

# Luther.

## Memo: Employment Law in Thailand

October 2023



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# A. Introduction



Labour law (or employment law) generally mediates the relationship between Employers, Employees, labour unions and the government. The term “collective labour law” relates to the tripartite relationship between the Employer, Employees and labour union; “individual labour law” concerns Employees’ rights at work also through the work contract.

Employment standards are social norms (in some cases also technical standards) for the minimum socially acceptable conditions under which Employees or contractors are allowed to work.

This publication shall give an overview of the labour law in the Kingdom of Thailand. Thai labour law is considered more protective of Employees’ rights, which can be credited to the basic presumption that the Employer is in a “position of power” in relation to the Employee. Rules and regulations apply to both Thai and foreign Employees. However, foreigners working in Thailand can be subject to additional requirements (e.g. such as holding a business visa and work permit).

## B. Regulatory framework

Thai labour law is governed by a number of legislative acts, royal decrees and ministerial regulations, as well as internal policies and practices of the Department of Labour Protection and Welfare of the Ministry of Labour (“Department of Labour”). These rules have been interpreted and further developed by decisions of the Thai Labour Courts.

The most relevant provisions can be found in the *Thai Civil and Commercial Code B.E. 2535 (1992)* (“Civil and Commercial Code”) and the *Labour Protection Act B.E. 2541 (1998)* (“Labour Protection Act”). The most recent amendments to the Labour Protection Act further enhanced worker protection, improved working conditions, and imposed sanctions on Employers who failed to uphold them, including several key changes to regulations around severance pay, change of Employer, leave, temporary cessation of business, transfer of business, payment in lieu of termination notice and default interest rate.

### I. Acts (non-exhaustive)

- Act Establishing the Labour Court and Labour Court Procedure B.E. 2522 (1979)
- Alien Working Act B.E. 2551 (2008)
- Employment and Job Seeker Protection Act B.E. 2528 (1985)
- Labour Protection Act B.E. 2541 (1998)
- Labour Relations Act B.E. 2518 (1975)
- Occupational Safety, Health and Environment Act B.E. 2544 (2001)
- Provident Fund Act B.E. 2530 (1987)
- Skills Development Promotion Act B.E. 2545 (2002)
- Social Security Act B.E. 2533 (1990)
- State Enterprise Labour Relations Act B.E. 2543 (2000)
- Thai Civil and Commercial Code B.E. 2535 (1992)
- Workmen’s Compensation Act B.E. 2537 (1994)
- Further sector-specific laws contain labour regulations

### II. Decrees (non-exhaustive)

- Royal Decree on Managing the Work of Aliens B.E. 2560 (2017)

### III. Ministerial regulations (non-exhaustive)

- Ministerial Regulation B.E. 2541 concerning Employers excluded from an application under the Labour Protection Act
- Ministerial Regulation (No. 3) B.E. 2541 concerning the rates of overtime working hours and working hours on holidays

- Ministerial Regulation (No. 4) B.E. 2541 concerning the types of work whereby an Employee may be prevented from taking a traditional holiday
- Ministerial Regulation (No. 5) B.E. 2541 concerning leave for training or development of knowledge of an Employee
- Ministerial Regulation (No. 6) B.E. 2541 concerning prohibited types of work for an Employee under 18 years of age to perform
- Ministerial Regulation (No. 7) B.E. 2541 concerning the types of work with the labour protection differentiated from the Labour Protection Act B.E. 2541
- Ministerial Regulation (No. 9) B.E. 2541 concerning the types of work to which the Labour Protection Act shall not apply
- Ministerial Regulation (No. 10) B.E. 2541 concerning sea fishery work
- Ministerial Regulation (No. 11) B.E. 2541 concerning loading and unloading work of goods on seagoing vessels
- Ministerial Regulation (No. 12) B.E. 2541 concerning land transport work
- Ministerial Regulation (No. 13) B.E. 2541 concerning the amendment of the Ministerial Regulations
- Ministerial Regulation (No. 14) B.E. 2541 issued by virtue of the Labour Protection Act

## C. Definitions

### Terms and definitions

The Labour Protection Act defines the meaning of the following terms as follows:<sup>1</sup>

**Contract of Employment** means a contract, whether written or oral, expressed or implied, whereby a person called an Employee agrees to work for a person called an Employer, and the Employer agrees to pay Wages for the duration of the work.

***Comment:** The Civil and Commercial Code defines an employment contract as contract whereby a person, called the Employee, agrees to render services to another person, called the Employer, who agrees to pay remuneration for the duration of the services (sec. 575).*

**Employer** means a person who agrees to accept an Employee for work by paying wage and includes (i) a person entrusted to act on behalf of the Employer and (ii) in case where an Employer is a juristic person, the term also includes a person authorised to act on behalf of the juristic person and a person entrusted by an authorised person to act on his or her behalf.

**Employee** means a person who agrees to work for an Employer in return for Wages regardless of the name used.

***Comment:** The Labour Protection Act is intentionally broad in defining the terms of Employer and Employee. The latter can include all types of Employees, for example full-time and part-time Employees, permanent and non-permanent Employees, Employees on probation, and Employees under special employment contracts.*

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<sup>1</sup> Sec. 5 Labour Protection Act.

## D. Employment contract

According to the Labour Protection Act, it is not mandatory that an Employer and Employee enter into written Employment Contracts. An oral agreement shall be sufficient to bind both parties.<sup>2</sup>

**Comment:** *However, even if there is no direct mandatory requirement, we do encourage Employers and Employees to produce a written contract in order to protect rights and benefits of all parties. In addition, the written contract shall prevent future dispute among the parties.*

The following particulars should be included in an Employment Contract:

- Personal details of Employer and Employee;
- Commencement date, duration and probation period;
- Condition of employment;
- Duties of Employee;
- Appointment/position of Employee;
- Working days/hours;
- Remuneration;
- Leave;
- Confidentiality;
- Intellectual property, patents and inventions;
- Non-solicitation, non-competition and non-acceptance;
- Termination of employment; and
- Dispute resolution.

