

Doing business in Thailand

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction (civil law, common law or a mixture of both)?

Thailand has a civil law legal system.

FOREIGN INVESTMENT

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

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

Potential investors should check with the FBA to determine which of the following categories their proposed business activity falls into:

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

- **List 2.** Foreign investment is only allowed in these activities with either:
 - permission from the Minister of Commerce (which must be approved by the Cabinet);
 - authorisation from the Board of Investment or from the Industrial Estate Authority of Thailand.

Activities in this list include:

- the production, sale and maintenance of firearms and armaments;
- domestic transportation by land, water and air.
- **List 3.** Foreign investment is only allowed in these activities with either:
 - permission from the Director-General of the Business Development Department at the Ministry of Commerce (which must be approved by the Foreign Business Committee);
 - authorisation from the Board of Investment or from the Industrial Estate Authority of Thailand.

Activities in this list include the following services:

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

3. Are there any exchange control or currency regulations?

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

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

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

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

- Foreign investment of between US\$5 million (about EUR4 million) and US\$10 million (about EUR8 million) a year.
- Loans to affiliates of between US\$5 million and US\$10 million a year.
- The purchase of property not exceeding US\$500,000 (about EUR405,300).

Sums that exceed the above require approval from the Bank of Thailand.

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

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

BUSINESS ENTITIES

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

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

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

- **Registration formalities (including timing).**
 - **Minimum (and maximum) share capital.**
 - **Whether shares can be issued for non-cash consideration such as assets or services (and any formalities).**
 - **Any restrictions on the rights that can attach to shares.**
 - **Any restrictions on foreign shareholders.**
 - **Management structure and any restrictions on foreign managers.**
 - **Directors' liability.**
 - **Parent company liability.**
 - **Reporting requirements (including filing of accounts) and cost of compliance.**
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The most common form of corporate vehicle established by a foreign company in Thailand is the private limited company. Foreign investors can engage in this form of business without permission from the authorities provided that a Thai partner holds a majority stake.

- **Registration formalities.** At least seven promoters are required to establish a private limited company. The company must reserve a company name and file a copy of its memorandum and articles of association with the Ministry of Commerce.

The registration fee is about 0.55% of the registered capital, with a minimum of THB5,500 (about US\$133) and a maximum of THB275,000 (about US\$6,671). The formation process takes three to four weeks.

- **Minimum (and maximum) share capital.** The minimum share capital for a foreign-majority-owned company is THB2 million (about US\$48,518). If the intended activity is listed in the FBA, the minimum share capital is THB3 million (about US\$72,777) or 25% of the company's average estimated annual expenses during the first three years. The par value of each share, whether or not the activity is listed in the FBA (*see Question 2*), must be at least THB5 (about US\$0.12). A minimum share capital of 25% must be paid on or before the date of filing the application for incorporation.
- **Shares issued for non-cash consideration.** Future services to the company can be used as consideration for shares.
- **Restrictions on rights attaching to shares.** There are no restrictions on rights attaching to shares other than any identified in the articles of association.
- **Restrictions on foreign shareholders.** In some activities listed in the FBA (*see Question 2*), foreign investors cannot hold a majority of shares.
- **Management structure and foreign managers.** A private limited company is managed by a board of directors, which is elected by the shareholders in a general meeting. Nationality requirements only apply to business activities in List 2 of the FBA (*see Question 2*).
- **Directors' liability.** Directors can be personally liable under civil law if:
 - they do not exercise their duties in the best interests of the company;
 - they do not act in a fair and honest way;
 - they fail to avoid a conflict of interest;
 - the memorandum of association states that they have unlimited liability.

Directors are criminally liable if they:

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

- a balance sheet certified by an auditor and approved by the annual general meeting of the shareholders;
- a statement of profits.

EMPLOYEES

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

Minimum standards for conditions of employment are set by the Labour Protection Act 1998 (LPA).

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

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

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

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

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

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

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

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

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

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

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

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

Any employee can commence proceedings in the Labour Court if he believes that he has been unfairly dismissed.

