



MAKING FOREIGN INVESTMENT IN THAILAND

A CORPORATE GUIDE 2015

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INTRODUCTION TO THAILAND

The Kingdom of Thailand is a sovereign country (514,000 sq. km) located in South-East Asia bordered by Burma in the north and west; Laos to the north and east; Cambodia to the east; and Malaysia to the south. It has two major coastlines, the Andaman Sea along the western coast and the Pacific Ocean along the eastern seaboard.

The Kingdom has 76 provinces with Bangkok (known locally as Krung Thep) as the nation's capital and economic centre. Thailand has a population of approximately 65 million, with 6.5 million living in Bangkok. Other major cities include Udon Thani, Hat Yai and Chiang Mai. Approximately 85 per cent of the population is ethnic Thai.

The official language in Thailand is Thai (with some local dialects) and is written in its own alphabet. English is widely used for international business and tourism with a high rate of proficiency among the professional classes. Contracts and other written transactions and documents involving foreigners are often written in English; however, contracts written in any language are generally legally enforceable.

Buddhism is the predominant religion (where in Thailand, believers comprise of approximately 95% of the population) but there is complete religious freedom. The second largest religion is Islam (4%), with the Muslim majority residing predominantly in Thailand's southern provinces bordering Malaysia. Christianity and Hinduism are other represented religions.

The currency is the Thai Baht (THB), which is divided into 100 satang. Notes are in denominations of 20, 50, 100, 500 and 1000 Baht. Coins are in denominations of 1, 2, 5, and 10 Baht, in addition to 25 and 50 Satang. The USD to THB foreign exchange rate as of April 25, 2014 was USD 1 : THB 32.36.

All legislation and official documents use the Buddhist Era (BE) when designating the calendar year. The BE started in the year in which the Lord Buddha was born (543 BC). The first day (1 January) and last day (31 December) of the BE calendar year coincides with the Christian calendar. To convert a Christian calendar date to a BE date, add 543 to the year (e.g. 2014 AD = 2557 BE).



THAI LEGAL SYSTEM

Thailand's legal system dates back to the reign of King Chulalongkorn (Rama V) in 1868.

Thailand has a civil law system embodied in statutes or codes promulgated by the government. Unlike Western common law systems (such as those in the United States, the United Kingdom, Canada and Australia), court decisions do not have binding legal precedent (but may influence judgments).

The principal legal codes are the:

- Civil and Commercial Code.
- Civil Procedure Code.
- Penal Code.
- Criminal Procedure Code.
- Revenue Code.
- Land Code.

I. CONSTITUTION

The supreme law of Thailand is the Constitution, which is supplemented by Acts of Thai legislatures, Royal Decrees, Emergency Decrees, Ministerial regulations, Ministerial Notifications, other governmental notifications, and local government regulations. As stated in its Preamble, the objectives of the Constitution are to promote and protect the fundamental rights of the people of Thailand, together with participation in observing, protecting and upholding the Constitution in order to maintain the democratic regime of government and the sovereign power derived from the Thai people.

2. FORMATION OF LAW

A Member of the House of Representatives can make an Act of law by introducing a Bill and getting both Houses of Parliament (the House of Representatives and the Senate) to approve it. The Cabinet or a Member will first submit the Bill to the House of Representatives for debate and if approved, the Bill will go to the Senate for consideration. If approved again by the Senate, the Prime Minister will then present the Bill to the King for his signature. The Bill will become an Act when it is published in the Royal Thai Government Gazette.



A law can also be made by Royal Proclamation or by an Emergency Decree. These are laws that are promulgated by the King upon advice of Cabinet and there are two types of Emergency Decrees or Royal Proclamations:

- A general Emergency Decree or Royal Proclamation is a law enacted because of an urgent need based on national security, public safety, and economic stability or the aversion of a public catastrophe. These decrees or proclamations must be immediately submitted to the parliament.
- An Emergency Decree or Royal Proclamation concerning taxes, duties or currency may be enacted while the House of Representatives is in session if an urgent need exists in the national interest. This type of decree must be submitted to the parliament within three days. Emergency Decrees or Royal Proclamations become immediately enforceable as a law, but they must be considered and approved by the parliament. If the parliament approves the decree or proclamation then it will continue to be in force; otherwise, it will be voided. Any action taken while the decree or proclamation was in force will stand.

FOREIGN INVESTMENT

I. DEFINITION OF 'FOREIGNER'

The Foreign Business Act ("FBA") regulates the scope of foreign participation in business activities in Thailand. The FBA prohibits foreigners, unless they are otherwise exempt, from participating in specified business activities and requires certificates or licenses to be obtained before engaging in such activities.

A "foreigner" is defined to mean:

- 1) a natural person who does not have Thai nationality;
- 2) a juristic person (including a company) that is not registered in Thailand;
- 3) a juristic person (including a company) registered in Thailand that possesses the following characteristics:
 - i. a juristic person with fifty per cent or more of its capital held by persons under (1) or (2), or with one-half or more of its capital invested by persons under (1) or (2);
 - ii. a limited partnership or a registered ordinary partnership whose managing partner or manager is a person under (1).
- 4) a juristic person registered in Thailand with one-half or more of its capital held by persons under (1), (2) or (3) who invest in at least one-half of the total capital of such a juristic person.

2. CATEGORIES OF RESTRICTED BUSINESS

The business activities that fall within the scope of the FBA are divided into three (3) categories and listed in Schedules 1, 2 and 3 to the FBA (see APPENDIX I).

Businesses listed under Schedule 1 are closed to foreign investment because of specific reasons.

Businesses listed under Schedule 2 are businesses related to national safety and security, businesses affecting cultural arts, traditional customs and folk handicrafts, and businesses affecting natural resources or the environment. These businesses are closed to foreign investment, except where permission is obtained from the Minister in charge of the FBA with the approval of the Cabinet.

Businesses listed under Schedule 3 are businesses in which Thai nationals are not yet ready to compete with foreigners. These businesses are closed to foreign investment, except where permission is obtained from

the Director-General of the Department of Business Development ("DBD") of the Ministry of Commerce ("MOC"), along with the approval of the Foreign Business Committees.

It is worth noting that the FBA prohibits foreigners from conducting only certain business activities listed in the abovementioned schedules. It does not forbid foreigners to have 100% ownership in corporate vehicles.

Please also note that in our experience, the procedure for obtaining a business license can take approximately 6 to 8 months from the time of submission of the completed application up to the time of receiving a decision from the MOC on such application.

3. INVESTMENT PROMOTION ACT AND BOARD OF INVESTMENT

General Information

The Investment Promotion Act of Thailand, B.E. 2520 (1977) ("IPA") has empowered the Board of Investment ("BOI") to promote domestic and foreign investments considered important and useful to the social and economic development of Thailand. A juristic person that has been promoted under the IPA must proceed in accordance with the conditions prescribed in the BOI Promotion Certificate. In the case where a promoted person violates or fails to comply with the conditions set forth in the Promotion Certificate by the BOI, Section 54 of the IPA provides that the BOI will have the power to withdraw the incentives and privileges granted to the promoted person.

BOI Privileges

The benefits granted by the BOI can be separated into two categories as follows:

- 1) Tax Privileges include:
 - Exemption or reduction of import duties on machinery;
 - Exemption or reduction of import duties on raw materials;
 - Corporate Income Tax exemptions and reduction; and
 - Exemption from income tax on dividend.
- 2) Non-Tax Privileges include:
 - State guarantee;

- Business Protection;
- Up to 100% foreign ownership allowance (notwithstanding the FBA restrictions);
- Relaxation of restrictions on participation by foreigners by allowing promoted companies to bring in foreign nationals for feasible studies;
- Allowing companies to bring in foreign technicians and experts to work on promoted projects;
- Allowing companies to own land for promoted activities (notwithstanding restrictions in the Land Code); and
- Allowing companies to receive or remit foreign currency abroad.

Project Implementation and Use of Privileges

- 1) The promoted companies may bring in foreign technicians and/or experts to work or obtain other permissions. In the case where the Company obtains a BOI Promotion, the restrictions and difficulties in relation to an employment of foreign technicians and/or experts shall be governed by the BOI, which lifts some of the difficulties and restrictions of employment and immigration regular processes for foreign labour through Immigration Bureau and Department of Employment. The application for the employment of foreign technicians or experts shall be submitted to the One Stop Service Centre for Visa and Work Permits (within five (5) – twenty (20) working days) and related government agencies.
- 2) The promoted companies may obtain approval to acquire and utilise the land for business operation after the issuance of the BOI Promotion Certificate from the Investment Promotion Bureau 1-4¹ depending on the type of business activities.
- 3) The promoted companies may obtain approval on the imported machinery list submitted to the Investment Promotion Bureau 1-4, depending on the type of business activities. An approval shall be made within sixty (60) working days. The promoted companies may

also request documents for the import of machinery with duty exemption/reduction with the Investor Club Association (“IC”). The importation of machinery shall be made within thirty (30) months of the issuance of the BOI Promotion Certificate. After the machinery is imported, the documents for the import of machinery with duty exemption/reduction shall be submitted to the IC for approval. The IC shall consider the request of the promoted Company within approximately 3 hours.

- 4) The promoted companies may obtain approval on the list and quantity of imported materials submitted to the Investment Promotion Bureau 1-4 or the Regional Investment and Economic Centers. An approval shall be made within thirty (30) working days. The promoted companies shall also request documents for the import of materials with duty exemption/reduction with the Investor Club Association (“IC”). An approval for material usage shall also be made within thirty (30) working days after the submission of the production formula to the Investment Promotion Bureau 1-4 or the Regional Investment and Economic Centers.
- 5) The promoted companies have to comply with the operation monitoring and report for project progress to the Investment Promotion Bureau 1-4 or the Regional Investment and Economic Centers. The requirements of filing report is as follows:
 - Notification of continuing the implementation of the project through the project progress report after the periods of six (6) months, one (1) year and two (2) years, starting from the date of the issuance of the BOI Promotion Certificate.
 - Obtaining the full operation start-up certificate within thirty six (36) months after the issuance of the BOI Promotion Certificate. The promoted companies shall submit the full operation start-up report with the related documents.

1. There are 4 Sectors of Investment Promotion Bureau controlling the promotion of various businesses as follows:

1. Investment Promotion Bureau 1 for agriculture, agricultural products and light industry businesses
2. Investment Promotion Bureau 2 for mining, ceramics, metal, machinery and transport businesses
3. Investment Promotion Bureau 3 for electronics and electric appliances businesses
4. Investment Promotion Bureau 4 for chemical, paper, plastic, services businesses and public utility

- Notification of the annual operation of the project, i.e., the financial status and the project operation results of every year, shall be reported within 31st July of following year.
- Other conditions specified in the promotion certificate e.g., ISO, shall also need to be satisfied.
- The documents submitted will be kept confidential.

4. U.S.-THAI TREATY OF AMITY

Since 1966, the Treaty of Amity and Economic Relations (“US Amity Treaty”) between the U.S. and the Kingdom of Thailand was signed in order to give special rights and benefits to US citizens who wish to establish their businesses in Thailand in various aspects. Major trade advantages provided for US investors by the US Amity Treaty are as follows:

- US companies are able to hold the majority of the shares or the whole company, or establish a branch office or a representative office located in Thailand.
- US companies, through its branch or subsidiary in Thailand, may also engage in business on the same basis as Thai companies, including an exemption from most of the restrictions on foreign investment imposed by the FBA. However, an operation of a representative office is limited to certain activities that are not income-generating activities.

However, the US investors are required to comply with certain restrictions stipulated in the US Amity Treaty which prohibits US investors from engaging in the following reserved activities: communications, transportation, fiduciary functions, banking involving depository functions, land ownership, exploitation of land or other natural resources, and domestic trade in indigenous agricultural products.

In addition, in order for the company to be eligible for the exemptions under the US Amity treaty, the majority of shareholders must be US citizens and/or American-owned and American-controlled entities. Also, the majority of the directors must be Thai and/or US nationals and the authorised director must also be a Thai or a US national. Where there is more than one authorised director, the majority of such directors must be Thai and/or US nationals.

5. OTHER LAWS

The following businesses are restricted under other laws in respect of the ownership of a foreign entity;

- Insurance Business: According to the Life Insurance Act, B.E. 2535 (1992) and Non-life Insurance Act, B.E. 2535 (1992), shares of the company’s operating business related to insurance that are owned by foreigners must be less than 25% of the total shares, and at least 75% of directors must be Thai;
- Tour Guide Business: According to the Tour Guide Business Act, B.E. 2551 (2008), shares of the company’s operating business related to tour guides that are owned by foreigners shall not exceed 49% of the total shares, and more than 50% of directors must be Thai;
- Financial Institution Business: According to the Financial Institution Business Act, B.E. 2551 (2008), shares of the company’s operating business related to financial institution that are owned by foreigners shall not exceed 25% of the total shares, and at least 75% of directors must be Thai. However, in the case where the company is granted permission from Bank of Thailand, foreigners may own up to 49% of the total shares, and the number of foreign directors is allowed to be more than 25%, but less than 50% of the total directors;
- Controlled Construction Business: According to the Construction Occupation Act, B.E. 2522 (1979), the business related to controlled construction issued by ministerial regulations is prohibited for the foreign entity described in the FBA;
- Formal School Business: According to the Private School Act, B.E. 2550 (2007), shares of the company’s operating business related to formal schools that are owned by foreigners shall not exceed 50% of the total shares, and not less than 50% of the shareholders must be Thai;
- Telecommunication Business: According to the Telecommunications Business Act, B.E. 2544 (2001), the business related to telecommunication services is prohibited for the foreign entity described in the FBA in case where the company intends to:

- a) operate with or without its network for telecommunication services intended for a limited group of people, or services with no significant impacts on free and fair competition or on public interest and consumers; or
- b) operate with its network for telecommunication services intended for the general public, or services which may cause significant impacts on free and fair competition or on public interest, or a service which requires special consumer protection;
- Air Navigation Business: According to the Air Navigation Act, B.E. 2497 (1954), the business related to air navigation is prohibited for the foreign entity described in the FBA;
- Land Transportation Business: According to the Land Transportation Act, B.E. 2522 (1979), the shares structure of company's operating business related to land transportation shall be as follows:
 - a) Shares of Private Limited Companies that are owned by foreigners shall not exceed 49% of total shares, and at least 50% of the directors must be Thai;
 - b) Shares of public limited companies (PLC) that are owned by foreigners shall not exceed 50% of total shares, and at least 50% of the directors must be Thai;
- Trading in Thai waters: According to the Thai Vessel Act, B.E. 2481 (1938), the shares structure of company operating business related to trading in Thai waters shall be as follows:
 - a) Shares of Private Limited Companies owned by foreigners shall not exceed 30% of total shares, and at least 50% of the directors must be Thai, and have no regulation to issue bearer share certificates;
 - b) Shares of PLC owned by foreigners shall not exceed 30% of the paid-up capital shares and at least 50% of directors must be Thai.



REAL ESTATE

I. FOREIGN OWNERSHIP OF LAND

Generally, ownership, possession and usage of land in Thailand is governed by the Land Code and by regulations issued by the Ministry of the Interior. Companies defined as Foreign Companies under the Land Code (see below) are prohibited from owning real property; however non-Thai companies may lease land and can also construct and own buildings.

a) Section 97 of the Land Code

Under Section 97 of the Land Code, legal entities with the following ownership structures are defined as “**Foreign Companies**” and are unable to own land for the purposes of the Land Code:

- a limited (or public limited) company which has more than 49% of its registered capital held by non-Thai nationals and/or a Private Limited Company which has more than 50% non-Thai shareholders (bearer shares in limited companies being deemed to be held by non-Thai shareholders for the purpose of evaluating ownership under the Land Code);
- a limited partnership or registered ordinary partnership where more than 49% of the total capital was contributed by non-Thai shareholders, or where more than half of the partners are non-Thai nationals;
- associations (including cooperatives) in which more than half the members are non-Thai nationals or where the association operates primarily in the interests of non-Thai nationals; and
- foundations whose objectives are substantially in the interest of non-Thai nationals.

Section 98 of the Land Code also provides that if one of the above legal entities becomes the owner of capital, shares or becomes a partner in another legal entity, that entity will also be deemed to be a Foreign Company if the foreign ownership interest in that other company is then in excess of the percentages specified above.

b) Internal Regulations of Land Department

In addition to the Land Code, the Land Department which is responsible for registering and keeping records of land title also have internal guidelines and policies.

Before registering the transfer to a legal entity of an interest in real property, the Land Department will investigate whether the purchaser is a Foreign Company (in which case the transfer will not be registered until the investigation is completed satisfactorily).

In the case of a Thai Private Limited Company, the Land Department will (generally) review the list of shareholders of the company to determine how many of its shareholders are themselves legal entities. The Land Department will also review the ownership chain of any corporate shareholder in a Thai company to ascertain whether, based on ultimate ownership, the purchaser constitutes a Foreign Company.

In addition, in April 2006, the Land Department issued a circular to all governors nationwide asking each province to inspect when the foreign shareholding or the number of foreign shareholders in a legal entity following a land transfer has increased, making the legal entity subject to section 97 or 88 of the Land Code (the **Circular**).

The Circular asks each Land Department to do the following:

- Each Land Department must compile the names of all Private Limited Companies, limited partnerships and ordinary partnerships, of which the shareholders or directors are foreigners, where the company or partnership owns or occupies land.
- By the end of June of every year, each Land Department must submit the name of the legal entities prescribed above to the Business Information Services Office or the Provincial Business Development Office in order to verify whether those entities fall within the scope of section 97 or 98 of the Land Code.
- After the Land Department has received the inspection report, if the legal entity falls under section 97 or 98 of the Land Code in that regard, the regulators must take appropriate action as prescribed in the Land Code. (See Penalties under the Land Code below).

