

# Thailand

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RISK & COMPLIANCE REPORT

Date: March 2018

<b>Executive Summary - Thailand</b>	
<b>Sanctions:</b>	None
<b>FATF list of AML Deficient Countries</b>	No
<b>Higher Risk Areas:</b>	US Dept of State Money Laundering assessment Not on EU White list equivalent jurisdictions Failed States Index (Political Issues)(Average Score)
<b>Medium Risk Areas:</b>	Compliance with FATF 40 + 9 Recommendations Weakness in Government Legislation to combat Money Laundering Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score)
<p><b>Major Investment Areas:</b></p> <p><b>Agriculture - products:</b></p> <p>rice, cassava (manioc), rubber, corn, sugarcane, coconuts, soybeans</p> <p><b>Industries:</b></p> <p>tourism, textiles and garments, agricultural processing, beverages, tobacco, cement, light manufacturing such as jewelry and electric appliances, computers and parts, integrated circuits, furniture, plastics, automobiles and automotive parts; world's second-largest tungsten producer and third-largest tin producer</p> <p><b>Exports - commodities:</b></p> <p>electronics, computer parts, automobiles and parts, electrical appliances, machinery and equipment, textiles and footwear, fishery products, rice, rubber</p> <p><b>Exports - partners:</b></p> <p>China 11.7%, Japan 10.2%, US 9.9%, Hong Kong 5.7%, Malaysia 5.4%, Indonesia 4.9%, Singapore 4.7%, Australia 4.3% (2012)</p> <p><b>Imports - commodities:</b></p> <p>capital goods, intermediate goods and raw materials, consumer goods, fuels</p> <p><b>Imports - partners:</b></p> <p>Japan 20%, China 14.9%, UAE 6.3%, Malaysia 5.3%, US 5.3% (2012)</p>	

**Investment Restrictions:**

Thailand continues to welcome investment from all countries and seeks to avoid dependence on any one country as a source of investment.

There are restrictions to foreign investment in the fields of communications, transport, banking, the exploitation of land or other natural resources, and domestic trade in agricultural products.

In general, non-Thai businesses and citizens are not permitted to own land in Thailand unless the land is on government-approved industrial estates. Under the 1999 amendment to the Land Code Act, foreigners who invest a minimum of 40 million Baht (approximately US\$1.3 million) are permitted to buy up to 1,600 square meters of land for residential use with the permission of the Ministry of Interior.

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## Section 1 - Background

A unified Thai kingdom was established in the mid-14th century. Known as Siam until 1939, Thailand is the only Southeast Asian country never to have been taken over by a European power. A bloodless revolution in 1932 led to a constitutional monarchy. In alliance with Japan during World War II, Thailand became a US treaty ally in 1954 after sending troops to Korea and later fighting alongside the United States in Vietnam. Thailand since 2005 has experienced several rounds of political turmoil including a military coup in 2006 that ousted then Prime Minister THAKSIN Chinnawat, followed by large-scale street protests by competing political factions in 2008, 2009, and 2010. Demonstrations in 2010 culminated with clashes between security forces and pro-THAKSIN protesters, elements of which were armed, and resulted in at least 92 deaths and an estimated \$1.5 billion in arson-related property losses. THAKSIN's youngest sister, YINGLAK Chinnawat, in 2011 led the Puea Thai Party to an electoral win and assumed control of the government. YINGLAK's leadership was almost immediately challenged by historic flooding in late 2011 that had large swathes of the country underwater and threatened to inundate Bangkok itself. Throughout 2012 the Puea Thai-led government struggled with the opposition Democrat Party to fulfill some of its main election promises, including constitutional reform and political reconciliation. Since January 2004, thousands have been killed and wounded in violence associated with the ethno-nationalist insurgency in Thailand's southern Malay-Muslim majority provinces.



## Section 2 - Anti – Money Laundering / Terrorist Financing

### FATF status

Thailand is no longer on the FATF List of Countries that have been identified as having strategic AML deficiencies

### Latest FATF Statement - 21 June 2013

The FATF welcomes Thailand's significant progress in improving its AML/CFT regime and notes that Thailand has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF had identified in February 2010. Thailand is therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process. Thailand will work with the APG as it continues to address the full range of AML/CFT issues identified in its Mutual Evaluation Report.

### Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Thailand was undertaken by the Financial Action Task Force (FATF) in 2018. According to that Evaluation, Thailand was deemed Compliant for 3 and Largely Compliant for 22 of the FATF 40 Recommendations. It was also deemed Highly Effective for 0 and Substantially Effective for 4 with regard to the 11 areas of Effectiveness of its AML/CFT Regime.

#### Key Findings

There is strong political support for recent AML/CFT reforms and for ongoing coordination and cooperation at policy and operational levels.

Thailand's statutory instruments demonstrate generally good compliance and AML/CFT institutional arrangements have also developed significantly since the 2007 Mutual Evaluation Report (2007 MER).

Thailand is subject to a large number of significant ML and TF threats and authorities generally have a reasonable understanding of the risks. The 2012 National Risk Assessment (NRA) informed priorities for reform. The 2016 NRA added to the deeper understanding of risk. That NRA adopted a robust methodology and will provide a good basis for risk-based policy development.

Authorities have assessed risks of domestic terrorism including many related elements of TF, but transnational terrorism and TF are not as comprehensively assessed. Relevant agencies demonstrate a good understanding of TF risk and context and intelligence sharing structures support awareness of TF risk amongst authorities.

There are gaps with assessments of sector-specific risks or more detailed TF risks assessments being available to the private sector. Findings of risk assessments have not been well applied to consider exemptions or enhanced measures for ML/TF risk mitigation.

The Anti-Money Laundering Office (AMLO) is Thailand's central authority for AML/CFT and plays a pivotal role in coordinating ML/TF risk assessments, including the NRA, and the development of the national AML/CFT strategies. AMLO is also the sole AML/CFT supervisor and a specialist asset recovery Law Enforcement Agency (LEA). AMLO, in its FIU role, collects a very wide range of data, and provides a financial analysis and intelligence capability that is highly regarded by key agencies responsible for investigating and prosecuting predicate crimes,

## **ML and TF**

Financial intelligence is integrated into predicate investigations, although key LEAs tend to place an over-reliance on financial intelligence generated by AMLO at the expense of developing in-house expertise. This also contributes to less proactive analysis and under-resourced strategic analysis within AMLO.

Thailand has achieved a reasonable number of successful outcomes from ML investigations and prosecutions; however ML is not sufficiently pursued as a policy objective and used to target key risk areas, particularly corruption.

Confiscation is actively pursued and AMLO plays a significant role in asset tracing, restraint, seizure, management and confiscation. Comprehensive provisional measures are well implemented. Successful confiscation is well demonstrated in narcotics matters, but is not evident across the spectrum of high-risk crime types in Thailand. The National Anti-Corruption Commission (NACC) results reflect an emphasis on unexplained wealth proceedings rather than financial investigations. Implementation of cross-border controls on cash and related detections and confiscations does not reflect the risks Thailand faces.

Despite high-risks of TF, particularly in Thailand's southern border provinces, Thailand only had three cases of TF under investigation at the time of the onsite and there had been no convictions for TF. A large number of security cases had been pursued where other relevant criminal provisions were utilised to prosecute offenders for conduct related to TF.

Thailand has made strategic use of domestic 1373 designations to combat domestic terrorism threats, having made 83 domestic proscriptions. These designations complement criminal justice measures. Implementation of targeted financial sanctions (TFS) against terrorism is strong in the banking and insurance sectors but there are challenges amongst other sectors of Financial Institutions (FIs) and Designated Non-Financial Business and Professions (DNFBPs). Some assets have frozen in relation to the 1373 designations, but no assets have been frozen pursuant to 1267/1989. The results from TFS are largely in keeping with the risk profile.

Thailand has made some assessments of Non-Profit Organisation (NPO) sector risks however further assessments are required to more effectively target risk-based measures and oversight. AMLO has undertaken outreach to the sector and regulators on risk.

Thailand has strong policy coordination mechanisms to support implementation of its new legal framework for implementing weapons of mass destruction (WMD) related TFS and additional measures including criminalisation of proliferation financing (PF). Thailand issued

guidelines on PF ahead of the new legal framework and conducted awareness raising, outreach and supervision to support implementation by Reporting Entities (REs) from late 2016. The PF guidance included information on vulnerabilities to PF and related sanctions evasion.

AML/CFT preventive measures reflect a degree of technical compliance with the FATF standards although significant gaps remained at the time of the onsite. There are some gaps in clarity and consistency between the various notifications and guidelines, in particular around enhanced due diligence, which may hinder implementation. Local large commercial banks and foreign commercial banks demonstrate a more developed understanding of their ML/TF risks and obligations, followed by local banks. The implementation of controls on politically exposed person (PEP) continues to be a priority and a challenge. The quality of suspicious transaction reporting (STR) reporting has shown a strong improvement, but the scope of sectors reporting requires further support. The role of AMLO and other authorities in outreach is a strength, but more support is needed for FIs and DNFBPs to understand their risk and obligations. Comprehensive customer due diligence (CDD) obligations for most DNFBPs only entered into force in late 2016.

The structural framework for AML/CFT supervision has been significantly strengthened in recent years. The transition of AMLO to the role of primary AML/CFT supervisor was successful. AMLO has a strong understanding of risk to support it taking a risk-based approach to supervision. There are gaps in fit and proper controls over some sectors to prevent criminals and their associates from entering the market and checks do not extend to beneficial ownership, with the exception of the securities sector. It is notable that ownership of the banking sector has been very stable over a long period. AMLO's approach to supervision is generally robust and is continuing to mature, however a greater allocation of resources and more joint work with sectoral supervisors is required to enhance effective risk-based supervision. Available sanctions for AML/CFT failures are low and the process for application of fines for breaches is limited to criminal prosecutions and related settling mechanisms. This undermines effective enforcement.

Obligations on legal persons to register basic ownership details assist with transparency. Thailand relies on FIs to obtain beneficial ownership (BO) information as part of CDD, however the lack of detailed CDD obligations for DNFBPs undermined the availability of BO information. Filing obligations support the identification of BO for public limited companies. Thailand has demonstrated experience in requesting basic and BO information of legal persons and arrangements formed abroad and information on foreign natural persons who may own or control Thai legal persons.

Thailand takes an open and flexible approach to international cooperation supported by a legal framework that generally conforms to international standards. Informal cooperation is used as a tool to enhance investigations and discuss transnational elements of predicate crimes. Thailand is very responsive to mutual legal assistance (MLA) requests. However, the international cooperation framework is not used in line with the risk profile nor targeted to specific high-risk jurisdictions including Thailand's immediate neighbours.

### **Risks and General Situation**

Thailand is a significant regional economy. It is an open cash-based economy with significant levels of international trade and investment and movement of people, goods and capital. Thailand has porous borders for the informal movement of people, goods and cash.

Thailand's assessments of risk have identified corruption, drug offences, tax evasion, unfair securities trade, and customs evasion as the five major crimes which contribute to a large majority of all crime-generated assets. Thailand faces a range of risk beyond these crime types. Authorities acknowledge high-risk channels of ML to include commercial banks and the real estate sector. Other channels posing ML risks include cross-border movement of funds, antique traders, NPOs, car dealers and gold & jewellery traders. Cross-border risks relate to immediate neighbour jurisdictions, jurisdiction within and beyond the region and the movement of people, goods and capital through Thailand. These factors have been assessed in NRAs in 2012 and 2016.

Thailand is exposed to TF threats from domestic terrorist groups operating particularly in the southern border provinces. Thailand is also vulnerable to transnational terrorism threats including foreign fighters seeking to return to other Southeast Asian countries. Fundraising for terrorist incidents is mainly generated through illegal activities, crowdfunding, NPOs and self-funding. Authorities consider border customs checkpoints, commercial banks and specialized banks as being vulnerable to TF. The funds identified are mainly used for operational and organisational purposes, particularly to launch incidents and acquire arms and weapons. TF is seen associated with training and conducting campaigns, including through the use of social media, to expand terrorist networks.

Thailand displays a generally high-level of political commitment to combat ML and TF. Coordination mechanisms under the Anti-Money Laundering Board (AMLB) support the development of reforms to policies, statutory frameworks and implementation priorities. Cabinet decisions have supported the increased allocation of resources and institutional reform to prioritise AML/CFT implementation. The 2010-2015 National AML/CFT Strategy concentrated on major legal and institutional reforms, including shifting to a risk-mitigation approach.

#### **Key Findings from latest Mutual Evaluation Report (2007):**

Thailand has introduced a number of measures in recent years to strengthen its Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) framework, particularly for CFT. The regime has resulted in a very large number of suspicious transaction reports (STRs), a large amount of assets being seized and contributed to the Thai government's objective of tackling drug crime. These achievements occurred despite outmoded legislation and other shortcomings identified in this assessment against the Financial Action Task Force (FATF) 40+ 9 Recommendations.

Thailand is susceptible to money laundering (ML) and terrorist financing (TF) because illicit proceeds are generated from drug trafficking, illegal gambling, theft, prostitution, human trafficking, illegal logging, corruption and from crime in bordering countries and because of a terrorist problem in its southern region. The illegal economy in Thailand has been estimated up to 13 percent of gross domestic product (GDP) and with ML predicate offenses estimated to generate illicit proceeds of up to 5 percent of GDP. In addition, the widespread use of cash and a large informal sector, estimated at up to 53 percent of GDP, provide many avenues for illicit proceeds to be laundered in Thailand.

This report identifies the strengths and weaknesses of the Thai AML/CFT framework and makes recommendations to bring it in line with the requirements of the FATF 40+9 Recommendations and to ensure that effective mechanisms are in place to implement and monitor Thailand's overall AML/CFT regime.

Thailand has a legal framework in the Anti-Money Laundering Act 1999 (AMLA) around which the core elements of its AML/CFT regime are established. The AMLA criminalizes ML by reference to eight predicate offenses, establishes the Anti-Money Laundering Office (AMLO) as Thailand's financial intelligence unit (FIU), imposes some customer due diligence (CDD) obligations on a wide range of financial institutions (FIs), requires these FIs to report transactions to the AMLO, and creates a civil process for the AMLO to seize criminal assets and have them vested in the state.

However, the AML/CFT regime is not fully in line with international standards and codes – there are weaknesses in the legal framework, the pursuit of ML cases, the coverage of institutions and in enforcement. The recommendations to improve the regime include the need to:

- amend the AMLA in order to: (i) properly criminalize ML so that it covers all serious domestic predicate offenses; (ii) impose the core AML/CFT obligations to all FIs that contain ML and TF risks; and (iii) clarify AML/CFT supervisory roles and give appropriate powers for conducting compliance examinations;
- strengthen enforcement when the AMLO and the financial regulators discover breaches of AML/CFT obligations;
- extend AML/CFT obligations to non-financial businesses and professions;
- properly pursue criminal investigations and prosecutions of ML and TF; and
- fully implement the UN Security Council Resolutions and properly criminalize FT.

The authorities are committed to bringing Thailand's AML/CFT regime up to international standards and they are supported in this endeavor by the management of the major FIs.

#### **Extract from 2014 Asia Pacific Group on Money Laundering Yearly Typologies Report:**

Emerging and continuing trends:

Identity theft-related fraud is increasingly a high threat.

## **Thailand is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.**

### OVERVIEW

Thailand is a centrally located Southeast Asian country with porous borders. Thailand is vulnerable to money laundering within its own economy, and to many categories of cross-border crime, including illicit narcotics, wildlife trafficking, and other contraband smuggling. Thailand is a source, transit, and destination country for international migrant smuggling and trafficking in persons, a production and distribution center for counterfeit consumer goods, and a center for the production and sale of fraudulent travel documents.

The proceeds of illegal gaming, official corruption, underground lotteries, and prostitution are laundered through the country's informal financial channels. The Thai black market includes a wide range of pirated and smuggled goods, from counterfeit medicines to luxury automobiles.

Thailand continues to make progress in its AML regulatory framework, most recently amending its Anti-Money Laundering Act (AMLA) in 2017. Thailand includes tax offenses as a predicate offense under the AMLA.

