Thailand

Exchange rate: USD 1.00 equals 38.15 bath (THB)

Regulatory Framework

2005: Provident Fund (Amendment) Act; provides members with options to accept accrued benefits in the form of a lump sum or instalments, portability from the Government Pension Fund to a provident fund and establishes a master fund to facilitate the concept of employee's choice.

1999: Provident Fund (Amendment) Act; transfers the responsibility for supervision of provident fund management companies from the Ministry of Finance to the Office of the Securities and Exchange Commission.

1998: Labour Protection Act; requires all employers with more than 10 employees to establish an employee welfare fund for their employees. Employers who have already established a provident fund need not establish the aforementioned employee welfare fund.

1992: Securities and Exchange Act; prescribes regulations governing the licensing of fund management companies.

1987: Provident Fund Act; promulgates all earlier law on voluntary occupational plans, provides for the registration and tax approval of provident funds; regulates the tax treatment of benefits and requires provident funds to be independent legal entities separate from the sponsoring employer and the provident fund management company.

Plan Profile

Plan sponsors

Single employers may, on a voluntary basis, establish an occupational pension plan for their employees based on an agreement between employer and employees.

According to a cabinet decision of 29 October 1996, all companies that are approved by the Board of Investment, listed on the Stock Exchange of Thailand as well as financial institutions and concessionaires from the government (e.g. telecommunication or gas sectors) must establish a provident fund plan for their employees. This requirement has not been applied to companies listed prior to 1997.

Types of plans

Provident funds: Employers may establish provident fund plans that are defined contribution lump-sum plans that must be implemented through provident funds.

Provident funds must be registered with the Registrar. The role of the Registrar is carried out by the Office of the Securities and Exchange Commission.

Provident funds may be a:

- Single employer fund: one provident fund for one employer where the fund size is relatively large; or
- Pooled Fund: one provident fund for multiple employers where the fund sizes range from small to medium.

Institutional Framework

Provident funds: Provident funds are independent legal entities separate from the sponsoring employer(s) and must be managed by management companies appointed by the fund committee.

A fund committee, where both employer and employees are represented, must be established for each provident fund. The fund committee has the duties to:

- Supervise general activities of the fund;
- Appoint a managing company to manage the contribution and benefit administration and the investment of fund assets;
- Represent the fund in relation to third parties;
- Determine the investment strategy or choose between different investment strategies offered by the fund management company.

Commercial banks, finance companies, securities companies, mutual fund management companies, life insurance companies or newly established private or public limited companies may be provident fund management companies if they obtain a license issued by the Ministry of Finance to carry out private fund management.

Coverage

Provident funds: Private- and public-sector permanent employees.

The employees of the following employers must be covered:

- State (except civil servants - see below);
- Employers approved by the Board of Investment;
- Companies newly listed on the Stock Exchange of Thailand after 1997;
- Financial institutions;
- Concessionaires from the government (e.g. telecommunication or gas sectors).

The categories of employees eligible for membership are defined in the plan rules and both full-time and part-time employees may be covered. There is, however, no legal requirement to cover part-time employees. Employers must treat male and female employees equally, except where the nature or the conditions of work do not allow the employer to do so.

Civil servants are covered by the Government Pension Fund established under the Government Pension Fund Act.

Self-employed persons may make provision for retirement by means of Retirement Mutual Funds that are tax-favoured personal savings plans.

Financing / Investment

Sources of funds

Provident funds: Contributions must be paid by both employers and employees and are defined in fund rules.

Employee contributions

Provident funds: Employees contribute between 2% and 15% of salary.

If employees want to contribute more than 15% of salary, they must obtain approval from the Ministry of Finance.

Many employers provide employees with a range of possible contribution rates, e.g. varying from 5% to 12% of salary. The employee must then determine the exact contribution rate for a certain period.

Employer contributions

Provident funds: Employers must at least match employee contributions.

Employers contribute between 2% and 15% of salary.

