

2016 Legal Guide to Thailand



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INTRODUCTION TO THAILAND

The Kingdom of Thailand is centrally located in Southeast Asia, bordering Myanmar in the north, Laos in the northeast, Cambodia in the east and Malaysia and Singapore in the south. Even though the country is currently under the rule of a junta military government as a result of the 2014 Coup D'état, Thailand is and has been traditionally a democracy based on the constitutional monarchy system, under which a prime minister is the head of state. Thailand is an export-led economy whereby the export sector contributes around 70 percent of the country's GDP. From the early 1990's to 2012, Thailand had experienced rapid growth resulting in the country becoming a middle-income country and a regional manufacturing and export powerhouse, although due to political instability since 2006 when the then Prime Minister Thaksin Shinawatra was ousted from power by a military coup, the Thai economy during the past few years has underperformed, although political situation has stabilized. In 2016 the Thai economy's growth rate is expected to be around 3.3 to 3.5 percent.

Economic Structure and Orientation

The orientation of the Thai economies has always been based on the export-led growth model, hence the country's liberal attitude towards free trade, both import and export. Exports from Thailand are subject to minimal controls, while the government has encouraged export diversification among local industries. Export diversification was initially sought to escape traditional reliance on agricultural exports, and Thailand was successful in becoming a key producer and exporter for value-added products in the vehicle, machinery, computer parts and components, electrics and electronics goods and chemical industries. Presently, Thailand maintains a balance between being an agriculture-based economy and a manufacturing-based economy.

The Thai government's strategy is to ensure that goods produced in Thailand will have access to markets beyond Thailand's population, and to establish Thailand as a strategic investment location in the region. As an active member of ASEAN, Thailand is poised to implement the ASEAN Economics Community (AEC) in December 2015. Bilaterally, Thailand has entered into a number of FTAs including with key trading partners such as Australia, India and Japan. Thailand is currently negotiating an FTA with the European Union.

Population Size, Languages Spoken & Business Hours

Currently, Thailand's population size is around 65 million. Thai is the country's official language. Although English is not widely spoken, many Thai people have a rudimentary understanding of English, and among the educated and professional classes, English is rapidly becoming a *lingua franca*. Due to the increasing interaction between Thailand and China, including bilateral trade and in-bound tourism from China, Mandarin Chinese has recently gained popularity among Thai people. Also, due to the huge presence of Japanese companies doing business in Thailand over the past decades, it is possible to find locals with Japanese language skill.

A normal working day in Thailand starts between 8.30 a.m. and 9.00 a.m. and ends between 5.30 p.m. and 6.00 p.m., Monday to Friday.

CULTURE, CUSTOMS AND PRACTICES IN THAILAND

Due to the fact that Thailand has never been colonized by Western countries, the culture and language of Thailand tend to be uniquely indigenous. Having said that, over the years Thai culture has been deeply influenced by both Western and East Asian popular culture and one

sees in daily lives the mingling between so-called Thai values and Western and/or Japanese, Chinese or Korean culture, whether it be foods, TV shows and movies, or physical appearances. Thailand is a predominantly Buddhist country, with Buddhism practicing by over 90 percent of the population.

Thai names are easily recognizable by foreigners due to their polysyllabic nature and length, and in most cases foreigners find them difficult to pronounce. An example of a Thai name is Mukkharin Lawanlakkhana, where Mukkharin is the surname and Lawanlakkhana is the family name. Except in a very few cases, Thai people have no middle name. Thai people always call someone, whether Thai or foreigner, by his or her first name. Moreover, Thai people almost always have a nickname among whom the nickname is often used depending on the degree of familiarity or formality. For example, if you need Mukkharin Lawanlakkhana's help with something, you should say, "Muk (Muk being the nickname of Mukkharin), please help me to research the Supreme Court precedents on the abuse of shareholders rights by a minority shareholder under the Civil and Commercial Code!" Lastly, in the polite society or formal business setting, it is usual to refer to a colleague or business associate as "Khun" (both male and female).

Thai customs are, in many ways, based on the Confucian concept of respect for the elders and people who have attained social status through seniority, social standing, business achievements and moral aptitude. Thai culture is highly hierarchical with His Majesty the King and the Royal Family at the apex of the society.