### VULNERABILITIES AND EXPECTED TYPOLOGIES

Funds from various illegal industries (drugs, contraband goods, and illegal remittances) are transported across Thailand's four land borders and through airports and seaports. Money launderers and traffickers use banks, non-bank financial institutions, and businesses to move the proceeds of narcotics trafficking and other criminal enterprises. Unlicensed or unregulated hawaladars serve Middle Eastern travelers in Thailand. Unregulated Thai and Chinese remittance systems are also prevalent. Smuggled items include cash, financial instruments, gold, jewelry, gems, protected wildlife species, drugs, and petroleum.

### KEY AML LAWS AND REGULATIONS

The primary regulation in Thailand is AMLA, Section 22, which includes KYC and STR regulations. The Act requires financial institutions to keep customer identification and financial transaction data for five years from termination of relationship. Financial institutions must keep due diligence records for 10 years. The Act also requires reporting of suspicious transactions. Thailand added terrorism and proliferation as predicate offenses under the AMLA after the Counter-Terrorism and Proliferation of Weapon of Mass Destruction Financing Act was enacted in December 2016. In April 2017, tax offenses were added as a predicate offense under the AMLA.

Thai law establishes reporting requirements for the import and export of currency, which vary depending on the type of currency, whether the currency is being imported or exported, and the source or destination country. For Thai currency being imported into Thailand, there is no reporting requirement. For foreign (non-Thai) currency, whether inbound or outbound, amounts exceeding U.S. \$20,000 or equivalent must be declared to Customs officers. For Thai currency being exported from Thailand to specified countries, namely Cambodia, Laos, Burma, Vietnam, Malaysia, and China's Yunnan province, amounts exceeding approximately U.S. \$13,700 must be declared, and amounts exceeding approximately U.S. \$60,900 require approval from the Ministry of Finance. For Thai currency being exported from

Thailand to countries other than those listed above, amounts exceeding approximately U.S. \$1,500 require approval from the Ministry of Finance. Thai law also establishes penalties for violation of the reporting requirements, which include seizure provisions.

Thailand is a member of the APG, a FATF-style regional body.

#### AML DEFICIENCIES

Thailand continues to make progress in its AML legal/regulatory framework. AMLA No. 4 (2013) transferred all supervision of reporting entities to the Anti-Money Laundering Office (AMLO), Thailand's FIU. Since the revision to AMLA in 2015 (AMLA No. 5), the law no longer requires AMLO to prove intent before an asset can be seized; simply being connected to narcotic activity allows a seizure.

AMLA No. 5 includes provisions intended to reduce the barriers to asset sharing and recovery in cases in which repatriating or sharing forfeited proceeds with a foreign jurisdiction is appropriate.

Thailand has numerous unlicensed, unregulated informal remittance systems. AMLA compliance needs to be enforced for these MSBs to deter their use as money laundering vehicles.

#### ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

Operationally, Thailand's AML regime appears to be continuing its longstanding focus on civil asset seizure and forfeiture as well as criminal enforcement. Thailand has continued to use AMLO's authorities to seize assets in a number of suspected human trafficking cases. The AMLO is effective in fighting money laundering and can operate in conjunction with, or independently from, other law enforcement bodies. From October 2016 to September 2017, there were 133 prosecutions and 155 convictions.

Thailand's legal framework allows for international cooperation on criminal matters and extraditions. The United States and Thailand have a MLAT in place. Thailand uses its membership in the Egmont Group as the primary mechanism through which Thailand shares information with the United States. Thailand's AMLO is able to share information with or without MOUs with domestic or international partners and does so actively. Thailand's primary difficulty in information sharing is with jurisdictions that require separate MOUs outside of the Egmont Group process.

#### **Current Weaknesses in Government Legislation (INCRS Comparative Tables):**

According to the US State Department, Thailand conforms with regard to the government legislation required to combat money laundering and the terrorism of financing.

#### **EU White list of Equivalent Jurisdictions**

Thailand is not currently on the EU White list of Equivalent Jurisdictions

### **World Governance indicators**

[To view historic Governance Indicators Ctrl + Click here and then select country](#)

### **Failed States Index**

[To view Failed States Index Ctrl + Click here](#)

### **Offshore Financial Centre**

Thailand is not considered to be an Offshore Financial Centre

### US State Dept Narcotics Report 2017

#### Introduction

Thailand is a net importer of illicit narcotics, and trafficking and use of illicit drugs remains a significant problem. There were no significant quantities of opiates, methamphetamine, or other drugs cultivated or produced in Thailand in 2016. Various transnational criminal organizations continue to use Thailand as a final destination and transit country for illicit drugs destined for regional and international markets. The primary drugs of concern continue to be amphetamine-type stimulants (ATS), specifically methamphetamine, the use of which continues to increase. The widespread availability of methamphetamine is due to cross-border smuggling of the drug from neighboring Burma.

According to the United Nations Office on Drugs and Crime, the Thai government has not reported eradicating opium poppy since 2013. However, in 2016 the Thai Office of Narcotics Control Board (ONCB) reported that 469.9 kilograms (kg) of opium plants were seized. Following a significant drop in the volume of seized heroin and cocaine in 2015, heroin seizures rebounded during the first six months of 2016 and were on pace to surpass the previous year's total. Since 2014, Thailand has seen a slight decline in methamphetamine tablet (yaba) seizures, but has experienced a slight growth in crystal methamphetamine seizures.

#### Conclusion

The U.S. government enjoys a particularly close and collaborative relationship with Thai law enforcement. The United States has encouraged the Thai government to adopt laws and regulations more closely aligned with international standards. The United States will continue to assist the Thai government in its efforts to promote greater cooperation between its police and prosecutors, prevent corruption, and further advance regional cooperation.

### US State Dept Trafficking in Persons Report 2016 (introduction):

Thailand is classified a Tier 2 (watch list) country - a country whose government does not fully comply with the Trafficking Victims Protection Act's minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Thailand (Tier 3\*) is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking. Victims from neighboring countries, as well as China, Vietnam, Russia, Uzbekistan, India, and Fiji, migrate willingly to Thailand to seek employment, often with the assistance of relatives and community members or through the use of informal recruitment and smuggling networks. There are an estimated two to three million migrant workers in Thailand, most of whom are from Burma. The majority of the trafficking victims within Thailand— tens of thousands of victims, by conservative estimates—

are migrants from Thailand's neighboring countries who are forced, coerced, or defrauded into labor or exploited in the sex trade. A significant portion of labor trafficking victims within Thailand are exploited in commercial fishing, fishing-related industries, low-end garment production, factories, and domestic work; some victims are forced to beg on the streets.

There are reports of corrupt officials on both sides of the border who facilitate the smuggling of undocumented migrants between Thailand and neighboring countries including Laos, Burma, and Cambodia; many of these migrants subsequently become trafficking victims. Unidentified trafficking victims are among the large numbers of undocumented migrants deported to Laos, Burma, and Cambodia each year. Burmese, Cambodian, and Thai men are subjected to forced labor on Thai fishing boats that travel throughout Southeast Asia and beyond; some men remain at sea for up to several years, are paid very little, are expected to work 18 to 20 hours per day for seven days a week, or are threatened and physically beaten. A 2013 report found that approximately 17 percent of surveyed fishermen, who primarily worked on short haul vessels spending less than one month at sea, experienced forced labor conditions, often due to threats of financial penalty including not being fully remunerated for work already performed.

A 2010 assessment of the cumulative risk of labor trafficking among Burmese migrant workers in the seafood industry in Samut Sakhon found that 57 percent of the 430 workers surveyed experienced conditions of forced labor. As fishing is an unregulated industry region-wide, fishermen typically do not have written employment contracts with their employers. Reports during the year indicate this form of forced labor continues to be prevalent, and that increasing international scrutiny has led traffickers to use new methods, making their crimes more difficult to detect. Men from Thailand, Burma, and Cambodia are forced to work on Thai-flagged fishing boats in Thai and international waters and were rescued from countries including Malaysia, Indonesia, Vietnam, and Timor-Leste. The number of Cambodian victims rescued from Thai fishing vessels in countries around the world more than doubled in 2013. Cambodian and Burmese workers are increasingly unwilling to work in the Thai fishing industry due to dangerous and exploitative work conditions which make them more vulnerable to trafficking.

There continued to be reports that corrupt Thai civilian and military officials profited from the smuggling of Rohingya asylum seekers from Burma and Bangladesh (who transit through Thailand in order to reach Malaysia or Indonesia) and were complicit in their sale into forced labor on fishing vessels. Thai navy and marine officials allegedly diverted to Thailand boats carrying Rohingya asylum seekers en route to Malaysia and facilitated the transfer of some migrants to smugglers and brokers who sold some Rohingya into forced labor on fishing vessels. Additionally, there are media reports that some Thai police officials systematically removed Rohingya men from detention facilities in Thailand and sold them to smugglers and brokers; these smugglers and brokers allegedly transported the men to southern Thailand where some were forced to work as cooks and guards in camps, or were sold into forced labor on farms or in shipping companies. Traffickers (including labor brokers) who bring foreign victims into Thailand generally work as individuals or in unorganized groups, while those who exploit Thai victims abroad tend to be more organized. Labor brokers, largely unregulated and of both Thai and foreign nationalities, serve as intermediaries between job-seekers and employers; some facilitate or engage in human trafficking and collaborate with employers and at times with corrupt law enforcement officials.

Foreign migrants, members of ethnic minorities, Thailand is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking. Thai victims of trafficking and some of the estimated three to four million migrant workers in Thailand are forced, coerced, or defrauded into labor or sex trafficking. Some labor trafficking victims are exploited in commercial fishing and related industries, factories, agriculture, and domestic work, or forced into street begging. Migrant workers who are trafficking victims may be deported without effective screening for indicators of trafficking. Sex trafficking remains a significant problem in Thailand's extensive commercial sex industry.

Women, men, boys, and girls from Thailand, Laos, Cambodia, Vietnam, and Burma are subjected to labor and sex trafficking in Thailand. Thailand is also a transit country for victims from China, North Korea, Vietnam, Bangladesh, India, and Burma subjected to sex trafficking or forced labor in countries such as Malaysia, Indonesia, Singapore, Russia, South Korea, the United States, and countries in Western Europe. Thai nationals have been subjected to forced labor and sex trafficking in Thailand and in countries in North America, Europe, Africa, Asia, and the Middle East. Members of ethnic minorities, highland persons, and stateless persons in Thailand have experienced instances of abuse indicative of trafficking. Children from Thailand, Burma, Laos, and Cambodia are victims of sex trafficking in brothels, massage parlors, bars, karaoke lounges, hotel rooms, and private residences. Local NGOs report the use of social media to recruit children into sex trafficking. Some parents or brokers force children from Thailand, Cambodia, and Burma to sell flowers, beg, or work in domestic service in urban areas. Reports indicate separatist groups in southern Thailand continue to recruit and use children to commit acts of arson or serve as scouts.

Many foreign trafficking victims migrate willingly to Thailand seeking employment, often with the assistance of relatives and community members or informal recruitment networks. Most migrate through irregular channels without identity documents or travel documents from their countries of origin. Instances of human trafficking, smuggling, abduction, and extortion of migrants occur as migrants move between Thailand and neighboring countries. Traffickers, including registered and unregistered labor brokers of Thai and foreign nationalities, bring foreign victims into Thailand through both formal migration and smuggling routes and serve as intermediaries between job-seekers and employers. Some brokers charge substantial fees or collaborate with corrupt law enforcement officials, and some migrant workers incur significant debts to obtain employment and are subjected to debt bondage. A number of brokers and employers continue to confiscate identity documents. Thai men and women who migrate overseas also rely on registered and unregistered labor brokers to facilitate acquisition of low-skilled contract work or agricultural labor and are sometimes subjected to conditions of forced labor and debt bondage.

Trafficking in the fishing industry remains a significant concern. Thai, Burmese, Cambodian, and Indonesian men are subject to forced labor on Thai and foreign-owned fishing boats. Some remain at sea for several years, are paid very little or irregularly, work as much as 18 to 20 hours per day for seven days a week, or are reportedly threatened, physically beaten, drugged to work longer, and even killed for becoming ill, attempting to escape, or disobeying orders. Some trafficking victims in the fishing sector had difficulty returning home due to isolated workplaces, unpaid wages, and the lack of legitimate identity documents or safe means to travel.

Corruption continues to undermine anti-trafficking efforts. Reports persist that some government officials are directly complicit. Migrant workers, especially those who are undocumented, are fearful of reporting trafficking crimes and cooperating with authorities due to minimal protections both in Thailand and in countries of origin and lack of awareness of their rights. Reports persist that some government officials profit from bribes and direct involvement in the extortion of migrants and their sale to brokers. Some of these migrants are kidnapped and held for ransom, which increases their vulnerability to sexual servitude, forced labor, or debt bondage. Some officials allegedly profit from trafficking and other criminal offenses committed against trafficking victims. Credible reports indicate some corrupt officials protect brothels and other commercial sex venues from raids and inspections and collude with traffickers.

The Government of Thailand does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government amended its 2008 anti-trafficking laws and other laws related to forced labor in the fishing and seafood industry, which increased criminal and civil penalties on traffickers, allowed for the closure of businesses involved in forced labor, and provided legal protection for whistleblowers. The government increased the numbers of investigations, prosecutions, convictions, and victims identified in 2015, compared with 2014. Labor trafficking investigations increased; however widespread forced labor in Thailand's seafood sector continued to occur. The government increased efforts to hold government officials complicit in trafficking crimes criminally accountable; however, official complicity continued to impede progress in combating trafficking. The government established a specialized anti-trafficking prosecution division and an anti-trafficking court division and increased anti-trafficking training for police, prosecutors, judges, labor inspectors, social workers, and navy personnel. Multidisciplinary teams inspected sea vessels and land-based seafood processing workplaces and found 430 cases of labor violations, including human trafficking cases. The government solicited multi-stakeholder feedback to improve victim identification questions and procedures and hired more interpreters; however effective, proactive screening for victims remained limited, and officials often failed to identify trafficking cases involving non-physical coercion or debt bondage. Only 10 percent of trafficking victims in government shelters worked outside of shelters during the reporting period. The government did not provide legal alternatives to victims who faced retribution or hardship upon return to their home countries. The court dismissed criminal defamation cases against two journalists who reported on trafficking and official complicity; however, fear of retaliation or defamation suits discouraged reporting on trafficking crimes.

### **US State Dept Terrorism Report 2016**

**Overview:** Thailand remained a productive counterterrorism partner, even as the government continued to focus on domestic political challenges as its primary security priority. The high volume of travel through Bangkok's main airport (a regional hub), an available market of illegal goods, and relatively weak oversight of banking make Thailand an attractive facilitation hub for illicit activity. Thai security officials expressed moderate concern about the threat to Thailand from ISIS amidst continued reports of foreign terrorist fighters from neighboring Southeast Asian nations traveling to the Middle East and the continued spread of ISIS-related content on social media. In November, Thai authorities publicly

acknowledged they were investigating Thais who have expressed support for Southeast Asian ISIS-affiliated groups and ISIS propaganda via social media. Security authorities emphasized there was no confirmed evidence of Thai citizens joining ISIS, and denied any evidence of operational linkages between ethno-nationalist Malay Muslim insurgent groups in southern Thailand and international terrorist networks. The Thai Ministry of Foreign Affairs has publicly condemned ISIS violence.

**Legislation, Law Enforcement, and Border Security:** Thailand incorporated terrorism offenses into its penal code in 2003, but most terrorism prosecutions fail to prove the necessary element of specific intent and therefore result in deportation or a conviction on less serious criminal offenses. In some cases, terrorism suspects are not charged with terrorism offenses due to political sensitivities.

Thailand's law enforcement units demonstrated some capacity to detect, deter, and respond to terrorist incidents. Multiple entities – including the Royal Thai Police, Department of Special Investigations, and elements of the Thai military – have law enforcement responsibilities on counterterrorism cases. Interagency cooperation and coordination are sporadic, information sharing is limited, and the delineation of duties between law enforcement and military units with counterterrorism responsibilities was unclear. Annual reshuffles of senior ranks of government and security officials hampered continuity in leadership.

