

Criminal Liability of Company Directors: Embezzlement of Company Funds, Wrongful Gain, and Falsified Accounts

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This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at <https://eksiamcorporatelaw.com/en/articles/director-criminal-liability.html>

Laws referred to in this article

1. Criminal Code, Sections 352 and 353, misappropriation (converting property in one's possession, and a person entrusted with managing property dishonestly acting contrary to that duty)
2. Criminal Code, Section 354, aggravated penalty where the offender is an administrator of property under a court order or a will, or carries on a profession or business in which the public places its trust (*the office of company director alone does not fall within this provision*)
3. Criminal Code, Section 341, fraud (deceiving another person by a false statement or by concealing facts that ought to be disclosed)
4. Act Prescribing Offences Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956), Section 42 (a criminal offense) and Sections 16, 18, and 28 (non-criminal pinai offenses under the Act on Imposition of Pinai Regulatory Fines B.E. 2565 (2022))



Short answer

The criminal liability of company directors falls into three groups. A director who embezzles company funds commits an offense under Criminal Code Section 352 or Section 353, punishable by imprisonment not exceeding three years. Falsifying accounts, or making false entries in them, in order to deceive the company or its shareholders so as to deprive them of a benefit is punishable by imprisonment not exceeding seven years under Section 42 of the B.E. 2499 (1956) Act. Seeking a wrongful gain that causes loss to the company under Section 41 is a pinai offense.

Starting point: why directors must take criminal liability especially seriously

In civil law, a limited company is a juristic person separate from its shareholders and directors, so a director is generally not personally liable for the company's debts. In criminal law, that principle does not apply: the criminal law punishes the individual who commits the offense, not the juristic person.

The consequence is that a director who dishonestly deals with the company's property, or who uses the office of director to deceive others, is personally subject to criminal punishment, regardless of whether the company is still operating or has enough assets to pay its debts.

Misappropriation (embezzlement): Criminal Code Sections 352 to 354

The offense for which directors are most often prosecuted falls under the Criminal Code's chapter on misappropriation (embezzlement). Section 352 applies to a person who is in possession of property belonging to another, or of which another is a co-owner, and dishonestly converts it to himself or a third person. The provision that fits a director's position most closely, however, is Section 353, which provides:



"Whoever, having been entrusted with the management of the property of another person, or of property of which another person is a co-owner, dishonestly does any act contrary to that duty in any manner, thereby causing damage to the proprietary interests of that person, shall be punished with imprisonment not exceeding three years or a fine not exceeding sixty thousand baht, or both."

Thai original: "ผู้ใดได้รับมอบหมายให้จัดการทรัพย์สินของผู้อื่น หรือทรัพย์สินซึ่งผู้อื่นเป็นเจ้าของรวมอยู่ด้วย กระทำผิดหน้าที่ของตนด้วยประการใด ๆ โดยทุจริต จนเป็นเหตุให้เกิดความเสียหายแก่ประโยชน์ในลักษณะที่เป็นทรัพย์สินของผู้อื่น ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ"

, Criminal Code, Section 353 (unofficial translation)

A company director falls squarely within the element of "a person entrusted with the management of the property of another," because the shareholders have authorized the director to manage the company's property and business, which every shareholder has a share in owning. A director who dishonestly uses the company's property for personal benefit can therefore commit the offense under this section.

Section 354 imposes an aggravated penalty only where the offender administers another person's property under a court order or a will, or carries on a profession or business in which the public places its trust.

"If the offense under Section 352 or Section 353 is committed by a person acting as an administrator of another person's property under a court order or under a will, or in the course of a profession or business in which the public places its trust, the offender shall be punished with imprisonment not exceeding five years or a fine not exceeding one hundred thousand baht, or both."

Thai original: "ถ้าการกระทำความผิดตามมาตรา 352 หรือมาตรา 353 ได้กระทำในฐานที่ผู้กระทำความผิดเป็นผู้จัดการทรัพย์สินของผู้อื่นตามคำสั่งของศาล หรือตามพินัยกรรม หรือในฐานเป็นผู้มีอาชีพหรือธุรกิจ อันยอมเป็นที่ไว้วางใจของประชาชน ผู้กระทำต้องระวางโทษจำคุกไม่เกินห้าปี หรือปรับไม่เกินหนึ่งแสนบาท หรือทั้งจำทั้งปรับ"

, Criminal Code, Section 354 (unofficial translation)

Holding the office of company director does not by itself attract the penalty under Section 354 unless the facts meet the conditions above. For an ordinary company director, the penalty under Sections 352 and 353 is imprisonment not exceeding three years, a fine not exceeding sixty



thousand baht, or both. Falsifying or altering the company's accounts and documents in order to deprive the company or its shareholders of a benefit to which they are entitled is a separate offense carrying a heavier penalty, as explained in the next section.

