

Are you the director of a Thai company? You should be aware of your significant legal liabilities

If you are a managing director of a private limited company in Thailand you may have decided to leave the task of dealing with your company's legal, tax and accounting formalities to your firm's in house lawyer and accountant or to outsource it to a law firm and an accounting office.

However, every director should be well aware that he personally has certain duties and liabilities to and on behalf of the company for which the law does not allow delegation. Note, a director is *not* the company's owner—the owners are the shareholders. The director is *merely* the company's agent who *acts for and on behalf* of the company. Therefore, the director has certain responsibilities to the company. Such responsibilities result in personal liability and the director may be held civilly liable if:

- 1) a director acts outside the scope of his authority granted from the company to the director. Company directors must only act for the company in the course of implementing and aiding the company's objectives and must exercise due skill and care in doing so. The Civil and Commercial Code of Thailand ("CCC") requires a company director to act as a reasonably and normally skilled businessperson would in acting for the company; and
- 2) the CCC also requires that a director may not put his interests ahead of the company's. The interest of the company must always take precedence over the director's other interests, including a director's personal interests and other business interests (if any). Thus, for example, a director may not enter into an agreement such as a lease or a loan agreement on behalf of the company and himself personally without the consent from shareholders.

If the director violates any of these example duties, which result in damage to the

company, then the director may be held civilly liable for such monetary damage by the company/shareholders.

However, it does not end there. In Thailand, unlike many other jurisdictions, a company director cannot only be held civilly liable for his actions as a director but also may be held *criminally* liable for such. At DUENSING KIPPEN's most recent count, there are over 90 different laws providing for a director's personal criminal liability for acts or omissions on behalf of the company. And many of these laws provide for multiple counts of such criminal liabilities.

For example, under the Determining Offenses Relating to the Registered Partnership, Limited Partnership, Limited Company, Association, and Foundation Act a director may face even higher fines than the company as well as time in prison for such acts. These acts include failures on the part of company to comply with the requirements of the CCC, for example:

- 1) the CCC requires a company to keep a register of shareholders at the company's registered office. If the company does not have and properly maintain such a register, the company's director is liable for a fine of up to THB 50,000; and
- 2) the director may also be liable for a fine of THB 50,000 if the company moves to a new address without giving proper notice to the Ministry of Commerce; and
- 3) the same liability is also applicable if the company did not hold its requisite annual general shareholders' meeting; and
- 4) if the director failed to issue the legally required notice; and
- 5) if the company's shares are not properly and actually paid up, its directors may be held liable for a fine of up to THB 50,000; it is therefore not enough to simply register the company as, for example, a THB 2 M company so that director can obtain a work permit and then leave the matter unattended; and
- 6) a director is obliged to:
 - a) submit a proper annual audit to the Ministry of Commerce; and
 - b) keep all minutes and resolutions of the director's board and shareholders' meetings in at the company's registered office address; anda director may be not only fined but also *imprisoned* for up to seven years if the director is found to have entered any false statement or made any material omission from in 6(a);(b) above.

In this article we have pointed out that a director of a Thai company has personal liability for his acts or omissions under several different relevant laws. Please note, the

examples of this which we give above are only a very few of the most general legal liabilities applicable to all directors—there are a multitude of others. Furthermore, there are many other such liabilities, which may be applicable to a director depending on the type of activity in which the director’s company engages. Thus, it highly advisable that a director be aware on all of legal liabilities applicable to them so that he may exercise proper caution to avoid incurring any such personal liability.

DUENSING KIPPEN is an international law firm specializing in business transaction and dispute resolution matters, with offices in Bangkok and Phuket, Thailand and affiliated offices in 45 other countries. Visit them at: **duensingkippen.com**