



December 2011

Criminal liability of legal entities

On 1 January 2012, the Act on Criminal Liability of Legal Entities and on Proceedings against them comes into effect. This act is a major breakthrough change in the area of criminal law, as the legal entities could have been punished only under administrative law so far. Unlike the criminal liability of natural persons, the liability of legal entities will be a collective one.

Under this act, the culpability of acts committed in the territory of the Czech Republic by a legal entity with registered office in the Czech Republic or whose enterprise or branch (organizational component) is located in the Czech Republic or which has its assets in the Czech Republic will be assessed. Further, under this act, the **culpability of acts committed abroad** will be assessed provided that they are committed by a legal entity with registered office in the Czech Republic or provided that they are committed by a legal entity which does not have the registered office in the Czech Republic but commits these acts to benefit of a legal entity with registered office in the Czech Republic.

An act can be assessed as a criminal offence committed by a legal entity, if following three conditions are met:

- 1) The act must be an illegal act committed **in the name of the legal entity or for its benefit or within its activities**:
- 2) The act must be committed (i) by the statutory body or a member of the statutory body or by a person authorized to act in the name or on behalf of the legal entity, (ii) by a person performing management or controlling activities in such legal entity, (iii) by a person exercising a decisive influence on the management of such legal entity or (iv) by an employee or a person in similar position within the performance of working tasks. **It does not have to be determined which specific natural person acted in the given way.**
- 3) **This act has to be attributable to the legal entity.** An act of persons enumerated under (i) through (iii) above is always deemed to be attributable to the legal entity. An act of employees is attributable to the legal entity only if such act was performed on the ground of a decision, approval or instruction of bodies of the legal entities or persons enumerated under (i) through (iii) above or if the bodies of the legal entity or persons enumerated under (i) through (iii) above failed to implement measures which they should have implemented under other legal regulations or which can be reasonably required from them, in particular if they failed to perform mandatory or necessary control of the employees' or other persons' activities, to whom they are

seniors, or failed to implement necessary measures preventing or averting consequences of the committed criminal offence.

A criminal offence can be committed by a legal entity and a natural person at the same time; **the criminal liability of a legal entity does not exclude criminal liability of a natural person and vice versa.**

In particular with regard to the attributability of employees' acts, it is **important to develop and implement a system of measures** securing the **control over activities of all employees and preventing and averting consequences of a possible committed criminal offence.** If a criminal offence is committed by an employee and the above mentioned conditions are met, the employer (legal entity) has to prove that it was only an excess of a particular employee and not a misconduct of the legal entity.

The act contains a precisely defined **catalogue of criminal offences** which can be committed by a legal entity. These are in particular **criminal offences related to the business activities of the legal entity** (except, for example, for the criminal offence of breach of competition rules, these offences will be, as yet, punished under provisions of administrative law), however, some criminal offences which, at first sight, can hardly be committed by a legal entity – e.g. sexual abuse, illegal weapons possession, etc. – are included in this catalogue as well. If, however, such offence is committed by an employee of a legal entity within the performance of working tasks and, at the same time, the conditions mentioned above (in particular the attributability) are met, not only the perpetrator – natural person but also his/her employer – legal entity would be liable for such criminal offence. In addition, a legal entity can commit a criminal offence not only as a **perpetrator**, but also as an accomplice (i.e., **organizer, instigator or aider**).

Until final and conclusive termination of the prosecution, the prosecuted legal entity may be neither dissolved nor converted without the consent of the court. The **criminal liability of a legal entity passes on each of its legal successors.**

Only following **penalties** for committing a criminal offence can be imposed on a legal entity:

- dissolution of the legal entity,
- forfeiture of property,
- pecuniary fine (CZK 20,000 – CZK 1,460,000,000),
- confiscation of a thing or other property value,
- prohibition to undertake activities (1 year – 20 years),
- prohibition to fulfil public contracts (procurements), to participate in concession proceedings or to participate in a public tender (1 year – 20 years),
- prohibition to accept subsidies (1 year – 20 years),

- publication of the court judgement (in media)

or **penalty measures:**

- seizure of a thing or other property value.

The commencement of prosecution of a legal entity will be entered also in the registries, e.g. in the **commercial register**.