



**Baker
McKenzie.**

Doing Business in Thailand 2021

Doing Business in Thailand

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Foreword

The attorneys of Baker McKenzie's Bangkok office have prepared this publication for the benefit of foreign individuals and companies who are considering investing in Thailand. The text presents a broad overview of certain aspects of the Thai legal system that significantly affect the way business is conducted in Thailand.

This publication primarily focuses on government regulation and incentives for foreign investment, forms of business organization available to foreign investors, and the Thai tax system. Additionally, summaries of various aspects of Thai law that generally affect most business operations in Thailand are included for the following: intellectual property, data privacy, competition and consumer protection, labour, import/export, exchange control, and real estate. Text on industries such as FinTech, healthcare and insurtech are also included in this edition.

This publication is intended only as a summary of certain aspects of Thai law with which a foreign investor should be familiar when initially planning a business venture in Thailand. It is not intended to serve as a substitute for specific legal advice, which one should procure before actually investing in Thailand. The materials on each topic do not exhaustively summarize all relevant laws. In addition to the topics covered, it is also important for the investor to consider the laws and regulations that govern the specific type of business activity contemplated. Finally, each of the laws discussed is, of course, subject to change.

Baker McKenzie was established in Chicago 70 years ago and now has 77 offices in 46 countries, including each of the world's major commercial centers. Today the firm has approximately 1,500 partners and over 6,000 legal professionals.

With over 240 legal professionals and 240 non-legal business professionals, the Bangkok office is more than adequately equipped to offer a full range of commercial legal services. Our clients, including Thai and international public and private companies, professional firms, banks and other financial institutions, governments, trade and industry associations, trustees, joint ventures, and partnerships, are active in all areas of commerce. They include many significant foreign investors and companies doing business in Thailand, as well as major local companies developing their markets abroad.

Meeting your Needs

Baker McKenzie Bangkok office has the capabilities to provide all clients with a one stop shop service offering a diverse range of legal services not limited to:

- Administrative and Constitutional
- Antitrust & Competition
- Banking and Finance and FinTech
- Capital Markets
- Construction
- Corporate and Commercial

- Dispute Resolution
- Employment and Compensation
- Environment and Climate Change
- Insurance
- Intellectual Property
- International Trade, Compliance and Customs
- Mergers and Acquisitions
- Major Projects
- Natural Resources
- Private Equity and Investment Funds
- Real Estate, Hotel/Resort and Property Development
- Restructuring and Insolvency
- Tax and Transfer Pricing

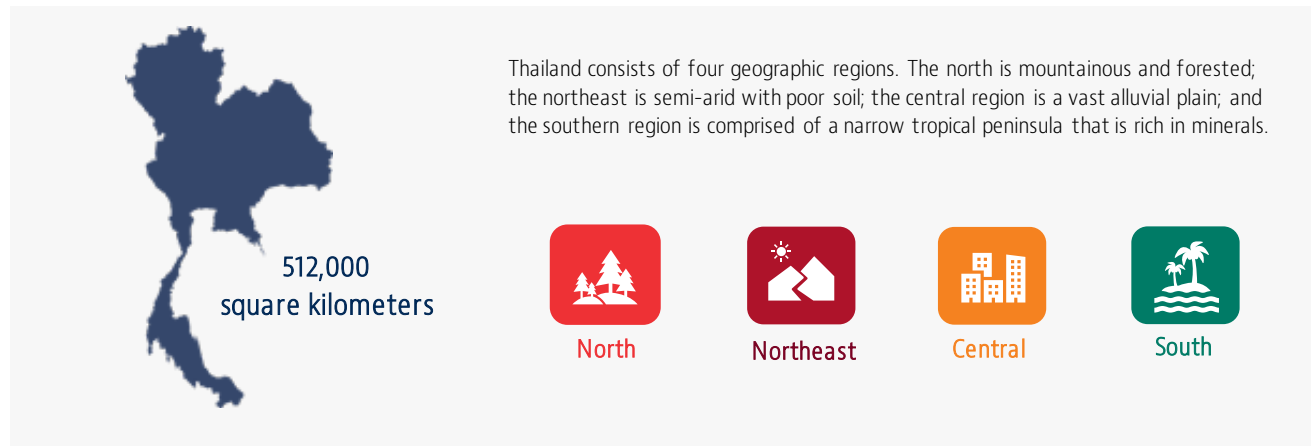
- Technology

We have dedicated foreign desks with legal and business professionals fluent in Chinese, French, German, Hindi, Japanese, Korean and Spanish to serve companies investing in Thailand.

1 Thailand: An Overview

1.1 Geography and Climate

Thailand is strategically situated in Southeast Asia, bordered by Cambodia to the southeast, Laos to the north and northeast, Myanmar to the north and west, and Malaysia to the south. It has extensive coastlines along the Andaman Sea to the west and the Gulf of Thailand to the east.



512,000 square kilometers

Thailand consists of four geographic regions. The north is mountainous and forested; the northeast is semi-arid with poor soil; the central region is a vast alluvial plain; and the southern region is comprised of a narrow tropical peninsula that is rich in minerals.

North Northeast Central South

The complex block contains a dark blue silhouette map of Thailand on the left. To its right, the text '512,000 square kilometers' is displayed. Further right is a paragraph describing the four geographic regions. Below this paragraph are four colored icons in a row: a red icon with trees for 'North', a dark red icon with a sun and a cracked house for 'Northeast', an orange icon with buildings for 'Central', and a green icon with palm trees and waves for 'South'. Each icon is positioned above its corresponding region name.

Thailand: An Overview



1.2 Population and Language

Thailand's population is approximately 66.4 million, as of December 2018. The predominant ethnic group is Thai, with minorities of Chinese, Laotians, Cambodians, Malays, and various indigenous hill-tribes.

Major Cities

Bangkok (capital)

Phuket

Khon Kaen

Chiang Mai

Nakhon Ratchasima

Songhla / Hat Yai

The national language is Thai, with minor regional variations. English is used in certain commercial circles and in tourist areas, but otherwise is not widely spoken.

1.3 Religion

Approximately 95 percent of Thailand's population is Buddhist. Minority religions include Islam (approximately 3 percent) and Christianity (approximately 1 percent).

Although the Christian calendar is widely used in Thailand, the Thai calendar is also used, with the Buddhist Era (B.E.) beginning with the Lord Buddha's death in 543 B.C. Therefore, the legislation cited in this brief is marked by the year in which the legislation was enacted in Buddhist Era terms, followed by the Christian calendar equivalent; for example, B.E. 2562 (2019).

Thailand: An Overview

1.4 The Political System

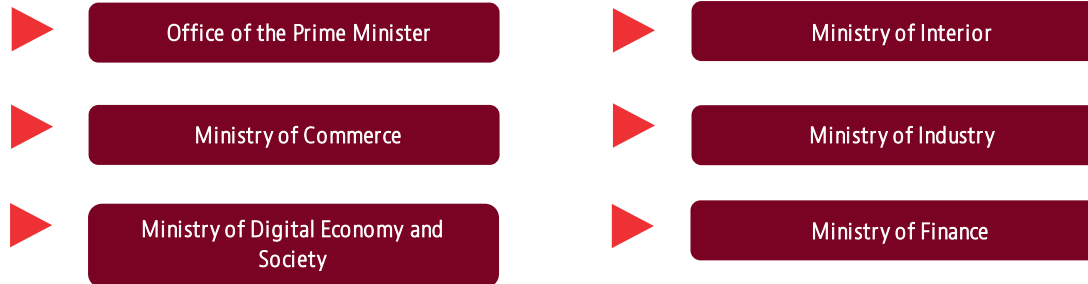
Political System:	Constitutional Monarchy
Established:	1932
Present Monarch:	King Maha Vajiralongkorn
Ascended Throne:	December 2016

At present, the country adopts the Constitution, which was promulgated in 2017, as the supreme law of the land. Under the Constitution, the King remains the head of state and exercises the sovereign powers through the main three branches, namely, the legislative powers through the National Assembly of Thailand (or the Parliament), the executive powers through the government, and the judicial powers through the Courts.

The Constitution provides for an elected lower house, the House of Representatives, and an appointed upper house (pursuant to the selection procedures stated in the applicable organic law), the Senate, which together make up the National Assembly.

The National Assembly consists of 750 members and is empowered to consider and enact laws. It succeeded the National Legislative Assembly which had been appointed by the National Council for Peace and Order in 2017.

The government, administered by the cabinet, which consists of ministers with a prime minister as the leader, is served by a large bureaucracy. Each ministry is headed by a minister appointed by the King on the recommendation of the prime minister.



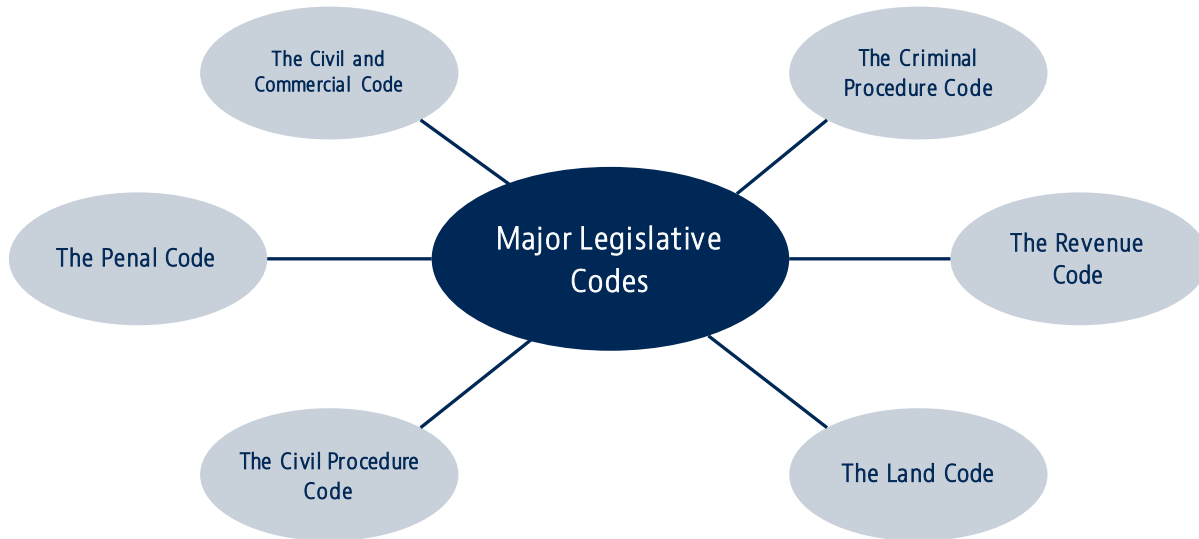
1.5 Currency

The local currency is the Thai Baht (THB), which is divided into 100 satang. Notes are available in denominations of 20, 50, 100, 500, and 1,000; and coins of one, two, five, and 10, as well as 25 and 50 satang. Foreign currency can be exchanged for THB at commercial banks, authorized money exchange centers, and other authorized agents.

2 The Legal System

2.1 The Law

Thailand has a codified system of law as a result of reforms instituted by King Chulalongkorn (King Rama V) at the turn of the nineteenth century.

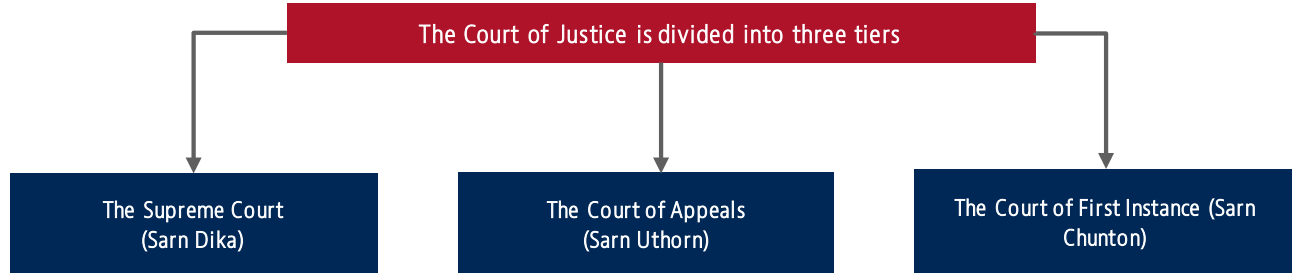


The Legal System

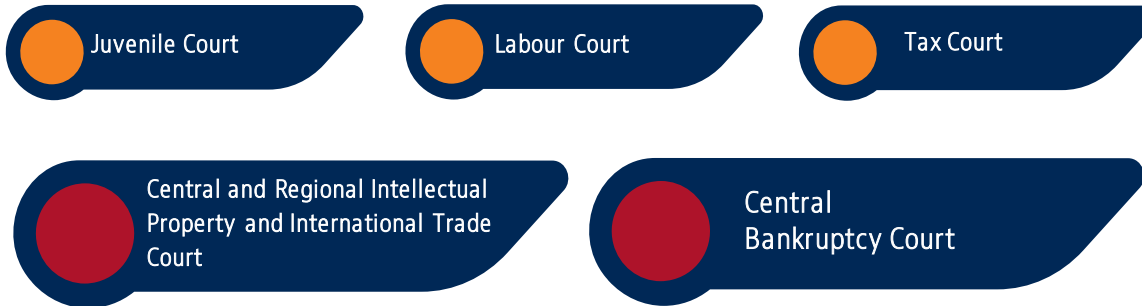
The content of the Codes was drawn from the laws of other countries having codified systems (e.g. France, Switzerland, and Germany), from countries with common law systems (e.g. Great Britain), and from the traditional laws of Thailand. The supreme law of Thailand at present is the 2017 Constitution. The current Constitution replaced the Interim Constitution 2014 on 6 April 2017.

Laws are normally drafted in broad terms, especially laws regulating commercial activities. Broad powers are delegated to government ministries or organizations, which are empowered to issue notifications or regulations. Local administrations are also empowered to issue rules and ordinances.

2.2 The Courts



All these courts were created under their own enacting legislation, which also established their specialized procedures.



The Constitution established a separate system of Administrative Courts to deal with administrative law and administrative contract matters. The Constitutional Court was also established to deal with governmental matters and constitutional questions. The Military Courts were established to try and adjudicate military criminal cases and other cases as provided by law. All cases are decided by judges, as there are no juries.

2.3 Arbitration

Arbitration is available as a means of dispute settlement. Under the Arbitration Act, B.E. 2545 (2002), written agreements to arbitrate a dispute are given binding effect by the Courts of Justice or Administrative Courts, depending on the nature of the dispute. Parties to an agreement may agree that certain types of disputes should be

The Legal System

resolved by means of arbitration. If an instance of dispute arises and one party brings the matter to litigation in court, the other party has the right to object. In this case, the court will refuse to hear the case and will order the parties to resolve the dispute via arbitration, in keeping with the terms of the agreement.

The Arbitration Act also provides that the courts may enforce foreign arbitration awards if the parties involved are entitled to rely on the terms of relevant international conventions of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (1958), and the Geneva Convention of 1927. To enforce such an award the court requires that the petitioner submit the originals, or certified copies of the originals, and Thai translations of the agreement and the award as evidence.

3 Foreign Investment

3.1 The Foreign Business Act

The main law governing foreign shareholding ratio is the Foreign Business Act, B.E. 2542 (1999) (the "FBA").

3.1.1 Prohibited and Restricted Businesses

The FBA defines "aliens" or "foreigners" as natural persons or juristic entities (companies, registered partnerships, etc.) who do not possess Thai nationality. The definition extends to companies registered in Thailand of which 50 percent or more of their share capital belongs to foreign individuals or juristic entities. A partnership is deemed to be "foreigner" if 50 percent or more of its partners are foreign individuals or if its managing partner or manager is a foreigner.

Foreign Investment



Definition of "aliens" or "foreigners"



Natural persons or juristic entities who do not possess Thai nationality



Companies registered in Thailand of which 50 percent or more of their share capital belongs to foreign individuals or juristic entities



A partnership

50 percent or more of its partners are foreign individuals or if its managing partner or manager is a foreigner

The FBA lists three categories, or schedules, of controlled business activities (set forth in Appendix A):

- Schedule One consists of business activities from which foreigners are barred for "special reasons" and for which they cannot obtain a license;

- Schedule Two lists businesses that may affect national security or safety, art, culture, customs, native manufacturing/handicraft production, natural resources, or the environment. Foreigners may only engage in Schedule Two businesses if they obtain permission from the minister of commerce, which in turn can only be issued pursuant to a resolution of the Cabinet. In addition, Thai nationals must hold at least 40 percent of the capital in that foreign juristic person and two-fifths of the directors must be Thai. With a resolution of the Cabinet, the Minister of Commerce may alter these requirements, but in no circumstances can the percentage of Thai shareholding in a Schedule Two business be less than 25 percent; and
- Schedule Three contains business activities in which Thais are considered not adequately prepared to compete on an equal footing with foreigners. Foreigners may engage in these businesses only upon receipt of permission from the Director-General of the Department of Business Development, the Ministry of Commerce, with the approval of the Foreign Business Board. If a foreign enterprise receives this permission, the foreign juristic person can be 100 percent foreign-owned and there is no requirement for a minimum number of Thai directors.

The Foreign Business Board must review the businesses listed in the Schedules at least once a year and propose any necessary changes to the Minister of Commerce.

The Ministry of Commerce has issued ministerial regulations which exempted certain service businesses from the restricted activities under Schedule Three of the FBA.

Foreign Investment

3.1.2 Exemptions

Foreigners who have been granted exemptions from the FBA will instead be required to obtain a Foreign Business Certificate as evidence of the exemption.

1. Treaty protection

- foreigners operating a business under the protection of a treaty to which Thailand is a signatory

2. Government's permission for a specified duration

- foreigners who engage in regulated businesses with the permission of the Thai government for a specified duration

3. Treaty imposing obligations

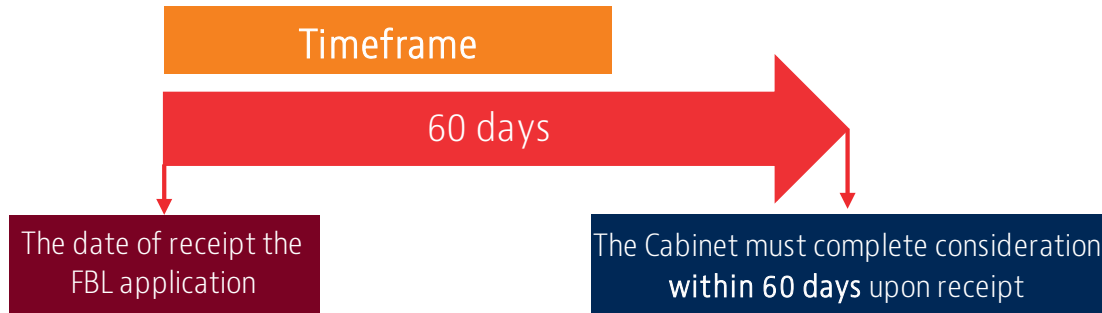
- foreigners operating a business under a treaty imposing obligations to which Thailand conforms, even though Thailand is not a signatory

4. BOI and IEAT

- foreigners who have been granted investment promotion from the Board of Investment ("BOI") or permission to operate industrial or export businesses by the Industrial Estate Authority of Thailand ("IEAT") for businesses in Schedules Two or Three

3.13 Timeframe for Processing Foreign Business License Applications

The Cabinet (for businesses in Schedule Two) or the director-general (for businesses in Schedule Three), must complete consideration of an application for a Foreign Business License within 60 days from the date of receipt. If the cabinet, in a case of necessity, is unable to complete its consideration within such period, it may be extended as necessary but shall not exceed a further 60 days.

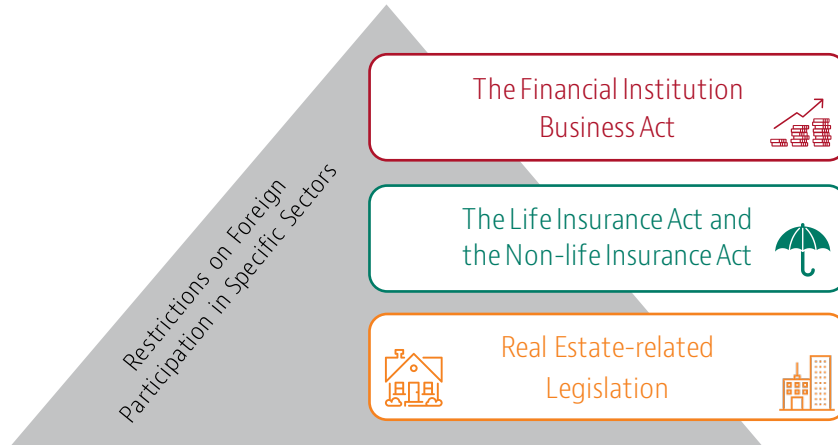


3.14 Penalties under the Foreign Business Act

Thai or foreign nationals who violate the provisions of the FBA, which include nominee structures used to avoid the law, are subject to imprisonment for a term not exceeding three years or to a fine of THB 100,000 up to THB 1,000,000, or both. A Thai court may also order the violating entity to cease its operations. Any violation of a court order in this regard shall be subject to a daily fine of THB 10,000 to THB 50,000.

3.2 Restrictions on Foreign Participation in Specific Sectors

In addition to the FBA, several statutes impose conditions of majority ownership and management by Thai nationals for specific business sectors, as described below. Specific regulations for some businesses, such as hotels and pharmaceuticals, require that the holder of the operating license be an individual Thai national.



3.2.1 The Financial Institution Business Act

The main purpose of the Financial Institution Business Act, B.E. 2551 (2008), as amended, (the "**FIBA**") is to regulate the commercial banking, and the undertaking of finance and credit foncier businesses in Thailand. The FIBA requires that Thai nationals hold not less than three-fourths of the total issued voting shares in a financial institution and that at least three-fourths of the total number of directors must be Thai nationals.

The FIBA does, however, empower the Bank of Thailand ("**BOT**"), on a case-by-case basis and upon request, to permit non-Thai nationals to hold up to 49 percent of a company's voting shares sold and to allow foreigners to comprise more than 25 percent, but less than 50 percent, of the directorship of a company.

Moreover, the Ministry of Finance, upon the recommendation of the BOT, can further extend the foreign shareholding and directorship limit, in order to rectify the status and performance of a distressed financial institution or to stabilize a financial institution.

Please note that the foreign shareholding and directorship limit set out above under the FIBA does not apply to a branch or a subsidiary of foreign commercial banks licensed to undertake commercial banking business in Thailand.

3.2.2 The Life Insurance Act and the Non-life Insurance Act

The Life Insurance Act, B.E. 2535 (1992), as amended, and the Non-life Insurance Act, B.E. 2535 (1992), as amended, (collectively, the "**Insurance Acts**"), require that: (i) Thai nationals constitute at least three-fourths of the total

Foreign Investment

number of directors and (ii) Thai nationals hold at least 75 percent of the total number of voting shares in an insurance company.

The Insurance Acts empower the Office of the Insurance Commission ("**OIC**"), on a case-by-case basis if there is a reasonable cause and upon request, to permit non-Thai nationals to hold up to 49 percent of a company's voting shares and to allow foreigners to comprise more than 25 percent, but less than 50 percent, of the directorship of a company.

Moreover, The Minister of Finance, upon the recommendation of the Insurance Commission, is empowered to grant a relaxation to allow the company's shareholding or directorship structure to differ (e.g. permit foreign shareholding of more than 49 percent): (i) when the company's standing or operations are of a condition that might cause damage to the insured or the public; and (ii) in order to strengthen the company's stability and enhance the stability of the insurance industry.

3.2.3 Real Estate-related Legislation

As explained in section 15.2 (*Foreign Ownership of Land*), foreigners, including companies with more than 49 percent of their total shares held by foreigner(s), or more than one half of shareholders are foreigners, are prohibited from owning land pursuant to the Land Code. Apart from this restriction in the Land Code, foreigners (pursuant to the definition prescribed in the FBA) are restricted from conducting real estate development-related businesses, as follows:

- Land Trading Businesses

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Land trading businesses are listed in Schedule One to the FBA. Foreigners are strictly prohibited from engaging in such businesses, which means licenses cannot be obtained.

- Hotel and Condominium Development

Foreigners are restricted from engaging in hotel businesses unless a Foreign Business License is obtained, since the "hotel business" is listed in Schedule Three of the FBA. However, "hotel management" businesses are exempted from the restriction; thus, foreigners can freely carry on hotel management businesses.

Condominium development, although not one of the restricted businesses listed in the Schedules of the FBA, is also restricted as far as foreigners are concerned. The reason is that one of the criteria of condominium registration is that the project owner must own the land and building(s) which are intended to be registered as a condominium. This then reverts back to the fact foreigners are prohibited from owning land under the Land Code, as detailed further in section 15.2.

4 Investment Incentives

4.1 The Investment Promotion Act and the Board of Investment ("**BOI**")

The Investment Promotion Act, B.E. 2520 (1977) provides the legal framework for investment incentives granted by the BOI. The BOI is responsible for promoting investment in Thailand. It has wide discretionary powers to encourage investment in areas considered to be the most beneficial to Thailand's economic and social development. BOI incentives include: (i) tax privileges, such as exemption of corporate income tax and exemption of import duties on machinery, and (ii) non-tax privileges, such as the right to own land and the right to bring in foreign experts. Members of the BOI include the prime minister (as chairman), the minister of industry (as vice-chairman), and other ministers or senior government officials, as appointed by the prime minister.

4.2 BOI Incentives

Under the Investment Promotion Act, the BOI is able to provide the following incentives and privileges to BOI-promoted enterprises:

- **State Guarantees:** Guarantees against nationalization, competition from state enterprises and monopolies on the sale of similar products, price controls, export restrictions, and duty-free imports by government agencies or state enterprises;
- **Business Protection:** This measure is subject to justification and need, which may include imposing a surcharge on imports of competing products, banning the import of competing products, ordering any actions necessary to assist the promoted project, and providing tax relief for the benefit of promoted projects;
- **Relaxation of Restrictions on Participation by Foreigners:** Allowing promoted companies to bring in foreign nationals for feasibility studies, allowing companies to bring in foreign technicians and experts to work on promoted projects, allowing companies to own land for promoted activities, and allowing companies to receive foreign currency or remit it abroad; and
- **Taxation:** Various incentives include import duty exemptions or reductions on imported machinery, imported raw materials, and components; corporate income tax exemption for three to eight years or more for certain

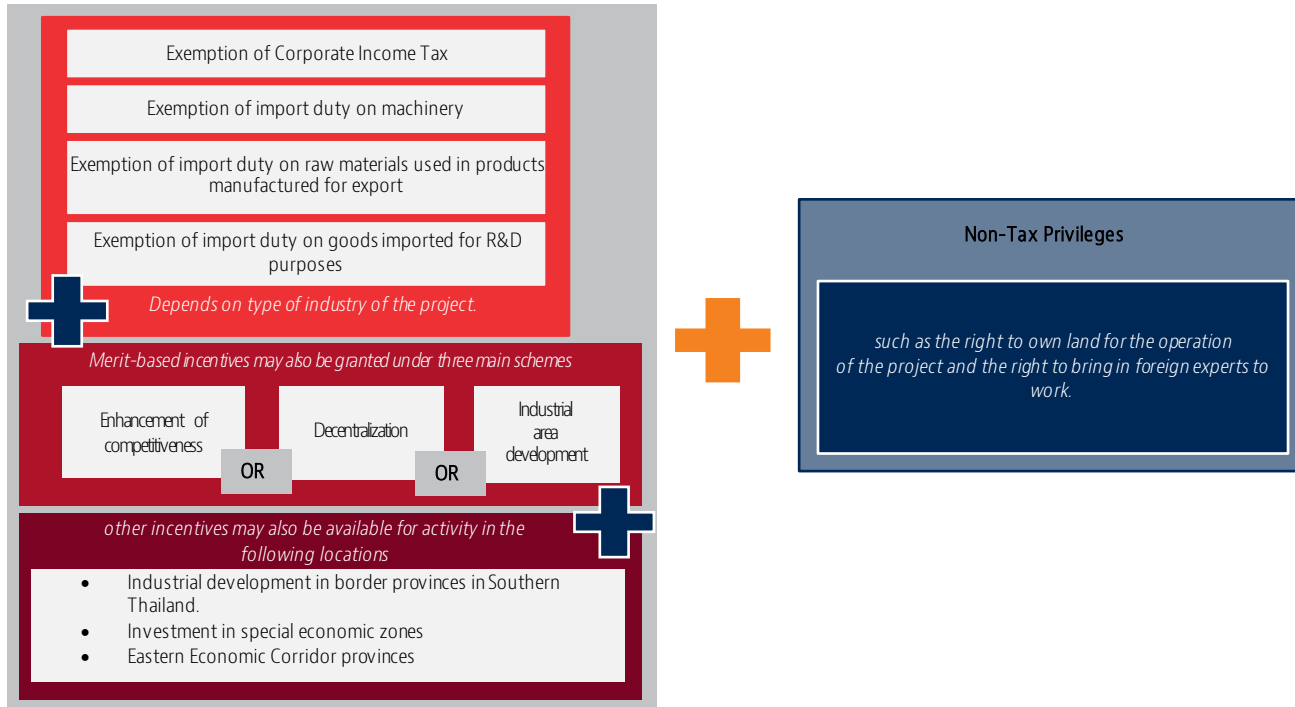


Investment Incentives

types of projects, from the date on which income is first earned, with permission to carry forward losses and deduct them as expenses for up to five years; and exemptions from withholding tax on taxable income on dividends derived from promoted projects during the corporate income tax exemption period.

4.3 Investment Incentives

To encourage the industrial development for projects that are deemed to be highly beneficial to the country and have high value-added benefits, the BOI grants special privileges to projects depending on the type of industry of the project, which include both tax and non-tax privileges.



Investment Incentives

The tax privileges to be granted are divided into groups A, B and others as set out in the table below. Also, all types of projects will receive non-tax privileges such as the right to own land for the operation of the project and the right to bring in foreign experts to work.

Furthermore, certain merit-based incentives may also be granted under three main schemes:

1. **Enhancement of competitiveness:** Additional corporate income tax incentives may be granted depending on the types and ratios of eligible investment or expenditure for the promoted company. The corporate income tax exemption cap amount and period may be increased for certain types of eligible investment or expenditures such as research and development, advance technology training and product and packaging design, etc.
2. **Decentralization:** Under this scheme, incentives will be granted to projects that are located in 20 specified provinces with the lowest per capita income. Projects in these 20 provinces will receive additional incentives including corporate income tax exemption cap amount and period may be increased; 50 percent corporate income tax reduction after the expiration of the corporate income tax exemption period; double deduction for costs of transportation, electricity, and water supply for 10 years; and additional 25 percent deduction for costs of installation or construction of facilities.
3. **Industrial area development:** An additional one-year corporate income tax exemption will be granted for projects located in industrial estates or promoted industrial zones.

In addition to the above incentives, certain other incentives may also be available for activity in the following locations:

- Industrial development in border provinces in Southern Thailand.
- Investment in special economic zones such as Tak, Mukdahan, Sakaew, Songkhla, and Trat provinces.
- Eastern Economic Corridor provinces, which are Rayong, Chonburi, and Chacheongsao. Further details are provided in item 4.8.4 below.

4.4 BOI Promotion Eligibility Criteria

General investment projects

- the value added must be at least 20 percent of sales revenue, except for projects that manufacture electronic products and parts or process agricultural produce, and coil centers, where the value added requirement is 10 percent;

Government Concession and Privatization Projects

- projects of state enterprises will not be granted promotion;
- for a private sector's Build, Transfer, Operate, or a Build, Operate, Transfer concession project, the state agency that owns the project must submit the project to the BOI for its consideration prior to any invitation to bid. Bidders will be

Investment Incentives

General investment projects

- the ratio of debt-to-registered capital should not exceed three-to-one for a newly-established project while expansion projects will be considered on a case-by-case basis;
- modern production processes and new machinery must be used; if old machinery is used, its efficiency must be certified by a reliable institution and a BOI approval must be obtained;
- environmental protection systems must be installed; for projects that may pose a threat to the environment, the BOI will prescribe special conditions on the project's location and the type of pollution treatment necessary; and

a feasibility study on the project (as prescribed by the BOI) must be submitted if the investment

Government Concession and Privatization Projects

- informed, prior to bidding, of any promotional privilege to which they are entitled. In principle, the BOI will not consider a project where the private sector pays for a concession;
- unless the payment is deemed to represent a reasonable investment for the state; and
 - for a Build, Own, Operate project including a lease by the private sector or rental payments to the state, the normal criteria are used.

General investment projects

capital (excluding the cost of land and working capital) is to exceed THB 750 million.

Government Concession and Privatization Projects

4.5 Foreign Shareholding in BOI-promoted Projects

Foreigners may wholly or partially own a promoted project, and the following criteria apply:

- for projects in activities under Schedule One of the FBA, Thai nationals must hold shares totalling at least 51 percent of the registered capital;
- for projects in activities under Schedule Two and Schedule Three of the FBA, there are no equity restrictions for foreign investors except as otherwise specified in other laws; and
- the BOI may specifically fix the maximum foreign shareholding in some promoted projects at the level it deems appropriate.

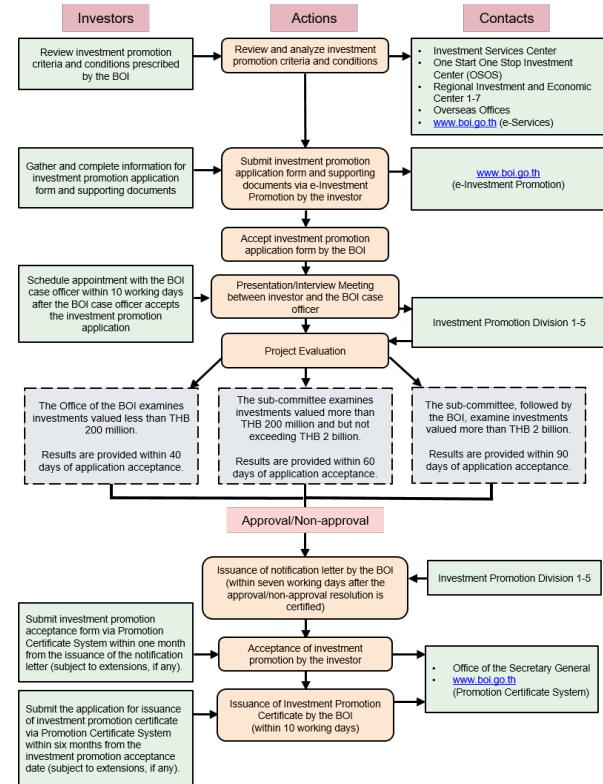
Investment Incentives

4.6 The BOI Promotion Application Process

The application procedure process is as follows www.boi.go.th

The application procedure diagram explains the routing and timing of applications for BOI promotion. On a standard application form, applicants must describe the project and provide other related data. There is no application fee and no penalty for not proceeding if granted promotion. Applicants usually receive most of the benefits to which they are entitled, but are sometimes subject to specific conditions and/or performance requirements set by the BOI. Investment promotion by the BOI is transferable.

Provided that the company receiving BOI promotion privileges is incorporated within six months after the acceptance date, an individual (such as the potential director of the company to be incorporated) may apply for BOI promotion before such incorporation actually takes place. This will allow the BOI promotion application and the incorporation process to be executed in parallel.



4.7 The BOI One Start One Stop Investment Center

To expedite foreign investment in Thailand and reduce the complexity of dealing with multiple government agencies, the BOI has established a One Start One Stop Investment Center at its office in Bangkok. The Center offers assistance in obtaining work permits and visas for foreign experts and technicians.

4.8 Investment Incentives under Other Acts

4.8.1 The Industrial Estate Authority of Thailand Act

The Industrial Estate Authority of Thailand Act, B.E. 2522 (1979) ("IEAT") details two industrial estate categories: General Industrial Zone and Free Zone. Currently, there are Industrial Estates in the vicinity of Bangkok and various parts of Thailand. These estates are operated by the IEAT, either solely or in a joint venture with private companies or government agencies. There are also privately-owned industrial estates, which are BOI-promoted enterprises.

Location in an industrial estate is encouraged by the BOI. BOI-promoted industries located within industrial estates, whether privately owned or not, are eligible for preferential treatment.

Industrialists located in government-sponsored estates also receive incentives, irrespective of whether their business operations are eligible for BOI promotion.

Free Zones are a part of industrial estates. The IEAT can grant both tax incentives and non-tax incentives to foreign or Thai investors who establish commercial operations in an approved Free Zone. The privileges include exemption

Investment Incentives

from import and export duties, as well as from Value Added Tax on machinery, equipment, tools, raw materials, supplies essential for production, and on goods imported for use in production. These kinds of privileges are similar to those provided to companies promoted by the BOI. Also, the non-tax incentives include the permission for foreign investor to own land in the industrial estate, to bring in foreign technicians and experts to work under the promoted project and to bring in the spouse or dependents to stay in the country.

4.8.2 The Petroleum Act

The Petroleum Act, B.E. 2514 (1971) provides concessionaires with privileges similar to those provided to BOI-promoted projects, such as assurances against nationalization, permission to own land, bring in foreign skilled workers and experts, and remit currency abroad, as well as certain exemptions from taxes and duties.

4.8.3 The National Competitive Enhancement Act

The National Competitiveness Enhancement for Target Industries Act B.E. 2560 (2017) (the "**National Competitive Enhancement Act**") became effective on 14 February 2018. Its aim is to improve the investment promotion measures and tools to add variety and increase efficiency in order to attract investments in the "targeted industries" and enhance the level of competitiveness to be able to compete with other countries in the region.

The National Competitiveness Enhancement Act provides various incentives to promote businesses such as CIT exemption up to 15 years and other non-tax benefits granted by the BOI under the Investment Promotion Act. Moreover, the Act establishes a Competitiveness Enhancement Fund, starting with THB 10 billion which has been

contributed by the government pursuant to this Act. The fund will be used to fund or subsidize promoted businesses pursuant to the terms and conditions of the Act.

Currently, the prescribed target industries are:

- next-generation automotive industry;
- smart electronics industry;
- quality tourism industry;
- agriculture and biotechnology industry;
- high value-added food processing industry;
- robotics industry;
- aviation industry;
- biofuels and biochemical industry;
- digital industry;
- comprehensive medical industry;

Investment Incentives

- national defence industry;
- industry directly and significantly supporting circular economy (e.g. producing fuel from waste, water resource management);
- human resource development and research and development activities for target industries; and
- other industries as approved by the National Competitiveness Enhancement Policy Committee in accordance with the 20-year National Strategy.

4.8.4 Eastern Special Development Zone Act B.E. 2561

In addition to the above, the Eastern Special Development Zone Act B.E. 2561 or also commonly referred to as the Eastern Economic Corridor Act (the "**EEC Act**") was enacted in 2018 and became effective on 15 May 2018. This act was enacted to specify certain areas in the eastern part of Thailand as special development zones. Chachoengsao, Chonburi, and Rayong provinces have been designated as the investment promotion zones which shall consist of: (i) special business promotion zones consisting of Eastern Airport City, Eastern Economic Corridor of Innovation and Digital Park Thailand; (ii) targeted industries promotion zones; and (iii) industrial estates or industry promotional zones.

The eligible projects are considered due to their ability to increase investment potentials and drives economically significant activities in the designated zones. The target industries specified by the EEC Committee are similar to the ones prescribed under the National Competitiveness Enhancement Act.

Investment incentives

The EEC Act provides both tax and non-tax incentives to business operators including exemption of CIT, exemption of import duties on machinery, special personal income tax rates for certain experts, right to own land, right to lease state's land for 50 years and a renewal of 49 years, fast track public-private partnerships, fast track environmental impact assessment process, etc.

Moreover, the act also establishes an Eastern Special Development Zone Fund, which will be used to develop the local areas and communities, support education in the development zones, and other expenses to increase efficiency of the developments in the areas pursuant to the terms and conditions of the Act.

4.9 Other Investment Incentives

Additional incentives are provided under other statutes and by other bodies, if goods are produced for export. The following is a brief summary of some of the privileges available.

4.9.1 Customs Duties

The Customs Department can refund import duties on materials imported for the production of goods which are then exported. In addition, if a manufacturing firm exports its products, it is possible, with certain guarantees and fees, to procure import duty exemption on materials to be incorporated in products manufactured under bonded warehouse status. However, if the exemption applies, there are also detailed reporting requirements.

Investment Incentives

4.9.2 Taxation

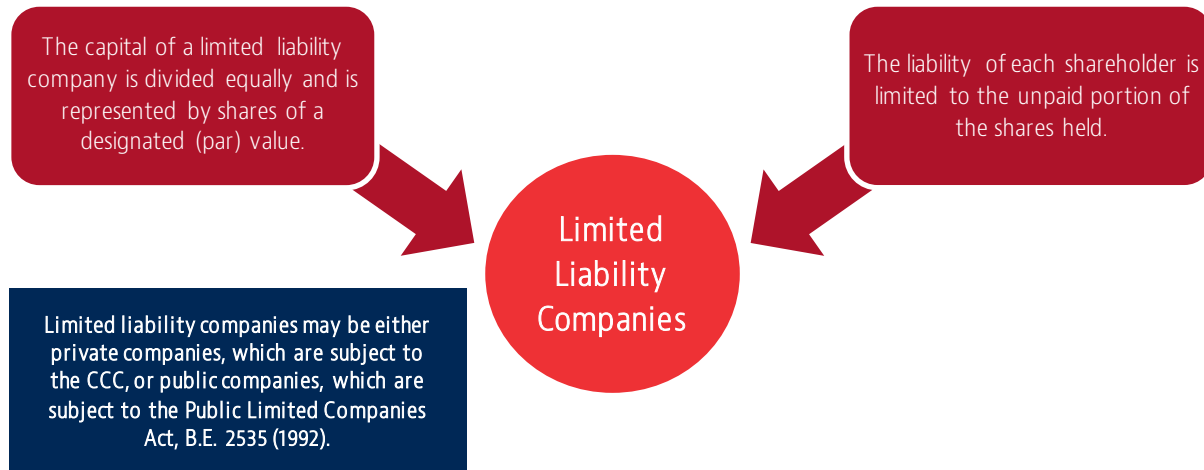
Zero percent value added tax applies to goods produced for export.

5 Forms of Business Organization

The principle forms of business organization are limited liability companies incorporated in Thailand (either private or public), partnerships, branch offices, representative offices, and regional offices.

