

Legal Framework

Promotion of foreign investment through programmes

Additional tax incentives for selected activities

Efforts to open further industries for foreign investors

Review of capital markets and labour and property law



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Bangkok Office

Supalai Grand Tower, 26th Floor, 1011 Rama 3 Road, Chongnonsi, Yannawa, Bangkok 10120, Thailand

T: +66 2653 5555 F: +66 2653 5678 E: bangkok@tillekeandgibbins.com

www.tillekeandgibbins.com



Trade agreements are expected to provide a boost to industry

Further liberalisation

Recent changes to foreign investment laws

The political turmoil of mid-2010 should not overshadow the government's commitment to meeting current global business needs. The government has introduced some important legislation over the past several years, such as the enactments of the Financial Institutions Business Act and Deposit Protection Agency Act, as well as the amendments of both the Securities and Exchange Act and the Civil and Commercial Code. A general trend towards liberalisation is likely to continue.

With exports of goods accounting for roughly 60% of GDP, international trade is a significant factor in Thailand's economic stability and growth, and the government takes quite an active role in creating incentives to attract foreign investors. Thailand was the first country in Asia to introduce legislation to promote foreign investment through such initiatives as the Board of Investment (BOI) and the Industrial Estates Authority of Thailand (IEAT). Under these programmes, foreign investors are allowed to hold full ownership in most qualified projects and are afforded both tax and non-tax benefits, including facilitation of visas and work permits and the right to own land (which is restricted under Thailand's Land Code).

PRIORITY PROJECTS: The BOI's main concern is to give priority to projects engaging in agriculture; technology, infrastructure and human resource development; conservation of natural resources; and other targeted industries. Special consideration is generally given to investment projects located outside Greater Bangkok, with an emphasis on decentralisation of investment into regional areas. The IEAT, on the other hand, is the state enterprise mainly responsible for overseeing national industrial development policy.

The Thai government has recently taken measures to provide further tax incentives for selected activities. Approved by the cabinet in May 2010, the Bank of Thailand and Ministry of Finance will commence with the second phase of the Financial Sector Master Plan over the course of 2010-14, which will grant waivers on income tax (both corporate and for individual share-

holders), specific business tax and stamp duty for earnings on merger and acquisition activities. Also recently approved, regional operating headquarters will be granted waivers on their corporate taxes for 15 years. This is in addition to the extension on the reduced rate of value-added tax, which will remain at its current level of 7% for at least another two years.

A PUSH TO RELAX FURTHER INDUSTRIES: Of particular importance for foreign investors wishing to conduct business in Thailand is the Foreign Business Act 1999 (FBA), which serves as the legal basis governing foreign business participation in Thailand. The FBA reserves certain business activities, which are classified into three lists for Thai nationals.

Under the FBA, a company is considered "foreign" if half or more of its shares are held by non-Thai natural or juristic persons. Foreign ownership restrictions on manufacturing activities have already been relaxed and while the FBA has not been revised since its enactment, there is a push to liberalise certain other industries to allow for more foreign participation.

On a macro level, Thailand has also been making efforts to open up international trade, particularly with respect to negotiating free-trade agreements (FTAs). One of the founding members of ASEAN, Thailand is now a signatory to the ASEAN Free Trade Area (AFTA), which came into force on January 1, 2010, for the six original ASEAN members (Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand), resulting in even greater market access within the region.

Meanwhile, the remaining four ASEAN countries (Cambodia, Laos, Myanmar and Vietnam) are expected to join AFTA in 2015, meaning that import duties will be effectively reduced to zero throughout the region. Thailand has also recently concluded FTAs with Australia, China, India, Japan and New Zealand, markets which, when considered together, represent approximately half of the world's population. Furthermore, Thailand also acceded to the Patent Cooperation Treaty (PCT) in 2009, making it the 142nd PCT contracting state.



