

NEWSLETTER

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INSIDE THIS EDITION

1. **Advance Ruling for Determination of Customs Value of Goods** 1
2. **Department of Business Development's Clarification Note on Allocation of Legal Reserve of a Limited Company** 2
3. **Department of Business Development's Clarification Note on Election of the Director to Fill up the Vacancy Occurring in the Board of Directors** 3

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1. Advance Ruling for Determination of Customs Value of Goods

As an importer brings in any good to the country, the common issue that the importer will have with a customs official is the assessment of the customs value of the imported good. Historically, over years the assessment of the customs value in Thailand has been the main cause of the disputes between the Thai Customs Department and the importers.

Due to the pressure to process the customs formalities quickly, the customs official may allow the imported good to pass through the customs formalities first and audit the customs value of the imported good as declared by the importer at the later date. Typically, a customs official audits to determine the correctness of the customs value of the imported good declared by the importer. In case where the customs official finds any importer underreports the price of the imported good, which effectively means the customs duty is also underpaid by the importer, the customs official will request the importer to pay customs duty, the penalty, VAT and excise duty.

These customs disputes are either litigated or settled one way or not. The prospect of the severe criminal penalty imposed on directors and officers of the importer company by customs law significantly pressures the importer company to settle with the customs official and to make the payments instead of having its directors and officers face the prospect of being sentenced.

The uncertainty of the customs value is the main cause of these customs disputes. One way to address this uncertainty is to arrange for the customs authority to provide an advance ruling on customs value.

In general, the advance ruling for the customs value is the official process that allows an importer (or an exporter) to request the customs official to make the ruling on the customs value of the good prior to the importation (or exportation) of the good. Ideally, this advance ruling should be legally binding to the customs official over the specified period for the importer (or the exporter) who sought for the ruling in order to save times in the custom formalities and the subsequent audit.

To facilitate the international trade, the Thai Customs Department recently issues the Notification of the Customs Department Re Performance of the Services for the Advance Determination of the Customs Value. In essence, the Customs Department will determine the customs value for an importer of a good who wants to know the criteria for the declaration of the customs value before the importation of the good in to Thailand. The customs official emphasizes that the department will only determine the criteria.

The Notification also specifies that the result of the advance determination of the customs value is merely the advice for the exclusive use of the importer who requests for the services for the goods that have been requested for the advance determination of the customs value. Given the limitations addressed above, the use of the services may be another tool for importers to minimize their customs risks.

For more details, please contact our lawyer for consultation.

LEGAL UPDATE

2

2. Department of Business Development's Clarification Note on Allocation of Legal Reserve of a Limited Company

Unless the articles of association of any limited company provides the higher proportion, every time the limited company distributes the dividend to its shareholders, the law specifies that the company must appropriate to a reserve fund, which is commonly known as a legal reserve, at each distribution of dividend, at least 5% of the profit arising from the business of the company until the legal reserve reaches 10% of the capital of the company.

Some companies have a lot of profit and intend to allocate higher than 5% of the profit to the legal reserve equal to 10% of the capital in one time instead of gradually allocating 5% of the profit to the legal reserve over the years. In response to the question whether a limited company can allocate the profit as the legal reserve in the percentage higher than the statutory requirement of 5% of the profit or not raised by limited companies, recently the Department of Business Development issues the Clarification Note on Allocation of Legal Reserve of a Limited Company.

The department clarifies that a limited company may allocate the legal reserve in the percentage higher than 5% of the profit so that the legal reserve reaches 10% of the capital in one time without the need to gradually allocate the profit at the percentage of 5% into the legal reserve. Allocating more than 5% of the profit into the legal reserve is not contrary to the law in any way.

For more details, please contact our lawyer for consultation.

LEGAL UPDATE

3. Department of Business Development's Clarification Note on Election of the Director to Fill up the Vacancy Occurring in the Board of Directors

The Department of Business Development finds out that many limited companies improperly elect the new director to fill in a vacancy of the office of director. Consequently, such appointment cannot be registered with the department. For this reason, the Department of Business Development issues the Clarification Note on Election of the Director to Fill up the Vacancy Occurring in the Board of Directors.

The department states that while company law allows the remaining directors to elect any person to fill up the vacancy occurring in the board of directors, in the case where a limited company has only two directors and one of them intends to resign from the office of director in the next month, such two directors cannot appoint the new director to fill up the future vacancy in the board of directors in advance even if the resolution of the directors will become effective in the next month. This is because while the resolution is passed there is no vacancy in the board of directors.

For more details, please contact our lawyer for consultation.

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Please contact our attorney, should you require any legal assistance.

NARIT & ASSOCIATES

Attorneys at Law

LEGAL AND TAX SERVICES

B A N G K O K , T H A I L A N D

FIRM PROFILE

NARIT & ASSOCIATES is international law firm based in Bangkok, Thailand with principal areas of practice on Corporate & Commercial, Mergers & Acquisitions, Tax Planning, Litigation & Dispute Resolution, Business Contracts/Agreements, Real Estate & Construction, Insurance and Employment.

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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