

Thailand

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REGULATORY OVERVIEW

1. Please give a brief overview of the regulatory framework for medicinal products/pharmaceutical products/drugs (as they are called in your jurisdiction), including the key legislation and regulatory authorities. If biotechnology products are treated differently, please specify the differences.

The regulation of medicinal drugs in Thailand is overseen by the Ministry of Public Health (MOPH). The Drug Control Division of the Food and Drug Administration (FDA) (*see box, The regulatory authority*), a department of the MOPH, handles the four main aspects of drug regulation:

- Pre-marketing control (including licensing and registration).
- Post-marketing monitoring and surveillance.
- Consumer education and dissemination of information.
- Promotion of technological development and research for export.

The key piece of legislation regulating medicinal drugs in Thailand is the Drug Act 1967 (Drug Act), which has been subsequently revised four times. The Drug Act (including its four amendments) together with ministerial regulations and notifications form the legislative framework for drug regulation in Thailand.

PRICING AND STATE FUNDING

2. Please give a brief overview of the structure and funding of the national healthcare system.

There are three main schemes relating to the healthcare system in Thailand.

Social Security Scheme. This is administered by the Social Security Office and covers employers with one or more employees. However, this scheme is not applicable to:

- Government employees in the central, provincial and local administrations.
- Employees of foreign governments or international organisations.
- Employees stationed abroad, despite their employers' office being in Thailand.
- Private school teachers and headmasters.

- Students, including undergraduate students, nursing students and apprentice doctors who are employees of schools, universities or hospitals.
- Employees of other undertakings as prescribed by royal decree.

Civil Servant Medical Benefit Scheme (CSMBS). This is administered by the Social Security Office and covers government officials and their dependants (parents and up to three children).

National Health Insurance (THB30 Scheme). This is administered by the MOPH and covers the remaining population not covered under either the Social Security Scheme or the CSMBS.

3. In what circumstances are the prices of medicinal products regulated?

Prices of medicinal products are regulated when they are listed on the National List of Essential Drugs (NLED), a "maximum list" from which government hospitals are expected to select their individual hospital formulary. The prices of the drugs on this list are subject to a median price policy.

In addition, the Ministry of Finance has implemented a notification setting prices for government hospitals. However, these prices only apply to persons under the CSMBS. The MOPH has implemented a notification on how much government hospitals are allowed to charge patients. The Drug Act is currently being revised, and these revisions may well include cost-effectiveness as a required element for drug registration.

4. When is the cost of a medicinal product funded or reimbursed by the state? Please briefly outline the procedure and pricing for state funding or reimbursement (for example, is the reimbursement paid to the producer, pharmacist or end-user)?

Medicines are reimbursed by the state when the drugs are listed in the NLED (*see Question 3*). However, this list is only available to government hospitals.

Government hospitals generally provide drugs from the NLED to civil servants and to persons under the THB30 Scheme. In this case, the patient either pays nothing to the hospital or, for people under the THB30 Scheme, a maximum of THB30 (as at 1 November 2010, US\$1 was about THB30.2) in certain circumstances. The hospital is reimbursed completely by the government.

For persons under the Social Security Scheme, reimbursement is partially covered if the medicinal product was administered by a doctor in a government hospital. Persons under the Social Security Scheme can also acquire private health insurance to cover the remainder of the cost.

MANUFACTURING

5. Please give an overview of the authorisation process to manufacture medicinal products. In particular:

- To which authority must the application be made?
 - What conditions must be met to obtain authorisation?
 - Are there specific restrictions on foreign applicants?
 - What are the key stages and timing?
 - What fee must be paid?
 - How long does authorisation last and what is the renewal procedure?
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Application

Applications are made to the FDA for Bangkok and its territories. Applications are made to the appropriate provincial public health offices for other provinces.

Conditions

A licence from the FDA is required for the manufacture of “modern medicines”. The FDA issues a licence to manufacture, sell or import modern medicines, or order them into Thailand, if the applicant:

- Is the owner of the business and has sufficient property or status to be able to establish and operate the business.
- Is at least 20 years of age.
- Is resident in Thailand.
- Has not been convicted for an offence against certain laws, such as laws concerning narcotics and psychotropic substances.
- Has premises to produce, sell, import or store drugs and equipment for use in the production, sale or storage of drugs, and the control or maintenance of drug quality and quantity as prescribed in ministerial regulations.
- Uses a trade name that is not a repetition of, or similar to, the trade name used by a licensee whose license is suspended or has been revoked for less than a full year.