Fraud: Criminal Code Section 341

Apart from misappropriation, a director may also be prosecuted for fraud under Section 341 if the director deceives third parties in order to obtain an undue benefit. The section provides:

"Whoever dishonestly deceives another person by asserting a falsehood or concealing facts that ought to be disclosed, and by that deception obtains property from the person deceived or from a third person, or causes the person deceived or a third person to execute, revoke, or destroy a document of title, commits the offense of fraud and shall be punished with imprisonment not exceeding three years or a fine not exceeding sixty thousand baht, or both."

Thai original: "ผู้ใดโดยทุจริต หลอกลวงผู้อื่นด้วยการแสดงข้อความอันเป็นเท็จ หรือปกปิดข้อความจริงซึ่งควรบอกให้แจ้ง และโดยการหลอกลวงดังว่านั้นได้ไปซึ่งทรัพย์สินจากผู้ถูกหลอกลวงหรือบุคคลที่สาม หรือทำให้ผู้ถูกหลอกลวงหรือบุคคลที่สามทำ ถอนหรือทำลายเอกสารสิทธิ ผู้นั้นกระทำความผิดฐานฉ้อโกง ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ"

, Criminal Code, Section 341 (unofficial translation)

In the context of a company director, conduct that may amount to fraud includes submitting financial statements with inflated figures to a bank in support of a loan application, representing that the company holds assets or contracts that do not exist in order to induce others to invest, or concealing the company's true debt position so that creditors agree to extend the time for payment. The offense requires proof that a deception actually took place and that the injured person relied on it and suffered a loss of a proprietary nature.



Offenses under the B.E. 2499 (1956) Act and non-criminal pinai offenses

Beyond the Criminal Code, the Act Prescribing Offences Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956) creates two groups of specific offenses. The first group consists of criminal offenses committed by "any person responsible for the operation" of the company, which includes its directors. The key provision is Section 42, which provides:

"Any person responsible for the operation of a registered partnership, limited partnership, or limited company who does, or consents to, any of the following: (1) damages, destroys, alters, cuts out, or falsifies any account, document, or security of the partnership or company, or relating to the partnership or company; or (2) makes a false entry in, or omits a material particular from, any account or document of the partnership or company, or relating to the partnership or company, where the act is done, or consented to, in order to deceive the partnership, the company, a partner, or a shareholder so as to deprive them of a benefit to which they are entitled, shall be punished with imprisonment not exceeding seven years or a fine not exceeding one hundred forty thousand baht, or both."

Thai original: "บุคคลใดซึ่งรับผิดชอบในการดำเนินงานของห้างหุ้นส่วนจดทะเบียน ห้างหุ้นส่วนจำกัด หรือบริษัทจำกัด กระทำ หรือยินยอมให้กระทำการดังต่อไปนี้ (1) ทำให้เสียหาย ทำลาย เปลี่ยนแปลง ตัดทอน หรือปลอมบัญชี เอกสาร หรือหลักประกันของห้างหุ้นส่วนหรือบริษัท หรือที่เกี่ยวกับห้างหุ้นส่วนหรือบริษัท หรือ (2) ลงข้อความเท็จ หรือไม่ลงข้อความสำคัญในบัญชี หรือเอกสารของห้างหุ้นส่วน หรือบริษัท หรือที่เกี่ยวกับห้างหุ้นส่วนหรือบริษัท ถ้ากระทำหรือยินยอมให้กระทำการเพื่อลงให้ห้างหุ้นส่วน บริษัท ผู้เป็นหุ้นส่วนหรือผู้ถือหุ้นขาดประโยชน์อันควรได้ ต้องระวางโทษจำคุกไม่เกินเจ็ดปี หรือปรับไม่เกินหนึ่งแสนสี่หมื่นบาท หรือทั้งจำทั้งปรับ"

