

Tilleke  
& Gibbins

# THAILAND LEGAL BASICS

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# Starting a Business

## 1.1 Foreign Investment

Foreign nationals are generally permitted to start businesses in Thailand, subject to the applicable laws. This chapter discusses some key legal requirements for establishing a business in Thailand, including:

- The Foreign Business Act, which restricts or prohibits foreigners from undertaking various business activities and sets licensing requirements for other types of businesses;
- Other restrictions that may limit foreign participation in specific sectors;
- Investment incentives offered under Thailand’s Board of Investment, the Industrial Estate Authority of Thailand, treaties, and free trade agreements; and
- Forms of business organization under Thai law.
  - Foreign Business Act

The most important law governing foreign direct investment in Thailand is the Foreign Business Act B.E. 2542 (1999)—or the FBA. The FBA reserves certain business activities for Thai nationals and limits the ability of foreigners to engage in those activities. Under the FBA, a company is considered foreign (sometimes translated as “alien”) if at least half of its shares are held by non-Thai natural or juristic persons.

The FBA has prescribed three categories of restricted businesses, laid out in schedules.

- **Schedule 1** covers businesses that are strictly prohibited to foreigners:
  - Newspaper business, radio broadcasting, or television station business
  - Rice farming, farming, or gardening
  - Animal farming
  - Forestry and wood fabrication from natural forests
  - Fishery for marine animals in Thai waters and within Thailand specific economic zones
  - Extraction of Thai herbs
  - Trading and auctioning Thai antiques or national historical objects
  - Making or casting Buddha images and monks’ alms bowls
  - Land trading
- **Schedule 2** covers businesses that are prohibited to foreigners unless they receive permission to operate from the minister of commerce with the approval of cabinet. Foreigners may operate a business under schedule 2 only if Thai nationals or juristic persons not considered to be foreigners under the FBA hold shares of no less than 40% of the capital of that foreign juristic person. Unless there is reasonable cause, the minister of commerce, with the approval of the cabinet, may reduce the proportion requirement, down to a minimum of 25%. The number of Thai directors must not

be less than two-fifths of the total number of directors. If the cabinet approves the application, a permit will be issued within 15 days. The minister may attach to it any conditions imposed by the cabinet, or stipulated by ministerial regulations issued under section 18 of the FBA.

- The following activities are included on this list:
  - Group 1: Businesses related to national safety or security:
    - Production, sale, repair, and maintenance of:
      - firearms, ammunition, gunpowder, and explosives;
      - accessories of firearms, ammunition, and explosives;
      - armaments, ships, aircraft, or military vehicles; or
      - equipment or components and all categories of war materials.
    - Domestic land, waterway, or air transportation, including domestic airline business
  - Group 2: Businesses affecting arts and culture, including traditional and folk handicrafts:
    - Trading antiques or art objects that are Thai arts and handicrafts
    - Production of carved wood
    - Silkworm farming, production of Thai silk yarn, Thai silk weaving, or Thai silk pattern printing
    - Production of Thai musical instruments
    - Production of gold ware, silverware, nielloware, bronze ware, or lacquer ware
    - Production of crockery of Thai arts and culture
  - Group 3: Businesses affecting natural resources or the environment:
    - Sugar manufacturing from sugarcane
    - Salt farming, including underground salt
    - Rock salt mining
    - Mining, including rock blasting or crushing
    - Wood fabrication for furniture and utensil production
- **Schedule 3** covers businesses that are prohibited to foreigners unless permission is granted by the director-general of the Department of Business Development (DBD). Foreigners seeking to perform a schedule 3 activity must apply for permission in accordance with regulations issued under section 17 of the FBA. The director-general will issue a foreign business license within 15 days after permission has been granted. The director-general may attach conditions to it as imposed by any ministerial regulations issued under section 18 of the FBA.

Any foreign business licenses granted for businesses under schedules 2 or 3 may be accompanied by license conditions. Violation of the FBA is punishable by imprisonment for up to three years, a fine of up to THB 1 million, or both. Further, the court will order termination of the business operation, dissolution of the business, or termination of the status of the shareholders or partners. If a company commits the offense, the directors or persons authorized to act on behalf of the company who collaborate with it in committing the offense, or failing to reasonably act to prevent such offense, are subject to imprisonment for up to three years, a fine ranging from THB 100,000 to THB 1 million, or both.

## Limitations on Foreign Participation in Specific Sectors

In addition to the FBA, various statutes impose additional foreign-ownership restrictions the requirement for management by Thai nationals in companies that are operating in certain restricted and sensitive business sectors, the key examples of which are provided below.

- Financial institutions
  - The Financial Institution Business Act B.E. 2551 (2008), as amended, (FIBA) stipulates that Thai nationals must hold a minimum of three-fourths of the total issued voting shares in financial institutions, and at least three-fourths of the total number of directors must be Thai nationals.
  - However, under the FIBA, the Bank of Thailand has the power to grant permission for non-Thai nationals to hold up to 49% of a company's voting shares and to make up more than 25% but less than 50% of a company's directorship.
- Insurance
  - The Life Insurance Act B.E. 2535 (1992), as amended, and the Non-life Insurance Act, B.E. 2535 (1992), as amended, require that Thai nationals constitute at least three-fourths of the total number of directors and Thai nationals hold at least 75 percent of the total number of voting shares in an insurance company.
  - These two laws empower the Office of the Insurance Commission to permit non-Thai nationals to hold up to 49 percent of a company's voting shares and to allow foreigners to comprise more than 25 percent, but less than 50 percent, of the directorship of a company.
- Education
  - The Private School Act B.E. 2550 (2007), in regulating applicants for a license to establish a formal school as a legal entity, requires public and private limited companies and partnerships to have at least half of their shares or capital owned by Thai nationals and at least half of the shareholders or partners to be Thai nationals. As for foundations that are juristic persons, at least half of the directors must be Thai nationals, while for associations and cooperatives that are juristic persons, at least half of the directors must be Thai nationals and at least half of the members must be Thai nationals.
- Land Transportation
  - Under the Land Transportation Act B.E. 2522 (1979), most types of transport business are reserved for Thai nationals and require a transport license from the Department of Land Transport. Applicants for a land transport business license must meet the following criteria:
    - a. The applying company must be registered under Thai laws and have its head office in Thailand;
    - b. At least one-half of the total number of the directors of the company must be Thai citizens;
    - c. At least 51% of the company's capital must be held by individual Thai-citizen shareholder(s), by a qualified (see below) registered partnership or a limited company, or by a Thai ministry, subministry, department, local government, state enterprise, or state organization;
    - d. The company's articles of association must not allow for the issuance of "certificate to bearer" shares (i.e., bearer shares); and
    - e. Any corporate shareholders of the land transport business license applicant must also meet the requirements under (b), (c) and (d) above.
- Real Estate



- Foreign nationals are prohibited from owning land in Thailand, according to the Land Code. Foreign nationals (as defined in the FBA) are also prohibited from engaging in the following types of business related to real estate development:
  - Land Trading
- Foreign nationals are forbidden from participating in land-trading businesses and cannot obtain licenses to engage in these activities. Land trading business is categorized in Schedule 1 of the FBA.
  - Hotel and Condominium Development
- Foreign nationals are prohibited from engaging in hotel businesses unless they obtain a Foreign Business License, as "hotel business" is categorized in Schedule 3 of the FBA. However, businesses related to "hotel management" are exempt from this restriction, allowing foreigners to operate hotel management businesses freely.
- Although condominium development is not explicitly listed as a restricted business in the FBA, it is still restricted for foreigners because applicants for condominium registration must have ownership of the land and building(s) intended for registration. As noted above, foreign nationals are not permitted to own land under the Land Code.

## 1.2 Investment Incentives

Incentives for investing in Thailand are generally available through the following:

- The Board of Investment (BOI)
- The Industrial Authority of Thailand (IEAT)
- Treaties and free trade agreements

Foreign enterprises granted promotional privileges by the BOI or the IEAT are permitted to engage in certain business activities specified in schedules 2 and 3 of the FBA. Additional regulations determine the conditions that may be fixed for qualifying businesses, such as minimum percentage of Thai ownership, amount of investment, permitted activities, and so on. After the business has obtained approval from either of the above authorities, the business should apply for a foreign business certificate in accordance with the procedures stipulated by the director-general pursuant to section 12 of the FBA. Unlike the process of foreign business license application under Section 17 of the FBA, the application process for the foreign business certificate is an administrative rather than approval procedure.

### Board of Investment

Thailand was the first country in Asia to introduce investment promotion laws (tax and non-tax incentives) to encourage investment in Thailand. Investment promotion laws were first enacted in 1954 and have been revised several times since then.

Under the Investment Promotion Act B.E. 2520 (1977), the BOI—a policy-making body—was established to promote domestic and foreign investments considered important and useful to the country's economic and social development.

BOI privileges are granted based on the project, not the entity. Thus, each entity can obtain multiple BOI promotions, with no limit on the number of BOI incentives it can receive. The BOI periodically announces and revises its list of eligible activities in line with investment promotion policies. Each

activity may qualify for either full (both tax and nontax) or partial (only nontax) incentives, depending on the category applied for by the company.

BOI incentives include (1) tax privileges, such as exemption of corporate income tax and exemption of import duties on machinery, and (2) non-tax privileges, such as the right to own land and the right to bring in foreign experts.

The privileges that the BOI offers are not absolute. The BOI still retains the right to stipulate certain conditions, such as amount and source of capital, nationality and number of shareholders, manpower training, and distribution of products, all of which investors must comply with to qualify for privileges.

The BOI has listed activities that are eligible for promotion, divided into five categories:

**Category 1:** Agriculture, biotechnology, and medical industries;

**Category 2:** Advanced manufacturing industries;

**Category 3:** Basic and supporting industries;

**Category 4:** Digital and creative industries and high-value services; and

**Category 5:** Research and development, targeted core technology development.

In granting privileges, the BOI does not discriminate between foreign and Thai investors. Under certain circumstances, however, the BOI may impose conditions on foreign investors who wish to enter into joint ventures with Thai investors.

Potential investors who wish to explore business opportunities in Thailand may contact the Investment Service Center of the BOI for information and advice. The center also offers matchmaking services to both Thai and foreign potential investors who seek cooperation in technology, marketing, or joint venture partnerships.

A detailed manual on how to apply for investment promotion is available to assist investors in preparing their applications. The applications typically take 2–3 months to process. If an application is not approved, the applicant can appeal to the secretary-general of the BOI within 30 days of being notified.

## **Industrial Estate Authority of Thailand**

The Industrial Estate Authority of Thailand (IEAT), established under the Industrial Estate Authority of Thailand Act B.E. 2522 (1979), grants incentives to investment projects located in industrial estates. These estates, which are located throughout the country, are managed by the IEAT either independently or in partnership with private companies or government agencies. In addition to benefits from the industrial environment and infrastructure, promoted investors are granted special incentives and privileges, including the right to own land in the industrial estate area, obtain work permits for foreign technicians and experts, and take or remit foreign currency abroad. Industrial operators within the IEAT Free Zone are granted a number of additional tax-based incentives and privileges.

## **Treaty/Free Trade Agreements (FTAs)**

Thailand has entered into five treaties or FTAs—with the United States, Australia, Japan, and ASEAN countries—which may allow their nationals to own more than 50% of some businesses in Thailand

without being subject to a foreign business license under the FBA. Qualified investors wishing to operate a business in Thailand under a treaty or FTA must notify the director-general to obtain a foreign business certificate in accordance with the rules and procedures stipulated by the relevant ministerial regulations.

### **United States-Thailand Treaty of Amity and Economic Relations**

The Treaty of Amity and Economic Relations B.E. 2509 (1966) between the United States and Thailand allows certain businesses in which foreign ownership may exceed 50% to be exempt for the foreign business license requirements under the FBA. With respect to most businesses, the word "foreigner," as used in the FBA, does not include American natural persons or American juristic persons who qualify for the privileges under the provisions of the Treaty of Amity. Under this treaty, an American-owned Thai company or branch office of an American company is permitted to do almost anything a Thai company does, except for the following:

- Own land
- Engage in the business of inland communications
- Engage in the business of inland transportation
- Engage in fiduciary functions
- Engage in banking involving depository functions
- Exploit land or other natural resources
- Engage in domestic trade in indigenous agricultural products

To receive protection under this treaty, the qualifying party must pursue the administrative processes to show registration thereunder. Although on paper the treaty appears self-executing, in practice the Thai government will not recognize an American company or branch office until it is officially registered, as required by section 11 of the FBA.

Copies of the treaty can be found at the American Chamber of Commerce, the Commercial Affairs Section of the United States Embassy, and international law firms in Bangkok.

### **Australia-Thailand Free Trade Agreement**

The Australia-Thailand FTA was implemented in January 2005. Under this FTA, an Australian-owned Thai company engaging in any of the 12 businesses below is permitted to have Australian ownership exceeding 50% without being subject to the foreign business license requirements of the FBA.

- Onshore and offshore mining
- Construction rendering basic services to the public in public utilities and transport requiring special tools, machinery, technology, or construction expertise
- Luxury hotel business
- Restaurant
- Advisor to regional operating headquarters, branches, or affiliates of regional operating headquarters
  - Convention hall
- International exhibition center

- Wholesale and retail service relevant to the sale and installation of goods manufactured by an Australian-owned Thai company
- Higher education institution specializing in life sciences, biotechnology, and nanotechnology
- Amusement park and zoo
- Marine park
- Pier and anchor service for tourism ships
- The required percentage of Australian shareholding varies by business type. For example, an Australian can hold up to 60% of shares in land- and marine-mining businesses, as well as in luxury hotel and resort services. In public utility businesses, Australians can hold up to 100% of the shares.

### **Japan-Thailand Economic Partnership Agreement**

Thailand signed the Japan-Thailand Economic Partnership Agreement (JTEPA) in November 2007. Under the JTEPA, a Japanese-owned Thai company engaging in the following eight types of business is permitted to have Japanese ownership exceeding 50% without being subject to the foreign business license requirements of the FBA:

- Retailing business (except distilled alcohol) for products manufactured by the company or subsidiaries located in Thailand under the same brand or automobile products manufactured by subsidiaries in Japan under the same brand
- Wholesaling business (except distilled alcohol) for products manufactured by the company or subsidiaries located in Thailand under the same brand or automobile products manufactured by subsidiaries in Japan under the same brand
- Advertising business
- Hotel business
- Restaurant
  - General management consultancy
- Logistics advisor (except transportation)
- Household electronic equipment repair and maintenance
- The required percentage of Japanese shareholding varies by business type. For example, companies offering general management consulting services, excluding legal and audit consulting services, can be wholly owned by Japanese individuals or entities, and companies engaged in logistics consulting, excluding transportation businesses, can have up to 60% of their shares owned by Japanese nationals, while the remaining shares must be held by Thai nationals.

### **ASEAN Comprehensive Investment Agreement**

Thailand signed the ASEAN Comprehensive Investment Agreement (ACIA) in February 2009. Under the ACIA, a Thai company engaging in the following four businesses is permitted to have more than 50% of its ownership held by non-Thai ASEAN nationals without being subject to the foreign business license requirements of the FBA:

- Mining
- Production of flour from rice and economic plants

- Fishery (only in respect to the hatching and raising of tuna sea cage culture and certain types of spiny lobsters)
- Cultivation, propagation, or development of onions

### **ASEAN Framework Agreement on Services**

Thailand signed the ASEAN Framework Agreement on Services (AFAS) in December 1995. Under the AFAS, as of May 27, 2016, a Thai company engaged in one of a list of 88 types of business, including the following, is permitted to have more than 50% of its ownership held by non-Thai ASEAN nationals without being subject to the foreign business license requirements of the FBA:

- Provision of legal services, limited to drafting documents relevant to international trade law
- Provision of accounting services, limited to tax filling for group and affiliated companies
- Provision of architectural services
- Provision of engineering services
- Advertising business
- Transportation business
- Construction
- Brokerage or agency business
- Retailing business
- Hotel business
- Other service businesses as prescribed in the AFAS

### **Other Business Investment Treaties and Free Trade Agreements**

While Thailand is not a signatory of the 1969 Vienna Convention on the Law of Treaties, it does comply with international laws and principles established by the Convention.

Thailand has also signed FTAs with other countries to establish economic relationships, attract foreign investors, and increase exportation opportunities. However, these FTAs do not allow foreign nationals to have foreign ownership exceeding 50% to engage in some businesses in Thailand which are restricted under the FBA without being subject to a foreign business license under the law.

Thailand has been working with other ASEAN member states to establish a free trade area with other countries such as India, China, Japan, South Korea, the European Union, and the Closer Economic Relations Trade Agreement between Australia and New Zealand.

ASEAN has implemented a number of FTAs with various trading partners, including Australia and New Zealand, China, India, Japan, and South Korea.

In November 2020, 10 ASEAN countries including Thailand and six trading partners (Australia, China, India, Korea, Japan, and New Zealand) signed the Regional Comprehensive Economic Partnership (RCEP), an FTA covering economic liberalization, trade in services and investment, and other areas of cooperation. Signatories of the RCEP aim for a greater reduction in tariffs to reduce barriers to trade, and Thailand hopes that the RCEP will cement the country's position as a primary candidate for a production base in Asia, especially in the automotive, plastics and petrochemicals, and electronics industries.

As of August 2021, Thailand was still engaged in discussions over the following proposed FTAs:

- Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Corporation (BIMSTEC) Free Trade Area
- Thailand-United States Free Trade Agreement
- Thailand-European Free Trade Association (EFTA) Free Trade Agreement
- Thailand-European Union Free Trade Agreement
- India-Thailand Free Trade Area
- Pakistan-Thailand Free Trade Agreement
- Sri-Lanka-Thailand Free Trade Agreement
- Thailand-Turkey Free Trade Agreement

In addition, Thailand is considering joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and has formed a committee to study the impact of adopting this trade pact.

### **1.3 Forms of Business Organization**

The principal forms of business organization open to both Thais and foreigners—provided the restrictions of the FBA are not breached—are:

- Private limited company
- Public limited company
- Joint venture
- Representative office
- Regional office
- Branch office of foreign company
- Ordinary partnership (unregistered)
- Ordinary partnership (registered)
- Limited partnership
- Sole proprietorship

#### **Private Limited Company**

Under Thai law, there are two types of limited company—the limited public company and the limited private company. The formation of a private company is governed by the Civil and Commercial Code (CCC), which requires private limited companies to have a minimum of two shareholders at all times. To set up a private limited company, at least two natural persons, who do not necessarily have to be Thai citizens, must serve as promoters. Each promoter must hold at least one share, thereby becoming a shareholder upon the company's incorporation.

The initial step in forming a private limited company is to reserve a name with the DBD and, if approved, file a memorandum of association. This must contain the following information:

- Name and location of the company.
- Objectives of the company.

- Amount of capital, divided into shares and par value. In general, there is no minimum capital requirement, but the value of each share must be at least THB 5. In addition, the registered capital of businesses conducted by foreign nationals must satisfy the minimum registered capital requirements under the FBA.
- Name, address, and occupation of each promoter (subsequently called shareholder), and number of shares subscribed by each.

The government fee to register the memorandum is THB 500.

After the memorandum has been approved and all shares have been fully subscribed, the promoters are required to call a statutory meeting of the share subscribers to formally bring the company into existence. The statutory meeting determines the following:

- Articles of association (by-laws)
- Ratification of any contracts entered into and expenses incurred by the promoters in promoting the company
- Remuneration, if any, to be paid to the promoters
- The number of preferred shares, if any, to be issued, and the nature and extent of the preferential rights
- Appointment of the initial director(s) and auditor(s) and determination of the powers of the directors

After the statutory meeting has been held, the promoters must hand over the business to the director(s). The directors must then have the promoters and subscribers pay at least 25% of the amount payable for the shares, after which the company is registered as a legal entity (or juristic person).

All steps, including the completion of necessary documents and having them duly signed by all promoters, directors, and shareholders, can be done in one day.

A Thai limited company is managed by a board of directors, which is appointed by the shareholders. Meetings of shareholders and directors must conform to the requirements set forth in the CCC or the company's articles of association. The CCC requires an annual general meeting of the shareholders.

The government fee to establish a limited company is charged at the flat rate of THB 5,000, irrespective of the amount of the registered capital of the company, not including miscellaneous certification fees and stamp duties.

## **Public Limited Company**

A public limited company is governed by the Public Limited Company Act B.E. 2535 (1992), as amended. A public limited company is a separate form of entity which is established for the purpose of offering shares for sale to the public. The rules and regulations concerning the procedure of offering shares for sale to the public are set by the Securities and Exchange Act B.E. 2535 (1992) and the amendments thereto, under the control of the Securities and Exchange Commission.

The procedure for incorporating a public limited company is similar to that of a private limited company in registration requirements and shareholders' liability. However, a public limited company must:



- have at least 15 natural persons as promoters who are 20 years of age or over;
- have at least half of the promoters domiciled in Thailand;
- have the promoters subscribe for shares which shall be paid up in money equal to at least 5% of the total registered capital;
- have at least five directors, a majority of whom must be domiciled in Thailand;
- hold a meeting of the board of directors at least once every three months; and
- have greater flexibility in issuing securities of various kinds (e.g., debentures or warrants).

### **Conversion of a Private Limited Company to a Public Limited Company**

A private limited company may be converted to a public limited company by passing a special resolution of the shareholders, as stipulated by the CCC, at which time the following matters are to be considered and amended if necessary:

- Memorandum of association
- Articles of association
- Appointment of a board of directors
- Appointment of an auditor
- Other matters as necessary for the conversion

A new board of directors consisting of at least five members will be appointed. The board of directors of the private limited company must hand over the business, properties, and accounting documents and evidence to the new board of directors within seven days from the meeting date. The new board of directors will be responsible for registering the conversion and submitting the required documents (e.g., shareholders' meeting minutes and approved company memorandum and articles of association) to the director-general of the DBD within 14 days of the date on which the special resolution was approved.

Once the registrar has registered the conversion from a private limited company to a public limited company, the conditions of the private limited company end, and the public company is entitled to all properties, debts, and liabilities of the former private limited company.





## Joint Venture

A Thailand limited company owned by two or more companies is often referred to as a joint venture. Incorporated joint ventures typically involve a partnership between a Thai company and a foreign one. Conceptually, this type of limited company can be viewed as an incorporated joint venture, although this term does not appear in the Civil and Commercial Code or elsewhere in Thai law, and are treated as any other limited company. However, unincorporated joint ventures are also prevalent in Thai law. They are referred to below.

In a contracted project which cannot be carried out by a single company, it is common for a company to join with others in the form of a joint venture. A joint venture has no legal personality under Thai law. A joint venture is formed by contract between two legal persons (whether companies, juristic partnerships, or individuals), and exists only for a particular project or venture. Although it may engage in business, it cannot be registered. However, the Revenue Department treats a joint venture as a juristic company for tax purposes. The joint venture must therefore apply for a taxpayer identification card. Moreover, VAT registration is required if a joint venture is qualified under the requirements of the Revenue Code.

A foreign company that participates in a joint venture is required to obtain a foreign business license if its intended activities are restricted under the FBA, and create a branch office in Thailand to engage in business as a partner of the joint venture. A foreign partner does not need to register for its own taxpayer identification card. However, the joint venture itself must still register. Registering the permit of the foreign partner and the taxpayer identification card of the joint venture takes about eight to ten weeks.

The government fee, collected upon issuance of the business permit to the foreign partner, will be charged at the rate of THB 5 for every THB 1,000 or fraction thereof of the registered capital, with a minimum fee of THB 20,000 and a maximum of THB 250,000.

## Representative Office

A representative office is defined as an office in Thailand of a foreign company engaged in "international trading business." A representative office cannot engage in any profit-seeking or profit-making enterprises, but can only undertake certain approved activities. If it undertakes activities beyond the scope of the approved list, the income of the parent or affiliated companies may be deemed to have been earned in Thailand, and will be subject to taxation.

### **International trading business** refers to activities concerning:

- The finding of purchase sources by the head office or its affiliated group/companies.
- The checking and controlling of quality and quantity of goods purchased for manufacturing in Thailand by the head office or its affiliated group/companies.
- The provision of advice on various aspects concerning goods of the head office sold to agents or consumers in Thailand or its affiliated group/companies.
- The dissemination of information concerning new goods or services of the head office or its affiliated group companies.
- The report of business movements in Thailand to the head office or its affiliated group companies.

A representative office that undertakes one or more of the approved activities in Thailand without rendering any service to any other person and refrains from prohibited activities is not subject to Thai taxation. Such a representative office is understood to be receiving a subsidy from the head office to meet its expenses in Thailand. Gross receipts or revenues received by a representative office from the head office are not considered revenue to be included in the computation of juristic person income tax.

Since 2017, foreign juristic persons have no longer been required to obtain a foreign business license from the Ministry of Commerce to set up a representative office in Thailand. However, all representative offices are required to obtain a corporate tax identification number and submit income tax returns and audited financial statements to the Revenue Department. Representative offices are also required to submit income tax returns and audited financial statements to the DBD. All foreigners and local staff of a representative office must obtain taxpayer cards and pay personal income tax.

## **Regional Office**

A regional office is:

- established by a transnational corporation in a country other than the country of registration of the head office; and
- not registered as a juristic person under the laws of the country where the office is established.

A regional office in Thailand is permitted to:

- contact, coordinate, and supervise on behalf of the head office the activities of branches or subsidiary companies located in the same region as the regional office; and
- provide services to the head office's branches and subsidiary companies with such services being advisory services, management services, training and personnel development services, financial management services, marketing control and sales promotion planning, product development, and research and development services.

A regional office cannot derive income from the above activities. It also cannot accept a purchase order, make a sales offer, or negotiate or enter into any business arrangement with a person or juristic person in Thailand. All expenditures incurred by the regional office in connection with the permitted activities must be borne by the head office. The head office will be the only source of funds.

Like representative offices, a regional office is required to obtain a corporate tax identification number and submit income tax returns and balance sheets, even if nil. Foreign individuals and all local staff are required to obtain taxpayer cards and pay personal income tax.

## **Branch Office**

A foreign company that plans to conduct business in Thailand, such as a contract project, usually establishes a branch office to undertake the project. There are no special registration requirements for the establishment of branches of foreign companies to do business in Thailand. A branch office is not considered a separate legal entity from its head office overseas and can carry on any of the business activities within the scope of the head office's business objectives.

However, most business activities fall within the scope of one or more laws or regulations that require special registration or licenses (e.g., VAT registration, taxpayer identification card, commercial

registration certificate, foreign business license, etc.) before the activities commence. Foreign business establishments must therefore follow the generally applicable procedures. If the intended activity is restricted under the FBA, the branch must apply for a foreign business license prior to performing any of the intended activities.

## Partnership

In Thailand, three forms of partnership are permitted:

- Unregistered ordinary partnership
- Registered ordinary partnership
- Limited partnership

The types of partnership differ primarily in the liability of the partners.

Thai national partnerships, which are defined as partnerships with two Thai natural or juristic persons for each foreign partner, can engage in all forms of business. However, partnerships that have a foreigner as the managing partner or as the manager, or in which foreigners' investments amount to half or more of the total capital, are regarded as foreign partnerships and are subject to the FBA.

The three forms of partnership generally do not conform to the needs of most foreign investors. The BOI does not promote partnerships, because businesses of this sort often conflict with the FBA. Furthermore, changes in ownership and control may jeopardize the good standing of a partnership or its license.

### Unregistered Ordinary Partnership

An unregistered ordinary partnership is one in which all partners are jointly liable for all of the obligations and debts of the partnership. It is not registered with the Ministry of Commerce.

This type of partnership is not a legal entity (juristic person), and the partnership (not the partner) pays taxes at the rates applicable to individuals. Under the Revenue Code, an unregistered partnership, although not a juristic person, is considered a separate entity for tax purposes. However, if a partner receives a salary, as opposed to a share of profit as a partner, then he or she would be liable for personal income tax on his or her salary. As the partnership is taxed as an entity, the partner would not have to pay tax a second time on his or her share of the profit.

Each partner must contribute money, property, or services to the partnership. If the partnership agreement does not fix the value of services it provides, the contribution of those services is considered equal to the average shares from the partners who contributed cash or other valuable properties.

### Registered Ordinary Partnership

A registered ordinary partnership is registered with the Ministry of Commerce, which makes it a juristic entity with a separate and distinct personality from each of the partners. The partnership must be registered at the registration office of the district in which the principal place of business of the partnership is located, or at the DBD, Ministry of Commerce, in Bangkok.

All partners of a registered ordinary partnership are jointly and unlimitedly liable for all obligations of the partnership. A partner may pursue any claim of, or any right acquired by, the partnership against

third persons, even if he or she did not actually participate in the transaction. A partner's liability for the partnership's obligations ceases two years after he or she leaves the partnership.

### **Limited Partnership**

A limited partnership is one in which the individual liabilities of one or more partners are limited to their respective contributions, and one or more partners are jointly liable without any limitation for all of the obligations of the partnership.

A limited partnership must be registered at the registration office in the district where the partnership's head office is located. In Bangkok, this can be done at the DBD, Ministry of Commerce. Until it is registered, the limited partnership remains an ordinary partnership for legal purposes, and all partners continue to be jointly and severally liable for all of the obligations of the partnership.

The firm name of a limited partnership may not contain the names of those partners with limited liability. If the names of partners with limited liability are included in the firm name, they become liable to third persons to the same extent as partners with unlimited liability.

The contributions of the partners with limited liability must be in cash or other valued properties. A limited partner cannot contribute services alone. No dividend or interest may be distributed to partners with limited liability except out of partnership profit. As a general rule, a limited partnership may only be managed by the partners with unlimited liability. A partner with limited liability who participates actively in the management of the partnership becomes jointly liable, without any limitation, for the partnership's obligations.

### **Conversion of a Partnership to a Limited Company**

A registered partnership or a limited partnership that has three or more partners may be converted to a limited company after the following steps have been taken:

- All partners must give their written consent to the conversion, after which the registrar must be notified within 14 days.
- The intended conversion must be publicized at least once in a local paper.
- Forwarding notices must be given to all creditors of the partnership, informing them of the proposed conversion and requesting that concerned creditors forward their objections to the conversion, if any, within 30 days from the date on which the notices are given.
- If there are any objections, the partnership cannot be converted unless obligations to the objecting creditor have already been fulfilled or security provided to the objecting creditor.

All partners must hold a meeting to give consent and carry out actions on the incorporation of a company (e.g., preparing a memorandum of association, fixing share capital (which must be equivalent to the share proportions of all partners in the partnership), fixing the amount of paid-up capital for each share, fixing the number and conditions of ordinary shares and preference shares, appointing directors, auditors, and other businesses, if any).

The managing partner must hand over the business, properties, and accounting documents and evidence to the company's board of directors within 14 days from the date of the partners' meeting.

The company's board of directors must apply to register the conversion to a limited company within 14 days from the date on which the managing partner completes the aforementioned handover to the company's board of directors.

Once the registrar has registered the conversion from registered partnership or limited partnership to a limited company, the conditions of the partnership come to an end and the limited company is entitled to all properties, debts, and liabilities of the former partnership.

## Sole Proprietorship

With a sole proprietorship, all of a proprietor's assets (both business and personal) are subject to attachment or any other legal action, whether connected to the business or not. The sole proprietor must acquire a taxpayer number and a VAT certificate if applicable. Some sole proprietors are required to obtain a Commercial Registration Certificate at the Ministry of Commerce.

## Registration Duties

An application to register a company must be filed with the DBD if the principal registered office of the company is in Bangkok. If the registered office is outside of Bangkok, the application must be filed with the Provincial Registration Office in the province where the registered office is located.

### **Key Points on Choice of Business Structure:**

- Each business structure has its own advantages and disadvantages. It is prudent to seek professional advice when deciding on a structure for your business.
- The formation of a private limited company is generally the preferred structure for doing business in Thailand since shareholders' liability is limited (only to the amount remaining unpaid, if any, of the shares respectively held by them).
- A representative office in Thailand cannot engage in any profit-seeking or profit-making enterprise. Activities that can be undertaken by a representative office are limited to approved activities.
- A regional office can contact, coordinate, and supervise the activities of branches or subsidiary companies located in the same region as the regional office, on behalf of the head office. It can also provide services to the head office's branches and subsidiary companies. A regional office cannot, however, derive income from these activities.
- There are three different types of partnerships. The types of partnerships differ primarily in the liability of the partners.

For further information on or assistance with insurance matters and corporate formation, please contact Tilleke & Gibbins at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

# General Commercial Transactions

## 2.1 Contracts

Thai law allows persons to freely enter into contractual agreements that establish the rights and obligations of the parties involved. The general legal requirements for contracts are contained in the Thai Civil and Commercial Code (CCC). Restrictions on certain types of contracts or certain terms can be found in the CCC and the Unfair Contract Terms Act B.E. 2540 (1997), among other laws and regulations.

### General Requirements for a Valid Contract

The CCC, book II, title II, provides the basic elements of formation and effect of contracts. The CCC also includes rules on earnest and stipulated penalties and rescission of contract. Book III of the CCC also provides requirements for several types of contracts (such as contracts for sale, hire, mortgage, and insurance). The requirements of the CCC are largely similar to contract laws in other jurisdictions.

Generally, a contract is an act made by two or more parties expressing their intention to have a legally binding agreement between themselves. An act is void under the CCC if its object is expressly prohibited by law, is impossible, or is contrary to public order or good morals. Contracts do not have to be in a particular form, unless the law provides otherwise, in which case a contract not in the prescribed form is void (e.g., the sale of immovable property must be in writing and registered with the competent officials, a share transfer document must be signed by the transferor and transferee and signed by at least one witness, etc.).

### Contract Terms

The principle of freedom of contract is recognized under the CCC and by the Thai courts, provided that the terms and conditions agreed upon by the contracting parties are not contrary to the public order or good morals of Thailand and are not otherwise illegal.

When drafting a contract, it is customary to put all necessary terms in writing. A verbal contract is recognized by Thai law, but due to the certainty provided by a written document, written contracts are preferred and recommended. Common terms include:

- Names of parties
- Finance terms and payment
- Termination
- Liabilities and penalties
- Choice of laws and jurisdiction

Special clauses may be needed, such as those relating to price escalation, environmental issues, insurance, and arbitration. Some contracts (such as international sale and purchase contracts) may

include the International Commercial Terms (INCOTERMS). INCOTERMS are published by the International Chamber of Commerce and are designed to delineate the allocation of risk and certain duties for sale of goods agreements. Contracting parties should know and understand the meaning of the general standard and commercial conditions under the INCOTERMS before the contract is executed. Once the terms are adopted and incorporated into the contract by the parties, they will be binding, regardless of whether or not both parties were aware of and understood their meaning.

Before finalizing any contract in Thailand, financing and payment procedures should be scrutinized.

**INCOTERMS** are a set of trade terms and conditions used internationally by those selling or buying goods and commodities across borders. They were created by the International Chamber of Commerce and approved by the United Nations in 1936. The mandate behind the project was to create a language of trade terms and laws that every nationality could use and understand, making the exchange of goods and payment easier.

**INCOTERMS** are included in a contract in order to eliminate possible misunderstandings between importers/exporters and buyers/sellers. However, special provisions can override INCOTERMS, and the use of such terms does not necessarily guarantee a legal position.

The Act Amending the Civil and Commercial Code (No. 20) B.E. 2557 (2014) requires guarantees to clearly specify the duration and amount of guaranteed obligations, as well as the main agreement that is being guaranteed. Among other requirements regarding specific terms that must be included in the agreement, the law states that a creditor cannot require a guarantor to be jointly liable with the debtor, and any provision purporting to do so would be void.

The contract should also include a dispute resolution clause to protect the parties in the event of a dispute arising. Thai law permits parties to an agreement to determine which country's law will govern their substantive obligations. Generally

speaking, parties are free to select the law of another jurisdiction. The Thai courts will enforce any terms and conditions governed by foreign law, unless the law is contrary to Thai concepts of public order or good morals. In practice, evidence of such laws would need to be submitted to the relevant court. If the laws of other countries are proven to the satisfaction of the Thai courts, and they do not offend Thai concepts of public policy or good morals, the tribunal may apply them. Should evidence of such laws not be submitted, or if they are not applied for any reason, Thai law will be applied.

Thai courts do not enforce the judgments of foreign courts. Thai courts may, at their discretion, allow foreign judgments to be admissible as evidence in legal proceedings in Thailand when retrying an entire case on its own merit.

For further information on enforcing a contract in a Thai court, please see chapter 17 on [Litigation and Bankruptcy in Thailand](#).

## Unfair Contract Terms

In principle, the Unfair Contract Terms Act B.E. 2540 (1997) addresses certain contractual terms that may be regarded as unfair. The purpose of the Unfair Contract Terms Act is to protect the interests of contractual parties who have a weaker bargaining position. When a contractual term is deemed unfair, the Unfair Contract Terms Act may limit its operation. The Unfair Contract Terms Act empowers courts

to order that terms deemed unfair be enforceable only to the extent that they are fair or reasonable, according to the circumstances.

The following situations are examples of when the Unfair Contract Terms Act would be relevant:

- Consumer contracts involving delivery of property
- Consumer contracts governing the payment of a debt through the delivery of real property to a consumer by a trading company or professional business operator may not contain terms exempting or restricting the liability of the trader or professional business operator for a defect of the property (or for eviction therefrom). However, if the consumer was aware of the defect at the time of entering into the contract, terms can exempt liability if it is fair and reasonable to do so in the circumstances.
- Standard-form contracts
- Standard form contracts that are prescribed by one party and that give that party excessive advantages are considered unfair. In case of doubt, the contract will be interpreted in favor of the party who did not prescribe the contract.
- Contracts for sale with right of redemption
- The terms of contracts that fix the redemption price to be higher than the selling price plus interest at a rate exceeding 15% per annum are considered unfair.
- Hire-purchase contracts
- Contracts that prescribe an excessive hire-purchase price or unduly burden the hire-purchaser are unfair.
- Credit card agreements
- Credit card agreement terms that obligate a consumer, in default of payment obligations, to pay unreasonably high interest, penalties, expenses, or other benefits are unfair.
- Employment contracts and covenants not to compete
- Certain employment contract terms are enforceable only to the extent that they are fair and reasonable in a particular case. An example would be terms restricting a person's professional pursuits, with the effect of causing that person to bear "greater burdens than usually expected" (in relation to factors such as the geographical area and duration of the restriction, whether the party being restricted has other available occupational opportunities, and others).

Other terms deemed to be unfair under the Unfair Contract Terms Act are those that:

- exempt or restrict liability arising from breach of contract;
- allow contract termination without reasonable grounds or without any material breach by the other party;
- force one party to shoulder more obligations or liabilities than those prescribed under the law;
- allow one party to delay or not comply with its contractual obligations without reasonable grounds;
- allow one party to enforce further obligations upon the other party beyond those agreed to on the date of contract execution;
- prescribe a method of compound interest computation that causes the consumer to shoulder an excessive burden;



- allow for confiscation of deposits that are excessively high in relation to the damages arising from a contract under which the deposit was placed, in which case the court will have the power to reduce the confiscation level to that of the actual damages incurred; and
- restrict or exempt liability for infringement or breach of contract with respect to injury to life, body, or health of a third person caused by a deliberate or negligent act committed by the party who sought to restrict or be exempt from such liability, or by other persons to whom said party must also be liable. These terms, notices, or statements will be considered ineffective, as will agreements or consents of the injured parties restricting or exempting the liability for wrongful acts arising from unlawful action contrary to public order or good morals.

The Unfair Contract Terms Act gives the courts great discretionary power in determining whether contract terms are unfair and unreasonable. The act does, however, provide general guidelines under which the court is to consider whether certain terms are unfair or unreasonable. For example, the court is to consider:

- the time and place of executing or performing the contract;
- whether one party shoulders a much heavier burden than the other;
- the normal practice within the industry concerned; and
- the integrity, bargaining power, economic positions, and adeptness of the parties.

The Unfair Contract Terms Act allows for the use of expert testimony during court hearings.

## **Guidelines for Specific Contract Types**

The law regarding most contract types can be found in the CCC. Book III of the CCC provides requirements for several specific types of contracts. Generally, an act or juristic act does not have to be in a particular form unless the law provides otherwise. As such, an act or juristic act not in the form prescribed by law is void. Act or juristic acts with special requirements as to form can generally be placed into the following four categories:

- Acts or juristic acts that must be made in writing and registered with a competent official
- These acts or juristic acts include such things as the sale of immovable property, sale with right of redemption, exchange, gift, mortgage, company memorandum of association, and so on.
- Acts or juristic acts that must be made with a competent official
- These acts or juristic acts include such things as a protest against non-payment of a bill of exchange, a will as a public document, a verbal will, a will as a secret document, and so on.
- Acts or juristic acts that must be registered with a competent official
- These types of acts or juristic acts need not be made in writing, but they must be registered with competent officials. These juristic acts include such things as registration of ordinary partnerships, registration of limited companies, registration of marriages, registration of divorces, and so on.
- Acts or juristic acts that must be in writing but do not need to be registered with a competent official
- These acts or juristic acts include such things as a letter of acknowledgement of debt, transfer of claims, a written instrument representing a gift, a hire-purchase agreement, an agreement regarding computation of compound interest, a share transfer document, a pre-nuptial agreement, and so on.

Additionally, some types of contract are subject to further legal restrictions under different legislation, provided that the validity or enforceability of acts or juristic acts will be principally governed by the principle of contracts under the CCC.

## **Contracts with the Government**

Entering into a contract with a government entity (e.g., ministry, department, state enterprise, etc.) would also be subject to particular regulatory frameworks.

Entities considered state enterprises under the scope of the Budget Procedures Act B.E. 2561 (2018), as amended, include the following:

- a. Government agencies or organizations owned by the government.
- b. Limited companies or public companies of which more than half of the shares in the capital are owned by an official agency.
- c. Limited companies or public companies of which more than half of the shares in the capital are owned by the government agency and state enterprises as stated in (a) or (b) or state enterprises as stated in (a) and (b) or state enterprise as stated in (b) above.

Generally, government contracts cover a wide variety of activities, including hire of work, supply of goods, provision of services, and construction and engineering projects, in relation to which various procedures and bureaucratic requirements must be complied with before any activity can be commenced. Relevant requirements are primarily contained in the following:

- Private Investment in State Undertakings Act B.E. 2562 (2019) (commonly known as the PPP Act);
- Public Procurement and Supplies Administration Act B.E. 2560 (2017);
- relevant cabinet resolutions; and
- notifications of the National Anti-Corruption Commission.

## **Private Investment in State Undertakings Act B.E. 2562 (2019)**

The Private Investment in State Undertakings Act B.E. 2562 (2019), commonly called the PPP Act, was promulgated in 2019 and replaced the previous Private Investments in State Undertakings Act B.E. 2556 (2013). It defines “joint investment” as a public-private joint investment undertaken by any means, or designation of a unilateral private investment by way of a license, concession, or grant of a right.

Any government unit that arranges for a joint investment project relating to fundamental infrastructure and public services such as roads, highways, land transport, railways, rail transport, airports, air transport, ports, water transport, irrigation systems, telecommunications, energy, hospitals, schools, and so on, must comply with the PPP Act.

Any joint investment projects valued at THB 5 billion or more must comply with the criteria, methods, and conditions specified in the PPP Act, while joint investment projects valued at less than THB 5 billion could be subject to less stringent compliance and approval processes, as set by the Private-State Joint Investment Policy Committee.

Any government unit in charge of a joint investment project must prepare a feasibility study and project analysis, which must include the principle behind and reasons for proposing the project; the

goal, scope, length, and chance of success of the project; the impact and risk to the public; the pattern of joint investment; the allocation of profits between the state and the private sector; public hearings; and so on. If considered necessary, the government unit may opt to specify supporting criteria in the project plan, such as BOI privileges, the rental right of land or immovable property, financial support, or others.

The selection of a private sector partner must be preceded by a bidding process set by the Private-State Joint Investment Policy Committee unless the cabinet thinks otherwise. The final decision in selection of the private sector partner is up to the discretion of the cabinet. Thereafter the government unit then signs the joint investment agreement with the selected private sector partner.

### **Public Procurement and Supplies Administration Act B.E. 2560 (2017)**

The Public Procurement and Supplies Administration Act B.E. 2560 (2017) applies to all government agencies' procurement of goods or services. However, it does not apply to procurement by a state enterprise solely for commercial purposes or procurement funded by an overseas entity such as a foreign government, an international organization, or an international financial institution.

In the interest of transparency in public procurement, a state agency must allow the public to observe its processes of procurement. Procurement of supplies may be conducted in three ways:

- Using the **general solicitation method**, any business operators determined by the state agency to be qualified may tender a proposal.
- Using the **selection method**, a state agency will solicit at least three business operators, determined by the state agency to be qualified, to tender a proposal.
- Using the **specific method**, a state agency will invite a single business operator to tender a proposal for price bargaining negotiations or procurement of supplies, the total cost of which is low.

State agencies must first choose to use the general solicitation method. If no business operator tenders a proposal under the general solicitation method, the selection method will be used. The selection method is also used in special cases where the supplies to be used have complicated specifications, are for official intelligence or affairs, by their nature have to be purchased from abroad, are urgently needed, and so on.

The specific method is used if no business operator has tendered a proposal by using the general solicitation method or the selection method. In addition, the specific method is used if the supplies are needed for an emergency and the use of the solicitation method and the selection method would result in undue delay. The specific method may also be used if there is only one qualified business operator in Thailand; there is only one authorized sales distributor in Thailand; or the supplies are to be sold at auction by a state agency, an international organization, or a foreign agency.

The Ministry of Finance may issue additional rules prescribing other details of supply procurement.

State agencies are to conclude contracts in accordance with the forms prescribed by the Policy Commission, with the approval of the Office of the Attorney General. If these forms are not used for the new draft contracts and documents, the state agency must subsequently submit the contracts and documents for consideration and approval by the Office of the Attorney General. If this approval is not

obtained or any substantial term is not made in accordance with the Office of the Attorney General's comments, the procurement contract may become void.

Enforcement of contracts against the government is discussed under section 2.2 Debt Collection below.

## Electronic Contracts

The Electronic Transactions Act B.E. 2544 (2001), as amended, contains provisions addressing the validity of electronic records as contracts and sets out standards for their reliability. In principle, the Electronic Transactions Act holds that a contract will not be invalid simply because the formation of the contract was conducted electronically. However, due to registration requirements, many contracts still need to be made in writing (e.g., contracts for the sale and purchase of immovable property).

### Summary of Key Points on Contracts:

- The CCC is based on the principle of freedom of contract.
- The general requirements for a valid contract are set out in the CCC and are similar to those of other jurisdictions.
- Specific rules apply to certain contracts (e.g., loans above a certain threshold, mortgages, and government procurement contracts).
- Unfair contract terms are only enforceable to the extent that they are fair or reasonable.

## 2.2 Debt Collection

Payment procedures in Thailand tend to follow international norms, though this is generally subject to negotiation. Frequently, credit terms allow 30 days before payment is due and interest begins to accumulate. Monthly payments would generally be accepted for regular customers and those with good reputations. In some cases, payment may be demanded up front or upon delivery of goods or services.

Monetary loans in excess of THB 2,000 are not enforceable unless the borrowing is evidenced by a written loan together with a written receipt of the loan, both signed by the borrower. This affects not only loan agreements but also overdrafts, promissory notes, and other negotiable instruments related to lending.

The parties to a transaction may agree to have the debt expressed in a foreign currency. However, the law allows for payment to be made in Thai currency according to the rate of exchange current at the place and time of payment. It should also be noted that payment in a specific currency can be made an essential term of the transaction, and lawsuits can be filed to claim amounts in foreign currencies. The value of registered collateral/security (e.g., land mortgage and machinery mortgage, etc.), must be expressed in Thai currency in order to be registered with the relevant authorities.

As for enforcement of a guarantee, the Civil and Commercial Code requires written notice of a debtor's default to be delivered to the guarantor as a prerequisite condition for the creditor to enforce the guarantee against the guarantor. This written notice must be given to the guarantor within 60 days

from the date of the debtor’s default. Failure to serve the notice within the 60-day period would automatically relieve the guarantor from being liable for any interest and compensation due by the debtor on account of its underlying obligation, including all charges accessory to it that may arise after that 60-day period.

Debt collection activities are also regulated by the Debt Collection Act B.E. 2558 (2015), which is meant to prevent abuse of individual debtors. Pursuant to that Act, debt collectors must register their businesses. This includes credit providers, business operators under the Consumer Protection Act B.E. 2522 (1979), gambling business operators, and other creditors entitled to receive payment in the ordinary course of business, regardless of whether the debt is legal. It also includes their lawyers and debt collection business operators. The Act sets out permissible approaches for collecting debt, addressing place, time, and frequency of contact. It also prohibits the use of threats and profane language and other tactics. There are administrative and criminal penalties for breaching the law.

Procedural information on bringing a claim against a debtor can be found in chapter 17 on **Litigation and Bankruptcy in Thailand**.

### Government as a Debtor

Although the royal family has sovereign immunity, there is no state immunity in Thailand. A suit may not be brought against Thailand or the kingdom generally, but must be brought against the appropriate juristic person (i.e., the specific government ministry, department, or state enterprise at issue).

ATTACHMENT
is a legal process where, at the creditor’s request, property of the debtor is transferred to the creditor.

APPROPRIATED FUNDS
are money that the government has allocated for a specific purpose.

Although a creditor can commence debt collection against the government, the actual collection of money may be problematic. State lands and certain state properties cannot be subject to attachment. Debts, therefore, must be paid out of appropriated funds.

In practice, unless funds have been appropriated to pay a specific debt, collection will not be successful within the kingdom.

**Summary of Key Points on Debt Collection:**

- Payment terms for debts are not specified in statute, are subject to negotiation, and should be specified in contracts.
- Loans of money over THB 2,000 must be in writing and signed by the borrower to be enforceable.
- A debt collection action may be brought against government institutions, but is unlikely to be paid upon unless there are appropriated funds to pay the specific debt.

## 2.3 Consumer Protection and Product Liability

### Consumer Protection Act

The Consumer Protection Act B.E. 2522 (1979) (CPA) was passed to protect consumers by requiring truth in advertising and full disclosure in labeling. The CPA empowers concerned authorities to take corrective measures against unscrupulous business operators.

The Office of the Consumer Protection Board monitors all forms of advertising labels and looks for violations of the CPA. The Food and Drug Administration must approve any food or drug advertisement before it is launched publicly. The National Broadcasting and Telecommunications Commission has issued a notification to prescribe the time limit for advertisements via digital terrestrial television.

### Product Liability

The Unsafe Goods Liability Act B.E. 2551 (2008) was passed to address product liability concerns. The act, which became effective on February 20, 2009, is designed to protect consumers who incur damage from defective products by imposing strict liability on business operators involved in the manufacture or sale of defective products that then cause harm to a consumer. The operator is held liable if the product is defective, regardless of whether the operator was negligent in making or selling the product.

Under the act's strict liability rule, an injured user needs only to prove that he or she was injured or suffered damage from the defective product while using it in the way it was intended to be used. Product liability cannot be waived or limited by means of contract or by any waiver or limitation of liability statement by an operator.

Moreover, the operator may not be released from liabilities by means of agreements entered into between the consumer and the operator before the damage took place. Nor can the operator be released from liabilities based on their statement to disclaim or limit liability for damages caused by unsafe products after the damages have been incurred.

The act empowers the court to award compensation for mental damages resulting from the injured users' bodily, health, or hygiene damages, separately from any compensation awarded under tort claims made under the Civil and Commercial Code. In case of death of the injured users, their spouse, parents, or inheritor will be entitled to receive compensation for mental damages.

The act also provides defenses for a defendant operator. For instance, an operator will not be liable if it can prove that the product was not defective, that the injured party was already aware that it was defective but used it anyway, or that the damage was due to improper use or storage of the product. In addition to the Unsafe Goods Liability Act, the provisions of the Civil and Commercial Code applicable to contracts and wrongful acts continue to be generally applicable to product liability. There are also some royal decrees which are broad enough to encompass criminal liability arising from what would be called a "product liability case" under Anglo-American law.

