

ASIA

A Legal Guide for Business
Investment and Expansion

Fifth Edition



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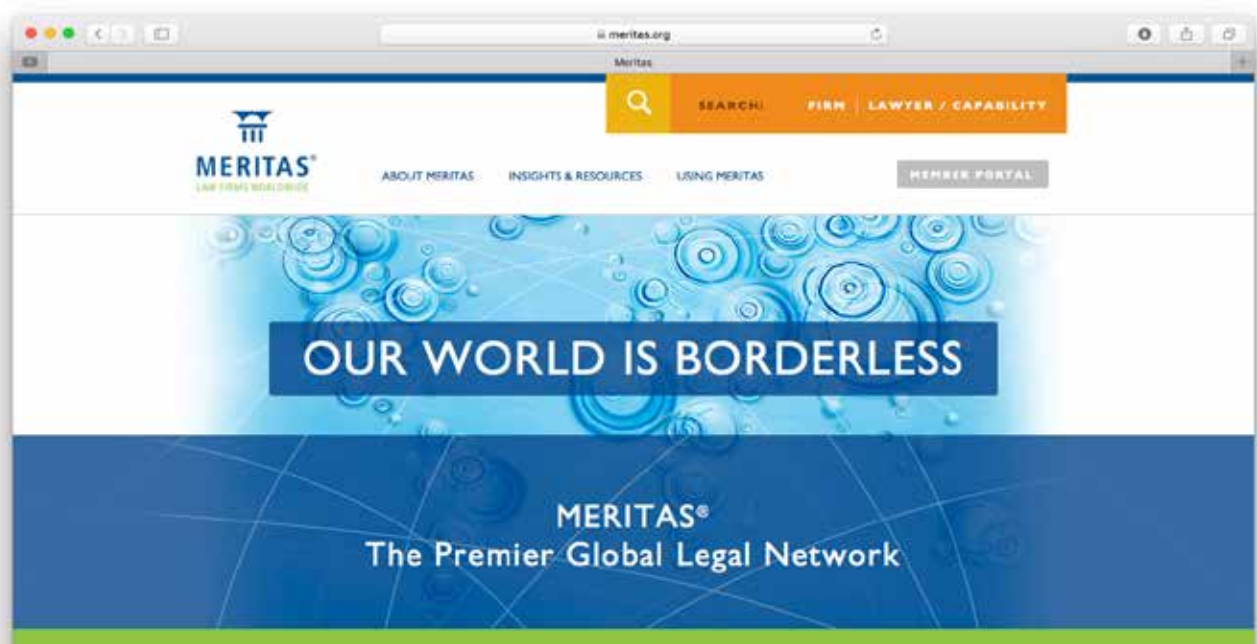
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THAILAND

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With 8 resident partners and, as of these writing 14 associate lawyers, plus 21 trained multilingual paralegals, together with other support staff, we are 70 in number. With our over 51-year history, ILCT was one of the pioneer law offices engaging in the business law practice in Thailand. Among the type of matters handled by our lawyers in Bangkok include Antitrust (Trade Competition), Banking and Finance, Contract Law, Expatriate services, Foreign Business Law, High Technology, Information Technology Services, Infrastructure and Privatization Projects, Insurance, Labor Law, Litigation and Arbitration, Merger & Acquisitions, Mineral Resources and Energy Law, Partnership and Company Law, Promotion of Investment Law, Real Estate, Real Estate Investment Trust (REIT), Securities, Taxation, Trademark, Patent and Copyright Law, Transportation Law, and Venture Capital.

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1. What role will the government of Thailand play in approving and regulating foreign direct investment?

The Thai Government regulates foreign direct investment by requiring foreign investors to obtain approval from the Department of Business Development (which is under the Ministry of Commerce) in the form of a license to conduct certain businesses in Thailand which are otherwise restricted pursuant to the Foreign Business Act, B.E. 2542 (1999) (“FBA”). The FBA lists the businesses that foreigners are: (1) absolutely prohibited from engaging in; (2) permitted to operate upon receiving permission from the Minister of Commerce with approval from the Cabinet; and (3) permitted to operate upon receiving permission from the Director General of the Department of the Business Development with approval from the Foreign Business Committee. Certain businesses such as financial institutions, securities, derivatives, or trustee businesses are exempt from the licensing requirements under the FBA. It is advisable to consult a local legal consultant before starting any business in Thailand as the lists of prohibited and permitted activities are constantly amended by Ministerial Regulations.