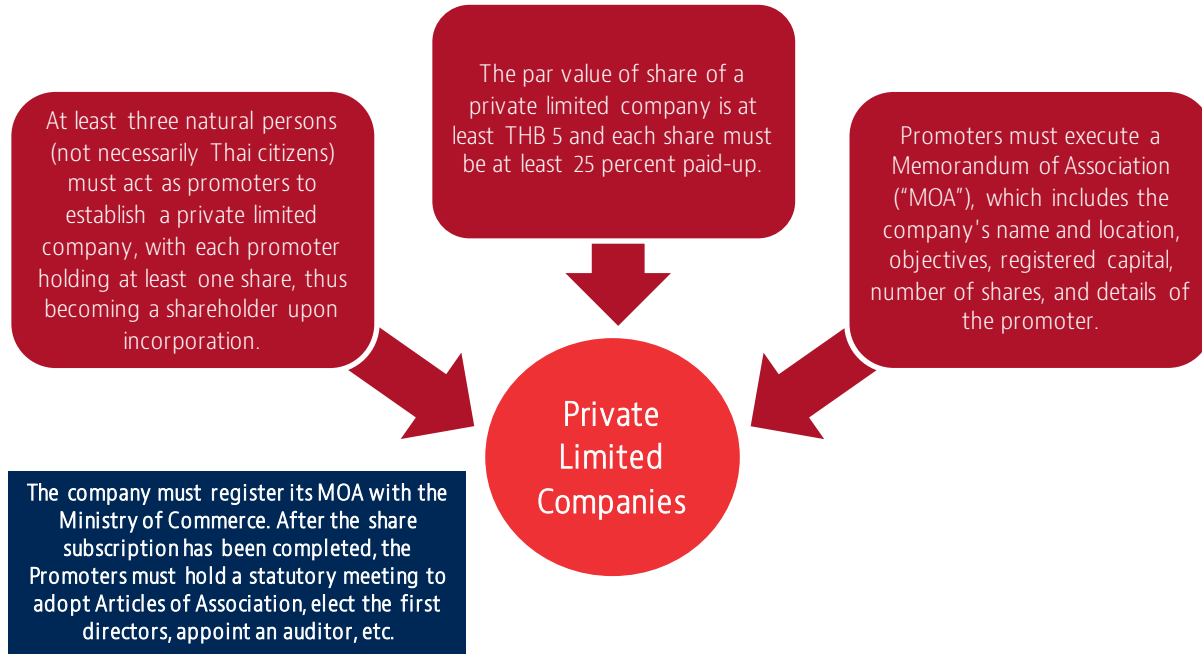
5.1 Limited Liability Companies

The nature and form of a limited liability company in Thailand is essentially the same as in many other jurisdictions.



Forms of Business Organization

5.1.1 Private Limited Companies





The incorporation of a private limited company can be completed within one day, provided that all conditions under the CCC are met.



Generally, there are no restrictions as to the nationality of the directors, except for companies that engage in certain commercial activities. Shares in a private limited company may not be offered publicly.

However, a private limited company may issue certain debt instruments to the public, subject to the approval from the Securities and Exchange Commission ("SEC") under the authority of the Securities and Exchange Act, B.E. 2535 (1992) (the "SEC Act").



Private limited companies that have registered capital of more than THB 5 million are subject to additional requirements to submit evidence issued by a commercial bank to prove that the capital injection is made into the companies' bank accounts.

Forms of Business Organization

5.1.2 Public Limited Companies

There must be at least 15 Promoters in order to apply to incorporate a public company.

The promoters must subscribe to at least 5 percent of the total shares and must hold such shares for two years from the company's incorporation (registration) date, except where approval from the shareholders meeting has been obtained.

In addition, at least 50 percent of the Promoters must be residents of Thailand.

The shares in a public limited company must be fully paid-up.

As with private limited companies, the promoters must hold a statutory meeting to elect the directors, appoint an auditor, etc.

The board of directors must have no less than five members, at least half of whom must reside in Thailand.



The directors must make full disclosure of their shareholdings in the company or its affiliates and generally have greater responsibility than directors of private limited companies.

The SEC, under the authority of the SEC Act, is responsible for approving the offering of securities to the public or any person and for supervising the Stock Exchange of Thailand ("SET"). Only the shares of public limited companies may be offered publicly and traded on the SET. Public limited companies may also issue debentures and other forms of securities to the public.

5.2 Partnerships



A partnership is a form of business organization in which two or more parties join for a common business purpose and share the profits.

Partnerships may be ordinary or limited.

In ordinary partnerships, all partners have joint and unlimited liability for the debts and obligations of the partnership.

Ordinary partners may contribute...



Labour



Money



Property

These partnerships may be registered or unregistered.

How?

Firstly, a partner in a registered partnership may make a claim on behalf of the partnership against third parties, even if the partner was not named in the transaction giving rise to the claim.

Second, the liability of partners in a registered partnership ceases two years after they leave the partnership, whereas they would be continuously liable in an unregistered partnership.

Third, creditors must exhaust all assets of the partnership before they can pursue claims against the individual partners.

Finally, creditors of an individual partner, in their individual capacity, may only make claims against any profit that the partnership owes to the indebted partner and not against the property of the partnership as a whole.



Some partners have only limited liability for the obligations and debts of the partnership.

Limited partners can only contribute money or other property to the partnership, and they cannot contribute labour, participate in the management of the partnership, or have their name included in the name of the partnership.



If they do so, they will lose their status as limited partners and assume full liability, along with any ordinary partners.

Limited partnerships must be registered. Registered ordinary partnerships or limited partnerships that contain at least three partners may convert into private limited companies, in accordance with the CCC.

Partnerships that have
registered capital of

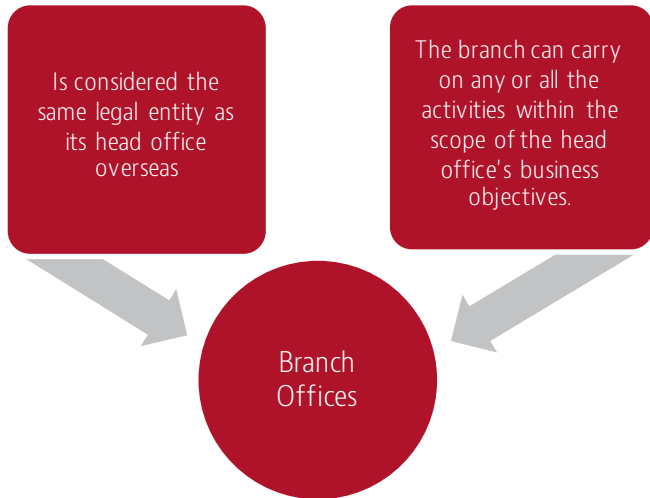
more than

THB 5 million

Are subject to additional requirements to submit evidence issued by a commercial bank to prove that the capital injection is made into the partnerships' bank accounts.

5.3 Branch Offices

A foreign enterprise may establish a branch office in Thailand. Such branch office, in terms of its status and liability.



There are no laws or regulations that specifically address the establishment or registration of the presence in Thailand of a foreign branch office.



There is no branch registry. The only filings, registrations, or licenses required for a branch office in Thailand are those prescribed under other relevant laws, such as the Commercial Registration Act, FBA or the Revenue Code.



A branch office of a foreign company is considered a "foreigner" just like its head office.



Depending on the nature of the business it intends to carry out in Thailand, the branch office will be subject to prohibitions and restrictions under the FBA, and may be required to obtain a Foreign Business License.

A branch can also enjoy protection under the U.S. Treaty, if it so qualifies. The Revenue Code requires that branch offices obtain taxpayer ID cards and register as VAT operators, on the same basis as locally incorporated companies.

5.4 Representative Offices¹

A foreign enterprise can establish a representative office in Thailand with the primary function of providing information and assistance to its foreign head office.

¹ The scope of representative offices described here is based upon the Notification of the Prime Minister's Office issued under the now repealed Alien Business Law. These criteria are currently being used as guidelines until the government issues a new notification or Ministerial Regulation governing representative and regional offices under the Foreign Business Act, B.E. 2542 (1999), which repealed the Alien Business Law.

Forms of Business Organization

A representative office has a limited scope of activity, in that it may only provide the following support services to its head office located offshore:

Finding sources from which the head office can purchase goods or services in Thailand.

Giving advice in various respects, concerning goods the head office sold to distributors or consumers.

Reporting on business movements in Thailand to the head office.



Checking on and controlling the quality and quantity of goods purchased or hired to be manufactured by the head office in Thailand.

Disseminating information concerning new goods or services of the head office.



Although the representative office business is not expressly acknowledged in the FBA, the Ministry of Commerce has issued a Notification and clarification stating that representative offices fall within the ambit of Schedule Three, Item 21 (Service Businesses) of the FBA, where a Foreign Business License is required.

However, the Ministry of Commerce has issued the ministerial regulations, removing certain businesses from the category of restricted business activities under the FBA, including operating businesses as a representative office. As a result, foreign companies operating businesses as a representative office will not be subject to the Foreign Business License requirements under the FBA. Nevertheless, in order to comply with the requirements for preparation and filing of accounts, foreign companies operating businesses as a representative office must request a registration number and notify the Ministry of Commerce of the place they are operating their businesses in Thailand.

5.5 Regional Offices²

Is a transnational corporation, which is defined to mean a juristic person incorporated under foreign law and entered to carry on business in other countries.



Has at least one branch or affiliate in Asia, which may include Thailand.

² The scope of regional offices described here is based upon the Notification of the Prime Minister's Office issued under the now

Forms of Business Organization

Must have no power to accept purchase orders from, make sale offers to or carry out business negotiations with persons or juristic persons in Thailand.

The activities that a regional office is permitted to undertake are:

	to carry out duties in communicating, coordinating, and directing, on behalf of the head office, the operations of the branches and affiliates located in the same region and,
	to provide the following services on behalf of the head office:
consulting and management	training and personnel development
financial management	marketing control and sales promotion planning
product development	research and development

repealed Alien Business Law. These criteria are currently being used as guidelines until the government issues a new notification or Ministerial Regulation governing representative and regional offices under the Foreign Business Act, B.E. 2542 (1999), which repealed the Alien Business Law.

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5.6 Joint Ventures



In general, a joint venture exists when two or more parties work together on a specific project or series of projects, or on a long-term and continuous basis.

Forms of Business Organization

Joint ventures can take many different forms;

In some the parties preserve their own separate legal status

others they create a new legal entity



Making it separate and distinct from the individual joint venture parties. A joint venture agreement need not be registered with the government, as it is considered a private contract.

Most often, incorporated joint ventures are arranged between a Thai company and a foreign company.

Thai partner provides...



- Local knowledge and skill

Foreign company provides...



- Equity
- Technology
- Know-how
- Patent or trademark licenses

Non-incorporated joint ventures are often set up for specific, limited-time projects. Each party to a non-incorporated joint venture must separately obtain any registrations or licenses that they may need to conduct the business of the venture. These may include commercial registration, VAT registration, factory licenses, etc.

Unincorporated joint ventures (UJV)

Can be set up on the basis of the parties sharing profits and losses

The Revenue Department considers a UJV a single entity for tax purposes



Thus, the UJV must file a single tax return, supported by a single balance sheet and profit and loss account.



If the parties do not want such tax treatment, but wish to remain separate taxpaying enterprises, they must take extreme care in advance to properly structure their proposed contracts and operations in Thailand.

5.7 Distributorships

Distributorship

is an agreement in which one party agrees to sell its product to another on a regular (sometimes exclusive) basis, in a defined geographical area.



There is no specific law that censures this type of relationship. The relationship between suppliers and distributors is governed by the contract provisions of the CCC. There is no requirement or process to register such an agreement, except in the case where certain intellectual property rights are licensed to the distributor under such agreement (please refer to section 5.8 below).

The distributor, acting solely as a buyer and re-seller, is not considered to be the agent, representative, or go-between of the supplying company. Thus, an offshore company using a distributor for the sale of its goods in Thailand is not subject to any Thai tax on the income from its sales to the distributor.

5.8 Licensees

A business may license the use of its

Intellectual Property rights



Including its name, trademark, copyright, patent, trade secrets, technology, or right to manufacture or sell a product based on such intellectual property rights.

Licensing agreements

Those pertaining to:



- Inventions
- Design
- Trade or service marks

That are patented or registered in Thailand



Must be made in writing and registered with the Registrar of the Department of Intellectual Property, the Ministry of Commerce.

Forms of Business Organization

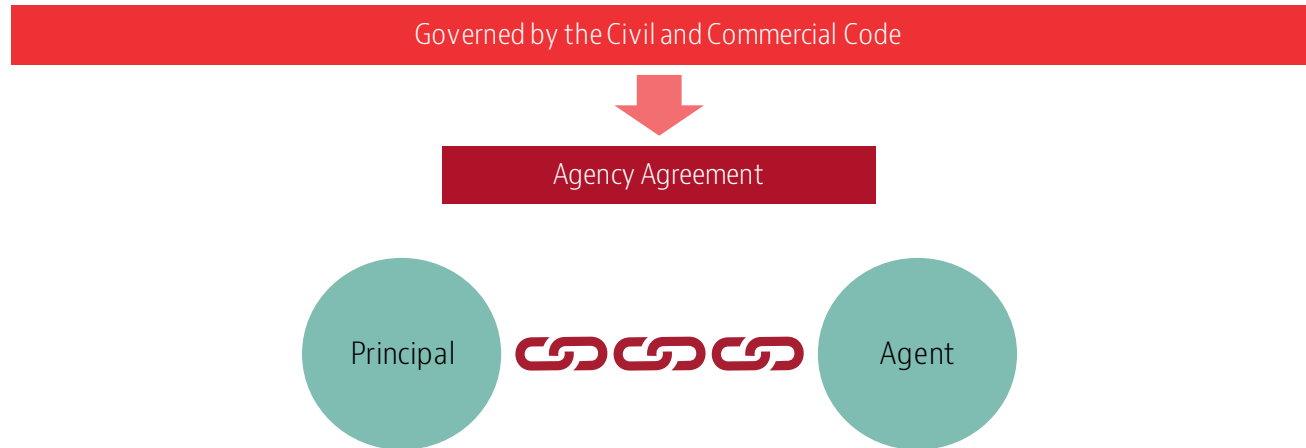
The Registrar can refuse to register a licensing agreement if the agreement does not comply with requirements under applicable law or it believes that it might confuse the public or conflict with public policy or morality.

For example, the Registrar may refuse to register a patent license agreement that contains a term or condition that could be deemed to violate anti-monopoly or unfair competition stipulations of a relevant Ministerial Regulation. In addition, the Board of Trademarks is empowered to revoke registration of a trademark licensing agreement if the licensors are not realistically able to control the quality of licensed products.

Although it is not necessary to obtain regulatory approval to enter into a licensing agreement with a foreign party, there are tax and exchange-control ramifications that need to be considered. Thai income tax is levied on license fees paid to a foreign company or partnership by withholdings made at source, at specified rates. There might also be relief effective under applicable agreements for the avoidance of double taxation.

Moreover, if the transfer of technology under a licensing agreement is related to the purchase and importation of tangible goods, the fees may be included in the value of the imported goods for the purpose of assessing customs duties.

5.9 Agencies



A principal is bound by the acts of an agent acting within the scope of its actual or apparent authority.



The principal is not bound by acts undertaken outside the scope of the agent's authority, unless those acts are subsequently ratified by the principal.

Tax is an important consideration in an agency agreement.

Income derived in or from Thailand by an offshore principal as a result of an agency relationship with a person in Thailand is usually subject to corporate income tax.

The appointment of an agent (or an employee, representative, or go-between) in Thailand exposes the overseas business entity to the risk of being deemed as "conducting business in Thailand," with a resulting tax burden.

However, where the Thai agent does not act solely for the overseas company, but acts as a general agent for various companies (i.e. an independent agent), income tax liability may not be incurred. There may also be relief effective under applicable agreements for the avoidance of double taxation.

6 Data Privacy

The Personal Data Protection Act B.E. 2562 (2019) (the "PDPA") was published in the Royal Thai Government Gazette on 27 May 2019. The PDPA is the first consolidated law governing data protection in general in Thailand. The PDPA was originally scheduled to come into effect on 27 May 2020. However, the **Royal Decree** on the Organizations and Businesses of which Personal Data Controllers are exempted from the Applicability of the Personal Data Protection Act B.E. 2562 (2019) B.E. 2563 (2020) (the "Royal Decree") was published to temporarily exempt data controllers from complying with obligations related to the collection, use, and disclosure of personal data, and associated penalties under the PDPA until 31 May 2021. Thus, the full enforcement of the PDPA is expected to take place on 1 June 2021. Sub-regulations under the PDPA are expected to be issued by 27 May 2021. During the transition period, data controllers and data processors are required to comply with the Notification of Ministry of Digital Economy and Society re: Standards of Personal Data Security B.E. 2563 (2020).



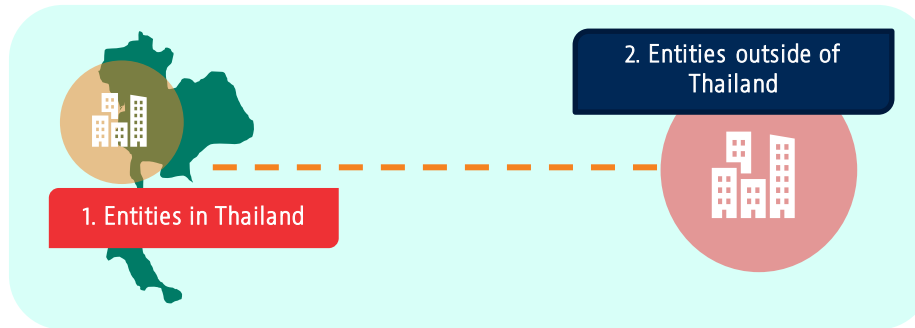
Regulatory Body

The Personal Data Protection Committee (the "PDPC") is the supervisory authority established under the PDPA. The responsibilities of the PDPC revolve around supervising compliance with the PDPA, including issuing sub-notifications under the PDPA.

6.1 Scope of Application

The PDPA applies to a person or legal entity that collects, uses or discloses personal data of a natural person, with certain exceptions (e.g. for household activity).

The key provisions relating to protection of personal data impact both onshore and offshore businesses. The PDPA has both territorial and extra-territorial application.





PDPA applies to entities outside of Thailand if:

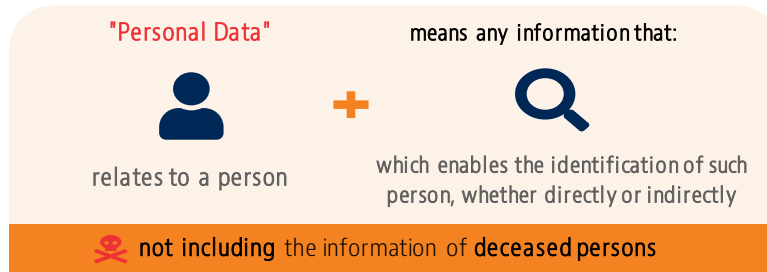
It is the **offering of goods or services to data subjects who are in Thailand**, irrespective of whether the payment is made by the data subject; or



It is the **monitoring of the data subject's behavior**, where the behavior takes place in Thailand.

6.2 Personal Data

Under the PDPA, personal data is divided into two categories: (i) general personal data; and (ii) sensitive personal data.



"Sensitive personal data" means any personal data pertaining to:



Racial or Ethnic Origin



Political opinions



Religious, cult or philosophical beliefs



Criminal Records



Sexual behavior



Health Data



Trade union Information



Genetic Data



Biometric Data



Disability



Any data which may affect the data subject in the same manner, as prescribed by the PDPC

The collection, use, or disclosure of sensitive data is subject to stricter requirements than general personal data. Sensitive personal data is also subject to more limited exemptions to explicit consent.

6.3 Key Players



A **Data Controller** is a person or legal person having the power and duty to make decisions regarding the collection, use, or disclosure of personal data.

A **Data Processor** is a person or legal person whose operations concern the collection, use or disclosure of personal data pursuant to the orders given by or on behalf of a personal data controller, whereby such person or legal person is not a personal data controller.

The data controller and data processor have several obligations to comply with under the PDPA, including obligations to collect, use or disclose personal data with an appropriate legal basis (i.e., consent, historical, research or statistics, vital interests, contractual performance, public interest, legitimate interests, or legal obligations), to provide a privacy notice, to put in place an appropriate mechanism for cross-border transfer of personal data, to implement

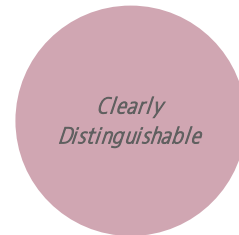
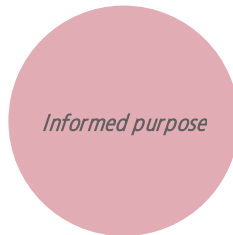
Data Privacy


appropriate security measures for protection of personal data, to report a personal data breach incident, to appoint a data protection officer, to have a record of processing activities, to implement a data deletion system, to take action to prevent others from unauthorized or unlawful use or disclosure, to respond to data subjects' right requests. We highlight some of the key obligations below.

6.4 Key Obligations


6.4.1 Requirements of the request for consent

The request for consent must comply with the requirements under the PDPA, e.g. presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form and consent must be freely given, among others. Further criteria may be issued in a sub-regulation.






*Intelligible and
easily accessible
form*



*Clear and plain
language and not
be deceptive*



*Freely given and
not unnecessary
conditional for
contract or
service*

6.4.2 Withdrawal of consent

The data subject may withdraw his or her consent at any time, save for certain exceptions.

Under the PDPA, the withdrawal of consent shall not affect the prior collection, use, or disclosure of personal data for which consent was given.

6.4.3 Consent of a minor, incompetent, or quasi-incompetent

For the use, collection, and disclosure of a minor's personal data, the holder of parental responsibility over the minor may be required to give consent, subject to criteria under the PDPA and the Thai Civil and Commercial Code on minors.

In the event that the data subject is incompetent/quasi-incompetent, consent must be obtained from the custodian who has the power to act on behalf of the incompetent/quasi-incompetent person.

6.4.4 Collection of Personal Data

Purpose limitation

Personal data shall be collected only to the extent necessary for the lawful purpose.

The collection, use or disclosure of personal data shall not be made in a manner that is different from the purpose previously notified to the data subject, unless certain exceptions apply (e.g. the data subject has been informed of such new purpose)

Collection of personal data from other sources

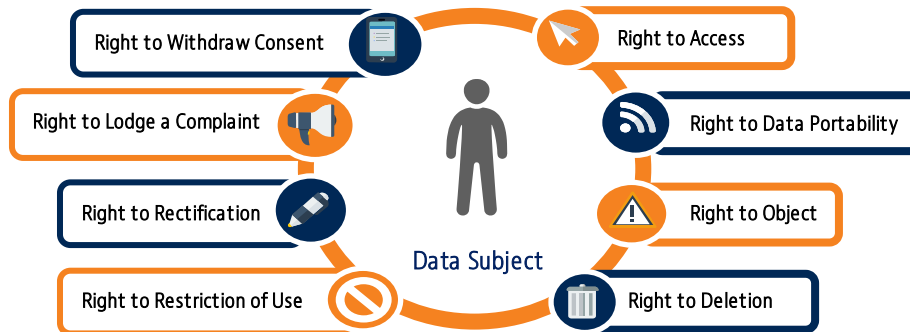
The data controller shall not collect personal data from any other source, apart from the data subject directly, unless the data controller informs the data subject within **30 days** from the date of such collection and has obtained the consent from the data subject. Certain exemptions apply.

Notification Requirement

A data controller is required to inform the required details to the data subject prior to or at the time of the collection of the personal data as prescribed under the PDPA, except where the data subject already knows such details and other exceptions.

6.5 Rights of the data subject

Data subjects have the following rights, subject to certain conditions:

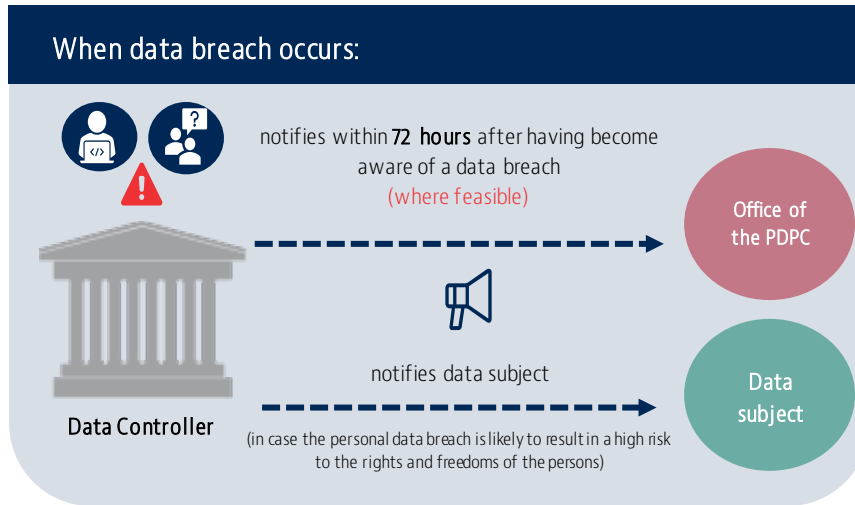


Data Privacy

Data controllers are required to ensure that data subject requests based on the above data subject rights are responded to in compliance with the conditions under the PDPA.

6.6 Data Breach Notification

When a data breach incident occurs, the data controller may be required to notify the Office of the PDPC and/or the data subject in accordance with the conditions under the PDPA.



6.7 Cross-Border Transfer of Personal Data

The PDPA contains provisions regarding the cross-border transfer of personal data, including:

1. Requirement for the destination country to have an adequate data protection standard;

2. Transfer within the group of businesses with reviewed and certified personal data protection policy; and

3. In the absence of 1. or 2. above, cross-border transfer may be permissible if suitable protection measures are provided.

6.8 Record of the Processing Activities

The record of processing activities (e.g. the collection of personal data, the retention period, etc.) shall be enabled and available for checking by the data subject and the Office of the PDP Committee which can be either in written or electronic form, with certain exemptions.

6.9 Data Protection Officer

Data controllers may be required to appoint a Data Protection Officer (the "DPO") if the conditions under the PDPA are met.



DPO

What are duties of DPO?

1. Advise on PDPA compliance
2. Investigate PDPA compliance
3. Coordinate with the competent authority
4. Keep personal data under his/her responsibility confidential

6.10 Data Processing Agreements

Data controllers are required to set in place an agreement between the data controller and the data processor, in order to control the activities carried out by the data processor on behalf of the data controller, and such agreement should set out the obligations of the data processor in accordance with the requirements under the PDPA.

6.11 Appropriate security measures

Appropriate security measures shall be provided by the data controller to prevent the unauthorized or unlawful loss, access to, use, alteration, correction, or disclosure of personal data. Such measures must be reviewed when necessary, or when the technology has changed in order to efficiently maintain appropriate security and safety.

6.12 Data Processor Obligations

Fewer obligations apply to data processors than controllers, e.g. to carry out activities related to the collection, use and/or disclosure of personal data only in accordance with the instructions of the data controller, provide and maintain appropriate security measures, and to notify the data controller of personal data breaches, among others.

6.13 Sanctions

Failure to comply with the PDPA could result in civil liabilities with punitive damages (and class action), administrative fines, and criminal penalties.

6.14 Sector-Specific Laws and Regulations

In addition to the above, personal data is regulated/restricted in sector-specific laws including:

- 1 Credit Information Business Act B.E. 2545 (2002)
- 2 Child Protection Act B.E. 2546 (2003)
- 3 National Health Act B.E. 2550 (2007)
- 4 Payment System Act B.E. 2560 (2017)
- 5 Official Information Act B.E. 2540 (1997)
- 6 Notification of the National Telecommunications Commission Re: Measures to Protect Telecommunications Users, Data Privacy, Privacy Rights and Freedom of Communications

7 Dispute Resolution

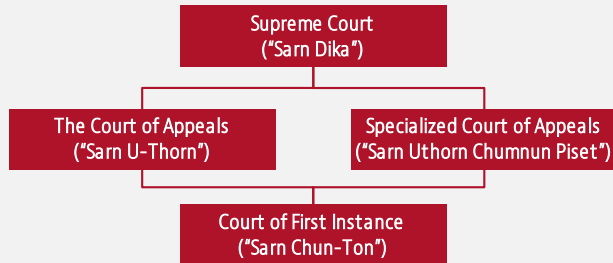
Note: This chapter on Dispute Resolution is current as of 2020. Changes are currently ongoing with regard to this area of Thailand's regulatory environment.

Dispute Resolution

7.1 Litigation

7.1.1 The Courts

- The highest court of the Thai Court of Justice.
- The Supreme Court reviews appeals against judgments of the lower courts, usually judgments of the Court of Appeals.
- However, as of 8 November 2015, any case lodged from such date onwards cannot be appealed to the Supreme Court unless the appellant applies for permission to do so on the grounds of public order, public interest or conflicting judgments of appeal courts and existing Supreme Court precedent, and the Supreme Court grants permission for the appeal.



- Has jurisdiction to hear appeals against judgments of the Court of First Instance, except for those cases within the newly formed Specialized Court of Appeal.

- In late 2016, the Specialized Court of Appeal was established in order to function as the appellate court for lower Courts of First Instance with respect to all appeals lodged after 1 October 2016 in order to reduce the burden of the Supreme Court in receiving appeals.

- Specialized courts that fall within the category of the Court of First Instance
- Labour Court
 - Tax Court
 - Intellectual Property and International Trade Court
 - Bankruptcy Court

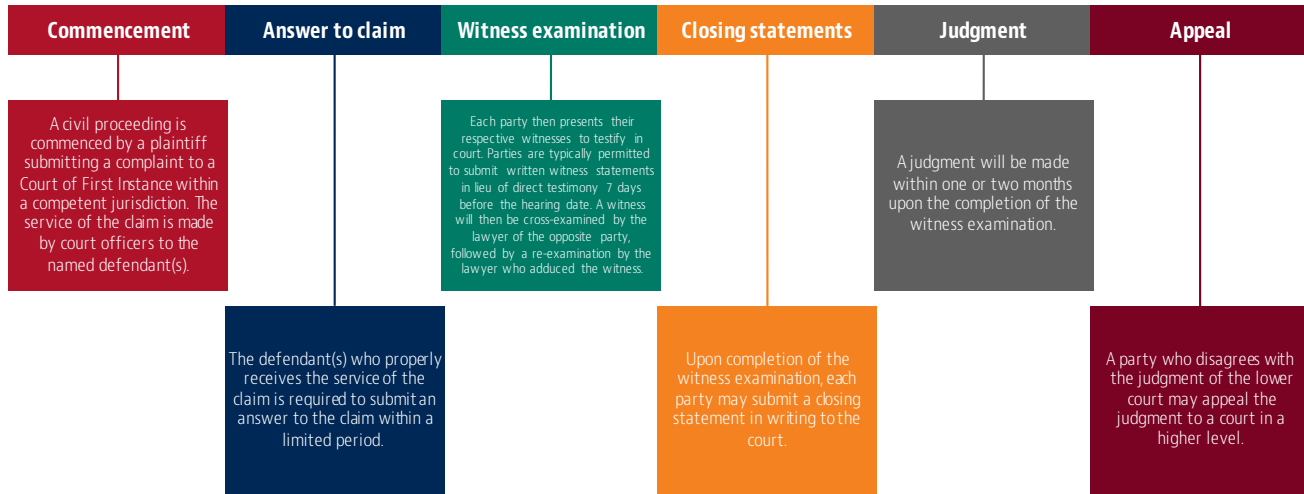
- Many courts located throughout the country, each of which has separate geographical jurisdiction to rule various types of litigation cases.
- There are more than 20 courts located in different parts of Bangkok alone, each of which has different jurisdictional power to hear cases and divided by geographical areas.

Administrative Court

The Constitution established a separate system of Administrative Courts to deal with administrative law and administrative contract matters. The Constitutional Court was also established to deal with governmental matters.

7.1.2 Regular Proceedings in Thailand

All cases are heard and decided by professional judges, as there are no juries in the Thai legal system.



Dispute Resolution

For cases brought before the Court of First Instance after 8 November 2015, an appeal from the Court of Appeal to the Supreme Court will require the express permission of the Supreme Court, a motion for which must be submitted to the Supreme Court along with the grounds of appeal. If the Supreme Court refuses that permission, the Court of Appeal's decision will be final as of the date it was handed down.

7.13 Foreigners Participating in Thai Proceedings

Foreigners Participating in Thai Proceedings

A foreigner can file a lawsuit, or can be sued in a Thai court, even if the foreign defendant is not domiciled within the Kingdom of Thailand. Where a foreign defendant does not have domicile in Thailand, the plaintiff can submit a lawsuit to the court within which the plaintiff is domiciled.

International Service of Process

Where a lawsuit is filed in a Thai court against a foreign defendant who is not domiciled in Thailand, the plaintiff may conduct service of process to the foreign defendant in one of the following ways:

- 1 if the foreign defendant has appointed a service agent in writing in Thailand, the plaintiff may serve the summons to the foreign defendant via the service agent at the domicile of the service agent;
- 2 if the foreign defendant carries on business in any part of Thailand, whether in person or by agent, the service process can be made in Thailand at the place of business of the foreign defendant in Thailand, or at the domicile of the agent who carries on business on behalf of the foreign defendant;
- 3 Regulations have been recently issued allowing a court officer to serve plaints and other pleadings by courier with return receipt to parties domiciled in foreign countries.



Foreigners Participating in Thai Proceedings

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<p>International Service of Process</p> <p>Where a lawsuit is filed in a Thai court against a foreign defendant who is not domiciled in Thailand, the plaintiff may conduct service of process to the foreign defendant in one of the following ways:</p>	<p>If the foreign defendant has appointed a service agent in writing in Thailand, the plaintiff may serve the summons to the foreign defendant via the service agent at the domicile of the service agent</p>
	<p>If the foreign defendant carries on business in any part of Thailand, whether in person or by agent, the service process can be made in Thailand at the place of business of the foreign defendant in Thailand, or at the domicile of the agent who carries on business on behalf of the foreign defendant</p>
	<p>Regulations have been recently issued allowing a court officer to serve plaints and other pleadings by courier with return receipt to parties domiciled in foreign countries</p>

Choice of Foreign Law in Thai Proceedings

The parties' choice of foreign law as the law applicable to their contractual relationship is generally recognized and given effect by Thai courts, unless the application of the foreign law is contrary to the public order and good morals of Thai citizens.

Foreign law is considered as a matter of fact, and the party wishing to rely on the application of foreign law has a burden to prove such foreign law to the satisfaction of Thai court.

In practice, the proof of foreign law can be done by a testimony of a foreign law expert, law professor, or practitioner supported by foreign court judgments and precedents.

Recognition and Enforceability of Foreign Judgments

- A judgment rendered by a foreign court is not recognized or enforced directly in a Thai court.
- Thailand does not have any bi-lateral or multi-lateral treaties with any country for the recognition and enforcement of foreign judgments.
- A party who has obtained a foreign court judgment, and wishes to enforce the foreign judgment against the defendant in Thailand, is required to start new proceedings in a competent Thai court.
- The foreign court judgment may be submitted to the Thai court as evidence, or as supportive evidence for interpretation and application of the governing foreign law as chosen by the parties in their contract.

Dispute Resolution

7.1.4 Costs of Proceedings

Court fees payable upon the submission of a claim shall be calculated based on the amount of the claim or on the value of the property in dispute.



Less than THB 50 million

In a case where the amount of the claim or the value of the property does not exceed THB 50 million, the court fee shall be calculated at 2 percent of the amount of the claim or the value of the property with a cap at THB 200,000.



Exceeds THB 50 million

If the amount of the claim or value of the property exceeds THB 50 million, the first THB 50 million is subject to a court fee of THB 200,000 and the amount of the claim/value of property that exceeds THB 50 million shall be subject to an additional fee of 0.1 percent, without any cap.

Although, the ultimate liability for costs shall be borne by the party losing the case. However, the court has discretion to order that the costs be borne by the winning party, or that each party shall bear its own costs, with due regard being paid to the reasonableness and good faith of the parties' contentions or the conduct of the case by the parties. However, Thai courts will generally only award nominal attorney's fees.

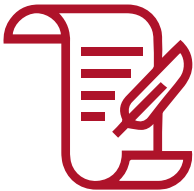
7.2 Arbitration

7.2.1 Arbitration in Thailand



Arbitration is an alternative means of dispute settlement. Parties to a dispute may mutually agree to submit their dispute to be resolved by a tribunal of arbitrator(s). The agreement to arbitrate can be made either before or after the dispute arises. When the agreement to arbitrate exists and is valid, a case which is filed to a national court can be stricken from the court's docket on motion by the counter-party.

7.2.2 Arbitration Law in Thailand (Lex Arbitri)



The Arbitration Act 2002 (the "**Act**") provides the legislative framework that governs the conduct of arbitration in Thailand. Thai arbitration law does not separate arbitration law regimes between domestic and international arbitrations. Therefore, both arbitrations seated in Thailand and those seated in other countries are subject to the same Act. The Act was largely adopted from the UNCITRAL Model Law on International Arbitration, in order to ensure its compliance with internationally recognized arbitration principles. The Act also provides limited grounds for Thai courts to refuse the recognition and enforcement of arbitral awards (see below), which are essentially the same grounds as stipulated in article V of the New York Convention 1958, to which Thailand is a member state.

7.2.3 Leading Arbitral Institutions in Thailand

		
<p>The Thai Arbitration Institution ("TAI") is a leading arbitration institution in Thailand. TAI is an organization under the supervision of the Office of the Judiciary of Thailand, but has its own arbitration rules, which were amended in 2017.</p>	<p>Another leading arbitration institution in Thailand is the Office of the Arbitration Tribunal of the Thai Chamber of Commerce and Board of Trade of Thailand. This institution has its own arbitration rules, which are largely based on the ICC International Arbitration Rules.</p>	<p>The Thai Arbitration Center ("THAC") was established in 2007 and recently announced its own arbitration rules, which are similar to the 2013 arbitration rules of the Singapore International Arbitration Centre.</p>

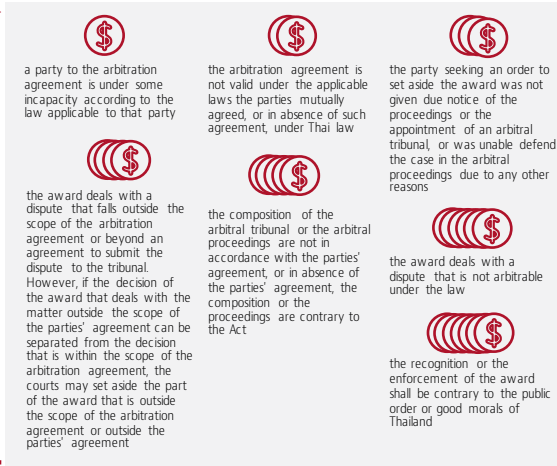
7.2.4 Recourse against arbitral award

An arbitral award shall be final and binding against the parties in the arbitration proceedings. Under the Act, neither party can appeal against the merit of the arbitral award, whether to the arbitral tribunal or the courts.

Recourse against arbitral award

An arbitral award shall be final and binding against the parties in the arbitration proceedings. Under the Act, neither party can appeal against the merit of the arbitral award, whether to the arbitral tribunal or the courts.

- The only available recourse for the losing party in arbitration is to apply to a competent court to set the award aside or to challenge the award at the time of enforcement
- A petition for setting aside an arbitral award must be submitted to the competent court within 90 days from the date of receipt of the award.
- The petition for setting aside must stipulate one or more of the following seven grounds to set aside the award



7.2.5 Recognition and enforcement of arbitral award

Thai courts generally recognize and enforce arbitration awards whether they are made in Thailand or elsewhere if the parties involved are entitled to rely on the terms of relevant international conventions to which Thailand is a party. At present, Thailand is a member state in the Convention on Recognition and Enforcement of Foreign Arbitral Award 1958 (the New York Convention 1958) and the Convention on the Execution of Foreign Arbitral Awards 1927 (the

Dispute Resolution

Geneva Convention 1927). Therefore, an arbitral award made in a member state under any of the above conventions will be recognized and enforced in Thai courts.

The petitioner	Opposing party
<p>To enforce an arbitration award, the petitioner (i.e. the party seeking enforcement of the award) must submit the original or certified copies of the originals, and Thai translations of the agreement and the award, as evidence.</p> <p>The petition for enforcement of the awards must be submitted to the competent court within three years of the date the awards become enforceable.</p>	<p>The party against whom the enforcement of an arbitral award is sought may apply to the court to refuse the recognition and/or enforcement of the award if:</p> <ul style="list-style-type: none">(i) the award has not yet become binding or has been set aside by a competent court; or(ii) there is one or more grounds identical to the grounds to set aside the arbitral awards stated in the previous section.

7.2.6 Costs and Fees



Costs and fees for arbitration proceedings

Unless the parties to an arbitration agree otherwise, the fees and expenses incidental to the arbitral proceeding and arbitrator remuneration, excluding attorney's fees and expenses, shall be determined by the arbitral tribunal in the arbitral award.

Where the parties agree to conduct the arbitration proceedings under institutional arbitration rules, the applicable rules may provide specific details on liability for costs and fees.



Costs and fees for enforcement of arbitral award in Thai courts

Where an arbitral award is brought to a Thai court for enforcement, the claimant is required to pay a court fee based on the amount of the claim as stipulated in the arbitral award.

Enforcement of a domestic arbitral award



Less than THB 50 million

If the amount of the claim does not exceed THB 50 million, the court fee shall be calculated at 0.5 percent of the amount of the claim with a cap at THB 50,000.



Exceeds THB 50 million

If the amount of claim exceeds THB 50 million, the first THB 50 million is subject to a court fee of THB 50,000 and the amount of the claim that exceeds THB 50 million shall be subject to an additional fee of 0.1 percent, without any cap.

Dispute Resolution

Enforcement of a foreign arbitral award



Less than THB 50 million

If the amount of the claim does not exceed THB 50 million, the court fee shall be calculated at 1 percent of the amount of the claim with a cap at THB 100,000.



Exceeds THB 50 million

If the amount of the claim exceeds THB 50 million, the first THB 50 million is subject to a court fee of THB 100,000, and the amount of claim that exceeds THB 50 million shall be subject to an additional fee of 0.1 percent, without any cap.

7.3 Class Action Suits

Class Action Suits

- 5 December 2015 - Legislation introducing class action law suits in Thailand came into effect
- 1 April 2016 - Secondary legislation in the form of regulations prescribed by the President of the Supreme Court came into effect
- The Thai class action system is available to plaintiffs in any area of civil litigation on an opt-out basis, subject to the court's certification of the proposed class.

Costs and damages

If a class action lawsuit is successful, the plaintiff class will receive up to 100 percent of the award claimed, and a legal costs payment of up to 30 percent of the total award claimed. A defendant in a class action suit could therefore be liable for up to 130 percent of the award claimed by the plaintiff class.