Law enforcement officials with counterterrorism responsibilities received U.S. training through the Bangkok-based joint U.S.-Thai International Law Enforcement Academy (ILEA) and Department of State-funded training programs. Additionally, Department of State Antiterrorism Assistance training programs were designed to enhance Royal Thai Police capacity to improve border security.

Land borders are relatively porous. Thailand continued to use a less reliable locally developed program to screen travelers at major points of entry. Thai immigration systems at border crossings lack real-time connectivity with INTERPOL databases on foreign terrorist fighters and stolen and lost travel documents. All passengers originating in Thailand traveling to or overflying the United States will continue to be vetted through the Secure Flight Program. Beginning in 2016, Thailand began to collect and analyze advanced passenger information and passenger name records on commercial flights. The market in fraudulent documents remained active despite government efforts to crack down on criminal counterfeit networks. Information sharing within the host government and with neighboring countries appears limited.

**Countering the Financing of Terrorism:** Thailand belongs to the Asia/Pacific Group on Money Laundering (APG), a Financial Action Task Force (FATF)-regional style body. Its financial intelligence unit, the Anti-Money Laundering Office (AMLO), is a member of the Egmont Group of Financial Intelligence Units. Thailand's Counterterrorist Financing (CFT) Act, together with subordinate laws, came into effect in early 2013. The AMLO revised the CFT Act in 2015, amending its rules and procedures for notifications of designations in accordance with the UN Security Council ISIL (Da'esh) and al-Qa'ida sanctions regime.

In cases where the Bank of Thailand has discovered unauthorized remittances, the bank has coordinated with the Royal Thai Police to arrest the perpetrators. In 2016, AMLO froze the assets of eight designated persons under the Thai CFT Act.

## International Sanctions

None applicable

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	37
World Governance Indicator – Control of Corruption	41

There are high risks of corruption in most sectors in Thailand. Even though Thailand has the legal framework and a range of institutions to counter corruption, companies may regularly encounter bribery or other corrupt practices. Ousted Prime Minister Yingluck Shinawatra has been put on trial for losses to the state allegedly amounting to at least USD 8 billion stemming from a rice subsidy scheme. The military junta that overthrew the government in 2014 has further entrenched its power and corruption is said to have worsened under the military regime. The Organic Law on Counter Corruption criminalizes corrupt practices of public officials and corporations, including active and passive bribery of public officials. The Penal Code also criminalizes embezzlement and trading in influence. Anti-corruption legislation is inadequately enforced, and facilitation payments and gifts are common in practice.

**Information provided by GAN Integrity.**

### US State Department

Thailand has several laws to combat corruption. The independent National Anti-Corruption Commission (NACC) together with the Office of the Public Sector Anti-Corruption Commission (PACC), coordinates official efforts against corruption and hold broad investigatory authority. In addition to these two agencies, the Office of the Ombudsman, the Constitutional Court, the Election Commission, the Office of the Auditor General, and the National Human Rights Commission have anti-corruption responsibilities. In December 2003, Thailand became a signatory to the U.N. Convention Against Corruption ratifying the convention in March 2011. In April 2005, Thailand endorsed the ADB-OECD Anticorruption Action Plan for Asia and the Pacific, and assigned the Ministry of Justice to implement the Action Plan. The Office of Public Sector Anti-Corruption Commission, under the Ministry of Justice, was established to assist the NACC by investigating cases of lower ranking government officials.

According to some studies, a cultural propensity to forgive bribes as a normal part of doing business and to equate cash payments with finders' fees or consultants' charges, coupled with the low salaries of civil servants, encourages officials to accept illegal inducements. U.S. executives with experience in Thailand often advise new-to market companies that it is far easier to avoid corrupt transactions from the beginning than to stop such practices once a company has been identified as willing to operate in this fashion. American firms that comply with the strict guidelines of the Foreign Corrupt Practices Act (FCPA) are able to compete successfully in Thailand. U.S. businessmen say that publicly affirming the need to comply with the FCPA helps to shield their companies from pressure to pay bribes.

Recent Thai administrations have publicly stated their intention to improve transparency in the evaluation of bids and the awarding of contracts. In 2013, the Public-Private Partnership (PPP) Act passed, replacing the Public Participation in State Undertaking Act of 1992. Effective April 4, the PPP Act requires public projects over \$1 billion to be awarded through a multi-agency committee instead of a single administering agency, a practice which may help reduce corrupt practices. Despite recent improvements, both foreign and Thai companies continue to complain about irregularities in the Thai Customs Department. Increasing media scrutiny of public figures has raised political pressure to curtail favoritism and corruption. However, convictions against public officials on corruption-related charges are rare, and the legal system offers inadequate deterrence against corruption. According to the most recent Transparency International's annual Corruption Perceptions Index, Thailand ranked 88th out of 176 countries in 2012, slipping from 80th a year earlier. Discussions with business people suggest that corruption and the level of kickbacks have increased over the past decade.

The press features frequent allegations of irregularities in public contracts, most notably over the use of public lands, procurement favoritism (e.g., revising requirements so that a preferred company wins over its competitors), and police complicity in a variety of illegal activities. In January 2010, the Thai press widely reported news of the U.S. Department of Justice indictment of a former Thai tourism minister accused of taking bribes from an American couple seeking to do business in Bangkok. In November 2011, the Permanent Secretary in the Ministry of Transportation resigned over allegations of corruption and bribery after large sums of cash were discovered in his home allegedly from transportation contract kickbacks. In 2012 the Deputy Prime Minister and Interior Minister resigned after it was determined that he was involved in an improper land deal. In 2013, the NACC implicated key members of the government, including the Prime Minister and former Commerce Minister, for corruption in management of the controversial rice pledging scheme.

In recent years, the private sector has attempted to take charge to fight corruption through education and advocacy. Since 2010, the Thai Institute of Directors (IOD) has built an anti-corruption coalition of Thailand's largest businesses. Coalition members sign the Collective Action Against Corruption Declaration and pledge to take tangible, measurable steps to proactively reduce corruption-related risks that are verified by third party certification. CIPE equipped IOD and its coalition partners with an array of tools for training and collective action, based on examples from CIPE's programs around the world. Member companies now represent over 15 percent of the Thai economy and more than 1 million employees.

Founded in 2011, the Anti-Corruption Organization of Thailand (ACT) was established with the intent to pressure the government to create laws that can reduce levels of corruption. ACT has 47 member organizations drawn from the private, public and academic sectors. Their signature program is the 'integrity pact.' Drafted by ACT and the Finance Ministry and based on a tool promoted by Transparency International, the pact forbids bribes from signatory members in bidding for government contracts. Member agencies and companies must adhere to strict transparency rules by disclosing bidding information--such as the terms of reference and the cost of the project--easily available to the public.

Corruption, including bribery, raises the costs and risks of doing business. Corruption has a corrosive impact on both market opportunities overseas for U.S. companies and the broader business climate. It also deters international investment, stifles economic growth and development, distorts prices, and undermines the rule of law. It is important for U.S.

companies, irrespective of their size, to assess the business climate in the relevant market in which they will be operating or investing, and to have an effective compliance program or measures to prevent and detect corruption, including foreign bribery. U.S. individuals and firms operating or investing in foreign markets should take the time to become familiar with the relevant anticorruption laws of both the foreign country and the United States in order to properly comply with them, and where appropriate, they should seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U. S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below.

## **Corruption and Government Transparency - Report by Global Security**

### **Political Climate**

In recent years, Thailand's political climate has been particularly marked by tensions that occasionally have turned violent, partly due to cases and accusations of corruption, as well as the issue of governmental legitimacy. In September 2006, the military overthrew the Thai government led by then-Prime Minister Thaksin Shinawatra, on the grounds of abuse of power and corruption. Thaksin's political party, the Thai Rak Thai (TRT), was subsequently dissolved and all leading party members were barred from political office for five years, while Thaksin fled the country to avoid being put on trial for corruption charges. In February 2010, the Supreme Court seized THB 46 billion (USD 1.44 billion) of Thaksin's assets, saying it was accrued through abuse of power. Thaksin continues to live in exile while a warrant on his arrest is still in force. In July 2011, Thaksin's sister Yingluck Shinawatra was elected the first female Prime Minister of Thailand. After the 2011 elections, several countries, such as Japan and Germany, lifted the ban that was imposed on her brother, and, according to a November 2011 article by Reuters, the Thai government has put forward proposals for an amnesty designed to allow Thaksin to return to Thailand without facing corruption charges. Yingluck Shinawatra is the leader of the populist Pheu Thai Party, which won enough seats in Parliament to form a one-party government, thus reducing the influence of the opposition Democratic Party, which had previously been in power.

The main source of corruption in Thailand is known as 'money politics', a term that refers to the flow of money within the political scene. This is confirmed by the Transparency International Global Corruption Barometer 2013, in which public officials and civil servants are perceived by Thai households to be among the most corrupt in Thailand. The report also notes that vote-buying and the purchasing of posts within the bureaucracy is common practice. The general view by the public on the government's anti-corruption measures is somewhat pessimistic, with 25% of household respondents viewing the government's efforts to fight corruption as ineffective. Moreover, 18% of the citizens surveyed reported paying a bribe in the past 12 months. According to a September 2011 article by Bangkok Post, an Abac Poll revealed that 64% of Thais see corruption as an acceptable behaviour if it benefits the country or themselves in one way or another. What is even more alarming is that 70% of the young population share the same opinion.

Thailand has seen some high-level officials brought to court and sentenced for corruption in recent years. Investigating the allegations of corruption in the Thaksin government brought to light many cases, as was reported by the National Anti-Corruption Commission (NACC), which took several of them to court in 2011. According to a July 2011 article by New Mandala, the years in which Thailand has witnessed high levels of corruption were during former PM Thaksin Shinawatra's reign, where his own businesses benefited from his privileged position in the country at the time. Nevertheless, the US Department of State 2013 notes that the prosecution of high-level officials for corruption still remains rare and that Thailand is lacking an adequate legal system to fight corruption in the higher echelons of the government. A September 2011 article by The Nation reports that a large number of Thais, the newly elected PM, politicians, and leading figures in the business sector joined in a rally against corruption in Thailand. The rally was led by the stock exchange in Thailand and 28 private organisations which had formed the Coalition Against Corruption. Prime Minister Yingluck Shinawatra vowed before the rally not to abuse power for her own benefit and to build social morals to prevent corruption. Corruption protests continued throughout 2012 and well into 2013. Protestors are demanding the Prime Minister and her administration step down, alleging that her government is corrupt and that former Prime Minister Thaksin is still interfering with Thai politics through the power of his sister, as reported by an August 2013 article by The Wall Street Journal. According to a news article published by Bangkok Post in August 2012, a survey conducted by the Research Centre at Bangkok University, Bangkok Poll, revealed a high number of concerns about possible corruption in the government's fiscal budget spending.

### **Business and Corruption**

The global financial crisis, coupled with the effects of political tensions, has slowed economic growth in Thailand. While 2010 Thai economic figures show the country emerging from recession, businesses continue to worry about the political prospects of the country, causing foreign investors to divert their interest from Thailand, as reported in a February 2011 article by BBC News Business. Moreover, poorly enforced laws and unclear policies caused by political instability remain a source of frustration to the business sector. Khun Smith Jingkaojai, a former Morgan Stanley banker, explains in the April 2011 Business Report Thailand that political unrest lies behind the reasons why Thailand's economy is unable to adequately engage itself in the capital markets. According to the World Economic Forum's Global Competitiveness Report 2013-2014, companies also consider corruption and government instability, as well as policy instability, to constitute a substantial barrier to doing business in Thailand. This is supported by the US Department of State 2013, which notes that bribery and facilitation payments are considered a normal part of doing business in Thailand. Nevertheless, the report also points out that companies that refrain from engaging in bribery from the start are still able to compete with success in Thailand. Bribery is particularly concentrated in a few government sectors in charge of large financial transactions: the Land Department, Tax and Customs Department, the Transport Department, and the Police Department.

Corruption is reportedly a significant problem in Thailand, both within the private and public sectors, but it is mainly found at the intersection between business and government, where illicit payments are widespread. According to the US Department of State 2013, bribes are considered a routine procedure for doing business in Thailand. Bribes are generally considered a 'fee' or 'consultants' charges' and is, therefore, considered a normal part of doing business. Those with political connections and administrative authority have been able to create possibilities for corruption, particularly with regard to securing monopolies,

protecting against foreign competition, and giving protection to illegal companies. These practices secure the flow of money into politics and have resulted in a high degree of interconnectedness between the business sector and the political system, as reported by a 2012 research paper, Political De-development, corruption and governance in Thailand. The close personal connections between politicians, civil servants, and businesspeople, reach from the heights of the central government down to local government bodies. Generally, the board memberships of Thai corporations are still characterised by an emphasis on personal connections over professional competence. Despite civil servants being legally barred from serving on the boards of private companies, high-ranking bureaucrats are commonly found on the boards of Thai companies, which is indicative of Thailand's patronage system and its problems concerning law enforcement.

Public procurement is an area where the risk of corruption is particularly pronounced. The then National Counter Corruption Commission (now renamed National Anti-Corruption Commission) estimated that up to 30% of the government procurement budget vanishes due to corrupt practices. However, the US Department of State 2013 reports that the government has publicly pledged to improve transparency in the bidding process and in the awarding of contracts. The report further notes that recent crackdown on corrupt public officials has increased the pressure to curtail favouritism and corruption. Nonetheless, Deputy Secretary of the Ministry of Finance Saowanee states that 5% of a project's value is often paid in kickbacks by private companies that are awarded contracts on state projects. She further states that businessmen working with the state claim that facilitation payments and corruption is common among the police, customs officials, and politicians. According to the Bertelsmann Foundation 2012, an antitrust policy was set out under the Trade Competition Act 1999 (TCA) to reduce monopolies. Despite the fact that the TCA is considered rather advanced, it is reported that several high-ranking individuals frequently receive exceptions from the Act. In order to maintain a fair and a competitive public procurement market, the competition law has to be further developed and enforcement improved. In order to best reduce the risk of extortion and demands for bribes in the procurement process, foreign investors considering bidding on public tenders are advised to use a specialised due diligence tool on public procurement. Moreover, companies are generally recommended to develop, implement, and strengthen integrity systems and to conduct extensive due diligence when considering and already doing business in Thailand.

### **Regulatory Environment**

Thailand is generally considered to be a business-friendly economy and has for several years been able to offer favourable investment incentives to foreign companies, such as tax exemptions, especially if the investment includes new technology or is located in a less developed area, and good investment protection compared to many other countries in the region. Thailand has several bilateral free trade agreements, including agreements with Australia, New Zealand and Peru. Foreign investment in Thailand must adhere to the Foreign Business Act 1999 unless exempted by a bilateral treaty or agreement. The Foreign Business Act lists a number of sectors in which non-Thais are not allowed to invest. Foreign ownership is limited to 49% in most service sectors, but majority foreign ownership is permitted in the manufacturing sector. According to the US Department of State 2013, non-Thai companies and citizens are only allowed to own land in government-approved industrial estates. Consequently, many foreign companies opt for long-term land leases instead of buying land.

Enforcing a contract through the Thai judicial system is relatively inexpensive, but time-consuming. However, Thailand's business regulatory environment has, in general and in relation to other countries, significantly improved since 2007-2008, particularly in the areas of registering property, paying taxes, and trading across borders. Still, however, the World Economic Forum Global Competitiveness Report 2013-2014 describes the burden of government regulation and inefficient bureaucracy as a competitive disadvantage for doing business in Thailand. The enforcement of bankruptcy and reconstructing judgments has also been eased since 2004. A reform of the Civil Procedure Code on Execution of Judgments has limited debtors' use of frivolous appeals as a means to stop the enforcement of those judgments. Thailand's 30 foreign chambers of commerce have criticised the heavy governmental bureaucracy, hinders effective reform initiatives. Criticism from the chambers is also directed towards the political instability of the country and the lack of executive power, which has made it impossible for the chambers representing thousands of companies to keep track of important governmental policy formulations. However, that criticism has only strengthened the resistance and entrenchment of Thai officials. The same criticisms have been adopted by Mrs Saowanee, Deputy Permanent Secretary in the Ministry of Finance. She declared that these were the dominant reasons why corruption persists.

