



## Executive Summary

Despite unresolved internal political tensions, 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. Resolving Thailand's current political crisis peacefully will be critical to maintaining investor confidence. Economic impacts to tourism and retail businesses resulting from a political impasse extending over several months eroded growth expectations for 2014. Investors, however, remain cautiously confident that the Thai economy will retain its well-known resiliency and resume growth once the impasse is resolved. Government plans for \$75 billion in infrastructure projects over a seven-year period, viewed as critical to maintaining Thailand's competitiveness in the region, were shelved in early 2014 and will require re-approval once a new government is seated.

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 Americans 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. 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. Since Parliament dissolved in November 2013 and courts annulled February 2014 national elections, the BOI has been unable to issue new investment licenses due to an inability to appoint new Board members without legislative approval. BOI has been working with the Thai Government to find a legal mechanism to restart operations, and hopes to be able to renew issuing licenses even if the political impasse continues. Although a small number of U.S. companies have been affected, other foreign investors have been hit harder.

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 and inefficient practice. Firms that refuse to make such payments can be placed at a competitive disadvantage when compared to other firms in the same field. However, most observers believe that the overall trend toward transparency in regulatory enforcement is positive, especially for foreign-owned businesses.

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 into line with international norms and achieving significant progress.

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

Despite unresolved internal political tensions, 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. A peaceful resolution to Thailand's latest political crisis will be important to maintaining investor confidence. Economic impacts to tourism and retail businesses resulting from a political impasse extending over several months have eroded growth expectations for 2014. Investors, however, remain cautiously confident that the Thai economy will retain its well-known resiliency and resume growth once the impasse is resolved.

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. 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 Alien Employment Act B.E. 2521 (1978) and Investment Promotion Act B.E. 2520 (1977).

Foreign companies are free to open and maintain bank accounts in foreign currency. However, Thailand retains to some extent its investment control, as under certain circumstances, foreign investors that are previously granted national treatment are subject to some reservations, in particular the service sector. From January 2012, the lower corporate tax rate was reduced temporarily under a Royal Decree from 30 percent to 23 percent for 2012 and to 20 percent for 2013 and 2014. Extending the tax cuts beyond 2014 requires action by Thailand's Parliament.

#### ***U.S. Investment:***

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 U.S., 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. Under the Treaty, American investment is restricted only in the fields of communications, transport, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in agricultural products. Prospective U.S. investors who seek benefits from the Treaty must first verify their nationality by obtaining a certified letter from the U.S. Embassy in Bangkok. For the representative office and foreign branch, the process stops at the U.S. Embassy, but for the investor wishing to register in Thailand in the form of company limited, the investor must then present the Embassy's letter to the Ministry of Commerce, along with an application form for a business operation certificate. This process typically takes less than one month. Notwithstanding their Treaty rights, many Americans choose to form joint ventures with Thai partners, allowing the Thai side to hold the majority stake because of the advantages that come from familiarity with the Thai economy and local regulations.

Americans planning to invest in Thailand are advised to obtain qualified legal advice. Such advice is particularly important given the fact 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.

***Banking:***

Thailand has removed some barriers to foreign ownership of domestic financial institutions. Meanwhile the establishment of new branches of foreign banks is subject to licensing, but in practice, foreign banks' only channel to market access during the past decades is through acquisition of shares of existing small domestic banks, as there was no policy for giving out new banking licenses. The Financial Institutions Business Act, passed at the end of 2007, unified the legal framework and strengthened Bank of Thailand (the country's central bank) supervision and enforcement powers. The Act gave power to the Bank of Thailand 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 Minister of Finance to authorize foreign ownership above 49 percent only if recommended by the central bank. In January 2009, the Ministry of Finance allowed Malaysia's CIMB Group to hold majority shares (around 93 percent) in BankThai, the country's ninth largest commercial bank, changing its name to CIMB Thai Bank Public Company Limited. In February 2010, the Ministry of Finance also granted Industrial and Commercial Bank of China (ICBC - the largest commercial bank in China) a waiver for the 49 percent foreign ownership limit to 97.24 percent in ACL Bank, Thailand's smallest commercial bank, renaming it as ICBC (Thai) Public Company Limited. The other two are Nakornthon Bank, with England's Standard Chartered Group, holding 99.87 percent ownership and the new name Standard Chartered Bank (Thai) Public Company Limited, and Bank of Asia with Singaporean United Overseas Bank as a majority holder (99.66 percent ownership), called UOB (Thai) Public Company Limited. The increase of foreign participation in the Thai banking system has improved competitiveness in the sector.

Thailand continues to implement the terms of its five-year (2010-2014) Financial Sector Master Plan Phase II (FSMP II) with the objective of comprehensive risk management, cost reduction, and enhancing competitiveness in the banking system with the planned opening up of new

banking licenses in 2014. FSMP Phase I (2004-2008) concluded in 2008 with the focus on strengthening Thai banking sector through the policies of consolidation. The objective of implementation of the FSMP is to get the banking sector ready for a more open economy. To prepare for the new market entrants, the Ministry of Finance endorsed the Bank of Thailand's rules, procedures and conditions in June 2013 for the establishment of new foreign commercial bank 'subsidiaries,' permitting new banks or representative offices, but not existing foreign bank full branches already in Thailand, to open up to 20 branches and 20 off-premise ATMs. Foreign commercial banks meeting the specified qualifications were required to submit applications to the Bank of Thailand between July and December 2013. While five new foreign subsidiary licenses are expected to be awarded and the Bank of Thailand has completed its evaluation and made recommendations of qualified candidates to the Ministry of Finance, final approval is still pending.

In 2012, the Bank of Thailand permitted foreign banks to upgrade existing full branches to 'subsidiaries,' by submitting a request to the central bank during 2012. Qualifying branches must maintain a capital adequacy ratio of no less than 12 percent, compared with a domestic minimum requirement of 8.5 percent, and non-performing loans must be kept under 3.5 percent. In addition, the converted subsidiary must have a minimum of \$333 million in paid-up-capital. After the application window ended, the Bank of Thailand forwarded the qualified list to the Ministry of Finance, but approvals have not yet been announced and the program remains unimplemented.

