

# Doing Business in Thailand

TILLEKE &

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**Tilleke & Gibbins**

# DOING BUSINESS IN THAILAND

prepared by



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## I. THE COUNTRY AT A GLANCE

### A. *What languages are spoken?*

Official language: Thai

Business languages: Thai and English, and in some circles Japanese, several Chinese dialects, Bahasa Malay, and languages of South Asia.

### B. *What is the current (as of November 8, 2007) exchange rate for the U.S. dollar, the Euro, and Yen?*

US\$1	=	Baht 34.08
Euro 1	=	Baht 50.06
Yen 100	=	Baht 30.33

### C. *Describe your country's geography, proximity to other countries and climate.*

Thailand is 514,000 sq. km. in area, about the size of France or Texas, with a population of 62.8 million, a current growth rate of 4.0 % per annum, and a per capita national GDP of about US\$9,100 (2006). Inflation is 5.1% (2006), and the heavy foreign debt of 1997 has been significantly reduced with steady growth in foreign exchange reserves.

Thailand has four geographic regions--the mountainous and forested North, the fertile Central plain, the arid Northeast, and hilly South. Located in the middle of Southeast Asia, Thailand's immediate neighbors are Laos, Myanmar, Cambodia, and Malaysia. Nearby are China, Vietnam, Singapore, and Indonesia. The climate generally is sunny, tropical, and very humid, with a rainy season from June to October.

### D. *Are there cultural influences or prohibitions on the way business is conducted?*

The Thai culture exercises significant influence on business dealings. Although the Thai people are tolerant of different behaviors, the optimal approach is one of politeness and respect without ever losing one's temper or raising one's voice. Conflicts should be resolved by polite discussion. There is a unique Thai identity, giving rise to "the Thai way" of doing things. Personal ties and trust are also important to the Thai people; accordingly, direct personal questions are common and not inappropriate. Yet, people tend to be indirect in their dealings with each other and go around an issue rather than directly to the key point. Thus, tasks may be accomplished less efficiently and less quickly than with a direct approach.

However, since the Asian crisis of 1997, the middle class is beginning to challenge established norms of a paternalistic society by questioning and arguing for openness, transparency, and accountability.

*E. Are there religious influences or prohibitions on the way business is conducted?*

The population is homogeneous and free of racial or religious strife. Of the 25% non-Thais, the majority are ethnic Chinese who have had an economic impact over the past century far in excess of their numbers. About 94% of the Thais are Buddhists, 4% are Muslim, and 2% are Christian, Hindu, Sikh and others. Although Buddhism imposes no specific prohibitions on business, the religion exerts influence on business dealings in that Thai people tend to adhere to Buddhist principles, such as avoidance of conflict and respect for established hierarchy.

*F. Explain your country's infrastructure. Be sure to explain which cities have airports, railroad systems, ports, and public transportation.*

Thailand was traditionally an agrarian economy, but since the Second World War, as a market-driven economy, it has developed sizeable industrial and services bases. Since the mid-1970s, industrialization has increased and investment has been directed towards export-oriented activities and the services industries. Between 1984 and 1994, Thailand had the most rapid economic expansion of any country in the world. Social institutions, social capital and costs failed to keep pace, leaving the country vulnerable to corruption, cronyism, money politics, systemic frailty, and an unorganized civil society. Thailand has received criticism over its inability to cope with recent demands on its infrastructure. Improvements are marked by indecision, delays, political conflicts, contract irregularities, corruption, and cost overruns.

**Airports:** Thailand has 39 civilian airports. In the north, there are airports in Chiang Mai, Chiang Rai, Tak, Mae Hong Son, Nan, Phrae, Lampang, Mae Sot, Phitsanulok, Pai, Uttaradit, and Sukhothai. In the northeast, there are airports in Udon Thani, Sakon Nakhon, Khon Kaen, Loei, Nakhon Ratchasima, Buri Ram, Nakhon Phanom, Roi-et, Surin, and Ubon Ratchathani. In the south, there are airports in Phuket, Hat Yai, Chumphon, Pattani, Nakhon Sri Thammarat, Surat Thani, Trang, Narathiwat, Krabi, Ranong and Koh Samui. In central Thailand, there are airports in Cha-am (Hua Hin), Phetchabun, Nakhon Sawan, and two terminals in Bangkok at Don Mueang Airport. The new Suvarnabhumi Airport was opened on September 28, 2006. It is located on an 8,000-acre plot of land in the Bang Phli district of Samut Prakan Province, only 25 kilometers away from central Bangkok. Built to accommodate 45 million passengers a year with a high level of competence, the government will use Suvarnabhumi Airport to strengthen the Kingdom as a future regional aviation hub.

Commercial air service is provided largely by the national flag carrier, Thai Airways. Six much smaller airlines have been allowed to operate along very limited routes: Bangkok Airways, P.B. Air, Orient Thai Airlines, Phuket Airlines, Thai Air Asia, and Nok Air. General aviation is only a handful of single-engine private aircraft.

**Railroad Systems:** Many people as well as goods in Thailand are transported by trains. From Bangkok, trains run regularly to the outer surrounding areas as well as to farther destinations north, south, east, or west. International trains only run to Malaysia and Singapore. There are three classes of passenger train travel, and sleepers, with or without air-conditioning, are available on longer trips. The trains are clean and run on time.

**Ports:** An estimated 85% of Thailand's trade goes through Klong Toey Port on the Chao Phya River. There are also deep seaports at Ma Ta Phut and Laem Chabang on the eastern seaboard, and at Songkla and Phuket in the south which are playing ever-increasing roles in international and coastal trade.

**Public Transportation:** Bangkok's road system is inadequate to deal with the large number of vehicles in the city. City road traffic suffers gridlock much of the business day. An overhead electric mass transit system (the so-called "BTS") has been in operation since December 1999, while an underground train (the so-called "MRTA") has been in operation since July 2004. In 2006, the Cabinet approved in principle four expansion projects of the mass transit system to five routes (Red Line, Dark Green Line, Light Green Line, Purple Line, and Blue Line), involving a total distance of 118 kilometers. In 2007, the Cabinet approved the Purple Line project (Bang Yai to Bang Sue route) involving a distance of 23 kilometers. It is hoped that these systems will help relieve pressure on the capital's too few roads and too much vehicular traffic. Chiang Mai in the north, Thailand's second largest though much smaller city, is beginning to experience the ill effects of the internal combustion engine.

**Road System:** Thailand has had an active road-building program since the early 1960s and now boasts a vast network of all-weather highways linking all parts of the nation. Thousands of trucks and buses transport goods and passengers among and within provinces. Thailand is the world's second largest market for pickup trucks.

**G. *Explain the telecommunications system.***

Thailand's telecommunications industry has evolved rapidly in the last fifteen years, as measured by both increased fixed-line telephone penetration rates and availability of sophisticated cellular, paging, and other value-added technology. However, Thailand's teledensity is very low, even for a developing country.

Presently, telecommunications services are provided exclusively through two former state enterprises--the TOT Corporation Public Company Ltd. and the CAT Telecom Public Company Limited--and the Post and Telegraph Department (PTD) of the Ministry of Transport and Communications. Since the late 1980s, the private sector has been allowed to operate within the Thai telecommunications market by obtaining concessions in the form of Build-Transfer-Operate (BTO).

Concessions were given by the then two state enterprises--the Telephone Organization of Thailand (TOT) and the Communications Authority of Thailand (CAT)--and the PTD to a number of local companies, many of which formed joint ventures with foreign telecommunications companies.

To conform to the World Trade Organization requirements (according to which the Thai telecommunications market must be fully liberalized by the year 2006), the Thai government approved on November 4, 1997 the "Master Plan for Telecommunications Development." The Master Plan provides for the privatization of the two state enterprises, the opening of the telecommunications market for competition through a step-by-step liberalization approach, and the setting up of one independent and impartial regulatory body, the National Telecommunications Commission (NTC) along the principles of the WTO. By liberalizing the telecommunications industry, Thailand shall allow the local and foreign private sector to apply for licenses to operate telecommunications services. Prior to 2006, foreign companies could do so only by entering into joint ventures with Thai companies with a limitation on foreign shareholding to not more than 25%. After 2006, the limitation on foreign shareholding was amended according to the law governing alien business operations, i.e. not exceeding 49%. Progress in the Master Plan schedule thus far has been the privatization in July 2002 of the TOT to the present TOT Corporation Public Company Limited, which assumed transfer of all the business, rights, debts, and liabilities of the former state enterprise, followed by the privatization in August 2003 of CAT to the present CAT Telecom Public Company Limited. The TOT Corporation Public Company Limited has a registered capital of Baht 6 billion while that of the CAT Telecom Public Company Limited is Baht 10 billion.

*H. Describe the public services, i.e. water, electricity, gas. Are they publicly or privately owned?*

**Water:** The Metropolitan Waterworks Authority (MWA), supervised by the Ministry of Interior, is the operator of the waterworks for Bangkok and neighboring Nonthaburi and Samut Prakan provinces. A main issue confronting the MWA is the potential lack of water available to Bangkok, in response to which many private parties have constructed over 14,000 artesian wells. Even though the underground water table has dropped dramatically and saltwater intrusion is occurring, the MWA's efforts to ban artesian wells have so far been unsuccessful. MWA's main source of raw water, the Chao Phya River, is suffering vast pollution due to silting and agricultural chemical and pesticide runoff as well as untreated urban sewage and industrial discharges.

The Provincial Waterworks Authority (PWA), also supervised by the Ministry of Interior, is the operator of the waterworks system for the rest of Thailand. Its publicly owned subsidiary, Eastern Water Resources Development (Eastwater), provides water to the industrial estates in Chon Buri, Rayong, Chachoengsao, and provinces in the eastern sector of the country.

PWA's and MWA's plans for privatization have not been implemented as yet. However, even before Thailand entered the IMF's bail-out program stemming from the 1997 Asian financial crisis, Thailand had privatized part of its water supply in the provinces. PWA operated its raw-water supply subsidiary Eastwater and awarded a build-own-transfer concession to a private consortium led by a UK water-utility company and construction firm.

**Electricity:** The state-owned Electricity Generating Authority of Thailand (EGAT), controlled by the Office of the Prime Minister, is the main electricity producer and distributor in Thailand, producing 60% of Thailand's electricity requirements. A further 37.6% comes from Independent Power Producers (IPP) and Small Power Producers (SPP), 9% of which is held by the Electricity Generating Public Co., Ltd. (EGCOMP). The remaining 2.4% comes from Laos and Malaysia.

Distribution of electricity in Thailand is provided mainly through the Metropolitan Electricity Authority (MEA) and the Provincial Electrical Authority (PEA), which are both state enterprises supervised also by the Ministry of Interior. The National Energy Policy Committee (NEPC) sets the rates that EGAT charges MEA and PEA. EGAT is currently undertaking four power-producing projects and planning to purchase more power from neighboring countries, and Very Small Power Producers (VSPP), which will greatly increase Thailand's electricity capacity.

The Thai government has begun implementing a restructuring program to increase the role of the private sector in the generation of electricity. This is to be done by allowing private companies to build new power plants to supply electricity to EGAT and spinning off EGAT's existing power generating assets into the private sector.

**Oil and Gas:** The former state-owned Petroleum Authority of Thailand (PTT), then controlled by the Ministry of Industry, is the leading petroleum and natural gas producer, wholesaler and retailer. In addition to being the country's leading oil retailer and sole distributor of indigenous natural gas, PTT has interests in Thailand's petrochemical sector.

