

Doing business in Thailand

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction?

Thailand has a codified legal system with a doctrine of strict compliance.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Foreign investment is restricted to certain types of business activities (*Foreign Business Act 1999* (FBA)).

Potential investors should check the FBA (which also defines foreign investors, known as aliens) to determine which of the following categories their proposed business activity falls into:

- **List 1.** Foreign investment is prohibited in these activities, which include:
 - a newspaper business;
 - radio broadcasting;
 - a TV station business;
 - farming;
 - land trading.
- **List 2.** Foreign investment is only allowed in these activities with either:

- permission from the Minister of Commerce (which must be approved by the Cabinet);
- authorisation from the Board of Investment or from the Industrial Estate Authority of Thailand.

Activities identified in this list include:

- the production, sale and maintenance of fire-arms and armaments;
- domestic transportation by land, water and air;

- **List 3.** Foreign investment is only allowed in these activities with either:

- permission from the Director-General of the Business Development Department at the Ministry of Commerce (which must be approved by the Foreign Business Committee);
- authorisation from the Board of Investment or from the Industrial Estate Authority of Thailand.

Activities identified in this list include the following services:

- accounting;
- legal;
- architectural;
- engineering;
- retail and wholesale;
- hotel.

3. Are there any exchange control or currency regulations?

Foreign exchange transactions are regulated by the Exchange Control Act 1942 (as amended).

Foreign currency can be imported for any purpose in any amount but must be either:

- Sold to an authorised agent.
- Deposited into a foreign currency account with a commercial bank in Thailand within seven days of receipt.

Money exported for certain transactions require approval from an authorised bank. These include:

- Foreign investment not exceeding US\$10 million (about EUR8 million).
- Loans to affiliates not exceeding US\$10 million (about EUR8 million).
- The purchase of property not exceeding US\$500,000 (about EUR402,000).

Sums in excess of the above require approval from the Bank of Thailand.

4. Are any grants or incentives available to foreign investors?

The Board of Investment grants fiscal and non-fiscal incentives to attract foreign investment.

BUSINESS ENTITIES

5. What are the most common forms of business entity used by foreign investors to conduct business in your jurisdiction?

The most common form of business entity used by foreign investors is a subsidiary.

6. In respect of the corporate vehicle most likely to be used by foreign investors conducting business in your jurisdiction, please state:

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**

- **Whether shares can be issued for non-cash consideration such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Directors' liability.**
- **Parent company liability.**
- **Management structure and any restrictions on foreign managers.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of corporate vehicle established by a foreign company in Thailand is the private limited company. Foreign investors can engage in this form of business without permission from the authorities provided that a Thai partner holds a majority stake.

- **Registration formalities.** At least seven promoters are required to establish a private limited company. The company must reserve a company name and file a copy of its memorandum and articles of association with the Ministry of Commerce. The registration fee is about 0.55% of registered capital, with a minimum of baht5,500 (about US\$133) and a maximum of baht275,000 (about US\$6,640). The formation process takes three to four weeks.
- **Minimum (and maximum) share capital.** The minimum capital requirement for a foreign-majority-owned company, is baht2 million (about US\$48,300). If the intended activity is listed in the FBA, the minimum capitalisation is baht3 million (about US\$72,500) or 25% of the company's average estimated annual expenses during the first three years. The par value of each share, whether or not the activity is listed in the FBA, must be at least baht5 (about US\$0.1). A minimum share capital of 25% must be paid on or before the date of filing the application for incorporation.
- **Shares issued for non-cash consideration.** Future services to the company may be used as consideration for shares.
- **Restrictions on rights attaching to shares.** There are no restrictions on rights attaching to shares other than any identified in the articles of association.

- **Restrictions on foreign shareholders.** In some activities listed in the FBA (see *Question 2*), foreign investors cannot hold a majority of shares.
- **Management structure and foreign managers.** A private limited company is managed by a board of directors, which is elected by shareholders in a general meeting. Nationality requirements only apply to business activities in List 2 of the FBA (see *Question 2*).
- **Directors' liability.** Directors can be held personally liable under civil law if:
 - they do not exercise their duties in the best interests of the company;
 - they do not act in a fair and honest way;
 - they fail to avoid a conflict of interests;
 - the memorandum of association states that they have unlimited liability.

