

CHAPTER 5

LEGAL ISSUES FOR FOREIGN INVESTORS

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1. Foreign Business Act of 1999 and Activities Restricted to Thai Nationals

Thai law regulates the activities in which the companies designated as “foreigner” may engage in. While some activities are completely prohibited, some may be engaged in with prior approval from a designated government agency, and some do not require any special approval at all.

1.1 Definition of a Foreign Company

According to the Foreign Business Act of 1999 (FBA), the term foreigner means:

- (1) Natural person not of Thai nationality.
- (2) Juristic person not registered in Thailand.
- (3) Juristic person registered in Thailand having the following characteristics:
 - (a) Having half or more of the juristic person's capital shares held by persons under (1) or (2) or a juristic person having the persons under (1) or (2) investing with a value of half or more of the total capital of the juristic person.
 - (b) Limited partnership or registered ordinary partnership having the person under (1) as the managing partner or manager.
- (4) Juristic person registered in Thailand having half or more of its capital shares held by the person under (1), (2) or (3), or a juristic person having the persons under (1), (2) or (3) investing with the value of half or more of its total capital.

The Foreign Business Act of 1999 has identified 3 lists of activities in which foreign participation may be prohibited or restricted, as follows:

Activities stated in List 1 are designated as “businesses not permitted for foreigners to operate due to special reasons”. Foreign companies are completely restricted from engaging in the activities contained in List 1.

Activities stated in List 2 are designated as “businesses related to national safety or security, or affecting arts and culture, traditional and folk handicraft, or natural resources and environment”. Foreign companies may only engage in the activities stated in List 2 with prior Cabinet approval.

Activities stated in List 3 are designated as “businesses which Thai nationals are not yet ready to compete with foreigners”. To engage in activities stated in List 3, the foreign company must apply for and obtain a Foreign Business License prior to commencing the activity.

There are two common exceptions to the above stated rules:

- If a foreigner is operating a business that is classified in List 2 or List 3 with the permission of the Government of the Kingdom of Thailand i.e. Board of Investment or the Industrial Estates Authority of Thailand, such foreigners shall notify the Director-General of Commercial Registration Department in order to obtain a certificate.
- If a foreigner is operating a business that is classified in the Lists under a treaty to which Thailand is a party or is obligated to abide by, it shall comply with the provisions of the treaty which may in return include the entitlement of Thai nationals and Thai enterprises to operate the businesses in the country of the foreigners, i.e. Treaty of Amity Between U.S.–Thailand.

1.2 Restricted Business Activities under the Foreign Business Act of 1999

List 1 – Businesses that foreigners are not permitted to engage in for special reasons:

- Newspaper business, radio-broadcasting station or radio/television business.
- Farming, cultivation or horticulture.
- Animal husbandry.
- Forestry and timber conversion from natural forests.
- Fisheries, especially fishing in Thai territorial waters and in specific economic areas of Thailand.
- Extracting Thai herbs.
- Trade and auction sale of Thai antiques or objects of historical value.
- Making or casting Buddha images and alms bowls.
- Trading in land.

List 2 – Businesses concerning national security or safety that could have an adverse effect on art and culture, customs, or native manufacture/handicrafts, or with an impact on natural resources and the environment:

Group 1 – Businesses concerning national security or safety

- Manufacturing, distribution, repair or maintenance of:
 - Firearms, ammunition, gunpowder, and explosive materials.
 - Components of firearms, ammunition, and explosive materials.
 - Armaments, ships, aircraft, or military vehicles.
 - Equipment, or parts of any type of war equipment.
- Domestic land transportation, water transportation, or air transportation, including domestic aviation.

Group 2 – Businesses that could have an adverse effect on arts and culture, customs, and native manufacturing/handicrafts

- Trading of antiques or artifacts that are Thai works of art or Thai handicrafts.
- Wood carving.
- Silkworm rearing, manufacture of Thai silk, Thai silk weaving, or Thai silk printing.
- Manufacturing of Thai musical instruments.
- Manufacturing of gold-ware, silverware, nielloware, bronzeware, or lacquerware.
- Making bowls or earthenware which are of Thai art and culture.

Group 3 – Businesses that could have an adverse effect on natural resources or the environment

- Manufacturing of sugar from cane.
- Salt farming, including rock salt farming.
- Mining of rock salt.
- Mining, including stone quarrying or crushing.
- Timber processing for making furniture and utilities.