If employers want to contribute more than 15% of the employee's salary, they must obtain approval from the Ministry of Finance.

Other sources of funds

Provident funds: Money or other properties donated and the returns earned thereon.

Methods of financing

Provident funds: Funded.

Asset management

Provident funds: Provident fund assets must be managed by the management company appointed by the fund committee (see section Institutional framework).

Provident fund management companies usually offer different investment policies (see below) with varying levels of risk. The provident fund committee usually decides the strategy to be adopted for the provident fund assets. Fund members may be allowed to choose the investment strategy applied to the accumulated capital themselves. Members may change the strategy once a year.

Fund management companies usually offer four different types of investment policies:

- Equity fund: focuses on investment in equities in order to increase the fund size via capital gains. At least 65% of the net asset value (NAV) must be invested in equities. The remainder may be invested in deposits or fixed income assets.
- Fixed income fund: focuses on investment in fixed income assets in order to increase the fund size in form of interest gains. Investments are in deposits and fixed income assets such as government bonds, treasury bills, certificates of deposit, promissory notes, bills of exchange and debentures.
- Mixed fund: focuses on investment in deposits, fixed income assets and equities:
  — Having equity limitation: Specifies maximum limits in equities such as 10%, 20%, or 40% of the NAV. However, equities must not exceed 65% of the NAV; otherwise, it is classified as an Equity fund.
  — Free hand: Investments are managed upon the discretion of the fund manager.
- Specialised fund: Investments do not focus either on equities or fixed income assets but has an exclusive investment form such as money market fund, guaranteed fund or capital protected fund.

Of total assets invested:

- A maximum of 20% may be in securities issued by a financial institution;
- A maximum of 15% may be in rated securities issued by one company;
- A maximum of 15% may be in unrated securities;
- A maximum of 15% may be in property funds;
- A maximum of 5% may be in unrated securities issued by one company.

In addition, a maximum of 15% of total assets may be invested in the sponsoring employer and its affiliated persons.

In order to avoid conflicts of interest, provident fund assets, unless fund committee's consent is obtained, must not be invested in:

- Securities or assets issued or otherwise related to the management company or one of its affiliated companies;
- Investment units or warrants for investment units of a mutual fund managed by the management company;
- Securities or assets of a company for which the management company has been the financial advisor, underwriter or selling agent.

Provident fund assets must be kept by a custodian.

Benefit provisions

Acquisition and maintenance of rights

Waiting period

Provident funds: No legal rules.

Employees are usually eligible for membership after the end of their employment probation period.

Vesting rules

Provident funds: No legal rules.

Employee contributions vest immediately. Employer contributions usually vest according to a sliding scale beginning after 2 years of membership with full vesting after 5 to 10 years.

Upon terminating employment before vesting of employer contributions starts, employees are entitled to a refund of the capital accumulated from their own contributions plus interest.

Preservation, portability, transferability

Provident funds: An employee's accumulated capital can be preserved for a period of 1 year before transferring to a new provident fund if appropriate. Amendments to allow portability from the Government Pension Fund to a provident fund are in process.

Upon terminating employment before retirement, employees are fully entitled to receive the accumulated capital from their own contributions plus the vested part of the employer contributions plus interest as a lump sum.

Retirement benefits

Benefit qualifying conditions

Provident funds: No legal rules.

Most provident fund plans provide for a retirement age of between 55 and 60 for both men and women, since favourable tax rules apply to benefits paid from age 55 (see section Taxation of benefits).

Benefit structure / formula

Provident funds: Defined contribution.

A lump sum is provided at termination of membership (e.g. due to retirement). There is no requirement to buy an annuity.

The lump-sum benefit equals the accumulated employee contributions and the vested part of the employer contributions plus interest.

Benefit adjustment

Provident funds: Not applicable, since benefits are paid as lump sums.

Survivors

Provident funds: Upon death of a member, the accumulated employee contributions and the vested part of the employer contributions plus interest are paid as a lump sum to the beneficiaries indicated in the deceased's last will. In the absence of such, the lump sum is divided among the spouse, orphans and parents. If the deceased has no such relatives, the capital must devolve on the fund.