Directors are criminally liable if:

 - they commit wrongful acts intentionally;
 - they commit or omit acts specifically identified by the law, either negligently or unintentionally.
- **Parent company liability.** A parent company is only liable for the debts and losses of its subsidiary up to the amount unpaid on its shares. It is also liable when the shares have been fully paid if it has given a guarantee.
- **Reporting requirements.** The following must be filed with the Ministry of Commerce within five months from the end of the tax year (that is, the company's 12-month accounting period):
 - a balance sheet certified by an auditor and approved by the annual general meeting of the shareholders;
 - a statement of profits.

EMPLOYEES

7. What is the jurisdictional scope of the regulatory environment for employment issues?

Minimum standards for conditions of employment are

set by the Labour Protection Act 1998 (LPA).

Sections 575 to 586 of the Civil and Commercial Code (CCC) defines a contract of employment and the general duties of employers and employees.

The Labour Relations Act 1975 (LRA) governs relations between employers and employees and sets out the procedures for:

- Presenting demands.
- Negotiations.
- Mediation by Labour Ministry officials.
- Strikes.
- Lockouts.
- Arbitration by the Labour Relations Committee.

These provisions apply to anyone who is working in Thailand, irrespective of their nationality.

8. Is a written contract of employment required and what, if any, other terms are likely to govern the employment relationship?

Employment contracts do not need to be in writing. However, there are certain provisions that employers must comply with whether or not there is a written contract, such as minimum notice periods.

9. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or to be consulted in relation to corporate transactions.

10. What statutory rights do workers have against dismissal in your jurisdiction?

If a termination is with cause, employees may be dismissed without notice or a severance payment. A termination is with cause if the employee:

- Acts dishonestly in connection with his duties.

- Intentionally commits a criminal act against the employer.
- Intentionally causes the employer to suffer loss.
- Causes the employer to suffer severe loss as a result of an act of gross negligence.
- Continues to violate the employer's work rules and regulations or lawful orders, despite having received a written warning (or commits an initial violation that is so serious that no written warning is required).
- Is absent from work, or neglects his duties, for three consecutive working days (whether or not holiday is taken in between) without reasonable cause.
- Receives a prison sentence, unless the court decides that the offence was petty or committed as a result of negligence.

Employees dismissed without cause are entitled to written notice of at least one pay-period and to a severance payment based on length of service.

Any employee is entitled to file suit with the Labour Court if they believe that they have been unfairly dismissed.

11. How are redundancies regulated?

Redundancy is regarded as termination without cause, even if the redundancy can be justified for business reasons, such as plant closures, and irrespective of the number of employees being dismissed. Therefore, employers must give written notice and a severance payment (see *Question 10*).

12. What is the cost of employment for employers and employees (such as mandatory taxes and social security contributions)?

Social security fund

Employers and employees must each contribute to the fund an amount equal to 5% of gross wages up to a maximum of baht750 (about US\$18) per month.

Payments are made from the fund to employees for:

- Work-related injuries.
- Sickness.
- Disability.
- Death from a cause unrelated to work.
- Maternity leave.
- Child welfare.
- Pension.
- Unemployment.

Workmen's compensation fund

Employers must contribute between 0.2% and 1% of an employee's annual earnings (up to a maximum of baht240,000 (about US\$5,795)), depending on the classification of the employer.

13. How are employees of foreign companies who are seconded to your jurisdiction from abroad taxed?

Employees of foreign companies who are seconded to work in Thailand are taxed in the same way as Thai employees (that is, according to a progressive rate). Exemptions may be available if a double tax treaty applies.

14. Do foreign workers require work permits? If so, how long does it take to get a permit and how much does it cost?

Yes, applications must be made to the One Stop Centre for Visa and Work Permit Services. Applicants must meet the necessary qualifications and pay the appropriate fee:

- Baht750 (about US\$18) for a three month visa.
- Baht3,000 (about US\$72) for a six to 12 month visa.
- Baht1,900 (about US\$46) for a one year visa.

Visas are issued within three to four hours.

TAX

15. What is the basis of taxation of companies that are incorporated and/or tax resident in your jurisdiction?

Thai companies must pay tax on their worldwide income.

16. How are the activities of non-tax resident companies in your jurisdiction taxed?

Foreign companies must pay tax on income sourced within Thailand.

17. What are the main taxes that potentially apply to companies (including rates)?

Corporate income tax for Thailand-based companies

This must be paid by Thai companies at a rate of 30% on net profit earned during a tax year.

Income tax on foreign companies not carrying on business in Thailand

A withholding tax must be paid on the gross amount of Thai-sourced income (such as service fees, royalties, interest and rental income) at the flat rate of 15% (or 10% for dividends). Tax payable is withheld at source at the time of the payment.

