



American Embassy
U.S. Commercial Service
Bangkok, Thailand

PROCEDURES FOR RECEIVING RIGHTS UNDER THE TREATY OF AMITY AND ECONOMIC RELATIONS BETWEEN THE UNITED STATES AND THAILAND

Prepared by: the Commercial Service, American Embassy Bangkok 2000 (updated 2005)

WHAT IS THE TREATY AND WHOM DOES IT BENEFIT?

The Treaty of Amity and Economic Relations between the United States of America and the Kingdom of Thailand was signed on May 29, 1966. This treaty allows U.S. citizens and businesses to establish a company or branch office in Thailand. Under the treaty, is permitted to do almost anything a Thai company does.

The major benefits of the Treaty are that it allows American companies to own a majority of the shares of its company, branch office located in Thailand and to receive national treatment. That is, they may engage in business on the same basis as Thais, and are exempted from most of the restrictions on foreign investment imposed by the Alien Business Decree of 1972. In return, Thais are extended reciprocal rights to invest in the U.S., and Thai businesspersons are eligible to receive U.S. visas as "treaty traders" and "treaty investors".

Under the Treaty, Thailand is permitted to apply the following restrictions to American and other foreign investment: owning land; engaging in the business of inland communications; inland transportation; fiduciary functions; banking involving depository functions; engaging in domestic trade in indigenous agricultural products; and exploiting land or other natural resources.

It should be noted that as part of agreements reached at the Uruguay Round of the GATT multilateral trade negotiations, Thailand must, by January 1, 2005, offer the same Most Favored Nation (MFN) status to all member-states of the World Trade Organization (WTO) as it does to the U.S. Therefore, Thailand either may accord the same privileges as is offered to the U.S. via the Treaty of Amity and Economic Relations to all other WTO member-states, or simply cancel the Treaty.

WHO IS ELIGIBLE TO RECEIVE RIGHTS UNDER THE TREATY?

To receive protection under the Treaty, the applying person(s) or business organization must be registered and established as an American sole proprietorship, partnership, representative office, branch office, joint venture, or limited company.

For a person wishing to receive protection under the Treaty as a sole proprietorship, he or she must be an U.S. citizen either by birth or naturalization.

For an applying business organization wishing to receive protection under the Treaty as a partnership, branch office, joint venture, or limited company, a majority of the shareholders and directors must be U.S. citizens either by birth or naturalization.

For an applying U.S. company that is a subsidiary to a larger, parent company, the parent or holding company also must have U.S. citizen majority ownership and management.

For an applying U.S. company wishing to invest directly in a Thai company to obtain a majority of the Thai company's shares, the majority of the owners and stockholders of both the applying company and the company to be incorporated must be (or will be, as in the case of the company to be incorporated) U.S. citizens either by birth or naturalization.



REGISTRATION PROCEDURES

To receive protection under the Treaty, the applying business organization must pursue an administrative process to show 'registration under the Treaty.' The Thai government will not recognize an American Company or branch office until it is officially registered. To pursue the administrative process to show "registration under the Treaty," the applying business organization may either consult with one of the many law firms in Thailand or observe the following procedures:

1. For a sole proprietorship, all that is required to seek protection under the Treaty is a notarized copy of the owner's passport or birth certificate to prove U.S. citizenship (either by birth or naturalization). They must send this information to the Commercial Service office at the U.S. Embassy in Bangkok for certification.
2. For a partnership, branch office, joint venture, or limited company, the following documents are required to be notarized by a Notary Public and sent to the Commercial Service office at the Embassy in Bangkok for certification:
 - A. Articles of Incorporation
 - B. Bylaws of the Company
 - C. An Affidavit of the Manager or Corporate Officer, stating the following:
 - Name of the Company, registration number, and date of registration.
 - Address of registered office.
 - Jurisdiction under which the corporation is registered.
 - Name, address, nationality, age and race of each director, number of shares held by each, and identification of the director(s) with the power to bind the company.
 - Authorized capital of the Company, number of shares and par value of each and amount of paid up capital.
 - Total number of shareholders, their nationalities, and number of shares owned or held by them.
3. For an applying U.S. company that is a subsidiary to a larger, parent company, the applying U.S. company, in addition to the above required documents, must also provide the same required documents pertaining to its parent company to the Commercial Service office at the U.S. Embassy in Bangkok.
4. For an applying U.S. company wishing to invest directly in a Thai company to obtain a majority of the Thai company's shares, the applying company must show notarized proof that the majority of owners and directors of both the applying company and the company to be incorporated are (or will be) U.S. citizens either by birth or naturalization.
5. Upon receipt of the preceding required documents, the Commercial Service then will prepare a document that certifies to the Thai Department of Business Development of the Ministry of Commerce that the applying business organization is an American owned and managed company and is therefore entitled to national treatment under the provisions of the Treaty.