Impact and scope

Several class action lawsuits have now been commenced in Thailand and the new class action regime is expected to have a substantial impact on many areas of litigation following both local and global trends.



Labor



Environmenta



Product



Tort



Securities



Adhesion contract

The current legislation is highly administrative, dealing with, for example, the process of requesting a class action suit, trial procedure, the execution of judgements, and the appeal process. As such, a number of details on the scope of the regime, such as the precise criteria for certification of a class, have yet to be determined.

New normal for virtual proceedings introduced by the Supreme Court

The president of the Supreme Court has issued a ruling, driven by the continuing restrictions posed by the pandemic, that will allow court proceedings to be conducted remotely using electronic means. Key features pronounced in the ruling indicate the following.



When the court sees fit or when requested by the parties, the court may order the case to be administered using electronic means after taking into account the parties' accessibility to the required technologies



An e-filing system is implemented whereby all proceedings, including appeal and Supreme Court appeal stages, can be processed electronically

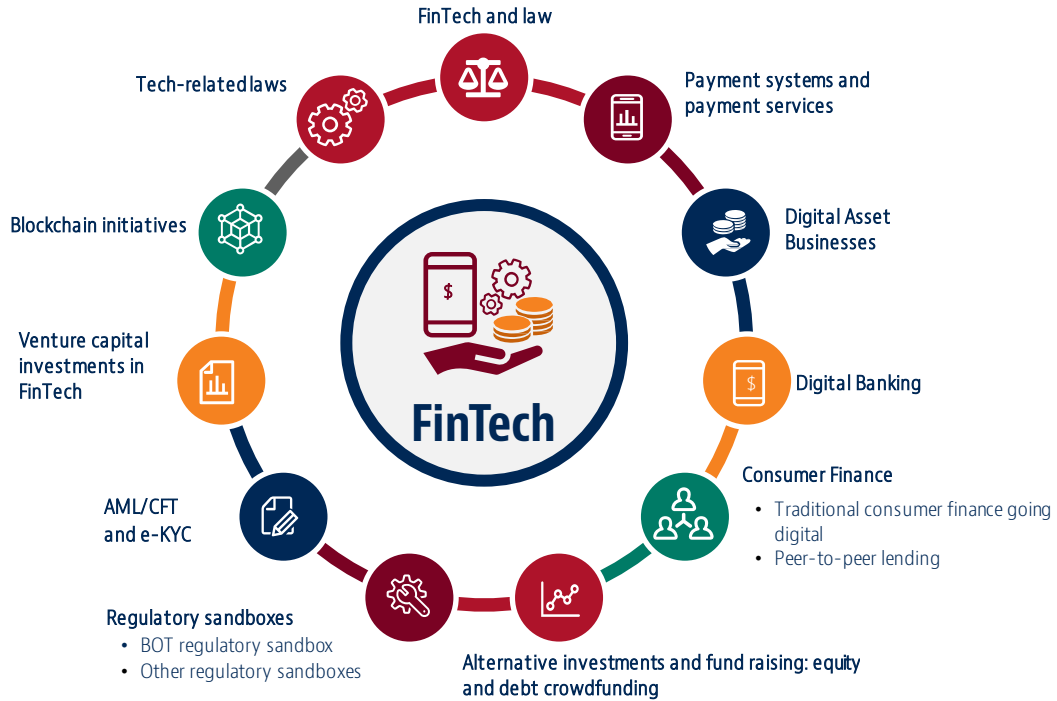


E-signatures will be recognized in all court documents such as complaints, examinations, and judgments



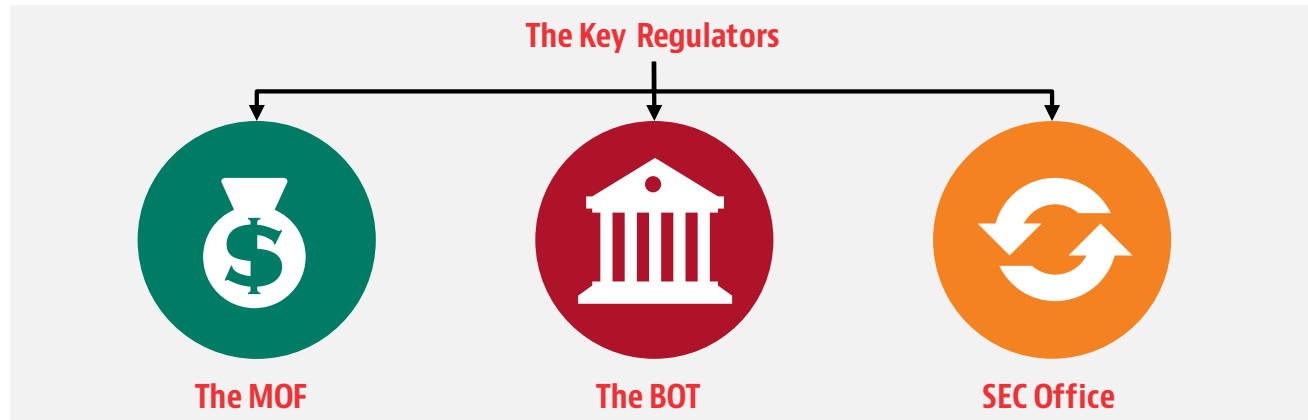
The presiding judge is prohibited from denying evidence solely due to its electronic form

8 FinTech



8.1 FinTech and law

FinTech — the implementation of technology into financial services — has become a growing trend in the Thai financial industry in recent years. While FinTech continues to develop in the Thai market, regulators, particularly the Ministry of Finance (the "MOF"), the Bank of Thailand (the "BOT"), and the Office of the Securities and Exchange Commission (the "SEC Office") have been active in regulating and promoting these activities in order to create a system that is secure for customers using financial services, and to promote the development of services offered by business operators.



FinTech

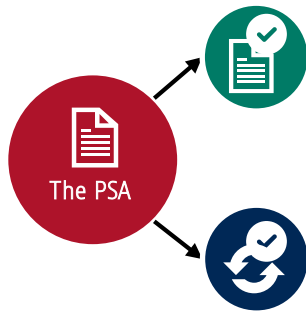
Regulations regarding FinTech can be found in various laws, including those supervising regulated financial-related businesses, and laws directly relating to technologies.

FinTech business operators should also be aware of: (i) other laws that may become relevant due to collaboration with other regulated entities, such as the Financial Institutions Business Act, B.E. 2551 (2008) (the "**FIBA**"), which regulates financial institutions including commercial banks and others; (ii) other laws that certain regulated businesses may be subject to, such as the Anti-Money Laundering Act, B.E. 2542 (1999), as amended (the "**AML Act**") and the Counter-Financing of Terrorism and Proliferation of Weapons of Mass Destruction Act, B.E. 2559 (2016) (the "**CFT Act**"); and (iii) other laws that may be involved due to the nature of the services, such as cross-border services and remittance, which may involve the Exchange Control Act, B.E. 2485 (1942), as amended. Some noteworthy laws and regulations relating to FinTech in Thailand are summarized below.

8.2 Payment systems and payment services

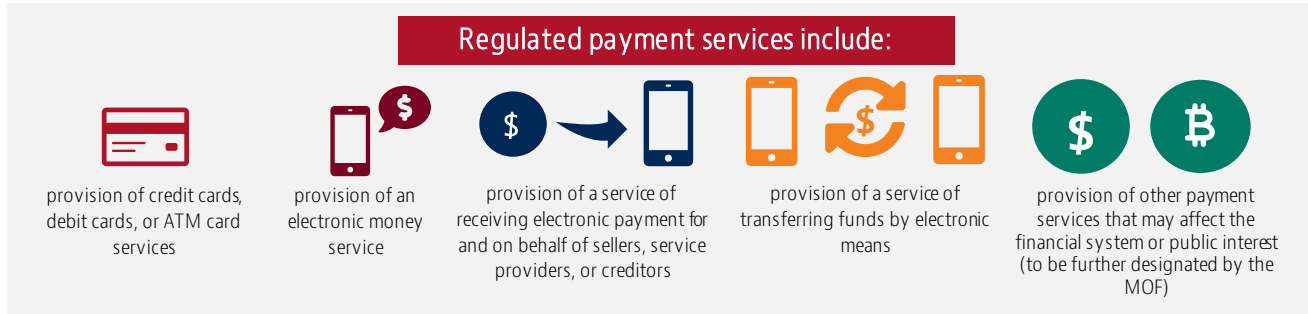
The Payment Systems Act, B.E. 2017 (2560) (the "**PSA**"), outlines the licensing and regulatory requirements for payment systems and payment services in Thailand, in place of the previous payment law. Under the PSA, there are three categories of regulated activities: (i) highly important payment systems (such as BAHTNET (Bank of Thailand Automated High-value Transfer Network) and ICAS (Imaged Cheque Clearing and Archive System) operated by the BOT); (ii) regulated payment systems; and (iii) regulated payment services.

Please see below the further details on the regulated payment systems and regulated payment services.



“Regulated payment systems” refer to the systems for fund transfer, clearing, or settlement with any of the following characteristics, and that has been designated as a regulated payment system by the MOF: (i) inter-institution fund transfer system; (ii) payment card network; or (iii) settlement system.

“Regulated payment services” refer to the provision of any payment instrument or payment channel service, for the purpose of paying for goods or services, transferring money, or carrying out other financial transactions, as set out under section 16 of the PSA.



Under the current regulatory regime, the BOT intends to create a level playing field among business operators within the payment industry, requiring business operators to obtain a license from the MOF or receive approval from the BOT, and to comply with ongoing obligations issued and supervised by the BOT. As an operator of these services is considered a "financial institution" under the AML Act, it is also subject to ongoing obligations under the AML Act and the CFT Act and subordinated regulations.

8.3 Digital Asset Businesses

The key law regulating businesses relating to digital assets, i.e. cryptocurrencies³ and digital tokens⁴, is the Emergency Decree on Digital Asset Businesses, B.E. 2561(2018) (the "**Digital Asset Decree**"), which came into effect on 14 May 2018. The main regulators under the Digital Asset Decree are the MOF and the SEC Office. This law regulates: (i) the offering of digital tokens to the public; and (ii) the operation of digital asset businesses that enable the trading and exchange of digital assets (i.e. cryptocurrencies and digital tokens).

³ "Cryptocurrency" means an electronic data unit created on an electronic system or network for the purpose of being used as a medium of exchange for the acquisition of goods, services or any other rights, or the exchange of digital assets, and includes any other electronic data units as specified in the notifications of the SEC.

⁴ "Digital token" means an electronic data unit created on an electronic system or network for the purpose of:

- (1) specifying the right of a person to participate in an investment in any project or business;
- (2) specifying the right of a person to acquire specific goods, specific services, or any other specific right under an agreement between the issuer and the holder, and includes any other electronic data units of right as specified in the notifications of the SEC.

Thailand's regulatory regime



Emergency Decree on Digital Asset Businesses, B.E. 2561

1. Offering of digital tokens

- Digital token
- Cryptocurrency
- Issuer
- Portal

2. Digital asset businesses

- Digital asset exchange
- Digital asset broker
- Digital asset dealer
- Digital asset fund manager
- Digital asset advisor



Emergency Decree on the Amendment of the Revenue Code (No.19), B.E. 2561

1. New types of income

- Share of the profit or any benefit derived from holding or having possession of digital tokens
- Capital gains from the transfer of a cryptocurrency or digital token

2. Withholding tax obligations



Cryptocurrency

- Electronic data unit
- Created on an electronic system or network



Digital Token

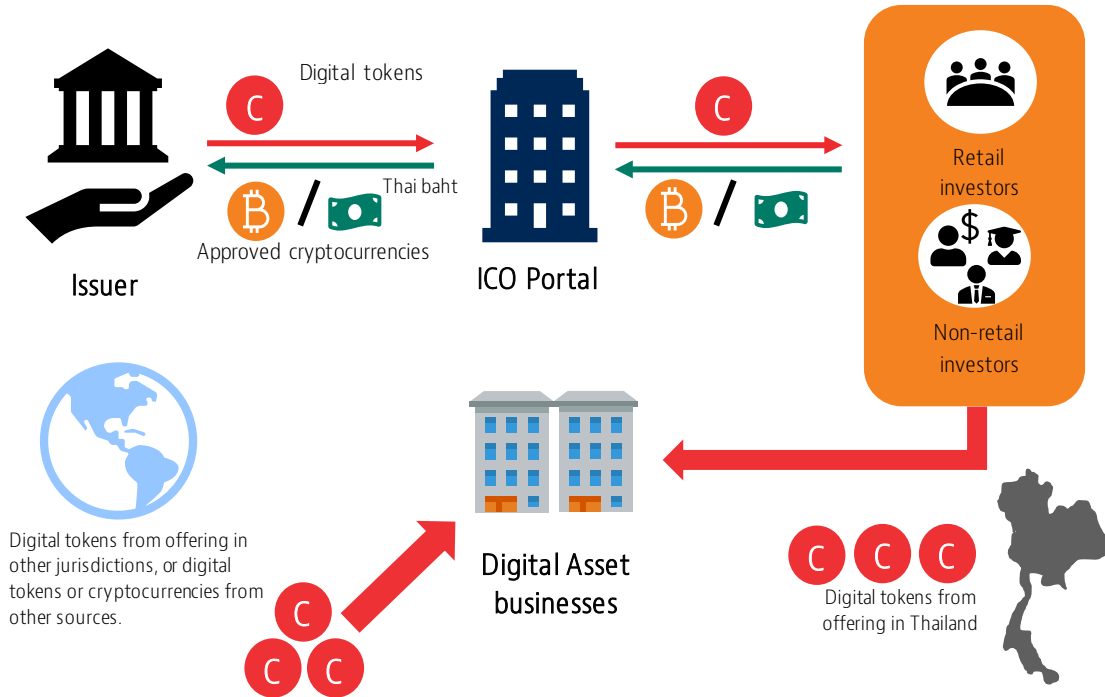
- Electronic data unit
- Created on an electronic system or network
- For determining:

- Being a medium for exchanging goods, services, rights, or Digital Assets
- Other electronic data unit as designated by the SEC
- Right of an investor to invest in any project or business (i.e. investment token); or
- Right to receive specific goods, services, or other right as agreed (i.e. utility token)
- Other electronic data unit as designated by the SEC

For a digital token offering, the issuer must offer digital tokens through an approved ICO portal⁵, file the registration statement and draft prospectus with the SEC Office and obtain prior approval from the SEC Office. The ICO portal will be responsible for conducting due diligence and screening processes. A token offering to retail investors must be limited to the amounts specified under the law (as of January 2021, THB 300,000 per retail investor).

⁵ "ICO portal" means a provider of an electronic system for an offering of newly issued digital tokens, who is responsible for screening the characteristics of digital tokens; qualifications of the issuer; and the completeness and accuracy of registration statement and draft prospectus or any other information to be disclosed through that service provider.

Thailand's regulatory regime on Digital Assets



In addition, those who act as a digital asset exchange, digital asset broker, digital asset dealer, digital asset fund manager, and/or digital asset advisor (the "**Digital Asset Business**") are required to submit an application to the SEC Office to obtain the relevant licenses from the MOF for operating such business. In the future, there may be additional types of activities relating to digital assets to be designated by the MOF. These business operators must also comply with certain on-going regulatory requirements.

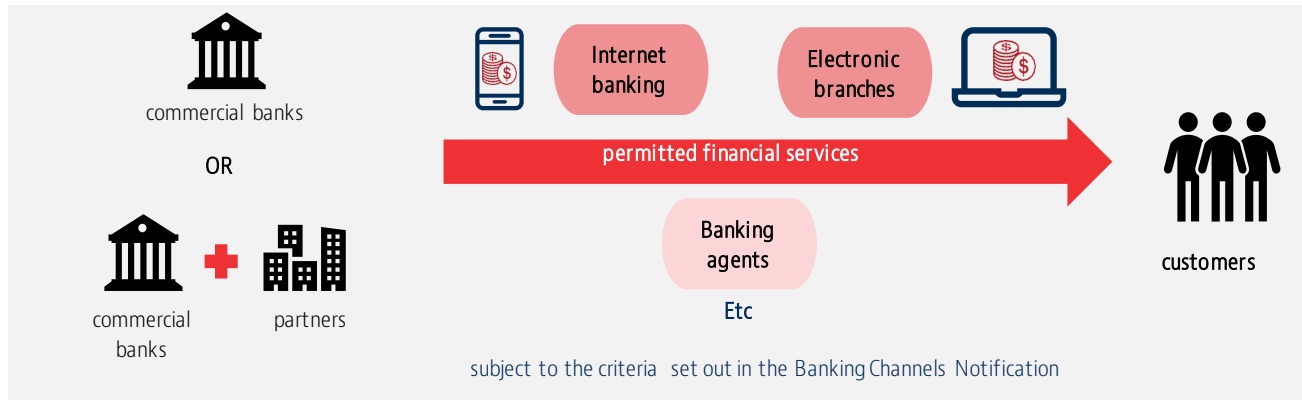
Currently, according to the Digital Asset Decree, operators of the Digital Asset Business and ICO portals are considered "financial institutions" under the laws regarding anti-money laundering. Therefore, they are also subject to ongoing obligations under the AML Act and the CFT Act and subordinate regulations.

8.4 Digital Banking

The BOT issued the Notification No. Sor Nor Sor 15/2563, effective from 4 September 2020 (the "**Banking Channels Notification**") to update and set out requirements and restrictions regarding use of means and channels for offering banking services to customers. This notification, among other things, regulates how commercial banks may use digital channels or business models with collaboration with partners in providing the permitted financial services to customers. Some examples include internet banking, mobile banking, electronic branches, banking agents, etc., subject to the criteria set out in the notification.

FinTech

Some examples include:



8.5 Consumer Finance

8.5.1 Traditional consumer finance going digital

Consumer finance — financing offered to individuals — is a regulated business under clause 5 of the Declaration of the Revolutionary Council Decree No. 58, which requires the business operator to obtain relevant licenses from the MOF, through either the BOT or the Fiscal Policy Office, depending on the type of financing offered.

The current types of regulated consumer finance include:



These financing activities differ in their purposes, types of financing, permissible interest and fees, qualifications of the borrowers, credit assessment criteria, and the maximum credit amount, etc. Some business operators who wish to digitalize their business processes in this industry will need to ensure that their digitalized business models and processes comply with the requirements and restrictions in operating these businesses.



Information-based lending

Due to recent amendments to the regulations, business operators offering personal loans and nano-finance loans can now use alternative data to assess the borrower's credit and ability to repay for certain types of loans - under the concept of "information-based lending."

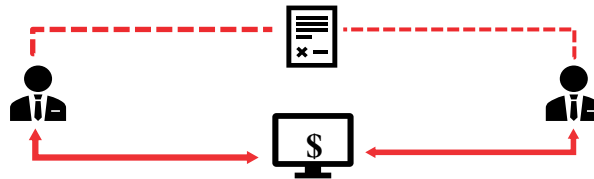


The digital personal loan business

In September 2020, the BOT introduced a sub-category type of personal loan business — the digital personal loan business. The intention is to promote financial inclusion and utilization of technologies and alternative data. Digital personal loan business operators will be able to offer loans of up to THB 20,000 per customer with a tenure of no more than six months for each loan agreement. Under this scheme, there is more flexibility for the business operators in assessing the credit of the borrowers using new technologies (e.g. ability or willingness to pay).

8.5.2 Peer-to-peer lending

The concept of peer-to-peer ("P2P") lending via an online service platform was introduced in 2019 as an alternative channel for individual borrowers to access funds, and also considered an alternative investment option for investors who are the lenders.





A business that wishes to operate a P2P lending platform ("**P2P Lending Operator**") must participate in the BOT's regulatory sandbox and obtain a license from the MOF through the BOT. The role of a P2P Lending Operator is to act as a "matchmaker" between borrowers and lenders (investors).

Certain key qualifications for a P2P Lending Operator include:



being a private or public limited company incorporated in Thailand and not a financial institution;



having registered, paid-up capital and shareholder equity not less than THB 5 million throughout the period of business operation; and



not less than 75 percent of its voting shares sold must be held by persons or juristic persons with Thai nationality.

In providing the services, the P2P Lending Operator is subject to certain requirements, such as safe-keeping of funds, and conducting know-your-customer procedures (KYC) and customer due diligence (CDD) on users of the platform. The regulations also prescribe, among other things, qualifications of borrowers, available loan types and limits,

suitability assessment for lenders, and disclosure of important information and investment risks that may affect investors' decision-making.

8.6 Alternative investments and fund raising: equity and debt crowdfunding



Crowdfunding



Crowdfunding — an alternative means of raising funds by private and public companies, by issuing shares or debentures via an online platform — is regulated under the Notification of the Capital Market Supervisory Board No. TorJor, 21/2562 re: Regulations on the Offering of Securities via Crowd Funding Portals.



A crowdfunding platform business operator ("**Crowdfunding Platform Operator**"), by acting as a matchmaker between a private or public company intending to raise funds and the investors, must obtain a license from the SEC.

Certain key qualifications for a Crowdfunding Platform Operator include:



(i) being a private or public limited company incorporated in Thailand; and



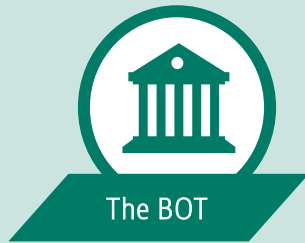
(ii) having registered paid-up capital of not less than THB 5 million.

In providing the services, the Crowdfunding Platform Operator is subject to certain requirements, such as having systems in place for the safekeeping of funds, data access, identifying and authenticating the users of the portal and their qualifications, including suitability assessment for investors. The regulations also prescribe, among other things, qualifications of the private or public company intending to raise funds through the portal, types of qualified investors and the investment limit, and types of debentures that can be issued through the portal, etc.

8.7 Regulatory sandboxes

To accommodate technological development, the regulators have implemented regulatory sandboxes that allow business operators to test innovative financial products and services in a limited environment under the supervision of the regulator before a full public launch.

Under the BOT's regulatory sandbox, firms that can participate include:



- (i) financial institutions;
- (ii) companies within the same financial business groups as financial institutions;
- (iii) non-banks under the supervision of the BOT;
- (iv) FinTech firms; or
- (v) technology firms.

These firms must be juristic persons incorporated in Thailand, having obtained all required licenses, and offer products relating to borrowing and lending, payment, other similar financial transactions, or related innovations, or any other financial transactions approved by the BOT. The products or services must consist of innovations employing new technology which is not already available in Thailand, or which will enhance the efficiency of existing products or services.

The BOT may in certain cases exempt applicants from specific regulations for as long as they are participating in the sandbox, which should not be longer than one year.

If the test results meet the goals initially presented to the BOT, the participant must submit an application for permission to offer the service or introduce the product as required by the law. However, if the goals are not met, or the applicant fails to comply with the conditions agreed upon during participation, the applicant must stop its service after notifying its consumers, and submit a report on the cessation of services to the BOT.

Under the March 2019 amendment to the regulation and guideline on the BOT regulatory sandbox, the BOT made certain changes with the aim to further support innovation and reduce the business operator's entry time to market. This guideline introduces the concept of an "own sandbox." This allows business operators that offer financial services to create their own sandboxes as long as the financial product or service is not: (i) a financial service or product which would be developed into an infrastructure or a standard practice for the financial sector that must be tested together; or (ii) a financial service or product for which the law requires the business operator to participate in the BOT sandbox.

8.7.1 Other regulatory sandboxes



The SEC Office and the Office of the Insurance Commission also introduced their own regulatory sandboxes for business operators who want to adopt certain technologies for certain types of products or services in the capital market and the insurance market, respectively

8.8 AML/CFT and e-KYC

AML/CFT

The AML Act applies to financial institutions and persons in professions listed under the AML Act (collectively regarded as reporting entities). Currently, the definition of financial institutions under the AML Act is being updated

to include new types of business operators, including those in the FinTech industry, such as Crowdfunding Platform Operators, digital asset business operators, ICO portal operators, and P2P Lending Operators.

There were also key recent updates during 2020 to the subordinate regulations that were issued under the AML Act include issuance of the new regulation regarding the customer due diligence ("CDD") process and issuance of certain sub-regulations thereunder to meet international AML/CFT standards.

The key changes in the new regulation regarding CDD process include:



- (i) enhancement of the requirements regarding risk assessment, customer risk levels, and levels of CDD measures to be applied;
 - (ii) updated threshold at which CDD process is required to be conducted to be in line with the threshold for conducting the Know-Your-Customer (KYC) process (covering customer identification and verification of their identities);
 - (iii) granting of exemptions for reporting entities from the requirement to identify beneficial owners of certain types of customers; and
 - (iv) updated requirements regarding the information required to be included in the wire transfer to be also applicable to cross-border and domestic transfers under THB 50,000.
-

As of November 2020, there are potential sub-regulations to be issued under the new regulation regarding the CDD process, which is still subject to further consideration of the Anti-Money Laundering Office (the "AMLO").

KYC

KYC



The BOT also issued the Notification No. SorNorSor. 19/2562 re: **Know Your Customer (KYC) Rules for Opening of Deposit Account by Financial Institutions**, to improve rules around customer identification and verification process (for both face-to-face and non-face-to-face on-boarding means). In addition to the requirements under anti-money laundering law, financial institutions must also comply with additional requirements prescribed in this notification.

The notification also allows the use of reliable advance technology (e.g. biometric comparison technology) and relevant infrastructure (e.g. National Digital ID (NDID) platform) in the process.

On 13 March 2020, the BOT issued the Notification No.SorNorChor. 1/2563 re: **Know Your Customer (KYC) Rules for Use of E-money Services**, to improve rules around customer identification and verification process (for both face-to-face and non-face-to-face on-boarding means). This notification applies to e-money service providers under the PSA. In addition to the requirements under anti-money laundering law, e-money service providers must also comply with additional requirements prescribed in this notification.

The notification also allows the use of reliable advance technology (e.g. biometric comparison technology) and relevant infrastructure (e.g. National Digital ID (NDID) platform) in the process.



For capital markets, the SEC Office issued Guideline Notification No. NorPor. 5/2563 re: Guideline for Using Technology to Conduct Know Your Customer (KYC) Process, including identity proofing, authentication, client due diligence, and ongoing/enhanced KYC steps, which becomes effective from 1 January 2021.

8.9 Venture capital investments in FinTech



Venture capital funding and investments in Thailand continue to grow. Led by the FinTech sector, the industry continues to see more and more capital influx from foreign venture capitalists, in addition to domestic funds, seeking unicorns in the region.

New business models are continuously being pioneered and tested in Thailand, which has a large number of strong corporate venture capitalists (“CVCs”) that are looking to transform and disrupt their own corporates from the inside out. Regulators are receptive of the need to try new business ideas, and have supported startups in various ways in cooperating with larger, more established entities.



Additionally, the government and regulators have provided support in numerous ways to address the need for venture capital funding. Public funding, matching funds, accelerators, access to industry networks, and other resources have been made available with the help of public bodies.

Furthermore, the government has issued several pieces of legislation and amendments to existing laws in place that would stimulate venture capital investments. As of November 2020, some new laws and regulations that are being drafted and may shape the future of the industry include provisions that will enable Thai companies to operate and raise funds in a more efficient manner, thereby increasing their access to funding.



One example is the issuance by the Thai SEC (*Notification of Capital Market Supervisory Board No. Tor.Jor. 17/2563 (Private Placement Offer by SMEs)*) of new regulations that would allow qualified startups and SMEs to issue convertible debt instruments similar to convertible loan notes that are readily available in some other jurisdiction. This opens up more opportunities for startups and SMEs alike to have access to funding from external investors.

8.10 Blockchain initiatives

Blockchain initiatives

In recent years, there have been a few high-impact applications and developments of blockchain technology in Thailand.



One example is the **Thailand Blockchain Community Initiative**, launched in March 2018 as a collaboration between almost all of commercial banks in Thailand and large business enterprises to adopt blockchain technology to improve the Thai market. Its first project is to offer “blockchain-based letters of guarantee” through a single, shared platform. Currently, the platform is being used for real transactions among some participants, and is being further developed for wider application between all participants.

As of November 2020, other important blockchain projects include:



1. '**National Digital ID (NDID) Platform**' — infrastructure with blockchain-based technology that will facilitate the authentication and identification of individuals and businesses.



2. '**Wholesale Central Bank Digital Currency (Project Inthanon)**' — a collaborative milestone led by the BOT to co-develop a new way of conducting interbank settlements using wholesale central bank digital currencies.



3. '**Distributed Ledger Technology (DLT) Scripless Bond Project**' — project by the BOT, in collaboration with the Public Debt Management Office, Thailand Securities Depository, Thai Bond Market Association, and selling agents, aimed to speed up bond allocation to retail investors, reducing the time from 15 to two days.



4. '**Electronic Government Procurement : e-GP**' — a project launched by the Comptroller General's Department with an aim to facilitate the submission of documents issued by participating banks and, in effect, expedite the entire process.



5. '**VAT Refunds for Tourists**' — blockchain technology was employed to create a system and an identification method on mobile phones for the purpose of filing for tax returns.



6. '**Scriptless Bond**' — initiated by the Ministry of Finance to harness the power of blockchain in, among other projects, the issuance of government bonds for the public.



7. '**Digital Court**' — Thailand's Office of the Judiciary becomes the first in the world to install blockchain system as a means to collect and maintain data of nation-wide courts, and the system is expected to go live in 2021.

8.11 Tech-related laws

Given the nature of FinTech, business operators in this industry are advised to take into account the laws directly relating to technologies used in business operations, including, but not limited to: the ETA; the Personal Data Protection Act, B.E. 2562 (2019), the Computer Crime Act, B.E. 2550 (2007), as amended; and the Cybersecurity Act, B.E. 2562 (2019). For further explanation on the related laws please see the relevant sections in this guidebook.

9 Healthcare

Thailand has specific Acts that govern specific products, in particular:

drugs	medical devices	foods
cosmetics	hazardous substances	narcotics and psychotropic substances
	herbal products	



Each Act lays out the products governed by each specific Act, and provides for definitions and

The principal regulatory authority is the Food and Drug Administration ("FDA"), which was established by the Ministry of Public Health. The FDA's roles and responsibilities include: pre-marketing control and post-marketing control.

9.1 Pre-marketing control

9.1.1 Drugs

Pre-marketing control covers product registration and related licences and permits (such as manufacturing facilities, importer's office and storage, product registration, and advertising).

Healthcare

The pre-marketing control of drugs is divided into two main steps for those who wish to import, manufacture or sell drugs in Thailand:

1. Obtain an appropriate licence.

2. Apply for the relevant product (formula) registration licence.



The FDA then reviews the application file to check the quality, efficacy and safety of the drug.

It takes approximately **210 working days** for a new drug registration licence to be granted, according to the current citizen manual, and the application file can be submitted in paper or via the e-submission as the eCTD (electronic Common Technical Dossier) has not yet been fully implemented.

The dossier requirements for drug applications must follow the rules on ASEAN Harmonisation or the ICH Guidelines ("International Council on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use").



This means that manufacturers wishing to sell their products in ASEAN countries are required to prepare dossiers in a common format.



The first approval of a new drug is conditional only.



Which allows the new drug to be sold solely through hospitals and medical clinics, and is subject to a one or two-year safety monitoring programme (SMP), depending on the product risk level*

*The Notification of the Food and Drug Administration Re: the Criteria on the Risk-Based Approach Safety Monitoring Program, dated 9 October 2560 (2017).

Reports from the SMP will then be considered when a subsequent application is made for an unconditional approval.

An unconditional approval will allow the drug to be sold through retail pharmacies, except otherwise specified by the FDA to be sold in hospitals or medical clinics for continuous monitoring.



Healthcare

9.1.2 Medical devices

Medical devices are categorised into three categories and each category has its own specific pre-marketing procedures. However, the FDA has re-categorised the medical devices following.

ASEAN Medical Device Directive (AMDD)



Which is done according to risk assessment, in regards to the pre-marketing procedures.



NOTE: It must comply with the Common Submission Dossier Template ("CSDT") of ASEAN

As a general first step, a local manufacturing facility requires a medical device establishment licence to manufacture and an importer requires a medical device establishment licence to import.

9.2 Post-marketing controls



Monitor manufacturing facilities and product quality and safety after approval has been granted.

The objective is to ensure continuing compliance with both previously approved requirements and current standards, legislation and notifications.

The FDA randomly selects and spot-checks products in the market occasionally and tests them to ensure that the ingredients and specifications are true to the pre-approved product information.



GMP Certification

Pharmaceutical manufacturing facilities that have previously been approved are inspected to ensure continuing compliance with the good manufacturing practices ("**GMP**") certification following the standards of the Pharmaceutical Inspection Co-operation Scheme ("**PIC/S**").

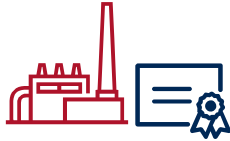
Medical device manufacturing facilities that have previously been approved are inspected with the GMP certification as announced by the FDA, or equivalent or higher standards such as ISO 13485.

Post-marketing controls on medical devices involve medical devices vigilance system to monitor the medical devices that are on the market, the development of regulatory standards, and product improvement.

To ensure Thailand meets ASEAN standards, Thailand has issued procedures for reporting of defective devices, adverse events and field safety corrective actions, and set up a post-marketing alert system to keep track of medical devices on the market that are unsafe.

Healthcare

9.3 Manufacturing controls



A factory license from the Ministry of Industry.

AND



A manufacturing license from the FDA.

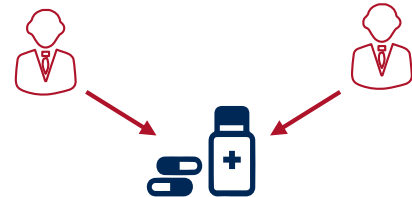
***In accordance to Section 12 Drug Act, BE 2510 (1967).**

A manufacturer of modern drugs must have at least two pharmacists to manage the operation and monitor drugs at the premises during business hours

All manufacturers are required to have GMP certification that complies with the standards of PIC/S.



GMP Certification



An entity that intends to manufacture any category of medical device in Thailand must have its business premises

inspected and registered with the FDA and obtain an establishment license to manufacture,⁶ and is required to comply with GMP certification as announced by the FDA.

9.4 Advertising and promotion

Each category of drugs and medical devices has different requirements regarding advertisement and promotion. Some products are more restricted than others.



For example, specially controlled drugs and dangerous drugs cannot be advertised to the public.⁷ Or, several medical devices can only be advertised to healthcare professionals, while other medical devices can be advertised to the general public.⁸ The specific requirements regarding advertising and promotion are prescribed by the FDA.

The main requirements for advertising drugs and medical devices include: (i) the content and wording of the advertisement must be submitted to the FDA for approval before advertising; and (ii) the content of the advertisement must comply with the FDA's conditions, e.g. must not contain information that is false, exaggerated, misleading or different from the details as registered with the FDA.

⁶ Section 15 Medical Device Act, BE 2551 (2008).

⁷ Section 88(6) Drug Act, BE 2510 (1967).

⁸ Section 4.5 Notification on Guidelines, Procedures and Restrictions on Medical Device Advertising, BE 2553 (2010).

Healthcare

In addition to the Drug Act and the Medical Device Act, several other laws and regulations are relevant, including the Consumer Protection Act, BE 2522, the Direct Sales and Direct Marketing Act, BE 2545, the Medical Professionals Act, BE 2525, and the ASEAN Harmonisation Guidelines covering topics such as labelling requirements and interaction with medical professionals.

9.5 Distributors and wholesalers



To sell drugs, a selling licence relevant to the type of business in question is required from the FDA. This may be a wholesale licence, a retail licence or a pharmacy licence. The main condition is that the seller must have such facilities as are prescribed by the ministerial regulations. A pharmacist must be in attendance during business hours to dispense drugs and to monitor activities.

A selling licence is also required for the sale of certain types of medical devices.

9.6 Classification of products

The Drug Act generally categorises drugs as modern, traditional, dangerous, specially controlled, household, packaged (other than those categorised as dangerous or specially controlled) and herbal.⁹ The Minister of the MOPH has the authority to classify drugs into one of these categories.¹⁰

For licensing purposes:

FDA classifies drugs into seven main categories:

- New drugs
- New Generic drugs
- Modern Drugs
- Traditional Drugs
- Herbal
- Household
- Orphan

Each category of drugs has different restrictions and requirements

⁹ Section 4 Drug Act, BE 2510 (1967).

¹⁰ Sections 76 and 78 Drug Act, BE 2510 (1967).

Healthcare

The FDA also announced the Herbal Product Act. B.E. 2562 for some types of products that contain herbals. The FDA is in the process of preparing subordinate laws.

The Medical Device Act categorises medical devices into three main categories: medical devices that require a license; medical devices the details of which must be notified; and general medical devices, each with different restrictions and requirements. However, in practice, for licensing purposes, the FDA categorises medical devices according to risk assessment following the AMDD.

9.7 Imports and exports

An entity that intends to import drugs into Thailand must obtain an import licence from the FDA.¹¹

An entity that intends to import any category of medical device must obtain a medical device establishment license to import.¹²

Under the Drug Act and the Medical Device Act, there is no requirement for a licence to export drugs or medical devices. However, an export certificate (similar to a free sale certificate) may be required by Thai Customs.

A business in Thailand that wishes to manufacture medical devices in accordance with the quality standards, labelling standards or other details specified by an overseas purchaser, and to export those devices without selling them in

¹¹ Section 12 Drug Act, BE 2510 (1967).

¹² Section 15 Medical Device Act, BE 2551 (2008).

Thailand, can apply for a manufacturing export licence that will expedite the application process and make it faster than a normal manufacturing licence application process. The procedures and conditions for obtaining a manufacturing export licence are as prescribed by the FDA.¹³

9.8 Enforcement

Enforcement is initiated when spot-checks in the market reveal that products are not up to standard, or when a complaint is made to the FDA about concerns regarding drugs or medical devices.

Some follow-up questions might be asked, and proof requested from the complainant. The FDA will then take over, and begin by gathering preliminary information about the product and the responsible person. The product in question will then be analysed, and the results will be compared with the product licence and registrations, and any relevant legislation, to determine infractions.

The FDA may vary in its investigation and inspection procedures from case to case, and if necessary, the FDA may enlist the police for assistance. The relevant legislation provides the penalties for infractions.

¹³ Section 34 Medical Device Act, BE 2551 (2008).

10 Importing, Exporting, and Trade Remedies

10.1 Import Controls

Thailand does not have a single main import control legislation. There are many laws and regulations that deal with import control in Thailand. Most of them are covered by specific laws that deal with specific issues or purposes.

The Export and Import Act, B.E. 2522 (1979), one of the general laws governing import and export controls, authorizes the Ministry of Commerce to designate classes of goods that are subject to import and export controls. Controls usually take the form of permission and licensing, or prohibition. The categories of import-controlled goods are subject to change at any time under Notifications of the Ministry of Commerce, so any prospective importer should always check for the latest Notifications from the Ministry. The Export and Import Act also established the Foreign Trade Board.

In addition to the Export and Import Act, a number of goods are subject to import controls under other laws, such as the following:



the Drug Act, B.E. 2510 (1967) stipulates that in order to import a modern drug, one must obtain a license from the Food and Drug Administration, Ministry of Public Health;



the Minerals Act, B.E. 2560 (2017) stipulates that without appropriate permission, an importer is prohibited from importing tin ore, metallic tin containing tin ore from 99.95% onwards, chrysotile and mercury;



the Ancient Monuments, Antiques, Objects of Art, and National Museum Act, B.E. 2504 (1961) stipulates that antiques or objects of art, whether registered or not, must not be delivered without permission from the Director-General of Fine Arts;



the Armament, Ammunition, Explosives, Fireworks, and Imitation Firearms Act, B.E. 2490 (1947) prohibits all persons from producing, buying, possessing, using, ordering, or importing military hardware, ammunition, or explosive devices unless with a license from the Ministry of Interior. An importer or manufacturer must also obtain the appropriate license from the Ministry of Defense in order to process military equipment, ammunition, and explosive devices, or the raw materials for their manufacture; and



the Cosmetics Act, B.E. 2558 (2015) stipulates that for the purpose of protecting public health, any importer of controlled cosmetics must provide the name, location of the office, and place of manufacture or storage of the cosmetics; the name, category, or kind of cosmetics to be imported; and major components of such cosmetics.

10.2 Export Controls

The Export and Import Act also authorizes the Ministry of Commerce to subject products to export control. The Act stipulates many classes of goods that are subject to export controls. Currently, approximately 40 classes of goods are under export controls.

Similar to the import controls, Thailand does not have a single main export control legislation. There are many laws and regulations that deal with export control in Thailand. Most of them are covered by specific laws that deal with specific issues or purposes. Certain goods require export licenses under other laws, such as under the Excise Tax Act, B.E. 2560 (2017). According to the Excise Tax Act, tobacco leaves, snuff or tobacco cannot be exported from Thailand without permission from the Director-General of the Excise Department.

Certain goods such as sugar and rice are subject to export licenses under the Export Standards Act, B.E. 2503 (1960). The purpose of the Export Standards Act is to ensure that such goods comply with set quality standards when being exported from Thailand.

In addition, exporters of agricultural commodities may find that membership in certain trade associations is mandatory. These trade associations may impose their own regulations for membership, which act as additional export controls.

The Trade Control on Weapons of Mass Destruction Related Items Act ("**WMD Act**") was enacted on 30 April 2019 and its main provisions became effective on 1 January 2020. The WMD Act regulates all items that are related to the

spread of weapons of mass destruction ("**WMDs**"). The regulated items include, WMDs themselves, armaments and dual-use items ("**DUI**") as well as tangible and intangible items that could have the commercial interest, technology or even software. Controlled activities under the WMD Act not only include export, but also re-export, transshipment, transit, being a brokerage and other actions with the purpose of spreading WMDs.

MOC is the responsible authority under the WMD Act and has the power to issue subsequent rules and regulations under the WMD Act, including a list of specific items that will be regulated under the WMD Act, controlled activities of each items, and requirements in order to engage in the controlled activities. It is expected the Ministry of Commerce will subsequently issue a list of goods that are considered DUI, which will be based on the latest EU Dual-Use Item List of 2018. Any person who wishes to engage in the controlled activities for the goods falling under this list will need a license from the MOC (e.g. an export license for export of DUI).

Relevant regulations and notifications under the WMD Act are also currently being drafted to ensure that the most important regulations and notifications, especially the rules and regulations regarding steps, procedures and requirements for licenses and self-certification (including an Internal Compliance Program conditions and requirements and their relevant benefits). The Ministry of Commerce is now setting up the Electronic Export Control System (e-Trade Management of Dual-Use Items) in order to facilitate the export license and certification.

It is also expected that the MOC will issue the regulations and notifications under the WMD Act in the beginning of 2021.

