

Recommendations for Freelancer Smart Visa and other Smart Visa topics.

V 3.5

21 October 2020 following discussion with BOI on 19 October

These recommendations are from the Digital Economy / ICT group of JFCCT / EABC, based on proposals made by this group in October 2019, and in response to BOI slide pack (10 slides) 19 October about proposed changes to Smart Visa.

A. Executive Summary

Scope of skills and target audience: Who is the new Freelancer Smart Visa for, and why?

- Development of solutions and platforms require a range of skills which are not just about science and technology. We call these ‘Innovation’, and provide some specifics. The Freelancer Smart Visa will proactively facilitate the ability of professionals with a broad range of skills which support innovation to work in and from Thailand for the medium- to long-term (even if employed offshore), spending money here and supporting the local economy through the contribution of their skills.
- With the right incentives, some may also choose to be employed locally, transferring skills to Thai colleagues. Originally proposed pre-pandemic, the current crisis has already motivated other countries to support economic recovery with policies that attract freelancers. Thailand should do the same, and reap tangible benefits from its strongly established appeal as an attractive place to live and work. We commend BOI for not requiring that economic benefits be only through the tax system.
- As with other Smart Visa categories, the applicant pool is open to those already in Thailand. Some adjustment to financial criteria may be needed for those in Thailand.

Application process: Simple, Efficient, Transparent

- Meaningful economic impact will only be realized if many hundreds of Freelancer Smart Visas are issued. Thus the application and vetting process must appeal to people with the right background. Individuals with the type of technical and creative skills which allow them to “work from anywhere” and whose lifestyle allows them the flexibility to do so, are generally young, although not always.
- Extensive documentation and long lead time before yielding a result will not be attractive to that audience, who (by definition) can choose to go anywhere. In order to attract them the process must be easy, quick, and transparent.

Assessment and vetting of applicants

- Some Freelancer Smart Visa holders will not stay long term or will make only a limited contribution to the local economy. However, when weighing that against the rewards for Thailand of attracting the many who will produce significant benefits, this should be considered an acceptable risk. The application process should be designed to increase the odds for success at large volume, not to eliminate the few unavoidable disappointments.
- We propose a multi-channel assessment – documented skills, income/assets, and a track record of creativity and innovation. A simple point system, with points assigned to distinct categories at quantifiable levels and which meet a predefined total, can limit risk and

effectively define desirable Smart Visa applicants. It eliminates the need for subjective evaluation by third parties and it creates transparency for the applicant.

- The application process needs to be fully online. All documentation should be uploadable via a secure website. Documents should not require certification by the issuing organization (e.g. school, employer) or notarization / legalization by any government agency or third-party. All documentation should be acceptable in English (or in Thai, if the document was originally issued as such).

B. Background

The Smart Visa relies on 13 industries / activities – being the ten ‘S’ curve industries plus an additional three introduced in 2019:

- Alternative Dispute Resolution (Arbitration in particular).
- Human Resource Development in Science and Technology, and
- Environmental Management / Renewable Energy.

BOI’s proposed revisions to Smart Visa, as we understand them:

- i) Addition of another industry / activity (ie a 14th) for experts in the development and management of business related to “Startup Ecosystem”, specifically for “targeted technologies” as defined by NSTDA.
- ii) The Human Resources Development (“HRD”) activity would now be applicable to industries and activities beyond only Science and Technology (but experts in non S&T sectors need endorsing by a public higher education institution and have a PhD/equivalent).
- iii) The Digital Freelancer Smart Visa is now being proposed not as a separate category of Smart Visa (“F”), but rather as a subset of the existing “T” (Talent) category, with the designation “S&T Freelancer” and with several criteria as distinct from other “T” category Smart Visas.
- iv) Including Thai SMEs, as well as startup or retired experts as firms or people to work for, one reason being to reduce the cost of hiring foreign experts by Thai SMEs. (No change to minimum income).
- v) Some change to work experience and educational background for senior executives ‘E’ category (substitute another 5 years’ experience for no degree)
- vi) Smart visa holder can work for other companies not part of the initial Smart Visa application, examples being affiliated company / related or supporting business. This also applies to freelances, such that the economic benefit to Thailand need not to be through the tax system.