**Comment:** *As long as the minimum standards of the Civil and Commercial Code and the Labour Protection Act are complied with, the Employer and Employee can freely negotiate and agree on any terms and conditions they see fit.*

The Employer may transfer his right to a third person, and the Employee may have a third person render the services in his place, subject to the consent of the other party.<sup>3</sup>

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<sup>2</sup> Supreme Court decision 2652-2653/2529.

<sup>3</sup> Sec. 577 Civil and Commercial Code.

# E. Employment terms

## I. Contract term

The term of employment is not regulated under any applicable law, which means that the Employer and the Employee can agree on either a fixed-term or open-ended Employment Contract.

### 1. Fixed-term employment contract

A fixed-term Employment Contract is a contractual relationship between an Employee and an Employer that lasts for a specified period. These contracts are subject to a variety of restrictions under Thai law to ensure that Employers still fulfil basic labour rights regardless of a contract's form, particularly around unjust dismissal. Under the Labour Protection Act, a fixed-term employment contract must be in writing and state when the employment period commences and ends.

### 2. Open-ended employment contract

An open-ended employment contract is an employment contract that has no end date. Under this type of contract, the duration of time an Employee will spend under a single Employer is ambiguous, leaving the Employee free to keep working in a job as long as the Employee's performance meets the expectations of the Employer.

## II. Probation period

While Thai law provides for the possibility to agree on a probation period, it does not stipulate any further details.

**Comment:** *If possible, the probation period of an Employee should not exceed 119 days. This is due to the Labour Protection Act, which provides that in case of termination of the employment by the Employer, the Employer shall pay severance to the Employee (starting from 120 days of service).*

*While the law is silent on the possibility of extending the probation period of an Employee, the Employer should keep in mind that if the combined length of the initial and extended probation period is 120 days of service or more, the Employee may be entitled to severance pay in case of termination.*

During a probation period, the employment contract can be terminated by either party by giving written notice to the other party.

If the Employer deems a probation period to be unnecessary, the Employee may be appointed without probation period.

## III. Working days and hours

Based on the type of work, Thai law provides for different maximum working hours.

The Labour Protection Act provides for a maximum of six working days with up to eight working hours (48 hours in total per week).<sup>4</sup>

For work which may be harmful to the health and safety of Employees, ordinary working hours are seven hours per day and 42 hours per week.

As a general rule, the Employer shall notify the Employee of the regular working hours (as well as meal and rest times). If, due to the nature of the work, the Employer cannot notify the Employee of the starting and ending time of a working day, the Employer and the Employee shall agree to specify the working hours in each day, not exceeding eight hours, and the total working hours per week, not exceeding 48 hours.

If on any given working day the working hours are less than eight working hours, the Employer and Employee may mutually agree to add to/shift remaining working hours to another working day. However, the sum of working hours shall not exceed nine hours per day and not exceed 48 hours per week.

At least one day per week shall be granted as a paid rest day. Ordinarily, Sunday of each week shall be designated as the rest day.<sup>5</sup> If necessary (e.g. due to the nature of the enterprise), the Employer and Employee may mutually agree on any other day of the week as the rest day.

**Comment:** *If an Employee has to work on the weekly rest day (e.g. in the hotel business), the Employer and the Employee may agree in advance to accumulate and postpone weekly rest days to be taken at any time, but they must be taken within a period of four consecutive weeks.*

<sup>4</sup> Sec. 23 Labour Protection Act.

<sup>5</sup> Sec. 28 Labour Protection Act.



An Employee shall be granted a break of at least one hour after a maximum of five consecutive hours of work.<sup>6</sup> The Employer and Employee may agree in advance that each rest period may be less than one hour, but the total rest period per day shall not be less than one hour.

The sum of working hours, one hour rest period and any overtime shall not exceed eleven hours within a day.

## IV. Salary and deductions from pay

While the Employer and Employee may agree on a wage/salary in accordance with the provisions of the law, the Employer must pay to the Employee at least the minimum rate of wages as determined by the Wages Committee under the Labour Protection Act.

### 1. Salary

Under the Labour Protection Act, the term “**Wages/Salary**” means money agreed between an Employer and an Employee to be paid in return for work done under a contract of employment for regular working periods on an hourly, daily, weekly, monthly or other period of time basis, or on the basis of piecework done during the normal working time of a working day, and includes money to be paid by an Employer to an Employee on holiday and on leave during which the Employee does not work but is entitled to the money under this Act.<sup>7</sup>

The promise to pay remuneration is implied. It cannot be expected that the services are to be rendered gratuitously.<sup>8</sup>

The National Wage Committee has approved the rise of the minimum daily wage with effect from 1 October 2022. The new rate varies, depending upon the location of the workplace, from 328 baht (approx. USD 9.00) in some provincial areas to 354 baht (USD 9.70) in Bangkok or Phuket.<sup>9</sup>

Unless otherwise agreed upon, the Employer shall pay wages, overtime pay, holiday pay and other benefits in Thai currency.<sup>10</sup>

**Comment:** *Thai law currently does not require any specific bonus payments, but the payment of a one month's salary bonus at the end of the calendar year is common practice.*

If no timeline for payment of remuneration is fixed by the Employment Contract (or by custom), the remuneration is payable after the services have been rendered; in case of a payment timeline fixed by periods, the remuneration is payable at the end of each period.<sup>11</sup>

### 2. Ad-hoc payments

In addition, the Employee may be entitled to the following types of payment:

#### Overtime

If an Employer requires an Employee to work overtime on a regular working day (generally Monday to Saturday), the Employer shall pay overtime pay to the Employee at a rate of not less than 1.5 times the hourly wage rate for each overtime hour worked.<sup>12</sup>

#### Holiday pay

Whereas an Employer requires an Employee to work on a weekly rest day (generally Sunday), public holiday (as announced by the Employer) or annual leave day, the Employer shall pay holiday pay to the Employee as follows:

- For an Employee who is entitled to Wages on Holidays, the payment shall be made in addition to Wages at a rate at least equal to the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, of not less than one time the piece rate of Wages of a Working Day for work done; or
- For an Employee who is not entitled to Wages on Holidays, the payment shall be made at not less than two times of the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a

6 Sec. 27 Labour Protection Act.

7 Sec. 5 Labour Protection Act.

8 Sec. 576 Civil and Commercial Code.

9 Please refer to Annex for further details.

10 Sec. 54 Labour Protection Act.

11 Sec. 580 Civil and Commercial Code.

12 Sec. 61 Labour Protection Act.



piece rate basis, at not less than two times the piece rate of Wages of a Working Day for work done.<sup>13</sup>

#### *Holiday overtime pay*

If an Employer requires an Employee to work overtime on a (public) holiday, the Employer shall pay holiday overtime pay to the Employee at the rate of not less than three times the hourly wage rate of a working day for the number of hours of work done.<sup>14</sup>

### 3. Disbursement

Monthly wages, overtime pay and holiday pay are to be paid at the end of the month, unless otherwise agreed upon in favour of the Employee.<sup>15</sup>

In case of termination, an Employer shall pay an Employee all wages, overtime pay and holiday pay within three days from the date of termination.<sup>16</sup>

In addition, an Employer shall pay wages to the Employee for unused annual leave for the year of termination in proportion to the annual leave to which the Employee is entitled.<sup>17</sup>

### 4. Deductions

The Employer is permitted to make deductions for the payment of personal income tax and other payments provided by law, labour union dues, debts owed to saving cooperatives or other cooperatives of the same description or of debts beneficial to the Employee (with the prior consent of the Employee), security deposits or as compensation to the Employer for damage caused by the Employee (with the prior consent of the Employee) or contributions to a provident fund.

Other than deductions for the payment of personal income, such deductions shall generally not exceed 10%; in aggregate, such deductions shall not exceed 20% of the monthly wages/ salary.

## V. Overtime

The Employer and Employee may mutually agree on the Employee working overtime on a working day in accordance with the applicable laws. Depending on the nature of the enterprise (e.g. requiring work to be performed continuously, if stoppage may cause damage to the work, if it is emergency work, or other work as prescribed in the Ministerial Regulations), an Employer may require an Employee to work overtime as necessary.<sup>18</sup>

An Employer shall not require an Employee to work on a **Holiday** (i.e. weekly holiday, traditional holiday or annual holiday) unless the description or nature of work requires it to be performed continuously and stoppage may cause damage to the work, or it is emergency work. In that case, an Employer may require an Employee to work on a holiday as necessary. An Employer may require an Employee to work on Holiday in a hotel business, an entertainment establishment, transport work, a food shop, a beverage shop, a club, an association, a medical establishment or any other businesses as prescribed in the Ministerial Regulations. For the purposes of production, sale and service, an Employer may require an Employee to work on a Holiday as necessary, other than as prescribed under paragraph one and paragraph two, provided that the Employee's prior consent is obtained on each occasion.<sup>19</sup>

Under the Labour Protection Act, any work requested by the employer in excess of eight working hours per working day is considered overtime. Working hours of overtime referred to in sec 24 (1) Labour Protection Act together with working hours on Holidays referred to in section 25 (2) and (3) Labour Protection Act shall not exceed a total of 36 hours per week.<sup>20</sup>

Working hours on Holidays shall include overtime working hours on holidays to avoid double counting of overtime working hours.<sup>21</sup>

*Unless an Employee is required to do work of a continuous nature with the consent of the Employee, or in case of emergency work, whereas any Overtime Work after normal working time is more than two hours, the Employer shall*

13 Sec. 62 Labour Protection Act.

14 Sec. 63 Labour Protection Act.

15 Sec. 70 (1) Labour Protection Act.

16 Sec. 70 (4) Labour Protection Act.

17 Sec. 67 Labour Protection Act.

18 Sec. 24 Labour Protection Act.

19 Sec. 25 Labour Protection Act.

20 Sec. 26 Labour Protection Act in conjunction with Ministerial Regulation (No. 3) B.E. 2541 (1998).

21 Ministerial Regulation No. 3 B.E. 2541 (1998)

*arrange for the Employee to take a rest period of not less than 20 minutes before the Employee commences the Overtime Work.*

In addition, an employee who works on a holiday in overtime is entitled to the highest rate of pay. The employer shall pay Overtime working hours on Holidays at the rate not less than the three times the hourly rate for hours of a normal workday.<sup>22</sup>

## VI. Public holidays

Under the Labour Protection Act, an Employer shall announce not less than 13 public holidays per year (including National Labour Day as specified by the Minister). The Employer shall fix these days in accordance with the annual official holidays, religious or local traditional holidays.

If a traditional holiday falls on a weekly holiday of an Employee, the Employee shall take a day off to substitute for the traditional holiday on the following working day.

Whereas an Employer does not provide a traditional holiday to an Employee because the Employee performs work of such description or nature as prescribed in the Ministerial Regulations, the Employer shall make an agreement with the Employee to take another day off to substitute for the traditional holidays or the Employer shall pay Holidays Pay to the Employee.

## VII. Leave

“Leave” means a day on which an Employee takes sick leave, leave for sterilisation, leave for necessary business, leave for military service, leave for training or knowledge and skill development or maternity leave.<sup>23</sup>

The Labour Protection Act provides for the following types of statutory leave:

### 1. Annual leave

An Employee shall be entitled to a minimum of six days of annual leave per year of employment, which may be taken consecutively or separately, provided the Employee has worked for an uninterrupted period of one year. For an Employee who has not completed one year of service, the Employer shall grant annual leave on a pro rata basis.

Annual leave may be accumulated and carried forward to the following years, as agreed between the Employer and the Employee.

