

Tilleke & Gibbins

Directors' Handbook

What You Need to Know as a
Company Director in Thailand



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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 often find themselves named personally in civil suits, regulatory investigations, and criminal prosecutions, putting their assets and their livelihoods at risk. Gaining an understanding of the local legal and regulatory environment is therefore an essential step for any director or executive working in Thailand, and this short guide aims to answer some of the most common questions asked.

What You Need to Know as a Company Director in Thailand

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What duties do I have as a company director in Thailand?

As a company director in Thailand, you are subject to a number of duties imposed by various laws.

First, directors owe a fiduciary duty to the company itself, meaning that the director must act **in good faith to maintain the interest of the company**, and must **not compete with the company's business or sit on the board of a competing company**.

Second, you are subject to a general duty of care to act with **responsibility and due care**, meaning that you must act as a prudent person in a similar business would.

Beyond these general duties, Thai law imposes many specific statutory duties that will depend on the nature of your company and your business. These include ensuring compliance with rules on public disclosures and trading of securities, as well as specific rules relating, for example, to consumer protection and product safety.

Can I be sued?

Yes. A breach of any of the duties described above 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.

As a defendant to a civil suit, directors are exposed to awards of compensatory and punitive damages, as well as liability for court fees and legal costs. Although Thai law permits recovery of legal costs from the losing party, the amount awarded is rarely close to the actual costs incurred. Even if successful, the defense of civil proceedings is therefore inevitably costly.

Under Thai law, in certain circumstances companies are permitted – but not required – to indemnify their directors for liabilities and costs arising in the course of discharging their duties.

Can I be prosecuted for criminal offenses?

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 **omission of financial data** under the Public Company Limited Act, and **insider trading** under the Securities and Exchange Act.

Over 100 further statutes in Thailand impose criminal sanctions on directors for specific acts and omissions, including:

- ❑ **Bankruptcy Act 1940**
- ❑ **Financial Institutions Business Act 2008**
- ❑ **Money Laundering Prevention and Suppression Act 1999**
- ❑ **Accounts Act 2000**
- ❑ **Electronic Transactions Act 2001**
- ❑ **Trademark Act 1991**

Penalties for committing the criminal offenses can be imprisonment, fines, or both.

Who can prosecute me?

Depending on the alleged offense committed, an investigation may be initiated by the relevant authority (for example the **Securities and Exchange Commission** or the **Department of Special Investigation**) or the police. After initial investigation, the prosecution is then taken up by the public prosecutors of the Office of the Attorney General.

Criminal proceedings may also be commenced by an **injured person** under various provisions of the Thai Criminal Code, including the offenses of **defamation** and **breach of confidential information**. In Thailand it is not unusual for an aggrieved party seeking redress to commence both civil and criminal proceedings against a company and its directors simultaneously, meaning that concurrent sets of proceedings must be defended in different courts. Counter-claims for wrongful prosecution are also possible in such circumstances.

Can I be questioned and my home 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 offense. However, the questioned person has a constitutional right not to make self-incriminating statements.

It is therefore essential to obtain legal advice and representation immediately upon the arrival of an enforcement authority at the company's premises or the employee's home, or upon receiving a request for documents or questioning.

How does the Thai court system work?

Thailand has a three-tier court system, beginning with the Courts of First Instance, followed by the Court of Appeal, and finally the Supreme Court (Dika). The Criminal First Instance Courts are divided into District Courts and Provincial Courts.

There is **no right to a jury trial** in the Thai legal system, and all cases, both civil and criminal, are adjudicated by judges. Evidence is presented orally in Thai.

In civil proceedings, both parties generally have broad rights to lodge an **appeal** against a judgment of the first instance courts, while in criminal proceedings appeals can be made only on issues of law or against the sentence imposed.

Thailand does not recognize the concept of **plea bargaining**, meaning that a defendant cannot voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges or in exchange for an agreed-upon sentence.

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 offense. 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 offense was committed without their knowledge or consent, or they acted reasonably in preventing the offense.

This type of **strict liability** provision, which can be found in over 100 statutes in Thailand, has the apparent effect of reversing the burden of proof (i.e., the director is guilty unless he or she can prove his or her innocence). However, in a recent case involving the Direct Sale and Direct Marketing Act, the Constitutional Court ruled that such a provision contradicted the principle that the defendant shall first be presumed innocent, and was therefore contrary to the rule of law and human rights. Following this decision, directors have stronger grounds upon which to resist criminal charges brought against them in relation to allegedly criminal corporate conduct.

What about bribery?

Bribery is a criminal offense in Thailand 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.”

Bribery is punishable by **imprisonment of up to five years** and/or a **fine of up to THB 10,000**.

The crime is committed by the particular person who bribed the official, but if the bribery was committed by a director in his or her line of duty, the **company would also be jointly liable**. However, **other directors would not be implicated** unless there is evidence suggesting that they were commanding or aiding the action.

Further criminal penalties are imposed for specific conduct under other legislation including the Act Concerning Offenses Relating to the Submission of Bids to Government Agencies.

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 the law imposes a lower threshold. Using a Thai “nominee shareholder” as a way to circumvent the requirements of the Act is a criminal offense, 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. It is also illegal for a company to employ a foreigner without a work permit. Directors and officers working without a permit may therefore be **punished by imprisonment and/or a fine**. Although the Act does not contain a director’s criminal liability provision, the directors of the company may still face criminal prosecution if it is alleged that they knowingly employed foreigners without work permits.

How do I protect myself?

1. Loss prevention and mitigation

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.

2. Risk transfer – Insurance

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 D&O 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.



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