

Doing Business Guide

Thailand

1st Edition

Morison CKS Co., Ltd



An independent member of
Morison International

About This Booklet

This booklet is produced by Morison CKS Co., Ltd for the benefit of its clients and associate offices worldwide who are interested in doing business in Thailand.

Its main purpose is to provide a broad overview of the various things that should be considered by organisations considering setting-up business in Thailand.

The information provided cannot be exhaustive and - as the underlying legislation and regulations are subject to frequent changes - we recommend anyone considering doing business in Thailand or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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While every effort has been made to ensure the accuracy of the information contained in this booklet, no responsibility is accepted for its accuracy or completeness.

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The Kingdom of Thailand

History

The Kingdom of Thailand was formerly known as Siam. The first Kingdom of Thailand can be dated back to the thirteenth century, when the Sukhothai Kingdom was founded. The then capital, Sukhothai, is located some 500 km north of Bangkok. The Sukhothai Kingdom flourished until the late fourteenth century, when it became part of the Ayutthaya Kingdom whose capital, Ayutthaya, was located about 70 km north of Bangkok. International trade between Thailand and European countries thrived during this period. The Ayutthaya Kingdom lasted for some 400 years; its downfall was caused by the Burmese invasion in 1767. Shortly after that, King Taksin the Great regained control from the Burmese, setting up a new capital in Thonburi (now part of Bangkok). Following his death, in 1782 King Rama I of the Chakri Dynasty moved the capital to its current location: Bangkok, located on the other side of Chao Phraya River.

Thailand's land area is approx. 510,000 km². To the north of its borders lie Laos and Myanmar; to the east, Laos and Cambodia. The south of Thailand is bordered by Malaysia, with the Gulf of Thailand to the east and the Andaman Sea and Myanmar to the west. The climate is very warm and humid, with temperatures in the range of 24–38°C for most of the year.

The national currency is Thai Baht.

Population

Thailand is the 21st most populous country in the world, with approx. 67 million people (75% ethnic Thai, 14% of Chinese origin). Most Thais are Buddhists. The official language is Thai, and English is mostly used in business.

Constitution and law

Thailand was under the rule of an absolute monarchy until the introduction of the first constitution in 1932. Today, Thailand is a constitutional monarchy, the king also being the head of state. National general election of members of parliament (MPs) is scheduled every 4 years, and the prime minister is elected by MP vote.

The Thai Economy

Thailand is one of the emerging economies in Asia, with a GDP for 2011 of US\$ 345 billion, 70% of which is based on exports – mainly of electronics and computer parts, automotive parts, foods and agriculture products. Major imports include crude oil, machinery and parts, as well as chemical products. Thailand's major trading partners are the USA, EU countries and China.

Thai financial systems are bank-based; commercial banks therefore play an important role in the Thai economy. Key regulators in the financial systems are the Bank of Thailand and the Securities and Exchange Commission (SEC).

Thailand is open to foreign direct investment. However, Thai law requires certain types of business – such as banking, insurance, property trading and services – to be majority owned by Thais. The Board of Investment, a government agency, acts as a catalyst to promote investment by granting income tax exemption privileges to certain industries.



Banking and Finance

An overview

There are six components of financial systems in Thailand: financial institutions, equity and debt markets, insurance, money and foreign exchange markets, other financial markets (such as derivatives), and non-banks (such as leasing and consumer finance). Banking activities in Thailand are supervised by the central bank (Bank of Thailand; BoT). Capital market activities are supervised by the SEC.

Banks

Banks in Thailand can be divided into commercial banks, finance companies, credit-foncier companies and specialist financial institutions.

Commercial banks

Commercial banks are governed by the Banking Act 1962 and are supervised by the BoT. They may be full banks, retail banks or branches of foreign banks.

Full banks offer a whole range of banking services: deposit taking, lending, trade finance, foreign currency, investment and financial advisory.

Retail banks

As at 31 December 2012, there are 14 full banks, 3 retail banks, and 15 branches of foreign banks in Thailand. (There are also 27 representative offices of foreign banks, but these are not allowed to operate any banking activities in Thailand).

Finance and credit-foncier companies

Finance and credit-foncier companies are governed by the Banking Act and supervised by the BoT. Their activities are limited to deposit taking and lending. They are allowed to take deposits only in the form of promissory notes and bill of exchanges but are not allowed to issue any passbooks or provide checking accounts. For credit-foncier companies, only mortgage lending is allowed. At 31 December 2012, there are seven finance and credit-foncier companies.

