

What do we “EXPECT” from the Board?

Director Performance vs Director Conformance



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In the previous articles, I have analyzed director contribution and director compensation from various aspects, including legal, tax, risks, and director governance.

In this Article, I will analyze how a corporate director can create damages to the company and its shareholders by running the company as a “Gangster Director”.

In the following case studies, you can decide if the incident occurred because the director exercised good faith practice, acted in gross negligence or whether the action was out of innocence.

Innocent Director: Former director claimed to be unaware that the Company had been dissolved

In this case, the intriguing fact is that one of the four authorized directors, who had sat on the Board for 25 years, claimed to be unaware that the company had been dissolved in 2000 and had completed its liquidation in 2001.

In 2002, when the company was no longer deemed a legal entity, this particular director signed on behalf of the Company a Baht 3 million Promissory Note (P/N) as evidence of borrowing money from the bank.

In terms of legal liability, the signatory of the P/N is deemed the debtor and is obliged to repay its debts to the instrument holder (the creditor).

The case was then brought to the Supreme Court in 2016. The bank did not file the lawsuit for the claim under a loan agreement, but chose to file a claim under the Law of Bills that covers Bill of Exchange (B/E), Promissory Note (P/N) and Cheque.

In general cases, a director who signs on behalf of the company must clearly indicate that he or she is signing for the company. In such case, the company would then be obliged to honour the P/N and the director would not be personally liable under the P/N because he or she is the representative of the juristic person and is acting on behalf of the company.

However, in this particular case, the company had already been closed down. The company has neither a status of a legal entity to act as a “principal” nor an ability to appoint the director to become its “agent”. Therefore, this signature turned out to be very costly to the former director, because the director had to be personally liable to repay the Baht 3 million P/N’s debts to the bank and could not recourse against anyone.

Upon considering the case, it remains suspicious how the bank could have accepted the signature and lend out the Baht 3 million in the first place.

Didn’t the bank conduct a credit analysis before approving the loan?

Didn’t the bank conduct KYC (Know Your Customer) procedures on the client? Especially after the company had been closed down for a year, the bank should have conducted a rigid Customer Due Diligence (CDD).

Or is there an unknown complication that is not stated in the facts of the case and the conflicting parties did not raise in the legal battle for the Court to consider?

More importantly is who actually got the “loan”?

Moreover, who brought the P/N in question to the former director to sign?

The lesson learnt from this case is that signing as a signatory has legal implications. Any corporate director or former director should not take such matter lightly.

The adverse effect of gross negligence in this case did not affect the company (which was already closed down) but directly and personally damaged the signatory.

There are more than ten other case studies on “corporate director” that I will further analyze. Please stay tuned.

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