

## Company directors in Thailand: Your questions answered

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Directors and officers of both local and multinational companies in Thailand are subject to a complex array of legal duties and obligations. When things go wrong, company executives may find themselves named personally in civil suits, regulatory investigations, and criminal prosecutions, putting their assets and their livelihoods at risk. Understanding the local legal and regulatory environment is therefore essential for any director or executive working in Thailand. This article aims to answer some of the most common questions posed by directors.

**Can I be sued?** Yes. A breach of your duties could result in civil proceedings being issued against you personally as a director of the company. Depending on the nature of the alleged breach, proceedings could be brought by the company itself, its shareholders, employees, creditors, customers, or consumers. In Thailand, it is not unusual for third parties to sue the directors and officers at the same time as suing the company.

**Can I be prosecuted?** Yes. Thai law imposes criminal liability on company directors in many circumstances. Examples of statutory crimes relating to the corporate affairs of public companies include the issuance of false statements or the omission of financial data under the Public Company Limited Act, and insider trading under the Securities and Exchange Act. More than 100 further statutes in Thailand impose criminal sanctions on directors for specific acts and omissions. The penalties for committing such criminal offences can be imprisonment, fines, or both.

**Can I be questioned and can my home be searched?** Yes. Government authorities have broad powers to gather information, issue written orders, summon witnesses to provide statements, and request documents. A government official can demand that a company employee produce documents under the circumstances of an investigation and raid the home or office of an employee to seize documents with a proper search warrant.

Enforcement authorities can also demand that an employee, officer, director, or any other responsible person of a company submit to questioning in order to ascertain the circumstances of the alleged offence.

The person being questioned, however, has a constitutional right not to make self-incriminating statements. It is therefore essential to obtain legal advice and representation immediately upon the enforcement authority's arrival at the company's premises or the employee's home, or upon receiving a request for documents or questioning.

**Can I be liable for the company's acts?** Yes. Many statutory corporate criminal liability laws presume that the managing partners, president, directors, managers, or empowered persons shall be co-principals in the commission of an offence. If the entity becomes liable for a crime or the employee acted on his or her personal behalf, without authority or beyond the scope of his or her authority, the individual will be personally liable, unless they can show the offence was committed without their knowledge or consent, or they acted reasonably in preventing the offence.

**What about bribery?** Bribery is a criminal offence under Section 144 of the Penal Code, and is broadly defined as "giving, offering, or agreeing to give the property or any other benefit to an official so as to induce such person to do or not to do any act, or to delay the doing of any act contrary to one's own duty".

**Are there any special laws governing foreigners?** Yes. Under the Foreign Business Act, almost all business activities (except manufacturing) are reserved. Foreign shareholdings in reserved businesses are required to be below 50%, and, in certain sectors, less. Using a Thai "nominee shareholder" as a way to circumvent the requirements of the Act is a criminal offence, and the Act contains an express criminal liability provision affecting directors.

Under the Alien Employment Act, it is illegal for foreigners to work without a work permit, and for a company to employ a foreigner without a work permit. Directors working without a permit, or employing foreigners without permits may therefore be punished by imprisonment and/or a fine.

**How do I protect myself?** Legal proceedings are always better avoided than defended, and companies operating in Thailand should therefore put in place adequate systems to ensure compliance, including reliable record-keeping, training for directors, and access to legal advice where required. In the event that legal proceedings are instigated \_ or expected \_ immediate access to reliable legal representation is of the essence. Thai court deadlines are generally very short, and no communication with prosecutors or investigators should be entered into without suitable legal advice.

Financial protection can be provided by directors' and officers' liability insurance, which generally provides cover for costs and liabilities arising from civil suits, regulatory investigations, and criminal prosecutions. The extent of cover available varies between providers, and policy wordings should therefore be carefully checked to ensure that the broadest permissible cover is in place.

Directors of multinational corporations with global directors' and officers' liability insurance cover in place should also check whether this includes a policy issued locally in Thailand, since unlicensed overseas insurers will be prevented from directly assisting and indemnifying directors facing claims in Thailand. (Building on the issues discussed in this article, Tilleke & Gibbins and AIG will jointly host a seminar on Dec 3 entitled "Protecting your Directors". If you are interested in more information on this event, please contact Pinta Punsoni at [pinta.p@tilleke.com](mailto:pinta.p@tilleke.com))