Additionally, the Thai Government offers incentives for certain foreign direct investments that are deemed desirable to Thailand, thereby exempting the licensing requirements if the criteria set by the Board of Investment are met.

Board of Investment

The Investment Promotion Act, B.E. 2520 (1997) governs the Board of Investment (BOI) which is the

Government agency responsible for providing incentives to stimulate investments in Thailand and conducting extensive investment promotion activities both domestically and internationally. The BOI promotes investment projects that strengthen Thailand’s industrial and technological capabilities, make use of domestic resources, create employment opportunities, develop core industries, earn foreign exchange, contribute to the economic growth of regions outside Bangkok, develop infrastructure, conserve natural resources, and reduce environmental problems.

The BOI is empowered to grant a wide range of tax and non-tax incentives and various guarantees to investment projects which meet national economic development goals such as the right to own land, permission for non-Thai nationals to be majority shareholders (thus overcoming the foreign ownership limitations under the provisions of the FBA), permission to remit profits freely, permission to hire foreign employees as justifiably required, and exemptions from import duties and taxes. Additionally, the BOI provides incentives to companies that set up Regional Offices in Thailand. Eligible Regional Offices opening in Thailand will be provided with investment promotion which exempts them from the restrictions of the FBA thereby allowing them to function more freely in the country.

In addition to a list of activities eligible for promotion, the BOI also considers other activities based on the benefits of the proposed investment. The BOI may also impose conditions on the investment as it deems fit.

2. Is it possible for foreign investors to conduct business in Thailand without a local partner? What corporate structure is most commonly used and best for foreign investors?

It is possible for foreign investors to conduct business in Thailand without a local partner. However, it is to be noted that unless the business is BOI-promoted and has obtained a Foreign Business Certificate, any forms of business in Thailand that do not include a Thai majority co-investor (other than certain exempted activities) will be subject to the restrictions under the FBA which prohibit certain businesses from operating entirely while permitting others to operate under certain conditions upon receiving a Foreign Business License. The following corporate structures are commonly used.

Representative Offices

A Representative Office is a non-trading office of a foreign company located in Thailand and is engaged in the business of trading internationally. Representative Offices may carry out activities such as finding suppliers of goods or services in Thailand for their overseas Head Offices, assessing and controlling the quality and quantity of goods purchased by their Head Offices for manufacturing purposes in Thailand, providing advice on goods sold by their Head Offices to agents, distributors and/or customers in Thailand, providing information to people in Thailand concerning goods or services of their Head Offices, and reporting to the Head Offices on businesses in Thailand. Representative Offices in Thailand are considered liaison offices and may not engage in

any profit-seeking or profit-making enterprise. Representative Offices do not generate or receive income and therefore pay no tax unless they operate beyond the scope of the above activities, in which case they may be regarded as doing business in Thailand and become subject to taxation on income generated or received in Thailand. In the worst-case scenario, they may be subject to a close-down order.

Regional Offices

A Regional Office, also a non-trading office, coordinates and supervises a company's branches and affiliates in the region on behalf of its Head Office. Regional Offices may provide branches and affiliates with advisory and management services, financial management services, training and personnel development services, marketing control and sales promotion plans, product development, and research and development services, but they must not derive income.

Branch Offices

Foreign companies may establish Branch Offices in Thailand without a local partner. However, most business activities of Branch Offices are likely to fall within the scope of the FBA and other laws that limit the activities in which Branch Offices can legally engage without a license. In such case, a license to operate such business must be obtained beforehand.

In addition, the Revenue Department may impose tax obligations upon revenue directly earned by their foreign Head Offices from sources within Thailand.

Other Business Organizations

Foreign investments may also be made via various entities such as partnerships, private limited companies, and public limited companies. However, without a majority Thai co-investor, such entity will be considered a foreign entity and will be limited in the scope of business in which it can legally engage pursuant to the FBA as well as other laws.

