

Section 5

Starting a business in Thailand

Section profile

This section deals primarily with legal and management issues involved with establishing a business entity in Thailand. Details are provided on tax policy, trade and investment incentives, labour laws and immigration policy, industrial licensing, and intellectual property rights.

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5.1 Types of business organisations

Sole proprietorships

A sole proprietorship is a business owned by one person with unlimited liability. A proprietor's business and personal assets are subject to attachment and other forms of legal action. Foreigners, unless covered under the United States-Thailand Treaty on Amity and Economic Co-operation, are not permitted to operate sole proprietorships.

Partnerships

Thailand acknowledges three general types of partnerships. The main difference between them is the degree of liability of the partners under each type of organisation. Partnerships are not promoted by the Board of Investment, and thus are rarely used by foreign investors in Thailand. The three types are:

- 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.

Limited companies

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

Private limited companies

In Thailand, they are similar to those of Western corporations, and are the most popular vehicle used to establish a permanent business in Thailand. Although there is no established minimum level of capitalisation, the private limited company's capital must be sufficient to accomplish its objectives. All of the shares must be subscribed to, and at least 25 percent of the subscribed shares must be paid up. It should also be noted that private limited companies are required to have capitalisation of two million baht, fully paid up, per each work permit the company desires

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 49 percent. Meetings of shareholders and directors must conform to the requirements set forth in the Civil and Commercial Code and/or the Articles of Association of the company.

Public limited companies

Such companies registered in Thailand may, subject to the 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 public limited company must:

- Have a minimum of 15 promoters for the formation and registration of the Memorandum of Association
- Have not less than half of the promoters domiciled in Thailand
- Have the promoters' subscribed shares, which will be paid up in money, equal to not less than 0.05 percent of the registered capital. These prescribed shares cannot be transferred within two years of the date of registration of the company, except with the consent of a general meeting of shareholders

- Have a statutory meeting within two months from the date when the shares have been fully subscribed, as specified in the prospectus, but not more than six months from the date of approval of the memorandum by the registrar
- Have a minimum of five directors, at least half of whom must be domiciled in Thailand
- Ensure that the directors are 20 years of age or older, and they must have clean legal records
- Have subscribers pay the full amount of each share
- Not stipulate any provisions which would prevent shareholders from becoming directors of the company
- Hold a meeting of the Board of Directors at least once every three months where a directors certificate must be obtained and the minutes must be recorded
- Have an auditor present at all times when the balance sheet is submitted for adoption by general meeting of the shareholders

A private limited company may be transformed into a public limited company by passing a special resolution of the shareholders as stipulated by the Civil and Commercial Code.

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

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 reservation is valid for 30 days. The corporate name can be reserved for an additional 30 days upon expiration of the initial period.

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 authorised capital, although partly paid, must all be subscribed by the initial shareholders. Thai law does not provide for treasury shares.

Although there are no minimum capital requirements, the size 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.

Convene a statutory meeting

Once the share structure has been defined, a statutory meeting is called. A minimum of 25 percent of the par value of each subscribed share must be paid.

Registration

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

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.

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.

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.

Annual accounts

A balance sheet must be prepared annually. 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.

Company registration

Limited partnership/ registered ordinary partnership

- Apply for permission to use the partnership name; request for research of records to ensure that the name intended for use does not coincide with any existing trade name.
- Enter relevant details, such as the name of partnership, addresses, ages, nationalities, investments and signatures of all partners, names of managing partners and their limitation of power (if any). The application form will be affixed with the partnership and handed in by the managing partner. Usually, the managing partner has to sign the application form in the presence of the Partnership & Company Registrar, but he may sign the form in the presence of an ordinary or extraordinary member of the Thai Bar Association. Alternatively, an attorney may be appointed to effect the registration on behalf of the partnership.
- The fee shall be based on the number of partners. For three partners, the fee is 1,000 baht. The fee for each additional partner is 200 baht.
- After registration, a certificate will be issued.

Limited companies

- Apply for permission to use company name; request for search of records to ensure that the name intended for use does not coincide with the name or any existing trade name.
- Make a memorandum of association. Enter in the application for the name of the company, address of the principal office, nature of business, capital to be registered, number of shares, par value, names, addresses, ages, occupation, number of shares subscribed by promoters (each of which is to subscribe at least one share), signatures of all promoters. An application for registration of memorandum of association (with a 200-baht stamp duty) shall be submitted by any promoter or his attorney. The fee for registration of memorandum of association shall be based on the capital, that is, for each

100,000 baht of capital, the fee shall be 50 baht. The minimum fee shall be 500 baht and the maximum 25,000 baht.

- After registration of the memorandum of association, company registration may be effected. The promoters must invite the share subscribers to attend a statutory meeting. The directors appointed by the statutory meeting shall collect the money from the share subscribers for the shares – the first collection shall be at least 25 percent. The director with the authorised signature shall apply for company registration within 30 days from the date of the statutory meeting. The registration fee shall be based on the capital, that is, for each 100,000 baht of capital, the fee shall be 500 baht. The minimum fee shall be 5,000 baht and the maximum 250,000 baht.
- Usually, the promoter or authorised director has to sign the application for registration of the memorandum of association and company registration in the presence of the registrar, but they may also sign such applications in the presence of ordinary or extraordinary members of the Thai Bar Association.

Public companies

The status of limited public company can be acquired by three different methods:

- Registration of newly established public limited company
 - Apply for permission for use of a company name; request for search of records to ensure that the Thai and foreign names intended for use do not coincide with any existing trade names.
 - Make a memorandum of association. Enter in the application for registration of the memorandum of association and the company names in Thai and in a foreign language. (The Thai name must begin with the word "Company" and end with the words "Limited (Public)." Foreign names must end with the words "Public Company Limited." The nature of business, capital to be registered, value of shares, numbers of ordinary shares and preferred shares, address of the principal office; names, dates of birth, nationalities and addresses of promoters, number of shares subscribed by each promoter (the value of shares subscribed by all promoters must be at least five percent of the registered capital) and signatures of all promoters. Application for registration of memorandum of association may be made by any promoter or his attorney. The registration fee shall be based on the registered capital. The fee shall be 1,000 baht for every one million baht of registered capital – the fraction of a million baht shall be rounded up to one million baht. The fee shall not exceed 25,000 baht.
 - After registration of the memorandum of association, registration of public limited company may be effected. All the shares may be subscribed by promoters. The public may also be invited to subscribe shares. Within two months from the date of complete subscription of shares, the promoters are to call for a statutory meeting. The directors appointed at the meeting shall collect full payments from subscribers. Within three months from the date of the statutory meeting, application for public limited company registration shall be made. The registration fee shall be based on the registered capital. The fee shall be 1,000 baht for every one million baht of registered capital – the fraction of a million baht shall be rounded up to one million baht. The fee shall not exceed 250,000 baht.
 - The promoter and authorised director shall sign the applications for registration of memorandum of association and registration of the company in the presence of the Limited Public Companies Registrar, attorney at law or auditor registered with the registrar.
- Turning limited company into public limited company

A limited company wishing to turn public must hold a shareholders' meeting to pass a special resolution in favour of turning public. Then, its memorandum of association and articles of association must be amended in line with the Public Company Limited Act of 1992. New directors and an auditor must be appointed. The articles of association of such public company limited must cover the issuance and transfer of shares, shareholders' meeting, appointment of directors, office term of directors, leaving office before the end of the office term, leaving office at the time of meeting, scope of the power of the directors, accounting, finance, audit, issuance of preferred shares and conversion of preferred shares to ordinary shares. Such articles of association must neither be in conflict with the memorandum of association nor the Public Company Limited Act of 1992. Application for registration of a public company limited must be made by a director within 14 days from the date of meeting resolution to that effect. The registration fee is 10,000 baht.

❑ Merger of limited company with public limited company

A limited company may be merged with a public limited company. The newly formed company shall have the status of a limited public company. The merger shall comply with the special resolution passed by the limited company pursuant to the Civil and Commercial Code and Public Company Limited Act of 1992. Then, such limited public company must hold a shareholders' meeting. A quorum is said to be formed when holders of shares with one quarter of voting rights attend such meeting. The fee for registration of the merger is 5,000 baht.

5.2 Joint ventures

A joint venture may be described as a group of persons (natural and/or juristic) entering into an agreement in order to carry on a business together.

Incorporated joint ventures

A Thai private limited company that is owned by two or more companies or groups of shareholders is often referred to as a joint venture (although there is no language governing incorporated joint ventures in Thailand's legal code). There are no specific restrictions on joint ventures, except that companies which are majority foreign-owned are treated as "foreign". Joint ventures which receive promotional incentives from the Board of Investment (BOI) can be exempted from restrictions that would be imposed on a "foreign" venture.

Unincorporated joint ventures

In a contracted project, which cannot be carried out by a single company, it is common for a company to join with others in the form of a joint venture. Although the joint venture may engage in business, it cannot be registered. The Revenue Department, however, treats a joint venture as a juristic company for purposes of tax liability. The joint venture must, therefore, apply for a taxpayer identification card. Moreover, Value Added Tax registration is required if a joint venture is qualified under the requirements of the Revenue Code.