We cover the Freelancer visa (part B) then other smart visa topics (part C).

C. Freelancers

The original objective of the Digital Freelancer Smart Visa was to create an avenue for a select class of technically skilled foreign visitors (with a broad range of skills) to live and work in Thailand. It would proactively facilitate the ability of many technology professionals who wish to stay in Thailand for the medium- to long-term, allowing them to work in and from Thailand while spending money here and supporting the local economy. As an added benefit, and with the right incentives, some may choose to work locally as well, transferring skills to Thai colleagues. It is important to note that no Thai jobs would be eliminated by this initiative.

This was proposed pre-pandemic. In the pandemic world, several economies have introduced policies to attract freelancers with various skills to support economic recovery.

We propose taking a risk and trying a multi-channel assessment.

1. Scope

The HRD category of activity is to be expanded beyond science and technology, presumably to any area, although there is a restriction in that outside science and technology the activity must be endorsed by a public higher education institution and the applicant must have a PhD.

Ironically the Freelancer visa is being narrowed to science and technology.

We propose that the Freelancer visa be about Innovation, not just science and technology.

The real business of developing and implementing of a modern software platform typically requires skills in different areas such as:

- Market research
- Sales & Marketing
- Business analyst
- Design (see for example User Centred Design¹, Design Thinking²) resulting in Design Innovation.
- Systems analyst
- Team management, often with people in different locations
- Organising and general management.
- Problem solving
- AI (Artificial Intelligence, Face Recognitions)
- Cloud Computing (Servers, hardware, Server Virtualization)
- Big Data (Analytics)
- Data Structure and Algorithm (Databases)
- Networking (Network configurations, penetrations tests, 4G, 5G, WiFi and Routers and other active network elements)
- Security (Cybercrime, Data Privacy, system availability)
- Software Languages; specific tasks require different languages such as Python, Java, C#, Javascripts depending on scope and performance.

¹ [https://www.interaction-design.org/literature/topics/user-centered-design#:~:text=User%2Dcentered%20design%20\(UCD\),and%20accessible%20products%20for%20them](https://www.interaction-design.org/literature/topics/user-centered-design#:~:text=User%2Dcentered%20design%20(UCD),and%20accessible%20products%20for%20them)

² <https://www.interaction-design.org/literature/topics/design-thinking>; popularized by [Stanford's D School](#)

- DevOps (System maintenance)

The needed skills are not all under one roof and some are needed for shorter periods. Freelancers may have any of or a basket of these skills. A points system for example can recognise this.

Starting with Freelancers, we thus suggest that “Innovation” rather than “S&T” should be the scope.

In 2019, during the discussion on Start Up, it was recognised that entrepreneurs might have not only technical skills but also expertise in developing innovative solutions for business processes. This point was accepted by BOI for that category.

For Freelancers, similar considerations should apply. Innovation can be any of:

- A new business process which makes a difference
- A fintech, regtech, agritech, edutech (etc) solution
- Development of part of a total solution or platform
- Anything else which reflects new value-add

Assessment of Innovation just involves adding additional skills (which can be specific) to the scope. A points system lends itself well to this.

2. What about non-nomads?

Early in the development of Smart Visa proposals, it was recognised that candidates could already be in Thailand. This is beneficial and such groups should not only not be ruled out, but some recognition might be needed in terms of vetting etc.

The people who need better visa options are those who desire to be in Thailand long-term but whose employment situation (working remotely or freelancing) precludes them from getting either a Non-B or a SMART Visa. These are people who are *already* starting businesses here but for whatever reason cannot or will not push through the red tape to register a Thai company. Many have families and ties here but typically travelled often enough they may make use of tourist visas.

These are people already in Thailand. They pose no “security risk” and have already been through immigration/border control.

The THB 100,000 / month income criteria should be adjusted for these cases (see below under Financial).

This also means that some toleration and flexibility are needed in terms of assessing current situation.

3. Application Process

To have a meaningful impact, many hundreds of Freelancer Smart Visas will need to be issued. To accomplish that, the benefits must appeal to the needs and interests of a defined target groups, ie people with the right skills and track record, and the application process must be

extremely straightforward. Individuals with the type of technical and related skills which allow them to “work from anywhere” and whose lifestyle allows them the flexibility to do so, are generally though not exclusively young. A process which requires extensive documentation or has a long lead time before yielding a result will not be attractive. These are people who can choose to go anywhere – in order to attract them the process should be easy and transparent.