Specialised financial institutions

These are government banks incorporated under special laws for specific purposes, such as the Small and Medium Enterprises Development Bank, Government Housing Bank and Export-Import Bank (EXIM). Some of these are under the supervision of the BoT; some are supervised by the Ministries under which they were formed.

These financial institutions accept deposits, but the scope of lending may be limited to certain groups. At 31 December 2012, there are eight specialised financial institutions in Thailand.

Equity and debt markets

There are two public equity markets in Thailand: the Stock Exchange of Thailand (SET) and the Market for alternative Investment (MAI). SET is for large companies with paid-up capital of not less than Baht 300 million (approx. US\$ 10 million) with sound profit tracks. MAI is for smaller companies, and has less stringent requirements than SET. At 31 December 2012, the market capitalisation of the SET was approx. US\$ 390 billion and MAI close to US\$ 4 billion.

The debt market trading in Thailand is an over-the-counter market rather than an exchange. Licensed traders or brokers (banks, securities companies, asset management companies) trade direct with the buyers or sellers of the debt instruments, either for themselves (proprietary trading) or on behalf of their clients (as brokers).

The futures and derivative markets in Thailand are relatively new and are operated by the Thailand Futures Exchange (TFEX). Players in these markets include commercial banks, securities companies, asset management companies and financial advisory firms. They are supervised by the SEC, SET or TFEX, depending on the type of activities.

Insurance

Life and non-life insurance companies in Thailand are regulated under the Life and Non-Life Insurance Acts 1992 and are supervised by the Office of the Insurance Commission. There are 25 life insurance companies and 72 non-life insurance companies in Thailand at 30 November 2012, with net insurance premium of approx. US\$ 5.5 and 9 billion, respectively.

Opening a bank account

A company seeking to open a bank account in Thailand must submit the following documents to the bank:

- Certified copy of minutes of directors' meeting or resolution to approve the opening of a bank account
- Completed bank account application forms and signature cards duly executed in the presence of a bank officer
- Copy of Memorandum and Articles of Association, Testimonial certified by authorised directors of the company.

Generally, the approval of the opening of a bank account for a locally incorporated company is quite straightforward. For offshore incorporated companies, some banks will ask for documents to be notarised, and may insist on additional documents.

Obtaining bank facilities

Banks will ask borrowers for certain information about the business (including financial forecast), major shareholders, key management, and collateral to be offered. Small companies with poor accounting records must supply the value of their collateral, evidence of credibility and a personal guarantee from the major shareholders.

Official Agencies Providing Assistance to Enterprises

Several government agencies provide assistance to business entities in Thailand. Some target small and medium enterprises (SME), while others help to promote foreign direct investment. The principal agency is the Board of Investment (BOI; www.boi.go.th), which plays an important role in promoting investment in Thailand. The Office of SME Promotion (www.sme.go.th) is charged with helping to build SMEs. Certain technology-based agencies, such as the Thailand Science Park and Software Park units of the National Science and Technology Development Agency, also support research and innovation and build technology companies.

The Board of Investment

Chaired by the prime minister, the BOI plays an important role in promoting investment in Thailand. It grants investment promotion privileges to manufacturing and industrial services sectors. These privileges, granted for a defined period of ≤ 8 years, include income tax and import duty exemption or reduction, and permission to employ foreigners. The extent of privileges depends on the type of industry and location of its factories.

The BOI also operates the BOI Unit for Industrial Linkage Development (BUILD), which provides information on subcontract opportunities to overseas buyers seeking a sourcing network in Thailand.

More information can be obtained from www.boi.go.th.

Thailand Science Park

Thailand Science Park is a unit under the National Science and Technology Development Agency (NSTDA) of the Ministry of Science and Technology. The park is located some 40 km north of Bangkok. Its mission is to promote research and innovation; it also provides value-added services to industrial sectors. These services include technology support (via its industrial technology assistance programme), incubation supports (through the Park's incubation centres), a technology joint investment programme, research grants, and provision of soft loans. More information is available at www.sciencepark.or.th.

Thailand Software Park

Thailand Software Park is another division of the NSTDA. Located 20 km north of Bangkok's central business district (CBD), the park's mission is to facilitate the software industry. The park operates an incubation centre providing IT technical advice, business advice, leased space and equipment to companies in its incubation programme. More information can be obtained from www.swpark.or.th.

Labour and Personnel

The Thai workforce

Out of the total population of 64.5 million, approx. 40 million aged ≥15 years are economically active as at December 2012.

