

Thailand

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Thailand has a civil law legal system.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Certain types of business activities are reserved for Thai nationals only (*Foreign Business Act 1999 (FBA)*). Foreign investment in those businesses must comprise less than 50% of share capital unless specially permitted or otherwise exempt.

Potential investors should check with the three lists attached to the FBA, as summarised below, to determine whether their proposed business falls under any of the reserved business activities.

List 1. This contains activities prohibited to non-nationals. Among others, they include:

- Newspaper businesses.
- Radio broadcasting.
- Television stations.
- Farming.
- Land trading.

List 2. This contains activities which are related to national safety or security, or those which affect arts and culture, tradition, folk handicrafts or natural resources and the environment. Among other things, they include:

- The production, sale and maintenance of firearms and armaments.
- Domestic transportation by land, water and air.
- Trading of Thai antiques or art objects.
- Mining.

A foreign majority-owned company can engage in List 2 activities if Thai nationals or legal persons hold not less than 40% of the total shares and the number of Thai directors is not less than two-fifths of the total number of directors. Exceptions are those which receive:

- Permission from the Minister of Commerce with approval by the Cabinet (if there is a reasonable cause, the Minister with the approval of the Cabinet may reduce the Thai shareholding requirement, which in no case shall be less than 25% of the total shares).
- Investment promotion from the Board of Investment.
- Authorisation by the Industrial Estate Authority of Thailand.

List 3. This contains activities in which there are economic protections for Thai nationals. Among other things, they include:

- Accounting, legal, architectural or engineering services.
- Retail and wholesale.
- Hotel.
- Selling food or beverages.
- Any kind of service business.

There are exceptions to List 3 for those which receive:

- Permission from the Director-General of the Department of Business Development at the Ministry of Commerce, with approval by the Foreign Business Committee.
- Investment promotion from the Board of Investment or from the Industrial Estate Authority of Thailand.

3. Are there any exchange control or currency regulations?

Foreign exchange transactions are regulated by the Exchange Control Act 1942 (as amended).

Commercial banks are authorised by the Bank of Thailand to approve the following foreign exchange transactions in its name:

- Remittance of an unlimited amount in payment of imported goods.
- Remittance for investing in overseas ventures in which Thai legal entities hold at least 10% shares.
- Lending to affiliated entities abroad for legal entities, as necessary and appropriate.
- Remittance of up to US\$100 million (as at 1 November 2011 US\$1 was about EURO.7) per year for natural persons investing in overseas ventures in which they hold at least 10% shares.
- Remittance of up to US\$50 million or its equivalent per year for lending to non-affiliated companies.

- Remittance for investment in overseas securities issued by Thai entities without limit.
- Remittance for investment in overseas securities issued by foreign entities of up to US\$50 million or its equivalent.
- Remittance of up to US\$10 million or its equivalent per person per year for the purchase of real property in a foreign country.
- Remittance to Thai emigrants who are permanent residents abroad of up to US\$1 million or its equivalent per person per year.

Sums that exceed the limitations, or are for purposes other than those specified by the Bank of Thailand, require the Bank of Thailand's approval.

4. What grants or incentives are available to investors?

The Board of Investment of Thailand grants both fiscal and non-fiscal incentives to qualifying investment projects in Thailand, and these incentives are available equally to both Thai and foreign investors. The incentives include, among other things:

- Income tax holiday of up to eight years (depending on the geographical location of the project).
- Withholding tax exemption for dividend distribution during the tax holiday.
- 100% foreign ownership in certain businesses reserved under the FBA.
- Customs duty exemption or reduction for imported raw materials and machinery.
- Land ownership for foreign companies.
- Visa and work permit privileges for expatriates.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies in your jurisdiction, and what are the main applicable formalities, rights, restrictions and liabilities?

The most common form of business vehicle used by foreign companies is the private limited company, as it limits shareholders' liability (to the remaining amount unpaid, if any, of the registered capital due on the shares respectively held by them). In addition, if Thai nationals own more than 50% of its share capital, a private limited company is not regarded as foreign under the FBA, and therefore is not restricted from engaging in reserved business (see *Question 2*).

