

NEWSLETTER

No. 40
Edition March 2010

INSIDE THIS EDITION

- 1. Supreme Court Refuses to Enforce Arbitral Award in Dispute between the Government Lottery Office and its Concessionaire 1**
- 2. Government to Conduct Investigation (Again) into the Use of Thai Nominee Shareholders 2**
- 3. Specific Business Tax Exemption does not Cover Jointly Owned Residential Property 3**

Disclaimer: The materials on this document have been prepared to informational purposes only and are not intended to be legal advice. The reader should not act in any way on the basis of the information without seeking where necessary appropriate professional advice concerning their own individual circumstances. NARIT & ASSOCIATES assumes no responsibility for, and disclaims all liabilities (including responsibility for any action or inaction taken) to the fullest extent permitted by law.

LITIGATION UPDATE

1. Supreme Court Refuses to Enforce the Arbitral Award in the Dispute between the Government Lottery Office and its Concessionaire

Recently, the Supreme Court issued a judgment between the Government Lottery Office and its former concessionaire. The arbitral tribunal had already made the arbitral award in favor of the concessionaire, instructing the Government Lottery Office to pay the damage of approximately Baht 2.5 billion to the former concessionaire for breach of contract.

The Government Lottery Office however still did not pay such damage to its former concessionaire, so the former concessionaire had requested the Civil Court to enforce the arbitral award. The Civil Court ruled in favor of the concessionaire, agreeing to enforce the arbitral award and instructing the Government Lottery Office to pay the damage to the concessionaire.

The Government Lottery Office still appealed the case all the way to the Supreme Court. Eventually the Supreme Court concluded that the contract appointing distributor and distribution of online charity lottery between the Government Lottery Office and the concessionaire fell under the Public-Private Joint Venture Act, B.E.2535 (1992).

Technically, the Government Lottery Office had to propose the project to the Cabinet for its approval. However, the Government Lottery Office did not follow the rules and procedures of such Act. So the contract appointing distributor and distribution of online charity lottery then is nonbinding to the government and the other party.

In addition, the arbitration settlement provision, which was a part of this contract, was considered invalid. Therefore, the Supreme Court has overturned the Civil Court's judgment. The case is final and the Government Lottery Office does not have to pay the damage to the former concessionaire according to the arbitral award of the arbitral tribunal and the judgment of the Civil Court.

Thailand's Arbitration in Brief

Arbitration is a popular way of the dispute resolution in the business world. Businesses prefer the arbitration to the court because the arbitration process allows dispute parties to select the arbitrators who are more familiar with their business than professional judges. In the past, the Thai court tended to enforce the arbitral award without getting into the details of the disputes. Enforcing the arbitral award without much interference is beneficial to arbitration. Increasingly, the Thai court is becoming more and more willing to reverse the arbitral awards by refusing to enforce the arbitral awards especially the dispute between the government and the private parties. So enforcing the arbitral award is no longer straightforward.

For more details, please contact our lawyer for consultation.

LEGAL UPDATE

2

2. Government to Conduct Investigation (Again) into the Use of Thai Nominee Shareholders

The Department of Business Department announces that the department will send the officials to the areas in the provinces in March 2010 to audit the use of Thai nominee shareholders who hold the shares in trust for foreigners in Thai companies with foreign shareholding not exceeding 49.99%. This audit project covers the southern province of Phuket and the northern provinces of Phayao, Chiang Mai and Chiang Rai.

In this audit, the department will send the notices to companies who are operating within the four primary target groups: (i) the rice farm business, (ii) the land trading and real estate business, (iii) the agriculture business, i.e. agricultural products retail, rice mill, warehouse and cold storage, and (iv) the company with foreign shareholders holding at least 40% of the total shares but less than 50% and the company with foreign shareholders holding less than 40% of the total shares, but having a foreigner as an authorized director.

It is quite unusual for the department to give the warning first before it runs this audit on the targeted companies. Nevertheless, those who fall within the targeted groups are advised to make any relevant documents ready for such investigation.

For more details, please contact our lawyer for consultation.

TAX UPDATE

3. Specific Business Tax Exemption does not Cover Jointly Owned Residential Property

Whenever an ordinary person sells immovable property within five years from the date of acquisition, the tax law imposes specific business tax on the seller. In other words, in order to get specific business tax exemption, an individual property owner has to hold the property for at least five years from the date of acquisition before selling of the property. Nevertheless, this five year holding period is not absolute - there is an exemption to this five year holding period.