Statutory immigration

Thailand's Working of Aliens Act 2008 controls the employment of foreigners; under this legislation, foreigners can only work in Thailand if they have a valid work permit granted by the Department of Employment, Ministry of Labour.

There are two types of work permit:

- **Temporary** – Granted for 15 days for emergency works, such as repair and maintenance or filming. The applicant must already have either a tourist or an exemption visa (60- or 30-day stay, respectively). A local sponsor is required to request for the work permit for the applicant. There is no minimum salary for the position applied, nor for the sponsor's capital. Minimal documents are required to support the application – a letter from the sponsor, passport and photographs of the applicant are usually sufficient.
- **Fixed-term** – Granted for 1–2 years (for a senior executive position, the permit is usually granted for 2 years). The applicant must possess a type 'B' non-immigrant visa (90-day stay) before filing their application. The employer must have at least Baht 2 million of paid-up capital for each work permit request, which must be supported by the following documents: passport with type 'B' visa, photographs of the applicant, financial statements and employer's corporate documents. Minimum salary requirements vary, depending on the nationality of the applicant.

Statutory working conditions

The Labour Protection Act, 1998 provides the statutory working conditions for employees in Thailand. It also establishes a committee to determine the minimum wages (approx. US\$ 10 day) for private sector employees.

- **Working hours** – In general, employees should not be required to work >8 hours/day or 48 hours/week. An employee should be paid 1.5 times the hourly rate of pay for working overtime on a normal working day, 2 times for working during normal working hours on a holiday, and 3 times for working overtime on a holiday. Employees are not permitted to work >36 hours/month of overtime.
- **Holidays** – Employees are entitled to a minimum of 1 holiday per week (usually at weekends) and a minimum of 13 public holidays per calendar year. Weekends are counted as working days if they are not holidays.
- **Annual leave** – Employees with >1 year of service are entitled to a minimum of 6 days' annual leave.

- **Medical leave** – Employees may take sick leave as necessary, but the employer may ask for a medical certificate to prove sickness for any leave ≥ 3 days. Employees are entitled to 30 days' sick leave with pay. Male employees are entitled to 60 days' military service leave with pay. Female employees are entitled to 45 days' maternity leave with pay.

Social Security Fund

Employers and employees are required to contribute to the Social Security Fund (SSF) on a monthly basis within the first 7 days of the following month. The rates of contribution are set by the Ministry of Labour and based on a fixed percentage of monthly basic salary of employees with a certain cap. Funds contributed by employers and employees cannot be withdrawn.

The SSF has certain arrangements with a number of hospitals to provide free medical care to SSF-registered employees; it also pays pension funds to retired SSF-registered employees.

Worker Compensation Fund

In addition to the Social Security Fund, employers are required to contribute to the Worker Compensation Fund (WCF). WCF pays compensation for any work-related injury, disability or death. Rates of contribution, set by the Ministry of Labour, vary according to the type of business.

Termination and dismissal

Employers are required to compensate an employee for termination of employment if they have served for ≥ 120 days, unless this was under a fixed-period employment contract of ≤ 2 years. Termination compensation ranges from 30 to 300 days' wages, depending on the period of service.

Office Premises, Factory and Industrial Land

Office premises

There is an ample supply of office premises in Bangkok; other cities also offer many large office buildings. Most office space is available for lease, with a small proportion for sale.

Rental prices vary, depending on their location, age and facilities of the buildings. Modern offices in the financial and business districts (Sathorn and Silom) in Bangkok command a high rent (US\$ 20–30/m² per month).

Factory space and industrial land

Factory space and industrial land are offered for rent or sale in both public (the Industrial Estate Authority of Thailand; IEAT) and private sectors. Most industrial land is now located outside Bangkok. IEAT operates over 30 industrial estates throughout Thailand; more details are available at www.ieat.go.th.

Over the past 20 years, the private sector has played an important role in the supply of industrial land and operation of industrial estates. Furnished factories can be found for lease, which can help to alleviate set-up costs for newly established companies.

The BOI generally grants the highest tax incentives allowed under the Investment Promotion Act, 1977 to companies that operate from industrial estates.



Legal Structure of Business Organisations

There are many forms of business organisations in Thailand: company, branch of a foreign company, representative office, partnership, and sole proprietor.

Company

A company is a separate legal entity from its owners (shareholders). Its shareholders' liability is limited to any amount unpaid on their shares. Unlike some other countries, Thai laws do not allow a company to be limited by guarantee (contribution undertaken by a company's shareholders).

