

CHAPTER 19 WORK PERMITS

The Foreign Employment Act (2008) that came into effect on 22 February 2008, repealed the Foreign Employment Act (1978) in full. It is now the principal Act that regulates the employment of foreigners in Thailand. Regulations issued under the 1978 Act will continue to apply, unless they are inconsistent with the new Act or with subsequent regulations.

The Act prohibits foreigners from engaging in work in Thailand, whether paid or unpaid, unless a work permit is first granted, except for certain exempt categories of employment. Foreigners may only work in occupations specified in regulations that will be issued by February 2010 (until then, the previous position will apply, namely that foreigners may work in any occupation other than a list of 39 prohibited occupations, see further below). The Act imposes criteria that work permit applicants must comply with. If it is desired to change the scope of the employment, or the locality or place of work, application for a variation must be made in advance to the Ministry of Labor. The Director General is granted regulatory powers and breach of the Act by foreigners or employers is subject to fines or imprisonment.

The terms of the law are strict and except for foreigners working in a small number of exempted employments, there are few exceptions to the general requirement to obtain a work permit and to comply with the Act.

In particular, note that the holder of a Resident's Permit must still obtain a work permit if he/she wishes to work. Note also that the holder of a Retirement Visa must obtain a Non Immigrant B Visa, if he/she wishes to work.

Foreign Employment Act (2008)

Work permit always required Under the Act, a work permit is always required when a foreigner undertakes any form of work, whether the work is paid or unpaid.

Exempt employment The requirements of the Act do not apply to foreigners who are:

1. Members of a diplomatic or consular mission.
2. Representatives of member countries and officials of the United Nations and specialized institutions.
3. Personal servants coming from foreign countries to work for the above persons.

4. Persons who perform duties or missions under an agreement concluded between the Government of Thailand and foreign governments or international organizations.
5. Persons who perform duties or missions for the benefit of education, culture, art, sports or other activities as may be prescribed by decree.
6. Persons permitted by the Government of Thailand to enter and perform any duty or mission.

Urgent and essential work A foreigner may engage in any work that is not prohibited to foreigners, only upon the issue of a work permit.

This does not apply to a foreigner who has been temporarily permitted to enter Thailand in order to engage in work that is necessary and urgent, for a period not exceeding 15 days, but he may engage in such work only after he has notified the Director-General in the prescribed form.

Under the Thailand-Australia Free Trade Agreement, a work permit is not required for Australian citizens who are business visitors conducting business meetings in Thailand for up to 15 days, and up to 90 days for APEC Travel Card Holders.

Work permit can include conditions In granting a permit to a foreigner, the Director-General may impose any condition for the foreigner to comply therewith. In such case, the foreigner is required to give assurances that he will comply with such conditions.

Businesses subject to investment promotion A foreigner who has been permitted entry to work in Thailand under the Investment Promotion Act may apply for a permit within 30 days from the date of entry, but if he is already in Thailand the period of 30 days begins from the date he is aware that he has been granted permission to work under the Act or other laws. Whilst the application is pending, the applicant is allowed to engage in such work.

Criteria for work permit applicant A foreigner who may apply for a permit must possess the following qualifications:

1. he/she has a place of residence in Thailand or has been permitted to enter Thailand temporarily, except as tourist or in transit; and
2. he/she is not disqualified or prohibited under ministerial regulations.

There will also be taken into account: the security of the country, the opportunities for employment of Thai citizens, and the need for foreign employees who are required to develop the country.

Period of validity of permits Work permits under the new Act will be valid for two years. Under the previous Act they were valid for one year from the date of entry into Thailand, except for foreigners working in promoted businesses who could obtain a two year work permit.

Under the Thailand-Australia Free Trade Agreement, which came into force on 1 January 2005:

1. Australian citizens transferred to work in Thailand for the same company will be granted a visa and work permit for up to five years, renewable annually.
2. Australian citizens transferred to work in Thailand for an Australian or Thai company other than their employer in Australia will be granted a visa and work permit for up to three years, renewable annually.

The Deportation Fund and duty of employees to contribute to the Deportation Fund Under the new Act, a Deportation Fund is set up. All foreigners granted a work permit, must pay a contribution to the Deportation Fund to secure expenses for arranging for foreigners to leave Thailand. An employer has a duty to deduct the amount of money from the employee's wages and pay into the Deportation Fund. The amount of money to be contributed to the Deportation Fund, deducting money from wages, and paying money into the Deportation Fund, shall be as specified in regulations. The payment amounts may differ depending on a person's nationality, by reference to the cost of sending each nationality of employee out of the country.

