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Presentation by Pramote Srisamai to British Chamber of Commerce in Thailand on practical issues and points of interest in relation to work permits and visas

Work Permits

- Work permit applicant must hold a non-immigrant visa Category B. Until recently, work permit validity could not run beyond visa validity. Today, work permits are granted for one year, possibly up to two years, regardless of visa expiry date.
- General practice is to issue the work permit for one year rather than two, unless there are special considerations, which include (i) the applicant holding a permanent residence visa, (ii) the applicant being in a senior position in a substantial and long-established company, which has made significant income tax payments over several years, or (iii) the employer operating with approval from the Board of Investment (BOI) or the Industrial Estates Authority of Thailand (IEAT) or pursuant to the Petroleum Act.
- Employer must generally have paid-up capital of Baht 2 million per work permit, if a local company, or Baht 3 million per work permit if a branch of a foreign company. With a local company the Department of Employment (DOE) relies on the affidavit from the Ministry of Commerce; with a branch the DOE requires evidence of funds having been brought in from abroad. On second or subsequent work permit applications the amounts mentioned are halved if the applicant has a Thai spouse.
- Also on second or subsequent work permit applications approval can be granted by DOE based entirely on other criteria, without regard to capitalisation, if the applicant is coming to do project work for a limited period or specialised technological work for which qualified Thai national employees cannot be found, or if in the previous financial year the employer paid income tax of at least 3 million Baht or had export sales of at least 30 million Baht, or if one hundred or more Thai nationals are employed, or if the employer operates in the field of entertainment, or in in-bound tourism with at least 5,000 arrivals annually.

Pre-Approval

- The law on work permits provides for a possibility of pre-approval, where a foreigner is to come to take up his/her first working position in Thailand. Time spent in obtaining that pre-approval may not however be time well spent, as it appears to be DOE policy that, if the foreigner has already arrived in Thailand on the date when the pre-approval is issued, the DOE will then have no regard to the pre-approval and will require the foreigner to apply for the work permit in the usual manner.

BOI

- The Board of Investment (BOI) can sometimes assist prospective investors in obtaining short-term work permits and visas for the purpose of making investment studies, and can usually assist a promoted company in having work permits and long-stay (one year) visas issued to its executives. Standard capitalisation requirements of the DOE are then not applicable. The BOI can also assist in having the DOE issue a short term work permit (misleadingly called “urgent” by the BOI), valid for up to one month
- A foreigner leaving Thailand is no longer required to surrender his work permit book, and his employer is not legally required to notify the DOE of his departure, though in practice the employer will usually wish to do so to free up the employment slot for a work permit application by a replacement. If the work permit was obtained through the BOI then under current policy the BOI must be notified of the foreigner’s departure within his last 15 days in-country, and no later than the day that he departs. A notification filed the following day stating the actual day of departure will be rejected by the BOI, apparently because of issues in the “E-expert” system.

Visas

- Long-stay visas are limited by law to one year maximum, except where the employer is BOI-promoted, approved by IEAT or operating under the Petroleum Act. In such cases visas can potentially be approved for up to two years.
- A foreigner in Thailand on a tourist visa can obtain an extension of up to thirty days. A foreigner in Thailand on a non-immigrant visa can obtain an extension of up to only seven days.
- A foreigner in Thailand on a non-immigrant visa Category B wishing to apply for a long-stay visa must, under current Immigration Bureau (IB) policy, produce a work permit. Merely producing a receipt showing filing of a work permit application is no longer acceptable, unless the foreigner changes his employer.

- For obtaining a long-stay visa there is a 4:1 Thai:foreign employment ratio required, but this is reduced to 1:1 where the employer is a branch, a rep office or a regional office.
- For a retirement visa, key requirements are age of not less than 50, prohibited to work, and savings in Thailand of at least Baht 800,000.
- Where an expatriate holding a work permit has departed from Thailand leaving family members behind, those dependents may still be able to continue renewing their visas. Key requirements are, a minor child studying in Thailand at a recognised school and a spouse remaining in Thailand with savings in Thailand of at least Baht 500,000.
- A foreign woman joining her Thai husband in Thailand can be issued a dependent visa with no evidence of financial resources. A foreign man joining his Thai wife can be issued a visa on the basis of the marriage, plus savings in Thailand of at least Baht 400,000.

Visa Conversion

- Someone in Thailand on a tourist visa, wishing to convert to a non-immigrant visa Category B in order to seek a work permit, may apply to do so provided that at least fifteen days remain on the tourist visa. Conversion is even possible if the foreigner has no visa, if the intending employer is a local company.
- If the foreigner has dependents, they can in theory also convert their visas, but under current IB policy they may not do so until the foreigner has obtained his work permit. Because dependents' visas would usually have expired by that time, this in practice means they will almost certainly have to go abroad to apply for new non-immigrant visas Category O.
- At least one year's financial statements and tax return of the employer must be produced, so a newly-established employer will not qualify for having its foreign employees convert their visa type.
- Before approving visa conversion the IB will in practice verify that applicable DOE requirements in respect of paid-up capital have been met, and where the intending employer is a branch then arrival of funds will need to be evidenced by a credit advice from the bank concerned.

Urgent Work Permits

- All foreigners working in Thailand need a work permit, no matter how short the period. Obtaining of a "regular" work permit is however impossible for a business visitor, in view of the time and documentary requirements involved, and the need for a local employer in Thailand.

- An “urgent work permit” can be obtained by a visitor filing a notification with the DOE together with a copy of his passport, when in Thailand to do urgent or necessary work of certain categories, including administrative work, technical work, overseas recruitment work, purchasing work and tourism co-ordination work. The visitor does not need to hold a visa, in order to do this. Attending a company meeting, or a business meeting, or a seminar, falls within the meaning of administrative work. The notification form must name a so-called “employer” in Thailand, even if the relationship between that entity and the visitor is not one of employer and employee. If the notification is accepted, the visitor may do work of the type described in it for up to 15 days.
- The urgent work permit notification may be lodged at (i) the headquarters of the Department of Employment, (ii) the One Stop Service Center of the BOI (if the “employer” is capitalised at not less than Baht 30 million) or (iii) the district office of the DOE local to the address of the “employer” in Thailand. Standard supporting documents often required include an invitation letter from the “employer”, and a power of attorney for filing. In practice requirements can vary from one office to another and from one occasion to another, and it is not unknown for urgent work permit notifications to be rejected.
- It is particularly important that the urgent work permit requirement be observed by any business visitors heading into a potentially contentious situation, e.g. an HR manager coming for a meeting involving possible dismissal of staff.
- The urgent work permit requirement is particularly problematic for foreign investors in joint venture companies, if engaged in a dispute with the local partner, where because of non-cooperation from the local partner it may not be possible to procure any invitation letter or power of attorney for filing.

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