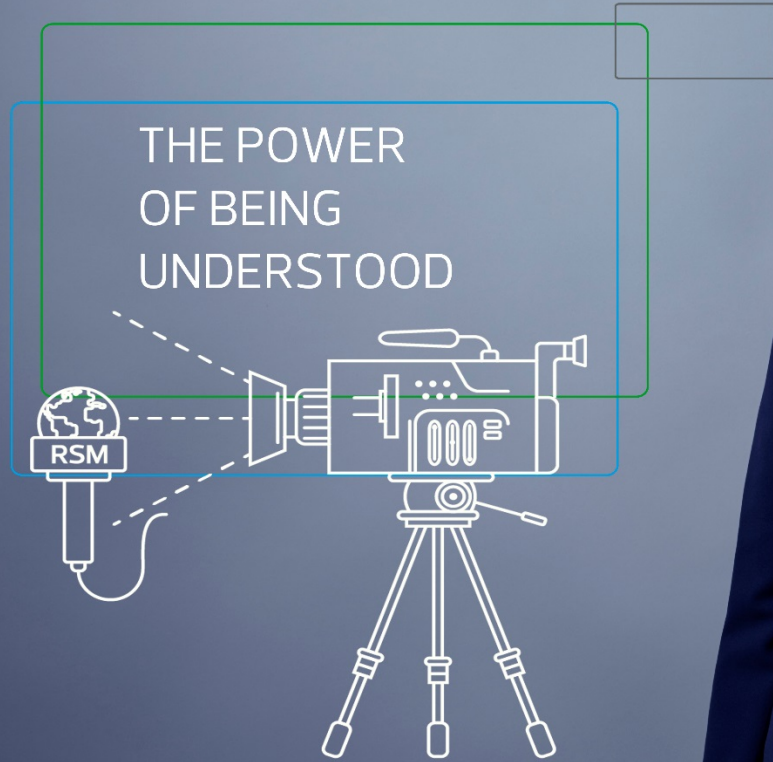


THE POWER  
OF BEING  
UNDERSTOOD



## A GUIDE TO DOING BUSINESS IN THAILAND

THE POWER OF BEING UNDERSTOOD  
AUDIT | TAX | CONSULTING



## FOREWORD

Thailand is strategically based at the heart of South East Asia and provides a wealth of opportunity for foreign investors. Since the Asian financial crisis of 1997, Thailand has bounced back as a vibrant and more diversified economy, resilient against the backdrop of an ever changing global landscape.

Thailand is seeking to continually "move with times" and is embracing the changes taking place in the global trend towards a digital economy.

Incentives to domestic and foreign investors in this field, are being granted. Thailand boasts a dynamic workforce that is competitive in the areas of cost and skills when compared to its peers.

We at RSM welcome foreign investors to make investments in Thailand and to use Thailand as an integral part of their expansion plans in South East Asia. With over 150 staff in Thailand, we have helped numerous foreign investors set up business in Thailand. Our affiliation to RSM International also facilitates connections on a global scale.

We hope this guide will provide the necessary insights into how you can make the best use of what Thailand can offer to investors. This guide is intended to provide an overview of issues to consider when investing and doing business in Thailand, and is for general information purposes only. Applicability of the information to specific situations should be determined through consultation with your advisors at RSM.

Welcome to Thailand. We welcome the opportunity for you to come and talk to us.

Gareth Hughes  
Managing Director  
RSM Thailand Group of Companies



## RSM INTERNATIONAL: GLOBAL REQUIREMENTS, LOCAL ADVICE

RSM International is the 6th largest network of independent accounting and consulting firms in the world, with revenues totalling US\$4.87 billion. There are over 41,000 staff operating in over 800 offices in 120 countries. RSM International professionals commit high-level skills, worldwide standards and a common work ethic of innovative thinking to develop results for clients.

RSM International is also a member of Forum of the Firms ("FoF"). The objective of FoF is to promote consistent and high quality standards of financial and auditing practices worldwide.

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## ABOUT RSM THAILAND

RSM is the sixth largest audit, tax and consulting network globally. In Thailand, we are one of the largest firms outside the Big 4, serving domestic and internationally active businesses.

Our expertise covers the following areas:

### **Audit**

- Statutory Audits
- Financial Due Diligence
- Other Non-statutory Audits
- Regulatory Compliance Reporting
- Reporting Accountants
- Special Reviews

### **Accounting and Payroll**

- Outsourced Accounting Function
- Tax compliance
- Payroll services

### **Tax**

- Corporate Tax – Compliance and Advisory
- International Tax Advisory
- Personal Tax – Compliance and Advisory
- Transfer Pricing

### **Business Advisory and Legal**

- Business Advisory
- Corporate Recovery and Insolvency
- Legal services
- Forensic and Litigation Support
- Fundraising
- M&A Advisory
- Transaction Support
- Valuations

### **Executive Recruitment**

- Recruitment
- Outplacement Services

### **Risk Advisory**

- Corporate Governance and Risk Management
- Internal Audit
- IT Governance and Oversight
- Regulatory Compliance
- Technology Assurance and Advisory
- Technology Risk Management

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# PART I: GENERAL BUSINESS

## Chapter 1: Introduction to Thailand

### Geography

Thailand is located in the heart of South East Asia and shares borders with Malaysia, Myanmar, Laos and Cambodia. Thailand is divided into 77 provinces, split into 5 groups based on location. Each province is further divided into smaller districts, of which there are 878. There are 50 districts in the capital, Bangkok.

Covering an area of approximately 514,000 square kilometers, Thailand is the 51<sup>st</sup> largest country in the world, and has a tropical climate with temperatures typically ranging from 19 to 38 degrees. Monsoon rains fall predominately from July until October and cooler, drier weather occurs around November and December.

### History

Thailand is a country rich in tradition with varied influences from the East as well as from the West. "Siam" is the name by which the country was known to the world until 1939 and from 1945 to 1949. On 11 May 1949, an official proclamation declared that the country would be known as "Thailand". The word "Thai" means "Free," and therefore "Thailand" means "Land of the Free".

### Monarchy

Thailand has been ruled under a constitution since 1932, when absolute monarchy ended. The current king, His Majesty King Maha Vajiralongkorn ascended to the throne on 1 December 2016 after his father King Bhumibol Aulyadej passed away on 13 October 2016. His formal coronation will take place in the near future. It is common for Thai people to criticise the Thai Government however it is an insult to criticise or disparage any members of the Thai Royal Family. The Thai monarchy is revered as the central, unifying element and the pillar of the Thai nation.

### Government

Thailand is a constitutional monarchy. The King is the head of state and has the authority to exercise sovereign power through the National Assembly, the Council of Ministers and the Courts. The leader of the government is the Prime Minister who functions in the name of the King. The Prime Minister is responsible for royal commands regarding affairs of State. Other executives include cabinet members, ministers and high-ranking officials in ministries, bureaus and agencies.

### Population

As of 1 January 2018, the population of Thailand was estimated to be 68,612,866 making it the world's 20th most populated country. This is an increase of 0.38% (257,699 people) compared to a year earlier. Immigration is controlled via a quota system. Bangkok is the country's most populated city with between 8 million to 10 million inhabitants.

### Language

Thai is the official language. English, although a compulsory subject in public schools, is generally only understood and used in business or international dealings. Regional dialects exist and differ in the North, South, East and West of the country.

### Religion

Absolute religious freedom exists in Thailand with the King as patron of all major religions. Buddhism is the national religion and is practiced by approximately 95% of the population. Approximately 4.6% of the population is Muslim. Christianity and various other religions make up the remainder.

### Education

Thailand has a literacy rate of approximately 96%. This is one of the highest in South East Asia and reflective of Thailand's view that the development of its human resources should be one of its highest priorities.

## Climate

Thailand is generally warm and humid. There is a pronounced rainy season from about May to September. The rest of the year is relatively dry. Summer runs from March to May with average temperatures in the range of 35°C to 40°C. November to February are cooler months with average temperatures in the range of 21°C to 24°C.

## Time

Thailand's time zone is 7 hours ahead of GMT/UTC (London). Daylight saving is not followed.

## Currency

The national currency is the Thai Baht (THB). Each one THB is divided into 100 satang. Coins are used for 25 and 50 satang as well as 1, 2, 5 and 10 THB. Payment of debt in coins is restricted to between THB 5 to THB 1,000 per transaction, depending on the type of coin. Notes are issued in 20, 50, 100, 500 and 1,000 THB denominations.

## Business hours

Most businesses operate a nine hour day – from between 8am or 9am to 5pm or 6pm – with a one hour lunch break, five days a week. Banks are open Monday to Friday from 8.30am to 3.30pm. Private shops do not have set business hours and in many cases stay open till 7–8 pm. Some convenience stores are open 24 hours and stock quite a wide variety of products.

## Communication

Thailand has an extensive communications network with more than 83 million mobile phone users. Broadband and Wi-Fi internet services are widely available with public access offered in many cafes, restaurants and hotels.

## Medical facilities

Thailand has an excellent reputation globally for its medical and dental services. Facilities and equipment are generally very modern and hospitals are staffed by internationally certified doctors and medical staff. Medical tourism is one of the fastest growing industries in Thailand with large numbers of international patients visiting each year to take advantage of the world class, yet very affordable, healthcare offerings.

## Transportation

Transportation in Thailand is very affordable. Inexpensive buses, taxis and trains make it easy to get around within Thailand's cities and to travel between different parts of the country. Suvarnabhumi Airport in Bangkok is one of the world's busiest airports and is consistently ranked as one of the best in Asia. Thailand also has eleven other international airports and dozens of domestic regional airports.

## Living conditions

Living in Bangkok is inexpensive compared with other major metropolitan cities, including those within the Asian region. This affords most expats the opportunity to enjoy a generally high standard of living. With a wide range of international schools and hospitals, Bangkok is a very good location for families.

A number of supermarkets stock imported food items in addition to local produce. Many different leisure activities are available including soccer, rugby, tennis, cycling, running and golf. There are several large fitness centres including global brands such as Fitness First and Virgin Active.

