

## Corporate Corruption in Thailand: Common Types of Corruption and Mitigating Actions

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For many in Thailand, corruption by employees is one of the worst nightmares in today's corporate world. Often, this kind of corruption results from an exploitation of loopholes in a company's systems or basic operating framework, and thus it may continue, unnoticed, for long periods of time. In many cases, corrupt practices have continued for 10 years or more before discovery. And, over a ten year period, damage to the affected company can be significant.

Corporations try different methods to discourage corrupt practices, but unfortunately, we often see safeguard systems implemented – after corruption has already occurred. To be specific, what happens when money is illegally taken by an employee? What are options for recovering from the damage incurred? What can a company do to set precedents and to alert other employees that such crime will not be tolerated without punishment?

To recover from damages, and as insurance might not cover this type of incident, companies might have no alternative but to seek recovery directly from the corrupt employee, i.e. by making a civil claim against the corrupt employee. To set precedents, seeking punishment against the corrupt employee might be the only alternative as well.

To achieve these goals, identifying the corrupt act or acts should be the priority. This is because different types of corruption will, likely, be subject to different degrees of punishment, and different prescriptions or time limitations. Without clarity on the area of corruption, such an incident could be judged to be non-litigable, or fail to be subject to the maximum degree of punishment.

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Moreover, in the case where a company decides to forego action regarding setting a precedent, and instead focuses on damage recovery, specific identification of the corrupt act or acts is required for consideration of whether such corruption was compoundable or not. Put in layman's terms, the compoundable offence is an offence that can be settled or compromised between the parties to the case. For example, while the offences of fraud and misappropriation are compoundable, the offence of theft is not. This difference would affect negotiations when the company pursues criminal prosecution as a bargaining tactic.

Further, in the case where money is illegally taken by an employee, typically, such an act would fall under one of the following three types of criminal offence: theft, fraud, or misappropriation.

To differentiate these three criminal offences, the concept of owning a property must be first addressed. Property ownership involves title and possession, and the difference between the three criminal offences under review will be determined by the manner in which title and possession of such property are 'harmed'.

For theft, what is illegally 'harmed' includes both title and possession of a property. For example: a company keeps money in a safe in the company's office. A company employee knows the combination of the safe, opens the safe and takes some of the money. This may even be an amount so insignificant that it is not identified by the company. However, in this case, the title and possession of the money were held by the company and the employee 'harmed' or took away both title and possession of such money.

There is also another type of theft called "Larceny by Trick". In this case, an owner of a property is deceived, and willingly surrenders possession of the property. The result: only the title of the property was 'harmed' or taken away. For example, an employee deceives a construction company by stating that there was a defect in materials on hand, and requests a new lot of materials. The company believes the deception and hands over a new lot materials to the employee. The employee then takes away

such material. The possession of the materials was willingly surrendered to the employee due to the deception, and only the title of the materials was 'harmed' or taken away.

For fraud, both title and possession of a property are willingly surrendered to the offender due to deception made by the offender. For example, an employee in a sales position deceives a company by stating that a certain sale can be closed with a customer. The employee then requests a commission regarding the sale. The company believes such deception and pays the employee the requested commission. The title and possession of the commission were held by the company, but due to the deception of the employee, the company willingly surrendered or gave away both title and possession of the commission to the employee.

For misappropriation, an owner of a property entrusts an offender to possess a property on the owner's behalf, but the title remains with the owner. Subsequently, the offender 'harms' or takes away such title of the property. This harm might be performed by changing the manner of possessing the property from 'on behalf of the owner' to 'for the offender itself'. For example, a company entrusts a finance employee to keep and manage petty cash on the company's behalf. The employee then takes such petty cash for himself. This offence is similar to larceny by trick, in which the possession of the property was with the offender and the offender only 'harmed' or took away the title of the property. The difference between misappropriation and larceny by trick is that, in the larceny case, possession was surrendered due to deception, but for misappropriation, the possession was entrusted.

These short descriptions of thievery, fraud and misappropriation serve to provide insight into how acts of corruption often encountered in Thailand are viewed from a legal perspective, and subsequently in the courts. In the future, we will cover other areas of corruption as experienced in today's business environment, and options for preventing them.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed to the right above.