Furthermore, in July 2006, the Land Department announced a notification prescribing investigation guidelines for any entity applying to acquire land where that entity has foreign shareholder(s) or director(s) or there are grounds to believe that the Thai shareholder(s) hold(s) shares as a nominee on behalf of a foreigner(s) (the **Notification**).

The Notification will apply if:

- A limited company, limited partnership or registered ordinary partnership applies to acquire land with the objective of operating a real estate business e.g. trading, leasing, hotel operation or resort business; and

- A foreigner is a shareholder or director of that entity or it is reasonable to believe that a Thai person has been nominated as a shareholder on the foreigner's behalf.
- In this case, the Land Department will investigate the income of all Thai shareholders of that entity. The investigation will cover the Thai shareholders' current profession, the length of time engaged in that profession, the amount of their monthly income, including the source of funding for the investment in the entity's shares. Supporting evidence must also be presented to the official.
- If the value of the land to be acquired is higher than the registered capital of the purchasing entity, e.g. a company with a registered capital of five hundred thousand (500,000) Baht purchasing a property for ten (10) million (10,000,000) Baht, and there will be no mortgage arrangement, the investigation must cover the source of funding for the proposed acquisition, including supporting evidence. In the case of borrowing, the relevant minutes of the meeting must be presented, together with the loan agreement and either of the following documents:
 - (i) if borrowing from a foreigner, whether an individual or a legal entity: evidence of the flow of funds such as a money transfer document or a withdrawal slip, and the minutes of the meeting of the lender (in the case of a legal entity);
 - (ii) if borrowing from a Thai individual or legal entity (regardless of whether it has a foreign shareholder or director): evidence of the source of funding such as a financial statement or a withdrawal slip, and the minutes of the meeting of the lender (in the case of a legal entity).

However, the Circulation Letter and Notification do not apply to:

- (i) a PLC or a legal entity which may acquire land under other laws, such as section 27 of the Investment Promotion Act B.E. 2520 (1977) or section 44 of the Industrial Estate Authority of Thailand Act B.E. 2522 (1979);

- (ii) a property mutual fund, (iii) a commercial bank, (iv) a bank established under specific laws, (v) a finance company, (vi) a finance and securities company, or (vii) a life insurance company or a non-life insurance company.

Subsequent internal regulations issued in August 2009 have also resulted in the Land Department checking, inter alia, if the shareholding structure of the relevant Thai companies do not contain any weighted voting rights whereby the foreign minority 49% shareholder can outvote the Thai majority 51% shareholder on the basis that such a feature gives reason to believe that the Thai shareholders in such Thai companies hold their shares on behalf of foreigners. If it does, then past experience has shown that the transfer of the land to that company structure is likely not to be allowed to proceed by the relevant Land Office.

For this reason, the use of weighted voting rights in favour of foreign shareholders in corporate structures to acquire land in Thailand should be avoided.

c) Restrictions under the Foreign Business License

Under the FBA, there are a number of business sectors which (as in the case of land ownership) are effectively closed to non-Thai majority owned companies.

These restricted activities include any trading in land or any service activity. Under Thai law, a "service" activity includes the construction of a house or villa for a buyer or the renting out of any property to any third party.

d) Compliance under the Land Code and Foreign Business License

- it must be incorporated in Thailand under Thai law;
- 51% (for owning land under the Land Code) of its issued share capital must be held by Thai nationals;
- the majority (in number) of the shareholders must be Thai (the minimum number of shareholders for a Thai company is three (3) shareholders; so two (2) out of the three (3) would need to be Thai owning not less than 51% in total);
- the Thai shareholders must own the shares outright, having funded the acquisition of such shares from their own funds or sources, and not be nominees (this is an offence under Thai law); and there should be no weighted voting rights in favour of the foreign shareholder(s) in the structure.

CORPORATE VEHICLES

Generally, the following types of legal entities are used by business investors, although there are other types of legally recognised entities such as associations and foundations. However, the most commonly used structure would be that of limited companies.

Commonly used categories of Legal Entities

1. Private Limited Companies
2. Public Limited Companies
3. Branches
4. Partnerships
 - Unregistered Ordinary Partnerships
 - Registered Ordinary Partnerships
 - Limited Partnerships
5. Representative Offices

I. PRIVATE LIMITED COMPANIES

Private Limited Companies are the most widely used vehicles for both domestic and foreign business investments. They are relatively easily recognisable because most of them end their company names with "...Co., Ltd." Or "Ltd." There is no distinction between these two and either can be selected based on the preference of the investors.

Legal Status

Similar to most other countries, Private Limited Companies are a distinct legal person recognised under law (i.e., they are juristic persons).

Legal Basis for Recognition

The Civil Commercial Code ("CCC") of Thailand is the primary basis for the legal recognition of Private Limited Companies. Private Limited Companies are formed by registration with the DBD. Commencing from 1 July 2008, an additional amendment has been made to the CCC, which enables the conversion of registered partnerships or limited partnerships, with three (3) or more partners, into a Private Limited Company.

Number of Promoters & Shareholders

By virtue of the Act Amending the Civil Commercial Code No. 18 B.E. 2551 (2008), the statutory minimum requirement for the number of promoters and shareholders has been reduced to three (3) as of 1 July 2008 and onwards. Prior to this, the minimum requirement was seven (7) promoters and shareholders.²

Shares

More than one class of shares may be issued (e.g. "common shares" and "preference shares") concurrently. Private Limited Companies may not own its own shares, i.e., treasury shares are not allowed. Shares are indivisible, i.e., stock splits cannot be done.

A shareholder cannot avail himself of a set-off against the company as to payments on shares, i.e., debt to equity conversions are generally not permissible.

Minimum Investment Amount

Under the CCC, the amount of a share must not be less than five (5) Baht. As mentioned above, the minimum number of shareholders is three (3). Therefore, in theory, the smallest registered capital amount required to incorporate a Private Limited Company would be fifteen (15) Baht. However, the competent registrar does have the discretion to reject company registrations if he/she deems certain aspects, such as the registered capital amount of the registration, to be unreasonable. Typically, a small company should fix its registered capital amount in the range of one hundred thousand (100,000) Baht to one hundred fifty thousand (150,000) Baht. Generally, the registered capital amount does not need to be paid-up in full until such time as the directors call for payments. However, at least 25% of capital must be paid-up in full before the company registration can be made.

On the other hand, in respect of "foreign" companies ("foreign" being as defined under the FBA mentioned above), the required minimum capital amount is two (2) million Baht. In order for a foreign company to operate certain lines of restricted business, the company would be required to obtain prior approval (i.e. Foreign Business License ("FBL")) from MOC or other regulatory agency which has jurisdiction

2. In order to set up the Company in Thailand, at least three (3) promoters are required to subscribe the number of share(s). The promoters will be considered the first group of shareholders. Thus, the minimum requirement of number of shareholders since the company registration shall be at least three (3) persons.

over the type of business which the foreign company intends to engage in. If a foreign company is required to obtain FBL, the minimum capital requirement would be three (3) million Baht. Furthermore, unlike Thai companies, foreign companies are prescribed as to the timing and amounts which the entire capital amount must be paid-up.

Liability

The risk borne by shareholders is generally limited to the shares they have subscribed for or acquired. The liability of shareholders is limited to the unpaid amount (if any) on the shares respectively held by them.

Directors

The relationships between directors, the company, and third-persons are governed by the provisions of the CCC concerning agency relationships. Directors generally have vested in them the authority to act on behalf of the company which he is a director of. Directors also have the fiduciary duty to act in the best interest of the company.

Private Limited Companies must appoint at least one authorised director who would have the power to represent the company. Multiple directors may be given the power to enter into legal acts on the behalf of a company, and under such an arrangement, it is possible that there is no single highest ranking officer in the company. In fact, there may be several officers with the same level of authority. Also, unauthorised directors, who would have the power to vote at board of director meetings, but would not have the authority to bind the company for legal transactions with third parties, may be appointed.

The minimum required number of directors is one person and there is no upper limit as to how many directors a Private Limited Company can appoint. Any national can become a director of a Private Limited Company. The board of directors may comprise entirely of foreigners, Thais, or a combination of both. Directors may reside outside of Thailand. However, Board of Directors' meetings cannot be held by proxy, by conference call or by circular meetings (i.e. non-physical/paper meetings), although they can be held outside of Thailand. In addition, under CCC, a director of a company must be a natural person.

Under the CCC, all directors may be foreigners, Thais, or a combination of both. Shareholders may become directors as well.

Statutory Audit

Director(s) of all Private Limited Companies are required to furnish financial accounts of the company at least once in every twelve (12) months. Such financial statements must be audited by qualified Certified Public Accountants within four months from the end of the fiscal year. Such audited accounts must then be submitted to MOC, where it then becomes public information.

Tax Considerations

Private Limited Companies are subject to corporate income tax. Each legal entity is taxed independently on its net income, and there is no concept of consolidated tax returns of multiple companies. Generally, corporate income tax is imposed on a company's net taxable profits. However, there are a few exceptions where tax is determined on the basis of gross income/receipts (e.g. if carrying out the business of international transports, or if a company fails to keep records of its accounts).

Generally, the corporate income tax rate would be 30% on net profit but for accounting year commencing in 2013 but not later than 2014, the corporate income tax rate is reduced to 20%. However, the rates may be lower or exempt depending on factors such as whether or not the company has tax privileges under the Board of Investment, or if it is a Small and Medium Enterprise ("SME").

2. PUBLIC LIMITED COMPANIES

Overview

Public Limited Companies ("PLCs") may be newly incorporated or converted from an existing Private Limited Company. The usual purpose of using the PLC is to obtain investment from the public at large, for example by making a public offering of its shares. PLC's are required to use a name beginning with the Thai term "Borisat", meaning "company", and ending with the Thai term "Chamkat (Mahachon)", meaning "Limited (Public)". Otherwise, the name may begin with the abbreviation "Bor Mor Jor", which is a Thai abbreviation of "Borisat Mahachon Chamkat", meaning "Public Company Limited".

Stock offerings can be categorised into two types, which are "Public Offerings" and "Private Placements". PLCs may make a Private Placement of its shares without prior approval. On the other hand, if a PLC intends to make a Public Offering, it must obtain prior approval from the Securities and Exchange Commission of Thailand

(the “SEC”). Shares of PLCs may or may not be traded on the Stock Exchange of Thailand (“SET”). A summary of listing on the SET is set out in Section 9 below.

Legal Basis for Recognition

The Public Companies Act of 1992 is the primary basis for the recognition of PLCs. There has been amendments in 2001 and 2008, which are respectively, the Public Limited Companies Act (No.2) of 2001, and Public Limited Companies Act (No. 3) of 2008.

Legal Status

Similar to most other countries, PLCs are a distinct legal person recognised under law. As such, they are juristic persons. They are registered with the DBD.

Number of Promoters & Shareholders

Upon incorporation of a PLC, there must be fifteen (15) or more natural persons, of which not less than 50% must reside in Thailand, acting as promoters to establish a PLC. In the case of a conversion from a Private Limited Company to a PLC, there is no requirement on the number of promoters as there is no Memorandum of Association registration.

In any case a PLC must maintain the minimum number of shareholders at fifteen (15) shareholders, regardless of being individuals or entities. Otherwise, the shareholders holding aggregate shares of not less than 10% of the allotted shares in a company may request the court to order to dissolve a PLC if the number of its shareholders decrease to less than fifteen (15) shareholders.

Shares

More than one class of shares may be issued (e.g. “common shares” and “preference shares”).

PLCs are generally not allowed to hold its own shares (i.e. treasury shares are not allowed), unless certain exceptions apply (e.g. a company buys shares back from the shareholders who vote against certain shareholder resolution meetings, or a company buys shares back from financial management purposes provided that such acquisition does not cause undue financial difficulties for the company).

Generally, a subscriber of shares cannot offset his/her receivables in place of making payments on the shares. In other words, debt to equity conversions are generally not permissible. However, according to the Public Companies Act, if a debt-to-equity conversion is part of a debt restructuring plan, approved by the shareholders, and

in accordance with the Ministerial Regulation regarding: Prescribing Rules and Procedures on Issuance of Shares for Payment of Debts and the Debt-To-Equity Conversion Plan for the Purpose of Debt Restructuring of Companies B.E. 2544 (2001), such conversion would be allowed.

Shares are indivisible. As such, stock splits cannot be done.

Directors

PLCs must have at least five (5) directors, not less than half of whom must reside within Thailand. Under the Public Companies Act, all directors may be foreigners, Thais, or a combination of both. Shareholders may become directors as well. PLC’s may also appoint unauthorised directors, who would have the power to vote at Board of Directors meetings, but would not have the authority to bind the company for legal transactions with third parties. Board of Directors meetings cannot be held by proxy, by conference call or by circular meetings (i.e. non-physical/paper meetings).

Minimum Investment Amount

Unlike Private Limited Companies, there is no minimum par value amount requirement for PLC’s. However, each share of a PLC must be equal in value, and generally, all shares must be paid-up in full in one payment. Also, there is no minimum registered capital amount requirement imposed on PLC’s. However, a company may decide on a total paid-up capital amount which would satisfy the SET listing criteria. If a company offers shares for sale at a price higher than the registered par value, such excess shall be set aside in a reserve fund, which must be distinguished from the reserve fund as required to be made out of positive un-appropriated retained earnings.

Similar to Private Limited Companies, for foreign PLCs, the required minimum capital amount would be two (2) million Baht. If a foreign PLC is operating with the FBL, the minimum capital requirement would be three (3) million Baht.

Liability

The risk borne by shareholders is generally limited to the shares they have subscribed for or acquired. The liability of shareholders is limited to the unpaid amount (if any) on the shares respectively held by them.

Inspection

One interesting aspect of PLCs is the fact that shareholders representing not less than a certain percentage of the total number of shares may initiate an inspection of business operations and the financial condition of the company, which is to be performed by the competent officer. Such inspection will be performed if the Registrar has reasonable grounds to suspect that the company is involved in matters such as fraud, violation of company objectives, falsification of financial statements, etc. A report will be furnished and delivered to the subject company, which in turn must deliver a summary thereof to the shareholders.

Statutory Audit

Similar to Private Limited Companies, PLCs are also required to have their accounts audited by a Certified Public Accountant. However, PLCs, particularly those listed on the SET, will be subject to additional reporting requirements as compared to Private Limited Companies.

Tax Considerations

PLCs are subject to corporate income tax. Each legal entity is taxed independently on its net income, and there is no concept of consolidated tax returns. Generally, corporate income tax is imposed on a company's net taxable profits.

Generally, the corporate income tax rate for PLCs is 30% on net income. However, if the company listed its shares with the SET or the New Securities Market ("MAI") the applicable rate would be 25% or 20% respectively for three (3) consecutive accounting years. PLCs may also apply for Board of Investment tax privileges and obtain an income tax exemption.

3. BRANCH

Overview

Companies established under foreign law may choose to open their branch in Thailand. Branches of foreign companies would be recognised as foreign juristic persons. If a foreign company opens a branch in Thailand, it would be an extension of the head office, incorporated under the laws of a foreign country. In other words, branches are not an independently recognised legal entities under Thai law.

Liability

Therefore, in respect of the limitation of liability, the head office would generally be held liable for all acts done by its branch.

Registration and Licensing

There exists no registration procedure or paperwork for the establishment of the branches of foreign companies. However, there are other registration requirements which must be satisfied for tax purposes.

The activities of a branch may or may not be regulated by the FBA or other regulatory restrictions imposed by the regulatory agency regulating the type of business the branch intends to engage in (e.g. Ministry of Finance, Ministry of Public Health, etc.). Therefore, depending on the nature of its business, it may either be prohibited from carrying out its business, or may need to obtain the relevant permit or license.

However, if the head office is a US company, it may be exempted from some restrictions under the FBA if US Amity Treaty benefits have been obtained.

Tax Considerations

For tax purposes, however, branches are treated as an independent taxable entity, which is independent from its head office overseas, and would be subject to corporate income tax on the net profits that it derives from its business carried on in Thailand. As such, branches are required to comply with tax filing requirements even if there is no income. There is no tax advantage for establishing a branch, when compared with establishing a limited company. Branches must also be annually audited by a certified public accountant.



4. PARTNERSHIPS (3 TYPES)

Overview

There are three (3) types of partnership: (1) unregistered ordinary partnerships (where all partners are jointly and severally liable); (2) registered ordinary partnerships (where the partnership becomes a legal entity, separate and distinct from the individual partners); and (3) limited partnerships (where individual liability of limited partners are limited to the amount of their capital contribution).

1) Unregistered Ordinary Partnerships

Overview

As the name indicates, Unregistered Ordinary Partnerships (“UOPs”) are those entities, which two or more partners join together for a common undertaking, with a view to share profits, by virtue of a contractual relationship between the member partners.

It should be noted that conduct that shows that multiple parties voluntarily associated together to carry on business and for sharing profits may create an UOP even in the absence of an express contract between the partners.

An UOP may include a company as a partner. Such partnership would be considered to be a Joint Venture (“JV”) for tax purposes. Here, the term JV is distinguished from joint ventures wherein two or more persons/companies take equity ownership of a newly incorporated limited company. JVs may be between natural persons and limited companies or between only limited companies.

Legal Status

Because UOPs are not registered, they are not legally recognised to be juristic persons which exist separately from the partners. Therefore an UOP itself cannot sue or be sued.

Legal Basis for Recognition

Most of the provisions relating to UOPs are found under Title XXII, “Partnerships and Companies” of the CCC.

Liability

All the partners are jointly and unlimitedly liable for acts done by any partner in the ordinary course of business of the partnership. Even if the partners agree to restrict the powers of certain partners, such restriction will not have effect on third persons.

