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The CEE guide to the criminal liability of corporate entities

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Introduction

The concept of corporate criminal liability has developed and permeated into the legal regimes of countries around the world, whether as a result of their obligations to implement the OECD's 1997 convention on combatting bribery of foreign public officials, as a response to the US's approach to enforcement of their Foreign Corrupt Practices Act against non-US corporates and persons, or simply to reflect public sentiment that corporates should be punished where they permit or gain from financial crime. CEE countries are embracing the global trend of prosecuting corporate entities for criminal misconduct by their officers and employees. Although a fairly new concept in the region, corporate liability exists in the Czech Republic, Hungary, Poland, Romania, and Slovakia. Corporations may also be subject to sanctions in Bulgaria and Ukraine, even though the concept of criminal or quasi-criminal liability does not (yet) operate in these countries.

This brochure outlines the risks faced by companies operating in these seven CEE countries. We will look at the principles which form the basis of corporate liability and its relationship with the criminal liability of individual employees or agents. We will also consider defences and mitigating factors, and the types and severity of penalties. Both prevention and efforts at limiting liability call for a comprehensive and coherent compliance system.

Executive Overview

The availability and extent of corporate liability in the seven CEE countries covered by this brochure varies. However, even in those countries where there is no concept of corporate criminal liability per se, legal entities may suffer the consequences for crimes committed by their employees. Some of the countries have made their corporate criminal regimes system quite effective, which is proven by the high or growing number of cases (Romania and the Czech Republic). In others, there are not many cases due to certain procedural disadvantages of prosecution (Poland, but this may change with adoption of the new law, or Hungary), or the short period during which the relevant provisions have been in place (Slovakia). At the same time, there are countries that do not recognise the criminal liability of corporate entities (Bulgaria and Ukraine). Even those countries, however, do have some sort of liability of legal entities, be it an administrative one (Bulgaria) or a system of sanctions that can be applied in proceedings against an individual (Ukraine).

The basis of the liability of corporate entities in those countries where liability exists rests on the premise that the acts of certain employees can be attributed to a corporate entity. The act must also generally be done in the interests, or for the benefit, of the corporate entity. What is common in many jurisdictions is a focus on proper systems and controls to prevent the offence from occurring. These may act as a defence or a mitigating factor on sentencing or impact on decisions to prosecute. This is because all of the countries considered here (other than Bulgaria) have a version of a 'proper-organisation' defence, meaning that the company has to show that its operations were organised properly to avoid or limit its liability.

The level of penalties vary across jurisdictions, but there are certain common trends. The most common penalties imposed on corporate entities are fines. The maximum penalty ranges from approx. EUR 51,550 (Ukraine) up to EUR 57,000,000 (the Czech Republic), or even dissolution of the company (Romania, Hungary, Slovakia, the Czech Republic, and possibly in the near future, Poland). In addition, if a company is prosecuted it can also face a number of harsh interim measures, which include suspension of commercial activities, prohibition on participating in public tenders or asset forfeiture.

The same is true when it comes to whistle-blowing policies. There are countries where having a whistle-blowing policy is mandatory in the case of certain entities (Poland, Slovakia and the Czech Republic). However, even if there is no requirement, it is crucial to have them in all jurisdictions because they can limit or exclude the company's liability.

A coherent and comprehensive compliance system in companies operating in the CEE region is not a luxury but a must, despite there being no formal and express obligation to implement one (except in the case of state-owned entities and certain entities involved in public procurement in Ukraine). This effort can help to save a company from any irregularity happening in the first place, or, in most cases mitigate or exclude its liability in the event of any wrongdoing by its employees or agents.

Bulgaria

Can corporate entities be liable (in particular criminally) for offences committed by their employees or business partners (or other persons)?

Corporate entities cannot be criminally liable for offences committed by their employees or business partners. A corporate entity may, however, be liable under administrative law for non-compliance with administrative law leading to fines. Bulgarian legal doctrine refers to this latter liability as "administrative criminal liability".