According to the World Bank & IFC Doing Business 2013, starting a company in Thailand takes an average of four procedures and 29 days at a cost of 6.7% of GNI per capita, which is relatively easy and inexpensive compared to the East Asia & Pacific region's corresponding averages. Despite this relative ease, the US Department of State 2013 recommends that companies seek qualified legal advice when entering the Thai market because Thai business regulations are governed by criminal law rather than civil law. Furthermore, one should note that Thailand does not recognise decisions by foreign courts. As a means to remedy the inefficiencies of the court system, companies may set up their own arbitration agreements, according to the US Department of State 2013. Thailand has signed, but not ratified, the Washington Convention 1965. Thailand is also a member of the New York Convention 1958, and has enacted its own rules and procedures for conciliation and arbitration. Contact the Arbitration Institute under the Ministry of Justice for information on these rules and procedures. Access the Lexadin World Law Guide for a collection of legislation in Thailand.

### Section 3 - Economy

With a well-developed infrastructure, a free-enterprise economy, and generally pro-investment policies, Thailand historically has had a strong economy, but it experienced slow growth in 2013-15 as a result of domestic political turmoil and sluggish global demand, which curbed Thailand's traditionally strong exports - mostly electronics, agricultural commodities, automobiles and parts, and processed foods. Following the May 2014 coup d'etat, tourism decreased 6-7% but is beginning to recover. The Thai baht depreciated more than 8% during 2015.

Thailand faces labour shortages, and has attracted an estimated 2-4 million migrant workers from neighbouring countries. The Thai Government in 2013 implemented a nationwide 300 baht (roughly \$10) per day minimum wage policy and deployed new tax reforms designed to lower rates on middle-income earners. The household debt to GDP ratio is over 80%.

#### **Agriculture - products:**

rice, cassava (manioc, tapioca), rubber, corn, sugarcane, coconuts, palm oil, pineapple, livestock, fish products

#### **Industries:**

tourism, textiles and garments, agricultural processing, beverages, tobacco, cement, light manufacturing such as jewellery and electric appliances, computers and parts, integrated circuits, furniture, plastics, automobiles and automotive parts, agricultural

#### **Exports - commodities:**

automobiles and parts, computer and parts, jewellery and precious stones, polymers of ethylene in primary forms, refined fuels, electronic integrated circuits, chemical products, rice, fish products, rubber products, sugar, cassava, poultry, machinery and pa

#### **Exports - partners:**

US 11.2%, China 11.1%, Japan 9.4%, Hong Kong 5.5%, Malaysia 4.8%, Australia 4.6%, Vietnam 4.2%, Singapore 4.1% (2015)

#### **Imports - commodities:**

machinery and parts, crude oil, electrical machinery and parts, chemicals, iron & steel and product, electronic integrated circuit, automobile's parts, jewellery including silver bars and gold, computers and parts, electrical household appliances, soybean,

#### **Imports - partners:**

China 20.3%, Japan 15.4%, US 6.9%, Malaysia 5.9%, UAE 4% (2015)

### Banking

In addition to more than 30 commercial banks, both foreign and domestic, the public financial sector includes several "specialized" government banks, namely the Government Savings Bank for small savings deposits, the Bank for Agriculture and Agricultural Cooperatives for farm credits, the Government Housing bank for middle and low income

housing mortgages, the Industrial Finance Corporation of Thailand for industrial development projects, and the Export Import Bank for importers and exporters.

In the years before the 1997-98 financial crisis, the Thai financial sector grew rapidly, but it was poorly regulated and mismanaged. However, with the cooperation of the IMF and other multilateral and bilateral donors, the government has done a lot of work to bring financial sector practices in line with international standards and to strengthen the operations and balance sheets of Thai banks. Accounting, auditing standards, and corporate governance have been upgraded. Also regulatory and corporate governance requirements for listed companies have been strengthened. In the banking sector, the Bank of Thailand, with multilateral and bilateral assistance, has improved its examination and supervision functions, and banks are required to meet BIS capitalization standards. As part of its efforts to create fewer, sounder financial institutions, The Bank of Thailand has required all finance companies and credit fanciers to either merge with another bank, convert to a retail or commercial bank, or close operations.

The Thai banking sector is profitable, strong, well-capitalized, and has sound risk management. In 2010, the banking system recorded ten consecutive years of profit. Major rating agencies have recently revised upward the outlook of the Thai banking sector. After peaking at 47 percent of total lending in May 1999 from the financial crisis, net non-performing loans slowly declined to stand at 2.28 percent of total loans in September 2010. Total assets of the country's largest six banks stood at 7.9 trillion Thai baht (approximately US\$247 billion) or 82 percent of GDP as of October 2010.

## Stock Exchange

In 2002, Thailand established the National Corporate Governance Committee (NCGC), chaired by the Prime Minister, to implement international-standard corporate governance policies. In conjunction with Thai Rating and Information Services Co., Ltd. (TRIS), the Stock Exchange of Thailand (SET) and the Thai Securities and Exchange Commission (SEC) began rating companies on their corporate governance practices.

Foreign investors are not restricted from borrowing on the local market, but there are a number of regulations that affect foreign portfolio investment. Thailand maintains regulatory maximum foreign ownership limits, and shares of listed companies are traded on both a domestic and alien (or foreign) board to enable authorities to track foreign ownership.

There are 3 distinct parts of the securities market: the equity market; the bond market; and the futures market. All are regulated and supervised by the SEC under the SEA and the Derivatives Act (DA).

### Executive Summary

Thailand, the second largest economy in ASEAN after Indonesia, is an upper middle-income country with pro-investment policies and a well-developed and growing infrastructure platform. In May 2014, Thailand's democratically elected government was overthrown in a bloodless military coup, and the military continues to rule over an interim government, interim legislature, and other entities tasked with developing and implementing reforms. Despite the upheaval, Thailand continues to maintain an open, market-oriented economy and encourages foreign direct investment as a means of promoting economic development, employment, and technology transfer. In recent decades, Thailand has been a major destination for foreign direct investment, and hundreds of U.S. companies have invested in Thailand successfully. Thailand continues to welcome investment from all countries and seeks to avoid dependence on any one country as a source of investment. Economic recovery and growth will be important to maintaining investor confidence. Delays in infrastructure spending and increased concerns about Thailand's regional competitiveness continue to weigh on growth forecasts, but investors remain cautiously optimistic that the Thai economy will retain its well-known resiliency and resume more robust growth.

Reforms implemented after the 1997-98 Asian Financial Crisis were designed to foster a more competitive and transparent climate for foreign investors. The Foreign Business Act (FBA) of 1999 continues to govern most investment activity by non-Thai nationals. Many U.S. businesses also enjoy investment benefits through the U.S.-Thailand Treaty of Amity and Economic Relations (AER), originally signed in 1833. The Treaty allows U.S. citizens and businesses incorporated in the United States or in Thailand that are majority-owned by U.S. citizens to engage in business on the same basis as Thai companies (national treatment) and exempts them from most restrictions on foreign investment imposed by the Foreign Business Act, although some types of business remain excluded under the Treaty. Notwithstanding their Treaty rights, many U.S. investors also choose to form joint ventures with Thai partners who hold a majority stake in the company, leveraging their partner's knowledge of the Thai economy and local regulations.

Consistent and predictable enforcement of government regulations remains problematic for investors in Thailand. Gratuity payments to civil servants responsible for regulatory oversight and enforcement remain a common and inefficient practice.

The Thai government maintains a regulatory framework that broadly encourages investment and largely avoids market-distorting support for specific sectors. Government policies generally do not restrict the free flow of financial resources to support product and factor markets, and credit is generally allocated on market terms rather than by "directed lending." Legal, regulatory, and accounting systems are largely transparent, with the Thai government investing considerable effort to bring these systems in line with international norms and achieving significant progress.

The Board of Investment (BOI) is Thailand's central investment promotion authority and offers investment incentives uniformly to both qualified domestic and foreign investors through clearly articulated application procedures. BOI in 2014 announced a new strategy to promote foreign direct investment over a seven-year period from 2015-2022. The strategy is intended to improve Thailand's competitiveness, reduce its reliance on low cost labor, and focus on high technology to support the government's efforts to build a digital economy. The

new strategy awards privileges based on types of projects, emphasizing those that support the digital economy, such as high technology, research and development, design, and other specific industries in the same designated sectors. As part of its strategic development plan, the government is developing ten Special Economic Zones, which will offer additional tax and non-tax benefits to investors, and building industrial clusters around the country to attract investment, decentralize development, and create opportunities for Small- and Medium-sized Enterprises (SMEs). The industrial clusters will also offer incentives and privileges for investors in the following sectors:

- Automotive and Parts;
- Electrical Appliances, Electronics and Telecommunication Equipment;
- Petrochemical and Eco-Friendly Chemical Product;
- Agro-processing;
- Textile and Garment.

Detailed information on these incentives can be found on the website of the Board of Investment: [www.boi.go.th](http://www.boi.go.th)

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	76 of 175	<a href="http://www.transparency.org/cpi2015#results-table">http://www.transparency.org/cpi2015#results-table</a>
World Bank's Doing Business Report "Ease of Doing Business"	2015	49 of 189	<a href="http://www.doingbusiness.org/rankings">http://www.doingbusiness.org/rankings</a>
Global Innovation Index	2015	55 of 143	<a href="http://www.globalinnovationindex.org/content/page/data-analysis">http://www.globalinnovationindex.org/content/page/data-analysis</a>
U.S. FDI in partner country (\$M USD, stock positions)	2014	\$11,729	<a href="http://www.BEA.gov">http://www.BEA.gov</a>
World Bank GNI per capita	2014	\$5,780	<a href="http://www.data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://www.data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

## 1. Openness To, and Restrictions Upon, Foreign Investment

### Attitude toward Foreign Direct Investment

Despite the May 2014 coup and continued rule by an interim military-led government, Thailand continues to maintain an open market-oriented economy and encourages foreign direct investment as a means of promoting economic development, employment, and technology transfer. In recent decades, Thailand has been a major destination for foreign direct investment, and hundreds of U.S. companies have successfully invested in Thailand. Thailand continues to welcome investment from all countries and seeks to avoid dependence on any one country as a source of investment. Economic growth has been

slow over the past couple years, but investors remain cautiously optimistic that the Thai economy will retain its well-known resiliency and resume growth. Many companies, however, are also carefully considering market factors, including the country's declining competitiveness, when making future investment decisions.

In the wake of the 1997-98 Asian Financial Crisis, Thailand embarked on an International Monetary Fund (IMF)-sponsored economic reform program designed to foster a more competitive and transparent climate for foreign investors. Legislation in 1999 established a new bankruptcy court, reformed bankruptcy and foreclosure procedures, and allowed creditors to pursue payment from loan guarantors. Other 1999 reforms include amendments to the Land Code, Condominium Act, and the Property Leasing Act, all of which liberalized restrictions on property ownership by non-Thais, and passage of the Foreign Business Act (FBA).

Foreign companies are free to open and maintain bank accounts in foreign currency. However, Thailand retains, to some extent, investment control, as under certain circumstances, foreign investors that were previously granted national treatment are subject to some reservations, particularly in the service sector.

#### Other Investment Policy Reviews

The World Trade Organization conducted a Trade Policy Review of Thailand in November 2015. Information is available on the WTO website:

[https://www.wto.org/english/tratop\\_e/tpr\\_e/tp426\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tp426_e.htm)

#### Laws/Regulations on Foreign Direct Investment

The Foreign Business Act (FBA) of 1999 continues to govern most investment activity by non-Thai nationals. The FBA opened some additional business sectors to foreign investment; however, foreign investment in most service sectors is limited to 49 percent ownership. Other key laws governing foreign investment are the Alien Employment Act B.E. 2521 (1978) and the Investment Promotion Act B.E. 2520 (1977).

Many U.S. businesses enjoy investment benefits through the U.S.-Thailand Treaty of Amity and Economic Relations (AER), originally signed in 1833. The 1966 iteration of the Treaty allows U.S. citizens and businesses incorporated in the United States, or in Thailand that are majority-owned by U.S. citizens, to engage in business on the same basis as Thai companies (national treatment), exempting them from most restrictions on foreign investment imposed by the Foreign Business Act.

The Financial Institutions Business Act, passed at the end of 2007, unified the legal framework and strengthened the Bank of Thailand's (the country's central bank) supervision and enforcement powers. The Act gave power to the Bank of Thailand to raise foreign ownership limits for existing local banks from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance to authorize foreign ownership above 49 percent if recommended by the central bank. Further details are available on the Bank of Thailand website:

[https://www.bot.or.th/English/AboutBOT/LawsAndRegulations/SiteAssets/Law\\_E24\\_Institution\\_Sep2011.pdf](https://www.bot.or.th/English/AboutBOT/LawsAndRegulations/SiteAssets/Law_E24_Institution_Sep2011.pdf).

Apart from acquiring shares of existing local banks, foreign banks can enter the Thai banking system by obtaining new licenses (from the central bank and the Ministry of Finance).

The 2008 Life Insurance Act and the 2008 Non-Life Insurance Act apply a 25 percent cap on foreign ownership of insurance companies and on foreign boards of directors. However, in January 2016 the Office of the Insurance Commission (OIC, the primary regulator) provided notification that any Thai insurance company wishing to have one or more foreigners holding more than 25 percent (but no more than 49 percent) of its total voting shares, or to have foreigners comprising more than a quarter (but less than half) of its total directors, may apply for approval by the OIC for both life and non-life insurance companies. Meanwhile, any foreign national who wishes to hold more than 10 percent of the voting shares in an insurance company must seek approval from the OIC. With approval of the OIC, a foreign national can acquire up to 49 percent of the voting shares. Any foreign shareholder holding more than ten percent of the voting shares prior to the effective date of the notification is grandfathered in and may maintain their current shareholding, but must obtain OIC approval to further increase shareholding. The OIC's latest notification (in Thai language only) is posted on the OIC's website:

<http://www1.oic.or.th/upload/lifeinsurance/download/1980-6453.pdf>.

In addition, the Finance Minister, on the recommendation of the OIC, has discretion to permit greater than 49 percent foreign ownership and a majority of foreign directors, only where the operation of the insurance company may cause loss to insured parties or to the public.

#### *Business Registration*

Any entity wishing to do business in Thailand must register with the Department of Business Development at the Ministry of Commerce, which generally takes three to six months to complete. Online business registration is only minimally functional and the forms are in Thai; therefore, foreigners typically hire a law firm or consulting firm to handle their applications. Firms engaging in production activities need to register with the Ministries of Industry and Labor and Social Welfare. If the entity falls under the definition of non-Thai national, as defined by the Foreign Business Act, it must obtain a foreign business license, which must be approved by the Council of Ministers (Cabinet) or Director-General of Department of Business Development at the Ministry of Commerce, depending on the applicable category of restricted business.

Effective February 11, 2016, the Department Business Development (DBD) of the Ministry of Commerce removed four categories from the Annex 3 list of the Foreign Business Act: commercial banking, bank representative offices, life insurance, and property and casualty insurance. Businesses in these sectors will no longer have to seek operating licenses from the DBD, as they are subject to specific banking laws and regulations of the Bank of Thailand and the Office of Insurance Commission, respectively. The aim is to reduce the number of redundant laws and regulations and to promote foreign businesses in Thailand.

Americans planning to invest in Thailand are advised to obtain qualified legal advice. Such advice is particularly important given that Thai business regulations are governed predominantly by criminal, not civil, law. While foreigners are rarely jailed for improper business activities, violation of Thai business regulations can carry heavy criminal penalties. Thailand has an independent judiciary and government authorities are generally not permitted to interfere in the court system once a case is in process.

For more information, visit: <http://export.gov/thailand/index.asp>

Below are the main types of business structures that are set up by American companies in Thailand:

Partnership: Thai and Western concepts of partnership are broadly similar. Thailand provides for three general types of partnerships: unregistered ordinary partnerships, registered ordinary partnerships and limited partnerships.