Creditors can directly seek performance from any individual partner without first claiming against the assets of the partnership.

A partner whose membership has ceased continues to be liable in respect of obligations incurred by the partnership before the his or her membership ceased. Newly joining partners are not only liable for the liabilities incurred subsequent to his/her participation, but also for those which have incurred prior to participation.

Tax Considerations

UOPs are taxed as if they were natural persons distinct from the partners, and therefore subject to Personal Income Tax (“PIT”). Distributions of profits from the partnership to the partners are not taxed a second time in the hands of the partners. UOPs start to pay PIT at the lowest progressive rate regardless of the PIT rates which the partners pay. Furthermore, the partners may take PIT exemptions even if the UOP takes them. In other words, duplicate exemptions may be taken. The tax advantage of UOPs are quite evident.

JV’s are a type of UOPs. However, JVs are subject to corporate income tax (currently at 20% of net profits) as if they were a separate juristic person. However, unlike juristic persons, profit distributions from the JV to its juristic person partners are not subject to tax, provided that such juristic person partners are domiciled in Thailand. In short, JV’s are taxed as if they were limited companies, but Thai domestic distributions are treated in the similar manner as with UOPs. If a partner to a JV is in a foreign country, profit distribution would be subject to withholding tax.

Minimum Investment Amount

Under CCC, there is no minimum investment amount required of UOPs. However, if it engages in activities restricted under the Foreign Business Act, there may be a minimum investment requirement.

2) Registered Ordinary Partnerships

Overview

Registered Ordinary Partnerships (“ROPs”) come into existence as a juristic person by virtue of its registration with the DBD. As such, they are a legal entity separate from the partners themselves. Therefore, ROPs can enter into contracts with third parties in its own name, and may sue or be sued in court.

Liability

Unlike entities such as Private Limited Companies, the personal liabilities of each partner are generally unlimited. Creditors may demand performance of an obligation from the partnership itself or any of the partners. However, if a partner can prove that the assets for the partnership are sufficient to perform whole or part of the obligation, and that collection from the partnership would not be difficult, then the Court at its discretion may order the creditor to first proceed against the assets of the partnership.

Legal Basis for Recognition

Most of the provisions relating to ROPs are found under Title XXII, “Partnerships and Companies” of the CCC.

Tax Considerations

As ROPs are legal entities distinct from the partners, ROPs are subject to corporate income tax, not PIT. Profit distributions from ROPs to the partners are subject to tax in the hands of the partners. Therefore, there are two levels of taxation.

Statutory Audit

Generally speaking, ROPs must be audited, for each fiscal year, by an independent Certified Public Accountant.

Minimum Investment Amount

Under CCC, there is no minimum investment amount required of ROPs. However, if it engages in activities restricted under the FBA, there may be a minimum investment requirement.

3) Limited Partnerships

Overview

Similar to ROPs, limited partnerships (“LPs”) are also juristic persons which are legal entities existing distinctly and separately from the member partners. LPs come into existence as a juristic person by virtue of its registration with the Partnership Registry Office under the Ministry of Commerce.

The most significant difference between LPs and the other two types of partnerships is that for LPs there are one or more partners who are limited in their

liability to their contribution amounts. Concurrently, there must be at least one partner who is unlimitedly liable for all the obligations of the partnership. LPs may be managed only by the partners with unlimited liability. If a limited partner becomes involved with the management of the partnership, that limited partner becomes jointly and unlimitedly liable for all the obligations of the partnership.

Legal Basis for Recognition

Most of the important provisions related to Limited Partnerships are found under Title XXII, “Partnerships and Companies” of the CCC.

Tax Considerations

As LPs are legal entities distinct from the partners, LPs are subject to corporate income tax, not PIT. Profit distributions from LPs to the partners are subject to tax in the hands of the partners. Therefore, there are two levels of taxation.

Statutory Audit

Generally speaking, LPs must be audited, for each fiscal year, by an independent Certified Public Accountant.

Minimum Investment Amount

Under CCC, there is no minimum investment amount required of LPs. However, if it engages in activities restricted under the Foreign Business Act, there may be a minimum investment requirement.

5. REPRESENTATIVE OFFICES

Overview

Companies established under foreign law may choose to open their representative offices in Thailand. Representative offices of foreign companies would be recognised as foreign juristic persons. Representative offices are not independently recognised legal entities under Thai law.

Liability

Therefore, in respect of the limitation of liability, the head office would generally be held liable for all acts done by its representative office.

Registration and Licensing

There exists no registration procedure or paperwork for the establishment of the branches of foreign companies.

The activities of a representative office are regulated by the FBA, in which a foreign business license is required to operate a representative office. However, the activities that a representative office can conduct are limited to the following activities:

- a. Sourcing of goods or services in Thailand for the head office;
- b. Inspecting and controlling the quality and quantity of goods purchased or hired to manufacture in Thailand by the head office;
- c. Giving advice concerning goods of the head office sold to agents or consumers;
- d. Propagation of information concerning new goods or services of the head office; and
- e. Reporting business trends in Thailand to the head office.

The following activities are NOT considered as within the permitted scope of activities of a representative office.

1. Purchasing order or payment of goods on behalf of the head office or its affiliated companies or any activities concerning the purchasing;
2. Shipping the goods of the head office or its affiliated companies already purchased;
3. Checking and controlling the quality and quantity of goods for any companies that are not the head office or its affiliated companies;
4. Giving after sale service concerning installation and maintenance;
5. Giving advice concerning goods that is not produced or sold by the head office or its affiliated companies;
6. Receiving purchasing orders or service on behalf of the head office or its affiliated companies;
7. Coordinating purchasing and selling on behalf of the head office or its affiliated companies;
8. Propagation of information concerning previous goods or services that has already been sold in Thailand;
9. Carrying out activities as a middleman or an agent between customers in Thailand and the head office or its affiliated companies;

10. Planning and coordinating with any organisation in terms of business on the behalf of the head office or its affiliated companies;
11. Being the representative in making any contract or activities on behalf of the head office or its affiliated companies; or
12. Reporting information to any companies that are not the head office or its affiliated companies.

Requirements in respect of the representative office:

1. Non-revenue generating activities;
2. No authority to accept purchasing orders or to make an offer for selling or to negotiate for the carrying out of business with a natural or juristic person in the country in which it is established;
3. All expenditures incurred by the representative office is to be borne by the head office; and
4. Not subjected to corporate income tax, in accordance with revenue code, except for the deposit interest of remitted funds from the head office.

However, if the head office is a US company, it may be exempted from some restrictions under the FBA if US Amity Treaty benefits have been obtained.

Tax Considerations

Generally, the representative office of a foreign company is not subject to corporate income tax in Thailand or VAT registration as it cannot generate any income from its activity. However, the representative office may be subject to cooperate income tax if it derives some passive income, e.g., interest from bank deposit, and it might have withholding tax obligations when the representative office pays certain money to employees or suppliers (either local or foreign suppliers). In addition, the representative office still has to comply with tax law and regulations applicable in Thailand.

TAXATION

I. OVERVIEW

Tax Residency

A juristic person (e.g. company) will be regarded as a resident in Thailand if it is incorporated under the law of Thailand regardless of a place of management and control; an individual will be a Thai resident for tax purposes if he/she resides in Thailand, for one or more periods in any calendar year, at least one hundred eighty (180) days in aggregate.

The resident is subject to income tax in Thailand based on his worldwide income while the non-resident is subject to income tax herein only an income deriving from source in Thailand. However, regarding personal income tax, a foreign source income may be exempt from personal income tax in Thailand provided if such individual recipient does not bring such income back to Thailand in the same tax year in which the income arises.

Corporate Income Tax

The normal corporate income tax rate is 30% but currently the corporate income tax rate is 20% (as of 2013-2014) of net profits. The net profits are calculated by deducting all deductible expenses from taxable income derived from businesses during the fiscal year.

The corporate income tax is imposed on every company carrying out business in Thailand. A Thai incorporated company is taxed on its worldwide income and a foreign incorporated company is taxed on its income arising in Thailand. The income is deemed to arise in Thailand if the non-resident company carries on business in Thailand through an agent, employee, representative or go-between in Thailand.

However, the non-resident may also be taxed in Thailand even though such non-resident does not carry on business in Thailand but derives certain incomes from a source in Thailand such as dividend, interest and royalty. These passive incomes are subject to tax on a gross amount received by way of withholding tax deducted at source. Such withholding tax is considered a final tax paid by the non-resident so no filing obligation is required.

The corporate income tax rate may be varied due to tax incentives as follow:

- Regional Operating Headquarter Regime (“ROH”): ROH company can enjoy reduced corporate tax rates at 0% or 10% provided that certain conditions are met such as provision of qualified services to related parties or income ratios arising from related parties.

- SME is subject to progressive corporate income tax rates that is the first one hundred fifty thousand (150,000) Baht net profits is exempt, the exceeding amount up to one (1) million Baht is taxed at 15% and the balance is taxed at 20%. The qualifying SME is companies having the paid-up registered capital not more than five (5) million Baht and its gross income not exceeding thirty (30) million Baht.
- BOI promotion provides corporate tax exemption for five (5) – eight (8) years from the date on which the first income arises. In addition, the company is eligible to carry tax losses up to five (5) years and a reduced corporate income tax rate after the end of BOI period.

Dividends paid by a Thai company to another Thai company may be exempt from corporate income tax subject to certain conditions. Otherwise, only 50% of dividend income is subject to corporate income tax in the hands of corporate shareholders (for the individual shareholder and non-resident shareholder, please refer to the withholding tax section).

Capital gain realised by the resident is treated as an ordinary income in the computation of corporate income tax. Vice versa, capital loss is regarded as a deductible expense. According to the Revenue Department’s interpretation, the capital gain/loss is calculated by the gross amount received by an investor, deducted by an acquisition cost. In the case of a share transfer, the par value of the transferred shares is considered to be the acquisition cost in situations where the seller is the original shareholder of the transferred company since its incorporation.

Tax losses incurred in any accounting year can be carried forward for up to five accounting years. In situations where the tax losses incur during a tax holiday under the BOI, such tax losses can be carried forward up to five years after the expiration of the tax holiday. No law or regulation allows the tax loss to be carried backward. Tax loss incurred by any company cannot be transferred to another company save for a tax loss incurred according to petroleum income tax, provided that certain conditions are met.

Withholding Tax

Under the Revenue Code, a payer is obliged to deduct withholding tax at an applicable rate upon making a payment to a recipient. However, even though not stated by law, it is a common practice that if the payment is not exempt or not subject to tax in the hand of recipient under Thai law, the withholding tax is not applicable.

- Dividend paid to residents and non-residents, either individual or corporate shareholder, is subject to 10% withholding tax. However, the dividend paid by a Thai company to corporate Thai shareholders will be exempt provided that the shareholder holds more than 25% of the total shares with voting rights three months prior to dividend payment and continues to hold shares for another three months after the dividend payment and does not engage in cross shareholding between the paying company and the shareholder. In addition, the dividend paid by a Thai company to a company listed on the SET is also exempt. Regarding a dividend paid by a company carrying on business under the Petroleum Act, such dividend is exempt from income tax if it is paid to corporate shareholders regardless of its residence. Therefore, if the dividend is exempt from income tax at the level of shareholders, no withholding tax is applicable.
- Branch remittance tax is a tax levied on a profit distributed by a branch of foreign companies carrying on business in Thailand and it receives the same tax treatment as dividend. The branch remittance tax will only be exempt if it is distributed by a branch of a Hong Kong company.
- Royalty paid to a corporate resident or a registered branch of foreign company is subject to 3% withholding tax, which is considered an advanced withholding tax and it can be used as tax credit in the computation of corporate income tax. The royalty paid to non-residents is subject to 15% withholding tax unless otherwise the withholding tax is reduced by virtue of relevant tax treaties.
- Interest paid to a Thai company is subject to 1% withholding tax but 15% withholding tax will apply if it is paid to any individual or non-resident. However, 10% withholding tax applies to interest paid on loans from a foreign lender who is a financial institution incorporated under the law of country that has concluded a tax treaty with Thailand.
- All kinds of rental payment are subject to 5% withholding tax if it is paid to a resident. If it is paid to a non-resident, the rental payment in relation to immovable property is subject to 15% withholding tax, but if it is a rent of movable property, it may be subject to 5% or 15% withholding tax or be exempt depending on the relevant tax treaty.

- Service fee paid to a resident or a permanent branch of a non-resident is subject to 3% withholding tax, but if it is paid to non-resident carrying on business in Thailand through a permanent establishment rather than permanent branch, 5% withholding tax applies.

Value Added Tax (“VAT”)

VAT applies to sale of goods and provisions of services in Thailand unless stated otherwise by the Revenue Code. All business entrepreneurs either individual or corporate must register under VAT as a VAT registrant unless it is a business with a turnover of less than one point eight (1.8) million Baht per year. Such business entrepreneurs are allowed not to register VAT.

The standard VAT rate under the Revenue Code is 10%. However, the current VAT rate has been reduced to 7%.

0% VAT rate is applicable to an export of goods or a provision of services where the service is rendered in Thailand and the result of such service is used outside of Thailand.

There is a specific VAT rule applicable to a business connecting to a joint development area between Thailand and Malaysia.

Specific Business Tax (“SBT”)

SBT applies to businesses of bank, insurance, factoring, and the pledging or sale of immovable property in a manner of making profit. The SBT also applies to transactions similar to transactions ordinarily conducted by a bank such as a provision of loan.

SBT rates are varied depending on types of business ranging from 0.11% to 3.3%. For example, interest income arising from a provision of loan is subject to SBT at a rate of 3.3% but premium income received by an insurance company is subject to SBT at the rate of 2.5%.

SBT paid can be treated as a deductible expenditure in the computation of corporate income tax, and once the SBT is applicable to whichever tax base, VAT shall not be applicable to the same.

Stamp Duty

Stamp duty is applicable to any instruments as prescribed under the Revenue Code. The rate of stamp duty is varied depending on the types of instruments used in relation to the transaction. The schedule of applicable stamp duty is set out in Appendix II.



Failure to affix and pay the stamp duty properly is subject to a penalty at a maximum of six times of stamp duty unpaid. However, if the liable person voluntarily pays the stamp duty without an assessment from the Revenue Department, the penalty may be reduced to 25% of the original penalty subject to an approval of the tax authority.

Stamp duty paid is a deductible expense in the computation of corporate income tax.

Customs and Excise Tax

An importer is required to declare goods and pay customs duties upon importation at a port of entry. The importer is responsible for all customs clearance including the obtaining of relevant permits for certain goods, if required, prior to the importation.

Thailand also provides special areas where the customs duties may be exempt. Such areas are widely known as export processing zones and free trade zones in which the goods are deemed not to enter into the territory of Thailand yet. Excise tax is imposed on certain products such as cars, liquor, tobacco and perfume, etc.

Given that the rates of customs duty and excise tax are varied, and that the penalty for non-compliance may be quite high, it is advisable to engage a professional experienced shipping service provider to carry out the

work. Both customs duties and excise taxes can be treated as deductible expenditure in the computation of corporate income tax.

Administration under the Revenue Code

A company is entitled to choose any accounting period which shall not exceed twelve (12) months. The tax year will be the same as the accounting period and it cannot be changed without a written approval from the Director-General of the Revenue Department.

A company is obliged to file corporate income tax returns twice a year, i.e., the mid-year tax return (“PND. 51”) and the year-end tax return (“PND. 50”). PND. 51 is calculated on an estimated income and expense of the full year but the tax will be paid at 50% of the estimated tax payable. In this regard, if the estimated profit under PND. 51 is less than 25% of the actual profit when filing PND. 50, the company is subject to a penalty and a surcharge. The company must file PND. 51 within two (2) months after the end of the first six (6) months of any accounting year and must file PND. 50 within one hundred fifty (150) days after the end of accounting period. Any tax payable according to PND. 51 can be creditable against amount of tax payable when submitting PND. 50. Consolidated tax returns are not permitted under Thai tax law.



Regarding tax audits, the tax authorities may generally conduct a tax audit for up to two (2) years once the corporate income tax return is lodged. However, the tax audit may be extended to five (5) years upon a suspicion of tax avoidance or evasion. However in practice, the tax authority would assess any non-compliance for up to five years, regardless of whether such non-compliance is considered to be tax avoidance or evasion or not. The statute of limitation period may be up to ten (10) years in situations where there is a case not specifically prescribed by the Revenue Code such as a failure to submit tax returns.

Petroleum Income Tax

Income tax for a company carrying on upstream petroleum business shall be governed by the Petroleum Income Tax Act (“PITA”) instead of the Revenue Code. However, in practice, if such company also derives income from other business activities other than the petroleum activities prescribed in PITA, the company shall be subject to income tax imposed by the PITA and the Revenue Code. In other words, PITA income will be taxed under PITA and non-PITA income will be taxed under the Revenue Code.

The PITA income is defined as all income arising from the petroleum business including (i) income from sales of petroleum, (ii) the value of petroleum disposed of, (iii) the value of petroleum delivered as a payment of royalty in kind, (iv) income arising from a disposal of any property or right related to petroleum business and (v) any other income arising from conducting petroleum business.

Currently there are mainly 3 tax regimes under PITA as follows;

- (1) Concessions granted to any concessionaire under the Petroleum Act B.E. 2514 (1971) are taxed under the Petroleum Income Tax Act B.E. 2514 (1971) (“PITA I”). Under PITA I, the concessionaire is liable to pay a royalty to the Department of Mineral Fuel at a rate of 12.5% of income deriving from sale of petroleum products. The PITA tax rate under this regime is 50% of net profit. However, the royalty paid can be creditable against the PITA tax payable.

