

REVIVING CORPORATE CRIMINAL LIABILITY IN POLAND

The Polish Government is working on a new Act on Corporate Criminal Liability (the "New Act"). The New Act is to make the procedure of bringing corporate entities to account more efficient. Under the current Act on Liability of Collective Entities for Acts Prohibited under Penalty of 2002, in practice the procedure has been ineffective.

The purpose of the New Act is, first of all, to introduce the liability of a corporate entity for each offence or treasury offence (to date, the liability has been limited to the offences expressly mentioned in the Act currently in effect). It will be possible to conduct criminal proceedings against a corporate entity, irrespective of criminal proceedings pending against an individual, and conviction of an individual will not be a criterion for instituting criminal proceedings against a corporate entity (which is the case at present). The New Act also considerably increases the maximum penalty for criminal liability of corporate entities to PLN 30,000,000 (currently the maximum fine is PLN 5,000,000).

Although the work on the New Act is at an early stage, it is possible that it could come into force quite soon. On 16 November 2017, the Polish Ministry of Justice organised an academic conference on liability of corporate entities that was preparing further work on the New Act. During the conference, we had the pleasure of presenting the various models of liability of corporate entities in other countries.

Assumptions of the New Act

- A corporate entity may be liable for any offence or treasury offence – the Act currently in effect sets out a list of offences for which a corporate entity may be held liable.
- The criminal liability of a corporate entity is to be independent of any previous conviction of an individual (the direct perpetrator) and is possible even without establishing who the direct perpetrator of the offence was – currently corporate entities are liable for specific offences committed by specific individuals and only after the final conviction of individuals.
- It will be possible to conduct preparatory proceedings against a corporate entity simultaneously with the proceedings conducted against an individual or even before the proceedings against an individual have been instituted – this is to reverse the current rule.

Key issues

- Corporate criminal liability for any offence or treasury offence
- Corporate criminal liability to be independent of the liability of the individual who committed the offence
- New fines of up to PLN 30,000,000
- Obligation to prove introduction of a compliance system

- A fine of up to PLN 30,000,000 could be imposed on a corporate entity (currently the fine is up to PLN 5,000,000) and its amount will not depend on the amount of revenues generated (at present, the fine cannot be higher than 3% of the corporate entity's revenues generated in the year the offence was committed).
- In criminal proceedings against a corporate entity, the entity will have to prove that it has introduced efficient procedures preventing the commission of offences (to demonstrate absence of fault).

Summary

The purpose of the New Act is to ensure that corporate entities are actually held accountable for offences; to date, criminal liability of corporate entities has been ineffective in Poland.

We expect that the New Act will be a further incentive to develop compliance systems in Poland. Such compliance systems combined with the cooperation with enforcement agencies could limit the liability of corporate entities under the New Act.

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