Sellers are liable for any defective goods sold in which the goods value or fitness for ordinary purposes, or for the purposes of the contract, is impaired. It doesn't matter whether the seller knew of the defect beforehand or not. Sellers are not liable for defective property if the buyer knew, or should have known, of the defect at the time of sale, if the buyer accepted the defective property at the time of

delivery without reservation, or if the property was sold by public auction. Buyers have one year after discovering a defect to file a claim in court.

## 2.4 Direct Sales and Direct Marketing

Direct sales of goods are governed by the Direct Sales and Direct Marketing Act B.E. 2545 (2002), as amended (DSA). The DSA supplements other legislation which may also affect direct sales, including the CCC, the Act on the Price of Goods and Services B.E. 2542 (1999), and consumer protection-related laws.



**Direct sales** refers to the presentation and offer of goods or services for sale directly to consumers in their dwelling or at any place other than in a retail shop specifically visited by the consumer through direct sales agents or independent sellers engaged in either a one-level or multi-level sale.

**Direct marketing** is marketing goods and services, by directly offering them to remote consumers, with the expectation that the consumer will accept and purchase the goods or services from the direct marketing business operator.



The following e-commerce businesses have been excluded from the term “direct marketing” by ministerial regulation:

1. Sale of goods or services by an individual who has not been registered as a direct marketing business operator, and whose income, which does not exceed THB 1.8 million per year, is derived from selling goods or services by means of e-commerce;
2. Sale of goods or services of small and medium-sized enterprises (SMEs) that have been registered in accordance with the law governing SMEs;
3. Sale of goods or services by community enterprises and community enterprise networks that have been registered under the Act on Community Enterprise Promotion B.E. 2548 (2005); and
4. Sale of goods or services by cooperatives and farmers groups, which have been registered under the law governing cooperatives.

The purpose of the DSA is to protect consumers from business operators who appear to be taking “willful advantage” of them through such undefined means as deception or coercion, and thus are depriving consumers of their freedom of choice. The majority of the DSA focuses on restricting who can do direct sales or direct marketing business and the ways that this business can be carried out.

### Operating Requirements

Direct sales business operators and direct marketing business operators are prohibited from operating businesses that persuade any person to join a direct sale or direct marketing business network by offering benefits for such solicitation, computed from the other number of persons joining the network.

Direct sales business operators must operate their business according to a compensation plan submitted to and approved by the registrar, as required by the DSA.

In addition, the DSA protects consumer privacy by prohibiting independent sellers or direct sales agents from offering the goods for sale to consumers at residences, places of work, or other places that are not usual places of retail work, unless he or she has already been granted permission to do so by the consumers.

## **Consumer Protection under the Direct Sales and Direct Marketing Act**

The DSA protects consumers by requiring that all sales documents be in Thai and contain the following:

- Seller's and buyer's names
- Purchase date
- Delivery date of goods or services
- Description of the consumer's right to terminate (printed more prominently than the other data)

Warranties for goods and services must also be in Thai and clearly outline the consumers' rights under those warranties. For some specifically regulated products (determined by additional regulations), the sales documents must also contain additional information.

The consumer is entitled to, and must be provided with, a copy of the goods or services sales documents or else he or she is not bound by the particulars in them.

### **Cooling-Off Period**

More importantly, the DSA provides consumers with a "cooling-off period," in that a direct sales agreement is only legally binding seven days after the goods or services are delivered. Before the expiration of those seven days, a consumer has the right to change his or her mind by terminating the agreement and returning the product(s). A full refund must be given within 15 days of the termination notification being received, provided that the customer take financial responsibility for any damage that he or she has caused. A description of the goods and services to be excluded from this seven-day period will be provided in future regulations, as will the general procedures for returning goods.

### **Penalties under the Direct Sales and Direct Marketing Act**

The DSA provides penalties for any violations of its rules. The penalties vary, depending on the offense. The maximum imposable sentence is imprisonment not exceeding five years, and fines not exceeding THB 500,000. However, for a repeat offender, if within five years after punishment they commit any offense under the Act again, they shall be punished with twice the punishment prescribed for such an offense. Such penalties may be applied not only to the enterprises, but also to managing directors, managers, or persons in charge of operations, unless the offense was committed without their knowledge.

### **Direct Sales and Direct Marketing Board**

A Direct Sales and Direct Marketing Board is established under the DSA. The board:

- considers consumer complaints;
- supervises direct sales and direct marketing operators;



- adjudicates appeals against orders of the registrar;
- advises the cabinet on direct sales and direct marketing issues;
- oversees the performance of competent officials and government agencies in the area, lays down rules and notifications, and suggests regulations to assist in the execution of the DSA;
- publicizes information relating to the goods or services that may cause damages to consumers; and
- sees to other matters assigned by the minister.

The board is empowered to apply settlements and conditions as it sees fit. It also, importantly, has the power to warn the public away from certain goods and services that may be “detrimental or prejudicial” and to disclose the identity of the direct sales business operator, direct marketing operator, agent, or distributor offering those products or services.

## Registration of Direct Sales Business

A direct sales business operator must register before conducting business. The secretary-general of the Consumer Protection Board acts as registrar under the DSA and is responsible for reviewing and registering direct sales and direct marketing applications. The application to the registrar must be accompanied by various requested documents providing information on the business, as well as a description of the offered goods or services, the procedure for selling the goods or services, and a remuneration payment plan. In reviewing applications, the registrar may request further explanations or documents for examination.

Pursuant to the DSA, complete applications must be processed and registered within 45 days of receipt, whereas incomplete applications must be altered or changed within a “reasonable time.” Upon receipt of a completed application following such alterations or changes, the application must be processed and registered within 30 days of receipt.

A business operator has 30 days to appeal either a rejection of an application or a cancellation of his or her registration under the DSA. The appeal is made to the Consumer Protection Board, whose decision is final.

A direct sales business operator is further required to enter into a written agreement with its independent sellers or direct sales agents. The agreement must contain details of the remunerative payments and the fees payable to the direct sales business operator, including the membership admission fee and promotion material costs (which must not exceed rates to be fixed by the Consumer Protection Board). In an independent seller’s case, the agreement must allow for and further state the procedure and timeline for reselling a product and the promotion materials back to a direct sales business operator.

New direct sales and direct marketing applicants are required to provide a fixed guarantee to the Office of the Consumer Protection Board. Existing business operators will be subject to rates based on their gross revenue.

## 2.5 Import and Export Controls

In principle, in order to import and export goods, the importer and exporter needs to comply with the procedures set forth pursuant to the Customs Act B.E. 2560 (2017), including the rules and regulations

promulgated under the act. However, for some categories of goods, the importer or exporter may also need to comply with requirements under other laws.

Some goods are addressed in laws specific to a particular area of industry or a particular type of goods. Where those laws impose additional requirements, they would typically take the form of product standards or import/export licenses. If such a license is required, it generally needs to be obtained prior to importation or exportation. Below are some of the laws imposing additional requirements:

- Armament, Ammunition, Explosives, Fireworks, and Imitation Firearms Act B.E. 2490 (1947), as amended.
- Cosmetics Act B.E. 2558 (2015).
- Drugs Act B.E. 2510 (1967), as amended.
- Minerals Act B.E. 2510 (1967), as amended.
- Hazardous Substance Act B.E. 2535 (1992), as amended.
- Food Act B.E. 2522 (1979).
- Medical Device Act B.E. 2551 (2008).
- Industrial Product Standards Act B.E. 2511 (1968), as amended.
- Export Standards Act B.E. 2503 (1960), as amended.
- Trade Control on Weapons of Mass Destruction Related Items Act B.E. 2562 (2019)

Clients often ask about the use of electronic signatures. However, when we delve further into their questions, we often find that what they really mean to ask is whether they can sign a contract with a pen and then fax it, or scan and email it, and whether the copy that is printed at the other end will be effective in the same way as an original. This is something altogether different from an electronic signature. In other words, faxed or scanned signatures do not constitute electronic signatures under the ETA.

Furthermore, apart from the above-mentioned laws, some categories of goods are subject to import and export controls under the Importation and Exportation of Goods Act B.E. 2522 (1979). Such controls typically take the form of licensing requirements or outright prohibition of exporting or importing. The categories of goods that are subject to control under this law can change from time to time, as may be necessary or appropriate for economic stability, public benefit, public health, national security, public order, good morals, or other benefits of the state. Goods subject to control are specified in notifications of the Ministry of Commerce.

Each of the relevant laws specify criminal penalties for breach.  
For information on customs duties, please see chapter 13 on [Taxation](#).

## 2.6 Electronic Commerce

The primary law governing electronic transactions is the Electronic Transactions Act B.E. 2544 (2001), as amended (ETA). Certain provisions of the ETA are based on the UNCITRAL Model Laws on Electronic Commerce 1996 and on Electronic Signatures 2001, and also on the United Nations Convention on the Use of Electronic Communications in International Contracts.

The main principle underlying the ETA is the functional equivalence between hard documents and electronic documents, ensuring their equal validity in terms of legal usage. The second principle is technological neutrality, meaning that the ETA does not favor any specific technology but instead accommodates all technologies—even those introduced in the future. Lastly, it upholds party autonomy for each contracting party

The ETA holds that contracts existing in electronic form should not be denied effect simply because they are conducted electronically, and it sets out provisions for determining their reliability. It also provides frameworks for the recognition of electronic signatures and the licensing of electronic commerce service providers.

## **Electronic Transactions and Electronic Signatures**

Subject to some explicit and practical exceptions, the ETA takes the general approach that an offer and acceptance may be expressed in the form of a data message, and that a contract cannot be denied legal effect on the sole ground that the offer or acceptance of that contract was made in the form of a data message. The concept of “data messages” includes information generated, sent, received, stored, or processed by electronic means, such as electronic data interchange (EDI), electronic mail, telegram, telex, or facsimile. The framework allows for considerable latitude by not explicitly requiring the use of any particular commercial standard or system.

Regarding transactions that, by law, must be made or evidenced in writing, a data message is deemed to meet such requirements if that message is accessible and usable for subsequent reference without alteration of its meaning. Similarly, when a signature is required by law on a particular document, the ETA provides that it will be deemed signed if the electronic method used is capable of identifying the signatory and representing the intention of the signatory regarding the information in the data message. Further to that, the method used must be reliable and appropriate, with regard to the parties’ agreement and the surrounding circumstances, for the purpose for which the data message was generated or sent, or it must be capable of verifying the signatory and representing his or her intention regarding the information in the data message, either by itself or with other supporting evidence. Similar provisions are made with respect to the equivalence of data messages to original documents, where documents are required by law to be retained. Where any of this information might be introduced as evidence in court, the law sets out provisions for determining whether such evidence is reliable.

The ETA defines an “electronic signature” as a letter, character, number, sound, or any other symbol created in electronic form and affixed to a data message in order to establish the association between a person and a data message for purposes of identifying the signatory and showing that they have approved the information contained in the message. An electronic signature is considered reliable if the signature creation data is, within the context in which it is used, linked to the signatory and no other person; if the signature creation data was, at the time of signing, under the control of the signatory and no other person; if any post-signing alteration is detectable; and if, where the signature is meant to indicate that the signatory attests to the completeness and integrity of the information, any post-signing alteration to such information is detectable. However, the law is clear that these criteria should not function to limit other possible ways of proving whether an electronic signature is reliable.

The law sets certain legal obligations for electronic signatories. Among these, they must exercise reasonable care to avoid unauthorized use of their signature creation data. In addition, one must quickly notify any person who may reasonably be expected to act in reliance on the electronic signature or the electronic signature service provider if the signatory knows or should have known that the signature creation data has been lost, damaged, compromised, unduly disclosed, or known in a manner inconsistent with its purpose, or if the signatory becomes aware there is a substantial risk

that the signature creation data may have been lost, damaged, compromised, unduly disclosed, or known in a manner inconsistent with its purpose.

When a certificate is issued to support the electronic signature, the signatory must exercise reasonable care to ensure the accuracy and completeness of all the signatory's material representations that are relevant to the certificate, throughout its validity. Parties relying on electronic signatures are expected to take reasonable steps to verify the electronic signature, and where supported by a certificate, to verify the validity, suspension, or revocation of the certificate, and observe limitations with respect to the certificate. The law also sets out a framework for electronic signature service providers.

Electronic signatures are classified into three categories under the ETDA Recommendations on ICT Standards for Electronic Transactions and Electronic Signature Guidelines, as follows:

- Regular electronic signatures – General electronic signatures, which can be in any form (e.g., letters, characters, or numbers). Examples include signing a touchscreen with a stylus, clicking an “accept” button on an electronic contract, an email signature, typing a name at the bottom of a message, and attaching a scanned handwritten signature to an electronic document.
- Reliable electronic signatures – An electronic signature created in accordance with a reliable electronic signature assumption prescribed in the ETA (e.g., a digital signature using public key infrastructure (PKI) technology).
- Reliable electronic signatures with a certificate issued by a certification authority – Electronic signatures created in accordance with a reliable electronic signature assumption and certified by a certification authority under the ETA—for example, a digital signature using PKI technology and using a certificate issued by a certification authority.

## **Practical Use of E-Signatures in Thailand**

In Thailand, the laws do not specify which transactions should utilize an e-signature or what type of e-signature should be used. The decision to apply for an e-signature, and the type used, may vary depending on the purpose of the document or data, the required level of reliability, and the involved parties. For instance, executing a sale-and-purchase agreement via a regular e-signature is generally acceptable and legally binding between parties, unless both parties opt for wet signatures or a reliable e-signature.

Moreover, companies in Thailand can utilize e-signatures for transactions or registrations with government authorities that accept them. These include the Revenue Department for e-tax Invoices & e-receipts, the Department of Foreign Trade for certificates of origin, Thai Customs for e-customs, and the Department of Business Development for e-registrations.

However, transactions concerning family and succession laws are explicitly prohibited from being executed with an e-signature. This prohibition aligns with the Royal Decree Prescribing Civil and Commercial Electronic Transactions Excluded from the Application of the Law on Electronic Transactions B.E. 2549 (2006).

## **Automated Electronic System for Data Exchange**

In 2019, the amended ETA introduced a new term: the “Automated Electronic System for Data Exchange” (AESDE). This is defined as a computer program, electronic method, or other automated

method used for initiating an act or responding to electronic data or any operation performed by that data system without examination or intervention by a natural person. The validity or enforceability of any agreement entered into via an AESDE cannot be denied solely on the grounds that there was no intervention by a natural person in the AESDE's operations.

The ETA allows any person who made an input error that was then sent to another party via an AESDE to revoke his or her intention derived from the input error, as long as the system does not already provide a method for the correction of error, and that the person (or an authorized representative) has taken necessary steps required under the ETA.

## **Invitation to Make an Offer**

Under the ETA, an offer that is made via electronic communication and sent to non-specific persons and that is accessible by any other persons using the same data system would be regarded as an invitation to make an offer. This includes an offer made through a data system that allows automatic responses.

## **Licensing under the Electronic Transactions Act**

Chapter 3 of the ETA provides for regulation of electronic transaction-related service providers. Service businesses relating to electronic transactions that are set out by royal decree must be licensed, be registered, or give notice of their operations, as applicable. Regulated types of business include electronic money services, credit card network services, EDC network services, payment system switching services, clearing services, balance settlement services, electronic payment services, and payment agent services. In addition to the ETA, specific regulatory requirements applicable to electronic payment business operators are contained in royal decrees and ministerial notifications. These address, among other things, rules with respect to security, reliability, protection of service users, financial requirements, "Know Your Customer" obligations, and reporting obligations.

## **Digital Identification and Verification**

Identification and verification of a person can now be done via the digital identification and verification system. According to the ETA, a royal decree might be enacted to prescribe the type of digital identification and verification service provider that would be required to obtain a license before it can provide such service.

## **Digital Platform Services**

In 2022, the ETDA adopted a royal decree on digital platforms under the ETA that aims to regulate intermediary digital platforms that provide an online space for business operators to connect with consumers. The royal decree contains extraterritorial provisions and imposes several obligations for digital platform providers, including operational reporting requirements, appointment of a local representative, requirements relating to terms and conditions, and stipulations regarding the mechanisms used in a digital platform.

Under the royal decree, certain types of intermediary platforms are deemed to be digital platform services that must notify the ETDA before commencing operations.



A "digital platform service" is defined as an electronic intermediary platform facilitating connections between merchants, consumers, and users via a computer network to enable electronic transactions, regardless of actual payment. However, this excludes platforms that offer the goods or services of the operator or affiliated companies, irrespective of whether these are offered to third parties or affiliates.

Businesses involved in e-commerce may need to notify the ETDA based on specific platform characteristics, such as revenue and user count. The notification requirements include:

- **Full-form notification:** Companies with annual gross income exceeding THB 50 million or more than 5,000 monthly active users in Thailand must comply with detailed reporting requirements, including information concerning the operator, transaction value, user count, revenue ratio in Thailand, gross revenue, complaints, and contact person.
- **Short-form notification:** Companies not meeting the above criteria, including e-service platforms with web-board hyperlinks or banners, still need to provide information to the ETDA but with fewer details compared to the full-form notification.

For further information on any of the topics mentioned in this chapter, or for advice on commercial transactions or regulations, please contact the Tilleke & Gibbins Commercial Transactions and Corporate Services teams at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.



# Mergers and Acquisitions

## 3.1 Mergers and Acquisitions

### Types of Mergers and Acquisitions

Under Thai law, there are four main types of the commonly used structures for mergers and acquisition (M&A) transactions:

1. Share acquisition
2. Asset acquisition
3. Amalgamation of two or more companies into a new company ( $A + B = C$ )
4. Merger, with one merging company surviving ( $A + B = A$  or  $B$ )

### Share Acquisition

#### Acquisition of Existing Shares

##### A. Private Limited Company

Thailand does not have a specific law on acquisition of shares in a private limited company, so such transfers must be made in accordance with the CCC, unless otherwise specified in the company's articles of association (AOA). The CCC and the target company's AOA will set forth the required procedures for transferring shares in that private limited company. Additionally, shareholders' agreements or joint venture agreements may contain other relevant contractual provisions that are not in the AOA.

Generally, the transfer of shares must be made in writing and signed by both transferor and transferee. Their signatures need to be certified by at least one witness, and the share transfer document must state the number of shares to be transferred. This transfer of shares will be valid against the company and third parties once the share transfer and the transferee's name and address are entered into the company's register of shareholders.

There is no registration fee for transferring a company's shares. However, stamp duties are required to be affixed to the share transfer instruments at the rate of THB 1 for every THB 1,000 or a fraction of the paid-up value of the shares or of the nominal value of the instrument, whichever is greater.

##### B. Public Limited Company

The Public Limited Company Act B.E. 2535 (1992) governs the acquisition of shares in a public limited company. Such share transfers require that a transferor endorse the share certificate specifying the name of the transferee, and the share certificate must be signed by both the transferor and the transferee. A public company may not specify any restrictions on a transfer of shares unless such restrictions are for preserving the rights and benefits to which the company is lawfully entitled, or for maintaining the ratio of shareholding between Thais and foreigners. Shareholders agreements or joint venture agreements should also be reviewed to ensure that any restrictions on share transfers.

### **C. Listed Company**

If a public limited company is listed on the Stock Exchange of Thailand (SET), then the rules and regulations of the Securities and Exchange Commission (SEC), SET, and Thailand Securities Depository Company Limited (TSD) also apply.

## **Acquisition of New Shares of a Company**

### **A. Private Limited Company**

An M&A transaction may also be shaped as an acquisition of new shares in a company by acquiring shares from the capital increase. However, a private limited company may offer and allot new shares only to its existing shareholders in proportion to the shares held by each of them. If existing shareholders decline to subscribe to new shares, the board of directors may issue unsubscribed shares to other existing shareholders.

Issuance of new shares to an investor who is not an existing shareholder is possible if that investor first becomes a shareholder of the company by purchasing some amount of existing shares, followed by the company's shares from the capital increase.

### **B. Public Limited Company**

Public companies differ from private companies in that it is possible to issue shares to the public. However, the rules and regulations of the SEC must be observed; otherwise, SEC approval and filings documents, as well as a registration statement, will be required.

### **C. Listed Company**

A similar process applies when a listed company issues shares to the public. A subscription of newly issued shares in a publicly listed company may be subject to mandatory tender offers with the SEC. Exemptions of the mandatory tender offer may, however, apply (e.g., whitewash).

## **Asset Acquisition**

In an asset acquisition, the acquirer purchases the assets of the target company. Although Thailand does not have specific laws on asset transfers, the transfer of assets requires the preparation of many documents and can be financially burdensome if the target company's assets include immovable assets. Registration is also necessary for transfers of immovable properties and assets (i.e., land and buildings), long-term lease agreements, some intellectual property rights, and machinery. In addition, employees have to be transferred in accordance with Thai labor law. Transfer of assets usually requires numerous notifications and consents from third parties.



If the seller is a juristic person, the transfer of immovable assets (land and buildings) is subject to a registration fee of 2% of the price as appraised by the Department of Lands. Also, the transfer of such assets is further subject to specific business tax at the rate of 3.3% of the selling price or the price appraised by the Department of Lands, whichever is greater. The seller must pay corporate income tax in the form of withholding tax at the rate of 1% of the selling price or official appraisal price, whichever is greater.

## **Amalgamation**

When two or more companies are amalgamated into a single new entity, the new amalgamated entity must be registered as a new company and will automatically assume all the rights and obligations of the amalgamated companies. The CCC sets forth registration and notice requirements for amalgamations.

A limited company can only amalgamate with another limited company with a special resolution of the shareholders (i.e., at least three-fourths of the votes of the shareholders who attend the meeting and are entitled to vote). After its adoption, the special resolution approving the amalgamation must be registered by the company within 14 days.

Each amalgamating company must publish a notice of the proposed amalgamation at least once in a local paper and must send a notice of the particulars of the proposed amalgamation to all creditors known to the company, requiring them to present any objections they may have within 60 days of the date of the notice.

When the amalgamation is complete, it must be registered by each amalgamated company with the Ministry of Commerce (MOC) within 14 days. The limited company formed by the amalgamation must be registered as a new company with the MOC.

The share capital of the new company must be equivalent to the total share capital of the amalgamated companies. The new company is entitled to the rights and subject to the liabilities of the amalgamated companies.

## **Merger**

Mergers, in which two or more companies merge and one merging company survives, are also regulated by the CCC. The requirements and procedures for mergers are similar to those laid out for amalgamations above.

## **Foreign Investor Limitations in M&A**

Foreign investors should be mindful of limitations on foreign ownership when considering cross-border M&A ventures in Thailand. Usual limitations arising under the Foreign Business Act, as discussed in part 1 of this chapter, will apply equally to merger or acquisition of a Thai company. Foreign investment in businesses specified in the FBA is limited to less than 50% of share capital, unless specially permitted or otherwise exempted.

Other incentives may include Board of Investment privileges, tax breaks, customs duty exemptions or reductions, land ownership for foreign companies, and visa and work permit privileges for foreigners.

## Due Diligence

Perhaps the most challenging aspect of M&A in Thailand concerns legal due diligence. Although due diligence plays a vital role in M&A, there are no specific statutory requirements in Thailand for legal due diligence reviews during the course of an M&A deal. Such reviews are essential in order to prevent or mitigate future liability. The review process can unearth determining factors, such as a target's noncompliance or any violation of laws, regulations, restrictions on foreign ownership, or restrictions on share transfers, any of which may eventually make or break a deal.

Legal due diligence has a variety of definitions, depending upon the context. Generally, due diligence refers to the conduct and judgment that a person would take to carry out their duties. In a corporate context, due diligence is more of an analytical and investigative exercise, typically involving the feasibility of a major transaction.

Before any intended merger or acquisition is completed, financial due diligence on the target is required in order for the acquirer to decide whether or not the acquisition of the target is commercially and financially viable. Legal due diligence on the target is also an important task to identify any legal discrepancies or liability on various matters, which the legal team may discover during their legal due diligence on the target. The acquirer should not complete the deal without their legal team conducting due diligence on the target.

A legal team can also confirm the legitimacy of issued shares; whether there are any encumbrances on major assets; whether the target is legally authorized to conduct business with the proper or requisite licenses; potential breaches of terms and obligations of material commercial contracts or employment agreements; and most importantly, whether there is any pending litigation by or against the target, or any bankruptcy or reorganization filings.

There are, however, limitations on the performance of legal due diligence review in Thailand. First, Thailand does not have a centralized recording system of pending nationwide court suits on which to conduct litigation searches. Independent litigation searches have to be conducted at each major court in Bangkok—the Central Bankruptcy Court and the Business Reorganization Office, Civil Court, Southern Bangkok Civil Court, Intellectual Property and International Trade Court, Central Labor Court, Criminal Court, and Central Tax Court. If the target is located outside Bangkok, litigation searches at the relevant provincial court must be arranged.

Thailand also does not have a centralized asset registry. Real property searches must be undertaken at the appropriate Land Office where the target's real property is situated. Copies of land title deeds may serve to facilitate these property searches.

Lastly, any encumbrances on shares can only be verified by vetting the register of shareholders, which is maintained solely by the target and is not in publicly available records.

## Merger Control

Notifications of the Trade Competition Commission of Thailand (TCCT) relating to merger control, under Section 51 of the Trade Competition Act B.E. 2560 (2017) (TCA), among others, provide definitions for key terms, as laid out below.

Mergers are defined as share or asset acquisitions that result in a sufficient change in the control of policy, business administration, direction, or management, meeting the following criteria:

- Merger among producers, sellers, or service providers, resulting in one business remaining and the other terminating, or a new business coming into existence;
- Acquisition of all or part of another business' assets in order to control its business administration policy, supervision, or management, pursuant to the guidelines prescribed and announced by the TCCT; or
- Direct or indirect acquisition of all or a portion of shares of another business in order to control its business administration policy, supervision, or management, pursuant to the guidelines prescribed and announced by the TCCT.

**Monopoly** describes a circumstance where an operator is (1) the sole business operator in a certain market, (2) has a turnover of at least THB 1 billion, and (3) has the power to independently determine prices and the quantity of their products or services.

**Market dominance** describes when:

- a business operator has a market share in the past year for a product or service of 50% or more and has sales in the past year of at least THB 1 billion; or
- the three largest business operators have a combined market share of 75% in the past year and each of them had sales in the past year of at least THB 1 billion, with the exception of business operators whose market share in the past year was below 10 percent.

A **merger transaction that causes a substantial lessening of competition in a certain market** is a merger transaction whereby the total turnover of any or all business operators that are to be merged in a certain market is THB 1 billion or more, but it does not result in a monopoly or a business operator having a dominant position.

The TCCT notifications recognize the concept of a "single economic unit," whereby the market share and the turnover of all the businesses or entities with a relationship in terms of policies or control, in accordance with the notifications of the TCCT, must be considered cumulatively when calculating market share and turnover (for assessing dominant position or a substantial lessening of competition).

The notification also sets out the rules, criteria, and conditions for premerger approval and postmerger notification:

- Premerger approval. Parties entering into a merger that may result in a monopoly, or in a business operator having market dominance, must submit an application and required documents to the TCCT for approval.
- Postmerger notification. Any merger that may result in a substantial lessening of competition must be reported to the TCCT by submitting a form and supporting documents within seven days of the completion of the merger.

The TCA provides a statutory exemption for mergers and acquisitions for the purpose of internal corporate restructuring or organizational restructuring for entities or companies within the same group (i.e., a merger for the purpose of restructuring business operators that are related in terms of policies or command).

### **Key Points on Mergers and Acquisitions:**

- Share acquisition is generally advantageous when:
  - the company has substantial intellectual property rights, contracts, licenses and permits, and other intangible assets that cannot be transferred;
  - the company's assets cannot be transferred, or are transferrable but would be very costly due to transfer fees, taxes, and other costs;
  - the company's losses could be carried over to subsequent accounting years; or
  - the company's employees are a material component of the existence of its business.
- Asset acquisitions are usually favored when risks that are foreseen in the hidden liabilities of the target company outweigh the advantages of lower transfer fees, taxes, and other transaction costs.
- Due diligence reviews are widely seen as an essential step when moving forward with a transaction. All companies involved in significant transactions should carry out legal due diligence, whether limited or in full, prior to entering into any M&A deal in order to prevent or mitigate future liability.
- Acquisitions may be subject to premerger approval or postmerger notification requirements.

For further information on mergers and acquisitions or assistance with the implementation of strategic growth transactions or due diligence, please contact the Tilleke & Gibbins M&A at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## **3.2 Directors' Duties**

Legally, foreign directors and Thai directors are not treated differently. A director has power to manage a company by all lawful means necessary, within the bounds of the company's memorandum of association, articles of association, resolution of shareholders' meetings, and applicable Thai laws. As long as directors act within that scope, their actions are legally binding on the company and they shall not be held personally liable to the third party.

It is a general rule of law that directors of a limited liability company must exercise their powers honestly and in the best interests of the shareholders and the company. Thus, directors must exercise the judgment of careful businesspersons and should not put themselves in a position where their duties and personal interests are likely to conflict with those of the company.

The general role of directors is setting goals, policies, and strategies, overseeing, and decision making. Directors could also undertake management responsibilities. The directors' legal positions are as representatives of the company. When dealing with a third party, agency law shall apply and the director is treated as an agent of the company (principal). The duties of directors toward the company may be described as fiduciary, performing their duties with care and skill, and complying with the resolutions of the shareholders, the company's articles of association, and the law. Directors may delegate their powers to any manager(s), who may then exercise powers accordingly.

In the performance of their duties, directors must apply the diligence of a careful businessman. Under the CCC, directors and persons representing directors are jointly responsible for:

- payment being made for shares by the shareholders;
- maintenance of company books, records, and documents, as prescribed by law;
- proper distribution of dividends or interest as prescribed by law; and
- proper enforcement of resolutions of general meetings of the shareholders.

Directors acting in a fiduciary relationship with a company must not directly or indirectly enter into:

- a competing business;
- a business dealing with the company for their own benefit; or
- a business in which they have a special interest, without the consent of the shareholders and/or the board of directors.



The concept of a **careful businessman** has been expanded on by the Thai Supreme Court in a past ruling. The judgment of a ‘careful businessman’ should be comparable to that of businesspersons in the same industry or business.

If a director enters into one of these activities, he or she may be accountable to the company for all profits or losses.

Public limited companies are governed by the Public Limited Company Act B.E. 2535 (1992), which imposes higher and more extensive standards and duties on directors. Directors of public limited companies listed on the Stock Exchange of Thailand are subject to even greater duties and standards of compliance under the Securities and Exchange Act B.E. 2535 (1992), as well as regulations of the Securities and Exchange Commission and the Stock Exchange of Thailand.

### **Binding Signatory Power**

Foreign directors should be aware of binding signatory power. Only directors who are registered as binding signatories with the Ministry of Commerce can sign documents on behalf of a company. Such signatory power is often checked by third parties (e.g., banks and authorities) before dealing with a company. It is common practice to affix the company seal along with a director’s signature. Non-director personnel may be delegated such powers through a power of attorney.

### **Civil Liability of Directors**

Directors are not personally liable to any third party if they act within the scope of their authority. The fundamental civil liability of directors is stipulated in the CCC, which empowers the company, its shareholders, or its creditors to hold directors liable to pay compensation for damages suffered by the company due to breach of any fiduciary duty, such as duty of care, duty of loyalty, and duty of disclosure. The burden of proof belongs to the party who initiates the civil lawsuit. Directors could avoid liability if they seek prior approval or post-action ratification from the shareholders. Resigning

from the board will not bring immunity, since directors are still liable for breach of fiduciary duty for two years after resignation. Directors' and officers' liability insurance is an increasingly popular means of protection.

## **Criminal Liability of Directors**

Directors, including non-director managers, are criminally liable when they commit acts or omissions that are expressly prescribed by certain laws to be wrongful and subject to prescribed criminal penalties. Wrongful acts are generally fraudulent or intentional, but in some cases, negligent or even unintentional acts are punishable. Breaches of fiduciary duty do not lead to criminal liability unless the company is listed. Non-compliance with basic corporate duties, such as the timely submission of audited financial statements, is also a criminal offense and subject to the penalties under the Act on Offenses Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations, and Foundations B.E. 2499 (1956), as amended.

It is not uncommon for directors to be prosecuted as co-defendants. In the past, there were approximately 100 different statutes concerning the liability of the representative of the juristic person, most of them containing the standard provision that directors and managers are automatically presumed guilty and would serve the same penalties if the company is found guilty of any prescribed crime. However, in a landmark ruling in 2012, the Constitutional Court held that this standard provision is unconstitutional and thereby unenforceable. This decision effectively shifted the onus of proof to the public prosecutor (i.e., the public prosecutor must prove that the company's wrongdoing was committed by, or at the behest of, the directors).

Accordingly, in February 2017, the Act Amending the Law on the Criminal Liability of Representatives of Juristic Persons B.E. 2560 (2017) came into effect to replace the standard provision in 76 statutes with a new provision that reads, "The director, manager, or person responsible for the business operations will be liable for the same offense committed by the company if the offense results from the instructions or actions of the director, or the director, manager, or the person responsible for the business operations has a duty to give instructions or take action, but omits doing so, which results in the legal entity committing an offense."

For information concerning directors' liability for taxation offenses, please see chapter 13 on [Taxation](#).

## **3.3 Restructuring and Dissolution**

### **Restructuring**

The Bankruptcy Act B.E. 2483 (1940), as amended, sets forth the process of maintaining the viability of a distressed company by setting up a legal structure to maintain the debtors' assets and to rehabilitate its business on the one hand, while protecting the interests of the creditors, old and new alike, on the other.

Two distinct means for restructuring exist: out-of-court restructuring and court-supervised restructuring.

## Out-of-Court Restructuring

Under informal restructuring schemes, lenders and borrowers with non-productive loans create their own plans to reformulate loan repayment. This is usually based on bilateral contracts between lenders and borrowers. The only guidelines to informal restructuring are the creditor's individual policies.

## Court-Supervised Restructuring

A petition for restructuring can be filed by:

- a debtor;
- a relevant government authority; or
- creditors who are owed no less than THB 10 million.

Once the court approves the petition, it declares a stay on legal proceedings, which restricts the ability of creditors to take action against the company to recover sums owed to them. This stay prevents parties from commencing or continuing lawsuits against the company and prevents creditors from filing dissolution or bankruptcy petitions.

Next, the creditors select a planner to draft a rehabilitation plan and to effectively take over the debtor's business. Within one month of the court's approval of the planner, all creditors must submit their claims. Claims that are not submitted within that period will be forfeited. The planner then drafts the plan and submits it to the creditors within three months (with a maximum of two one-month extensions). The law divides creditors into the following four groups (in order of repayment priority):

1. Major secured creditors
2. Minor secured creditors
3. Unsecured creditors
4. Subordinate creditors

The creditors must approve the plan by special resolution, which takes place when creditors representing at least 75% of the total indebtedness approve the plan, or upon approval by those representing 75% of the indebtedness of a single group of lenders, so long as those representing at least 50% of the total indebtedness approve the plan. When a special resolution has been passed, the plan is submitted to the court for final approval.

The court must approve all plans that meet certain criteria. From the time the court accepts a plan, it becomes binding on all creditors. The court-supervised plan administrator then manages the business and its assets, attempting to implement the plan within a five-year time frame (with a maximum of two one-year extensions). Within this time frame, if the court deems the plan unsuccessful, it may order its termination and/or put the company under absolute receivership, leading to bankruptcy proceedings.

It is possible to file an appeal against any interlocutory order or court order giving a decision regarding business reorganization.



A **secured creditor** is a creditor that holds rights over the assets of the debtor in a mortgage, pledge, or right of retention, or a creditor with a preferential right.

Any creditor who does not fall within the definition of a secured creditor is deemed to be an **unsecured creditor**.





## Recent Amendments for Small and Medium Sized Enterprise

Recent amendments open the rehabilitation process to natural persons, juristic bodies, and partnerships, while also lowering the minimum threshold of debt that debtors, who are not in a position to make repayment, must meet to be eligible for protection. The minimum thresholds vary depending on the type of debtor. For a debtor which is a private limited company, the amount of debt must not be less than THB 3 million and not more than THB 10 million.

In order to apply for rehabilitation, a debtor or a creditor of the debtor must file a petition to rehabilitate, along with an approved rehabilitation plan for at least two-thirds of the total amount of debt, to the Central Bankruptcy Court and comply with other procedural requirements.

The court then considers whether or not to accept the petition. If accepted, an automatic stay goes into effect. This stops the creditor(s) from claiming or seizing the debtor's assets, and it stops the ongoing seizure process and the auctioning off of the debtor's assets.

## Restructuring Termination and Absolute Receivership

If the court does not approve the restructuring plan, or terminates the reorganization and orders absolute receivership, the debtor undergoes bankruptcy procedures. Should this occur, creditors can apply for repayment with the court receiver within two months after the court publishes the absolute receivership order. This deadline is extended to four months for foreign creditors.

Should the court terminate the restructuring plan rather than place the debtor under receivership, the company is restored to its former state. In such circumstances, the stay is lifted, reinstating all rights and liabilities of the former shareholders and directors. Secured creditors may then decide to foreclose on the debtor's assets. The timeframe for the whole procedure, from the date of filing the application to actual realization of assets, if not appealed, is approximately 44 weeks.

## Cessation or Termination of Business

When formally ceasing a business, the main tasks are (1) the settling of the company's affairs, (2) paying debts, (3) distributing assets, and most importantly, (4) settling its tax liability with the Revenue Department.

There are six ways a limited company can be legally terminated in accordance with the Civil and Commercial Code (CCC):

- As provided by the company's articles of association;
- If formed for a specified period of time, by the expiration of that period;
- If formed for a single undertaking, by the termination of that undertaking;
- By a special resolution to dissolve the company;
- By becoming bankrupt; or
- By court order on grounds specified in section 1237 of the CCC.

## Liquidation

A company can commence the cessation process by passing a special resolution to dissolve the company.

Upon dissolution of a partnership or company for any cause other than bankruptcy, the managing partners or directors become the liquidators unless otherwise specified in the partnership contract or the company's articles of association.

The liquidators must issue a notice to all known creditors, have a public notice published in a newspaper, and register the dissolution and the names of the liquidators with the Department of Business Development within 14 days of the date of dissolution.

The liquidators must, as soon as possible, make a balance sheet and have it examined and certified by the auditors, and must call a general meeting to:

- confirm the directors or managing partners as liquidators, or appoint other liquidators; and
- adopt the balance sheet.

The general meeting may direct the liquidators to make an inventory or to do whatever the meeting may deem advisable for the settlement of the affairs of the partnership or company.

Every three months, an interim report must be filed by the liquidators with the registrar, for open inspection by the company's creditors and shareholders. If the liquidation continues for more than one year, the liquidators must call a general meeting of shareholders at the end of each year in order to report their activities and give detailed accounts.

Once the affairs of the partnership or company are fully liquidated, the liquidators must make up an account showing how the liquidation has been conducted and how the property belonging to the partnership or company has been disposed of. The liquidators must then set this out before a general meeting and provide the meeting with any necessary explanations.

After the account is approved, the liquidators must register the proceedings of the meeting with the Department of Business Development within 14 days. This officially ends the liquidation process.

After the liquidation, the books, accounts, and documents of the liquidated partnership or company must be deposited at the registrar's office within 14 days, where they will be kept for ten years after the end of the liquidation. All such books, accounts, and documents are freely available for inspection by any interested person.

### **Obligations toward Creditors, Employees, and Others**

Besides the notices to shareholders, creditors, and the public as described above, obligations toward employees must also be observed. The employer must give advance notice of termination to employees and pay severance as required by the Labor Protection Act.

For further information on obligations toward employees,  
please see chapter 15 on [Employment](#).

### **Tax Consequences of Liquidation**

Special provisions of the Revenue Code deal with liquidations. The voluntary winding up of a business is generally subject to a tax audit on the company's income tax and VAT by the Revenue Department.

This creates an important responsibility for both the liquidator and the auditor to closely monitor and resolve any tax issues with the revenue inspector. The investigation could include a review of up to five

years of financial transactions. If any irregularities or extra tax burdens are found, the Revenue Department may request that the Department of Business Development hold off on completing the liquidation.

### **Costs and Timeframe for Liquidation**

The costs involved in liquidation include government fees, advertisement fees, announcements to shareholders, lawyers' fees, auditors' fees, severance pay to employees, bankruptcy court fees (if applicable), and other incidental costs.

The time required to terminate a business depends on how complicated it is to settle the affairs of the company, pay its debts, distribute the assets, and most importantly, settle its tax liability with the Revenue Department. Some cases may take only a month, while others could take up to ten years—the maximum prescription period for civil claims.

### **Bankruptcy**

Following the 1997 Asian financial crisis, Thailand's bankruptcy laws were substantially amended. A specialist Bankruptcy Court was created, which also has the power to consider bankruptcy cases that involve criminal matters.

Bankruptcy proceedings may only be commenced for debtors (companies or individuals) by creditors and cannot be voluntarily commenced by a debtor.

For bankruptcy proceedings to be commenced, the debtor must:

- be insolvent, with insolvency being assumable if:
  - the debtor's assets are seized or attached under a writ of execution;
  - none of the debtor's assets can be seized or attached for payment of the debts; or
  - the debtor receives notices from a creditor at least twice, thirty days apart, and the debtor does not pay the debt under those notices;
- have a domicile or operate a business in Thailand; and
- have debt of at least THB 1 million for an individual or THB 2 million for a juristic person.

If the court grants the petition, the liquidation process commences. A court-appointed official receiver will then take control of the debtor's property and distribute it among the creditors in accordance with the priority rules, which are largely similar to those used in restructuring.

Government officials, teachers, or employees of certain state-owned organizations will be disqualified from their job upon a court order declaring them bankrupt.

### **Rules on Bankruptcy Cases**

The Rules on Bankruptcy Cases B.E. 2549 (2006) establish procedural rules that focus on accelerating Bankruptcy Court proceedings and hearings. The rules encourage the use of electronic equipment and express mail in communications between courts and require provincial courts that receive bankruptcy petitions, including bankruptcy petitions involving criminal matters, to deliver such petitions to the Bankruptcy Court as soon as possible. The provincial courts have the power to issue search warrants and arrest warrants, and to imprison or release defendants.

## Discharge from Bankruptcy

There are two ways in which a bankrupt may be discharged from bankruptcy:

- a. Court-ordered discharge: A court will discharge a bankrupt debtor from bankruptcy when the court finds that at least 50% of the debtor's assets have been distributed to creditors and the court does not find the bankrupt to be dishonest.
- b. Automatic discharge after the lapse of the bankruptcy period: A discharge will take effect three years from the date of adjudication, barring several disqualifying criteria that would extend the time period to five or ten years.

The effect of a discharge from bankruptcy is that the bankrupt debtor is released from debts that arose before the court ordered the bankruptcy. This applies to all debts except for tax debts and debts that were a result of the debtor's dishonest or fraudulent conduct. However, the discharge from bankruptcy has no effect on the liability of the bankrupt's partners, or a person who bears liability jointly with the bankrupt debtor.

The party discharged from the bankruptcy still must assist in the disposal and distribution of its property, as the receiver may require. Otherwise, the bankruptcy court may revoke the order of discharge from bankruptcy.

## Dissolution by the Court

Under section 1237 of the CCC, a limited company may also be dissolved by the court on the following grounds:

- Failure to file a statutory report or hold a statutory meeting. However, the court may, instead of dissolving the company, direct that the statutory report be filed or the statutory meeting be held.
- The company does not commence business within a year from the date of registration or suspends its business for a whole year.
- The business of the company can only be carried on at a loss and there is no prospect of its fortunes being recovered.
- The number of shareholders is reduced to less than two.
- Any other cause making the continuance of the company an impossibility.

### Key Points on Bankruptcy and Restructuring:

- The minimum amount of debt to commence bankruptcy proceedings is THB 1 million for an individual and THB 2 million for a juristic person.
- Debtors cannot voluntarily commence bankruptcy proceedings for themselves.
- Once the court has ordered the debtor into absolute receivership, a creditor may ask for repayment of its debt within two months of the court's order, except in a case of *force majeure* or another justification deemed reasonable by the court, whereby the court may then extend the period for the creditor to apply for repayment. If the creditor resides outside of Thailand, the receiver may extend this period by up to another two months.
- Debtors and creditors who are owed at least THB 10 million can file a petition for restructuring.
- Creditors must submit their claims within one month of the court approving the plan.
- In general cases, the plan implementation period must not exceed five years.

For further information on bankruptcy and restructuring, or assistance with commencing bankruptcy or restructuring proceedings, please contact Tilleke & Gibbins' bankruptcy and restructuring practice at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

# Capital Markets

## 4.1 Regulatory Overview and Key Organizations in the Thai Capital Markets Landscape

Thailand's Ministry of Finance oversees the regulation of capital markets through the Securities and Exchange Commission (SEC), established under the Securities and Exchange Act B.E. 2535 (1992), as amended, (the "SEC Act").

The SEC functions independently to set policies and rules governing the development and operation of primary and secondary markets. Its goal is to ensure that securities trading is conducted fairly, transparently, and efficiently, maintaining order and standards in Thailand's capital markets. The SEC is also authorized to take legal actions, which may include administrative, criminal, or civil measures, against individuals or entities found to be in violation of the SEC Act, such as those that engage in insider trading or fail to meet disclosure obligations.

The Capital Market Supervisory Board (CMSB), which reports directly to the SEC, is responsible for issuing rules, regulations, notifications, orders, and directions at the operational level to govern the issuance and offering of securities, securities exchanges, securities-related businesses, securities settlement systems, securities business associations, and takeover transactions.

The Office of the Securities and Exchange Commission, or the "SEC Office," is tasked with executing the resolutions of the SEC as well as carrying out various functions outlined in the SEC Act, including approving the offering of securities to the public and issuing waivers regarding tender offer requirements. Furthermore, the SEC Office is authorized to oversee the enforcement of laws, especially in cases of SEC Act violations.

The Stock Exchange of Thailand (SET), Thailand's primary stock exchange, operates as a nonprofit organization and consists of member securities firms. Its duties include handling listing applications, overseeing compliance with disclosure regulations for listed companies, and monitoring all trading activities involving listed securities. Other than the SET, the Market for Alternative Investment (MAI) was established in June 1999 to support small and medium-sized enterprises (SMEs) in accessing capital markets and to offer additional investment choices to the public. Another exchange, named "LiVe Exchange" or "LiVEx" was launched in March 2022 with a view to becoming a capital market funding center for developing enterprises, such as SMEs and startups with the required qualifications, albeit with a smaller scale than those listed on the SET or the MAI.

In terms of housekeeping and settlement of traded securities, the Thailand Securities Depository (TSD) functions as a depository, dividend agent, transfer agent, and registrar for most listed companies, while Thailand Clearing House Co., Ltd. serves as a clearing house.

## 4.2 Issuance and Offering of Securities

Companies can raise funds by issuing either equity or debt securities. The following types of securities that can be issued under the SEC Act:

- Shares
- Convertible securities
- Warrants
- Investment units
- Treasury bills
- Bonds
- Debentures
- Depository receipts

Any issuance or offering of securities to investors in Thailand by Thai private or public companies or by foreign companies is regulated by the SEC Act, albeit with specific exemptions (such as for rights offerings).

The requirements for securities offerings can vary based mainly on the offering method (e.g., public offerings, private placements, and rights offerings) and the nature of securities being offered (e.g., new or existing securities). Typically, the higher the impact of the offering (such as an initial public offering), the higher the scrutiny it will entail. This may include obtaining approval from the SEC Office before proceeding with an initial public offering, and submitting a registration statement and draft prospectus (the “offering documents”) to the SEC Office for its consideration and screening of the qualifications of the issuer and offeror as well as the adequacy of the information disclosure so that investors can make an informed decision prior to investing in the securities.

Three of the most notable share offering methods are initial public offerings or public offerings, private placements, and rights offerings.

### Initial Public Offerings and Public Offerings

An initial public offering (IPO) is when shares are first offered for sale to the public, while a public offering (PO) is any subsequent offering of shares to the public (defined as more than 50 noninstitutional investors). Only a public company may conduct an IPO or a PO in Thailand. The shares offered in the IPO will be listed and traded on an exchange in Thailand, such as the SET or the MAI.

IPOs and POs require SEC Office approval of both the issuer (for an offering of new shares) and existing shareholders (for an offering of existing shares). The offering documents must be filed with the SEC Office and must become effective before the shares can be offered to the public. A listing application must also be filed with the SET if the offered shares are to be listed on the SET or the MAI. In this regard, the issuer must meet all of the following offering criteria:

- Its shareholding structure must be clear and fair. For example, there must be no cross-shareholding or holding of more than 10 percent of shares in the issuer’s subsidiary or associate by a person that may have a conflict of interest with the issuer, such as a director or major shareholder.



- There must be no conflict of interest between the issuer and its directors, management, or major shareholders. For instance, there must be no competing business, no major related-party transactions, and no reliance on the business of these persons.
- There must be an adequate system of checks and balances via the appointment of independent directors (one-third of the total number of board members) and an audit committee (at least three members, with one having sufficient knowledge to be able to determine if financial statements are reliable), as well as a good internal control system.
- The directors, management, and controlling persons of the issuer must not have prohibited characteristics, such as being bankrupt or being incompetent.
- The issuer's information disclosed in the offering documents must be sufficient and not misleading—especially in the financial statements, which must be prepared in line with applicable accounting standards (i.e., the Thai Financial Reporting Standards or TFRS) for publicly accountable entities for the three years before the date of the filing.

The preparation and filing of the offering application and offering documents with the SEC Office must be handled by a qualified financial advisor whose name is on the SEC Office's list of approved financial advisors. The issuer must also engage one or more underwriters to manage the offering of its shares to the public. Once closing is completed (i.e., once the issuer receives the subscription price from the underwriters on behalf of the subscribers) the issuer must register the amendment of its paid-up capital with the Department of Business Development under the Ministry of Commerce within 14 days, which usually takes place on the closing date or the day after the closing date. After closing, the issuer will proceed with listing the shares on the relevant exchanges, and the SET will make an announcement when the shares are successfully listed and ready for trading. The date following the SET announcement is officially the first trading day the shares can be traded in the secondary market.

After the IPO is completed, the issuer must report the sale of the shares to the SEC Office. After it has become a listed company, it must also comply with various rules of the SEC, the CMSB, the SEC Office, and the SET. For example, it must ensure timely disclosure of material information to all investors through the SET's information disclosure system, which can be divided into periodic disclosures and material event disclosures. Periodic disclosures are those such as annual reports (currently called the Form 56-1 One Report), annual audited financial statements, and quarterly reviewed financial statements. Material event disclosures may cover entry into a material acquisition or disposal transaction or entry into a material transaction with a connected person (e.g., a director, management, major shareholder, controlling person, or any person nominated as management or a controlling person of the listed company). In addition, listed companies must comply with the following maintenance requirements:

- The par value of their shares must be at least THB 0.5 per share (unless certain conditions are met).
- The directors and management must possess the qualifications stipulated under the SEC Act or the relevant regulations promulgated thereunder.
- There must be a good corporate governance system in place.
- Their auditor must be on the SEC Office's list of approved auditors.
- Their internal control system must be in place and in line with the relevant rules.
- There must be no conflict of interest with any of its subsidiaries.

- There must be a sufficient number of retail shareholders (or “free float”) of at least 150 retail shareholders collectively holding at least 15 percent of the listed company’s paid-up capital.
- There must be a provident fund for the listed company’s employees.
- The SET or a third party approved by the SET (usually the TSD) must be appointed as the listed company’s registrar of securities.

## Private Placements

A private placement (PP) by a listed company in Thailand involves the issuance and offering of newly issued shares to specific investors without any advertisement of the offering to the public. The SEC Office now implements a deemed-approval approach and requires no filing of documents if the offering meets any of the following criteria:

- The offering is made to no more than 50 investors within a 12-month period.
- The offering value is up to THB 20 million and is made within a 12-month period.
- The offering is made to institutional investors, such as commercial banks, finance companies, securities firms, insurance companies, mutual funds, qualified private funds, provident funds, angel investors, and venture capital and private equity firms.

In this regard, the number of investors in the first bullet, or the aggregate value in the second bullet does not include any offer made to institutional investors.

Non-listed companies may also offer their new shares via PP in line with the above criteria, provided the offering takes place within one month of the date of shareholder approval. Furthermore, the issuer cannot advertise the offering to the public, can only distribute solicitation materials to a limited group of investors, and cannot sign any offering document allowing the investors to sell their shares via a PO within two years.

