

Client Alert

August 2015

Certain Activities by Foreigners That Do Not Require Work Permits

Following the issuance of the notification of the Department of Employment (the "DOE") on 6 March 2015 (the "Notification") concerning activities not considered as 'work' under the Alien Working Act of 2008 (the "Act"), we have received a number of queries on the implications of such exempt activities. This new notification represents the DOE's interpretation of the term 'work' under the Act, in response to the government's recent policy to promote investments in Thailand and the opinion of the Council of State regarding foreigners undertaking activities pertaining to trade and investment in Thailand.

In general, a foreigner wishing to undertake any form of work in Thailand must first obtain a valid work permit prior to commencing any activity defined as 'work' under the Act. The term 'work' is broadly defined to include any type of work involving exertion of physical strength or knowledge whether or not done for money or other remuneration. As such, it has been particularly problematic for foreigners on short visits to Thailand who engage in activities which may be construed as 'work' without realizing that a work permit is needed.

Attempts to remove obstacles for foreign investors who undertake activities pertaining to trade and investment in Thailand led to the Council of State issuing an opinion on activities considered as 'work' under the Act in 2013. The interpretation of 'work' by the Council of State was based primarily on the intention of the Act to protect jobs for Thai nationals, taking into consideration national security, employment opportunities of Thais, and the demand for foreign labour necessary for the development of Thailand.

Most importantly, the Council of State formed the opinion that whether activities pertaining to trade and investment, (e.g., meetings, seminars, exhibitions, and technical training) would be regarded as 'work' under the Act depends on whether or not such activities have an impact on the local labour market. In other words, if an activity undertaken by a foreigner causes 'work' to occur as a result of physical strength or knowledge and if it has a negative impact on the local labour market, (i.e., taking work away from Thai nationals) such activities will be considered work and a work permit must be obtained prior to commencing such activity.

Based on the opinion of the Council of State, the DOE issued the Notification in March 2015, specifying the following activities not considered as 'work' under the Act:

1. Attendance at meetings, discussions or seminars.
2. Attendance at exhibitions or trade exhibitions.
3. Visits to observe businesses or to meet for business dialogues.
4. Attendance at special lectures and academic lectures.

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5. Attendance at technical trainings and seminars.
6. Purchasing of goods in trade exhibitions.
7. Attendance at board of directors meetings of one's company.

Foreigners temporarily entering Thailand to undertake such activities are no longer required to obtain a work permit. However, it should be noted that the above activities must be examined on a case by case basis to determine whether they are considered 'work' and if a work permit is required. In this regard, the wording in the Notification cannot be literally interpreted to suggest that foreigners could attend all meetings, seminars or exhibitions, or any other event stated above. One must consider other factors involving the engagement of such activities and whether those factors could give rise to the interpretation that such activities are considered as 'work' under the Act, which would require work permits as a result.

However, it should be noted that this Notification is not a law but only a position taken by the DOE and should be used for guidance only.