

A full-page background image showing two hikers on a rocky mountain peak. One hiker is standing on the peak, leaning forward to help another hiker who is climbing up. The scene is set against a dramatic sunset sky with orange and yellow hues. The hikers are wearing backpacks and outdoor gear.

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# **Doing Business in Thailand Guide**

Updated as of December 2024

**1st Edition**

# FOREWORD

As businesses today face a constantly evolving environment, a paradigm-shifting approach to legal advice is required.

At Kudun & Partners, we recognize the dynamic nature of today's business environment, and our publication, curated by our lawyers who have expertise in their respective legal practice areas, is tailored to assist foreign individuals and companies in navigating the intricate legal terrain of conducting business in Thailand and address key facets of the Thai legal system that significantly impact business operations. The content offers a holistic view of government regulations, incentives for foreign investment, forms of business organization for international investors, and nuanced perspectives on the Thai tax system. Additionally, concise summaries covering various aspects of Thai law affecting general business operations are provided, including intellectual property, data privacy, dispute resolution, labor laws, tax, transfer pricing, and real estate. This edition also features information on specific industries such as digital assets, renewable energy, and technology.

It's imperative to underscore that while this publication offers a thorough summary and is designed to familiarize foreign investors with crucial aspects of Thai law as they embark on planning business ventures in Thailand, it is not a substitute for specific legal advice. The materials presented here provide only a foundational understanding, do not cover all relevant laws exhaustively, and are updated as of December 2024. Foreign investors are urged to seek professional legal guidance before making concrete investments in Thailand. Considering the ever-evolving legislative landscape in Thailand, investors should delve into the specific laws governing their intended business activities, and identify and interpret the laws and regulations applicable to particular projects and transactions before implementation.

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Founded in 2015, Kudun & Partners is a modern and award-winning full-service law firm led by some of South East Asia's most accomplished lawyers with a desire to provide more commercially minded and creative legal advice to our clients. Since inception, we have attracted many lawyers, including senior partners with over 20 years of experience from major international firms. These leading individuals bring an international standard of legal practice with extensive local experience in the Thai legal landscape, representing various entities on transactions in Thailand and Southeast Asia. With 13 partners and a dedicated team of over 50 lawyers and 40 business professionals as well as language capabilities in Thai, English, Japanese, and Chinese, we take pride in being one of the few local firms that offer a comprehensive one-stop service solution to clients, ensuring success in this challenging market.

Clients value our responsiveness and distinctly commercial attitude, as well as our passion for developing forward-thinking, innovative strategies and solutions that respond to their unique business needs. In only six years since our inception, we have been awarded the highly coveted Thailand Law Firm of the Year by The Legal 500 Southeast Asia Awards 2020/2021 and 2023, a reflection of the firm's commitment to delivering work that exceeds expectations and raises industry standards.



With a worldwide network through the World Services Group, a leading global network comprised of over 120 elite top-ranked global practice firms across 150 jurisdictions, we serve leading Thai and international clients across a spectrum of practice areas including:



Kudun & Partners is consistently recognized as a top-tier firm by international legal directories, including The Legal 500, IFLR1000, Chambers and Partners, Asialaw, International Tax Review, and Benchmark Litigation. Our commitment to excellence is reflected in the numerous accolades we have received, including:

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- Thailand Firm of the Year, 2023-2024 by Asialaw Award
- Client Choice Award – Thailand Firm of the Year, 2023 by Asialaw Award
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At Kudun & Partners, we stand at the forefront of legal innovation, providing tailored solutions that meet the unique business needs of our clients.



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# CHAPTER

# 1

## Thailand Snapshot

Thailand, formally known as The Kingdom of Thailand, stands as the second-largest economy in ASEAN, boasting a GDP of approximately USD 495 billion and a population of approximately 71.75 million as of January 2024. Thailand holds a strategic location in Southeast Asia, sharing borders with Cambodia to the southeast, Laos to the north and northeast, Myanmar to the north and west, and Malaysia to the south. The country features extensive coastlines along the Andaman Sea to the west and the Gulf of Thailand to the east.

The primary ethnic group in Thailand is Thai, with minority populations including Chinese, Laotians, Cambodians, Malays, and diverse indigenous hill tribes. Major cities include Bangkok, the capital city of Thailand, Phuket, Khon Kaen, Chiang Mai, Nakhon Ratchasima and Songkhla/ Hat Yai.

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

### Religion

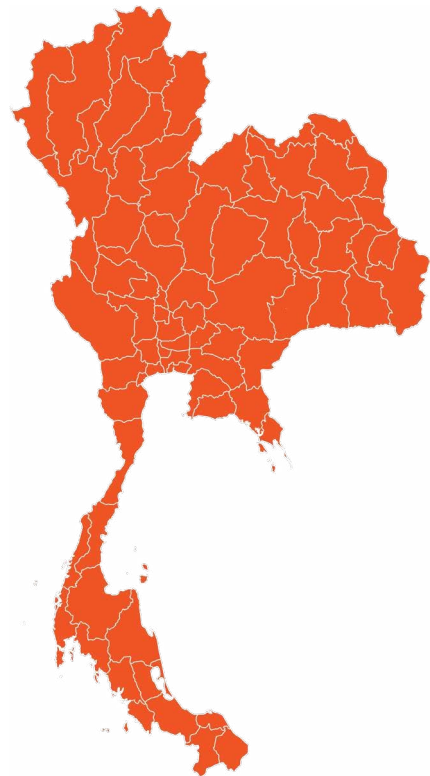
About 95% of Thailand's population practices Buddhism. Minority religions include Islam, making up approximately 3%, and Christianity, constituting around 1%.

While the Gregorian calendar is commonly used in Thailand, the Thai calendar, based on the Buddhist Era (B.E.), is also prevalent. The Buddhist Era commences with the death of Lord Buddha in 543 B.C. Consequently, the legislative references in this brief are indicated by the year in which the legislation was enacted in Buddhist-era terms, followed by the Gregorian calendar equivalent. For instance, B.E. 2562 corresponds to the year 2019 in the Gregorian calendar.

### Political System

Currently, Thailand adheres to the Constitution promulgated in 2017 as the supreme law of the land. According to this Constitution, the King serves as the head of state and exercises sovereign powers through the three main branches: legislative powers via the National Assembly of Thailand (or the Parliament), executive powers through the government, and judicial powers through the Courts.

The Constitution outlines the structure of the National Assembly, comprising an elected lower house called the House of Representatives and an appointed upper house, the Senate, selected according to procedures detailed in the relevant organic law. Together, they form the National Assembly.



Comprising 750 members, the National Assembly is vested with the authority to deliberate and pass laws. It succeeded the National Legislative Assembly, which was appointed by the National Council for Peace and Order in 2017.

The government, overseen by the cabinet and led by a prime minister, operates with the support of an extensive bureaucracy. Each ministry is headed by a minister appointed by the King based on the prime minister's recommendation.

## Currency

The official currency in Thailand is the Thai Baht (THB), subdivided into 100 satang. Banknotes are issued in denominations of THB 20, 50, 100, 500, and 1,000, while coins are circulated in values of THB one, two, five, and 10, along with 25 and 50 satang. Foreign currencies can be exchanged for THB at commercial banks, authorized money exchange centers, and other designated agents.

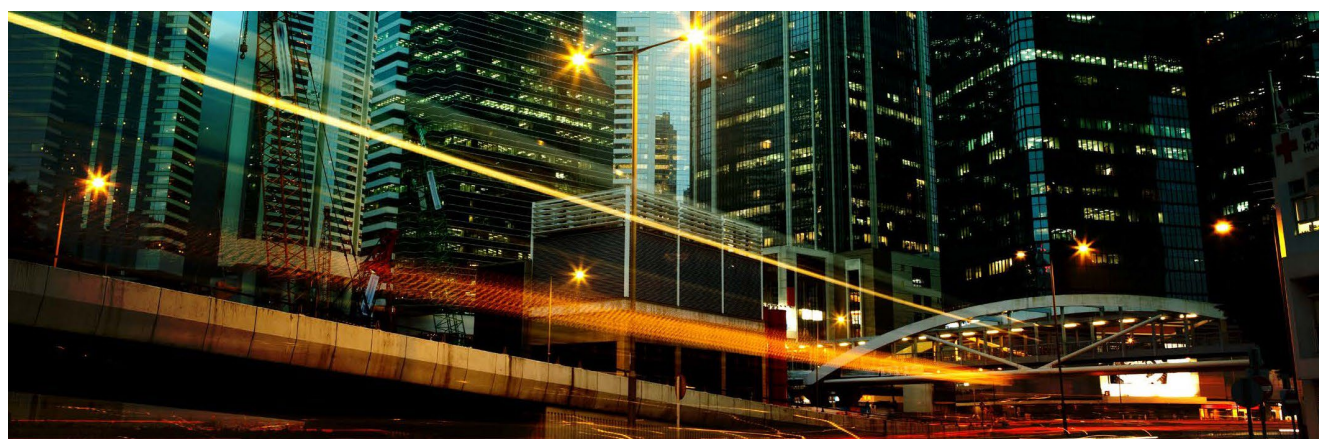
## Investment Climate

Over the past few decades, the country has made significant strides in both social and economic development, resulting in a consistent rise in household incomes. Thailand's urban population has surged to 53% in 2024, a notable increase from the 45% recorded in 2012. This shift has given rise to a vibrant and expanding consumer market, fuelled by a rapidly growing middle class. This demographic is quick to embrace new digital and lifestyle trends, creating a surge in demand for a variety of goods and services.

Thailand aims to make a transition from an upper middle-income to a high-income country by 2037, aligning with its commitment to inclusive and sustainable development laid out in the 20-year national strategy. Anchored by the recently introduced Thailand 4.0 vision and the Bio-Circular-Green (BCG) economy model, the government aims to realize these objectives through economic advancement, emphasizing a value-based and environmentally sustainable approach.

The Board of Investment (BOI), responsible for investment promotion and facilitation, has demonstrated an impressive track record in stimulating both foreign and domestic investments. The investment promotion strategy spanning from 2015 to 2021 introduces innovations, such as a shift towards more targeted and merit-based incentives for Research and Development (R&D) and skills development, coupled with a reduction in eligible activities for promotion. Earlier this year, BOI announced that applications for investment promotion in 2022 reached THB 664.6 billion (approximately USD20 billion), an increase of 39% from the previous year's adjusted number, boosted by large foreign direct investments (FDI) in key sectors, including electronics, the electric vehicles (EV) supply chain and data centers, confirming a recovery from Covid-19.

In summary, Thailand's investment landscape paints a compelling picture of a nation on the rise, driven by robust social and economic advancements. With a flourishing urban population and a burgeoning middle class, the consumer market is expanding rapidly, presenting exciting opportunities for investors. Aligned with a visionary roadmap and strategic initiatives from various government bodies, coupled with a remarkable surge in investment, Thailand stands as a beacon of opportunity and growth for those seeking a dynamic and forward-thinking investment destination.





# CHAPTER

## 2

## Forms of Business Organization in Thailand

**Authors:** Peerasanti Somritutai, Chayakorn Boonsri, Thanchon Phetroocheang and Suphatcha Sirilapanan

This chapter serves as an introduction to the forms of business organization that are commonly used in Thailand. The key forms of business organization in Thailand are partnerships and companies (either private or public).

### 1. Partnerships

A partnership is a form of business where at least two individuals agree to join for a common business purpose and share the resulting profits. In Thailand, partnerships can take the form of either an ordinary partnership or a limited partnership.

Ordinary Partnership	Limited Partnership
An ordinary partnership can be either an unregistered partnership or a partnership registered with the Department of Business Development, Ministry of Commerce (referred to as the “DBD”). Partners in an ordinary partnership may contribute capital in the form of money, property or labor to the partnership as agreed among themselves. Importantly, all partners in an ordinary partnership are jointly and unlimitedly liable for the partnership’s obligations.	A limited partnership must be registered with the DBD. In a limited partnership, there are two categories of partners: (i) partners whose liability is limited to the amount they have contributed to the partnership; and (ii) partners who are jointly and unlimitedly liable for all liabilities of the partnership. However, only the latter category is eligible to serve as managing partner of a limited partnership.

For both types of partnerships, once registered with the DBD, the partnership becomes a distinct juristic person separate from its individual partners.

In the Thai business landscape, a partnership is relatively less popular due to the inherent unlimited liability nature of partners.

### 2. Companies

Companies are the preferred choice of business organization in Thailand owing to the limited liability enjoyed by shareholders. A company’s capital is divided into shares with equal par value and the shareholders’ liability is limited to the amount unpaid on the shares owned by them.

Companies can be further categorized into a private limited company or a public limited company, with both requiring registration with the DBD.

Private limited companies are generally subject to less stringent statutory governance compared to public limited companies (certain distinctions are outlined in the table below). Therefore, compared to a public limited company, a private limited company is the more popular option in Thailand because of its flexibility in business operation.

A private limited company can be converted into a public limited company, and, after the conversion and following certain statutory requirements, can list its shares on one of Thailand's stock exchanges, which will be mainly governed by the Securities and Exchange Act B.E. 2535 (1992).

Set out below is the table showing the key differences of legal requirements applicable to a private limited company and a public limited company.

	Private Limited Company	Public Limited Company
<b>Number of Promoters</b>	Minimum 2 individual promoters	Minimum 15 individual promoters
<b>Promoter's Shareholding</b>	Each promoter must subscribe for at least 1 share	All promoters must collectively subscribe for at least 5% of the total issued shares
<b>Number of Shareholders</b>	Minimum 2 shareholders	Minimum 15 shareholders
<b>Par Value</b>	At least THB 5 per share	No minimum share value requirement
<b>Share Payment</b>	At least 25% of the par value of each share must be paid-up	All shares must be fully paid-up
<b>Offering of New Share</b>	Newly issued shares must only be offered to the existing shareholders	Newly issued shares may be offered to the existing shareholders or to the public
<b>Director</b>	At least 1 director	At least 5 directors
<b>Director's Place of Residence</b>	No requirement on director's place of residence	At least 50% of the directors must reside in Thailand

From the above differences, a private limited company would be a viable option for (i) a family-owned business, (ii) a new entrant to the Thai market, or (iii) any business operator initiating a new line of business, primarily due to its flexibility and associated lower costs and expenses. On the other hand, a public limited company should be a viable option for (i) a more sophisticated player with plans for an initial public offering (IPO) (i.e. capital / fundraising from the public), or (ii) an operator of a controlled business which requires a public limited company as an operator (such as an insurance business).

### Establishment of a Private Limited Company

In Thailand, the process for the incorporation of a private limited company can be completed within one business day. The steps for such process are illustrated as follows:



## ALTERNATIVE FORMS OF INVESTMENT IN THAILAND

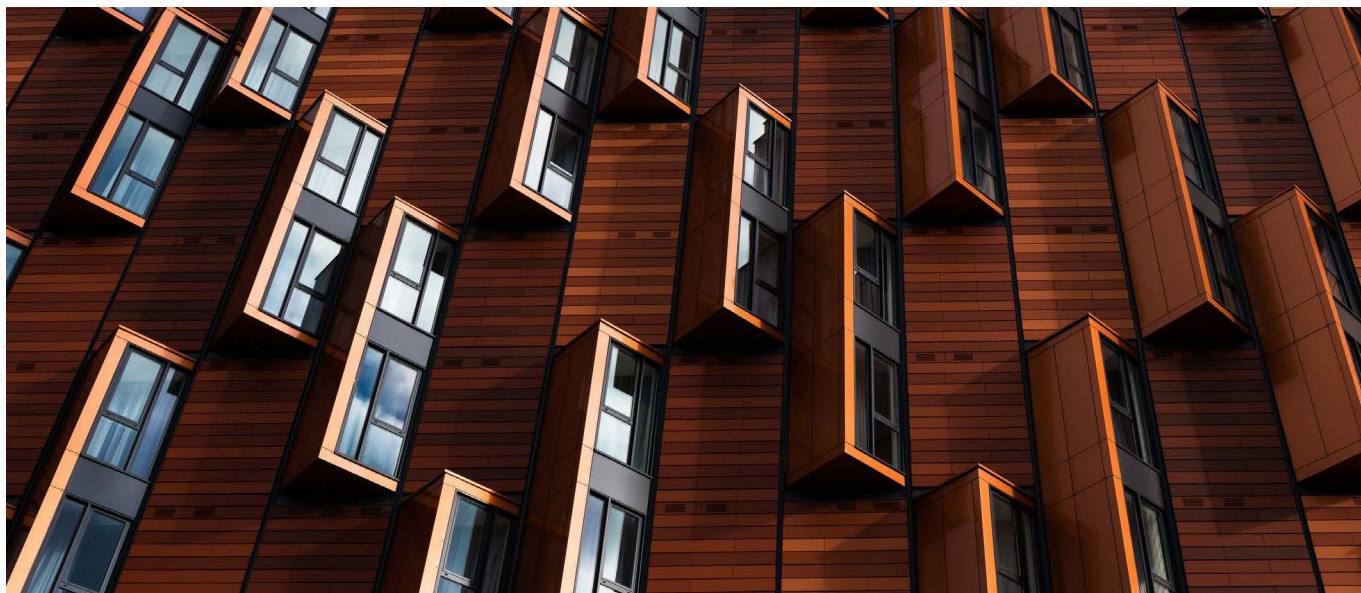
Apart from holding share(s) in a Thai-registered company, a foreign corporate investor may opt for alternative forms to conduct business in Thailand as follows:

Branch Office	Representative Office	Regional Office
<p>A foreign entity may establish a branch office in Thailand. The branch office is considered to be the same legal entity as its head office. That is, if a head office is a foreign-registered entity, a branch office is also considered as a foreign-registered entity, and accordingly, if a branch office operates any restricted business under the Foreign Business Act B.E. 2542 (1992) (the “<b>FBA</b>”), such branch office is also required to obtain a foreign business license before its operation.</p> <p>The establishment of a branch office does not require any registration with governmental authorities. Nevertheless, the branch office must apply for and obtain a taxpayer ID and register itself as VAT operator (if applicable) for its operations in Thailand.</p>	<p>A foreign entity may establish a representative office in Thailand to support its head office located outside of Thailand. For the scopes of activity, the representative office can only operate one or more of the five following activities:</p> <ol style="list-style-type: none"> <li>1. to seek for products or services in Thailand for its head office;</li> <li>2. to inspect and control quality and quantity of the goods purchased or hired to be manufactured by its head office in Thailand;</li> <li>3. to advise distributors and users on various aspects on the goods distributed by its head office to the distributors or users in Thailand;</li> <li>4. to circulate to distributors and users information about new goods or services of its head office; or</li> <li>5. to report the business activities in Thailand to its head office.</li> </ol>	<p>A foreign entity may establish a regional office in Thailand to support services to its related companies including its head office, subsidiaries and affiliated companies operating in the same region (i.e., in Asia). Therefore, to establish a regional office, such foreign entity must have its head office or an established subsidiary, affiliated company or branch office in Asia.</p> <p>For the scopes of activity, the regional office can only operate one or more of the seven following activities:</p> <ol style="list-style-type: none"> <li>1. to communicate and coordinate with a branch office and affiliated companies in Asia on behalf of the head office;</li> <li>2. to provide consultation and management services;</li> <li>3. to provide training and personnel development services;</li> <li>4. to provide financial management services;</li> <li>5. to provide marketing control and sales promotion planning services;</li> <li>6. to provide product development services; or</li> <li>7. to provide research and development services.</li> </ol>



In general, any foreign entity with a business presence in Thailand is obligated to obtain a foreign business license under such foreign entity's name if it operates any restricted business under the FBA. However, the Ministry of Commerce issued ministerial regulations to remove certain businesses from the restricted business activities under the FBA, including the operation of a representative office and a regional office. Therefore, foreign entities establishing a representative office or regional office are exempted from the licensing requirements under the FBA. However, it is important to note that foreign entities are still obliged to notify the DBD of the establishment of a representative office or a regional office (including the location where such representative office or regional office is located) and obtain a 13-digit registration number. These requirements are in place to ensure compliance with the necessary accounting procedures and reporting obligations.





Set out below is a table comparing the pros (green-highlighted) and cons (blue-highlighted) of each of the regional office, representative office and branch office.

	Branch Office	Regional Office/ Representative Office
<b>Scope of Activity</b>	Not limited	Limited
<b>Ability to Generate Income</b>	Not prohibited	Prohibited
<b>Foreign Business License Requirement</b>	Required to obtain a foreign business license if engaging in any restricted business under the FBA	Exempted

# CHAPTER

## 3

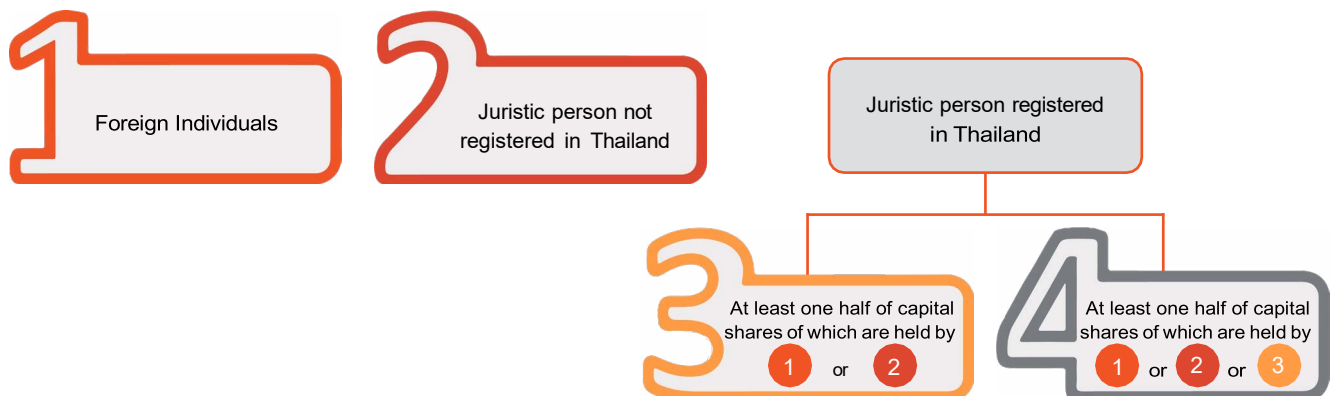
## Foreign Business Act

**Authors:** Thanyaluck Thongrompo and Sirapat Chaisarnseri

### 1. Definition of Foreigner under the Business Act B.E. 2542 (1999)

In order to regulate and oversee foreign business activities that may compete with Thai entrepreneurs, the Thai government has promulgated the Foreign Business Act B.E. 2542 (1999) ("FBA"). The FBA also regulates certain businesses in which foreign investors possess greater capacity and advanced technology than their Thai counterparts. Accordingly, the FBA permits such businesses to operate under the condition that foreign investors transfer technology to Thai staff to enhance their proficiency in the industry.

FBA has provided the definitions of "Foreigner" in section 4, which can be summarized as follows.



### 2. Restricted Business

Restricted businesses are listed in the FBA's annex, divided into three lists based on the reasons for the restrictions and the scope of the applicable restrictions.

LIST ONE: BUSINESSES STRICTED NOT PERMISSIBLE TO FOREIGNERS BY SPECIAL REASON



FOREIGNER CANNOT OPERATE

Examples



THE PRESS



LIVESTOCK FARMING



FISHERY



LAND TRADING

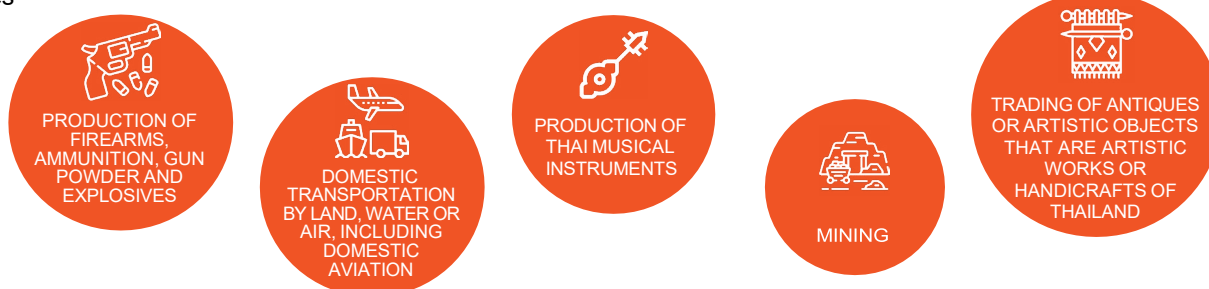


EXTRACTION OF THAI MEDICINAL HERBS

LIST TWO: BUSINESSES THAT MAY AFFECT TO NATIONAL SAFETY OR SECURITY OR HAVING IMPACTS ON ARTS, CULTURE, TRADITIONS, CUSTOMS AND FOLKLORE HANDICRAFTS OR NATURAL RESOURCES AND THE ENVIRONMENT

REQUEST PERMISSION FROM THE MINISTER WITH THE APPROVAL OF THE COUNCIL OF MINISTERS

#### Examples



LIST THREE : BUSINESSES IN RESPECT OF WHICH THAI NATIONALS ARE NOT READY TO COMPETE WITH FOREIGNERS

REQUEST PERMISSION FROM THE DIRECTOR-GENERAL OF THE DBD WITH THE APPROVAL OF THE COMMISSION

#### Examples



If a foreigner intends to operate a restricted business in Thailand, it is mandatory to apply for a Foreign Business License ("FBL") from the Foreign Business Administration Division ("FBAD"). Failure to comply with this requirement may result in the foreigner facing imprisonment for a period not exceeding three years, a fine ranging from THB 100,000 up to THB 1,000,000, or both. Additionally, a Thai court may order the offending entity to cease its operations. Noncompliance with such a court order may lead to a daily fine ranging from THB 10,000 to THB 50,000.

### 3. Exemptions

Although an entrepreneur may be classified as a foreigner under the definitions outlined in the FBA, and their business may be categorized as a restricted business as stipulated by the same act, there exist certain exemptions that may permit the entrepreneur to operate without the need for an FBL. These exemptions can be categorized into three categories, as outlined below.

#### 3.1 Exemption listed in the FBA or exemption by the Ministerial Regulations.

In this scenario, the foreigner is exempted from applying for any license or certificate from the FBAD and may operate with a minimum capital of THB 3 million or as specified by particular conditions.

#### Examples

The exemption of the requirement to apply for FBL for retailing or wholesaling business, with the condition that the foreigner has a minimum capital of THB 100 million to operate the business.

The exemption of the requirement to apply for FBL for brokerage or agency business if the foreigner is a broker or an agent in the sale or purchase of securities.

The exemption of the requirement to apply for FBL for certain services e.g.

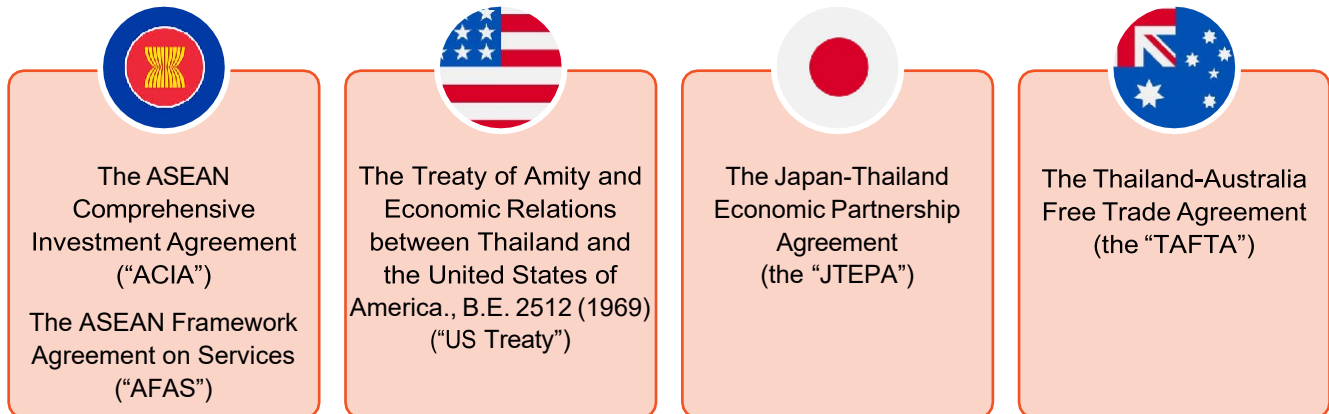
- representative office of foreign juristic person;
- the regional office of foreign juristic person; and
- service business in which the contractual party is a government agency or state enterprise under the law on budgetary procedures.



### 3.2 Exemption from special treaty or bilateral agreements

The requirement for an FBL may be waived for a foreigner holding the nationality of a country engaged in a special treaty or bilateral agreement with the Thai government. The conditions and scope of the exempted business activities are determined by the terms agreed upon between Thailand and the respective foreign country.

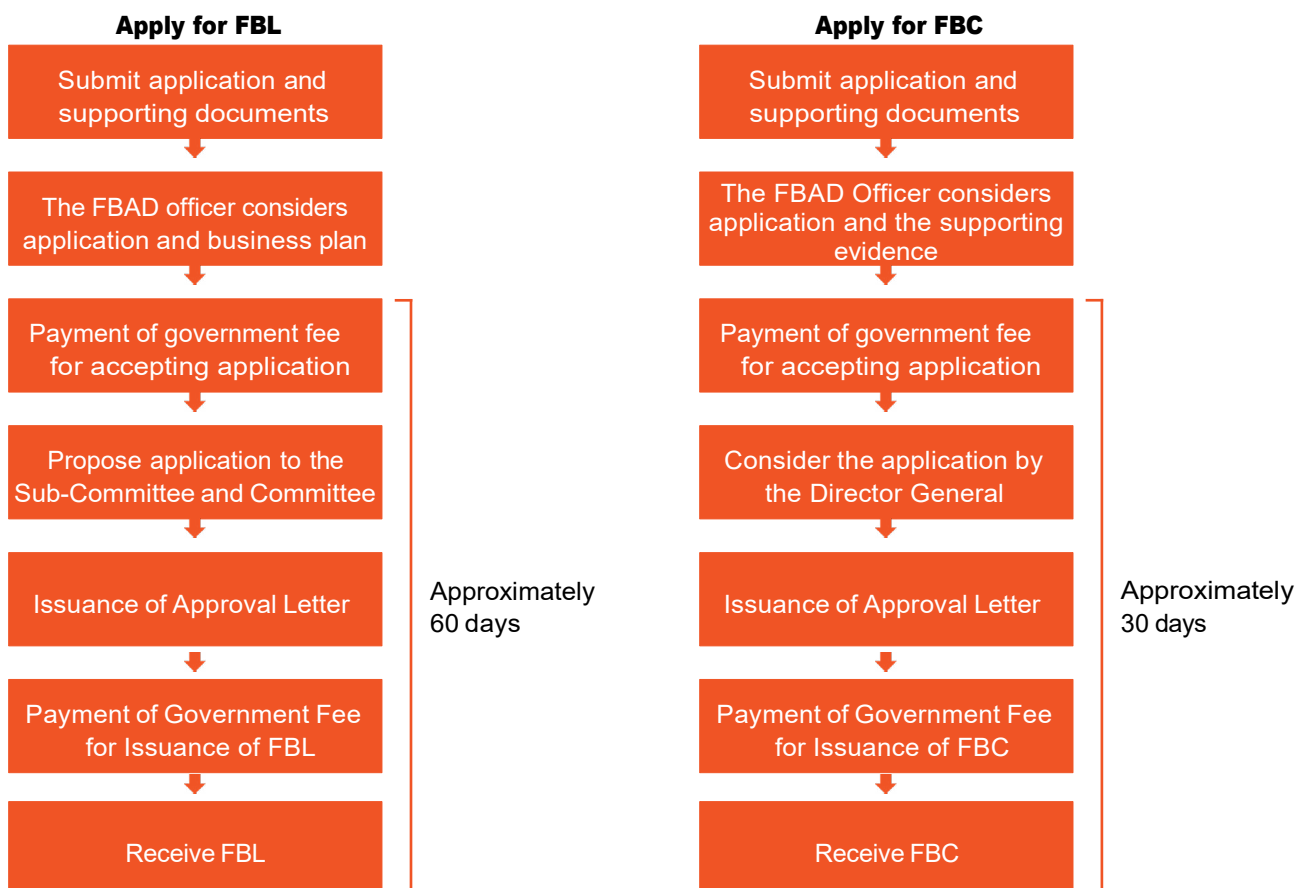
To operate under this exemption, the foreigner must apply for the Foreign Business Certificate (“FBC”) to demonstrate the utilization of privileges granted under the special treaty or bilateral agreement. The following are examples of such agreements:



### 3.3 Exemption from privileges under the investment promotion from the Board of Investment (“BOI”) or as permitted under the law of the Industrial Estate Authority of Thailand (“IEAT”)

If a foreigner is granted promotion from the BOI or permission from the IEAT to operate a restricted business listed under either List Two or List Three of the FBA, they will be exempted from the requirement for an FBL. Instead, they may apply solely for the FBC to certify the approval to operate the business from the FBAD.