As of December 2013, there were 30 commercial banks, including 14 locally incorporated commercial banks, one retail bank, 14 foreign bank branches, including three American banks (Citibank, Bank of America, and JP Morgan Chase), and one subsidiary operating in Thailand. There are also eight state banks or specialized financial institutions, two finance companies, three mortgage loan providers, 40 foreign bank representatives, 31 asset management companies, 10 credit card companies, and 26 personal loan companies. Beginning in March 2010, existing foreign bank branches have been permitted to request opening up to two additional branches in Thailand without having to meet additional capital requirements. Details of the FSMP II are available in English at: <http://www.bot.or.th/>. In addition, under the new Basel III capital framework starting on January 2013, foreign bank branches will be required to maintain a minimum total capital ratio of 8.5 percent, in line with Thai banks.

The Thai banking sector is profitable, strong, well-capitalized, and has sound risk management. In 2013, the banking system recorded US\$7.0 billion in net profit, growing by 25.0 percent from the same period of the previous year. After peaking at 47 percent of total lending in May 1999 from the financial crisis, net non-performing loans slowly declined to stand at 1.0 percent of total loans in December 2013. Banks' capital position remained strong with Tier-1 ratio of the domestic banks registered at 12.6 percent and Capital Adequacy Ratio (BIS ratio) at 15.7 percent in December 2013. Total assets of the country's largest six banks stood at 11.5 trillion Thai baht (approximately US\$375 billion) or roughly 97 percent of GDP as of December 2013.

***Insurance:***

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 directors of boards. However, the

Office of the Insurance Commission (OIC) may, at its discretion, permit foreign equity ownership up to 49 percent, and foreign directorship up to 50 percent. Foreign ownership restrictions may be relaxed further in cases where the Minister of Finance, upon recommendation from the OIC, determines that financial problems at an insurance company may cause damage to the insured or the general public. The Acts also requires that limited liability and non-life insurance companies register as public companies, though listing on the Stock Exchange of Thailand is not a requirement.

***Business Registration:***

Any entity wishing to do business in Thailand must register with the Department of Business Development at the Ministry of Commerce, generally taking from three to six months to complete. 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' (or a certificate for US investors as mentioned above.) The 'foreign business license' 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 types of restricted businesses.

***Work Permits:***

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 US\$60 to US\$3,000). Exceptions to the requirement for a work permit include officially recognized diplomatic and consular delegations, representatives of member countries and officials of the United Nations and specialized institutions, personal servants working for the above persons, and those who are performing duties or missions otherwise exempted by the Royal Thai Government. Volunteer or charity work can be considered work under Thai law, requiring a work permit.

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 Board of Investment (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.

***Land Ownership:***

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. If the required land is not used as a residence within two years from the date of acquisition and registration, the Ministry has the power to dispose of the land. Petroleum concessionaires may own land necessary for their activities. Rather than purchasing, many foreign businesses instead sign long-term leases, and then construct buildings on the leased land. Under the 1999 Condominium Act, non-Thais were allowed to own up to 100 percent of a condominium building if they purchased the unit between April 28, 1999 and April 28, 2004. Under the newer Condominium Act of 2007, foreign ownership in a condominium building, when added together, must not exceed 49 percent of the total space of all units in the building, except for those purchased between 1999 and 2004.

***Privatization:***

With the aim of encouraging capital inflows and relieving resource constraints in many key sectors of the economy, the previous government of Thaksin Shinawatra embarked on a privatization program for state-owned economic enterprises and state monopolies. The interim government that followed the September 2006 coup as well as the former government of Abhisit Vejjajiva (Democrat party) considered privatization too controversial and put these plans on hold. Most privatization plans have remained on hold since. 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 state enterprises 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 a company's shares are sold to the public.) Foreign investors are allowed to participate in the privatization but certain restrictions are also applied in certain sectors, which mostly regulated by the Foreign Business Act of 1999 and the Act on Standards Qualifications for Directors and Employees of State Enterprises of 1975 and its series of amendments. The current State Enterprise Policy Office under the Ministry of Finance does not have the power to regulate all SOEs. Meanwhile, a draft comprehensive bill to set up a new regulatory and policy body to supervise all SOEs, including those that have been partially privatized, remains stalled.

***International Rankings:***

The following is a summary of Thailand's ranking in several international indexes.

Table 1: Rankings

Measure	Year	Index/Ranking
TI Corruption Index	2013	102 of 177
Heritage Economic Freedom	2014	72 of 177 (moderately free)
World Bank Doing Business Report, "Ease of Doing Business"	2013	18 of 189
Global Innovation Index	2013	57 of 142
World Bank GNI per capita	2012	USD 5,120

## 2. Conversion and Transfer Policies

All foreign exchange transactions must be conducted through commercial banks and authorized non-banks, namely money changers, money transfer agents, and companies that are granted foreign exchange licenses by the Minister of Finance. Inward remittances are free of controls. Repatriation of investment funds and repayment 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 remittance supporting the loan agreement.

Thai nationals are subject to quantitative limits on the amount of foreign currency that can be remitted abroad without specific permission from the Bank of Thailand. The limits vary depending upon the purpose of the transaction, and range from US\$100 million per annum for business investment or loans to subsidiaries, to US\$1 million per annum for remittances to family members. The Bank of Thailand must approve the purchase of immovable assets or securities abroad, except the latest exemption mentioned above. The new regulation, however, also increases the limit of overseas fund remittances in foreign currencies up to US\$1 million by Thai individual. In addition, the authorities relaxed the repatriation requirement for exporters with foreign currency receipts by extending the period in which such receipts must be brought into the country from within 120 days, to within 360 days and requiring that the foreign currencies be deposited or sold with financial institutions within another 360 days. In 2010, the repatriation requirement is exempted if the export proceeds are less than US\$50,000. A person traveling to any of Thailand's border countries (and Vietnam) may take up to 500,000 Baht (US\$16,600), and up to 50,000 Baht (US\$1,660) for other countries, without prior authorization.