This Code requires that at least one of the joint venture partners be a juristic entity, and the Revenue Department further stipulates that the joint venture must have two elements:

- A joint investment in the joint venture and a sharing of profit or loss under the joint venture agreement; and
- The partners have joint liability to third parties dealing with the joint venture. A foreign company which participates in an unincorporated joint venture is required to obtain an Alien Business Permit and create a branch office in Thailand to engage in business as a partner of the joint venture. Such foreign partners do not need to register for their own taxpayer identification card, because merely acting as a partner is not considered "doing

business.” However, the joint venture itself must register. The registration process for the permit of the foreign partner and the taxpayer identification card of the joint venture takes about 5-7 weeks to complete. The government fee, collected upon issuance of the business permit to the foreign partner, will be five baht per 1,000 baht of the registered capital of the foreign partner, with 10,000 baht as the maximum fee.

5.3 Joint venture partners

General guidelines

Joint ventures between Thai and foreign companies are increasingly common in manufacturing, marketing/distribution and services. As in other countries, joint venture partners are usually companies or individuals operating in the same or related manufacturing activities or markets, with similar business objectives and growth strategies. General guidelines for Thai joint venture partner selection by foreign partners are:

- Interest in a joint venture relationship with a foreign partner
- Compatible corporate vision/strategies
- Compatible management styles
- Financial strength and stability
- Compatible size
- Effective two-way communications
- Complementary products, markets and services.

Joint venture with family-owned groups

Most Thai companies started up as family-run enterprises, and several of Thailand’s largest business groups are still family-controlled. Thus, family members are logical prospects as joint venture partners.

Joint venture with the Crown Property Bureau

The Crown Property Bureau, a Thai government agency that manages Royal properties, takes equity positions in public and private companies as a passive investor. Association with the Crown Property Bureau confers legitimacy and prestige on a joint venture.

Joint venture with a commercial bank

Commercial banks are permitted under Thai law to invest up to 10 percent of their assets in companies. Most banks have investment arms, which can commit such investments. Banks are desirable JV partners because of their prestige, connections and capital resources.

Joint venture agreements

Joint venture collaboration is usually governed by legal agreements, which follow standard legal forms, used in other countries, e.g., Memoranda of Understanding, Confidentiality Agreements, Joint Venture Partner Agreements, etc. In addition to standard legal provisions in JV agreements, negotiating points, which usually require special attention, are:

- Ownership split
- Management control
- Specifics of contributions by each JV partner
- Protection of intellectual property rights
- Technology transfer and methods of transfer
- Dispute resolution
- Termination provisions

Identification of joint venture partners

Foreign firms can identify attractive collaborative partners from a number of sources, including:

- The Board of Investment
- Law firms
- Auditing and accounting firms
- Consulting firms
- Commercial banks
- Merchant banks
- Securities firms
- Federation of Thai Industries (FTI)
- Thai Chamber of Commerce (TCC)
- Foreign chambers of commerce
- Thai/foreign business councils
- Commercial offices of foreign embassies

BOI joint venture criteria

For investment projects in agriculture, animal husbandry, fisheries, mineral exploration and mining, or service sectors, Thai nationals must hold no less than 51 percent of the registered capital. However, for projects with investment of over one billion baht, foreigners may initially hold the majority or all of the shares, but Thai nationals must acquire at least 51 percent of the shares within five years of operation.

For manufacturing activities, majority or total foreign ownership of projects is permitted, and there is no foreign export requirement for any project. Existing projects that were subjected to export requirements as a result of previous joint venture criteria may request the removal of the export requirement from their investment promotion certificate.

Projects in Zones 1 and 2

For new projects, applications must be submitted to the Board of Investment no later than June 30, 2000.

For existing projects that have not yet started operations, majority or total foreign ownership is permitted if the consent of the existing Thai shareholders is obtained. Applications must be submitted to the Board of Investment no later than June 30, 2000.

For existing projects that have already begun operations, majority or total foreign ownership is permitted if the consent of the existing Thai shareholders is obtained.

Since the Seventh Development Plan period (1992-96), the foreign ownership requirement for projects in the following areas have been established by the responsible Ministries, and the BOI will not consider the foreign ownership issue:

- Development of transportation systems
- Public utilities
- Environmental conservation and restoration
- Direct involvement in technological development

5.4 Other types of collaborative ventures

Agency/distribution agreements

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

Licensing agreements

Licensing permits an enterprise rights to use technology for a financial consideration. The licensor is obligated to provide the means by which the technology can be effectively transferred, such as blueprints, manuals and training. Although licensing agreements must be registered, there are effectively no restrictions on them.

Manufacturing agreements

These describe the terms and conditions under which foreign companies sub-contract manufacturing activities to companies in Thailand. They may also give Thai companies the right to distribute products in certain territories.

5.5 Other types of corporate presence

There are three types of offices that may be set up by a foreign or multinational company in Thailand – representative, regional or branch.

Branches

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 establishment must, therefore, follow generally acceptable 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 five-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.

Representative offices

The Regulation of the office of the Prime Minister BE 2529 (AD 1986) defines a representative office as an office of a foreign company which is located in Thailand and in the business of trading internationally.

Trading representative offices may carry out the following activities:

- Finding suppliers of goods or services in Thailand for the overseas head office
- Checking and controlling the quality and quantity of goods purchased or hired by the head office for manufacturing purposes in Thailand
- Providing advice on various aspects of goods sold by its head office to agents, distributors and/or customers in Thailand
- Providing information to interested persons in Thailand concerning goods or services of the head office; and
- Reporting to the head office on movements of business in Thailand.

The definition of a representative office excludes regional offices and other business-related trading activities. A representative office in Thailand is considered a liaison office and may not engage in any profit-seeking or profit-making enterprise. Over the five-year initial life of the permit, at least five million baht must be remitted into Thailand for operational expenses of the representative office, with two million baht in the first operational year, and at least one million baht in each of the following three years. Remittances can be made only after the permit is granted.

Representative offices do not generate income and therefore pay no tax. If the representative office exceeds the scope of the above activities, it may be regarded as doing business in Thailand and become subject to taxation on all income received in Thailand.

A representative office must obtain an Alien Business Permit under Annex C, Chapter 3(1) of NEC Announcement No. 281 (the Alien Business Law) to start its activities. This Permit, valid for five years, serves as the permission/license to establish a representative office. An application for a permit to establish a representative office, together with supporting documents, as well as applications for work permits and visas, must be filed with the Commercial Registration Department of the Ministry of Commerce. Normally, work permits will be granted for up to five persons.

Regional offices

In order to promote Thailand as the region's commercial centre, in 1992, the Prime Minister's office passed a regulation facilitating the formation of regional offices of trans-national corporations within the Kingdom. This regulation is designed to create a "one-stop service" with the Department of Commercial Registration for trans-national corporations.

A regional office has the ability to co-ordinate 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 five 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

A 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 authorised to impose any conditions on a business permit granted under the rules.

Regional trade and investment support offices

In support of the government's policy to develop Thailand as a regional centre for trade and investment, 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.

Activities in this category include, but go far beyond, regional offices. The activities covered are quite broad, ranging from engineering, testing and training services to consulting services, as well as from wholesaling and retailing of machinery to provision of training and installation, maintenance and repairing of machinery, tools, engines, and equipment.

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.

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 and 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.

5.6 The Foreign Business Act and restricted occupations

There are two sets of regulations that place work restrictions on foreigners in Thailand – A Royal Decree which list *occupations* closed to foreigners, and a Law which closes certain *activities* to foreigners.

Restricted occupations

A Royal Decree in 1973 listed 39 occupations that were then closed to aliens. This list has been amended on several occasions by subsequent Royal Decrees, the latest one in 1979. Prohibited occupations are:

- Labour
- Work in agriculture, animal breeding, forestry, fishery or general farm supervision
- Masonry, carpentry, or other construction work
- Wood carving
- Driving motor vehicles or non-motorised carriers, except for piloting international aircraft
- Shop attendant
- Auctioning
- 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 organising agency
- Architectural work
- Civil engineering work

The Foreign Business Act

The Foreign Business Act (the Act) was approved on 15 October 1999 by the Senate and on 20 October 1999 by the House of Representatives, and it was published in the Government Gazette on December 4, and it will be enforced from March 4, 2000.

The Act repeals and replaces the 1972 National Executive Council Announcement No. 281 (or Alien Business Law, ABL).

As with the Alien Business Law, the businesses attached to the Act are still divided into three categories – List 1, List 2, and List 3. The ABL divided businesses into Annex A, Annex B and Annex C.

However, the business categories in the Act have been substantially changed from those of the ABL. Under the Act, a Foreign Business Board will review the businesses listed at least once a year, and present it to the Commerce Minister. The Commerce Minister, acting in terms of the recommendations of the Foreign Business Board, is empowered to issue

Ministerial Regulations.

The Foreign Business Board will consist of 19 committee members from both government and private agencies. The latter will include the Thai Chamber of Commerce and the Federation of Thai Industries. A maximum of five experts can also sit on the committee.

List 1 activities are strictly prohibited to aliens. List 2 is prohibited to aliens unless permission is granted by the Commerce Minister by and with an appropriate Cabinet resolution. Alien juristic entities allowed to engage in the businesses in List 2 must meet the following two conditions:

- (1) At least 40 percent of all of the shares are held by Thai persons or non-alien juristic entities.
- (2) Two-fifths of the members of the Board of Directors are Thai.

List 3 is prohibited to aliens unless permission is granted by the Director-General of the Department of Commercial Registration, Ministry of Commerce, by and with approval of the Foreign Business Board.

