

## COVID 19 BUSINESS CONTINUITY ESSENTIALS

**Objectives: Reduce paperwork; reduce / eliminate need for person: person interaction, in-person presence**

9 April 2020 -a

### **Background:**

COVID 19 containment measures include restrictions on gatherings, on holding meetings, on the ability to obtain wet signatures and a range of other things which were 'business as usual'. Some government employees supporting various functions must necessarily work from home but may not have the necessary e-government tools. Many processes still require in-person visits. While deferment from filing obligations or obligations to hold meetings by certain times is a partial, short term remedy, such measures do not recognize the many other dependencies.

Most immigration and labour processes for example require some kind of in-person attendance, not only at the Immigration Bureau or Department of Employment offices but also at the offices of other government departments or agencies, institutions etc in order to obtain required supporting documentation. (e.g., certified copies from the Department of Business Development, Thai Revenue Department, Social Security Office, etc.), hospital visits and blood tests, current staff and office photos to comply with the long list of documents required. These wet signature and other hard copy aspects, jeopardise compliance with COVID 19 containment mandates and thus creating a personal health risk for both public officials and users of the service. Immigration Bureau officers frequently exercise a discretion to request additional documents outside the required list and extra copies of existing documents, putting added pressures on users of the service and those processing the applications, thus increasing risk.

A fresh approach to changing regulations (including secondary legislation such as decrees or notifications) or procedures is necessitated by the COVID 19 situation. The changes are urgent and necessary and should not be temporary.

One avenue for a fresh approach is afforded by the State of Emergency which relies on the EMERGENCY DECREE ON PUBLIC ADMINISTRATION IN EMERGENCY SITUATIONS, B.E. 2548 (AD 2005), s. 7 of which empowers the Prime Minister to act in the place of the Ministries and public officials who under relevant laws held such powers and authorities. Such powers are "... temporarily transferred to the Prime Minister for consistent, expeditious and efficient command and mitigation of the situation". See the Decree under s.7 [here](#).

One such law specifically listed is the Immigration Act. JCCFT has many recommendations about Visa and Work Permit issues – see [here](#). JFCCT has also recommended de-duplication and harmonization of requirements as between Immigration and Labour – see [here](#) .The following pages show those most highly relevant to the current situation.

JFCCT will also provide additional recommendations about other laws.

## Immigration related

Ref # Immi 1	Quick Title / Label of issue	Visa relief
	Current practice / process	For visa renewal - Personal attendance needed with hard copies and certified supporting documents, some drive through. An extension has been granted for renewals to be done in the period 26 March to 30 April, to be done after 30 April. But this is unlikely to go far enough.
	How to fix it	<ol style="list-style-type: none"> <li>1. Extend all visas by two months initially (an immediate recommendation, see letter to HE the Prime Minister <a href="#">here</a>);</li> <li>2. After that, basic systems in place so that personal presence at Immigration Office, hard copy documents should be an absolute exception, elimination of non-value adding or duplicative supporting documents.</li> </ol> (Some action has been for tourist visas and those dislocated, but non-immigrant categories are largely unaddressed)
	Dept / Agency / Company	Immigration Bureau, Ministry of the Interior.
	Relevant Laws and Regulations (if known)	Immigration Act and regulations made under it.
	Contact for follow up (email / phone)	JFCCT