Commercial banks are authorized to undertake most routine foreign remittance transactions without prior approval from the Bank of Thailand. Non-residents can open and maintain foreign currency accounts without deposit and withdrawal ceilings with authorized banks in Thailand. Such accounts must use funds that originate abroad. If non-residents have underlying liabilities or transactions in Thailand, they can open and maintain Thai baht accounts under Non-resident Baht Accounts (NRBA) with authorized banks in the country; however, the combined outstanding of all NRBA for each non-resident at the end of the day cannot exceed 300 million baht (approximately US\$9 million). Since February 2008, the Bank of Thailand has segregated the NRBA into two types: Non-resident Baht Account for Securities (NRBS) for investment in securities and other financial instruments, and Non-resident Baht Account (NRBA) for general purposes. Funds under the two types of NRBA cannot be transferred to the other. The cap on NRBA was introduced in October 2003 with the goal of limiting speculation on the Thai baht.

All remittances exceeding US\$10,000 for any purpose other than export must be reported to the Bank of Thailand.

In general, foreign currencies may be brought into Thailand and are not subject to quantitative limit. Any person who brings foreign currencies into or out of Thailand exceeding US\$20,000 or the equivalent must declare the amount at a Customs checkpoint. Foreigners staying in Thailand for less than three months, as well as those working for foreign embassies and international organizations, are exempt from this requirement.

Due to the substantial appreciation of the Thai baht in 2010, the Ministry of Finance and the Bank of Thailand relaxed regulations on capital outflows. The changes included allowing Thai export companies to transfer funds from their foreign currency deposit accounts to counterparties in Thailand for payment of goods and services without exchanging into Thai baht, and increasing the foreign exchange transactions threshold amount for which a foreign exchange transaction form must be submitted from US\$20,000 to US\$50,000. The Ministry of Finance abolished the US\$200 million per year limit of lending and direct investment of Thai companies to affiliated companies abroad, and relaxed the pre-approval requirement for all transactions of Thai companies' lending to non-affiliated companies abroad to only transactions above US\$50 million per year. The government also increased the limit for purchase of immovable properties abroad from US\$5 million per year to US\$10 million per year; raised the outstanding balance limit of foreign currency accounts that are deposited with funds converted from Thai baht without future obligations with commercial banks in the country to US\$500,000 for both companies and individuals; abolished a pre-approval requirement on unwinding of foreign exchange hedging transactions for goods and services; and relaxed regulations on corporate treasury centers on both lending, deposit and fund transfer activities.

In 2007, the Bank of Thailand and the Ministry of Finance doubled the ceiling on foreign currency deposited with financial institutions in the country from US\$0.5 million to US\$1 million for individuals and from US\$50 million to US\$100 million for juristic persons with future foreign exchange obligations within the following 12 months. The deposit ceiling applies only to foreign currencies that are borrowed from financial institutions, but if foreign currencies are earned (not borrowed), the deposit ceiling restriction is not applied.

### **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.

### **4. Dispute Settlement**

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



generally is 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. Thailand signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States in 1985, but has not yet ratified the Convention. Thailand is a member of the New York Convention and enacted its own rules on conciliation and arbitration in the Arbitration Act of 2002. The 2002 Arbitration Act adopted the principles under the United Nations Commission on International Trade Law (UNCITRAL). The Arbitration Office of the Ministry of Justice administers these procedures.

The Bankruptcy Act was amended in 1999 to provide Chapter 11-style protection to debtors, and to give debtors and creditors the option of negotiating a reorganization plan through the courts instead of forcing liquidation. The Act now allows creditors to extend additional loans to insolvent firms without losing the right to claim compensation during a future restructuring or liquidation process, but only if the new loan is intended to keep the firm in operation. Also in 1999, the Act was amended to facilitate the financial restructuring process. Higher minimum levels for individual and corporate bankruptcies were established, and the previous ten-year period of bankruptcy status was reduced to three years. The 1999 Bankruptcy Act also established a specialized court for bankruptcy cases. The Bankruptcy Courts are divided into the Central Bankruptcy Court which has jurisdiction throughout the Bangkok Metropolitan areas and the Regional Bankruptcy Courts.

In 2004, Parliament approved changes to the Bankruptcy Act including tightening the rules under which some debtors can emerge from bankruptcy status and streamlining the legal appeals process in bankruptcy and restructuring cases. In an effort to quicken the foreclosure process, amendments to the Civil Procedure Code on Execution of Judgments have limited appeal options available to debtors. Under the old regulations, debtors were free to appeal each action taken with respect to the execution of a bankruptcy judgment. Such appeals, often frivolous in nature, were one of the tactics debtors used to delay the foreclosure process. In June 2001, the Supreme Court set an important legal precedent by ruling in favor of implementing a creditor-backed corporate restructuring plan opposed by the former owner of the business in question. The Act was later amended in 2005 by granting the Bankruptcy Court the power to consider bankruptcy cases that involve criminal matters.

Individual cases can take months, or even years, to work their way through the legal system however, and many businesses have urged the government to speed up the bankruptcy procedure. In 2006, new procedural rules were established to accelerate the bankruptcy court proceedings by encouraging the use of electronic equipment and express mail in communications between courts. Under the new rules, provincial courts have the authority to issue search warrants and arrest warrants, and to imprison or release a defendant. Other amendments to the Bankruptcy Act are currently under consideration.

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

**WTO TRIMS:**

Thailand committed to implement all WTO agreements, including Trade-Related Investment Measures (TRIMS). In its latest Trade Policy Review in November 2011, the WTO noted, “Thailand did not take any new measures to restrict trade since the 2008 global financial crisis. Indeed, it has made some important improvements to trading conditions in some areas, such as its adoption of paperless import procedures and its intention to move to a single [customs] window. Furthermore, an appeals system has been introduced by the Customs Department to cover many aspects of import procedures. As a member of ASEAN, Thailand has adopted the Association’s harmonized tariff nomenclature which has also helped facilitate trade by standardizing the customs codes used to identify products.”