10.3 Prohibited Products

There are certain prohibited goods which are prohibited from the import into and export out of Thailand i.e. obscene objects/literature/pictures, pornographic materials, goods with Thai national flag, narcotics, fake currency/bonds/coins, fake royal seals/official seals, intellectual property rights infringing goods, and counterfeit trademark goods.

10.4 Exchange Control

Exchange control in Thailand falls under the jurisdiction of the BOT, as entrusted by the Ministry of Finance. In addition to the import and export permissions and licenses discussed above, business operators must, therefore, comply with Thai Exchange Control laws.

10.5 Customs Duty

Customs duties are an important part of the Thai taxation system. The relevant governing acts are the Customs Act, B.E. 2560 (2017) and the Customs Tariff Decree, B.E. 2530 (1987). Duties are collected on both imports and selected exports.

The classification of goods for duty purposes is based upon The Harmonized Commodity Description and Coding System (commonly referred to as the "Harmonized System" or "HS Code") and is, therefore, consistent with the classifications used by most of Thailand's trading partners. Duties are levied on an ad valorem basis or at a specific rate, whichever is higher. As of 1 January 2000, Thailand adopted the GATT Valuation Agreement.

Imported articles are subject both to duties and to VAT, which is also administered by the Customs Department. Export duties are imposed on only a few items, including rawhide and wood. Exports are taxable at a 0 percent VAT rate.

10.5.1 Customs Procedures Related to Taxes and Duties

Customs procedures for goods arriving in Thailand are similar to those in most other countries. An importer must file an entry form, plus other requisite documents (e.g. bill of lading, invoice, and packing list) with the Customs Department through an electronic channel called the "Paperless System." The duties and VAT are due upon the arrival of a vessel. For certain goods, import requirement(s) must be fully complied in various forms, which include a registration, an approval and an import license before the importation of the goods into Thailand. When total duties have yet to be determined or urgent clearance is required, a deposit may be paid. Finally, landing and storage charges must be paid before the goods are released.

Imported goods can also be stored in bonded warehouses. Generally the obligation to pay duties arises at the time of import, whereas stored goods are assessed at the tariff rate in effect on the date of release.

In addition, the imported goods can be stored in customs free zones or free trade zones, in which the duty will be levied at the time of bringing the goods out of the customs free zones or free trade zones to be used or distributed in Thailand. The duty calculation is based on a nature of goods, a customs value and a corresponding customs tariff and a duty rate at the time which the goods are released from the customs free zones or free trade zones.

Importing, Exporting, and Trade Remedies

To expedite customs clearance, an advance entry system allows importers to file the required forms, including the bill of lading, prior to the arrival of the goods in Thailand. The amount of duties can then be determined with reference to the bill of lading. Once the goods arrive, the duties and port charges need only be paid before the goods are released from the customs custody. It is often worthwhile to use the services of an experienced agent to assist with clearing goods through customs.

Shipping agents often provide their own clearing agents.

Where goods accompany passengers arriving by air, sea, or land, a declaration is required. If necessary, customs officers, at their discretion, can assess the value of the imported goods and collect any shortfall duties.

10.5.2 Generalized System of Preferences

The Generalized System of Preferences ("**GSP**"), which was introduced in 1971, allows industrialized countries to grant non-reciprocal tariff reductions to developing countries as an exception under the WTO rules to the principle of most-favored-nation treatment. Under the GSP, tariff preferences have been granted to Thailand by certain countries, i.e. the U.S., Japan, Canada, Switzerland, Norway, and Russia. Such tariff preferences may exist in the form of duty-free admission of industrial products and semi-industrial products; and duty-free or reduced duty admission of certain agricultural products.

The European Union has modified their GSP, excluding certain products exported from Thailand which will be delisted as they meet the threshold prescribed by the European Union. Under the new system, upper-to-middle income countries ("**UMICs**") will be removed from the program, and trade preferences will shift to least-developed countries.

Thailand has been considered a UMIC since 2010. To this end, Thailand has not been eligible for GSP tariff privileges from the European Union since 31 December 2014.

10.5.3 Bilateral and Multilateral Agreements

Thailand has implemented bilateral trade agreements with various countries including Australia, New Zealand, Japan, Peru, India, and Chile. The negotiation between Thailand and the European Union is currently being suspended. Thailand is also a member of ASEAN, which was established in 1967. ASEAN is currently comprised of 10 members including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

The ASEAN also implemented a number of FTAs with its trading partners, including ASEAN-Australia and New Zealand, ASEAN- Japan, ASEAN-China, ASEAN-Japan, and ASEAN-India. In addition, Thailand has implemented a new FTA between ASEAN-Hong Kong which became effective from 11 June 2019 onwards. The latest and the largest FTA, the Regional Comprehensive Economic Partnership ("RCEP"), is still being negotiated between the 10 ASEAN members and its six trading partners, namely, Australia, China, India, Korea, Japan, and New Zealand with a view to expand the economic cooperation among them. They have planned to conclude the negotiation and determine to sign deal in November 2020.

The customs duty on goods to be imported from and exported to the parties of these bilateral and multilateral agreements are reduced or eliminated in accordance with the agreed terms.

Importing, Exporting, and Trade Remedies

At the end of 2015, Thailand and Cambodia jointly established the "Joint Thailand-Cambodia Committee on Trade" in order to explore and expand trade and investment, especially border trade between two countries.

In addition, ASEAN also looks to upgrade its FTAs with China, Japan, and South Korea, which includes further reduction of tariffs and increased goods, services, investment, and customs procedures. Furthermore, the FTA between India and ASEAN has also come into force to increase more investment opportunities.

10.6 The Anti-dumping and Countervailing Act

As a member of the WTO, Thailand is bound by the Agreement on Implementation of Article VI of GATT 1994 (the "**WTO Anti-dumping Agreement**"). To this effect, it implemented the Anti-Dumping and Countervailing Act, B.E. 2542 (1999), which took effect on 30 June 1999. The provisions of the AD Act are in line with Thailand's international obligations as a WTO member.

In 2019, Thailand has amended the Anti-Dumping and Countervailing Act, B.E. 2542 (1999) resulting in the enactment of Anti-Dumping and Countervailing Act (No. 2), B.E. 2562 (2019) (the "**AD Act**"). This new act was promulgated in the Government Gazette on 22 May 2019 and became effective on 18 November 2019.

The amendment introduces "anti-circumvention" measures which is a new concept under Thai laws. The main purpose of the anti-circumvention provisions is to enhance the efficiency of anti-dumping and countervailing measures under the AD Act to ensure that domestic industries are protected against imports that are found to circumvent existing anti-dumping or countervailing measures.

10.6.1 Dumping

Based upon strict criteria for the determination of dumping, a product is considered to have been dumped when its export price is less than the normal value (i.e. the price at which the product is offered for sale on the domestic market of the exporting country). The dumping margin is the amount by which the export price is lower than the normal value.

10.6.2 Requirement of Material Injury in Dumping

It is essential to establish, through investigation, whether increased imports of the dumped product are causing material injury or a threat of material injury to the domestic industry, or material retardation to the establishment or development of the domestic industry. Thus, in this context, the AD Act adopts the condition of a causal link between the dumped imports and the alleged injury to the domestic industry, as required by the WTO Anti-dumping Agreement.

10.6.3 Initiation of Dumping Proceedings

Before imposing anti-dumping duties, it is important to undertake an investigation to determine whether dumping activities are occurring; whether its domestic industry has been or will be injured; and whether there exists a causal link between the antidumping activities, and the injury to the domestic industry. In order to deal with the first issue, the Department of Foreign Trade ("DFT"), Ministry of Commerce may conduct a dumping investigation on its own initiative, or if a petition is submitted by or in the name of the domestic industry producing a similar product

Importing, Exporting, and Trade Remedies

suspected of being dumped. While the DFT is empowered to conduct investigations to determine the existence of both dumping and injury, the authority is required to proceed with the investigation to find a fair comparison between normal value and export price. Upon the conclusion of an investigation, the DFT must refer its findings and opinions to a body called the Anti-dumping and Subsidies Committee (the "**Committee**") for deliberation and final determination.

10.6.4 Provisional Measures

If the preliminary investigation indicates that dumping and consequent injury exist, and if it is essential to prevent injury to the domestic industry, the Committee may impose provisional measures by levying a provisional duty or requiring submission of a guarantee for such provision duty. However, such duty must not exceed the dumping margin estimated at the time of preliminary investigation.

10.6.5 Price Undertakings with Respect to Dumping

Pursuant to the preliminary determination, a foreign exporter or the DFT, in order to stop the dumping proceedings, may propose a price undertaking. However, the DFT may refuse to accept the offer made by the foreign exporter and any price undertaking agreement will be valid only if the Committee approves it.

10.6.6 Anti-dumping Duties

The imposition of anti-dumping duties must be made on a non-discriminatory basis, in an amount necessary to remove the injury, and in any case, not greater than the dumping margin. The use of definitive anti-dumping duty

must be terminated no later than five years after its imposition or after its most recent review (if that review covers both dumping and injury), unless it is determined that the termination could likely lead to a continuation or recurrence of dumping. The Committee's final determination on the imposition or review of anti-dumping duties is subject to judicial review by the Intellectual Property and International Trade Court, provided that an appeal is made to the Intellectual Property and International Trade Court within 30 days of notification of such determination.

10.6.7 Maximum Time-limit for Dumping Proceedings

Once initiated, the AD Act requires that the overall dumping proceedings must be concluded within one year. However, if it is deemed necessary, this period may be extended for an additional period not exceeding six months.

10.6.8 Review of Anti-dumping Duties

One year after anti-dumping duties are levied, the existing duties may be reviewed by the Committee, either at its own initiative or at the request of an interested party. The review must be concluded within one year of its initiation.

10.6.9 Subsidies

Under the AD Act, a "subsidy" is a benefit received by reason of actions undertaken by the government on:

1. Provision of financial contribution such as:

- i. a government practice which involves a direct transfer of funds (e.g. grants, loans, and equity infusion) or potential direct transfers of funds or liabilities (e.g. loan guarantees);
- ii. government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- iii. government provides of goods or services other than general infrastructure or purchases goods; or
- iv. a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i)-(iii) above which would normally be vested in the government; or

2. Any form of income or price support for the purpose or increase export and decreasing import of a certain product.

However, the granting of an exemption from or reduction of taxes or duties borne by a like product, when destined for domestic consumption, or the granting of tax rebates not exceeding the taxes and duties that have accrued, does not constitute a subsidy under the AD Act.

10.6.10 Specific and actionable subsidies

The AD Act further provides that specific subsidies that cause injury to the domestic industry are actionable. The AD Act sets out the criteria in determining whether a subsidy is a specific subsidy. For example, the AD Act clearly states that a subsidy that is explicitly granted by the government only to certain enterprises shall be considered as a specific subsidy. Subsidies that are granted pursuant to criteria or conditions specified under laws, regulations or rules that are generally applicable, do not constitute specific subsidies, provided that such criteria or conditions are strictly adhered to.

10.6.11 Subsidy Consultations/Remedies

Upon receiving a request from a representative acting in the name of the domestic industry, or from the DFT to consider countervailing measures, before initiating the investigation, the DFT will notify the government of the relevant country to attend for consultation regarding the subsidies and injury to the domestic industry.

10.6.12 Calculation of Countervailing Duties for Subsidies

A countervailing duty shall be calculated on the basis of the benefits received during the period of investigation and in terms of the subsidization per unit of subsidized product. A countervailing duty may be levied only to the extent necessary to remove injury and cannot exceed the amount of the subsidy found to exist. In determining the benefits received, various rules apply, as supplemented by rules and procedures stipulated in Ministerial Regulations. Such Ministerial Regulations may also be issued to deal with any case specifically.

10.6.13 Other Procedures Relevant to Subsidies

The procedures applicable to anti-dumping in relation to export prices, normal value, dumping margins, material injury, domestic industries, investigations, the imposition of duties, periods for duty imposition, and administrative/judicial reviews, shall apply to subsidies. However, the agreement to cease subsidization, between an exporter and the DFT, shall also be subject to approval by the exporting country.

10.6.14 Circumvention

As mentioned above, the anti-circumvention provisions were introduced in Thailand for the first time under the recent amendment. The amendment was driven by numerous complaints received by the Ministry of Commerce from domestic industries that foreign manufacturers and exporters have found various ways to export their goods to Thailand by circumventing the duties imposed under the AD Act, ultimately causing injury to their operations.

10.6.15 Elements of Circumvention

The three elements of circumvention are as follows:



There is a change of pattern of trade which stems from an operation relating to manufacturing or business for which there is insufficient due cause or economic justification other than to avoid the imposition of the anti-dumping or countervailing duties;



As a result of such change of pattern of trade, the remedial effects of the anti-dumping or countervailing measures are being undermined in terms of the prices or quantity; and



There is evidence of dumping when comparing the normal values previously established for the like product and the export price of the goods under consideration or the price of the like product of the party alleged for circumvention.

To elaborate, slight modification of the goods, exports of goods to Thailand through one or more third countries, and imports of semi-finished or parts for assembly in Thailand or third countries, could be considered as operations relating to manufacturing or business that may be deemed as a change of pattern of trade.

10.6.16 Initiation of Circumvention Proceedings

Anti-circumvention investigations can be initiated upon the request of: (i) the Department of Foreign Trade; or (ii) a party or a group of parties acting in the name of the domestic manufacturers of subject goods which is supported by manufacturers producing not less than one-quarter of total domestic production quantity.

10.6.17 Determination to Extend Anti-Dumping and Countervailing Duties

After the investigation, if the Anti-dumping and Subsidy Committee has determined that there is circumvention of an existing anti-dumping or countervailing measure, the duties under those measures will be extended to the imports of the circumvented goods. The rate will not exceed the highest anti-dumping or countervailing duty rate imposed on the goods from the exporter's country.

10.6.18 Maximum Time-limit for Circumvention Proceedings

Generally, the overall investigation process must be completed within nine months. However, it can be extended up to three months where necessary.

10.7 The Safeguard Act

Safeguard measures are deemed to be temporary measures that are used in the face of increased levels of imports, which have seriously injured or threaten to seriously injure a country's domestic industry. Similar to the Thai anti-dumping law, Thailand has enacted the Safeguard Measures on Increased Imports Act B.E. 2550 (2007) (the "**Thai Safeguard Act**") as it is bound by the WTO Agreement on Safeguards (the "**WTO Safeguard Act**"). The provisions of the Thai Safeguard Act are in line with Thailand's international obligations as a WTO member. The Ministry of Commerce and the Ministry of Finance are the authorities responsible for carrying out the implementation of this Act.

The Thai Safeguard Act aims to protect the domestic industry from serious injury resulting from an increase in importation of certain goods. The Thai Safeguard Act provides the authorities with the power to: (i) collect safeguard

duty; (ii) impose quotas on the importation of certain goods; and (iii) impose any other measure as necessary in order to decrease the importation of certain goods. These powers may be exercised in the case that the authorities find, as a result of investigation as requested by the interested party, that there has been an increase in importation of certain products and such increase has caused or will soon cause serious injury to the domestic industry. However, it is pertinent to note that unlike the antidumping duties and countervailing duties, safeguard measures do not set out detailed procedures, but instead impose basic requirements such as requiring that an investigation be conducted pursuant to procedures already published, requiring public notice, and requiring that interested parties have the opportunity to present their views.

11 Insurance and Insurtech

11.1 The Insurance Acts

Insurance companies are subject to two main legislations: the CCC, and the Life Insurance Act B.E. 2535 (1992) or the Non-Life Insurance Act B.E. 2535 (1992) (each, the "**Insurance Act**").

Example of activities governed by the Insurance Act

Business licenses

Financial stability of insurance companies

Insurance agents and brokers

11.2 Regulatory Body

The Office of Insurance Commission (the "**OIC**") oversees and regulates all aspects of the insurance business operations in Thailand. The OIC is an independent regulatory organization and reports to the Ministry of Finance.

11.3 Types of Insurance Operators



Insurance Companies

an insurer must obtain an insurance business license from the Ministry of Finance with the approval of the cabinet.

Permitted corporate forms:

- (i) Locally established company
- (ii) Branch of an offshore insurance company



Insurance Agents

Insurance agents can generally be individuals only. Each insurance agent must have obtained a license from the OIC.



Insurance Brokers

Insurance broker can be either an individual or a juristic person.

The Licenses for **life insurance brokerage** and **non-life insurance brokerage** are separate licenses.

An insurance brokerage company can also do businesses in addition to its brokerage business, e.g. advertising, marketing, and other service businesses.



Reinsurance

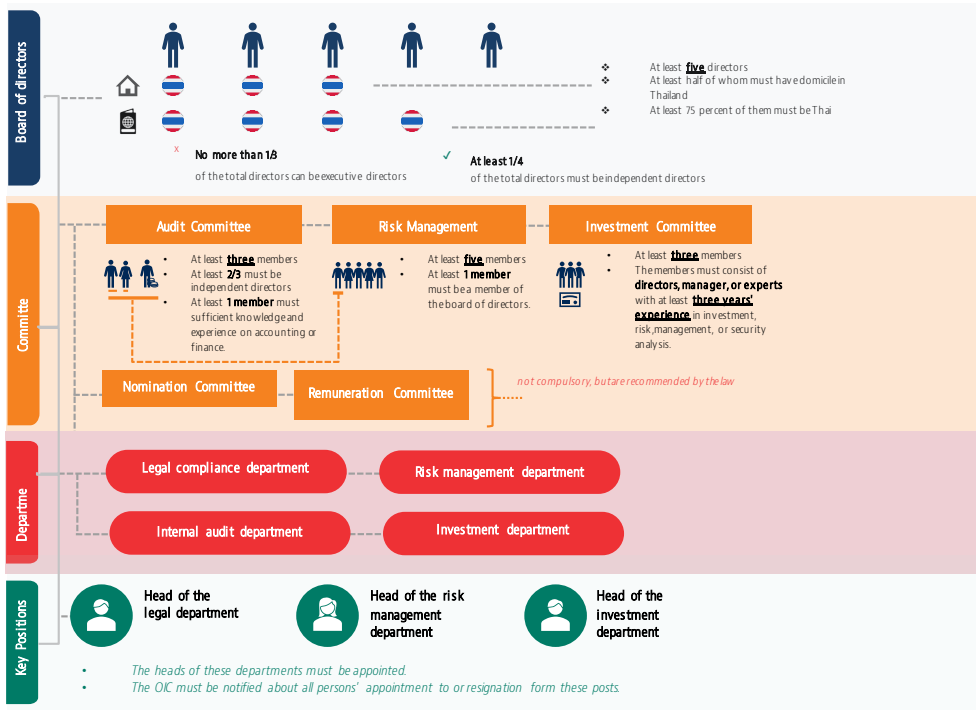
An offshore reinsurer that is not licensed in Thailand can reinsure insurance products, or enter into the reinsurance agreement with insurance companies in Thailand, as long as the offshore reinsurer does not conduct a reinsurance business in Thailand



11.4 Corporate Governance

The Notifications of the Insurance Commission Re: Corporate Governance of Life and Non-life Insurance Companies B.E. 2562 (2019) were enforced in August 2019, except for certain provisions which will come into effect on 1 January 2020. The notifications prescribe the qualifications, duties, and responsibilities of the director of insurance companies, as well as specify how directors should supervise each of the functions in an insurance company.

Key requirements on good corporate



11.5 Insurtech

With insurers incorporating technology into their operations and the OIC pushing towards a digitized and centralized supervision, insurers must embrace insurtech to ensure that they can compete efficiently.

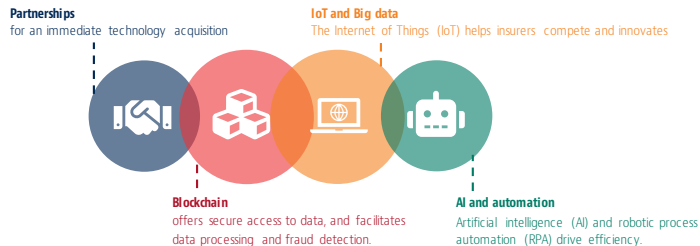
A substantial number of insurers are offering their products and services through online platforms. Some insurers and brokers have developed and launched mobile applications in order to provide services directly to customers.

11.5.1 Technological disruption and changed consumer behavior



- Consumer behaviors have changed significantly.
- Consumers now demand products that are customized to their financial capabilities and needs.
- They are no longer brand loyal.

11.5.2 Key insurtech trends



11.5.3 Insurtech in Thailand

Insurtech has gained support from the OIC and is positively welcomed by local insurers. At this stage, existing players in the market are working to transform their existing operations, while new players introduce fresh innovations to attract customers.



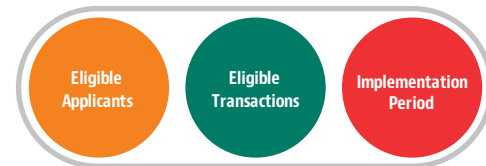
The OIC's official legislation on online sale, insurers in Thailand have been focusing on improving their online distribution channel. In accordance with the OIC regulations, the most basic features of these websites contain details about policies' coverage, term, premium, compensation, and indemnification payments.

Some insurers have started to develop their websites to include a **special feature** that allows site visitors to personalize their products for example, online liver-char services and mobile phones.



11.5.4 The New Insurance Regulatory Sandbox

The sandbox regime was first introduced in May 2017. Having gathered feedback over the past three years, the OIC recently decided to replace the former criteria, intended to better suit Thailand's InsurTech ecosystem. Some key changes are outlined below.



In addition to the conventional regulatory sandbox, which is regulated by the OIC, successful applicants are now allowed to create their own sandbox by implementing their initiatives without the OIC's close supervision. Therefore, the level of supervision from the OIC and requirements to be complied by the applicants will be less than those required under the regular sandbox scheme.

11.5.5 SupTech

The OIC is now exploring SupTech – the technology that is used by supervisory bodies to supervise players in the insurance industry and automate their supervisory tasks – to be used in its supervisory functions.



Insurance and Insurtech

The OIC is also considering a digital platform called the **Insurance Bureau System (IBS)**, a database which help collect, systemize, and analyse data uploaded by insurers. The OIC also plans to use the data for developing an insurance fraud database.

In addition, the OIC plans to develop the **Gateway Application** as a platform which connects policyholders, insurance companies, and the OIC. Through the Gateway Application, policyholders can submit questions or complaints, as well as verify information on their policies.

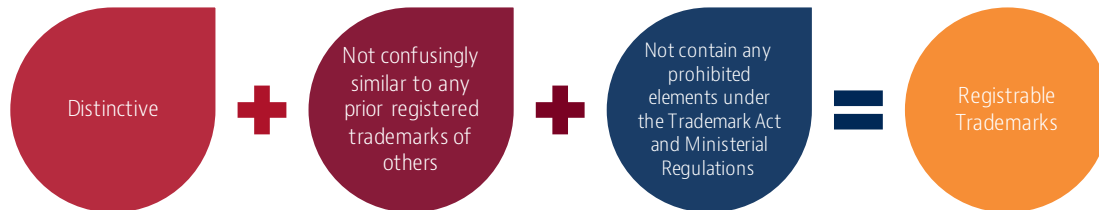
12 Intellectual Property

Thailand has laws in place relating to the protection of intellectual property, including trademarks, patents, copyright, plant varieties, layout designs of integrated circuits, and trade secrets. These laws meet Thailand's obligation, as a member of the World Trade Organization ("WTO"), to provide internationally-recognized standards of protection.

12.1 Trademarks

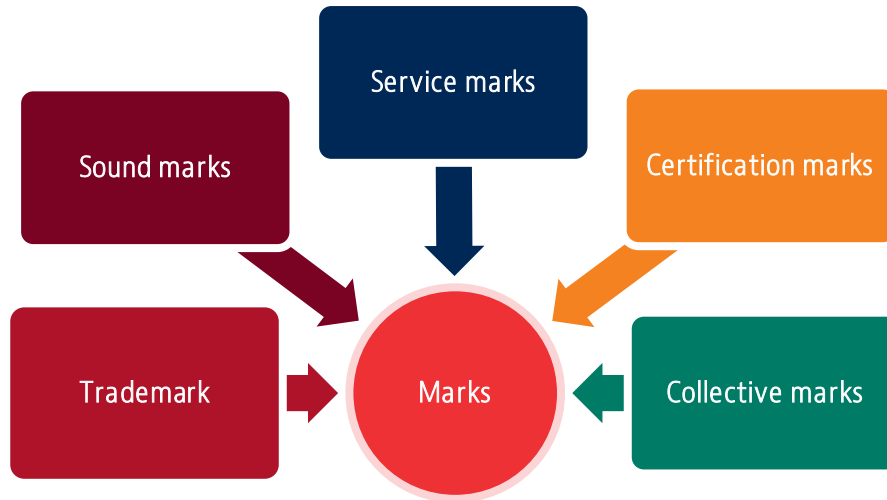
Trademark protection is available through registration with the Department of Intellectual Property, Ministry of Commerce, under the Trademark Act, B.E. 2534 (1991), as amended by the Trademark Act (No. 2) B.E. 2543 (2000) and Trademark Act (No. 3) B.E. 2559 (2016) (collectively, the "**Trademark Act**").

Although unregistered trademarks are protected under the Penal Code, registration under the Trademark Act affords the best protection against infringement and counterfeiting.



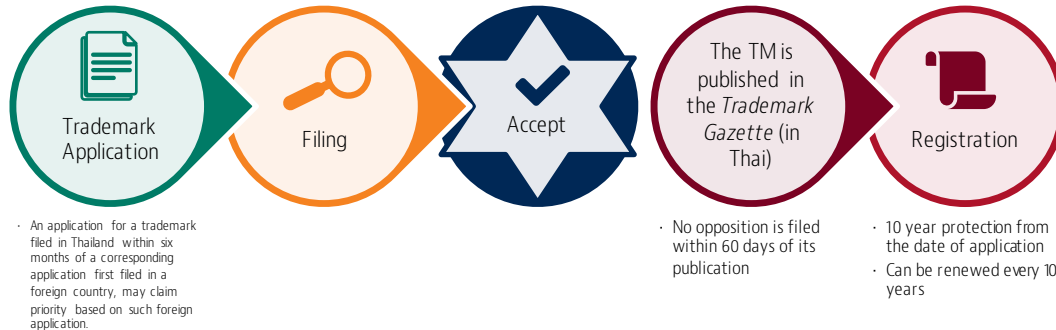
Intellectual Property

To qualify for registration, a mark must satisfy the definition of "trademark," as set forth by the Trademark Act, which now includes sound marks. That is, the trademark must be distinctive, not confusingly similar to any prior registered trademarks of others, nor contain any prohibited elements under the Trademark Act and Ministerial Regulations. The Trademark Act also provides for registration and protection for service marks, certification marks, and collective marks.



Once accepted, a trademark application is published in the *Trademark Gazette* (in Thai). If no opposition is filed within 60 days of its publication, the trademark application is then further processed for registration. Trademark protection lasts for 10 years from the date of application and can be renewed every 10 years.

Successful Trademark Process



Thailand deposited its instrument of accession to the Madrid Protocol with the World Intellectual Property Organization ("WIPO") on 7 August 2017 and became the 99th member of the Madrid System. As such, the Madrid Protocol came into force for Thailand on 7 November 2017. International trademark applications are now available for Thailand.

Intellectual Property

There are specific provisions for licensing registered trademarks. Licensing can be achieved by contract, in accordance with the CCC. However, the license agreement must be in writing and be registered with the Trademark Registrar. A licensing agreement must have terms and conditions that enable the licensor to ensure sufficient quality control for products manufactured under the agreement, an indication as to whether the license is exclusive or not, and a list of the trademarks subject to the license and the goods covered in order to meet registration requirements. Failure to register the licensing agreement will result in it being deemed void and unenforceable.

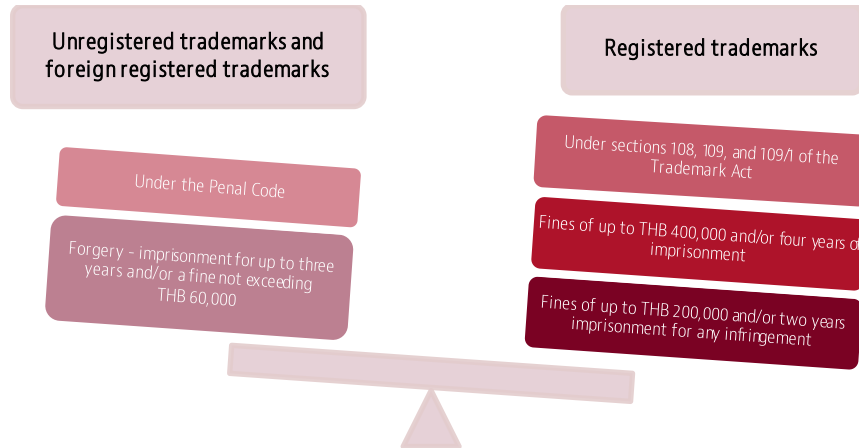
Registration is, in itself, no guarantee against infringement. Therefore, the owner of a trademark, its local distributor, or a trademark agent should actively monitor for possible trademark infringements. If detected, the trademark owner may initiate legal action against the infringing party. This might include filing an opposition to a published application to register a similar mark, lodging a complaint with the police, directly submitting a criminal complaint to the Courts, or initiating a civil action. Penalties for trademark violations under sections 108, 109, and 109/1 of the Trademark Act include fines of up to THB 400,000 and/or four years of imprisonment, or THB 200,000 and/or two years imprisonment for any infringement, provided the trademark is registered in Thailand.

The Trademark Act imposes heavier penalties than those available under the Penal Code. According to the Trademark Act, in the event that an offender liable for penalty is a juristic person, if the offense is committed by an order, instruction, act, non-intrusion, or omission of a director, manager, or any other person responsible for the operation of such juristic person, that director, manager, or other responsible person shall be deemed a joint offender with the juristic person and also be liable for the penalty prescribed for the offense.

A trademark owner may also seek protection of his or her registered trademark at the border by way of recording the mark with the Customs Department. After recordal, whenever Customs comes across products it believes infringe upon the recorded mark, it will temporarily detain the shipment and contact the owner of the mark or its agent in Thailand to verify whether the detained goods are genuine or not. If the goods are confirmed as counterfeit, they will be seized for destruction and fines will be imposed on the importer.

The Penal Code offers protection for both unregistered trademarks and foreign registered trademarks, whether or not they are registered in Thailand. For a case of "forgery," the penalties are imprisonment for up to three years and/or a fine not exceeding THB 60,000.

Penalties for Trademark Violations



In addition to the measures above, the Amendment to the Thai Computer Crime Act (the "**Computer Crime Act**") was approved by the National Legislation Assembly in December 2016. The Computer Crime Act was since published in the Government Gazette on 24 January 2017 and officially became active in May 2017. Among the numerous provisions set forth in the Amendment, Section 20 empowers competent officials to file petitions with the court to block computer data that violates IP law. Under the provision, upon request by a competent official under the relevant IP laws or at the request of an inquiry officer under the Criminal Procedure Code, an official authorized under the

Amendment, with approval from the Minister of the Ministry of Digital Economy and Society ("**MDES**"), shall file such a petition with the court to block infringing data. If the court grants the requested order, the officer may then take steps to independently block such data or order the service provider to do so. Currently, an IP rights holder can request that the DIP, as a competent body per the relevant IP laws, file petitions with the court to block infringing data.

12.2 Patents

The Patent Act, B.E. 2522 (1979), as amended by the Patent Act (No. 2) B.E. 2535 (1992) and the Patent Act (No. 3) B.E. 2542 (1999) (collectively, the "**Patent Act**") protects patents, petty patents, and product designs granted in Thailand. On 24 December 2009, Thailand became a member of the Patent Cooperation Treaty (the "**PCT**").

Requirements for a patent include novelty, inventive step, and industrial application. A simpler alternative to the patent is the petty patent. Requirements for a petty patent include novelty and industrial application. Similarly, requirements for a product design include novelty and industrial application. Product designs can include handicrafts.

Some inventions cannot be patented, including those relating to innovations in naturally-occurring microorganisms, animals, and plants; scientific and mathematical rules and theories; computer programs, *per se*; methods of diagnosis, treatment or cure of human and animal diseases; and inventions that might constitute a threat to public order, morality, health, or welfare.

Intellectual Property

The Patent Act does not protect a patent granted in a foreign jurisdiction unless a corresponding patent application has been properly filed and granted in Thailand.

Patents are valid for 20 years, and product design patents are valid for 10 years. A petty patent is valid for six years, but may be renewed twice, with the first renewal being for two years and the second for two more years (for a total of 10 years). A patent gives the holder the exclusive right to make, use, import, sell, and allow others to make, use, import, and sell products using the patent, design patent, or petty patent, and to use the words "Thai Patent" or "Thai Patent Pending."

A patent holder is entitled to license his or her patent. Under certain circumstances, a compulsory license may be issued to another party for a patent. This may occur if the claimed subject matter of a patent or pending patent application is not being produced, sold, or publicly offered, or if it is being sold at an unreasonably high price three years after the patent was issued or four years after the patent application was filed but remains pending. The license agreement for the patent must be in writing and must be registered in compliance with the requirements and procedures stipulated in the relevant Ministerial Regulation.


Penalties for the infringement of patents granted in Thailand may involve imprisonment for up to two years, a fine not exceeding THB 400,000, or both. In the event that an offender liable for penalty is a juristic person, if the offense is committed by an order, instruction, act, non-intrusion, or omission of a director, manager, or any other person responsible for the operation of such juristic person, that director, manager, or other responsible person shall be deemed a joint offender with the juristic person and also be liable for the penalty prescribed for the offense. In 2018,

Thai patent practice introduced an electronic-filing system (e-filing) for the filing of patent, design and petty patent applications without submission of hard copies of electronic documents.





In 2019, the Thai patent office introduced new patent examiner guidelines which include several changes, such as clarifying descriptions and elaboration of the patent process, adding the stage of formality check and new document forms. However, there has been no significant change to the substantive examination.

In October 2020, the Department of Intellectual Property (the "DIP"), in accordance with the order from the Cabinet Secretary's Office, merged the amendments to the Thai Patent Act regarding invention and design that were published between 2017 and 2019. Said most recent draft amendment includes:



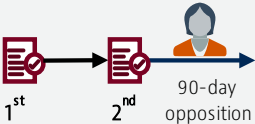
Patent and Petty Patent:

SIGNIFICANT CHANGES	
	<ul style="list-style-type: none"> o surgical methods will be non-patentable subject matter
	<ul style="list-style-type: none"> o the concept of access to genetic resources and benefit sharing has been added

Intellectual Property

	✓ declare the source of origin of genetic resources	✓ submit prior informed consent (PIC) and mutually-agreed terms (MAT) by the provider of the genetic resources
	○ export of drugs to least-developed countries or countries that do not have their own production capacity is permissible under a compulsory license	
○ the registration of patent license agreements will be changed to be a recordation system 		
	○ conversion of a patent application into a petty patent within 3 years from filing an application but before grant, and vice versa	

Patent:

SIGNIFICANT CHANGES			
	<ul style="list-style-type: none"> ○ two rounds of publication <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> <ul style="list-style-type: none"> ✓ 1st: after 18 months from the filing date in Thailand or the first priority date </td> <td style="width: 50%; padding: 5px;"> <ul style="list-style-type: none"> ✓ 2nd: when the substantive examination is completed </td> </tr> </table>	<ul style="list-style-type: none"> ✓ 1st: after 18 months from the filing date in Thailand or the first priority date 	<ul style="list-style-type: none"> ✓ 2nd: when the substantive examination is completed
<ul style="list-style-type: none"> ✓ 1st: after 18 months from the filing date in Thailand or the first priority date 	<ul style="list-style-type: none"> ✓ 2nd: when the substantive examination is completed 		
	<ul style="list-style-type: none"> ○ time limit to submit a request for substantive examination is reduced <div style="text-align: center; margin-top: 10px;"> <div style="border: 1px solid gray; padding: 5px; display: inline-block;">5 years from the publication date</div> ➔ <div style="border: 1px solid gray; padding: 5px; display: inline-block;">3 years from the filing date</div> </div>		
	<ul style="list-style-type: none"> ○ an interested person is allowed to file an opposition within 90 days from the second publication date 		

Intellectual Property



- o other changes made to comply with Patent Cooperation Treaty (PCT) regulations

Petty Patent:

SIGNIFICANT CHANGES



- o an interested person is allowed to **request for examination** of a petty patent within 6 years from the filing date

Patents / Petty Patents:

- surgical methods will be non-patentable subject matter;
- the concept of access to genetic resources and benefit sharing which requires the patent applicant to declare the source of origin of genetic resources, derivative and traditional knowledge and submit documents

showing prior informed consent (PIC) and mutually-agreed terms (MAT) by the provider of the genetic resources, derivative and traditional knowledge;

- iii. export of drugs to least-developed countries or countries that do not have their own production capacity is permissible under a compulsory license;
- iv. time limit to submit a request for substantive examination is reduced from five years from the publication date to three years from the filing date in Thailand;
- v. conversion of a patent application into a petty patent within 3 years from filing an application but before granting, and vice versa;
- vi. allowing an interested person to request for examination of a petty patent within 6 years from the filing date;
- vii. two rounds of publication, i.e. the first publication will take place promptly after 18 months from the filing date in Thailand or the first priority date; and the second publication will take place when the substantive examination is completed regardless whether said patent application will be granted or rejected;; a third party observation can be submitted by any person during the period between the first and the second publication;
- viii. allowing an interested person to file an opposition within 90 days from the second publication date;






Intellectual Property

- ix. the registration of patent license agreements will be changed to be a recordation system;
- x. other changes made to comply with Patent Cooperation Treaty (PCT) regulations.

Design Patents:

- i. addition of protection for partial designs, principle and related designs;
- ii. removing the requirement to submit a claim;
- iii. the scope of design patent protection has been added, and it will rely on clear drawings, while the title of the design, a claim (if any) and description (if any) can be incorporated to interpret the scope of protection;
- iv. revision of protection of product design patent period to be 5 years and allow two renewals, each for 5 years (for a total of 15 years); and
- v. changes made to comply with the Geneva Act of 1999 under the Hague Agreement Concerning the International Registration of Industrial Designs.

Design Patents:

SIGNIFICANT CHANGES	
	<ul style="list-style-type: none"> o addition of protection for partial designs, principle and related designs
	<ul style="list-style-type: none"> o removing the requirement to submit a claim
	<ul style="list-style-type: none"> o the scope of design patent protection has been added, and it will rely on clear drawings, while the title of the design, a claim (if any) and description (if any) can be incorporated to interpret the scope of protection
 5 years	<ul style="list-style-type: none"> o revision of protection of product design patent period to be 5 years and allow two renewals, each for 5 years (for a total of 15 years)
	<ul style="list-style-type: none"> o change made to comply with the Geneva Act of 1999 under the Hague Agreement Concerning the International Registration of Industrial Designs

12.3 Copyrights

Copyrights in Thailand are governed by the Copyright Act, B.E. 2537 (1994), as amended by the Copyright Act (No. 2) B.E. 2558 (2015), Copyright Act (No. 3) B.E. 2558 (2015) and Copyright Act (No. 4) B.E. 2561 (2018) (collectively, the "Copyright Act").

Protection



The Copyright Act provides copyright protection on a range of creative works, expressed in the form of literature; drama, visual and graphic arts; music, audio-visual works, cinema, and sound recordings; sound, video, and other broadcasts; or any other work in the literary, scientific, or artistic domain of the author, irrespective of the mode or manner in which the works are expressed, and includes the rights of performers; to manage and protect their information, take reasonable measures to do so, and be protected from any actions meant to undercut such reasonable measures.



Uncopyrightable

Copyright protection does not extend to steps, processes, systems, organizations, or instructions for use. Nor does copyright protection cover thoughts, principles, findings, or theories in science or mathematics.



The author of a work holds the copyright to that work. The Copyright Act defines "author" as the person who makes or causes to come into being any creative work in which copyright subsists. Under the Copyright Act, the acquisition of copyright is automatic and need not be registered. A copyright can be transferred or assigned either in whole or in part. It can also be licensed to another person for use or for exercising rights in relation to it.

Conventions & Treaties

The Copyright Act stipulates that Thailand will also accord copyright protection on a "National Treatment" basis to citizens of, and works created or first published within, countries that are parties to international copyright conventions to which Thailand is also a party.

Intellectual Property

Thailand is a signatory member of the Berne Convention for the Protection of Literary and Artistic Works, the WTO, and the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS").



As the National Legislative Assembly of Thailand agreed to Thailand's membership of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ("**Marrakesh Treaty**") on 21 April 2017, the Copyright Act provides an exemption for disabled persons to reproduce or adapt copyrighted works on a non-profit basis for the benefit of disabled persons who cannot access the copyrighted work due to their disability.

In general, a copyright is valid for the life of the creator, plus 50 years. When the creator is a juristic person, protection extends for 50 years from the date of creation or first publication. The period of protection is reduced to 25 years for applied artistic work.

Copyright Infringement

- Copyright infringement includes reproducing, adapting, or communicating a copyrighted work to the public, without the copyright owner's authorization. It also includes selling, offering for sale, leasing, importing, publishing or distributing unauthorized duplicates of a copyrighted work.
- The Copyright Act states that certain uses of a creative work, such as for research, education, teaching, or personal purposes do not constitute a copyright infringement.
- The maximum penalties for copyright infringement are a fine of up to THB 800,000, a prison sentence of up to four years, or both.
- In the event that an offender liable for penalty is a juristic person, if the offense is committed by an order, instruction, act, non-intrusion, or omission of a director, manager, or any other person responsible for the operation of such juristic person, that director, manager, or other responsible person shall be deemed a joint offender with the juristic person and also be liable for the penalty prescribed for the offense.



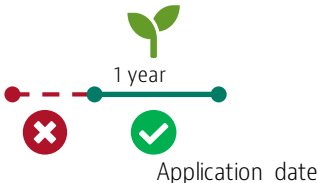

12.4 Plant Varieties

The Plant Varieties Protection Act, B.E. 2542 (1999) defines a plant variety as "a group of plants with the same or similar genetics and botanical description, with constant and fixed specific qualities. The subject must be different from any other group of plants of the same kind. This includes plant stems that can be propagated to obtain a group of plants with those qualities." The Plant Varieties Act goes on to define certain set features that constitute a plant variety, such as morphology, physiology, or other properties that are the result of the genetic nature specific to one plant variety. It should be noted that novelty requirements must be met.

Priority date can be claimed based on an overseas application to register a new plant variety, provided that an application is filed in Thailand within one year of the overseas application. This provision only applies to applications filed in countries that would extend the same rights to Thai nationals. The period of protection can last from 12 to 27 years, depending on the plant variety.