For some firms, machinery can be exempt from import duties

Legislative matters

A look at the laws of interest to investors

FOREIGN INVESTMENT LAW: The most important law governing foreign direct investment in business in Thailand is the Foreign Business Act 1999 (FBA), which reserves certain business activities for Thais. Under the FBA, the definition of “alien” includes, among other things, foreign nationals, foreign corporations and companies incorporated in Thailand with at least half of their shares held by aliens. Alien ownership in businesses, which are reserved under Lists 1, 2 and 3 of the FBA, is limited to 49%. Business activities indicated in List 1 of the FBA, such as farming, forestry, antiques trading and broadcasting, are strictly closed to aliens.

Aliens wishing to exceed the ownership limit in business activities indicated in List 2 of the FBA, which involve national safety, arts and culture, natural resources and environment, must obtain an alien business licence (ABL) from the minister of commerce with the approval of the cabinet. Business activities indicated in List 3 of the FBA, including professional services, construction, wholesale, retail, hotel and restaurant, and any kind of service, can be 100% owned by aliens if an ABL is granted by the director-general of the Department of Business Development with the approval of the Foreign Business Committee. An ABL application is a time-consuming process with an unpredictable outcome and is normally granted only to the extent necessary. The foreign ownership restrictions under the FBA do not apply to US nationals and US corporations. The Treaty of Amity and Economic Relations between the US and Thailand allows Americans to own and operate almost all reserved businesses in Thailand except for businesses reserved under the treaty which, among other things, are land, inland transportation and communication businesses, provided that the MoC is notified and the firm applies for a certificate.

Investment promotion and privileges: The BOI is the government agency responsible for providing incentives to stimulate investment in Thailand. It has the authority to give both tax and non-tax incentives to qualified investors. Each category of activities eligible for

investment promotion from the BOI will receive different benefits and incentives depending on location, production for export, or industries identified as priority activities. In accordance with the investment decentralisation policy, the BOI provides different levels of incentives to projects located in three geographical areas (Zones 1, 2 and 3).

Tax incentives consist of import duty reduction/exemption on machinery and raw or essential materials; corporate income tax exemption for three to eight years; double deduction from taxable income of transportation, electricity and water costs; tax exemption for dividends paid out of the exempted profits during the tax exemption period; tax exemption for fees for goodwill, copyright, or any other rights derived from a business’s promoted activity, etc.

One of the non-tax incentives is that investors granted investment promotion status by the BOI who are regarded as aliens under the FBA may have 100% ownership in business activities specified in Lists 2 and 3 of the FBA in accordance with the conditions prescribed by such authorities. They shall be exempted from obtaining an ABL but need to notify the MoC and apply for a certificate. Other incentives include the permission for foreigners to own land and possess visa and work permit privileges for expatriates.

The BOI prescribes certain general criteria for application for investment promotion such as a minimum BT1m (\$30,850) investment, minimum value added of 20%, maximum 3:1 debt-to-equity ratio, industrial standard of ISO 9000 level, new or certified used machinery only, modern production technology and adequate environmental protection. The investor must submit an application form along with supporting documentation to the BOI to be considered for incentives. The processing of an application takes about two to three months.

The Industrial Estates Authority of Thailand (IEAT) is another agency that grants incentives to investment projects located in industrial estates nationwide. In addition to benefits from the industrial environment

and ready infrastructure, investors are also granted special incentives and privileges including the right to own land in the industrial estate area, to obtain work permits for foreign technicians and experts who work for the industrial operator and to take or remit foreign currency abroad. Industrial operators working within the Export Processing Zone are granted additional tax-based incentives and privileges.

FORMS OF BUSINESS ORGANISATION: Under Thai law, the forms of business organisation are sole proprietorship, partnership (including unregistered ordinary partnership, registered ordinary partnership and limited partnership), branch office, representative office, regional office, limited company (private company limited and public company limited) or joint venture.

Sole proprietorship: With a sole proprietorship, all of a proprietor's assets, business and personal, are subject to attachment or any other legal action, whether connected to the business or not. The sole proprietor must acquire a taxpayer identification card and value-added tax (VAT) certificate if his or her gross income is expected to exceed BT1.8m (\$55,530) per year. Certain businesses will require a sole proprietorship to obtain a Commercial Registration Certificate at the MOC. A sole proprietorship is subject to personal income tax at progressive rates ranging from 5% to 37%.

