

## ***Long Term Residents in Thailand (LTR)***

### ***Recommendations following 8 October workshop and later consultation***

*control v 1.4A*

JFCCT is most appreciative of the BOI Secretary-General's invitation to participate in a workshop on 8 October on proposals to attract Long Term Residents, and about some proposed changes to the Smart Visa programme. Although the 8 October workshop referred to conditions for qualification and less on benefits or privileges, we also cover privileges based on our more limited understanding of them.

#### **A. Summary of Recommendations**

- i) The LTR proposals have some positive features but do not address the significant barriers regularly encountered by legitimately established, long-term foreign residents living and working in the Kingdom who are already contributing to its economic and social well-being. In no way are the LTR proposals a means of tackling those issues nor will they contribute to ease of doing business.
- ii) A fundamental question is what is the objective of LTR. Once qualified for the programme, what is expected overall of those in each category; for example the amounts of investment required just show a level of commitment; the amounts do not of themselves represent a significant investment in the economy at a level which will make a difference; nor will the kinds of skills attracted necessarily result in transfer of know-how. Conflating money with skills is a mistake.
- iii) The concept of 'wealth' or 'foreign wealth' in nation-building has more than one dimension. Perhaps 'wealth and wisdom' is a more appropriate identifier. A person with only money, and no particular skills, who is able to meet the financial qualifying criteria, may not offer much towards real nation-building let alone the Thailand 4.0 vision.
- iv) We make some specific recommendations about each category and on Special Visa proposals.
- v) LTR should be open (as Smart Visa is) to those already in Thailand. Indeed, activity in Thailand to date would be relevant to qualifying.
- vi) Of all categories, retirement seems most promising under current proposals. Is that intended?
- vii) If removal of 90 day reporting can be done for Smart Visa (reporting only annually) and for LTR (reporting only on change of address, which is the long-standing JFCCT recommendation), it should be done for all. JFCCT has again, on 18 October 2021, made detailed suggestions about how to make this change. Please see Annex A. If it can't be done by any of the means proposed, then we suggest mustering the political will to change the law.
- viii) One benefit proposed by the Cabinet for inclusion in the LTR program is a schedule of

lower imposts for wine, spirits, and cigars. This may be complicated to administer. If implemented, we suggest making this applicable to all and not just to LTR visa holders. Please see Annex B.

- ix) Avoid a retrograde step of requiring a separate Work Permit. The Smart Visa model does not require one. Community understanding requires more education, not a step backwards to retain a system already understood to be problematic.
- x) We strongly recommend maintaining Smart Visa for skills and for the promotion of Startups, and continuing to seek opportunities for further reduction of processing overhead.
- xi) Dropped from both Smart Visa and LTR is the Digital Nomad / Digital Freelancer. We recommend a Smart Visa category be established for this, using a points system. See Annex F.
- xii) At the May 2021 information session, there was much discussion about a super contact and support centre. Is this still part of the plan? If so it will need to be very high calibre and have a high service ethic. Is it viable?
- xiii) How the LTR proposals sit with Thailand Elite should be examined. LTR is 10 years; Thailand Elite is up to 20 years. See Annex D.
- xiv) Plans to revise rules about Residents (meaning Permanent Residents) should be revised to avoid unintended policy anomalies. Rules about Residents are set by the Immigration Commission under ss. 6 and 7 of the Immigration Act. See Annex E.
- xv) Clarification about target sectors and allowed activity. There are five 'basic' and five 'new' S curve industries. The older 'S' curves may no longer still be 'S' curve industries. EEC and Smart Visa have slightly different scope definitions and there are restrictions based on the 39 professions rule (1979 Decree and later April 2020 Notification). Please see Annex G for details about these important questions.
- xvi) Clarity is needed about tax treatment of overseas income, across the categories. Assuming a person is a Thai resident for tax purposes, does it mean that foreign-sourced or foreign paid income (including personal exertion income) will not be taxed in Thailand, regardless of whether it is brought into Thailand? Is PIT for those with LTR status to be assessed on the same sliding scale applicable to other tax residents?
- xvii) There is, we suggest, reliance on some wrong impressions about Startups. The LTR proposals miss the mark on Startups. Look at regional statistics – of all startups in SE Asia in the past, say, five years, how many are attributable to Thailand's policies, vs natural conditions? And compared with some other SE Asian economies what percentage were of Thailand origin? See separate suggestions about Startups.

## **A. Background**

The most commonly referred to pain points of the foreign business community in doing business in Thailand are the requirements for work permit and visa issuance and renewal. Processes are still largely done by hard copy, wet signature format requiring in-person presence by the foreigner or their staff and by complex rules. Many rules make no sense under the lens of stated intention about ease of doing business or even stated purpose. Rules are often interpreted inconsistently and without clarity and there is little harmonisation between work permit and visa regimes.

This is an area long-needing structural and process reform including full digitalisation. We maintain a master file on work permit and visa recommendations, which include a harmonisation/rationalisation tables which propose not only removing duplications but fundamental reforms.

Initiatives such as the Guillotine project (in which JFCCT and EABC have been involved since 2016), and the wider Fast Track Regulatory Reform initiative from September 2020 (with nine sub committees including Digitalisation and Guillotine) need budget support. The pace of reform needs to accelerate greatly if we are to achieve a Thailand 4.0 vision in our lifetimes.