THAI GOVERNMENT

As earlier mentioned, except for a periodic hiatus or interruptions, Thai politics has traditionally been defined by its adherence to the democratic system where multiple political parties vie for seats as members of the Parliament by way of a general election. The current head of state, Prime Minister Prayut Chan-Ocha, had earlier confirmed Thailand's return to democracy and had announced that general election will take place sometimes in 2016. Thailand's political system is based on the Executive (Office of the Prime Minister), Legislative (the Parliament and the Senate) and the Judiciary.

JUDIACIARY

The Thai judiciary system is independent from the legislative or executive branches in deciding the disputes which referred to the courts. There are four courts in Thailand as follows:

1. The Constitutional Court settles cases that are related to the constitution matters which referred to it by other courts, the legislative, and the executive branches.
2. The Administrative Courts has jurisdiction over matters regarding an unlawful act by an administrative agency or state official, neglecting of official duties, and an administrative contract. There are two levels of the Administrative Court, i.e. the Administrative Courts of First Instance and the Supreme Administrative Court.
3. The Military Courts. The Military Court tries and adjudicates cases involved with violations or military laws, or other criminal laws which a person under the jurisdiction of the Military Court has violated. There are three levels of the Military Courts, which are the Military Court of First Instance, the Middle Court of Military, and the High Court of Military.

However, after the Thai government led by Yingluck Shinawatra was deposed by the National Council for Peace and Order ("**NCPO**") on 22 May 2014, General Prayuth Chan-

Ocha, the leader of NCPO and the current Prime Minister of Thailand empowers the Military Court to prosecute certain crimes in the Thai Criminal Code, including *lese majeste* crimes for insulting the monarchy and national security and sedition offenses. In addition, people who violate the NCPO's orders are also subject to trial by Military Court.

4. The Courts of Justice deals with civil and criminal disputes. The Courts of Justice are divided into three levels, i.e. the Court of First Instance, the Appellate Court and the Supreme Court. In addition, there are specialized courts with jurisdiction over certain matters such as the Central Intellectual Property and International Trade Court, the Central Tax Court, the Central Labor Court, the Juvenile and Family Court.

LEGAL SYSTEM

Thai Legal System

The legal system of Thailand is based on the civil law with patterns of civil law similar to Continental European Countries. Thai laws comprise of two major sources; the legislative branch and the executive branch. Similar to other civil law countries, the judicial decisions are not law because they are applied to an individual. Nevertheless, Thailand's legal system has been influenced by common law, which results in the tendency of Thai courts to adhere to precedents set by higher courts to maintain stability and fairness.

Thai laws are arranged in a hierarchy, where having the Constitution of Thailand as the supreme and model law in which prevails over other laws.

The following are the principal sources of law:

Constitution of Thailand

The Constitution of Thailand sets out the powers and relationship of the Government and the relationship between the Government and citizens in connection with fundamental rights and responsibilities.

Acts and Statutes

Acts and Statutes are the most commonly known law and passed by the Parliament, e.g. Civil and Commercial Code, Criminal Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Land Code, and Revenue Code.

Emergency Decree

Emergency Decree is enacted by the executive branch through the Cabinet in case of emergency for the propose of national security.

Royal Decree

Royal Decree is issued under power granted by the certain act to set out specific rules concerning such act.

Ministerial Regulations

Ministerial Regulations are enacted by Minister under relevant acts.

Municipal Ordinances

Municipal Ordinances are passed by local government.

Foreign Law in the Thai Court System

In accordance with principles set out in the Act on Conflicts of Laws, foreign law may serve as the law governing the case. However, it must be proved to the satisfaction of Thai court that the foreign law in question is not contrary to public order or Thai public morals, and if the burden of proof is not met, Thai court will apply Thai law.

Effect of Treaties and International Conventions

The Thai system of jurisprudence is a dualistic system. Unlike some countries, the mere fact that the Kingdom has entered into a treaty or convention with a foreign country does not automatically make the provisions of such treaty or convention enforceable in Thailand. Under the dualistic system, treaties are not law within Thailand until they are made law by legislative enactment such as an Act, Royal Decree or Ministerial Regulation.