Whilst the level of traffic and pollution are sometimes the cause of frustration (in Bangkok especially), resorts and scenic attractions including Pattaya, Hua Hin, Rayong, Kanchanaburi and Khao Yai National Park are easily accessible for weekend breaks outside the city.

## Housing and accommodation

From high-rise apartment buildings, condominium complexes and seaside shacks, to stand-alone houses on large plots, all types of accommodation are available to rent in Thailand. The price and quality of rental accommodation will vary enormously, although there are plenty of excellent deals to be found.

## Chapter 2: Regulation of Foreign Investment

The economy of Thailand is characterised by steady growth, strong exports and a vibrant domestic consumer market. Thailand possesses abundant natural resources. A skilled and cost-effective workforce helps attract foreign investors, and enables them to prosper and develop industry in Thailand.

Successive Thai governments have recognized that the private sector has been the driving force behind Thailand's economic growth. The government, via agencies such as the Thailand Board of Investment (BOI), actively promote and support the private sector. Furthermore, the Thai government recognises the important role that foreign investment has to play in the economic and technical advancement of the country and generally takes a favourable view towards foreign investment. To this end, the BOI offers special incentives to qualifying foreign investment in certain business activities.

Government approval is generally not required in order to invest in Thailand unless special incentives offered by the BOI are applied for. However, some sectors of the Thai economy are restricted in terms of foreign ownership and participation by the Foreign Business Act (FBA).

### Thailand Board of Investment

The BOI operates under the Prime Minister's Office. It is the principal government agency encouraging and promoting investment in Thailand. This is achieved via offering tax incentives, non-tax incentives, guarantees and protection to eligible investment and activities. In December 2014, the BOI launched a seven-year investment promotion strategy for the years 2015 – 2021, which commenced from 1 January 2015. The BOI classifies 2 groups of incentives, being "activity-based incentives" and "merit-based incentives", as detailed below.

#### Activity-based incentives

Activity-based incentives are classified based on importance of activities, which are divided into 2 groups, being Group A (A1 to A4), which provides corporate income tax exemptions (from 3 to 10 years) plus other tax and non-tax benefits; and Group B (B1 and B2) which offers certain tax and non-tax benefits.

The BOI currently lists the following business activities as eligible for investment promotion:-

1. Agriculture and agricultural production;
2. Mining, ceramics and basic metals;
3. Light industry;
4. Metal products, machinery and transport equipment;
5. Electronic and electric appliances industry;
6. Chemicals, paper and plastics;
7. Services and public utilities; and,
8. Technology and innovation development.

#### Activities classified as activities of special importance and benefits to the country

The following activities will be granted corporate income tax exemption without being subjected to a corporate income tax exemption cap:-

1. Economic forest plantations (except for Eucalyptus) (category 1.3);
2. Creative product design and development centres (category 3.9);
3. Manufacture of aircraft or aircraft parts such as air frames, critical parts (engines and parts), propellers appliances including flight recorders, radar equipment and other components (category 4.11.1);
4. Electronic designs, including microelectronics designs and embedded system designs (category 5.6);
5. Software including embedded software and enterprise software and/or digital content (category 5.7);
6. Production of electricity or steam power from waste or refuse-derived fuel (category 7.1.1.1);
7. Energy Service Company (ESCO) (category 7.8);
8. Industrial zones or technology industrial zones (category 7.9.2);
9. Cloud services (category 7.10);
10. Research and development (category 7.11);
11. Biotechnology (category 7.12);
12. Engineering design 3 (category 7.13);



13. Scientific laboratories (category 7.14);
14. Calibration services (category 7.15); and,
15. Human resources development including vocational training centres and "high potential" academies and institutions for higher education (category 7.19).

### **Merit-based activities**

In order to attract and stimulate more investment and/or spending activities that benefit the country or industry at large, the BOI offers additional incentives (based on the merits of each project) as follows:-

1. Merit on "competitive enhancement" which includes additional corporate income tax exemption of up to 3 years plus an additional tax exemption of up to 300%;
2. Merit on "decentralization" whereby groups A1 and A2 shall receive a 50% reduction in corporate income tax for 5 years; additional corporate income tax exemption of up to 3 years; double deduction for transportation, electricity and water costs for 10 years; and a deduction of 25% of the net investment cost of a project's infrastructure installation or construction costs; and,
3. Merit on "industrial area development" whereby a project located within an industrial estate or a promoted industrial zone will be granted an additional year of corporate income tax exemption.

The additional incentives offered include an additional corporate income tax cap and an additional corporate income tax exemption.

### **Criteria for gaining access to investment promotion privileges**

The BOI may adjust the criteria for activities which are eligible for promotion from time to time. Changes to the criteria may be made in order to respond to economic and investment conditions at certain times. Investment promotion privileges are targeted in order to benefit the economy, to promote the development of quality production standards, to increase competitiveness in the global market, to bring the economy into line with international trade and investment agreements, to support regions with low income and poor investment facilities, and to prioritize targeted industries. The following criteria are used in determining which projects or activities are suitable for investment promotion privileges:-

1. Value added of at least 20 % of sales revenue, except projects that manufacture electronic products and parts, agricultural activities and products, and projects granted special approval by the BOI;
2. The ratio of debt to equity should not exceed 3:1 for a newly established project. Expansion projects are considered on a case-by-case basis;
3. Modern production processes and new machinery are used, or the efficiency of old machinery is certified by reliable institutions and granted special approval by the BOI;
4. Adequate environmental protection systems are installed. The BOI will give special consideration to the location and pollution treatment of a project with a potential environmental impact; and,
5. For projects with investment capital exceeding 750 million THB (excluding the cost of land and working capital), a project feasibility study must be submitted.

### **Foreign shareholding**

When considering investment promotion privileges, foreign shareholding levels in companies will also be considered.

For projects in activities under List one of the FBA, Thai nationals must hold shares totalling not less than 51 per cent of the registered capital. There are no equity restrictions for foreign investors for projects in activities under List two and List three of the FBA, except as specified in other laws (i.e. specific laws).

For manufacturing projects, there are no equity restrictions for foreign investors. The BOI may restrict the amount of shares or equity that may be held by foreign investors in promoted projects when deemed appropriate.

### **Incentives**

Tax incentives granted to promoted activities include the following:-

- Exemption/reduction of import duties on machinery;
- Reduction of import duties for raw or essential materials;
- Exemption of import duties on materials imported for R&D purposes;
- Exemption of corporate income tax on the net profit and dividends derived from the promoted activity;

- A 50% reduction of corporate income tax;
- Double deduction for the costs of transportation, electricity and water supply for a period of time;
- An additional 25% deduction of the cost of installation or construction of facilities; and,
- Exemption of import duty on raw or essential materials imported for use in production of exports.

Non-tax incentives granted to promoted activities include the following:-

- Permission for foreign nationals to enter Thailand for the purpose of studying investment opportunities;
- Permission to bring into Thailand skilled workers and experts to work in investment promoted activities;
- Permission to own land;
- Permission to take out or remit money abroad in foreign currency; and,
- Permission to have 100% foreign ownership for certain businesses.

Guarantees granted to promoted activities include the following:-

- The State will not nationalise the activity of the promoted person;
- The State will not undertake a new activity in competition with the promoted person;
- The State will not monopolise the sale of products or commodities of the same kind as, or similar to those produced or assembled by the promoted person;
- The State will not impose price controls on the products or commodities of the promoted person;
- The State will grant the promoted person permission to export products or commodities at all times; and,
- The State will not allow any government agency, government organisation or state enterprise to import the product being produced by the promoted person on a tax-exempt basis.

Protections granted to promoted activities include the following:-

- To charge extra import fees into the country on products similar to those produced by the promoted person at a rate not exceeding 50% of the price of overseas insurance and freight charges, effective for a period of not more than one year;
- In the case where the BOI is of the opinion that the relevant law is inadequate for protecting the activity of the promoted person, it may increase the measure by banning the import of products similar to the products produced by the promoted person; and,
- In the case where the promoted person encounters any problems or obstacles in the course of carrying out the promoted activity, the BOI will have the power to render any appropriate assistance.

A wider range of tax incentives may be available to those investors who set up their operations in designated industrial estates and zones or clusters.

#### Measures for Improvement of Production Efficiency

BOI Announcement No. 1/B.E. 2557 contains certain provisions related to the promotion and upgrading of technology and machinery for energy conservation, alternative energy utilisation or reduction of environment impacts, as well as provisions designed to encourage research and development and advanced engineering design involvement to improve production efficiency.

This measure is to be used in conjunction with the following:-

1. Existing projects, whether BOI or non-BOI promoted. In the case of non-BOI promoted projects, the activity must be eligible for investment promotion by the BOI; and,
2. BOI promoted projects can also apply for this measure when the corporate income tax exemption or reduction period expires, or in cases where the respective projects do not receive a corporate income tax exemption.

Conditions:-

1. The minimum capital investment must not be less than 1 million THB (excluding the cost of land and working capital); and,
2. The application must be submitted by 30 December 2020 and the project must complete implementation within 3 years from the date the promotion certificate is issued.

## Industrial Estate Authority of Thailand

The Industrial Estate Authority of Thailand ("IEAT") was founded in 1972 as a government agency under the Ministry of Industry and is responsible for the establishment and development of industrial estates. Industrial estates are areas of land where industrial factories are systematically clustered to decentralize industrial development throughout the country. The IEAT is charged with granting permission for businesses to operate in an industrial estate and to provide privileges and incentives to those that do so. Industrial estates provide an extensive range of infrastructure, facilities and administrative support.

Industrial estates are divided into two zones:-

1. General Industrial Zones ("GIZ"); and,
2. IEAT Free Zones ("IEATFZ").

The opportunities and privileges from investing in each zone include the following:-

### GIZ

- Permission to operate a service business;
- Permission to own land for business operations;
- The right to bring in foreign skilled workers, their spouses and their dependants;
- The right to remit money abroad; and,
- The right to receive additional privileges from the BOI when applying for investment promotion.