In October 2001, in accordance with privatization plans, PTT became the PTT Public Company Limited with an initial registered capital of Baht 20 billion. At present, the registered capital of PTT is slightly over Baht 28.5 billion. As a part of its "World Class 2000" plan, PTT has been restructured into subsidiaries. The head office has taken the strategic leadership role and the main businesses have been divided into four sector groups: Exploration/Production and Gas Sector Group, Downstream Oil Sector Group, Refining Sector Group, and Petrochemical Sector Group. These four groups supervise and administrate current affiliated companies and subsidiaries.

The exploration for oil and gas is conducted by major upstream field developers under Ministry of Energy concessions. This industry is

dominated by American petroleum companies. Unocal's largest gas fields are located offshore Thailand, and this company is Thailand's largest foreign investor.

Oil is refined in country by Bangchak Petroleum Public Co., Ltd. (BPC), Rayong, Star, Thai Oil, TPI and Esso. PTT is a significant shareholder in most of Thailand's oil refining companies.

Retailing of gasoline, diesel oil, and other petroleum products for consumers and industrial operations is undertaken by an array of dealers representing PTT and the foreign marketing operations of Shell, Esso, Caltex, JET, Petronas, and others.

## II. GENERAL CONSIDERATIONS

### A. *Diplomatic Relations*

#### 1. *Explain any established diplomatic relations your country may have.*

Thailand is a well-established sovereign member of the international community. In addition to early membership in the United Nations and World Trade Organization, Thailand also participates in regional organizations such as ASEAN (Association of Southeast Asian Nations), AFTA (ASEAN Free Trade Area), and APEC (Asia-Pacific Economic Cooperation). Thailand has historically enjoyed strong ties with the United States, Japan, the European Community, and China. Over the last few years, it has developed an "equidistant" form of foreign policy that has steered a more independent path in foreign relations, especially with the U.S., China, Australia and India.

#### 2. *Give addresses, telephone numbers for the embassies or consulates in your country.*

<http://www.mfa.go.th/web/886.php>

#### 3. *Are there prohibitions or restrictions on certain business dealings with the country?*

At present, there are no international sanctions, prohibitions, or restrictions on business dealings with Thailand. The country does remain on the priority watch list of the USTR with respect to intellectual property rights enforcement. Both the US and the EU impose quotas on Thai textiles and designated agricultural products, although such quotas have been increased since 2005. As a member of WTO, Thailand is committed to reducing or eliminating tariffs and subsidies on hundreds of agricultural, industrial, and information technology products.

4. *Explain any travel restrictions to, or within the country.*

All nationalities may travel to and throughout Thailand. Some nationalities must obtain a visa prior to visiting Thailand. There are 15 nationalities including China and Taiwan, Czech Republic, Hungary and India that can obtain a 15-day visa upon arrival in Thailand. Tourists from 41 countries including the U.S.A., Japan, most member states of the EU, Canada, Australia, Malaysia and Singapore may enter without a visa for 30 days. Tourists from five countries, which are Argentina, Brazil, Chile, Peru and the Republic of Korea, may enter without a visa for 90 days.

**B. *Government***

1. *Explain your country's election system and schedule. Is there an anticipated change in the present government?*

Under the 2007 Constitution, the National Legislative Assembly is comprised of the House of Representatives and the Senate. Of the 480 members, 400 members are directly elected by the people under constituency basis, and 80 members are elected under proportional basis. The general election is held every four years.

The 150 senators are elected or appointed for six-year terms from the date of election or appointment respectively. The number of members directly elected under a provincial constituency basis is equal to the number of provinces, and the remaining are selected by the Senator Selection Commission.

The President of the House of Representatives is the President of the National Legislative Assembly.

The Cabinet consists of the Prime Minister and not more than 35 other ministers who are appointed by the King. The Prime Minister is required to be an elected member of the House of Representatives and not allowed to serve for more than eight consecutive years.

On September 19, 2006, the Council for National Security ("CNS") led by Army Commander General Sonthi Boonyaratglin staged a coup d'etat that overthrew the elected government of Thaksin Shinawatra, and declared martial law and abrogated the 1997 Constitution. Since then, Thailand has been administrated by a post coup or interim government led by General Surayud Chulanont, who was appointed by the CNS and whose appointment was endorsed by the King on October 9, 2006.

The next general election will be held on December 23, 2007, after which the newly elected members of the House of Representatives will form the new government.

2. *Is the present government stable? Briefly explain your country's political history in the last decade.*

As mentioned earlier in no. 1, the present government is an interim government, and there will be a newly elected government after the general election on December 23, 2007.

Thailand has been ruled by a King since the thirteenth century and officially became a democratic constitutional monarchy in 1932. The King is the head of the state and the Prime Minister is the head of the government.

As of 1997 up until the coup was staged by the CNS on September 19, 2006, Thailand had been governed by two political parties. From 1997-2001, the Democrats, with several parties in coalition, ruled Thailand with Chuan Leekpai as the Prime Minister. However, in 2001, their opponents, the Thai Rak Thai party, led by Thaksin Shinawatra, won a landslide victory and stayed in power through 2006. During such years, the Constitution of 1997 was the predominant law of the land.

After the coup of September 2006, the CNS declared martial law and abrogated the 1997 Constitution. An interim constitution was established. Thereafter the Constitution Drafting Council was appointed to draft a permanent constitution, and on August 19, 2007, a referendum was accepted and a new Constitution was enacted as law.

3. *Describe your country's executive branch or head of state.*

The Prime Minister is the person primarily responsible for recommending other ministerial appointments and carrying out the administration of State affairs in accordance with the provisions of the Constitution, laws, and the policies stated after taking office.

The Cabinet is responsible to the House of Representatives for the performance of its duties, and also to the National Legislative Assembly for the general policies of the Cabinet.

4. *Describe your country's legislative branch.*

Under the new Constitution, legislative power is vested in the National Legislative Assembly, comprised of the House of Representatives of 480 members and the Senate of 150 members. The members of the House of Representatives are elected for four-year terms, while senators are elected or appointed for six-year terms as stated above.

After receiving approval by the National Legislative Assembly and endorsement by the King, new proposed statutes become law after their publication in the Government Gazette.

5. *Describe your country's judiciary system.*

The judiciary is independent from the control of the executive branch. The Ministry of Justice provides all administrative support for the courts of the land. Judges are appointed by the King upon recommendation of a judicial commission. Thailand's judicial system divides the courts into two categories: the courts of justice and the administrative courts.

The courts of justice are in turn comprised of common courts and specialized courts. The common courts consist of the civil and criminal courts for each jurisdiction. With respect to the specialized courts, there are five, namely the Family and Juvenile Court, the Labor Court, the Tax Court, the Intellectual Property and International Trade Court, and the Central Bankruptcy Court. In addition to the five specialized courts, there is also the Military Court and the Constitutional Court, each having special authority to determine disputes under specific circumstances. For example, if one of the parties to a dispute is a military official, the Military Court would have jurisdiction over the case.

The administrative court was established in 2000 and has the competence to try and adjudicate or give orders over cases involving disputes in relation to decisions of government servants and administrative contracts. It is divided into two levels; the Supreme Administrative Court and the Administrative Courts of First Instance.

Within the common courts (civil and criminal courts), there are three court levels: (i) the Courts of First Instance, which are trial courts having original and general or special jurisdiction of all civil and criminal matters; (ii) the Courts of Appeal, which determine legal and factual issues on appeal from the Courts of First Instance; and (iii) the Dika (Supreme) Court, which determines legal and factual issues on appeal from the Courts of First Instance and Appeals Courts. However, within the specialized courts and the administrative courts, there are only two court levels with appeals from the Courts of First Instance being heard directly by the Dika (Supreme) Court.

Thailand is a civil country with four principal fundamental codes: the Civil and Commercial Code, the Civil Procedure Code, the Penal Code, and the Criminal Procedure Code. Cases are heard by panels of judges instead of juries and although traditionally, trials were generally heard over a series of non-consecutive hearing dates and could therefore last over a period of years, to speed up proceedings, the President of the Supreme Court in October 2002 instituted a policy of consecutive hearings, barring long adjournments between hearings.

Nevertheless, due to the courts' current backlog, a typical case may still take up to 18 to 24 months, from the date of filing, for judgment to be rendered at the lower level. An appeal in the Court of Appeals

be rendered at the lower level. An appeal in the Court of Appeals usually takes an additional 12 to 24 months, with a similar period for appeals to the Dika Court. Notwithstanding the foregoing, proceedings in the specialized courts are generally faster than those in the common courts. This is because in these courts, hearings proceed without adjournment until all evidence is taken, after which the Court must promptly render its judgment.

Thailand is not a party to any conventions on enforcing foreign judgments. The Thai courts do not enforce foreign judgments, but will accept foreign judgments in evidence in a new trial. If the foreign judgment is a default judgment, its evidentiary value in the new trial is minimal. Even if the foreign judgment is based on the merits, the claimant must present all the key witnesses and testimony in the new trial in Thailand.

Thailand is, however, a signatory to both the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the Geneva Protocol on Arbitration Clauses 1923 (Geneva Protocol). Foreign arbitration awards given in countries that are signatories to the New York Convention or the Geneva Protocol are recognized and enforceable in Thailand.

Under the Arbitration Act, domestic arbitration usually occurs under the rules of the Thai Arbitration Center administered by the Ministry of Justice or the rules of the Board of Trade.

## *C. Financial Facilities*

### *1. Banking*

#### *a. Explain the banking system.*

The Commercial Banking Act 1962 regulates commercial banking and establishes the types of businesses that a bank may participate in. A commercial bank is defined as a bank licensed to undertake the business of commercial banking and to accept deposits of money to be withdrawn upon demand or at the end of a specified period. Such deposit monies are then used by the commercial bank to lend, buy, and sell financial instruments.

The financial industry is controlled and regulated by the Ministry of Finance (MOF) and the Bank of Thailand (BOT). The MOF formulates fiscal policy and oversees the nation's finances, including development of taxation plans, printing of money, oversight of the banking industry, supervision of state enterprises and government monopolies, and control of foreign currency reserves. The BOT is Thailand's central bank responsible for implementation of the MOF plans, including issuing bank notes, advising the government on monetary policies, supervising

financial institutions, and maintaining monetary stability. Generally, the BOT is treated as an independent body.

*b. Must an investor maintain a bank account in the country? Explain.*

There is no express requirement that an investor must have a bank account in Thailand. On December 18, 2006, the Bank of Thailand announced the implementation of a 30% reserve requirement on short-term capital inflows, whereby banks/financial institutions are generally required to withhold 30% of the amount of foreign currencies remitted from abroad into Thailand and exchanged against Thai Baht for a period of one year (with certain relaxations). Any incoming foreign exchange must be changed into Baht or deposited in a foreign currency account with an authorized bank in Thailand according to the customary practice of each bank. Maximum total balance of all such accounts per person per day shall not exceed US\$500,000 for a natural person or US\$5 million for a juristic person. (See the Exchange Control Act 1942.)

*c. What are the requirements for opening a bank account?*

A non-resident account may be opened with any authorized commercial bank in Thailand without any restrictions on the amount of funds that can be deposited or withdrawn. Resident accounts for individuals and business entities can be opened under generally accepted banking practices and processes, such as individuals may be required to possess valid work permits or proof of their residency in Thailand issued by their embassies, while business entities may be required to show corporate registration with the Ministry of Commerce and tax registration with the Revenue Department.

*d. What are the restrictions, if any, on the investor's use of the account?*

Any deposits in Thai Baht must derive from one of the following sources: conversion of foreign currencies, payment of goods or services, or a capital transfer for which BOT approval is not required.

Any withdrawals are permitted except the withdrawal of funds for credit to another non-resident person or purchase of foreign currency involving an overdraft.