All of the above conditions must be met to obtain a licence to manufacture in Thailand.

Restrictions on foreign applicants

A foreign applicant must be a resident in Thailand to obtain a licence to manufacture, sell or import drugs.

Key stages and timing

An application for a licence to manufacture is submitted to the Drug Control Division of the FDA. The applicant’s buildings and facilities are then inspected by the MOPH, to assess compliance

with World Health Organisation Good Manufacturing Practices (GMP) and decide whether the applicant has adequate facilities and the appropriate personnel to manufacture such medicines.

Fee

The fees are as follows:

- Licence to manufacture modern medicines: THB10,000.
- Licence to manufacture traditional medicines: THB5,000.

Period of authorisation and renewals

Licences for modern medicines are valid up until 31 December of the year in which they are issued. An application for renewal must be submitted before expiration of the current licence.

6. What powers does the regulator have to:

- Monitor compliance with manufacturing authorisations?
 - Impose penalties for a breach of a manufacturing authorisation?
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Regulators can inspect manufacturing sites for GMP compliance, and monitor manufacturing process changes to ensure that there are no adverse effects on the safety or efficacy of the medicines being produced. The regulator can suspend or revoke the manufacturing licence if the licensee violates any provision of the Drug Act. Licensees can appeal to the Minister of Public Health within 30 days of notification of an order to suspend or revoke a licence.

Further, the authorities can impose fines and terms of imprisonment for manufacturing without a licence. Manufacturing modern medicines without a licence can lead to up to five years’ imprisonment, and a fine of up to THB10,000. Manufacturing traditional medicines without a licence can lead to up to three years’ imprisonment and a fine of up to THB5,000.

CLINICAL TRIALS

7. Please give an overview of the regulation of clinical trials. In particular:

- Which legislation and regulatory authorities regulate clinical trials?
 - What authorisations are required and how is authorisation obtained?
 - What consent is required from trial subjects and how must it be obtained?
 - What other conditions must be met before the trial can start (for example, the requirement for a sponsor and insurance cover)?
 - What are the procedural requirements for the conduct of the trial (for example, using certain medical practices and reporting requirements)?
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There is no centralised regulation for clinical trials. At least six regulatory authorities have jurisdiction over various aspects of clinical trials:

- FDA of the MOPH.

- Department of Medical Services of the MOPH.
- Department of Communicable Diseases Control of the MOPH.
- Ethical Review Committee for Research in Human Subjects of the MOPH.
- National Sub-Committee of HIV Vaccine of the MOPH.
- Medical schools and hospitals with specific regulations and/or ethics committee.

The FDA does not have a direct mandate to regulate clinical trials in humans. Instead, the FDA's authority to control the import of drugs for research purposes is frequently used to indirectly allow the FDA to regulate clinical trials of drugs in humans.

To obtain approval for clinical trials in Thailand, the drug developer/sponsor must first select a research facility and a team of physicians to conduct the study. The facility is usually a hospital or university medical centre. The sponsor must then obtain approval to conduct a study in humans from the Ethical Review Committee for Research in Human Subjects of the MOPH (ERC) and/or the ethics committee of the research institute or university that will conduct the trial. This can take two to three months. If an approval is obtained from the ethics committee of the research institute or university conducting the trial, an approval from the ERC is usually optional (unless it is further required by the internal rules and regulations of that research facility).

Once the drug developer/sponsor receives approval from the relevant ethics committee, it can apply to the FDA for a licence to import investigational drugs into Thailand for research purposes. To obtain this licence, the drug developer/sponsor must submit approval from an authorised (or FDA approved) ethics committee, together with documentation, including:

- Details of the drugs to be imported.
- Pre-clinical trial reports.
- A complete clinical trial protocol.
- The estimated amount of drugs required.
- A power of attorney.

The licence is only valid for one year. If the clinical trial is not complete within a year, a new import licence must be obtained.

MARKETING

- 8. Please give an overview of the authorisation process to market medicinal products. In particular:**
- To which authority must the application be made?
 - What conditions must be met to obtain authorisation?
 - What are the key stages and timing?
 - What fee must be paid?
 - How long does authorisation last and what is the renewal procedure?

Application

Applications are made to the FDA.

Conditions

The applicant must register its product (*see below, Key stages and timing*).

Key stages and timing

Companies and individuals wishing to place a drug on the market must obtain a licence from the FDA to manufacture, sell or import drugs in Thailand. The licensed applicant must then obtain FDA registration for the medicine to market and sell the drug in Thailand. Registration requirements differ for general drugs (which include generics, new medicines and new generics) and traditional drugs.