Listed-company issuers are currently required to comply with the information disclosure and corporate approval requirements (i.e., the notice of a shareholders’ meeting must be submitted to all shareholders at least 14 days in advance, and the offering must be approved by at least three-fourths of the shareholders present and entitled to vote). Moreover, if the offering price is lower than the market price, there must be no veto of the offering by shareholders holding 10 percent or more of the total issued shares in aggregate.

In addition, listed-company issuers must submit the opinion of an independent financial advisor (IFA) together with the notice of the shareholders’ meeting in case of any of the following “material” offerings:

- The offering price is lower than the market price.
- The offering may result in any investor being a shareholder with the highest voting rights in a listed company—including shareholding by any person under section 258 of the SEC Act (e.g., “related persons,” which includes the investor’s spouse and minor children, any juristic person in which the investor together with his or her spouse and minor children has more than 30 percent shareholding, or any person having more than 30 percent shareholding in the investor as a juristic person; any concert party of the investor; and related persons of a concert party of the investor.

- The offering may affect the earnings-per-share dilution or control dilution of at least 25 percent of the number of paid-up shares before the date on which the board of directors resolved to propose the offering to the shareholders' meeting.

In this regard, the opinion of the IFA must contain at least the following information:

- Appropriateness of the offering price and conditions of the offering;
- Reasonableness and benefits of the offering to the investors, including the use of proceeds, in comparison with the impacts on the shareholders; and
- An opinion (with reasons) on whether the shareholders should vote to approve the offering.

The issuer must submit the draft notice of the shareholders' meeting and the draft opinion of the IFA to the SEC Office via the office's e-submission system. The SEC Office will provide feedback within five business days of all documentation being submitted. After the offering is completed, both listed and nonlisted issuers must also report the shares sold via PP to the SEC Office.

## Rights Offerings

A rights offering (RO) involves the sale of newly issued shares to the existing shareholders of a listed company based on their existing ownership proportions. Given that there is no share or control dilution from an RO, no approval from or filing of offering documents with the SEC Office is required. Moreover, shareholders may be given the option to oversubscribe for shares beyond their entitled portion in an RO, which is a common practice employed by listed companies in Thailand to increase the chance for a full subscription of RO shares, ensuring that they receive the targeted proceeds from the offering.

### 4.3 Securities Reporting and Tender Offer Requirements

According to the SEC Act and the relevant CMSB notifications, any acquisition or sale of shares in a listed company that results in a person, acting alone or in collaboration with others (including any related person or any concert party), holding at least any multiple of 5 percent of the total voting rights of that company must be reported to the SEC Office within three business days of the transaction. Reporting to the SEC Office is also required for the acquisition of convertible securities in a listed company but is not required for the sale of convertible securities; these reporting rules also apply to the increase or decrease of any related person or concert party.

A mandatory tender offer (MTO) is required when a person, acting alone or in collaboration with others (including any related person or any concert party), collectively acquires shares in a listed company, resulting in that person or others holding shares meeting or surpassing the "tender thresholds" (i.e., 25%, 50%, or 75% of the total voting rights of the listed company). An MTO will also be required if a listed company repurchases its own shares and a person acquires additional shares in the company, resulting in that person's shareholding meeting or exceeding any of the tender thresholds.

Furthermore, an MTO must be undertaken if a person, acting alone or in collaboration with others, (1) gains substantial control in a legal entity that is an existing shareholder of a listed company under the "chain principle" rule, which applies whether directly or indirectly through shareholding or control in other legal entities within the ownership chain, and (2) this results in the combined shareholding of that person (including any related person or any concert party) meeting or exceeding any of the tender thresholds.

However, an MTO may not be required if the acquisition of securities falls under certain exemptions, which include, among others, the following:

- When shares are acquired through inheritance or through the exercise of rights to purchase shares or conversion rights from inherited convertible securities.
- When shares are acquired subsequent to a stock dividend or the exercise of preemptive rights to purchase new shares proportionate to the number of existing shares held.
- When shares are acquired during a separate tender, or from the exercise of rights to purchase shares or conversion rights attached to convertible securities obtained during a separate tender offer.
- When shares are acquired by entities typically restricted from exercising voting rights at shareholders' meetings of a listed company, such as the Thai Trust Fund or Thai NVDR Company Limited.
- When the acquirer disposes of the shares or control over the listed company, such as refraining from exercising voting rights in connection with the shares that must be disposed of in order not to trigger a tender offer.
- When shares are acquired in accordance with waivers granted by the SEC Office in case of a partial tender offer.
- When shares are acquired in accordance with waivers or waivers granted by the Thai SEC or the Takeover Panel under the following circumstances:
  - SEC Office waivers for an MTO are obtained, which may be done in the following cases:
    - When the acquisition does not result in a change of control over the listed company;
    - When the acquisition is made for the purpose of providing support to or rehabilitating the listed company;
    - When an acquisition of new securities is made pursuant to a resolution of the shareholders' meeting of the listed company authorizing the issue of these new securities to the acquirer without the requirement to make a tender offer for all securities of the listed company (or "whitewash");
    - When there exists any other circumstance pursuant to which a precedent has been set by the Takeover Panel; or
    - When there exists any other reasonable and appropriate ground.
  - Takeover Panel waivers for an MTO are obtained, which may be in certain cases, such as:
    - When the acquisition of a significant degree of control over the immediate holding entity (under the chain principle) is not made with the main objective of a business takeover; or
    - Any other circumstance which, in the opinion of the SEC Office, should be considered by the Takeover Panel.

Anyone to whom a waiver has been granted pursuant to the above must arrange for the acquisition of shares in the listed company in the six months from the date of the waiver; otherwise the waiver will lapse.

# Financing Transactions

## 5.1 Loan and Security in Thailand

### Lending activities

Money lending is generally governed by the Civil and Commercial Code (CCC). A monetary loan of THB 2,000 or more will only be enforceable if:

- The loan is documented and signed by a borrower; and
- Proof of the transfer of the monies, signed by the borrower, can be produced.

Lending to corporate entities is not a regulated business under Thai law, but granting unsecured loans to individuals for nonspecific purposes is a regulated business activity that requires a license from the Ministry of Finance before the personal loan business can be operational.

The general maximum permissible interest rate for a loan pursuant to the CCC is 15% per annum.

Financial institution lenders licensed in Thailand may be able to charge a rate of interest higher than 15% per annum under specific laws, such as (1) the Financial Institutions Act B.E. 2551 (2008), as amended, together with the relevant notifications of the Bank of Thailand (BOT) issued thereunder, and (2) the Interest on Loans of Financial Institutions Act B.E. 2523 (1980), as amended. The maximum permissible interest rate on a loan chargeable by a foreign financial institution is limited to a rate of 20% per annum.

Any benefits in lieu of interest, service fees, and expenses relating to the granting of loan could be deemed as part of the interest, especially if the related costs are not generally and expressly set out for the borrower's consideration before submission of loan request application.

The Supreme Court of Thailand has ruled that any provisions specifying an interest rate higher than the maximum permissible rate are void. In other words, only the principal amount of the loan is recoverable in such cases.

### Valid Security Interests

Thai law recognizes three types of valid securities that can be created over an asset: pledges, mortgages, and business securities. This means that only in their capacity as mortgagee, pledgee, or holder of business securities is a creditor regarded as a secured creditor in Thai bankruptcy proceedings.

While it is also possible for private parties to enter into contracts creating other types of security arrangements, and these contracts will be enforceable between the parties, the holder of the security will not have priority over holders of securities recognized under the law. Claims under contracts creating other types of security arrangements—for example, assignment of rights and guarantee—will be treated as unsecured debts in Thai bankruptcy proceedings. As a creditor of unsecured debts,

the unsecured creditor will not have any preferential rights over any assets of the debtor in the bankrupt estate.

## **Recognized Security Interests**

### **Pledge**

Pledges can be created over moveable property. A pledge can be created by physically delivering the pledged property to the pledgee. Shares can be pledged by delivering the share certificates to the pledgee and recording the pledge in the share registry book maintained by the company. However, for scripless listed shares, a pledge can instead be created through the book-entry system maintained by the Thailand Securities Depository Company Limited, the registrar for shares listed on the Stock Exchange of Thailand. Bills of exchange, cheques, promissory notes and other negotiable instruments may also be pledged by endorsement and delivery of the instrument to the pledgee.

Pledges are automatically discharged when the property is returned to the pledgor or when the secured obligation is extinguished otherwise than by prescription.

### **Mortgage**

Mortgages can be created over immovable property (e.g., land, condominium unit, building) or certain types of registered movable property (including floating houses and rafts, machinery, ships and vessels weighing more than five tons, and certain animals used as vehicles).

To create a mortgage, it is necessary to execute an official form of mortgage agreement in Thai and register it with the competent authority (e.g., the land office). The secured amount must be stated in Thai baht (THB). If the parties wish to add their own terms and conditions, this can be done with a supplement. The agreement and supplement must be executed before a competent official when they are presented for registration. The competent land office will usually accept a supplemental mortgage executed in Thai or in both Thai and English, with the English being certified as a true and correct translation.

### **Business security**

A business security is a security created over all the assets of a business or enterprise, including the changing pool of assets used by the business on a nonpossessory basis. It is a relatively new type of security interest, created in 2015 by the Business Security Act B.E. 2558 (2015) (BSA). A business security has similar features to a floating charge in other jurisdictions.

Both natural and legal persons can provide a business security under the BSA. However, only financial institutions (insurance companies and financial institutions under the FIBA) and other designated persons can hold business securities in their favor as creditors. Foreign banks involved in transactions in which loans are syndicated to Thai financial institutions, as defined under the BSA, can also hold business securities as creditors.

To create a business security, parties must register a written business security agreement with the Ministry of Commerce. The business security agreement must contain certain prescribed terms.

## Other contractual security arrangements

### Guarantee

To create a valid and enforceable guarantee, a guarantee agreement must be made and signed by a guarantor. The guarantee agreement must contain certain terms and conditions prescribed by the law for it to be treated as a guarantee under Thai laws. The guarantee agreement must also contain the type, purpose and period of incurrence of the underlying obligations that are guaranteed, as well as a fixed number for maximum guarantee amount, to constitute a valid and enforceable guarantee under Thai law. A maximum guarantee amount is intended to be a maximum cap for the guarantor's liabilities under the guarantee.

Only juristic persons are allowed under Thai law to agree and take liabilities as joint debtor together with the primary debtor under a guarantee.

After a guarantor has made a payment pursuant to the guarantee, the creditor's right of claim will be subrogated to it and it will be entitled to recover from the debtor for the amount paid.

### Assignment

To create an assignment of right, a written agreement between the assignor and the assignee must be made, and a written notification of this assignment must be delivered to the original debtor of the underlying contract (under which the assignor's rights have been assigned). For an assignment of obligation (i.e., a novation), written consent from the original debtor is also required for perfection of the assignment.

Although taking assignment of rights as part of a security package would not create any priority in favor of the assignee, lenders in the Thai market would take comfort based on the legal principle that if the assignment is absolute (i.e., unconditional), the assigned right would become the asset of the assignee. Therefore, in the event of the assignor's bankruptcy, it will not form part of the assignor's bankruptcy estate unless it can be established that the assignment has given undue preference or is fraudulent.

## 5.2 Exchange Controls

Exchange control restrictions are set out in the:

- Exchange Control Act B.E. 2485 (1942), as amended,
- Notification of the Foreign Exchange Control Officer re: Rules and Practices regarding Currency Exchange, as amended, and
- Ministerial Regulation No. 13 B.E. 2497 (1954), as amended. The responsible regulator is the BOT under the supervision of the Ministry of Finance.

The Thai baht is currently allowed to float, and thus the baht value is determined by market forces.

Generally, all matters involving foreign currency are regulated by and require permission from the BOT. No person other than authorized financial institutions or dealers may buy, sell, lend, exchange, or transfer any foreign currency without permission from the BOT. However, an exception exists for the sale of foreign currency by authorized financial institutions and dealers (i.e., authorized banks,



companies, or persons) that have been authorized and delegated certain powers to approve certain foreign exchange transactions on behalf of the BOT.

## **Inflow Rules**

Generally, unlimited amounts of foreign currency can be transferred or brought into Thailand, but it must be sold or converted into Thai baht with authorized financial institutions or dealers, or deposited into a foreign currency account located in Thailand, within 360 days of acquisition or importation.

## **Outflow Rules**

In general, any remittance of money offshore can be made through and approved by a commercial bank licensed in Thailand in its capacity as an authorized agent of the BOT. This will require the submission of supporting evidence showing the basis on which the offshore transfer is being made. However, if remittances offshore appear to be currency speculation or speculative investments (e.g., payments for foreign currency purchased abroad, derivatives transactions, or investments in financial products) they must be made with direct approval from the BOT.

Although approval for outward remittances is discretionary, approval is routinely given for transactions that have reasonable grounds and that are supported by documentary evidence.

The remittance of money offshore for the repayment of a loan principal or interest usually requires evidence of the underlying obligations. For example, evidence of a foreign loan could be the loan agreement, a promissory note, or any other documentary evidence with details on the foreign loan.

Exceptions to this requirement are given to foreign embassies and persons with diplomatic privileges and immunities, special organizations of the United Nations, or international organizations or institutions (including their staff members and specialists with diplomatic privileges and immunities), and Thai citizens who are permanent residents abroad or working abroad.

For any spot or forward transactions, the person only has to notify the relevant commercial bank (instead of submitting supporting documents or a foreign exchange transaction form) if (1) the commercial bank has performed the know-your-business process on the person and there is a control on the future transaction limit, or (2) the aggregate amount of the transaction is no more than USD 200,000. For cases that do not fall within the required criteria, the person will be required to submit supporting documents for such purposes.

Foreign exchange transfers can be conducted within the purposes and limited amount specified in the law. For example, a Thai company or individual may invest in an overseas business entity, whereby the shareholding or equity ratio of the Thai party in the overseas business entity is 10% or more. Thai individuals and companies may also invest or lend to affiliated business entities abroad without limit as long as that overseas business entity carries out actual operations pursuant to its business objectives or as registered with overseas regulatory agencies. Thai companies are also allowed to lend without limit to borrowers that are business entities abroad.

For outbound investments by Thai nationals, retail investors are authorized to invest in foreign securities directly, with a capped amount of THB 5 million per year. The permitted types of foreign securities are prescribed by the BOT.

# Real Estate and Environment

Ownership of real property can be separated into three categories:

- Ownership of land
- Ownership of condominiums
- Ownership of buildings on land that is owned by others

Different legal requirements apply to each type of ownership. Foreign nationals are subject to strict ownership requirements under Thai law and those who purchase real property usually choose to own condominiums. As an alternative to ownership, foreigners may wish to lease land or property.

## 6.1 Land Ownership

Land ownership in Thailand may be individual or shared. Thai nationals may purchase and own land in Thailand, while foreigners (individuals or companies) are generally not allowed to buy or hold land unless they obtain permission from the concerned governmental authorities; this permission will not be granted unless the foreigners obtain promotion from the Board of Investment (BOI) or the Industrial Estates Authority of Thailand (IEAT), or permission under other specific laws. Special considerations apply to foreigners with a Thai spouse or a Thai minor born of a foreign parent.

### Documentation of Ownership

The land office in the district or province where the land is located is the proper registration location for land transactions. For land located in the Bangkok area, registration must be made at the appropriate district land office. All land transactions should be recorded in a written document, have documentation of ownership or possession, and be registered with the relevant land office.

It is critical to conduct legal property due diligence to ensure the current ownership of the land and to determine whether there is any mortgage, encumbrance, or other impediment over the property prior to any agreement. The process to determine ownership can become complicated; especially in rural areas.

Land documents providing evidence of land ownership or possession rights include:

- **Land title deed** (*Chanot*)—A land title deed is the purest form of land ownership. It ensures easy transfer and is issued mainly in urban areas. One original set is kept at the district land office where the registration of land transfer takes place and the other original set is given to the owner of the land.
- **Confirmed utilization certificate** (*Nor Sor 3 Gor*)—This document certifies the right to use land and is often issued pending the issuance of the land title deed, under which rights of possession of particular land may be registered or the owner may lease the land. Transfer of a confirmed certificate of use is mainly completed at the district land office or branch district office.

- **Utilization certificate** (*Nor Sor 3*)—This is similar to the confirmed utilization certificate but lacks completion of formalities such as provision of an aerial photo of the land. To transfer a certificate of use, the intent to do so must be posted at each of the following places:
  - Provincial land office or branch land office
  - District land office or branch district office
  - House of the village headman
  - Location of the land
  - Municipal office, if the land is in a municipality
  - There is a 30-day waiting period before the transfer is registered by the chief district officer or Assistant district officer, as the case may be.
- **Certificate of possession** (*Sor Kor 1*)—A certificate of possession only recognizes possession and does not imply ownership rights. A certificate of possession is nontransferable, but a person in possession may transfer physical possession. This certificate is required before a certificate of use or land title deed can be issued, and is most common in rural areas.
- **Tax receipt**—A tax receipt is evidence of possession, but does not confer ownership rights with possession. It is useful when applying for a certificate of possession.

## Residential Land for Foreign Nationals

Foreigners who have brought in over THB 40 million for investment can acquire land for their residential purpose, with a total area of less than one *rai*; permission must be obtained from the Minister of Interior.

The acquisition of land by foreigners shall be per the bases, procedures, and conditions prescribed by ministerial regulations. The Ministerial Regulations Governing the Bases, Procedures, and Conditions for Foreign Acquisition of Land for Use as Residence B.E. 2545 (2002) rules that foreigners can purchase land of not more than one *rai* in Thailand for residential purposes, so long as they comply with the following rules and conditions:

- They bring at least THB 40 million into Thailand for investment and maintain the investment for a period of not less than five years.
- Permission must be obtained from the Minister of Interior.
- Money brought into Thailand must be invested in one of the following businesses or activities:
  - Purchasing bonds of the Thai government, Thai National Bank, Thai state enterprises, or which the Ministry of Finance secures capital or interest.
  - Investment in immovable property mutual funds, immovable property mutual funds, or mutual funds for resolving financial institution problems established under the law governing securities and exchange.
  - Investment in share capital of a juristic person, which is granted permission to invest under the law on investment promotion.
  - Investment in an activity declared by the Board of Investment to be eligible for investment promotion under the law on promotion of investment.
- The area which a foreigner is permitted to acquire must be within Bangkok, Pattaya City, or municipalities or areas designated as residential zones under the law governing city planning, and must not be located in a military safety zone according to the law governing military safety zones.

- A foreigner who is granted permission must only utilize the land only for residential purposes for himself or herself and family, and the usage must not be against the morals, customs, or way of life of the local community.

## Special Consideration for Thais with a Foreign Spouse

The Interior Ministry has set up guidelines to be followed by the competent land authorities. Those guidelines, in summary, provide the following:

- If a Thai with a lawful foreign spouse (by registered marriage) wishes to purchase land or accept land transfers in a like manner during marriage, the competent authorities will register the legal rights in land for the applicant if the official inquiry reveals that the applicant, along with the foreign spouse, have jointly affirmed in writing that the money used to buy the land is derived wholly from separate property owned by the applicant and not from shared property.
  - If the foreign spouse fails to make such an affirmation, or affirms in writing that all or part of the money so used is out of the communal property, the matter will be submitted for a decision to the minister in charge through the Royal Land Department after the inquiry has been made. This is in accordance with section 74, paragraph 2 of the Land Code.
- If a Thai with an unregistered foreign spouse (a common spouse) wishes to purchase land or accept land transfers in a like manner while living with the spouse as husband and wife, the competent authorities will proceed with the registration of legal rights in land for the applicant if the official inquiry reveals that the applicant, along with the foreign spouse, have jointly affirmed in writing that the money used to buy the land is derived wholly from personal property owned by the applicant and not from property jointly owned by the applicant and the common foreign spouse.
  - If the foreign spouse fails to make such an affirmation, or affirms in writing that all or part of the money is out of the money jointly earned by the applicant and the foreign spouse, after the inquiry has been made the matter will be submitted for decision to the minister in charge through the Royal Land Department. This is in accordance with section 74 paragraph 2 of the Land Code.
- If a Thai with a foreign spouse, whether their marriage is registered or not, wishes to accept land as a gift during the marriage while living with the spouse, the competent authorities will proceed with the registration of legal rights in land for the applicant if the official inquiry reveals that the gift has been accepted as separate property, or as personal property only, and that the foreign spouse has no ownership interest in land.
  - If the gift has been accepted as shared property, and if the foreign spouse has ownership interest in land, after the inquiry has been made the matter shall be submitted for decision to the minister in charge through the Royal Land Department. This is in accordance with section 74 paragraph 2 of the Land Code.
- If a Thai who once had a foreign spouse but has now divorced or deserted said spouse wishes to register land acquisitions, the competent authorities shall only register such legal rights if the official inquiry reveals that there are no circumstances in which the law has been evaded.

The Land Department also requires the foreign spouse to give spousal consent in the matter in person and in writing. If the foreign spouse is unable to make a trip to Thailand to give the required consent, the foreign spouse may make an affidavit before a notary public. The affidavit is then suitably attested

by a Thai Consulate located in the country concerned, and then submitted to the Royal Land Department.

## Special Considerations for Thai Minors Born of a Foreign Parent

The Interior Ministry has set up guidelines to be followed by the competent land authorities. Those guidelines, in summary, provide the following:

- If a Thai minor born of a foreign parent wishes to make land acquisitions and registrations, the competent authorities will proceed with the registration of legal rights in land for the applicant if the official inquiry finds that no evasion of the law has been committed.
- If a person wishes to give a piece of land as a gift to a Thai minor born of a foreign parent, the competent authority will inquire into his or her intention of giving the gift to the minor and into his or her legal relations with the minor. If the property to be given as a gift is acquired by purchase, it must be determined whose money was used to make the acquisition and that there are no circumstances in which the law has been evaded.
- No such inquiries will be required for a foreign-born Thai who has reached the age of 20.

## 6.2 Condominium Ownership

The Condominium Act B.E. 2522 (1979), as amended, allows certain groups of foreigners (both individuals and juristic persons) to acquire condominium units in Thailand, provided that the foreign ownership in a condominium project does not exceed, in the aggregate, 49% of the total area of all condominium units in the condominium building. The foreigners must be able to present correct and complete documentation and evidence as required by the Land Department.

The following foreign individuals are eligible to own condominium units:

- Foreigners who are permitted to have residence in Thailand under the Immigration Act. The documents required are a passport, residence permit and house registration, or alien book (red book) for foreign nationals with permanent residency.
- Foreigners who are permitted to enter Thailand under the Investment Promotion Act. The documents required are a passport plus a letter from the Board of Investment of Thailand certifying permission to live in Thailand under the Investment Promotion Act.
- Foreigners who bring foreign currency into Thailand to pay for the purchase of condominium units, or withdraw money from a nonresident's bank account, or withdraw money from a foreign currency account. The documents required are evidence of bringing foreign currency into Thailand or evidence of withdrawal of money from a nonresident's Thai Baht account or withdrawal of money from a foreign currency account in an amount not less than the price of the unit to be bought.

Evidence of ownership of a condominium unit is in the form of a condominium unit title deed (*Nangsue Kammasit Hong Chut*). One original set is kept at the land office where the ownership is registered and the other original set is given to the owner of the condominium.

## **6.3 Building Ownership**

There is no law prohibiting foreigners from owning a building. Therefore, foreign companies and foreign individuals may own buildings, even though they do not own the land on which the building is constructed. To construct or own a building in such circumstances, the foreign company or individual would need to lease the land, or have permission from the landowner to occupy the land, or otherwise have evidence of the consent of the landowner to the foreigner's building occupying the land.

## **6.4 Lease of Property**

Laws regarding lease of property or buildings generally fall under the Hire of Property General provisions of the Civil and Commercial Code.

### **Lease Durations**

A lease contract of any immovable property for three years or less is not enforceable unless made in writing and signed by the party liable. Leases of more than three years need to be registered with the land office. Otherwise, they will be enforceable for only three years.

Land, houses, condominium units, and other buildings may be leased to foreigners for up to 30 years, with possible renewal for another 30 years. However, it should be noted that the renewal option, agreed by the parties in a lease agreement, will be treated as a private agreement between the parties and might not be enforceable against someone who purchases the property from the lessor or any transferee of the leased property during the first 30-year lease period.

### **Extending or Ending the Lease**

The lease is extinguished at the end of the agreed period without notice. At the end of an agreed lease period, however, if the tenant retains possession of the property and the landlord does not object, the lease is deemed to be extended for an indefinite period whereby either party may terminate the lease contract by providing the other party notice of at least one rental period of not more than two months.

### **Extinguishing the Lease**

The lease is not extinguished by the transfer of the ownership of the leased property. The transferee is entitled to the rights and is subject to duties of the transferor towards the lessee.

There are a number of resource options available to an innocent party if a lease is extinguished before the end of the agreed lease period. A contract can be terminated by a lessor in the case of nonpayment of rent or the lessee breaching the agreement.

If the lease is cancelled by the lessee, he or she is responsible for damages incurred until an appropriate replacement is found or a reasonable time period has expired. If taken to court, the verdict can vary depending on the specifics of the case and the actual damage the plaintiff is able to prove to the court.

### **Transfer of Lease Rights**

Unless otherwise provided in the lease agreement, a lessee cannot transfer his or her rights to a third person or sublet the whole or part of the leased property without the consent of the lessor.

### **Key Points on Property Ownership and Leases:**

- Foreigners (individuals or companies) are generally not allowed to buy or hold land unless they obtain permission from the concerned governmental authorities.
- Foreigners who bring in money of not less than THB 40 million may own land for residential purposes of up to one *rai*, subject to obtaining permission from the relevant minister.
- Qualified foreigners can own condominium units in Thailand of up to 49% of the total area of all condominium units in the condominium building.
- Foreigners may own buildings even though they do not own the land on which the building is constructed.
- Foreigners can lease immovable property for the maximum period of 30 years with an option to renew for another 30 years.

For further information on, or assistance with, property ownership or leasing, please contact Tilleke & Gibbins at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## **6.5 Environmental Responsibility**

There are numerous acts and regulatory notifications that address environmental regulatory matters in Thailand, which involve a variety of different government bodies. One of the primary acts governing environmental issues is the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) (NEQA). The NEQA provides a framework for protecting the environment by apportioning environmental responsibilities among various government agencies, and establishing committees to deal with environmental issues. Among the requirements imposed under the NEQA are environmental impact assessments. On July 18, 2018, the amended NEQA came into effect. The amended NEQA mainly improves the criteria for environmental impact assessment report and system for environmental impacts analysis, in order to be consistent with provisions in Thailand's constitution.

### **Environmental Impact Assessments**

Environmental impact assessments (EIAs) are the mainstay of environmental regulatory planning in many countries. In Thailand, EIAs are required by the NEQA for 35 types of projects, including:

- Dams/reservoirs; highways/roads; commercial ports; commercial airports; mass transit system; coastal land reclamation; projects in watershed areas; petrochemical plants; oil refineries; natural gas separation and processing plants; chlor-alkali plants; iron/steel works; cement plant; smelting plants; pulp plants; pesticide plants; and
- Chemical fertilizer plants; central waste treatment plants; sugar plant; industrial estate; thermal power plant; petroleum development; mining; hotels/resorts; residential buildings; building proximal to water or national parks; commercial or residential developments; and hospitals.

The 2007 constitution contained enhanced environmental protections, and although that constitution has been replaced, some related environmental requirements are in place through other laws and regulations. Based on the NEQA (as amended), the Ministry of Natural Resources and the Environment later issued regulations imposing not only EIA requirements, but also requirements for health impact assessments (HIAs) and public consultations for certain projects, including:



- Land reclamation projects of over 300 *rai*, excluding beach rehabilitation projects;
- Specified types of mining;
- Specified types of industrial estates;
- Specified types of petrochemical plants;
- Specified types of ore or metal smelting plants;
- Nuclear reactors for research, with power of 2 MW (heat) or more;
- Production, disposal, or configuration of all sizes of radioactive substances;
- Hazardous waste disposal or incineration plants of all sizes except concrete incinerators that use hazardous waste as supplementary material or fuel;
- Airport runways of 3,000 meters or more;
- Specified types of ports;
- Specified types of dams or reservoirs;
- Thermal power plants, including all nuclear plants and other plants of at least 100 MW (for coal fired), 150MW (for biomass), and 3,000 MW (for natural gas combined cycle or cogeneration systems);
- Production of coke; and
- Radioactive waste disposal service facilities.

Specific requirements with respect to EIAs, HIAs, and public consultation are set out in ministerial regulations.

## Other Laws

Environmental regulatory provisions are also found in laws addressing other topics. These include, for example, the following:

- Factories Act B.E. 2535 (1992), as amended
- Public Health Act B.E. 2535 (1992), as amended
- Navigation in Thai Waters Act B.E. 2456 (1913), as amended
- Act for the Cleanliness and Orderliness of the Country B.E. 2535 (1992)
- Hazardous Substances Act B.E. 2535 (1992), as amended
- Building Control Act B.E. 2522 (1979), as amended
- Industrial Estate Authority of Thailand Act B.E. 2522 (1979), as amended
- Land Transportation Act B.E. 2522 (1979), as amended
- Land Traffic Act B.E. 2522 (1979), as amended
- Energy Policy Act B.E. 2535 (1992), as amended
- Highway Act B.E. 2535 (1992), as amended
- Non-Smokers' Health Protection Act B.E. 2535 (1992)
- National Forest Act B.E. 2507 (1964), as amended
- Plant Varieties Act B.E. 2518 (1975), as amended
- Fisheries Act B.E. 2490 (1947), as amended
- Forest Act B.E. 2484 (1941), as amended
- Industrial Product Standards Act B.E. 2511 (1968), as amended
- Thai Vessels Act B.E. 2481 (1938), as amended

- Energy Development and Promotion Act B.E. 2535 (1992), as amended
- Investment Promotion Act B.E. 2520 (1977), as amended
- Energy Conservation Promotion Act B.E. 2535 (1992), as amended
- Town and Country Planning Act B.E. 2518 (1975), as amended
- Act on Control of Killing Animals and Selling Meat B.E. 2535 (1992), as amended
- National Parks Act B.E. 2504 (1961), as amended
- Minerals Act B.E. 2510 (1967), as amended
- Wildlife Preservation and Protection Act B.E. 2535 (1992), as amended
- Petroleum Act B.E. 2514 (1971), as amended
- Act Controlling Advertising by Using Amplifiers B.E. 2493 (1950)
- Atomic Energy for Peace Act B.E. 2504 (1961), as amended

## Liability and Strategies for Compliance

In addition to potential civil liability under the Civil and Commercial Code, some laws contain provisions allocating civil liability for particular environmental damage. Some of these and other laws also impose criminal penalties in respect of environmental damage, which may include fines, imprisonment, or both. Liability for oil spills, for example, can accrue under a variety of different laws.

Regardless of industry, those subject to the rules of the Thai jurisdiction should take the necessary steps to ensure compliance with the applicable environmental statutes. The number of laws can make this task appear daunting, but the reality is that, aside from EIAs, HIAs, and public consultations, many of the provisions of law relevant to environmental matters function to impose environmental obligations as part of already-existing licensing or permitting obligations. In this regard, Thailand has crafted an environmental regulatory regime that, while protecting the environment, is also business-friendly.

For example, the Hazardous Substances Act, under which the import, export, production, storage, transport, possession, sale, and use of dangerous substances is regulated, delegates authority to a variety of agencies, depending on the substance at issue, and imposes requirements that may include notification, registration, or licensure, as well as handling storage, disposal, and other requirements.

Similarly, under the Factories Act, the Ministry of Industry uses its authority to regulate factory operations to also impose environmental protection requirements. These may take the form of standards for air pollutants, effluents, and other waste from factories, and requiring the installation of particular equipment to reduce or eliminate damage to the environment.

Business operators should also observe local regulations to assess whether their business is considered hazardous in that area, as certain activities could trigger additional local licensing requirements.

For further information on the Factories Act, please see the section on [Factory Operations](#) in chapter 7.

For further information on any of the topics mentioned on this chapter, or for advice on corporate responsibility, please contact the Tilleke & Gibbins Corporate Services team at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

# Industrial Operations

## 7.1 Factory Operations

The Factory Act B.E. 2535 (1992) regulates factory construction and operation, factory expansion, and safety and environmental requirements. Under the Factories Act, factories are divided into three categories:

- **Factory Type 1:** Factories that may operate immediately, as desired by the operator, without notification to, or approval of, the Department of Industrial Works, Ministry of Industry.
- **Factory Type 2:** Factories that must notify the Department of Industrial Works, Ministry of Industry before operating.
- **Factory Type 3:** Factories that must obtain a factory operations license before operating.



A factory is defined as a building, place, or vehicle using machinery of 50 horsepower or more, having a minimum of 50 workers, with or without any machinery, in its operations.

On April 30, 2019, the Factory Act (No. 2 and No. 3) B.E. 2562 (2019) was published in the Government Gazette and takes effect on October 27, 2019. It relaxed certain requirements under the Factories Act (1992) and simplified the process of setting up a factory. Key amendments of new act include:

- **Changed definition of “factory”:** The definition of “factory” is amended to mean a building, place, or vehicle using machinery of 50 horsepower or more, or having a minimum of 50 workers (increased from 5 horsepower or 7 workers under the previous legislation), with or without machinery, in its operations, in accordance with the type of factory prescribed in the relevant ministerial regulations. In addition, construction of buildings no longer falls within the definition of factory setup.
- **Increased exemptions:** There are five types of factories that will be partially exempted from complying with the Factory Act, as follows: (1) a factory belonging to a governmental authority, (2) a factory for study and research, (3) a factory for training at an education institute, (4) a family-owned factory, and (5) a factory necessary for or related to a non-factory business and located in the same space.
- **Amended license renewal:** Under the Factory Act (No. 2), a factory license will not expire until the factory ceases doing business.
- **Private inspector:** Inspection of machinery and factory is authorized be carried out by private inspectors who are qualified and licensed in accordance with requirements in Factory Act (No. 2)

There are currently 107 categories of factories listed in the ministerial regulations issued under the Factories Act, which were last updated in 2020. The classification of factory categories depends on the capacity of the machinery and manpower. Generally, factory type 1 is a factory thought not to be harmful to health or the environment. A factory with machinery of less than 75 horsepower or less than 75 workers is classified as factory type 2, requiring notification to the Department of Industrial Works in the Ministry of Industry. A type 3 factory, which requires a license, has machinery of more than 75 horsepower or more than 75 workers, or production process that might be harmful to health or the environment. However, factories in particular industries may be classified as factory type 1, 2, or 3, regardless of their machinery capacity and manpower. For example, all shoe or leather repair factories are classified as type 1 factories, and all recycling factories and liquor factories are classified as type 3 factories.

In addition to the classification of factory categories, other ministerial regulations generally stipulate location and construction requirements of the factory, environmental requirements, various application forms, government fees, safety measures, standards and methods of inspection, and worker qualifications.

## Licensing Requirements

Factories for industrial purposes are regarded as controlled buildings under the Building Control Act B.E. 2522 (1979), as amended, and require a construction permit, which must be issued by the local authority in the area where the factory is located (i.e., district, sub-district or municipal administration office). Zoning laws and other regulations or restrictions might also prohibit factory construction in certain areas.

In addition, for type 3 factories, an application for a factory operations license must be submitted to the Department of Industrial Works, Ministry of Industry. The layout and floor plan of the factory must be in accordance with the construction requirements of both the Building Control Act and the Factory Act.

In order to obtain a factory operation license, requirements on the following matters must be met:

- Location and environmental requirements of factory, construction, and interior design of the factory.
- Type of machines and equipment required to operate the factory.
- Expertise of the workers in specific areas necessary for factory operations.
- Manufacturing process, equipment or tools to prevent or mitigate the danger, injury, or trouble that they may cause to persons or property in the factory.
- Disposal of waste, pollutants, or anything that affects the environment.
- Safety and prevention to stop or mitigate dangers or injuries that may result from factory operations.

Applications for a factory operations license normally take 60 days to process. A successful applicant can commence the construction and installation of machinery after the license has been granted. The license is valid throughout the period of business operation. For factory expansion (for example, increase of machinery or factory space), approval from the Department of Industrial Works is required.

Operation of a type 3 factory without a factory operations license is subject to a fine of up THB 200,000, imprisonment for up to two years, or both.

The operation of a factory in certain industries that may have a significant impact on environment or public health, requires conducting an Environmental Impact Assessment (EIA) or Health Impact Assessment (HIA) according to the notifications of the Ministry of Natural Resources and Environment.

## **Factory Operations in an Industrial Estate**

The Industrial Estate Authority of Thailand (IEAT) is a state enterprise under the Ministry of Industry. The IEAT is responsible for the establishment and development of industrial estates in Thailand. The industrial estates established and developed by the IEAT offer the basic infrastructure, public utilities, waste management systems, and other facilities as necessary for the operations of factory in various industries. Other than these benefits, the IEAT provides tax incentives (free zone) and grants exemptions on land ownership of foreign enterprises. Please refer to these incentives described in part 1 (Starting a Business) and part 4 (Taxation) of this chapter. Currently, there are more than 60 industrial estates located throughout Thailand.

Other than the regulations prescribed by the IEAT, a person who wishes to operate a factory in an industrial estate must comply with the requirements on the establishment of a factory and the construction of the factory under the Building Control Act and the Factory Act. However, the granting of approval or a license will be subject to the authority of the IEAT, not the Department of Industrial Works, Ministry of Industry, unlike other factories that operate outside the IEAT.

An application for a permit to use land and operate a business in an industrial estate must be submitted to the IEAT, and it takes 30 days to learn the outcome. If approved, the IEAT will issue a Permit for Land Utilization and Business Operation to the successful applicant. Operators in industrial estates also need construction permits, as factories are controlled buildings under the Building Control Act. A construction permit can only be applied for after the Land Utilization and Business Operation Permit is issued.

The Land Utilization and Business Operation Permit is valid for up to five years and is renewable. The licensee must comply with the regulations of the IEAT Committee regarding criteria, procedures, and conditions for conducting business in an industrial estate.

## **Environmental Concerns Regarding Sources of Water**

Certain areas (currently some districts in Ayutthaya and Pathum Thani provinces, and the west bank of the Chao Phraya River) have been assigned by the cabinet to be reserved as sources of water by the Metropolitan Waterworks Authority. In order to control the establishment or expansion of factories in such areas, regulations have been imposed forbidding setting up or expanding factories that release wastewater containing heavy metals, poisonous substances used in agriculture, or other chemicals such as PCBs, cyanide, arsenic, and phenol.

It is forbidden to set up or expand factories in areas reserved for water supply. The only exceptions are factories that release wastewater with a biochemical oxygen demand of less than one kilogram per day or those that are in Navanakorn Industrial Estates I and II.

Under Ministerial Regulation No. 3, factories specified by Ministry of Industry notifications as severely affecting the environment are required to provide environmental impact studies.

For more information on Thailand's environmental laws, please see section 6.5 on [\*\*Environmental Responsibility\*\*](#).

## 7.2 Petroleum Operations

The petroleum industry is governed by a group of Thai laws that specify regulations for exploration and operation in Thailand or its territorial waters. Petroleum belongs to the state, and exploration for and production of petroleum can only be by concession under the Petroleum Act B.E. 2514 (1971).

The petroleum industry is managed by the Department of Mineral Fuels and a Petroleum Committee under delegated authority from the Ministry of Energy. The Petroleum Act, as amended, establishes guidelines for petroleum companies to explore and operate in Thailand.

On June 23, 2017, the Petroleum Act (No.7) B.E. 2560 (2017) entered into force and introduced the new concepts of production sharing agreements and service contracts for exploration and production of petroleum under Thai law. The petroleum industry must follow competitive bidding procedures for concession areas, formalize production areas, acknowledge special privileges, and adhere to strict royalty requirements and separate taxation laws. Technical information relating to these topics can be found in the aforementioned acts. Prior approval must be granted by the Ministry of Energy before any petroleum venture may be commenced. Upon approval, the companies must comply with the Petroleum Act, as well as the rules and regulations of the Petroleum Income Tax Act B.E. 2514 (1971), as amended.

## 7.3 Mining Operations

The mining industry is highly regulated by Thai laws addressing exploration and mining projects, and is under the jurisdiction of the Department of Primary Industries and Mines (DPIM) of the Ministry of Energy. The Mining Council is the intermediary between companies and the government. All prospective mining parties must become members of the Mining Council before any business venture is considered.

The mining industry is controlled under and guided by the Minerals Act B.E. 2560 (2017).

Interested companies must apply for various exploration and mining licenses. Upon approval for exploration or mining they must also gain the consent of the owners of the surface rights, for which a fee is usually paid.

If actual mining is initiated, the mining company pays royalties under the Ministerial Regulation Prescribing Mineral Royalty Rates B.E. 2561 (2018), and are subject to the Revenue Code taxes. The DPIM can provide further information on all mining issues.

In response to the COVID-19 pandemic, in 2020 the DPIM issued a ministerial regulation granting an exemption or reduction of the government fee for qualified license holders whose place of business has been damaged or who have had to temporarily cease business operations due to natural disaster, pandemic, or contagious disease.

Under the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) and the Constitution of the Kingdom of Thailand, mining businesses are required to submit environmental impact analysis reports to the Office of Natural Resources and Environmental Policy and Planning under the Ministry of Natural Resources and Environment.

For more information environmental impact reports, please see section 6.5 on [Environmental Responsibility](#).

## Life Sciences

The key piece of legislation regulating the manufacture and sale of medicinal drugs in Thailand is the Drug Act B.E. 2510 (1967), as amended, together with ministerial regulations and notifications. Parties wishing to manufacture, test, or market medicinal products must adhere to these rules.

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

- Premarketing control (including licensing and registration)
- Postmarketing monitoring and surveillance
- Consumer education and dissemination of information
- Promotion of technological development and research for export

### 8.1 Biological and Combination Products

All pharmaceutical products, including chemical drugs, biological drugs and vaccines, and combination products, are regulated by the Thai FDA in accordance with the Drug Act. Before launching any pharmaceutical products in Thailand, companies must first obtain a license from the FDA to produce, sell, or import the products into the country. In addition, companies must also obtain marketing approval, i.e., by registering their product for actual sales.

The marketing approval procedure and post-approval regulations for chemical, biological, and combination products are largely the same. The FDA requires applicants to follow either the ASEAN Common Technical Dossier (ACTD) or the International Conference on Harmonization Common Technical Document as the technical document template for submission of both biological and chemical drugs.

In particular, the approval process and requirements for new biological products are similar to those of new chemical (low-molecular-weight) drugs. The approval process for generic biological products (i.e., biosimilars), however, is more stringent than the approval process for generic chemical drugs. For a biosimilar product, the application dossier must include: (1) administrative and product information; (2) information regarding drug quality (drug substance, drug product, and manufacturing process and control); (3) preclinical and clinical trial data; and (4) a risk management plan.

As for a combination product, if the combination of active ingredients is new then the FDA classifies it as a new drug. In such a case, the application dossier must contain documentation similar to that for a new chemical or a new biological product.



## 8.2 Medical Devices and Diagnostics

In Thailand, the key legislation that regulates medical devices and diagnostics is the Medical Instrument Act B.E. 2551 (2008) (also known as the Medical Device Act) and its most recent amendment, B.E. 2562 (2019), together with ministerial regulations and notifications of the Ministry of Public Health.

Place-of-business registration (an establishment license) by a local company is required for both importers and local manufacturers of medical devices (including in-vitro diagnostics).

In February 2021, Thailand's FDA implemented a risk-based classification system aligned with the ASEAN Medical Device Directive. There are three classes of medical devices, depending on the risk classification (classes 1–4) of the device.

- **Licensed Medical Devices:** Consisting of devices in the highest risk class (class 4), this is the most rigorously controlled category. For medical devices in this class, the following details must be submitted to the FDA:
  - Executive summary and device description
  - Essential principles of safety and performance of medical devices and method used to demonstrate conformity
  - Summary of design verification and validation documents
  - Certificate of quality system of manufacture, e.g., the relevant iso certificate
  - Device label and leaflet (if any)
  - Commercial marketing history and evidence of registration approval obtained in other countries
  - Manufacturing information
  - Risk analysis

The FDA requires applicants to use the ASEAN Common Submission Dossier Template (CSDT) as the technical document requirement for licensed medical devices.

- **Detailed Notification Medical Devices:** The medical devices in this category are in risk classes 2 and 3. The level of control in this category is less stringent than for licensed medical devices. Examples of medical devices in this class include physical therapy products, silicone breast implants, alcohol detectors, and so on. The documents required for submission to the FDA are similar to those listed above, and the dossier must be prepared according to the CSDT.
- **Notification Medical Devices:** This category, encompassing all medical devices not classified into either of the above categories, is subject to the least stringent control by the FDA. For FDA submissions, the following documents are required:
  - Device description and product specification
  - Device labeling/ and package insert
  - Commercial marketing history (if applicable)

While there are no specific regulations regarding health IT issues and mobile medical applications, several relevant regulations impact their development and use. For instance:

- Under the Medical Device Act, software and IT systems for disease diagnosis are also classified as medical devices. Importers usually register these components together with the main medical device or system.
- The Personal Data Protection Act B.E. 2562 (2019) (PDPA), effective as of June 1, 2022, plays a crucial role in regulating health IT and mobile medical applications. The PDPA mandates stringent guidelines for the collection, use, and disclosure of personal health data. Health IT systems and mobile medical applications comply with the PDPA requirements, which include obtaining user consent, ensuring data security, allowing individuals to access and/or correct their data, and providing an option to revoke consent.
- The Ministry of Public Health (MoPH) enacted a new Notification of MoPH, effective as of February 2, 2021, to regulate telemedicine or remote healthcare services provided through electronic communication technologies. This regulation may impact the development and implementation of health IT and mobile medical applications that facilitate remote consultations as it outlines several essential requirements for healthcare service providers engaging in telemedicine in Thailand. These requirements consist of:
  - Holding a valid license to provide healthcare services via telemedicine.
  - Having sufficient healthcare professionals to not affect the normal operation of the healthcare service provider.
  - Informing patients of the nature of telemedicine services, limitations, and potential outcomes and risks involved.
  - Being adequately equipped with appropriate technology and communication tools.
  - Collecting and recording the data of a service outcome of each step of the telemedicine services performed.

### **8.3 Clinical Trials and Import of Drugs for Research**

Clinical research in Thailand is overseen mainly by institutional ethical committees (IECs) and the FDA. The IEC of each healthcare institution is responsible for reviewing both ethical and scientific issues in preparing, conducting, recording, and reporting clinical research. The FDA is responsible for reviewing procedures for importing investigational products and for issuing licenses to conduct clinical trials aimed at supporting the marketing authorization of those medicinal drugs in Thailand. The Drug Act (No. 6) empowers the FDA to order clinical trial investigators to revise trial protocols, temporarily suspend a trial, or terminate a trial if there is a safety concern or harm to the subjects. The Drug Act (No. 6) also empowers the Ministry of Public Health to issue notifications and announcements on the methods and conditions for drug clinical trials. In 2018, for example, the FDA issued an announcement on the importation of drugs for research. It mandates compliance with the Good Clinical Practice (GCP) guidelines of the International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human Use (ICH). The GCP covers various aspects of clinical trials, including standards for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials.

To further streamline the process and ensure adherence to the FDA's 2018 announcement and related international standards, the FDA's Drug Division issued an announcement in 2023 that provides detailed standards for obtaining approval of clinical trial licensing and reporting requirements for drug

clinical studies, aligning with the ICH's GCP guidelines. It specifies that sponsors are required to provide evidence of having obtained insurance for volunteer subjects in the clinical trial.

Before launching a clinical trial, a drug developer or sponsor must obtain approval from the IEC or ethics committee overseeing human research projects in the research institute or university that will conduct the trial. A protocol for carrying out the clinical trial must also be established and approved at the outset before further approval by the Thai FDA can be obtained. Each IEC will approve the study for a single site only. However, there are two IECs in Thailand that can approve a multicenter clinical study: the IEC of the Department of Medical Services of the MOPH, which can approve a study for all sites/hospitals that are under supervision of the MOPH, and the Central Research Ethics Committee, which was established out of cooperation among healthcare institutes handling clinical trials and the MOPH. A proposed multicenter clinical study protocol that involves various MOPH hospitals is usually submitted to the Department of Medical Services for review and approval.

Thailand also strives to adhere to the following treaties, although it has not ratified and is not bound by them:

- World Medical Association Declaration of Helsinki Ethical Principles for Medical Research Involving Human Subjects 1964.
- International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, Guidelines on Good Clinical Practice 1996 (ICH GCP), which sets out a standard for the design, conduct, performance, monitoring, auditing, recording, analyses, and reporting of clinical trials.

## **Licensing of Clinical Trials**

The sponsor must first obtain approval to conduct a study in humans from the Ethical Review Committee for Research in Human Subjects of the MOPH (ERC) or the ethics committee of the research institute or university that will conduct the trial. This can take two to three months. If approval is obtained from the ethics committee of the research institute or university conducting the trial, approval from the ERC is usually optional (unless further required by the internal rules and regulations of that research facility).

Once the drug developer or sponsor receives approval from the relevant ethics committee, it can apply to the FDA for a license to conduct a clinical trial.

To obtain this license, the drug developer or sponsor must submit approval from an authorized (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; and
- a power of attorney.

The license is valid for five years. If the clinical trial is not complete within that time, the license must be renewed.

## Consent

Issues relating to consent are regulated by the Civil and Criminal Code, the National Health Act B.E. 2550 (2007), and the Personal Data Protection Act B.E. 2562 (2019). Trial subjects are required to sign an informed consent form before commencement of clinical trials. The consent forms must emphasize that participation is voluntary and, therefore, subjects have the right to withdraw from the trial at any time.

To be valid, the consent form must be signed and dated by the volunteers. However, if they are unconscious, an authorized legal representative can sign the form on their behalf. Participants in the study cannot act as witnesses to the signature. Legal representatives may provide consent for volunteers or patients who are not capable/authorized to give consent.

The FDA Drug Division's 2023 announcement also required that a consent form covering a number of specific points, together with other documentation, be given to clinical study volunteers.

## Insurance

Sponsors must obtain insurance or agree to compensate for damages if the investigator or the investigational site is sued for damages arising from the clinical trial. Required insurance coverage or compensation includes medical expenses, loss of earnings, and compensation for other losses to research participants or individuals with legal rights if research participants are sick, injured, disabled, or deceased as a result of the clinical trial.

## Trial Preconditions

The trial preconditions and recruitment of the participants are in the protocol submitted to the Institutional Review Board (IRB)/Ethics Committee (EC). A sponsor must have a local representative (that is, an investigator or co-investigator) to fulfill the appropriate local responsibilities. A sponsor is also responsible for the appropriate selection of investigators.

## Procedural Requirements

The following procedures must be complied with during the conduct of a clinical trial (ICH GCP):

- **Investigator brochure.** This brochure will gather the clinical and non-clinical information of the drug intended to be studied. The aim is to provide information to the investigator and the relevant persons in order to understand the Research Protocol (e.g., frequency/interval of drug administration, route of administration and safety monitoring). Only the sponsor and the investigator have access to the entire brochure and it is not made available online. The brochure should be attached with the project proposal and submitted to IRB/EC. There is no formal time limit for submission.
- **Source data.** The original documents must be archived for at least 15 years and include:
  - signed and dated consent forms;
  - patient OPD cards;
  - doctor's notes (or any other medical professional's note);
  - lab tests;

- study evaluation tests; and
  - any other documents related to the research.
- **Monitoring by the sponsor and ethics committee.** To ensure the study does not raise any ethical or other issues, the sponsor and ethics committee must:
  - check all source data;
  - verify the quantity of medication delivered; and
  - prepare a report on any adverse effects.
- **Safety report.** This report must list any adverse events, serious adverse events, adverse drug reactions, or suspected or unexpected serious adverse reactions, and should be submitted to the ethics committee. According to the ICH guidelines, the sponsor should report the serious/unexpected adverse drug reactions (ADRs) to the investigator/medical center and IRB/ECs as early as possible. The report should conform to the ICH Guideline for Clinical Safety Data Management: Definitions and Standards for Expedited Reporting.
- **Auditing.** This step ensures that the trial is conducted in accordance with the GCP guidelines.

