



# Thailand

Prepared by Lex Mundi member firm,  
Tilleke & Gibbins

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Guide to Doing Business  
in **THAILAND**

2016



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# Tilleke & Gibbins

Guide to Doing Business  
in **THAILAND**

2016

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# The Country at a Glance

## What languages are spoken?

Official language: Thai

Business languages: Thai and English, and in some circles Japanese, several Chinese dialects, Bahasa Malay, and languages of South Asia.

## What is the current (as of December 17, 2015) exchange rate for the U.S. dollar, the euro, and the yen?

USD 1	=	THB 35.96
Euro 1	=	THB 39.01
Yen 100	=	THB 29.20

## Describe your country's geography, proximity to other countries, and climate.

Thailand is 514,000 sq. km. in area, about the size of France or Texas, with a population of over 67 million, an estimated current economic growth rate of approximately 2.7% per annum for 2015, and a per capita GDP (PPP) of about USD 5,466 (at the end of 2014).

Thailand has four geographic regions: the mountainous and forested North, the fertile Central plain, the arid Northeast, and the hilly South. Located in the middle of Southeast Asia, Thailand's immediate neighbors are Laos, Myanmar, Cambodia, and Malaysia. Nearby are China, Vietnam, Singapore, and Indonesia. The climate generally is sunny, tropical, and very humid, with a rainy season from June to October.

## Are there cultural influences or prohibitions on the way business is conducted?

The Thai culture exercises significant influence on business dealings. Although the Thai people are tolerant of different behaviors, the optimal approach is one of politeness and respect without ever losing one's temper or raising one's voice. Conflicts should be resolved by polite discussion. There is a unique Thai identity, giving rise to "the Thai way" of doing things. Personal ties and trust are also important to the Thai people; accordingly, direct personal questions are common and not inappropriate. Yet, people tend to be indirect in their dealings with each other and go around an issue rather than directly to the key point. Thus, tasks may be accomplished less efficiently and less quickly than with a direct approach.

However, there have been movements to challenge the established norms of a paternalistic society by questioning the status quo and arguing for openness, transparency, and accountability.

## Are there religious influences or prohibitions on the way business is conducted?

The population is homogeneous and free of racial or religious strife. Of the 25% non-Thais, the majority are ethnic Chinese who have had an economic impact over the past century far in excess of their numbers. About 94% of the Thais are Buddhists, 4% are Muslim, and 2% are Christian, Hindu, Sikh, and others. Although Buddhism imposes no specific prohibitions on business, the religion

exerts influence on business dealings in that the Thai people tend to adhere to Buddhist principles such as avoidance of conflict and respect for established hierarchy.

## **Explain your country's infrastructure. Be sure to explain which cities have airports, railroad systems, ports, and public transportation.**

Thailand was traditionally an agrarian economy, but since the Second World War, as a market-driven economy, it has developed sizeable industrial and services bases. Since the mid-1970s, industrialization has increased and investment has been directed toward export-oriented activities and the services industries. Between 1984 and 1994, Thailand had the most rapid economic expansion of any country in the world. Social institutions, social capital, and costs failed to keep pace, leaving the country vulnerable to corruption, cronyism, money politics, systemic frailty, and an unorganized civil society. Thailand has received criticism over its inability to cope with recent demands on its infrastructure. Improvements are marked by indecision, delays, political conflicts, contract irregularities, corruption, and cost overruns.

**Airports.** Thailand has 39 civilian airports. In the North, there are airports in Chiang Mai, Chiang Rai, Tak, Mae Hong Son, Nan, Phrae, Lampang, Mae Sot, Phitsanulok, Pai, Uttaradit, and Sukhothai. In the Northeast, there are airports in Udon Thani, Sakon Nakhon, Khon Kaen, Loei, Nakhon Ratchasima, Buri Ram, Nakhon Phanom, Roi-et, Surin, and Ubon Ratchathani. In the South, there are airports in Phuket, Hat Yai, Chumphon, Pattani, Nakhon Sri Thammarat, Surat Thani, Trang, Narathiwat, Krabi, Ranong, and Koh Samui. In central Thailand, there are airports in Cha-am (Hua Hin), Phetchabun, Nakhon Sawan, and two terminals in Bangkok at Don Mueang Airport.

Bangkok's Suvarnabhumi Airport (opened in 2006) is located on an 8,000-acre plot of land in the Bang Phli district of Samut Prakan Province, only 25 kilometers away from central Bangkok. Built to accommodate 45 million passengers per year with a high level of competence, the government uses Suvarnabhumi Airport to strengthen the Kingdom as a future regional aviation hub.

Commercial air service is provided largely by the national flag carrier, Thai Airways. A few much smaller airlines have been allowed to operate along very limited routes: Asia Atlantic Airlines, Bangkok Airways, Kan Air, Nok Air, Orient Thai Airlines, Thai Lion Air, Thai Air Asia, and Thai Smile Air.

**Railroad Systems.** Many people as well as goods in Thailand are transported by trains. From Bangkok, trains run regularly to the outer surrounding areas as well as to farther destinations north, south, east, or west. International trains only run to Malaysia and Singapore. There are three classes of passenger train travel and sleepers, with or without air-conditioning, are available on longer trips. The trains are clean and run on time.

**Ports.** An estimated 85% of Thailand's trade goes through Klong Toey Port on the Chao Phraya River. There are also deep seaports at Map Ta Phut and Laem Chabang on the Eastern Seaboard, and at Songkhla and Phuket in the South, which are playing ever-increasing roles in international and coastal trade.

**Public Transportation.** Bangkok's road system is inadequate to deal with the large number of vehicles in the city. City road traffic suffers gridlock much of the business day. An overhead electric mass transit system has been in operation since December 1999, while an underground train has been in operation since July 2004. In 2006, the Cabinet approved in principle four expansion projects of the mass transit system to five routes (Red Line, Dark Green Line, Light Green Line, Purple Line, and Blue Line), involving a total distance of 118 kilometers. In 2007, the Cabinet approved the Purple Line project (Bang Yai to Bang Sue route) involving a distance of 23 kilometers.

The Airport Rail Link and City Air Terminal systems were opened for operations in 2010 and span a distance of 28 kilometers, providing a link from the Bangkok city center to Suvarnabhumi Airport.

On August 12, 2011, an extension to the east of the Light Green Sukhumvit line (from On Nut station to Bearing station) was opened. There are plans for this line to be further extended eastwards by 10.6 kilometers to Samut Prakarn. Construction has already started and the extensions are scheduled to be opened in 2017.

It is hoped that these systems will help relieve pressure on the capital's too few roads and too much vehicular traffic.

**Road System.** Thailand has had an active road-building program since the early 1960s and now boasts a vast network of all-weather highways linking all parts of the nation. Thousands of trucks and buses transport goods and passengers among and within provinces. Thailand is the world's second-largest market for pickup trucks.

### Explain the communications system.

Thailand's telecommunications industry has evolved rapidly in the last 15 years, as measured by both increased fixed-line telephone penetration rates and availability of sophisticated cellular, paging, and other value-added technology.

In the past, telecommunications services were provided exclusively through two former state enterprises—the TOT Corporation Public Company Limited and the CAT Telecom Public Company Limited—and through the Post and Telegraph Department (PTD) of the Ministry of Transport and Communications. Since the late 1980s, the private sector has been allowed to operate within the Thai telecommunications market by obtaining concessions in the form of Build-Transfer-Operate. Concessions were given by the then two state enterprises—the Telephone Organization of Thailand (TOT) and the Communications Authority of Thailand (CAT)—and the PTD to a number of local companies, many of which formed joint ventures with foreign telecommunications companies.

To conform to World Trade Organization (WTO) requirements, the Thai government approved on November 4, 1997, the "Master Plan for Telecommunications Development." The Master Plan provides for the privatization of the two state enterprises, the opening of the telecommunications market for competition through a step-by-step liberalization approach, and the setting up of one independent and impartial regulatory body, the National Telecommunications Commission, along the principles of the WTO. By liberalizing the telecommunications industry, Thailand allows the local and foreign private sector to apply for licenses to operate telecommunications services. Prior to 2006, foreign companies could do so only by entering into joint ventures with Thai companies with a limitation on foreign shareholding of not more than 25%. After 2006, the limitation on foreign shareholding was amended according to the law governing alien business operations (i.e., not exceeding 49%).

Progress on the Master Plan schedule thus far has been the privatization in July 2002 of the TOT to the present TOT Corporation Public Company Limited, which assumed transfer of all the business, rights, debts, and liabilities of the former state enterprise, followed by the privatization in August 2003 of CAT into two separate entities, namely the CAT Telecom Public Company Limited and the Thailand Post Company Limited. The TOT Corporation Public Company Limited has a registered capital of THB 6 billion, while CAT Telecom Public Company Limited and the Thailand Post Company Limited have registered capital of THB 10 billion and THB 1.25 billion, respectively.



Presently, TOT Public Company Limited and True Corporation operate the majority of the telephone network in the Bangkok metropolitan area, while TOT Public Company Limited and TT&T Public Company Limited operate the telephone networks in other provinces.

Mobile cellular telephone use has grown at a much faster rate than landlines. Current statistics indicate that mobile cellular telephone use is approximately 15 times larger than the use of landlines (approximately 6 million subscriptions) and that most of the Thai population owns a mobile cellular telephone, with the number of allocated mobile telephone numbers (93 million) exceeding the country's total population at over 130%.

The major mobile phone service providers in Thailand are AIS (Advanced Info Service PCL, Thailand's largest GSM mobile phone operator with approximately 42 million subscribers), followed by DTAC (Total Access Communication PCL, with approximately 28 million subscribers) and True Move (controlled by communications conglomerate True Corporation PCL, with approximately 23 million subscribers).

### **Describe the public services, i.e., water, electricity, gas. Are they publicly or privately owned?**

**Water.** The Metropolitan Waterworks Authority (MWA), supervised by the Ministry of Interior, is the operator of the waterworks for Bangkok and neighboring Nonthaburi and Samut Prakan provinces. A main issue confronting MWA is the potential lack of water available to Bangkok, in response to which many private parties have constructed over 14,000 artesian wells. Even though the underground water table has dropped dramatically and saltwater intrusion is occurring, MWA's efforts to ban artesian wells have thus far been unsuccessful. MWA's main source of raw water, the Chao Phraya River, is suffering vast pollution due to silting and agricultural chemical and pesticide runoff as well as untreated urban sewage and industrial discharges.

The Provincial Waterworks Authority (PWA), also supervised by the Ministry of Interior, is the operator of the waterworks system for the rest of Thailand. Its publicly owned subsidiary, Eastern Water Resources Development (Eastwater), provides water to the industrial estates in Chon Buri, Rayong, Chachoengsao, and provinces in the eastern sector of the country.

PWA's and MWA's plans for privatization have not yet been implemented. However, even before Thailand entered the IMF's bail-out program stemming from the 1997 Asian financial crisis, Thailand had privatized part of its water supply in the provinces. PWA operated its raw-water supply subsidiary Eastwater and awarded a build-own-transfer concession to a private consortium led by a U.K. water-utility company and construction firm.

**Electricity.** The state-owned Electricity Generating Authority of Thailand (EGAT), controlled by the Office of the Prime Minister, is the main electricity producer and distributor in Thailand, producing 45% of Thailand's electricity requirements. A further 48% comes from Independent Power Producers (IPP) and Small Power Producers (SPP). The remaining 7% comes from Laos and Malaysia.

Distribution of electricity in Thailand is provided mainly through the Metropolitan Electricity Authority (MEA) and the Provincial Electrical Authority (PEA), which are both state enterprises also supervised by the Ministry of Interior. The National Energy Policy Committee (NEPC) sets the rates that EGAT charges MEA and PEA. EGAT is currently undertaking four power-producing projects and planning to purchase more power from neighboring countries and Very Small Power Producers (VSPP), which will greatly increase Thailand's electricity capacity.

The Thai government has begun implementing a restructuring program to increase the role of the private sector in the generation of electricity. This is to be done by allowing private companies to build new power plants to supply electricity to EGAT and spinning off EGAT's existing power generating assets into the private sector.

**Oil and Gas.** The former state-owned Petroleum Authority of Thailand (PTT), then controlled by the Ministry of Industry, is the leading petroleum and natural gas producer, wholesaler, and retailer. In addition to being the country's leading oil retailer and sole distributor of indigenous natural gas, PTT has interests in Thailand's petrochemical sector.

In October 2001, in accordance with privatization plans, PTT became the PTT Public Company Limited with an initial registered capital of THB 20 billion. At present, the registered capital of PTT is slightly over THB 28.5 billion. As a part of its "World Class 2000" plan, PTT has been restructured into subsidiaries. The head office has taken the strategic leadership role and the main businesses have been divided into four sector groups: Gas Sector Group, Downstream Oil Sector Group, International Trading Sector Group, and Petrochemical and Refining Sector Group. These four groups supervise and administrate current affiliated companies and subsidiaries.

The exploration for oil and gas is conducted by major upstream field developers under Ministry of Energy concessions. A new round of concessions which was scheduled to take place in early 2015 was postponed until amendments to the Petroleum Act (PA) and the Petroleum Income Tax Act (PITA) could be finalized. With the amendments to the PA and the PITA coming into force in August 2015, the announcement of a new round of concessions should be forthcoming.

This industry is dominated by U.S. petroleum companies. Chevron's largest gas fields are located offshore Thailand and this company is one of Thailand's largest foreign investors. PTT conducts exploration and production through its subsidiary, PTT Exploration and Production Company Limited (PTTEP). PTTEP has invested in 29 projects: 13 in Thailand, 2 in overlapping areas, and 14 projects in Myanmar, Vietnam, Cambodia, Indonesia, Oman, Algeria, and Iran.

Oil is refined in Thailand by Bangchak Petroleum Public Co., Ltd., Star Petroleum Refining Co., Ltd., Thai Oil Public Co., Ltd., and PTT Global Chemical Public Co., Ltd. PTT is a significant shareholder in most of Thailand's oil refining companies.

Retailing of gasoline, diesel oil, and other petroleum products for consumers and industrial operations is undertaken by an array of dealers representing PTT and the foreign marketing operations of Shell, Esso, Chevron, Petronas, and others.

## General Considerations

### Investment Policies

**Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment?**

The Thai government has long believed in an open, laissez faire economy. Foreign investment is welcome, and various incentives are granted to attract foreign investment through the Board of

Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT). In principle, the BOI maintains a policy of giving special consideration to investment projects that locate operations in provincial areas (in preference to Greater Bangkok).

Under Thailand's BOI policy, mainly specified in the BOI's Announcement No. 2/2557, the government has placed an emphasis on attracting investment in six key sectors that have been identified as priority activities for the country's development. These six target areas are:

1. Promotion of investment that helps enhance national competitiveness by encouraging R&D, innovation, value creation in the agricultural, industrial, and services sectors, SMEs, fair competition, and inclusive growth;
2. Promotion of activities that are environmentally friendly, save energy, or use alternative energy to drive balanced and sustainable growth;
3. Promotion of clusters to create investment concentration in accordance with regional potential and strengthen value chains;
4. Promotion of investment in border provinces in southern Thailand to help develop the local economy, which will support efforts to enhance security in the area;
5. Promotion of special economic development zones, especially in border areas, both inside and outside industrial estates, to create economic connectivity with neighboring countries and to prepare for entry into the ASEAN Economic Community; and
6. Promotion of Thai overseas investment to enhance the competitiveness of Thai businesses and Thailand's role in the global economy.

