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The International Comparative Legal Guide to:

Corporate Immigration 2016

3rd Edition

A practical cross-border insight into corporate immigration law

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Thailand

Jean-François Harvey



Bastien Trelicat



Harvey Law Group

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

In Thailand, visa and immigration laws are outlined by the Immigration Act, B.E. 2522 (1979) and its amendments.

The Foreign Business Act, B.E. 2542 (1999) sets out the rights and limitations on foreigners doing business in Thailand. The Alien Working Act, B.E. 2551 (2008) regulates the employment of foreigners in Thailand.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

- The Ministry of Foreign Affairs (Thai Consulate in each country) issues non-immigrant visas (Category B) (Non-B visa).
- The Board of Investment (BOI) is authorised to approve certain types of investment and grant more favourable conditions or treatment regarding the employment of foreigners to BOI status-eligible investments. Among those, upon BOI approval, the foreign applicant may apply for a Non-B visa directly with the Immigration Bureau (One-Stop Service Division).
- The Ministry of Labour is in charge of issuing work permits for foreign nationals.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR), which facilitates the movement of people between countries for employment purposes?

Thailand is a member of the Association of South East Asian Nations (ASEAN) Economic Community (AEC). The AEC brings together 10 countries to promote the free movement of a skilled labour force. In this respect, Mutual Recognition Agreements (MRAs) are intended to facilitate the movement of professionals by ensuring that their qualifications are acknowledged and recognised by other AEC country members.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Thai laws and regulations impose visa requirements for business visitors entering the Kingdom for the purpose of conducting any business activity in Thailand. In fact, only foreign nationals travelling to Thailand for tourism purposes are allowed to benefit from a visa waiver.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Generally, the non-immigrant Type-B visa is granted for a period of 90 days' stay in Thailand. A renewal of such visa for up to one year can be submitted to the Immigration Division.

2.3 What activities are business visitors able to undertake?

Business visitors who wish to conduct business for short-term, necessary and urgent work, are not required to obtain a work permit under the Working of Aliens Act, B.E. 2551 (2008). Such permitted short-term business activities fall into six categories and are defined by the Department of Employment as follows:

1. Administrative and Educational Work

- a. Conference, discussion, seminar or business invitation events.
- b. Temporary internal audit.
- c. Special lecture and educational works.
- d. Aviation superintendent works.

2. Technical Work

- a. Inspection, follow-up and technical solutions work.
- b. Petroleum technical work.
- c. Technical training and seminar work.
- d. Aircraft engineering or mechanical work.
- e. Machine repair or installation work.
- f. Machinery testing or demonstration work.
- g. Meetings on machinery installation and techniques.
- h. Movie-making and photography work.

3. **Overseas Employment Services**
 - a. Works recruitment.
 - b. Skills testing.
4. **Legal Services or Legal Cases**
 - a. Arbitration.
 - b. Conducting lawsuits in an arbitration court in cases where the law in dispute is not Thai or in cases where the dispute needs no judgment or arbitration in the Kingdom of Thailand.
5. **Miscellaneous Work**
 - a. Merchandise procurement.
 - b. Tourism coordination.
 - c. Charity work without commercial objectives or benefits.
6. **Other Work** under the consideration of the Director General of the Department of Employment or officials entrusted by the Director General.

2.4 Are there any special visitor categories that will enable business visitors to undertake work or provide services for a temporary period?

Business visitors may conduct the types of business referred to under question 2.3 above for a temporary period. The period of stay in Thailand for conducting necessary and urgent work cannot exceed 15 days.

2.5 Can business visitors receive short-term training?

Business visitors can receive short-term training if they hold a non-immigrant Type-B visa.

In case of short-term training, the applicant must submit a letter of acceptance and a training schedule from the trainer in their home country, including a details of the place of training and the name and contact number of the trainer in charge. It must also be clear whether or not there will be any practical training and any remuneration payable to the trainee.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, under the Thailand Foreign Business Act, B.E. 2542 (1999), the registrar and competent officials are entitled to address in writing enquiries or summons requiring any person to give explanations on any facts and furnish documents or evidence necessary for factual examination regarding foreign nationals.

Officers from the Social Security Office, Immigration Bureau and Labour Department can also randomly inspect work premises at their total discretion.

3.2 What are the rules on the prevention of illegal working?

The laws governing the employment of foreigners in Thailand are the Alien Working Act B.E. 2551, the Foreign Business Act B.E. 2542, and the Immigration Act B.E. 2522.

