

Singapore Summit on Anti-Corruption Compliance and Risk Management

Thailand – Responding to Demand Side “Requests”

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Responding to Demand Side “Requests” in Thailand

- Understanding the Environment
- Using Compliance to Deter Requests from Being Made in the First Place.
- Planning Ahead When Establishing Operations in Thailand
- Indirect & Direct “Requests” from Officials
- Proactive Avoidance Measures

Understanding the Environment – High Level

- Transparency International – Corruption Perceptions Index 2011:
 - Score 3.4 (10)
 - Rank 80 (183)
- Thailand does not have a monopoly on red tape, but it does seem to have more than its fair share.
- Thai statutes tend to state law in broad terms. A significant amount of discretion is vested in officials and those officials are sometimes operating according to unpublished internal rules or established, but unwritten, practices and customs.

The Environment: Not all Government Agencies are equally...

- Government agencies in charge of large financial transactions.
- Approvals required for many routine activities, but not all agencies responsible for routine approvals are equally problematic.
- Common 'Routine' Problems
 - Queue Jumping
 - Missing Records

Caution: corruption and corruption allegations have become highly politicized in Thailand, and this will likely not change in the near future.

The Best Offense...is a Robust Compliance System

- Clear & Concise – English & Thai
- Attachment C to Deferred Prosecution Agreements
- Commitment from Senior Management – Make that Thailand Trip.
 - Reporting Resources
 - Coming Soon: Bribespot (in Thai) – Don't be preempted.
- Disciplinary Action & Compliance: A minefield that can be mitigated with a clear compliance program.

Establishing Operations in Thailand

- Agency vs. Local Subsidiary.
- Due Diligence **Before** Establishing an Agency Relationship or Hiring Employees.
 - Qualifications & Associations.
 - Business Rationale.
- Education & Training:
 - Setting the General Principles.
 - Implementing them Locally.

On-Going Monitoring & Audits

- Long Distance Monitoring?
 - Form over Function.
 - Gadgetry has Serious Limits.
 - Language Matters:
 - ไบ่สั่ง police ticket or purchase order (สินค้า)?
 - ปรับ to impose a fine or adjust?
- Local Law Considerations:
 - The Work Permit “Trap”
 - Before Careful What you Say – Liberal Use of Criminal Defamation in Thailand.

Indirect Requests from Officials

- Recognizing when a request is made in a culture graced with politeness and charm, but not known for bluntness and candor.
- Distinguishing between legitimate and tactical delays.
- And when a delay is tactical, determining if it's a polite "no" or an opening gambit.
- Turning the tables and using guilelessness as a weapon:
 - Ask yourself: do I even need to respond?
 - "I am sorry I don't quite understand. It's probably my own denseness. Could you tell me clearly what you want in an email or letter?"

Direct Requests

- Be very careful before jumping to conclusions – or at least articulating them yourself.
- “I am sorry could you say that again?”
- Make sure it’s understand that it’s a lose/lose proposition. For example, *U.S. vs. Juthamas Siriwan, et. al.*
- Tactical Disappointment without patronization.
- Allow the other side an opportunity to retract and distance themselves from the request or demand while keeping their face intact.

More Direct Requests

- “I am sorry, I am from _____, and we don’t do that sort of thing.”
- Name & Shame? If you decide to do it, do so carefully and make sure you have a clear path the to the Exit Door.
- Don’t Play the General’s Game. There are 1,600 of them.
- Extortion: Have Your Embassy’s number handy.

Proactive Avoidance Measures

- Due Diligence
- Make sure that everyone understands that your country's foreign corruption prohibitions are real. People go to jail. Cite examples.
- Make sure that everyone understands that your company's rules are real. Careers are destroyed.
- Make sure every one understands that your zero tolerance policy on corruption is not negotiable.

Thank you

While reasonable efforts have been made to ensure the preceding slides are accurate, this presentation does not constitute legal advice.

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