Registration formalities

At least three natural persons (promoters) are required to establish a private limited company. The incorporation of a limited company must be registered with the Department of Business Development (DBD) of the Ministry of Commerce. The process includes reservation of a company name and filing and registration of a memorandum of association and incorporation

documents, which must be signed by all promoters and directors. If all incorporation documents are signed and ready, the filing and registration with the DBD can be completed within one day. Total government fees are about 0.55% of the registered capital, with a minimum of THB5,500 (as at 1 November 2011 US\$1 was about THB30) and a maximum of THB275,000.

Share capital

The minimum share capital for a foreign majority-owned company is THB2 million. If the intended activity is reserved under the FBA (see *Question 2*), the minimum share capital is THB3 million. The par value of each share must be at least THB5. The registered capital must be initially paid up at the minimum of 25% of the total amount.

If the company has foreign employees, the company must have at least THB2 million registered capital, 100% paid-up, per work permit.

Non-cash consideration

In principle, non-cash capital contribution (payment in kind), such as assets or services, is acceptable if approved by the statutory shareholders' meeting.

Rights attaching to shares

Restrictions on rights attaching to shares. The following restrictions apply:

- Shares are indivisible.
- A company cannot take its own shares in pledge.
- The whole amount of every share must be paid in money, unless approved by the statutory meeting or special resolution of the general meeting of shareholders in case of an increase in the registered capital.
- A shareholder cannot avail himself of a set-off against the company as to payments on shares.

Other rights or restrictions may be given by the company's Memorandum of Association, Articles of Association, or the general meeting of shareholders.

Automatic rights attaching to shares. Automatic rights attached to shares include, among other things:

- The right to receive a shares certificate.
- The right to transfer shares without the consent of the company unless shares are entered in a name certificate and otherwise provided in the company's Articles of Association.
- The right to attend and vote at any general meetings of the shareholders.
- The right to receive dividends.
- The right to inspect the register of shareholders and the minutes of the board of directors' and shareholders' meetings.
- The right to submit an application to the court to cancel any resolution of the general meeting which is contrary to the law or company's articles of association.
- The right to claim for compensation against directors for injury caused by them to the company.
- The right to purchase new shares in proportion to the shares currently held by shareholders.

- The right to receive the remaining property of the company once the company has been liquidated.

Foreign shareholders

If the company engages in any business activities reserved in the FBA (see *Question 2*), non-national shareholders must hold, in aggregate, less than 50% of the total number of shares. Foreign shareholders are entitled to the same rights attached to shares as Thai shareholders.

Management structure

A private limited company is managed by a board of directors consisting of at least one director who is elected by the shareholders in a general meeting.

Management restrictions

Generally, there is no nationality requirement for directors, except for foreign companies permitted to engage in a business in List 2 of the FBA (see *Question 2*).

Directors' and officers' liability

Directors are generally not personally liable to a third party for their actions on behalf of the company, unless they are in breach of their authority as stipulated in the memorandum and articles of association of the company or a shareholders' resolution. Directors can also be criminally liable if the company commits a criminal offence under certain statutes.

Parent company liability

A parent company, as a shareholder, is only liable for the debts and losses of its subsidiary (which is a limited company in Thailand) up to the amount unpaid on its shares.

Reporting requirements

All limited companies must file audited financial statements of the fiscal year (12-month accounting period) with the Ministry of Commerce and Revenue Department within five months of the end of the fiscal year. The audited financial statement must be approved by a general meeting of shareholders within four months of the end of the fiscal year, and the Ministry of Commerce also requires that the filing must be done within one month of the approval of the general meeting of the shareholders.

EMPLOYMENT

Laws, contracts and permits

6. What are the main laws regulating employment relationships?

The main laws regulating employment relationships in Thailand are:

- Thai Civil and Commercial Code on Hire of Services (sections 575 to 586).
- The Labour Protection Act (*B.E. 2541 (1998)*).
- The Labour Relations Act (*B.E. 2518 (1975)*).
- The Social Security Act (*B.E. 2533 (1990)*).
- The Workmen's Compensation Act (*B.E. 2537 (1994)*).
- The Alien Employment Act (AEA) (*B.E. 2521 (1978)*).

