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Newsletter

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Are Fines under Thai Criminal Law Too Low to Affect Large Businesses? Thailand is Establishing Criteria for Holding Juristic Persons Liable Separately from Natural Persons

Currently, the Thailand Penal Code does not explicitly have criteria for holding companies and other types of juristic persons criminally liable separately from natural persons, unless provided otherwise in specific laws, such as the Anti-Money Laundering Act B.E. 2542. Being treated the same as natural persons without the consequence of being punished with imprisonment makes it more bearable for companies to commit a crime. This has led to some juristic persons being used as tools by directors for corrupt or illegal business practices.

To address this issue, the state has deemed it appropriate to establish specific criteria for criminal liability for juristic persons and corresponding punishments in the Thai Penal Code. This would provide a clear legal framework for Thai courts in determining more reasonable and proportionate criminal punishments for juristic persons based on their respective wrongdoings. This amendment includes three essential aspects as follows:

Firstly, in cases where there is no established specific penal law punishments for juristic persons, the punishments to be imposed on the juristic persons will then be newly determined based on the severity of the punishments which were formerly inapplicable to juristic persons i.e., death penalty, imprisonment, and detention. To be specific, in a case where the possible punishments for an offence are only imprisonment or the death penalty, the juristic persons will be penalized under this new amendment with a fine not exceeding THB 10 million instead. In case the possible punishments for an offence also include a fine, or the possible punishments are only a fine without other punishments, the juristic persons will then be penalized with a fine not exceeding five times the prescribed fine for that offense. It seems this alarming increase of the fine rate could probably take a mid-size business straight to bankruptcy.

Secondly, the court has discretion to impose the following additional sanction orders for juristic persons found guilty if the circumstances and conditions provided under the law are met, i.e., dissolution of the juristic persons, closure of business premises or computer systems either temporarily or permanently, prohibition from raising funds from the public either temporarily or permanently, prohibition from participating in government auctions or entering contracts with the government either temporarily or permanently, forced publication or dissemination of the court judgment in the Thai language in general circulation newspapers or through electronic media, and prohibition from conducting any business or activity related to the committed offense either temporarily or permanently. Obviously, these sanction orders can be simply viewed as the death penalty (dissolution) and imprisonment (closure of business) of a juristic person.

Moreover, any juristic person that violates or fails to comply with the court's sanction order will be subject to a fine ranging from THB 50,000 to 300,000. However, in case the juristic person gains or may gain any benefit as the result from its violation or non-compliance of the court's sanction order, the range of imposed fine will be altered to two times of the amount of such benefit at the maximum but not below THB 50,000. For example, if a company was imposed with a sanction order to temporarily close its chained restaurant for six months but opted to continue opening it, and as the result received an income of THB 10,000,000, then the company would be subject to a fine up to two times of the gained income of THB 10,000,000, equivalent to THB 20,000,000 at the maximum. In addition, in case where the offense committed by a juristic person was the result from the orders, actions, or omissions of the representatives responsible for its operations, the representatives would also be subject to imprisonment not exceeding one year or a fine not exceeding THB 300,000, or both. This serves as a mechanism to ensure that the sanction order will be complied with.

Lastly, the amendment specifies that juristic persons will be held criminally liable only when their representatives act on behalf of the juristic person and commit offenses within the scope of their duties and objectives and for the benefit of the juristic person. Moreover, the imposition of criminal liability on a juristic person does not absolve individuals who commit or participate in offenses with the juristic person from their own criminal liability. In other words, both the juristic person and the individuals involved may be held accountable for their respective roles in the commission of the offense. On the other hand, this can also be considered as the mechanism to prevent the juristic person from being liable from the offenses committed by its representatives indefinitely.

These drastic changes to criminal punishments for juristic persons would potentially expose more severe risk to businesses varied from direct effects such as the increased amount of liability to indirect effects such as the increased amount of reserved funds and premium for insurance.

Although the proposed amendment seems to contain a lot of concerning issues, this law has not been announced and effectuated, and thus, there are no established guidelines for interpretation. The act is currently in the process of public hearing and revision. Prior to publication, it's possible that there may be changes made to the provisions of this amendment. After this process, the law would be transformed into a legally enforceable legislation in Thailand.

To discuss the legal topics included in this briefing in further detail, please contact the authors listed in the left-hand column.

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