

**Key Points –
'Doing Business' enhancements; welcoming business visitors;
modernising a 44 year old law**

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A. Background & Developments

Thailand has policies to attract business visitors including International Headquarters (IHQ) arrangements and is an attractive conference destination.

Unlike most places in the world, such activities in Thailand are hamstrung by a 44 year old law which for most activities requires a work permit. This applies to a wide range of activities which most business visitors do not consider to be 'working'. Signing accounts at a board meeting and speaking at a conference are officially classified as 'working' for which a work permit is needed, just two examples.

A law dating back to 1972 (now in s.5 of the 2008 Foreign Employment Act) defines work as exerting physical or mental effort, whether paid or not. This is extremely wide and was introduced at a time of crackdown on foreign activity. The historical context is described on p.13 in the historical section of the JFCCT Book (published 25 November 2016).

1. Which people are relevant to this issue?

There are two relevant categories of people:

- i) **Employees and similar staff:** People who need to be in Thailand to work; are local employees and need to work in Thailand. They are in the generally accepted definition of the word "work" where they are paid to do defined jobs.
- ii) **Business visitors** who have no intention or need to take up local employment and are not resident in Thailand. They come to Thailand to do various business related activities which could include attending meetings, seminars or having business discussions. They do not seek local employment and do not intend to live in Thailand. In the generally understood and internationally accepted definition they are not 'working' (and do not believe they are) however under the very broad definition of 'work' in Thai law in most cases, relevant activities would constitute 'work' and thus they would need a work permit.

It continues to be policy in the foreign business community to seek a longer-term change to the effective definition of 'work' – ie to change the law. It is

worth noting that it is also published policy of EABC, JFCCT and Amcham (and others) to change the law by changing the definition of 'work'. The foreign business community does try to build consensus around, and be harmonised on, key issues and this is an illustration. This note focuses only on this one, big issue, not on the various other 'ease of doing business' issues such as removing location restrictions for work permits.

2. Clear rulings

There have been two recent and clear official statements about what can be done at meetings and conference (both reported in the English language press in Thailand):

- a) The Dept of Employment has reconfirmed that a foreign director of a Thai company may not sign accounts (financial statements) at a board meeting unless he has a work permit, and that defect vitiates (undoes the validity of) the accounts. The workarounds proposed are very cumbersome (and one may not even be valid) and add to 'doing business' overhead. This conflicts with what was understood to be the general intent of the March 2015 interpretation (see below), and flies against the very purpose of IHQ policies which are to encourage regional and international headquarters to be established in Thailand -- in other words that people not usually working in Thailand can come here to carry out various business activities. And yet this official statement by the Dept. of Employment directly limits their ability to do so (and presumably would also prevent them from chairing, or even presenting a report at a board meeting). In fact, these are normal business activities for a foreign director of any Thai company, not only those with IHQ status.-
- b) The holder of a business visa was advised that he could not speak at a conference as this was 'working', again contrary to the general understanding of the March 2015 interpretation. According to press reports, the DoE officer said that the law would be applied to all, regardless of the nature of the work being done.

Thailand is a sought-after MICE destination with many conference organisers arranging high level conferences often with outstanding visiting speakers. These foreign speakers need a work permit to be in line with the law but it is not the practice of such organisers to advise them accordingly or help arrange such a work permit.

In all cases where a business visitor is in Thailand carrying out various 'business visitor'-type activities for which a work permit is currently needed, there is a high likelihood that a claim under a travel insurance policy would be denied as the business traveller did not hold all valid permits to do the activity. For IHQ activities with frequent but often short notice visits, there is a business risk due to non compliance.

Thus this matter is not just one of inconvenience.

The above (a) and (b) are just two examples based on the law which if applied to various typical activities at a board meeting, would *also* include giving a management report for example and most likely, chairing the meeting.

3. Interpretive efforts

The basis of the law is as described above. Interpretations are based on this. Interpretations do not change the law, they may allow some creeping scope, that's all.

While *interpretations* of this have been done (eg March 2015 – see details below in the Annex), the law still requires work permits in nearly all situations. Most business visitors believe that by ticking a box saying 'business' on the TM.6 entry form, there is no need to obtain any other permit in order to do the usual things which, in most countries, a business visitor can do without the need for further permits.

Even these well-intentioned interpretations have been eroded by the two statements from the Department of Employment. (See two cases mentioned above about signing accounts and speaking at conferences). Applying the same legal principles, there would be many other specific activities which would require a work permit.

Every day there are many, many business visitors to Thailand who do not realise that a work permit is needed in order to speak at conferences or do various normal things at other meetings. In many cases, foreign speakers in the many conferences which are part of Thailand's MICE industry are unfortunately breaking the law with the high probability that any travel insurance cover would not apply.

In many situations (one example being cases involving supply of certain professional services), the ability to obtain a work permit is cumbersome or unachievable in practical terms.

Thus it continues to be necessary to change the law; it is suggested that interpretations have been exhausted.

B. A way to change the law

One possible way to change the law is to focus on the definition of a 'business person' or business visitor to create a visa-free or visa-on-arrival category, borrowing a concept from APEC which Thailand has already agreed to in that context. (The concept is also in the TPP). This is not about the category of people (see item 1 (i) above) who reside in Thailand and need to be locally employed. It is about business visitors and others doing activities of the same kind as business visitors.

It appears that this concept has not been incorporated into Thai domestic law.

The general concept has been adjusted for suitability as a general law applying to business visitors from all nationalities and recognising the 'doing business' enhancements.