Under PITA I, there is a special tax regime governing a concession granted prior to Petroleum Act B.E 2514 (1971) and the concessionaire entered into a petroleum sale agreement before B.E. 2522 (1979). This regime is widely known as “PITA I Special”. According to this regime, the result of PITA tax calculation will be the same of that calculated under PITA I.

- (2) Concessions granted to any concessionaire under the Petroleum Act B.E. 2532 (1989) are taxed under the Petroleum Income Tax Act B.E. 2532 (1989) (“PITA III”). The royalty under this regime applies progressive rates ranging from 5%-15% depending on the gross income from sale of petroleum. Unlike PITA I, the royalty paid is not a tax credit but can be treated as a deductible expense in computation of PITA tax. In addition, the concessionaire may be subject to a special remuneration benefit depending on its petroleum income, capital expenditure, operating expenditure or depth of well. The PITA tax rate under PITA III is 50%.
- (3) Upstream projects located in the overlapping area between Thailand and Malaysia, the joint development area (“JDA”) is governed by a production sharing contract (“PSC”). A company operating an exploration and exploitation project in the JDA will be taxed by both Thailand and Malaysia. However, there would be

no double taxation as according to a protocol of double tax agreement between Thailand and Malaysia, such company shall compute its tax liability based on its whole income and expense under Petroleum Income Tax Act B.E. 2534 (1991). Then, the company is liable to pay 50% of the tax payable. Subsequently, the same income and expense will be computed according Malaysian income tax law but likewise, the company is liable to pay 50% of the tax payable. Under the JDA, the royalty rate is 10% and the company as a PSC contractor shall enjoy a tax holiday for eight (8) accounting years and then shall be subjected to 10% income tax.

A company operating business under the Petroleum Act is not required to submit an income tax return until it recognises the first income from the sale of petroleum products upon which it is deemed to be the first day of accounting period for tax purposes. Thereafter, the company must submit the PITA tax return within five months after the end of each accounting period. Any loss incurred in any one (1) or more accounting year can be carried forward up to ten (10) years and it may be transferable to another company upon a transfer of petroleum business provided that certain conditions are met.

If a company has more than one (1) concession under more than one (1) tax regime, the company shall compute petroleum income tax separately, and income and expense arising from a concession under one regime is ring-fenced from income and expense arising from a concession under another regime. In other words, any expense of a concession under the PITA III is not allowed to be deducted against income of a concession under the PITA I in computation of petroleum income tax.

Only concessions under the PITA I are not required to submit a mid-year tax return while concessions under the PITA III and the JDA are obliged to submit the mid-year tax return within two (2) months after the first six (6) months of accounting year.

2. DOUBLE TAX AGREEMENT

Thailand has concluded double tax agreements (“DTA”) with more than 50 countries. Generally, the DTAs entered into by Thailand are in line with the OECD model and UN model tax conventions. The tax benefits provided in

the DTAs are automatic, provided that a tax residence certificate is obtained from the tax authority of the country of residence.

The table below demonstrates the general withholding tax implications provided by the current DTAs compared to the situation where the recipient is a foreign company incorporated under the law of a country which has no DTA with Thailand.

Type of payment	Without DTA	With DTA
Dividend	10%	10%
Branch profit remittance	10%	Exempt* or 10%
Interest	15%	Exempt, 10% or 15%
Royalty	15%	Exempt, 5%-15%
Rental income	15%	Exempt or 10%-15%
Business profit (excluding sale of goods)	15%	Exempt or 5%

**Only profit repatriated by a Thai branch of Hong Kong company.*

Inbound Investment

Such as a general partnership, limited liability partnership, company, branch, joint venture or consortium.

Apart from the branch profit remittance which is exempt if it is paid by a Thai branch of Hong Kong company, in terms of selecting the jurisdiction of an offshore intermediate holding company, there would be no difference in terms of withholding tax on dividend paid from a Thai entity to its foreign shareholder as the DTAs do not provide a reduced rate.

Hong Kong and Singapore are the usual jurisdictions selected for the intermediate holding company to be established as the vehicle to make the investment in Thailand. Selection of the UK and US is also common.

Outbound Investment

Outbound investment is a growing trend especially for the large Thai companies listed on the SET.

One of the main considerations for the outbound investment would be how the dividend income received by a Thai entity is treated under Thai tax law. Under the Royal Decree No. 442, the dividend paid by foreign companies are exempt subject to following conditions;

- the Thai company must hold, for at least six months before the receipt of the relevant dividend, shares in the foreign company comprising not less than 25% shareholding and voting rights in the foreign company; and
- the dividend must be paid out of profits which are subject to corporate income tax of not less than 15% in the country where the foreign company is a tax resident.

Therefore, in order to qualify for the dividend tax exemption, the dividend must be paid by the operating company to the Thai corporate shareholder directly.³ However, in situations where an intermediate holding company is required, a usual jurisdiction to set up a holding company for the outbound investment situation is Mauritius.

Recently, a drafted legislation to relax the conditions set forth in the Royal Decree No. 442 is in process. Once enacted, the holding structure might be feasible to qualify for the dividend tax exemption provided that the dividend paid by the intermediate holding company has already been subjected to an underlying tax at a certain rate imposed by the country in which the operating company is a resident.

3. ANTI-AVOIDANCE RULE

Transfer Pricing

The transfer pricing rules in Thailand are relatively broad. For example, Section 65 bis (4) stipulates that in the case of a transfer of asset, the provision of services or loan without consideration or the sale price, service fee or interest is less than the market price without a reasonable justification, the tax authority has a power to adjust such sale price, service fee or interest on loan to be at market price.

The Revenue Department has issued a transfer pricing guideline according to the Departmental Instruction No. 113/2545 dated 16 May 2002. Under the guideline, the market price is defined and the adjusting power of the tax

authority is extended to include cases where the sale price, service fee or interest is beyond the market price resulting in a higher expense without a reasonable justification.

There are three principle transfer pricing methods acceptable by the tax authority which are (i) comparable uncontrolled price method, (ii) resale price method and (iii) cost plus method. Nonetheless, a taxpayer may adopt other methods not mentioned in the guideline provided that such method is internationally accepted and suitable to the business nature in relation to the transfer of the asset, the provision of service or the loan.

Controlled Foreign Company (“CFC”)

Thailand does not have the CFC rule so for the outbound investment, the Thai parent company is free to set up an intermediate holding company in tax havens or low tax jurisdictions.

Thin Capitalisation

Currently, there is no thin capitalisation rule under Thai tax law, so any foreign parent company investing in Thailand is free to finance its subsidiaries in Thailand by debt instead of equity provided that the interest rate is in line with the market price. However, in some circumstances, the company may be required to maintain its debt per equity (“D/E”) according to specific laws such as:

- In the case where the company is considered to be a foreign company within the definition of the FBA and the company carries on a restricted business activity prescribed thereunder. The company is required to obtain a FBL in order to operate such restricted businesses in Thailand. As a result, the company is required to maintain its D/E ratio at 7:1 at all times.
- In the case where the company has obtained a BOI certificate, not only must the company have a minimum registered capital set out in the BOI certificate, but the company also has to maintain its D/E ratio at 3:1.
- According to PITA, a company operating in an upstream petroleum business in Thailand is not allowed to include its interest expense in the computation of petroleum income tax. The result of which is equivalent to the absolute thin capitalisation rule that from a legal perspective, no D/E ratio requirement is applicable but all of the interest expense is regarded as a non-deductible expenditure for tax purposes.

³ The dividend will only be exempt if it is paid by the operating company so if the dividend is paid from an intermediate holding company located in Singapore/Hong Kong or other tax haven company, it does not qualify for the tax exemption because these countries do not tax dividend income. Mauritius is a special case because under Mauritius tax law, the dividend receiving from the operating company is taxed at the rate of 30% but Mauritius grants a deemed expense so effectively, the actual tax paid in Mauritius is very low. Subsequently, when the intermediate holding company in Mauritius pays a dividend to Thai parent company, it qualifies for the tax exemption).

DISTRIBUTION OF PROFITS TO OVERSEAS

I. DIVIDENDS

According to Section 1201 of the CCC, a dividend may only be made out of profits. The distribution of a dividend cannot be made unless all losses have been made good. The CCC does not define the meaning of profits; however, in practice, “profits” has been interpreted as the cumulative statutory retained earnings of the company or net profits as the case may be.

Therefore, if a company has incurred losses on a cumulative basis, the distribution of a dividend cannot be made. The company will be eligible to pay a dividend when all losses are covered. This will be judged based solely on its financial statements.

A company must, on each distribution of a dividend, deduct 5% from the entire amount of a dividend to be paid into its profit reserve fund until the reserve fund reaches 10% of its registered share capital according to Section 1201 of the CCC.

2. THAI EXCHANGE CONTROL LAW

In principle, the remittance of foreign currency from Thailand is subject to the control of the Bank of Thailand (“BOT”). However, in practice, an

enterprise in Thailand can conduct each remittance of funds for certain specified purposes, including the repayments of loan to abroad, the remittance of capital to overseas investors, with an authorised juristic person (i.e. a commercial bank). An authorised juristic person, on behalf of the BOT, will request the enterprise for supporting documentation such as the shareholder list, the sale and purchase agreement, written evidence of the loan and also the Foreign Exchange Transaction Form (for a remittance of USD twenty thousand (20,000) or more).

It is important for a company to ensure that it should maintain all relevant documents in its office; e.g. a written evidence of loan, an evidence of the foreign exchange being brought into Thailand for future reference, as such documentation will be requested by the authorised juristic person upon remittance of foreign currency to abroad. Otherwise, the remittance for repayment of the loan, for example, will not be permitted unless the debtor(s) can produce adequate evidence of the funds being remitted to Thailand and the decision will be based on the sole decision of the BOT on a case-by-case basis.

More details will be discussed in Section 10 below.



EXCHANGE CONTROL REGULATIONS IN THAILAND

I. EXCHANGE CONTROL REGULATIONS

a) Rules and Regulations

The legal basis for exchange control in Thailand is derived from the Exchange Control Act B.E. 2485 (1942) and the Ministerial Regulation No. 13 B.E. 2497 (1954) issued under the Exchange Control Act. These laws set out the principles of controls under which the Notifications of the Ministry of Finance and the Notices of the Competent Officer are issued.

b) Administration

The Bank of Thailand has been entrusted by the Ministry of Finance with the responsibility of administering foreign exchange. The governor of the Bank of Thailand shall appoint the officials of the Bank of Thailand as the Competent Officers under the Exchange Control Act B.E. 2485 (1942).

All foreign exchange transactions are to be conducted through commercial banks and through authorised non-banks; namely authorised money changers, authorised money transfer agents, and authorised companies, that are granted foreign exchange licenses by the Minister of Finance. Any transactions not conducted through the above-mentioned licensees require approval from the Competent Officer on a case-by-case basis.

c) Currency Regulations

1) Foreign Currency

Foreign currencies can be transferred or brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to repatriate such funds immediately and sell them to an authorised bank or deposit them in a foreign currency account with an authorised bank within three hundred sixty (360) days of receipt. Foreigners temporarily staying in Thailand for not more than three months, foreign embassies, international organisations including their staff with diplomatic privileges and immunities, and Thai emigrants who are permanent residents abroad or working abroad are exempted.

Purchase of foreign currency from authorised banks is generally allowed upon submission of documents indicating international trade and investment. Companies in Thailand can engage in derivative transactions with authorised banks to hedge against foreign exchange risk provided that supporting documents indicating future foreign currency receipts or obligations are submitted.

Any person bringing into or taking out of Thailand foreign currency bank notes in an aggregate amount exceeding USD twenty thousand (20,000) or its equivalent must declare them to a customs officer.

2) Local Currency

There is no restriction on the amount of Thai Baht bank notes that may be brought into the country.

A person traveling to Vietnam, the People's Republic of China (only Yunnan province) and Thailand's bordering countries is allowed to take out up to two million (2,000,000) Baht. Taking out Thai Baht bank notes in an amount exceeding four hundred fifty thousand (450,000) Baht requires declaration to a Customs Officer.

A person traveling to other countries is allowed up to fifty thousand (50,000) Baht.

2. BANK DEPOSITS

a) Foreign Currency Account of Thai Residents

Thai residents are allowed to maintain foreign currency accounts with authorised banks, and deposit or withdraw funds from such accounts under the following conditions:

1) Deposit

- (1) Foreign currencies originating from abroad (foreign-source) can be deposited into foreign currency accounts without limit.
- (2) Foreign currencies purchased or borrowed from authorised banks (domestic-source) can be deposited into two (2) types of foreign currency accounts:
 - i. Foreign currency accounts with future obligations: deposits can be made in an amount not exceeding future obligations to pay in foreign currencies to entities abroad. Such obligations include loan repayment to authorised banks.
 - ii. Foreign currency accounts without future obligations: the total outstanding balance shall not exceed USD five hundred thousand (500,000) for both a natural person and a juristic person.
- (3) Deposit of foreign currency notes and coins must not exceed USD ten thousand (10,000) per person per day.

2) *Withdrawal*

- (1) For payment to entities abroad of the account holder's own obligations or its subsidiaries' obligations.
- (2) For payment to authorised banks of the account holder's own foreign currency liabilities or its subsidiaries' foreign currency liabilities.
- (3) For deposit into another foreign currency account of the same account holder.
- (4) For conversion into another foreign currency, prior to depositing into another foreign currency account of the same account holder, or for payment to an entity abroad, or for payment of liabilities to an authorised bank.
- (5) For conversion into Baht.

Thai companies having export proceeds in foreign currency from overseas are allowed to transfer funds from their foreign-source foreign currency accounts to deposit into foreign currency accounts of their counterparties in Thailand for payment of goods or services.

b) Foreign Currency Account of Nonresidents

Non-residents may maintain foreign currency accounts with authorised banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad. Payments from Thai residents or borrowing from authorised banks can be deposited subject to supporting evidences. Balances on such accounts may be freely withdrawn.

c) Nonresident Baht Account

Non-residents may open Thai Baht accounts with authorised banks in Thailand as follows:

- (1) Non-resident Baht Account for Securities ("NRBS"): The account may be debited or credited for the purpose of investment in securities and other financial instruments such as equity instruments, debt instruments, unit trusts, derivatives transactions traded on the Thailand Futures Exchange and the Agricultural Futures Exchange of Thailand.
- (2) Non-resident Baht Account ("NRBA"): The account may be debited or credited for general purposes (i.e. other than investment in securities) such as trade, services, foreign direct investment, investment in immovable assets, and loans.

The total daily outstanding balances for each type of account shall not exceed three hundred (300) million Baht per nonresident. Transfers between different types of accounts are not allowed.

3. TRADE AND SERVICES

a) Exports

Export proceeds in an amount equivalent to USD fifty thousand (50,000) or above shall be repatriated immediately after payment is received and within three hundred sixty (360) days from the export date. The proceeds must be sold to or deposited in a foreign currency account with an authorised bank in Thailand within three hundred sixty (360) days of receipt.

b) Imports

Importers may purchase or withdraw foreign currencies from their own foreign currency accounts for import payments upon submission of supporting documents. Letters of credits may also be opened without authorisation.

c) Services

All proceeds from services in an amount equivalent to USD fifty thousand (50,000) or above shall be repatriated immediately after payment is received and within three hundred sixty (360) days from the transaction date. The proceeds must be sold to or deposited in a foreign currency account with an authorised bank in Thailand within three hundred sixty (360) days of receipt.

Outward remittances of amounts properly due to nonresidents are permitted for items of a non-capital nature such as service fees, interest, dividends, profits, or royalties provided that supporting documents are submitted to an authorised bank. Travelling expenses or educational expenses of residents are also freely permitted upon submission of supporting documents.

4. FOREIGN INVESTMENTS

Transfers in foreign currency for direct and portfolio investments in Thailand are freely permitted. Proceeds must be surrendered to an authorised bank or deposited in a foreign currency account with an authorised bank in Thailand within three hundred sixty (360) days.

Repatriation of investment funds and repayment of overseas loans can be remitted freely upon submission of supporting documents to an authorised bank. For repatriation of investment funds, evidence of sale or transfer of such investment shall be submitted. For loan repayment, evidence of inward remittance of such loan and loan agreement shall be submitted.

5. CAPITAL TRANSFERS BY THAI RESIDENTS

a) Direct Investment and Lending Abroad

- 1) A Thai company is allowed to invest in an overseas business entity whose shares are held by the Thai company by not less than 10%, or to invest or lend to affiliated business entities abroad as necessary.
- 2) A Thai company is allowed to lend to non-affiliated business entities abroad up to USD fifty (50) million per year.
- 3) A Thai natural person is allowed to invest in an overseas business entity whose shares are held by that person by not less than 10%, or to invest or lend to its affiliated business entities abroad as necessary.

Fund transfers for such investments or lending to business entities abroad must be in foreign currencies only, whereas fund transfers for investments or lending to business entities in Vietnam or Thailand's neighboring countries for trade and investment in Thailand or those countries can be in foreign currencies or in Thai Baht.

b) Portfolio Investment Abroad

- 1) Institutional investors, namely the Government Pension Fund, the Social Security Fund, provident funds, mutual funds (excluding private funds), securities companies, insurance companies, specialised financial institutions, Thai juristic persons with assets of at least five thousand (5,000) million and companies listed in the Stock Exchange of Thailand are allowed to invest in foreign securities without

limit. Such investment shall not exceed the limit set by the supervisory authority, directors or managements of each institutional investor.

