

LEGAL ALERT

Liability of collective entities

January 2019

A bill to essentially modify the rules of accountability of collective entities for offences

In January 2019, a bill to govern liability of collective entities for commission of offences was presented to the Sejm. The bill provides for the necessity to establish internal compliance procedures intended to verify suspicions reported by whistleblowers. Among the essential changes is the possibility to penalise a collective entity even if the perpetrator is not sentenced.

Subject matter of the bill

The bill governs the rules of liability to be incurred by collective entities (primarily commercial companies, cooperatives and foundations) for offences committed in connection with their activity (crimes and fiscal offences). The bill provides that offences can be committed by members of managing or supervisory bodies, as well as employees, and, under certain conditions, by collective entity's counterparties (subcontractors) or their staff.

The bill also defines conditions for ordering confiscation of a collective entity's assets in a situation where the requirements for holding it accountable are not fulfilled, but where, as a result of commission of an offence, the entity has derived financial benefits of a value exceeding PLN 500 thousand.

Measures at the disposal of State authorities

The bill provides for a broad range of sanctions and penalties. In addition to standard fines and confiscation of assets, the following sanctions are envisaged:

- dissolution of the entity,
- a ban on engaging in a specific type of activity,
- a ban on promotion and advertising,
- prohibition to use subsidies or aid offered by international organisations,
- a ban on applying for award of public procurement contracts,
- an obligation to return the public aid, etc.

The value of a fine may be as high as 30 million zlotys, and may be increased to 60 million zlotys.

However, the measures which were already used at the stage of preparatory proceedings (i.e. before the case was examined by the court) may prove of key significance for business entities in practice. These include in particular the possibility to send a company into receivership, i.e. to practically take over the management of corporate assets from the hands of the company owners.



Additionally, the following can be ordered:

- a ban on promotion and advertising,
- a ban on conclusion of certain contracts,
- a ban on encumbering and sale of assets, which includes the process of combination (merger), division and transformation of companies,
- a ban on applying for award of public procurement contracts and suspension of public aid payment.

The bill also establishes a general rule whereby, in the course of the proceedings, the enterprise and the shares in its capital cannot be sold or encumbered without prior notice to an investigative authority, under the sanction of nullity of contracts already concluded.

Whistleblower protection

The act also governs the issue of whistleblowing, i.e. reporting non-compliant acts committed by staff members, the management and representatives of collective entities. It provides for the need to ensure that explanatory procedures are in place whenever legal noncompliance is reported, and negligence in this respect may lead to doubling the fine to be imposed on a collective entity. Whistleblowers are to be protected against having their employment terminated as a result of reporting noncompliance.

Mergers, divisions and transformations

The bill provides for legal liability of successors of those companies which have undergone a merger, division or transformation. Whenever a M&A occurs, special attention needs to be paid to the potential risk of the acquired company being held accountable, and consequently - of the liability passing to the acquirer (investor). Therefore, due diligence in this respect may become a common practice.

An invitation to a seminar in Katowice

The new law may be passed in the first quarter of 2019. Given that some new internal procedures need to be implemented in enterprises so as to prevent crimes, and in view of the high fines, it is advisable to get ready before the new regulations take effect.

We offer you the possibility to expand your knowledge and exchange opinions in this respect during a seminar organised by KSP's experienced advocates and legal counsels.

The seminar is planned to be held on 27 February 2019 in Katowice

During the meeting, we plan to discuss the most important aspects of the new regulations, including new internal procedures on how to take due care to avoid penalties. Additionally, we will address the issue of mandatory reporting of the tax schemes and changes concerning a double taxation avoidance clause.

More details on the planned seminar will be sent to you. We also encourage you to contact Małgorzata Popek at malgorzata.popek@ksplegal.pl or by phone: +32 731 68 52 to get all the information you may need.