### IEATFZ

- May export products without restriction;
- May bring into the IEATFZ merchandise and raw materials without restriction;
- Improved tax duty privileges on supplies taken into the IEATFZ;
- VAT and excise reductions on machinery, equipment, raw materials and supplies used in the production of goods;
- Tax relief for products taken out of the IEATFZ for domestic use or consumption;
- Import/export tax privileges;
- Duty privileges;
- Permission to own land;
- The right to bring in foreign technicians and experts as well as their spouses and dependants;
- The right to remit foreign currency;
- Reduction on requirements for import permits and particular seals or symbols; and,
- Reduced compliance with standard and quality control requirements.

## Eastern Economic Corridor Development

On 1 January 2018, Parliament approved legislation geared towards attracting more investment and revitalising/enhancing the growth prospects of The Eastern Economic Corridor ("EEC"). Under this initiative, the Eastern Economic Corridor Office of Thailand ("EECO") has been assigned to drive the country's investment in up-lifting innovation and advanced technology for the EEC.

It is expected that these initiatives will lead to a significant development and transformation of Thailand's investment in physical and social infrastructure in the EEC. The EEC covers 3 eastern provinces (Chachoengsao, Chonburi, and Rayong) and 5 Promotional Zones have been designated:-

1. The Special EEC Zone: Eastern Airport City – This zone is located in the vicinity of the U-Tapao International Airport, and will facilitate the transformation of U-Tapao International Airport into an aviation hub.
2. The Eastern Economic Corridor of Innovation: EECi – This zone is located in the vicinity of the Wangchan Valley of Rayong Province and will seek to enhance both the community and industry through the development of research and innovation initiatives.
3. Digital Park Thailand: EECd – This zone is located in the Sriracha district of Rayong Province and is designed to enhance and develop digital infrastructure in anticipation of the establishment of the regional ASEAN Data Hub.
4. Smart Park – The Smart Park is located in Rayong Province.
5. Hemaraj Eastern Seaboard 4 Industrial Estate – This industrial estate is located in Rayong Province.

In addition to the above, several important transportation infrastructure development projects have been approved involving railway networks and strategic ports.

### **Privileges**

Privileges include the following:-

- Exemption of corporate income tax for up to 15 years;
- Exemption of import duties;
- Matching grants;
- Permission to own land for BOI promoted projects;
- Rights to lease of land for 50 years;
- 17 % personal income tax rate;
- One-stop service centre to facilitate foreign investors; and,
- Work permits being issued for periods of 5 years.

The EECO is charged with acting as the central agency for coordination, tracking progress, and facilitating investment and investors in targeted technologically advanced sectors.

## PART II: ENTITY INCORPORATION AND MANAGEMENT

### Chapter 3: Types of business entities

Three main types of business entities are used in Thailand. Each type of entity can take different forms. The three types of entities are as follows:

- Partnership;
- Limited company; and,
- Joint venture.

#### Partnership

The Civil and Commercial Code ("CCC") provides for two types of partnership:-

1. An ordinary partnership which can be a non-registered ordinary partnership or a registered ordinary partnership; and,
2. A limited partnership.

The principal difference between each type of partnership is the level of liability that attaches to the partners for partnership obligations.

#### Non-registered ordinary partnership:-

- All partners are jointly and severally liable for partnership obligations;
- Has no separate juristic status and is not treated as a separate legal entity; and,
- Treated as an individual for tax purposes.

#### Registered ordinary partnership:-

- All partners are jointly and severally liable for partnership obligations;
- Is registered with the Commercial Registrar and hence has a separate juristic status; and,
- Treated as a separate entity distinct from the partners and is taxed as a corporate entity.

#### Limited partnership:-

A limited partnership must have two types of partners:-

1. One or more partners whose liability is limited to the amount of contributed capital; and,
2. One or more partners who are jointly and severally liable for partnership obligations.

Limited partnerships must be registered and are taxed as corporate entities.

#### Limited company

A limited company may be a private limited company, governed by the CCC, or a public limited company governed by the Public Limited Company Act. The main difference between the two types of companies is a public company's ability to raise funds from the public. Other characteristics and requirements of each are as follows:-

#### Private limited company

- A Memorandum of Association and Articles of Association form the constituent documents upon registration;
- Shareholders have limited liability up to the amount remaining unpaid on the value of their shares;
- Directors may be subject to unlimited liability;
- Management of the company is conducted by the board of directors in accordance with the Articles of Association;
- All shares must have voting rights;
- There must be at least three shareholders at all times;
- May be wholly owned by foreigners except for companies engaging in businesses reserved for Thai nationals under the FBA. Foreigners may generally own up to 49% of the shares in companies engaging in businesses reserved for Thai nationals; and,
- The 49% limit on foreign ownership may be exceeded if a Foreign Business License ("FBL") is granted. A FBL is more likely to be granted if the company does not compete with a Thai business.

## Public limited companies

- May raise funds from the public and list on the Stock Exchange of Thailand subject to approval and compliance with a prospectus;
- The board of directors must have at least 5 members and more than half of the members of the board of the directors must be domiciled in Thailand;
- Directors have increased potential liabilities and directors' meetings must be held at least once every three months; and,
- Must have at least 15 shareholders.

## Joint venture

A joint venture is not recognized as a legal entity in Thailand. However corporate income tax is levied on a joint venture (whether unincorporated or incorporated) as though it was a limited company. In instances where joint venture partners are also taxed as corporate entities (for example a Thai company or a foreign company doing business in Thailand), dividends or the share of joint venture profits received may be exempt from corporate income tax.

## Other forms of corporate presence

### Branch of a foreign company

A foreign company does not need to register a branch to do business in Thailand. However some forms of registration will be required to conduct business in most cases. Examples of registrations that may be required are VAT registration, taxpayer identification number registration and foreign business license registration, if required, for the business to be conducted. A branch of a foreign company cannot undertake business activities reserved for Thai nationals unless a FBL is obtained.

To obtain a FBL, at least one branch office manager, domiciled in Thailand, must be appointed to take charge of the operations in Thailand. Conditions such as minimum capital requirements and transfer of technology requirements may be attached to the FBL. The minimum capital investment must not be less than 25% of the estimated average annual operating costs over 3 years, and must be at least 3 million THB. The time frames over which the investments must be made are mandated. A technology transfer report must be prepared and submitted annually and audited financial statements must also be prepared and submitted to the Department of Business Development (DBD) and the Revenue Department ("RD").

The following non-trading entities are entitled to legally operate a business in Thailand without a FBL being required:-

- Representative office of a foreign company; and,
- Regional office for an international trade business.

The above two types of business entities must be registered with the DBD in order to acquire a registration number prior to commencement of business operations.

### Representative office of foreign companies

A foreign corporation may establish a representative office ("RO") in Thailand to render services to the head office or group affiliates. A RO must have the following characteristics:-

1. Must only provide certain services to its foreign head office or group affiliates;
2. Must not derive income from the provision of services to the foreign head office or group affiliates. It may receive a supporting fund to cover expenses incurred; and,
3. Must not have any authority to receive purchase orders, to make offers of sale or to negotiate business.

The services which a RO is permitted to provide to its foreign head office or group affiliates are as follows:-

- To report the business movements in Thailand to its foreign head office or group affiliates;
- To give advice on various aspects pertaining to the goods distributed by its foreign head office or group affiliates to the distributors or the users in Thailand;
- To source suppliers of goods or services in Thailand for its foreign head office or group affiliates;

- To inspect and control the quality and quantity of the goods that its foreign head office or group affiliates purchase in order to manufacture in Thailand; and,
- To disseminate information in relation to new goods or services of its foreign head office or group affiliates.

A RO must comply with certain conditions. At least one person responsible for the operation of the RO must be domiciled in Thailand. There are minimum capital requirements similar to those of a branch. A technology transfer report must be prepared and submitted annually and audited financial statements must also be prepared and submitted annually to the DBD and the RD.

### **Regional office for an international trade business**

A foreign corporation may establish a regional office for an international trade business ("ROIT") in Thailand to render services to its foreign head office or group affiliates. A ROIT must have the following characteristics:-

1. Must only provide certain services to its foreign head office or group affiliates;
2. Must not derive income from the provision of services to its foreign head office or group affiliates. It may receive a supporting fund to cover expenses incurred; and,
3. Must not have any authority to receive purchase orders, to make offers of sale or to negotiate business.

The services which a ROIT is permitted to provide to its foreign head office or group affiliates are as follows:-

- Provision of services in consulting and management;
- Training and personal development;
- Financial management;
- Marketing control and sale promotion planning;
- Product development; and,
- Research and development services.

A ROIT must comply with certain conditions. At least one person responsible for the operation of the ROIT must be domiciled in Thailand. There are minimum capital requirements similar to those of a branch. The audited financial statements must be prepared and submitted annually to the DBD and the RD.

### **Regional Operating Headquarters**

Up until recently, Thailand had two regional operating headquarters ("ROH") regimes. As detailed below, tax privileges were granted to attract multinational companies (both domestic and foreign) to set up regional headquarters operations in Thailand.

A regional operating headquarters (ROH) is a company incorporated in Thailand providing managerial services, administrative services, technical services and other supporting services to the ROH's foreign branches or associated companies and enterprises. The allowable "other supporting services" are as follows:-

- General administration;
- Business planning and coordination;
- Procurement of raw materials and components;
- Research and development;
- Marketing and sales promotion;
- Technical assistance;
- HR management and training;
- Corporate financial advisory services;
- Economic analysis and investment research; and,
- Credit control.

The first ROH regime, with criteria and benefits, was launched in 2002. In 2010, the second ROH regime came into existence, modifying some of the criteria and benefits. An ROH at the time was able to elect to keep the first regime or move to the second regime while a new ROH could choose either regime. The second ROH regime has subsequently been withdrawn and the privileges under the second ROH regime are no longer available to new applicants.

