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# Guide to Doing Business in Thailand 2023



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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 Melayu, and other languages of South Asia.

## What is the current (as of November 2, 2023) exchange rate for the U.S. dollar, the euro, and the yen?

USD 1	=	THB 36.02 (mid-market)
EUR 1	=	THB 38.18 (mid-market)
JPY 100	=	THB 23.94 (mid-market)

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

Thailand is approximately 513,120 sq. km. in area, about the size of France or Texas, with a population of nearly 70 million, and GDP (Purchasing Power Parity) of about USD 1.34 trillion for 2020.

Thailand has four main 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 Cambodia, Laos, Malaysia, and Myanmar. Nearby are China, Indonesia, Singapore, and Vietnam. The climate is generally 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?

Thai culture significantly influences business dealings. Although different behaviors are accepted, most find the optimal approach to be one of politeness and respect without ever losing one's temper or raising one's voice. Conflicts should be resolved by polite discussion. Personal ties and trust also tend to be very important to the Thai people; accordingly, direct personal questions are common and not inappropriate. At the same time, people tend to be indirect in their dealings with each other and go around an issue or address a source of tension indirectly rather than going directly to the key point. These typical behaviors are not uniform, however. There are also notable currents that challenge established norms of the society by questioning the status quo and arguing for greater and more standardized openness, transparency, and accountability.

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

The population is largely homogeneous and has relatively little racial or religious strife. Of the 25% who are not ethnically Thai, the majority are ethnic Chinese who have had an economic impact over the past century far outweighing their numbers. About 93% of Thais are Buddhist, 5% are Muslim, 1% are Christian, and a handful of other religions make up the remaining 1%. 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. Some of the country's infrastructure has been criticized as insufficient, but there have been numerous initiatives to make improvements in this area, including many that are currently underway.

**Airports.** As of 2023, Thailand has 11 international airports, plus another 28 providing scheduled commercial domestic services. Of these, the North has airports located in Chiang Mai, Chiang Rai, Lampang, Mae Hong Son, Mae Sariang, Mae Sot, Nan, Pai, Phetchabun, Phitsanulok, Phrae, Sukhothai, and Tak. In the Northeast, there are airports in Betong, Buri Ram, Khon Kaen, Loei, Nakhon Phanom, Roi Et, Sakon Nakhon, Ubon Ratchathani, and Udon Thani. In the South, there are airports in Chumphon, Hat Yai, Ko Samui, Krabi, Nakhon Si Thammarat, Narathiwat, Pattani, Phuket, Ranong, Surat Thani, and Trang. In central Thailand, there are airports in Bangkok (Don Mueang and Suvarnabhumi), Hua Hin, Nakhon Sawan, and U-Tapao (Rayong/Pattaya). There is also an airport in Trat, the country's easternmost province on the Gulf of Thailand.

Bangkok's Suvarnabhumi Airport, which opened in 2006, is located approximately 25 kilometers east of central Bangkok. Built to accommodate 45 million passengers per year, the airport has been accommodating significantly higher numbers in recent years. As such, expansion is currently underway to accommodate these increased numbers. Don Mueang Airport, which also serves Bangkok, is the oldest operating airport in Asia and is located approximately 20 kilometers north of central Bangkok. It has become a hub for regional aircraft and low-cost airlines. A major redevelopment of U-Tapao Airport is now in the works.

Thai-flagged passenger airlines include Bangkok Airways, Nok Air, Thai AirAsia and Thai AirAsia X, Thai Airways, Thai Lion Air, Thai Smile (soon to be dissolved and merged into its parent, Thai Airways), and Thai Vietjet Air. Thailand also receives extensive service from foreign-flagged airlines.

**Rail Systems.** From Bangkok, passenger and freight trains run regularly to the outer surrounding areas as well as to farther destinations north, south, east, and west. There are rail links to Malaysia and Laos, while rail links to Cambodia and Myanmar are expected in the future. Multiple other rail expansion projects are planned for the near future. High-speed and dual-track railway projects are also in the planning and construction stages.

**Ports.** Major seaports are located at Bangkok (Klong Toey), Laem Chabang, Map Ta Phut, Prachuap, and Si Racha.

**Public Transportation.** Greater Bangkok features local rail services in the forms of subway, at grade, and elevated. There are numerous rail expansion projects currently underway. Many public buses also operate in Greater Bangkok.

**Road System.** Thailand has more than 390,000 kilometers of roads, almost all of which are paved. This includes a national highway network of over 70,000 kilometers.

## Explain the communications system.

Thailand's telecommunications industry has evolved rapidly over the last 30 years.

In the past, telecommunications services were provided exclusively through two state enterprises—which are now TOT Corporation Public Company Limited (TOT) and CAT Telecom Public Company Limited (CAT)—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, and more recently, licenses. Concessions were given by TOT, CAT, or PTD to local companies, many of which formed joint ventures with foreign telecommunications companies. Aside from TOT and CAT, there are six private providers of landline telephone services.

While TOT and CAT also have mobile phone businesses, the private operators are significantly larger. These private operators include AIS (part of Singtel group), DTAC (part of Telenor group), and True (with significant investment from China Mobile). DTAC and True are in the process of completing a merger, which leaves Thailand with two major private operators. There are also mobile virtual network operators (MVNOs).

## 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 the neighboring provinces of Nonthaburi and Samut Prakan. A main issue confronting the 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, the MWA's efforts to ban artesian wells have thus far been unsuccessful. The MWA's main source of raw water, the Chao Phraya River, is suffering vast pollution due to silting, agricultural chemical and pesticide runoff, 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 (East Water), provides water to the industrial estates in Chon Buri, Rayong, Chachoengsao, and provinces in the eastern part of the country.

The PWA's and the MWA's plans for privatization have not yet been implemented. However, even before Thailand entered the International Monetary Fund's (IMF) bail-out program stemming from the 1997 Asian financial crisis, Thailand had privatized part of its water supply in the provinces. The PWA operated its raw-water supply subsidiary East Water 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. Additional electricity is provided by Independent Power Producers (IPPs) and Small Power Producers (SPPs), and some from generation in Laos and Malaysia.

Distribution of electricity in Thailand is provided mainly through the Metropolitan Electricity Authority (MEA) and the Provincial Electrical Authority (PEA), both of which are state enterprises. The National Energy Policy Committee sets the rates that EGAT charges the MEA and the PEA.

**Oil and Gas.** The state-owned Petroleum Authority of Thailand (PTT), 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 around THB 28.5 billion.

Exploration for oil and gas is conducted by major upstream field developers under concessions from the Ministry of Energy. This industry is dominated by U.S. petroleum companies. Chevron's largest gas fields in Thailand are located offshore, and the company also happens to be 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 some 37 projects, including sites in Algeria, Brazil, Cambodia, Canada, Indonesia, Iran, Malaysia, Mexico, Mozambique, Myanmar, Oman, Thailand, and Vietnam.

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, 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 economy with relatively low levels of regulation. Foreign investment is welcome, and various types of incentives—both tax and non-tax—are granted to attract foreign investment. Such incentives are provided through government agencies, including the Board of Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT); for special economic zones (SEZs) and the Eastern Economic Corridor (EEC); and through agreements between

Thailand and other countries, such as the ASEAN Comprehensive Investment Agreement (ACIA), the ASEAN Framework Agreement on Services (AFAS), and the Treaty of Amity and Economic Relations between Thailand and the United States (Treaty of Amity). In principle, the BOI maintains a policy of giving special consideration to investment projects that promote clusters to create and concentrate investment in accordance with regional potential, and to strengthen value chains as well as promote investment in southern and eastern Thailand and in special economic zones—especially in border areas.

Under Thailand's BOI policies, mainly specified in the BOI's Announcement No. 8/2565, the government has placed an emphasis on attracting investment in seven key sectors that have been identified as priority activities for the country's development. The seven targets are to:

1. Restructure industry by enhancing existing industry, building up new industrial bases for which Thailand has potential, and strengthening supply chains;
2. Accelerate the transition to smart and sustainable industry through new investments and enhancement of existing entrepreneurs;
3. Promote Thailand as an international business hub and regional trade and investment gateway;
4. Develop the strength and global connectivity of small and medium enterprise (SMEs) and startups;
5. Promote investment based on potential of each geographical area to foster inclusive growth;
6. Encourage promoted enterprises to engage in community and social development; and
7. Promote Thai overseas investment to expand business opportunities and Thailand's role in the global economy.