## 4. Procedure to Apply for the FBL and FBC



# CHAPTER

# 4

## Investment Incentives

**Authors:** Thanyaluck Thongrompo and Sirapat Chaisarnseri

### BOI

#### ▪ Background

The Investment Promotion Act B.E. 2520 (1977) provides the framework and objectives for promoting investment in Thailand. The Board of Investment (the “**BOI**”) is granted the authority to issue relevant policies aimed at attracting investment, fostering economic and social development in the Thai economy, and providing enticing incentive programs to prospective applicants. In the latest update on December 9, 2022, BOI updated its promoted programs under BOI Announcement No. 9/2565 Re: Measures to Promote Investment in Industries that are Important to the Country’s Development.

#### ▪ Incentives

The following incentives can be granted to promoted applicants, depending on the type of promoted activity.

Tax Incentives	Non-Tax Incentives
<ul style="list-style-type: none"><li>▪ Exemption or reduction of import duties on machinery.</li><li>▪ Reduction of import duties for raw or essential materials.</li><li>▪ Exemption of import duties on materials imported for R&amp;D purposes.</li><li>▪ Exemption of Corporate Income Tax (the “<b>CIT</b>”) on the net profit and dividends derived from the promoted activity.</li><li>▪ A 50% reduction in CIT.</li><li>▪ Double deduction from the costs of transportation, electricity, and water supply.</li><li>▪ An additional 25% deduction of the cost of installation or construction of facilities.</li><li>▪ Exemption of import duty on raw or essential materials imported for use in production for export.</li></ul>	<ul style="list-style-type: none"><li>▪ Permit for foreign nationals to enter the Kingdom for the purpose of studying investment opportunities.</li><li>▪ Permit to bring skilled workers and experts into the Kingdom to work in investment-promoted activities.</li><li>▪ Permit to own land.</li><li>▪ Permit to take out or remit money abroad in foreign currency.</li></ul>

#### ▪ Categories of Eligible Activities

The BOI is focusing on providing investment promotion to four main categories as follows:

1. Agricultural, Food, Biotechnology, and Medical Industries;
2. Machinery, Automotive, Electrical Appliances, and Electronics Industries;

3. Metal, Material, Chemical, and Petrochemical Industries, and Public Utilities; and
4. Digital, Creative Industries, and High-Value Services.

It is worth noting that there are sub-categories within each main category above that applicants should explore and identify before applying for a potent investment promotion.

#### ▪ **Basic Incentives**

Based on the applied activity, the applicant will be eligible to receive the Basic Incentives according to the respective activity, which can be divided into Activities Groups with certain incentives as follows.

Activities Group	Incentives
A1+	<ul style="list-style-type: none"> <li>10 to 13-year CIT exemption with no cap</li> <li>Exemption of import duties on machinery, raw materials for research and development, and raw materials used in export</li> <li>Non-tax incentives</li> </ul>
A1	<ul style="list-style-type: none"> <li>8-year CIT exemption with no cap</li> <li>Exemption of import duties on machinery, raw materials for research and development, and raw materials used in export</li> <li>Non-tax incentives</li> </ul>
A2	<ul style="list-style-type: none"> <li>8-year CIT exemption with cap</li> <li>Exemption of import duties on machinery, raw materials for research and development, and raw materials used in export</li> <li>Non-tax incentives</li> </ul>
A3	<ul style="list-style-type: none"> <li>5-year CIT exemption with cap</li> <li>Exemption of import duties on machinery, raw materials for research and development, and raw materials used in export</li> <li>Non-tax incentives</li> </ul>
A4	<ul style="list-style-type: none"> <li>3-year CIT exemption with cap</li> <li>Exemption of import duties on machinery, raw materials for research and development, and raw materials used in export</li> <li>Non-tax incentives</li> </ul>
B	<ul style="list-style-type: none"> <li>Exemption of import duties on machinery, raw materials for research and development, and raw materials used in export</li> <li>Non-tax incentives</li> </ul>

#### ▪ **Additional Incentives**

Besides the Basic Incentives, the BOI also offers Additional Incentives on top of the Basic Incentives listed. The applicant may be eligible to apply for the following areas.

#### **1. Merit-based Incentives for Competitiveness Enhancement**

To enhance the competitive efficiency of the Thai economy, the applicant will be eligible for additional tax incentives for investing or developing in these decisive areas as follows:

##### **1) Technology and Innovation**

- Research & Development (R&D)
- IP licensing fee of local technology
- Product and packaging design
- Support academic, research institutes, and government agencies in the technology and human resource development as approved by the Board

## 2) Human Resource Management

- Advanced technology training
- Technology and innovation training for students while studying in the science and technology field

## 3) Operator Efficiency Development

- Development of local supplier

### Condition and Incentives

- Additional **200% CIT exemption** from investment/expenses under the following conditions:

Investment/expenses per sale of the first 3 years	Additional CIT Exemption Period
More or equal to 1% / More or equal to THB 200 million	1 Year
More or equal to 2% / More or equal to THB 400 million	2 Year
More or equal to 3% / More or equal to THB 600 million	3 Year
More or equal to 4% / More or equal to THB 800 million	4 Year
More or equal to 5% / More or equal to THB 1 billion	5 Year

- In case of the investment/expenses of R&D per sale is more or equal to 1%: the CIT exemption shall be uncapped, but the period shall not be over 13 years.
- All CIT exemption periods combined shall not be over than eight years, except for the activities in A+, A1, and A2, their applicable periods shall not be over than 13 years.

## 2. Strategic Talent Center (“STC”)

The BOI encourages the private sector to establish their educational institute or STCs to develop the skills of Thai workers by granting Tax and Non-tax incentives to the parties involved as follows:

### A. Parent Company

- Must be currently operating promoted or non-promoted project and such business must be entitled under promoted activity except for International Business Center, Human Resource Development, and Educational Institute or Higher Education Institute.
- If it is a promoted person, they can apply for investment under this measure when the current CIT exemption period expires.
- Must invest in STCs or educational institutes to develop human resources related to Advanced Science, Technology, Engineering, and Mathematics (STEM) for at least THB 1 million (excluding land and working capital costs).
- Must apply for investment promotion for the current business after the investment in STC is complete and ready to start full operation.
- Receives CIT exemption not exceeding five years, capped according to the actual investment in STC (excluding land and working capital costs).
- Receives non-tax incentives.

### B. Strategic Talent Center

- Must be newly established, or by the entity that held shares by the current shareholders of the Parent Company.
- Must apply for investment promotion with a notification letter requesting to utilize the benefits of the current project.
- Receives non-tax incentives.



### 3. Area-based Incentives (Decentralization)

By establishing promoted businesses in certain economic zone target areas in Thailand and complying with relevant requirements, the applicant may be eligible to apply for additional incentives in the locations as follows:

- **20 provinces with the lowest income**, consisting of Kalasin, Chaiyaphum, Nakhon Phanom, Nan, Bueng Kan, Buri Ram, Phrae, Maha Sarakham, Mukdahan, Mae Hong Son, Yasothon, Roi Et, Si Sa Ket, Sakhon Nakhon, Sa Kaew, Sukhothai, Surin, Nong Bua Lamphu, Ubon Ratchatani, or Amnatcharoen.
- **Industrial Estates/Zones**
- **Science and Technology Parks**
- **Eastern Economic Corridor (EEC)**, consisting of Chachoengsao, Chonburi, and Rayong (Details shall be provided in the following part)
- **Special Economic Corridor, consisting of sub-categories of the economic zone as follows:**
  - **Northern Economic Corridor: NEC**, consisting of Chiang Mai, Chiang Rai, Lamphun, and Lampang.
  - **Northeastern Economic Corridor: NeEC**, consisting of Nakhon Ratchasima, Khon Kean, Udon Thani, and Nong Khai.
  - **Central Western Economic Corridor: CWEC**, consisting of Phra Nakhon Si Ayutthaya, Nakhon Pathom, Suphan Buri, and Kanchanaburi.
  - **and Southern Economic Corridor: SEC**, consisting of Chumphon, Ranong, Surat Thani, and Nakhon Si Thammarat.
- **Special Economic Zone (SEZ)**, consisting of Tak, Songkhla, Sakaeo, Trat, Nong Khai, Nakhon Phanom, Mukdahan, Kanchanaburi, Chiang Rai, and Narathiwat.
- **Southern Border Provinces and the model city**, consisting of Narathiwat, Yala, Satun, and parts of Songkhla.
- **Eligibility for Investment Promotion**

#### Eastern Economic Corridor (“EEC”)

Thailand's Eastern Economic Corridor



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The Eastern Special Development Zone Act B.E. 2561 (2018) lays the foundation for promoting investment in targeted industries located in Chachoengsao, Chonburi, and Rayong along with the updated policies from the government to grant the private sector participation in human resource development, research & development, and innovation in these areas with additional incentives.

#### Categories of Eligible Activities

Projects must fall within the targeted activities in the EEC involving the adoption and utilization of advanced technologies essential for increasing national competitiveness. These are the activities included in Group A1+, A1, A2, A3, and A4 except the following categories:

- Activity 1.1.4 Deep sea fishery
- Activity 8.2.3 International high-speed marine communication circuits
- Activity 10.9.1 Ferry services or tour boat services or tour boat renting
- Activity 10.10.2 Air transportation services
- Activity 10.10.3 Maritime transportation services
- Activity 10.10.4 Rail transport

Also, the project must be located in Chachoengsao, Chonburi, and Rayong to be eligible.

To be eligible for specific area incentives, the project must be located in one of these project zones.

- EECa: Eastern Airport City
- EECi: Innovation Platform
- EECd: Digital Park
- EECmd: Medical Hub Thammasat (Pattaya)
- EECg: Genomics Thailand Burapha University
- EECtp: Silicon Tech Park, Ban Chang, Rayong

These specific area incentives will also apply to the industrial estates or industrial zone only in the three provinces.



## ▪ Incentives

In addition to the basic incentive granted by the BOI, EEC applicants are eligible to receive additional incentives as follows:

Activities	Basic Incentives	Additional Incentives			
		In the case of human resources	In case of projects located in specific areas		
			EECa, EECi, EECd, EECmd, EECg, EECtp	Or	Industrial Estates / Industrial Zones
Activities Group A1+	13 to 10-year corporate income tax exemption	Additional 2-year corporate income tax exemption	Additional 1-year corporate income tax exemption		Additional 1-year corporate income tax exemption
Activities in Group A1 and A2	8-year corporate income tax exemption	50% reduction of corporate income tax for an additional 3 years	50% reduction of corporate income tax for an additional 2 years		-
Activities in Group A3 and A4	3 to 5-year corporate income tax exemption				Additional 1-year corporate income tax exemption

## Remarks

1. EEC applicants are eligible to receive incentives from human resources development, research & development, and innovation at the same time.

2. In case the project is located in EECa, EECi, EECd, EECmd, EECg, and EECtp or industrial estate/industrial zone, the applicant can choose either one area base incentive.
3. Projects that have been granted corporate income tax exemption for over 8 years shall not be eligible for additional corporate income tax reduction pursuant to Section 35 (1).
4. For activities of Group A1+, all corporate income tax exemption incentives combined shall not exceed 13 years, and for the activities of Group A1-A4, all corporate income tax exemption incentives combined shall not exceed 8 years.
5. All reductions of corporate income tax incentives combined shall not exceed five years.

### **In the Case of Human Resource Development**

To be eligible for additional incentives, the applicant must collaborate with educational institutions as approved by the Board of Investment such as Work-integrated Learning (WiL), dual vocational education projects, co-operative education project, or engage in developing Thai personnel in science and technologies. The collaboration plan shall be submitted, and the number of students or university students admitted to training shall not be less than 10% of the total number of employees in the projects applying for investment promotion or shall not be less than 40 persons, whichever is lower.

### **In the Case of Research & Development and Innovation**

The applicant must have investment or expenses for research & development and innovation whether from its operation, local outsourcing, or joint research and development with other international organizations combined not less than 1% of the product sales of the first three years of business or not less than THB 200 million, whichever is lower.

Nevertheless, the number of students under human resource management or expenses from the human research & development and innovation mentioned cannot be used to apply for other special investment promotions.

### **Qualification of the Applicant**

The BOI aims to develop the competitiveness of the Thai economy through the promoted projects, thus, the applicant must meet the qualification as follows:

#### **Q U A L I F I C A T I O N S**

- The value-added of the project must not be less than 20% of revenues, except for projects in agriculture and agricultural products, electronic products and parts, and coil centers, all of which must have a value-added of at least 10% of revenues.
- Utilization of modern production processes.
- Utilization of new machinery. In the case of imported used machinery, the criteria for consideration will be classified into 3 cases, general case, factory relocation, and others.
- Projects that have investment capital of THB 10 million or more (excluding land and working capital costs) must obtain ISO 9000 or ISO 14000 certification or similar international standard certification within 2 years from the full operation start-up date, otherwise, the corporate income tax exemption shall be reduced by one year.
- Must have an environmental protection plan for required activities.
- The minimum capital investment of THB 1 million (excluding land and working capital costs) unless required otherwise.
- For newly established projects, the debt-to-equity ratio must not exceed 3 to 1. Expansion projects shall be considered on a case-by-case basis.
- For a project with an investment value over THB 750 million (excluding land and working capital costs) the project's feasibility study must be submitted with details as specified by the BOI.
- For a concession project and the privatization of a state enterprise project, the BOI's criteria shall be based on the Cabinet's decisions dated 25 May 1998, and 30 November 2004.

## ▪ Foreign Shareholding Incentives

The BOI allows companies to have a foreign shareholding majority under the prohibited business according to the Foreign Business Act, B.E. 2542 (1999) under the following conditions:

- For projects in activities under List One annexed to the FBA, Thai nationals must hold shares totalling not less than 51% of the registered capital.
- For projects in activities under List Two and List Three annexed to the FBA, there are no equity restrictions for foreign investors except as specified in other laws.
- The BOI may set foreign shareholding limits for certain activities eligible for investment promotion as it deems appropriate.

## ▪ Procedures for Applying for the Investment Promotion

To apply for the investment promotion, the BOI evaluates application based on criteria such as the project's economic value, its potential to generate employment and transfer technology, and its alignment with the government's economic and social development policies. Project evaluation and consideration process varies depending on the investment capital in the application for investment promotion as follows:

Investment Capital	Estimated Timeline
Less than THB 200 million	Within 40 working days after submission of a complete application
More than THB 200 million but less than THB 2 billion	Within 60 working days after submission of a complete application
More than THB 2 billion	Within 90 working days after submission of a complete application

Once the application is approved, applicants will receive an investment promotion certificate from the BOI, which provides various incentives such as tax exemptions, import duty exemptions, and permission to own land. The promoted entities need to comply with the conditions of investment promotion, such as meeting the minimum investment, employment requirements, and submitting the progress reports and annual reports to the BOI. The BOI has the power to withdraw, in whole or in part, the granted rights and benefits or revoke the investment promotion on failure to comply with such requirements.

## LTR Visa

### ▪ Background

In September 2022, the Thai government introduced the Long-Term Resident Visa ("LTR visa") scheme to attract affluent and talented foreigners to reside in Thailand, aiming to make Thailand one of the attractive regional hubs in Asia. This scheme offers a wide range of non-tax and tax incentives granted from related government agencies such as the Immigration Bureau ("IB"), the Department of Employment ("DOE"), the Board of Investment ("BOI") as well as the Revenue Department.

### ▪ Incentives

Successful LTR visa holders will be granted the following privileges:

PRIVILEGES OF LTR VISA HOLDERS	
	<ol style="list-style-type: none"> <li>1. A 10-year renewable visa (granted 5 years each time).</li> <li>2. Permission to work in Thailand (Digital Work Permit).</li> <li>3. Exemption from the ratio of 4 Thais: 1 Foreigner employment requirement for the employer</li> <li>4. Extension of the 90-day reporting to a 1-year reporting, and exemption of re-entry permit.</li> <li>5. A 17% personal income tax rate for Highly-skilled Professionals.</li> <li>6. Fast Track Service at international airports in Thailand.</li> <li>7. Immigration and work permit facilitation services at the One Stop Service Center for Visa and Work Permit</li> </ol>



## ▪ Type of LTR Visas

Applicants must submit applications to the BOI according to their preferred type of LTR visa. The types of LTR visas and their criteria are as follows:















Type	Criteria	Health Insurance Requirement
<b>(1) Wealthy Global Citizens</b>	<ul style="list-style-type: none"> <li>Have a minimum investment of USD 500,000 in Thai government bonds, FDI, or real estate.</li> <li>Have a minimum salary of USD 80,000 per year for the past 2 years.</li> <li>Have a minimum of USD 1 million in assets.</li> </ul>	<ul style="list-style-type: none"> <li>Must provide evidence of the following: <ul style="list-style-type: none"> <li>Health insurance to cover treatment in Thailand with at least THB 50,000 coverage. /</li> <li>Social security that covers treatment in Thailand. /</li> <li>Bank account balance of at least USD 100,000.</li> </ul> </li> </ul>
<b>(2) Wealthy Pensioners</b>	<ul style="list-style-type: none"> <li>Have a minimum pension/personal income of USD 80,000 per year.</li> <li>If the pension/personal income is less than USD 80,000 but not less than USD 40,000, the applicant must have a minimum investment of USD 250,000 in Thai government bonds, FDI, or real estate.</li> <li>Must be a retiree aged at least 50 years old with a pension or stable income.</li> </ul>	<ul style="list-style-type: none"> <li>Must provide evidence of the following: <ul style="list-style-type: none"> <li>Health insurance to cover treatment in Thailand with at least THB 50,000 coverage. /</li> <li>Social security that covers treatment in Thailand. /</li> <li>Bank account balance of at least USD 100,000.</li> </ul> </li> </ul>
<b>(3) Work-from Thailand Professionals</b>	<ul style="list-style-type: none"> <li>Have a minimum personal income of USD 80,000 per year for the past 2 years.</li> <li>If the personal income is less than USD 80,000 but not less than USD 40,000 in the past 2 years, the applicant must have a master's degree or higher, or possess intellectual property, or receive Series A funding that has passed the seed funding phase of not less than USD 1 million.</li> <li>Must have work experience in a relevant field of employment for at least 5 years within the past 10 years.</li> <li>Current employer must be a listed company on the stock exchange of any country or be a company which has been in operation for at least 3 years and generated a total income of at least USD 150 million for the past 3 years.</li> </ul>	<ul style="list-style-type: none"> <li>Must provide evidence of the following: <ul style="list-style-type: none"> <li>Health insurance to cover treatment in Thailand with at least USD 50,000 coverage. /</li> <li>Social security that covers treatment in Thailand. /</li> <li>Bank account balance of at least USD 100,000.</li> </ul> </li> </ul>
<b>(4) Highly-skilled Professionals</b>	<ul style="list-style-type: none"> <li>Have a minimum personal income of USD 80,000 per year for the past 2 years.</li> <li>If the personal income is less than USD 80,000 but not less than USD 40,000 in the past 2 years, or retirement, the applicant must have a master's degree or higher. If the applicant has a master's degree or higher in science or technology or has specialist knowledge in the field of work.</li> <li>In the case of working with a Thai educational institute or government sector, the requirement for evidence of minimum personal income will be waived.</li> <li>Have at least 5 years of experience working in the "targeted industries".</li> <li>Must have entered into an employment agreement or service agreement with domestic or international businesses and have been assigned to work in Thailand, or work for a Thai educational institute or government sectors in the target industries.</li> </ul>	<ul style="list-style-type: none"> <li>Must provide evidence of the following: <ul style="list-style-type: none"> <li>Health insurance to cover treatment in Thailand with at least USD 50,000 coverage. /</li> <li>Social security that covers treatment in Thailand. /</li> <li>Bank account balance of at least USD 100,000.</li> </ul> </li> </ul>

Type	Criteria	Health Insurance Requirement
<b>(5) Dependents</b>	<ul style="list-style-type: none"> <li>Must be the legal dependents (spouse and children).</li> <li>Children aged not over 20 years are eligible.</li> <li>Maximum 4 dependents in total per one LTR Visa holder.</li> </ul>	<ul style="list-style-type: none"> <li>Must provide evidence of the following:               <ul style="list-style-type: none"> <li>Health insurance to cover treatment in Thailand with at least THB 50,000 coverage. /</li> <li>Social security that covers treatment in Thailand. /</li> <li>Bank account balance of at least USD 25,000 per person.</li> </ul> </li> </ul>

**Remark:** All applicants must not be classified as prohibited persons under immigration laws.

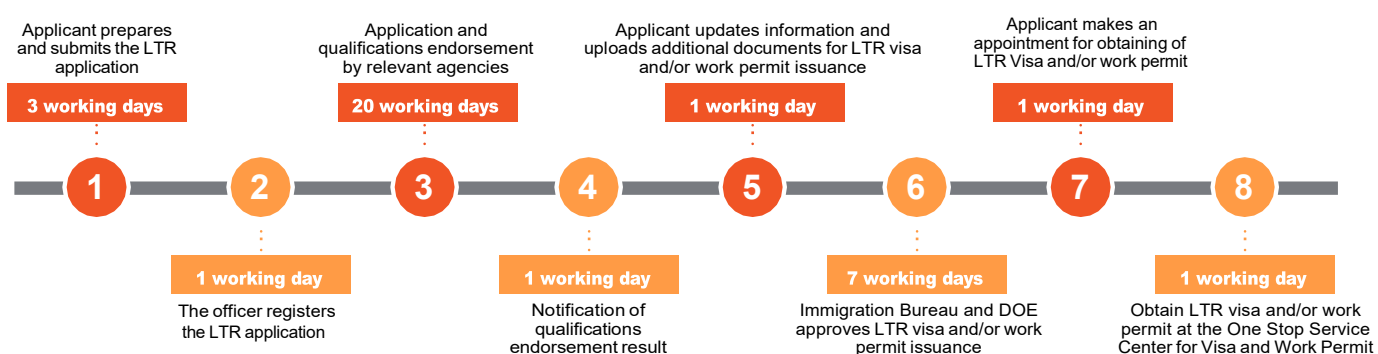
#### ▪ Targeted Industries

For applicants under Highly-skilled Professionals, they must apply to work in the targeted industries, which includes:

	Next-Generation Automotive Industry		Aviation Industry
	Smart Electronics Industry		Biofuels and Biochemicals Industry
	Affluent Tourism Industry		Digital Industry
	Agricultural and Biotechnology Industry		Medical Industry
	High-value-added Food Processing		Defense Industry
	Automation and Robotics Industry		Human Resource Development, Research, and Development for targeted industries
	Industries that facilitate the Circular Economy directly and significantly e.g. the production of energy-from-waste, water resources management, etc.		Other targeted industries in accordance with the 20-year National Strategic Plan as approved by the Board of the National Competitiveness Enhancement Policy for Targeted Industries Policies

#### ▪ Application Process

The estimated official application process is as follows:



- **Government Fees**

Government fees are as follows:

- |                                      |                    |
|--------------------------------------|--------------------|
| 1. LTR Visa with Multiple Entry Fee: | THB 50,000         |
| 2. Work Permit Fee:                  | THB 3,000 per year |

- **Penalty**

LTR visa holders must submit application for LTR visa renewal to the BOI before the expiration of the five year of the first LTR visa. Thus, the LTR visa holder must maintain their qualifications in the respective applied category. The penalty for disqualification is the cancellation of the received LTR visa or ineligibility for extension of the visa and/or work permit for the next five years.



# CHAPTER

# 5

## Mergers & Acquisitions

**Authors:** Peerasanti Somritutai, Chavisa Jinanarong and Chayakorn Boonsri

This chapter serves as a comprehensive guide to the legal framework governing mergers and acquisitions (“**M&A**”) transactions in Thailand. The primary laws regulating M&A transactions in Thailand include the Civil and Commercial Code of Thailand and the Public Limited Companies Act B.E. 2535 (1992).

In Thailand, based on the nature of the transactions, M&A transactions can be broadly categorized into four main categories: (1) acquisition of shares; (2) acquisition of assets; (3) business transfer; and (4) merger and amalgamation.

### (1) ACQUISITION OF SHARES

Shares in a company can be acquired through two main methods (i) purchasing from existing shareholder(s), or (ii) subscribing for newly issued shares.

#### (A) Purchase of Shares from Existing Shareholder(s)

##### Private Limited Company

Unless otherwise restricted by the articles of association, shares in each private limited company can be freely transferred from a shareholder to any person. The transfer of shares will be effective and in full force against any third party upon the completion of the following steps:



The transferor and the transferee to execute a share transfer instrument.

Signatures of both transferor and transferee must be certified by at least one witness.



The company to record the transfer of shares in its share register book and to issue new share certificate to the transferee.



The company to prepare an updated list of shareholders and to file such updated list of shareholders with the Department of Business Development, Ministry of Commerce (the “DBD”).

However, if there is any restriction on the share transfer under the articles of association of the company, the transferor and the transferee must ensure that any transfer of shares in such company complies with the steps required under the Civil and Commercial Code and with the requirements under the articles of association. Otherwise, any such transfer of shares would be ineffective, and accordingly, the ownership over the relevant shares would not be effectively transferred from the transferor to the transferee.

##### Public Limited Company

Unlike a private limited company, a public limited company cannot specify any restriction on the share transfer in its articles of association, unless such a restriction is to preserve rights and benefits to which the company is legally entitled or to maintain the shareholding percentage in the company between foreign and Thai shareholders.



Any transfer of shares in a public limited company will be valid and enforceable against any third party upon the completion of the following steps:

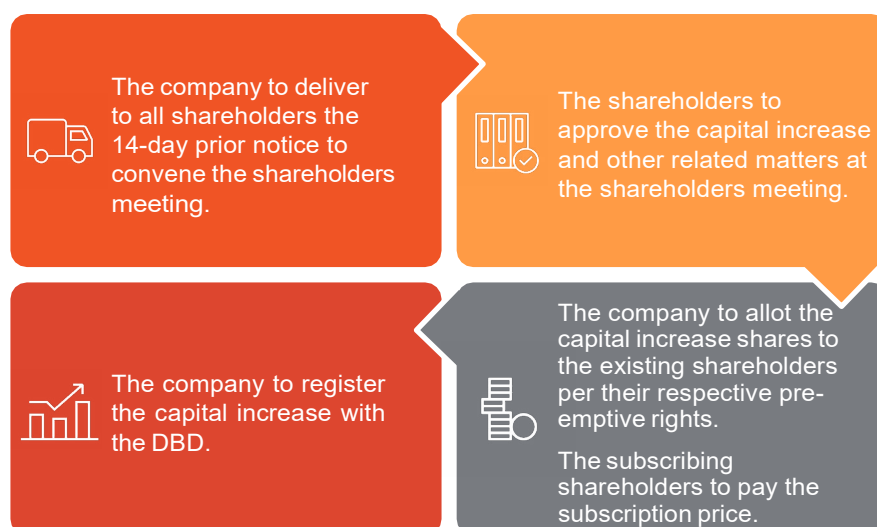


It is important to note that any acquisition of shares in a stock exchange-listed public limited company would trigger a reporting obligation by the transferee (or the transferor, or both) or a mandatory tender offer obligation (imposed on the transferee) if the number of shares acquired reaches any applicable threshold specified by the Securities and Exchange Commission of Thailand.

## (B) Subscription of Newly Issued Shares

### Private Limited Company

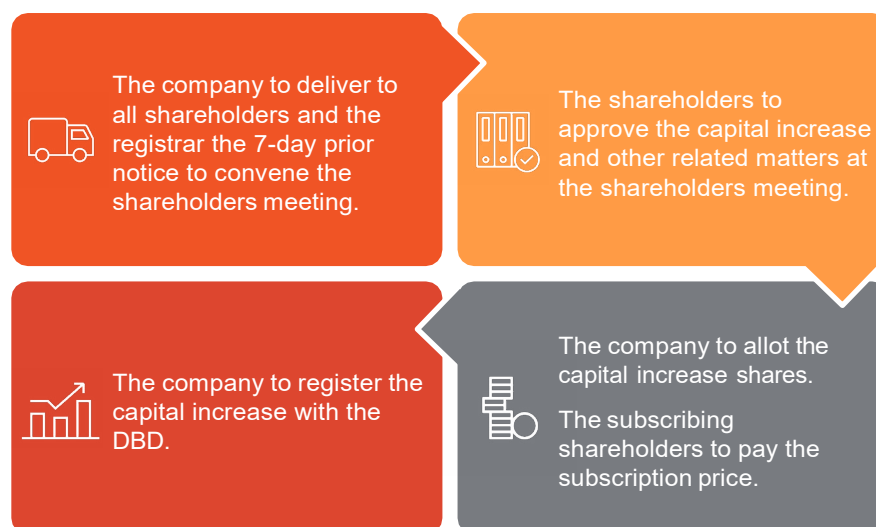
A private limited company can issue new shares by increasing its registered share capital. To increase a private limited company's registered share capital, such company must convene a shareholders meeting and obtain a resolution from the shareholders meeting. The resolution approving the increase of the registered share capital requires the affirmative votes of at least 75% of the total shares owned by the shareholders attending the meeting and having the right to vote. The process for the increase of the registered share capital is as follows:



If any shareholder waives his/her pre-emptive right to subscribe for his/her portion of capital increase shares, the company's board of directors may then allot unsubscribed shares to other existing shareholders. Therefore, if any third party would like to subscribe for the capital increase shares, such third party must first become a shareholder of the company by purchasing at least 1 share from any of the existing shareholders before the commencement of the shareholders meeting approving the increase of the registered share capital.

