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Criminal liability of legal entities

Shortly before the end of the year, the act No 418/2011 Sb., on criminal liability of legal entities and proceedings against them (hereinafter referred to as the “Act on criminal liability of legal entities”) was published in the Collection of Laws. The Czech Republic has introduced this long-discussed breakthrough regulation, which was vetoed by the President in November 2011, as one of the last EU member states. Legal entities should pay attention to this law since fines amounting to millions or dissolution of legal entity are among the sanctions.

The Act on criminal liability of legal entities should not be considered as a separate criminal law regulation but rather as a supplementary regulation to the present Act No 40/2009 Sb., Criminal Code, as amended (hereinafter referred to as the “Criminal Code”). Accordingly, the Act on criminal liability of legal entities makes frequent references to the Criminal Code and, if the nature of the respective provision allows so, the Criminal Code shall be applied as supporting law.

The provisions of the Act No 141/1961 Sb., on criminal procedure, as amended (hereinafter referred to as “Criminal Procedure Code”) shall be used ancillary in criminal proceedings. Newly, proceedings against a legal entity according to the Act on criminal liability of legal entities shall be considered to be “criminal procedures” used in other legal regulations.

Crimes

The Act on criminal liability of legal entities shall apply when judging

- crimes committed by any legal entity in the territory of the Czech Republic,
- crimes committed by any legal entity abroad if the violation of the legally protected interest should happen in the territory of the Czech Republic,
- crimes committed abroad by legal entities having their registered office in the Czech Republic,
- some selected crimes (crimes against the currency and means of payment and terrorist attacks) committed by any legal entity in the Czech Republic or abroad.

The Czech Republic and autonomous territorial units when exercising public authority are excluded from criminal liability of legal entities.



Furthermore, an exhaustive list of crimes giving rise to prosecution is contained in the Act on criminal liability of legal entities. There is a reference to the corresponding provision of the Criminal Code cited for each particular criminal offence in the list. There are no crimes against life and health, crimes against military service and military crimes in the list, for which legal entities may not be prosecuted.

Imputability of criminal liability

When prosecuting a legal entity, it will not be necessary to prove intention or negligence. The law introduces a new institute of the “imputability” of crimes. The main advantage of the law is that a legal entity may be designated as perpetrator of the committed crime even in cases where there is no possibility to identify a particular individual who has committed the crime, but where, at the same time, this legal entity gained a benefit from the committed crime.

A legal entity may be prosecuted for committing crimes that have been committed by one of the persons listed in the Act on criminal liability of legal entities and that are imputable to the legal entity. The commitment of a crime by

- actions of statutory bodies of the legal entity,
- a member of the statutory body,
- a person carrying out managing or control activity, or
- a person exercising a decisive influence over the management of the legal entity

is imputable to the legal entity.

The commitment of a crime by an employee or a person having a similar status is imputable to the legal entity only if

- this person has acted according to the instruction of the above-mentioned bodies or persons, or
- the above-mentioned bodies or persons have not performed sufficient control over the activity of employees or other subordinates or have not taken sufficient measures to avoid or avert the consequences of the committed crime.

It does not preclude a legal entity from being held liable if it is not possible to ascertain which particular individual has committed the crime in question. A legal entity may be prosecuted for committing a crime even if the imputable action took place before its incorporation, if the legal act is invalid or ineffective or if the acting individual shall not be held criminally responsible for such crime.



Criminal liability of a legal entity shall pass over to all its legal successors. If there are more legal successors, the court shall consider to which extent the profit from the committed crime has passed over to each of them, or, if applicable, to which extent each of them continues to carry out the activity in connection to which the crime was committed.

Penalties

As mentioned above, criminal sanctions may be detrimental for legal entities. The purpose of introducing them shall be, however, in particular the psychological effects. The legislators considered when creating the law that legal entities would wish to avoid not only threatening sanctions but also the judicial proceeding itself or entry in the register of criminal records which shall be available to the public. Conviction of legal entities in criminal proceedings could be used in possible proceedings for damages as an important piece of evidence.

According to the Act on criminal liability of legal entities, the following sanctions can be imposed on legal entities for committing criminal offences:

- dissolution of the legal entity,
- forfeiture of property,
- fine (daily rate 1.000 – 2.000.000 CZK),
- forfeiture of a thing or other assets,
- ban on carrying out the activity (1 – 20 years),
- ban on performing public contracts, participation in concession proceedings or tenders (1 – 20 years),
- ban on accepting grants and subventions (1 – 20 years),
- publication of judgments.

The court may impose also protective measures – forfeiture of a thing or other assets – on legal entities. The court may (with some exceptions) combine the particular types of sanctions and protective measures.

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