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

Also in Announcement No. 8/2565, as amended by Announcement No. 9/2565, ten types of activities are eligible for investment promotion:

- Agriculture, food and biotechnology;
- Medical electrical appliances and electronics;
- Machinery and vehicles;
- Electrical appliances and electronics;
- Metal and material;
- Chemical and petrochemicals;
- Public utilities;
- Digital industry;
- Creative industry; and
- High-value services.

In general, the activities on the list annexed to the Announcement will be granted activities-based incentives, including tax and/or non-tax incentives, if certain conditions are met. The term for the tax

benefits will vary. Activities may be granted additional merit-based incentives if the project has merits pertaining to 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 accommodation and facilities to assist entrepreneurs. In addition to the BOI incentives, businesses may enjoy tax and/or non-tax privileges granted for investment, such as land ownership, in industrial estates.

The SEZs consist of 10 special zones targeted by the BOI for the promotion of socioeconomic growth and development at both local and regional levels:

- Tak Special Economic Zone;
- Mukdahan Special Economic Zone;
- Sa Kaew Special Economic Zone;
- Trat Special Economic Zone;
- Songkhla Special Economic Zone;
- Chiang Rai Special Economic Zone;
- Nong Khai Special Economic Zone;
- Nakhon Phanom Special Economic Zone;
- Kanchanaburi Special Economic Zone; and
- Narathiwat Special Economic Zone

The SEZs aim to support rapid development of connectivity in trade, movement of raw materials, supply chain, and consumer markets. Investors in SEZs receive additional tax incentives and foreign labor allowances, depending on the targeted activities and the location of the SEZ.

The three provinces designated as part of the EEC are Chachoengsao, Chon Buri, and Rayong. Eligible projects under the EEC program, which fosters human resource development and transfer of technology and skills to boost the digital economy in target industries, are entitled to both tax incentives such as CIT exemption and exemption of import duties on machinery and raw materials, and non-tax incentives such as the right to own land, fast-track public-private partnership opportunities, and so on.

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

The rate of headline inflation is 2.5% and the rate of core inflation is 2.0%, according to the Bank of Thailand's Monetary Policy Report of July 2023.

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

Despite Thailand generally welcoming 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, that are subject to different levels of restrictions for foreigners—unless the foreigner is able to obtain a Foreign Business License (FBL) or Foreign Business Certificate (FBC). A company is considered "foreign" under the FBA if it is

not registered in Thailand or if it is registered in Thailand but at least half of its shares are held by non-Thai natural or juristic persons.

Foreign business operators are prohibited from operating a business from any of the nine business categories mentioned in List 1 of the FBA. This includes businesses such as newspapers and radio or television stations, rice farming operations, fisheries in Thai territorial waters, and exclusive economic zones in Thailand, forestry, or land trading.

For activities under List 2 of the FBA, foreign business operators must obtain a license from the Department of Business Development (DBD) of the Ministry of Commerce, along with an 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 businesses; 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, foreign business operators must obtain a license from the director general of the DBD of the Ministry of Commerce, along with approval from the Foreign Business Committee. List 3 includes, among others, all service businesses (accounting, legal, architecture, engineering, and any other category of service business except those prescribed in ministerial regulations), retail (unless the company's registered capital is THB 100 million or more), hotels, advertising, selling food and beverages, and construction (with some exceptions). Some businesses exempted by ministerial regulation include provision of loans to affiliates or subsidiary companies, engaging in business as a representative office or regional office, and providing advice and support to affiliates or subsidiary companies in relation to administration, marketing, human resources, information technology, and so on.

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 2001, the Financial Institution Business Act 2008, the Life Insurance Act 1992, and the Non-Life Insurance Act 1992.

Exceptions to the FBA's restrictions on List 2 or List 3 activities can be granted as promotional privileges by the BOI or IEAT, or, as a temporary measure, by approval from the Thai government.

Exceptions can also be provided based on international treaties that Thailand has entered into. U.S. companies or nationals, under the Treaty of Amity, can be eligible for "national treatment," whereby they are treated in the same way as Thai nationals, with some exceptions. Other international treaties, such as ACIA, AFAS, the Japan-Thailand Economic Partnership Agreement (JTEPA), and the Thai-Australia Free Trade Agreement (TAFTA), also provide for exceptions with conditions. By virtue of these international treaties, together with the FBA, qualified entrepreneurs may file a request for a Foreign Business Certificate from the director general of the DBD.

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

Under the laws regulating exceptions from foreign investment restrictions (such as promotional privileges by the BOI or IEAT, or Foreign Business Licenses), the authorities issuing such exceptions

have been provided with bureaucratic discretion to determine whether the exception will be granted. In practice, however, 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 China, the European Community, Japan, and the United States. 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 Australia, China, India, and the United States.

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

Contact information for all embassies and consulates in Thailand is available through the website of the Ministry of Foreign Affairs (<https://www.mfa.go.th/en/page/diplomatic-and-consular-list>).

### **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. As of 2021, the country is on the Watch List of the Office of the United States Trade Representative (USTR) with respect to intellectual property rights enforcement. Both the European Union and the United States impose quotas on designated agricultural products, although such quotas have been increased since 2005. As a member of the World Trade Organization (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.**

As the COVID-19 pandemic situation has eased, Thailand has canceled travel restrictions and requirements regarding the pandemic. All nationalities may travel to and throughout Thailand, though visitors of some nationalities must obtain a visa prior to visiting Thailand. According to the Notification of the Department of Consular Affairs, dated March 4, 2019, tourists from 19 countries and territories (including China, India, and Taiwan) may obtain a 15-day visa on arrival in Thailand. Furthermore, the Visa Exemption Scheme allows tourists from 57 countries/territories (including Australia, Canada, most members of the European Union, Japan, Malaysia, Singapore, England, and the United States) to enter without a visa for 30 days. Tourists from China and Kazakhstan are allowed to enter Thailand without a visa for 30 days in as a special case from September 22, 2023, to February 29, 2024. Tourists from the 57 countries or territories under the Visa Exemption Scheme who enter Thailand at an immigration checkpoint from a bordering country by any means except airplane will only be allowed to stay for 15 days each time, except for nationals of Malaysia, Brunei, Indonesia, and Singapore, who are allowed to enter Thailand via a land checkpoint more than twice per year.

Tourists from Argentina, Brazil, Chile, Peru, and South Korea may enter without a visa for 90 days due to bilateral agreements.

In addition, since February 2001, holders of the APEC Business Travel Card—available to business persons from jurisdictions 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 held national elections on May 14, 2023. Former prime minister Prayuth Chan-o-cha, who led Thailand since 2014 after seizing power in a military coup, lost the election to Pita Limjaroenrat and his Move Forward Party. However, Move Forward was blocked from leading the government after it failed to receive enough votes from the military-appointed upper house of the Thai parliament. As a result, Srettha Thavisin, a former business executive from the second-place Pheu Thai party, was ultimately nominated to be prime minister. A new coalition government led by Pheu Thai Party was formed thereafter.

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

The present government appears to be stable. However, the fact remains that the governing party did not win the popular vote, which can potentially lead to future instability. With that in mind, while Thailand has a history of tumultuous politics, business operations largely remain unaffected.

From 1997 until 2006, Thailand was governed by two successive parties—the Democrat Party until 2001 and thereafter the Thai Rak Thai Party under the leadership of Thaksin Shinawatra. Thai Rak Thai remained in government until it was ousted in a bloodless coup 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 grounds of electoral fraud. On August 19, 2007, a new constitution was enacted.