- The Royal Decree Naming Professions Prohibited to Aliens (RD) (*B.E. 2522 (1979)*).
- The Labour Court Establishment and Procedure Act (*B.E. 2522 (1979)*).
- The Home Workers Protection Act (*B.E. 2553 (2010)*).
- The Occupational Safety and Health Act (*B.E. 2554 (2011)*).

In addition, most laws provide for the promulgation of ministerial regulations, which provide additional clarity and rules.

Thai labour law applies to all employees working in Thailand, regardless of their nationality or tenure. It is not possible to avoid the applicability of Thai labour law through the use of choice of law provisions.

The AEA and the RD regulate employment of non-Thai nationals working in Thailand.

Subject to certain arcane exceptions, none of the laws are relevant to employment of Thai employees outside Thailand or employees (of whatever nationality) of Thai companies working outside Thailand.

Contract requirements

7. Is a written contract of employment required, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

Employment contracts do not need to be in writing. An employment relationship can be proven by an employer's payroll documents or other reports/filings submitted to the Social Security Office or the Revenue Department. In addition, the terms of an employment relationship can be defined by the parties' conduct, (implied terms). A collective bargaining agreement may also be applicable.

8. Do foreign employees require work permits and/or residency permits?

Thai employment and immigration laws require that foreign persons wishing to work or physically operate a business in Thailand to obtain a work permit from the Ministry of Labour and maintain a valid non-immigrant visa while staying in Thailand. A foreign person intending to work in Thailand must first obtain a non-immigrant business (B) visa from any Royal Thai Embassy/Consulate abroad before entering Thailand and then obtain a work permit from the Ministry of Labour in Thailand before starting work. The work permit application must be sponsored by an entity or sponsor who is registered in Thailand. Processing the application normally takes between ten and 14 days. The processing time can be reduced to one day for companies that:

- Receive investment promotion.
- Have at least THB30 million in assets/capital.
- Otherwise qualify.

Government fees for a work permit are in the range of THB850 to THB6,100 depending on the validity period granted, which could be up to two years, plus minimal stamp duty.

While staying in Thailand, the foreign person must comply with the period of stay that is initially granted at 90 days on arrival (stamped in the passport). A one-year visa can be applied for within Thailand after the work permit is obtained, subject to renewal before the expiration date. The foreign person must leave Thailand by the expiry date or apply for an extension of stay in Thailand; otherwise, an overstaying fine is imposed.

There is no requirement for foreign employees to apply for Permanent Residence (PR) permits. Non-nationals with one-year non-immigrant visas who have resided in Thailand consecutively for at least three years are eligible to apply for a PR permit. There are several categories under which the PR application can be submitted, such as, business or employment purposes, experts/academics, or to support a family (spouse and/or children) who are Thai citizens. Various factors are taken into consideration when reviewing a PR application such as:

- The applicant's income.
- The applicant's properties.
- The applicant's knowledge.
- The applicant's proficiency in his or her profession.
- The applicant's family status.
- Conditions relating to national security.

A PR application under the category of employment is subject to the following conditions:

- The applicant must have worked in Thailand with a valid work permit for at least three consecutive years before the application.
- The applicant must have been working in the current company for at least one year before the application.
- The applicant must earn income of at least THB80,000 per month on average for at least two consecutive years before the application. Evidence of income tax filing is also required.
- The applicant must be able to understand and speak Thai to an average standard.

Each nationality is allowed an annual quota of 100 PR permits. The entire process takes at least one year from the submission date. A non-refundable PR application fee is charged at THB7,600. The PR permit fee (after approval is granted) is charged at THB191,400.

Termination and redundancy

9. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled by law to management representation or to consultation in relation to corporate transactions. Nevertheless, employees are protected in situations of termination of employment without cause, whether in relation to redundancy or otherwise. In addition, employee consent is required in situations of transfer of employment from one legal entity to another.

