

IP in business transactions: Thailand overview

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Country Q&A | [Law stated as at 01-Sep-2019](#) | Thailand

A guide to intellectual property law in Thailand. The IP in business transactions Q&A gives an overview of maintaining an IP portfolio, exploiting an IP portfolio through assignment and licensing, taking security over IPRs, IP and M&A transactions, and the impact of IP on key areas such as competition law, employees and tax.

To compare answers across multiple jurisdictions, visit the [IP in business transactions: Country Q&A tool](#).

This Q&A is part of the global guide to IP law. For a full list of jurisdictional Q&As visit global.practicallaw.com/ip-guide.

Overview of main IPRs

1. What are the main IPRs in your jurisdiction? How are they protected?

Patents

A patent can be granted for an invention that is all of the following:

- New.
- Involves an inventive step.
- Capable of industrial application.

An invention is considered as new or qualified for worldwide novelty if it does not form part of the state of the art.

The following subject matter is not patentable under the Patent Act:

- Micro-organisms that naturally exist and their components, animals, plants, or extracts from animals or plants.
- Scientific and mathematical rules and theories.
- Computer programs.
- Methods for diagnosing, treating, or curing human or animal diseases.
- Inventions contrary to public order or morality, public health, or welfare.

An invention patent is valid for a period of 20 years from the Thai filing date with no extension available.

To be eligible for a petty patent, an invention must be new and industrially applicable. A petty patent grants protection of six years from the application date, which can be extended twice for a two-year period each time. It is not possible to obtain both a patent and a petty patent for the same invention. However, applicants in either case can change the type of right applied for, from petty patent to patent and vice versa. This must be done before registration of the invention and issue of a petty patent, or before publication of the patent application.

An invention patent application can seek patent protection over an unlimited number of claims. A petty patent application can seek patent protection for no more than ten claims. A request for substantive examination is not required, and it typically takes two to four years for a petty patent to be granted.

Trade marks

A trade mark is a mark that is or will be used on or in connection with goods or services, to distinguish the relevant goods or services from the goods or services of other persons.

A trade mark can be a photograph, drawing, device, brand, name, word, text, letter, numeral, signature, combination of colours, figure or shape of an object, sound, or any combination of them.

Trade marks can be registered by the Department of Intellectual Property and give rise to various rights provided by the Trade Mark Act. Trade mark protection lasts for ten years and can be renewed every ten years.

Unregistered trade marks can be protected through a passing-off action under the Trade Mark Act.

Copyright

To obtain copyright protection, a work must be an expression of an idea, expressed in a recognised work, original and not illegal.

Copyright protection is automatic and valid for the life of the author plus an additional period of 50 years after his/her death. If the author is a legal person, copyright lasts for 50 years after the work is first published. If the work is unpublished, this 50-year period commences after its creation.

Under the Copyright Act, copyright can be obtained for literary works (including computer programs), dramatic works, artistic works, musical works, audiovisual works, cinematographic works, sound recordings, sound and video broadcasting and other works in the literary, scientific or artistic domain.

Copyright protection does not extend to ideas, procedures, processes, systems, methods of use, operations, concepts, principles, discoveries, or scientific or mathematical theories.

The Copyright Act recognises moral rights covering the right of paternity and the right of integrity. Moral rights can be waived in writing.

There is no requirement to register a copyright work. However, the Copyright Office of the Department of Intellectual Property provides a copyright recordation system for copyrighted works. In the event of a court action, recordation can be used as supporting evidence.

Design rights

To obtain design protection, an owner of a design must file a design patent application with the Patent Division.

To be eligible for a design patent, a design must be new, have special characteristics, and be industrially applicable. The term of a design patent is ten years from the date the application is filed in Thailand. This term cannot be extended. The design system in Thailand is a substantive examination system.

Trade secrets and confidential information

Trade secrets are protected by the Trade Secrets Act B.E. 2545 (2002). The Act provides protection against misappropriation of confidential information, including formulas, programs, patterns, compilations, methods, devices, techniques, and processes.