The Treaty of Amity and Economic Relations Between The Kingdom of Thailand and the United States of America

The Treaty of Amity and Economic Relations Between the Kingdom of Thailand and the United States of America (the "Treaty") gives special rights and benefits to U.S. citizens. The Treaty allows U.S. companies to maintain a majority shareholding or to wholly own its company located in Thailand. The Treaty also allows U.S. companies to engage in business on the same basis as Thai companies and exempt them from most of the restrictions under the FBA.

3. How does the Thai government regulate commercial joint ventures composed of foreign investors and local companies or individuals?

There are no specific legal restrictions on joint ventures. However, if a joint venture is not a mere contractual joint venture and results in incorporation of a new company and the resulting new company is foreign-owned, such joint venture will be treated as a foreign company for purposes of the FBA and may fall under the applicable restrictions and approval requirements.

Under an Order of the Central Partnership and Company Registration Office which came into effect on 2 January 2013, if a limited liability partnership or limited liability company has the following:

- foreign partner(s) or foreign shareholder(s) investing in or holding less than 50% of its investment or share capital; or
- foreign director(s) acting as sole signatory or co-signatory in the case of a limited company,

then a confirmation letter issued by a bank to certify corresponding financial status of the Thai partners or the Thai shareholders is required to be filed with the Registrar as one of the supporting documents for the application for incorporation of a limited liability partnership or limited liability company. Specifically, the said bank confirmation letter must show that each of the Thai partners/Thai shareholders has sufficient funds deposited with the bank that is not less than the amount of money to be invested or paid as the subscription price for the shares by such Thai partners or Thai shareholders.

The reason for this Order is that it had become a common practice for some foreign investors to improperly make use of nominee shareholders/partners in order to side step the foreign ownership restrictions under the FBA.

Board of Investment Incentives for Joint Ventures

If a joint venture is incorporated, it may be eligible to receive promotional incentives from the BOI and can be exempted from the restrictions that would otherwise be imposed on a "foreign" venture. For certain investment projects such as agriculture,

animal husbandry, fisheries, Thai participation must not be less than the majority of the registered capital of the joint venture.

4. What specific laws will influence the commercial relationship between local agents/distributors and foreign companies?

Thailand does not impose any legal restrictions or conditions on Agency/Distribution Agreements between foreigners and Thai citizens. Such Agreements may be made and terminated freely at the discretion of the parties involved.

Nevertheless, the relationship between local agents and distributors in Thailand and foreign companies located overseas is governed by the provisions of the Civil and Commercial Code of Thailand (“CCC”) concerning contracts and agency. Generally, the relationship between a manufacturer and agent/distributor such as scope of authority of the agent, remuneration, territory, and other terms and conditions will be according to Agency or Distributorship Agreement executed between such manufacturer and agent/distributor. Provided that the Agreement does not contain any provisions that are against public policy or expressly prohibited by Thai law, sole and exclusive distributorship arrangements are recognized under the general provisions governing contracts under the CCC. It is not uncommon for overseas manufacturers to grant exclusive rights for distributors in Thailand to act as sole distributors for Thailand or Southeast Asia for certain products.

One of the essential issues that foreign investors should be aware of is that in order to obtain the protection under Thai intellectual property laws, trademarks or trade names of products to be distributed in Thailand should be registered with the Department of Intellectual Property, Ministry of Commerce, under the name of the owner thereof, with a license to utilize the trademarks/trade names being given to the distributor for use according to the terms of the respective Distributor Agreement.

5. In what manner does the Thai government regulate proposed merger and acquisition activities by foreign investors? Are there any specific areas or industries that are heavily restricted or completely prohibited to foreign investors?

Proposed merger and acquisition activities are generally governed by the provisions of the Civil and Commercial Code (“CCC”). A special resolution of shareholders and registration with the Department of Business Development is required. In the case of a public company or a listed company, such merger and acquisition activities will be more heavily regulated by the Limited Public Company Act, B.E. 2535 (1992) and the Securities and Exchange Act, B.E. 2535 (1992). Moreover, certain businesses are subject to specific laws such as commercial banks, insurance companies, etc.