Registration of a new modern drug requires an application to the Drug Control Division of the FDA for permission to import a drug sample into Thailand or, less frequently, permission to manufacture a sample. Then the applicant must submit a full marketing approval application, together with the samples, to the FDA for review and registration. The review can take at least nine months, depending on the type of drug, with different timelines for new drugs and generic drugs. The review can take up to two years for a new drug that has never applied for a marketing licence in Thailand. The timeline also depends on the credibility and comprehensiveness of the information submitted along with the application.

Once the review has been passed, the new drugs must undergo a two-year safety monitoring period, during which the product can only be prescribed in hospitals and clinics. Safety reports must then be submitted to the authorities for consideration as to whether general marketing will be permitted.

For generics, see *Question 9*, and for traditional medicines, see *Question 17*.

Fee

The fee for a licence to market a drug is THB2,000.

Period of authorisation and renewals

Once approved, the certificate of product registration is valid as long as the product marketing remains active. If the product is not in the market for longer than two years, the FDA will automatically cancel the registration.

9. Please briefly outline the abridged procedure for obtaining marketing authorisations for medicinal products. In particular:

- Which medicinal products can benefit from the abridged procedure (for example, generics)?
- What conditions must be met?
- What procedure applies and what information can the applicant rely on?

Generics enjoy an abridged registration process. To benefit from the streamlined procedures, the product must meet the criteria for a generic. Generics are pharmaceutical products with the same active ingredients and the same dosage forms as those of the original products, but they are made by different manufacturers.

To register generics, an applicant must submit an application for permission to import or manufacture drug samples. The requirement is similar to that for registration of new drugs (*see Question 8*).

The applicant then submits various details about the drug production process to be used, including:

- Manufacturing methods.
- In-process controls.
- Specifications of the active ingredients.
- Excipients used in the production process.

Information about the drug storage conditions and details about the stability of the drug are also required.

The applicant then submits a formal application for a drug registration certificate. The entire process can take six to 12 months.

There are also “new generics”, or medicines with the same active ingredients, doses, and dosage forms as those of new compounds registered after 1992. To register new generics, the FDA only requires dossiers of bioequivalence studies, in addition to the required documentation for a generics submission (*see above*).

10. Are foreign marketing authorisations recognised in your jurisdiction? If so, please briefly outline the recognition procedure.

An existing market authorisation issued in a foreign jurisdiction does not provide fast-track approval for an application filed with the FDA. However, the application requires the applicant to inform the FDA of any approved, and pending, marketing authorisation of the product in other countries.

If the foreign authorisation belongs to a country where regulatory practice is credible and globally accepted, this adds credibility to the authorisation application and the evidence submitted to the FDA with the application for marketing approval.

11. What powers does the regulator have to:

- Monitor compliance with marketing authorisations?
 - Impose penalties for a breach of a marketing authorisation?
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The Medical Sciences Department under the MOPH is the main authority responsible for ensuring the quality and safety of drugs on the market in Thailand. Samples are regularly tested at its laboratories to monitor the safety of new drugs. The Medical Sciences Department can, if necessary, remove drugs from the market. The authorities can also suspend or revoke a licence. A breach of a marketing authorisation is considered a criminal offence and is subject to both imprisonment and a fine. Licensees can appeal to the Minister of Public Health within 30 days from the date of notification of an order to suspend or revoke a licence.

12. Are parallel imports of medicinal products into your jurisdiction allowed? If so, please briefly outline what conditions must be met by the parallel importer. Can intellectual property rights be used to oppose parallel imports?

Generally, most intellectual property laws in Thailand recognise the exhaustion of rights principle. Therefore, parallel imports are not generally regulated in Thailand.

However, parallel imports are not permitted in the pharmaceutical sector. To import a drug into Thailand, a company needs a licence from the FDA. When applying for product registration, the FDA will not accept an application for a product that has a trade mark identical to other products in the Thai market.

13. Please briefly outline the restrictions on marketing practices such as gifts or “incentive schemes” for healthcare establishments or individual medical practitioners.

The Drug Act is silent on this issue. However, for pharmacists or doctors who are government officers, the anti-corruption rules prohibiting gifts or incentives that exceed THB3,000 apply.

For pharmacists or officers who are not employed by the government, marketing practice is restricted by the Code of Sales and Marketing Practices issued by the Pharmaceutical Research and Manufacturers Association (PReMA) (PReMA Code). The PReMA Code provides detailed marketing restrictions in different situations.