FOREIGN BUSINESS IN THAILAND

Foreigners in Thailand have basically the same rights as those of Thai nationals, except for certain rights that are reserved only for the citizens of Thailand. Restrictions on foreign share ownership apply in commercial banks, insurance companies, commercial fishing, aircraft, commercial transportation, commodity export, mining and other enterprises exist under various statutes, Cabinet policies, and trade associations' regulations. With some exceptions, Thai participation is to a certain extent, generally required for foreign investment in Thailand.

Foreign Business Act

To apply for business permitting under the Foreign Business Act B.E. 2542("The Act"), an applicant must prepare an application along with a declaration of details of the type of business for which an application is made and submit supporting documents to the Foreign Business Committee for consideration.

The Act provides a definition of "alien" and identifies the scope of foreign participation in business in Thailand.

"Alien" is defined as:

- a natural person who is not of Thai nationality;
- a juristic entity that is not registered in Thailand;
- a juristic entity incorporated in Thailand with foreign ownership accounting for one-half or more of the total number of shares and/or registered capital;
- a limited partnership or ordinary registered partnership whose managing partner or manager is a foreigner.

Businesses Subject to Restrictions

Businesses that are reserved under Lists 1, 2, and 3 of the Act are subject to foreign ownership limitations imposed by law. Business activities indicated in List 1 of the Act are strictly closed to foreigners. Foreigners wishing to engage in one of the activities indicated in List 2 of the Act must obtain permission from the Minister of Commerce with the approval of the Cabinet as for

activities indicated in List 3 of the Act, permission of the Director-General of the Department of Business Development with the approval of the Foreign Business Committee. Alternatively, foreign enterprises granted promotional privileges by the Board of Investment or the Industrial Estate Authority of Thailand are permitted to engage in business activities specified in Lists 2 and 3 of the Act in accordance with the conditions prescribed by such authorities, provided that the Ministry of Commerce is notified and a certificate is applied for.

Licenses/ Certificate

A foreigner who desires to engage in business specified in List 2 or 3 of the Act is required to submit an application and obtain permission from the concerned authorities.

The cabinet in the case of List 2 or the Director General in the List 3 reviews and will make a decision within 60 days of the submission date of the application.

Minimum Capital

"Minimum capital" in the Act means the capital to be brought by the foreign investor.

The minimum capital requirement to incorporate a foreign owned Thai limited company is THB 2,000,000 if the foreign owned company exercises an activity that is not controlled under List 2 and List 3 of the Act.

If the foreigner owned company applies for a Foreign Business License or a Foreign Business Certificate to exercise an activity that is controlled under List 2 and List 3 of the Act, then the minimum capital requirement will be THB 3,000,000 per activity for which a license is required.

If, for example, a foreigner who owns the limited company and is applying for a license for retailing goods and services, the capital requirement will be THB 3,000,000 plus THB 3,000,000, which is THB 6,000,000 in total.

Thai Participation

Foreigners may operate the business in List 2 subject to conditions that at least 40% of the capital of the foreign corporate entities is held by Thai nationals or Thai corporate entities, and at least two-fifths of the directors are Thai nationals. The business carrying out activities in List 3 may be solely owned by non-Thai nationals.

Forms of Business Organization

The principal forms of business organizations under Thai law are sole proprietorship, partnership, limited company, and public limited company. In addition, establishments of branches of foreign corporations are recognized or may be required for the purpose of doing business in many sectors. "Representative" and "regional" offices of foreign companies receive special recognition and, in certain situations, may be distinguished from other branch offices for tax and other purpose.

BANKING AND FINANCE

Forms of Financial Institution

In Thailand, there are various forms of financial institution business. The financial institutions in Thailand are regulated by the Financial Institution Business Act B.E. 2551 (2008) under the supervision of the Bank of Thailand, Ministry of Finance, and divided into two types.

Financial Institution

The financial institution is engaged with financial activities by obtaining funds from the public which are repayable upon demand or at the end of a specified period, and benefiting from such funds by giving credit, trading of bills of exchange or negotiable instruments, foreign exchange, including activities relating to insurance and security. The financial institution can be in the form of commercial bank, finance company, or credit foncier company.

