



Joint Foreign Chambers of Commerce in Thailand

Mr. Jirasuk Sugandhajati
Permanent Secretary
Ministry of Labour

16 July 2014

Police Lt. Gen. Sakda Chuenpakdee
Acting Commissioner
Immigration Bureau

Mr. Sumet Mahosot
Deputy Permanent Secretary
Department of Employment

Mr. Udom Wongviwatchai
Secretary-General
Office of Board of Investment

Dear Mr Jirasuk, Pol Lt-Gen Sakda, Mr Sumet, Mr Udom:

WORK PERMIT AND VISA ISSUES – ENABLING COMPETITIVENESS IN THE ECONOMY

The JFCCT has long recommended that major revisions should be effected to the system of Work Permits and Visas, to recognise the objectives of:

- i) Building capacity in the Thai economy through re-skilling, transfer of know-how and better to support overall economic competitiveness.
- ii) Moving towards being a knowledge-based economy
- iii) Supporting the development and enhancement of the services sector in general

The current legal, regulatory and administrative regimes have some policies and procedures, which are hard to comply with, and appear out-dated, where the real objectives are not clear.

At the joint BOI-JFCCT consultative session held on 30 June 2014 (hosted by BOI), it was agreed that the JFCCT would make a more detailed submission, which consolidated the Work Permit and Visa issues. The JFCCT is grateful to the BOI for facilitating the discussion and to the participants from both the Bureau of Immigration and the Ministry of Labour.

Please see attached our recommendations, for which we have also consulted the EABC and some other chambers of commerce which are not currently members of the JFCCT. Our recommendations include suggestions on how the changes might be achieved. We would be pleased to participate in a focused discussion on these issues.

Provided under separate cover dated 15 July 2014, addressed to the BOI, are the labour enhancements proposed for BOI promoted companies and elsewhere in the economy.

Yours sincerely,


Stanley Kang
Chairman JFCCT



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Letter address details.

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The current legal, regulatory and administrative regimes have some policies and procedures which are hard to comply with, and appear out-dated, where the real objectives are not clear.

Limitations on the free movement of skills by restrictive Work Permit and Visa requirements are impediments to economic strengthening.

This document is a summary of key recommendations, which have been raised over the past several years to a number of governments, but which have yet to be modified or changed (apart from a welcome opinion with a somewhat clarified definition of 'work' in the WP – 10 context).

In addition, we join with others in proposing a major re-consideration of the need for labour in the economy, and to this end believe that it would be useful to recognise both skilled and unskilled labour. We made that submission to BOI, under separate cover.

1. Reducing the burden; enhancing the ability to work

(a) For what activity is a Work Permit required?

In our recommendation, no Work Permit should be required for a wide range of activities, which are about carrying on business, or activities normally associated with business purpose, but do not involve being locally employed. Further, where work is done voluntarily, a wider tolerance of activities should be allowed.

We recommend that in an AEC context and any context involving other treaties, the widest possible interpretation be given such that skills are readily available.

(b) What is 'work'

We understand that the basis starts with the definition of 'work' in s. 5 of the Foreign Employment Act 2008. If an activity is not 'work' or is exempted from the requirement to have a Work Permit, then no Work Permit is required in order to carry out the activity. Otherwise a Work Permit is required.



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(c) WP – 10

Section 9 of that Act then in effect refers to Immigration Law. As we understand it, the formal procedure is that the Immigration Act 1979 only prescribes the means for a foreigner to enter Thailand and be eligible to engage in necessary and urgent work for a period of no more than 15 days. The steps are that (i) a foreigner enters Thailand and is granted a permission for a 'temporary stay' under conditions of Section 34 of the Immigration Act and (ii) a foreigner must give a notification to a registrar (via WP-10) of engaging in the necessary and urgent work. The definition of 'work' to be engaged in by a foreigner under the WP10 is the same definition as in the Foreign Employment Act.

In October 2013 the Department of Employment issued an opinion (supported by the Council of State) with a list of activities which are in effect a subset of the list of activities for which a WP-10 is currently required. The list of activities, which make up the current list requiring a WP-10 we take to be either 'work' deemed to be urgent and necessary, or activities otherwise currently requiring a WP-10.

(d) Recommendations about WP-10

(i) Our recommendation is to **rescind the WP-10 altogether** and to replace it with a much narrower definition of the situations where a Work Permit is required – i.e. to redefine these circumstances and make them apply in all contexts, whether for 15 days or longer. A Business Visa - similar to a Non-Immigrant B Visa, but more widely available, could be used (see below).

(ii) An immediate step (for less than 15 day contexts) would be to exempt all activities currently in the WP-10 list from the requirement to have a WP-10.

(e) Problems with current WP-10 as defined.

