

6 June 2024

# THAILAND

## Newsletter

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## White-collar Crime in Thailand: Handling White-collar Crime in the Workplace

Building on our previous newsletter, 'An Overview of White-collar Crime in Private Organizations', this edition will explore specific responses to such incidents within companies.

In today's business environment, white-collar crime poses a significant threat to the integrity and financial stability of organizations. It is crucial for companies to be vigilant and proactive in addressing these issues. Companies increasingly encounter criminal behavior committed by either outsiders or their own employees. Criminal acts are not limited to violence or the use of force, but also include subtle ones such as embezzlement, copyright infringement, espionage, fraud, etc. These acts can lead to major impacts on companies, e.g., loss of reputation, and can even expose the companies to third-party liabilities. In many cases, such major impacts can be alleviated or mitigated if the companies' responses are timely and efficient.

### Identifying Offenders and Securing Evidence

The first step in addressing white-collar crime is to identify potential offenders and their 'modus operandi'. This involves conducting investigations either internally or through law enforcement mechanisms, depending on the complexity and seriousness of the crime. During the investigation phase, it is crucial to gather all relevant evidence, such as documents, electronic data, and witness statements, to build a strong case against the offenders.

In circumstances where an internal investigation is appropriate, one of the approaches to preventing evidence from being altered or destroyed is to keep the potential offenders away from the workplace and their fellow employees through suspension under the labor protection law. Companies need to ensure due compliance with applicable laws when implementing the suspension of any employee. For example, such suspension must not exceed 7 days and must be notified to the affected employee, stating the reason and the suspension period before the suspension begins.

<sup>1</sup>The term 'modus operandi' is a Latin phrase meaning an individual or group's method of operating or habitual operating pattern and is primarily used to discuss criminal behavior.

Such internal investigation should aim to ensure fair treatment of the accused employee while safeguarding the employer's integrity. Also, it is crucial for companies to treat every investigation as if it might need to be presented in a court of law. It is advisable that an investigation be conducted by a panel of investigators comprising, for instance, the accused employee's supervisor, head of HR, head of legal, an accountant, and someone familiar with the nature of the work of the involved persons. A team of investigators can compensate for areas where a single investigator may lack experience or knowledge in relation to the matter in question.

A final investigative report must be concluded on the assumption that every serious investigation could potentially be reviewed by a court.

As most white-collar crimes in the workplace involve financial transactions, tracing the money trail can serve as a crucial starting point for an affected company to recover its losses. With the right resources and expertise, the complex task of following the money trail is attainable and can provide pivotal evidence in building a strong case against the offenders.

## Implementing Disciplinary Actions

Once findings about any misconduct are concluded, it is vital for companies to swiftly address the misconduct and/or prevent its recurrence. Companies are empowered to impose disciplinary or corrective action, ranging from formal warnings to employment termination, in accordance with the companies' work regulations. Various Supreme Court judgments have set a precedent that an employee's misconduct is justifiable grounds for loss of trust and employment termination, regardless of whether it is prosecuted or results in a conviction.

## Navigating Legal Proceedings

Apart from disciplinary actions, companies may need to take necessary criminal action against alleged offenders. Available options include the public prosecution process and the private prosecution process. In the public prosecution process, an injured party initiates action by lodging a complaint with a police officer, who acts as an Inquiry Officer under the Criminal Procedure Code. This process continues until the alleged offenders are prosecuted by the Public Prosecutor and sentenced by the court. Conversely, the private prosecution process bypasses both the Inquiry Officer and the Public Prosecutor, requiring the injured party to lodge a complaint directly with the court. Before proceeding to trial, the court must see preliminary evidence to establish the 'prima facie case<sup>2</sup>'. Consulting with legal experts is advisable to determine the best course of action and to monitor the ongoing process. While the prosecution process primarily serves as a means to combat crime, it also provides leverage for the injured person to recover losses through restitution, which is typically requested alongside the conviction of the offenders. In some instances, companies may also need to consider pursuing civil action to claim damages beyond what is recoverable through criminal proceedings.

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<sup>2</sup>A prima facie case is a term that refers to a case with sufficient evidence to proceed to trial or judgment.

## What's next

In conclusion, handling white-collar crime in the workplace requires a vigilant and structured approach. Companies must be proactive in identifying offenders, securing evidence, and implementing appropriate disciplinary actions. Navigating legal proceedings, whether through public or private prosecution, demands a strategic and informed approach to ensure justice is served and organizational integrity is maintained.

It is essential for companies to stay updated on the latest legal frameworks and best practices in white-collar crime management. By doing so, they can safeguard their assets, reputation, and the trust of their stakeholders. As we continue to witness the evolution of white-collar crime, staying ahead with robust preventive measures and effective legal strategies will be key to mitigating these risks.

For further guidance and support in handling white-collar crime within your organization, feel free to reach out to our team of experts. We are committed to helping you maintain a safe and ethical business environment, ensuring your company's continued success in the face of these challenges.

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

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