

WORK PERMIT AND VISA ISSUES – ENABLING COMPETITIVENESS IN THE ECONOMY & BUILDING FOR THE FUTURE; “DOING BUSINESS” ENHANCEMENTS

DETAILS ABOUT KEY ISSUES

The foreign business community have long recommended that major revisions should be made to the system of Work Permits and Visas, to recognise the objectives of:

- i) Ease of doing business which benefits investors and local companies who are hiring or need business visitors.
- ii) Building capacity in the Thai economy through re-skilling, transfer of know-how and better to support overall economic competitiveness.
- iii) Recognising Thailand 4.0. moving towards being a knowledge-based economy, supporting a digital economy and key policies such as IHQ/ITC.
- iv) 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, or where the real objectives are not clear.

1. A new business visa/ visa free entry; change to the definition of ‘work’

(a) The definition of ‘work’ too broad and is based on inappropriate principles.

Whether a work permit (or WP-10) is required depends on whether ‘work’ is being done. Trying to support business engagement based on nebulous principles and definitions which produce grey areas and artificial distinctions is time consuming and costly. Interpretation principles are based on a 1972 law (over 44 years old):

- 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.

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?

This is a valid effort to interpret. But they are still restricted by the law. Instead of relying on these definitions which have had re-interpretations, changing the law is the only means. To support this, a new business visa (or visa-free entry) is needed which allows a wide range of activities without the need for a work permit.

The proposed means of changing the law (with proposed legal text and other details) are in a related document.

Those doing unpaid volunteer work should not need a work permit. There could be some safeguards to avoid abuse.

(b) Abolish the WP-10.

Where ‘urgent and necessary’ work is to be done, a WP-10 is needed for less than 15 day contexts. 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. As part of the overall proposal, abolishing the WP-10 is recommended.

(c) A simple Business Visa or visa-free entry allowing at least 30 days for any business activity, such a Visa can be issued on arrival –VoA (in addition to availability at Thai missions abroad and on-line) and without cumbersome procedures or it could be visa-fee. This would not support local employment but would allow for a wide range of business activities, including all kinds of activities at meetings, seminars, trade fairs and explorations. A Business Visa should not require a separate Work Permit for the range of business purposes proposed.

These changes require change to legislation (ie amend the law), not just re-interpretations. The details are in a separate file.

2. Distinguishing between unskilled and skilled labour – major review?

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. There is scope for a dual regime of different kinds of work passes. For example:

Dual regime recommended- illustration

Skilled / Semi skilled - eg “Employment Pass”	Unskilled – eg “Work Permit”
High pay minimums, qualifications (academic, vocational + experience)	Lower pay minimums, no qualifications
Health – self declare	Health – self declare + screening, tests
Up to 5 years	Shorter period.
No 90 day reporting- report changes only	Revised 90 day reporting

3. Paper work and lead time. Applying for a work permit requires, in most cases, first obtaining a non-immigrant “B” visa from a Thai Embassy or Consulate (i.e. outside Thailand). Additionally, the set of requested documents varies from consulate to consulate, making it difficult to prepare a completed application.

Allowing the application for a non-immigrant “B” visa, if required, to be submitted from within Thailand (with standardized requirements), thereby streamlining the process for companies. Alternatively the requirement for a “B” visa could be eliminated if a work permit is being sought.

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. Location should be removed as a component of the job description but a principal office can be noted.

(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. A downloadable app as well as a good on-line system are needed. The collection of certain highly intrusive and sensitive personal data is unlikely in our submission to make a difference to reduction of crime. There is a separate submission on this aspect.

(c) Ability to carry out legitimate business activity

For the avoidance of doubt, a Work Permit holder should not need any additional permission or permit to carry out non ‘work’ business activity outside the company for which he holds a Work Permit. (Example – Work Permit holder works for company X but in addition, with the consent of employer, is a director of a social enterprise and signs financial statements in that capacity).

5. Staff ratios; Capital invested

When applying for a work permit, there is a requirement from the Immigration Bureau that the company employ at least four Thai nationals for every one foreigner employed. This is despite the Employment Dept. having advised Immigration that it no longer enforces those ratios itself.

SMEs providing or developing digital technology or other new products or services often start up with one or two people plus intellectual capital, not cash invested in plant and equipment or a large staff. These companies are therefore unable to hire foreign technical experts, even when there are no local resources available with the necessary skills.

We suggest eliminating the Thai-to-foreign staff ratio for issuing long-term visas to work permit holders.

Further, for many start ups and SMEs there is little capital invested. Requiring high invested capital before having the ability to hire foreigners does not enhance ease of doing business or help advance Thailand 4.0 plans.

6. Repeated submissions of the same documents; high volumes of paper required

Visa renewals require repeat submission of the same documents supplied with the initial application, even when the information is unchanged. This duplication results in excessive paperwork (often hundreds of pages for each renewal, many requiring original authentication each time by other government agencies).

Exactly what needs to be submitted should be minimally defined.

It is recommended that unless there is a material change in the document, any document referred to for an application in the past, say, three years not require re-submission.

This should be a change to an administrative process and possibly a change to regulation rather than a change to the law. It would also require a change to data retention. The scanning of hard copies or, better, the submission of soft copies in a secure environment would be needed.

7. Harmonised Validity between Work Permits and Visas; Operational harmonisation

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.

Operational

There is little coordination between the Immigration Bureau and the Employment Department (Ministry of Labour) for the visa and work permit application process or for subsequent renewals (with an exception for BOI-promoted companies). Each organization requires its own copy of the same documents to be submitted. The lack of coordination between Labour and Immigration results in many difficulties and inconsistencies including the following:

- No automatic coordination of visa term with validity of work permit (e.g. a maximum two-year work permit but maximum one-year visa). Synchronize the validity of the visa with that of the work permit.
- 90-day reporting (this issue is addressed elsewhere)
- Upon termination of a work permit, the employee has just seven days before expiry of the visa. This leaves no time for ending a lease, closing bank accounts, managing personal effects, or transitioning to new employment. Extend the period of time visas remain valid after termination of a work permit. A 90-day visa extension following work permit expiration would allow a realistic period for personal and professional reorganization.

It is common practice in many countries to have a single point of contact at borders. Thus the Bureau of Immigration could take on the role of being the point of contact for many Work Permit issues (where necessary) with the objective as far as possible to combine into a single instrument.

8. Chamber permits

One key role of chamber staff is to help promote trade and investment into and with Thailand. Currently, the Executive Directors of foreign chambers of commerce can obtain their work permit at the BOI Chamchuri Square center (one year only, this used to be 2 years). Other staff can get 1 year work permits but they need to apply for a 3-month "O" visa every 3 months because chambers of commerce are classified as NGOs. While this may be correct technically, a new classification as

“BOI partners” or “foreign investment partners” could make the situation much easier with two year work permit and 2 year non-immigrant “B” visa for all chamber staff.

9. Residency Status

We recommend that Permanent Residency Status include an inherent general Work Permit or an exemption from the requirement for a work permit. Permanent Residents should also not be required to obtain re-entry permits.

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