Agreements/implied terms

10. How is the termination of individual employment contracts regulated?

Distinctions are drawn between termination with cause and without cause, and between termination that is fair and unfair.

Termination with cause is only permissible in certain specific situations. Examples of reasons which justify termination with cause include:

- Dishonestly performing duties or intentionally committing a criminal offence against the employer.
- Deliberately causing damage to the employer.
- Negligently causing severe damage to the employer (*Labour Protection Act §119(3)*).
- Violating the employer's work rules and regulations or lawful working orders, despite having received a written warning for the same offence within the immediately preceding 12 months (for serious cases, the requirement of a written warning does not apply).
- Abandoning work for three consecutive working days, whether or not a holiday is taken in between, without justifiable reason.
- Having been sentenced to imprisonment by final court judgment for any offences other than those committed by negligence or petty offences and/or which caused the employer to incur loss or damage.

In circumstances justifying termination with cause, the employer can terminate employment immediately, and need not pay severance. However, if the employer terminates employment without cause (which is most frequently the case), the employer must:

- Serve a notice of termination at least one pay period in advance, or as stipulated in the employment agreement, whichever is longer (more than three months' notice need not be given).
- Provide compulsory severance pay, the amount of which depends on the length of service, ranging from one month to ten months.

In addition to the above, there is also a risk of claims for unfair termination. If a terminated employee considers his termination unfair, he or she may pursue the case in the labour courts, seeking compensation for unfair dismissal. The court, at its discretion, can award compensation beyond mere severance and payment of wages in lieu of notice, and so on. In making its determination the court is to consider various factors, such as:

- The age of the employee.
- The employee's tenure.
- The employee's position.
- The reason for termination.

If the court finds a termination unfair, it may order re-employment or damages. To avoid claims for unfair termination, employers should negotiate with outgoing employees to reach an amicable end to the employment relationship.

11. Are redundancies and mass layoffs regulated?

As a general matter, redundancies and mass layoffs are not regulated differently than other circumstances in which termination may occur. However, when employment is terminated due to certain kinds of restructuring relating to deployment of new technology or machinery, employers must both:

- Give 60 days' advance notice to the Labour Inspector.
- Give 60 days' advance notice to the affected employees, or make payment in lieu of such notice.

For this type of termination, normal severance pay is required (see *Question 10*), and the employer must also pay special severance to those employees who have at least six years' tenure.

TAX

Taxes on employment

12. In relation to employees, what constitutes tax residency in your jurisdiction?

A person (Thai or foreign) who resides in Thailand for a total period of 180 days or more (not necessarily consecutively) in any tax (calendar) year is considered a resident of Thailand for tax purposes.

13. What income tax or social security contributions must be paid during the employment relationship?

Tax resident employees

Tax resident employees are subject to personal income tax at progressive rates of 10% to 37%. The tax year is from 1 January to 31 December.

Non-tax resident employees

Non-tax resident employees are subject to income tax in the form of a withholding tax on the gross amount of their Thai source income at the flat rate of 15%. Tax payable is withheld at source at the time of the payment.

Employers

Employers must withhold income tax at the progressive rate or at the flat rate of 15% and remit the tax to the Thai tax authority no later than the seventh day of the month following the month of payment.

Social Security Fund

Employers and employees must each contribute to the Social Security Fund an amount equal to 5% of the employee's gross wages up to a maximum of THB750 per month.

Workmen's Compensation Fund

Employers must contribute annually to the Workmen's Compensation Fund between 0.2% and 1% of an employee's annual earnings (up to a maximum of THB240,000), depending on the classification of the employer.

Business vehicles

14. What constitutes tax residency in relation to business vehicles?

Companies incorporated in Thailand are deemed to be tax residents of Thailand.

15. What are the main taxes that potentially apply to a tax resident business vehicle (including rates)?

Thai companies must pay the following taxes on their worldwide income.

Corporate income tax

This must be paid at the rate of 30% on the net profit earned during a tax year. Reduced rates at the progressive rates of 15% to 30%, with an exemption on the first THB150,000 of net profit, are granted to small and medium-sized enterprises.