Partnership: In Thailand, three forms of partnership are permitted, as follows:

- An unregistered ordinary partnership is one in which all partners are jointly liable for all the obligations and debts of the partnership. Each partner must contribute money, property or services to the partnership. It is not registered with the MOC and is not a legal entity (juristic person). Although it is not a juristic person, it is considered a separate entity for tax purposes. The partnership must obtain a taxpayer identification card and VAT certificate from the Revenue Department if its gross income is expected to exceed BT1.8m (\$55,530) per year. Certain businesses will require an unregistered partnership to obtain a Commercial Registration Certificate at the MOC. An unregistered partnership is subject to personal income tax at progressive rates ranging from 5% to 37%. After-tax profits when distributed to partners are not considered taxable income.
- A registered ordinary partnership is registered with the MOC, which makes it a juristic entity with a separate and distinct personality from each of the partners. All the partners are jointly and unlimitedly liable for all the obligations of the partnership. A registered ordinary partnership partner may pursue any claim of, or any right acquired by, the partnership against third persons, even if the third person did not actually participate in the transaction. A registered ordinary partnership pays corporate income tax at a rate of 30% on net profits.
- A limited partnership is also registered with the MOC and considered a juristic entity with a separate and distinct personality from each of the partners. A limited partnership is one in which the individual liabilities of one or more partners (called "limited partner")

are limited to their respective contributions and one or more partners (called "general partner") are jointly liable without any limitation for all the obligations of the partnership. A limited partnership can only be managed by the partners with unlimited liability. A partner with limited liability who participates actively in the management of the partnership becomes jointly liable, without any limitation, for the partnership's obligations. A limited partnership pays corporate income tax at a rate of 30% on net profits.

This form of business organisation is common among Thais, but not among overseas investors, as it is based on individual rather than corporate status.

Branch office: A foreign company may establish a branch office to conduct business in Thailand. The head office must appoint at least one branch office manager to be in charge of operations in Thailand. A branch office is subject to corporate income tax at the rate of 30% on net profits derived from its business operations in Thailand. Therefore, for tax purposes, a branch office is required to apply for a taxpayer card and VAT certificate (if its gross income is expected to exceed BT1.8m, \$55,530, per year) and to file annual corporate income tax returns with the Revenue Department within five months after its fiscal year ends.

Having a branch office in Thailand, the foreign company will be exposed to civil, criminal and tax liability if the branch office violates any law in Thailand.

Regional office and representative office: A regional office or representative office is technically a branch office of a foreign company which carries on permissible non-income-generating service activities on behalf of the head office in Thailand. They are strictly prohibited from accepting purchase orders or making sales offers and negotiating and entering into any business arrangement with any customer, sales agent or other party in Thailand. The operations of these offices can be financed only by the head office.

Even though the incomes of these offices is nil and thus they pay no income tax, the law stipulates that they have a duty to file audited financial statements with the authority on an annual basis. The only distinction between a regional office and a representative office is the scope of their respective permissible activities enumerated below.

Regional office:

- To contact, coordinate and supervise on behalf of the head office the activities of the branch office, affiliate and/or subsidiary of the head office located in the same region as the regional office.
- To provide services to the head office's branch office, affiliate and/or subsidiary of the head office, such services being advisory services, management services, training and personnel development services, financial management services, marketing control and sales promotion planning, product development, and research and development services.

Representative office:

- To find sources for the purchase of goods or services in Thailand for the head office or affiliates or subsidiaries of the head office.

- To check and control the quality and quantity of goods purchased or manufactured in Thailand by the head office or affiliates or subsidiaries of the head office.
- To provide advice and assistance concerning goods of the head office or affiliates or subsidiaries of the head office sold to agents or consumers in Thailand.
- To disseminate information concerning goods or new services of the head office or affiliates or subsidiaries of the head office.
- To report on business developments in Thailand to the head office or affiliates or subsidiaries of the head office.

