



TRUSTLAW NON-PROFIT
STRUCTURING GUIDE FOR
THAILAND

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Thomson Reuters Foundation

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Tilleke & Gibbins and the Thomson Reuters Foundation, have created this Guide purely to inform and to assist its readers in learning more about legal vehicles used by non-profit (charitable) and/or socially driven businesses. The contents of this Guide are for information purposes and to provide an overview only. This Guide does not provide legal information on all corporate forms available and is current as of Jun 4th , 2018. Although we hope and believe this Guide will be helpful as background material, we cannot warrant that it is accurate or complete, particularly as circumstances change after publication. This Guide must be considered as an overview only. It does not constitute legal advice and should not be relied on as such. This Guide is general in nature and may not apply to a particular factual or legal circumstance faced by a social or philanthropic venture. To address a specific situation, it is always recommended to seek independent legal advice. All copyright and other intellectual property rights in all text and other materials in this Guide are owned by Thomson Reuters Foundation and Tilleke & Gibbins or are included with permission of the relevant owner. You are permitted to browse the electronic version of this Guide and to print or download a copy to a hard disk. You are not permitted to reproduce, sell or distribute any part of this Guide for commercial purposes, nor shall it be modified or incorporated in any other work, publication or site. No other license or right is granted.

TABLE OF CONTENTS

P. 02 | About us

P. 03 | Disclaimer

P. 05 | Legal Structure 1 – Foreign Private Organisation

P. 10 | Legal Structure 2 – Association

P. 14 | Legal Structure 3 – Foundation

LEGAL STRUCTURE 1 – Foreign Private Organisation

(a) Overview

A Foreign Private Organization (FPO) is a juristic person under the law of its home country, which does not have any profit-making or political purposes. An FPO has the objective of providing economic, social, and academic assistance in Thailand, whether through the public or the private sector, in accordance with the assistance guidelines provided by the Thai government. The guidelines, and therefore the operations of the FPO, are in line with the development and stability policy of the Thai government.

(b) Advantages & disadvantages

Advantages:

- ✓ Policy or management control by head office.
- ✓ Can obtain permission for a regional office.
- ✓ Non-profit nature ensures the FPO's activities are for social benefits.

Disadvantages:

- ✗ Cannot earn any income or make any profit in Thailand; the budget for all activities in Thailand must be supplied by the FPO's head office.
- ✗ Must seek approval for its operations in Thailand from the Ministry of Labor (MOL). The MOL will grant the FPO a limited permit to operate in Thailand, depending on the permitted projects.
- ✗ Can only carry out activities which are permitted by the MOL.
- ✗ In practice, it takes a long time to obtain permission from the MOL and to complete all administrative processes required to set up operations in Thailand.

(c) Establishment process, documentation & costs

An FPO must submit an application to the MOL. 30 copies of each of the following documents are required:

- Evidence or certificate of juristic person status from the FPO's home country, or from an embassy or a consulate in that country;
- Certificate from a work unit or institute in Thailand to which the FPO applicant plans to contribute assistance;
- A letter of reference from a work unit chief in the province where the FPO applicant plans to proceed;
- Three years of previous annual reports;
- Power of Attorney with 30 baht duty stamp affixed;
- 2x2.5 inch photos of:
 - The applicant - 4 photos
 - The appointee - 4 photos
 - The joint operator - 2 photos;
- Location map of the FPO in Thailand; and
- Details of the project applied for in Thailand, and the operating budget, on forms PV 1-5, PV 8 and PV 9. This requirement is broader in the event that a regional office is being established, in which case the following are required instead:
 - Project details for the operation for which assistance is proposed, including a certificate from the work units which will be given assistance, using forms PVR 1-6. In this regard, the FPO must coordinate with relevant parties in Thailand in order to obtain project approval, and must not exploit Thailand as base for intervening in the internal affairs of any other country.
 - All other documentary requirements are the same.

An FPO which applies for permission to operate in Thailand, and/or set up a regional office, would be permitted to operate for one year for the first application. Extensions may subsequently be granted for two years per extension.

The representatives and staff of the FPO who will be appointed for the operation in Thailand must submit the following evidence:

- Form PV 3/PVR 3, PV 4/PVR 4, PV 4.1/PVR 4.1 (30 copies) stipulating the reasons and the need to use foreign staff instead of Thai personnel, the position required, and clear and detailed job descriptions;
- Location map of the FPO office in Thailand;
- Organization chart of the FPO, clearly specifying the names and positions of the staff and representatives; and
- Copies of their educational qualifications (and professional licenses in the case of professions where that is relevant, such as a medical practitioner license, etc.).

