

Foreword

Doing Business in Thailand

This booklet has been prepared for the use of clients, partners and staff of HLB International member firms. It is designed to give some general information to those contemplating doing business in Thailand and is not intended to be a comprehensive document. You should consult us, therefore, before taking further action. HLB Thailand Ltd. and HLB International cannot be held liable for any action or business decision taken on the basis of information in this booklet.

HLB Thailand 12th December 2008

About HLB International

Formed in 1969, HLB International is a world-wide network of independent professional accounting firms and business advisers. The network comprises member firms in over 100 countries who, collectively, have more than 1,720 partners and 13,510 staff in over 450 offices. Member firms provide clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Up-to-date information and general assistance on international matters can be obtained from any of the member firm partners of HLB Thailand listed in this booklet or from the Executive Office in London.

**HLB International
Executive Office
21 Ebury Street
London SW1W 0LD
UK**

**Telephone +44 (0)20 7881 1100
Fax +44 (0)20 7881 1109
Email: mailbox@hlbi.com**

Website: www.hlbi.com

HLB International is a world-wide network of independent professional accounting firms and business advisers, each of which is a separate and independent legal entity and as such has no liability for the acts and omissions of any other member. HLB International Limited is an English company limited by

guarantee which co-ordinates the international activities of the HLB International network but does not provide, supervise or manage professional services to clients. Accordingly, HLB International Limited has no liability for the acts and omissions of any member of the HLB International network, and vice versa.

Contents

| | |
|---|----|
| Foreword | 1 |
| About HLB International | 2 |
| General information | |
| Introduction | 4 |
| The Kingdom of Thailand | |
| Location | 5 |
| Population | 6 |
| Climate | 6 |
| Government and Legal system | 7 |
| Economy and Currency | 8 |
| Investment Incentives | |
| Board of Investment | 10 |
| Industrial Estate Authority | 12 |
| Legal Issues for Foreign Investors | |
| Foreign Business Act | 14 |
| Visa and Work Permit | 16 |
| Condominium and Land Ownership | 18 |
| The Banking System | 20 |
| Employment Regulations | 22 |
| Establishing a Business | |
| Types of Business Organisations | 24 |
| Procedures for Establishing a Company | 26 |
| Accountancy | |
| Accounting and Reporting Requirements | 28 |
| Auditing Principles | 29 |
| Taxation | |
| Personal Income Tax | 30 |
| Corporate Income Tax | 32 |
| Withholding Tax | 34 |
| Value Added Tax | 35 |
| Other Taxes | 36 |
| Double Tax Agreements | 37 |
| Contact in the Kingdom of Thailand | 38 |

General information

Introduction

HLB (Thailand) Ltd. is a well established firm of business, tax and legal advisors and accountants. We are advising foreign and local investors to plan, structure and successfully operate their projects in Thailand.

The expertise and engagement of our accounting, audit and tax partners and our employees enable us to assist our clients in all relevant fields as demanded by today's rapidly changing business environment.

Our firm is large enough to provide our clients with a comprehensive range of business advice and relevant services but we still provide personal services based on our clients individual needs.

In the field of **structuring and realisation of investment projects** we offer a broad variety of services including market and feasibility studies, due diligence and advice on optimising the company and shareholder structure.

We provide assistance in **cost controlling and reorganisation of business procedures**, such as implementation and operation of budget and controlling systems, implementation of business software and management information systems. HLB (Thailand) Ltd. is also a partner for foreign

companies engaged in joint ventures with Thai partners. Through an active control of the day to day financial matters of the company we ensure that the interest of the foreign joint venture partner is looked after in the best possible way. With providing this service HLB (Thailand) Ltd. is the only business firm in Thailand engaged in active **joint venture management**.

Moreover we assist clients in bookkeeping and preparation of financial statements, implementation and improvement of internal auditing and auditing of financial statements according to Thai and International Accounting and Auditing Standards.

Our **tax and legal consulting, accounting and auditing services** consist of comprehensive tax and legal consulting, tax filing and negotiating with tax authorities as well as implementation and supervision of accounting systems. Clients can also receive assistance in the **restructuring of endangered projects** as we will elaborate tax, legal and accounting concepts, restructure debt and renegotiate loans with banks and coordinate negotiations between debtors and creditors.

To be able to serve the rising number of clients of HLB all around Thailand, we have opened **office in Phuket. and Samui.**

The Kingdom of Thailand



A. The Kingdom of Thailand

Thailand is situated in the heart of the Southeast Asian mainland covering an area of 513,115 sq. km. Thailand borders Laos, Cambodia and the Gulf of Thailand to the East, Burma and the Indian Ocean to the West, and Malaysia to the South. Thailand has a coastline of approximately 1,840 kilometers on the Gulf of Thailand and 865 kilometers along the Indian Ocean.

Population and Religion

With a population of 62.8 million Thailand is one of the largest South East Asian countries.

Buddhism is the national religion of over 95 % of the population.

There is a constitutional guaranteed right of religious freedom.

Climate

Thailand is a warm and rather humid tropical country with 4 monsoonal climate. Temperatures are highest in March and April with average temperatures of 28 degrees Celsius to 3 degrees Celsius and humidity averaging between 82.8 percent to 73 percent

The Baht is the standard currency unit.

1 Baht=100 satangs,

Bank Notes: 20,50,100,500,1,000 Baht

Coins:1,2,5 and 10 Baht

Baht approximation : 35 Baht/ 1 USD

Government

Thailand is governed by a constitutional

monarchy with a parliamentary form of government. Under the constitution, the Parliament comprises 200 Members of the Senate and 500 elected Members of the House Representatives. The Prime Minister is an elected MP and is selected from among the members of the House of Representatives.

The country is divided into 76 provinces, each administered by an appointed governor.

Thailand, with its King as Head of State, bases its judicial and legal systems on the democratic nation's Constitution(1)which recognizes four courts: the Constitutional Court, the Courts of Justice, the Administrative Court, and the Military Court.

The responsibilities of each court vary. The Constitutional Court renders judgment or decision on the constitutionality of the provisions of law and other powers as provided for in the Constitution and other laws. The Administrative Court tries and adjudicates administrative disputes between the private sector and State organs(2) concerning the issue of abuse of power by such State organs. The Military Court tries and adjudicates cases involving persons within its jurisdiction as prescribed by the Act for the Organization of the Military Court B.E. 2498 (AD 1955). The Courts of Justice try and adjudicate all cases except those specified by the Constitution or other laws to be

within the jurisdiction of other courts.

The Courts of Justice are classified into three levels: the Courts of First Instance, the Courts of Appeal, and the Dika Court (Thailand's Supreme Court). The Courts of First Instance filed with the Court of Appeals, subject to certain restrictions. The Supreme (Dika) Court has jurisdiction over cases appealed from the Court of Appeals, subject to certain restrictions provided by the Civil Procedure Code, Criminal Procedure Code,⁽⁵⁾ and other procedural laws/codes applicable for proceedings carried out in the specialized courts, i.e. in the Labor Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

Thailand generally follows the civil law system. However, one must realize that Thailand belongs to the civil law system only by the fact of its codification. The contents of the codes are as varied as the major legal systems of the world.⁽⁶⁾

This article is divided into three sections: (1) a brief overview of Thailand's courts and legal system, (2) the Practice of Law in Thailand, which looks at the prerequisites a person must achieve before applying to be licensed and registered as a lawyer,⁽⁷⁾ judge or public prosecutor in Thailand, and (3) Legal Education: The Institute of Legal Education of Thai Bar Association, which summarizes the requirements and the roles of the Institute of Legal Education of the Thai Bar Association.