### 2. Sick leave

An Employee shall be entitled to 30 days of paid sick leave per year. If the sickness lasts longer, the Employee shall be entitled to take unpaid leave as long as he or she is actually sick.

For sick leave of three days or more, the Employer may require the Employee to provide a medical certificate from a first class physician or an official medical establishment.

An Employee who is absent from work due to a work-related injury or illness arising or maternity shall not be regarded as taking sick leave.

### 3. Sterilisation leave

An Employee shall be entitled to take leave in order to be sterilised for the time period prescribed by a doctor of first class modern medicine and for which the doctor of first class modern medicine issues a certificate.

### 4. Personal business leave

An Employee shall be entitled to take at least three days of personal business leave per year for essential errands.

### 5. Training leave

An Employee shall be entitled to take leave for training or development of knowledge and competence.

The Employer can refuse to give permission to this type of leave if the Employee has already taken training leave three times, or for a total of 30 days.

### 6. Military service leave

An Employee shall be entitled to leave for military service for inspection, military drilling or for readiness testing under the law concerning military service.

<sup>22</sup> Sec. 63 Labour Protection Act

<sup>23</sup> Sec. 5 Labour Protection Act.

## 7. Maternity leave

The Labour Protection Act provides that female Employees shall enjoy up to 98 days of maternity leave (with up to 45 days of these days paid).

## 8. Trade union activity leave

An Employee who is a committee member of a labour union has the right to take leave to carry out the undertakings of the labour union as a representative of Employees in negotiation, conciliation and labour dispute arbitration, and shall have the right to take leave to participate in meetings as specified by a government agency, provided that such Employee shall explicitly notify the Employer with evidence.<sup>24</sup>

## VIII. End of employment

The Labour Protection Act and – to some extent – the Civil and Commercial Code provide details on contract expiration as well as resignation by the Employee and termination or dismissal by the Employer.

### 1. Expiry of employment

An employment contract shall expire upon the completion of the period specified in the contract of employment with no requirement for advance notice.<sup>25</sup> Unless an exemption applies, an Employee shall be entitled to receive severance pay.<sup>26</sup>

However, if after the end of the agreed period the Employee continues to render services and the Employer knowing thereof does not object, the parties are presumed to have made a new contract of hire on the same terms (but either party can terminate the contract by giving notice in accordance with the following sections).<sup>27</sup>

### 2. Resignation of the Employee

Where the term of service is not specified in the contract of employment, an Employee can resign by giving notice at or before any time of payment to take effect at the following time of payment, provided that the Employee shall not be required to give more than three months' notice.

The Employer shall disburse any outstanding salary/wage for the days actually worked and compensation for remaining earned leave days, but shall not be required to pay severance pay to the Employee.

### 3. Termination by the Employer

Under the law, an Employer can either dismiss (e.g. for gross misconduct) or terminate an Employee. Either option should be carefully considered, as this will have implications for the obligations to comply with a notice period and to pay severance.

#### *Dismissal*

An immediate, summary dismissal is permitted for any of the following reasons:<sup>28</sup>

- Performing his/her duty dishonestly or intentionally committing a criminal offence against the Employer;
- Wilfully causing damage to the Employer;
- Committing negligent acts causing serious damage to the Employer;
- Violating work rule, regulation or order of the Employer which is lawful and just, and after written warning having been given by the Employer, except for a serious case with no requirement for the Employer to give warning. The written warning shall be valid for a period not exceeding one year from the date when the Employee commits the offence;
- Absenting himself/herself from duty without justifiable reason for three consecutive working days regardless of whether there is holiday in between (absence for a reasonable cause and during a reasonably short period does not entitle the Employer to terminate the contract)<sup>29</sup>; or
- Being sentenced to imprisonment by a final court judgment.

In such a case, an Employer may dismiss an Employee by giving written notice without having to comply with a notice period and without having to pay severance.

In addition, if the Employee wilfully disobeys or habitually neglects the lawful commands of his Employer, absents themselves for services, is guilty of gross misconduct, or otherwise acts in a manner incompatible with the due and

<sup>24</sup> Sec. 102 Labour Relations Act.

<sup>25</sup> Sec. 17 (1) Labour Protection Act B.E. 2541 (1998).

<sup>26</sup> Sec. 118 (3) Labour Protection Act B.E. 2541 (1998).

<sup>27</sup> Sec. 581 Civil and Commercial Code.

<sup>28</sup> Sec. 119 Labour Protection Act B.E. 2541 (1998).

<sup>29</sup> Sec. 579 Civil and Commercial Code.

faithful discharge of his duty, he may be dismissed by the Employer without notice or compensation.<sup>30</sup>

#### Termination

Where the term of service is not specified in the contract of employment, an Employer may terminate the contract by giving advance notice in writing to the Employee at or before any due date of wage payment to take effect on the following due date of wage payment, with no requirement for advance notice of more than three months.

Alternatively, the Employer may pay wages of an amount to be paid up to the due time of termination of the contract of employment as specified in the notice and may dismiss the Employee immediately.<sup>31</sup>

#### 4. Cancellation of employment

Upon mutual agreement between the Employer and the Employee, the employment contract may be cancelled.

