

# NEWSLETTER

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## 1. Investigation of the Violation of the Foreign Business Law

The Department of Business Development, Ministry of Commerce (the "DBD") announces that the department will closely coordinate with the Department of Special Investigation, Ministry of Justice (the "DSI") on the investigation of the violations of the Foreign Business Act, B.E. 2542 (1999) (the "Act"), which the DBD is a regulator, in preparation of the ASEAN Economic Community (the "AEC"). The Act prohibits foreign owned companies from engaging in restricted activities listed the Act in Thailand. The DBD will screen, spot any circumstance that there is a high probability that a Thai nominee shareholder is used, and forward any suspicious case to the DSI for DSI's in-depth investigation. Both departments will sign the Memorandum of Agreement Re Formation of the Special Joint Working Group in overseeing the operation of foreign owned businesses.

The DBD will adopt the six criteria as the guideline in initially determining whether there is a high probability that a Thai shareholder holds the shares in a company for a foreigner or not.

1. A foreign shareholder holds the shares in a company not exceeding 49.99% of the total shares.
2. A foreign shareholder has the power to control a company through a disproportionately high voting right. (i.e. a foreigner has 10 votes for one share, while a Thai shareholder has one vote for one share.)
3. A foreign shareholder has the power to manage a company.
4. A suspicious loan is granted without an interest or for an unspecified period.
5. A foreign shareholder has a disproportionately preferential right for the dividends payment from a company.
6. A company has the significant amount of inflows of the funds from a foreign company.

If any of these circumstances occurs, the DBD will need to investigate whether any Thai shareholder holds the shares for a foreigner or not.

For more details, please contact our lawyer for consultation.

## DISPUTE RESOLUTION

### DEBT COLLECTION

Debt collection seems to be one of the troubles many businesses face in Thailand. Our firm can assist clients on debt collection resulting from either trade debt or borrower's default on payment of the loan. If the lawyer's demand notice still yields no positive result, our firm is ready to represent client to take further legal action to the court or file the claim to the arbitration body.

After the completion of court or arbitration process, we can assist clients on debt recovery as follows:

- Asset search
- Asset recovery
- Enforcement of judgment or enforcement of arbitration award

### SHAREHOLDER'S DISPUTES

Our firm has experience and expertise in representing both majority shareholder/partner and minority shareholder/partner in the shareholders' disputes/partnership disputes. Eventually, the shareholders' disputes/partnership disputes have to be resolved one way or another, either through a lengthy negotiation that yields a settlement satisfactory to both parties, pursuing any legal actions (courtroom) to revoke certain corporate actions, and even filing a criminal charge against the counterparty.

We also assist clients in the following matters:

- Corporate fraud
- Investment fraud
- Finance

### BREACH OF CONTRACT/MISREPRESENTATION

In the business world, another area of disputes is breach of contract, misrepresentation and wrongful inducement. Our firm can advise and represent clients on these issues. Typically, a non-default party has two options either to enforce the default party to perform the obligations and claim any damage for a delay of performance or to exercise the right to terminate the contract and claim for any damage suffered by the non-default party. The non-default party may request the court to impose the injunction on the default party, requiring the default party to do or refrain from doing certain things.

### BANKRUPTCY & BUSINESS REORGANIZATION

Whenever the court has order the debtor to be under an absolute receivership or a business reorganization, the creditor may ask for repayment of his debt only by complying with the procedure prescribed in the bankruptcy law even though the creditor may be a judgment creditor, or a creditor who has filed a civil action which is, however, still under trial.

*The creditor must take an action within the deadline otherwise the claim for repayment of debt will be invalidated by the bankruptcy law. Once any counterparty is on the verge of bankruptcy, the creditor is recommended to have an eye on debtor's possible financial demise.*

We can assist the creditor file the claim for repayment of debt to preserve creditor's right.

### LABOR DISPUTES

We can advise and represent clients on the labor disputes which typically arise in the following circumstances.

- Employee's fraud and misappropriation of employer's assets
- Employee's unauthorized use of employer's assets, information and trade secret
- Termination, layoff, restructuring (downsizing), severance pay and notice payment
- Lawful termination and unfair termination

### TAX DISPUTES

We advise and represent clients on a variety of tax disputes from the Revenue Department to the Customs Department. Our services cover:

1. Making representations on behalf of clients to tax a relevant tax authority in the pre-assessment stage;
2. Providing advice concerning the legality of tax assessment made by a relevant tax authority;
3. Preparation of notice of objection to tax assessments and request for re-determination to the tax appellate body; and
4. Representation in the tax court.

### CONSTRUCTION & REAL ESTATE DISPUTES

The problem between the contractor and the owner seems to happen all the times. Some disputes could be settled right away, while other unavoidably may have to make their way to courtroom or arbitration. Our firm can assist either contractor or owner (hirer) in the construction dispute arising from below situations:

- Contractor's delay in completion of work according the milestones
- Delivered work is different from the agreed specifications
- Delivered work fails to meet the agreed standards
- Owner's delay in payment of the construction price to the contractor for no good reason
- Owner's delay in delivery of the construction site to the contractor
- Owner's insisting to use the unusable designs despite the protest by the contractor
- Use of the engineering consultant who is less than neutral and fair
- Owner's refusal to accept the delivery of work from the contractor on the ground of small defects
- An effort by the owner to bargain the contraction price long after the contract has been sealed
- Parties' disagreement over the price increase and the additional time for the additional scope of work

With respect to the real estate disputes, a real estate developer might fall behind the construction schedule, the problem between a property buyer and a developer may arise from time to time.

### OTHER BUSINESS DISPUTES

In addition to the above matters, we can advise and represent client on other business disputes, i.e. unfair business practice, business tort claim, trade secret and intellectual property, corporate fraud, investment fraud, finance, and international sales disputes.

Contact our lawyers without delay if you have or about to have any dispute before the dispute (likely) goes bad and gets worse.



# NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,  
DISPUTE RESOLUTION & TAX  
B A N G K O K , T H A I L A N D

## THE FIRM

NARIT & Associates is a Bangkok-based international law firm serving both Thai and foreign companies by combining international perspectives with profound local expertise, in the areas of corporate & commercial, mergers & acquisitions, tax, real estate & construction, commercial dispute and general practice.

We have experiences in advising our clients, from publicly held companies, Thai subsidiaries of multinational corporations to foreign and private investors, across a broad range of matters, including acquisitions of local companies, formation of joint venture companies, international sales, investment/divestment, distributorship, commercial contract tax planning, cross border tax planning, transfer pricing, remittance of profit and tax dispute.

As we aspire to be a fast growing legal service provider in Thailand, we are pleased to offer our high quality legal services at a very competitive rate, as compared to those of other international law firms.



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## CORPORATE & COMMERCIAL

Business Setup  
Construction  
Contracts/Agreements  
Employment  
General Counsel Services  
Mergers & Acquisitions  
Real Estate

## DISPUTE RESOLUTION

Debt Collection  
Shareholder Disputes  
Breach of Contract/Misrepresentation  
Bankruptcy & Business Reorganization  
Labor Disputes  
Construction & Real Estate Disputes  
Other Business Disputes

## TAX

International Tax Planning  
Mergers & Acquisitions Tax Structuring  
Property/Real Estate Taxes  
Commercial Contract Tax Planning  
Investment Tax Incentives  
Finance and Securities Taxes  
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