The existing criteria and associated privileges for ROH are as follows:-

### Criteria

1. Must have paid-up capital of at least 10 million THB at the end of each accounting period;
2. Must provide services to branches or associates in at least three countries other than Thailand;
3. At least 50% of total income must be derived from qualifying services provided to, and royalties received from, branches and associates outside of Thailand. This threshold is reduced to 33% for the first three accounting periods; and,
4. Must notify the RD of its incorporation as an ROH.

### Tax incentives and privileges

- Corporate income tax rate of 10% on net profits derived by the ROH from services provided to foreign branches or associates;
- Corporate income tax rate of 10% on net profits derived by the ROH from royalties in respect of the use of research and development by foreign branches or associates;
- Corporate income tax rate of 10% on net profits derived by the ROH from interest on loans provided to foreign branches or associates;
- Exemption from corporate income tax on dividends received from associates; and, Exemption from withholding tax on amounts paid by the ROH to a foreign shareholder not carrying on business in Thailand;
- Expatriates employed by the ROH can choose to be taxed at a flat rate of 15% for four consecutive years; and,
- Exemption from personal income tax on remuneration for expatriate employees who are sent to work in a foreign country. However, the remuneration that is exempt from tax cannot then be deducted, directly or indirectly, as an expense against the net income of the ROH or any associated enterprises in Thailand.

### Miscellaneous ROH issues

- Where a company undertakes ROH and non-ROH business activities, the two businesses must be accounted for separately;
- Expenses which are common to ROH and non-ROH business activities must be apportioned in accordance with the ratio of income received from each activity;
- Losses generated by the ROH business cannot be offset against income of the non-ROH business; and,
- Two income tax returns must be filed if there are ROH and non-ROH business activities. One return must show the income that has been granted reduction/exemption under the ROH scheme and the other must show income that has not been granted privileges and is subject to corporate income tax at the normal rate.

### International Headquarters

On 23 December 2014, the Thailand Cabinet approved various tax incentives to promote the establishment of an International Headquarters ("IHQ") in Thailand with the idea being that the IHQ regime would replace the ROH regime. A summary of the IHQ regulations are as follows:-

#### Definition

An IHQ is a company incorporated under the laws of Thailand that undertakes:-

- Administrative and technical support services to affiliated entities in foreign countries and in Thailand;
- Financial management services to affiliated entities in foreign countries and in Thailand; and,
- International trading of goods with affiliated entities in foreign countries and services in relation thereto.

#### Conditions

An IHQ company shall:-

- Have paid-up capital of at least 10 million THB at the end of each financial year;
- Have operating income from at least one affiliated entity in a foreign country;
- Have operating expenditure that is paid to recipients in Thailand of at least 15 million THB for each financial year;
- File an application for registration as an IHQ with the Thailand Revenue Department; and,
- Comply with the rules and conditions of the Thailand Revenue Department.



Any existing ROH company that wishes to apply for IHQ incentives shall be required to de-register as an ROH and then register as an IHQ.

### **Tax Concessions**

For 15 accounting periods (15 financial years) from the date of registration with the Thailand Revenue Department, an IHQ that meets the definition and complies with the conditions will be entitled to the following tax concessions (provided that, in the case an IHQ does not meet any one of the conditions in an accounting period, the tax concessions for that accounting period will be suspended):-

### **Corporate Income Tax (“CIT”) exemption**

The following income will qualify for a CIT exemption:-

- Fees from providing management, technical, and support services to its overseas associated enterprises or branch offices overseas;
- Interest income from providing treasury center services to its overseas associated enterprises;
- Royalties from its overseas associated enterprises;
- Dividends received from its overseas associated enterprises;
- Capital gains from the sale of shares of its overseas associated enterprises;
- Income generated from its overseas branch office; and,
- Sales income from in-out transactions and fees earned from providing services relevant to the international trade business to its overseas associated companies.

### **Reduced 10% CIT**

The following income will qualify for a 10% CIT reduction:-

- Fees from providing management, technical, and support services to its associated enterprises in Thailand;
- Interest income from providing treasury center services to its associated enterprises in Thailand;
- Royalties from its associated enterprises in Thailand; and
- Sales income from in-out transactions.

### **Withholding tax exemption to overseas entity earning income from the IHQ**

Dividends paid from the IHQ from the CIT exemption profits will be exempt from Thai withholding tax. Similarly, no withholding tax will be assessed on interest paid on the loan used by the IHQ for treasury center service activities.

### **Other tax incentives**

Interest income from providing treasury center services to its associated enterprises, either overseas or in Thailand will be exempt from specific business tax. In addition, expatriate employees of the IHQ will benefit from a reduced and flat 15% personal income tax rate.

Expatriates employed by the IHQ can elect to be taxed at a flat rate of 15% from the date that the IHQ becomes qualified until the date on which the IHQ is no longer qualified.

## Chapter 4: Accounting, audit and reporting

### Accounting

An accounting period must be 12 months. Unless the Articles of Association state otherwise, a newly established company should close its accounts within 12 months of its registration. Thereafter, the accounts should be closed every 12 months. If a company wishes to change its accounting period, it must obtain written approval from the Revenue Department ("RD").

### Books and record keeping

Companies must keep books and follow accounting procedures as specified by the Civil and Commercial Code, the Revenue Code, and the Accounts Act. Documents may be prepared in any language, provided that a Thai translation is attached. All accounting entries should be written in ink, typewritten, or printed.

### Accounting principles

Currently, Thailand has two sets of Thai Financial Reporting Standards ("TFRS"), consisting of:

- A) TFRS for Public Accountable Entities ("PAE") – TFRS for PAE's are broadly consistent with International and Financial Reporting Standards ("IFRS"), although the issuance of new TFRS are behind that of IFRS and certain IFRS have not yet been adopted as TFRS. The most significant IFRS that has not as of yet been adopted as a TFRS is **IFRS 9** Financial Instruments. TFRS are used for the following entities:-
  - 1) Public companies under Public Limited Company Act;
  - 2) Any entities issuing debt or equity instruments traded in a public market;
  - 3) Any entities which are in the process of issuing instruments for trading in a public market; and,
  - 4) Any entities holding assets in a fiduciary capacity for a broad group of outsiders i.e. banks, insurance companies, mutual funds etc.
  
- B) TFRS for small and medium sized enterprises (TFRS for SME's) which are TFRS for small and medium sized entities (which are essentially entities which do not qualify as PAE's). These standards follow IFRS for SME's and the various IFRS for SME's are being implemented in Thailand on a phased basis. The Federation of Accounting Professions ("FAP"), when setting the basis for the application of TFRS for SME's, distinguishes between two types of SME's or Non-Public Accountable Entities ("NPAE"): a) Complex NPAE's; and b) Non-Complex NPAE's. Complex NPAE's are required to comply with TFRS for SME's in full. Non-Complex NPAE's are only required to comply with certain TFRS for SME's.

General accounting practices of note include:-

Depreciation. The Revenue Code permits the use of varying depreciation rates according to the nature of the asset which has the effect of depreciating the asset over a period that may be shorter than its estimated useful life. These depreciation rates are not mandatory. A company may use a lower rate that approximates the estimated useful life of the asset. If a lower rate is used in the books of account, the same rate must be used in the income tax return;

Accounting for pension plans. Contributions to a pension or provident fund are not deductible for tax purposes unless they are actually paid out to the employees, or the fund is approved by the RD and managed by a licensed fund manager;

Statutory reserve. A statutory reserve of at least 5% of annual net profit arising from the business must be appropriated by the company at each distribution of dividends until the reserve reaches at least 10% of the company's authorized capital.

### Audit requirements

All juristic business entities (limited companies, registered partnerships, branches, representative office headquarters, regional offices or joint ventures) must prepare financial statements each year. The financial statements must be audited by an authorized auditor and submitted to the RD and to the Commercial Registrar each accounting year.

However, for a registered partnership with contributed capital of less than 5 million THB, total revenue of no more than 30 million THB, and total assets of no more than 30 million THB, financial statements need only be submitted to the RD and not to the Commercial Registrar.

## PART III: TAXATION AND LABOUR LAW

### Chapter 5: Corporate income tax

The following entities registered under the laws of Thailand are subject to corporate income tax (CIT) in Thailand:-

- Limited companies;
- Public limited companies;
- Limited partnerships;
- Registered ordinary partnerships;
- Joint ventures;
- Foundations and associations; and,
- Branches of foreign companies.

Foreign corporate entities carrying on business in Thailand are also subject to CIT in Thailand.

Foreign corporate entities not carrying on business in Thailand may still be subject to tax, levied on a withholding basis, at the rates indicated below, if they are in receipt of the following types of income: -

- Remittance of profits after tax 10%
- Dividends 10%
- Interest 15%
- Royalties 15%
- Capital gains 15%
- Rent 15%
- Professional fees and brokerage 15%

Double tax agreements ("DTA") may limit or reduce withholding tax rates.

#### Corporate income tax rates

The corporate income tax rate in Thailand is currently 20%. Rates may vary according to the type of taxpayer. For example, small and medium enterprises are taxed as described below:-

#### Small and medium enterprises

- A small and medium enterprise ("SME") is a corporate tax paying entity with paid up capital of no more than 5 million THB on the last day of the accounting period, and revenue from the sale of goods and/or the provision of services of no more than 30 million THB during the accounting period. SME's are entitled to a number of tax concessions including current tax rates on a graduated scale as follows :-

| Net profit (THB)     | Tax rate |
|----------------------|----------|
| 1 to 300,000         | Nil      |
| 300,001 to 3,000,000 | 15%      |
| Over 3,000,000       | 20%      |

#### Tax calculation

CIT is payable on net profit calculated on an accruals basis. A CIT paying entity must take into account all revenues in an accounting period and may deduct expenses in accordance with the Revenue Code.

50% of the dividends received by a Thai company from another Thai company are exempt from tax if certain conditions are met. 100% of the dividends received from a Thai company by a company listed on the Stock Exchange of Thailand ("SET"), or by a Thai company that holds not less than 25% of the voting shares in the first company, are exempt if certain conditions are satisfied.