The report also said that Thailand has committed to liberalize the regulatory regime with legislation governing key sectors such as transport, distribution, and telecommunications under review. However, the report observed that there are some areas of Thailand’s import and domestic policies that could hamper trading opportunities and impede its development, including agriculture policies such as domestic support and tariff quota administration, complex tariffs structure, technical barriers to trade and Sanitary Phyto Sanitary (SPS) measures, and intellectual property. The report also underlined that despite progress in the liberalization of trade in some service sectors, there remain concerns over foreign ownership and market access restrictions in financial services (particularly the insurance sector), telecommunications, maritime and professional services. The report noted that Thailand has yet to modify its General Agreement on Trade in Services (GATS) schedule following the negotiations on telecommunications in 1997.

**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 web site at: [www.boi.go.th](http://www.boi.go.th).

In November 2009, BOI established the 'One Start One Stop Investment Center' as a centralized location to assist investors with the requirements of the various investment related government agencies. Staff at the Center provide guidance to investors on how to register a company, obtain BOI's investment promotion privileges, obtain a foreign business license, complete an environmental impact assessment, request permission to use land for industrial operations, obtain utilities, and other related investment issues. More information could be found on its web site at <http://osos.boi.go.th/>. BOI identifies eligible activities for its investment incentives (detailed below) covering hundreds of types of businesses. Generally, the most generous incentives are offered to those projects that bring new technology to Thailand and those that invest in less developed provinces. These projects are usually referred to by BOI as “priority activities.”

There are two basic types of BOI incentives: tax-based (including tax holidays and tariff exemptions) and non-tax privileges (guarantees, special permissions, services, etc.). The minimum investment amount is 1 million baht (approximately \$33,000), excluding the cost of

land and working capital; however, small and medium industries in certain activities with minimum investment of 500,000 baht (approximately \$16,700), excluding the cost of land and working capital, are also eligible for the incentives. Projects with an investment of 10 million Thai baht (approximately US\$330,000) or more, excluding the cost of land and working capital, are typically required to obtain international standards certifications, such as International Standards Organization (ISO) 9000. BOI requires investors to submit evidence of compliance with the conditions of their approval in order to claim incentive benefits. BOI previously lifted all local content and export requirements.

Specific BOI incentives include:

- Tax incentives: exemptions or reductions of import duties on imported machinery; reductions of import duties on imported raw materials and components; exemptions from corporate income taxes for three to eight years; and, deductions from net income of infrastructure costs.
- Permissions: to bring in foreign nationals to undertake investment feasibility studies; to bring in foreign technicians and experts to work under promoted projects; to own land for carrying out promoted activities.
- Guarantees: against nationalization; against competition by new state enterprises; against state monopolization of the sale of products similar to those produced by promoted firms; against price controls; against tax-exempt import by government agencies or state enterprises of competitive products; and, of permission to export.

Tax incentives offer the greatest advantages, though their relative value has declined in recent years with the general reduction of import duties and elimination of the former business tax system. The Value Added Tax (VAT) Law, which eliminated the business tax exemption, has no provision for BOI to offer VAT exemptions or reductions. Investors must submit an application form along with supporting documentation to be considered for incentives. In most cases, BOI decides within 40-60 working days whether or not a project is eligible for investment privileges. BOI typically completes its review of applications for projects valued in excess of 750 million baht (approximately US\$24 million) within 90 working days.

The maximum allowable debt-to-equity ratio is 3:1 for a newly established project, but expansion projects are considered on a case-by-case basis. With the exception of electronic and agricultural investments, regardless of overall investment size, projects must produce added value equal to at least 20 percent of sales revenue. For projects with investment capital more than 80 million baht (about US\$2.7 million), excluding land and working capital, a feasibility study must be presented at the time of application. Adequate environmental protection systems must be installed for projects with a potential environmental threat.

State-enterprise projects are not eligible for BOI promotions, but concession projects (either Build Transfer Operate or Build Operate Transfer) by the private sector are eligible with some restrictions.

BOI's eligible activities for investment privileges are divided into seven categories. These seven categories cover hundreds of actual business activities. The complete list can be found at [www.boi.go.th/english/about/eligible\\_activities.asp](http://www.boi.go.th/english/about/eligible_activities.asp).

Category 1: Agriculture and agricultural products;  
Category 2: Mining, ceramics and basic metals;  
Category 3: Light industry;  
Category 4: Metal products, machinery and transport equipment;  
Category 5: Electronic industry and electrical appliances;  
Category 6: Chemicals, paper, and plastics;  
Category 7: Services and public utilities.

Each year, BOI also selects certain business activities under the seven categories as priority investment activities. BOI traditionally gives maximum incentive packages to these priority investment activities and sometime regardless of locations. These activities have included agriculture and agro-industries; research and development; public utilities; infrastructure and basic services; biotechnology; alternative energy; manufacture of high technology products; and environmental protection and conservation.

Activities classified as priority activities are granted the following tax incentives:

- Exemption of import duties on machinery for all zones
- Eight-year corporate income tax exemption for all zones (subject to the corporate income tax exemption cap)
- Other relevant location-based incentives

As part of its policy to encourage investment throughout the country, BOI divides the country into three zones: Zone 1 (Bangkok and 5 surrounding provinces), Zone 2 (a grouping of 12 other provinces, mostly in the central region), and Zone 3 (the remaining 59 provinces with low income and less-developed infrastructure). BOI actively encourages investment in Zone 3, which includes the least developed provinces of Thailand, by offering maximum incentive packages. BOI also promotes the relocation of projects from Zone 1 to Zone 2 and Zone 3; however, in order to be eligible for new incentives, these projects must relocate to an industrial estate or a promoted industrial zone. More details are available on BOI's website.

Majority or total foreign ownership is permitted for BOI-approved investment projects in the manufacturing sector; however, for projects in agriculture, animal husbandry, fishery, mineral exploration and mining, and service businesses under Schedule One of the Foreign Business Act of 1999, Thai nationals must hold shares totaling not less than 51 percent of the registered capital.