Where employer fails to pay Deportation Fund contributions An employer who fails to pay the employee's contributions into the Deportation Fund, in whole or part, must pay a penalty of 2% per month of the amount due.

Reclaiming contributions to Deportation Fund An employee who leaves the country at his own cost, can reclaim Deportation Fund contributions. Claims may be made to the Immigration Office on departure, or the Department of Employment. Applications for a refund must be processed within 30 days, or 7.5% interest is payable in a case of late payment. Claims must be made within two years of leaving Thailand, otherwise the money is forfeited to the Deportation Fund.

Right to receive credit for contributions paid When an employee enters the country and works with the same work permit which has not expired, or works with a new work permit in a category of work prescribed by regulations, in either case within two years of leaving Thailand, he does not have to pay any contribution into the Deportation Fund, unless there was a shortfall of money from the previous contributions, in which case the employer must deduct and remit the money from wages paid.

Duty of the Deportation Fund to pay for deportation costs Where a foreigner is deported, the Deportation Fund shall pay for expenses relating to arrangement of transportation.

Where the foreigner has not paid contributions to the Deportation Fund, the Deportation Fund will pay the balance of contributions into the Deportation Fund. This is except in cases where the foreigner entered the country to work at the request of an employer, in which case the latter will be responsible for making up the contribution shortfall suffered by the Deportation Fund.

Application for renewal If the holder of a permit wishes to continue working, he must apply for renewal prior to expiry. The applicant for renewal may continue working until an application for renewal is refused. Renewal will usually be for two years.

Appeals Where a work permit is refused not renewed or permission to change the work or place of work is refused, the applicant has a right of appeal. Such appeal must be submitted in writing within 30 days from the date of knowledge of the refusal.

Right to continue working pending appeal In the case of an appeal against refusal to renew a permit, the appellant may continue to work pending the appeal decision.

Permit must be made available for inspection A holder of permit must keep the permit on his person or at the place of work during working hours, in order that it may be readily shown to a competent official.

Permit lost or damaged If a permit is materially damaged or lost the holder of the permit must apply for a substitute within 15 days from the date of knowledge of such damage or loss.

Termination of employment Where employment terminates, the work permit must be returned to the Registrar of the district where the place of work is situated, within seven days from the date of termination.

Duty not to engage in unauthorised work or change locality or place of work without prior permission A holder of a permit may not engage in work, other than that which is specified in the permit, or change the locality or place of work, unless prior permission is obtained from the Registrar.

Employer must notify employment transfer or termination Any person who employs a foreigner, transfers a foreigner to work in a locality other than that which is specified in the permit or has a foreigner who resigns from his

employment, must notify the Registrar within 15 days from the date of employment, transfer or resignation.

Fines and imprisonment Fines and imprisonment are imposed for breaches of various of the sections of the Act.

Prohibited occupations A regulation issued under the previous Act set out a list of occupations that are prohibited to foreigners. This will continue to apply until February 2010. Within that period, new regulations should be issued giving categories of occupation in which foreigners may work.

1. Labouring work
2. Work in agriculture, animal husbandry, forestry or fisheries excluding specialized work in each particular branch or farm supervision
3. Bricklaying, carpentry or other construction work
4. Wood carving
5. Driving mechanically propelled vehicles or driving non-mechanically-propelled vehicles, excluding piloting of international aircraft
6. Shop assistant
7. Auctioneer
8. Supervising, auditing or giving service in accountancy excluding occasional internal auditing
9. Cutting or polishing jewelry
10. Haircutting, hairdressing or beauty treatment
11. Cloth weaving by hand
12. Weaving of mats or making products from reeds, rattan, hemp, straw or bamboo
13. Making of rice paper by hand
14. Lacquerware making
15. Making of Thai musical instruments
16. Nielloware making
17. Making of products from gold, silver or gold-copper alloy
18. Bronzeware making
19. Making of Thai dolls
20. Making of mattresses or quilt blankets
21. Alms bowl casting
22. Making of silk products by hand
23. Casting of Buddha images
24. Knife making
25. Making of paper or cloth umbrellas
26. Shoemaking
27. Hat making
28. Brokerage or agency, excluding brokerage or agency in international trade
29. Engineering work in civil engineering concerning design and calculation, organization, research, planning, testing, construction supervision or advice, excluding specialized work

30. Architectural work concerning design, drawing of plans, estimating, construction supervision or advice
31. Garment making
32. Making pottery or ceramics
33. Cigarette making by hand
34. Tour guide or conducting sightseeing tours
35. Street vending
36. Typesetting of Thai characters by hand
37. Drawing and twisting silk-thread by hand
38. Office or secretarial work
39. Legal or litigation services

Procedural matters

Employer may submit a work permit application Any person wishing to employ a foreigner in his business in Thailand may submit an application on behalf of the foreigner to the Director-General. The Director-General may issue the permit only after the entry into Thailand of such foreigner.