Ref # Immi 2	Quick Title / Label of issue	TM.30 reporting
	Current practice / process	Landlords must report on the movements of foreigners whenever they move location. JFCCT and others have strongly recommended removing almost all categories to which TM.30 applies and ultimately removing TM.30. This has been done for TM.28 (foreigner direct reporting), by using a part of s.37 Immigration Act. There is no electronic means for TM.30 reporting. The one category which was left open was short term visitors (usually tourists) not staying in hotels or other recognized accommodation means. As the borders are closed and accommodation is being used for quarantine purposes, there is no value in TM.30 even for that category. Persons in quarantine are tracked by other means.
	How to fix it	<ol style="list-style-type: none"> <li>1. From some time in or after 1979 until about late March 2019, TM.30 was not enforced and no-one paid much attention to it. Putting it on hold immediately is recommended.</li> <li>2. Use s.17 Immigration Act (or some other tool) to remove categories of foreigner (referring to s.34 Immigration Act) to which s. 38 would no longer apply.</li> </ol>
	Dept / Agency / Company	Immigration Bureau,, Ministry of the Interior
	Relevant Laws and Regulations (if known)	s. 38 Immigration Act, other parts of Immigration Act; JFCCT has prepared a legal brief
	Contact for follow up (email / phone)	JFCCT

<b>Ref # Immi 3</b>	<b>Quick Title / Label of issue</b>	<b>90 day reporting</b>
	Current practice / process	Foreigners must report location (residential address) each 90 days, unless on a Smart Visa, in which case it is annually. Permanent residents are not exempt. JFCCT has recommended changing from 90 day reporting, to reporting when there is a change of residential address. In the meantime, a properly working but simple on-line tool, not an App (which brings in other issues – see JFCCT submission of 11 February) see <a href="#">here</a> [URL to be done].
	How to fix it	<ol style="list-style-type: none"> <li>1. Moratorium on the requirement.</li> <li>2. Change the application of s. 37 (5) Immigration Act so that it applies to few or no foreigners; introduce a different reporting for change of residential address only.</li> <li>3. Any reporting then should be via a simple, properly operational on-line system.</li> </ol>
	Dept / Agency / Company	Immigration Bureau, Ministry of the Interior.
	Relevant Laws and Regulations (if known)	Immigration Act and regulations made under it. s.37(5) and others.
	Contact for follow up (email / phone)	JFCCT

<b>Ref # Immi 4</b>	<b>Quick Title / Label of issue</b>	<b>TM.6 form</b>
	Current practice / process	TM. 6 is a paper form. Its application to Thai nationals was ceased. JFCCT has recommended its removal for foreigners. The one sticking point was capturing address. But this can be captured in other ways (see JFCCT review and recommendations 11 Feb 2020) see <a href="#">here</a> [URL to be done].
	How to fix it	<ol style="list-style-type: none"> <li>1. Cease the paper TM.6.</li> <li>2. The temporary AOT App for COVID 19 tracing purposes covers all relevant information.</li> <li>3. Post COVID 19, do not re-introduce a paper form. Malaysia, Vietnam have no paper form. Singapore for example has just ceased the paper form.</li> </ol>
	Dept / Agency / Company	Immigration Bureau, Ministry of the Interior
	Relevant Laws and Regulations (if known)	Immigration Act and regulations made under it.
	Contact for follow up (email / phone)	JFCCT

<b>Ref # Immi 5</b>	<b>Quick Title / Label of issue</b>	<b>Thai : foreigner staff ratio</b>
	Current practice / process	A staff ratio is applied by Immigration Bureau (other than for BOI promoted companies and other than for some other specific promotions).
	How to fix it	Eliminate the Thai -to -foreigner staff ratio for issuing long -term visas to work.
	Dept / Agency / Company	Immigration Bureau, Ministry of the Interior.
	Relevant Laws and Regulations (if known)	Immigration Act and regulations made under it. JFCCT: recommendations <a href="#">here</a>
	Contact for follow up (email / phone)	JFCCT

### ***Employment of foreigners – law and regulation about ‘work’***

<b>Ref # WP 1</b>	<b>Quick Title / Label of issue</b>	<b>Work Permit Relief</b>
	Current practice / process	Work permit renewal - mainly paper based, in-person visits. A Ministry of Labour press release of 24 March talks of an extension for renewals to 30 June, but a notification or decree seems to be absent.
	How to fix it	1.Allow immediate extension of work permits by two months initially. An immediate recommendation is to extend by two months, see letter to HE the Prime Minister <a href="#">here</a> ); 2. After that, basic systems in place so that personal presence at Department of Employment or other Labour Ministry offices and hard copy documents should be an absolute exception; elimination of non-value adding or duplicative supporting documents
	Dept / Agency / Company	Ministry of Labour, Dept of Employment.
	Relevant Laws and Regulations (if known)	JFCCT: recommendations <a href="#">here</a> .
	Contact for follow up (email / phone)	JFCCT