The Smart Visa had hoped to be a new way, for skilled labour a bypass of the 'normal' work permit / visa morass. Its take up is low, due to hurdles and administrative overhead. The Long Term Resident Programme (LTR) could possibly set a new standard, but its stated objectives do not – LTR is for wealth levels which mean that it will not be applicable to most people, and will not address many of the categories seen as desirable and promoted by the Smart Visa program. Retaining a revising important parts of Smart Visa is a positive step.

Although the LTR proposals include benefits associated with certain investments or skills, they do not address most of the significant barriers regularly encountered by legitimately established, long-term foreign residents living and working in the Kingdom who are already contributing to its economic and social well-being. Nor will these proposals improve the ease of doing business in Thailand.

The WP and Visa system will, based on the slow pace of reform to date (the Pandemic is said to have been a good crisis, wasted) take a long time to fix. A strategic plan, supported by political will from the top, is needed rather than piecemeal approaches.

We cannot get away from the mandate to address the needs of so many already in Thailand (who cannot all qualify for a wealth-oriented programme).

## Target segments



**Wealthy global citizen**



**Wealthy pensioner**



**Work-from-Thailand  
professional**



**High-skilled  
professional**

**In addition:** Reformation of some Smart Visa categories.

Indicatively as we understand it, the expectation about 1 million may be broken into sub targets over some period.

1. Wealthy global citizen	10,000
2. Wealthy pensioner	390,000
3. WFH professional	200,000
4. Highly skilled professional	400,000

## B. Objectives

### ***What are the possible objectives of LTR?***

- i) Promote companies already doing business here by recognising wealth and talent
- ii) Stimulate talent to support knowhow transfer
- iii) Higher tourism spend?
- iv) Stimulate investment linked to higher calibre individuals in some cases
- v) The showing of \$500,000 (etc.) is more like a show of 'commitment' rather than the kind of investment which will make a difference. How will it stimulate investment, or is that not part of the objective? LTR does not seem to be targeted at stimulating that kind of investment, or to support Startup activity (there is no category similar to Smart Visa's Startup; hence the retention of part of the Smart Visa)
- vi) So what's next, what is the expected action after achieving LTR status? For pension holders, it might only be part time work and enjoying later years, but what about category 1? – for them is LTR expected to open this? – is that the next stage?

- vii) How will all categories contribute to knowhow / skills enhancement in the economy, and infuse it? This idea does not seem to be part of LTR.
- viii) LTR does not seem to have as an objective increasing knowhow materially (other than one category) which Smart Visa did.
- ix) Make a small change in general calibre/profile of foreigners in Thailand
- x) A larger strategic question is an overall strategy of uplifting skills in the economy, and stimulating Startup activity.

***We suggest that objectives should include:***

- i) Foster an understanding (without legal obligation) about further real economic stimulation and contribution; consider an advisory council
- ii) Promote companies recognise individuals already doing business in Thailand by recognising wealth and talent
- iii) Stimulate talent to support knowhow transfer
- iv) Make a small change in general calibre/profile of foreigners in Thailand
- v) By retaining (with revisions) part of Smart Visa, have a clear and comprehensive strategy for Startups, a multi-agency engagement.
- vi) Take the opportunity to make a strategic plan for reform of visa and WP to welcome talent and improve ease of doing business; otherwise LTR will become a reviled, privileged group
- vii) Startup strategy (multi agency)  
<https://docs.google.com/document/d/1kgzURRpdTHkaY4bCqaFkl109Qd6nDfAr/edit?usp=sharing&oid=112102837987368870860&rtpof=true&sd=true>
- viii) Use the opportunity to make a general change to 90 day reporting. See Annex A

**C. Points applicable to all or most categories.**

**1. 90 day reporting**

Changes so that only change of address is reportable should apply to all. See Annex A.

**2. Land Ownership**

The law would need revision to confirm that foreigners can own a houses in designated areas as well as a condo (potentially without the current 49% cap) and be able to have long term rent in property. The foreigner should not need to bring in new funds from abroad. There is some concern expressed by Thai citizens about land privileges in LTR.

**3. Work Permit and right to work**

Ministry of Labour / Department of Employment to allow the person who holding this long term visa to work 'automatically' – ie without a separate work permit (like Smart Visa) OR

does it mean that a WP is granted, which means interaction with DoE. We recommend the Smart Visa model – no work permit needed. Some education is needed so that this is understood. There is some valid discussion about limited working hours for retirees, but type of work should not be restricted.

#### **4. Existing Smart Visa programme**

Continues? LTR has a different focus and objective, it should not replace it. The opportunity should be taken to enhance Smart Visa and make it more attractive.

#### **5. Thailand Elite**

How will LTR sit with this? Is LTR like a new Thailand Elite? LTR is much more comparable to Thailand Elite than to Smart Visa.

#### **6. Central service centre**

Is there still a plan as proposed in May, for a high end service centre (conciierge)? This seemed ambitious given other service points eg from larger chambers etc., and would need to have a very high service mindset and capability. One function of a service centre will be liaising with government agencies and possibly the private sector (eg banks, etc.) to ensure that privileges are understood and respected.