## 8.4 Medicinal Products

### Manufacture of Medicinal Products

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

A license from the FDA is required for the manufacture of “modern medicines.” The FDA may issue a license 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 (foreign applicants must be resident in Thailand to obtain a license to manufacture, sell or import drugs);
- has not been convicted for an offense 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; and
- 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 license to manufacture in Thailand. Licenses for modern medicines are valid until December 31 of the year in which they are issued. An application for renewal must be submitted before expiration of the current license.

An application for a license 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

Pharmaceutical Inspection Cooperation Scheme (PIC/S) Good Manufacturing Practices (GMP). The MOPH then determines whether the applicant has adequate facilities and the appropriate personnel to manufacture these medicines.

Application fees are listed on the Drug Division's website. A license to manufacture modern medicines is THB 8,000. A license to manufacture traditional medicines is THB 5,000. Fees may change from time to time.

## **Compliance and Penalties**

Regulators can inspect manufacturing sites for GMP compliance, and monitor manufacturing process changes to ensure that there are no compromising issues on the quality of products, and no adverse effects on the safety or efficacy of the medicines being produced.

The regulator can suspend or revoke the manufacturing license 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 license.

Further, the authorities can impose fines and terms of imprisonment for manufacturing without a license. Manufacturing modern medicines without a license is punishable by imprisonment for up to three years and a fine of up to THB 300,000.

## **Registration of Medicinal Products**

Companies and individuals wishing to place a drug on the market must obtain a license from the FDA to manufacture, sell, or import drugs in Thailand, then obtain FDA registration for the medicine to market and sell the drug.

Companies and individuals wishing to place a drug on the market must:

- Obtain a license from the FDA to manufacture, or import drugs into Thailand;
- Then obtain a marketing authorization (MA) license for the medicine to market and sell the drug in Thailand. Registration requirements differ for the "modern drugs" category (which include generics, new medicines, and new generics), biologicals, and vaccines. Registration of a new modern drug requires an application to the Drug Division of the FDA for permission to import a drug sample into Thailand or, less frequently, permission to manufacture a sample; and
- Then submit a full marketing approval application, together with samples, to the FDA for review and registration.

The FDA review of a marketing approval application 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 been the subject of a marketing license application 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, new drugs must undergo a 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.

According to the most recent amendment of Drug Act B.E. 2562 (2019), the certificate of product registration (i.e., the MA license) is valid for seven years, and the certificate can be renewed. If the product is not on the market for longer than two years, the FDA will automatically cancel the registration.

The Department of Medical Sciences under the MOPH is the main authority responsible for testing products and 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 FDA can, if necessary, remove drugs from the market. The authorities can also suspend or revoke a license. A breach of a marketing authorization is considered a criminal offense and is subject to both imprisonment and a fine. Licensees can appeal to the MOPH within 30 days from the date of notification of an order to suspend or revoke a license.

## Registration of Generics

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.

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 and finished products; and
- inactive 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 nine 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 (please see above).

## Relevance of Foreign Authorizations

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

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



## Marketing Medicinal Products

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 the Pharmaceutical Research and Manufacturers Association (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.

## Restrictions on Marketing Medicinal Products

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

Drugs classified as dangerous (i.e., pharmacy-dispensed medicines) cannot be advertised directly to consumers and the general public, and must only be dispensed by a pharmacist or doctor. Drugs that are not classified as dangerous (e.g., household remedies and over-the-counter medicines) are specifically listed by the MOPH. Patients can buy these drugs without the need for a pharmacist to dispense it. However, most drugs are classified as dangerous under Thai law.

Advertising must be approved by the FDA before dissemination (section 88 *bis*, Drug Act). Section 88 of the Drug Act states that advertisements must not:

- 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 contain an ingredient or has it 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; or
- show its therapeutic properties as being capable of curing, mitigating, treating, or preventing diseases (or symptoms of them), as notified by the MOPH under Section 77 of the Drug Act (e.g., cancer, diabetes, paralysis, psychiatric disorder, blood pressure disorders, health conditions relating to neurological, cardiovascular, lung, kidney, spleen, or liver disorders).

Further, according to the FDA Internal Rules 2002, advertisements to consumers of the general public must not:

- be impolite, such as by singing and dancing or by showing the distress or suffering of a patient;

Marketing pharmaceutical products online, by e-mail, and/or by mail order is not permitted.

According to the FDA, most advertisements (more than 85%) on the Internet are being run without FDA permission.

The FDA has prioritized the solving of this problem.

- be contrary to traditions, e.g., 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; or
- encourage acts or activities contrary to law.

Violation of advertising requirements under the Drug Act can result in a fine of up to THB 100,000. Failure to comply with an FDA order to suspend a violating advertisement is punishable by imprisonment for up to three months, a fine of up to THB 5,000 (with an additional daily fine of THB 500 until compliance is achieved), or both.

Advertisements must meet the FDA information requirements (e.g., contain the drug name, ingredients, and manufacturing source).

## Packaging and Labeling

The Drug Act and its bylaws also regulate the packaging and labeling of medicinal drugs. The Drug Division of the FDA handles enforcement. The label and the current size of the packaging must be submitted to the FDA to obtain FDA marketing approval.

## Information Requirements

For labeling, the Drug Act requires that either a package insert, a summary of a 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 or she 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 medical products, 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 authorization 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

## Other Conditions

All of the above information can be in Thai or English, except for the information noted above that must be expressly stated in Thai (please see above, Information Requirements). Furthermore, the FDA will periodically issue ministerial notifications to set out specific required information to be included on the label of specific drugs such as antibiotics, antihistamines, sedatives, and hypnotics.

For information about consumer protection relating to marketing medicinal products, please see section 2.3 on [Consumer Protection](#).

## 8.5 Pharmaceutical Patents

Pharmaceutical patents are treated in the same way as inventions in other fields. Nonetheless, the Department of Intellectual Property (DIP) has issued specific guidelines and examination guidelines for pharmaceuticals. A claim for a pharmaceutical innovation must meet the usual criteria of novelty, non-obviousness, and industrial applicability.

The following subject matter is not patentable:

- Micro-organisms 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 that are contrary to public order or morality, public health, or welfare



This exclusion from patent protection is absolute. The most problematic issues for the pharmaceutical sector relate to biologics, 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 (i.e., pharmaceutical compositions)
- New therapeutic use of a known chemical compound
- Combination and dosage form
- Methods for preparing medicinal products or related substances

In an attempt to clear the longstanding backlog of patent applications for pharmaceutical and chemical inventions, the Department of Intellectual Property issued patent examination guidelines for these sectors. One of the most debated issues was the acceptance of “use claims,” with the guidance now that a claim indicating a process or method that results in an actual or concrete outcome is considered a patentable process according to the Patent Act 1999, so long as use is not directed to a method of treatment of human or animal disease pursuant to Section 9(4), which is not patentable.

In the past, a “Swiss-type claim” would have been problematic. Under the updated examination guidelines, the Department of Intellectual Property will now only consider whether the specification sufficiently discloses the claimed subject matter.

For further information on obtaining a patent, please see chapter 16 on [Protecting Intellectual Property in Thailand](#) or contact Tilleke & Gibbins at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

# Competition and Trade Remedies

## 9.1 Competition and Trade in Thailand

There are several acts that regulate trade competition and fair pricing in Thailand. The primary acts are the Trade Competition Act B.E. 2560 (2017), the Act Governing Prices of Goods and Services B.E. 2542 (1999) and the Act Countering Market Dumping and Subsidy of Goods from Abroad B.E. 2542 (1999).

### Trade Competition Act

The Trade Competition Act B.E. 2560 (2017) applies to all enterprises and business activities in Thailand, with the exception of the following:

- Central administration, provincial administration, or local administration;
- State enterprises, public organizations, or other state agencies, but only the part carried out under laws or resolutions of the Council of Ministers with necessity for the purpose of maintaining stability of the state, public interest, common interests, or the arrangement of utilities;
- Farmers' groups, cooperatives, or cooperative societies recognized by law and having the objectives of operating business for the benefits of farmers; and
- Other businesses with specific laws providing for trade competition supervision.

The act establishes the Trade Competition Commission of Thailand, with authority to administer the regime, including:

- Proposing Ministerial Regulations to be issued under the act;
- Issuing regulations or notices for carrying out work under the act;
- Supervising business operations and impose compliance guidelines to provide for free and fair competition;
- Considering complaints and conduct investigations into offences under the act;
- Considering applications by business operators with respect to certain conduct otherwise prohibited under the act;
- Prescribing regulations on investigation and interrogation of the investigation subcommittee;
- Appointing relevant officials;
- Initiating criminal proceedings based on a complaint by a person injured under the act;
- Setting certain fines under the act;
- Summoning persons to give facts, clarifications, advice, and opinions;
- Providing advice to state agencies relating to rules, regulations, or orders which impede fair competition; and

- Carrying out any other work as provided by law to be within the powers and duties of the commission.

The act contains provisions to prevent abuse of dominance, certain mergers, unfair trade practices, anticompetitive agreements (“cartels”), and restrictive arrangements with foreign suppliers. The particulars of each of those provisions largely align with concepts in major jurisdictions overseas.

Failure to abide by the provisions of the Trade Competition Act could result in administrative penalties and/or criminal penalties. Penalties vary depending on the offense. In the case of a juristic person, its directors and/or responsible management may also face the same penalties. In addition, the Act allows injured parties to claim for damages suffered due to anticompetitive conduct.

## **Act Governing Prices of Goods and Services**

The Act Governing Prices of Goods and Services B.E. 2542 (1999) applies to businesses, enterprises, and business activities in Thailand (with the exception of central, provincial, and local agencies, and certain activities exempted by ministerial regulations).

The act establishes the Central Board Governing Prices of Goods and Services. The board has authority to:

- Prescribe goods and services to be controlled by the act;
- Fix the sale/purchase prices of controlled goods and services;
- Ensure that there is sufficient supply of goods or services to meet the domestic demand;
- Consider complaints of distress or damage arising from unfair price practices;
- Make regulations governing the payment of rewards and money; and
- Prescribe bases, procedures, and conditions regarding the display of prices for goods and services.

The act generally applies only to “controlled” goods or services—to be announced from time to time—and covers all types of unfair pricing of products and services. Under the act, a person is prohibited from:

- Stockpiling controlled goods in excess of the amount prescribed by notification of the commission;
- Storing controlled goods at a place other than a place of storage declared to a competent official;
- Not distributing controlled goods that are held for distribution or normal sale; and
- Refusing distribution or delaying distribution or delivery of controlled goods without reasonable grounds.

A business operator of a controlled service is prohibited from halting normal services, refusing to provide services, or delaying the provision of services without reasonable grounds.

Business operators are prohibited from doing anything that would cause the prices of goods or services to be too low or too high, or that may cause confusion regarding the prices of any such goods or services. Note that this prohibition is not confined to the pricing of only controlled goods or services, but to the pricing of *any* goods or services.

Depending on the specific offense, penalties can include fines of up to THB 140,000, imprisonment for up to seven years, or both. If an offender is a juristic person, the directors and/or responsible management may be made to bear the same penalties.



## Act Countering Market Dumping and Subsidy of Goods from Abroad

The Act Countering Market Dumping and Subsidy of Goods from Abroad B.E. 2542 (1999) is intended to provide for countermeasures against dumping and subsidization of goods from abroad.

“

**Dumping** means exporting goods into Thailand for commercial purposes, with the export price being less than the normal value of goods of the same type.

**Exported price** refers to the price of exported goods when exported from the country of origin to Thailand as paid or payable.

**Normal value** refers to the price an independent buyer in the country of origin normally pays for goods. If the quality of good sold in the country of origin is less than 5% of the quantity, this is considered insufficient data for determining the normal price, and an alternate method must be used: pricing to a third country, or constructed value.

”

Under the act, dumping that damages a domestic industry is unlawful and action may be taken against it.

Domestic industry may file a petition to request a dumping investigation, with the Department of Foreign Trade. It is to conduct an inquiry into whether dumping is occurring and whether there are any damages to domestic industry. Following completion of the inquiry, the Department of Foreign Trade is to summarize the results and submit its opinion to the Committee on Dumping and Subsidies, for a decision.

If the committee concludes that the offender dumped goods into the market and that it caused damage to the domestic industry, it may impose dumping duties.

A subsidy under the law includes any benefit conferred by the government of the country of origin or the exporting country taking the form of financial contribution or income or price support, with the goal of increasing exports or reducing imports of any product. The law provides a list of actions that may constitute subsidies; it also specifies some that do not. It further specifies

examples of subsidies that are actionable, and examples of those that are not.

In terms of investigating actionable subsidies, the law provides for a procedure analogous to that used for dumping investigations. When the committee determines that there is an actionable subsidy, the Department of Foreign Trade is to consult with the subsidizing country to settle the matter and may impose countervailing duties.

### Summary of Key Points on Pricing and Competition:

- The Trade Competition prohibits abuse of dominance, certain mergers, unfair trade practices, anticompetitive agreements (“cartels”), and restrictive arrangements with foreign suppliers.
- Business operators are prohibited from doing anything that would cause the prices of goods or services to be too low or too high, or which may bring confusion regarding the prices of any such goods or services.
- The Act Countering Market Dumping and Subsidy of Goods from Abroad B.E. 2542 (1999) provides a mechanism for obtaining redress for dumping from abroad that causes injury to domestic industry, as well as for actionable foreign subsidies.



# Fintech

The implementation of new technology by various players in the Thai financial sector has ushered in new financial products as well as the improvement of financial-related technology from traditional financial institutions and alternative financial service operators. In Thailand, the Bank of Thailand (BOT) and the Securities and Exchange Commission (SEC) are the main regulators overseeing different aspects of fintech-related businesses.

## 10.1 Electronic Payment Systems and Services

### Payment System Act

Thailand adopted the Payment Systems Act (PSA) in October 2017. The PSA aims to create and ensure electronic payment system stability and consumer protection, establishing two main categories of electronic payment businesses: payment systems and payment services.

#### Electronic Payment Systems

Electronic payment systems that require a specific license or registration under the PSA include the following:

- Payment systems that act as a center or a network between the system's service users for fund transfers, clearing, or settlement, such as a system for retail fund transfers between service users, payment card networks, or settlement systems; and
- Any other payment systems that may affect public interest, public confidence, or the stability and security of the payment infrastructure.

#### Electronic Payment Services

Electronic payment services that require a specific license or registration under the PSA include the following:

- Credit cards, debit cards, and ATM cards;
- Electronic money;
- Receipt of electronic money for and on behalf of others;
- Fund transfer by electronic means; and
- Other payment services that may affect financial systems or public interest.

## 10.2 Alternative Personal Finance

### Personal Finance

Revolutionary Council Decree No. 58 regulates lending businesses in Thailand. Lending businesses must obtain the relevant operating license from the BOT or the Fiscal Policy Office, depending on the nature of the business.

Under this decree, there are two supervised types of lending business that are allowed to use alternative data in assessing loan applications instead of making the typical request for collateral:

- **Nano Finance**

The nano finance scheme under the BOT's supervision aims to provide funding to small entrepreneurs who might have limited access to funding. The BOT allows licensed nano finance providers to use alternative data in assessing loan applicants' ability to repay. To do so, the nano finance provider must have an internal policy on credit approval consideration that supports:

- Identifying scope and processes for utilizing alternative factors or technologies in determining (1) debt repayment capacity, (2) credit line limits for each loan applicant and total credit limits, and (3) acceptable debt repayment targets;
- Having resources and personnel with sufficient knowledge, capability, experience, and expertise to operate efficiently and effectively, as well as clear checks and balances;
- Establishing guidelines for selecting and analyzing factors or financial models to evaluate or predict loan applicants' ability and willingness to repay;
- Having an internal sandbox to test key success factors of the selected factors or models; and
- Having a process for monitoring and reviewing the application of the selected factors or models in assessing debt repayment capability.

- **Personal Loan**

The personal loan scheme aims to solve loan-shark problems by providing the public with access to personal loan providers under BOT supervision. Unlike the nano finance scheme, personal loans under the BOT supervision provide a broader scope of lending purposes and credit limits depending on lending objectives and collateral (if applicable).

To encourage the implementation of technology and the use of alternative data in approving loans, the BOT has relaxed certain requirements and rules on personal loan business to "digital personal loan" providers under the following conditions:

- The personal loan provider uses alternative data in assessing loan applicants' ability or willingness to repay according to their customized risk profile;
- The personal loan provider has a digital channel as the main outlet for paying and receiving repayment to create a digital footprint for future financial services (examples include an automatic direct debit system and e-wallets); and
- The personal loan provider publishes the applicable interest rate, penalty fees, fines, service fees, and other expenses, along with the loan amortization table, on a digital channel that customers can conveniently access.

## P2P Lending

Revolutionary Council Decree No. 58 also regulates peer-to-peer (P2P) lending platforms. A “P2P platform provider” is defined as a person who provides an electronic system or network for peer-to-peer lending. The BOT recognizes the benefits of P2P lending platforms in allowing lenders to access means of investment and borrowers to reach additional sources of funds.

To ensure the security and stability of the P2P lending system and sufficient platform-user protection, the BOT requires P2P lending platforms to participate in a regulatory sandbox before applying for a P2P lending platform license.

Applicants for a P2P lending platform license may not be a financial institution and must:

- Be incorporated in Thailand;
- Have minimum paid-up registered capital of THB 5 million; and
- Have at least 75% Thai ownership of the voting shares sold.

The BOT further provides requirements for borrowers and lenders on P2P lending platforms:

- **Borrowers** must be individuals with capable of taking on and repaying debts and may not be directors, authorized persons, or major shareholders of the P2P lending platform.
- **Lenders** may not be P2P lending platforms and must pass a client suitability assessment before providing loans. The BOT also limits the credit amount for individual lenders (i.e., not institutional investors, joint ventures, venture capital, or certain other specific investors identified by the Capital Market Supervisory Board) to THB 500,000 within a 12-month period.

## 10.3 BOT-Supervised Sandbox

In June 2024, the BOT updated its sandbox framework to support business operators to experiment with new technologies or innovations under the BOT’s supervision. This sandbox program allow participants to test their ideas in a controlled and limited environment. There are three types of sandboxes under the framework:

- **Regulatory Sandbox.** Certain BOT-licensed financial services require participation in the regulatory sandbox as a requisite for license application or implementation of new technologies or innovations in their services. The regulatory sandbox is also compulsory for financial services that have the potential to become structural element or standard of the Thai financial sector (e.g., the Thai QR code payment system).
- **Own Sandbox.** The program is optional but encouraged for financial service or fintech operators implementing new technologies.
- **Enhanced Regulatory Sandbox.** This is a testing environment for new financial products or services that are not yet authorized by the BOT for regulated financial operators. It is a testing process under the supervision of the BOT and is conducted under controlled conditions with limitations on how the product or service can be offered and tested.

## 10.4 Crowdfunding

In Thailand, investment-based crowdfunding is mainly regulated activity by the SEC. The crowdfunding regulations allow non-publicly traded companies to raise funds by offering equity and debentures for sale via an SEC-licensed crowdfunding portal.

“Crowdfunding portals” are defined as websites, mobile phone apps, or other similar electronic media developed for offering securities for sale.

Applicants for a crowdfunding portal license must:

- Be incorporated in Thailand;
- Have minimum paid-up registered capital of THB 5 million; and
- Have crowdfunding portal systems ready for use upon applying to the SEC for approval to operate.

## 10.5 Digital Asset Business

In 2018, Thailand enacted the Emergency Decree on Digital Asset Businesses. This decree, under SEC and Ministry of Finance supervision, regulates cryptocurrency and certain types of digital tokens.

For the primary market, it regulates issuance and sale of digital assets by initial coin offerings (ICO) through SEC-approved ICO portals. For the secondary market, it lays out the relevant authority’s role in supervising and licensing the following digital assets intermediaries:

- Digital asset exchanges
- Digital asset brokers
- Digital asset dealers
- Digital asset advisory services
- Digital asset fund managers
- Digital asset custodians

To implement its digital asset-related policies, the SEC imposes ongoing obligations on licensed digital asset intermediaries to undertake or refrain from certain activities (e.g., restricting the listing of certain digital assets on digital asset exchanges, restricting intermediaries from facilitating digital assets as a means of payment).

### Revisiting Regulations on Digital Assets

The SEC has regularly revised its digital asset regulations to keep up with developments and global digital assets trends.

#### Supervision of ready-to-use utility token

In 2023, in its public hearing document to amend its regulations on ready-to-use utility tokens, the SEC proposed dividing ready-to-use utility tokens into two groups:

- **Group 1:** Ready-to-use utility tokens issued for consumption purposes or as a digital representation of a certificate; and

- **Group 2:** Ready-to-use utility tokens not specified in Group 1 (e.g., native/governance tokens and exchange tokens).

For group 2 utility tokens, the SEC will require issuers to comply with ICO regulations and will provide additional supervision to licensed digital asset intermediaries.

Additionally, the SEC aims to transition the supervision of not-ready-to-use utility tokens to be under the Securities and Exchange Act B.E.2535 (1992).

### **Establishment of Regulatory Sandbox**

The SEC has proposed establishing a regulatory sandbox to encourage the implementation of innovations in digital asset businesses. The regulatory sandbox, like the BOT sandbox, would allow participants to test their innovations within a controlled environment for up to one year. Regulatory sandbox participants would likely be exempt from digital assets business licensing requirements during the regulatory sandbox participation period.

## **10.6 Artificial Intelligence**

### **Guidelines and Ethical Principles**

Thailand has aimed to keep pace with the global development and deployment of artificial intelligence (AI) across various industries. In February 2021, the Ministry of Digital Economy and Society (MDES) issued the “Digital Thailand – AI Ethics Guidelines” to establish a framework for the ethical AI practices. In July 2022, the Cabinet approved the Thailand National AI Strategy and Action Plan (2022–2027) (NAIS) in July 2022, aiming to prepare essential infrastructure for AI development.

Thailand is currently in the process of drafting two AI-related instruments to promote and regulate AI systems: (1) the draft AI Innovation Promotion and Support Act, and (2) the draft Royal Decree on AI System Service Business.

The MDES AI Ethics Guidelines mentioned above apply to both governmental and civil sectors, establishing the core ethical principles for the use of artificial intelligence in Thailand. These principles cover six key areas:

- Competitiveness and sustainable development, which involves promoting the utilization of AI across public, private, and community sectors to foster innovation and sustainable growth;
- Laws ethics and international standards, ensuring AI practices align with existing laws, ethics, and international standards while respecting privacy, dignity, freedom, and human rights;
- Transparency and accountability, which requires activities to be traceable and responsible for any impact which arise from their duties;
- Security and privacy, and emphasizing the need for AI systems to be secure against threats, and protect data integrity and privacy according to ethical standards;
- Fairness, which includes equity, diversity, and inclusivity, and focuses on avoiding monopolistic practices and bias to benefit the broader population; and
- Reliability, supporting the trustworthiness and public confidence in AI systems, ensuring accuracy and integrity in relation to output and data quality control.

In addition to the AI Ethics Guidelines developed by the MDES, there are the “Ethical Guidelines for AI” issued by the National Office of Science and Technology Development (NSTDA). The objective of these guidelines is to ensure that AI technologies and data science, including AI-driven algorithms, are developed and utilized ethically. There are 7 AI ethics principles outlined in this guideline:

- Privacy – AI should be designed to protect privacy and respect individual rights and freedoms. The use of personal data, including the dissemination and utilization of results from AI processing and decision-making, must be disclosed to AI users in advance.
- Security and safety: AI should be secure and safe to prevent potential harm to humans, the environment, society, the economy, and the country from overuse and misuse of AI.
- Reliability: AI developers must build trust and confidence in the use of AI, despite the uncertainty of the systems’ decision-making impact, among the public.
- Fairness and nondiscrimination: AI should be designed and implemented to promote fairness, equality, diversity, unity, and justice for all groups in society.
- Transparency and explainability: AI should be designed and implemented to ensure humans are aware they are using AI, understand data usage, comprehend decision-making and actions, and are able to supervise and audit the AI.
- Accountability: AI research, design, or development must include mechanisms to ensure accountability for the impacts of AI by those involved in its research, design, development, and implementation. This accountability must be clearly traceable to the responsible parties.
- Human oversight and human agency: In the design and implementation of AI, a human-centric approach should be adopted and human control should be maintained during critical decision-making processes.

Furthermore, ASEAN has released its “Guide on AI Governance and Ethics” in February 2024) for policymakers and organizations in ASEAN to rely on when designing, developing, and deploying AI technologies. The guide encourages regional-level initiatives, alignment within ASEAN, and interoperability of AI frameworks across jurisdictions. The guiding principles it lays out align with the ethical principles identified by the EU high-level expert group on AI in 2019, on which the EU AI Act heavily relies.

## Thailand NAIS

The NAIS aims to establish an ecosystem that promotes the development and application of AI technology by 2027, and it lays out five strategies for pursuing the goal of enhancing Thailand’s AI readiness:

### STRATEGY 1 Prepare Thailand's readiness in regard to society, ethics, law, and regulations for AI

- Educate at least 600,000 Thais on AI law and ethics.
- Implement and enforce AI law and the requisite regulations.

### STRATEGY 2 Develop infrastructure for sustainable AI development

- Increase Thailand’s Government AI Readiness index to rank in the top 50 globally.
- Increase digital infrastructure investment 10% per year to support AI development in both the public and private sectors.

### **STRATEGY 3 Increase human capability and improve AI education**

- Equip at least 30,000 individuals with AI skills within six years.

### **STRATEGY 4 Drive AI technology and innovation development**

- Strengthen AI technology by developing at least 100 R&D prototypes within six years.
- Encourage widespread AI research, development, and innovation that has a business and social impact of at least THB 48 billion by 2027.

### **STRATEGY 5 Promote the use of AI in the public and private sectors**

- Increase the number of agencies (government, business & new entrepreneurs) using AI innovations to at least 600 in six years.
- Increase Thailand's AI competitiveness through AI applications.

## **Draft AI Innovation Promotion and Support Act**

In October 2022, the Electronic Transactions Development Agency (ETDA) issued its draft AI Innovation Promotion and Support Act (AIPSA), which covers the following areas:

- AI innovation testing center (AI sandbox);
- Data sharing;
- AI standards;
- AI service contract standards; and
- Risk assessments.

The draft AIPSA does not regulate the use and provision of AI (which is the purview of the draft Royal Decree on AI) but mainly tries to promote the development of AI in Thailand.

The ETDA has also proposed the following draft subregulations for the AI Promotion Act:

- Draft Notification regarding the AI Sandbox; and
- Draft Notification regarding AI Risk Assessments.

The public comment period for the draft AIPSA and subregulations closed on August 20, 2023.

While the drafted AI laws have not yet been enacted, existing laws can still be applied for the use of AI, as many of Thailand's laws are technology-agnostic. Therefore, general laws such as the Personal Data Protection Act 2019, the Computer Crime Act 2007, as well as consumer protection laws (e.g., for AI services provided directly to end consumers) also apply to the use of AI systems.

## **Draft Royal Decree on AI System Service Business**

In October 2022, the Office of the National Digital Economy and Society Commission in the MDES issued the draft Royal Decree on AI System Service Business. The draft royal decree is aligned with the principles of the European Union's AI Act, and it aims to address potential risks from AI systems to public health, safety, and freedoms. The draft highlights the necessity for risk assessments, reporting specifications, and the establishment of specific steps to reduce AI risks.



Under the draft royal decree, an “AI system” refers to a machine-based system or software developed by using technologies such as machine-learning approaches, logic-based and knowledge-based approaches; or statistical, Bayesian estimation, and search and optimization approaches that create specific results (e.g., information, content, predictions, recommendations, or decisions in accordance with the environment) in which the system or software is used.

The draft royal decree generally categorizes AI systems into two main categories:

- **Prohibited AI systems:** This category includes AI systems that may influence or change human behavior, cause mental harm to a person, harm a person’s body or life, or cause unfair discrimination that is not in balance with the context of the activities being undertaken. Examples include (1) AI systems using subliminal techniques with the purpose of influencing or changing human behavior, (2) AI systems that use sensitive personal data (e.g., age and disability), (3) AI systems with social scoring, and (3) AI systems using a real-time remote biometric identification system in a public place. Prohibited AI systems may only be provided in exceptional cases with approval from the authority.
- **Restricted AI systems:** This category includes AI systems that may lead to high levels of risk in relation to creating unfair discrimination or affecting the rights and freedoms of a person. Providers of such AI system providers must register the AI systems with the authority, and they must comply with the criteria and requirements prescribed by the Electronic Transaction Committee. Examples of restricted AI systems include (1) AI systems for safety components in critical infrastructure or products and services (e.g., medical devices, transportation, food, and drugs); (2) AI systems used for examination scoring, recruitment, and accessing public facilities; (3) surveillance systems involving real-time and post remote biometric identification; (4) AI systems in legal proceedings or related procedures; and (5) AI systems for immigration purposes, except for those that are permitted by the local authority.





The main requirements and obligations for AI system providers, importers, and distributors include:

- conducting risk assessments in relation to the AI system;
- implementing monitoring systems to ensure the AI system is operated in a manner commensurate with the risks and the applicable regulations;
- report to the authority when the AI system is operated in a manner inconsistent with the regulatory requirements;
- appoint a local coordinator if the AI system provider is located outside Thailand; and
- notify the users about the use of the AI system (e.g., in chatbots, emotion and biometrics AI, and impersonation and deepfake AI).

Certain AI systems with limited risk (e.g., chatbots and deepfakes) may not be subject to the full obligations but will still be subject to the transparency obligation under the draft royal decree.

While most of these requirements are for the AI system provider, the draft royal decree also prescribes obligations for AI system users to monitor and examine the operation of the AI system to ensure it is in accordance with the procedures specified by the AI system provider, including by keeping records of the operation of the systems in accordance with the timeframe specified by the authority. If the AI system may cause risks to the nation, users must notify the relevant authority.

## **AI Investment Incentives**

Thailand's Board of Investment (BOI) offers attractive privileges to support investment in target industries. As BOI promotion packages often focus on technology, projects involving advanced technology such as AI and robotics may be able to receive higher investment incentives, including corporate income tax exemptions for up to 13 years.

# Anticorruption and Anti-Money Laundering

## 11.1 Anticorruption

There are a number of laws in Thailand that contain anticorruption measures, the most prominent being the 2018 Organic Act on Counter Corruption (OACC). This new law repeals and replaces the previous 1999 OACC and its various amendments.

The OACC prohibits a state official, foreign state official, or international organization official from demanding, accepting, or agreeing to accept property or any other benefit that affects his or her duties.

The giver or offer of the corrupt payment is also criminally liable. Under the OACC, a legal entity—such as a private company—can be criminally liable for the bribery offenses of its “associated persons,” which are defined as its employees, agents, and others acting on behalf of the company. More importantly, the entity can be criminally responsible even if the associated person gave the bribe without the management’s authorization.

Significantly, the legal entities included under the new OACC include foreign juristic persons, or organizations that are registered abroad but operating in Thailand. This would include, for example, situations in which a company may not have a physical office in Thailand, but is using “associated persons,” such as local agents, to secure government contracts.

The private entity is liable for the corrupt act if the bribe was made for the company’s benefit and the entity failed to implement proper internal measures to prevent it. In 2017, the National Anti-Corruption Commission (NACC), Thailand’s main anticorruption enforcement agency, released a set of guidelines on appropriate internal controls under the law. These guidelines are still applicable under the new OACC.

Under the OACC, a government official is not entitled to receive property or any other benefits, except those authorized by a separate regulation called the Notification of the National Counter Corruption Commission Concerning the Provisions of the Acceptance of Property or Any Other Benefit on an Ethical Basis by State Officials. The notification sets a threshold of THB 3,000 per occasion for the value of property or benefits that can be given by one person. The notification allows the giving of such “business courtesies” to a state official on a traditional, customary, or cultural occasion, or on an occasion in which a societal norm requires giving. The law states that a “benefit” could be anything that has value, including a discount, entertainment, service, training, meals, and so on.

The definition of “state official” under the OACC is broad and includes government officials or local officials holding a position or receiving a regular salary; persons performing duties in a state agency or a state enterprise; local administrators (and their deputies and assistants); members of local

assemblies; members of boards, commissions, and committees; and employees of government agencies, state agencies, or state enterprises. The definition does not include persons holding a political position, judges of the Constitutional Court, persons holding a position in an independent agency, and members of the NACC.

Bribe receivers or solicitors, which, under the law, include foreign state officials and international organization officials, can be punished with imprisonment of five to 20 years, imprisonment for life, or the death penalty. They can also be fined THB 100,000 to THB 400,000 in addition to the imprisonment. Furthermore, corruption brokers, who accept property to induce a state official to commit a corrupt act, can be punished with imprisonment for up to five years, a fine of up to THB 100,000, or both.

Bribe givers can be punished with imprisonment for up to five years, a fine of up to THB 100,000, or both. Legal entities that are criminally liable can be punished with a maximum fine of twice the actual damage or amount of benefits obtained.

The new OACC also increases the severity of the penalty for any person who discloses a statement, fact, or information that the NACC or competent official has obtained during the performance of their duties under the OACC. Such person is liable for imprisonment for up to one year, a fine of up to THB 20,000, or both. Further, any person who obstructs justice under the new OACC or related anticorruption law during the investigation or prosecution of the matter can be liable for imprisonment for up to ten years, a fine of up to THB 200,000, or both.

Another important change in the new OACC involves NACC investigations. In the new law, the process by which the NACC can seek international cooperation in their investigations is streamlined. The NACC can also refer matters to its foreign counterparts. These changes are important, as anticorruption investigations frequently cross borders and involve a number of countries and regulatory authorities. In these circumstances, the NACC can work with their foreign counterparts to obtain evidence and help build a criminal case against the bribe-givers and recipients in Thailand.

The following six criminal offenses are prescribed in law:

- Bribery of public servants
- Solicitation or acceptance of gifts by public servants
- Abuse of political positions for personal advantage
- Possession of unexplained wealth by a public servant
- Secret commissions made by agents or employees in the case of private sector corruption
- Bribes and gifts to voters.

These offenses, with the exception of private sector corruption, are dealt with in a variety of Thai laws

## **Thai Penal Code**

The Thai Penal Code deals with different types of corruption, including bribery. The regulations are, however, limited to public corruption or other types of abuse of public office for personal gain. The law distinguishes between a number of scenarios by including active (offering) as well as passive (accepting) bribery and even penalizes the promise to bestow a benefit.

Title II in Book II of the Penal Code entitled “Offenses Relating to Public Administration” contains several regulations that deal with bribery of officials, members of the state legislative assembly, members of a provincial assembly, or members of a municipal assembly.

There is no universal or comprehensive definition of what constitutes corrupt behavior. The most prominent definitions emphasize the abuse of public power or public position for personal benefit. These definitions—placing the public sector at the center of the phenomenon—do not cover private-to-private corruption.

## Offenses against Officials

Section 143 attempts to cover cases in which an intermediary accepts a benefit as compensation for influencing a public official or a member of any of the national assemblies (which It provides a list of) to perform or omit any of his or her functions resulting in an advantage or disadvantage. The mere demand of or agreement to accept a benefit is penalized. Penalties for breach of section 143 include imprisonment for up to five years, a fine of up to THB 100,000, or both.

Section 144 punishes the bribing of a public official or assembly member to incite him or her to undertake, avoid, or delay an act. The law requires that the desired act must be contradictory to the functions of the official, with the result that the act of bribing with the intention to induce an official to act in accordance with his or her functions goes penalty free. It is unclear whether this result was intended by the legislature. Again, the mere offer or agreement to give a benefit is punishable under section 144, regardless of whether an advantage or disadvantage was established. Penalties include imprisonment for up to five years, a fine of up to THB 100,000, or both.

## Malfeasance in Office

Section 148 punishes the abuse of public power through coercion or inducing in order to procure a benefit. Members of the different assemblies are not included in this section. Penalties include imprisonment of five to 20 years, life imprisonment, and a fine of THB 2,000 to THB 400,000, or death.

Section 149 prohibits public officials and assembly members from accepting a benefit as compensation for exercising or avoiding any of their functions. Again, demanding or agreeing to accept a benefit are treated equally by the law. It is not important whether the act or the avoidance of it is wrongful, nor is it necessary that an advantage or disadvantage result from the official’s behavior. Penalties include imprisonment for 5 to 20 years, or imprisonment for life, and a fine of THB 100,000 to THB 400,000, or death.

Section 150 extends a penalty to a situation where an official exercises or avoids any of his or her duties in return for a benefit that he or she accepted, demanded, or agreed to accept prior to his or her appointment as an official. Penalties include imprisonment for five to 20 years, or imprisonment for life and a fine of THB 100,000 to THB 400,000.

Sections 151 through 154 address other abuses of authority for personal gain.

## **Offenses Relating to Justice**

Offenses against Judicial Officials are stipulated in Sections 167 to 199. Judicial officials, for the purpose of this law, are persons holding a judicial post, public prosecutors, officials conducting official cases, or inquiry officials.

Section 167 imposes a penalty on anyone who gives or agrees to give a benefit to a judicial official in order to induce him or her wrongfully to act, not act, or delay an act. Again, the question arises whether such an action is penalty-free if the benefit or property is given with the intention to ensure that a rightful act is carried out (e.g., paying a bribe to induce a judge to pass a judgment that is in accordance with the facts and the law). Penalties include imprisonment not exceeding seven years and a fine not exceeding THB 140,000.

## **Malfeasance in Judicial Office**

Section 201 provides for the punishment of any officials holding judicial posts who wrongfully demand, accept, or agree to accept a benefit for themselves or other persons in order to exercise or not exercise any of their functions. It is not important whether the performance or nonperformance of such act is wrongful. The simple fact that an official accepts benefits for exercising his or her duty is considered punishable. Penalties include imprisonment of 5 to 20 years, or imprisonment for life, and a fine of THB 100,000 to THB 400,000, or death.

## **Constitution of the Kingdom of Thailand B.E. 2560 (2017)**

The latest Constitution of the Kingdom of Thailand B.E. 2560 (2017) was enacted on April 6, 2017. Section 130 of the Constitution provides that the following Organic Acts shall be in effect:

- Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018)
- Organic Act on Installation of Senators B.E. 2561 (2018)
- Organic Act on Election Commission B.E. 2560 (2017)
- Organic Act on Political Parties B.E. 2560 (2017)
- Organic Act on Ombudsmen B.E. 2560 (2017)
- Organic Act on Prevention and Suppression of Corruption B.E. 2561 (2018)
- Organic Act on State Audit B.E. 2561 (2018)
- Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018)
- Organic Act on Criminal Procedure for Persons Holding Political Positions B.E. 2560 (2017)
- Organic Act on Human Rights Commission B.E. 2560 (2018)

## Other Sources of Anticorruption Law

Name of Legislation	Effect of Legislation
<b>Organic Act on Counter Corruption B.E. 2561 (2018), as amended</b>	The act aims to support the NACC in performing its duties more efficiently. The act appoints an investigating official and chief investigating official to gather facts and evidence prior to and during factual inquiries. The act also prescribes qualifications for investigating officials and chief investigating officials.
<b>Organic Act on Criminal Procedures for Persons Holding Political Positions B.E. 2560 (2017), as amended</b>	The act describes the procedures for cases that are subject to a follow-up by a special commission of the Criminal Court. The cases can be brought by the NACC or the attorney general. The Supreme Court of Justice will be in charge of cases that involve persons holding political positions and those who are deemed to have gained unusual wealth from corruption.
<b>Management of Partnership Stakes and Shares of Ministers Act B.E. 2543 (2000), as amended</b>	<p>The act prohibits ministers from holding any profitable position or being an employee in partnerships, companies, or other organizations.</p> <p>In addition, a minister is not allowed to be a partner or shareholder in any type of profit-making organization.</p> <p>If occupying one of these positions at the time of appointment, the minister is legally obliged to transfer his or her shares to a juristic person to manage the property for the benefit of other people.</p>
<b>Act on Establishment of Criminal Court for Corruption and Malfeasance Cases B.E. 2559 (2016)</b>	The act came into force on August 17, 2016. The purpose of the Corruption Court is to expand the prosecution of corruption offenses to state officials and the private sector and to resolve corruption cases more quickly.
<b>Corruption and Malfeasance Procedure Act B.E. 2559 (2016)</b>	The act prescribes the judicial process for the Corruption Court, so that its judgments will be issued with equality, timeliness, and justice.
<b>Regulation of the President of the Supreme Court Governing Corruption and Malfeasance Procedure B.E. 2559 (2016), as amended in B.E. 2562 (2019)</b>	The regulation specifies details for certain sections of the Corruption and Malfeasance Procedure Act B.E. 2559 (2016).
<b>Act Amending Provisions of Laws Relating to Criminal Liability of Juristic Person Representatives B.E. 2560 (2017)</b>	The Act Amending Provisions of Laws Relating to Criminal Liability of Juristic Person Representatives B.E. 2560 (2017) rectifies the provisions of the laws relating to criminal liability of juristic person representatives so that they are not contradictory to or inconsistent with the Thai constitution. In addition, section 18 of the Management of Partnership Stakes and Shares of Ministers Act B.E. 2543 (2000), which is a law related to corruption, was amended by section 3 (49) of is act.

Name of Legislation	Effect of Legislation
<b>Organic Act on the Election Commission B.E. 2560 (2017), as amended</b>	<p>The Act on the Election Commission (EC) sets forth the duties of the EC, which include organizing elections and exercising certain legislative powers.</p> <p>Importantly, the EC is also empowered to conduct investigation and fact-finding inquiries, and to adjudicate and make decisions on problems or disputes that may arise with respect to the implementation of legislation falling within its purview (such as the Organic Act on the Election of Members of the House of Representatives and the Selection of Senators).</p>
<b>Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) and Organic Act on Installation of Senators B.E. 2561 (2018)</b>	<p>The act attempts to prevent electoral fraud and corruption by establishing a fast and transparent electoral process. Under the act, the Election Commission can conduct an investigation and inquiry into a candidate if certain criteria are met.</p>
<b>Civil Service Act B.E. 2551 (2008), as amended in B.E. 2562 (2019)</b>	<p>The act regulates the conduct of government employees in office. Implementation of the law is supervised by the Office of the Civil Service Commission (OCSC). The act provides for the follow-up of penalties for corrupt practices in the public sector through disciplinary action.</p>
<b>Act Governing Liability for Wrongful Acts of Competent Officers B.E. 2539 (1996)</b>	<p>The act establishes the concept of corporate responsibility for government entities. Government work units can be held responsible for wrongful acts committed by officers in the course of their duty. The act also provides for the government to claim damages from an officer if a wrongful act is committed against a government work unit. The prime minister is in charge of executing this act.</p>
<b>Government Procurement and Supplies Management Act B.E. 2560 (2017)</b>	<p>The act aims to standardize government procurement and supplies management by establishing standard criteria for all government agencies to follow.</p> <p>The act introduces changes to the government’s procurement process, principles of operator selection, registration of operators, annual procurement planning by government agencies, and the role of the civil society sector and operators in anti-corruption.</p> <p>Potential penalties for violations of the act include imprisonment, fines, or both.</p>
<b>Act on Offenses Relating to the Submission of Bids to State Agencies B.E. 2542 (1999), as amended</b>	<p>The act defines the procedures for cases of allegations of infringement of the procurement regulations.</p> <p>The act covers and punishes the actions of bidders, state officials who received an advantage, and any intermediaries.</p>
<b>Official Information Act B.E. 2540 (1997)</b>	<p>The act enables the public to peruse most official data and information.</p>



Name of Legislation	Effect of Legislation
<b>Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542 (1999), as amended</b>	<p>The court has the function of adjudicating administrative disputes between a private individual on one side and a state agency, government organization, state enterprise, and/or local government organization on the other side.</p> <p>Members of the public can sue state agencies or individual officials for corruption, negligence, abuse of power, or any other wrongdoing in the performance of their duties.</p>

## 11.2 Anti-Money Laundering Law

The Anti-Money Laundering Act B.E. 2542 (1999) (AMLA) aims to combat the drug trade and other illicit activities, such as corruption, criminal fraud, and prostitution.

The act targets a wide scope of offenses, provides broad powers to conduct investigations and seizures, and requires financial institutions and nonfinancial businesses—such as electronic payment service providers, insurance companies, jewelry traders, automobile dealers, and real estate brokers—to report transactions that exceed the values prescribed in the relevant ministerial regulations, as well as to conduct know-your-customer (KYC) procedures and customer due diligence (CDD) when entering into a transaction. The AMLA prescribes minimum customer information and documentation required for KYC procedures and CDD.

The Anti-Money Laundering Prevention and Suppression Office (AMLO), which was established under the act, has reported that financial institutions have cooperated in reporting transactions subject to the act, with the AMLO receiving over 10,000 reports a week from commercial banks alone shortly after implementation of the act. Of the total number of transactions reported to the AMLO, only a small portion result in further investigation for violation of the act.

### Targeted Crimes

Thai law enforcement officials initially proposed the enactment of money laundering legislation to target the regular transfer of money and property derived from the rampant trade in illegal narcotics, as well as to comply with requirements for membership under the 1988 Convention against Illegal Traffic in Narcotic Drugs and Psycho-toxic substances. In February 2013, amendments not only added 12 new categories of predicate offenses, but they also confirmed the application of the act to predicate offenses committed outside of Thailand, provided that such acts would have constituted a predicate offense had they been committed in Thailand.

Currently, the act covers the transfer or conversion of funds or property obtained from the following predicate offenses:

- Drug trafficking
- Prostitution and other sexual offenses
- Fraud against the public
- Fraud involving financial institutions
- Abuse of position by a government official
- Extortion

- Trade in contraband
- Terrorism
- Gambling offenses, with particular emphasis on large-scale organization of gambling games
- Participation in racketeering groups or participation in a criminal association
- Receiving stolen property only as it constitutes assisting in the selling, buying, pawning, or receiving, in any way, of property obtained from the commission of an offense with the nature of business conduct
- Counterfeiting or alteration of currencies, seals, stamps, and tickets with the nature of business conduct
- Criminal trading only where it is associated with the counterfeiting or violating of intellectual property rights to goods or the commission of an offense under the laws on the protection of intellectual property rights with the nature of business conduct
- Forgery of a document of right, electronic cards, or passports with a nature of regular or business conduct
- The unlawful use, holding, or possessing of natural resources or a process of illegal exploitation of natural resources with a nature of business conduct
- The commission of an offense relating to murder or grievous bodily injury which leads to the acquisition of assets
- Restraining or confining a person only where it is to demand or obtain benefits or to negotiate for any benefits
- Theft, extortion, blackmail, robbery, gang-robbery, fraud, or misappropriation with a nature of regular conduct
- Acts of piracy under anti-piracy law
- Unfair securities trading practice under the law on securities and stock exchange
- Offenses related to arms and arms equipment which is or may be used in combat or war under the law on arms control

There are additional predicate offenses outlined in other specific laws.

## **What Does the Law Prohibit?**

Under the act, it is a crime to transfer, convert, or receive funds or property arising from the prescribed offenses for the purpose of hiding or concealing the source of the funds. Penalties for violators include imprisonment for up to ten years, a fine of up to THB 200,000, or both. Violators are defined as persons who commit or attempt to commit a money laundering offense or aid another person in committing a money laundering offense.

The 2008 and 2015 amendments also include provisions targeted specifically at government officials, whereby the aforementioned fines and maximum prison sentences are doubled for government officials, and can even be tripled for certain categories of government officials if they are involved in a conspiracy to commit a money laundering offense. This represents a concerted effort to tackle the consistent problem of institutional corruption in Thailand.

Banking transactions are the primary activity scrutinized under the act, but other financial transactions are also covered. For example, an individual who secretly uses money from a drug sale to purchase shares of publicly traded stocks on the Stock Exchange of Thailand could be prosecuted. Further, a

corrupt government official who uses bribe money to purchase land runs the risk of being exposed, having the land confiscated, and being subject to doubled fines. Even property developers can be subject to enforcement under the act if they hold or accept monies that they know come from one of the stated criminal offenses.

Perhaps the most effective tool in combating crime is the ability of enforcement officials to seize, without a warrant, money or property connected with a money laundering offense or one of the criminal offenses listed above. In such case, the owner of the seized property can only get it back by demonstrating that the property is unrelated to the alleged offense. The 2022 amendment introduced provisions aimed at mitigating and compensating for any damages arising from the seizure to stakeholders and owners. If, in the seizure, the property related to commission of the offense is commingled with or inseparable from property not related to the offense, the seized property will be sold by auction and the proceeds returned to the assets' owners and stakeholders.

A juristic person that commits an offense related to money laundering can be fined THB 200,000 to THB 1 million. Directors, managers, or others responsible for business operations will also be held liable if responsible in any way (e.g., commission, ordering, or negligence). For a natural person, attendant punishments may include imprisonment from one to 10 years, a fine of THB 20,000–200,000, or both.

## **Reporting Requirements**

A key provision of the act is the requirement that financial institutions and other businesses prone to use as vehicles for money laundering report all cash transactions and property transactions that reach the criteria set out in the AMLA (different for each type of reporting entity), as well as suspicious transactions, to the AMLO. The AMLA prescribes an exhaustive list of professions that fall within the purview of reporting requirements under the act. These institutions or entities must have their customers provide a detailed record of any such transactions.

Failure to comply with reporting duties is punishable by a fine of up to THB 1 million and a daily fine of THB 10,000 until the violator complies. Filing a false report is punishable by a fine of up to THB 500,000 and imprisonment for up to two years.

## **Other duties of financial institutions and reporting entities**

Financial institutions and reporting entities are also obligated to do the following:

- Issue customer acceptance and risk management policies related to money laundering, and undertake customer due diligence when the customer's first transaction is carried out, in accordance with ministerial regulations.
- Arrange for trained staff to carry out or oversee preparation of reports, identification of customers, and customer due diligence under the AMLA. Failure to comply with this obligation is punishable by a fine of up to THB 500,000.
- Maintain records of customer due diligence for at least 10 years from the date of closing the account of or terminating the relationship with the customer.
- Refrain from disclosing or causing the disclosure of information regarding customer due diligence, the reporting of transactions, or the sending of any information to the AMLO, except in certain cases. Violation of this nondisclosure obligation is punishable by imprisonment for up to five years, a fine of up to THB 100,000 or both.

# Data Privacy and Data Protection

Thailand's first comprehensive personal data protection legislation, the Personal Data Protection Act B.E. 2562 (2019) (PDPA) took full effect on June 1, 2022. Since then, the Personal Data Protection Committee (PDPC) has issued various subordinate regulations to further elaborate on requirements and obligations. Some of these have dealt with cross-border transfer of personal data, processing of criminal records, appointment of a data protection officer (DPO), and imposition of administrative penalties, among others. The ongoing nature of PDPA-related developments necessitates close attention to mitigate the risk of noncompliance with the PDPA's requirements.

The PDPA imposes obligations on two main players: the data controller and the data processor. The data controller is the person or legal entity with the power to determine the collection, use, or disclosure of personal data, while the data processor is a person or legal entity that merely collects, uses, or discloses personal data for or pursuant to the instructions of the data controller. Therefore, data controllers bear more responsibilities than data processors.

## 12.1 Applicability of the PDPA

The PDPA broadly defines the term "personal data" as any data pertaining to an individual that enables identification of that individual directly or indirectly, excluding data of a deceased person. Hence, any collection, use, or disclosure of data that can directly or indirectly identify the data subject (such as full name, date of birth, gender, job title, etc.) would be subject to the provisions of the PDPA.

Data controllers and data processors located in Thailand are subject to the PDPA, regardless of where the processing activity takes place. Similar to the European Union's General Data Protection Regulation (GDPR), the PDPA has extraterritorial effect, meaning that even if a data controller or data processor is located outside of Thailand, they could also be subject to the PDPA if the processing activity is carried out to (1) offer goods or services to a data subject in Thailand, regardless of whether payment is made; or (2) monitor the data subject's behavior in Thailand.

Overseas data controllers and data processors subject to the extraterritorial reach of the PDPA must appoint a representative in Thailand in writing, authorizing this local representative to act on behalf of the data controller or data processor without limitation to liability in relation to the collection, use, or disclosure of personal data in accordance with the purposes of the data controller, unless otherwise exempted.