The period of protection		
12 years 	17 years 	27 years 
plant variety which bears fruits after being cultivated for less than two years	plant variety which bears fruits after being cultivated for over two years	plant variety of which its parts can be used after being cultivated for over two years

The validity of the certificate of registration of a new plant variety begins on the date on which the certificate is issued. Annual fees must be paid to maintain the registration. Rights holders can permit anyone to use their rights and can assign the rights to others. Assignment or permission to others must be made in writing and lodged with the competent official. The holder of the rights in a new plant variety has the sole right to produce, sell or dispose of, and import or export the new plant variety, as well as to hold the propagating material of the new plant variety for the purpose of doing any of those acts.

Registrability Criteria For a New Plant Variety	
<p>1.</p>  <p>Application date</p>	<p>A variety whose seeds or propagating material has not been exploited, by sale, trade, or any other means, within or outside Thailand by the breeder or by others with his or her consent for more than one year before the application date.</p>
<p>2.</p> 	<p>Being distinguished from other recognised plant varieties as of the application date. The distinctions include those related to cultivation, consumption, pharmaceutical purposes, production or processing. The</p>

Intellectual Property

	distinctions from the following varieties are also included;
<ul style="list-style-type: none">Plant varieties which have been registered, within or outside the Kingdom of Thailand, before the application date	<ul style="list-style-type: none">Plant varieties which have been submitted for registration in the Kingdom of Thailand which are subsequently registered.

	A new plant variety which has direct or indirect severe environmental impact on the environment, people's health or welfare is prohibited from being registered
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A new genetic modified plant variety can only be registered once an assessment of the impact it has on the environment, people's health and welfare has been made by the Department of Agriculture or other agency or institute assigned by the Plant Variety Protection Committee.

A person that holds the certificate of registration for a plant variety is expected at some point to sell the propagating material for the plant variety, or sell, at a reasonable price, enough of the plant variety to satisfy public demand in Thailand. If the certificate holder has not done so within three years of obtaining the certificate, other parties may apply for and obtain the rights to that plant variety. The penalties for infringement of the rights to a registered plant variety are a term of imprisonment not exceeding two years, a fine not exceeding THB 400,000, or both. The same penalties apply to anyone who violates community rights to a local indigenous variety or who fails to obtain permission in respect to general indigenous and forest plant varieties. The penalties for forging a plant variety registration mark are imprisonment for six months to five years, and a fine from THB 20,000 to THB 200,000.

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In 2017, the Department of Agriculture (the "DOA") published draft amendments of Plant Varieties Protection Act on its website. Several changes were introduced in the draft including:

- i. extension of plant varieties protection term to 20 or 25 years depending on the plant variety;
- ii. extend the scope of protection from propagating materials to include a plant variety's produce (e.g. flowers, fruits, vegetables, legumes, nuts, grains, etc.);
- iii. lower requirements for genetically modified varieties to automatically receive waivers of environmental impact assessments from the DOA;
- iv. extend protection to cosmetic breeding (traits do not contribute to the productivity of the crop) and essentially derived varieties (a variety shall be deemed to be essentially derived from another variety, such as predominantly derived from the initial variety or clearly distinguishable from the initial variety); and
- v. fewer restrictions on use or collection of a plant variety in Thailand to exclude the use of any general domestic plant variety that has been bred. Hence a person who wishes to use or collect such varieties will not be required to obtain prior informed consent or establish any mutually agreed terms from the local authority.

However, the draft was strongly opposed and criticized by the public sector and is currently under revision by the DOA.

12.5 Layout Designs of Integrated Circuits

The Layout Design of Integrated Circuits Act, B.E. 2543 (2000) provides protection to layout designs of integrated circuits.

12.5.1 Key Definitions

Integrated circuits

"Ready or pre-ready products that have electronic functionality, either alone or with other products, and that are composed of electronic-pulsing parts and connecting parts that wholly or partly lay upon or within the same product with semi-conductor material."

Layout designs

"...pattern, chart, or picture that is created in any form to show the overview of integrated circuits in three dimensions." In order to be eligible for registration, the layout design of an integrated circuit must be generally new (i.e. unknown to the integrated circuit industry)."



Registration is required in Thailand

Intellectual Property

Protection under the Integrated Circuits Act is only available for a layout design that has been registered in Thailand. Therefore, a foreign layout design has no protection under Thai law unless it is registered in Thailand as well.

12.5.2 Conditions for Registration



The layout design must be registered or exploited within **15 years** from its creation

If a layout design has already been commercially exploited, the applicant must file an application in Thailand within **two years** from the first date of exploitation.



If the layout design has neither been registered nor exploited within 15 years from its creation, it is not eligible for registration in Thailand. Also, if a layout design has already been commercially exploited, the applicant must file an application in Thailand within two years from the first date of exploitation in order to qualify for registration in Thailand.



Registrations are valid for **10 years** either (whichever is earlier):

1. from the filing date; or
2. the date of its first exploitation

A layout design registration, once conferred, is valid for 10 years from the filing date or the date of its first exploitation, whichever is earlier. The license agreement and assignment of a layout design registration must be in writing and registered in compliance with the requirements and procedures stipulated. The penalty for infringement of the rights to a registered layout design is a fine not exceeding THB 500,000.

12.6 Trade Secrets

Generally, there are two types of trade secrets protected under the Trade Secrets Act, B.E. 2545 (2002) as amended by the Trade Secrets Act (No. 2) B.E. 2558 (2015) (collectively, the "**Trade Secrets Act**"), which are "information" and "data or test results."

"Information" includes formulae, technical procedures and designs, compiled or assembled works, or business operation methods that the proprietor normally preserves from disclosure. The information must have commercial value and must not yet be widely known or known by people in the trade. The proprietor of the information must have taken lawful steps appropriate to the situation to keep the information secret. Data or test results require

Intellectual Property

considerable effort to prepare and, in general, are submitted to state agencies as a condition upon approval being granted to import, export, or sell drugs or new agricultural chemical substances.

TWO TYPES OF TRADE SECRETS	
1. Information	2. Data or Test Results
<ul style="list-style-type: none">● Formulae● Technical procedures and designs● Compiled or assembled works● Business operation methods	<p>Data or test results require considerable effort to prepare and, in general, are submitted to state agencies as a condition upon approval being granted to import, export, or sell drugs or new agricultural chemical substances.</p>

* The information must have commercial value and must not yet be widely known or known by people in the trade.

Generally, infringement under the Trade Secrets Act is subject to civil action. Only in certain circumstances will the infringement also be subject to criminal action. All infringement, both civil and criminal, can be submitted to the Trade Secrets Committee for conciliation or settlement out of court. As for interim remedies, where there is clear evidence of infringement or an imminent threat of infringement, the trade secret controller may apply *ex parte* for temporary injunction from the court ordering the infringer to cease or desist from the infringement.

The plaintiff or injured party eligible to bring a lawsuit for infringement of a trade secret is the person who has legitimate control of the trade secret at the time of the infringement. The proprietor of the trade secret is not eligible, unless the controller and the proprietor are one and the same person. The infringement of a trade secret entitles the proprietor to bring a lawsuit against the infringer for compensation. Compensation includes the actual damages sustained by the plaintiff, and the legal fees and expenses required to prosecute the case. In addition to actual losses, the court may order a return of unjust enrichment to the plaintiff based on the benefit, profit, or advantage gained by the infringer due to the misappropriation of trade secret information. Infringement can also be subject to criminal penalties. The maximum penalties are imprisonment for one year or a fine of up to THB 200,000, or both.



Civil Liability

- Actual damages sustained by the plaintiff
- Legal fees and expenses required to prosecute the case

*The court may order a return of unjust enrichment to the plaintiff based on the benefit, profit, or advantage gained by the infringer due to the misappropriation of trade secret information.



Criminal Sanctions

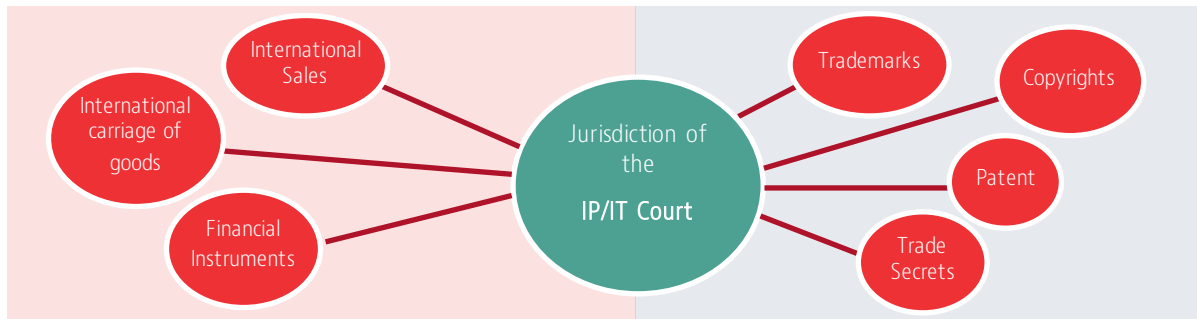
- Penalties: Fine up to THB 200,000; or
- Imprisonment for one (1) year; or
- Both

12.7 The Intellectual Property and International Trade Court

Prompted in part by its desire to tighten intellectual property rights protection, the government passed the Intellectual Property and International Trade Court Establishment Act (the "**IP/IT Act**") in October 1996. The IP/IT Act laid out the framework for the Intellectual Property and International Trade Court (the "**IP/IT Court**"), which was established on 1 December 1997.

Under the IP/IT Act, the IP/IT Court has exclusive jurisdiction over intellectual property and international trade cases covering such subject matter as copyrights, trademarks, patents, trade secrets, international sales, financial instruments, and international carriage of goods, among others, and is responsible for both civil and criminal cases.

The IP/IT Court has exclusive jurisdiction over both civil and criminal intellectual property and international trade cases



Intellectual Property

The government believed that a specialized judicial tribunal was required because intellectual property and international trade cases generally involve more complex technical issues than other criminal and civil cases. Proponents of the IP/IT Act also felt that such cases should be considered by judges with expertise in intellectual property and international trade. The IP/IT Court is dedicated to resolving international trade disputes efficiently, promoting technology transfers, and ensuring justice in cases of intellectual property rights violations.

The IP/IT Court observes different procedures from those set forth in Thailand's civil and criminal procedural codes. For the purpose of expediency and the fairness of proceedings, the Chief Justice of the IP/IT Court is empowered, subject to the approval of the President of the Supreme Court, to issue rules of the IP/IT Court that are not in accordance with the procedural rules of other courts, if such rules do not impair the defendant's right of defense in a criminal case.

Over the past few years the number of civil and criminal cases before the IP/IT court has remained relatively stable. Of all recent cases, there have been 796 civil intellectual property cases filed with the IP/IT Court between January 2017 and November 2020. And, despite the advent of Covid-19, the court remained operational 2020, but implemented social distancing practices and ordered the postponement of a number of hearings.

13 Labour Laws

13.1 General

Labour Relations Act 1975 (B.E. 2518)	Working conditions are governed more by statute than by collective agreements.
Labour unions are in operation under the auspices of the Labour Relations Act 1975 (B.E. 2518).	
Thailand's labour force is largely non-unionized, even though the labour unions have begun to play a more active role.	

13.2 Leave and Holidays

Under the Labour Protection Act, B.E. 2541(1998)

<p>ALL EMPLOYEES Are entitled to paid annual holidays</p>	<p>Working days...</p>	
<p>There are provisions for certain maximum periods of paid sick leave and military leave (If military service is required by law) and partially paid maternity leave.</p>	<p>ALL EMPLOYEES Whether full-time, part-time, seasonal, casual, occasional, or contract</p>	<p> Maximum working hours are generally fixed at 8 hours per day</p>
	<p>ARE ENTITLED To weekly holiday and paid traditional holidays</p>	<p>or</p> <p> 48 hours per week</p>
		<p> Maximum working hours are generally fixed at 8 hours per day</p> <p> 48 hours per week</p> <p style="font-size: small; text-align: center;">For work considered hazardous to health and safety of employees</p>

13.3 Severance Pay

All employees who have worked for a continuous period of 120 days or more are entitled to severance pay if their employment is terminated without cause. "Cause" has a very limited definition under the law.



Employees are not entitled to severance pay if they resign or are hired for a maximum period of two years and the nature of the work is not in the normal course of business of the employer, or for work that is, by its nature, occasional, casual, or seasonal; and their employment ends upon the expiry of such definite period. In such case, the employee and the employer must also have executed an employment agreement in writing that stipulates the employment commencement and termination dates.

Severance pay entitlement depends on the period of employment and ranges from 30 days' wages, for service of 120 days or more, but less than one year, to 400 days' wages, for service of 20 years or more.

Regardless of the amount of severance pay due to an employee, in the case where an employee is hired for an indefinite period, the Labour Protection Act and the CCC require employers to provide employees with notice of termination. Notice must be given at or before any time of wage payment, to take effect at the following time of wage payment, although not more than three months' notice is required.

Payment for an equivalent length of time can be given in lieu of such notice.



In the event of unfair termination, an employee may claim the unfair termination compensation or reinstatement.

13.4 Other Regulations

Contributions

Any employer with at least one employee must make contributions



*Managed by the Office of Social Security under the Ministry of Labour













*Managed by the Office of Social Security under the Ministry of Labour

The level of contribution depends on the type of business and ranges between 0.2 - 1.0 percent of each employee's annual wage. Any employer with at least one employee must also make a monthly contribution as well as deducting the employee's wage each month and submitting such to the Social Security Fund of the Office of Social Security. The level of contributions for each employer and employee is equal to 5 percent of each employee's monthly wage. However, if the employee's monthly wage is more than THB 15,000, the amount of his/her monthly wage to be used

Labour Laws

for calculation of monthly contributions shall be capped at THB 15,000, thus making the maximum contribution amount that of THB 750.

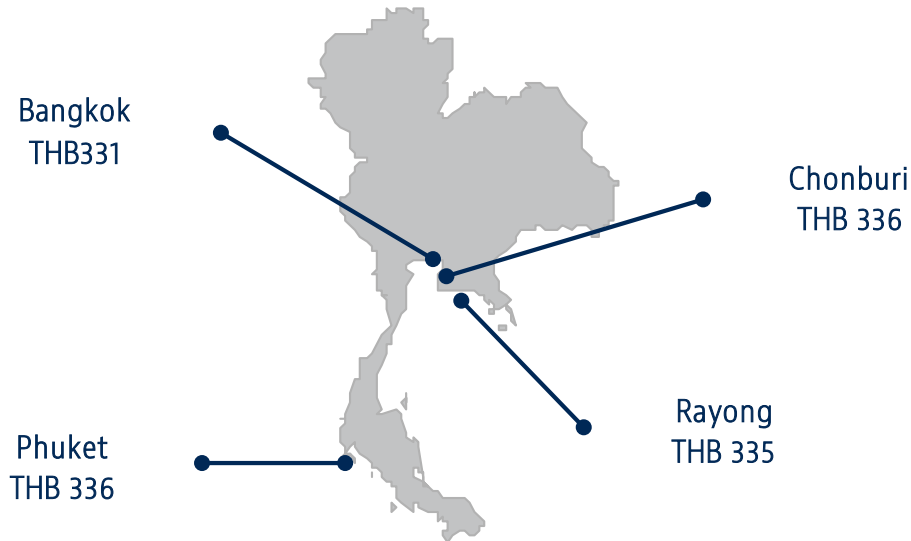
Employers who employ 10 or more employees must establish and post work regulations. Such a document must include the following:

 Such matters as the working days	 Holiday pay and holiday overtime pay
 Normal working hours and rest periods	 The leaves and rules governing leaves
 The holidays and rules governing holidays	 The discipline and disciplinary measures
 The rules governing overtime and holiday work	 The submission of grievances
 The date and place of payment of wages	 The termination of employment
 Overtime pay	 Severance pay and special severance pay

However, the work regulations do not need to be filed with the labour office.

Minimum wages are prescribed by law for all employees except agricultural workers.

As of January 1st 2020, general minimum daily wage rates has been increased, and they vary between provinces.



If an employer defaults on a wage payment, a penalty of 15 percent interest per annum on the amount due is imposed. Criminal sanctions of imprisonment not exceeding six months or a fine not exceeding THB 100,000, or both, may also be imposed.

14 Product Liability

14.1 Product Liability

There are two specific laws in Thailand related to product liability

The Act on Liability
for Injuries from
Unsafe Products
2008
(B.E. 2551)

Act on Court
Proceedings for
Consumer Cases
2008
(B.E. 2551)

More commonly known as...

Product Liability Act

Consumer Case Procedure Act

These two pieces of legislation provide a number of consumer-friendly procedural elements, designed to give consumers advantages when taking cases to court against business operators.

14.1.1 Product Liability Act

Product Liability Act

The scope of the Product Liability Act is limited to injuries caused by unsafe products, whether to life, body, health, well-being, emotions or property, but excludes damages caused to the unsafe product itself.

The term "product" covers all types of movable property, including agricultural products and electricity, but excluding certain products specified in subsequent Ministerial Regulations.

Types of products that have been exempted so far include:



Agricultural products created by nature.



Agricultural produce grown by farmers that originated in Thailand.



As well as drugs and medical devices manufactured by public healthcare service providers specifically to treat individual patients or animals,

- Or those manufactured pursuant to the public healthcare service provider's orders

Product Liability

Under the Product Liability Act, a product is deemed unsafe if it causes or is likely to cause damage. Damage, or the likelihood of damage, may arise from manufacturing defect, design defect, or warning defect. In determining whether or not a product is unsafe, the court will take into account both the nature of the product and its ordinary use and storage.

If a consumer suffers damage as a result of an unsafe product, the relevant business operator may be liable to compensate the said consumer.

The courts are empowered by the Product Liability Act to award compensation for mental distress, as well as punitive damages of up to two times the actual damages incurred.



However, under the Consumer Case Procedure Act, if the actual damage does not exceed THB 50,000, the courts are empowered to fix punitive damages at not exceeding five times the actual damage.

In this regard, "business operator" means:



Manufacturers or hirers for manufacture;



Sellers of products, if the products do not indicate the manufacturer, hirer for manufacture, or importer; and



Importers;



Persons who use a name, trademark, trade name, mark, or statement that would lead to the understanding that they are the manufacturer, hirer for manufacture or importer of the product in question.

Once the product has been found to be unsafe.

A business operator will be held jointly liable with other relevant business operators to compensate the injured persons.

Even if such business operator did not intend to cause injury or was not acting negligently.

The Product Liability Act expands the concept of "strict liability" under Thai law to mean that a business operator may not need to be at fault to be liable for an unsafe product under the Product Liability Act.

Product Liability

The defenses available to business operators include:



That the product is not unsafe.



That the injured party already knew that the product was unsafe.



That the injury arose from the improper use or storage of the product in a manner not in accordance with directions for usage or storage, warnings or information regarding the product which have been reasonably, correctly and clearly provided by the business operator.

14.1.2 Consumer Case Procedure Act

The Consumer Case Procedure Act applies to all cases arising from the consumption of goods and services, and includes cases under the Product Liability Act.

The Consumer Case Procedure Act ensures that consumers are given access to cheaper, quicker and simpler proceedings.

Consumer Case Procedure Act

The Consumer Case Procedure Act ensures that consumers are given access to cheaper, quicker and simpler proceedings.



Consumers are allowed to file a complaint either verbally or in writing. In this regard, they are initially exempted from court fees; however, if the consumer loses the case, the consumer will have to pay such fees. For expediency, consumer cases are guaranteed a speedy trial.



A case administrator will be appointed by the court to assist consumers in the process. During trial, the burden of proof regarding the facts surrounding the production, assembly, design or components of a product, or regarding the provision of services, rests on the business operator (the defendant), as the court is of an opinion that such facts are known only by the party that is the business operator.



Unlike in a normal civil case, the court is empowered to call any evidence and witnesses it deems appropriate.

With regard to damages, the Consumer Case Procedure Act provides the court with greater power than in normal civil cases, whereby the court can award/order:

1 Punitive damages

2 a product recall

3 replacement damages

Product Liability

Furthermore, if the court finds that a business operator, which is a juristic entity...



- Has been established or operates in bad faith.
- Or where fraudulent acts have been committed against consumers.
- Or where the assets of the juristic entity has been transferred for the benefit of any individual and the remaining assets of the juristic entity are insufficient to cover the amount claimed under the relevant consumer case.

Then the court can apply the doctrine of "piercing the corporate veil" in order to force the business operator's shareholders, partners, or controlling persons to be jointly liable to the consumers.

The foregoing also applies in the case of third parties who have received the juristic entity's assets.



14.2 Consumer Protection

Unlike the product liability law which addresses the legal liability of business operators to consumers for injuries caused by unsafe products, consumer protection law usually refers to statutes or government efforts intended to regulate advertising, labelling, sales practices, product quality and other aspects of marketing to consumers.

Discussed below are some specific statutes that, while not always providing direct or appropriate protection to all consumers, provide some indirect protection against defective products.



They all prescribe certain standards for the quality of products manufactured, imported or sold in Thailand. Also discussed below are some recent efforts by the government to protect consumers against defective products, as well as false or misleading advertising.

14.2.1 The Food Act

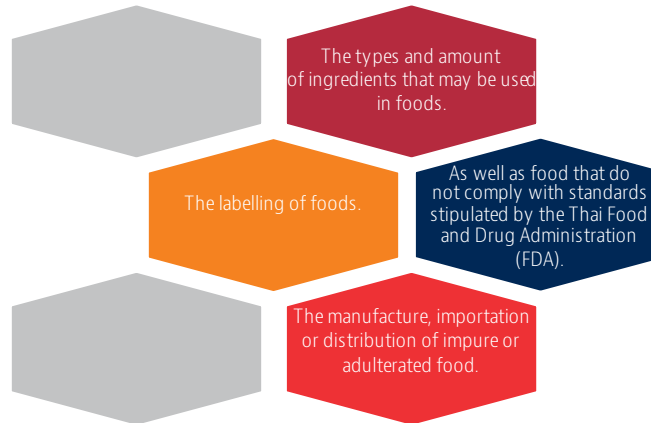
The Food Act 1979 (B.E. 2522)

Imposes various requirements, restrictions or prohibitions on manufacturers, importers and sellers of food products.

Apart from regulatory requirements regarding product approval (e.g. the requirement to obtain a food manufacture/import/product license for certain types of food, etc.)

The Food Act also addresses certain issues that relate to product liability.

**The requirements,
restrictions and prohibitions
under the Food Act cover
matters including...**



As well as food that do not comply with standards stipulated by the Thai Food and Drug Administration ("FDA").

The Food Act also seeks to control the advertising of foods. In this respect, food advertisements cannot contain false or deceptive statements in relation to the benefits, qualities or properties of the food. Additionally, any person wishing to advertise foods for commercial purposes must first submit the advertising materials for the FDA's review and approval, and obtain a license from the FDA, prior to being able to use and release the advertisement to the general public.

However, in practice, the FDA may have specific requirements for certain types of foods which may not be outlined under the Food Act.

Those that fail to comply with the requirements, restrictions and prohibitions under the Food Act may be subject to fines and/or imprisonment.

14.2.2 The Drug Act

Under the Drug Act, B.E. 2510 (1967) (the "**Drug Act**"), manufacturers, importers or sellers of drugs are required to follow the requirements regarding labels and package inserts.

Product Liability



The Drug Act also prohibits persons from, amongst other things, manufacturing, importing or selling counterfeit, substandard, deteriorated or unregistered drugs.

The Drug Act required any person wishing to advertise drugs through audio, visual or print media to first submit the advertising materials for the FDA's review and approval, and obtain a license from the FDA, prior to being able to use and release the advertisement to the general public, as well as to follow the conditions set by the FDA.



Among other stipulations, the Drug Act prohibits drug advertisements from:



Boasting that a drug or its ingredients are capable of miraculous cures or total treatment;



Exaggerating or falsely declaring the properties of the drug; or



Stating that a drug can relieve, cure or prevent diseases or illnesses, or use other words with a similar meaning;



Creating an understanding that the drug contains any medicinal substance or ingredient it does not actually contain, or, if it contains a particular medicinal substance or ingredient, creating an understanding that it is in a quantity other than that which it actually contains.

Moreover, drug advertisements cannot be impolite, contain singing and dancing or show the suffering or distress of patients. The prohibition relating to the advertising of drugs also extends to advertising via the provision of gifts or lucky draws.

It should be noted that the advertising license which is issued by the FDA only remains valid for as long as the drug's ingredients or properties remain the same as they were when the license was originally granted.

However, in practice, the FDA may have specific requirements for the advertisement of certain types of drugs which may not be outlined under the Drug Act.

To enhance the protection for consumers, the amendment to the Drug Act (No. 6), B.E. 2562 (2019) (the "**Amendment No. 6**") was published in the Government Gazette on 16 April 2019 and came into force on 13 October 2019.

<p>Specifies the period of the drug registration licenses to be valid for seven years from the issue date, instead of a lifetime period.</p>	<p>The criteria, method and conditions for the renewal must be in accordance with the Ministerial Regulation to be issued under the Drug Act.</p>
<p>This may include a condition for the FDA to review the drug application file and may request the licensee to improve their drug pharmacopoeia if a safety issue is found before granting the renewal.</p>	<p>The drug registration licenses that were issued before the amendment becomes effective will still be valid for between five to nine years, subject to the year of approval of such drug registration licenses.</p>
<p>Amendment no. 6 allows the FDA to issue the Ministerial Regulation to support and develop the efficiency and safety standards related to a clinical trial in humans as part of the drug approval process.</p>	<p>The FDA is also empowered to order clinical trials to be reviewed or ceased if any safety issue arises, which shall be subject to the degree of harm of such clinical trial.</p>

Product Liability

The key requirements in the Ministerial Regulations must include the safety requirements of patients that participate in clinical trial programs.

14.2.3 The Medical Device Act



Outlines specific requirements regarding labels and package inserts for medical devices. Business operators who manufacture or import medical devices must provide labels and package inserts that conform to the rules, procedures, and conditions set out by the Minister of Public Health in a Ministerial Notification.

The most important requirement is that the information placed on such labels or package inserts cannot be false or contain exaggerated information.



Additionally, the Medical Device Act also prohibits persons from, amongst other matters, manufacturing, importing or selling counterfeit, substandard, deteriorated or unsafe medical devices.

In this respect, the FDA has the authority to request the manufacturer or importer of a medical device to provide documents or evidence regarding the quality, standards, efficacy or safety of the said medical device, where there is reason to believe that the medical device does not possess the required quality, standards, or efficacy, or is unsafe, or there is a change in the standard.

Furthermore, the Medical Device Act also sets out regulations governing the advertisement of medical devices.



Any form of action taken in order to allow the general public to see, hear or know of a statement for commercial purposes and includes sales promotion activities.

In short, a license is required for persons wishing to advertise medical devices.

The Medical Device Act stipulates that the advertising of medical devices must not show or contain certain information, e.g. false or exaggerated properties or qualities, a guarantee of the medical device's properties by a particular person, the offer of rewards by means of gambling, or any wording that may cause a misunderstanding in relation to the medical device.

The FDA has the authority, by virtue of the Medical Device Act, to order the advertisement to be amended, to prohibit the use of certain statements or matters which appear in the advertisement, or to order the cessation of the advertisement in the event that the FDA deems that the advertisement is in violation of the requirements under the Medical Device Act.

Product Liability



However, in practice, the FDA may have specific requirements for the advertisement of certain types of medical devices which may not be outlined under the Medical Device Act.

Finally, the Medical Device Act contains interesting provisions relating to product liability. It provides protection to consumers harmed by unsafe medical devices by stipulating that manufacturers, importers, or sellers of medical devices are responsible for damages incurred from their use, unless they can prove that the damage was caused by *force majeure* or the injured person's own fault, rather than defects in the medical device. However, consumers may wish to claim damages under the Product Liability Act, as it offers more protection and possibility for recourse.



Medical Device Act (No. 2), B.E. 2562 (2019) (the "Amendment No. 2")

Published in the Government Gazette on 30 April 2019 and came into force on 1 May 2019.

Among other things, the Amendment No. 2 requires business operators that apply for the business premise registration, product license or notification, as the case may be, to report any malfunction of their medical devices or adverse reactions and remediation actions to the FDA, regardless of whether these occurred in Thailand or overseas, in accordance with the criteria, method and conditions as specified in the Ministerial Regulations.

In addition, the Amendment No. 2 empowers the FDA to order business operators to amend their medical devices information registered with the FDA, to improve their medical device, to cease manufacturing, import or sell, to announce test results or analysis of the medical device to the public, or to recall the medical device from market within the timeline specified by the FDA.

14.2.4 The Cosmetics Act

The labels for all cosmetic products must meet the requirements of the Cosmetics Act, B.E. 2558 (2015) (the "**Cosmetics Act**"), including;

The statements used on the label must be true and must not contain any statements which may cause a material misunderstanding of the cosmetics and are not against good moral;

The statements used on the label must be written in Thai, in legible font and size, and may also contain a foreign language; and

The statements used on the label must contain all necessary information to protect the consumers' interests.

No persons may manufacturer for sale, import for sale, or sell unsafe, counterfeit, and substandard cosmetics.

Product Liability

The Cosmetics Act prohibits the advertisement which contain statements that are unfair to consumers or statements which may adversely impact the public. Advertisements must not be undertaken by means which may be dangerous to physical or mental health, or against good public moral, or by means which may create nuisances to consumers.

14.2.5 The Consumer Protection Act

The Consumer Protection Act, B.E. 2522 (1979) (the "Consumer Protection Act").



Aims to protect the interests of consumers, rather than to protect the economy or preserve business competition.

The Consumer Protection Board, established under the Consumer Protection Act and chaired by the prime minister is responsible for protecting the rights of consumers and enforcing the Consumer Protection Act.

The Consumer Protection Act also established four committees responsible for different matters; the Committee on Advertisement, the Committee on Labeling, the Committee on Contracts, and the Committee on Products and Services' Safety.

The Consumer Protection Board is charged with considering complaints made by consumers, taking action against those that infringe on the rights of consumers, and regulating the performance of, and hearing appeals from,

decisions of the four Committees. The Consumer Protection Board is also empowered to require a business operator who wishes to sell a particular product to conduct tests, at the operator's expense, to ensure that the product is safe.

The Committee on Advertisement is empowered to prescribe the text, warning or advice that must be included in advertisements for designated products. The Committee on Advertisement may also impose advertising restrictions or entirely prohibit the use of advertising for a particular product. The Consumer Protection Act is specifically directed at protecting consumers from false, exaggerated, materially misleading, illegal or indecent advertising, or advertising that may cause harm to the public.

The Committee on Labeling is primarily concerned with ensuring that information necessary to protect the health of consumers is included on labels and that labels do not contain misleading information.

Generally, all goods produced for sale by factories covered by the Factories Act and goods imported for sale in Thailand are subject to labeling control. If a label does not conform to the requirements of the Act, the Committee on Labeling may issue an order for it to be discontinued or modified.

The Committee on Contracts is empowered to declare any business, for which contracts are either required by law to be made in writing or are customarily made in writing, to be a controlled business. A controlled business must not use a contract for its business that contains any terms creating an unreasonable advantage over consumers or that are unfair to consumers. Certain businesses, e.g. those relating to credit cards, car hire purchasing, and condominium unit sales, have been declared controlled businesses by the Committee on Contracts.

Product Liability

The Committee on Products and Services' Safety was established under an amendment to the Consumer Protection Act (No. 4), B.E. 2562 (2019) (the "**Amendment No. 4**") which was published in the Government Gazette on 27 May 2019 and came into force on 25 August 2019. The Committee on Products and Services' Safety is empowered to require the business operator to provide measures to prevent or eliminate risk of harm due to the products or services, e.g. monitor the products or services throughout the guarantee period, and provide channels to communicate with consumers on the products and services' safety.

14.2.6 The Hazardous Substance Act

Under the Hazardous Substance Act, B.E. 2535 (1992) (the "Hazardous Substance Act")



A hazardous substance means any of the following substances; explosives, flammable substances, oxidizing agents and peroxides, toxic substances, infectious substances, radioactive substances, mutant causing substances (mutagens), corrosive substances, irritating substances and other substances which may be harmful to humans, animals, plants, properties, or the environment.

Besides regulatory requirements in relation to product approval, the Hazardous Substance Act imposes various requirements, restrictions and prohibitions on manufacturers, importers, carriers, sellers and persons in possession of

hazardous substances and also addresses issues regarding duties and liabilities of such persons. Those failing to comply with the requirements, restrictions and prohibitions may be subject to fines and/or imprisonment.

The amendment to the Hazardous Substance Act (No. 4), B.E. 2562 (2019) (the "**Amendment No. 4**"), was published in the Government Gazette on 30 April 2019 and came into force on 27 October 2019, defines the term "advertisement" as any form of action taken in order to allow the general public to see, hear or know of a statement and also includes giving information or convincing the general public to use the hazardous substance, for commercial purposes. The advertisement of the hazardous substance must not be in a form that may harm persons, animals, plants or environment or conflict with public policy. Furthermore, the Government authorities may provide conditions for the advertisement of certain hazardous substances, e.g. caution is required in certain advertisements or certain hazardous substances are prohibited from advertising, to protect persons, animals, plants and environment from any hazard that may be caused.

14.2.7 The Industrial Product Standards Act

Under the Industrial Product Standards Act, B.E. 2511 (1968) (the "Industrial Product Standards Act"),compulsory or partially compulsory.



The Ministry of Industry

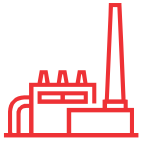
may issue a Notification prescribing industrial standards for any industrial product with which manufacturers or importers may voluntarily comply for the promotion of the industry.

Any manufacturer or importer who wishes to comply with the standards must obtain a license from the Ministry of Industry. Once the license is granted, the products of the manufacturer or importer can bear the industrial standards logo.



The Ministry of Industry may also, by way of a Royal Decree, prescribe compulsory or partially compulsory industrial standards for any industrial product, either manufactured in, or imported into, Thailand.

Compulsory and partially compulsory industrial standards are issued to ensure the safety of, or prevent harm to, the public, the industry, or the economy.



Once any product becomes subject to a compulsory or partially compulsory industrial standard, it cannot be manufactured or imported unless the appropriate license is obtained from the Ministry of Industry. Once a license is obtained, manufacturers or importers must display the industrial standards logo on their products.

A licensed manufacturer is prohibited from using the standards logo on products that do not conform to the industrial standards prescribed by law. In addition, a licensed manufacturer is prohibited from advertising or selling a product known to violate standards defined by law.



In the event of a violation, the Ministry of Industry is empowered by the Act to revoke or suspend the license of the manufacturer or importer.

14.2.8 Food and Drug Administration (FDA) Scheme

The Healthcare Products Complaints and Law Enforcement Center, an organization under the FDA, has announced a plan to obtain information regarding complaints from consumers.

Product Liability



The sources of this information will not only come from consumers who are affected by the manufacturing, importation or sale of healthcare products.

But also from those who are affected by false advertisements from various media outlets



Television



Internet



Radio



Printed Materials

The information obtained will be analyzed and forwarded to the responsible regulatory agencies to perform investigations and pursue legal action accordingly.



In some cases, cash rewards are provided to consumers who assist in targeting business operators who violate controlling statutes. According to the FDA, the scheme is intended to help ensnare business operators (who undertake food, drugs, cosmetics, medical devices, and chemicals businesses) who publish false advertising claims or who sell low-quality products that adversely affect the health of consumers.

Consumers filing complaints may be entitled to a part of the amount of court fines levied against the business operator, if such business operator is found liable.

15 Real Estate, Hotel, Resort & Property Development

15.1 Land Development

There are restrictions and regulations relating to development on land. Investors need to check all relevant criteria and requirements carefully.



commercial



residential



industrial

General Restrictions

under laws on town planning, building control, or environmental conservation

Specific Regulations

factories, hotels, condominiums, housing estates etc.

15.2 Foreign Ownership of Land

Restriction

The Land Code contains a provision allowing foreigners to acquire land if allowed to do so by a treaty giving land ownership rights. Despite this provision, no treaty giving foreigners the right to own land actually exists. In addition, government policy has generally not permitted foreigner to own land.

Exemptions

1	<p>A company with non-Thai shareholders can own land, if</p> <ul style="list-style-type: none">▪ not more than 49 percent of shares in the company are owned by foreigners; and▪ numerical majority of the shareholders are Thai persons or companies.	2	<ul style="list-style-type: none">▪ BOI promotion privileges▪ Oil concessions under the Petroleum Act▪ Business located in industrial estates
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Details in Chapter 4

Thai-Structure Company

A company with non-Thai shareholders can own land, if

- not more than 49 percent of shares in the company are owned by foreigners; and
- numerical majority of the shareholders are Thai persons or companies.

Other Laws

- BOI promotion privileges
- Oil concessions under the Petroleum Act
- Business located in industrial estates

Penalty



Fine up to
THB 20,000

and/or

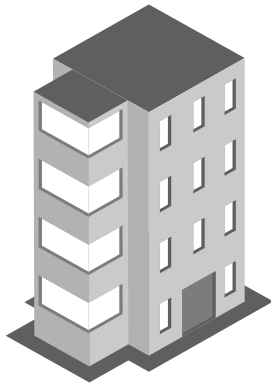


Imprisonment
up to two years

Any foreigner who does not comply with the Land Code's provision regarding foreign ownership of land:

Similar penalties may be imposed on any Thai person or company found to have acquired land as an agent of a foreign person or company.

15.3 Foreign Ownership of Condominiums



- Foreigners may own up to 49 percent of the total area of all condominium units in a condominium project.
- Foreign buyers (with certain exceptions) must remit foreign currency into Thailand, or withdraw THB or any foreign currency from their non-resident account, in an amount not less than the unit's price.

*Proof of fund remittance must be shown to the Land Department at the time the transfer of ownership of the condominium unit is registered.

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Foreign buyers (with certain exceptions) must remit foreign currency into Thailand, or withdraw THB or any foreign currency from their non-resident account, in an amount not less than the unit's price.

*Proof of fund remittance must be shown to the Land Department at the time the transfer of ownership of the condominium unit is registered.

15.4 Foreign Ownership of Buildings



Foreigners may own buildings directly and freehold, provided that they have the rights to locate the buildings on land and use the land.

*Please see 15.5 for these rights.

Foreigners may own buildings directly and freehold, provided that they have the rights to locate the buildings on land and use the land.

*Please see 15.5 for these rights.

15.5 Alternatives to Land Ownership for Foreigners

Given the restrictions on the outright ownership of land, foreigners sometimes employ alternative forms of land or building tenure. The CCC allows forms of possessory rights such as a lease and the Roman law concepts of usufruct or superficies. Unlike the Land Code, the CCC does not distinguish between foreigners and Thai nationals.



Normal Lease

A lease allows land and buildings to be used for a maximum term of 30 years. To be enforceable, any lease with a term longer than three years must be registered, which involves payment of registration fee and stamp duty at 1.1 percent of the rental fee for the whole lease term. The registered lease will remain attached to the leased property for the entire lease term, even if there is a change in property ownership.

The Act on Leasing Immovable Property for Industrial and Commercial Purposes, B.E. 2542 (1999) allows immovable property to be leased for more than 30 and up to 50 years, if the lease is for industrial or commercial purposes and meets other conditions as prescribed in Ministerial Regulations.



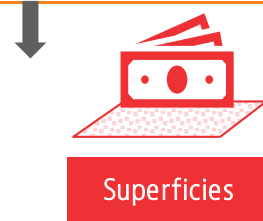
Lease of Immovable Property for Industrial and Commercial Purposes



Usufruct Interest

A usufruct interest gives temporary ownership rights to things on or arising from the land and the right to enjoy the products of the land, such as the crops from a field or the rocks from a quarry, but does not give ownership of the land itself. Any use is allowed (except destruction), without the land owner's permission. A usufruct is limited to a 30-year period (renewable), and its interest can be sold or transferred but, as the usufruct expires upon the holder's death, cannot be inherited.

A superficies is similar to a usufruct, but provides more security for the interests of the holder. A superficies has the right to own things on or under the land, such as building, structures, or plantations, but not the land itself. A renewable 30-year maximum term applies. Unlike a usufruct, a superficies can be both transferred and inherited.



Entitlement over
Immovable Property
(Sub-Ing-Sithi)

The Entitlement over Immovable Property Act, B.E. 2562 (2019) provide holders of these entitlements with rights to use immovable property, provided that the immovable property must be land represented by a title deed, buildings, or condominium units.

The owner of immovable property can create an entitlement on such immovable property with the maximum period of 30 years. The entitlement holder can transfer the entitlement to others and can mortgage or create business security over the entitlement. Transactions related to the entitlement must be registered.

15.6 Alternative Investment in Real Estate for Foreigners

REIT (Real Estate Investment Trust)

REIT can be an alternative for foreigner investors who are interested in real estate. Under the regulations governing REITs, REITs can invest in real property of any kind (i.e. both freehold and leasehold) with the purpose of seeking rental, whether onshore or offshore. REIT is exempted from income tax and are required to distribute dividends annually.

Foreigners can invest in REITs by purchasing REIT units listed on the SET. The foreign restrictions remain applicable to REITs investing in freehold real property in Thailand. Also, no person may hold more than 50 percent of total units of one REIT.

16 Securities Law and Regulations

16.1 Latest Amendment to the Securities and Exchange Act

2008



- The Securities and Exchange Act B.E. 2535 (1992) (as amended) (the "**SEC Act**") was amended and supplemented by the SEC Act (No. 4) B.E. 2551 (2008) (the "**SEC Act No. 4**"), which came into force on 31 August 2008.
- The aim was to efficiently apply the former SEC Act to the highly dynamic market practices of Thailand's capital markets and to provide more flexible regulations.
- The SEC Act No. 4 restructures the regulatory framework of the Securities and Exchange Commission (the "**SEC**"), increasing adaptability in the enforcement of regulations regarding ongoing capital market transactions.
- The SEC Act No. 4 also provides increased investor protection and enhances corporate governance requirements for listed companies. It has also established new mechanisms to support the efficient enforcement of capital market regulations; for example, whistle blower protection, a safe-harbor for directors' liabilities, etc.