### Public Limited Company

Similar to a private limited company, a public limited company may need to increase its registered share capital before issuing new shares. To increase the registered share capital of a public limited company, such company must convene a shareholders meeting and obtain a resolution from the shareholders meeting. The resolution approving the increase of the registered share capital requires the affirmative votes of at least 75% of the total shares owned by the shareholders attending the meeting and having the right to vote. The process for the increase of the registered share capital is as follows:



In general, the capital increase shares can be subscribed by any person (whether in whole or in part). That is, a public limited company may offer capital increase shares either to the existing shareholders in proportion to their shareholding percentage or to any third party.

For a stock exchange-listed public limited company, there are four ways to offer capital increase shares:

- (i) **Rights Offering (RO)**, which is an offer for sale of capital increase shares to the existing shareholders in proportion to their respective shareholding percentage;
- (ii) **Preferential Offering (PPO)**, which is an offer for sale of capital increase shares to the existing shareholders in proportion to their respective shareholding percentage. However, if the subscription of capital increase shares by any shareholder would subject the company to any requirement under foreign law, an offer will not be made to any such shareholder;
- (iii) **Private Placement (PP)**, which is an offer for sale of capital increase shares to a limited group of people; and
- (iv) **Public Offering (PO)**, which is an offer for sale of capital increase shares to public.

Although a shares sale and purchase agreement (SPA) or a shares subscription agreement (SSA) is not legally required for the acquisition of shares in Thailand, we would recommend the investor to enter into such an agreement to expressly prescribe the terms, conditions, consideration, rights and obligations of each relevant party in connection with the acquisition of shares.

After the acquisition of shares in a non-listed company, the investor may also consider to enter into a shareholders agreement with other shareholders of the company to govern their relationship, rights and obligations in the company and navigate certain aspects of the management and operations of the company. It is crucial to note that certain terms and conditions outlined in the shareholders agreement must be included in the company's articles of association and must be registered with the DBD, such that those terms and conditions are enforceable against any third party to the fullest extent permitted by law.

## (2) ACQUISITION OF ASSETS

In certain M&A transactions where the acquisition of shares may not be commercially viable, the acquirer may consider acquiring assets of the target company (instead of shares). The acquirer may purchase one or more assets from the target company whether in form of movable properties, immovable properties, rights or liabilities.

Although compared to the acquisition of shares, the acquisition of assets can be beneficial in some respects as the acquirer may not have to acquire all liabilities and other irrelevant risks in the target company, the process for the acquisition of certain assets can be time-consuming or tax-inefficient and may delay the timeline of the transaction.

Set out below are samples of assets that can be transferred and key legal requirements applicable to the transfer thereof.

No.	Type of Asset	Key Legal Requirements
1	Land and buildings	<ul style="list-style-type: none"> <li>The buyer and the seller must enter into a written sale and purchase agreement and register the transfer of ownership with the relevant land office.</li> <li>Registration fee and taxes incurred for the transfer of land and building may be higher than taxes incurred for the transfer of shares.</li> </ul>
2	Licenses from governmental authorities	<ul style="list-style-type: none"> <li>The buyer and the seller must apply to each relevant governmental authority for the transfer of license. The process for such application is subject to the laws and regulations governing such license.</li> <li>Subject to applicable laws and regulations, some licenses cannot be transferred to others.</li> </ul>
3	Agreements with customers or suppliers	<ul style="list-style-type: none"> <li>The buyer and the seller must enter into the novation agreement to novate all rights and obligations from the seller to the buyer.</li> <li>The novation requires consent from all parties to such agreements.</li> </ul>
4	Employees	<ul style="list-style-type: none"> <li>The consent from each of the transferred employees is required.</li> </ul>

### **(3) BUSINESS TRANSFER UNDER THE REVENUE CODE**

Similar to the acquisition of assets, the business transfer is another way to acquire the entirety or part of the target company's business. By complying with the requirements of the Revenue Code and relevant regulations issued thereunder, the business transfer arrangement would reduce the tax burden arising from such transfer of business.

However, for an entire business transfer (EBT), once a business transfer has been completed, the transferring company must be dissolved within the same fiscal year to receive the tax benefits.

#### **(4) MERGER AND AMALGAMATION**

Under the Civil and Commercial Code, two private limited companies can merge or amalgamate.



In both scenarios, all rights, obligations and liabilities of the non-existing company(ies) (that is, A and B in the first scenario, and either A or B in the second scenario) (each, a **“Non-Existing Company”**) will be automatically transferred to the surviving company (that is, C in the first scenario, and either A or B in the second scenario) (each, an **“Existing Company”**).

The process for the merger/amalgamation of private limited companies under the Civil and Commercial Code is as follows:



Upon notifying the creditors and publishing in a local newspaper of the merger/amalgamation, the creditors will have a one-month period to file an objection to such merger/amalgamation. If any creditor of any merging/amalgamating company files an objection with the DBD, the DBD will not accept the registration of such merger/amalgamation until each relevant merging/amalgamating company (i) repays its debt owed to the objecting creditor or (ii) places a security in favor of such objecting creditor to such objecting creditor's satisfaction, such that the objecting creditor withdraws the objection from the DBD. Following the completion of the registration with the DBD, each Non-Existing Company will be dissolved, and the Existing Company will be duly incorporated (in cases of the amalgamation).

Although the rights, obligations and liabilities of a Non-Existing Company will be automatically transferred to the relevant Existing Company, certain requirements, such as consent from employees or notification to governmental authorities regarding business licenses or re-application of business licenses with governmental authorities, must also be considered. Therefore, to avoid non-transferability risks, we would recommend the relevant parties to conduct legal due diligence on the transferability before commencing any process relating to the merger/amalgamation.





# CHAPTER

## 6

### Capital Markets

**Authors:** Thitawan Thanasombatpaisarn, Rujisaya Bubpaproh, Supajit Koosittiphon and Nichapat Anantaseriwittaya

#### Overview of Capital Market in Thailand

Thailand's capital market has indeed been instrumental in fostering economic growth in the country by serving as a platform for businesses to raise funds and enabling individuals, including the general public, to invest. Thailand's capital market plays a crucial role in channelling capital from investors to companies, allowing businesses to expand, innovate, and create employment opportunities. At the same time, it offers individuals the opportunity to participate in the country's economic growth and potentially earn returns on their investments.

Looking ahead, it is anticipated that Thailand's capital market will continue to play an increasingly vital role in the country's economic development. As the Thai economy evolves and expands, the demand for capital is expected to grow. The capital market will be crucial in facilitating the necessary funding for infrastructure projects, supporting small and medium-sized enterprises (SMEs), promoting technological advancements, and attracting foreign investments.

To support this growth, the relevant regulators, such as the Stock Exchange of Thailand (the “**SET**”) and the Securities and Exchange Commission (the “**SEC**”), are likely to continue enhancing the regulatory framework and introducing new initiatives. This may include implementing measures to encourage greater participation from retail investors, improving corporate governance practices, fostering the development of new financial products, and strengthening investor education and protection.

#### 1. Types of capital markets

In Thailand, the capital market consists of both primary and secondary markets with the details as follows:

Primary Capital Market	Secondary Capital Market
The primary capital market refers to the initial issuance of new securities by companies or the government to raise funds. In Thailand, the primary capital market involves activities such as initial public offerings (IPOs), where companies offer their shares to the public for the first time, and the issuance of new bonds. The primary market allows businesses to access capital by selling their securities directly to investors which is regulated by the SEC for ensuring compliance with disclosure requirements and investor protection.	The secondary capital market is where previously issued securities are traded among investors and provides liquidity and supply and demand dynamics as well as allows investors to exit or adjust their investment positions by themselves. The SET operates with regulatory oversight from the SEC to maintain fair trading practices, transparency, and investor protection.

In this regard, both the primary and secondary capital markets play crucial roles and instruments in Thailand's financial system. To illustrate, the primary market enables companies to raise capital for expansion and investment, while the secondary market provides liquidity, efficient price discovery, and opportunities for investors to participate in the market and potentially earn returns on their investments.

## 2. Types of securities

Thailand's capital market offers a variety of securities that investors can trade. Here are sample of the primary types of securities available in Thailand:

### a) Debt securities

- **Bill of Exchange: B/E:** debt instruments issued by any company, representing the right of the holder of such instrument to receive money or other benefit.
- **Debenture:** debt instruments that divided into units, each with equal value and a predetermined rate of return, issued by any company, representing the right of the holder of such instrument to receive money or other benefit.

### b) Equity securities

- **Stocks:** representing ownership in a company and investors will have voting rights and the potential for dividend payments in the respective shareholding proportion of each shareholder. There are 2 types which are common stocks and preferred stocks.
- **Warrants:** instruments that grants the holder the right, but not the obligation, to purchase securities (underlying assets) at the exercise price and amount give the holder the right to buy the issuer's ordinary shares at a predetermined price within a specified time period.
- **Depository Receipts:** negotiable securities that represent securities of a foreign company registered in the SET. They are issued by the certified issuers who are granted approval from the SEC for facilitating the investors in Thailand.

## 3. Equity Securities Offering Methods in Thailand

Equity securities offerings play a vital role in the capital market, enabling companies to raise funds and investors to participate in the growth of promising enterprises. In Thailand, a dynamic emerging market with a thriving economy, various methods are available for companies to issue equity securities. The regulatory framework surrounding securities issuance vary based on factors such as the type of securities being offered and the method of offering. SEC may play a crucial role in the offering of the security in Thailand. The SEC's objective is to ensure that investors have access to accurate and comprehensive information that is essential for making informed investment decisions. This section will focus solely on shares offering.

- a) **Public Offering (PO)** method encompasses various mechanisms through which companies offer equity securities to the public. This includes Initial Public Offerings (IPOs), where privately held companies transition into publicly traded entities by offering their shares to the public for the first time. IPOs in Thailand are limited to public companies; therefore, private companies that wish to raise capital through a public offering in Thailand's capital market must convert to a public company, which has more stringent legal requirements than a private company. The key consideration when transitioning to a public company is that the process is irreversible. As a result, the listing process necessitates the involvement of multiple advisors to conduct thorough due diligence. It is essential for companies to appoint financial advisors, auditors, and lawyers to assist them throughout the listing process. These professionals play a critical role in ensuring the company is adequately prepared in terms of its internal control system, shareholding structure, financial position, and other crucial aspects.

Listed companies must guarantee compliance with the Public Company Limited Act B.E 2535, Stock Exchange Act B.E 2535, and relevant regulations set forth by the SEC and SET. These regulations entail specific criteria such as having a minimum of five directors, with at least half of them being Thai residents, as well as ensuring that the company's capital is fully paid. To obtain approval for a Public Offering (PO), the company must submit an application for public offering, registration statement, and a draft prospectus to the SEC. The SEC will meticulously review the information contained in these documents to ascertain compliance with regulatory requirements. This scrutiny includes assessing the fairness of the shareholding structure, the absence of conflicts of interest, effective management practices, the absence of cross-shareholding, adherence to corporate governance policies, compliance with accounting standards, and the financial status of the company. The SEC holds the authority to request additional documents and conduct further inquiries as needed, and it is mandatory for the company to comply with such requests. Additionally, the management and distribution of PO (Public Offering) shares must be handled through approved underwriter(s).

**b) Rights offerings (RO)** involves offering existing shareholders the opportunity to purchase additional shares in proportion to their existing holdings. This method allows companies to raise capital while giving current shareholders a chance to maintain their ownership percentage. Here are key aspects of rights offerings in Thailand:

- **Pre-emptive Rights:** Existing shareholders are conferred with pre-emptive rights, which enable them to subscribe to new shares in proportion to their current holdings. This mechanism ensures that shareholders have an equitable opportunity to preserve their ownership stake. However, the rights offering permits shareholders to subscribe for additional unexercised shares beyond their proportionate shareholding. Moreover, a rights offering extended to all existing shareholders in a proportional manner, except for shareholders whose acquisition of such shares would subject the company to obligations under international laws, will be designated as a Preferential Public Offering (PPO). The issuance process and regulations for a PPO remain the same.
- **Shareholder Approval:** Rights offerings require approval from the company's shareholders, typically through a resolution passed at a general meeting. The resolution outlines the terms and conditions of the offering, including the subscription price and the number of shares offered.
- **Regulatory Compliance:** While rights offerings may benefit from certain exemptions, such as exemptions from full prospectus requirements, they still need to adhere to relevant regulations, including disclosure requirements and investor protection measures.

**c) Private Placement (PP)** involves the offering of equity securities to a select group of investors. Private placements are typically conducted to raise capital swiftly and efficiently, often targeting sophisticated investors, such as institutional investors, private equity firms, or high-net-worth individuals. Recent amendments by the Thai SEC have been made to enhance the efficiency of private placement ("PP") for newly issued shares by listed companies.

When issuing shares through PP, the issuing company is not obliged to submit information for review to the Office of the Securities and Exchange Commission (SEC), unless in cases of material PP where the SEC may exercise its discretion to request the company to provide a notice of shareholders meeting and an independent financial advisor (the "IFA") report for review. It is essential for the PP method to comply with the criteria and conditions set forth by the SEC. The issuance of PP can be classified into two primary categories: (1) deemed approval PP and (2) material PP, which necessitates the involvement of an IFA to provide their opinion.

- **Deemed approval Private Placement**
  - (a) The issuance of PP with the shareholders' meeting authorize the Board of Directors to determine the offering price at the market price as of the issuance period.
  - (b) The issuance of PP with the fixed offering price which is not lower than the market price as specified in the relevant regulations.
  - (c) The offering of PP for the shares remaining from the Preferential Public Offering (PPO) and Rights Offering (RO) with the offering price of PP not lower than the RO or PPO price.
- **Material Private Placement**
  - (a) The issuance of PP with the offering price lower than the market price as specified in the relevant regulations.
  - (b) The issuance of PP, which may result in each investor having the most voting rights in the company. The calculation of voting rights will include the voting rights of such investor's related and concerned parties of such investors.
  - (c) the issuance of PP shares that may affect earnings per share (E/S) or control dilution greater than 25%, based on the number of paid-up shares on the date of the board's resolution approving PP shares.

**d) Employee Stock Option Program (ESOP)** involves the offering of securities to the company's directors and employees, as well as its subsidiaries. ESOP shares are specifically issued to enhance work motivation by fostering a sense of ownership in the company and providing performance-based returns. It is crucial for the ESOP method to comply with the criteria and conditions set by the Securities and Exchange Commission (SEC).

Additionally, during the resolution of shareholders' meetings, special attention must be given to the voting process. In the general case of ESOP, the shareholders' veto voting must not exceed 10% of the total number of votes cast by shareholders attending the meeting. However, in cases where the total offered ESOP shares surpasses 5% of the company's total voting rights, it becomes even more critical to limit the shareholders' veto voting to 5% of the total number of votes cast by shareholders attending the meeting.

Moreover, if any director or employee is allocated more than 5% of the total offered ESOP shares, an independent approval from the shareholders for each director and employee is required. In cases where directors and employees are allocated more than 5% of the total offered ESOP shares, the shareholders' veto voting must not exceed 5% of the total number of votes cast by shareholders attending the meeting for each director and employee.

#### 4. Relevant authorities

The capital market in Thailand is regulated and overseen by several key authorities to ensure transparency, fairness, and investor protection. The relevant authorities involved in regulating and supervising Thailand's capital market include:

<p><b>Securities and Exchange Commission (SEC)</b></p> 	<p>The SEC is the main regulatory authority for Thailand's capital market and securities. It is responsible for enforcing securities laws, overseeing market participants, and protecting investors' interests. The SEC has the responsibility to issue rules and regulations for the issuance, trading, and disclosure of securities, as well as licensing and supervising intermediaries such as securities companies, mutual funds, and asset management companies, ensuring compliance and pursue enforcement in case of violations.</p>
<p><b>Stock Exchange of Thailand (SET)</b></p> 	<p>The SET is the primary stock exchange in Thailand and serves as the center for trading of listed securities, and to provide the necessary infrastructure to facilitate securities trading. It provides a marketplace for the trading of securities, including stocks, bonds, and other listed instruments. The SET ensures fair and efficient trading practices, maintains listing requirements, and sets trading rules and regulations. It collaborates closely with the SEC to ensure compliance with market regulations and promote investor confidence.</p>
<p><b>Thailand Futures Exchange (TFEX)</b></p> 	<p>TFEX is Thailand's derivatives exchange platform. It offers trading in various derivative instruments, such as futures and options contracts on underlying assets which investors can use to protect their portfolio from unanticipated events. TFEX operates under the supervision of the SEC, emphasizing risk management and hedging strategies for market participants.</p>
<p><b>Office of the Insurance Commission (OIC)</b></p> 	<p>The OIC regulates and supervises the insurance industry in Thailand. Although not directly involved in the capital market, the OIC plays a pivotal role in overseeing insurance companies and their investment activities, which may involve investments in the capital market. By establishing regulations, providing guidance, and conducting supervision to ensure that insurance companies' investments are made in a prudent and compliant manner, protecting the interests of policyholders and maintaining the stability of the insurance sector.</p>

These authorities work together to create a regulatory framework, establish market rules, monitor market activities, and protect the interests of investors in Thailand's capital market. They strive to maintain market integrity, ensure proper disclosures, and foster an environment conducive to sustainable economic growth.

## 5. Maintaining Listing Status

### a) Qualifications of a Listed Company

In Thailand, companies that have listed their securities on the SET must maintain their listing status throughout the period of their listing by fulfilling certain qualifications related to the shares, shareholding structure, directors and management, internal system, and other relevant aspects. These qualifications include, but are not limited to, the following:

- ☑ the par value of ordinary shares or preferred shares must not less than THB 0.5 per share;
- ☑ directors and management must have the qualifications according to the SEC Act and SEC regulations;
- ☑ a listed company must have a Chief Financial Officer and Accounting Supervisor whose qualifications align with those prescribed in the Notification of the Capital Market Supervisory Board;
- ☑ the Chairman and the Chief Executive Officer or equivalent position in other titles must not be the same individual;
- ☑ a good governance system is in place;
- ☑ an auditor approved by the SEC must be appointed;
- ☑ an internal control system is in place as required by the Notification of the Capital Market Supervisory Board;
- ☑ the listed company and its subsidiary must not have conflict of interests as specified in the Notification of the Capital Market Supervisory Board;
- ☑ qualified in terms of free float distribution, with no less than 150 retail shareholders who collectively hold no less than 15% of the company's paid-up capital;
- ☑ the listed company must provide a provident fund in accordance with the Provident Fund Law; and
- ☑ the listed company is required to appoint either the SET or a third party that has been approved by the SET to act as the registrar of its listed securities.

### b) Compliance with Listed Company Regulations

In addition to the mentioned requirement above, listed companies must comply with the applicable laws and regulations set forth by the relevant authorities that govern various aspects including disclosure requirements, regulation related to acquisition or disposition of assets transactions, and the rule related to connected transactions. Below are some key requirements of regulatory compliance that listed companies must comply.

#### ▪ Disclosure Requirements

To provide transparency and relevant information to shareholders, potential investors, and general public, disclosure requirements for listed companies in Thailand typically includes (i) Periodic Information Disclosure; and (ii) Material Event Disclosure.

(a) **Periodic Information Disclosure** is disclosure about operating results and financial positions and other information, which could be summarized as follows:

i. Disclosure about operating results and financial positions

Report	Submission Deadline
1. Annual financial statements (audited)	
1.1 Without Quarterly financial statements	2 months after the fiscal year end
1.2 With Quarterly financial statements	3 months after the fiscal year end
2. Quarterly financial statements (reviewed)	45 days after the end of each quarter
3. Form of 56-1 One Report	3 months after the fiscal year end



## ii. Disclosure of other information

Item	Submission Deadline
1. Report on the use of fund from capital increase	Every 6 calendar months i.e. within 30 days from the end of June and end of December each year
2. Form of the distribution of ordinary shares report	Within 14 days from the last day that the listed company is required to hold its annual shareholders' meeting
3. Invitation letter to shareholders' meeting	Submission at the date the invitation letter delivered to shareholders
4. Report of the shareholders' meeting	Within 14 days from the day that the meeting was held

(b) **Material Event Disclosure** is the disclosure when there is any event that could have a significant impact on the operations of listed company, financial position, stock price or the decision of investors. The disclosure of information under material events could be categorized into two groups i.e. (i) Information that needs immediate disclosure; and (ii) Information that must be disclosed within specific deadline. Example of both are as follows:

## i. Information that needs immediate disclosure, example:

- Setting the date of shareholders' meeting
- Shareholders' record date, Book closing date
- Acquisition or disposal of assets and/or investment in another company which results in that company becoming or ceasing to be a subsidiary company, connected transactions
- Increase or decrease of capital, issuance of new securities
- Resignation of managing director or whole board of directors or audit committee
- Changing the Chief Executive Officer or equivalent position, or changing of directors more than half of the total number of Board of Directors
- Being under receivership by a court order or any similar matters, applied for rehabilitation with the bankruptcy court or there is any action or progress to the application for rehabilitation

## ii. Information that must be disclosed within specific deadline, example:

- Information to be disclosed within 3 working days, such as head office relocation, change of director or auditor, or the person taking the highest responsibility in finance and accounting (Chief Financial Officer) and the person supervising accounting (Chief Accountant)
- Information to be disclosed within 7 working days, such as the submission of directors or authorized person's profile or audit committee's curriculum vitae (F24-2)
- Information to be disclosed within 14 days, such as report of shareholders' meeting.

▪ **Acquisition or Disposition of Assets Transactions**

As mentioned above, the acquisition or disposition of assets including investment in other company, by a listed company may be considered as material event, necessitating the listed company to disclose information related to the transaction to investors.

To determine whether a listed company is required to take any actions when it is involved in an acquisition or disposition of assets transaction, the followings shall be taken into account:

(i) Definition of Assets:

Assets means tangible or intangible items owned by person or business, which hold value and are transferable, except current assets used in business operation and investment for liquidity managements, such as investment in equity securities and debt securities.

(ii) Definition of Acquisition or Disposition of Assets:

- A purchase or sale of assets; or
- An agreement/entering into contract to acquire or sell assets; or
- Acquisition or forgoing the rights to acquire or sell assets; or
- Receiving the transfer or transferring the claim to possess assets in the long-run; or
- Investing or cancelling investment

(iii) Transaction size:

Any listed company involved in the acquisition or disposition of assets transactions must calculate the transaction size under the calculation base and formula as prescribed by the applicable regulations. This calculation is essential to evaluate its potential effects on the company's financial position and operational performance. After the transaction size is evaluated, a listed company may take appropriate action(s) according to the size and significance of the transactions, such as to disclose information related to the transaction to the SET or to obtain approval from the board of directors or the shareholders. In addition, if the counterparty to the transaction is connected person, the procedure should be in line with the connected transaction rule.

▪ **Connected Transaction**

To determine whether a listed company conduct any connected transaction as prescribed under the applicable laws, the followings shall be considered.

(i) Definition of Connected Transaction:

Connected transaction means transactions made by a listed company or its subsidiary with any person connected with such listed company.

(ii) Definition of Connected Person:

A person who could lead to a conflict of interests for the director or executives of a listed company, which may cause such director or executive to make a decision based on personal or corporate benefits. Connected person includes:

- (1) The directors, executives, major shareholders, controlling person, person to be nominated for directors, executive, or controlling person positions as well as their related persons and close relatives.
- (2) Any juristic person with major shareholders or controlling persons in (1).
- (3) Any person whose actions can be identified as proxy or under the influence of (1) and (2).
- (4) The director of a juristic person with controlling power.
- (5) The spouse, underage offspring or adopted child of the director in (4).
- (6) A juristic person under the controlling power of the person in (4) or (5).
- (7) Any person taking action under the perception or agreement that if such action is to bring the financial benefit to the person, the following person will also gain similar benefit i.e. the director, executive, controlling person of the company, the director of the person with controlling power over the company, the spouse, underage offspring or adopted child of the person earlier mentioned.

## (iii) Type of Connected Transaction:

Type	Description	Examples
1. Ordinary business transactions	Commercial transactions that a listed company or its subsidiary normally makes to operate business under general commercial conditions	Selling goods, buying the raw materials, and providing services
2. Ordinary business support transactions	Transactions made to support ordinary business under general commercial conditions	A hire for goods shipment, advertisement production, management contract, and receiving technical assistance
3. Real estate rental transactions for a period not longer than 3-year span	Rental transactions with no more than 3-year contract period, and without proof of general commercial conditions	Renting a building as office, or renting a building or land for warehousing
4. Transactions relating to assets or services	Transactions about the acquisition or disposition of assets, or the right to get or receive the service	Buying the machine, buying investment capital, selling a building, selling the land leasehold or concession
5. Providing or receiving financial assistance	Providing financial assistance	Offering the loans or guarantee
	Receiving financial assistance	Borrowing loans, paying fees for the connect persons' credit line used by the company, paying fees to connected persons regarding the loan guarantee.

## (iv) Example of the exempted transactions:

- Loan offering in accordance with the employee welfare rule
- Transactions in which the counterparty of the listed company, or both parties are: (i) a subsidiary in which the listed company hold shares amounting to not less than 90% stake; or (ii) a subsidiary in which the director, executives, or related persons hold shares or has the interest in, directly or indirectly, not exceeding the rate determined by the Capital Market Supervisory Board, or meet the required qualifications.
- The listed company has made transactions with its subsidiary, in which the connected persons holds shares in such subsidiary amounting to no more than 10% stake and have no controlling power over the subsidiary.

## (v) Transaction size:

Any listed company involved in the connected transaction must calculate the transaction size based on the calculation base and formula as prescribed by the applicable regulations. This is to prepare for the case of any possible connected transactions and deciding how to handle them. After the transaction size is evaluated, a listed company may take appropriate action(s) according to the size and type of transaction, such as to disclose information related to the transaction to the SET, to obtain approval from the management or board of directors or the shareholders.

### c) Delisting

The process of delisting can occur through in the following ways:

- (i) Voluntary delisting occurs when a listed company decides to remove its securities from trading on the SET, often due to reasons such as restructuring, mergers, or acquisitions. In this case, the listed company must comply with the SET's rules and regulations regarding voluntary delisting procedures. For example, the listed company has to disclose related information and procedures such as the Board of Director's resolution, shareholders' approval, and tender offer.

These procedures include providing notice to the SET and its shareholders, obtaining approval from the shareholders' meeting with no less than 3/4 of the total issued shares of the listed company, and also no more than 10% objection of the total issued shares, and ensuring that shareholders are offered a fair exit opportunity.

- (ii) Possible delisting occurs when a company is removed from the SET due to non-compliance with listing requirements. This can happen for various reasons, such as significant drop in operational performance or financial conditions falling within criteria (e.g., the operation is halted entirely or almost entirely or the auditor issues a disclaimer opinion on the financial statements of the listed Company for 3 consecutive years), disclosure of false information, failure to disclose material information that could impact shareholders' decisions, changes in securities prices, or if a company disposes of most or all of its assets leading to it being a Cash Company for over 6 months. Breach of SET rules can also lead to delisting. Additionally, if the nature of the listed company's business operations is no longer suitable for it to remain listed, delisting may occur. However, the SET has prescribed the procedures for the listed company to solve the grounds for delisting when the SET considers the listed company will be able to repossess the qualifications of listed companies. The listed company must adhere to the appropriate procedures to remove the reasons for delisting within the allotted timeframe, to be able to resume trading.



# CHAPTER

# 7

## Dispute Resolution

**Authors:** Emi Rowse (Igusa), Kongwat Akaramanee and Kusalin Laksanakorn

### Thailand Legal System

In the late nineteenth century, under the reign of King Rama V (King Chulalongkorn), Thailand initiated comprehensive legal reforms that included the establishment of the Penal Code. Subsequent modernization efforts of Thai law continued under the reigns of King Rama VI and King Rama VII, during which the Civil and Commercial Code, Criminal Procedure Code, Civil Procedure Code and laws governing the organization of the courts of justice were enacted. Thailand's legal system fundamentally follows the principles of a civil law system. However, Supreme Court judgments also serve as precedents to interpret laws in lower and subsequent court cases.

### Sources of Thai Law

As Thailand's legal system is categorized as a civil law system, written law forms the backbone of Thailand's legal system. The hierarchy of written law in Thailand is structured below:

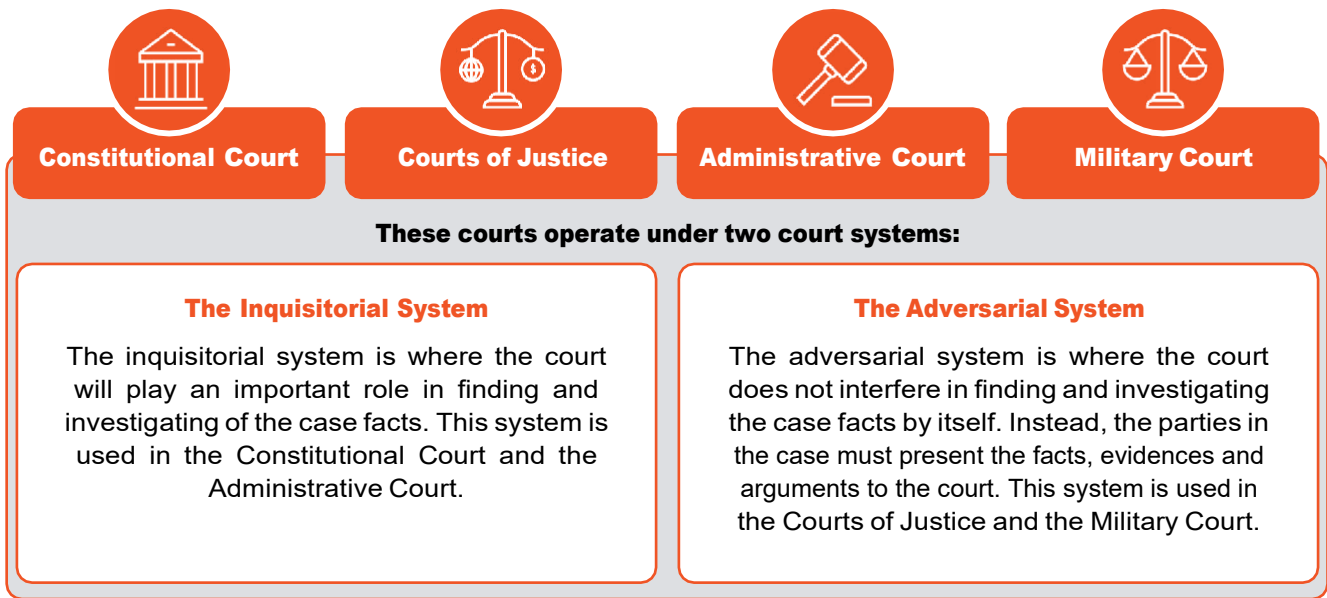


In cases where there is no specific written law, the case will be decided by drawing analogies to the provision that is most closely applicable. In the absence of such provision, general principles of law are applied.



## Judiciary of Thailand

Thailand has four distinct court types



## Dispute resolution

### 1. Litigation

#### 1.1 The courts

Thailand has four distinct court types: (i) the Constitutional Court, (ii) the Courts of Justice, (iii) the Administrative Court, and (iv) the Military Court.

#### A. The Constitutional Court

The Constitutional Court is established to resolve matters pertaining to the constitution, and will determine whether the provisions of any law, rule or regulation are contrary to or inconsistent with the Constitution. The Constitutional Court has nine qualified members who serve for a seven-years term and the decisions of the Constitutional Court are not subject to appeal by any other court.

#### B. The Courts of Justice

The Courts of Justice are classified into three tiers: Courts of First Instance, Courts of Appeal and the Supreme Court. The Courts of Justice can adjudicate all cases except where otherwise specified in the Constitution or other laws.

