

Legal Update

THE EXTENSION ON TAX BENEFITS FOR DEBT RESTRUCTURING OF NON-PERFORMING LOAN AND CORPORATE RESTRUCTURING

According to the stimulus package for tax benefit on debt restructuring and corporate restructuring which will be expired on 31 December 2009, the Cabinet on 22 December 2009 approved to extend the tax privileges and the registration fee with the Land Department as the same principle. The details are as follows:

Debt Restructuring of Non-Performing Loan ("NPL")

The debt which is entitled to obtain the privileges is considered the NPL and classified as doubtful account so reserved 100 percent and cut off from the account according to the rules and regulations of Bank of Thailand, provided that the debt account is classified either before 2010 or within 31 December 2010.

Tax Privileges

- (1) Exempt income tax to the debtor of either financial institute or non-financial institute creditor on the income received from the release of debt.
- (2) Exempt income tax, value-added-tax ("VAT"), specific business tax ("SBT") and stamp duty to the debtor of financial institute and such financial institute creditor or the debtor of non-financial institute creditor and such non-financial institute creditor on the income so received from transfer of assets, sale of goods or services and entering into any instruments due to the debt restructuring.
- (3) Exempt income tax, VAT, SBT and stamp duty to the debtor of the financial institute on the income so received from transfer of mortgaged property to other party that is not the financial institute creditor as well as entering into any instruments due to the such transfer, provided that the debtor must utilize such proceeds for repaying loan to the financial institute creditor.

Registration Fee

The registration fee for the transfer of immovable properties and mortgage in relation to the debt restructuring shall be 0.01 percent in case that

- (1) The debtor of either financial institute or non-financial institute creditor transfers the immovable properties to the financial institute or non-financial institute creditor as the debt payment.
- (2) Financial institute or non-financial institute creditor transfers the immovable properties so received from (1) to their debtor.
- (3) The mortgage of immovable property between either the debtor of financial institute and the financial institute or the debtor of non-financial institute creditor and the non-financial institute creditor whether the mortgaged property is the same security or the new security.
- (4) The debtor of financial institute transfers the immovable property so mortgaged to other party in order to utilize money so received from transfer of mortgaged property for debt repayment to financial institute, provided that the registration fee for the amount to be paid to the financial institute shall be 0.01 percent of the asset assessment and for the excess amount thereof, the registration fee at the normal rate shall be applied.

Corporate Restructuring for Partial Business Transfer

Exempt VAT, SBT and stamp duty for partial business transfer between a limited company and/or a public limited company having relationship between each other on tax bases, incomes or entering into any instruments so incurred or arisen due to such partial business transfer and the registration fee for the transfer of immovable properties relating to such partial business transfer with the Land Department shall be 0.01 percent.

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THE DEVELOPMENT OF DRAFT RETAIL AND WHOLESALE BUSINESSES ACT

The Cabinet on 22 December 2009 agreed in principle with the latest draft Retail and Wholesale Businesses Act as proposed by the Ministry of Commerce. The Council of State was assigned to look into the wording of the act including the size of modern trade stores and revenue sales and such will take approximately six months. Then, the draft Act will be sent back to the Cabinet for approval and forwarding to the House of Representatives for further consideration and approval.

The Ministry's Permanent Secretary said that the contents of the draft Act are mostly the same as the former draft. Under the latest draft, a Central Committee would be empowered to approve the opening or expansion of modern trade stores.

Four types of businesses would be required for official permission: (i) very large retailers with outlets larger than 3,000 square meters, (ii) large retailers sized from 1,000 to 2,999 square meters, (iii) medium-size retailers from 300 to 999 square meters and (iv) small retailers from 120 to 299 square meters such as chain convenience stores with high annual turnover.

The rules exclude fresh markets and outlets operated by the co-operatives.

However, the opening and closing hours for large outlets and the distance from the central areas of municipalities could be determined later through ministerial regulations.

NEW REGULATIONS OF MUTUAL PROPERTY FUNDS

The Securities and Exchange Commission ("**SEC**") has announced the Notification of the Office of the Securities and Exchange Commission No. SorNor. 53/2552, effectively from 16 November 2009, in respect of the Rules, Conditions and Procedures for Establishment and Management of the Mutual Property Funds in order to be in conformity with the Securities and Exchange Act as well as the foreign business laws. SEC also revised the rules by not allowing the foreign investors to invest in the mutual property funds exceeding 49%.

Certain significant provisions of the said new regulation are summarized as follows:

1. In case of Initial Public Offering (IPO), the Fund Management Company ("**FMC**") shall be required to offer and allot to the retail subscribers that are not special subscribers, owner, lessor or the grantor of the immovable property right not less than 50% of the total issued investment units.
2. The FMC is prohibited to allot the investment units to the foreign investors exceeding 49% of the total issued investment units for (i) investment in the land (Freehold) or (ii) investment in the condominium (Freehold) that the area of the condominium units to be invested by the mutual property funds plus the other condominium units of such condominium already held by foreigners exceeding 49% of the total condominium units in the said condominium.

For the mutual property fund established before the effectiveness of the said notification, the FMC shall close its Investment Register Book in order for investigation of the foreign's investment unit holders within 1 January 2010. If it appears that the foreign investors have held the investment units exceeding 49% of the total issued investment units, the FMC shall not be allowed to additionally invest in freehold of land and condominium until the proportion of investment unit holders are in conformity with the said restriction.

By the way, the investment in Leasehold shall not be subject to the above restriction.

3. In case of investment in the real estate under construction, the construction must be completed by at least 80% of the total value of project as at the date of establishment of the mutual property fund as approved by the Office of SEC.
4. The property fund may invest in or acquire the share having special voting right (golden share) issued by the company which has leased the real estate from the property fund and such company agreed to pay the consideration depending on the performance of the leased real estate.

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AMENDMENT TO FOREIGN BUSINESS ACT

The Ministry of Commerce has planned recently to propose the economic cabinet minister's meeting to consider amendment to the Foreign Business Act B.E. 2542 ("FBA") by proposing two methods i.e. alleviative method and strict method in order to supervise and control foreign business operation in Thailand.

Certain significant provisions of the said amendments are summarized as follows:

1. The Alleviative Method

- To remove certain businesses in List Three of the FBA which have already been governed and controlled by specific authorities under specific laws e.g. Guided Tour Business, Agricultural Future Trading Business, Security Business, Derivative Business, Commercial Bank Business, Capital Business, Insurance Business, Pawnshop Business, Warehouse Business, School Business, and Credit Foncier Business.
- To cancel the minimum capital of Baht 100 million for the wholesaling and retailing businesses. As such, the foreign investor who intends to engage in wholesaling and retailing business shall be required to obtain the Foreign Business License ("FBL") regardless of the amount of its capital.

2. The Strict Method

- To remove certain businesses stated in List Three of FBA like the above method and to increase strictness by establishing the policy level authority to control the foreign business operation on every related sector.
- To amend the definition of foreigner in order to include the foreigner who has the voting right more than 50 percent, majority in management control or power of appointing majority executives as well as the benefits. By the way, the amendment will have the transitory provision for supporting the former operators.

Additionally, the MOC has planned to amend the following provisions in order to conform with the current business operation, reduce the corruption and empower the Director-General of Department of Business Development ("DBD").

- i. To remove the private representative of the Foreign Business Committee.
- ii. To cancel the condition relating to the debt to equity ratio.
- iii. To increase power to the Director-General of DBD in order to suspend or repeal FBL in case of failure to comply with the conditions as stated in FBL or to appoint the commercial policeman for investigation and apprehension.

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