The Administrative Infringements and Administrative Sanctions Act ("**AIASA**") provides for a fine not exceeding BGN 1,000,000 (EUR 500,000) where a legal entity has obtained a benefit or might obtain a benefit as a result of certain offences committed by an individual related to that legal entity, namely: an individual, authorised to form the will or represent the legal entity, or who is a member of a controlling or supervisory body of the legal entity, or an employee to whom the legal person has assigned a certain task, where the crime was committed during or in connection with the performance of such task.

Is the liability based on fault or risk?

Financial liability under AIASA is risk-based - there is no requirement to prove intent or knowledge on the part of the legal entity. However, criminal offences by natural persons, which trigger the liability of the legal entity, require proof of fault.

Are there any defences available?

A legal entity will not face sanctions if it proves that no benefit has arisen or might arise for the legal entity as a result of the committed crime.

What conduct by individuals may result in such liability? Is there a closed catalogue of crimes for which companies can be punished?

As already mentioned, the criminal conduct of individuals cannot trigger criminal liability for the legal entity they may be associated with. However, AIASA provides a closed catalogue of criminal offences which may trigger corporate liability, including fraud, theft, corruption, rape, kidnapping, traficking, breach of management and official duties, financial crimes, tax-related crimes such as tax evasion, forgery, criminal infringement of intellectual property rights, organized crime.

Are corporate entities required to vet their business partners or associates?

There is no such express requirement set out in the law.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

Under AIASA, the proceedings can be initiated once the individual perpetrator associated with the legal entity has been indicted by the prosecutor's office and are to be conducted independently. Moreover, the individual might not be found criminally liable (e.g. because of amnesty, death, expired limitation period), but this would not preclude proceedings against the legal entity.

Do the regulations apply extraterritorially (can a corporate entity be liable for offences of individuals committed abroad)?

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Pursuant to AIASA, a fine may be imposed on a legal entity not established in Bulgaria, if the criminal offence was committed in Bulgaria.

What penalties can be imposed on a company?

The maximum liability under AIASA is BGN 1,000,000 (EUR 500,000) but not less than the benefit the legal entity enjoyed as a result of the criminal offence.

What interim measures may be applied (by court/ prosecutor)?

Under AIASA the prosecutor is entitled to request various interim measures, including freezing of accounts, distraint of real estate property, attachment of company shares.

What is the statute of limitations on corporate liability?

There is no particular limitation period set down by AIASA and there is no established case law yet. According to some cases, e.g. Ruling 641/2014 of the Sliven District Court, the general limitation period under AIASA (up to one year from the commission of the crime) applies. Other court cases accept that the general limitation periods under the Criminal Code apply, and these are dependent on the particular type of crime in question (Decision 535/2014 of the Burgas Administrative Court). There are also court decisions confirming that there is no limitation period applicable at all (Decision under case 386/2017 of the Varna Administrative Court).

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

AIASA is used in practice, however so far there have been no cases which have attracted much media and public attention. Typically, cases are related to tax evasion crimes (according to unofficial data, these constitute 72% of cases) and fraud (22% of cases).

How do mergers or divisions of 'convicted' companies impact on newly formed entities?

This is not regulated under AIASA so it may be assumed that if a legal successor (e.g, by way of, a merger or division) of a company liable under the act is established to have obtained a benefit as a result of a crime by way of succession, this will lead to the liability of the successor company.

Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

No, there is no such legal requirement under the existing law.

Are companies required to have internal guidelines in place pertaining to whistleblowing? If yes, what are the consequences for a lack of such policies?

There are currently no such requirements.

Czech Republic

Can corporate entities be criminally liable for offences committed by their employees or business partners (or other persons)?

Under Act No. 418/2011 Coll., on the Criminal Liability of Legal Entities and Proceedings against Them (the "**Act**"), since 1 January 2012 legal entities can be liable for criminal offences committed by the governing body or its members, and/or another person in a senior position within a legal entity authorised to act on behalf of or for such legal entity or to carry out a managing or controlling activity by such legal entity. Legal entities can also be liable for offences committed by any person exercising a decisive influence on the management of such legal entity if the acts of such person were to lead to the occurrence of a criminally relevant consequence constituting the criminal liability of a controlled legal entity.