#### **7. Staff ratio exemption – even if that still exists**

This type of Visa is not subject to the criteria for issuance of a visa which accompanies a (normal) work permit - hiring 4 Thai permanent employees for each non-Thai employee. The issue of employment ratios is being referred from the Guillotine Sub Committee to the Prime Minister's office. It is recommended that the ratios be removed.

#### **8. Special excise treatment and Special privileges on alcohol and tobacco 60% reduction to 30%**

Finance Ministry consider any involvement in taxation and practicing procedures in Customs, as follows:

- taxation for wine, liquor, cigarettes
- taxation for passenger carrying goods in and out of the country (update value of those goods)
- Issuing any support law involving personal taxation for long term resident visa

As part of the plan to revive the post-COVID 19 economy and attract wealthy foreign investors to stay and work in Thailand, on 14<sup>th</sup> September 2021 a Cabinet Resolution approved an incentives package which included a reduction of the import tariffs on spirits, wines, and cigars by half from 60% to 30% over a five-year period from 2022 to 2026. There are some obvious administrative challenges with such a scheme. The benefit should apply to all as part of an overall plan to entice higher end tourists. See Annex B

#### **9. Health insurance of USD 100,000 cover**

Applies to all categories. Clarification needed. Is this intended to be based on the COVID 19 cover of this amount, which was changed during October to be USD 50,000 for all medical including COVID 19? If so, that is an old benchmark or reference point. For O-A holders, the new requirement is THB 3m (just under USD 100,000). What will be the LTR standard in light of

these changes? Retirees will have difficulty with obtaining this – see notes under the ‘Pensioner’ category.

Obtaining health insurance up front for 10 years is almost impossible. It is usually done on an annual basis.

10. **Offline and back office assessments by other agencies; proof hurdles.** Scrutiny of such detail is an issue. Scope- and depth-creep in these assessments – eg Immigration; DEPA, NIA and others.

### D. Comments specific to each of the four categories, and comments on Smart Visa plans

<p><b>1. Wealthy Global Citizen</b></p>  <p><b>Wealthy global citizen</b></p>	<div style="text-align: right;"><b>Qualif and I</b></div> <h4 style="text-align: center;">Wealthy Global Citizen</h4> <ol style="list-style-type: none"> <li>1. Wealthy individual with no age requirement and former Smart I applicant</li> <li>2. Personal income of no less than \$80,000/ year in the past 2 years</li> <li>3. Investment of no less than \$500,000 in any of the following             <ul style="list-style-type: none"> <li>➤ Thai Government or state-owned enterprise bonds</li> <li>➤ Direct investment as an individual investor</li> <li>➤ Real estate (with a proof of transfer)</li> </ul> </li> <li>4. Total assets value of no less than \$1 Million (not including assets without proof of applicant’s ownership and assets without reliable market appraisal evidence e.g., artworks, amulets or memberships)</li> <li>4. Health insurance policy covering the entire period of stay in Thailand, with coverage for hospitalization treatment of no less than \$100,000</li> </ol>
<p><b>Recommendations / questions about 1. Wealthy Global Citizen</b></p> <ol style="list-style-type: none"> <li>i) Investments will be a low hurdle for some (just treated as a pre condition) with several possible investments globally. For some they are a mark of commitment to Thailand, for others not so.</li> <li>ii) See Objectives – is there a non legally binding expectation about greater contribution to the economy? – the figures just show some commitment.</li> <li>iii) How is the investment recognised? – is it similar to total assets under management? Or a Net Asset Value (NAV) basis? We suggest flexibility given</li> </ol>	

the objective.

- iv) Existing development and investment activity in Thailand should be includable in the assessment.
- v) The tax benefit (not needing to pay tax on foreign-sourced income) may be illusory, but in any event clarity is needed that this applies to both personal exertion income and passive income.
- vi) Investment assessment should recognise co-investment (eg on an equity accounted basis). The value of existing (and especially long-standing) investment in Thai business entities should be counted towards any required threshold.
- vii) The tax benefit could be no tax on foreign sourced income brought into Thailand. Foreign pensions are taxable if they are brought into Thailand same year as earned. The practice is not to tax income from abroad. By practice, it is believed that some are not in the system.
- viii) Beware the proof hurdles – eg would a wealthy investor have a ‘salary’ like this?
- ix) As with all categories, it should apply to foreigners already in the Kingdom.

## 2. Wealthy Pensioner



Wealthy pensioner

## Qualifications Criteria

## Wealthy Pensioner



1. 50+ years of age who receive regular income and former Retirement Visa applicant who wishes to work in Thailand



2. Personal income of no less than \$80,000/ year



3. In case of personal income of no less than \$40,000/ year applicants must have investment of no less than \$250,000 in any of the following

- Thai Government or state-owned enterprise bonds
- Direct investment as an individual investor
- Real estate (with a proof of transfer)



4. Health insurance policy covering the entire period of stay in Thailand, with coverage for hospitalization treatment of no less than \$100,000

### Recommendations / questions about 2. Wealthy Pensioner

- i) There is much talent amongst retirees. Utilizing that talent and knowledge should not only be permitted, but also encouraged.
- ii) Retirement visa has self-sufficiency requirements; Income element is necessarily passive income or derived overseas. Retirees have much to offer the Thai economy, world retirement ages are increasing / people are working longer.
- iii) JFCCT suggested allowing limited hours of local, income-producing work per week or per month. Example – ‘Malaysia My 2<sup>nd</sup> Home’ (MM2H) – up to 20 hours per week.
- iv) More could be made of the learning embodied by this group and how the knowledge can be imparted, eg visiting professors teaching part time. People already in Thailand have a wealth of knowledge about culture, society, and economy different from those coming to Thailand afresh.
- v) We do not recommend limiting the type of work, as has been suggested, to lecturing, consulting, etc. Imparting knowledge can come in a variety of forms and activities which can lead to economic contribution in other ways. Part time management, being on a board, etc. should be supported. Tour Facilitators (which would not violate the requirement that Tour Guides be Thai only) might be another relevant activity, or it could even include Tour Guides if LTR is to override other restrictions.