##### a) Courts of First Instance

There are three types of Courts of First Instance: general courts, juvenile and family courts, and specialized courts.

##### i. General Courts

General courts, consisting of Civil Courts, Criminal Courts, Provincial Courts and Municipal Courts (Kwaeng Courts), are ordinary courts with the authority to adjudicate both criminal and civil cases.

In Bangkok, the general courts include the Civil Court, Criminal Court, Bangkok South Civil Court, Bangkok South Criminal Court, Thon Buri Civil Court, Thon Buri Criminal Court, Min Buri Provincial Court, Taling Chan Provincial Court and Phra Khanong Provincial Court, Bangkok North Municipal Court, Bangkok South Municipal Court, Thon Buri Municipal Court, Dusit

Municipal Court and Pathumwan Municipal Court. These courts have jurisdiction over specific areas as stipulated by laws.

## **ii. Juvenile and Family Courts**

Juvenile and Family Courts have authorities to adjudicate cases involving minors and family related matters. These include Central Juvenile and Family Court, the Provincial Juvenile and Family Courts and the Provincial Courts, Juvenile and Family Divisions.

## **iii. Specialized Courts**

There are four specialized courts in Thailand: the Tax Court, the Intellectual Property and International Trade Court, the Bankruptcy Court and the Labour Courts. Each specialized court has a central court, except for the Labour Courts, which have both the central Labour Court and the regional Labour Courts.

## **b) The Courts of Appeal**

Courts of Appeal consist of the Court of Appeal and nine regional Courts of Appeal where they have jurisdiction to adjudicate appeals of judgments and orders on both questions of law and fact of the general Courts of First Instance.

As for the specialized cases, there is a Specialized Court of Appeals where they have jurisdiction to adjudicate the appeals of judgments and orders of Juvenile and Family courts, Tax Court, the Intellectual Property and International Trade Court, the Bankruptcy Court and the Labour Court.

## **c) The Supreme Court**

The Supreme Court is the final court with jurisdiction to adjudicate appeals on questions of law and, in certain cases, on questions of fact. The submission of the appeal to the Supreme Court is a discretionary appeal, which means the Supreme Court of Justice can consider whether to accept the appeal or not.

In addition, under the Constitution, the Supreme Court of Justice also has jurisdiction to adjudicate criminal cases involving individuals who hold political positions which are brought by, or against, members of the National Counter Corruption Commission.

## **C. The Administrative Court**

The Administrative Court is composed of two tiers: the Administrative Court of First Instance, and the Supreme Administrative Court. Their jurisdiction includes adjudicating cases between (i) a government entity or official; and (ii) a private individual or another government entity or official. Cases must be brought as a consequence of the exercise of an administrative power under the law or a consequence of a pursuit of an administrative act by a government entity or official. However, the Administrative Court does not have jurisdiction over a constitutional organ exercising its direct powers under the Constitution.

## **D. The Military Court**

The Military Court is composed of three tiers: the Military Court of First Instance, the Military Court of Appeal and the Supreme Military Court where they have jurisdiction to adjudicate criminal cases against individuals under the jurisdiction of the Military Courts.

## **1.2 Overview of Civil Litigation in Thailand**

Civil litigation in Thailand refers to legal disputes between individuals, organizations, or entities that are resolved through court proceedings.

The process generally involves the following steps:

#### **A. Complaint**

The litigation starts when a person (the plaintiff) files a complaint with the Court of First Instance within the competent jurisdiction. The complaint should contain the grounds of the claim, relevant facts, allegations, claimed amounts and relief sought. Once the court accepts the complaint, the court officer will serve the complaint to the defendant.

#### **B. Statement of Defense and Counterclaim**

The defendant who receives the service of the claim has a duty to submit the statement of defense within a specified timeframe, typically 15 or 30 days depending on the method of receipt as stipulated by law. The timeframe may be extended upon request and subject to the court's discretion. Additionally, the defendant may also assert a counterclaim against the plaintiff in the statement of defense.

#### **C. Determining of issues**

The court will then determine the issues in the case and set the burden of proof on the parties based on the complaint and statement of defense. Subsequently, the court will schedule the dates for witness examination for the parties to present their witnesses to the court.

#### **D. Witness examination**

During the witness examination session, the witnesses are required to take the stand before the court and will be cross-examined by the opposing party's lawyer. The lawyer of the party who presented the witnesses will then conduct a re-examination.

In civil cases, upon request, the court may allow the parties to submit written witness statement of their witness seven days prior to the witness hearing of each party in order to expedite examination proceedings.

It is important to note that all proceedings carried out by the court are conducted in the Thai language, including pleadings and communication. If documentary evidence is in a foreign language, its Thai translation is normally required. Additionally, if the witness is a foreigner and cannot speak Thai, such witness must give his/her testimony or statement through a sworn interpreter.

#### **E. Closing Statement**

Upon the completion of the witness examination session, it is optional for the parties to submit a formal written closing statement to the court, which serves to summarize the essential facts and evidence that should be taken into account in the case.

#### **F. Judgment**

The Court of First Instance will render judgment upon the completion of the witness examination session. In practice, the judgment will be rendered within a period of one to three months, depending on the complexity of the case.

#### **G. Appeal**

If either parties are dissatisfied with the judgment rendered by the Court of First Instance, they can submit an appeal to the court within one month from the date of pronouncement of the Court of First Instance's judgment. The opposing parties are required to submit a response to the appeal within a specific timeframe, which is typically 15 or 30 days depending on the method of receipt as stipulated by law. The timeframe may be extended upon request and subject to the court's discretion. The Court of Appeal will then examine and render judgment, taking into consideration the facts and evidence presented in the Court of First Instance.

A judgment of the Court of Appeal will be final, unless permission for appeal to the Supreme Court is granted. The appeal to the Supreme Court is discretionary and requires permission from the Supreme Court. Parties dissatisfied with the Court of Appeal's judgment can seek permission by submitting a motion for permission along with an appeal within one month from the date of pronouncement of the Court of Appeal's judgment. The Supreme Court has discretion to give permission to appeal for cases that fall within the specifications outlined by law.

## H. Enforcement

The enforcement of a judgment is conducted by the Legal Execution Department. An executing officer, upon request, has the authority to enforce a judgment by freezing the bank account and/or right to receive payments, seizing the debtor's assets and selling them through a public auction or other appropriate methods, depending on the relief sought and granted. It is important to note that an appeal process does not automatically suspend or halt the execution of a judgment issued by a lower court. Therefore, to stay the execution, a judgment debtor will need to submit a petition to stay the execution and if granted, the court may require the judgment debtor to provide a deposit or collateral to secure the stay until the conclusion of the higher court's proceedings or judgment.

## I. Timeline

On January 23, 2023, the Act on the Timeframe of Judicial Proceedings B.E. 2565 (2022) came into effect in Thailand. This act mandates that all judicial authorities, including the courts, establish clear timeframes for the proceedings. Consequently, on January 24, 2023, the Office of Judiciary issued the Judicial Regulation on the Timeframe for Court Cases B.E. 2566 (2023), which is summarized below:

- (1) Court of First Instance: The Court of First Instance is required to adhere to strict timeline for its proceedings from six months to one year from the date of accepting the complaint. The specific timeline is determined based on the type of the cases which includes special management cases, ordinary cases, and extraordinary cases.
- (2) Court of Appeal: The Court of Appeal has four different types of cases i.e. special urgent cases, urgent cases, special cases, and general cases. The timeline for these cases ranges from four months to one year from the day the Court of Appeal receives the case files from the Court of First Instance.
- (3) Supreme Court: The general timeframe is one year from the date of receipt of the case files from the Court of First Instance.

## J. Costs

In civil cases, the court fee for filing a complaint or counterclaim is determined based on the amount of the claim. If the claim amount does not exceed THB 50 million the court fee is calculated at a rate of 2% of the claim amount, with a maximum limit of THB 200,000.

For claims exceeding THB 50 million, the party is required to pay a court fee of THB 200,000, as well as an additional fee of 0.1% of the amount exceeding THB 50 million. There is no limit on the additional fee for amounts exceeding THB 50 million.

The general principle is that the party who loses the case is ultimately responsible for bearing the costs. However, the court has the discretion to deviate from this principle and may order the winning party to bear the costs or decide that each party should bear its own costs. In making this determination, the court considers factors such as the reasonableness and good faith of the parties' arguments and the conduct of the case. It is important to note that in practice, Thai courts do not typically award full lawyer's fees to the winning party. Instead, the court typically grants nominal lawyer's fees within a specified range as prescribed by statutory provisions.

# CHAPTER

# 8

## Labour and Employment

**Authors:** Chai Lertvittayachaikul, Yanin Sirilak, Kamonrat Kongtheing and Suphatcha Sirilapanan

This chapter provides an overview of the key legal landscape governing employment in Thailand.

### 1. Relevant laws and regulations


In Thailand, except for government and state enterprises officer/administration, all employment arrangements in Thailand are governed by the following Thai labor laws and regulations:

- **Thai Civil and Commercial Code** (the “**CCC**”), the main body of laws that institutes rights and obligations of private persons (natural and juristic persons) across broad area of laws including law of contracts which is the work of employment relationship under contractual basis;
- **Labor Protection Act BE 2541 (1998) (as amended)** (the “**LPA**”), the law that governs standard relationship between employer and employee including working conditions in private sector;
- **Labor Relation Act BE 2518 (1975) (as amended)**, the law that sets out matters in relation to collective bargaining between employer and employee to encourage more stable work and better quality of employee’s life;
- **Social Security Act BE 2533 (1990) (as amended)**, the law that sets out requirements for both employer and employee for a contribution to a social security fund and other related matters; and
- **Emergency Decree on Administration of Aliens Working BE 2560 (2017) (as amended)**, the law that governs foreign workers employment in Thailand and impose penalties for both employer and foreign employee who fails to observe the law.






### 2. Legal Definition of Employment

Under the LPA, there is no legal requirement on a form of employment agreement, thus any written or oral agreement that clearly states that an employee who agrees to work for an employer to whom such employer agrees to pay a salary or wage in return for the work done by the employee constitutes an employment relationship. The relationship between the employer and the employee under the employment agreement shall be primarily governed by the LPA. An employment relationship is distinct from a “Hire of Work”, which is a relationship between the employer and a contractor and which is governed by the CCC.

The following are key distinctions differentiating Employment and Hire of Work;

Key Distinction	Employment	Hire of Work
<b>Nature of the work</b> 	<ul style="list-style-type: none"><li>▪ An employee shall work with their best efforts with no specific result obligation.</li><li>▪ An employee performs work at a specific work place and within the working time as agreed with the employer.</li></ul>	<ul style="list-style-type: none"><li>▪ A contractor is independently working to achieve a specific result irrespective of working hours and work place.</li></ul>



Key Distinction	Employment	Hire of Work
<b>Remuneration</b> 	<ul style="list-style-type: none"> <li>An employee receives a fixed salary or a minimum guaranteed salary for working time, irrespective of the results of the work done.</li> <li>An employee is generally guaranteed a regular wage amount.</li> </ul>	<ul style="list-style-type: none"> <li>A contractor is paid for the result of the work done with no guaranteed income.</li> </ul>
<b>Employer's controlling power</b> 	<ul style="list-style-type: none"> <li>An employer has management control over the employee's work and performance by giving direction and setting out disciplinary action to be followed by the employee.</li> </ul>	<ul style="list-style-type: none"> <li>An employer has no control over the contractor regarding working days or disciplinary actions.</li> </ul>
<b>Responsibility to third parties:</b> 	<ul style="list-style-type: none"> <li>An employer is jointly liable with the employee for the consequences of a wrongful act committed by the employee in the course of employment.</li> </ul>	<ul style="list-style-type: none"> <li>An employer is not liable for damages caused by the contractor to a third party for the course of the work, unless the fault was due to the work ordered or instructed.</li> </ul>
<b>Provision of work materials:</b> 	<ul style="list-style-type: none"> <li>An employee works with the materials provided or paid for by the employer.</li> </ul>	<ul style="list-style-type: none"> <li>A contractor works with their own tools or instruments to execute the work.</li> </ul>
<b>Working hours:</b> 	<ul style="list-style-type: none"> <li>The normal working hours of an employee cannot exceed 8 hours per day and 48 hours per week.</li> <li>The work is detrimental to employee's health or safety, normal working hours cannot exceed 7 per day with a maximum of 42 hours per week.</li> <li>An employee requires approval from the employer to take leave or holiday.</li> </ul>	<ul style="list-style-type: none"> <li>The contractor freely determines working time and holiday arrangements.</li> </ul>

Under the employment agreement, the employees could be classified into;

#### I. Fixed-term employees

An employee who is employed for a specified period. The fixed-term employment will automatically terminate upon the expiry of the contract, without requiring any notice of termination, provided that it must be clearly stated in the employment agreement.

Under the LPA, the fixed-term employees must be employed for a period of not exceeding 2 years for a special project which is not in the normal course of business or trade of the employer. Once the employment period ends, the fixed-term employee is not entitled to severance pay benefits.

However, if a fixed-term employment contract contains the following details or clauses, it will not be considered as fixed-term employment but permanent employment:

- scheduled contract terms more than 2 years; or

- allows the employer to terminate the contract at any time on their sole discretion prior to the end of employment terms; or
- allows the employer to extend the probation period or terminate the contract any time at their own will prior to the end of employment terms;

## II. Permanent employees

An employee who is employed for an unlimited term of employment. Permanent employees are entitled to overtime payment and holiday pay, including severance pay, where applicable.

### 3. **Entitlement to Statutory Employment Rights**

All employees are entitled to the minimum statutory entitlements provided by the LPA, as well as benefits from the Social Securities Fund and Workmen's Compensation Fund. In contrast, contractors are not entitled to these employment rights and benefits, since the relationship with the employer is governed mainly by the CCC.

Any dispute relating to an employment relationship must be brought before the Thai Labor Court, while disputes relating to the independent contractor relationship are brought before the Thai Civil Court. The following are key statutory employment rights under LPA;

#### I. **Wage**

Employees are entitled to a minimum wage when necessary. Please note that in Thailand, the minimum wage varies in each province.

If an employer fails to comply with the payment of the minimum wage or skilled worker minimum wage, the employer may be subject to imprisonment for a term of six months or less or fine of no more than THB 100,000 or both.

#### II. **Working hours and Holiday**

In principle, working hours must not exceed 8 hours per day and 48 hours per week. If the working hours are less than 8 hours in one day, the employer and employee may agree to add the remaining time to the working hours of another work day. However, note that the working hours mentioned above may be different for some types of work, subject to delegated legislation prescribed by the Ministry of Labour.

Employers may not require employees to work on holidays. If an employer requires an employee to work on holidays, it must be a case where the nature or condition of the work requires continuous performance, a break from work would obstruct the performance of work due to the nature of the work or in case of an emergency, and to the extent necessary. In addition, employers may require an employee to work on a holiday where the place of business is prescribed by the Labour Ministerial Regulations.

Employers must grant employees at least one holiday per week and there must not be more than a six-day interval between holidays. Moreover, employers must determine 13 or more public holidays as announced annually by the Thai government.

#### III. **Overtime and holiday pay**

It is generally necessary for an employer to obtain consent from an employee in order to require the employee to work overtime, to work on a holiday, or to work overtime on a holiday. Further, the employer may require the employee to work overtime only when necessary or when prescribed by Labor Ministerial Regulations.

If working overtime and/or work on holiday is required, an employer must pay employees an overtime payment or a holiday pay (as the case maybe) at the rate stipulated by law as follows;

Types of overtime pay and holiday work		Additional payment amount (of the normal wage rate)
Overtime work		one and a half times
Holiday work	(In cases of a salary such as a monthly salary)	one time
	(In cases of a daily wage)	two times
Holiday overtime work		three times

#### IV. Leave

Employees are entitled to at least 13 public holidays each year, which include the National Labor Day. Employees are also entitled to the following leaves pursuant to Thai labor law:

Type of Leaves	Details
Annual Leave	Employees who have worked continuously for at least 1 year are entitled to annual paid leave of at least 6 working days per year.
Sick Leave	<p>An employee is entitled to sick leave as long such employee is actually sick but the employer is obliged to pay wages for no more than 30 working days of sick leave per year.</p> <p>In an event that the employee is absent for at least 3 consecutive days, the employer may require the employee to submit a medical certificate from a first-class medical practitioner or a government hospital. If the employee is unable to do so, the employee must provide an explanation to the employer.</p>
Maternity Leave	Pregnant employees are entitled to maternity leave for the maximum of 98 days per childbirth, and such 98-day leave must include leave days for pregnancy check-ups prior to delivery and holidays. The employer is obliged to pay wages for not less than 45 days of the 98 days of maternity leave.
Sterilization Leave	Employees are entitled to sterilization leave for the required period as prescribed in a medical certificate from a first-class medical practitioner submitted to the employer and the employer must provide wages for all sterilization day leave.
Personal Affairs Leave	Employees are entitled to at least 3 working days of personal leave per year and the employer must provide wages for only 3 days personal leave per year.
Military Service Leave	Employees are entitled to military service leave in order to receive inspections, military training, or service according to the law related to military service and the employer must provide wages for up to 60 days of military service leave per year.
Professional Development and Training Leave	Employees are entitled to take professional development leave in order to receive training or develop skills in accordance with Labor Ministerial Regulations.

#### **4. Employment of Female Labour**

The employers are not allowed to require a female employee to perform certain works such as mining or construction work which is to be performed underground, under water, in a cave, in a tunnel or mountain shaft, or working on a scaffold of 10 meter or more above the ground, or producing or transporting of explosive materials.

The employers must not terminate the employment of a female employee because of her pregnancy, and employers are prohibited from requesting a pregnant employee to work between 10.00 p.m. and 06.00 a.m., to work overtime, or to work on holidays.

The employers are also prohibited from requesting the pregnant employee to perform any of the following work:

- work involving vibrating machinery or engine;
- work of driving or going on a vehicle;
- work of lifting, carrying on the back, carrying on shoulder, carrying with a pole across shoulder, carrying on a head, pulling or pushing of loads in excess of fifteen kilograms;
- work on a boat; or
- any other work as prescribed in the Ministerial Regulations.

#### **5. Employment of Child Labor**

An employer shall not employ a child under 15 years of age as an employee.

A child under 18 years of age may be employed, but he or she must not be required to work overtime or on a holiday, or to work between 10.00 p.m. and 06.00 a.m. (unless written permission is granted by the competent authority).

The employer of a child labourer must also provide a resting period of not less than 1 whole hour after he or she has worked for not more than 4 hours; and during the period of such 4 hours, the child employee shall have a resting period as specified by the employer.

In addition, a child labourer must not be required to work in places such as slaughterhouse, gambling place, and recreation place, and he or she must not be required by the employer to work in the following establishments:

- metal smelting, blowing, casting or rolling;
- metal pressing;
- work involving heat, cold, vibration, noise and light of an abnormal level which may be hazardous as prescribed in the Ministerial Regulations;
- work involving hazardous chemical substances as prescribed in the Ministerial Regulations;
- work involving poisonous microorganisms which may be a virus, bacterium, fungus, or any other germs as prescribed in the Ministerial Regulations;
- work involving poisonous substances, explosive or inflammable material, other than work in a fuel service station as prescribed in the Ministerial Regulations;
- driving or controlling a forklift or a crane as prescribed in the Ministerial Regulations;
- work using an electric or motor saw;
- work that must be done underground, underwater, in a cave, tunnel or mountain shaft;
- work involving radioactivity as prescribed in the Ministerial Regulations;
- cleaning of machinery or engines while in operation;
- work which must be done on scaffolding ten meters or more above the ground; or
- other work as prescribed by law.

#### **6. Termination of Employment**

An employer or employee can terminate an employment contract by giving advance notice to the other party before the wage payment due date (if wages are paid monthly, it should not be more than 3 months), in order for the termination to be effective on the following wage payment due date.

However, if the employer wishes to terminate the employment contract with immediate effect, without an advance notice period, the employer must pay the wage that the employee would have received during the advance notice period. This payment is so-called a payment in lieu of advance notice.

In addition, if the termination is due to the employee's serious misconducts, the employer is not obliged to provide advance notice of termination, or payment in lieu of advance notice, or severance pay. Such serious misconduct consists of the following:

- the employee performed his or her duty dishonestly or intentionally committed a criminal offence against the employer;
- the employee wilfully caused damage to the employer;
- the employee committed negligent acts causing serious damage to the employer;
- the employee violated a work rule, regulation or lawful and fair order of the employer, and after the employer has already issued a written warning to the employee. Such written warning shall be valid for a period not exceeding 1 year from the date of the offence commitment;
- the employee is absent from duty without justifiable reason for 3 consecutive working days regardless of whether there is holiday in between; or
- the employee was being sentenced to imprisonment by a final court judgment.

For termination of employment due to serious misconduct, the employer must provide a written notice stating the reason for the termination. If the employer has not done so, the employer cannot afterwards claim for such cause.

## 7. Severance Payments

An employee who has been terminated without serious misconduct causes is entitled to statutory severance pay. The amount of statutory severance pay is based on the employee's length of service with the employer, as follows:

Period of continuous employment	Severance pay (based on last wage payment)
120 days or more – less than 1 year	30 days of wages
1 year or more – less than 3 years	90 days of wages
3 years or more – less than 6 years	180 days of wages
6 years or more – less than 10 years	240 days of wages
10 years or more – less than 20 years	300 days of wages
20 years or more	400 days of wages

A terminated employee is also entitled to:

- any outstanding salary or other expenses;
- payment of in lieu of advance notice (if advance notice is not given);
- payment for accumulated holidays in the previous year; and
- payment for unused leave of the current year on a pro-rata basis.

## 8. Social Security Fund

Social Security Fund (the “**SSF**”) is established to provide security and coverage to the insured employees so that the insured employees shall receive compensation in case of injury, sickness, invalidity, and death which are not caused by employment, including, childbirth, child allowance, old age, and unemployment.



The employers are required to register their employees with the Workmen's Compensation and Social Security Fund. Both the employee and the employer must contribute to the SSF on a monthly basis, at a rate of 5% (each) of the of the employee's salary. The monthly salary base is capped at THB 15,000, so the maximum monthly contribution amount from the employee and the employer is THB 750 each.

## 9. Employee Committee

A workplace having 50 or more employees may establish an employee committee as the representative of all employees to discuss and negotiate with employer on employment welfare, work rules, employee's complaints including compromising and settling dispute in a work place. The employee committee may petition the Labor Court for a decision regarding any act of the employer which may be unfair or causes excessive grievance to the employees.

The employee committee is protected by laws against being dismissed, punished or obstructed to perform their duty by the employer unless approved by the Labour Court.

The number of the employee committee to be appointed or elected by the employees is based on the total number of employees of the work place as follows:

Number of employees	Number of employee committee
50-100	5
101-200	7
201-400	9
401-800	11
801-1500	13
1501-2500	15
2500 or more	17-21

## 10. Foreign Worker

All foreign nationals are prohibited from working in Thailand unless a work permit is granted to allow such foreign employee to engage in any occupation except for reserved occupation and/or profession for Thai nationals where foreigners are prohibited to engage i.e. wood carving, cloth weaving by hand, brokerage or agency, tour guide, hairdressing including professional in relation to accounting, legal, architectural, engineering etc.

Any foreign employee who works without a work permit or engage in any reserved occupation for Thai, shall subject to imprisonment of not more than 5 years or a fine of between THB 2,000 to THB 100,000, or both.

In addition, an employer who employs a foreign employee who does not have a work permit or employs a foreign employee to work on the reserved works shall also subject to a fine from THB 400,000 to THB 800,000 per one foreign employee employed.

# CHAPTER

# 9

## Real Estate

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This chapter provides an overview on the interests, conditions and restrictions related to real estate properties in Thailand.

### (1) MAIN LEGISLATION

The main legal frameworks governing the transfer and ownership of real estate are as follows:

Law	Key Substance
<b>Civil and Commercial Code</b>	Outlines general regulations on the proprietary rights of real estate.
<b>Land Code</b>	Outlines specific regulations on the proprietary right of land, including the issuance of title documents and restriction on foreign ownership over land.
<b>Condominium Act B.E. 2522 (1979)</b>	Provides specific regulations on condominiums, including the ownership of condominium units and common area, and juristic persons of condominiums.
<b>Foreign Business Act B.E. 2542 (1999)</b>	Provides the general regulations on businesses and activities that a foreigner can undertake and the requirements of a foreign business license.
<b>Investment Promotion Act B.E. 2520 (1977)</b>	Outlines the various investment incentives which allow a foreigner to own land if such foreigner operates a promoted business and gets a promotion certificate from the Board of Investment (the “ <b>BOI</b> ”).
<b>Industrial Estate Authority of Thailand Act B.E. 2522 (1979)</b>	Outlines regulations on the land ownership in industrial estate area.
<b>Eastern Special Development Zone Act B.E. 2561 (2018)</b>	Outlines regulations on the land ownership within the Eastern Special Development Zone.

### (2) RESTRICTIONS ON FOREIGN OWNERSHIP

#### Land

In general, ownership over land in Thailand is limited to Thai nationals (individuals and entities). As such, unless specifically permitted by law, foreigners are precluded from owning land in Thailand.

Under the Land Code, a “**foreigner**” includes (i) a non-Thai national individual, (ii) a foreign-registered entity, (iii) a Thai-registered company in which foreigners hold more than 49% of the total issued shares, and (iv) a Thai-registered company with more than half of the number of the shareholders are foreigners (irrespective of the numerical shareholding).

Foreigners may be permitted to own land subject to certain requirements and criteria. The following laws set out exceptions and criteria permitting foreigners to own land:

#### **(A) Land Code**

A foreigner may own up to one *rai* (i.e. 1,600 square meters) of land for residential use, provided that such foreigner brings in not less than THB 40 million from abroad to invest in specified businesses in Thailand and obtains approval from the Ministry of Interior of Thailand. This permission is subject to the criteria, procedures, and conditions prescribed in the relevant ministerial regulations.

#### **(B) Investment Promotion Act B.E. 2520 (1977)**

A foreigner who receives an investment promotion from the BOI may be permitted to own land for the purposes of the operation of a promoted business as the BOI deems appropriate. If a foreigner ceases to operate such promoted business, such land owned by a foreigner must be disposed within one year.

#### **(C) Industrial Estate Authority of Thailand Act B.E. 2522 (1979)**

A foreign business operator who operates its business in an industrial estate may be permitted to own land located in such industrial estate as the Board of Directors of the Industrial Estate Authority of Thailand (the “**IEAT**”) deems appropriate. If such foreign business operator ceases to operate its business, such land must be disposed to the IEAT or any transferee within three years.

#### **(D) Condominium Act B.E. 2522 (1979)**

Under the Condominium Act, a foreigner is allowed to own any “foreign-quota” condominium unit. In each condominium building, all of the foreign-quota condominium units must have the aggregate area of not exceeding 49% of the total area of all units in such condominium building. A foreigner must also comply with other requirements to own a foreign-quota condominium unit; for example, the money used for the purchase of a condominium unit must be transferred from outside of Thailand or withdrawn in THB (or any foreign currency) from a foreigner’s non-resident account in the amount not less than the condominium unit price.

### **Building**

In Thailand, the ownership of a building (including any construction) can be separated from the ownership over the land plot on which such building is situated. Even though a foreigner is generally not permitted to own land, a foreigner is allowed to own a building. Therefore, it is not uncommon in Thailand for a foreigner to lease a land plot to construct or operate a foreign-owned building.

### **(3) PROPRIETARY INTERESTS**

There are three primary types of proprietary interests in real estate; ownership/freehold interest, entitlement over immovable property and rights of possession. Given the restrictions on foreign ownership over land, a foreigner may sometimes consider acquiring entitlement over immovable property or one of the rights of possession instead.

**(A) Ownership/Freehold Interest** - the owner has absolute ownership over land or real estate. The ownership over land includes ownership over the surface of, space above and beneath such land. Therefore, unless proven otherwise, a person or entity whose name appears in the title document of the land as a landowner is presumed to be an owner of the land and of whatever construction that is situated thereon. That is, in general, if the ownership over the land is transferred to a transferee, the ownership of the building would also automatically be transferred to the same transferee.

However, the ownership of a building (including any construction) can be separated from the ownership over the land plot on which such building is situated. The first transfer of any individual building (i.e. without the

transfer of land) must be registered at the competent land office and recorded in a newly created building registration (as opposed to and separate from the title document of the land).

**(B) Entitlement over Immovable Property** (also known in Thai as, “Sub-Ing-Sith”) – the Entitlement over Immovable Property Act B.E. 2562 (2019) (the “**Act**”) provides a new type of proprietary interests in real estate. The owner of (i) a plot of land with a land title deed (a “**Land Plot with Title Deed**”), (ii) a building constructed on a Land Plot with Title Deed (a “**Qualified Building**”), or (iii) a condominium unit (together with a Land Plot with Title Deed and a Qualified Building, collectively, the “**Properties**”), may grant another person (*including a foreigner*) a right to use a Property for the maximum period of 30 years (an “**Entitlement Holder**”).

Any right granted to an Entitlement Holder must be registered at the competent land office. Upon the registration of the entitlement over each Property, an Entitlement Holder can enjoy rights, obligations and liabilities with respect to the relevant Property as if an Entitlement Holder is another owner of the relevant Property, but *without* the following rights which are exercisable only by the actual owner of the relevant Property:

- (i) right to dispose of the relevant Property;
- (ii) right to retrieve the possession of the relevant Property from others; and
- (iii) right to prevent any unlawful interference with the relevant Property.

Unless the prior written consent from an Entitlement Holder is obtained, the owner of each Property (over which the entitlement under the Act has been created and registered) cannot create any proprietary right over such Property or do anything that prejudices the rights of an Entitlement Holder over such Property.

**(C) Right of Possession** – the right of possession can be classified under the Civil and Commercial Code as follows:

- **Lease** – in exchange for rents, the owner or Entitlement Holder of real estate (i.e. the lessor) grants another person (i.e. the lessee) the right to use such real estate for the maximum period of 30 years or the lifetime of the lessor or the lessee (applicable only to an individual lessor or lessee). However, a lease for qualified commercial or industrial purpose may have a lease term of up to 50 years. In any case, any lease for a period longer than 3 years is enforceable only for 3 years unless made in writing and registered at the competent land office;
- **Servitude** – if (and when) the servitude is created, with or without consideration, the owner or Entitlement Holder of real estate which is subject to the servitude is bound to (i) allow certain acts on their land or real estate, or (ii) refrain from exercising their rights, in each case for the benefit of another real estate of which the servitude is created in favor. There is no statutory limitation imposed on the term of servitude. Any right of servitude must be registered at the competent land office to be effectuated;
- **Habitation** – the owner or Entitlement Holder grants another person a right to live in a building without paying rent. The maximum term for the right of habitation is 30 years or for the lifetime of the grantee (if the grantee is an individual). Any right of habitation must be registered at the competent land office to be effectuated;
- **Superficies** – with or without consideration, the owner or Entitlement Holder grants another person (i.e. the superficiesary) the right to own buildings, structure or plantations either situated on or under the land (as opposed to the land itself). The maximum term for the right of superficies is 30 years or for the lifetime of the landowner or the superficiesary (if the landowner or the superficiesary is an individual). Any right of superficies must be registered at the competent land office to be effectuated; and
- **Usufruct** – with or without consideration, the owner or Entitlement Holder grants another person (i.e. the usufructuary) the right to possess, use and enjoy benefit of and product arising from real estate. The maximum term for the right of usufruct is 30 years or for the lifetime of the usufructuary (if the usufructuary is an individual). However, if the real estate that is subject to the right of usufruct is destroyed, the right of usufruct will also be extinguished; but if the owner or Entitlement Holder restores the condition of the destroyed real estate, the right of usufruct will also be restored to the extent usufructable as a result of such restoration. In any case, any right of usufruct must be registered at the competent land office to be effectuated.