In an attempt to revive the economies of the three southernmost provinces (Pattani, Yala, and Narathiwat), BOI launched a special package in mid-2007. The package includes maximum tax incentives, including eight-year corporate income tax holidays plus a 50 percent reduction on corporate income tax for the following five years, an exemption of import duties on machinery and raw materials, and deduction of infrastructure construction and installation cost up to 25 percent of capital investment. The applicable period for double deduction of public utilities and transportation costs was extended to 15 years. In 2009, BOI broadened the investment promotion scope to allow all types of eligible activities to apply for the promotion incentives in Pattani, Yala, and Narathiwat. In addition, the deadline for applications was extended to December 2012.

In June 2010, BOI signed a cooperation agreement with the Thai Ministry of Justice's Office of Public Sector Anti-Corruption Commission (PACC) to improve protection for foreign investors and entrepreneurs from corruption. Both agencies will increase information sharing and open new channels to receive complaints from investors affected by corruption by government officials.

In late 2011, severe flooding damaged 1,775 of BOI's existing promoted companies worth a combined investment value of 624 billion baht (about US\$21 billion) or roughly 9 percent of the total investment for the past ten years. The BOI issued the following measures to help minimize business disruptions:

- Affected factories are allowed to temporarily relocate elsewhere to continue their production for a period of six months with a possible extension period from the application submission date;
- Manufacturing processes can be allowed to be outsourced partially or wholly;
- Affected companies are allowed to export their machineries to be used for overseas production;
- BOI would cooperate with the Department of Employment and foreign Embassies to facilitate the use of Thai workers from the flood-affected companies at the overseas production facilities;
- BOI, Ministry of Labor and the Immigration Bureau would assist companies to bring in foreign experts and technicians to rehabilitate the factories;
- Duty-free importation of replacement machinery is allowed until the end of June 2012;
- Imported raw materials damaged by the flooding can be counted as part of the waste allowance without any tax burden.

## **6. Right to Private Ownership and Establishment**

Private entities may establish and own business enterprises. The principal forms of business organization under Thai law are sole proprietorships, partnerships, limited companies, and public limited companies. In addition, branches of foreign corporations are recognized, and a "representative" or "liaison" office of a foreign company may receive special recognition. Regardless of the form of business organization, most businesses must apply for business registration. Establishment of a business in certain sectors by a foreign entity may be restricted by the Foreign Business Act. U.S. investors may benefit from the Treaty of Amity and Economic Relations (AER) as discussed above.

A Thai public limited company is similar to a corporation in the United States, and may be wholly owned by a foreigner unless the corporation is involved in a business activity reserved for Thai nationals. A public limited company is allowed to offer its shares to the public. Eight laws pertaining to individual industries limit foreign ownership of companies listed on the Stock Exchange of Thailand.

## **7. Protection of Property Rights**

Property rights are guaranteed by the Constitution against condemnation or nationalization 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 Criminal Procedure Code. In adopting these codes early in the twentieth century, Thailand selected features of the two major Western legal systems (common law and civil law), and adapted to circumstances in Thailand provisions drawn from Great Britain, Germany, Switzerland, France, Japan, Italy, India, and other foreign systems. 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.

Widespread counterfeiting and piracy continue to plague intellectual property 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 intellectual property (IP) legal developments in areas such as broadcasting and digital copyright. Thailand is signatory to long-standing IP agreements such as the Berne and Paris Conventions, but not the World Intellectual Property Organization Copyright Treaty (WCT) or Performances and Phonograms Treaty (WPPT). Thailand acceded to the Patent Cooperation Treaty in 2009. 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>.

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

In 1999, Thailand enacted the Trade Competition Act together with the Price of Merchandises 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 Merchandises and Services Act. The Department of Internal Trade under the Ministry of Commerce administers this law and interacts with the affected companies although only the "Committee on Price of Merchandise and Service" make the final decision on what products to add or remove from price controls. As of January 2014, out of 43 controlled commodities and services, only sugar is subject to a price ceiling. Besides the 43 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 industries also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and repeated use of arbitrary values by the Customs Department. In August 2009, the Thai government proposed a series of reforms to its customs laws and procedures. Following the change in government in July 2011, amendments to address the penalty regime need to be resubmitted to the Cabinet before they can be sent to Parliament.

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. However,

most observers believe that the overall trend toward transparency in regulatory enforcement is positive, especially for foreign-owned businesses.

## **9. 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. 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, despite significant problems in some areas. The Thai government has devoted considerable effort to bringing these systems into line with international norms, and important progress has been made. However, there is more to be done to implement the legal and regulatory changes, and the lack of skilled labor will limit overall progress in some areas, particularly auditing, for the foreseeable future.

In 2002, Thailand established the National Corporate Governance Committee (NCGC), chaired by the Prime Minister, to implement international-standard corporate governance policies. Thailand's main equity market is the Stock Exchange of Thailand (SET) and a secondary market for small and medium-sized enterprises are trading on the Market for Alternative Investment (MAI). In 2013, local retail investors accounted for 57.1 percent of total trading volume, foreign investors for 21.7 percent, and proprietary trading for 12.6 percent, and local institutional investors for 8.5 percent. . In 2013, the market capitalization of the SET was US\$374.1 billion or 96.6 percent of Thailand's Gross Domestic Product (GDP). 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.

Limits on foreign ownership of Thai companies are perhaps most prominent in the financial sector. 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, private debt markets are not well-developed, and most corporate financing, whether for short-term working capital needs, trade financing, or project financing, is commercial bank or financial institution borrowing.

In addition to legal limits on foreign ownership in certain sectors, Thai firms employ defenses against foreign investment primarily through cross- and stable-shareholding arrangements. Such defenses against hostile takeovers are typically applied against all potential investors, rather than against foreign potential investors alone. Companies are permitted to specify limits on foreign ownership more strict than those established by the government. In general, limits on foreign ownership and participation in the Thai economy have eased since the Asian Financial Crisis in 1997-98.

