

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

NEWSLETTER

No. 50

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UP COMING EVENT

BUSINESS & LEGAL SEMINAR

COMMERCIAL CONTRACTS: DRAFTING, NEGOTIATION & RISK MANAGEMENT

Friday, 11 March 2011 Royal Orchid Sheraton Hotel & Towers, Bangkok

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TAX UPDATE

1. Withholding Tax Refund after Entire Business Transfer

Tax law offers attractive tax treatments for the entire business transfer. These special treatments make it possible for Thai companies to merge/consolidate their operations in order to strengthen their combined comparative advantage. Even though income tax may be exempt, certain regulatory issues have to be properly sorted out.

In late 2010, the Revenue Department offers an interesting view on withholding tax refund after the entire business transfer in department's ruling. In this case, Company A intended to transfer the entire business to its affiliated company. The transfer agreement clearly specified that all assets had to be transferred to its affiliated company, including withholding income tax refund that Company A was claiming back from the government. The department indicates that the right to receive withholding tax refund from the government was the right that the transferee affiliated company was supposed to receive.

For more information, please contract our lawyers for consultation.

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LEGAL UPDATE

2. New Law on Safety, Occupational Health and Environments in Working

At present, technology, equipment, machines, tools, chemical substances and hazardous are bought into manufacture process, construction and services. But the lack of development of understanding makes laborers vulnerable in term of work safety, occupation health and environment and causes the danger derived from working to the extent that laborers are injured, disabled, infirmed, dead or infected with diseases due to the work. This trend is likely to increase. Due to its limited scope, the existing Labor Protection Act, B.E. 2541 (1998) does not efficiently impose the mechanisms and safety administration measures. In order to properly impose the control measure, supervision, taking care and administration of the work safety, occupation health and environments in working, Parliament enacts the Act on Safety, Occupational Health and Environments in Working, B.E. 2554 (2011).

For more information, please contract our lawyers for consultation.

NOT
TO-BE-MISSED
EVENT

A practical program
Friday, 11 March 2011
Royal Orchid Sheraton Hotel & Towers, Bangkok

COMMERCIAL CONTRACTS: DRAFTING, NEGOTIATION & RISK MANAGEMENT

Presentation will be in English

Narit Direkwattanachai, LL.M (Cambridge)
Founder/Principal at **NARIT & Associates**

**SAVE
10%**

for early bird rate or
booking for 2 or
more delegates

BOOK NOW!

EASY WAYS TO BOOK

Tel: +66 2248 2874 Fax: +66 2248 2873 Email: enquiry@naritlaw.com

Master practical skills to draft clear and concise commercial agreements

Get-to-grip with all key clauses and how to effectively use them

Learn cutting-edge strategies for managing different types of contracts

Identify early contractual risks and avoid costly pitfalls

A practical program focusing on:

- Legal framework of commercial contracts
- Risk assessment and mitigation
- Understanding and drafting the legal clauses
- Structuring shareholders agreement
- Managing contract and subcontract risks

Who should attend?

CEO, COO, MD, GM, corporate counsel, commercial director, sales director, financial manager, legal & compliance manager, head of legal department, contract manager, project managers, business development manager, procurement managers

**Learn from Private Practitioner's
Real World Experience!**

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0900 REGISTRATION & MORNING COFFEE

0930 SESSION 1: COMMERCIAL CONTRACT DRAFTING & NEGOTIATION

- Legal Framework of Thai Law Governing Commercial Contract
- Crucial Issues in Contract Formation for Non-Lawyers: Formality, Enforceability, Court's Power to Scale Down Contractual Provisions, Legal Capacity, Consideration, Applicability of Statutory Arrangements and Opting out of Statutory Arrangements
- Common Features of Commercial Contract- Boiler Plate: Witnesseth, Representations & Warranties, Liquidated Damage (Penalty), Indemnification, Limited Liability Provisions, Non-Waiver, Entire Agreement, Confidentiality Clause, Termination, Choice of Law, Choice of Jurisdiction, Arbitration, Notice, and Severability

1045 MORNING REFRESHMENT

1100 SESSION 2: COMMERCIAL CONTRACT RISK MANAGEMENT

- Identifying Business Objectives and Concerns of the Parties
- Assessing, Analyzing and Mitigating the Risks in Commercial Contracts
- Strategies for Effective Contract Management to Avoid Dispute/Litigation and to Strengthen Your Position
- Breach of Contract, Claim and Remedy
- Negotiation Strategies
- Should I Use the Term "Shall"?

1215 LUNCH (International Buffet)

1315 SESSION 3: TECHNIQUES FOR DRAFTING & STRUCTURING SHAREHOLDERS AGREEMENT

- Understanding the Relevant Provisions of Company Law
- Statutory Arrangement versus Contract Clause
- Majority Rule
- Concerns of Majority Shareholders and Minority Shareholders
- Key Provisions of Shareholders Agreement
- Importance of Articles of Association and Corporate Formalities
- Contractual Mechanisms to Deal with Shareholders Dispute

1430 AFTERNOON REFRESHMENT

1445 SESSION 4: MANAGING CONTRACT & SUBCONTRACT RISKS

- Key Considerations for Insourcing and Outsourcing
- Understanding Different Types of Contracts
- Designing Critical Provisions in Contracts and Subcontracts
- Identifying Contract and Subcontract Risks and How to Mitigate Such Risks
- Dealing with Multiple Contractors
- Practical Problems in Contract Management

1600 COURSE ROUND-UP

COURSE FEES

EARLY BIRD (PAYMENT BY FEB 15, 2011)

MULTIPLE BOOKING (MIN 2)

Baht ~~8,000~~ 7,200

FULL PRICE

Baht 8,000

ALL PAYMENT MUST BE RECEIVED IN ADVANCE OF THE EVENT

**SAVE
10%**

for early bird rate or
booking for 2 or
more delegates

** We reserve the right to change the content of the program, date and venue if warranted by reasons beyond its control.



THE SPEAKER

NARIT DIREKWATTANACHAI is the founder and principal of NARIT & Associates, a law firm based in Bangkok, Thailand. He specializes in corporate & commercial, tax and commercial disputes. Narit regularly serves clients from different industries on acquisitions/sales of local companies, formation of joint venture companies, investment/divestment, international sales, distributorship, franchise, cross border tax planning, transfer pricing, remittance of profit, shareholder/partner disputes and other commercial disputes. His client list includes publicly held companies (or their Thai subsidiaries) listed in

New York Stock Exchange, Frankfurt Stock Exchange, Tokyo Stock Exchange, Singapore Exchange, and Stock Exchange of Thailand, Thai subsidiaries of multinational corporations, Thai owned companies and foreign investors.

Narit holds earned an LL.B (1st class honors) from Chulalongkorn University, an LL.M (British Chevening Cambridge Scholar) from the University of Cambridge, England and an MBA in Finance (GRSP Scholar) from the Georgia Institute of Technology, Atlanta, USA. Narit commenced his legal career at Baker & McKenzie, Bangkok office. He also worked at Baker & McKenzie, Sydney office, Australia and the Investment Banking Group at DBS Bank, Singapore. Narit is the author of *What Every Executives Need to Know about Thailand Tax*, a practical guideline in plain English on tax planning strategy for those operating business in Thailand.

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 DISPUTE

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.

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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

Business Setup
Construction
Contracts/Agreements
Employment
General Counsel Services
Mergers & Acquisitions
Real Estate

DISPUTE RESOLUTION

Debt Collection
Shareholder's Dispute
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

For more detailed information,
please visit our website at

www.naritlaw.com