#### **(4) REAL ESTATE OWNERSHIP STRUCTURE**

The most common structure to hold real estate in Thailand is through a Thai-national individual or entity. However, it is also customary in Thailand for the owner to own real estate through a “single-asset special purpose vehicle” (the “**SPV**”) for greater flexibility. The most popular form of SPV in Thailand is a private limited company because of (i) the simple rules of corporate governance, and (ii) the corporate veil that provides each shareholder with a liability limit of up to the aggregate unpaid par value of shares owned by each shareholder.

##### **Acquisition of Real Estate in Thailand**

Similar to other countries, a transfer of real estate can be effected either through an asset transfer (i.e. an asset deal) or, if such real estate is held by a corporate entity, a share transfer (i.e. a share deal).

Compared to the “asset deal” which entails the transfer registration and payments of fees and taxes, the share deal can be more commercially viable in quite a number of situations. This is because there will be no change to the direct owner of the real estate and no transfer-related fees or taxes will be incurred. However, the share deal would be viable for a buyer who wants to buy all of the assets owned by the target entity (which will belong to (or be controlled by) the buyer after closing). This explains why it is customary in Thailand for many owners to own real estate through a single-asset SPV as discussed above.

One important thing to note before acquiring any proprietary interest or ownership over real estate in Thailand is that it is usual for a buyer to conduct a legal due diligence on at least the following matters to ascertain or clarify the legal status of such real estate and to minimize any risks and maximize the benefits of the buyer:

1. the legality and validity of the relevant title document(s) of the land and the access to and egress from the real estate;
2. encumbrances registered at the relevant land office;
3. material transactions relating to real estate;
4. the relevant regulations on zoning, construction and environmental control;
5. the relevant permits and licenses for the construction and operation of real estate;
6. corporate search on the seller (corporate entity); and
7. litigation and bankruptcy search on the seller and the real estate.

#### **(5) FEE AND TAXES RELATING TO REAL ESTATE TRANSFER**

Fee and taxes relating to the transfer of real estate are: (i) transfer fee; (ii) withholding tax; (iii) specific business tax and municipal tax; and (iv) stamp duty.

- (A) **Transfer Fee:** Levied at 2% of the governmental appraised value of the real estate transferred. Unless agreed otherwise by the parties, the seller and the buyer will be equally responsible for the transfer fee.
- (B) **Withholding Tax:** The seller must pay to the competent land office (during but before completion of the transfer) the withholding tax at the rate applicable to such seller. The rate applicable to a corporate seller is 1% of the sale price or the governmental appraised value of the real estate transferred (whichever is higher). The rate applicable to an individual seller will be calculated based on the governmental appraised value of the real estate transferred and the tax rate applicable to such individual.
- (C) **Specific Business Tax and Municipal Tax:** Levied at 3.3% of the sale price or the governmental appraised value of the real estate transferred (whichever is higher). Unless agreed otherwise by the parties, the seller will be responsible for the specific business tax and municipal tax. The specific business tax and municipal tax may be exempted if the seller is an individual (without any co-owner) and: (i) has possessed the real estate transferred for at least 5 years before the transfer; or (ii) the real estate transferred has been used as the principal residential place as evidenced by the seller's name having appeared in the relevant household registration for at least 1 year.
- (D) **Stamp Duty:** If the transfer is not subject to the specific business tax and municipal tax, the stamp duty at the rate of 0.5% of the sale price or the governmental appraised value of the real estate transferred (whichever is higher) will apply. That is, the seller must pay the stamp duty if the specific business tax and municipal tax are exempted.



# CHAPTER

# 10

## Renewable Energy in Thailand: A Path to Sustainability and Investment Opportunities

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### INTRODUCTION

Renewable energy has gained significant traction in Thailand as the country strives to diversify its energy portfolio, diminish reliance on fossil fuels, and achieve sustainability goals. Governmental initiatives and policies have been instrumental in promoting this shift, offering strong support and incentives that encourage investment in renewable energy projects.

This chapter provides a comprehensive overview of Thailand's renewable energy landscape, including current trends, relevant authorities, governmental support, and investment guidelines.

### PART A: RENEWABLE ENERGY TREND IN THAILAND

On 27 September 2022, the Energy Regulatory Commission (the “**ERC**”) published the official Regulations for Purchasing Electricity from Renewable Energy Sources under a Feed-in-Tariff (FiT) Scheme between 2022-2030 (B.E. 2565 -2573) for Power Plants with No Fuel Costs (the “**FiT Scheme 2022-2030**”). The FiT Scheme 2022-2030 specifies that power purchase agreements (PPAs) will be awarded on a non-firm basis for solar, biogas, and wind power plants with a contracted capacity of not more than 90 MW <sup>8</sup> and on a partial-firm basis for solar with battery energy storage systems (BESS) with a contracted capacity of more than 10 MW but not exceeding 90 MW.

The target electricity purchasing quotas under the FiT Scheme 2022-2030 for these renewable energy sources are as follows:

Type of renewable power plants	Total purchasing target by 2030	Term of FiT
<b>Biogas (from wastewater/ solid waste)</b>	335 MW	20 years
<b>Wind</b>	1,500 MW	25 years
<b>Ground-mounted Solar</b>	2,368 MW	25 years
<b>Ground-mounted Solar with BESS</b>	1,000 MW	25 years
<b>Total</b>	<b>5,203 MW</b>	-

The list of all bidders who have been awarded the projects under the FiT Scheme 2022-2030 was announced in April 2023. Furthermore, from 14 August 2024 to 20 August 2024, the ERC held a public hearing on an additional round of purchasing electricity from renewable energy sources under a FiT scheme between 2022-2030 for power plants with no fuel costs. Once the ERC publishes the official regulation for this additional round, it is anticipated that there will be an increase in the development of renewable energy projects in Thailand.

<sup>8</sup> Megawatts.

Here is a closer look at the key renewable energy sectors in Thailand and their current status.

Percentage of Alternative Energy Consumption (as of 30 April 2023)

Alternative Energy	Unit	Target 2037	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Target 2023	2023 Jan-Apr
<b>Electricity<sup>1/2/</sup></b>														
1. Solar Energy <sup>3/</sup>	MW	12,139.00	823.46	1,298.51	1,419.58	2,446.12	2,697.26	2,962.44	2,982.62	2,979.24	3,015.29	3,135.16	3,551.62	3,136.19
2. Solar Powered Buoys	MW	2,725.00									45.00	45.00	45.00	45.00
3. Biomass <sup>4/</sup>	MW	5,790.00	2,320.78	2,451.82	2,726.60	2,814.70	3,157.28	3,372.94	3,410.14	3,517.38	3,646.47	3,765.46	3,830.14	3,872.46
4. Wind Energy	MW	2,989.00	222.71	224.47	233.90	507.04	627.82	1,102.82	1,506.82	1,506.73	1,545.33	1,545.32	1,686.82	1,545.32
5. Biogas <sup>4/</sup>	MW	1,565.00	265.23	311.50	372.51	434.86	475.42	505.24	529.98	557.24	635.39	651.99	979.98	652.00
6. Municipal Solid Waste	MW	900.00	47.48	65.72	131.68	145.28	191.47	317.82	314.67	333.68	388.52	371.09	900.00	371.09
7. Industrial Waste	MW	75.00										34.43	19.40	34.43
8. Small Hydro Power <sup>5/</sup>	MW	308.00	108.80	142.01	172.12	182.12	182.28	187.72	187.85	190.39	191.75	191.75	187.85	191.75
9. Large Hydro Power <sup>6/</sup>	MW	2,920.00	-	-	2,906.40	2,906.40	2,906.40	2,919.66	2,919.66	2,919.66	2,918.40	2,918.40	2,919.66	2,918.40
10. Other Alternative Energy (Geothermal Power)	MW	-	-	-	-	-	-	0.30	0.30	0.30	0.30	0.30	0.30	0.30
MW	MW	29,411.00	3,788.46	4,494.03	7,962.79	9,436.52	10,237.93	11,368.94	11,852.04	12,004.62	12,386.45	12,658.91	14,120.77	12,766.94
ktoe	ktoe	7,298.00	1,341	1,467	1,556	2,122	2,473	2,960	3,239.36	2,903.00	3,090.41	3,336.22	4,151.53	1,294.41
Alternative Energy Consumption (ktoe)	ktoe	38,284.00	8,231.50	9,025.20	10,076.32	11,050.94	11,730.90	12,995.63	14,136.41	11,996.70	10,459.22	11,260.36	17,884.45	5,658.83
Final Energy Consumption (ktoe)	ktoe	126,867.00	75,214.00	75,804.00	77,881.00	79,929.00	80,752.00	83,952.00	85,708.08	77,340.00	72,160.90	84,177.95	92,798.74	29,903.60
Percentage of Alternative Energy Consumption	%	30.00	10.94	11.91	12.94	13.83	14.53	15.48	16.49	15.51	14.49	13.38	19.27	18.92
Installed Capacity of Alternative Energy Plants	MW	29,411.00	3,788	4,494	7,963	9,437	10,237.93	11,368.94	11,852.04	12,004.62	12,386.45	12,658.91		12,766.94
Total Installed Capacity	MW	70,335.00	33,681	35,610	37,247	42,982	49,472.50	51,391.96	52,254.49	55,390.99	57,924.83	57,379.64		57,487.65
Percentage of Installed Capacity of Alternative Energy Plants	%	41.82	11.25	12.62	21.38	21.95	20.69	22.12	22.68	21.67	21.38	22.06		22.21
Electric Generation from Alternative Energy	ktoe	7,298.00	1,341	1,467	1,556	2,122	2,473	2,960	3,239.36	2,903.00	3,090.41	3,336.22		1,294.41
Total Electric Consumption	ktoe	27,788.60	14,002	14,371	15,455	16,210	16,519	16,805	17,358.00	16,761.00	17,129.00	17,755.00		5,836.00
Percentage of Electric Generation from Alternative Energy by Total Electric Consumption	%	26.26	9.58	10.21	10.07	13.09	14.97	17.61	18.66	17.32	18.04	18.79		22.18

Source: EGAT, MEA, PEA, ERC, DEDE, and DOE

Notes: 1/ Including off grid power generation.

2/ Including on grid power generation with capacity ≤ 1 MW & ≥ 1 MW.

3/ Including the community power plants.

4/ Including waste water / waste dumping and energy crops.

5/ Including hydro power plants ≤ 12 MW & hydro power plant using the water downstream.

6/ The existing installed capacity.

Source: [https://www.dede.go.th/ewt\\_news.php?nid=48247](https://www.dede.go.th/ewt_news.php?nid=48247)

Thailand aims to increase the overall percentage of renewable and alternative energy consumption (ktoe<sup>9</sup>) to final energy consumption (ktoe) to 30% by 2037, according to the Alternative Energy Development Plan 2018 (AEDP2018). In the first five months of 2024, Thailand's final energy consumption was 36,366.73 ktoe, out of which 6,352.39 ktoe was attributed to renewable energy consumption, accounting for 17.47% of the total final energy consumption.

The latest status and trends of key alternative energy sources in Thailand are as follows:

- Solar Power:** Thailand has made remarkable progress in solar power adoption, leveraging its favorable solar resources as evidenced by the consecutive increase in the total installed capacity of solar power plants. The total installed capacity of solar power plants in the first five months of 2024 was 3,358.77 MW (3,289.77 MW for solar energy power plants and 69.00 MW for solar floating power plants). Such figure has grown by 158.66% compared to that in 2014, which was at 1,298.51 MW. The government's implementation of incentives and feed-in tariff programs has fostered the growth of solar energy generation.
- Wind Energy:** While wind energy is still in its early stages of development and we have not seen any growth in the installed capacity of wind power plants from 2023 to 2024 yet, there is considerable potential for growth. As previously mentioned, the FiT Scheme 2022-2030, along with the current Power Development Plan, establishes a target electricity purchase by state distribution utilities (MW) for wind power plants to achieve 1,500 MW by 2030.
- Biomass:** We have seen steady growth in the installed capacity of biomass power plants during the last 10 years, including the first five months of 2024 where the installed capacity of biomass power plants, which was at 3,851.51 MW, has almost reached the target set for the entire year of 2024, which is at 3,930.14 MW. Thailand's robust agricultural sector provides a consistent source of biomass materials, positioning the country to further capitalize on bioenergy and biofuels in the future.
- Hydropower:** Hydropower is the largest form of renewable energy in Thailand, owing to the abundant water resources that can be harnessed for electricity generation. The Electricity Generating Authority of Thailand (EGAT) has recorded the installed generating capacity of EGAT's hydropower plants in Thailand as of July 2024 to be 3,038.13 MW (2,972.40 MW for large hydropower plants with an installed capacity of 12 MW or more and 65.73 MW for small hydropower plants with an installed capacity of less than 12 MW) as shown in the table below.



<sup>9</sup> The kilotonne of oil equivalent.

**EGAT's Installed Generating Capacity (as of July 2024)**

Type of Plants	Installed Capacity	% to EGAT's total installed generating capacity
<b>All types of energy</b>	<b>16,261.02</b>	<b>100</b>
<b>Renewable Energy</b>	<b>3,143.62</b>	<b>19.32</b>
<b>Hydro large dam</b>		
- Bhumibol	779.2	4.79
- Sirikit	500	3.07
- Ubol Ratana	25.2	0.15
- Sirindhorn	36	0.22
- Chulabhorn	40	0.24
- Srinagarind	720	4.43
- Vajiralongkorn	300	1.84
- Tha Thung Na	39	0.24
- Kaeng Krachan	19	0.12
- Bang Lang	84	0.52
- Rajjaprabha	240	1.48
- Pak Mun	136	0.84
- Chao Phraya	12	0.07
- Kwae Noi Bumrung Dan	30	0.18
- Mae Klong	12	0.07
<b>Total Hydro large dam's capacity</b>	<b>2,972.40</b>	<b>18.26</b>
<b>Hydro small dam</b>		
- Nam Pung	6	0.04
- Ban Santi	1.28	0.01
- Mae Ngat	9	0.06
- Huai Kum	1.06	0.01
- Naresuan	8	0.05
- Khlong Chong Klum	0.02	-
- Ban Yang	0.12	-
- Ban Khun Klang	0.2	-
- Huai Kui Mang	0.1	-
- Khun Dan Prakan Chon	10	0.06
- Pasak Jolasid	6.7	0.04
- Kiew Kho Ma	5.5	0.03
- Chulabhorn - Downstream Hydro Power Plants	1.25	0.01
- Khlong Tron	2.5	0.02
- Pha Chuk	14	0.09
<b>Total Hydro small dam's capacity</b>	<b>65.73</b>	<b>0.42</b>

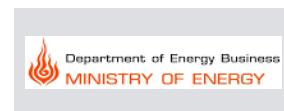
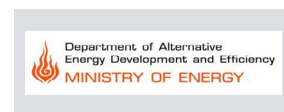
Source: <https://www.egat.co.th/home/statistics-all-egat/>

- 5. Waste to Energy:** With its increasing population and urbanization, Thailand faces a growing challenge of managing solid waste generated by households and factories across the country. The government has recognized this issue and declared solid waste problems a national agenda. As part of this effort, the government aims to increase the installed capacity of electricity generated from waste power plants (using both municipal solid waste and industrial waste) to 900 MW by 2037. Therefore, the waste-to-energy sector in Thailand is poised for further growth.

**PART B: GOVERNMENTAL AUTHORITIES**

Thailand has multiple governmental bodies with significant and important roles in the oversight, regulation, development, and promotion of renewable energy businesses. Some of the key entities include:

1. **Ministry of Energy (the “MOE”):** MOE is the primary government agency responsible for formulating and implementing energy-related policies in Thailand. It oversees the overall development and promotion of renewable energy in the country.
2. **Department of Alternative Energy Development and Efficiency (the “DEDE”):** DEDE operates under the MOE and specifically focuses on the development and promotion of alternative energy sources, including renewable energy. The DEDE is responsible for formulating policies, providing incentives, and supporting the implementation of renewable energy projects.
3. **Department of Energy Business (the “DEB”):** DEB is responsible for monitoring and supervising the trade, quality, industrial safety, environmental concerns and security of energy business.
4. **Energy Policy and Planning Office (the “EPPO”):** EPPO also operates under the MOE and is responsible for energy planning, policy analysis, and strategic development in the energy sector. It plays a role in setting targets, formulating energy plans, and coordinating with other government agencies.
5. **Energy Regulatory Commission (the “ERC”):** ERC is an independent regulatory agency established under the Energy Industry Act B.E. 2550 (2007) (the “**Energy Industry Act**”) to regulate and supervise the electricity and energy sectors in Thailand. It plays a crucial role in granting licenses, setting tariffs, and ensuring compliance with regulations for renewable energy businesses.
6. **Electricity Generating Authority of Thailand (the “EGAT”):** EGAT is a state-owned agency under the supervision of the MOE, responsible for producing and supplying electricity for the entire country. Thailand has adopted the enhanced single buyer model, where EGAT essentially holds a monopoly on high-voltage transmission and the wholesale electricity market. EGAT acts as the sole buyer of electricity from private electricity generators, except for two cases: (i) electricity generated by power plants with an installed capacity of not more than 10MW, which can be sold to either MEA or PEA; and (ii) private direct sales from small-scale facilities such as solar rooftops.
7. **Provincial Electricity Authority (the “PEA”):** PEA is a state enterprise responsible for distributing electricity in various provinces of Thailand, particularly those outside the Bangkok Metropolitan Area. It plays a key role in facilitating grid connections and power purchase agreements for renewable energy projects.
8. **Metropolitan Electricity Authority (the “MEA”):** MEA is another state enterprise responsible for electricity distribution within the Bangkok Metropolitan Area. Similar to PEA, MEA facilitates grid connections and power purchase agreements for renewable energy projects within its jurisdiction.
9. **Department of Industrial Works (the “DIW”):** DIW is responsible for regulating and overseeing industrial activities in Thailand, including those related to renewable energy. It ensures compliance with environmental regulations and permits for industries involved in renewable energy production.
10. **Provincial Energy Office (the “PEO”):** Each province in Thailand has a PEO, which serves as a local authority for energy-related matters. PEOs provide support, guidance, and coordination for renewable energy projects at the provincial level.
11. **Board of Investment (the “BOI”):** BOI is an agency under the Ministry of Industry that promotes and facilitates investment in various sectors, including renewable energy. It provides incentives and privileges to attract both foreign and domestic investors to the renewable energy industry.



## PART C: GOVERNMENTAL SUPPORT

Thailand's commitment to a sustainable energy future is evident in its comprehensive policy frameworks. The government, recognizing the paramount importance of renewable energy and energy efficiency, has instituted various strategic plans to steer the nation towards greener energy solutions. These frameworks not only establish clear targets but also ensure that the country continues on a path of responsible energy consumption and development.

In this section, we introduce three significant governmental instruments, the PDP, AEDP, and EEDP (as defined below), which collectively outline Thailand's roadmap for energy transition and sustainability.

### 1. Power Development Plan (the “PDP”)

PDP sets forth targets for renewable energy installations in Thailand. It details the country's energy strategies, including capacity additions, energy mix, and the promotion of renewable energy. Moreover, it also provides guidance on the bidding process for upcoming power ventures.

MOE regularly updates PDP to reflect the nation's evolving energy strategies. The most recent version is the PDP2018 Revision 1 (2018-2037), which aims to increase the total generating capacity of electricity in Thailand from 46,090 MW (as of December 2017) to 77,211 MW by the end of 2037.

### 2. Alternative Energy Development Plan (the “AEDP”)

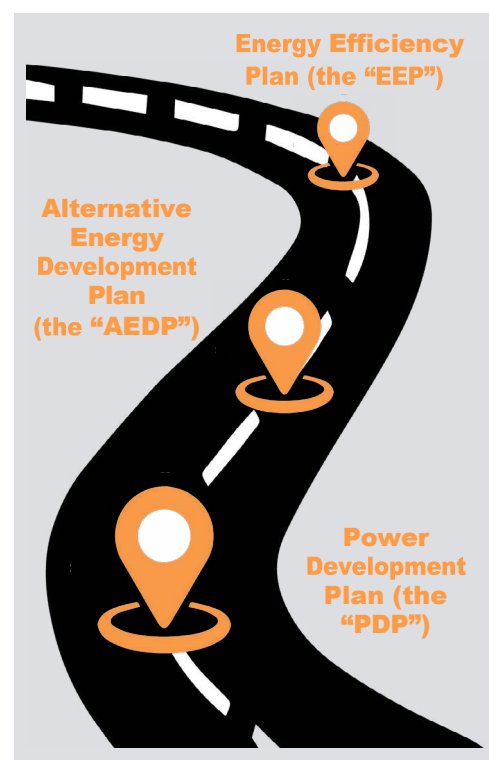
AEDP is one of Thailand's primary tools for promoting and developing renewable energy in the country. AEDP is a strategic framework setting targets for renewable energy generation capacity and outlines policies and incentives to support its implementation.

The AEDP2018 has set an ambitious goal for renewable energy consumption in Thailand to increase the percentage of renewable energy consumption (ktoe) to final energy consumption (ktoe) to 30% by 2037.

### 3. Energy Efficiency Plan (the “EEP”)

EEP is another strategic framework established by the government to promote energy efficiency and conservation across various sectors of the economy. The plan aims to reduce energy consumption, enhance energy efficiency practices, and mitigate greenhouse gas emissions.

EEP sets targets for reducing energy intensity, which is the amount of energy consumed (in ktoe) per unit of gross domestic product or GDP (in THB). These targets provide a benchmark for measuring progress and ensuring that energy efficiency improvement keep pace with economic growth. The EEP2018 (2018-2037) aims to reduce energy intensity (EI) by 30% by 2037, using 2010 as a baseline.



## PART D: INCENTIVES

Through a combination of financial, regulatory, and tax incentives, the government has laid the groundwork to significantly boost the country's renewable energy sector. Please find below the summary of the mechanisms and incentives that contribute to making Thailand an attractive landscape for renewable energy investments and developments.

1. **Feed-in Tariff Program (the “FiT”)**: The government has implemented a FiT program to incentivize renewable energy generation. Producers of renewable energy are guaranteed fixed payment rates for the electricity they generate over a specific period. FiT rates vary based on the renewable energy source.
2. **Investment Promotion**: The BOI offers incentives and privileges to attract investment in the renewable energy sector. These incentives include the following:

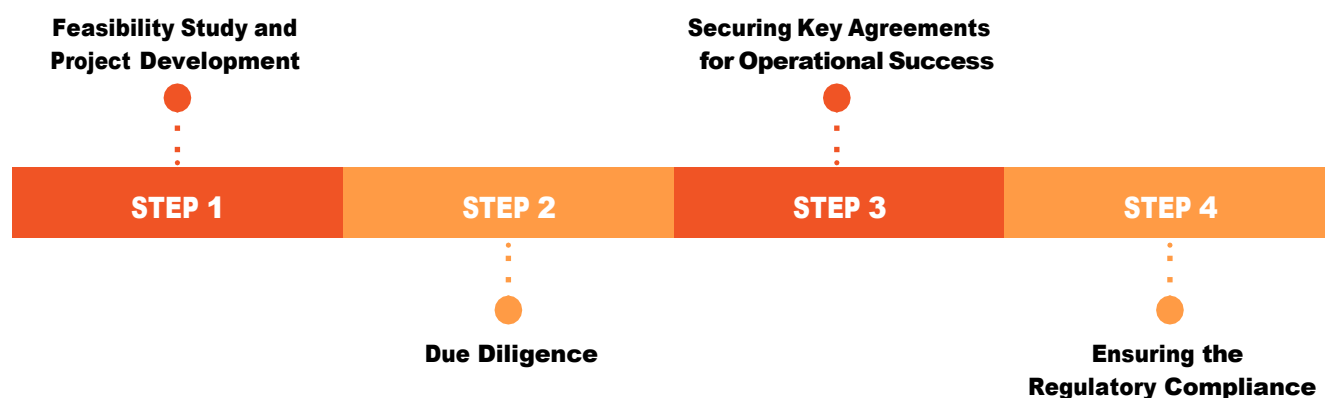


- 8-year corporate income tax exemption;
- Exemption of import duty on machinery;
- Exemption of import duty on raw materials used in products manufactured for export; and
- Other non-tax incentives such as the right to own land for the operation of the project and the right to bring in foreign experts to work.

**3. Low-Interest Loans:** Financial institutions in Thailand, in collaboration with governmental agencies, have been known to offer soft loans or loans with lower-than-market interest rates for certain renewable energy projects.

## PART E: GUIDELINES FOR INVESTMENT IN RENEWABLE ENERGY BUSINESS

Considering the growing significance of renewable energy in Thailand, the country offers immense opportunities for investors in this sector. With Thailand's clear incentives and strategic direction fostering a favorable investment environment, it is crucial to understand the roadmap for establishing a renewable energy business. Set out below is a step-by-step guide to navigating this venture in Thailand.



### **Step 1: Feasibility Study and Project Development**

Before diving into a renewable energy project in Thailand, investors must start with a comprehensive project plan. Whether starting from a 'brownfield' site or a pristine 'greenfield' location, this plan should outline the technical specifications, provide a clear financial breakdown, and assess any environmental impacts. With this foundation, it will become easier for investor to select the most suitable technology, assess costs, and forecast potential earnings.

### **Step 2: Due Diligence**

Once a project is deemed feasible, investors should engage in an exhaustive due diligence process. This process involves a detailed examination of the project, encompassing a thorough review of legal, financial, and technical documents, among other considerations. Due diligence helps in identifying potential risks, ensuring regulatory compliance, and uncovering any existing liabilities associated with the project.

### **Step 3: Securing Key Agreements for Operational Success**

After completing the feasibility study and due diligence, the next step in establishing a renewable energy venture in Thailand involves entrance into the contracts with the government and/or private entities, such as construction contractor or service provider. Here is a list of the essential agreements:

#### **1. Power Purchase Agreement (the "PPA")**

The PPA specifies the terms and conditions for selling electricity generated from the renewable energy project. It provides clarity on crucial aspects such as pricing, contract duration, and the obligations of the power producer. Typically, as Thailand's electricity market is an enhanced single buyer model where EGAT, PEA and MEA purchase all electricity from private power producers, most PPAs are entered into with EGAT, PEA or the MEA.

To achieve the goals outlined in the PDP, Thailand frequently invites bids for renewable energy projects. Governed by a Terms of Reference, also known as TOR, the competitive bidding process determines which projects will be awarded the PPA and under what conditions. The primary goals of this procedure are to ensure transparency, foster competitiveness, and maintain fairness among the bidders.



## 2. **Grid Connection Agreement**

The Grid Connection Agreement is also made with the electricity distribution authorities, namely the EGAT, the PEA, or the MEA. This agreement outlines the terms and conditions for connecting the renewable energy project to the national electricity grid. Key elements to consider within this contract include connection fees, technical criteria, ongoing maintenance responsibilities, and standards related to grid stability and reliability, as stipulated by the respective authority.

## 3. **Engineering, Procurement, and Construction Agreement (the “EPC Agreement”)**

The EPC Agreement encompasses the entire process, from designing and procuring materials to constructing the renewable energy facility or power plant. This agreement is typically entered into between a project owner and a contractor. It outlines the construction contractor's responsibilities, setting out the expected timelines, costs, and quality standards to ensure that the project adheres to the outlined plan and specifications.

## 4. **Operations & Maintenance Agreement (the “O&M Agreement”)**

Once the facility or the power plant is up and running, it needs consistent care and oversight. This contract, usually executed between a project owner and a specialized contractor, outlines the terms for the regular operation, maintenance, and potential troubleshooting of the renewable energy plant, ensuring longevity and consistent performance.

### **Step 4: Ensuring the Regulatory Compliance**

During the course of manoeuvring through the agreement processes, it is imperative for owners of renewable energy projects to simultaneously ascertain the project's adherence to Thailand's regulatory framework. A summary of the relevant key licenses and regulatory requirements is set out below.

#### 1. **Electricity Production License**

According to the Energy Industry Act, an owner of a power plant is required to have an electricity production license from the ERC prior to engaging in electricity production activities. However, an owner of a power plant with a total capacity of less than 1,000 kVA is exempted from having the electricity production license, provided that it must notify the ERC of its power plant project.

#### 2. **Factory License**

The Factory Act B.E. 2535 (1992) (as amended) requires that any business engaging in manufacturing activity, including electricity production, with a capacity exceeding 50 horsepower (approximately 37.285 kW) or having 50 workers or more, must obtain a factory license (known as form 'Ror Ngor 4') before commencing its construction.

Therefore, power plants are required to obtain the factory license from the ERC except in the following cases, which the factory license is exempted:

- An electricity production through solar rooftop photovoltaic installations with a total capacity of not exceeding 1,000 kWh;
- An electricity production from water energy from dams or reservoirs with a capacity of not exceeding 15 MW;
- An electricity production from pumped-storage hydroelectricity;
- An electricity production from bay of dams;
- An electricity production from weirs; and
- An electricity production from water delivery canals.

#### 3. **The Building Control Act**

Under the Building Control Act B.E. 2522 (1979) (as amended) (the “**Building Control Act**”), any construction of the building is required to obtain a construction permit (known as form 'Aor 1') from the competent local office of the ERC prior to initiating the construction.

Furthermore, the Building Control Act categorizes certain types of building as ‘usage-controlled building’ that requires to be inspected by the authorities after its construction completion. Power plants and related facilities fall under this category requiring post-construction inspection. Upon successful inspection, the ERC will issue a construction certificate (known as form ‘Aor 5’) to the owner/possessor of the building.

#### 4. **Environmental Impact Assessment**

The Enhancement of Conservation of National Environmental Quality Act B.E. 2535 (1992) (as amended) lists out the types of business that require a study and assessment on the environmental impact of the project as well as an approval from the Environmental Impact Assessment Expert Committee. The purpose of this study and assessment is to assess the negative and positive environmental effects on nearby environment of a potential project and establish appropriate mitigation measures for those effects. There are three main types of environmental impact studies, as follows:

- The Initial Environmental Examination (IEE);
- The Environmental Impact Assessment (EIA); and
- The Environmental Health Impact Assessment (EHIA).

The requirement for the environmental assessment studies depends on the project’s type, size, and potential impact. As such, the investor must determine which type of the study their project is subject to. Set out below is the types of electricity production businesses that require the environmental impact studies:

Type of studies	Types of electrical production businesses
<b>EIA</b>	Thermal power plant with the total capacity of 10MW or more
<b>EHIA</b>	Coal-fired power plant with the total capacity of 100MW or more
	Biomass power plant with the total capacity of 150MW or more
	Natural gas power plant with the total capacity of 3,000MW or more
	Any nuclear power plant

Other power plants that do not burn fuel are generally exempted from conducting the EIA/EHIA/IEE. However, it is still required to comply with the standards and procedures relating to environment, safety and impact on local community as imposed by the ERC. This practice is commonly known as the Code of Practice (CoP).