Allowable deductions are as follows:-

- Ordinary and necessary expenses. The deductible amount of the following expenses are allowed at a special rate:-
  - 200% deduction for research and development expenses plus an additional 100% deduction for expenditure on research, development and innovation activities;
  - 200% deduction for job training expenses; and,
  - 200% deduction for expenditure on the provision of equipment for the disabled.
- Interest, except interest on capital reserves or funds;
- Taxes, except for CIT and Value Added Tax paid to the Thai government;
- Net losses carried forward from the last five accounting periods;
- Bad debts subject to conditions;
- Repairs;
- Donations of up to 2% of net profits;
- Provident fund contributions;
- Entertainment expenses up to 0.3% of gross revenue or paid-up capital, whichever is greater, but not exceeding 10 million THB;
- Donations made to public educational institutions;
- Expenses for the maintenance of public parks, public playgrounds, or sports grounds; and,
- Depreciation, subject to some limitations as shown below.

| Type of asset  | Depreciation rate per annum  |
|--|--|
| Durable buildings  | 5%   |
| Temporary building   | 100%   |
| Depletive natural resources  | 5%   |
| Lease rights without a lease agreement   | 10%  |
| Lease rights under a written lease agreement with no renewal clause or with a renewal clause but with a finite duration of renewal periods | 100% divided by the sum of the years of the original and renewable lease periods |
| Rights in a process, formula, goodwill, trademark, business license, patent, copyright or any other rights for an unlimited period of use  | 10%  |
| Rights in a process, formula, goodwill, trademark, business license, patent, copyright or any other rights for a limited period of use     | 100% divided by the number of years of use                                       |
| Machinery used in research and development   | Initial allowance of 40% with the remaining balance at a rate not exceeding 20%  |
| Computer hardware, software and operating programs   | Within three accounting periods from the acquisition date                        |
| Other assets not mentioned above excluding land and inventory  | 20%  |

Further depreciation concessions are allowed for SME's with fixed assets (excluding land) of no more than 200 million THB and with no more than 200 employees. Depreciation rates in those circumstances are as follows:-

| Type of asset                                      | Depreciation rate   |
|--|---|
| Plant and buildings                                | Initial allowance of 25% then the remaining balance at no more than 5% per annum  |
| Machinery and equipment                            | Initial allowance of 40% then the remaining balance at no more than 20% per annum |
| Computer hardware, software and operating programs | Initial allowance of 40% and the remaining balance over three accounting periods  |

The following expenses are not allowed as deductible expenses in the calculation of net profits:-

- Reserves;
- Fund contributions except provident fund contributions under the rules, procedures and conditions prescribed by Ministerial regulations;
- Personal expenses;
- Expenses for gifts or charitable purposes except expenses for public charity, or for the public benefit;
- Entertainment expenses subject to conditions;
- Capital outlays;
- Expenses for the addition to, change to, expansion of or improvement of an asset;
- Fines and/or surcharges, criminal fines and income tax;
- The part of the salary of a shareholder or partner which is in excess of an appropriate amount;
- Expenses which are not actually incurred or expenses which should have been paid in another accounting period except in the case where it cannot be entered in any accounting period. Then it may be entered in the following accounting period;
- Interest paid to equity, reserves or funds of the company or juristic partnership itself;
- Damages claimable from an insurance or other protection contract;
- Losses from previous accounting periods except net losses carried forward for five years up to the present accounting period;
- Expenses which are not for the purpose of making profits;
- Expenses which are not for the purpose of the business in Thailand;
- The portion of the purchase price of an asset and expenses relating to the purchase or sale of an asset which exceeds a normal amount without justification;
- Value of lost or depleted natural resources due to the carrying on of business;
- Any expense payable from profits received after the end of an accounting period; and,
- Expenses listed, from time to time, by Royal Decree.

### **Tax returns and payment**

The Thai tax system operates on a self-assessment basis. CIT returns must be filed within 150 days after the end of the relevant accounting period. Payment must be made together with the filing of the return.

Tax prepayments are required on a half yearly basis. An estimate of half of the net taxable profit and the tax liability for the accounting period must be made and paid within 2 months after the end of the first half of the accounting period. This prepayment is creditable against the eventual annual tax liability. Surcharges can be imposed by the RD if the half-yearly estimates of net taxable profits are understated by 25% or more, without reasonable cause.

### **Tax credits**

Tax credits against CIT are available for foreign tax paid on foreign sourced income. The credits allowed cannot exceed the amount of Thai tax payable.

Credits are also available for withholding tax deducted at source and for the half yearly prepayment of tax.

## Chapter 6: Withholding tax

Tax is required to be withheld from a payment by Thai juristic entities in two broad circumstances:-

1. Payments to another Thai juristic entity or foreign entity conducting business in Thailand; and,
2. Payments to foreign entities not conducting business in Thailand.

Withholding tax rates vary depending on the characteristics of the income and the tax status of the receiving entity. Tax withheld must be reported and remitted by the payer within 7 days after the end of the month in which the payment was made. Credits are available toward the annual tax liability of the recipient of the income. A withholding tax certificate must be issued to the recipient of the income to support a claim for credits. An excess of credits over the annual tax liability is refundable if the required conditions are met.

### Withholding tax rates for certain payments to resident individuals

| Type of payment         | Withholding tax rate |
|-------------------------|----------------------|
| Salary and wages        | 5 – 35%              |
| Rents                   | 5%                   |
| Interest                | 15%                  |
| Prizes                  | 5%                   |
| Ship rental charges     | 1%                   |
| Service fees            | 3%                   |
| Professional fees       | 3%                   |
| Public entertainer fees | 5%                   |
| Dividends               | 10%                  |
| Advertising fees        | 2%                   |

### Withholding tax rates for certain payments to Thai juristic entities

| Type of payment                              | Withholding tax rate |
|--|----------------------|
| Royalties                                    | 3%                   |
| Interest                                     | 1%                   |
| Dividends                                    | 10%                  |
| Rent   | 5%                   |
| Advertising fees                             | 2%                   |
| Discounts and prizes under a sales promotion | 3%                   |
| Service fees                                 | 3%                   |
| Sale of immovable property                   | 1%                   |
| Transportation fees                          | 1%                   |

### Withholding tax rates for certain payments to foreign entities

| Type of payment                             | Withholding tax rate |
|---|----------------------|
| Dividends                                   | 10%                  |
| Interest                                    | 15%                  |
| Rent  | 15%                  |
| Royalties                                   | 15%                  |
| Service fees                                | 15%                  |
| Capital gains                               | 15%                  |
| Profits remitted after corporate income tax | 10%                  |

Withholding tax rates on payments to foreign entities may be limited or reduced under the relevant articles of an applicable double taxation agreement.

### **Withholding tax rate on digital assets**

Payments of share of profits or any other similar gains derived from holding or possessing token digital assets or that part of value received from transfer of crypto currency or token digital assets which exceeds the cost of investment is subject to withholding tax at a rate of 15%.



## Chapter 7: Value added tax

### Liability to value added tax

Any person or entity supplying goods and/or services with an annual turnover exceeding 1.8 million THB is subject to Value Added Tax ("VAT"). An importer is subject to VAT regardless of registration with VAT being collected by the Customs Department at the time of importation.

### Exemptions

Some activities are exempt from VAT. Examples of exempt activities are as follows:-

1. Sales of unprocessed agricultural products and related goods such as fertilizers, animal feeds and pesticides;
2. Sales of newspapers, magazines, and textbooks;
3. Certain basic services such as: -
  - Transportation by way of land;
  - Healthcare services provided by government and private hospitals;
  - Educational services provided by government and private schools and other recognised educational institutions; and,
  - Rental of immovable property.
4. Medical services, auditing services, legal services in court and other similar professional services that have laws regulating them;
5. Cultural services such as amateur sports, libraries, museums and zoos;
6. Importation of goods that are kept under the supervision of the Customs Department which will be re-exported and be entitled to a refund for import duties;
7. Other services such as religious and charitable services, services of government agencies and local authorities;
8. Importation of goods into a duty free zone which are exempt from import duty; and,
9. The provision of services under an employment contract.

### VAT registration

Any person who is, or will be, liable to VAT must register as a VAT operator before the business begins or within 30 days of reaching the turnover threshold of 1.8 million THB.

### Timing of the tax liability

The tax liability on the sale of goods will generally arise when the goods are delivered unless transfer of ownership, receipt of payment or issuance of a tax invoice occurs prior to delivery. The tax liability on the provision of services will generally arise when the service fee is received unless issuance of a tax invoice occurs prior to payment.

### Tax rate

The general VAT rate is currently 7% but may revert to the statutory rate of 10% at some point in the future. Some activities, including those below, attract a zero rate:-

- The export of goods;
- Services rendered in Thailand but utilized outside Thailand;
- The use of aircraft or sea-vessels in international transportation;
- The sale of goods or the provision of services to government agencies or state-owned enterprises under a foreign-aid program;
- The sale of goods or the provision of services to the United Nations and its agencies as well as embassies and consulates; and,
- The sale of goods or the provision of services between bonded warehouses or between enterprises located in customs free zones.

### Tax invoices

A VAT operator is required to issue a tax invoice detailing the nature and value of goods and services provided and the amount of VAT charged. A tax invoice must contain several details as stipulated in the Revenue Code.

### **VAT calculation and returns**

The VAT liability is equal to the VAT charged on the goods and services supplied ("output tax") less the input tax credits to which the VAT operator is entitled ("input tax"). Tax invoices issued from suppliers must be held by VAT operators in order to claim input tax credits.

VAT returns must be filed within 15 days of the end of each month. Payments must be made at this time. Services provided by entities outside Thailand but where the services are provided in Thailand may also be subject to VAT. In such circumstances, the obligation to file the VAT return, and remit any VAT payable, falls on the recipient in Thailand.

Where input tax credits for a period exceed the output tax for the same period, a VAT refund may be claimed by the taxpayer. Alternatively, the credit can be used in the following months to be offset against a VAT liability that may arise.

