



# Doing business in Thailand

## **A comparative guide**

July 2023

# A guide to doing business in Thailand

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



**No.**                      **Question**

## A. Legal system and landscape

**1**                      **Is the system of law in your jurisdiction based on civil law, common law or something else?**

The legal system of Thailand is a civil law system established by a code of laws passed by the legislature. Though sources of laws in Thailand include the constitution, codes of laws, acts, and decrees, some judicial decisions are used as a secondary authoritative source of laws due to the influences of common law in Thailand's legal system.

## B. Entity establishment

**2**                      **What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?**

Thailand recognizes 3 types of business organizations: partnership, limited companies, and other forms of corporate presence:

Type	Brief description
<b>Partnership</b>	
Ordinary Partnership	<ul style="list-style-type: none"> <li>All partners are jointly and wholly liable for all obligations of the partnership.</li> <li>Ordinary partners may contribute money, other property or labour to the partnership</li> <li>Can be an unregistered or registered partnership</li> </ul>
Limited Partnership	<ul style="list-style-type: none"> <li>Two types of partners in the limited partnership:                             <ul style="list-style-type: none"> <li>Limited liability – limited its liability to the amount of capital contributed</li> <li>Unlimited liability</li> </ul> </li> <li>Limited Partnership must be registered with the Ministry of Commerce ("<b>MOC</b>")</li> </ul>
<b>Limited companies</b>	
Private limited companies	<ul style="list-style-type: none"> <li>Governed by the Civil and Commercial Code ("<b>CCC</b>")</li> <li>A minimum of two subscribers is required to form a private limited company</li> <li>All shares must be subscribed to and at least 25% of the subscribed shares must be paid up by the subscribers</li> </ul>

Public limited companies	<ul style="list-style-type: none"> <li>• Governed by Public Limited Company Act B.E. 2535 (1992) (“<b>PLCA</b>”)</li> <li>• A minimum of 15 promoters is required for the formation and registration of a public limited company</li> <li>• All shares must be subscribed and fully paid up</li> </ul>
<b>Other forms of corporate presence for example:</b>	
Branch office	An entity registered under foreign law and considered as the same legal entity as its head office.
Representative office	<ul style="list-style-type: none"> <li>• Established for limited business purposes (e.g. market research) and cannot render services to any person other than its head office or affiliated/group companies or earn income from any transaction.</li> <li>• Such offices can only receive funds for payment of their expenses from their head office.</li> </ul>

**3 Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?**

Yes, but a certain business of non-domestic entities may be restricted by certain regulations, for example, the Foreign Business Act B.E. 2542 (1999) (“**FBA**”).

**4 Are there any capital requirements to consider when establishing different entity types?**

- Generally, there is no specific minimum registered capital requirement. However, for the limited company, the value of each share may not be less than THB 5, and at least 25% of the share value must be paid up. For the public limited company, 100% of the issued share capital must be paid up.
- If 50% or more shares of the limited company or the public limited company are owned by the foreigner(s), it is generally required to have a minimum capital of not less than THB 2 million (fully-paid up) per business activity that it will conduct. Any activities being subject to the FBA restrictions and requiring an FBL or FBC would require a fully paid-up capital of at least THB 3 million per activity.
- For the branch office that applies for a business license, it is required to have the remittance funds from its head office in the amount of 25% of estimated average expenses per year in the first three years (per the license application) or a minimum of THB 3 million per activity.

**5 How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?**

- Please refer to the differences in question 2
- The most common form of a vehicle that we have seen would be a limited company.

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**6** **How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?**

- Under the CCC or PLCA, the limited company and the public limited company are managed by directors (appointed by shareholders) who make decisions at board meetings. Board may appoint managers or any sub-committees to exercise a power as they deemed fit.
- There are certain decisions that require the shareholders approval.
- Shareholder decisions may pass by various voting requirements, depending on the type of decision stipulated in the company's articles of association and the CCC or PLCA.

