
5. Legal Disputes

5.1 The Disputes with Expressway Authority of Thailand (“EXAT”)

The Company and NECL have a total of 12 disputes with EXAT, which were referred to the Arbitral Tribunal in accordance with the dispute settlement procedures under the Agreements and in the Administrative Court, divided into the disputes that the Company and the subsidiary referred to the dispute settlement proceedings under the Agreements and demanded for damages with the total amount until the date of submission of the disputes of approximately Baht 28,179.8 Million; and the disputes that EXAT submitted claims for damages with the total amount until the date of submission of the disputes of approximately Baht 9 Million. The essence of each dispute was as follows:

5.1.1 Disputes submitted by the Company and the subsidiary claiming for damages

1. Priority Component Opening Date under the Second Stage Expressway Agreement

The Company completed the construction of the “Priority Component” of the Si Rat Expressway on November 13, 1992, in respect of which the Agreement specifies that the date on which the Construction Completion takes place in respect of the Priority Component should be deemed as the Priority Component Opening Date, and the Company would then be entitled to receive the toll revenue sharing, but EXAT just commenced sharing the toll revenue with the Company on September 2, 1993, thereby rendering the Company to lose such revenue which should have been received under the Agreement.

EXAT and the Company had different opinions as to which date was the Priority Component Opening Date, from which EXAT was obliged under the Agreement to commence sharing the toll revenue with the Company onwards.

On December 15, 2008, the Arbitral Tribunal rendered its arbitral award on the dispute requiring EXAT to pay the toll revenue sharing which should have been received by the Company for the period from November 13, 1992 to September 2, 1993, amounting to Baht 1,974.6 Million, including interest amounting to Baht 1,856.8 Million, totaling Baht 3,831.4 Million, including interest until the payment would be made in full to the Company.

EXAT submitted a petition to the Central Administrative Court requesting the Court to revoke the arbitral award, and the Company submitted a petition to the Central Administrative Court requesting a judgment to enforce compliance with the arbitral award, with the disputed amount of Baht 5,021.1 Million.

On September 13, 2013, the Central Administrative Court adjudged to dismiss EXAT’s petition requesting the Court to revoke the arbitral award and adjudged to enforce the Company’s petition by requiring EXAT to pay the toll revenue sharing which should have been received by the Company, amounting to Baht 1,974.6 Million, with interest under the Agreement amounting to Baht 3,046.5 Million, totaling Baht 5,021.1 Million, to the Company.

On October 11, 2013, EXAT lodged an appeal against the Central Administrative Court’s judgment with the Supreme Administrative Court. At present, it is pending the Supreme Administrative Court’s consideration.

2. Competing road with the Udon Rattaya Expressway

The Agreement specified that during the term of the Agreement, should EXAT or the Government put into effect any arrangements for the construction or substantial improvement of any road or highway of an expressway standard within the primary catchment area of the expressway, which has the effect of reducing the actual volume of traffic using the expressway or the revenue arising therefrom from the projections, EXAT shall compensate the subsidiary for such effect.

Given that the Government granted permission for construction of the Extension of the Don Muang Tollway Project, from the National Memorial to Rangsit Section, which constituted a competing road under the Agreement, and affected the financial position of the subsidiary, the subsidiary therefore demanded EXAT to compensate for such effect as per the Independent Certification Engineer’s letter certifying the effect upon the subsidiary.

On November 27, 2008, the Arbitral Tribunal rendered its arbitral award on the dispute requiring EXAT to compensate for the deficient revenue from the projection to the subsidiary for the year 1999 in the amount of Baht 730.8 Million, with interest, and for the year 2000 in the amount of Baht 1,059.2 Million.

EXAT submitted a petition to the Central Administrative Court requesting the Court to revoke the arbitral award, and the subsidiary submitted a petition to the Central Administrative Court requesting a judgment to enforce compliance with the arbitral award, with the disputed amount of Baht 3,296.7 Million.

On May 3, 2013, the Central Administrative Court adjudged to dismiss EXAT's petition requesting the Court to revoke the arbitral award and enforced compliance with the subsidiary's petition, thereby requiring EXAT to compensate for revenue reduced from the projection to the subsidiary for the year 1999 in the amount of Baht 730.8 Million and for the year 2000 in the amount of Baht 1,059.2 Million together with interest until the said payment would be made in full.