Generally, gifts to healthcare professionals and institutions for customary courtesy and traditional occasions are allowed. The gift must not be distributed frequently, and the value of any gift must not exceed THB3,000 per healthcare facility or professional on each occasion.

14. Please briefly outline the restrictions on marketing medicinal products on the internet, by e-mail and by mail order.

Marketing pharmaceutical products online, by e-mail, and/or by mail order is not permitted. According to the FDA, most adverts (more than 85%) on the internet are being run without FDA permission. The FDA has made it a priority to focus on this problem.

ADVERTISING

15. Please briefly outline the restrictions on advertising medicinal products. In particular:

- Which legislation applies and which regulatory authority enforces it?
 - What types of medicinal product cannot be advertised?
 - What restrictions apply to advertising that is allowed?
 - If advertising over the internet is treated differently, please identify the differences.
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Sections 88 to 90 of the Drug Act regulate the advertising of medicinal products and are enforced by the FDA. The authorities also take the Consumer Protection Act 1979 into consideration when regulating advertising practice. Further, pharmaceutical companies that are members of PReMA must comply with the PReMA Code. Although the PReMA Code is not considered to be law, and the FDA does not have the authority to enforce it, a violation of the PReMA Code can be reviewed by the PReMA Committee, which can sanction its members.

Adverts for prescription or pharmacy dispensed medicines can only be targeted to professionals. Drugs in the household remedy category can be advertised directly to consumers and the general public, but that advertising is subject to FDA review and approval before dissemination.

Drugs that can be advertised directly to consumers and the general public must not be dangerous drugs. However, most drugs are classified as dangerous drugs under Thai law. In this regard, drugs classified as dangerous drugs must be dispensed by a pharmacist or doctor. Drugs that are not classified as dangerous drugs (for example, traditional drugs or household remedies) are specifically listed by the Ministry of Public Health. Patients can buy these drugs without the need for a pharmacist to dispense the drug.

There is a requirement that advertising be truthful and not exaggerated, and adverts must be approved by the FDA before dissemination. Adverts must not (*section 88, Drug Act*):

- Boast that a medicine can miraculously or absolutely treat, cure or prevent disease or illness.
- Exaggerate or falsely declare properties of the medicine.
- Give the impression that the drug has a substance as its chief or component ingredient that it either:
 - does not have; or
 - has in a lower quantity than believed to be present.
- Give the impression that it is an abortifacient or a strong emmenagogue.
- Give the impression that it is an aphrodisiac or a birth control drug.
- Advertise specially controlled drugs or dangerous drugs.
- Contain certification or endorsement of its therapeutic properties by any other person.
- Show its therapeutic properties as being capable of curing, mitigating, treating or preventing diseases (or symptoms of them) as notified by the Minister of Public Health under section 77 of the Drug Act.

Further, adverts must not (*FDA Internal Rules 2002*):

- Be contrary to traditions, for example, local beliefs, norms and morals.
- Persuade patients to consume the product more than necessary, or create a misunderstanding that the product should be used regularly.
- Make a comparison that would defame other products.
- Cause consumers to misunderstand that the drug is equivalent to other products, such as food or cosmetics.
- Encourage acts or activities contrary to law.

Adverts must meet the FDA information requirements (for example, contain the drug name, ingredients and manufacturing source). Information distributed on the internet which is intended for customers or patients in Thailand must meet the same requirements outlined above.

PACKAGING AND LABELLING

16. Please briefly outline the regulation of packaging and labelling of medicinal products. In particular:

- Which legislation applies and which regulatory authority enforces it?
 - What information must the packaging and/or labelling contain?
 - What other conditions must be met (for example, information being stated in the language of your jurisdiction)?
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The label and the current size of the packaging are mandatory documents that must be submitted to the FDA to obtain FDA marketing approval. For labelling, the Drug Act requires that either a package insert, a Summary of Product's Characteristics or a Patient Information Leaflet are submitted. Required information is listed in the FDA Guidelines. If an applicant submits a Patient Information Leaflet, he must also submit the package insert.

Package inserts must contain the following:

- Product name.
- Name and strength of the active ingredients.
- Product description.
- Pharmacodynamics/pharmacokinetics.
- Indications.
- Recommended dose.
- Instructions for use, including modes of administration, contra-indications, general warnings and precautions, interactions with other medicaments, warnings and precautions for pregnant and lactating women, undesirable effects, and possible overdose and treatment.
- Dosage forms and packaging available.
- Name and address of manufacturing/marketing authorisation holder.
- Date of revision of package insert.