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**7** **Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?**

- There is no restriction on the number or nationality of directors for the limited company. However, businesses that are subject to specific laws (e.g., aviation business) may be required to maintain a specific ratio of Thai nationals to foreigners on the board or in management. There must be at least 2 shareholders at all times.
- The board of directors of the public limited company must have at least five members and at least half of the directors must reside in Thailand. There must be at least 15 shareholders at all times.
- If 50% or more shares of a company are owned by foreigners, the said company might be subject to the FBA conditions.

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**8** **Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

There is no restriction on expanding business operations in Thailand provided that the activity is covered by the company's objectives, and it is not either subject to restriction under the FBA or illegal under the relevant Thailand laws. We also have anti-trust laws which should be taken into consideration when expanding by mergers and acquisitions.

## C. Entity operation

Please answer the following questions only for the most common entity / ies within your jurisdiction:

### C1. Governance

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**9** **Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

No. Corporate governance codes are normally applicable for the listed company.

## C2. Capital

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### 10 **What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

Capital injection, loans, and corporate debentures. Corporates may also issue convertible debentures as alternative instruments for fundraising.

## C3. Return of proceeds

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### 11 **What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.**

- The limited company normally returns proceeds to its shareholders by dividend distribution. At the annual dividend of the limited company is declared by the shareholders or, for interim dividend, declared by board of directors. In this regard, at the time of each dividend distribution, a limited company must appropriate at least 5% of the profit arising from the business of the company to a reserve fund, until the fund reaches 10% of the registered capital.
- Loan to shareholders with interest is possible. However, there is the Thai legislation limits the ceiling of interest.
- The limited company also can reduce its share capital by reducing the number of shares issued or reducing the par value of the shares. This process requires a special resolution from shareholders, approval from its creditor and registration with the MOC.

## C4. Shareholder rights

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### 12 **Are specific voting requirements / percentages required for specific decisions?**

There are mainly two types of shareholders' resolutions for the limited company: an ordinary resolution (usually set at majority of shareholders attending votes), and a special resolution (i.e., 75% of total voting shares of shareholders who attend the meeting and eligible to vote). An ordinary resolution applies to any shareholders' meeting. While special resolutions are required by the law (and if specified in the company's Articles of Association) for specific actions as follows:

- Amending the Memorandum of Association or Articles of Association
- Increasing the capital by issuing new shares
- Decreasing capital
- Dissolving or merging the company
- Converting private limited company to public limited company

### 13 **Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?**

Under the CCC, when the shareholder(s) holding 20% or more of the total share of the company call(s) for a meeting, the directors must, without delay, summon the meeting. If the extraordinary meeting is not held within 30 days, shareholders holding the required amount of company shares may summon it themselves.

C5. Employment

**14 What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?**

Employment laws are mainly covered by the Labor Protection Act (LPA) as amended, Labor Relations Act (LRA) and as Social Security Act (SSA), and the hiring of foreign nationals in Thailand also are regulated by the Foreign Business Act and the foreigner’s Working Management Emergency Decree 2017 and Amendment 2018. We have set out below a summary of the rights and protections of employees in Thailand under Thailand’s employment law. This is not exhaustive but covers the core areas. All financial figures are the current figures and are subject to review.