On May 31, 2013, EXAT lodged an appeal against the Central Administrative Court's judgment with the Supreme Administrative Court. At present, it is pending the Supreme Administrative Court's consideration.

3. Issuance of variation orders by EXAT

EXAT issued additional variation orders for certain construction work of the Si Rat Expressway and confirmed that EXAT would be responsible for such costs as actually incurred by such variation orders. The Independent Certification Engineer subsequently issued a letter certifying the additional costs in the total amount of Baht 209.1 Million (excluding interest). EXAT refused to make such payment as certified by the Independent Certification Engineer.

On December 20, 2013, the Arbitral Tribunal unanimously rendered its arbitral award requiring EXAT to pay the construction costs and expenses as per such variation orders in the total amount of the principal with interest of Baht 382.5 Million, including interest on the principal of Baht 209.1 Million, until the said payment would be made in full to the Company.

On March 26, 2014, EXAT submitted a petition to the Central Administrative Court requesting the Court to revoke the arbitral award. At present, it is pending the Central Administrative Court's consideration.

4. Revision of toll rates of the Chalerm Mahanakorn Expressway and the Si Rat Expressway for the year 2003

The Company requested to revise the toll rates under the Second Stage Expressway Agreement which stipulates that the toll rates shall be revised every five-year interval. In this regard, EXAT and the Company had different opinions in respect of the calculation of the tolls to be revised, and as such, EXAT issued the toll rate notification which did not increase the toll rates as proposed by the Company.

On May 14, 2008, the Company submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages caused by the revision of toll rates for 2003, which was not in accordance with the Agreement, in the total amount of Baht 4,368 Million. The witness examination was completed on October 16, 2015, and the due date for both disputing parties' submission of their closing statements was scheduled for January 5, 2016.

5. Revision of toll rates of Sector D of the Si Rat Expressway for the year 2003

The Company requested to revise the toll rates under the Agreement for the Extension of the Second Stage Expressway System (Sector D) which stipulates that the toll rates shall be revised every five-year interval. In this regard, EXAT and the Company had different opinions in respect of the calculation of the tolls to be revised, and as such, EXAT issued the toll rate notification which did not increase the toll rates as proposed by the Company.

On July 24, 2008, the Company submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages caused by the revision of toll rates for the year 2003, which was not in accordance with the Agreement, in the total amount of Baht 1,048.2 Million. At present, it is in the process of the witness examination, which will be completed in March 2016.

6. Revision of toll rates of the Chalerm Mahanakorn Expressway and the Si Rat Expressway for the year 2008

The Company requested to revise the toll rates under the Second Stage Expressway Agreement which stipulates that the toll rates shall be revised every five-year interval. In this regard, EXAT and the Company had different opinions in respect of the calculation of the tolls to be revised, and as such, EXAT issued the toll rate notification which did not increase the toll rates as proposed by the Company.

On June 13, 2013, the Company submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages, together with interest, caused by the revision of toll rates for the year 2008, which was not in accordance with the Agreement, in the total amount of Baht 9,091.8 Million.

At present, it is in the process of the witness examination. The Thai Arbitration Institute scheduled the hearing dates for examination of witnesses of the Company to be held in January 2016.

7. Revision of toll rates of Sector D of the Si Rat Expressway for the year 2008

The Company requested to revise the toll rates under the Agreement for the Extension of the Second Stage Expressway System (Sector D) which stipulates that the toll rates shall be revised every five-year interval. In this regard, EXAT and the Company had different opinions in respect of the calculation of the tolls to be revised, and as such, EXAT issued the toll rate notification which did not increase the toll rates as proposed by the Company.

On June 28, 2013, the Company submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages, together with interest, caused by the revision of toll rates for the year 2008, which was not in accordance with the Agreement, in the total amount of Baht 4,062.8 Million. At present, it is pending selection of candidates for appointment as the Chairman of the Arbitral Tribunal.

8. Revision of toll rates of Udon Rattaya Expressway for the year 2003

The subsidiary requested to revise the toll rates under the Bang Pa-in - Pak Kret Expressway Agreement which stipulates that the toll rates shall be revised every five-year interval. In this regard, EXAT and the subsidiary had different opinions in respect of the calculation of the tolls to be revised, and as such, EXAT issued the toll rate notification which did not increase the toll rates as proposed by the subsidiary.