List 3 – Businesses in which Thais are not ready to compete in undertakings with foreigners:

- Rice milling and flour production from rice and plants.
- Fisheries, specifically breeding of aquatic creatures.
- Forestry from re-planting.
- Production of plywood, veneer, chipboard or hardboard.
- Production of lime.
- Accountancy.
- Legal services.
- Architecture.
- Engineering.
- Construction, except:
 - Construction of infrastructure in public utilities or communications requiring tools, technology or special expertise in such construction, except where the minimum foreign capital is 500 million baht or more.
 - Other construction, as prescribed in regulations.
- Agency or brokerage, except:
 - Brokerage or agency of securities or service related to future agricultural commodities futures or financial instruments or securities.
 - Brokerage or agency for the purchase/sale or procurement of goods or services necessary to production or providing services to affiliated enterprises.
 - Brokerage or agency for the purchase or sale, distribution or procurement of markets, both domestic and overseas for the distribution of products made in Thailand, or imported from overseas in the category of international business, with minimum foreign capital of not less than 100 million baht or more.
 - Other brokerage or agency activities, as stipulated in ministerial regulations.
- Auctioneering, except:
 - Auctioneering in the manner of international bidding, not being auctions of antiques, ancient objects or artifacts that are Thai works of art, Thai handicrafts or antique objects, or with Thai historical value.
 - Other types of auctioneering, as stipulated in ministerial regulations.
- Domestic trade in local agricultural products not prohibited by law.
- Retailing all categories of goods having of less than 100 million baht capital in total or having the minimum capital of each shop of less than 20 million baht.
- Wholesaling, all categories of goods having minimum capital of each shop less than 100 million baht.
- Advertising.
- Hotel operation, excluding hotel management.
- Tourism.
- Sale of food and beverages.
- Planting and culture of plants.
- Other services, except those prescribed in the ministerial regulations.

“Other service businesses” stated in List 3 effectively serves as a “catch-all” service category. If the foreigners provide a service, not otherwise contained in List 3, the company must still apply for and obtain a Foreign Business License prior to commencing operation. This category includes the business activity of leasing both fixed and non-fixed assets. Additionally, the activities in which representative offices and regional offices are allowed to engage in are all services that fall under this category.

Also, note that special rules apply if the foreigners plan to engage in the activities of “retail sale of goods” or “wholesale sale of goods”. Both of these activities are contained in List 3; therefore, in order for a foreigner to engage in either of these activities the company must first apply for and obtain a Foreign Business License.

Thai law, however, grants narrow exceptions to the Foreign Business License requirement for those foreign companies seeking to engage in retail selling and/or wholesale selling.

For foreigners to engage in the activity of retail selling, the exception is that if the company has a registered capital of 100 million baht (fully paid up) or more, and capital for each additional retail store of 20 million baht or more, the foreigner is not subjected to the Foreign Business License.

For a foreign company to engage in wholesale selling, the exception is that if the company has 100 million baht capital or more for each of its wholesale stores, the foreigner is not subjected to the Foreign Business License.

There is a catch-all promotional category named “Trade and Investment Support Office” (TISO) which permits a variety of services, including monitoring/servicing affiliates, consultancy services, engineering and technical services, and activities related to machinery, engines, tools and equipment such as training installation, maintenance and repairs, calibration, and software design and development. There is a condition of sales and administration expenses of at least 10 million baht per year. TISO is not qualified for tax benefits.

1.2.1 Foreign Business License Application

As stated above, foreigners seeking to engage in List 3 activities are required to apply for and obtain a Foreign Business License prior to commencing operations.

The Foreign Business Act sets forth the process by which the Foreign Business Committee (“Committee”) reviews the application. It states that the Committee is required to rule on the application within 60 days of submission. However, practically speaking, the application process has 2 distinct steps. The first is the process by which the presiding official at the Ministry of Commerce (MOC) accepts the application for review by the Committee, and the second is the Committee’s actual review of the application.

Acceptance by the MOC Official

An application for a Foreign Business License is submitted to the MOC together with all required documents and information. The presiding MOC official, who is in charged with accepting the application normally, will not do so until he is satisfied that all documents are in order. The official will perform the preliminary inspection upon presentation, but usually he will require the person submitting the application to leave it for later inspection. The time frame for the official’s review of the application is not specified by statute.

