

Legal Update

MOU on suspension of store expansion of modern trades / mega stores

Local small retailers have claimed that the opening of 'convenience store' sized branches in their communities by certain modern trade wholesalers and retailers (multinational hypermarkets, superstores, specialty stores, supermarkets, department stores and convenience stores) could affect their local businesses because the small businesses are not financially strong enough to compete against such modern trade operators.

The Ministry of Commerce ("MOC") has then negotiated with and requested for cooperation from such modern trade operators, including but not limited to Tesco Lotus, Big C, Carrefour, Makro, 7 Eleven, to sign with MOC a memorandum of understanding (MoU) for temporarily suspension of new outlet expansions and construction on new stores for period of 30 days from the MoU signing date. And after the MoU was signed, an open forum would be conducted with all concerned parties including the government, such modern trade operators and vendors of small and traditional shops to seeking for mutual guidelines or solutions which would benefit all parties.

In case any modern trade operator refuses to sign MOU, MOC will consider cooperating with related ministries and authorities, including the Interior Ministry, the Department of Public Works and Town and Country Planning, and the Natural Resources and Environment Ministry for implementing or issuance of strict regulations under the existing applicable laws to ensure that such modern trade operators are completely monitored and controlled.

The MoU was scheduled to be signed on Friday, 22 September 2006, but representatives of such modern trade operators did not appear. On 23 September 2006, a source from MOC said that signing MoU to end a row between modern trade operators and small local businesses may be delayed and require waiting for a new government. It is believed to be preferable to wait for the new government which can draft a retail business law.

Source: Ministry of Commerce, The Nation - 14 September 2006, MCOT News – 25 September 2006

MOC prevents Thai businesses from nominee by strengthening regulations

MOC is preparing to add some rules in order to maintain Thai businesses such as spa, hospital, educational institute and retail / wholesale business which are still not able to compete with foreigners. The Under Secretary of MOC expressed after the meeting of foreign business committee that the committee has given an order to Department of Business Development ("DBD") to study and review all categorized list of businesses that are prohibited or restricted to be operated by foreigners under the Foreign Business Act B.E. 2542 ("FBA"). In this regard, the consideration shall be parted into two sections.

The first section is to consider repealing unnecessary business or the business which should not be further required to obtain permission from DBD since Thai operators are apparently able to compete with foreigners and such has also been controlled by other applicable laws, such as advertising business.

Secondly, the businesses which Thai operators are suffered from foreign competitors shall be taken into account and strengthen some regulations, particularly retail / wholesale business, spa, hospital and educational institute. For instance, according to the existing rule, the operating of retail- wholesale business by foreigners with its minimum capital of not less than 100 million Bath for each business is not required to obtain prior permission under the from DBD. This rule may be adjusted that any foreigner intending to operate retail / wholesale business in Thailand shall apply for permission in any cases.

Source: Post Today - 30 August 2006

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📌 Ministerial Regulation prescribing standards for administration and management in respect of safety, occupational health and working environment B.E. 2549 (AD. 2006)

This Ministerial Regulation was proclaimed on 16 May 2006 and published in the Government Gazette dated 10 June 2004, in order for providing work safety to an employee in accordance with the Labor Protection Act B.E. 2541 (A.D. 1998). The significant provisions of this Ministerial Regulation are concluded as follows:

1. This Ministerial Regulation shall apply to the following business or place of business:
 - (1) Mine station, coal station, petroleum or petrochemical.
 - (2) Production, manufacturing, assembly, packing, repairing, maintenance, improving, decoration, modification or disposal of materials or properties, as well as generating, diverting and distributing of electricity or other energies.
 - (3) Construction, preparation, installation, repairing, maintenance, modification or demolition of building, airport, railway, subway, port, dock, pier, waterway, road, embankment, tunnel, bridge, drainage pipe, water pipe, telephone, electricity, gas or water supply or other constructions.
 - (4) Transportation of passengers or goods as well as loading and delivery of goods.
 - (5) Gas and fuel station.
 - (6) Hotel.
 - (7) Department store.
 - (8) Hospital.
 - (9) Financial institution.
 - (10) Physical examining institution.
 - (11) Entertainment, recreation or sport complex.
 - (12) Chemical or biological laboratory.
 - (13) The operating office supporting the place of businesses in (1) to (12) above.
 - (14) Other activities to be prescribed by the Ministry of Labor.

2. Definitions:

“Safety, occupational health and working environment” means act or working condition which is free from the cause of danger, illness or nuisance which is resulted from work or relating to work.

“Safety at work officer” means an employee appointed by an employer to operate as safety at work officer at a chief level, executive level, technical level, high-technical level and professional level.

“Safety team” means safety, occupational health and working environment team assigned by an employer to monitor and operate safety matters, occupational health and working environment in the place of business.

3. An employer shall provide regulation and guidebook in respect of safety at work in the place of business.

Regulation on safety at work shall include procedures and safety methods of operation in order to control and prevent any action which may cause unsafe condition at work. In this regard, the employer, under the responsibility of safety at works in every level, shall supply training and operation practice for safety working and shall set a controlling, directing and monitoring system.

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4. An employer in each place of business as stated in item 1 above having employees in the number as required in this Ministerial Regulation shall appoint its employee(s) at different level(s) to be the safety at work officer(s) at each level at the said place of business. Such employee(s) shall meet the qualifications prescribed under this Ministerial Regulation, such as:
 - (1) Having been trained according to the regulations and methods prescribed by the Director-General; or
 - (2) Being or having been a chief safety at work officer according to the Announcement of Ministry of Labor and Social Welfare, Re: "working safety for employee" dated 31 March B.E. 2540 (A.D. 1997).
5. For a place of business having 50 employees or more, the employer shall provide a safety, occupational health and working environment committee, in the number as prescribed therein, within 30 days from the date of enforcement of this Ministerial Regulation or within 30 days from the date of having 50 employees. The committee shall have the duties, including but not limited to the followings:
 - (1) Consider policy and working plan for reporting to the employer in respect of safety in work, including off-work safety in order to prevent and decrease the cause of accident, cause of danger, illness or disturbance which is resulted from work or unsafe condition in work.
 - (2) Report and present to the employer applicable measures or directions in compliance with the law relating to safety in work and safety standard in work for safety in work against employees, contractors and other parties operating or utilizing services in the place of business.
6. An employer in the place of business as stated in item 1 (1) where there are two employees or more and in the place of business as stated in items 1 (2) – (5) where there are 200 employees or more shall provide a safety team within 360 days from the date of enforcement of this Ministerial Regulation or within 360 days from the date of having 200 employees. The safety team shall have the duties, including but not limited to the followings:
 - (1) Set the operating plan for controlling the elimination of risks in the place of business on a continual basis.
 - (2) Arrange for the proposal or suggestion relating to the prevention of danger from accident and risk and the internal risk controlling.
7. An employer shall notify the name(s) of safety officer(s) at work to be registered with the Department of Labor Protection and Welfare in compliance with the regulation and the direction to be prescribed by the Director- General.

Source: Government Gazette, Legislation Issue, Vol 123, Part 65 Kor., 21 June 2006

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