In addition, a corporate entity can also be liable for offences committed by its employee or a person with a similar status. However, in order to be liable, an employee would need to have acted pursuant to an instruction, or at least the consent of the person mentioned in the paragraph above, or that these persons have failed to implement measures that they were to implement pursuant to another legal regulation or that can be reasonably required of them. In particular, if they have failed adequately to supervise employees or implement the necessary measures to prevent or avert the consequences of the offence that has been committed, this could lead to liability.

Is the liability based on fault or risk?

Under Czech law, criminal liability of legal entities is based on the attributable character of a criminal offence. A crime is attributable to a legal entity, if it was committed either in its interest or within its operations (activity). The Czech Supreme Court[1] held that there is 'separate and parallel' criminal liability of both the legal entity and the individual entity committing the crime, each being liable for the whole resulting consequence. However, criminal liability cannot be attributed to a legal entity if the acting individual has committed an offence in the course of the activity of the legal person but at the expense of that legal entity.

Liability is based on fault. The fault (intention or negligence) of a legal entity must be derived from the fault of the individual person who actually commits the crime, and not from the fault of the individual who is formally authorised to act on behalf of such corporation (in the case of different individuals).

Are there any defences available?

A legal entity may avoid criminal liability if it has made all efforts that could be justifiably expected of it to prevent the commission of an offence (e.g. a suitable and effective internal compliance programme is set up, internal regulations and policies are adopted, and educational events take place).

What conduct by individuals may result in such liability? Is there a closed catalogue of crimes for which companies can be punished?

Until 30 November 2016, there was an exhaustive list of crimes for which a legal entity could be liable. Since 1 December 2016, the amended Act provides for an exhaustive list of crimes that may **not** be committed by a legal entity (such as homicide or polygamy). Conversely, all the other crimes listed in the Czech Criminal Code, which can be applied to individuals, may also be applied to a corporate entity.

Are corporate entities required to vet their business partners or associates?

There is no statutory obligation to vet business partners or associates, however a certain level of precaution is expected to be included in the compliance programme (if set up). As already mentioned, by having internal procedures set up (e.g. internal codes of behaviour, guidelines on the detection of risky conduct), a legal entity may be able to exempt itself from criminal liability.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

Even though an attributable act of an individual is necessary to give rise to the criminal liability of a legal entity, it is not required that a particular individual who acted on behalf of a corporation be identified. As a result, the proceedings can indeed be conducted independently.

Do the regulations apply extraterritorially (can a corporate entity be liable for offences of individuals committed abroad)?

Yes, a legal entity with its registered seat in the Czech Republic can be liable for a criminal offence committed abroad. Additionally, a corporate entity without a registered seat in the Czech Republic may be criminally liable for crimes committed abroad, if it committed one of the most grievous crimes (such as financing of terrorism). Moreover, crimes committed abroad by a

[1] Case No. 7 Tdo 1199/2015.

corporate entity **without** its registered seat in the Czech Republic shall be considered as giving rise to criminal liability of such a legal entity also in cases where such crimes were committed in the interests of a Czech legal entity.

What penalties can be imposed on a company?

A court may impose the following penalties: dissolution (with liquidation), forfeiture of the property of the legal entity (in whole or in part) or of a particular item or its value, a fine of CZK 20,000 to CZK 1,460,000,000 (EUR 780 – EUR 57,000,000), prohibition on certain actions, disqualification from participation in public tenders or from receiving grants and subsidies, prohibition on keeping and breeding animals or publication of a court's judgment. Additionally, as a protective measure, a court may order the confiscation of an item the company used, gained by or as a reward for committing the criminal offence or confiscation of part of a property. Penalties and protective measures may be imposed individually or side by side with specific exceptions.

What interim measures may be applied (by court/ prosecutor)?

If there is a reasonable concern that the accused legal entity will repeat the criminal activity for which it is prosecuted, or complete the criminal offence which it attempted, or commit a criminal offence that it had planned or threatened to commit, the court may suspend one or more commercial activities of the legal entity or limit the disposal of the legal entity's assets.

What is the statute of limitations on relation to corporate liability?