The conflict between the two camps became more entrenched in the following years, as an election led to the rise and eventual dissolution of another Thaksin-aligned party, Thaksin was found guilty of conflicts of interest, and more protests roiled the capital. The Democrat Party then headed a coalition government under its choice for prime minister, Abhisit Vejjajiva. However, the political conflict continued, as former Thaksin-aligned 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 resulted in another Thaksin-aligned party, Pheu Thai, forming a government led by Prime Minister Yingluck Shinawatra (Thaksin Shinawatra's sister). The next two years were a period of relative calm. However, in late 2013, large protests again erupted in Bangkok

in response to a proposed amnesty bill that sought to pardon all of those facing criminal charges from Thailand's political turmoil through 2010—including her brother, 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 in the outskirts of Bangkok.

Attempts to defuse the crisis through a new election failed, and on May 7, 2014, Yingluck Shinawatra was removed as prime minister by the Constitutional Court due to a controversial transfer of a government official. 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 declared martial law. Two days later, the army, led by General Prayut Chan-o-cha, seized power in a bloodless coup and cancelled the 2007 constitution. General Prayut established the NCPO with himself as commander to rule the country, and in August he was appointed as the 29th prime minister of Thailand.

In August 2016, a new draft constitution was approved in a public referendum. Thailand's new monarch, King Vajiralongkorn, asked the ruling junta to review and amend certain provisions, and the revised constitution was enacted on April 6, 2017. General Prayut and the NCPO remained in power until the formation of a new government after the March 24, 2019, elections.

In February 2020, the Constitutional Court dissolved the Future Forward Party (a precursor to the Move Forward Party), a political party that sought to oppose the rule of General Prayut, causing renewed protests. After being slowed by the COVID-19 pandemic and an emergency decree issued by the government, the protests picked up again in July 2020 and continued throughout 2020. Late in 2020, police began cracking down on protestors and arresting their leaders. Anti-government protests re-ignited in July 2021, with protestors calling for the resignation of General Prayut for mismanaging the COVID-19 pandemic, and other reforms.

In 2022, protests continued and ultimately culminated in an electoral win for Move Forward in May 2023. However, Move Forward was prohibited from taking power, resulting in the current governing coalition led by Pheu Thai.

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

Thailand's judiciary is independent from the executive branch, and the Ministry of Justice provides all administrative support for the courts. Judges are appointed by the King of Thailand—who serves as the head of state—upon recommendation of a judicial commission. Thailand's judicial system divides the courts into three categories: the courts of justice, the administrative courts, and the military courts.

The courts of justice are, in turn, comprised of common courts and specialized courts. The common courts have authority to try and adjudicate civil and criminal cases, and consist of the Civil Courts, Criminal Courts, Municipal, and Provincial Courts. Several specialized courts have also been established to handle cases requiring expertise and specific knowledge, including the Central Bankruptcy Court, the Central Intellectual Property and International Trade Court, the Central Tax

Court, the Criminal Court for Corruption and Malfeasance Cases, the Family and Juvenile Court, and the Labor Court. In addition, Thailand also has the Military Court and the Constitutional Court, each having special authority to determine disputes with specific circumstances.

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.

A Specialized Appeal Court has also been established to hear appeals from the Central Bankruptcy Court, the Central Tax Court, the Central Intellectual Property and International Trade Court, the Family and Juvenile Court, and the Labor Court. Further appeals against orders by the Specialized Appeal Court can be made to the Supreme Court. In addition, an appeal against a judgment or order of the Criminal Court for Corruption and Malfeasance Cases must be made to the division of corruption and malfeasance cases of the Appeal Courts.

The Supreme Court must give permission to hear an appeal from Appeal Courts and the Specialized Appeal Court. The decision to accept an appeal is based on a number of factors, including, among others, whether the dispute involves matters of public interest or public order, whether the appellate court's interpretation of the law is inconsistent with a Supreme Court precedent case, and other grounds as set by the President of the Supreme Court.

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

Traditionally, trials were generally heard over a series of non-consecutive hearing dates and could, therefore, last over a period of years. To expedite proceedings, the president of the Supreme Court instituted a regulation aiming to provide an expected time period for court proceedings and to reduce unnecessary delays.

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 Supreme Court. Proceedings in the specialized courts are generally faster than those in the common courts because hearings proceed without adjournment until all evidence is taken, after which the court must promptly render its judgment.

Thailand experienced a surge in COVID-19 infections in 2021. As a result, most Thai court cases were postponed. In response, the courts turned to developing an online system for e-filings and e-hearings.

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 a 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, therefore, 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 intellectual property disputes cannot be submitted to arbitration on account of being contrary to public policy. In addition, on July 14, 2015, the cabinet passed a resolution that prevents the use of arbitration clauses in two types of contracts between governmental organizations and private companies (unless cabinet approval is obtained): (1) a contract under the Private Investments in State Undertaking Act B.E. 2556 (2013), and (2) concession contracts.

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

Under the 2017 Constitution, legislative power is vested in the bicameral National Legislative Assembly (NLA). The 500-member lower house is fully elected (including both constituency and party list MPs), while the upper house is made up entirely of senators appointed by the military.

After receiving approval by the NLA 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 toward environmental regulation 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.

The government established an Environmental Fund in 1992 to provide funds for waste management activities in both the public and private sectors. Some waste management activities that are eligible for financial support from the Environmental Fund include construction or installation of wastewater treatment systems and air pollution treatment systems. Such funds are provided in the form of

subsidies and loans. However, subsidies are available for the government sector only. Private operators are only permitted to apply for loans from the Environmental Fund.

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

Environmental regulations are issued under various laws including the Act on the Maintenance of the Cleanliness and Orderliness of the Country 1992, the Energy Conservation Promotion Act 1992, the Enhancement and Conservation of National Environmental Quality Act 1992, the Factory Act 1992, the Hazardous Substance Act 1992, the Industrial Estate Authority of Thailand Act 1972, and the Public Health 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.

The Thai government has also tasked the Natural Resource and Environment Ministry to oversee implementation of its Plastic Waste Management Road Map 2018–2030, which phases in bans on many types of consumer plastic and foam products.

## **Intellectual Property**

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

Thailand is a civil law country and, therefore, legal protection of intellectual property (IP) is based on statutory laws, including provisions of the following:

#### **➤ Trademarks**

- Trademark (No. 3) Act B.E. 2559 (2016)
- Trademark Act B.E. 2534 (1991)

#### **➤ Patents**

- Patent Act B.E. 2522 (1979)

#### **➤ Copyrights**

- Copyright Act (No. 2) B.E. 2558 (2015)
- Copyright Act (No. 3) B.E. 2558 (2015)
- Copyright Act B.E. 2537 (1994)

#### **➤ Trade Secrets**

- Trade Secrets Act (No. 2) B.E. 2558 (2015)
- Trade Secrets Act B.E. 2545 (2002)

#### **➤ Others**

- Optical Disc Production Act B.E. 2548 (2005)
- Protection of Geographical Indications Act B.E. 2546 (2003)
- Protection of Layout-Designs of Integrated Circuits Act B.E. 2543 (2000)
- Protection and Promotion of Traditional Thai Medicinal Intelligence Act B.E. 2542 (1999)
- Plant Varieties Protection Act B.E. 2542 (1999)

## **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 or services 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, or within six months after the expiration date, and provides protection for a further period of 10 years from the expiration date of the original registration or the last renewal date. A grace period for renewal is available with a surcharge of 20 percent of the government renewal fee.

In 2016, the Trademark Act was amended to include the recognition of sound marks and provide clarification of the definition for “distinctiveness” for certain types of marks including device marks, shape marks, and sound marks. In order to expedite the trademark registration process, the amended act effectively shortens the timeframe for the trademark prosecution process, and increases the timeframe for the payment of the registration fee. In addition, the 2016 amendments abolished the registration of associated marks, established an option to file a multi-class trademark application, and added a new “Refilling Offense” clause which incriminates those that reuse or refill packaging or containers bearing another person’s registered trademark.

Since 2017, a protocol for international registration under the Madrid System has been fully implemented in Thailand. Thus, international registrations under the Madrid System can be filed through Thailand’s Trademark Office. Additionally, foreign applicants who have filed a trademark application through this system are now free to designate Thailand as a country in which they want their mark to be protected.

