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Chapter 1

Procedures for Establishing a Company

1: Forming a Company

In order to set up a limited company in Thailand, the following procedures should be followed:

A. Corporate Name Reservation

The name to be reserved must not be the same or close to that of other companies. Certain names are not allowed and therefore the name reservation guidelines of the Commercial Registration Department in the Ministry of Commerce should be observed. The approved corporate name is valid for 30 days. No extension is allowed.

B. File a Memorandum of Association

A Memorandum of Association to be filed with the Commercial Registration Department must include the name of the company that has been successfully reserved, the province where the company will be located, its business objectives, the capital to be registered, and the names of the seven promoters. The capital information must include the number of shares and the par value. At the formation step, the authorized capital, although partly paid, must all be issued.

Although there are no minimum capital requirements, the amount of the capital should be respectable enough and adequate for the intended business operation.

The Memorandum registration fee is 50 baht per 100,000 baht of registered capital. The minimum fee is 500 baht, the maximum 25,000 baht.

C. Convene a Statutory Meeting

Once the share structure has been defined, a statutory meeting is called during which the articles of incorporation and bylaws are approved, the Board of Directors is elected and an auditor appointed. A minimum of 25 percent of the par value of each subscribed share must be paid.

D. Registration

Within three months of the date of the Statutory Meeting, the directors must submit

the application to establish the company. Company registration fees are 500 baht per 100,000 baht of registered capital. The minimum fee is 5,000 baht; the maximum is 250,000 baht.

E. Tax Registration

Businesses liable for income tax must obtain a tax I.D. card and number for the company from the Revenue Department within 60 days of incorporation or the start of operations. Business operators earning more than 600,000 baht per annum must register for VAT within 30 days of the date they reach 600,000 baht in sales.

2: Reporting Requirements

Firms must keep books and follow accounting procedures specified in the Civil and Commercial Code, the Revenue Code and the Accounts Act. Documents may be prepared in any language, provided that a Thai translation is attached. All accounting entries should be written in ink, typewritten, or printed.

Specifically, Section 1206 of the Civil and Commercial Code provides rules on the accounts that should be maintained as follows:

“The directors must cause true accounts to be kept:

1. Of the sums received and expended by the company and of the matters in respect of which each receipt or expenditure takes place;

2. Of the assets and liabilities of the company.”

A. Imposition of Taxes

Companies are required to withhold income tax from the salary of all regular employees.

A value-added tax of seven percent is levied on the value added at each stage of the production process, and is applicable to most firms. The VAT must be paid on a monthly basis.

A specific business tax is levied on firms engaged in several categories of businesses not subject to VAT, based on gross receipts, at a variable rate ranging from 0.1 – 3.0 percent.

Corporate income tax is 30 percent of net profits and is due twice each fiscal year. A mid-year profit forecast entails advance payment of corporate taxes.

B. Annual Accounts

A newly-established company or partnership should close accounts within 12 months from the date of its registration. Thereafter, the accounts should be closed every 12 months. The performance record is to be certified by the company auditor, approved by shareholders, and filed with the Commercial Registration Department, Ministry of Commerce, within five months of the end of the fiscal year, and with the Revenue Department, Ministry of Finance, within 150 days of the end of the fiscal year. If a company wishes to change its accounting period, it must obtain written approval from the Director General of the Revenue Department.

C. Accounting Principles

In general, the basic accounting principles practiced in the United States are accepted in Thailand, as are accounting methods and conventions as sanctioned by law. The Institute of Certified Accountants and Auditors of Thailand is the authoritative group promoting the application of generally accepted accounting principles.

Any accounting method adopted by a company must be used consistently and may be changed only with approval of the Revenue Department.

Certain accounting practices of note include:

Depreciation. The Revenue Code permits the use of varying depreciation rates according to the nature of the classes of assets which have the effect of depreciating the assets over periods that may be shorter than their estimated useful lives. These maximum depreciation rates are not mandatory; a company may use lower rates that approximate the estimated useful lives of the assets. But if a lower rate is used in the books of the accounts, the same rate must be used in the income tax return.

Accounting for Pension Plans. Contributions to a pension or provident fund are not deductible for tax purposes unless these are actually paid out to the employees, or the fund is approved as a qualified fund by the Revenue Department and is managed by a licensed fund manager.

Consolidation. Local companies with either foreign or local subsidiaries are not required to consolidate their financial statements for tax and other government reporting purposes, except for listed companies which must submit consolidated financial statements to the Securities and Exchange Commission of Thailand.

Statutory Reserve. A statutory reserve of at least five percent of the annual net profits arising from the business must be appropriated by the company at each distribution of dividends until the reserve reaches at least 10 percent of the company's authorized capital.

Stock Dividends. Stock dividends are taxable as ordinary dividends and may be declared only if there is an approved increase in authorized capital. The law requires the authorized capital to be subscribed in full by the shareholders.

D. Auditing Requirements and Standards

Audited financial statements of juristic entities (that is, a limited company, a registered partnership, a branch, or representative office, or a regional office of a foreign corporation, or a joint venture) must be certified by an authorized auditor and submitted to the Revenue Department and (except for joint ventures) to the Commercial Registrar for each accounting year.

Auditing standards conforming to international auditing standards are, to the greater extent, recognized and practiced by authorized auditors in Thailand.

3: Types of Business Organizations

Thailand recognizes three types of business organizations:

A. Partnership

Thai and Western concepts of partnership are broadly similar. Thailand provides for three general types of partnerships:

- Unregistered ordinary partnerships, in which all partners are jointly and wholly liable for all obligations of the partnership
- Registered ordinary partnerships. If registered, the partnership becomes a legal entity, separate and distinct from the individual partners
- Limited partnerships. Individual partner liability is restricted to the amount of capital contributed to the partnership. Limited partnerships must be registered.

B. Limited Companies

There are two types of limited companies, i.e. private or closely held companies, and public companies. The first is governed by the Civil and Commercial Code, the second by the Public Company Act.

Private Limited Companies in Thailand have basic characteristics similar to those of Western corporations. A private limited company is formed through a process which leads to the registration of a Memorandum of Association (Articles of Incorporation) and Articles of Association (By-laws), as its constitutive documents.

Shareholders enjoy limited liability, i.e., limited to the remaining unpaid amount, if any, of the par values of their shares. The liability of the directors, however, may be unlimited if so provided in the company's memorandum of association or the articles of incorporation. The limited company is managed by a board of directors according to the company's charter and by-laws.

All shares must be subscribed to, and at least 25 percent of the subscribed shares must be paid up. Both common and preferred shares of stock may be issued, but all shares must have voting rights. Thai law prohibits the issuance of shares with no par value. It also stipulates that only shares with par value of five baht or above may be issued. Treasury shares are prohibited.

A minimum of seven shareholders is required at all times. A private limited company may be wholly owned by aliens. However, in those activities reserved for Thai nationals, aliens' participation is generally allowed up to a minimum of 49 percent.

The registration fee for a private limited company is 5,500 baht per million baht of capital.

Public Limited Companies registered in Thailand may, subject to compliance with the prospectus, approval, and other requirements, offer shares, debentures and warrants to the public and may apply to have their securities listed on the Stock Exchange of Thailand (SET).

A minimum of 15 promoters is required for the formation and registration of the memorandum of association of a public limited company, and the promoters must hold their shares for a minimum of two years before they can be transferred. The Board of Directors of a public limited company must have a minimum of five members, at least half of whom are Thai nationals. Shares must have a face value of at least five baht each and be fully paid up. Restrictions on share transfers are unlawful except those protecting the rights and benefits of the company allowed by law, and those maintaining a Thai/foreigner shareholder ratio. Debentures may only be issued with the approval of three quarters of the voting shareholders.

The registration fee is 2,000 baht per million baht of capital for a public limited company.

C. Joint Venture

A joint venture may be described in accordance with general practice as a group of persons (natural and/or juristic) entering into an agreement in order to carry on a business together. It has not yet been recognized as a legal entity under the Civil and Commercial Code. However, income from the joint venture is subject to corporate taxation under the Revenue Code, which classifies it as a single entity.

D. Other Forms of Corporate Presence

Branches of foreign companies. There is no special requirement for foreign companies to register their branches in order to do business in Thailand. However, most business activities fall within the scope of one or more laws or regulations which require special registration, either before or after the commencement of activities. Foreign business establishments must, therefore, follow generally accepted procedures. It is important to clarify beforehand what constitutes income subject to Thai tax because the Revenue Department may consider revenues directly earned by the foreign head office from sources within Thailand as subject to Thai taxes.

As a condition for approval of an Alien Business License to a branch of a foreign corporation, working capital amounting to a total of five million baht in foreign exchange must be brought into Thailand within certain intervals over a four-year period.

The branch may be allowed to operate for a period of five years, unless a shorter period is indicated in the application as a result of a contract to be performed in Thailand. Extension of the original duration of the license to operate may be granted, provided the working capital required to be brought into Thailand is met.

A representative office of foreign corporations may also be established to engage in limited “non-trading” activities, such as sourcing of goods or services in Thailand for its head office or inspecting and controlling quality of goods which its head office purchases in Thailand. Other activities can cover disseminating information about new products and services of its head office, and reporting to its head office on local business development and activities.

The working capital contributions as discussed above in respect to branches apply.

E. Regional Offices

A regional office of a multinational corporation may also be established to coordinate and direct the operation of the branches and affiliates of the head office in the region on behalf of the head office.

A regional office has the ability to coordinate and supervise the company's branches and its affiliated companies in the region on behalf of the head office. The regional office may provide these branches and affiliated companies with:

- Advisory and management services
- Financial management services
- Training and personnel development services
- Marketing control and sales promotion plans
- Product development
- Research and development services.

Benefits from Establishing a Regional Office

Companies establishing regional offices are not required to be registered or incorporated as juristic persons in Thailand, and do not have to submit any financial statements to the Department of Commercial Registration. The Department will assist in customs clearance of the personal effects of transferred foreign staff and in their applications for further temporary stay in the Kingdom or change in visa type. Work Permits for aliens performing work in the regional office will be granted for up to 5 persons depending on necessity and volume of work in each particular case, and fees of not more than 1,000 baht per year must be paid for a Work Permit or its renewal.

Conditions for Permission to Establish a Regional Office

- Regional Office must not:
 - Derive any income from its activities. Expenditures incurred by the regional office shall be borne by the head office
 - Have the power to accept a purchase order or make a sales offer
 - Negotiate or enter into business arrangements with any natural or juristic person within the Kingdom.

A permit to establish a regional office, valid for five years, can be granted after application with the Alien Business Section of the Department of Commercial Registration at the Ministry of Commerce. The fee is five baht per every 1,000 baht of registered capital, not to exceed 5,000 baht.

When a permit to establish a regional office is issued, it may be subject to the following conditions:

- The total debt financing used in the business shall not exceed seven times the portion of the capital owned by shareholders or the owner of the business
- Money used in the regional office shall be remitted from abroad and shall not be less than a total of 5,000,000 baht. During the first year period, at least 2,000,000 baht of the total must be remitted, at least half of which must be remitted within the first six months. Then, no less than 1,000,000 baht should be remitted each succeeding year until the full 5,000,000 baht has been transferred. Documents verifying this transfer must be presented to the Department of Commercial Registration
- At least one person who is responsible for operating the regional office must have their domicile in the Kingdom.

The Director-General of the Department of Commercial Registration is also authorized to impose any conditions on a business permit granted under the rules.