Under the Thailand-Australia Free Trade Agreement, applications by Australians for visas and work permits submitted by an employer on an applicant's behalf may be given advance notice of approval with visa to be granted on arrival, subject to proof of identity.

Submitting letter of sponsorship and obtaining Non Immigrant B visa In order to apply for a work permit, a foreigner must enter Thailand holding a class B Non Immigrant visa.

The procedure to obtain such a visa prior to 2006, was quite simple: a letter of sponsorship confirming the employment offer was submitted by the applicant to a Thai embassy or consulate outside Thailand. There was in practice little difficulty in obtaining the issue of such a visa. Having then obtained the visa, the applicant would then enter Thailand, and submit the application for a work permit. If the permit had not yet been granted, then an application to extend the visa by one month at a time could be made, until the permit was granted. When the permit was issued, the visa could then be extended for 12 months backdated to the first date of entry.

Under a regulation issued in 2006, this procedure has changed. Firstly, a prospective work permit applicant has to submit to the Ministry of Labour in Thailand copies of the corporate documents of the sponsoring company, details of the offer of employment including salary, copies of his passport and photos, and obtain a receipt from the MOL. Then the applicant applies to a Thai embassy or consulate for the issue of a Non Immigrant B visa as above, and must include a copy of the receipt from the Ministry of Labour, and copies of the employer's corporate documents.

Application for a work permit The following documents should be submitted with the work permit application:

1. Passport or document used in lieu of passport, foreigner's personal identification papers or residence papers under the law on immigration.
2. Documents certifying educational qualifications or certificates of the employers for whom the applicant used to work, specifying details of characteristics and period of the work that the applicant used to perform.
3. The potential employer's certificate of employment of the applicant together with supporting evidence for not employing a person of Thai nationality to work.
4. Certificate of a medical practitioner certifying that the applicant is not suffering from diseases prescribed under regulations.
5. Certificate of the relevant government agency showing that the business of the potential employer for whom the applicant is going to work has been duly and lawfully registered or licensed to be established and operated and also showing the category of the business.
6. Three photos, half-body, facing front, without hat, size 5 x 6 centimetres, having been taken within the previous six months.

A person who is granted a work permit must report in person to collect it.

Under the Thailand-Australia Free Trade Agreement, Thailand has agreed to reduce the number of documents required from Australians for work permits and renewals of work permits.

Application for renewal of a work permit An application for a work permit renewal must be submitted with documentation as follows:

1. The existing work permit.
2. Passport or document used in lieu of passport, foreigner's personal identification papers or residence permit.
3. Certificate of the employer stating the reasons for the requirement to employ the applicant to continue to work together with supporting evidence thereof.

Application to approve a change in work, or locality or place of work An application for permission to change the permitted work, or locality or place of work must be submitted with documentation as follows:

1. Passport or document used in lieu of a passport, foreigners personal identification papers or residence permit.
2. Existing work permit.
3. Documents certifying the educational qualifications or certificates of the employers for whom the applicant used to work, specifying details of characteristics and period of the work the applicant used to perform, in the case of an application for permission to change work.
4. Certificate of employment of the potential employer engaging the applicant to work, in the case of application for permission to change work or place of work, together with supporting evidence giving reasons for not employing a person of Thai nationality to work.
5. Certificate of the relevant government agency showing that the business of the potential employer for whom the applicant is going to work has been duly and lawfully registered or licensed to be established and operated and also showing the category of the business, in the case of application for permission to change work or place of work.
6. Three photos, half-body, facing front, without hat, size 5 x 6 centimetres having been taken within a period not exceeding six months before.

A person who is granted permission to change work or locality or place of work must report in person to collect the work permit.

Under the Thailand-Australia Free Trade Agreement, Australians who hold work permits may participate in business meetings anywhere in Thailand, including locations not specified in their work permits.

Fees payable Under the new Act, fees payable are increased significantly. The fee to obtain or renew a work permit is 20,000 Baht. The fee to register a change in work, conditions, locality or place of work is now 5,000 Baht.

General criteria for approval of a work permit The criteria for approval of the issue of a work permit were revised in October 2004. The new Act states that previous regulations will continue to apply, unless inconsistent with the new Act. Thus it is believed that, as at July 2008, the following matters will be taken into account when deciding to issue a work permit or not:

1. Political, religious, economic and social stability in Thailand.

2. The availability of Thais to perform the work.
3. The benefit to Thailand including:
 - (a) remittance of substantial amounts of foreign currency into Thailand for investment and expenses;
 - (b) creation of employment for a substantial number of Thais; and
 - (c) potential enhancement of the country's economic development and opportunity for state-of-the-art knowledge and skills to be transferred to Thais.
4. Development of skills and dexterity for Thais through transfer of knowledge, skills and technology to Thais resulting from the foreigner's employment in Thailand.
5. Humanitarian reasons.

