



Newsletter No. 53 (EN)

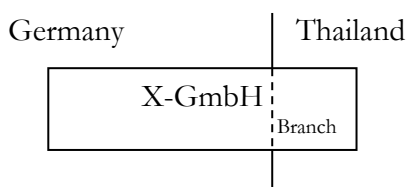
**Establishment of a Branch Office
in Thailand**

July 2017

Although Lorenz & Partners always pays great attention on updating information provided in newsletters and brochures we cannot take responsibility for the completeness, correctness or quality of the information provided. None of the information contained in this newsletter is meant to replace consultation with a qualified lawyer. Liability claims regarding damage caused by the use or disuse of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected, if not generated deliberately or grossly negligent.

I. Introduction

To conduct business in Thailand, investors can decide to set up a *Branch Office* (“**Branch**”). A *Branch* is a part of another company and is, therefore, not a separate legal entity.



However, a *Branch* is a separate tax entity. It normally constitutes a permanent establishment of a foreign company. In Thailand, the *Branch* has to be registered with the Ministry of Commerce.

II. The Foreign Business Act

The Foreign Business Act B.E. 2542 (1999) (“**FBA**”) sets restrictions to foreigners conducting business in Thailand. Depending on the type of business, foreigners are either prohibited from operating it, or have to obtain a license or a certificate prior to operating the business. The different types of businesses are outlined in three lists annexed to the FBA.

“Foreigner” under the FBA means:

- A natural person who does not have Thai nationality; or
- A juristic person not registered in Thailand; or
- A juristic person registered in Thailand having half or more of its share capital held by one of the abovementioned persons.

The Business Lists under the FBA are as follows:

- Business List 1: Covers businesses that foreigners are not allowed to operate for special reasons.
- Business List 2: Covers businesses that are reserved due to national safety, security, culture, natural resources and environment. The maximum amount of shares held by foreigners is limited to 60%, or 75% if the Cabinet has approved the project.
- Business List 3: Covers businesses where Thais are not yet ready to compete with foreigners. These businesses can be carried out by foreigners without any restrictions regarding the number of shares held by foreigners. However, the business operator must obtain a Foreign Business License (“**FBL**”) before conducting the business. The FBL must be applied for at the Department of Business Development and requires the approval of the Foreign Business Committee.

The *Branch* of a foreign entity is considered a “foreigner” under the FBA (*a juristic person not registered in Thailand*) and, therefore, requires an FBL prior to conducting any activities under List 2 and 3. To obtain an FBL, the minimum working capital in foreign currency equivalent to 25% of the average 3-years expenditures must be brought into Thailand. The minimum working capital shall not be less than THB 3 million in any case.

The capital shall be remitted in accordance with the following timeline:

- an amount of not less than 25% of the minimum capital must be brought in or remitted within the first three months;

- Another 25% of the necessary capital must be brought in or remitted within the first year;
- Another 25% of the necessary capital must be brought in or remitted until the end of the second year;
- The remaining 25% must be brought in or remitted until the end of the third year.

A *Branch* may exist for an indefinite period up to its date of dissolution unless a shorter period is indicated in the application as a result of a contract for a specific project in Thailand. Usually, a *Branch* is used for projects of international contractors who do not intend to permanently do business in Thailand.

III. Required Documents

The following documentation is required to be submitted to the Ministry of Commerce:

- A copy of the company affidavit or other documents showing the juristic person's status with particulars of name, capital, objectives, address, list of directors and signing authority;
- A power of attorney issued by the authorised person(s) of the juristic person appointing its representative(s) in Thailand;
- A copy of the passport of the representative(s), or (in case the representative is a Thai national) a copy of the ID card;
- A copy of the household registration, residence permit or document showing temporary visa under the law governing immigration, of the representative(s);
- Affidavit of the applicant stating that the applicant, its director(s), manager(s) or representative(s) are qualified and are not disqualified according to Section 16 of the FBA;
- A letter describing the details of the business activities applied for, including information related to the applicant's profile, type of applied business, details of business operation, capital structure, business structure, size of business, tech-

nology transfer plan and employment-related information;

- A map showing the location of the applicant's business operating place in Thailand;
- A power of attorney, in case another person is authorised to act on the applicant's behalf (e.g. a consultant submitting the application).

IV. FBL Exemption for Government Contractors

Since 9 June 2017, foreign juristic persons are no longer required to apply for an FBL if the branch office is set up to conduct the following activities:

- Service business under a contract with a governmental authority; or
- Service business under a contract with a state-enterprise.

The foreign entity only has to notify the business operation to the Ministry of Commerce to obtain a registration number for the branch.

Unlike for a branch office that requires an FBL, the FBL-exempt branch office only requires a minimum capital of THB 2 million. However, in case of employing foreigners, the THB 3 million minimum capital is still required.

V. Summary

Setting up a *Branch* in Thailand is possible, but the process is lengthy and bureaucratic. Depending on the intended business, investors should consider setting up a separate Thai company, as this may be easier and, thus, more efficient, especially considering the separate taxation of the branch and the resulting accounting requirements. However, under the new legislation, government contractors are no longer required to apply for an FBL, thereby reducing the registration procedure from 4-6 months to approx. 1 week until the Certificate is issued.



*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

LORENZ & PARTNERS Co., Ltd.

27th Floor Bangkok City Tower
179 South Sathorn Road, Bangkok 10120, Thailand

Tel.: +66 (0) 2-287 1882

E-Mail: info@lorenz-partners.com