A legal entity cannot be found liable after the lapse of the limitation period of a specific offence of an individual, for which actions it would be liable i.e. between 3 to 20 years, except for the most serious crimes which are not subject to the statute of limitations.

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

Yes, the use of the provisions of the Act in practice is growing. The penalties most frequently imposed by the courts are: monetary penalties (usually amounting to CZK 20,000 – 100,000 (approx. EUR 780 – 3,900)), prohibition of certain actions, publication of a court's judgment, and dissolution. The penalty of dissolution (which is considered to be the most severe penalty that can be imposed on legal entities) is usually imposed by courts on legal entities which almost exclusively committed crimes in their commercial activity (e.g. tax evasion). The Supreme Court held2 that in order to impose a penalty of the dissolution of a legal entity, it is not decisive what the subject-matter is of the activity of the legal entity declared in the articles of association or registered in a public register. Only the factual activity of the legal entity is essential for an assessment of whether or not to impose such a penalty.

How do mergers or divisions of 'convicted' companies impact on newly formed entities?

The criminal liability of a legal entity is assumed by any and all of its legal successors. Whether and in what cases the liability is passed on to the legal successors depends on the particular circumstances. It is worth noting that a mere change in the ownership structure of the company (the change in owner of the ownership interest, its executive, business name and address) is not a reason for the company to be absolved of existing liability.

However, if criminal liability has passed onto more legal successors of a legal entity, the court – when taking a decision on the type and assessment of the penalty or protection measure will also take into account to what extent the proceeds, benefits and other advantages from the committed offence have passed onto each of them and (as the case may be) to what extent any of them continues in pursuing the activity in connection with which the offence was committed.

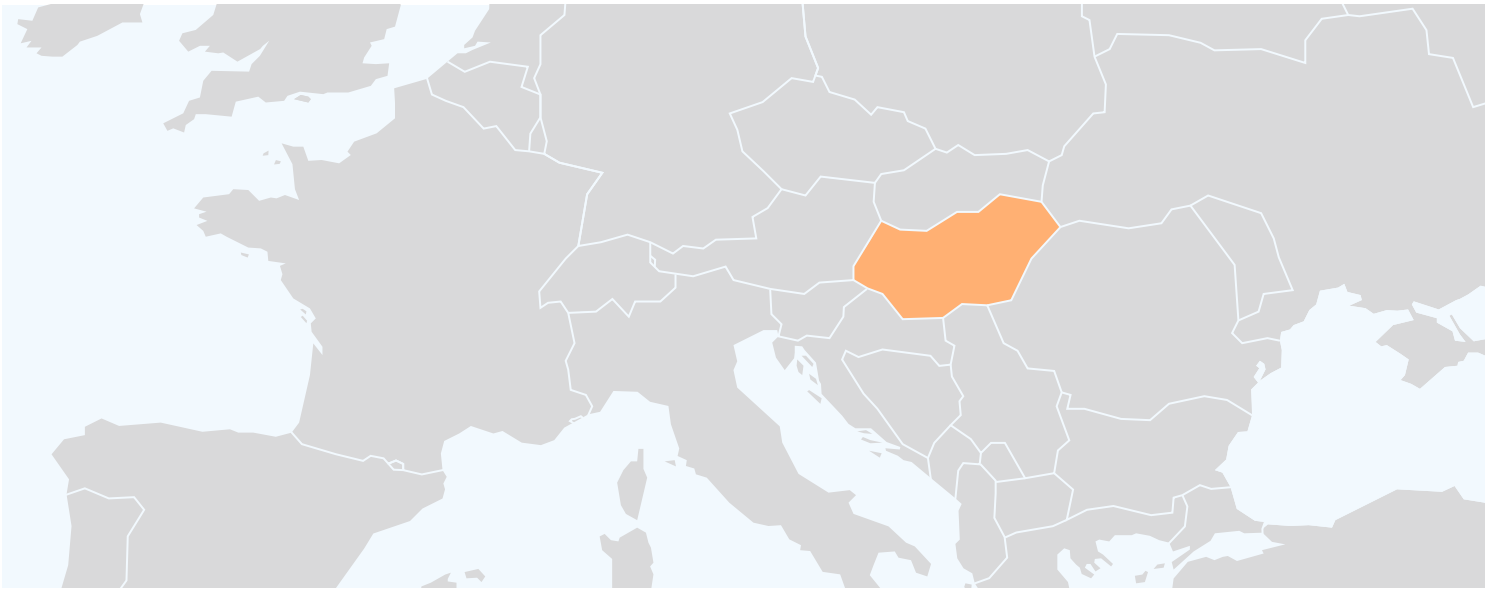
Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