Limited company: A limited company is generally the form of business establishment most preferred by foreign investors because, among other things, shareholders' liability is limited (to the remaining amount unpaid, if any, of the registered capital due on the shares respectively held by them). The incorporation of a limited company must be registered with the Department of Business Development of the MOC. A limited company is managed by a board of directors (consisting of at least one director) under the control of the general meeting of shareholders. Capital of a limited company is divided into shares, each having a minimum equal value of BT5 (\$0.15). Three shareholders are required to be maintained while the company is in operation.

Publicly held companies are subject to the Public Limited Company Act 1992. A public limited company is a company established for the purpose of offering the sale of shares to the public. The minimum number of required shareholders in a public limited company is 15. The board of directors of a public limited company must consist of at least five directors, the majority of whom must reside in Thailand.

A newly registered company must apply for a taxpayer identification card and VAT certificate with the Revenue Department (if its gross income is expected to exceed BT1.8m (\$55,530) per year).

Joint venture: Joint ventures are permitted under Thai law and they may take two forms:

- A joint venture in the form of a partnership established by contract between one company and another company or juristic partnership or individual that exists only for a particular project. Even if it is not registered as a legal entity, the "unincorporated joint venture" is treated as a juristic entity by the Revenue Department for the purposes of tax liability. The joint venture must, therefore, apply for a taxpayer identification card and VAT certificate (if its gross income is expected to exceed BT1.8m (\$55,530) per year).
- A joint venture registered as a legal entity, that is, a limited company wherein the joint venture partners hold shares in the agreed proportion.

CAPITAL MARKETS: Regulatory framework: Capital raising through initial public offerings and offering of other securities in Thailand are regulated by the Securities and Exchange Act 1992, as amended, and supervised by the Securities and Exchange Commission (SEC).

Companies wishing to offer newly issued securities must generally submit an application to the SEC for approval and fulfil pre-offering information disclosure

requirements. After the securities are sold to the public, the offering company must undertake securities settlement with the holders in accordance with SEC regulations and disclose information on a continual basis. There is also an additional requirement for issuers to report any acquisition or disposal of securities which causes a person, and their connected persons, to hold shares amounting to 5% or more of the voting rights in a company.

Market liberalisation: Until recently, the issuance and offering of foreign equity-based securities was prohibited, except when offered only to limited groups of recipients, such as offering foreign securities to employees of the foreign issuer or its subsidiaries in Thailand under an employee stock option plan, or offering fully paid ordinary shares to existing shareholders (i.e. rights offering). Effective December 1, 2009, foreign equity-based securities (e.g. shares and warrants on shares) listed on a home (foreign) stock exchange are now permitted to be listed on the Stock Exchange of Thailand (SET), as long as certain requirements are fulfilled. SEC requirements include: home exchange is a member of the World Federation of Exchanges and shares are listed on the main board; home regulator is a member of the International Organisation of Securities Commissions (IOSCO) and a full signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information or other comparable memorandum of understanding; foreign issuer has a contact person in Thailand; value of shares to be issued in Thailand are within the Bank of Thailand's limit; and approval of home regulator or evidence that the issuance and offering of securities in Thailand does not breach any home exchange regulation is obtained.

In addition, SET requirements must also be fulfilled. The foreign issuer must be a listed company on the home exchange for not less than three years; have market capitalisation in the top quartile of all listed companies on the home exchange, or not less than BT10bn (\$308.5m); have market capitalisation in Thailand of not less than BT300m (\$9.3m), or 5% of its registered capital, whichever is lower, or otherwise have proof that there will be sufficient trading volume and liquidity.

Foreign companies wishing to issue equity-based securities have to submit an application to the SET and simultaneously file an application to obtain approval from the SEC and file a registration statement and draft prospectus to disclose information to the investing public (filing). If the SET is satisfied that all qualifications are met, it will issue a certification of qualification for submission to the SEC. After the application, all supporting documents and filing are completed, there will be a cooling-off period of at least 14 days. Once SEC approval and filing become effective, the shares can be offered for sale to the public through underwriters, which must be completed within six months from SEC approval, and then listed on the SET.