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



State-owned enterprises operate primarily in the utility, energy, telecommunications, banking, tobacco, agriculture and transportation sectors. At the end of 2012, Thailand's 55 state-owned enterprises (SOEs) had revenues of around 4.95 trillion Thai baht (approximately US\$159.2 billion), employed approximately 278,192 people (0.7 percent of the Thai labor force), and accounted for approximately 43.5 percent of Gross Domestic Product (GDP). Of the SOEs' total revenue, around eighty percent comes from the energy sector.

Private enterprises are generally not allowed to compete with state-owned enterprises under the same terms and conditions with respect to access to markets, credit, and other business operations such as licenses and supplies, except in the banking sector. The government announced its intention to allow more private companies to compete with SOEs, in particular in the telecommunications, energy, and transport sectors. The government regularly allocates three to four percent of its annual budget expenditures to fund the SOEs. The government can temporarily provide short-term credit facilities, loan guarantees, or capital injections for troubled SOEs. This assistance usually focuses on those SOEs that have not been corporatized or are operating in loss. Corporate board seats are typically allocated to senior government officials or other politically-affiliated individuals. All SOEs are required by law to submit annual financial reports to the Office of the Auditor General. Publicly-listed state-owned enterprises, such as Thai Airways, are required to publish their financial reports. Currently, there are only 6 SOEs listed in the Stock Exchange of Thailand (SET), including Krung Thai Bank (1989 listed year), THAI Airways (1991), PTT (2001), AOT (2004), MCOT (2004) and PTTEP (1993), accounting for around 17 percent of the SET's total market capitalization. As for procurements, state-owned enterprises, 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 state-owned enterprises in managing procurements, while denying bidders recourse to challenge procedures. Allegations frequently surface that changes are made in procurements.

Thailand currently does not have a sovereign wealth fund. However, the Bank of Thailand is studying a plan to use its surplus foreign reserves to establish what would be called a New Opportunity Fund, aimed at increasing returns as a part of efforts to improve the central bank's balance sheet. The Bank estimates that such a fund could be up and running in 2015.

## **11. Corporate Social Responsibility**

There is wide recognition and awareness of the value of corporate social responsibility (CSR) initiatives among Thai producers and consumers, but many companies still lack a full understanding of the generally accepted CSR principles such as 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, are actively supporting the development of CSR programs in Thailand. Since 2007, the American Chamber

of Commerce Corporate Social Responsibility Excellence Awards have encouraged the expansion of CSR programs by identifying best practices of companies in Thailand. Many CSR programs incorporate the Embassy'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, IT, and microfinance projects. The AMCHAM ACE program also tracks continuous improvement.

Both the Thai Chamber of Commerce (TCC) and the Federation of Thai Industries (FTI) have undertaken several CSR projects over the past years. The Joint Standing Committee on Commerce, Industry, and Banking of Thailand (JSCCIB) has also established a CSR committee that consolidates reports on activities from both TCC and FTI members.

## **12. Political Violence**

After a period of relative political stability following 2011 elections, Thailand is again experiencing unrest and political division. Beginning in late 2013, anti-government protesters demanding the resignation of Prime Minister Yingluck Shinawatra and removal of her family's influence from Thai politics began a series of rallies, roadblocks, and protest marches focused mostly in Bangkok. Demonstrations resulted in clashes with police forces in early December, which, along with sporadic violent acts near protest areas, have resulted in dozens of deaths and hundreds of injuries. PM Yingluck dissolved parliament in December 2013 but protesters disrupted February 2, 2014 elections to the point that they were annulled in March 2014, leaving an uncertain way forward. Several corruption and legal charges threaten to remove PM Yingluck and her government. Protesters contend that she and her elder brother, former PM Thaksin Shinawatra, who was deposed in a 2006 coup, are corrupt while PM Yingluck insists her democratically elected government is legitimate and there should be new elections. The current unrest is the most significant since 2010, when pro-Thaksin opposition protesters opposed the then-government, which culminated in clashes with the army resulting in 91 deaths and an estimated \$1.5 billion in arson-related property losses. Another important political problem for the Thai government is the ongoing political violence in Thailand's southern-most provinces (Yala, Narathiwat, and Pattani). Efforts to quell the ethno-nationalist insurgency, which has led to over 4,000 deaths since 2004, have not yet had much effect.

Thailand and Cambodia have disputed sections of their boundary which resulted in sporadic border clashes in 2008-2011. In November 2013, the International Court of Justice, at Cambodia's request, reinterpreted its 1962 ruling which had awarded the disputed Preah Vihear temple to Cambodia. The border has remained calm since the November ruling, which awarded some of the area in the vicinity of the temple to Cambodia, but not the entire piece claimed by that country. Thai-Cambodian tensions have subsided over the last year and both governments meet regularly to discuss border issues, including on overlapping claims in the Gulf of Thailand which contain hydrocarbon reserves.

## **13. 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. 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 administrating 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.

***U.S. Foreign Corrupt Practices Act:***

In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

The U.S. Department of Justice (DOJ) and the Securities and Exchange Commission released a Resource Guide to the U.S. Foreign Corrupt Practices Act. The Guide is an excellent resource on

the FCPA for U.S. companies with questions about the statute and its enforcement. The Guide explains the statute in detail and contains hypothetical, examples of actual enforcement actions, and summaries of FCPA case law and DOJ opinion releases. For this and other useful resources visit the DOJ Webpage: <http://www.justice.gov/criminal/fraud/fcpa/guidance/>.

***Guidance on the U.S. FCPA:***

The Department of Justice's (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department's present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure are available on DOJ's Fraud Section Website at [www.justice.gov/criminal/fraud/fcpa](http://www.justice.gov/criminal/fraud/fcpa). Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information on the FCPA, transparency and anti-bribery initiatives, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, website, at <http://www.commerce.gov/os/ogc/transparency-and-anti-bribery-initiatives>. More general information on the FCPA is available at the Websites listed below. Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

***Other Instruments:***

It is U.S. Government policy to promote good governance, including host country implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, the United States has been instrumental to the expansion of the international framework to fight corruption. Several significant components of this framework are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-bribery Convention), the United Nations Convention against Corruption (UN Convention), the Inter-American Convention against Corruption (OAS Convention), the Council of Europe Criminal and Civil Law Conventions, and a growing list of U.S. free trade agreements. Thailand is party to the UN Anticorruption Convention; Thailand is also a member of the Asia/Pacific Group against Money Laundering (APG).