The Thai Government regulates foreign business primarily through the FBA which shortlists businesses that foreigners are prohibited from engaging in or can only engage in with permission. In addition to the FBA, the restrictions on foreign share ownership in commercial banks, insurance companies, air and commercial transportation services, commodity export, and mining are also restricted under various Acts, Ministerial Regulations, and Cabinet Policies.

Pursuant to the FBA, foreign participation is restricted according to the types of business and the strategic role of that business in the Thai economy or society.

Businesses falling under Category 1 are categorically closed to foreign participation. These include key national businesses and national resources such as radio and television broadcasting, press, farming, forestry and wood fabrication, fishing in Thai waters and Thailand’s special economic zones, trading in Thai antiques or national historic artifacts and, most importantly, trading of land.

The businesses under Category 2 are restricted for reasons of national security or for reasons related to their effects on national art and culture or natural resources and the environment. These businesses may only be operated with permission from the Minister of Commerce with approval of the Cabinet. These businesses include without limitation production and sale of weapons, all domestic transportation services, manufacturing of sugar, salt, mining, and production of precious metalwork.

Category 3 restricts certain businesses that the Thai Government deems that Thai people are yet to be ready to compete with foreign businesses such as legal services, accounting services, agricultural and engineering services, construction, advertising, hotels (not including hotel management), and other businesses in the service sector specified by the Government in Ministerial Regulations.

Trade Competition Act

The Trade Competition Act prohibits business operators, i.e., sellers, distributors, manufacturers, importers, buyers for retail business purchase, buyers in production, and service providers who distribute goods having market dominance from unfairly fixing their price of goods/services. Business operators are also prohibited from consolidating their businesses in a manner that may create a monopoly or create unfair competition and from monopolizing, reducing, or restricting competition in a certain market for goods or services.

6. How do local labor statutes regulate the treatment of employees and expatriate workers?

The essential laws that govern labor and the treatment of employees and expatriate workers are as follows.

Civil and Commercial Code (CCC)

The CCC provides the general definition for contracts of employment, duties and liabilities of employers and employees, and general conditions required in the hire of work and hire of labor.

Labor Protection Act, B.E. 2541 (1998)

This Act is the law that provides essential regulations regarding the conditions of work such as wages, payment of wages, overtime and overtime pay, work hours, leave, women and child labor, welfare, termination and notice of termination, severance pay and liability thereof, and reengineering and relocation. It provides exceptions for certain categories of employees.

Labor Relations Act, B.E. 2518 (1975)

This Act contains provisions that relate to the promotion of good understanding and good relations between employers and employees as well as procedures for presenting labor demands, employer-employee negotiations, mediation by the Ministry of Labor, strikes, lock-outs, labor unions and employer associations and employee committees, as well as provisions concerning unfair practices and unfair dismissal and workmen's compensation criteria and rates.

Act on Establishment of Labor Court and Labor Court Procedure, B.E. 2522 (1979)

All cases that involve, inter alia, employment contracts, termination of employment, claims for unfair dismissal, severance pay and damages must be submitted to the Central Labor Court (or Regional Labor Court).

Social Security Act, B.E. 2533 (1990)

This Act applies to every employer but does not apply to certain limited categories of employees. The Social Security Fund has been established by virtue of this Act to provide an employer's liability compulsory insurance system. The Government, employers, and employees are required to contribute to the Compensation Fund at the specified rates. The Fund pays out benefits to employees, covering non-work-related injuries or sickness, maternity expenses, disability, death, child and elderly welfare, and unemployment.

Compensation Fund Act, B.E. 2537 (1994)

Under this Act, employers are required to pay compensation to employees if they suffer injuries, sickness, or death in the course of employment. The Act does not apply to certain limited categories of employers. The Compensation Fund is established under this Act to provide an employer's liability compulsory insurance system.

Employers are required to contribute to this Fund annually at the specified rates depending on the type of business and nature of the work performed. Once the employer has paid the compensation, the employer can seek reimbursement from the Fund.