## **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 and 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 was revised to allow for the protection of a petty patent—an invention that is new and capable of industrial application, but lacks an inventive step. A petty patent is valid for six years, but this term can be extended twice for a period of two years each time. The patentee of a petty patent will 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); artistic, audio-visual, cinematographic, dramatic, or musical 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. For applied artistic works, the period of protection is reduced to 25 years from the date of creation or from the date of its first publication.

The Copyright Act was amended in 2015 to include the recognition of Internet Service Provider (ISP) liability, the first sale doctrine, moral rights of performers, Rights Management Information (RMI), Technological Prevention Measures (TPM), and temporary reproduction. The amendments also explicitly prohibit unauthorized video recording 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.

After the 2015 amendment, which focused on updating the law for the digital age, the Copyright Act underwent another amendment that became effective in March 2019 to comply with the Marrakesh Treaty, providing exemptions to copyright infringement for people with disabilities.

In February 2022, Thailand amended its Copyright Act B.E. 2537 (1994), previously amended in 2015 and 2019, to comply with the World Intellectual Property Organization Copyright Treaty (WCT) and update practices for combating online infringement. The amended law became effective in August 2022.

The amended Copyright Act of 2022 introduces notable changes, including an extension of protection for photographic works to the author's lifetime plus 50 years and the allowance for Copyright Committee members to serve until replacements are found. Importantly, the amended act classifies ISPs as intermediary, caching, hosting, and search engine ISPs. It establishes a notice-and-takedown system with liability for false notices, broadens the definitions of technological protection measures (TPMs), increases penalties for circumventing rights-control TPMs, and extends liability to parties providing services to circumvent TPMs.

### **Trade Secrets**

The Trade Secrets Act 2002 provides protection for commercially valuable "trade information" that is not generally known or readily accessible to groups of persons who normally deal with such information. 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 secretive.

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

A trade secret is protected as long as it is deemed secretive 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, with the amendments mainly covering 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.

### **Optical Disc Production**

The Optical Disc Production Act 2005 regulates the manufacturing of optical discs by establishing a manufacturing reporting process, through which persons wishing to manufacture optical discs can inform the authorities of their intent. Also, the Act provides authorities of the Department of Intellectual Property with a mechanism to keep track of machinery used in manufacturing, volume of raw materials, and storage places. The Act puts in place mechanisms that support efficient and systematic prevention of copyright infringement, creates an effective system for tax collection, and supports persons involved in the optical disc manufacturing business to act in accordance with the law.

### **Geographical Indication**

Under the Act on the Protection of Geographical Indications 2003, “geographical indication” (GI) 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 GI must not be a generic name of the goods for which the GI is to be used and must not be contrary to public morality, order, or public policy. For a foreign GI to be protectable under the Act, there must be clear evidence that it is a GI protected under the law of that country and has been continuously used until the date of application in Thailand. The protection of a GI becomes effective from the filing date of the application for registration.

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

According to the Protection of Layout-Designs of Integrated Circuits Act 2000, an integrated circuit is defined as a “finished or semi-finished product 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.”

Layout-designs that can be protected under the 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 that 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 from 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 rights holder has the exclusive right to reproduce, import, sell, or distribute the protected layout-design, an integrated circuit containing the protected layout-design, or a product incorporating such integrated circuit in any manner for commercial purposes. However, reproduction for use in the course of analysis, education, evaluation, reproduction, or research for one's own benefit and not for commercial purposes, will not be held as an infringement of the rights of the right holder.

### **Protection and Promotion of Traditional Thai Medicinal Intelligence**

The Protection and Promotion of Traditional Thai Medicinal Intelligence Act 1999 is under the supervision of the Ministry of Public Health and aims to (1) reward traditional healers for their continuing contribution to health and healthcare; (2) create incentives for maintaining traditional medicinal knowledge; (3) set up a system for conservation and regulation of access to biological resources and traditional medicinal knowledge; and (4) undertake effective action to curb the destruction of species, habitats, and ecosystems. The Act establishes the right of traditional healers to retain control over traditional medicinal knowledge through a public registry.

### **Plant Variety Protection**

The Plant Varieties Protection Act 1999 was enacted in Thailand to comply with Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

It provides for the protection of traditional plant varieties and plant genetic resources. The act recognizes the important role played by farmers and local communities as custodians and traditional cultivators of crops. It acknowledges communities' contributions and compensates them by allowing the registration of traditional plant varieties that are exclusively found within the community. After registration, the community becomes the rights holder and has the exclusive right to use that traditional plant variety—their rights are comparable to the rights of breeders of new plant varieties.

Criteria for registration of a traditional plant variety are distinctness, due uniformity, and stability, in accordance with the Convention for the Protection of New Varieties of Plants 1978 (UPOV 1978). In addition, it has to be demonstrated that the variety cannot be found outside the community that wants to register it.

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

Thailand is a member of the WTO and is, thus, bound by the TRIPS agreement. Thailand is also a member of a number of international treaties:

- Berne Convention for the Protection of Literary and Artistic Works (July 17, 1931)
- Convention Establishing the World Intellectual Property Organization (December 25, 1989)
- Paris Convention for the Protection of Industrial Property (August 2, 2008)
- Patent Cooperation Treaty (December 24, 2009)
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (November 7, 2017)

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

No, there are no substantive prior approvals required by the Thai BOI 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 IP licenses. The law on trade competition in Thailand is principally enshrined in the Trade Competition Act 2017. In Section 50, this legislation 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 IP statutes dictate that an IP rights 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 IP.

Interestingly, Section 56 of the Trade Competition Act specifically mentions several exceptions in which a joint agreement between business operators that results in monopolization, or reduction or restriction of competition in a market, will not count as a violation of the Act. One exception worth noting is found under Section 56 (3), which permits an exception if, "the joint agreement is in the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted rights, with a duty to pay charges, fees, or other remunerations for the rights granted." However, at the end of Section 56, the law states that such agreements should not result in a monopoly or substantially restrict competition in the market, and impact on consumers shall be considered.

According to these specific sections, it could be interpreted that franchising agreements and trademark licensing agreements between business operators will not be subject to punishment and limitations under the Trade Competition Act, as long as such activity does not cause a monopoly, considerably restrict competition, or impact customers. However, as the current Trade Competition Act has only recently been promulgated and most of its notifications and ministerial regulations released in 2018, the scope or limit of this exception remains unclear in practice.

In addition to the Trade Competition Act, there are a few other laws that mention antitrust provisions. Specifically, 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. Additionally, Ministerial Regulation Number 25, issued under the Patent Act, dictates that prohibited terms in patent licenses include "other conditions in violation of the law on competition."

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

Typical agreements with respect to IP rights are distributorship, franchising, and licensing agreements.

# Investment Incentives

## Investment Incentives

### Explain any export incentives or guarantees.

Numerous tax incentives are available in order to encourage export activities. For example, value added tax (VAT) is waived on exported goods and customs duties on exported goods are generally exempted, except for on certain goods and agricultural products including latex, lumber, rice, and rubber sheets.

Import duties imposed on materials that are imported for the production of goods for exportation 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. Additionally, BOI-promoted companies may be granted exemptions of customs duties on imported goods.

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

In general, there are no grants, subsidies, or funds offered specifically to foreign investors. Incentives for both Thai and foreign investors are typically granted by the BOI in the form of exemptions or reductions of corporate income tax or import duties.

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

Thailand was the first country in Asia to introduce investment promotion laws to encourage investment in the country. Under the Investment Promotion Act, first passed in 1977 and last amended in 2017, such promotions include both tax and non-tax incentives.

Tax incentives consist of benefits including 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 is located and the activity the investor engages in); double deduction from taxable income of transportation, electricity, and water costs; and tax exemption for dividends paid out of the exempted profits during the tax exemption period.

Tax incentives depend on the type of activity, location of the enterprise, and certain other conditions, such as introducing new technology to the industry, the amount of actual investment, and ISO 9000 certification or similar international standard (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 more overall benefits than disadvantages to Thailand. Activities that strengthen Thailand's industrial and technological capability or use domestic resources generally qualify for a promotion certificate.