Specified criteria and requirements for particular sectors are included in several other BOI Announcements.

In Announcement No. 2/2557, as amended by Announcement No.6/2558 and No. Sor. 1/2558, activities which are eligible for investment promotion are classified into seven sections, as follows:

1. Agriculture and agricultural products
2. Minerals, ceramics, and basic metals
3. Light industry
4. Metal products, machinery, and transport equipment
5. Electronics and electrical appliances
6. Chemicals, paper, and plastics
7. Service and public utilities

In general, the activities on the list annexed to the Announcement will be granted activities-based incentives including tax and non-tax incentives. Activities may be granted additional merits-based incentives if the project has merits on enhanced competitiveness, decentralization, and industrial area development,

The IEAT carries out the government's industrial development policy, which includes allocating land for further expansion, improving land conditions, and providing accommodations and facilities to assist entrepreneurs. In addition to the BOI incentives, businesses may enjoy tax and non-tax privileges granted for investment, such as land ownership, in industrial estates.

### **What is the rate of inflation?**

The Bank of Thailand in its Monetary Policy Report, dated June 2015, forecasts the rate of headline inflation and core inflation in Thailand in 2016 to be 1.2% and 0.8% respectively. The trend of the headline inflation rate and core inflation rate is predicted to decrease from 1.9% and 1.6% in 2014 to -0.9% and 1.0% in 2015 respectively.

## Explain any sector exceptions or restrictions on foreign investment.

Despite the fact that Thailand generally welcomes foreign investment, some sectors are subject to foreign equity restrictions.

While these restrictions are imposed through a variety of different rules, regulations, and cabinet policies, the main governing law for such restrictions is the Foreign Business Act 1999 (FBA). Under the FBA there are 43 categories of business, divided into three lists, which are subject to different levels of restrictions for foreigners, unless the foreigner is able to obtain a Foreign Business License. A company is considered foreign under the FBA if it is not registered in Thailand or registered in Thailand but half or more than half of its shares are held by non-Thai natural or juristic persons.

Foreigners are prohibited from operating a business from any of the nine business categories mentioned in List 1 of the FBA, and therefore such businesses cannot obtain a Foreign Business License under any circumstances. This includes businesses such as operating newspapers and radio or television stations, rice farming, fishery in Thai territorial waters and exclusive economic zones in Thailand, forestry, or land trading.

For activities under List 2 of the FBA, a foreigner would require a license from the Minister of Commerce and approval from the Thai Cabinet. Additionally, the company would have to be at least 40% owned by Thais (only 25% if the Minister of Commerce and the Cabinet have given special approval) and at least two-fifths of its managing directors would have to be Thai nationals. Business categories under List 2 of the FBA are businesses involving national safety or security including arms trade and domestic aviation business, businesses affecting arts, culture, traditional customs, and folk handicrafts, and businesses affecting natural resources or the environment.

For activities under List 3 of the FBA, a foreigner would require a license from the Director General of the Commercial Registration Department of the Ministry of Commerce and approval from the Foreign Business Committee. List 3 includes all service businesses (accounting, legal, architecture, engineering, and any other category of service business except those prescribed in the ministerial regulations), as well as retail (unless the company's registered capital is THB 100 million or more), hotel business, advertising, selling food and beverages, construction (with some exceptions), and others.

Further restrictions on foreign ownership in specific sectors, such as telecommunications, banking, or insurance, are regulated in specific laws pertaining to these sectors, such as the Telecommunications Business Act 2006, the Financial Institution Business Act 2008, the Life Insurance Act 1992, or the Non-Life Insurance Act 1992.

Exceptions from the restrictions of the FBA can be granted as promotional privileges by the BOI or IEAT, or, as a temporary measure, in the form of government approval issued by the Thai government.

Exceptions can also be provided based on international treaties Thailand has entered into. U.S. companies or nationals under the Treaty of Amity and Economic Relations between Thailand and the United States (Treaty of Amity) can be eligible for "national treatment," where, with some exceptions, they are treated in the same way as Thai nationals. Other international treaties, such as the Thai-Australia Free Trade Agreement (TAFTA), the Japanese Thai Economic Partnership Agreement (JTEPA), the ASEAN Comprehensive Investment Agreement (ACIA), and the ASEAN Framework Agreement on Services (AFAS) also provide for exceptions with conditions. By virtue of these international treaties together with the FBA, qualified entrepreneurs may file a request for the

issuance of a Foreign Business Certificate from the Director-General of the Department of Business Development.

**Describe de facto restrictions on investment, if any, such as bureaucratic discretion.**

Under the laws regulating the exceptions (such as promotional privileges by the BOI or IEAT, Foreign Business Licenses) from foreign investment restrictions, the authorities issuing such exceptions have been provided with bureaucratic discretion as to whether the exception will be granted. It is noted, however, that in practice, the authorities under the Treaty of Amity are unlikely to exercise such bureaucratic discretion if applicants can meet the requirements under the Treaty.

## **Diplomatic Relations**

**Explain any established diplomatic relations your country may have.**

Thailand is a well-established sovereign member of the international community. In addition to early membership in the United Nations and World Trade Organization, Thailand also participates in regional organizations such as the Association of Southeast Asian Nations (ASEAN), ASEAN Free Trade Area (AFTA), and Asia-Pacific Economic Cooperation (APEC). Thailand has historically enjoyed strong ties with the United States, Japan, the European Community, and China. Over the last few years, it has developed an “equidistant” form of foreign policy that has steered a more independent path in foreign relations, especially with the United States, China, Australia, and India.

**Give addresses, telephone numbers for the embassies or consulates in your country.**

Contact information for all embassies and consulates in Thailand is made available through the website of the Ministry of Foreign Affairs: <http://www.mfa.go.th/main/en/org-chart>.

**Are there prohibitions or restrictions on certain business dealings with the country?**

At present, there are no international sanctions, prohibitions, or restrictions on business dealings with Thailand. The country remains on the Priority Watch List (PWL) of The Office of the United States Trade Representative (USTR) with respect to intellectual property rights enforcement. Both the United States and the European Union impose quotas on designated agricultural products, although such quotas have been increased since 2005. As a member of the WTO, Thailand is committed to reducing or eliminating tariffs and subsidies on hundreds of agricultural, industrial, and information technology products.

**Explain any travel restrictions to or within the country.**

All nationalities may travel to and throughout Thailand. Some nationalities must obtain a visa prior to visiting Thailand. According to the Notification of Department of Consular Affairs, dated October 26, 2015, tourists from 19 countries (including China, Taiwan, and India) may obtain a 15-day visa upon arrival in Thailand. Tourists from 46 countries/territories (including the United States, Japan, most member states of the European Union, Canada, Australia, Malaysia, and Singapore) may enter without a visa for 30 days. Effective November 25, 2008, if tourists from these countries/territories enter Thailand at an immigration checkpoint of a bordering country by any means except airplane, they will only be allowed to stay for 15 days each time, except for: (1) Malaysian nationals arriving from Malaysia; and (2) persons from seven leading industrial countries including the United States, England, Canada, France, Germany, Italy, and Japan, who will be allowed to stay 30 days each time.

Tourists from Brazil, Peru, Chile, Argentina, and the Republic of Korea may enter without a visa for 90 days due to a bilateral agreement.

In addition, since February 2001, APEC Business Travel Card (ABTC) holders (available to business persons from the countries/territories under the APEC organization) may enter without a visa for 90 days.

## Government

### Explain your country's election system and schedule. Is there an anticipated change in the present government?

Thailand currently does not have an election system. The country is ruled by a military-led government that seized power through a coup d'état in May 2014. The junta has stated that general elections may be held in 2016 or 2017, but no firm date has yet been offered. A special drafting committee is now preparing a new constitution. The present government may relinquish power after elections are held, but when or if this happens is unknown.

### Is the present government stable? Briefly explain your country's political history in the last decade.

Thailand's military rulers have a secure hold over the government. However, there still exists a strong undercurrent of tension stemming from a decade of political unrest. This tension, along with Thailand's volatile political history (which includes two coups in the last eight years), creates a general sense of uncertainty hanging over Thai politics.

From 1997 until 2006, Thailand was governed by two successive parties—the Democrats and the Thai Rak Thai Party. From 1997 to 2001, the Democrats were in power, with several parties in coalition. In 2001, their Thai Rak Thai opponents, under the leadership of Thaksin Shinawatra, won a landslide victory. Thai Rak Thai remained in government until it was ousted in a bloodless coup, staged in 2006. The coup was presaged by large protests against the Thaksin government by a group calling itself the People's Alliance for Democracy (PAD), also known as the "yellow shirts."

The military junta declared martial law and abrogated Thailand's 1997 constitution. General Surayud Chulanont was appointed head of the interim government. On May 30, 2007, Thailand's Constitutional Court dissolved Thai Rak Thai and banned Thaksin Shinawatra from politics for five years on the grounds of electoral fraud. On August 19, 2007, a new constitution was enacted.

In an effort to restore the country to democratic rule, a general election was held in December 2007. The People's Power Party (PPP), which consisted of members of the deposed Thai Rak Thai Party, won the election. Efforts by the PPP to amend the 2007 constitution, as well as other issues, resulted in large-scale protests by PAD members. Thailand was again engulfed in political crisis as the protestors took over Bangkok's two airports and faced off against police and PPP supporters. Thaksin was found guilty of conflicts of interest and sentenced in absentia to two years imprisonment by the Dika (Supreme) Court. The Constitutional Court subsequently dissolved the PPP amid charges of electoral fraud.

The opposition Democrats then assumed power under Abhisit Vejjajiva, who was appointed prime minister. However, the political conflict continued, as former PPP party members and their supporters (known as the United Front of Democracy Against Dictatorship, or the "red shirts") engaged in mass protests. The protests, openly supported by Thaksin, erupted into violence between

the red shirts, PAD activists, and security forces. The crisis continued through 2010, with pro- and anti-government supporters engaging in regular clashes, with violent clampdowns by the military.

In July 2011 general elections were held. The main parties involved were the Democrats and the Pheu Thai Party, PPP's successor. Pheu Thai, led by Yingluck Shinawatra (Thaksin Shinawatra's sister), won a landslide victory.

For the next two years, the Yingluck government presided over a period of relative calmness. However, in late 2013, large protests again erupted in Bangkok in response to a proposed amnesty bill. The amnesty sought to pardon all of those facing criminal charges from Thailand's political turmoil through 2010—including Thaksin Shinawatra. The bill was rejected, but protests continued, now aimed at the government itself.

In the following months, protestors, led by former Democrat Deputy Prime Minister Suthep Thaugsuban, marched on government buildings and occupied sections of Bangkok. Supporters of the Yingluck government also massed outside Bangkok. Tensions escalated and incidents of violence increased.

Seeking to defuse the crisis, the government called a general election for February 2014. The elections went ahead, but the Democrats and other opposition parties did not participate. Voting was also disrupted by protestors in areas of Bangkok and southern Thailand. The Constitutional Court subsequently nullified the election on the grounds that the polling was not in compliance with Thai law.

On May 7, 2014, Yingluck Shinawatra was removed as prime minister by the Constitutional Court due to a controversial transfer of a government official. Her supporters called the verdict a "judicial coup" and promised to take to the streets. The country's political impasse continued as both sides squared off amid growing fears of civil conflict.

On May 20, 2014, the Royal Thai Army stepped in and declared martial law. Two days later, the army, led by General Prayut Chan-ocha, seized power in a bloodless coup and cancelled the 2007 constitution. General Prayut established the National Council for Peace and Order (NCPO) with himself as commander to rule the country. On July 22, 2014, an interim constitution was enacted.

In August 2014, General Prayut was appointed as the 29th Prime Minister of Thailand. The drafting of a new constitution was then discussed. The NCPO stated that it will stay in power until its stated mission of restoring peace and order and reforming the country is complete. It is uncertain how long this will take.

### **Explain your country's judicial system.**

Thailand's judicial system has remained unchanged under the junta (and has been confirmed by the July 2014 interim constitution). The judiciary is independent from the executive branch. The Ministry of Justice provides all administrative support for the courts. Judges are appointed by the King of Thailand (who is the head of state) upon recommendation of a judicial commission. Thailand's judicial system divides the courts into two categories: the courts of justice and the administrative courts.

The courts of justice are, in turn, comprised of common courts and specialized courts. The common courts consist of the civil and criminal courts for each jurisdiction. There are five specialized courts: the Family and Juvenile Court; the Labor Court; the Tax Court; the Central Intellectual Property and International Trade Court; and the Central Bankruptcy Court. In addition to the five specialized courts,



there is also the Military Court and the Constitutional Court, each having special authority to determine disputes with specific circumstances. For example, if one of the parties to a dispute is a military official, the Military Court would have jurisdiction over the case.

The Administrative Court was established in 2000 and has the authority to try and adjudicate or issue orders in cases involving disputes related to decisions of government servants and administrative contracts. It is divided into two levels: the Supreme Administrative Court and the Administrative Courts of First Instance.

Within the common courts (civil and criminal courts), there are three court levels: (1) the Courts of First Instance, which are trial courts having original and general or special jurisdiction over all civil and criminal matters; (2) the Courts of Appeal, which determine legal and factual issues on appeal from the Courts of First Instance; and (3) the Dika (Supreme) Court, which determines legal and factual issues on appeal from the Courts of First Instance and Appeals Courts. However, within the specialized courts and the administrative courts, there are only two court levels, with appeals from the Courts of First Instance being heard directly by the Dika (Supreme) Court.

Thailand is a civil law country with four principal fundamental codes: the Civil and Commercial Code, the Civil Procedure Code, the Penal Code, and the Criminal Procedure Code. Cases are heard by panels of judges instead of juries.

Although traditionally trials were generally heard over a series of non-consecutive hearing dates and could therefore last over a period of years, to speed up proceedings, the President of the Supreme Court in October 2002 instituted a policy of consecutive hearings, reducing the likelihood of long adjournments between hearings.

Nevertheless, due to the courts' current backlog, a typical case may still take up to 18 to 24 months from the date of filing for judgment to be rendered at the lower level. An appeal in the Court of Appeals usually takes an additional 12 to 24 months, with a similar period for appeals to the Dika Court. Notwithstanding the foregoing, proceedings in the specialized courts are generally faster than those in the common courts. This is because in these courts, hearings proceed without adjournment until all evidence is taken, after which the court must promptly render its judgment.

Thailand is not a party to any conventions on enforcing foreign judgments. The Thai courts do not enforce foreign judgments, but will accept foreign judgments as evidence in a new trial. If the foreign judgment is a default judgment, its evidentiary value in the new trial is minimal. Even if the foreign judgment is based on the merits, the claimant must present all the key witnesses and testimony in the new trial in Thailand.