The aforesaid exemption applies when an individual property owner has used the property as his or her place of primary residence and put his or her name in the household registration of the property for the period not less than one year from the date of acquisition of the property. In this case, specific business tax is exempted even the property is sold within the period less than five years from the acquisition.

One recent revenue ruling explains that for the property that is jointly acquired by individual persons, the sale of such property within five years from the date of acquisition is still subject to specific business tax even if co-owners put their names in the household registration of the property for the period not less than one year. The Revenue Department clarifies that the primary residence/household registration exemption does not apply to the property jointly owned by co-owners. Therefore, any specific business tax arising from the sale still needs to be paid.

For more details, please contact our lawyer for consultation.

GENERAL COUNSEL SERVICES

OUTSOURCED LEGAL SERVICES AT COST SAVING, FIXED RATE

General Counsel Services arrangement is a great solution for corporate companies who do not have in-house lawyers or have a stretched legal department, but require additional legal support in the cost-effective and flexible way.

NARIT & Associates proudly presents our General Counsel Services, unique outsourced in-house general counsel legal services, a new approach to your business at more affordable rates. General Counsel Services is a unique arrangement in which for a monthly fixed retainer fee, the clients are provided with the legal services that are traditionally rendered by the in-house legal counsels.

General Counsel Services brings the best of both worlds together, namely all the benefits and comfort of having in-house legal counsel as well as outsourcing flexibility and expertise of outside law firms. Corporate clients are benefited from an unlimited access to our legal advice, raising any legal questions to us as many as they wish.

LAW FIRM EXPERTISE AT A FIXED FEE

We offer the expertise of traditional international law firms at a fixed fee.

COST SAVING

Outsourced general counsel services costs the company less than hiring a fulltime in-house legal counsel. The lower costs and the other benefits of in-house general counsel can be achieved without the need to add another (expensive) person to the company payroll with its associated concerns and overhead costs.

HAND-ON SUPPORT

We provide full-time support from a team of experienced legal professionals in the most cost-effective way.

FLEXIBILITY

The company fully benefits from all flexibility and cost effectiveness of the outsourcing approach offered by our General Counsel Services.

CONTINUITY

Your outsourced general counsel from us is well acquainted with your business issues facing your company and consequently provides focused, relevant, practical, and cost effective legal advice that is becoming increasingly crucial to your business.

PART-TIME GENERAL COUNSEL

If your legal needs do not justify hiring a full time in-house general counsel, all you need is part-time legal advice on various business issues, our General Counsel Services can fill the gap to satisfy your need.

EASY BUDGETING

You can precisely and conveniently budget for legal fees, without worrying about the meter running or incurring additional costs.

IN-HOUSE ATTORNEY'S BENEFITS

You have the advantages of an in-house attorney at a reasonable monthly rate.

AVAILABILITY OF TEMPORARY SERVICES

Temporary general counsel services are also available to fill in the gap when your permanent general counsel takes her maternity leave, is on prolonged sick leave or leaves a job.

TAILOR MADE

We structure our general counsel scheme based entirely on your particular needs. So your retainer scheme or project based scheme is tailor made to meet your particular needs.

OTHER LEGAL SERVICES

- Corporate & Commercial**
- Construction**
- Contracts/Agreements**
- Employment**
- Insurance**
- Litigation & Dispute Resolution**
- Mergers & Acquisitions**
- Notarial Services**
- Private Clients**
- Real Estate**
- Work Permit & Immigration**

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.

Contact our lawyer to find out how we can help you.

AREAS OF PRACTICE

- Corporate & Commercial
- Construction
- Contracts / Agreements
- Employment
- General Counsel Services for Corporate Clients
- Insurance
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Private Clients
- Real Estate
- Tax
- Work Permit & Immigration

For more detailed information,
please visit our website at

www.naritlaw.com

CONTACT INFO

OFFICE ADDRESS:
65/31 Chamnan Phenjati Business Center
2nd Floor, Rama IX Road
Huay Khwang, Huay Khwang
Bangkok 10320

TEL: +66 86 785 0793
+66 2248 2872
FAX: +66 2248 2873
E-MAIL: enquiry@naritlaw.com
WEBSITE: www.naritlaw.com