One of the most attractive non-tax incentives is that investors granted investment promotion by the BOI, who are regarded as foreigners under the 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. In such cases, they will be exempt from having to obtain a Foreign Business License, but still need to notify the Ministry of Commerce and apply for a Foreign Business 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. While tax incentives will only be granted for a certain period of time, non-tax incentives will be granted throughout the period of operation of the promoted investor (provided their activities remain within the requirements of the FBA).

Investors must submit an application form along with supporting documentation to the BOI through the BOI's online platform to be considered for incentives. In most cases, the processing of an application takes two to three months, depending on the size of the investment for the applied project. This will be subject to consideration of the subcommittee and the BOI Board, as necessary.

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 (1) own land in the industrial estate area, (2) obtain work permits for foreign technicians and experts who work for the industrial operator, and (3) 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.**

Apart from the tax incentives granted by the BOI (listed above), foreign investors may choose to set up an International Business Center (IBC).

IBCs were introduced in December 2018 to replace International Headquarters (IHQs) and International Trade Centers (ITCs), which were subsequently cancelled by the BOI. An IBC is defined as a company incorporated in Thailand—and can be wholly-owned by a foreigner—that provides financial management services, management services, support services, or technical services to its associated enterprises, or carries out international trading activities.

Tax incentives granted to IBCs by the BOI are limited to the exemption of import duties on imported machinery for R&D and training purposes only. However, IBCs may be eligible for additional tax incentives granted by the Revenue Department, subject to requirements set out by, and the approval of, the Revenue Department. Such tax incentives include the reduction of corporate income tax (to 8%, 5%, or 3% of net profit, depending on the expenses of the IBC in Thailand), exemption of corporate income tax for dividends received from the IBC's associated enterprises, exemption of the specified business tax on the income derived from the associated enterprises for the provision of financial management services, and reduction of personal income tax to 15% for expatriates who work for the IBC. These tax incentives are valid for 15 accounting periods and are subject to the approval of the Revenue Department.

A reduction of, or exemption from, customs duties on imported goods is granted to member countries of certain international organizations or agreements such as ASEAN, AFTA, JTEPA, TAFTA, the Thailand and New Zealand Free Trade Agreement, and the Agreement on Comprehensive

## Financial Facilities

### Banking

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

The Financial Institution Act 2008, as amended, regulates commercial banking and establishes the types of business in which a bank may participate. A commercial bank is defined as a bank licensed to undertake the business of commercial banking, including for small enterprises, as a subsidiary company of a foreign commercial bank, and as a branch of a foreign commercial bank authorized to conduct the business of a commercial bank. Under the Financial Institution Act, the commercial banking business is defined as the business of accepting deposits of money, or accepting money from the public to be withdrawn upon demand or at the end of a specified period. Such deposit monies are then used by the commercial bank to issue loans and buy and sell foreign currency and financial instruments.

The financial industry, including Specialized Financial Institutions (SFIs) which were incorporated by a separate legal statute and certain non-bank operators, 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 responsible for implementation of the MOF's plans, including issuing bank notes; advising the government on monetary policies; supervising financial institutions, certain non-bank business operators, and certain personal loan businesses; 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 converted 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 nonresident 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. However, certain requirements may apply differently if the applicant is a business entity. For example, individuals may be required to possess valid work permits or proof of residency in Thailand issued by their embassies, while business entities may be required to show corporate registration in Thailand 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 an individual or the non-

American status of a business entity with any American shareholders (US-owned foreign entity) who opens an account with them.

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

The BOT sets out three types of nonresident THB accounts as follows:

- 1. Nonresident THB Account for Securities.** This type of account may accept deposits and withdrawals for the purpose of investment in securities and other financial instruments, including derivative transactions traded on the Thailand Futures Exchange and the Agricultural Futures Exchange of Thailand, and may make payments in relation to these transactions.
- 2. Nonresident THB Account.** This type of account may accept deposits or withdrawals for purposes other than investment in securities and other financial instruments, such as the purchase of goods or services, direct investment, granting of loans, as well as other domestic transactions.
- 3. Special nonresident THB Account.** This type of account may accept THB deposits for trade and investment with neighboring countries via Thai commercial banks' branches located in Vietnam, China (only Yunnan province), or countries bordering Thailand.

One nonresident may open more than one account; however, from July 22, 2019, the total daily outstanding balances for each type of account cannot exceed THB 200 million per nonresident. Nonresidents may transfer funds between the same types of accounts, but they are not allowed to transfer between different types of accounts.

### 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. Financial institutions can be generally segregated into two categories, (1) financial institutions that accept deposits (e.g., commercial banks, SFIs, saving cooperatives, credit unions, and money market mutual funds), and (2) financial institutions that do not accept deposits (e.g., mutual funds, insurance companies, provident funds, asset management companies, and securities companies).

### What kind of financial institutions exist?

The types of financial institutions in Thailand—which may be defined differently under various laws or regulations (e.g., Financial Institution Business Act, Securities Act, and Anti-Money Laundering Act) include the following:

- Domestic Commercial Banks—licensed by the MOF to undertake the traditional business of commercial banking practice.
- Finance Companies and Credit Foncier Companies—companies that make loans, usually at higher interest rates and shorter repayment periods than bank loans.
- Foreign Commercial Banks—with similar privileges as domestic commercial banks with certain additional requirements and restrictions (e.g., branching).
- Representative Offices of Foreign Commercial Banks—licensed by the 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).
- Securities Companies—companies that engage in securities brokerage, dealing, or underwriting; investment advisory services; mutual or private fund management; and other businesses relating to securities as specified by the MOF upon the recommendation of the Securities and Exchange Commission of Thailand (including securities borrowing and lending, securities financing, inter-dealer brokerage, and venture capital fund management).
- Special Financial Institutions (SFIs)—six banks with special mandates (Bank of Agriculture and Agricultural Cooperatives, Export-Import Bank of Thailand, Government Housing Bank, Government Savings Bank, Islamic Bank of Thailand, and Small and Medium Enterprise Development Bank of Thailand); and two Quasi-Governmental Financial Institutions (Secondary Mortgage Corporation and Thai Credit Guarantee Corporation).

### 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 regulations established by the SET itself.

On November 11, 1998, the SEC approved, in principle, the establishment of a market for listing securities of small and medium-sized enterprises. This second stock exchange is known as the Market for Alternative Investment (MAI), and it commenced operation on June 21, 1999. The MAI is an alternative market for small and medium-sized enterprises with a registered capital of more than THB 20 million but less than THB 300 million.

As of August 9, 2021, there were approximately 582 companies and 2,716 securities registered with the SET, and 179 companies and 212 securities registered with the MAI. 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, as amended (SEC Act), which was established to help regulate the SET. The key improvements for the securities system in Thailand include:

- Supervision of securities trading under one body: the Securities and Exchange Commission (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, warrants, derivatives, and trusts.
- Establishment of securities-related organizations including the Market for Alternative Investment (MAI), Settrade.com Co., Ltd., Thai Securities Depository Co., Ltd. (TSD), Thai NVDR Co., Ltd., Live Exchange, and Thailand Futures Exchange.
- Permission for non-securities companies—especially commercial banks—to engage in limited activities related to the securities business (e.g., advising, securities brokerage, securities investment, etc.).
- Increased regulation of disclosure requirements, insider trading, large sales/purchases of securities by one individual, stock manipulation, and takeover rules.

The SEC Act was recently amended by the Securities and Exchange Act (No. 6) B.E. 2562 (2019). The updated legislation set forth important changes, including supervision of securities business, supervision of mutual fund management and fund voting, supervision of the SET, improvements to the competitiveness of capital markets, establishment of the Capital Market Development Fund, and updates to the SEC’s operations.

The SEC has been implementing a “regulatory guillotine” project to remove unnecessary regulation and support the securities businesses and listed companies, while keeping securities laws and regulations relevant to current business operations.