*e. Can the investor receive bank loans? Explain the process.*

Yes, a licensed commercial bank or other financial institution, onshore or offshore, can lend to a domestic or foreign investor

provided that bank requirements are fulfilled. Banks may have different requirements.

## 2. *Financial Facilities*

### a. *Explain the financial system of your country.*

In addition to commercial banking, the financial sector in Thailand comprises many other types of financial institutions that are regulated by the MOF. Recent efforts of liberalization and reform have expanded the scope of activities that these institutions can engage in.

### b. *What kind of financial institutions exist?*

- Domestic Commercial Banks - licensed by MOF to undertake the traditional business of commercial banking practice
- Foreign Commercial Banks - similar privileges as domestic commercial banks with certain additional requirements and restrictions, e.g., branching
- International Banking Facilities (IBFs) - licensed by MOF to engage in offshore and domestic lending, cross-currency exchange transactions, debt guarantees, letter of credit matters, loan syndications, investment feasibility studies, merger and acquisition advice, financial and economic data compilation and underwriting
- Government Banks - six banks with special mandates (Bank of Agriculture and Agricultural Cooperatives, Government Housing Bank, Government Savings Bank, Export Import Bank of Thailand, Islamic Bank of Thailand and Small and Medium Enterprise Development Bank of Thailand)
- Quasi-Governmental Financial Institutions - three public-private corporations that aim to promote industrial enterprises generally and small industry in particular
- Securities Companies - engage in securities brokerage, dealing or underwriting; investment advisory services; and mutual or private fund management
- Finance Companies and Credit Foncier Companies - make loans, usually at higher interest rates and shorter repayment periods than bank loans
- Hybrid Finance and Securities Companies - corporations with dual licenses that are separately regulated by both the BOT and the SEC
- Insurance Companies - able to make loans in certain circumstances, guarantee bills of exchange or promissory notes secured by immovable property, operate leasing business and buy foreign securities

*c. Is there a stock market? Give a brief history.*

From 1962 until 1974, private entrepreneurs created and operated the Bangkok Stock Exchange completely free of government control. This exchange was then expropriated by the government and replaced by the Stock Exchange of Thailand (SET). A small and volatile exchange, the SET began operations in 1975 with 30 members and 14 listed securities under the supervision of the Ministry of Finance and regulation by the SET itself. As of October 2007, there were approximately 538 members and 633 listed securities registered with the SET and the Market for Alternative Investment (MAI). The MAI is an alternative market for medium enterprises with a registered capital of more than Baht 20 million but less than Baht 300 million. The number of members and listed securities are constantly changing.

In 1992, the government revamped the SET by the enactment of the Securities and Exchange Act 1992 (SEC Act). It established a Securities Exchange Commission (SEC) to regulate the SET. The key improvements for the securities system in Thailand include:

- Supervision of securities trading under one body, the SEC
- Separation of the primary and secondary markets, where the SEC regulates the primary market and the exchanges regulate the secondary market
- Recognition of various new instruments, including convertibles and warrants
- Establishment of securities-related organizations, including Thai Securities Depository Co., Ltd., Bond Electronic Exchange, Market for Alternative Investment, Settrade.com Co., Ltd., Thai NVDR Co., Ltd., etc.
- Permission for non-securities companies (especially commercial banks) to engage in limited activities related to the securities business
- Increased regulation of insider trading, stock manipulation, large sales/purchases of securities by one individual, take-over rules, and disclosure requirements

*D. Environment*

*1. What is the public/government attitude toward environmental regulation?*

The public/government attitude toward environmental regulation has changed from command and control, to supervision and guidance (i.e., requiring environmental impact studies, prohibiting logging, encouraging environmental services, and reporting and occasionally prosecuting offenders).

The National Environment Board supervises the environmental policy of the country. The Ministry of Natural Resources and Environment manages environmental matters in a more organized approach.

2. *Explain any environmental regulations.*

Environmental regulations are issued under various laws including the Enhancement and Conservation of Environmental Quality Act 1992, the Factory Act 1992, the Energy Conservation Act 1992, the Hazardous Substances Act 1992, the Public Health Act 1992, the Cleanliness and Orderliness of Country Act 1992, etc. They are designed to enable the authorities and parties concerned to comply with the laws and to implement environmental protection activities.

Taking environmental degradation seriously is not widespread among either the public or private sector. Elements of civil society are vocal and becoming more effective in creating public pressure for environmental awareness and responsibility.

E. *Intellectual Property*

1. *Describe the laws for the protection of intellectual property, including trademarks, copyrights, patents and know-how.*

The legal protection of intellectual property (IP) is based on the provisions of the Trademark Act B.E. 2534 (A.D. 1991), the Patent Act B.E. 2522 (A.D. 1979), the Copyright Act B.E. 2537 (A.D. 1994), and the Trade Secrets Act B.E. 2545 (A.D. 2002), as well as the Geographical Indications Act B.E. 2546 (A.D. 2003) and the Protection of Layout-Designs of Integrated Circuits B.E. 2543 (A.D. 2000). Other laws are applicable such as the Civil and Commercial Code, the Penal Code, and the Trade Competition Act B.E. 2542 (A.D. 1999). The Department of Intellectual Property, operating under the Ministry of Commerce, is responsible for all matters relating to intellectual property (trademark, service mark, or patent registrations, copyright recordation, etc.) as well as enforcement of IP rights laws. The Central Intellectual Property and International Trade Court deals with civil and criminal cases relating to IP.

Thailand, as a civil law country, is still rather undeveloped in terms of jurisprudence about intellectual property and thus statutes and codes may not be viewed to be as comprehensive as other countries. In addition, the civil code and criminal code provide civil and criminal sanctions for IPR violations. Moreover, the Ministry of Justice also established a new highly trained operating force, in addition to the police forces, the Department of Special Investigations (DSI), in October 2002 which is responsible for investigating "Special Criminal Cases" throughout Thailand. DSI established a specialized Bureau of IP Crime which has had several major breakthrough cases in IP enforcement.

The Trademark Act 1991 was amended by the Trademark Act 2000, which came into effect on June 30, 2000. Under the new Act, a combination of colors or groups of colors represented in a special or particular manner, as well as three-dimensional marks, may be registrable as a trademark if deemed distinctive. Trademarks, service marks, collective marks, certification marks, and license user agreements are protected through registration. The owner of a registered trademark has the exclusive right to its use pertaining to the goods for which registration was granted. The registration of a trademark is valid for 10 years from the filing date. An application for renewal may be filed within 90 days prior to the expiration date for a further period of 10 years from the expiration date of the original registration or the last renewal date. Unregistered trademarks are protected from passing-off under the Civil and Commercial Code.

Copyright is protected in Thailand by the Copyright Act 1994. The owner of copyrighted works, which include creations in the form of literary (including computer programs), dramatic, artistic, musical, audio-visual, or cinematographic works, and sound and video broadcasting works, has the exclusive right to utilize his/her copyrighted work. In addition, the protection of the copyrighted work exists without registration under the Thai law. In general, a copyright is protected for the life of the creator plus an additional period of 50 years. The period of protection is reduced to 25 years from the date of creation or from the date of its first publication for applied artistic work.

Under the Patent Act 1979, which was amended by the Patent Act 1992, protection is given to inventions and industrial designs. To be considered patentable under the Patent Act, an invention must be novel, involve an inventive step, and be capable of industrial application. Similarly, an industrial design must be novel and capable of industrial application. A Thai patent is valid for 20 years for an invention or 10 years for an industrial design. The patentee has the exclusive rights to produce, use, sell, and import the patented products.

On September 27, 1999, the Patent Act 1979, revised for the second time, was amended by the Patent Act 1999. The revised Patent Act provides protection by granting petty patents to inventions which are new and capable of industrial application but lack an inventive step. A petty patent is valid for 6 years, but such term can be extended twice for a period of 2 years each. The patentee of a petty patent will also have the same exclusive rights as the patentee of a patent. Please note that it is not possible to obtain both a patent and a petty patent for the same invention. In addition, an invention for patent application can seek patent protection over an unlimited number of claims. A petty patent application can seek patent protection for no more than 10 claims.

The Trade Secrets Act 2002 (TSA) came into force on July 22, 2002. This Act provides protection for “trade information” that is not generally known or readily accessible to groups of persons who normally deal with information of the said kind and has commercial value. In addition, in order for trade information to be protected as a trade secret, it is necessary for its lawful controller to take reasonable measures to keep such information secret.

The Act defines trade information as any information that conveys meaning, facts, or other things, communicated in whatever way and arranged in whatever form. A trade secret is a form of protection that is not generally known to the public which confers on its holder some form of economic benefits or advantages over competitors within the same industry or profession. The following are examples of what can be protected under the TSA: formulas, compounds, prototypes, experimental data, calculations, drawings, diagrams, supplier information, marketing/sales promotion plans, etc. A trade secret is protected as long as it is deemed secret and has commercial value. Any unauthorized disclosure or usage or wrong access of the trade secret will constitute an infringement of the trade secret owner. This means that a trade secret may have protection for only one day or more than a hundred years depending upon whether the information remains secret.

No registration is required to obtain trade secret protection. A trade secret is transferable by a written agreement signed by both parties. If no term of assignment is indicated in the agreement, the term of the assignment is 10 years.

2. *Does the country subscribe to international treaties? Describe them below.*

Thailand generally complies with the World Trade Organization (WTO) Convention and with the Trade-Related Aspects of Intellectual Property (TRIPs). Thailand is also a member of the Berne Convention Governing Protection of Literary and Artistic Works and the CBD Convention on Biological Diversity (Biodiversity Convention).

Despite the absence of Thailand from the Paris Convention, it is still possible for a foreign national to claim priority on the basis of reciprocal treatment. For example, the Patent Act (Section 19 bis, patent for invention and petty patent; Section 60 bis for design patent) and the Trademark Act (Section 28) state that a person who files an application in Thailand within twelve months for patent or six months for trademark and design patent from the date of filing the corresponding application in a foreign country for the first time, is entitled to claim priority from the first filed application if that country of which the applicant is a national accords the same right to Thai nationals. As a member of WTO, Thailand permits nationals of all WTO members to benefit from this system of priority.

3. *Are there substantive prior approvals by national investment boards?*

No, there are no substantive prior approvals required by the Thai Board of Investment (BOI) with respect to intellectual property.

4. *What are the notarization requirements?*

Notarization requirements attest to the authorization or the power of the signers on official papers, i.e., Power of Attorney, declaration, affidavit, etc., affirming the right of the signers to act on behalf of companies or corporations. Likewise, notarization requirements attest to the existence of signers on official papers, who can be individuals of any nationality. The Thai authorities require notarization of official documents, as this provides proof regarding the existence of a company or corporation under the law of the country where that company or corporation is established, as well as the individuals who bear the nationality.

5. *Are there regulatory guidelines for licenses?*

**Trademarks:** Yes  
**Patents:** Yes  
**Copyrights:** Yes

6. *Are there specific exceptions or requirements in relation to a particular product(s)?*

There are no specific exceptions or requirements under the Trademark Act, the Patent Act, or the Copyright Act for licenses. With respect to licenses under the Trademark Law, Patent Law, and Copyright Law:

**Trademarks:** No  
**Patents:** No  
**Copyrights:** No

However, under other specific laws, e.g., the Export and Import Act 1979, the Cosmetics Act 1992, the Medicines Act 1967, the Consumer Protection Act 1979 as amended by the Consumer Protection Act (No. 2) 1998, and the Act on Prices of Goods and Services 1999, there are specific exceptions or requirements in relation to a particular product.

