

Offences related to private limited companies

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A substantial number of private limited companies in Thailand are run by foreign managing directors, who often prefer to leave the task of dealing with the legal formalities of Thai corporate law to their accountants or to outsource it to legal service providers and accounting offices.

However, for any managing director it is important to personally know and heed the duties and requirements stipulated by the Thai Civil and Commercial Code (CCC) in order to avoid inadvertently committing an offence. Such an action could make one liable for criminal penalties under the "Act Determining Offences Relating to the Registered Partnership, Limited Partnership, Limited Company, Association and Foundation of 1956", to give it its full English name.

Even though this law has been in force since 1956, not all managing directors are aware of its existence and may suffer an unpleasant surprise when they find out that not only is their company criminally liable, but as managing directors, they may face even higher fines than their company.

For all managing directors who have not paid much attention to these matters until now, here are a few pointers to help you ensure that your private limited company is set up and run in compliance with Thai corporate laws and the rules of good corporate governance.

One obligation that is sometimes neglected by private limited companies is the duty to keep a register of shareholders at the company's registered office. Should the company not have such a register or fail to provide its shareholders access to it, or should the company's shareholder register not contain the particulars required by law, the company may be fined up to 20,000 baht. The company's directors, however, face an additional fine of up to 50,000 baht for this offence.

The same fines may be imposed if your private limited company has moved to a new office location without giving notice to the Registrar of Companies to register the new company address.

These penalties also apply not only if your company did not hold any annual general shareholders' meeting, but even if your board of directors failed to publish the notice summoning the shareholders to the general meeting in a newspaper seven days in advance of the meeting as required by law.

Since a change of Section 1,175 of the CCC a few years ago, the board must now both summon the shareholders' general meeting by registered mail and additionally publish the notice in a local newspaper by a specified number of days in advance. Unfortunately, due to an editorial error, a widely used bilingual Thai-English edition of the CCC still contains the now-outdated version of the law in its English translation, according to which the summons can be either published or alternatively sent by mail. However, if your Thai reading skills are sufficiently advanced, a quick look at the original Thai version of the law will show that now both means of notification are required.

In a private limited company, the civil liability of its members/shareholders to creditors of the company is limited to the remaining amount unpaid, if any, of the registered capital due on the shares respectively held by them. Many foreign-run companies only register company capital of 2 million baht when setting up initially, as this is usually the minimum required for obtaining a work permit for a foreigner.

By law, at least 25% of the company capital must be actually paid up. As long as the registered capital has not been paid up 100%, the company is not allowed to mention its company capital in any notice, letter, or other document without also mentioning the percentage of the paid-up capital. In case of non-compliance, the company will be liable for a fine of up to 20,000 baht, while its directors will be liable for up to 50,000 baht.

Most managing directors are aware of their obligation to submit an annual balance sheet to the Registrar and to keep all minutes and resolutions of their board and shareholder meetings in their books at their registered office. But did you know that if you allow any falsification of your company's accounts or any false statement or omission of important issues in your company documents, and if a Thai Criminal Court deems that you acted with the intention to deceive the company or the shareholders about their benefits, you may face a prison term of up to seven years? One should always keep in mind that a person is known by the company he keeps.