## 12.2 Collection, Use, and Disclosure of Personal Data

The PDPA generally permits collection of personal data only to the extent necessary for the lawful purposes of the data controller. In addition, personal data can only be collected, used, or disclosed if there is a legal basis.

Consent is required for the collection, use, or disclosure of personal data, except when this collection, use, or disclosure is:

- For the achievement of a purpose relating to the preparation of historical documents or archives for public interest, or for a purpose relating to research or statistics;
- For preventing or suppressing danger to a person's life, body, or health;
- Necessary for the performance of a contract to which the data subject is a party, or in order to take steps at the request of the data subject prior to entering into a contract;
- Necessary for the performance of a task carried out in the public interest by the data controller;
- Necessary for the legitimate interests of the data controller or any other persons or legal entities, provided that these legitimate interests are not overridden by the data subject's fundamental personal data rights; or
- Necessary for compliance with a law to which the controller is subject.

Different legal bases and explicit consent are required for collection, use, or disclosure of "special categories of personal data" listed in section 26 of the PDPA (including personal data pertaining to ethnicity; race; political opinions; doctrinal, religious, or philosophical beliefs; sexual behavior; criminal records; health records; disability; labor union membership; genetic data; biometric data; or any other data that may affect the data subject in a manner prescribed by the PDPC) unless the collection, use or disclosure is:

- To prevent or suppress a danger to life, body, or health when the data subject is unable to give consent;
- Carried out in the course of legitimate activities with appropriate safeguards by foundations, associations, or other nonprofit bodies;
- Information that is disclosed to the public with the explicit consent of the data subject;
- Necessary for the establishment, compliance, exercise, or defense of a legal claim; or
- Necessary for compliance with a law to achieve purposes with respect to: (1) preventive medicine or occupational medicine, assessment of the working capacity of an employee, medical diagnosis, provision of health or social care, medical treatment, or management of health or social care systems and services; (2) public interest in public health (e.g., protecting against a cross-border dangerous disease); (3) employment protection, social security, national health security, or social health welfare of the entitled person; (4) the scientific, historical, or statistical research purposes, or other public interests, or (5) substantial public interest, by providing suitable measures to protect the fundamental rights and interest of the data subject.

Consent requests must be made in accordance with the PDPA. Otherwise, they are not valid or binding on the data subject, and thus do not give the data controller a legal basis to collect, use, or disclose the personal data.

## **12.3 Notification Requirement**

Prior to or at the time of the collection of personal data, the data subject must be notified of information on the collection, use, or disclosure of the personal data, except when the data subject already knows of this information. The notification must contain the following:

- Purposes of the collection, use, or disclosure of the personal data;

- Circumstances requiring the data subject to give personal data in order to comply with a law or contract, or if it is necessary to give personal data in order to conclude a contract, along with possible consequences for not giving personal data under these circumstances;
- Types of personal data to be collected;
- Retention period, or if a specific retention period cannot be set, the expected retention period according to the data retention standards;
- Types of persons or entities that the personal data will be disclosed to;
- Information and contact details of the data controller and any local representative or DPO; and
- The rights of the data subject under the PDPA.

## 12.4 Cross-border Transfer of Personal Data

The PDPA generally permits the cross-border transfer of personal data by the data controller to destination countries or international organizations that have adequate personal data protection standards (known as the “whitelisted countries”) as prescribed by the PDPC. The list of whitelisted countries has not yet been announced; however, the PDPC has provided the criteria for determining which countries and international organizations would be included.

Even if the destination country or international organization receiving the personal data is not one of the whitelisted countries, the cross-border transfer of personal data is still permitted if the personal data is transferred by the data controller if:

- The law so prescribes;
- The consent of the data subject is obtained after the data subject has been informed about the insufficient personal data protection standards of the relevant destination country or international organization;
- It is necessary to comply with a contract under which the data subject is a contracting party;
- It is compliant with a contract between the data controller and other persons or legal entities for the interests of the data subject;
- Is for vital interests; or
- Is in the public interest.

The PDPA also permits the cross-border transfer of personal data when it will be transferred among “affiliated entities”—that is, within the same group of undertakings in order to jointly operate the business. However, in such a case, there must be “binding corporate rules,” meaning a personal data protection policy for the cross-border transfer of personal data among the affiliated entities that has been certified by the Office of the PDPC.

If the cross-border transfer of personal data does not involve whitelisted countries or binding corporate rules, it may still be permitted if “appropriate safeguards” are implemented pursuant to the notification of the PDPC. Examples of appropriate safeguards include, for example, adoption of the ASEAN Model Contractual Clauses for Cross Border Data Flows; the Standard Contractual Clauses for the Transfer of Personal Data to Third Countries issued by virtue of the GDPR, and ad hoc arrangements subject to conditions stipulated by the PDPC.

These requirements on binding corporate rules and the appropriate safeguards apply to both data controllers and data processors.





## 12.5 DPO Appointment

It is mandatory for the data controller and data processor to appoint a DPO if:

- The data controller or data processor is a state agency as prescribed by the PDPC;
- The activities of the data controller or data processor in relation to the collection, use, or disclosure of the personal data require “regular monitoring of the personal data or the system” by reason of “having large-scale personal data” as prescribed by the PDPC; or
- The core activity of the data controller or data processor is the collection, use, or disclosure of special categories of personal data.

Upon appointment of a DPO, the Office of the PDPC must be notified.

The DPO can be either an employee (of the data controller or data processor) or a contractor. The PDPA does not yet stipulate any specific requirements on the qualifications of the DPO. It is anticipated that required qualifications may be stipulated later; for example, these may require the DPO to be trained and have passed the requisite test, among other requirements.

## 12.6 Other Obligations

Some of the miscellaneous other obligations the data controller must comply with include:

- Implementing appropriate security measures;
- Notifying the Office of the PDPC and the data subject of any notifiable breach;
- Maintaining a record of processing activities; and
- Managing and proceeding with data subjects’ requests to exercise their rights, to enter into an agreement with the data processor, and so on.



## 12.7 Enforcement of the PDPA

Noncompliance with or violation of the PDPA could result in the following penalties or liabilities:

- **Civil Liability.** A data subject injured by noncompliance with or violation of the PDPA is entitled to compensation for the actual damages and, in certain cases, punitive damages.
- **Administrative Penalties.** Depending on the offense committed, the offender could be subject to an administrative fine of THB 1–5 million. The Expert Committee, which is designated by virtue of the PDPA, is empowered to decide on the imposition of administrative penalties. If the Expert Committee considers an offense to be non-severe, it may impose other administrative measures instead of an administrative fine (e.g., issuing a warning, ordering rectification, ordering suspension of the processing of personal data, etc.). On the other hand, if the Expert Committee determines that an offense is severe, or if the offender fails to comply with certain orders issued by the Expert Committee, administrative fines will be imposed.
- **Criminal Penalties.** Use, disclosure, or transfer of special categories of personal data in violation of the PDPA with specific intent (e.g., in a manner that is likely to cause another person to suffer any damage, harm a person’s reputation, etc.) could result in criminal penalties of imprisonment for six months to one year, a fine of THB 500,000–1 million, or both. If the offense is due to an act or omission of a legal entity’s director, manager, or person responsible for its operations, that director, manager, or person responsible for its operations will also be liable for the offense.

The PDPC tends to be active in enforcing the PDPA against offenders. The Expert Committee has imposed administrative measures against a few offenders; however, cases for which administrative fines were imposed or court decisions made in favor of data subjects have not yet been reported.

# Taxation

## 13.1 Direct Taxes

### Personal Income Tax

Individual Thai citizens and noncitizens who live in Thailand for one or more periods totaling at least 180 days in any tax (calendar) year are, for tax purposes, deemed residents of Thailand. Residents of Thailand is subject to tax on:

- all assessable income derived from sources within the country, whether paid within or outside Thailand; and
- all assessable income derived from foreign sources to the extent that it is brought into Thailand in the year in which income is received.

Nonresident individuals are subject to tax only on assessable income from Thai sources, regardless of payment location. Nonjuristic partnerships (unregistered ordinary partnerships) and nonjuristic bodies are also subject to personal income tax.

Individual taxable income includes money, assets, taxes paid by the payer of income, and all other benefits received that are not exempt from taxes under Thai tax laws. Some examples are below:

- Wages paid in Thailand
- Wages paid abroad as a result of work in Thailand
- Income (wages, interest, dividends, etc.) from abroad brought into Thailand in the year earned. This applies only to those who reside in Thailand for a total of 180 days or more in that taxable calendar year
- Vacation pay earned in Thailand
- Housing and meal allowances or their value
- School fees for dependents paid for by an employer
- Cost of home leave for taxpayer and dependents
- Any other benefit received or obligation paid for by an employer
- Taxes paid by an employer for an employee, including taxes paid on taxes
- Capital gains arising from a transfer of assets, except proceeds of a sale of movable property acquired by bequest or acquired with no intention to trade or make profit, as well as those from selling securities listed on the Stock Exchange of Thailand, but not in the form of debentures or bonds
- Royalties
- Gifts received from ascendants, descendants, or spouses that are worth more than THB 20 million in a taxable calendar year

- Gifts other than those from ascendants, descendants, or spouses that are worth more than THB 10 million in a taxable calendar year (please refer to section 9.3 below for details)

The following list shows examples of nontaxable income, assuming that concrete proof is available:

- Income earned abroad by a person who does not reside in Thailand for a total of 180 days or more in the year the income is brought into Thailand
- Moving expenses received by an employee to assume employment for the first time or to return to his place of origin at termination of employment
- *Per diem* or transportation expenses spent by an employee exclusively and wholly for carrying out his or her duties
- Medical expenses paid by an employer for an employee and his or her family
- Compensation for wrongful acts, sums derived from insurance or from a funeral assistance scheme
- Scholarships

### Allowable Deductions: Expenses

A standard deduction in percentage of assessable income or the actual expenses incurred in deriving income is allowed, depending on the category of income. For employment income, the standard deduction is 50% of the wages up to a maximum of THB 100,000.

### Allowable Deductions: Allowances

Various kinds of allowances can be deducted from total assessable income. Examples are set out in the table below.

ALLOWANCES	AMOUNT (THB)
For the income earner	60,000
For the spouse	60,000
For each child (maximum of three)	30,000
For the father and the mother of the income earner if such parent is above 60 years old and earns less than THB 30,000 (per person)	30,000
For the father and the mother of the spouse if such parent is above 60 years old and earns less than THB 30,000 (per person)	30,000

Other allowances provided for in the Revenue Code are as follows:

- Social security allowance
- Old age allowance (for a person aged 65 years or more) of THB 190,000 per person
- Taxpayer life insurance premiums covering a period of at least ten years from an insurance company in Thailand, but not exceeding THB 100,000
- Interest paid on loans granted for acquiring houses not exceeding THB 100,000

- Provident fund contributions not exceeding THB 500,000
- Payment for the purchase of investment units in a Retirement Mutual Fund under the law governing Securities and Exchanges, not exceeding 30% of gross income, and when combined with the amount paid to the provident fund or the government pension fund, not exceeding THB 500,000
- Payment for the purchase of investment units in a Super Savings Fund under the law governing Securities and Exchanges, not exceeding 30% of gross income and for the portion not exceeding THB 200,000
- Charity allowance, not exceeding 10% of the balance after deduction of other allowances

A tax credit with respect to dividends is permitted for an individual who is domiciled or resident in Thailand and who receives dividends from any company organized under Thai law. Such credits are computed by multiplying the dividend by the result of dividing the corporate income tax rate that the company paying the dividends is subject to by the balance of 100 minus the corporate income tax rate of the company in question. The formula is shown below.

$$\text{Credit} = \text{Dividend} \times \frac{A}{100 - A}$$

A = the corporate income tax rate of the dividend-paying company

## Tax Rates

The tax due is computed on the net assessable income (income after deduction of expenses and allowances) at progressive rates ranging from 5% to 35%, as illustrated below (all figures in THB).

ON INCOME AFTER DEDUCTIONS	RATE
0 – 150,000	0%
> 150,000 – 300,000	5%
> 300,000 – 500,000	10%
> 500,000 – 750,000	15%
> 750,000 – 1,000,000	20%
> 1,000,000 – 2,000,000	25%
> 2,000,000 – 5,000,000	30%
Over 5,000,000	35%

## **Personal Income Tax Violations**

An individual who fails to file an annual tax return is subject to a penalty of twice the amount of the tax due plus a monthly surcharge of 1.5% of the tax due. In the case of an improperly filed tax return, the individual will have to pay a one-time penalty in the amount of the tax due and a monthly surcharge of 1.5% of the tax due. In both cases, the surcharge will be capped at the amount of the tax due.

## **Corporate Income Tax**

Companies and juristic partnerships organized under Thai law (Thai companies) are subject to taxation on their worldwide income. Companies and juristic partnerships organized under foreign laws (foreign companies) are subject to taxation only on income from sources within Thailand. The Revenue Code takes the view that if foreign companies carry on business in Thailand, their income arising from or in consequence of such business constitutes Thai-source income.

### **Tax Liability of Foreign Companies**

A juristic entity incorporated in Thailand is subject to tax on its worldwide income, derived from both domestic and foreign sources. A juristic entity incorporated abroad but carrying on business in Thailand is subject to tax only for income arising from or in consequence of the business carried on in Thailand. The computation of net profits and the rate applied to foreign corporations carrying on business in Thailand is the same as domestic corporations. However, a branch remitting its net after-tax profits to its head office, or the keeping of profits abroad if the head office has received a payment abroad for a service rendered in Thailand, is subject to a further income tax (profit remittance tax) at the rate of 10% of the amount actually remitted or deemed remitted.

Wholly owned subsidiaries of foreign companies established as companies or juristic partnerships under Thai law are deemed Thai, not foreign, and are subject to corporate income tax.

A joint venture is also subject to corporate income tax.

Foreign corporations not carrying on business in Thailand but deriving certain types of income from or in Thailand, usually as service fees, royalties, interest, dividends, capital gains, rent, or professional fees, are subject to a flat rate of corporate income tax. This is a final tax but is collected as withholding tax based on gross income (see the "Withholding Taxes" section below for more information).

Tax credit for income tax paid abroad is granted by a royal decree issued under the Revenue Code and double tax treaties, whereby income tax paid in a foreign country can be used as a credit against Thai income tax payable. However, the amount of tax credit allowed shall not exceed the Thai income tax imposed on the same income.

### **Tax Calculation**

Corporate income tax is calculated by taking into account all revenue arising from or in consequence of a business carried on in an accounting period and deducting all allowable expenses, in accordance with the conditions prescribed in the Revenue Code. The tax year for a corporation is its accounting period, which is normally a duration of 12 months.

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The term *carrying on business in Thailand*, for income tax purposes, is very broad.

Foreign juristic entities are deemed to be "carrying on business in Thailand" if they:

- ◆ have an employee, agent, representative, or go-between in Thailand; and
- ◆ derive income or gains in Thailand from the activities of such person(s).

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In calculating net profits, an accrual basis following generally accepted accounting principles may be applied. Other calculation methods can, however, also be applied for certain types of income, such as income derived from certain businesses including banking, finance, securities, life insurance, consignment sale, leasing of assets, hire-purchase, installment sale, construction, sale of immovable properties, golf courses, short selling of securities, and buying and selling securities.

In determining taxable income, the all-inclusive concept of income is applied. All realized economic gains are treated as income whether they occur frequently or sporadically. Taxable income includes business or professional income, dividends, interest, royalties, and service fees. Capital gains are treated as ordinary income and are subject to corporate income tax.

Income can be in money or in kind, provided that it is convertible into money or monetary value.

## Exemptions

Certain exemptions from corporate income tax are provided under the Revenue Code, royal decrees issued under the Revenue Code, and the Investment Promotion Act. Some examples are given below:

1. A reduction or exemption from tax may be granted to juristic entities in accordance with tax treaties between Thailand and foreign countries.

For more information on **tax treaties**,  
please see section 13.3 on **double taxation**.

2. A corporate income tax exemption for a period of three to eight years may be granted to promoted businesses under the Investment Promotion Act. In addition, dividends, fees for goodwill, copyright, or other rights received from the promoted businesses may also be exempt from income tax in the hands of the recipient.

For more information on **concessions schemes**, please see section 1.2 on  
**Investment Incentives**.

3. Dividends paid by a limited company, registered under Thai law, to another Thai limited company or to a company registered under the law governing the Stock Exchange of Thailand may be exempt from corporate income tax if the holding of the shares in the payer company is in compliance with conditions prescribed in the Revenue Code. A Thai company is entitled to include in its taxable income only 50% of the dividends received from another Thai company, provided that shares have been held for a period of at least three months before and three months after receipt of those dividends (referred to as holding period). A Thai company will be exempt from taxation on all dividends received from another Thai company if the recipient company holds at least 25% of the total shares with voting rights in the paying company and has held those shares in compliance with the holding period, and the paying company does not hold any shares of the recipient company, either directly or indirectly. Thai

companies listed on the Stock Exchange of Thailand are exempt from taxation on all dividends received from other Thai companies if they merely comply with the defined holding period.

## Deductible Expenses and Allowance

Generally, expenses incurred exclusively for the purpose of generating income or for the purpose of business, other than certain expenses specified under Section 65 *ter* of the Revenue Code, are tax deductible. However, the deduction of some expenses and allowances must comply with the rules prescribed in the Revenue Code.

- **Depreciation allowance** - Any generally accepted accounting method of depreciation can be used, but the depreciation rates cannot exceed the rates specified in the Royal Decree issued under the Revenue Code (No. 145). Accelerated depreciation may be allowed for cash registering machines, and machinery or accessories used in research and technological development.
- **Vehicles** - Buses with no more than a 10-seat capacity, or passenger cars, may be depreciated but only for the part of the cost value that does not exceed THB 1 million. The THB 1 million limit is not applicable to vehicles used in the automobile rental business.
- **Reserves** - Reserves set aside from premiums of an insurance business, as well as reserves set aside as provision for bad or doubtful debts from credit extension by banks or finance and securities or credit foncier companies, are allowed as deductions. Other reserves are not allowed.
- **Contribution to funds** - Contribution to a provident fund for employees, established in accordance with ministerial regulations, is deductible.
- **Bad debts** - For tax purposes, bad debts may be written off only in accordance with the procedures and conditions prescribed by ministerial regulations.
- **Entertainment expenses** - Actual entertainment expenses may be deducted from gross income. However, the total deduction of entertainment expenses in an accounting period must not exceed 0.3% of total gross revenue or gross sales, or of the paid-up capital, whichever is greater. In addition, the total entertainment expenses allowed for deduction must not exceed THB 10 million.
- **Donations** - Donations to public charities of up to 2% of net profits, and donations for education or sports of up to 2% of net profits, may be deducted.
- **Losses carried forward** - Operating losses may be carried forward for five accounting periods to offset against future profits. Losses for a business promoted by the BOI incurred during a tax holiday period may be carried over for five accounting periods after the expiration of the tax holiday. There is no provision for the carry back of losses to previous accounting periods.

## Nondeductible Expenses

Various of nondeductible expenses are stated under section 65 *ter* of the Revenue Code, including:

- personal expenses and gifts;
- tax penalties, surcharges, and criminal fines under the Revenue Code and other laws concerning taxes and duties;
- any artificial or fictitious expenses;
- consideration for properties owned and used by the juristic entity;
- interest on capital, reserves, or funds of the juristic entity;
- any damage recoverable under an insurance or contract of indemnity;



- any disbursement if the identity of its recipient cannot be proved by the payer; and
- the portion of the purchase price of properties and the expenses in connection with the purchase or sale of properties that exceed a reasonable amount.

## Corporate Tax Rate

The corporate income tax rate is 20%, imposed (with few exceptions) on worldwide net profit received by Thai companies and on Thai-source net profit received by foreign companies during the tax year.

A number of other reduced rates also apply to various enterprises:

- Reduced progressive rates of 15% to 20% are granted to **small and medium-sized enterprises** (SMEs), with an exemption on the first THB 300,000 of net profits.
- A company established as an **International Business Center (IBC)** that provides qualifying services to affiliated juristic companies or partnerships is subject to tax at reduced rates of 3%, 5%, or 8% of net profits, depending on the expenditure paid to recipients in Thailand in each accounting period.

Foreign companies engaged in **international transportation** are subject to tax at the rate of 3% of gross ticket receipts collected in Thailand for passenger transportation, and 3% of gross freight charges collected anywhere for transportation of goods from Thailand, in lieu of tax on net profit. Foundations and associations engaged in business activities are subject to tax at the rate of 2% and 10% of gross business income depending on category of income.

## Withholding Taxes

Withholding taxes apply to various categories of income paid to juristic entities. The amount of tax to be withheld depends on the category of income and the tax status of the recipient. The withholding tax rates on some important categories of income are listed below:

- The rate on dividends paid to domestic and foreign corporations is 10%
- Rates on interest:
  - 1% on interest paid by financial institutions (banks, finance or credit foncier companies) to domestic companies that are not financial institutions
  - 10% on interest paid by financial institutions to associations and foundations
  - 15% on interest paid to foreign corporations (final tax payment)
- Rates on royalties:
  - 3% on royalties paid to domestic companies and partnerships (juristic partnerships)
  - 10% on royalties paid to associations and foundations
  - 15% on royalties paid to foreign corporations (final tax payment)
- 15% on capital gains, service fees, professional fees, and rent paid to foreign corporations (final tax payment)
- 3% on service fees and professional fees paid to domestic corporations or permanent branch offices of foreign corporations

The withholding tax rates applied to foreign corporations may be reduced or exempted under tax treaties.

Tax withheld must be remitted to the local district office within seven days from the last date of the month in which the payment is made. The tax withheld will then be credited against the final tax liability of the domestic corporations or branches of foreign corporations.

**Filing Tax Returns and Payment of Tax**

Juristic entities must file tax returns and pay corporate income tax twice a year: a half-year tax return and an annual income tax return.

A half-year income tax return must be filed within two months from the last day of the first six months of an accounting period. The amount of tax to be paid is computed either on one-half of the estimated net profits for the whole year or on the actual net profits

for the first six months of an accounting period. A juristic entity selecting to pay tax on the actual net profits must submit financial statements together with the tax return. The financial statements must be reviewed by an authorized auditor. The tax paid for a half-year is treated as a credit in the computation of the annual income tax liability.

An annual income tax return must be filed and tax must be paid within 150 days from the end of an accounting period. The tax return must also be filed together with an audited balance sheet and profit and loss accounts, or a statement of gross receipts, as the case may be.

In cases involving profit remittance tax, the tax return must be filed and tax must be paid within seven days from the date of remittance.

**Consolidated Returns for Affiliated Corporations**

There is no consolidated treatment under the Thai Revenue Code whereby corporations within a group may be treated as one tax entity. Each corporation is taxed as a separate legal entity.

In addition, there is no form of group relief or relief by consolidation in respect of losses incurred by an affiliate.

The following entities are only required to file tax returns once per year:

- Juristic entities that pay taxes on gross receipts instead of net profits (i.e., foreign corporations engaged in international transportation, associations, and foundations); and
- juristic entities whose first or last accounting period is less than 12 months

The term **market price** or **arm's length price** means the price of the remuneration, service fee, or interest that each independent party must set fairly in business practice, in the transfer of assets, provision of services, or extension of loans of the same type as on the date of such transfer of assets, provision of services, or extension of loans.

## Transfer Pricing Rules

Transfer pricing refers to transactions between related parties. For tax purposes, a company may be required to show that a transaction with a related party was made at market price or arm's length price.

The Revenue Department has the power to make assessments regarding the following:

- Transfer of assets without compensation
- Rendering of services without service charge
- Lending of money without interest
- Purchase of properties, or expenses related to purchase of properties, which exceed a normal amount

Additionally, the Revenue Department has the power to make an assessment of a transfer of assets, rendering of services or lending of money with compensation, service charge, or interest in an amount considered to be lower than the market value without justification. The Revenue Department also has the power to determine the price of imported goods by comparing them with the price of goods of the same category and type delivered to another country.

## Disclosure Requirements

Companies with total income of at least THB 200 million that transacted with related parties must file a transfer pricing disclosure form with the Revenue Department (RD) upon filing the annual corporate income tax return (i.e., within 150 days of the end of accounting period). The completed transfer pricing disclosure form allows the RD to determine whether related party transactions are conducted at arm's length. Failing to file or reporting incorrect information without justification is punishable by a fine of THB 200,000.

## Transfer Pricing Methods

The arm's length result of an intercompany transaction (i.e., the controlled transaction) must normally be determined using the most appropriate of the five transfer pricing methods accepted by the RD:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Transactional net margin method
- Transactional profit split method
- However, if none of these methods is appropriate for the tested controlled transaction, the company may apply an alternate method by notifying the director general of the RD in writing, within the relevant accounting period, and describing the reason for doing so.

The selection of the most appropriate transfer pricing method must take into account the following factors:

- The respective strengths and weakness of the recognized methods;
- The appropriateness of the method in view of the nature of the controlled transaction, determined in particular through functions performed, assets used, and risk assumed (functional analysis) by each party under the controlled transaction;

- The availability of reliable information to apply the selected transfer pricing method; and
- The degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments (that may be needed to eliminate material differences between them).

### **Intragroup Services**

- For controlled transactions that relate to a service, the remuneration will be deemed an arm's length price if:
  - the service has actually been rendered;
  - the service provides the recipient with economic or commercial value;
  - an independent enterprise in comparable circumstances would have been willing to pay for the activity if it were performed by an independent enterprise, or would have performed the activity in-house for itself; and,
  - the amount charged would have been charged and accepted between independent enterprises for comparable services.
- Remuneration for a service that benefits the shareholders or the partners of a company or juristic partnership is not considered an arm's length charge.

### **Intangibles**

- If the controlled transaction involves intangible property, the following factors will be taken into account to determine the remuneration for the controlled transaction:
- If the transaction involves the use of intangibles: the party's involvement in developing, enhancing, maintaining, protecting, and exploiting intangibles, including assets used and risks assumed.
- If the transaction involved the sale, transfer, or grant of use rights of intangibles, consideration shall be taken on benefits, geographical limitations, specifications, and the right to develop the intangibles.

### **Corresponding Adjustment**

- When RD officials adjust the income or expenses of a party to an intercompany transaction, the other party will be allowed to perform a corresponding adjustment if:
  - the tested party already paid tax following the official's adjustment; and
  - the adjusted income or expense has been included in the tax computation of the other party, and that other party did not conceal information or mislead the tax authorities about the controlled transaction.
- In addition, the corresponding adjustment must be made in accordance with the applicable tax treaty.

### **Advance Pricing Agreements**

- Companies that have cross-border related party transactions may request an advance pricing arrangement between Thailand and the other jurisdiction.

## Corporate Income Tax Violations

An annual corporate income tax return, together with the tax due, must be filed within 150 days of the end of the accounting period, accompanied by audited financial statements. For a juristic entity, failure to file or improper filing of the tax return is subject to the same punishment imposed upon individuals.

A mid-year corporate tax return is also required. It must be filed by the eighth month of the accounting period. Failure to file the mid-year tax return without a reasonable excuse is subject to a surcharge of 20% of the amount of the tax due. In addition, should the underestimation of the net profit of an accounting period exceed 25% of the actual net profit without a reasonable justification, a surcharge of 20% of the deficit tax can also be imposed. Companies listed on the Stock Exchange of Thailand, commercial banks, financial institutions, securities companies, or credit foncier companies, which pay taxes based on actual profit, may also be subject to a surcharge of 20% of the tax due for failure to file the mid-year tax return or filing the mid-year tax return inaccurately without a reasonable excuse.

With regard to criminal liability for tax offenses, sections 35 to 37 *bis* of the Revenue Code provide penal sanctions, primarily against whoever commits a tax offense. A company director can be criminally liable jointly with the company for a tax offense under the Revenue Code.

## Inheritance Tax and Gift Tax

### Inheritance Tax

The Inheritance Tax Act B.E. 2558 (2015) came into effect on February 1, 2016. Any income derived from inheritance prior to the act becoming effective is regarded as exempt for Thai income tax purposes.

Inheritance tax arises upon distribution of the decedent's estate to an heir or inheritor, and is levied upon the recipient of inherited taxable assets within the scope defined under the act (e.g., immovable property, bank deposits, etc.), but only on value in excess of THB 100 million. A tax rate of 5% applies if the recipient is an ascendant or descendant of the decedent, while the tax rate is 10% in all other cases.

The act does not apply to (1) assets inherited from a decedent who passed away prior to the effective date of the act or (2) assets inherited by a legal spouse of the decedent.

### Gift Tax

While there is no separate gift tax, certain gifts are subject to income tax under the Thai Revenue Code. This is relatively new; in the past, income received from a moral obligation, or gifts made in a ceremony or on occasions in accordance with established customs, were exempt from personal income tax.

However, the Act to Amend the Revenue Code (No. 40) B.E. 2558 (2015), which came into effect on February 1, 2016, made recipients subject to personal income tax on the value of gifts exceeding an annual threshold of either THB 10 million or THB 20 million, depending on the recipient's status. The recipient has the option of either paying the tax at a flat rate of 5% on the non-exempt income (i.e., the amount in excess of THB 10 million or THB 20 million) or including the non-exempt income with their other income, all of which would be subject to personal income tax at normal progressive rates.

## Petroleum Income Tax

Companies granted licenses to explore, produce, and export petroleum (crude oil, natural gas, etc.) under the Petroleum Act, and companies purchasing oil for export from a concessions holder, are subject to tax under the Petroleum Income Tax Act instead of corporate income tax under the Revenue Code.

Petroleum Income Tax is chargeable on net profits at a rate of 50%. No further tax is levied on dividends payable to shareholders or on the distribution of profits to the head office by a branch. Net profit for petroleum income tax purposes is computed in the same manner as for corporate income tax, but net losses may be carried forward for ten accounting periods, and interest is not a deductible expense.

## 13.2 Indirect Taxes

### Value-Added Tax

Value-added tax (VAT) is an indirect tax collected upon consumption (i.e., at each stage of production, distribution of goods, or provision of services).

Generally, the operator charges VAT on the sale of goods or provision of services to the consumer. The VAT paid by the operator to other operators for the purchase of goods or services is then deducted and the balance remitted to the Revenue Department. Thus, tax will accrue at each stage only on the "value added" to the goods or services at that stage. Under the VAT system, the tax will ultimately be borne by the consumer. The operator is therefore regarded as a collector of tax for the Revenue Department.

VAT is imposed on the following:

- Sale of goods
- Provision of services by an operator
- Importation of goods by an importer

As of September 1, 2021, business operators providing e-services to users in Thailand who are not VAT registrants must register for and pay VAT as required without deducting any output tax (VAT pay-only). The term "e-service" is defined as "a service that includes incorporeal property delivered through the internet or other electronic means, where the service is, in essence, performed automatically, and where the service cannot be performed without information technology."

### Persons Liable to Pay VAT

The following persons are liable to pay VAT:

- Operators or persons who sell goods or render services in the course of their business or professional activities. Operators include companies, partnerships, joint ventures, sole proprietors, and government enterprises conducting a business;
- Importers;
- Agents who sell goods or render services in the ordinary course of business for operators residing outside Thailand;

- Transferees of goods or services from certain persons or organizations (e.g., the United Nations, consulates, embassies, etc.). Sale of goods or provision of services to such persons or organizations is subject to VAT at a zero-percent rate; and
- Operators residing outside Thailand and persons with the responsibility to carry on business in Thailand, including their employees or representatives residing in Thailand who have direct or indirect authority to manage for the operators, are jointly liable for VAT.

**Sale** is the disposition, distribution, or transfer of goods, whether or not for a benefit or consideration. It also includes delivery of goods on hire-purchase or installment sales, delivery of goods to an agent for sale, or delivery to a foreign country.

**Service** is any activity performed with a view to benefits, other than sale of goods, and includes making use of the supplier's own service by any means.

**Provision of services in Thailand** means performing a service in Thailand, regardless of whether the service is used locally or overseas. A service that is performed in a foreign country and made use of in Thailand will be regarded as provided in Thailand.

## Exemptions

The following persons are exempted from paying VAT:

- Small businesses with annual sales volume not exceeding THB 1.8 million
- Persons exempted by other laws, such as corporations falling under the Petroleum Income Tax Law

In general, the sale of goods or provision of services that are necessary for the maintenance of life and social welfare will be exempt from VAT. Exempted transactions also include cultural services and religious and charitable services. Examples of exempted transactions are as follows:

- Sale of unprocessed agricultural products
- Provision of educational services
- Provision of health care services
- Provision of domestic transportation services and international transportation by land
- Sale of goods or provision of services exclusively for the benefit of a religion or a public charity in Thailand, provided that the profits are not applied for other purposes

## Tax Base

The tax base for sale of goods or provision of services is the total value received or receivable by a supplier from the sale or service inclusive of excise tax. The value of the tax base includes money, property, compensation, consideration for services, or any benefit ascertainable in terms of money. However, the value of the tax base does not include the following:

- Prompt discounts and allowances as clearly stated and deducted from the price of goods or services on the tax invoice
- Rebates, subsidies, or compensation prescribed by the director-general of the Revenue Department, with the approval of the minister



- Output tax
- Compensation answering to the description and conditions given or prescribed by the director-general, with the approval of the minister

The tax base for the import of goods is the CIF price of goods plus import duty and excise tax (if any) and surcharges and other taxes and fees.

## VAT Rates

VAT is generally imposed at a standard rate of 10%. This rate includes municipal tax, charged at the rate of one-ninth of the VAT rate. All sales of goods, provision of services, and importation of goods are subject to this rate, except the businesses or transactions stated below. A temporary reduction of the VAT rate to 7% is currently in force. The original reduction was due to expire in 2010 but has since been repeatedly extended by successive governments.

A 0% rate applies only to certain businesses specified under the provisions of VAT. A business that makes only zero-rated supplies will not be required to collect any tax on its supplies and can refund all input tax paid. The following are examples of business activities subject to the 0% rate:

- Export of goods
- Provision of services performed in Thailand but used in a foreign country
- Provision of international transport services by aircraft or sea-going vessels, organized under Thai or foreign law
- Selling goods and providing services to the United Nations organization or its specialized agencies, or to a foreign embassy or consulate

## Computation

VAT is computed monthly by deducting the amount of VAT paid on the purchase of goods and services for sale or utilization in the production process during the month ("Input Tax") from VAT due from the sale of goods or provision of services during the same month ("Output Tax"). If Output Tax exceeds Input Tax, the operator must remit the excess amount to the Revenue Department. If Input Tax exceeds Output Tax, the excess amount may either be claimed as a tax refund from the Revenue Department or carried forward to offset against the VAT due in the following months.

VAT arising from the purchase of goods or services (i.e., the Input Tax) is not always deductible from the total VAT due (i.e., the Output Tax). Examples of non-deductible Input Tax are as follows:

- Input Tax without a tax invoice
- Input Tax with a tax invoice containing materially inaccurate or incomplete contents
- Input Tax that is not related to the operator's business
- Input Tax on entertainment expenses
- Input Tax of a tax invoice issued by non-authorized person

If an operator carries on business in both categories subject to and not subject to VAT, then the operator is required to apportion Input Tax to each business. Only the Input Tax that is attributable to the business of the category subject to VAT may be deducted from Output Tax.

## VAT Registration

An operator must apply for VAT registration within 30 days of its annual revenue exceeding THB 1.8 million. However, an operator has the right to apply for VAT registration before commencing business.

An application for VAT registration must be filed with the local Revenue office where the place of business is located. If the operator has several offices or branches, the application for VAT registration must be filed at the local Revenue office that has jurisdiction over the operator's head office.

The registered operator is required to issue a tax invoice when VAT liability arises in respect of sale of goods or provision of services. The tax invoice must contain all the particulars prescribed by law. The original tax invoice must be given to the purchaser and copies of all tax invoices must be maintained for at least five years.

## Filing VAT Returns and Payment of Tax

A registered operator must file a VAT return and pay tax (if any) to the local district office within 15 days of the end of the month in which the VAT is to be accounted for. For an operator with several places of business, separate VAT returns must be filed (and separate amounts paid) for each place of business (unless otherwise permitted by the director-general of the Revenue Department).

Registered operators who make payments for the following transactions are also required to remit VAT to the Revenue Department within seven days from the end of the month in which the payment is made:

- Payment for goods or services to a supplier residing outside Thailand and temporarily carrying on business in Thailand without being recorded for temporary VAT registration
- Payment for services to a supplier providing services in a foreign country, the use of which is made in Thailand

## VAT Violations

The VAT registrant is generally required to file a VAT return and pay the tax monthly, no later than the fifteenth day of the following month.

Failure to register as a VAT operator, file a VAT return, or issue a tax invoice to a customer, is subject to a penalty of twice the amount of the tax due. A surcharge for failure to pay the VAT is levied at the rate of 1.5% per month of the tax due, capped at the amount of the tax due. In addition, noncompliance with VAT regulations is punishable by imprisonment for up to seven years and a fine of up to THB 200,000. If the offenses have been committed by a juristic person, its managing directors, managers, or representatives may also be subject to the same penalties in certain situations.

“ Operators residing outside Thailand may be liable for SBT if they carry on business through a place of business, an agent a representative, or an employee residing in Thailand. ”

## Specific Business Tax

Specific business tax (SBT) is imposed on certain types of businesses that provide services whose “value added” is difficult to define. These businesses are considered to be outside the VAT system and therefore are not subject to VAT. Businesses subject to SBT are set out in the table below.

An operator subject to SBT must apply for SBT registration within 30 days from the date of commencing business. Businesses in the sale of securities and temporary businesses are exempt from SBT registration requirements.

SBT is computed on monthly gross receipts at the applicable rate stipulated in the law. SBT returns must be filed monthly within 15 days from the end of the month in which the SBT is to be accounted for.

Where an SBT operator purchases goods or services that are subject to VAT, the SBT operator is characterized as the ultimate consumer in the VAT system.

The types of business, tax base, and tax rates under the SBT are as follows:

Type of Business	Tax Base	Tax Rate (as Percentage of Gross Receipts)
1. Banking or similar business, finance business, credit foncier, and securities business	1.1 Interest, discounts, fees, service charges, or profits before deduction of any expenses from the purchase or sale of negotiable instruments or documents of indebtedness	3.0
	1.2 Gross profits before deduction of any expenses from the exchange or sale of currencies, issuance of negotiable instruments or documents of indebtedness, or remittance of currencies to a foreign country	3.0
2. Life insurance	Interest, fees, or service charges	2.5
3. Pawnshop	Interest or fees	2.5
	Money, property, consideration, or benefit of value received or receivable from sale of forfeited pawned goods	2.5
4. Sale of immovable property in a commercial manner or for profits.	Gross receipts before deduction of any expenses	3.0
5. Sale of securities in SET	Gross receipts before deduction of any expenses (exempt by Royal Decree No. 240)	0.1

The SBT rates do not include municipal tax. An additional amount of 10% of SBT is levied as municipal tax on top of the SBT rate.

An operator liable for SBT may also be subject to pay VAT on the following business transactions:

- Business transactions that are not directly related to the specific businesses
- Business transactions which, though directly related to specific businesses, are prescribed by royal decree as business subject to VAT, such as provisions for letting out movable properties on hire, provision of credit card services, and provision of securities underwriting services

If an operator carries on a business that is subject to SBT as well as a business subject to VAT, the operator must allocate its Input Tax between the business subject to SBT and the business subject to VAT. Only Input Tax related to VAT-taxable supplies will be credited against the Output Tax.

## **SBT Violations**

Failure to register as an SBT operator or file an SBT return is subject to a penalty of twice the amount of the tax due. A surcharge for failure to pay the SBT is levied at the rate of 1.5% per month of the tax due and is capped at the amount of the tax due. In addition, noncompliance with SBT regulations is punishable by imprisonment for up to seven years and a fine of up to THB 200,000. If the offenses have been committed by a juristic person, its managing directors, managers, or representatives may also be subject to the same penalties in certain situations.

## **Customs Duties**

Customs duty is mainly imposed on imported and selected export goods specified by the Law on Customs Tariffs. Customs duty is levied in accordance with the Harmonized Commodity Description and Coding System or Harmonized System.

Most tariffs are *ad valorem*, which is a duty laid upon goods at a certain rate of their value. In certain cases, however, both an *ad valorem* rate and a specific rate (e.g., a rate charged on a unit of goods) are given, and the tariff that gives the most revenue will apply. In general, the invoice price is the basis for computation of duty and normally applied to cost, insurance, and freight value for import and free on board for export.

## **Reduction and Exemption from Customs Duties**

Reduction of or exemption from customs duties on some imported goods is granted to promoted persons under the Investment Promotion Act and to petroleum concessionaires under the Petroleum Act.

Reduction of or exemption from customs duties on imported goods is also granted to members of the ASEAN Free Trade Area (AFTA) and the World Trade Organization (WTO), and to parties of free trade agreements and international agreements to which Thailand is a party.

In determination of customs value of imported goods, Thai customs law adopts practices and standards in accordance with the Valuation System under the General Agreement on Tariffs and Trade (GATT) 1994.

## **Excise Tax**

Excise tax is levied on selected goods (mainly luxury goods) such as petroleum products, tobacco, liquor, beer, soft drinks, crystal glasses, perfume and cosmetic products, air-conditioners up to 72,000 BTU, and passenger cars with ten seats or less.

Excise tax is computed *ad valorem* or at a specific rate, whichever is greater. All goods subject to excise tax remain subject to VAT. The excise tax is collected by the Excise Department and is usually imposed at the time of delivery of the goods from factories.

### Stamp Duties

Stamp duty is levied on 28 classes of instruments specified in the Stamp Duty Schedule of the Revenue Code. Rates vary according to the nature or content of instruments. Examples of instruments subject to stamp duties are powers of attorney, letters of credit, checks, bills of lading, memoranda of association of limited companies, articles of association of limited companies, and partnership contracts.

### Property Tax

Thailand’s new Land and Building Tax Act B.E. 2562 (2019) came into effect on March 13, 2019. Payment of land and building tax under the new act will be required from January 1, 2020, onward.

The new act revokes and replaces various pieces of legislation, including the House and Land Tax B.E. 2475 (1932) and its amendments; the Land Development Tax B.E. 2508 (1965) and its amendments; the Notification of the National Executive Council No. 156 dated June 4, B.E. 2515 (1972); and the Royal Decree Designating the Medium Price of Land for Land Development Tax Assessment B.E. 2529 (1986).

Under the act, both individual and juristic persons who have ownership, possessory, or usage rights over land or buildings (including condominium units), as of January 1 of each year, must pay land and building tax to the local administrative authorities. Payment is due in April of each year.

The official assessed price of the land, building, or condominium unit, as determined by the government authority for the purpose of collecting registration fees under the current Land Code, will be used as the basis for calculation of the land and building tax. The actual land and building tax rate that authorities will collect will be announced by royal decree in due course, subject to the fixed maximum rates, exemptions, and transition period rates outlined below.

#### Fixed Maximum Rates for Land and Building Tax

Use	Maximum Tax Rate
Agricultural	0.15%
Residential	0.30%
Other	1.20%
Vacant/unused	1.20%*

\* If the land or building is unused for more than three years, the rate will be increased by 0.30% every three years, until the rate reaches 3.0%

## Exemptions

The act provides limited exemptions to owners that meet the following criteria:

Taxpayer	Use	Exempted Value
Owner of Land or Building	Agricultural	Up to THB 50 million
Owner of Land and Building whose name must be on the house registration book as of January 1 in such year	Residential	Up to THB 50 million
Owner of Building (Not Land) whose name must be on the house registration book as of January 1 in such year	Residential	Up to THB 10 million

## Transition Period Rates

For the first two years of tax collection under the act commencing from January 1, 2020, the land and building tax rates will be reduced for the following owners:

Taxpayer	Use	Value of the property (THB)	Tax Rate
1. Owner of land and/or building	Agricultural	less than or equal to 75 million	0.01%
		>75–100 million	0.03%
		>100–500 million	0.05%
		>500 million – 1 billion	0.07%
		>1 billion	0.10%
2. Owner of land and/or building who is an individual and whose name is on the house registration book	Residential	less than or equal to 25 million	0.03%
		>25–50 million	0.05%
		>50 million	0.10%
3. Owner of building (but not land) who is an individual and whose name is on the house registration book	Residential	less than or equal to 40 million	0.02%
		>40–65 million	0.03%
		>65–90 million	0.05%
		>90 million	0.10%
4. Owner of land or building other than categories 2 and 3 above	Residential	less than or equal to 50 million	0.02%
		>50–75 million	0.03%
		>75–100 million	0.05%
		>100 million	0.10%
5. Owner of land and/or building	Other	less than or equal to 50 million	0.30%
		>50–200 million	0.40%
		>200 million–1 billion	0.50%
		>1–5 billion	0.60%
		>5 billion	0.70%
6. Owner of land and/or building	Unused or vacant	less than or equal to 50 million	0.30%
		>50–200 million	0.40%
		>200 million–1 billion	0.50%
		>1–5 billion	0.60%
		>5 billion	0.70%

In addition, individual owners who use land or buildings for agricultural purposes will be exempt for the first three years of tax collection under the act.

## Signboard Tax

Under the Signboard Tax Act B.E. 2510 (1967), as amended, a tax is levied on signboards showing names, symbols or marks of business, or advertisements. Rates specified in the Signboard Tax Act are computed on signboard size.

## 13.3 Double Taxation

Thai tax treaties are mainly concerned with the avoidance of double taxation. The general principle is that the country in which the income arises (source country) has the prior right to tax and the country of residence will grant a relief (tax exemption or tax credit) from paying taxes twice on the same income. In addition, the treaties also provide for cooperation between governments in preventing tax evasion.

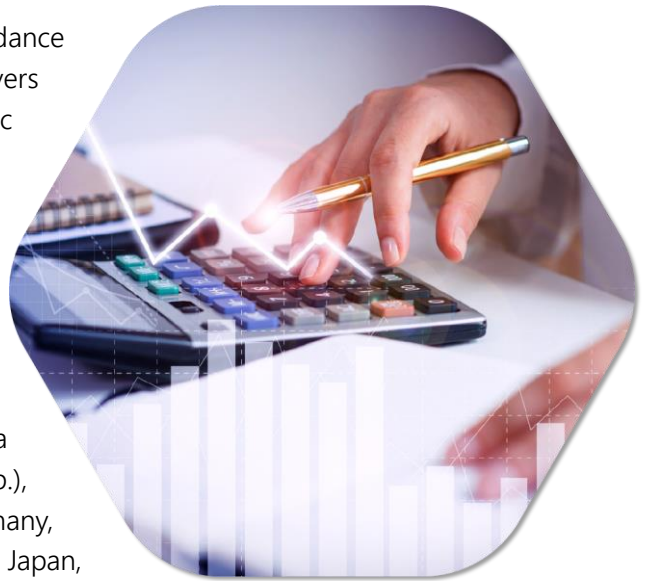
Thailand has entered into a number of treaties for the avoidance of double taxation. The scope of the Thai tax treaties covers taxes on income and on the capital of individual and juristic entities. The provisions of these tax treaties minimize or exempt certain types of income from taxation.

### Countries with Double Tax Treaties with Thailand

Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria (Rep.), Cambodia, Canada, Chile, China (People's Republic of China), Chinese Taipei, Cyprus (Rep.), Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Korea (Rep.), Kuwait, Laos, Luxembourg, Malaysia, Mauritius, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Romania, Russia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, and Vietnam

### Countries with Treaties Not Yet in Force

Brunei, Kenya, Lithuania, Mongolia, Morocco, Papua New Guinea, and Zimbabwe





# Insurance

## 14.1 Compulsory Insurance

### Third-Party Motor Insurance

Third-party motor insurance is compulsory for all private vehicle owners. The law sets out minimum standards for such limited coverage for passengers and third-party liability, as well as deadlines for filing and payment of claims.

The injured are able to claim initial payment, without proof of liability required, of up to THB 30,000 for medical treatment, THB 35,000 for the loss of an organ or permanent incapacitation, or THB 35,000 in case of death. The total initial payments that the injured is entitled to receive are limited to THB 65,000. The initial payment must come from either the insurance company or the Victims Compensation Fund within 7 days of receiving an application for initial payment, which itself must have been filed within 180 days of the damage occurring. The fund, supported by the government and the insurance industry, provides protection for damages caused to the injured by vehicles in certain atypical situations.

The injured may also claim compensation of up to THB 80,000 for medical coverage, THB 500,000 for death, and THB 200,000–500,000 for the following:

- blindness, deafness, muteness, or the loss of ability to speak or loss of the tongue;
- loss of a reproductive organ;
- loss of an arm or any other organ;
- physical or psychological deformity; or
- permanent incapacitation.

The injured is also entitled to daily compensation of THB 200 per day for up to 20 days if he or she is hospitalized as an inpatient.

### Third-party Liability Insurance for Building Construction and Building Usage

Third-party liability insurance is also required for all phases of building construction and usage of certain buildings.

#### Building Construction, Modification, Relocation, and Demolition

When a permit for construction, modification, relocation, or demolition is granted for a building classified as a high-rise, large, or extra-large building, the owner, occupant, or operator who obtained the permit must apply for third-party liability insurance before work begins. The insurance period is required to cover the duration of construction, modification, relocation, or demolition.

# INSURANCE



## Building Usage

Owners or occupiers of public assembly buildings, hotels with more than 80 rooms, entertainment venues of 200 square meters or more, and large freestanding or building-attached signboards and support structures must also apply for third-party liability insurance covering accidents related to the condition or use of the structures. Owners or occupiers have 30 days from the completion of the construction, modification, relocation, or change of use of the buildings to apply for third-party liability insurance.

## Other Compulsory Insurance

Other compulsory insurance is provided for in the Workmen's Compensation Fund and Social Security Fund. Coverage by these funds is the responsibility of employers to their employees. Further information on these funds can be found in the chapter on Working in Thailand.

## 14.2 Options

Numerous life and non-life insurance companies are active in Thailand. Shopping around can often produce some interesting options, depending upon the criteria for selection. Most investors prefer to appoint a broker, rather than an agent, who can play a supportive role almost as if a brokerage company were in fact the insurance department of their company.

As in any country, the prudent foreign investor should investigate the requirements and skills of a good broker and secure the services of a competent professional to meet his or her needs.

## 14.3 Claims

An insurance contract is defined as an agreement between the insurer and insured, whereby the insurer agrees to make compensation or pay a sum of money in case of contingent loss or any other future event specified in the contract, and the insured agrees to pay the premium.

An insurance contract is voidable if, at the time of its making, the insured, or in case of life insurance, the party upon whose death payment depends, knowingly omits facts that would have induced the insurer to raise premiums or refuse to enter into the contract, or knowingly makes false statements in

regard to such facts. In addition, an insurance contract is not enforceable by action unless written evidence exists and is signed by the liable party or its agent. Pursuant to the amendments to the Casualty Insurance Act B.E. 2535 (1992) and Life Insurance Act B.E. 2535 (1992), however, all advertising wordings or images, or solicitation documents, are regarded as parts of the insurance policy, with any contradiction between the meaning of any advertisement wording or image and that written in the policy being interpreted in favor of the insured or the beneficiary.

Any right to claim compensation for loss is time-barred if judicial proceedings are not instituted within two years of the date of loss. The prescription period for compensation claims under life insurance is 10 years.

For further information about civil claims and court processes in Thailand, see chapter 17 on [Litigation and Bankruptcy in Thailand](#).

### **Key Points on Insurance:**

- All vehicle owners must get insurance for injuries or death caused by their vehicles.
- The owners, occupiers, or operators of certain buildings must get third-party liability insurance.
- All advertising images or solicitation documents are regarded as parts of the insurance policy.
- Any right to claim compensation for loss is time-barred if judicial proceedings are not instituted within a two-year period from the date of loss. The prescription period for compensation claims under life insurance is 10 years.