In practice, obtaining permission from the MOL will take at least one year to complete. An MOL officer will first review all the documents and, if satisfied, will then send them to the Committee on Consideration of the Entry of a Foreign Private Organization (the “Committee”) to consider whether to grant the FPO registration. The applicant will be notified after the Committee makes a decision on the FPO’s registration.

(d) Liabilities

As mentioned above, the FPO can only carry out activities which are permitted by the MOL, and can only use funds provided by the head office in another country. If an FPO intends to hire workers, enter into agreements, or rent property, in order to run its permitted project, it must do so using its own funds. As such there is no possibility of an FPO being held liable for any debts.

Similarly, the FPO has no legal status under Thai law and therefore its employees and representatives are personally liable for any actions they carry out in its name.

(e) Tax treatment

As mentioned above, an FPO cannot generate any income in Thailand and can only use the funds which it receives from its head office. On that basis, the FPO would not be subject to corporate income tax.

(f) Ongoing governance and regulatory obligations

An FPO which obtains permission to operate in Thailand shall proceed as follows:

1. Comply with the rules, conditions, or practices regarding the operation of FPOs, as prescribed by the Committee;
2. Comply with the laws, rules, and relevant official regulations, provided that its activities are not contrary to morals, customs and culture of Thailand;
3. Carry out its activities in accordance with the permitted projects or work plan;
4. Carry out no activities other than those permitted;
5. Submit semi-annual reports on the results of its operation to the Committee for their information;
6. Report to the Committee within 90 days of the end date of the project, or the work plan, where the term of the project or the work plans permitted by the Committee comes to an end; and

If a permitted FPO violates or fails to comply with the rules, or where the Committee considers that the operation of an FPO is not beneficial to Thailand, the Committee may require the FPO in writing to comply FPO with the rules within a specified period. If the FPO does not comply with the rules within the period specified in the notice, or in the case of a severe violation, the Committee has the power to suspend the operation of the FPO, either wholly or partially; or to propose to the Minister of Labor to order any foreigner who enters Thailand to work for the FPO in the regional office, or the branch office, to leave Thailand; or to terminate the implementation of any activity, provided that the competent agencies comply with the resolutions of the Committee.

(g) Corporate structure

An FPO is required to submit the bio-data of representatives who will act on its behalf in Thailand to the Committee before the Committee grants the FPO license.

(h) Governance

There is no prohibition against foreigners acting as representatives of the FPO.

(i) Finance & fundraising

The FPO has to submit details about its project, including its operating budget etc., for the Committee to review before the FPO license is granted. As mentioned above, the FPO cannot generate any income in Thailand, and it can only use the funds which it receives from its head office. Therefore, an FPO is also prohibited from engaging in fundraising.

(j) Resources

https://www.doe.go.th/prd/download/download_by_pool_file/6650

LEGAL STRUCTURE 2 – Association

(a) Overview

Associations are one of the most commonly used structures in the charitable field in Thailand. Fundamentally, this legal structure involves grouping three or more persons (members) who wish to continually and collectively perform a non-profit activity. Such associations must register their articles of association in accordance with the requirements of the Thai Civil and Commercial Code. The articles of association must not have any unlawful objectives.

Associations are legally required to register under Thai law. Fines are applicable if the term “association” is used in business documents by an entity that is not registered as an association.

(b) Advantages & disadvantages

Advantages:

- ✓ Flexible structure, as the association is governed by its own articles of association.
- ✓ Easy and simple to operate, with minimal administrative requirements.
- ✓ Low set-up costs.
- ✓ More than one member can be involved in the operation.
- ✓ Can be registered as a charity as well.
- ✓ Tax privileges are available.
- ✓ Non-profit nature assures donors that the association will solely use donations and revenue for social benefits.

Disadvantages:

- ✗ At least 10 members are required.
- ✗ An association can gain profits and income, but is prohibited from distributing them to its members.
- ✗ Only the directors, and not the members, are authorized to carry out the association’s functions.
- ✗ Heavy reliant on government funding and public donations as the main sources of income.
- ✗ Unsuitable for borrowing money or seeking investment due to its legal structure and inability to issue shares, respectively.
- ✗ Unsuitable for profit-seeking organizations.

(c) Establishment process, documentation & costs

An association can be registered at the relevant district office, based on the jurisdiction of the association's address. The required documents (three copies each) are as follows:

- Form Sor. Kor. 1 – application to establish an association;
- Articles of association;
- Names, addresses, and occupations of the members (not less than 10 persons);
- Names, addresses, and occupation of the directors of the association;
- Statutory meeting minutes of the association;
- Map of the head office and other offices (if any) of the association;
- Consent letter to use the address of the head office, along with the title of ownership or possessory right (e.g., a land deed, or lease agreement – original copies must be reviewed by the authorities, and photocopies must be submitted);
- Identification card(s) of the Thai person(s), or the passport(s) of the foreigner(s); and
- Copy of the members' household registrations (for Thai nationals).

