

Call in for a Coffee

RSM Nelson Wheeler, Thailand

Edition No. 26

March 2005

Introduction

Welcome to **RSM's** March 2005 edition of "Call in for a Coffee". This edition focuses on the Sarbanes-Oxley Act of 2002 ("SOX") which was enacted as a direct result of the Arthur Andersen/Enron debacle. The article was written by **Mr. Andrew Durieux** an expert on the subject, who now consults to **RSM**.

It's a Risky World - SOX and the Thai company

The Sarbanes-Oxley Act of 2002 is now in effect. At the highest level the legislation affects only US listed companies as befits a piece of legislation enacted by the US government. Amongst other things the CEO, CFO and Auditors of any affected company are now forced to provide an annual sign-off attesting that they have established and maintain an adequate internal control structure and procedures for financial reporting. The objective is to ensure that investors are confident that information supplied by corporate America is correct after the various scandals that have rocked the US and global stock markets over the last few years.

This appears to mean that the only affected companies will be those that are listed on any of the US Stock Markets. However, the legislation specifically requires that these new sign-offs apply to the US operations and any subsidiaries of the US listed company where at least a significant stake is held by the US parent either directly or indirectly regardless of the location.

This means that there will be a number of Thai companies for which a CEO, CFO or Auditor in the US will be providing a sign-off for which they can be held legally accountable for up to 5 years from the date of submission. Already some Thai companies have had requests made by their parent companies for a statement of compliance with the SOX legislation.

The requirement for an increased accountability and responsibility for the internal controls, and having external auditors also sign-off on these and their effectiveness for each year is actually a very broad change in that the regulators can now punish companies or individual managers with various penalties including forcing payback of bonus payments for up to 5 years after payment.

Most of the major accounting firms (Deloitte, E&Y, PWC and others) have indicated that their Auditing responsibilities will be taken very seriously (since they can also be "blacklisted" from a list of authorized auditors if their audits are found wanting), and have issued indications of how the legislation will be interpreted by them during their audits.

All of these auditors have indicated that a minimum requirement for adequate controls to be in place will be an active and effective risk management system. This will focus not only on financial matters, but also on operational matters. Risk Management will

need to be more detailed and include Risk Treatment actions. It will no longer be sufficient to present a list of risks. This does not mean that all risks will have to be treated to effectively make any risk an impossibility of occurring – rather it means that management will be responsible for conducting the risk assessment and considering the most appropriate course of action for each risk. In some cases this may mean "taking" the risk – in others the potential impact, and likelihood of the risk will be significant and once this is known a manager will be forced to take steps to treat (trim or transfer) the risk.

The likely implication for Thai companies that are not US listed or subsidiaries from the SOX legislation is that when a US listed company or its subsidiaries undertake their risk assessments, it is likely that suppliers and outsourced service providers will be identified as risks.

This means that Thai companies could be asked to provide information about their own risk management activities, since failure could disrupt a US company or subsidiary to the extent that a SOX sign-off may not be able to be provided, or an auditor may consider it necessary to indicate that controls on key suppliers or outsourced service providers are not appropriate, thereby placing the CEO's bonus at risk or ultimately the listing of the US parent.

A number of other countries have similar standards or practices either enshrined in legislation or otherwise enforced. Even without legislation many groups recommend having a Risk Management process in place as good practice and beneficial to the overall long term performance of a company. The Thai government and stock exchange has indicated that these internal controls will be required within the coming two or three years.

Similar internal controls are required for industry groups that involve European, US, Japanese and Australian legislation. Basel 2, Food labeling, "Point of Origin" and "Farm of Origin" are all examples.

Thai companies need therefore to be proactive and implement best practices such as Risk Management as soon as possible. Where it is required it can be used as compliance evidence and saving other compliance costs. Where possible, this can also be used as a selling tool proving a commitment to minimizing risks of customers. Thai shareholders (listed or otherwise), just like their US and European counterparts, will eventually see the benefit and therefore necessity of these activities. Recent events such as Bird Flu, the Tsunami, Drought and SARS are all examples of how good business practices such as Risk Management and Business Continuity can help the bottom line if managed well.