F. Regional Trade and Investment Support Offices

In April, 1996, the Board of Investment announced the establishment of trade and investment support offices would become a new category of activities eligible for investment promotion.

Projects in this category are eligible for BOI non-tax incentives, including:

- Permission to own land for an office
- Permission to bring in foreign nationals to undertake investment feasibility studies
- Permission to bring in as many foreign technicians and experts as required

- Permission to take or remit foreign currency abroad
- No limit on number of shares owned by foreigners.
- The range of activities eligible for promotion are:
- Controlling and advising affiliated companies
- All types of consulting services, except those engaged in:
 - Buying and selling securities
 - Foreign currency exchange
 - Accounting
 - Advertising
 - Legal affairs
 - Architecture
 - Civil engineering.

Note: Exceptions may be granted by permission from the Department of Commercial Registration or concerned government agencies

- Information services related to sourcing and procurement, but not brokerages or agencies
- Engineering and technical services, except these related to architecture and civil engineering
- Testing and certifying standards of products, production and services standards
- Exporting of all types of products
- Wholesaling of all types of products within the country, excluding local agricultural products, arts & crafts, antiques, and natural resources
- Provision of training on the use of machinery, engines, tools, and equipment
- Installation, maintenance, and repairing of machinery, engines, tools, and equipment
- Calibration of machinery, engines, tools, and equipment
- Computer software design and development.

If there are any other activities deemed appropriate for investment promotion under the Establishment of Trade and Investment Support Offices, the Office of the Board of Investment will consider them on a case-by-case basis.

Eligibility for regional trade and investment support offices

Applicants must be either companies established under Thai law, or companies planning to establish under Thai law.

Conditions for regional trade and investment support offices

- Operating licenses must have been acquired from all relevant government agencies
- Operating expenses must amount to no less than 10 million baht per year, which shall consist of sales and administrative expenses, as set forth in the Revenue Code
- Operating plans must be approved by the Board of Investment
- Majority or total foreign ownership is allowed
- Non-tax privileges, only, will be granted.

Chapter 2

Taxation in Thailand

The Revenue Code outlines regulations for the imposition of taxes on income, with income tax divided into three categories: Corporate income tax, value added taxes (or specific business taxes), and personal income tax.

1: Corporate Income Tax

Incorporated firms operating in Thailand pay income tax at a rate of 30 percent of net profits. Foundations and Associations pay income taxes at a rate of two to 10 percent of gross business income, depending upon the activity. International transport companies face a rate of three percent of gross ticket receipts and three percent of gross freight charges.

All companies registered under Thai law are subject to taxation as stipulated in the Revenue Code and are subject to income tax on income earned from sources within and outside of Thailand. Foreign companies not registered or not residing in Thailand are subject to tax only on income derived from sources within Thailand.

Normal business expenses and depreciation allowances, at rates ranging from five to 100 percent, depending on the item, or at rates under any other acceptable depreciation method, are allowed as deductions from gross income. Inventory must be valued at cost or at market price, whichever is lower. Net losses can be carried forward for up to five consecutive years. Interest payments on some foreign loans may be exempt from a firm's income tax.

Inter-corporate dividends are exempt from tax on 50 percent of dividends received. For holding companies and companies listed on the SET, dividends are completely exempt, provided the shares are held three months prior to and after the receipt of dividends.

Deductions for gifts and donations up to a total of four percent of net profit are available, as follows:

- Two percent to approved public charities or for public benefit;
- Two percent to approved education or sports bodies.

No deduction is permitted for any expenditure that is determined on the basis of net profit (e.g. bonuses paid as a percentage of net profit) at the end of an accounting period. Depreciation of assets of limited companies and partnerships is based on cost. The rates of annual depreciation permitted by the law generally vary from five to 20 years.

Entertainment and representation expenses are deductible up to maximum limits as a percentage of gross sales, or of paid-up capital at the closing date of the accounting period, whichever is greater.

Taxes are due on a semi-annual basis within 150 days of the close of a six-month accounting period, and employers are required to withhold personal income tax from their employees.

Except for newly-incorporated companies, an accounting period is defined as a duration of 12 months. Returns must be accompanied by audited financial statements.

A corporate taxpayer must file a half-year return and pay 50 percent of the estimated annual income tax by the end of the eighth month of the accounting period. Failure to pay the estimated tax or underpayment by more than 25 percent may subject the taxpayer to a fine amounting to 20 percent of the amount in deficit.

Failure to file a tax return, late filing or filing a return containing false or inadequate information may subject the taxpayer to various penalties. Failure to file a return, and subsequent non-compliance with an order to pay the tax assessed, may result in a penalty equal to twice the amount of tax due. Penalties are due within 30 days of assessment.

2: Value Added Taxes

The value added tax (VAT) system, which came into effect on 1 January 1992, largely replaced the old business tax system, which critics claimed caused inefficient redundancies and facilitated tax evasion.

Under the new tax regime, value added at every stage of the production process is subject to a seven percent tax rate. Those who are affected by this tax are: Producers, providers of services, wholesalers, retailers, exporters and importers. VAT must be paid on a monthly basis, calculated as:

$$\text{Output tax} - \text{Input tax} = \text{Tax paid}$$

where output tax is the VAT which the operator collects from the purchaser when a sale is made, and input tax is the VAT which an operator pays to the seller of a goods or service which is then used in the operator's business.

If the result of this calculation is a positive figure, the operator must submit the remaining tax to the Revenue Department not later than 15 days after the end of each month. However, for a negative balance, the operator is entitled to a refund in the form of cash or a tax credit, which must be paid in the following month.

A. Zero Rate

- Exports

- Services provided in Thailand for persons in foreign countries
- International transportation by air and sea by Thai juristic persons. Foreign juristic persons may enjoy zero percent when its country applies zero percent to Thai juristic persons operating there
- Sale of goods or services to civil service or state enterprises under foreign loan or aid schemes
- Sale of goods or services to the UN and its agencies, foreign embassies and consulates
- Sale of goods or services between bonded warehouses, between operators in export processing zones, or between the former and the latter.

Operators whose gross earnings from the domestic sale of goods and services exceed 600,000 baht, but are less than 1,200,000 baht per year, can choose between paying a gross turnover tax of 1.5 percent or the normal VAT. However, operators paying the gross turnover tax may not offset this tax by charging VAT to their customers in any step of production.

B. Special exemption from VAT

- Operators earning less than 600,000 baht a year
- Sale or import of agricultural products, livestock, and agricultural inputs, such as fertilizer, and feed
- Sale or import of published materials and books
- Auditing, legal services, health services and other professional services
- Cultural and religious services
- Educational services
- Services provided by employees under employment contracts
- The sale of goods as specified by Royal Decree
- Goods exempt from import duties under the Industrial Estate Authority of Thailand (IEAT) Act
- Domestic transport (excluding airlines) and international transport (excluding air and sea lines).

C. Specific Business Tax (SBT)

- A specific business tax of approximately three percent is imposed,

in lieu of VAT, on the following businesses:

- Commercial banks and similar businesses
- Insurance companies
- Financial securities firms and credit fonciers
- Sales on the stock exchange
- Sales of non-movable properties
- Pawn shops.

The SBT is computed on the monthly gross receipts at the following rates:

Type of business	Tax rates
Banking or similar business; finance, securities and credit foncier business	3%
Insurance	
– Life	2.5%
– Insurance against loss	3%
Pawnshop	2.5%
Sale of immovable property in a commercial manner for profits	3%

D. Remittance Tax

Remittance tax applies only to profits transferred or deemed transferred from a Thailand branch to its head office overseas. It is levied at the rate of 10 percent of the amount to be remitted before tax, and must be paid by the remitting office of the offshore company within seven days of the date of remittance.

However, outward remittances for the purchase of goods, certain business expenses, principal on loans to different entities and returns on capital investment, are not subject to an outward remittance tax.

The tax does not apply to dividends or interest payments remitted out of Thailand by a company or partnership; these are taxed at the time of payment.

Section 70 of the Revenue Code addresses income paid to foreign juristic persons. When a company or partnership incorporated under a foreign law and not carrying on business in Thailand receives “assessable income” paid either from or in Thailand, the payer is usually required to deduct income tax at a rate of 15 percent of the gross remittance. In 1992, standard

deductions, which used to vary with each type of income, were abolished, making the flat 15 percent rate effective on all assessable income except for dividend income, on which the 20 percent withholding tax was reduced to 10 percent.

There is no withholding tax on capital gains or on the share of profit paid to foreign investors in mutual funds, if in the SET. Physical remittance of funds may not be necessary in order to incur either the dividend or interest tax liabilities, which may be incurred by making book entries.

3: Personal Income Tax

Every person, resident or non-resident, who derives assessable income from employment or business in Thailand, or has assets located in Thailand, is subject to personal income tax, whether such income is paid in or outside of Thailand. Exemptions are granted to certain persons, including United Nations officers, diplomats and certain visiting experts, under the terms of international and bilateral agreements.

Personal income tax is applied on a graduated scale as follows:

Baht

Net annual income	Tax rate
0-100,000	5%
100,001-500,000	10%
500,001-1,000,000	20%
1,000,001-4,000,000	30%
>4,000,001	37%

Individuals residing for 180 days or more in Thailand for any calendar year are also subject to income tax on income from foreign sources if that income is brought into Thailand during the same taxable year that they are a resident.

Exchange control laws stipulate that all foreign exchange earned by a resident, whether or not derived from employment or business in Thailand, and brought into Thailand, must be sold to or deposited with commercial banks within 15 days, unless permission for an extension is granted.

Personal income taxes and tax returns must be filed prior to the end of March of the year

following the year in which the income was earned.

A standard deduction of 40 percent, but not in excess of 60,000 baht, is permitted against income from employment or services rendered or income from copyrights.

Standard deductions ranging from 10 percent to 85 percent are allowed for other categories of income. In general, however, taxpayers may elect to itemize expenses in lieu of taking standard deductions on income from sources specified by law.

Other types of taxable income and the rate of standard deduction include:

- *Interest, dividends, capital gains on the sale of securities:* Forty percent, but not exceeding 60,000 baht.
- *Rental income:* Ten percent to 30 percent depending on type of property leased
- *Professional fees:* Sixty percent for income from medical practice, 30 percent for others.
- *Income derived by contractors:* Seventy percent.
- *Income from other business activities:* Sixty-five percent to 85 percent depending on the nature of the business activity.

Annual personal allowances permitted:

Taxpayer	30,000 baht
Taxpayer's spouse	30,000 baht
Each child's education	15,000 baht
For taxpayers and spouse for contributions to an approved provident fund	10,000 baht*
For taxpayer and spouse for interest payments on loans for purchasing, hire purchasing or construction of residential buildings	10,000 baht*
For taxpayer and spouse with respect to contributions to Social Securities Fund	Actual contribution not more than 10% of adjusted income

* Or the amount actually paid if less

Only three children per taxpayer family qualify for the child allowance, but this

limitation applies only to children born on or after 1 January 1979.

Therefore, in counting the number of children, a child born prior to 1979 can also be counted. For example, a taxpayer with four children born before 1979 continues to qualify for an aggregate allowance of 60,000 baht. A fifth child, born in 1979, would not qualify.

Additional taxes can be assessed, within a period of two years from the date of filing a return, and up to five years for tax evasion or tax refund. If an individual fails to file a return, the assessment officer may issue summons within a period of 10 years from the filing due date.

