



Tilleke & Gibbins

Directors' Liability Overview of Civil and Criminal Disputes

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Director's liability seminar - AustCham

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Civil and Criminal Liability: Litigation

1. Civil and Criminal Liability of Directors

1.1 Scope of Director's Liability

1.1.1 Civil liability

1.1.2 Criminal liability

1.2 Civil and Criminal Liability of Directors under Labor Law

1.3 Civil and Criminal Liability of Directors under the Personal Data Protection Act

2. Litigation Procedures against Directors

- Civil
- Criminal

1.1 Scope of Liability of Directors

1.1.1 Civil Liability

1. Liability to Company

CCC section 1169:

“Claims against the directors for compensation for injury caused by them to the company may be entered by the company or, in case the company refuses to act, by any of the shareholders.

Such claims may also be enforced by the creditors of the company in so far as their claims against the company remain unsatisfied”.

1.1 Scope of Liability of Directors

1.1.1 Civil Liability

1. Liability to Company

- ▶ Who has the right to submit a claim against the directors?
- ▶ Shareholders
- ▶ Creditors
- ▶ Third parties

1.1 Scope of Liability of Directors

1.1.1 Civil Liability

2. Liability to Third Parties

- Director must act under scope of authority
- No personal liability

Ex. - General meeting of shareholders - resolution to ratify the act



1.1 Scope of Liability of Directors

1.1.1 Civil Liability

2. Liability to Third Parties

Act beyond scope of authority



Personal Liability

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

- There are approximately 76 laws providing for criminal penalties for company directors.
- Imprisonment and/or Fines

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

In the past:

“ In case where an offender whom will be liable for criminal penalties is a juristic person, a managing director, a shareholder, a managing partner, or a representative who is responsible for the operations of the juristic entity, it shall be presumed that such person is liable for the penalties as stated by the law for such offence, except where the person is able to prove that he or she was not involved in the offence of the juristic person ”

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

A legal assumption that the director, the managing director, the representative of juristic person, or the person who is responsible for the operation of the juristic person:

- ➡ The person is deemed an offender the same as the juristic person
- ➡ Without proving from action or refraining from the action whether they actually committed the offence

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

Constitutional Court case number 12/2012

“ The law providing for a legal presumption that the managing director, managing partner, or person will be responsible for the operation of the juristic person and must be liable for criminal penalties with the juristic person without proving the action or intention of the person to commit the offence violates the Constitutional Act B.E. 2550 Section 39 paragraph 2 ”

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

Consequence

Enactment of General Provision

Government enacted Criminal Liability of Representatives of Juristic Persons (B.E. 2560) to revise concerned laws.

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

Result of new law

If a person who commits an offence is a juristic person, if the offence of such juristic person is committed by the order or act of any person or by the failure to give an order or to do any act which is a duty that must be performed by the managing director or any person responsible for the operation of such juristic person, that person shall also be liable to punishment as provided for such offence.

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

Consequence

The plaintiff now has a specific burden of proof to show that:

1. The juristic person committed an offence under related laws;
and
2. The offence must be incurred by:
 - 2.1 Order / Failure to order
 - 2.2 Action / Refraining from action
 - 2.3 Of a director, a manager, or any person responsible for the operations of such juristic person

1.1 Scope of Liability of Directors

1.1.2 Criminal Liability

Examples of adapted laws

1. Act Prescribing Offences Related to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations, B.E. 2499
2. Public Company Act, B.E. 2535 (Section 222)
3. Security and Stock Exchange Act, B.E. 2535
4. Labor Law
5. Personal Data Protection Act

1.2 Civil and Criminal Liability of Directors under Labor Law

Labor Protection Act section 158

“ Whereas the offender is a juristic person, if a violation by such juristic person is due to an order or performance of any person, or neglects to order or, a neglect of a duty as required as a Managing Director or of any person who is responsible for carrying out the business of such a juristic person, such person shall be penalized according to the provisions prescribed for such violations ”