An alien can engage in businesses in List 2 and/or List 3 if he is a promoted investor in accordance with either the Investment Promotion Act, Industrial Estate Authority of Thailand Act, or other laws. They must then notify the Commerce Minister.

Major features of the Foreign Business Act compared with the Alien Business Law

Definition of Alien

Alien Business Law

1. A natural person or a juristic person who is not of Thai nationality;
 - 2 A juristic entity of which foreigners hold one-half or more of either the number of the shares or the value of the shares;
 - 3 A juristic entity of which foreigners account for one-half or more of the shareholders;
 - 4 A limited partnership or a registered ordinary partnership with a foreign managing partner or a foreign manager.
- Bearer (no name) certificate shares of a limited company shall be considered shares owned by aliens, unless otherwise prescribed by Ministerial Regulation.

Foreign Business Act

- 1 A natural person who is not of Thai nationality;
 - 2 A juristic entity which is not registered in Thailand;
 - 3 A juristic entity incorporated in Thailand with foreign shareholding accounting for one-half or more of the total number or value of shares;
 - 4 A limited partnership or registered ordinary partnership whose managing partner or manager is a foreigner.
- Bearer (no-name) certificate shares of a limited company shall be considered shares owned by aliens, unless otherwise prescribed by Ministerial Regulation.

Shareholding limit in other business

Alien Business Law

An alien as a permit holder or shareholder or partner of a juristic entity under the alien definition, shall not become a partner or shareholder in any other partnership or company with more than one-third of the total shares of the company or with more than one-third of the total capital of the partnership, or buy out such businesses, unless permission has been granted by the Director-General, who may prescribe certain conditions.

Foreign Business Act

None

Minimum capital

Alien Business Law

None

Foreign Business Act

The minimum capital is three million baht for businesses listed in the Act, and two million baht for businesses not listed in the Act. However, the minimum capital requirement shall not be imposed in cases of re-investment.

List of prohibited and restricted businesses

Alien Business Law

Businesses subject to the Act are classified into three categories – Annex A, Annex B, and Annex C.

Any businesses specified in Annex A are strictly prohibited to aliens.

An alien cannot engage in any businesses in Annex B and/or Annex C unless he is granted investment promotion by the Board of Investment.

An alien cannot engage in any businesses in Annex C unless he is granted permission by the Director-General.

Foreign Business Act

Businesses subject to the Act are classified into three categories – List 1, List 2, and List 3.

List 1 consists of businesses strictly prohibited to aliens.

List 2 is prohibited to aliens unless permission is granted by the Commerce Minister by and with an appropriate Cabinet resolution. Alien juristic entities allowed to engage in the businesses in List 2 must meet the following two conditions:

- (1) At least 40 percent of all the shares are held by Thai persons or non-alien juristic entities. (The minimum threshold may be lowered to 25 percent given reasonable grounds.)
- (2) Two-fifths of the members of the Board of Directors are Thai.

List 3 is prohibited to aliens unless permission is granted by the Director-General of the Department of Commercial Registration, Ministry of Commerce, by and with approval of the Foreign Business Board

An alien can engage in businesses in List 2 and/or List 3 if he is a promoted investor in accordance with either the Investment Promotion Act, Industrial Estate Authority of Thailand Act, or other laws.

Changes in business categories attached

Alien Business Law

Wholesales of all kinds of products (Annex C) except those specified in Annex A, and retailing of all products (Annex B and Annex C), require an investment promotion by the Board of Investment, or a permission by the Director-General of the Department of Commercial Registration, Ministry of Commerce.

Broker or agent business (Annex A) is prohibited to aliens.

All kinds of Businesses in services are specified in Annex A, Annex B, and Annex C. Those are under the Law. Particularly, accounting, legal, and architectural services are under Annex A, while engineering service is under Annex C.

Building construction business is under Annex A, and other construction businesses are under Annex C.

The business of Internal trade concerning local agricultural products and advertising is under Annex A.

Foreign Business Act

The businesses of wholesale and retail of all kinds of goods still require licensing under List 3 except a wholesale business which the minimum capital of each store is 100 million baht or more, and a retail business which the total minimum capital is 100 million baht or more, or the minimum capital of each store is 20 million baht or more.

The business of broker or agent is under List 3 and may be engaged in by aliens if such aliens obtain a Foreign Business License. However, the business as the following is exempt from the Act:

Trading in securities or services concerning futures trading in agricultural commodities, financial instruments or securities;

Trading in or the procurement of goods and services needed for production by, or providing the services of, an enterprise in the same group;

Trading, purchasing (for other) or distributing or finding domestic or overseas markets for selling goods made domestically or imports as an international trading business, with a minimum capital of the alien of at least 100 million baht; and

Other lines of business stipulated in Ministerial Regulations.

While all types of service business (except for those to be prescribed in Ministerial Regulations) are under List 3 and can be licensed, a major change has been to allow for accounting, legal, and architectural services (previously not capable of licensing), and engineering service to be licensed.

The business of construction is capable of licensing under List 3; however, it is exempt from the Act in case of its business relates to:

Construction of things that provide basic services to the public with respect to public utilities or communications and which require the use of special instruments, machinery, technology, or expertise in construction and a minimum capital of the alien of at least 500 million baht;

Other categories of construction as stipulated in Ministerial Regulations.

Domestic trade concerning indigenous agricultural produce or products not prohibited by any other law, and advertising are in List 3 and may be engaged in by aliens if such aliens obtain a Foreign Business License.

Revision of prohibited and restricted businesses

Alien Business Law

An alien can engage in any businesses listed in Annex A or Annex B if permitted by a Royal Decree. An amendment of Annex C can only be made by a Royal Decree.

Foreign Business Act

An amendment of List 1 and Chapter 1 of List 2 can only be made by an Act. Other amendments will require a Royal Decree. The Foreign Business Board is required to review and revise the business listed at least once a year and to present an opinion as to any changes to the Commerce Minister.

Penalties

Alien Business Law

A fine of 30,000-500,000 baht

Foreign Business Act

A fine of 100,000-1,000,000 baht and imprisonment of no more than three years

List of business activities

List 1

Business that aliens are not permitted to do for special reasons:

- (1) Newspaper undertakings and radio and television station undertakings
- (2) Lowland farming/upland farming, or horticulture
- (3) Raising animals
- (4) Forestry and timber conversions from natural forests
- (5) Fishing for aquatic animals in Thai waters and Thailand's exclusive economic zones
- (6) Extraction of Thai medical herbs
- (7) Trade in and auctioneering of Thai ancient objects or ancient objects of national historical value
- (8) Making or casting Buddha images and making monk's bowls
- (9) Dealing in land.

List 2

Businesses concerning national security or safety with an adverse effect on art and culture, customs or native manufacture/handicrafts, or with an impact on natural resources and the environment.

Chapter 1: Businesses concerning national security or safety

- (1) Production, disposal (sale) and overhaul of:
 - (a) Fire arms, ammunition gunpowder and explosives
 - (b) Components of fire arms, gunpowder and explosives
 - (c) Armaments, and military vessels, aircraft or conveyances
 - (d) All kinds of war equipment or their components.
- (2) Domestic transport by land, water or air inclusive of the undertaking of domestic aviation.

Chapter 2: Businesses with an adverse effect on art and culture, customs or native manufacture/handicrafts

- (1) Dealing in antiques or objects of art and works of art, and Thai handicrafts
- (2) Production of wood carvings
- (3) Raising silkworms, producing Thai silk thread and weaving or printing patterns on Thai silk textiles
- (4) Production of Thai musical instruments
- (5) Production of articles of gold or silver, nielloware, nickel-bronze ware or laquerware
- (6) Production of crockery and terra cotta ware that is Thai art or culture.

Chapter 3: Businesses concerning natural resources and the environment.

- (1) Production of sugar from sugarcane
- (2) Salt farming, inclusive of making salt from salty earth
- (3) Making rock salt
- (4) Mining, inclusive of stone blasting or crushing
- (5) Timber conversions to make furniture and articles of wood.

List 3

Businesses which Thais are not ready to compete in undertakings with aliens

- (1) Rice milling and production of flour from rice and farm crops
- (2) Fishery, limited to propagation of aquatic animals
- (3) Forestry from replanted forests
- (4) Production of plywood, wood veneer, chipboard or hardboard
- (5) Production of natural lime
- (6) Accounting service undertakings
- (7) Legal service undertakings
- (8) Architectural service undertakings
- (9) Engineering service undertakings

- (10) Construction except:
 - (a) Construction of things that provide basic services to the public with respect to public utilities or communications and which require the use of special instruments, machinery, technology or expertise in construction and a minimum capital of the alien of at least 500 million baht
 - (b) Other categories of construction as stipulated in ministerial regulations
- (11) Brokerage or agency undertakings except:
 - (a) Trading in securities or services concerning futures trading in agricultural commodities, financial instruments or securities
 - (b) Trading in or the procurement of goods or services needed for production by or providing the services of and enterprise in the same group
 - (c) Trading, purchasing (for others) or distributing or finding domestic or overseas markets for selling goods made domestically or imports as an international trading business, with a minimum capital of the alien of at least 100 million baht
 - (d) Other lines of business stipulated in ministerial regulations
- (12) Auctioning, except:
 - (a) International bidding that is not bidding in antiques, ancient objects or objects of art that are Thai works of art, handicraft or ancient objects, or of historical value
 - (b) Other types of auction as stipulated in ministerial regulations
- (13) Domestic trade concerning indigenous agricultural produce or products not prohibited by any present law
- (14) Retail trade in all kinds of goods where the total minimum capital is 100 million baht or more, or the minimum capital of each store is 20 million baht or more.
- (15) Wholesale trade in all kinds of goods with a minimum capital for each store of more than 100 million baht
- (16) Advertising undertakings
- (17) Hotel undertakings, except for hotel management services
- (18) Sale of food or beverages
- (19) Plant breeding and propagating, or plant improvement undertakings
- (20) Doing other service businesses except for service businesses prescribed in ministerial regulations.