- 2) Other investors can invest in foreign securities through private funds or securities companies without limit provided that such investment shall be subject to the guidelines of and not exceed the limit set by the Securities and Exchange Commission.

c) Transfers for Other Purposes

- 1) Outward remittances to Thai emigrants who are permanent residents abroad provided that funds are derived from their own assets, from their families or relatives, or from their inheritances, are allowed up to USD one (1) million per recipient per year for each purpose. Fund transfers to the public for donation are allowed up to USD one (1) million per person per year.
- 2) The purchase of shares, warrants and options of related companies abroad under employee benefit plans is allowed up to USD one (1) million per person per year.
- 3) The purchase of immovable properties abroad is allowed up to USD ten (10) million per person per year.

6. REPORTING

Any person purchasing, selling, depositing, or withdrawing foreign currencies with an authorised bank in an amount of USD fifty thousand (50,000) or above shall be required to report such foreign exchange transactions to the authorised bank in the form as prescribed by the Competent Officer.



APPLICATION FOR WORK PERMIT AND VISA

If the company would like to employ an expatriate employee, a work permit and visa is required.

In general, the company that is the employer of the foreigner has the responsibility to apply for the work permit and visa for its employee(s) and the following general requirement must be met:

- Having a minimum registered and paid up capital of Baht two (2) million per foreign employee;
- Employing at least four (4) Thai employees per foreign employee; and
- Salary of the foreign employees must be more than the standard salary rate, i.e. for an American it must be more than fifty thousand (50,000) Baht/month.



INTELLECTUAL PROPERTY

Thailand has intellectual property protection represented in various laws regarding trademarks, mainly copyright, patents, plant varieties, layout design of integrated circuits, and trade secrets. In addition, Thailand has also become a contracting party of the Patent Cooperation Treaty (PCT) and a member of the World Trade Organisation (WTO), which are the commitment of intellectual property protection in an international extent. Information regarding the protection of intellectual property in particular areas is described below.

I. TRADEMARKS

Under the Trademark Act, B.E. 2534 (1991), as amended by the Trademark Act (No.2) B.E. 2543 (2000) (collectively, the “Trademark Act”), the protection for trademarks shall be granted only by the registration with the Department of Intellectual Property (“DIP”), MOC. Although the Penal Code provides the protection for unregistered trademarks, registration with DIP provides the greatest protection against infringement and counterfeiting for the owner of a trademark.

The mark to be registered as a trademark must be used or proposed to be used on or in connection with goods to distinguish the goods from other goods. Accordingly, in order to qualify the registration of trademark, the mark must be distinctive, not prohibited under the Trademark Act, and also not identical or confusingly similar to other prior registered trademarks.

Where a trademark application has been filed in a foreign country within six months before the application is filed for the registration of trademark in Thailand, the applicant may claim the first foreign filing date as the filing date in Thailand if he/she possesses one of the following qualifications:

- 1) being a Thai national or a juristic person having its headquarters located in Thailand;
- 2) being a national of a country party to a convention or international agreement on trademark protection to which Thailand is also a party;
- 3) being a national of country which accords the same rights to Thai nationals or juristic persons having their headquarters located in Thailand; or
- 4) being domiciled or having a real and effective industrial or commercial establishment in Thailand or a country party to a convention or international agreement of trademark protection to which Thailand is also a party.

2. PATENTS

Under the Patent Act, B.E. 2522 (1979), as amended by the Patent Act (No. 2) B.E. 2535 (1992) and the Patent Act (No. 3) B.E. 2542 (1999) (collectively, the “Patent Act”) patents, petty patents, and product designs registered in Thailand are protected. The patent holder has an exclusive rights to produce, use, import, sell, allow others to use such rights on granted products. The qualifications and validation for each are different and are generally described below.

2.1 Patent

A patent shall be granted only for an invention in respect of which the following conditions are satisfied:

- the invention is new;
- it involves an inventive step; and
- it is applicable of industrial application.

New invention means it does not form part of the state of the art including widely known invention, prior granted invention whether in Thailand or a foreign country, or an invention which the subject matter was already disclosed to the public.

The validation of patent is for twenty (20) years as of the date of filing the application in the country. In Thailand, the validation period for patent cannot be renewed.

2.2 Petty Patent

A petty patent shall be granted for an invention in respect of which the following conditions are satisfied

- the invention is new;
- it is capable of industrial application.

The same invention cannot be applied for both patent and petty patent.

The validation of patent is for six years as of the date of filing the application in country and can be renewed twice, for two years each respectively (with the total of ten years of validation).

2.3 Product Design Patent

A patent for design shall be granted under the Patent Act for a new design for industry, including handicrafts. However, the designs with the following conditions shall not be deemed new:

- A design which was widely known or used by others in this country before the date of filing application for a patent;

- A design which was disclosed or described in a document or a printed publication in Thailand or a foreign country before the date of filing application for a patent;
- A design which was published pursuant to the consideration for permission of the Director-General of the DIP before the date of filing application for a patent;
- Any design so nearly resembling any of the designs mentioned above to the extent that can be considered as an imitation.

The validation of patent is for ten years as of the date of filing the application in the country. In Thailand, the validation period for product design cannot be renewed.

3. COPYRIGHTS

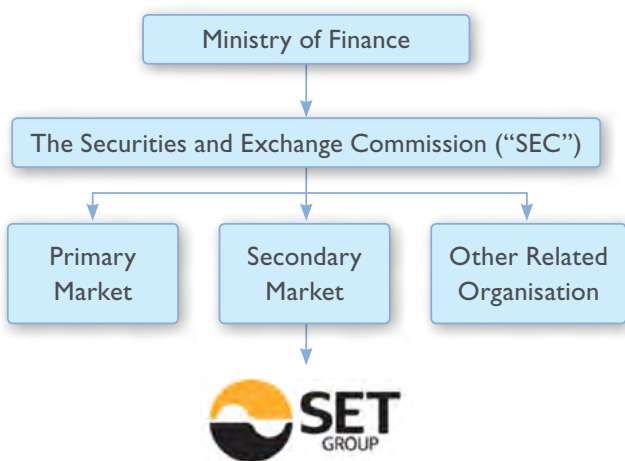
The Copyright Act, B.E. 2537 (1994) provides the protection on copyrights in an extensive range including works of authorship in the categories of literary, dramatic, artistic, musical, audio-visual, cinematographic, sound recording, sound and video broadcasting work or any other works in the literary, scientific or artistic domain of the author, regardless of the mode or form in which the works are expressed.

Under the Copyright Act, as the author, a person who makes or creates the work defined in the virtue of this act shall have an exclusive right irrespective of any registration with DIP. However, copyright in the work created in the course of commission vests in the employer, unless the author and the employer have agreed otherwise.



SECURITIES LAWS AND REGULATION

I. REGULATORY FRAMEWORK OF THE CAPITAL MARKET



Securities transactions are governed by the Securities and Exchange Act B.E. 2535 (1992) (“SEA”). The SEA stipulates the SEC as the regulator of the Thai Capital Market which includes securitisation, derivatives, and other securities related businesses. While the SEC oversees the development of the Kingdom’s capital market, the BOT is responsible for the country’s money market. The SEA also provides a clear separation between the primary and the secondary markets to facilitate their successful development. Both primary and secondary markets are regulated by the SEC.

Primary Market

The SEC oversees and regulates the primary market. In this regard, a company wishing to issue new securities, carry out an Initial Public Offering (“IPO”) or offer additional securities to the public must first apply for the SEC’s approval and comply with its filing requirements. The SEC is then required to carefully review the financial status and operations of the company before allowing the firm to issue securities to the public.

Secondary Market

Following the initial public offering, securities may be traded in the secondary market once the issuer has applied for and been granted approval by the SET.

The Capital Market Supervisory Board (“CMSB”)

The CMSB was also established under the SEA. The CMSB may issue regulations, rules, notifications, orders, and directions at the operational level in relation to the securities and exchange business including settlement systems, takeover transactions and any other matter authorised by the SEC. The CMSB reports to the SEC.

2. SECURITIES OFFERINGS

Supervision on issuance of equity

Initial Public Offering (“IPO”)	Public Offering (“PO”)		Private Placement (“PP”)
	Non-listed Company	Listed Company	
1. Procedures on the offering for sale of securities			Definition of private placement (“PP”)
2. Approval criteria			Approval criteria-general approval
2.1 Approval criteria for IPO	2.2 Approval criteria for PO		
3. Information disclosure prior to the offering for sale of securities			Information disclosure prior to the offering for sale of securities-exemption on filing
4. Information disclosure and after sale duties			Information disclosure and after sale duties

Relevant regulation: the Notification of the Capital Market Supervisory Board No. TorChor. 28/2551 Re: Application for Approval and Granting of Approval for Sale of Newly Issued Shares (codified).

2.1 Initial Public Offerings (“IPO”) and Public Offerings (“PO”)

General Requirements for IPO of non-listed companies

An applicant for the issuance for sale of securities to the public shall be a PLC (Section 33 of the SEA) and have the qualifications prescribed by the regulations on corporate governance and other requirements, including:

A. Protection of investors’ rights and fair treatment to shareholders

- Having a clear and fair structure of shareholding;
- Showing power of control and shareholders’ interest transparently;
- Persons with conflicts of interest holding not more than 10% of shares in subsidiaries or associated companies unless it can be proven that the structure of such shareholding is for the best interest of the issuing company;
- Not having a cross-shareholding structure among the applicant, major shareholders and associated companies unless allowed by the SEC;
- The Board of Directors, executives and major shareholders not having conflicts of interest unless a reliable management mechanism is put into place for the best interests of the company and the shareholders;
- Not having reasonable grounds to suspect that the company’s management fails to protect the rights of the shareholders or treat them fairly.

B. Roles, duties and responsibilities of directors, executives and controlling persons

- Understanding their roles, duties and responsibilities to the shareholders and demonstrating the ability to perform accordingly;
- Having sufficient checks and balances between the Board of Directors and the management, for example:
 - At least one-third of the Board of Directors, in any event not less than three persons, shall be independent directors;
 - The Audit Committee shall comprise of at least three independent directors who have qualifications and duties similar to those specified by the SET

regulations, experience in auditing financial statements and the capability to perform the other duties of the Audit Committee.

- Where the Board of Directors authorises the management to act on its behalf:
 - i. The authorisation must be in writing or clearly recorded as a resolution of the board in the minutes of the company’s meeting;
 - ii. The scope of the power of attorney must be clearly specified.
- The board of directors and the management shall not have prohibited characteristics and their names shall be on the SEC database of directors and executives of securities issuing companies in compliance with the disclosure rules.

C. Disclosure of information

- The disclosed information must be sufficient, and not misleading, for investment decision-making;
- The company’s financial statements and the consolidated financial statements for the latest financial year and the latest quarter must be accurate and reliable by way of:
 - Complying with the accounting standards for PLCs (including limited company subsidiaries) and the rules prescribed under Section 56 of the Securities and Exchange Act of B.E. 2535 (1992);
 - Being audited or reviewed by an approved auditor (List of the SEC-approved auditors);
 - The report of the auditor shall not have the following characteristics:
 - i. The auditor not expressing an opinion on the financial statements or expressing an opinion that they are inaccurate;
 - ii. The auditor expressing a qualified opinion that any significant transaction is not in compliance with accounting standards;
 - iii. The auditor being of the opinion that the auditing scope is limited by the company or its executives;

- There is a reasonable ground to suspect the company's ability to prepare and disclose sufficient information in compliance with the specified rules continuously and reliably.

D. Other qualifications

- Not being involved in illegal business;
- Not having a record of violating or failing to comply with the offering rules in respect of significant matters;
- Having a clear resolution to increase capital within one year prior to the date of filing the application.

General Requirements for Public Offering of listed companies

- Being a listed company on the SET or the "MAI";
- Not being in violation of Section 56, Section 57, Section 58 or Section 199 regarding disclosure of information such as the annual registration statement (Form 56-1) and the annual report (Form 56-2) unless granted a waiver;
- Having the same qualifications as an IPO.

General Conditions and permission period

The issuer shall complete the offering for sales of securities within six months from the SEC's approval date but may request a deadline extension. In any event, the permission period shall not exceed twelve (12) months.

Pre-Offering Disclosure of Information

The issuing companies are required to submit a filing and a draft prospectus to the SEC. The filing and draft prospectus must become effective prior to such offering.

Post-Offering Disclosure of Information

The issuing companies must report the result of the subscription of securities, and other relevant reports to the SEC and/or the SET which include quarterly and annual financial statements. In addition, the issuing companies are also required to inform any particular matters to the SEC such as takeovers, changes in management, and/or adverse changes in the company.

2.2 Private Placement (PP)

Private placement is an offer for sale which falls within one of the following categories:

- The amount of funds;
 - An offer for sale of newly-issued securities, with an aggregate value not exceeding twenty 20 million Baht, during any consecutive 12-month period; provided that

the aggregate value of the offering shall be calculated based on the offering price of the shares (excluding any offer made to institutional investors);

- Number of Investors

- An offer for sale of newly-issued securities to not more than 50 investors during any consecutive 12-month period (excluding any offer made to institutional investors);

- Character of Investors

- An offer for sale of newly-issued securities made to institutional investors;

- Character of Offerings

- An offer of sale is made by a company to its shareholders in proportion to their shareholding and the issuing company receives full payment from its shareholders (i.e. a rights issue); or
- An offer for sale to its creditors under a rehabilitation plan approved by the Bankruptcy Court under the bankruptcy laws if the rehabilitation plan requires the issuer to issue shares instead of making repayment.

General Conditions for Private Placement

- The issuer shall not advertise the offer of securities to the public;
- In the case that the issuer wishes to distribute any document relating to the securities being offered, such documents must be distributed to specific investors only.

Post-Offering Disclosure of Information

The issuer is required to report the result of the sale of securities to the SEC within fifteen (15) days from the closing. The report must include the offering date, type and character of securities, number of securities offered and sold, price, name and address of subscriber and number of shares subscribed by each investor, and the name, address and phone number of the issuer.

3. TAKEOVER REGULATIONS

3.1 Reporting obligations

According to Section 246 of SEA, any person, by his own act or acting in concert (as described below) with others, acquires or disposes of the securities of any business and thereby increase or decrease the number of securities (particularly, shares or convertible securities) held by him or other persons in such business to a number which

aggregately reaches any multiple of five percent (5%) of the total number of voting rights of such business, whether or not the transfer has been registered and regardless of the amount of such increase or decrease, such person shall report to the SEC each time such an acquisition or disposition has been made, provided that the calculation of voting rights and the report shall be in accordance with the rules, conditions and procedures as specified in the notification of the CMSB.

The holding of securities as mentioned above shall include having the right to purchase or to be delivered securities issued by the business that resulted from holding of securities issued by other businesses or from engaging in an agreement with any other persons as specified in the notification of the CMSB.

3.2 Requirement on Tender Offer

With reference to Section 247 of the SEA and the relevant Notifications of the CMSB, a person, either acting alone or in concert with others, or does any other acts which results or will result in acquiring shares in a company up to the percentage considered as a Trigger Point, which is significant to the change of control or management of the company, must make a tender offer and comply with the Tender Offer Obligation in accordance with the applicable regulations. This is to allow existing shareholders of the company to have an opportunity to sell their shares upon the change of control.

The Trigger Point is specified by law as follows:

- either 25% of all issued shares of the business, or 25% or more of all common shares of the business that has also issued preference shares representing less than one (1) vote per one (1) preference share. (An acquirer, however, may be exempted from the Tender Offer Obligation under this clause if the shares acquired by the acquirer are less than 25% of the total voting rights of the business);
- 50% of the total voting rights; or
- 75% of the total voting rights.

4. ROLES OF THE STOCK EXCHANGE OF THAILAND

As defined in the SEA, the SET's primary roles are:

- To serve as a center for the trading of listed securities, and to provide the essential systems needed to facilitate securities trading;

- To undertake any business relating to the Securities Exchange, such as a clearing house, a securities depository center, a securities registrar, or similar activities;
- To undertake any other business approved by the SEC.

5. OPERATIONS

- The Stock Exchange of Thailand is a juristic entity set up under the Securities Exchange of Thailand Act, B.E. 2517 (1974). Operations started on 30 April 1975.
- Its mandate is to be a market or center for the trading of listed securities, and promoter of financial planning, as well as the provider of related services connected to such activities, without distributing any profits to its members.
- It encourages the general public to become shareholders in a variety of local industries.
- It operates under the legal framework laid down in the Securities and Exchange Act, B.E. 2535 (1992).
- Its main operations include securities listing, the supervision of listed companies, information disclosure, trading, market surveillance, member supervision, information dissemination and investor education.

6. TRADING METHODS

1) Automatic Order Matching (“AOM”) Trading

AOM trading performs the order matching process according to price-then-time, priority, without human intervention. After brokerage houses electronically send buy or sell orders from their offices to the SET mainframe computer, the CONNECT system queues the orders and arranges them according to a price-then-time priority. This means orders are first grouped according to price, with the best price taking precedence. Then, within each price group, orders are arranged according to time. In terms of the matching process, there are two methods: Continuous Order Matching and Auction method.

Continuous Order Matching procedures operate during the regular trading sessions. The CONNECT continuously matches the first buy and sell orders in the queue, and at the same time, confirms each executed transaction via the member's (broker's) terminal.

The Auction method is utilised in calculating the opening and closing prices of a security at the opening and closing of the trading hours. This method allows brokers to enter their orders to be queued for matching at a specified time at a single price that generates the greatest trading volumes for that particular stock.

on the behalf of their clients or for themselves. Prices may be adjusted during the negotiation; hence, the effective executed price may not be the same as that advertised and may not follow the price spread rules. After concluding negotiations, dealers must send details of the result(s) to the CONNECT for recording purposes.

