

## DSI also has right to investigate customs violations

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Business operators in Thailand should be familiar with the many administrative agencies that have regulatory and investigative authority. For example, under the Customs Act B.E. 2469, the Customs Department has the right to investigate any customs transaction that might not comply with the customs law.

By law, a customs officer may invite a business operator for one or more interviews, and may visit the operator's office to audit and possibly attach documents and goods for further investigation, if the officer believes those documents need to be reviewed by the customs team at their office.

The Customs Department has the authority to levy very substantial taxes, duties and fines if it concludes that the business operation is non-compliant.

Due to recent developments in Thai administrative law, in addition to the Customs Department and other agencies directly responsible for regulating business operators, the Department of Special Investigation (DSI) also has the mandate to investigate what it deems to be customs infractions or other criminal activity related to business. This means that business operators who have never been investigated by the Customs Department might still be investigated for customs violations by the DSI.

The DSI was established under the Special Case Investigation Act of 2004 and accompanying announcements (the SCI Act). The DSI is overseen and directed by the Board of Special Cases, and it is charged with investigating and examining "special cases", which include the following:

- complex criminal cases that require special inquiry, investigation and collection of evidence;
- criminal cases that might have a serious effect on public order and morals, national security, international relations or the country's economy or finance;
- criminal cases that involve serious transnational crime or that were committed by an organised criminal group;
- criminal cases involving an influential person as a principal, instigator or supporter;
- certain criminal cases against administrative officials or senior police officers; or
- any criminal case that the Board of Special Cases determines by majority vote to investigate.

If a matter is judged to fall within the definition of the above "special cases", the DSI will normally send the business operator a written request to attend an interview at the DSI and/or provide the DSI with a list of documents for review.

The DSI may invite the business operator to be interviewed as an accused person or as a potential witness, depending on the amount of evidence already assembled. It is possible for a business operator or members of its management to be called as witnesses, and later to be charged with the suspected crime.

Technically, a person summoned as a witness to give information to the DSI is not entitled to have a lawyer present at the interview (although discretionary exceptions are sometimes granted) and, as a general rule, anything said by a witness and recorded at the interview may be used against him or others. It is always advisable to consult legal counsel as soon as the company is first contacted by the DSI.

When there are reasonable grounds, the DSI official also has the authority to access and search any dwelling place or premises; search any person or vehicle; issue a summons or subpoena to a financial institution, government agency, or state enterprise to provide documents; and seize and attach property that is authorised under the SCI Act.

Under section 41 of the SCI Act, any person who does not facilitate lawful requests for information or evidence by the DSI is subject to imprisonment of up to one year and/or a fine of up to 20,000 baht.

The above list of "special cases" might not seem very relevant to many business operators, but the Board of Special Cases recently refocused DSI resources on other business-related investigations when it issued its Announcements of the Board of Special Cases No. 4 and No. 5 in 2011 and 2012. Under those announcements, "special cases" eligible for DSI investigation now include possible infractions involving (among others) the following list of laws, entities, and agencies:

- consumer protection,
- trade competition,
- government agency bidding,
- customs, liquor and tobacco,
- exchange controls, currency, Bank of Thailand and financial institutions,
- export tax reimbursement,
- trademarks and patents,
- industrial product standards,
- public companies and foreign businesses,
- food, pharmaceuticals, cosmetics, and hazardous substances,
- minerals.

One would be hard-pressed to identify a business operator that does not fall under the purview of the recent announcements from the Board of Special Cases. Thus, almost every business could potentially be subject to a DSI investigation, even when other directly responsible agencies (such as the Customs Department or the Department of Mineral Resources) have passed on the investigation.

All business operators should keep systems in place to help them respond to the DSI and other investigations. They should also consult legal counsel as soon as they become aware of an investigation in order to help them navigate the procedural and substantive requirements, while minimising exposure.