For further information on or assistance with, insurance matters please contact Tilleke & Gibbins at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

# Employment

## 15.1 Thai Labor Law

Labor matters are generally governed by the Labor Protection Act B.E. 2541 (1998), as amended, and sections 575 to 586 of the Civil and Commercial Code on hire of services. Other laws include:

- Labor Relations Act B.E. 2518 (1975), as amended
- Act Establishing the Labor Court and Labor Court Procedure B.E. 2522 (1979), as amended
- Provident Fund Act B.E. 2530 (1987), as amended
- Social Security Act B.E. 2533 (1900), as amended
- Workmen's Compensation Act B.E. 2537 (1994)
- Royal Decree on Managing the Work of Foreigners B.E. 2560 (2017), as amended
- Home-Based Worker Protection Act B.E. 2554 (2011)
- Occupational Safety and Health Act B.E. 2554 (2011)



### Standard Conditions of Employment

An employer must provide the minimum standard conditions of employment. Employers cannot stipulate employment conditions that do not meet the minimum standards set by the Labour Protection Act.

### Work Rules and Regulations

Any employer that has ten or more employees is required to prepare written work rules and regulations (in Thai) and have them announced and posted at the place of work at all times. An employer may also opt to announce the work rules and regulations via electronic means, such as by posting on the intranet. The work rules and regulations must contain at least the following information:

- Working days, regular working hours, and rest periods
- Holidays and rules for taking holidays
- Rules on overtime and working on holidays
- Date and place of paying wages, overtime pay, holiday pay, and holiday overtime pay
- Leave and rules for taking leave
- Discipline and disciplinary actions
- Submission of grievances
- Termination of employment, severance pay, and special severance pay

In addition, an employer who regularly employs ten or more employees has to maintain at the place of work:

- a register of employees (in Thai) containing, for example, names, addresses, dates of employment, wage rates, etc.; and
- documents concerning the calculation of wages (in Thai), for example, working days, working hours, and wages.

## Working Hours

Maximum working hours are fixed depending on the type of work that is conducted. In general, normal working hours may not exceed eight hours per day or 48 hours per week. Work that may be detrimental to an employee's health or body, as prescribed in ministerial regulations, cannot exceed seven hours per day or 42 hours per week.

If any day has less than eight working hours, the employer and the employee may agree to include the remaining working hours with the working hours of any normal working day. The total number of working hours, however, must not exceed nine hours per day and 48 hours per week. The employer must pay remuneration at 1.5 times the hourly wage rate of a working day for the number of hours worked in excess of eight hours to a daily or hourly employee, or at 1.5 times the rate for each work unit performed on a working day to a piecework employee.

On a typical workday, employees shall be entitled to a rest period of one hour after five consecutive working hours. The employer and the employee, however, may agree in advance to a rest period shorter than one hour, but the total rest periods during a working day may not be less than one hour per day.

## Child and Female Employees

The minimum age of employment is 15, and no children under the age of 18 may be employed without first informing the labor inspector.

Male and female employees must be treated equally, unless the nature of the working conditions does not allow for such equal treatment.

Employees under the age of 18 and pregnant employees are not allowed to work between the hours of 10 p.m. and 6 a.m., work overtime, work on holidays, or do other work as prescribed by law. Employers are not allowed to terminate female employees for reason of pregnancy.



The minimum wage is set periodically by notification of the Ministry of Labor and Social Welfare.

It is advisable to check the current Notification of the Ministry of Labor and Social Welfare Regarding Prescribing Minimum Wages.

## Remuneration

The employer can provide a remuneration package, which may include a range of benefits. Basic remuneration, however, must meet salary scales based on the minimum wage.

Wages must be paid in Thai currency, unless otherwise agreed between an employer and an employee.

## Employee Welfare

A business entity with 50 employees or more must have a popularly elected welfare committee, whose role is to look after and make recommendations regarding employee welfare.

## Holidays and Leave

An employee is entitled to at least a one-day holiday per week. This is usually taken on Sunday. In addition, a minimum of 13 public holidays per year, including National Labor Day, must be granted. After one year of service, employees are entitled to a paid annual vacation of not less than six working days. Below are the commonly adopted public holidays.

COMMERCIAL HOLIDAYS	
New Year's Day	January 1
Chinese New Year	January-February (changes annually)
Makha Bucha Day	February-March (changes annually)
Chakri Day	April 6
Songkran Day	April 13
National Labor Day	May 1
Coronation of King Vajiralongkorn	May 4
Visakha Bucha Day	May (changes annually)
H.M. Queen Suthida's Birthday	June 3
Asarnha Bucha Day	July (changes annually)
H.M. King Maha Vajiralongkorn's Birthday	July 28
Queen Sirikit's Birthday / National Mother's Day	August 12
Anniversary of the Passing of King Bhumibol	October 13
Chulalongkorn Day	October 23
King Bhumibol's Birthday / National Father's Day	December 5
Constitution Day	December 10
New Year's Eve	December 31
New Year's Day	January 1
Chakri Day	April 6
Songkran Day	April 13–15
Makha Bucha Day	February–March (changes annually)
Coronation of King Vajiralongkorn	May 4

## COMMERCIAL HOLIDAYS

Royal Ploughing Day	May (changes annually)
Visakha Bucha Day	May (changes annually)
H.M. Queen Suthida's Birthday	June 3
Asarnha Bucha Day	July (changes annually)
Buddhist Lent Day	July (changes annually)
H.M. King Maha Vajiralongkorn's Birthday	July 28
Queen Sirikit's Birthday / National Mother's Day	August 12
Anniversary of the Passing of King Bhumibol	October 13
Chulalongkorn Day	October 23
King Bhumibol's Birthday / National Father's Day	December 5
Constitution Day	December 10
New Year's Eve	December 31

## BANK HOLIDAYS

New Year's Day	January 1
Makha Bucha Day	February–March (changes annually)
Chakri Day	April 6
Songkran Day	April 13
National Labor Day	May 1
Coronation of King Vajiralongkorn	May 4
Visakha Bucha Day	May (changes annually)
H.M. Queen Suthida's Birthday	June 3
Half-Year Holiday	July 1
Asarnha Bucha Day	July (changes annually)
H.M. King Maha Vajiralongkorn's Birthday	July 28
Queen Sirikit's Birthday / National Mother's Day	August 12
Anniversary of the Passing of King Bhumibol	October 13
Chulalongkorn Day	October 23
King Bhumibol's Birthday / National Father's Day	December 5
Constitution Day	December 10
New Year's Eve	December 31



## **Additional Holidays**

The Thai government may announce additional public, government, and bank holidays from time to time to mark special occasions, and prudent employers should monitor the press to ensure that they are aware of such *ad hoc* holidays well in advance.

## **Sick Leave**

Employees are entitled to 30 paid working days per year sick leave when they are sick.

## **Maternity Leave**

A pregnant employee is entitled to 98 days of maternity leave for each pregnancy, including holidays and leave taken for pre-natal exams before the delivery. The employer must pay 45 days of full wages during the leave period, with the remaining 45 days being paid by the social security fund.

# **15.2 Benefits and Social Security**

## **Employee Welfare Fund**

Under the Labor Protection Act, the employees of a business operation with ten or more employees must be members of the Employee Welfare Fund. The objective of the Employee Welfare Fund is to provide financial security for the employees (in the case of resignation or retirement) or for beneficiaries (in the case of death).

The Employee Welfare Fund is to be established and managed by the Employee Welfare Fund Committee upon enactment of an enabling royal decree. However, no such decree has been issued—therefore, the Employee Welfare Fund is not in effect at present and employers are not required to use this fund.

Once established, the Employee Welfare Fund will be mandatory, subject to certain exceptions. If the employer has a registered provident fund (see section below) or provides welfare for employees in case of their resignation or death in accordance with the rules and procedures prescribed in ministerial regulations, it is not legally required to take part in the Employee Welfare Fund.

The contributions of the employer and employee will be in accordance with the rates prescribed in the ministerial regulations, but must not exceed 5% of the employee's wage.

## **Social Security**

An employer with one or more employees must register with and contribute to the Social Security Fund. Upon registration, employees will become "insured persons," entitled to benefits provided under the Social Security Act.

The Social Security Act requires that the government, employers, and employees contribute to the Social Security Fund at the rates prescribed by law. Generally, both employers and employees each make monthly contributions at the rate of 5% of the employees' wages, while the government contributes at a rate of 2.75%. The maximum salary used as a basis for calculation of contribution is THB 15,000. Thus, the maximum monthly contribution paid by an employer and an employee is THB 750 each. However, this might vary in exceptional circumstances, such as when the government

temporarily reduced the contribution rates as a financial relief measure for employers and employees during the COVID-19 pandemic.

The Social Security Act does not cover government officials; employees of foreign governments and international organizations; teachers at private schools; students who work for schools, universities, and hospitals; and other types of employees according to royal decree.

The act provides compensation and benefits for:

- injury or illness not related to work (work-related injury or illness is covered by the Workmen's Compensation Fund);
- maternity;
- disability not related to work (work-related disability is covered by the Workmen's Compensation Fund);
- funerals for death not related to work (work-related death is covered by the Workmen's Compensation Fund);
- child welfare
- old age; and
- unemployment.

Self-inflicted injuries and suicide are excluded from coverage under the act.

## **Provident Fund**

A provident fund is a type of superannuation fund that employers and employees jointly establish and register according to the Provident Fund Act B.E. 2530 (1987), as amended. Although provident funds are not mandatory, if one is established it must be registered.

Provident funds consist of monetary contributions made by employees and their employer, including money and interest on money or other property donated to the fund. They are managed by independent securities firms that are approved by the Ministry of Finance. A provident fund provides security for an employee in case of death, retirement, or termination or resignation from employment.

The employee's contribution may not be less than 2% and not more than 15% of his or her wages. The employer's contribution must not be less than the employee's contribution. Similar to the government's reduction of social security fund contribution rates during the COVID-19 pandemic (see above), the Ministry of Finance eased provident fund contribution requirements temporarily during the pandemic.

## **Worker's Compensation**

An employee who sustains injury or sickness, or the estate of an employee who disappears or dies, during performance of his or her work-related duties is entitled to receive workmen's compensation. An employer who has one or more employees must register for and contribute to the compensation fund once a year, unless the employer is exempt under:

- the Workmen's Compensation Act B.E. 2537 (1994), as amended; or
- the Notification of the Ministry of Labor Re Types, Sizes of Businesses, and Localities where Employers are Required to Make Contributions B.E. 2562 (2019).

The rate of contribution is assessed at 0.2% to 1.0% of employees' annual earnings, depending on the risk classification of the employer.

An employee who suffers injury or illness during performance of his work-related duty is entitled to reimbursement for the cost of medical treatment, funeral expenses, and compensation.

### 15.3 Termination and Dismissal

Termination of employment and the ensuing consequences are governed by general stipulations in the Civil and Commercial Code and in labor law.

#### Termination with Cause

Under the Labor Protection Act B.E. 2541 (1998), an employee may be dismissed without notice or severance payment under any of the following circumstances:

- Dishonestly performing his or her duty or intentionally committing a criminal offense against the employer.
- Intentionally causing damage to the employer.
- Negligently causing gross or serious damage to the employer.
- Violating work regulations, rules, or lawful orders of the employer after written warning has been given by the employer other than in serious cases, when no warning is required.
- Neglecting duty for three consecutive working days without justifiable reason.
- Being imprisoned by a final judgment of imprisonment. If it is an offense committed through negligence or a petty offense, it must be a case which has caused damage to the employer.

#### Termination without Cause

When there is termination without cause, the employer must give written notice and severance payment to the employee. Severance pay is calculated based on the length of unbroken service, as follows.

Period of Service	Days
<i>(Inclusive of holidays, leave days, and days on which work stoppage is ordered by the employer)</i>	
120 days but less than 1 year	30
1 year but less than 3 years	90
3 years but less than 6 years	180
6 years but less than 10 years	240
10 years but less than 20 years	300
20 years or more	400

Employers can terminate the services of an employee immediately by making payment in lieu of notice. The terminated employee can bring an action against his or her employer in the Labor Court if the employee thinks the employment was terminated by unfair practices.

## 15.4 Labor Disputes

The Labor Relations Act B.E. 2518 (1975), as amended, establishes procedures for:

- labor negotiations;
- resolution of demands between employers and employees; and
- mediation by the Department of Labor Protection and Welfare officials, or arbitration by the Labor Relations Committee.

If there is a labor dispute concerning the conditions of employment, the complaining party must serve a written notice on the other party. The first stage of settlement is direct negotiation between employer and employee through their duly authorized representatives. If no settlement is reached, the dispute is referred to the conciliation officer, who will mediate the dispute. If mediation fails, both parties may refer the matter to arbitration by one or more arbitrators. The employer can choose to effect a lockout or the employees can go on strike, but this is subject to restrictions on some businesses, as provided by the Labor Relations Act.

“  
**Employees may establish unions with the objective of protecting their employment benefits and/or interests and to promote good relations between the employer and employees, as well as among the employees themselves**  
”

For labor disputes in certain essential services that affect the general public or the national economy, such as railways, telephone or telecommunications, and waterworks, the conciliation officer will refer the dispute to the Labor Relations Committee if mutual negotiations and mediation fail. The committee's decision can be appealed to the minister of the interior within seven days of receipt of the decision. The minister will issue a decision on the appeal and notify both parties within ten days of receipt. A Labor Relations Committee decision is final if not appealed within seven days, as is the minister's decision regarding the appeal.

### Labor Unions

The Labor Relations Act provides that employees within the same company (except state enterprises) or employees doing similar work, regardless of the number of employers, may form labor unions. Labor unions must be registered with the registrar of the Department of Labor Protection and Welfare. They

“  
**Entitlement to form a labor union is restricted to Thai nationals employed by the same employer, or engaged in the same type of activity in the same province, of at least 20 years of age. A labor union must have at least ten promoters.**  
”

can operate only upon the issuance of a license. A license is issued only after an investigation is made by the registrar to confirm that the regulations of the union are not contrary to law and public order and that they do not constitute a threat to national security or the economy.

Entitlement to form a labor union is restricted to Thai nationals employed by the same employer, or engaged in the same type of activity in the same province, of at least 20 years of age. A labor union must have at least ten promoters. Supervisory employees responsible for recruitment, promotion, sanctions, and termination of employment cannot

become members of a labor union established by other employees or in which other employees are members. Furthermore, such other employees cannot become members of a labor union established by supervisory employees or in which supervisory employees are members. Labor unions registered under the law can submit demands for better conditions of employment and carry out other activities for the benefit of their members.

## 15.5 Employment of Foreign Nationals

Foreign nationals may work in Thailand if they:

- Have a valid visa and a work permit; and
- Are able to perform work that does not violate the Foreigners' Working Management Emergency Decree B.E. 2560 (2017), as amended in B.E. 2561 (2018).

The term "work" is defined very broadly and covers both physical and mental activities (both paid and unpaid).

Theoretically, even volunteer or charity work requires a work permit. It is common practice for volunteer teachers and other official charity workers to be required to obtain work permits

### Occupations Closed to Foreign Nationals

Most foreign nationals who intend to work in Thailand are subject to the Foreigners' Working Management Emergency Decree B.E. 2560 (2017), as amended in B.E. 2561 (2018). A foreign national cannot perform any act of work or service unless a work permit has been issued by the Department of Employment, Ministry of Labour, or unless the individual or the work performed falls within an exception to the act.

The Notification of the Ministry of Labor Prescription of Work Prohibited to Foreigners lists occupations that are closed to foreign nationals and reserved for Thais. These occupations fall into four categories:

#### Category 1: Occupations that foreign nationals are strictly prohibited from undertaking

- Wood carving
- Driving motor vehicles or vehicles which do not use machinery or mechanical devices, except international aircraft piloting or forklift driving
- Auctioneering
- Cutting or polishing of diamonds or gemstones
- Haircutting, hairdressing, or beauty treatment
- Cloth weaving by hand
- Weaving or making of mats or products from reed, rattan, jute, straw, bamboo, bamboo pulp, grass, feather, coconut stalk, fiber, wire, or other materials
- Making rice paper by hand
- Lacquerware making
- Making Thai musical instruments
- Nielloware making
- Goldsmith, silversmith, or gold-and-copper alloy smith work

- Stone work
- Making Thai dolls
- Making alms bowls
- Making silk products by hand
- Creating Buddha images
- Making paper or cloth umbrellas
- Brokerage or agency, except in international trading
- Thai massage
- Cigarette rolling by hand
- Tour guiding or conducting
- Hawking of goods
- Thai typesetting by hand
- Unwinding and twisting silk by hand
- Clerical or secretarial work
- Providing legal services or engaging in legal work, except for arbitration work and work relating to defense of cases at arbitration level, provided the law governing the dispute under consideration by the arbitrators is not Thai law.

**Category 2: Occupations that foreign nationals are prohibited from undertaking, except where an international agreement or other legal provision provides otherwise**

- Supervision, auditing, performance, or provision of accounting services, with the exception of occasional internal auditing work. These types of work would also be allowed in cases where Thailand is bound under an international agreement or obligation and the applicant's qualifications have been certified by the Thai professional association for that occupation.
- Civil engineering work including consulting services, project planning, design and calculation, construction supervision, production, examination work, administrative work, systemization, research, or testing. This does not include professional engineers, those in the controlled engineering profession in accordance with the ASEAN mutual recognition agreements (MRAs), those that fall under other international agreements relating to the provision of cross-border engineering services, and licensed civil engineers in accordance with applicable engineering laws.
- Professional architectural work including project study, design, management, construction directing, and audit or consulting services, excluding professional architects and those in the controlled architecture profession in accordance with the ASEAN MRAs, as well as other international agreements relating to the provision of cross-border architecture services from the Council of Architects, or a professionally licensed architect in accordance with applicable architectural laws.

**Category 3: Occupations that foreign nationals are prohibited from undertaking, with the exception of craft or semi-skilled work undertaken for an employer**

- Agriculture, animal husbandry, forestry or fishing
- Bricklaying, carpentry, or other construction works
- Making mattresses or quilted blankets
- Knife making

- Shoemaking
- Hat making
- Dressmaking
- Pottery

**Category 4: Occupations that foreign nationals can undertake for an employer only when they have been permitted to enter Thailand in accordance with immigration laws under a memorandum of understanding or memorandum of agreement made by the Thai government with a foreign government**

- Labour work
- Shop attendance

## Applying for Work Permits

### Criteria for Granting Work Permits

The criteria for consideration of whether to grant work permits vary according to the type of employer or work. For instance, every company established under Thai law is generally given a quota of one work permit for every THB 2 million of its capital. In addition, when reviewing a work permit application, officials also consider other qualifications of the applicant, such as age, job title, job description, educational background, and work experience. Most royal decrees, ministerial regulations, notifications, resolutions, and orders issued under the previous act continue to be enforceable insofar as they do not contradict the new act.

### Application Process

Applicants for a work permit must have either a nonimmigrant visa or a permanent resident permit. Generally, a non-immigrant visa must be obtained before entering Thailand. A permanent resident permit can be applied for only after a foreigner has resided in Thailand for at least three consecutive years under a non-immigrant visa. An employer or potential employer may file an application for advance permission for an employee to work before the foreigner enters the country. The work permit itself, however, will not be issued until the individual enters Thailand on a valid non-immigrant visa.

If the job being applied for is not in Bangkok, the application is filed at the relevant provincial department of the Employment Office. Supporting documents usually must be translated into Thai with appropriate certification.

In order to work with a limited company in Thailand, applicants for work permits must supply the following documents:

- Application form (Bor. Tor. 25, Bor. Tor. 32) and three photographs, front view, and 3x4 cm in size (taken within the previous six months)
- Letter from employer certifying employment and reasons for not employing a Thai national
- Copy of the company's affidavit certified by the Department of Business Development (made within the previous six months)
- Copy of the list of shareholders certified by the Department of Business Development (made within the previous six months)



- Copy of certificate of incorporation
- Copy of VAT certificate, or Phor. Por. 01 and 09
- Copy of latest audited financial statements
- Copy of Phor. Ngor. Dor. 50 (Corporate Income Tax Return) and receipt
- Organizational chart
- List of all expatriate(s) in the company indicating position and work permit number(s)
- Copies of educational certificates and letters of recommendation from previous employment
- Copies of all pages of passport showing the valid non-immigrant visa ("B" or "O")
- Copies of all pages of the work permit of the authorized director showing the valid date (if the authorized director is a foreigner)
- A medical certificate certifying that the applicant is free from prohibited diseases (issued within the previous one month)
- Power of Attorney affixed with THB 10 duty stamp
- Official form for notification of commencement of work (Bor. Tor. 34)
- Any other relevant document(s)

In addition, applicants need to observe the following procedural requirements:

- All photocopies of documents must be certified as true copies by the authorized director(s) and affixed with the company seal (if any).
- If the application is filed by another person, a valid power of attorney in the prescribed form must be attached with a THB 10 duty stamp affixed.
- On the application form, the job description entry must be completed with a detailed description of the job to be performed, how it is related to other employees, and what materials will be used in the work.
- If the job applied for is subject to a license under a particular law in addition to the Foreign Employment Act, a photocopy of that license (e.g., a teacher's license, physician's license, press card from the Public Relations Department, certificate of missionary status from the Religious Affairs Department, etc.) must be attached.
- If the applicant is married to a Thai national, the marriage certificate must be presented along with the spouse's identity card, household registration certificate, and a photocopy of every page of the applicant's passport.
- If the applicant is applying for a position previously held by a foreign national, a photocopy of the predecessor's work permit, together with his or her notice of resignation from the company or a letter confirming his or her intended date of departure, must be presented.

## **Length and Validity of Work Permits**

According to the Foreigners' Working Management Emergency Decree B.E. 2560 (2017), as amended in B.E. 2561 (2018), a work permit can be granted for up to two years (renewable), regardless of the duration of stay stamped on the foreigner's passport.

A work permit is valid only for the particular job for which it was issued. The foreign employee is permitted to work under the work permit regardless of changes in position or work location, provided

that he or she still works for the same company. Foreigners working with one or more employers must obtain permission for each employer.

Exceptions to the Foreign Employment Act permit foreigners to perform work deemed necessary and urgent that can be completed within 15 days. The Department of Employment must, however, be informed before work begins.

## **Exemptions from Work Permits**

Certain foreigners are exempt from work permit requirements. There are seven categories:

- Members of the diplomatic corps
- Members of a consular mission
- Representatives and officials of the United Nations and its specialized agencies
- Personal servants from abroad employed by any of the above
- People who perform duties or missions under an agreement between the government of Thailand and another foreign government or international organization
- People entering into Thailand irregularly for arrangement or attendance of meeting, expression of view, lecture or presentation in a meeting, training, visit or seminar or performance of arts, culture, sports competition or other activities as prescribed by the Cabinet and the Cabinet may specify the time period and conditions as deemed appropriate
- People who operate or invest in business or have knowledge, capacity, or skills that will benefit Thailand development as prescribed by the Cabinet
- Representatives of foreign juristic persons obtaining a license to operate business under the law on foreign business operations

## **Penalties for Work Permit Violations**

Working without a valid work permit, even for one day, is a criminal offense. The penalty for working without a work permit is a fine of THB 5,000 to THB 50,000. This is to be followed promptly by deportation. They may be blacklisted and not allowed to reenter Thailand. A company or employer that hires a foreigner without a valid work permit is subject to a fine of THB 10,000 to THB 100,000 for each foreign employee. An employer committing a repeat offense is liable to imprisonment for a term of up to one year, a fine of THB 50,000 to THB 200,000 per foreigner employed, or both. The person will also be prohibited from employing a foreigner for three years from the date of final court judgment.

If requested, a work permit must be presented to the officer within a reasonable time frame.

## **One-Stop Service Center**

The One-Stop Service Center facilitates the processing of work permits and extensions of stay for qualified foreign investors, experts, and correspondents. Through the center, the Immigration Bureau and the Department of Employment can issue work permits and extensions of stay within three hours. In general, processing an extension of stay is handled by the Immigration Bureau, while processing work permits is handled by the Department of Employment, which normally takes about 10 to 14

working days to complete. The following investors, executives, or experts, including their family members, are qualified to submit applications through the center:

- Executives or experts granted privileges under the Investment Promotion Act B.E. 2520 (1977), Petroleum Act B.E. 2514 (1971), or Industrial Estate Authority of Thailand Act B.E. 2522 (1979)
- Executives or experts working with a company whose total current asset value is not less than THB 30 million
- Foreign nationals who come to work for the foreign press
- Foreign officers of branch offices of overseas banks, foreign banking offices of overseas banks in Bangkok, provincial foreign banking offices of overseas banks, and representative offices of foreign banks
- Foreign nationals who come to work for branch, representative, or regional offices of overseas enterprises

For further information on visas and immigration or assistance with obtaining permits, please contact Tilleke & Gibbins at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## 15.6 Immigration and Visas

### Immigration Requirements

To visit, live, or work in Thailand, immigration requirements must be met. Immigration into Thailand is governed by the Immigration Act B.E. 2522 (1979), as amended, and is administered by the Immigration Bureau of the Royal Thai Police.

Any foreigner wishing to enter Thailand, unless otherwise exempt, must obtain a proper visa from a Royal Thai Embassy or Royal Thai Consulate prior to his or her arrival in Thailand. There are three exemptions to this general rule:

- Individuals in transit and tourists from the following countries are permitted to obtain an entry visa on their arrival (a “visa-on-arrival”) at designated entry points in Thailand. A visa-on-arrival allows a stay of 15 days.
  - Bulgaria, Bhutan, China (including Taiwan), Cyprus, Ethiopia, Fiji, Georgia, India, Kazakhstan, Malta, Mexico, Nauru, Papua New Guinea, Romania, Russia, Saudi Arabia, Uzbekistan, Vanuatu.
- Individuals in transit and tourists from the following countries are exempt from complying with visa requirements. They are permitted to enter and stay in Thailand for 30 days for tourism without an entry visa. These individuals, however, must obtain an entry stamp on their passports at the immigration checkpoint of entry.
  - Andorra, Australia, Austria, Bahrain, Belgium, Brazil, Brunei, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Mauritius, Monaco, Netherlands, New Zealand, Norway, Oman, Peru, Philippines, Portugal, Poland, Qatar, San Marino, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, Ukraine, United Arab

Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, and Vietnam.

- Individuals in transit and tourists who are exempt from complying with the visa requirements above, and who arrive in Thailand by any means except by airplane, are only permitted to stay for 15 days each time. There is an exception for Malaysian nationals who arrive from Malaysia and nationals from the G7 countries: USA, UK, Canada, France, Germany, Italy, and Japan, who are allowed to stay for up to 30 days each time.
- Nationals of Brazil, the Republic of Korea, and Peru are currently permitted to stay for up to 90 days after obtaining an entry stamp at the immigration checkpoint of entry.

In order to stay longer than the initial length permitted, foreigners must have a valid visa, which can be obtained from a Royal Thai Embassy or Consulate prior to entry into Thailand.

The countries listed above change periodically. The Immigration Bureau adds and removes countries as circumstances dictate. It is recommended to check the lists of countries with a Royal Thai Embassy or consulate prior to traveling. Foreigners from all other countries that do not have agreements with Thailand must obtain visas before coming to the country.

## Visas

A visa authorizes entry into Thailand for a specific duration, which varies depending on the visa type. The passport or travel document will show the date of authorized entry and the permissible duration of stay.

The Immigration Act prescribes eight main visa categories. Each category is restricted to the purpose for which the visa has been issued, and foreigners are advised to strictly adhere to the rules governing each visa category. Any change of address should be relayed to local police within 24 hours, and those who have a foreigner stay in their residence are subject to the same reporting requirement.

- **Transit Visa (TS).** For foreigners entering Thailand with the intention to travel to another country.
- **Tourist Visa (TR).** For foreigners visiting Thailand for sightseeing purposes only.
- **Non-Immigrant Visa.** For foreigners entering Thailand on a temporary basis for a particular purpose. This is divided into several subcategories:
  - "B" for business and work purposes
  - "B-A" for business or investment
  - "IB" for investment purposes or other affairs connected with an investment under the law governing investment promotion. Issuance of IB visas is controlled by the Board of Investment.
  - "IM" for investment purposes, as approved by the appropriate ministries or departments concerned
  - "ED" for purposes of study or observation
  - "RS" for purposes of scientific research or teaching in a research or educational institution in Thailand with approval from the ministry or department concerned
  - "M" for performance of duties connected with the mass media
  - "R" for missionary work with approval from the ministry or department concerned

- "EX" for performance of skilled or expert work
- "O" for other purposes, as prescribed in the ministerial regulations (such as for family reunions, medical treatment, or legal proceedings)
- "O-A" (Long Stay) visas may be issued to applicants aged 50 years or over who wish to spend their retirement in Thailand. Employment of any kind is strictly prohibited. Upon arrival, the holder of this type of visa will be permitted to stay in Thailand for one year from the date of first entry. The accompanying spouse will be eligible to be considered for temporary stay under a non-immigrant "O" visa, for which a marriage certificate must be provided.
- "O-X" (Long Stay) visas may be issued to applicants aged 50 years or over for a retirement purpose in Thailand. This visa is available to foreigners from 14 countries: Japan, Australia, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Sweden, Switzerland, United Kingdom, Canada, and United States of America. The visa holder will be granted a five-year consecutive stay, which can be extended in Thailand for another five-year period subject to a qualification verification process with the Immigration Bureau once a year. It requires several requirements, such as a criminal background check certificate and health insurance policy (meeting the specific package/conditions required by the Ministry of Interior).
- **Diplomatic Visa (D).** Applicable to foreigners who enter Thailand on a diplomatic or consular mission or for the performance of duties with international organizations.
- **Official Visa (F).** For performance of official duties involving the Thai government.
- **Non-Quota Immigrant Visa.** Applicable to permanent residents wishing to leave Thailand and return within the year.
- **Courtesy Visa.** Applicable to diplomatic or official passport holders who enter Thailand for purposes other than official duties, and to ordinary passport holders who enter Thailand in response to an official Thai request.

Foreigners with non-immigrant one-year visas who have resided in Thailand consecutively for at least three years are eligible to apply for permanent residence (PR) permits in Thailand.

## Length of Stay

The permitted length of stay in Thailand varies depending on the type of visa.

Type of Visa	Permitted Length of Stay
Transit Visa	Not exceeding 30 days
Tourist Visa	Not exceeding 30 or 60 days
Non-Immigrant Visa	Not exceeding 90 days
Diplomatic, Official, and Courtesy Visa	As necessary

## Extension of Stay

A tourist visa may be extended for a maximum of 30 days, depending on an applicant's nationality. Extension applications for tourist and transit visas are processed for a government fee of THB 1,900. The following documents are needed to process an extension application:

- Passport or travel document.

- One photograph (2½ inches square).
- Statement of reasons for requesting an extension.

Non-immigrant “B” visas are usually extended for up to one year per time from the date of arrival. Exceptions to this standard rule exist under the investment law, which allows for longer periods of up to two years, depending on the recommendation of the authorities in charge and the size of the investment. Extensions for non-immigrant visas are processed for a government fee of THB 1,900. Numerous supporting corporate documents are needed.

## Overstaying

The allowable period of stay is always stamped or written in the passport upon arrival in Thailand. Every foreigner is responsible for checking his or her passport for the authorized length of stay.

Passport and visa control is a rigorous process in Thailand. Any foreigner who overstays in Thailand is subject to a fine of THB 500 for each day after the expiration date of the permitted length of stay, up to a maximum of THB 20,000. This fine may be paid at the Immigration Division or at the airport upon departure. If a foreign national is unable to pay the fine for overstaying a visa, he or she is subject to detention at the Immigration Detention Center under section 30 of the Penal Code.

Overstaying for 90 days or more is a serious offense punishable by deportation and ban on entering Thailand. The severity of the punishment depends on the length of the overstay:

Less than 90 days	THB 500/day fine (maximum THB 20,000)
More than 90 days	1 year ban from Thailand and THB 20,000 fine
More than 1 year	3 years ban from Thailand and THB 20,000 fine
More than 3 years	5 years ban from Thailand and THB 20,000 fine
More than 5 years	10 years ban from Thailand and THB 20,000 fine

## Change of Visa

For foreigners who did not apply for a non-immigrant visa prior to arriving in Thailand, the Thai government provides the opportunity to change visa status if additional time in Thailand is required. This procedure may be done within the country. An eligible foreigner may have entered Thailand with a tourist or transit visa granted by a Thai embassy or consulate abroad, or even entered the country under a 30-day visa exemption. The foreigner must apply to change the type of visa at least 21 days in advance of the expiry date of his or her period of stay. Certain documents are required, which vary depending on the purpose of the application for a non-immigrant visa. Foreigners who have already received permission to stay in Thailand under a non-immigrant visa and would like to change the purpose of staying in Thailand will be considered on a case-by-case basis and will have to fulfill the requirements under the new category applied for.

## Re-entry Permit

If a foreign national holding any kind of visa for staying in Thailand and wishes to leave and return to the country by the expiry date of his or her period of stay without having to apply for a new visa, a re-entry permit must be applied for prior to departure. A re-entry permit allows the foreigner to re-enter Thailand and use the time remaining on his or her period of stay. If a re-entry permit is not applied

for, the visa will be automatically canceled when the holder leaves Thailand, even though the visa has not expired.

To facilitate the travel schedules of foreigners, aside from the immigration offices throughout Thailand, a re-entry permit may be obtained at Suvarnabhumi and Don Mueang (Bangkok), Chiang Mai, Phuket, and Hat Yai, international airports, as well as other designated immigration checkpoints throughout the country. Suvarnabhumi (Bangkok) International Airport operates 24 hours, 7 days a week, while other checkpoints generally operate during normal office hours or some variation thereon. Applicants should check the opening hours in advance, as they may vary with little notice. The fee for a single re-entry is THB 1,000 (plus administration costs), while for multiple re-entries it is THB 3,800. It is recommended to request a multiple re-entry permit if one expects to be frequently traveling out of Thailand. This allows the permit holder more than one entry into Thailand during his or her travels. If the visa holder leaves Thailand before the expiration of his or her period of stay and wants to return, but does not have a re-entry permit, he or she must apply for a new visa from a Thai embassy or consulate abroad.

Exits may only be legally made at designated immigration control points. Crossing any border is an exit for immigration purposes, whether or not the exit point is controlled. Thus, forays into neighboring countries are deemed to be exits, legal or otherwise, and returning to Thailand from such trips is a new entry requiring a proper visa or re-entry permit.

### **90-day Notification**

A foreign national who stays in Thailand for a period of 90 consecutive days has a duty to report their current address to the Immigration Office. Upon failing to comply with this requirement, they will be subject to a fine of THB 2,000, which will increase if they are arrested. If they leave Thailand any time during the 90-day period the count of 90 days will restart upon their reentry into Thailand.

For information on **work permits**, see chapter 15 on **Employment**.

For further information on visas and immigration or assistance with obtaining permits, please contact Tilleke & Gibbins at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2054 5555.



# Protecting Intellectual Property in Thailand

Thailand's ongoing rapid development, along with the incumbent increased incoming technology transfer, raises important issues relating to intellectual property rights and their protection in the country.

Intellectual property is regarded as one of the most important and valuable assets of a business. The value of marks and names is based on the goodwill and reputation accumulated through the owner's use of them in his or her business until they become known and accepted by the general public to represent or be associated with certain goods or services.

Owners benefit from well-managed and well-protected intellectual property in two forms—direct commercial profit through their own use, and royalties and other fees through others' use with owners' permission. Consumers benefit by having access to goods with established, reliable, and well-known quality and safety standards.

This chapter discusses the four main types of intellectual property—marks, patents, copyrights, and trade secrets—and details registering and securing rights, guidelines for use of those rights, and dealing with infringement of each type of intellectual property.

## 16.1 Introduction to Intellectual Property

Intellectual property is generally classified into marks, patents, and copyrights.

- Marks (trademarks, service marks, certification marks, and collective marks) are used as a way to identify a unique product, service, or certification.
- Patents for inventions and product designs grant the patent holder an exclusive right to use an invention or method.
- Copyrights apply to literary works, artistic works, dramatic works, musical works, audiovisual works, cinematographic works, sound and video broadcasting works, and computer software.

In view of recent economic growth and escalating infringement and counterfeiting in Thailand, intellectual property owners should seek protection of their IP rights through both active use and legal protection. Protection of intellectual property is based on the following legislation:

- Trademark Act B.E. 2534 (1991)
- Trademark Act (No. 2) B.E. 2543 (2000), as amended by Trademark Act (No. 3) B.E. 2559 (2016)
- Patent Act B.E. 2522 (1979)
- Patent Act (No. 2) B.E. 2535 (1992)
- Patent Act (No. 3) B.E. 2542 (1999)
- Copyright Act B.E. 2521 (1978)

- Copyright Act B.E. 2537 (1994), as amended by Copyright Act B.E. 2558 (2015)
- Civil and Commercial Code
- Penal Code
- Consumer Protection Act

Trademarks and patents are legally protected by a system of registration, while copyright protection is automatic and does not require registration. The Department of Intellectual Property (DIP) maintains comprehensive records of copyright.

The DIP, Ministry of Commerce, is responsible for all matters relating to intellectual property (trademarks, service marks, or patent registrations; copyright recordation; etc.), as well as the enforcement of intellectual property rights laws.

## 16.2 Trademarks

Marks (including trademarks, service marks, certification marks, and collective marks) identify a unique product, service, or certification. When a trademark is registered, the proprietor of the trademark has the exclusive right to its use with the goods and/or services for which the registration was granted.

Thailand has followed the international standardized classification known as the Nice System since its adoption of the 10th edition of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks in 2013. The Thai Trademark Office follows the eleventh edition of the Nice Agreement, interpreted according to the trademark registrar's discretion. The Thai Trademark Act (No. 3) B.E. 2559 (2016) grants legal protection and registration of the following:

- Trademarks
- Service Marks
- Certification Marks
- Collective Marks
- Trademark and Service Mark Licenses

**A *mark* includes a photograph, drawing, invented picture, brand, name, word, text, letter, numeral, signature, group of colors, shape, three-dimensional object, sound, or any combination of these items.**

In addition to legal protection for trademarks registered in Thailand, the act also provides protection for well-known trademarks.

While it was possible in the past to record a well-known trademark by filing an application with the DIP, the recordation system for well-known marks was abolished in 2015. Despite this change, if a trademark was recorded as a well-known trademark under the previous regulations, a trademark registrar can still consider this recordation when examining new trademark applications.

## Accession to the Madrid Protocol

Thailand acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) on August 7, 2017, and the system came into effect on November 7, 2017. This system enables trademark owners in Thailand to file a single international application designating other member states to the protocol. Similarly, trademark owners in other member states are able to designate Thailand in international applications to seek protection in the

country. The decision as to whether or not a mark in such an international application is registrable in Thailand is still based on the amended Thai Trademark Act.

## Acquisition of Rights

According to the Trademark Act (No. 3) B.E. 2559 (2016), a trademark may be registered if:

- it is distinctive;
- it is not forbidden under the act; and
- it is not identical or similar to a trademark registered by another person.

## Distinctiveness Requirement

A distinctive trademark is one that enables the public or users of the goods or services under said trademark to recognize and understand that such goods or services are different from other goods or services. A distinctive trademark shall possess or consist of at least one of the following essential particulars:

- A personal name, a surname of a natural person that is not according to its ordinary signification a surname, the full name of a legal entity under relevant law, or a trade name, that is stylized and not directly descriptive of the nature or characteristics of the goods or services.
- A word or text that is not directly descriptive of the nature or characteristics of the goods or services and is not a geographical name designated by the minister by notification.
- A newly-invented word.
- A stylized letter or numeral.
- A combination of colors represented in a stylized manner.
- The signature of the applicant or the previous owner of the applicant's business, or the signature of another person, with his/her permission.
- A representation of the applicant, or of another person, with his or her permission, or, if the person is deceased, with permission of his or her ascendant(s), descendant(s), and spouse, if any.
- A device.
- An image that is not directly descriptive of the characteristics of the goods or services, and does not represent a map or a geographical location designated by the relevant minister by notification.
- A figure or shape that is not an inherent feature of the goods or services, is not necessary for the technical operation of the goods or services, or does not add value to the goods or services.
- A sound that is not directly descriptive of the nature or characteristics of the goods or services, is not an inherent sound of the goods or services, or is not the sound that the goods or services make when they are used.
- A trademark that does not contain any of the above elements can be deemed distinctive if it is used as a trademark on goods or services that are widely sold, distributed, or advertised under the rules and regulations prescribed by the minister of commerce and there is proof that the rules and regulations have been complied with.

A trademark that possesses or consists of any of the following particulars is not registrable:

- Royal or official arms or crests, royal seals, official seals, the royal Chakri seal, emblems and insignia of royal orders and decorations, position seals, emblems of ministries, bureaus, departments, or emblems of provinces.
- Flags of Thailand, royal standards, or official flags.
- Royal names, royal signatures, royal monograms, or royal dynasties.
- Photographs or portraits of the king, queen, or heirs.
- Names, words, text, or emblems that represent the king, queen, royal descendants, or heirs.
- National flags or national emblems of foreign countries, flags and emblems of international organizations, seals of heads of foreign countries, official emblems and marks of quality assurance on goods of foreign countries or international organizations, or names and initials or acronyms of foreign countries or international organizations, unless authorized by the person in charge of foreign affairs of such foreign countries or international organizations.
- Official emblems, emblems of the Red Cross, or the appellation "Red Cross" or "Geneva Cross."
- A trademark that is similar to any of the seven categories listed above.
- A mark identical or similar to the representation of a medal, diploma, or certificate or any other mark awarded at an exhibition or competition held by the Thai government, a Thai government agency, a Thai state enterprise, a foreign government, or an international organization, unless such medal, diploma, certificate, or mark has actually been awarded to the applicant for goods bearing its representation, and it is used as a part of his or her trademark, and provided that the calendar year of award is indicated.
- A mark that is contrary to public order, morality, or public policy.
- A mark that, according to criteria prescribed by the minister, is identical or so similar to a well-known trademark that it confuses or deceives the public as to the proprietor or the origin of the goods or services bearing the mark, regardless of whether or not the trademark has been registered.
- A geographical indication that is protected under related laws.
- Other trademarks prescribed by the relevant minister.

### **Application for Trademark Registration**

A trademark (service mark, certification mark, and collective mark) application must:

- be completed on an official form in the Thai language, with specimens of the mark attached;
- include the class of goods/services intended to be protected;
- be filed along with a priority claim form (if priority is to be claimed);
- be filed by the proprietor or his or her agent under a power of attorney, who must have a fixed place of business in Thailand or a contact address at which they can be contacted by the Trademark Registrar; and
- be filed with the DIP.

All documents and trademarks that are not in the Thai language must be translated into Thai. Word marks can be registered, but the meaning and pronunciation in Thai shall be stated in the application. A single notarized power of attorney is sufficient for all applications having the same owner.

Under the current practice, both single-class and multiple-class applications may be filed.

## First Action Fast-Track Examination Programs

There are currently two parallel First Action Fast-Track trademark examination programs. The first program expedites the issuance of a first office action for qualifying trademarks in Thailand to within six months from the date of filing the application, at no additional cost. To benefit from this expedited process, applications must comply with all of the fast-track conditions specified in the DIP notification:

- The total number of goods or services must not exceed 50 items.
- The description of goods or services should follow the DIP's suggested description manual.
- No amendment (such as recordal of name or address change), recordal of assignment or inheritance, or request to prove acquired distinctiveness through use can be made in the application.

The second program expedites the issuance of a first office action for qualifying trademarks in Thailand to within four months from the date of filing the application, with additional requirements to be met. To be eligible for this new system, the application must strictly comply with the following requirements:

- The application must be submitted through the e-filing system;
- It must be a single-class application that contains no more than 10 goods or services;
- The specification of goods or services must follow the DIP's suggested description manual;
- Any amendment, recordal of trademark assignment or inheritance of trademark rights, or request to prove acquired distinctiveness through use cannot be made upon or after filing;
- The application must include a document proving the applicant's urgent need to use the trademark in Thailand;
- The applicant must provide a search report on similar or identical prior trademarks.

After the trademark application is filed, if the trademark registrar finds that the proposed trademark:

- is distinctive;
- is not prohibited;
- is not identical or similar to another trademark already registered by another proprietor;
- does not confuse or deceive the public as to the proprietorship or origin of the goods or services; and
- meets criteria for registration;

The registrar will advertise the mark and the details of the application in the *Trademark Gazette*, which is published in Thai. If there is no objection within 60 days of publication, the mark will be registered (subject to payment of the registration fee).

## Competing Applications: Priority Rights

If several persons have applied for registration of identical or closely similar marks for goods or services in the same or different classes, but which are, in the registrar's opinion, of the same character so as to confuse the public, the first applicant has the priority right.

An applicant or challenger not satisfied with the registrar's decision can, in certain circumstances, file an appeal with the Board of Trademarks within 60 days of receipt of the registrar's notice. If the applicant or challenger in either an appeal petition or an opposition is not satisfied with the Board of Trademarks' decision, the applicant or challenger can file a lawsuit with the Intellectual Property and

International Trade Court (IP&IT Court) within 90 days of receipt of the board's decision. The losing party at the IP&IT Court can further bring the case to the Court of Appeal for Specialized Cases within 30 days of the reading of the judgment. In civil cases, judgments of the Specialized Appeal Court will be deemed final. However, any party who disagrees with a judgment may ask the Supreme Court for permission to appeal the decision within 30 days of the reading of the judgment. The Supreme Court may grant permission if it finds that there is an issue(s) in the appeal that sets out a significant matter worthy of clarification.

The act also grants a priority right to trademark applications filed in Thailand within six months from the date of the first application in a foreign country if the applicant is a national (or is domiciled or has an actual operating industrial or commercial enterprise) in a country:

- that is a member country of an international convention or treaty for the protection of trademarks of which Thailand is also a member; or
- where a reciprocal gesture is made for Thai nationals.

Under the Trademark Act, a court action to cancel the registration of any mark on the grounds of a better right must be brought within five years from the date of registration.

## **Trademark Rights**

When a trademark is registered, the proprietor of the trademark shall have the exclusive right to its use with the goods or services for which registration was granted.

The date on which the trademark registration application was filed or deemed to be filed will be its date of registration. A registered trademark is valid for a period of ten years from the filing date of the application. The validity term does not include the period of time involved in legal proceedings. An application for renewal can be made within three months before the registration expires.

A renewal application may be filed within a six-month period from the expiry date by paying a 20% surcharge of the government fee.

On March 1, 2021, the renewal process for qualifying trademarks in Thailand got significantly faster, with the examination of renewal applications and grant of a certificate of renewal now able to be completed within 45 minutes of a renewal application being filed. The expedited process incurs no additional official fee.

To benefit from this, renewal applications must comply with all of the fast-track conditions specified in the relevant notification from the DIP:

- The total number of goods or services must not exceed 30 items.
- No changes may have been made to the particulars of the registration.
- The renewal application must be filed at the DIP by either the owner or an appointed attorney. In the latter case, the power of attorney must authorize the attorney to collect the certificate on the owner's behalf.
- Fast-track examination must be requested when the renewal application is submitted.

Rights to trademark applications or registered trademarks are transferable and inheritable.

Any interested person or the registrar may request that the Board of Trademarks or the IP&IT Court, depending on the circumstances, cancel the registration of a trademark on various grounds (e.g., nondistinctiveness, contrary to public policy or good morals, nonuse, and better right).

## Trademark Licensing

The owner of a registered trademark may grant a license to other persons for any or all of the goods or services for which it is registered. A trademark license agreement must be in writing and registered with the DIP.

Applications for registration of a trademark license agreement must be in accordance with the rules and procedures of Ministerial Regulation No. 1, which prescribes the required documents and lays out the process for filing applications. Under current Thai law, a trademark license agreement must be undertaken in writing, and must at least identify:

- the conditions and terms of the agreement between a trademark proprietor and a person applying to be an authorized licensee, which enables the former to control the quality of the goods or services;
- the goods or services for which the licensed trademark is to be used; and
- a provision specifying that only an authorized licensee has the right to use the trademark, or that the proprietor authorizes any person, in addition to the authorized licensee, to use it.

According to the current law, a license agreement will not be extinguished as a result of a transfer or inheritance of the licensed trademark, unless agreed otherwise in the license agreement.

For information on trademark licensing in franchise agreements, please see section 16.6 on [Franchising](#).

### Key Points on Trademarks:

- Marks (including trademarks, service marks, certification marks, and collective marks) are used as a way to identify a unique product, service, or certification.
- When a trademark is registered, the owner has the exclusive right to use the mark with the goods and/or services for which the registration was granted.
- A trademark may be registered if it is distinctive, not forbidden under the Trademark Act, and not identical/similar to other registered trademarks.

For further information on trademark registration, please contact the Tilleke & Gibbins Intellectual Property team at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## Infringement of Marks

The Trademark Act provides penalties for counterfeiting and stipulates that a proprietor of a trademark, service mark, certification mark, or collective mark whose rights are infringed may petition for a court injunction instructing the infringer to cease and desist. In practice, a petition for injunction is filed after an action against mark infringement has been initiated.



## Criminal Action: Infringement of Trademarks

The legal framework for the protection of marks in Thailand is set out in the Trademark Act B.E. 2534 (1991), as amended by the Trademark Act (No. 2) B.E. 2543 (2000) and (No. 3) B.E. 2559 (2016), the Penal Code, and the Civil and Commercial Code. The prohibitions on activity under the Trademark Act are directed at those who forge, imitate, import, sell, or offer for sale any counterfeit goods, refill infringing products in genuine packaging, or grant any service using, without permission, any registered trademark, service mark, collective mark, or certification mark.

A criminal action is initiated when the owner of a mark or his or her authorized agent files a complaint with the police, followed by a police raid. After a court action on trademark infringement has been initiated, a trademark proprietor can file a petition directly with the court requesting an injunction against forgeries or imitations of his or her mark.

The most common offenses for infringement of trademarks are forgery of a trademark and imitation of a mark:

- Penalties for forgery of a trademark registered in Thailand or refilling infringing products in the genuine packaging can include fines of up to THB 400,000 and prison sentences of up to four years (usually reduced or suspended for first-time offenders). A trademark owner may bring criminal charges against an infringer by either submitting a complaint directly to the court, or more commonly, lodging a complaint with police authorities.
- Penalties for imitation of a mark registered in Thailand can include fines of up to THB 200,000 and prison sentences of up to two years. Infringement of foreign-registered marks can also lead to criminal sanctions, but the fines are dramatically less and have little deterrent effect.

Directors or managers of a juristic person (a company, registered ordinary partnership, association, foundation, or limited partnership) are regarded as having jointly committed the offense with the juristic person, unless it can be proven that the offense was committed without their knowledge or consent.

Foreign trademarks not registered in Thailand but already registered outside of Thailand are protected under sections 273–275 of the Penal Code. Currently, the maximum penalties imposed are a fine of THB 60,000, imprisonment for three years, or both, for forging a trademark; or a fine of THB 20,000, imprisonment of one year, for both, for imitating a trademark.

## Civil Action: Marks Violation

The owner of a registered trademark that has been infringed may file an action claiming compensation from the infringer under sections 420 and 421 of the Civil and Commercial Code.

“Generally, a trademark owner must be prepared to commit significant resources for any truly effective sustained campaign. Costs will include special agents’ or investigators’ fees for conducting raids, legal incentives and rewards given and accepted by the police and/or other officials (authorized under Thai law Title 38, Incentives and Rewards, Chapter 1, General Principles Concerning Payments and Rewards, and is contained in the regulations of the Police Internal Manual), rewards for informers, and legal fees.”

The owner of a trademark not yet registered in Thailand but registered elsewhere can receive protection under the Trademark Act B.E. 2534 (1991), section 46, under “passing off.” For monetary recovery, proof of damages is required.

## Unregistered Trademarks

The owner of an unregistered trademark is not entitled to institute any legal proceedings in court to prevent use or to recover damages for infringement. Certain protection for the owner of an unregistered trademark is afforded by the Penal Code, which imposes penalties on use of name, figure, artificial mark, or wording in carrying on the trade of another person or causing the same to appear on merchandise, packing, covering, advertisements, price lists, commercial letters, or the like, in order to make the public believe that it is the merchandise or trade of that person.

Under the Civil and Commercial Code, the owner of an unregistered trademark has the right to institute a case in the IP&IT Court against any person for passing off goods as those of the true proprietor.

For further information on commencing a civil or criminal case, please see chapter 17 on [Litigation and Bankruptcy in Thailand](#).

