16th Annual Conference

Does legal risk management and compliance really matter?

Maximise Shareholder Value through Effective Tax Planning 2015

16 October 2014
Shangri-La Hotel
Agenda

- Real Cases!
- Why important?
- Key legal compliance risk elements
- What do you need to comply with, if you are...
  - Manufacturer
  - Service operator
  - Related to UK company
  - Related to US corporation
  - Issues common to all
- How to manage compliance
Real cases
It could happen in your organisation!
ที่มา: ไทยรัฐ 6 ต.ค. 2557

ที่มา: ไทยรัฐ 12 ก.พ. 2555

ที่มา: สุรินทร์โพสต์ 29 พ.ค. 2557

ที่มา: ไทยพัฒนา 25 ม.ค. 2555

ที่มา: ไทยรัฐ 3 ต.ค. 2554

ที่มา: ประชาชาติธุรกิจ 9 ก.ย. 2555

ที่มา: ไทยรัฐ 18 มี.ค. 2557

ที่มา: ไทยรัฐ 12 ก.พ. 2555

ที่มา: ไทยพัฒนา 25 ม.ค. 2555

ที่มา: สุรินทร์โพสต์ 29 พ.ค. 2557
Why Important!
The Cost of Compliance

Corporate level
• Fines
• Brand reputation
• Money & time wasted
• Suspension or closure of business
• Third party claims
• Civil or Criminal actions
• Unenforceable agreements

Individual (personnel) level
• Imprisonment or fine
• Criminal record
• Prohibition from industry
• Civil and/or disciplinary action
• Loss of employment
• Time wasted
• Revocation of profession license
Key legal – compliance -risks elements

Corporate
- Civil and Commercial Code
- Act Prescribing offences related to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations
- Foreign Business Act
- Public Limited Company Act
- Securities and Exchange Act
- Land Code

Contractual relationship
- Unfair Contract Terms Act
- Form vs. Substance
- Contractual terms and conditions
- Know your clients/ customers
- Risk allocation & mitigation
- Force majeure vs Hardship clause
- Enforceable of agreement

Employment
- Labour Protection Act
- Labour Relations Act
- Working of Alien Act
- Social Security Act /Workmen’s Compensation Act
- Establishing the Labor Court and Labor Court Procedure
- Occupational Safety, Health and Environment Act

Company compliance

Industry compliance

Licences

Sample of regulatory authorities:
- Food and Drug Administration
- Bank of Thailand
- Energy Regulatory Commission
- Office of the National Broadcasting and Telecommunications Commission
- Department of Public Works and Town & Country Planning
- Office of Natural Resources and Environmental Policy and Planning

Sample of Licences:
- BoI certificate
- Factory Licence
- Storage of Fuel License
- Food Distribution Centre License
- Groundwater License
- Hazardous Possession License
- Warehouse License
- IEAT
- Etc.

Revenue Department
- Tax return filing
- VAT/SBT filing
- Stamp duty affixed

Excise Department

Tax compliance/Accounting

Transactions Management

HR
What do you need to comply with?

Specific Industry Compliance – Manufacturing Businesses

**Responsibility under the Factory Licence**

**General requirements**
- Operate in the specified scope of activity
- Comply with machinery capacity
- Appoint environmental management personnel
- Submit pollution report, e.g. wastewater
- Obtain permission to transport waste out of factory
- Obtain boiler safety annual report and boiler controlled permit

**BOI requirements**
- Apply for operation start-up within the required period
- Submit BOI annual report
- No mortgage of machinery without obtaining prior approval
- Report stoppage of operations for more than 2 months
- Use only new and qualified used machinery
- Do not use joint machinery in approved BOI project without BOI approval

**Responsibility under the BOI**

**Responsibility under other laws**

- Construction license vs Certificate of use of building vs Permission for building modification
- Zoning law restrictions
  - Town planning
  - Aviation
  - Forestry area
  - Permanent Forest Area
- Trade Competition Act
- FBA
  - Toll manufacturing
What do you need to comply with?

