

CHAPTER 19 WORK PERMITS

The Foreign Employment Decree (2017) came into effect in 2017 and repealed the previous Foreign Employment Act (2008) in full. The 2008 Act itself repealed the 1978 Foreign Employment Act in full. The FED was further amended in 2018. In this chapter, the 2017 decree and the 2018 changes to it are together referred to as the “**FED.**”

The FED is now the principal law that regulates the employment of foreigners in Thailand. Regulations issued under the 1978 Act will continue to apply, unless they are inconsistent with later law or subsequent regulations.

The FED prohibits foreigners from engaging in work in Thailand, with or without an employer, unless a work permit is first granted, except for employment by certain categories of employer (see further below), or where a foreigner works in a company that holds a licence under the Foreign Business Act (see further Chapter 1 Foreign Business Restrictions). In addition, foreigners may not work in any prohibited occupations, see further below. The FED imposes criteria that work permit applicants and their employers 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 Labour. The Ministry has regulatory powers and breach of the FED 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 Residence Permit must still obtain a work permit if he/she wishes to work.

Note also that the holder of a Retirement Visa must change his visa status and obtain a Non Immigrant B Visa and a work permit, if he/she wishes to work.

What is “work”? The FED defines “*work*” as engaging in any occupation, whether with or without an employer, but excluding foreigners who work in a company that holds a licence under the Foreign Business Act (see further Chapter 1, Foreign Business Restrictions). An interesting point here is that the previous definition included the words “*paid or unpaid*” but these words are omitted under the FED.

Thus foreigners who e.g., work voluntarily in a foundation, an NGO, a school or university or anywhere else, are still required to obtain a work permit.

2018 FED revision In 2018, an amendment to the FED was passed declaring that the following activities no longer constituted *work*, and therefore foreigners engaging in such activities no longer required to obtain a work permit:

- those who enter Thailand to hold or to attend a meeting, an expression of opinion, a lecture, or a demonstration at a meeting, for training, to carry out inspections, or attend a seminar, or an exhibition of arts or culture, or a sports competition, or any other activities, as prescribed in regulations. The period and conditions for such activities may also be fixed in regulations.
- those who enter to operate businesses or to invest or who have knowledge, ability, or high skills, which would be beneficial to the development of Thailand, as prescribed in regulations.
- Those who are representatives of a foreign juristic person (*that has an associated company in Thailand that is*) licenced under the Foreign Business Act.

Exempt employment Under the Act there is no requirement to obtain a work permit, by 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.

Occupations prohibited to foreigners A regulation issued under the 1978 Act set out a list of 39 occupations that are prohibited to foreigners. This will continue to apply until a new regulation is issued. The prohibited occupations are:

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 jewellery
 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. Lacquer ware 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

The Eastern Economic Corridor Act (2017) The Eastern Economic Corridor Act established a new economic zone consisting of the three provinces of Chachoensao, Chonburi and Rayong. In these provinces investment privileges may be granted including, in some cases, the right to work without a work permit in certain industries, as set out in regulations.

Duties of employers The FED imposes duties on employers to obtain work permits or amendments for their foreign employees, to deposit security in accordance with regulations, and to be responsible for the cost of repatriating foreign employees to the country from which they came, in accordance with regulations.

Duties are also imposed on employers to notify the employment or dismissal of a foreign employee within 15 days of employment, or seven days of dismissal.

Necessity for holding a Non-Immigrant B visa In order to apply for a work permit, a foreigner must enter Thailand holding a class B Non Immigrant visa. This is the only visa which may be used to support a work permit application.

Application in advance for a work permit A company wishing to employ a foreigner in its business in Thailand may submit an application in advance on behalf of the foreigner to the Ministry of Labour. The permit, if granted, will be issued only after the entry into Thailand of the applicant.

The documents to be submitted to the Ministry of Labor in Thailand with the work permit application include:

- copies of the corporate documents of the employer,
- the offer of employment including salary, and
- copies of the applicant's passport and photos.

The applicant must obtain a receipt for filing these documents from the MOL.

The applicant then applies to a Thai embassy or consulate for the issue of a Non Immigrant B visa as above, and submits a copy of the receipt from the MOL, and copies of the employer's corporate documents.

Rights of Australians 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 a visa to be granted on arrival, subject to proof of identity.

General criteria for work permit applicants A foreigner who applies 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.

Specific criteria for approval of a work permit The specific criteria for approval of the issue of a work permit were revised in October 2004. The FED states that previous regulations will continue to apply, unless inconsistent with the FED. Thus it is believed that 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 30 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).

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

The BOI also has power to assist applicants to apply for a short term work permit valid for up to one month.

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.

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

Documents to be submitted with the work permit application The following documents should be submitted with the work permit application:

Documents of the employee:

- Three 3x4 cms pictures of the foreigner, taken not more than 6 months earlier.
- The applicant's original passport and a copy. Thailand Permanent Residents must submit his/her Certificate of Permanent Residence and Alien Book, with copies.
- Copies of educational certificates or degrees and work experience certificate letters from former employers.
- Medical certificate showing that the foreigner does not suffer from certain prohibited diseases, including a statement of the applicant's blood group, and a blood test result proving that the applicant is not suffering from syphilis.
- Power of attorney to an agent if the foreigner cannot submit the application himself.