A company is subject to corporate income tax. Annual corporate tax filing is due within 150 days after the end of the fiscal year, with mid-year income tax filing due within month 8 of the fiscal year. A company must maintain accounting records and is subject to annual statutory audit.

There are two types of company: a non-public public company and a public company.

Non-public company

A non-public company is governed by the Thailand Civil and Commercial Code.

The minimum number of shareholders is three persons (natural or juristic). The minimum par value of a share is Baht 5. At least 25% of the par value must be paid up. Treasury shares are not allowed.

The company must have at least one director. A juristic person is not allowed to be a director of the company. A company secretary is not required.

Public company

A public company is governed by the Public Company Act 1992.

The minimum number of shareholders is 15 persons (natural or juristic). The par value of share can be of any value, but the par value of each share must be equal. All shares must be fully paid up. Treasury shares are allowed.

A public company must have at least five directors, half of whom must be Thai residents. A juristic person is not allowed to be a director of the public company. A company secretary must be appointed.

Branches of a foreign company

A foreign company having contractual obligations with its customers in Thailand may operate as the branch of an overseas company. The branch is not a legal entity, but is required to pay corporate income tax similar to a company.

Certain types of businesses are not allowed to be majority owned by a foreigner. Accordingly, a branch of a foreign company is required to possess a Foreign Business License (FBL), which

must be obtained from the Ministry of Commerce prior to its establishment. The FBL is granted for a specific project (or contract), so the activities of a company's branch in Thailand must be limited to that project or contract. The FBL is given for the same period as the underlying contracts.

The minimum funds to be brought into Thailand for any branch is Baht 3 million per annum.

Representative office

A foreign company may set up a representative office in Thailand. Similar to the branch, an FBL is required. However, the permitted activities under the FBL are limited to procurement and quality control of products, giving advice or providing information clients in Thailand, and collecting business information for the foreign company. The FBL is usually granted for 3 years, but could be shorter, depending on the documents and plans submitted when requesting the FBL.

The representative office is not a legal entity and is not permitted to earn any revenue from its activities. However, it is required to file its annual income tax return.

The representative office must bring funds into Thailand of at least Baht 3 million per annum.

Partnership

A partnership is governed by the Civil and Commercial Code. A partnership arises when a minimum of two natural persons agree to form a partnership for profit-making purposes. There are three types of partnerships: ordinary, registered ordinary, and limited. There is no minimum capital requirement for partnerships.

Ordinary partnership is subject to personal income tax. Annual tax filing is required for each calendar year. Once the ordinary partnership is registered with the Minister of Commerce, it becomes a 'registered' ordinary partnership, and is subject to corporate income tax. Limited partnership is subject to corporate income tax.

The managing partner of a limited partnership is personally liable for any business debts incurred by the partnerships.

Partnerships must maintain accounting records, but are not subject to statutory audit. Tax returns of limited partnerships and registered ordinary partnerships are required to be certified by the certified tax auditors, while those of ordinary partnerships are not required to be certified.

Sole proprietor

A sole proprietorship is the most common form of small business in Thailand. The owner is personally liable for the business debts of the proprietorship. The proprietorship and the owner are treated as the same tax unit and are subject to personal income tax. A sole proprietorship must maintain accounting records but are not subject to statutory audit.

Statutory requirements

	Company	Branch / Representative Office	Sole Proprietorship / Ordinary Partnership	Registered Ordinary Partnership / Limited Partnership
Personnel requirement	<p>Non-public: Minimum of 3 shareholders and 1 director; company secretary not required</p> <p>Public: Minimum of 15 shareholders and 5 directors with half of directors residing in Thailand; company secretary always required</p>	A branch manager	<p>Sole Proprietorship: Owned by one or more individuals</p> <p>Partnership: Not less than 2 partners</p>	Not less than 2 partners
Capital requirement	Depends on number of shares and par value. Only minimum par value of share is set	Baht 3 million to be brought into Thailand for each fiscal year	No minimum set	No minimum set
Annual accounts / income tax filing	<p>Audited accounts with the Ministry of Commerce</p> <p>Annual income tax return for every fiscal year</p> <p>Mid-year income tax return for every fiscal year</p>	<p>None</p> <p>Same as Company</p>	<p>None</p> <p>Annual income tax return for every calendar year</p>	None Same as Company
Other requirements	Registered office address	Registered office address	Registered business address	Registered office address
Relevant legislation	<p>Non-public: Civil and Commercial Code</p> <p>Public: Public Company Act, 1992</p>	Foreign Business Law	Civil and Commercial Code	Civil and Commercial Code

Accounting records

The Accounting Act, 2000 requires business entities (juristic or non-juristic persons) to maintain proper accounting records in Thai or in English with appropriate Thai translation. The accounting records must be kept for a minimum of 5 fiscal years.

