

# Legal Alert

**3/2016**

## **Criminal liability of legal entities**

The National Parliament of the Slovak Republic adopted a new Act no. 91/2016 Coll., on Criminal Liability of Legal Entities and on Amendments and Supplements of Certain Acts (hereinafter the "Act") on 13 November 2015. The proposal of the Act follows from the proposal of actions for ensuring fulfilment of recommendations adopted by the OECD Work Group on Bribery in International Business Transactions for the Slovak Republic. The Act will become effective on 1 July 2016. A number of framework decisions and directives of the European Union were implemented into the Act regarding the fight against fraud, corruption, organized crime, terrorism or environmental protection.

### **What will be the scope and object of the Act?**

The Act defines the principles of criminal liability for legal entities, types of penalties, the approach to imposing penalties and criminal procedure provisions. There will be a subsidiary application of the Criminal Code and Criminal Procedure Code to the Act.

The provisions regarding the territorial scope of the Act are widely outlined. They contain the following rules:

- The Act will apply to criminal liability for an act committed on the territory of the Slovak Republic;
- The Act will apply to crimes committed outside the territory of Slovak Republic by a Slovak legal entity, or by a branch of a foreign legal entity with its registered seat in the Slovak Republic;
- The Act will apply to criminal liability for an act committed by a foreign legal entity outside the territory of the Slovak Republic if such a crime was committed for the benefit of a legal entity with its registered seat in the Slovak Republic, for the benefit of a Slovak citizen or a foreigner with his/her permanent residence in the Slovak Republic or if such crime caused damage to the above mentioned subjects.

### **What kind of criminal offences does the Act contain?**

The Act contains a list of criminal offences that will be imposed on legal entities. This list reflects commitments of the Slovak Republic following from international agreements and membership in the European Union.

Outside the scope of international commitments the list was extended to offences the prosecution of which is in the interest of the Slovak Republic. Contrary to this fact, the Act does not contain a number of important penalties; e.g. failure to pay wages and severance pay, fraud, induced bankruptcy, unfair preference or harm a creditor or machinations in public procurement and public auctions.

## **Direct criminal liability of legal entities**

The new Act will introduce the direct criminal liability of legal entities to the Slovak legal system alongside the indirect criminal liability still used today. This means the possibility to impose a penalty upon a legal entity in contrast to limitations on protective measures in criminal proceedings. Under the currently valid and effective law, only natural persons acting on behalf of a company may be personally liable for a violation of the law.

A legal entity will be liable for a crime committed by respective bodies and representatives specified in the Act, for the benefit of, in the name of, in the scope of activity or by means of activity of such legal entity, on the basis of the attribution principle. This will also apply in cases where the above mentioned persons enable a person acting within the scope of his/her competencies (e.g. a representative or employee performing work outside an employment relationship) to commit (even by negligence) a crime. The Act also contains reasons that exclude liability for a legal entity regarding such unlawful conduct.

Bankruptcy, liquidation procedure, dissolution of a company or setting up a new one has no impact on the criminal liability of a legal entity. The criminal liability of a dissolved legal entity passes to all of its legal successors except for natural persons.

## **Who will be exempted from the Act?**

The criminal liability of legal entities will not apply to states, its bodies, international organizations, municipalities or legal entities established by a special law.

## **New definitions of legal terms in Slovak criminal law**

The Act will introduce a new definition of the terms "Offender" and "Accomplice" beside the terms already used in the Criminal Code, which cannot be adopted from the Criminal Code. The participation of a legal entity in a criminal offence is also stipulated by the Act.

## **Which type of penalties will be imposed?**

A legal entity will be punished for committing a crime with the following types of penalties:

- dissolution of the company;
- assets forfeiture;
- forfeiture of an individual asset;
- monetary penalty;
- prohibition to perform certain activities;
- prohibition of receiving subsidies or subventions;
- prohibition of receiving the aid and benefits provided from European Union funds;
- prohibition on participation in public procurement; and
- publication of the sentencing judgement.

When considering the type and degree of penalty the court must take into account the nature of the penalty and its importance for society, the circumstances of the legal entity, including its financial circumstances, the previous activity of the legal entity and also whether the legal entity carried out activities in the public interest, with strategic importance for the national economy, defence or security. When applying a penalty, the court will consider the impact on the employees of the legal entity, the legally protected interests of the aggrieved party and the legal entity's creditors.

## **Are there any peculiarities of criminal proceedings against a legal entity?**

The Act will prevent the legal entity from double punishment simultaneously in administrative and criminal proceedings.

Coherence between the criminal offences from which the legal entity and its body or representative is charged will see the respective criminal proceedings merged together.

Restrictive and assurance measures should prevent or frustrate the consequences of the crime committed. These are as follows:

- the obligation to put an amount of money or a thing on deposit with the court;
- the prohibition of handling certain things or rights;
- the obligation to do something, to restrain from something or to tolerate something.

A statutory body represents a legal entity in criminal proceedings and has the right to remain silent.

## **Conclusion**

The Act will adopt the direct criminal liability of legal entities. This means the possibility to impose a penalty upon a legal entity for a crime committed by a natural person entitled to act and decide on behalf of the respective legal entity. The list of criminal offences which will be possible to impose on legal entities is considerably shorter in comparison to the Criminal Code. The effectiveness of some legal acts of a statutory body requires prior judicial approval after commencement of prosecution.

### **Contacts:**

**In case of any questions, please do not hesitate to contact your contact person in our office, or approach JUDr. Marek Olekšák (marek.oleksak@bapol.sk) or Mgr. Marek Orosz (marek.orosz@bapol.sk).**

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