[Part 2](#)

are trial courts that consist of general courts,⁽³⁾ juvenile and family courts, and specialized courts.⁽⁴⁾ All cases commence at a Court of First Instance. Appeals against Court of First Instance judgments shall be

1) The present Constitution, the Constitution of the Kingdom of Thailand B.E. 2540 (AD 1997), was drafted by the Constitution Drafting Assembly composed of members selected from each province throughout the country as well as academics in public law, politics, and public administration, for a total of 99 members. It was the first time the Thai people had an opportunity to draft the entire Constitution on their own.

(2) The establishment of the Constitutional Court and the Administrative Court resulted from the provisions of the current Constitution of the Kingdom of Thailand B.E. 2540 (AD 1997).

(3) The general court is an ordinary court which has the duty to try and adjudicate criminal and civil cases and consists of Civil Courts, Criminal Courts, Provincial Courts, and Kwang Courts.

(4) At present, there are four types of specialized courts: the Labor Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

(5) The Courts of Appeal and the Supreme (Dika) Court are not trial courts and, as a general rule, no new evidence can be introduced after a trial in a Court of First Instance has been completed unless these courts so order. Appeal Court and Dika

(Supreme) Court appeals are based on questions of law and, to a limited extent, questions of fact. In civil actions involving Baht 50,000 or less, no appeal can be made on a question of fact, unless one of the Court of First Instance judges dissents or certifies that reasonable grounds exist for the Appeal Court to consider questions of fact. In civil actions involving Baht 200,000 or less, no Dika (Supreme) Court appeal can be made on a question of fact, unless one of the Appeal Court judges dissents or certifies that reasonable grounds exist for the Dika (Supreme) Court to consider questions of fact.

(6) See David Lyman, "An Insight into the Functioning of the Thai Legal System", Thai-American Business Magazine, Jan-Feb 1975). The following is a quotation from the said article: *"Most of the Thai lawyers of the time had been trained in England but they recognized the disadvantages of the Common Law system for their country. So Thailand picked the best of both systems and began the process of adapting them to the Thai situation. The result is that the penal law is Italian, Indian, French, and Japanese inspired; the Civil Law greatly influenced by French, German, and Swiss law; the Commercial Law primarily British; the Law of Evidence founded on an English model; the Civil and Criminal Procedure Codes being taken from their English and French counterparts; while the courts were organized along the lines of French courts of law. All of these Codes were also influenced by Thai customs and heritage of the period but were also quite democratic in tenor."*

(7) Please see Section II (A) for definition of "lawyer" under the Lawyers Act B.E. 2528 (AD 1985). To appear in court and to prepare any plaint, motion, petition, or appeal for the Court, a license to become a lawyer from the Law Society of Thailand must be obtained.

ASEAN

Thailand is member of the Association of Southeast Asian Nations (ASEAN), which includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Burma, Philippines, Singapore and Vietnam. These ten countries together are home to more than 500 million people, and boast a collective GDP of US\$ 737 billion. ASEAN initiated the Free Trade Area (AFTA), which laid out a comprehensive program of regional tariff reduction

Economic Overview

Thailand's main economic indicators are as follow:

| Economic Indicators (2006) | |
|----------------------------|-------------------|
| GDP | 143 Billion US\$ |
| GDP per Capita | 2198 US\$ |
| External Debt | 52.3 Billion US\$ |
| Export | 78.4 Billion US\$ |
| Internat. Reserves | 42.1 Billion US\$ |

After the Asian Crisis in 1997, that started in Thailand and spread throughout Asia, Thailand's economy was struck hard but has now fully recovered.

Thailand's main economic sectors are manufacturing and wholesale and retail.

The most important export products are electrical and mechanical parts, automotive parts as well as plastic articles. Manufactured goods represent roughly 75% of total exports.

As far as agricultural products are concerned rubber, rice and fishery products are among the most exported items. Agriculture is still a major employment sector for Thai people of the 34.9 million labor force, over 13.9 million people are employed in the agricultural sector.

Thailand's most exported products

1. Computers and parts
2. Integrated circuits and parts
3. Vehicle, parts and accessories
4. Plastic products
5. Rubber
6. Garments
7. Canned food
8. Base metal products
9. Precious stones and jewelry
10. Rice
11. Fishery Products
12. Transformers, generator and motors
13. Rubber products
14. Petroleum products
15. Air conditioning
16. Chemical products
17. Televisions
18. Furniture and parts
19. Telecommunication equipment
20. Canned crustaceans

Thailand has gradually gained revenue from the tourism sector especially in the crisis period (1998-1999). While Thailand announced a currency floatation and experienced sluggish business sentiment in every sector, the tourism sector expanded at a good rate. In 1998, the revenue from tourism in Thai Baht grew by 9.7 percent compared to the previous year.

In 2004, Thailand earned a revenue of 384.4 billion Baht rising from 195 billion Baht in 1995. The number of tourists visiting the kingdom stood at 11.65 million people in 2004 increasing from 6.9 million people in 1995. The country's revenue and number of foreign tourists grew at an average pace of 7 and 6 percent respectively in the 10 year period.

The most important trading partners are Japan, USA and the ASEAN member countries. Among European countries, Germany is the main importer of Thai products.

Thailand still depends on traditional export markets such as Asean, the United States, the European Union and Japan - which together account for 60 per cent of Thai exports - the country has to expand into new markets, due to the competition from economies such as China, India and Vietnam.

At present, Thai exports to new markets account for about 38 per cent of overall export value, as compared to an average of some 28 per cent during the previous five years.

B. Investment Incentives

Thailand offers several investment incentive programmes. For foreign investors, in particular, the investment incentives of the Board of Investment (BOI) are among the most attractive.

The Board of Investment

The BOI is the government agency responsible for providing incentives to stimulate investment in Thailand. In addition, the BOI conducts extensive investment promotion activities, both in Thailand and abroad. The BOI has five permanent overseas investment promotion offices: Frankfurt, Paris, New York, Tokyo and Shanghai.

Objectives of the BOI

The BOI has a policy of giving special consideration to investment projects that:

- Strengthen Thailand's industrial and technological capability
- Make use of domestic resources
- Create employment opportunities
- Develop and support selected industries
- Earn foreign exchange
- Develop infrastructure
- Reduce environmental problems

Criteria for Promotion

There is a list of activities eligible for investment promotion. It is classified into 7 sections as follows:

1. Agriculture and Agricultural Products
2. Mining, Ceramics and Basic Metals

3. Light Industry
4. Metal Products, Machinery and Transport Equipment
5. Electronics Industry and Electrical Appliances
6. Chemicals, Paper and Plastics
7. Services and Public Utilities

Each section specifies the promoted activity, the conditions to meet and the granted incentives.

The criteria to fulfill by the investor for a BOI promotion can be various such as the extent of foreign equity participation, location of the project, a minimum investment amount or the entitlement of priority activity.

Extent of Foreign Participation

For a project in agriculture, animal husbandry, fishing industry, mineral exploration and mining and service business under Schedule One of the Foreign Business Act, Thai nationals must hold shares totaling not less than 51 per cent of the registered capital.

For manufacturing projects foreign investors may hold a majority of shares. The Board may specifically fix the shareholding of foreign investors on some promoted projects is approved.

Investment Promotion Zone

In line with the national goals of decentralizing and spreading the benefits of development to the country's

provinces, the BOI has divided Thailand into three investment zones. Investors who set up their operations in provinces outside the central region of Thailand are entitled to a wider range of tax incentives. There are three Investment Zones based on economic factors, i.e., the level of income and the availability of infrastructure in each province.

Zone 1

6 central provinces with high income and good infrastructure: Bangkok, Samut Prakan, Samut Sakhon, Pathum Thani, Nonthaburi and Nakhon Pathom

Zone 2

12 provinces: Samut Songkhram, Ratchaburi, Kanchanaburi, Suphanburi, Ang Thong, Ayutthaya, Saraburi, Nakhon Nayok, Chachoengsao, Chon Buri, Rayong and Phuket

Zone 3

The remaining 58 provinces with low income and less developed infrastructure.