Value added tax (VAT)

The VAT rates is 7%. The following four categories of business transactions are subject to VAT:

- Sale of goods.
- Provision of services.
- Export sales.
- Import of goods for any purposes.

Some business activities are exempt from VAT (such as the sales of agricultural products).

Special business tax (SBT)

Some business activities exempt from VAT are subject to SBT, such as:

- Banking or similar activities.
- Credit financing.
- Securities.
- Life insurance.
- Pawn shop services.
- Commercial sales of immovable property or sales of immovable property for profits.

The rate payable varies between 0.1% and 3% of gross monthly receipts.

Municipal tax

This applies to anyone subject to SBT and is charged at the rate of 10% of the SBT payable.

Stamp duty

There are 28 transaction documents subject to stamp duty (*Stamp Duty Schedule, Revenue Code*). The rate of tax payable depends on the document executed.

18. Please explain how each of the following are taxed:

- **Dividends paid to foreign corporate shareholders.**
- **Dividends received from foreign companies.**
- **Interest paid to foreign corporate shareholders.**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders.**

- **Dividends paid to foreign corporate shareholders.** Dividends are subject to a withholding tax at the rate of 10%.

- **Dividends received from foreign companies.** Dividends are taxed as ordinary income tax of the Thai company.

- **Interest paid to foreign corporate shareholders.** Interest is subject to a withholding tax at the rate of 15%.

- **IP Royalties.** Royalties paid to non-resident companies are subject to a withholding tax at the rate of 15%, which may be reduced to 5% or 10% under some tax treaties.

19. Does your jurisdiction have thin capitalisation rules (restrictions on loans from foreign affiliates)?

Thailand does not have thin capitalisation rules.

20. Can the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules in Thailand. A Thai parent company is only subject to tax on dividends actually paid to it by a foreign subsidiary.

21. Does your jurisdiction have transfer pricing rules?

Yes, the Revenue Department can assess, without justification:

- Transfers of assets without, or with below-market-value, compensation.
- The provision of services without, or with a below-market-value, service charge.
- Monetary loans without, or with below-market-value, interest.

Market value is defined as the remuneration that each independent party would fairly set in business practice.

22. How are imports and exports taxed?

Customs duty is imposed on all imported and selected exported goods. Customs duty is levied in accordance with the Harmonised Commodity Description and Coding System.

As a signatory to the General Agreement on Tariffs and Trade and a member of the World Trade Organisation, Thailand complies with all relevant standards and codes when determining customs duty.

23. Does your jurisdiction have a wide network of double tax treaties?

Thailand has signed more than 40 double tax treaties including with the US, and European and Asian countries.

ANTI-TRUST

24. Are restrictive agreements and practices regulated by anti-trust law in your jurisdiction? If so, please give brief details.

The Trade Competition Act 1999 aims to create fair competition in Thailand. The Act established the Trade Competition Commission to oversee and ensure compliance with its provisions.

INTELLECTUAL PROPERTY

25. Please outline the main intellectual property rights that are capable of protection in your jurisdiction and, in each case, please state:

- Nature of right.
- How protected.
- Length of protection.

Patents

- **Nature of right.** Patents are governed by the Thai Patent Act 1979 (as amended). A person may be granted one of three patents:

- invention patent;
- petty patent;
- design patent.

To qualify for an invention patent, an invention must:

- be new;
- involve an inventive step; and
- have an industrial application.

An invention which is new and capable of industrial application but lacks an inventive step (a utility model) can be protected by a petty patent.

The owner of an invention patent or petty patent has the sole right to produce, import, use or sell the protected product or process.

To qualify as a design patent, a product design must be:

- composed of lines or colours which give a special appearance to a product;
- new; and
- for industrial use.

The owner of a design patent has the sole right to use the patented design with a product and to possess, import or sell any product which utilises the design.

- **How protected.** Applications for a patent must be submitted to the Department of Intellectual Property.

Unauthorised use of a patent is a criminal offence under the Patent Act. Actions may also be brought by the patent owner using the tort provisions under the CCC.

- **Length of protection.** The length of protection depends on the type of patent being applied for:
 - invention patents: 20 years, non-renewable;
 - petty patents: six years, which may be renewed for a further two years on two occasions (up to a maximum of ten years);
 - design patent: ten years, non-renewable.

Trade Marks

- **Nature of right.** The following may be registered as a trade mark (*Trade Mark Act 1991 (as amended)*):
 - trade marks;
 - service marks;
 - certification marks;
 - collective marks.

To be registrable, a mark must:

- be distinctive;
- not be excluded by the Trade Mark Act; and
- not be identical or similar to trade marks already registered.

