

WORK PERMITS AND VISAS – THAILAND’S ACHILLES’ HEEL

RECOMMENDATIONS SUMMARY

Control v 7.1

Work Permits and Visas continue to be the single most referred-to irritant in doing business and disincentive to foreign investment. JFCCT with EABC have released a comprehensive update ('Master Document' which has two main parts, and eight appendices). References to Appendices are to those in the Master Document. There are two groups of Recommendations:

Group 1: Business visitors who have no intention or need to take up local employment and who are not resident in Thailand. They come to Thailand for various business-related activities and should not need a work permit. Recommendations.

1. Revise the definition of 'work' further from the basis in Decree 2, to be "a consistent and regular engagement of any profession, with or without employer, but not including voluntary work and not including activity which is excluded by Decree or other administrative action, and excluding business operation of a licensee under the law governing aliens' business operation". Then Institutionalise this change, embed it in departmental and agency procedures, and train government officials about how the change to law narrows the definition of 'work'.
2. Without narrowing the scope of action 1, it is requested that the Minister of Labour issue a Declaration about what is not 'work' – the recommended text is provided in Appendix 2 in English and Thai.
3. Redefine the relevant Business Visa so that it is available on a Visa on Arrival basis simply by stating the purpose of visit. If there are security concerns for a limited number of countries, an on-line facility such as used by Myanmar could be explored, *OR* allow 'no visa' business purpose entry for visitors from most countries. The validity might be for 30 days, extendable (e.g. once per entry).
4. There should be no need for the WP-10 category for 'urgent and necessary work'; as no work permit would be required for any of the activities contemplated. While the 29 June 2017 Decree (see Appendix 5) provided some streamlining under current arrangements (and that Decree is repealed pending a replacement), our recommendation is to dispense with the separate category WP-10 altogether.
5. As should be the case for all processes, put everything on-line and eliminate paper-based assessment. Dispense with the use of TM.6 for tourists, Business Visitors, and others.

Group 2: Employees and others: People who are employees of local companies (or local affiliates of multinational or other foreign companies), or who are owners of local businesses need to work and reside in Thailand.

Recommendation (a): Restructure permits and licensing into skilled / unskilled categories with different requirements.

Recommendation (b): Noting the listed objectives 1 – 12 in this part (b), and the specific recommendations in some of those objectives, it is recommended to build on the Smart Visa

advances. In particular, using one instrument – a ‘work visa’ should be used in all relevant cases.

Recommendation (c): Eliminate unnecessary steps. A ‘whole-of-government’, on-line architecture should be devised as soon as possible, to allow introduction of efficiency improvements in high priority areas. Take the opportunity to effect business process re-engineering.

Recommendation (d): Remove location of work restrictions. If zonal-based benefits apply, they can appear in a different instrument, or as a qualification by exception.

Recommendation (e): Eliminate 90 day reporting; Only require the reporting (on-line) of changes in residential address.

Recommendation (e1): Foreigners who do 90 day reporting (or any effective replacement of it) or who are exempted from it, should be exempted from TM.30 requirements.

Recommendation (f): Clarify that no additional work permit or work permit endorsement is needed for a work permit holder to carry out non work activity; and effect/implement this change in relevant ministerial procedures.

Recommendation (g): Cease using capital investment and staff ratios as bases for hiring foreigners.

Recommendation (h): Review and revise procedures for document retention and record keeping. As with Recommendation (c), process re-engineering is needed in the context of a whole-of-government , digital government architecture.

Recommendation (i): If the s. 44 Order about sourcing documents is to be of use (as it should be), include it as part of the review and re-design described in Recommendation (h)..

Recommendation (j): Review, consult about and propose a mechanism for Mode 4 service delivery with minimal, legal licensing which does not introduce tax complications. Alternatively exempt the requirement in order to foster advanced service sector development.

Recommendation (k): Revise requirements to easily accommodate individuals such as visiting skilled foreigners ^[PF1] on long holiday in Thailand.

Recommendation (l): Devise a procedure for easy registration for use of eGates by all visa holders for whom information is held on file, linked to a passport, and not just for citizens and permanent residents.

Recommendation (m): Harmonise work permit and visa terms; in the longer term, use one instrument (eg work visa).

Recommendation (n): Allow two year work permits and visas for all chamber of commerce staff

Recommendation (o): Exempt Permanent Residents from the need for a work permit, or deem a flexible work permit to be included.

Recommendation (p): Participate and consult with the foreign business community and local business community about overdue changes to removing many items from the list of 39 professions, with a view to achieving the skill sets needed for a skilled workforce, the Thailand 4.0 vision, and an intelligent society.

The following **recommendations (q)** relevant to unskilled labour are made:

1. Expanding use of the “pink card” to facilitate employers’ ability to increase workforce for short-term periods without entering quota or agency systems. This will support the freer movement of labor (an AEC goal).
2. Reducing to a nominal amount the visa fee, re-entry permit fee, and pink card issuing fee, for unskilled foreign workers.
3. As with our general recommendations, allow for work nationwide without further geographical registration or additional medical checkups. This would make it easier for companies in the service sector to allocate resources more efficiently. An example would be a company registered in Bangkok which needs to provide service in an upcountry province for a period of time on a temporary basis. When the company deploys foreign workers to work at a client site, those workers might need to stay in a motel, labor camp or similar temporary accommodation which is not the employer’s premises. Under current law, the employer should apply to modify/extend the work location defined in that employee’s work permit. Even if a company is to provide labour under a service contract for, say, 7-10 days in a particular province, the employer is supposed to re- register the worker in that particular province, possibly including the repetition of a medical checkup.
4. Also as with the general recommendations, abolish mandatory 90-day reporting, and report changes only. Reporting changes of residence could in many cases be done by the employer on a group basis. Reporting change of principal work location is already an existing requirement.
5. As a separate but related issue, consideration might be given to the specific economic and societal bases for maintaining restrictions on the number of unskilled workers using a quota system. In many cases it is hard to see the justification assuming the demand for the labour exists. This should apply to workers already carrying a foreign ID (Passport or equivalent).

List of Appendices in Master Document

- 1) March 2015 DoE interpretive changes
- 2) Text of proposed Minister’s Declaration (in EN and TH)
- 3) 23 June 2017 Decree – penalties
- 4) Basis of APEC ‘Business Mobility’
- 5) 29 June 2017 Urgent Duty process changes
- 5A). 27 March 2018 Decree (Decree no. 2) commentaries
- 6) About Smart Visa
- 7) 39 Professions not open to foreigners
- 8) Types of Law