Furthermore tax and duty privileges granted by the BOI depend upon the company's location in an industrial estate or a special promoted industrial zone.

Investment Amount

For a project with investment capital (excluding cost of land and working capital) not exceeding 500 million baht, the following criteria are used:

1. The value added is not less than 20 percent of sales revenue, except for projects that manufacture electronic products and parts or process

agricultural produce, and projects granted special approval by the Board.

2. Ratio of liabilities to registered capital should not exceed 3 to 1 for a newly established project. Expansion projects shall be considered on a case by case basis.
3. Modern production processes and new machinery are used. In cases where old machinery will be used, its efficiency must be certified by reliable institutions and the Board's approval must be obtained.
4. Adequate environmental protection systems are installed. For projects with a potential environmental threat, the Board shall prescribe special conditions on both the location of the project and the manner of pollution treatment.
5. For a project with investment capital (excluding cost of land and working capital) exceeding 500 million Baht, a feasibility study of the project must be submitted in addition to the criteria mentioned above.

Tax and Non Tax-Incentives for Promoted Companies

The BOI grants the following tax incentives to promoted projects:

- Exemption from or reduction of import duties on imported machinery
- Exemption from or reduction of import duties on imported materials and components
- Exemption from corporate income taxes for three to eight years, with permission to carry forward losses

and deduct them as expenses for up to five years. The total amount of the CIT exemption is limited to the amount of investment.

- Exclusion of dividends derived from promoted enterprises from taxable income during the corporate income tax holiday

Permissions granted by the BOI

- To own land
- To bring in foreign technicians and experts
- To bring in foreign nationals to undertake investment feasibility studies

The general rules for granting import duty exemptions on the import of machinery and raw materials by promoted companies are outlined in the tables below:

Import Duty on Machinery

| Zone | |
|------|----------------|
| 1 | 50% reduction |
| 2 | 50% reduction |
| 3 | 100% reduction |

Import Duty on Raw Materials

| Zone | |
|------|------------------|
| 1 | 1-year exemption |
| 2 | 1-year exemption |
| 3 | 5-year exemption |

In general, the duration of the income tax exemption granted to promoted companies depends on the project's location, as follows:

Corporate Income Tax Exemption

| | Inside Industrial Estate | Outside Industrial Estate |
|--------|--------------------------|---------------------------|
| Zone 1 | 3 years | Not Exempt |
| Zone 2 | 5 years | 3 years |
| Zone 3 | 8 years | 8 years |

Promoted projects located within industrial estates or promoted industrial zones with investments of 10 million Baht or more (excluding land and working capital) must obtain ISO 9000 or other international certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.

The Industrial Estate Authority of Thailand

The IEAT is a government agency under the Ministry of Industry and is responsible for industrial development and pollution control. Industrial estates are divided into 2 zones according to the nature of the industries as follows:

1. General Industrial Zone (GIZ), an area designated for industrial and supporting operations.
2. Export Processing Zone (EPZ), an area designated for industrial and supporting operations for exports exclusively.

Industrial operators locating their projects in GIZ or EPZ may be granted certain investment incentives without having to apply for BOI promotion as follows:

- Permission to own land in an industrial estate.
- Permission to bring in foreign technicians and experts to work in industrial activities
- Permission for foreign technicians, experts and spouse or dependents to stay in the country.
- Permission to transfer foreign currency abroad.

Moreover, industrial operators locating in the EPZ may be granted the following tax incentives:

- Exemption from import duty and value added tax on machinery and construction materials for the factory.
- Exemption from import duty and value added tax on raw materials used in production.
- Exemption from export duty and value added tax on products, by-products, and other products derived from production in the export industrial zone if these are to be exported from Thailand.
- Exemption from or refund of taxes for any goods sent into the export

industrial zone for manufacturing. Such goods must be goods entitled to exemption or refund of taxes if they are exported from Thailand.

Duty Free Zone

Besides the Export Processing Zone, there are also Duty Free Zones (DFZ) for industrial and commercial activities. The incentives granted are basically the same as for the EPZ. However, a DFZ is under the supervision of the Customs Department.

C. legal issues for foreign investors

1. Foreign Business Act
2. Visas and Work Permits
3. Land and Condominium Ownership

Foreign Business Act

The most important law governing alien-controlled businesses in Thailand is the Foreign Business Act (01.03.2000). It divides various types of business into three main categories and subjects each category to different limitations with respect to foreign ownership. Other laws control the foreign ownership of land and specialized activities such as banking, insurance, finance and shipping.

It should be pointed out that a company with 51% Thai shareholding is not considered as a foreign company. Hence, the Alien Business Law is not relevant. However, the Foreign Business Act comes into effect when the company is applying for a work permit for a foreigner.

Definition of "Foreigner"

A business is considered "foreigner" if:

- (1) it is established under foreign law; or
- (2) half or more of its capital is owned by foreigners even if the company is incorporated under Thai law, or
- (3) half or more of the value of the total capital being invested by

foreigners even if more than half the capital is owned by Thai nationals.

- (4) a limited partnership or ordinary registered partnership whose managing partner or manager is a foreigner.

Categories

The Foreign Business Act divides businesses into three Categories.

Generally, those businesses listed in Category One are absolutely prohibited to foreigners.

Category Two refers to businesses concerning national security and safety, natural resources etc. Such businesses are prohibited to foreigners unless a specific permission is granted by the Commerce Ministry, by and with an appropriate Cabinet resolution. To obtain such permission Thai shareholdings of at least 40% are requested (may be reduced to 25% on a case-by-case basis) and two-fifths of the members of the Board of Directors have to be Thai nationals.

Category Three comprises businesses in which Thai nationals are considered not to be competitive with foreigners. Such businesses are prohibited to foreigners unless a license is granted by the Director General of the Commercial Registration Department. A Thai shareholding is not requested.

As a precondition for obtaining a license under business categories 2 and 3, foreigners are required to invest at least three million Baht in the business.

The three categories of the Foreign Business Act:

Category One

Businesses in which alien participation is not permitted.

- (1) Newspaper business, radio, broadcasting or television station business
- (2) Farming or gardening
- (3) Animal farming
- (4) Forestry and wood fabrication from natural forest.
- (5) Fishery for marine animals in Thai waters and within Thailand specific economic zones
- (6) Extraction of Thai medical herbs
- (7) Trading and auctioning Thai antiques or national historic objects
- (8) Making or casting Buddha images and monk alms bowls
- (9) Land trading

Category Two

Businesses related to national safety or security or affecting arts and culture, tradition, folk handicraft or natural resource and environment.

Group 1: Businesses related to national safety or security:

- (1) Production, selling and maintenance of:
 - (a) Firearms, ammunition, gun powder, explosives
 - (b) Accessories of firearms, ammunitions and explosives
 - (c) Armaments, ships, aircrafts or military vehicles
 - (d) Equipment or components, all categories of war materials

- (2) Domestic land, waterway or air transportation, including domestic airline business

Group 2: Businesses affecting arts and culture, traditional and folk handicraft:

- (1) Trading antiques or art objects being Thai arts or handicraft.
- (2) Production of wood carvings
- (3) Silkworm farming, production of Thai silk yarn, weaving Thai silk or Thai silk printing.
- (4) Production of Thai musical instruments
- (5) Production of gold ware, silverware, niellaware, bronze ware or lacquer ware
- (6) Production of crockery and terra cotta ware of Thai arts and culture

Group 3: Businesses affecting natural resources or environment:

- (1) Manufacturing sugar from sugarcane
- (2) Salt farming, including underground salt
- (3) Rock salt mining
- (4) Mining, including rock blasting or crushing
- (5) Wood fabrication for furniture and utensil production

Category Three

Businesses in which Thai nationals are not yet ready to compete with foreigners:

- (1) Rice milling and flour production from rice and farm produce
- (2) Fishery, specifically marine animal culture
- (3) Forestry from forestation
- (4) Production of plywood, veneer board, chipboard or hardboard
- (5) Production of lime
- (6) Accounting services business
- (7) Legal services business
- (8) Architecture services business

- (9) Engineering services business
- (10) Construction, except for:
 - (a) Construction rendering basic services to the public in public utilities or transport requiring special tools, machinery, technology or construction expertise having minimum capital of 500 million Baht or more
 - (b) Other categories of construction as prescribed by the ministerial regulations
- (11) Broker or agent business, except:
 - (a) Being a broker or agent for underwriting securities or services connected with future trading of commodities or financing instruments or securities
 - (b) Being a broker or agent for trading or procuring goods or services necessary for production or rendering services amongst affiliated enterprises
 - (c) Being a broker or agent for trading, purchasing, distributing or seeking both domestic and foreign markets for selling domestically manufactured or imported goods in the manner of international business operations having minimum capital 100 million Baht or more
 - (d) Being a broker or agent of other category as prescribed by the ministerial regulations
- (12) Auctioning, except:
 - (a) Auctions in the manner of an international bidding not being the auction of antiques, historical artifacts or art objects which are Thai works of art, handicraft or antiques historical value.
 - (b) Other categories of auctions as prescribed by the Ministerial Regulations.
- (13) Internal trade connected with native products or produce not prohibited by law
- (14) Retailing all categories of goods having a total minimum capital of less than 100 million Baht or having the minimum capital of each shop of less than 20 million Baht
- (15) Wholesaling all categories of goods having minimum capital for each shop less than 100 million Baht
- (16) Advertising business
- (17) Hotel business, except for hotel management service
- (18) *Tourism*
- (19) Selling food or beverages
- (20) Plant cultivation and propagation business *and plant improvement undertakings*
- (21) Other categories of service business except for those prescribed in the ministerial regulations

Visas

Thailand requires non-Thai nationals wishing to enter the country to obtain a visa. However, agreements exist between Thailand and other countries according to which no visa is required.

There are basically five types of visa:

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

Foreign nationals who intend to remain in Thailand to work or conduct business should obtain non-immigrant visas for all family members prior to entering the Kingdom.

A non-immigrant visa is the only type of visa that permits non-residents to be employed in Thailand. Any person, who holds a non-immigrant visa and wishes to work, needs, in addition, to apply for a work permit and extended stay in the country.

Visa application forms for this category need to be filled out, stating reasons for employment and must include a letter of application from the company where the applicant is to work. A company profile should be attached to the application.

The duration of stay is 90 days upon entering Thailand.

Work Permits

Any alien wishing to work in Thailand must obtain a work permit issued by the Department of Employment.

Applicants have to meet the following requirements:

- Valid passport with non-immigrant visa
- Evidence of applicant's educational qualifications proving the ability to undertake the work according to the information provided in the application for a work permit
- A recent medical certificate from a licensed physician in Thailand stating that the applicant is not of unsound mind and not suffering from leprosy, acute tuberculosis, elephantiasis, narcotic addiction or habitual alcoholism.

In order to employ foreigners a company must satisfy at least one of the following criteria enacted by the Employment Department:

1. The company needs to have a paid-up capital of at least 2 million Baht. One foreigner can be employed for every 2 million Baht with a maximum of ten foreigners by relying on this condition. The company is required to submit a bank statement to verify this.
2. If a company has been incorporated for at least three years and has paid annual corporate income tax of at least 5 million Baht over the last three years, it can employ one foreigner for each 5 million Baht of tax paid. Copies of annual corporate income tax returns for the previous three years together with their receipts are required to be submitted.
3. A company which employs at least 50 Thai staff is allowed to employ one foreigner for each group of 50 Thai staff with a maximum of five work permits.
4. Companies which are involved in the export business can employ a foreigner if the exported goods reached the amount of 3 million Baht over the previous year. One foreigner can be employed for each 3 million Baht with a maximum of three work permits.
5. Any foreign individual who will pay personal income tax of at least 18,000 Baht per year (monthly salary approximately 45,000 Baht) is eligible to apply for a work permit.

The number of available work permits increases, if the company meets the requirements under more than one category.

Provided the above conditions are satisfied, the authorized officers should grant the work permit within 3 weeks.

The applicant must collect the work permit in person.

The period of validity of a work permit for a non-immigrant visa holder will be the same as the period of temporary stay indicated in the passport. Yet, in order to receive a one year visa the employer must employ four Thai staff for every one non-Thai staff. If this requirement is not met the Immigration Bureau will issue only a three months visa.

One-Stop Service Center

In order to facilitate visa and work permit procedures for promoted investors, the Board of Investment coordinated the establishment of a One-Stop Service center for Visas and Work Permits. The One-Stop Service Center only provides services for persons who work for companies that have been granted special privileges by the Investment Promotion Act, the Industrial Estate Authority of Thailand Act or the Petroleum Act or are companies that have a registered capital amounting to at least 30 million Baht, or two representative offices.

It should be noted that the criteria mentioned above do not apply to the One-Stop Service Center.

Ownership of Condominium and Land

Condominium

In accordance with the Condominium Act any foreigner can acquire condominium units. *However, the percentage*

of units sold to foreigners cannot exceed 49% of the total number of units in the condominium block. Moreover, a minimum of 40 condominium units per block is required and the size of the estate must not exceed 5 Rai. Furthermore the funds used to buy the condominium *must have been* remitted from abroad and correctly recorded by a Thai bank.

Land Ownership

Ownership of land is governed by the Land Code, the Civil and Commercial Code, Investment Promotion Act, Industrial Estate Authority Act and the regulations set forth by the Ministry of Interior.

Foreign or Majority Foreign-Owned Company

In general, foreigners cannot own land. However, a foreign investor is allowed to acquire land under certain circumstances. A permission to own 1 rai (1.600 sqm) of land will be granted by the Minister of Interior, for residential purposes only, if the foreigner brings in a minimum investment of at least 40 million Baht *for a minimum of 5 years.* Special Ministerial Regulations apply to the procedures and conditions for these acquisitions.

Another way to acquire land is given by the Investment Promotion Act and the Industrial Estate Authority Act.

A BOI promoted company with 50 % or more of its shares held by foreigners may apply for land ownership. Permission to own land is granted on a case-by-case basis. The BOI will approve the amount of land to be acquired, and will send eventually a letter of approval to the

applicant.

A foreign company located in an industrial estate may also apply for land ownership. Responsible for the approval is the Board of the Industrial Estate Authority.

Majority Thai-Owned Company

A 51% Thai shareholding is considered as a Thai-owned company. Hence, the company can own land without any restrictions.

Lease of Land

The Act on the Lease of Immovable Property allows foreigners to lease land for commercial or industrial purposes for a period of more than 30 years, but not more than 50 years. Upon completion of the lease period, it can be extended for another maximum period of 50 years. The lease agreement must be written and registered with the responsible land official. Any lease for area exceeding 100 rai requires prior approval from the Director-General of the Land Department.

D. the banking system

Thai banks are regulated and supervised by the Bank of Thailand (BOT) under the provisions of the Commercial Banking Act. The Ministry of Finance is the BOT authority institution.

BOT responsibilities include supervising banking institutions, issuing currency on behalf of the government, advising on monetary policy, and dealing with multinational monetary organizations.

There are 13 Thai commercial banks and 18 branches of foreign banks. Thai commercial banks offer a full range of banking services, whereas foreign banks *mainly* provide wholesale banking services such as corporate lending, trade finance, cash management and investment banking services.

Exchange Control Regulations

The Exchange Control Act regulates all matters involving foreign exchange.

The Bank of Thailand is responsible for administering foreign exchange. Foreign exchange transactions are to be conducted through authorized banks. Banks with a BIBF license (Bangkok International Banking Facility) are allowed to accept deposits in foreign currencies, to lend on- or offshore with funds raised offshore and to conduct foreign exchange transactions across foreign currencies.