It is not mandatory, however it is highly recommended. In November 2020, the Supreme State Prosecutor Office of the Czech Republic issued a third updated version of the August 2018 and November 2016 methodology on the assessment of compliance management systems (among others). According to the methodology, the necessary measures that a legal entity should adopt in order to be excluded from criminal liability should be assessed on a case-by-case basis and consider the type of legal entity under question. One of the factors which should be taken into account by state prosecutors during the investigation is the corporate culture, especially the corporate governance of each particular company. State prosecutors should focus on the size of the company, the number of its employees, the subject-matter of its business activity, its previous criminal history (if any), etc. In addition, the methodology lists the possible measures which should be adopted by legal entities, such as internal regulations, educational events (lectures, workshops), ethical codes, anti-bribery and corruption programmes, and corporate ombudsman. Obviously, it is not necessary for a legal entity to adopt all of these measures. However, it is recommended to implement the measures that are reasonably required and control and assess the results as this may act as a defence exempting a corporate entity from criminal liability.

Even if an offence for which a company may be liable had been committed, the law enforcement authorities may conclude that the compliance programme was not defective but sufficient and appropriate, and thus the legal entity concerned indeed made all efforts that could be justifiably expected from it to prevent the commission of the offence, and as a result cannot be criminally liable. We note, however, that there is no automatic presumption that a legal entity is exempted from criminal liability solely based on the reason that it has a compliance programme in place. The compliance programme and related aspects need to be assessed on a case-by-case basis to confirm that the legal entity has, in fact, made every effort that could be justifiably expected to prevent the commission of an offence.

Are companies required to have internal guidelines in place pertaining to whistleblowing? If yes, what are the consequences for a lack of such policies?

No, at this moment there is no general statutory obligation to have in place internal guidelines pertaining to whistleblowing. However, certain legal entities (companies operating in financial markets such as investment firms, brokers or market operators of the regulated market under Act No. 256/2004 Coll., the Capital Market Undertakings Act, and further banks, savings and credit cooperatives under the Decree of Czech National Bank No. 163/2014 Coll., on the performance of activities of banks, savings and credit cooperatives) are obliged to implement guidelines and internal mechanisms on whistleblowing and ensure that the employee whistle-blower is protected from unequal treatment, retaliation or other unfair treatment. If the concerned legal entities do not implement such policies, they may be subject to a fine up to CZK 10,000,000 (approx. EUR 390,000) or eventually face the Czech National Bank withdrawing their licence.



Hungary

Can corporate entities be criminally liable for offences committed by their employees or business partners (or other persons)?

Under Hungarian law, on 1 May 2004, Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law (the "Corporate Criminal Code") introduced the criminal liability of legal entities. Such liability is triggered by an underlying criminal offence, set out in Act C of 2012 on the Criminal Code (the "Criminal Code"), committed by an individual person in relation to the operation of a given legal entity.

If an individual person is convicted of (i) a deliberate criminal offence which (ii) resulted in or was at least aimed at giving an advantage to the legal entity or the crime was perpetrated by using the company, and was committed by the corporate entity's executive officer, shareholder, employee or other officer, company manager with the right to represent the company towards third persons, supervisory board member, or the agents of any of these persons, criminal sanctions can be imposed against the corporate entity as well.
The same rule applies in the event of negligence of duties, notably if the said criminal offence was committed by any shareholder or employee (not necessarily having representation rights), provided that the crime could have been prevented had the executive officer(s), company manager(s) or supervisory board member(s) fulfilled their managing or supervisory obligations. Criminal sanctions can also be imposed if the underlying crime resulted in an advantage for the company, and any shareholder or executive officer having the right to represent the company was aware of such crime (even if the underlying crime was committed by an external third party).