Should the association have a director who is a foreigner, he or she needs to undergo a background check by the Thai National Intelligence Agency and the embassy where he or she holds nationality. Letters from both organizations need to be submitted to the relevant district office where the association will be registered.

The district officer will review all the documents and determine whether any other authorities need to become involved in the association's registration. The applicant will be notified after the Association Registrar makes a decision on the association's registration. The process takes approximately 60-70 days to complete.

There is an applicable fee of THB 2,005 per association per registration application.

(d) Liabilities

An association is a legal entity that is separate from its members. Therefore, it can hold assets in its own name, and its members will not be personally liable for the debts and other obligations of the association, as long as they comply with the laws and the articles of association. If an association intends to hire workers, enter into agreements, or purchase or rent property, the association may use its own funds.

(e) Tax treatment

Associations registered under Thai law are subject to corporate income tax on gross income, before the deduction of any expenses. The tax rates are as follows:

- 2 percent on gross income under Section 40 (8) of the Revenue Code (i.e., income from business, commerce, agriculture, industry, and transport, etc.).
- 10 percent on any gross income, other than income under Section 40 (8) of the Revenue Code (i.e., interest, dividends, capital gains, rental, commission, and professional fees etc.).

Associations are granted corporate income tax exemptions on registration and subscription fees received from members, and on money or property received as donations or gifts.

Associations which are prescribed as public charity organizations, or institutions, under a Notification of the Ministry of Finance are exempt from corporate income tax on all kinds of income. Furthermore, donations to qualifying associations, which do not exceed a specified amount, are allowed as a deduction in the computation of a donor's personal income tax or corporate income tax.

(f) Ongoing governance and regulatory obligations

Every fiscal year, the association must report its operational performance to the Association Registrar, and provide the following documents:

- Operational report for the past fiscal year;
- Audited account and balance sheet for the past fiscal year; and
- copies of all the minutes of meetings of the board of directors for the past fiscal year.

An association is a legal identity that is distinct from its members. It can enter into agreements under its own name, as referred to in its Articles of Association, and the association's members do not have to individually and personally enter into such agreements.

Associations can gain profit and income, but they are prohibited from distributing them to their members. As it is a non-profit entity, an association can only use its profits and income for the continuance of its social objectives and for the public good.

(g) Corporate structure

In order to be established an association must have at least three promoters whose backgrounds are endorsed by a Level 6 civil servant or higher. The association must also have at least 10 members, who may be divided into ordinary members and honorary members, with the latter possessing most of the rights of ordinary members except the right to vote.

The law requires that any change in the board composition must be registered with the Association Registrar within 30 days from the date of the meeting which resulted in the change (e.g., retirement, removal, or replacement of directors).

(h) Governance

There is no prohibition against foreigners sitting on the board of directors of an association.

(i) Finance & fundraising

Associations can accept financing and funding from their members. Associations may also utilize fundraising to finance their charitable activities. The Fundraising Control Act B.E. 2487 (1944) is the applicable law which governs fundraising, which is a regulated and licensed activity in Thailand. Therefore anyone seeking to fundraise must meet the licensing requirements.

(j) Resources

www.rd.go.th/publish/fileadmin/user_upload/roa/aboutus/roa-knowledge.pdf

www.rd.go.th/publish/44182.0.html

www.dopa.go.th/public_service/service_guide30

www.dopa.go.th/public_service/service_guide143/view144

LEGAL STRUCTURE 3 – Foundation

(a) Overview

A foundation is an entity registered under the Civil and Commercial Code that consists of property allocated to a public charity, religion, arts, science, education, or other purposes for public benefit, and not for profit. Under the law, a foundation must have the word “foundation” in its name.

(b) Advantages & disadvantages

Advantages:

- ✓ Flexible structure, as the foundation is governed by its own articles of association.
- ✓ Easy and simple to operate, with minimal administrative requirements.
- ✓ Low set-up costs.
- ✓ Can be registered as a charity as well.
- ✓ Tax privileges are available.
- ✓ Non-profit nature assures donors that the foundation will use its donations and revenue entirely for social benefits.

Disadvantages:

- ✗ A foundation can gain profits and income, but it is prohibited from distributing them to its directors.
- ✗ Difficulties in seeking private investment, as the foundation cannot issue shares.
- ✗ Heavy reliance on government funding and public donations as the main sources of income.
- ✗ Unsuitable for borrowing money or seeking investment due to its legal structure and inability to issue shares, respectively.