Thailand is, however, a signatory to both the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the Geneva Protocol on Arbitration Clauses 1923 (Geneva Protocol). Foreign arbitration awards given in countries that are signatories to the New York Convention or the Geneva Protocol are recognized and enforceable in Thailand.

Under the Arbitration Act, domestic arbitration usually occurs under the rules of the Thai Arbitration Center administered by the Ministry of Justice or the rules of the Board of Trade. It is generally accepted and recognized that criminal, family, and certain types of labor and IP disputes cannot be submitted to arbitration on account of being contrary to public policy. In addition, on July 28, 2009, the Cabinet passed a Resolution that prevents the use of arbitration clauses in all types of contracts between a governmental organization and a private company, unless cabinet approval is obtained.



### **Explain your country's legislative system.**

Under the 2014 interim constitution, legislative power is vested in the National Legislative Assembly. Members of the National Legislative Assembly are selected by the NCPO and appointed by the King. The National Legislative Assembly acts as the House Representatives, the Senate, and the National Assembly.

After receiving approval by the National Legislative Assembly and endorsement by the King, new statutes become law after their publication in the *Government Gazette*.

## **Environment**

### **What is the government attitude toward environmental regulation?**

The government attitude at present is to ensure adequate supervision and guidance in order to protect and rehabilitate the environment for enhancement of quality of life. This is accomplished, for example, by requiring environmental impact studies, prohibiting logging, encouraging environmental services, and reporting and occasionally prosecuting offenders.

The National Environment Board supervises the environmental policy of the country. The Ministry of Natural Resources and Environment also manages environmental matters.

### **Explain any environmental regulations.**

Environmental regulations are issued under various laws including the Enhancement and Conservation of Environmental Quality Act 1992, the Factory Act 1992, the Energy Conservation Act 1992, the Hazardous Substances Act 1992, the Public Health Act 1992, and the Cleanliness and Orderliness of Country Act 1992. They are designed to enable the authorities and parties concerned to comply with the laws and to implement environmental protection activities.

Taking environmental degradation seriously is not widespread among either the public or private sector. Elements of civil society are vocal and becoming more effective in creating public pressure for environmental awareness and responsibility.

## **Intellectual Property**

### **Describe the laws for the protection of intellectual property, including trademarks, copyrights, patents, and know-how.**

Thailand is a civil law country. The legal protection of intellectual property is based on statutory laws including the provisions of the following pieces of legislation:

- Trademark Act 1991
- Patent Act 1979
- Copyright Act 1994
- Trade Secrets Act 2002
- Act on the Protection of Geographical Indications 2003
- Act on the Protection of Layout-Designs of Integrated Circuits 2000

## **Trademark**

The Trademark Act 1991 provides protection for trademarks, service marks, collective marks, and certification marks. The owner of a registered trademark has the exclusive right to its use pertaining to the goods for which registration was granted. The registration of a trademark is valid for 10 years from the filing date. An application for renewal may be filed within 90 days prior to the expiration date for a further period of 10 years from the expiration date of the original registration or the last renewal date.

## **Patent**

Under the Patent Act 1979, protection is given to inventions and industrial designs. To be considered patentable under the Patent Act, an invention must be novel, involve an inventive step, and be capable of industrial application. Similarly, an industrial design must be novel and capable of industrial application. A Thai patent is valid for 20 years for an invention or 10 years for an industrial design. The patentee has the exclusive right to produce, use, sell, and import the patented products.

In 1999, the Patent Act 1979 was revised to allow for the protection of a petty patent—an invention which is new and capable of industrial application but lacks an inventive step. A petty patent is valid for six years, but such term can be extended twice for a period of two years each. The patentee of a petty patent will also have the same exclusive rights as the patentee of a patent. It should be noted that it is not possible to obtain both an invention patent and a petty patent for the same invention.

## **Copyright**

Copyright is protected in Thailand under the Copyright Act 1994. Copyrighted works include creations in the form of literary works (including computer programs); dramatic, artistic, musical, audio-visual, or cinematographic works; and sound and video broadcasting works. The owner has the exclusive right to utilize his or her copyrighted work. In addition, under Thai law, the protection of the copyrighted work extends to works that have not been registered. In general, a copyright is protected for the life of the creator plus an additional period of 50 years. The period of protection is reduced to 25 years from the date of creation or from the date of its first publication for applied artistic works.

The Thai Copyright Act was amended in 2015 to include the recognition of temporary reproduction, Rights Management Information (RMI), Technological Prevention Measures (TPM), Internet Service Provider (ISP) liability, the first sale doctrine, and moral rights of performers. The amendments also explicitly prohibit unauthorized camcording in cinemas and provide an exception to copyright for the benefit of disabled persons. The amended Copyright Act also has a new section on punitive damages, and it amends the section on the seizure and destruction of counterfeits.

## **Trade Secrets**

The Trade Secrets Act 2002 provides protection for “trade information” that is not generally known or readily accessible to groups of persons who normally deal with information of the said kind and which has commercial value. In addition, in order for trade information to be protected as a trade secret, it is necessary for its lawful controller to take reasonable measures to keep such information secret.

The Act defines trade information as any information that conveys meaning, facts, or other things, communicated in whatever way and arranged in whatever form. The following are examples of what can be protected under the Trade Secrets Act: formulas, compounds, prototypes, experimental data, calculations, drawings, diagrams, supplier information, and marketing or sales promotion plans.

A trade secret is protected as long as it is deemed secret and has commercial value. Any unauthorized disclosure or usage of or wrongful access to the trade secret will constitute a misappropriation of the trade secret.

The Trade Secret Act was amended in 2015, and the amended version entered into force on February 6, 2015. The amendments mainly cover the following two issues:

1. The amended Act revises provisions concerning the reorganization and qualification of members in order to facilitate the Trade Secrets Board to be more effective in practice (Sections 3 to 8 of the amended Act).
2. The maximum penalties for the disclosure of trade secrets by officials have been reduced (Sections 34 to 35 of the amended Act).

No registration is required to obtain trade secret protection. A trade secret is transferable by a written agreement signed by both parties. If no term of assignment is indicated in the agreement, the term of the assignment is 10 years.

### **Geographical Indication**

Under the Act on the Protection of Geographical Indications 2003, “geographical indication” means a name, symbol, or any other thing used to call or represent a geographic source that identifies goods as originating from a geographic source where a quality, reputation, or specific characteristic of the goods is attributable to that geographic source. A registrable geographical indication must not be a generic name of the goods for which the geographical indication is to be used and must not be contrary to public order, morality, or public policy. For a foreign geographical indication to be protectable under the Act, there must be clear evidence that it is a geographical indication protected under the law of that country and has been continuously used until the date of application in Thailand. The protection of a geographical indication becomes effective from the filing date of the application for registration.

### **Layout-Designs of Integrated Circuits**

According to the Act on the Protection of Layout-Designs of Integrated Circuits 2000, an integrated circuit is defined as a “product, finished or semi-finished and intended to perform an electronic function, consisting of components capable of activating electronic impulses, including parts connecting those components wholly or in part, which are combined together in a layer formation in and/or on the same semi-conductor.” A layout-design is a “design, layout or diagram made out in any form or manner that shows the arrangement of an integrated circuit.”

The layout-designs that can be protected under Act are: (1) a layout-design that a designer has created by himself or herself and is not commonplace in the integrated circuit industry; and (2) a layout-design that a designer has created by combining elements, interconnections of layout-designs, or integrated circuits that are commonplace in the integrated circuit industry, resulting in a layout-design which is not commonplace in the integrated circuit industry.

The right to a layout-design is protected once registration is granted and a certificate is issued. The registration of a layout-design is valid for 10 years from the date of filing the registration application or the first date of commercial exploitation, whichever is earlier, but must not exceed 15 years from the date of the completion of the layout-design’s creation. The right holder has the exclusive right to reproduce, import, sell, or distribute in any manner for commercial purposes the protected layout-design, an integrated circuit containing the protected layout-design, or a product incorporating such integrated circuit. However, reproduction for use in the course of evaluation, analysis, research, or education, or reproduction for one’s own benefit and not for commercial purposes, will not be held as an infringement of the right of the right holder.

### Does the country subscribe to international treaties? Describe them below.

Thailand is a member of the World Trade Organization and thus is bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thailand is also a member of the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Properties, and the Patent Cooperation Treaty.

### Are there substantive prior approvals by national investment boards?

No, there are no substantive prior approvals required by the Thai Board of Investment with respect to intellectual property.

### What are the notarization requirements?

Notarization requirements attest to the authorization or the power of the signers on official papers (Power of Attorney, declaration, affidavit, etc.), affirming the right of the signers to act on behalf of companies or corporations. Likewise, notarization requirements attest to the existence of signers on official papers, who can be individuals of any nationality. The Thai authorities require notarization of official documents, as this provides proof regarding the existence of a company or corporation under the law of the country where that company or corporation is established, as well as the individuals who bear the nationality.

### Are there regulatory guidelines for licenses?

<b>Trademarks:</b>	Yes
<b>Patents:</b>	Yes
<b>Copyrights:</b>	Yes

### Are there specific exceptions or requirements in relation to a particular product(s)?

<b>Trademarks:</b>	No
<b>Patents:</b>	No
<b>Copyrights:</b>	No

### When are royalties from licenses deemed to be excessive?

**Trademarks.** There are no regulations controlling royalty rates for trademarks.

**Patents.** Under the Ministerial Regulation No. 25 (1999), excessive patent royalties are deemed unlawful. In order to assess whether the royalty rate is excessive, the royalty rate in question must be compared with the rates prescribed in other licensing contracts under the same patent.

**Copyrights.** Under Ministerial Regulation (1997) Article 1(4), royalties “at an unfair rate when compared to the rate prescribed by the owner of copyright for other licensee for the same copyrighted work . . . in the same period of time” are deemed excessive.

**Trade secrets.** There are no regulations controlling royalty rates for trade secrets.

## Do local antitrust or competition laws apply to licenses?

Thai antitrust law may play a part in the regulation of intellectual property licenses. The law on trade competition in Thailand is principally enshrined in the Trade Competition Act 1999. This legislation, in Section 25, sets out a number of activities that will be proscribed in respect of entities that are essentially dominant in the market. These proscribed activities correspond to the type of activities that are restricted in other jurisdictions as abusive dominance or unfair monopolization. The activities outlawed in Thailand include:

- Unfairly fixing or maintaining the purchase price or sale price of goods and services;
- Unfairly imposing compulsory contractual conditions in either a direct or indirect manner in terms that require a customer to limit the provision of services, or limit the manufacture or the purchase and sale of goods, or terms that otherwise restrict the opportunity for a customer to buy or sell goods or acquire or provide services, or obtain credit from other business operators;
- Suspending, reducing, or limiting the provision of services or the manufacture, purchase, sale, delivery, or importation without reasonable grounds and the destruction or damaging of goods so as to reduce the quantity thereof to a level lower than market demand; and
- Intervening in the business operations of others without reasonable grounds.

Generally, to fall foul of these provisions, the licensing party would have to hold a dominant position in the relevant market. None of Thailand's intellectual property statutes dictate that an intellectual property right holder automatically holds a dominant position for the purpose of this legislation; however, in many cases, a licensor will hold such a market-controlling position due to the lack of viable substitutes for the protected intellectual property.

Section 27 of the Trade Competition Act is also relevant to intellectual property licensing. The provisions of this section seek to prohibit collusive behavior between undertakings that could be regarded as anticompetitive. Among the types of collusion prohibited are price fixing and market segregation agreements, cartels, and restrictions on field of use.

The Protection of Layout-Designs of Integrated Circuits Act makes specific reference to competition legislation by requiring licensors to ensure that license agreements do not contain terms that are anticompetitive.

Moreover, Ministerial Regulation Number 25, issued under the Patent Act, dictates that prohibited terms in patent licenses include "conditions, which are against the law relating to competition."

## What typical agreements do foreign corporations enter into with their wholly owned subsidiaries?

The typical agreements with respect to intellectual property rights are licensing, distributorship, and franchising agreements.

# Investment Incentives

## Investment Incentives

### Explain any export incentives or guarantees.

To encourage export activities, numerous tax incentives are available. For example, value added tax is applied at a rate of 0% to exported goods. Customs duties on exported goods are generally exempted, except for certain goods and agricultural products, e.g., latex, lumber, rice, and rubber sheets.

Import duty imposed on materials imported for the production of goods that are then exported can be refunded by the Customs Department. Further, exemption from customs duties on imported goods is granted when the goods are taken through a Free Zone established by the Customs Department or the IEAT.

### Explain any grants, subsidies, or funds your country offers foreign investors.

Investment promotion incentives awarded by the BOI generally do not include grants, subsidies, or funds.

### Explain any national tax incentives for foreign investors.

Thailand was the first country in Asia to introduce investment promotion laws to encourage investors to invest in Thailand. Under the Investment Promotion Act, the promotions include both tax and non-tax incentives.

Tax incentives consist of such benefits as import duty reduction or exemption on machinery and raw or essential materials; corporate income tax exemption from three to eight years (depending on the zone where the enterprise will be located in and the activity the investor will engage in), which will be changed to be based on the activities the investor will engage in under the “merit-based incentives” policy for investment promotion applications submitted from January 1, 2015, onward; double deduction from taxable income of transportation, electricity, and water costs; tax exemption for dividends paid out of the exempted profits during the tax exemption period; and tax exemption for fees for goodwill, copyright, or other rights received from a promoted activity.

Tax incentives depend on the type of activity, location of the enterprise (which will be changed to promote cluster zones and special economic development zones to create investment concentration and economic connectivity with neighboring countries starting January 1, 2015, onward), and certain other conditions, such as introducing new technology to the industry, the amount of minimum capital investment, and ISO 9000 or similar international standard certification (the corporate income tax exemption may be reduced to only one year if such ISO 9000 or other similar international standard is not qualified as per the timeline imposed by the BOI). A promotion certificate will be granted if such activity is regarded as generating overall benefits to Thailand as compared to disadvantages. Activities that strengthen Thailand’s industrial and technological capability or use domestic resources generally qualify to be granted a promotion certificate.

One of the attractive non-tax incentives is that investors granted investment promotion by the BOI who are regarded as foreigners under the Foreign Business Act (FBA) may have 100% ownership of businesses conducting activities specified in Lists 2 and 3 of the FBA in accordance with the conditions prescribed by such authorities. They are exempt from obtaining a Foreign Business License but still need to notify the Ministry of Commerce and apply for a certificate, which is an administrative procedure rather than permission. Other non-tax incentives include permission for foreigners to own land and visa and work permit privileges for expatriate employees who will work in the promoted company.

The investor must submit an application form along with supporting documentation to the BOI to be considered for incentives. In most cases, the processing of an application takes two to three months, depending on the investment size of the applied project. This will be subject to consideration of the subcommittee and BOI Board, as the case may be.