A. Treaties to Avoid Double Taxation

Thailand has treaty agreements to eliminate double taxation with the following countries:

Austria	Australia	Bangladesh	Belgium	Canada
China	Czech Rep.	Denmark	Finland	France
Germany	Hungary	Indonesia	Israel	Italy
India	Japan	Laos	Luxembourg	Malaysia
Mauritius	Nepal	Netherlands	New Zealand	Norway
Pakistan	Philippines	Poland	Romania	Singapore
S. Korea	S. Africa	Spain	Sri Lanka	Sweden
Switzerland	United Kingdom and Northern Ireland		United States	Vietnam

The treaties generally place taxpayers in a more favorable position for Thai income than they would be under the Revenue Code, as profits will only be taxable if the taxpayer has a permanent establishment in Thailand.

B. Other Taxes

- *Petroleum Income Tax*
The Petroleum Income Tax Act replaces the Revenue Code in imposing a tax on income from firms which own an interest in a petroleum concession granted by the Thai government or which purchase oil from a concession holder for export. Net income from petroleum operations includes revenue from production, transport or sale of oil and gas, the value of gas delivered to the government as a royalty and the proceeds of a transfer of interest in a concession. The tax rate for most operators is not less than

50 percent and not more than 60 percent of net profits.

- *Stamp Tax*

The Revenue Code contains a Stamp Duty Schedule listing transactions subject to stamp tax. Rates depend on the nature of the transaction, and fines for failure to stamp documents are very high.

- *Excise Tax*

Excise tax is levied on the sale of a number of goods, including petroleum products, tobacco, liquor, soft drinks, cement, electrical appliances, and automobiles.

- *Property Tax*

Owners of land and/or buildings in designated areas may be subject to annual taxes levied by the local government. Under the Local Development Tax Act of 1965, rates per unit vary according to the appraised value of the land. However, land for the personal residence of the owner, animal husbandry, or land cultivation is exempted from this Act. For land taxable under the House and Land Tax Act of 1932, which is based on the value of the land and buildings or any other improvements, annual tax is levied at the rate of 12.5 percent of the assessed assumed rental value of the property, and only owner-occupied residences are exempt.

C. Tax Courts

Tax cases are considered different in nature from normal civil cases. The Tax Court Establishment and Procedure Act, effective since 1985, provides special and accelerated procedures for tax litigation. Tax courts have authority to judge the following cases:

- Appeals against the decision of tax officers or committees
- Disputes over the claims of state tax obligations
- Disputes over tax refunds
- Disputes over rights or obligations concerning tax collection obligations. Disputes over the right or obligations regarding tax collection obligations
- Other cases made subject to the Act as prescribed by other laws.

Note: Decisions of the tax courts may be appealed to the Supreme Court within one month after the date of the judgment.

D. Tax Clearance Certificates

As of May 1991, requirements for tax clearance certificates have been significantly reduced. Provided that an individual demonstrates compliance with tax laws, he is not required to secure a tax clearance certificate within 15 days before leaving the country.

Employees of businesses incorporated under foreign law, but which carry out business in Thailand, must acquire a certificate from the Revenue Department before departure. The requirement is not enforced if the individual has been in Thailand less than 90 days in

any tax year and has not received any income.

E. Other Tax Reforms

Thailand is actively pursuing reform of its tax system and taxes on industrial imports have already been sharply reduced. Over the past five years, the government has consistently moved to reduce import tariffs on machinery and raw materials. In August 1999, the government introduced a number of measures to encourage investment, including tariff cuts. One-hundred and forty-six tariff lines – 85 percent of the total number – had their rates cut to 0–five percent, notably on raw materials and capital goods.

4: Customs duties

Tariff duties on goods are levied on an ad valorem or a specific rate basis. The majority of goods imported by businesses are subject to rates ranging from five percent to 60 percent.

The majority of imported articles are subject to two different taxes: Tariff duty and VAT. Tariff duty is computed by multiplying the CIF value of the goods by the duty rate. The duty thus determined is added to the value of the goods determined with reference to the CIF price. VAT is then levied on the total sum of the CIF value, duty, and excise tax, if any. Goods imported for re-export are generally exempted from import duty and VAT.

As a part of the BOI's Investment Promotion Program, BOI-promoted companies are eligible to receive exemptions or reductions from import duties on raw and essential materials as well as machinery.

Further, companies that belong to the BOI's Investor Club Association (IC) are eligible to use the IC's Raw Materials Tracking System. For companies that take advantage of this service, release of raw materials can be done in three hours or less. For more information, please contact the Investor Club at:

Tel 936-1429-40, ext 314, 315, 318

Export duties are imposed on only a few items, including rice, hides, skins and leather, scrap iron or steel, rubber, teak and other kinds of wood.

Two exceptions to the obligation to pay customs duties apply to the importation of machinery, equipment, and materials for the use by:

- Oil and gas concessionaires and their contractors.
- Certain companies promoted by the BOI.

5: Import and Export Regulations

There are certain regulations governing the import and export of goods into and out of Thailand. However, trade in certain items is restricted through outright prohibition, the imposition of duties or licensing requirements. Thus, the export of unmilled rice and rice bran is expressly prohibited. Other goods, such as rubber, timber, rice, hides and skins, silk yarn, and iron scrap may be sold to foreign buyers, but duties must be paid on them. To export certain items, such as gold, cattle, or sugar, one must secure a license from the relevant government authorities.

Import controls

The Ministry of Commerce designates classes of goods that are subject to import controls, which usually take the form of permission and licensing. Although these controls are being liberalized, at present more than 50 classes of goods require import licenses from the Ministry of Commerce. These categories are frequently changed through notifications from the ministry. A license to import any of the specified items must be secured from the Ministry of Commerce. Application for the license must be accompanied by a supplier's order, confirmation, invoice, and other pertinent documents.

In addition to the Act imposing the above controls, a number of goods are subject to import controls under other laws. These include:

- The import of modern drugs requires prior licensing from the Food and Drug Administration under the Ministry of Health
- The Minerals Act stipulates that without appropriate permission, an importer is prohibited from importing tungstic oxide and tin ores and metallic tin in quantities exceeding two kilograms
- The Ancient Monuments, Antiques, Objects of Art and National Museum Act provides that antiques or objects of art, whether registered or not, must not be delivered without permission from the Director General of Fine Arts
- The Armation, Ammunition, Explosives, Fireworks and Imitation

Firearms Act bars people from producing, buying, using, ordering or importing armations or ammunition or explosive devices unless they have the appropriate license from the Ministry of Interior

- The Cosmetics Act stipulates that for the purpose of protection of public health, any importer of controlled cosmetics must provide the name and location of the office and the place of manufacture or storage of the cosmetics, the name, category, or kind of cosmetics to be imported, and the major components of the cosmetics.

Export controls

The Act Controlling the Importation and Exportation of Goods authorizes the Ministry of Commerce to subject products to export control. At present, close to 50 items require such control.

Certain goods require export licenses under other laws, such as seeds, trees, and leaves of tobacco. Certain goods, such as sugar and rice, are subject to export licenses under the Export Standard Act, which aims to ensure that such exports are of a set quality.

Exporters of agricultural commodities may find that membership in trade associations is mandatory, and they may impose their own regulations for membership.

Chapter 3 Industrial Licensing and Regulations

1: The Factory Act

The Factory Act of 1969 (amended in 1972, 1975, 1979, and 1992) stipulates regulations for factory construction and operation, factory expansion, and safety requirements. The latest revision of the Act also imposes strict controls on industrial pollution. The Act is administered by the Department of Industrial Works of the Ministry of Industry.

A factory is defined as any premise that uses machinery equivalent to five horsepower or more, or that employs seven or more workers for manufacturing, producing, assembling, packing, repairing, maintaining, testing, improving, processing, conveying,

storing or destroying anything included in the classes or types of factories presently listed in the Ministerial Regulations.

The Act does not apply to factories owned or operated by government agencies for the purpose of national security or safety, except that such factories must use the procedures of the Act as guidelines for their operations.

2: Factory Licenses

Factories are divided into three categories:

- Factories that do not require licensing.
- Factories that only require notification to officials in advance of the start of operations. Operators may commence operations as soon as they receive a receipt form from the Ministry stating their report has been received.
- Factories that require licenses prior to operation. Subject to the Ministry's discretion, operators may be granted, prior to the license, a certificate allowing them to build parts of the factory.

Note: In general, the degree of government control required is dependent on the degree of environmental protection deemed necessary. The more likely a factory, based on its output, is to cause pollution, the more that type of factory is regulated.

The Ministry of Industry has the power to issue regulations for all of the categories regarding:

- Description, category, or type of machinery and equipment to be used in the operation of the factory business.
- Location, environment, interior, and description of the factory.
- Requirements for workers who have specific knowledge to carry out any duties in the factory.
- Process of manufacture and provision of equipment to prevent, stop, or alleviate danger, damage, or disturbances that may occur to the public or property in the factory or nearby premises.
- Standards and procedures for the control or release of waste, pollution, or anything else arising from factory

operations which may affect the environment.

- Provision of necessary data and documents by the factory operators to ensure compliance with the law.
- Provision of anything that may affect the safety of work operations.

If there is an inspection of a factory or machinery to ensure compliance with the Act, a private body may carry out the inspection and report in place of government officials, provided the private persons follow the regulations concerning the Act as per the Government Gazette.

Licenses granted are valid until the end of the fifth calendar year from the year in which the business started operations, except when the factory is transferred, leased or subject to hire purchase, or if operations stop. In these cases, the license is regarded as having expired on the date of issuance of a license to the factory's new operators, or on the date of cessation of operations.

Applications for renewal of licenses must be submitted prior to the date of expiration, along with a fee of 100,000 baht. Following submission, renewal is considered to have been extended unless there is a specific order otherwise. If the application is submitted within 60 days of the expiration date, it will be processed normally, but an additional fee of 20,000 baht will be levied. Once the expiry date is reached, and application for a renewal must be made within 60 days.

3: Factory Operations

The Ministry of Industry has the power to designate:

- The size and quantity of the type of factory in each category which should not be established or expanded in any locality in the Kingdom.
- The type, quality, source of origin, and ratio of raw materials to be used in a factory.
- The type or quality of products to be manufactured in a factory.
- The type of energy to be used in a factory.

The Ministry may also prescribe that a factory's products be used in certain industries or be wholly or partly exported. If a factory in category 2 or 3 (See Section A above) stops operation for more than one year, the operator must notify the Ministry in writing within seven days of the date the one-year period has lapsed, and must inform the Ministry before restarting operations. If the operator's factory is in category 3, he must receive written permission from the Ministry before restarting operations.

If there is an accident that causes death, injury, or sickness that incapacitates a worker beyond a 72-hour period, the operator must inform the Ministry within three days from the date of the death or the lapse of the 72 hour period. If there is an accident that causes the factory to stop operations for more than seven days, the operator must notify the Ministry within 10 days from the date of the accident.

Factory operators must obtain permission to remove machinery from its original place of installation to another site for temporary operations, or to move a factory to another site. Permission must also be obtained to transfer, rent, offer for hire purchase, or sell a licensed factory. In these cases, the prior license is considered to have expired, and a new license must be applied for within seven days, although no fee is required. If the licensee dies, the heir or administrator of the estate must submit an application for the transfer of the license within 90 days of the date of death.