2) Trade Report (“TR”) Trading

The CONNECT also allows brokers to advertise their buy or sell interests by announcing bid or offer prices. Members may then deal directly with each other, either

7. OFF-HOURS TRADING

Off-hours trading is the extra trading period after the closing of the regular trading session. This facility enables investors, especially institutional investors and foreign investors, to adjust their positions. It also serves as a tool for traders to adjust error transactions or cover the transactions executed in the regular session.

Off-hours trading starts from the closing time until 17:00 hours. Only Trade Report transactions can be recorded as specified in the following rules:

Types of Trading	Volume/Value	Price	Others
Trade Report – Big Lot	Each transaction must have a minimum volume of at least one (1) million shares or a minimum value of at least three (3) million Baht	<ul style="list-style-type: none"> ■ No spread requirement ■ Price Limits refer to the local share price limitations (except the Trade Report cases of mergers and acquisitions which are permitted by the SET on a case-by-case basis) ■ Related report must be submitted to the Exchange if the transaction meets one of the following criteria: <ul style="list-style-type: none"> – Executed price is 15% or more higher than previous day closing price of local shares; or – Size of the transaction is larger than 25% of the company’s registered capital or such transaction results in the buyer’s share holding of 25%, 50% or 75% of the company’s registered capital 	<p>Trading both one firm and two firms TRADE REPORT</p> <p>Advertisement via trading system is allowed</p>

Types of Trading	Volume/Value	Price	Others
Trade Report – Off Hour	Each transaction must be in board lots with a volume of less than one (1) million shares and a value of less than three (3) million Baht	Closing price or average price (VWAP) of that trading day. If neither is available, the last closing price will be used	Trading both one firm and two firms TRADE REPORT Advertisement via trading system is allowed
Trade Report- Foreign	Each transaction must be with a volume of less than one (1) million shares and a value of less than three (3) million Baht	Price limit is +60% of previous day closing price of local shares	Trading both one firm and two firms TRADE REPORT Advertisement via trading system is allowed



LISTING

I. GENERAL LISTING CRITERIA FOR COMMON SHARES

A company applying to list its common shares on SET must have the following qualifications:

1.1 Qualifications for common shares

- specifies the name of the bearer; and
- are not subjected to restrictions on the transfer of ordinary shares, unless these restrictions are in accordance with the law and in the articles of association of the company.

1.2 Qualifications for the applicant

Qualifications		
	Profits Test	Market Capitalisation Test ^{1/}
Status of the applicant		
	Must be a PLC or corporation established under special law.	
Paid-up capital in common shares (after public offering)	> Three hundred (300) million Baht	> Three hundred (300) million Baht
Track record	<ul style="list-style-type: none"> ■ must have the following net profit characteristics: <ul style="list-style-type: none"> – combined minimum net profits from operations of fifty (50) million Baht over the past two or three years. – net profits from operations of thirty (30) million Baht for the latest full year. ■ net profits from operations in the year of filing the listing application, when all quarterly results from that year are combined. 	Market Capitalisation of > five (5) billion Baht
	<ul style="list-style-type: none"> ■ must have been in operation for at least three years prior to the application date. For a privatised state enterprise, operations prior to privatisation will be considered as part of this three-year period. ■ must have had the same company management for at least one (1) year prior to the application date. 	
Distribution of minority shareholders (after public offering)		
No. of minor shareholders/ Non-strategic shareholders	> one thousand (1,000) shareholders	
“Strategic shareholders” refers to <ul style="list-style-type: none"> ■ Directors, managers, and executive management, including related persons and associated persons ■ Shareholders who have a holding of above 5%, including related persons 	<ul style="list-style-type: none"> ■ hold > 25% of paid-up capital for companies with three hundred (300) million Baht paid-up capital < three thousand (3,000) million Baht. ■ hold > 20% of paid-up capital for companies with paid-up > three thousand (3,000) million Baht. 	

Qualifications		
	Profits Test	Market Capitalisation Test ¹
Public offering		
Approval	Must have been granted approval by the SEC (except for a company established under a special law).	
Number of shares cumulatively offered for sale:		
<ul style="list-style-type: none"> ■ paid-up capital of < five hundred (500) million Baht ■ paid-up capital of > five hundred (500) million Baht 	<ul style="list-style-type: none"> > 15% of paid-up capital > 10% of paid-up capital or seventy five (75) million Baht in shares, whichever is higher 	
Public offering procedure	Offered through an underwriter	
Financial condition and liquidity	<ul style="list-style-type: none"> ■ must be in a stable and healthy financial condition and have sufficient working capital. ■ must have a minimum total shareholder equity of three hundred (300) million Baht. 	
Management		
Management and control personnel	<ul style="list-style-type: none"> ■ Management and control personnel must hold qualifications in accordance with the SEC regulations and not have any characteristics prohibited by the SEC*. 	
Scope of audit committee's duties and responsibilities	<ul style="list-style-type: none"> ■ The audit committee's duties and responsibilities must be clearly defined as specified by the SEC*. 	
Corporate governance and internal control	<ul style="list-style-type: none"> ■ must demonstrate good corporate governance practice and have a qualified audit committee as specified by the SET. ■ must maintain effective auditing and internal control systems as specified by the SEC*. 	
Conflicts of interest	<ul style="list-style-type: none"> ■ must have no existing or potential conflicts of interest as defined by the SEC*. 	
Applicant's articles of association	<ul style="list-style-type: none"> ■ must ensure that the applicant's articles of association and those of its subsidiaries are in line with the SEC rules and regulations*. 	
Financial statements and auditors	<ul style="list-style-type: none"> ■ must ensure that financial statements have been prepared in accordance with the SEC rules and regulations*. ■ must have an auditor approved by the SEC*. (list of qualified auditors can be obtained from www.sec.or.th) 	
Provident fund	<ul style="list-style-type: none"> ■ must ensure that by the date the listing application is filed, the applicant has established a provident fund. 	

Definition: Market Capitalisation Calculation

1. IPO price: the candidate applies for listing within one (1) year from the last date of its IPO.
2. Fair price determined by financial advisor: the candidate applies for listing more than one (1) year from the last date of its IPO.

Relaxation for Quantitative Listing Criteria for Common Shares. In the case that it deems that the admission of the issuer is beneficial to the Thai equity market, the Board of Governors of the SET may accept the listing of the issuer by relaxing quantitative listing criteria as it deems appropriate.

2. GENERAL LISTING CRITERIA FOR LISTING ON MAI

A company applying to list its common shares on MAI must have the following qualifications:

2.1 Qualifications for common shares

- are bearer shares
- are not subject to restrictions on the transfer of ordinary shares, unless these restrictions are in accordance with the law and in the articles of association of the company

2.2 Qualifications for the applicant

Qualifications		
	Net Profits Criteria	Market Capitalisation Criteria
Status of the applicant		
	Must be a PLC or corporation established under special law.	
Paid-up capital in common shares (after Public Offering)	> twenty (20) million Baht	> twenty (20) million Baht
Track record	<ul style="list-style-type: none"> ■ Continuous operation for at least two (2) years, under the management of mainly the same executive group for at least one (1) year prior to application. ■ Record net profits in the most recent year prior to application, and net profit for all combined results in the year of filing application. 	<ul style="list-style-type: none"> ■ operational results are available for only one year, the company's market capitalisation must be over one (1) billion Baht.
Distribution of minority shareholders (after public offering)		
No. of minor shareholders/ Non-strategic shareholders	> three hundred (300) shareholders	
Proportion of minority shareholders	<ul style="list-style-type: none"> ■ hold > 20% of paid-up capital for companies ■ minor shareholders are not strategic shareholders "Strategic shareholders" refers to <ul style="list-style-type: none"> – Directors, managers, and executive management, including related persons and associated persons – Shareholders who have a holding of above 5%, including related persons 	
Public Offering		
Approval	Must have been granted approval by the SEC (except for a company established under a special law).	
Number of shares cumulatively offered for sale:	> 15% of paid-up capital	
Public offering procedure	Offered through an underwriter	

Qualifications		
	Net Profits Criteria	Market Capitalisation Criteria
Financial condition and liquidity	<ul style="list-style-type: none"> must be in a stable and healthy financial condition and have sufficient working capital. must have a minimum total shareholder equity of twenty (20) million Baht. 	
Management		
Management and control personnel	<ul style="list-style-type: none"> Management and control personnel must hold qualifications in accord with the SEC regulations and not have any characteristics prohibited by the SEC*. 	
Scope of audit committee's duties and responsibilities	<ul style="list-style-type: none"> The audit committee's duties and responsibilities must be clearly defined as specified by the SEC*. 	
Corporate governance and internal control	<ul style="list-style-type: none"> must demonstrate good corporate governance practice and have a qualified audit committee as specified by SET. must maintain effective auditing and internal control systems as specified by the SEC*. 	
Conflicts of interest	<ul style="list-style-type: none"> must have no existing or potential conflicts of interest as defined by the SEC*. 	
Applicant's articles of association	<ul style="list-style-type: none"> must ensure that the applicant's articles of association and those of its subsidiaries are in line with the SEC rules and regulations*. 	
Financial statements and auditors	<ul style="list-style-type: none"> must ensure that financial statements have been prepared in accordance with the SEC rules and regulations*. must have an auditor approved by the SEC*. (list of qualified auditors can be obtained from www.sec.or.th) 	
Provident fund	<ul style="list-style-type: none"> must ensure that by the date the listing application is filed, the applicant has established a provident fund. 	

Definition: /1 Market Capitalisation Calculation

1. IPO price: the candidate applies for listing within one (1) year from the last date of its IPO.
2. Fair price determined by financial advisor: the candidate applies for listing more than one (1) year from the last date of its IPO.

Relaxation for Quantitative Listing Criteria for Common Shares

In the case that it deems that the admission of the issuer is beneficial to the Thai equity market, the Board of Governors of The Stock Exchange of Thailand may accept the listing of the issuer by relaxing quantitative listing criteria as it deems appropriate.

3. CRITERIA FOR COMPANIES ENGAGED IN INFRASTRUCTURE PROJECTS

An infrastructure project is defined as a construction or business development project which clearly benefits the country economically and socially in one or more of the following areas: power generation and transmission, water supply, land transportation (e.g. expressway or toll way), seaports, airports, telecommunications, and environmental control and treatment systems. In its bid to encourage companies engaged in infrastructure projects to list, the Exchange has provided special listing requirements for securities in this category. The requirements for infrastructure companies are the same as those for other firms, except for the three-year track record and business operation requirements.

Additional Requirements	
Nature of business	<ul style="list-style-type: none"> the company has a concession period of > twenty (20) years with > fifteen (15) years remaining as of the application date; or the firm has obtained specific permission from a government agency/state enterprise, or the company possesses a contract to sell products/services to a government agency/state enterprise which will generate reliable revenue.
Sources of finance	The firm has confirmed and sufficient sources of finance.

4. LISTING CRITERIA FOR HOLDING COMPANIES

Holding companies have become increasingly popular, because:

- The holding structure allows for business growth and expansion into new businesses through subsidiaries, domestic and/or overseas, which may or may not be related to its current business.
- A growing number of affiliated companies with different structures wish to have their securities listed on the Exchange.

If only one company from a group is put forward as the listing candidate, problems may arise due to incongruence between the lines of business of different companies in the group.

Consequently, the Exchange has established special listing criteria for firms which have holding company-like organisational structures and which invest domestically and/or overseas. They may apply for listing without demonstrating a three-year track record, but they must meet the definition and requirements listed below:

Holding company	Core subsidiary company
<p>A holding company is defined as a firm with no substantial operations of its own, but whose business activities consist mainly of holding shares in other operating companies (domestic and/or overseas) and realising its earnings from such investments. The requirements for a holding company applying to list on the Exchange are as follows:</p> <ul style="list-style-type: none"> ■ The applicant must comply with all listing requirements applicable to listed companies in general, except that the only operational results to be considered are the net profit or market capitalisation according to the requirements applicable to its core subsidiary. ■ The applicant must hold shares in at least one core subsidiary in one of the following ways: <ul style="list-style-type: none"> ■ In general, > 50% of the core subsidiary’s paid-up capital must be held. ■ In the case that the core subsidiary is subjected to restrictions under laws or is a joint investment with a government or government agencies, > 40% of the core subsidiary’s paid-up capital must be held. ■ The applicant’s directors and executives must have been responsible for managing the core subsidiary for at least one year prior to submitting the application. ■ The applicant must have control of or the ability to manage the core subsidiary in accordance with its shareholding ratio. ■ Once listed, the applicant must maintain its shareholding in the core subsidiary for at least three (3) years, after which it may change its core subsidiary. ■ The applicant must not be an investment company prescribed by the SEC. 	<ul style="list-style-type: none"> ■ A core subsidiary is defined as any operating firm with a core business activity which contributes earnings to a holding company. The characteristics of a core subsidiary are as follows: <ul style="list-style-type: none"> ■ A core subsidiary, by itself, must satisfy the listing requirements applicable to listed companies in general, except for the requirements regarding the distribution of minority shareholding, independent directors, and the audit committee. A foreign company established under foreign law will also be exempted from qualifications regarding provident funds. ■ A core subsidiary must not be a listed company. ■ A core subsidiary must have its own business operations.

5. CRITERIA FOR RENEWABLE POWER GENERATION COMPANIES

Renewable Power Generation Companies support the economic growth as well as encourage the sustainability of Energy and Environment. Therefore, The Stock Exchange of Thailand (“SET”) and The Market for Alternative Investments (“MAI”) help promoting the listing of these companies in MAI by easing the requirement on Track Record, Market Capitalisation and Net Profit, while the other general listing criteria maintains.

Qualifications	General listing criteria for MAI	Listing Criteria for Renewable Power Generation Companies	
Paid-up capital	≥ Twenty (20) million Baht	Identical to General Listing Criteria	
Shareholder Equity	≥ Twenty (20) million Baht		
Free Float	≥ 20% and ≥ three hundred (300) shareholders		
Public Offering	≥ 15%		
Management, Corporate Governance, Internal Control, Conflict of Interest, Financial Statement, Auditor and Provident Fund	Identical to General Listing Criteria		
Net Profit	Record net profit in the most recent year prior to application, and net profit for cumulative results in the year of filing application.	–	–
Market Capitalisation	–	≥ one thousand (1,000) million Baht	≥ five hundred (500) million Baht
Track Record	≥ two (2) years	≥ one (1) year	≥ one (1) year after COD
Same Management	≥ one (1) year		
Silent Period	<ul style="list-style-type: none"> ■ Lock up 55% of Paid-up Capital after IPO ■ For one (1) year after Listed ■ Allow to sell maximum of 25% of shares after six (6) months, then the rest after another six (6) months 	<ul style="list-style-type: none"> ■ Lock up 55% of Paid-up Capital after IPO ■ For two (2) year after Listed ■ Allowed to sell a maximum of 25% of shares after six (6) months then another 25% after every six (6) months 	

Definition Renewable Power Generation Companies which can be applied to this regulation must be power generators using renewable energy as defined in The Energy Conservation Promotion Act B.E. 2535 (1992) such as Solar, Wind, Hydro, Biomass, Biogas and Waste energy. Also, they must have a long term contract to sell their power (“PPA”) or other equivalents, and a proven track record of operation after COD (Commercial Operation Date) for at least one (1) year.

6. CRITERIA FOR REAL ESTATE INVESTMENT TRUST (REIT)

The SEC brought a Trust Scheme for the purpose of investing in real estate which is called Real Estate Investment Trust (“REIT”), which in turn makes it conformable to international standards and guidelines. This also adds to the level of flexibility of the creation and management of the real estate investment scheme. The announcement is subjected to an initial offering of the Unit Trust Trading of REIT on 1 January 2013 in which the SET has issued rules to certify the listing of REIT effective as of 18 March 2013.

Criteria	Description
Establishment	The Trust contract complies fully with The Trust for Transactions in Capital Market Act B.E. 2550 (2007) and any other regulations set by the SEC
Name	Represents the significant features and investment policy
Size	Paid up capital after Public Offering > five hundred (500) million Baht
Unit Trust Trading	Must be a listed security on the SET
Tranche	Trust certificate can be classified as several tranches upon policy compliance
Type of Investing Assets	<ul style="list-style-type: none"> ■ Any type of real property that can generate rental revenue, except for real property involving immoral or illegal businesses ■ Real Properties located outside Thailand are able to be invested in ■ Real properties that can raise capital by >75 % of its value including debt (if any). Any reserve capital can be invested; e.g. government bonds, savings account, etc. ■ Investment in a Greenfield project is permissible upon SEC conditions and with no more than 10% of total assets
Property Investment Criteria	REIT can invest in real property directly, or indirectly by holding shares of a company for more than 99% of the outstanding shares of each company.
Options on Raising/Receiving Profits	<ul style="list-style-type: none"> ■ Contractual lease of property without engaging in other businesses. E.g. Hotels, Hospitals, etc. ■ Tenant is forbidden to generate a property income from immoral or illegal businesses ■ In the event that the contractual lease of the property is for the purposes of other businesses, the rental fee shall be relative to the profits of the tenant but will be < 50% of the minimum set rental charge
Leverage Limit	<ul style="list-style-type: none"> ■ 35% of total assets but can be up to a maximum of 60% if the REIT obtains an investment grade credit rating ■ Comply with Trust establishment contract ■ Assets can be placed as collateral ■ In other commitments or agreements, customary commercial transactions shall take place
REIT Manager	REIT Managers hold the qualifications.
Public Offering and Allocation	<ul style="list-style-type: none"> ■ Offer REIT certificates via an underwriter ■ > Two hundred fifty (250) Trust unit holders are required ■ > 20% of the total issued certificate per tranche upon listing (and with not less than 15% per tranche to be maintained as free float thereafter)

Any person or persons in the same group is entitled to hold a trust certificate	<ul style="list-style-type: none"> ■ Not exceeding 50% of the total trust certificated sold
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Listing on SET

A trust certificate is required to be listed on SET in order to create liquidity for the trust unit holders in the primary market.