The definition of illegal work: a non-citizen performing restricted work or work that is reserved only for citizens of Thailand, working

at or operating a business without a work permit or Foreign Business Licence issued by the Labour Department or Department of Business Development, and working under a type of visa other than a valid working visa such as a Non-B visa.

These Acts contain various civil and criminal offences and liabilities in respect of the person or legal entity who is working illegally in Thailand and any person supporting a non-citizen to commit such an offence.

Penalties can consist of a fine, imprisonment or being banned from re-entering the Kingdom of Thailand.

3.3 What are the penalties for organizations found to be employing foreign nationals without permission to work?

Working illegally in Thailand is a source of liability for both employers and employees.

Employing foreign workers without a work permit will be punished with a fine of an amount that can be up to THB 100,000 per person, according to Section 51 of the Working Alien Act.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No. However, once the employers and employees conclude an employment contract, the employer must apply to the Labour Department for a work permit for any newly hired foreign national employees.

Once the work permit has been issued, employers must register foreign employees with the Social Security Office within 30 days from the date provided on the work permit.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, all employers must ensure that their employees work within the scope of work specifically referred to under the relevant work permit or Foreign Business Licence (FBL) and hold a valid visa. All employers must also provide a report on investment and work progress to the Department of Business Development.

For the renewal of the licence and visa, the employers must provide confirmation to an Immigration Officer and to the Department of Business Development that the employee continues to comply with the immigration requirements.

4.3 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Immigration police and social security officers perform random inspections at workplaces at their discretion.

4.4 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Yes, Immigration Bureau Order no. 327/255 contains a list of “skilled occupations” corresponding to different types of visa, such as: a teacher/educational professor/expert in government/private

education; a medical practitioner who imparts medical knowledge to Thai nationals; or a person who performs installations or repairs to aircraft or ocean vessels.

Freedom of movement under the AEC Treaty also aims at eliminating all barriers to skilled professional workers being employed within the ASEAN area. Those holding skilled occupations are listed as follows:

- Nurses.
- Architects.
- Surveyors.
- Accountants.
- Dental practitioners.
- Medical practitioners.

4.5 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes, such exemptions may apply to skilled workers being employed in one of the fields mentioned under question 4.4 within the ASEAN countries.

4.6 Are there annual quotas for different types of employment-related work permits or visas?

There is no annual quota under Thai laws and regulations.

4.7 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

While evaluated on a discretionary basis, generally the Thai authorities require the following of an employer in order to issue work permits on their behalf:

- The company must have a fully paid-up registered capital of THB 2 million to hire one foreigner, plus one person for every additional THB 2 million (up to a maximum of 10 people).
- If it is less than THB 2 million, the company can hire one foreigner if its total corporate income tax payment had been at least THB 5 million for the past three years. The company can hire one foreigner for every THB 5 million paid in tax.
- The Immigration Act B.E. 2522 fixes a quota at a rate of four Thai employees per one foreigner, with a maximum of 10 foreigners under certain circumstances.

Quotas for Board of Investment (BOI) eligible companies may be relaxed depending on the type of business conducted in Thailand under a BOI status. Some types of FBL Licence (i.e. Representative Office) allow foreigners to conduct business within the scope allowed without employing four Thai employees.

4.8 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, applicants for a work permit do not have to demonstrate language proficiency. However, an education certificate (school, university, etc.) must be provided to the Ministry of Labour.

4.9 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, any applicant has to provide a medical certificate to the Ministry of Labour.

4.10 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employers have a duty to register their employees with the Social Security Office so that they can benefit from low-cost public medical services.

4.11 Does the work permit system allow employees who hold work permits to be seconded to a client site?

No, it does not.

5 Highly Skilled Visas

5.1 Is there an immigration category, which covers highly skilled individuals?

The “EX” visa type allows foreigners to undertake skilled work or to work as an expert or specialist. Thailand does not differentiate between “highly skilled workers” and “skilled workers”.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into your jurisdiction?

Yes, there are several categories of investment programme, which correspond to the following:

- Board of Investment with a minimum paid-up capital of THB 1,000,000 with conditions.
- Foreign Business Licence with a minimum paid-up capital of THB 3,000,000 with conditions.
- Non-immigrant visa with an investment of THB 10,000,000 with conditions or an investment project approved by the Ministry, Department and Bureau.
- A member of Thailand Privilege Card (Thailand Elite) is qualified to apply for an additional Non-B visa and work permit depending on the purpose of each entry.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The “ED” visa type allows its holder to study, to come on a work/study or observation tour, to participate in projects or seminars and to attend a conference or training course.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform temporary work?

In general, foreign nationals can apply for a work permit for long-term or short-term employment, depending on the scope of work allowed.