1.2 Civil and Criminal Liability of Directors under Labor Law

1.2.1 Wages, Overtime payment

Failure to pay wages, overtime payment



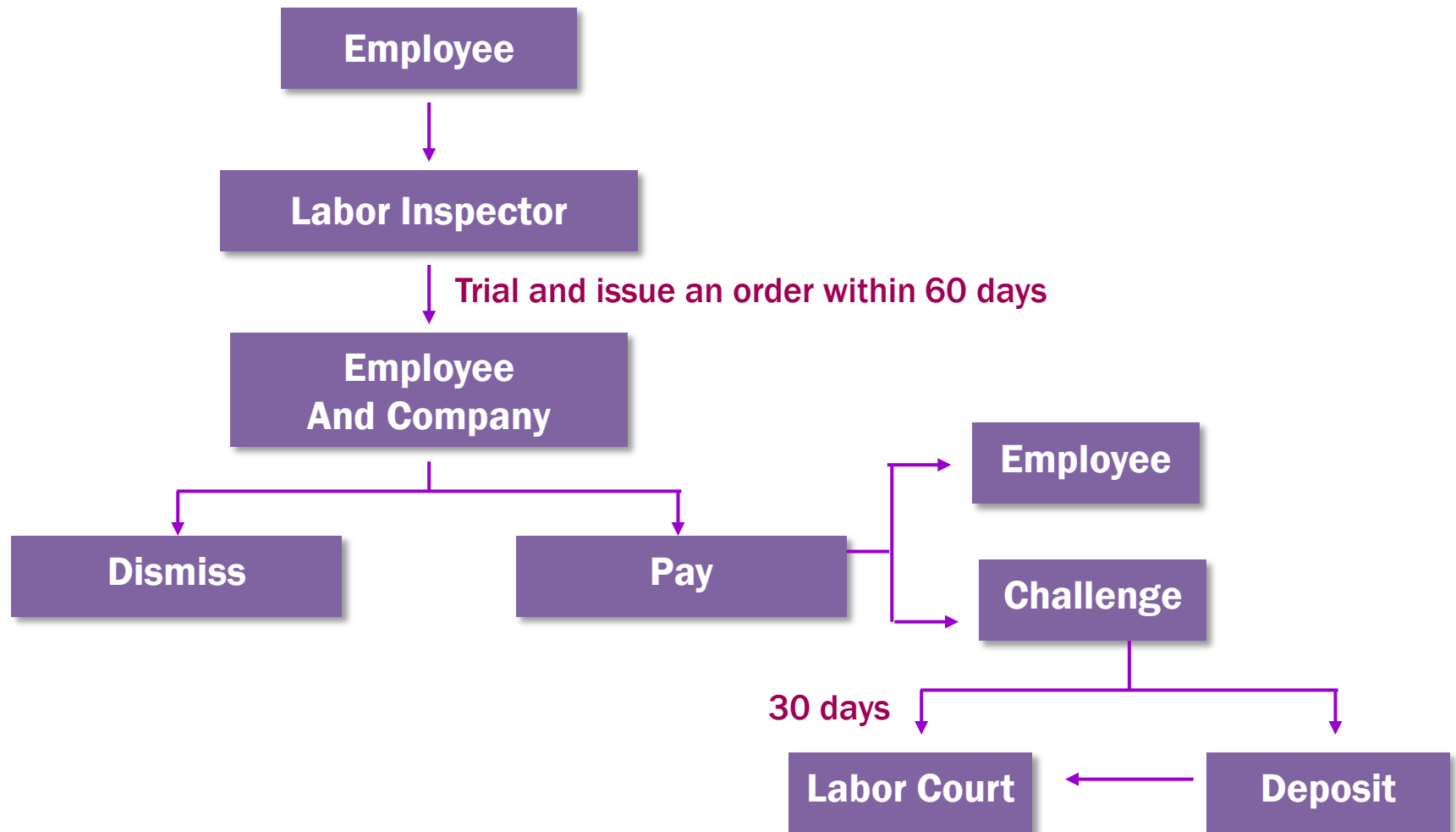
Imprisonment not exceeding six months
or a fine not exceeding 100,000 Baht or both