Right / Protection	Details																		
<p><b>National Minimum Wage</b></p>	<p>As per the National Wage Committee’s Notification regarding the Minimum Wage Rate (No. 11) (NWC Notification), which is effective from 1 October 2022 onwards, the minimum wage rate applicable to the businesses in each province are as follows:</p> <table border="1" data-bbox="619 922 1393 1995"> <thead> <tr> <th data-bbox="619 922 991 976">Provinces</th> <th data-bbox="999 922 1393 976">Minimum daily wage rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 987 991 1030">Chonburi, Rayong and Phuket</td> <td data-bbox="999 987 1393 1030">354</td> </tr> <tr> <td data-bbox="619 1041 991 1151">Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakarn, and Samut Sakhon</td> <td data-bbox="999 1041 1393 1151">353</td> </tr> <tr> <td data-bbox="619 1162 991 1205">Chachoengsao</td> <td data-bbox="999 1162 1393 1205">345</td> </tr> <tr> <td data-bbox="619 1216 991 1258">Ayutthaya</td> <td data-bbox="999 1216 1393 1258">343</td> </tr> <tr> <td data-bbox="619 1270 991 1491">Krabi, Khon Kaen, Chiang Mai, Trat, Nakhon Ratchasima, Prachin Buri, Phang Nga, Lop Buri, Songkhla, Saraburi, Suphan Buri, Surat Thani, Nong Khai, Ubon Ratchathani</td> <td data-bbox="999 1270 1393 1491">340</td> </tr> <tr> <td data-bbox="619 1503 991 1612">Kalasin, Chanthaburi, Nakhon Nayok, Mukdahan, Sakokn Nakhon, Samut Songkhram</td> <td data-bbox="999 1503 1393 1612">338</td> </tr> <tr> <td data-bbox="619 1624 991 1912">Kanchanaburi, Chainat, Nakhon Phanom, Nakhon Sawan, Bueng Kan, Buri Ram, Prachuap Khiri Khan, Phayao, Phattalung, Phitsanulok, Phetchaburi, Phetchabun, Yasothon, Roi Et, Loei, Sa Kaeo, Surin, Ang Thong, Uttaradit,</td> <td data-bbox="999 1624 1393 1912">335</td> </tr> <tr> <td data-bbox="619 1924 991 1995">Kamphaeng Phet, Chaiyaphum, Chumphon, Chiang Rai, Trang, Tak,</td> <td data-bbox="999 1924 1393 1995">332</td> </tr> </tbody> </table>	Provinces	Minimum daily wage rate	Chonburi, Rayong and Phuket	354	Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakarn, and Samut Sakhon	353	Chachoengsao	345	Ayutthaya	343	Krabi, Khon Kaen, Chiang Mai, Trat, Nakhon Ratchasima, Prachin Buri, Phang Nga, Lop Buri, Songkhla, Saraburi, Suphan Buri, Surat Thani, Nong Khai, Ubon Ratchathani	340	Kalasin, Chanthaburi, Nakhon Nayok, Mukdahan, Sakokn Nakhon, Samut Songkhram	338	Kanchanaburi, Chainat, Nakhon Phanom, Nakhon Sawan, Bueng Kan, Buri Ram, Prachuap Khiri Khan, Phayao, Phattalung, Phitsanulok, Phetchaburi, Phetchabun, Yasothon, Roi Et, Loei, Sa Kaeo, Surin, Ang Thong, Uttaradit,	335	Kamphaeng Phet, Chaiyaphum, Chumphon, Chiang Rai, Trang, Tak,	332
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	<p>Nakhon Si Thammarat, Phichit, Phrae, Maha Sarakham, Mae Hong Son, Ranong, Ratchaburi, Lampang, Lamphun, Si Sa Ket, Satun, Sing Buri, Sukhothai, Nong Bua Lamphu, Amnat Charoen, Uthai Thani</p> <p>Narathiwat, Pattani, Yala, Nan, Udon Thani 328</p>
<b>Holiday</b>	<p>The employees are entitled to the holidays as detailed below:</p> <ul style="list-style-type: none"> <li>• The employees who have worked continuously for one full year are entitled to an annual holiday of no lesser than six working days.</li> <li>• The employees who have worked for lesser than one year are entitled to an annual holiday on a pro-rata basis.</li> <li>• In addition to the above, the employees are entitled to no lesser than 13 days of traditional holiday each year (inclusive of National Labor Day). The traditional holidays are to be in accordance with the public's annual holiday, religious holiday, or local customary holiday.</li> </ul>
<b>Working Hours</b>	<p>Employee's working hours shall not exceed 8 hours per day. If the working period in any one day is less than 8 hours, the remaining hours can be added to the other normal working days upon mutual agreement between the employer and employee. However, such working hours shall not exceed 9 hours per day and 48 hours per week.</p>
<b>Rest Periods</b>	<p>Employees are entitled to at least one hour rest period after working for five hours consecutively. The rest period can be agreed otherwise between the employer and employee, however, the total rest period per day shall not be less than one hour.</p>
<b>Pension rights</b>	<p>The employer is required to enrol its employees, who are older than 15 years old, for the social security funds within 30 days from the date on which the employer hires the employees. Such employees contributing to the social security fund are known as an insured person which they will receive the following benefits:</p> <ul style="list-style-type: none"> <li>• Injury or sickness benefits</li> <li>• Maternity benefits</li> <li>• Invalidity benefits</li> <li>• Death benefits</li> <li>• Child benefits</li> <li>• Old-age benefits</li> <li>• Unemployment benefits</li> </ul> <p>An insured person aged 55 and above is entitled to old-age benefits as follows:</p> <ul style="list-style-type: none"> <li>• Contributed for not lesser than 180 months (whether consecutively or not): entitled to the monthly living allowances or known as superannuation pension in the amount of 20% of the average wage (capped at THB 15,000) for the last 60 months before retirement; or</li> </ul>



