

LEGAL ARTICLE

THAILAND TO TREAT
FOREIGNERS BETTER UNDER
FOREIGN WORKERS ACT'S
NEW INTERPRETATION

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Thailand has been regulating

foreign workers for decades to protect Thai workers. The existing piece of legislation in concerned is the Foreign Workers Act, B.E. 2551 (2008) (the "Act"). The Act basically says that no foreigner shall engage in any work (in Thailand) unless the foreigner obtains a work permit from the Department of Employment, Ministry of Labor.

Working without a work permit shall result in imprisonment for a term of not exceeding five years or a fine from Bath 2,000 to Baht 100,000 or both. Essentially, foreigners cannot work in Thailand without the work permit.



"WORK" ACCORDING TO FOREIGN WORKERS ACT

Section 4 of the Act defines the "work" as engaging in work by exerting energy or using knowledge whether or not in consideration of wages or other benefits. Based on this definition, the relevant authorities interpret the "work" rather broadly. For example, if any foreigner simply signs a document in Thailand, he or she is considered to work in Thailand and must obtain the work permit from the Department of Employment prior to affixing a signature.

without any work permit in violation of the Act. Tactically, the Act (or its predecessor) has been used against foreigners for a long time.



POTENTIAL ABUSE AGAINST FOREIGNERS

This broad definition of "work" poses potential problems for foreigners in Thailand because almost anything a foreigner does in Thailand could be considered the "work" under the Act and subject to the work permit requirement. Many foreigners who are here on a short visit may end up violating the Act without any awareness.

In a case where a Thai party and a foreign party have any business dispute and their negotiation ends badly, it is not uncommon for the Thai party to report to the relevant authorities that the foreign party's foreigner works in Thailand by attending a long meeting

NEW (NARROW) INTERPRETATION.

The Department of Employment and the Office of Board of Investment sought the legal opinion from the Council of State, Thai government's official legal advisor, on the definition of the "work" under the Act. The Council of State interprets the definition of "work" under the Act rather narrowly, citing an economical justification. The Council of State cites that the spirit of the Act is to protect the working of Thais. Section 7 of the Act stipulates the key considerations in determining the types of work allowed for foreigners to do.

Those are considerations for a national security, occupation opportunity of Thais and the demand for foreign labor as necessary for the development of the country. Essentially, in deciding to specify the criteria and scope of work that a foreigner is allowed to work, the department must consider whether such work have an impact on the local labor or not, which will take jobs from Thais.

The Council of State states that whether activities pertaining to trade and investment, i.e. a meeting, a seminar, a company visit, special and academic lectures, technical training and seminars, purchases of goods and tourism coordination will be considered the "work" under the Act or not, one must consider facts in each case. To be considered the work under the Act, such activities must have an impact on the labor market in Thailand. The keyword here is the impact on the local labor market. Any activity will be considered the "work" under the Act, which is subject to the work permit requirement, if such activity has the impact on the local labor market.

If a foreigner works as an employee or a contractor of an organizer of a meeting or a seminar to create the meeting or the seminar, such activity is the "work" under the Act, which is subject to the work permit requirement.

On the other hand, if a foreigner merely attends a meeting or a seminar without any participation in organizing the meeting or the seminar, such activity is not considered the work under the Act.

In response to this opinion of the Council of State, in March 2015 the Department of Employment issued the Notification Re Activities Not Considered Work under the Foreign Workers Act, B.E. 2551 (2008), under which the department explicitly clarifies that the following activities are not considered the "work" under the Act. This means a foreigner that is engaged in any of these activities is no longer required to obtain a work permit from the department or to notify the department for any work with a short period of time.

1. Attending a meeting or a seminar.
2. Attending a fair, an exhibition or a goods exhibition.
3. Making any visit to observe business or to meet and negotiate a business.
4. Attending special and academic lectures.
5. Attending technical training and seminars.
6. Purchasing goods in a good exhibition.
7. Attending a meeting of a board of director of one's company.

NOTIFICATION REQUIREMENT FOR SHORT TERM WORK

A foreigner who enters Thailand on a nonimmigrant visa to engage in necessary and urgent work for a period of not exceeding 15 days is exempt from the work permit requirement under the condition that the foreigner must give a written notification to the Department of Employment prior to commencing such work.

CONCLUSION

The opinion of the Council of State lays down an interesting criterion for any activities to be considered the "work" under the Act, the activities must affect the local labor market by contracting the local labor market. This means any activities that do not affect the local labor market are not considered the work under the Act and are not subject to the work permit requirement. While the legal opinion of the Council of State is only applicable to the activities raised by the Department of Employment and the Office of the Board of Investment, the requirement to affect the local labor market should be applied to other activities as well. This means a definition of work under the Act can no longer be construed broadly to catch all activities that a foreigner does here. Eventually, an abusive interpretation of the Act against foreigners will be curtailed with this interpretation. Obviously, this is a very positive development that brings a fresh perspective to treat foreigners better in Thailand.

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