Limited companies: There are two types of limited companies. Private companies are governed by the Civil and Commercial Code, while public companies are governed by the Public Company Act.

Private Limited Companies in Thailand are similar to those of Western corporations. A private limited company is formed through a process which leads to the registration of a Memorandum of Association (Articles of Incorporation) and Articles of Association (By-laws), as its constitutive documents. A minimum of seven shareholders is required at all times. A private limited company may be wholly owned by aliens; however, in those activities reserved for Thai nationals, foreign participation is generally allowed up to a maximum of 49 percent. The registration fee for a private limited company is 5,500 baht per million baht of capital.

Public Limited Companies registered in Thailand may, subject to compliance with the prospectus, approval, and other requirements, offer shares, debentures and warrants to the public, and may apply to have their securities listed on the Stock Exchange of Thailand (SET). A minimum of 15 promoters is required for the formation and registration of the memorandum of association of a public limited company, and the promoters must hold their shares for a minimum of two years before they can be transferred. The Board of Directors of a public limited company must have a minimum of five members, at least half of whom are Thai nationals. The registration fee is 2,000 baht per million baht of capital for a public limited company.

Joint Venture: A joint venture may be described in accordance with general practice as a group of persons (natural and/or juristic) entering into an agreement in order to carry on a business together. It has not yet been recognized as a legal entity under the Civil and Commercial Code. However, income from the joint venture is subject to corporate taxation under the Revenue Code, which classifies it as a single entity.

Representative Office: A representative office is limited to engaging in non-profit activities. In order to form a representative office, at least one of the following purposes would need to be sought for the purposes of limited "non-trading" activities:

- To search for a source of goods or services in Thailand for the headquarters overseas
- To check the quality and quantity of a product ordered by the headquarters overseas
- To give advice to headquarters about goods to order
- To supply information about headquarters' products to customers in Thailand
- To report economic movement in Thailand to headquarters

Steps to Establishing a Company

- Step 1: Corporate Name Reservation

The name must be reserved, and must not be the same as or similar to that of other companies. Certain names are not allowed, as detailed in the name reservation guidelines issued by the Business Development Office of the Ministry of Commerce. The approved corporate name is valid for 30 days. No extension is allowed.

- Step 2: Filing of Memorandum of Association

A Memorandum of Association to be filed with the Business Development Office must include the name of the company that has been successfully reserved, the province where the company will be located, its business objectives, the capital to be registered, and the names of the seven promoters. The capital information must include the number of shares and the par value. Although there are no minimum capital requirements, the amount of capital should be respectable and adequate for the intended business operation.

- Step 3: Convene a Statutory Meeting

Once the share structure has been defined, a statutory meeting is called, during which the articles of incorporation and bylaws are approved, the Board of Directors is elected, and an auditor appointed. A minimum of 25 percent of the par value of each subscribed share must be paid.

- Step 4: Registration

Within three months of the date of the Statutory Meeting, the directors must submit an application to establish the company. Company registration fees are 500 baht per 100,000 baht of registered capital. The minimum fee is 5,000 baht; the maximum is 250,000 baht.

- Step 5: Tax Registration

Businesses liable for income tax must obtain a tax I.D. card and number for the company from the Revenue Department within 60 days of incorporation or the start of operations. Business operators earning more than 600,000 baht per annum must register for VAT within 30 days of the date they reach 600,000 baht in sales.

For a private or public limited company, if 50 percent or more of the company's shares are owned by a foreigner, the company will be considered foreign and subject to the Foreign Business Act, which prohibits the operation of certain business activities unless approvals are obtained from the Ministry of Commerce (MOC). Foreign investors usually carry on business through a limited company, branch or representative office.

The most frequently utilized type of legal entity in Thailand is the limited-company, which is similar in structure to the Limited Liability Company (LLC) in the United States. A limited-company is owned by a minimum of three shareholders and managed by at least one director. It has the advantage of being a stand-alone company under Thai law.

As for company registration in Thailand, it is important to be aware that at least 51 percent of a company's shares must be held by Thai citizens. The remaining shares may be held by foreigners. In spite of this, it is still possible for a foreigner to maintain controlling interest in a company by issuing two separate classes of shares: ordinary and preferred. Shareholders with ordinary shares have more voting rights in the company. At least one director is chosen

by the shareholders. Only the director(s) is authorized to sign anything on behalf of the company, and individual shareholders are only liable for their percentage of shares.

A company is required to have registered capital of two million Thai baht per foreign employee in order to obtain work permits. For example, a company with two non-Thai employees is required to have a registered capital of at least four million Thai baht. Foreign employees must enter on a non-immigrant visa and then submit work permit applications directly to the Department of Labor. Application processing takes approximately one week.

For more information on Thailand visas, please refer to the website of Ministry of Foreign Affairs: [http://www.mfa.go.th/main/en/services/4908/15388-Non-Immigrant-Visa-%22B%22-\(for-Business-and.html](http://www.mfa.go.th/main/en/services/4908/15388-Non-Immigrant-Visa-%22B%22-(for-Business-and.html)

According to the Institute for Small and Medium Enterprises Development of the Ministry of Industry, small and medium enterprises are defined as follows:

- Production and Service Sectors:
  - Medium: fixed assets not over 200 million Thai Baht; fewer than 200 employees
  - Small: fixed assets not over 50 million Thai Baht; fewer than 200 employees
- Trading Sector:
  - Medium: Wholesale: fixed assets not over 100 million Thai Baht; fewer than 50 employees  
Retail: value of fixed assets not over 60 million Thai Baht; fewer than 50 employees
  - Small:  
Wholesale: fixed assets not over 50 million Thai Baht; fewer than 25 employees  
Retail: fixed assets not over 30 million Thai Baht; fewer than 15 employees

Thai government agencies have incentives to only promote SMEs with Thai majority shareholding.

#### Industrial Promotion

The Thailand Board of Investment (BOI) introduced a new seven-year investment promotion policy beginning in 2015. The new BOI policy no longer supports activities that have low added value, are labor intensive, or involve low technology and/or uncomplicated production processes. The new BOI strategy focuses on 1) investment that helps enhance national competitiveness by encouraging research and development (R&D), innovation, and value creation in the agricultural, industrial, and services sectors, and SMEs; 2) activities that are environmentally friendly, save energy, or use alternative energy; 3) industrial clusters to create investment concentration in accordance with regional potential and strengthen value chains; 4) investment in border provinces in southern Thailand to help develop the local economy, supporting efforts to enhance security in the area; 5) the development of planned special economic zones, especially in border areas, to create economic connectivity with neighboring countries, and to prepare for entry into the ASEAN Economic Community; and 6) the promotion of Thai overseas investment.

Activity-based incentives vary and are categorized from A1 to B2. The activities in the A1 field are those that the country wants to promote the most, and will receive the highest incentives, such as an eight-year corporate income tax exemption without a cap, exemption of import duty on machinery and raw materials, and other non-tax incentives.

A1 activities include electricity generation, creative product design, electronics design, and R&D. Merit-based incentives are meant to encourage investment that benefits the country. A 200 percent additional cap on corporate income tax incentives will be granted to a company that has a high ratio of expenditure on R&D.

#### Limits on Foreign Control and Right to Private Ownership and Establishment

According to the Foreign Business Act 1999 (FBA), certain types of business activities are reserved for Thai nationals only. Foreign investment in those businesses must comprise less than 50 percent of share capital, unless specially permitted or otherwise exempt.

The following three lists, attached as annexes to the FBA, detail restricted businesses for foreigners:

List 1. This contains activities prohibited to non-nationals, including:

- Newspaper or radio broadcasting stations and radio and television station businesses
- Rice farming and growing plantations or crops
- Livestock farming
- Forestry and timber processing from a natural forest
- Fishery in Thai territorial waters and specific economic zones
- Extraction of Thai medicinal herbs
- Trading and auctioning of antique objects or objects of historical value from Thailand
- Making or casting of Buddha images and monk alms bowls
- Land trading

List 2. This contains activities related to national safety or security, or those which affect arts and culture, tradition, folk handicrafts, or natural resources and the environment. Among other things, they include:

- The production, sale and maintenance of firearms and armaments.
- Domestic transportation by land, water, and air.
- Trading of Thai antiques or art objects.
- Mining, including rock blasting and rock crushing.
- Timber processing for production of furniture and utensils.

Remark: A foreign majority-owned company can engage in List 2 activities if Thai nationals or legal persons hold not less than 40 percent of the total shares and the number of Thai directors is not less than two-fifths of the total number of directors.

Exceptions are those which receive:

- Permission from the Minister of Commerce with approval by the Cabinet (if there is a reasonable cause, the Minister, with the approval of the Cabinet, may reduce the Thai shareholding requirement, which cannot be less than 25 percent of the total shares)
- Investment promotion from the Board of Investment
- Authorization by the Industrial Estate Authority of Thailand
- Permission under a treaty to which Thailand is bound

List 3. This contains activities in which there are economic protections for Thai nationals. Among other things, they include:

- Accounting, legal, architectural, or engineering services
- Retail and wholesale
- Advertising businesses
- Hotels
- Guided touring
- Selling food or beverages
- Any kind of service business

There are exceptions to List 3 for those which receive the following:

- Permission from the Director-General of the Department of Business Development at the Ministry of Commerce, with approval by the Foreign Business Committee, on obtaining a Foreign Business License.
- Investment promotion from the Board of Investment or from the Industrial Estate Authority of Thailand, on obtaining a Foreign Business Certificate from the Director-General of the Department of Business Development at the Ministry of Commerce.
- Protection under a treaty or obligation to which Thailand is bound, including: US Treaty of Amity and Economic Relations; Thai-Australia Free Trade Agreement (TAFTA);
- Japan-Thailand Economic Partnership Agreement (JTEPA); and ASEAN Framework Agreement on Services (AFAS), on obtaining a Foreign Business Certificate from the Director-General of the Department of Business Development at the Ministry of Commerce.

Further restrictions on foreign ownership in specific sectors, such as telecommunications, banking, or insurance, are regulated in specific laws pertaining to these sectors, such as

the Telecommunications Business Act (2006), the Financial Institution Business Act (2008), the Life Insurance Act (1992), and the Non-Life Insurance Act (1992).

The U.S.-Thai Treaty of Amity and Economic Relations of 1833, commonly referred to as the Treaty of Amity, is a special economic relationship between the United States of America and the Kingdom of Thailand that gives special rights and benefits to U.S. citizens who wish to establish their businesses in Thailand. The Treaty of Amity was amended in 1966 and provides two major benefits:

- American companies are permitted to maintain a majority shareholding or to wholly own its company, branch office, or representative office located in Thailand.
- American companies receive national treatment, meaning U.S. firms may engage in business on the same basis as Thai companies, and are exempt from most of the restrictions on foreign investment imposed by the Alien Business Law of 1972.

Despite the Treaty of Amity, there are still certain restrictions on U.S. investment as follows:

- Owning land
- Engaging in inland transportation and communication industries
- Engaging in fiduciary functions
- Engaging in banking involving depository functions
- Engaging in domestic trade in indigenous agricultural products
- Exploiting land or other natural resources

The U.S. Commercial Service, U.S. Embassy Bangkok, is responsible for issuing a certification letter to confirm that the applicant is qualified to apply for protection under the Treaty of Amity. The applicant must first obtain documents verifying that the company has been registered in compliance with Thai Law. Upon receipt of the required documents, the U.S. Commercial Service office will then certify to the Thai Department of Commercial Registration in the Ministry of Commerce that the applicant is seeking to register an American-owned and managed company or that the applicant is an American citizen and is therefore entitled to national treatment under the provisions of the Treaty. For more information on how to apply for protection under the Treaty of Amity, please e-mail: [ktantisa@trade.gov](mailto:ktantisa@trade.gov)

#### Privatization Program

With the aim of encouraging capital inflows and relieving resource constraints in many key sectors of the economy, the government of Thaksin Shinawatra embarked on a privatization program for state-owned economic enterprises (SOEs) and state monopolies. However, most privatization plans have remained on hold since 2006. Other than the Petroleum Authority of Thailand (PTT), the Airport Authority of Thailand (later renamed Airports of Thailand (AOT)), and the Mass Communication Organization of Thailand (MCOT), few significant privatizations have occurred. The 1999 State Enterprise Corporatization Act provides the framework for the conversion of SOEs into stock companies, and corporatization is viewed as an intermediate step toward eventual privatization. (Note: "Corporatization" describes the process by which an SOE adjusts its internal structure to resemble a publicly-traded enterprise; "privatization"

means that a majority of the SOE's shares is sold to the public, and "partial privatization" refers to a situation in which less than half of a company's shares are sold to the public.) Foreign investors are allowed to participate in privatization, but restrictions are applied in certain sectors, regulated by the FBA and the Act on Standards Qualifications for Directors and Employees of State Enterprises of 1975 and its series of amendments.

The new 15-member State Enterprises Policy Commission, or "superboard," was established in 2014 to oversee reform of the country's 55 SOEs. In March 2015, the superboard approved, in principle, the establishment of a holding firm to supervise 12 SOEs, which have been partially equitized and listed on the Stock Exchange of Thailand, while the State Enterprise Policy Office will be retained to supervise SOEs that have been established by specific laws, including the Electricity Generating Authority of Thailand, the Metropolitan Electricity Authority, and the Provincial Electricity Authority. The superboard is now in the process of pushing through a new law that will reform these SOEs and ensure transparent management decisions; however, privatization is not part of the process.

#### Screening of FDI

Thailand does not have any government agency to screen, review, or approve foreign direct investment. The Board of Investment (BOI), which operates under the Ministry of Industry, is the principal government agency for encouraging investment in the country. Foreign investment in Thailand does not require approval from the BOI, provided the necessary operating permits have been obtained.

The BOI appoints a subcommittee, comprised of 15 members, including the BOI Secretary General as Chairman; BOI senior executives; and representatives from the public and private sectors. The subcommittee is responsible for approving investment projects with an investment value between 200 and 750 million baht (USD 6.1 and USD 23 million) and export-led projects with over 750 million baht (USD 23 million) in investment value. The subcommittee is also responsible for screening projects with an investment value of over 750 million baht (USD 23 million) and passes them on to the BOI Board for further consideration and approval.

#### Competition Law

The Thailand Trade Competition Act (hereafter called "the Competition Act") contains provisions regarding price fixing and monopolies. According to the law, the "Competition Commission," which includes the Minister of Commerce as Chairman, other Government officials, and no more than twelve other qualified persons as members, is responsible for the enforcement of the Act. They hold office for a term of two years and not more than two consecutive terms in case they are re-appointed. The Commission has the power to consider complaints, to prescribe rules related to dominant positions, to consider applications for permission to merge businesses, or to initiate the joint reduction or restriction of competition to give orders for suspension, cessation, correction, or variation of activities by business operations.

Anti-competitive behaviors under the Act have been defined and divided into specific categories. Section 25 prohibits businesses with dominant positions to abuse their market power. A business operator with market domination is defined under the Competition Act as one or more business operators in the market of any goods or services who have the market share and sales volume above the level that is prescribed by the Commission.

Section 26 prohibits any merger that may create monopolistic power or reduce competition, unless it obtains authorization from the Commission granting that it is a business necessity and beneficial to the economy.

Section 27 prohibits a business operator from conspiring, colluding, or collaborating with another business operator in order to create monopolistic power or reduce competition. In the case where it is reasonably necessary in the business and does no serious harm to the economy, the business operators shall submit an application for permission to the Commission. The Commission has already approved forms, rules, and procedures to apply for permission for any kind of anti-competitive agreement.

Section 28 deals with agreements between domestic and overseas business operators performing an activity that will restrict the freedom or opportunity of a person residing in the Kingdom from purchasing goods or services for his/her own use directly from business operators outside the Kingdom.

Section 29 of the Act also prohibits a business operator from performing any act which is not free and fair competition and which results in destroying, impairing, obstructing, impeding, or restricting business operations of other business operators, preventing other persons from carrying out business, or causing the cessation of business.