Thailand also grants tax and non-tax incentives for industrial development through the IEAT. Industrial operators are granted special incentives and privileges including the right to own land in the industrial estate area, to obtain work permits for foreign technicians and experts who work for the industrial operator, and to take or remit foreign currency abroad. Industrial operators within the Export Processing Zone may be granted additional tax-based incentives and privileges.

#### **Explain any regional tax incentives open to foreign investors.**

Generally, certain tax privileges are provided to International Headquarters (IHQ), which is a company incorporated in Thailand, in order to provide managerial, technical, or supporting services (qualifying services) to its associated enterprises or branches, whether situated in or outside Thailand, including international trading companies which are granted IHQ status. These tax privileges include a tax exemption on corporate income tax for certain types of income such as income derived from services provided to its overseas associated enterprises and a reduction of corporate income tax from 20% to 10% on net profits derived from qualifying services provided to its local associated enterprises. Furthermore, IHQ expatriate employees may choose to pay tax at a rate of 15%. The period of tax incentives is 15 accounting periods.

A reduction of or exemption from customs duties on imported goods is granted to member countries of certain international organizations or agreements such as the Association of Southeast Asian Nations (ASEAN), the ASEAN Free Trade Area (AFTA), the Thailand and Australia Free Trade Agreement (TAFTA), the Thailand and New Zealand Free Trade Agreement (TNFTA), the Japan-Thailand Economic Partnership Agreement (JTEPA), and the Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People's Republic of China.

## **Financial Facilities**

### **Banking**

#### **Explain the banking system. How is it structured?**

The Financial Institution Act 2008 regulates commercial banking and establishes the types of businesses in which a bank may participate. A commercial bank is defined as a bank licensed to

undertake the business of commercial banking, including a commercial bank for small enterprises, a commercial bank being a subsidiary company of a foreign commercial bank, and a branch of a foreign commercial bank authorized to conduct the business of a commercial bank; and licensed to accept deposits of money to be withdrawn upon demand or at the end of a specified period. Such deposit monies are then used by the commercial bank to lend, buy, and sell financial instruments.

The financial industry is controlled and regulated by the Ministry of Finance (MOF) and the Bank of Thailand (BOT). The MOF formulates fiscal policy and oversees the nation's finances, including development of taxation plans, printing of money, oversight of the banking industry, supervision of state enterprises and government monopolies, and control of foreign currency reserves. The BOT is Thailand's central bank responsible for implementation of MOF plans, including issuing bank notes, advising the government on monetary policies, supervising financial institutions, and maintaining monetary stability. Generally, the BOT is treated as an independent body.

#### **Must an investor maintain a bank account in the country? Explain.**

There is no express requirement that an investor must have a bank account in Thailand. However, any incoming foreign currencies must be changed into Thai baht or deposited in a foreign currency account with an authorized bank in Thailand according to the customary practice of each bank.

#### **What are the requirements for opening a bank account?**

A non-resident account may be opened with any authorized commercial bank in Thailand without any restrictions on the amount of funds that can be deposited or withdrawn. Resident accounts for individuals and business entities can be opened under generally accepted banking practices and processes. For example, individuals may be required to possess valid work permits or proof of their residency in Thailand issued by their embassies, while business entities may be required to show corporate registration with the Ministry of Commerce and tax registration with the Revenue Department.

As a result of the U.S. Foreign Account Tax Compliance Act (FATCA), commercial banks in Thailand are also required to declare the American or American-related status of a person who opens an account with them.

#### **What are the restrictions, if any, on the investor's use of the account?**

Any deposits in Thai baht must be derived from one of the following sources: conversion of foreign currencies, payment of goods or services, or a capital transfer for which BOT approval is not required.

Any withdrawals are permitted, except the withdrawal of funds for credit to another non-resident person or purchase of foreign currency involving an overdraft.

#### **Can the investor receive bank loans? Explain the process.**

Yes, a licensed commercial bank or other financial institution, onshore or offshore, can lend to a domestic or foreign investor provided that bank requirements are fulfilled. Each bank may have different requirements.



## Financial Facilities

### Explain the financial system of your country.

In addition to commercial banking, the financial sector in Thailand is comprised of many other types of financial institutions that are regulated by the MOF.

### What kind of financial institutions exist?

- Domestic Commercial Banks—licensed by MOF to undertake the traditional business of commercial banking practice.
- Foreign Commercial Banks—similar privileges as domestic commercial banks with certain additional requirements and restrictions (e.g., branching).
- Representative Offices of Foreign Commercial Banks—licensed by MOF to undertake certain business on behalf of a head office overseas (e.g., contact and coordination work, research and data collection, report of business movement in Thailand to head office or other affiliated companies).
- Government Banks—six banks with special mandates (Bank of Agriculture and Agricultural Cooperatives, Government Housing Bank, Government Savings Bank, Export Import Bank of Thailand, Islamic Bank of Thailand, and Small and Medium Enterprise Development Bank of Thailand).
- Quasi-Governmental Financial Institutions—three public-private corporations that aim to promote industrial enterprises in general and small industry in particular.
- Securities Companies—engage in securities brokerage, dealing, or underwriting; investment advisory services; and mutual or private fund management.
- Finance Companies and Credit Foncier Companies—make loans, usually at higher interest rates and shorter repayment periods than bank loans.
- Hybrid Finance and Securities Companies—corporations with dual licenses that are separately regulated by both the BOT and the Securities and Exchange Commission (SEC).
- Insurance Companies—able to make loans in certain circumstances, guarantee bills of exchange or promissory notes secured by immovable property, operate leasing businesses, and buy foreign securities.

### Is there a stock market? Give a brief history.

From 1962 until 1974, private entrepreneurs created and operated the Bangkok Stock Exchange completely free of government control. This exchange was then expropriated by the government and replaced by the Stock Exchange of Thailand (SET). A small and volatile exchange, the SET began operations in 1975 with 30 members and 14 listed securities under the supervision of the MOF and regulation by the SET itself. As of November 2015, there were approximately 641 listed securities registered with the SET and the Market for Alternative Investment (MAI). The MAI is an alternative market for medium-sized enterprises with a registered capital of more than THB 20 million but less than THB 300 million. The number of members and listed securities is constantly changing.

In 1992, the government revamped the SET by the enactment of the Securities and Exchange Act 1992 (SEC Act). It established the SEC to regulate the SET. The key improvements for the securities system in Thailand include:

- Supervision of securities trading under one body: the SEC.
- Separation of the primary and secondary markets, where the SEC regulates the primary market and the exchanges regulate the secondary market.

- Recognition of various new instruments, including convertibles and warrants.
- Establishment of securities-related organizations including the Thai Securities Depository Co., Ltd., Bond Electronic Exchange, Market for Alternative Investment, Settrade.com Co., Ltd., and Thai NVDR Co., Ltd.
- Permission for non-securities companies (especially commercial banks) to engage in limited activities related to the securities business (e.g., securities brokerage, securities investment advisor, etc.).
- Increased regulation of insider trading, stock manipulation, large sales/purchases of securities by one individual, takeover rules, and disclosure requirements.

The SEC Act was recently amended by the Securities and Exchange Act (No. 4). The updated legislation sets forth changes to three important areas of securities laws:

1. The structure of the SEC has been altered by establishing a new capital markets supervision board, namely the Capital Markets Supervisory Board (CMS Board). The CMS Board has the authority to promulgate regulations and notifications under the SEC Act, which governs day-to-day operational matters.
2. The legislation creates supportive mechanisms for more effective enforcement of securities laws.
3. Existing mechanisms related to investor protection and transparency have been enhanced under the new law.

## Exchange Controls

### Business Transactions with Nationals, Residents, or Non-Residents

#### How are nationals, residents and non-residents defined?

For the purpose of opening a non-resident baht account with a financial institution in Thailand, a non-resident is defined as any of the following:

- Corporations, institutions, funds, financial institutions, or juristic persons located outside Thailand.
- Entities of foreign governments located outside Thailand.
- Branches and agents of domestic juristic persons located outside Thailand.
- Natural persons, not of Thai nationality, and not having an alien ID or residence permit.

Non-residents exclude:

- Thai embassies, Thai consulates, or other entities of the Thai government located outside Thailand.
- Foreign embassies, foreign consulates, specialized agencies of the United Nations, international organizations or institutions (both financial and non-financial) located in Thailand.
- Branches and agents of foreign juristic persons located in Thailand.

Any entities not mentioned above are considered residents of Thailand.

### **Are there restrictions on conducting business with nationals, residents or non-residents?**

Commercial banks in Thailand are authorized by the Bank of Thailand to approve certain foreign exchange transactions, such as the following:

- Remittance of an unlimited amount in payment of imported goods.
- Remittance of up to USD 100 million, or its equivalent, per year for foreign direct investment or lending (to affiliated entities, subsidiaries, or parents abroad).
- Remittance of up to USD 5 million, or its equivalent, per person, per year for the purchase of real property abroad.
- Remittance of up to USD 1 million, or its equivalent, belonging to a Thai national permanently living abroad, per year.
- Remittance of an unlimited amount in repayment of foreign loans and accrued interest, having proper documentary evidence.
- Remittance of an unlimited amount for obligations abroad, having proper documentary evidence.

Foreign exchange transactions involving amounts in excess of these limitations require approval from the Bank of Thailand.

### **Are there reporting requirements?**

The party has to provide documentation through its bank, and the bank is required to report the transaction to the Bank of Thailand.

### **Can the investor receive loans from nationals, residents or non-residents?**

A Thai company is allowed to lend to non-affiliated business entities abroad up to USD 50 million per year.

## **Investment Controls**

### **Are there restrictions on direct investment in the country?**

Foreign investors are required to operate their business under the Foreign Business Act 1999. However, not all business fields are open to foreign investment. This is described in greater detail in the “Requirements for the Establishment of a Business” section below.

### **Are there restrictions on indirect investments in the country?**

Foreign investors are allowed to invest in Thailand through transactions made in the domestic capital market/stock exchanges, with limitations, and subject to the regulations of the Securities and Exchange Commission and Bank of Thailand.

### **Must the investor make declarations regarding the nature of his/her investment?**

Investors are required to report their acquisition or disposition of securities, subject to regulations of the Securities and Exchange Commission.

## Money Transfer

### Is there free determination of exchange rates?

The exchange rate is managed by the Bank of Thailand.

### Are there restrictions on the transfer of money into or out of the country?

There are no restrictions on the amount of Thai baht bank notes that may be brought into the country. A person traveling to Thailand's bordering countries, including Vietnam, is allowed to take out up to THB 500,000, and to other countries they are allowed up to THB 50,000, without authorization.

There are some restrictions on the transfer of foreign currency, however. Unlimited amounts of foreign currency may be brought into Thailand, under the condition that it must be sold or converted into Thai baht with an authorized bank, authorized company, authorized person, or deposited into a foreign currency account located in Thailand within 360 days from the date of acquisition or importation. The only exceptions to these requirements are for foreigners temporarily staying in Thailand for a period of not more than three months, foreign embassies and persons with diplomatic privileges, special organizations of the United Nations, international organizations or institutions, including their staff members and specialists with diplomatic privileges and immunities.

Fund remittances in foreign currencies, with an authorized bank, amounting up to USD 50,000 or more require submission of a foreign exchange transaction form to the authorized bank, as prescribed by the competent officer.

### Are there restrictions on the remittance of profits abroad?

Dividends may be remitted abroad, provided that supporting documents are submitted to an authorized bank.

Accordingly, foreign currency can also be remitted or repatriated abroad freely upon submission of all proper documentary evidence to the agents (e.g., commercial banks in Thailand) that are authorized to approve certain foreign exchange transactions such as payment of imported goods, buying immovable property abroad, foreign investment, lending to affiliated companies, repayment of offshore loan, and payment of accrued interest.

For example, remittance of foreign currency for payment of imported goods requires submission of (1) sales contract or (2) price list of goods or (3) invoice. Repatriation of foreign currency in repayment of offshore loan and payment of accrued interest requires submission of (1) proof of currency inflow when the currency was transferred into Thailand, such as the foreign exchange transaction form, receipt, and/or any documents issued by the authorized commercial banks, and (2) proof of the offshore loan, such as the loan agreement.

### Are there reporting requirements?

The relevant documentation evidencing the purpose of the remittance must be provided to the commercial bank in which the transactions take place, and must also be reported to the Bank of Thailand.

### Can hard currency be taken out of the country?

Foreign currency can be transferred out of the country through an authorized bank and is subject to the reporting obligations described above.

Any person taking foreign currency bank notes in an aggregate amount exceeding USD 20,000 or its equivalent out of Thailand must declare the currency to a customs officer.

## Import / Export Regulations

### Customs Regulations

#### Is the country a member of GATT?

In 1982, Thailand signed the GATT and began steps to liberalize quota schedules in line with the agreement. Thailand must also comply with TRIPS.

#### Is the country a party to a regional free trade agreement?

In January 1992, Thailand signed the Framework Agreement on Enhancing ASEAN Economic Cooperation. The goal of this Agreement was to establish an ASEAN Free Trade Area (AFTA). The countries now affected by AFTA are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

To strengthen the regional economy, in 2003, ASEAN leaders resolved that the ASEAN Economic Community (AEC) would be established by 2020. In 2007, ASEAN leaders affirmed their strong commitment and agreed to speed up the establishment of the AEC by 2015 to liberalize trade and investment within the region, allowing for free movement of goods and services, investment, skilled labor, and capital.

Thailand concluded free trade negotiations with Australia at the end of 2004, and the Thailand-Australia Free Trade Agreement (TAFTA) was implemented in January 2005. Thailand also signed a free trade agreement with New Zealand in April 2005 and with Japan in April 2007 (effective from November 2007).

The first phase of free trade agreements with China and India or the so-called Early Harvest Agreements started in October 2003 and September 2004, respectively. Thailand is currently negotiating the details of the full FTAs with China and India and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) which currently comprises seven countries: Bangladesh, Bhutan, India, Nepal, Myanmar, Sri Lanka, and Thailand.

As to FTAs with countries in the South American continent, Thailand and Peru signed the Framework Agreement on the Closer Economic Partnership Arrangement between the Government of the Republic of Peru and the Government of the Kingdom of Thailand on October 17, 2003 (Framework Agreement), with the objective to liberalize and promote trade in goods and services between the two countries.

In addition, Thailand and Chile signed a Free Trade Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Chile (Thailand-Chile FTA) on November 5, 2015, in order to strengthen economic partnership, expand and secure markets for goods produced from each territory, promote bilateral trade through the establishment of clear and mutually advantageous trade rules, and reduce trade barriers.

### **Does the Customs Department value goods? Explain.**

The Customs Department values goods based on the CIF value for imports and the FOB value for exports.

Imported goods are also subject to value added tax, which is levied on the total sum of the CIF value, import duty, and excise tax (if any).

### **How are goods cleared through Customs?**

Most companies use customs brokers and freight forwarders to assist in the customs process.

Customs clearance procedures in Thailand are similar to those found in most countries. The normal practice of customs clearance is along the lines of an “advanced entry system” where entry of goods must be accompanied by supporting documents already filed and processed prior to the arrival of the goods.