Turning; however, to the **WP – 10 context**, we note that:

(i) where a foreigner enters the Kingdom for less than 15 days to engage in an activity which is 'work', a WP-10 must be applied for;

(ii) If over 15 days, a Non-Immigrant B Visa is needed plus an application for a WP-1 (i.e. this is outside the WP-10 context).

We appreciate that the DoE opinion is based on Council of State advice, working within existing laws. As we understand it the guiding principles for the exemptions from WP-10 are these criteria:

1. If physical effort or knowledge is required in order to complete such activity/task
2. If it has little or no effect on the labor market in Thailand.



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Further detail is provided in the document 'Guidelines for consideration of trade and investment activities not requiring WP-10 notification' (with thanks to the BOI for the informal translation), provided to the JFCCT in July 2014.

Thus what are exempted are (*our own comments appear in italics*):

1. Attending conferences, meetings and seminars (*but not organizing one*). An organizer, if present for under 15 days, needs a WP-10, or if over 15 days, needs a Non-immigrant B Visa and must apply for a WP-1.
2. Attending exhibitions or trade fairs (*but not being an exhibitor?*). *The situation of someone not being involved in arranging the event but who is an exhibitor, is not clear, even based on the more detailed Guidelines.*
3. Attending business meetings or visits (*this is not clear; however, – for example; would attending board meetings be 'work'?; and see further on this below; the Guidelines do not fully clarify*)
4. Attending academic and/or special lectures (*but not giving the lecture*). Being part of the audience is not 'work'. *It thus appears that being on a panel or giving a presentation is 'work'.*
5. Attending technical seminars and/or trainings (*but not delivering the training or talking at a seminar – even if delivering just one paper at a seminar*)
6. Purchasing products at trade fairs – if not engaged in arranging the event. (*but not putting up products for sale*). An employee or contractor of a trade fair is undertaking work.

There is also a special exemption (by Royal Decree No. 2 of BE 2528, as we understand it) for a foreigner arranging a meeting, seminar or exhibition in co-operation with a government agency or State Enterprise. A 30 day exemption is available.

We note as follows:

(i) The defined exclusions in the WP-10 context (based on an interpretation of the law as it stands) are good steps in the right direction, but do not go far enough to support Thailand's aims to be a services and manufacturing hub, and moving into more higher-end services. Using the AEC context as an example, the concept of 'free movement' goes beyond the specific 7 or so professions currently the subject of MRA's and includes a range of other skills, including technical skills where there is often no recognized professional body (mode 4), and should also include the ancillary ability to support the objectives of commercial presence (mode 3) by allowing appropriately skilled people (technical and otherwise) to support the investment. We do not propose a fully open and unregulated regime, but one, which supports the economic and commercial objectives easily, transparently and without inappropriate, inconvenient or cumbersome procedures.



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- i) Ideally any definition of 'work' should be consistent for all relevant situations, not just in the context of a WP-10.
- ii) The kind of meeting ('business') should not be limited to discussions or planning only and the activity should not be limited to a 'meeting'. The meetings or other activities should enable the conducting of any business activity (be it technical, marketing, accounting, development, production etc.), which an existing or prospective entity is legitimately able to do)
- iii) The ability to attend or conduct business meetings or carry out other activities is important. This may last one day, a week, or even 30 days.
- iv) That should apply to any sector.
- v) We provide just one example. Data Centres are a BOI promoted activity. They operate via owner level staff (who may be based in the region, but not in Thailand) or customer level staff having secure access to their areas as part of a co-location of hosting service. Such staff may also be regionally based. In either case the staff may not be Thai nationals, but need to be able to have access – often at extremely short notice, to carry out technical or business functions on an urgent and non-urgent basis. A project may well go beyond 15 days; however, even if 'urgent and necessary', under the current definition a WP-10 would be needed for less than 15 days, and a Non-Immigrant B as well as a WP-1 would be needed if longer than 15 days.
- vi) It is also often noted that volunteer work should be encouraged and easily facilitated. For example, there is a largely untapped resource of volunteer labour amongst the spouses of foreigners working in Thailand. Many such people are capable and willing to do work for charities and other organizations, or simply to engage on an individual basis to help out in cases of emergency, etc. The ability to be occupied in a valued way can be part of the overall attractiveness of a place for family location. Perhaps some boundary to this is needed. Thus work, which would ordinarily be done for a fee, were the work being carried out by a commercial organisation, might be done for no fee and the situation abused if there weren't any guidelines to prevent this. On the other hand, bookkeeping work for no fee for a charity or other similar organization (for example), for no fee, should be allowed. The specific means to enable this to happen short of an amendment to the law would need to be found – e.g. deeming it not to be 'work' or otherwise characterizing it as something for which no Work Permit is needed.



