

# Joint Ventures 2021

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# Joint Ventures 2021

**Contributing editors**

**Kai Bitter, Kristen A Elia and Emily Tanji**

Frost Brown Todd LLC

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Lexology Getting The Deal Through is delighted to publish the fourth edition of *Joint Ventures*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Russia, South Korea and Taiwan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Kai Bitter, Kristen A Elia and Emily Tanji of Frost Brown Todd LLC, for their continued assistance with this volume.



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# Thailand

Jirapong Sriwat and Apinya Sarntikasem

Nishimura & Asahi

## FORM

### Types of joint venture

- 1 | What are the key types of joint venture in your jurisdiction? Is the 'joint venture' recognised as a distinct legal concept?

A 'joint venture' is not specifically recognised as a distinct type of legal entity under Thai corporate laws. It is essentially a business arrangement wherein joint venture parties typically set up a new company, more commonly in the form of a private limited company in Thai market practice, to invest jointly in certain businesses. Once the joint venture company is incorporated, the joint venture parties have the rights and obligations as shareholders of such a company. Unless otherwise prescribed in the joint venture agreement or specifically required by laws, the joint venture parties' liabilities are limited to their unpaid equity contribution in their shares.

Apart from the joint venture arrangement, investors may work together in a particular project in a form of a consortium, where no new entity will be established. In the consortium arrangement, the consortium partners typically remain independent with regard to their normal business operations. They merely share profits through the arrangement, and are responsible only for the obligations set out in the consortium agreement. As such, in Thai market practice, this consortium arrangement is preferable for investors in project-based construction and IT businesses.

For the purposes of this chapter, we will focus on joint venture companies registered in the form of a private limited company, which is prevalent in the Thai market and mainly governed by the Thai Civil and Commercial Code (CCC).

### Common sectors

- 2 | In what sectors are joint ventures most commonly used in your jurisdiction?

Joint ventures are typically used in businesses that require a large amount of funding, such as manufacturing, heavy industry, real estate and IT businesses. They are especially implemented where investors are of foreign nationalities, owing to Thailand's foreign business restrictions discussed.

## PARTIES

### Rules for foreign parties

- 3 | Are there rules that relate specifically to foreign joint venture parties?

Foreigners are generally restricted from engaging in certain businesses in Thailand by the Foreign Business Act 1999 (FBA). Under the FBA, a 'foreigner' includes a natural person who is not of Thai nationality, a

juristic person not registered in Thailand and a juristic person of which at least 50 per cent of the paid-in capital is held by foreigners.

The restricted businesses reserved for Thai nationals are categorised into three lists, as follows:

- List One: businesses that are strictly prohibited to foreigners for special reasons, such as television broadcasting and land trading;
- List Two: businesses that concern national security or safety, or could affect arts, culture or natural resources, such as production and trading of firearms, domestic transportation and mining; and
- List Three: businesses in which Thai nationals are not yet ready to compete with foreigners, such as retail, wholesale and the provision of certain services.

The businesses in List One are strictly prohibited to foreigners, whereas businesses in List Two are permitted for foreigners who obtain prior permission of the Minister of Commerce, with approval from the Cabinet, and businesses in List Three are permitted for foreigners who obtain prior permission of the Director-General of the Department of Business Development, with the approval of the Foreign Business Committee (ie, a foreign business licence).

Apart from the FBA, foreigners may also be subject to other specific laws that impose foreign investment restrictions. For instance, the Financial Institutions Businesses Act 2008 requires a financial institution operating financial businesses in Thailand to have at least 75 per cent of its total number of issued shares with voting rights held by Thai nationals, and at least three-quarters of its directors to be of Thai nationality. The Land Transport Act 1979 imposes similar requirements on a company applying for a licence to operate fixed route transport, non-fixed route transport or transport by a small vehicle. That is, the company applicant is required to have:

- Thai nationality (ie, incorporated under Thai laws and having a headquarters located in Thailand);
- at least half of its directors of Thai nationality; and
- at least 51 per cent of its shares held by, among others, a Thai national.

In addition, foreigners are also prohibited by the Land Code from owning a plot of land in Thailand. In this regard, in the case of a company, it would be deemed as a 'foreigner' from the perspective of the Land Code if any of the following conditions is met:

- more than 49 per cent of the company's registered capital is held by foreign entities (ie, shareholding percentage);
- the number of its foreign shareholders is more than half of its total number of shareholders (ie, headcount).