Inherent in granting large numbers of Freelancer Smart Visas is the reality that not every person to whom one is issued will stay and contribute extensively to the local economy. While reasonable efforts should be made to ensure that applicants have the skills and intention to live and work here, some may have only moderate technical ability, or never be hired for projects they initially anticipated (whether inside or outside Thailand). Others may simply choose leave before the end of their visa term. These risks should be accepted as unavoidable if the goal of issuing many hundreds of successful Smart Visas is to be achieved. The application process should be designed to increase the odds for success at large volume, not to eliminate the few unavoidable disappointments.

The application process needs to be fully online, not digital copies of paper-based forms (e.g. not just “fillable” pdf files). All documentation (passport data, photos, scans of degrees or certificates, etc.) should be uploadable via a secure website. Documents should NOT require certification by the issuing organization (e.g. a school or an employer) or notarization / legalization by any government agency or third-party. All documentation should be acceptable in English (or in Thai, if the document was originally issued as such).

1. Assessment/vetting

We propose a multi-channel assessment – income/assets, Innovation. Using a points system helps with this.

The BOI’s proposal of an “S&T Freelancer” being part of the “T” Smart Visa category retains the requirement for relevant government agencies (e.g. DEPA, NIA) to endorse the applicant’s skills. As implied elsewhere in the proposal, we suggest that the person’s savings and/or recent salary history from employment in a relevant technical field might be taken into consideration here, not as an additional requirement but as an acceptable alternative means of substantiating the person’s level of technical skill and experience.

The broader scope of ‘Innovation’ likely means that other agencies or other criteria are needed. Private sector industry associations could be included.

Reliance on a subjective, and inherently unpredictable or opaque evaluation by a line agency defeats the ‘ease of process’ which we believe is essential to attracting the desired pool of Freelancers and making this program a success. If that can be done within the other constraints of the “T” Smart Visa, then perhaps this context can work, although we believe that an entirely separate Smart Visa category would accomplish it more easily. As to the concern that a new category would somehow be “too easy” as compared to the other Smart Visa types, we note that there would still be distinct criteria required for Freelancers, and that applicants should always be encouraged to take the path with the fewest barriers to a successful

outcome. The objective should not be to turn these people away or scare them off with a difficult and time-consuming process; in that case it would be better to leave things as they are, rather than to make them more difficult.

Alternatively, the smart visa could be used as the standard for all skilled labour (see our general comments below).

To keep the process simple and efficient so that it can support large volumes of applicants (the goal being to attract MANY freelancers to come and be “smart” in Thailand) the program must accept some risk, namely that not everyone granted a SMART VISA will transfer skills, or contribute anything beyond spending a little money here. Although some care should be taken in the vetting process, it’s really no different from hiring a new employee (but still more stringent than a simple tourist visa) – a resume is reviewed, some proficiency is demonstrated via reference letters, or project examples, or salary history, and the person is accepted on board. Initial limits on the visa term (e.g. 6 months rather than 1 year) would be an acceptable trade-off for this simplicity. Those who do not meet subsequent criteria would either not be extended, or would leave anyway, or could re-enter on a tourist visa without prejudice. In order to extend a Freelancer visa after the initial period, a test could be that the holder must have engaged in some sort of technology transfer activity such as mentoring or lecturing for private companies or higher educational institutions or government agencies. The more the applicant has done, the longer the visa extension term granted.

A multi-channel system could be used. A points system is one aspect. In our opinion, a simple point system, with points assigned to distinct categories at easily quantifiable levels which, in combination meet a predefined total, can be used to define a desirable Smart Visa applicant. The intent is to eliminate the need for subjective evaluation by third parties and to create transparency for a prospective applicant to easily evaluate in advance the likelihood of being granted the Smart Visa. We note that the application for Thai citizenship includes a similarly structured point system as part of that process.

See attached spreadsheet

2. Financial criteria

Liquid assets of THB 600,000 seems to be a standard. Some thought should be given to alternatives in relevant cases or for those already here in Thailand.