In order to avoid these delays, make sure that the person designated to submit the application is familiar with the intended operations of the company to respond on the spot to the official’s questions regarding the application. In the case that the official requests additional documents and/or information, make sure the designated person supplies those documents in a timely fashion.

Review by the Board

Once the official accepts the application and issues a receipt, the sixty -day consideration period begins. The factors considered by the Committee when reviewing applications are:

- The advantages and disadvantages to the nation's safety and security;
- Economic and social development;
- Public order, good morals, art, culture and traditions of the country;
- Natural resources, conservation, energy and environment, consumer protection, size of the enterprises, employment;
- Technology transfer and research and development.

Technology transfer and research and development (R&D) are probably the most important. In 2004, the Ministry issued a document advising foreign investors on how they should describe technology transfer in the license application. Technology here is not just limited to R&D and use of sophisticated equipment, but also specifically includes "administration, management and marketing". In addition, any planned programs the company has with Thai universities are taken under consideration by the committee.

In the event that the Foreign Business License application is rejected, the law requires that the MOC inform the applicant within 15 days of the decision. The notification of rejection must be in writing and expressly state the reasons why the application was rejected.

If the application is rejected, the applicant has the right to appeal the decision. The appeal must be submitted within 30 days of the date on which the applicant received the rejection notice. The Minister of Commerce is required to rule on the appeal within 30 days of receipt. The decision of the Minister shall be final.

2. Work Permits

The Foreign Working Act of 2008 requires all foreigners working in Thailand to obtain a work permit prior to starting work in the Kingdom and describes the procedures for issuance and maintenance of work permits and lists certain occupations from which the foreigners may be excluded.

2.1 Exemptions

The Act grants exemptions from the work permit requirement to persons occupying the following professions:

- Members of the diplomatic corps;
- Members of consular missions;
- Representatives of member countries and officials of the United Nations and its specialized agencies;
- Personal servants coming from abroad to work exclusively for persons listed under the above items;
- Persons who perform duties on missions in the Kingdom under an agreement between the government of Thailand and a foreign government or international organization;
- Persons who enter into 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 Thai Government to enter into and perform any duty or mission in the Kingdom.

2.2 Special Cases

While most foreigners must apply for a work permit, and may not begin work until the permit is issued, the Foreign Working Act does provide special treatment in the following circumstances:

Urgent and Essential Work

Exemption from work permit requirements is granted to the foreigner who enters into 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 foreigner may engage in work only after a written notification on a prescribed form (WP-10), signed by the foreigner and endorsed by his employer, has been submitted to and accepted by the Director-General or his designee.

The foreigners entitled to this treatment may enter into 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.

Application to perform urgent and necessary duties for period not longer than 15 days according to Article 9 which is under the following condition/situation:

1. An alien entering the Kingdom of Thailand to engage in necessary and urgent work which is too necessary and urgent to occur the damage if it could not to perform immediately and shall has the finish periods within 15 days
2. A work, which have the feature of administration, academic matter and uncertain period same as the usual except the non-work which has to perform in suddenly (if it failure to perform at the time, the damage will occur), is not necessary and urgent work
 - Completed Form of WP-10 and one photograph (3 x 4 cm.) plus one copy
 - Letter show the reason why applicants need to perform urgent and necessary duties such as invitation letter and agenda etc.
 - A copy of passport (the page which show a photo and entry VISA)
 - A copy of Company Registration (updated within six months) and a copy of VAT registration; Form Phor Por 01 identifying type of business, which are certified by authorized director of the owner of work place or employer
 - A copy of employer's work permit in case of him/her is a foreigner. If that employer is not working in Thailand nor has no work permit, Power of Attorney certified by Notary Public and Thai Embassy is needed.
 - In case of Thai employer, a copy of Employer's I.D. card
 - Power of Attorney from a foreigner and an employer with 10 Baht duty stamp affixed and a copy of appointee's I.D. card (if a foreigner and an employer are unable to apply in person).

