

Thailand amends laws relating to criminal liabilities of directors, partners and managers

by

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Introduction There are numerous Thai statutes that impose criminal liabilities upon directors where a company has been convicted of the offence of breach of duty under the statute concerned. But there has been a lack of uniformity in the drafting of such provision. For example, the statute may impose liability upon the “*director or manager*” of the company of a company, or the “*director or manager or person in charge*” of the company. Sometimes the clause may go onto to say that such person “*shall be presumed to be guilty unless he can prove he had no knowledge or did not participate in the act concerned.*” Once again, the words used vary from Act to Act.

The Supreme Court in a number of cases has considered such provisions under various Acts, and has ruled in some cases that such obligations are in breach of the Constitution. A review of many different Acts has been undertaken as a result. The outcome is the Criminal Liability of Juristic Persons’ Representatives Amendment Act (2017). This brings together and makes uniform the relevant clauses in no less than 76 separate Acts, provisions of the Revenue Code or regulations. The Act also contains other provisions. The Act came into force in February 2017.

In an article of this size, it is not possible to consider all the Acts that have been changed. But we draw attention to the provisions that relate in particular to companies operating businesses in Thailand, changes to the Revenue Code, real property, employment, intellectual property, transport, financial institutions, and other significant areas. The whole Act will need to be studied where an issue arises as to the liability of directors, partners or managers, where the company or partnership has been convicted of primary liability.

Area of law	Statute reference	New provision for liability of directors, managers or others (as from February 2017)
Taxation	Revenue Code Sec 35 bis	Whoever violates Section 12 bis shall be liable to imprisonment not exceeding two years and a fine not exceeding Baht two hundred thousand. Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for the offence as well.
Taxation	Revenue Code Section 90/5.	Where the offender under this Chapter is a juristic person, if the offence derived from an order or action of a director or the manager or any person responsible for the operations of the juristic person, or where the person has the duty

		to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Shipping	Thai Vessels Act (1938) Sec 62 ter	Where the offender under Section 62 bis is a juristic person, if the offence derived from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided in Section 62 bis as well.
Air transport	Air Navigation Act (1954) Section 118.	Where the offender is a juristic person, if the offence derived from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so and thereby caused the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Companies and partnerships	Act Prescribing Offences Relating to Registered Partnerships, Limited Partnership, Companies, Associations, and Foundations (1956) section 25	Where a company has committed the offence under Section 7 - 24, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has a duty to issue an order or to take action but has failed to do so thereby causing the company to have committed the offence, the person shall be liable to fine not exceeding Baht fifty thousand.
Petroleum tax	Petroleum Income Tax Act (1971) Section 76	Where a company has committed the offence, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has a duty to issue an order or to take action but failed to do so and thereby caused the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Immigration	Immigration Act (1979) Section 83.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has a duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Patents	Patents Act (1979) Section 88.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has a duty to issue an order or to take

		action but failed to do so and thereby caused the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Condominiums	Condominium Act (1979) Section 71.	<p>Any condominium juristic person that violates or fails to comply with Sections 38/1, 38/2, or 38/3, shall be liable to fine not exceeding Baht ten thousand.</p> <p>Where the condominium juristic person has committed the offence under paragraph one, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided under paragraph one as well.</p>
Consumer protection	Consumer Protection Act (1979) Section 59.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Building control	Building Control Act (1979) Section 72.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Taxes and duty on export of goods	Act Compensating Taxes and Duties on Exported Goods Produced in Thailand (1981) Section 32.	Where the offender under Section 30 or 31 is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has a duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Fraudulent loans	Royal Proclamation on Fraudulent Loans (1984) Section 15.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment

		<p>provided for such offence as well.</p> <p>The provisions of paragraph one shall apply to the employees of the juristic person where there is evidence that they are responsible for its operations as well.</p>
Employment	Employment and Job Seekers Protection Act (1985) Section 92.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Provident funds	Provident Fund Act (1987) Section 41	Where the Fund Committee has committed the offence under Section 34, if the offence derives from an order or action of any director, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the Fund Committee to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Social Security	Social Security Act (1990) Section 101.	Where the offender is a juristic person and has been punished, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Energy conservation	Energy Conservation Promotion Act (1992) Section 60.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Environment	National Environmental Quality Preservation and Promotion Act (1992) Section 111.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Dangerous goods	Dangerous Goods Act (1992) Section 87/2.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person

		responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Factories	Factories Act (1992) Section 63.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Life assurance	Life Assurance Act (1992) Section 114.	Where a company has committed the offence under Section 23, 28, 36, or 51, paragraph one, or has shown false statements, or has concealed facts that must be reported or clarified under Section 45, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so and thereby caused the company to have committed the offence, the person shall be liable to imprisonment not exceeding one year or a fine not exceeding Baht one hundred thousand, or both.
Insurance	Insurance Against Loss Act (1992) Section 108.	Where a company has committed the offence under Section 23, 28, 35, or 57, paragraph one, or has shown false statements, or concealed facts that must be reported or clarified under Section 45, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the company to have committed the offence, the person shall be liable to imprisonment not exceeding one year or fine not exceeding Baht one hundred thousand, or both.
Copyright	Copyright Act (1994) Section 74.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Asset management companies	Royal Proclamation on Asset Management Companies (1998) Section 13.	If an asset management company violates or fails to comply with Section 4/1, paragraph one, Section 10, 11, or 11/1, paragraph two, or violates or fails to comply with the bases