On October 22, 2013, the subsidiary submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the subsidiary for damages, together with interest, caused by the revision of toll rates for the year 2003, which was not in accordance with the Agreement, in the total amount of Baht 908.7 Million, and interest shall be calculated on a daily basis on the principal of the damages in the amount of Baht 561.9 Million from the day following the date of submission of the statement of claim until EXAT would compensate the subsidiary for the principal of such damages, together with interest in full.

On June 23, 2014, the subsidiary submitted a letter of appointment of its arbitrator, and EXAT submitted a letter of appointment of its arbitrator on June 25, 2015.

At present, it is pending selection of candidates for appointment as the Chairman of the Arbitral Tribunal.

5.1.2 Disputes submitted by EXAT claiming for damages

EXAT referred four disputes to the Arbitral Tribunal requiring the Company and its subsidiary to be held liable for costs, in the total amount of Baht 9 Million, which the Company and its subsidiary were of the view that such costs claimed by EXAT were not within their scope of responsibility under the Agreements. In this regard, the Arbitral Tribunal rendered its arbitral awards on three disputes, two disputes of which were referred by EXAT to the Administrative Court for enforcement of the arbitral award and revocation of the arbitral award.

1. Additional construction work

On September 25, 2009, the Arbitral Tribunal issued its arbitral award requiring the Company to reimburse EXAT for the amount advanced by EXAT for mitigation of damage for complainants, in the amount of Baht 1.7 Million. The Company submitted

a petition to the Central Administrative Court requesting the Court to revoke the arbitral award. EXAT submitted a petition requesting compliance with the arbitral award to the Central Administrative Court.

The Central Administrative Court rendered its judgment revoking the arbitral award, and as such, the Company's petition was dismissed. Having considered the current facts, the Company deemed it appropriate not to lodge an appeal against the Central Administrative Court's judgment with the Supreme Administrative Court.

On February 27, 2015, the Central Administrative Court adjudged to enforce the arbitral award in the case where EXAT submitted the petition requesting compliance with the arbitral award, by requiring the Company to comply with the arbitral award within 60 days from the date the case was final. Such arbitral award required the Company to install noise barriers for 6 complainants, arrange for entrance-exit for 3 complainants, and reimburse EXAT for Baht 1.4 Million which was advanced to the complainants.

On March 20, 2015, the Company made payment to EXAT pursuant to the judgment in the amount of Baht 1.4 Million, together with interest from the date on which EXAT advanced such amount until the payment would be made in full in the amount of Baht 1.3 Million, totaling Baht 2.7 Million, and the Company submitted to the Central Administrative Court its statements for notification of its compliance with the arbitral award.

2. Cost of arrangements of the entrance - exit and resolution of complaints

On January 23, 2014, the Arbitral Tribunal issued its arbitral award ruling that EXAT may not exercise a right of claim demanding the Company to pay the cost of arrangements of the entrance - exit and the cost of road construction, together with drainage and free flow drains, totaling Baht 0.4 Million, therefore dismissed EXAT's claims and requests.

On May 7, 2014, EXAT submitted a petition for revocation of the arbitral award to the Central Administrative Court. At present, it is pending the Central Administrative Court's consideration.

3. Cost of utilization of the Second Stage Expressway Control Center Building

On February 16, 2015, the Arbitral Tribunal rendered its arbitral award that the Company was not required to deliver or leave the vicinity of the Second Stage Expressway Control Center Building, and was not required to pay EXAT for the cost of utilization of such area. In this regard, EXAT accepted this arbitral award, the case was thus final.

However, given that all of the remaining cases are not yet final and the Company's management believed that there would be no material impact upon the Company, the Company therefore did not record such entries in the financial statements.

5.1.3 Lawsuit

An expressway user sued the Expressway Authority of Thailand (EXAT) and the Company on grounds of wrongful act in relation to traffic management and safety on the Si Rat Expressway System, whereby EXAT was the first defendant and the Company was the second defendant. The Court of First Instance adjudged to dismiss the plaintiff's claim. The Appeal Court adjudged to require EXAT and the Company to jointly compensate the plaintiff in a total amount of Baht 2.3 Million, with interest at the rate of 7.5 percent per annum, from May 21, 2005 onwards until the payment would be made in full. In this regard, the Company, EXAT and the plaintiff lodged their respective appeals with the Supreme Court.

On June 30, 2015, the Supreme Court adjudged to confirm the Appeal Court's judgment requiring EXAT and the Company to jointly compensate the plaintiff. On August 10, 2015, the Company duly deposited such payment with the Court per the judgment.