In addition, an owner of power plants with a capacity of at least 5MW but less than 10MW must prepare an Environmental and Safety Assessment Report (ESA) and submit to the ERC as one of the supporting documents of the application for the factory license.

#### 5. **A Controlled Energy Production**

The Energy Development and Promotion Act B.E. 2535 (1992) as well as its subordinated laws stipulate that a power plant with a capacity of 200 kVA or more is required to obtain the controlled energy production license (known as form ‘Por Kor 2’) from the ERC<sup>10</sup> prior to commencing its operation.

#### **CONCLUSION:**

Thailand’s renewable energy sector offers promising opportunities for both domestic and foreign investors. The government’s commitment to sustainable energy development, along with supportive policies and investment incentives, create a favorable investment climate. By harnessing Thailand’s solar, wind, biomass, and energy storage potential, investors can contribute to the country’s sustainable energy transition while reaping the economic benefits of renewable energy projects.

<sup>10</sup> For a power plant with a capacity of at least 1,000 kVA, the owner must apply for the controlled energy production license with the ERC. For a power plant with a capacity of at least 200 kVA but less than 1,000 kVA, the owner must apply for the controlled energy production license with the DEDE.

# CHAPTER

# 11

## Digital Asset and Tech Start-Up Fundraising

**Authors:** Ekachai Chotpitayasunon, Teerachai Boonyaratgalin and Thamonwan Koosuwan

### OVERVIEW

The increasing number of the world population causes the rapid change from the industrial era to the technology era. The internet has a huge impact to connect people in each country and lead to the knowledge sharing and enlighten the countless opportunity to the societies, including Thailand. Thai government foreseen the opportunity and issue the “Thailand 4.0” which is the economic model to emphasis on the agriculture and industry, by aiming to bring balance to the country and run away from the concept of middle income and inequality. One of the tools to achieve the plan is to incubate entrepreneurs and develop networks of an innovation to drive enterprise for the distribution of occupation across nationwide. Thus, Thai government aims to help life easier with the public facilitation from the government for the people by distribute the high-speed internet, which it leads to the fast expansion of the technology such as cloud computing blockchain, metaverse, AI, big data, and open platform SaaS or PaaS to encourage programmer and developer in order to create the collaborative project. Such collaborative works cause the growth of technology over recent years and make the technology disruption in vary fields such as Fintech, HealthTech, Edtech, Foodtech, E-Commerce and Marketplace.

The rapid change of technological advance and emerging of COVID-19 increased the online shopping that was responded by the Fintech and E-Commerce industry as a marketplace that leads to the high development in the logistics industry and e-payment system. Since the advance tech is developing aggressively so Thai government needs to catch up by establishing the Digital Economy Promotion Agency (DEPA) under the Ministry of Science and Technology, to control and monitoring, and support the business sectors.

When the popularity of technology market reaches to the peak, it lures both developers and investors to participate in the market and causes a fund raising in the business development side to raise fund for each project. That led to the new generation of the young entrepreneur as a startup, which are also supported by the Thai government by amending and proposing several legislations to promote the growth of startups and SMEs and increase the flexibility for investment in private company.

Because the SMEs and startup companies are new in the market but cause the big cash flow so the Securities and Exchange Commission of Thailand (the “**SEC**”) comes in the game to regulate the certain fund raising. In addition, the digital asset and virtual currency play an importance role in the Fintech industrial.

### 1. E-COMMERCE

#### 1.1. OVERVIEW

Nowadays, there are a large number of Electronic Commerce or E-Commerce business operators with a variety of characteristics and types of businesses. Operating E-Commerce businesses lead to trading expansion which materially affects the economic system and society.

Therefore, An E-Commerce business operator shall concerns relevant laws and regulations for operating its business as follows:

1) Civil and Commercial Code

- Provisions which generally applied in all cases to regulate and protect customers and business operators, unless otherwise specified by other applicable law.

2) Electronic Transactions Act B.E. 2544 (2001)

- Regulated by Electronic Transactions Development Agency (ETDA)
- Provisions to (1) support electronic data/ transactions; (2) protect customers from using E-Commerce platform by regulating business operations related to such electronic data/transactions; and (3) create standards for E-Commerce business operators to provide reliable and secure services through electronic methods.

3) Direct Sale and Direct Marketing Act B.E. 2545 (2002)

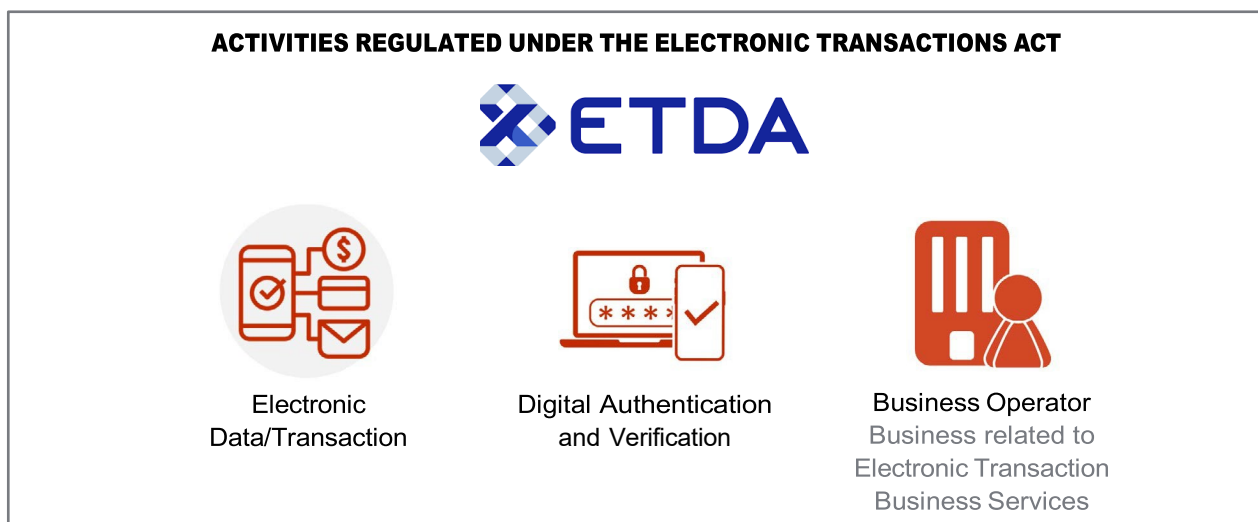
- Regulated by Office of the Consumer Protection Board (OCPB)
- Provisions to (1) encourage reliable and secure purchases of goods and services through both electronic and non-electronic methods; (2) protect consumers who have received services from direct sales and direct marketing business operators; (3) create standards for direct sales and direct marketing business operators to provide reliable and secure services for presenting goods or services to consumers.

## 1.2. ELECTRONIC TRANSACTIONS ACT B.E. 2544 (2001)

### OBJECTIVES

Electronic Transactions Act B.E. 2544 (2001) (the “**Electronic Transactions Act**”) was enacted due to the difference between electronic transactions and traditional legal support transactions, including to protect customers from business operations that provide services related to electronic data/transactions and to create standards for any business operators to provide reliable and secure services through electronic methods.

### KEY LEGISLATION



- Any business operators who operate business related to electronic data/transaction (including E-Commerce business operator), unless the law specified otherwise, must comply with the Electronic Transactions Act as follows:

Regulation	Punishment
<b>Electronic Data/ Transactions</b> <ul style="list-style-type: none"> <li>Electronic data/transaction is legitimate enforceable equivalent to the traditional legal support data/transactions made by non-electronic means; however, under the criteria prescribed by law.</li> <li>Authentication and verification can be through the digital system; however, under the criteria prescribed by law.</li> </ul>	<ul style="list-style-type: none"> <li>-</li> <li>-</li> </ul>
<b>Electronic Transaction Business Services</b> <ul style="list-style-type: none"> <li>The business operators of the specified electronic transaction business services under the Electronic Transactions Act shall have given notice, or registered, or acquired license from ETDA prior operating such business. The notification, registration, or obtaining a license for each type of business services will be determined by issuing a Royal Decree</li> <li>Currently, there is only one Royal Decree, namely the Royal Decree on the Operation of Digital Platform Services subject to Prior Notification B.E. 2565 (2022) enacted under the Electronic Transactions Act Clause 32. Under this Royal Decree, a Platform Service Business Operator shall notify the ETDA prior to the commencement of such businesses.</li> <li>Royal Decree on the Supervision of Regulated Digital Identification Authentication and Verification Service Businesses B.E. 2565 (2022) enacted under the Electronic Transactions Act Clause 34/4. Under this Royal Decree, the service business related to digital authentication and verification systems (the Digital ID Service), including identity proofing service, authenticator management service, authentication service, and digital identity exchange service shall obtain a license from ETDA before operating the business.</li> </ul>	<ul style="list-style-type: none"> <li>Any person who operates a service business relating to electronic transactions without notifying the ETDA shall be liable to imprisonment for a term not exceeding one year, or a fine not exceeding 100,000 THB, or both.</li> <li>Any person who operates a service business relating to digital authentication and verification systems without obtaining a license from ETDA shall be liable to imprisonment for a term not exceeding three years, or a fine not exceeding 300,000 THB, or both.</li> </ul>

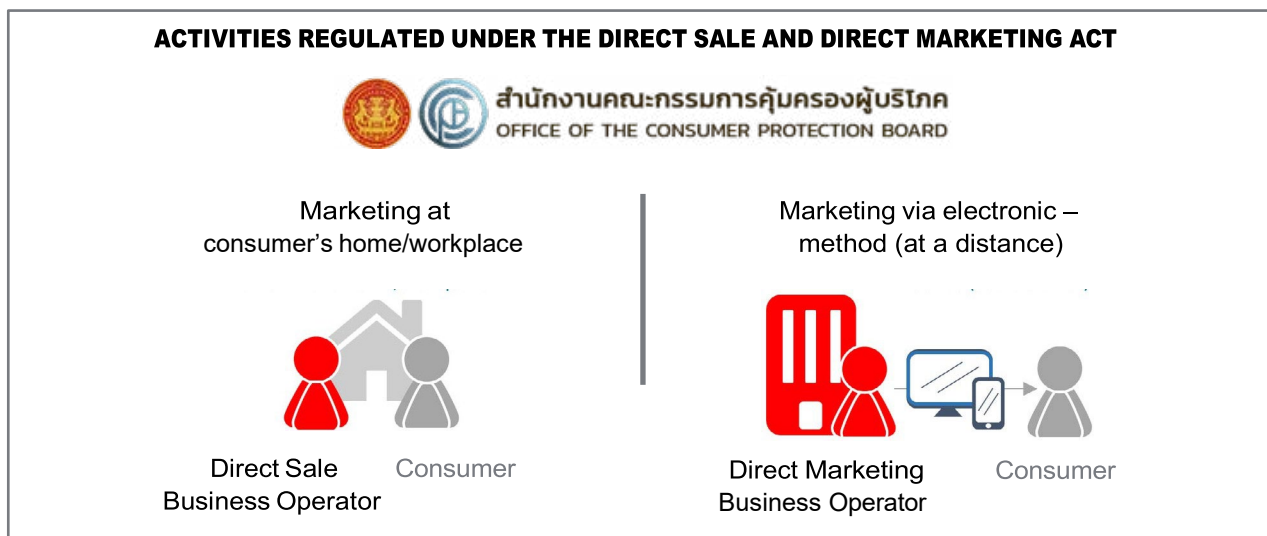
### 1.3. DIRECT SALE AND DIRECT MARKETING ACT B.E. 2545 (2002)

#### OBJECTIVES

E-Commerce allows entrepreneurs to reach more targets, reduce marketing costs, and be accessible at all times. This encourages some business operators to market by offering goods or services directly to consumers through electronic media, aiming customers to reply to buy products or services; however, such products or services may not match the advertised claims. For example, misleading representation of goods or services conveyed through false or fraudulent claims by E-Commerce business operators.

Therefore, marketing goods or services through direct marketing may cause disadvantages and unfairness to the general public as consumers, together with inadequate protection by law. The government thus issued the Direct Sale and Direct Marketing Act B.E. 2545 (2002) (the “**Direct Sale and Direct Marketing Act**”) to protect consumers and to create standards for providing reliable and secure services for presenting goods or services to consumers.

#### KEY LEGISLATION



- Most E-Commerce businesses shall be considered direct marketing businesses that sell products or render services directly to the consumer at a distance through a digital platform upon such business meets other criteria or conditions as specified by the law.
- The sales of goods or rendering of services which are required to comply with the Direct Sale and Direct Marketing Act, are as follows:

Regulated Business	Legal Obligations	Punishment
<ul style="list-style-type: none"><li><b>Direct Sales Business Operator</b><ul style="list-style-type: none"><li>Directly marketing to the consumer at his/her home or workplace, including acting through representative or independent distributors.</li></ul></li></ul>	<ul style="list-style-type: none"><li>Shall register with the Office of the Consumer Protection Board (OCPB) under the Direct Sale and Direct Marketing Act.</li></ul>	<ul style="list-style-type: none"><li>Imprisonment for a term of not exceeding one year, or to a fine not exceeding 100,000 THB, or to both; and</li><li>Additional fine at a daily rate not exceeding 10,000 THB throughout the time of the violation.</li></ul>
<ul style="list-style-type: none"><li><b>Direct Marketing Business Operator</b><ul style="list-style-type: none"><li>Directly marketing to the consumer at a distance and expecting such consumer to purchase the goods or services</li></ul></li></ul>	<ul style="list-style-type: none"><li>Shall provide advertisement that comply with consumer protection law.</li></ul>	<ul style="list-style-type: none"><li>Subject to penalties under the Consumer Protection Act B.E. 2522 (1979) (as amended).</li></ul>

- The sale of goods or rendering of services by means of electronic commerce that is **not considered direct marketing**, which does not have to comply with the Direct Sale and Direct Marketing Act, are as follows<sup>5</sup>:

<sup>5</sup> The Ministerial Regulation Prescribing the Sale of Goods or Services by Means of Electronic Commerce that is not Considered a Direct Marketing B.E. 2561 (2018).



Sale of Goods / Services by Means of Electronic Commerce	Exemption Conditions
<ul style="list-style-type: none"> <li>▪ Sale of goods or services by individual</li> </ul>	<ul style="list-style-type: none"> <li>▪ Not registered as direct marketing business operators; and</li> <li>▪ Having income from selling products or services by means of electronic commerce not exceeding THB 1.8 million per year.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Sale of goods or services by SMEs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Registered under the Small and Medium Enterprises Promotion Act B.E. 2543 (2000).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Sale of goods or services of community enterprises and community enterprise networks</li> </ul>	<ul style="list-style-type: none"> <li>▪ Registered under the Community Enterprise Promotion Act B.E. 2548 (2005).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Sale of goods or services of cooperatives and farmers' groups</li> </ul>	<ul style="list-style-type: none"> <li>▪ Registered under the Cooperatives Act B.E. 2542 (1999).</li> </ul>

## 2. PAYMENT SYSTEM AND SERVICE

### 2.1. OVERVIEW

With the arising of e-commerce and the increasing number of people embracing online transactions and mobile payments, many new entrepreneurs are now interested to enter into market of payment businesses.

#### REGULATORY LANDSCAPE AND RELEVANT SUPERVISING AUTHORITY

With the aim to maintain a secure and efficient payment ecosystem while protecting the interests of consumers and the stability of the financial system, the Payment Systems Act B.E. 2560 (2017) ("**Payment System Act**") empowers the Ministry of Finance and the Bank of Thailand ("BOT") to be the main authorities in regulating and supervising of payment businesses.

#### TYPES OF REGULATED BUSINESS

Under the Payment System Act, regulated payment businesses are classifiable into (i) designated payment system businesses and (ii) designated payment service businesses (collectively, "**Designated Payment Businesses**").

The operator of Designated Payment Businesses must obtain a license from the BOT before operating the business. Designated Payment Business can be categorized as follows:

Designated Payment Businesses	License/Permission Type
Designated Payment System Business	Inter-institution fund transfer system
	Payment card network
	Settlement system

Designated Payment Businesses	License/Permission Type
Designated Payment Service Business	Credit card, debit card, or ATM card services
	Electronic money service
	Service of receiving electronic payment for and on behalf of sellers, service providers, or creditors, which is separated into acquiring service, payment facilitating service, and receiving payment on behalf of others service.
	Service of transferring money by electronic means
	Other provisions of the payment services which may affect the financial system or public interest.

### QUALIFICATION AND LICENSE REQUIREMENTS

An applicant of the Designated Payment Business license must meet the qualifications and requirements specified under the BOT's notifications. The licensing process involves submitting an application, which includes detailed information about the business, its shareholders, directors, and key executives, as well as documentation demonstrating compliance with financial and operational requirements.

The BOT's notifications further specify the requirements for different types of payment services. These requirements may include minimum capital requirements, technology infrastructure standards, risk management systems, and measures for anti-money laundering and counter-terrorism financing. Applicants must demonstrate compliance with these requirements and provide evidence of sound financial standing, reputation, and relevant experience.

Overall, obtaining licenses for payment services in Thailand involves a comprehensive application process, compliance with the Payment Systems Act, and adherence to the specific requirements outlined by the BOT's notifications.

## **3. DIGITAL ASSET**

### **3.1. OVERVIEW**

Centralization revolved around us before Blockchain technology took over in the public and private sectors, in which the central agency (intermediary) can control the various features, including transparency and fees. For example, social media such as Facebook, YouTube, and Instagram; financial sector such as banks; regulatory bodies such as regulators and government agencies. However, Blockchain technology has disrupted the centralized system by maintaining a decentralized record for real-time transactions, having traceability of data shared across a business network, and eliminating intermediaries.

Regarding its transparent, immutability, and decentralization (without the need for a centralized exchange), also delivering cost savings, a large number of business operators use Blockchain technology to create digital assets as a tool for fundraising and seeking profit from investors (the "**Issuers**"). As a result, there was an intermediary who seek to gain profit from providing services to such Issuers (the "**Digital Asset Business Operator**").

### **3.2. EMERGENCY DECREE ON DIGITAL ASSET BUSINESSES B.E. 2561**

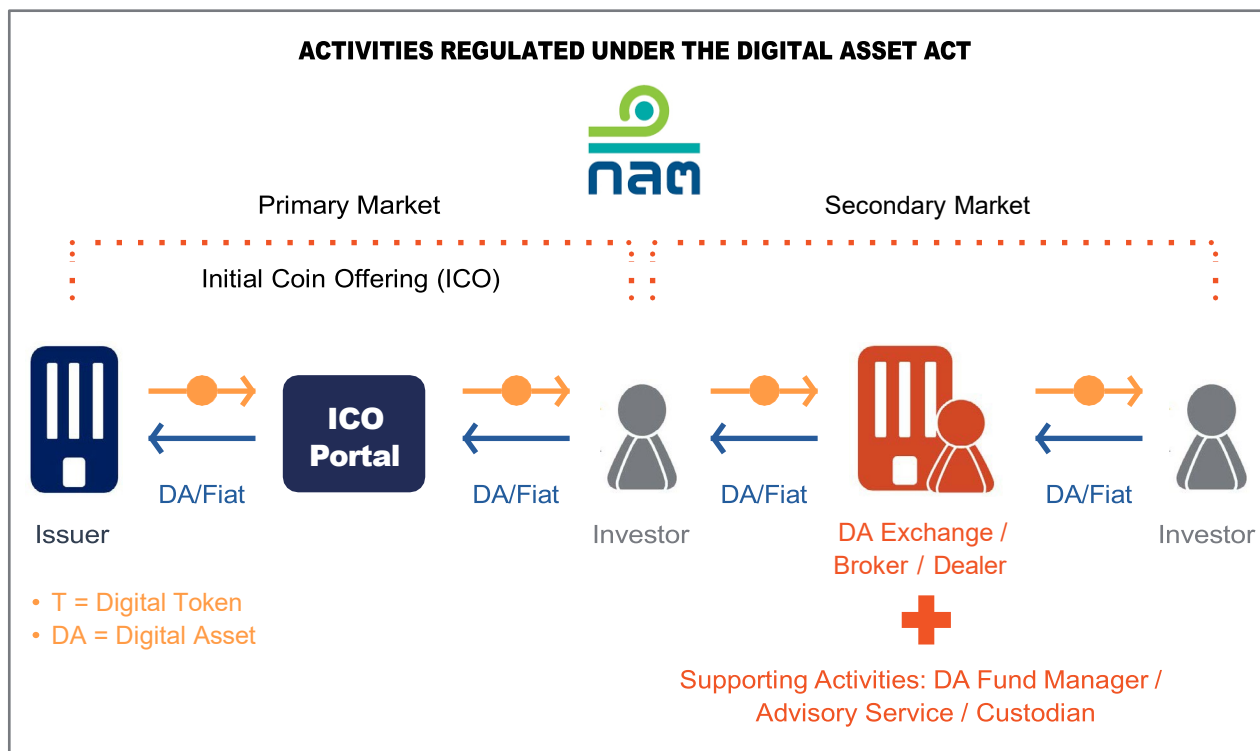
#### OBJECTIVES

Presently in Thailand, there is no adequate regulatory laws governing the usage of digital asset ("**DA**") as a fund-raising instrument and medium of exchange. Such activities potentially affect national financial stability, the economic system, and the general public. Thus, the Emergency Decree on Digital Asset Businesses B.E. 2561 (as amended) (the "**Emergency Decree**") was enacted to regulate the offering of DAs of the Issuers and the activities of the Digital Asset Business Operator and service provider for issuing such DAs, unless the law specified otherwise.

## REGULATOR

The Securities and Exchange Commission (the “**SEC**”) regulates businesses and activities as follows:

Regulated Business / Activity	Regulation	Penalty
<b>DA Business</b> <ul style="list-style-type: none"> <li>DA Exchange</li> <li>DA Broker</li> <li>DA Dealer</li> <li>DA Fund Manager</li> <li>DA Advisory Service</li> <li>DA Custodian</li> </ul>	<ul style="list-style-type: none"> <li>Must obtain an approval from the SEC before operating the business.</li> </ul>	<ul style="list-style-type: none"> <li>Any person who operates a Digital Asset Business without obtaining an approval from the SEC shall be liable to imprisonment for 2 – 5 years, or a fine from 200,000 THB – 500,000 THB, or both, and to additional fine at a daily rate not exceeding 10,000 THB throughout the time of the violation.</li> </ul>
<b>DA Issuer</b> <ul style="list-style-type: none"> <li>A limited company or public limited company that issues and offers to sell digital token.</li> </ul>	<ul style="list-style-type: none"> <li>Must offering through ICO Portal (part of the SEC consideration for giving permission)</li> <li>Must obtain permission from the SEC if offering digital tokens (unless exempted by law) for sale to the public (initial coin offering: ICO)</li> <li>Shall comply with relevant regulations under the Digital Asset Act.</li> </ul>	<ul style="list-style-type: none"> <li>Digital Token Issuers who issues and sells digital token (unless otherwise required by law) without obtaining permission from the SEC shall be liable to imprisonment for a term of not exceeding two (2) years, or to a fine not exceeding 2 times of the digital token's offering price; however, the fine must not less than 500,000 THB, or to both.</li> </ul>
<b>Digital Token Portal Service Provider (ICO Portal)</b> <ul style="list-style-type: none"> <li>A provider for an offering of newly issued digital tokens under the SEC's supervision.</li> <li>Screening the digital token's characteristics, the issuer's qualifications, and the completeness and accuracy of registration statement and draft prospectus.</li> </ul>	<ul style="list-style-type: none"> <li>Must obtain approval from the SEC.</li> <li>Shall comply with relevant regulations under the Digital Asset Act.</li> </ul>	<ul style="list-style-type: none"> <li>ICO Portal, which does not obtain approval from the SEC, will be considered the supporter of the Issuer who issues tokens without obtaining permission from the SEC.</li> </ul>



#### TYPES OF DIGITAL ASSET

- Under the Emergency Decree, DAs are categorized as follows:

Digital Asset	Description
Cryptocurrency	An electronic data unit built on an electronic system or network as a medium of: <ul style="list-style-type: none"> <li>exchange for the acquisition of goods, services, or other rights ; and</li> <li>exchange between digital assets.</li> </ul>
Digital Token	An electronic data unit built on an electronic system or network which can be classified as follows: <ul style="list-style-type: none"> <li>Investment Token</li> <li>Ready-to-use Utility Token</li> <li>Non Ready-to-use Utility Token</li> </ul>
Any other electronic data	Any other electronic data prescribed under the Digital Asset Act.

## **4. STARTUP**

### **4.1. STARTUP**

Recently, many new startups emerged in the Thai business industry with each own unique idea to adapt new technology, digital solution, and/ or disruptive idea to address market gaps or create new opportunities in the current Thai business market.

Startups can span to various industries depending on business scope and purpose e.g., technology, e-commerce, Fintech, Healthtech, Edtech, Foodtech, etc.

#### 4.1.1. LEGAL REQUIREMENT

As generally required for the establishment and operation of any legal entity in Thailand, there are several general laws that a startup business must ensure to comply with in order to lawfully operate its business in Thailand. For example, the Thai Civil and Commercial Code (“**TCCC**”); laws on corporate income tax; labor law; and intellectual property law

Notwithstanding the above, startup businesses may have specific legal requirements that can be different from each other, depending on each business operation and activity.

#### 4.1.2. INCENTIVES

The government has implemented several laws and initiatives to provide incentives and promote the growth and development of startups. One of the interesting promotions was on capital gain tax exemption which was mainly provided in the Royal Decree no. 750 (B.E. 2565) (“**Royal Decree**”) issued by the Revenue Code. This Royal Decree aims to promote tax exemption on capital gains tax from investment in startups for the investors. However, there are several criteria required to be met.

Startups must engage in the target activities supported by the relevant government agencies as prescribed by the Committee on Policy for National Competitive Enhancement for targeted industries, i.e., Digital Economy Promotion Agency (DEPA), National Science and Technology Development Agency (NSTDA), and the National Innovation Agency (NIA). Provided that the startup must also register and apply for the certification with the aforementioned government agencies.

Under the Royal Decree, the investor of startup enterprises can enjoy tax benefits as follows:

- A person or a corporate entity registered either in Thailand or abroad can qualify for income tax exemptions on profits derived from the sale of shares in a startup, on the condition that the startup operates within the targeted industries and generates a minimum of 80% of its total revenue from the designated activities for two consecutive accounting periods prior to the share transfer.
- Nonetheless, for venture capital (VC), corporate venture capital (CVC), or private equity trust (PE Trust), including shareholders of corporate venture capital or unitholders of private equity trust (“**Indirect Investor**”) that invests in startups, its tax benefits could be summarized to as follows:

##### (a) **Tax benefits for CVC and PE Trust:**

The CVC funds will be eligible for corporate income tax exemptions on the profits obtained from the transfer of shares in a startup, given that the startup generates a minimum of 80% of its income from the target activities in each accounting period for two consecutive accounting periods before the share transfer.

##### (b) **Tax benefits for Indirect Investor:**

###### (i) Gains from share transfers

Shareholders of CVC funds and unitholders of PE Trusts will receive personal or corporate income tax exemptions in proportion to their investments when selling shares in CVC funds and PE Trusts. To qualify for this exemption, the startups in which the funds and trusts have invested must earn at least 80% of their income from the target activities in each accounting period for two consecutive accounting periods before the share transfer.

###### (ii) Gains from fund or trust dissolution

Shareholders of CVC funds and unitholders of PE Trusts will also benefit from tax exemptions on gains derived from the dissolution of the funds and trusts. The exemption amount will be determined based on the proportion of retained earnings received from the target activities of the startups. To be eligible for this exemption, the startups must earn at least 80% of their income from the target activities in each accounting period for two consecutive accounting periods before the dissolution.

## 4.2. SMEs

Startups, by their nature and business characteristics, can also be considered as SMEs under the Ministerial Regulations on the Designation of the Characteristics of Small and Medium Enterprises Promotion Act B.E. 2562 (2019) and Announcement of the Office of Small and Medium Enterprises Promotion Re: Designation of Characteristics of Micro Enterprise which classified the MSMEs into three categories, depending on the number of employees and its annual revenue, as follows:

Business	Small-sized Enterprises				3. Medium-sized Enterprises	
	1. Micro-sized		2. Small-sized			
	Employment	Revenue	Employment	Revenue	Employment	Revenue
Product manufacturer	> 5	> 1.8 million	> 50	> 100 million	> 200	> 500 million
Service providers, wholesalers, or retailers	> 5	> 1.8 million	> 30	> 50 million	> 100	> 300 million

In the event that the number of employments classifies an enterprise into a type of enterprise, but the revenue classifies such enterprise into another type, the revenue shall be used to determine which type of enterprise.

SMEs in Thailand are eligible for benefits and incentives such as:

- Business opportunities:
  - The SMEs that are registered with the Office of Small and Medium Enterprises Promotion (“**OSMEP**”) are eligible to receive supportive campaigns and promotional measures from the OSMEP and other institutions and governmental agencies. One of the supportive campaigns from OSMEP is the Thai SME-GP campaign, a campaign that aims to promote and increase business opportunities for SMEs in access to governmental procurement.
- Tax benefits:
  - Reduced corporate income tax rate, depending on the level of paid-up capital and annual income of the SME.
  - Additional tax deductions for specific expenses related to research and development (R&D) activities, employee training, and contributions to certain approved funds.
  - SMEs that invest in promoted industries or designated areas may qualify for investment promotion incentives under the BOI promotion, such as tax holidays, reduced corporate income tax rates, or exemption from import duties on machinery and raw materials.

