



## Joint Foreign Chambers of Commerce in Thailand

**Free movement of skills limited by restrictive work permit and visa requirements; impediments to economic strengthening.**

**This document is a summary of key recommendations, which have been raised over the past several years to the Thai government, but which have yet to be modified or changed. Updated February 19, 2013**

Certain existing laws and regulations in Thailand impede the robust development of critical economic sectors and the development of a highly skilled and nimble workforce. For example, 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.

Another impediment to development arises from short-term business visitors having no easy way to enter Thailand and legitimately conduct business or respond to urgent needs of a customer or employer. The process for receiving a short-term business visa (WP-10) is impractical and inflexible; most business visitors (and many local companies) are unaware of the legal requirements. We have been verbally informed by the Employment Department of the Ministry of Labour that a recent Council of State ruling may partially address the issue, but have not yet seen any official documentation of this.

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 behind on these measures.

Some of the following suggested changes rely on changes to the primary law; others may require only administrative changes.



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Work Permit/VISA	Current Status	Suggested Changes	Possible Implementation
<b>Criteria</b>			
Registered Capital	Company must have 2 million baht registered capital per work permit (1 million baht if applicant has Thai spouse)	Eliminate registered capital as a metric for work permit issuance, especially for those skills and/or industries where sufficient resources are not locally available (ICT, project mgmt., Q/A, etc.)	Changes to ministerial regulations or Labour/Immigration guidelines. (Closer study of existing legislation is required, to determine best approach)
Staff Ratios	At least 4 Thai employees are required for every foreigner employed in order to obtain Work Permit for the foreigners. (There is some relaxation under certain circumstances)	Eliminate staff ratios as a metric for work permit issuance where skilled staff are involved. Encourage skills transfer (to business partners, customers, co-workers, etc.)	Employment Dept. (Min. of Labour) no longer enforces these ratios and has said they will advise Immigration Bureau to do same (i.e. disregard ratios in issuing Non-Immigrant B visas). Aim to keep ministerial regulations and/or guidelines synch.
Exceptions are for large companies only	Unpublished Labour Dept. guidelines favour large organizations -- companies with 100+ employees AND paying 3+ million baht in corporate income tax can apply for unlimited number of work permits.	Evaluate applicants from both large and small companies to the same standard. Ensure transparency; publicize the criteria used in evaluating applications.	Changes to ministerial regulations or Labour/Immigration guidelines. Add exemption for companies which meet the Revenue Dept. definition of "SME" (less than 5 million baht registered capital).
<b>Restrictions</b>			
Location limitations	Work permit application requires highly specific detail as to location of workplace. Consultants, service companies, others with client-facing responsibilities cannot comply (constantly adding or modifying location in work permit is difficult and time-consuming.	Initially, relax definition requirements to be at the level of province (not specific to one physical location), as was previously the case OR (better) – remove location requirements and rely on scope of work.	DG Employment Dept proposes a focus on scope rather than location; proposes to issue sample wording.
90 Day Reporting	Relevant visa holders (incl. Non-Immigrant B) are required to report to Immigration Bureau every 90 days, in person.	Only changes of address should need reporting; rather than basing it on 90 days.	Explore administrative remedy or regulatory change. (But see s. 37(5) IA – may need legislative change).



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Short-term business visa (WP-10)	Requires separate, post-arrival notification to Employment Dept. (cannot be done 'on-arrival'). Limited to 15 days. Requires company affiliation (not conducive to individuals meeting potential suppliers, distributors, business partners, etc.).	For 'on-arrival' visa entrants, allow Immigration officials at point-of-entry to receive WP-10 notification on behalf of Ministry of Labour and simply indicate entry stamp as "business" instead of "tourist". Extend WP-10 to same 30-day length as 'on-arrival' tourist visa.	Would require co-ordination between Labour and Immigration. Recent Council of State ruling on definition of 'work' in the context of certain business visitors may have helped somewhat; waiting for official documentation, in order to review actual impact.
"Work" is very broadly defined	Attending a meeting, even if receiving no compensation or salary in Thailand or elsewhere, can be 'work', for which a permit is required.	Redefine the definition of 'work' to exclude a range of situations - e.g. work not paid for in Thailand, any short-term business visit for specific task or assignment, meetings, attending any conference (government-run or otherwise), etc.	Administrative change may be considered over a legislative change; recent Council of State ruling on definition of 'work' (though in the context of WP-10 only) should be a positive step.

Residency Permits	All of the backlog has been cleared, with thanks; however the residency permit does not include a work permit	Allow Residency Permit holders the right to work. Making this inherent in the residency permit would be difficult: labour law clearly distinguishes between citizens and non-citizens. But the right for permanent residents to obtain a work permit could be facilitated via regulatory change.	Request Employment Dept. (Min. of Labour) to create new category (with separate, simple criteria) for work permit issuance to permanent residents. By definition, there would be no need for coordination with Immigration Bureau.
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## Some relevant Ministries and some key departments/agencies/bureau

Ministry of Labour <a href="http://www.mol.go.th/en/anonymouse/molduties">http://www.mol.go.th/en/anonymouse/molduties</a>	Office of the Prime Minister (previously under Ministry of the Interior)
Department of Employment Department of Skill Development Department of Labour Protection and Welfare	The Immigration Bureau of the Royal Thai Police administers the law. <a href="http://www.immigration.go.th">www.immigration.go.th</a> Immigration Commission makes regulations. Principal legislation: Immigration Act 1979.