Disability

Provident funds: Upon termination of employment due to disability, the disabled person receives the accumulated employee contributions and the vested part of the employer contributions plus interest as a lump sum.

Protection of Rights

Protection of Assets

Provident funds: Provident funds are independent legal entities that hold assets separate from the sponsoring employer and the provident fund management company.

Provident fund assets must be kept by a custodian.

Financial and Technical Requirements / Reporting

Provident funds: Provident fund management companies must prepare yearly financial statements in accordance with the accounting standards for investment companies specified by the Institute of Certified Accountants and Auditors of Thailand. Financial statements must be examined, and commented on, by an auditor and be submitted to the Office of the Securities and Exchange Commission.

Whistleblowing

Provident funds: No legal rules.

Standards for service providers

Provident funds: Custodians must obtain approval from the Office of the Securities and Exchange Commission (OSEC) to carry out custodial functions and must be independent of the management company. Approval is granted if the custodian:

- Is a commercial bank, finance company, securities company, mutual fund management company, life insurance company, another financial institution subject to certain requirements, or a limited company whose main business objective is to be custodian of securities or financial instruments;
- Has proper operating systems to carry out custody business operations;
- Has competent officers.

Auditors must be certified public accountants and must in addition obtain approval from the OSEC if they provide services to provident funds with more than 100 members.

Provident funds are obliged to engage net asset value (NAV) verifiers to verify the correctness of the NAV calculated by management companies. NAV verifiers must be trustees or custodians who possess necessary operating systems to carry out NAV verification functions.

Fees

Provident funds: Management fees are usually based on the net asset value of the provident fund and freely negotiable. Management companies are prohibited from charging fees below their costs.

Winding up / Merger and acquisition

Provident funds: The fund is wound up upon:

- Dissolution of the sponsoring employer;
- Resolution by the general meeting of the fund to wind up the fund;
- Order by the Office of the Securities and Exchange Commission (OSEC);
- Occurrence of an event requiring the dissolution as provided by the provident fund's rules.

The fund committee (see section Institutional framework) must notify the OSEC and arrange for the liquidation of the fund.

A liquidator, who may make partial payments to members during the liquidation process, must be appointed. After the completion of liquidation, all outstanding amounts must be paid to employees.

Bankruptcy: Insolvency Insurance / Compensation Fund

Provident funds: There is no requirement for provident funds to insure against financial loss, and no compensation fund exists.

Disclosure of information / Individual action

Provident funds: Provident fund management companies must disclose financial information about the performance of the managed funds to the fund committee (see section Institutional framework).

Fund members must be provided twice a year with a report containing information on the total accumulated capital in their accounts and the employer and employee contributions paid in the previous 6 months.

Members of a provident fund may complain to the Office of the Securities and Exchange Commission (OSEC) about actions of a provident fund management company. The OSEC must forward the case to the management company which must resolve the problem, clear the complaint and report back to the OSEC within 30 days. If a settlement is not reached within this period, an arbitration process must be carried out for which the OSEC designates an arbitrator to resolve the complaint within 90 days.

Other measures

Provident funds: Management companies must not promise any guaranteed minimum rate of return, fixed benefit or insurance against any loss.

Tax Treatment

Taxation of employee contributions

Provident funds: Employee contributions to a registered provident fund are tax-deductible up to THB 10,000. Contributions that exceed that amount are tax-exempt up to 15% of the salary with a limit of THB 290,000.

Taxation of employer contributions

Provident funds: Employer contributions up to 15% of salary are tax-deductible as expenses for the purpose of calculating corporate income.

Taxation of investment income

Provident funds: Tax-exempt.

Taxation of benefits

Provident funds: Tax-exempt if an employee retires at age 55 or over with 5 years or more of membership in the plan.

A partial tax exemption is granted only to employees with at least 5 years of employment upon termination of employment before retirement.

