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Criminal liability of legal persons

March 2016



The new Slovak legislation governing the criminal liability of legal persons will come into effect on 1 July 2016. Considering the extent of the new legislation, it undoubtedly warrants a closer look, as it will have a significant effect on the business community. The implementation of this legislation is expected to bring Slovakia closer to the common law system, thanks to its adoption of the model of direct liability of legal persons, which enables the imposition of direct criminal sanctions on legal persons without the need to prosecute individuals. The system of direct criminal liability has already been adopted by the Netherlands, France, Portugal and Spain in response to their international obligations.

Scope of the law

The purview of the new legislation extends to criminal acts that were:

- a. committed by a legal person on the **territory of the Slovak Republic**¹ (thus regardless of the jurisdiction in which the legal person was incorporated or which governs the legal person);
- b. committed **outside the territory of the Slovak Republic** by a legal person with a registered seat in the Slovak Republic; this includes any **legal person with a branch in the Slovak Republic**, provided that the crime was committed within the pursuit of its activities;
- c. committed **outside the territory of the Slovak Republic** by a legal person with a registered seat outside the Slovak Republic, provided that a **corporation based in the Slovak Republic** or a Slovak national or an alien with permanent residence in Slovakia **benefited from the crime**;
- d. committed **outside the territory of Slovakia** by a legal person with a registered seat outside the territory of Slovakia, provided that a **legal person based in Slovakia** or a Slovak national or an alien with permanent residence in Slovakia **suffered damage as a result of the criminal action** and the action is classified as criminal in the jurisdiction where it was committed or if the venue where it was committed does not fall within any criminal jurisdiction.

The above implies extraterritorial jurisdiction, meaning that the application of the new legislation may carry considerable criminal and other implications outside the boundaries of Slovakia.

¹ The act also enumerates circumstances under which the commission of a crime is regarded to have taken place in Slovakia

Crimes committed by legal persons

The list of crimes enumerated by the new act refers to the provisions of the Criminal Code. **By way of example**, criminal acts committed by legal persons include:

- illegal employment;
- **damage to the financial interests of the European Union;**
- **damage to a consumer;**
- unfair business-to-consumer commercial practices;
- reduction of tax liability or mandatory insurance premiums;
- withholding of tax or mandatory insurance premiums;
- tax fraud;
- **non-payment of tax or mandatory insurance premiums;**
- obstructing the course of tax administration;
- risk and environmental damage;
- **illegal waste disposal;**
- illegal release of pollutants;
- violating laws regarding air and water protection laws regarding air and water protection;
- violating laws regarding plant and animal protection;
- violating laws regarding tree shrub protection;
- **accepting a bribe;**
- **offering or giving a bribe;**
- **indirect corruption;**
- legalising income from criminal activities;
- usury;
- unauthorised computer system access;
- unauthorised computer system invasion;
- unauthorised computer data interference;
- **unauthorised interception of computer data;**
- manufacturing and possession of access facilities, computer passwords or other data.



According to the explanatory memorandum to the act, the list of actions that trigger the criminal liability of legal persons reflects Slovakia's international obligations and the applicable EU acts. The list further covers those criminal actions the prosecution of which is in the interest of Slovakia (tax offences), due to their character or the knowledge obtained from the implementation and enforcement of the law. As mentioned in the explanatory memorandum *"the continuous development of the international agenda indicates that the future may require further modifications of this catalogue of crimes."*

Liability of legal persons

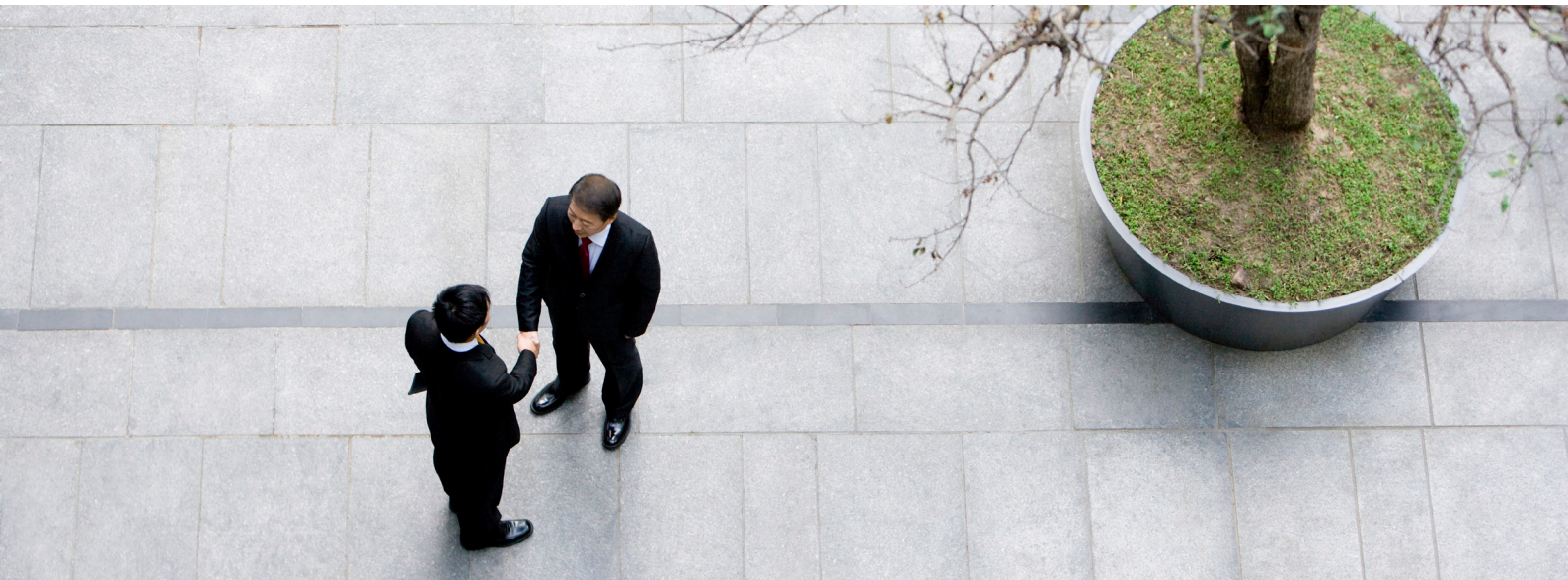
The crimes (enumerated in Section 3 of the new act) are deemed to have been committed by a legal person if the legal person benefited from the crime, the crime was perpetrated on behalf of the legal person, in the scope of its activities or through the legal person, provided that the legal person acted through:

- **its statutory body or a member of its statutory body;**
- **a person in charge of the control or supervision of the legal person, or**
- **another person authorised to represent the legal person or adopt decisions on behalf of the legal person.**

An action shall also be considered criminal, if the above persons facilitated, including as a result of their negligence, or by exercising poor supervision or control the fact that it was their duty, the commission of a crime by a person that acted within the scope of the authorities vested in him or her by the legal person.

The legal person shall not be charged with a crime committed by any of the above persons if:

- considering the activities pursued by the legal entity;
- the manner of the crime, the consequences of the crime;
- **the failure to fulfil the obligations** in the area of supervision and control by the body of the legal person or by another of the above person, was **NEGLIGIBLE**.



The criminal liability of legal persons is not conditional on the incurring of criminal liability by any of the above individuals or by the identification of the individual who committed the above misconduct.

Criminal liability **SURVIVES** bankruptcy adjudication, entry into liquidation, winding-up or receivership. In the event that a legal person is wound up, its criminal liability, including any pending punishment, is **automatically passed on to all of its legal successors**. This liability is, however, not transferred to individuals. If the **legal person changes or is wound up** during the execution proceedings, the court will decide whether and to what extent the pending punishment applies to its legal successor. To that end, the law further provides that a change of the legal person means a **merger or division of the legal person, transfer of capital to a shareholder, change of legal form or the relocation of its seat abroad**.

Types of punishment

The following punishments may be imposed on a legal person:

- winding-up (but only if the activities of the legal persons were wholly or partly pursued for the commission of a crime);
- forfeiture of assets or things;
- fines (ranging from EUR 1,500 to EUR 1,600,000);
- temporary prohibition of activity (for a period of 1 to 10 years);
- prohibition from accepting grants, subsidies, aid or incentives from EU funds (for a period of 1 to 10 years);
- prohibition from participating in public procurement procedures (for a period of 1 to 10 years);
- conviction disclosure.

Restrictive and securing measures

Where the established facts indicate that the legal person who is charged is indeed liable for the commission of a crime and its actions or any other facts lead to reasonable doubts that the person will not cease these criminal actions, will perpetrate the crime they have attempted, they have prepared or threatened to commit, or have rid themselves of their assets and have so jeopardised the purpose of the punishment, the court may impose the following measures:

- obligation to put up security in the form of money or a thing pledged to the court;
- prohibition of the disposal of certain things or rights;
- obligation to perform something, to cease the performance of something or to tolerate something.

In the case of criminal proceedings, the legal person shall be represented by their statutory body. Pursuant to Section 27 (2), the legal person may appoint an agent – an individual with unrestricted **legal capacity and residing in Slovakia**. The representation authorisation must be evidenced by a written power of attorney granted to the agent; the power of attorney must expressly authorise the agent to act on behalf of the legal person. In criminal



proceedings, **only 1 individual** may represent and act on behalf of the legal person at any time (**this also applies to cases where the statutory body has several members who are authorised to act independently on their behalf**). This is without prejudice to the right **to appoint a defence lawyer**. A defence lawyer shall be chosen by the person authorised to represent the legal person.

Together with the effectiveness of the act on criminal liability of legal persons, **many amendments to other legal acts will also come into effect**; the amendments mainly relate to:

- the repeal of the indirect criminal liability of legal persons (amendments to Criminal Code, Code of Criminal Procedure, **Act on Bankruptcy and Restructuring, Act on Public Procurement**);
- records kept in connection with legal persons, as the data recorded on legal persons will be extended (data on punishments, restricting and securing measures imposed on legal persons in criminal proceedings);
- issuance of permits, licences, authorisations to perform certain activities, the precondition of its issuance is proof that the natural person as well as the legal person has a clean criminal record that the natural person as well as the legal person has a clean criminal record (e.g. member of the statutory body), in the case of a legal person, such proof shall be **evidenced by an extract from the register of convictions of legal persons**.

When it comes to interim provisions, the new act on criminal liability of legal persons shall apply to all offences committed after the date of effectiveness of this act.

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