Foreign investors would need to devise their plans for investment and business operations in Thailand by taking into account the above-mentioned foreign investment and land ownership restrictions. These restrictions are the primary reasons why most foreign investment in

Thailand is in the form of joint ventures between foreign and Thai investors. Considering the definitions of a 'foreigner' under the FBA and the Land Code, a joint venture company with foreign joint venture parties that wishes to hold ownership over a plot of land in Thailand would have at least 51 per cent of its total shares held by Thai investors, and the number of its foreign shareholders would not be more than half of its total number of shareholders.

Nonetheless, exemptions from the foreign investment and land ownership restrictions are generally available to companies that, among others, are granted investment promotion from the Board of Investment of Thailand or operate their businesses in the industrial park regulated by the Industrial Estate Authority of Thailand.

### Ultimate beneficial ownership

#### 4 | What requirements are there to disclose the ultimate beneficial ownership of a joint venture entity?

There is no statutory requirement for the joint venture company to disclose its ultimate beneficial ownership upon the registration of its incorporation. However, the disclosure requirement may be imposed when the joint venture company takes certain actions. For instance, if the joint venture company is to make a tender offer for the acquisition of shares that results in the joint venture company together with its related persons or concert parties holding voting rights at or in excess of 25 per cent, 50 per cent or 75 per cent of all voting rights in a company listed on the Stock Exchange of Thailand, it would be required to disclose the list of its top 10 shareholders, as well as their ultimate beneficiaries. In addition, where the joint venture company is to register ownership over the land, considering the foreign land ownership restriction under the Land Code, the joint venture company would typically be required to submit its shareholding structure for the land officer to check if it is not considered a 'foreigner' under the Land Code. In normal practice, the land officer would check all levels of shareholding up to the ultimate shareholders of the land transferee.

## SETTING UP AND OPERATING A JOINT VENTURE

### Structure

#### 5 | Are there any particular drivers in your jurisdiction that will determine how a joint venture is structured?

The foreign investment and land ownership restrictions under Thai laws are the primary drivers in determining how a joint venture is structured.

### Tax considerations

#### 6 | When establishing a joint venture, what tax considerations arise for the joint venture parties and the joint venture entity? How can tax charges be lawfully mitigated?

Joint venture parties will need to consider any tax triggered as a result of their respective contributions of any assets or businesses to the joint venture. This could be in the form of a capital gains tax with respect to contributed assets or businesses. In addition, value added tax may also be an issue when contributing non-fixed assets to a joint venture company. Prior consultation with a tax advisor on this is highly recommended.

### Asset contribution restriction

#### 7 | Are there any restrictions on the contribution of assets to a joint venture entity?

Contributions in kind, such as assets and labour, are permitted under the Thai Civil and Commercial Code (CCC). However, the share price

cannot be paid by offsetting debt that the company owes to the shareholder. In addition, if the joint venture parties contribute in the form of assets or labour, it may be difficult in practice to evaluate the value of such a contribution. An asset appraiser would be engaged to ascertain the valuation and avoid any challenge from the relevant authorities.

### Interaction between constitution and agreement

#### 8 | What is the interaction between the constitution of the joint venture entity and the agreement between the joint venture parties?

One of the constitutional documents of a private limited company are the articles of association (AOA), which prescribe the regulations concerning the company's internal affairs, such as share transfer restrictions, composition of the board of directors, the board of directors' and shareholders' meetings, and distribution of dividends. Under the CCC, the AOA is required to be filed with the Ministry of Commerce upon the company's incorporation, and within 14 days of the date on which a shareholders' meeting, by a special resolution, approves an amendment to the AOA.

The CCC requires that the company shall be managed in accordance with the AOA. As such, in practice, the provisions of the agreement between the shareholders (eg, the joint venture agreement or the shareholders' agreement) should be reflected in the joint venture company's AOA. Where there is a discrepancy between the AOA and the agreement between the shareholders, the provisions of the AOA generally prevail, in terms of the management of the company. However, between the shareholders, if such a discrepancy results in a breach of the shareholders' agreement or the joint venture agreement, the defaulting party would need to be liable therefor.