, Act Prescribing Offences Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956), Section 42 (unofficial translation)

Another provision that answers the question "What is the penalty when a director seeks a wrongful gain that causes loss to the company?" is Section 41, which provides: "Any person responsible for the operation of a registered partnership, limited partnership, or limited company who **does or omits to do any act in order to obtain a benefit to which he or she is not lawfully entitled**, for himself or herself or for another person, to the detriment of that juristic person, commits a pinai offense and shall pay a pinai fine not exceeding fifty thousand baht" (unofficial



translation). This section was formerly punishable by a fine only, and it was therefore converted into a pinai offense by Section 39 of the Act on Imposition of Pinai Regulatory Fines B.E. 2565 (2022) (verified against the legal database of the Office of the Council of State on 4 October 2026 (B.E. 2569)). If the same act amounts to converting the company's property or dishonestly acting contrary to one's duty, it may also constitute an offense under Criminal Code Section 352 or Section 353, which carry a separate penalty of imprisonment. Thai original of Section 41: "บุคคลใดซึ่งรับผิดชอบในการดำเนินงานของห้างหุ้นส่วนจดทะเบียน ห้างหุ้นส่วนจำกัด หรือบริษัทจำกัด กระทำการหรือไม่กระทำการเพื่อแสวงหาประโยชน์ที่มิควรได้โดยชอบด้วยกฎหมาย เพื่อตนเองหรือผู้อื่น อันเป็นการเสียหายแก่นิติบุคคลดังกล่าว มีความผิดทางวินัยต้องชำระค่าปรับเป็นพินัยไม่เกินห้าหมื่นบาท"

The second group covers failures to perform duties under the Civil and Commercial Code: for example, the company fails to call a general meeting under Section 1171, paragraph one (Section 16); the company fails to prepare a balance sheet, to have it examined by an auditor, or to submit it to the general meeting for approval under Section 1196 and Section 1197 (Section 18); and the directors fail to send copies of the balance sheet under Section 1199, paragraph two, or fail to have minutes recorded and the minute book kept (Section 28). These offenses were formerly punishable by a fine only, and Section 39 of the Act on Imposition of Pinai Regulatory Fines B.E. 2565 (2022) converted them into pinai offenses, which are not criminal offenses. The offender must pay a pinai fine (a non-criminal regulatory fine) not exceeding twenty thousand baht (Sections 16 and 18) or not exceeding fifty thousand baht (Section 28).

The distinction worth noting is that the offense under Section 42 must be committed **in order to deceive the company, a partner, or a shareholder so as to deprive them of a benefit to which they are entitled**. By contrast, failing to perform the duties under Sections 16, 18, and 28 requires no proof of dishonest intent, but the legal consequence is a pinai fine, not imprisonment.



Comparison of offenses and maximum penalties

Offense	Provision	Maximum imprisonment	Dishonest intent required?
Misappropriation, and a person managing property dishonestly acting contrary to that duty	Criminal Code ss. 352-353	3 years (5 years only in the cases under Section 354)	Required
Fraud	Criminal Code s. 341	3 years	Required
Falsifying or altering accounts to deprive the company or shareholders of a benefit	B.E. 2499 Act, s. 42	7 years	Intent to deceive required
Failing to call a general meeting, to prepare or submit the balance sheet, or to send copies of the balance sheet	B.E. 2499 Act, ss. 16, 18, 28	No imprisonment (pinai fine)	Not required

Elements the prosecution must prove in a misappropriation case

In a case under Section 353, the prosecution bears the burden of proving all four of the following elements:

First, the relationship of entrustment: It must be proved that the defendant was entrusted with the management of property belonging to another, or in which another has a share of ownership. For a director, this element can usually be proved from the memorandum of association, the company registration records, and the resolution appointing the director.



Second, an act contrary to duty: It must be proved that the defendant acted contrary to the duty entrusted, such as using the company's money or assets for personal benefit, transferring property without a supporting resolution or authority, or entering into transactions against the company's interests.

Third, dishonest intent: It must be proved that the defendant acted with "dishonest intent," that is, knowing that he or she had no right or authority to do the act but doing it to obtain an undue benefit for himself, herself, or another. An honest and reasonable belief that one had the authority to act may be a defense.

Fourth, damage: It must be proved that the act actually caused damage to the injured person's property, and the damage must be a direct result of the breach of duty.