The Customs Department introduced electronic paperless systems for the exportation of goods on March 1, 2006, and for the importation of goods through certain ports (e.g., Laem Chabang Port) on June 1, 2007. Under the system, exporters and importers are allowed to submit export/import information with their electronic signature to the Customs Department via electronic methods instead of submitting hard copies of documents and signature prior to/at the exportation/importation of goods.

### **Are there applicable tariffs?**

Thailand has implemented a customs tariff system based on the Harmonized Commodity Description and Coding System. The current harmonized tariff schedule of Thailand is provided in Customs Tariff Decree 1987, as amended. Thailand is now in the process of updating laws and regulations on customs tariffs to comply with the new amendments to the Harmonized Commodity Description and Coding System (referred to as “HS2012”) which became effective in 2012. The tariff schedule is applicable to all goods imported into and exported from Thailand.

However, the customs tariff rates as prescribed in the schedule may be reduced or exempted under the related customs regulations. Additionally, exemption or reduction may also be granted for goods originating from Australia, New Zealand, China, or ASEAN countries by virtue of TAFTA, the Thailand-New Zealand Free Trade Agreement, the Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People’s Republic of China, and the ASEAN Free Trade Agreement, respectively. The objective of these Agreements is to reduce tariffs between member countries.

For countries that are members of the World Trade Organization whose goods are imported into Thailand, various trade facilities such as customs duty exemption and reduction in rates and relaxed customs procedures are extended. These trade facilities exist by virtue of the Agreement establishing the WTO and other Multilateral Trade Agreements annexed thereto and the Information Technology Agreement among the members of the WTO.

Customs duty is computed by multiplying the CIF value of goods by the tariff rate. The tax base for VAT is the CIF value plus import duty and excise tax (if any).

## Exports

### Are there any restrictions on exports? Explain.

In cases where it is necessary for economic stability, public interest, public health, national security, peace and order, or good morals of the people, or for any other interests of the Kingdom, the Importation and Exportation Act empowers the Ministry of Commerce to issue ministerial regulations or notifications requiring that certain goods be subject to restrictions for export. Depending on the goods, restrictions vary from strict prohibition, requirement of licenses, specifications control, and special fees, to quality control. Restrictions are generally limited to indigenous agricultural products, cultural and religious items, rare species of native flora and fauna, endangered wildlife, fruits, and seafood. Such restrictions are generally limited to the requirement that the domestic market must be served first before any surplus goods are exported.

### Are export licenses required? Explain.

Export licenses are only required for specific goods prescribed by the Ministry of Commerce. See above for more details.

### Are there applicable export duties? Explain.

Since the government aims to promote exports, customs duties on exported goods are generally exempted. However, the government may fix special fees for export of certain goods and agricultural products.

## Foreign Trade Regulations

### Are there foreign trade regulations on the import or export of goods involved in the business?

A foreigner wishing to conduct business in Thailand is subject to the Foreign Business Act.

A foreigner may export all types of goods but cannot import goods for sale, either retail or wholesale, as a trading company unless the company has been granted permission by the Ministry of Commerce or its capitalization is not less than THB 100 million (about USD 3.3 million). However, a foreigner may import raw materials and machinery to manufacture products that are not covered under the Foreign Business Act.

## Imports

### Are import licenses required?

The Importation and Exportation Act specifies a number of goods that are subject to import licenses. Licenses are generally required for the importation of certain agricultural products to protect local producers and certain chemical substances to protect public health. Unless the goods concerned are subject to restrictions and import controls under the Importation and Exportation Act or other laws,

import licenses are generally not required. There are other local laws and regulations that require that approval be obtained from relevant authorities prior to the importation of certain goods. For example, importation of certain foods, pharmaceutical and cosmetic products, or chemical or poisonous substances requires approval from the Food and Drug Administration; importation of tobacco or liquor requires approval from the Excise Department; and importation of arms and ammunition requires approval from the Ministry of Defense.

#### **Are there applicable import duties?**

Customs tariffs and value added tax are generally imposed on the importation of goods into Thailand. Customs tariff rates vary depending on the classification of goods. These rates are adjusted periodically to meet various treaty or fiscal policy requirements. VAT is presently 7%. Furthermore, excise taxes are imposed on certain goods, such as spirits, tobacco, petroleum oils and petroleum products, beverages, perfumes, and passenger cars. The importation of certain goods (generally, agricultural products) is subject to special fees imposed by the Ministry of Commerce.

#### **Are there applicable import quotas?**

Import quotas are generally imposed on agricultural products that require import licenses. The Ministry of Commerce is empowered under the Importation and Exportation Act to impose import quotas to protect local producers.

#### **Are there applicable import barriers?**

Import restrictions exist for preventing the importation of goods that bear false, forged, or misleading trademarks, and sound recording tapes (musical tapes), compact discs, videotapes, computer programs, books, or any other goods that contain works that have been remade or modified from copyrighted works of other persons.

### **Manufacturing Requirements**

#### **Must the product contain ingredients or components that are found or produced only in the country?**

It is not necessary that a product contain ingredients or components that are found or produced only in the country. However, under certain tax and/or investment promotion laws and regulations, there are incentives for certain products that contain more local ingredients or components. In the past, automobiles assembled in Thailand were required to have a certain percentage of locally manufactured content, but this requirement was abrogated on January 1, 2000. For projects promoted by the Board of Investment, products must contain more local ingredients or components than imported items; otherwise, privileges or incentives might not be granted in full.

#### **Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?**

Whether certain component parts must be ultimately incorporated into a final product will depend upon the type of product and business and the laws and regulations governing such product and business. Importation of component parts may be permitted, provided that all legally prescribed conditions are complied with to the satisfaction of the relevant authority.



## Product Labeling

**Explain applicable labeling or packaging requirements (e.g., multilingual notices, safety warnings, listing of ingredients, etc.).**

Product labeling is regulated differently by various laws and regulations based upon the type of product and business concerned. It is necessary to know the type of product and business in order to comply with the proper laws and regulations concerning product labeling. The same is true for packaging requirements.

Any product applied to or ingested in the human body is subject to labeling requirements. Consumer protection laws and regulations are also applicable to product labeling.

# Structures for Doing Business

## Governmental Participation

**Will the government seek to participate in the ownership or operation of the entity (e.g., depending on the type of activity involved)? If so, to what extent?**

The Thai government might seek to participate in the ownership or operation of a business entity. This would depend on the nature of the business, such as those involving communications, radio, television, newspapers, Internet service providers, defense, national security, transportation (air, rail, and some land transportation), petroleum upstream, and mineral resources activities. Under the Foreign Business Act (FBA), the Minister of Commerce can regulate the operation of certain aspects of a permit holder's business, such as the ratio of capital to loans, funds brought in from overseas, the ratio of capital of Thais to that of foreigners in the business, and the ratio of Thais to foreigners responsible for the management of the business.

Some protection for foreign investors against government intervention exists. The Investment Promotion Act and the Industrial Estate Act provide that the state shall not nationalize the activities of the promoted entity. State monopolies generally exist over such sectors as transport (air, rail, and certain kinds of transport), communications, and the manufacture of arms. The Thai government exercises close control over the exploration, production, and refining of petroleum, mining, and public utilities. However, in some of these sectors, exclusive licenses or concessions have been granted to the private sector.

**What is the investor's potential liability to partners, investors, or others?**

The investor's potential liability depends on the type of business organization. For instance, for an ordinary partnership, all partners are jointly and wholly liable for all obligations of the partnership. For a limited partnership, there are two types of partners: (1) a limited partner whose liabilities are limited to his or her capital contribution to the partnership; and (2) a general partner who is liable for all partnership obligations without limitation. In a limited company, liability of the shareholders is limited to the unpaid capital on the par value of stock.

### **Are there restrictions on capitalization? Explain.**

The registered capital of a company must be at least 25% paid up initially. Absent liquidation, the capital of the company may not be reduced to less than one-fourth of its total registered amount.

A foreign individual or a juristic person registered in Thailand with foreigners (either foreign natural persons or juristic persons) holding half or more of the shares is regarded as a foreign company and will be subject to the foreign ownership restrictions under the FBA, whereby the minimum capital used for the business operation is THB 2 million. If the business requires a Foreign Business License, the company must have minimum capital of not less than 25% of the annual average of the first three years' estimated expenditures or THB 3 million, whichever is higher.

### **What are the investor's tax consequences?**

Corporations are taxed on net profits at a flat rate of 20%. Presently, SMEs with paid-up capital as at the end of an accounting period not exceeding THB 5 million enjoy discounted corporate income tax at the rates of 15% to 20%, depending on the amount of net profits with a tax exemption for the first THB 300,000 of net profits.

Dividends distributed by a company or share of profits paid by a partnership to a resident investor, whether an individual or a juristic person, are subject to 10% withholding tax.

Non-resident investors, whether an individual or a juristic person, are subject to income tax in the form of a withholding tax at the rate of 10% on dividends or share of profits received from a company or a partnership established under Thai law.

## **Joint Ventures**

### **Are joint ventures permitted? If so, what is the registration or incorporation procedure? How long do these procedures take? What costs and fees are involved?**

Joint ventures are permitted under Thai law. There are two forms of joint ventures.

First, a joint venture may take the form of a partnership established by contract between one company and another company or juristic partnership or individuals that exists only for a particular project. Even if it is not registered as a legal entity, an "unincorporated joint venture" is treated as a juristic company by the Revenue Department for purposes of tax liability. The joint venture must, therefore, apply for a taxpayer identification card and value added tax certificate if it engages in a business subject to VAT and will earn an income of more than THB 1.8 million in a fiscal year.

Second, a joint venture can be registered as a legal entity, that is, a limited company wherein the partners of the joint venture hold shares in an agreed proportion.

The registration process and fees are similar to those in the formation of an ordinary limited company.

### **Must a national of the country or a related state (e.g., the EEC) be a participant, manager, or director?**

Generally, there are no nationality or residency requirements to be a manager or director of a limited company, with the exception of companies seeking permission to conduct businesses listed under

List 2 of the FBA, in which case a minimum of two-fifths of the total number of directors must be Thai nationals. The restriction on nationality may also be applied under special laws such as the Insurance Act, Air Navigation Act, Thai Vessel Act, Land Transport Act, and Travel Agency Business Act. For a company established under Thai-U.S. Treaty protection, a majority of its directors must be American and/or Thai nationals. For an unincorporated joint venture, which is treated as a partnership, if the managing partner is a foreign individual, the partnership would be deemed an alien and subject to foreign ownership restrictions under the FBA.

### **What is the investor's potential liability?**

If the joint venture is established by contract between the investors and is not registered, all parties to an unincorporated joint venture agreement have unlimited liability similar to the partners in a partnership. If the joint venture is registered as a limited company, the liability of parties to an incorporated joint venture is the same as that of the shareholders of a limited company—that is to say, the liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them.

### **Are there any restrictions on capitalization?**

A juristic person registered in Thailand with foreigners (either foreign natural persons or juristic persons) holding half or more of the shares is regarded as a foreign company and will be subject to the foreign ownership restrictions under the FBA, whereby the minimum capital used for the business operation is THB 2 million. If the business requires a Foreign Business License under the FBA, the company must have minimum capital of not less than 25% of the annual average of the first three years' estimated expenditures or THB 3 million, whichever is higher.

### **What are the investor's tax consequences?**

Under the Revenue Code, a joint venture (whether incorporated or unincorporated) is recognized as a taxable entity and subject to corporate income tax in the same manner as a company. That is, it is subject to all the rules (i.e., computation of net profits and/or losses, filing of tax returns and payment of taxes) and tax rates applicable to a company.

However, the share of profits under a joint venture received by a juristic company and partnership organized under Thai law or by a juristic company and partnership organized under a foreign law and carrying on business in Thailand is generally exempt from further corporate income tax once in the hands of the recipient (participating partners).

## **Limited Liability Companies**

### **Are limited liability companies permitted? If so, how are they registered or incorporated? How long do these procedures take? What cost and fees are involved?**

There are two types of limited companies: the private limited company and the public limited company. The latter is explained in the "Incorporation" section below (p. 32).

A private limited company requires a minimum of three individual promoters. During its life, a minimum of three shareholders, natural and/or juristic persons, must be maintained.

The first step is to reserve the company name; second, file a Memorandum of Association with the Registrar; and third, convene a statutory meeting. During the statutory meeting, among other things, the Articles of Association must be adopted, auditors appointed and directors elected, any pre-incorporation contracts entered into by promoters ratified, expenses incurred by promoters paid, preference shares (if any) established, and the number of ordinary shares or preference shares to be allotted and their prices fixed. The fourth step is to register the company. If necessary documents are complete and duly signed by all promoters, directors, and shareholders, all four steps could be done in one day. The process of preparing documents for forming a company generally takes about two to three weeks. The company registration fee is THB 5,500 per THB 1 million registered capital, with a maximum fee of THB 275,000.

#### **Must a national of the country or a related state be a participant, manager or director?**

Please refer to our comments in the “Joint Venture” section above (p. 29).

#### **Are there any restrictions on capitalization?**

Please refer to our comments in the “Joint Venture” section above (p. 29).

#### **What are the investor’s tax consequences?**

Please refer to our answer in the “Governmental Participation” section above (p. 27).

### **Liability Companies, Unlimited**

#### **Describe the types of liability companies.**

Under Thai law, there are two types of limited companies: the private limited company and the public limited company. Thai law does not recognize the unlimited liability company, although the Memorandum of Association of a private limited company may provide for the unlimited liability of directors.

#### **How are the companies registered or incorporated? How long do these procedures take? What costs and fees are involved?**

See our comments in the “Limited Liability Companies” section above (p. 30).

#### **Must a national of the country be a participant, manager or director?**

See our comments in the “Joint Venture” section above (p. 29).

### **Partnerships, General or Limited**

#### **Are partnerships recognized or permitted?**

Under Thai law, there are three types of partnership, namely an unregistered ordinary partnership, a registered ordinary partnership, and a limited partnership (which must be registered).

### **Must a national of the country or related state be a partner? If so, to what extent?**

Because of restrictions on alien participation in certain business activities under the FBA, a majority of Thai partners may be required in some cases. In the case of a limited partnership or registered ordinary partnership, the managing partner or manager must be a Thai; otherwise, the entity will be regarded as foreign and will be subject to foreign ownership restrictions under the FBA.

### **What costs and fees are involved?**

The registration fee is THB 1,000 to THB 5,000 for up to three partners. If there are more than three partners, the registration fee is THB 300 for each additional partner. Also, THB 100 is charged to receive the registration certificate.

### **What is the investor's potential liability?**

In an ordinary partnership, all partners are jointly and wholly liable for all the obligations of the partnership. In a limited partnership, there are two types of partners: (1) a limited partner whose liabilities are limited to his or her capital contribution to the partnership, and (2) a general partner who is liable for all partnership obligations without limitation. A limited partner who exercises any type of management control will be treated as a general partner. Until the limited partnership is registered, it is deemed to be an ordinary partnership, and all partners have joint and unlimited liability for all partnership obligations.