Source: http://wp.doe.go.th/wp/images/form/Form_tt10.pdf

Activities Not Requiring a WP-10

- A foreign national entering the Kingdom as "a participant" of a conference or seminar, who does not engage in arranging such event
- A foreign national entering the Kingdom as "a visitor" to an exhibition or trade fair, and who does not engage in arranging such event
- A foreign national entering the Kingdom as "a visitor" to a business site or as "a participant" of a business meeting, who does not engage in arranging the business site visit or meeting
- A foreign national entering the Kingdom to be a member of "an audience" at a special or academic lecture, and who does not engage in arranging such event
- A foreign national entering the Kingdom to be a member of "an audience" at a lecture or seminar on technical training, and who does not engage in arranging such event
- A foreign national entering the Kingdom as "a purchaser" at a trade fair, who does not engage in arranging such event

In addition, a foreign national arranging a meeting, seminar, or exhibition in cooperation with a government agency or state enterprise will be given a 30-day exemption according to the Royal Decree (No. 2) B.E. 2528.

Investment Promotion

A foreigner seeking permission to work in the Kingdom under the Investment Promotion Act must submit an application for a work permit within 30 days of notification by the BOI that the position has been approved. A foreigner in this category may engage in authorized work while the application is being processed.

2.3 Procedures

The Act requires that any foreigner working in Thailand must obtain a work permit before beginning work. Section 11 of the Act stipulates that while a prospective employer may file an application on behalf of the foreigner in advance of his commencing work, the actual work permit will not be issued until the foreigner has entered into Thailand in accordance with the immigration laws and has presented him or herself to receive the work permit.

For a regular position, a work permit will be issued for 1 year, but for executive position or experts, a work permit will be issued for 2 years. A work permit must be renewed before its expiry date or it will lapse.

Applicants for work permits must enter into Thailand with Non-immigrant B visa. If they enter with a tourist visa or transit visa or visa waiver, they must change the type of visa to be Non-immigrant B visa. Furthermore, a foreigner who enters into Thailand with a Non-immigrant B visa will also qualify to apply for a work permit, if he marries a Thai woman.

2.4 Required Documentation

The following documents must be provided by the foreigner and attached to a work permit application:

- For non-permanent residents: Original of passport containing a Non-Immigrant visa (Validity period not less than 6 months) (except for WP 3 applications, only a copy of passport showing photo page, name and number).
- For permanent residents: Original of passport, residence permit and foreigner book (except for WP 3 applications, only a copy of passport showing photo page, name and number).
- 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, habitual alcoholism or syphilis stage 3 (except for WP 7 applications).
- Three 5x6 cm. full-faced, bareheaded, black and white or color photographs, taken no more than 6 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 Foreign Working Act, 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, and photocopy of every page of 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.

2.5 Permitted Activities

The former law, Foreign Working Act of 1978, prohibited the employers from allowing foreigners to perform any function other than that described in the foreigner's work permit. The employers must report changes in employment, transfers and termination of all foreigners in their organization within 15 days of any such action. In cases of dismissal, the foreigners must return their work permits to labor authorities in Bangkok at the Alien Occupation division or, if they are in a provincial area, to the province's Department of Employment. Failure to do so will result in a fine of up to 1,000 baht.

However, according to the Foreign Working Act of 2008, the law does not force the employers to return a work permit of their foreign employees, but if the employers or foreign employees wish to return a work permit, the labor authorities will receive a work permit and record the termination date.

Note that, although, the law does not force the employers or employees to return a work permit but if the foreigners wish to work in Thailand with the other employers, such foreigner should return their work permit to the labor authorities so that they can record of termination date and the foreigners will then be allowed to apply for a new work permit with the other employers.

Any foreigner engaging in work without a work permit may be punished by a term of imprisonment not exceeding 5 years or a fine from 2,000 baht up to 100,000 baht, or both. In case of violation of the conditions of his work as stipulated in his permit, the foreigner may be punished by a fine of not exceeding 20,000 baht.

An employer who permits a foreigner to work in his organization without a work permit may be punished with a fine from 10,000 baht up to 100,000 baht for each foreign employee. An employer who permits a foreigner to act in violation of the nature of the work specified in the work permit may be punished with a fine not exceeding 10,000 baht.