Specific Industry Compliance – Service Business

Common business restricted under the FBA

- Trading business
- After sales service
- Lending service
- Land lease
- ATM location
- Canteen for employees
- Toll manufacturing

Significant regulations governing service business

- Bank of Thailand regulations
- Telecommunications Business Act
- Travel Agency Business and Guide Act
- Hotel Act
- Etc.
If you are related to a **UK company**
More concerns on...

**Bribery Act**

- It introduced the offence of corporate failure to prevent bribery.
- The Act has extra-territorial reach.
- The only defence for companies against this liability is to prove that it had in place adequate procedures to prevent bribery.

**Did you put in place adequate procedures to prevent bribery?**

There are penalties set out for companies, boards of directors and individuals.

- Offence committed by companies is punishable by a fine (unlimited).
- Offence committed by an individual is punishable by imprisonment for a term not exceeding ten years or to a fine, or to both.
If you are related to a UK company
More concerns on...

Anti-Money Laundering

• Recent recommendations of the Basel Committee on banking on how to manage the risks relating to money laundering and financing of terrorism need to be addressed.

• Need to demonstrate a robust compliance framework ensuring that each territory has sufficient oversight, and that AML regulatory requirements are being adhered to both at the local and global level.

• Do you know your customers well enough?
If you are related to a **UK company**

More concerns on...

**Competition Act**

- The strongest driver for compliance with antitrust law is the desire to conduct business ethically and to be recognized as doing so.
- There can be no “one-size-fits-all” approach.
- Competition and Markets Authority ("CMA") is the principal competition authority which took over in April 2014.
- CMA investigates mergers and anti-competition practices in markets and also enforces some consumer laws.

- Are you aware of some degree of risk your organisation is facing?
- Have you adopted a code of conduct to articulate clearly the standards all employees must meet when doing business?
- Do your business leaders show personal active support for ethical business practices?
If you are related to a US corporation
More concerns on...

FCPA

- Does your organisation have any connections with a U.S. entity?
- Are you subject to the FCPA provisions?
- Have you put in place internal controls which are essential to detecting and preventing FCPA violations?
If you are related to a US corporation
More concerns on...

Anti-Money Laundering

- Is your company considered as a financial institution under the US Anti-Money Laundering laws?
- Have you put in place a compliance programme to identify and verify the identity of customers?
If you are related to a **US corporation**

More concerns on...

**FATCA**

- Is your organisation considered as a foreign financial institution under the FATCA?
- There are a number of new or revised responsibilities and requirements for MNCs on information reporting and withholding requirements for payments to U.S. and non-U.S. payees. Are you in compliance with these new requirements?
- Are you aware of the existence of presumption rules that apply with regard to payees who fail to provide valid documentation in a timely manner?
**Issues common to all...**

**Corporate**
- Missing the filing deadline
- Non-compliance with the obligations under the CCC
- Operation of restricted businesses without foreign business licence

**Contractual relationship**
- Non-compliance with the forms required by the CCC
- Excessive burdens imposed on the other party
- Unauthorised signatories

**Employment**
- Unlawful termination
- Non-submission of the company’s work rules
- Illegal amendments to employment conditions
- Unlawful overtime wage policy
- Illegal foreign workers
- Temporary stoppage of operations

**Tax Authorities**
- Missing the filing deadline for income tax return
- Miscalculation of CIT exemption – non-BOI income
- Stamp duty not duly affixed

**Failure to obtain regulatory required operation licence, such as:**
- Food Manufacturing Licence
- Banking Licence
- Licence for the Energy Industry Operation
- Telecommunications Licence
- Tourist Business and Guide Licence
- Land zoning restriction
- Environmental limitation

**Sample of common absent licences:**
- Licence for Operation of Controlled Business
- Hazardous Materials Business Licence
- Food Distribution Centre Licence
- Storage of Fuel License
- Non-compliance with the conditions under the BOI certificate

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How to manage compliance

1. Identify
2. Assess
3. Mitigate/manage
4. Monitor
5. Practice

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Slide 16
To foresight & prevent.....

not to find & fix
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Slide 18