### **What are the investor's tax consequences?**

Please refer to our answer in the "Governmental Participation" section above (p. 27).

## **Undisclosed Partnership**

### **Explain undisclosed partnerships.**

Thailand does not recognize undisclosed partnerships.

## **Sole Proprietorships**

### **Can a foreign investor be a sole proprietor?**

A foreign investor may engage in business in the form of a sole proprietorship, subject to the restrictions of the FBA.

### **How is the sole proprietorship registered or established? How long does this process take? What costs and fees are involved?**

Registration of sole proprietorships is conducted at the Revenue Department, where the sole proprietor must acquire a taxpayer number. Sole proprietors doing certain types of business may be required to obtain a "commercial registration" at the Ministry of Commerce. The costs include THB 1,000 for registration as well as transportation and counsel fees. The process takes about three to five days.

### What is the investor's potential liability?

With a sole proprietorship, all of the proprietor's assets, business and personal, are subject to judicial attachment or any other legal action, whether connected to the business or not.

### Explain restrictions on capitalization.

Please refer to our answer in the "Governmental Participation" section above (p. 27).

### What are the investor's tax consequences?

Sole proprietors are subject to personal income tax at progressive rates of 10% to 35% with a tax exemption for the first THB 150,000 of net income (income after deduction of standard expenses and allowances). The highest tax bracket for an individual is 35% of net income in excess of THB 4 million. For some categories of income, a sole proprietor, in the computation of personal income tax, can choose between itemizing expenses or taking a standard deduction, whichever provides substantial benefit.

## Incorporation

### Describe the local company law and formation requirements.

Under Thai law, there are two types of limited companies: (1) public limited (publicly held) companies, and (2) private limited (closely held) companies. The formation of a public company is governed by the Public Limited Companies Act, while the formation of a private company is governed by the Thai Civil and Commercial Code.

A public limited company can be incorporated by at least fifteen individual promoters, who must prepare the Memorandum of Association (MOA) and register the same with the Registrar. Once the MOA is registered, the promoters can offer shares for sale to the public or any person according to the laws governing securities and exchanges. Once the subscription of shares reaches the number specified in the prospectus or public offering document, which shall not be less than 50% of the number of shares specified in the MOA, a statutory meeting shall be called to consider, among other things, the following:

- The company's Articles of Association (AOA).
- Ratification of the business done by the promoters and approval of expenses spent in the establishment of the company.
- Determination of the amount of money to be paid to the promoters (if specified in the prospectus).
- Specification of the nature of the preferred shares (if any).
- Determination of the number of ordinary shares or preferred shares to be issued if the payments therefor have been fully made.
- Election of directors.
- Election of the auditor and determination of audit fees.

The notice calling for the statutory meeting must be issued within two months from the date on which the subscription of shares reaches the specified number and must not be later than six months from the date that the MOA is registered. Then, the directors shall register the company and submit, among other things, the company's AOA, list of shareholders, and minutes of the statutory meeting to the Registrar within three months from the date of the statutory meeting.

Private company formation is discussed in the “Limited Liability Companies” section above (p. 30).

### What are the regulatory distinctions made between closely held and publicly held corporations?

A public limited company is a company established for the purpose of offering the sale of shares to the public. A private limited company cannot do so. The regulatory distinctions between closely and publicly held companies involve the number of promoters and the number of shareholders (private companies have a minimum of three shareholders, while public companies have a minimum of 15 shareholders). The Board of Directors of a public limited company must consist of at least five directors, the majority of whom must reside in Thailand, whereas a private limited company can have only one director.

### Explain the following issues:

#### a. What are the requirements for formation?

The requirements for public company formation are set forth in the Public Limited Companies Act. The Civil and Commercial Code lists the requirements for a private company formation. A publicly held company must have a minimum of 15 promoters, and the promoters shall subscribe for shares that are paid up in money, the total number of which must not be less than 5% of the registered capital. Offering of shares for sale to the public requires prior permission from the Securities and Exchange Commission. Once the Companies Registrar at the Ministry of Commerce accepts the registration, the public limited company becomes a juristic person.

#### b. Is local participation required? If so, in which sectors?

Local participation is required if the business is listed under the Foreign Business Act or any other special acts. The FBA requires Thai majority ownership in certain reserved activities such as farming, fishery, land trading, mining, wholesale/retail, brokerage/agency, restaurant, and all kinds of service activities. Some of these activities can be operated by a foreign majority-owned company if granted a Foreign Business License. Other special laws such as the Telecommunications Act, Insurance Act, Financial Institution Business Act, Travel Agency Business and Guide Act, and Private School Act also limit foreign equity ownership.

#### c. What special provisions apply to the administration of the company? Must citizens or residents of the country sit on the board of directors?

A public limited company is managed by a board of directors consisting of no less than five directors, at least one-half of whom must reside in Thailand. In addition, not less than half of the promoters must reside in Thailand.

#### d. Do board or shareholder meetings have to take place in the country?

Board of Directors or shareholders meetings must take place in the country, unless otherwise stipulated by the company's AOA.

## Subsidiaries/Branches/Representative Offices

### Can the investor establish a branch, subsidiary or representative office?

A foreign entity may establish a branch office or subsidiary in Thailand. If the branch office or subsidiary will engage in a business reserved under the FBA, it must obtain a Foreign Business License from the competent authority prior to commencing operation.

Under Thai law, a representative office (which is also a branch office) may be established by a foreign entity and is allowed to conduct only the activities prescribed below:

- Finding sources of goods or services in Thailand for the head office.
- Checking and controlling the quantity of goods purchased in Thailand by the head office.
- Providing advice and assistance concerning goods of the head office sold to agents or consumers in Thailand.
- Disseminating information concerning new goods or services of the head office.
- Reporting on business developments in Thailand to the head office.

As the representative office performs service activities, which are covered by List 3 (21) of the FBA, it must obtain a Foreign Business License. The representative office cannot generate any income in Thailand and, thus, need not pay tax. All operational expenditures incurred by the representative office in connection with its activities must be covered by foreign remittances from the head office only.

### If so, how long is the process for registration or incorporation?

For a private limited company, registration may take from one day to approximately two weeks, and for a public limited company, from four to five weeks, after the application and all supporting documents are presented to the Ministry of Commerce. If a Foreign Business License is required, registration will take an additional three to five months.

### What costs and fees are involved?

A branch office generally requires no corporate registration unless it carries out restricted businesses that require a Foreign Business License, in which case it will be subject to a fee of THB 5 or THB 10 per THB 1,000 capital, with a minimum of THB 20,000 or THB 40,000 and a maximum of THB 250,000 or THB 500,000, depending on the activity. If the activity is listed in List 2 of the FBA, the cost is higher than if listed in List 3 of the FBA.

The fee for establishing a subsidiary is the same as for a limited company; for a private limited company, the registration fee is THB 5,500 per THB 1 million registered capital, with a maximum of THB 275,000, while the registration fee for a public limited company is THB 2,000 per THB 1 million capital, with a maximum of THB 300,000.

### What is the investor's potential liability?

For a branch office and representative office, the head office in a foreign country is responsible for all liabilities of the office. These offices must have at least one manager residing in Thailand responsible for all operations. For a subsidiary, liability will be the same as that of a public limited company or private limited company.



### **Must a national of the country be a participant, manager or director?**

For a branch office and representative office, the manager need not be a Thai national.

### **Explain any restrictions on capitalization.**

The representative office will be required to bring into Thailand working capital in foreign currency equivalent to a minimum of not less than 25% of the annual average of the first three years' estimated expenditures or THB 3 million, whichever is higher; or THB 5 million (THB 2 million in the first operational year and at least THB 1 million in each of the following operational years) if it employs foreigner(s) in Thailand.

### **What are the investor's tax consequences?**

Foreign juristic entities carrying on business in Thailand through branch offices are subject to corporate income tax only for income arising from or in consequence of the business carried on in Thailand. A subsidiary of a foreign company is taxed on income derived in Thailand and worldwide. Basically, a representative office is not subject to Thai tax if it complies with regulatory requirements. However, a representative office is required to obtain a tax ID card and file corporate income tax returns with the Thai Revenue Department, even if its income is nil.

### **Are these tax consequences different than those of a local company?**

A subsidiary of a foreign company registered in Thailand is subject to income tax, VAT, stamp duty, and other taxes and duties in the same manner as a local company. Please refer to our answer in the "Governmental Participation" section above (p. 27).

## **Trusts and Other Fiduciary Entities**

### **Are trusts or other fiduciary entities recognized? If so, how are each defined?**

As a civil law country, local trusts and fiduciary entities are generally not recognized under Thai law, except for a trust established under the Trust for Transactions in Capital Market Act 2007, which is defined as a legal relationship arising from a trust instrument, meaning a contract whereby a person, called a settlor, transfers or creates a real right or any right appertaining to property to or for another person, called a trustee, in trust and confidence in order that the trustee will manage such property for the benefit of beneficiaries. This meaning includes a document showing the intention to create a trust whereby the settlor and the trustee are the same person.

Under the Trust for Transactions in Capital Market Act, a trust may be created for the benefit of transactions in the capital market as specified in the notification of the SEC in relation to the following transactions:

- Issuance of securities under the laws governing securities and exchanges.
- Securitization under the laws governing special purpose juristic persons for securitization.
- Other transactions which are supportive or beneficial to capital market development.

### **What are the legal consequences of a transfer of assets to a trust or fiduciary?**

The assets will become part of the trust property. The trustee shall have legal right over the trust property as an owner of the property or a person entitled to the right over the property, and shall

have the duty to manage the trust property in accordance with the trust instrument and the Trust for Transactions in Capital Market Act.

### Can the investor be the grantor, trustee or beneficiary?

The investor can only be the beneficiary, subject to criteria and restrictions set forth by the SEC. Under the Trust for Transactions in Capital Market Act, only a company issuing securities under the laws governing securities and exchanges, originator under a securitization scheme, or juristic person prescribed by the SEC can be the settlor of a trust. In cases where a settlor makes a declaration to act in trusteeship, a trust shall be created where a written declaration to create the trust has been made and submitted to the SEC Office by the settlor, in accordance with the rules and regulations under the SEC's notifications. A settlor or a trustee is not allowed to be a beneficiary unless there are other beneficiaries.

No person shall undertake trust business without an approval from the SEC. Only commercial banks, financial institutions, and other juristic persons as specified under the SEC's notifications can apply for a license to be a trustee.

## Requirements for the Establishment of a Business

### Foreign Business Act

The Foreign Business Act 1999 (FBA) reserves certain business activities for Thai nationals. Under the FBA, a company is considered "foreign" if half or more of its shares are held by non-Thai persons, whether natural or juristic.

Businesses that are reserved under Lists 1, 2, and 3 of the FBA are subject to foreign ownership limitations imposed by law. Business activities indicated in List 1 of the FBA are strictly closed to foreigners. Foreigners wishing to engage in one of the activities indicated in List 2 of the FBA must obtain permission from the Minister of Commerce with the approval of the Cabinet; or for activities indicated in List 3 of the FBA, permission of the Director-General of the Department of Business Development with the approval of the Foreign Business Committee. Alternatively, foreign enterprises granted promotional privileges by the Board of Investment or the Industrial Estate Authority of Thailand are permitted to engage in business activities specified in Lists 2 and 3 of the FBA in accordance with the conditions prescribed by such authorities, provided that the Ministry of Commerce is notified and a certificate is applied for.

### Antitrust Laws

#### Do the entity's operations need to comply with antitrust laws?

All restrictive trade practices of business operators, which create or may create a monopoly and/or reduce competition in trade of goods and services, including price fixing, intervening in the operation of business of others, and mergers among business operators which will result in a monopoly or unfair competition, will generally be prohibited under the Trade Competition Act 1999.

## What are the filing requirements?

For permission to carry on certain restrictive trade practices under the Trade Competition Act, the applicant must submit an application for the permission of the Trade Competition Board in accordance with its procedures, criteria, and conditions. The application must state the business necessity for the restrictive trade practices, the details as to how the restrictive trade practices will be put into effect, and the time period within which the restrictive trade practices will continue.

## Environmental Regulations

### Is the business of the investor subject to environmental regulation? If so, are there added costs involved (i.e., audit requirements)?

Various businesses of investors are subject to environmental regulations, for example, regulations on environmental impact assessment, hazardous business which impact health, etc. There are added costs involved such as the cost of an Environmental Impact Assessment (EIA) report.

Below are examples of businesses and/or activities which are required to prepare an EIA report before commencing business operation:

1. All sizes of mining projects (e.g., coal, potash, rock salt, limestone, and all types of metal);
2. All sizes of petroleum industry;
3. Iron or steel industry with productivity of 50 tons per day and over; and
4. Hotel or resort with a total of 80 rooms or more or a total utilization area of 4,000 square meters or more.

## Government Approvals

### Are government approvals required for the anticipated business? If so, how long does this process take? What fees are involved?

Government approvals may be required depending on the nature of the business. Foreigners wishing to engage in business reserved for Thai nationals under List 2 or 3 of the FBA must apply for a Foreign Business License from the concerned authorities. It usually takes at least 60 days from submission of the application to learn the outcome of the application. Government fees range from THB 20,000 to THB 500,000, depending on the business.

The most common form of enterprise is a limited liability company. The preliminary process for forming a limited liability company takes approximately two to three weeks. However, since July 2008, limited liability companies can complete the registration process within one day if the promoters, shareholders, and directors can provide all required supporting documents. Upon its creation, a limited liability company must be registered with the Department of Business Development, Ministry of Commerce. At the moment, a newly incorporated company will have a tax identification number on the date of incorporation and it will be the same number as its registration number. The government fee to register a limited liability company is charged at a minimum of THB 5,500 for every THB 1 million registered capital and a maximum of THB 275,000, plus minimal certification fees and stamp duty of THB 2,000.

Further, once the newly incorporated company hires an employee, the company shall register itself with the Social Security Office for social securities fund and workmen's compensation fund contributions.

## Insurance

### Must the enterprise carry insurance? If so, what kinds of risks are insured?

Compulsory insurance in Thailand is minimal, compared with other jurisdictions. For example, compulsory third-party motor insurance was introduced through the Motor Accident Victims Protection Act 1992 and would certainly be important to an enterprise that owns or operates vehicles as part of its day-to-day operations. In addition, directors and officers insurance is now required in certain companies. Aside from these, a wide variety of insurance is available for companies to cover many business risks, including medical, fire, theft, personal accident, home, business interruption, trade credit, product liability, professional liability, public liability, engineering, marine, and other risks.

### Is there a state monopoly on insurance?

There is a broad selection of insurance companies in Thailand; the Thai government may have some ownership interest in certain of these companies. The primary regulator is the Insurance Commission, which draws its authority from the Casualty Insurance Act 1992 as amended, the Life Insurance Act 1992 as amended, and the Insurance Commission Act 2007. These laws provide financial requirements for insurance companies, consumer protection, and for the regulation of contracts.