***OECD Anti-bribery Convention:*** Thailand is not a party to the OECD Convention (see <http://www.oecd.org/dataoecd/59/13/40272933.pdf>).

***UN Convention:*** Thailand is a party to the UN Convention (see <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>).

***OAS Convention:*** Thailand is not a party to the OAS Convention (see <http://www.oas.org/juridico/english/Sigs/b-58.html>).

***Council of Europe Criminal Law and Civil Law Conventions:*** Thailand is not a member of the Council of Europe Conventions (see [www.coe.int/greco](http://www.coe.int/greco)).

**Free Trade Agreements:** The United States does not have an FTA with Thailand (for U.S. FTAs see U.S. Trade Representative Website: <http://www.ustr.gov/trade-agreements/free-trade-agreements>).

**Local Laws:**

U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department's U.S. and Foreign Commercial Service can provide assistance with navigating the host country's legal system and obtaining a list of local legal counsel.

**Assistance for U.S. Businesses:**

The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company's overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at [www.trade.gov/cs](http://www.trade.gov/cs). The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce Department's Advocacy Center and State's Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center "Report a Trade Barrier" Website at [http://www.tcc.export.gov/Report\\_a\\_Barrier/index.asp](http://www.tcc.export.gov/Report_a_Barrier/index.asp).

**Anti-Corruption Resources:**

Some useful resources for individuals and companies regarding combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a "Lay-Person's Guide to the FCPA" is available at the U.S. Department of Justice's Website at:
  - <http://www.justice.gov/criminal/fraud/fcpa/guidance/>.
- Information about the OECD Anti-bribery Convention including links to national implementing legislation and country monitoring reports is available at: [http://www.oecd.org/department/0,3355,en\\_2649\\_34859\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,3355,en_2649_34859_1_1_1_1_1,00.html). See also new Anti-bribery Recommendation and Good Practice Guidance Annex for companies: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>
- General information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, is available at the Department of Commerce Office of the Chief Counsel for International Commerce Website: [http://www.ogc.doc.gov/trans\\_anti\\_bribery.html](http://www.ogc.doc.gov/trans_anti_bribery.html).

- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: <http://cpi.transparency.org/cpi2012>. TI also publishes an annual Global Corruption Report which provides a systematic evaluation of the state of corruption around the world. It includes an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See <http://www.transparency.org/publications/gcr>.
- The World Bank Institute publishes Worldwide Governance Indicators (WGI). These indicators assess six dimensions of governance in 212 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp). The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: <http://go.worldbank.org/RQOXYJ6210>.
- The World Economic Forum publishes the Global Enabling Trade Report, which presents the rankings of the Enabling Trade Index, and includes an assessment of the transparency of border administration (focused on bribe payments and corruption) and a separate segment on corruption and the regulatory environment. See <http://www.weforum.org/en/initiatives/gcp/GlobalEnablingTradeReport/index.htm>.
- Additional country information related to corruption can be found in the U.S. State Department's annual Human Rights Report available at <http://www.state.gov/g/drl/rls/hrrpt/>.
- Global Integrity, a nonprofit organization, publishes its annual Global Integrity Report, which provides indicators for 92 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: <http://report.globalintegrity.org/>.

***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
- +662-528-4930
- Email: TACC@nacc.go.th

***Civil Society Contact on corruption:***

- Dr. Kanokanokknn Anukanasi
- Director
- Transparency Thailand
- Center for Philanthropy and Civil Society, NIDA, 118 SeriThai Road, Klong Jan, Ket Bang Kapi 10240, Thailand
- +662-377-7206

- Email: [juree@cpcnida.com](mailto:juree@cpcnida.com)

#### **14. Bilateral Investment Agreements**

The 1966 iteration of the U.S.-Thai Treaty of Amity and Economic Relations (AER), discussed above, allows U.S. citizens and businesses incorporated in the U.S., 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 U.S. and Thailand signed a bilateral Trade and Investment Framework Agreement (TIFA). The TIFA establishes a Trade and Investment Council (TIC), 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 39 countries, including China, India, Taiwan, S. 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.

#### **15. OPIC and Other Investment Insurance Programs**

The Overseas Private Investment Corporation (OPIC) provides political risk insurance, debt financing, and private equity capital to support U.S. investors and their investments. OPIC can provide political risk insurance for currency inconvertibility, expropriation, and political violence for U.S. investments including equity, loans and loan guarantees, technical assistance, leases, and consigned inventory or equipment. OPIC is currently insuring two U.S. organizations involved in humanitarian services and economic development in Thailand. OPIC debt financing in the form of direct loans and loan guarantees of up to \$250 million per project are also available for business investments in Thailand, covering sectors as diverse as tourism, transportation, manufacturing, franchising, power, infrastructure, and others. In addition, OPIC supports eight private equity funds that are eligible to invest in projects in Thailand.

Thailand became a member of the Multilateral Investment Guarantee Agency (MIGA) in October 2000.

#### **16. Labor**

According to the National Statistical Office, the Thai labor force in 2013 reached 40.2 million workers out of a total population of 68.2 million. The official unemployment rate in 2013 averaged just 0.7% of the labor force, despite a significant daily minimum wage increase to 300 baht (\$10) in 70 provinces effective January 2013 (minimum wage in the remaining 7 provinces, including Bangkok and 6 other high-income areas, increased to 300 baht in April 2012).



Due to a shortage of low skilled labor, Thailand has attracted migrant workers since the 1990s. Although one million Thais work outside Thailand, the country hosts approximately 2.5-3 million migrant workers, primarily from developing neighboring Burma, Laos, and Cambodia. As of October 2013, 1.2 million migrant workers are registered while roughly 1-2 million remain undocumented. While the Thai government has stated that documented migrant workers will be equally protected under Thai Labor Laws, in practice, there are reports that some migrant workers are still receiving wages lower than Thais and have limited access to workmen's compensation fund and training.