The monthly employment of THB 100,000 does not seem too high for relevant jobs outside Thailand but it may depend on how it is applied. For those already in Thailand it should be say THB 50,000 but either assumes a stable job which is out of synch with being a Freelancer. Elsewhere THB 50,000 is used and we suggest that that level could be taken into account so that the objective of getting in people who are likely to contribute is good.

But rather than a regular amount and given that often relevant work is compensated by project milestones, a lump sum amount based on a period would work better. These could be alternatives – eg either THB 50,000 per month, or min THB 300,000 in a six month period.

The points system has benefits in this respect.

We commend BOI for not mandating that the economy can only gain through paying taxes, that the contribution of the Freelancer otherwise is valuable.

3. Working for whom? / Remote workers

It is assumed that a Freelancer would not in most cases, at least initially, have a local employer. However, some type of local (and locally taxable) employment should be permitted which may bring foreign and local IT professionals into closer and collaborative contact, thus potentially facilitating accelerated skills transfer.

We suggest that a Freelancer should be permitted to legally work for employers in Thailand as well as for those outside the country. If paid by a Thai company or individual, the Freelancer could be subject to a preferential personal income tax rate (there is precedent for a cap of 15% highest bracket PIT as in other promotions) on income earned in Thailand. Tax return filing by the recipient would be required for all Thai-sourced income. Filing a tax return would be the responsibility of the Freelancer and is the responsibility of the filer/ Foreign-source income would be tax-free in Thailand, regardless of where paid (e.g. even if paid to the freelancer in Thailand).

A pathway should also exist for eventual transitioning to a full “T” category SMART VISA if the person’s work status and other conditions warrant doing so.

We recommend a high degree of flexibility about remote working.

4. Skills house – professionals for hire

Firms which employ a range of skills on a ‘bench’ and then charge them out to various jobs are often sought after by developers and entrepreneurs as the developer as it reduces administrative cost, especially when someone may only need be engaged for say two to three months. Assume the range of skills is in the Innovation scope, the employer should be recognized as an employer of Freelancer smart visa holders.

Rather than assessing the underlying activity of the end user, those employed by the skills house itself, assuming the right range of Innovation skills, could have Freelancer smart visas.

5. Privileges

The Freelancer Smart Visa stays with the person not with an employer. No employment sponsor is required.

All other standard Smart Visa benefits apply, including visas for spouse and dependent children, who are also permitted to work.

No 90-day reporting but 180 days reporting. The smart visa standard is one year. JFCCT has long recommended reporting a change of residence only.

All application and renewal processing is managed via the One-Stop Center.

C. Other – non Freelancer topics

1. Smart visa as the standard for skilled labour

The smart visa has many administrative merits. The traditional work permit and visa system is complicated, almost entirely paper based and its custodians have resisted reform recommended by many. It is likely that meaningful reform of work permit and visa may not happen until there is pressure due to some future major treaty. The smart visa should thus be the basis for all WP&V in skilled areas.

An example is that the 'normal' visa's life has been extended several times, most recently to 31 October and for those who paid a fee for a 30 day extension, to 30 November. But little or nothing has been done to take advantage of the crisis by converting the visa process to being on line, let alone a major process re-engineering.

2. HRD – we suggest that the filter of public higher education institution endorsement will be too nebulous and a person should not need a PhD or equivalent. Rather an expansion of HRD skills (which is the point) should be enough as long as there is genuine demonstration of having HRD skills.

3. New category 'Development and management of business related to Startup Ecosystem and targeted technologies

Consider the economic stimulation which economic recovery demands, now is a good opportunity to avoid being overly restrictive. Micro tweeking activity by limiting the activities to those in an NDTDA announcement is unlikely to make any material economic difference. But it is skills which should do that. We suggest making this broad.

4. Economic recovery – the bigger picture Considering the total picture of the skills needed for economic recovery in this pandemic period economic priorities could be set by the fact that over 70% of the economy is represented by exports (about 54%) and tourism (about 18%). To support exports – skills for machinery repair and maintenance, commissioning systems and short business visits to support FDI are needed. Safe border opening is needed with quarantine bypass, as competing economies are doing. These are not just technical skills but knowhow to support investments and business maintenance and expansion.