	<ul style="list-style-type: none"> <li>Contributed for over 180 months (whether consecutively or not): entitled to the monthly living allowances or known as superannuation pension in the amount of 20% of the average wage (capped at THB 15,000) for the last 60 months before retirement plus an extra 1.5% for each additional year.</li> </ul>
<b>Discrimination</b>	<p>Employees are protected against unfair and unequal treatment based on the following grounds:</p> <ul style="list-style-type: none"> <li>Origin</li> <li>Race</li> <li>Language</li> <li>Sex</li> <li>Pregnancy</li> <li>Age</li> <li>Disability</li> <li>Physical or health condition</li> <li>Personal status</li> <li>• Economic or social standing</li> <li>• Religious belief</li> <li>• Education</li> <li>• Constitutionally political view</li> </ul>
<b>Maternity Leave / Pay</b>	<p>Pregnant female employees are entitled to no more than 98 days of maternity leave (this includes weekends and public holidays).</p> <p>Pregnant female employees are entitled to their normal earnings for the period of 45 days from their employer and pay for the other 45 days from the Social Security Fund.</p>
<b>Paternity Leave</b>	Not available
<b>Shared Parental Leave</b>	Not available
<b>Statutory sick pay</b>	Employees are entitled to sick pay equal to their wage for a normal working day for the entire period of time taken as sick leave, but not exceeding 30 working days per year.
<b>Statutory Notice Periods</b>	<ul style="list-style-type: none"> <li>Where the period of employment is not specified in the employment contract, if the employer wishes to terminate the employment contract, a written advance notice must be given to the employees on or before the due date of wage payment and such termination shall take effect on the following due date of the wage payment</li> <li>If the employer wishes to immediately terminate the employment contract, the employer shall render payment in lieu of advance notice to the employees in the amount to be paid up until the following due date of the wage payment</li> </ul>
<b>Unfair dismissal</b>	<p>Unfair dismissal of employees cases can be varied and it usually depends on the specific cases of each case. However, some of the unfair dismissals are as follows:</p> <ul style="list-style-type: none"> <li>Immediate dismissal without cause and without severance pay;</li> </ul>