4: Factory Expansion

An application must be filed, and granted, prior to factory expansion. A fee of 100,000 baht is charged. As defined in the Act, the following undertakings constitute factory expansion:

- An increase in the number of machines, or change or modification of machinery to increase its power by 50 percent or more.
- The addition to, or alteration of, any part of the factory building which causes any part of the foundation of the

factory to bear a load of an additional 500 kilograms or more.

When a licensee:

- Increases the quantity of machinery
- Changes or modifies machinery used for production or generation of power, but by less than 50 percent
- Constructs or increases factory space by more than 100 square meters, application must be filed within seven days of the date of the change.

5: Other Provisions

Any factory that is seriously endangering the public may be ordered to cease operations or to make specified improvements. The Minister has the authority to order removal of all or part of the plant to a location where the public will not be threatened. Officers of the Ministry of Industry have broad powers of inspection, and are authorized to issue written orders requiring a factory to cease operations, modify or repair machinery, or to undertake other remedial measures.

Issuance of either a factory establishment license or a factory operator's license does not exempt the licensee from compliance with other central or local government requirements for carrying out a proposed industrial activity. Licenses may be suspended for violations of the Act or for failure to carry out orders issued under the Act by competent officials.

Factories established to produce and sell food and drugs must also apply for production licenses from the Ministry of Health.

Violation of certain provisions of the Act may incur penalties in the nature of a fine or imprisonment not exceeding four years. A Case Settlement Committee of three experts is appointed by the Ministry to carry out penalties for violations of the Act. If the offender is a partnership, company or other juristic entity, the directors, managers, or other persons responsible for committing the offence are subject to the same punishment unless it can be proved that the offence was

committed without their knowledge or consent.

Chapter 4

Patents, Trademarks, Consumer Protection

Thailand recognizes three broad categories of property rights:

1: Patents 2: Copyrights 3: Trademarks

1: Patents

Thailand promulgated its first patent law, the Patent Act, in 1979, with significant amendments added in 1992. The Act protects both inventions and product designs and pharmaceuticals. Thailand has numerous bilateral agreements enabling citizens of other countries to file patent applications in Thailand. However, Thailand is not a signatory to the Paris Convention for the Protection of Industrial Property nor a signatory of any other international convention for reciprocal protection of patents.

In December 1997 a new intellectual property and international trade court began operations, which has significantly improved enforcement. Appeals procedures at the trademark and patent offices have also been streamlined.

A. Invention Patents

For an invention to be patentable, it must

- Have novelty
- Involve an inventive step
- Be capable of being made or used for some kind of production activity.

Therefore, the following would not qualify for patents:

- An invention widely known or used by others in Thailand before the filing of the patent application
- An invention, the subject matter of which was described in a document or printed publication, displayed or otherwise disclosed to the public, in any manner, whether inside or outside Thailand, and whenever the disclosure is by document, printed matter,

exhibition or public disclosure by any means whatsoever¹

- An invention that has been granted a patent inside or outside Thailand prior to the date of the patent application
- An invention that is the subject of an abandoned application in Thailand. This provision does not affect the rights of co-inventors and others who did not apply for such patent shall not be affected
- An invention for which an application for a patent was filed in a foreign country more than 12 months prior to the date of the patent application, the foreign patent not having been issued.

The revised Patents Act provides that the following are not patentable:

- Microbes and any components thereof which exist naturally; animal, plant and extracted substances from animals or plants
- Scientific or mathematical rules or theories
- Computer programs
- Methods of diagnoses, treatment and care of human and animal diseases
- Inventions that are contrary to public order or morality, public health or welfare.

B. Patentable Product Designs

A product design must be novel in order to be patented: i.e., it must not fall under any of the following conditions:

- A design widely known or used in Thailand before the filing of the patent application
- A design picture, the subject matter or details of which have been displayed or disclosed in a document or printed publication inside or outside of Thailand before the filing of the application

¹ Disclosure of the essential or specifications due to or in consequence of an unlawful act, or disclosure of essential or specifications by the inventor, including display of the inventor's work at an international exhibition or an official public exhibition provided such disclosure occurred within the period of 12 months prior to the date of filing the patent application shall not be deemed to be a disclosure under subsection 2.

- A design that has been published in the patent journal under Section 65 and 28 before the filing of the patent application
- A design that so nearly resembles any of the product designs indicated in the points described above that it is apparently an imitation.

C. Product Designs Which Are Not Patentable

- Product designs which are contrary to public order and good morals
- Product designs prescribed by Royal Decree.

D. Eligibility

An inventor or product designer has the right to apply for a patent, as does a successor or assignee of the right. An assignment must be made in writing, signed by both the assignor and the assignee.

If, during the course of employment, an employee or contractor creates an invention or product design, the right to apply for a patent belongs to the employer unless otherwise provided by agreement.

The Patent Act requires that an applicant for a patent must be a Thai national or a national of a country which allows persons of Thai nationality to apply for patents in that country.

The patent holder or applicant is entitled to the following rights:

- A patent for an invention is valid for a period of 20 years from the date of filing the application; a patent for a product design is valid for a period of 10 years from the date of filing the application. The time during which court proceedings regarding the issuance of the patent are in process may be excluded
- During the period of the validity of the patent, the patent holder has the exclusive right to produce, use, sell, have for sale, offer for sale and import the patented invention or design. Any act performed before the patent is granted, that would otherwise constitute

an infringement of the patent, is not deemed an infringement

- A patent holder has an exclusive right to use the words “Thai Patent”, or an abbreviation or translation thereof
- A patent holder may assign the patent to another holder
- A patent holder may grant a license to another person, subject to restrictions:
 - The patentee shall not impose upon the licensee any condition or restriction or any royalty covenant which is an unfair restraint of competition. Conditions, restrictions or covenants that unfairly restrain competition shall be prescribed by a Ministerial Regulation
 - A patent holder may not require a licensee to pay a royalty or royalties after the validity of the patent has expired
 - Conditions, restrictions, or royalties which are contrary to the above two points are null and void
- Any assignment or license must be in writing and officially registered.

E. Compulsory Licenses

To discourage monopolies and the acquisition of patents simply to prevent other persons from manufacturing or producing the patented inventions or product designs, Section 46 of the Patent Act provides that:

- At any time after the expiration of three years from the grant of a patent or four years from the date of filing an application for a patent, any person may apply to the Director-General for a compulsory license if, at the time of the application, it appears that:
 - For no legitimate reason, there is no production of the patented product nor application of the patented process in the country
 - For no legitimate reason, there is no sale of the product produced under the patented process or there are sales of the same at unreasonably high prices or in quantity insufficient to domestic public demand.

F. Cancellation of Patents

A patent may be canceled under the following conditions:

- Although a patent has been granted, any person who has an interest in the patent or the public prosecutor may challenge its validity by petitioning the Court for cancellation
- The Director-General may ask the Board of Patents to cancel a patent in the following cases:
 - If it appears that two years after the issue of a license under Section 50, the licensing has been unable to prevent or alleviate the condition for which a license was issued under Section 46 or 46 bis; or
 - The patentee has licensed another person to exercise the patent rights in violation of Section 41.

Before requesting the Board to cancel a patent, the Director-General shall order an inquiry and notify the patentee and licensees to submit their briefs within 60 days from the date of receipt of notification. The Director-General may summon any person to make statement or deliver any additional documents or items.

G. Foreign Patents

A foreign patent that has not been granted a separate patent in Thailand receives no protection under the Patent Act. However, foreign patent holders or owners of rights to inventions or designs in foreign countries may enter into business transactions with parties in Thailand and seek equivalent protection through contractual obligations in the form of a licensing agreement.

Since foreign patents, inventions and designs receive no protection under the Patent Act, no civil or criminal action can be taken against a third party who produces products or sells a patented product in Thailand without paying fees to the holder of the foreign patent or who applies in Thailand for a patent on an invention or design already patented in other countries. Nevertheless, legal solutions to such conflicts may be available under separate legislation.

2: Copyrights ©

The Copyright Act of 1994 protects literary, artistic works, and performance rights by making it unlawful to reproduce or publish such works without the owner's permission.

A. Works Subject to Copyright

The Copyright Act protects works in the categories of literary work, including computer programs; dramatic, artistic and musical work; audiovisual material, cinematic film, recorded material; disseminated pictures or disseminated sound; or any other works in the fields of literature, science or fine arts.

The Copyright Act protects computer software against reproduction or adaptation, publicity and rental of such software. Algorithms are not, however, protected.

The “copyright” as defined by the Act means “the exclusive right to take any action concerning the work created or made by the creator”. The Act also defines the word “creator” as meaning the person who does the work or creates the work, as defined by the Copyright Act.

A copyright belongs to the creator of a work, subject to the following conditions:

- In the case of unpublished work, the creator must be of Thai nationality or reside in Thailand or be a national of or reside in a country which is a member of the Convention on the Protection of Copyright, of which Thailand is a member, provided that the residence at all times or most of the time is spent on the creation of the work
- In the case of published work, the first publication must be made in Thailand or in a country that is a member of the Convention on the Protection of Copyright. In the case where the first publication was made outside Thailand or in a country which is not a member of the Convention, the work created must have been published in Thailand or in a country which is a member of the Convention within 30 days from the first publication, or the creator must have the qualification as prescribed above at the time of the first publication.

In cases where the creator is required to be a person of Thai nationality, and the creator is a juristic person, such juristic person must be established under the Civil and Commercial Code of Thailand.

B. Copyright Infringement ©

The Copyright Act includes a comprehensive list of the types of infringement covered by law:

- Infringement by reproduction. The Act defines the word “reproduction” as follows: “Reproduction includes copying by whatever means, imitating, duplicating, making printing blocks for, recording the sound of, taking pictures of, or recording the sound and taking pictures in substantial parts of the originals, from copies or from the publication, regardless of whether made in whole or in part.”
- Infringement by adaptation. Adaptation, as defined by the Act, means a reproduction by conversion. Modification or emulation of the original work for the substantial part without a character of creating a new work whether wholly or partly.
 - With regard to literary work, it shall include a translation, a transformation or a collection by means of selection and arrangement
 - With regard to a computer program, it shall include a reproduction by means of transformation, modification of the program for the substantial part without the appearance of creating a new work
 - With regard to dramatic work it shall include the transformation of a non-dramatic work into a dramatic work or dramatic work to a non-dramatic work, whether in the original language or in another language
 - With regard to artistic work, it shall include the transformation of a two-dimensional work or a three-dimensional work into a three-dimensional work or a two-dimensional work respectively, or the making of a model from the original work

- With regard to musical work, it shall include an arrangement of tunes or an alteration of lyrics and rhythm
- Infringement by publicizing without permission - It is an infringement of copyright to publicize a work without the consent of the copyright owner. “Publicize” means “present to the public by showing, lecturing, praying, playing, presenting with by sound and/or picture, constructing, distributing, selling, or by other means, the works done or created.” The word “public” refers to the person or persons who are present, and not to the place where the performance occurs. A performance will not be regarded as being carried on in public if it is restricted to family and friends of the performer or whoever is responsible for the performance
- Infringement by producing audiovisual material, cinematic film, recorded material or dissemination of sound or picture or by rebroadcasting of sounds and visual images, wholly or in part, or arranging for dissemination of sound or picture in public with commercial purposes

C. Exceptions

Under the Act, any act that might ordinarily be deemed copyright infringement may not be so deemed if done for the following purposes:

- Research or education, without any commercial purposes
- For one’s own benefit or for the benefit of a member of one’s own family, or close relatives
- Comment, criticism or recommendation of the work, with recognition of the copyright ownership of such work
- Presenting news or otherwise reporting through the mass media, with recognition of the copyright ownership of the work
- Reproduction, adaptation, performance or presentation for a court hearing or consideration by competent and authorized officers or for the purpose of reporting on the outcome of such hearing or consideration
- Copying, duplicating, or adapting parts of the work, or making extracts or

summaries, by teachers or by educational institutions for the purpose of distributing or selling to students in school classes or in educational institutions, provided that such activities are not for commercial purposes; and

- Using the work as parts of questions and answers in examinations.