Royal Ordinance Concerning Management of Foreign Employment, B.E. 2560 (2017)

This Ordinance requires non-Thai nationals to obtain a work permit prior to working in Thailand and provides the procedures and criteria for the issuance and maintenance of work permits. The Ordinance also

provides exemptions to the work permit requirements for members of a diplomatic mission, members of a consular mission, representatives of member countries and officials of the United Nations and specialized institutions, persons who perform duties or missions in accordance with agreements between the Government of Thailand and foreign government or international organizations, persons who perform duties or missions for the benefit of education, culture, art, sports, etc.

Once non-Thai nationals obtain a valid work permit, they are subject to the same labor law provisions as Thai employees.

Skill Development Promotion Act, B.E. 2545 (2002)

A business operator engaging in industrial, commercial or other businesses with 100 or more employees must contribute to the Skill Development Fund at the prescribed rate. Certain businesses (e.g., agricultural, private school businesses and nonprofit organizations) are exempt from the requirement. However, the contribution is not required in the case where such operator: (1) provides skill training to its own employees; (2) arranges for its employees to take standard labor skills testing; and/or (3) has employees who are certified for having knowledge and expertise of no less than 50% of its total employees per calendar year (one category of multiple combined). The training course shall be approved by the Registrar of the Department of Skill Development, Ministry of Labor.

Provided that certain requirements are met, a business operator who provides training under this Act to its

employees will be granted certain benefits such as an income tax exemption amounting to a prescribed percentage of the training expenses, an exemption on import duty and value added tax on tools and equipment imported for training purposes, a double tax deduction on electricity and water charges, etc.

7. What role do local banks and government agencies play in regulating the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Thailand's exchange controls are established by the Exchange Control Act, B.E. 2485 (1942), as well as the Anti-Money Laundering Act, B.E. 2542 (1999), and administered by the Bank of Thailand under Ministerial Regulations and Bank of Thailand's Notifications. All foreign currency transactions must be made through an authorized commercial bank or authorized company or authorized person.

Conversion of Local Currency

Inward remittances of foreign currencies may be made freely for all purposes and in unlimited amounts. There is no requirement for registration of foreign investment. However, with few exceptions, such inward amount has to be sold to an authorized agent or deposited in a foreign currency bank account within 360 days from the date of acquisition or importation, as the case may be.

Repatriation of Funds Overseas

Foreign investors can without permission remit funds to invest in Thailand, whether it is by direct investment,

financial transactions or share purchases, subject to the requirement that it be sold to an authorized agent or deposited in a foreign currency bank account within 360 days. The repatriation of such funds or loan payment can be made only by submitting the documents related to the funds and substantiating the amount of funds being remitted (such as share transfer instruments, Share Purchase Agreements, Loan Agreements, etc.).

Letters of Credit

Letters of credit issued for payment for purchase of goods and services pursuant to sale contracts may be purchased, amended, and negotiated without prior permission.

Other Basic Financial Transactions

Securities, share certificates, bonds, deposit certificates, bills of exchange and promissory notes may be carried or sent out of Thailand without prior permission, subject to reporting regulations.

8. What types of taxes, duties, and levies should a foreign investor expect to encounter in negotiating an inbound investment in Thailand?

The Revenue Code (Code) is Thailand's principal taxation law and imposes taxes and stamp duty on the execution of certain transactions. The Code provides for five classes of taxation on income and consumption, i.e., Personal Income Tax, Corporate Income Tax (CIT), Value Added Tax (VAT), Specific Business Tax, and Stamp Duty.

Personal Income Tax

Any person who derives assessable income from Thailand shall be taxed in Thailand. A Thai resident who derives assessable income from overseas shall be taxed in Thailand if the income has been brought into Thailand in the same tax year (calendar year). “Thai resident” means any person who stays in Thailand for a period or periods totaling 180 days or more in a tax year.

Personal income tax rates are progressive ranging from 0% to 35%. The expenses and allowances can be deducted from gross revenue, subject to certain conditions.

Corporate Income Tax (CIT)

All companies and partnerships registered under Thai law or foreign law but that carry on business in Thailand are subject to CIT.

Companies registered in Thailand pay corporate income tax based on worldwide income at the fixed rate of 20% of net profits except SMEs. Foreign registered companies carrying on business in Thailand are taxed on their net profits arising from business carried on in Thailand.