## Licenses/Permits

### Are licenses or permits required for the anticipated activity? If so, how does the investor apply for and receive the necessary license or permit? How long does it take to receive the license or permit?

A foreigner who desires to engage in business specified in List 2 or 3 of the Foreign Business Act is required to submit an application and obtain permission from the authorities concerned. It generally takes 60 days from the submission date of the application to know the outcome. Business operating licenses may be required depending on the nature of each business which is governed by its own special legislation.

# Operation of the Business

## Attorneys

### Is it necessary to have local counsel?

There is no legal requirement to have a local Thai attorney act as counsel for business operations in Thailand. Investors are free to consult compliance requirements under the laws of Thailand with foreign attorneys if they so wish. However, court procedures and some certification processes, such as notarial services, are required to be performed by a Thai attorney.

### How can local counsel be found?

The regulations of the Lawyers' Council of Thailand require a person who holds a lawyer's license to register with the Lawyers' Council of Thailand. Because the profession is independent in Thailand,

attorneys are not required to operate within the confines of a law firm. Local counsel can be found independently or through law firms all over the country.

Currently, the Lawyers' Council does not provide a central search to help individuals or companies in seeking reputable local counsel who specialize in a specific practice area. Typically, clients find local counsel through word of mouth referrals or independent research.

### **How much are attorneys' fees?**

Attorneys' fees may depend on a number of factors, such as:

- Type of work.
- Complexity of work.
- Duration of work.
- Specialization of the attorney.
- Reputation of the attorney and his or her firm.

Legal fees may be offered through a variety of arrangements, including fixed fees, hourly fees, or retainer fees, depending upon the agreement between the attorney and client. However, the Lawyers' Council of Thailand strictly prohibits Thai lawyers from calculating their service charges on a contingency basis.

## **Bookkeeping Requirements**

### **Must the investor keep local books of accounts?**

According to the Accounting Act 2000, all investors conducting business in Thailand are required to retain their books of accounts and relevant documents at their office for at least five years. In certain businesses, however, the Director General of the Revenue Department may extend this retention period to seven years, with approval from the Minister of Finance

### **In what form must the investor keep accounts? (e.g., GAAP, in what language, etc.)?**

Thailand has its own Federation of Accounting Professions which controls, regulates, and develops Thai Accounting Standard (TAS) to apply to all accounting matters in business operations.

Normally, accountants will follow TAS by keeping their books of accounts and relevant documents including the form of such books and corresponding relevant documents. However, as Thailand is now adopting some parts of the International Financial Reporting Standards (IFRS) for use together with TAS, investors should implement an accounting system consistent with both TAS and IFRS.

## **Business Ethics/Codes**

### **Are there certain business ethics or codes, which the investor must follow (e.g., GAAP for accountants, etc.)?**

Currently, there are no business ethics or codes specifically for business entrepreneurs, but the provisions of the Civil and Commercial Code, Public Company Limited Act 1992, and Securities and Exchange Act 1992 address the duties of directors. These laws hold that directors must perform their duties with responsibility, due care, and loyalty, and must comply with all laws, company

objectives and Articles of Association, the resolutions of the Board of Directors, and resolutions of the shareholders' meeting.

Before performing duties on behalf of a company, a director should consider whether his or her decision is made based on reliable information, whether he or she honestly believes that the decision is reasonable and for the best interests of the company, and whether he or she is making the decision without any personal conflict of interest. If the director causes the company damage due to negligence, the company's shareholders can claim compensation from the director on behalf of the company.

## Consumer Protection Laws

### Are there consumer protection laws, which apply to the investor's operations?

The Consumer Protection Act 1979 and the Consumer Case Procedure Act 2008 protect consumers against false advertising, false labeling, unfair contracts, and more.

In addition, Thailand enacted a Product Liability Act in 2008. First, the Act imposes strict liability on business operators involved in the manufacturing and sales of a defective product if it causes harm to an individual if the consumer can prove that he or she suffered damage while using the product the way it was intended. Second, the Act broadens the scope of liable parties; the injured party can sue the manufacturer as well as the operator. The "operator" is defined in the Act as the manufacturer, hirer, importer, or seller who cannot identify the manufacturer, hirer, or importer. Any person who uses a name, trade name, trademark, service mark, mark, or statement, or acts in a way to cause an understanding that it is the manufacturer, hirer, importer, or seller, is also considered an "operator." And third, each "operator" can be held jointly liable for the damages caused by the defective product to the injured person, regardless of whether the damages were caused negligently.

## Contracts

### Can the investor freely enter into local contracts?

There are no restrictions against foreigners from entering into local contracts, as long as the contract is not explicitly prohibited by law, is not impossible, or is not contrary to public order or good morals. Of course, foreign investors may not be allowed to perform certain acts under the local contracts without first obtaining any necessary permits or approval.

### Can the law of another country govern the contracts?

Parties to a contract may agree to have a foreign law as the governing law and to grant exclusive jurisdiction to a foreign court. However, the Thai courts will accept the foreign law only as long as it is not contrary to Thai law in matters of public order or good morals. In addition, if a party brings a case to the Thai court, the Thai court will not relinquish its sovereignty but will accept the case if the court has jurisdiction over the case, regardless of the agreed exclusivity of the foreign court.

Furthermore, foreign court judgments are not enforceable in Thailand but can be used as supporting evidence. Arbitration, both local and abroad, as a means of dispute resolution is an alternative acceptable under Thai law. Foreign arbitral awards are also recognized and enforced in Thailand if they are governed by a treaty, convention, or international agreement to which Thailand is party, and to the extent that Thailand is committed to be bound. Thailand is party to both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Geneva

Convention on the Execution of Foreign Arbitral Awards 1927. Foreign arbitral awards do not require reiteration in Thailand to execute such awards, even though there is a required enforcement mechanism to comply with.

## Price Controls

### Are there applicable price controls?

The Price of Goods and Services Act 1999 empowers the Price of Goods and Services Committee, Department of Internal Trade, and Ministry of Commerce to issue price controls for lists of goods and services distributed in the country. Currently, there are 38 products and 3 services subject to price control under the Price of Goods and Services Committee's announcement, which include sugar, eggs, milk, and licensing copyrighted music for commercial purposes. The list is subject to change at the committee's discretion.

## Reductions or Return on Capital

### Can capital be repatriated while the corporation is still going?

Under the Civil and Commercial Code, once a company is incorporated and operates as a going concern, the capital contribution paid to the company by the shareholders will be deposited into the company's bank account to be used as working capital for its business operations.

If the business has sufficient profits, the company can declare dividends payable to all shareholders. The company must withhold tax in the amount of 10% before remitting the dividends to shareholders who reside both in Thailand and overseas. Other forms of repatriation, such as reduction of capital, may be subject to additional audit and tax ramification. If a company is dissolved, the company may repatriate its remaining capital to the shareholders after the liquidation process is completed.

# Cessation or Termination of Business

## Termination

### What are the tax consequences of terminating the business?

The Revenue Code has special provisions dealing with liquidations, mergers, and bankruptcy. A voluntary winding-up and dissolution of business normally mandates a tax audit. Therefore, some investors will make their companies dormant for at least five years, the maximum period the Revenue Department can order audits in the case of a taxpayer filing a tax return. During the dormant period, nil tax returns must be filed. After the five-year waiting period, the winding-up can proceed without incident.

### What costs are involved in termination?

The costs involved in termination would include such expenses as government fees, advertisement fees, announcements to shareholders, lawyer fees, auditor fees, severance pay to employees, and bankruptcy court fees (if applicable).

### **How long does it take to terminate the business?**

The amount of time depends on how complicated it is to settle the affairs of the company, pay its debts, and distribute its assets. Once all affairs are resolved, dissolution may proceed subject to any applicable tax audit (see above). Final approval of dissolution can take as little as three months once all tax issues are resolved by the Revenue Department audit.

### **How is the investor's particular form of business treated in termination?**

Termination of a business is considered a normal business risk. There is normally no distinction accorded between different kinds of businesses.

### **Can the business be terminated without government approval or intervention?**

No, the government acts in a transparent capacity to ensure compliance with accepted norms. Under the Civil and Commercial Code, the dissolution of a company and the names of the liquidators must be registered within 14 days after the date of dissolution. For a limited company, the date of dissolution is the date of the shareholders meeting (the notice of which must be published at least once in a local newspaper and sent via return-receipt mail to all shareholders at least 14 days in advance) wherein a "special resolution" for dissolution is passed, or the date which is specified in the special resolution to be the date of dissolution. A liquidator must then be appointed, who must submit a report of his/her activities every three months to the Registration Office of the Ministry of Commerce (MOC). Such report shall be open for inspection by the shareholders and creditors.

As soon as the affairs of the partnership or company are fully liquidated, the liquidators must draw up an account of the liquidation process, showing how the liquidation has been conducted and how the property of the partnership or company has been disposed of, and thereupon must call a general meeting of the shareholders to present the account and give any explanation thereof. After the account is approved, the proceedings of the meeting must be registered and the last financial account submitted, by the liquidators, within 14 days. Such registration is considered the end of liquidation. The company must then obtain approval from the Revenue Department and the MOC before the liquidation can be finalized and the company deregistered.

### **What are the obligations toward creditors, employees and others upon termination?**

Within 14 days after the date of dissolution, the liquidators must notify the public by newspaper advertisement of the dissolution of the company and send a similar notice by registered mail to each creditor. If a creditor does not apply for payment, the liquidators must deposit the amount due to him or her as described by the provisions of law concerning deposit in lieu of performance.

The liquidators may require the partners or shareholders to pay a portion of their contributions of shares as may still be unpaid, and such portion must be paid at once, even if it was previously agreed in the partnership contract or company regulations that it would be called for at a later stage. Only the property of the partnership or company may be divided among the partners or shareholders if it is not required for the performance of all the obligations of the partnership or company.

The employer must give notice of termination in advance to employees and pay severance in accordance with the Labor Protection Act. Employees have preferential rights on par with claims of the tax authorities.



No action for payment of debts due from the partnership or company, or from the partners, shareholders, or liquidators, can be entered into later than two years after the end of liquidation.

## **Insolvency/Bankruptcy**

### **Describe the general consequences of insolvency.**

Under the Bankruptcy Act, once the court approves a petition for liquidation, an official receiver is appointed. The receiver will garner all of the debtor's assets, fix all creditors' claims, and submit a report to the court for final judgment. Until the final judgment for bankruptcy is rendered, a creditor can make any of the following ex parte applications to the court:

- Request an examination by the receiver of all assets of the debtor and/or request the debtor to attend questioning on the existence of assets.
- Require that the debtor provide satisfactory security to the court.
- Request the court to take immediate custody of the debtor's assets and/or seize evidence in order to prevent the loss or destruction of such items.

Once the court has ordered the debtor under receivership, the debtor is prohibited from doing any act related to its assets or business, except such act that is required to be done by order or approval of the court, the official receiver, the assets administrator, or of a creditors' meeting, as prescribed under the Bankruptcy Act.

### **What is the extent of the investor's liability in the event of insolvency or bankruptcy?**

The liability of the investor, who is a shareholder, is limited up to the amount, if any, unpaid on the shares respectively held by them. If the investor already made full payments for the shares they hold, no further liability will be charged to the investor.

### **If debt-to-capital ratios fall below a minimum, must the foreign shareholder recapitalize or face liquidation?**

No, there is no mandatory liquidation in Thailand. However, a creditor may begin either formal or informal bankruptcy proceedings against an insolvent debtor to encourage corporate restructuring. A creditor may also petition the court for dissolution of the company.

Where the debtor is a registered ordinary partnership, a limited partnership, a limited company, or any other juristic person, aside from the creditors being able to file a bankruptcy action, the liquidator of such juristic person may also submit a petition to the court requesting that such juristic person be adjudged bankrupt if it appears that the contribution or shares have been fully paid up and the assets are insufficient to cover the debts.

### **Describe the bankruptcy laws.**

The Bankruptcy Act 1940 (as amended) provides for two types of bankruptcy to be available at the Bankruptcy Court. First, a creditor can invoke a soft bankruptcy under Chapter 3/1 of the Act whereby the court will administer the reorganization of a debtor company and offer an automatic stay of court proceedings against the debtor. Second, the traditional insolvency process can be invoked and a creditor can request that the court participate in winding up the company.

Generally, a creditor may set up a bankruptcy charge against the debtor only when (1) the debtor is insolvent; (2) the debtor is a natural person who is indebted to one or several plaintiff creditors amounting to not less than THB 1 million or the debtor is a juristic person who is indebted to one or several plaintiff creditors amounting to not less than THB 2 million; and (3) the debt may be determined in a definite amount, irrespective of whether such debt is due promptly or thereafter. The liquidator may also submit a petition to the court when the contribution or shares have been fully paid up and the assets are insufficient to cover the debt as stated above.

#### **Are foreign companies required to guarantee debt in the original registration?**

No such requirement is imposed by law.

#### **What choices, if any, are available to the investor with regard to the restructuring or reorganizing of the business?**

In respect of a firm's restructuring, a company may have business integration as another option further to the reorganization method, such as partial business transfer, entire business transfer, amalgamation, or securitization. By means of these restructuring methods, the company may be entitled to enjoy certain tax benefits and gain business opportunities for reinvestment.

## Labor Legislation, Relations, and Supply

### **Employer/Employee Relations**

#### **What laws govern employer/employee relations?**

Given its basis in the law of contracts, the Civil and Commercial Code provides the framework for employment relationships. In addition, the Labor Protection Act (LPA) sets standards applicable to most private sector employment relationships and the Labor Relations Act (LRA) is relevant to matters of collective bargaining. Many important regulations/notifications are promulgated under the LPA and LRA.

#### **Explain any obligations the investor may have to train employees.**

Each calendar year, employers with 100 or more employees must arrange training for at least 50% of their employees, by headcount. Those employers who fail do so are required to make a contribution to the Labor Skill Development Fund before March of the following year. The government has set the contribution at a certain amount which is tied to the minimum wage, for each untrained employee who should have received training during the year in question. Penalties apply to nonpayment and late payment.

Companies promoted by the Board of Investment (BOI) (discussed elsewhere herein) may also be subject to training, skill development, or related technology transfer obligations, depending on the conditions listed on the particular promotion certificate.

## Employment Regulations

### Must the investor hire nationals of the country?

The employment of foreigners is governed by the Foreign Employment Act and the Foreign Business Act. Both laws set employment preferences in favor of Thai nationals. Though requirements may vary, as a general matter, employers must hire four Thais for every one foreign employee. Without exception, foreign private sector employees require work permits, which are granted by the Ministry of Labor. In considering whether to grant a work permit, the Ministry is to consider:

- Whether the job could be done by a Thai employee.
- Whether the foreigner is qualified for the job.
- Whether the job fits the present economic needs of the Kingdom.

Different requirements apply to companies promoted by the BOI, which typically result in greater flexibility and ease in obtaining work permits for foreign nationals.