Securities Law and Regulations

2016	<ul style="list-style-type: none">▪ In 2016, the SEC Act was further amended by the SEC Act (No. 5) B.E. 2559 (2016) (the "SEC Act No. 5"), which came into force on 12 December 2016, in order to update provisions regarding market misconduct offences and introduce a new civil sanction regime to the former SEC Act.▪ Currently, market misconduct offences in Thailand are more complex and the former SEC Act did not cover such new offenses.▪ In addition, some provisions were unclear and did not clearly outline the elements of the offences which led to a broad interpretation on whether an action contains the elements of the offence. Furthermore, market misconduct offences are criminal offenses which require high standard of accreditation or prove (i.e. beyond reasonable doubt), therefore, it is unsuitable for the nature of the market misconduct offense in which the evidence of the offense is largely in the perception and possession of the offender.▪ As a result, the National Legislative Assembly passed the SEC Act No. 5 to amend the former SEC Act in order to update and increase the efficiency of the enforcement measures (i.e. civil sanction) to follow the international standard.
2019	<ul style="list-style-type: none">▪ In 2019, the SEC Act was further amended by the SEC Act (No. 6) B.E. 2562 (2019) (the "SEC Act No. 6"), which came into force on 17 April 2019, to address the following six issues:<ol style="list-style-type: none">I. to enhance flexibility of securities business supervision;

- II. to enhance supervision of mutual fund management;
- III. to enhance supervision over the SET to be in line with international standards;
- IV. to enhance competitiveness of the capital market;
- V. to establish the Capital Market Development Fund (CMDf) as a center to promote market development; and
- VI. to enhance effectiveness, clarity and transparency of the SEC's operation.

16.2 Regulatory Bodies of Thailand



Relevant Laws

- Securities and Exchange Act B.E. 2535
- Derivatives Act B.E. 2546
- Provident Fund Act B.E. 2530
- Trust for Transactions in Capital Markets Act B.E. 2550
- Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540
- Emergency Decree on Digital Asset Businesses B.E. 2561
- Rule, Regulations and Notifications of the Securities and Exchange Commission of Thailand issued under the legislation above

16.2.1 The Securities and Exchange Commission (the "SEC")

The SEC

- Responsible for oversight and regulation of all aspects of securities business and transactions in Thailand, including securitization, derivatives and trusts transactions in capital markets.
- Promotes, develops, and supervises all matters concerning securities, securities business, the Stock Exchange of Thailand (the "SET"), over-the-counter centers, issuance and offer of securities for sale to the public, acquisition of securities for business takeovers, and prevention of unfair securities trading practices.
- Issues rules, regulations and notifications at the policy level
- Pursuant to the 2019-2021 Strategic Plan announced by the SEC,
 - the SEC intends to focus on 4 major goals, as follows:
 - Sustainable capital market;
 - Financial inclusion and equality reduction;
 - Competitiveness and connectivity; and
 - Trustworthy and confidence-inspiring



Securities Law and Regulations

- 5 Strategic Areas, as follows:
 - Corporate governance and institutional culture
 - Employee potential
 - Operational effectiveness
 - Information and infrastructure
 - Participation of and responding to the needs of involved parties

16.2.2 The Capital Market Supervisory Board (the "**CMSB**")

The CMSB

- The CMSB has the authority to issue rules, regulations, notifications, orders, and directions at the operational level in order to govern securities-related businesses, the issuance and offering of securities, the securities exchange, the securities settlement systems, the securities business associations, and takeover transactions.
- The CMSB is directly responsible to the SEC.

16.2.3 The Office of the Securities and Exchange Commission (the "**Office of the SEC**")

Office of the SEC

- The Office of the SEC is responsible for implementing the SEC's resolutions and has the power and duty to perform any other acts as prescribed in the SEC Act, which include, among others, granting approval for the offer of securities for sale to the public and granting waivers on tender offer obligations.
- In addition, the Office of the SEC also has the power to supervise the enforcement of law, particularly, with regard to persons violating the provisions of the SEC Act.
- For further information about the SEC, the CMSB, and the Office of the SEC, please visit their website at <http://www.sec.or.th>.

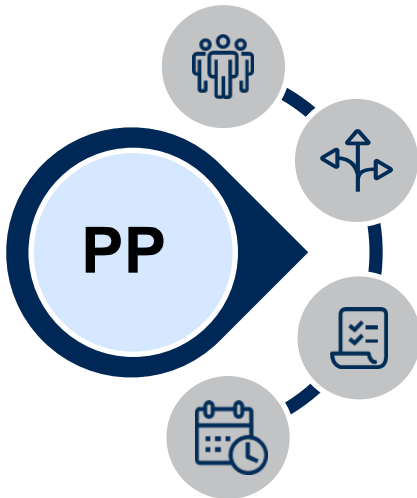
16.3 Key Types of Share Offering in Thailand



Relevant Laws

- The Securities and Exchange Act B.E. 2535
- The Public Limited Company Act B.E. 2535
- Regulations of the Stock Exchange of Thailand
- Regulations of the Securities and Exchange Commission of Thailand

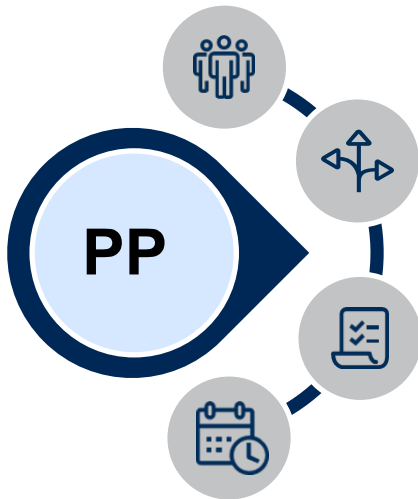
16.3.1 Private Placement



Investors

- i. ≤ 50 investors within any 12-month period **OR**
- ii. ≤ THB 20 million within any 12-month period, (provided that the aggregate value of the offering shall be calculated based on the offering price of the shares) **OR**
- iii. institutional investors (e.g. commercial banks, mutual funds, and international financial institutions).
- iv. existing shareholders allocated in proportion to their shareholdings with payment made in full (Note that this is not applicable to the private placement of listed co.)

❖ For the purpose of determination of a private placement offering, the number of investors as referred to in (i), or the aggregate value of the offer as referred to in (ii), shall not include any offer made to institutional investors as mentioned in (iii), regardless of whether the offer is made simultaneously or at a different time.



Regulations

- ❖ The private placement regime is prescribed under the Notification of the CMSB No. Tor.Chor.72/2558 re: Approval for listed companies to offer newly issued shares to selective investors ("**CMSB Notification No. Tor.Chor.72/2558**").
- ❖ It imposes a specific process for listed companies to seek approval from the Office of the SEC, and requires a regulatory intervention by the Office of the SEC in scrutinizing the corporate approval process and corporate governance disclosures of listed companies intending to raise funds through private placement.
- ❖ Under the CMSB Notification No. Tor.Chor.72/2558, an issuing company is required to seek:
 - an SEC pre-process approval in which the company submits a draft application together with the minutes of Board of Directors' meetings, and a draft notice of invitation to the general meeting of shareholders and relevant disclosures to the Office of the SEC for consideration before the private placement matters can be proposed to shareholders; and

- an SEC approval following the general meeting of shareholders (in the case that the offering price is fixed by the shareholders' meeting). The regulation also provides enhanced scope and contents of disclosures required of the issuing company, and a timeframe for the placement depending on how, when, and by whom an offering price is determined.

- ❖ The time spent and the process involved in the Office of the SEC consideration and scrutiny will be governed by the Act on the Facilitation of Official Approval Process 2015, promulgated in year 2015 to impose clear requirements as to approval process, timeframe, and required documents to facilitate the approval process.

4 types of PP by listed co.: each of which has its own scope, requirements for disclosure, and timeframe for the placement

- 1) Offering price **determined by Board of Directors** to be at a **market price** during the offering, possibly with a discount of no more than 10 percent;
- 2) Offering price **fixed by resolution of the shareholders' meeting**;
- 3) private placement of **shares remaining after a right offering**; and
- 4) other private placement offerings

Notes on Private Placement Process

- A non-listed company (i.e. a public limited company or its promoters) is subject to a separate private placement regime (i.e. Notification of the CMSB No. Tor.Chor. 39/2559), which the company could benefit from the deemed Office of the SEC approval with regard to such offering and the exemption from the securities filing requirements (that is, filing a registration statement and draft prospectus).
- In addition, a non-listed company will still be required to report the result of the sale of shares to the Office of the SEC within the time prescribed by notifications of the CMSB, and comply with a number of conditions prescribed in the relevant notifications of the CMSB and the Office of the SEC. For instance, the offer for the sale of newly-issued shares must not be advertised to the public. The issuing company shall complete its offer for sale of shares within one year from the date on which the shareholders' meeting resolves to approve an offer for sale of newly-issued shares.
- The offering may be deemed ineffective or prohibited if there are grounds for the Office of the SEC to believe that;
 - The issuing company is not qualified or does not or may be unable to comply with the post-offering obligations
 - The investors are not provided with sufficient information to decide whether to invest
 - The private placement offering is made to avoid the rules or regulations under the SEC Act
- The offering of debt instruments or debentures is subject to separate private placement exemptions and conditions.

16.3.2 Initial Public Offering/ Public Offering



Investors: Public

- ❖ IPO (Initial Public Offering): First time offer securities for sale
- ❖ PO (Public Offering): Offer to public investors, i.e. more than 50 non-institutional investors (general case other than PP and RO)

- ❖ Require **SEC approval**
- ❖ **Filing** of the registration statement and draft prospectus to the SEC deemed effective
- ❖ Register change of paid-up capital with Ministry of Commerce (MOC) within **14 days** after subscription and payment period.
- ❖ Any public limited companies, juristic persons established under the laws of foreign jurisdictions, and other juristic persons as prescribed by the SEC Act (the "**Issuing Companies**"), who wish to offer securities for sale to the public are generally required to obtain prior approval from the Office of the SEC. Public limited companies are required to file a registration statement and a draft prospectus with the Office of the SEC, and have them become

effective. Additionally, the Issuing Company is required to complete certain prerequisite obligations in connection with securities offerings in Thailand before proceeding with the offer and sale of securities to the public.

Post-Offering Obligations

- ❖ The Issuing Companies must report the results of the sale of securities, submit quarterly and annual financial statements and other relevant reports to the Office of the SEC or the SET.
- ❖ The Issuing Companies must also inform the Office of the SEC or the SET immediately of any major events, such as a change of management, takeover, or substantial damage that may have repercussions on the Issuing Companies.
- ❖ Directors, managers, auditors, and other management personnel (as prescribed by the SEC Act) of the Issuing Companies are obliged to make full disclosure of their shareholding status as well.

16.4 Takeover Regulations

16.4.1 Reporting Obligations

Section 246 of the SEC Act

- The SEC Act imposes certain reporting obligations on any person who performs any acts, either by his/her own actions or by "acting in concert with others," and thereby increases or decreases the number of securities (particularly, shares or convertible securities) in a listed company that are held by such person and his/her "related persons," as well as other persons acting in concert, up to or through the specified trigger points (such as, any multiple of 5 percent of the total voting rights in such listed company).

Notification of the CMSB No. Tor.Chor. 28/2554

- The Notification of the CMSB No. Tor.Chor. 28/2554 re: Rules and procedures concerning reporting of acquisition or disposal of securities, any person of a listed company, by his/her own act or his/her acting in concert with others, who acquires or disposes of securities, reaches the "trigger point", is required to submit a report of the securities holding by using an official form prescribed by the Office of the SEC.

Securities Law and Regulations

- The report must be made via electronic system to the Office of the SEC within three business days from the date of the acquisition or disposal of securities, except for the following cases:
 - the disposition of securities in the event of tender offer under Section 247, in which the report must be made within 5 business days from the end of the tender offer period; and
 - the acquisition of securities by inheritance, in which the report must be made within 3 business days from the date of the transfer registration.
- A copy of the report must also be submitted to the SET.
- Please note that in considering the acquisition or disposal of securities, the number of the securities of a listed company held by an acquirer or disposer, other persons acting in concert, and their related persons shall be aggregated.

Related persons of each acquirer or disposer:

- the spouse of the acquirer or disposer and a minor child of the acquirer or disposer;
- a natural person who is a shareholder of the acquirer or disposer, in an amount exceeding 30 percent of the total voting rights of such person, inclusive of the voting rights of the spouse and minor children of such shareholder;
- a juristic person who is a shareholder of the acquirer or disposer, in an amount exceeding 30 percent of the total voting rights of such person;
- a shareholder in the juristic person under (iii) and the shareholders in all levels of upward shareholding, beginning from the shareholder in the juristic person under (iii), provided that the shareholding in each level exceeds 30 percent of the total voting rights of the juristic person in the immediate lower level. In cases where the shareholder in any level is a natural person, the voting rights of such shareholder's spouse and minor child must be included;
- a juristic person in which the acquirer or disposer or the persons under (i), (ii) or (iii) collectively hold shares in an amount exceeding 30 percent of the total voting rights of such juristic person;
- a juristic person in which the juristic person under (v) holds its shares and its shareholders in all levels of downward shareholding, beginning from the shareholder in the juristic person under (v), provided that the

Securities Law and Regulations

shareholding in each level exceeds 30 percent of the total voting rights of the juristic person in the immediate lower level;

- an ordinary partnership in which the acquirer or disposer or the person under (i), (ii), (iii), (iv), (v), (vi), or the limited partnership under (viii), is a partner;
- a limited partnership in which the acquirer or disposer or the person under (i), (ii), (iii), (iv), (v), (vi), or the ordinary partnership under (vii), is an unlimited liability partner; and
- a juristic person over which the acquirer or disposer has the power of management in respect of investment in securities.

It is advisable to note that the SEC Act provides a definition of related persons that extends to cover the upstream shareholding trail as well, and not just the downstream trail.

Acting in Concert

- In February 2009, the CMSB issued the Acting in Concert Notification and became effective from 1 August 2009 onward. Under the Acting in Concert Notification, the persons will be considered to be 'acting in concert' if:
 - ✓ any person shares an intent with another person(s) to exercise their voting rights in a coordinated manner, or causes another person(s) to exercise his voting rights for the purpose of controlling the voting rights, or jointly controlling the business; and
 - ✓ such person has relationships, or has coordinated his conduct with any person in accordance with the prescribed description, including, entering into an agreement to act with respect to the exercising of voting rights held by the parties thereto in a coordinated manner, or entering into an agreement to allow any party thereto to exercise their voting rights on behalf of other parties, or entering into an agreement to jointly manage the business.

16.4.2 Tender Offer Obligations

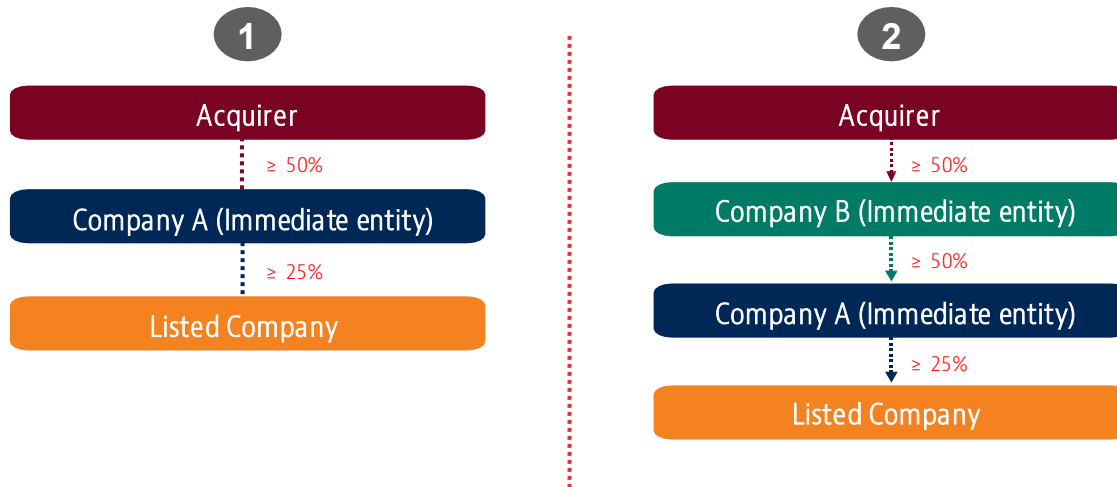
The SEC Act and the relevant CMSB notification

- A person, either acting alone or in concert with others, together with any related persons of either that person or the persons with whom they are acting in concert, who has acquired shares in a listed company which has certain characteristics as described below, in aggregate, up to the percentage that is significant to the change of control or management of a company (the "Trigger Point") to make a tender offer (the "Tender Offer Obligation") and comply with the Tender Offer Obligation (unless such acquisition is exempted or waived) in accordance with the applicable regulations. This is in order to allow existing shareholders the opportunity to sell their shares upon the change of control or business takeover.
- The Trigger Point is prescribed as:
 - 25 percent of the total voting rights;
 - 50 percent of the total voting rights; or
 - 75 percent of the total voting rights.

Chain Principle

- It is advisable to note that the Tender Offer Obligation will also be triggered upon the occurrence of any direct or indirect acquisition of material control over the company through the "control in existing shareholders of the company" (i.e., via an immediate entity holding shares directly in the company or an intermediary entity holding shares through the immediate entity) ("Chain Principle"), provided that the acquisition of control of an immediate or intermediary entity, the aggregate shareholdings by the acquirer, each intermediary entity, the immediate entity, and their related persons in the company reaches or exceeds the Trigger Point.

Securities Law and Regulations



In this regard 'control in an existing shareholder' means the holding of shares representing 50 percent or more of the total voting rights in the immediate entity (for direct control) or in the intermediary entity, which directly or indirectly holds 50 percent or more shares in the immediate entity (for indirect control)

In this regard, 'control in an existing shareholder' means control over the management or operation of the relevant entity or the company, through the nomination of a substantial number of directors

16.5 The Stock Exchange of Thailand ("SET")



- ❖ The SET was originally established under the Securities Exchange of Thailand Act B.E. 2517 (1974) and began trading in April 1975.
- ❖ The SET is the key institution permitted to operate a securities exchange in Thailand. Notably, three other securities exchanges are also permitted: the Market for Alternative Investment ("MAI"), the Bond Electronic Exchange ("BEX"), and the Thailand Futures Exchange ("TFEX").
- ❖ Presently, trading on the SET takes place between 10:00 am - 12:30 pm, and 2:30 - 4:30 pm, Monday to Friday (except public holidays). The SET permits trading on margin requirements, which are applicable from time to time.

Securities Law and Regulations

- ❖ There are two SET trading methodologies in which trading takes place, via computerized systems.
 1. Automated Order Matching ("**AOM**"), which performs the order matching process, giving priority to the order with the best price at that time, without human intervention (Price then Time Priority). AOM is comprised of the Main Board, the Foreign, and the Odd Lot.
 2. Trade Report ("**TR**"), or Put-through, which allows brokers to advertise their buying or selling interests through the announcement of bid or offer prices. Brokers may then deal directly with each other, either on behalf of their clients or for themselves. TR is comprised of the Big Lot Trade Report, the Foreign Trade Report, the Off-hour Trade Report, the Buy-in Trade Report, and the Member Buy-in Trade Report. The SET requires that bid and offer quotations for shares be at minimum spreads, depending on the market price per share and in accordance with the table of values.





SET

- ❖ Despite the limitations placed on foreign ownership of many Thai corporate entities, it is possible for foreigners to invest in Thai securities provided that the purchase does not increase the level of foreign ownership in such listed company beyond permissible levels. A special Foreign AOM and Foreign TR exists where shares owned by foreigners may be traded.
- ❖ The Big Lot Trade Report is where ordinary shares, preference shares, warrants, and unit trusts are traded with trading volumes of THB 1 million securities or more, or trading values of THB 3 million or more.
- ❖ The Odd Lot AOM, investors may trade ordinary shares, preference shares, warrants and unit trusts, the total number of which is lower than one board lot (generally, one board lot contains 100 units).

16.6 Non-Voting Depository Receipts (NVDRs)



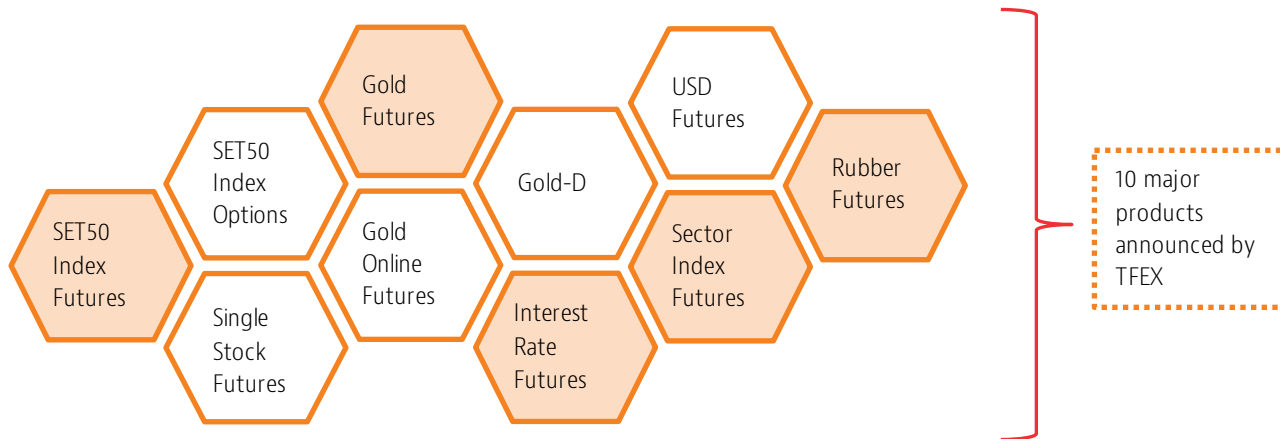
NVDRs

- ❖ The NVDRs is a trading instrument issued by NVDR Company Limited (a subsidiary of the SET). It is a valid securities as specified by the SEC and is automatically regarded as a listed securities by the SET.
- ❖ The NVDRs is an alternative option for the investment of foreign investors who previously could not trade in the Thai stock market due to foreign investment restrictions.
- ❖ By investing in NVDRs, NVDRs holder will receive the same financial benefits (i.e., dividends, right issues or warrants) as other shareholders of the company.
- ❖ However, NVDRs holders are not the shareholder of the company and they cannot be involved in any decision-making of the company (i.e. they do not have voting rights).

- ❖ Although the NVDRs are designed mainly to facilitate foreign investors, Thai investors and institutional investors can also invest in the NVDRs.
- ❖ However, there is an investment limitation on NVDRs which limits each investor to hold any combination of NVDRs and shares totaling less than 25 percent of the total number of voting rights of securities of the company and the NVDR Company Limited has the right to buy back the excess number of NVDRs immediately.
- ❖ Trading NVDRs will be similar to trading other securities on the SET and NVDRs holders are obliged to submit a report of acquisition or disposal of their NVDRs to the Thai NVDR Company Limited in the same manner as reporting underlying stock acquisition or disposal.

16.7 Thailand Futures Exchange ("TFEX")

- ❖ TFEX, a subsidiary of the SET, was established in 2004 as a derivatives exchange under the Derivatives Act, B.E. 2546 (2003) (the "Derivatives Act"). The TFEX operates under the supervision of the SEC.
- ❖ According to the Derivatives Act, the TFEX is allowed to trade futures, options, and options on futures.



16.8 Investing in the Stock Exchange of Thailand

In general, there are six steps to invest in the SET. These steps include:

Appointing a Custodian, Correspondent Bank, and Broker

- Local commercial banks can act as custodians and correspondent banks.
- Nonetheless, it is recommended that only one bank be appointed to handle each deal.
- A broker must also be appointed for trading execution.

Bringing in the Money

- Investors must use a correspondent bank to bring foreign currency into Thailand for portfolio investments.
- The investors are required to declare the purpose of inward remittance to the correspondent bank.
- As only THB can be used to trade on the SET, the investors must convert the foreign currency into THB and deposit the converted THB into a non-resident THB account opened with a correspondent bank in Thailand.

Buying and Selling

- Buy and sell orders must be placed through a broker.
- The SET is fully computerized for the execution and confirmation of orders.

In general, there are six steps to invest in the SET. These steps include:

Clearing and Settlement

- Currently, settlement of equity and debt securities traded on the SET is completed on a T+2 working days basis, with "T" representing the day of the trade.

Outward Remittance of Funds

- Outward remittance of investment funds, dividends, and profits, as well as loan repayments and interest payments (net of all taxes), can be made through a correspondent bank.
- In this case, the investor is required to declare the purpose of outward remittance and submit documents evidencing the underlying transaction to the satisfaction of the correspondent bank.
- If the investor fails to submit the documents as required by the correspondent bank, a prior approval from the Bank of Thailand will be required on a case-by-case basis for outward remittance of funds.

Reporting the Acquisition and Disposal of Securities

- Please see details in the Reporting Obligation section.

17 Taking Security and Enforcement in Thailand

17.1 Security

The security interests available under Thai law are mortgages, pledges, guarantees, business security and avals. At present, Thai law recognizes the concept of security creation over a changing pool of assets having attributes similar to those of a 'floating charge' in the form of a "business security."

In some cases, an assignment of rights and obligations under a contract is also implemented as a security. Besides the aforementioned, hire-purchase, leasing, conditional sale and trust receipts are commonly used to provide creditors certain protection whereby the "sale of goods" is involved.

17.1.1 Types of Security



Mortgage

A mortgage is a contract whereby a mortgagor designates its own property as security for the performance of an obligation of the mortgagor itself or a third party debtor. Under the law on mortgage, a mortgage will be created upon registration with the relevant authority, the details of which are set out in the section headed "Registration." A

Taking Security and Enforcement in Thailand

mortgage agreement must be made in an official form specified by the relevant authority while a supplement to the official mortgage agreement can be attached. Such mortgage agreement and its supplemental agreement must be executed in the presence of a competent officer at the time of filing an application for registration with the relevant authority. The secured amount of the mortgage must be stated in THB currency in the mortgage agreement.

A mortgage can be granted over immovable property (e.g. land represented by registered ownership documents, buildings, etc.) or certain kinds of registrable movable property (e.g. ships of five tons and over, machinery, etc.). There was also an attempt to allow the granting of a mortgage over a duly registered car. However, in practice, it is still not possible to register such mortgage as the draft Ministerial Regulation on the rules and procedures regarding registered car mortgages and registration fees is currently awaiting enactment.

A mortgage for future debt or debt with conditions is required to specify details of the mortgaged obligations (i.e. the purpose, the underlying debt, the maximum mortgage amount and the period for mortgage). In addition, a provision which requires a third-party mortgagor to become liable: (i) beyond the value of the mortgaged asset; or (ii) as a guarantor for the same underlying debt is only allowed in the case where the debtor is a juristic person and such third party-mortgagor is a person with the power of management over such juristic person debtor and the said third-party mortgagor has made a separate guarantee agreement.



Pledge

A pledge is a contract whereby a pledgor delivers a movable property to the possession of a pledgee (or any third party that the pledgor and pledgee mutually agree) as a security for the performance of an obligation. A pledgor can either be a debtor itself or a third party.

A movable property that can be pledged includes a certain right represented by an instrument (e.g. promissory note, bill of exchange, cheque, etc.). If a pledged property is a company's share certificate or an instrument, such share certificate or instrument must also be delivered to the pledgee. However, such pledge cannot be set up against the company or other third parties unless the creation of such pledge has been recorded in the company's shareholder registration book or, as the case may be, a pledge of instrument has been endorsed on the back of such instrument.

A pledge is automatically released and discharged when: (i) the obligation secured is extinguished; or (ii) when the pledgee allows the pledged property to return into the possession of the pledgor. The requirement to deliver the pledged property into possession of the pledgee of the pledged property renders the pledge impractical when the pledgor still requires the pledged property for its operation. Accordingly, the Business Security Act B.E. 2558 (2015) also provides for the giving of security in moveable property without delivery of possession. This enables the debtor to still occupy, use, exchange and transfer such assets, and the creditor will be protected by having the right to conduct physical inspection of such assets.



Guarantee

A guarantee is not a security as such, but it is a contractual *right in personam* given by a third party to secure the performance of an obligation of a debtor. In the event that the debtor defaults in the performance of its obligation under a separate underlying agreement, the guarantor has to assume the payment obligations of such debtor. In order for a guarantee agreement to be enforceable in court, it must be made in writing and signed by the guarantor. It is not necessary, however, for the creditor to sign a guarantee agreement.

A guarantee for future debt or debt with conditions is required to specify details of the guaranteed obligations (i.e. the purpose, the underlying debt, the maximum guaranteed amount and the guaranteed period). Additionally, the extension of payment terms by a creditor will release the guarantor from all liabilities under the guarantee agreement unless the guarantor gave consent to such extension. An advance consent to extension of payment terms is only allowed when made by a guarantor, which is: (i) a financial institution; or (ii) in the business of providing guarantees (for example, bailers).

The joint and several liability provisions or provisions causing a similar effect in a guarantee will be void if the guarantor is not a juristic person, and unless the debtor is adjudged bankrupt or his whereabouts in Thailand is unknown, the creditor is not permitted to pursue the non-juristic guarantor until all alternatives of pursuing the

primary obligor have been exhausted. The guarantor will normally have the right to delay payment under the guarantee by claiming that the beneficiaries are still in the position to demand payments from, or enforce the debts against the primary obligors, unless it has joint liabilities with the debtor as permitted by law.

The guarantor has rights of subrogation. After a guarantor has made a payment under the guarantee, the guarantor will have the right of recourse against the debtor for the amount paid.



Aval

Similar to a guarantee, an aval is given by a third party to secure the performance of an obligation of the person who is liable under a bill of exchange or promissory note. An aval may be given by signing a name on the face of the instrument with or without stating that it is 'good as aval,' or endorsing on the back of the instruments that it is 'good as aval.'



Assignment

An assignment does not create security interest under Thai law. However, in project financing transactions, it is common that a debtor may be required to assign its rights (and/or obligations) under the major project documents to secure performance of its obligations and/or to facilitate the enforcement of secured assets under the project. It should be noted that there is uncertainty as to the legal operation of an assignment as a form of security in practice due to the lack of legislation governing such matter.

Assignments of property lease rights and accounts receivable are the most common in business transactions.

The creation of assignment of right and/or obligation under a contract is made by way of a written assignment agreement between the assignor and the assignee with notification to and/or consent from the counterparty of the contract under which the right and/or obligation has been assigned. It is important to note that if an assignment of obligation or so-called "novation" is made, such novation must also receive written consent as mentioned above.

However, by virtue of the Business Security Act, parties may now create actual security interest over contractual rights and receivables.



Business Security

The provisions of the Business Security Act provide that a debtor may use certain types of assets to secure the performance of its obligation on a non-possessory basis. Therefore, security providers are allowed to retain the rights to possess, use, mortgage (excluding pledge) and sell the collateral (and to receive interests derived therefrom), unless agreed otherwise. Moreover, due to its floating charge nature, the preferred right of the secured creditor will extend to the assets the security provider receives in exchange for, or in place of, a transfer of the collateral assets once the change of business security is registered with the relevant authorities.

There are two alternatives for creating security over assets:

- (i) Creating security over the business which will cover all assets used by the security provider for conducting the business
- (ii) Creating security over specific assets which are contractual right, movable property, immovable property, intellectual property or other types of assets as may be prescribed

Taking Security and Enforcement in Thailand

Both individuals and juristic persons can become security providers under the Business Security Act, but only "financial institutions" and those specifically designated under a ministerial regulation can accept business security as secured creditors. Note that foreign banks without a branch in Thailand that participate in a loan syndication with Thai financial institutions are entitled to accept business security as secured creditors.

A business security is created when the parties enter into a business security agreement in writing (in the prescribed form) and register the same with the Ministry of Commerce. In addition, where business security is created over a business, the parties must appoint in the agreement a duly licensed security enforcer who will enforce the security once an enforcement event takes place.

It should be noted that since the business security is a relatively new concept, some difficulties in implementation may be expected. Many issues under the Business Security Act remain debatable and further guidance and regulations from the authorities will be necessary for its successful implementation as intended. As the Act is implemented and tested over time, any difficulties in relation to the taking, maintenance and enforcement of floating security should become clearer.

17.2 Foreign Creditors / Foreign Lenders



A creditor is not required to be resident, domiciled in or doing business in Thailand in order to execute or enforce a security in Thailand.



When a foreign creditor wishes to enforce the security, no approval from a government authority is required.



A foreign creditor can take a security over property situated in Thailand as long as it has corporate power to do so under its constitutional document.



However, due to the limitations on foreign ownership of real property in Thailand, foreign creditors, except a foreign bank which has a branch office in Thailand, are restricted in foreclosing (taking ownership) on a mortgage.

17.3 Exchange Control



In Thailand, a remittance of money by a debtor to a lender overseas, either voluntarily or upon the enforcement of the security, is subject to the law and regulations on exchange control. In sum, both a voluntarily remittance of money under the loan agreement (including loan proceeds, interests, fees and other charges) and remittance from security enforcement can be done without prior approval from the BOT, provided that the debtor or the lender acting as the remitter is able to provide supporting documents to the satisfaction of the remittance bank.

These supporting documents include,

in case of imported loans:

- (i) evidence of loan agreement and collateral arrangement;
- (ii) evidence of inward remittance,

in case of imported loans:

- (a) evidence of loan agreement and collateral arrangement;
- (b) evidence of the permissible offshore payment paid by the loan proceeds.

A debtor, however, has to withhold tax at source (if any) before such outward remittance (which may be relieved or reduced by any applicable double taxation agreement).

If the mortgage, pledge or business security secures an obligation or debt denominated in a foreign currency, the security provider can use THB enforcement proceeds to purchase such foreign currency and remit out of Thailand, provided that evidence of the foreign currency obligation or debt has been submitted to the satisfaction of the BOT or the remittance bank.

As for enforcement of a guarantee, similar to loan repayment, the guarantor can remit the amount claimed under the guarantee to the offshore beneficiary without being required to obtain a prior approval from the BOT, provided that the guarantor is able to provide supporting documents to the satisfaction of the remittance bank e.g. the guarantee.

17.4 Registration

There is no requirement for a foreign bank, not having a branch in Thailand, to register or report a loan, either secured or unsecured loan, with any Thai authority unless the loan will be granted to individuals as its ordinary course of business.

Taking Security and Enforcement in Thailand



Ministry of
Interior/Industry

To perfect a mortgage, it is required that such mortgage is registered with the relevant authority.

For example, mortgage on land and buildings must be registered with the relevant Land Department Office of the Ministry of the Interior, while mortgage on machinery must be registered with the Central Office for Machinery Registration of the Ministry of Industry.

Registration of second or subsequent mortgages is permissible, priority being given to that which is first registered in point of time. The registration fees will be calculated by reference to the mortgage amount with the applicable capped amount.



Ministry of
Commerce

To perfect a business security, it is required that the business security agreement is registered with the Ministry of Commerce.

Such registration is required to contain details such as names of the parties, the secured debt, the list of secured assets, the maximum amount secured, the enforcement events and the security enforcer.



the Company

In the case where the collateral is a registered asset, the registration officer will also inform the relevant registrars to record the business security in the register of such asset.

A pledge does not require registration. Nonetheless, some types of pledged property may be subjected to further formality. A pledge over a share certificate must be recorded in the company's shareholder registration book; otherwise it cannot be set up against the company or any third party.

In practice, both a pledgor and a pledgee will jointly notify a company of the pledge of share certificate, so that the registrar of the company can record such pledge in the company's shareholder registration book and confirm to both parties that the pledge has been recorded.

A pledgor of an instrument (e.g. bill of exchange, promissory note, cheque, etc.) must endorse a pledge on the back of the instrument. If such an instrument is non-negotiable, either the pledgor or the pledgee or both must notify the parties who will be liable under such instruments of such pledge.

No registration is required for a guarantee, aval, hire-purchase, leasing or conditional sale at the time of execution.

17.5 Public Record and Privacy

With regard to security, public access depends upon the type of security. As for a mortgage and a business security, which fall under the registration requirement, once a mortgaged property or a business security has been registered, the registration record will be available for public search.

The record of other types of securities, by contrast, is not available for public access. For example, as only the shareholders are entitled to examine the company's shareholder registration book, an outsider creditor is not entitled to examine it in order to see whether there has been any pledge recorded before taking a pledge thereon.

17.6 Trustee / Security Agent

The use of a security trustee is not common in loans that are governed by Thai law, as the law of Thailand recognizes a legal concept of trust merely in cases where the provisions of the law specifically allow the establishment of trust, for example:



- (i) a trust for purposes of securities, securitization and capital market transactions under the Trust for Transaction in Capital Markets Act B.E. 2550 (2007); and



- (ii) a trust-like concept which appears in an issuance of debentures pursuant to the Securities and Exchange Act B.E. 2535 (1992).

As for the trust-like concept, the act requires that, if secured debentures are to be issued, the issuer must appoint a debenture holders' representative having the power to act in his own name for the benefit of all holders of the debentures in, among other things, accepting security (e.g. mortgages, pledges and/or other collaterals) and exercising the right to enforce the collaterals.

In a transaction where there is more than one lender and there is a security agent, the security agent itself usually executes security documents in two capacities, namely: (i) for and on behalf of the lenders; and (ii) on its own

Taking Security and Enforcement in Thailand

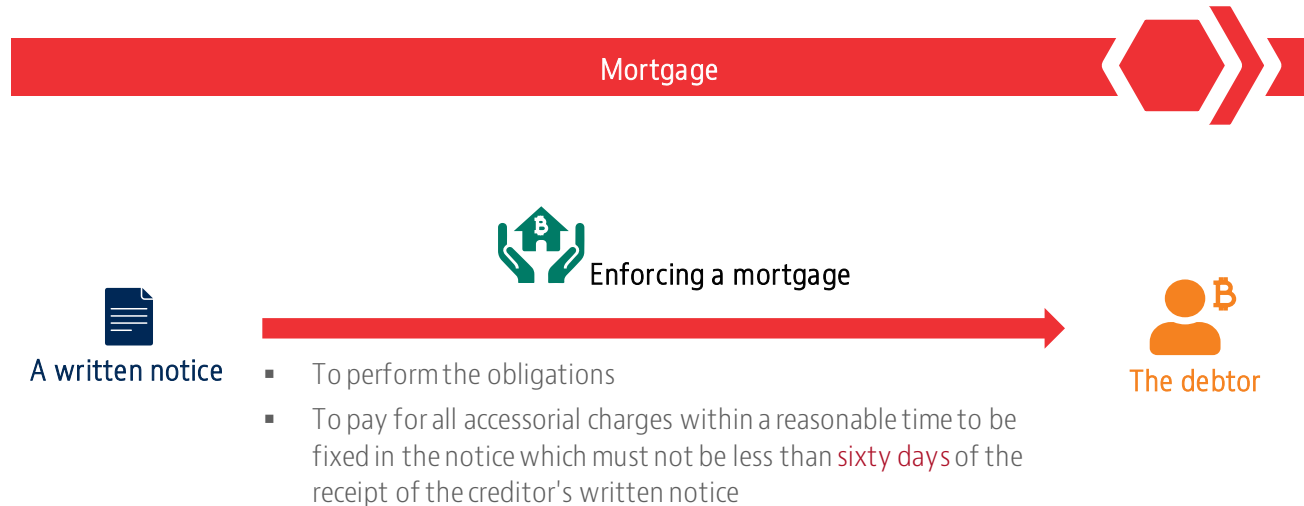
account as the security agent. In such case, all of the individual lenders do not need to execute the security documents as the security agent can act on their behalf, but such lenders need to be expressly named in the security documents, provided that each individual lender must be registered as a mortgagee in mortgage agreements and as secured parties in business security agreements.

17.7 Enforcement of Security



Subject to bankruptcy proceedings, enforcement of security interests in Thailand can be made as follows:

17.7.1 Enforcement of a Mortgage



In addition, in case of a third-party mortgagor, the creditor is also required to serve a written notice to such third-party mortgagor within fifteen days after the date of the demand notice to the debtor. Should the creditor fails to

Taking Security and Enforcement in Thailand

serve a written notice within the fifteen-day period, the third-party mortgagor will be relieved from the liability for all interest, compensation and accessorial charges arising after such prescribed period.

A mortgage can be enforced by court order through public auction or foreclosure. Additionally, after the obligation has become due and if there is no other mortgage or registered preferential right over the mortgaged property, the mortgagor is entitled to serve written notice requesting the mortgagee to conduct a public auction of the mortgaged property without entering an action in court. The mortgagee is then required to sell such mortgaged property within one year of the receipt of the mortgagor's written notice.

In a public auction, the mortgaged property will be sold by the court official, in which the mortgagees (who are entitled to own land) may, at their discretion, bid for the mortgaged property during the public auction. The executing officer may reasonably withhold the sale of the mortgaged property if he deems that the winning bid does not reflect the actual value of the property. The debtor and mortgagor are also entitled to oppose the public auction if the winning bid does not reflect the actual value of the mortgaged property. The court has discretion to approve or reject the winning bid in case where the debtor and/or the mortgagor oppose it.

If there is no other preferential rights over the same property, the mortgagee may enter an action in court in order to foreclose the mortgaged property, given that the following conditions are met: (i) the debtor has failed to pay interest for five years (imposed and counted before filing the suit of foreclosure); and (ii) the mortgagee is able to satisfy the court that the value of the mortgaged property is lower than the amount due.

17.7.2 Enforcement of a Pledge



The pledgee is not required to bring a case to court as a precondition of the enforcement of pledge.



Enforcing a pledge



A written notice

- To perform the obligations and accessories **within a reasonable time** to be fixed in the notice
- If the debtor fails to comply with the notice within the prescribed period, the pledgee is entitled to sell the pledged property only in public auction

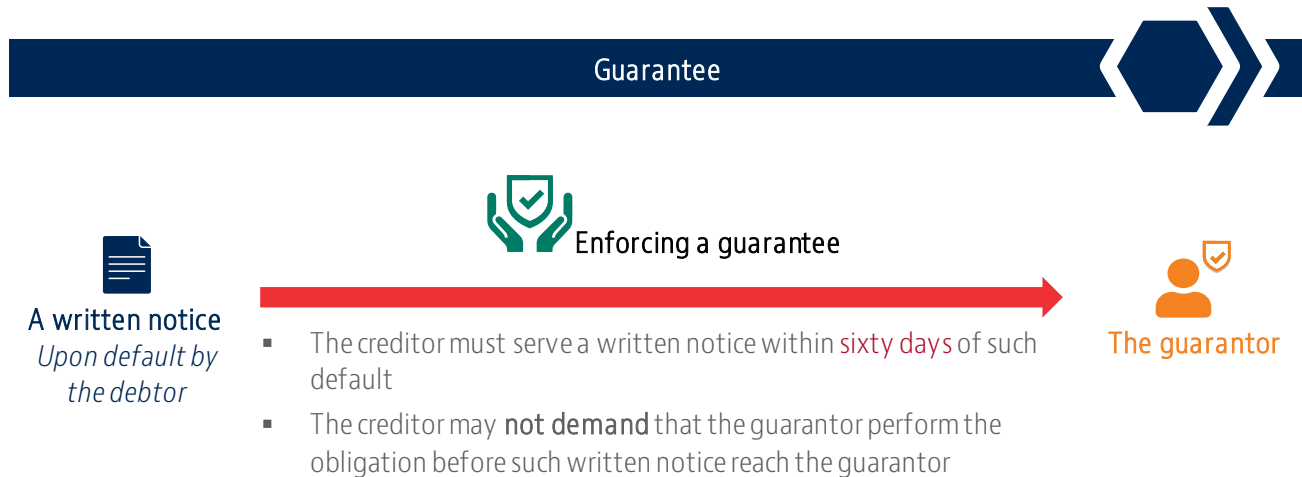


The debtor

Taking Security and Enforcement in Thailand

The pledgee must state the time and place of the auction in the notice. The parties to the pledge cannot agree to enforce the pledge by any other method in advance but can agree otherwise after the occurrence of an act or omission to act in default.