- vi) We recognize a potential issue with leaving number of hours uncapped, otherwise this could be a back door way to obtaining a right to work full time. Capping the amount to be earned however would seem to be against the spirit of attracting wealthy people.
- vii) Unpaid charity or other volunteer work should not be part of the hours capped.
- viii) Income to meet the test should not have to be remitted into Thailand.
- ix) The new requirement for THB 3m insurance cover (a little under USD 100,000) for those on O-A visas will be difficult. For those on O visa extension there is no insurance requirement. If making a trip from Thailand and then returning, they will need USD 50,000 medical insurance (not just COVID) cover, like anyone else entering. A Non B visa holder with work permit can show a social security card or letter from their employer.
- x) Income source – does it have to be a pension? What about self-managed superannuation (Australian example) or just personal overseas investments which generate income?
- xi) Consider existing retirees: they have an option to obtain a retirement visa (no work) – the benefits are minimal. If buying a condo, they must bring in funds from abroad. The question of utilising local funds to buy a condo is with the Guillotine Sub Committee for process by Bank of Thailand – there are some issues over local:foreign ratio of unit ownership.
- xii) Obtaining a local credit card – even with Smart Visa - has been difficult. Once finalised, information about Smart Visa and LTR need wide promulgating to both public and private sector.
- xiii) Thailand has been ranked among the best countries (6<sup>th</sup> out of 142) in the world to retire, according to a recent survey. See Annex C. (This is a survey and not based on scientific analysis but sounds positive).

### 3. Work-from-home Professional



Work-from-Thailand professional

### Work-from-Thailand professional

Qual  
and



1. Remote workers who works for an overseas employer



2. Personal income of no less than \$80,000/ year in the past 2 years

3. Current employer must have one of the following characteristics



3.1 A public company listed on the Stock Exchange in any country.

3.2 A private company that has been in operation for at least 3 years and has total revenue of more than 500 million USD in the last 3 years.



4. Health insurance policy covering the entire period of stay in Thailand, with coverage for hospitalization treatment of no less than \$100,000

### Recommendations / questions about 3. WFT Professional

- i) This category would be marketed at employers more than at employees
- ii) It requires a bit of investment in quality market research to assess the potential market
- iii) Advice about a new Work from Home (WFH) model recognises the value of in-person interaction; the model is more a hybrid of in-office and home, rather than just WFH.
- iv) Applying this to Work From Thailand (WFT) might be useful for: (i) Companies from afar – eg Europe, US, where staff cannot easily group in person (ii) companies in the region where they can possibly re-group more easily.
- v) It could be seen as a facility or remote regional centre which not only covers the office site but gives staff quite an attractive visa.
- vi) Settling the family in Thailand could be attractive.
- vii) Care that this does not trigger other regulatory issues:
  - (a) Permanent Establishment – a whole team being in Thailand might do that. We recommend a rule which effectively overrides that. The administrative response in taking in Double Taxation Agreements could be massive

- (b) Similarly if this has the effect of amounting to commercial presence, would the company need a Foreign Business Licence (FBL) or even something more like a Foreign Business Certificate (FBC), which applies to BOI promoted companies?
- viii) If the employees are paid overseas, what is the planned tax treatment? Would it still be tax free?
- ix) See issues about scope in Annex G. If the services are performed outside Thailand this is not an issue. As they will be performed in Thailand, will LTR override the constraints described in Annex G?

#### 4. Highly Skilled Professional



High-skilled professional

#### Qualifications criteria

#### High-skilled professional



1. - High skilled professionals working in targeted industries in Thailand
  - S&T Experts working for a Thai government agency
  - Lecturers or researchers in S&T working in a higher education institution or specialized training institution in Thailand
  - Experts working in an arbitration case in Thailand



2. Personal income of no less than \$80,000/ year in the past 2 years



3. In case of personal income between \$40,000/ year - \$80,000/ year in the past 2 years, applicants must have at least 5 years of working experience in the targeted industries and expertise in S&T endorsed by a relevant agency (e.g. NSTDA)



4. NO minimum personal income for S&T experts working for a Thai government agency or a higher education institution or a specialized training institution and experts working in an arbitration case in Thailand



5. Health insurance policy covering the entire period of stay in Thailand, with coverage for hospitalization treatment of no less than \$100,000