#### 5. Certificate of employment

If a hire of services comes to an end, the Employee is entitled to an employment certificate as to the length and nature of his services.<sup>32</sup>

### IX. Suspension from work

Whereas an Employee alleged to have committed an offence is under investigation by an Employer, the Employer is not allowed to order the suspension from work of the Employee during such investigation, unless the Employer is empowered by work rules or an agreement on conditions of employment to order such. The Employer shall issue a written order of suspension stating the offence committed and the period of suspension to not exceed seven days, and notify the Employee prior to the suspension.<sup>33</sup>

During the suspension, the Employer shall make payments to the Employee according to the rate specified in the work rules

or the agreement based on conditions of employment agreed between the Employer and Employee. Such rate shall not be less than 50% of the Wages of a Working Day received by the Employee prior to his or her suspension.<sup>34</sup>

If it appears upon completion of the investigation that the Employee is not guilty, the Employer shall pay Wages to the Employee equivalent to the Wages of a Working Day from the date of suspension. In addition to this payment, the Employer shall pay interest at a rate of 15% per annum.<sup>35</sup>

### X. Severance payment

According to the Labour Protection Act, an Employer shall pay severance pay to an Employee who is terminated as follows:<sup>36</sup>

Term of Employment	Severance Pay
120 days – 1 year	30 days of latest salary
1 year – 3 years	90 days of latest salary
3 years – 6 years	180 days of latest salary
6 years – 10 years	240 days of latest salary
10 years – 20 years	300 days of latest salary
> 20 years	400 days of latest salary

For the purpose of calculating the period of employment of an Employee under the Labour Protection Act, holidays, leave days, days-off permitted by the Employer for the benefit of the Employee, and days-off ordered by the Employer for the benefit of the Employee shall also be counted in the period of employment of the Employee.<sup>37</sup>

If an Employer dismisses an Employee for any of the reasons stated in sec. 119 Labour Protection Act (please see above), the Employee shall however not be entitled to the payment of severance pay.

<sup>30</sup> Sec. 583 Civil and Commercial Code.

<sup>31</sup> Sec. 17 (3) Labour Protection Act B.E. 2541 (1998); Sec. 582 Civil and Commercial Code.

<sup>32</sup> Sec. 585 Civil and Commercial Code.

<sup>33</sup> Sec. 116 (1) Labour Protection Act B.E. 2541 (1998).

<sup>34</sup> Sec. 116 (2) Labour Protection Act B.E. 2541 (1998).

<sup>35</sup> Sec. 117 Labour Protection Act B.E. 2541 (1998).

<sup>36</sup> Sec. 118 (1) Labour Protection Act B.E. 2541 (1998).

<sup>37</sup> Sec. 19 Labour Protection Act B.E. 2541 (1998).

## XI. Compliance obligations

Employment contracts and company policies should provide for the relevant obligations to be observed by the Employees.

### 1. Confidentiality

Employees should be clearly advised of their confidentiality obligations, both during and after cessation of the employment.

Regulations such as the *Trade Secret Act B.E 2545 (2002)* set out secrecy and confidentiality obligations that can apply to Employees in an employment relationship. Employers should include explicit terms in the Employment Contract, specifying the type of information that is a trade secret, and is therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality.

In addition, if an Employee causes damage to the Employer, for example by releasing confidential information such that the Employer suffers damages, the Employer may claim for damages.

### 2. Restrictive covenants

Thai law does not prohibit an Employer from restricting an Employee's activities during and after termination of employment.

For example, it is possible for an Employer to prohibit an Employee from working or operating a business that is the same as or in competition with the Employer's business. It is also possible to prohibit an Employee from soliciting former or existing Employees or clients of the Employer after termination.

Guidance from the Thai Supreme Court indicates that non-competition and non-solicitation clauses are considered to be reciprocal agreements aiming to protect commercial rights and benefits of the parties (mainly, in this case, the Employer who may suffer loss if the Employee breaches the restrictive covenant) to the contract, provided that the restriction:

- Must not entirely prohibit or obstruct the Employee from making a living; and
- Is enforced on specific restricted businesses and/or for a restricted time period which is considered as being fair.

A restriction can be either geographical (by prohibiting the carrying-out of the restricted business in a certain area) and/or for a specified time, provided that the geographical area and time specified is deemed to be fair. In any event, the court has the power to reduce the restrictions at its discretion (i.e. the court is not obliged to find an unreasonable restriction wholly unenforceable) if the court takes the view, under the terms of the *Unfair Contract Terms Act, B.E. 2540 (1997)*, that the restriction imposes too much of a burden on the Employee.

## F. Supervision

The Labour Protection Act provides for the following labour related compliance requirements.

### I. Work rules

An Employer who employs ten or more persons shall provide work rules in Thai language, which shall contain at least the following details:

- Working Days, normal working hours and rest periods;
- Holidays and rules for taking Holidays;
- Rules governing Overtime and Holiday Work;
- Date and place of payment of Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay;
- Leave and rules for taking Leave;
- Discipline and disciplinary measures;
- Lodging of grievances; and
- Termination of employment, Severance Pay and Special Severance Pay.<sup>38</sup>

The Employer shall announce the work rules within 15 days of the date that the Employer employs 10 or more persons; and the Employer shall always keep a copy of such rules at the place of business or at the Employer's office and deliver a copy of the rules to the Director-General or a person entrusted by the Director-General within seven days from the date of the announcement of application of the rules.<sup>39</sup>

The Employer shall distribute and affix the work rules in a prominent position in the workplace available to Employees that they may know and read.<sup>40</sup>

### II. Grievances

The lodging of grievances shall contain at least the following particulars:

- Scope and meaning of grievances;
- Method and steps of dealing with grievances;
- Investigation and consideration of grievances;
- Procedures for settlement of grievances; and
- Protection for the claimant and any involved persons.<sup>41</sup>

### III. Records of Employees

An Employer who employs ten or more persons shall keep and maintain Employee records in Thai language which shall contain at least the following particulars of the Employees:

- Name and surname;
- Sex;
- Nationality;
- Date of birth or age;
- Present address;
- Date of commencement of employment;
- Position or duties;
- Rate of wages and other benefits agreed to be given to the Employee by the Employer; and
- Date of termination of employment.<sup>42</sup>

### IV. Records of wages

An Employer who employs ten or more persons shall provide documents relating to the payment of Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay, which shall contain at least the following particulars:

- Working Days and working time;
- Work done by Employees who receive Wages on a piece rate basis; and
- Rate and amount of Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay received by each Employee.<sup>43</sup>

An Employer shall keep the record of Employees for not less than two years from the date of termination of employment of each Employee; and the Employer shall keep the documents relating to the payment of Wages, Overtime Pay, Holiday Pay or Holiday Overtime Pay of not less than two years from the date of such payment.<sup>44</sup>

If there is a complaint made or a labour dispute under the law on labour relation, or a lawsuit is commenced, the Employer shall retain the record of Employees and documents relating to the payment of Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay until the order or judgement in respect of such matter has been final.