7. *When are royalties from licenses deemed to be excessive?*

**Trademarks:** There are no regulations controlling royalty rates.

**Patents:** Ministerial Regulation No. 25 (1999), which is given effect by Section 39 (1) paragraph two of the 1999 Act, provides that “fixing royalties . . . at a rate far too high or at a rate that is not fair when compared with the rate prescribed in the contract of exercising rights

under the patent” will be unlawful. Essentially, royalties are prohibited if they tend to unfairly limit competition.

**Copyrights:** Under Ministerial Regulation [1997] Article 1[4]), royalties “at an unfair rate when compared to the rate prescribed by the owner of copyright for other licensee for the same copyrighted work...in the same period of time” are deemed excessive.

**Trade secrets:** There are no regulations controlling royalty rates.

8. *Do local antitrust or competition laws apply to licenses?*

Yes, and they include the Copyright Act 1994, the Patent Act 1999, the Unfair Contract Terms Act 1997, the Trade Competition Act 1999, the Consumer Protection Act 1979 as amended by the Consumer Protection Act (No. 2) 1998, the Act on Prices of Goods and Services 1999, and the Civil and Commercial Code.

9. *What typical agreements do foreign corporations enter into with their wholly owned subsidiaries?*

The most common agreement with respect to intellectual property rights is a licensing agreement. A second type of typical agreement is a distributorship agreement between a corporation and its subsidiary. Sometimes, the agreement is a combination of a license and distributorship agreement. Currently, franchising is a new trend in agreements connected with intellectual property rights.

### III. INVESTMENT

A. *Describe general investment policies.*

The Thai government has long believed in an open, laissez faire economy. Foreign investment is welcome, and various incentives are granted to attract foreign investment through the Board of Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT). In principle, the BOI maintains a policy of giving special consideration to investment projects which locate operations in provincial areas (in preference to Greater Bangkok). Under the BOI policy, priority is given to projects engaged in agriculture and agricultural products, projects related to technological and human resource development, projects that develop public utilities and basic infrastructure, conserve natural resources and reduce environmental problems, and targeted industries. The IEAT carries out the government’s industrial development policy, which includes allocating land for further expansion, improving land conditions, and providing accommodations and facilities to assist entrepreneurs.

## *B. Investment Incentives*

### *1. Explain any export incentives or guarantees.*

To encourage export activities, numerous tax incentives are available. For example, Value Added Tax (VAT) is applied at a rate of 0% to exported goods. Customs duties on exported goods are generally exempted except certain goods and agricultural products.

Import duty imposed on materials imported for the production of goods, which are then exported can be refunded by the Customs Department. Further, exemption from customs duties on imported goods is granted when the goods are taken through a Free Zone established by the Customs Department or the IEAT.

### *2. Explain any grants, subsidies or funds your country offers foreign investors.*

N/A

### *3. Explain any national tax incentives for foreign investors.*

Thailand was the first country in Asia to introduce investment promotion laws to encourage investors to invest in Thailand. Under the Investment Promotion Act, the promotions include both tax and non-tax incentives.

Tax incentives consist of import duty reduction/exemption on machinery and raw or essential materials; corporate income tax exemption for 1-8 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; and tax exemption for fees for goodwill, copyright or other rights received from a promoted activity, etc.

Tax incentives are restricted by type of activity and location of the enterprise. Additionally, the period of corporate income tax exemption is also capped by the amount of capital investment, unless the promoted project is a priority activity and approved by the BOI, and the obtaining of ISO 9000 or similar international standard certification. For example, activities which strengthen Thailand's industrial and technological capability or use domestic resources may be granted a promotion certificate.

The investor must submit an application form along with supporting documentation to the BOI to be considered for incentives. In most cases, the processing of an application takes from 2-3 months.

Thailand also grants tax incentives for industrial development through the IEAT. Industrial operators are 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 within the Export Processing Zone are granted additional tax-based incentives and privileges.

4. *Explain any regional tax incentives open to foreign investors.*

Generally, there are some tax privileges provided to a Regional Operating Headquarters (“ROH”), which is a company incorporated in Thailand in order to provide managerial, technical or supporting services (“qualifying services”) to its associated enterprise or branch, whether situated in or outside Thailand. Said tax privileges include a reduction of corporate income tax from 30% to 10% on net profits derived from qualifying services, royalties, and interest on loan, tax exemption for dividends, and accelerated depreciation for buildings used in the ROH business at the initial rate of 25% of asset value on the date of acquisition, with the residual cost value depreciated over a period of 20 years. Furthermore, ROH expatriate employees may choose to pay tax at a rate of 15% for a period not exceeding 4 years.

Furthermore, a reduction of or exemption from customs duties on imported goods is also granted to members of the Association of Southeast Asian Nations (ASEAN), the ASEAN Free Trade Area (AFTA), the Thailand and Australia Free Trade Agreement (TAFTA), the Thailand and New Zealand Free Trade Agreement (TNFTA), and the Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People’s Republic of China.

C. *Direct Investment*

1. *In general terms, discuss preferences of the foreign investor.*

Under Thai law, the principal forms of business organizations are Sole Proprietorship, Partnership (Unregistered Ordinary Partnership, Registered Ordinary Partnership, and Limited Partnership), Limited Company (Private Company Limited and Public Company Limited), Representative Office, Branch Office, Regional Office, and Regional Operating Headquarters.

The formation of a limited company is generally the preferred structure since shareholders’ liability is limited only to the remaining amount unpaid, if any, of the shares respectively held by them. Generally, there is no tax advantage between registration of a branch or creation of a subsidiary limited company under Thai law--both entities incur a 30% income tax rate. However, only a limited company incorporated under Thai law is entitled to a reduction of the corporate income tax rate (between 15% and 30%) if the company has a paid-up capital not exceeding Baht 5 million as at the end of an accounting period (Tax Privilege for SME). Furthermore, only a

limited company can apply for a BOI promotion certificate to get tax and non-tax benefits and shall be eligible for ROH privileges as above. Other forms of business organization (such as sole proprietorships, branches, or partnerships) are not eligible for these privileges.

*2. Are there local participation laws limiting equity ownership and forcing a joint venture with a local company?*

The Foreign Business Act (FBA) requires Thai majority ownership in certain reserved activities such as farming, fishery, land trading, mining, wholesale/retail, brokerage/agency, restaurant, and all kinds of service activities. Some of these activities can be operated by a foreign majority-owned company if granted an alien business license. Other special laws such as the Telecommunications Act, Insurance Act, Commercial Banking Act, Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, Travel Agency Business and Guide Act, and Private School Act also limit foreign equity ownership.

*3. What are the registration fees?*

A branch office generally requires no corporate registration unless it carries out restricted businesses which require an alien business license, in which case it will be subject to a fee of Baht 5 or Baht 10 per Baht 1,000 capital, with a minimum of Baht 20,000 or Baht 40,000 and a maximum of Baht 250,000 or Baht 500,000, depending on activity. If the activity is listed in List 2 of the FBA, the cost is higher. For a private company limited, the registration fee is Baht 5,500 per Baht 1 million registered capital, with a maximum of Baht 275,000. The registration fee for a public limited company is Baht 2,000 per Baht 1 million capital, with a maximum of Baht 300,000.

*4. What are the time frames for registration?*

For a private company limited, it usually takes 3-4 weeks, and for a public company limited, 4-5 weeks.

*5. Are there other substantial administrative regulations?*

There are various substantial administrative regulations, such as the Revenue Code and notifications of the Ministry of Commerce.

*6. When is registration required?*

Registration is required to operate or engage in a business in Thailand. Registration should be completed prior to the commencement of business operations.

*7. If a company is not registered, can it obtain the following:*

- *Government contracts*

- *Hire local labor*
- *Open a bank account*
- *Import equipment*
- *Obtain work permits*
- *Import materials*
- *Export materials*

A company might be able to obtain government contracts without registration depending on the particular project and the terms fixed by the particular government agency, as well as the existing ministerial regulations.

A company can hire local labor but cannot open a bank account (as banks will require corporate documents) or obtain work permits without registration.

A company cannot import equipment, import materials, and export materials without registration, because in order to do so, it would need to apply for a manager card with the Customs Department, requiring the submission of corporate registration documents with the application. Furthermore, the goods transported must not be prohibited or limited by the Export and Import Act and other laws.

**8. *When does a company have to register? Explain.***

There are rules that companies cannot do business without registration. There is no limitation on the time of registration. However, if a company applies for promotion with the BOI and it receives promotion, company registration must be completed within 6 months from acceptance of the investment promotion from the BOI unless an approval to extend is granted.

**9. *Are there any penalties for failure to register? What are they?***

It is a criminal offense to conduct a reserved business under the FBA without a proper license. If registration does not take place within 3 months after the statutory meeting, the company is not formed. All the money received from the promoters/subscribers must be repaid without deduction.

With a BOI investment promotion, approval may be revoked if the company does not register within the specified time, unless an approval to extend is granted.

**10. *What are the financing restrictions imposed on foreign owned companies?***

Generally, there is no restriction on the debt-equity ratio of foreign-owned companies. However, for a BOI-promoted company, the debt-equity ratio cannot exceed 3:1, unless the project falls within the exemptions and approved by the BOI.

11. *Are intercompany agreements permitted? (Licenses, rental agreements, technical assistance, management contracts, leases, etc.)*

Intercompany agreements are permitted, except in cases where they are expressly prohibited by the law or the provisions of the agreements are impossible or are contrary to public order or good morals. The Thai Revenue Department generally requires that the prices or service fees charged are at arm's length as if the companies are unrelated.

#### **IV. IMPORT/EXPORT REGULATIONS**

##### *A. Customs Regulations*

1. *Is the country a member of GATT? Explain.*

In 1982, Thailand signed the GATT and began steps to liberalize quota schedules in line with the agreement. Thailand must also comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

2. *Is the country a member of the EEC? Explain.*

No, as Thailand is not a European country.

3. *Is the country a party to a regional free trade agreement? Explain.*

In January of 1992, Thailand signed the Framework Agreement on Enhancing ASEAN Economic Cooperation (AFTA). The goal of this Agreement was to establish an ASEAN free trade zone. The countries now affected by the AFTA Agreement are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. Thailand is also a member of the World Trade Organization. Thailand has been working with other ASEAN members to establish a free trade area with other countries such as India, China, Japan, Korea, and the CER or Australia and New Zealand. The negotiations between ASEAN and each of these countries are expected to be concluded within two years in order to become full-fledged FTAs by 2015 or at the latest 2020.

Thailand concluded FTA negotiations with Australia at the end of 2004 and the Agreement was implemented on January 2005. Thailand also signed an FTA Agreement with New Zealand in April 2005.

The first phase of FTA Agreements with China and India or the so-called Early Harvest Agreements started on October 2003 and September 2004, respectively. Thailand is currently negotiating the

details of the full FTAs with China and India. Thailand is also working with Bahrain and Japan on FTAs.

*4. Does the Customs Department value goods? Explain.*

The Customs Department values goods based on the C.I.F. value for imports and the F.O.B. value for exports.

Imported goods are also subject to Value Added Tax (VAT) which is levied on the total sum of the C.I.F. value, import duty and excise tax.

*5. How are goods cleared through Customs?*

Most companies use customs brokers and freight forwarders to assist in the customs process.

Customs clearance in Thailand is similar to those found in most countries. The normal practice of customs clearance is along the lines of an “advanced entry system” where entry of goods must be accompanied by supporting documents already filed and processed prior to the arrival of the goods.

On March 1, 2006, the Customs Department introduced electronically paperless system for the exportation of goods. Under the system, exporters are allowed to submit export information with their electronic signature to the Customs via electronic methods instead of submitting hardcopies of documents and signature prior to/at the exportation of goods.