The offering of existing shares by shareholders (as opposed to the offering of new shares) for listing on the SET is also allowed, provided that the foreign issuer

has obtained pre-approval from the SET, and shall be subject to the same qualifications as the offering of new shares. The company must issue a written acknowledgement of such offering and provide representation that it will comply with all requirements, such as those concerning disclosure.

After the securities are listed, the foreign issuer must comply with its home exchange regulations such as submission of financial statements; rules for transactions with related parties; reporting on material transactions; reporting on shareholding of directors, management and auditors; rules of takeovers, etc. Once a foreign security is listed on the SET, the company may issue new securities without listing them on the trading market, by simply filing an application with the SEC. This filing requirement will also be exempted if the issuance qualifies as a private placement. Existing shareholders will also be able to trade their shares on the SET, provided that approval from the SET has been granted.

Thailand is also starting to liberalise activities in other areas of investment, such as derivatives.

PROPERTY LAW: Land ownership: Land ownership in Thailand may be individual or shared. A Thai national may purchase land in the country. There are, however, restrictions on foreign ownership. Under present Thai law, foreign individuals and foreign companies (including companies established under Thai law with foreign shareholding of more than 49% of the total issued shares) are prohibited from owning land in Thailand. Companies incorporated in Thailand which are at least 51% Thai-owned may legally own land. If a company has significant foreign equity, it will be investigated by the Land Department to determine whether or not there is any use of Thai shareholders as nominees on behalf of minority alien shareholders for the purpose of owning land before the company is allowed to register the purchase of the land. However, there are no regulations that prohibit aliens from owning a building.

An exception to the foreign ownership rule applies to projects promoted by the BOI and the IEAT. Under these projects, special privileges are given to foreign-owned companies to own land for business operations and for residential purposes of management and employees. Foreign oil companies which meet the requirements of the Petroleum Act may also own land.

An alien juristic person may obtain rights to land under the following laws:

- Investment Promotion Act 1977, Section 27: A promoted entity is permitted to own land required for the promoted business in such size as the BOI may prescribe, even though it exceeds the limit prescribed under other laws.
- The IEAT Act of 1979, Section 44: Industrial operators and operators of trading for export may be allowed to hold land ownership in an industrial estate or an export industrial zone for the operation of business in a size deemed reasonable by the IEAT Board, even though it may exceed the limit fixed under other laws. The lease of property or buildings is governed by the Hire of Property General Provisions contained in the Civil and Commercial Code. Land, houses, condomini-



Firms with at least 51% Thai ownership have the ability to own land in the country

um units and other buildings may be leased to foreign nationals for as long as 30 years, with possibility of renewal for an additional 30 years. However, it should be noted that the renewal option might not be fully enforceable against someone who purchases the property from the lessor.

A lease contract of any immovable property for three years or less is not enforceable unless made in writing and signed. Leases of more than three years need to be registered with the Land Office; otherwise, they will be valid for only three years.

Condominium ownership: The Condominium Act 1979 allows certain groups of aliens (both individuals and juristic persons) to acquire condominium units in Thailand provided that foreign ownership in a given condominium project does not exceed, in aggregate, 49% of the total area of all condominium units in the building. Aliens must be able to present correct and complete documentation and evidence as required by the Land Department.

Aliens eligible to own condominium units include:

- Individual aliens permitted to reside in Thailand under the Immigration Act.
- Individual aliens permitted to enter Thailand under the Investment Promotion Act.
- Juristic persons specified under Sections 97 and 98 of the Land Code which are registered as juristic persons under Thai law (i.e. juristic persons with foreign shareholding of more than 49% of the total issued shares or with foreign majority shareholders, including juristic persons with the aforesaid juristic person holding more than 49% of the total issued shares).
- Juristic persons specified as aliens under the National Executive Council Announcement No. 281 and promoted by the BOI.
- Individual aliens or foreign juristic persons who bring foreign currency into Thailand to pay for the purchase of a condominium unit, or withdraw money from a Thai baht bank account of a non-resident, or withdraw money from a foreign currency account.