## Exchange Controls

### Business Transactions with Nationals, Residents, or Nonresidents

#### How are nationals, residents, and nonresidents defined?

For the purpose of opening a nonresident baht account with a financial institution in Thailand, a “nonresident” is defined as any of the following:

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

Any entities not mentioned above are considered residents of Thailand. Notably, nonresidents do not include:

- Thai consulates, Thai embassies, or other entities of the Thai government located outside Thailand.

- Foreign consulates, foreign embassies, specialized agencies of the United Nations, or international organizations or institutions—both financial and nonfinancial—located in Thailand.
- Branches and agents of foreign juristic persons located in Thailand.

### Are there restrictions on conducting business with nationals, residents, or nonresidents?

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

- Remittance of an unlimited amount in respect to payments for imported goods.
- Remittance of an unlimited amount in respect to payments for foreign direct investments or lending (to affiliated entities, subsidiaries, or parents abroad).
- Remittance of an unlimited amount in respect to payments for purchase of immovable properties abroad or leasehold rights on immovable properties abroad, or payments for decoration of immovable properties abroad, including remittances to a family member for such purposes.
- Remittance of an unlimited amount belonging to a Thai national who is permanently living abroad, or to family member who is permanently living abroad.
- Remittance of up to USD 50,000 per year to any other person residing abroad.
- Remittance of an unlimited amount in repayments for foreign loans and accrued interest, with proper documentary evidence.
- Remittance of an unlimited amount for obligations abroad, with proper documentary evidence.

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

### Are there reporting requirements?

The party has to provide documentation through its bank, and the bank is required to report the transaction to a competent officer at the BOT.

### Can the investor receive loans from nationals, residents, or nonresidents?

A Thai company or natural person may invest in an overseas business entity when the Thai party holds no less than 10% of the shares, or in order to invest or lend to affiliated business entities abroad, without limit, as necessary, provided that the overseas business entity carries out actual operations pursuant to its business objectives or as registered with the relevant overseas regulatory agency. However, a Thai company classified as foreign under the Foreign Business Law would have to apply for the relevant license in order to engage in a lending service business.

## 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, as amended. 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 BOT and the SEC.

### 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 SEC.

## Money Transfer

### Is there free determination of exchange rates?

The exchange rate is managed by the BOT.

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

There are certain restrictions on the transfer of money out of Thailand. The amount to be transferred must be within the limitations for each type of transaction, as prescribed by the BOT. If a person intends to transfer an amount that exceeds the limitations, they must first apply for approval from the BOT.

There are no restrictions on the amount of Thai baht bank notes that may be brought into the country. There are, however, restrictions on Thai baht bank notes that may leave the country. A person traveling to the People’s Republic of China (only Yunnan province), Vietnam, or countries that share a border with Thailand is allowed to take out up to THB 2,000,000. A person who is traveling to other countries is allowed to take out up to THB 50,000, without authorization.

Further, there are additional restrictions on the transfer of foreign currency. 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. Exceptions to these requirements are given to foreign embassies and persons with diplomatic privileges, special organizations of the United Nations, or international organizations or institutions, including their staff members and specialists with diplomatic privileges and immunities.

In 2017, as part of the BOT’s strategic plan to relax rules and restrictions to facilitate doing business, the BOT generally gave remitters an exemption from the requirement to submit a foreign exchange transaction form (FX form) to an authorized bank when remitting funds in foreign currency amounting to USD 50,000 or more. However, the BOT revoked this exemption in 2022, and an FX form must be submitted to an authorized bank for the remittances described above, except for

remittances of foreign currency to a family member or relative who is a permanent resident abroad or a donation for public benefit, which can proceed without a limit on the amount.

Once a commercial bank has performed the “know your business” process on the remitter, or the aggregate amount of the transaction is not over USD 200,000, for future transactions the remitter only has to notify the relevant commercial bank rather than submitting supporting documents or an FX form. For cases that do not fall within these criteria, the remitter will be required to submit supporting documents.

### **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) 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 loans, and payment of accrued interest.

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

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

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 BOT.

### **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 bringing or taking Thai baht bank notes, foreign currency bank notes, or negotiable monetary instruments into or out of Thailand in an aggregate amount exceeding THB 450,000, USD 15,000, or the equivalent, must declare the amount 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 the 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 to 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 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 (FTAs) 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 discussing the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Free Trade Area, which currently comprises seven countries: Bangladesh, Bhutan, India, Nepal, Myanmar, Sri Lanka, and Thailand.

Regarding FTAs with countries in South America, 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, with the objective to liberalize and promote trade in goods and services between the two countries.

In addition, Thailand and Chile signed an FTA on November 5, 2015, in order to strengthen economic partnership, expand and secure markets for goods from each territory, promote bilateral trade through clear and mutually advantageous trade rules, and reduce trade barriers.

Thailand is considering negotiating an FTA with the EU, which would have a significant effect on importation and exportation should an agreement materialize.

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

The Customs Department values goods based on the cost, insurance, and freight (CIF) value for imports and the free-on-board (FOB) value for exports.

Imported goods are also subject to VAT, 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 or shipping agents to assist with the customs formalities to clear the goods.

Customs clearance formalities 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 (e.g., cargo manifest, proforma invoice) already filed and processed prior to the arrival of the goods.

The Customs Department introduced electronic paperless systems for the export 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 signed documents prior to or upon exporting or importing 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 latest amendments to the Harmonized Commodity Description and Coding System (referred to as “HS2017”), which became effective in 2017. 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, China, New Zealand, 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 WTO 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 country, the Ministry of Commerce has the authority 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 cultural and religious items, endangered wildlife, fruits, indigenous agricultural products, rare species of native flora and fauna, and seafood. Such restrictions are generally limited to the requirement that the domestic market 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, certain goods (e.g., rawhide, wood, etc.) are still subject to customs duties, and 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 foreign party wishing to conduct business in Thailand is subject to the Foreign Business Act.

A foreign party 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 Export and Import of Goods 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 Act, or other laws, import licenses are generally not required. Other local laws and regulations 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 VAT 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 beverages, passenger cars, perfumes, petroleum oils and products, spirits, and tobacco. 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 Export and Import of Goods 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 books, compact disks, computer programs, sound recording tapes (musical tapes), videotapes, 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?**

Products do not have to contain ingredients or components found or produced only in Thailand. However, under certain tax and investment promotion laws and regulations, there are incentives for certain products that contain more local ingredients or components. Business operators may also be entitled to an exemption from the customs duty for the products manufactured, assembled, packed, or otherwise processed within a Free Zone and distributed in Thailand if, among others, the product contains a threshold of ingredients or components from Thailand or members of ASEAN countries as prescribed under the relevant notification of the Customs Department.

### **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 relevant governing laws and regulations. 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 on 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 into 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?**

In certain situations, the Thai government might seek to participate in the ownership or operation of certain business entities, such as those involving communications, defense, ISPs, radio, mineral resources, national security, newspapers, petroleum upstream, television, and transportation (air, rail, and some land transportation). Under the 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 a promoted entity. State monopolies generally exist over such sectors as communications, the manufacture of arms, and transport (air, rail, and some land transportation). 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 potential liability of an investor depends on the type of business organization. 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. Finally, for a limited company, liability of the shareholders is limited to the unpaid capital on the par value of the shares.

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

The registered capital of a company must be at least 25% of the amount that was initially paid up. 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 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 business operation is THB 2 million. If the business requires a Foreign Business License, the company must have a minimum capital of no 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 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 profit. There is also a tax exemption for the first THB 300,000 of net profit.

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 individuals or juristic persons, 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?**

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

First, a joint venture may take the form of a partnership established by a contract between one company and another company, 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 tax liability purposes. The joint venture must, therefore, apply for a taxpayer identification card and VAT 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 included in 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 Air Navigation Act, the Insurance Act, the Land Transport Act, the Thai Vessel Act, and the Travel Agency Business Act. For a company established under Thai-U.S. treaty protection (Treaty of Amity), a majority of its directors must be American 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 alien and subject to foreign ownership restrictions under the FBA.

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

If a joint venture is established by a contract between the investors and is not registered, all parties to the unincorporated joint venture agreement have unlimited liability similar to the partners in a partnership. However, investors may enter into joint venture agreements in order to establish the rights and liabilities of each party. 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 unpaid (if any) 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 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 (e.g., computation of net profits 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 out 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.