1.2 Civil and Criminal Liability of Directors under Labor Law

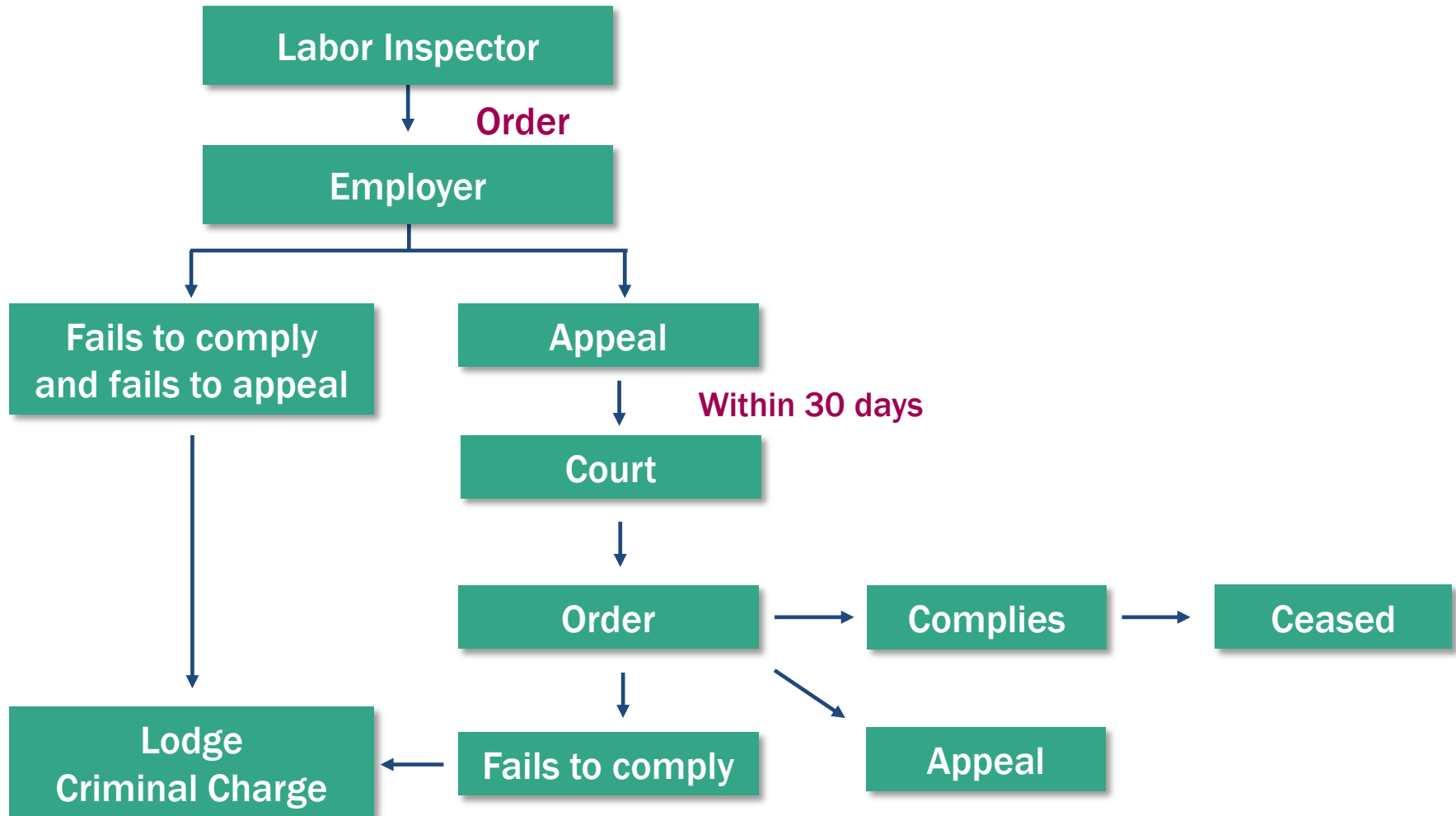
1.2.1 Wages, Overtime payment

- The company fails to pay wages, overtime, etc.
- Director of the company liable for the criminal penalties
- When the director orders or fails to order or acts or fails to act