### Party interaction

#### 9 | How may the joint venture parties interact with the joint venture entity? Are there any restrictions?

Interactions between the joint venture parties and the joint venture company are mainly governed by the terms of the joint venture agreement, the constitutional documents of the joint venture company and the applicable law (ie, the CCC if the joint venture company is a private limited company, and the Public Limited Companies Act 1992 if the joint venture company is a public limited company).

Joint venture governance arrangements, which may restrict or provide mechanisms for related-party transactions, are typically prescribed in the joint venture agreement and the company's AOA. A special resolution of the shareholders (which shall be passed by at least 75 per cent of the total votes of the shareholders attending the meeting and eligible to cast the votes) may be required for the joint venture company's entry into a related-party transaction, or a joint venture party may have a veto right against such entry. In addition, in Thai market practice, the joint venture agreement often includes a provision on confidentiality obligation, which restricts the joint venture parties from exploiting confidential information shared by the other party in the course, or for the benefit, of the joint venture company's business operations.

### Exercising control

#### 10 | How may the joint venture parties exercise control over the joint venture entity's decision-making?

Under the CCC, resolutions of the board of directors' meeting in any matters require a majority vote of the attending directors, and resolutions of the shareholders' meeting in ordinary matters (eg, appointment of directors) require a simple majority vote (unless otherwise provided

in the company's AOA, on a vote by show of hands, the 'one shareholder, one vote' rule applies, whereas on a vote by secret poll, the 'one share, one vote' rule applies). Matters requiring special resolutions (eg, an amendment to the AOA, capital increase and decrease, and dissolution of the company) are required to be passed by at least 75 per cent of the total votes of the shareholders attending the meeting and eligible to cast the votes. As such, in the absence of any agreement between the joint venture parties to the contrary, a shareholder holding more than 50 per cent of the company's total issued shares would be able to effectively control the company, and it would essentially have total control over the company if it holds 75 per cent or more of the company's total issued shares.

In light of the above, it is customary for minority investors to seek protection and contractual rights in proportion to their size of investment through the provisions of the joint venture agreement and the joint venture company's AOA. In this regard, minority investors typically request for the constitution of the quorum of the joint venture company's shareholders' or board of directors' meeting to require attendance of such minority investors or the director nominated by them, as the case may be. In addition, they typically seek veto rights over certain important matters, and try to negotiate for as many board seats as possible. Further, they may seek to designate other management positions in the company (eg, chief operating officer or chief financial officer).

### Governance issues

#### 11 What are the most common governance issues that arise in connection with joint ventures? How are these dealt with?

In Thai market practice, the most common governance issues are:

- the level of control that joint venture parties have over the joint venture company: the joint venture party holding majority shares in the joint venture company would be able to effectively control the company. Therefore, it is significant for the minority shareholders to seek protection in the joint venture agreement, which should also be reflected in the company's AOA to ensure stronger protection;
- management of the conflict of interests: governance issues often arise when it comes to the balancing of interests of the joint venture company and the interests of the joint venture parties. In terms of a private limited company, the CCC prescribes the mechanism to deal with the conflict of interest issue; and
- deadlock mechanism: a deadlock event arises when the joint venture parties cannot compromise on a certain key issue. To keep the business of the joint venture company going, a deadlock mechanism is often included in the joint venture agreement as well as the AOA in relation to the joint venture company.

### Nominee directors

#### 12 With an incorporated joint venture, what controls exist in your jurisdiction in relation to nominee directors? How should a nominee director balance the potentially conflicting interests of the joint venture company and the appointing shareholder?

The directors of a private limited company owe a fiduciary duty to the company as prescribed in the CCC and shall be jointly liable for certain matters, such as capital payments being paid and resolutions of the shareholders' meeting being properly enforced.

In addition, the directors of a private limited company are also subject to the statutory non-compete obligations under the CCC, which explicitly prohibit the directors from undertaking any commercial transaction of the same nature as and competing with that of the company, either for the benefit of the directors or other persons, and from being a partner with unlimited liability in another commercial entity carrying

on business of the same nature as and competing with that of the company. However, if the directors are granted approval of the shareholders' meeting to undertake the foregoing, they may not be liable to the company and the shareholders giving the approval.

