

# NEWSLETTER

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## 1. Statutory Provision Imposing the Presumption of Guilt on Representatives of a Legal Entity is Ruled Unconstitutional

The principle of presumption of innocence prevails in most jurisdictions in the world. In Thailand, ironically many statutes still automatically presume that legal entity's legal representatives, i.e. a director, an officer, a managing director or a person who is responsible for operation of the legal entity to be guilty of a crime committed by the legal entity, unless the legal representatives can prove otherwise. This means if a public prosecutor or a plaintiff's attorney can prove to the court beyond a reasonable doubt that the legal entity is guilty of the crime, its legal representatives (as prescribed by a relevant statute) is presumed to be guilty of the same crime committed by the legal entity, unless the legal representative can prove that the legal representatives played no part in committing such crime. This unfairly passes a burden of proof for innocence to legal representatives.

The Constitutional Court rules that the statutory provision presuming the guilt of legal representatives is not the presumption of some facts that are components of a crime and that the statutory provision is contrary to the rule of law and Article 11 of the Universal Declaration of Human Rights. The Constitutional Court rules that the presumptive provision in the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) that presuming the guilt of a managing director, a manager or any person responsible for operation of a legal entity without appearing of any involvement of the person with the committing of the crime of the legal entity unconstitutional.

This decision of the Constitutional Court affects not only the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), but also many other acts that presume the guilt of legal representatives of a legal entity if the legal entity is found to commit any crime. This list of the acts having the presumptive provision for legal entity's legal representatives includes the customs law and the Revenue Code. This decision will be a criminal defense tactic for the legal representatives who are charged for committing a crime along with the legal entity.

For more details, please contact our lawyer for consultation.

## 2. Minimal Relaxation of the Conditions for Regional Operating Headquarters' Tax Privileges

The Regional Operation Headquarters ("ROH") classification is the tax privilege scheme offered by the Thai government in an effort to lure multinational corporations to set up their regional administrative offices here in Thailand. This effort largely failed to convince many multinational corporations to relocate their regional administrative office here under the ROH scheme. Why this ROH scheme has failed so far? The main reason is the rigid conditions of the ROH scheme. The existing rule says that if the ROH type 2 fails meet any of the conditions pertaining to a minimum number of offshore affiliates that the ROH renders the services, minimum expenditures, a minimum number of qualified employees, a minimum amount of employee compensation and a minimum number of employees, the tax reduction and exemption will be revoked retroactively way back to the first year.

The new rule is slightly more flexible than the existing rule. Under the new rule, if the ROH type 2 fails to fulfill any of the required conditions in any accounting year, the tax reduction and exemption will be revoked retroactively to the first year just like the existing rule except for any failure to meet the conditions pertaining to minimum expenditures and a minimum number of qualified employees, in which the tax reduction and exemption will be revoked from the year in which the conditions are not fulfilled.

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](mailto:enquiry@naritlaw.com)

**WEBSITE** [www.naritlaw.com](http://www.naritlaw.com)

# NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,  
DISPUTE RESOLUTION & TAX  
BANGKOK, THAILAND

## 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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