

Doing Business in Thailand – the “Amity Company”- a Thai Company without Thais

The Foreign Business Act (1999) of Thailand (the “Act”) generally restricts foreigners from engaging in most business activities in Thailand, without special permission as provided by the Act. Serious violations of the Act by a foreigner or facilitated by a Thai carry significant criminal penalties. In the case of a Thai limited company, Section 4 of the Act provides that if fifty percent or more of its share capital is owned by a non-Thai, then that company is a “foreigner” for purposes of the Act. This means that if a foreigner wishes to conduct business in Thailand in compliance with the Act, the foreigner generally must find a Thai willing to actually invest in and own more than half of the company. This can be a significant impediment to a foreigner wishing to conduct lawful business in Thailand.

However, Section 10 of the Act does provide for a significant exception to its restrictions on business by foreigners in Thailand. Such exception is for foreigners whose country is a party to a treaty that outlines that each party’s citizens may operate businesses in each other party’s country under the same conditions as their own citizens. Currently, Thailand has such a bilateral treaty only with the United States. Under the Treaty of Amity and Economic Relations between the United States and Thailand (1968)(the “Treaty”) citizens of the United States and of Thailand are granted reciprocal national treatment with regard to, among other things, ownership of businesses in the other’s country. Thus, a Thai company of which fifty percent or more of the share capital is majority American owned, a majority of the directors are also American and which further obtains formal permission pursuant to the Treaty (herein after referred to as an “Amity Company”) is permitted, without any Thai ownership or management, to engage in virtually any business activity in Thailand in which a Thai majority owned company is permitted to engage.

In order a Thai limited company to qualify as an Amity Company it must meet the

following conditions:

- (1) more than half of company's capital is held by an American(s);
- (2) more than half of the company's shareholders are Americans or American and Thai;
- (3) more than half of the authorized directors of the company are American(s) or Thai(s); and if
- (4) the authorized director is from a third country, he must be required to jointly act for the company with another authorized director who is either American or Thai.

However, to complete the administrative requirements, the Amity Company must then also obtain a "Foreign Business Certificate" ("FBC") as provided for under Section 11 of the Act. But because of the Treaty, obtaining the FBC for an Amity Company is a relatively certain and expeditious process as long as the legal and administrative requirements are met during the application process.

Please note that although under the Treaty Americans have the right to own and control their Thai limited company, it does not grant Americans unrestricted freedoms to stay or work in Thailand. In other words, Americans must obtain the relevant valid Thai visas and work permits to stay and work in Thailand just like citizens of other third countries.

It should also be noted that the right to own land is not granted by the Treaty. Thus, although pursuant to American law foreigners of good standing may own land in the United States, under current Thai law, with few exceptions, foreigners, including Americans and Amity Companies, may not own land in Thailand.

Finally, although the Treaty would permit an Amity Company to engage in most businesses in Thailand including most generally restricted by the FBA, the Treaty itself does include exceptions. Therefore, the Treaty does not grant the right to an Amity Company to engage in any of the following businesses in Thailand:

- (1) communications;

- (2) transportation;
- (3) fiduciary functions;
- (4) banking involving depository functions;
- (5) exploitation of land or natural resources; and
- (6) domestic trade in indigenous agricultural products.

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