### 4.2.1. FUNDRAISING

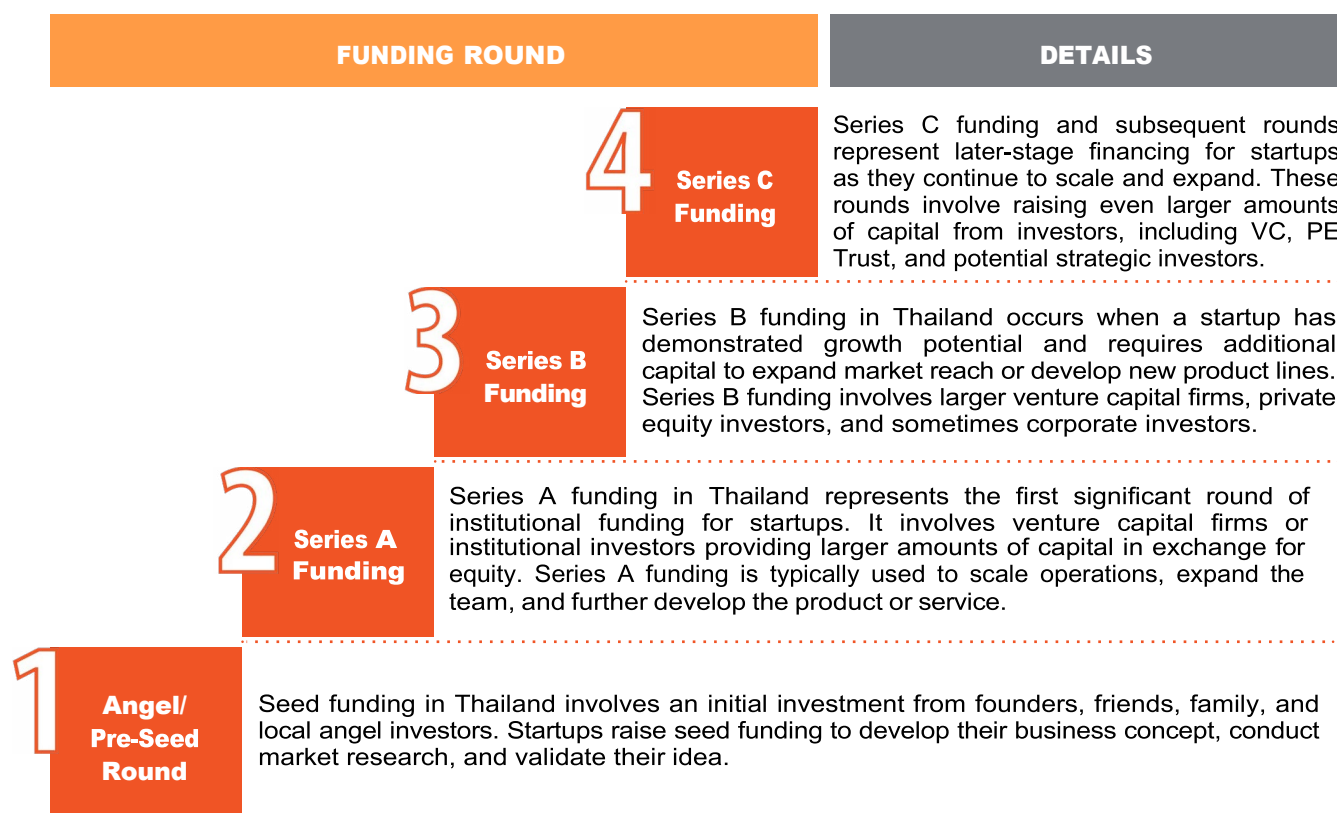
As startups and SMEs may require funds to scale their operations, expand their product or service offerings, reach a larger customer base, and invest in product development, marketing, hiring talent, expanding infrastructure, and other growth initiatives. This includes investing in marketing, sales, technology infrastructure, hiring additional personnel, and especially in the research and development stage. Thus, to expand and expedite the growth of the business, one of the common sharing characteristics of startup enterprises and SMEs is the need for funds.

#### Why not take loans from a financial institution?

As startups and SMEs are typically small-sized ventures with limited resources and assets, startups and SMEs may find it difficult to take loans from financial institutions as they typically require collateral to mitigate the borrower's risk of default. Also, taking loans from financial institutions also incur interest burdens on the business. Thus, seeking funds from other sources than financial institutions, such as raising funds from public



investors through equity investment or other investment instruments, seems to be a more feasible option for startups and SMEs. Generally, fundraising rounds are typically categorized as follows:



As most startups and SMEs are limited companies, their public fundraising activities are subject to several legal limitations and pre-requisite requirements under the securities laws and laws concerning public fundraising i.e., the offering shall not be made to the general public or at large scale, unless it is exempted or complied with the SEC's rules.

In order to promote the opportunity in access to public funds and to expedite the growth of startups and SME businesses. The SEC provides more flexibility in fundraising regulations by reducing legal requirements and burdens for startups and SMEs to raise funds from the public, as follows:

# 1. PP-SME

The SMEs that are registered with OSMEP are eligible to offer newly issued shares or convertible debentures ("CD"). However, due to the significant risks associated with investing in SMEs and startup companies, only investors who meet the criteria set by the SEC are eligible to invest in the PP-SME scheme. These eligible investors include Institutional Investor, Private Equity (PE), Venture Capital (VC), angle investors, not more than specific person, etc. The limitation on the offering amount can be summarized as follows:

Type of Investor	Offering Amount	Number of Investor
(1) Institutional Investor, as well as PE, VC, and angel investors.	No limit	No limit
(2) ESOP or subsidiary companies <sup>6</sup> .	No limit	No limit
(3) Other investors than (1) and (2) above e.g., PP 10 <sup>7</sup>	Not exceeding THB 50 Million	Not exceeding 10 investors

<sup>6</sup> Directors and employees of the company and subsidiary companies, including special purpose vehicles (SPV) established to hold shares on behalf of directors and employees for share allocation purposes.

<sup>7</sup> Offering of shares to not more than 10 specific persons by way of private placement and the total offering value shall not more than THB 50 Million.

Nonetheless, only medium-sized enterprises or large-sized enterprises can only offer their shares or CD to the above (3) investors. While for small-sized enterprises, can only offer their shares to (1) and (2) investors.

The issuer company also requires to submit a factsheet summarizing information about the nature of the business, associated risks, and key relevant data. This factsheet serves as information for investors to consider before making an investment.

In the case of offering convertible debt (CD), the business must register the transfer restrictions for each CD offering with the SEC. After the completion of the offering period, the business is required to report the results of the securities sales to the SEC within 15 days from the closing date of the offering. Additionally, the business must report the results of the exercise of CD conversion rights to the SEC within 15 days from the date of exercise.

## **2. PO-SME and LiVE Exchange**

Apart from PE-SME, in order to enhance and promote the growth of startups and SMEs in Thailand, the SEC recently promoted alternative way of fundraising method for SMEs and startup through the Public Offering-SME (the “**PO-SME**”). The PO-SME allows SMEs and startups to list their share on a newly established public market for stock trading, namely, LiVE Exchange.

To qualify for a PO-SME, companies must be registered as a public limited company, have a minimum of 15 shareholders, and must not be an investment company. Despite it is one way of public offering, PO-SME offerings are specifically aimed at qualified investors which include institutional investors, high-net-worth individuals, and other investor categories as specified under the SEC’s notifications. The total value of the offering must meet a minimum of 10 million THB and not exceeding 500 million THB.

The target investors also limit to institutional investors, VC, PE, and related persons of the company (e.g., director, employee, major shareholder, and affiliate and subsidiary), high net worth investors, etc.

While the SEC approval is not required for a PO-SME, there are certain requirements require to fulfill e.g., information disclosure requirements, requirement to submit relevant information and documents through the designated filing system. The financial statement of the company must also need to meet the audit standards and audited by the SEC’s approved list of auditors.

In addition to the above, as the process of going through PO-SME require SMEs and startup to set up and develop its company’s corporate governance, financial reporting, and investor relations strategies. PO-SME can be a crucial stepping stone for SMEs and startups to pursue listing on the Stock Exchange of Thailand (SET) or the Market for Alternative Investment (MAI) which have more stringent listing requirements.

# CHAPTER

# 12

## Personal Data Protection

**Authors:** Thanyaluck Thongrompo and Natthamol Dechpokked

### 1. Introduction

Personal Data Protection Act, B.E. 2562 (2019) (the “**PDPA**”) is Thailand’s first consolidated law that governs personal data protection. The PDPA was published in the Thai Government Gazette on May 28, 2019 and became fully effective on June 1, 2022. The PDPA aims to guarantee protection for individuals or data subjects and their personal data and impose obligations on people or organizations that collect, use, and disclose (collectively, “**data processing**”) personal data.

The PDPA applies to data processing carried out by organizations in Thailand and organizations outside Thailand that offer goods and services to or monitor the behavior of individuals in Thailand. However, the PDPA does not apply to the following cases:

- 1) data processing of individuals for personal or household activities;
- 2) data processing of government agencies that have a duty to safeguard state security, including fiscal security or public security, and duties relating to anti-money laundering, forensic science, or cyber security;
- 3) data processing for journalism, artwork, or literary work according to the professional code of conduct or for the public interest;
- 4) data processing of the House Representatives, the Senate, and the Parliament, including the commissions appointed by these bodies, for making deliberations under their duties and powers;
- 5) data processing of courts’ consideration and officers’ performance in legal proceedings, legal execution, and deposits of property, including the criminal juridical procedures; or
- 6) data processing of the National Credit Bureau Company Limited and its members under the law on credit information business operations.

### 2. Key terms under the PDPA

The following key terms relating to the PDPA and the terms defined in the PDPA apply in this document:

- 1) “**Personal Data**” means any information relating to an identified or identifiable natural person, excluding information of deceased persons;
- 2) “**Sensitive Data**” means the personal data stipulated under Section 26 of the PDPA or any personal data about racial, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behavior, criminal records, health data, disability, trade union information, genetic data, biometric data, or of any data which may affect the data subject in the same manner as prescribed by the Personal Data Protection Committee;
- 3) “**Data Processing**” means collecting, using, or disclosing Personal Data;
- 4) “**DPA**” means a data processing agreement between a Controller and a Processor; and
- 5) “**PDPC**” means the Personal Data Protection Committee.

### 3. Key Players under the PDPA

- 1) Data subject is a natural person for whom a Controller processes their Personal Data.
- 2) Controller is a person or a juristic person who has the power to make decisions regarding data processing.
- 3) Processor is a person or a juristic person who processes personal data according to the instructions of the Controller.
- 4) Data Protection Officer ("**DPO**") is a person or a group of persons who acts as an intermediary between the Controller or Processor and the PDPC and the Controller or Processor and the data subjects. The DPO is responsible for monitoring the PDPA compliance of the Controller or Processor.
- 5) Representative is a person appointed by the Controller or Processor based outside Thailand. A representative is responsible for processing Personal Data on behalf of the Controller or Processor and keeping a Record of Processing Activities ("**ROPA**").
- 6) PDPC is the supervisory authority responsible for monitoring compliance with the PDPA and issuing notification or regulation under the PDPA.

### 4. Lawful Basis of Data Processing

In processing Personal Data, a Controller or Processor must rely on a lawful basis under the PDPA to process the Personal Data lawfully. It is safe to say that the PDPA classifies Personal Data into (i) general personal data and (ii) sensitive data (personal data stipulated under Section 26 of the PDPA). Different categories of Personal Data rely on different lawful basis, which can be summarized as follows.

#### 1) General Personal Data

- a. consent;
- b. contract;
- c. legal obligation;
- d. legitimate interest;
- e. public task;
- f. vital interests;
- g. archives for public interests, or research, or statistics.

#### 2) Sensitive Data

- a. consent;
- b. legal obligations for purposes relating to preventive medicine, public health, labor protection, scientific, historical, or statistic research, or public interests;
- c. legal claims or judicial acts;
- d. vital interests;
- e. legitimate activities by non-profit organizations;
- f. made public by the data subjects.

### 5. Data Subject Rights

Data subjects may request a Controller to exercise the following rights under the PDPA, subject to certain conditions:

- 1) Right to withdraw consent;
- 2) Right to access;
- 3) Right to data portability;
- 4) Right to object;
- 5) Right to data erasure;

- 6) Right to restriction of use; and
- 7) Right to rectification.

## 6. Duties of a Controller

The key duties of a Controller under the PDPA are as follows.

### 1) Notifying the data subjects on data processing

A Controller must notify the data subjects of required data processing details before or at the time of data collection. If a Controller indirectly collects Personal Data from the data subjects, a Controller must notify the data subjects of the required data processing details within 30 days from the date of collection and obtain consent.

### 2) Obtaining consent from data subjects

A Controller must obtain consent from data subjects before or at the time of collecting personal data. Data subjects must be informed of the purposes and details of data processing, and their consent must be provided through clear affirmative action. However, not all data processing activities require consent. Consent is specifically needed in certain cases, such as when processing sensitive data where no other lawful basis applies, or when conducting direct marketing. For a consent request to be valid, it must comply with the criteria outlined in Section 19 of the PDPA and the PDPC Guidelines on Requesting Consent from Data Subjects under the PDPA.

### 3) Implementing appropriate security measures

A Controller must implement appropriate security measures to prevent the unauthorized or unlawful loss, access to, use, alteration, correction, or disclosure of Personal Data. The security measures must meet the minimum standards according to the PDPC Notification re: Security Measures, B.E. 2565 (2022) (the “**Security Measures Notification**”). Under the Security Measures Notification, the security measures must contain organizational, technical, and physical measures – which must cover the three aspects of data protection: confidentiality, integrity, and availability. A Controller must review the security measures when necessary, when there is a technology change, or when a data breach occurs.

### 4) Notifying the PDPC and data subjects of the data breach

In case of a data breach and a Controller is reported of the data breach, the Controller must take the following actions:

- a. assess the credibility of the information, investigate the data breach incident, and assess the risk level;
- b. prevent, cease, and rectify the data breach if the data breach poses a high risk to the rights and freedom of relevant data subjects;
- c. notify the PDPC of the data breach within 72 hours from the time that the Controller becomes aware of the data breach except where the data breach does not pose a risk to the rights and freedom of relevant data subjects;
- d. notify data subjects of the data breach and the remedial measures without undue delay if the data breach poses a high risk to the rights and freedom of relevant data subjects; and
- e. take necessary and appropriate measures to suspend, respond, remedy, or recover from the data breach incidents as well as prevent and mitigate the impact of similar data breaches in the future.

The notification on personal data breach must be according to the PDPC Notification re: Personal Data Breach Notification, B.E. 2565 (2022).

### 5) Preparing a ROPA

A Controller must prepare a Record of Processing Activities (“**ROPA**”) and make it available to the data subject and the PDPC for inspection. The ROPA must contain the required information under the PDPA, such as Personal Data processed, purposes of data processing, retention period, rights and methods to access Personal Data, disclosure of Personal Data, rejection of data subject request, and security measures. However, the PDPC issued the Notification re: Exemption from Record of Processing Activities of

Controller which is a Small Business, B.E. 2565 (2022), to exempt the following organizations from maintaining a ROPA:

- a. small or medium enterprises under the laws on small and medium enterprise promotion;
- b. community enterprises or community enterprise networks under the laws on community enterprise promotion;
- c. social enterprises or a group of social enterprises;
- d. cooperatives, cooperative federations, or farmer's groups under the laws on cooperatives;
- e. foundations, associations, religious organizations, or non-profit organizations; or
- f. household businesses or other businesses in a similar manner.

## **6) Establishing an inspection system for data erasure or destruction**

A Controller must establish an inspection system for the erasure or destruction of personal data in the following scenarios:

- a. when the retention period ends;
- b. when the personal data is irrelevant or beyond the scope of processing purposes;
- c. when the data subjects request to exercise their right to data erasure; or
- d. when the data subjects withdraw consent.

The data erasure or destruction must be according to the PDPC Notification re: the Criteria for Personal Data Deletion, Destruction, and De-identification, B.E. 2567 (2024).

## **7) Entering into a DPA with the Processor**

A Controller must prepare a DPA or a Data Processing Agreement to provide instructions on data processing to a Processor.

## **8) Appointing a DPO**

A Controller must appoint a DPO or a Data Protection Officer in the following cases:

- a. A Controller is a public authority as prescribed and announced by the PDPC;
- b. The core activities require regular monitoring of Personal Data or systems due to having a large scale of personal data; or
- c. The core activities involve the processing of Sensitive Data.

In this regard, the PDPC issued the Notification re: the Appointment of Data Protection Officers under Section 41 (2) of the PDPA, B.E. 2565 (2022), outlining the specific requirements for appointing a DPO.

## **7. Duties of a Processor**

In principle, a Processor must process Personal Data according to a Controller's instruction as stipulated in a Data Processing Agreement. Besides this duty, a Processor must also have the following duties.

### **1) Implementing appropriate security measures**

A Processor must provide appropriate security measures to prevent the unauthorized or unlawful loss, access to, use, alteration, correction, or disclosure of Personal Data. The security measures must also meet the minimum standards outlined in the Security Measures Notification.

### **2) Preparing a ROPA**

A Processor must prepare a ROPA containing the following information:

- a. contact details of the Processor;
- b. contact details of a Controller;



- c. contact details of a Data Protection Officer;
- d. the type of data processing, including the processed Personal Data and the purposes of data processing;
- e. types of persons or entities receiving Personal Data in the event of cross-border transfer; and
- f. security measures.

### 3) Appointing a DPO

A Processor must appoint a DPO or a Data Protection Officer in the same cases as a Controller.

## 8. Cross-border Transfer

A Controller may transfer Personal Data to a foreign country or cross-border transfer of personal data in the following circumstances.

- 1) The destination country must have adequate data protection standards that are in line with the adequacy criteria issued by the PDPC (the “adequacy decision”);
- 2) In the absence of the adequacy decision, the cross-border transfer may be permissible if a Controller can rely on one of the following general exemptions:
  - a. legal compliance;
  - b. consent from the data subjects;
  - c. necessity for data subjects to comply with contractual obligations;
  - d. for compliance with a contract between the Controller and other entities for the interest of data subjects;
  - e. vital interests of data subjects or other persons; or
  - f. public interest;
- 3) Cross-border transfer may also be done within the group of businesses with certified binding corporate rules (the “**BCR**”); or
- 4) In the absence of (1), (2), and (3), the cross-border transfer may be permissible if a Controller has established appropriate safeguards for enforcing the rights of data subjects with efficient remedial measures.

The cross-border transfer in case of the adequacy decision, BCR, or appropriate safeguards must be according to Section 28 and Section 29 of the PDPA, the PDPC Notification re: the Cross-Border Transfer under Section 28 of the PDPA, B.E. 2566 (2023), and the PDPC Notification re: the Cross-Border Transfer under Section 29 of the PDPA, B.E. 2566 (2023).

## 9. Legal Liabilities

A Controller, a Processor, or any person who fails to comply with the provisions of the PDPA may be subject to the following legal liabilities:

- 1) administrative fines up to THB 5 million;
- 2) criminal penalties up to THB 1 million or 1-year imprisonment, or both; and
- 3) civil liabilities with punitive damages up to 2 times of actual damages.

# CHAPTER

# 13

## Tax

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### 1. Taxation

The primary legislation that governs taxation in Thailand is the Revenue Code (the “**RC**”), which undergoes regular amendments and is supplemented by specific subordinate regulations. However, certain taxes such as inheritance tax, petroleum tax, customs duties, and land and building tax are regulated by their respective laws.

The administration of personal income tax, corporate income tax, petroleum income tax, Value-Added Tax (the “**VAT**”), specific business tax, and stamp duty is the responsibility of the Revenue Department (the “**RD**”), operating under the Ministry of Finance. The Customs Department, also under the Ministry of Finance, oversees the administration of customs duties, while the Excise Department handles the administration of excise tax. Thailand’s tax administration generally follows the principle of “self-assessment.” However, the tax authorities may conduct inspections in certain circumstances which include, inter alia, false or insufficient tax return submissions etc.

#### 1.1 Corporate Income Tax

Corporate income tax is levied on juristic companies and partnerships. The term “juristic company and partnership” encompasses various types of entities, including limited companies, limited partnerships, and registered ordinary partnerships incorporated under Thai or foreign laws, as well as associations or foundations engaged in revenue generating business activities, joint ventures, and business or profit-seeking activities operated by foreign governments, agencies, or other juristic bodies incorporated under foreign laws.

All companies incorporated under Thai laws are subject to taxation on their worldwide income, regardless of whether it is generated within Thailand or from overseas activities, at the end of each accounting period.

Foreign companies conducting business in Thailand are taxed only on the net profit derived from or as a result of their activities in Thailand. To be considered as conducting business in Thailand, a foreign company must have an office, branch, or any other place of business in Thailand, or employ individuals, agents, representatives, or intermediaries for business activities in Thailand. Foreign companies not engaged in business in Thailand but earning certain types of income, such as service and commission fees, royalties, interest, dividends, rent, and professional fees from or in Thailand, are subject to withholding tax.

In general, the prevailing income tax rate for juristic companies and partnerships is 20% of net profits. However, there are reductions available for small and medium-sized enterprises (SMEs) based on progressive rates ranging from 0% to 20%, subject to specific rules, regulations, and conditions.

When determining the annual net profit, any expenses directly associated with generating profits for a juristic company can be deducted from its worldwide income in the relevant tax year. This allows for the offsetting of eligible expenses against the overall income of the company. The calculation of net profits follows the accrual basis and adheres to generally accepted accounting principles.

Additionally, companies established as international business centers (IBCs) that provide qualified services to affiliated juristic companies enjoy a reduced tax rate ranging from 3% to 8% of net profits, depending on the expenditures incurred during the tax concession periods. The maximum duration of the tax concession period is 15 years.

Corporate income tax payments are made twice a year. The first instalment, which accounts for 50% of the total tax, is typically based on estimated net profits for the entire year and is due within two months after the close of the first half of the company's financial year. An annual income tax return must be filed within 150 days after the end of the company's financial year. Failure to file the return results in a penalty of twice the amount of tax due when assessed by the tax authority. When the tax is calculated based on net profits, the return must be accompanied by an audited balance sheet and a profit and loss account. If the tax is calculated based on gross receipts, a statement of gross receipts should be filed along with the return. Taxpayers have the option to file the return either in paper format or electronically using an electronic form.

## 1.2 Personal Income Tax

Personal income tax is imposed on an individual's earnings. According to the RC, the term "individual taxpayer" encompasses various entities, including individuals, ordinary partnerships, groups of people, deceased individuals, and undivided estates.

Individuals who receive taxable income from employment or business activities in Thailand, or who possess assets located in Thailand, are obligated to pay personal income tax, regardless of whether the income is received within or outside of Thailand.

If a person spends a cumulative period of 180 days or more in Thailand during any given tax year, they are considered a resident for tax purpose. As a result, they are liable for personal income tax on income derived from sources within Thailand.



From January 1, 2024 onwards, any income from foreign sources that is brought into Thailand is also subject to personal income tax, irrespective as to when it was earned. It is worthy of note that prior to January 1, 2024, the foreign-source income is subject to personal income tax only if it is remitted to Thailand in the same year it was earned.

Taxable income, after deducting eligible deductions and allowances, is subject to progressive tax rates that range from 5% to 35%. The specific progressive tax rates are as follows:

Taxable income from	Tax Rate	Tax Amount	Accumulated Tax
<b>0 - 150,000</b>	Exempt	0	0
<b>&gt;150,000–300,000</b>	5%	7,500	7,500
<b>&gt;300,000–500,000</b>	10%	20,000	27,500
<b>&gt;500,000–750,000</b>	15%	37,500	65,000
<b>&gt;750,000–1,000,000</b>	20%	50,000	115,000
<b>&gt;1,000,000–2,000,000</b>	25%	250,000	365,000
<b>&gt;2,000,000–5,000,000</b>	30%	900,000	1,265,000
<b>&gt;5,000,000</b>	35%		

## 1.3 Withholding of Income Tax at Source

Payment of certain types of incomes are required to be withheld at source by corporate or individual payers.

Withholding tax rates are determined based on the type of income and the legal status of the payer and the recipient. The withholding tax rates for certain types of income are as follows:



#### DIVIDENDS

- 10% on dividends paid to both domestic and foreign corporations.



#### INTEREST

- 1% on interest paid by financial institutions (such as banks, finance or credit foncier companies) to domestic companies that are not financial institutions.
- 10% on interest paid by financial institutions to associations and foundations.
- 15% on interest paid to foreign corporations, which is considered a final tax payment and not attributable to foreign corporations' permanent branch offices in Thailand.



#### ROYALTIES

- 3% on royalties paid to domestic companies and partnerships (juristic partnerships).
- 10% on royalties paid to associations and foundations.
- 15% on royalties paid to foreign corporations that are not conducting business in Thailand, which is considered a final tax payment.

Withholding tax must be remitted to the RD together with the submission of withholding tax return within the seventh day of the following month in which the payment was made.

For domestic payments, the tax withheld can be used as a credit against the final tax bill of the recipients.

For overseas payments, generally, certain cross-border payments (other than payment for goods and dividends) are subject to 15% withholding tax. The tax withheld on cross-border payment in most cases is treated as a final tax. Further tax relief may be provided under an applicable tax treaty.

### 1.4 Value Added Tax

Generally, operators charge VAT on the sale of goods or provision of services to the consumer (known as “output tax”). The VAT paid by the operator to other operators for the purchase of goods or services (or “input tax”) is then deducted and the balance remitted to the RD. Under the VAT system, the tax is ultimately borne by the consumer. The operator is therefore regarded as a collector of tax for the RD. In the case of an operator conducting business in Thailand with a turnover of less than THB 1.8 million per year, the operator is not required to register itself as a VAT operator.

The standard VAT rate in Thailand is 10%, but certain businesses are assigned a 0% rate. The 10% rate applies to the sales of goods, provision of services, and importation of goods, unless the businesses or transactions qualify for the 0% rate. Currently, the 10% rate is temporarily reduced to 7% (calculated from VAT 6.3% + Local Tax 0.7%), but it will revert back to 10% starting from September 30, 2025, under the Royal Decree (No.790) issued on September 19, 2024, unless the reduced rate is extended.

A business that exclusively provides zero-rated supplies is not obligated to collect any tax on its supplies and is eligible to receive a refund for all input tax paid. In the case of a non-resident supplier, the Thai company is responsible for paying VAT on behalf of the supplier and can subsequently claim the VAT as an input tax credit.

### 1.5 Overseas Digital Service Provider

Foreign companies that provide electronic services from abroad with a turnover of not less than THB 1.8 million are subject to VAT. The services and the supply of intangible assets delivered over the internet or other electronic networks. These services must be utilized by the service recipient which is not a VAT registrant and fall into either of the following categories:

- Electronic services supplied by overseas service providers from abroad; or
- Electronic services supplied through an electronic platform through which the foreign operator provides electronic services abroad.

Foreign companies providing electronic services meeting the specified criteria are required to register for VAT and submit monthly VAT returns through the RD's website, even without having a physical presence in Thailand. If the electronic services are provided through an electronic platform, the operator of the platform is responsible for remitting VAT on behalf of all the electronic service providers within its platform. Neither the service providers nor the platform operators can offset any input VAT against the output VAT on the services.

## 1.6 Specific Business Tax

Specific business tax is generally imposed on certain types of businesses, particularly in the financial services sectors. The businesses subject to specific business tax include commercial banking, life insurance, and businesses engaged in transactions similar to commercial banking, as well as the sale of immovable property and real estate. These businesses are considered outside the scope of the VAT system and are therefore not subject to VAT. The specific business tax rate, which includes municipal tax, varies from 0.001% to 3.3% on the gross revenue derived from specific business activities.

An operator that carries on business subject to specific business tax is required to register for specific business tax within 30 days. Regardless of whether the business has generated income from specific business tax transactions, a specific business tax registrant must file a tax return (Form Phor Thor 40) on a monthly basis. The specific business tax return and payment must be submitted to the RD within 15 days of the following month.

## 1.7 Excise Tax

Under the Excise Tax Act, B.E. 2560 (2017), excise tax is generally levied on certain commodities, such as petroleum products, tobacco, liquor, beer, soft drinks, crystal glasses, perfume, cosmetic products, batteries, and motor vehicles.

Excise Tax is calculated based on either an ad valorem rate or a specific rate, whichever is higher. The tax bases and rates for excise tax differ depending on the type of goods and services. It is important to note that goods subject to excise tax are still subject to VAT. The Excise Department is responsible for collecting the excise tax, and it is typically imposed when goods are delivered from factories. On the other hand, for services, tax liability is generally imposed on the service provider when a service fee is paid.

## 1.8 Stamp Duty

Stamp duty is imposed on 28 categories of instruments as specified in the Stamp Duty Schedule of the RC. The rates or amounts of stamp duty vary depending on the nature or content of the instrument. This includes, among others, contracts for the hire of work, loans, transfers of shares, leases of land or buildings, and insurance policies.

The rate of stamp duty and the party responsible for paying the duty vary depending on the type of instrument, ranging from 0.1% of the contract value to a fixed amount per instrument.

Typically, stamp duty is paid by affixing stamps to the relevant instrument. However, for certain instruments such as hire of work contract, if the value of the instrument is THB 1 million or more, the stamp duty must be paid in cash. In such cases, companies must submit Form Aor Sor 4 and Aor Sor 4Kor to the area revenue office along with the cash payment. Most dutiable instruments executed in electronic format can be filed and have stamp duty paid via the RD's e-Stamp Duty system over the Internet.

Stamp duty is triggered when the instrument subject to stamp duty is executed in Thailand or brought into Thailand. Generally, the party receiving income, such as the service provider or lender, bears the stamp duty unless otherwise agreed in the contract.

The stamp duty is due and payable within 15 days after the execution of most instruments, and a stamp is affixed to the relevant document as evidence of payment. Voluntary late payment of stamp duty incurs surcharges, which are calculated based on the unpaid stamp duty amount:

- If the stamp duty is paid within 90 days of the due date, the taxpayer is subject to the stamp duty shortfall payment and a surcharge of twice the unpaid amount.
- If the payment is more than 90 days overdue, the taxpayer is subject to the stamp duty shortfall payment and a surcharge of five times the unpaid amount.

However, if involuntarily detected by the tax examiner, a surcharge can be imposed on the shortfall amount up to the rate of six times.

## **1.9 Petroleum Income Tax**

Companies that have been granted licenses to explore, produce, and export petroleum (such as crude oil and natural gas) according to the Petroleum Act, B.E. 2514 (1971) are subject to taxation under the Petroleum Income Tax Act, rather than corporate income tax as stated in the RC.

Under the Petroleum Income Tax Act, B.E. 2514 (1971), a tax rate of 50% is applied to the net profits. Shareholders receiving dividends and the head office receiving profit distributions from a branch are not subjected to any additional taxes. The computation of net profit for petroleum income tax purposes follows the same method as for corporate income tax. However, it is important to note that net losses can be carried forward for up to ten accounting periods, and interest expenses are not deductible.

## **1.10 Customs Duty**

Customs duties are imposed mainly on imported and selected exported goods, determined by the Customs Act B.E. 2560 (2017) and Customs Tariff Decree B.E. 2530 (1987). Most tariffs are ad valorem. In certain cases, however, both ad valorem and ad naturam rates may be applicable and the tariff generating the highest revenue is applied by the authorities. In general, the invoice price is the basis for the computation of the duty which is normally applied to the C.I.F. value.

Customs duties are levied in accordance with the Harmonized Commodity Description and Coding System or Harmonized System. Customs duty rates on most imported goods vary between 0% and 100%. Exemptions from customs duties on imported goods are available to promoted persons under the Investment Promotion Act and to petroleum concessionaires under the Petroleum Act. Reductions or exemptions from customs duties on imported goods are also granted to members of the ASEAN Free Trade Area and the World Trade Organization, as well as parties of free trade agreements and international agreements that Thailand is a part of (such as the Thailand and Australia Free Trade Agreement, Japan and Thailand Economic Partnership Agreement, etc.). Thailand is a member of the General Agreement on Tariffs and Trade (GATT), and the Thai Customs law follows practices and standards in line with GATT codes for determining customs prices.

## **1.11 Land and Building Tax**

On March 13, 2019, Thailand implemented the Land and Building Tax, which replaced the House and Land Tax and the Local Development Tax. This tax is levied annually and is determined based on the purpose of usage, whether residential, industrial, commercial, or agricultural. The responsibility for paying the land and building tax lies with the owners or occupants of the land or buildings.

The calculation of the land and building tax is based on the government's appraisal value, which is periodically determined. The tax rates range from 0.15% to 3%. In cases where land and buildings are used for multiple purposes, the tax is calculated proportionally based on the usage determined by the government's specified conditions. Taxpayers are required to settle their tax obligations after assessment by a designated officer by every April.

If the immovable property being transferred does not have an appraised value, the tax base will be determined according to the Ministerial Regulation B.E. 2563 (2020), which outlines the rules, procedures, and conditions for calculating the value of land or building with no appraised value. For example, the tax base of Nor Sor Saam Gor land will be estimated by correlating it with the appraised value of a nearby plot of land with similar characteristics.

In cases where a land or building falls under multiple categories or types of use, the local government authorities will assess and collect the tax based on an apportionment system.