Withholding Tax

Foreign companies not carrying on business in Thailand but receiving certain types of assessable income such as interest, dividends, and service fees are subject to withholding tax at the rate of 10% (dividends) and 15% (others) on payments. However, this withholding tax might be exempted under the provisions of a Double Tax Treaty between Thailand and the country of the recipients.

Value Added Tax (VAT)

VAT is charged on the sale of goods, rendering of services, export sales and import of goods at the rate prescribed by the Code, currently 7%,

and 0% for export. VAT is a consumption tax added to the sale price of the goods or services charged to consumers. However, transportation service charges are exempted from VAT.

Specific Business Tax (SBT)

Certain types of businesses are subject to SBT based on their gross receipts. There are three applicable rates of SBT, and SBT is for the types of businesses that fall outside the VAT regime. Commercial banking, finance and securities business, life insurance, businesses that engage in commercial banking activities (such as loans, currency exchange, sale of negotiable instruments and money transfer) and sale of immovable property and securities under the Stock Exchange of Thailand are subject to SBT.

Stamp Duty

The Code requires certain instruments, e.g., Rental Agreements, transfers of shares, Hire-Purchase Agreements, etc., to be subject to stamp duty at various rates, depending on the types of instruments. For Hire-of-work Agreements and leases of real property with the value of more than Baht 1 million, payment of stamp duty is to be made in cash instead of affixing duty stamps.

9. Do comprehensive intellectual property laws exist in Thailand and do they provide the same levels of protection for foreign investors as local companies? Will local courts and tribunals enforce IP laws uniformly, regardless of the nationality of the parties?

Thailand is a party to the Convention Establishing the World Intellectual Property Organization (WIPO) and also has acceded to the Berne

Convention, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Agreement on Trade Related Aspects of Intellectual Property (TRIPs), and the Madrid Protocol. Thailand has recognized intellectual property rights under its legal system and has accordingly enacted a broad range of intellectual property legislation. The laws that regulate the various aspects of Intellectual Property in Thailand are as follows:

- Copyright Act, B.E. 2537 (1994) (as amended in 2015)
- Patent Act, B.E. 2522 (1979) (as amended in 1992 and 1999)
- Trademark Act, B.E. 2534 (1991) (as amended in 2000 and 2016)
- Plant Varieties Protection Act, B.E. 2542 (1999)
- Act for the Protection of Layout-Designs of Integrated Circuits, B.E. 2543 (2000)
- Geographical Indicators Act, B.E. 2546 (2003)
- Trade Secrets Act, B.E. 2545 (2002) (as amended in 2015)
- Disc Products Production Act, B.E. 2548 (2005)
- Act for the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E. 2539 (1996) (as amended in 2015)

In endeavoring to secure internationally recognized and nondiscriminatory judgments, Thailand has established a specialized court called the “Intellectual Property and International Trade Court” to hear and adjudicate both civil and criminal cases that are related to intellectual property. The Court also offers mediation procedures in pursuing a

settlement between parties that are in dispute to seek a quick solution before going to trial. The law provides that the Court is to be staffed with high-caliber professional judges and associate judges who are proficient in matters of intellectual property. The efforts of the Thai government to ensure that Thai intellectual property laws are comprehensive and enforced by the Courts in an objective and nondiscriminatory manner are declared in the Court's mission statement, which states that the Court shall "...hold steadfast to the principle of adjudication on an effective and international basis ... to provide the public with swift, easily accessible and nondiscriminatory services..."

Registration of intellectual property rights with the Department of Intellectual Property, Ministry of Commerce, by foreign nationals should be made through a local Representative or Agent domiciled in Thailand or reachable by the Registrar. Priority claims are recognized. Once intellectual property rights are registered, Thai law also recognizes the principles of licensing and sublicensing and provides for criminal penalties for violations of intellectual property rights.

10. If a commercial dispute arises, given the choice between local courts or an international arbitration venue, which would offer a more beneficial forum for fair dispute resolution for foreign investors?

For complex commercial disputes of a highly technical nature, arbitration provides a more efficient method of dispute resolution for foreign

investors in that the disputes could be better understood and analyzed by arbitrators who are experts or otherwise have related experience.

