

NEWSLETTER

No. 41
Edition April 2010

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1. Council of State's Interpretation of Minimum Capital under Foreign Business Law

Under the Foreign Business Law, a foreign owned company may engage in a wholesale business in Thailand with the minimum capital for each store of less than Baht 100 Million, only if the foreign owned company obtains a foreign business license. A foreign owned company is a locally incorporated company whose majority of shares are owed by non-Thai shareholders. Consequently, any foreign owned company having the minimum capital for each store of *at least* Baht 100 Million may operate the wholesale business in Thailand *without* the need to apply for a foreign business license.

The question arises: what is the minimum capital of the foreign owned company? The minimum capital is supposed to be the registered capital of a limited company, which may be partially paid up. Upon incorporation, company law only requires 25% of the registered capital of a limited company to be paid up. Previously, the Department of Business Development relied on company law and interpreted that the minimum capital of a foreign owned company was the registered capital, which means the registered capital may be partially paid up. But later on, the Department of Business Development changed its interpretation of the minimum capital of the foreign owned company. The department interpreted that the minimum capital means the paid up capital, not the registered capital.

But one foreign owned company challenges this interpretation by referring to the definitions of the capital and the minimum capital under the Foreign Business Law. In order to clarify this issue, the Department of Business Development wrote to the Council of State to request for the legal opinion of the Council of State.

The Council of State expressed its legal opinions as summarized here below.

1. The capital and the minimum capital are separately defined in the Foreign Business Law.
2. The minimum capital in (14) and (15) of the Schedule 3 attached to the Foreign Business Law must be the actual capital (paid up capital), not the registered capital.

With this interpretation, a foreign owned limited company cannot use the registered capital that is still unpaid as the minimum capital for the basis of getting out of the restricted businesses under Schedule 3.

For more details, please contact our lawyer for consultation.

TAX UPDATE

2. Regional Operating Headquarter

The Ministry of Finance held the seminar on the regional operating headquarters (“ROH”). ROH is the scheme that Thailand copied from its neighboring countries to promote Thailand as a regional operation hub for multinational corporations. The scheme has been introduced since 2002, and so far it is not terribly successful. Apparently, multinational corporations still prefer other neighboring countries than Thailand. Therefore, the government wants to get inputs from the audience so that the government can implement any necessary adjustments to the scheme to make it more attractive to multinational corporations.

During the seminar, the Revenue Department answered many questions raised by the members of audience as summarized here below.

1. The tax audit of ROH by the Bureau of Large Business Tax Administration, Revenue Department (“LTO”) is conducted in the same manner as the LTO conducts other taxpayers under the LTO.
2. Any non-ROH income (income from non-qualified services) must be included for the purpose of paying corporate income tax.
3. The source of fund for the loans to be extended by ROH is not specified as the condition of the ROH scheme.
4. Only the foreign exchange profit of ROH business is deemed the income derived from ROH.

For more details, please contact our lawyer for consultation.

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Please contact our attorney, should you require any legal assistance.

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B A N G K O K , T H A I L A N D

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