	<ul style="list-style-type: none"> <li>• Termination of the employment contract without payment of unused annual leave;</li> <li>• Termination of the employment contract due to violation of work regulations by the employees without prior warning; or</li> <li>• Termination of employment contract under the ground prohibited by law.</li> </ul> <p>Accordingly, in case of unfair dismissal, if the court sees that the dismissal of employees is unfair, the court may order the employer to reinstate the employee or order the employer to compensate the employee as the court see fits.</p>														
<p><b>Statutory Redundancy Payment</b></p>	<p>A statutory redundancy payment or known as severance pay in Thailand must be provided to the employees if the employer dismisses the employees without cause. The details of severance pay are summarized as follows:</p> <table border="1" data-bbox="616 725 1393 1102"> <thead> <tr> <th>Length of service</th> <th>Severance pay rate</th> </tr> </thead> <tbody> <tr> <td>120 days but less than 1 year</td> <td>30 days</td> </tr> <tr> <td>1 year but less than 3 years</td> <td>90 days</td> </tr> <tr> <td>3 years but less than 6 years</td> <td>180 days</td> </tr> <tr> <td>6 years but less than 10 years</td> <td>240 days</td> </tr> <tr> <td>10 years but less than 20 years</td> <td>300 days</td> </tr> <tr> <td>More than 20 years</td> <td>400 days</td> </tr> </tbody> </table>	Length of service	Severance pay rate	120 days but less than 1 year	30 days	1 year but less than 3 years	90 days	3 years but less than 6 years	180 days	6 years but less than 10 years	240 days	10 years but less than 20 years	300 days	More than 20 years	400 days
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<p><b>Statement of particulars</b></p>	<p>An employer with 10 or more regular employees is required to establish written rules and regulations in the Thai language governing work performance and to display these regulations on the work premises within 15 days from the date that the number of employees reaches 10 employees or more. The content of written rules and regulations should at least cover the following topics:</p> <ul style="list-style-type: none"> <li>• Working Days, normal working time and rest periods;</li> <li>• Holidays and rules of taking Holidays;</li> <li>• Rules governing Overtime and Holiday Work;</li> <li>• The date and place of payment of Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay</li> <li>• Leave and rules of the taking Leave;</li> <li>• Discipline and disciplinary measures;</li> <li>• Lodging of grievances; and</li> <li>• Termination of employment, Severance Pay and Special Severance Pay.</li> </ul>														

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**On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?**

**Unfair dismissal**

In general, the employer may dismiss the employee on the following basis:

- The employee has performed their duty dishonestly or intentionally committed a criminal offense against the employer;

- The employee has willfully caused damage to the employer;
- The employee has violated the work regulations, lawful regulation, or order of the employer in which the employer has issued a written warning (except for serious instances);
- The employee has been absent from their duty without justifiable reason for three consecutive working days; or
- The employee has been sentenced to imprisonment by final court judgment.

In this case, the employer is required to specify the said cause in the termination of employment letter as well as inform the employee of the cause of termination. Provided that the cause of termination has been informed to the employee, the employer may immediately dismiss the employee without having to provide the severance pay.

Dismissal for certain reasons such as dismissal for reasons connected to pregnancy, health and safety activities, or exercising the rights provided under the law is considered as unfair dismissal. As stated in question 14, if the court sees that the dismissal of employees is unfair, the court may order the employer to reinstate the employee or order the employer to compensate the employee as the court sees fit.

When determining the award, the court would consider the employee's age, year of service, hardship for losing job, the reason for termination, and the severance pay.

The costs of dismissal will depend on the reason for the dismissal. Potential costs will include payment in lieu of advance notice

#### **Collective dismissals**

Unlike unfair dismissal, collective dismissals or known as dismissals of employees due to corporate reorganization based on non-profitability such as the closing of a department, close of business is not considered as an unfair termination provided that all employees under such department are treated fairly and the same.

In this case, the employees are entitled to payment in lieu of advance notice (for cases of immediate termination) and severance pay.

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#### **Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

- The Labour Relations Act, B.E. 2518 (1975) specifically provides for the establishment of labour unions.
- Labour unions must first register with the Registrar at the Ministry of Labour and obtain a license before they are recognized under Thai law and may commence activities.
- A union must have at least ten members, and the members must be Thai nationals employed by the same employer or be engaged in the same type of work. Each labour union must form a "Labour Union Committee" to carry out the activities of the labour union and act as its representative when dealing with third parties.