A longer research paper which covers the development of APEC 'business mobility' policy is available if needed (done by JFCCT/EABC).

SAMPLE LEGAL TEXT

Recognise business activity which will override any residual restrictions from the definition of 'work'

"A 'Business Person' is someone seeking temporary entry into the Kingdom for business activity and is not seeking employment or residence in the Kingdom. Their primary source of remuneration, principal place of business, and predominant (but not exclusive) place of accrual of profits remain outside the Kingdom. It may also be a person already in Thailand, holding a work permit for designated, employed activity with a different company, or already in Thailand for other, non-work related reasons, and who is to engage in the same kind of 'non work' activity as a Business Person seeking temporary entry, for which no Work Permit is to be required.

Activities not considered to be 'work' are:

- a) Conducting, arranging, organising or attending conferences, seminars, lectures or workshops and participating in any capacity

including but not limited to presenting papers, chairing sessions etc;

b) negotiating, proposing or setting up the sale of services or goods where such negotiations do not themselves involve direct sales to the general public (although that may be part of the later intended business enterprise) but may involve sales or provision of samples

c) Activities to set up businesses of any kind and related activities such as raising funds for investment, performing due diligence, or arranging representation, marketing or distribution agreements

d) Attending board, or management, or shareholder or other general meetings and participating in any capacity, including but not limited to chairing, presenting papers, management reports, or other reports, signing checks, signing financial statements or other corporate documentation, voting on resolutions, or any other activity which any board member or shareholder (or other member of the organisation) might be expected to carry out during the meeting or in that person's capacity as a director or board member (howsoever termed) or participant in the meeting.

e) Doing any other act, matter or thing incidental or related to any of these things.

A Business Person validly carrying out any such activity shall not require any work permit. In the event of any inconsistency between this law and the Foreign Employment Act [or other law purporting to define work] this law shall prevail."

For Thailand's economy to remain regionally competitive, it should be easy for business people to enter the country and legally engage in normal business activities which should not require a work permit.

The law describes a general purpose. It is recommended that it is not wise to build in some kind of up front proof test, as this would be cumbersome and defeat some of the purpose. Rather it is better to rely on an entrant's statement. There are sufficient sanctions for false statements.

So far, this proposed mechanism for changing the law has had a positive reception. It does need further support and discussion. Some fine-tuning will be needed.

And as mentioned there are already official specific exclusions such that signing accounts at a meeting is 'working' and speaking at a conference is 'working'. These are just two examples based on the law which if applied to various typical activities at a board meeting, would also include giving a management report for example and most likely, chairing the meeting.

Thus it does continue to be a policy hope that the law can be changed, such as to change the effective definition or 'work'. The specific mechanism suggested for how to do this will need further discussion and support and doubtless some fine tuning.

A change to the law would not impact Thai jobs; it would merely give a solid legal footing to the necessary activities of a typical business visitor who is not working in Thailand. It would also increase Thailand's competitive edge, improve ease of doing business and better support the heart of ASEAN which is a natural choice for MICE. Not having a proper legal status impacts travel insurance, affects the legitimacy of otherwise valid actions, and exposes business visitors to needless risks and difficulties.

C. How would it work?

Visa Free / VoA / apply on line

A business visitor would, on statement of purpose of entry, be granted a business visa (or business visitor visa by whatever title), just as a tourist visa is issued now. Term can be 30 days. Or visa-free entry could be provided.

The business visa would be renewable at least once without physical re-entry.

A one year multiple re-entry visa could be effected, although the idea is that every entry should be simple so that even though available, a multiple re-entry visa would not be essential for a frequent business visitor.

Shared service coverage at checkpoints such as enabling Bureau of Immigration to issue any required business visa (or business visitor visa), or process visa-free entry.

In the future, paper free entry should be possible.

D. For reference: the March 2015 Interpretation and the additional resulting grey areas and exclusions

In March 2015, an *interpretation* was done with the aim of supporting IHQ and related policies. The following activities were interpreted as not being considered as ‘working’:

1. Attendance at meetings, gatherings of information or seminars
2. Attendance at exhibitions or trade exhibitions
3. Visit at business operations or attendance at business meetings
4. Participation to listen to special lectures and academic lectures
5. Participation to listen to lectures in any technical trainings and seminars
6. Purchasing of goods at trade exhibitions
7. Attendance at the alien’s company board meeting

But this raised more questions that it directly answered, for example (this table has been published by JFCCT since 2015):

Expanded interpretation March 2015	But what about ?
i. Attendance at meetings, gatherings of information or seminars.	Giving a paper or presentation, chairing a session?
ii. Attendance at exhibitions or trade exhibitions	Exhibiting, selling an item?
iii. Visit at business operations or attendance at business meetings	Presenting a paper or report, chairing, signing financial statements?
iv. Participation to listen to special lectures and academic lectures	Chairing a session, giving part of a lecture; being on panel? Speaking at length from the floor?
v. Participation to listen to lectures in any technical trainings and seminars	Chairing a session, giving part of a lecture?
vi. Purchasing of goods at trade exhibitions	Selling goods?
vii. Attendance at the alien company’s board meeting	Chairing, presenting a paper or report, signing financial statements? Does having IHQ/ROH/ITC status make a difference? If so, how?

As noted there are already two specific rulings or statements which restrict the general statements in (i) and (vii). It is understood that there are also some additional activities in those categories which would still be considered as ‘work’.

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