### Is there a minimum wage?

In 2013, a national minimum wage was set. Separately, a minimum wage was also imposed for workers practicing certain skilled trades. There is also a minimum wage set for foreign employees, which is enforced at the point of renewal of immigration documents.

### What is the maximum number of hours an employee can work each week?

Employees are entitled to at least one day off (holiday) per week, at an interval of no more than six days. In addition, for most private sector employees, the maximum number of working hours is 8 per day and 48 per week, in excess of which employees are entitled to overtime pay, holiday pay, or holiday overtime pay, as applicable. In hazardous lines of work, the maximum number of working hours is lower, i.e., 7 per day and 42 per week.

### Is there a minimum number of vacation and sick days to be given?

Employees who have worked for at least one year are entitled to at least six vacation days per year. In addition, each calendar year, employees are entitled to at least 13 traditional holidays, one of which must be the National Labor Day.

Employees are entitled to sick leave for as many days as they are actually sick, but are only entitled to pay for a maximum of 30 days per year.

## Hiring and Firing Requirements

### Must the investor employ a minimum number of people?

Generally, there are no set minimums with respect to the number of people that must be employed.

### Must the investor employ a minimum number of nationals?

Yes, in the case that the company wishes to hire a foreign employee, there would be a requirement on hiring Thai employees (see topic Labor Permits below).

### **Must certain positions in the company be held by nationals?**

It is not an express requirement. However, every foreign worker requires a work permit which is granted by the Department of Employment (DOE), Ministry of Labor. The current practice of the DOE is to grant a work permit only for the job positions of high skills and those not specifically reserved for Thai nationals. This implies that certain common positions, such as secretary, human resources, accounting, legal, etc., are reserved for Thai nationals only.

### **Are there rules to follow in hiring/dismissing personnel (e.g., notice)?**

Termination for cause is permissible only under certain specific circumstances, and neither advance notice nor severance pay is required. In the case of termination without cause, an employer must give notice spanning at least one pay period to an employee to be terminated. In other words, employees are entitled to notice of at least one complete payment cycle between the date the employee is notified of his or her termination and the date the termination takes effect. However, wages may be paid in lieu of notice. In addition, employees terminated without cause are entitled to certain other payments, such as severance for those employees who have worked at least 120 days. Statutory severance ranges from 30 days (1 month) to 300 days (10 months), depending on the length of the employee's service with the employer.

### **Does the investor have any obligations towards dismissed employees?**

Employees terminated without cause are entitled to advance notice of termination or payment in lieu thereof, statutory severance pay, and any additional benefits that might be specified in their employment agreements and the employer's Work Rules and Regulations. In some circumstances, employees may also be entitled to special severance. In addition, there are specific payment deadlines with respect to all of the foregoing, as well as for payment of outstanding wages and accrued annual leave.

## **Labor Availability**

### **Is adequate skilled or unskilled labor available for the anticipated business?**

Thailand's labor force is approximately 40 million people, ranking number 16 in the world. With around 73% of the population between the ages of 15 and 64, a large portion of Thailand's overall population is of working age.

## **Labor Permits**

### **Are labor permits required? If so, how are they obtained?**

Foreigners wishing to work in Thailand must apply for work permits with the Department of Employment, Ministry of Labor. The applicant must first enter Thailand with a non-immigrant visa, obtained from any Royal Thai Embassy/Consulate outside of Thailand. Presently, the DOE only grants a work permit to an expatriate who is employed by or sponsored by an entity in Thailand (whether a Thai company or a registered branch office of a foreign corporation). The DOE grants every company in Thailand a general quota of 1 work permit each per THB 2 million capital plus 4 Thai employees of the company. The DOE normally takes about 10 days to process a complete work permit application. BOI promoted companies may be granted a waiver of this quota limitation only with respect to executives, technicians, and experts.

### How long does the process take?

The process takes about seven to ten days. Processing time is different in the case of a BOI promoted company.

### What fees are involved?

The government fees for a work permit are as follows:

- THB 850 for up to three months.
- THB 1,600 for more than three months but less than six months.
- THB 3,100 for more than six months but less than one year.
- THB 6,100 for more than 1 year, up to two years.

## Safety Standards

### Are there safety codes that must be followed?

The Occupational Safety and Health Act provides for workplace safety regulation. To this end, ministerial notifications set safety standards. These address such topics as the maximum load a worker may carry, safety apparel, scaffolding, environmental standards, and many others. Safety standards are also set within the framework established by the Hazardous Substances Act and the Factory Act, either or both of which may apply, depending on the type of business.

## Unions

### Are unions recognized?

Unions are recognized if they are properly registered with the Central Registration Office. The Thai Labor Relations Act contains detailed provisions on the formation and regulation of labor unions.

### What are the unions in the investor's business?

If a union exists, it may be independent, existing in a single company, or it may represent employees across an entire industry (multiple companies).

### What are these unions' political affiliations, if any?

Unions are usually not politically active; however, the affiliations of unions that are politically active at any given time would depend on the industry in question and the prevailing political climate.

### Is there an obligation on the part of the employer to organize unions?

Employers are not obligated to organize unions for their employees. If employees choose to form a union, however, the employer may not prevent its formation and will be obligated to provide certain minimal support (i.e., approve leave for union leadership to attend meetings).

### Are there mandatory collective bargaining agreements for the business involved?

No, collective bargaining agreements are subject to negotiation.

# Tax

## Describe the general tax system.

In Thailand, the principal taxes levied are direct taxes (personal and corporate income taxes and petroleum income tax) and indirect taxes (value added tax, specific business tax, excise tax, customs duties, and stamp duties). Generally, income tax in Thailand is by self-assessment, and tax declarations and payments are assumed to be correct. However, the Revenue Department has the power to audit taxes and taxpayer financial records.

Personal income tax is imposed on a natural person, a group of persons, and an unregistered ordinary partnership at the progressive rates of 5% to 35%.

Corporate income tax is imposed on companies and juristic partnerships at the rate of 20% of net profits. Reduced rates at the progressive rates of 15% to 20% are granted to SMEs with a tax exemption on the first THB 300,000 of net profits.

Companies granted licenses to explore, produce, and export petroleum under the Petroleum Act are subject to petroleum income tax instead of corporate income tax.

Value added tax (VAT) is collected upon consumption of goods and provision of services and is also levied on imported goods. VAT is currently imposed at the rate of 7% but will return to 10% from October 1, 2016, onward if the reduced rate is not extended.

Specific business tax (SBT) is imposed on certain types of businesses that provide services whose "value added" is difficult to define. Businesses subject to SBT will be exempt from VAT. SBT is computed on monthly gross receipts at rates varying from 0.1% to 3%. When SBT is paid, an additional amount of 10% of SBT is levied as municipal tax.

Excise tax is levied on selected goods (mainly luxury goods) such as perfume and cosmetic products, tobacco, liquor, beer, soft drinks, crystal glasses, and petroleum products.

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

Stamp duty is levied on 28 classes of instruments specified in the Stamp Duty Schedule of the Revenue Code, such as powers of attorney, hire-of-work agreements, lease agreements, and loan agreements. The stamp duty rates vary according to the nature or content of the instrument.

## Explain the major deductible items. What are the expenses that are excluded from deductibility?

Deductions are allowed for depreciation allowance, reserves for premiums of an insurance business, reserves for provision of bad or doubtful debts of financial institutions, contributions to employee funds, entertainment expenses, donation allowances, and losses carried forward not more than five accounting periods from the current accounting period.

Nondeductible expenses include personal expenses and gifts, artificial or fictitious expenses, expenses not exclusively expended for the purpose of acquiring profit or for the purpose of business, and expenses determined on and payable out of the profits.

### **Explain any tax treaties or territorial rules your country may have.**

Thailand has signed many treaties on the avoidance of double taxation. In most cases, these tax treaties cover only taxes on income. They do not cover indirect taxes such as value added tax and customs duties. Most of the treaties follow the OECD model with the exception of a few changes for certain countries.

Thailand currently has double tax treaties with 60 countries:

Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria, Canada, Chile, China (PRC), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, South Korea, 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, Taiwan, Tajikistan, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, and Vietnam.

### **Describe any other tax considerations.**

#### **Is there a generally accepted way of structuring the company or other entity so as to ensure the desired tax consequences?**

The preferred method for structuring a company so as to procure particular desired tax consequences would be highly fact-dependent and would require consideration of all relevant factors.

#### **Is there an advance tax ruling that can be used to validate or invalidate the chosen form of doing business?**

Taxpayers can request approval of Advance Pricing Agreements. In addition, taxpayers can write to the Revenue Department to pose questions on interpretation of provisions of the Revenue Code and related regulations.

#### **Is there a general anti-tax avoidance system?**

Thailand has enacted regulations on transfer pricing. In addition, the Revenue Code contains a number of provisions which disallow excessive expenses. It also provides that if goods or services are given away or sold at below market value, revenue officials have the authority to impute market value in respect of such transactions. Other anti-avoidance measures are under consideration.

#### **Can the chosen form of business be treated as a deferent form for tax purposes?**

The type of entity (e.g., limited company, unregistered ordinary partnership, etc.) will determine the section of the Revenue Code under which tax is assessed.

# Immigration Requirements

## Immigration Controls

### Are entry permits required? If so, must you apply for an entry permit before entering the country?

Visas, entry permits, or border passes are required for all non-Thai nationals entering the Kingdom. Visitors may apply for a visa at a Royal Thai Embassy or Consulate. However, for tourism purposes, nationals of 49 countries (e.g., Japan, the United States, and most European countries) are permitted to enter and stay in Thailand for a maximum period of 30 days without a visa; nationals of 19 other countries (e.g., India and China) are permitted to apply for a Visa on Arrival at designated immigration checkpoints for a maximum stay of 15 days; nationals of 3 other countries which have entered into treaties with the government of Thailand for exemption of visas (e.g., South Korea and Brazil) are permitted to enter Thailand without a visa for a maximum stay of 90 days. These lists of countries change periodically, so one must check with the nearest Thai Embassy or Consulate prior to entering Thailand.

### Are exit permits required?

Exit permits are not required, but exits may only be legally made by obtaining a departure stamp at a designated immigration checkpoint.

### Are reentry permits required?

Thailand offers (1) single entry permit (allows one entry), (2) limited entry permit (allows a limited number of entries), and (3) multiple entry permit (allows unlimited entries). A reentry permit may be required where a foreigner who obtained a single and/or limited entry visa wishes to leave and reenter Thailand during the period of permitted stay (granted by the designated immigration checkpoint for each entry): (a) for a single entry visa holder, prior to expiration of the period allowed to stay; and (b) for a limited entry visa holder, in excess of the limitation of entries allowed. In these instances, without a reentry permit, the remaining period of stay lapses and the foreigner must apply for a new visa at a Thai Embassy or Consulate abroad before reentry.

A reentry permit can be applied for either at the Immigration Bureau or at the Suvarnabhumi Airport immigration checkpoint.

### Are there immigration quotas?

There are immigration quotas for permanent residence permit holders, are regulated yearly and by nationality through the Immigration Bureau (not exceeding 100 persons per year from each country and not exceeding 50 persons who have no nationality).

### Are vaccinations required?

Vaccinations are not required unless an individual is traveling from an epidemic area to Thailand. Visitors to Thailand who have visited any country which has been declared a yellow fever infected



area must provide a valid Yellow Fever Vaccination Certificate. Those who do not present a valid Yellow Fever Vaccination Certificate may be vaccinated and quarantined for up to six days.

#### **Are medical certificates required?**

As mentioned above, a medical certificate is not required unless the visitor has visited a yellow fever infected area, in which it is necessary to provide a valid Yellow Fever Vaccination Certificate.

Furthermore, a recent medical certificate from a first-class licensed physician in Thailand stating that the applicant is not of unsound mind and not suffering from leprosy, active tuberculosis, elephantiasis, narcotic addiction, habitual alcoholism, and syphilis phase III is required to apply for a work permit in Thailand.

### **Immigration Requirements/Formalities**

#### **Is a residence permit required? If so, does the investor have to apply for one before entering the country?**

A residence permit is not mandatory for an expatriate staying or working in Thailand. Typically, in terms of immigration control, an expatriate can work and/or conduct business in Thailand once they have obtained a business visa (Non-Immigrant “B” visa) and a work permit.

A residence permit is an alternative for expatriates who would like to have Thailand as their permanent residence and would like to be excused from an annual extension of stay and notification of address for every 90-day period of consecutive stay. A residence permit is also a prerequisite to applying for Thai nationality.

#### **What information must be supplied to the immigration authorities?**

To apply for a residence permit, an applicant must have been staying in Thailand consecutively for at least three years; disclose information regarding his or her income, assets, previous tax filings in Thailand, knowledge, vocational ability, family status, conditions concerning national security, and other information as deemed appropriate; and have basic comprehension of the Thai language.

#### **How long does it take to receive authorization?**

The time frame for a residence permit application is not explicitly specified by official procedures. The application may take six months for the Immigration Bureau’s review and at least another one year for the Ministry of Interior’s further review and approval.

### **Visas**

#### **Is a visa required for travel or stay in the country? If so, for how long is the visa valid?**

Visas are required for all non-Thai nationals who wish to enter the Kingdom. Exemptions are, however, provided for expatriates who have a residence permit and/or are a national of one of the 49 countries mentioned above.

The validity of a visa varies (e.g., three months, six months, one year, and three years), depending on the purpose of stay and discretion of the Royal Thai Embassy or Consulate issuing the visa. A tourist

visa allows its holder to stay in Thailand for a maximum period of 60 days per entry. A business visa allows its holder to stay in Thailand for a maximum period of 90 days per entry. However, an extension of stay, for a period of up to one year, may be applied for if the expatriate meets the conditions stipulated by the Immigration Bureau.

### **How does the investor apply for a visa?**

Investors may apply for a visa at a Royal Thai Embassy or Consulate. The Royal Thai Embassies and Consulates located in most countries accept visa applications in person, while some accept applications by post.

Investors are advised to check with the particular Embassy or Consulate at which they plan on applying.

### **What documents are required?**

Requirements of a particular Royal Thai Embassy or Consulate may be different. In general, however, complete personal documentation of the investor is required. This may include:

- Passport.
- Visa application form.
- Photos.
- Invitation letter or confirmation letter of employment from the prospective business partner and/or employer in Thailand, including a set of corporate documents of the sponsor (e.g., copies of Directors' Certificate (Affidavit), Certificate of Incorporation, and Thai ID card or passport of authorized director(s) of the sponsor).

Investors are advised to check the requirements with the particular Embassy or Consulate at which they plan on applying.

### **How long does it take to receive a visa?**

Processing times differ across Royal Thai Embassies or Consulates. But in general most visas can be approved and granted within two to three business days.

Again, it is advisable for investors to check on the standard processing times at the particular Embassy or Consulate at which they plan on applying.

### **What fees are involved?**

The current fee for a transit visa is THB 800, while the fee for a visa on arrival and a tourist visa is THB 1,000. A non-immigrant visa for business and other purposes can be obtained for a fee of THB 2,000 for a single entry or THB 5,000 for multiple entries.

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