

# NEWSLETTER

No. 83 Edition March 2014

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## 1. Government's Aggressive Audit on (Thai) Nominee Shareholders

The Department of Business Development, Ministry of Commerce, a regulator under the Foreign Business Act, B.E. 2542 (1999) (the "FBA") continues its aggressive audit on (Thai) nominee shareholder. As a matter of fact, the Department has been engaging this process for well over three or four years by now. Department's Director-General says that the Department has already conducted the audit on the juristic persons (companies and partnerships) with the foreign shareholders holding less than 50% and found out 2,300 juristic persons in the group with the high risk of FBA violation.

The initial audit identifies 61 cases where Thai shareholders hold the shares in trust for and on behalf the foreigners so that the companies can engage in the activities restricted for Thai-owned businesses.

### Audit Results

Issue	Results
1. Geographic Areas of Cases with the Potential FBA Violations	29 cases in Bangkok and 32 cases in other provinces (largely in Chaing Mai, Phuket and Chonburi).
2. Activities Conducted	Largely, real estate, land purchasing, tourism and services.
3. Next Step	Department officers will be dispatched to the ground and investigate companies' offices and call up companies' directors to clarify the facts and submit any relevant documents.  Once the FBA violation is confirmed, the Department will take further legal actions to prosecute the FBA violators.

Department's audit efforts emphasized on the tourists destination provinces like Krabi, Chonburi, Prachuapkhirikhan (Hua Hin), Phuket, Surat Thani (Samui), Chaing Mai and Chaing Rai. Department's perspective is that the Department does not wish to see the use of the nominee shareholders to take advantage of Thai owned businesses.



For more information on foreign business law, read our previous article on Foreign Business Law, at the following link:

[www.naritlaw.com/Resources/Foreign%20Business%20Law\\_NARITLAW.pdf](http://www.naritlaw.com/Resources/Foreign%20Business%20Law_NARITLAW.pdf).

For more information, please contact our lawyers for consultation.

## LEGAL UPDATE

### 2. Contribution to Fund for Transporting Foreigners Out of the Kingdom

A work permit holder who works as (i) in-house servant or (ii) unskilled laborer in Thailand so far has been exempt from making any contribution to the Fund for Transporting Foreigners Out of the Kingdom established under the Foreign Workers Act, B.E. 2551 (2008) (the "Act"). Now the Ministerial Regulation Re Stipulation of the Jobs and the Amount of the Money an Employer Must Remit to the Fund for Transporting Foreigners Out of the Kingdom and Criteria and Methods in Making the Payment, Issuance of Receipt, Certificate and Document in lieu of the Payment Certificate (No. 4), B.E. 2556 (2013) issued by virtue of the Act is announced. Effective March 1, 2014, an employer who hires any work permit holder who works as (i) in-house servant or (ii) unskilled laborer must deduct Baht 1,000 from the salary payment to a work permit holder regardless of the citizenship and remits to the deducted amount as the contribution to the fund to the Department of Employment within 15th of a subsequent month until the accumulated contribution amount of the work permit holder reaches Baht 4,000.

The idea of setting up this fund is to finance the return trip for a work permit holder who for some reason cannot afford by oneself. This way, Thai taxpayers no longer have to foot any bill for departing any unskilled foreign workers who cannot afford the airline/bus tickets back to their home countries. Upon termination of the employment, if any worker permit holder cannot afford the trip home, ideally the fund will pay for the trip.

If an employer does not want to bother to make the deductions for four months, the employer and the work permit holder may agree in writing to deduct in the amount higher than Baht 1,000 per month and remit the contribution to the fund within the period shorter than four months.

Employer's failure to remit the contribution to the fund shall be liable to pay a surcharge at the rate of 2% per month of the amount that the employer fails to remit to the Department of Employment.

For more information, please contact our lawyers for consultation.

# NARIT & ASSOCIATES

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