To engage in the aforementioned financial business, a specific license from Ministry of Finance with advice from the Bank of Thailand is required, provided that the applicant is a public limited company of which establishment must be first approved by Ministry of Finance. Following the establishment, the application for the specific license shall be filed with Ministry of Commerce through the Bank of Thailand.

Each license granted by Ministry of Finance provides different scope of permitted business depending on the type of financial institution and rules, regulations, and conditions as announced by the Bank of Thailand from time to time.

Non-bank Financial Institution

Non-bank financial institution is a public limited company or a limited company carrying out business engaging in financial activities. Although this type of financial institution is not bank, it is still under the supervision of the Bank of Thailand. Activities that may be conducted by non-bank financial institution are activities such as providing credit loans, personal loans, e-payment service, or foreign currency exchange service.

Foreign Commercial Bank

Foreign commercial bank may establish branches in Thailand by obtaining a license from Ministry of Finance with advice from the Bank of Thailand, which will be subject to conditions specified by Minister of Finance. Other than the establishment of branches of foreign commercial bank, foreign commercial bank may establish representative offices in Thailand with approval from the Bank of Thailand, provided that such representative office must not accept deposits from the public which are repayable upon demand or with a specified period, whether directly or indirectly.

Shareholding Requirements of Financial Institution in Thailand

Nationality Requirement

The financial institution shall have at least 75% of the total issued shares with voting rights held by Thai nationals, and at least three-fourth of directors being Thai nationals. However, the Bank of Thailand may permit non-Thai nationals to hold up to 49% of the total issued shares with voting rights, and more than one-fourth, but not exceeding half of directors being non-Thai nationals, if it deems appropriate.

Percentage Restriction

An individual whether Thai nationals or non-Thai nationals is prohibited to hold more than 10% of the total issued shares with voting rights unless the approval from the Bank of Thailand is obtained.

CAPITAL MARKETS

The Securities and Exchange Commission ("**SEC**") was established by the Securities and Exchange Act B.E. 1992 ("**the Act**") to act as a regulator of the Thai Capital Market in primary and secondary markets. The SEC was authorized to introduce policies for the development and supervision of the securities markets and related activities in Thailand.

The Stock Exchange of Thailand ("**SET**") is the sole stock exchange in Thailand for trading of securities, offering a full range of products, services and trading infrastructure for investors, listed companies and other participants.

Restriction on the Foreign Ownership of Thai Listed Companies

Foreign shareholding limits apply to every share listed on the SET. Most listed companies limit the foreign ownership to a maximum of 49%, except those in the banking and finance sector which generally permits only a 25% foreign holding. The foreign shareholding limit typically leads to demand exceeding supply, which results in paying a premium for shares on the foreign board.

In order to ensure that the foreign shareholders entitled to receive financial benefits are arising from investment in the SET, and will be eligible for dividends, right issues & warrants and voting right, they are required to hold stock registered according to their "residential status".

All securities trading on the SET is handled in Thai Baht. There are no direct restrictions on the inward and outward remittance of funds by foreigners. The Bank of Thailand (the "**BOT**") does not limit the inward remittance of funds by foreigners. For the repatriation of funds, foreign investors illustrate the evidence from the sale of securities to the banks, which are authorized to facilitate the repatriation of proceeds and will report remittances to the BOT.

Taxation

Foreign investors are subject to taxation on capital gains, dividends and interest earned from their securities investment on the SET, according to the following schedule:

Types of income	Tax rate
Capital gains	Tax-free for individual investors, but 15% withholding tax for foreign juristic investors ¹
Dividends	10% withholding tax
Income (capital gain and interest income) from investment in debentures and bonds	15% withholding tax

Remarks¹

Foreign juristic investors are defined as institutions established under foreign law, and which do not operate in Thailand.

LABOR LAWS

Thai labor laws were enacted to specify rights and duties between the employer, the employee and the government authority with the purpose in protecting the employee from being taken advantage of. The labor laws stipulate the minimum standards under which the employer must provide to the employee.

Fundamental labor law in Thailand is governed by a number of laws, including the Civil and Commercial Code; the Labor Protection Law; the Labor Relations Law; the Act Establishing the Labor Court and Labor Procedure; the Social Security Law; and the Workmen's Compensation Law.