Labour law gives the courts broad powers to determine working conditions for Thai employees

Land documents: There are various documents under Thai law pertaining to land title/claim. These documents vary in strength from a land title deed (*Chanote*, the purest form of land ownership, representing full and complete ownership rights), through certificates of use and certificates of possession, to a mere notice of possession of land. A condominium unit title deed is evidence of ownership of a condominium unit and has similar significance to a land title deed. All land and condominium unit transactions should be recorded in a written document and registered with the Land Office in the province in which the land is located.

LABOUR LAWS & REGULATIONS: The main laws governing employment matters in Thailand are the Civil and Commercial Code (CCC) and the Labour Protection Act (LPA). The CCC, forming the basis for contracts in Thailand, sets out the principles of contractual relationships between an employer and an employee. Employment contracts are not required to be made in writing. Similarly, the LPA provides the legal framework necessary to enact minimum standards, for instance, the establishment of minimum wages, administration procedures for disputes and employment conditions such as working hours and working days, holidays and types of leave, overtime work and overtime pay, holiday work and holiday work pay, statutory severance for termination without cause and notice of termination with reference to such relationships.

In 2008, the LPA underwent significant amendment in order to cope with current labour practices. Amendments included: granting the Thai courts the power to order the contract of employment and the employer's work rules and regulations (WRR) or orders to be enforced only insofar as they are fair and appropriate; addressing provisions relating to employee working hours; expanding the definition of "security deposits" for working guarantee; increasing employer obligations concerning outsourced employees; and prohibiting certain types of work for children under the age of 18 years and for female employees as well.

WRR are one of the most important documents in an employment relationship. They set out the terms and conditions of employment and the rights and obligations of both the employer and the employee, in addition to certain other benefits and rules which should be obeyed by both parties. Employers with 10 or more employees are required to have their WRR written in the Thai language, which must be announced to employees and posted at the workplace within 15 days from the date on which the employer has 10 or more employees. The employer must submit the WRR to the Office of Labour Protection and Welfare governing the area in which the employer's office is located within seven days from the date such WRR become effective. Other important pieces of legislation include:

- Labour Relations Act, which authorises employees to establish labour unions, so long as they do not pose a threat to national security;
- Act Establishing the Labour Courts and Labour Court Procedures, which sets up specialised courts to adjudicate employment issues and provides recourse for employees subject to unfair termination;
- Provident Fund Act, which authorises employers and employees to jointly establish provident funds to provide security to employees in case of death, retirement, or resignation;
- Social Security Act, which requires employers and employees to contribute to the Social Security Fund to compensate the employee or the employee's heirs in the event of injury, illness, or death unrelated to work;
- Workmen's Compensation Fund Act, which requires employers and employees to contribute to a workmen's compensation fund at a rate depending on the type of business.

VISAS & WORK PERMITS: Visas, entry permits, or border passes are required of all non-Thai nationals entering the country. A foreigner wishing to work in Thailand should apply for a non-immigrant business (B) visa at a Thai embassy or consulate before entering Thailand. The term "work" is defined very broadly, i.e. "working by exerting one's physical energy or employing one's knowledge, whether or not for wages or other benefits". Thus, aliens also require work permits to engage in volunteer or charity work.

Regardless of the length of the visa obtained, a holder of a non-immigrant visa will be permitted to stay in Thailand for not more than 90 days per entry as stamped in his or her passport upon arrival. A foreigner may not start working until he or she receives a work permit from the Ministry of Labour in Thailand. To apply for a work permit, the Ministry of Labour requires various corporate and tax documents from the employing company certified by its authorised director as well as personal documents from the expatriate such as photo, passport copy and degree/diploma. A work permit is often issued within two weeks from submission of a complete application and remains valid for up to two years.