RSM! Nelson Wheeler (Thailand) Limited

No responsibility can be taken by the publisher or the contributors for action taken as a result of information provided or opinions expressed in this publication. Readers are strongly recommended to take expert advice on particular situations.

So why not get the lead on your competitors?

RSM can help you get started with a tailored best practice Risk, Business Continuity and/or Crisis Management program complete with training, documentation and compliance evidence.

Andrew Durieux can be contacted on andrew.durieux@rsmnw.com

Land Acquired By Aliens

Some of our readers raised certain queries pertaining to an article that appeared in our last edition and accordingly, we will clarify those in this edition. Even though the share proportion of 51% (Thai) : 49% (Aliens) is the correct proportion in theory that is applied to a juristic person who wishes to purchase land in Thailand, a shareholder ratio of 61% (Thai) : 39% (Aliens) is still recognised and publicised by some provincial land offices in some rural areas in order to secure the completion of a land sale transaction and unless challenged, the official's decision shall proceed.

Recently, however, there was one land sale transaction lodged by a Bangkok Legal Firm on behalf of its Client in Phuket using the 51:49 ratio, which resulted in an objection from the land official in question since it did not comply with the ratio of 61:39 which was still being applied by that particular land office. The decision was challenged by the legal firm and upheld.

Financial Planning and Tax Preparation Assistance for US Citizens Domiciled in Thailand.

RSM is happy to announce its capability to provide Americans based in Bangkok with income tax preparation services, tax planning and financial planning meeting their unique needs. RSM has established this service through a relationship with a highly experienced and qualified individual based in Bangkok who is a U.S. Certified Public Accountant-Personal Financial Specialist and Certified Financial Planner Professional. Please contact **Christopher Coleridge Cole** at our offices on 02 253 2984 or mobile: 07 808 8518 for more information or to arrange a meeting.

Employee Retention Plans – Continued from Previous Edition

The greatest assets that a service company such as RSM has is its employees. Is it important therefore that staff of a high standard are taken care of and retained, if possible. Unfortunately, it is often the case that Thais find it difficult to communicate their grievances and consequently their resignation reasons to their foreign employers.

It has been brought to our attention that a number of Thais leaving their employment positions cite incorrect reasons for their departures.

Common Resignation Excuses

How many times have you heard the following resignation reasons from Thai Employees?

1. Have to return upcountry to take care of a sick relative;
2. Have to leave to pursue further studies such as a MBA;
3. Have been offered a job that was applied for prior to commencing work at your company; and
4. Hate my Boss.

It is excuse No. 4 "Hate my Boss" that is often the correct reason and also the least likely one to be communicated to Human Resources or Management. In the event that the Boss is the problem, this can also result in substantial cost to the business to replace staff on a regular basis. It is important, though often difficult, that a system be put in place by Human Resources to ascertain the correct reasons for staff departures to assist in retaining them and better still to save money in training and recruitment costs.

RSM News

RSM would like to wish Mr. Yves Henon's wife Susan and Son Yann a speedy recovery. Susan and Yann, unfortunately, were victims in a terrorist bomb attack in Hat Yai on Sunday 3rd April. Mr. Yves Henon is a Client and good friend of RSM's.

Upcoming RSM Sponsored Events

<u>Date</u>	<u>Event</u>	<u>Contact Details</u>
11.05.05	Lighthouse Club Gathering Bull's Head, Sukhumvit 33/1	sunisa.makotpate@rsmnw.com
6.07.05	Sundowners - AustCham JW Marriott Hotel, Sukhumvit 2	gareth.hughes@rsmnw.com

Free Consultation

If your company has any issues requiring clarification with respect to legal, taxation, accounting, auditing, wealth management or recruitment, please contact the RSM Team and "Call In For A Coffee" for a free consultation.

Contact Details

We are located at:
26th Floor, Sathorn City Tower,
175 South Sathorn Road,
Bangkok 10120, Thailand

Telephone: 66 (0) 2670-9002-6

Facsimile: 66 (0) 2670-9027-8

Website: www.rsmnelsonwheeler.co.th

Email Address: askus.bangkok@rsmnw.com

RSM! Nelson Wheeler (Thailand) Limited

No responsibility can be taken by the publisher or the contributors for action taken as a result of information provided or opinions expressed in this publication. Readers are strongly recommended to take expert advice on particular situations.