

Legal Update



THE OFFICE OF COUNCIL OF STATE'S INTERPRETATION ON THE DEFINITION OF "MINIMUM CAPITAL" UNDER THE FOREIGN BUSINESS ACT B.E. 2542

According to the literal definition of 'minimum capital' under the Foreign Business Act (FBA) and the previous interpretation and practice of the registrars of the Department of Business Development, Ministry of Commerce (MOC) several years ago, a foreigner, that is private limited company, may be entitled to operate certain restricted businesses without requiring to obtain permission under FBA in case it has the registered capital in the amount not less than the requirement on minimum capital, such as Baht 100 million for entitlement of retailing business operation, while its paid-up capital may still be less than Baht 100 million.

However, the MOC's registrars have changed their interpretation on the definition of the 'minimum capital' of a foreigner under FBA from being the 'registered capital' to be the 'paid-up capital' instead (which is contrary to the literal definition as prescribed in FBA and MOC's previous practice and interpretation as mentioned above). In December 2009, MOC had also sought for further opinion on this matter from the Office of Council of State. Recently in this year 2010, the Council of State has now rendered its opinion on this matter by issuing a memorandum corresponding with the latest interpretation of MOC's registrars, i.e. the minimum capital of a foreigner that is a private limited company means the paid-up capital (not the registered capital).

So if the foreigner has the paid-up capital in the amount less than the required minimum capital for each restricted business, such foreigner should be deemed in violation to FBA under this latest interpretation accordingly.

Remark: The literal definition of 'minimum capital' has been defined in Section 4 of FBA as follows:

'Capital' means the registered capital of a limited company or paid-up capital of a public limited company, or the money invested in a partnership or juristic person by its partners or its members.

'Minimum Capital' means the capital of the foreigners in the case where the foreigners are juristic persons registered in Thailand and, in the case where the foreigners are juristic persons not registered in Thailand or natural persons it shall mean the foreign currencies that the foreigners bring in and use for the commencement of the business operation in Thailand.



EXTENSION ON TAX REDUCTION PRIVILEGE FOR LISTED COMPANIES

Finance Minister, Mr. Korn Chatikavanij, has assigned the Capital Market Development Committee to consider extending the privilege on tax reduction for companies listed on the Stock Exchange of Thailand (SET) and the Market for Alternative Investment (MAI), as an attempt to attract more firms to be registered and listed on the Stock Market since most of the corporate taxes are collected from listed companies. The current's privileges on reduction of corporate income tax for the listed companies are as follows:

- Tax reduction from the rate of 30% to be 25% for companies listed on SET; and
- Tax reduction from the rate of 30% to be 20% for companies listed on MAI.

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**DRAFT OF CREDIT CARD BUSINESS ACT**

The Cabinet on 22 June 2010 has approved in principle a draft of Credit Card Business Act (**CCBA**) as proposed by the Ministry of Finance (**MOF**) and forwarded to the Office of Council of State for consideration.

Currently, there are different standards of law regulating the operation of credit card business. The operator which is a financial institution is regulated by the Financial Institution Business Act B.E. 2551, while the operator which is a non-financial institution or Non-Bank is regulated by the MOF's announcement which certain issues relating to the consumer's protection are not yet covered. And the Non-Bank institution typically charges higher fees and interest rates than the Bank institution.

This Draft CCBA should have more protection against the consumers from the abuses of the credit card business operator (**Operator**) and apply a uniform set of standard to all Operators, either financial institution or non-financial institution.

Certain significant provisions of the Draft CCBA are summarized as follows:

1. The Operator is required to obtain a license from MOF with recommendation from the Bank of Thailand (**BOT**).
2. BOT shall establish the rules for credit card business such as credit card contract, category of cards, card holder's qualification, interest rates, method of calculating interest, penalty rates, fees, and other service fees etc.
3. MOF shall have full authority to revoke the license if the Operator breaches the law or acts unfairness thing to the credit card holder, or causes any damage against public (**Holder**).
4. The provisions relating to the rights and duties of Operator, Holder and vendor shall be stipulated clearly such as (i) the Operator shall have the duty to provide the Holder information relating to the dishonesty, (ii) the Holder shall have the duty to pay the Operator for products and service fees within due time, (iii) the vendor shall have the duty to check for the card's correctness etc.
5. The protection to the Holder shall be prescribed e.g. (i) the Operator is prohibited to collect the payment before the due date, (ii) in case of overpayment, upon request in writing by the Holder, the Operator shall promptly return the excess amount thereof to the Holder, (iii) the Operator shall protect the Holder's personal information of not to be used by the third party in fraud.
6. In case of purchasing of products or using of services via internet, if the Holder provides an argument to the Operator in writing denying such internet transaction, the Operator shall suspend collection of such payment for further investigation.
7. Any debts relating to the use of credit card shall not be claimed upon the lapse of two years from the date of termination of the credit card contract.

There shall be the transitory provision for any permitted Operator prior to the effectiveness of this CCBA. And any person who has been granted for the relaxation under the former law shall be relaxed until having any order under this act. Any credit cards under the former law shall be deemed the credit cards under this act as well.

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**🇹🇭 RULES, PROCEDURES AND CONDITIONS IN RESPECT OF
PARTIAL BUSINESS TRANSFER TRANSACTIONS**

In exercise of the Royal Decree issued in accordance with the Revenue Code prescribing the exemption of Value Added Tax (**VAT**), Specific Business Tax (**SBT**) and stamp duty in respect of the partial business transfer between a limited company and/or a public limited company, on 30 April 2010, the Director-General of the Revenue Department has prescribed the Director-General's Notification in respect of the rules, procedures and conditions of partial business transfer transactions for purpose of tax exemption under the said Royal Decree. The said Director-General's Notification shall be in effect during 1 January 2010 until 31 December 2010.

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

1. The partial business transfer transactions must be made between a public limited company and/or a limited company registered under Thai law which are the same affiliated companies as defined in Section 39 of the Revenue Code. The relationship of such affiliated companies shall be continued not less than six months from 31 December 2010.
2. The transferee shall have the registered and paid-up capital not less than the price of net transferred asset.
3. Prior to the business transfer, the transferor and transferee shall jointly prepare and provide the letter notifying the business transfer together with the organization restructuring plan and the list of transferred assets to relevant Revenue Office. The partial business transfer transactions shall be completed within 31 December 2010.
4. The transferred assets must be related to the business so transferred which is not the sale in an ordinary course of business and the transferee must operate the business so acquired in the same kind of operation or in the related business.
5. In case the transferor is a VAT registrant, the transferee shall also be the VAT registrant and use the transferred assets for the operation of its VAT business.
6. The transferor shall not transfer assets without remuneration or with remuneration lower than the market value as at the date of transfer without a justifiable ground.
7. The transferor and transferee shall not be the accrued debtors of the Revenue Department as at the date of transfer unless the security is provided in accordance with relevant regulations thereof.

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