## C6. Anti-corruption / bribery / money laundering / supply chain

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**17** **Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

Yes, there are anti-corruption laws preventing and suppressing corruption and willful misconduct in Thailand, including:

- Penal Code
- Constitution of Thailand
- Anti-corruption Act
- Civil Servant Act
- Money laundering Prevention and Suppression Act

These anti-corruption laws (except civil servant act) extend to nondomestic constellations where a foreign juristic person is registered abroad but operates a business in Thailand. The foreign juristic person needs not be physically present or registered in Thailand to be subject to the anti-corruption laws, but may be liable for violations if such juristic person is registered overseas and using local agents/representatives in Thailand.

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**18** **What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?**

There are no direct laws governing economic crime. The laws relating to economic crime are as listed in answer to question 17. However, in general, economic crimes are usually under the examination of the Economic Crime Suppression Division.

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**19** **How is money laundering and terrorist financing regulated in your jurisdiction?**

Money laundering is regulated by the Anti-Money Laundering Prevention and Suppression Office established under the Money Laundering Prevention and Suppression Act which are the core of Thailand's anti-money laundering law, regulating the laundering of money or property derived from the commission of a predicate offense. Separately, terrorist financing is regulated by the Counter-Terrorism and Proliferation of Weapon of Mass Destruction Financing Act.

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**20** **Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?**

No

## C7. Compliance

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**21** **Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**

- A limited company must prepare a statement of financial position at least every 12 months. The statement must contain a summary of the assets and liabilities of the company and a profit and loss statement for the fiscal year. The company must have the statement of financial position and the statement of income audited by the Thai Accounting Professions Act, which requires Certified Public

Accountants who are appointed by the annual general shareholders meeting (AGM) of the company, and those statements must be submitted to the AGM for approval within four months from the end of each fiscal year.

- The financial statements must be submitted to the Department of Business Development (DBD) via electronic systems (DBD e-filing). Those statements must be submitted within one month from the day on which the AGM approves the audited financial statements.

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**22 Please detail any corporate / company secretarial annual compliance requirements?**

Please refer to questions 21 and 23. Also, there is the requirement of the limited company to file the list of shareholders to DBD within 14 days after the AGM of the company. A public company is required to submit the list of shareholders within 1 month after its AGM as well.

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**23 Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?**

The board of directors of a limited company must call the AGM within four months from the end of the fiscal year. The significant agenda items require approval from the AGM, e.g., approval on the audited financial statement and appointment of auditor etc.

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**24 Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") of entities? If yes, please briefly describe these requirements.**

A limited company is required to report list of shareholders to DBD as prescribed in 22 above.

A public company undergoing the initial public offering process and the listed company will have to include its UBO of top 10 shareholders and influenced shareholders (including its related persons) in its disclosure documents, namely prospectus and annual registration statements, if the shareholder does not show genuine shareholders (e.g. holding company or nominee account).

## C8. Tax

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**25 What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

The main tax for a limited company is corporate income tax which has a flat rate of 20% and applies to net profit. A company with a paid-in capital of THB 5 million or less of any accounting period and income from the sale of goods (and/or the provision of services) not exceeding THB 30 million could be eligible for the SME rates i.e., 0 – 20%.

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**26 Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)**

Tax exemptions and various tax incentives are available to all qualified entities, depending upon the conditions of each tax privilege, e.g., activities promoted under Board of Investment (BOI) measures, incentives from industrial development in border provinces in Southern Thailand, Eastern Economic Corridor area or a special economic zone, and incentives issued by the relevant authorities.

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**27** **Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?**

Please refer to question 34

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**28** **Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?**

Under the Revenue Code, there are significant transfer taxes as follows: -

- Stamp duty at 0.01% applies on the transfer of shares and is payable by the transferee and THB 5 for each new share certificate.
- Specific Business Tax at 3.3% applies on the sale of immovable property in a profit-seeking manner.