Trade mark owners have the exclusive right to use the mark on any goods for which registration has been obtained.

- **How protected.** Applications for trade mark registration must be submitted to the Department of Intellectual Property.

It is a criminal offence to:

- forge or imitate a registered trade mark;
- import, sell or offer for sale products bearing a forged or imitated trade mark.

Actions may also be brought for trade mark infringement under the provisions of the CCC.

If a trade mark has not been registered, an action may be brought under the passing off provisions of the CCC and the Penal Code.

- **Length of protection.** Protection lasts for ten years from the date of filing an application for registration, renewable indefinitely for ten-year periods.

Copyrights

- **Nature of right.** Copyright may subsist in the following works (*Copyright Act 1994*):
 - literary (including computer programs);
 - artistic;
 - dramatic;
 - musical;
 - audio-visual;
 - cinematographic;
 - sound and video broadcasting;
 - compilations;
 - any other works of a literary, scientific, or artistic nature, provided that they are original creations (that is, not copied).

A copyright owner has the exclusive right to:

- reproduce or adapt the work;

- disseminate the work to the public;
- rent out the work;
- grant licences for the work;
- sell the copyright.
- **How protected.** Copyright protection arises automatically on creation or publication of the work, provided that the work is original.

Copyright infringement is a criminal offence (*Copyright Act*). Civil actions may also be brought using the tort provisions of the CCC.

- **Length of protection.** Protection for most works lasts for the lifetime of the creator plus 50 years. Works of applied arts are protected for 25 years from the date the work was created. An applied art is a protected work that is used for a practical purpose rather than just for artistic appreciation.

Trade secrets

- **Nature of the rights.** To qualify as a trade secret, information must (*Trade Secrets Act 2002*):
 - not be known to the public;
 - not yet be known to those who would normally deal with it;
 - have commercial value as a result of its secrecy;
 - be controlled using reasonable measures to ensure it remains secret.

The owner of a trade secret has the right to:

- disclose it;
- use it; or
- permit others to use it.
- **How protected.** Trade secrets are automatically protected (no application procedure is necessary).

Trade secret rights may be infringed by:

- disclosing the trade secret;
- depriving the owner of his ability to use the trade secret;

- using the information without the consent of the owner and in a manner contrary to honest trade practices (such as breach of contract, confidentiality or covenants, bribery, coercion, fraud, theft and espionage).

Infringement is a criminal offence.

- **Length of protection.** Trade secrets are protected for as long as they remain secret.

Layout-designs of integrated circuits

- **Nature of rights.** The layout-designs of semi-conductor chips can be registered provided that they are not commonplace in the integrated circuit industry (*Protection of Layout-Designs of Integrated Circuits Act 2000*). A layout-design is any pattern, layout or image made for the purpose of displaying the arrangement of an integrated circuit.

The rightholder has the exclusive right to reproduce, import, sell or distribute the design, in any manner, for commercial purposes.

- **How protected.** Designs must be registered with the Department of Intellectual Property to qualify for protection.

Anyone who reproduces a protected design without permission is liable to a fine of between baht20,000 (about US\$483) and baht500,000 (about US\$12,080).

- **Length of protection.** Protection lasts for ten years from filing an application for registration. However, this term may be shorter depending on when the application for registration was made and when the design was first exploited commercially. Generally, protection does not last beyond the 15th anniversary of the date on which the design was created.

MARKETING AGREEMENTS

26. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- Agency.
- Distribution.
- Franchising.

The principle of freedom of contract applies to all marketing agreements, provided that the terms and provisions agreed by contracting parties are not contrary to public order or good morals.

- **Agency.** Agency agreements are governed by general principles of contract and agency under the CCC and must be construed in accordance, and comply, with their express terms.
- **Distribution.** There are no specific laws relating to distribution.
- **Franchising.** There are no specific laws relating to franchise agreements.

E-COMMERCE

27. Are there any laws or codes of practice relating specifically to e-commerce (such as electronic signatures and distance selling)?

The Electronic Transactions Act 2001 currently governs electronic civil and commercial transactions and signatures.

The following e-commerce-related laws have been proposed:

- Universal Access Bill.
- Computer Crime Bill.
- Data Protection Bill.
- Electronic Fund Transfer Bill.

DATA PROTECTION

28. Does your jurisdiction have data protection laws? If so, please give brief details.

No legislation exists at present. However, a draft law based on the European model is under consideration.

PRODUCT LIABILITY

29. Does your jurisdiction have product liability laws? If so, please give brief details.

There are no specific product liability laws. General provisions of tort law apply.

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