For a company secret to be protected as a trade secret, all the following must be satisfied:

- The information must not be publicly known or not accessible by persons who are normally connected with the information.
- The information must be economically valuable because of its secrecy.
- The controller of the information must have taken appropriate measures to maintain the secrecy. The appropriate measures depend on the nature of the secret. Use of non-disclosure agreements and confidentiality clauses in employment contracts and other agreements are generally required.

Maintaining IPRs

Search and information facilities

2. What facilities are available to conduct IP searches and obtain IP information on registered IP rights?

Patents

A patent search can be conducted on the Thai Department of Intellectual Property's (DIP) computerised database which is available online at <https://patentsearch.ipthailand.go.th/dip2013/simplesearch.php>. The DIP database is the most reliable for patent, design and petty patent searches. However, the searches must be conducted in the Thai language because in most cases, the information in English is not available.

Trade marks

The Department of Intellectual Property's trade mark database provides a trade mark search facility and information on registered trade mark rights through the eServices website, accessible at <http://ipthailand.go.th/th/e-service/#####.html>. The change of the search platform to English is not yet available.

Copyright

A search on a copyrighted work that has been recorded with the Copyright Office can be made through the Department of Intellectual Property's website. However, since copyright registration is not required in Thailand, such a search will not cover copyright works that have not been recorded.

There are no facilities available to monitor possible infringements of copyright works.

Design rights

See above, [Patents](#).

Maintenance of main IPRs

3. What steps must a business take to maintain the registration and legally protectable status of its main IPRs?

Patents

Annuity payments must be made to maintain the patent. The first annuity (the so-called fifth annuity) is due on the beginning of the fifth year from the Thai filing date, and additional fees are payable annually after then.

If an annual fee is not paid within the prescribed period, the patentee must pay the fee together with a surcharge of 30% of the unpaid fee.

Trade marks

A registered trade mark must be renewed every ten years to maintain its rights. The renewal can be filed within three months before the expiry of the ten-year period. Renewal can still be filed up to six months after the due date, with a late payment penalty of 20% of the government fee.

Registration can be cancelled on application by an interested person if the trade mark has not been used by the owner or a licensee recorded at the Department of Intellectual Property for at least three consecutive years before the application is filed.

Copyright

There is no requirement to register copyright (see [Copyright](#)).

Registered designs

See above, [Patents](#).

Trade secrets and confidential information

Legal protection for a trade secret can last indefinitely as long as the information remains secret.

Monitoring infringement

4. What steps can a business take to avoid infringing another party's IPRs and to monitor whether another party is infringing its IPRs?

Patents

It is highly advisable for a business to conduct an analysis to ascertain whether a particular product or process can be made without infringing others' patent rights, before entering the market. Thailand offers patent searches through the Department of Intellectual Property, to check for prior registered patents around the world (see [Patents](#)).

In addition, to avoid patent infringement, a business should investigate products that appear similar to its own products and then undertake patent/product mapping.

A local patent consulting firm may be required to assist a business to discover products that infringe its rights.

Trade marks

Before filing a trade mark application for registration in Thailand, it is recommended that the applicant conduct a trade mark search for goods or services associated with the proposed trade mark. The Department of Intellectual Property has an extensive trade mark database (see [Trade marks](#)). A search of this database can uncover likely objections and is also helpful for detecting trade mark squatters.

Monitoring new trade mark applications periodically is another way for a trade mark owner to protect its rights, particularly during the publication period. It enables trade mark owners to file an opposition against trade mark applicants, on the grounds that a proposed trade mark is identical or confusingly similar to previously registered trade marks.

Conducting a periodic online search is a convenient option for trade mark owners to monitor infringement in online markets. There are also professional IP monitoring services available in Thailand that provide market surveys for trade mark owners.

Copyright

Copyright registration is not mandatory. The Department of Intellectual Property has a copyright database in Thailand, but it does not cover all copyrighted works (see [Copyright](#)).

Another option is to periodically search for works advertised online, to check for possible copyright infringement. This can be conducted by professional monitoring services.