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vii) The above illustrates the existing grey areas and fine definitions involved in this area, which in many cases would be almost impossible to determine in a reasonable time frame at an entry point. Our recommendation reflects this concern also.

(f) ***Recommendation – a Business Visa***

A simple Business Visa allowing at least 30 days for any business activity, but only if such a Visa were issuable on arrival (in addition to being issued at Thai missions abroad) and without cumbersome procedures. This need not support local employment. A Business Visa should be available on arrival (VoA) and should not require a separate Work Permit for the range of business purposes proposed. It would, in our recommendation, cover the boundaries of normal business-type activities short of local employment, thus overriding the concerns about grey areas and fine definitions.

Currently, short-term business visitors have no easy way to enter Thailand and legitimately conduct business or respond to needs of a customer or employer. The current process for receiving what is in effect a short-term business Visa (WP-10) is impractical and inflexible; most business visitors (and many local companies) are unaware of the legal requirements. Many believe that by checking the box 'Business' or 'Meeting' in the purpose of visit part of the TM6 form, no other action is required in order to carry out various activities normally associated with a business or a meeting (e.g. attending a board meeting, leading a panel discussion at a conference, or participating at a trade fair as an exhibitor).

In the ASEAN context, free movement has focused on Mutual Recognition Arrangements for Professions (Mode 4), not on the inherent ability to bring in own staff (mode 3, based on commercial presence). This is not currently addressed, nor is a wider body of skills for Mode 4. We strongly believe there is no reason for Thailand to be lagging on these measures.

A "Business Visa" to be obtained from Thai Embassies abroad and (unless there is good reason not to include it for all foreign nationals) – a Business Visa on Arrival. The period could be 30 days, allowing multiple-entry when obtained at a Thai mission abroad, but with a restriction on the duration of each stay, if needed – say 30 days). For VoA, it could be single entry with a 30 day limit (subject to ABTC arrangements, which may allow longer). It would need to be renewable or extendable from within Thailand.

Starting with the Business Visa we also suggest a facility be introduced similar to what is offered with the APEC Business Travel Card (ABTC). This is a well-known concept meeting most of the requirements faced by visiting business people coming to Thailand for short term work / business visits. The APEC card is limited to APEC member countries, but as a concept it works well. A Thailand issued business card (any nationality), which could pre-clear foreigners doing business should be explored.



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2. Staff ratios and registered capital requirement

(a) Background

High registered capital and a specific ratio of Thai to foreign employees are required for each Work Permit issued to a company. These metrics are not appropriate for SME's, especially in the service sector and when critical skills are needed. SME's, many of which provide important services to much larger organizations, often begin as sole proprietorships, or with just two or three partners and no additional employees.

Even long-established service companies often need only a small staff to generate significant revenue. Their primary assets are the skills and intellectual capital of their employees, not plant and equipment, and they therefore often have no need for high initial capital investment. There is regional competition for skills and Thailand should encourage the intake of skills and entrepreneurs from around the world to invest and "start-up in Thailand", regardless of ratio or initial capital commitment. SME's (Thai- or foreign-owned) should not be restricted from hiring foreigners to provide needed know-how. Such skilled workers will not take away local jobs but, rather, will enhance competencies and competitiveness overall, supporting business growth in Thailand.

We have noted that clarification from the Immigration Office is needed about conditions and requirements for permission to stay in Thailand, and from the Department of Employment an update of any change in the requirements for Work Permit issuance.

The Department of Employment has employed new criteria for Work Permit issuance for foreigners since 2009, which no longer enforces the Thai-Foreign employment ratio of 4:1

The Immigration Office still relies on this criterion of Thai-Foreign employment ratio of 4:1 for an extension of stay in Thailand (regarding Work Permit issuance)

We would recommend that the Immigration Bureau policies in this regard be changed to reflect the same criteria used by the DoE.



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<i>Immigration Office</i>	<i>DoE</i>
Registered capital of THB 2 m need for a one year extension	Registered capital of THB 2 m is needed for issuing 1 Work Permit.
Rep offices of international businesses, regional offices and MNC branch offices are exempt from the registered capital requirement	Such offices are exempt from the requirement, thus allowing a 1:1 Thai:Foreign staff ratio.

As we understand it, 'registered capital' means paid up capital.

(b) Other background – specific benefits.

There are also some immigration promotions linked to amount invested.

<i>Immigration Office</i>	<i>DoE</i>
No less than 3 million baht of investment money transferred into Thailand is required to grant a one year extension of stay in Thailand (evidence of money transfer must be shown)	A company starting before 30 October 2002 that does not have evidence of more than a 3 million baht money transfer is required to show a bank statement dated in the past 6 months that has no less than 3 million baht of working capital



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Other DoE exemptions:

The Department of Employment may issue Work Permits as necessary and required for a qualified foreign national such as foreigners who work for:

1. An employer paying corporate income tax of no less than 3 million baht
2. An export business, which brings in no less than 30 million baht
3. The tourism industry, which brought in no less than 5,000 foreign tourists the previous year
4. An entity employing no less than 100 Thai workers

(c) Recommendation

In our recommendation, the amount of capital or amount invested should not be the basis for the ability to hire foreigners. As noted, many companies do not need high paid-up capital. Service sector industries (a sector needing promotion) are generally not capital intensive.

