

Legal Update

Thailand Tighten Visa Regulations

Recently, on 8 September 2006, Immigration Bureau has issued two new Orders which are likely to affect foreigners in Thailand, for both tourism and business purposes. These regulations come into force on 1 October 2006.

1) **Order of Royal Thai Police No. 606/2549:** This Order imposes new conditions for approving business visa extension. Significant matters of this regulation are as follows:

- i The amount of total shareholder's equity in the company's audited balance sheet of the preceding year must not be less than Baht one million; and
- ii The amount of total revenues in the company's audited balance sheet must not be less than the amount of expense which company shall pay to all expatriates for their wages and all other benefits for working with the company in next fiscal year.

Failure to meet requirements under these conditions, the expatriate shall be permitted to stay in Thailand only for a period of not more than seven days from the expiry date of the current permission. However, under this Order, foreigners who entered into and has been permitted to stay in Thailand continuously before the said effective date but does not meet all criteria and conditions of this Order, may obtain relaxation on a case-by-case basis from the authorized official.

This Order will cause difficulties or problems for some foreign investors in Thailand, so this is an issue which presumably embassies and foreign chamber of commerce may bring up with the government, which might result in the Immigration Bureau reconsidering the Order.

2) **Order of Royal Thai Police No. 608/2549:** This Order imposes new regulation for tourist by limiting visitors to a maximum stay of 90 days in every six months, in an effort to prevent foreigners from staying or working in Thailand on a long-term basis without the required work permits.

This Order stipulates that within every six-month period, the passport holders from visa-on-entry countries, as approved by the Interior Minister to enter to temporarily stay in Thailand for tourism purpose, will be permitted to enter Thailand several times which shall not exceed 30 days period, or 90 days in total, from the first day that the passport holder arrived in Thailand.

Previously, some foreigners used the loopholes in the old regulations to work in Thailand, namely, foreigners from 41 countries having good relationship with Thailand were granted 30 days tourist visa that could be extended twice within the country and with a quick trip abroad, they could obtain another tourist visa and thereby live in Thailand on an annual basis. However, under this Order, those foreigners will be allowed only 30-day tourist visa which may be extended twice, after which they will have to stay outside Thailand for at least 90 days before returning again.

Foreigners from other countries that have no Thai embassy or Thai royal council thereon shall be allowed only 30-day tourist visas, non-extendable in the country.

Sources: *Royal Thai Police Order No. 606/2549 and No. 608/2549, Bangkok Post 21 September 2006.*

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Ministry of Commerce Launched Guideline for Fair Retail / Wholesale Business

On 3 October 2006, Ministry of Commerce, by the Trade Competition Board, approved draft new Guidelines for the commercial practice between retailers/wholesalers and their suppliers.

The guidelines had already been announced to the public and shall take effect immediately. Under the guideline, any of the following matters are determined as unfair practices:

- 1) Setting unfair price such as setting price lower than cost;
- 2) Demanding unfair benefits from suppliers such as demanding for entry fee without notification in advance;
- 3) Unfair product return policies such as returning large amounts of products when sales are not active;
- 4) Unfair provisions of the contracts made with suppliers;
- 5) Forcing supplier to purchase other products or pay for additional service fees;
- 6) Unfair use of supplier's workforce;
- 7) Forcing manufacturers or retailers to promote house brands and refusing all or part of made-to-order products;
- 8) Any other unfair conducts such as reducing product quantity of purchase orders.

Those unfair practices under the Guidelines have been defined under Article 29 of the Trade Competition Act B.E. 2542. The aim of the new Guidelines is to consider whether the retailers/wholesalers had violated Article 29 of the said Trade Competition Act, which makes it illegal for any business to act to limit or hamper the market access of rivals.

In this regard, Article 29 of Trade Competition Act states that "A business operator shall not carry out any act which is not free and fair competition and has the effect of destroying, impairing, obstructing, impeding or restricting business operation of other business operators or preventing other persons from carrying out of business or causing their cessation of business". An operator failing to engage in a free and fair trade competition shall be subject to a fine punishment up to Baht six million and/or an imprisonment of not exceeding three years. Repeating violators will also get double punishment.

Sources: *Ministry of Commerce, the Nation and Bangkok Post 4-5 September 2006.*

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Ban on Alcohol Advertisements

On 18 October 2006, Thai Food and Drug Administration issued the Order No. 504/2549 to prohibit, 24 hours, advertising of alcoholic beverages in order to curb underage drinking.

The new Order was issued by virtue of Section 24 of the Consumer Protection Act B.E.2522 (A.D.1979) and will take effect from 3 December 2006 onwards.

Currently, Thailand already bans alcohol advertisements from 5.00 a.m. to 10.00 p.m., but according to the new Order, alcoholic beverages shall be prohibited from advertising in all kinds of advertising media or any other methods all 24 hours, except for:

- I Live broadcast of events on television and radio from overseas without intention to broadcast to Thailand only, excluding advertising inserted during the live broadcast;
- ii Advertising in printing material printed outside Thailand without intention to sell, distribute, disseminate in Thailand only.

It seems that the Order uses very broad words (all kinds of advertising media or any other methods), therefore, this may include internet etc. Moreover, the new rules also require warning labels on bottles of alcoholic beverages to alert consumers recognizing potential risk of drinking. In this regard, the violators under the said Order shall be punished by imprisonment of not more than 3 months or fine of not more than Bath 30,000, or both.

However, at this stage, disagreed parties, including hotels, restaurants, brewers and importers, strongly claimed that 24 hours ban on alcohol advertising in Thai media left them at an unfair advantage, because foreign producers can still advertise at international sporting events televised in Thailand. They complained further that it is clearly double standard and the ban could result in annual losses of 2.5 billion Baht due to the advertising business in Thailand.

Sources: *Food and Drug Administration (Thailand) Order No. 504/2549, the Nation and the Manager 17 and 19 October 2006.*

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