Value added tax (VAT)

VAT is payable at the rate of 7% (or 0% for export of goods and services) on the following categories of business transactions:

- Sale of goods.
- Provision of services.
- Export sales.
- Import of goods for any purpose.

Some business activities are exempt from VAT (such as sales of agricultural products).

Specific business tax (SBT)

Some business activities are subject to SBT instead of VAT, such as:

- Banking or similar activities.
- Lending money on the security of a property mortgage in the ordinary course of business.
- Securities.
- Life insurance.
- Pawn shop services.
- Commercial sales of immovable property or sales of immovable property for profit.

The rate payable varies between 0.1% and 3% of gross monthly receipts.

Municipal tax

This applies to anyone subject to SBT and is charged at the rate of 10% of the SBT payable. Municipal tax is already included in the 7% of VAT paid.

Stamp duty

There are 28 transaction documents subject to stamp duty (*Stamp Duty Schedule, Revenue Code*). The rate of stamp duty payable depends on the document executed.

16. How are the activities of non-tax resident business vehicles taxed?

Non-tax resident business entities (foreign companies) not carrying on business in Thailand must pay a withholding tax on the gross amount of their Thai-source income (such as service fees, royalties, interest and rental income) at the flat rate of 15% (or 10% for dividends). Tax payable is withheld at source at the time of the payment.

Dividends, interest and IP royalties

17. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
 - Dividends received from foreign companies?
 - Interest paid to foreign corporate shareholders?
 - Intellectual property (IP) royalties paid to foreign corporate shareholders?
-

Dividends paid

Dividends are subject to a withholding tax of 10%.

Dividends received

Dividends are taxed as the ordinary income of the Thai company. Tax exemptions are granted with certain conditions.

Interest paid

Interest is subject to a withholding tax of 15%.

IP royalties paid

Royalties paid to foreign corporate shareholders are subject to a withholding tax at 15%, which can be reduced to 5% or 10% under some tax treaties.

Groups, affiliates and related parties

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Thailand does not have thin capitalisation rules.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign corporation rules in Thailand. A Thai parent company is only subject to tax on dividends paid to it by a foreign subsidiary.

20. Are there any transfer pricing rules?

The Revenue Department has the power to make assessments regarding:

- The transfer of assets without compensation.

- The rendering of services without service charge.
- The lending of money without interest.

Additionally, it can make assessments of other activities with compensation, service charges, or interest in an amount considered to be lower than the market value without justification.

Customs duties

21. How are imports and exports taxed?

Customs duty is imposed mainly on imported and selected exported goods. Customs duty is levied in accordance with the Harmonised Commodity Description and Coding System.

As a signatory to the General Agreement on Tariffs and Trade and a member of the World Trade Organisation, Thailand complies with all relevant standards and codes when determining customs duty.

Imports and exports are also subject to VAT (*see Question 15*).

Double tax treaties

22. Is there a wide network of double tax treaties?

Thailand has signed 55 double tax treaties including with the US and European and Asian countries.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law?

The Trade Competition Act 1999 regulates agreements and practices which may create unfair competition. The Act established the Trade Competition Commission to oversee and ensure compliance with its provisions.

24. Is unilateral (or single-firm) conduct regulated by competition law?

Firms are expressly prohibited from performing any act that would have the effect of destroying, impairing, or restricting the business operation of another. In addition, firms that are deemed as having market domination are specifically prohibited from engaging in unilateral acts such as unreasonably fixing prices or suspending services or goods without justification, in order to reduce the quantity below market demand. Penalties for violation include imprisonment for a term not exceeding three years or a fine not exceeding THB6 million.

25. Are mergers and acquisitions subject to merger control?

Mergers and acquisitions or any other agreements that would result in a monopoly or unfair competition are expressly prohibited, unless permission is granted by the Trade Competition Commission. The merger control laws do not specifically address foreign businesses.

INTELLECTUAL PROPERTY

26. What are the main IP rights capable of protection?

Patents

Nature of right. To qualify for an invention patent, an invention must be all of the following:

- New.
- Involve an inventive step.
- Have an industrial application.