Failure to abide by the above provisions of the Competition Act could result in jail terms between one to three years and/or fines ranging from two to six million baht (USD 61,427 to USD 184,281). Note that under the Act, such penalties may be applied not only to the enterprises, but also to their managing partners or persons in charge of operations, unless the offense at stake was committed without his/her knowledge or consent and/or reasonable measures were taken to prevent such offense.

## **2. Conversion and Transfer Policies**

### Foreign Exchange

There are no limitations placed on foreign investors for converting, transferring, or repatriating funds associated with an investment. Repatriation of investment funds and repayments of overseas loans can be remitted freely, but only upon submission of supporting documents to commercial banks, including evidence of sale or transfer in the case of investment funds and evidence of inward remittances supporting the loan agreement. Foreign currency must be converted to Thai baht or deposited with authorized banks within 360 days after the date of bringing the money into the country. There are some exceptions for foreigners staying in Thailand for less than three months and those working for foreign embassies and international organizations. A foreigner could also open a Foreign Currency Deposit (FCD) Account at domestic commercial banks with no restrictions on maximum values if the fund originated from overseas. If the fund originated in Thailand, there are also no restrictions on maximum values, but a depositor needs to provide supporting documents to commercial banks. In addition, any person who brings foreign currency into or out of Thailand exceeding USD 20,000 or the equivalent must declare the amount at a Customs checkpoint. Investment funds are allowed to be freely converted into any currency. The exchange rate is determined by a managed float system.

### *Remittance Policies*

There are no time limitations on remittances. There are no limitations on the inflow or outflow of funds for remittances of profits or revenue.

Since Thailand, like most Asian countries, is the recipient of capital inflows, the Bank of Thailand (BOT, the country's central bank) has maintained a managed-float exchange rate regime, which focuses on curbing short-term volatility and maintaining regional competitiveness. The exchange rate movements have also been determined by market fundamentals; however, during the period of excessive capital inflows (i.e. exchange rate speculation), the central bank has stepped in to prevent extreme movements in the currency and to reduce the duration and extent of the exchange rate's deviation from the equilibrium.

The BOT normally uses both verbal and actual intervention when the Thai baht does not move in line with BOT foreign exchange policy, as determined by the Monetary Policy Committee. In practice, the BOT generally intervenes during the Asian time zone of high market liquidity.

In some cases, where the capital inflows were huge but underlying Thai economic fundamentals were still sound, the BOT adjusted its intervention strategy accordingly, allowing the Thai Baht to strengthen gradually. Since 2010, the central bank has started relaxing regulations by encouraging capital outflows (promoting outward investment of Thai investors overseas) in order to restore the balance between capital inflows and outflows in the market.

Thailand was publicly identified by the Financial Action Task Force (FATF) in 2010 for its strategic AML/CFT deficiencies, for which it developed an action plan. In February 2013, the FATF removed Thailand from its Public Statement after concluding that Thailand had made significant progress and had completed all items in its action plan. Thailand is a member of the Asia/Pacific Group on Money Laundering (APG), a FATF-style regional body.

### **3. Expropriation and Compensation**

Private property can be expropriated for public purposes in accordance with Thai law, which provides for due process and compensation. In practice, this process is seldom used and has been principally confined to real estate owned by Thai nationals and needed for public works projects. U.S. firms have not reported any problems with property appropriation in Thailand; however, the Embassy has received reports of conflicts over land title authenticity in areas that the government has designated as national park land.

### **4. Dispute Settlement**

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Thailand has a civil code, commercial code, and a bankruptcy law. Monetary judgments are calculated at the market exchange rate. Decisions of foreign courts are not accepted or enforceable in Thai courts. Disputes such as the enforcement of property or contract rights have generally been resolved through the Thai courts. Thailand has an independent judiciary that is generally effective in enforcing property and contractual rights. The legal process is slow in practice, however, and litigants or third parties sometimes affect judgments through extra-legal means.

In addition, companies may establish their own arbitration agreements (see International Arbitration.)

## Bankruptcy

Under Thailand's Bankruptcy Act, once the court approves a petition for liquidation, an official receiver will be appointed. The receiver will gather all of the debtor's assets, fix all of the creditors' claims, and submit a report to the court for final judgment. Until the final judgment for bankruptcy is rendered, a creditor can request the following ex parte applications from the court:

- Request an examination by the receiver of all assets of the debtor and/or request the debtor attend questioning on the existence of assets;
- Require that the debtor provide satisfactory security to the court;
- Request the court to take immediate custody of the debtor's assets and/or seize evidence in order to prevent the loss or destruction of such items.

The liability of the investor, who is a shareholder, is limited up to the amount, if any, unpaid on the shares respectively held by them. If the investor already made full payments for the shares they hold, no further liability will be charged to the investor.

## Investment Disputes

There have been a couple notable cases of investor-state disputes in recent years. In 2003, the Civil Court of Thailand upheld a 6.2 billion baht (USD 190.4 million) international arbitration award against the Expressway and Rapid Transit Authority of Thailand (ETA, a Thai government agency), in favor of Bangkok Expressway, PLC (a Thai-foreign joint venture company). In 2009, Walter Bau AG (a foreign contractor) was awarded approximately 30 million Euros in an international arbitration case regarding construction of the Don Muang tollway. Subsequently, the Thai Cabinet issued a resolution prohibiting the inclusion of arbitration in public-private contracts without prior approval by the Cabinet. Since then, the Cabinet has granted approval in several cases for an arbitration clause to be included in contracts. Local law firms allege that Thai courts have refused, in some instances, to enforce international arbitration awards based on interpretations which are not in keeping with international norms.

## International Arbitration

Thailand's national Arbitration Act of 2002, which was modeled in part after the UNCITRAL Model law, governs domestic and international arbitration proceedings and states that "in cases where an arbitral award was made in a foreign country, the award shall be enforced by the competent court only if it is subject to an international convention, treaty, or agreement to which Thailand is a party." The Thai Arbitration Institute of the Alternative Dispute Resolution Office, Office of the Judiciary, and the Office of the Arbitration Tribunal of the Board of Trade of Thailand provide arbitration services to proceedings held within Thailand. In addition, the newly-established, semi-public Thailand Arbitration Center offers mediation and arbitration for civil and commercial disputes. There are only very limited circumstances under which a court can set aside an arbitration award. Thailand does not have a Bilateral Investment Treaty (BIT) or a Free Trade Agreement (FTA) with the United States.

### *ICSID Convention and New York Convention*

Thailand is a signatory to the New York Convention, and enacted its own rules on conciliation and arbitration in the Arbitration Act of 2002. Thailand signed the Convention on the Settlement of Investment Disputes in 1985, but has not yet ratified the Convention.

### Duration of Dispute Resolution – Local Courts

Disputes settled through arbitration can be settled within 12-18 months; while disputes that are litigated in domestic court can take considerably longer (up to several years) and are subject to appeal. Since the official language in all domestic court proceedings is Thai, this can present a challenge for foreigners who do not speak the language. Domestic court rulings are not enforceable outside of Thailand. It is not customary for local judges to specialize in hearing only cases involving one type of law; therefore it is not uncommon for there not to be sufficient understanding regarding the legal nature of the dispute. The Thai legal system allows the application of the international long-arm statute in the service of process regarding defendants located outside of Thailand. Nevertheless, since Thailand's legal system is based on Civil law, in order for there to be proper service, it requires that the notice be taken to the Thai Ministry of Foreign Affairs, where it undergoes a bureaucratic process in order to validate its service abroad.

## **5. Performance Requirements and Investment Incentives**

### WTO/TRIMS

Thailand committed to implement all WTO agreements, including Trade-Related Investment Measures (TRIMS); however, concerns remain over areas of import and domestic policy in sectors such as agriculture, financial services, intellectual property, telecommunications, and professional services.

### Investment Incentives

The Board of Investment (BOI), established by the Investment Promotion Act of 1977, is Thailand's central investment promotion authority. The BOI offers investment incentives uniformly to both qualified domestic and foreign investors with a clear articulation of the application procedures. Good governance is one of the key factors to manage and supervise the application for tax and duty privileges. Complete information on BOI's updated policies, programs, incentives, and application procedures can be found on the BOI website at: [www.boi.go.th](http://www.boi.go.th).

Effective January 1, 2015, the BOI launched a new investment incentive policy that gives preferential benefits to investment projects based on the level of technology involved in the activities. Firms employing a high level of advanced technologies qualify for the maximum incentive package, including an eight-year exemption from corporate income taxes, while activities that do not employ advanced technology, but are nevertheless still important to the supply chain, no longer receive any exemption. All companies may be eligible for other privileges if they engage in activities otherwise considered valuable, such as R&D, advanced technology training, or acquiring licenses to commercialize technology.

Two of the most significant privileges offered by the BOI for promoted projects are:

- Tax privileges, such as corporate income tax exemption, tariff exemption, reduction on import machinery and tariff exemption, or reduction on imported raw material
- Non-tax privileges, such as permission to own land, permission to bring foreign experts to work on the promoted projects, exemption on foreign ownership of companies, and exemption from work permits and visa rules.

### *Research and Development*

Foreign firms, including U.S. firms, are able to benefit from the Board of Investment's promotion incentives for investment projects that employ a high level of technology and R&D.

### Performance Requirements

The employment of foreigners is governed by the Foreign Employment Act and the Foreign Business Act. Both laws set employment preferences in favor of Thai nationals. Though requirements may vary, generally, employers must hire four Thais for every one foreign employee. Without exception, foreign private sector employees require work permits, which are granted by the Ministry of Labor. When considering whether to grant a work permit, the Ministry considers:

- Whether the job could be done by a Thai employee
- Whether the foreigner is qualified for the job
- Whether the job fits the present economic needs of the Kingdom

Different requirements apply to companies promoted by the BOI, which typically result in greater flexibility and ease in obtaining work permits for foreign nationals.

Such schemes apply equally to senior management and boards of directors. According to the Foreign Business Act, if a foreigner is the managing partner or the manager, the company is subject to the restrictions applicable to foreign businesses and the Foreign Business License application.

There are no excessively onerous visa, residence, work permit, or similar requirements inhibiting mobility of foreign investors and their employees.

Thai law requires foreign workers to have a work permit issued by the Ministry of Labor in order to work legally in Thailand; Thai law also reserves 39 occupations for Thai workers and will not grant work permits for foreigners to engage in these occupations, including lawyers, architects, and civil engineers. Foreigners found to be working without work permits could be imprisoned up to five years and/or fined between 2,000 and 100,000 Thai baht (approximately USD 60 to USD 3,000).

Factors that influence the granting of work permits include the degree of specialization required by the position, the size of the firm in terms of number of employees and registered capitalization, and the ratio of Thai nationals to foreigners employed by the firm. Foreigners working for the Thai government or working on projects promoted by the BOI usually have little difficulty obtaining work permits and typically receive their permits within seven days of application. Work permits in other areas are sometimes difficult to obtain. The duration of work permits is generally tied to the length of stay permitted by the person's visa.

U.S. citizens can enter Thailand without a visa for visits of up to thirty days. In order to apply for a work permit, a foreigner must enter Thailand on a non-immigrant visa (issued at Thai embassies and consulates) for a stay of three months or, for foreigners with well-defined work or business plans, for a stay of one year. Issuance of the three-month visa is usually completed within two or three days; the one-year visa requires approval from the Immigration Bureau of the Royal Thai Police in Bangkok. Upon obtaining a work permit, a holder of a three-month visa may apply for a one-year visa, which generally can be extended every year. Foreigners holding nonimmigrant visas who have lived in Thailand for at least three consecutive years may apply for permanent residence in Thailand if they meet strict criteria regarding investment or professional skills.

Despite the fact that Thailand generally welcomes foreign investment, some sectors are subject to foreign equity restrictions. (See Limits on Foreign Ownership)

Foreign businesses falling under List 1 of the FBA cannot obtain a Foreign Business License under any circumstances. For activities under List 2 of the FBA, a foreigner would require a license from the Minister of Commerce and approval from the Thai Cabinet. Additionally, the company would have to be at least 40 percent owned by Thais (only 25 percent if the Minister of Commerce and the Cabinet have given special approval) and at least two-fifths of its managing directors would have to be Thai nationals. For activities under List 3 of the FBA, a foreigner would require a license from the Director General of the Commercial Registration Department of the Ministry of Commerce and approval from the Foreign Business Committee.

Further restrictions on foreign ownership in specific sectors, such as telecommunications, banking, or insurance, are regulated in specific laws pertaining to these sectors, such as the Telecommunications Business Act of 2006, the Financial Institution Business Act of 2008, the Life Insurance Act of 1992, or the Non-Life Insurance Act of 1992.

Exceptions from the restrictions of the FBA can be granted as promotional privileges by the BOI or IEAT, or, as a temporary measure, in the form of government approval issued by the Thai government.

Exceptions can also be provided based on international treaties Thailand has entered into. U.S. companies or nationals under the Treaty of Amity and Economic Relations between Thailand and the United States (Treaty of Amity) can be eligible for "national treatment," where, with some exceptions, they are treated in the same way as Thai nationals. Other international treaties, such as the Thai-Australia Free Trade Agreement (TAFTA), the Japanese Thai Economic Partnership Agreement (JTEPA) or the ASEAN Comprehensive Investment Agreement (ACIA), also provide for exceptions, but these have mostly not yet been implemented under Thai laws.

Under the laws regulating exceptions from foreign investment restrictions, the authorities issuing such exceptions have been provided with bureaucratic discretion as to whether the exception will be granted.

## Data Storage

The Thai government does not currently have any specific statutory law governing "forced localization" policy in which foreign investors must use domestic content in goods or

technology. There are no requirements for foreign IT providers to turn over source code and/or provide access to surveillance.

## **6. Protection of Property Rights**

### Real Property

Property rights are guaranteed by the Constitution against being condemned or nationalized without fair compensation. Secured interests in property are recognized and enforced. Thailand has a civil law system under which all laws are embodied in statutes or codes promulgated by the government. This practice is in contrast to the common law system in many Western countries, where court interpretations of statutes serve as governing legal precedent. There is an independent judiciary that provides a forum for settlement of disputes. Agencies of the government, as parties to commercial contracts, may be sued in the courts, and cannot raise a defense of sovereign immunity. However, state property is not subject to execution. There are four basic codes: Civil and Commercial Code, Criminal Code, Civil Procedure Code, and the Criminal Procedure Code. Decisions and rulings of the judiciary and civil service can have considerable force as precedents.

There are three levels to the judicial system in Thailand: the Court of First Instance, which handles most matters at inception, the Court of Appeals, and the Supreme Court. There are specialized courts such as the Labor Court, Family Court, Tax Court, the Central Intellectual Property and International Trade Court, and the Bankruptcy Court. However, real property rights are uncertain because the interim constitution does not state a deadline for the enactment of the new constitution, which may define and/or protect real property rights differently.

### Intellectual Property Rights

Widespread counterfeiting and piracy continue to plague intellectual property (IP) rights owners in Thailand. Particular areas of concern include counterfeiting of pharmaceuticals, cosmetics, apparel, and accessories. Piracy rates are also high for motion pictures, music, business, and entertainment software. The lack of sustained and coordinated enforcement, and, in particular, the failure to prosecute and penalize high level offenders, remains a substantial problem. The vast majority of criminal IP cases in Thailand are brought against retailers caught with relatively little infringing product. In addition to problems with counterfeiting and piracy, rights holders cite concerns about long delays in the patent process due to the large backlog of unexamined patent applications. Due to these concerns, Thailand has been on the Special 301 Priority Watch List since 2007 and on the Notorious Markets List. The government continues to develop measures to improve protection and enforcement of intellectual property rights.

Thailand amended its legal regime to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPs) in the mid-1990s, but questions remain about Thailand's implementation of obligations to protect pharmaceutical and agricultural test data from unfair commercial use, treatment of conflicting trademarks, and geographical indications. Since that time, Thailand has not kept pace with international IP legal developments in areas such as broadcasting and digital copyright. Thailand is a signatory to long-standing IP agreements such as the Berne and Paris Conventions, but not the World Intellectual Property Organization Copyright Treaty (WCT) or the Performances and Phonograms Treaty (WPPT). Thailand acceded to the Patent Cooperation Treaty in 2009.