<sup>38</sup> Sec. 108 (1) Labour Protection Act B.E. 2541 (1998).

<sup>39</sup> Sec. 108 (2) Labour Protection Act B.E. 2541 (1998).

<sup>40</sup> Sec. 108 (4) Labour Protection Act B.E. 2541 (1998).

<sup>41</sup> Sec. 109 Labour Protection Act B.E. 2541 (1998).

<sup>42</sup> Sec. 113 Labour Protection Act B.E. 2541 (1998).

<sup>43</sup> Sec. 114 Labour Protection Act B.E. 2541 (1998).

<sup>44</sup> Sec. 115 Labour Protection Act B.E. 2541 (1998).

An Employer who employs ten Employees or more shall submit a report form on conditions of employment and working conditions to the Director-General or a person entrusted by the Director-General within every January.<sup>45</sup>

Where there is any change in the facts on conditions of employment and working conditions submitted under paragraph one, the Employer shall inform the Director-General or a person entrusted by the Director-General in writing of the change within the following month after the existence of such change.<sup>46</sup>

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<sup>45</sup> Sec. 115/1 (1) Labour Protection Act B.E. 2541 (1998).

<sup>46</sup> Sec. 115/1 (3) Labour Protection Act B.E. 2541 (1998).



## G. Labour disputes

Thailand's labour dispute resolution system is primarily governed by the Labour Protection Act.

### I. Complaints

If an Employer violates or fails to comply with an Employee's entitlement to receive payments and the Employee wishes to enforce the entitlement under the Labour Protection Act, the Employee is entitled to file a complaint with the Labour Inspector of the locality where the Employee works or where the Employer's business is located.<sup>47</sup>

The Labour Inspector shall investigate and issue an order within 60 days from the date of receipt of the complaint.<sup>48</sup> If the Labour Inspector is unable to make an order within this period, he may apply for an extension of the period, but the extension of time shall not exceed 30 days from the initial expiry date.<sup>49</sup>

If it appears that the Employee is entitled to any sum of money which the Employer is liable to pay under the Labour Protection Act, the Labour Inspector shall order the Employer to pay such money to the Employee within 30 days from the date of acknowledgement or the date deemed to be acknowledged of the order.<sup>50</sup>

### II. Lawsuit

If an Employer or Employee is not satisfied with the order of the Labour Inspector, he shall bring the case to the Court within 30 days from the date of receipt of the order.<sup>51</sup>

If an Employer or Employee fails to bring the case to the Court within this period of time, such order shall be as final.

#### 1. Protection against dismissal

Although an Employer may terminate the employment of an Employee whose employment term is not specified, the Employer must consider whether or not such termination of employment would be considered as being "unfair" under Section 49 of the Act Establishing the Labour Courts and Labour Procedure Act B.E. 2522 (1979).

Pursuant to Section 49 of this Act, the Thai Labour Court has the discretion to grant a remedy if it considers that the

termination of employment was 'unfair'. There is no exhaustive definition of the meaning of 'unfair' – some examples of circumstances that the Thai Labour Court has considered to amount to unfair termination include:

- Termination without reason;
- Termination without any fault on the part of the Employee;
- Termination as disciplinary action, in circumstances where the penalty imposed was not in accordance with the Employer's work rules;
- Termination where the Employer cannot produce witnesses or evidence to prove default by the Employee;
- Discrimination.

If the Thai Labour Court finds that the termination is unfair, it has a power to order reinstatement of the Employee on the same terms and conditions of employment (i.e., at the same salary and position prior to termination). If the Thai Labour Court decides that the parties are no longer able to work together, then the Thai Labour Court may order payment of compensation for unfair termination. The amount of compensation ordered is at the sole discretion of the Thai Labour Court, and in exercising its discretion, the Thai Labour Court takes into consideration the age of the Employee, the length of employment, the hardship of the Employee resulting from the termination, the reasons for the termination and the compensation that the Employee is entitled to receive.

#### Time limits for claims following termination

Employees' claims for wages or other remuneration, including disbursements, or claims of the Employer of advances must be issued within two years following termination, though the statute of limitations on claims for severance is ten years.

<sup>47</sup> Sec. 123 Labour Protection Act B.E. 2541 (1998).

<sup>48</sup> Sec. 124 (1) Labour Protection Act B.E. 2541 (1998).

<sup>49</sup> Sec. 124 (2) Labour Protection Act B.E. 2541 (1998).

<sup>50</sup> Sec. 124 (3) Labour Protection Act B.E. 2541 (1998).

<sup>51</sup> Sec. 125 (1) Labour Protection Act B.E. 2541 (1998).

# H. Employee benefits

## I. Employee welfare fund

Unless an exemption applies, all Employees of businesses with more than 10 Employees shall be members of the Employee Welfare Fund.<sup>52</sup>

The Employer shall make a deduction from the Employee's Wage in every payment to pay for Contributions; and the Employer shall pay Supplementary Contributions to the Employee Welfare Fund; provided that it shall be in accordance with the rate prescribed by the Ministerial Regulations but not exceeding 5% of the Wages.<sup>53</sup>

## II. Social security

The Social Security Act requires all Employers to withhold social security contributions of 5% from the monthly salary of all Employees, up to a maximum of 15,000 baht (USD 375) per month. Employees with social security registration may file compensation claims for injury, illness, disability or death which is not due to work performance, childbirth, child welfare, retirement and unemployment.

If business conditions necessitate cutbacks, firms have freedom in determining retrenchment policies; there is no "first in, last out" requirement in Thailand.

## III. Workmen's compensation

The Workmen's Compensation Act requires an Employer to provide benefits at rates prescribed by law for Employees who suffer injury, illness or death while performing their work. In general, the compensation amount is paid monthly at a rate of 60% of monthly wages, between a minimum of 2,000 baht (approx. USD 50) and a maximum of 9,000 baht (approx. USD 225) per month.