<b>Ref # WP 2</b>	<b>Quick Title / Label of issue</b>	<b>Thai : foreigner staff ratio</b>
	Current practice / process	A staff ratio is applied.
	How to fix it	Eliminate the Thai -to -foreign staff ratio.
	Dept / Agency / Company	Ministry of Labour, Dept of Employment; Also see Immigration.
	Relevant Laws and Regulations (if known)	Labour regulations JFCCT: recommendations <a href="#">here</a> .
	Contact for follow up (email / phone)	JFCCT

<b>Ref # WP 3 Quick Title / Label of issue</b>	<b>Short term work – up to six months</b>
Current practice / process	WP-10 allows urgent and necessary work for up to 15 days; the system for short term workers who may not have a local employer is defective
How to fix it	New fast track simple means; this will be very relevant for post COVID 19 recovery
Dept / Agency / Company	Ministry of Labour, Dept of Employment
Relevant Laws and Regulations (if known)	Labour regulations. JFCCT: recommendations <a href="#">here</a> – see for example Mode 4.
Contact for follow up (email / phone)	JFCCT

<b>Ref #. WP 4 Quick Title / Label of issue</b>	<b>Definition of ‘work’</b>
Current practice / process	Even with changes by Decrees in July 2017 and March 2018, the definition of ‘work’ is troublesome, restrictive and out of line with competing economies. Foreigners in Thailand now may be inadvertently and unknowingly breaching the regulation.
How to fix it	1.Cease any enforcement of alleged breaches of the definition of ‘work’ , in the current environment. 2.Notification or other instrument of Minister of Labour – EN and TH versions <a href="#">here</a> pages 2-5 and Appendix 2, which can be done by the Prime Minister now.
Dept / Agency / Company	Ministry of Labour.
Relevant Laws and Regulations (if known)	Existing July 2017 and March 2018 labour decrees.
Contact for follow up (email / phone)	JFCCT

## Conduct of Business

The relaxation (by Dept of Bus Development) by deferring requirements beyond 120 days after end of financial year of holding AGMs for all organisation types is noted and welcome. But it does not address the issues of business needing to continue and third party reliance on resolutions at meetings; it does not address the need to hold meetings so that business can continue.

Ref # MOC 1	Quick Title / Label of issue	Electronic meetings
	Current practice / process	Electronic meetings are allowed, but with cumbersome conditions; Restricted by two regulations (an NCPO Announcement and a Ministry of Digital Economy & Society Notification, both 2014, plus a DBD clarification 2016). AGM deferrals announced by DBD are one step but do not address the substance.
	How to fix it	<p>Cabinet Resolution to allow electronic meetings without the current restrictions for boards, AGMs – other than for public companies to record them; then change the law (see JFCCT Advocacy paper on this topic <a href="#">here</a> ). <i>Summary</i></p> <ul style="list-style-type: none"> <li>• Meeting can be fully electronic, no need to have 1/3 physically in one place</li> <li>• Participants can be anywhere, not just in Thailand</li> <li>• Trade Associations and Chambers of Commerce should not have to amend their constitutions / charters.</li> <li>• Other points</li> </ul> <p>Details in 'Meeting Electronically' paper <a href="#">here</a>.</p>
	Dept / Agency / Company	PM Office, Min Commerce, MDES
	Relevant Laws and Regulations (if known)	NCPO Announcement, MDES Technical standards; DBD Clarification, Electronic Transactions Act
	Contact for follow up (email / phone)	JFCCT