Under the current military-run government, Thailand recently enacted legislative amendments to the Trade Secret Act and the Copyright Act. The amendment to the Trade Secret Act changes the composition of the Trade Secret Board and substantially reduced the penalties for a trade secret disclosure by its officers. The amendments to the Copyright Act were enacted by the National Legislative Assembly as two separate amendments dealing with anti-camcording and right management information. The Anti-Camcording amendment criminalizes the unauthorized camcording in cinemas by making the act of recording an offence by itself with no exception as a fair use, as provided under the Copyright Act. The other amendment dealt with technological protection measures, right management information, exceptions, performers' rights, and ISP liability.

Thailand recently passed an amendment to the Trademark Act to streamline the trademark registration process and enable Thailand to accede to the Madrid Protocol, as well as clarify the application of the Trademark Act to illegal refilling practices. The amendment is currently pending signature into law by the King.

According to the Royal Thai Government, the latest enforcement statistics collected in 2013 shows that Thai's enforcement authorities have conducted 10,515 enforcement actions with 2,981,427 infringing items seized. The Royal Thai Government is responsible for paying for the storage and destruction of these goods. While Royal Thai Customs has ex officio authority to seize counterfeit goods, without rightholder confirmation on product identification, it is reluctant to pursue cases. The Department of Intellectual Property (DIP) is the agency responsible for registration of most intellectual property, including trademarks, patents and designs. However, due to limited resources, rightholders complain that they experience substantial delays in the registration process.

On the enforcement side, IPR infringement is commonly treated as a criminal offense in Thailand. The police unit tasked with IPR infringement cases is the Economic and Cyber Crime Division (ECD) of the Royal Thai Police. Larger cases are generally brought to the Department of Special Investigation. Penalties for IPR infringement can range from fines to imprisonment.

An IP owner may also pursue a civil case for IPR infringement. Civil enforcement of IP infringement can yield compensation, an interim injunction, or a permanent injunction. However, the burden of proof for the actual damages in a civil action is considerably higher than in the United States, and attorney's fees and litigation costs are rarely recoverable.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>

Resources for Rights Holders:

Peter N. Fowler, Regional Intellectual Property Attaché for Southeast Asia, U.S. Embassy Bangkok, [Peter.Fowler@trade.gov](mailto:Peter.Fowler@trade.gov)

The American Chamber of Commerce in Thailand, <http://www.amchamthailand.com>

## **7. Transparency of the Regulatory System**

In 1999, Thailand enacted the Trade Competition Act, together with the Price of Goods and Services Act, to strengthen the government's ability to regulate market monopolies and price fixing. The Trade Competition Act applies to all business activities with the exception of state-owned enterprises, cooperatives, agricultural and cooperative groups, government

agencies, and certain enterprises exempted by the law. The law established a Trade Competition Commission with the authority to place limitations on market share and revenues of firms with substantial control of individual market sectors, to block mergers, and other forms of business combinations, and to levy fines for price fixing and other proscribed activities. Since the law's implementation, several foreign motorcycle distributors were found guilty of violating the law by forcing sales agencies to sell only their brands.

The government continues to have the authority to control the price of specific products under the Price of Goods and Services Act. The Department of Internal Trade under the Ministry of Commerce administers this law and interacts with the affected companies, though only the Committee on Prices of Goods and Services makes the final decision on what products to add or remove from price controls. As of January 2016, out of 45 controlled commodities and services, only sugar is subject to a price ceiling. Besides the 45 controlled commodities, practically any producer of consumer products is prohibited from raising prices without first notifying the Committee of its intention to do so. The government also uses its controlling stakes in major suppliers of products and services such as Thai Airways and PTT to influence prices in the market. Thailand has extensive legislation aimed at the protection of the environment, including the National Environmental Quality Act, the Hazardous Substances Act, and the Factories Act. Food purity and drug efficacy are controlled and regulated by a Food and Drug Administration with authority similar to its U.S. counterpart. Likewise, labor and employment standards are set and administered by the Ministry of Labor.

U.S. businesses have repeatedly expressed concern about the lack of transparency of the Thai customs regime and the significant discretionary authority exercised by Customs Department officials. The U.S. government and private sector have also expressed concern about the inconsistent application of Thailand's transaction valuation methodology and repeated use of arbitrary values by the Customs Department. Since the May 2014 coup, the interim government has made an effort to speed up passage of legislation that was stalled by the political gridlock of the previous administration. Several amendments of laws and regulations were passed in late 2014, including: Authorization of Customs Officials on Examination, Search and Seizure of Goods in Transit and Transshipment; Advance Ruling on Customs Valuation; Advance Ruling on Tariff Classification; Advance Ruling on the Origin of Goods; and Use of Electronic System for Customs Documents. Thailand submitted its acceptance of the protocol for the WTO Trade Facilitation Agreement in October 2015.

Consistent and predictable enforcement of government regulations remains problematic for investment in Thailand. Gratuity payments to civil servants responsible for regulatory oversight and enforcement remain a common practice. Firms that refuse to make such payments can be placed at a competitive disadvantage when compared to other firms in the same field.

## **8. Efficient Capital Markets and Portfolio Investment**

The Thai government maintains a regulatory framework that broadly encourages investment and largely avoids market-distorting support for specific sectors. Thailand's regulatory system has encouraged and facilitated portfolio investment. There is sufficient liquidity in the markets to enter and exit sizeable positions. Government policies generally do not restrict the free flow of financial resources to support product and factor markets. The Bank of Thailand has respected IMF Article VIII by refraining from restrictions on payments and transfers for current international transactions. Credit is generally allocated on market terms rather than by "direct lending." Foreign investors are not restricted from borrowing on the local market, but there are a number of regulations that affect foreign portfolio investment. In theory, the private

sector has access to a wide variety of credit instruments, ranging from fixed term lending to overdraft protection to bills of exchange and bonds. However, the private debt market is not well-developed, and most corporate financing, whether for short-term working capital needs, trade financing, or project financing, requires borrowing from commercial banks or other financial institutions.

#### Money and Banking System, Hostile Takeovers

In general, Thailand's banking sector, with 14 domestic commercial banks, is healthy with low rates of non-performing loans (around 2.55 percent in Q4 2015) and a high ratio of capital funds/risk assets (capital adequacy) of 16.98 percent in Q4 2015. Thailand's largest commercial bank is Krung Thai Bank, with assets totaling USD 80.24 billion as of December 2015. For the five largest commercial banks, their combined assets totaled USD 348.8 billion, or 76.6 percent of the total assets of the Thai banking system.

Thailand's central bank is the Bank of Thailand (BOT), which was established in 1942 and is governed by an appointed Governor with a five-year term. The BOT has the following roles and responsibilities: print and issue banknotes and other security documents (i.e. the Bank of Thailand bonds), promote monetary stability and formulate monetary policies, manage the BOT's assets, provide banking facilities to the government, act as the registrar of government bonds, and provide banking facilities for financial institutions.

Non-residents can open and maintain foreign currency accounts without deposit and withdrawal ceilings with authorized banks in Thailand. Meanwhile, any deposits in the Thai Baht currency must be derived from one of the following sources: conversion of foreign currencies, payment of goods and services, or a capital transfer for which BOT approval is not required. Any withdrawals are permitted, except the withdrawal of funds for credit to another non-resident person or purchase of foreign currency involving an overdraft.

The Thai banking industry does not have a history of hostile takeovers, and the BOT does not have clear rules governing hostile takeovers. The Financial Institutions Business Act, passed at the end of 2007, unified the legal framework and strengthened BOT supervision and enforcement powers. The Act gave powers to the BOT to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Ministry of Finance to authorize foreign ownership above 49 percent only if recommended by the central bank. These past practices by the BOT have suggested that it applies rules on a non-discriminatory basis.

#### **9. Competition from State-Owned Enterprises**

There are 55 state-owned enterprises (SOEs) in Thailand with total assets of around USD393.4 billion and 270,000 employees (or around 0.7 percent of the Thai labor force). In Q3 2015 (latest available data), their combined income was USD 99.4 billion gross (USD 4.4 billion net). Of the 55 total SOEs, 12 are in the form of limited companies, and five of them are publicly listed companies in the Stock Exchange of Thailand, including Thai Airways International Public Company Limited, Airport of Thailand Public Company Limited, PTT Public Company Limited, MCOT Public Company Limited, and Krung Thai Bank Public Company Limited.

SOEs operate primarily in service delivery, in particular the energy, telecommunications, transportation, and financial sectors. The full list of SOEs list is published under the website of the State Enterprise Policy Office under the Ministry of Finance: ([www.sepo.go.th](http://www.sepo.go.th)). Although

precise definitions of SOEs vary slightly according to different pieces of legislation, in general, the government defines SOEs as special agencies established by precise laws for a particular purpose and 100 percent owned by the government (through the Ministry of Finance as a shareholder) or limited company/public company limited that is 50 percent or more owned by the government.

The government does not specify R&D allocations for SOEs in percentages, but has encouraged all SOEs to set aside some portion of their budgets for it. In general, SOEs do not receive a larger percentage of government contracts/business than their private sector competitors. However, in some industries, such the telecommunications sector, the government has assigned all 'fixed line' operations in the country to SOEs, as the private sector competitors are reluctant to conduct such unprofitable business.

SOEs purchase or supply goods or services from private sector/foreign firms. Some SOEs have established rules and regulations on procurement, but most are still under the WTO's Government Procurement Agreement. While Thailand is not a member of the WTO GPA, it officially became an observer in June 2015. In general, SOEs, like government agencies, reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process, if, according to regulations, corruption is suspected. The latter provision allows considerable leeway to SOEs in managing procurements. Private enterprises can compete with SOEs under the same terms and conditions with respect to market share, products/services, and incentives in most sectors, but there are some exceptions, such as the fixed line operation in the telecommunications sector.

According to the government regulations, all SOEs must deposit money or purchase securities (bonds) from only state-owned banks or private banks that have been approved by the Ministry of Finance. Therefore, SOEs tend to receive better loan conditions from these financial institutions than private enterprises. The Ministry of Finance usually guarantee loans made by SOEs, resulting in lower interest rate charged from lower risk of loan default.

The tax burden of SOEs depends on the type of SOE. SOEs established by special laws that are not listed on the stock market are not subject to corporate income tax. SOEs in the form of limited companies/public limited companies/listed companies are subject to corporate income tax. Each year, all SOEs, regardless of type, must return a certain percentage (ranging from 35-88 percent) of their net profits back to the Ministry of Finance.

SOEs are not afforded material advantages such as preferential access to land and raw materials. Each year, the government regularly allocates three to four percent of its annual budget expenditures to fund SOEs. All SOEs can also borrow directly with a guarantee from the Ministry of Finance, or can request that the Ministry of Finance grant an on-lending loan for them. Depending on the size of the loan, either the board of the SOE or the Cabinet has to approve such loans. In general, combined borrowing of all (non-bank) SOEs cannot be higher than 20 percent of the government's annual budget expenditures.

#### OECD Guidelines on Corporate Governance of SOEs

Thailand is one of the leaders in corporate governance in private enterprises among Asian economies and emerging economies. However, corporate governance within SOEs, except for publicly listed SOEs, is viewed as lagging behind the private sector. In June 2014, the government established "the State Enterprise Policy Committee" or "Superboard," chaired by

the Prime Minister, as a new central body to supervise and regulate all SOEs. The Committee also established a subcommittee on corporate governance, chaired by the Bank of Thailand's Former Governor, with the Ministry of Finance's State Enterprise Policy Office (SEPO) as a secretariat. The subcommittee is now the core body promoting corporate governance within SOEs and has responsibility for studying, analyzing, and laying plans to prevent corruption by promoting transparency and disclosure. The Ministry of Finance's SEPO also established guidelines for SOE board members, including rules on board member nomination process, roles and duties, responsibilities, and good governance. In addition, all SOEs are required by law to submit annual financial reports to the Office of the Auditor General. Meanwhile publicly listed SOEs, such as Thai Airways and PTT, are required to publish their financial reports.

According to officials at the SEPO, SOEs adhere to the OECD Guidelines on corporate governance, including the state acting as an owner. The current guidelines are not yet sufficient to ensure a level playing field between SOEs and private sector enterprises, but the subcommittee of corporate governance has realized the importance of the issue, which is now under the process of consideration and review.

In general, SOE senior management reports directly to a line minister and to the Superboard. Corporate board seats are typically allocated to senior government officials or other politically-affiliated individuals. The Superboard tries to eliminate political interference in board member appointments.

#### Sovereign Wealth Funds

Thailand currently does not have a sovereign wealth fund.

### **10. Responsible Business Conduct**

There is wide recognition and awareness of responsible business conduct (RBC) primarily in the area of corporate social responsibility (CSR) initiatives among Thai producers and consumers, but many Thai companies still lack a full understanding of the generally accepted CSR principles under the OECD Guidelines for Multinational Enterprises. CSR is most often identified as individual philanthropic projects or community service of companies, rather than as an overall corporate strategy aimed to improve the community in which the companies operate. Companies that pursue CSR are viewed favorably by the public.

Many business associations, including the American Chamber of Commerce (AMCHAM), Thai Chamber of Commerce (TCC), the Federation of Thai Industries (FTI), Joint Standing Committee on Commerce, Industry, and Banking of Thailand (JSCCIB) actively support the development of CSR programs in Thailand. Since 2007, the AMCHAM CSR Excellence Awards (AMCHAM ACE) have encouraged the expansion of CSR programs by identifying best practices of companies in Thailand. Many CSR programs incorporate the U.S. Mission's Thai-U.S. Creative Partnership to work directly with local partner organizations on long-term projects training and promoting opportunities in innovative sectors, especially renewable energy, entrepreneurship, and health projects. The AMCHAM ACE program also tracks continuous improvement. Both the TCC and the FTI have undertaken several CSR projects over the past years. The JSCCIB has also established a CSR committee that consolidates reports on activities from both TCC and FTI members.

Although Thailand does not have a National Action Plan on RBC, nor does it currently maintain a National Contact Point (NCP) for OECD Guidelines for Multinational Enterprises, the Thai government through various ministries has taken several measures to encourage RBC that integrates sustainable business practices focused on respecting human rights, environmental protection, labor relations, and financial accountability. The Ministry of Industry under the Department of Industrial Works has encouraged the sector to implement their Corporate Social Responsibility (CSR-DIW) standards, giving them the potential to meet ISO 26000 standards (an international standard on Social Responsibility). In 2015, the Ministry of Industry issued awards to factories that have reached CSR-DIW standards. The Thai Labor Standard on Corporate Social Responsibility of Thai Business (TLS 8001-2010) implemented by the Ministry of Labor in 2003 was recently reprioritized as Thailand faces challenges in the areas of IUU fishing and trafficking. In 2015, the Ministry of Labor awarded TLS 8001-2010 certificates to organizations with consistently high labor standards. The Stock Exchange of Thailand (SET), under their sustainable stock exchange initiative, are encouraging listed companies to be conscious of social responsibility when conducting business by considering environmental, social, and corporate governance factors in their investment decisions. SET houses an active Social Responsibility Center which was created to provide sustainability guidelines as well as raise awareness among listed companies the importance of balancing the economy, society, and environment, under the corporate governance principles. In terms of transparency in the natural resources sector, the Royal Thai Government announced that it intended to join the Extractive Industries Transparency Initiative and apply EITI standards in the energy sector.

There is also a burgeoning Social Enterprise movement in Thailand. A bill proposed by the National Reform Council (NRC) Committee on Social Enterprise was approved by the Cabinet in March 2016. The social enterprise bill will create a regulatory framework to encourage the development of social enterprises, promote participation of the private sector through CSR in social development, and provide tax incentives to private enterprises to encourage spending a percentage of their profits on addressing social problems. The bill establishes a new independent regulatory body, the Office of the National Social Enterprise Promotion (ONSEP), to be formed under the Prime Minister's Office; a National Social Enterprise Promotion Commission to coordinate policy and supervise ONSEP; and a new Social Enterprise Fund designed to provide loans to social enterprises and subsidize state or private agencies to achieve social enterprise goals.