(c) Overview

A foundation can be registered at the relevant district office, based on the jurisdiction of the foundation's address. The required documents (three copies of each) are as follows:

- Form Mor. Nor. 1 – application to establish a foundation;
- Articles of association;
- Name, address, and occupation of the directors of the foundation (at least three persons);
- Evidence of name change (if applicable);
- Minutes of the statutory meeting of the foundation;
- Interview records relating to the status and good behavior of the directors of the foundation, as well as certification made by the directors of the foundation;
- Approval letter from the founder of the foundation, or the heir, or other relevant government authorities;
- Identification card(s) of the Thai person(s), or the passport(s) of the foreigner(s), for the property owner and the directors of the foundation (certified true and correct copies);
- Copy of the household registration of the property owner and the directors of the foundation (certified true and correct copies);
- Bank certificate confirming the deposit of the foundation property at the bank (that currently holds the property);
- Title deed and a land valuation report for any land that is allocated to the foundation; and,
- A copy of the will, if an estate has granted property to the foundation, and written representation that the property will be granted to the foundation by the property owner, as well as the bank's certification.

One original copy and two photocopies of the following documents are required:

- Map of the head office and other offices (if any) of the foundation;
- Consent letter to use the address of the foundation, with the title of ownership or possessory right; and
- Management authority over the land (e.g., title deed of the land, land sale and purchase agreement, construction permit, lease agreement and company affidavit), if any.

Should the foundation have a director who is a foreigner, he or she needs to undergo a background check by the Thai National Intelligence Agency and the embassy where he or she holds nationality. Letters from both organizations need to be submitted to the relevant district office where the foundation will be registered.

The entire process takes approximately 60 days to complete. Firstly, the district officer will review all the documents, and determine whether any other authorities need to become involved in the foundation's establishment. The applicant will be notified after the Foundation Registrar makes a decision on the foundation's registration.

There is an applicable fee of THB 210 per foundation registration application. Please note that other applicable fees may apply, should there be additional filings required after the registration process.

(d) Liabilities

A foundation has a legal identity that is separate from that of its directors. Therefore it can hold assets in its own name and its directors will not be personally liable for the debts and other obligations of the foundation, should the directors comply with the law and the articles of association. If a foundation intends to hire workers, enter into agreements, or purchase or rent property, it may do so using its own funds.

(e) Tax treatment

The tax position of a foundation is similar to that of an association.

(f) Ongoing governance and regulatory obligations

In March of every year, the foundation is required to report its operational performance to the Foundation Registrar, and provide the following documents:

- Operational report for the past fiscal year;
- Audited account and balance sheet for the past fiscal year; and
- Copies of all the minutes of the meetings of the board of directors for the past fiscal year.

A foundation is a legal identity that is distinct from its members. It can enter into agreements in its own name, as referred to in its articles of association, and foundation members do not have to individually and personally enter into such agreements.

Foundations can gain profits and income, but they are prohibited from distributing them to their directors. As non-profit entities they can only use their profits and income for the continuance of their social objectives and for public good.

(g) Corporate structure

A foundation must have regulations and a board of directors, consisting of at least three persons, to conduct its business. The law requires that any change in the board composition must be registered with the Foundation Registrar within 30 days from the date of the meeting which resulted in the change (e.g., retirement, removal, or replacement of directors).

(h) Governance

There is no prohibition against foreigners sitting on the board of directors of the foundation.

(i) Finance & fundraising

Under the law, a foundation must have funds of not less than THB 500,000 in cash, or THB 250,000 in cash and other properties that have a combined value of not less than THB 500,000. Foundations for social welfare, education promotion, sports, religion, public hazard mitigation, health treatment, AIDS prevention, drug rehabilitation, or which are government-funded foundations, must have funds of not less than THB 200,000.

Representatives or managers of a foundation will allocate or manage the foundation's property, and profits from that allocation or management must be solely used for the social causes and charitable purposes of the foundation. That is to say, representatives or managers of foundations are not authorized to appropriate the profits for their personal gain. For example, they cannot appoint a relative to be a director of a foundation and then grant them unreasonably high remuneration, because this will indirectly lead to the sharing of profits to the representative or manager, which would be considered tax evasion on their personal income.

Foundations may utilize fundraising to finance their social enterprise. The Fundraising Control Act B.E. 2487 (1944) is the applicable law which governs fundraising, which is a regulated and licensed activity in Thailand. Therefore anyone seeking to fundraise must meet the licensing requirements.

(j) Resources

www.dopa.go.th/public_service/service_guide30

www.rd.go.th/publish/44182.0.html