Minimum Wage

According to the announcement of the Ministry of Labor, as of 1 January 2013 until the end of the year 2015, the minimum wage of 300 Baht per day has been applied to every province in Thailand. The rate applies to both Thai and foreign employees. However, if there is any adverse change to the economic situation in Thailand, the Wage Committee has the right to revise the minimum wage as it deems appropriate.

Working Time

Pursuant to the Labor Protection Act B.E. 2541 Section 23, the normal working time of the employee shall not exceed 8 hours per day, and the total working time per week shall not exceed 48 hours. However, where the work may be hazardous to the health and safety of the employee as prescribe in the Ministerial Regulations, the normal working time shall not exceed 7 hours per day, and the total working time per week shall not exceed 42 hours.

Overtime Work

Under the Labor Protection Act, there are two types of overtime payments.

General overtime pay is a payment made to an employee by an employer in return for working overtime on a working day at the rate of not less than 1.5 times of the normal hourly wage.

Holiday overtime pay is a payment made to an employee by an employer in return for working overtime on a holiday at the rate of not less than 3 times of the normal hourly wage.

Termination of Employment Contract

For the employment contract with the definite period of work, the expiration will be upon the completion of specified, where notice is not required in advance.

In respect of the employment contract without definite period, an employer or an employee may terminate the contract by giving advance notice in writing to the other party before or on the date when the wage payment is due in order for the termination to be effective on the following a wage payment date, but an advance notice of more than three months is not required. The contract for work during probationary employment is deemed an employment contract with no definite period specified.

The employer may pay wages in an amount to be paid up to the due time of termination of the contract of employment as specified in the notice and may dismiss the employee immediately.

The advance notice for termination of the employment contract is not required if the employer terminates the employment contract with certain causes stipulated by the applicable labor laws.

Severance Pay

In the case where the employer terminates the employment contract, the employer is obliged to pay the employee who is terminated severance pay at the rate prescribed by the applicable labor laws.

Nevertheless, the employee whose employment contract is terminated due to completion of definite work period and the employee who is terminated due to certain causes prescribed by the applicable labor laws shall not be entitled to the severance pay.

Foreign Employment

Foreigners who wish to work in Thailand are required to obtain Non-immigrant B visa. Such visa must be requested by the employer. In order to obtain such visa, the foreigner must present the employment contract along with other supporting documents of the employer to the Thai Embassy in the country where the foreigner files a visa application.

After coming to Thailand under the Non-immigrant B visa, the foreign employee shall apply for a work permit in Thailand by filing a "Tor.Tor. 1" form with the Thai Ministry of Labor.

There are certain professions that are reserved for Thai nationals only. In fact there are several factors for the Thai official to consider in issuing a work permit for the foreign employee such as the national security, economic development, career opportunities for Thai citizen or whether such profession will bring income or transfer technology into the country.

The employer which is a Thai entity will be able to hire a foreign employee only when the employer has at least THB 2,000,000 of registered capital. If the entity is a foreign corporation, the entity is required to have at least THB 3,000,000 of capital in Thailand in order to hire a foreign employee.

TAXES

Tax imposition in Thailand covers both national and local levels. The main taxing authority is the Revenue Department of Thailand. The following is the basic taxes that persons doing business in Thailand should be aware of.

Personal Income Tax ("PIT")

PIT is a direct tax levied on income of a person. A person refers to an individual, an ordinary partnership, a non-juristic body of person and an undivided estate. Generally, a person liable to PIT has the duty to compute his tax liability, file tax return and pay tax (if any) based on a calendar year basis. Current personal income tax rates applicable to taxable income are progressive rates as follows:

Level	Taxable Income (baht)	Tax Rate (%)
1	0-150,000	Exempt

Level	Taxable Income (baht)	Tax Rate (%)
2	more than 150,000 but less than 300,000	5
3	more than 300,000 but less than 500,000	10
4	more than 500,000 but less than 750,000	15
5	more than 750,000 but less than 1,000,000	20
6	more than 1,000,000 but less than 2,000,000	25
7	more than 2,000,000 but less than 4,000,000	30
8	Over 4,000,000	35

Corporate Income Tax ("CIT")

At present, a Thai company basically pays tax at 20% of net profit. Nevertheless, some types of companies receive a rate reduction. On the other hand, a foreign company operating business in Thailand shall pay 20% tax merely on profit obtaining from business in Thailand. In addition, international transportation company shall pay tax at the rate of only 3% on gross receipts. However, a company which is promoted by the Board of Investment of Thailand ("BOI") may be exempted from CIT for certain years specified by the BOI.