Registered designs

See above, [Patents](#).

Trade secrets and confidential information

Trade secrets can be vigorously protected by drafting an effective employment agreement, including a non-disclosure clause to preserve the company's confidential information. It is advisable for an employer to raise awareness of its IPRs and IP infringement with their employees, to avoid infringing others' IP rights.

In the exit interview, there should be a reminder to departing staff about their obligation to protect their ex-employer's trade secrets.

Exploiting IPRs

5. What are the main steps in conducting an IP audit in your jurisdiction to determine the content of an IP portfolio?

Patents

The main steps are as follows:

- Investigate all types of products and processes in the inventory, to determine whether they should be protected as inventions through process patents or petty patents.
- Identify and classify all documentation related to such products and processes, both registered and unregistered.
- Verify patent ownership of the inventory.

- Review existing agreements related to current patents, for example, licensing agreements, assignment agreements (both inbound and outbound), joint development agreements, and technology transfer agreements.
- For registered patents or petty patents, verify the current legal status, the expiry and renewal date, and periodic payment fees, to prevent expiry.
- Assess potential or existing conflicts, to check whether the company has encountered any litigation or contingent liability due to patent infringement matters.

Trade marks

The main steps are as follows:

- Investigate trade marks in the inventory that the company has created or owns.
- Identify and classify all documentation related to trade marks, both registered and unregistered.
- Verify trade mark ownership.
- Review existing agreements related to trade marks, for example, licensing agreements and assignment agreements (both inbound and outbound).
- For registered trade marks, verify the current legal status, expiry and renewal dates, and periodic payment fees, to prevent expiry. In addition, verify whether trade marks have been used, to prevent revocation due to non-use.
- Assess potential or existing conflicts to check whether the company has encountered any litigation or contingent liability due to trade mark infringement.

Copyright

The main steps are as follows:

- Investigate all creations in the inventory to determine whether they can be considered copyright work.
- Identify and classify all documentation related to copyright works, both recorded and non-recorded.
- Verify copyright ownership.
- Review all existing agreements related to copyright works, for example, licensing agreements, assignment agreements (both inbound and outbound), and co-author agreements.
- Assess potential or existing conflicts to check whether the company has encountered any litigation or contingent liability due to copyright infringement matters.

Registered designs

See above, [Patents](#).

Trade secrets and confidential information

The main steps are as follows:

- Investigate all trade information in the inventory, to determine whether it has been kept secret and whether the business should take precautions to keep it secret.

- Identify and classify all documentation related to that trade information.
- Verify ownership of the trade information.
- Review all existing agreements related to the trade secret, for example, non-disclosure agreements and employment agreements.
- Assess potential or existing conflicts to check whether the company has encountered any litigation or contingent liability due to trade secret infringement.

Assignment

Scope of assignment

6. On what basis can the main IPRs be assigned?

Patents

A patent and petty patent (including patent applications) can be assigned at any time from filing.

Trade marks

A registered trade mark can be wholly assigned or partially assigned for only some of the relevant goods and services.

Copyright

Copyright can be assigned wholly or partially for a certain period of time or throughout the period of protection. Moral rights to a copyright work cannot be assigned; however, they can be waived in writing.

Registered designs

A registered design (including registered design applications) can be assigned at any time from filing.

Trade secrets and confidential information

Trade secrets and confidential information can be assigned.

Formalities for assignment

7. What formalities are required to assign each of the main IPRs?

Patents

In the filing of a recordal of assignment, the assignment must be in writing, and signed by the assignor and assignee. Documents required for filing are the notarised deed of assignment between the assignor and the assignee, and the notarised power of attorney executed by the assignee.

There is no time limitation for filing the recordal of assignment. The assignment must be registered at the Department of Intellectual Property in order to properly assign the invention under the Thai application from the current owner to the new owner, and for the change in ownership to be valid and enforceable against third parties.

The Thai Patent Office will not issue a certificate confirming any change in name, address, or ownership for a pending application. Such a change is regarded as an amendment to the applicant's information, and should be completed at the time of filing. Only a granted patent will receive a certificate from the Thai Patent Office.

