

Unofficial Translation

(TRANSLATION)

-Official Emblem-

No. Ror.Ngor.0303/19444

Department of Employment
Mit Maitri Road, Din Daeng Sub-district,
Bangkok Metropolis, 10400

19 May 2020

Subject: Working of foreigner who is authorized by a party in arbitration case
To: Managing Director of Thailand Arbitration Center
Refer to: Letter of the Thailand Arbitration Center No. THAC 114.2563, dated 30 March 2020

As per the referred letter referred to herein, the Thailand Arbitration Center would like to discuss with the Department of Employment whether a foreigner who is authorized by a party in an arbitration case and granted with a work permit under the Foreigner's Working Management Emergency Decree B.E. 2560 (2017) is able to make declaration of facts or inquiry of facts from the witnesses or those involved in an arbitration case like a party.

The Department of Employment would like to inform you that a foreigner who is the representative authorized by a party to proceed with the arbitral proceedings in Kingdom of Thailand and is granted with a certificate from the Thailand Arbitration Center is entitled to work in Kingdom of Thailand according to the position and duties specified in the certificate issued by the Thailand Arbitration Center, although such work is prohibited for the foreigners under Section 23/5 in conjunction with Section 23/6 of the Arbitration Act B.E. 2545 (2002) and as amended and Section 62, 3rd Paragraph of the Foreigner's Working Management Emergency Decree B.E. 2560 (2017) and as amended. Therefore, in the arbitration proceedings, after the party has appointed a Thai lawyer as his/her defense attorney in the case, the party is still able to make declaration of facts or inquiry of facts from the witnesses or those involved in the arbitration case. In this case the authorized representative can also perform such actions like the party under the scope of authorization and conditions specified in the certificate issued by the Thai Arbitration Institute.

Please be informed accordingly.

Best regards,

-Signature-

(Mr. Suchat Phonchaiwisetkul)

Director of the Department of Employment

Legal Affairs Division

Tel: 022452875

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THAC 114/2563

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30 March 2020

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Date: -illegible-
Time: 2:50 PM

Foreign Workers Administration Office
Department of Employment
3284
Date: -illegible-
Time:

Subject: The scope of duties of foreign authorized representative
To: Director of the Department of Employment
Attachment: Form of certificate for the foreign authorized representative

As stipulated by the Arbitration Act B.E. 2545 (2002) as amended by Section 23/6 of the Arbitration Act (No.2) B.E. 2562 (2019) to apply mutatis mutandis to the representative authorized by the parties, the measures for issuing the certificate supporting the work permit application for the foreign arbitrator.

According to the previous practices, the Thailand Arbitration Center found that the authorized representative who is granted with a certificate under the Arbitration Act B.E. 2545 (2002) as amended by Section 23/6 of the Arbitration Act (No.2) B.E. 2562 (2019) and a work permit, the problem observed is that whether they shall be subject to the law on the foreigner's working management. Such ambiguity affects the performance of duties of the authorized representative, which normally has the power to act on behalf of the party under the scope of authorization in all respects, especially declaration of facts or inquiry of facts related to the dispute from the witnesses or those involved in an arbitration case.

To be clear, to reduce problems and obstacles in the performance of duties of the authorized representative and to promote Thailand as a place of arbitration, the Thailand Arbitration Center therefore intends to discuss the said issue: whether a foreigner representative who is granted with the certificate and work permit and has already appointed a Thai lawyer is able to make declaration of facts or inquiry of facts from the witnesses or those involved in an arbitration case like the party. In this regard, the Thailand Arbitration Center is of the opinion that an authorized representative who granted with a certificate and work permit would be able to perform actions like the party. In addition, if Thailand has made it clear that an authorized representative is able to make declaration of facts or inquiry, especially in case where a Thai lawyer is appointed, it would also promote the practice of lawyers in Thailand in another way.

In this regard, the Thailand Arbitration Center has attached the form of certificate for the foreign representative who has appointed a Thai lawyer with the details as shown in the attachment for consideration.

Please be informed accordingly.

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For your information
For your consideration
-Signature-
(Mr. Natthawut Phatharaprayoon)
Secretary of the Department

Best regards,
-Signature-
(Miss Matchimthon Khampiranon)
Arbitration and Mediation Director
For Director of the Thailand Arbitration Center

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-Signature-
(Mr. Yuthana Buachun)