Value-Added Tax ("VAT")

VAT is an indirect tax levied on goods and services. The current rates are 10% (for sale of goods or provision of services or import of goods/services) and 0% (for exported goods, services wholly consumed overseas, international transport services, sales of goods/services between enterprises located in a duty free zone) with some reductions or exemptions.

Nevertheless, according to the Royal Decree No. 549 and the Announcement No. 92/2557 of the NCPO, VAT is decreased to the rate of 7% charge on consumers until 30 September 2015. Afterwards, VAT will be increased to the rate of 10%.

Withholding Tax ("WHT") for Foreign Contractors

A foreign company that does not operate business in Thailand will be subject to WHT on certain types of income derived from Thailand. The WHT rates may be reduced / exempted in accordance with categories of income under the provision of Double Taxation Agreement. The rates of WHT are 10% (for remittance of profits and dividends) and 15% (for other income such as interests, royalties, capital gains, rents as well as professional fees).

INTELLECTUAL PROPERTY

Thailand has continuously improved its intellectual property law. At present, Thailand has many laws relating to the protection of intellectual property rights. Since 1989, Thailand participated as the member of the World Intellectual Property Organization (WIPO). Apart from being a member of WIPO, Thailand is also a contracting party to several treaties, conventions or agreements including Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), Paris Convention for the Protection of Industrial Property (Paris Convention), Berne Convention and Patent Cooperative Treaty (PCT). In order to conform to the aforementioned treaties, conventions, and agreement as the contracting party, Thailand is currently in the midst of amending its intellectual property law regime to meet international standards.

Copyright and Copyright Related Rights

The law regulates copyright in Thailand is the Copyright Act B.E. 2537. Types of works protected by such act are literary work, computer program, dramatic work, artistic work, musical work, audiovisual work, cinematographic work, sound recording, performer, and broadcasting work. The aforementioned works are automatically protected for the life of the author and 50 years after the death of the author. Registration is not compulsory, but is recommended for the owner to file a record with the Department of Intellectual Property. The owner of copyright has the exclusive rights to reproduce or adapt, communicate to public, rent out the original or the copies of a computer program, an audiovisual work, a cinematographic work and a sound recording, including rights to give benefits accruing from the copyright to other persons, and license the rights with or without condition.

Industrial Property Rights

Industrial property rights cover patent, including invention and industrial design, petty patent, trademark, trade secrets, geographical indications, layout designs of integrated circuits, plant varieties, and traditional knowledge. Thailand usually applies the "first to file" principle, but priority can be invoked to certain number of cases.

Patents

Patents will be granted by the Patent Office of the Department of Intellectual Property of Thailand. The conditions of invention are novelty, inventive step and capable of industrial use. The term of protection for patent is 20 years, industrial design is 10 years, petty patent is 6 years (renewable for 2 periods, each period shall be valid for 2 years). Layout designs of integrated circuits are valid for 10 to 15 years.

Trademark

Trademark will be examined, and the certificate of registration will be issued by the Trademark Office of the Department of Intellectual Property of Thailand. The conditions for registration of trademark are its distinctiveness, to not be prohibited under Thai Trademark Act, and not be the same as or similar to a trademark registered by another person. The term of protection for trademark is 10 years, and a renewal can be filed before the due date.

Plant Varieties

Plant varieties can be registered for protection in accordance with Plant Varieties Protection Act B.E. 2542. The conditions for registration are uniformity, stability and distinctness. Thailand is the member of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Measures to Infringement

The intellectual property law provides a number of tools for the authorities to deal with infringements and to protect intellectual property rights:

Administrative Measures

Administrative measures are mostly practical for intellectual property owners. The fine and sanction in each act relating to intellectual property are clearly specified. The Intellectual Property and International Trade Court (IPITC) is the court having jurisdiction over dispute concerning intellectual property or case relating to intellectual property.