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

2.6 Restricted Occupations

A Royal Decree in 1973 listed 39 occupations and professions that were then prohibited to foreigners. This list has been amended on several occasions by subsequent Royal Decrees, the latest one in 2005;

1. Labor work, except crewmen engaging in fishery activities included under Item 2 below;
2. Cultivation, animal breeding, forestry and fishery work, except for labor work in maritime fisheries and work requiring specific skills in farm supervision;
3. Masonry, carpentry, or other construction work;
4. Wood carving;
5. Driving motor vehicles or non-motorized carriers, except for piloting international aircraft;
6. Shop attendant;
7. Auctioneering;
8. Supervising, auditing or giving services in accounting, except occasional international auditing;

9. Gem cutting and polishing;
10. Hair cutting, hairdressing and beautician work;
11. Hand weaving;
12. Mat weaving or making of wares from reed, rattan, kenaf, straw or bamboo pulp;
13. Manufacture of manual fibrous paper;
14. Manufacture of lacquerware;
15. Thai musical instrument production;
16. Manufacture of nielloware;
17. Goldsmith, silversmith and other precious metal work;
18. Manufacture of bronzeware;
19. Thai doll making;
20. Manufacture of mattresses and padded blankets;
21. Alms bowl making;
22. Manual silk product making;
23. Buddha image making;
24. Manufacture of knives;
25. Paper and cloth umbrella fabrication;
26. Shoemaking;
27. Hat making;
28. Brokerage or agency work, except in international business;
29. Engineering work, civil engineering branch, that concerns planning and calculation, systemization, research, planning, testing, construction supervision or advisory work, except work requiring specialized skills;
30. Architectural work concerning designing, drawing, estimating, construction supervision, or advisory work;
31. Dressmaking;
32. Pottery or ceramics;
33. Manual cigarette rolling;
34. Tourist guide or tour organizing agency;
35. Hawking business;
36. Thai character type setting;
37. Manual silk reeling and weaving;
38. Clerical or secretarial work;
39. Legal or litigation service, except
 - (a) Working as arbitrator
 - (b) Conducting law suits in Arbitration Court in cases where the law which enforces the dispute is not Thai Law or in cases that do not require judgment of Arbitration in the Kingdom of Thailand

3. Visas and Immigration Law

All persons, other than those in transit and citizens of certain countries, are required to obtain a visa in order to enter into 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.

3.1 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

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

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 up to 30 days at a time.

Visitor Transit: Foreigners 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 30 days at a time, but the total stay may not exceed 90 days from the date of entering into Thailand.

In addition, nationals of 40 countries and 1 special administrative region – Hong Kong SAR – will be able to enter into Thailand without a visa and may remain for 30 days per visit. Foreigners who enter into the Kingdom under the Tourist Visa Exemption category may re-enter and stay in Thailand for a cumulative duration of stay of not exceeding 90 days within any six-month period from the date of first entry. A list of the 40 countries and one special administrative region can be found at www.mfa.go.th/web/2482.php?id=2490

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.

Non-Immigrant Visa: Foreigners, who seek a prolonged stay, or those coming to work in Thailand, should obtain non-immigrant visas for all family members prior to entering into the Kingdom. This visa has several categories:

- Diplomatic visa (D) for those employed by an embassy;
- Business visa (B) for those conducting business in the Kingdom;
- Mass media visa (M) for accredited business or press representatives;
- Expert visa (EX) for those performing skilled or expert work;
- Investor visa (IM) for those who set up their companies under the BOI;
- Study/education visa (ED) for teachers and those here to study/observe;
- Official visas (F) for those performing official duties involving the Thai government;
- Missionary visa (R) for those performing missionary work;
- Science visa (RS) for those doing scientific research or training, or studying in an educational institution in the Kingdom;
- Sports visa (S) for those participating in an officially recognized sports event;
- Dependent visa (O) for those who are here as dependents.

Advantages of a Non-Immigrant visa include:

- Entitlement of the holder to apply for a multiple re-entry visa to Thailand from the Immigration Division in Bangkok;
- Subject to the regulations of the Immigration Authorities, entitlement of the holder to apply for permanent residence in Thailand;
- Eligibility for issuance of a work permit to the holder (only for category B and category O (only a foreigner who married to a Thai national));
- Eligibility for temporary visa renewal while processing issuance of a long-term annual visa.

Foreigners are advised to strictly adhere to the rules governing each visa category. They should report any changes of address or status to local police within 24 hours.

In addition, foreigners residing in Thailand for more than 90 consecutive days are required to notify their address with the Immigration Bureau every 90 days. This requirement applies to all foreigners, including holders of work permits and long-term visas. Failure to do so, the foreigner shall be punished with a fine not exceeding 5,000 baht and with an additional fine not exceeding 200 baht per each day passing until the law is complied with.