11. How are redundancies regulated?

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

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

Social security fund

Employers and employees must each contribute to the fund an amount equal to 5% of the employee's gross wages up to a maximum of THB750 (about US\$18) a month.

Payments are made from the fund to employees for:

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

- Child welfare.
- Pension.
- Unemployment.

Workmen's compensation fund

Employers must contribute between 0.2% and 1% of an employee's annual earnings (up to a maximum of THB240,000 (about US\$5,822)), depending on the classification of the employer.

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

Employees of foreign companies who are seconded to work in Thailand are taxed in the same way as Thai employees (that is, according to a progressive rate) (*see Question 12*). Exemptions may be available if a double tax treaty applies.

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

Foreign employees require work permits. Applications for work permits must either be made to the:

- Ministry of Labour, which takes seven to ten days to process.
- One Stop Service Centre, which takes one day to process provided that applicants meet the necessary qualifications to apply at the Centre.

The fees are:

- THB850 (about US\$21) for a three-month work permit.
- THB3,100 (about US\$77) for a six to 12-month work permit.

TAX

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

Thai companies must pay tax on their worldwide income (*see Question 17*).

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

Foreign companies must pay tax on their Thai-sourced income (*see Question 17*).

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

Corporate income tax

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

Foreign companies not carrying on business in Thailand must pay a withholding tax on the gross amount of their Thai-sourced income (such as service fees, royalties, interest and rental income) at the flat rate of 15% (or 10% for dividends). Tax payable is withheld at source at the time of the payment.

Value added tax (VAT)

VAT is payable at the rate of 7% on the following categories of business transactions:

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

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

Specific business tax (SBT)

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

- Banking or similar activities.
- Credit foncier (that is, the business of lending money on the security of mortgage of immovable property in the ordinary course of business).
- Securities.
- Life insurance.
- Pawn shop services.
- Commercial sales of immovable property or sales of immovable property for profits.

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

Municipal tax

This applies to anyone subject to SBT and is charged at the rate of 10% of the SBT payable. Municipal tax is already included in the 7% of VAT paid.

Stamp duty

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

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

- **Dividends paid to foreign corporate shareholders.**
 - **Dividends received from foreign companies.**
 - **Interest paid to foreign corporate shareholders.**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders.**
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- **Dividends paid to foreign corporate shareholders.** Dividends are subject to a withholding tax at the rate of 10%.
 - **Dividends received from foreign companies.** Dividends are taxed as ordinary income of the Thai company.
 - **Interest paid to foreign corporate shareholders.** Interest is subject to a withholding tax at the rate of 15%.
 - **IP royalties.** Royalties paid to non-resident companies are subject to a withholding tax at the rate of 15%, which can be reduced to 5% or 10% under some tax treaties.

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

Thailand does not have thin capitalisation rules.

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

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

21. Does your jurisdiction have transfer pricing rules?

Yes, the Revenue Department can assess, without justification:

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

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

22. How are imports and exports taxed?

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

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

Imports and exports are also subject to VAT (*see Question 17*).

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

Thailand has signed 48 double tax treaties including with the US, and European and Asian countries.

ANTI-TRUST

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

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

INTELLECTUAL PROPERTY

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

- **Nature of right (that is, the conditions that must be satisfied for the right to arise and what the right-holder is entitled to do).**
 - **How protected (for instance, by registration, by agreement, by common law). If an application is needed, where should it be filed?**
 - **How enforced and, if any, what penalties arise for breach.**
 - **Length of protection.**
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Patents

- **Nature of right.** The three different types of patent rights available under Thai law are (*Thai Patent Act 1979 (as amended)*):
 - invention patents;
 - petty patents;
 - design patents.

To qualify for an invention patent, an invention must:

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

An invention that lacks an inventive step (a utility model) can be protected by a petty patent.