Trade marks

The assignment must be in writing, signed by both the assignor and assignee. The assignment must be registered at the Department of Intellectual Property to reflect a proprietor change on the database of the Trade mark Office as well as be valid and enforceable against third parties. The signatures of both representatives of the assignor and the assignee must be notarised. The application for registration of the assignment must include a duplicate copy of the registration certificate or original registration certificate for the trade mark if the mark is registered. A pending trade mark application can also be assigned.

Copyright

An assignment of a copyrighted work must be in writing and signed by the assignor and assignee. The assignment does not require registration.

Registered designs

See above, [Patents](#).

Trade secrets and confidential information

The assignment agreement must be in writing and signed by both the assignee and assignor.

Main terms for assignments

8. What main terms should be included in an assignment of IPRs?

Patents

To satisfy the official requirements, the following information must be included in the deed of assignment form:

- Name and address of the current applicant/patentee as the assignor.
- Name and address of the new applicant/patentee as the assignee.
- Thai patent application number and title of the invention.
- Signatures of the authorised persons of the assignor and assignee.

Trade marks

The main term that must be included in the deed of assignment is wording showing the transfer of the trade mark.

Copyright

The main terms to be included in a copyright assignment are:

- Whether the rights granted to the assignee are exclusive or non-exclusive.
- The period of time the right is to be assigned for. If no period is specified, the assignment is for ten years.

Registered designs

See above, [Patents](#).

Licensing

Scope of licensing

9. On what basis can the main IPRs be licensed?

Patents

A patent can be licensed in whole or part.

Trade marks

A trade mark can be licensed for any or all of the goods for which it is registered.

Goodwill in a registered mark is not recognised under the Trade Mark Act B.E. 2534 (1991) as amended by the Trade Mark Act (No. 3) B.E. 2559 (2016), and therefore cannot be assigned or licensed.

Copyright

A copyright owner can license any or all of the following rights in the copyright work:

- Reproduction or adaptation.
- Communication to the public.
- The original or copies of a computer program, an audiovisual work, a cinematographic work and sound recordings.

Design rights

See above, [Patents](#).

Trade secrets and confidential information

A trade secret can be licensed.

Formalities for licensing

10. What are the formalities to license each of the main IPRs?

Patents

A patent licence must be in writing and signed by both parties. The licence must be notarised and registered.

Trade marks

A trade mark licence must be in writing and signed by both parties. The licence must be notarised and registered.

Copyright

The Copyright Act does not require a copyright licence to be in writing, but in practice, it is advisable that a copyright licence be in writing. The licence does not require notarisation. There is no copyright registration system in Thailand for copyright works or copyright licences.

Registered designs

A design right licence must be in writing and signed by both parties. The licence must be notarised and registered.

Trade secrets and confidential information

The Trade Secrets Act does not require a trade secrets licence to be in writing. The licence does not require notarisation and registration.

Main terms for licences

11. What main terms should be included in an IP licence?

Trade marks

Apart from the standard licence provisions on territory, royalty fees, duration, and type of licence granted (exclusive or non-exclusive), a trade mark licence should clearly state whether the rights are granted for all or some of the goods/services registered for the licensed trade mark.

Further, a provision on quality control must be included, to ensure that the products/services under the licensed trade mark will conform to the licensor's quality standard.

Patents

The standard provisions in a patent licence may include:

- Preamble and parties' identification.
- Patent(s) and claim(s) being licensed.
- Bundle of rights being licensed (for example, to manufacture, sell, and import).
- Licensing type (non-exclusive, sole or exclusive).
- Term (effective date and expiry).
- Royalty calculation and payment.
- Sublicensing.
- Rights to the improvement.
- Warranties.
- Confidentiality.
- Termination.
- Miscellaneous (amendment of licence, assignment, registration, inheritance, dispute resolution, and so on).