5.7 Taxation

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.

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 the 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. Filing a return with a tax deficiency may result in a penalty equal to the amount of tax. All penalties must be paid within 30 days of being assessed.

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:

Output tax - input tax = 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.

Zero rate VAT

- 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.

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 fertiliser, feed and chemicals
- 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 transportation (excluding airlines) and international transportation (excluding air and sea lines).

VAT refunds

Problems with VAT refunds persist. The Revenue Department has acknowledged that irregularities with paperwork has held up more than six billion baht in refunds, and that there are a number of concerted efforts to defraud the government through illegitimate tax refund claims.

The Revenue Department has thus committed to directly assist companies having problems with VAT refunds and to point out irregularities in documentation.

From June 1 1999, tourists shopping in Thailand have been able to obtain VAT refunds as a part of the country's tourist promotion policy.

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 rate
Banking or similar business: finance, securities and credit foncier business	3 percent
Insurance	
– Life	2.5 percent
– Insurance against loss	3 percent
Pawnshop	2.5 percent
Sale of immovable property in a commercial manner for profits	3 percent

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. These taxes may be incurred by making book entries.

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:

Net annual income (baht)	Tax rate
0 – 100,000	5 percent
100,001 – 500,000	10 percent
500,001 – 1,000,000	20 percent
1,000,001 – 4,000,000	30 percent
> 4,000,000	37 percent

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 itemise 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 taxpayer 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 or spouse with respect to contributions to social securities funds or the amount actually paid if less	Actual contribution not more than 10 percent of adjusted income

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.

Treaties to avoid double taxation

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

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

The treaties generally place taxpayers in a more favourable 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.

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.

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.

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

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 not received any income.

Tax reforms

In August 1999 the Cabinet approved several important tax and tariff measures to promote private investment, lower production costs, improve corporate liquidity, and reduce consumer prices.

The Cabinet also eliminated the registration requirement for the import and export of gold.

Tariff measures

The Customs Department collects import duties on over 9,000 items. As part of its continuing efforts to improve the tariff structure, the Ministry of Finance is in the process of preparing a comprehensive reform of the country's tariff structure in line with the country's development and forthcoming international commitments. Under the ASEAN Free Trade Area (AFTA) agreement, for example, import duties will have to be reduced to 0-5 percent on 85 percent of total product items, representing over 7,000 items, on January 1, 2000.

Furthermore, under the Information Technology Agreement (ITA), 153 items will be exempt from import duties. Given the difficulties faced by producers due to economic conditions and these forthcoming international commitments, the Cabinet approved a variety of tariff measures to lower costs and enhance competitiveness.

In identifying these tariff measures, the Ministry of Finance consulted with the Federation of Thai Industries and the Thai Chamber of Commerce. The measures focus on capital goods, raw materials, and products that are not being produced domestically. The measures include reduced tariffs on capital goods, raw materials, and other products.

Capital goods

Tariff reduction on machinery and mechanical appliances and parts; electrical machinery and equipment and parts; and measuring, checking, precision instruments and apparatus from five and 20 percent to three percent for 326 items.

Raw materials

- Tariff exemption on fish or crustaceans, molluscs or other aquatic invertebrates for breeding, which previously faced a tariff rate of 60 percent.
- Tariff reductions on raw materials for cosmetic, pharmaceutical, food and other industries including lanolin, jojoba oil, vitamin premix, dried glands and organs for medical use from 10 percent to five percent; and on artificial waxes and prepared waxes from 20 percent to 10 percent for 26 items.
- Tariff exemption and reduction on chemical products which are inorganic chemicals, organic chemicals, fertilisers, and miscellaneous chemical products from five and 10 percent to one percent for 148 product items; from 10 percent to five percent for 69 items; and tariff exemption on five products which previously faced a five percent import duty.
- Tariff reduction on 11 plastic items from 20 percent to 10 percent.
- Tariff reduction on lupins, alfalfa, and canola meal from 10 to 40 percent down to five percent for five items.
- Tariff exemption on five cotton items, which help to improve the quality of textile products, and which previously faced a five percent import duty.
- Tariff reduction on copper cathode from six to one percent.
- Tariff reductions on 12 iron items including Tin Mill Black Plate (TMBP) iron and Hi Carbon iron from two, 10, and 12 percent to one percent.
- Tariff exemptions on precious metals including pearl, silver, and platinum for 21 items, which previously faced import duties of one, five, and 10 percent. Tariff reductions on artificial jewellery from 30 and 60 percent to 20 percent for two items.
- Tariff reduction on other raw materials including skins and other parts of birds from 20 and 35 percent to 10 percent; on waste and scrap glass from five to one percent; and on glass rods from 10 percent to five percent for six items.

Other products

The tariff rates of three other products will be restructured in line with the new Harmonised System. The above tariff reductions and exemptions are on a permanent basis, except for the following reductions which are temporary:

- The tariff reductions on inorganic chemicals, organic chemicals, TMBP iron, and Hi Carbon iron to one percent are valid until 31 December 2003, when the tariff rates will be increased to their respective rates in the tariff structure or set at appropriate rates to be considered by the Ministry of Finance.
- The tariff reduction on copper cathode to one percent is valid until 31 December 2000, when the Ministry of Finance will re-consider the appropriate rate.

Removal of the import duty surcharge

The Cabinet has decided to remove the 10 percent import duty surcharge which has been collected since October 15, 1997 on items with a tariff rate over five percent.

These measures will directly assist producers in a wide range of industries. For example, the food processing industry will benefit from the tariff reduction on TMBP iron. Producers in the pharmaceutical and cosmetic industries will benefit from lower tariffs on key inputs. The textile industry will benefit from lower cotton and chemical tariffs, while the electronics industry will benefit from lower copper cathode duties.

Furthermore, producers in general will face lowered production costs because of the reduced tariffs on chemicals and machinery. At the same time, the removal of the import duty surcharge will lessen the degree of protection provided to industry and encourage more efficient production.

Consumers will also benefit from these measures in the form of lower prices of goods. The Cabinet has mandated the Ministry of Commerce to monitor the prices of items, which have been affected by the tariff reductions.

Accelerated depreciation of fixed assets

While current tax regulations allow businesses to calculate depreciation expenses according to any generally accepted accounting method, any changes in the method used require the approval of the Director-General of the Revenue Department. In practice, the majority of businesses currently employ the straight line method of depreciation.

To encourage private investment and enhance the productivity of the private sector, under the measure approved by the Cabinet, businesses can now freely choose the double declining balance method of depreciation, by which assets can be depreciated at twice the rate of the straight line method. Furthermore, businesses can fully depreciate the remaining book value of the asset in the last accounting period of the useful life of the asset.

This measure will be applied to fixed assets such as machinery and parts, office equipment, forklifts, aircraft, boat, and other vehicles, but does not apply to passenger cars.

Elimination of export and import registration requirement for gold

On October 15, 1990, the Cabinet approved the deregulation of the export and import of gold and mandated the Ministry of Finance to amend the necessary rules and regulations accordingly. To this end, the Ministry of Finance amended regulations to allow the general public to register for licenses for the export and import of gold. To further liberalise the export and import of gold and support industries such as jewellery and electronics that require gold as an input, the Cabinet has eliminated the registration requirement.

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.

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.

5.8 Investment and trade incentives

Board of Investment (BOI) promotional incentives

The Board of Investment is the government agency responsible for providing incentives to stimulate investment in Thailand. In addition, the BOI conducts extensive investment promotion activities, both in Thailand and abroad.

NOTE: The BOI is in the process of refining a new investment policy scheduled to be introduced in the first quarter of 2000. It is, however, in the drafting and consultation stage, and the existing policy outlined below is still in force.

The BOI is governed by the 1977 Investment Promotion Act, as amended by the Investment Promotion Act of 1991. The Board is chaired by the Prime Minister, with economic ministers, senior civil servants, representatives of major private sector organisations, and academics serving as Board Members or Advisors.

The BOI promotes projects that:

- Strengthen Thailand's industrial and technological capability
- Make use of domestic resources
- Create employment opportunities
- Develop basic and support industries
- Earn foreign exchange
- Contribute to the economic growth of regions outside of Bangkok
- Develop infrastructure and conserve natural resources
- Reduce environmental problems.

The BOI is empowered to grant a wide range of fiscal and non-fiscal incentives and guarantees to investment projects that meet national economic development goals. In addition to investment incentives, the BOI also offers comprehensive business-related services to investors and potential investors.

These services range from working with investors to help them obtain licenses and permits to the identification of promising investment projects and joint-venture partners. In addition, the BOI offers assistance to Thai firms interested in investing overseas, especially in Indochina and in Association of Southeast Asian Nations (ASEAN).