After certification by the Commercial Service, original copies of all the above-mentioned required documents, along with a completed application form that may be obtained from the Department of Business Development of the Ministry of Commerce, must be given to the Thai Department of Business Development of the Ministry of Commerce in order to register under the Treaty and to complete the process.

Please allow at least four to five weeks to complete the entire process. It usually takes less than one week for certification from the Commercial Service office, but registration by the Thai government can take anywhere from a few weeks to a few months. Please note that the above description of the procedure is to the best of the knowledge of the Commercial Service. Consulting with a legal firm in Thailand may still be advisable.



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A SUMMARY OF THE REQUIRED DOCUMENT FOR TREATY OF AMITY REGISTRATION PROCEDURES

Type of Organization:

- **Sole Proprietorship:**

Notarized copy of owner's passport or birth certificate to prove U.S. citizenship. (Notarization can be obtained at the U.S. Embassy's American Citizen Services office.)

- **U.S. Company acquiring Thai Company: Partnership, Branch Office, Joint Venture, or Limited Company**

For an applying U.S. Company wishing to invest directly in a Thai Company so as to obtain a majority of a Thai's Company's shares the applying company must show notarized proof that the majority of owners and directors of both the applying company to be incorporated are (or will be) U.S. citizens either by birth or naturalization.

- Articles of Incorporation.
- Bylaws of the Company.
- An affidavit of the Manager or Corporate Officer stating the following:
 - Name of the Company, registration number, and date of registration.
 - Address of registered office.
 - Name, address, nationality, age, race, of each director, number of shares held by each, and identification if the director(s) with the power to bind the company.
 - Authorized capital of the Company, number of shares and par value of each, and amount of capital paid up front.
 - Total number of shareholders, their nationalities, and number of shares owned or held by them.
 - Notarized copy of American Shareholders' passports.
- **Thai Company with Majority of American's shareholder(s):**
 - Certificate
 - Memorandum of Association
 - New Director(s)
 - List of Shareholders
 - Notarized copy of American Shareholders' passports.
 - Objective Class
 - Attestation
 - Articles of Association
 - Certificate of Company Registration

Please Note: The original documents will be returned together with the certificate.

All documents listed above must be filed with the U.S. Commercial Service in GPF Witthayu, Tower A, 3rd Floor, Room 302, Wireless Road. Please submit the required documents **both copies and originals in Thai and English** along with a **request form** with a **cover letter** to: Ms. Ann Bacher, Commercial Counselor.

