

# Legal Alert

## The amendment of Act on Criminal Liability of Legal Persons

The amendment of Act No. 418/2011 Coll., on Criminal Liability of Legal Persons (the "Act"), which was promulgated in the Collection of Laws of the Czech Republic on 13<sup>th</sup> June 2016 (effective from 1<sup>th</sup> December 2016) introduces several significant changes that will have an impact on the criminal liability of legal persons.

### Extension of the number of criminal offences

Legal persons will be newly liable for a much wider range of criminal offences than it was the case until now. Instead of the current exhaustive list of criminal offences for which a legal person may be held criminally liable, the new legal regulation uses the so-called negative list of criminal offences. According to this list a legal person may be held liable principally for all criminal offences specified in the Criminal Code with the exception of expressly excluded criminal offences that cannot be committed by a legal person by its definition, such as Manslaughter, Infanticide, Accessory to Suicide, Fight, Bigamy, Abandonment of a Child or an Entrusted Person, etc.

### Relieve from the criminal liability

From the perspective of legal persons, the amended Act opens up an opportunity for the relieve from the criminal liability for an unlawful act of persons defined by the Act (whereby the group of affected persons was restricted by the amendment) provided that every effort to prevent the criminal offence was made as the Act explicitly

states that: *"a legal person shall be relieved from the criminal liability according to Subsections 1 to 4 provided that it made every effort reasonably required to prevent committing a criminal offence by persons stated in Subsection 1."*

Measures, by which legal persons may prove that they made every effort reasonably required to prevent committing a criminal offence, may include:

- high-quality **code of ethics** that the legal persons will adequately implement and ensure its observance,
- adequately implemented **hot line for reporting unethical or unlawful acts** that will enable to investigate eventual violation of the Act in time,
- **assessment of risks** that may be relevant to the legal entity and evaluation of their significance. The legal persons should systematically evaluate available accounting and other data in order to demonstrate an active effort to detect cases of unlawful acts with regard to these risks.
- **communication and education** of all employees in areas of the prevention of violation of the Act and consistent evidence of these activities. The aim of the effort is for the implemented measures to be well known among all employees and that the effort that was made can be retrospectively proved.

Under foreign jurisdictions, e.g. the USA or UK, the possibility of reduction of eventual sanction or acquittal of legal person has been applicable for many years. Experience from foreign practice shows that legal persons may limit their liability by proving they implemented appropriate and functional prevention and detection measures, consistently investigated and sanctioned eventual violations and amended identified deficiencies in the control system.



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The information in this bulletin is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made. Nor should the information in this bulletin be considered an exhaustive description of the given matter and its possible ramifications. We also note that legal opinion varies regarding some of the issues raised in this bulletin due to ambiguities in the relevant provisions. Thus, it is possible that an interpretation other than the one presented here will prevail in the future.

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