If the considerations listed above are favorable, then a work permit may be issued to the applicant based on the following criteria:

- (a) An unspecified number of foreigners coming to Thailand to work in financial institutions supervised by the Bank of Thailand or Ministry of Finance in such numbers as are set forth in letters of certification issued by the relevant governmental authorities.
- (b) An unspecified number of foreigners for whom any other national, provincial or local governmental authority or state enterprise issues a letter of certification specifying the foreigner's names, positions and duration for their work.
- (c) Up to 10 foreigners working for:
 - (i) a Thai employer with at least 2 million Baht in paid up capital (with one work permit permissible for each 2,000,000 Baht of paid up capital) or
 - (ii) a foreign incorporated employer who has remitted and invested no less than 3 million Baht in Thailand (with one work permit permissible for each 3 million Baht invested) or
 - (iii) a foreign incorporated employer who cannot provide evidence that it has brought in foreign funds, but which started its business in Thailand before 30th October 2002 and whose bank balances (as

evidenced by its bank statements) exceeded 3 million Baht during the past 6 months (with one work permit permissible for each 3 million Baht).

The amounts of these investments are reduced by 50%, if the foreigner is married to and living with a Thai spouse and the marriage is legally registered in Thailand.

The limit of 10 work permits in the preceding cases may be exceeded if:

- (i) the employer paid at least 3,000,000 baht tax during the preceding year;
 - (ii) the employer is an exporter who brought in foreign currencies equivalent to at least 30 million Baht during the preceding year;
 - (iii) the employer works in the tourist sector and brought at least 5,000 tourists to Thailand during the preceding year;
 - (iv) the employer employs at least 100 Thais;
 - (v) the foreign employee uses technology that Thais cannot handle or the number of Thais who can handle the technology is inadequate to meet local demand so long as technological skills are transferred to Thais within a prescribed period;
 - (vi) the foreign employee has specialised knowledge and skills for work to be completed within a set period of time;
 - (vii) the foreigner works in the areas of entertainment, theatre, or music on an ad hoc basis and the work is to be completed within a set period of time;
- (d) Foreigners working for foundations, associations and other non-profit or civic organizations.
- (e) For representative offices of foreign trading companies, up to (i) two foreigners who advise or disseminate information about their company's products or provide reports about the Thai market to their home offices and (ii) five foreigners who source goods and services in Thailand for the foreign company or who are responsible for quality control for such goods and services unless the representative office sources at least 100 million Baht in goods and services from Thailand during the preceding year (in which case this limit may be exceeded).
- (f) For regional offices of foreign companies that service regional operations outside Thailand and do not receive income for those services; and are not authorized to sell goods or services, negotiate deals or accept purchase orders; and whose expenses are allocated only by their head offices, up to 5 work

permits, unless more than 10 million Baht is remitted to Thailand in the preceding year to cover expenses (in which case this limit may be exceeded).

Grandfathering of existing work permits If a foreigner was granted a work permit or was allowed to work in accordance with the Foreign Employment Act (1978) as amended, then as at 22 February 2008, it will be deemed that he was granted a permit or was allowed to work in accordance with this Act, in accordance with any conditions in the permit or the permission.

One Stop Service Centre For those who qualify, a work permit and immigration extension may be issued at the One Stop Service Centre. This fast track procedure is available to an applicant who:

1. is employed by a company with BOI promotion;
2. personally invests Baht 2 million or Baht 10 million in a business, where it is shown that the Baht 2 million or Baht 10 million, as the case may be, was brought into Thailand officially in the applicant's own name; or
3. is employed by a company with Baht 30 million in registered capital or who has Baht 30 million in working capital.

Applicants in the above categories may qualify for a one or two year work permit, issued within three hours of application. Those who do not qualify for the One Stop Service Centre must apply in the traditional way, which will often involve a longer period.

Under the Thailand-Australia Free Trade Agreement, all Australian business visitors are entitled to access to the One Stop Visa and Work Permit Service.

Tax liability of foreigners who work During the period that a foreigner is waiting for a work permit to be issued, he/she is not permitted to work. The Revenue Department, however, will normally assess income tax due from the foreigner for the non-working period, since it is permissible to be paid salary whilst waiting for the work permit to be issued.

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[previous chapter](#) | [contents](#) | [next](#)
[chapter](#)