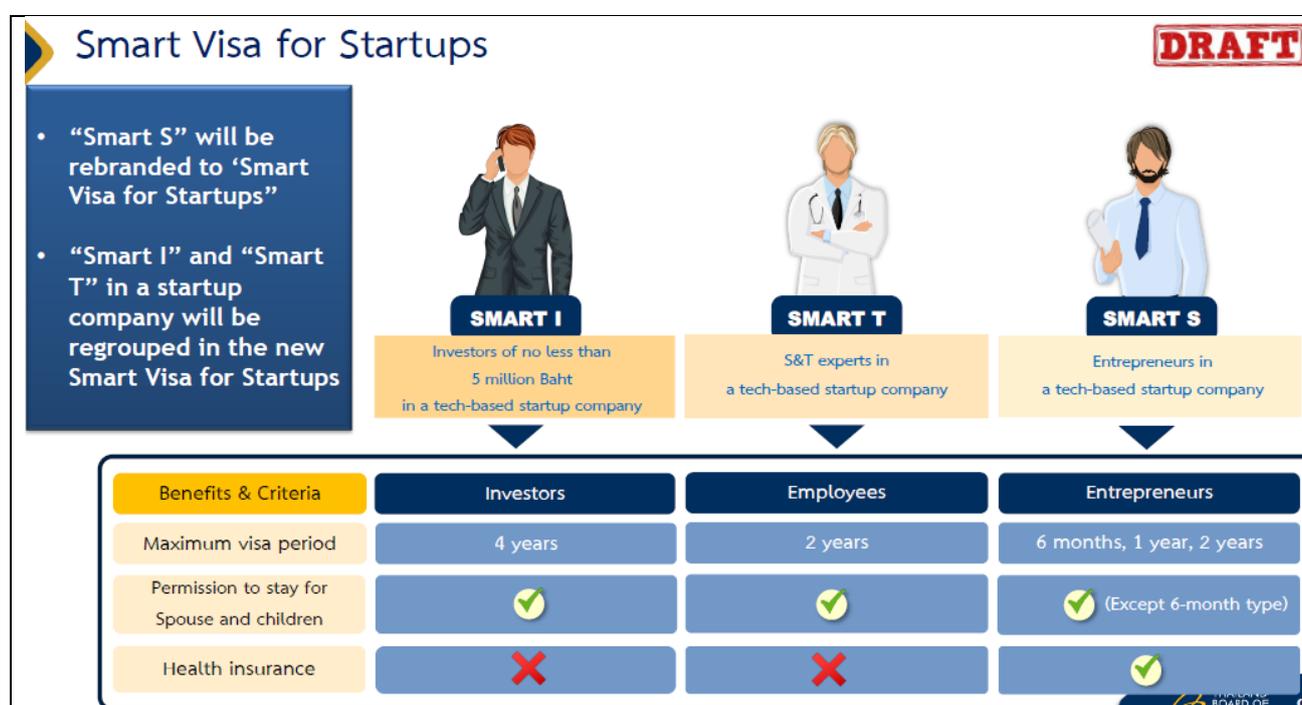
#### Recommendations / questions about 4. Highly Skilled

- i) Similar to Smart Visa T but maybe more streamlined?
- ii) Why the targeted industries? – Seems too restrictive. Please see Annex G and Annex F about scope and professions – limitation to S&T, also existing Smart Visa take up on Arbitration.
- iii) What scrutiny is to be done by third party agencies in Thailand? This has been an issue for Smart Visa's attractiveness.

iv) The differential in income depending on job type is noted and makes sense.

## 5. Smart Visa Changes

The Smart Visa instrument has some attractive features. It suffered from perceptions of too much scrutiny, second guessing with related party of back office processes and has not been sufficiently promoted. The fact that Work Permits are being asked for is evidence that insufficient promotion of Smart Visa to the private sector has been done.



### Recommendations / questions about 5. Smart Visa changes

- This seems to broaden the scope of Startup visas.
- Benefits should be consistent with LTR – eg report change of address only, not 90 day reporting and duration of visa needs review.
- When BOI were planning a Digital Freelancer category there were also plans to review other categories. See page 8, item C in this Oct 2020 submission: <http://www.ifcct.org/wp-content/uploads/sites/1871/2020/10/Smart-Visa-Freelancers-v-3.5-21-October-2020.pdf?nocdn>
- See JFCCT suggestions about barriers for Startups: <https://docs.google.com/document/d/1kgzURRPdTHkaY4bCqaFkI109Qd6nDfAr/edit?usp=sharing&ouid=112102837987368870860&rtpof=true&sd=true>

- v) Every effort should be made to streamline processing of approvals and reduce second-guessing etc.

## Smart Visas – some statistics

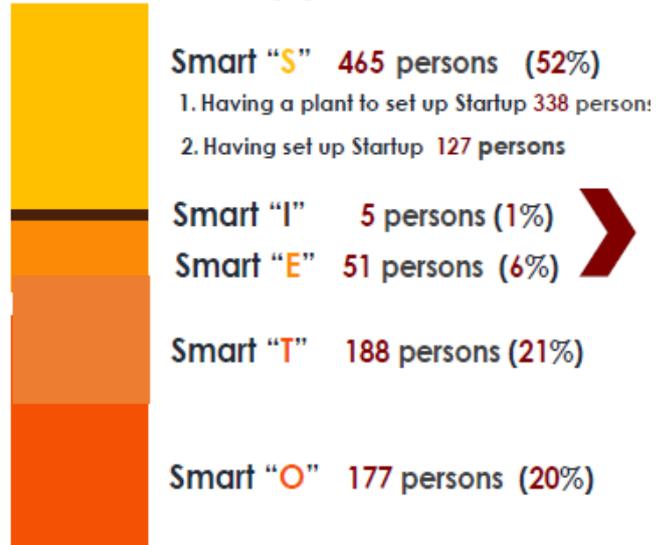
The smart visa instrument has several attractive qualities. JFCCT and EABC have been intimately engaged with developments since 2017. Visa was launched 1 Feb 2018. Some main submissions from JFCCT:

- 17 August 2017, preliminary ideas about a ‘Tech Visa’
- 15 Nov 2017
- 13 August 2018
- 30 October 2020 on Digital Freelancer and proposed changes to other categories, points system proposal.

