



Foreign directors and the criminal court summons process: bound by duty

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The criminal summons process can affect a company director in many ways and at virtually any time. For example, a director may be summoned as a witness, as a representative for an accused company, or even as an individual accused of a crime. Further complicating matters is the possibility that a summons could be issued to a company director without his or her direct knowledge. This increases the risk of noncompliance, possibly subjecting the director to additional liability.

It is often presumed that a person who is merely acting as an authorised director has limited individual liability. This is generally true, but Thai law includes numerous circumstances in which a director may be named not only as a witness or company representative in criminal litigation, but also as an accused. Many laws extend a presumption of liability to a director, including those related to construction licensing, customs clearance, labour law and the Foreign Business Act.

This article provides guidance in dealing with the unique issues that affect foreign directors served with a criminal summons.

The criminal summons: A criminal summons is a significant document that may affect the freedoms of a foreign director. Failure to respond may also have significant consequences, including the issuance of an arrest warrant.

A criminal summons may be issued by any authorised law enforcement officer at the investigation stage under the Thai Criminal Procedure Code and other criminal laws. That could include an investigation of business transactions focused on whether a company and its directors have broken the law.

Take the following example. After auditing company documents, Customs or Revenue Department officers suspect a company has committed a criminal offence under the Customs Act or the Revenue Code and file criminal claims with the relevant agency. The company and its authorised director will receive a summons to appear before a law enforcement officer.

If supported by the facts or by the relevant statute after completion of an investigation, many authorised foreign directors will be named as joint accused. Another summons will then be served to the foreign director as an individual accused. While the company and others may also be named, the authorised director must nonetheless defend the case separately as an individual.

Alternatively, a criminal summons may be issued in cases where a plaintiff files a criminal case to the court without an investigation. In such a case, the court will issue a summons to inform the defendant of the details of the charge and the schedule for court proceedings. If the court does not accept the plaintiff's complaint for trial, the defendant has nothing to do. But if the court accepts the complaint, it will issue another summons requiring the defendant to appear and defend the case.

Responding to the summons: A criminal summons is served by an officer of the court but according to no specific schedule. Sometimes the officer will make a surprise visit or ask to meet the director. It is important to prepare for such a scenario. For example, company representatives should know how to communicate with the court officer. It is critically important that nobody sign and receive the summons on behalf of the director. The director should also be advised urgently of the service.

Prior to receiving the summons, review all details carefully. The document will be in Thai and should be translated to the language of the foreign director, so that he or she fully understands potential individual liabilities. If the officer requests to meet the director and serves the summons, the director should contact an attorney immediately.

If a representative for the director receives the summons, the representative can mention in the summons receipt that the appointment date could not be confirmed. Otherwise, non-appearance may be considered a ground for issuing an arrest warrant.

Should the director not be available to meet the officer on the appointment date, he or she should inform the officer in writing to reschedule based on reasonable grounds.

If the summons names the director as a witness at the investigation stage, the director is not allowed to have an attorney at the interview. However, the director should have an interpreter with experience and knowledge of the criminal inquiry process.

If the summons names the director as an accused, he or she should contact an attorney and assign an interpreter to attend the interview. The officer will inform the director of the allegation and arrange for fingerprinting on the first appearance date.

If the summons is served by a court officer, the director should request clarification of its purpose. If it requires the director to appear at a hearing, he or she will need to attend with an attorney and interpreter. Failure to appear without a reasonable explanation may result in criminal liability.

Limiting liability: Many foreign directors and their representatives mistakenly presume the summons process is simple and that there is time to manage. Some lack a proper understanding of the serious nature of the court document and of their obligations to comply within a set time. But as we have shown, the process is extremely important, and directors and their representatives need to take steps to address and, thereby, limit potential liabilities.

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