The BOI currently has six regional offices: Nakhon Ratchasima and Ubon Ratchathani in the Northeast, Songkhla and Surat Thani in the South, Chiang Mai in the North, and Chon Buri (Laem Chabang) in the Eastern Seaboard area.

The BOI maintains permanent investment promotion offices in Frankfurt, New York, Paris, and Tokyo. These offices offer potential foreign investors a complete range of information on business opportunities and incentives in Thailand.

Depending on which sector their proposed activity falls under, projects are assigned to one of the seven Investment Promotion Divisions within the Board of Investment. Each of the divisions is empowered to handle all aspects of a promoted project so that investors only need to deal with one division for most of their business with the BOI.

Functions of the seven divisions include: The screening and appraising of applications for investment incentives; reviewing specific duty and tax exemptions for machinery and raw materials; monitoring the operations of promoted projects to ensure compliance with conditions stipulated in their promotion certificates. The division also provides information to investors on the industry sector in which they are involved.

These divisions also consider various measures to assist promoted industries, including import duty reductions, duty exemptions and rebates, and tariff increases on competing imports.

The BOI Unit for Industrial Linkage Development (BUILD) encourages growth in supporting industries in Thailand. BUILD provides information on subcontracting opportunities and offers its support to buyer firms seeking sourcing networks in Thailand. It helps small and medium-sized Thai suppliers achieve standards required to enter into productive subcontracting arrangements. BUILD's extensive database on subcontractors in Thailand provides matchmaking services for firms seeking specific components or raw materials.

The BOI provides investment matchmaking services to both Thai and foreign investors seeking co-operation in the areas of technology, management and marketing. In addition, the BOI offers a matchmaking service for investors in regional areas looking for joint-venture partners from Bangkok and abroad, as well as for firms that want to invest in provincial areas.

Tax incentives

- Tax incentives offered by the BOI include:
- Exemption or reduction of import duties on imported machinery
- Exemption or a reduction of import duties on imported materials and components
- Exemption of corporate income taxes for three to eight years, with permission to carry forward losses and deduct them as expenses for up to five years
- Exclusion of dividends derived from promoted enterprises from taxable income during the corporate income tax holiday.

Additional incentives for enterprises in the Special Investment Promotion Zones include:

- Reduction of corporate income tax by 50 percent for five years after the exemption period
- Double deduction from taxable income of water, electricity, and transport costs for 10 years from the date of first sales
- Deduction, from net profit, of 25 percent of the project's infrastructure installation or construction cost.

Additional incentives for export enterprises:

- Exemption of import duties on imported raw materials and components
- Exemption of import duties on re-exported items
- Exemption of export duties
- Allowance to deduct from taxable corporate income an amount equivalent to five percent of an increase in income derived from exports over the previous year, excluding the cost of insurance and transportation.

Criteria for project approval

In determining both the economic and technological suitability of a project for which investment is requested, the Board applies different criteria depending on the level of investment capital.

For a project with investment capital, excluding land and working capital, not greater than 200 million baht, the following criteria are used:

- Value added not less than 20 percent of sales revenue, except projects which export more than 80 percent of total sales, or use domestic agricultural resources as raw materials, or conserve, restore or develop natural resources and the environment
- Registered capital is at least 20 percent of the total investment
- Modern machinery and production processes are used

- Adequate environmental protection systems are installed.

For a project with investment capital, excluding land and working capital, greater than 200 million baht, the same criteria as for projects with investment capital less than or equal to 200 million baht, plus:

- Impact on its own industry
- Impact on government finances
- Impact on consumers
- Contribution to technological development.

For a project with investment capital, excluding land and working capital, of over 500 million baht, the same as for projects with investment capital greater than 200 million baht, plus:

- A feasibility study.

Projects which qualify for investment promotion incentives and the conditions under which awards are made are set out on BOI's "List of Promoted Activities." The List is broad enough to encompass most industrial projects. The award of tax-related incentives is based on project location and, in certain cases, on type of industry or export orientation.

The BOI divides Thailand into three investment zones for promotional purposes. These are:

- Zone 1, comprising Bangkok and five contiguous provinces;
- Zone 2, comprising 10 provinces, most of which are within a 180-kilometre radius of Bangkok;
- Zone 3, comprising all other provinces.

Standard BOI incentives provided to promoted firms include:

- Investment guarantees against nationalisation, state monopolies, price controls, tax exempt imports by government agencies, export restrictions
- Visas and work permits for expatriate personnel
- Permission to own land
- Permission to remit money abroad in foreign currency

The principal incentives offered by Zone are:

Zone 1

- No tax exemption or reduction on machinery, except projects which export not less than 80 percent of total sales or locate their factories in industrial estates or promoted industrial zones. Such projects will receive a 50 percent import duty reduction on machinery which is not included in the tariff reduction notification of the Ministry of Finance (Notification No.C 13/2533) and which is subject to import duty greater than or equal to 10 percent
- No corporate income tax exemption, except for projects that export not less than 80 percent of total sales and locate their factories in industrial estates or promoted industrial zones, in which case a three-year exemption will be granted
- Exemption of import duty on raw or essential materials used in export products for a period of one year for projects exporting at least 30 percent of total sales.

Zone 2

- A 50 percent import duty reduction on machinery that is not included in the tariff reduction notification of the Ministry of Finance (Notification No. C 3/2533) and that is subject to import duty greater than or equal to 10 percent
- Corporate income tax exemption for three years, extendible up to seven years for projects that locate their factories in industrial estates or promoted industrial zones
- Exemption of import duty on raw or essential materials used in export products for a period of one year for projects exporting at least 30 percent of total sales.

Zone 3

- Import duty exemption on machinery
- Corporate income tax exemption for eight years
- Exemption of import duty on raw or essential materials used in export products for a period five years for projects exporting at least 30 percent of total sales
- 75 percent import duty reduction on raw and essential materials used in production for domestic sales for five years. This reduction is renewable on an annual basis, provided that raw or essential materials comparable in quality are not being produced or are not originating within the Kingdom in sufficient quantity to be acquired for use in such activity.

This does not include projects or factories in Laem Chabang Industrial Estate.

Special privileges are granted as follows:

- Reduction of corporate income tax by 50 percent for five years after the exemption period
- Double deduction from taxable income of water, electricity, and transport costs for 10 years from the date of first sales
- Deduction, from net profit, of 25 percent of the project's infrastructure installation or construction cost.

Priority activities

The Board has identified projects in the following five areas to be priority activities:

- Basic transportation systems
- Public utilities
- Environmental protection and/or restoration
- Direct involvement in technological development; and
- Basic industries.

Such projects will be eligible to receive the following privileges:

- Corporate income tax exemption for eight years, regardless of location
- A 50 percent import duty reduction on machinery which is not included in the tariff reduction notification of the Ministry of Finance (Notification No. C 13/2533) and which is subject to import duty greater than or equal to 10 percent for projects located in Zones 1 or 2
- Import duty exemption on machinery for projects located in Zone 3.

Industrial Estate Authority of Thailand (IEAT) incentives

The IEAT, established in 1979 as a State Enterprise under the Ministry of Industry, is charged with carrying out the government's industrial development policy. The IEAT is the principal regulatory authority for industrial estate construction and operation. The Authority is also the sole investor in three industrial estates, including Map Ta Phut and Laem Chabang Industrial Estates on the Eastern Seaboard, and more than 20 more joint operations with the private sector.

There are 17 export processing zones (free trade zones), where machinery, goods and materials may be imported free of duty and tax to facilitate production for export. Finished products produced in export processing zones are treated like imports when they are distributed in Thailand. Import duties are paid at the gate of the Zone.

Additionally, the IEAT may grant non-tax investment incentives (essentially the same as BOI's non-tax incentives) to companies that locate in industrial estates. Most industrial estates also offer "one-stop shop" services to foreign investors in the estates.

Duty drawback scheme

Under the duty drawback scheme, exporters may recover import duties paid for importing raw materials that are processed into finished goods for export. Processing takes approximately three months. The duty drawback scheme is a workable alternative to import duty exemptions on raw materials provided by the BOI. Applications for duty drawback should be submitted to the Customs Department.

Bonded warehouses

Under the bonded warehouse program, manufacturers which import and export may import goods under bond into bonded warehouses without payment of import duties. No import duties need be paid on the goods unless they are distributed into the local economy. The program works in two ways. Importers and manufacturers may use the services of private companies operating commercial bonded warehouses, and manufacturers may request the Customs Department to designate their factories as bonded warehouses. In both cases, the Customs Department stations one or more officials at the bonded warehouse to facilitate import and export paperwork. Manufacturers must have a paid-in registered capital of at least 10 million baht of goods per year to qualify for bonded warehouse status.

5.9 Labour law and related issues

Labour protection

In August 1998, the Labour 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. Domestic workers (household staff) are not included in the definition of "employee" and are not covered by the labour Act. All other employees, whether full or part time, seasonal, casual, occasional or contract, are covered.

Important protections contained in the new law

Work hours and holidays: The maximum number of work 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 the number of 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 follow correct legal procedures. Employee Associations and Labour Unions must be registered at the Labour Department, and require a license for operation. Finally, a Labour 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 companies with at least 10 employees that do not 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 that women and children can perform. Guidelines are set for wages and overtime, as well as resolution of labour-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, Nonthaburi, 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.

