

Client Alert

July 2017

NCPO Order Temporary Suspension of Penalties Under The New Foreign Workers Law

As explained in our previous alert, "New Law on Foreign Employees and Migrant Workers", a new Emergency Decree on Managing the Work of Aliens B.E. 2560 (2017) ("Decree"), which came into force immediately on 23 June 2017, substantially increases certain penalties for various offences relating to foreign employees working in Thailand. For example, an employer hiring a foreigner without a work permit is now subject to a fine from Baht 400,000 to Baht 800,000 per foreigner - increased from a fine from Baht 10,000 to Baht 100,000 per foreigner.

Since the Decree came into force on 23 June 2017, many employers of migrant workers criticized the Decree for adversely affecting their day-to-day business by making them think twice whether to hire migrant workers due to a chance they may be held liable to the new harsher penalties. Similarly, migrant workers themselves were also worried that they could be liable to the harsher penalties and many of them have decided to leave Thailand altogether. This in turn caused unexpected widespread panic and potential labour shortages in businesses that rely heavily on the migrant workers.

Therefore, in order to address the current crisis and to allow employers, foreign employees and also state officials sufficient time to prepare and to proceed with necessary steps to comply with the requirements under the Decree, while at the same time limiting adverse impacts to the economy and society, on 4 July 2017, the National Council for Peace and Order ("NCPO") have invoked Section 44 of the Interim Constitution and issued the NCPO Order Number 33/2560 Re: Temporary Measures to Rectify the Problems in Managing the Work of Aliens ("NCPO Order"). This NCPO Order shall be effective retroactively from 23 June 2017, the date when the Decree became effective. Thus the following matters covered under this NCPO Order shall be effective from 23 June 2017:

1. The penalties of the following offences under the Decree are suspended until 1 January 2018:

Offences	Penalties under the Decree
Working in prohibited occupations or working without a work permit	A maximum of 5-year imprisonment and/or a fine from Baht 2,000 to Baht 100,000
Employing a foreigner working in prohibited occupations or working without a work permit	A fine from Baht 400,000 to Baht 800,000 per foreigner

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Working on an urgent and necessary basis without notifying officials	A fine from Baht 20,000 to Baht 100,000
Employing a foreigner without an appropriate work permit which allows the foreigner to work with that employer	A fine from Baht 400,000 to Baht 800,000 per foreigner

2. Employers and foreign employees shall quickly proceed to comply with the Decree before 1 January 2018 according to rules, conditions and procedures which the Ministry of Labour shall subsequently specify.
3. State officials who are involved with the implementation of the Decree or the NCPO Order are prohibited from abusing their power, or acting or failing to act for the purpose of obtaining benefits or properties for the officials themselves or for others.
4. Ministry of Labour shall proceed to amend or revise existing laws regarding managing the work of aliens for proposing to the Cabinet within 120 days from 23 June 2017 (i.e. by 20 October 2017). During the process of amendment and revision, the Ministry of Labour will also conduct a hearing from relevant parties and consider their opinions.

We will keep you updated on the development of this Decree.