

Legal Update

Development on Draft Retail and Wholesale Businesses Act

On 16 October 2007, the Cabinet approved the latest draft Retail and Wholesale Businesses Act as proposed and amended by the Ministry of Commerce (**MOC**). MOC hopes that the new law would balance the regulatory power of national and local commissioners, who will regulate the retail business. If this law is passed, it will create a regulator specifically for the sector and limit expansion by big retail chain, the large operators will need to request a license from MOC. As such, it will cause the expansion of modern trades to be more difficult and time consuming than the present.

Under this law the retailing and wholesaling businesses would be limited to only the retailing and wholesaling of consumer products for personal use or household use mostly.

The retail / wholesale business operators who will fall under this law include retailers and wholesalers with sales area larger than 1,000 square meters or with combined annual revenue sales of all branches of at least THB one billion, as well as the business operators who acquire / purchase franchise for operating retail or wholesale business.

Certain retail / wholesale businesses that shall be exempt from applying for permission under this law shall include the following businesses: selling of drugs, petrol, books or newspapers, souvenirs in tourist attractions, jewelries, local or community products and/or any other businesses to be regulated by relevant Committee.

The retail and wholesale industries which shall be subject to this law will be governed by a Central Committee chaired by the Commerce Minister. The Committee shall have duties in stipulating policy and regulations relating to the granting relevant approvals, as well as criteria, procedures and conditions for business operations, such as zoning, specific areas, operating hours and store expansion, which may be different or varied based on each type of business and suitability of each community.

The law is not retroactive, provided that all existing operators running their retail / wholesale businesses prior to the effectiveness of relevant ministerial regulation must apply for obtaining permission within 60 days in order that they shall be entitled to continue its retail/wholesale business operations with all existing branches/stores. However, any new branch/store opening plan will have to go through a new approval process governed by these regulations.

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The next step is to get this draft approved by the National Legislative Assembly (**NLA**). NLA's further consideration and approval will be arranged at a later stage. Even though the government, MOC wanted to enact this law prior to the end of this government; however, the rest of the processes may be lengthy and may take several months since the draft will potentially have to be considered, revised and approved by NLA in the first, second and third readings. In addition, NLA itself also has its own draft of this law which is different from the one drafted by MOC. This could create conflicts and this latest draft may need substantial revision again. It is then likely that this law may not be able to be enacted within this government term. However, if the law is eventually enacted, it is obviously negative of the retail and wholesale industries.

Recently, during the explanation of such draft to NLA's Committee by MOC, the Director-General of Department of Internal Trade stated that the Department will also draft relevant Ministerial Regulations for further consideration by NLA simultaneously with the draft law for further clarity of such draft law.

Under the Ministerial Regulations to be drafted, they will stipulate three types of retail businesses that will not be subject to this law, i.e. (1) department store, such as Central, The Mall, Robinson, since their retailing would not effect small retailers, (2) category killer, such as Power Buy, and (3) specialty store, such as drug stores, jewelry and accessories stores and book stores. And there would be four types of retail and wholesale businesses that shall comply with the law, i.e. (1) discount store, (2) hypermarket, (3) supermarket, and (4) cash and carry, such as Makro.

Sources: www.cabinet.thaigov.go.th, *The Nations* 17 October 2007, *Post Today* 1 November 2007

Taxes / Charitable Giving - Donors for Education to Get Double Tax Break

The Revenue Department has proposed allowing people who donate cash for education to deduct double the amount from their taxable income, according to Director-General Mr. Sanit Rangnoi.

The existing code allows only educational materials donors to reclaim taxes at two times the value of the donation but not exceeding 10% of taxable income after deductions. The amendment would therefore treat cash and materials donations under the same standard.

To qualify for the tax break, the donations must be made under three objectives: tuition-fee support, research and development, and hiring of extra-curricular personnel.

The amendment, now being considered by the Ministry of Finance, would support the government's educational reforms, he said.

Source: *Bangkok Post* 31 October 2007.

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