To deal with the potential conflicting interests of the joint venture company and the appointing shareholder, the joint venture agreement may include the provision regarding related transactions and apply the arm's-length basis, or designate a matter regarding related transactions as a shareholders' reserved matter that requires a supermajority vote or entitles the minority shareholder to a veto right. Nonetheless, in common market practice, strong protection is not typically available where the shareholders, nominee shareholders or nominee directors are not direct parties to the transaction at issue.

### Competition law

#### 13 What competition law considerations are engaged by the formation and operation of the joint venture? Is approval needed?

If the joint venture company is a result of a merger between two entities, the merger control regulations may apply.

### Provision of services

#### 14 What are the key considerations in your jurisdiction in structuring the provision of services to the joint venture entity by joint venture parties?

Typically, the roles of the joint venture parties depend on their areas of expertise. Common services provided by the foreign joint venture parties are technical assistance and IT solutions. Given that the joint venture company is located and operated in Thailand, back office services, such as bookkeeping, marketing and revenue management, are typically provided by the Thai joint venture party.

### Employment rights

#### 15 What impact do statutory employment rights have in joint ventures?

In general, the seconded employee shall be:

- entitled to the rights, benefits and welfare without discrimination and comparable to those granted to other employees of the joint venture company whose work is of similar nature; and
- required to observe the joint venture company's work rules and the statutory requirements under Thai labour laws. For example, the seconded employee may terminate the employment agreement with the joint venture company by giving written notice of at least one payment cycle in advance.

### Intellectual property rights

#### 16 How are intellectual property rights generally dealt with on the creation, operation and termination of a joint venture in your jurisdiction?

Ownership over intellectual property rights depends largely on the negotiation between the joint venture parties. Nonetheless, the parties usually agree to have joint ownership over the intellectual property arising in the course of the joint venture company's business operations.

## FUNDING THE JOINT VENTURE

### Typical funding

- 17 | How are joint ventures generally funded in your jurisdiction? Are there any particular requirements relating to funding and security packages?

Joint venture companies are generally funded in the form of equity, debt (from joint venture parties or financial institutions) or a hybrid of debt and equity whereby the debt is exchangeable into equity.

If the joint venture company is considered a foreigner under the Foreign Business Act 1999 (FBA) and obtains a foreign business licence to engage in FBA-restricted business operations in Thailand, the joint venture company is subject to a debt-to-equity ratio of 7:1 (ie, the total loan amount used for the joint venture company's business operation shall not exceed seven times its registered capital). If the joint venture company obtains investment promotion from the Board of Investment of Thailand (BOI), it is subject to a debt-to-equity ratio of 3:1 (ie, the company's debt shall not exceed three times its registered capital).

### Capital injection restrictions

- 18 | Are there any legal or regulatory restrictions on the injection of capital into, or the distribution of profits or the extraction of cash by other means from, the joint venture entity?

Upon a share subscription, the shareholders are required to pay in at least 25 per cent of the share subscription amount. Therefore, in Thai market practice, the joint venture parties may establish a joint venture company by initially paying in 25 per cent of the share subscription amount, and set out certain important events (eg, obtaining investment promotion from the BOI and permission to use and own the land from the Industrial Estate Authority of Thailand) as conditions precedent to the payment of the remaining share subscription amount.

As for the distribution of profits, the joint venture company is subject to the statutory requirements for the distribution of dividends under the Thai Civil and Commercial Code (CCC). That is, dividends may only be declared by a resolution passed in a shareholders' meeting. However, the directors may resolve an interim dividend payment from time to time, if it is justified by the profits of the company. The payment of dividends shall be made within one month of the date of the resolution of the shareholders' meeting or the board of directors' meeting, as the case may be. In addition, dividends may only be paid out of profits, and may not be paid if the company is accumulating losses. Moreover, the company shall appropriate to a reserve fund at each distribution of dividends at least 5 per cent of the profits arising from the business of the company, until the reserve fund reaches 10 per cent of the capital of the company, or a higher proportion thereof as may be stipulated in the articles of association.

### Tax considerations

- 19 | What tax considerations should be taken into account in the operation of the joint venture?

For corporate joint venture parties, profits distributed by dividends are primarily taxable. Where the parties fund their joint venture by providing loans to the joint venture, they will be subject to tax on the interest received under the Revenue Code. For the joint venture company, if it is granted an investment promotion from the BOI, some tax incentives may be available to the joint venture company, such as corporate income tax exemption for certain years, subject to the type of business promoted by the BOI. Prior consultation with a tax advisor on this is highly recommended.