Labour management

In general, Thai labour laws provide for considerable freedom in managing labour, and unions are not very effective. 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 displayed 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.

5.10 Immigration, visas, work permits

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.

Exemptions

The Act grants exemptions from the Work Permit requirement to the following professionals:

- Members of the diplomatic corps
- Members of consular missions
- Representatives of member countries and officials of the United Nations and its specialised 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 organisation
- 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.

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 authorised work while the application is being processed.

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 Labour 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.

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
- For permanent residents, a valid passport, residence permit and alien book
- 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
- Three 5x6 cm. full-faced, bareheaded, black and white or colour 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.

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 organisation within 15 days of any such action. In cases of dismissal, aliens must return their Work Permit to labour 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 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 organisation 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 labour 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.

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.

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 seven to 10 days.

Transit, visitor transit and tourist visa holders are not authorised to work in Thailand.

Non-quota immigrant

This category includes, 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 organisations or agencies operating in Thailand, and dependants of all the aforementioned persons, including private servants of members of the diplomatic corps, are exempted by the Act from the normal visa requirements.

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 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).

A non-immigrant visa entitles the holder to apply for a multiple re-entry visa to Thailand from the Immigration Division in Bangkok, as well as allowing the holder to apply for permanent residence in Thailand. It also provides eligibility for the issuance of a Work Permit, and 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.

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 authorisation 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 labourer or specialist (one year).

In order to facilitate and speed up the process of issuing visas and work permits, the Thai government has established a One-Stop Service Centre for Visas and Work Permits where

applications, once all relevant paper work is in place, can be processed in a few hours. This includes a multiple re-entry visa for the period of the validity of the visa – usually one year.

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.

If an individual stays in Thailand for an unbroken period of 90 days, he or she has to notify immigration officials accordingly.

Guidelines for foreign investors on acquiring permanent residence in Thailand

Qualifications

- A foreign national of any country who has legally entered Thailand by passing through an immigration checkpoint
- Free of disease and not prohibited from entering Thailand under the Immigration Act
- Able to submit a money certificate for funds transferred from abroad through one or more banks in Thailand in the name of the applicant, amounting to not less than 10 million baht.

Applications may be submitted under one of five categories of investments:

- Investment in a private company or public company
- The purchase of a condominium from the owner of the condominium project
- The purchase of government bonds or state enterprise bonds
- Deposit(s) totalling not less than 10 million baht in one or more Thai banks
- Other investments in accordance with the specification of the Immigration Commission.

Criteria

For a successful application for permanent residence for investment in Thailand, the project must benefit the country in the following ways:

- Produce for export
- Increase employment
- Utilise indigenous raw materials
- Locate in provincial areas
- Encourage technology transfer to Thai nationals.

Projects in the following categories will not be taken into consideration:

- Those restricted by law
- Those which compete in such a way as to destroy existing domestic businesses
- Those which hinder the growth of existing domestic businesses or domestic businesses which have not yet been developed.

For any project eligible for investment promotion which has submitted an application for promotional status or has already been granted promotional status, the applicant must bring in funds to invest in the new project that has not yet started operations. Such investment must be in the form of a joint venture in a newly or already established company. This joint venture must economically benefit the project, for example by assisting in export marketing or by bringing in appropriate technology.

Remitted funds must be invested in ordinary shares of the limited company that is set up to implement the approved project. The applicant must hold more than 25 percent of the registered capital unless the size of the project exceeds 100 million baht, excluding the costs of the land and working capital. In this case, the share-holding criteria can be relaxed.

The applicant can apply for permanent residence for himself and the following family members:

- Spouse
- Parents
- Not more than three children who are unmarried and under 20 years of age.

Investors must hold their investments continuously for a minimum of three years after being granted permanent residence in Thailand, and must submit evidence of their investment holding to the Immigration Bureau before the end of September in each of the three years.

For the purchase of a condominium or government bonds or state enterprise bonds, an amount of eight million baht must be invested by the investor, six million baht for a spouse and two million baht per unmarried child under the age of 20.

If the purchase consists of either government bonds or state enterprise bonds, the bonds may not be transferred or redeemed for a period of five years. Should an investor choose to apply via purchase of a condominium whose project has been registered with the Board of Investment, he must not sell it for a minimum of five years, and may not use the condominium as collateral for a loan.

Place, period of time and documentation for submitting an application for permanent residence

Applications may be submitted from 1 July 1997 until 30 June 2000 to Section 1, Sub-Division 1, Immigration Division 1, Immigration Bureau (Room 301, old building), Soi Suan Plu, off South Sathorn Road, Sathorn District, Bangkok 10120. Telephone 237-3117, 285-5582.

The Immigration Bureau will submit the application to the Immigration Commission for consideration within 60 days after receiving the completed documentation. After approval is granted by the Immigration Commission, applications will be forwarded to the Minister of Interior for final approval and signature. The Immigration Bureau will then inform each applicant of the result within 15 days after receiving notification from the Ministry of Interior.

Application can also be made directly to the Board of Investment.

Fees

A fee of 2,000 baht will be charged for each application and a fee of 50,000 baht will be charged at the time of issuing the residence book.

Withdrawal of permanent residence

If, after granting of permanent residence status, it is discovered that the person possesses qualities which are prohibited by the immigration laws and which cannot be changed, the permanent residence permit will be withdrawn and the fees will not be returned.

5.11 Industrial licensing and regulations

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.

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.

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.

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 subject to licensing 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 needed a licence prior to starting operations, it 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.

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.

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 authorised 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.

5.12 Intellectual property rights

Thailand has laws protecting the rights of copyright, patent and trademark holders, but the law is in need of much improvement. Enforcement is still a cause for much concern, and is a significant bilateral issue. Large quantities of infringing goods continue to be sold at the retail level.

Since November 1994, Thailand has been on the Special 301 "watch list". In September 1996, the Thai Parliament passed a long-awaited law establishing an intellectual property and international trade court, which began operations in December 1997. Appeals procedures at the trademark and patent offices have also been streamlined.

Although allegations of irregularities continue to undermine confidence in local police authorities, co-operation and co-ordination among enforcement officials improved with the creation of an interagency committee on the suppression of IPR piracy. This committee unfortunately was mandated for only a year of operation, but the Thai government is now offering assurances that it will be made permanent.

Patents

Thailand promulgated its first patent law, the Patent Act, in 1979, with significant amendments added in 1992 which extended protection to pharmaceutical and agricultural machinery and increased patent protection to 20 years.

In 1993, following complaints from private industry about inadequacies in the law, Thailand established administrative measures to provide a degree of market exclusivity for pharmaceutical products not eligible for protection under the 1992 law ("pipeline protection"), narrowed the scope of compulsory licensing provisions, and restricted the

authority of the pharmaceutical patent review board. These measures, however, are not fully consistent with the growing international consensus on protecting pharmaceutical products. For example, the market exclusivity period is only five to six years.

Although the Thai government recognises importation as “working the patent”, this policy position is not uniformly understood by Thai officials. The Thai government has long promised to amend its patent law to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), including the abolition of the Pharmaceutical Review Board.

Due to domestic opposition and frequent changes of government, it has failed to do so. The government also refuses to exercise discretionary power to amend pending patent applications under the 1979 law. Such action would provide enhanced protection under the 1992 patent law.

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 of any other international convention for reciprocal protection of patents.

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 whatsoever
- 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 which are contrary to public order or morality, public health or welfare.

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
- A design which 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.

Product designs which are not patentable

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

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 that are contrary to the above two points are null and void
- Any assignment or license must be in writing and officially registered.

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.

Cancellation of patents

- A patent may be cancelled 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.

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.

Copyrights

Thailand's new copyright law became effective in March 1995, bringing Thailand into closer conformity with international standards under the TRIPS agreement and the Bern Convention (Paris Act). The legislation also increased fines and lengths of sentences for offenders. Nonetheless, the vagueness of certain provisions of the law, particularly regarding decompilation and government use of software, continues to be areas of concern.

The law does not clearly define what acts constitute infringement of software and the fines actually imposed are often too light to deter offenders. Piracy in certain areas, such as CDs and CD-ROMs (containing application software), has increased since 1996.

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

Works subject to copyright

The Copyright Act protects works in the categories of literary work, including computer programs; dramatic, artistic and musical work; audio-visual 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 case of published work, the first publication must be made in Thailand or in a country, which 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, of the public of the sound work is subsequently made in Thailand or in a country which is a member of the Convention within 30 days from the first publication or the creator has 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.

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 publicising without permission - It is an infringement of copyright to publicise a work without the consent of the copyright owner. “Publicise” 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 audio-visual material, cinematic film, recorded material or dissemination of sound or picture or by re-broadcasting of sounds and visual images, wholly or in part, or arranging for dissemination of sound or picture in public with commercial purposes

Exceptions

Under the Act, any act that might 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 authorised 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.

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 judgements, orders, rulings and official reports
- Translations and collections of those items specified as above which are prepared by government agencies or local administrations.

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 organisations of which Thailand is a member.

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.

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.

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.

Trademarks

Amendments to the trademark law enacted in 1992 provide higher penalties for infringement and extend protection to services, certification and collective marks. These amendments seem to have created a viable legal framework and have led to some improvements in enforcement, but trademark infringement remains a serious problem. Trademark infringers often use Thailand as a platform to export counterfeit goods, such as apparel and watches. The legal process remains time-consuming and expensive for those who would defend a trademark and the actions of the trademark appeals board often lack transparency and consistency.