### Key Points on Trademark Enforcement:

- Mark should be registered in Thailand in order to have the full range of protection provided for in the Trademark Act.
- The owner of a mark whose rights are infringed may petition for a court injunction instructing the infringer to cease and desist.
- In practice, a petition for injunction is filed after an action against mark infringement has been initiated.
- A criminal action is initiated when a mark owner or his or her authorized agent files a complaint with the police, followed by a police raid.
- A civil action is initiated by an owner of an infringed registered trademark by filing an action claiming compensation from the infringer under the Civil and Commercial Code.
- Owners of trademarks not yet registered in Thailand but registered elsewhere can receive protection under the section on “passing off” of the Trademark Act. Proof of damages is required for monetary recovery.

For further information on trademark enforcement, please contact the Tilleke & Gibbins Intellectual Property team at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## 16.3 Patents

A patent provides the patent owner with the exclusive right to exploit a particular design or invention, which includes a product or process. Under the Patent Act B.E. 2522 (1979), as amended, applicants may file for patent protection of inventions and designs. Thailand has its own patentability criteria and procedures for filing patent applications.

Pharmaceutical products or processes are currently patentable if they do not involve methods of diagnosing or treating diseases. Naturally occurring microorganisms and their components, animals, plants, and their extracts are not patentable. To date, Thailand has not granted patents for business methods, algorithms, or scientific theories.

Computer programs are also not regarded as patentable subject matter. However, inventions that engage the use of computer programs or AI-related processes may be allowed protection if they meet certain requirements.

## Acquisition of Patent Rights

Patent rights can be acquired through several different application routes. The foremost procedure is filing an international PCT application under the Patent Cooperation Treaty. Doing so provides some international recognition to the application and a preliminary opinion on whether its subject matter is patentable. Patents can also be obtained by filing a national application with the DIP through the Paris Convention route.

### Patent Cooperation Treaty

Thailand is a contracting state of the Patent Cooperation Treaty (PCT). The PCT has established an international procedure for filing patent applications for all countries that are members of the treaty. An international PCT application does not offer universal or worldwide protection for a claimed invention. The international PCT application must later be filed in Thailand for any resulting patent to have domestic recognition. This stage is known as “entering the national phase,” and the related application is termed the “PCT National Phase application”.

### PCT National Phase Application in Thailand

The required information and documents for filing a PCT National Phase application in Thailand are:

1. The details of the international PCT application.
2. A copy of the English or English translation of the PCT specification, as originally filed.
3. The Thai translation of the specification, including claims, abstract, and drawings. Ideally, the Thai translation should be filed on the date that the international PCT application enters into the Thai national phase.
4. Signed and notarized power of attorney. Legalization is not required unless the applicant is Taiwanese.
5. If the applicant in the national phase is different from the applicant in the international PCT application, then a deed of assignment is required. However, the Thai Patent Office does not require the deed of assignment if the applicant(s) and inventor(s) in the international PCT application and the Thai national phase application are the same entity.
6. PCT Request (PCT/RO/101)
7. PCT/IB/306 (if any)
8. PCT/ISA/210 (International Search Report), PCT/ISA/237 (Written Opinion)
9. WIPO publication of the international PCT application
10. International Application Status Report



After the National Phase application has been filed in Thailand, the Thai Examiner will conduct an examination of the application according to the procedures provided under the Thai Patent Act B.E. 2522 (1979), as amended by the Patent Act (No. 3) B.E. 2542 (1999).

## Patents under the Paris Convention

Thailand is also a member of the Paris Convention for the Protection of Industrial Property, the World Trade Organization, and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). A patent application filed in Thailand under the Paris Convention poses an alternative pathway to the PCT National Phase application.

Choosing the Paris Convention route allows patent or petty patent applicants who are nationals of non-PCT member states or have not initially filed an international PCT application to receive the same protection accorded to Thai nationals upon grant of a patent or petty patent. One of the key differences between a Paris Convention application and a PCT National Phase application is the length of time allowed for claiming priority rights.

### Priority Rights

A priority right, which is provided under the Paris Convention or the PCT route, is a time-limited right starting from the earliest filing date of a patent application in another country. The priority right allows an applicant to file subsequent applications in other member countries for the same invention or design, effective as of the filing date of the first application.

Under the Paris Convention, priority rights can be claimed in relation to an invention if the application is filed in Thailand within 12 months of the first filing date in a foreign country. For PCT National Phase applications, priority right can be claimed within 30 months of either the PCT application filing date or the filing date of the first patent application in another country. Under the Paris Convention, priority rights can be claimed in relation to a design if the application is filed in Thailand within 6 months from the first filing date in a foreign country.

### Invention Patents

To be patentable, inventions must be:

- new;
- non-obvious (i.e., the invention must have an inventive step); and
- industrially applicable.

An invention is “new” if it does not form part of the “state of the art,” which includes the following:

- Inventions that were widely known or used by others in the country prior to the date of the patent application.
- Inventions with subject matter described in a document or printed publication, displayed, or otherwise disclosed to the public in Thailand or a foreign country prior to the date of the patent application. An exception to this is when a disclosure was made because the subject matter was obtained unlawfully or was made by an inventor through the display of the invention at an international or official exhibition, if done within 12 months before the filing of the patent application.
- Inventions already patented or petty patented in Thailand or a foreign country before the date of the Thai patent application.

- Inventions for which a patent or a petty patent has already been filed in a foreign country more than 18 months before the date of the Thai patent application, and for which a patent or petty patent has not yet been granted.
- Inventions for which a patent or a petty patent application has already been filed within or outside Thailand, and the application has been published before the date of filing the application in Thailand.

## Petty Patents

Inventions that are new and capable of industrial application but lack an inventive step may be protected under petty patents. Petty patent holders receive the same exclusive right to exploit and license their invention as ordinary patent holders.

Applicants may not apply for both a patent and a petty patent for the same invention. Applicants in either case can, however, change the type of right applied for (i.e., from petty patent to patent or vice versa) prior to registration of the invention and issuance of the petty patent or publication of the patent application.

- No substantive examination is required for petty patents. Any interested person may request a substantive examination within one year of the registration date of the petty patent.

## Excluded Inventions

The following inventions do not qualify for patents or petty patents:

- Naturally occurring microorganisms and their components, animals or plants, or extracts from animals or plants;
- Scientific or mathematical rules or theories;
- Computer programs;
- Methods for diagnosis, cure, or treatment of human or animal diseases; and
- Inventions contrary to public order, good morals, health, or welfare

## Design Patents

A patent may be granted under the Thai Patent Act for new product designs capable of industrial production, including handicrafts. Novelty is required for a design to be patentable (i.e. it must not have been disclosed anywhere prior to the date of filing a patent application in Thailand).

Designs that are contrary to public policy or good morals or that are prescribed by royal decree are not patentable.

### PRODUCT DESIGN

means any form or composition of lines or colors that gives a special appearance to a product.

## Eligible Patent Applicants

The right to apply for a patent or petty patent and design protection extends to:

- Thai nationals or juristic persons whose principal office is located in Thailand;
- Nationals of countries that have reciprocal patent agreements with Thailand;

- Nationals of countries that allow Thai nationals or juristic persons with a principal office in Thailand to apply for patents;
- Nationals of countries that are party to international treaties or conventions for patent protection to which Thailand is also a party; and,
- Foreign applicants who are domiciled or have an ongoing and functioning industrial or commercial enterprise in either Thailand or a country that is a member of any international treaty or convention for patent protection to which Thailand is a party.

## **Application Process for Invention and Design Patents**

Once an application is submitted for either an invention patent or a product design patent, it will be assessed for compliance with the abovementioned requirements. Patent applications are then published under an early publication system (although it is possible to defer publication upon request). Any interested party may object to the granting of the patent within 90 days of the date of publication.

A substantive examination of the patent application will then be carried out to assess the novelty, non-obviousness and industrial applicability of the invention, while designs will only be assessed for novelty and industrial applicability. In the case of invention patents, the substantive examination is not automatic, but must be requested within five years from the publication date.

Following the successful passing of a substantive examination, an invention or design patent will be granted and issued. The patent holder will then have legally protected exclusive use of the invention or design.

## **Extent of Patent Rights**

The term of an invention patent in Thailand is 20 years from the filing date for Paris Convention applications or from the filing date of PCT applications for the PCT National Phase entries. Design patents have shorter terms at 10 years from their respective Thai filing dates. The terms for both types of patents are not renewable. For a petty patent, the term of protection is six years from the application's filing date, which can be extended twice for two years with each extension.

## **Termination of Protection**

The director-general may ask the Board of Patents to revoke a patent if:

1. Two years after issuance of a compulsory license, the patentee or licensee has not manufactured the product or applied the process under the patent in the country, or the product is not being sold or imported for sale, or is being sold at an unreasonable price; or
2. The patentee has licensed other persons to exercise the rights in the patent without conforming to prescribed procedures.

## **Patent Licensing Agreements**

The patent holder may authorize any other person by granting a license to exercise his rights or may assign his patent to any other person. In granting a license, however, the patent holder must not:

- impose upon the licensee any condition, restriction, or royalty term that tends to unfairly limit competition; or
- require the licensee to pay a royalty for use of a patented invention after the patent has expired.

Conditions, restrictions, or royalty terms that are contrary to the above are considered null and void. The patent license agreement and the assignment of a patent must be in writing and registered in compliance with the requirements and procedures prescribed by Thai ministerial regulations.

## Compulsory Licenses

A compulsory license can be issued by the government authority allowing a person other than the patent holder to utilize the patented invention without the patent holder's consent. Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) authorizes the use of the compulsory licensing "in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use."

An application for a compulsory license may be made under the following circumstances:

1. If the patentee or petty patentee has not enforced his or her lawful rights three years from the patent or petty patent being granted, or four years from the application date, whichever is later.
2. If the exercise of the patent rights of one party (the junior patentee) infringes on another patentee (the senior patentee), provided that:
  - a. the junior patentee's invention is a substantial technological advancement that is beneficial to the economy, compared to the invention under the patent for which the license is being sought;
  - b. the senior patentee receives a cross-license to exploit the junior patentee's patent rights; and
  - c. the junior patentee shall not assign a legal license to anyone, unless it is an assignment together with his or her own patent.
3. A government ministry or department may exploit an exclusive right by itself or by designating another person in a patent for the benefit of public utilities or national defense; the preservation or acquisition of natural resources or the environment; the prevention of severe shortages of food, medicine, or other necessities for living; or other public interests.

### Key Points on Patent Rights:

- Patents provide the exclusive right to exploit a particular design or invention, including selling the relevant products or possessing such products for the purpose of selling.
- The non-renewable term of an invention patent is 20 years from the filing date for Paris Convention applications or from the filing date of PCT applications for the PCT National Phase entries in Thailand.
- The term of protection for a petty patent is six years from the application's filing date, which can be extended twice for two years with each extension.
- The director-general may ask the Board of Patents to revoke a patent if, two years after issuance of a compulsory license, the patentee or licensee has not manufactured the product or applied the process under the patent within Thailand, the product is not being sold or imported for sale, or the product is being sold at an unreasonable price.
- Patent licensing agreements must not unfairly limit competition or require the licensee to pay a royalty for use of a patented invention after the patent has expired.
- A person can receive a right to a patent without consent of the patentee in the form of a compulsory license, authorized only "in the case of national emergency or other circumstances of extreme urgency or in cases of public noncommercial use."

For further information on patent registration and licensing, please contact the Tilleke & Gibbins intellectual property team at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## Infringement of Patent Rights

The patentee or petty patentee of an invention is granted an exclusive right to engage in the production or utilization of processes that have been patented or petty patented during the period of validity. The exclusive rights of the patentee or petty patentee of an invention include selling, offering for sale, possessing for the purpose of selling, and importing the patented or petty patented product or product produced under the patented or petty patented process.

The following acts are not considered to be infringement of a patent or a petty patent for inventions:

- Any act for the purpose of study, research, experimentation or analysis, provided that it does not unreasonably conflict with a normal exploitation of the patent or petty patent and does not unreasonably prejudice the legitimate interests of the patent or petty patent owner.
- Production of the patented or petty patented product or use of the patented or petty patented process, provided that the use, production, or acquisition of production equipment occurred prior to the filing of the patent or petty patent application in Thailand in good faith and without knowing or having reasonable cause to know about the patent or petty patent application.
- Preparation of a drug specifically to fill a doctor's prescription by a professional pharmacist or medical practitioner, including any act done to such pharmaceutical product.
- Any act concerning an application for drug registration, with the applicant intending to produce, distribute or import the patented or petty patented pharmaceutical product after the expiration of the patent or petty patent term.
- Use of a patented or petty patented device in the body or other accessories of a maritime vessel of a country that is party to an international convention or agreement on patent protection to which Thailand is also a party, when such a vessel temporarily or accidentally enters the waters of Thailand, provided that such a device is used exclusively for the needs of the vessel.
- Use of a patented or petty patented device in the construction or other accessories of an aircraft or a land vehicle of a country that is party to an international convention or agreement on patent protection to which Thailand is also a party, when such aircraft or land vehicle temporarily or accidentally enters Thailand.
- Use, sale, possessing for sale, offering for sale, or importation of a patented or petty patented product when it has been produced or sold with the consent of the patentee or petty patentee.

No other person except the patentee has the right to use the patented design in manufacturing, selling, possessing for sale, offering for sale, or importing a product that embodies the patented design, except in the use of the design for the purpose of study or research.

Infringement of exclusivity may be enforced through either civil or criminal action.

Any act conducted before a patent or petty patent is granted is not considered an infringement unless:

- a. the act was against an invention or design under a pending patent application that has been published in the official *Patent Gazette*; and
- b. the person so acting knew of the patent or petty patent application, or had been informed in writing thereof.

A complaint for related damages may be filed only after the patent or petty patent is granted.



## Patent Injunctions and Patent Infringement Proceedings

Both civil and criminal action may be taken against infringers of a Thai-registered patent or petty patent.

Criminal action is initiated with the filing of a criminal complaint with the police, followed by a police raid (based on a lawful search warrant), arrest of the infringer, and seizure of the infringing goods.

Alternatively, a patentee may initiate a private criminal action against the infringing by filing a complaint directly with the court, which would then hold a pretrial hearing to determine whether the complaint has grounds before accepting it for further prosecution. Potential penalties in the case of invention or design patents are imprisonment for up to two years, a fine of up to THB 400,000, or both; in the case of petty patents penalties can include imprisonment for up to one year, a fine of up to THB 200,000, or both.

If an infringer violates the rights of a patentee or petty patentee, the patentee or petty patentee may file a petition with the court to immediately stop the infringement. In practice, this may be done after a court action against patent or petty patent infringement has been initiated.

In a civil process patent or petty patent infringement case, the burden of proof is on the defendant provided that the patentee or petty patentee can prove that the defendant's product is identical or similar to the product derived from the process under the patent or petty patent. In addition, the court has the power to order the infringer to make compensation for actual damages, loss of profit, and necessary expenses incurred in enforcing the right of the patentee or petty patentee, and to confiscate or destroy all infringing goods possessed by the infringer to prevent resale.

For further information on commencing a civil or criminal case, please see chapter 17 on [Litigation and Bankruptcy in Thailand](#).

### Key Points on Patent Enforcement:

- A patentee has the exclusive right to engage in the production or utilization of processes that have been patented during the patent's period of validity.
- Infringement of exclusivity can be enforced through civil or criminal actions.
- Criminal action is initiated with the filing of a criminal complaint with the police, followed by a police raid, arrest of the infringer, and seizure of the infringing goods.
- Patent holders may file a petition with the court to immediately stop infringement if an infringer violates a patent holder's right.
- In a civil process patent infringement case, the burden of proof is on the defendant. The court has the power to order the infringer to pay compensation for actual damages, loss of profit, and necessary expenses incurred in enforcing the patent holder's rights, and to confiscate or destroy all infringing goods possessed by the infringer to prevent resale.

For further information on patent enforcement, please contact the Tilleke & Gibbins Intellectual Property team on +66 2056 5555.

## 16.4 Copyrights

Copyright provides an associated bundle of exclusive rights to the creator of a copyright work. Copyright is governed by the Copyright Act B.E. 2537 (1994), as amended most recently by the Copyright Act (No. 5) B.E. 2565 (2022).

### Acquisition of Rights

Copyright protection arises automatically upon creation of a qualifying work. For effective enforcement, authors may undertake voluntary recordal of their copyright with the DIP. A record of copyright does not conclusively prove ownership or priority, but it may be used as evidence in court as well as for submitting infringement reports to online platforms. It is also recommended to attach a copyright notice to the copyright work, but this is not required to obtain copyright protections.

To record a copyright with the DIP, applicants should submit an application form; a current, notarized power of attorney (mandatory for foreign applicants); and one original or copy of the copyrighted work. All documents must be completed in the Thai language.

### Types of Works

Only original works are protected by copyright. Original works may be protected if they meet the Copyright Act's definitions for the following eight categories:

- Literary works (including computer program source code)
- Artistic works
- Dramatic works
- Musical works
- Audiovisual works
- Cinematographic works
- Sound recordings
- Sound and video broadcasting works
- Any other works of a literary, scientific, or artistic nature

Copyright protection does not extend to ideas, steps, processes or systems, methods of use or operation, concepts, principles, discoveries, or scientific or mathematical theories. No copyright can be claimed for daily news, constitutions, regulations, by-laws, judgments, orders, or government decisions based on the public's underlying right to receive information.

A copyright is inherent in every original work if:

- At the time of the work's creation, or when it was unpublished, the author was a Thai citizen or a resident of Thailand, or a national or resident of a member country of the Berne Convention or the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); or
- The work was first published within Thailand or a member country of the Berne Convention or TRIPS, or else a nonmember country of the Berne Convention or TRIPS, and subsequently published in Thailand or a member country of the Berne Convention or TRIPS within 30 days of first publication.

Thailand is not a signatory to the Rome Convention of 1961 or the Universal Copyright Convention. Therefore, only persons with unpublished works who are nationals, subjects, or residents of a country party to the Berne Convention, and those whose works were first published in such a member country, may claim copyright protection in Thailand, provided certain conditions are met.

## Rights of Copyright Owners

A copyright owner has the exclusive right to reproduce, adapt, communicate to the public, rent, assign the copyright work, or license such rights to others.

The author of the work is the inherent owner of the copyright, although certain exceptions exist in the context of employment and other commissioning relationships. When the work is created by an officer or employee under hire of service, the officer or employee is entitled to the copyright unless otherwise agreed in writing. When a work is created by a contractor for a commission, the employer is entitled to the copyright unless otherwise agreed between the parties. The author will generally possess an exclusive right to take action against unauthorized users of the work, including unauthorized reproduction, adaptation, or public dissemination.

In addition to copyright protection, the author is entitled to moral rights, which are the right to be identified as author of the work and the right to prohibit another person from distorting, abridging, adapting, or doing anything that would cause damage to the author's reputation or image.

The 2015 amendment to the Copyright Act formally acknowledged the first-sale doctrine's applicability to copyrighted works, which means that an owner's rights end after a legitimate sale of the work.

## Duration of Copyright

The term of copyright protection depends on the type of creator and the type of copyrighted work. For instance:

- A copyrighted work **created by an individual** (whose name can be identified) has a term of copyright protection of 50 years from the death of the last surviving individual creator if the work is not an audiovisual work, film, sound recording, broadcasting work, or work of applied art, and it was not created by commissioning or under the control of a governmental agency.
- A copyrighted work **created by a juristic person** (whose name can be identified) has a term of copyright protection of 50 years from the creation of the its first publication. This applies when a company director creates a copyrighted work by himself or herself or when the creation of the copyrighted work is within the scope of the company's articles of association.
- A copyrighted work **created by both an individual and a juristic person** can be assumed to have a copyright protection term of 50 year from the death of the last surviving individual creator, though such works are not addressed explicitly in the Copyright Act.
- A copyrighted work created by an **unidentifiable individual or a juristic person** has a term of copyright protection of 50 years from the creation of the copyrighted work or its first publication.
- Copyrighted **audiovisual works, film, sound recordings, broadcasting works, and applied art** have a term of copyright protection of 50 years from the creation of the copyrighted work or after its first publication.

## Assignment and Licensing of Copyright

Copyright is transferable (assignable), provided it is made in writing and specifies a period of assignment. If no period is defined, the assignment is valid for ten years and then reverts to the original owner. In addition, the owner may grant a license to another person for reproduction, adaptation, public dissemination of its copyrighted work, or renting an original or copy of a computer program, audiovisual work, cinematographic work, and sound recording with or without conditions. Licenses may not contain conditions that restrict fair competition, as provided for in the Ministerial Regulations B.E. 2540 (1997) issued under the Copyright Act B.E. 2537 (1994).

## Performers' Rights

A performer holds exclusive rights to the sound and video broadcasting or the public dissemination of his or her live performance. Performers also have the exclusive right to authorize the making of a recording of their performance and the right to control the reproduction of a performance recording made without permission, or made for purposes other than those for which the performers gave their permission, or of that which falls under the exemptions to infringement of performers' rights. The performer is entitled to compensation if he or she is a resident or citizen of Thailand, or a substantial portion of the performance occurred in Thailand or a member country of the International Convention on Protection of Performers' Rights, of which Thailand is also a member. Performers' rights are protected for a term of 50 years from the last day of the calendar year of the performance or recording thereof.

The 2015 amendment to the Copyright Act recognized that a performer also has moral rights to identify himself or herself as the performer and to prevent a transferee, or any other person, from any modification of the performances that would cause damage to the performer's reputation or honor. This right continues after death and may be exercised by a performer's heirs for the term of protection.

Any assignment of performers' rights must be in writing and can be made either wholly or in part, except when through inheritance. If there is no period of time specified in the assignment contract, the assignment will be for a period of three years.

## DIP Fair-Use Guidelines

The DIP initiated a significant move to develop a knowledge-based system with intellectual property laws. Three fair-use guidelines were drafted to strike a balance between copyright owners' interests and the interests of the public. The three guidelines cover fair use in the areas of software, news reporting, and education. Despite the DIP's endorsement, these guidelines are not law, and have no binding effect. They can, however, be viewed as clarifying sections 32–35 of the Copyright Act, providing the general public with guidance on what qualifies as "fair use."

According to the guidelines (and as provided for in the Copyright Act), two general elements must be met in order for "use" to qualify as "fair use":

- The use must not conflict with the normal exploitation of the copyright work.
- The use must not unreasonably prejudice the legal rights of the owner.

In addition to these basic elements, for educational use, the DIP proposed in the guidelines that the following factors should be taken into consideration:

- The purpose of the use and whether the use is appropriate;

- The nature of the copyrighted work;
- The amount used—in general, the guideline suggests that using less than 10 percent of the copyright work is allowed; and
- The economic impact or effect on the value of the copyright work.

With respect to news reporting, the DIP proposed the following considerations:

- Whether the use is within the general course of news reporting through the mass media and contains an acknowledgment of copyright ownership;
- The nature of the copyrighted work;
- The amount used—in general, using less than 10 percent of the work is permissible; and
- The effect of the use on the potential market for or the value of the copyrighted work.

As for software, the DIP recommended an analysis focusing on the purpose and economic impact of the use and the terms of the licensing agreement in connection with the computer program. The DIP also suggested that different types of software should be analyzed differently. Commercial software should be treated strictly because most of the conditions would depend on the terms indicated in the licensing agreement. For shareware, trialware, and freeware, the DIP has provided guidelines to users as to what extent use should be deemed fair or unfair. For instance, the DIP suggested that multiple downloads of trialware after its expiration to avoid purchasing the software would be considered unfair. On the other hand, open source software is open to reverse engineering or development without prior consent or a licensing agreement. The DIP has proposed new draft guidelines to address these issues.

#### **Key Points on Copyright:**

- Copyright protects an owner's creation or works from infringement by actions such as unauthorized reproduction or public dissemination.
- Copyright does not have to be registered in order for protection to exist.
- Only original works under the following nine categories can be protected by copyright: literary works, artistic works, dramatic works, musical works, audiovisual works, cinematographic works, sound recordings, sound and video broadcasting works, and any other works of a literary, scientific, or artistic nature.
- A copyright owner has the exclusive right to reproduce, adapt, communicate to the public, rent, assign the copyright work, or license such rights to others.

For further information on copyrights, please contact  
the Tilleke & Gibbins Intellectual Property team on +66 2056 5555.

## **Infringement of Copyright or Performer's Rights**

Copyright infringement arises from a deliberate act of reproduction, adaptation, or public dissemination of all or part of a copyright work of another without permission, either directly or indirectly.

Infringement of performer's rights arises from a deliberate act of sound and video broadcasting or the public dissemination of a performer's live performance of another without permission.

The Thai Copyright Act was amended in 2015 to create additional liability (with exceptions) for any person who deletes or modifies the rights management information (RMI) of a copyrighted work with the knowledge that this deletion or modification would induce, cause, or facilitate infringement of a copyrighted work or a performer's right. Additional liability (with exceptions) is also created for any person who communicates to the public or imports any copyrighted work for distribution in Thailand with the knowledge that the RMI of the work has been deleted or modified.

The amended act establishes that any person who circumvents the technological prevention measures (TPM) of software or provides circumvention services may be held liable for infringement (with exceptions) if the circumvention was performed with the knowledge that it would induce or cause infringement of a copyrighted work or a performer's rights. The amendments also create liability for recording the video or sound of movies in a theater without authorization.

In cases of online copyright infringement, the amended Copyright Act provides copyright owners with a procedure to obtain a preliminary injunction against an internet service provider (ISP) that is hosting infringing content. To obtain an injunction, the copyright owner must provide sufficient details to the court to demonstrate that it is the owner of the work, the work is being infringed upon in the ISP's system, and a preliminary injunction is necessary to prevent further harm. The copyright owner must follow up the request for injunction with legal action against the infringer within the time period specified by the court.

Use of copyrighted material—provided it neither conflicts with the normal exploitation of the work nor unreasonably prejudices the owner's rights—for the following purposes is not considered infringement:

- Use for research, study, teaching, examination, or for personal or family benefit; for comment or for reporting current events through mass media with acknowledgment of the copyright owner of the work; or for proceedings or consideration of government officials.
- Reasonable use (i.e., reasonable recitation of, copying, or reference to part of a copyrighted work) with acknowledgment of the ownership of such work. Reasonable copying for use in a library or for the purpose of research or study and not for profit-making purposes.
- Use of a computer program for research, study, or for the benefit of the owner of the reproduction of the computer program; for comment or for reporting current events through mass media with acknowledgment of the copyright owner of the computer program; for proceedings or consideration of government officials; for adaptation of the computer program when necessary for its use; or for making backup copies for reference or for public research and not for profit-making purposes.
- Reasonable dissemination to the public of dramatic or musical works by associations, foundations, or charitable organizations when not done for profit.
- Reproducing a copyrighted work in conducting government affairs by a government official authorized by law or as directed by government officials, if such work is under official possession.

Additionally, the following uses are not considered copyright infringement:

- Use for drawing, painting, constructing, engraving, sculpting, carving, lithographing, photographing, filming, video broadcasting, or any similar acts with regard to any artistic work displayed in a public place (excluding architectural work).

- Use for acts as described immediately above (except construction work) carried out in relation to a work of architecture.
- Restoration of a building that holds an architectural copyright to its previous form.
- Use of legally acquired copyrighted material for disabled persons.

The amended Copyright Act provides an exception to infringement for any reproduction of a copyright work that is required in order to allow a computer system to function normally.

## **Infringement Proceedings**

The Central Intellectual Property and International Trade Court (IP&IT Court) has exclusive jurisdiction in both civil and criminal cases involving copyright or performer's rights infringement disputes throughout Thailand.

For a civil action, the statute of limitations for copyright and performer's rights infringement under the Copyright Act is three years from the date when the rights owner becomes aware of the infringement and the identity of the infringer. An action for copyright or performer's rights infringement cannot be initiated after 10 years from the date of infringement. A criminal complaint must be made within three months from the offense and the infringer becoming known to the copyright or performer's rights owner, or else the prosecution will be precluded by prescription.

Criminal action may be taken against copyright or performer's rights infringement under the penalty provisions of the Copyright Act. Penalties include imprisonment for up to four years, a fine of up to THB 800,000, or both. Double penalties may be imposed upon any person who commits a second copyright or performer's rights infringement offense within five years of being released from punishment for the first offense, or when there is clear evidence that infringement was deliberate or was intended to make a work widely accessible to the public.

In addition, infringement of RMI or TPM may result in a fine of up to THB 100,000. If the above infringement is committed in the course of trade, the offender may be liable for imprisonment for three months to two years, a fine of THB 50,000 to THB 400,000, or both.

The Copyright Act also provides for the confiscation of infringing goods and permits the copyright or performer's rights owner to seek to permanently enjoin an infringer from repeating the offense. The Copyright Act also provides that 50 percent of the fines levied by the court against the infringer will be payable to the copyright or performer's rights owner.

Previously, directors or managers of a juristic person (a company, registered ordinary partnership, association, foundation, or limited partnership) were regarded as having jointly committed any copyright or performer's rights infringement offenses with the juristic person, unless it could be proven that the offense was committed without their knowledge or consent (section 74). However, this provision was repealed by the Act Amending Provisions of Laws Relating to Criminal Liability of Juristic Person Representatives B.E. 2560 (2017) when it came into effect on February 11, 2017.

For further information on commencing a civil or criminal case, please see chapter 17 on [Litigation and Bankruptcy in Thailand](#).

### **Key Points on Copyright Enforcement:**

- Copyright infringement arises from a deliberate act of reproduction, adaptation, or public dissemination of all or part of a copyrighted work of another without permission, either directly or indirectly.
- Direct infringement consists of reproducing, adapting, publicly disseminating, renting out an original or a copy (audiovisual, cinematographic, sound recording, computer program), or publishing by a person who is not the copyright owner or licensee.
- Indirect infringement occurs from selling, possessing for sale, offering for sale, offering for rent, public dissemination, or distribution of copyright-infringing material in any manner prejudicial to the copyright owner's rights, or importing or making an order for import into Thailand of copyright infringing material by any person who knows, or should have known, that the particular work infringes a copyrighted work.
- The Copyright Act provides for the confiscation of infringing goods and permits the copyright owner to seek to permanently enjoin an infringer from repeating the offense. The Copyright Act also provides that 50 percent of the fines levied by the court against the infringer will be payable to the copyright owner.

For further information on copyright enforcement, please contact the Tilleke & Gibbins Intellectual Property team at [bangkok@tilleke.com](mailto:bangkok@tilleke.com) or +66 2056 5555.

## **16.5 Trade Secrets**

Trade secrets are protected under the Trade Secret Act B.E. 2545 (2002), amended by Trade Secret Act (NO. 2) B.E. 2558 (2015) (TSA). The TSA provides broad trade secret protection, including protection for pharmaceutical formulas, food formulas, cosmetic formulas, advertisements, and marketing strategies.

### **Acquisition of Rights**

Registration of trade secrets is not required, with the understanding that revealing details of the secret to a third party would deprive the owner of the benefit of monopolizing that secret. Not all of a company's secrets are considered to be trade secrets by the TSA. In order for a company secret to be eligible for legal protection in Thailand as a trade secret, the following three criteria must be satisfied:

- The information must not be publicly known or not yet accessible by persons who are normally connected with the information.
- The information must be economically valuable because of its secrecy.
- The controller of the information must have taken appropriate measures to maintain secrecy.

Actions that constitute "appropriate measures" depend on the nature of the secret, although merely "not telling anyone" is generally not sufficient to meet the third prerequisite. Precedent also indicates that solely using nondisclosure agreements and confidentiality clauses in employment contracts and other agreements might not be enough. Additional measures to maintain secrecy should also be implemented.



### Examples of appropriate measures to maintain secrecy include:

- restricting access to information to those who require it in order to complete their tasks;
- physically protecting the information by keeping it in locked cabinets or on password-protected separate network drives;
- clearly distinguishing confidential information from other information, and marking all relevant documents as “confidential” so that there can be no confusion;
- conducting regular and thorough training for employees on how to handle secret information;
- having a clear exit process for departing employees;
- providing training completion certificates when employees are trained in using your confidential information (in order to successfully show access to your trade secrets later if necessary); and
- tracking the flow of confidential information, including restricting the use of flash disks, portable hard drives, and laptops.

## Rights of Trade Secret Owners

The owner of a trade secret has the right to disclose, take, or use his or her trade secret, or permit others to use his or her right with any condition necessary to maintain its secrecy. Trade secrets are protected for as long as they are deemed secret.

### Ownership of Trade Secrets

The TSA does not explicitly vest ownership of a trade secret in a single owner. This can prove especially problematic where both an employer and an employee claim ownership of a trade secret.

The TSA identifies the owner of a trade secret by specifying the actions that qualify an entity to claim ownership. Trade secret owners include:

1. those who discover, invent, compile, or create the trade information without violating the trade secret rights of another person;
2. those with a legitimate right in test results or trade information that is a trade secret; and
3. transferees.

Trade secret rights are transferrable; a trade secret owner may transfer his or her right to another entity by written evidence. Ownership in a trade secret can therefore theoretically be vested in multiple entities.

**For example,** an employer would own the trade secret by virtue of having a legitimate interest in the trade information, while an employee would also own the trade secret because the employee created the trade information.

Where multiple persons qualifying as owners under provisions 1 and 2 above claim ownership in a trade secret, the TSA appears to be silent on which owner would have superior rights. While parties (and courts) may look to the intellectual property landscape and the various rationales underlying it to craft arguments on who should have superior rights, trade secret ownership should not be determined in the context of a dispute or litigation. Instead, the employer should enter into a valid

written agreement with the employee to conclusively identify which party is the only legitimate owner of the trade secret.

## Infringement of Trade Secrets

Infringement of a trade secret could result in either civil or criminal action, depending on the actions taken by the infringer.

For civil actions, infringement of a trade secret includes an act of disclosing, taking, or using a trade secret without the lawful consent of the trade secret owner in a manner that violates fair commercial practice. In this regard, the infringer must know, or have appropriate reason to know, that his or her action is contrary to fair commercial practice.

Actions that are contrary to fair commercial practice include breach of contract, breach of confidence or persuasion to breach confidence, bribery, intimidation, fraud, theft, receipt of stolen property, or espionage by electronic surveillance or any other means.

The causes of action available in civil trade secret cases include:

- breach of an employment agreement by an employee;
- misappropriation of trade secrets and confidential information; and
- tortious interference with business relations with a former employee or between the former employer and its customers or suppliers.

The following actions are not considered infringement of a trade secret in relation to civil actions:

- Disclosure or use of a trade secret by a person who obtained the secret through a juristic act without awareness, or without any reason to be aware, that the other party acquired the trade secret by violating another person's trade secret rights.
- Disclosure or use of a trade secret by a government agency in charge of preserving such trade secrets in the circumstances where:
  - it is necessary to protect public health and security;
  - it is necessary for other public interests, not for commercial purposes. In this regard, an agency charged with keeping and maintaining the trade secret, or a state agency or any concerned person that obtained the trade secret, must take regular measures to protect the trade secret from unfair commercial use;
  - independent discovery as a result of the expertise of the person making the discovery; and
  - reverse engineering.
    - The exception under reverse engineering cannot be applied if the person who carries out the reverse engineering has entered into an agreement with the trade secret owner or with the product seller that states otherwise. Therefore, prudence dictates an express prohibition against reverse engineering when contracting for or licensing any technology or product where a trade secret is at risk of exposure.

In contrast, the TSA sets higher criteria for triggering criminal sanction of infringement of a trade secret by the private sector. To merit a criminal sanction, the disclosure must be made to the public in a manner that causes the trade secret to cease being a secret, and this must occur with malicious intent

to cause damage to the business of the controller of trade secrets. The exemption mentioned above does not apply to these criminal sanctions.

## **Infringement Proceedings**

The IP&IT Court has exclusive jurisdiction in civil and criminal cases involving trade secrets throughout Thailand. Cases filed with the general Civil or Criminal Court to avoid trade secret criteria, as mentioned above, will be transferred to the IP&IT Court.

A civil lawsuit for infringement of a trade secret must be initiated within three years from the date when the controller of a trade secret becomes aware of both the infringement and the infringer. The civil lawsuit cannot exceed 10 years from the date of infringement. As for a criminal complaint, it must be filed within three months of the offense and the offender becoming known to the controller of a trade secret.

Infringement of a trade secret that results in criminal action may lead to imprisonment for a term of up to one year, a fine of up to THB 200,000, or both.

These punishments also apply to offenses committed by a juristic person resulting from an order, action, or lack of a required order or action in the course of duty by a director, manager, or any person responsible for the operations of the juristic person.

The TSA also makes some offenses eligible for settlement. According to the TSA, upon payment of fines within the stipulated period, the case can be settled and closed.

For further information about breach of employment and groups for termination of employment, please see chapter 15 on [Employment](#).

For further information on commencing a civil or criminal case, please see chapter 17 on [Litigation and Bankruptcy in Thailand](#).

### **Key Points on Trade Secrets:**

- Each company should develop appropriate measures to maintain secrecy in addition to its own policy on trade secrets and agreements.
- Employers should enter into a valid written agreement with employees to conclusively identify the party who is the only legitimate owner of the trade secret.
- Infringement of a trade secret includes an act of disclosing, taking, or using a trade secret without the lawful consent of the trade secret owner in a manner that violates fair commercial practice.
- Actions contrary to fair commercial practice include breach of contract, breach of confidence or persuasion to breach confidence, bribery, intimidation, fraud, theft, receipt of stolen property, or espionage by electronic surveillance or any other means.
- Causes of action available in civil trade secret cases include breach of an employment agreement by an employee; misappropriation of trade secrets and confidential information; and tortious interference with business relations with a former employee or between the former employer and its customers or suppliers.

For further information on trade secret rights, please contact the Tilleke & Gibbins Intellectual Property team on +66 2056 5555.

## 16.6 Franchising

Franchise agreements arise in many contexts in Thailand. Industry research indicates that there are currently more than 350 franchisors (majority foreign-owned) and more than 15,000 franchisees in Thailand. The most popular franchise operations, according to the Department of Business Development, occupy the food and restaurant sector, followed by services, education, and retailing.

While there are no specific regulations governing franchising in Thailand, the Ministry of Commerce regularly announces plans to commence drafting regulations, such as the Franchising Business Act. It is widely considered that Thailand may follow the China model as set out in the 2005 PRC Ministry of Commerce's Administrative Measures on Commercial Franchising and the subsequent 2007 Franchise Regulations. An important point to watch here will be whether Thailand follows the China model by requiring a franchisor to prove the viability of its business model by showing a track record of profitability at two or more outlets before selling a franchise contract to a franchisee.

Towards the end of December 2016, the Council of Ministers returned the draft Franchising Business Act to the legislators for further amendments over policy issues. At the time of writing, the act's first reading by the National Assembly has yet to be scheduled, and its promulgation is apparently not among the current government's priorities.

Franchise terms may be dictated by legislation, negotiation, or by practical considerations that have critical importance in Thailand. Specifically, although Thailand is generally a "freedom of contract" jurisdiction, some provisions are required in certain franchise agreements, while other terms are not permissible or advisable in such agreements.

### Relevant National Legislation

No specific legislation offers a comprehensive guide to franchising in general. Instead, a franchise agreement in Thailand will generally need to conform to laws:

- Civil and Commercial Code
- Trademark Act B.E. 2534 (1991), as amended by Trademark Act (No. 2) B.E. 2543 (2000) and Trademark Act (No. 3) B.E. 2559 (2016)
- Patent Act B.E. 2522 (1979), as amended by Patent Act (No. 2) B.E. 2535 (1992) and Patent Act (No. 3) B.E. 2542 (1999)
- Copyright Act B.E. 2537 (1994), as amended by Copyright Act (No. 2) B.E. 2558 (2015), Copyright Act (No. 3) B.E. 2558 (2015), and Copyright Act (No. 4) B.E. 2561 (2018), and Copyright Act (No. 5) B.E. 2565 (2022)
- Trade Secrets Act B.E. 2545 (2002), as amended by Trade Secrets Act (No. 2) B.E. 2558 (2015)
- Unfair Contract Terms Act B.E. 2540 (1997)
- Trade Competition Act B.E. 2560 (2017)
- Act Relating to Price of Merchandise and Service B.E. 2542 (1999)
- Revenue Code B.E. 2481 (1938)

Each act cited above is implemented by a set of ministerial regulations, and they each touch on only a few basic aspects of franchise arrangements. The parties must therefore negotiate most of the terms

of a given agreement. A deal between parties of equal bargaining power will generally not be disturbed by the Thai courts unless there is a clear public policy reason to do so.

## Basic Premises

A franchise agreement must protect the rights of the franchise system. There is, however, no absolute requirement that the agreement must be truly balanced.

There are two basic issues to be considered with a franchise agreement:

1. How much protection is required for the franchisor to achieve the desired result?
2. To what extent should market/commercial considerations affecting franchise sales and the past success of the franchisor's business model be taken into account in building the franchise agreement?

Franchising in its infancy was often built on very short basic contracts. The earliest known agreements in franchise operations, such as those of Kentucky Fried Chicken and Dairy Queen, were based on one-page agreements. With added complexity (and less trust), the agreements have required more comprehensive treatment. Territoriality, supply requirements, technology and social media, genetically modified food, e-commerce, third-party guarantee, data privacy concerns, unfair competition—all of these factors have created the need for contractual controls never before imagined when franchise systems were first created.

In certain situations, a franchisor must be reasonable in setting terms, or the term may be held to be unenforceable as an unfair limitation on competition. For example, in the context of a franchising arrangement involving use of technology, a "tying arrangement" may be prohibited under the Ministerial Regulations B.E. 2540 (1997) dated February 14, 1997, issued under the Copyright Act B.E. 2537 (1994) and the Office of the Trade Competition Commission's Notification on the Guidelines for the Consideration of Unfair Trade Practices in Franchise Businesses announced on October 30, 2019 and last amended on July 13, 2021. In a tying arrangement, the franchisor establishes a requirement that the franchisee must purchase materials from the franchisor (or his or her agent) for use in the production of a particular item. This type of tying arrangement, if imposed without justifiable reasons, might be seen as anticompetitive and might be unenforceable.

For further information on permissible terms in franchise agreements, please see the sections on [Contracts](#) and [Consumer Protection](#) in chapter 2.

## Trademark Licensing and Franchising

Very often, one of the most important components of the franchise is the trademark portfolio of the franchisor. Trademarks and branding are always associated with the notion of quality control and serve as an indicator to the consuming public that goods or services bearing a particular trademark will have a consistent level of quality, no matter when or where the goods and services are purchased.

The rights to a trademark application or registered trademark are transferable and inheritable. The proprietor of a registered trademark may grant a license to other persons to use it for any or all of the goods for which it was registered.

The use of the registered trademark or service mark by the franchisee or licensee, if recorded with the Trademark Office Registrar of the Department of Intellectual Property as required under the Trademark

Act, will be deemed as use of the mark by the franchisor or licensor, which can be raised as a defense in the event of a cancellation action for non-use. Both the licensor and the licensee may take action against infringers, although the licensee's ability to take action is restricted by the terms of the agreement. Since Thailand is a freedom of contract jurisdiction, the contracting parties can adopt any terms or conditions they deem appropriate concerning the ability to take action, as long as the terms and conditions are not expressly prohibited by law, impossible, or contrary to public order or good morals.

## **Trademark License Agreements**

The license agreement may either be contained within the franchise agreement or it may be a separate stand-alone agreement. According to the Trademark Act, a trademark license agreement must comply with the rules and procedures prescribed in the relevant ministerial regulations and must at least provide:

- conditions and terms of the agreement between the trademark proprietor and the person applying to be an authorized licensee that enable the former to control the quality of the goods manufactured by the latter;
- the goods for which the licensed trademark is to be used; and
- provisions specifying that only the authorized licensee has the right to use the trademark, or that the proprietor shall authorize any person in addition to the authorized licensee to use it.

A trademark license agreement must be in writing and registered with the Trademark Office Registrar of the Department of Intellectual Property. The unrecorded use of a trademark by a franchisee or licensee will not be considered as proof of use of that trademark for the purposes of defending the franchisor or licensor's registered trademark from a third-party trademark cancellation action based on alleged non-use of the trademark. Trademark or service mark license agreements are governed by provisions of the amended Trademark Act (sections 68 to 79/1), the relevant ministerial regulations, and the general laws of contract under the Civil and Commercial Code. A trademark shall be deemed as registrable if it is distinctive, not forbidden under the Trademark Act (essentially, nothing making reference to the monarchy of Thailand and no official emblems or documents), and not identical or similar to those already registered by others. The registrar may issue an order accepting the license agreement, imposing conditions or limitations deemed suitable for the well-being of the public.

The quality level indicated in the agreement enables the licensor to monitor and control the quality of the goods manufactured or of the services rendered by the licensee. Registering a trademark allows the owner to have the exclusive right to use the mark in respect to the goods or services registered and to prevent any unauthorized use of an identical or confusingly similar mark. A license to use a registered trademark allows the licensee to use the mark without being subjected to infringement liability.

For further information regarding trademarks,  
please see chapter 16 on [Protecting Intellectual Property in Thailand](#).

## Patents and Franchising

Another important component of the franchise is the franchisor's patented technology. In Thailand, the law of patents is primarily enshrined in the Patent Act B.E. 2522 (1979), as amended, together with various ministerial regulations. Section 41 of the current Patent Act contains a mandatory requirement that a patent license agreement be similarly registered with the Department of Intellectual Property.

The requirements to register patent licenses are as onerous as those applicable to trademarks, and the foregoing discussion in relation to trademark requirements can be equally extended to patents (i.e., failure to comply with the registration requirement renders the agreement unenforceable, pursuant to section 152 of the CCC). Similarly, there is no clear definition as to what will be regarded as a patent license—presumably, any contractual relationship that contains provisions directed to the license of any of the rights conferred on a Thai patentee. In theory, a technology transfer agreement that incorporates license provisions for know-how plus exclusive rights under a patent would be liable to registration.

One major area where patent licenses may be subject to even greater scrutiny than trademarks before being permitted to be registered is in the area of competition law. There are certain procedural hurdles to be surmounted in the registration process. It is a requirement under section 39 of the Patent Act and Ministerial Regulation No. 25 B.E. 2542 (1999), issued on September 24, 1999, that the license agreement does not contain any provisions that unfairly restrict competition; hence, upon receipt of the application for registration, the patent examiner will examine the license agreement to ensure that it does not contain any anticompetitive provisions. The presence of such anticompetitive provisions will have the effect of barring the agreement from registration.

The 1999 ministerial regulation further explains the various prohibited restrictions. There are now categories of restricted provisions: a type of "gray list" of provisions that may be prohibited, and a "black list" of provisions that are entirely prohibited with no chance of exception.

### Provisions That May Be Prohibited: The "Gray List"

In respect of the gray list, it is within the purview of the director-general of the Department of Intellectual Property to analyze the agreement to determine if there is an unauthorized unfair restriction. The director-general will consider "the object or intent of the parties" as to whether they intended to cause unfair practice or not, including the result which may occur. Therefore, there is scope for a certain "rule of reason" type of approach to be employed in the analysis of the relevant patent license and its background. The gray list generally may include such questionable activities as tying obligations, obligations on the licensee to hire specific persons for production of the invention except where the person to be hired is required to work the patent, and restrictions on sales and distributions and production quantities. Resale price maintenance and unfair royalty rates are also open to scrutiny.

### Prohibited Provisions: The "Blacklist"

"Blacklist" clauses are anticompetitive and their presence in a patent license will automatically cause the registration of that license to be refused. There is no opportunity for the director-general to apply a rule of reason analysis to clauses such as these. These clauses include the following.

- Requiring the licensee to use another patent/technology of the licensor upon payment of a royalty, except where it can be shown that this additional patent is required so that the product

to be produced by the licensee under the patent conforms to the invention in the main licensed patent (form of tie-in).

- Prohibiting the licensee from challenging the validity of the licensed patent of the licensor.
- Requiring the licensee to disclose and allow the licensor to take advantage of improvements which the licensee has made without suitable remuneration.
- Requiring that royalties be paid after expiration of the patent.
- Requiring the licensee to act in a manner that has been determined by the courts or other competent competition law officials to be anticompetitive.

## Trade Secrets and Franchising

Trade secrets in Thailand are protected under the amended Trade Secrets Act B.E. 2545 (2002) (TSA). The TSA contains provisions to protect against unauthorized disclosure of trade secrets, including a framework that enables the court to issue injunctive relief against disclosure of trade secrets.

A franchisor must be vigilant to identify and carefully control the use and disclosure of its proprietary trade secrets, such as secret know-how, formulas, recipes, inventions, client lists, and sales data. This can be done either in a separate nondisclosure or confidentiality agreement or with an airtight confidentiality provision within the franchise agreement itself, or preferably both.

The TSA provides for broad protection and severe penalties for trade secret infringement. However, one can only resort to the TSA for enforcement purposes if careful steps have been taken (and can be demonstrated) to maintain the secrecy of whatever proprietary information is in dispute. The expansion of such protection should be viewed as a benefit for a trade secret owner in seeking remedial action for unauthorized disclosure of secrets.

For further information on trade secrets, please see chapter 16 on [Protecting Intellectual Property in Thailand](#).

## Development of Franchising Guidelines

In October 2019, the Office of the Trade Competition Commission issued the Notification on the Guidelines for the Consideration of Unfair Trade Practices in Franchise Businesses (Franchising Guidelines) pursuant to the Trade Competition Act B.E. 2560 (2017), which was subsequently published in the *Government Gazette* in December 2019. These guidelines were amended on August 11, 2020, and July 13, 2021.

The Franchising Guidelines define “franchise,” “franchisor,” and “franchisee,” and introduce precontractual disclosure requirements. Specifically, franchisors in Thailand (Thai franchisors and master franchisees of foreign franchisors) are now required to disclose information on the points below in a disclosure document or letter to prospective franchisees before entering into agreements. There is currently no prescribed format or timeline for disclosure.

- Applicable payments and expenses relating to the franchise, such as franchise fees, royalties, marketing expenses, training costs, costs of mandatory equipment and materials (as well as their calculation methods), payment details, and conditions for reimbursement;



- Business model of the franchise, including matters relating to assistance, training, and advisory services to be provided by the franchisor, as well as information on existing and future branches operated by other franchisees in the vicinity, and information on sales and promotion;
- Intellectual property rights, such as trademarks, patents and copyright, including their respective terms of protection, and their licensing scope and restrictions; and
- Renewal, amendment, cancellation, and termination of the franchise agreement.

The Franchising Guidelines also prohibit franchisors from engaging in unfair trade practices, such as setting unjustified restrictive conditions for franchisees, imposing unjustified product tying or purchasing restrictions on franchisees, stipulating discriminatory conditions among franchisees, and more. Subject to certain conditions, the Franchising Guidelines also require franchisors to provide their franchisees with the first right of refusal whenever seeking to open and manage any new branches in the vicinity of existing franchisees.

# Litigation and Bankruptcy in Thailand

## 17.1 Introduction to Civil and Criminal Matters

### Civil, Criminal, or Both?

If you are considering initiating a legal action or responding to an action commenced by another party, one of the first fundamental considerations is whether the matter is civil or criminal. This has important implications for both the conduct of the proceedings and the range of possible outcomes.

A criminal matter is usually brought by the government (the Public Prosecutor's Office), but in Thailand, private parties may also bring a criminal claim. The principal aim of bringing a criminal matter to court is to punish the offender. In contrast, a civil action is brought by a party against another party for the purpose of seeking compensation or some other form of restitution for damage caused.

Certain actions can give rise to grounds for both civil and criminal actions. For example, defamation may be prosecuted as a criminal offense to seek criminal punishment, as well as by a civil action to seek a public retraction or compensation for damage to the victim's reputation.

There are two main differences between civil and criminal proceedings: the standard of proof and the remedies.

- The **burden of proof** in civil trials is by a preponderance of the evidence, and will be assigned by the court based upon the issues raised in the complaint and answer. On the date of the settlement of issues, the court will assign the burden of proof on each disputed issue to one of the parties. In contrast, in a criminal proceeding, the prosecuting body must prove the allegations beyond a reasonable doubt.
- The **punishments** available in criminal matters generally include fines and imprisonment. Civil proceedings have a broader range of remedies. As the aim of civil proceedings is redress, not punishment, the end result is usually an award of money or, in some cases, an order that the defendant perform or refrain from some action. Preliminary injunctions are also available in some civil actions to protect the plaintiff's position or to stem the plaintiff's losses pending trial.

