



EMERGENCY DECREE: SUDDEN RESTRICTIONS ON EMPLOYMENT LIKELY TO HARM ECONOMY; PHASED INTRODUCTION AND LEGAL DISTINCTIONS NEEDED

The Joint Foreign Chambers of Commerce in Thailand (JFCCT) recognizes the worldwide problems associated with undocumented foreign workers. Trafficking, medical support and exploitation are just some of the negative consequences. The JFCCT recognizes the Royal Thai Government's actions seeking to resolve these issues.

The recent Emergency Decree which came into effect on 23 June has unfortunately had unintended consequences. Despite a shortage of workers, available manpower was effectively reduced in response and a message that skills of various kinds are not welcome seems to be contrary to the general push for an economy which will support Thailand 4.0. Without changes before full implementation, some jobs are likely to be lost. Further, with the cost of Work Permits, employers face a much larger expense in re-engaging workers.

The decision to defer implementing four key sections to January 2018 is most welcome. JFCCT recommends using that time to make some important changes. These are summarized in the five Recommendations below.

The JFCCT has long supported the evolution of labour laws in effect to change the legal definition of 'work' so as to draw **distinctions** between:

- i. Those locally employed and paid ; *and*
- ii. Those who are business visitors and others who are in Thailand for meetings as part of a regional business or other purposes, exploration, seminars, trade fairs, business development and related tasks and carrying out any task or function in those contexts.

One positive aspect of the Decree is the empowerment of the Minister of Labour to determine which activities will not be considered as 'work'. JFCCT has already proposed the text of what should not be considered 'work'.

Another important aspect which would help clarify the intent of the Emergency Decree is a **distinction** between or among different skill categories

- a) Skilled, *and*
- b) Unskilled or semi-skilled workers

The social and economic problems of undocumented workers generally do not apply in the same way, or at all, to skilled workers. But work permits and many aspects of labour law currently draw no such distinction.



Recommendations

The JFCCT recommends these actions prior to implementation of the full decree, currently proposed for January 2018.

1. The main provisions would not apply until a distinction is made between skilled and unskilled labour so as to avoid unintended consequences for skilled workers.
2. Similarly the main provisions would not apply until the definition of 'work' is effectively changed by use of subordinate legislation through a Ministerial notice to meet the purpose presented – ie removing from the definition of 'work' a range of activities which are more about being a business visitor or related action.

In the meantime, in the current hiatus, it appears that as the Decree has effected an interim step by changing the definition of 'work' to restrict it to those activities which have the purpose of carrying on an occupation or undertaking a business, full credit should be given to those words. If not, the effectiveness of this new definition should also be deferred until revised.

3. In all cases, more detailed consultation with all relevant groups to review timing and substance of the requirements, and support efficient re-engagement brought about by the regulations. The huge penalties should be open to review also.
4. Review the list of jobs not to be undertaken by foreigners, in consultation with relevant industry groups. Very often knowledge transfer and capacity building come about through working alongside others.
5. Review the level of fees for Work Permits, especially considering the impact on SMEs. The required use of agents for unskilled labour also has a material cost impact. Extending the use of Pink Cards may also be beneficial, overall.

“We support the measures to reduce trafficking and reduce undocumented workers. It is about getting a workable formula which businesses can support and making changes in the work permit and visa programme better to support Thailand 4.0”, said Stanley Kang, Chairman JFCCT. “The JFCCT is always pleased to work with others on these measures”

About JFCCT

The Joint Foreign Chambers of Commerce in Thailand is the umbrella body for most foreign chambers of commerce and similar foreign business associations. With 32 chamber members and some 9,000 companies in the grouping, the JFCCT aims to contribute to economic development in a positive way and to support skills transfer.

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