A private limited company requires a minimum of two individual promoters, who must also subscribe to at least one share each at the time of the establishment of the company. During the company's existence, a minimum of two shareholders, who can be natural or juristic persons, must be maintained.

The first step is to reserve the company name; second, file a memorandum of association (MOA) 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, 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 allotted and their prices fixed. The fourth step is to register the company. If necessary documents are complete and duly signed by all directors, promoters, and shareholders, all four steps could be completed in one day. The process of preparing documents for forming a company generally takes about two to three weeks. The government fee for the company registration is fixed at THB 5,000 regardless of the registered capital; however, this does not include miscellaneous certification fees and stamp duty of about THB 1,000.

### 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.

### Are there any restrictions on capitalization?

Please refer to our comments in the "Joint Venture" section above.

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

Please refer to our answer in the "Governmental Participation" section above.

## Liability Companies, Unlimited

### Describe the types of liability companies.

Under Thai law, there are only 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 MOA 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.

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

See our comments in the “Joint Venture” section above.

## **Partnerships, General or Limited**

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

Under Thai law, there are three types of partnerships: 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 national. 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. An additional fee of THB 100 must be paid in order 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. Only a general partner can be a managing partner of the limited partnership. 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.

## **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 identification number. Sole proprietors doing certain types of business may also be required to obtain a “commercial registration” at the Ministry of Commerce. The total cost runs around THB 1,000, which includes registration and transportation. 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.

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

Sole proprietors are subject to personal income tax at progressive rates of 5% to 35%, with a tax exemption for the first THB 150,000 of net income. The highest tax bracket for an individual is 35% of net income in excess of THB 5 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.

## 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 15 individual promoters, who must prepare the MOA and register it 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 for those shares 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.

### **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 two 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, while the Civil and Commercial Code lists the requirements for 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 make up 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 FBA or any other special acts. The FBA requires Thai majority ownership in certain reserved activities such as brokerage/agency, farming, fishery, land trading, mining, restaurant, wholesale/retail, 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 Financial Institution Business Act, Insurance Act, the Private School Act, Telecommunications Act, and the Travel Agency Business and Guide 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, no 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 can take place in the country or be held electronically according to the law on electronic meetings, 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.

A representative office is not required to obtain a foreign business license under the FBA. However, it would have to obtain a 13-digit juristic person number from the DBD or the Revenue Department.

Under Thai law, a representative office is allowed to conduct only the activities prescribed below:

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

A representative office cannot generate any income on its own account or on behalf of the parent company in Thailand and, thus, does not need to 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 doesn't require 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 of 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.

The fee for establishing a subsidiary is the same as for a limited company. For a private limited company, the registration fee is fixed at THB 5,000 regardless of the registered capital. The registration fee for a public limited company is THB 1,000 per THB 1 million of capital, with a maximum of THB 250,000.

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

A branch office or representative office will be deemed as the same legal entity as its head office, and the head office in a foreign country is responsible for all liabilities of the branch or representative office.

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 or representative office, the manager need not be a Thai national. However, these offices must have at least one manager residing in Thailand responsible for all operations.

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

The branch office or representative office will be required to bring working capital in foreign currency into Thailand equivalent to a minimum of no 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?**

Foreign juristic entities conducting business in Thailand through branch offices are subject to corporate income tax only for income arising from, or in consequence of, the business carried out in Thailand. A subsidiary of a foreign company is taxed on income derived in Thailand and worldwide. A representative office is not subject to Thai tax if it complies with regulatory requirements. However, a representative office is required to obtain a 13-digit juristic person number and provide this number as its tax ID to the Revenue Department in order to file corporate income tax returns, 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, stamp duty, VAT, and other taxes and duties in the same manner as a local company. Please refer to our answer in the “Governmental Participation” section above.

## **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 trusts established under the Trust for Transactions in Capital Market Act 2007. Through this Act, a trust 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 extends to 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 that 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 has a legal right over the trust property as an owner of the property, or a person entitled to the right over the property, and has the duty to segregate the trust property and the property held in its own capacity and to manage the trust property in accordance with the trust instrument and the Trust for Transactions in Capital Market Act.

Trust property may not be divided among personal creditors of a trustee. In cases where a trustee becomes bankrupt as a result of its own debt or ceases to be a juristic person, the trust property shall not be deemed in a bankruptcy estate or as property in liquidation.

### **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 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 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 reserved under Lists 1, 2, and 3 of the FBA are subject to foreign ownership limitations imposed by law. Business activities in List 1 are strictly closed to foreigners. Foreigners wishing to engage in one of the activities in List 2 must obtain permission from the Minister of Commerce with the approval of the Cabinet; or for activities in List 3, 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 BOI or the IEAT are permitted to engage in business activities specified in Lists 2 and 3 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?

The Trade Competition Act B.E. 2560 (2017) (TCA) is a key law governing various anticompetitive practices in Thailand. The TCA prevents abuse of market dominance, the formation of cartels or collusive practices, anticompetitive agreements, and unfair trade practices, such as abuse of superior bargaining power and unfair creation of barriers to entry. The TCA also provides for general merger control regimes. The Trade Competition Commission of Thailand (TCCT) is the competition authority under the TCA.

Business operators in the commercial, financial, industrial, insurance, and service sectors, or other businesses to be prescribed by ministerial regulations, all fall within the scope of the new TCA. However, the new law does not apply to government agencies, agricultural cooperatives, businesses with sector-specific anti-competition regulations (e.g., telecommunications and energy), or state enterprises (only for activities performed in accordance with a Cabinet resolution or law, or for the benefit of national security, public interest, or public utility.)

#### What are the filing requirements?

Unlike the 1999 TCA, the new TCA revokes the requirement to submit an application seeking permission for certain anticompetitive arrangements. Instead, the new law provides exemptions for certain types of vertical arrangements undertaken by business operators, such as franchise arrangements, distributorship arrangements, research and development, or arrangements carried out

by business operators “that have a relationship in policy or control,” which would fall under the principle of a single economic unit.

Business operators may submit an application to the TCCT to consider whether their proposed arrangements or strategies will violate the new TCA.

Merger control provisions require filing for pre-approval and post-notification, as follows:

- **Pre-merger approval.** Any merger that may result in a monopoly or market dominance requires prior approval from the TCCT.
- **Post-merger notification.** Any merger resulting in substantial lessening of competition, in accordance with the criteria to be prescribed by the TCCT, must be reported to the TCCT within seven days from the date of the merger.

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

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

1. All sizes of mining projects (e.g., coal, potash, rock salt, limestone, and all types of metal);
2. All sizes of business in the petroleum industry;
3. Power plant projects that have a production capacity exceeding 10 megawatts per day;
4. Business in the iron or steel industry with productivity of 100 tons per day and over; and
5. Hotels or resorts 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 have been able to complete the registration process within one day if the directors, promoters, and shareholders 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 the company's registration number. The registration fee for a limited liability company is a fixed THB 5,000 regardless of the registered capital, plus miscellaneous certification fees and stamp duty of about THB 1,000.

Further, once the newly incorporated company hires an employee, the company must register with the Social Security Office for social security and worker'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 to 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. Aside from compulsory insurance, a wide variety of insurance is available for companies to cover many business risks, including business interruption, engineering, fire, home, marine, medical, personal accident, product liability, professional liability, public liability, theft, trade credit, and other risks.

### Is there a state monopoly on insurance?

There is no state monopoly on insurance. There is a broad selection of insurance companies in Thailand; however, the Thai government has some minimal or indirect ownership interest in a few of these companies. The local regulator is the Office of Insurance Commission, which draws its authority from the Non-Life Insurance Act 1992, as amended; the Life Insurance Act 1992, as amended; and the Insurance Commission Act 2007. These laws provide financial requirements for consumer protection, insurance companies, and 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 foreign business operator who wishes to engage in business specified in List 2 or 3 of the Foreign Business Act is required to submit an application and obtain permission or a license from the authorities concerned. It generally takes 60 days from the submission date of the application to receive the outcome. Other specific business operating licenses may be required depending on the nature of each business, which is governed by its own legislation (e.g. factory operation license, food and drug related license, etc.).