*6. Are there applicable tariffs?*

Thailand has implemented a Customs tariff system based on Harmonized Commodity Description and Coding System or Harmonized system. The current harmonized tariff schedule of Thailand is under the Customs Tariff Decree B.E. 2530. The tariff schedule is applicable to all goods imported into and exported from Thailand.

However, the Customs tariff rates as prescribed in the schedule may be reduced or exempted under the related Customs regulations. Additionally, exemption or reduction may also be granted for goods originating from Australia, New Zealand, China, or ASEAN countries by virtue of the Thailand and Australia Free Trade Agreement (TAFTA), the Thailand and New Zealand Free Trade Agreement (TNFTA), the Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People’s Republic of China, and the ASEAN Free Trade Agreement (“AFTA”), respectively. The objective of these Agreements is to reduce tariffs within member countries.

For countries which are members of the World Trade Organization (WTO) whose goods are imported into Thailand, various trade facilities such as customs duty exemption and reduction in rates, relaxed customs procedures, etc. are extended. Said trade facilities exist by virtue of the Agreement establishing WTO and other Multilateral Trade Agreements annexed thereto and the Information Technology Agreement among the members of WTO”.

Customs duty is computed by multiplying the C.I.F. value of goods by the tariff rate. The tax base for VAT is the C.I.F. value plus import duty and excise tax (if any).

## **B. Exports**

### **1. Are there any restrictions on exports? Explain.**

In cases where it is necessary for economic stability, public interest, public health, national security, peace and order, or good morals of the people, or for any other interests of the Kingdom, the Importation and Exportation Act empowers the Ministry of Commerce to issue ministerial regulations or notifications requiring that certain goods be subject to restrictions for export. Depending on the goods, restrictions vary, from strict prohibition, requirement of licenses, specifications control, special fees, to quality control. Restrictions are generally limited to indigenous agricultural products, cultural and religious items, rare species of native flora and fauna, endangered wildlife, fruits, and seafood. This is generally limited to the requirement that the domestic market must be served first before any surplus goods are exported.

### **2. Are export licenses required? Explain.**

Export licenses are only required for specific goods prescribed by the Ministry of Commerce. See above for more details.

### **3. Are there applicable export duties? Explain.**

Since the government aims to promote exports, customs duties on exported goods are generally exempted. However, the government may fix special fees for export of certain goods and agricultural products.

## **C. Foreign Trade Regulations**

### **1. Are there foreign trade regulations on the import or export of goods involved in the business?**

A foreigner wishing to conduct business in Thailand is subject to the Foreign Business Act. Export of all types of goods is permitted to be conducted by a foreigner. A foreigner cannot import goods for sale, either retail or wholesale, as a trading company unless the company

has been granted permission by the Ministry of Commerce or its capitalization is not less than Baht 100 million (about US\$2.5 million). However, a foreigner may import raw materials and machinery to manufacture products, which are not covered under the Foreign Business Act.

#### *D. Imports*

##### *1. Are import licenses required?*

The Importation and Exportation Act specifies a number of goods that are subject to import licenses. Licenses are generally required for the importation of agricultural products to protect local producers, and certain chemical substances to protect public health. Unless the goods concerned are subject to restrictions and import controls under the Importation and Exportation Act or other laws, import licenses are generally not required. There are other local laws and regulations which require that approval be obtained from relevant authorities prior to the importation of certain goods. For example, importation of certain foods, pharmaceutical and cosmetic products, or chemical or poisonous substances require approval from the Food and Drug Administration; importation of tobacco or liquor require approval from the Excise Department; importation of arms and ammunition require approval from the Ministry of Defense, etc.

##### *2. Are there applicable import duties?*

Customs tariff and Value Added Tax ("VAT") are generally imposed on the importation of goods into Thailand. Tariff rates vary depending on the classification of goods. These rates are adjusted periodically to meet various treaty or fiscal policy requirements. VAT is presently 7%. Furthermore, there are excise taxes imposed on certain goods such as spirits, tobacco, petroleum oils and petroleum products, beverages, perfumes, passenger cars, etc. The importation of certain goods is subject to special fees imposed by the Ministry of Commerce. Generally, the goods are agricultural products.

##### *3. Are there applicable import quotas?*

Import quotas are generally imposed on agricultural products which require import licenses. The Ministry of Commerce is empowered under the Importation and Exportation Act to impose import quotas to protect local producers.

##### *4. Are there applicable import barriers?*

Import restrictions exist for preventing the importation of goods that bear false, forged, or misleading trademarks, and sound recording tapes (musical tapes), compact discs, videotapes, computer

programs, books or any other goods which contain works that have been remade or modified from copyrighted works of other persons.

#### *E. Manufacturing Requirements*

- 1. Must the product contain ingredients or components that are found or produced only in the country?*

It is not necessary that a product contain ingredients or components that are found or produced only in the country. However, under certain tax and/or investment promotion laws and regulations, there are incentives for certain products which contain more local ingredients or components. In the past, automobiles assembled in Thailand were required to have a certain percentage of locally manufactured content. However, such requirement was abrogated in January 1, 2000. For BOI-promoted projects, products must contain more local ingredients or components than imported ones, otherwise privileges or incentives might not be granted in full.

- 2. Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?*

It depends upon the type of product and business and the laws and regulations relevant to such product and business. Such importation may be permitted provided that all legally prescribed conditions are complied with to the satisfaction of the relevant authority.

#### *F. Product Labeling*

- 1. Explain applicable labeling or packaging requirements (e.g., multilingual notices, safety warnings, listing of ingredients, etc.).*

Product labeling is regulated differently by various laws and regulations based upon the type of product and business concerned. It is necessary to know the type of product and business before relevant laws and regulations concerning product labeling can be complied with. The same is applicable to packaging requirements. Certainly, any product applied to or ingested in the human body is subject to labeling requirements. Consumer protection laws and regulations are also applicable to product labeling.

## **V. EXCHANGE CONTROLS**

### *A. Describe any exchange controls.*

The legal basis for exchange control restrictions in Thailand are set out in the Exchange Control Act 1942 as amended from time to time, empowering the Ministry of Finance and the Bank of Thailand (BOT) to issue the relevant regulations and notifications to control inward and outward remittances of foreign exchange. Principally, foreign exchange

transactions in Thailand are administered by the Bank of Thailand under the supervision of the Ministry of Finance.

Unlimited amounts of Thai Baht or foreign currency may be brought into Thailand; however, as general rule, such foreign currency must be sold or converted into Thai Baht or deposited into foreign currency account with authorized financial institutions located in Thailand (according to the customary of each bank), except foreigners temporarily staying in Thailand for not more than three months, foreign embassies, and international organizations. On December 18, 2006, the Bank of Thailand announced the implementation of a 30% reserve requirement on short-term capital inflows and its relaxation. The goal of such measure was primarily to help maintain stability of the Thai Baht, which is conducive to sustained long-run growth of the Thai economy, and to prevent speculation on the Thai Baht rate. Principally, the Bank of Thailand set out the 30% foreign currency reserve requirement, whereby banks/financial institutions are generally required to withhold 30% of the amount of foreign currencies remitted from abroad into Thailand and bought or exchanged against Thai Baht for a period of one year, except: (a) foreign currency of less than US\$20,000 or equivalent; (b) foreign exchange transactions related to current account activities, including transactions related to exchange of goods, services, income, transfers and aid; (c) inflows for equity investment in companies listed on the Stock Exchange of Thailand and Market for Alternative Investment (excluding mutual funds and warrants), investment in the Thai Futures Exchange (TFEX), and investment in the Agricultural Futures Exchange of Thailand (AFET). Funds destined for the aforementioned investments must be deposited in the Special Non-resident Baht Account for Securities (SNS); (d) investment in real estate such as land and condominiums (excluding real estate mutual funds); (e) foreign currency borrowings transacted prior to December 19, 2006; (f) currency swap transactions associated with rolling over existing exchange rate hedging contracts with the original financial institution; (g) foreign currency for clients or authorized money changers in the form of travelers' checks and bank notes; (h) foreign currency from foreign embassies, foreign consulates, specialized agencies of the United Nations, international organizations/institutions situated in Thailand, Thai embassies, Thai consulates or other Thai government entities located outside Thailand; (i) foreign currency borrowing of government entities. To be exempted from the 30% reserved requirement on certain inward remittance, such fund shall be fully hedged through FX Swap or Cross Currency Sway Agreement for the whole amount and throughout the term of the loan or up to one year if the term of the loan exceeds one year with authorized financial institutions in Thailand under certain conditions. A Foreign Exchange Transaction Form must be submitted to authorized commercial banks for each transaction involving the purchase, sale, deposit or withdrawal of such foreign currency valued at US\$20,000 or above.

Accordingly, foreign currency can also be remitted/repatriated abroad freely upon submission of all proper documentary evidence in respect

thereof to the authorized agents (e.g., commercial banks in Thailand), which are authorized to approve certain foreign exchange transactions such as payment of imported goods, buying immovable property abroad, foreign investment, lending to affiliated companies, repayment of offshore loan, and payment of accrued interest. For example, remittance of foreign currency for payment of imported goods requires submission of: (a) sales contract, or (b) price list of goods, or (c) invoice. Repatriation of foreign currency in repayment of offshore loan and payment of accrued interest require submission of (a) proof of currency inflow when the currency was transferred into Thailand such as the Foreign Exchange Transaction Form as aforementioned, receipt and/or any documents issued by the authorized commercial banks, and (b) proof of the offshore loan, such as the Loan Agreement.

Special taxes imposed with respect to foreign trade transactions include the following:

- Dividends distributed to foreign shareholders (whether an individual or a juristic person) are subject to income tax in the form of a withholding tax at the rate of 10%.
- Income derived from business carried on in Thailand by branches of foreign companies is subject to corporate income tax at the rate of 30% of net profits, and the net after-tax profit when repatriated to the head office will be subject to income tax at the rate of 10% of profit remitted or deemed to be remitted.

## **VI. TAX**

### *A. Describe the general tax system.*

In Thailand, the principal tax levied are direct taxes (personal and corporate income taxes and petroleum income tax) and indirect taxes (Value Added Tax, specific business tax, excise tax, customs duties, and stamp duties). Generally, income tax in Thailand is by self-assessment, and tax declarations and payments are assumed to be correct. However, the Revenue Department has the power to audit taxes and taxpayer financial records.

Personal income tax is imposed on a natural person, an unregistered ordinary partnership, etc. at the progressive rates of 5%-37%.

Corporate income tax is imposed on companies and juristic partnerships at the rate of 30% of net profits. Reduced rates at the progressive rates of 15% to 25% are granted to small and medium-sized enterprises (SMEs).

Companies granted licenses to explore, produce and export petroleum under the Petroleum Act are subject to petroleum income tax instead of corporate income tax.

Value Added Tax (VAT) is collected upon consumption of goods and services and is also levied on imported goods. VAT is currently imposed at the rate of 7% but will return to 10% from October 1, 2008 onward if the reduced rate is not extended.

Specific business tax (SBT) is imposed on certain types of businesses that provide services whose "value added" is difficult to define. Businesses subject to SBT will be exempt from VAT.

Excise tax is levied on selected goods (mainly luxury goods) such as perfume and cosmetic products, tobacco, liquor, beer, soft drinks, crystal glasses, petroleum products, etc.

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

Stamp duty is levied on 28 classes of instruments specified in the Stamp Duty Schedule of the Revenue Code, such as powers of attorney, hire of work agreements, lease agreements, and loan agreements. The stamp duty rates vary according to the nature or content of the instrument.

