

NEWSLETTER

No. 51
Edition February 2011

INSIDE THIS EDITION

1. **New Guidelines for Refund of Court Fee** 1
2. **Revenue Ruling on Long Term Lease Agreement and Input VAT** 2

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.

LEGAL UPDATE

1. New Guidelines for Refund of Court Fee

Whenever a commercial dispute cannot be resolved amicably by the parties, one party may go on the offensive and sue the other party in court. A claimant (plaintiff) files a civil lawsuit against a defendant to the court having the jurisdiction over the case. The claimant has to foot the court fee bill by handing cash or a check to the court clerk first just to get the proceeding started. Eventually if the claimant fully wins the case, the court may order the losing defendant to pay the court fee. But the settlement may be reached in a courtroom and the court renders a judgment according to the in-court settlement.

Recently, the President of the Supreme Court issues the new regulation regarding the refund of court fee to provide the guidelines to judges on how much the court fee should be refund to claimants (plaintiffs).

1. If the case is resolved before the examination of witnesses, the fee shall be returned in the amount not exceeding 75%, but the remaining amount shall not be less than Baht 200.
2. If some witnesses have been examined, the fee shall be returned in the amount not exceeding 50%, but the remaining amount shall not be less than Baht 200.
3. If the fee is returned in a special circumstance, the fee shall be returned in the amount not exceeding 88%, but the remaining amount shall not be less than Baht 200.

For more details, please contact our lawyer for consultation.

2. Revenue Ruling on Long Term Lease Agreement and Input VAT

In late 2010, the Revenue Department issues an interesting revenue ruling that once again reminds us just how crucial wording of the long term lease agreement is to the right of the lessee to claim back input VAT incurred on construction of the structure on the leased premises. In this ruling, a lessee takes a long term lease of the property (land and building) from one local government. The long term lease agreement says that if the lessee wishes to modify, add or remove the leased premises or any structure on the land plot in the leased premises, the lessee must obtain the written permission from the lessor first before the lessee can proceed with modification, addition, or removal. And any structure that the lessee makes on the land or modifies shall be under the ownership of the lessor, unless the lessor does not want the structure, which must be removed by the lessee.

The additional structure was built without the knowledge of the lessor. Once the lessor became aware of the additional structure, the lessor went on to charge the lessee the additional rent for the additional structure. The department concludes that based on wording of the lease agreement and the circumstance the ownership of the additional structure was transferred by the lessee to the lessor. Therefore, the lessee has no right to claim back input VAT incurred on construction of the additional structure from the government.

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.



OFFICE ADDRESS

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

TEL +66 86 785 0793
+66 2248 2872

FAX +66 2248 2873

EMAIL enquiry@naritlaw.com

WEBSITE www.naritlaw.com

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

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
Corporate Tax Compliance
Transfer Pricing
Tax Restructuring
Tax Dispute
International Expatriate Services
Wealth Tax Management

Learn more about
Corporate & Commercial,
Dispute Resolution & Tax Services from
NARIT & ASSOCIATES

Visit www.naritlaw.com