The accounts are opened with authorized Banks in Thailand with deposited funds that originate from abroad.

The depositor must submit evidence showing the obligations to pay in foreign

Import and export of foreign funds

Foreign currencies can be brought into Thailand without limit. Any person receiving foreign currency is required to surrender foreign currencies to an authorized bank or to deposit the same in a foreign currency account within seven days from receipt, except foreigners temporarily staying in Thailand for not more than three months, foreign embassies and international agencies.

Repatriation of investment funds and repayment of overseas borrowing in foreign currency can be remitted freely upon submission of supporting evidence. The remittance of amounts properly due to non-residents is permitted for items of a non-capital nature such as service fees, interest, dividends, profits or royalties provided supporting documents are presented to the authorized bank.

Foreign currency account

Companies registered under Thai law are allowed to maintain foreign currency accounts under certain conditions:

currencies to people abroad to authorized banks within three months from the date of deposit. It is not possible to deposit more than the amount of the above obligation.

The deposit of foreign currency must not exceed 2000 US\$ 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 balance in all accounts must not exceed 5 million US\$ for a company and 500,000 US\$ for an individual.

Proceeds of Exports

All proceeds of exports exceeding 500,000 Baht must be received in Thailand immediately after payment is received, which may not be later than 120 days from exportation. The proceeds must be surrendered to an authorized bank or deposited in a foreign currency account with an authorized bank in Thailand within seven days after receiving the funds.

Import and Export of Local Currency

There is no restriction on the amount of Thai currency that may be brought into the country.

Individuals in transit, however, may not take out Thai currency exceeding 50,000 Baht per person, except to countries bordering Thailand (Burma, Laos, Cambodia, Malaysia and Vietnam), where an amount of 500,000 Baht is allowed.

E. Employment Regulations

The Labour Protection Act applies to all businesses with at least one employee.

Work Hours and Holidays

The maximum number of hours for non-hazardous work is eight hours a day or 48 hours a week in total. Hazardous work may not exceed seven hours a day, or 42 hours per week. Employees are entitled to no fewer than *14* national holidays a year and a minimum of six days of annual vacation after working consecutively for one full year.

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

For work performed in excess of the maximum number or working hours fixed either by law or by specific agreement (if the latter is lower), employees must be paid overtime compensation. The rates for overtime vary and range from 1½ times to three times the normal hourly wage rate for the actual overtime worked. The maximum number of overtime working hours is limited to not more than 36 hours a week.

Sick Leave

Employees can take as many days of sick leave as necessary. The employer must pay up to 30 days of sick leave per year.

Maternity Leave

A female employee is entitled to maternity leave for a period of *an additional* 90 days including holidays. Payment of salary is guaranteed up to 45 days.

Termination of Employment

The termination of an employment contract must be written and at least one month before the next salary month. The employer must specify the reason for dismissal.

If an employment contract does not indicate any duration either party can terminate the contract by giving notice at or before any time of payment. The employment ends the next pay period.

Severance Pay

Employees, who have worked more than 120 days, but less than one year, are entitled to 30 days severance pay. For staff employed between one and three years, *it is not less than 90 days severance pay*. Employees with three to six years of service will receive six months salary, those with more than *six but less than 10 years* service will receive eight months salary, and employees with more than 10

years service will receive 10 months salary.

| Employment period | Severance pay |
|-------------------|---------------|
| >120 days | 30 days |
| >one year | 90 days |
| >three years | 180 days |
| >six years | 240 days |
| >ten years | 300 days |

Social Security Fund

The Social Security Act requires that all employers with one or more employees have to withhold social security contributions from the monthly wages of each employee.

The social security compensates any illness, injury e.g. that are not work-related as well as an old-age pension.

The Social Security Fund provides 6 types of benefits:

- Sickness or injuries benefits
- Maternity benefits
- Invalidity benefits
- Death benefits
- Child allowance benefits
- Old-age pension benefits

The rate on monthly wages is 5% (since 01.01.2004). The maximum monthly wage base on which the rate is applied must not exceed 15,000 Baht.

The employer needs to register any employee to the Social Security Fund within 30 days from the date of

employment.

The contributions must be remitted to the Social Security Office within the 15th day of the following month.

The conditions and the amount of benefits paid by the Social Security Office (SSO) vary and may be checked in details under www.sso.go.th.

Workmen's Compensation Fund

The workmen's compensation fund provides compensation benefits for employees who suffer injury (death injury included) or illness through work.

Any employer who employs at least one employee must pay contributions to the Fund within 30 days of employment. The contribution rate is between 0.2% and 1.0% of wages depending on the risk classification of the establishment.

The payment of compensation benefits is made in accordance with the criteria and rates prescribed by law depending on the seriousness of the case. In general, the compensation amount must be paid monthly at the rate of 60 percent of the monthly wages of the employee but not lower than 2,000 Baht and not exceeding 9,000 Baht a month. Actual and necessary medical expenses are paid up to 35,000 Baht for normal cases and 50,000 Baht for serious injury.

F. Establishing A business

1. Types of business organisations
 - a. Partnerships
 - b. Limited Companies
 - c. Representative Offices
 - d. Regional Operating Headquarters
2. Procedures of establishing a company
 - a. Corporate name
 - b. Memorandum of association
 - c. Statutory meeting
 - d. Commercial registration
 - e. Tax registration

Types of Business Organisations

Thailand recognizes two types of business organisations:

Partnership

Three forms of partnerships exist:

The unregistered ordinary partnership is an association of *at least two* individuals in which all partners are jointly and wholly liable for all obligations of the partnership. *All partners have to be natural persons.* The partners are responsible for the actions of the partnership and those of the other partners in the ordinary course of business. As the partnership is not a legal entity, the partners are taxed individually on the income of the partnership.

Unlike the unregistered ordinary partnership, the registered one is a legal entity, separate and distinct from its individual partners. *Partners are only liable for the company's obligations in case of default by*

the company. A registered ordinary partnership is subject to corporate income tax.

A limited partnership is a special partnership arrangement between at least one limited and one general partner. The limited partner is liable for the debts of the partnership limited to the amount of capital contributed to the partnership. In contrast, the general partner has unlimited liability.

Limited partnerships must be registered and are taxed as a corporate entity.

Limited Companies

There are two types of limited companies:
Private and Public Companies.

The first is governed by the Civil and Commercial Code, the second by the Public Company Act.

The private limited company (Ltd) is a legal entity and distinct from its shareholders. The shareholders are not personally liable for the debts and actions of the corporation. Shareholders enjoy limited liability.

Private limited companies operate under the general direction of a board of directors. The directors do not have to be necessarily shareholders.

There is no minimum registered capital requirement

All shares must be subscribed to and at least 25 percent of the subscribed shares must be paid up. Both common and preferred shares may be issued as long as all shares have voting rights. Thai law prohibits the issue of shares with no par value. It also stipulates that only shares with par value of five Baht or above may be issued. Treasury shares are prohibited. A minimum of seven shareholders is required at all times.

A private limited company may be wholly owned by aliens. However, in those activities reserved for Thai nationals, (Foreign Business Act) foreigners' participation is generally limited to a maximum of 49% or requires a special permission from the Commerce Secretary.

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

A minimum of 15 promoters is required for the formation and registration of the memorandum of association of a public limited company, and the promoters must hold their shares for a minimum of two years before they can be transferred. The Board of Directors of a public limited company must have at least five members and half of them have to be Thai residents.

At least 15 shareholders are required. Shares must have a value of at least five Baht each and must be fully paid up.

Restrictions on share transfers are unlawful except those protecting the rights and benefits of the company allowed by law, and those maintaining a

Thai/foreigner shareholder ratio. Debentures may only be issued with the approval of three quarters of the voting shareholders.

