

Posting bail as an authorised director

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Authorised directors are liable for the actions of their company, and in turn, they are sometimes involved in criminal charges. In such cases, they must prepare for the possibility that they may need to post bail to avoid a temporary stay in prison. There are typically two situations in which a director may have to consider posting bail.

First, an individual may file a criminal complaint against a company directly with the police; the police will then request the presence of a representative of the company, who is often the authorised director. The authorised director can then plead guilty, in which case bail will not be available.

Alternatively, the director can deny the charge, after which the police inquiry officer will review the case and send a prosecution or non-prosecution opinion to the public prosecutor. At that stage, the public prosecutor will decide whether there is sufficient evidence to proceed with a case. If so, the director may have the option of bail.

The second situation whereby bail may be granted to directors occurs when an individual files a criminal charge directly with the court. At a preliminary hearing, the plaintiff will present witnesses to the court, and the court will then either accept or dismiss the complaint. If the complaint is accepted, the authorised director (or the accused) must reappear for a full criminal trial.

Normally, the accused is prepared to post security at the first trial court hearing. However, if security has not been prepared beforehand, then the accused director will be required to remain in temporary custody until a guarantee is posted with the court.

The amount of bail required is decided by the court depending on the severity of the alleged crime. Various securities may be used as bail, including real property, fixed-deposit bank accounts, bank guarantees or certificates, or promissory notes issued by the government.

A certificate of guarantee issued by an insurance company may also be used as a security. In this case, the insurance company sets the price of the premium based on the crime. Such insurance policies can be purchased either before or after the commission of an offence.

If the accused cannot provide any of these guarantees, they may also use a senior government official's position as security. This means that the government official's position is valued in monetary terms, and if the accused does not appear at the next hearing, the government official must pay the court the value of his position. This is because a third party acting as a guarantor has an obligation to present the accused at hearing. Certain other professionals may also act as guarantors, including lawyers, doctors, architects, and auditors; the same procedure applies to them as for officials.

The procedure for requesting bail begins with the accused stating which security he wishes to use as a guarantee. The officer of the court will review the request and will present it to the court for acceptance or rejection. If accepted, the guarantor (who may be the accused) will need to present the security to the court officer, after which the accused director will be released. If the court rejects the petition, the accused may submit a new request or may appeal to the Appeals Court or Supreme Court.

In determining whether to accept a petition for bail, the court considers Section 108 of the Criminal Procedure Code. This provision states that the court must review the severity of the offence, any evidence, and the case facts. It must also assess the credibility of the guarantee and the possible consequences of agreeing to bail, such as potential damage.

The court may not accept the request for bail if it believes that the accused will abscond or tamper with evidence, interfere with the police investigation, or cause harm to another person. It may also reject the request for bail if the court does not trust the credibility of the guarantee. Additionally, the court may review any objections from the police, public prosecutor, or plaintiff.

The security or guarantee may be returned to the guarantor when the case is finalised or when the court has given an order to return bail. Then the guarantor has a right to obtain the security immediately by presenting the receipt received when supplying the original security.

While facing accusations of criminal wrongdoing is never pleasant, directors must nonetheless prepare themselves for the increased risk that they could be criminally charged. The complex responsibilities and duties that come with their positions and as stipulated by the law also increase the risk of such charges and investigations.

Being prepared for the processing of bail applications, if and when such unpleasant cases arise, allows the directors and their companies to respond without delay and utilise their resources to focus on defence of the company and its directors.