Smart Visa could be made much more attractive. It is a useful instrument and has useful features. Tables are at 30 August 2021. Startup and Talent are the best supported categories.

SMART VISA STATS to 30 August 2021 from 1 Feb 2018				
<a href="https://smart-visa.boj.go.th/smart/">https://smart-visa.boj.go.th/smart/</a>				
Smart visas issued based on track record of having done a start up				
<b>S</b>	StartUp		465	52.5%
	<b>Plan to set up startup</b>	388		
	<b>Have set up</b>	127		127
<b>I</b>	Investor		5	0.6%
<b>E</b>	Snr Executive		51	5.8%
<b>T</b>	Talent		188	21.2%
<b>O</b>	Family		177	20.0%
<b>TOTAL</b>			<b>886</b>	
<b>TOTAL WITHOUT O</b>			<b>709</b>	

## Smart Visa Approval (by visa type)



JFCCT 8 Nov 2021

**Annex A – 90 day reporting** (further submission made by JFCCT 18 October 2021).  
This is the paper presented under a cover letter:

Almost all foreigners in Thailand need to report residential address every 90 days. Section 37(5) of the Immigration Act (AD 1979) requires it.

JFCCT's long-standing recommendation is to change the 90 day reporting requirement to make it a requirement to report changes in residential address only when that occurs, under the Immigration Act and regulations. While JFCCT does not question the need of the Royal Thai Government to have up-to-date contact and residence information about foreigners, many in the public and private sector have acknowledged that reporting every 90 days does not add much value.

Reporting should not be expanded to include additional, personal information for example about social media use and places commonly visited (as was previously proposed) and should be supported by a simple on-line facility. No fee should be introduced for reporting, although a modest late fee would be preferable to not being able to report on line at all (see case study below).

While multiple means of reporting are allowed, they are becoming more, not less, cumbersome. For example from 22 January 2021, for reporting at the OSOS Centre, if an agent or representative is making the report a formal power for attorney is needed.

Currently as we understand it:

1. 90 day reporting applies to all foreigners, including unskilled workers under an MoU. If the foreigner travels abroad, the 90 day period re-commences from arrival in Thailand.
2. *Different rules apply to:*
  - a) Permanent Residents (or 'Residents') who must provide a confirmation annually of address. The update is done annually via the permanent residence book (blue colour first, later changed to white). Ironically this is done at an Immigration office. The change of address has to be reported to the police station (red book) and at the Khet for the pink card.
  - b) Smart visa holders, who must report annually
  - c) Proposed LTR visa holders would report change of residential address only.

- d) Labour law requires reporting of change of workplace for Work Permit holders, which may also include a statement at that time of residential address (which may or may not have changed).
- e) Possibly, diplomats / embassy staff.

**How can the change be made?**

**(i) The same means as was used for Smart Visa:**

Smart Visa commenced 1 Feb 2018. We understand that a s.44 Order (old Charter; carried forward for a period by s.265 of the new Charter) had been proposed, but in the end s. 17 of the Immigration Act was used, as a new class of visa could be recognised.

Can all relevant visa holders be re-designated for this purpose?

**(ii) The same means as applies to Residents**

Using the same rule base. Conditions applicable to Residents are set by the Immigration Commission.

**(iii) The second last paragraph of s. 37**

As the second last paragraph of s. 37 was used to support the 1979 Notification (which changed the Immigration Act’s effect on TM.28 scope), the January 2020 Police Regulation, and the import of s. 37(5) is now somehow re-stated in the Police Regulation, why can’t that paragraph be used to amend s.37(5) to make 90 day reporting to require reporting of change of address only, even though the second last paragraph refers only to s.37(3) and (4), not to (5).

**(iv) By same means as s.37(1) was changed in 2018**



Immigration Act  
Section 37(1) change

**(v) Other use of s.17**

Was s.17 used to support changes to s.38 or the Immigration Act in other ways? Can it be used to change s.37(5)?

**Section 37.**

An alien who is permitted to stay in the Kingdom temporarily shall do the following —  
.....

(5) Staying in the Kingdom longer than ninety days, an alien shall notify the competent official at the Immigration Division, of his or her residence, in writing, without delay, upon the completion of a ninety day period. This shall be repeated at every ninety day interval. If there is an immigration office in the locality, the notification may be made to the competent official of that immigration office.

(The relevant form is TM.47)

**Section 17.** In a special case, the Minister, by the approval of the Council of Ministers, may permit any alien or any group of aliens to enter and remain in the Kingdom under certain conditions, or may grant exemption from complying with this Act in any case.

***Experience with on-line 90 day reporting.***

Evidence shows that for that if the case falls fully within the requirements, the system may work. However the system was not designed for late entries.

Case study embedded.



