

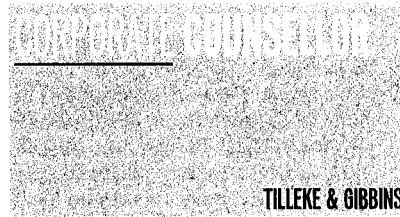
# LEGAL LIABILITY OF RIOT LEADERS

In the last half-decade, many unfortunate events have taken place due to Thailand's ongoing political discord. The recent May riots resulted in incalculable damages, both public and private. Naturally, as Thai law imposes liability on those who directly commit violent acts, those directly responsible and the masterminds of the riots should be held liable for the damages caused. However, this raises questions as to the circumstances under which these instigators or masterminds are criminally and/or civilly liable.

With regard to criminal liability, the masterminds may be deemed liable as "principals" in addition to those who actually committed the violent offences if it can be proven that they had a mutual intention to commit the offences. A precedent with the Supreme Court (Case No. 2038-2041/2527), a case with similar facts to those of the May riots, held that all masterminds (leaders on the stage) who provoked and incited people to participate in anti-government riots and who subsequently created serious disturbances in the city — for example by blocking main streets and burning city halls — were jointly liable as "principals" for committing offences against the internal security of the kingdom and for disturbing public peace.

The delivery of speeches onstage and certain actions of the masterminds may also be viewed as action conducted to instigate others to riot pursuant to Section 84 of the Penal Code. If these actions ultimately result in others committing offences, the masterminds can be held equally liable with the direct offenders.

Under Section 86, two-thirds of the punishment for an offence can be imposed on those who assist or facilitate any person in the commission of an offence. There are no specific actions or omissions defined under the law, but the Thai courts generally interpret this provision broadly. Encouraging an



offender to commit the offence or funding of riots is likely to be interpreted as action amounting to assisting or facilitating the commission of the offence.

The masterminds behind the May riots may also be liable as principals, instigators or assistants (depending on the particular circumstances) for the offence of terrorisation, which is a fairly new offence brought into effect with a 2003 amendment of the Penal Code. This offence covers acts that cause (i) danger to life, body or freedom; (ii) serious damage to public infrastructure; or (iii) damage to the state's or a person's property which in turn causes or is likely to cause an important economic injury. If acts committed are intended to threaten or cause the Thai government to act because failure to act would cause serious injury, or would result in public disorder by terrifying people, offenders would be subject to a severe penalty.

With regard to civil liability, parties aggrieved by the riots are entitled to make a claim against the masterminds pursuant to Section 420 and 432 of the Civil and Commercial Code (CCC). Section 420 is the general provision concerning tortious liability and provides that whoever willfully or negligently injures another person in a variety of specified ways shall pay compensation. Section 432 provides for liability for those who jointly cause a wrongful act or who instigate or assist in a wrongful act.

Under Section 432, Paragraph 2 of the CCC, the masterminds and leaders of riots can be found liable together with the direct wrongdoers for various

forms of action or omission. For example, certain speeches may convey messages intended to incite others to commit wrongdoing and liability can therefore be attributed to those who deliver such speeches. For example, messages such as (i) "Hey folks, bring a canister of gasoline and burn down Bangkok," or (ii) "If they attempt to crack down on us, burn it down. I will be responsible for all results," are likely to incite people, who had no previous intention of wrongdoing, to burn buildings. Accordingly, if a court deems that a time lag between cause and consequence is not a significant factor in determining liability for the offence, the mastermind may be held liable as an "instigator".

"Assisting" in an offence is also broadly interpreted by the courts. A court may view that anyone who commits any act in support of the wrongful act is "assisting" in an offence. For example, the following may be considered as acts of "assisting": televising a broadcast to support the riot, offering encouragement via social networking sites, or arranging transport for weapons and rioters. If the expressions of support and the results are closely linked together, it is likely that a court will hold those providing such assistance liable.

Note also that even the failure to act or take control of the riot by the masterminds may result in civil liability under Section 432 of the CCC.

The law provides remedies for those who suffered losses and damages from the May riots, and there are many civil and criminal provisions under which those involved in the riots, either as masterminds or direct wrongdoers, can be brought to justice.

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