## Accounting and reporting issues

- 20 | Are there any noteworthy accounting or reporting issues for the joint venture parties regarding their investment in the joint venture?

If the joint venture company is a private limited company, the CCC does not subject the joint venture parties to any particular reporting requirements. On the other hand, if the joint venture company is a public limited company listed on the Stock Exchange of Thailand, the joint venture parties are subject to the 5 per cent report requirement. That is, any acquisition or disposal of the listed shares that increases or decreases the aggregate number of listed shares held by the acquirer or disposer and its related persons or concert parties by a multiple of 5 per cent of the total number of voting rights of the listed company shall be reported to the Securities and Exchange Commission of Thailand using the form 246-2.

## DEADLOCK, EXIT AND TERMINATION

### Deadlock provisions

- 21 | What deadlock provisions are commonly included in joint venture agreements in your jurisdiction?

It is common in Thai market practice to include deadlock provisions in the joint venture agreement, wherein a deadlock event is typically deemed to have occurred if:

- a resolution at any board of directors' meeting cannot be passed after certain successive attempts;
- a resolution at any shareholders' meeting cannot be passed after certain successive attempts; or
- a shareholders' meeting or a board of directors' meeting cannot be convened because of the absence of the requisite quorum, after certain successive attempts.

Once the deadlock event occurs, the joint venture parties are generally entitled to exercise a put or call option, or dissolve the joint venture company.

### Exit provisions

- 22 | What exit provisions are commonly included? Does the law restrict any forms of mandatory transfer provision or any basis of calculation?

Pre-emption rights are available under the Thai Civil and Commercial Code for all existing shareholders in the private limited company entitled to subscribe for the company's newly issued shares resulting from a capital increase in proportion to their shareholding before those shares are available to other shareholders. In the case of a share transfer, the joint venture agreement typically provides for the right of first refusal, whereby a shareholder shall offer shares to other existing shareholders prior to offering or selling them to third parties.

If the joint venture involves a minority shareholder, the drag-along provision may be included to ensure that the majority shareholders can force the minority shareholders to sell their shares and the prospective buyer can purchase the entire joint venture company, and the tag-along provision may be included to entitle the minority shareholders to participate with the majority shareholders in exiting the joint venture company. However, this would be subject to the commercial consideration of the relevant parties.

In the case of a default, the joint venture agreement typically provides for a put option for the non-defaulting party to sell its shares in the joint venture company to the defaulting party at a premium price, or a call option for the non-defaulting party to force the defaulting party to sell its shares at a discounted price.

As opposed to the provision forcing or permitting a party to exit the joint venture mentioned above, many joint venture agreements include a lock-up provision to ensure that the shareholders will remain as shareholders for a certain period, especially during the initial phase of business operation.

### Tax considerations following termination

#### 23 | What are the tax considerations on termination of the joint venture?

Any transfer of shares in a joint venture company by a joint venture party to another joint venture party or a third party will be a disposal potentially subject to capital gains tax and stamp duty under Thai law. In addition, value added tax may also be an issue when it is a sale of non-fixed assets in a joint venture company. Prior consultation with a tax advisor on this is highly recommended.

## DISPUTES

### Choice of law and resolution methods

#### 24 | In your jurisdiction, are there constraints on the choice of law or the method of dispute resolution provided for in joint venture agreements?

Thailand adopts the principle of party autonomy as a ground for recognising the parties' choice of law (to the extent that the party relying on the foreign law can provide its existence to the satisfaction of the court and it is not contrary to Thai public order and good morals) and method of dispute resolution. Nonetheless, in Thai market practice, provided that the joint venture company is located and operated in Thailand, it is advisable to prescribe Thai law as the governing law of the joint venture agreement. As for the method of dispute resolution, if the joint venture parties are of various nationalities, arbitration may be a dispute resolution of choice, wherein the place of arbitration may be a country neutral to the disputing joint venture parties. It is worth noting that foreign judgments would not be enforced by the Thai courts, but would be permissible only as evidence in a new trial.

