

Legal Update

Cracking Down on Nominee Shareholders for Foreign Companies

The Department of Business Development, Ministry of Commerce sets the new rules and procedures of the registration of incorporation of partnerships and limited companies, i.e. the Order of the Central Partnership/Company Registration Office (Order no, 102/2549, issued on July 20, 2006). Such rule is aimed at guarding against the problems of nominee shareholders and increasing transparency in the corporate registration process which shall take effect from August 15, 2006 onwards. The significant provisions thereof are as follows:

In case where the registration of incorporating of a partnership and limited company which a foreigner holds shares of such partnership or limited company from 40 percent but less than 50 percent of registered capital; likewise, in case a foreigner holds less than 40 percent shares of the partnership or the limited company but the foreigner has the authority to act on behalf of the partnership or limited company, all Thai national partners or shareholders must submit an evidence stating source of fund for supporting to the application for registration, provided that said documents must show the amount of money corresponding to the amount of invested money or holding shares of each Thai partner or shareholder as follows:

1. A copy of a deposit account book or bank statement (6 months backward); or
2. A document issued by a bank certifying or expressing financial status of a partner or a shareholder; or
3. A copy of evidence expressing source of fund used for investment or holding shares.

The source from Ministry of Commerce also states that the authority's examination shall be parted into two steps. The first step is, as mentioned above, to examine documents before an incorporation of the partnership or limited company and another step is to examine the existing registered partnerships or limited companies in the future to determine whether or not the said entities operate against the law, such as the law governing a partnership and a company, Foreign Business Act or Accounting Act. If illegal procedures are found, the office shall consider withdrawing its registration or prosecuting as a case may be.

At this stage, the examination procedures against the existing partnerships or companies may not be conducted thoroughly against all entities due to the current limited manpower of the authority.

Investigation on Purchase of Land by Foreign-owned Companies

On 15 May 2006, the Ministry of Interior sent letters to all Provincial Governors notifying that to protect avoidance of the law or purchase of the land for benefit of foreigner(s), in case a limited company, limited partnership, or registered ordinary partnership makes a request for obtaining the land under the objective to operate real estate business (except for the public limited company or a juristic person being permitted to obtain the land under other laws, e.g. Investment Promotion Act, Industrial Estate Authority of Thailand Act) and it appears that a foreigner is a shareholder or a director or it is reasonable to believe that Thai national is holding shares for a foreigner, the official shall make an inquiry on income of all shareholders who are Thai nationals by asking about their occupation and number of years in such occupation, income per month together with presenting evidence thereof. In case it is a loan from another, evidence of the loan must be presented. From such inquiry if it is reasonable to believe that the registration has been made to avoid the law or to believe that a person purchasing the land for benefit to a foreigner, the official shall make an inquiry for full facts and submit the same to the Land Department for obtaining an order of the Minister.