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 (1 year);
- An investment that has received authorization from the appropriate government authorities (2 years);
- Investment or other business in connection with investment under the Investment Promotion Act (as determined by the BOI);
- Transit (30 days);
- The controller or crew of a conveyance entering a port or other locality in the Kingdom (30 days);
- Work as a skilled laborer or specialist (1 year).

In response to feedback from investors, the BOI coordinated the establishment of a One-Stop Service Center for Visas and Work Permits. Through joint cooperation with the Immigration Bureau and the Ministry of Labor, the center can process applications or renewals of visas and work permits within 3 hours, upon receipt of proper and complete documentation.

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

The One-Stop Service Center is located at 18th Floor, Chamchuri Square Building, Phayatai Road, Pathumwan, Bangkok 10330, and it may be reached by phone at 0-2209-1100.

Work permits have also to be renewed every year. When an individual applies for a renewal of work permit, he or she has to show that taxes for the previous year have been paid.

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

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

4. International Banking Facilities

4.1 International Banking Facilities (IBF)

On September 16, 1992, the Ministry of Finance and the Bank of Thailand established rules and conditions for commercial banks to establish international banking facilities in Thailand. The annual fee is 100,000 baht. A commercial bank that receives a license will be able to undertake international banking facilities (IBF) business for:

Offshore Lending

- Accepting deposits or borrowing from abroad in foreign currencies from
 - Foreign nationals who do not have a domicile in Thailand; or

- Juristic persons who have no establishment in or business with Thailand. An exception is made for receiving money from foreign banks that have a branch or representative office in Thailand; or juristic persons permitted by Bank of Thailand
- Foreign branches of Thai commercial banks; or
- Other IBF businesses, the Ministry of Finance, the Bank of Thailand, or the Exchange Equalization Funds.

These foreign currencies must be lent abroad, to other IBF businesses, the Ministry of Finance, the Bank of Thailand or the Exchange Equalization Funds.

- Acceptance of deposits or borrowing of offshore baht funds from
 - Offshore banks, foreign branches of Thai commercial banks or other IBF businesses. These funds must be lent to foreign banks, foreign branches of Thai commercial banks, or other IBF businesses.

Local Lending

- Acceptance of deposits, or borrowing from abroad in foreign currencies from
 - Foreign nationals who do not have a domicile in Thailand; or
 - Juristic persons who have no establishment in or business with Thailand. An exception is made for receiving money from foreign banks that have a branch or representative office in Thailand; or juristic persons permitted by Bank of Thailand
 - Foreign branches of Thai commercial banks; or
 - Foreign branches of Thai commercial banks, and other IBF businesses.

These foreign currencies must be lent in Thailand. Each withdrawal and disbursement must be of an amount not less than USD 2,000,000 except in one of the following two cases, where the minimum disbursement is USD 500,000:

- An exporter who has income from exports in excess of 50% of all income during the last accounting period;
- A customer whose revenue is greater than 50% derived from sales or services to an exporter with export revenue exceeding 50% of all revenue during the last accounting period.

Other Related Business

- Cross-currency transactions with overseas customers, other IBF businesses, the Bank of Thailand, the Ministry of Finance, the Foreign Equalization Funds, banks licensed under the foreign exchange control laws, or local customers to whom such IBF businesses have lent foreign currencies.
- Giving acceptance or guarantee against any debts in foreign currencies when either:
 - The bank is licensed under the foreign exchange control laws; or
 - The parties involved reside outside of Thailand.
- All matters dealing with letters of credit in cases where the buyer and the seller of goods involved with the letter of credit purchasing agreement both reside abroad and the goods involved in the agreement have not been either exported out of or imported into Thailand.
- Procuring, or managing the loan syndication procurement of foreign currency loans from foreign sources to those requiring loans in foreign currencies.

Other Unrelated Business

Commercial banks licensed to undertake IBF businesses may also:

- Invest directly or indirectly in common stocks, preferred stocks or warrants of juristic persons registered abroad that are made according to debt restructuring in accordance with Bank of Thailand regulations.

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

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

4.1.1 Revocation of Tax Incentives of Bangkok International Banking Facilities (BIBF)

Previously, corporate income tax reductions and exemptions were granted to BIBF businesses. However, in view of the improved economy, tax privileges have been revoked. Thus, there will be no BIBF business for commercial banking.

