

Newsletter:

Director's Criminal Liabilities under Thai Laws

Key Takeaways

The law stipulates that a juristic person must have a legal representative who acts on behalf of a juristic person. Additionally, the law has established provisions regarding the liabilities of such representatives, which can be classified as follows:

A. Director's Liability

1) Limited Companies

According to the Civil and Commercial Code, Section 1167, the relationship between directors, the juristic person, and third parties shall be considered based on the principles of liability of an agent to third parties. The juristic person is bound to third parties in all transactions conducted by the directors or representatives of the directors within the scope of their authority. However, all directors must share responsibility for overseeing the juristic person's affairs in general matters, according to the Civil and Commercial Code, Section 1168.

Therefore, any actions taken by directors of limited companies without authority or beyond their scope of authority are not considered binding the juristic person under the law. As a result, the directors shall be personally liable for such transactions.

2) Public Companies

According to the Public Limited Companies Act, Section 66, Directors are required to act in good faith and in the best interests of the juristic person and its shareholders, exercise due care and diligence in their duties and must be jointly liable with the juristic person to third parties if any action of the juristic person causes damage to another person and the director is aware of and consents to such action of the juristic person, according to the Public Companies Act, Section 222.

B. Criminal Liability

According to Thai laws, if a juristic person does anything that is a legal violation, most of the laws stipulate that the directors must be jointly liable together with the company.

For example:

- ◆ The Liability under the Act on Offenses Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2449 in the case of breach of duty as a director.
- ◆ Liability under the Building Control Act B.E. 2522 in the case of construction that is not in accordance with the plan or construction without permission, according to Section 72, it is stipulated that "In the event that a juristic person commits an offence under this Act, all directors or managers of that juristic person shall be deemed to have committed the offence with that juristic person, unless it can be proven that the action of that juristic person was committed without their knowledge or consent."
- ◆ Liability under the Act on Offenses Arising from the Use of Checks B.E. 2534, in the case of ordering a check to pay a debt and the bank refuses to pay the money on the check, in the event that a director signs and stamps a check in the name of the company, such director cannot claim that he had no intention of issuing such a check.

In addition, in the Thai court procedure, if the issue in the court process involves a law that specifies the liability of the director, who must be jointly liable with the juristic person, the prosecutor or authorized officer will proceed with the prosecution of the director together with the juristic person.

Next../page 2....

Author



Tanadee Pantumkomon
Partner
Tanadee.P@ilawasia.com



Kamintra Piriayon
Associate
corporate@ilawasia.com

Contact

ILAWASIA CO., LTD.
319 Chamchuri Square Building,
Floor 17th, Unit 1702, Phayathai Road,
Pathumwan Sub-district,
Pathumwan District, Bangkok, 10330
Thailand
Tel: +66 (0) 2 048 2534
Email: info@ilawasia.com

About us

ILAWASIA is a full-service, Thai law firm based in central Bangkok. Mr. Somphob Rodboon, an acclaimed expert in business law and litigation in Thailand, founded ILAWASIA since 2007. A visionary Managing Partner, he expanded the firm's operation into Myanmar through acquisition of an experienced and respected local law firm in June 2018. Additionally, the firm established an office in Cambodia in August 2019 and incorporated a branch in Laos in January 2021.

We offer services in business and international law ranging from corporate and commercial law, litigation, intellectual property and due diligence to immigration, real estate and labour law. Our teams are individually experienced in legal practice and always combine cutting-edge understanding with a unique sensitivity to international clients' business needs. With pride, we take our ethical standards seriously, ensuring responsibility, care and respect in all aspects of our operations.

C. Guidelines for Practice in Cases where Directors would not be Jointly Liable with the Juristic Person

- 1) Guidelines in the manual of directors of listed companies on the roles, duties and responsibilities of "directors" and "boards of directors".
 - ◆ If the director did not participate in the action or the action was taken without relying on the board's resolution (e.g. the executive acted outside the scope of the board's authority).
 - ◆ If the director objected at the meeting, recorded it in the minutes, or wrote to the chairman after the meeting stating his disagreement with any resolution.
 - ◆ If it is a matter of the juristic person not preparing accounts, registers or documents as required by law, but the director can show that he acted appropriately to avoid violating the law.
- 2) Guidelines for Consideration of Cases
 - ◆ Supreme Court Decision No. 173-228/2010

"The first defendant is a juristic person. The second defendant is a director with the authority to act on behalf of the first defendant, who is the principal. Therefore, the second defendant must be bound to the third party for the second defendant's actions that were done within the first defendant's objectives. The second defendant is not personally liable. The Central Labour Court's ruling that the second defendant, together with the first defendant, should pay compensation to the plaintiff as claimed, without stating that the second defendant is not personally liable, is incorrect. The Supreme Court has amended the ruling to say that Sergeant Major No. 2 is not personally liable. Apart from the amendment, it should be in accordance with the Central Labour Court's ruling."
 - ◆ Supreme Court Decision No. 3176/1989

"The third defendant is a director of the company. He signed and affixed the company's seal on the check made out to the plaintiff who deposited the money. Although the company's regulations require two directors to jointly sign and affix the seal, the fact that the company used the plaintiff's deposit in its business by lending it out and receiving excess interest from the borrower for the company's benefit is considered an agreement and binding on the company. The third defendant is therefore not personally liable to the plaintiff who holds the check."

Conclusion

In Thailand, directors of juristic persons, particularly limited companies and public companies, are subject to both civil and criminal liability for actions performed within their authority. Directors are obligated to act in good faith and are jointly liable with the company for any damages resulting from their consent to unlawful conduct. However, directors can avoid personal liability if they do not participate in the wrongdoing, are not formally objected to during a meeting, or take appropriate measures to ensure compliance with the law. Legal guidelines emphasize the difference between personal and corporate liability, and directors are protected under certain conditions, thus emphasizing the importance of understanding their legal responsibilities.

At ILAWASIA CO., LTD., we have over 17 years of expertise in civil and commercial law, corporate governance, and legal risk management across Thailand, Myanmar, Cambodia, and Laos. With our extensive experience, we are fully prepared to support your business in achieving its goals while minimizing legal risks relating to director criminal liabilities and ensuring regulatory compliance. Our commitment is to your success.

Remark: This newsletter is not intended to provide legal advice. It is for informational purposes only and should not be considered a substitute for professional legal consultation.