90 Days Reporting -  
Experience Jan 2021

***On line tools***

For reporting change of address, we recommend that a simple on-line tool be used as well as an App. Recommendations from the case study illustrate. The on-line system was not available for a period in April 2021. JFCCT wrote to HE the Minister of the Interior with suggestions about an attractive and efficient on-line tool.

## **Annex B about reduced imposts for wine, spirits, cigars**

### **Request for clarity: Cabinet Resolution 14<sup>th</sup> September on import tariff reduction**

As part of the plan to attract wealthy foreign investors to stay and work in Thailand, on 14<sup>th</sup> September 2021 a Cabinet Resolution agreed *in principle* an incentives package which included a reduction of the import tariffs on spirits and wines by half from 60% to 30% over a five-year period from 2022 to 2026. We would kindly request clarity on this incentives package, as there appears to be conflicting information about the scope of it.

### **The benefits of reducing import tariffs – attracting high-yield international and local tourists**

- **High yield expats and premium tourists group spend on food and premium beverages:** Destinations like Thailand are operating in an increasingly competitive, experience-oriented tourist economy<sup>12</sup>. Food and beverage consistently ranks very highly as a driver, with the average spend per head of inbound tourist increasing from 50,000 baht to 70,000 baht during the pandemic.<sup>3</sup> Inbound tourists will come primarily from markets (e.g. Russia, USA, India) where consumers are driving a growth in premium international spirits,<sup>4</sup> and a tariff reduction would better align prices of imported wines and spirits with other countries in the region<sup>5</sup>
- **Premium imported alcoholic beverages do not compete with locally produced ones:** Imported wines and spirits do not compete with locally produced alcoholic beverages given their much higher price point and higher base of excise tax (ad valorem plus higher specific rate)
- **Help reduce the incentives to illicit alcohol trade:** The high import tariffs currently levied on imported alcoholic beverages inadvertently drives illicit trade, given the high price discrepancy for imported spirits between Thailand and its neighbouring countries<sup>6</sup>. A change in the tariff would help reduce this discrepancy
- **Increased sales of premium products will substitute tax loss impact:** The additional taxation revenue generated by the increased sales of premium wines and spirits would likely offset any loss in import tariff revenue given the compounding *ad valorem* nature of earmarked taxes

### **An import tariff reduction solely for qualified foreign investors will not encourage tourist spend, but will create a complex parallel system**

- **It will not help tourist activity:** Wealthy tourists tend to buy in bulk from travel retail, and it is difficult to foresee how a small reduction in tax for high-net worth individuals only entering Thailand would be a driving factor to visit or stay
- **Grey market:** A new, less controlled channel of import could further exacerbate the already high levels of illicit spirits consumption in Thailand<sup>7</sup>
- **It creates a more complex, parallel import process for Government and businesses:** A new parallel import regime, including label registration and suggested retail price, would create a loophole for individuals to resell goods declared for personal use with virtually no possibility of enforcement. This would add increasing compliance costs for border officials to try and monitor

<sup>1</sup> Premiumization in Travel and Tourism (2021): <https://store.globaldata.com/report/gdtt-tr-s050--premiumization-in-travel-and-tourism-2021-update-thematic-research/>

<sup>2</sup> Financial Times (2021): <https://www.ft.com/content/2f3d9d56-b153-4531-86f6-d33587ca612b>

<sup>3</sup> World Tourism Organization (UNWTO), International Tourism and COVID-19 Dashboard: International tourist arrivals, slide 4, available at: <https://www.unwto.org/international-tourism-and-covid-19>

<sup>4</sup> IWSR, Routes to Resilience: The impact of Covid-19 on beverage alcohol trends & the outlook for the industry, December 2020 & ISWR Online Database

<sup>5</sup> The only higher tariff in the APAC region is Indonesia, which is 150%. Cambodia, Philippines, Malaysia, Singapore and Vietnam are all lower or 0%

<sup>6</sup> Euromonitor (2021) 'Study on Building A Strategy To Combat Illicit Trade In Thailand'. A study by global expert Euromonitor International reveals that the illicit imported spirits trade alone costs the Royal Thai Government around 2.8 billion baht per year in revenue loss, with over 16% of all imported spirits smuggled via neighbouring countries

<sup>7</sup> same as 6.

## **Annex C**

### **Recent survey about attractiveness of Thailand for retirement**

Thailand has been ranked among the best countries (6<sup>th</sup> out of 142) in the world to retire, according to a recent survey [money.co.uk](https://money.co.uk), reported in <https://aseanow.com/topic/1236694-thailand-ranked-among-the-top-6-places-in-the-world-to-retire/>.

The survey used data from Google Keyword Planner to analyse search data in each country looking at common search terms associated with retiring to another country, such as 'retirement in [country]', 'retire in [country]' and 'retire to [country]'.

The survey, titled Where the world wants to retire, found that Thailand was the most searched destination for a total of 9 countries.

Thailand's ranking put it ahead of the likes of Spain (7<sup>th</sup>), a perennial favourite retirement destination for Brits and Europeans, and also ahead of ASEAN rival the Philippines (10<sup>th</sup>).

Overall, France came out on top with 20 countries searching about retiring there more than anywhere else, while Canada, Argentina, Portugal and Australia made up the top 5.

