

## THE UNITED STATES THAILAND TREATY OF AMITY

The Treaty of Amity and Economic Relations between the United States and Thailand was negotiated in 1968, at a time when both countries were allies in the Vietnam War. The treaty was to continue for a period of 10 years, after which it could be terminated by either party upon one year's notice. In May 2003, the Thai Government announced that the Treaty would be rescinded at the end of 2004, as part of the negotiations for a bilateral trade treaty between the United States and Thailand. The nature of the provisions that will replace the treaty have not yet been agreed.

**Benefits** Subject to seven exceptions, Americans are granted the same rights that Thai nationals have to own and operate businesses in Thailand. Likewise, Thai nationals are granted reciprocal rights in the United States, but since the United States generally does not restrict the right of foreigners to do business there, Thai nationals rarely if ever have the opportunity to directly claim benefits under the treaty, although they do have the right to apply for Treaty Trader and Treaty Investor visas under United States immigration laws.

**Who may claim benefits** 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.

**Exclusions** The categories of business excluded from protection under the treaty are:

- . Communications
- . Transportation
- . Fiduciary functions businesses such as warehousing and security services are included in this category and thus not entitled to treaty protection.)
- . Banking involving depository functions (interpreted to include finance businesses)
- . The exploitation of land or natural resources
- . Domestic trade in indigenous agricultural products

Although a given type of business may be excluded from the Treaty, it does not mean that Americans are prohibited from engaging in such a business. For example, banking is excluded from the Treaty yet there are several American banks operating in Thailand.

**Land,** The right to own land is not included in the Treaty. Americans have no greater rights than other foreigners to own land, which under present practice precludes Americans from purchasing land, unless they are able to bring themselves into one of the exceptions to the general rule.

**Work permits and visas,** Although Americans have the right to manage their businesses, the Treaty does not grant Americans unrestricted freedom to work in Thailand or the absolute right to stay in Thailand if they own a business entitled to Treaty protection. Americans are therefore obligated to apply for work permits

**Taxes,** The double taxation treaty between United States and Thailand is entirely separate from the Treaty of Amity. The double taxation treaty came into effect on January 1, 1998.

**Comment** As noted above, the Treaty is due to be rescinded at the end of 2004. Two questions arise. After rescission, will American citizens and companies be made subject to the Foreign Business Act (see previous chapter) in the same way as nationals and companies of all other countries, or will different treatment be applied? Secondly, what will happen with regard to existing

companies that are registered under the provisions of the Treaty? These questions cannot be answered at present. A tentative view is that Treaty companies will be made subject to the Foreign Business Act, and existing treaty companies will be allowed a grace period to comply with any foreign shareholding or other limitations that arise under the Act.