### Mandatorily applicable local law

#### 25 | What mandatory provisions of local law will apply irrespective of the choice of governing law?

Under the Conflict of Law Act 1938, foreign law can apply only to the extent that it is not contrary to Thai public order and good morals. Based on the precedent of the Supreme Court of Thailand, the provisions of the Thai Civil and Commercial Code (CCC) with regard to, among others, company formation, distribution of dividends and relationships between the shareholders and the company are deemed as relating to Thai public order. Thereby, the joint venture parties are prohibited from agreeing on these matters to the contrary of the CCC; otherwise, such an agreement shall be void and the CCC shall apply. In this regard, it is worth noting that the parties are expressly permitted by the CCC to agree on certain matters differently from the provisions of the CCC; for example, the quorum of the shareholders' meeting and the method of voting.

### Remedy restrictions

#### 26 | Are there any restrictions on the remedies a tribunal can grant that would have a bearing on the arbitration of joint venture disputes? Are there any restrictions on the arbitration of shareholder claims?

Under the Thai Arbitration Act 2002, as amended, an arbitral award, irrespective of the country in which it was made, shall be binding upon the

parties to the dispute and, upon application to the competent court of Thailand, shall be enforced. If the arbitral award was made in a foreign country, the competent court of Thailand may render judgment for enforcement of the award only when it is governed by an international agreement to which Thailand is a party, and this shall have effect only to the extent that Thailand agrees to be bound thereby.

Nonetheless, the competent court of Thailand shall be empowered to issue an order refusing enforcement of an arbitral award, irrespective of the country in which it was made, if the party against whom it is invoked can furnish proof that, among others, the arbitration agreement is not binding under the law of the country to which the contractual parties have agreed. In addition, the court shall also be empowered to refuse to enforce an arbitral award if it is apparent to the court that the award deals with a subject matter that is not capable of settlement by arbitration under the law, or the enforcement of the award would be contrary to public order or good morals.

### Minority investor protection

#### 27 | Are there any statutory protections for minority investors that would apply to joint ventures?

Under the CCC, any shareholder shall be entitled, among others, to file a lawsuit against the director who causes damages to the company if the company refuses to do so, and to inspect the minutes of all proceedings and resolutions of the company's directors and shareholders. The shareholders, holding altogether at least 20 per cent of the total shares of the company, shall be entitled, among others, to summon a shareholders' meeting and request that the registrar conduct an inspection of the company. In addition, to protect the minority shareholders, the CCC requires certain matters that may significantly affect the management and condition of the company to be approved by a special resolution of the shareholders' meeting (ie, 75 per cent of the total votes of the shareholders attending the meeting and eligible to cast the votes); for example, amendments to the articles of association and dissolution of the company. This means that, to pass these resolutions, affirmative votes of the minority shareholders could be of high importance.

### Liabilities

#### 28 | How can joint venture parties have liabilities to each other beyond what is expressly agreed in the joint venture agreement?

Apart from the liabilities under the joint venture agreement, the joint venture parties may be liable to each other under the general provisions of law, such as tort liabilities under the CCC.

### Disclosure of evidence

#### 29 | Are there any particular issues that can arise in joint venture disputes in your jurisdiction concerning disclosure of evidence?

In civil cases, the parties are generally required to submit the list of evidence, setting out the documents and other evidence that they wish to lodge with the court, at least seven days prior to the evidentiary hearing. Copies of the documentary evidence are required to be submitted to the court and the counterparty, except in cases where, for example, the original document is in the counterparty's possession, which the court may order to be produced upon request of the party.

With respect to attorney-client privilege, registered Thai lawyers are subject to the ethical mandate, which prohibits them from disclosing the client's confidential information unless prior consent from the client is granted or an order is issued by the court. Violation may result in professional sanction (ie, probation, suspension of practice or deletion from the Register of Lawyers).

## MARKET OVERVIEW

### Jurisdictional advantages

#### 30 | What advantages does your jurisdiction offer for parties wishing to set up and operate joint ventures?

To boost economic growth, the Thai government attracts investment from both Thai and foreign investors by providing incentives through the Board of Investment of Thailand (BOI) and the Industrial Estate Authority of Thailand (IEAT).