Actual and necessary medical expenses must be paid up to 35,000 baht (approx. USD 875) for normal cases and 50,000 baht (approx. USD 1,250) for serious injury.

Employment rehabilitation expenses must be paid as necessary, up to 20,000 baht (USD approx. 500).

In the case of death, funeral expenses will be paid at a maximum amount equal to 100 times the minimum daily wage rate.

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52 Sec. 130 (1) Labour Protection Act B.E. 2541 (1998).

53 Sec. 131 (1) Labour Protection Act B.E. 2541 (1998).

# I. Distinction between Employees & consultants

## General

Thai law draws a distinction between Employees (i.e. persons with an employment contract) and independent contractors (i.e. persons working under a service contract). Independent contractors are entitled to receive payment when the work/project is completed. They are primarily governed by the “Hire for work” provisions under the Thai Civil and Commercial Code.

In practice, however, the distinction between Employees and independent contractors may be rather difficult. Since the labour authorities in Thailand are very Employee-friendly and interested in protecting the Employees’ rights under Thai labour law, a service engagement may thus in many cases be considered “hidden employment”, with all consequences provided under the law for defaulting Employer obligations, such as social security, personal income tax filing, leave and holiday provisions, etc.

In theory, the same principles apply as in other jurisdictions, and the distinction between service (e.g. consultant or contractor) and employment should be made based on factors, such as:

- Control - What is the nature and degree of control that the hiring organisation has over the way in which the contractor is to perform the work?
- Chance of profit/risk of loss - Does the contractor have an opportunity to make a profit or a loss?
- Investment - Does the contractor have an investment in materials, equipment, or other personnel required to perform the work?
- Integration - To what extent is the work an integral part of the hiring organisation’s operations?
- Duration - What is the duration of the engagement?
- Payment/Benefits - What payments and benefits does the contractor receive?

**Comment Luther:** *While it is to some extent possible to control these factors in the drafting of a service contract, the test is based on the actual facts of the engagement rather than the wording of the contractual agreements. For example, where an engagement is entered into for the full-time provision of services by a single individual for a longer duration, it is very likely that such would be considered employment under the law. Only if it is very clear that an*

*engagement constitutes independent services (e.g. the individual is also providing equipment and materials, and is providing the same services to more than one customer), it may be safe to consider it as engagement of an independent contractor.*

## Foreign Consultants

In general, as in almost every other country, foreign persons are not allowed to provide independent services in Thailand without first registering a business. Consequently, any foreigner intending carry out business in Thailand would thus have to incorporate a company or register a branch office of an overseas corporation in Thailand to provide services within the country, with such company/branch office acting as Employer of the foreigner.

Without such registration requirement, it would not be possible to enforce investment restrictions, nor tax-and other obligations.

## J. Foreign Employees

Unless exempted, a foreigner must hold a valid visa and a work permit to legally work in Thailand. A work permit is a legal document that states the position, job description and Employer of the foreigner.

Both the Employer and the foreigner must meet certain minimum requirements. Further, foreigners are only allowed to perform work that does not violate the restrictions of the *Foreigners' Working Management Emergency Decree B.E. 2561 (2018)*.

**Comment Luther:** *For further information, please refer to our Memo: Immigration Services in Thailand.*

On 1 July 2018, a new labour law came into effect, capping the number of foreign Employees at businesses operating in Thailand. The move was taken to ensure Thais are not forced out of the labour market, restricting the number of foreign Employees to a maximum of 20% of the workforce in industrial and services sectors.

## K. Our Service

Our Team in Bangkok provides all aspects of employment law services, HR advice and support for employers and employees. Our employment law specialists will work closely with you to understand your specific needs and provide you with “advice that works”. We would further be happy to assist with compliance matters, such as accounting, payroll, corporate secretarial services, and tax compliance, as well as general legal and tax advice.

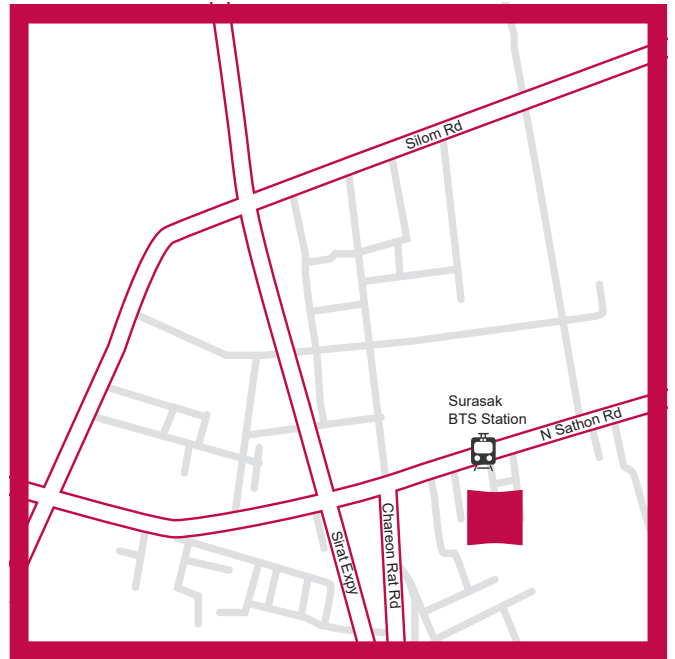
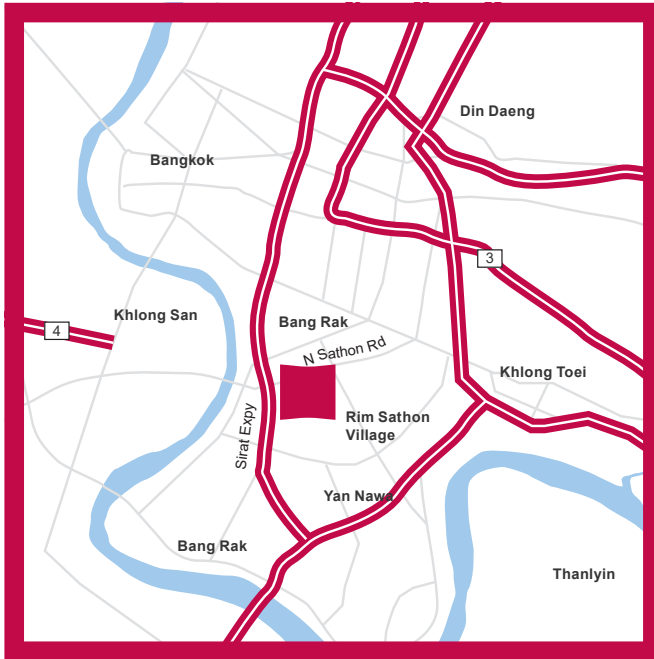
We hope we can be of assistance to you. Should you have any questions, please do not hesitate to contact us.