## Chapter 8: Specific business tax

### Liability to specific business tax

Certain businesses are excluded from VAT and are subject to specific business tax ("SBT") instead. Businesses subject to SBT include:-

- Banking under the law governing commercial banking or any other specific law;
- The business of finance, securities and credit fonciers under the law governing the operation of those businesses;
- Life insurance under the law governing life insurance;
- Pawn broking under the law governing pawnshops;
- Business with regular transactions similar to commercial banks, such as the provision of loans, the provision of guarantees, exchange of currencies, the issuance, purchase or sale of bills or transfer of money abroad by different means;
- The sale of immovable property in a commercial or profitable manner; and,
- The sale of securities in a securities market under the law governing securities exchange in Thailand.

### Registration

Any entity that is subject to SBT must register to be a SBT registered entity within 30 days of its first day of operation.

### Tax bases and rates

| Type of business   | Type of income  | SBT rate |
|--|---|----------|
| Banking, finance and similar                                   | Interest, discounts, service fees, other fees, gross profits from trading in currencies | 3%       |
| The business of finance, securities and credit fonciers        | Interest, discounts, service fees, other fees, gross profits from trading in currencies | 3%       |
| Life insurance   | Interest, service fees and other fees   | 2.5%     |
| Pawn brokerage   | Interest, fees, proceeds from selling forfeited goods                                   | 2.5%     |
| Business with regular transactions similar to commercial banks | Interest, discounts, service fees   | 3%       |
| Sale of immovable property                                     | Gross receipts  | 3%       |

An additional 10% of the SBT is levied as a municipal tax.

### SBT returns

SBT returns must be filed on a monthly basis within 15 days of the end of the month. Payments must be made at this time.

## Chapter 9: Personal income tax

Individual taxpayers must generally file a tax return and pay taxes due, if any, on an accrual basis. The tax year begins on the 1st of January and ends on the 31st of December. The Thai tax system operates on a self-assessment basis.

### Residency

A person is a tax resident of Thailand if he or she resides in Thailand for a period or periods aggregating 180 days or more in a tax year.

### Tax computation

Personal income tax ("PIT") is calculated by applying progressive rates to the calculated taxable income. Taxable income is equal to assessable income less deductions and allowances.

### Assessable income

Individuals who receive assessable income sourced in Thailand are liable to tax in Thailand regardless of where the income is actually paid. Thai tax residents who receive foreign sourced income are liable to Thai tax on that income if the income is brought into Thailand in the same year as received.

Assessable income is divided into eight groups:-

1. Income from personal services rendered to employers;
2. Income from jobs, positions or contract services rendered;
3. Income from goodwill, copyright, franchises, other rights, annuities or income in the nature of yearly payments derived from a will or any other juristic Act or judgment of the Court;
4. Dividends. Interest on deposits with banks. Shares of profits or other benefits from a company, partnership, or mutual fund. Payments received as a result of a reduction of capital, a bonus, an increase in capital holdings, gains from amalgamation, acquisition or dissolution of juristic companies or partnerships. Gains from transferring shares or partnership holdings;
5. Income from the rental of property and from breaches of instalment sales or hire-purchase contracts;
6. Income from liberal professions such as engineering, law and accounting;
7. Income from construction and other contracts of work; and,
8. Income from business, commerce, agriculture, industry, transport or any other activity not specified above.

### Deductions

Standard deductions are allowable against personal income as follows:-

| Type of income   | Deduction  |
|--|--|
| Income from employment   | 50% but not exceeding 100,000 THB                            |
| Income from copyright  | 50% but not exceeding 100,000 THB                            |
| Income from renting buildings and wharves  | 30% *  |
| Income from renting agricultural land  | 20% *  |
| Income from renting other land   | 15% *  |
| Income from renting vehicles   | 30% *  |
| Income from renting other property   | 10% *  |
| Income from liberal professions  | 30% except for the medical profession where 60% is allowed * |
| Income from a contract of work where the contractor provides essential materials besides tools | The actual expenses or 70% *                                 |

|   |   |
|---|---|
| Income from a business, commerce, agriculture, industry, transport, or any other activity not specified above | The actual expenses or 65% - 85% depending on the types of income * |
|---|---|

\*Actual necessary and reasonable expenses may be deducted (instead of taking the standard deduction) if sufficient documentary evidence is held.

### Allowances

In addition to standard deductions, standard allowances are allowable against personal income as follows:-

| Type of allowance   | Amount of allowance  |
|---|--|
| Single taxpayer   | 60,000 THB for the taxpayer  |
| Undivided estate  | 60,000 THB for the taxpayer  |
| Non-juristic partnership or body of persons   | 60,000 THB for each partner but not exceeding 120,000 THB in total   |
| Spouse allowance  | 60,000 THB   |
| Child allowance (child under 25 years of age and studying at educational institution, or a minor, or an adjusted incompetent or quasi-incompetent person) | 30,000 THB each  |
| Parents allowance   | 30,000 THB for each of taxpayer's and spouse's parents if such parent is above 60 years old and earns less than 30,000 THB |
| Life insurance premium paid by taxpayer or spouse   | Amount actually paid but not exceeding 100,000 THB each  |
| Approved provident fund contributions paid by taxpayer or spouse  | Amount actually paid at the rate not more than 15% of remuneration, but not exceeding 500,000 THB                          |
| Long term equity fund contribution  | Amount actually paid at the rate not more than 15% of remuneration, but not exceeding 500,000 THB                          |
| Home mortgage interest  | Amount actually paid but not exceeding 100,000 THB   |
| Social insurance contributions paid by taxpayer or spouse   | Amount actually paid by each person  |
| Charitable contributions  | Amount actually donated but not exceeding 10% of the income after standard deductions and the above allowances             |
| Health insurance premiums   | Amount paid but not exceeding 15,000 THB for the parents of the taxpayer and the taxpayer's spouse                         |

## Tax rates

A progressive scale of marginal tax rates applies to PIT as follows:-

| Taxable income (THB)   | Tax rate |
|------------------------|----------|
| 0 – 150,000            | 0%       |
| 150,001 to 300,000     | 5%       |
| 300,001 to 500,000     | 10%      |
| 500,001 to 750,000     | 15%      |
| 750,001 to 1,000,000   | 20%      |
| 1,000,001 to 2,000,000 | 25%      |
| 2,000,001 to 5,000,000 | 30%      |
| Over 5,000,000         | 35%      |

## Tax returns and payment

Individual taxpayers are required to file a personal income tax return by the 31st of March following the end of the tax year. Taxpayers in receipt of certain types of income (rents, liberal professions, contract work and other businesses) are required to file a half yearly tax return and make a payment toward the estimated tax liability by the 30th of September. Any tax paid with the half-yearly return can be offset against the annual tax liability.

## Chapter 10: Other taxes

### Stamp duty

Stamp duty is levied upon the execution of certain specified instruments (generally defined as documents) and is payable by those persons associated with the instrument. This includes the persons executing the instrument, the holders of the instrument or the beneficiary of the instrument. The instruments liable to stamp duty include, amongst others, transfers of land, leases, stock transfers, mortgages, annuities, powers of attorney and letters of credit. Rates may be applied on a percentage or flat rate basis. Percentage rates range between 0.1% and 1% of the value of the instrument. Flat rates range from 1 THB to 200 THB per instrument.

### House and land tax

House and land tax is levied upon all properties except for owner occupied residences. The tax is calculated based on: a) the actual value of the property; or b) an "imputed annual rental value" of the property at the rate of 12.5%, whichever is the higher. The tax is payable within February of each year.

### Property tax

The Land and Building Tax Act comes into force in January 2019. Under the Act, land and buildings will be divided into four categories. Annual tax rates will be applied, as follows:-

- Land or buildings used for agriculture: up to 0.2% of the appraised value;
- Residential land and buildings: up to 0.2% of the appraised value;
- Commercial and industrial land: up to 2% of the appraised value; and,
- Un-utilized land: 2% of the appraised value, triennially increasable (capped at 5%).

Besides public properties, not-for-profit assets, property owned by intergovernmental organizations, common areas of housing or condominium developments, any residential land and buildings with a value lower than 50 million THB shall be exempted from the tax.

### Local development tax

Local development tax is calculated based on the "unimproved capital value" of land determined by local authorities to be subject to local development tax. Land that is subject to house and land tax is not subject to local development tax.

### Inheritance tax

The Inheritance Tax Act became effective in February 2016. The tax is levied on residential properties, land, vehicles, bonds, equities, and deposits at financial institutions, regardless of whether such items are transferred all at once in the form of an inheritance or over a period of time.

Each person that inherits property ("the legatee") is allowed an exemption of 100 million THB from the "taxable asset base" received from a decedent. The total value of property received from a decedent's estate, net of liabilities attached to any asset received, that exceeds this exemption amount will be subject to inheritance tax.

The tax rate imposed on the "taxable asset base" is 10% but reduced to 5% if the legatee is a descendant or ascendant of the decedent.

### Gift tax

Similar to Inheritance Tax, Gift tax has been applicable since February 2016. Any individual who receives gratuitous gifts shall be taxed at the rate of 5% of the aggregate value of receipts exceeding 20 million THB per calendar year for ascendants, descendants and the spouse; and 10 million THB per calendar year for other beneficiaries.

## Chapter 11: Double taxation agreements

Thailand has an extensive treaty network encompassing the countries listed below. Each treaty is different and must be read on its own terms. The Organisation for Economic Co-operation and Development ("OECD") or United Nations ("UN") model treaties are not necessarily adopted. Thailand's double taxation agreements ("DTA") generally limit the right of a treaty partner to tax non-residents in order to reduce the incidence of double taxation. DTA's vary but they will often contain similar characteristics including:-

- Defining the taxes which are covered;
- Defining how residency is to be determined and providing a tie breaker test if dual residency exists;
- Defining the circumstances in which income of a resident of one treaty partner, sourced in the other treaty partner, can be taxed by the other treaty partner;
- Limiting the withholding tax rates that apply to interest, dividends and royalties paid by a resident of one treaty partner to residents of the other treaty partner;
- Limiting the right to tax the business profits of a resident of one treaty partner by the other treaty partner; and,
- Providing a dispute resolution mechanism.