Regulatory and Supervisory Authorities

Office of the Securities and Exchange Commission (OSEC): Assumes the role of Registrar of provident funds and is the regulatory and supervisory authority of provident funds and provident fund management companies. The OSEC has the responsibilities to:

- Approve the establishment of provident funds (through registration);
- Approve amendments to fund rules;
- Issue rules and regulations regarding the management of provident funds;
- Supervise fund management companies;
- Approve and supervise custodians;
- Issue rules with regard to auditors of provident funds;
- Issue rules with regard to the disclosure of information to fund members and the supervisory authority;
- Report the status of the provident fund industry to the Ministry of Finance twice a year.

The OSEC may order the winding up of a fund and appoint a liquidator to the fund if:

- There is an event indicating that the management of the fund is not in compliance with legal requirements;
- There is an event indicating that the fund's operation cannot continue.

The OSEC may appoint an officer to examine the management of a fund and in order to do so:

- Enter the fund's office or the fund manager's office to examine the business records, and assets and liabilities of the fund;
- Order the fund committee members, the fund manager, or the fund's officers to disclose any information with regard to the fund.

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Contents

Introduction

Guide to Reading the Country or Territory Profiles. 9
- Sources of information 10
- Complementary and private pensions and social security 10
- Classification of complementary and private pensions 11
- Occupational or personal. 11
- Mandatory or voluntary. 11
- Format of country or territory profiles 12

Guidance Notes for Completion of Country or Territory Profiles 14

Tables 25
- Table 1. Types of systems for retirement income 25
- Table 2. Methods of implementing voluntary complementary and private pension plans 29
- Table 3. Legal rules for voluntary complementary and private pension plans 31
- Table 4. Legal rules for mandatory complementary and private pension schemes. 33
- Table 5. Demographic statistics related to complementary and private pensions, 2005. 35
- Table 6. Financial statistics related to complementary and private pensions, 2005 38

Country or Territory Profiles

AFRICA - Voluntary (Information valid at 01-01-2005). 41

Botswana 42

Kenya 47

South Africa 55

Tunisia 63

Zambia 68

Zimbabwe 74

AMERICAS - Voluntary (Information valid at 01-07-2005). 81

Brazil 82

Canada 88

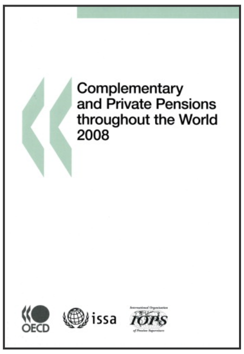
United States of America 96

AMERICAS - Mandatory (Information valid at 01-07-2005). 105
Argentina 106
Bermuda. 115
Bolivia 122
Chile. 132
Colombia 142
Costa Rica 153
Dominican Republic 160
El Salvador. 169
Mexico 177
Peru 186
Uruguay 194
EUROPE - Voluntary (Information valid at 01-01-2006) 201
Austria 202
Belgium 212
Denmark. 219
Germany. 225
Ireland 234
Italy 245
Luxembourg. 251
Republic of Moldova 261
Netherlands 266
Portugal 274
Slovak Republic. 282
Slovenia 288
Spain 297
Sweden. 304
United Kingdom. 313
EUROPE - Mandatory (Information valid at 01-01-2006) 327
Bulgaria 328
Croatia 337
Estonia 345
Finland 354
France. 364
Hungary 371

Iceland 381
Liechtenstein 390
Macedonia 397
Norway. 405
Poland 413
Romania 422
Switzerland 430
ASIA & PACIFIC - Voluntary (Information valid at 01-07-2006) 437
Bangladesh 438
Hong Kong, China 443
Indonesia 452
Israel. 461
Japan 469
Malaysia. 479
New Zealand 486
Thailand 494
ASIA & PACIFIC - Mandatory (Information valid at 01-07-2006) 501
Australia. 502
Hong Kong, China 512
Kazakhstan. 525

Glossary

Glossary 531



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