*B. Explain the major deductible items. What are the expenses that are excluded from deductibility?*

Deductions are allowed for depreciation allowance, reserves for premiums of an insurance business, reserves for provision of bad or doubtful debts of financial institutions, contributions to employee funds, entertainment expenses, donation allowances, and losses carried forward not more than five accounting periods from the current accounting period.

Non-deductible expenses include personal expenses and gifts, artificial or fictitious expenses, expenses not exclusively expended for purpose of acquiring profit or for the purpose of business, expenses determined on and payable out of the profits, etc.

*C. Explain any tax treaties or territorial rules your country may have.*

Thailand has signed many treaties on the avoidance of double taxation. In most cases, these tax treaties cover only taxes on income. They do not cover indirect taxes such as value added tax and customs duties. Most of the treaties follow the OECD model with the exception of a few changes for certain countries.

Thailand currently has double tax treaties with 52 countries: Armenia, Australia, Austria, Bahrain, Bangladesh, Belgium, Bulgaria, Canada, China (PRC), Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Japan, South Korea, Kuwait, Laos, Luxembourg, Malaysia, Mauritius, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines,

Poland, Romania, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Seychelles, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, and Vietnam.

## **VII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS**

### *A. Foreign Business Act*

The Foreign Business Act of 1999 (“FBA”) reserves certain business activities for Thais. Under the FBA, a company is considered “foreign” if half or more of its shares are held by non-Thai natural or juristic persons. Businesses which are reserved under Lists 1, 2 and 3 of the FBA are subject to foreign ownership limitations imposed by law. Business activities indicated in List 1 of the FBA are strictly closed to foreigners. Foreigners wishing to engage in one of the activities indicated in List 2 of the FBA must obtain permission of the Minister of Commerce with the approval of the Cabinet; or for activities indicated in List 3 of the FBA, permission of the Director-General of the Department of Business Development with the approval of the Foreign Business Committee. Alternatively, foreign enterprises granted promotional privileges by the Board of Investment or the Industrial Estate Authority of Thailand are permitted to engage in business activities specified in Lists 2 and 3 of the FBA in accordance with the conditions prescribed by such authorities, provided that the Ministry of Commerce is notified and a certificate is applied for.

### *B. Antitrust Laws*

#### *1. Do the entity’s operations comply with anti-trust laws?*

All restrictive trade practices of business operators, which create or may create monopoly and/or reduce competition in trade of goods and services, will generally be prohibited under the Trade Competition Act 1999.

#### *2. What are the filing requirements? Explain.*

For permission to carry on certain restrictive trade practices under the Act, the applicant must submit an application for permission of the Trade Competition Board in accordance with its procedures, criteria, and conditions. The application must state the business necessity for such restrictive trade practices, the details as to how such restrictive trade practices will be put into effect, and the time period within which the restrictive trade practices will continue.

### *C. Environmental Regulations*

- 1. Is the business of the investor subject to environmental regulation? If so, are there added costs involved (i.e. audit requirements)?*

Various businesses of the investors are subject to environmental regulations. There are added costs involved such as cost of environmental impact assessment (EIA) report, etc.

### *D. Government Approvals*

- 1. Are government approvals required for the anticipated business? If so, how long does this process take? What fees are involved?*

Government approvals may be required depending on the nature of the enterprise. The preliminary process for forming a limited liability company takes approximately 3-4 weeks. There are various government fees levied by the government authorities concerned. The creation of a limited liability company or partnership must be registered with the Ministry of Commerce, Company and Partnership Division, and with the Revenue Department to obtain corporate and VAT tax registrations.

### *E. Insurance*

- 1. Must the enterprise carry insurance? If so, what kinds of risks are insured?*

A wide variety of insurance is available for companies to cover many types of business risks, from liability to medical to bonding, fire and theft, personal accident, home, business interruption, product liability, marine, auto, etc. Company reimbursement policies cover areas such as negligence, breach of contract, breach of duty, error or omission, etc. For directors and managers of companies, Directors' and Officer's ("D&O") Insurance is now available locally to protect them from liability in cases of negligence, breach of duty, error or omissions, etc. Most insurance contracts of this type do not cover things such as fraud, dishonesty, fines, penalties, and/or criminal acts.

While such insurance is available for corporate and directors in relation to their liabilities, litigation for corporate and directors' liabilities is quite rare. In Thailand, liability does exist against directors of public companies from which they cannot hide; however, instances of cases against directors have been small. This trend may change, however, with renewed interest in good corporate governance.

2. *Is there a state monopoly on insurance?*

There is no state monopoly on insurance, but the Thai government, through the Ministry of Commerce, does regulate the insurance industry and limits the number and ownership (nationality) of licensed insurance companies. The insurance industry is governed by legislation such as the Civil and Commercial Code, the Casualty Insurance Act 1992, and the Life Insurance Act 1992. These Acts provide for the financial requirements of insurance companies, consumer protection, and the regulation of contracts.

F. *Licenses/Permits*

1. *Are licenses or permits required for the anticipated activity? If so, how does the investor apply for and receive the necessary license or permit? How long does it take to receive the license or permit?*

A foreigner who desires to engage in business specified in List 2 or 3 of the Foreign Business Act is required to obtain permission from the authorities concerned. It generally takes 60 days to know the outcome of the application.

Business operating licenses may be required depending on the nature of the business. Each is governed by its own special legislation.

## VIII. STRUCTURES FOR DOING BUSINESS

A. *Governmental Participation*

1. *Will the government seek to participate in the ownership or operation of the entity (e.g. depending on the type of activity involved)? If so, to what extent?*

The Thai government might seek to participate in the ownership or operation of a business entity. Again, it depends on the nature of the business, such as those involving communications, radio, television, newspapers, internet service providers, defense, national security, air, rail and some land transportation, petroleum upstream, mineral resources, etc. Under the Foreign Business Act, the Minister of Commerce can regulate the operation of certain aspects of a permit holder's business such as the ratio of capital to loans, funds brought in from overseas, the ratio of capital of Thais to that of aliens in the business, and the ratio of Thais to alien persons responsible for the management of the business.

Some protection for foreign investors against government intervention exists. The Investment Promotion Act and the Industrial Estate Act provide that the state shall not nationalize the activities of the promoted person. State monopolies generally exist over

transport (air, rail, and certain kinds of transport), communications, the manufacture of arms, etc. It exercises close control over the exploration, production and refining of petroleum, mining, and public utilities. However, in some of these sectors, exclusive licenses/concessions have been granted to the private sector.

*2. What is the investor's potential liability to partners, investors or others?*

It depends on the type of business organization. For instance, for an ordinary partnership, all partners are jointly and wholly liable for all obligations of the partnership. For a limited partnership, there are two types of partners: (a) a limited partner whose liabilities are limited to his capital contribution to the partnership, and (b) a general partner who is liable for all partnership obligations without limitation. In a limited company, liability of the shareholders is limited to the unpaid capital on par value of stock.

*3. Are there restrictions on capitalization? Explain.*

The registered capital of a company must be at least 25% paid up initially. Absent liquidation, the capital of the company may not be reduced to less than one-fourth of its total registered amount. Under the Foreign Business Act, the minimum capital invested by an alien shall not be less than Baht 2 million. If the operation of a business requires permission under the FBA, a minimum investment of Baht 3 million is required.

*4. What are the investor's tax consequences?*

Corporations are taxed on net profits at a flat rate of 30%. Presently, Small and Medium-Sized Enterprises (SMEs) with paid-up capital as at the end of an accounting period not exceeding Baht 5 million enjoy discounted corporate income tax at the rates of 15%-30% depending on the amount of net profits.

Dividends distributed by a company or share of profits paid by a partnership to a resident investor, whether an individual or a juristic person, are subject to 10% withholding tax.

Non-resident investors, whether an individual or a juristic person, are subject to income tax in the form of a withholding tax at the rate of 10% on dividends or share of profits received from a company or a partnership established under Thai law.

## *B. Joint Ventures*

- 1. Are joint ventures permitted? If so, what is the registration or incorporation procedure? How long do these procedures take? What costs and fees are involved?*

Joint ventures are permitted under Thai law. There are two forms of joint ventures:

- A joint venture in the form of a partnership established by contract between one company and another company or juristic partnership or individual(s) that exists only for a particular project. Even if it is not registered as a legal entity, the so-called "unincorporated joint venture" is, however, treated as a juristic company by the Revenue Department for purposes of tax liability. The joint venture must, therefore, apply for a taxpayer identification card and Value Added Tax (VAT) certificate if it engages in a business subject to VAT and will earn an income of more than Baht 1.8 million in a fiscal year.
- A joint venture registered as a legal entity, that is, a limited company wherein the partners of the joint venture hold shares in the agreed proportion.

Registration process and fees are similar to those in the formation of an ordinary limited company.

- 2. Must a national of the country or a related state (e.g., the EEC) be a participant, manager, or director?*

There are generally no nationality or residency requirements to be a manager or director of a limited company, with the exception of companies seeking permission to conduct businesses listed under List 2 of the Foreign Business Act, in which case a minimum of two-fifths of the total number of directors must be Thai nationals. The same is true under special laws such as the Insurance Act, Air Navigation Act, Thai Vessel Act, Land Transport Act, and Travel Agency Business Act. For a company established under Thai-U.S. Treaty protection, a majority of its directors must be American and/or Thai nationals. For an unincorporated joint venture, which is treated as a partnership, if the managing partner is a foreign individual, the partnership would be deemed as an alien and subject to foreign ownership restrictions under the Foreign Business Act.

- 3. What is the investor's potential liability?*

All parties to an unincorporated joint venture agreement have unlimited liability similar to the partners in a partnership. The liability of parties to an incorporated joint venture is the same as that of the shareholders of a limited company, that is to say, the liability of the

shareholders is limited to the amount, if any, unpaid on the shares respectively held by them.

*4. Are there any restrictions on capitalization?*

A company registered in Thailand with foreigners holding half or more of the shares is regarded as a foreign company. A minimum of Baht 2 million capital is required. A foreign company granted an alien business license under the Foreign Business Act must have a minimum capital of Baht 3 million.

*5. What are the investor's tax consequences?*

Under the Revenue Code, a joint venture (whether incorporated or unincorporated) is recognized as a taxable entity and subject to corporate income tax in the same manner as a company. That is, it is subject to all the rules (i.e., computation of net profits and/or losses, filing of tax returns and payment of taxes) and tax rates applicable to a company.

However, the share of profits under a joint venture received by a juristic company and partnership organized under Thai law or by a juristic company and partnership organized under a foreign law and carrying on business in Thailand, is generally exempt from further corporate income tax once in the hands of the recipient (participating partners).

*C. Limited Liability Companies*

*1. Are limited liability companies permitted? If so, how are they registered or incorporated? How long do these procedures take? What cost and fees are involved?*

There are two types of limited companies: the private limited company and the public limited company. The latter is explained in Section VII. I. below.

A private limited company requires a minimum of 7 individual promoters. During its life, a minimum of 7 shareholders, natural and/or juristic persons, must be maintained. The first step is to reserve the company name; second, file a Memorandum of Association with the Registrar; and third, convene a statutory meeting. During the statutory meeting, among other things, the Articles of Association must be adopted, auditors appointed and directors elected, any pre-incorporation contracts entered into by promoters ratified, expenses incurred by promoters paid, preference shares (if any) established, and the number of ordinary shares or preference shares to be allotted and their prices fixed. The fourth is to register the company. The process of forming a company takes about 3-4 weeks. The company registration fee is Baht 5,500 per

Baht 1 million registered capital, with a maximum fee of Baht 275,000.

2. *Must a national of the country or a related state be a participant, manager or director?*

Please refer to our comments in VII.B.2 above.