Representative Office

A representative office can be established to engage in limited “non-trading” activities such as:

- sourcing of goods or services for its head office
- inspecting and controlling the quality and quantity of goods purchased by the head office
- providing advice relating to products directly sold by its head office to local distributors or consumers
- disseminating information about new products and services of its head office
- reporting on local business developments and activities

The application can be submitted under the name and address of its head office or under a Thai limited company. Furthermore the minimum invested capital requested is 3 million Baht.

Regional Operating Headquarter (ROH)

A ROH is defined as a company incorporated under Thai law that provides, the following services to its branches or affiliated enterprises located in Thailand or abroad.

- Management and administrative services
- Technical services
- Support services

In December 2001, the Thai Cabinet approved a package of tax incentives aimed at attracting foreign regional operating headquarters to Thailand.

In order to be eligible for the tax incentives, an ROH must meet the following conditions:

- The paid-up capital must be at least ten million Baht
- Services must be provided to associated enterprises or branches in at least three countries other than Thailand
- Qualifying service and royalty income of the ROH paid from or foreign countries must comprise at least fifty percent of total revenues (except in the first three years, one-third of total revenues is acceptable)

The tax incentives comprise a lower tax rate and tax exemptions:

- 10 % corporate tax on net profits
- 10% tax on royalty income
- 10% tax on interest income
- Dividend income exemption
- 25% write-off on buildings *in the first fiscal year*
- 15% personal income tax benefits for expatriates

Procedures for Establishing a Company

In most cases a joint venture is the most appropriate vehicle for foreign investors because of the legal requirement of local participation. There are several laws, which impose local majority ownership

requirements on specific business operations such as the Foreign Business Act or the restrictions under the Land Code.

In general, foreign investors choose private limited companies.

A private limited company is formed through a process which leads to the registration of a Memorandum of Association (Articles of Incorporation) and Articles of Association (Bylaws), as its constitutive documents. Seven promoters are required for the formation and registration of the memorandum of association.

In order to set up a private limited company, the following procedures must be followed:

Corporate Name

The registration will start with the notification of the proposed corporate name to the Registrar in order to get clearance for the name selected. The name to be reserved must not be the same or close to that of other companies. Certain names are not allowed. (Guidelines of the Commercial Registration Department of the Ministry of Commerce)

Memorandum of Association

A representative of the promoters will register the Memorandum with the Registrar at the Ministry of Commerce. This should contain the name and location of the company, its objectives, registered capital, the number of shares and value per share, as well as personal details of the individual promoters, (at

least seven) and the numbers of shares for which each will subscribe. The fee to register the memorandum is Baht 100 per Baht 100,000 of capital, subject to a minimum fee of Baht 500, and a maximum of Baht 25,000.

Statutory Meeting

Once a Memorandum of Association is registered, the prospective shareholders of the company will have to subscribe for their respective shares. This duly done, a Statutory Meeting should be called.

At least 25% of the value of each share must be paid up. The promoters are required to send to every subscriber a Notice of the Statutory Meeting at least seven days prior to the date of the Statutory Meeting.

After the Statutory Meeting, the promoters pass the business to the directors. The directors call for payment of the shares in the amount determined at the Statutory Meeting.

Commercial Registration

After the payment for shares and within 3 months from the Statutory Meeting, the directors must apply to register the establishment of the company. The paid-up capital must be proven on the time of registration of the company or upon application within 15 days. The company is required to submit alternatively:

- a bank account certifying the financial status of company
- a confirmation letter of receipt of share payment
- a certification of receipt of share payment of the company.

The registration can be done online, at

www.dbd.go.th.com. The original documents have to be handed in.

When the application is approved, a registration fee of Baht 500 per Baht 100,000 of the company's capital is payable subject to a minimum fee of Baht 5,000 and a maximum of Baht 250,000. The promoters transfer any shares they hold to the subscribers after the statutory meeting.

Tax and VAT Registration

Businesses liable for income tax must obtain a tax I.D. number for the company from the Revenue Department within 60 days of incorporation or start of operations.

Persons who have annual turnover in excess of Baht 1,800,000 are required to register as VAT operators.

Cost of Setting up a company

The cost of setting up a company estimately THB 100,000 approximately USD 3,000

G. accountancy

1. Accounting and Reporting Requirements
2. Auditing Principles

Accounting and Reporting Requirements

A newly established company or partnership should close its accounts within 12 months from the date of its registration. Thereafter, the accounts should be closed every 12 months. If a company wishes to change its accounting period, it must obtain the written approval of the Director-General of the Revenue Department.

In accordance with the Accountancy Act, all companies, partnerships and branches of foreign companies are required to prepare financial statements for each accounting period. The financial statement must be audited by a certified public accountant.

Copies of the audited financial statements must also accompany the income tax return that must be filed with the Revenue Department within 150 days from the closing date of each accounting period. The audited financial statements also have to be filed with the Ministry of Commerce where they are accessible to the public.

The accountants must maintain the accounting books and supporting

documents at its regular place of work or operation of the company and keep the

books for at least five years from the date of closing.

The Institute of Certified Accountants and Auditors of Thailand is the authoritative group promoting the application of generally accepted accounting principles.

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

Certain accounting practices that may be of interest are as follows:

Depreciation

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

Accounting for Pension Plans

Contributions to a pension or provident fund are not deductible for tax purposes unless these are actually paid out to the

employees, or the fund is approved as a qualified fund by the Revenue Department and is managed by a licensed fund manager. In most cases, contributions to the pension fund are not based on actuarial computations.

standards conforming to international auditing standards are, to a large extent, recognized and practised by authorized auditors in Thailand.

Consolidation

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

Statutory Reserve

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

Dividends

Dividends are taxable and may be declared only if a company is in profitable position.

Auditing Principles

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

H. taxation

1. Personal Income Tax
2. Corporate Income Tax
3. Withholding Tax
4. Value Added Tax
5. Other Taxes
6. Double Tax Agreements

Thailand's taxes are imposed both at the national and local levels. The principal taxes in Thailand include direct taxes (personal income tax, corporate income tax, petroleum income tax) and indirect taxes (value added tax, specific business tax, customs duty, excise tax, stamp duty, property tax).

Tax collections is administered by the Ministry of Finance through three departments: the Customs Department, which is responsible for import and export duties; the Revenue Department, which attends to the collection of income tax, VAT, specific business tax, and stamp duty; and the Excise Department, which collects excise taxes levied on certain specific commodities. Local governing bodies deal with the collection of property and municipal taxes.

Thai taxation administration is based on a self-assessment system. The taxpayer is supposed to declare his income and pay the relevant tax. The declarations and tax payments are deemed to be correct. However, the authorities have the right of additional assessments in the case of false declaration. Appealing against any additional assessment is possible.

The Revenue Code is the principal tax law in Thailand. The Code governs

personal income tax, corporate income tax, value added tax, specific business tax, and stamp duty. The Petroleum Income Tax Act governs taxation of oil and gas concessionaires, and the Customs Act governs tariffs on imports and exports. Other laws govern excise tax and property tax.

Personal Income Tax

The tax year for individuals is the calendar year ending December 31.

The individual taxpayer, whether Thai or foreigner, who stays in Thailand for a period of total 180 days or more per calendar year is deemed to be a resident of Thailand for tax purposes. A resident is subject to Thai personal income tax on all assessable income derived from sources within Thailand, whether paid within Thailand or outside of Thailand. Further, income derived from foreign sources is subject to Thai tax if such income is brought into Thailand in the year the income is received.

A non-resident individual is subject to tax only on income earned from sources within Thailand.

The taxable base is determined by deducting expenses and allowances from all assessable income. Tax is levied on the taxable base at progressive rates ranging from ten per cent to 37 per cent.