A package label must include the following mandatory information:

- Product name.
- Registration certificate number.
- Content.
- Composition or active ingredient with the quantity/potency.
- Lot/batch number.
- Manufacturer's name and country of origin.
- Date of manufacture.
- If applicable and on a red label, a statement that the drug is classified as a specially controlled drug, dangerous drug, or common household drug in Thailand.
- Expiration date and the word "expiry" in Thai.

All of the above information can be in Thai or English, except for the information noted above that must be expressly stated in Thai.

TRADITIONAL HERBAL MEDICINES

17. Please briefly outline the regulation of the manufacture and marketing of traditional herbal medicinal products in your jurisdiction.

Like other types of medicinal drugs, the FDA also regulates the manufacture and sale of traditional medicines.

Those who wish to produce, sell and/or import traditional medicines must first apply for a manufacturing licence, a sales licence, and/or an import licence (as the case may be).

Marketing approval (that is, a drug registration certificate) from the FDA is generally required for traditional medicines. However, the Drug Act exempts traditional herbal medicines from this requirement. Therefore, traditional herbal medicines do not have to be registered with the FDA. Only a manufacturing, sales or import licence is required.

PATENTS

18. What types of medicinal products and related substances and processes can be protected by patents and what types cannot be patent protected? If process patents only are available for these products and substances, please give details including whether the situation is likely to change. What are the legal criteria to obtain a patent? Which legislation applies?

The principal source of patent law is the Patent Act 1979, as amended by the Patent Act 1992 and the Patent Act 1999 (Patent Act). Ministerial regulations and various notifications published by the Department of Intellectual Property also form part of the patent regulatory scheme.

Pharmaceutical patents are treated the same as inventions in other fields. There are no specific guidelines or examination guidelines for pharmaceuticals. A claim for a pharmaceutical innovation must meet the usual criteria of novelty, non-obviousness and industrial applicability.

Certain subject matters are specifically excluded from patentability by the Patent Act. The following cannot be patented (*section 9, Patent Act*):

- Microorganisms that naturally exist and their components, animals, plants or extracts from animals or plants.
- Scientific and mathematical rules and theories.
- Computer programs.
- Methods for diagnosing, treating or curing human or animal diseases.
- Inventions which are contrary to public order or morality, public health or welfare.

The prohibition against patenting is absolute. The most problematic issues for the pharmaceutical sector relate to biologics and diagnostic methods, and methods of treatment.

Generally, the following can be patented if it is novel, non-obvious and useful:

- Polymorphic forms (such as solvates or different crystalline forms of a known chemical compound).
- Formulations (that is, pharmaceutical compositions).
- New therapeutic use of a known chemical compound.
- Combination and dosage form.
- Methods for preparing medicinal products or related substances.

19. How is a patent obtained? In particular:

- To which authority must the application be made?
- What fee must be paid?
- What are the key stages and timing?
- Does the patent office operate a deposit system or are applications subject to some form of scrutiny before acceptance?

The authority

Patent applications are made to the Patent Office of the Department of Intellectual Property, Ministry of Commerce (www.ipthailand.go.th). Thailand is a signatory to the Patent Cooperation Treaty (PCT) and international patent applications can be submitted through the PCT system.

Fee

Government fees for filing a patent in Thailand depend on the type of patent (patent, petty patent or design patent) and the number of claims. In general, the government filing fees are minimal. There is no deposit system for patent applications. Once the patent is granted, various maintenance fees apply from the fifth year onwards.

Process and timing

An applicant must first prepare a patent specification, including a detailed description of the invention, abstract, drawings and claims. Then the application must be filed with the Patent Office. The Patent Office then conducts a preliminary (formality) examination and publishes the patent application in the official *Patent Journal* in Thai. Substantive review is then undertaken. The entire process for issuance of an invention patent can take from three to five years. For pharmaceutical patents, the process can take six to eight years, and in some cases up to ten years.

20. How long does patent protection last? How is a patent renewed or patent protection extended? If the patent itself cannot be extended, can the organisation's monopoly rights be extended by other means, such as supplementary protection certificates or (regulatory) data exclusivity periods?

A patent for an invention is valid for 20 years from the date of filing (*section 35, Patent Act*). No extensions or renewals are allowed. Once the patent expires, the patentee's monopoly rights under the patent cannot be extended by other means, such as

supplementary protection certificates or data exclusivity periods, which, while available in other jurisdictions, are not available in Thailand.