When granting a licence, the licensor must observe anti-competitive rules and regulation. For example, he/she must not impose on the licensee any condition or restriction or royalty term that unfairly limits competition, or requires the licensee to pay royalties for use of the invention after the patent has expired. Conditions, restrictions, or royalty terms which are contrary to the foregoing are considered null and void.

Copyright

When granting a licence, the licensor must observe the conditions prescribed in ministerial regulations to limit unfair competition. For example, he/she must not impose on the licensee any condition or restrictive term that requires the licensee to:

- Acquire materials for use in the production of a copyright work, either wholly or partly, from the copyright owner, or from a distributor designated by the copyright owner.
- Pay royalties at an unfair rate when compared to the rate prescribed by the copyright owner for other licensees for the same copyrighted work.

Registered designs

See above, [Patents](#).

Taking security

12. What are the key issues in taking security over the main IPRs?

Under the Business Security Act B.E. 2558 2015, security can be taken over all types of IPRs.

In practice, registered IP is preferable. Since IP is considered an intangible asset, most security receivers prefer to obtain a registration document, to ensure that the IP is recognised.

Unregistered IP (such as trade secrets or copyright) creates uncertainty about the ability of its owners to perform their obligations and unregistered IP cannot be verified through database searches.

Perhaps the most common problem area is that IP valuation is uncertain. Even though there is general practice in property valuation established by the Valuers' Association of Thailand, it is still difficult to assure financial institutions of the estimated value of IP assets.

The enforcement of security over IP is also in question because the Business Security Act restricts enforcement alternatives. The creditor can only take title to the secured IP or its proceeds, or sell the collateral at a public auction if the borrower defaults. In terms of taking title, it is uncertain how Thai financial institutions can manage seized IP assets, due to their possible lack of experience in IP asset management.

13. What are the main security interests taken over IPRs?

A charge is compatible with IPRs. According to the Business Security Act, IPRs can be used as collateral without the requirements of transfer of ownership or delivery of possession.

A security agreement must be in writing. To perfect it, the security agreement must be registered with the Department of Business Development, in the Ministry of Commerce.

The Business Security Act specifies the required information needed to register a security interest. The registration must contain at least the following information:

- Names and addresses of the parties.
- Secured debt.
- Details of the property used as the security.
- Maximum amount agreed to be secured.
- Grounds for enforcing the security.
- Other particulars prescribed by the registration officer and published in the *Government Gazette*.

If the contracting parties do not register the security agreement, the secured transaction is unenforceable against third parties.

M&A

Due diligence

14. What IPR-related due diligence is commonly carried out in both a share sale or merger and an asset sale?

In both share sales and asset sales, the steps commonly taken during IP-related due diligence are to identify all IPRs used or owned by the target that are needed to conduct its business and gather further information on them, such as:

- Jurisdiction, status, ownership, registration number, registration date, and expiry/renewal date, pending application, infringement assessment, and status of payments of periodical fees (maintenance or renewal).
- Litigation and disputes, noting the parties, nature of the dispute, jurisdiction, cause(s) of action, status and so on, for any actual, pending, or threatened litigation, administrative action, or settlements affecting the IPRs.
- Assignments, licences, third party rights, or other authorisations, research and development agreements and collaboration agreements, including their main clauses such as exclusivity, warranties, scope and term.
- Security interests relating to the IPRs owned or used by the target.

Warranties/indemnities

15. What IPR-related warranties and/or indemnities are commonly given by the seller to the buyer in both a share sale or merger and an asset sale?

In both share sales and asset sales, common warranties and/or indemnities typically given by the seller relate to:

- Ownership of the IPRs.
- Infringement, litigation and disputes.
- Third party rights in the IPRs.
- Legal compliance.

Transfer of IPRs

16. How are the main IPRs transferred in both a share sale or merger and an asset sale?

Share sale or merger

A share sale or merger does not affect ownership of IPRs, since the target company remains the IPR owner.

Asset sale

In an asset sale, IPRs are transferred by assignment. In case of registered IPRs, namely trade marks and patents, an assignment agreement must be filed at the Department of Intellectual Property to record the assignment of the IPR ownership.