Income and Deductions

The various types of assessable income subject to personal income tax are classified into 8 categories:

1. Income from salaries and wages

2. Income from hire of work, office of employment or services rendered
3. Income from goodwill, copyrights, franchises, patent, other rights, annuity *or income in the nature of annual payments derived from a will or any other Act or judgment of the Court*
4. Income from interest (including interest derived on bank deposits in Thailand), dividends, bonuses for investors, gains on acquisition or dissolution, gains on transfer of shares
5. Income from leasing property, breaches of hire-purchase contract and installment sales contracts
6. Income from liberal professions, such as legal work, engineering, architecture and accountancy
7. Income from a contract of work whereby the contractor provides essential materials other than tools
8. *Income from business, commerce, agriculture, industry, transport and income other than specified in (1) - (7)*

Certain types of income are exempt from personal income tax. Among the excluded items are:

- Employee moving expenses, the travelling expenses paid by the employer to the employee for travelling from another location to assume employment for the first time and for returning to the point of origin at the termination of employment
- Reimbursement for per diems or transportation expenses of an employee
- Share of profits obtained from a non-juristic partnership or a non-juristic

body of persons subject to personal income tax

- Income from the sale of securities traded in the Securities Exchange of Thailand, not including income from sale of debentures and bonds
- Reimbursement of medical expenses incurred in Thailand for an employee and his family members
- Income from sale of investment units in a mutual fund set up under the Securities and Stock Exchange Act 1992
- Up to 290,000 Baht of employee contributions to a registered provident fund

Personal and other allowances

In addition to the itemized standard deductions, taxpayers are also entitled to the following personal allowances:

- 30,000 Baht for the taxpayer;
- 30,000 Baht for the taxpayer's spouse
- 15,000 Baht for each of the taxpayer's children (maximum three children except those born before 1979)
- 2,000 Baht for each child in school in Thailand

Other allowances are available for the following:

- life insurance premium, not exceeding 90,000 Baht
- spouse's life insurance, not exceeding 90,000 Baht
- interest on mortgage of residence, not exceeding 100,000 Baht
- contributions to a qualified provident fund, not exceeding 10,000 Baht

- contributions to a social security fund, for the full amount
- the estate of a deceased person, *not exceeding* 30,000 Baht
- unregistered partnership 60,000 Baht (maximum)
- *charitable contributions, not exceeding 10% of income after standard deductions and allowances*

Tax Rates

After deducting the standard or itemized deductions and the applicable allowances from gross income, the resulting net income is taxed at the rates shown in the following table:

| Net Annual Income (Baht) | Tax Rate |
|--------------------------|----------|
| 0-150,000 | 0 |
| 150,001-500,000 | 10% |
| 500,001-1,000,000 | 20% |
| 1,000,001-4,000,000 | 30% |
| >4,000,000 | 37% |

The tax rate on the joint income of spouses is the same as that on 2 persons filing individual returns. The incomes of both spouses are treated as accruing solely to the husband. However, if both spouses have employment income, each spouse may elect to file a separate tax return. In that case, each employed spouse is entitled to a separate standard deduction and the personal exemption of each spouse will consequently be 30,000 Baht plus 7,500 Baht for each dependent child (or 8,500 Baht, if school allowance is applicable).

If an individual has a gross income of more than 60,000 Baht, excluding income under Section 40 (1) of the Revenue Code (employment income), the income tax

payable must not be less than 0.5 per cent of that gross income.

Corporate Income Tax

A juristic company or partnership incorporated in Thailand is subject to corporate income tax on all profits derived from domestic and foreign sources.

Tax is imposed on the net profits of juristic companies and partnerships.

The tax rate is 30% of net profit.

A reduction is given to listed companies, i.e. companies listed on the Stock Exchange of Thailand (SET) or the Market for Alternative Investment (MAI), the trading board newly established by the SET, as follows:

- Companies listed on the SET before 6 September 2001
net profits : Baht 0 - 300 million: 25 %
net profits : Baht >300 million: 30%
- Companies listed on the SET from 6 September 2001
net profits : 25 %
- Companies listed on the MAI from 6 September 2001
net profits : 20 %

The corporate tax is also reduced for small enterprises (SME).

(SME refers to companies with paid-up capital less than 5 million Baht at the end of each accounting period)

| Net Profit not more than (Baht) | Tax Rate |
|---------------------------------|----------|
| <i>First 0-150,000</i> | 0 |
| From 150,000-1,000,000 | 15% |
| From 1,000,000-3,000,000 | 25% |
| From > 3,000,000- | 30% |

Computation of Net Profits

Net profits must be computed on an accrual basis with certain exceptions.

Deductions of business expenses are allowed for all outgoings and expenses exclusively incurred for the purpose of acquiring profits or for the purpose of the business operations, unless there is a specific direction in the Revenue Code to the contrary.

A Thai resident company can claim a deduction for royalties, management fees and interest charges provided they have been used exclusively for the purpose of acquiring profits or for the purposes of business in Thailand and do not exceed a reasonable amount.

Deductions of net losses may be carried forward for 5 accounting periods for offset against future profits from all sources. There is no provision for loss carry-back. Each company's losses are dealt with separately. There is no form of group relief or relief by consolidation. A change in shareholding of a company does

not affect its tax losses.

Deductions for wear and tear and depreciation are allowed as a percentage of cost. If the rate of deduction adopted by a company under its own accounting method is lower than the statutory percentage of cost, a deduction will be allowed only at the rate adopted by the company.

Tax Administration and Payment of Tax

The tax year for a company is its accounting period, which must be of 12 months' duration.

However, it may be less than 12 months in the case of the first accounting period after incorporation or after approval from the Revenue Department for changing the accounting period.

The system is one of self-assessment. A company prepares and files its tax returns by the due dates and at the same time pays the taxes calculated to be due.

Corporate income tax is paid semi-annually. A half-year return must be filed within two months after the end of the first six months of an accounting period.

The tax to be paid is computed on one-half of the estimated profits for the full accounting period, except for listed companies, banks, certain other financial institutions and other companies under prescribed conditions, where the tax is based on the actual net profit for the first six months.

The annual tax return is to be filed within 150 days from the closing date of an accounting period and credit is given for the amount of tax paid at the half-year.

Withholding Tax

All persons paying assessable income are required to deduct income tax withholding at various rates depending on the type of assessable income.

In the case of income under categories (1) or (2), the payer must deduct tax by:

- (a) multiplying the amount paid by the number of times of payment so that the result will represent the total amount which would be payable in a year;
- (b) after deducting expenses and allowances, if any, computing the tax on such an amount in accordance with the personal income tax rates; and
- (c) dividing the amount of tax so computed by the number of times of payment.

In the case of income categories (3) and (4), the payer must deduct tax at the prevailing income tax rates. There are exceptions to this rule, notably interest on fixed deposits and dividends where a flat rate of 15%, 10% respectively is deductible.

A company, registered partnership or other juristic person, which pays assessable income to another Thai registered company, registered partnership or other juristic person or foreign company carrying on business in Thailand must withhold tax at different rates from payments of income.

- (a) 5% from payments under category (5) which constitute the lease of assets;
- (b) 3% from payments under category (6) which constitute professional fees;

- (c) 3% from payments under category (7) - (8) which constitute the hire of work;
- (d) 2% from payments under category (8) which constitute advertising fees;
- (e) 3% from payments under category (8) which constitute the rebates or benefits from sales promotion except where goods/services are used for private consumption (not for sale) by the buyer;
- (f) 3% from payments under category (8) which constitute the service fees other than fees for hire of work, fares for public transportation, services by hotel and restaurant, and life insurance premiums;
- (g) 5% from payments under category (8) which constitute the prizes won in contests, competitions, lucky drawing or other like activities; and
- (h) 15% for service fees, rentals, and income under categories (2), (3), (4) professional fees paid to a non-resident.

Where income under categories (5), (6), (7) or (8) in excess of 10,000 Baht is paid by Central or Local Government, the payer is required to deduct income tax at the rate of 1% at the time of each payment.