Civil Remedies

The intellectual property owner can claim the infringer for remedy, such as the payment of damages, and order the infringer to do or omit from any act, such as suspending the distribution of counterfeit goods.

Criminal Procedures

Criminal procedures are separated into 2 types. The first type is prescribed in each act concerning intellectual property with the specific criminal penalty. In case where there is no specific provisions prescribed in a certain act, the second type which is prescribed in the Criminal Code will be applied.

DISPUTE RESOLUTION

In general, the parties to an agreement are free to choose the governing law and dispute resolution method. Any disputes arising between the parties may be referred either through court settlement or out of court settlement.

In-court Settlement

Litigation

The parties may bring their disputes to a competent Thai court of jurisdiction. Cases filed with Thai courts are decided based on submitted evidence and testimony given by the parties during the trial stage.

For civil cases that do not fall within the jurisdiction of the special courts, upon the filing and the acceptance to hear the case by the court, the court will be responsible in settling the issues in dispute and burden of proof, and conduct the trials on a non-jury basis. Following the submission of evidence and witness hearing, the court will render the judgment.

Due to the increase of foreign investors and international commercial transactions, the numbers of commercial litigation have significantly increased. As a result, the court normally asks the parties whether they mutually wish to mediate their disputes or not before the commencement of the trials. In the case where the parties wish to mediate, their case will be referred to the Mediation Centre of the Office of the Courts of Justice for mediation. By offering the mediation prior to the trials, this would benefit the parties in the aspects of business and cost and expenses incurred from the proceedings.

In-court Arbitration

Under Thai laws, cases that can be arbitrated in court shall be the cases pending in the court and arbitration in court is taken place upon the parties' mutual agreement. In this regard, the parties may submit their disputes to one or more arbitrators by filing the joint application stating terms of their settlement agreements.

Out-of-court Settlement by Arbitration

The Arbitration Act B.E. 2545 (2002) regulates general form of arbitration, arbitration proceedings, challenge, recognition and enforcement of awards, and the Thai Arbitration Institute as the main arbitration body in Thailand.

Upon mutual written arbitration agreement, the parties to the agreement may refer their disputes to arbitration according to their agreement on the arbitral tribunal, venue, language, and regulations governing the arbitration.

Arbitral awards are binding upon the parties. If the award is issued in Thailand, the parties are entitled to challenge or enforce the award, as the case may be, by filing the petition with the competent court.

Foreign Arbitration

The arbitral awards which are issued in foreign countries are also binding upon the parties in Thailand. However, foreign arbitral awards are unenforceable until they have been enforced by competent Thai courts, provided that Thai courts will only enforce the award governed by a treaty, convention, or international agreement to which Thailand is the party, and to the extent that it is not contrary to public order and good moral of the Thai people.

Apisith & Alliance is a highly focused Bangkok-based independent law firm recognized for its know how and expertise in the areas of international trade, intellectual property, corporate and commercial transactions, mergers and acquisitions and litigation. The firm's lawyers are highly experienced and recognized as experts in their focused areas of practices. Due to the international and cross-border nature of our works, we have over the years built up an extensive network of strategic partners in virtually every jurisdiction in which our clients are doing business.

Apisith & Alliance is perhaps best known for its leading international trade practice as well as its rowing corporate and commercial/M&A practice with particular niches in renewable energy, middle market mergers & acquisitions, IPOs and capital market and cross-border transactions. Our international trade practice is highly experienced with excellent track records. Our lawyers have intensive and broad experience in representing Thai and foreign clients in trade remedy actions, including numerous Thai antidumping investigations in which our lawyers represent key domestic industries such as steel, home products, tire and chemical. The firm and Apisith John Sutham have over the years been recognized as leading practitioners by publications such as *The International Who's Who of Leading Trade and Customs Lawyers*, *Chambers Global – the World Leading Lawyers for Business - under WTO/International Trade*, *the Expert Guides to the World's Leading International Trade Lawyers*. Our corporate and commercial practice is headed by practitioners with extensive experiences and backgrounds as partners in international law firms. Our trademark prosecution practice is currently ranked by *Managing Intellectual Properties* magazine as one of the leading IP firms in Thailand.



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