Who is the injured person entitled to lodge a criminal complaint: Money embezzled by a director is the company's property, so the company is the injured person, and a director with authority to act on its behalf lodges the complaint in the company's name under Criminal Procedure Code Section 5(3). The difficulty arises when the authorized director is the wrongdoer. Supreme Court Judgment No. 7626/2568 (Criminal Code Section 352; Criminal Procedure Code Section 5(3), Section 120, and Section 121, paragraph two) concerned a case in which the joint plaintiff and the defendant were both shareholders and directors who jointly acted on behalf of the company. The defendant withdrew money from the company's account and converted it to the defendant's own use. The Supreme Court, by resolution of its General Assembly, held that the charge had already asserted that the joint plaintiff was a shareholder and "is an injured person where a director of the company commits an offense against the company, which is itself a juristic person"; the argument in the Supreme Court appeal that the joint plaintiff was entitled to lodge the complaint was therefore not outside the charge or the issues. The Court went on to hold that the defendant, as the authorized director, would plainly not bring proceedings on the company's behalf against himself or herself, and that the joint plaintiff could not lodge a complaint as a director acting alone because the company's articles of association required the two directors to act jointly. As a shareholder with a direct interest in the company's results, however, and in light of Civil and Commercial Code Section 1169, paragraph one, the joint plaintiff was an injured person who had validly lodged the complaint, so the inquiry official had



power to investigate and the public prosecutor had power to prosecute. The Supreme Court set aside the Court of Appeal's judgment on the embezzlement charge and directed the Court of Appeal to decide that appeal afresh. The reasoning therefore rests on the joint plaintiff's status as a shareholder, not as a director; where the facts differ, for example where another director can lodge the complaint for the company, the position should be assessed case by case.

Misappropriation is also a compoundable offense under Section 356, so the complaint must be lodged within the prescription period for lodging a complaint.

Situations in which directors risk criminal prosecution

Situation one, withdrawing funds without an approving resolution: A director transfers money from the company's account to pay personal expenses, without a supporting board resolution and without recording it as a loan under the company's rules. If dishonest intent can be proved, conduct of this kind may satisfy the elements of the offense under Section 352 or Section 353.

Situation two, using inaccurate information to obtain credit or raise funds: A director presents inaccurate financial statements, or conceals the company's liabilities, to a financial institution or investors in order to obtain approval of a loan or investment. If it can be proved that the director acted dishonestly and, through that deception, obtained property such as the loan or investment funds, this conduct may satisfy the elements of fraud under Section 341.

Situation three, undisclosed conflict-of-interest transactions: A director causes the company to contract with a company or person in which the director has an interest, on terms that favor the director personally and cause the company loss. If dishonest intent can be proved, this may amount to misappropriation.

Situation four, neglecting duties under company law: The directors fail to hold the annual general meeting, fail to file the financial statements with the Department of Business Development (DBD), or fail to have the balance sheet examined by an auditor. These offenses require no proof of dishonest intent, but they are non-criminal pinai offenses under Sections 16, 18, and 28 of the B.E. 2499 (1956) Act, which carry no imprisonment.



Situation five, a director who becomes a liquidator when the company is dissolved: When a company is dissolved, the directors become the liquidators under Civil and Commercial Code Section 1251. Returning property to the shareholders before the debts are paid contravenes Section 1269 and is subject to a pinai fine under Section 37 of the B.E. 2499 (1956) Act, while dishonestly making a false statement or concealing the truth from the general meeting about the company's financial position is a pinai offense under Section 38. A liquidator may also be personally liable in civil law to the creditors. Details are in the article Closing a Company: Dissolution and Liquidation under Thai Law (Thai).

Key observation: documentary evidence is the best shield

In criminal cases involving directors, a director who has no documents supporting his or her actions is usually at a serious disadvantage. Clearly recorded board resolutions, receipts, properly executed contracts, and complete minutes are key evidence of good faith in the conduct of the business, and they can be decisive in the case.

How directors can guard against criminal risk

One, keep complete resolutions and minutes: Every significant transaction involving the company's money or assets should go through a board meeting and be supported by a properly adopted resolution. Fully signed minutes are powerful evidence that the director acted with authority and in good faith.