21. In what circumstances can a patent be revoked?

The validity of patents can be challenged in the Intellectual Property and International Trade Court (IP & IT Court). The IP & IT Court can revoke a patent if one of the following applies:

- The invention is not new, lacks an inventive step, and/or is not capable of industrial application.
- The subject matter of the invention is not patentable (see *Question 18*).
- The patent applicant did not have the right, or was not eligible, to apply for the patent.

22. When is a patent infringed? How is a claim for patent infringement made and what remedies are available?

Specific rights of patentees are set out in section 36 of the Patent Act. They include the sole right relating to produce, use, sell, possess for sale, offer for sale or import into Thailand the patented products. The same protection is provided for processes.

Any person who violates the patentee's exclusive rights is subject to infringement liability, except where a statutory exemption applies.

Patentees can enforce their patent rights through criminal and/or civil actions in the IP & IT Court, which can issue injunctive remedies, damages and criminal penalties (fine and/or imprisonment).

TRADE MARKS

23. Can a medicinal product brand be registered as a trade mark? What are the legal criteria to obtain a trade mark? Which legislation applies?

A medicinal product brand can be registered as a trade mark according to the Trade Mark Act 1991, as amended by the Trade Mark Act 2000 (Trade Mark Act). There is no special register of pharmaceutical trade marks. Applicants for drug marketing approval are not required to obtain prior approval from the drug regulatory authorities for trade mark use. There are no guidelines or ministerial regulations requiring stricter levels of distinctiveness for marks used on pharmaceutical products.

A trade mark is registrable if the following requirements are met:

- It is distinctive.
- It is not forbidden under the Trade Mark Act.
- It is not identical or similar to trade marks registered by others.

24. How is a trade mark registered? In particular:

- To which authority must the application be made?
 - What fee is payable?
 - What are the key stages and timing?
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The authority

Applications are made to the Trade Mark Office of the Department of Intellectual Property, Ministry of Commerce (www.ipthailand.go.th).

Fee

One trade mark or service mark application can be filed per class. Multiple class applications are not available.

The registrar determines the filing fee and registration fee, based on the number of goods to be registered. The filing fee is THB500 and the registration fee is THB300 for one item of goods.

If a mark covers more than one item of goods, the cost of registering a mark in one class increases by THB800 for each additional item of goods.

Process and timing

After filing an application with the Trade Mark Office, it takes at least six to nine months for the registrar to examine an application. After the examination, if the application is accepted for registration, it is published in the *Trade Mark Gazette*. If no objections are filed within 90 days after publication, registration is granted, dated as at the application filing date. The registrar issues a notification requesting payment of the registration fee. The certificate of trade mark registration is issued within two months after the registration fee has been paid. Barring any problems, it normally takes about ten to 12 months for a trade mark to be registered.

25. How long does trade mark protection last? How is a trade mark renewed?

A trade mark is protected for ten years from the filing date, and can be renewed every ten years. A renewal application can be filed within 90 days before its expiry, for an additional ten years from the date of expiry of the original registration, or from the date of the previous renewal. A trade mark can therefore be indefinitely renewed provided the formal procedure is completed.

26. In what circumstances can a trade mark be revoked?

A trade mark can be revoked if it does not comply with the legal requirements, that is, it must be distinctive, not forbidden under the Trade Mark Act, and not identical or similar to trade marks registered by others.

27. When is a registered trade mark infringed? How is a claim for trade mark infringement made and what remedies are available?

The person registered as the trade mark owner has the exclusive right to use the goods for which registration has been granted (*section 44, Trade Mark Act*). Infringement of the rights of a registered trade mark owner is a criminal offence leading to penal remedies.

Penalties for forgery of a registered trade mark can include both:

- A fine of up to THB400,000.
- A prison sentence of up to four years (usually reduced or suspended for first-time offenders).

Penalties for imitation of a registered trade mark can include both:

- A fine of up to THB200,000.
- A prison sentence of up to two years (usually reduced or suspended for first-time offenders).

A trade mark owner can bring criminal charges against an infringer by submitting a complaint directly to a court or, more commonly, lodging a complaint with the police authorities.

The owner of a registered trade mark that has been infringed can file an action claiming compensation from the infringer under sections 420 and 421 of the Civil and Commercial Code. The owner of a trade mark not yet registered in Thailand but registered elsewhere can receive protection under the passing off theory (*section 46, Trade Mark Act*). Proof of damage is required for economic recovery.

28. Is there a requirement for a patent or trade mark licence agreement to be approved by any government or regulatory body? If so, please provide details including anticipated timelines and cost.