Thailand has entered into DTA's with 62 countries including, Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria, Cambodia, Canada, Chile, China, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Kuwait, Laos, Luxembourg, Malaysia, Mauritius, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Romania, Russia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uzbekistan and Vietnam.



## Chapter 12: Transfer pricing

In January 2018, the Thailand Cabinet approved the "draft specific transfer pricing provisions" after a public hearing of such provisions was conducted in 2017. Once approval is obtained from Parliament, it is expected that such provisions will become part of the Revenue Code. The focus of the RD with respect to transfer pricing is to ensure that goods or services traded between multinational group members are done so using a "market price". Determining the correct market price is a difficulty acknowledged by the RD which is aware of the practical problems associated with determining market price. Accordingly, the RD has issued guidelines on the determination of market price to provide Revenue Officers with a guideline of market price principles and how to obtain a market price. They also list the documentation required in order to substantiate the decision rationale behind the ultimate market price calculation.

### Notable provisions

The following represents a summary of notable provisions contained in the "draft specific transfer pricing provisions":-

1. The RD will be granted authority to adjust the revenue and expenditure of related party transactions that are not considered to be on an arm's length's basis;
2. Taxpayers with annual turnover exceeding the threshold to be set in a Ministerial Regulation (which cannot be lower than THB 30 million) will be required to submit a transfer pricing disclosure form disclosing certain transfer pricing information for Revenue Officers to conduct their risk analysis;
3. Taxpayers are also required to prepare a transfer pricing report (with related supporting documentation) disclosing full transfer pricing information as prescribed by the RD and keep such reports for a period of 5 years from the transfer pricing disclosure form filing date;
4. Provisions related to the timeframe and deadlines for tax refund claims;
5. The above requirements are to be applicable for accounting periods beginning on or after 1 January 2017; and.
6. Failure to submit either the transfer pricing disclosure form or the transfer pricing report (with related supporting documentation), or submission of incomplete or inaccurate information without any justifiable reasons, will result in penalties being imposed.

### Acceptable methods

1. Comparable uncontrolled price method ("CUP");
2. Resale price method ("RPM");
3. Cost plus method ("CPM"); and,
4. Other methods. Other internationally accepted methods may be used but only in circumstances where the CUP, RPM or CPM cannot be used to accurately determine the market price. Any other method used must be justifiable and commercially appropriate to the facts and circumstances of the transaction.

### Documentation

Appropriate documentation should be created and kept as Revenue Officers have been instructed to consider such documentation during a tax investigation into a transfer pricing issue. The necessary documents are as follows:-

1. Documentation indicating the structure and relationship between business entities within the group, including the structure and nature of the business carried on by each entity;
2. Budgets, business plans and financial projections;
3. Documentation indicating the business strategies and the reasons for adopting such strategies;
4. Documentation indicating sales and operating results and the nature of transactions with business entities in the group;
5. Documentation indicating the reasons for entering into international transactions with business entities in the group;
6. Pricing policies, product profitability, relevant market information and profit sharing of each business entity. Consideration should be given to functions performed, assets utilised and risks assumed by each of the related business entities;
7. Documentation supporting the selection of a particular method;
8. Where several methods are considered and rejected, documentation indicating details of the methods and the reasons for rejection of those methods. These documents should be created at the same time the decision is made to select the actual method used;

9. Documentation indicating the negotiation positions taken by the taxpayer in relation to the transactions with business entities in the same group and the basis for those negotiating positions; and,
10. Other related documentation in determining the transfer price, if any.

#### **Advance pricing arrangement**

Advance pricing arrangements ("APA") are an available option in Thailand used to mitigate the transfer pricing risk and create certainty for taxpayers in their transfer pricing positions. The RD has issued guidelines covering the application process, the period over which an APA will be effective, the required documentation, the expected conduct of the parties and how an APA may terminate.

## Chapter 13: Employment law

The availability of a relatively low cost and mobile labour force has been a major attraction leading to Thailand's popularity as a location for manufacturing businesses.

Legal regulations relating to the employment of staff and workers are contained in the Labour Act and the sections of the Civil and Commercial Code which relate to contracts for the hire of services. In addition, there are a number of Ministerial Regulations issued by the Ministry of Interior (prior to 1993) and the Ministry of Labour and Social Welfare (from 1993 onwards) governing employment law in Thailand.

### Minimum wage

The minimum daily wage can depend on the location and type of employment activity in accordance with the Labour Act. The minimum wage is currently 308–330 THB per day according to the province in which the person is employed, e.g. the minimum wage for an employee in Chonburi/Rayong/Phuket is 330 THB per day, while in Bangkok the rate is 320 THB per day.

### Working hours and holidays

The maximum number of hours for non-hazardous work is 8 hours per day, but not exceeding 48 hours per week. The maximum number of hours for hazardous work is 7 hours per day, but not exceeding 42 hours per week. Once employees have worked for 5 consecutive hours, they must be given a one hour rest period.

Employees who have worked continuously for a period of at least 1 year are entitled to a minimum of 6 working days paid vacation every year in addition to the 13 public holidays traditionally observed in Thailand.

### Wages and overtime

For work performed in excess of the maximum number of hours, fixed either by regulations or by specific agreement, employees must be paid wages and overtime equal to at least 1.5 times their normal wage rate. In the case of an emergency requiring employees to work during holidays and vacations, overtime pay must be given. The rates depend on the working status of the employee. Executives and supervisors are not entitled to overtime pay.

### Sick leave

All employees are entitled to sick leave with pay for up to 30 working days per year. An employer may require an employee to produce a medical certificate if sick leave taken is for 3 consecutive days or more. An employee may be dismissed as a result of an absence from work for 3 days or more without reasonable explanation.

### Female labour

Female workers may not be employed to perform work which is strenuous and dangerous to their health. Female workers may not be employed to perform work which is detrimental to their morals and safety. Female workers may not be engaged to work between 12 midnight and 6 am, except in shift work. A female employee who has worked for more than 180 days is entitled to take maternity leave with pay for 45 days and an additional 45 working days without pay, if necessary. Maternity leave is in addition to the 30 days paid sick leave to which all employees are entitled.

### Child labour

Children under 15 years of age may not be employed under any circumstances. Children over 15 but under 18 years of age may be allowed to work if official permission is secured from the Ministry of Labour and Social Welfare. Children over 15 but under 18 should not be made to work between the hours of 10 pm and 6 am unless they are film or theatre performers or are engaged in similar work. No one under 18 years is allowed to perform work prejudicial to their health, morals or safety.

### Welfare

An employer is required by law to provide adequate drinking facilities, washrooms and toilets for employees and must have first aid and medical facilities available on the premises. The extent of such facilities depends on the nature of the business and the number of employees.

### **Work rules and regulations**

An employer with 10 or more regular employees is required to establish written rules and regulations in the Thai language governing work performance. The rules and regulations must be displayed at the work premises. A copy of these rules and regulations must be submitted to the Ministry of Labour and Social Welfare within 7 days from the date the employer acquires a total of 10 employees or more.

An employer is also required to maintain an employee register in the Thai language with documents relating to the calculation of wages. The registers are required to be made readily available to inspectors from the Ministry of Labour and Social Welfare upon request.

### **Termination of employment and severance pay**

Where a work contract does not specify a definite period of employment, either party may terminate it by giving advance written notice before or at the due date of wage payment in order to take effect at the following due date of wage payment. A dismissed employee is entitled to receive termination payments based on the length of service unless his or her dismissal is the result of serious misconduct.

In the event of an employee being dismissed without advance prior written notice before or at the due date of wage payment, an additional remuneration in lieu of advance notice is required.

### **Labour relations**

An employer is prohibited from dismissing an employee who is unable to continue working because of participation in labour rallies and submission of labour demands and negotiations, the results of which are pending. All labour associations must be registered with, and licensed by, the Central Registration Office of Employees' Association, the Ministry of Labour and Social Welfare or by provincial registrars designated by the Ministry of Labour and Social Welfare.

Demands by employees will only be considered to have been received by the employer when they are presented in writing. Negotiations between employers and employees must be undertaken through their authorized representatives.

If the parties cannot reach an agreement, direction may be given by the Ministry of Labour and Social Welfare. An application of the case must be presented in writing. An arbitrator may be appointed to reconcile the dispute.

The employer may not resort to an employee lockout or employment termination. Employees are prohibited from staging strikes unless negotiation procedures have been exhausted.

### **Labour settlements**

The Labour Inspector under the Labour Protection Act and the Labour Court under the Labour Court Procedure Act provide additional protection and remedies for any disputes arising between an employer and an employee. A decision as to whether an employee's termination is unfair or not rests upon the Labour Court's discretion.

## Chapter 14: Foreign employment law

Under Thailand's Foreign Employment Act ("FEA"), certain occupations in Thailand are closed to foreigners. The FEA also governs the issuance and renewal of work permits for foreigners and the penalties for foreigners who violate the FEA.

### Work Permits

Foreigners entering Thailand to perform any working duty must obtain a work permit before commencing work. Exceptions to this requirement are granted for foreigners who are members of diplomatic corps, consular missions and officials of the United Nations and Thai government missions. A new exemption has recently been granted to foreigners who are employed by companies that engage in "S-Curve" industries and holding "Smart Visas".

A foreigner may be permitted to carry out necessary and urgent work in Thailand for not more than 15 days. However the Ministry of Labour and Social Welfare must be informed in writing before commencing such work. The FEA provides a list of occupations exclusively reserved for Thai nationals. These are mostly in the fields of manual and industrial labour but some professional occupations such as engineering, accounting, architecture and law are also reserved.

The FEA provides that a prospective employer may file an application for a work permit on the foreigner's behalf before the foreigner enters Thailand. A work permit will be valid for the period of time (but not exceeding 4 years) insofar as the foreigner's non-immigrant visa permits them to remain in Thailand and will be renewed at the same time as the approval of a visa extension. There is an exception in the case where the foreigner has been granted a "more than 1 year" work permit in which case the visa expiry period may be different from the work permit validity.