Joint ventures

17. Is it common for companies to set up joint ventures in your jurisdiction to develop projects that heavily involve IPRs?

Share sale or merger

It is common for companies to set up joint ventures in Thailand to develop projects that heavily involve IPRs. The main IP-related provisions normally included in the joint venture agreement are as follows:

- Ownership.
- Evaluation of the contribution of each party with respect to IPRs.
- Strategic alliance agreements, such as joint research and development, joint manufacturing, joint venture, joint promotion, and marketing agreements.

Competition law

Main provisions and common issues

18. What are the main provisions of your national competition law that can affect the exploitation of the main IPRs?

The main provisions of competition law are set out in the Trade Competition Act B.E. 2560 (2017). It does not have any provisions that specifically affect the exploitation of a party's main IPRs. Four main activities are considered illegal under the Trade Competition Act. These illegal activities include:

- Abuse of market dominance.
- Mergers and certain other forms of acquisition.
- Collusion and other collective practices that restrain competition in the market.
- Activities considered by the Trade Competition Commission (Commission) as unfair trade practices.

The Trade Competition Act grants the Commission the powers and authority to update legally binding lists of anti-competitive activities. It is expected that activities related to IP rights will appear on the list in the foreseeable future.

Section 39 of the Patent Act and section 15 of the Copyright Act specifically prohibit licences that have anti-competitive clauses.

19. What are the most common national competition law issues that arise in the exploitation of the main IPRs?

The Patent Act and the Copyright Act specifically prohibit licences that have anti-competitive clauses (see [Question 18](#)).

Exclusions/exemptions

20. What exclusions or exemptions are available for national competition law issues involving the exploitation of the main IPRs?

Under section 55 of the Trade Competition Act, business operators are restricted from jointly undertaking conduct that monopolises, reduces or restricts competition in a market, by appointing or assigning any one person to exclusively sell the same goods or provide the same services, which are the same type. However, section 56 of the Trade Competition Act provides an exception to section 55 where a joint agreement is in the form of a contract between business operators of different levels. For example, a contract where one side is granted rights in goods or services, trade marks, business operational methods, or business operations support, and the other side is granted rights with the duty to pay charges, fees, or other remuneration for the rights granted. In other words, a franchise business is allowed.

Advertising

21. To what extent do advertising laws impact on the use of third party trade marks?

Thailand does not have specific legislation on comparative advertising but there are general restrictions in practice. The Consumer Protection Act and tort provisions of the Civil and Commercial Code are normally applied to comparative advertising.

Other laws may apply, depending on the relevant industry. For example, the Drug Act in the pharmaceutical industry and the Food Act in the food industry.

Whether relevant laws impact on the use of third party trade marks is decided on a case-by-case basis.

Employees and consultants

22. Who owns each of the main IPRs created by an employee in the course of his employment? Must compensation be paid to the employee? What main steps can an employer take to ensure it owns each of the main IPRs?

Ownership

Patents. The Patent Law explicitly states that an employer has the right to apply for a patent for an invention created by the employee during his/her employment, unless otherwise provided in the contract. This applies when an employment contract does not require the employee to exercise any inventive activity, but the employee has made the invention using any means, data or report that his/her employment has put at his/her disposal. (*section 11, Patent Act*).

At the same time, an employee-inventor has the right to receive remuneration in addition to his/her regular salary if the employer gains certain benefits from using the invention. This right to receive remuneration cannot be excluded in the employment contract (*section 12, Patent Act*).

An employee-inventor who wishes to receive such remuneration must submit a request to the director-general of the Department of Intellectual Property. The director-general can set the amount of remuneration as he or she deems fit, taking into account the employee's salary, the invention's importance, the current and future benefits of the invention, and other circumstances, as laid out by ministerial regulation (*Ministerial Regulation No. 24*).

Copyright. Under section 9 of the Copyright Act, copyright in a work created by an author in the course of employment vests in the author unless otherwise agreed in writing, provided that the employer is entitled to communicate the work to the public in accordance with the purpose of the employment. Therefore, the employer must prepare an agreement with the employee to ensure that the employer owns the IPRs.