In addition, citing, copying or imitating certain parts of the copyrighted works under the Act, with recognition of the copyright ownership of the work, shall not be deemed to be copyright infringement.

The Act also entitles librarians to reproduce works copyrighted under the Act, provided that complete reproduction is not done for commercial purposes.

D. Works Not Subject to Copyright under the Copyright Act

The Act specifically provides that the following are not deemed eligible for copyright protection:

- Daily news and facts that are, by nature, merely news items
- The Constitution and laws
- Announcements, orders and regulations of ministries, bureaus, departments or any other agency of the state or local jurisdiction
- Court judgments, orders, rulings and official reports
- Translations and collections of those items specified as above which are prepared by government agencies or local administrations.

E. International Copyrights ©

The Copyright Act of 1994 protects copyright works of a creator and the rights of a performer of a country party to conventions on copyright protection or conventions on performance rights protection to which Thailand is a party, or for works copyrighted under international organizations of which Thailand is a member.

F. Licensing and Assignment of Copyrights

The 1994 Act provides that a copyright owner is entitled to grant licenses to another

person to use or exercise rights with respect to his copyrighted work. The Act requires that an assignment of copyright by means other than inheritance must be made in writing and signed by the copyright owner and the assignee. In the event the assignment is made without specifying the assignment period, the assignment shall be valid for 10 years. In the event of an assignment of a copyright, the creator of the copyrighted work retains the right to forbid the assignee to distort, delete from, adapt, or act otherwise in any manner against the work if such act would cause damage or injury to the reputation or prestige of the creator.

G. Copyright Protection Period

A copyright in literature, drama, artistry or music is valid throughout the lifetime of the creator, and for an additional 50 years thereafter. In the event the creator is a juristic person, the copyright will be valid for a period of 50 years following the creation of the work. The copyright for applied artistic work is valid for a period of 25 years following the creation of the work.

H. Penal Provisions

Persons who commit copyright infringement by means of reproduction without permission from the copyright owner may be fined 20,000 to 200,000 baht. If the copyright infringement was committed for business purposes, the offender may face punishment of imprisonment for a term from six months to four years, or a fine from 100,000 to 400,000 baht, or both.

3: Trademarks TM

The Trademark Act of Thailand of 1991 governs registration of and provides protection for trademarks. The Act defines a trademark as a symbol used in connection with goods for the purpose of indicating that they are the goods of the owner of the trademark. The trademark must be “distinctive” and not identical or similar to those registered by others, and must not be prohibited by section 8 of the Trademark Act of 1991.

A. Registration Procedure

A trademark application must be completed by the proprietor or his agent, in Thai, and filed with the Trademark Office on official forms. The proprietor or his agent must have a place of business or address in Thailand at which he can be contacted by the Trademark Office.

If the Trademark Office deems the trademark registrable, and provided that no opposition to the trademark arises within 90 days of its publication in the official journal, the Trademark Registrar will grant a trademark registration.

B. Trademark Registration Period

Trademark registration is effective for a period of 10 years. Owners of trademarks must file an application for renewal at least 90 days prior to the expiration of their current trademark registration. A renewed trademark will be effective for an additional 10 years.

A trademark may be registered even if it is not being actively used. However, failure to utilize the trademark entitles third parties to challenge the rights of the trademark owner.

C. Penal Provisions for Trademark Infringement

The owner of a registered trademark has the exclusive right to use the trademark, and may initiate legal action against violators. It is a criminal offense to represent a trademark as registered when it has not been legally registered, or to sell, possess for sale, or bring into the Kingdom objects under such a pretense. This offense is punishable by imprisonment of up to one year or a fine of up to 20,000 baht, or both. Presenting false evidence while registering a trademark is liable to a term of imprisonment not exceeding six months or a fine not exceeding 10,000 baht, or both.

Anyone who forges another person's trademark, registered in the Kingdom, or who sells, possesses for sale, or brings into the Kingdom objects with a forged trademark, shall be punishable by imprisonment not exceeding four years or a fine not exceeding 400,000 baht, or both.

Anyone who imitates another person's registered trademark in order to mislead the public into believing the imitation mark is that of the registered owner, or who sells, possesses for sale, or brings into the Kingdom objects with an imitated trademark, will be punishable by imprisonment not exceeding two years or a fine not exceeding 200,000 baht, or both. Whoever repeats these offenses within a five-year period is liable to double punishment.

D. The Board of Trademark Committee

In 1991, the Board of Trademarks was established to have the power and duties specified hereunder:

- To decide an appeal, order, or decisions of the Registrar under Trademark Act
- To order a withdrawal of the registration of a Trademark, service mark or certification mark
- To give advice to the Minister in the issuance of the Ministerial Regulations on Notifications
- To consider other matters assigned by the Minister.

E. Service Marks, Certification Marks and Collective Marks

As of February 1992, these variations on trademarks are covered under all the provisions the Act and, hence, receive the same protection as trademarks under the law. In the case of service marks, all the words "goods" mentioned in the Act's provisions shall mean "services".

Certification Marks.

Applicants for certification marks must forward a copy of the regulations concerning the use of the certification mark together with the application for registration and demonstrate that they are well qualified to certify the merits of the goods or services.

The owner of a registered certification mark shall not use it for his own goods or services and shall not license any third person to grant certifications to use the mark, although they may license a third person to use the certification mark themselves. If they violate this rule, they are subject to a fine not exceeding 20,000 baht.

The regulations concerning the use of the certification marks must:

- Specify the origin, composition, manufacturing process, quality and other characteristics of the goods and services to be certified
- Include the rules, procedures and conditions in the granting of a license to use the certification mark.

Chapter 5 Legal Issues for Foreign Investors

1: Alien Business Law

Note: The Ministry of Commerce has proposed a Foreign Investment Law (FIL) that has been approved by the Cabinet and that is currently in the parliamentary process. When approved, it will replace the Alien Business Law.

A. Introduction

Aliens in Thailand derive their legal rights primarily from the domestic laws of Thailand. In general, aliens enjoy the same basic rights as Thai nationals.

Restrictions on alien ownership in commercial banks, insurance companies, commercial fishing, aviation business, commercial transportation, commodity export, mining and other enterprises exist under various laws. In addition, Thai participation will frequently be required in those activities seeking promotion from the BOI.

B. The Alien Business Law

The Alien Business Law of 1972 primarily serves to define and narrow the scope of foreign participation in Thai business activities.

- An “alien” is defined as a natural or juristic person without Thai nationality and includes:
- A juristic person with at least one-half of shares in its registered capital being held by aliens or juristic persons in which the capital contribution by aliens is valued at least one-half of its total capital
- A juristic person with more than half of the number of its shareholders, partners or members being aliens, regardless of the amount of capital invested by aliens
- A limited partnership, or a registered ordinary partnership of which the managing partner is an alien

C. Businesses Subject to Regulation

Businesses that initiate activities that fall under categories A, B and C (listed below) of the Alien Business Law are subject to the limitations imposed by law. Activities

outside of the apparent scope of the Alien Business Law include many manufacturing industries, leasing and lending activities. Some of these businesses may be subject to restrictions under other Thai laws, regulations and practices.

Businesses in Categories A and B are closed to aliens. Alien enterprises granted promotional privileges by the Board of Investment are permitted to engage in a Category B business.

While businesses in Category C remain open, Thai authorities grant permits to foreigners for work in these categories only when they are convinced that such new businesses could not be competently conducted by an organization in which the majority ownership is Thai.

Category A – Closed to Aliens

- Agricultural Businesses
 - Rice farming
 - Salt farming, including manufacture but excluding rock salt mining
- Commercial Businesses
 - Internal trade in local agricultural products
 - Land trade
- Service Businesses
 - Accounting
 - Law
 - Architecture
 - Advertising
- Brokerage or agency
 - Auctioneering
 - Barber hairdressing, and beautification
- Other Businesses
 - Building construction

Category B – Closed to Aliens unless promoted by the Board of Investment

- Agricultural Businesses
 - Cultivation
 - Orchard farming
 - Animal husbandry,

- including silk worm raising
 - Timbering
 - Fishing
 - Industrial and Handicraft Businesses
 - Rice mill
 - Manufacture of flour from rice field crops
 - Manufacture of sugar
 - Manufacture of beverage, with and without
 - Alcoholic blending
 - Manufacture of ice
 - Manufacture of drugs
 - Cold storage
 - Wood processing
 - Manufacture of product from gold, silver, niello, or bronze
 - Manufacture of casting of images of Buddha and manufacture of alms bowls
 - Manufacture of wood carvings
 - Manufacture of lacquerware
 - Manufacture of all types of matches
 - Manufacture of lime, cement, or cement by-products
 - Stone blasting or crushing
 - Manufacture of plywood, wood veneer, chip-board or
 - Hard-board
 - Manufacture of garment or shoes except for export
 - Printing press
 - Newspaper
 - publication
 - Silk combing, silk weaving or printing of pattern or
 - Silk material
 - Manufacture of products from silk, silk treads or silk cocoon.
 - Commercial Businesses
 - Retailing of all products except those specified in Category C (Below)
 - Sale of mining products except those specified in Category C
 - Sale of all types of food and beverage except those specified in Category C
 - Sale of antiques, period antiques or works of art.
 - Service Businesses
 - Tour agencies
 - Hotel business except hotel management
 - Business under the law on service-providing establishments
 - Photography, photographic developing and printing
 - Laundry
 - Tailoring and dressmaking
 - Other Businesses
 - Internal transport by land, water, or air.
- Category C – Open to Aliens**
- Business in Commerce
 - Wholesales of all types

- of products within the country except those specified in Category A (Above)
 - Export of all types of products
 - Retailing machinery, equipment and tools
 - Sale of food and beverage for the promotion of tourism
- Business in Industry and Handicrafts
 - Manufacture of animal feeds
 - Extraction of vegetable oil
 - Manufacture of embroidering and knitting products including weaving, dyeing, and pattern printing
 - Manufacture of glass containers including light bulbs
 - Manufacture of crockery
 - Manufacture of writing and printing paper
 - Rock salt mining
 - Mining
- Business in Services
 - Except for those specified in Category A and Category B
- Other
 - Other constructions except those specified in Category A

Many American-owned enterprises have invoked the provisions of the Treaty of Amity and Economic Relations between Thailand and the United States to claim exemption from the Law. The treaty

requires national treatment be granted to persons of each country by the other country. To receive protection, Americans must register under the Treaty. Although on paper the Treaty appears self-executing, the Thai Government will not recognize the American applicant until such applicant proves its American nationality.

D. Permits

An alien desiring to engage in any business specified in Category C as listed above must submit an application to the Department of Commercial Registration and must receive a permit – an Alien Business License – prior to beginning business activities. Permits will be valid for a fixed period and will be subject to conditions therein stated.