		<p>or orders or conditions prescribed under Section 4/1, paragraph two, 5, 10, 11, 11/1, paragraph one, or 12, shall be liable to fine not exceeding Baht three hundred thousand and an additional daily fine at Baht three thousand throughout the period of incorrect compliance.</p> <p>Where an asset management company has committed an offence under paragraph one, if the offence derives from an order or action of a director or the manager, or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the company to have committed the offence, the person shall be liable to imprisonment not exceeding three years or a fine not exceeding Baht three hundred thousand, or both.</p>
Prices of goods and services	Act Governing Prices of Goods and Services (1999) Section 42.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Money laundering	Anti-Money Laundering Act (1999) Section 61.	<p>Any juristic person committing the offence under Section 5, 7, 8, or 9, shall be liable to a fine from Baht two hundred thousand to Baht one million.</p> <p>Where the offence under paragraph one derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to imprisonment from one year to ten years or a fine from Baht twenty thousand to Baht two hundred thousand, or both.</p>
Engineers	42. Engineers Act (1999) Section 74.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence, and the juristic person shall be liable to fine not exceeding ten times the rate of fine imposed for such offence

		as well.
Architects	Architects Act (2000) Section 74.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence, and the juristic person shall be liable to a fine not exceeding ten times of the rate of fine imposed for such offence as well.
Accounting	Accounting Act (2000) Section 40.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Integrated Circuit Layout Designs (intellectual property)	Integrated Circuit Layout Designs Protection Act (2000) Section 52.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Oil fuel trading	Oil Fuel Trading Act (2000) Section 60	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Telecommunications	Telecommunications Business Act (2001) Section 78.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for the offence as well
Electronic commerce	Electronics Commerce Act (2001) Section 46.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the

		juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Geographic Indications (intellectual property)	Geographic Indications Act (2003) Section 42.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Accountants	Accounting Profession Act (2004) Section 72	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
CDs/optical discs	CD Products Production Act (2005) Section 36	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Energy	Energy Business Operation Act (2007) Section 141.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Education	Private School Act (2007) Section 153.	Where the licensee is a juristic person who has committed the offence and has been punished, if the offence derives from an order or action of a director or the manager or any person responsible for its operations or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for the offence as well.
Property funds	Trust for Transactions in the Capital Market Act (2007) Section 80.	Whoever gives false statements to the competent officer, and such false statements are significant to an examination or operations under this Act, shall be liable to imprisonment not exceeding one year or a fine not exceeding Baht one hundred

		<p>thousand, or both.</p> <p>Where the person giving a false statement to the competent officer under paragraph one is a trustee, if the offence is committed by the trustee derives from an order or action of a director or the manager or any person responsible for the operations of the trustee, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the trustee to have committed the offence, the person shall be liable to imprisonment not exceeding two years or fine not exceeding Baht two hundred thousand, or both.</p>
Banking and financial institutions	Financial Institution Business Act (2008) Section 132 and 139	<p>Where an offender under Section 121 or 123 is a juristic person, if the offence derives from an order or action of a director or the manager or a person with power to manage its business or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.</p> <p>Subject to Section 139, where a financial institution has committed the offence under Section 122, 124, 125, or 128, if the offence derives from an order or action of a director or the manager or a person with power to manage its business or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the financial institution to have committed the offence, the person shall be liable to the punishment provided for such offence as well.</p> <p><i>(Section 139)</i> Where a financial institution violates or fails to comply with Section 36, 50, 66, 80, 93, 94, or 95, or violates or fails to comply with a notice, regulations, bases, or an order prescribed under Section 9, paragraph one, Section 10, paragraph one, Section 33, 36, 50, 66, 71, 80, 90, or 95, if the offence derived from an order or action of a director or the manager or a person with power to manage its business or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the financial institution to have</p>

		committed the offence, the person shall be liable to imprisonment not exceeding one year or a fine from Baht five hundred thousand to Baht one million, or both.
Deposit Protection	Deposit Protection Institution Act (2008) Section 65, 66	<p>Where any person other than a financial institution uses a statement, mark, or symbol to show that his business is that of a financial institution whose deposits are protected under this Act, shall be liable to imprisonment not exceeding two years or a fine not exceeding Baht two hundred thousand, or both, and an additional daily fine not exceeding Baht five thousand throughout the period of violation.</p> <p>Where the offender under paragraph one is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.</p> <p><i>(Section 66)</i> Any financial institution that violates or fails to comply with Section 40 shall be liable to a fine not exceeding Baht five hundred thousand and an additional daily fine of Baht five thousand throughout the period of violation.</p> <p>Where the offence under paragraph one derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the financial institution to have committed the offence, the person shall be liable to the punishment provided for such offence as well.</p>
Escrow of documents or money	Escrow Act (2008) Section 50	Where an offender under Part 2, except Section 48, is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.
Employment (homeworkers)	Homeworkers Protection Act (2010) Section 48.	Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations or where the

		<p>person has the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the person shall be liable to the punishment provided for such offence as well.</p>
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Comment: The ensuring of uniformity in drafting clauses for cross liability of directors or managers where a company is the primary offender, is a serious problem, and this Act helps to introduce a degree of uniformity, though there are still other Acts that have not been brought into the drafting uniformity that this Act attempts. In terms of interpretation of these clauses, we can foresee interesting issues arising, for example:

- What is the scope of an “*order or action*”?
- Who is a “*person responsible for a company’s operations*”?
- Is the “*duty to issue an order*” to be found in the particular statute or elsewhere? Is it to be an express duty or does it extend to an implied one?
- How will a court decide if a director “*caused*” the company to commit an offence?

Doubtless some guidance can be found in previous Supreme Court decisions. But remember that Thailand is a civil law country and previous decisions though they may be from the Supreme Court, are persuasive only and are not binding.

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