



## Expat Counsel

By James Finch and Nilobon Tangprasit

Last time we talked about provisional release, when a judge gives a defendant their freedom pending a criminal trial or appeal. But how does the judge ensure that the defendant will show up for the trial or appeal? Under certain circumstances, the judge can require the defendant to post bail or a bond, which would be lost if the accused doesn't show up to court. Both a bail and a bond are contracts with a bondsman, who gets money or assets from the defendant to ensure that the bondsman won't have to pay the bond if the defendant doesn't show up.

The difference between bail and a bond (called security in the English version of the Criminal Procedure Code) is that bail guarantees that the defendant will appear at the trial. A bond guarantees that the defendant will also be around when the court delivers judgment.

If the maximum penalty for the crime of which the defendant is accused is less than five years' imprisonment, the judge has discretion. The judge can require the defendant to post bail or put up a bond but doesn't have to. By regulation of the president of the Supreme Court, the maximum amount for such bail or bond is

100,000 baht. If the judge decides not to require bail or a bond under these circumstances, the defendant has to take an oath or make a written affirmation that he or she will appear for the trial or appeal before being released.

Here's an example of the kind of bail or bond that is required where the maximum penalty is less than five years. For theft, the minimum bail or bond required would be 50,000 baht. Of course, this is up to the discretion of the judge because the maximum penalty is less than five years, but if the judge decides bail or a bond is necessary, it must be more than 50,000 baht. Also, for the reason mentioned above, it can't exceed 100,000 baht.

If the maximum penalty is five years' imprisonment or more, the judge must require bail or a bond. For example, the crime of bodily harm, for which the maximum penalty is more than five years, the minimum bail or bond is 40,000 baht. For grievous bodily harm, a more serious crime, the minimum is 120,000 baht. These are minimums and the judge, at the behest of

the public prosecutor, can require larger amounts.

In practice, if the maximum penalty is more than five years, the judge will always require a bond, and not bail.

The form of the bond can be any of the following:

- Cash.
- Other assets. These must be something with certain value, such as a bank book, government bond or a bank cheque.
- Having another person post assets to guarantee that the defendant will appear. The adequacy of such a guarantee will depend on the salary of the person, and the salary must be at least one-tenth of the bond, or additional security will be required.

Foreigners, however, are limited to cash bonds.

As mentioned above, the purpose of bail and bonds is to ensure that the defendant will show up for the legal pro-

ceeding. Bail can't be excessive. This means it must be reasonable to ensure that the defendant will show up for the trial or appeal. It can't be more than this. If bail or a bond is designed to punish the defendant or make it impossible for the defendant to pay, thus ensuring the defendant will stay in jail, it is too much.

Of course, if the court selects the minimum amount for bail as discussed above, it will never be considered excessive. But if the court selects a much higher amount for the bail, the defendant can appeal this from jail. ■

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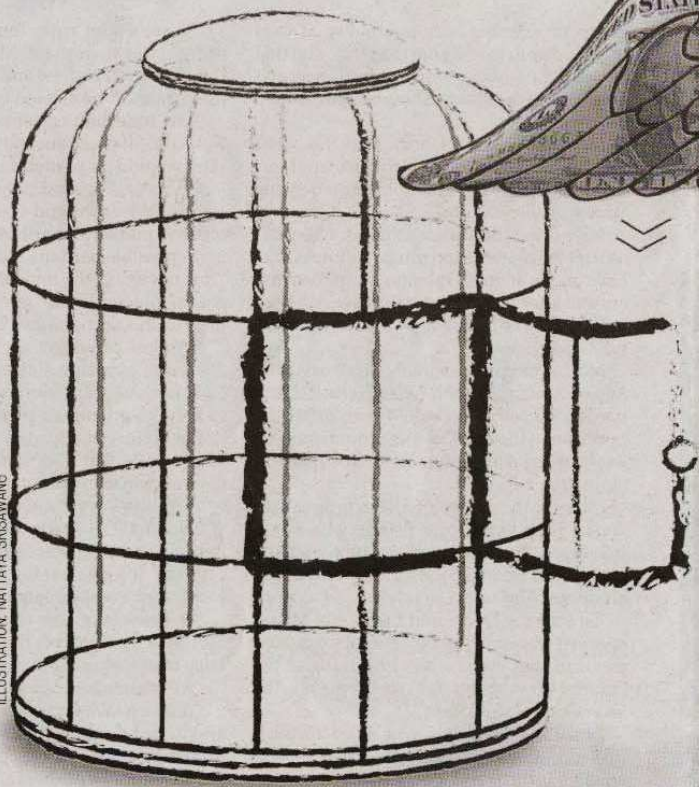


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## CRIMINAL LAW IN THAILAND

### Part XXXVIII: The criminal trial — bail and bonds