Qualification of REIT	Qualification of Trust
<ul style="list-style-type: none"> ■ The REIT must be approved by the SEC* ■ Having a REIT manager who was approved by the SEC and having a trustee permitted by the SEC ■ Free float of not less than 20% of the total issued units per tranche upon listing ■ The Thailand Securities Depository (TSD) or any other third party approved by the SET as its registrar 	<ul style="list-style-type: none"> ■ Being fully paid-up ■ Specifying the name of bearer ■ Containing no restrictions on transfer of REIT units with the exception of restrictions according to laws, provided that such restrictions shall be specified in the trust deeds

* Notification of Capital Market Supervisory Board (TorChor) 49 subjecting to the initial offering of the Real-Estate Investment Trust Re: Listing, Disclosure of Information and Delisting of Units of Real Estate Investment Trusts B.E. 2556 (2013).

7. LISTING CRITERIA FOR THE INFRASTRUCTURE FUND

The infrastructure fund was established to raise capital from both individual investors and institutional investors in order to finance infrastructure projects across Thailand. Investment in infrastructure projects is not only essential for the well-being of the Thai people but it also plays a crucial role in developing the nation's economy. Naturally, infrastructure projects are huge in size and require a tremendous amount of capital in which the government is likely going to borrow, thereby increasing the level of public debt. Thus, the purpose of the infrastructure fund is to alleviate that burden. Moreover, the fund will also become an alternative source of financing for the private sector involved in the national infrastructure projects.

The infrastructure fund is allowed to invest in ten types of infrastructure projects, which are:

- Railway
- Electrical Grid
- Deep Sea Port
- Road/Expressway/Toll-way/Concession way
- Alternative Energy
- Natural Disaster Prevention System
- Waterworks
- Airport/Airfield

Important Attributes	Details
Type	Closed-end Fund; project(s) in which the fund invests in must be specified
Name	Must contain the words 'Infrastructure Fund'; must be able to convey the nature of the fund
Size	NAV > two thousand (2,000) million Baht; each individual project > one thousand (1,000) million Baht Exception—electrical grid; each individual project > five hundred (500) million Baht

Important Attributes	Details
Investment	Must invest in infrastructure projects that are > 75% of NAV within six (6) months after the fund has been established
Investment Style	Two schemes: 1. Direct investment: investing in assets, rights to future revenue, concession rights, leasehold rights, rights to receivables; or 2. Indirect investment: to invest in >75% of the shares and/or bonds (with voting right) of a company that engages in infrastructure project, the company must invest in the infrastructure project by > 75% of NAV; or, > 75% of revenue must come from the infrastructure projects
Investment in Greenfield Project	Two scenarios: 1. If investment in Greenfield does NOT exceed 30% of NAV: shares must be offered to the general public (at least 500 shareholders and listing on the SET is required) 2. If investment in Greenfield exceeds 30% of NAV: shares must be offered to institutional investors only (at least thirty five (35) shareholders and listing on the SET is not allowed until income is generated, after which the shares must be listed within three (3) years)
Borrowing Restriction	Maximum D/E ratio is 3:1
Listing of Unit	Fund units must be registered at the SET
Unit Distribution	It is not permitted to offer more than 1/3 of units to individuals and related parties Exceptions: government pension funds, provident funds, retail funds, social security funds, and tax-exempt Thai organisations are allowed to hold no more than 50% of units sold Same logic applies if there are more than one tranche

Tax for Sponsors and Investors of the IFF

Investor Level

	Individual Investor	Juristic Investor
Dividend Tax	A ten-year exemption of personal income tax on the dividends distributed from the fund to individual unit holders (excluding ordinary partnerships or groups of persons), starting from the day the fund is established. After the ten-year period, investors will be subjected to the normal tax rate that is currently applicable at 10%.	To be calculated together with CIT at 20% Listed companies may enjoy tax exemption when holding units three months prior and after dividend payment Non-listed companies may enjoy tax extenuation by half when holding units three months prior and after dividend payment; at 10%
Capital Gain Tax	Exempt	To be calculated together with CIT at 20% (no withholding)

Fund Level

Type	Detail
Corporate Income Tax	Exempt
Other applicable taxes	VAT: not exempt Stamp Duty: not exempt Leasing Fee: extenuated: from 1% to 0.01%, and maximum of ten thousand (100,000) Baht

Sponsor/Issuer Level

Type	Detail
Corporate Income Tax	CIT 20% (1% Withholding)
Other applicable taxes	Applicable only if the fund arranges to transfer assets back to its originator/transferor or to any other public sector <ul style="list-style-type: none"> ■ VAT, Stamp duty, and any specific business taxes: exempt ■ Transfer tax: extenuated; from 2% to 0.01% and maximum of ten thousand (100,000) Baht ■ Mortgage Registrar Fee: extenuated; from 1% to 0.01% and maximum of ten thousand (100,000) Baht ■ Lease Registrar Fee: extenuated; from 1% to 0.01% and maximum of ten thousand (100,000) Baht <p>In the case of no such arrangement, normal tax rates are applicable</p>



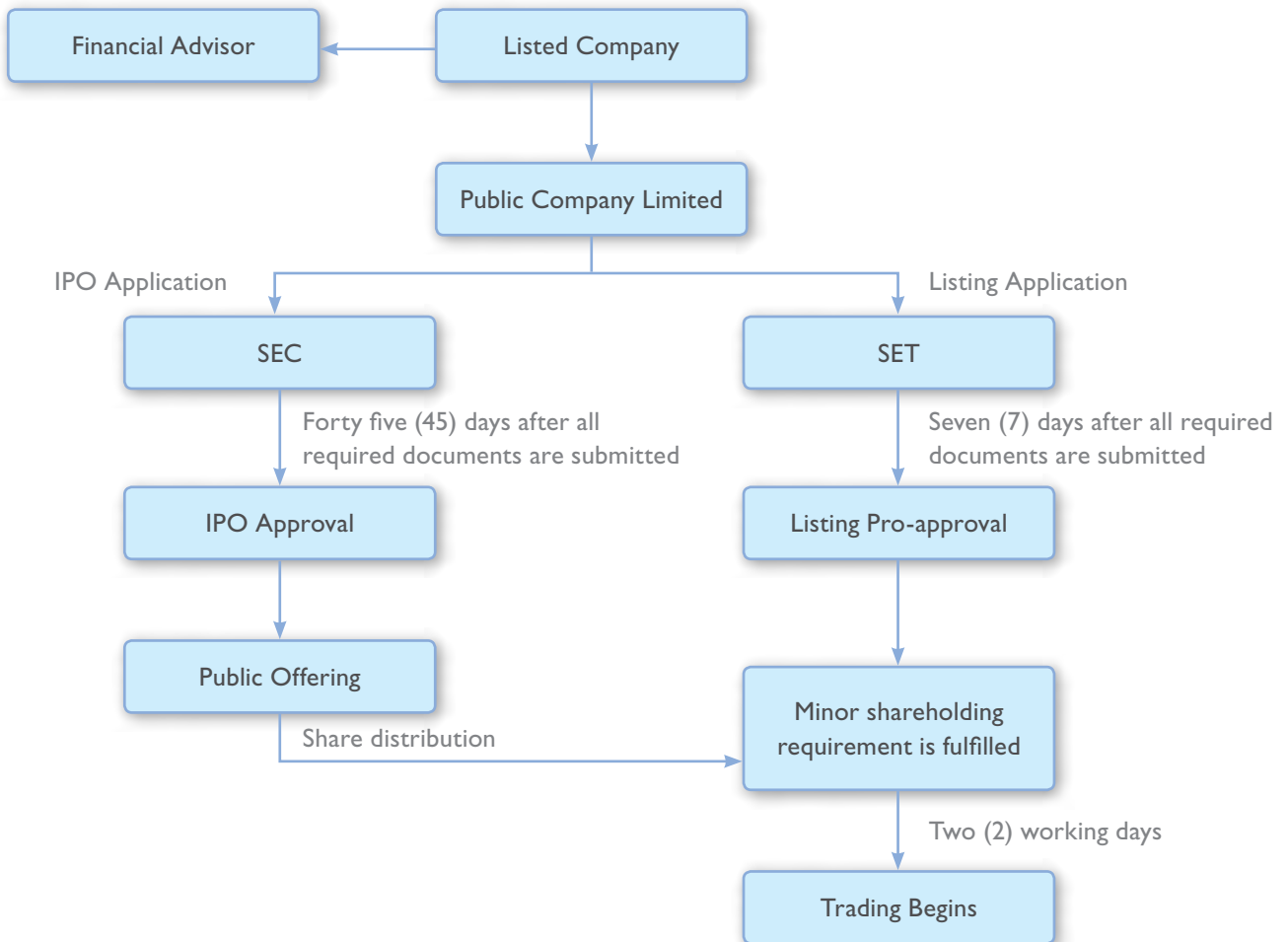
8. LISTING PROCEDURE

8.1 Listing procedures for common shares

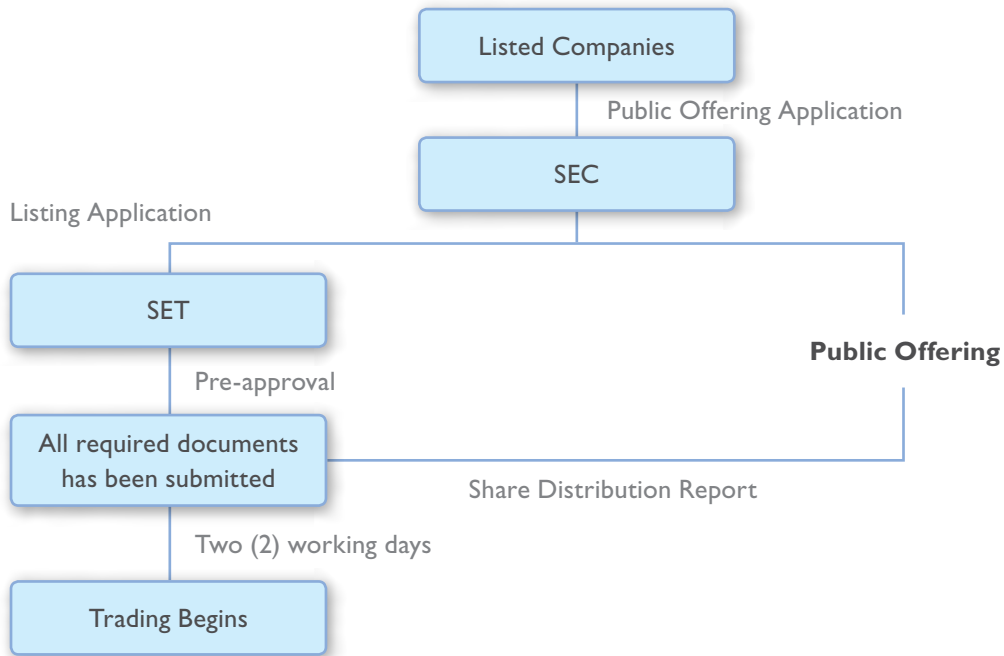
Before offering securities to the public, a limited company must transform itself into a PLC under the Public Company Act B.E. 2535 (1992). This Act plays a key role in protecting investors. To file a listing application, the applicant may either:

1. Submit a listing application to the Exchange following the SEC’s approval of the public offering; or
2. Submit listing and public offering applications to the SET and the SEC simultaneously (“parallel listing”).

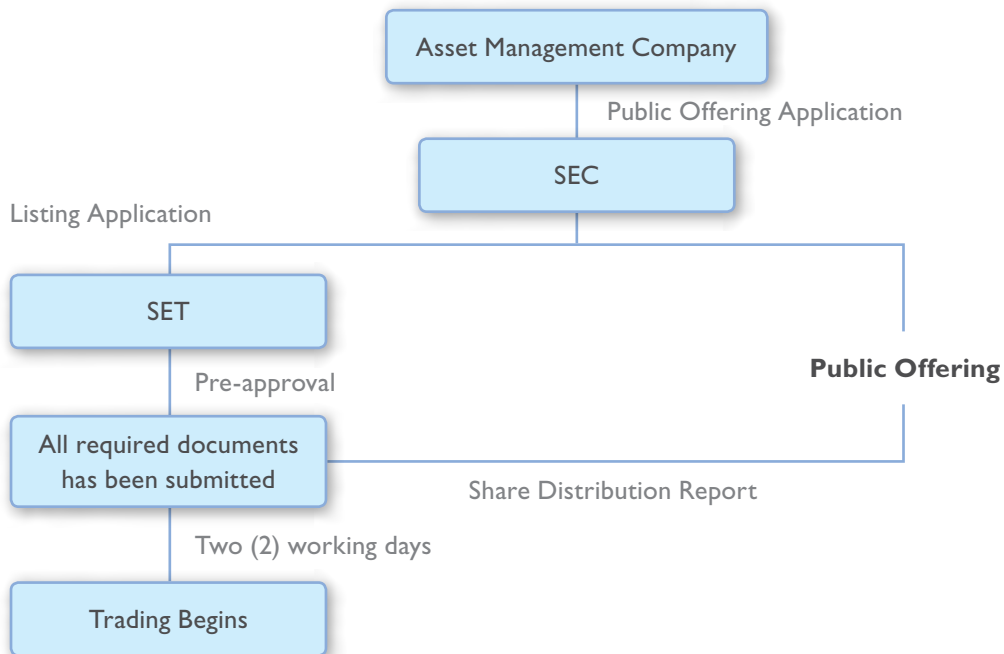
The consideration of the listing application by the Exchange will normally be completed within 30 days of its receiving of all required documents and information. The applicant must then appoint a financial advisor, approved by the SEC and independent of the applicant, to coordinate listing activities with the Exchange and prepare listing documents in conjunction with the applicant.



8.2 Listing procedures for preferred shares, debentures, convertible debentures, and warrants



8.3 Listing procedures for investment units including property funds



9. RULES AND REGULATIONS IN RELATION TO FOREIGN LISTING

SEC rules and regulations

Concept	Allow for dual listing only (for the initial phase)
Prerequisites for SET approval	<p>Have a home exchange which is a WFE member, and is listed on that exchange's main board</p> <p>The regulator of the home exchange is a member of IOSCO and is a signatory to its MMOU, or has signed bilateral agreement with the Thai SEC</p> <p>Have the BOT quota for fund-raising in Thailand by foreign companies available</p>
Type of offering	<ul style="list-style-type: none"> ■ Issuer offers new shares as PO; or ■ Issuer offers old shares as PO
Approval process and filing	<p>I.1 Meets prerequisites for approval from the SET</p> <p>I.2 Obtains approval from and/or files with the SEC</p> <ul style="list-style-type: none"> ■ If issuing new shares: request for approval and submit filing with the SEC ■ If offering old shares: submit filing with the SEC
<i>Disclosure</i>	
Filing	<ul style="list-style-type: none"> ■ Complies with home exchange regulations and provides information according to section 69 (1) – (10), i.e., <ol style="list-style-type: none"> (1) the objective of the offer for sale of the securities to the public or any person; (2) the name of the issuing company which issues securities; (3) the capital of the company; (4) the amount and type of the securities offered for sale; (5) the expected selling price per unit of securities; (6) the nature of the business; (7) the financial condition, business operation, and material information of the business; (8) the management and major shareholders of the issuing company; (9) the auditor, regularly contacted financial institutions, and legal advisor of the issuing company; and (10) the procedures for the subscription, underwriting and allocation of securities ■ Additional concerns and risk factors (e.g., Investors will bear the same risks as if they were directly investing overseas, limitation and risk of enforcement of legal actions against foreign issuers, possible limitations on sending funds overseas imposed by issuer's foreign exchange authority). Information regarding the contact person and corporate secretary, and the statement as to what language will be used for post-listing disclosure ■ Language: English if the filing submitted for the home exchange is in English; otherwise, Issuer may choose to submit the filing in either English or Thai

Concept	Allow for dual listing only/(for the initial phase)
Financial Statement	<ul style="list-style-type: none"> The Thai Accounting standard, IFRS, home plus reconciled IFRS, or any other standards acceptable to the Thai SEC
Intermediaries	<ul style="list-style-type: none"> Auditor and valuer: must comply with home exchange regulations FA: not compulsory Underwriter: must appoint an underwriter approved by the SEC
Post-listing disclosure	Comply with home exchange regulations
Contact person	Contact person located in Thailand authorised to act on issuer's behalf

The SET rules and regulations

Listing	Only allowed to list on the SET (not on the MAI)
Quantitative Criteria: size and track record	<ul style="list-style-type: none"> Marketing Capitalisation (in home country) must be in top quartile of all listed companies or over ten thousand (10,000) million Baht (whichever is lower) Be listed in home exchange for not less than three (3) years
Quantitative criteria: Performance	<ul style="list-style-type: none"> > three hundred (300) million Baht > three hundred (300) million Baht
<ul style="list-style-type: none"> Paid-up Capital Equity Net Profit 	<ul style="list-style-type: none"> Combined net profit of latest two (2) to three (3) years is > fifty (50) million Baht and latest year > thirty (30) million Baht and current year > Zero (0) Baht Marketing Capitalisation > three hundred (300) million Baht or > 5% of paid-up capital (whichever the lower); or ensure liquidity on the SET by depositing shares at a securities depository in Thailand
Public Offering and free float	
Qualitative criteria	<ul style="list-style-type: none"> Comply with home exchange regulations Contact person and registrar located in Thailand
Post-listing Disclosure	<ul style="list-style-type: none"> Comply with home exchange requirements and disclosure is no later than in the home exchange Disclosure in English as a minimum

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD

Thailand has enacted the Thai Arbitration Act B.E. 2545 (2002) (“**Thai Arbitration Act**”); an arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application to the competent court, shall be enforced.