Ironically where particular skills are in short supply or where particular know-how is needed, and skills transfer is somehow the aim, staff ratios do not help as there would be restrictions on the ability to access the skills in short supply. If the aim is to secure jobs for Thai nationals, then in a limited range of sectors by exception, staff ratios may possibly be appropriate (on an exceptions basis).

3. Distinguishing between unskilled and skilled labour – major review of the BOI

As with other middle income and higher income economies, reliance on cheap foreign labour has had the effect that many citizens do not want to do certain tasks, and as a result, productivity and innovation are not necessarily being enhanced in the economy. Forcing less reliance on unskilled labour does not seem to be the answer.

Currently for BOI companies:

- i) During the extended period, they must implement a plan to reduce the number of unskilled foreign workers by 25 percent every six months until no unskilled foreign worker remains hired on 1 January 2015
- ii) Any company that fails to implement the plan as proposed will have their corporate tax exemption privileges removed for the year in which non-compliance with the plan commenced.



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iii) We understand that the BOI extended 2 years of permission to 101 promoted companies to continue hiring unskilled foreign workers until 31 December 2014, under the relief measure concerning the employment of unskilled foreign labor.

iv) However, the companies are required to propose a concrete plan to gradually reduce the number of unskilled foreign workers to the BOI.

Please refer to JFCCTs wider submission on skilled and unskilled labour under cover of letter to the BOI dated 15 July 2014.

4. Location of Work; 90 Day Reporting

(a) Location

A Work Permit should not be location based; the nature of how business is conducted generally has changed since that requirement was originally introduced.

A Work Permit application requires highly specific detail as to the location of workplace. Consultants, service companies, and others, with client-facing responsibilities cannot comply (constantly adding or modifying locations in the Work Permit is difficult and time-consuming).

Specifically, our recommendation that location be removed as a component of the job description, and that the work permit rely instead on the scope of work and nature of the job, with no limitation as to location within Thailand where that work may be performed.

(b) 90 day reporting.

In our recommendation, only a change of residential or business address should need reporting, within say 30 days of the change and that time-based reporting should be abolished.

5. Co-ordination between the Immigration Bureau and Department of Employment

We recommend an on-going, regular dialogue and co-ordination session about changes. A permanent, but limited duration working group or consultative committee could be devised, including representatives of the foreign business community, to support progress with developments and changes.



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In addition, we'd recommend the co-ordinated engagement at entry points (especially airports) with an Immigration Department officer acting as agent for the Department of Employment in any situation where an employment – related instrument is relevant.

eGov solutions lend themselves well to immigration and work permit applications. JFCCT has published in July 2013 recommendations on development and phased rollout of eGov solutions with the acknowledgement that a change of mindset away from paper being the primary mode being needed. There are many benefits of eGov solutions, including efficiency, consistency, reducing cost and transparency.

6. Repeated submissions of the same documents

Very often the same documents have to be submitted more than once. An eGov solution would greatly assist in reducing duplications, as well as improving accuracy. In the meantime, a review of procedures to avoid duplicative requirements would be useful.

7. Harmonised Validity between Work Permits and Visas

Wherever possible, unless there is a compelling reason for exceptional treatment, a Visa and Work Permit (where one is necessary) should expire at the same date and be of the same period. Currently there are situations of two-year Work Permits but one year Visas.

8. Residency Permits

We recommend that these include an inherent general Work Permit.



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Summary table

Ref	Recommendation
1	Redefine 'work' so that normal non-employment business activities do not require a Work Permit; introduce an easily accessible Business Visa to cover the situation
2	Staff ratios and registered capital – remove registered capital as a basis for Work Permit eligibility; similarly for staff ratios, other than on an exceptional basis for specific sectors for specific purposes
3	Unskilled and skilled labour- see separate submission dated 15 July 2014
4	(a) Remove location-based restriction (b) Abolish 90 day reporting; report only on changes to residential or primary work address
5	Co-ordination between DoE and Immigration Bureau; Roll out eGov solutions.
6	Submission requirements - remove duplications
7	Harmonise validity as between Work Permits and Visas
8	Permanent Residency to include Work Permit

Many of the changes could be effected by administration change or change to delegated legislation. The JFCCT would recommend immediate addressing of these issues. It is anticipated that change should be possible in the very short term.

JFCCT
16 July 2014