Two, keep personal and company accounts strictly separate: Mixing personal money with company money, even with the intention of repaying it, is conduct that is easily cited as evidence in a misappropriation case. If it is necessary to borrow from the company, the loan should be documented in a loan agreement approved by resolution, with a clear repayment period.

Three, disclose conflicts of interest before the transaction: If a director has an interest in a transaction, the director should inform the board or the shareholders' meeting and abstain from voting on the matter. Concealing a conflict of interest is one of the circumstances most often raised in dishonesty cases.



Four, comply strictly with duties under company law: Holding the annual general meeting, filing the financial statements, and cooperating with the auditor are all legal duties that cannot be neglected. If the company has difficulty meeting these requirements, consult a legal consultant before the problems accumulate and give rise to legal liability.

Frequently asked questions on the criminal liability of company directors

The answers below are summarized from Criminal Code Sections 352, 353, and 356; Sections 41 and 42 of the Act Prescribing Offences Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956); and Supreme Court Judgment No. 7626/2568. The facts of each case may lead to a different result.

What is the penalty if a director embezzles company funds?

If a director in possession of the company's money dishonestly converts it to his or her own use, it is the offense of misappropriation under Criminal Code Section 352. If a director entrusted with managing the company's property dishonestly acts contrary to that duty and causes loss to the company, it is an offense under Section 353. Both sections carry imprisonment not exceeding three years, a fine not exceeding sixty thousand baht, or both, and both are compoundable offenses under Section 356.

What is the penalty if a director seeks a wrongful gain that causes loss to the company?

Section 41 of the Act Prescribing Offences Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956) provides that a person responsible for the operation of a company who does or omits to do any act in order to obtain a benefit to which he or she is not lawfully entitled, causing loss to the company, commits a pinai offense, with a pinai fine not exceeding fifty thousand baht. If the act also amounts to misappropriation, it may be an offense under Criminal Code Section 352 or 353, which carry imprisonment.



Can a shareholder lodge a criminal complaint against a director who embezzled company funds?

The company is the direct injured person and lodges the complaint through its authorized director under Criminal Procedure Code Section 5(3). Where the authorized director is the wrongdoer, Supreme Court Judgment No. 7626/2568 (a General Assembly resolution) held that a shareholder with a direct interest in the company's results is an injured person entitled to lodge a complaint or bring the prosecution, relying also on Civil and Commercial Code Section 1169, which allows a shareholder to sue the directors on behalf of the company. Where the facts differ, for example where another director can lodge the complaint for the company, the position should be assessed case by case.

What is the penalty for falsifying company accounts or making false entries in them?

Section 42 of the B.E. 2499 (1956) Act provides that a person responsible for the operation of a company who damages, destroys, alters, cuts out, or falsifies accounts, or makes a false entry in or omits a material particular from the accounts, in order to deceive the company, a partner, or a shareholder so as to deprive them of a benefit to which they are entitled, is liable to imprisonment not exceeding seven years, a fine not exceeding one hundred forty thousand baht, or both.

When to consult a legal consultant

A director should seek legal advice immediately in the following situations: when other directors, shareholders, or outsiders begin to complain about or question the management of the company's property; when the director receives a letter from the Department of Business Development, the Revenue Department, or another government agency requiring an explanation; when the company intends to enter into a major transaction that may affect shareholders' rights; and when a dispute arises among the directors over management authority or the use of the company's property, which often escalates into a criminal complaint under Section 352 or Section 353.



Eksiam Chaisorn has direct experience advising on directors' civil and criminal liability and on structuring company management to reduce legal risk effectively.

Key points

- The criminal law punishes the individual directly, so a director cannot rely on the company's status as a juristic person to avoid criminal liability.
- Misappropriation under Criminal Code Sections 352 and 353 carries imprisonment of up to 3 years; the aggravated penalty under Section 354 applies only to administrators of property under a court order or a will, or to those in a profession in which the public places its trust.
- Fraud under Criminal Code Section 341 carries a maximum of 3 years' imprisonment and requires proof that a deception took place and that the injured person relied on it and actually suffered loss.
- Falsifying or altering accounts to deprive the company or its shareholders of a benefit carries imprisonment of up to 7 years under Section 42 of the B.E. 2499 (1956) Act, whereas failing to call a meeting or prepare a balance sheet is a non-criminal pinai offense (Sections 16, 18, 28).
- Board resolutions, minutes, and properly executed contracts are the best tools a director has for guarding against criminal risk.