Documents of the employer:

- A letter from the employing company stating the necessity to hire the foreigner instead of hiring a Thai employee.
- Employment Certification form as provided by the Department of Employment
- Recent copy of employer's company affidavit and list of shareholders showing paid up capital of at least Baht 2 million per foreign employee certified by the Department of Business Development. In the case of a foreign business operating in Thailand, a copy of the Foreign Business Act Certificate or License, with evidence of bringing foreign money into Thailand (Baht 3 million per foreigner).
- Valued Added Tax registration certificate
- List of foreign workers stating their names, nationalities, positions and work permit numbers
- Map indicating the location of the employer and photos of the location
- Previous year's audited financial statements

- Previous year's corporate income tax return
- VAT returns for the previous three 3 months
- Social Security Fund returns for the previous three months
- Where the director who signs the application is foreign, a copy of his/her work permit.

Additional papers specific to the business of the employer may be requested e.g. factory license, restaurant license, hospital license, school license.

When the application has been granted, the applicant must report in person to collect it.

Rights of Australians 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.

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.

Work permit can include conditions In issuing a work permit, the MOL may impose any conditions. In such case, the foreigner is required to give assurances that he will comply with such conditions.

Renewal and validity of permits Work permits can be issued valid for one year or in some cases two years, and application must be made to extend them for a further period prior to expiry.

A work permit for two years may be issued in special cases, namely where:

- the applicant is a permanent resident;
- the applicant holds a senior position in a long established company;
- the employer has BOI privileges; or
- the employer operates its business in an IEAT- owned or managed industrial estate.

The documents required to accompany an application for renewal are similar to those required for the first application (see above). A copy of the applicant's Thailand income tax return and receipt for tax paid may also be requested.

Regardless of whether a document has been submitted previously, it has to be copied and re-submitted with the renewal application.

Rights of Australians 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.

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

Validity period of the work permit matching that of the visa In the past, the validity period of a work permit had to match that of the visa. This rule no longer applies. The visa and work permit expiry dates no longer have to match.

Deportation Fund The 2008 Act contained provisions for a Deportation Fund to be set up to which all employers that employ foreigners must contribute. The purpose of the fund is to pay the costs of foreigners who are deported for working in breach of the Act, etc. These provisions have not been implemented.

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 MOL.

Documents to be submitted to apply to change work, or the 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, foreigner's 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.

Rights of Australians 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 The current 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 5,000 Baht.

15 day work permit exemption for “urgent and essential work” It is possible for a foreigner who has entered Thailand with a valid visa (*or without a visa, where he is a citizen of a country whose nationals do not need a visa in advance to enter Thailand, see further Chapter 20 Immigration*) to apply for a short term exemption from the work permit regulations for a period of 15 days only, to perform “urgent and essential work.”

Applications for this are submitted to the Ministry of Labour and provided that adequate reasons are given for its issue, and all supporting documents are in order, it can be granted on the same day as it is applied for. In practice, applications should be submitted promptly after entry into Thailand, otherwise they may be refused on the grounds that the work is no longer “urgent.”

During 2014, the Ministry of Labour issued internal regulations aimed at dealing with perceived abuse of the 15 day exemption. These include:

- (a) it will not be possible to issue “back-to-back” 15 day exemptions
- (b) A period of two months would be required between the expiry of one exemption period, and an application for a further exemption
- (c) Only two exemptions will be granted, per person, per year

The reason for this is that the MOL believes that some foreigners have been using the procedure as an alternative to submitting an application for a 12 month

work permit, which must be accompanied by far more documentation and will attract much closer official scrutiny.

There may also be policy divergence and different criteria applied, where the application is submitted to the One-Stop Service Centre, rather than the MOL.

Australians and APEC Travel Card holders 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 for up to 90 days for APEC Travel Card holders.

Termination of employment Where employment terminates, as a matter of law, both the work permit and the supporting visa terminate.

The employer must report the fact of termination within seven days of its occurrence.

The terminated foreigner must report to the Immigration Bureau immediately and apply for either a short term visa (which in practice may be granted for a period of up to seven days) in order to facilitate his exit from Thailand, or may apply for a visa extension, e.g., where he has another job, or for another category of visa e.g. if he/she wishes to remain in Thailand as a retiree, or as a student. Failure to report incurs a fine of 500 Baht a day, the person concerned being treated as a visa overstayer.

Where the foreigner works in a BOI –promoted company, notice of termination must be given to the BOI within 15 days prior to the effective date of dismissal.

Appeals Where a work permit application 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 available for inspection The holder of a work permit must have it available for inspection by an official during working hours.

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

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/she

was granted a permit or was allowed to work in accordance with the new Act, in accordance with any conditions in the permit.

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

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