There is no authority for a government or regulatory body to review a licence agreement, though a licence agreement must be recorded with the Department of Intellectual Property in order to be enforceable.

Trade mark licence agreements must be in writing and registered with the Trade Mark Office. Such registration authorises the licensee to represent the licensor in any enforcement matters, except where the licence agreement expressly excludes this (*section 68, Trade Mark Act*). Regarding the consequences of non-registration of trade mark licensing with the Trade Mark Office, Thai courts have varying views on this issue. Some judges consider that if the licence agreement is not registered with the Trade Mark Office, the whole agreement is void. Other judges consider that the licence of the use of a trade mark right only forms part of a broader commercial agreement between the parties. If the trade mark licence has not been registered properly, the terms regarding trade mark licensing are void, but other commercial terms will survive.

The government fee for the registration of a licence agreement for one mark in one class is THB500. For each additional trade mark in one class filed at the same time, the government fees are THB500. Finally, the fee upon the issuance of the licence certificate is THB1,000 per agreement. The time frame for obtaining a licence certificate is usually more than three months from the date of submission to the Trade Mark Office.

The Patent Act sets out the various types of voluntary and compulsory licences available under Thai law. They are as follows:

- **Section 45:** the right of patent owners to signal that any third party can take a licence of a patent.
- **Section 46:** the granting of a compulsory licence where the patent has not been used in the kingdom for three years.
- **Section 47 and Section 47 bis:** the granting of a compulsory licence to inventors of new technologically important inventions that depend on, or build upon, existing patented technologies.
- **Section 51:** the granting of a compulsory licence in various circumstances, such as where there is a shortage of medicines, or it is “in the public interest”. The provisions of section 50 are deemed to apply *mutatis mutandis* to the grant of a licence under section 51, and so arguably the grant of this “government use” licence is contingent upon a period of consultation with the patent owner as required by section 50.
- **Section 52:** the granting of a compulsory licence “during a state of war or emergency”. Under this section, only the Prime Minister acting with the approval of the Cabinet can order the exploitation of the patented technology. Under this section, there is no need to consult in advance with the patent owner.

Therefore, the Patent Office must record, and sometimes be involved in the negotiation of the terms of, patent licences. The timeline is difficult to determine, since negotiation is required prior to submission of the licence. The government fee for applying for a licence is THB250.

29. Is there a requirement for remittance of royalties payable under a patent or trade mark licence agreement to a foreign licensor to be approved by any government or regulatory body? If so, please provide details including anticipated timelines and cost.

The Trade Mark Act does not specifically refer to the inclusion of royalties requiring approval by the Trade Mark Office in connection with a trade mark licence. Indeed, the main requirement is that the licence agreement must contain the conditions and terms of the agreement between the trade mark owner and the person applying to be an authorised licensee, which must actually enable the former to control the quality of the manufactured goods (*section 68, Trade Mark Act*). In other words, it is not mandatory to have a royalty paid to the licensor, although in practice, a royalty is usually established in the agreement or encompassed in other broader payment terms.



With a patent licence agreement, royalty terms must be included in the request for a licence. In the case of a voluntary licence, the royalty must be negotiated between the patentee and the applicant. If those parties cannot agree, the Director General of the Patent Office is entitled to grant a licence which can specify royalty terms. The Director General is also authorised to establish royalties in the event of a disagreement concerning involuntary licenses. The timeline is difficult to determine, as the terms depend upon the negotiation between the parties and are issued on a case-by-case basis.

30. Is your jurisdiction party to international conventions on patent and trade mark protection?

Thailand is a party to the:

- World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.
- World Intellectual Property Organisation (WIPO) Paris Convention for the Protection of Industrial Property 1883.
- Patent Cooperation Treaty, which entered into force in Thailand on 24 December 2009.

PRODUCT LIABILITY

31. Please give an overview of medicinal product liability law, in particular:

- Under what laws can liability arise (for example, contract, tort or statute)?
 - What is the substantive test for liability?
 - Who is potentially liable for a defective product?
-

Legal provisions

Thailand has adopted the following laws to specifically address product liability.

Unsafe Goods Liability Act 2008. This is a substantive law, also known as the Product Liability Act, which came into force in February 2009. It is designed to protect consumers who incur damage from defective or dangerous products, by imposing strict liability on business operators involved in the manufacture and/or sale of the product. It addresses manufacturing defects, design defects and warning defects (or failure to warn).