3. *Are there any restrictions on capitalization?*

Please refer to our comments in VII.B.4 above.

4. *What are the investor's tax consequences?*

Please refer to our answer in VII.A.4.

#### *D. Liability Companies, Unlimited*

1. *Describe the types of liability companies.*

Under Thai law, there are two types of limited companies: private limited company and public limited company. Thai law does not recognize the unlimited liability company, although the Articles of Association may provide for the unlimited liability of directors.

2. *How are the companies registered or incorporated? How long do these procedures take? What costs and fees are involved?*

See our comments in VII.C.1 above.

3. *Must a national of the country be a participant, manager or director?*

See our comments in VII.B.2 above.

#### *E. Partnerships, General or Limited*

1. *Are partnerships recognized or permitted?*

Under Thai law, there are three types of partnership, namely an unregistered ordinary partnership, a registered ordinary partnership, and a limited partnership (which must be registered).

2. *Must a national of the country or related state be a partner? If so, to what extent?*

Because of restrictions on alien participation in certain business activities under the Foreign Business Act, a majority of Thai partners may be required in some cases. In the case of a limited partnership or registered ordinary partnership, the managing partner or manager must be a Thai, otherwise the entity will be regarded as alien.

3. *What costs and fees are involved?*

The registration fee is Baht 1,000 for up to 3 partners. If more than 3 partners, the registration fee is Baht 200 for each additional partner. Also, Baht 50 is charged to receive the registration certificate.

4. *What is the investor's potential liability?*

In an ordinary partnership, all partners are jointly and wholly liable for all the obligations of the partnership. In a limited partnership, there are two types of partners: (a) a limited partner whose liabilities are limited to his capital contribution to the partnership, and (b) a general partner who is liable for all partnership obligations without limitation. A limited partner who exercises any type of management control will be treated as a general partner.

5. *What are the investor's tax consequences?*

See our comments in VII.A.4.

F. *Undisclosed Partnership*

1. *Explain undisclosed partnerships.*

N/A

2. *What is the investor's potential liability?*

N/A

3. *What are the investor's tax consequences?*

N/A

G. *Sole Proprietorships*

1. *Can a foreign investor be a sole proprietor?*

A foreign investor may engage in business in the form of a sole proprietorship, subject to the restrictions of the Foreign Business Act.

2. *How is the sole proprietorship registered or established? How long does this process take? What costs and fees are involved?*

Registration of sole proprietorships is made at the Revenue Department, where the sole proprietor must acquire a taxpayer number. Sole proprietors doing certain types of business may be required to obtain a "commercial registration" at the Ministry of Commerce. The costs thereof include Baht 1,000 for registration as well as transportation and counsel fees. The process takes about 3-5 days.

3. *What is the investor's potential liability?*

With a sole proprietorship, all of the proprietor's assets, business and personal, are subject to judicial attachment or any other legal action, whether connected to the business or not.

4. *Explain restrictions on capitalization.*

See our comments in VII.A.3.

5. *What are the investor's tax consequences?*

Sole proprietors are subject to personal income tax at progressive rates of 5% to 37%. The lowest tax bracket of 5% for the first Baht 100,000 of net income (income after deduction of a standard expense and allowances) is currently exempted. The highest tax bracket for individual is 37% of net income in excess of Baht 4 million. For some categories of income, a sole proprietor, in the computation of personal income tax, can choose between itemizing expenses or taking a standard deduction, whichever provides substantial benefit.

H. *Incorporation*

1. *Describe the local company law and formation requirements.*

Under Thai law, there are two types of limited companies: (a) the limited public (publicly held) company, and (b) the limited private (closely held) company. The private company formation has been discussed in Section VII.C. above.

The formation of a public company is governed by the Public Limited Company Act, while the formation of a private company is governed by the Civil and Commercial Code. To form a company, first, the company name must be reserved. Next, a Memorandum of Association must be filed. Third, a statutory meeting must be convened. Finally, the company must be registered.

2. *What are the regulatory distinctions made between closely held and publicly held corporations?*

A public limited company is a company established for the purpose of offering the sale of shares to the public. A private limited company cannot do so. The regulatory distinctions between closely and publicly held companies involve the number of promoters and the number of shareholders (private companies have a minimum of 7 shareholders, while public companies have a minimum of 15 shareholders). The Board of Directors of a public limited company must consist of at least 5 directors, the majority of whom must reside in Thailand, whereas a private limited company can have only one director.

3. *Explain the following issues:*

a. *What are the requirements for formation?*

The requirements for a public company formation are set forth in the Public Limited Companies Act (PLCA). The Civil and Commercial Code lists the requirements for a private company formation. A publicly held company must have a minimum of 15 promoters, and the total number of subscribed shares paid up in money shall not be less than 5% of the registered capital. Offering of shares for sale to the public requires prior permission from the Securities and Exchange Commission. Once the Companies Registrar at the Ministry of Commerce accepts the registration, the public company limited becomes a juristic person.

b. *Is local participation required? If so, in which sectors?*

Local participation is required if the business is listed under the Foreign Business Act or any other special acts. See our comments in III.C.2.

c. *What special provisions apply to the administration of the company? Must citizens or residents of the country sit on the board of directors?*

A public company limited is managed by a board of directors consisting of no less than 5 directors, at least one-half of whom must reside in Thailand. In addition, not less than half of the promoters must reside in Thailand.

d. *Do board or shareholder meetings have to take place in the country?*

The board or shareholders' meetings shall take place in the country, unless otherwise stipulated by the Articles of Association of the company.

I. *Subsidiaries/Branches/Representative Offices*

1. *Can the investor establish a branch, subsidiary or representative office?*

A foreign entity may establish a branch office or subsidiary in Thailand. If the branch office or subsidiary will engage in a business reserved under the Foreign Business Act, it must obtain an alien business license from the competent authority prior to commencing operation.

A representative office, which is a branch office, may be established by a foreign entity. As it performs a service function, which is covered by List 3 (21) of the Foreign Business Act, it must therefore

obtain an alien business license. The representative office cannot generate any income in Thailand and thus need not pay tax. It is an expense operation only, and funds to be used locally for its operational expenses must be remitted from the head office abroad. A representative office can only perform those activities prescribed under the regulations.

*2. If so, how long is the process for registration or incorporation?*

See our comments in III.C.3. and 4. If an alien business license is needed, it will take an additional 3-5 months.

*3. What costs and fees are involved?*

The government fee for a representative office and a branch office is Baht 5 or Baht 10 for every Baht 1,000 capital, with a minimum of Baht 20,000 or Baht 40,000 and a maximum of Baht 250,000 or Baht 500,000. The fee for establishing a subsidiary is the same as for a company limited.

*4. What is the investor's potential liability?*

For a branch office and representative office, the head office in a foreign country is responsible for all liabilities of the office. These offices must have at least one manager residing in Thailand responsible for all operations. For a subsidiary, liability will be the same as that of a public limited company or private limited company.

*5. Must a national of the country be a participant, manager or director?*

For a branch office and representative office, it is not required for the manager to be a Thai national. For a subsidiary, see public and private companies, Section VII.C.2. above.

*6. Explain any restrictions on capitalization.*

The representative office will be required to bring into Thailand working capital in foreign currency equivalent to a minimum of Baht 3 million or Baht 5 million (Baht 2 million in the first operational year and at least Baht 1 million in each of the following operational years) in case it employs foreigner(s) in Thailand. For a branch office and subsidiary, see Section VII. C.3.

*7. What are the investor's tax consequences?*

Foreign juristic entities carrying on business in Thailand through branch offices are subject to corporate income tax and only for income arising from or in consequence of the business carried on in Thailand. A subsidiary company is taxed on income derived in Thailand and worldwide. Basically, a representative office is not subject to Thai tax if it complies with regulatory requirements.

8. *Are these tax consequences different than those of a local company?*

A local company is subject to income tax, VAT, stamp duty and other taxes and duties in the same manner as a subsidiary company.

J. *Trusts and Other Fiduciary Entities*

1. *Are trusts or other fiduciary entities recognized? If so, how are each defined?*

As a civil law country, local trusts and fiduciary entities are not recognized under Thai law. However, offshore entities will be recognized. Inroads are being made within banking and securities areas with acceptance of trust receipts and mutual funds.

2. *What are the legal consequences of a transfer of assets to a trust or fiduciary?*

N/A

3. *Can the investor be the grantor, trustee or beneficiary?*

N/A

## IX. **CESSATION OR TERMINATION OF BUSINESS**

A. *Termination*

1. *What are the tax consequences of terminating the business?*

There are special provisions of the Revenue Code dealing with liquidations, mergers, and bankruptcy. A voluntary winding-up and dissolution of business normally mandates a tax audit. Therefore, most investors will make their companies dormant for at least 5 years, the maximum period the Revenue Department can order audits in the case of a taxpayer filing a tax return. During the dormant period, nil tax returns must be filed. After the 5-year waiting period, the winding-up can proceed without incident.

2. *What costs are involved in termination?*

Government fees, advertisement fees, announcement to shareholders, lawyers' fees, auditors' fee, severance pay to employees, bankruptcy court fees (if applicable), etc.

3. *How long does it take to terminate the business?*

It depends on how complicated it is to settle the affairs of the company, pay its debts, and distribute its assets. Once all affairs are resolved, dissolution may proceed subject to applicable tax audit

(see above). Final approval of dissolution can take as little as 3 months once all tax issues are resolved by the Revenue Department audit.

4. *How is the investor's particular form of business treated in termination?*

Termination of a business is considered a normal business risk. There is normally no distinction accorded between different kinds of businesses.

5. *Can the business be terminated without government approval or intervention?*

No. The government acts in a transparent capacity to ensure compliance with accepted norms. Under the Civil and Commercial Code (CCC), the dissolution of a company and the names of the liquidators must be registered within 14 days after the date of dissolution. For a limited company, the date of dissolution is the date of the second of two successive shareholders meetings, each on at least 7 days' notice and at least 14 days apart, wherein a "special resolution" for dissolution is passed. A liquidator is appointed who must submit a report of his activities, etc. every 3 months to the Registration Office of the Ministry of Commerce. The company must obtain approval from the Revenue Department and the Ministry of Commerce before liquidation can be finalized and the company deregistered.

6. *What are the obligations toward creditors, employees and others upon termination?*

Within 14 days after the date of dissolution, the liquidators must notify the public by newspaper advertisement of the dissolution of the company and send a similar notice by registered mail to each creditor. The employer must give notice of termination in advance to employees and pay severance payments in accordance with the Labor Protection Act. Employees have preferential rights on a par with claims of taxing authorities.

7. *What are the tax consequences of termination?*

See Section VIII.B.1. above.

**B. *Insolvency/Bankruptcy***

1. *Describe the general consequences of insolvency.*

Under the Bankruptcy Act, once the Court approves a petition for liquidation, an official receiver is appointed. The receiver will garner all of the debtor's assets, fix all creditors' claims, and submit a report to the Court for final judgment. Until the final judgment for bankruptcy

is rendered, a creditor can make the following *ex parte* applications to the court:

- a. Request an examination by the receiver of all assets of the debtor and/or request the debtor to attend for questioning on the existence of assets;
- b. Require that the debtor provide satisfactory security to the court; or
- c. Request the court take immediate custody of the debtor's assets and/or seizure of evidence in order to prevent the loss or destruction of such items.

2. *If debt to capital ratios fall below a minimum, must the foreign shareholder recapitalize or face liquidation?*

No, there is no mandatory liquidation in Thailand. However, the creditor may begin either formal or informal bankruptcy proceedings against an insolvent debtor to encourage corporate restructuring. A creditor may also petition the court for dissolution of the company.