A survey done by the World Bank found that firms report acute shortages for technical skills, especially at the vocational school level as well as language and IT skills and soft skills such as leadership and creativity. This technical skill shortage is attributed in large part to a mismatch between market demands and educational preparation. The problem is likely to be exacerbated as Thailand enters a period of demographic aging, with an expected compound annual growth rate of the working age population at only 0.2% between 2010 and 2020. In December 2013, Thailand's Ministry of Labor survey reported a shortfall of 270,000 workers, particularly in the wholesale and retail sectors. Many multinational firms continue to bring in expatriate professionals because qualified local personnel are not available, even at high salaries. Finding, training, and retaining qualified employees to work in the manufacturing facilities being developed in industrial estates, such as those along the Eastern Seaboard, will continue to be a challenging government priority.

According to Ministry of Labor data for 2012, there are 1,411 labor unions operating in Thailand, 1,366 come from private enterprises and 45 come from state-owned enterprises. There are 569,174 unionized workers (roughly 1.4% of the labor force over the age of 15), 402,633 of which come from private enterprises and 166,541 of which come from state-owned enterprises. Thai law allows private sector workers to form and join trade unions of their choice without prior authorization, but enforcement of labor laws is inconsistent and Thai labor unions are generally weak. Noncitizen migrant workers, whether registered or illegally present, do not have the right to bargain and collect nor serve as union officials, but registered migrants may be members of unions organized and led by Thai citizens. The law restricts affiliations between state enterprise unions and private sector unions.

The labor relations climate is generally peaceful and formal strikes are infrequent. The Labor Protection Act, enacted in 1998, brought labor practices more in line with International Labor Organization (ILO) standards. The law cut the workweek to a maximum of forty-eight hours, with a limit on overtime of 36 hours per week payable at one and one-half times the hourly rate. Hazardous work may not exceed seven hours per day or forty hours per week. All employees are entitled to a vacation of six workdays per year, in addition to thirteen holidays traditionally observed in Thailand. Under the labor law, the employment of children under the age of fifteen is prohibited, and there are restrictions on the employment of children and youths between the ages of fifteen and eighteen. The Thai government amended the Labor Protection Act in 2008 to help promote standards for contract labor. The Act now requires an employer to provide benefits and welfare without discrimination to the contract laborers. The Act also extended protection for employees against sexual abuse and harassment in the workplace. In 2012, two regulations ("Ministerial Regulation on Domestic Work" and "Hazardous Child Labor Work List") were

enacted that increased protection to domestic workers and child laborers. Under the new regulations, children under 15 and 18 are prohibited from working in the field of domestic work and fishing vessels. The new regulation on domestic workers will also give annual leave, holidays, and paid sick leave to domestic workers. However, it still fails to address how other issues will be handled, such as minimum wage, working hours, and maternity leave.

### 17. Foreign Trade Zones/Free Ports

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 that the IEAT Committee has to consider and approve the amount of space for a foreign owned firm to buy or lease land 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), Ayudhya, 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.

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

**TABLE 2: Key Macroeconomic data, U.S. FDI in Thailand**

	Thailand's National Economic and Social Development Board (NESDB)		USG or international statistical source		USG or international Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
<b>Economic Data</b>	Year	Amount	Year	Amount	

Thailand Gross Domestic Product (GDP) ( <i>Millions U.S. Dollars</i> )	2013	\$401 billion	2012	\$366 billion	<a href="http://www.worldbank.org/en/country">http://www.worldbank.org/en/country</a>
<b>Foreign Direct Investment</b>	Bank of Thailand		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in Thailand ( <i>Millions U.S. Dollars, stock positions</i> )	2012	\$17.0 billion	2012	\$16.9 billion	<a href="#">(BEA) click selections to reach.</a> <ul style="list-style-type: none"> <li>• Bureau of Economic Analysis</li> <li>• Balance of Payments and Direct Investment Position Data</li> <li>• U.S. Direct Investment Position Abroad on a Historical-Cost Basis</li> <li>• By Country only (all countries) (Millions of Dollars)</li> </ul>
Thailand's FDI in the United States ( <i>Millions U.S. Dollars, stock positions</i> )	2012	\$3.8 billion	Not Available	Amount	<a href="#">(BEA) click selections to reach</a> <ul style="list-style-type: none"> <li>• Balance of Payments and Direct Investment Position Data</li> <li>• Foreign Direct Investment Position in the United States on a Historical-Cost Basis</li> <li>• By Country only (all countries) (Millions of Dollars)</li> </ul>
Total inbound stock of FDI as % host GDP ( <i>calculate</i> )	50.9%	2012	Amount	Insert (Year)	

**TABLE 3: Sources and Destination of FDI**

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations ( <i>US Dollars, Millions</i> )					
Inward Direct Investment			Outward Direct Investment		
Total Inward	178,003	100%	Total Outward	48,459	100%
Japan	56,026	31%	Singapore	6,354	13%
Singapore	32,263	18%	Cayman Islands	5,453	11%
United States	15,728	9%	China, P.R.: Hong Kong	4,618	10%
Netherlands	11,559	6%	China, P.R.: Mainland	4,107	8%
China, P.R.: Hong Kong	8,243	5%	Malaysia	2,222	5%

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

Source: <http://cdis.imf.org/>

**TABLE 4: Sources of Portfolio Investment**

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
World	28,198	100%	World	7,549	100%	World	20,649	100%
Brazil	4,892	17%	Australia	1,868	25%	Brazil	4,886	24%
Korea, Republic of	3,100	11%	United States	1,733	23%	Korea, Republic of	3,084	15%
United States	2,633	9%	Luxembourg	1,031	14%	China, P.R.: Hong Kong	1,456	7%
Australia	2,327	8%	Switzerland	721	10%	United Arab Emirates	916	4%
China, P.R.: Hong Kong	1,909	7%	Singapore	551	7%	United States	900	4%

Source: <http://cpis.imf.org/>

#### 19. Contact Point at Post

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