## Annex – Minimum Wage Rates

Minimum Wage per Day (baht)	Provinces
354	Chon Buri, Phuket, Rayong
353	Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakan, Samut Sakhon
345	Chachoengsao
343	Phra Nakhon Si Ayutthaya
340	Prachinburi, Nong Khai, Ubon Ratchathani, Phang Nga, Krabi, Trat, Khon Kaen, Chiang Mai, Suphan Buri, Songkhla, Surat Thani, Nakhon Ratchasima, Lop Buri, Saraburi
338	Mukdahan, Kalasin, Sakon Nakhon, Samut Songkhram, Chanthaburi, Nakhon Nayok
335	Phetchabun, Kanchanaburi, Bueng Kan, Chainat, Nakhon Phanom, Phayao Surin, Yasothon, Roi Et, Loei, Phatthalung, Uttaradit, Nakhon Sawan, Prachuap Khiri Khan, Phitsanulok, Ang Thong, Sa Kaeo, Buriram, Phetchaburi
332	Amnat Charoen, Mae Hong Son, Chiang Rai, Trang, Sisaket, Nong Bua Lamphu, Uthai Thani, Lampang, Lamphun, Chumphon, Maha Sarakham, Sing Buri, Satun, Phrae, Sukhothai, Kamphaeng Phet, Ratchaburi, Tak, Nakhon Si Thammarat, Chaiyaphum, Ranong, Phichit
328	Yala, Pattani, Narathiwat, Nan, Udon Thani

Remark: According to the National Wage Committee and the Labour Minister. Kindly note that abovementioned wages are required for non-skilled workers.

# Our office in Bangkok



Description in detail

## Our office in Bangkok

**Luther Law Firm (Thailand) Co., Ltd.**  
43 Thai CC Tower, 18th Floor, Unit #183  
South Sathorn Road, Yannawa, Sathorn  
Bangkok 10120, Thailand  
Phone: +66 2 2100 036  
Email: Thailand@luther-services.com

## Your contact



**Fabian Lorenz, M.A.**  
Attorney-at-law (Germany)  
Partner, Location Head  
Mobile: +66 6 1420 4049  
Email: fabian.lorenz@  
luther-lawfirm.com



# Luther in Asia

## Expertise

Our office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the creation of international holding structures and ensuring tax-efficient repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR professionals and tax consultants offering all the services one would necessarily associate with a “one-stop shop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax structures. Our accountants and professionals carry out the time-consuming administrative tasks of accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

## Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters for many international companies operating within the Asia-Pacific region.

With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than 26 lawyers from Singapore, Germany, France and other jurisdictions cover the full range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia.

Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

## Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market.

Luther Shanghai is fully authorised to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

## Region

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Ho Chi Minh City (Vietnam), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners in Australia, Hong Kong, Japan, New Zealand, the Philippines and South Korea.

# Hits the Mark. Luther.

Luther Rechtsanwaltsgesellschaft mbH is one of the leading corporate law firms in Germany. With some 420 lawyers and tax advisors, we can advise you in all fields of German and international corporate law. In addition to having offices in every economic centre throughout Germany, we are also present in 11 locations abroad: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Ho Chi Minh City, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advisory services are tailored to our clients' corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients. The name "Luther" stands for expertise and commitment. With a passion for our profession, we dedicate all our efforts to solving your issues, always providing the best possible solution for our clients. Not too much and not too little – we always hit the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always have an eye on the economic impact of our advice. This is true in the case of strategic consulting as well as in legal disputes. We have complex projects on our agenda every day. At Luther, experienced and highly specialised advisors cooperate closely in order to offer our clients the best possible service. Thanks to our fast and efficient communication, permanent availability and flexibility, we are there for you whenever you need us.

Luther has been named "Law Firm of the Year: Germany 2021" and also "European Law Firm of the Year 2021" by The Lawyer, one of the most well-known legal magazines worldwide.



## About unyer

unyer, founded by Luther and Fidal in 2021, is a global organisation of leading international professional services firms. Besides law firms, unyer is also open to other related professional services, especially from the legal tech sector. unyer is based in Zurich as a Swiss Verein. unyer is globally connected but has strong local roots in their respective markets.

unyer has an exclusive approach and only accepts one member firm from each market. unyer members offer its clients full services across all jurisdictions with a compelling industry focus. The organisation has an annual turnover of more than EUR 650 million and includes over 2,550 lawyers and advisors in more than 14 countries in Europe and Asia. In September 2021, Pirola Pennuto Zei & Associati joined the international organisation. In the spring of 2023, the Austrian law firm KWR joined the group. [www.unyer.com](http://www.unyer.com)



# Our locations

Our and our local partners' offices in important European and Asian markets



The shown locations are either Luther legal or corporate services offices and/or offices of our local cooperation partners.

# Luther.

**Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,  
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Leipzig, London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon**

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[www.luther-services.com](http://www.luther-services.com)

