

Dentons Newsletter

Amendment to the Act on Criminal Liability of Legal Entities

July 18, 2016

We have prepared for you below a brief description of selected changes triggered by a principal amendment to Act No. 418/2011 Collection of Laws (Sb.), on Criminal Liability of Legal Entities ("CLLE"), which was promulgated in the Collection of Laws under No.: 183/2016 Coll. (Sb.) on 13 June 2016 and which will become effective on 1 December 2016. The purpose of the amendment is primarily to extend the range of criminal acts for which legal entities may be criminally prosecuted. The amendment includes, *inter alia*, a provision allowing a legal entity to release oneself from criminal liability for acts taken by all persons associated with the legal entity, without any exceptions, in the event that a suitable internal compliance program is set up. Until now, this option existed only in relation to regular employees. The amendment will affect not only new criminal cases but also any pending ones, unless they are effectively terminated as of 1 December 2016.

The key points of the passed amendment are as follows:

1. **Extending the list of criminal acts that may be committed by a legal entity;**
2. **Introducing a general legal principle of exempting oneself from criminal liability (exculpation) if the legal entity has applied all efforts that could be justifiably expected from such legal entity to avert an offence;**
3. **Narrowing criminal liability for acts committed by persons authorized to act on behalf of the legal entity solely to offences committed by persons occupying the position of a manager;**
4. **Extending the catalogue of offences (criminal acts) where effective mitigation of liability is excluded by adding other corruption related offences; and**
5. **Extending the catalogue of offences (criminal acts) whereby the ending of criminal liability and barring of the service of a sentence (punishment) by statute of limitation are excluded.**

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1. Changes in the List of Criminal Acts

The amendment substantially extends the number of offences which can be committed by legal entities; it also newly introduces a system where legal entities can be liable for all offences or misdemeanor crimes described in the Criminal Code, save for offences listed in Section 7 of CLLE. Legal entities will be newly liable, for example, for the crime of embezzlement, theft or violation of one's duty in the course of administration of another one's assets.

The original legal regulation contained a comprehensive definition of offences for which a legal entity could be liable. Due to a change in the approach to the issue (through a negative comprehensive list), the original 84 offences have turned into approximately 200 offences. Among offences listed in Section 7 of the Act, which will continue to be exempted from the criminal liability of legal entities, there are most frequently acts in respect of which, due to their nature, it is difficult to presume could be committed by a legal entity.

Legal entities will be newly liable also for the offence of defamation (libel).

2. Introducing the Possibility to Exempt (Exculpate) Oneself from Criminal Liability

Based on a proposal for modification submitted by one of the deputies in the Parliament, the Act has been amended with a new provision allowing legal entities to exempt themselves from criminal liability (exculpation), if they have exerted all efforts that could be justifiably expected from them to avert the offence (committing of the crime).

The criminal liability of legal entities has been based on the principle of attributability, which makes a tie

between a legal entity's liability for and acts taken by a limited circle of persons having a managerial role, or, as the case may be, by employees.

In the past, there was a rule in relation to the attributability of acts taken by employees stipulating that an offence committed in the course of performing work-related tasks may be attributed to a legal entity only if the employee acted based on a decision, approval or instruction of the legal entity's management bodies, or, as the case may be, because the management or controlling bodies of the legal entity failed to take any measures they should have taken according to legal regulations or such measures the taking of which could be justifiably demanded from them.

This means in particular a failure to exercise a statutory or pertinent inspection of activities performed by employees or a failure to adopt necessary measures aimed at preventing or averting the consequences of a committed offence. According to the previously valid regulation, the possibility to block the attributability of an offence to a legal entity based on an internal compliance program was thus limited only to exculpation from acts taken by regular employees.

In this respect, the new regulation brings along a major extension of possibilities for the use of this principle. A compliance program can be implemented for example through the training of employees, establishment of an internal whistleblowing system or a whistleblower policy, or based on the adoption of an Ethical Conduct Code and making it available for employees. It can therefore be presumed in connection with the amendment that compliance programs will become more frequently utilized by all types of businesses and other entities. Due to the introduction of such a type of program and its thorough observance, a conclusion can be

drawn on applying all efforts that can be demanded from a legal entity. If such conclusion is drawn, criminal liability can be newly avoided not only in relation to a misdemeanor of an employee but also of members of the statutory body, proxies and other persons whose acts are attributable to the legal entity according to CLLE.

3. Narrowed Criminal Liability

The amendment has taken away from Section 8 of CLLE the wording stipulating that an offence committed "on behalf of a legal entity" is an offence committed by that legal entity. The two situations that have remained unchanged by the amendment will apply: it must either be a situation within the scope of the company's activities or in the company's interests (it will therefore not suffice if the offence was committed merely by acting on behalf of the company); the existing regulation has thus been slightly qualified.

The newly approved wording of Section 8 of CLLE has furthermore narrowed the liability for offences committed by persons authorized to act on behalf of a legal entity and persons performing management or inspection activities. The law newly requires that such persons must simultaneously be persons with a managerial function within the framework of the legal entity.

4. Other Issues

The catalogue of offences where effective mitigation of liability is excluded, i.e. situations where the criminal liability of a legal entity no longer becomes applicable, has been newly extended. The criminal liability of legal entities does not newly end in the event of other offences connected with corruption related acts. Furthermore, the catalogue of offences whereby the ending of criminal liability and barring of the service of a sentence (punishment) by statute of limitation are excluded has also been extended.

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