The employer can include a provision in the employment contract to assign the copyright in a work created by the employee, during the course of the employment, to the employer. The employment contract must be signed by both the employer and the employee.

Employers are not required to provide extra compensation to employees who create a copyrightable work.

Main steps

It is important for businesses involved in creating new products or processes to make sure that their employment contracts clearly address the issue of IPRs to works created during employment. The main provisions to be included in the employment contracts are as follows:

- Ownership.
- Remuneration.
- The rights to use IPRs after termination of employment.
- Confidentiality.

23. Who owns each of the main IPRs created by an external consultant? What main steps can a business take to ensure it owns each of the main IPRs?

Ownership

Unlike an employee, an external consultant who creates an IPR, in the absence of any agreement to the contrary, does not own the IPR.

Main steps

Even though it is presumed that the hirer owns IPRs in work created by an external consultant, consultancy agreements should clearly address this issue, to avoid any potential disputes.

Tax

24. What are the main taxes payable by a licensor on the licensing of the main IPRs?

Royalties or fees paid on the licensing of the main IPRs within Thailand are treated as taxable income subject to income tax.

The corporate income tax rate varies depending on the size of the legal person. This is determined by the amount of paid-up capital in each corporation, as well as the net profit per year. For non-small and medium enterprises, the rate is 20%.

Royalties paid to another Thai company are subject to a 3% advance withholding tax, which can be credited against the final corporate income tax due for the accounting period.

Royalties paid to non-residents are subject to 15% withholding tax on the gross amount. However, under some double tax treaties, the rate may be reduced to 5% or 10%.

25. What are the main taxes payable by a seller on the disposal of the main IPRs?

The sale proceeds from a disposal of the main IPRs are treated as taxable income subject to income tax (*see Question 24*).

Cross-border issues

26. What major international IP treaties is your jurisdiction party to?

Thailand is a member of the World Trade Organization and bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS). Thailand is also a member of several international IP treaties, including the:

- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989 (Madrid Protocol).
- Patent Cooperation Treaty 1970 (PCT).
- Paris Convention for the Protection of Industrial Property 1883.
- Convention Establishing the World Intellectual Property Organization 1967.

- Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).

A detailed list of treaties can be found at www.wipo.int/wipolex/en/profile.jsp?code=TH.

27. Are foreign IPRs recognised in your jurisdiction?

Patents

Registered foreign patents are not recognised nor protected in Thailand, unless the patent owner seeks to register its patent in Thailand. The PCT provides an efficient way to register in Thailand.

Trade marks

A foreign trade mark holder can now protect its mark in Thailand under the Madrid Protocol, which entered into force in Thailand in 2017.

Copyright

A foreign copyright owner can protect its copyright in Thailand under the Berne Convention.

Registered designs

The Department of Intellectual Property is preparing legislation, personnel, and international registration systems for accession to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

Reform

28. Are there any proposals for reform?

A new Patent Act is expected in 2020. According to the Department of Intellectual Property, the new Patent Act will add a new section on access to genetic resources and benefit sharing. This section contains definitions of genetic resource, genetic material, and their derivatives.

There will also be a section on traditional knowledge, as Thailand is a party to the Convention for the Safeguarding of Intangible Cultural Heritage.

The new Patent Act will also introduce a new compulsory patent licensing process for public health needs, as ordered by the Competition Commission, in cases where a patent owner infringes trade competition law and restricts public access to medicines.

Online resources

Office of the Council of State, Thailand

W www.krisdika.go.th/wps/portal/general

Description. This website is maintained by the Office of the Council of State. It contains all official updated documents including legislation, court decisions and legislative-related articles. Official and unofficial translations of these documents are available.

WIPO Lex website, Thailand

W www.wipo.int/wipolex/

Description. Most Thai IP legislation can be found on this website in both English and Thai. The legislation is clearly listed. However, it may not be up to date.

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