Audit of financial statements

The Civil and Commercial Code and the Public Company Act 1992 require annual audits of companies and public companies, regardless of company size. The Revenue Code requires annual audits of entities subject to corporate income tax, which will include a branch of foreign company, a representative office and certain types of partnership.

Financial statements and annual general meeting

Every company must have its financial statements containing the statement of financial position and the statement of income (and for some companies, cash flow statement) audited and presented to its shareholders for approval at the annual general meeting (AGM), which must be held within 4 months after the end of the fiscal year.

Loan to directors

The Public Company Act, 1992 prohibits a public company from lending funds to directors. There is no such prohibition for other types of entity.

Retirement age of directors

There is no retirement age for directors.

Disqualifications of director

Under the Public Company Act, 1992, a person is disqualified from acting as a director of a public company if they are incompetent, bankrupt, or (if at that time working in a government agency) dismissed from the state agency by reason of fraud, or sentenced by a final judgment to imprisonment for dishonesty.

Under the Civil and Commercial Code, a person is disqualified from acting as a director of a non-public company if declared incompetent or bankrupt.

Expatriates Living in Thailand

Immigration requirements

All foreign nationals entering Thailand to take up employment must apply for work permits from the Department of Employment, Ministry of Labour. The Department is located in Bangkok and has offices in provincial areas. More details can be obtained from www.doe.go.th.

Once the work permit is granted, the permit holder may ask for an extension of the visa to a 1-year term; their dependants (spouse and child/ren) should apply for visas at the same time. It should be noted that family dependants are not allowed to work in Thailand without their own work permits.

Living conditions

Generally, living conditions in Bangkok and major cities in Thailand are convenient and safe, with a relatively low cost of living. Thais are very friendly and will generally be pleased to help; the country is known as the 'Land of Smiles'.

Accommodation

Accommodation is ample, and the rent is reasonable. Many international hotel chains operate in Thailand. Rooms in a 5-star hotel costs from US\$ 120. Monthly rent of a similar unit of an apartment generally costs less. Monthly rent of a one-bedroom serviced apartment within 5 km of Bangkok's CBD starts from US\$ 1,500.

Food

The price of food in Thailand is very low, and there are many restaurants serving a wide variety of foods ranging from Asian delicacies to Western dishes.

Recreation and shopping

There are many tourist attractions in Thailand. Bangkok has been the capital of Thailand for more than 200 years; there are many historic temples. Ayutthaya, the former capital of Thailand, can be accessed within 1.5 hours by road from Bangkok; Pattaya, a world-famous beach resort, within 2 hours. Phuket, another renowned beach resort, or Chiang Mai (the ancient city of the northern part of Thailand), can be reached within 1.5 hour by air from Bangkok.

There are many leisure activities in Bangkok, ranging from sports facilities (including golf and tennis) to cultural shows and concerts. There are also many cinemas in Bangkok showing the most current British, American and Chinese films.

There are numerous private social and sport clubs in Thailand. Their membership fees vary, depending on location and the range of facilities offered.

Shopping in Bangkok and other major Thai cities is very convenient. Bangkok has many shopping centres selling wide variety of merchandise, from local produce to international brands.

Schooling

Most schools in Thailand teach in Thai; some offer a bi- or tri-lingual curriculum (English and Thai; or English, Thai, and Mandarin). There are some 100 private 'international' schools with an English-language curriculum, and a few in Japanese and Mandarin. Most of these are in Bangkok; some are in Chiang Mai, Phuket and other major cities.

Transport

New cars in Thailand are expensive because of high import duties. Japanese brands are very popular due to high resale prices. Used cars are easily available from a large number of dealers.

Public transport is available in Bangkok and major cities, and the fares are very low. There is a very extensive bus service in Bangkok (with or without air-conditioning), with a fare of around US\$ 1 for a one-way trip. There are also plenty of air-conditioned metered taxis available; the fare starts from US\$ 1.20.

There are two rail networks in Bangkok: a sky train (BTS) and an underground train (MRT). The maximum fare is around US\$ 1.50 - 2.50



The Next Step

Contact Morison CSK Co., Ltd to discuss your needs.

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