Ministerial Regulations under Section 8 of the Law and recent announcements of the Department established the following standard conditions for companies applying for Alien Business permits:

- The total debt financing used in the business shall not exceed seven times the capital owned by the shareholders, partners and proprietors of the business
- Money remitted from abroad shall not be less than the amount declared as capital investment to be made in Thailand
- The number of Thai and alien directors shall be in proportion to capital held
- At least one person responsible for operating the business must have his domicile in the Kingdom
- Upon expiration of the permit, the portion of the capital of the shareholders, partners or business proprietors owned by Thai nationals shall not be less than that owned by aliens.

2: Work Permits

The Alien Occupation Law, adopted in 1973, requires all aliens working in Thailand to obtain a Work Permit prior to starting work in the Kingdom. An updated version of the Act, adopted in 1978, describes the procedures for issuance and maintenance of Work Permits and lists certain occupations from which aliens may be excluded.

A. Exemptions

The Act grants exemptions from the Work Permit requirement to persons occupying the following professions:

- Members of the diplomatic corps
- Members of consular missions
- Representatives of member countries and officials of the United Nations and its specialized agencies
- Personal servants coming from abroad to work exclusively for persons listed under the above items
- Persons who perform duties on missions in the Kingdom under an agreement between the government of Thailand and a foreign government or international organization
- Persons who enter the Kingdom for the performance of any duty or mission for the benefit of education, culture, arts, or sports
- Persons who are specially permitted by the Government of Thailand to enter and perform any duty or mission in the Kingdom.

B. Special Cases

While most aliens must apply for a Work Permit, and may not begin work until the Permit is issued, the Alien Employment Act does provide special treatment in the following circumstances:

- *Urgent and Essential Work:*
Exemption from Work Permit requirements is granted to aliens who enter the Kingdom temporarily, but in accordance with the immigration law, to perform any work of any “urgent and essential nature” for a period not exceeding 15 days. However, such aliens may engage in work only after a written notification on a prescribed form, signed by the alien and endorsed by his employer, has been submitted to and accepted by the Director-General or his designee.

Aliens entitled to this treatment may enter Thailand with any kind of visa, including a transit visa. The term “urgent and essential work” is not explicitly defined and consequently, the issuance of this sort of exemption is a matter of administrative discretion.

- *Investment Promotion*

An alien seeking permission to work in the Kingdom under the Investment Promotion Law must submit his application for a Work Permit within 30 days of notification by the Board of Investment that his position has been approved. An alien in this category may engage in authorized work while the application is being processed.

C. Procedures

The Act requires that any alien working in Thailand must obtain a Work Permit before beginning work. Section 8 of the Act stipulates that while a prospective employer may file an application on the alien’s behalf in advance of his commencing work, the actual Work Permit will not be issued until the alien has entered Thailand in accordance with the immigration laws and has presented himself to receive his Work Permit.

The Permit initially will be valid only for the period of the alien’s Non-Immigrant visa permits him to remain in Thailand under the Immigration law. The Work Permit will be subject to renewal in accordance with the renewed or extended visa. For aliens who are holders of a Thai Certificate of Residence, the Work Permit can be renewed annually. The Labor Department, subject to subsequent renewal, will in principle grant an initial duration of one year for the Work Permit. A Work Permit must be renewed before its expiry date or it will automatically lapse.

Applicants for Work Permits may not enter the Kingdom as tourists or transients.

D. Required Documentation

The following documents must be attached to a Work Permit application:

- For non-permanent residents: A valid passport containing a Non-Immigrant visa (except for WP 3 applications)
- For permanent residents: A valid passport, residence permit and alien book (except for WP 3 applications)
- Evidence of applicant’s educational qualifications and letter(s) of recommendation from the former employer, describing in detail the applicant’s past position, duties,

performance, and place and length of employment. If the documents are in a language other than English, a Thai translation certified as correct by a Thai Embassy (if abroad) or Ministry of Foreign Affairs (if in Thailand) must be attached

- A recent medical certificate from a first-class licensed physician in Thailand stating that the applicant is not of unsound mind and not suffering from leprosy, acute tuberculosis, elephantiasis, narcotic addiction or habitual alcoholism (except for WP 7 applications).
- Three 5x6 cm. full-faced, bareheaded, black and white or color photographs, taken no more than six months prior to the filing of the application
- If the application is to be filed by another person, a valid power of attorney in the prescribed form must be attached with a 10 baht duty stamp
- On the application form, the “job description” entry must be completed with a detailed statement as to what job is expected to be performed, how it is related to other people, and what materials will be used in the work (additional paper to be used if necessary)
- If the job applied for is subject to a license under a particular law, in addition to the Alien Occupation Law, a photocopy of such license, (e.g. teacher’s license, physician’s license, press card from the Public Relations Department, certificate of missionary status from the Office of Religious Affairs, etc.) shall be attached
- If the applicant is married to a Thai national, the original and photocopies of the following must be presented:
 - Marriage certificate, spouse’s identity card, birth certificates of children, household registration, as well as a photocopy of every page of the applicant's passport
- If the job being applied for is not in Bangkok, the application should be filed at the relevant province’s Department of Employment, or in the absence of such an office, at the province’s city hall

- Additional evidence as requested. It may be necessary to translate any or all documents into Thai.

E. Permitted Activities

Thai law prohibits employers from allowing aliens to perform any function other than that described in the alien's Work Permit. Employers must report changes in employment, transfers and termination of all aliens in their organization within 15 days of any such action. In cases of dismissal, aliens must return their Work Permit to labor authorities in Bangkok at the Alien Occupation division or, if they are in a provincial area, to the province’s Department of Employment. Failure to do so will result in a fine of up to 1,000 baht.

Any alien who engages in work without a Work Permit, or in violation of the conditions of his work as stipulated in his Permit, may be punished by a term of imprisonment not exceeding three months or a fine of up to 5,000 baht, or both. Aliens engaged in work prohibited to them by Royal Decree (see below) shall be liable to imprisonment for a term not exceeding five years or to a fine ranging from 2,000 to 100,000 baht, or both.

An employer who permits an alien to work in his organization without a Work Permit or to act in violation of the nature of the work specified in the Permit may be punished with imprisonment not exceeding three years or fined up to 60,000 baht or both.

Permit holders must obtain prior permission to change their occupation and/or place of work. Change of employer location or the residential address of the permit holder must be properly endorsed in the Work Permit by the labor authorities. The Alien Employment Act does not prevent an alien from engaging in work in more than one field or for more than one employer.

F. Restricted Occupations

A Royal Decree in 1973 listed 39 occupations and professions that were then prohibited to aliens. This list has been amended on several occasions by

subsequent Royal Decrees, the latest one in 1979.

- Labor
- Work in agriculture, animal breeding, forestry, fishery or general farm supervision
- Masonry, carpentry, or other construction work
- Wood carving
- Driving motor vehicles or non-motorized carriers, except for piloting international aircraft
- Shop attendant
- Auctioneering
- Supervising, auditing or giving services in accounting, except occasional international auditing
- Gem cutting and polishing
- Hair cutting, hair dressing and beautician work
- Hand weaving
- Mat weaving or making of wares from reed, rattan, kenaf, straw or bamboo pulp
- Manufacture of manual fibrous paper
- Manufacture of lacquerware
- Thai musical instrument production
- Manufacture of nielloware
- Goldsmith, silversmith and other precious metal work
- Manufacture of bronzeware
- Thai doll making
- Manufacture of mattresses and padded blankets
- Alms bowl making
- Manual silk product making
- Buddha image making
- Manufacture of knives
- Paper and cloth umbrella fabrication
- Shoemaking
- Hat making
- Brokerage or agency work, except in international business
- Dressmaking
- Pottery or ceramics
- Manual cigarette rolling
- Legal or litigation service
- Clerical or secretarial work
- Manual silk reeling and weaving
- Thai character type-setting
- Hawking business

- Tourist guide or tour organizing agency
- Architectural work
- Civil engineering work

3: Visas and Immigration Law

All persons, other than those in transit and citizens of certain countries, are required to obtain a visa in order to enter Thailand. Foreign nationals who intend to remain in Thailand to work or conduct business must comply with visa requirements in addition to obtaining a work permit.

A. Visa Categories

The Immigration Act of 1979 as amended in 1980 establishes the following visa categories:

- Tourist
- Visitor transit
- Immigrant
- Non-quota immigrant
- Non-immigrant

Nationals of most countries will, without applying for a visa from a Thai embassy or consulate in advance, be given a 30 day-visa, except for those who are eligible for 90 day-visas. Nationals of some countries who are entitled to the 30 day-visa may be requested by the immigration officials to produce an onward ticket to establish that they will leave the Kingdom within 30 days.

Tourist:

Tourist visas are initially valid for 60 days and are renewable at the discretion of the Immigration Department. Renewals are normally granted for periods of up to 30 days at a time.

Visitor Transit:

Aliens who have obtained a transit visa from a Thai embassy or consulate will be granted a 30-day stay in the Kingdom. Extensions of stay are normally granted for periods of 7-10 days.

Note: Transit, visitor transit and tourist visa holders are not authorized to work in Thailand.

Non-quota immigrant:

This category includes, inter alia, former residents who have lost their resident status but who have reapplied to resume their residency

and who have been able to demonstrate a convincing reason to support the granting of this type of visa.

Members of the diplomatic or consular corps, aliens coming to perform their duties in Thailand with the approval of the Thai government, aliens performing their duties in Thailand under an agreement between the Thai government and a foreign government, heads of international organizations or agencies operating in Thailand, and dependents of all the aforementioned persons, including private servants of members of the diplomatic corps, are exempted by the Act from the normal visa requirements.

B. Non-Immigrant Visa

Aliens seeking a prolonged stay, or those coming to work in Thailand, should obtain non-immigrant visas for all family members prior to entering the Kingdom. There are several categories of Non-Immigrant visas which include, among others, business visa category (B); dependent visa category (O); investment subject to the provision of the laws on investment promotion (BOI IB); diplomatic and consular visa category (D); performance of duties with the mass media (M); performance of skilled or expert work (EX); investment (with concurrence of ministries and departments concerned)- (capital investment IM); study or observation (ED).

Advantages of a Non-Immigrant visa include:

- Entitlement of the holder to apply for a multiple re-entry visa to Thailand from the Immigration Division in Bangkok
- Subject to the regulations of the Immigration Authorities, entitlement of the holder to apply for permanent residence in Thailand
- Eligibility for issuance of a Work Permit to the holder
- Eligibility for temporary visa renewal while processing issuance of a long-term annual visa.

Aliens are advised to strictly adhere to the rules governing each visa category. They

should report any changes of address or status to local police within 24 hours.

In addition, foreigners residing in Thailand for more than 90 consecutive days are required to register their address with the Immigration Bureau every 90 days. This requirement applies to all foreigners, including holders of work permits and long-term visas. Failure to do so can result in substantial penalties.

Transit, Visitor Transit, Tourist and Non-Immigrant Visas are issued only for the following purposes and duration:

- Diplomats or consular missions (duration as necessary)
- Official missions (duration as necessary)
- Tourism (90 days)
- Sports (30 days)
- Business purposes (one year)
- An investment which has received authorization from the appropriate government authorities (two years)
- Investment or other business in connection with investment under the Investment Promotion Act (as determined by the Board of Investment)
- Transit (30 days)
- The controller or crew of a conveyance entering a port or other locality in the Kingdom (30 days)
- Work as a skilled laborer or specialist (one year).