The Alien Working Act B.E. 2551 allows for a special temporary visa for urgent duties, which will allow a foreign employee to remain in Thailand for a maximum period of 15 days.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, such a category does not exist in Thailand.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

This is not applicable – please see question 8.1.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

This is not applicable.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable.

8.6 How long does the process of obtaining the work permit and initial visa take?

This is not applicable.

8.7 How long are visas under the “initial” category valid for, and can they be extended?

This is not applicable.

8.8 Can employees coming under the intra-company transfer route apply for permanent residence?

This is not applicable.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Various categories of non-immigrant visa are currently provided to meet the needs and qualifications of individual business persons. These include the Category “B” business visa for work, the Category “B-A” business-approved visa, and the Category “IB” investment and business visa. A holder of this type of visa wishing to work in Thailand must be granted a work permit before starting work.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Under the Working of Aliens Act B.E. 2551, there are no requirements or particular terms and conditions regarding labour market testing in Thailand.

9.3 Are there any exemptions to carrying out a resident labour market test?

As there are no rules requiring labour market testing in Thailand, there are no exemptions.

9.4 What is the process for obtaining a work permit for a new hire?

To secure a work permit in Thailand, a foreign national needs an initial non-immigrant visa that must be obtained before entering Thailand.

Once the foreigner has a non-immigrant visa, he may begin to process the work permit at the Ministry of Labour. The processing time is seven business days.

A foreigner must have a non-immigrant visa or a resident visa to apply for a work permit. The employer can also apply for the work permit on the behalf of his employee, before the employee enters Thailand, whereby the Labour Department will issue a letter of approval upon completion of documents. After that, the employee shall submit the letter of approval to the Thai consulate in their country in order to obtain the Non-B visa. Upon their arrival, the employee shall submit further required documents to the Labour Department to obtain the work permit.

The applicant has to submit the following documents:

- Two photographs sized 3.5 × 4.5 cm.
- A medical certificate.
- An original passport.
- A letter of employment.
- A degree certificate.
- An address in Thailand.

The employer has to provide the following:

- A company certificate and objectives.
- A list of shareholders.
- An application for VAT.
- Details of withholding tax paid by the company.
- A financial statement.

- A photocopy of the director's passport and work permit with signature affixed.
- An office map.
- A letter of employment stating the position and salary of the applicant.
- An employment agreement.

9.5 What is the process for the employee to obtain a visa under the intra-company group transfer category for a new hire?

The intra-company group transfer category does not exist in Thailand.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The processing time for the initial visa is about two working days, whereas it takes seven working days for the work permit to be delivered once the file is submitted.

9.7 How long are initial visas for new hires granted for and can they be extended?

Holders of this type of visa are entitled to stay in Thailand for a maximum period of 90 days. They may apply to the Immigration Bureau for an extension of stay, and may be granted such extension for a period of one year from the date of first entry into Thailand.

9.8 Is labour market testing required when the employee extends their residence?

No, it is not required.

9.9 Can employees coming as new hires apply for permanent residence?

No, in order to apply to become a Thai Permanent Resident, the foreign employee must have had a Thai non-immigrant visa for at least three years prior to this, which must include three consecutive yearly extensions in order to qualify.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

First of all, a foreign national will need to have a non-immigrant visa before being able to apply for a work permit. A non-immigrant "B" visa generally allows a foreign national to stay in Thailand for up to 90 days. Upon being granted a work permit from the Labour Department, the foreign national may also apply to have an extended period of stay in Thailand of up to one year, which must be extended or renewed on an annual basis. In the case that the foreign national has to leave Thailand temporarily, a re-entry permit must be applied for prior to temporary departure, which allows the foreign national to exit Thailand prior the expiration of the visa's validity and re-enter Thailand; otherwise his visa may be cancelled if he exits the Kingdom without obtaining the re-entry permit.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

When granted a one year non-immigrant "B" visa, the holder of such visa needs to report his place of residence to the Thai Immigration Authorities every 90 days.

11 Dependents

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Family members of foreigners who are in Thailand on a non-immigrant visa such as types B, ED and O-A may qualify for non-immigrant O-type visas for family members.

Family members who qualify to apply for a non-immigrant O-type visa are as follows:

- Spouse.
- Unmarried children/adopted children who are less than 20 years of age.
- Parents who are aged 50 and over.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Unmarried couples cannot qualify as dependants or as family members, since a marriage certificate is required in order to present a relationship of "spouses" to the authorities.