Remedies and punishments are further discussed under the sections below on [Civil Proceedings](#) and [Criminal Proceedings](#).

### Court Jurisdiction

The Constitution of the Kingdom of Thailand B.E. 2560 (2017) recognizes four court systems:

- Constitutional Court

- Administrative Court
- Courts of Justice
- Military Court

Each of these courts has jurisdiction over different types of matters. The table below provides a simplified overview of the courts and the types of matters over which they have jurisdiction. Further information on each court is found at the end of this chapter.

Court	Dispute type
<b>Juvenile and Family Court</b>	<p>Any criminal case involving children (7–14 years of age) and juveniles (15–18)</p> <p>Any civil action involving minors (less than 20 years of age) or family members over which the Thai Civil and Commercial Code, the Act on Family Registration, or other acts related to family apply</p>
<b>Central Bankruptcy Court</b>	Bankruptcies and restructuring
<b>Central Intellectual Property and International Trade Court</b>	<p>Trademarks, copyrights, or patents (civil and criminal)</p> <p>Agreements on technology transfers or licensing (civil)</p> <p>International sales, exchange of goods or financial instruments, services, carriage, insurance, and other related legal actions (civil)</p> <p>Letters of credit issued in connection with the above civil actions, inward and outward remittance of funds, trust receipts, and provision of guarantees in connection therewith (civil)</p> <p>Ship arrests, dumping and subsidization of goods, and services from abroad (civil)</p> <p>Disputes over layout designs of integrated circuits, scientific discoveries, trade names, geographical indicators, trade secrets, and plant varieties (civil and criminal)</p> <p>Offenses relating to trade under sections 271 to 275 of the Criminal Code (civil and criminal)</p> <p>Arbitral award enforcement (civil)</p>
<b>Labor Court</b>	<p>Employment disputes</p> <p>Disputes concerning rights or duties under the laws relating to labor protection or labor relations</p>
<b>Central Tax Court</b>	Tax issues and customs duty matters
<b>Municipal Courts</b>	<p>Any civil claim in which the value of property in dispute or the amount of claims does not exceed THB 300,000</p> <p>Any criminal case in which the maximum sentence does not exceed three years' imprisonment, a fine of THB 60,000, or both</p>
<b>Civil and Criminal Courts</b>	General disputes not falling within the jurisdiction of any of the specialized courts
<b>Courts of Appeal</b>	Appeals from civil and criminal courts

Court	Dispute type
<b>Court of Appeal for Specialized Cases</b>	Appeals from specialized courts (Central Intellectual Property and International Trade Court, Central Tax Court, Labor Court, Central Bankruptcy Court, and Juvenile and Family Court)
<b>Criminal Court for Corruption and Misconduct Cases</b>	Corruption and misconduct cases relating to state officials
<b>Administrative Court</b>	<p>Legality of decisions made by government entities or officials</p> <p>Disputes relating to neglect or unreasonably delayed performance of official duties by an administrative agency or a state official</p> <p>Disputes relating to an administrative agency's or state official's wrongful act or other liability arising from the exercise of power under a law, administrative order, or any other order, or from the neglect or unreasonably delayed performance of official duties</p> <p>Disputes relating to an administrative contract</p>
<b>Dika (Supreme) Court</b>	Appeals from the Courts of Appeal and certain specialized courts
<b>Constitutional Court</b>	Constitutional review of laws or royal decrees, resolutions of political parties, and appointment and removal of public officials
<b>Military Court</b>	Disputes related to violation of any martial or other criminal law in which the offender is under the jurisdiction of the Military Court at the time of the alleged offense

## Court Process Fundamentals

All courts use the continuous hearing system, whereby all hearings are conducted continuously until the case is finished.

Unlike most court systems, trials are presided over by multiple judges; the required number of judges varies between courts. Several courts also require one or more lay judges to adjudicate matters with an assigned lead judge.

The Thai judicial system is largely an adversarial system. Judges take a proactive role in case management and make all procedural decisions during the trial. Judges have discretion to ensure that the matter is adequately addressed by the parties and may also directly question witnesses during trial hearings to elicit facts necessary to adjudicate the dispute. Thai law does not provide for trial by jury.

Proceedings are conducted in the Thai language. Translators are permitted for persons who do not speak Thai, but must be provided by the party concerned. Judges may also take an active role in the examination of witnesses, with due regard to impartiality, and in settlement negotiations between the parties in court.

Most court proceedings are open to the public. On the petition of a party, however, the court may close all or part of the proceedings or prohibit their disclosure, if it is of the view that doing so "is proper to protect the injured person (e.g., a juvenile or rape victim, etc.) or to safeguard the public

interest.” In practice, this rarely occurs, but there have been situations where, for example, the court closed hearings to protect the identity of a particular witness or to protect evidence and testimony that may constitute a trade secret. Despite such an order, every judgment is read in open court. Court documents such as pleadings, witness statements, and court orders (except for Supreme Court judgments) are not generally available to the public.

Foreigners, whether resident or nonresident, individual or corporate, are not discriminated against in Thai courts and can expect a fair hearing by the judiciary.

Further information on the jurisdiction and procedures of specific courts can be found later in this chapter under the section on **Establishment of Courts**.

## 17.2 Civil Proceedings

### Prior to Commencing Proceedings

Litigation is usually the last resort in the process of resolving disputes. In fact, many parties to a dispute try to avoid the litigation process altogether, fearing that seeking recourse from the courts will lead to a disruption in commercial relationships, result in unnecessary legal expenses, and generally lengthen the time of the dispute remaining unresolved. While some of these fears may be legitimate, sometimes litigation is the most effective means for a party to obtain relief. For parties contemplating such recourse, the Thai court system is generally accessible, unbiased, and a balanced vehicle for the resolution of disputes.



### Time Limitations for Commencing Court Proceedings

The Civil and Commercial Code prescribes periods within which claims must be commenced. The periods vary from one month to ten years, depending on the type of claim.

- **Torts:** Claims for wrongful acts (torts) must be filed within one year from the date on which the wrongful act and the person bound to make compensation became known to the injured person (or within three years if the wrongful act claim is filed under the Consumer Case Procedure Act), but no later than ten years from the date on which the wrongful act was committed. The prescription period may, however, be longer than one year if the wrongful act is also a criminal offense (e.g., vehicular homicide).
- **Contracts:** Generally, the prescription period for most commercial disputes ranges from two to five years from when the claim could have first been enforced. However, there are different prescription periods for different types of contract. Since prescription can be a difficult and imprecise area of the law in Thailand, those who believe that they may have a claim against a defendant in Thailand are advised to retain counsel sooner rather than later, even if only for the limited purpose of evaluating this issue.
- **Other:** The prescription period for claims for which no specific period is prescribed is ten years.

The prescription period cannot be extended or reduced by agreement, but it may be interrupted if the debtor acknowledges the claim in writing, gives security, or does some other unequivocal act acknowledging the claim. A fresh period of prescription commences when the interruption ceases.

### Other Statutory Preconditions before Commencing Proceedings

There are no formal pre-action steps required prior to commencing most civil proceedings, but typically a plaintiff will send one or more demand letters prior to commencing a civil action. In some instances, the purpose of the demand letter is partly to prove the date of commencement of the prescription period.

There are also certain requirements for specific claims that must be met before a claim can be filed:

- **Mortgage:** The mortgagee must send a notice to the debtor requiring it to perform its obligation within a reasonable time period fixed in the notice. A claim can only be filed after the expiry of this time period.
- **Rescission of contract:** A contract party must notify the other party to perform its obligation within a reasonable time period fixed in the notice before the contract can be rescinded, unless the contract already provides for performance at a fixed time or within a fixed period.
- **Hire of property:** A hirer must notify the lessor to make good any defects before the hire contract can be terminated. A lessor must notify the hirer to comply with the terms of the contract or to take care of the property before the contract may be terminated. A claim may only be brought after the notification and subsequent termination.

### Power of Attorney

A client may execute a power of attorney (POA) specifically authorizing an agent to file a lawsuit, or a deed of appointment specifically authorizing an attorney to represent the client in court. Before initiating or responding to a lawsuit, the client's lawyer must present to the court the POA or deed of appointment. Clients must execute such documents in the manner instructed by their attorneys, especially if the documents are executed outside of Thailand. A Thai lawyer representing a client in court generally has absolute authority to conduct the case in any lawful manner he or she sees fit, unless limited in writing.

### Location of Assets

Before initiating litigation, it may be advisable to investigate the nature and extent of the defendant's assets in Thailand and abroad. A money judgment is of limited value if the defendant has little or no recoverable assets.

In civil cases when a plaintiff is a nonresident, the defendant is entitled to seek security, which will be remitted to the court in order to cover the defendant's costs and legal fees in the event the defendant wins the case. A security bond deposited by the plaintiff may be held until all appeals are exhausted by the defendant.

## Commencing Proceedings

Civil proceedings are commenced by filing a complaint in the prescribed form and paying the court fee.

The complaint must contain the name of the court and the names of the parties, together with details of the facts and allegations forming the basis of the claim. The complaint may be pleaded generally and there is no need to give full particulars of the claim in the complaint, provided that all grounds on which the plaintiff wishes to rely in later trial hearings are included. Finally, the complaint must be dated and include the names of those on whom the complaint is to be served.

After the complaint is filed and the court has accepted it, the plaintiff must file a request to the court for a summons and pay a fee to have the summons and a copy of the complaint served on the defendant. A court officer will then serve the summons and complaint on the defendant. Depending

### COURT FEES

To cover the initial court costs in civil cases (except consumer and labor cases), the court requires, at the time of filing the original suit and each further appeal, a payment by the applicant of 2% of the claim (maximum of THB 200,000) for claims under THB 50 million, and an additional 0.1% of the claim for claims exceeding THB 50 million.

Court fees may be waived if the court is satisfied that the applicant is a pauper or in certain other cases.

on the means of service (personal, by posting, or by mail), the defendant has 15 to 30 days from the date of service to file its answer to the complaint, as well as a counterclaim (if any). If the defendant files a counterclaim in time, a court officer will serve it on the plaintiff, and the plaintiff will also have 15 to 30 days to file an answer. Extensions are routinely granted.

Thereafter, the court schedules a hearing at which the issues in dispute are settled. The court encourages the parties to mediate the dispute, and one or more mediation hearings may be scheduled. The court will also schedule the trial hearings. The mediation hearings are likely to be scheduled within a few months of the

settlement of issues hearing, but the trial hearings may be scheduled six to ten months later. The average length of time from filing a complaint through to the lower court judgment is approximately 12 months.

The burden of proof in civil trials will be assigned by the court based on the issues raised in the complaint and the answer. On the date of the settlement of issues, the court will assign the burden of proof on each disputed issue to one of the parties.

There is no formal disclosure or discovery procedure. Parties are required to file a list of witnesses and documents on which they will rely, together with copies of the documents, seven days before the commencement of the first trial hearing. It is possible to apply to the court for a subpoena of known documents from the other party or from third parties.

### Mediation before Filing a Complaint with the Court

Before filing the case with the court, the law allows one party to submit a petition for appointing a mediator to mediate the dispute between the parties. It is voluntary for the other party to join this

mediation process. If a settlement can be reached through this process, the settlement can be submitted to the court to render its judgment according to the settlement without filing the complaint.

## Emergency Orders and Temporary Injunctions

An emergency order or temporary injunction can be obtained at any time before judgment is entered. In practice, however, the courts will not grant such relief unless they are satisfied that the complaint is well grounded and that there are sufficient extenuating circumstances to uphold the granting of the order.

Generally, the court will only issue such an order in emergencies. In addition, the court may require the plaintiff to put up a security deposit as indemnification for a wrongfully ordered injunction.

Emergency orders and temporary injunctions generally remain in force until judgment is given. The defendant may, however, petition the court at any time to withdraw the order or its enforcement.

Similarly, pre-judgment attachment is rare and difficult to obtain. The plaintiff must convince the court that there is a high chance that the defendant is about to abscond or transfer or waste assets before the court issues its judgment.

## Early Disposal of a Case

There are three ways a case can be disposed of before reaching a hearing:

- A plaintiff fails to request a court officer to serve a summons to the defendant for purposes of submitting an answer to the complaint and fails to inform the court of this within the prescribed time limit;
- A plaintiff fails to proceed with the case within the specified period provided by the court; or
- A settlement is reached.

## Default Orders

Either party may be declared in default by the court upon motion by the other party for failure to answer or to appear within the prescribed time period.

If the defendant fails to answer, the plaintiff may apply for a default order. After it is served on the defendant, he or she may appear to explain his or her default. If the failure to answer was involuntary or otherwise justified, the court will ordinarily grant the defendant a reasonable time to answer. If the default was unjustified, the court will order the action to proceed without permitting the defendant to file an answer or present its own witnesses (although a defaulting defendant can still cross-examine the plaintiff's witnesses). If the plaintiff fails to file for a default order within 15 days after expiration of the time period prescribed for the defendant to answer, the court will strike the case from its docket.

If both parties are in default of appearance, the action will be stricken from the court docket without prejudice to reinstating the suit. If the plaintiff fails to appear, the court will strike the action, unless

Temporary orders may, for example, include an order that a defendant not dispose of certain property before a final judgment is rendered.

An injunction would temporarily prevent a defendant from undertaking a certain action.



the defendant requests that the action proceed, in which case it will be adjudicated *ex parte*, as it is the same as if the defendant fails to appear.

## **Offers of Compromise or Settlement**

In Thailand, there is no such thing as an “offer without prejudice.” Anything that is put in writing can be used against the offering party. It is therefore advised that compromises, settlements, and offers to compromise or to settle should not be made without first consulting with legal counsel. A party at trial or anticipating litigation should be careful in all communications with the opposing party.

## **Hearing and Judgment**

### **Witnesses and Evidence**

Each party submits a list of witnesses to the court prior to the hearing. At the hearing, each party may select any or all of the witnesses on the list to give evidence. Evidence may be called from a person not on the witness list, but only with the court’s approval.

All evidence given by a witness must be in Thai or translated into Thai. Translators must be provided by the party who called the witness. In certain circumstances, evidence may be given via videoconference.

If documentary evidence is to be relied upon, it must be authenticated by a witness (i.e., a witness must present the document and be available for cross-examination by the other party). Documents are required to be originals, unless the court allows otherwise. Any document in a language other than Thai must be accompanied by a certified Thai translation.

### **Burden of Proof and Final Arguments**

After all of the evidence has been heard, both parties are entitled to present final oral and written arguments, citing pertinent evidence and legal precedents. Each party’s final argument will summarize the evidence, address the burden of proof, and assert why the court should rule in that party’s favor.

### **Judgments**

Judgments are given in writing and are read in court. Judgments generally set forth each party’s presentation of the facts and statement of arguments, followed by the court’s decision.

### **Remedies**

The court can award monetary damages and order specific performance and permanent injunctions prohibiting actions or conduct. While the courts are sometimes authorized by law to award punitive damages, they rarely do so. Judgments provide for simple interest to run up to the date of payment; the rate of interest currently prescribed by law is 3% per annum (for non-agreement on the interest rate); and 5% per annum (for the default interest rate).

A court of first instance generally has the power to issue writs of execution to enforce its judgments and decide related matters. When a court issues an execution order, it can also issue an order instructing the judgment debtor to:

- pay the judgment;

- deliver property; and
- perform an act.
- Compensation can be claimed for all damages arising from nonperformance and special circumstances that the defaulting party foresaw or ought to have foreseen.

## **Payment**

Judgments calling for payment can be rendered in foreign currencies if that is the currency specified in the pleadings and was the intent of the parties. Monetary awards carry a statutory rate of interest and are generally calculated either from the date of filing suit or from the date of judgment.

## **Property**

If the debtor does not comply with a monetary judgment, the creditor may apply for a writ of execution. Upon receiving the writ, an executing officer normally accompanies a creditor or an agent of the creditor to the property location, and either seizes the property or leaves the property in place under seal. Notice of attachment is then sent to the judgment debtor and a public auction is advertised. Both parties and any others concerned are notified. These procedures are in practice complex and time-consuming, as identifying, tracing, and locating assets can be extremely difficult. In certain rare circumstances, at the request of the creditor, the court may order the debtor to disclose his or her assets.

Secured creditors are entitled to collect sums due and owing only from the encumbered property, unless the security agreement provides otherwise. Unsecured creditors are entitled to collect their debts out of the whole of the debtor's property, including any money or other property due to the debtor from third parties, subject to the priority claims of secured creditors.

## **Performance**

The existence of an obligation may entitle the creditor to demand performance from the debtor. Performance must be tendered in the manner in which it is owed, and may be tendered by a third person to the creditor or his or her authorized representative. The creditor cannot be compelled to receive any performance other than that to which he or she is entitled, unless he or she accepts such substitute performance. Courts may compel performance by imposing terms of imprisonment, subject to performance by the debtor.

## **Costs**

The court has discretion in awarding costs to the prevailing party. Large legal fee awards, however, are not common in Thailand, and it is more likely that only a small fraction of actual legal fees will be recoverable. The court calculates costs to be awarded based on a statutory schedule. The statutory level of fees serves as a minimum and maximum guideline for the courts in assigning lawyer remuneration in cases of need.

The minimum and maximum guidelines for lawyers' fees depend on the amount of claim, much like court fees. In fixing the amount of lawyers' fees, the court must regard how complicated or simple the case is, the time devoted, and the amount of work done by the lawyer in conducting the case. The award is usually nominal; parties to litigation should not expect to recover a meaningful portion of legal costs.

The defendant can apply to the court for an order requiring the plaintiff to deposit money or security with the court for costs and expenses if either:

- the plaintiff is not domiciled or does not have a business office situated in Thailand and does not have assets in Thailand; or
- there is a strong reason to believe the plaintiff will evade payment of costs and expenses if it is unsuccessful.

The Thai courts routinely grant orders for security or a deposit in relation to foreign plaintiffs.

## Appeals

Appeals to the Court of Appeals must be filed within one month after the judgment or order being appealed is handed down (provided the party wishing to appeal is entitled to do so). Extensions are often granted. Filing an appeal does not in itself stay execution of a judgment or an order of the court of first instance. A separate motion for a stay must be filed with or after the appeal.

For appeals to the Supreme Court, the parties must file a request for permission to file the appeal, together with the appeal itself and the filing fees, to the Supreme Court within one month from the reading of the appeal court's order.

## Alternative Dispute Resolution

As court litigation is often lengthy and protracted, potential litigants should consider alternative means of resolving disputes. Deciding on whether to litigate or seek resolution of conflicts through alternative dispute resolution (ADR) is commonly an anticipatory decision made by the parties to a contract, before a dispute exists, where the parties either specifically elect mediation or arbitration uniquely tailored to their needs or simply leave the matter of dispute resolution to the responsible court.

The pros and cons of ADR in Thailand are not unlike elsewhere, but potential litigants should be aware of the following local factors:

- **Speed.** The ADR process will not necessarily be faster from start to enforcement of the award or judgment. This is because while ADR does have the advantage of giving the parties more control of the pace of proceedings, a final court judgment can be enforced immediately through the Legal Execution Office. In contrast, enforcement of arbitral awards often requires an additional set of lower court and upper court proceedings, which may take several more years.
- **Costs.** Traditionally, arbitration has been considered cheaper than litigation, primarily because arbitration proceedings are more flexible and limit some more costly aspects of litigation (such as pre-trial discovery). In Thailand however, litigation can be cheaper than arbitration, because:
  - court filing fees in many cases are limited to 2% of the claim amount or THB 200,000, whichever is less;
  - only limited pretrial discovery is allowed;
  - it is necessary to pay an arbitration institute or panel, which can often be quite expensive;
  - many Thai courts have implemented user-friendly and cost-saving measures, such as affidavits in lieu of direct examination and video testimony for overseas witnesses; and
  - a final court judgment can be enforced without further recourse to the courts, which is generally not the case when trying to enforce an arbitration award.

- **Expertise of the Panel.** One of the most frequently cited benefits of arbitration is the parties' ability to select a panel of arbitrators with the proper expertise for understanding and resolving the dispute. This benefit applies in Thailand as well. For the sake of completeness, however, it should be noted that for cases filed in the Intellectual Property and International Trade Court, the panel of judges will have at least one lay judge with special expertise in the field underlying the dispute (for example, international finance or intellectual property). Their presence has helped bridge the expertise gap between litigation and arbitration in Thailand, and is helping make the outcomes of complex commercial litigation far more predictable. In addition, Thai civil procedure permits the parties to a court case to appoint arbitrators to decide specific issues in dispute, and the court will adopt those findings of fact in rendering its judgment.

Lastly, one reason for choosing arbitration over court litigation is flexibility and the ability to tailor how a dispute would be resolved by choosing the arbitration rules and institute, the venue, the language of the proceedings, and the number and qualification of arbitrators. For example, the parties may choose local arbitration institutes over international arbitration institutes such as the Thai Arbitration Institute (TAI), the Thailand Arbitration Center, or the International Chamber of Commerce (ICC). The administrative costs and arbitrator fees are quite reasonable at local institutes and are one way to decrease the overall cost of arbitration in Thailand.

## **Arbitration Law and Usage**

Thailand is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

Arbitration as an alternative to court trials is recognized in Thailand under the Arbitration Act B.E. 2545 (2002), which generally follows UNCITRAL rules. Under the Arbitration Act, domestic arbitration usually occurs under the rules of the TAI, administered by the Office of the Judiciary, or the rules of the Board of Trade. In 2017, the TAI rules were updated and modeled after the ICC rules. Among other novelties, the 2017 TAI rules now include the provisions of the terms of reference under the ICC model. Consequently, the 2017 TAI rules generally provide stricter time limits and are intended to make the process more efficient.

Arbitration clauses are increasingly common in commercial contracts, particularly for international transactions and construction contracts. To be binding upon the parties, the agreement to arbitrate must be evidenced by a written document or stated in written correspondence between the parties. A court claim under a contract containing an arbitration clause may be dismissed if a party to the contract raises the issue of arbitration prior to the deadline to file an answer. If neither party raises the issue, the case will be litigated.

## **Arbitration Institutes**

There are three main domestic arbitration institutes in Thailand:

- Thai Arbitration Institute of the Alternative Dispute Resolution Office, Office of the Judiciary, established in 1990;
- Thai Commercial Arbitration Institute of the Board of Trade, also established in 1990; and
- Thailand Arbitration Center, established in 2014.

These institutes are well respected and well administered, supervised by a diverse advisory board, have standard arbitration rules, and maintain a list of qualified available arbitrators.

### Arbitrators

Under the Arbitration Act (No. 2) B.E. 2562, an amendment to the Arbitration Act B.E. 2545, new provisions were enacted to allow foreign arbitrators and representatives to participate in arbitral proceedings. The Amendment allows foreign citizens participating in arbitral proceedings at an arbitral institution, such as the TAI or THAC, to apply for a certificate, which will be considered by the Immigration Official. The certificate is valid for the expected duration of the arbitration proceedings, with an option for renewal. During this period, the government permits foreign arbitrators or representatives to reside in Thailand, authorizes them to perform their duties, and issues them a work permit. The foreign arbitrator or representative can perform his/her duties during the period of validity of the work permit.

### Enforcement of Arbitral Awards

There is no distinction between enforcement of arbitration awards rendered in Thailand and those rendered in foreign countries, so long as an award rendered in a foreign country is governed by a treaty, convention, or international agreement to which Thailand is a party. Foreign arbitral awards rendered in member countries of the New York Convention are recognized and enforced in Thailand. Arbitral awards are generally enforced, whereas foreign judgments are not.

- **Revocation/Set Aside.** A petition to set aside an arbitration award must be filed with the court within 90 days from the date of receipt of the award. Under UNCITRAL, an arbitral award may only be set aside in the country in which it was issued. The effect of setting aside an arbitral award is that the award is no longer enforceable worldwide.
- **Enforcement.** If either party refuses to comply with an arbitration award in Thailand, the award may be enforced only after a Thai court orders enforcement. A petition for enforcement of an award must be filed within three years from the date when the award could first be enforced. The effect of a non-enforcement order is that the award is not enforceable in Thailand (only).
- **Grounds.** The grounds for setting aside or refusing to enforce an arbitral award are similar. Sections 40 and 43 of the Arbitration Act provide that a court may set aside or refuse enforcement of an arbitral award when the party contesting the arbitral award or its enforcement proves one of the following factors:
  - A party to the arbitration agreement was under some incapacity under the law applicable to that party.
  - The arbitration agreement is not binding under the law of the country agreed to by the parties, or if not indicated, under the law of the country where the award was issued.

It is generally accepted and recognized that criminal, family, labor, and certain types of IP disputes cannot be submitted to arbitration on account of being contrary to public policy. In 2015, the Cabinet passed a resolution that relaxed the previous general rule prohibiting the use of arbitration clauses in all types of public sector contracts unless Cabinet approval was obtained. However, Cabinet approval is still needed in public-private partnerships, concession agreements, and other large-scale projects.

- The party making the application was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings, or was otherwise unable to defend the case in the arbitral proceedings.
- The award deals with a dispute not falling within the scope of the arbitration agreement or contains a decision on a matter beyond the scope of the arbitration agreement. However, if the award on the matter which is beyond the scope can be separated from the part that is within the scope, the court may set aside or enforce only the part that is beyond the scope of the arbitration agreement or clause.
- The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, if not otherwise agreed by the parties, in accordance with the law of the country where the award was issued.
- The arbitral award has not yet become binding, or has been set aside or suspended by a competent court or under the law of the country where it was made. Save where the setting aside or suspension of the award is being sought from the competent court, the court may adjourn the hearing of this type of case as it thinks fit. If requested by the party making the application, the court may order the party against whom enforcement is sought to provide appropriate security.
- The court may also set aside or refuse to enforce an arbitral award if it finds that: (1) the award involves a dispute not capable of settlement by arbitration under the law, or (2) the recognition or enforcement of the award would be contrary to the public order or good morals of Thailand.

#### **Key Points on Alternative Dispute Resolution:**

- Arbitration is often preferable to litigation when special technical expertise is required to understand the dispute. Construction and software design disputes are typical examples of disputes that are better resolved by arbitrators with expertise in those fields.
- Arbitration is also preferable when some or all of the opposing party's assets are located outside of Thailand, since arbitral awards are enforceable in most countries, whereas a Thai court judgment is normally only enforceable against assets located in Thailand.
- Litigation in Thailand is usually less expensive than arbitration because arbitrators and arbitration institutes normally charge the parties far more than a typical court filing fee. Arbitration can also take longer than litigation if the plan is to enforce the award in Thailand, because the party attempting to enforce the award will need to proceed through a lower court proceeding followed by one or two upper court appeals.

For more information on alternative dispute resolution,  
please contact the Tilleke & Gibbins dispute resolution team on +66 2056 5555.

## **17.3 Criminal Proceedings**

### **Search and Arrest Warrants**

The state has the general power to gather information and to issue notices requesting documents and witness statements. If the recipient of such a notice does not comply, the state authority must seek a search warrant from the court.

A search warrant may be issued in the following circumstances:

- To discover and seize any article that may be used as evidence in the course of an inquiry, preliminary examination, or trial.
- To discover and seize any article where:
  - the possession of the article is an offense;
  - the article has been unlawfully obtained; or
  - the article is reasonably suspected to have been used or intended to be used in the commission of an offense.
- To discover and rescue any person who is wrongfully restrained or confined.
- To locate any person against whom a warrant of arrest has been issued.
- To discover and seize any article according to the judgment or order of a court, where such discovery or seizure cannot be otherwise secured.

A search warrant for the purpose of finding and arresting a person must be issued concurrently with an arrest warrant for that person. The person to execute the search warrant must possess both the search warrant and the arrest warrant.

A government official or a police officer may search a private place without a search warrant in various cases of emergency and imminent danger and in other specified circumstances. An officer may also search a person who is placed under arrest and may seize any and all articles in the possession of the detained person. The search of a person must be conducted with due propriety, and a woman must be searched by a female officer.

An illegal search does not preclude the evidence from being admissible in court. The trial judge may determine whether to admit or preclude the evidence. An illegal search may, however, result in penalties (e.g., fine, imprisonment) for the officer conducting the search.

## Criminal Charges

In Thailand, there are two options available to a party seeking to initiate criminal actions.

- The victim may file criminal charges directly with the court without going through the police and Public Prosecutor's Office. In that event, the court will schedule a preliminary hearing to determine whether the facts support trying the case. If the court finds reasonable grounds to proceed, it will schedule a trial just as if the Public Prosecutor was bringing the charges.
- The victim (or in some cases a witness) may submit charges directly to the police and allow the police and the public prosecutor to handle the matter. The police will question the petitioner and summons the defendant to appear for questioning. After completion of an investigation, the investigating officer will issue an opinion to the public prosecutor, recommending for or against prosecution. If the prosecutor ultimately decides to prosecute, the matter will go to trial. Normally, the court will not conduct a preliminary hearing in this instance.

Filing a criminal action is serious and could subject the filer to criminal charges of defamation or asserting false information in order to lodge a criminal

## Compoundable Offenses

The Thai legal system recognizes two types of criminal offenses: compoundable and noncompoundable. In general terms, crimes against the state or crimes affecting morality and public policy (e.g., murder and theft) are noncompoundable, whereas certain crimes between persons are compoundable (e.g., fraud, defamation, and bouncing cheques).

A compoundable offense may be settled and withdrawn by the victim at any time before its final judgment, and the public prosecutor cannot then prosecute the case.

A noncompoundable offense may also be settled and withdrawn by the victim at any time prior to the lower court's judgment, but the public prosecutor retains the authority to prosecute the offense on behalf of the State. The courts generally do not allow a public prosecutor to withdraw or settle a lawsuit based on a noncompoundable offense, absent of exceptional circumstances.

The Criminal Code Amendment Act (No. 27) B.E. 2562 (2019) makes the offense of rape more difficult to be compoundable. A rape offense would be compoundable if (1) it was committed between a married couple and did not occur in public, or did not cause grievous bodily harm, or (2) the offense was committed against a minor whose age is greater than 15, if (i) the act did not occur in public and did not cause grievous bodily harm or death, or (ii) it was not committed against a blood relative, student, person in custody, elderly person, pregnant woman, or person who is handicapped or lacking mental capacity.

The Criminal Code Amendment Act (No. 28) B.E. 2564 (2021) removed abortions in the first twelve weeks from the scope of the offense of abortion. Under the amended law, it is a crime for a woman to cause her own abortion or allow another to cause her abortion after her pregnancy has passed the 12-week mark. Also, a medical practitioner who causes an abortion in compliance with the criteria of the Medical Council of Thailand would not be subject to criminal liability in certain cases, such as when a pregnant woman confirms that she has become pregnant because of an offense related to sexuality, or a woman whose pregnancy is longer than 12 weeks insists on her intention to terminate the pregnancy.

The Criminal Code Amendment Act (No. 29) B.E. 2565 (2022) increased the age of a liability for a minor who commits an act which is an offence as provided by law. Under the amended law, the age of a minor was increased from 10 years to 12 years, the result of which is that a minor 12 years old or younger is not liable to punishment for criminal acts. This is to provide increased protections for minors considered too young and impressionable to fully understand the implications of their criminal acts.

## Prosecution

In Bangkok, the criminal caseload is shared among different courts of first instance. Alleged offenders may appear in the Criminal Court, the South Bangkok Criminal Court, the Thon Buri Criminal Court, or Min Buri Provincial Court, depending on the place of arrest, the alleged offender's residency, or the origin of inquiry. In other provinces, criminal matters can be adjudicated in provincial (*changwat*) courts.

- Municipal (district/*kwaeng*) courts have the power to adjudicate criminal cases where the maximum punishment by law does not exceed three years' imprisonment or a THB 60,000 fine.
- Provincial (*changwat*) courts may adjudicate all criminal matters within the jurisdiction of the court.



- The Intellectual Property and International Trade Court is a specialized court with exclusive jurisdiction to adjudicate criminal matters involving intellectual property.

If the defendant has no counsel, a lawyer will be appointed by the court prior to the start of the trial in cases where the charge carries a maximum sentence of death or by request where the accused is 18 or under. Attorney fees paid by the court are very low and are determined by the judge according to the complexity of the case.

The prosecutor has the burden of proving all elements of the crime beyond a reasonable doubt.

## Punishment

Thailand does not have any mandatory sentencing guidelines, and the court is authorized to exercise its discretion in criminal cases by taking into account the circumstances and gravity of the offense. The court can fix any amount of punishment within the legislative framework for the offenses involved. There are five types of sentences in Thailand:

- Death
- Imprisonment
- Confinement
- Fines
- Forfeiture of property

The usual penalty for a criminal conviction is a fine, imprisonment or both. Maximum amounts are fixed for each offense by statute. Fines in Thailand depend on the circumstances, but are relatively low compared to the fines imposed in many other countries.

## Appeals

Appeals can generally be made on both the facts and the law in regard to a guilty judgment, though Thailand's Criminal Procedure Code (CPC) does not allow plaintiffs to appeal questions of fact in cases where a defendant is sentenced to imprisonment for three years or less, a fine of up to THB 60,000, or both. A defendant can appeal questions of fact if he or she is fined over THB 1,000 or is sentenced to more severe punishments such as suspended imprisonment. Both parties can appeal questions of law.

A defendant facing serious punishment (i.e., an order for imprisonment or greater punishment) that intends to appeal a judgment to the Court of Appeals or the Supreme Court must appear before court officials. In these cases, absent defendants lose their right to appeal to higher courts and are barred from designating lawyers to act on their behalf before the Court of Appeal or the Supreme Court. Defendants facing lesser punishments (e.g., a fine, confinement, forfeiture, etc.), including suspended sentences of imprisonment, can apply for an extension of the deadline to appear before court officials.

## Criminal Procedure Code Amendment Act (No. 33 and 34) B.E. 2562 (2018)

Certain key amendments in the Criminal Procedure Code include the following:

- In cases involving the death penalty, or involving a defendant whose age is not more than 18 years old, at the preliminary examination process, if the defendant does not have a legal representative, the court must appoint one for him or her. In cases involving an imprisonment penalty, at the preliminary examination process, if a defendant does not have a legal representative and needs one, the court must appoint one.
- During the preliminary examination process, the defendant can submit a statement explaining the facts or legal issues that the court should consider to dismiss the case. In that regard, the defendant may refer to persons, documents, or materials that support his or her statement. The court may call these persons, documents, or materials as the court's evidence for consideration.
- Trial in absentia (i.e., without the presence of the defendant) is an exception to the defendant's right to be present at trial. In cases where the defendant escapes or does not attend a witness hearing without reasonable grounds, the court may issue an arrest warrant. If despite the warrant the defendant has not been arrested within three months, the court has the discretion to proceed with the witness hearing without the defendant's presence. However, in cases involving the death penalty or involving a defendant under 18 years old, a trial in absentia cannot be conducted.
- In cases where the defendant is a juristic person and a warrant has already been issued, but the defendant's manager or representative has not been arrested within three months, the court has the discretion to conduct the witness hearing without the defendant's presence.
- In cases where the victim files a criminal charge directly with the court, if the court finds that the claimant filed the charge in bad faith in order to take advantage or benefit in addition to one he or she has the right to receive, the court will dismiss the charge and, consequently, the charge cannot be resubmitted.

## 17.4 Foreign Proceedings

### Enforcement of Foreign Judgments

Foreign judgments are not enforceable in Thailand. Thailand is not a party to any unilateral or multilateral treaties or conventions on the enforcement of foreign judgments. Foreign decrees are sometimes acceptable as evidence in Thai courts and can be persuasive evidence, provided they are not default judgments, are not offensive to Thai public policy, and are translated into the Thai language.

### Depositions

Thailand is not a party to the Hague Convention on Taking Evidence Abroad. Thailand has, however, entered into a number of bilateral agreements on mutual assistance in criminal matters. These agreements provide for cooperation in taking evidence and obtaining statements.

For countries without a bilateral agreement with Thailand, testimony can be taken for a foreign court through the use of letters rogatory, which normally take at least six months. The procedure begins when a foreign court produces written questions that are sent to Thailand through diplomatic channels. Once the questions reach the Thai Civil Court, the assigned judge can compel the deponent's attendance to respond to the questions. Thai and foreign attorneys from both sides are allowed to be present during examination by the judge, and may ask the judge to further probe areas worthy of additional inquiry. The judge normally summarizes (not repeats) the deponent's replies into a tape recorder, and they are transcribed and returned to the foreign court through the same diplomatic channels.

### Foreign Writs

Foreign writs may be served on persons in Thailand with affidavits of service being made at the concerned embassy, provided this method of service complies with the laws of the foreign jurisdiction. This procedure is neither affirmed nor prohibited by Thai law.

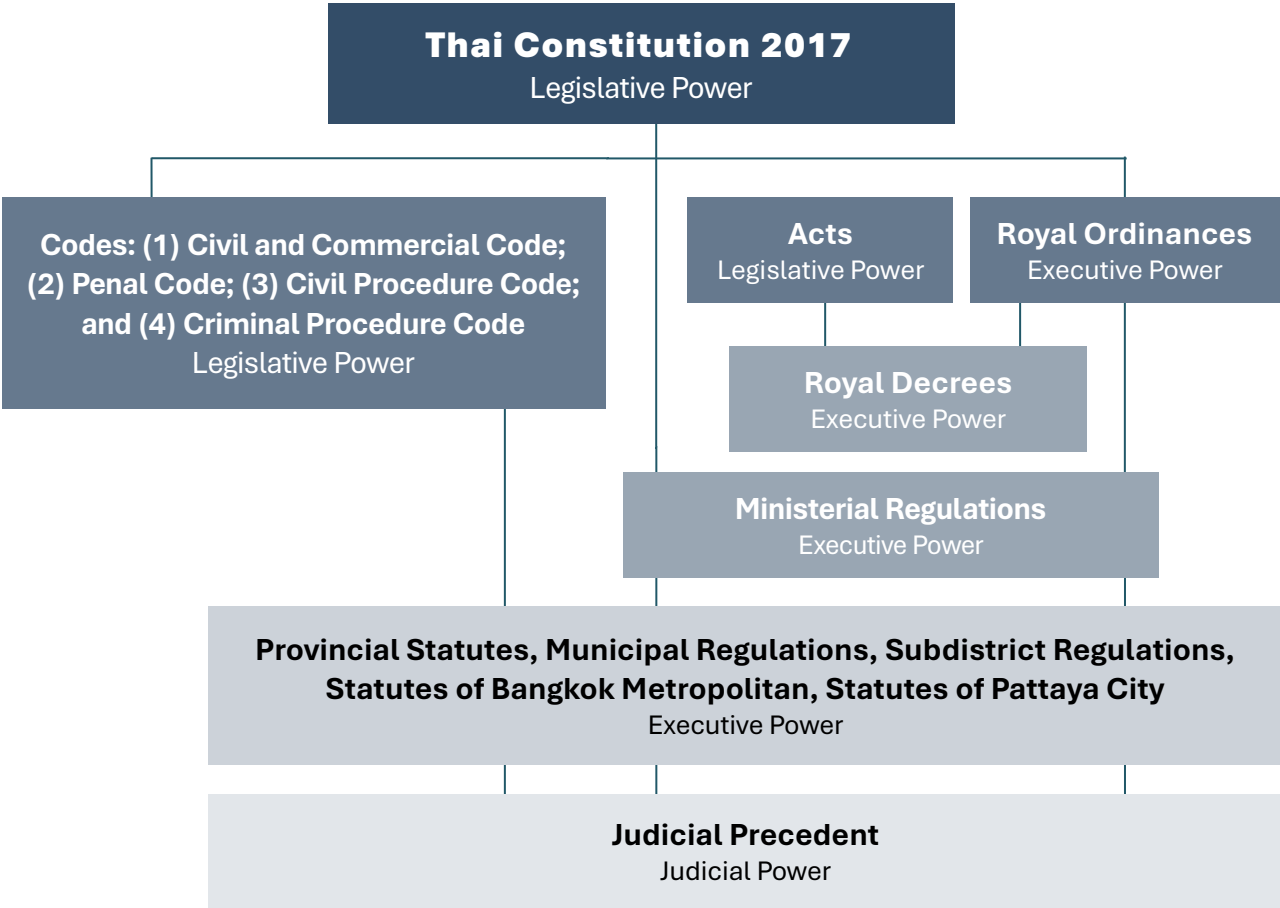
### Extradition

Extradition is governed by the Extradition Act B.E. 2551 (2008), together with extradition treaties. Thailand has extradition treaties with Australia, Bangladesh, Belgium, Cambodia, Canada, China, Fiji, Hungary, India, Indonesia, Laos, Malaysia, the Philippines, South Korea, the United Kingdom, and the United States of America. Extradition generally requires the offense to be criminal under the laws of the requesting country and the laws of Thailand, and the offense must be punishable in both countries by imprisonment of at least one year, or death.

## 17.5 Further Information on Thailand’s Legal System

### Governing Laws

The sovereign power of Thailand is vested in the legislature, the executive, and the judiciary. The hierarchy of legal authority in Thailand can be generally described as follows:



*Source: Associate Professor Police Colonel Naiyana Kerdwichai, "Introduction to Laws," 2005. (Revised by Tilleke & Gibbins in 2011)*

## Legislative Power

Legislative power belongs to the parliament, comprised of the House of Representatives and the Senate.

## Constitution

The Constitution of the Kingdom of Thailand is the supreme law concerning the administration of the country. There have been several constitutional amendments and promulgations of new constitutions throughout Thailand's history. The most recent promulgation is the 2017 constitution, which was drafted by the Constitution Drafting Committee and then enacted by the king.

The 2017 constitution maintains the key principles of its predecessors by instituting a democratic regime of government. The king is the head of state but exercises no political responsibility. Sovereignty rests with the Thai people through the National Legislative Assembly, the cabinet, courts (including constitutional organs), and state agencies in accordance with the provisions of the constitution.

## Codes and Acts

- The elemental codes are as follows:
- Civil and Commercial Code
- Penal Code
- Civil Procedure Code
- Criminal Procedure Code

The country functions under a series of special legislative enactments called acts, of which there are hundreds. Acts concern many aspects of the day-to-day life and activities of people in business, industry, agriculture, military, and government.

## Executive Power

Executive power is vested in the government of Thailand, which is led by the prime minister and the cabinet (composed of the prime minister and not more than 35 ministers nominated by the prime minister and appointed by the king). The prime minister is not required to be a member of the National Assembly but must be qualified in accordance with the requirements provided in the constitution. The king has the power to remove ministers from office as advised by the prime minister.

Only the king can promulgate royal ordinances and royal decrees. The government may issue ministerial regulations and local acts.

## Judicial Power

Judicial power to adjudicate cases is vested in the courts. The judiciary is independent from executive control. Judges independently try cases in accordance with the constitution and the law and in the name of the king.

Judicial precedent as a source of law has a unique Thai definition. A previous Thai Dika (Supreme) Court decision will influence a current case only to the extent of the judge's impression of the merits of the earlier case; the judge retains the discretion to apply the precedent opinion to the current case.

In practice, however, the Dika (Supreme) Court endeavors to follow its earlier decisions. In certain unique circumstances, the Dika (Supreme) Court may call a meeting of Dika (Supreme) Court judges to debate a certain point of law and, if a consensus is reached, to change previous precedent.

All reported Dika (Supreme) Court decisions (dated after 1986) and judgments of the Specialized Court of Appeal are searchable online. Since lower and intermediate courts of appeal decisions are not reported, they have virtually no influence outside their jurisdictional areas

## **Establishment of Courts**

### **Courts of First Instance**

The courts of first instance comprise general civil courts and courts of special jurisdiction. The general civil courts are divided into district courts, which have jurisdiction to hear small claims with a maximum value of THB 300,000, and provincial courts, which have jurisdiction to hear all claims above THB 300,000. Unless the judgment has been declared final by statute, appeals from the general civil courts may be made to the Appeals Court, and a further appeal can be made to the Supreme Court.

The courts of first instance are the lower courts—the first level in the court system where trials actually take place.

There are only two tiers of courts for the Administrative Court. The Supreme Administrative Court hears appeals from the Administrative Court.

### **Juvenile and Family Court**

The Juvenile and Family Court has jurisdiction in any criminal case involving children (under the age of 15) and juveniles (15 to 18) and any civil action under the Civil and Commercial Code involving proceedings concerning a minor (under 20). This court also governs family matters such as divorce, maintenance, and custody, and any proceedings in which the court must pass judgment or issue orders affecting children or youth. Children below the age of 10 are not punishable under Thai law, and reduced or no imprisonment is imposed upon children under 15.

A trial in the Juvenile and Family Court is adjudicated by two professional judges and two lay judges, with the requirement that at least one of the lay judges be female.

### **Central Bankruptcy Court**

The Central Bankruptcy Court has jurisdiction over bankruptcies filed in all provinces. The court is charged with administering the Bankruptcy Act B.E. 2483 (1940), as amended by the Bankruptcy Act (No. 10) B.E. 2561 (2018), and bankruptcy proceedings involving liquidation or reorganization.

### **Central Intellectual Property and International Trade Court**

The Central Intellectual Property and International Trade (IP&IT) Court is a court of first instance that considers international trade and intellectual property disputes.

The IP&IT Court has jurisdiction over the following civil and criminal actions, and civil cases related to arbitration on the same topics:

- Trademarks, copyrights, or patents (civil and criminal);

- Agreements on technology transfers or licensing (civil);
- International sale, exchange of goods or financial instruments, services, carriage, insurance, and other related legal actions (civil);
- Letters of credit issued in connection with the above civil actions, inward and outward remittance of funds, trust receipts, and provision of guarantees in connection therewith (civil);
- Ship arrests, dumping, and subsidization of goods or services from abroad (civil);
- Disputes over layout designs of integrated circuits, scientific discoveries, trade names, geographical indicators, trade secrets, and plant varieties (civil and criminal); and
- Offenses relating to trade under sections 271 to 275 of the Criminal Code (civil and criminal).

Career judges in the IP&IT Court are judicial officials with special training in intellectual property or international trade. The court also utilizes lay judges with specific expertise in particular areas of intellectual property or international trade. An IP&IT Court trial is adjudicated by at least two career judges and one lay judge.

The IP&IT Court is the only court to allow interlocutory injunctions or attachments before filing suit. This court is also unique in that it allows pre-trial conferences.

Hearings are usually held without adjournment until judgment is rendered. This allows for a trial to be completed within 12 to 18 months, plus another three years or sometimes longer if appealing to the Dika (Supreme) Court.

### **Labor Court**

Labor courts and their procedures are established by the Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979). Labor Court trials are heard by a quorum of one career judge, one lay judge selected by employer federations, and one lay judge selected by labor federations.

### **Tax and Duty Court**

The Tax and Duty Court hears tax and customs duty disputes. It requires a quorum of two judges, one lay and one career, to hear cases.

### **Constitutional Court**

The Constitutional Court has the jurisdiction to determine the constitutionality of laws. Persons whose rights or liberties (as recognized by the constitution) are violated may file a motion with the Constitutional Court for a decision that the law or a provision thereof is unconstitutional. Access to the Constitutional Court is only allowed where all other means for redress have been exhausted.

The Constitutional Court has jurisdiction to review the following:

- The constitutionality of parliamentary acts
- The constitutionality of royal decrees
- The authority of constitutional mechanisms
- The appointment and removal of public officials
- Political party issues
- The constitutionality of draft legislation

## **Legal Profession and Judiciary**

The first Lawyers Act was passed in the year 1914 during the reign of King Rama VI and has witnessed many changes since, with the Lawyers Act B.E. 2528 (1985) being the present governing law. Section 4 of the Lawyers Act describes a lawyer as a person who has been registered as a lawyer and who possesses a license that has been issued to him or her by the Lawyers Council of Thailand. A lawyer must observe the Regulation of the Lawyers Council of Thailand on Lawyer's Ethics B.E. 2529 (1986), which is managed by the Committee on Professional Ethics.

The Lawyers Council of Thailand is given power under the Lawyers Act to issue rules regulating the professional practice and conduct of lawyers, the breach of which constitutes professional misconduct. When a complaint of professional misconduct is filed against a particular practicing lawyer, the Lawyers Council of Thailand appoints a committee consisting of three members to investigate the complaint. If they decide that the complaint is valid, the case is sent before the Disciplinary Committee.

The legal profession in Thailand is limited to Thai nationals. However, foreign attorneys who obtained lifetime work permits when the first Alien Working Act was passed in 1972 are allowed to continue giving legal advice.

### **Qualifications and Legal Education**

Prince Rabi's Law School was the nation's preeminent law school for 36 years before merging with Chulalongkorn University in 1933. Teaching of law was transferred to a new school, Thammasat University, the next year. Chulalongkorn University started teaching law again in the 1950s. The 1970s saw the start of open universities, including Ramkhamhaeng University and Sukhothai Thammathirat Open University, teaching law.

In addition to the prerequisite LLB degree from the undergraduate law faculty of a Thai university (or an Associate Degree in Law or a Certificate in Law equivalent to a bachelor's or associate degree from an educational institution accredited by the Lawyers Council of Thailand), law graduates are now required to pass a six- to seven-month training course provided by the Lawyers Council of Thailand, which consists of a legal theory examination and six to seven months of practical training. Alternatively, law graduates may serve as law trainees for one year in a law office and then pass the Lawyers Council of Thailand examination before applying to the Lawyers Council of Thailand for permission to practice law.

The above requirements entitle a national to a license, which is valid for two years from the date of issuance and which can be renewed within 60 days prior to its expiration. Life memberships are also available, the licenses of which are valid until the death of the holder.

A barrister-at-law degree is a further course lasting one year or more, offered by the Bar Institute. A barrister-at-law is entitled to take further examinations to qualify as a judge or a public prosecutor.

### **Judiciary**

The judiciary is currently made up of over 5,000 professional and trainee judges sitting on courts of first instance (excluding the Constitutional Court, Administrative Court, Military Courts), plus Courts of Appeal and one Dika (Supreme) Court. Judges are also attached to the Office of the Court of Justice for providing administrative support and for filling in when needed in courts throughout the nation.

Generally, a judgeship is a career profession. A judge will be retired at the age of 60. After that, he or she may become a senior judge and remain in office until the age of 70, subject to a performance evaluation process.

General candidates for judgeships are recruited through an open competitive examination. Candidates must be of Thai nationality, be at least 25 years of age, and possess an LLB degree from a Thai law school and a barrister-at-law degree from the Bar Institute. They must also have two years of experience as a court clerk, assistant court clerk, probation officer, execution officer, official receiver, public prosecutor, litigator, judge advocate's general officer, or other government legal officer.

Candidates with special qualifications or expertise must still qualify via an open competitive selection process, but may elect to take alternative examinations to assess their knowledge and expertise. Three groups of candidates are eligible for such preferential treatment. The first group includes candidates with a barrister-at-law degree from the Bar Institute and additional special qualifications, for example, a foreign law degree or a Thai bachelors, masters, or doctorate degree with expertise or experience in legal or other fields corresponding to the degree or as specified by the Court of Justice Judicial Committee. The second group includes candidates with a barrister-at-law degree from the Bar Institute with expertise or experience in branches of law specified by the Court of Justice Judicial Committee, together with current or past service as (1) a professor or associate professor in a government university, (2) a law instructor in a government university for at least five years, (3) a director in a government agency, or (4) a litigator for five years. The third group includes candidates with a barrister-at-law degree from the Bar Institute with a postgraduate degree in law from abroad. If the postgraduate program is a two-year course, only one postgraduate certificate is required. However, if the postgraduate degree is a single-year program, the candidate must obtain two certificates to be eligible to sit the examination.

Appointments, promotions, transfers, and removal of judges are made by H.M. the King upon recommendation of the Court of Justice Judicial Commission. The judiciary and its functions are virtually independent of both the legislative and executive branches. Judges are governed by the Judicial Service Act and may be dismissed from service only for proven misconduct, incapacity, or infirmity.

## **Public Prosecutors**

The government is represented in both criminal and civil matters by public prosecutors stationed throughout the country. The Office of the Attorney General is currently an independent public agency. Both judges and public prosecutors are governed by their own service commissions in order to be free of outside influence and control. Like judges, public prosecutors are career professionals. Public prosecutors are governed by the Prosecution Office and Prosecutors Act B.E. 2553 (2010).



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