Language

Pursuant to the provisions of the Thai Civil Procedure Code, all Court proceedings must be conducted in Thai language. Testimony by non-Thai-speaking witnesses must be translated spontaneously in Court and all documents must be translated into Thai prior to being submitted to Court. In addition to increased costs that are associated with this and the burden on both clients and attorneys, there is always the possibility that the true essence of the issues in dispute in the case could be "lost in translation".

On the contrary, in arbitration proceedings, parties to a contract may agree to the language of the proceedings, alleviating much of the burden caused by language barriers.

Procedure

Trial procedure in Thai Courts, as with the majority of Courts all over the world, is rule-oriented and intricate. On the other hand, arbitration proceedings tend to be more flexible in terms of procedures, allowing the proceedings to focus more on the issues in dispute.

Time

Thai trial Courts have a significant backlog of cases awaiting trial. Hearing dates can often be scheduled up to nine months from the date of filing an action. The entire Court process can take several years if the case is appealed to the Court of Appeals and the Supreme Court. On the other hand, arbitration proceedings emphasize adherence to a strict timetable, and hearing dates can be

controlled more easily than court cases in which judges hear several cases per day.

What could be considered as the downside of arbitration proceedings is that the Arbitration Act, B.E. 2545 (2002) allows parties to request the Court of competent jurisdiction to revoke an arbitration award. Also, enforcement of arbitration awards is done through an application to the Court.

Forum

Without an arbitration clause, commercial disputes must be submitted to the Court having jurisdiction over the case. However, with an arbitration clause, parties can select a forum for the proceedings beforehand.

Judicial Panel vs. Arbitral Panel

Many arbitration clauses used commercially in Thailand provide that each party shall select one arbitrator with the chairman of the arbitral panel to be selected by the two elected arbitrators. This allows the parties to choose arbitrators who have specific knowledge of the issue in dispute, whether it is construction, trans-border investment, turnkey finance, securitization or natural resources.

However, it should be noted that arbitral awards are to be enforced by Thai Court if they are not adhered to since the arbitral panel has no authority to enforce them and the Court must be requested to issue a judgment pursuant to the awards in order for it to be enforced by the Legal Execution Department under the Ministry of Justice.

The advantage that an arbitral award has over a court judgment is that it can be enforced in any country that is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (of which most of Thailand's treaty partners are members) whereas there is no treaty or convention for foreign court judgment enforcement.

For the purposes of enforcing an arbitration award, it can take many months to obtain a lower court's judgment. If the lower court's judgment is appealed, this will extend the period by one to two years. The Court may refuse to enforce an arbitration award on the following limited grounds:

- One of the parties lacked capacity;
- The Arbitration Agreement was not legally binding;
- One of the parties was not given proper notice;
- The arbitration award was beyond the scope of the Arbitration Agreement between the parties;
- The arbitral tribunal or arbitration procedure was inconsistent with the Arbitration Agreement;
- The arbitration award was not yet to be binding or was revoked or suspended by the Court of competent jurisdiction.

|| . What recommendations can you offer for how best to negotiate and conduct business in Thailand?

Many foreigners coming to Thailand for the first time, especially those from outside the Southeast Asia region, may have an impression that

Thailand takes a carefree approach to doing business. In fact, negotiating deals and conducting business in Thailand is carried out in a conservative manner and following business protocols. Giving the proper level of respect to your business partner/potential business partner is a very important element of successfully concluding a deal and conducting a business in Thailand. Emotional restraint and politeness are held in high esteem.

Setting the stage by creating a good personal relationship with a new potential business partner can greatly assist in ensuring a successful negotiation and a successful joint business.

|2. What practical advice can you share with investors who decide to do business in Thailand?

There have been instances where a foreign national and a Thai national have turned a pre-existing personal relationship into a business relationship but fail to fully and properly document that new aspect of their relationship (e.g., fail to have a comprehensive Joint Venture Agreement or a Shareholders Agreement). As a result, this has almost always led to misunderstandings, disputes and in a number of cases a failure of the business venture.

Failure to set up procedures for how one party can exit from a business smoothly and fairly has, in many cases, resulted in serious disputes.