The BOI grants investment incentives to eligible investors both in the form of tax incentives (eg, exemption or reduction of customs duties and exemption of corporate income tax) and non-tax incentives (eg, permits to bring in skilled workers and experts, and permits for foreigners to own land). The BOI investment incentives are granted on an activity basis, whereby the eligible activities include high-technology activities that are important to the development of the country. Additional incentives are available on a merit basis for investors who invest in research and development activities in Thailand, or projects that are located in certain industrial estates, among others.

As for the IEAT, investors whose projects are located within the general industrial estate area are eligible for non-tax incentives, such as permits to bring in skilled workers and experts, and permits for foreigners to own land. If the projects are located in the IEAT Free Zone, they are eligible for additional tax incentives, such as exemption of import and export duties.

Foreign investors who are granted BOI investment incentives or whose projects are located within the industrial estates are eligible to obtain a foreign business certificate, which entitles them to engage in the businesses restricted under the Foreign Business Act 1999 (FBA). The process to obtain this foreign business certificate is relatively easy compared to obtaining a foreign business licence, and does not require consideration or assessment by the authority.

Apart from the investment incentives granted by the BOI and the IEAT, the Thai government is developing the Eastern Economic Corridor (EEC), an ASEAN-leading economic zone. The targeted industries of the EEC include high wealth and medical tourism, robotics and digital industries. Both tax and non-tax incentives are available to eligible investors, including the lowest personal income tax rate in ASEAN of 17 per cent.

### Requirements and restrictions

#### 31 | Are there any particular requirements or restrictions relating to joint ventures in your jurisdiction that could deter international investors?

Foreigners are generally restricted from engaging in certain businesses in Thailand by the FBA and prohibited from owning a plot of land in Thailand by the Land Code. However, these restrictions and prohibitions can be avoided through the organising of the joint venture company's shareholding structure such that it would not be deemed a foreigner under the respective statutes. Alternatively, the joint venture company may apply for investment promotion granted by such authorities as the BOI and the IEAT, which would entitle the company to, among others, a foreign business certificate to operate FBA-restricted businesses in Thailand and a permit to own land in Thailand.

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## UPDATES & TRENDS

### Key developments of the past year

#### 32 | What are the current trends affecting joint ventures in your jurisdiction? What recent developments in legislation and case law have had an impact on joint ventures?

The covid-19 pandemic has prompted the Thai government to enact an Emergency Decree regarding meeting through electronic media to facilitate business operations in the midst of business lockdowns, travel bans and implementation of social distancing measures. By virtue of the Emergency Decree, a Thai public and private limited company would be able to hold shareholders' and board of directors' meetings via electronic media, without being subject to the previous requirement to have at least one-third of the meeting quorum being in the same venue and all participants being in Thailand.

The key elements of the Emergency Decree are as follows:

- the meeting shall be conducted in accordance with the security standards set out by the Ministry of Digital Economy and Society;
- the meeting may be convened via electronic means, provided that the meeting organiser shall keep a copy of the meeting notice and meeting documents as evidence;
- the meeting organizer shall arrange for the following:
  - the participants showing up before the meeting;
  - the participants being able to cast a vote in the meeting, either through an open or a secret voting;
  - the minutes of the meeting being prepared in writing;
  - the audio or video recording, as the case may be, of all participants being taken throughout the meeting in electronic form, except in the case of a secret meeting; and
  - the electronic traffic data of all participants being recorded as evidence; and
- if meeting allowance is to be paid to participants of the meeting, participants who attend the meeting through electronic media shall also be entitled to such meeting allowance.

**Coronavirus**

33 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Thai government has enacted legislation to relieve the impact of the covid-19 pandemic on business operations in Thailand. Apart from the Emergency Decree regarding meeting through electronic media, the Thai government has enacted a Royal Decree to postpone full enforcement of the Personal Data Protection Act (PDPA), which was initially due to come into full effect on 27 May 2020 to address business operators' concerns about their ability to fully comply with the requirements under the PDPA and consequences of failure to do so.

By virtue of the Royal Decree, data controllers in certain agencies and businesses (eg, government agencies, industrial business, commerce business, tourism business, finance, banking, and insurance businesses and administrative business) are exempted from complying with the PDPA requirements to protect the personal data and rights of the data subject until 31 May 2021. Nonetheless, the data controllers are still required to implement the security measures in accordance with the standard set by the Ministry of Digital Economy and Society.

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Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
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Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
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