In the case where an award made in a foreign country, the competent court shall enforce such award only if it is governed by a treaty, convention or international agreement to which Thailand is a party, and it shall have effect only to the extent that Thailand agrees to be bound. In this connection, in the case of the enforcement of a foreign arbitral award under the Geneva Convention 1927, and New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, such awards must also satisfy the requirements of such Conventions.

A party who wishes to enforce the arbitral award shall apply to the competent court within three (3) years as from the date the award is enforceable.

After having received the application, the court shall, without delay, make an inquiry and render its judgment.

The court may refuse to enforce the arbitral award, irrespective of the country in which it was made, if the party against whom the enforcement is invoked can prove that:

- (1) a party to the arbitration agreement is incapable under the law applicable to that party;
- (2) the arbitration agreement is not legally binding under the law to which the parties have agreed upon or, in the case where there is no such agreement, under the law of the country where the award was made;
- (3) the enforced party was not given advance notice of the appointment of the arbitral tribunal or of the hearings of the arbitral tribunal or was otherwise unable to present his or her case;
- (4) the award deals with a dispute not falling within the scope of the arbitration agreement or contains decisions on matters beyond the scope of the submission to arbitration. If the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be enforced by the court;

- (5) the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement made by the parties or, in the case where there is no such agreement, was not in accordance with the law of the country where the award was made; or
- (6) the award has not yet become binding upon the parties, or it has been set aside or suspended by a competent court or by the law of the country where it was made, except where the application for setting aside or suspension of the award has been made to the competent court and the trial is pending, the court may suspend the proceedings to enforce the award as it thinks fit. If so requested by the party who apply for the enforcement of award, the court may order the enforced party to give security in an amount it thinks fit.

The court shall have the power to refuse the application to enforce the award if it appears that the award deals with the dispute which shall not be settled by arbitration under the law or the enforcement of award is contrary to the public order or good moral of Thailand.

An order or judgment of the court under this Thai Arbitration Act shall not be appealed, except where:

- (1) the recognition or enforcement of the award is contrary to public order or good morals;
- (2) the order or judgment is contrary to the provisions of law relating to public order or good morals;
- (3) the order or judgment is not in accordance with the arbitral award;
- (4) the judge who has tried the case gave a dissenting opinion in the judgment; or
- (5) it is an order on provisional measure where a party to an arbitration agreement has filed a motion requesting the competent court to issue an order imposing provisional measures to protect his interest before or during the arbitral proceedings.

An appeal against an order or judgment under this Thai Arbitration Act shall be made to the Supreme Court or the Supreme Administrative Court, as the case may be.

APPENDIX I

BUSINESS ACTIVITIES RESTRICTED UNDER FOREIGN BUSINESS LICENSE

LIST ONE

BUSINESSES SENSU STRICTO NOT PERMISSIBLE TO FOREIGNERS BY SPECIAL REASON

- (1) The Press, radio broadcasting station or radio and television station business
- (2) Rice farming, plantation or crop growing
- (3) Livestock farming
- (4) Forestry and timber processing from a natural forest
- (5) Fishery, only in respect of the catching of aquatic animals in Thai waters and specific economic zones of Thailand
- (6) Extraction of Thai medicinal herbs
- (7) Trading and auction sale of antique objects of Thailand or objects of historical value of the country
- (8) Making or casting Buddha Images and monk alms bowls
- (9) Land trading

LIST TWO

BUSINESSES RELATED TO NATIONAL SAFETY OR SECURITY, HAVING IMPACTS ON ARTS, CULTURE, TRADITIONS, CUSTOMS AND FOLKLORE HANDICRAFTS, OR NATURAL RESOURCES AND THE ENVIRONMENT

Chapter 1: Businesses related to National Safety or Security

- (1) Production, distribution and maintenance of:
 - firearms, ammunition, gun powders and explosives;
 - components of firearms, ammunition and explosives;
 - armaments, ships, aircraft or vehicles for military use;
 - equipment or components of all types of war materials
- (2) Domestic transportation by land, water or air, including domestic aviation

Chapter 2: Businesses Having Impacts on Arts, Culture, Traditions, Customs and Folklore Handicrafts

- (1) Trading of antiques or artistic objects that are the artistic works or handicrafts of Thailand
- (2) Production of wood carvings
- (3) Silkworm raising, production of Thai silk yarn, weaving of Thai silk or printing of Thai silk patterns
- (4) Production of Thai musical instruments
- (5) Production of goldwork, silverware, niello wares, bronze wares or lacquer wares
- (6) Production of crockery or porcelains representing Thai arts and culture

Chapter 3: Businesses Having Impacts on Natural Resources or the Environment

- (1) Production of sugar from sugar cane
- (2) Salt farming, including non-sea salt farming
- (3) Production of rock salt
- (4) Mining, including rock blasting or rock crushing
- (5) Timber processing for production of furniture and utensils

LIST THREE

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

- (1) Rice milling and production of flour from rice and economic plants
- (2) Fishery only in respect of the hatching and raising of aquatic animals
- (3) Forestry from a grown forest
- (4) Production of plywood, veneer wood, chipboards or hardboards
- (5) Production of lime
- (6) Provision of accounting services

- (7) Provision of legal services
- (8) Provision of architectural services
- (9) Provision of engineering services
- (10) Construction, with the exception of:
 - a) Construction of structures for the delivery of infrastructure public services in the sphere of public utilities or transportation requiring the use of special apparatuses, machines, technology or expertise, with the minimum capital of five hundred (500) million Baht or upwards from foreigners;
 - b) Construction of other types as prescribed in the Ministerial Regulation
- (11) Brokerage or agency businesses, with the exception of:
 - a) being a broker or an agent in the sale or purchase of securities or in services related to future trading of agricultural commodities or financing instruments or securities
 - b) being a broker or an agent in the sale, purchase or procurement of goods or services necessary for the production or the provision of services amongst affiliated enterprises
 - c) being a broker or an agent in the sale or purchase, procurement, distribution or acquisition of domestic and foreign markets for the distribution of domestically manufactured or imported goods, which is in character for the operation of international trade, with the minimum capital of one hundred (100) million Baht or upwards from foreigners
 - d) being a broker or an agent of other types as prescribed in the Ministerial Regulation
- (12) Sale by auction, with the exception of:
 - a) a sale by auction which, in character, involves international bidding of items other than antiques, objects of antiquity or artistic objects that are artistic works or handicrafts or objects of antiquity of Thailand or of historical value of the country;
 - b) sales by auction of other types as prescribed in the Ministerial Regulation
- (13) Internal trade related to traditional agricultural products or produce not yet prohibited by law
- (14) Retail sale of goods of all types with the total minimum capital in the amount lower than one hundred (100) million Baht or with the minimum capital of each store in the amount lower than twenty (20) million Baht
- (15) Wholesale of all types with the minimum capital of each store in the amount lower than one hundred (100) million Baht
- (16) Advertising business
- (17) Hotel business, with the exception of the hotel management service
- (18) Guided touring
- (19) Sale of food and beverages
- (20) Cultivation, propagation or development of plant varieties
- (21) Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation

APPENDIX II

Nature of Instrument/Transaction	Stamp Duty
<p>1. Rental of land, buildings, other constructions or floating houses</p> <p>For every one thousand (1,000) Baht or fraction thereof of the rent or key money, or both for the entire lease period</p>	One (1) Baht
<p>2. Transfer of shares, debentures, bonds and certificates of debt issued by any company, association, body of persons or organisation</p> <p>For every one thousand (1,000) Baht or fraction thereof of the paid-up value of shares, or of the nominal value of the instrument, whichever is greater</p>	One (1) Baht
<p>3. Hire-purchase of property</p> <p>For every one thousand (1,000) Baht or fraction thereof of the total value</p>	One (1) Baht
<p>4. Hire of work</p> <p>For every one thousand (1,000) Baht or fraction thereof of the remuneration prescribed</p>	One (1) Baht
<p>5. Loan of money or agreement for bank overdraft</p> <p>For every two thousand (2,000) Baht or fraction thereof of the total amount of loan or the amount of bank overdraft agreed upon</p> <p>Duty on the instrument of this nature calculating into an amount exceeding ten thousand (10,000) Baht shall be payable in the amount of ten thousand (10,000) Baht</p>	One (1) Baht
<p>6. Insurance policy</p> <p>(a) Insurance policy against loss</p> <p>For every two hundred fifty (250) Baht or fraction thereof of the insurance premium</p> <p>(b) Life insurance policy</p> <p>For every two thousand (2,000) Baht or fraction thereof of the amount insured</p> <p>(c) Any other insurance policy</p> <p>For every two thousand (2,000) Baht or fraction thereof of the amount insured</p> <p>(d) Annuity policy</p> <p>For every two thousand (2,000) Baht or fraction thereof of the principal amount, or, if there is no principal amount, for every two thousand (2,000) Baht or fraction thereof of 1/3 times the annual income</p> <p>(e) Insurance policy where reinsurance is made by an insurer to another person</p> <p>(f) Renewal of insurance policy</p>	<p>One (1) Baht</p> <p>One (1) Baht</p> <p>One (1) Baht</p> <p>One (1) Baht</p> <p>One (1) Baht</p> <p>One (1) Baht</p> <p>Half the rate for the original policy</p>

Nature of Instrument/Transaction	Stamp Duty
<p>7. Authorisation letter i.e., a letter appointing an agent, which is not in the form of an instrument or contract including a letter appointing arbitrators:</p> <p>(a) authorising one or more persons to perform an act once only</p> <p>(b) authorising one or more persons to jointly perform acts more than once</p> <p>(c) authorising to perform acts more than once by authorising several persons to perform acts separately; the instrument will be charged on the basis of each individual who is authorised</p>	<p>Ten (10) Baht</p> <p>Thirty (30) Baht</p> <p>Thirty (30) Baht</p>
<p>8. Proxy letter for voting at a meeting of a company</p> <p>(a) Authorised for one meeting only</p> <p>(b) Authorised for more than one meeting</p>	<p>Twenty (20) Baht</p> <p>One hundred (100) Baht</p>
<p>9. (1) Bill of exchange, or any similar instrument used like a bill of exchange, for each bill or instrument</p> <p>(2) Promissory note, or any similar instrument used like promissory note, for each note or instrument</p>	<p>Three (3) Baht</p> <p>Three (3) Baht</p>
<p>10. Bill of lading</p>	<p>Two (2) Baht</p>
<p>11. (1) Share or debenture certificate, or certificate of debt issued by any company, association, body of persons or organisation</p> <p>(2) Bond of any government sold in Thailand</p> <p>For every one hundred (100) Baht or fraction thereof</p>	<p>Five (5) Baht</p> <p>One (1) Baht</p>
<p>12. Cheque or any written order used in lieu of cheque for each instrument</p>	<p>Three (3) Baht</p>
<p>13. Receipt for interest bearing fixed deposit in a bank</p>	<p>Five (5) Baht</p>
<p>14. Letter of credit</p> <p>(a) Issued in Thailand</p> <p>– For value less than ten thousand (10,000) Baht</p> <p>– For value of ten thousand (10,000) Baht or over</p> <p>(b) Issued abroad and payable in Thailand for each payment</p>	<p>Twenty (20) Baht</p> <p>Thirty (30) Baht</p> <p>Twenty (20) Baht</p>
<p>15. Traveler's cheque</p> <p>(a) For each cheque issued in Thailand</p> <p>(b) For each cheque issued abroad but payable in Thailand</p>	<p>Three (3) Baht</p> <p>Three (3) Baht</p>
<p>16. Each goods' receipt</p> <p>issued in connection with carriage of goods by waterway, land and air, namely, an instrument signed by an official or cargo master of a transport vehicle which carries goods as specified in that receipt upon issuing the bill of lading</p>	<p>One (1) Baht</p>

Nature of Instrument/Transaction	Stamp Duty
17. Guarantee (a) For an unlimited amount of money (b) For an amount exceeding one thousand (1,000) Baht (c) For an amount exceeding one thousand (1,000) Baht but not exceeding ten thousand (10,000) Baht (d) For an amount exceeding one thousand (1,000) Baht	Ten (10) Baht One (1) Baht Five (5) Baht Ten (10) Baht
18. Pawn broking For every two thousand (2,000) Baht or fraction thereof of the debt. If the pawn broking does not limit the amount of debt	One (1) Baht One (1) Baht
19. Warehouse receipt	One (1) Baht
20. Delivery order	One (1) Baht
21. Agency (a) specific authorisation (b) general authorisation	Ten (10) Baht Thirty (30) Baht
22. Decision given by an arbitrator (a) In the case where the dispute is concerned with the amount of money or price for every one thousand (1,000) Baht or fraction thereof (b) In the case where no amount of money or price is mentioned	One (1) Baht Ten (10) Baht
23. Duplicate or counterfoil of an instrument , namely, an instrument having the same contents as the original document or contract and signed by the person executing the instrument in the same manner as the original (a) If the duty payable for the original does not exceed five (5) Baht (b) If the duty exceeds five (5) Baht	One (1) Baht Five (5) Baht
24. Memorandum of association of a limited company submitted to the registrar	Two hundred (200) Baht
25. Articles of association of a limited company submitted to the registrar	Two hundred (200) Baht
26. New articles of association, copy of amended memorandum of association or articles of association submitted to the registrar	Fifty (50) Baht
27. Partnership contract (a) Contract on the establishment of a partnership (b) Amendment of the contract on the establishment of a partnership	Hundred (100) Baht Fifty (50) Baht

Nature of Instrument/Transaction	Stamp Duty
28. Receipt only as specified below:	
(a) Receipt issued for government lottery prizes;	One (1) Baht
(b) Receipt issued in connection with a transfer of, or creation of any right in, an immovable property, if the juristic act which gives rise to such receipt is registered under the law;	One (1) Baht
(c) Receipt issued in connection with a sale, sale with right of redemption, hire-purchase or transfer of ownership in a vehicle, only if the vehicle is registered under the law governing such vehicle. If the receipt under (a) (b) (c) has an amount of two hundred (200) Baht or more: for every two hundred (200) Baht or fraction thereof.	One (1) Baht



KEY BIOGRAPHY



Chanvitaya Suvarnapunya is the Head of Corporate in DLA Piper's Bangkok office. He advises on a broad range of commercial issues, including commercial contracts, mergers and acquisitions, securities, labour, corporate, investment and intellectual property transactions. He also advises on tax planning and customs issues. He has acted for major international companies, state enterprises and major corporations in Thailand. His recent experience includes; acting for a Swedish company in relation to purchasing shares in a public listed telecommunications company; representing a retail sale company in the initial public offering of its shares; acting for a major Hong Kong company to rescue a sky train project in financial difficulty; and providing advice on a tax appeal regarding a SWAP transaction between a Thai telecommunication entity and financial institution.

Chanvitaya has been named in IFLR as a leading lawyer in Capital Market/M&A, Thailand, 2011-2014. He has been also named in Chambers Asia Pacific as a leading lawyer in Tax, Thailand, 2011-2014.



Supreedee Nimitkul is a partner in DLA Piper's Bangkok office. With over 20 years' experience, he has extensive experience in advising on a wide range of corporate and commercial matters as well as providing advice to multinational corporations and leading Thai companies. He has advised clients in a wide range of industry sectors and has particular experience in the banking and finance, project financings, joint ventures, mergers and acquisitions, corporate restructuring, employment and real estate transactions. In addition, he has advised on a number of major business reorganisations, debt restructurings and has handled dispute resolution matters under Thai and ICC arbitration rules. He has assisted clients in expanding their franchise businesses in various sectors including automobile and entertainment.

Supreedee has been named in IFLR 2011-2012 as a leading lawyer in Capital Market/M&A in Thailand and has been described by IFLR 2014 that "he is very patient, calm, disciplined, and supportive."



Dusadee Jittasaiyapan is the Head of Real Estate in DLA Piper's Bangkok office. With over 20 years' experience in the private practice and in leading international construction companies, he has experience of general commercial transactions including real estate, construction, hospitality and leisure, sales, services, employment, government contracts and general corporate matters. He has been representing one of the world's leading international retailers on the acquisition of leaseholds and freeholds for operation of hypermarkets and supermarkets throughout Thailand as well as advising various leading international hotel chains on their businesses and operations in Thailand.

Dusadee has been named in Chambers Asia Pacific 2008-2014 as a leader of high profile real estate practice in Thailand. He has been mentioned in Asia Pacific Legal 500 2012 for having "strong real estate knowledge" and as "Leading Individual" in 2013-2014. And also ranked by Asialaw Profiles 2011 as head of real estate practice and high professional standard service in Thailand in the area of real estate.



Timothy Tan focuses on SE Asian finance, debt restructuring and special situation investments, and is both a Partner of the Bangkok office and a Director (Partner) of the Singapore office. He has particular expertise in event-driven leveraged finance, including acquisition finance, bridge and pre-IPO financing, mezzanine lending and intercreditor structures, refinancings, rescue finance, and hybrid investments. Coupled with extensive experience with contentious Asian debt restructuring and enforcement situations, Tim is one of the few finance lawyers in the market able to provide holistic risk mitigation and enforcement analysis and structuring advice specific to the legal framework and practical realities in developing countries in Asia.

His experience includes representing international banks, investment funds and corporate borrowers in debt finance and debt restructuring transactions across Asia, including Indonesia, Thailand, the PRC, India, the Philippines and Singapore.

Tim has been identified as a leading lawyer by IFLR1000 for Banking – Foreign Firms (Singapore), 2011, 2012 and 2013; and also recognised by Chambers & Partners for Banking & finance (International Firms, Singapore), 2012 and 2013.

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