

# NEWSLETTER

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**ALSO, DON'T MISS THIS UP COMING EVENT !**

**20-21 OCTOBER 2011**  
Industry Forum

**REAL ESTATE INVESTMENT & LAW UPDATES THAILAND 2011**

**DAY TWO: FRIDAY, 21 OCTOBER 2011**  
Plaza Athenee, Bangkok  
A Royal Meridien Hotel

**CRUCIAL LEGAL CONCERNS IN MAKING PROPERTY SALES/PURCHASE CONTRACTS AND OPERATIONS IN REAL ESTATES**  
Guest Speaker: Narit Direkwattanachai, LLM (Cambridge)

**ORGANIZED BY: BMN**

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## 1. Tax Incentives for Good Procurement Center for International Manufacture

The Royal Decree is enacted to offer the tax incentives for a good procurement center for international manufacture (the "Center"). The Center is a company formed under the laws of Thailand for the purpose of procuring goods, raw materials and parts and selling them to related enterprises.

The government promotes an establishment of the Center in Thailand to support the procurement and the sale of goods outside Thailand and the procurement and sale of raw materials and parts in Thailand for manufacture of goods of related enterprises overseas, in order to reduce the cost of manufacture for the sale of goods, raw materials or finished pieces within the corporate group from overseas and expand the investment base in the industry sector from overseas to Thailand.

It is noteworthy that the Royal Decree imposes certain terms and conditions in term of the minimum amount of operating expenses in Thailand, the minimum amount of capital expenditure in Thailand, the minimum amount of Center's qualified income and the minimum amount of compensation for top executives. Any company considering the tax privileges for the Center has to familiarize itself with these terms and conditions first because failure to comply with any of these terms and conditions in any year will unfortunately result in the tax incentives being revoked retroactively from the first year. This retroactive revocation of the tax incentives may make some multinational corporations reluctant to apply for the tax privileges for the Center in the first place.

### 1. Corporate Income Tax Rate Reduction for Center

The Center is entitled to the corporate income tax rate reduction from 30% to 15% for five consecutive accounting years only for the following qualified income:

- (i) The income derived from the procurement and the sale of goods overseas to related enterprises located in foreign countries without importation of goods into Thailand.

- (ii) The income derived from the procurement of raw materials or part either in Thailand or overseas and the sale to related enterprises located in foreign countries for the purpose of manufacture overseas by the aforementioned related enterprises.

## 2. Personal Income Tax Rate for Center's Three Top Executives

Besides corporate income tax, the Royal Decrees cuts the person income tax rate of Center's foreign top executives or experts from the progressive rate with 37% at the top bracket to 15% for up to five years. But this reduction is definitely far from being generous. First of all this entitlement is only applicable to just three foreign top executives or experts. Only three foreign employees will be eligible for this cut. Second, these three foreign employees have to give up the tax credit from withholding income tax deducted on any dividend income, interest income and income derived from sale of real estate in Thailand. Third, for five consecutive years the Center must derive the qualified income in the amount not less than 50% of the sum of the qualified income and the income derived from the procurement of raw materials or parts in Thailand or foreign countries and the sale of raw materials or parts to related enterprises located in Thailand for manufacture by the aforementioned related enterprises for five consecutive years.

While the terms and conditions are definitely imposed on the Center and its foreign employees the explicit purpose of preventing any exploitation of the tax incentives, many of them are subject to the business environment and are not under the absolute control of the management of the Center. The prospect of the retroactive revocation of the tax privilege way back to the first year may make this package less appealing to some multinational corporations.

For more details, please contact our lawyer for consultation.

### TAX UPDATE

## 2. National Savings Fund Act, B.E. 2554 (2011)

The National Savings Fund Act, B.E 2554 (2011) is enacted by Parliament to help the workers who are out of the system and are not covered by any retirement benefit. Under the new law, the National Savings Fund will be set up, any Thai citizen from the age of not less than 15 years old and not exceeding 60 years old may apply to be a member of the National Savings Fund.

An applicant must not hold any membership in the Social Security Fund, the Government Pension Fund, the Bangkok Metropolitan Administration Pension Fund, the Local Government Pension Fund, a provident fund under the law on private school and any other pension system. A member of the National Savings Fund will save and contribute the money to the fund over the period of time and the government will also contribute the money to the fund for a member the rate of 50%, 80% and 100% of member's contribution depending on the age of a member. Upon reaching the age of 60 years, a member will receive the pension from the fund for the rest of his life.

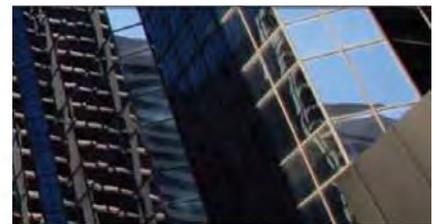
For more details, please contact our lawyer for consultation.

### UPCOMING EVENT



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# REAL ESTATE INVESTMENT & LAW UPDATES THAILAND 2011



## DAY TWO: FRIDAY, 21 OCTOBER 2011

10:00-10:30 Morning Refreshments & Networking  
10:30-11:15

Make Smart Move In The Thai Real Estate Market 2011 & Beyond, Keep Abreast With Crucial Law Changes & Legal Requirements To Avoid Mistake And Develop Sustainable Investment

### SALES/PURCHASE CONTRACT

#### CRUCIAL LEGAL CONCERNS IN MAKING PROPERTY SALES/PURCHASE CONTRACTS AND OPERATIONS IN REAL ESTATES

- Updates on relevant legal framework when making sales/purchase contracts
- Latest issues: Examining different forms of sales/purchase contracts and how to use them correctly
- Special considerations to make in sales/purchase contracts when there is a foreign contractual party
- Common mistakes to be avoided



#### NARIT DIREKWATTANACHAI Principal NARIT & Associates

Mr. Narit Direkwattanachai earned LLB (1st hon) from Chulalongkorn University, LLM from University of Cambridge and MBA (Finance) from Georgia Tech, USA. Prior to establishing his firm, he worked with Baker & McKenzie and the Investment Banking Group of DBS Bank, Singapore. He regularly advises listed companies and multinational corporations across a broad range of matters, i.e. acquisitions, investment/divestment, taxation, and real estate disputes. He currently serves on JFCCT Property Committee and subcommittee on Complaints, Laws, Regulations and Contracts of Thai Contractors Association. He is the author of What Every Executive Needs to Know about Thailand Tax.

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## 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,  
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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  
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