1.2 Civil and Criminal Liability of Directors under Labor Law



1.2 Civil and Criminal Liability of Directors under Labor Law



1.3 Civil and Criminal Liability of Directors under Privacy Data Protection Act

Section 81

“ In the case where the offender who commits the offense under this Act is a juristic person and the offense is conducted as a result of the instructions given by or by the acts of any director, manager or person, who shall be responsible for such acts of the juristic person, or in the case where such person has a duty to instruct or perform any act, but omits to instruct or perform such act, such person shall also be punished as prescribed for such offense ”

1.3 Litigation Procedure against Directors

1.3.1 Civil claim

- Submit the civil claim to the Court that has jurisdiction

1.3.2 Criminal claim

- Lodge a criminal charge to police
- Submit a criminal charge to the Court that has jurisdiction

1.3 Litigation Procedure against Directors

1.3.2 Criminal claim

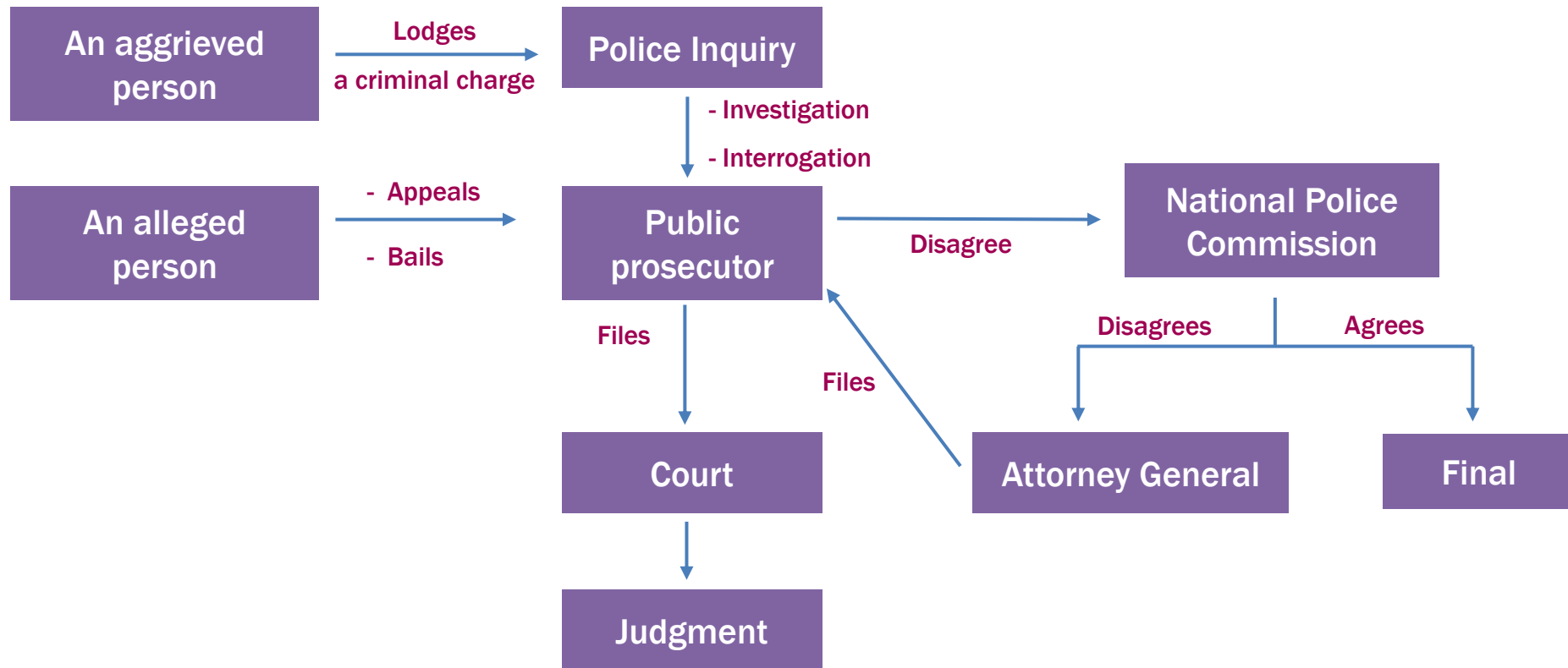
1) Necessary documents

- Company affidavit
- Power of Attorney
- Supporting documents
- Witnesses
- Security for bail