Under regulations, companies applying for work permits must have a registered capital of at least BT2m (\$61,700) per expatriate for whom a work permit is

sought. There are minimum salary requirements, which employers are required to follow in order to apply for a work permit. These requirements will depend on the nationality of the expatriate employee.

INTELLECTUAL PROPERTY (IP): Thailand provides protection for many forms of IP, including patents, trademarks, copyrights, geographical indications, trade secrets, plant varieties and integrated circuits. Under IP laws, IP owners can obtain exclusive rights to these intangible assets and prevent any person from using or registering their IP rights in bad faith. It is important for the IP owners to file for registration of any available IP rights in Thailand immediately after creation. Registration offers IP owners full protection under the law, prevents third parties from using or registering the IP rights and avoids the possibility of IP infringement disputes. Among the available forms of IP rights in Thailand, protection is most commonly sought for patents, trademarks and copyrights.

Patents: The Thai Patent Act 1979, as amended in 1992 and 1999, provides patent protection for inventions and product designs. Patent registration is granted on a first-to-file basis. If two or more persons have separately and independently made the same invention and each files an application for a patent, the applicant who is the first to file shall be entitled to a patent.

To obtain a patent for an invention, the invention must be novel, inventive and capable of industrial application. If the invention lacks only an inventive step, the inventor may file an application for a petty patent. Product designs must be new and used for industrial purpose, including handicrafts.

Under Thai law, however, certain inventions are ineligible for patent protection, namely natural microorganisms and their components, animals, plants, or extracts from animals or plants; scientific or mathematical rules or theories; computer programmes; methods of diagnosis, treatment, or cure of human and animal diseases; and inventions that are contrary to public order, morality, health, or welfare.

After a patent application for an invention is filed, a patent examiner conducts a preliminary examination regarding any minor errors the application might have. The applicant or the agent has 90 days from the date of being notified of any such errors to correct them. The application will then be published in the Patent Gazette for 90 days. The applicant must then request an examination of the invention and pay the government fee within five years from the date of the publication. The examiner will then examine all documents to determine whether the invention is identical or similar to existing inventions. If the invention fulfils the legal qualifications, the examiner will require payment of the registration fee and grant the patent to the applicant. If not, the application will be nullified.

The main difference in the process of a product design registration is that the applicant is not required to request an examination of the product. For petty patents, after the preliminary examination, the examiner will require payment of the registration fee and then will issue the petty patent. Any interested person may

request an examination of the petty patent during the one-year publication period. If the petty patent fails to comply with the law, the petty patent shall be nullified.

The protection periods of patents for invention, product design and petty patent are 20 years, 10 years and six years, respectively, from the filing date. However, the owner of a petty patent may request a renewal twice, each time for a period of two years.

Trademarks: Trademark registration in Thailand similarly operates on a first-to-file basis. According to the Thai Trademark Act 1991, as amended in 2000, a mark which is registrable must be distinctive; not be prohibited under the Act; and not be identical or confusingly similar to any prior registered trademarks.

After an application has been filed with the Thai Trademark Office, it takes 6-12 months for the registrar to conduct the examination. If the application is deemed acceptable, it will be published in the Trademark Gazette. Should no objections be filed within 90 days after publication, the registration will be granted, dated as of the day of the filing. The registrar will then issue an official notification requesting payment of the registration fee and the certificate of trademark registration will then be issued within two months after the relevant fee has been paid. Barring any problems, it normally takes approximately 12-18 months for a trademark to be registered.

The protection period for a trademark is 10 years from the filing date. A renewal can be filed within 90 days before the expiration for an additional period of 10 years from the date of expiration of the original registration, or from the date of the last renewal of registration.

Copyrights: According to the Thai Copyright Act 1994, the owner of a copyright work automatically obtains copyright protection when they create such work.

Copyright works under the act include literary, dramatic, artistic, musical, audiovisual and cinematographic works. Copyright protection does not extend to ideas, procedures, processes, systems, methods of use or operation, concepts, principles, discoveries, or scientific or mathematical theories.