However, the new Intellectual Property Court is beginning to make a real difference in this situation. The time factor in legal proceedings is likely to be reduced further over the next years.

The Trademark Act 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.

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 that the trademark can be registered, 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.

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 utilise the trademark entitles third parties to challenge the rights of the trademark owner.

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 offence 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 pretence. This offence 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 offences within a five-year period is liable to double punishment.

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

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 mark.

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.

5.13 Export and import 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 liberalised, 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 authorises 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.

In addition, the exporters of agricultural commodities may find that membership to trade associations is mandatory. These associations may in turn impose their own regulations for membership.

5.14 Rights of foreigners to possess real estate

Non-Thai businesses and citizens are not permitted to own land in Thailand unless given permission by the Board of Investment, or unless the land is on government-approved industrial estates. Petroleum concessionaires may own land necessary for their activities. Many foreign businesses instead sign long-term leases, and then construct buildings on the leased land.

On August 4 1998, the Cabinet approved the amendments of Land Code and Condominium Act to eliminate restrictions on foreign ownership of property. The amendments are:

- Allow individual foreign investors investing specified amounts (in the region of 40 million baht) in activities of productive interest for Thailand to own up to one rai [400 square metres] of residential land. The land must be in Bangkok, Pattaya or other residential areas as provided for by law.
- Allow Thai citizens married to foreigners to own land.
- Permit foreigners to purchase 100 percent of condominium buildings of five rai or less during the next five years. The previous ceiling on ownership in a condominium building had been 40 percent.
- Amend the lease provisions of the Civil and Commercial Code to provide personal rights pertaining to real estate property instead of real rights, and the period of lease of selected real estate property has been limited to no less than 15 years but no more than 30 years, may be renewable for an additional 30 years.

Note: Obtaining qualified legal advice is recommended for people planning to invest in Thailand, particularly as Thai business regulations are governed predominantly by criminal rather than civil law. Violations of Thai business regulations can carry heavy criminal penalties, and criminal liability can be assessed under numerous different laws.

Other legislation of interest to foreign investors

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.

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.

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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 authorised 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 authorised bank for each transaction involving the sale, exchange or deposit of such foreign currency in an amount exceeding US\$5,000 or its equivalent.

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.

Foreign exchange in business transactions

Foreign currency accounts of Thai residents

Thai individuals and juristic persons in Thailand are allowed to maintain foreign currency accounts under the following conditions:

- The accounts are opened with authorised banks in Thailand and deposited with funds that originate from abroad or from foreign currency borrowing from the Bangkok International Banking Facilities
- The depositor must submit evidence showing the obligations to pay in foreign currency to persons abroad, authorised 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
- The deposit of foreign currency notes and coins must not exceed US\$2,000 per day
- Debits to the accounts are permitted for payment of any external obligations upon submission of supporting evidence or for conversion into baht at authorised banks
- The total daily outstanding balances in all accounts must not exceed US\$ five million 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 authorised banks in Thailand. The deposits must come from funds originating abroad. Balances on such accounts may be transferred with restriction.

Non-resident bank account

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

- Proceeds from the sale of foreign currency that originate from abroad or foreign currencies from non-residents' foreign currency accounts
- Amounts transferred from other non-resident baht accounts.
- 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 authorised bank or deposited in a foreign currency account with an authorised 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 authorised 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 authorised bank or deposited in a foreign currency account with an authorised bank in Thailand within seven days of receipt.

Gold

Residents may hold and trade domestically in gold jewellery, gold coins and gold bullion. The import and export of gold other than jewellery has recently been deregulated.

5.15 Regional resources and opportunities

A key part of government policy since the Chuan Leekpai administration took office in 1997 has been to increase the potential Special Economic Zones to enhance the competitiveness of the Thai industrial sector. This involves working continuously to increase the potential of special economic zones, especially the Eastern Seaboard, into the country's main industrial production base, in order to support higher-technology industries and attract investment and collective integrated industrial development. This will save production costs and enhance industrial competitiveness. Moreover, domestic and foreign investment shall be given incentives under the Southern Seaboard development scheme.

The government has also committed to expediting the development of border and contiguous areas to support the growth generated by sub-regional co-operation with neighbouring countries.

5.15.1 Opportunities and resources in the Northern region

Resource availability

Agricultural raw materials: The Northern region is the major producer of many crops including maize, mungbean, soybean, sorghum, groundnuts, cotton, garlic, and many other varieties of cool climate vegetables and fruits. Most of the area's produce is used in vegetable and fruit processing industries. The North has a substantial number of livestock, especially cattle and chickens.

Minerals: The North is rich in mineral resources. Its major ore and mineral outputs include fluorite ore, tin concentrates, wolfram ore, etc.

Water: The North's vast forest areas are the source of many of Thailand's rivers. The region has four major rivers: the Ping, Wang, Yom, and Nan. Water quality, particularly in Lamphun, is high, and is suitable for high-tech industries. The Ping River provides a large surface water source for water supply in the North. The Electricity Generating Authority of Thailand has also established several dams on this river.

Forest: The North has substantial timber reserves, which are used as raw material for many wood-based handicraft industries.

Availability of labour and technical skills

There are many technical training institutions in the Northern provinces. To further support industry's need for technically trained personnel, the directors of many technical schools have co-operated with manufacturers in providing students with particular skills. Some manufacturers have donated used machines and equipment to these schools for their workshop activities.

Opportunities

Agro-related activities: fruit and vegetable processing, animal feed industry, livestock farming, medicinal plants and fast-growing tree plantations. Potential locations: around Tak, Lampang, and Chiang Rai in the upper part; and areas around Nakhon Sawan, Phitsanulok, Phichit, and Phetchabun in the lower part. Supporting factors: availability of raw materials, land price, and suitable land quality.

Hydrocarbon and gas related activities in the industrial estate in the Upper North.

Labour intensive industries: ceramics, handicrafts, artificial flowers, garments, toys, jewellery, and electronics. Opportunities to develop the Chiang Mai-Lamphun-Lampang triangle into the country's electronic production base. Supporting factors: availability of labour, industrial estates, quality water, proximity to other industrial facilities, including an international airport in Chiang Mai.

Tourism-related activities in all far north provinces, and in the Kamphaeng Phet-Sukhothai area of the Lower North.

Border trade activities and facilities: Supporting factors include proximity of many provinces to Myanmar (Tak, Mae Hong Son, Chiang Mai, Chiang Rai) and Laos (Phayao, Nan, Uttaradit).

5.15.2 Opportunities and resources in the Northeastern region

Resource availability

Land: The Northeast is Thailand's largest region with land available for industrial development at a reasonable cost.

Agricultural raw materials: Major crops in the Northeast include cassava, sugar cane, maize, jute and kenaf, soybean, ground nuts, and mungbean. The region has several major fruits and vegetables that are used as raw materials in food processing industries such as pineapple, tomato, and young corn. The Northeast has a large number of livestock, especially chickens, water buffaloes, and cattle. The region's centre is an important source of animal hides.

Minerals and natural gas: Major minerals in the Northeast include barite, copper, iron, lead, tungsten, manganese, gold, gypsum, emery, phosphate, antimony, uranium, potash, rock salt, graphite, marble, sand, gem stones, lignite, and natural gas. Udon Ratchathani, Khon Kaen, and Nakhon Ratchasima are important bases for these minerals while rock salt and potash can be found in almost every province in the region. Natural gas reserves in the Northeast are large. The present source of natural gas is the Nam Phong field in Khon Kaen. Currently, other sources are being explored by major oil groups in Chaiyaphum and Udon Thani with future exploration efforts likely in Sakon Nakhon and Mukdahan Provinces.

Availability of labour and technical skills

The Northeast is Thailand's most populous region and has been a traditional source of labour for the entire country. Northerners are regarded as hard working, well disciplined, and fast learning. In addition to the vast pool of unskilled labour, a large number of skilled and semi-skilled workers are supplied by three major universities located in Khon Kaen, Nakhon Ratchasima, and Ubon Ratchathani, as well as other technical schools and colleges.

Unskilled workers are eligible to participate in government programs offered by the Regional Skill Development Institute located in Khon Kaen and Ubon Ratchathani, and at a private training centre in Nakhon Ratchasima, the Choonhavan Training Centre, which specialises in training technicians for work in the automotive industry. Despite the large number of Northerners who seek employment outside the region every year, most prefer to come back to their homeland as opportunities arise.

Opportunities

Food industries: fruit and vegetable processing, egg powder manufacturing, ginger products, bean thread, vegetable oil, processed foods.

Agro-industries: animal feed, beef and dairy cattle and linked industries, tapioca flour, glucose, tanning, silo, and seeds.

Textile industries: manufacture of silk fabric, knitted fabric, apparel, and fishing net.

Non-metallic industries: plastic bags, straws and bottles, bamboo boards, toothpicks and chopsticks, wood and rattan furniture, artificial flowers and plants, paper and pulp, and ceramics.

Metallic industries: electronic and electrical components, agricultural equipment and machinery, transportation machinery.

Cottage industries: pottery, wickerware, gem cutting and carving.

Service industries: hotels, amusement parks, resorts, hospitals and other health-related establishments, department stores, sports complexes.