There are several local NGOs that promote and monitor RBC and a majority operate freely, but a few face intimidation as a result of their work in monitoring civil rights issues.

## **11. Political Violence**

Since the May 2014 military coup, incidents of political violence have decreased. The coup followed seven months of anti-government protests and sporadic incidents of violence. On February 1, 2015, one person was injured after two bombs exploded near a train station and a shopping mall in downtown Bangkok. On March 7, 2015, suspects threw a hand grenade at the Bangkok Criminal Court and were apprehended at the scene. Following the incidents, Thai police detained four suspects, and claimed the attacks were politically motivated and intended to undermine the government.

On August 17, 2015, an explosion in Bangkok killed 20 and injured over 120 at the Erawan Shrine, a downtown tourist destination popular with Thai and Chinese tourists. On August 18, a second explosion occurred near Saphan Taksin, a pier popular with tourists, but did not result

in any damage or casualties. Thai authorities claimed the motive for the attacks was retaliation for the government crackdown on human trafficking. It is widely believed, however, that the attacks were related to Thailand's July 2015 forced deportation of a group of Uighur migrants to China.

Despite continued restrictions on freedoms of assembly and speech, political divisions remain. These rifts, together with ongoing concerns about a slowing economy – exacerbated by drought – could lead to the reemergence of public protests and/or violence.

Violence related to an ongoing Malay-Muslim insurgency in Thailand's southernmost provinces continues. Efforts to end the ethno-nationalist insurgency, which has claimed over 6,000 lives and caused over 12,000 injuries – mostly civilians – since 2004, have so far been unsuccessful. Almost all attacks typically occur in the 3 southernmost provinces of the country.

On April 10, 2016 a car bomb exploded at a shopping mall parking garage on the tourist island of Koh Samui, injuring seven. Thai authorities detained two suspects, and a third was killed as the police were trying to detain him. All three suspects were associated with the insurgency.

## **12. Corruption**

Thailand has several laws to combat corruption. The independent National Anti-Corruption Commission (NACC), together with the Office of the Public Sector Anti-Corruption Commission (PACC), coordinates official efforts against corruption and hold broad investigatory authority. In addition to these two agencies, the Office of the Ombudsman, the Constitutional Court, the Election Commission, the Office of the Auditor General, and the National Human Rights Commission have anti-corruption responsibilities. Thailand ratified the UN Convention Against Corruption in March 2011. In April 2005, Thailand endorsed the ADB-OECD Anticorruption Action Plan for Asia and the Pacific and assigned the Ministry of Justice to implement the Action Plan. The Office of Public Sector Anti-Corruption Commission, under the Ministry of Justice, was established to assist the NACC by investigating cases of lower ranking government officials.

In July 2015, the revised Organic Act on Counter Corruption came into effect. Among the various substantive amendments are provisions to criminalize the bribery of foreign public officials and employees of public international organizations, establish criminal liability for legal persons when their employees or agents engage in the bribery of public officials, as well as to allow the National Anti-Corruption Commission to confiscate proceeds of corruption through non-conviction-based forfeiture. There is a positive trend of increased dialogue and collaboration between the anti-graft agency and business associations to advocate for the removal of red tape and promotion of transparency in public procurement procedures.

According to some studies, a cultural propensity to forgive bribes as a normal part of doing business and to equate cash payments with finders' fees or consultants' charges, coupled with the low salaries of civil servants, encourages officials to accept illegal inducements. U.S. executives with experience in Thailand often advise new-to market companies that it is far easier to avoid corrupt transactions from the beginning than to stop such practices once a company has been identified as willing to operate in this fashion. American firms that comply

with the strict guidelines of the Foreign Corrupt Practices Act (FCPA) are able to compete successfully in Thailand. U.S. businessmen say that publicly affirming the need to comply with the FCPA helps to shield their companies from pressure to pay bribes. A U.S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below.

Recent Thai administrations have publicly stated their intention to improve transparency in the evaluation of bids and the awarding of contracts. In 2013, the Public-Private Partnership (PPP) Act passed. Effective April 4, 2013, the PPP Act requires public projects over USD 1 billion to be awarded through a multi-agency committee instead of a single administering agency. Despite recent improvements, both foreign and Thai companies continue to complain about irregularities in the Thai Customs Department. Increasing media scrutiny of public figures has raised political pressure to curtail favoritism and corruption. However, convictions against public officials on corruption-related charges are rare, and the legal system offers inadequate deterrence against corruption. According to the most recent Transparency International's annual Corruption Perceptions Index, Thailand ranked 76th out of 168 countries in 2015.

The press features frequent allegations of irregularities in public contracts, most notably over the use of public lands, procurement favoritism (e.g., revising requirements so that a preferred company wins over its competitors), and police complicity in a variety of illegal activities. In January 2010, the Thai press widely reported news of the U.S. Department of Justice indictment of a former Thai tourism minister accused of taking bribes from an American couple seeking to do business in Bangkok. In November 2011, the Permanent Secretary in the Ministry of Transportation resigned over allegations of corruption and bribery after large sums of cash were discovered in his home, allegedly from transportation contract kickbacks. In 2012, the Deputy Prime Minister and Interior Minister resigned after it was determined that he was involved in an improper land deal.

In recent years, the private sector has attempted to take the lead in fighting corruption through education and advocacy. Since 2010, the Thai Institute of Directors (IOD) has built an anti-corruption coalition of Thailand's largest businesses. Coalition members sign the Collective Action Against Corruption Declaration and pledge to take tangible, measurable steps to proactively reduce corruption-related risks that are verified by third party certification. CIPE equipped IOD and its coalition partners with an array of tools for training and collective action, based on examples from CIPE's programs around the world. More than 130 companies have been certified under the declaration, and member companies now represent over 15 percent of the Thai economy and more than 1 million employees.

Founded in 2011, the Anti-Corruption Organization of Thailand (ACT) was established with the intent to pressure the government to create laws that can reduce levels of corruption. ACT has 47 member organizations drawn from the private, public and academic sectors. Their signature program is the "integrity pact." Drafted by ACT and the Finance Ministry and based on a tool promoted by Transparency International, the pact forbids bribes from signatory members in bidding for government contracts. Member agencies and companies must adhere to strict transparency rules by disclosing bidding information--such as the terms of reference and the cost of the project--easily available to the public.

The United States does not have an FTA with Thailand.

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

Thailand is a party to the UN Convention, but not the OECD Convention.

#### *Resources to Report Corruption*

Government Contact for combating corruption:

International Affairs Strategy Specialist

Office of the National Anti-Corruption Commission

361 Nonthaburi Road, Thasaai District, Amphur Muang Nonthaburi 11000, Thailand

+662-528-4800

Email: TACC@nacc.go.th

Civil Society Contact on corruption:

Dr. Mana Nimitmongkol

Secretary General

Anti-Corruption Organization of Thailand

44 Srijulsup Tower, 16th floor, Phatumwan, Bangkok 10330

+662-613-8863

Email: mana2020@yahoo.com

### **13. Bilateral Investment Agreements**

Bilateral Taxation Treaties

The 1966 iteration of the U.S.-Thai Treaty of Amity and Economic Relations (AER) allows U.S. citizens and businesses incorporated in the United States or in Thailand that are majority-owned by U.S. citizens, to engage in business on the same basis as Thai nationals. Under the AER, Thailand is permitted to apply restrictions to American investment only in the fields of communications, transport, banking, the exploitation of land or other natural resources, and domestic trade in agricultural products. In October 2002, the United States and Thailand signed a bilateral Trade and Investment Framework Agreement (TIFA). The TIFA establishes a Trade and Investment Joint Council (TIJC), which serves as a forum for discussion of bilateral trade and investment issues such as intellectual property rights, customs, investment, biotechnology, and other areas of mutual concern. Thailand also has bilateral investment agreements with 40 countries, including China, India, Taiwan, South Korea, United Kingdom, and members of the Association of Southeast Asian Nations (ASEAN). These agreements establish guidelines for expropriation compensation and the repatriation of capital, but do not include national treatment provisions.

Thailand has had a bilateral tax treaty with the United States since 1996.

### **14. Foreign Trade Zones/Free Ports/Trade Facilitation**

The Industrial Estate Authority of Thailand (IEAT), a state-enterprise under the Ministry of Industry, established the first industrial estates in Thailand, including Laem Chabang Industrial Estate in Chonburi Province (eastern) and Map Ta Phut Industrial Estate in Rayong Province (eastern). The IEAT was established under the IEAT Act B.E. 2522 (1979). Foreign owned firms have the same investment opportunities as Thai entities, but the IEAT Act requires the IEAT Committee to consider and approve the amount of space/land a foreign owned firm plans to buy or lease in industrial estates. In practice, there is no record of disapproval for the requested amount of land. More recently, private developers have become heavily involved

in the development of these estates. The IEAT currently operates 9 estates, plus 39 more in conjunction with the private sector in 15 provinces nationwide. Private sector developers operate over 50 industrial estates, most of which have received promotion privileges from the Board of Investment.

In addition, the IEAT established 12 special IEAT Free Zones (renamed from export processing zones or free trade zones), reserved for the location of industries manufacturing for export only, to which businesses may import raw materials and export finished products free of duty (including value added tax). These zones are located within industrial estates, and many have customs facilities to speed processing. The free trade zones are located in Chonburi, Lampun, Pichit, Songkhla, Samut Prakarn, Bangkok (at Lad Krabang), Ayuddhya, and Chachoengsao. In addition to these zones, factories may apply for permission to establish a bonded warehouse within their premises to which raw materials, used exclusively in the production of products for export, may be imported duty free.

#### 14. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2015	\$395,216	2014	\$404,824	<a href="http://www.worldbank.org/en/country">www.worldbank.org/en/country</a>
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	2015	\$15,070	2014	\$11,729	BEA data available at <a href="http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm">http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm</a>
Host country's FDI in the United States (\$M USD, stock positions)	2015	\$3,300	Not available		BEA data available at <a href="http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm">http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm</a>
Total inbound	2015	\$186,064	Not available	47.1%	Not available

stock of FDI as % host GDP					
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\*National Economic and Social Development Board (GDP); Bank of Thailand (FDI)

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations (US Dollars, Millions)					
Inward Direct Investment			Outward Direct Investment		
Total Inward	192,220	100%	Total Outward	62,500	100%
Japan	68,299	36%	Cambodia	38,738	62%
Singapore	28,567	15%	Cayman Islands	5,354	9%
United States	14,507	8%	Singapore	2,999	5%
Netherlands	14,127	7%	Mauritius	2,439	4%
China, P.R.: Hong Kong	10,730	6%	United States	1,341	2%

"0" reflects amounts rounded to +/- USD 500,000.

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	42,450	100%	All Countries	16,625	100%	All Countries	25,825	100%
United States	7,138	17%	United States	6,214	37%	China (Main)	6,513	25%
China (Main)	6,905	16%	Luxembourg	4,614	28%	Turkey	3,728	14%
Luxembourg	4,843	11%	Singapore	953	6%	Brazil	3,341	13%
Turkey	3,728	9%	Ireland	832	5%	China (HKG)	2,817	11%
China (HKG)	3,533	8%	China (HKG)	716	4%	Korea	1,525	6%

## Section 5 - Government

### Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments](#)

### Legal system:

civil law system with common law influences

### International organization participation:

ADB, APEC, ARF, ASEAN, BIMSTEC, BIS, CD, CICA, CP, EAS, FAO, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRC, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), MIGA, NAM, OAS (observer), OIC (observer), OIF (observer), OPCW, OSCE (partner), PCA, PIF (partner), UN, UNAMID, UNCTAD, UNESCO, UNHCR, UNIDO, UNMOGIP, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

## Section 6 - Tax

### Exchange control

Exchange control regulations are in place to govern the importation and repatriation of funds by residents and non-residents, and the import and export of goods. Subject to certain criteria and thresholds, forms are also required.

### Treaty and non-treaty withholding tax rates

The schedule below is only intended to give a general outline of the rates of tax applicable to interest, dividend and royalty payments under Thailand's Double Tax Treaties. It is advisable to consult the relevant tax treaty for more detailed information. The table below sets out the lower of the treaty rate and the applicable domestic rate on dividend, interest and royalty payments.

<b>Non-resident company</b>	<b>Dividends<sup>1</sup> (%)</b>	<b>Interest<sup>2</sup> (%)</b>	<b>Royalties<sup>3</sup> (%)</b>
Non-treaty countries	10	15	15
Treaty countries			
Armenia	10	10/15	15
Australia	10	10/15	15
Austria	10	10/15	15
Bahrain	10	10/15	15
Bangladesh	10	10/15	15
Belgium	10	10/15	5/15
Bulgaria	10	10/15	5/15
Canada	10	10/15	5/15
Chile	10	10/15	10/15
China	10	10/15	15
Cyprus	10	10/15	5/10/15
Czech Republic	10	10/15	5/10/15
Denmark	10	10/15	5/15
Finland	10	10/15	15
France	10	3/10/15	5/15
Germany	10	10/15	5/15
Hong Kong	10	10/15	5/10/15
Hungary	10	10/15	15
India	10	10/15	15
Indonesia	10	10/15	15
Israel	10	10/15	5/15
Italy	10	10/15	5/15
Japan	10	10/15	15
Korea	10	10/15	15
Kuwait	10	10/15	15

Laos	10	10/15	15
Luxembourg	10	10/15	15
Malaysia	10	10/15	15
Mauritius	10	10/15	5/15
Nepal	10	10/15	15
Netherlands	10	10/15	5/15
New Zealand	10	10/15	10/15
Norway	10	10/15	5/10/15
Oman	10	10/15	15
Pakistan	10	10/15	10/15
Philippines	10	10/15	15
Poland	10	10/15	5/15
Romania	10	10/15	15
Russia	10	10	15
Seychelles	10	10/15	15
Singapore	10	10/15	15
Slovenia	10	10/15	10/15
South Africa	10	10/15	15
Spain	10	10/15	5/8/15
Sri Lanka	10	10/15	15
Sweden	10	10/15	15
Switzerland	10	10/15	5/10/15
Turkey	10	10/15	15
Ukraine	10	10/15	15
United Arab Emirates	10	10/15	15
United Kingdom	10	10/15	5/15
United States	10	10/15	5/8/15
Uzbekistan	10	10/15	15
Vietnam	10	10/15	15

1 The lower rate generally applies if certain conditions are met including having a specified minimum percentage of equity in the company paying the dividend.

2 The lower rate generally applies to interest for which a financial institution is beneficially entitled.

3 The lower rate generally applies to payments made as consideration for the right to use any copyright of literary, artistic or scientific work.

## Methodology and Sources

### Section 1 - General Background Report and Map

(Source: [CIA World Factbook](#))

### Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
<a href="#">FATF List of Countries identified with strategic AML deficiencies</a>	Not Listed	AML Deficient but Committed	High Risk
<a href="#">Compliance with FATF 40 + 9 recommendations</a>	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
<a href="#">US Dept of State Money Laundering assessment (INCSR)</a>	Monitored	Concern	Primary Concern
<a href="#">INCSR - Weakness in Government Legislation</a>	<2	2-4	5-20
<a href="#">US Sec of State supporter of / Safe Haven for International Terrorism</a>	No	Safe Haven for Terrorism	State Supporter of Terrorism
<a href="#">EU White list equivalent jurisdictions</a>	Yes		No
<a href="#">International Sanctions UN Sanctions / US Sanctions / EU Sanctions</a>	None	Arab League / Other	UN , EU or US
<a href="#">Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network</a>	>69%	35 – 69%	<35%
<a href="#">World government Indicators (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Failed States Index (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Offshore Finance Centre</a>	No		Yes

### **Section 3 - Economy**

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: [CIA World Factbook](#))

### **Section 4 - Foreign Investment**

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: [US State Department](#))

### **Section 5 - Government**

Names of Government Ministers and general information on political matters.

(Source: [CIA World Factbook](#) / <https://www.cia.gov/library/publications/world-leaders-1/index.html>)

### **Section 6 - Tax**

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: [OECD Global Forum on Transparency and Exchange of Information for Tax Purposes](#) [PKF International](#))

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