



## Legal Update Week 17 - 18 (23 April – 6 May 2019)

- Highlights:**
- Thailand still on the US watchlist for IP violations
  - New alternative right over real estate called “Sub-Ing-Sitthi”.
  - Hopewell (Thailand) Co., Ltd. to be compensated by SRT and MOT.

### Thailand legal news

- **26 April 2019:**
  - The Office of the U.S. Trade Representative (USTR) released annual Special 301 report on the adequacy and effectiveness of trading partners’ protection of intellectual property rights. Thailand remains on the Watch List (WL), since it has been moved up from Priority Watch List (PWL) in 2017.  
\*Lately, Thailand implemented defensive and supportive measures for intellectual property (“IP”) in various aspects e.g. increasing efficiency for IP registration, providing the international trademark registration system under Madrid Protocol, amending patent laws, taking serious action to reduce infringement in both marketplace and internet.
  - The poll regarding the status of Thai labour revealed that 95% of low income labours (less than THB 15,000) is in debt (approx. THB 158,855 per household) and 86.2% of them has no saving. Money (debt) is spent mostly on daily expenses and accommodation.
- **29 April 2019:**
  - The Office of Trade Competition Commission has launched the legal guideline to consider unfair behaviors of wholesale and retail businesses. This guideline will be opened for public hearing during 29 April – 28 May 2019, then will be concluded and enforced.

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- **1 May 2019:**

- The Minister of Transport (“MOT”) prepared 5 options to compensate Hopewell (Thailand) Co., Ltd. (“HW”) for termination of contract after the Supreme Administrative Court ordered State Railway of Thailand (“SRT”) and MOT to pay THB 11.8 billion, plus 7.5% per annum interest. For more details regarding this case, please see the timeline below.

Year	Situation
1990	SRT signed concession contract with HW to build an elevated highway and rail system from central Bangkok to Don Mueang International Airport.
1992-1995	The project faced funding and other problems from government side e.g. economic recession and failure to hand over plots.
1995-1996	The project faced construction delays due to the aforesaid problems.
1998	SRT terminated the contract due to delayed construction.*
2004	HW filed a petition to the arbitration tribunal for MOT and SRT to pay THB 56 billion compensation for termination without the right to do so. HW also cited that major cause for delay was the failure of SRT to hand over land plots along the project’s routes. The SRT counterclaimed for THB 200 billion compensation for loss of opportunity to utilize the constructions under this project.
2008	The arbitration tribunal ordered MOT and SRT to pay THB 11.88 billion plus 7.5% per annum interest to HW for unfairly contract termination.
2014	- SRT later filed the case to the Administrative Court, hoping to avoid the compensation. - The Central Administrative Court overturned the arbitration award seeing that the arbitration tribunal lacked authority (HW’s late filing). The court also ordered court fees to be refunded to MOT and SRT. - HW appealed the ruling.
2019	The Supreme Administrative Court overturned the lower court ruling and ordered the parties to comply with the arbitral award within 180 days of the ruling (SRT to pay THB 11.88 billion + 7.5% interest).

\*These massive losses derive from many loopholes in the concession contract e.g. SRT has no right to terminate the contract when HW is unable to fulfill the terms and conditions.

## New Cabinet resolutions

### 24 April 2019:

- **Approved Draft:** Draft Min. Reg. (No. ..) B.E. .... issued under the Revenue Code re: tax exemption (tax measure to promote and support electronic tax system).

Tax deduction allowance	Limit	Period	
		From	To
The expenses related to the investment in the electronic tax system i.e. Point of Sale (POS), e-Tax Invoice & e-Receipt, e-Withholding Tax	200%	30/4/2019	31/12/2019

### 30 April 2019:

- **Approved Draft:** Draft Min. Reg. indicated the restricted areas for construction and modification for specific types of buildings in Phayathai and Ratchathewi, Thonburi, Khlong San district, Bangkok.

## Royal Gazette Update:

Date	Part	Subject
30 April 19	Gor	<ul style="list-style-type: none"><li>• <b>Act on Sub-Ing-Sitthi B.E. 2562</b> (“ทรัพย์สินอสังหาริมทรัพย์”)</li><li>- <u>Effective date</u>: 27 October 2019 (180 days after enacted).</li><li>- Establish <u>new</u> alternative right over real estate which will support and push up real estate investment and national economy.</li></ul>

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		<ul style="list-style-type: none"><li>- Sub-Ing-Sitthi is similar to lease, but less limitation and more flexibility.</li><li>- The asset which can be registered for Sub-Ing-Sitthi are land with title deed (with/without buildings) and condominium.</li><li>- The registration of Sub-Ing-Sitthi must be made in writing and registered with the land department (30 years maximum).</li><li>- Grantee of Sub-Ing-Sitthi can lease out, sell, transfer, inherit, use as collateral (mortgage), alter, modify and construct any building on such asset, without permission/consent of the grantor needed.</li></ul> <p><a href="http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0097.PDF">http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0097.PDF</a></p>
	Gor	<ul style="list-style-type: none"><li>● <b>Factory Act (No.2) B.E. 2562</b></li><li>- <u>Effective date</u>: 27 October 2019 (180 days after enacted).</li><li>- Narrow down the definition of “Factory” to cover merely factory with machinery <math>\geq</math> 50 hp and/or <math>\geq</math> 50 employees. (Previously, 7 hp and/or 5 employees).</li><li>- Relax factory’s control regulations and take control only when necessity.</li></ul> <p>*This change will cause 70,000 factories (out of 140,000) to be out of the control under the Factory Act.</p> <p><a href="http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0213.PDF">http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0213.PDF</a></p>
	Gor	<ul style="list-style-type: none"><li>● <b>Factory Act (No.3) B.E. 2562</b></li><li>- <u>Effective date</u>: 1 May 2019 (next day after enacted).</li><li>- Transfer the duties of the officials type 1 and 2 under the Factory Act to local administration (decentralize power to local administration in accordance with the national plan).</li></ul> <p><a href="http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0227.PDF">http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0227.PDF</a></p>
	Gor	<ul style="list-style-type: none"><li>● <b>Act Establishing Administrative Courts and Administrative Courts Procedure (No.12) B.E. 2562</b></li><li>- <u>Effective date</u>: 1 May 2019 (next day after enacted).</li><li>- Alternative dispute resolution: allowing mediation and conciliation in administrative cases.</li></ul> <p><a href="http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0247.PDF">http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0247.PDF</a></p>