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

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

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

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

- **How protected.** Applications for a patent must be submitted to the Department of Intellectual Property.
- **How enforced.** Criminal and civil enforcement is possible. Unauthorised use of a patent is a criminal offence under the Patent Act. Penalties for infringement include:
 - fines from THB20,000 (about US\$485) to THB400,000 (about US\$9,703).
 - imprisonment of between six months and two years.

Civil enforcement is through a tort action under the CCC.

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

Trade marks

- **Nature of right.** Both registered and unregistered trade marks can be protected in Thailand. The Trade Mark Act 1991 (as amended) provides a framework for the registration and protection of:
 - trade marks;
 - service marks;
 - certification marks;
 - collective marks.

To be registrable, a mark must:

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

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

There is no specific legislation relating to unregistered trade marks in Thailand. The owner of an unregistered trade mark can obtain indirect protection under the CCC if identifiable ownership rights to the unregistered mark (such as established reputation and goodwill) can be established.

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

The protection for unregistered trade marks depends on the extent to which reputation or goodwill has been established or created by the owner in that mark in Thailand.

- **How enforced.** Both civil and criminal enforcement is possible. If the mark is registered, it is a criminal offence to:
 - forge or imitate a mark without authorisation;
 - import, sell or offer for sale products bearing forged or imitative marks.

Penalties for infringement include:

- fines from THB200,000 (about US\$4,851) to THB400,000;
- imprisonment of two to four years;

Civil enforcement is through a tort action under the CCC.

For unregistered marks, enforcement can be through an action for passing-off under the CCC and the Penal Code.

- **Length of protection.** Protection lasts for ten years from the date of filing an application for registration, renewable indefinitely for ten-year periods. There is no defined term of protection for unregistered marks.

Copyright

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

A copyright owner has the exclusive right to:

- reproduce or adapt the work;
 - disseminate the work to the public;
 - rent out the work;
 - grant licences for the work;
 - sell the copyright.
- **How protected.** Copyright protection arises automatically on creation or publication of the work. The owner can record his ownership with the Department of Intellectual Property, which can be used when seeking to enforce his rights.
 - **How enforced.** Both civil and criminal enforcement of copyright is possible. Infringement of copyright is a criminal offence under the Copyright Act. Criminal penalties include:
 - fines from THB20,000 to THB800,000 (about US\$19,407);
 - terms of imprisonment between six months and four years.

Repeat offenders (within five years) can be liable to double punishment.

Civil enforcement is through a tort action under the CCC.

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

Trade secrets

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

The owner of a trade secret has the right to:

- disclose it;
 - use it;
 - permit others to use it.
- **How protected.** Trade secrets are automatically protected (no application procedure is necessary). The rights often arise from contractual relationships, although this is not always necessary.

Trade secret rights can be infringed by:

- disclosing the trade secret;
 - preventing the owner from using the trade secret;
 - using the information without the consent of the owner and in a manner contrary to honest trade practices (such as breach of contract and bribery).
- **How enforced.** Both civil and criminal enforcement is possible. Infringement of trade secret rights is a criminal offence. Criminal remedies include:
 - fines of between THB200,000 and THB 2 million (about US\$50,000);
 - terms of imprisonment of between one and ten years.

Civil enforcement is through a tort action under the CCC.

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

Layout-designs of integrated circuits

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

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

- **How protected.** Designs must be registered with the Department of Intellectual Property to qualify for protection.
- **How enforced.** Infringement of layout-design rights is a criminal offence with fines of between THB20,000 and THB500,000 (about US\$12,129) Civil enforcement is through an action in tort under the CCC.
- **Length of protection.** Protection lasts for ten years from filing an application for registration. However, this term can be shorter depending on when the application for registration was made and when the design was first exploited commercially. Generally, protection does not last more than 15 years from the date on which the design was created.

MARKETING AGREEMENTS

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

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

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

E-COMMERCE

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

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

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

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

DATA PROTECTION

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

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

PRODUCT LIABILITY

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

There are no specific product liability laws. However, a draft product liability law is under consideration, General provisions of tort law apply.