

# Legal orientation for foreign directors

Many foreigners hold the respected position of director of a local company because they know how to manage in terms of good business and profit making. But do they know how to comply with Thai law? Do they understand what the legal implications of the business are? This article will discuss certain basic legal requirements and responsibilities as well as practice guidelines with which newcomers should make themselves familiar.

At the stage of business startup, foreign directors should be aware that the minimum number of directors is only one unless stated otherwise by a company's Articles of Association. Except in special cases, there is no nationality requirement, and it is permissible for a company to have a sole foreign director.

Legally, foreign and Thai directors are not treated differently. The distinction is that foreign directors need a permit to work in Thailand (and the term "work" is defined quite broadly under the law). Thus, foreign directors residing abroad should apply for a permit to work in Thailand for more than 15 days. Even if they only intend to attend a meeting or training course of less than 15 days it is recommended that their companies file a 15-day notification with Labour officials.

While a director's position may bring money and prestige, it also brings issues of a more serious nature including power, responsibility and duty.

Power enables directors to manage a company by all lawful means necessary within the scope stipulated in its Memorandum of Association, Articles of Association, resolutions of shareholders' meetings, and applicable Thai laws. As long as directors act within

such scope, their actions are legally binding on the company and they will not be held personally liable for acts done in good faith and with due care.

Directors are appointed by shareholders to manage the company in their best interests, a principle known as fiduciary duty. Directors must exercise the judgment of careful business persons, elaborated on in a Thai Supreme Court ruling that such judgment should be comparable to that of business persons in the same industry or business.

In addition to displaying loyalty to their companies, directors must not participate in competing businesses or put themselves in conflicts of interest without full disclosure to the shareholders.

Thai corporate law sets forth certain joint statutory duties for all directors such as ensuring that payment for shares is actually made by the shareholders. In this respect, directors must not allow the offsetting of share payment against any debts of the company to shareholders. Other joint tasks of directors include the maintenance of books and accounts, lawful payment of dividends, and enforcement of shareholders' resolutions.

Of utmost concern to Thai and foreign directors alike is limited personal liability. The guiding principle is to act faithfully with due care and within the scope of their powers in order to avoid personal liability brought against them by injured persons. However, negligence, omissions, mismanagement, and self-dealing could lead to a derivative suit brought by the shareholders on behalf of the company. Directors could avoid such liability if they seek prior approval or post-action ratification from the shareholders.

Resigning from the board will not bring

immunity since directors are still liable for wrongdoing two years after the offence. Directors' and officers' liability insurance is one means of protection.

Criminal liability is another issue of paramount concern to directors as it can be initiated by injured persons such as employees, shareholders, and the public prosecutor, and may involve statutes such as the Revenue Code and labour law. Even commendable and effective management actions could trigger an unintended criminal violation. Fortunately, some statutes provide directors with a safety clause whereby they can raise the defence that they had nothing to do with the wrongful act or tried their best to prevent the same. Still, directors should watch out for other statutes that provide no such clause.

Finally, foreign directors should be aware of binding signatory power that may sound unfamiliar. Only directors registered as binding signatories with the Commerce Ministry can sign documents on behalf of a company. Such signatory power is often checked by third parties such as banks and authorities, before dealing with the company. It is common practice to affix the company seal along with a director's signature. Non-director personnel may be delegated such powers through a Power of Attorney.

In summary, it would be wise for foreign directors to familiarise themselves with the above lessons to avoid committing costly mistakes.

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