A taxpayer whose income tax is withheld may pay or request a refund for the tax amount under or over withheld as the case may be. A claim for a refund must be submitted to the tax authority within three years from the last day of the year in which the excess amount was deducted.

Taxes withheld by the payer of income must be remitted within seven days after the end of the month of payment, together with a return, to the Revenue Department. The recipient of the assessable income is provided with a withholding tax certificate

and can use the tax withheld at source as a credit against the annual or mid-year income tax payable for the pertinent tax year.

Value Added Tax

Value Added Tax (VAT) is a consumption tax levied on the supply of goods or provision of services by VAT operators. VAT is calculated on the total price of the goods delivered or services provided. A provision of services is deemed to have been made in Thailand if the service is performed in Thailand regardless of where the service is used, or if the service is performed abroad but is used in Thailand. The VAT is calculated as: Output tax – Input tax = Tax paid.

Output tax is the VAT that the vendor collects from the purchaser when a sale is made, and input tax is the VAT that is paid by the vendor to the purchaser. If Output Vat exceeds input VAT, the operator must pay the difference to the Revenue Department.

VAT operators are required to issue tax invoices indicating the amount of goods or services provided together with VAT charged. All significant particulars in tax invoices must be completed as prescribed by the law.

Generally, every person who conducts business in Thailand is liable to pay VAT. However, there are persons and business activities, which are exempt from VAT (selection):

- (a) Small business operators (< 1.8 mil)
- (b) Educational services
- (c) *Cultural services*
- (d) Auditing and court practice services
- (e) Health care services
- (f) Research and technical services

(g) Rental of immovable property

The current rate is 7%. A zero percent rate is applied to the following items:

Exports of goods

- Services provided in Thailand but totally sent for use in a foreign country
- Sales of goods or services to government agencies or state enterprises under foreign aid programs
- Sales of goods and services between bonded warehouses or between enterprises located in a duty free zone
- *Supply of goods and services to the United Nations and its specialized agencies as well as embassies, consulate-general and consulates*

VAT operators are required to file monthly tax returns no later than the 15th day of the following month.

Tax invoices received and copies of issued tax invoices must be maintained as well as relevant documents and records. For instance, book keeping records and raw material records must be properly maintained at the place of business of VAT operators at all times.

Specific Business Tax

Due to the difficulty in determining the value added of certain businesses for the purpose of VAT imposition, an alternative tax levy on services, especially in the financial services sectors was introduced in tandem with the VAT regime. Specific Business Tax (“SBT”) is collected on gross revenue at fixed rates.

The following businesses are subject to the

Specific Business Tax:

- *Banking, finance and similar business 3%*
- *Life insurance 2.5%*
- *Pawn brokerage 2.5%*
- *Real estate 3% (since 01.01.2004)*
- *Repurchase agreement 3%*
- *Factoring 3%*

Other Taxes

Excise Tax

Excise tax is imposed on the sale of a selected range of commodities whether manufactured locally or imported. Tax rates are based on ad valorem or a specific rate.

Tax liabilities arise on locally manufactured goods when leaving the factory and upon the time of importation for imported goods.

1. Fuel oil and petroleum products
2. Beverages (except water, milk, liquor)
3. Electrical appliances
4. Crystal glassware
5. Motor vehicles, incl. Motorbikes
6. Boats
7. Perfume products and cosmetics
8. Entertaining services
9. Cigarettes containing tobacco
10. Batteries

The manufacturer of the products must file a return and remit the tax due prior to taking the goods from the factory or bonded warehouse. If a VAT liability arises before the goods are taken out of such locations, the manufacturer must file a return and remit the tax to the Excise Department within 15 days from the end of the month.

Petroleum Income Tax

Taxation on income from petroleum operations is imposed on petroleum concessionaire companies by the Petroleum Income Tax Acts (PITA). Companies taxed under the Petroleum Income Tax Act are exempt from taxes and duties imposed under the Revenue Code and under any other laws. The exemption applies as long as the company pays taxes and duties on income subject to the PITA or on dividends paid out of income subject to the PITA. Petroleum companies are taxed on the basis of their net annual profits from petroleum operations, including profits from the transfer of their concession interests and other activities incidental to petroleum operations at the rate of 50%.

Property Taxes

There are two kinds of property tax in Thailand, namely, House and Land Tax, and Local Development Tax.

House and Land Tax is imposed on the owners of a house, building, structure or land, which is rented or otherwise put to commercial use. The tax rate is 12.5 per cent of the actual or assessed annual rental value of the property.

A local development tax is imposed upon any person who either owns land or is in possession of land. The tax rates vary according to the appraised value of the property being determined by the local authorities. There is an allowance granted for land utilized for personal dwellings, the raising of livestock and the cultivation of crops by the owner. The extent of the allowance differs according to the location of the land.

Stamp Duty

Stamp duty is levied on the execution of 28 different items of documents or instruments specified in the stamp duty schedule in the Revenue Code (e.g. Purchase and lease of land, Bill of Lading, transfer of share, loan, Memorandum and Articles of Association, Letter of Credit).

The rates vary according to the nature of the documents. Stamp duty must be duly stamped at the rate specified in the stamp duty schedule.

Customs Duties

Customs duties are governed by the Customs Act and the Customs Tariff Decree. Customs duties are collected on both imports and some export items. Generally, the value of imports is based on their CIF (Cost, Insurance and Freight), whereas export is based on their F.O.B (Free On Board).

Classification of imports is based on the Harmonized Commodity Description and Coding System (Harmonized System, HS). The majority of imported articles are subject to two different taxes: tariff duty and VAT. Tariff duty is computed by multiplying the CIF value of the goods by the duty rate. The duty thus determined is added to the value of the relevant goods with reference to the CIF price. VAT is then levied on the total sum of the CIF value, duty and excise tax, if any. The majority of goods imported by businesses are subject to rates - either ad valorem or specific rates - ranging from 0% to 80%. Goods imported for re-export are generally exempted from import duty and VAT.

Export duties are imposed on only a few items including raw hide, certain kinds of wood, sawn-wood and articles made of wood.

Double Tax Agreements

Thailand has treaty agreements with over 40 countries, including U.S.A., Australia, South Africa and most European and Asian countries.

Double tax agreements apply to all persons, whether natural or juristic, who are residents of one or both of the contracting states. It defines the terms and conditions under which the natural person and the juristic person are deemed to be the resident of the contracting state. As far as taxes are concerned, the tax treaties cover taxes on income and capital of individuals and juristic entities. However, VAT, specific business tax and municipal tax are usually not covered under the tax treaties. In general, double taxation agreements provide income tax exemption on business profits earned in Thailand by a resident of a contracting state, if it does not have a permanent establishment in Thailand. In addition, withholding taxes on payments of income to foreign juristic entities not carrying on business in Thailand may be reduced or exempted under the tax treaties.

I. Contacts in The Kingdom of Thailand

HLB (Thailand) Ltd.
990 Abdulrahim Place,
11th floor, Suite 1101,
Rama IV Road, Silom,
Bangrak, Bangkok 10500,
Thailand.
Telephone:+66 (0) 2 636 0534-5
+66 (0) 2 636 0588-9
Fax:+66 (0) 2 6363962
E-mail: info@hlbthai.com
Website: <http://www.hlbthai.com>

HLB (Thailand) Ltd.
39/1-3 Kohkaew Plaza,
Thepkasattri Road,
T.Kohkaew, A.Muang
Phuket 83000 Thailand.
Telephone:+66 (0) 7627 3518
Fax:+66 (0) 7627 3517

HLB (Thailand) Ltd.
101/4 Natien Centre, 2nd Floor,
Moo 2, Tambol Bophut, Koh Samui,
Suratthani 84320, Thailand
Tel :+66 (0) 7723 0108
Fax :+66 (0) 77-230107