In response to feedback from investors, the Board of Investment coordinated the establishment of a One-Stop Service center for Visas and Work Permits, Through joint cooperation with the Immigration Bureau and the Ministry of labor, the center can process applications or renewals of visas and work permits within three hours, upon receipt of proper and complete documentation.

In addition, the center handles other transactions, including the issuance of multiple reentry stamps, changes in class of visa (to non-immigrant from tourist or transit), and payment of fines.

The One-Stop Service Center is located at 207 Rachadapisek Road, 3rd Floor, Bangkok, and they may be reached by phone at (66) (2) 693-9333-9.

Work permits, which are valid for the period of the visa, have to be renewed every year. When an individual applies for a renewal of visa, he or she has to show that taxes for the previous year have been paid.

Foreigners may also apply for permanent residence permits for Thailand under certain conditions, such as investment in a business, or a condominium. Application can either be made to the Board of Investment or the Immigration Department.

4: International Banking Facilities

A. Bangkok International Banking Facility

On September 16, 1992 the Ministry of Finance and the Bank of Thailand established rules and conditions for commercial banks to establish international banking facilities in Thailand. The annual fee for participants is 500,000 baht.

A commercial bank that receives a license will be able to undertake international banking facilities (IBF) business for:

- **Offshore Lending**
 - Accepting deposits or borrowing from abroad in foreign currencies from foreign natural or juristic persons who have no establishment in or business with Thailand. An exception is made for receiving money from foreign banks that have a branch or representative office in Thailand, from foreign branches of Thai commercial banks, and from the Ministry of Finance, the Bank of Thailand, or the Exchange Equalization Funds. These foreign currencies may be lent abroad, to other IBF businesses, and to the Ministry of Finance, the Bank of Thailand and the Exchange Equalization Funds.
 - Acceptance of deposits or borrowing of offshore baht funds from offshore banks, foreign

branches of Thai commercial banks and other IBF. These funds may be lent to foreign banks, foreign branches of Thai commercial banks, or other IBF businesses.

- **Local Lending**
 - Acceptance of deposits, or borrowing from abroad in foreign currencies from foreign natural or juristic persons who have no establishment in or business with Thailand, foreign branches of Thai commercial banks, and other IBFs to lend foreign currencies in Thailand. However, each withdrawal and disbursement must be of an amount not less than US\$2,000,000 except in one of the following two cases, where the minimum disbursement is US\$500,000:
 - An exporter who has income from export in excess of 50 percent of all income during the last accounting period
 - An exporter who has goods and services that are sold to an exporter who meets the above-specified condition
- **Other Related Business**
 - Cross-currency transactions with overseas customers, other IBF businesses, the Bank of Thailand, the Ministry of Finance, the Foreign Equalization Funds, banks licensed under the foreign exchange control laws, or local customers to whom such IBF businesses have lent foreign currencies
 - Giving acceptance or guarantee against any debts in foreign currencies when either:
 - The bank is licensed under the foreign exchange control laws; or
 - The parties involved reside outside of Thailand.
 - All matters dealing with letters of credit in cases where the buyer and the seller of goods involved with the letter of credit purchasing agreement both reside abroad and the goods involved in the agreement have not been either

exported out of or imported into Thailand.

- Procuring, or managing the loan syndication procurement of, foreign

currency loans from foreign sources to those requiring loans in foreign currencies.

Tax Privileges for participating in BIBF

	Corporate Tax (% of net income)	Business Tax (% of revenue)	Withholding Tax	Profit Remittance Tax	Stamp duties
BIBF					
Out-out	10%		10%*	10%	No
Out-in	10%		10%	10%	No
Other IBF	10%**		Not applicable	10%	No
Others	30%	3.3%	Not applicable	10%	No
		10% VAT			
Commercial	30%	3.3% or	10% or 15%	10%	Yes
Banks		10% VAT			

* Withholding tax paid on interest paid for O-I lent to State Enterprises is exempt

** Tax on fee of O-O loan syndicate exempted if:

- At least three BIBF's participate in the syndication
- Most of the operations are carried out in Thailand
- If there is only one arranger, a BIBF is the arranger, or there is more than one arranger, at least half the arrangers are BIBFs.

• Other Unrelated Business

Commercial banks licensed to undertake IBF businesses may also:

- Provide news, financial and general economic information
- Prepare or analyze investment projects
- Advise in the purchase, merger or amalgamation of businesses
- Give financial advice; and
- Arrange or underwrite debt instruments issued for sale abroad. If the debt instruments are issued from Thailand, this must be undertaken in conjunction with the IBF business of a commercial bank registered in Thailand.

However, these activities must be separated from the accounts of the IBF business – as if the commercial bank were a separate juristic person.

B. Conditions for Participating in BIBF

The Bank of Thailand stipulates that the IBF must be separate from other banking business – as if it were a separate juristic

person. In addition, the IBF business in offshore lending must be separate from the IBF business in local lending, and the IBF business in local lending cannot transfer or raise funds to the IBF for offshore accounts. Customers of IBF are required to provide their actual names, addresses, and information for correspondence, and the names on the accounts must be the actual names of customers.

For tax privileges granted for participating in BIBF, please see table overleaf.

5: Exchange Control

The Exchange Control Act, B.E. 2485 (A.D. 1942), as amended, governs all matters involving foreign exchange. As a general rule, all matters involving foreign currency are regulated by, and require the permission of, the Bank of Thailand. Since May 22, 1990, however, foreign exchange control has been considerably relaxed by the Bank of Thailand. At present, certain transactions in Thai baht or foreign currency can be performed virtually without restriction, and only a few require approval from the Bank of Thailand.

A. Importation of Funds

- *Non-residents*
Individuals in transit may normally bring foreign currency and negotiable instruments into Thailand without limit. They may also freely take out of the country all foreign currency they had brought in, without limit. Individuals in transit, however, may not take out Thai currency exceeding 50,000 baht per person, except for trips to countries bordering Thailand (Myanmar, Laos, Cambodia, Malaysia and Vietnam), where an amount of up to 500,000 baht is allowed. There is no restriction on the amount of Thai currency that may be brought into the country.
- *Residents:*
There are usually no restrictions on the amount of foreign currency or negotiable instruments that a resident may bring into Thailand. However, all such currency and instruments must be sold to, or deposited into, a foreign currency account with a commercial bank within seven days from the date of receipt or entry into the country
- *Investors*
There is no restriction on the import of foreign currency such as investment funds, offshore loans, etc. Such foreign currency, however, must be sold or exchanged into Thai baht, or deposited in a foreign currency account with an authorized bank, within seven days from the date of receipt or entry into the country. An application form F.T. 3 or F.T. 4 must be submitted to an authorized bank for each transaction involving the sale, exchange or deposit of such foreign currency in an amount exceeding US\$5,000 or its equivalent.

B. Repatriation of Funds

Repatriation of investment funds, dividends and profits as well as loan repayments and interest payments thereon, after settlements of all applicable taxes, may be made freely. Similarly, promissory notes and bills of

exchange may be sent abroad without restriction.

C. Foreign Exchange in Business Transactions

Foreign Currency Accounts of Thai Residents

- Thai individuals and juristic persons in Thailand are allowed to maintain foreign foreign currency accounts under the following conditions:
 1. The accounts are opened with authorized banks in Thailand and deposited with funds that originate from abroad or from foreign currency borrowing from the Bangkok International Banking Facilities.
 2. The depositor must submit evidence showing the obligations to pay in foreign currency to persons abroad, authorized banks, the Export and Import Bank of Thailand, or the Industrial Finance Corporation of Thailand within three months from the date of deposit. The depositor can deposit no more than the amount of the above obligations.
 3. The deposit of foreign currency notes and coins must not exceed US\$2,000 per day
 4. Debits to the accounts are permitted for payment of any external obligations upon submission of supporting evidence or for conversion into baht at authorized banks.
 5. The total daily outstanding balances in all accounts must not exceed US\$5,000,000 for a juristic person and US\$500,000 for an individual.
- *Foreign Currency Accounts for Non-Thai Residents*
- Non-residents can open and maintain foreign currency accounts with authorized banks in Thailand. The deposits must come from funds originating abroad. Balances on such accounts may be transferred without restriction.
- *Non-Resident Bank Account*

Non-residents may open an account with any authorized bank in Thailand. They may freely credit the account with:

1. Proceeds from the sale of foreign currency that originate from abroad or foreign currencies from non-residents' foreign currency accounts.
2. Amounts transferred from other non-resident baht accounts.
3. Obligations between residents and non-residents.

- *Imports*

Importers may freely purchase or draw foreign exchange from their own foreign currency accounts for import payments. Importers need not seek approval from the Bank of Thailand, but must submit form F.T. 2 to customs, together with the Bill of Lading when importing goods valued at more than 500,000 baht or its equivalent per transaction.

- *Exports*

Exports are free from any foreign exchange restrictions. However, proceeds of exports valued at more than 500,000 baht or its equivalent per transaction must be received within 120 days from the date of export and must be surrendered to an authorized bank or deposited in a foreign currency account with an authorized local bank within seven days from the date of receipt.

- *Transactions of Invisibles*

The remittance of amounts properly due to non-residents is permitted for items of a non-capital nature, such as service fees, interest, dividends, profits and royalties, provided supporting documents are presented to an authorized bank. Travelling expenses or educational expenses of residents are also freely permitted upon submission of supporting evidence. Proceeds from invisibles must be surrendered to an authorized bank or deposited in a foreign currency account with an authorized bank in Thailand within seven days of receipt.

- *Gold*

Residents may hold and trade domestically in gold jewelry, gold coins and gold bullion. The import and export of gold other than jewelry was in August 1999 freed from licensing controls previously imposed by the Ministry of Finance.

6: Stock Exchange of Thailand

The Stock Exchange of Thailand (SET) is Thailand's primary stock exchange in Thailand. It was established in 1974, and is supervised by a Board of Governors. The Board consists of 11 Governors, with five appointed by the Securities and Exchange Commission (SEC), five elected by the SET members companies, and a full time president, who is appointed by the Board and serves as an ex-officio Board member.

The SET considers applications from companies requesting listing on the Exchange, including ensuring applicants meet requirements as well as submit the correct documentation. It has also established information disclosure requirements for listed companies and monitors all trading activities involving listed securities. The Exchange's regulations strictly prohibit insider trading and price manipulation of listed securities.

Net Clearing and book entry settlement are services handled by the Thailand Securities Depository Co., Ltd. (TSD), a subsidiary of the SET.

The SET lists a wide range of equity and debt instruments. Listed securities include ordinary shares, preferred shares, bonds and debentures, warrants and covered warrants, and unit trusts.

A. SET Members

Currently, the SET has 50 broker seats. At present, there are 27 active members at the Exchange. Member companies must be securities companies permitted by the Ministry of Finance to conduct securities business in the category of securities brokerage.

B. SET Listed Companies

All listed companies are publicly limited firms. Becoming a listed company not only allows a firm to gain access to development capital, but also allows shareholders to benefit from investment liquidity and enjoy dividend income as a result of revenue or profit growth at the companies they invest in.

C. Foreign Shareholding Limits

The Thai Cabinet recently approved a new draft law that relaxes foreign ownership limits in certain industries. Its aim is to allow foreign investors to hold more majority stakes without limit in Thai companies, depending on certain criteria, that may apply to some sectors or industries.