1.3 Litigation Procedure against Directors

1.3.2 Criminal claim

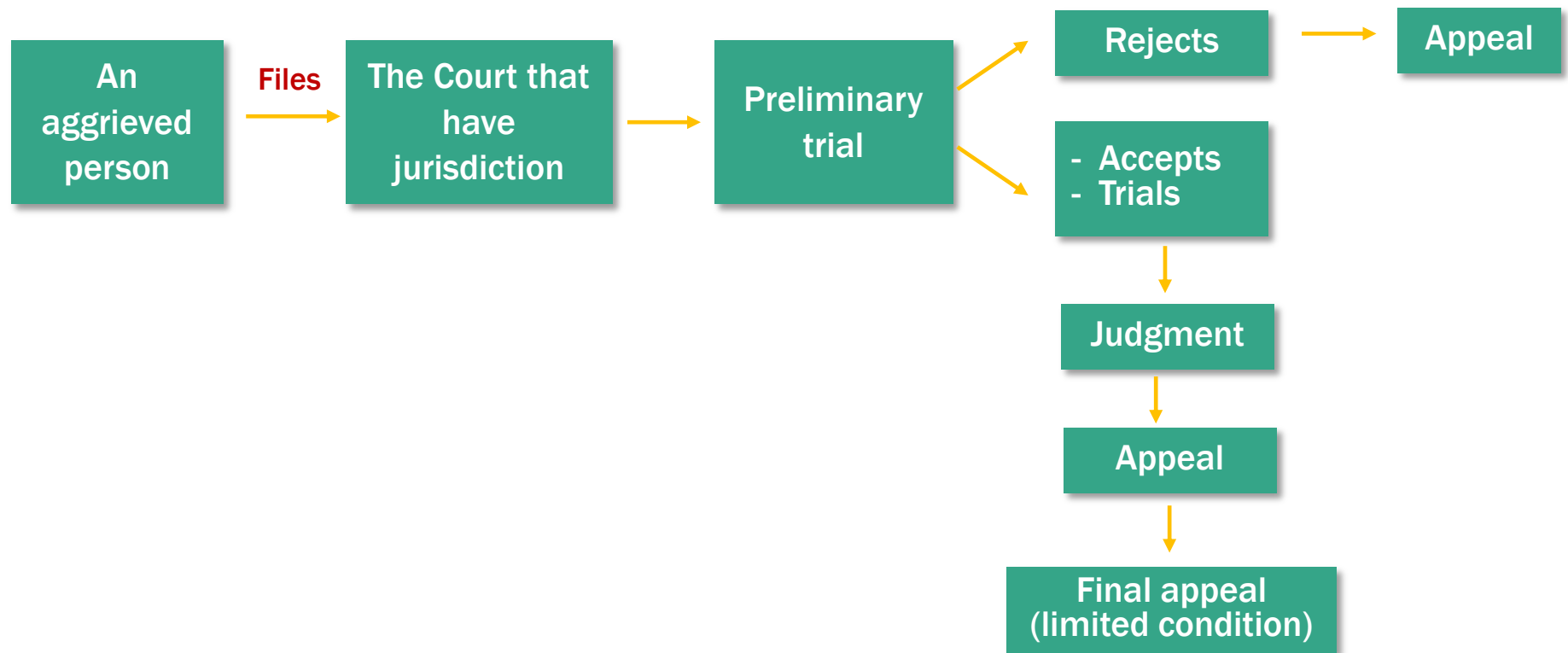
2) Investigation Process



1.3 Litigation Procedure against Directors

1.3.2 Criminal claim

3) Submitting criminal charge to the Court



1.3 Litigation Procedure against Directors

1.3.2 Criminal claim

Recommendation

1. Clear regulation, authorization and process of juristic person
2. Carefully conduct or supervise duties
3. Beware of Civil and Criminal Liabilities



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