As all dealings with government agencies must be conducted in the Thai language, it is important that

non-Thai speakers obtain translations of documents that have been done by experienced translators. A foreign investor who seeks to save expenses by not getting documents properly translated, or only partially translated or by using a nonprofessional translator, may find that they have a completely incorrect understanding of their obligations and entitlements.

There are many examples of foreign nationals using improper and/or flawed mechanisms to circumvent foreign ownership restrictions that apply to business ventures and the ownership of land. These mechanisms often backfire, leaving the foreign national to suffer losses and damages.

|3. Does Thailand currently have any data privacy laws or regulations? How do they affect business activities?

Data privacy law is yet to be passed. Its draft is currently being reviewed by the Cabinet.

|4. Are there any recently passed laws or regulations in Thailand that are expected to affect the activities of foreign investors in the future?

There are many laws that have been passed during the year 2017 including the National Competitive Enhancement for Targeted Industries Act, B.E. 2017, the Investment Promotion Act (No.4), B.E. 2560, the Labor Protection Act (Nos.5 and 6), B.E. 2560, and Royal Ordinance Concerning Management of Foreign Employment, B.E. 2560.

National Competitive Enhancement for Targeted Industries Act

The National Competitive Enhancement for Targeted Industries Act is the law that entered into force on February 14, 2017 and aims to increase the competitiveness of industries in line with Thailand's capabilities. This Act encourages foreign companies to invest in targeted industries which are new to Thailand or using new technology that will bring in development and innovation to the country.

The Act offers 3 categories of incentive to targeted business. The first one is an exemption from corporate income tax for up to 15 years. Another one is the non-tax incentives under the Investment Promotion Act. The last one is the Fund for Enhancement of Competitiveness for Targeted Industries. The supporting fund of Baht 10 billion will be granted for investment projects involving research and development or innovation.

Investment Promotion Act

The amended version of the Investment Promotion Act which became effective on January 25, 2017 grants a corporate income tax exemption for up to 13 years (formerly up to 8 years) for certain types of business, for example, technology and advanced innovation business.

However, in the event that the BOI considers that a particular business in the list of activities should not be granted the corporate income tax exemption, the BOI may instead grant a tax reduction of not more than 50% of the regular rate for up to 10 years.

For some businesses that do not qualify for corporate income tax exemption, they may be eligible for tax reduction. Moreover, for businesses that are neither eligible for the tax exemption nor reduction, 70% of the amount invested in the promoted business could be deducted from the taxable net profits.

In addition, import duties for raw materials imported for use in R&D business will now be exempted, like raw materials for use in production or export.

Labor Protection Act

The new provisions which came into force on September 1, 2017 give many benefits to the employees as now a retirement is considered as a termination of employment. If an employee reaches a default retirement at 60 years and there is no retirement age set out by the employer, or the retirement is set out over 60 years of age, then he/she will be entitled to severance pay after their retirement.

The minimum wages for certain types of employees (e.g. handicapped) may be set out by The National Wage Committee differently from the others.

Royal Ordinance Concerning Management of Foreign Employment

This Royal Ordinance, effective as of June 23, 2017, had repealed and replaced the old regulations, namely the Foreign Employment Act B.E. 2551 and the Royal Ordinance Concerning Importation of Expatriate Workers for Domestic Employment, B.E. 2559. Although most of the provisions are still the same, the penalty for some offenses has been significantly

increased; for example, employing a foreigner to work without a work permit will subject the employer to a fine from Baht 10,000 to 400,000 per one foreigner.

In addition, the Royal Ordinance aims to protect foreign workers who are victims of human trafficking. Unauthorized confiscation of a work permit or identification document of a foreign worker is now a criminal offense under this Royal Ordinance.

Customs Act

The Customs Act became effective on November 13, 2017. This Act aims at strengthening the business environment in Thailand. The major improvement is to encourage the investment in the country by eliminating customs formality and other relevant procedures in order for Thailand to be efficient and consistent with international standards. Supposedly, with easier and faster services, Thailand would be able to attract a multitude of investors to the Eastern Economic Corridor (EEC) and become the center of the regional investment and logistic.

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