

GMS Flash Alert



Immigration Edition

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Thailand - Revisions to Decree "Managing the Work of Aliens"

The Thai Cabinet issued a new statute concerning work permit requirements and other administrative obligations for foreigners working in Thailand. The Emergency Decree on Managing the Work of Aliens B.E. 2561 (No.2) amends the Emergency Decree on Managing the Work of Aliens B.E. 2560 ("the Decree").¹

WHY THIS MATTERS

With a broadened list of work permit exemption activities, representative office managers at representative offices and branch managers are relieved of some of the burden of applying for/acquiring work permits so that their employees may work in Thailand. The amendments to the Decree loosen restrictions, reduce administrative burdens on work permit requirements, and reduce penalties for non-compliance.

Global mobility professionals and immigration counsel need to be aware of the evolving work permit and administrative landscape in respect of bringing foreigners into Thailand for work so as to appropriately advise their Thailand-inbound workers and adjust their policies and practices, as well as preclude potential penalties and fines should they be non-compliant with the new rules.

Key Amendments

1. Broadening of activities permitted an exemption from work permit requirements;
2. Revision in the definition of "work";
3. Extension of period for urgent work permit;

4. No longer a requirement to register multiple working locations;
5. Registration deadline;
6. Reduction in penalties.

Activities Exemption List

Originally, the Decree provided that foreigners who enter Thailand occasionally for the purpose of attending meetings shall not be required to apply for work permits.

The amendment to the Decree broadens that list of activities to be exempt from a work permit to include:

- organizing or attending a meeting, conference, or lecture; issuing expressions of opinion, or presenting at a meeting, training, workshop, or seminar; performing art and cultural activities; or participating in sports competitions or any activities to be prescribed by the Council of Ministers;
- establishing a business or making an investment, or possessing knowledge, ability, or a high level of skill ("high level of skills" – see *KPMG Note section*), which will be beneficial to Thailand's development, as prescribed by the Council of Ministers; and
- serving as a representative of a foreign juristic person licensed to operate business under the foreign business law.

Revision of "Work" Definition

The Decree, originally, defined "work" to be *the use of physical strength or knowledge to engage in a profession or to perform work with or without an aim to obtain wages or any other benefits*.

"Work" has been revised under the amendment to the Decree to be *an engagement of any profession, with or without employer, but excluding business operation of a licensee under the foreign business law*.

Extension Period for Urgent Work Permits

The Decree provides that foreigners who engage in "necessary and urgent work" within a period of 15 days may engage in such work only after submitting a notification by the sponsoring company to the Registrar. In the past, should the necessary and urgent work exceed 15 days, a work permit was required for the individual to continue to provide such work, or the individual was expected to leave the country at the end of the initial 15-day period.

Under the amendment to the Decree, in the case where necessary and urgent work cannot be completed within 15 days by the foreigner, the sponsoring company may request an extension for another 15 days by notifying the Department of Labor before the lapse of the initial 15 days; thus, a foreign employee can work a maximum of 30 days consecutively at one time for necessary and urgent work.

Multiple Working Location Registration

In the past, foreign individuals can only work in Thailand with a specific job, specific location, and in a specific capacity as stated in their work permits. Where the individual performed work in more than one location, these locations had to be identified and notified.

With the repeal of such provisions under the amendment to the Decree, foreign employees are no longer required to register in their work permits all the locations where they work or are required to work for their employers at multiple locations, providing that their employers registered all the locations where they operate with the Department of Business Development (a department within the Ministry of Commerce) and it is included in the company's affidavit / company's registration certificate.

Registration Deadline

Employers or sponsoring companies in Thailand are required under the amendment to the Decree to notify the Department of Labor of the nationality and work descriptions of their foreign employees within 15 days from the date of employment, as well as to notify them within 15 days from the date of resignation / termination / completion of employment. This requirement also applies to foreign employees in order to foster proper notification on the part of their employers or sponsoring companies in Thailand. A fine not exceeding THB 20,000 would apply to each employer and employee deemed non-compliant.

Reduction in Penalties

Fines and penalties have been reduced depending on the nature of the non-compliance as follows:

- Before, foreign employees who worked without a work permit were subject to imprisonment for up to five years, a fine ranging from THB 2,000 to THB 100,000, and/or both. Under the amendment to the Decree, the monetary fine is reduced to a range from THB 5,000 to THB 50,000. Imprisonment is no longer an imposable penalty.
- Employers who hire foreigners to work without a work permit, or the employee is carrying on work outside of the permitted scope, are subject to a reduced monetary fine ranging from THB 10,000 to THB 100,000 per foreign employee (formerly from THB 400,000 to THB 800,000).
- Employers who repeat the same offense may be subject to an imprisonment term of up to one year and/or a fine ranging from THB 50,000 to THB 200,000 per foreign employee. In addition, the employer could be prohibited from hiring foreign workers for three years from the date of the final court judgment.
- Foreign employees who work on necessary and urgent work without notifying the Registrar under previous rules would be liable to a fine ranging from THB 20,000 to THB 100,000. Under the amendment to the Decree, this has been adjusted to a maximum of THB 50,000.

KPMG NOTE

The amendments to the Decree are intended to help facilitate better control over the process of bringing foreign workers into Thailand and further promote cooperation amongst related sectors when it comes to the management of foreigners working in the country; moreover penalties for non-compliance have been revised so as to make them effective but not unduly onerous.

There is still in need for further clarification on the matter of "high level of skills" under the exemption activities list.

The KPMG International member firm in Thailand will endeavour to keep GMS *Flash Alert* readers informed of any new updates on this matter.

FOOTNOTE:

1 See: [Emergency Decree on Managing the Work of Aliens B.E. 2561 \(No.2\)](#) (in Thai).

[THB 1 = EUR 0.0264 | THB 1 = USD 0.031 | THB 1 = AUD 0.043 | THB 1 = GBP 0.0235]

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