

THE TREATY OF AMITY AND ECONOMIC RELATIONS
BETWEEN THE KINGDOM OF THAILAND AND
THE UNITED STATES OF AMERICA

The Amity Treaty between Thailand and the United States was entered into during the Vietnam conflict era. At the time, there were close relations between the US and Thailand. The U.S. and Thailand ratified the treaty in 1968. This treaty was negotiated to be in effect for a period of ten years. After the expiration of 10 years, both parties had the option to terminate the treaty but did not and as a result the treaty is still in effect.

The period in which this treaty became active offered little in the way of gains to Americans. This is because at that time there were no restrictions regarding foreigners entering into business in Thailand. However, subsequent legislation has made it more difficult for foreigners to do business in Thailand and, as a result, the Amity Treaty, at the present time, provides a relative advantage to Americans as opposed to other foreign nationals doing business in Thailand. However, it is important to be aware that the treaty does not grant the right to immigrate, the right to own land, the right to a visa nor the right to work.

Benefits: Excluding the seven stated exceptions enumerated in the Treaty, Americans have rights the same as any Thai national with regards to owning and operating businesses in Thailand. These same rights are reserved for Thai nationals in the United States. However, because the U.S., unlike Thailand, has no restrictions regarding foreigners doing business in the U.S., benefits are rarely claimed by Thai nationals under this treaty. It should be noted however, that they do retain the right of applying for Treaty Trader and Treaty Investor visas under the US immigration laws as a result of the Treaty.

Excluded Businesses: The following business activities are excluded from protection under the treaty. In other words, the following businesses are restricted to Thai nationals and Americans are prohibited from owning or operating these businesses in the same manner that other non-Thai nationals are excluded from these businesses, notwithstanding the Amity Treaty.

- communications
- transportation
- fiduciary functions (the Thai text of the treaty translates "fiduciary functions" as "taking care of the property of others" and therefore sees businesses such as warehousing and guard services to be included in this category and are not granted protection with regards to this treaty).
- banking involving depository functions (interpreted to include the finance business)
- exploiting natural resources or land
- domestic trading in indigenous agricultural products
- the liberal professions

Entitled Persons: The equal national treatment benefits under the treaty may be claimed by

- American citizens
- Business entities established under Thai law which are majority American owned; or
- Business entities established under American law (the laws of a state, territory or district), which are majority American owned and managed.

Qualifying Process: For a treaty protected business entity to do business they must submit an application to the Ministry of Commerce for a Treaty Protection Letter. The entity's right to do business will not be recognized by other Thai government offices without such a letter, so obtaining one is therefore advisable.

To qualify for treaty status, an applicant must present documents proving that the natural person or most of the partners or shareholders of a company (or partnership) are American citizens.

A copy of the applicant's passport should be sufficient evidence for natural persons and shareholders and or partners in either a company or partnership.

Evidence must be presented proving a company's incorporation in the US for a shareholder to be in the Thai business entity. Evidence must also be supplied proving that the majority of the shareholders and directors are American citizens. An affidavit may be given stating the number of shares owned by Americans if the shareholders are numerous. If shares are publicly traded then an estimate involving the number of shares owned by Americans may be given.

An affidavit which lists the names and nationalities of the directors may also be given by the company secretary. Documents such as this, as well as all other other documents concerning American companies and shareholders, must be notarized or certified. This must be done by a government official, and is then subject to authentication by a Thai Embassy or Consulate. Subsidiary companies must present evidence proving their relation to the parent company which would then be scrutinized by the same criteria as stated above.

American companies interested in doing business through a branch office are encouraged to apply for a Treaty Protection Letter and to submit evidence of their American nationality. Submission of documents to the Ministry of Commerce must also contain a letter from the Commercial Attaché of the US Embassy in Bangkok. This letter must confirm that the applicants are American and entitled to protection under the treaty.

Source: U.S. Embassy in Thailand