Nevertheless the law still provides tax privileges to the out-out business, which will operate under normal commercial banking business. The tax privileges are as follows:

- A reduction of corporate income tax (CIT) to 10% of net profit
- Tax exemption on personal income tax and corporate income tax on interest on loans and interest on deposit received for out-out business to non-Thai individuals who are not residents of Thailand, juristic companies organized under foreign laws and not carrying on business in Thailand and foreign banks
- Tax exemption on profit remittance under Section 70 bis
- CIT exemption for arrangement fees received for the arrangement of a syndicated loan. However, the exemption will be granted only if it meets the criteria, methods and procedures under a notification of the Director-General of the Revenue Department.
- Special Business Tax (SBT) and stamp duty exemption

4.2. Conditions for Participating in IBF

The Bank of Thailand stipulates that IBF must be separated from other banking business – as if it were a separate juristic person. The IBF business in offshore lending must be separated from the IBF business in local lending, and the IBF business in local lending cannot transfer or raise funds to the IBF for offshore accounts. Customers of IBF must provide their actual names, addresses and information for correspondence, and the names on the accounts must be the actual names of customers.

5. Exchange Control

The Exchange Control Act, B.E. 2485 (A.D. 1942), as amended, governs all matters involving foreign exchange. As a 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.

5.1 Currency Regulation

Non-residents

Thai emigrants who are permanent resident abroad or working abroad, foreigners temporarily staying in Thailand for not more than 3 months, foreign embassies, international organizations, including their staff with diplomatic privileges and immunities, 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 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 can be brought into the country.

Residents

There is no restriction on the amount of foreign currency a resident may bring into Thailand. However, all such currency must be sold to, or deposited into a foreign currency account with an authorized bank within 360 days of receipt or entry into the country.

Investors

There is no restriction on the amount of foreign currency transferred into Thailand for direct or portfolio investments. Such foreign currency, however, must be sold or deposited into a foreign currency account with an authorized bank, within 360 days from the date of receipt or entry into the country. Repatriation of investment funds and repayment of overseas loans, are freely permitted subject to submission of supporting document to an authorized bank.

Please note that any person who brings into or takes out of Thailand foreign currency bank notes or coins in an aggregate amount exceeding USD 20,000 or equivalent at market rate must declare such funds to Customs Officer. Furthermore, any transaction involving the sale, exchange, withdraw or deposit foreign currencies in an amount exceeding USD50,000 or its equivalent shall be reported to an authorized bank in a Foreign Exchange Transaction Form as prescribed by the Competent Officer.

5.2 Bank Accounts

Foreign Currency Accounts of Thai Residents

Thai individuals and juristic person in Thailand may maintain foreign currency accounts with authorized banks under the following conditions:

- Foreign currencies originating from abroad can be deposited into foreign currency accounts without limit.
- Foreign currencies purchased or borrowed from authorized banks can be deposited into 2 types of foreign currency accounts.
 - Foreign currency accounts with future obligations, deposit can be made in an amount not exceeding future obligation to pay in foreign currencies to entities abroad. The total outstanding balance shall not exceed USD 1 million for a natural person and USD 100 million for a juristic person. For amounts exceeding such limits, authorized banks may accept such a deposit up to the obligations to pay in foreign currencies abroad within 12 months.
 - Foreign currency accounts without future obligations, the total outstanding balance shall not exceed USD 500,000 for both a natural person and a juristic person.
- In the case of purchasing and borrowing foreign currency, the depositor must submit evidence showing their obligations to pay in foreign currency to persons abroad, authorized banks, the Export and Import Bank of Thailand or the Industrial Finance Corporation of Thailand within 3 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 USD 10,000 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 authorized banks.
- The total daily outstanding balances in all accounts must not exceed USD 5,000,000 for a juristic person and USD 500,000 for an individual.

Foreign Currency Accounts for Non-Thai Residents

Non-residents can open and maintain foreign currency accounts with the authorized banks in Thailand. Funds originating from abroad can be freely deposited. Payment from Thai residents or borrowing from authorized banks can be deposited subject to supporting evidences. Balances on such accounts may be transferred without restrictions.

Non-Resident baht Account

Non-residents may open an account with any authorized bank in Thailand for the purpose of investment in securities or other financial instruments; and for the general purposes other than investment in securities. Proof of identity such as valid passport shall be provided to open the account. The total daily outstanding balances must not exceed 300 million baht per non-resident for each type of account and transfers between different types of accounts are not permitted.