17.7.3 Enforcement of Guarantee



Should the creditor fail to serve a written notice within the sixty-day period, the guarantor will be relieved from the liability for all interest, compensation and accessorial charges arising after such prescribed period. When the creditor is entitled to demand the guarantor to perform the obligations of the debtor after the default by the debtor, the guarantor has an option to either: (i) perform such obligation in its entirety; or (ii) exercise his right to perform only a specific portion of the debtor's obligations for which he is liable under the terms and conditions of the obligations agreed between the debtor and the creditor prior to the default. In this instance, the guarantor will be exempted from the default interest rate.

If there is no payment within the specified period of time under the demand notice, the creditor may file a lawsuit in court, which would take approximately two years in the Court of First Instance, one year in the Appeals Court and two years in the Supreme Court.

17.7.4 Enforcement of Aval and Assignment



Aval / Assignment

To enforce an aval and assignment, the relevant parties may give a demand notice to the counterparty stating its intent to enforce its right. If there is no payment within the specified period of time under the demand notice, the

Taking Security and Enforcement in Thailand

creditor may file a lawsuit in court, which would take approximately two years in the Court of First Instance, one year in the Appeals Court and two years in the Supreme Court.

17.7.5 Enforcement of Business Security



Business Security

The secured creditor is not required to bring a case to court as a precondition of the enforcement of a business security unless the security provider refuses to surrender the assets to the secured creditor or the security enforcer's determination is contested. It should be noted that the enforcement of a business security for (i) specific assets and (ii) businesses are subject to different procedures.

A business security over specific assets is required to be enforced by way of either a foreclosure or a public auction. The process will commence once the enforcement notice is served on the security provider. Upon receipt of such notice, the collateral will "crystallize" and the security provider will lose the right to dispose the asset and is required to surrender them to the secured creditor. It should be noted that once the foreclosure is completed, the principal debts and those under the business security agreement will be discharged and the parties cannot agree to the contrary.

A business security over businesses is required to be enforced through the appointed security enforcer who would be responsible for the investigation as to whether an enforcement event has occurred. Once determined that an enforcement event has occurred, the security provider is required to deliver the business and the related documents, rights and liabilities to the security enforcer within seven days along with the managerial power and shareholders' rights over the business (excluding dividends) so that the business will be vested in the security enforcer instead of the security provider. The security enforcer will then be in charge of selling the business and allocating the sale proceeds derived therefrom, and the security enforcer will remain responsible for managing the business until such business is disposed of.

17.8 Claims among Secured and Unsecured Creditors



Among creditors, secured creditors holding security over a secured property generally have priority over the claims of unsecured creditors.

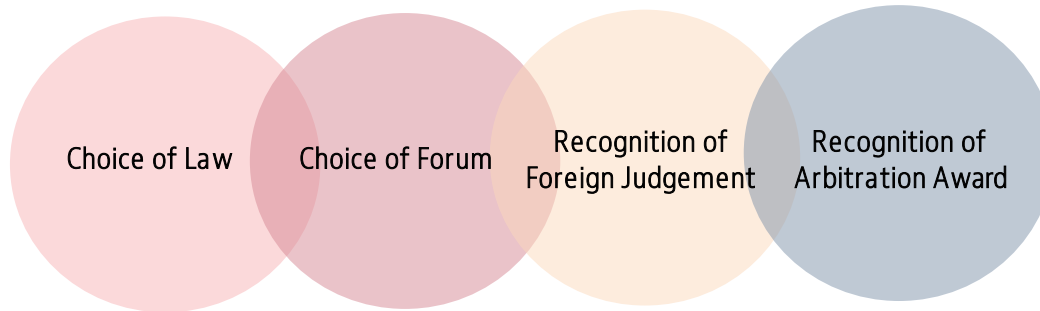
Taking Security and Enforcement in Thailand

Currently, only the creditor in its capacity as a pledgee, a mortgagee or a security receiver of a business security would be regarded as a 'secured creditor' within the meaning of the Bankruptcy Act of Thailand.



Security given by way of a mortgage or a business security under the Business Security Act may be ranked in a specified order on a 'first in time' basis. In other words, where multiple security interests are registered over the same property as security for different underlying debts, the claim of a secured creditor (or a group of secured creditors) that registers its security over that property will, on the basis of prior registration, be senior to, or have priority over, the claims of subsequent secured creditors.

17.9 Choice of Law and Forum



If the proceedings for the enforcement of the loan agreement are taken in Thai courts, the choice of foreign law as the governing law of the loan agreement will be recognized and applied in a case where: (i) such law is proven to the satisfaction of the court; and (ii) public order or the good morals of the people of Thailand is not violated. However, in any case, where the security involved is located in Thailand, the laws of Thailand must be applied.




Taking Security and Enforcement in Thailand

The law of Thailand does not prohibit the agreement for the submission by any person to the non-exclusive jurisdiction of the foreign court, but such agreement does not prevent the Thai court from having the jurisdiction over the case if by virtue of the Civil Procedure Code of Thailand it has jurisdiction over the case.

Subject to specific requirements for court proceedings, any foreign judgment or order is not enforceable in Thailand, thus a party involved must initiate a new proceeding. A foreign judgment or order may, nonetheless, at the sole discretion of the court, be admitted as evidence of an obligation and can be persuasive in new proceedings instituted in Thai court. Where the obligations of the debtor are originally denominated in a foreign currency, payment may be made in Thai currency.

However, Thai courts generally recognize and enforce arbitration awards whether they are made in Thailand or elsewhere. Please see Chapter 7.2 for more details on arbitration.

18 Taxation

<p>The Revenue Code</p> <p>Five main forms of taxation in Thailand</p>		Corporate Income Tax (CIT)
		Personal Income Tax (PIT)
		Value-added Tax (VAT)
		Specific Business Tax (SBT)
		Stamp Duty

18.1 General

The principal tax law is the Revenue Code, and five main forms of taxation imposed under it are: corporate income tax; personal income tax; value-added tax ("VAT"); specific business tax ("SBT"); and stamp duty. There are also a number of specific revenue-collecting statutes that impose taxes such as customs duties and excise taxes, property and land taxes, and petroleum income tax.

Taxation

- Corporate income tax applies to companies (including branches of overseas companies), registered ordinary partnerships, limited partnerships, foundations, associations, mutual funds established as juristic persons under Thai or foreign laws, and unincorporated joint ventures between two or more companies or partnerships, or between companies or partnerships and individuals. Moreover, certain payments, such as dividends, royalties, capital gains, remittance of profits, interest, fees, and profit sharing distributed from mutual funds to non-residents (including overseas companies not conducting business in Thailand) are generally subject to withholding tax.
- Personal income tax applies to individuals (including residents and non-residents), unregistered ordinary partnerships, a group of persons, the deceased, and an undivided estate.
- Thailand has treaties with a number of countries for the avoidance of double taxation, specifically relating to corporate income tax and personal income tax.
- Thailand has been active in preparing domestic laws to implement the international standards for exchange of information, both the exchange of information on request (EOIR) and the automatic exchange of financial information (AEOI). It is expected Thailand will be fully prepared and undertake the first information exchanges by the upcoming few years.
- VAT is levied on the supply of most goods and services at the current reduced rate of 7 percent (inclusive of municipal tax). However, from 1 October 2021 onwards, VAT will increase to a standard rate of 10 percent, unless the tax reduction is continued.

- SBT is levied on several businesses, including banking, real estate trading, life insurance, etc.
- Stamp duty is imposed on dutiable documents that are listed in the Stamp Duty Schedule of the Revenue Code.
- Inheritance tax is imposed on: the recipient of inheritance that is a Thai national; or non-Thai nationals but having a domicile in Thailand under the immigration law; or non-Thai nationals inheriting assets situated in Thailand. Juristic persons that are established under Thai law, or that have more than 50 percent of its paid-up capital held by Thai nationals or more than 50 percent of management being Thai nationals are also subject to Thai inheritance tax. In addition, the recipient of a gift during the life of the giver is subject to gift tax upon receipt, subject to requirements and exemption under the laws.
- Importers are responsible for paying customs import duties, which can sometimes be exempted or reduced under various incentive schemes, notably the Investment Promotion Act, the Industrial Estate Authority of Thailand Act, and the Petroleum Act. Import duty exemption or reduction schemes are also in place based on Free Trade Agreements between Thailand and other countries.
- Transfer pricing law in Thailand is applicable for accounting periods starting on or after 1 January 2019. Taxpayers having turnover exceeding the threshold are required to prepare transfer pricing documents.

18.2 Corporate Income Tax Categories

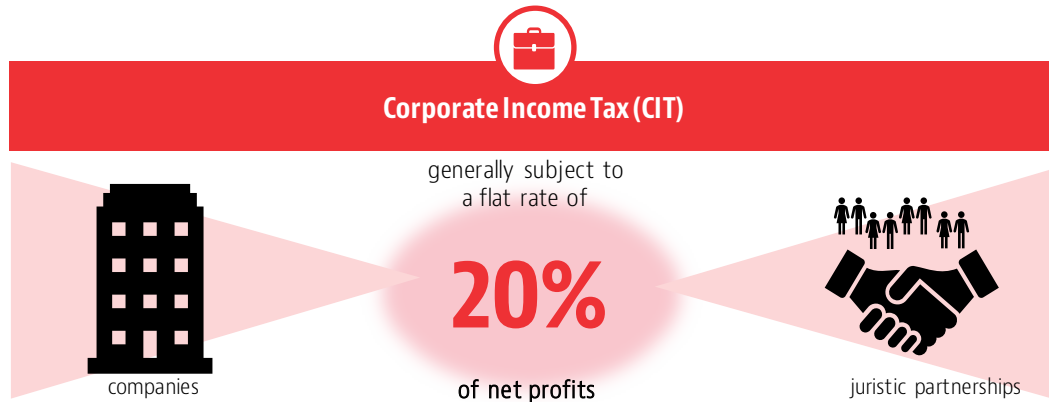
Corporations are taxed in one of two ways, depending on whether the company is considered to be conducting business in Thailand, "onshore" or "offshore." The definition contained in the Revenue Code of "conducting business in Thailand" is very broad and stipulates that:

If a juristic company or partnership incorporated under a foreign law has an employee, a representative, or a go-between in Thailand, for carrying on its business, and thereby derives income or gains in Thailand, such juristic company or partnership shall be deemed to be carrying on business in Thailand.

An independent sales agent is not regarded as an "employee, representative, or go-between" if the agent also engages in business independently of the principal company or partnership and meets other criteria.

A company operating onshore pays the normal spectrum of corporate income tax and must withhold certain amounts at source on some transactions. An offshore entity receiving certain types of income from Thailand must pay income tax only at a fixed percentage of gross income, and the party in Thailand who pays the income is generally required to withhold the tax at source.

18.3 Corporate Income Tax



Corporate income tax applies to companies and juristic partnerships that are registered under Thai law or that conduct business in Thailand, even if formed under foreign law. This tax also applies to members of unincorporated joint ventures, registered partnerships, foundations, mutual funds, and associations engaged in business activities. If the taxable entity is incorporated or established under Thai law, its worldwide income is taxable in Thailand. If the taxable entity is established under foreign law, but conducts business in Thailand, then only income derived or gained in or from Thailand is taxable.

Taxation

18.3.1 Corporate Income Tax Rates

In general, all companies and registered partnerships are subject to a corporate income tax at a flat rate of 20 percent of net profits.

With respect to small and medium enterprises (companies or juristic partnerships with paid-up capital of not more than THB 5 million with an annual income from the sale of goods and the provision of services of not more than THB 30 million), the following progressive rates apply to net profits derived in the accounting years beginning from 1 January 2017 onwards:

Amount (THB)	Rate
1 - 300,000	exempt
300,001 - 3,000,000	15%
3,000,001 onwards	20%

There are special guidelines regarding standard deductions for foreign-incorporated companies or partnerships that conduct business in Thailand but cannot prove their expenses for the tax year. Standard deductions are allowed depending on the type of business activity that gave rise to the income. The resultant net profits are taxed at a normal rate. Any Thai or foreign-incorporated company or registered partnership conducting business in Thailand that

fails to file a return in accordance with the law may, with the approval of the director-general, be assessed an income tax at a rate of 5 percent of the aggregate of either its gross receipts or total sales, without any deductions. Certain types of business are subject to corporate income tax on their gross receipts or gross sales instead of net profits. For example, foreign-incorporated companies engaged in the business of international transportation of passengers or goods pay 3 percent corporate income tax on gross receipts of fares collected in Thailand or gross freight collected in or outside Thailand for goods carried out of Thailand. Mutual funds are subject to corporate income tax at a rate of 15 percent on certain income, such as interests and discounts. Foundations and associations pay corporate income tax at a rate of either 2 percent or 10 percent of their gross income, depending on the type of income received.

18.3.2 Determination of Net Profit for Corporate Income Tax

Corporate income tax is usually imposed on the net profits of a business in one tax year. The tax year can be any 12-month period selected by the company. Net profits are ascertained according to the conditions imposed in the Revenue Code. An all-inclusive concept of income is used and all realized economic gains are treated as income (including capital gains), whether they occur regularly or only occasionally.

Corporate income tax is generally computed on an accrual basis i.e., income accruing in any accounting period is included as income in that period, whether or not it has been received, and expenses may be deducted as they accrue, whether or not they have actually been paid out.

As a general matter, expenses incurred exclusively for the purpose of acquiring profits or from conducting business in Thailand (other than those specifically excluded) are deductible expenses for determining net profit. Therefore,

Taxation

normal business expenses, qualifying bad debts, and depreciation at maximum rates ranging from 5 percent to 20 percent per annum (depending on the item) are allowed as deductions. Any generally accepted accounting method may be used to calculate depreciation, as long as the resulting depreciation rate is not more than that provided by using the straight-line method at the rate prescribed in the Revenue Code. Such accounting method must be applied consistently and may be varied only with the approval of the director-general. The following items, among others, are not allowed as deductions:

- reserves (other than those required by law);
- private expenses, including gifts for customers;
- gifts to charitable institutions, exceeding 2 percent of net profit;
- capital expenditures;
- corporate income tax, penalties, surcharges, and criminal fines under the Revenue Code; and
- portion of salary paid to shareholders which exceeds a reasonable amount.

Entertainment expenses are deductible if they are generally necessary for that type of business, up to a maximum of between 0.3 percent of gross revenues or the paid-up capital of the company, whichever is higher, but only up to THB 10 million. Certain bad debts can generally be written off if reasonable efforts have been made to recover them

or if such action is clearly impractical, such as in the case of the bankruptcy or death of the debtor. Net losses may be carried forward for five consecutive years. However, there is no provision for the carry-back of losses.

18.3.3 Remittance Abroad of the Profits of a Branch Office

This tax generally applies only to profits transferred overseas from a Thai branch. It is levied at a rate of 10 percent of the amount to be remitted and must be paid by the remitting Thai office of the company, within the seventh day of the month following the remittance.

18.3.4 Withholding of Income Tax on Payments to Offshore Companies

The Revenue Code requires that most payments to an offshore company or juristic partnership, paid either from or in Thailand, be subject to income tax. It is the responsibility of the payer to withhold the tax at source. The rates range from 10 percent to 15 percent, depending on the type of the income. If payments are made to an offshore company or juristic partnership incorporated in a country that has a double taxation agreement with Thailand, then the rate of withholding may be reduced or waived under the terms and conditions of the relevant agreement.

18.3.5 Dividends

Generally, if a Thai limited company pays dividends to another Thai limited company, 50 percent of the dividends paid are deemed exempt income of the recipient company. If the company receiving the dividend payment is listed on the SET, then the whole dividend is exempted. The total dividend is also exempted if the non-listed company receiving the payment holds at least 25 percent of the voting shares of the paying company, and there is no direct or

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indirect cross shareholding. In order to qualify for either the 50 percent or the 100 percent exempt income status, the receiving company must have held the shares for at least three months prior to the dividend declaration and must have continued to hold them for three months after the dividends were declared. Dividends paid by a Thai limited company, whether to a resident or non-resident corporate shareholder, are generally subject to 10 percent withholding at source, unless it is exempt income.

18.3.6 Other Taxes Withheld on Account of Income

In addition, the Revenue Code requires the payer of certain income to a company conducting business in Thailand to withhold tax at source. These rates vary from 0.5 percent to 10 percent, depending on the type of income. The amount withheld can be credited against the corporate income tax of the recipient company.

18.3.7 Filing Returns and Paying Corporate Income Tax

Corporate income tax is payable twice a year. The first instalment is 50 percent of the total tax, normally based on estimated net profits for the year. This is due within two months after the close of the first half of the financial year of the company. An annual income tax return must be filed within 150 days of the close of the company's financial year. In the case of a failure to file, a penalty of twice the amount of tax due is imposed when the official conducts an assessment. If tax is to be paid on the basis of net profits, then the return must be accompanied by an audited balance sheet and a profit and loss account. If tax is to be paid on a gross-receipts basis, then a statement of gross receipts must be filed along with the return. Currently, filing can be done either via a paper return or an electronic form.

18.3.8 Proposed legislation on e-commerce tax

The Revenue Department has been trying to conceptualize an e-service tax to efficiently capture the percentage of revenue generated by the e-commerce sector which has seen large volume and strong growth recently. After several amendments on the draft bill and public hearings, the Cabinet approved the draft of e-service tax law on 9 June 2020. The key point is to levy VAT on (i) a foreign operator who provides electronic service from outside Thailand where the service is used in Thailand by the service recipient which is not a VAT registrant, and (ii) an electronic platform through which the foreign operator provides electronic services. In addition, a foreign operator will be required to register and pay VAT in Thailand if receiving service income of more than THB 1.8 million per year, while a foreign digital platform will be required to register and pay VAT in Thailand if the service income generated from such platform is more than THB 1.8 million per year. Currently, the draft bill is being considered by the House of Representatives. It is expected that the law will come into force soon.

18.4 Transfer Pricing in Thailand

The key requirements for Thai taxpayers are summarized below.

18.4.1 What is required?

- Transfer pricing disclosure form ("**Disclosure Form**") for disclosing related parties as well as reporting domestic and offshore related-party transactions annually.
- Transfer pricing documentation to be submitted upon request.

Taxation

18.4.2 Who must prepare?

- Disclosure Form: Thai companies or juristic partnerships with income greater than THB 200 million in the accounting period, regardless of whether there are any transactions with related parties.
- Transfer pricing documentation: Thai companies or juristic partnerships with income greater than THB 200 million in the accounting period, who has entered into transactions with related parties.

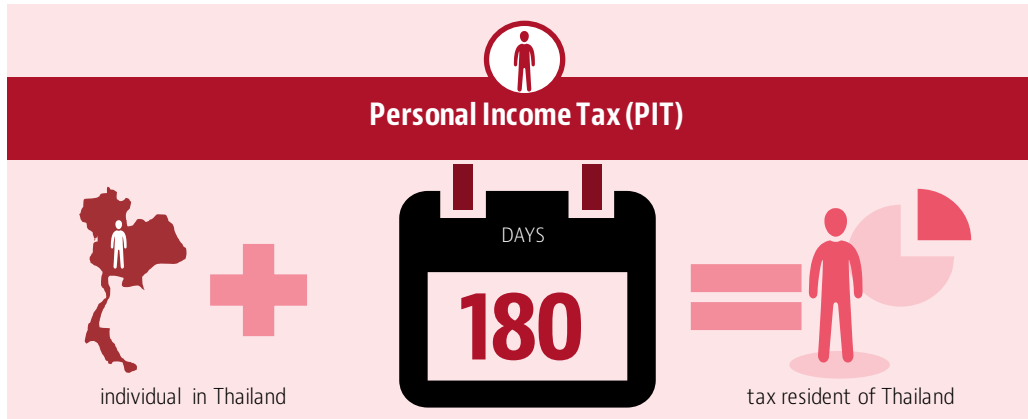
18.4.3 When to submit?

- Disclosure Form: 150 days after end of accounting period.
- Transfer pricing documentation: 60 days (some extension may be possible) upon receipt of request. Request can be made only within a five-year period from the date of filing of the Disclosure Form.

18.4.4 What are the penalties for non-compliance?

- Fine of up to THB 200,000 for not submitting Disclosure Form or transfer pricing documentation, or for inadequate or wrong information
- There may be additional corporate tax payable, a penalty up to 200% of the tax shortfall, and a monthly surcharge at 1.5% of the tax shortfall (capped at tax shortfall).

18.5 Personal Income Tax



Every person, resident or non-resident, who derives taxable income from employment or business conducted in Thailand, is subject to personal income tax, whether such income is paid in or outside of Thailand. Exemptions are granted to certain persons (United Nations officers, diplomats, and some visiting experts) under the terms of international and bilateral agreements. An individual who is present in Thailand for at least 180 days in any tax year (calendar year) is treated as a tax resident of Thailand. Tax residents are also subject to income tax on any foreign-sourced income they bring into Thailand in the year the income is earned.

Taxation

18.5.1 Personal Income Tax

Taxable income includes any payment for services and any other money, property, or benefits received from hire of service or employment. It also includes dividends, interest, and any royalties or technical assistance fees. Capital gains are considered to be normal taxable income, except in the case of the sale of movable property acquired by inheritance or with no intention to trade or make a profit.

Personal income tax paid and absorbed by an employer (in effect giving the employee a net salary) is also considered taxable income to the employee, leading to a "tax pyramid" effect. Also included in taxable income are living allowances, the monetary value of rent-free accommodation, school fees paid by the employer, travel allowances for annual leave, and the monetary value of any other benefit provided by the employer.

18.5.2 Income Exempt from Personal Income Tax

Certain types of income are excluded from taxable income, including occasional business travel expenses and work-related moving expenses reimbursed by the employer, interest on savings deposited with banks in Thailand (not exceeding THB 20,000 in a calendar year), insurance benefits, inheritances, and scholarships.

18.5.3 Deduction of Allowances and Expenses for Personal Income Tax

There are various kinds of allowances (subject to certain limitations) authorized by the Revenue Code, including the standard personal allowance, allowances for life insurance premiums, provident or pension funds, interest payments,

charitable donations, and political party donations. A married couple can choose to file a personal income tax return jointly or separately.

A standard expense deduction of 50 percent, but not exceeding THB100,000, is allowed against income from employment. Standard deduction of expenses from 10 percent to 60 percent is allowed against other categories of income as well. However, for certain types of income, the taxpayer can elect to itemize expenses instead of taking the standard deduction.

18.5.4 Income from Dividends and Personal Income Tax

Dividend income is generally subject to personal income tax. Thai tax residents may choose to have tax withheld at the rate of 10 percent of dividend income, without including such dividend payments in their taxable income at the end of the tax year. Alternatively, Thai tax residents can claim a dividend tax credit of approximately 25 percent if they include such dividends into their taxable income at the end of the tax year. The tax credit is determined by dividing the corporate income tax rate of the dividend payer by the difference between 100 and such corporate income tax rate, then multiplying the resulting figure by the dividend amount. This tax credit is only available to individuals who are domiciled in Thailand and who have stayed in Thailand for a minimum of 180 days in a calendar year.

Taxation

18.5.5 Personal Income Tax Rates

Personal income tax rates on net taxable income are as follows:

Amount (THB)	Rate
1 -150,000	exempt
150,001 - 300,000	5%
300,001 - 500,000	10%
500,001 - 750,000	15%
750,001 - 1,000,000	20%
1,000,001 - 2,000,000	25%
2,000,001 - 5,000,000	30%
5,000,001 onwards	35%

18.5.6 Tax Exemptions on Bonds

In order to promote the country's Asian bonds, a withholding tax exemption on interest, capital gains, and discounts derived from bonds issued by the government, governmental organization, or certain specific financial institutions, is

granted to non-tax resident foreign investors (i.e. investors staying in Thailand less than 180 days in a calendar year) provided that the bonds were issued and acquired before 13 October 2010.

18.5.7 Tax Relief for Mutual Fund Investment

Recently, a new investment vehicle, the so-called Super Savings Funds ("**SSFs**") was introduced to substitute Long-Term Equity Funds (LTFs), which were discontinued at the end of 2019. Tax deductions for the investment in SSFs is up to 30 percent of taxable income, but are capped at THB 200,000 a year and only for the period from 2020 to 2024. Retirement Mutual Funds ("**RMFs**") still continues but taxpayer investing in RMFs will be entitled to a higher tax deduction rate from 15 percent to 30 percent of taxable income, capped at the same amount of THB 500,000 a year. However, ultimately, the total tax deductions for SSFs and RMFs when combined with other pension funds are limited only to THB 500,000 a year. They are also granted a tax exemption on capital gains derived from the sale of RMFs or SSFs units, provided that the terms and conditions under the applicable Revenue Regulations are met (e.g. such individual holders have held such SSFs units for at least ten calendar years).

18.5.8 Taxes Paid by Another Person

The definition of "taxable income" includes all taxes paid for or reimbursed to the taxpayer by any other person. All such taxes paid by any person other than the taxpayer, at any stage, are in turn subject to tax.

18.5.9 Filing Personal Income Tax Returns

Personal income tax returns must be filed and the tax must be paid by the end of March in the year following that in which the income was earned. However, if there are certain types of income derived in the first half of the year, such as income derived from rent, income from liberal professions, income derived from a hire of work, and miscellaneous income, a half-yearly tax return must be filed and the tax paid by the end of September in the year in which such income was earned. Currently, filing can be done either via a paper return or an electronic form.

18.5.10 Tax Clearance Certificates

Foreigners departing Thailand do not have to obtain a tax clearance certificate unless:

- their remittance of tax to the Revenue Department is either in arrears or must be paid prior to, or at the time of, departing the country; or
- they are responsible for the submission of the returns and payment of income tax for a company or registered partnership established under the laws of a foreign country, carrying on business in Thailand; or
- they receive income from being public entertainers in Thailand; or
- they receive income from sales of genuine jewellery (e.g., diamonds, rubies, opals, pearls, and other similar gemstones), which has not yet been cut.

18.6 Withholding of Income Tax at Source

18.6.1 Overseas Payments

Income tax must be withheld at source by a corporate or individual payer, from taxable income paid to non-residents or persons not conducting business in Thailand.

18.6.2 Local Individuals

In general, payers of taxable income to individuals who must pay personal income tax are required to deduct tax at source at the time of payment. Taxable income includes salary, payment for services, value for goodwill, patents, trademarks, and copyrights, dividends, interest, bonuses, rental fees, etc.

18.6.3 Local Interest Payments

Income tax must also be withheld on the payment of interest on deposits and bills by commercial banks, and finance, securities, and credit foncier businesses, to:

- companies or juristic partnerships operating businesses in Thailand, at the rate of 1 percent;
- individuals, at the rate of 15 percent; and
- prescribed foundations or associations, at the rate of 10 percent.

Taxation

18.6.4 Government Payments

Central government and local government organizations that pay taxable income to companies or partnerships conducting business in Thailand must withhold income tax at the rate of 1 percent of the total income payable. The withheld tax is credited against the total tax due for the period in which the deduction is made.

18.6.5 Tax Credits

Certain taxes withheld may be used by the recipient of the net income as a credit against year-end taxes. If the credit cannot be utilized, then it is refundable.

18.7 Gift and Inheritance Tax

The Inheritance Tax Act, B.E. 2558 (2015), and the Revenue Code Amendment Act (No. 40), B.E. 2558 (2015) (i.e. Gift Tax law) were published in the Thai Royal Government Gazette on 5 August 2015, and entered into force on 1 February 2016.

18.7.1 Gift Tax

Gift Tax is considered to be a part of personal income tax under the Revenue Code. In general, a recipient of a gift is deemed to be a recipient of income and is subject to tax upon receipt. However, for gratuitous transfers of immovable property, the transferor is deemed to be the recipient of income and subject to personal income tax. Pursuant to the amendment of the Revenue Code, person who receives movable property, or who gratuitously

transfer immovable property may be taxed at a special flat rate of 5 percent, (rather than personal income tax rate of 5 percent to 35 percent). However, there are certain tax exemptions as follows:

- a. in the case of gratuitous transfers of immovable property from a parent to a legitimate child (excluding adopted child), the transferor is exempt from personal income tax up to THB 20 million per calendar year;
- b. in the case of gratuitous receipt of movable property from ascendant, descendant, or spouse, the recipient is exempt from personal income tax up to THB 20 million per calendar year; and
- c. in the case of gratuitous receipt of movable property from any other persons for moral obligation or in ceremony or occasion according to established custom, the recipient is exempt from personal income tax up to THB 10 million per calendar year.

Any gifts received in excess of the capped amount of exemption are taxable to the recipient at either a fixed rate of 5 percent of the gross value or at the personal income tax rate if the excess is included into a personal income tax computation. These rates also apply to gift of immovable property. The 5 percent rate on the gross value of the gift received in excess of the exemption is a final tax, which the taxpayer is not required to include the value of the gift that is in excess of the capped amount in a personal income tax return. However, the taxpayer also has a choice to include the excess of the exemption value as aforementioned into the taxpayer's tax computation and subject to 5 percent to 35 percent tax rate of the total taxable income after deducted allowances and expenses.

Taxation

Nonetheless, if a Thai-resident individual receives gifts abroad, these gifts are considered foreign-sourced income, which will be subject to Thai personal income tax under the residence rule only if that Thai tax resident remits such gifts back into Thailand in the same calendar year in which the gifts are received. In the other words, if gifts are not remitted into Thailand or remitted into Thailand in the subsequent calendar year, they will not be taxable in Thailand.

18.7.2 Inheritance Tax

Under the Inheritance Tax Act, any person who receives taxable assets by inheritance from a decedent, valued over THB 100 million, will be subject to inheritance tax. The inheritance tax rates are as follows.

- If the recipient is an ascendant or a descendant of the deceased, then the recipient will subject to inheritance tax of 5 percent.
- If the recipient is not an ascendant or a descendant of the deceased then the recipient will subject to inheritance tax of 10 percent.

However the legally married spouse of the decedent is not subject to inheritance tax. Similarly, inherited assets, which the deceased intends to give for the benefit of religion, education, or public interest, or intends to give to persons or international organisations having objectives for religion, education, or public interests, is exempt from inheritance tax.

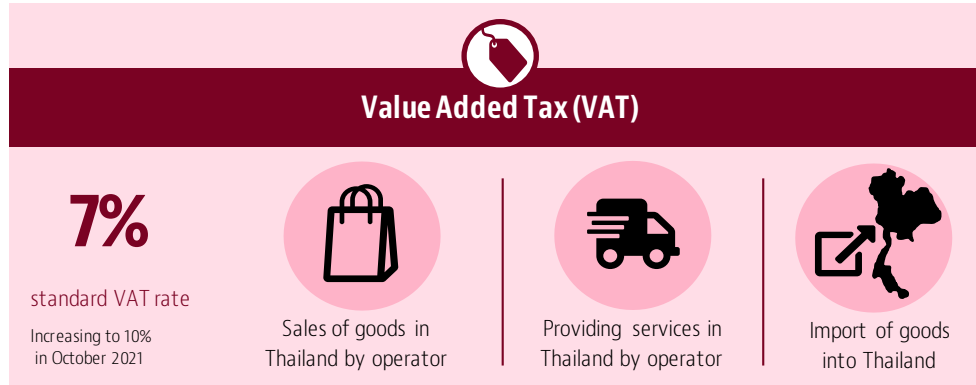
In addition, if the recipient is a Thai national, Thai resident under Thai immigration law, or a Thai entity then such recipient will be subject to Thai inheritance tax on all assets including Thai and offshore assets that are inheritance.

Nevertheless, if the recipient is not a Thai national and not a Thai resident under Thai immigration law or a Thai entity, then the recipient will be subject to Thai inheritance tax on only Thai assets.

Moreover, only the taxable assets are subject to inheritance tax. The taxable assets are as follows:

- a) immovable property;
- b) securities defined under the law on securities and exchange;
- c) bank deposits or other money having similar nature;
- d) registered vehicles; and
- e) financial assets as prescribed in the royal decree.

18.8 Value Added Tax



VAT is essentially a broad-based consumption tax on goods and services, operating at each stage of production and distribution. As a result, VAT applies to all retailers, manufacturers, wholesalers, producers, and importers of goods, as well as service providers, other than those excluded or exempt by the Revenue Code.

18.8.1 VAT Rates

VAT is currently levied at a standard rate of 7 percent; however, it will increase to 10 percent (inclusive of municipal tax) from 1 October 2021 onwards, unless the reduced rate is extended. Exported goods and services, under the terms and conditions of the Revenue Code, are subject to 0 percent.

18.8.2 VAT Exemptions

18.8.3 Zero Percent Rate for VAT

The businesses and activities that are exempt from VAT are as follows:

- small and medium enterprises ("SME") with annual gross sales of not exceeding THB 1.8 million;
- businesses that sell agricultural products, other than for the purpose of export;
- provision of domestic transportation;
- provision of health care services;
- provision educational services;
- religious and charitable organizations;
- leasing of immovable property; and
- other activities and businesses as prescribed under the Revenue Code.

18.8.4 Tax Invoices

Every VAT registrant must issue a tax invoice to each customer and must retain copies of the tax invoices. Generally, the VAT registrant is responsible for collecting and remitting VAT to the Revenue Department. A business operator residing outside Thailand who sells goods or renders services in Thailand on a temporary basis, or provides an offshore service that will be used in Thailand, is subject to VAT. In this regard, the Thai customer is obligated to remit VAT on behalf of the foreign business operator that is not a VAT registrant. In addition, the receipt issued by the Revenue Department for the remitted VAT will be deemed as a tax invoice.

Moreover, the Revenue Department has been encouraging taxpayers to use the E-Tax Invoice & Receipt and E-Tax Invoice by Email. E-Tax Invoice & Receipt is an electronic system that a VAT registrant can use in order to issue an e-tax invoice, e-receipt, e-debit note, and e-credit note. The e-tax invoice will be issued in XML, PDF, or other electronic file format with a digital signature affixed to it. The e-tax invoice will be sent to the customer and the Revenue Department by electronic means as specified by the Revenue Department. On the other hand, E-Tax Invoice by Email is a system that VAT registrants with a revenue not exceeding 30 million per annum can use in order to send an e-tax invoice to both the customer and the Revenue Department by email. However, the e-tax invoice must be issued in PDF/A-3 format only. In addition, the seller must always copy the Revenue Department when sending the e-tax invoice to the customer.


18.8.5 VAT Registration and Returns

A business operator must register as a VAT registrant within 30 days from the date that it has a revenue from VAT business of exceeding THB 1.8 million per year. However, a business operator may also register as a VAT registrant within 30 days from the date that it has submitted the request to be a VAT registrant to the director-general of the Revenue Department.

VAT registrants must file a monthly VAT return and remit the monthly VAT to the Revenue Department by the fifteenth day of the following month. VAT registrants are entitled to utilize the VAT charged by another VAT registrant (i.e. input VAT) to credit against its output VAT. The amount of monthly VAT payable is the output VAT amount deducted by input VAT amount. If the monthly input VAT exceeds the output VAT, the VAT registrant may claim a VAT refund or carry the excess forward to subsequent tax months.






18.9 Specific Business Tax

The infographic features a dark green header with a white icon of a classical building. Below the header, the text 'Specific Business Tax (SBT)' is centered. A light green box contains the text 'varies from 0.011% to 3.3% on gross revenue'. A horizontal line separates this from the text 'Applies to certain types of businesses including:'. Below this, five icons are arranged horizontally: a piggy bank, a banknote, an umbrella, a credit card, and a hand holding a coin. Each icon is accompanied by a label: 'banking', 'finance', 'life insurance', 'credit foncier', and 'pawn brokerage'.


Specific Business Tax (SBT)

varies from **0.011% to 3.3%** on gross revenue


Applies to certain types of businesses including:


-  banking
-  finance
-  life insurance
-  credit foncier
-  pawn brokerage


SBT is an indirect tax currently imposed on certain types businesses, such as banking, finance, life insurance, credit foncier, pawn brokerage, business with transactions similar to commercial banks, commercial trading of real estate, securities repurchase, factoring, and any other businesses that are prescribed by a royal decree. The SBT business is not subject to VAT. The SBT rate (inclusive of municipal tax) varies from 0.011 percent to 3.3 percent on gross revenue derived from SBT business, depending on type of business.


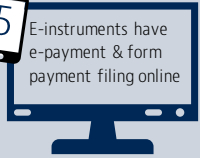
The business operator that operates any of the SBT businesses must register as SBT registrant within 30 days from the date of commencing any of these businesses. Moreover, the SBT registrant must submit monthly SBT return and remit the SBT to the Revenue Department by the fifteenth day of the following month.


18.10 Stamp Duty



Stamp Duty

28 dutiable documents


in the Stamp Duty Schedule of the Revenue Code


 E-instruments have e-payment & form payment filing online


 **Failure to stamp?**
 Penalties can be up to **6X** original duty cost.

 Documents not properly stamped are not admissible as evidence in civil court proceedings.

A stamp duty is levied on the execution or importation of 28 dutiable documents listed in the Stamp Duty Schedule of the Revenue Code, including, for example, share transfer instruments and hire-of-work contracts. Rates and payment procedures depend upon the type of instrument. Penalties for failure to stamp documents are very high.

Taxation

Penalties can be imposed at the rate of up to six times the original duty. Furthermore, documents that have not been properly stamped are not admissible as evidence in civil court proceedings.

On 1 July 2019, new rules on stamp duty payment for instruments prepared in electronic format (e-instruments) under the laws governing electronic transactions entered into force. Under these rules, stamp duty imposed to five types of e-instruments, which are: (i) a hire-of-work contract; (ii) a loan agreement or agreement for bank overdraft; (iii) a power of attorney; (iv) a proxy for voting at a company's meeting; and (v) a guarantee agreement, is required to be paid by electronic payment made to the Revenue Department's account. Taxpayers must file the stamp duty payment form through the Revenue Department's website or Application Programming Interface. However, for the e-instruments executed between 1 July 2019 and 31 December 2020, taxpayers may alternatively pay stamp duty in cash at the Revenue Department.

Furthermore, to support the growing digitalization of Thai economy, on 16 September 2020, the Revenue Department issued new rules allowing the payment of stamp duty for the abovementioned five types of instruments, which are not prepared in electronic format, to be alternatively conducted through the Revenue Department's website or Application Programming Interface, in addition to the payment in cash at the Revenue Department or the payment by affixing physical stamps on the instruments. These rules on stamp duty payment for physical instruments will be applicable only until 31 December 2020 unless there is an extension of these rules.

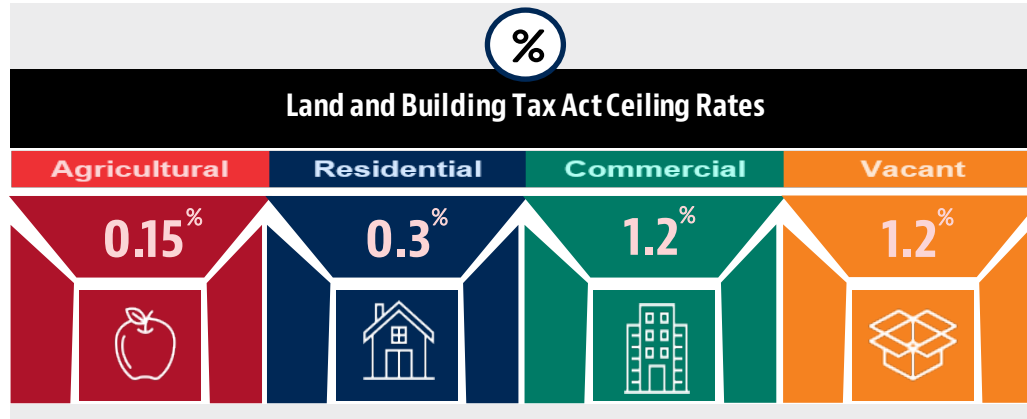
18.11 Appeal Procedures under the Revenue Code

There is a standard appeal procedure for grievances arising from income tax assessments. To qualify for consideration, an appeal must be filed with the Board of Appeals within 30 days of receiving the notice of assessment. A further appeal can be made to the Tax Court against the Board's decision, within 30 days from the date of receipt of the decision on appeal. A further appeal can be made to the Supreme Court against the Tax Court's judgment, within one month from the date of judgment hearing. The judgment of the Supreme Court is considered final and the parties cannot make any further appeals.

18.12 Excise Tax

Excise tax is generally imposed, under the Excise Tax Act B.E. 2560, on certain commodities, whether manufactured locally or imported from overseas, and on certain services provided domestically. These include petroleum and petroleum products, alcoholic and non-alcoholic beverages, automobiles, motorcycles, batteries, perfumes, tobacco, golf courses, and horse racing tracks. Generally, tax liability in case of commodities is incurred when the goods leave the factory, or bonded warehouse if they are stored upon arrival in Thailand, or are imported or released from a customs free zone or bonded warehouse, as the case may be, and is payable by the manufacturer or importer concerned. Meanwhile, tax liability in case of services is generally imposed on the service provider when there is a payment of service fee. The excise tax bases and rates vary according to the type of goods and services.

18.13 Property and Land Taxes



The house and land tax and the local development tax were replaced and revoked by the Land and Building Tax Act, which became effective on 13 March 2019. Land and building tax collection under the Act commenced on 1 January 2020.

The land and building tax rates vary depending on the purposes of the property. The rates will be subsequently announced in the royal decree, but would not exceed the following ceiling rates:

- i. For property used for agricultural purposes, the ceiling rate is 0.15 percent of the official appraisal value.

- ii. For property used for residential purposes, the ceiling rate is 0.3 percent of the official appraisal value.
- iii. For property used for commercial purposes, the ceiling rate is 1.2 percent of the official appraisal value.
- iv. For vacant property, the ceiling rate is 1.2 percent of the official appraisal value. The rate would increase by 0.3 percent every three years if the property remains unused, but the rate shall not exceed 3 percent of the official appraisal value.

In the first years of the enforcement of the Land and Building Act, the reduced tax rates and certain reliefs will apply in order to minimize tax burdens. For example, if the property is used for commercial purposes, the land and building tax will be applicable at progressive rates of 0.3–0.7 percent for the first two years (2020–2021).