Consumer Case Procedure Act 2008. This is a procedural law governing court proceedings for disputes between consumers and business operators, which came into force in August 2008. It was adopted to make it easier for consumers to pursue product liability claims against business operators. It simplifies and expedites the legal process for an injured party to seek redress. For example, consumers can orally file complaints, and court fees are waived for consumers who file an action. Further, the court is given considerable discretion to conduct the proceedings and ensure that consumers receive fair treatment.

THE REGULATORY AUTHORITY

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Main areas of responsibility

- Pre-marketing control.
- Post-marketing monitoring and surveillance.
- Consumer education and dissemination of information.
- Promotion of technological development and research for export.

Substantive test

The Unsafe Goods Liability Act imposes a strict liability standard. A business operator can be liable regardless of whether it was negligent in making or selling the product. An injured party only needs to prove that he was injured or suffered damage from the defective product while using the product in the way it was intended to be used. There is no need to prove fault or negligence.

Liability

A potentially liable “operator” includes a:

- Producer, outsourcer or importer of the defective product.
- Seller who cannot identify the manufacturer, outsourcer or importer of the product.
- Person using a trade name, trade mark, logo, wording, or showing by any means, in a manner that would cause people to understand that he is a producer, an outsourcer or an importer.

In the pharmaceutical context, the following persons can be liable if the product is found defective and has resulted in damage to a consumer:

- Drug manufacturers, including contract manufacturers and ingredient producers.
- Local importers and distributors.
- Hospitals, clinics and drug stores that sell the drugs.

Product liability cannot be waived or limited by way of contract, or by any waiver or limitation of liability statement given by a business operator.

32. What are the limitation periods for bringing product liability claims?

The right to claim damages expires after three years from the date that the injured person knew of both the injury and the identity of the business operator liable for loss or damage, or ten years after the date of sale of the product.

If the injury occurred to life, body or health as a result of substances accumulated in the body of the injured person, or if it takes time to show symptoms, the injured party (or the person with a right to file a legal action on behalf of the injured party) must bring the claim within three years from the day that he knows of the injury, and can identify the responsible business operator. However, this must not exceed ten years from the date on which the injury was discovered.

33. What defences are available to product liability claims?

The Unsafe Goods Liability Act provides several defences for a defendant operator. For instance, an operator is not liable if it can prove one of the following:

- The product was not defective.
- The injured party was aware that it was defective but used it anyway.
- The damage was due to improper use or storage of the product.

The Unsafe Goods Liability Act also provides defences for producers of custom-made products and component producers, who are generally not liable if they can show that the defect was due to the specifications or design of the final product provided to them by the outsourcer or producer.

34. What remedies are available to the claimant?

Damages under the Unsafe Goods Liability Act consist of two components:

- Damages for a wrongful act as provided for in the Civil and Commercial Code.
- Additional categories of damages specially provided under the Unsafe Goods Liability Act, including:
 - compensation for mental damage as a result of damage to the body, health or sanitation of the injured party;
 - punitive damages (*see Question 36*).

35. Are class actions allowed for product liability claims? If so, are they common?

At present, it remains unclear whether a product liability claim can be brought as a class action lawsuit. Class actions are not common in Thailand.

36. Are punitive damages allowed for product liability claims? If so, are they common? What comment can you make about likely quantum?

A court can award punitive damages on top of actual damages if it can be shown that the defendant either:

- Produced, imported or sold the product, despite being aware that it was defective, or was unaware that the product was defective due to gross negligence.
- Became aware of its defect after production, importation or sale, but failed to take proper action to prevent any damage, for example by failing to recall a defective product.

In these cases, the court can award punitive damages in an amount that the court deems appropriate (with a maximum limit of no more than twice the amount of the actual damages).

REFORM

37. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

There are currently three bills under review that concern the pharmaceutical industry.

The Trade Mark Bill has passed the consideration of the Committee of the Council of State and is now being considered by the Director of the Council of State. This bill is expected to enter into force in 2012. This bill will change the trade mark regime as follows:

- Smells and sounds trade marks should be acceptable.
- The definition of a distinctive trade mark will be broadened.
- Multiple-class applications should be acceptable.
- A licence agreement will not be terminated as a result of the transfer or inheritance of rights to the underlying mark.
- Government fees for certain translations may be increased.

The Patent Bill was submitted to the Council of State in 2006, but was returned to the Committee of the Department of Intellectual Property for review and study in 2009. Issues under discussion and consideration include novelty criteria and the process for compulsory licensing.

A Drug Bill has been drafted and revised many times in recent years, but it is not currently high on the government's legislative agenda. The contentious issues, among others, are civil liability and price controls.



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