5.15.3 Opportunities and resources in the Upper Central region

Resource availability

Land: It is expected that the land utilisation pattern will progressively change as more land is used for non-agricultural activities; in particular emerging industrial estates. Land prices in the Upper Central region in general are still affordable despite a rather sharp increase in recent years in the southern part of the region.

Agricultural raw materials: The Upper Central region is the major production base of many kinds of agricultural products, many of which are used as raw materials for related industries. Almost 50 percent of its total area is used for paddy cultivation while 27 percent is used for growing field crops, fruit trees, tree crops, vegetables, and flowers. Major field crops grown in the UCR are maize, cassava, sugar cane, mungbean, sorghum, soybean, groundnuts, and cotton.

The UCR produces 10 percent of the country's maize, 10 percent of its mungbeans, 38 percent of its sorghum, 10 percent of its cotton, and two to five percent of all other crops. Major fruit trees grown in the UCR include tangerine, mango, coconut, and banana while major vegetable crops are short cucumber, taro, yard-long bean, hot pepper, Chinese kale, pumpkin, water spinach, and white gourd. The region also supports a variety of livestock.

Ores and minerals: The UCR is the Thailand's major source of limestone, and hence the primary production base for cement and related construction materials. Many types of infrastructure have also been established to facilitate limestone mining and cement industries. Cement produced in the UCR is used to supply the established Bangkok market in addition to growing new markets in the Northeast and neighbouring countries. Other ores and minerals in the UCR include iron, phosphate, lead, and gems.

Availability of labour and technical skills

The UCR is among the country's most densely populated areas, outside of the greater Bangkok area. Other densely populated areas include Phuket, Pattani, and Chon Buri. Available work force is thus one of the region's comparative advantages. The UCR also has a high percentage of educated labour; 14 percent of the region's work force has higher education. Additional highly skilled labour can be obtained relatively easily from the Bangkok area. The UCR is thus ready for further development in terms of availability of labour and technical skills.

Opportunities

Resource-based industries: agro-processing industries of agricultural and livestock/fishery products. Construction material industries utilising non-metallic mineral resources in the area such as limestone and gypsum from neighbouring areas Phichit and Nakhon Sawan.

Supporting industries: light processing industries, labour intensive and highly responsive to market needs. Examples include apparel, accessories, sundries, houseware, sporting goods, and artificial flowers. Precision machining and electronics industries. Supporting factors include quality water, stable supply of electricity, proximity to airport, and labour force.

Agricultural input industries: fertiliser, pesticides, and agricultural machinery. These industries were located mostly in Bangkok in the past because of access to the market and the industrial agglomeration of Bangkok. However, as these advantages continue to decline in Bangkok, the Upper Central Region (UCR) is becoming more attractive.

Energy consuming industries: chemical seasoning, noodles, sugar, starch, cement, ceramics.

Cottage industries: Supporting factors: existing cottage industries with sufficient technology, availability of seasonal workers from the agricultural sector, tourism sites such as Ayutthaya, Lop Buri, and Phra Phutthabat, proximity to Bangkok and hence overseas to catch market information and tastes, and the Royal Project of Folk Arts and Crafts for Farmers in Bang Sai, Ayutthaya, which offers the training course in basic handicraft skills.

5.15.4 Opportunities and resources in the Eastern region

Resource availability

Agricultural raw materials: Major agricultural products in the Eastern region include rice, sugarcane, cassava, rubber, fruits, and fast-growing trees. These provide a strong base for agricultural processing businesses, rubber products, paper pulp, furniture, and canned food industries. There is also a large number of livestock in Chachoengsao, Chon Buri, and Prachin Buri. Fishery activities in Chon Buri and Rayong can facilitate the expansion of food processing and cold storage industries in the region.

Minerals and natural gas: The Eastern region is endowed with gem stones, especially in Trat and Chanthaburi. Other minerals include antimony, quartz, tin, and manganese. Large quantities of natural gas are present in the Gulf of Thailand area.

Availability of labour and technical skills

The region's status as a newly industrialised area with a developed inter-regional transportation network has resulted in the fast inflow of labour from other regions.

Opportunities

Food industries in Chon Buri, Rayong, Chanthaburi, Trat, and Prachin Buri. These provinces have good availability of raw materials and water supply, and suitable locations for development.

Chemical, petrochemical and metal industries in Chachoengsao, Chon Buri, and Rayong. Supporting factors: proximity to ports and availability of raw materials.

Tourism development in Chanthaburi and Trat. Supporting factors: natural attractions such as beautiful coastlines, proximity to Bangkok, and availability of labour.

Rubber wood processing, rubber products in Chanthaburi and Trat. Supporting factors: availability of raw materials and bright domestic and world market prospects.

Service industries in all six provinces in order to accommodate industrial expansion.

5.15.5 Opportunities and resources in the Southern region

Resource availability

Agricultural raw materials: Major cash crops in the South include rubber, palm oil, coconut, coffee, and fruit. Other potential cash crops include cocoa, cashew nuts, pepper, and vegetables. Rubber plantations utilise 21 percent of the region's total land. The South also produces a major portion of the Thailand's seafood, especially black tiger prawns. Livestock output in the South also has potential for expansion as the region is classified as the disease free zone. A large part of the region's outputs are used as raw materials for various major agro-industries in the South.

Minerals: The Southern region is richly endowed with minerals. Major industrial minerals include gypsum, feldspar, marble, coal, kaolin, phosphate, ball clay, chromite, tin, tungsten, manganese, and columbite-tantalite. Tin generates the highest income for the region.

Natural gas: The five major sources of natural gas in the South have a combined capacity of 557 million m³/day.

Forest products: Southern forests are mostly virgin and mangrove forests. Yang or rubber tree is the most important wood in the South. Forests in the South cover 20.6 percent of the region's total area. Surat Thani has the largest forest area while Songkhla has the largest rubber tree growing area.

Water: As the south is affected by monsoons, its rainy period lasts for most of the year. Consequently, the region has numerous rivers, including the Tapee, Pattani, Su Ngai Kolok, Trang, and Kra Buri, which provide adequate water sources for irrigation, industrial production, and residential water supply.

Availability of labour and technical skills

Although the agricultural provinces in the region are a source of lower-skilled labour, Southerners are less industrialised than other regions.

Opportunities

Industries that utilise local raw materials for domestic and export markets: Finished rubber products: automobile tires, condoms, rubber bands, rubber parts for automobiles, inner and outer bicycle and motorcycle tires, rubber sponges.

Construction materials: cement, ceramics, gypsum board, marble and granite floor tiles, certain finished rubber products, frozen seafood, canned seafood, prawn feed, finished seafood, seafood essence for the food industry, products from rubber wood.

Food processing industries which utilise the abundance of local raw materials: vegetable and fruit processing: canned fruits and vegetables, instant coffee, palm oil, non-dairy coffee creamer, finished coconut milk, ground pepper, canned fruit and vegetable juice, dairy products, and livestock products.

Industries, which import raw materials to produce for export: plastic products, electronics.

Service industries: tourism-related activities, such as hotels and handicrafts in tourist attracting provinces. Potential provinces include Surat Thani, and Krabi.

5.15.6 Opportunities and resources in the Western region

Agricultural and natural resources

Agricultural raw materials: The Western Region is the major growing area for sugar cane (Suphanburi, Kanchanaburi, and Ratchaburi) and pineapples (Phetchaburi and Prachuap Khiri Khan), most of which are used as raw materials for sugar refineries and canned pineapple factories in the West and other parts of the country. Other major outputs are rice (along the Mae Klong and Thachin river basin) and coconut (Prachuap Khiri Khan). There are also fresh and marine fisheries in the region. The Western region is considered the national swine raising centre, concentrated mainly in Ratchaburi.

Forest: The Western region is well endowed with forests. The region's forest area comprises 59 national forest conservation zones, six national parks, and three wild animal conservation zones.

Minerals: The Western region has an adequate supply of minerals. Major minerals include tin, tungsten, fluorite, feldspar, manganese, and lead. Most minerals are found in the western part of the region.

Water: Water sources in the West include rain water, river water, and sea water. The region has the Mae Klong and Thachin Rivers with branches that run through every province. The provinces of Samut Songkhram, Phetchaburi, and Prachuap Khiri Khan, are connected to the Gulf of Thailand.

Availability of labour and technical skills

The Western region has an adequate supply of unskilled and semi-skilled local labour. Skilled labour is supplied locally or from either the neighbouring province of Nakhon Pathom, where a campus of the University of Fine Art is located, or from Bangkok. Many

provinces in the west have a strong industrial base and, hence, the local labour force is highly industrial-oriented.

Opportunities

Agricultural processing: food seasoning, wood and paper products, fruits and vegetables, and sugar in Kanchanaburi and Suphanburi; coconut products in Samut Songkhram; pineapple processing, para wood products in Prachuap Khiri Khan. Supporting factor: availability of raw materials.

Large-scale industries: pulp, food processing, machinery, textiles (dying and printing) in Ratchaburi. Major supporting factors are strong base of existing industries and availability of industrial facilities.

Down-stream manufacturing and service activities of the steel industry, port-related activities in Prachuap Khiri Khan.

Cement and ceramic products in Phetchaburi. Supporting factors: availability of raw materials and specific skills, strong existing ceramic industry base.

Less polluting industries are becoming more and more welcome in every province, especially Samut Songkhram and Ratchaburi.