For further information, please contact

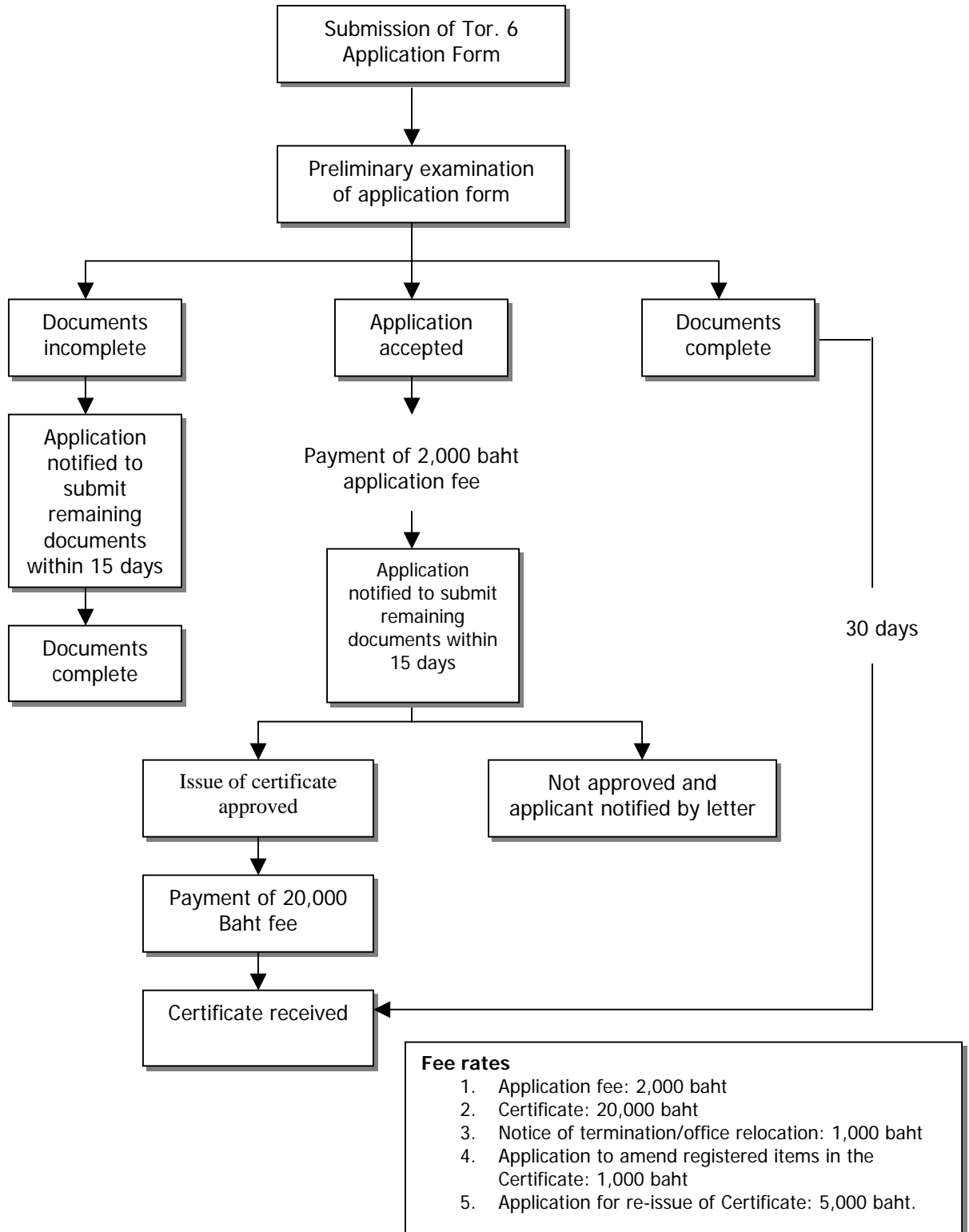
Ms. Kritsananan, Commercial Assistant

Tel: 662-205-5282 (direct line) or 662-205-5090

Fax: 662-255-2915

E-mail: ksetasuv@mail.doc.gov

NOTIFICATION PROCEDURE FOR OBTAINING A CERTIFICATE





Application documents:

1. A declaration of details the type of business for which a certificate application is made.
2. A letter from an embassy of a country which is a party to a treaty concluded with Thailand certifying the nationality of the applicant giving notice to exercise rights pursuant to the obligation.
3. A map indicating the approximate location of the place of business operation in Thailand.
4. A power of attorney in the case where another person has been authorized to act on the applicant's behalf.
5. Other evidence or documents (if any).
6. In the case of a natural person, the following documents must also be submitted:
 - 6.1 a copy of a passport or identification document for foreigners;
 - 6.2 a copy of the house register, a certificate of residence in the Kingdom or evidence of permission to enter the Kingdom for a temporary stay under the law on immigration.
7. In the case of a juristic person registered in Thailand, the following documents must also be submitted:
 - 7.1 a copy of a certificate or evidence of juristic person status containing particulars of the name, capital, objects, place of business, list of directors and authorized signatories of the juristic person;
 - 7.2 a declaration of the proportion of shareholdings between Thai person and foreigners and the number of shares and the class or kind of shares held by foreigners.
 - 7.3 In the case where the majority shareholder or partner of the person making the notification is a juristic person, the same evidence or documents as required from a juristic person not registered in Thailand under 7.1 and 7.2 above shall also be submitted for the shareholder or partner as the case may be.
8. In the case of a juristic person not registered in Thailand, the following documents must also be submitted:
 - 8.1 A copy of a certificate or evidence of juristic person status containing particulars of the name, capital, objects, place of business, list of directors and signatories who are authorized to bind the juristic person and the name and nationality list of shareholders or details of partners; in the case where documents showing the name and nationality list of shareholders or details of partners cannot be submitted, a document which shows that a person having the nationality of a country which is a party to the treaty or which has a binding obligation with Thailand holds or invested the majority of shares or money in such juristic person shall be submitted.
 - 8.2 In the case where the majority shareholder or partner of the person making the notification is a juristic person, a copy of a certificate or evidence of juristic person status of such majority shareholder or partner must also be submitted until the last majority shareholder or partner in order to show that such juristic person who is the majority shareholder or partner of the person making the notification has nationals of a party to a treaty or of a country having a binding obligation with Thailand who hold or invested the majority of shared or money in the juristic person.
 - 8.3 A letter of appointment of a representative issued by the authorized signatory as appointer of a representative in charge of the business operations in Thailand on behalf of the juristic person.
 - 8.4 A copy of the appointed representative's passport, identification document for foreigners or identification card.
 - 8.5 A copy of the appointed representative's house register, a certificate of residence in the Kingdom or evidence of permission to enter the Kingdom for a temporary stay under the law on immigration.

Qualifications of an applicant for a certificate of business operation under a treaty or obligation:

1. A natural person.
2. A juristic person of the following composition:
 - (1) a juristic person established under Thai laws or the laws of a country which is a party to a treaty or has a binding obligation with Thailand;
 - (2) the majority of the juristic person's capital is held by nationals of a country which is a party to a treaty or has a binding obligation with Thailand;



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- (3) more than half of the managing directors must be nationals of a country which is a party to a treaty or has binding obligation with Thailand and/or Thai national;
- (4) if a managing director has been given the authority to sign on behalf of the company, such managing director must not be a national of a third country;
- (5) if several managing directors has been given the authority to sign on behalf of the company; the majority of such managing directors must not be nationals of a third country.

Place of giving notice to apply for a certificate:

1. In Bangkok, notice may be given to the Department of Business Development, Ministry of Commerce.
2. In other provinces, notice may be given to the Provincial office of Business Development.

Business reserved by treaty (only Thai-American Treaty 1968):

- (1) Communications.
- (2) Transport.
- (3) Fiduciary functions
- (4) Banking involving depository functions
- (5) The exploitation of land, or other natural resources
- (6) Domestic trade in indigenous agricultural products

Warning:

- (1) The applicant must completely fill in the application form in print, which must also be signed by the applicant or by an appointee in the case where another person was authorized by a power of attorney to act on his/her behalf.
- (2) In the case where a power of attorney was executed in a foreign country, such power of attorney must be notarized by an official or by a person who has been prescribed with the powers of notarization by the laws of such country, or by an authorized official of the Royal Thai Embassy or Royal Thai Consulate stationed in such country at a time not exceeding six months prior to the date of submission of application.
- (3) In the case where the power of attorney was executed in Thailand and the appointer does not have residence in Thailand, a copy or photocopy of the passport or certificate of temporary residence, or other evidence showing that at the time of the power of attorney such person had truly entered into Thailand, must be submitted.
- (4) In the case where the evidence or documents in support of the application have been signed in a foreign country, the applicant must provide for the certification of such signatures.
- (5) If the evidence or documents submitted in support of the application are in a foreign language, their translations in Thai must be provided. The applicant and translator must affix their signatures to certify the correctness of the translations.
- (6) The applicant must certify the correctness of copies or photocopies of evidence or documents submitted in support of the applications.

Contact

The Office of Secretary of
Foreign Business Committee
Department of Business Development,
Ministry of Commerce
Tel: 662-547-4419-20, 662-547-4425-26
Fax: 662-547-4428
Email: foreign@thairegistration.com Website: www.dbd.go.th