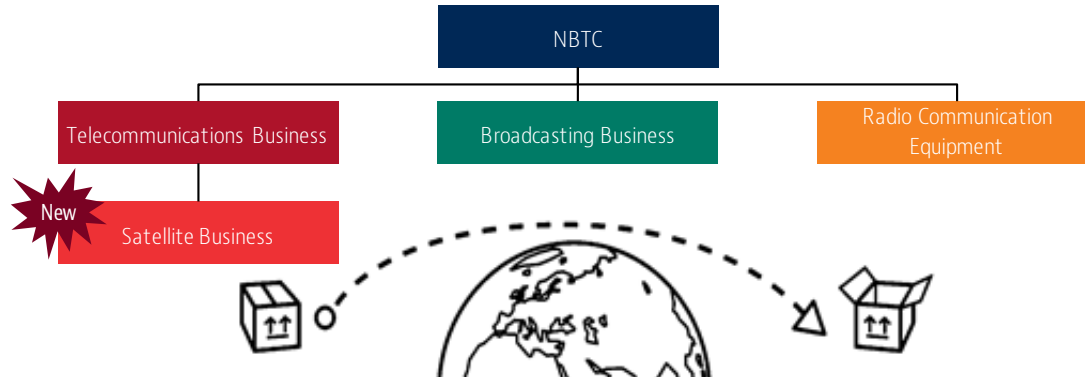
Persons liable to pay land and building tax include: (i) an individual or corporate land and building owner; (ii) a beneficiary to land and building owned by the government; or (iii) any persons liable to pay tax on behalf of taxpayers (e.g. heirs, legal guardians, liquidators).

The land and building tax will levy annually, and the local authority will send assessment letters to taxpayers by the end of February. The taxpayers must pay the assessed land and building tax by the end of April.

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19.1 Telecommunications

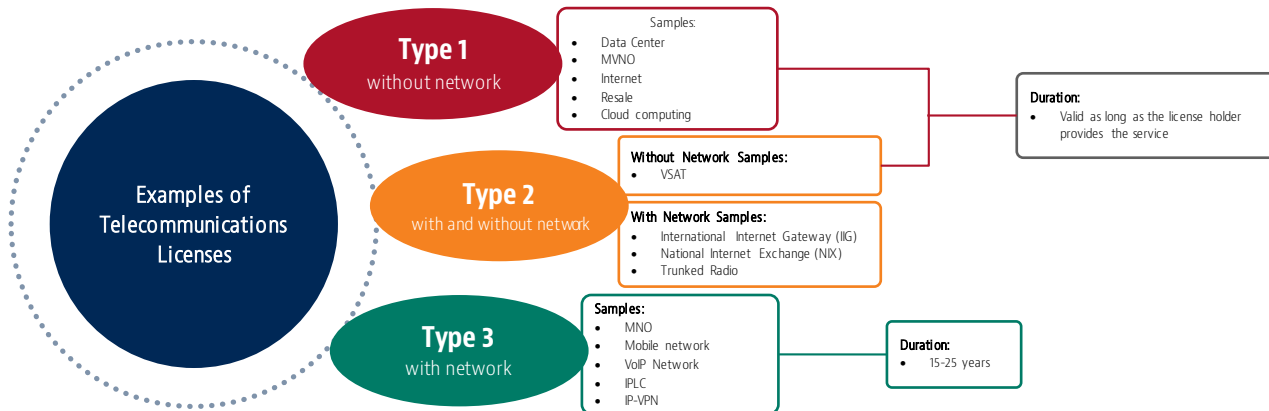
Thailand's telecommunications industry is currently overseen and regulated by the National Broadcasting and Telecommunications Commission ("**NBTC**"). The NBTC is an independent regulator established by virtue of the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010) and its amendments ("**NBTC Act**"). The NBTC is empowered to regulate telecom, broadcasting as well as satellite businesses.



In addition to the NBTC Act, the Telecommunications Business Act B.E. 2543 (2000) amended by the Act No. 2 B.E. 2549 (2006) ("TBA") also plays a vital role in Thailand's telecommunications industry. The TBA imposes a licensing requirement and relevant rules on anyone wishing to engage in the telecommunications business. All rules under the TBA are promulgated and regulated by the NBTC.

19.1.1 Telecommunications Licenses

The TBA requires all telecommunications business operators to obtain a telecom business license from the NBTC before commencing telecoms related business operations in Thailand. These licenses are divided into three types as shown in the infographic below:



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19.1.2 Telecommunications License Fees

License fees, renewal fees, and annual fees for the licenses are subject to the rates prescribed by the NBTC. The license fees and renewal fees are currently prescribed on a fixed fee basis, which varies depending on the type of license. The current annual fees for all types of licenses are, however, subject to percentage rates at a maximum of 1.5 percent of the gross revenue from the services.

19.1.3 Spectrum Allocation

The NBTC Act prescribes that any spectrum used for the purpose of telecommunications business operation must be assigned through an auction method in accordance with the criteria, procedures, duration, and conditions prescribed by the NBTC. Other selection methods may be applied, provided that such spectrum is sufficient for use, or the spectrum will be used for public services, national security, or non-profit purposes. A granted spectrum license is exclusive and non-transferable, unless approval is obtained from the NBTC.

19.1.4 Foreign Ownership

Under the TBA, foreigners are allowed to obtain the type 1 license. However, the TBA restricts foreigners under the Foreign Business Act B.E. 2542 (1999) ("**FBA**") in obtaining type 2 and type 3 licenses as shown below.



In addition to the TBA, companies which operate under type 2 licenses with their own networks or under type 3 licenses, are also restricted from conducting activities prescribed under the Foreign Dominance Notification B.E. 2555 (2012) and its amendment ("**Foreign Dominance Notification**"). The Foreign Dominance Notification prohibits foreigners from having the ability to exert any control or influence which may, directly or indirectly, affect the management or the operation of these companies. Foreigners are restricted from performing any actions which are deemed as "foreign dominance" as set out in the Foreign Dominance Notification.

The Foreign Dominance Notification also stipulates a list of specific prohibited foreign dominance actions. These include, for example, holding shares by nominee, having special preferential rights in casting votes, and entering into

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an agreement relating to intellectual property that gives exclusive rights to foreigners wherein such agreement renders an effect of transfer of expenses and benefits in return to foreigners, amongst others.

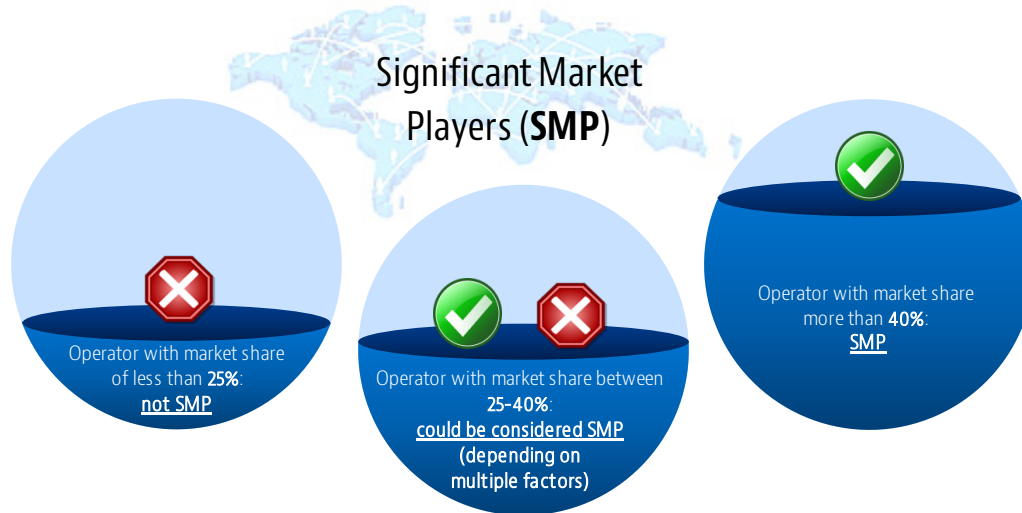
19.1.5 Universal Service Obligation

The NBTC has imposed duties for all types of telecom licensees to pay for universal service obligation fees ("USO"). The current rate of USO fees is 2.5 percent of the net revenue of the licensees.

19.1.6 Competition

The NBTC is empowered to provide measures against monopolization, anti-competitive behaviors, and to set measures to promote free and fair competition, specifically among telecom business operators. The NBTC has issued a number of notifications to promote competition in the market. These include, for example, significant market players ("SMP"), anticompetitive behaviors, relevant market definitions, and mergers.

i. Significant Market Players (SMP)



ii. Merger Control

The Notification on Merger and Acquisition of Telecommunications Business B.E. 2561 (2018) provides rules and procedures for mergers and acquisitions related to telecom licensed holders. With certain exceptions, the telecom

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business licensee or a person with controlling power shall report to the NBTC secretary not less than ninety (90) days before engaging in merger and acquisition activities.

19.1.7 Consumer Protection

The NBTC issues many regulations in relation to consumer protection. For example, the standard contract between a telecom operator and an end-user must be approved by the NBTC in advance. There is also a data privacy regulation, which requires telecom operators to collect personal data directly from the customers and retain such information for a certain period. In case the telecom operators wish to use, disclose, transfer, or amend the personal data, the telecom operators are required to obtain consent from the customer in advance.

19.1.8 Other Issues to Note

i. Retail Tariffs

Under the Telecom Tariff Regulation, an operator has two choices in calculating its tariffs: (i) to use the Rate of Return ("ROR") model; and (ii) to use the price cap set by the NBTC. When an operator wishes to change its retail prices, it is required to notify the NBTC prior to the change.

ii. Number portability

The Regulation on Mobile Number Portability requires all mobile network operators to implement a mobile number portability system.

iii. Mobile Virtual Network Operator ("**MVNO**")

The Notification of the NBTC on Mobile Virtual Network Operator B.E. 2563 (2020) regulates resellers of mobile telephone services. The MVNO under this notification cannot use or control any part of the spectrum.

iv. Wholesale and Resale Services

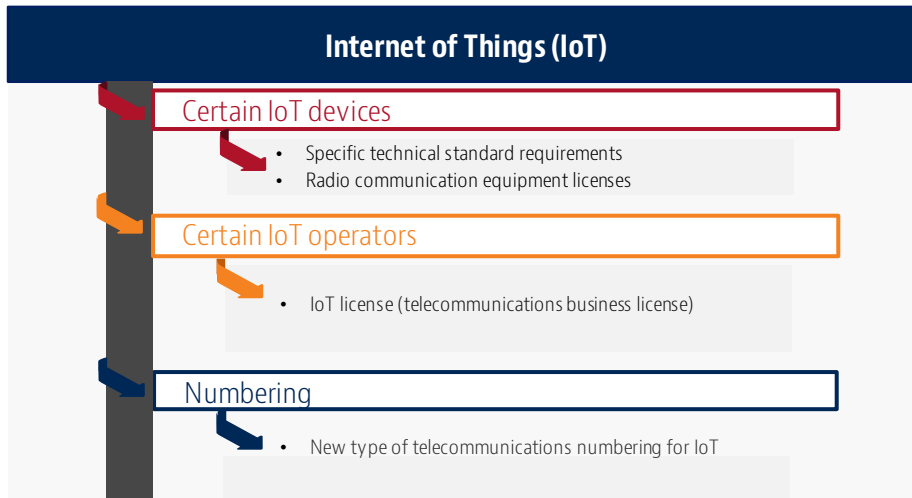
Under the Wholesale and Resale Services Regulation, telecom wholesalers and resellers must obtain a license, which indicates whether they provide wholesale or resale services.

Wholesale operators who provide certain services, for example Public Switched Telecom Services and Leased Circuit Channel Services, are obligated to resell their services to a reseller without any right of refusal.

v. Internet of Things ("**IoT**")

The NBTC started an initiative to regulate IoT in Thailand back in 2017. According to recent NBTC Notifications related to IoT, certain IoT operators are now subject to the IoT license, and certain IoT devices would be subject to specific technical standard requirements and radio communication equipment licenses prescribed by the NBTC. Since then, the NBTC has issued IoT licenses to some IoT operators accordingly. In addition, the NBTC also amended NBTC Notifications related to telecommunications numbering to include a new type of telecommunications numbering for IoT.

The regulating regime for IoT in Thailand is still quite new and should expand along with the development of IoT technology.



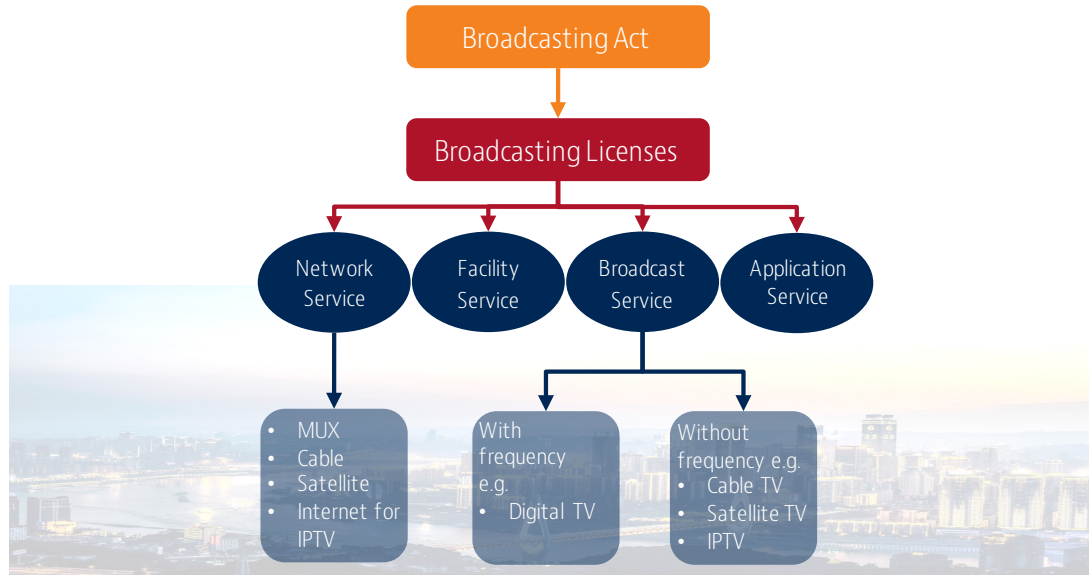
19.2 Broadcasting

The NBTC Act and the Broadcasting Business Act B.E. 2551 (2008) ("**Broadcasting Act**") have liberalized the broadcasting industry in Thailand.

By virtue of the NBTC Act and the Broadcasting Act, the NBTC has issued a number of regulations regulating television and radio businesses, both with and without the use of frequencies. The issues of interest are as follows:

19.2.1 Licensing

Under the Broadcasting Act, television broadcasters are required to obtain broadcasting licenses from the NBTC prior to commencing broadcasting business. The NBTC separates broadcasting licenses into types as shown in the infographic below:



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19.2.2 Broadcasting Business License Fees

License fees, renewal fees, and annual fees for the licenses are subject to the rates prescribed by the NBTC. The license fees and renewal fees are currently prescribed on a fixed fee basis, dependent on the type of license. The current annual fees for all types of licenses are, however, subject to percentage rates at a maximum of 1.5 percent of the gross revenue from the services.

19.2.3 Foreign Ownership

According to the Broadcasting Act, foreigners are restricted from operating broadcasting businesses in Thailand. A broadcasting service provider must be a Thai entity and meet, among other things, the following qualifications:

- i. being a Thai entity that is invested in or has its capital shares held by Thai nationals making up not less than three-quarters of its total capital; and
- ii. being a Thai entity consisting of Thai nationals having power under the law or by-laws, or agreement on voting rights, of not less than three-quarters of the total number of votes.

19.2.4 Merger Control

The NBTC has issued a notification governing mergers and acquisitions in the radio and broadcasting sectors.

With certain exceptions, the radio and television licensee or a person with controlling power shall report to the NBTC secretary not less than thirty (30) days before engaging in merger and acquisition activities.

19.3 Satellite Business

In the past few decades, the satellite business has been monopolized and regulated under the concession regime. However, in order to transfer the satellite business from the concession regime to the licensing regime, the NBTC issued a number of new regulations to regulate satellite business in accordance with the NBTC Act in February 2020 to govern satellite business as well as landing rights for foreign satellites. This change will likely transform the satellite business in Thailand and allow more players to enter the market accordingly.



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19.4 IT/E-Commerce

Currently, no central authority oversees or regulates Thailand's IT/E-commerce industry. Businesses in this sector are subject to a number of regulations and authorities, depending upon the arrangements and details of each business. Certain types of IT/E-commerce businesses are also subject to telecommunications regulations and the authority of the NBTC, Ministry of Digital Economy and Society, Electronic Transaction Committee, etc.

In late 2014, the Thai government introduced a digital economy plan to promote IT/E-commerce businesses and a digital environment in Thailand, which are expected to become part of a new economic drive for the country's future.

In 2019, several relevant laws and amendments to certain laws from said initiative have been passed, including:

- i. Cybersecurity Act, B.E. 2562 (2019);
- ii. Personal Data Protection Act, B.E. 2562 (2019);
- iii. Electronic Transactions Act (No. 3) B.E. 2562 (2019);
- iv. Electronic Transactions Act (No. 4) B.E. 2562 (2019);
- v. Electronic Transactions Development Agency Act B.E. 2562 (2019);
- vi. Digital Economy And Society Council Act B.E. 2562 (2019); and

vii. Emergency Decree re: Electronic Meetings B.E. 2563 (2020).

Below is a summary of certain legislation which currently plays a vital role in the operation of IT/E-commerce businesses in Thailand.

19.4.1 The Electronic Transactions Act B.E. 2544 (2001)

Thailand has promulgated the Electronic Transactions Act B.E. 2544 (2001) ("**E-Transactions Act**") to deal with legal issues brought about by business transacted via electronic means, and to keep pace with the rapid developments in electronic technology. The E-Transactions Act combines the electronic transactions law and the electronic signatures law into one, and has established various methods and rules to support all civil and commercial transactions using electronic data. These include legal recognition of electronic data, methods of dispatch and receipt of electronic data, use of electronic signatures, and the evidential admissibility of electronic data.

The E-Transactions Act has also laid down various rules for electronic signatures, including: (i) the consideration as to whether any electronic signature should be deemed as a trustworthy electronic signature; (ii) procedures for the creation of an electronic signature; and (iii) rules regarding a certificate to support an electronic signature.

Due to the increased importance of automation and the need to define and determine what constitutes a legally recognized electronic signature, the Electronic Transactions Act (No. 3), B.E. 2562 (2019) has finally introduced the definition of "automatic electronic data exchange" ("**AEDES**") in order to facilitate automated transactions. Another point worth noting is the Electronic Transactions Act (No. 3) also allows for the issuance of a Royal Decree which would

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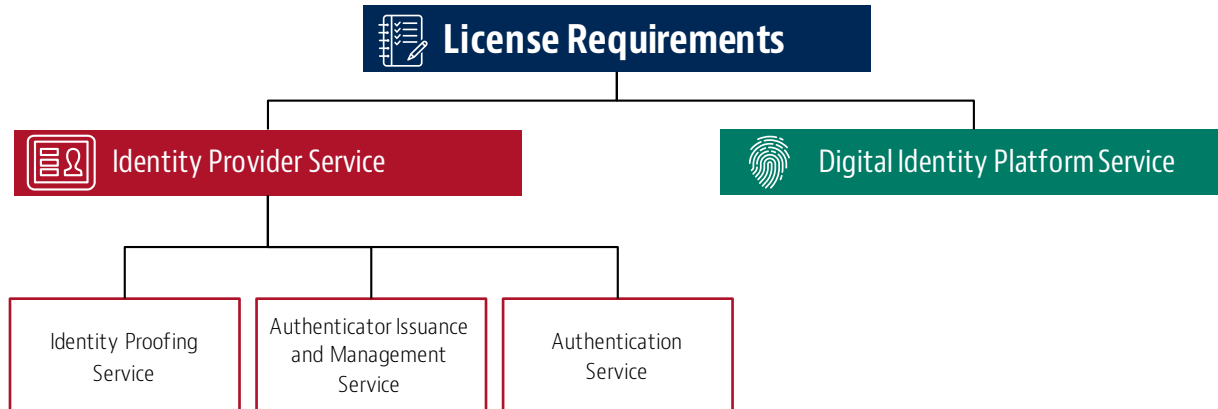
regulate certain "service businesses concerning electronic transactions" and require notification, registration or a license before commencing the regulated businesses, where it is necessary for: (i) financial and commercial security; (ii) credibility and recognition of electronic transactions systems; and (iii) the prevention of damage to the public.

A separate amendment, the Electronic Transactions Act (No. 4), B.E. 2562 (2019) provides a definition of "Digital ID" and "Digital ID system", and the legal framework required to support the National Digital ID (NDID) system, Thailand's first national system to facilitate electronic identity proofing, authentication and data access authorization for conducting transactions. In essence, the NDID system provides the option not to physically undertake the traditional KYC. Nonetheless, other means for conducting identity proofing and authentication are not prohibited by this Electronic Transactions Act (No. 4).

In September 2020, the Thai Cabinet approved, in principle, the *Draft Royal Decree RE: Control and Supervision on Service Provision of Digital ID System That Requires a License B.E...* (the "**Draft Royal Decree**") to regulate certain services, regarding digital ID. The Draft Royal Decree is proposed to prescribe that the following types of digital ID services require a license before commencing operation:

- (1) Identity Provider Service (i.e., those who provide (i) identity proofing service; (ii) authenticator issuance and management service; and (iii) authentication service)
- (2) Digital Identity Platform Service (i.e., providers of a network or system to link and exchange information relating to digital ID proofing and authentication)

- (3) Other services relating to digital identity proofing and authentication systems which may affect security or public order



The Draft Royal Decree also provides exemptions to certain types of services, relating to digital ID proofing and authentication, to obtaining a license (e.g., service of issuance of a certificate for electronic signatures, digital ID system service which is conducted for internal use only without providing the same to others externally) and gives room for the ETC to prescribe additional exemptions in the future.

The current Draft Royal Decree is not finalized and may undergo further revisions during the legislative process.

Technology

The Notification of the Electronic Transaction Committee B.E. 2562 (2019) (the "**Cloud Guideline**") has also been issued to provide a guideline for electronic transactions service providers using cloud services from cloud service providers. Cloud Guideline discusses frameworks relating to the efficiency of the provision of the cloud service, security, data management, and personal data protection. At the time of writing, it is uncertain who should be subject to the Cloud Guideline as an "electronic transactions service provider."

19.4.2 Cybersecurity Act

The Cybersecurity Act, B.E. 2562 (2019) (the "**Cybersecurity Act**") establishes a National Cybersecurity Committee and other committees to monitor cybersecurity of public and private entities, establish cybersecurity frameworks, and to exercise authority in order to handle or mitigate risks from cyber threats. The Act classifies cyber threats in three levels with compliance obligations on the private entities for each level to prevent cyber threats, for example, to allow officials to test the operation of the computer.

It also provides obligations for the entities which provide services that may be deemed as a **Critical Information Infrastructure Organization ("CII Organization")**. Subject to future sub-regulation, organizations which undertake the following tasks or provide certain services, and where their operation relates to maintaining national security, public security, national economic security, or the fundamental infrastructures for public interest, may be deemed a CII Organization.

Private entities which are deemed CII Organizations would have compliance obligations, such as to:

- i. provide names and contact information of the owner(s), person(s) possessing the computer and person(s) monitoring the computer system;
- ii. comply with the code of practice and minimum cybersecurity standards;
- iii. conduct cybersecurity risk assessment; and
- iv. notify the authority of cyber threats.

19.4.3 Computer Crime

The Computer Crime Act B.E. 2550 (2007) amended by the Act No. 2 B.E. 2560 (2017) (the "**Computer Crime Act**") focuses on criminal penalties applicable to computer-related crimes and the power of the authorities to investigate these crimes.

Prohibited activities, which could be subject to penalties under the Computer Crime Act, include hacking, illegal disclosure of prevention measures for accessing a computer system, illegal eavesdropping on computer data, illegal content, spamming and the liability of service providers. The Computer Crime Act also prescribes safe harbor provisions for service providers whose computer systems contains illegal content. If a service provider can prove that it followed the prescribed procedures, it could be exempted from relevant penalties. Further, the Computer Crime Act also prescribes data retention requirements for service providers, including types of data and time period for retention.

Technology

19.4.4 National Intelligence Act

The National Intelligence Act, B.E. 2562 (2019) (the "**National Intelligence Act**") provides power for the National Intelligence Agency ("**NIA**") to acquire data and documents which affect national security. In case of necessity, NIA may obtain data or documents regarding intelligence, intelligence threats, communications on the same, and/or civil defence, by means of electronic, scientific, and telecommunications tools or other technology. It establishes a National Intelligence Coordination Centre to monitor and handle the situations, both inside and outside Thailand, and provide remedial measures for emergency cases.

19.4.5 Direct Sales and Direct Marketing Act B.E. 2545 (2002)

The Direct Sales and Direct Marketing Act B.E. 2545 (2002), amended by the Act (No. 3) B.E. 2560 (2017) ("**DSA**"), partly controls the marketing of goods or services via distance medium (e.g. web portal, e-marketplace, e-commerce, etc.), with the anticipation that consumers will respond through such distance medium. The DSA prescribes registration requirements and other compliance requirements for the operators of these businesses with the exception of certain types of e-commerce, e.g. registered small and medium enterprises (SMEs) and certain other business operated by natural persons.

19.4.6 Commercial Registration Act B.E. 2522 (1979)

The Commercial Registration Act B.E. 2522 (1979) ("**CRA**") and its relevant notifications impose registration requirements and other compliance requirements on all business operators engaging in e-commerce. These include

buying or selling goods/services via the Internet, providing Internet services, leasing space in a computer hosting device, and acting as a marketplace for the sale or purchase of goods and services via the Internet.

19.4.7 Emergency Decree re: Electronic Meetings B.E. 2563 (2020)

The Emergency Decree re: Electronic Meetings B.E. 2563 (2020) (the "Emergency Decree") was published on 19 April 2020 and superseded the earlier Announcement of the National Council for Peace and Order on the same subject. The Emergency Decree allows electronic meetings to form a quorum without imposing a minimum number of participants being at the same place in person. The participants may attend such meeting from anywhere and do not have to be in Thailand.

Electronic meetings held are further subject to specific requirements on electronic meetings by the Ministry of Digital Economy and Society (MDES) and the Electronic Transactions Development Agency (ETDA), e.g., security policy and standards of meetings via electronic means as specified by the MDES, which covers the areas of minimum requirements for electronic meetings (such as, identity verification of participants prior to meeting, access to meeting documents, voting, storage of related information), standards for confidential electronic meetings (such as, access control, identification of participants, prohibition of audio or audio-visual recording) and IT security measures (such as, confidentiality, integrity, availability, privacy and personal data protection).

20 Competition Law

20.1 Trade Competition Act

The Trade Competition Act B.E. 2560 (2017) ("**Trade Competition Act**") is the main piece of legislation governing competitive interactions among businesses in Thailand. The act applies to all businesses, except those specifically exempted. For example, activities of central, provincial or local administration and state-owned enterprise which are carried out in accordance with the law or the Cabinet's resolution for the purpose of national security or public benefit; and business sectors that have competition sector-specific laws.

20.1.1 Scope of the Trade Competition Act

The Trade Competition Act contains provisions that are similar in many ways to those found in US antitrust laws or in the competition laws of certain European countries. The act generally regulates all anti-competitive practices. It also established the Trade Competition Commission and the Office of Trade Competition Commission ("**OTCC**"), an independent body in charge of the supervision and enforcement of the Trade Competition Act. The OTCC is empowered to impose penalties on businesses that engage in anti-competitive activities.

The Office of Trade Competition Commission ("**OTCC**") is empowered to



in charge of the supervision and enforcement of the Trade Competition Act

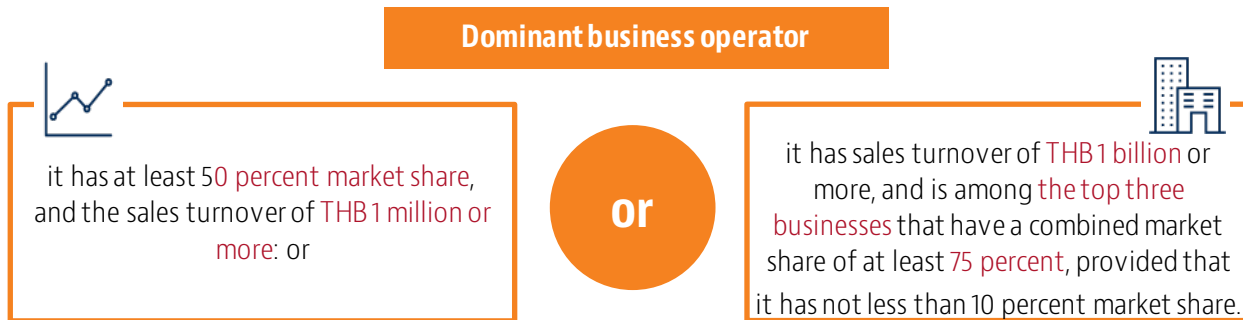


impose penalties on businesses that engage in anti-competitive activities

20.1.2 Abuse of a Dominant Position

The Trade Competition Act prohibits businesses from abusing their "dominant position." A business has a dominant position in the market if it has certain market share and sales turnover, as defined by the OTCC. The OTCC is obliged to revise this dominance test every three years, and, in determining the criteria, must take into account competitive conditions, including, for example, the number of players in the market, the amount of investment, and access to the key factors of production.

The dominance test in force has been in effect since 25 September 2020. A business will be considered to have a dominant position in the market if, in the previous year:



Competition Law

It is not illegal for a business operator to hold a dominant position in the market. However, dominant businesses **cannot adopt certain practices** that are regarded as an abuse of dominant position, including unfairly fixing the price of goods or service; unfairly imposing conditions to force their business partners to limit production, service, purchase or sale of goods, or to limit the partners' opportunity to select goods or services or obtain credit from another business; or unreasonably interfering with the business operations of another operator. The OTCC has published a guideline for considering abuse of dominant position behaviors. The guideline provides examples of behaviors that could be deemed as the abuse of dominant position (such as predatory pricing, certain forms of vertical restraints, and limitation of outputs), as well as guidelines for determining reasonableness of the behaviors.

20.2 Restrictive joint conducts

20.2.1 Cartel

The Trade Competition Act prohibits competitors from specific forms of joint conduct that cause monopoly or reduces competition. These include price fixing, quantity fixing, bid rigging, and territorial allocation. These types of conduct are treated as inherently illegal and cannot be justified, unless they are between or among businesses operators within the same single economic entity.

20.2.2 Anti-competitive agreements

The Trade Competition Act also prohibits any businesses (even when they are not competitors) from engaging in any anti-competitive agreements. The difference between these and cartels is that there are exemptions to these anti-

competitive agreements. The prohibited anti-competitive agreements include any form of cartel conduct, quality reduction, appointment of a sole distributor for the same goods or services, and having common trade practices.

An anti-competitive agreement is not prohibited if:

In addition, the joint conduct is not prohibited if:



to improve production and distribution, or promote technical or economic development



it is done under an agreement between business operators at different levels



any other form of agreement or business model as prescribed by the TCC.

Like cartels, the anti-competitive agreement provision does not apply to agreements between businesses within the same single economic entity.

20.3 Unfair trade practices

The Trade Competition Act provides a general "catch-all" provision that prohibits any business, whether or not dominant, from engaging in any conduct which does not constitute free and fair competition, and which causes damage to another business. The following conducts may be deemed unfair trade practices:

- i. unfairly impeding the business operation of others;
- ii. unfairly exercising market power or superior bargaining power;
- iii. unfairly fixing trade terms that limit or obstruct others' business operations; or
- iv. other action as specified by the OTCC.

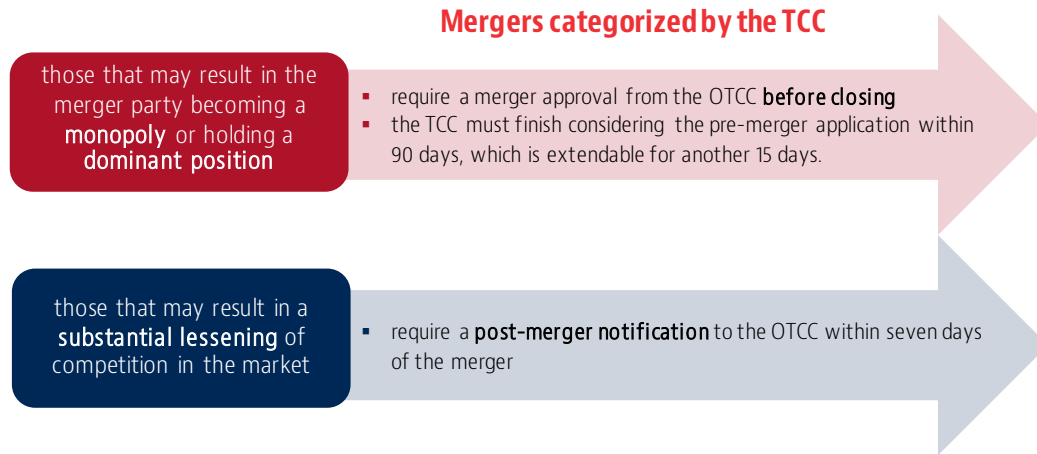
20.4 Prohibited agreements with overseas business operators

The Trade Competition Act also restricts business operators within Thailand from entering into agreements with offshore business operator(s), which would cause monopoly or an unfair restriction of trade, and which has serious adverse impact on the economy and on the benefit of consumers, without justifiable reason.

20.5 Merger control

Transactions that constitute a merger, including share and asset purchase to acquire control and amalgamation, are subject to merger control under the Trade Competition Act, unless they are regulated by sector-specific merger

control regulations (e.g. telecommunications sector). The Trade Competition Act categorizes mergers into two groups with different filing requirements, namely:



For mergers requiring an approval before closing, the OTCC must complete its review within 90 days, which is extendable for another 15 days. The OTCC must take into account business necessity, benefits to business promotion, impact on the economy, and benefit to consumers as a whole. The OTCC may grant an approval, an approval with conditions, or may block the transaction.

Competition Law

Mergers which are internal structuring are not subject to merger control.

20.6 Request for a ruling from the OTCC

Businesses may seek a ruling from the OTCC on all activities regulated under the Trade Competition Act, but not merger control. The ruling will be binding on the party that seek the ruling. The OTCC may also prescribe conditions.

20.7 Consequences of violation of the Trade Competition Act and penalties

Penalties under the Trade Competition Act include imprisonment, fines, and other penalties imposed by the OTCC's administrative orders.

20.7.1 Cease and desist order

If the OTCC has proper evidence to believe that any business is violating or will violate the prohibitions on restrictive trade practices, it may order the operator to cease, withhold, or correct its action, as well as impose other conditions necessary for compliance with the Trade Competition Act.

20.7.2 Filing a lawsuit for compensatory damages

If a business suffers damage as a result of another business's act, the injured business may seek compensatory damages from the other business, provided the injured business make a claim within one year after it learns of or should have learned of the violation. This right to compensation may be interpreted as extending to any business

competitor or individual consumer which has been injured as a result of a violation. In addition, the Trade Competition Act permits the Consumer Protection Board, or any association established under the consumer protection law, to take legal action on behalf of either an individual consumer or a member of the association.

20.7.3 Penalties

Abuse of dominance and cartel conducts carry a criminal penalty of up to two years' imprisonment and a fine of up to 10 percent of the turnover in the year of the violation. If the violation is committed in the first year of operation, the penalty is up to two years' imprisonment and a fine of up to Baht 1 million.

Anti-competitive agreements, unfair trade practices, and unfair agreements with the offshore businesses carry a fine penalty of up to 10 percent of the turnover in the year of the violation. If the violation is committed in the first year of operation, the penalty is a fine of up to Baht 1 million.

Failure to obtain a merger approval before closing carries a fine penalty of up to 0.5 percent of the transaction value. Failure to submit a post-merger notification within 7 days of closing carries a fine of up to Baht 200,000, plus a daily fine of up to Baht 10,000.

Directors, managers, or any person responsible for the operation of the company may also be liable for the same penalty if the offense is caused by their orders, actions, or failure to order or act.

20.7.4 Leniency

To date, the OTCC has not officially announced any leniency program.

20.8 The Prices of Goods and Services Act

20.8.1 Scope of the Prices of Goods and Services Act

The Prices of Goods and Services Act, B.E. 2542 (1999) established the Central Prices of Goods and Services Committee, whose function is to prevent price fixing and unfair pricing practices with respect to designated goods and services. The Act only applies to goods or services designated by the Committee. That is, the Committee has the power, with the Cabinet's approval, to announce its control measure over any goods or services so as to prevent price fixing or unfair pricing practices with respect to such goods or services. Once announced by the Committee, the controls can continue for up to one year, unless they are extended by another announcement.

20.8.2 The Central Prices of Goods and Services Committee

The Committee consists of representatives of various government agencies, and includes four to eight members designated as experts. At least half of its members must be nominated by the private sector. The Committee has the ability to impose an extensive set of regulatory measures for any goods or services under its control. For example, it can fix minimum and/or maximum purchase prices for goods or services, or fix prices at a particular level. To supplement the Committee's tasks in areas outside Bangkok, the Act also established provincial committees.

20.8.3 Prohibitions and Control Measures

The Prices of Goods and Services Act prohibits any person from:

- i. hoarding controlled goods by having in their possession a volume exceeding the limit prescribed in the Committee's announcement;
- ii. storing controlled goods in places other than those notified to the competent officials;
- iii. refusing to distribute controlled goods for sale or to offer them for sale in the ordinary course of trade; and
- iv. delaying the sale or delivery of controlled goods without reasonable cause.

For service provider of controlled services, the Price of Goods and Services Act prohibits the service provider from ceasing to provide the controlled services in the ordinary course of trade, and from refusing to provide controlled services or delaying the provision of controlled services, without reasonable cause.

The Act also prohibits any business operator from willfully causing the price of any good or service to become unreasonably low or high. Other control measures under the Act include the Committee's power to require manufacturers, sellers, distributors, or importers of controlled goods or services to notify the Committee's Secretary General of sales prices, standards, qualities, sizes, quantities, weights per unit, and the composition of controlled goods or services, and to display prices for any goods or services.

Competition Law

Violations of the Prices of Goods and Services Act are punishable by imprisonment ranging from one month to seven years and/or a fine ranging from THB 2,000 to THB 140,000, depending on the type of offense committed. If the violation is committed by a juristic person, its managing directors, managing partners, or other people responsible for its business operations may also be personally liable to the same penalties, unless they can prove that the action in question was conducted without their knowledge or consent, or they took reasonable steps to prevent such offense from occurring.

20.8.4 Exemptions

The Act applies to agricultural, industrial, commercial, service, and other similar business operators, but it does not apply to central, provincial, and local government agencies or other businesses prescribed from time-to-time in Ministerial Regulations.

21 Appendix A

Schedule of Businesses from which Foreigners are Restricted or Prohibited

Schedule One

Businesses that foreigners are not permitted to operate, for special reasons:

- newspaper, radio, and television businesses;
- lowland farming, upland farming, and horticulture;
- animal husbandry;
- forestry and timber conversions from natural forests;
- fishing for any form of aquatic animal in Thai waters or in Thailand's Exclusive Economic Zone;
- extraction of Thai medicinal herbs;
- trade in and auctioning of ancient Thai objects or objects of national historical value;
- making or casting images of Buddha and making monk's bowls; and
- dealing in land.

Appendix A

Schedule of Businesses from which Foreigners are Restricted or Prohibited

Schedule Two

Businesses that affect national security or safety:

- domestic transport, by land, water, or air (inclusive of domestic aviation);
- production, disposal, sale, or overhaul of firearms, ammunition, gunpowder, or explosives;
- production, disposal, sale, or overhaul of components of firearms, ammunition, or explosives;
- production, disposal, sale, or overhaul of armaments or military vessels, aircraft, or conveyances; and
- production, disposal, sale, or overhaul of any kind of war matériel or components of war matériel.

Businesses that affect art, culture, customs, and native manufacturing/handicrafts:

- dealing in Thai antiques, objects of art, or handicrafts;
- production of wood carvings;
- raising silkworms, producing Thai silk thread, or weaving or printing patterns on Thai silk textiles;
- production of Thai musical instruments;

- production of articles of gold or silver, nielloware, nickel-bronze ware, or lacquer ware; and
- production of crockery and terra-cotta ware that may be regarded as a form of Thai art.

Businesses that have an impact on natural resources or the environment:

- production of sugar from sugarcane;
- salt farming, inclusive of extracting salt from saline soil;
- making rock salt;
- mining, inclusive of stone blasting or crushing; and
- converting timber to make furniture or articles of wood.

Schedule Three

Businesses in which Thais are not yet prepared to compete with foreigners on an equal footing:

- rice-milling or producing flour from rice or farm plants;
- fishery, limited to propagating aquatic animals;
- forestry, from replanted forests;

Appendix A

Schedule of Businesses from which Foreigners are Restricted or Prohibited

- production of plywood, wood veneer, chipboard, or hardboard;
- production of (natural) lime;
- accounting service undertakings;
- legal service undertakings;
- architectural service undertakings;
- engineering service undertakings;
- construction, except (a) construction of things that provide basic services to the public with respect to public utilities or communications and which require the use of special instruments, machinery, technology, or expertise in construction, provided the foreigner has a minimum capital of at least THB 500 million; and (b) other categories of construction, as stipulated in Ministerial Regulations;
- brokerage and agency undertakings, except (a) trading in securities or services concerning futures-trading in agricultural commodities, financial instruments, or securities; (b) trading or procuring goods or services needed for production by, or providing services for, an enterprise in the same group; (c) trading, purchasing for others, distributing, or finding domestic or overseas markets in which to sell goods made domestically or

imports as an international trading business, with a minimum foreign capital investment of at least THB 100 million; and (d) other lines of business stipulated in Ministerial Regulations;

- auctioning, except, (a) international bidding that does not involve antiques or Thai art works, handicrafts, or objects of national historical value; and (b) other types of auctioning, as stipulated in Ministerial Regulations;
- domestic trading of indigenous agricultural produce or products not prohibited by any present law, except agricultural futures trading on the Agricultural Futures Exchange of Thailand without delivery or taking delivery of agricultural commodities in the country;
- retail trading of any goods with an aggregated minimum capital of less than THB 100 million or a minimum capital for each store of less than THB 20 million;
- wholesale trading of any goods, with a minimum capital for each store of less than THB 100 million;
- advertising undertakings;
- hotel undertakings, except for hotel management services;
- tourism;
- selling food or beverages;
- breeding, propagating, or improving plants; and

Appendix A

Schedule of Businesses from which Foreigners are Restricted or Prohibited

- undertaking other service businesses, except for service businesses prescribed in Ministerial Regulations.



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