C9. M&A

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**29** **Are there any public takeover rules?**

Yes, there is the takeover regulations issued under the Securities and Exchange Commission Act B.E. 2535 (1992). The Office of the Securities and Exchange Commission supervises the public takeover.

Briefly speaking, If the target company is a listed company on the SET, and there is any acquirer (including related person or concerted party) acquires shares resulting in its shareholding reaching or passing each of 25%, 50% or 75% of the voting rights in the target company, the acquirer is mandatorily required to make a tender offer for all securities of the target company. There are certain exemptions for mandatory tender offer.

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**30** **Is there a merger control regime and is it mandatory / how does it broadly work?**

Yes, the Trade Competition Act B.E. 2560 (2017) is administered by the Trade Competition Commission. The Act also regulates business mergers and acquisitions that significantly reduce trade competition, or mergers and acquisitions which may cause monopoly or result in adominant position in a market. The Act may require to notify Office of Trade Competition Commission („**OTCC**“), or seek approval from OTCC, depending on applicable threshold as prescribed by the law.

Certain legislations governing some industries, e.g. telecommunication, energy, also have specific merger control rules.

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**31** **Is there an obligation to negotiate in good faith?**

No. There is only the requirement of good faith in evoking one's rights or performance of debts.

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**32** **What protections do employees benefit from when their employer is being acquired, for example, are there employee and/or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?**

There are no specific protections for employee rights and benefits other than the ordinary employment law for the acquisition of the company both share deals and asset deals.

## C10. Foreign direct investment

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**33** **Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**

- The FBA is the main law governing foreign investment and defining foreign ownership. The law restricts access to certain businesses (e.g., transport, retail and wholesale and services) for reasons of security, cultural heritage, or perceived competitive disadvantage.
- A foreign juristic entity is defined as an entity that is not registered in Thailand, or that is registered in Thailand and has a foreign shareholding equal to 50% or more of the total registered capital. A limited partnership or ordinary registered partnership is classified as foreign if the managing partner or manager is a non-Thai. Foreigners currently may not retain majority control through nominees, and penalties apply for violations. Notably, however, 100% foreign-owned businesses are permitted, except for 43 restricted businesses in three categories covered in the FBA.
- Some of Thailand's free trade agreements and certain laws (e.g., the Investment Promotion Act and Industrial Estate Authority of Thailand Act) relax the ownership restrictions under the Foreign Business Law. Some of the countries that Thailand has a free trade agreement with are the United States, Australia, and Japan.
- The BOI, which operates under the directives of the Office of the Prime Minister, is the principal government agency for encouraging investment in the country. Foreign investment in Thailand does not require approval from the BOI, provided the necessary operating permits have been obtained. Investors should determine whether the incentives available through the BOI outweigh the various restrictions involved.

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**34** **Does your jurisdiction have any exchange control requirements?**

Exchange control in Thailand falls under the jurisdiction of the Bank of Thailand, as entrusted by the Ministry of Finance. The Exchange Control Act and its regulations set out the governing principles.

Recently, regimes of remittance of money under the Exchange Control Act are quite relaxed by the Bank of Thailand and require only documentations provided to commercial banks. However, there are certain remittance that still requires specific approvals from the Bank of Thailand.

## D. Entity closure

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**35** **What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

The most common way to dissolve a limited company in Thailand is by seeking a special resolution approval from shareholders.

There are two main steps for registering the company's dissolution with the MOC:

- Registering the company's dissolution together with the appointment of a liquidator. The liquidator shall become the director of the company. In case the liquidator cannot complete the liquidation, the liquidator has to submit the report to the officer every three months. However, if the liquidation

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cannot be completed within one year, the liquidator has to hold the shareholders' meeting every year to report the movement of the going on liquidation.

- Registering the completion of liquidation once the liquidation process is completed. Upon registering the second step, the company is now dissolved.



# Contacts



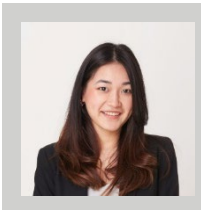
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