# 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?

Regulations 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 searchable database to help individuals or companies find 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/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 Department of Business Development may extend this retention period to seven years, with approval from the Ministry of Commerce.

### 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 the Thai Accounting Standards (TAS) for 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.)?**

In general, 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 the AOA, 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 based on reliable information, whether he or she honestly believes that the decision is reasonable and in 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.

In addition, business operators in specific sectors—such as derivatives companies, financial institutions, institutional investors in the capital market, or securities companies—may be required to comply with a certain standard or code of good governance.

## **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.

The Product Liability Act imposes strict liability on business operators involved in the manufacturing and sales of a defective product if it causes harm to an individual and if the consumer can prove that he or she suffered damage while using the product the way it was intended. Additionally, 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 one or more of these other parties. 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." The Act further provides that 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 preventing 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 local contracts without first obtaining necessary approval permits.

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

Contractual parties 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 if it is not contrary to Thai law in matters of public order or good morals. Thai courts would apply foreign law principles, provided that parties can prove the foreign law to the satisfaction of the court, and as long as it is not contrary to the public order or good morals of Thailand.

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 recognized and enforced in Thailand if they are governed by a convention, treaty, or international agreement to which Thailand is a party, and to the extent that Thailand is committed to be bound. Thailand is a 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 are required to comply with the enforcement mechanism set out by the Arbitration Act B.E. 2540.

## 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 the Ministry of Commerce to issue price controls for lists of goods and services distributed in the country. Currently, there are 46 products and 5 services subject to price controls under the Price of Goods and Services Committee's announcement, which include eggs, garlic, medical services, shampoo, soap, and student uniforms. 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 ramifications. If a company is dissolved, the company may repatriate its remaining capital to 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 bankruptcy, liquidations, and mergers. A voluntary winding up and dissolution of business normally requires 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 process can proceed without incident.

#### What costs are involved in termination?

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

#### 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 approximately three months to one year, once any and all tax issues from the Revenue Department's audit have been resolved. As not all businesses will have complex issues, the length of the process varies case by case.

#### 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 from 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 sent via return-receipt mail to all shareholders and, in some cases, published at least once in a local newspaper, 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 or her activities every three months to the Registration Office of the

Ministry of Commerce until the liquidation process is complete. 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. As soon as the liquidation process has been documented, the company must call a general meeting of the shareholders to present the account and provide a thorough explanation. 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. This registration is considered the end of liquidation. The company must then obtain approval from the Revenue Department and the Ministry of Commerce before the liquidation can be finalized and the company deregistered.

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

Within 14 days from the date of dissolution, the liquidators must notify the public of the dissolution of the company by newspaper advertisement 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 to employees in advance 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 1940, as amended, 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 consider permitting the receipt of debt repayment. To object to the order of the official receiver, the stakeholders may file an objection 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 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, unless the act is required 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 no less than THB 1 million, or the debtor is a juristic person who is indebted to one or several plaintiff creditors amounting to no less than THB 2 million; and (3) the debt may be determined in a definite amount, irrespective of whether such debt is due promptly. 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. It is worth noting that partial business transfer, entire business transfer, and amalgamation could be considered as a “business merger” under the definition of the TCA in which the company, if its transaction falls within the criteria prescribed under the law, could be subject to the requirement of pre-merger approval or post-merger notification.

## 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 and 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. Employers who fail to 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 for both non-payment and late payment.

Companies promoted by the BOI 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 Royal Proclamation on Alien Working Management, which came into effect on June 23, 2017, and was promulgated to repeal and replace the Foreign Employment Act. The law sets employment preferences in favor of Thai nationals. Though requirements may vary, as a general matter, employers must hire four Thai nationals 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. However, this policy has since been reversed and Thailand has now reverted to a setting minimum wages at the provincial level. In addition to the standard minimum wage at the provincial level, workers practicing certain skilled trades are eligible for higher minimum wages, depending on their profession. 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 eight 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 (e.g., seven hours per day and 42 hours 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 "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 work permits only for positions that require high skills and those not specifically reserved for Thai nationals. This implies that certain common positions, such as accounting, human resources, legal, secretary, and so on 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 that is 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 to 400 days, 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 40.61 million people. With around 70% 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 nonimmigrant 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 fully paid-up capital plus four 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, experts, and technicians.

### **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 100 application fee.
- THB 750 for up to three months.
- THB 1,500 for more than three months but less than six months.
- THB 3,000 for more than six months but less than one year.
- Fees increase at the rates given above for durations greater than one year

## 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 LRA 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 (e.g., 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.

## 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—VAT, 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 natural persons, groups of persons, and unregistered ordinary partnerships at progressive rates of 0% to 35% on net income.

Corporate income tax is imposed on companies and juristic partnerships at the rate of 20% on net profits. Reduced 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.

VAT is collected on 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, 2024, onward if the reduced rate is not extended. From September 1, 2021, business operators providing e-services from abroad to users in Thailand must be registered for VAT, and are liable to pay VAT.

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 beer, cosmetic products, crystal glasses, liquor, perfume, petroleum products, soft drinks, and tobacco.

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.

Non-deductible expenses include artificial or fictitious expenses, personal expenses and gifts, expenses not exclusively 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 VAT and customs duties. Most of the treaties follow the Organisation for Economic Co-operation and Development model with the exception of a few changes for certain countries.

Thailand currently has double tax treaties with 61 countries:

Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria, Cambodia, 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 the 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 that 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 any Royal Thai Embassy or Consulate outside of Thailand. However, for tourism purposes, nationals of 56 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., China, India, and Taiwan) are permitted to apply for a visa on arrival at designated immigration checkpoints for a maximum stay of 15 days; and nationals of four other countries (Argentina, Brazil, Chile, and Peru), which have entered into treaties with the government of Thailand for exemption of visas, are permitted to enter Thailand without a visa for a maximum stay of 90 days. These lists of countries change periodically, so it's essential to check with the nearest Thai Embassy or Consulate prior to entering Thailand. For instance, tourists from China and Kazakhstan have been allowed to enter Thailand without a visa for 30 days as a special case from September 22, 2023, to February 29, 2024.

### 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 single entry permits (allows one entry), limited entry permits (allows a limited number of entries), and multiple entry permits (allows unlimited entries). A reentry permit may be required if a foreigner who obtained a single 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—or the period of extension of stay—granted by the immigration bureau. A reentry permit is required for (1) a single entry visa holder, prior to expiration of the period of permitted stay; and (2) 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 branches or at the immigration checkpoints at Chiang Mai Airport, Don Mueang Airport, or Suvarnabhumi Airport.

### Are there immigration quotas?

There are immigration quotas for permanent residence permit holders, which are regulated yearly 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 (45 countries) must provide a valid International Health Certificate on Yellow Fever Vaccination. Those who do not present a valid International Health Certificate on Yellow Fever Vaccination 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 International Health Certificate on Yellow Fever Vaccination. However, 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 active tuberculosis, elephantiasis, habitual alcoholism, leprosy, narcotic addiction, 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 or conduct business in Thailand once a business visa (Nonimmigrant "B" visa) and a work permit have been obtained.

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 continuously for at least three years (i.e., with uninterrupted visa renewals); disclose information regarding his or her assets, conditions concerning national security, family status, income, knowledge, previous tax filings in Thailand, vocational ability, and any 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. It may take up to six months for the Immigration Bureau to review the application and at least another 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 tourists who are nationals of one of the 57 countries mentioned above.

The validity of a visa varies (e.g., three months, six months, one year, or three years), depending on the purpose of stay and discretion of the Royal Thai Embassy or Consulate issuing the visa. A transit visa allows its holder to stay in Thailand for a maximum period of 30 days per entry. 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 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 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. 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 for a single-entry visa or THB 5,000 for a multiple-entry visa. A nonimmigrant visa for business and other purposes can be obtained for a fee of THB 2,000 for a single-entry visa or THB 5,000 for a multiple-entry visa.

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