

**Speedread:**

## **Criminal liability of legal persons**

On 27 April 2010, the National Council of the Slovak Republic, issued the new Act, amending the Criminal Act, Criminal Procedure and Act on Bankruptcy and Restructuring. The amendment was approved in conjunction with the EU legislation, setting out the criminal liability of legal persons, and adopts the criminal liability of legal persons as a new institute of criminal law. New Act will come into effect on 1 September 2010.

The new Act sets out the criminal liability of legal persons provided that a criminal offence has been committed in relation to legal person's activity. In accordance with the fundamental provisions of criminal law, only the newly adopted protective measures: confiscation of property, or alternatively, confiscation of funds may be imposed on a legal person.

### **General Principals**

- Criminal prosecution of natural persons will not be a condition for imposing protective measures.

Imposing protective measures will not be bound by criminal proceedings against individual natural persons, thus protective measures may be imposed even without the parallel prosecution of individual natural persons. The competent prosecutor will be entitled to lodge a petition on imposing protective measures if the result of the investigation indicates, that the persons executing control, empowered to make decisions, or representing the legal person concerned, had committed a crime or neglected the supervision or check related to the legal person concerned.

### **Protective measures**

- The court may order confiscation of property, or alternatively, confiscation of funds

The court may order a legal person's property be confiscated if a criminal offence has been committed, and if the legal person has acquired the property with relation to this criminal activity or earnings coming from this criminal activity.

Alternatively, the court may order a legal person's funds confiscated if a criminal offence has been committed in relation to legal person's activity, from EUR 800 to EUR 1.660.000 confiscated.

Neither property, nor the funds may be ordered confiscated, if the property of the state, European Union, authority of a foreign country or international organisations would be afflicted.



## *Continuation*

In the event of winding up the company with a legal successor, the protective measure will be imposed on its legal successor.

The property and funds confiscated becomes the property of the state.

## **Protection of a legal person's creditors and employees**

- Confiscation of property may not affect legal person's creditors and employees.

The establishment of a legal person's criminal liability, and with the adoption of protective measures (mainly the confiscation of property) affecting the legal person's property, raises the issue of protecting a legal person's creditors.

The rationale of the new Act is to protect the whole society; therefore this protection cannot be executed at the expense of creditors and employees rights in private legal relations. Therefore, the new Act sets out that the result of a confiscation of property proceeding has to be a bankruptcy proceeding of the legal person concerned, and only the property which remains after the bankruptcy proceeding's commencement and the creditor's and employees claims are settled may be subject to confiscation.

## **Prohibition of retroactivity**

Pursuant to the new Act, the courts are permitted to order funds or property be confiscated only if the related criminal offence was committed after 31 August 2010.

### **Contacts**

For further information, please contact your usual contact person from our offices

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