Since same-sex marriage is not recognised in Thailand, approval depends on the discretion of the authorities.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Only spouses of Thai nationals, as well as spouses of foreign nationals holding a Non-B visa for the purpose of undertaking charity activities, are entitled to access the labour market.

11.4 Do children have access to the labour market?

No, they do not.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

In order to submit a request to become a Thai Permanent Resident, the applicant must meet the following criteria:

- The applicant must have had a Thai non-immigrant visa for at least three years prior to submission of the application. Holders of multiple non-immigrant visas cannot apply. The applicant must have had three consecutive yearly extensions in order to qualify.
- The applicant must be a holder of a non-immigrant visa at the time of submitting the application.

- The applicant must be in one of the following categories in order to apply for Permanent Resident status in Thailand:
 - The investment category (minimum THB 3–10 million investment in Thailand).
 - The working/business category.
 - The family support or humanitarian reasons category: in this category, the applicant must have a relationship with a Thai citizen or an alien who already possesses a residence permit as a husband or wife, father or mother, or guardian of a Thai child under 20 years of age.
 - The expert/academic category.
 - Other categories as determined by the Thai Immigration Authorities.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Immigration visas and work permits are generally valid only for one year, and must be extended or renewed on an annual basis. However, Sections 7, 41, 43 and 45 of the Immigration Act B.E. 2522, stipulate that foreign nationals who wish to attain permanent residence in the Kingdom of Thailand may apply to the Immigration Commission for permanent residence.

To facilitate the immigration of foreign nationals for the best interests of the Kingdom, the Immigration Commission has stipulated the following criteria when considering the qualification of foreign applicants for residential permits: the applicant's income, assets, knowledge, vocational ability, and family status in terms of connection with a Thai national; conditions of national security or other considerations as deemed appropriate under current economic and social conditions; and to ensure that such consideration was made thoughtfully, transparently and fairly.

Separate application categories are as follows:

1. Investment

The applicant must have brought in at least THB 10 million to invest in the Kingdom and this must be certified with a letter issued by a commercial bank in Thailand which provides evidence of financial remittance into Thailand. However, investment in this case does not only mean buying property but also includes depositing money in a bank account in the country of purchase of state-issued securities or a state enterprise's securities where the Ministry of Finance or Bank of Thailand is a guarantor, and documentary evidence of such acquisition is required, or investment in the stock market such as ordinary shares, bonds, preference shares or investment units, etc., with a condition that such investment must be approved or certified by the Stock Exchange Commission.

With regard to the above, there are three requirements which investors must meet in order for their investment to qualify:

- a) Putting the money into a condominium unit at a purchase price or rent of at least THB 10 million (either freehold or a leasehold of three years or more).
- b) Holding at least THB 10 million in a fixed deposit account at a Thai bank whose share capital is majority Thai-owned.
- c) Owning or having bought Thai government or Thai state enterprise bonds worth at least THB 10 million.

In case the condominium unit costs less than THB 10 million, the foreign national can still be eligible for an investment visa by adding one of the other types of investment listed above to reach the THB 10 million.

2. Employment

The foreign national applicant must hold a passport that bears a non-immigrant visa which was granted with one-year visa extensions which demonstrate that, up until the date of application submission, the applicant has been staying in the Kingdom for at least three consecutive years.

3. Humanitarian reasons

Such as joining a spouse, child or parent.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main impediments are as follows:

1. A criminal record.
2. Some activities are forbidden to foreigners under the Thai Foreign Business Act – within professions such as agriculture, accounting, the legal field and architecture.
3. Disease: leprosy; tuberculosis; drug addiction; alcoholism; elephantiasis; and tertiary syphilis.
4. Being mentally unstable.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Any foreigner who, having been imprisoned by a judgment of a Thai court, by a lawful injunction, or by a judgment of a court of a foreign country, except when the penalty is for a petty offence or negligence, or where it is provided for as an exception in the Ministerial Regulations, is prohibited from entering the Kingdom of Thailand.

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Mr. Trelcat is a partner of HLG and acts as the Managing Partner of HLG Thailand. He also plays an important role in the development of the South East Asia market.



Founded in 1992 by Jean-François Harvey, the Montréal-based Harvey Law Group (HLG) has maintained a presence throughout Asia, South America and the Middle East from the beginning. Today, it has evolved into a leading international immigration and business law firm that has developed a worldwide reputation of excellence by providing sophisticated legal representation to businesses and individuals. With offices notably in Hong Kong, Bangkok, Ho Chi Minh City, Hanoi, Da Nang and Yangon, along with a regional and international network, HLG has an extensive team that can provide exceptional support to a diverse global clientele.

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