An invention that lacks an inventive step (a utility model) can be protected by a petty patent. A patent owner enjoys exclusive rights to produce, import, use or sell the protected product or process.

Protection. To obtain protection, an application for a patent must be submitted to the Department of Intellectual Property.

Enforcement. A patent owner can bring:

- A criminal action to prevent infringement, which includes fines from THB20,000 to THB400,000 and/or imprisonment of six months to two years.
- A tort action under the Civil and Commercial Code.

Length of protection. An invention patent is protected for a non-renewable period of 20 years. A petty patent is protected for six years, which is renewable for a further two years on two occasions (up to a maximum of ten years in total).

Trade marks

Nature of right. The Trademark Act 1991 (as amended) provides a framework for the registration and protection of trade marks, service marks, certification marks and collective marks. To be capable of registration, a mark must be all of the following:

- Distinctive.
- Not be excluded by the Trademark Act.
- Not be identical or similar to trade marks already registered.

Protection. Applications for trade mark registration must be submitted to the Department of Intellectual Property. The owner of a registered mark has the exclusive right to use the registered mark for the goods in respect of which registration has been granted. Owners of unregistered marks are not entitled to institute any legal proceedings in court to prevent the use or claim for damages for the infringement of an unregistered mark, except in passing-off cases.

There is no specific legislation relating to unregistered trade marks in Thailand. The owner of an unregistered trade mark can obtain indirect protection under the Civil and Commercial Code if identifiable ownership rights to the unregistered mark (such as established reputation and goodwill) can be established.

Enforcement. A trade mark owner can bring:

- A criminal action in a case where a third party forges or imitates a mark without authorisation or imports, sells or offers for sale, products bearing forged or imitative marks. The penalties include fines from THB200,000 to THB400,000 and/or imprisonment of two to four years.

- A tort action under the Civil and Commercial Code.

For unregistered marks, enforcement can be through an action for passing off under the Civil and Commercial Code and/or the Penal Code.

Length of protection. Protection lasts for ten years from the date of filing an application for registration, renewable indefinitely for ten-year periods. There is no defined term of protection for unregistered marks.

Registered designs

Nature of right. Registered designs are protected by the Thai Patent Act 1979, as amended. To qualify, a product design must be all of the following:

- Composed of lines or colours which give a special appearance to a product.
- New.
- For industrial use.

Protection. Applications for a design patent must be submitted to the Department of Intellectual Property.

Enforcement. The enforcement procedure is the same as for patents (*see above, Patents*).

Length of protection. Protection is for a non-renewable ten-year period.

Unregistered designs

Nature of right. There is no specific protection for unregistered designs. However, a design may be protected under section 4(7) of the Copyright Act 1994, as a work of applied art.

Protection. A work of applied art is a protected work that is used for a practical purpose rather than just for artistic appreciation. Copyright protection arises automatically on creation or publication of the work.

Enforcement. The enforcement options are the same as for patents. The penalties for a criminal action include fines from THB20,000 to THB800,000 and/or imprisonment of six months to four years. Repeat offenders (within five years) can be liable to double punishment.

Length of protection. A work of applied art is protected for 25 years from the date the work was created or, if published, 25 years from its publication.

Copyright

Nature of right. Copyright can subsist in the following original works (*Copyright Act 1994*):

- Literary (including computer programmes).
- Artistic.
- Dramatic.
- Musical.
- Audio-visual.
- Cinematographic.
- Sound and video broadcasts.

- Compilations.
- Any other original works of a literary, scientific or artistic nature.

A copyright owner has the exclusive right to:

- Reproduce or adapt the work.
- Disseminate the work to the public.
- Rent out the work.
- Grant licences for the work.
- Sell the copyright.

Protection. Copyright protection arises automatically on creation or publication of the work. Alternatively, the copyright owner can record his ownership with the Department of Intellectual Property, in order to create proof of ownership.

Enforcement. This is the same as for unregistered designs (see above, *Unregistered designs*).

Length of protection. Protection for most works lasts for the lifetime of the creator plus 50 years, except works of applied art (see above, *Unregistered designs*).