## **1.12 Inheritance Tax**

The recipient of an inheritance is subject to inheritance tax only on a value exceeding THB 100 million received from each donor, either in a single instance or on multiple occasions. The inheritance tax rate is 10%, except for heirs who are ascendants or descendants of the deceased, in which case the rate is 5%. The tax must be paid within 150 days of receiving the inheritance. Legacies received by the spouse of the deceased are exempt from inheritance tax. The taxable assets subject to inheritance tax include immovable property, securities defined under



the law on securities and exchange, bank deposits or other money as defined under the law on securities and exchange, bank deposits or other money with a similar nature, registered vehicles, and financial assets as prescribed in the royal decree.

### 1.13 Gift Tax

Gifts to individuals are subject to personal income tax under the conditions specified in the RC. Income tax is applicable when parents, ascendants, descendants, spouses, or others receive gifts that exceed the prescribed threshold, which depends on the type of gift and the donor.

The thresholds for different types of gifts are as follows:

- Gifts of immovable property to a legitimate child (excluding adopted children) have a threshold of THB 20 million per tax year.
- Gifts of movable assets (including securities, shares in a company, deposits and bank accounts, vehicles, luxury watches, jewellery, brand-name bags and apparel, insurance policies, etc.) to parents and descendants have a threshold of THB 20 million per year.
- Gifts of movable assets (including securities, shares in a company, deposits and bank accounts, vehicles, luxury watches, jewellery, brand-name bags and apparel, collections, insurance policies, etc.) to other individuals have a threshold of THB 10 million per year.

Gifts that do not exceed the threshold are exempted from personal income tax. Any value exceeding the threshold is considered taxable income and subject to personal income tax at a rate of 5%. This income can be excluded from annual personal income tax liability.

### 1.14 Bilateral Tax Treaties

Currently, Thailand has 61 double taxation treaties in effect with the following countries:

Armenia	Germany	Myanmar	Sri Lanka
Australia	Great Britain and	Nepal	Sweden
Austria	Northern Ireland	Netherlands	Switzerland
Bahrain	Hong Kong	New Zealand	Taipei
Bangladesh	Hungary	Norway	Tajikistan
Belarus	India	Oman	Turkey
Belgium	Indonesia	Pakistan	Ukraine
Bulgaria	Ireland	Philippines	United Arab
Cambodia	Israel	Poland	Emirates
Canada	Italy	Romania	United State of America
Chile	Japan	Russia	Uzbekistan
China, (P.R.)	South Korea (Rep.)	Seychelles	Vietnam
Cyprus	Kuwait	Singapore	
Czech Republic	Laos	Slovenia	
Denmark	Luxembourg	South Africa	
Estonia	Malaysia	Spain	
Finland	Mauritius		
France			

### 1.15 Multilateral Agreements on Taxation

In June 2017, Thailand became a member of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which prompted the development of implementing legislations to adhere to the BEPS action commitments, specifically focusing on the following actions:

ACTION 5	ACTION 6	ACTION 13	ACTION 14
Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance	Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	Transfer Pricing Documentation and Country-by-Country Reporting	Making Dispute Resolution Mechanisms More Effective

Thailand has also signed and ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which came into force on July 1, 2022. This convention applies to the 58 tax treaties that Thailand has entered into, and it affects relevant withholding taxes and the interpretation of taxable periods from January 1, 2023 onwards.

Furthermore, Thailand has agreed to the Organisation for Economic Co-operation and Development's 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, i.e., imposition of taxing rights to destination countries (where the final sales of digitalized goods or services are made) and a global minimum level of taxation.

On June 3, 2020, Thailand has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Under this convention, Thailand is committed to providing various forms of mutual assistance in tax matters which include, inter alia, exchange of information upon request and automatic etc.

On March 15, 2024, Thailand has completed the public hearing process regarding the draft Top-up Tax Act on March 15, 2024, incorporating feedback received for further development and preparation of the proposed legislation. This draft bill aims to put an end to tax competition aimed at attracting investment and to prevent tax avoidance by multinational enterprises (MNEs) that may shift profits to subsidiaries located in low-tax countries. This is achieved by establishing a global minimum corporate tax rate of 15% for MNEs with total revenue exceeding 750 million euros per year.

On August 27, 2024, the Thai Cabinet approved the signing of a Letter the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule ("STTR MLI") under the Subject to Tax Rule ("STTR") principle, which is part of Pillar 2. This initiative aims to collect a minimum nominal tax rate of 9% on certain payments, e.g. royalties, interest and financial services incurred among the group of large multinational corporations to reduce international tax competition.

Based on these commitments, various new domestic tax laws and regulations have been released and enforced, significantly impacting Thailand's taxation of domestic and international transactions.

## 2. Transfer Pricing

Thailand recognized the significance of transfer pricing in both domestic and international business operations, leading to the implementation of transfer pricing regulations<sup>1</sup> (the "**TP Regulations**") on January 1, 2019. This move aimed to align with the Organization for Economic Cooperation and Development (the "**OECD**") standard, ensuring fair taxation and accurate profit allocation among related companies or juristic partnerships. Prior to the implementation of TP Regulations, detailed transfer pricing provisions were absent in the RC. During that period, the RD relied on legislative authority given under general provisions<sup>2</sup> to make transfer pricing adjustments. Departmental Order Por.113/2545<sup>3</sup>, though not a law, served as guidance for transfer pricing compliance in the pre-TP Regulations era.

The TP Regulations govern commercial or financial terms entered into between related companies or juristic partnerships in order to prevent profit shifting. If agreements with profit-shifting characteristics are detected, assessment officials may adjust the taxable income and expenses to reflect the arm's length price.

The TP Regulations can be divided into five topics as follows:

### 1. Related Companies or Juristic Partnerships

Under the TP Regulations, companies or juristic partnerships will be considered as related when:

- (i) Companies or juristic partnerships hold shares of another, either directly or indirectly, of not less than 50% of the total capital;
- (ii) Companies or juristic partnerships and another have the same direct or indirect shareholder(s), who hold shares of not less than 50% of the total capital; or

<sup>1</sup> section 71 bis and section 71 ter of the RC

<sup>2</sup> 65 bis and section 65 ter of the RC

<sup>3</sup> The Revenue Department's Order No. Por.113/2545 Re: Transfer Pricing According to the Market Price for Corporate Income Tax, dated May 16, B.E. 2545 (2002)

- (iii) Companies or juristic partnerships having relationship with another through capital, management or the power to control, and such another cannot perform independently from those companies or juristic partnerships.

## 2. Commercial or Financial Terms

Commercial or financial terms encompass conditions, agreements, or contracts related to the purchase or sale of products or services, marketing, advertising, or other commercial activities, as well as activities related to borrowing, financial support, financial collaboration, or other financial-related activities, regardless of whether there is any written evidence.

## 3. Characteristics of profit-shifting

Commercial or financial terms entered between related companies or juristic partnerships are regarded as having profit shifting characteristics if they meet the following conditions:

- (i) having commercial and financial terms;
- (ii) the commercial or financial terms are different from those that would be made between independent parties; and
- (iii) the commercial or financial terms will result in profit-shifting between related companies or juristic partnerships through one of the following mechanism:
  - a. Prices of goods or services, including any payment conditions and methods differ from those that would be made between independent parties who sell similar goods or services under similar circumstances;
  - b. Interest, financial services fees, or other financial fees differ from those that would be charged between independent parties; and
  - c. Other income or expenses differ from those that would be received or charged between independent parties.

## 4. Adjustment of income and expense

Assessment officials may adjust the taxable income and expenses of those companies based on an arm's length price, considering:

- a. If the related companies or juristic partnerships enter into a similar transaction with other independent parties (the "**Internal Comparable**"), the information relating to the transaction's income or expenses must be applicable for the determination of the arm's length price.
- b. If the related companies or juristic partnerships did not enter into a similar transaction with other independent parties, the information relating to income or expenses charged under a similar transaction between other companies or juristic partnerships (the "**External Comparable**"), whether onshore or offshore, shall be applicable for the determination of the arm's length price.

Note: External Comparable will apply only when Internal Comparable is not available.

## 5. Transfer Pricing Methods

The following OECD-recognized transfer pricing methods are generally accepted by the RD to determine the market price or arm's length price.

- (i) Comparable Uncontrolled Price Method;
- (ii) Resale Price Method;
- (iii) Cost Plus Method;
- (iv) Transactional Net Margin Method; and
- (v) Transactional Profit Split Method.

Other transfer pricing methods can be used only if it can be proved that each of above recognized transfer pricing methods is not appropriate for the transaction. More details on the pricing methods can be seen in Director Notification (No. 400)<sup>4</sup>.

<sup>4</sup> Notification of the Director General of the Revenue Department on Income Tax (No. 400) Re: Details of Rules, Conditions, and Procedures regarding Adjustment of Income and Expenses of Related Companies and Juristic Partnerships, dated 14 January B.E.2564 (2021)

## 6. Documentation Obligations

The TP Regulations require related companies or juristic partnerships having income of not less than THB 200 million in the relevant fiscal year to disclose the related party transactions that occurred during the relevant reporting period using the disclosure form. The disclosure form must be filed together with the annual corporate income tax return.

After filing the disclosure form for a period of five years, transfer pricing documentation must be maintained, and upon request by the assessment official, related companies or juristic partnerships must submit the transfer pricing documents, generally, within 60 days.

In addition, multinational enterprises operating in Thailand and having total consolidated revenues of more than THB 28 billion are required to comply with country-by-country transfer pricing reporting requirements, unless certain exemptions apply.

Thailand's implementation of transfer pricing regulations underscores the country's commitment to fair taxation and accurate profit allocation among related companies or juristic partnerships. By aligning with OECD standards, Thailand aims to create a transparent and equitable business environment for domestic and international operations.

To mitigate potential risks and ensure efficient business operations, investors and business operators must comprehend and adhere to Thailand's transfer pricing requirements. Consulting with professional advisors who are proficient in Thai TP Regulations can provide invaluable guidance and assistance in navigating the complexities of these regulations.

## 3. Common Reporting Standard

As a participating member of the Global Forum on Transparency and Exchange of Information for Tax Purposes ("**Global Forum**"), Thailand has entered into agreements related to Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA CRS). In light of these developments, the RD has recognized the urgent need to improve tax collection methods, thereby promoting greater fairness among individuals earning income from both domestic and foreign sources, including individuals having tax resident of the parties of the MAC and MCAA CRS who are subject to the exchange of information.

The enhancements in the methodology for collecting personal income tax, with a specific emphasis on individuals deriving income from foreign sources, as outlined in Por 161/2566 and Por 162/2566, have been designed with the objective to introduce transparency and efficiency into the taxation of foreign-sourced income in Thailand.

### Background and Rationale for CRS Implementation:

In 2017, Thailand became a member of the Global Forum, a framework dedicated to facilitating the exchange of tax-related information among member nations of the OECD. This collaboration encompasses both the Exchange of Information upon Request (EOIR) and the Automatic Exchange of Information (AEOI) on an annual basis, as prescribed by the OECD. It is important to note that EOIR primarily relates to the exchange of information at the government-to-government level, while AEOI has a more direct impact on taxpayers.

The automatic exchange of financial information, following OECD standards, is referred to as the Common Reporting Standard (CRS). CRS involves the annual exchange of financial account data of individuals who are not considered tax residents in Thailand with countries that have a double taxation agreement with Thailand (treaty partner countries).

### Promulgation of the CRS Law:

In order to ensure Thailand's compliance with international agreements and obligations relating to the exchange of tax and financial account information and to streamline the fair and efficient collection of taxes, the Royal Decree for the Exchange of Information B.E. 2566 (referred to as the "**CRS Law**") was enacted on March 30, 2023, and it has been in effect since April 1, 2023. The first exchange of information under the CRS in Thailand began in late September 2023.

### Key Components of the CRS Law:

The CRS Law's principal components include the reporting section, which outlines the reporting responsibilities of financial institutions, the types of financial accounts subject to reporting, financial account information to be exchanged, and the customers' due diligence procedures incumbent upon financial institutions.

Below, we highlight the significant aspects of the CRS Law relating to AEOL.

Topic	Details
<b>Reportable financial accounts (Financial Accounts)</b>	<p>The Financial Accounts cover the following:</p> <ul style="list-style-type: none"> <li>▪ Deposit accounts</li> <li>▪ Asset management accounts</li> <li>▪ Investment accounts</li> <li>▪ Life insurance policies</li> </ul>
<b>Reportable Persons</b>	<p>Individuals who are tax residents of i) the treaty partner countries; or ii) the countries of the estate of the deceased who was a tax resident in the territory of the treaty partner</p>
<b>Reporting Financial Institutions</b>	<p>Reporting Financial Institutions responsible for reporting financial account information to the TRD include:</p> <ul style="list-style-type: none"> <li>▪ Banks and Financial institutions;</li> <li>▪ Securities companies;</li> <li>▪ Governmental financial institutions;</li> <li>▪ Authorized life insurance licensees;</li> <li>▪ Derivatives business operators;</li> <li>▪ Escrow agents;</li> <li>▪ Credit card operators; and</li> <li>▪ Trustees</li> </ul>
<b>Verification of Residence</b>	<p>Reporting entities are required to have customers notify and verify tax residency information each time a new financial account is opened.</p>
<b>Reportable Information</b>	<p>There are three categories of information to be reported:</p> <ol style="list-style-type: none"> <li>1. Identification Information, including details about the account holder or the person with control over the account, such as name, address, taxpayer identification number, date of birth, and place of birth.</li> <li>2. Accounting Information, including account number, account balance, or cash value of insurance policies, interest received, or any other financial benefits.</li> <li>3. Information about the reporting person, including name and taxpayer identification number of the reporting entity. This information should be as of the end of the calendar year.</li> </ol>
<b>Submission of financial account information obligation</b>	<p>Reporting entities are responsible for sending financial account information to the TRD by June 30 of the following year for use in future automatic exchange of information with other treaty partner countries.</p>
<b>Data Retention Period</b>	<p>Reporting entities must retain records and evidence, as well as information collected from the financial account verification process, for a period of six years from the end of the calendar year in which the financial account verification process was completed.</p>
<b>Penalties</b>	<p>In cases of intentional false reporting or concealing information, penalties ranging from THB 50,000 to THB 500,000 may be imposed.</p>

# CHAPTER

# 14

## Intellectual Property

**Authors:** Thanyaluck Thongrampo

Thailand has established a comprehensive framework for safeguarding intellectual property (IP), covering six core categories: trademark, patent, copyright, trade secret, geographical indications and integrated circuit layout designs. Several international treaties have been ratified by Thailand, bringing its intellectual property laws in conformity with global standards. The Department of Intellectual Property (“**DIP**”) under the Ministry of Commerce is the regulatory authority for overseeing intellectual property in Thailand.



This chapter explores distinctions between three major categories of intellectual property in Thailand: (i) trademark; (ii) patent; and (iii) copyright focusing on legal concepts, registration procedures, rights of the owner and implications upon infringement.

### 1. Trademark

The Trademark Act B.E. 2534 (1991), as amended, (“**Trademark Act**”) provides legal protection for four types of marks, namely trademarks, service marks, certification marks and collective marks that are registered with the DIP. The marks eligible for registration under the Trademark Act should be distinctive, not confusingly similar to or identical with any registered trademarks and should not contain any prohibitive elements stipulated by the Trademark Act and relevant subordinate laws.

Both Thai and foreign applicants are eligible to file a trademark application with the DIP. The trademark registration process involves submitting an application to the DIP, upon which the DIP shall assess the eligibility of the applied marks. If deemed eligible, the trademark application is published in the Government Gazette for a 60-day public opposition period. If no oppositions arises during the publication, the trademark registration is approved. The owner of a registered trademark has exclusive rights over the trademark for 10 years from the date of filing, which can be renewed every 10 years.

Any production of counterfeit marks registered under the Trademark Act, including importation, distribution, possession or distribution of trademark-infringing products or services may result in imprisonment for a period of not exceeding four years or a fine of not exceeding THB 400,000. Imitating registered marks is punishable by imprisonment for a period of two years or a fine of not exceeding THB 200,000. Directors, managers or any persons with authority to represent the juristic person, who connive at the commission of such offences or fail to take reasonable action in preventing such offences, may be subject to the same penalties.

#### *Trademark Registration under Madrid Protocol*

The Madrid Protocol is an international treaty that offers trademark protection for trademark holders in multiple signatory countries, subject to applicable domestic laws. With Thailand’s accession in 2018, Thai trademark holders can apply for trademark protections through the Madrid Protocol in accordance with the DIP’s procedure, with the minimum requirement being that the applicant has successfully completed the trademark registration process with the DIP and is a Thai national or a juristic person with a headquarters, domicile, or principal place of business operation in Thailand.





## 2. Patent

The Patent Act B.E. 2522 (1979), as amended, ("**Patent Act**") provides statutory protections for two major categories of patent, namely innovation patents and design patents.

An innovation patent may be granted for an invention that is considered innovative, involves an inventive step and is industrially applicable. A design patent, on the other hand, is issued when the design is novel to the industry. The patentable articles shall not possess qualifications that undermine the novelty requirement, such as being an invention or design that was widely known or used in Thailand, or to which a patent was granted in Thailand or abroad prior to the filing date. Some inventions, including naturally occurring microorganisms, scientific or mathematical rules or theories, computer programs, diagnostic methods and inventions harmful to public order, morals, health or welfare, are not eligible for patent protection under the Patent Act.

The petty patent, also known as a utility model, is a separate registration system for innovations that provides similar exclusive rights to patent holders as those of the innovation patent. The petty patent system, however, requires simpler qualifications by excluding the inventive-step threshold.

Qualification for patent registration is available to the inventor, an employer (in case of inventions or designs invented in the course of employment) or an assignor. In case of foreign applicants, it is required that they have a nationality of a country that is a signatory to a convention to which Thailand is also a signatory.

The patent registration procedure entails submitting an application to the DIP, followed by examination and publication for 90-day public opposition period. The protection period for innovation patent and design patent is 20 years and 10 years, respectively, from the date of filing in Thailand. The protection period for petty patent is 6 years from the filing date, and it can be renewed twice for a term of 2 years each.

Any infringement of the exclusive rights of the patentee without their consent may result in imprisonment of not exceeding 2 years, or a fine of not exceeding THB 400,000, or both. Directors, managers or any persons with authority to represent the juristic person, who connive at the commission of such offences or fail to take reasonable action in preventing such offences, may be subject to the same penalties.

### *Patent Registration under Patent Cooperation Treaty*

Under the Patent Cooperation Treaty, an international convention of which Thailand has become a signatory in 2009, patentees can seek protection for their patented invention in all selected designated states, subject to applicable domestic laws, by filing a patent application.

## 3. Copyright

The Copyright Act B.E. 2537 (1994), as amended, ("**Copyright Act**") provides copyright protections to a wide range of creative works of authorship, including literary, dramatic, artistic, musical, audiovisual, cinematographic, sound recording, sound and video broadcasting work, regardless of mode or form of expression. However, copyright protection does not extend to any idea, procedure, process, systems, method of use or operation, concept, principle, scientific or mathematical theory. Additionally, certain creative works, such as daily news, constitutions, legislations, court decisions and translation or compilation thereof, are not copyrightable.

By creating any work protected by copyright, the person is deemed an author of the creative work and automatically acquires copyright over such work without any registration requirement. Depending on the context in which the copyright work was created, copyright owners may be employees (in case of works created in the course of employment), contractors (in case of commissioned works) or an assignor. Upon acquisition of copyright, the copyright owner is entitled to an exclusive right to duplicate, modify, publish, allow any lease of the original works, provide benefits from such work to others and permit others to use the copyright works, with or without stipulated conditions.

In general, copyright subsists for the life of the author, plus 50 years. If the author is a juristic person, or in case of an anonymous author, copyright protection extends for 50 years from the date of creation or first publication.

Any copyright infringement, including but not limited to the sale, possession for sale, publication, and distribution of copyright-protected works that may cause damages to the author, with knowledge or foreseeability of the infringing nature of such articles, is punishable by imprisonment for a period of not exceeding one year or a fine of not exceeding THB 10,000-THB 100,000. Directors, managers or any persons with authority to represent the juristic person, who connive or fail to take reasonable action to prevent such offences may be subject to the same penalties.

The Copyright Act exempts certain acts that are regarded as fair use of copyright work and do not constitute infringement. These acts include, but are not limited to, any acts against a copyright work which does not interfere with a normal exploitation of the copyright owner (including but not limited to non-profit research or study, personal use, criticism and educational use), reproduction of lawfully-acquired copyright work in the computer system and a reasonable recitation of work with an acknowledgement of copyright ownership.



# CHAPTER

# 15

## Trade Competition Law

**Authors:** Niruch Winiyakul and Prangmook Jannawan

### Trade Competition Law and Business Practices

Many emerging businesses are experiencing rapid growth, driven by evolving consumer demands for goods and services, as well as advancement in technology, which leads to innovation to meet the ever-changing needs of consumers. Thailand's free market economic system provides business operators the opportunity and freedom to compete with one another in a market to develop the potential of the business sector and contribute to the country's economic system as a whole. However, full-fledged competition can lead to problems where larger businesses have advantages over smaller ones due to greater bargaining power and access to capital for innovations, potentially discouraging smaller or micro-entrepreneurs from entering the market.

### Trade Competition Act B.E. 2560 (2017)

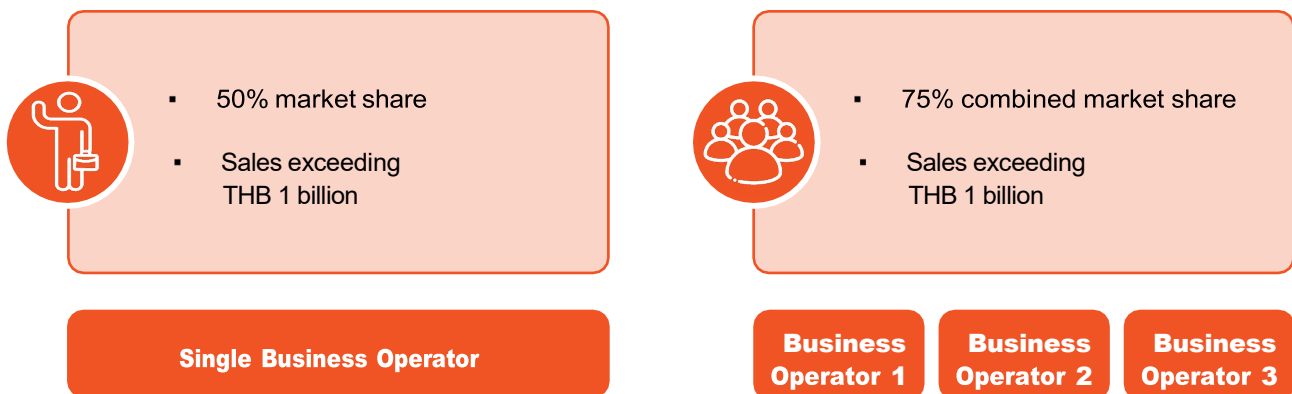
In response, Thailand enacted trade competition laws to regulate the business conduct of all entrepreneurs, ensuring fair competition, defining the roles and responsibilities of the Trade Competition Commission Thailand (the "**TCCT**"), and prescribing penalties for any violations. The current governing legislation is the Trade Competition Act B.E. 2560 (2017) (the "**Act**"), which addresses some of the crucial aspects of business operations related to competition. This chapter explores key topics such as the abuse of market dominant position (Section 50), mergers and acquisitions of businesses (Section 51), monopolization, reduction of competition, or limitation of competition in the market (Section 54 and Section 55), and unfair trade practices (Section 57).

### The abuse of market dominant position (Section 50)

The abuse of market dominant position arises when any single business operator in a market holds a market share of at least 50% in a given year and has sales exceeding THB 1 billion in that year. Alternatively, if the top three business operators in a market collectively hold a combined market share of 75% or more and have sales exceeding THB 1 billion in that year, these business operators are considered to have market power. Generally, having market power alone is not a legal offense unless there are actions taken that constitute an unfair exercise of market power. Such actions may include setting prices unreasonably low or high, engaging in discriminatory pricing structure, or in other unfair practices that use market power to obstruct or take advantage of consumers, create unreasonable conditions for trading business partners, implement tying arrangements or tied-sale, and interfere with other people's business operations. These actions are considered an abuse of market position pursuant to Section 50 of the Act, which would lead to criminal penalties under Section 72 of the Act.

## The abuse of market dominant position

### Market Power



### Mergers and acquisitions of businesses (Section 51)

In the context of mergers and acquisitions, when the business growth trends upward, in order to reduce operating costs and increase market shares as well as bargaining power, mergers and acquisitions become an intriguing option. Through this approach, a business operator can acquire shares with voting rights in another business or acquire significant assets for the operation of that business, gaining control over the operation of another business, including efficient personnel for the further development of one's own business. However, mergers and acquisitions can lead to a reduction in market competition, especially in markets with few business operators, which could result in unfair market competition. In this regard, business consolidation is regulated under the trade competition law, particularly when it may lead to monopolization or a dominant position in a market after mergers and acquisitions. Before such mergers and acquisitions are completed, prior permission from the TCCT is required. Failure to obtain such permission can result in administrative penalties as prescribed by law. However, after such mergers and acquisitions, if the entity is not deemed to have a dominant position in the market; for instance, the entity has a market share of less than THB 1 billion per annum, it can proceed without permission. Additionally, if it has an annual market share revenue of more than THB 1 billion per annum but does not attain the market share according to the method for considering the exercise of dominant position in the market, notification of the mergers and acquisitions is sufficient, and no permission is required.

### Monopolization, reduction of competition, or limitation of competition in the market (Section 54 and Section 55)

With respect to monopolization, reducing competition, or limiting competition in the market in accordance with Section 54 and Section 55 of the Act, in principle, every business operator has freedom to operate their business to the fullest for their maximum benefits. However, such freedom may impact other business operators if there is no appropriate supervision. For this reason, the Act specifies; (1) the nature of joint actions by business operators that are considered to cause serious damage and are absolutely prohibited from being taken; and (2) actions that are considered to cause damage but not to the point of seriousness. To elaborate, the aforementioned actions must be carried out by business operators who are separate entities, agreeing to take joint action, whether it was made in writing or not. Examples of serious actions include jointly setting conditions or prices higher in a market without any reasonable cause, impacting consumers, or limiting the quantity of goods to create scarcity, which results in price increase higher than under normal circumstances without any reasonable cause, or allocating sales area that limit consumers' choice because they are forced to buy goods only from local operators in that area. Serious actions are subject to criminal penalties, while actions that affect competition but do not seriously constitute severe damage are subject to administrative fines only.

### Unfair trade practices (Section 57)

Unfair trade practices are similar to the abuse of dominant position but apply to all business operators, regardless of the business size, and aim to prevent the business operator from committing the actions that would damage others, including unfairly preventing the business operation of others, using market power to dictate the direction or conditions of business operations in a market, setting trade conditions that unfairly restrict or obstruct the business activities of others, or other actions as determined by the TCCT, in accordance with Section 57 of the Act.

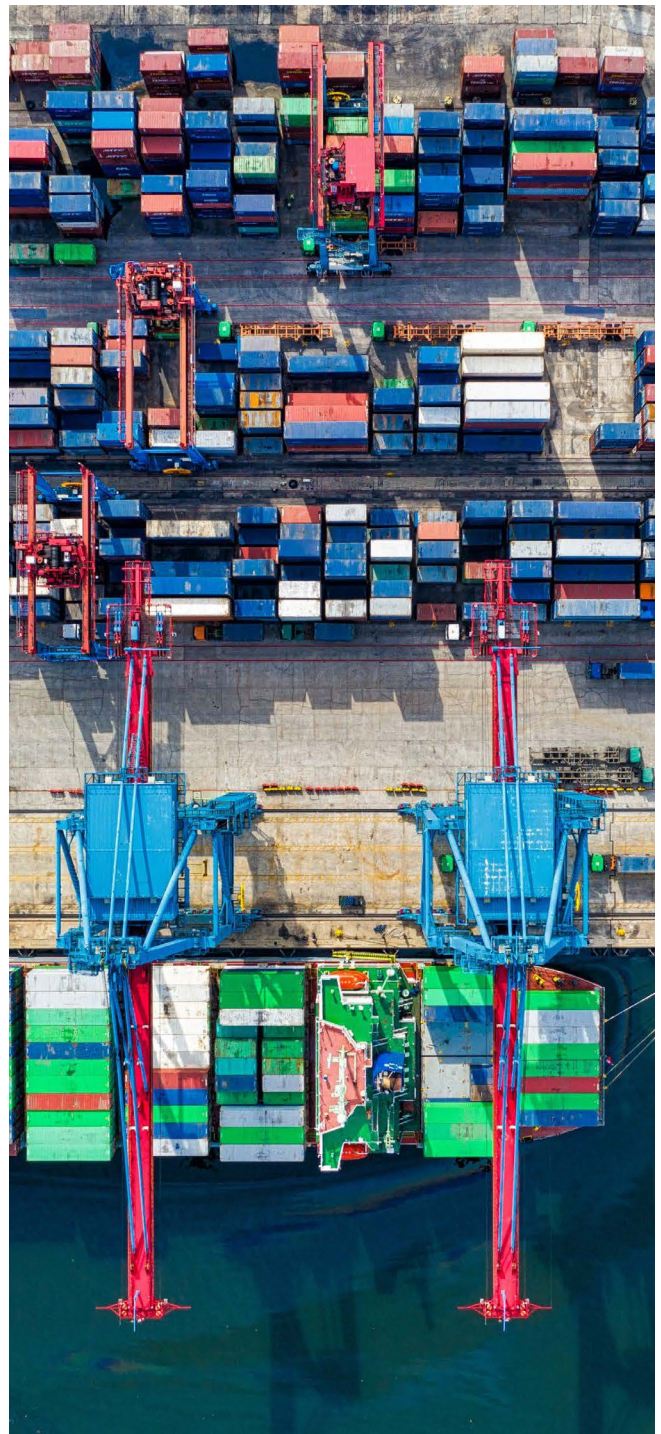


For instance, a dominant business operator unfairly imposes trade conditions by exploiting its bargaining power over the others who have an inferior status. Violation of this nature are subject to administrative fines.

Nevertheless, it is crucial to note that the illustrations of behaviors mentioned above are merely examples set forth under this Act. In order to determine whether a specific action falls under the purview of this Act, one must first consider the nature of the market for related goods and services, substituted goods or services, market boundaries, the number of business operators within that market, market shares, sales volumes, production volumes, and other factors. The TCCT will use this information to assess whether business operators have violated trade competition law.

The Act specifies penalties, including both criminal and administrative penalties ranging from fines to imprisonment. Generally, when an individual commits an offense, the individual will be held liable under the law. As for a juristic person that has a separate legal existence, this Act also regulates provisions imposing penalties on directors, managers, or individuals to be jointly liable with the company if the company's offense results from the instruction or management of its directors, managers, or individuals responsible for its operations. In this regard, if any business operator is concerned that their actions may violate trade competition law, they can file a petition with the committee to seek a ruling or advice on their actions in advance to prevent any potential future damage.

In summary, the objective of the Act is to strike a balance between regulation and the promotion of fair and free competition. As business operators engage in heightened market competition, it encourages them to enhance their goods and services to meet consumer needs, ultimately benefiting the overall economic system of the country. This framework fosters an environment where business operators, regardless of size, can coexist and continue their operations collaboratively into the future.





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