Under earlier legal changes, the limits on the foreign ownership of securities companies have been relaxed, depending on a number of conditions. These included any new foreign owner investing at least 500 million baht in the securities company. Such amount of that money will include funds brought into the securities company within the period of one year prior to the date of applying for permission from the Ministry of Commerce. It must also be maintained for a minimum period of three years. Any foreign managing director must also reside in Thailand at least 60 days a year.

Guidelines for Equity Holding in Financial Institutions

The Ministry of Finance and the Bank of Thailand have recently announced measures to restore confidence in the financial sector by requiring commercial banks and finance companies currently in operation to increase their capital as a cushion against any potential loss from asset deterioration.

All financial institutions are encouraged to take early action so as to prevent any problem in the future. .

To facilitate and expedite financial institutions' capital increase, the Bank of Thailand, with the approval of the Minister of Finance, has set the following guidelines for the financial institution's capital increase:

1. Guidelines for foreign equity participation in Thai financial institutions

1.1 Foreign investors that have sound financial status and high potential to help increase the efficiency in the management of the financial institution shall be allowed to hold more than 49 percent of the share in the 15 commercial banks, 33 finance companies, and 12 credit foncier companies for a period of 10 years. After 10 years, foreign investors will not be forced to sell their shares but they may not purchase any additional shares, unless the amount of foreign shareholdings is less than 49 percent of total shares. Additional shares may be acquired to bring foreign shareholdings to 49 percent of total shares.

For the holding of shares of the 58 suspended finance companies, the Financial Sector Restructuring Agency (FRA) shall follow the guidelines of the Committee to Supervise the Merger and Acquisition of Financial Institutions announced on 13 October 1997. The guideline allows unlimited amount of shareholding by foreign shareholders up to a period of 10 years. After 10 years, foreign investors may not purchase any more shares unless the amount held is less than 49 percent of total shares in which case additional shares maybe acquired until the 49 percent mark is reached.

1.2 The guideline shall be the same for foreign investors that are banks. The foreign bank that already has a full branch or a Bangkok International Banking Facility will be allowed to continue their existing operation. However, the authorities reserve the right not to allow a foreign bank that has more than 49 percent stake in a Thai bank to have an additional full branch in Thailand.

D. The Securities and Exchange Commission

In March 1992, the Securities and Exchange Act established a Securities and Exchange Commission (SEC) in Thailand. The SEC plays a supervisory and policy formulation role in the Thai capital market. However, it

does not directly regulate the SET's operations, other than to give approval to the SET's major regulations not concerned with day-to-day operations.

E. Market for Alternative Investment (MAI)

In line with the Thai Government policy to support the development of small and medium-sized enterprises, in June 1999, the SET established a new secondary market for trading SME shares, or the Market for Alternative Investment.

Chapter 6 Labor Issues

1: Labor Regulations

Employment legislation has a direct bearing on labor practices for each type of business. Investors should seek appropriate advice to determine which legislation applies to their line of business.

A. Labor Protection

In August 1998, the Labor Protection Act (1998) went into effect. It applies to all businesses with at least one employee. Under the law, employers who disregard the law are subject to fines ranging from 5,000 baht to 200,000 baht and imprisonment of up to one year. It should be noted that domestic workers (household staff) are not included in the definition of "employee" and are not covered by the labor Act. All other employees, whether full or part time, seasonal, casual, occasional or contract, are covered.

Important protections contained in the new law are:

- **Work Hours and Holidays:** The maximum number of hours for non-hazardous work is eight hours a day or 48 hours a week in total. In some types of work as stipulated by law, the employer and the employee may agree to arrange the period of working hours, but it still must not exceed 48 hours a week. Hazardous work may not exceed seven hours a day, or 42 hours per week. Employees are entitled to no fewer than 13 national holidays a year, and a

minimum of six days of annual vacation after working consecutively for one full year. Employees have the choice of whether they wish to work overtime or on holidays. A female employee is entitled to maternity leave for a period of 90 days including holidays, but paid leave shall not exceed 45 days.

All employees are entitled to a daily rest period of at least one hour after working five consecutive hours. The employer and the employee may arrange the daily rest period to be shorter than one hour at each time, but it must not be less than one hour a day in total. A weekly holiday of at least one day a week at intervals of a six-day period must be arranged by the employer.

For work performed in excess of the maximum number or working hours fixed either by law or by specific agreement (if the latter is lower), employees must be paid overtime compensation. The rates for overtime vary and range from 1-1/2 times to three times the normal hourly wage rate for the actual overtime worked. The maximum number of overtime working hours is limited to not more than 36 hours a week.

- *The minimum age* for employment is 15 years, and workers below the age of 18 are banned from dangerous and hazardous jobs. They are also prohibited from working overtime, on holidays, or between the hours of 10 p.m. and six a.m. Pregnant employees are also prohibited from working overtime, on holidays, or between the hours of 10 p.m. and 6 a.m.
- *Sick Leave:* Employees can take as many days of sick leave as necessary, but if an employee takes three months of sick leave, the employer is required to pay only one month's wages
- *Severance Pay:* Employees who have worked more than 120 days, but less than one year, are entitled to 30 days severance pay. For personnel employed between one and three years, the severance pay is not less than 90 days pay. Employees with three to six years of service will receive six months salary, those with more than six to 10

years service will receive eight months salary, and employees with more than 10 years service will receive 10 months salary.

- *Termination of employment:* Conditions for termination of employment are also laid out in the Act, and a code governs unfair practices and unfair dismissals, which often are the result of the failure to companies with at least 10 employees that do not follow correct legal procedures. Employee Associations and Labor Unions must be registered at the Labor Department, and require a license for operation. Finally, a Labor Court specifically settles employment disputes. If an employment contract does not specify any duration, either party can terminate the contract by giving notice at or before any time of payment, to have effect in the next pay period.
- *Employee Welfare Fund:* For have a provident fund, an Employee Welfare Fund will be established to compensate employees who resign, are laid off, or die in service. Employers and employees will be required to contribute to this fund.

Note: Implementation of this fund will be delayed until the economy improves.

In addition to these provisions, there are restrictions on the kind of work women and children can perform. Guidelines are set for wages and overtime, as well as resolution of labor-management disputes. Employers are required to pay workers compensation if an employee suffers injury, sickness or death in the course of work.

Thai law also requires employers to provide welfare facilities, including medical and sanitary facilities.

Workmen's compensation

The Compensation Act prescribes that an employer must provide the necessary compensation benefits for employees who suffer injury or illness or who die as a result or in the performance of their work at the rates prescribed by law.

The compensation benefits can be grouped into four categories: The compensation

amount, the medical expenses, work rehabilitation expenses, and funeral expenses.

The payment of compensation benefits is made in accordance with the criteria and rates prescribed by law depending on the seriousness of the case. In general, the compensation amount must be paid monthly at the rate of 60 percent of the monthly wages of the employee but not lower than 2,000 baht and not exceeding 9,000 baht a month.

Actual and necessary medical expenses must be paid but not exceeding 35,000 baht for normal cases and 50,000 baht for serious injury.

The work rehabilitation expenses must be paid as necessary according to the criteria procedures and rates prescribed by law but not exceeding 20,000 baht.

In the case of death, funeral expenses will be paid at a maximum amount equal to 100 times of the minimum daily wage rate prescribed by law.

Minimum wages

These regulations apply to all businesses and rates depend largely on the location of the workplace. The minimum wage per day effective January 1, 1998 are:

162 baht for Bangkok, Nakhon Pathom, Nanta Buri, Pathum Thani, Phuket, Samut Prakan and Samut Sakhon.

140 baht for Chonburi, Chiang Mai, Nakhon Ratchasima, Phangnga and Ranong

130 baht for all other areas.

Social security

The Social Security Act requires that all employers with 10 or more employees to withhold social security contributions from the monthly wages of each employee. The prescribed rates to the monthly wages are:

From Jan. 1, 1999 to Dec. 31, 1999:
two percent

From Jan. 1, 2000 to Dec 31, 2000:
three percent

From Jan 1, 2001 onwards: 4.5 percent.

The maximum monthly wage base on which the rates are applied must not exceed 15,000 baht. The employer is required to match the contribution from the employee. Both contributions must be remitted to the Social Security Office within the 15th day of the following month.

Employees with social security registration may file claims for compensation in case of injury or illness, disability or death which is not due to the performance of their work, and for cases of child delivery, child welfare, old age pension and unemployment.

B. Legal Implications of Labor Management

In general, Thai labor laws provide for considerable freedom in managing labor. In many countries, it is not legal to discriminate on the basis of age or sex. Perusal of personnel ads in Thai newspapers finds employers narrowly defining their needs: "The successful candidate will be male, under 35 years of age, not a member of a labor union, and at least 150 cm in height, etc."

Further, the government doesn't interfere with a company's retrenchment policies when economic conditions necessitate cutbacks. There is no "first in, last out" requirement in Thailand.

Similarly, Thai employers have the right to transfer employees to other work locations, provided the transfer is not ordered with the exclusive intent to create hardship on them. Refusal to transfer is legal cause for dismissal.

Employee records

An employer with 10 or more regular employees is required to establish written rules and regulations in Thai language governing work performance. The regulations must be display on the work premises within 15 days of the date from which the number of employees reached 10 or more.

An employer with 10 or more regular employees is also required to maintain an employee register in Thai language with

documents pertaining to the payment of wages, overtime, holiday work etc.

C. Tips on Recruiting and Developing Staff

The ability of a company to attract and retain staff is considerably enhanced by tailoring compensation packages to meet individual employee needs. Increasingly, factors such as work environment, organizational policies, relationships with superiors, and career path influence decisions whether to join, or remain with, a company. In a challenging living environment such as Bangkok, these "quality of life" issues take on even more importance.

Organizing training programs to upgrade skills helps to motivate staff and demonstrates a company's commitment to its employees. Admission to such programs can be seen both as a reward for good performance and as part of the total compensation package.

D. Recruiting Technically-skilled Manpower

There are two main English language daily newspapers which contain significant numbers of advertisements, both in English and in Thai. Both the *Bangkok Post* and *The Nation* boast circulation figures of close to 60,000 copies per day, and advertising rates of the two newspapers are similar. In addition to these mass-market dailies, there is an English-language daily, *Business Day*, which claims a daily circulation of approximately 10,000. In addition to reaching prospective employees through the print editions of these newspapers, it should be noted that the newspapers have classified advertisements on-line through their Home Pages.

In addition, the Department of Employment, Ministry of Labor and Social Welfare, has a web site listing both job fairs and employment opportunities. It can be found at:

www.doe.go.th/eng/index/html

Several domestic and international personnel recruitment services operate in Bangkok. In addition to securing personnel,

these companies offer services such as advice on issues of organizational structure, labor relations, and the cultural implications of managing labor in Thailand.

Developing contacts with educational institutes to identify and court potential candidates as early as possible is also recommended. For firms with ongoing manpower needs, establishing a network of contacts can be especially valuable.

In addition to tailoring compensation packages to individual need and emphasizing long-term and organizational benefits, high-end technical employees, such as scientists and engineers, need to be given work commensurate with their skills. By allowing them greater challenges, and less narrowly defining their role so that it may include responsibilities in systems design and possibly management, technical personnel become more productive and are more likely to view themselves as integral to the company as a whole.

Concrete, long-term benefits are an effective retention tool. Long-term benefits motivate personnel to work through problems and to identify self-interest with company interest. Committing resources to long-term benefits also insures that companies realize increased production levels from staff as they gain experience.