Confidential information (trade secret)

Nature of right. To qualify as a trade secret under the Trade Secrets Act 2002, information must:

- Not be known to the public.
- Not yet be known to those who would usually deal with it.
- Have commercial value as a result of its secrecy.
- Be controlled using reasonable measures to ensure it remains secret.

The owner of a trade secret has the right to disclose it, use it, and permit others to use it.

Protection. Trade secrets are automatically protected (no application procedure is necessary). The rights often arise from contractual relationships, although this is not always necessary. Trade secret rights can be infringed by:

- Disclosing the trade secret.
- Preventing the owner from using the trade secret.
- Using the information without the consent of the owner and in a manner contrary to honest trade practices (such as breach of contract and bribery).

Enforcement. The enforcement options are the same as for patents. Criminal remedies include fines of THB200,000 to THB2 million and/or terms of imprisonment of one to ten years.

Length of protection. Trade secrets are protected for as long as they remain secret.

MARKETING AGREEMENTS

27. Are marketing agreements regulated?

Agency

Agency agreements are regulated by general contract and agency principles under the Civil and Commercial Code and must be construed in accordance, and comply, with their express terms.

Distribution

There are no specific laws relating to distribution agreements.

Franchising

There are no specific laws relating to franchise agreements. However, if a franchising agreement contains a provision related to granting a licence to use a registered trade mark, the franchising agreement must be made in writing and registered with the competent officer under the Trademark Act.

The principle of freedom of contract applies to all marketing agreements, provided the terms and provisions agreed by the contracting parties are not contrary to public order or good morals.

E-COMMERCE

28. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

The Electronic Transactions Act 2001 regulates electronic civil and commercial transactions and signatures. The Act on Computer-Related Offences 2007 sets out various types of virtual criminal offences. Penalties of both imprisonment and fines may be imposed not only on violators but also on service providers. The draft Data Protection Bill remains on the agenda and was recently reviewed by the Council of State.

DATA PROTECTION

29. Are there any data protection laws?

The Act on Computer-Related Offences covers data security and provides penalties for unauthorised access or changing of data. No specific data protection legislation presently exists. However, a draft law based on the European model is under consideration (see *Question 28*).

PRODUCT LIABILITY

30. Are there any laws regulating product liability and product safety?

Two laws were recently adopted to address product liability and product safety issues:

- The substantive Unsafe Goods Liability Act 2008 (Product Liability Act) , which came into force in February 2009.
- The Consumer Case Procedure Act 2008, a procedural law to regulate court proceedings in relation to disputes between consumers and business operators. This took effect in August 2008.

Unsafe Goods Liability Act

The Product Liability Act (the Act) is designed to protect consumers who incur damage from a defective or dangerous product by imposing strict liability on business operators involved in the manufacture and/or sale of the product. The operator is liable regardless of whether it was negligent in making or selling the product. The Act addresses three specific types of product defects:

- Manufacturing defects.
- Design defects.
- Insufficient warnings (or failure to warn).

Under the Act, product liability cannot be waived or limited by way of contract or by any waiver or limitation of liability statement given by an operator. The Act does not have retroactive application and, therefore, products sold to consumers before enactment are not subject to this specific product liability legislation.

Consumer Case Procedure Act

The Consumer Case Procedure Act 2008 is intended to make it easier for consumers to pursue product liability claims against business operators. The Act simplifies and expedites the legal process for an injured party to seek redress. For example, consumers can file complaints orally, and court fees are waived for consumers who wish to file an action. In addition, the court is given considerable discretion under the Act to conduct the proceedings and to ensure that consumers receive fair treatment.

CONTRIBUTOR DETAILS



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Areas of practice. Tax.

Recent transactions

- Acted as the exclusive tax adviser for General Motors (Thailand) Ltd. on its THB30 billion manufacturing plant.
- Advised a client on various tax matters, including tax implications and tax planning for tool sharing and various domestic and cross-border transactions with other corporate units, tax planning for various business operation and sales promotion plans, transfer pricing issues, Free Zone implementation, and other issues.