## **Annex D**

### **About Thailand Elite**

A press report of 5 October says that the Thailand Elite is adding privileges.

<https://www.nationthailand.com/business/40007054>

The Thailand Privilege Card Co is launching a new "Elite Flexible One" campaign, which will make it easier for foreigners to buy property in the country. A separate "Welcome Back to Amazing Paradise" campaign has been launched to bring back existing elite cardholders, so they can contribute to the revival of the economy.

[Thailand Elite – Official website](#) – ability to live in Thailand for up to 20 years is possible.

## **Annex E**

### **Residents (meaning Permanent Residents)**

It is accepted that such status is not for everyone, and there would be some limits on the number of people who would become Residents. The LTR concept is separate to 'Resident' but a 10 year visa with various privileges would be just as good, or better, given the current Work Permit requirement for Residents. Permanent Residents in Singapore for example do not need a work permit.

#### ***Pain points***

- i) Administration and Rule setting – see ss 6 and 7 of the Immigration Act, the role and constitution of the Immigration Commission
- ii) Long process
- iii) High cost
- iv) Paperwork intensive; nothing digitalised
- v) Quotas – 100 / nationality per annum believed to be the rule.
- vi) Unlike the equivalent status in some other ASEAN economics, a work permit is still needed in Thailand for those with Permanent Resident status. A work permit should either inhere in the status, or the status should mean exemption from the need for a work permit.
- vii) Broader recognition of the status by private sector – better understanding, which would assist with reducing duplicative processing or second-guessing.
- viii) Five categories of PR – including family, business, investor. Worth reviewing.

## **Annex F Digital Nomad, Digital Freelancer**

This category has been dropped from original LTR proposals (they may not be ‘wealthy’) and also plans for revision

JFCCT has engaged much on this issue, researched other practice and engaged with the startup community in Chiang Mai and elsewhere. ‘Lighter touch’ regulation is needed to make this work. A points system is recommended. Please see submissions:

- *October 2020 about Digital Freelancer* <http://www.jfcct.org/wp-content/uploads/sites/1871/2020/10/Smart-Visa-Freelancers-v-3.5-21-October-2020.pdf?nocdn>
- *Points system supporting Digital Freelancer* <http://www.jfcct.org/wp-content/uploads/sites/1871/2020/10/Smart-Visa-Freelancer-point-system-v-1.5-21Oct2020.pdf?nocdn>

## **Annex G About scope of activity; allowed professions and related activity**

Clarification about target sector and allowed activity. There are five ‘basic’ and five ‘new’ S curve industries. The older ‘S’ curves may no longer still be ‘S’ curve industries. In addition:

- (a) EEC adds two to the ten, total 12 (the chart shows that EEC adds two to the

second group – Defence Industry and Education/HRD; although whether Defence is really an ‘S’ curve industry is questionable). The EEC in practice seems flexible in accommodating a variety of industries. EEC for example has a number of sub programmes which can be attractive but are hard to follow.



(b) BOI for Smart Visa purposes, adds three to the ten <https://smart-visa.boi.go.th/smart/> ; the additional three being:

- ADR (mainly about arbitration); some have opined that is easier and more flexible
- Environmental Management & Renewable Energy
- HRD for Science & Technology (JFCCT has questioned why this should be limited to S&T and has used the skill set needed in describing software development for example and also in its Digital Freelancer description (see Annex F in this document) as to why such activities should not be limited to S&T. Also – is the HRD in existing Smart Visa the same?

While the industries are broadly drawn, is it necessary to limit activity in order to support LTRs? Or could there be an additional category which objectively contributes in some way directly or indirectly to economic advancement or skills development?

What is needed is consistency and clarity of offering (while still allowing flexibility).

Does this ‘S’ curve scheme still fit with the Thailand 4.0 vision, (the nearest thing to 4IR) and other long term objectives.

Are professions intended to be those only open to foreigners under existing rules? Please refer to the 1979 Decree about 39 professions off limits to foreigners (replaced by an April 2020 Notification which keeps the same 39 but puts them into

four categories.

JFCCT's analysis of the original 1979 Decree : <http://www.jfcct.org/wp-content/uploads/sites/1871/2018/08/Occupations-and-Professions-Prohibited-for-Foreign-Workers-v-1.7A.pdf?nocdn>

We have analysed such restrictions into three layers.

<b>Subject</b>	<b>Effect</b>	<b>Regulatory source</b>
<b>Business activities of entities</b> (eg companies) with more than 49% foreign shareholding	Restricts the business activity of the company using three lists.  List 3 has unnecessary restrictions.	Foreign Business Act AD 1999.  Foreign Business Licence (s.7)  Under IPA (the basis of BOI promotion) Foreign Business Certificate (s. 12)
<b>Professions</b> which may not be undertaken by foreigners	Prohibits foreigners (individuals) from carrying out 39 professions. JFCCT has identified 8 of interest	AD 1979 Decree; April AD 2020 Notification groups these into 4 categories
<b>Professional</b> licensing or permits at sector or individual professional level.	An additional barrier which is often overlooked by regulatory moves to liberalise professions.	Various sector or profession-specific laws – eg Engineers Act, Accountants Act, Lawyers Act which typically set up a professional licensing authority.

In a grey area, or an area of overlap, will an LTR visa override such restrictions? Which HRD rule would apply – that of EEC or that of existing smart visa?