Approval of a work permit is considered on a case-by-case basis depending on the status of the employer. Considerations include paid up capital, ratio of Thai staff to foreigners and how beneficial the business of the employer is to the Thai economy.

Any foreigner undertaking work without a work permit (or in violation of a work permit), as well as any person found employing a foreigner without a relevant work permit may face imprisonment, a fine, or both.

In the case of termination of employment or resignation of employees, the employer has a duty to report the cancellation of the respective work permits within a period of 7 days. Failure to comply could result in penalties being imposed.

The standard procedure for foreigners wishing to work in Thailand includes the following:-

1. Enter Thailand with a valid category B non-immigrant visa;
2. Preparation and submission of an application for a work permit with the Department of Employment ("DOE"). This normally takes between 3 to 7 working days to process; and,
3. Extend the category B non-immigrant visa beyond 90 days.

### Non-immigrant visas

Foreigners intending to live and work in Thailand must obtain a non-immigrant visa prior to arrival. Non-immigrant visas are issued by a Royal Thai Embassy or a Consulate abroad.

There are several categories of non-immigrant visas, including business visas (category B), dependent visas (category O), long-term business visas (category B-A), diplomatic and consular visas (category D), education visas (category ED) and "Smart visas".

"Smart Visas" are granted to executives of companies that invest in certain targeted industries, referred to as "S-Curve" industries. Industries within the "S-Curve" category include certain "next generation" businesses; smart electronics; affluent, medical and wellness tourism; agriculture and biotechnology; food for the future; automation and robotics; aviation and logistics; biofuels and biochemical; digital; and medical hubs. Foreigners who hold such visas will be permitted visa periods of up to 4 years and will not be required to obtain a work permit.

To avoid complications and delays, the correct category of non-immigrant visa should be obtained prior to entering Thailand. Foreigners intending to work in Thailand will be issued a category B visa while members of their family are usually issued category O visas. Most of the embassies now require a certification or letter of invitation from the prospective employer in Thailand as well as a work permit pre-approval letter ("WP3") issued by the DOE. Upon arrival, a non-immigrant visa holder will initially be granted a 90 day stay. A category B visa is normally not extendable unless the applicant has applied for a work permit (except for holders of "Smart Visas" who can be granted visa periods of up to 4 years and extensions without work permits). Often, the Immigration Department grants a temporary stay visa for a period of up to 1 month at a time during the process of extension of the category B visa. Approval of the visa extension is considered on a case-by-case basis and the decision of the Immigration Department is final.

### **Re-entry permits**

Foreigners who have been granted visas to stay in Thailand will be required to obtain a re-entry permit (either single entry or multiple entry) prior to their departure from Thailand otherwise their visas will be automatically cancelled and the entire work permit and visa application process will need to be re-started (except for holders of "Smart Visas").

### **Report of 90 day stay**

Foreigners who have been granted visas to stay in Thailand are obliged to report their stay in Thailand to the Immigration Department every 90 days either in person or via the online report channel (except for holders of "Smart Visas" who will be granted extensions of up to 1 year).

## Chapter 15: Intellectual property protection

Three broad intellectual property rights are recognized in Thailand:-

1. Patents;
2. Copyrights; and,
3. Trademarks.

### Patents

Thailand became a party to the Paris Convention in 2008 and thereby became bound by the Patent Cooperation Treaty. Thailand is also a member of the World Trade Organisation and is therefore bound by the Agreement on Trade Related Aspects of Intellectual Property Rights. Patent protection under these agreements and treaties provides Thai nationals with protection for their inventions abroad. It also provides nationals from other member countries with patent protection in Thailand. Patents in Thailand are governed by the Patent Act.

Patents are categorised into invention patents or product design patents.

### Invention patents:

For an invention to be patentable, it must: -

- Be novel;
- Involve an inventive step; and,
- Be capable of being made or used in a production activity.

The following are not patentable:-

- Microbes and any components thereof which exist naturally;
- Animals, plants or extracted substances from animals or plants;
- Scientific or mathematical rules or theories;
- Computer programs; and,
- Methods of diagnoses, treatment and care of human and animal diseases.

### Product design patents:

- A product design must be novel in order to be patented;
- It must not be a product design widely known or used in Thailand before the filing of the patent application;
- It must not be a product design or picture, the subject matter or details of which have been displayed or disclosed in a document or printed publication inside or outside of Thailand before the filing of the application;
- It must be a product design that has been published in the patent journal under Sections 65 and 28 of the Patent Act before the filing of the patent application; and,
- It must not be a product design that so nearly resembles any of the product designs indicated in the points above that it is apparently an imitation.

### Product designs which are not patentable:

- Product designs which are contrary to public order and good morals; and,
- Product designs prescribed by Royal Decree.

### Term

The term of an invention patent is 20 years from the filing date. The term of a product design patent is 10 years from the filing date.

### Copyrights

Copyrights in Thailand are governed by The Copyright Act which protects copyrights in the following categories:

- Literary work, including computer programs;
- Dramatic, artistic and musical work;
- Audio-visual materials, cinematic films, recorded materials;
- Disseminated pictures or disseminated sound; and,
- Any other works in the fields of literature, science or fine arts.

The Copyright Act protects computer software against reproduction or adaptation, publicity and rental. Algorithms are not protected.

A "copyright" is defined by under the Copyright Act to mean "the exclusive right to take any action concerning the work created or made by the creator". The Copyright Act also defines the "creator" as the person who does the work or creates the work.

A copyright belongs to the creator of a work, subject to the following conditions:-

- In the case of unpublished work, the creator must be of Thai nationality, or reside in Thailand, or be a national of, or reside in, a country which is a member of the Convention on the Protection of Copyright; and,
- In the case of published work, the first publication must be made in Thailand or in a country that is a member of the Convention on the Protection of Copyright. In the case where the first publication was made outside Thailand, in a country which is not a member of the Convention, the work created must have been published in Thailand, or in a country which is a member of the Convention, within 30 days from the first publication, or the creator must have the qualification as prescribed above at the time of the first publication.

### Exceptions

Under the Copyright Act, any act that might ordinarily be deemed a copyright infringement may not be so deemed if done for any of the following purposes:-

- Research or education without any commercial purposes;
- For one's own benefit or for the benefit of a member of one's own family, or close relatives;
- Comment, criticism or recommendation of the work, with recognition of the copyright ownership of such work;
- Presenting news or otherwise reporting through the mass media, with recognition of the copyright ownership of the work;
- Reproduction, adaptation, performance or presentation for a court hearing, or consideration by competent and authorised officers, or for reporting on the outcome of such a hearing or consideration;
- Copying, duplicating or adapting parts of the work, or making extracts or summaries, by teachers or by educational institutions, for the purpose of distributing or selling to students in school classes or in educational institutions, provided that such activities are not for commercial purposes; and,
- Using the work as parts of questions and answers in examinations.

In addition, citing, copying or imitating certain parts of the copyrighted works under the Copyright Act, with recognition of the copyright ownership of the work, shall not be deemed to be a copyright infringement.

The Copyright Act specifically provides that the following are not eligible for copyright protection:-

- Daily news and facts that are, by nature, merely news items;
- The Constitution and laws;
- Announcements, orders and regulations of ministries, bureaus, departments or any other agency of the state or local jurisdiction;
- Court judgments, orders, rulings and official reports; and,
- Translations and collections of those items specified as above which are prepared by government agencies or local administrations.

### Term

A copyright in literature, drama, artistry or music is valid throughout the lifetime of the creator, and for an additional 50 years thereafter. In the event the creator is a juristic person, the copyright will be valid for a period of 50 years following the creation of the work. The copyright for applied artistic work is valid for a period of 25 years following the creation of the work.

### Trademarks

The Trademark Act (which governs trademarks in Thailand) defines a trademark as a symbol used in connection with goods indicating that they are the goods of the owner of the trademark. Pursuant to the Trademark Act, a brand,



name, word, letter, photograph, drawing, device, manual, signature, combinations of colours, shape or configuration of an object, sound or any one or combination thereof can be registered.

A trademark must be "distinctive" and not identical or similar to those registered by others, and must not be prohibited under the Trademark Act.

The Trademark Act was amended so as to satisfy the requirements of the Madrid Protocol in 2016.

### **Term**

Trademark registration is effective for a period of 10 years from the filing date of the application. Owners of trademarks must file an application for renewal at least 90 days prior to the expiration of their current trademark registration. A renewed trademark will be effective for an additional 10 years.

A trademark may be registered even if it is not being actively used. However, failure to utilise the trademark entitles third parties to challenge the rights of the trademark owner.

## Chapter 16: Portfolio investments

### Stock Exchange of Thailand

A foreign entity is not restricted from making portfolio investments consisting of shares listed on the Stock Exchange of Thailand. Income or capital gains from portfolio investments in shares listed on the Stock Exchange of Thailand may be subject to tax in Thailand on a withholding basis which may be limited by any relevant articles of an applicable double taxation agreement. The normal tax rate for profit remittance under Thai Revenue Code is at the rate of 10%.

### Real estate

Foreign nationals are generally prohibited from owning land in Thailand unless granted an exemption such as those that may be issued by the Board of Investment for certain investment activities in certain zones. However the exemption would usually only apply for the duration of the business activity.

Foreigners may own an apartment unit in a building registered and licensed under the Thailand Condominium Act. Section 19 Bus of this act governs foreign ownership of condominiums which, among other things, puts a limit on foreign ownership in a condominium building. Not more than 49% of all units in a condominium project can be foreign owned.

Many foreigners prefer to obtain a long term lease over property. For rent or leases of immovable property in Thailand, foreign nationals have the same rights as Thai nationals. Long term leases may be obtained for a period of up to 30 years. There is no requirement to bring foreign currency into Thailand when obtaining a long term lease as there is when buying a condominium or apartment freehold.

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