3. *Describe the bankruptcy laws.*

Recent amendments to the Bankruptcy Act 1940 provide for two types of bankruptcy to be available at the newly established Bankruptcy Court. First, a creditor can invoke a soft Chapter 11-style bankruptcy under Chapter 3/1 of the Act where the court will administer the reorganization of a debtor company and offer an automatic stay of court proceedings against the debtor. Second, the traditional insolvency process can be invoked and a creditor can request that the court participate in winding up the company.

4. *Are foreign companies required to guarantee debt in the original registration?*

No, the Commercial Registration Act 1956 imposes no such requirement.

5. *Are there provisions for reorganization of a business?*

Following the 1997 economic crisis, Thailand addressed the need for corporate debt restructuring with new provisions for formal in-court bankruptcy proceedings and informal out-of-court agreements.

Introduced in August 1998, the informal Bangkok Approach was intended to provide a set of flexible non-binding guidelines for an efficient out-of-court debt restructuring of viable business entities. Recently, the Approach has been refined by the addition of the Debtor-Creditor Agreement (DCA) and the Inter-Creditor Agreement (ICA) under the auspices of the Corporate Debt Restructuring Advisory Committee (CDRAC) of the Bank of Thailand. These agreements outline the parties' roles and set out binding specific time

lines and procedures for compliance with the steps of the optional framework. Under these agreements, creditors are required to seek collection of their credits under judicial process and/or immediate liquidation or reorganization of the debtor under new management pursuant to the Bankruptcy Act, if the debtor fails to execute or accede to the DCA or is in material breach of the DCA. A creditor who fails to vote for or against a proposed plan or fails to comply with an approved plan may be subject to a fine of 10% of its claims, but no less than Baht 500,000.

With amendments in 1998 and 1999, the Bankruptcy Act now allows a creditor to force a debtor business into formal restructuring by filing a petition with the Bankruptcy Court under Chapter 3/1. The court can administer the reorganization of a debtor company and offer an automatic stay of court proceedings against the debtor. This option is designed to help a company address its financial difficulties and to continue its operations. However, the court can also order the termination of business restructuring and/or adjudicate the debtor a bankrupt.

## **X. LABOR LEGISLATION, RELATION, AND SUPPLY**

### *A. Employer/Employee Relations*

#### *1. What laws govern employer/employee relations?*

The Labor Relations Act 1975 and the Labor Protection Act 1998 and the regulations/notifications adopted thereunder, and to a limited extent the Civil and Commercial Code of Thailand, regulate employer and employee relations.

#### *2. Explain any obligations the investor may have to train employees.*

A business operator with 100 or more employees is required to arrange yearly labor skill training for at least 50% of its total number of employees. If the employer fails to arrange such training, the employer is required to make a contribution to the Labor Skill Development Fund before February of the following year. Currently, the amount of the contribution is 1% X Baht 3,990 (the base salary presently used for calculation) X 12 months X the number of employees who have not been trained. If the employer fails to make such contribution in full to the Labor Skill Development Fund before February as required by law, the employer is required to pay an additional payment of 1.5% of the outstanding contribution per month until the contribution is made in full.

## *B. Employment Regulations*

### *1. Must the investor hire nationals of the country?*

The employment of foreigners is governed by the Working of Alien Act of 1978 and the Alien Business Operation Act of 1999. Both legislation provide criteria designed to protect the domestic labor market. Generally, the Labor Department, when considering whether to allow foreign nationals into the country to work, will look at things such as:

- whether the work could be done by a Thai;
- whether the foreigner is appropriately qualified; and
- whether the job fits the needs of Thailand.

Companies which are entitled to investment promotion under the Investment Promotion Act will be able to obtain work permits for foreign nationals more easily, and there may be more flexibility on employment requirements.

### *2. Is there a minimum wage?*

Yes, there is a minimum wage. However, the wage varies among the different regions of the country and is adjusted periodically to accommodate inflation and cost of living increases.

### *3. What is the maximum number of hours an employee can work each week?*

Section 23 of the Labor Protection Act sets the maximum number of working hours at 8 hours per day or 48 hours per week. In certain industries where the work is considered detrimental to health, the maximum number of working hours is 7 hours per day or 42 hours per week.

### *4. Is there a minimum number of vacation and sick days to be given?*

Employers must arrange weekly holidays for all employees. This cannot be less than 1 day per week, and weekly holidays must have an interval of not more than 6 days.

There must be a minimum of 13 days per year set aside as traditional holidays (including National Labor Day). Annual leave of not less than 6 days per annum for an employee who has worked at least 1 year for a company must be arranged. An employee is entitled to sick leave for as many days as he/she is actually sick but will only receive pay for a maximum of 30 days per year.

### *C. Hiring and Firing Requirements*

*1. Must the investor employ a minimum number of people?*

There are no restrictions on the minimum number of people that must be employed by a foreign investor.

*2. Must the investor employ a minimum number of nationals?*

The policy of the Thai government is that if a job can be done by a Thai national, then a Thai national should be employed for the job. The aim of this policy is to protect the domestic labor market (please refer to point B1 above). Foreign investors should note that when hiring foreigners to work in Thailand, the Immigration Department has an internal policy that there must be 4 Thais for every foreigner employed in a business.

*3. Must certain positions in the company be held by nationals?*

No.

*4. Are there rules to follow in hiring/dismissing personnel (e.g. notice)?*

Under the Labor Protection Act, an employer must give notice equal to at least one pay period to an employee if it wishes to terminate the employment of said employee without cause. However, payment in lieu of notice can be made.

*5. Does the investor have any obligations towards dismissed employees?*

Employees terminated without cause are entitled to statutory severance pay and additional benefits that are specified in their employment contracts and/or the Employer's Work Rules and Regulations.

### *D. Labor Availability*

*1. Is adequate skilled or unskilled labor available for the anticipated business?*

There is a large pool of skilled and unskilled labor in Thailand. The labor force is approximately 37 million people. With 63% of the population under the age of 40, Thailand has quite a young population and a very developed educational system.

## *E. Labor Permits*

### *1. Are labor permits required? If so, how are they obtained?*

Foreigners working in Thailand must apply for a work permit at the Department of Employment, Ministry of Labor.

### *2. How long does the process take?*

The process takes about 7-10 days.

### *3. What fees are involved?*

The government fees for a work permit are:

- Baht 850 for not more than 3 months
- Baht 1,600 for more than 3 months but less than 6 months
- Baht 3,100 for more than 6 months but not exceeding 1 year.

## *F. Safety Standards*

### *1. Are there safety codes that must be followed?*

The Labor Protection Act provides regulations on workplace safety. Ministerial notifications set minimum standards for the promotion of safety and prevention of accidents. These rules include such matters as the maximum load a worker may carry, safety apparel, scaffolding, environmental standards, etc.

## *G. Unions*

### *1. Are unions recognized?*

Unions are recognized in Thailand, and there are many labor organizations established to protect their members' interests. The Thai Labor Relations Act contains detailed provisions on the duties, formation, and powers of labor unions. There are certain rules and requirements to be satisfied before a labor union can be recognized, such as registration with the Central Registration Office.

### *2. What are the unions in the investor's business?*

There are two types of unions: those formed within a single company and those that are industry specific. Therefore, it really depends on the industry the investor is involved in.

### *3. What are these unions' political affiliations, if any?*

Company-specific unions generally have no political affiliation. Industry-specific unions may have a political affiliation, but such affiliation would depend on the industry and current political climate.

4. *Is there an obligation on the part of the employer to organize unions?*

There is no obligation for employers to organize unions. Under the Labor law of Thailand, employees are allowed to form their own unions.

5. *Are there mandatory collective bargaining agreements for the business involved?*

There are no mandatory collective bargaining agreements, but labor unions can assist in the settlement of disputes, acknowledging arbitral awards, and assisting in employee strikes.

## **XI. IMMIGRATION REQUIREMENTS**

### *A. Immigration Controls*

1. *Are entry permits required? If so, must you apply for an entry permit before entering the country?*

Visas, entry permits, or border passes are required of all non-Thai nationals entering the Kingdom. Visitors may apply for a visa at a Royal Thai Embassy or Consulate. Nationals of 41 countries may enter Thailand without a visa for a maximum stay of 30 days for the purpose of tourism only, subject to obtaining an entry permit chop in their travel documents from the immigration authorities at authorized ports of entry. Nationals of 15 other countries are permitted to obtain tourist visas on their arrival at immigration checkpoints in Thailand. Nationals of 5 other countries are permitted to enter Thailand without a visa for a maximum stay of 90 days. These lists of countries change periodically, so one must check with the nearest Thai Embassy or Consulate prior to entering Thailand.

2. *Are exit permits required?*

Exit permits are not required, but exits may only be legally made by obtaining an exit stamp at designated immigration checkpoints.

3. *Are re-entry permits required?*

Re-entry permits are required for foreigners who hold any kind of visa and who wish to leave Thailand temporarily and re-enter Thailand before his or her visa expires. Without a re-entry permit, the remaining time lapses and the foreigner must apply for a new visa at a Thai Embassy or Consulate abroad.

## *B. Immigration Requirements/Formalities*

### *1. Is a residence permit required? If so, does the investor have to apply for one before entering the country?*

A residence permit is only required for an investor who wants to become a permanent resident of Thailand. Most foreign business staff need only have a business or related visa for extension of their stay in the country. A visa allows the visa holder to live in Thailand but not work. If a visa holder wishes to work in Thailand, a work permit must be applied for.

A residence permit can be obtained after staying in Thailand for at least 3 consecutive years on non-immigrant 1-year visas.

### *2. What information must be supplied to the immigration authorities?*

There are six categories of residence permits. The documents required vary according to each category. Supporting documents are required, such as tax filing returns for the previous 3 years, health certificate, certification that the applicant has no criminal record in his country, and personal information sheet.

### *3. How long does it take to receive authorization?*

The entire process with respect to an application for permanent residence will take approximately 12 months: 6 months for the Immigration Bureau to review the application and another 6 months for final endorsement by the Ministry of Interior.

## *C. Visas*

### *1. Is a visa required for travel or stay in the country? If so, for how long is the visa valid?*

A visa may be required for travel to or stay in Thailand (see response XI.A.1. above). There are some exceptions. According to a Ministry of Interior regulation, there are 41 countries whose nationals are exempt from visas to travel or stay in Thailand for 30 days, and 5 countries whose nationals are exempt from visas for 90 days.

A transit visa is valid for a stay of 30 days, a tourist visa for 90 days, and a non-immigrant visa for 90 days.

### *2. How does the investor apply for a visa?*

The investor should apply for a non-immigrant Business (“B”) visa at a Royal Thai Embassy or Consulate before entering Thailand. The investor can either apply by mail or apply in person with all the required documents, i.e. passport, photographs, application form, and visa fee. One should check with the nearest visa-issuing office.

3. *What documents are required?*

For the non-immigrant “B” visa, the following documents are generally required: passport, visa application form, 2 photographs 2” x 2” in size, a confirmation letter of employment from the prospective employer in Thailand, and copies of corporate documents of the employer.

4. *How long does it take to receive a visa?*

It generally takes 2-3 days to receive a visa. The processing time depends on each Thai Consulate. For instance, the Thai Embassy in the U.S. can process a visa application within 2 days if submitted in person, and approximately 1 week, plus mailing time, if by mail. Applying in Hong Kong, Penang, Kuala Lumpur, or Singapore can often be done in 1-2 days.

5. *What fees are involved?*

Visa fees:	Transit Visa	\$24
	Tourist Visa	\$30
	Non-immigrant Visa	\$60 per single entry \$151 for multiple entries



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