Although registration is not required to obtain copyright protection, copyright owners can file an application with the Department of Intellectual Property to record their creation and ownership of the copyright works. The recordation may be used as an official document to indicate the date the copyright work was created. However, such recordation can be used as a preliminary assumption only. If a dispute arises, an opposing party may submit evidence showing that they are actually the rightful owner of the work in question.

In general, copyright subsists for the life of the creator and for an additional period of 50 years after their death. If the creator is a juristic person, the copyright subsists for period of 50 years after the work is first published or, if unpublished, after its creation. However, copyright in a work of applied art subsists for only 25 years from either its creation or first publication.

OBG would like to thank *Tilleke & Gibbins* for compiling these articles for **THE REPORT Thailand 2011**



David Lyman

More prudent practice

David Lyman, Chairman & Chief Values Officer, Tilleke & Gibbins, on corruption

No country is immune to corruption. Corruption and other illicit activities thrive in Thailand today as they have throughout this nation's long history. According to Transparency International's latest survey, the level of corruption in Thailand is no worse than it is in many countries. Is it liked? No. Accepted? Yes, but as a repugnant fact of life. Why? Because most people can do little about curbing it so they learn to live with it. Is the government promoting anti-corruption? Lip service, yes. Concrete steps? Very slow, so the jury is still out. Are Thais less moral or ethical than other nationalities? No. With perhaps a few exceptions in the political arena and within the circles of the powerful, they know that corruption is reprehensible.

Thailand does not lack for anti-corruption laws. Are they enforced? Infrequently and often short of any degree of enthusiasm. Selectively, yes, but principally for lower levels with the occasional high-profile case. Why? Money politics, coalition politics, lack of political will, an age-old patronage system, personal connections, nepotism, the intervention of influential people, parliamentary and judicial leniency, an uninformed electorate, a lack of funding to pay government officials competitive wages and a lack of funding to pay for the operations of some government agencies. Police stations have to be self-funded (at least in part), as do fire houses, hospitals, clinics, schools, garbage dumps, civil service units, and many departments and agencies.

A government official wants to get promoted, so he/she may have to pay his/her superiors to get a place in line. Where does he/she get the money to feed the system and still support themselves and their families? Unless they moonlight or have family money, they have to get it from those they serve. Sad but true. Each instance may be petty – such as facilitating payments – but in the aggregate on a nationwide scale, calling it petty is a gross understatement.

Then we have the private-to-public grand corruption – the massive kickbacks from suppliers and contractors in state-funded infrastructure and procurement

projects. Monies find their way back to senior civil and military officials, and political figures and their advisors. It has been reported in the Thai press that over the past 10 years, the quantum of the average bribe has grown from 3% to 10-30% of a project's cost.

For perspective, are all officials corrupt? Absolutely not. Is the whole system of government in Thailand corrupt? No. It tends to be more prevalent in pockets (forgive the expression) of construction, infrastructure and public works, concessions, real estate, procurement, licensing and permits, utilities and illicit activities.

The good news is that the current government leadership is attempting to conduct state business in an ethical, honest and honourable manner. It has initiated a range of schemes and programmes to subvert corruption, sometimes against the interests of politicians and ensconced senior civil servants who, of course, are pushing back in order to protect their long-held turf.

Public disclosure of the personal wealth of ministers, MPs, senators and others political positions is now required by law. Transparency in government procurement is beginning to be seen more often in practice. While there are a couple of related but narrowly focused laws on contracts with state agencies, there is not yet a comprehensive statute law on the subject – most government procurement is subject principally to the regulations of the Prime Minister's Office.

The Anti-Money-Laundering Act and strict banking regulation and oversight are also having an effect on the flow of illegal monies as paper trails are left.

A growing number of both common and high profile corruption cases are being prosecuted. A former prime minister, now in self-imposed exile, has been convicted of abuse-of-power corruption and had \$1.4bn confiscated by the courts. His fortune was frozen pending claims on it by other government agencies.

There is hope the accelerating anti-corruption movement in Thailand is taking root, rather than just being symbolic, and will become accepted, prudent government and corporate engagement and practice.