5.3 Trading*Imports*

Importers may freely purchase or draw foreign exchange from their own foreign currency accounts for import payments. Letter of credits can be opened without authorization from the Competent Officer.

Exports

Exports are free from any foreign exchange restrictions. However, proceeds of exports valued at more than USD 50,000 or its equivalent per transaction must be immediately repatriated into Thailand after payment is received which shall not exceed 360 days from the export date and must be surrendered to an authorized bank or deposited in a foreign currency account with an authorized local bank within 360 days of receipt or entry into the country.

Payment to a person or a justice person overseas is freely permitted for items of a non-capital nature, such as service fees, interest, dividends, profits, royalties and educational expenses provided supporting documents are presented to an authorized bank. Travelling expenses are also freely permitted on submission of supporting evidence.

6. Stock Exchange of Thailand

The Stock Exchange of Thailand (SET) is Thailand's primary stock exchange. It was established in 1974 and is supervised by a Board of Governors. The Board consists of 11 Governors, with 5 appointed by the Securities and Exchange Commission (SEC), 5 elected by the SET member companies, and a full time president, who is appointed by the Board of Governors and serves as an ex-officio Board member.

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

Net clearing and book entry settlement are services handled by the Thailand Securities Depository Co., Ltd. (TSD), a subsidiary of the SET. The SET lists a wide range of equity and debt instruments. Listed securities include ordinary shares, preferred shares, bonds and debentures, warrants, covered warrants, derivative warrants and unit trusts.

6.1 SET Members

Currently, the SET has 38 member companies. Member companies must be securities companies permitted by the Ministry of Finance to conduct securities business in the category of securities brokerage.

6.2 SET Listed Companies

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

6.3 Foreign Shareholding Limits

On 3 March 2000 the Foreign Business Act B.E. 2542 (1999) came into effect to relax foreign ownership limits in certain industries, including securities industries. As a result, a securities company with foreign investors holding up to 100% shareholding may engage in the security brokerage business without any restrictions. However, if the securities company operates any other type of securities business, such as dealing, underwriting, investment advisory services, mutual fund or private fund management and securities lending and borrowing, such company must seek approval from the Director General of Commercial Registration Department, Ministry of Commerce.

6.4 The Securities and Exchange Commission (SEC)

The SEC was established on the promulgation of the Securities and Exchange Act B.E. 2535 in 1992 with the objective of developing and supervising the Thai capital market in a fair, efficient and transparent manner. This includes the primary market, the secondary market, securities businesses, market participants and the prevention of unfair securities trading practices. Further information about the SEC is available on its website at www.sec.or.th

7. Land Ownership

In general, non-Thai businesses and citizens are not permitted to own land in Thailand unless the land is on government-approved industrial estates. However, companies that are more than 50% Thai-owned may legally own land. An exception to the rule relates to projects approved by the Board of Investment. A promoted company with 50% or more of its shares held by foreigners may apply for land ownership by submitting the appropriate forms to the Office of the Board of Investment (OBOI). Once the land acquisition is approved, the OBOI will send a letter of approval to the applicant and will notify the Department of Land or the provincial governor.

In addition to projects approved by the Board of Investment, petroleum concessionaires may own land necessary for their activities.

Under the 1999 amendment to the Land Code, foreigners who invest a minimum of 40 million baht are permitted to buy up to 1,600 square meters of land for residential use, with the permission of the Ministry of Interior. An investor has to maintain the investment more than 5 years.

Foreigners are also permitted to own buildings on land that is leased, because there are no restrictions on building ownership. Foreigners can, thus, lease land and build on it and are permitted to own the structure.

Foreign individuals and foreign companies are allowed to hold title to condominium units in buildings that qualify. The rule is that foreigners may own no more than 49% of the total units in the building at any one time. If the proposed transfer would cause the building to exceed 49% foreign ownership it would violate the above rule, and the official would reject the transfer.

Although Thailand does not yet have a requirement for an escrow account to protect the interests of the purchaser of properties, an escrow account may be voluntarily entered into by the contracting parties under the Escrow Act of May 21, 2008. Only commercial banks and finance companies under the law governing financial institutional business, and banks established under a specific law may operate as escrow agents. By placing the agreement deposits into escrow accounts, the purchaser can decrease risks. A new Condominium Act significantly protects the interest of the buyers.