The Corporate Criminal Code contains a broad definition of a "legal entity" which includes all corporate entites that have a legal personality under the Hungarian Civil Code, such as business associations, companies, foundations, associations, etc.

Are there any defences available?

Yes, the corporate entity may make a claim during the criminal proceedings initiated against the individual person perpetrator that it exercised due diligence in the choice of or supervision over the perpetrator, or that the operations of the company were not faulty in a way which enabled the crime to be committed.

In addition, even if the executive officer, shareholder, employee, etc. of the corporate entity is convicted, it still does not automatically entail the application of criminal measures against the corporate entity, since rendering such decision is always at the decretion of the court, provided that the prosecutor put forward a motion for such measures in the indictment.

What conduct of individuals may result in such liability? Is there a closed catalogue of crimes for which companies can be punished?

The Corporate Criminal Code does not limit the list of criminal offences that can lead to the application of criminal measures against the corporate entity. Therefore, a legal entity may be liable for any offence listed in the Criminal Code, e.g. embezzlement, bribery, fraudulent asset manegement, (budgetary) fraud, and negligent misappropriatation.

Are corporate entities required to vet their business partners or associates?

There is no explicit requirement to vet business partners under the Corporate Criminal Code. Nevertheless, a lack of due diligence in choosing or supervising business partners, representatives or employees who commit an offence may constitute one of the prerequisites for imposing criminal sanctions. Therefore, a proper vetting of business partners can be viewed as exercising due diligence.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

The criminal liability of the individual, as well as the preconditions of imposing criminal measures against a corporate entity, shall be investigated in the framework of the very same criminal proceedings. Accordingly, the court has to render its decision on such sanctions simultaneously with the conviction of the individual in the criminal proceedings conducted against her/him.

What penalties can be imposed on a company?

According to the Corporate Criminal Code, if the court convicted the corporate entity's executive officer, shareholder, employee, etc., potential corporate criminal sanctions include: (i) termination and winding-up of the corporate entity if it does not pursue any economic activity and it was established with the aim of disguising a criminal offence, or its activity serves to disguise such an offence; (ii) restrictions of the activity of the corporate entity for maximum of three years, including an exclusion from public procurement tenders and public concessions, as well as immediate termination of all existing public procurement contracts; (iii) a fine of up to triple the amount of the advantage gained or aimed to be gained by the corporate entity in relation to the underlying crime.

What is the statute of limitations in relation to corporate liability?

As the Corporate Criminal Code does not provide for any limitation period, the general rules prescribed for criminal liability of individuals by the Criminal Code apply. Accordingly, accountability becomes time-barred five years after the perpetration, unless such period is restarted by any relevant investigative measure. If the maximum imprisonment to be imposed is longer than five years, the length of the limitation period is equal to such longer jail term.

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

Under Hungarian law, corporate criminal liability has been tested in action only in a few cases, thus the criminal authorities do not regard it as a default sanction. To date, courts have imposed actual sanctions only in a few very exceptional cases (on a handful of occasions in the last fifteen years). However, we have encountered a rising number of separate cases in the practice of the tax investigative authority recently, where not only were private individual culprits suspected, but also the related legal entities having been involved in alleged criminal activities have also been investigated and charged pursuant to the Corporate Criminal Code. According to criminal statistics available online, the maximum fine actually imposed has only been EUR 50,000 since the Corporate Criminal Code entered into force.

What interim measures may be applied (by court/ prosecutor)?

Insofar as the imposition of a criminal measure against the company is expected, the court may seize the assets of the company in order to secure the payment of the potential fine if there is a well-grounded concern that someone is aiming at hindering the enforcement of such fine. The Criminal Procedure Code enables the seizure to be applied by the prosecutor or even the investigative authority with the approval of the court. The measures applied by the prosecutor or the investigative authority are effective until finally nullified by the court.

Do the regulations apply extraterritorially (can a corporate entity be liable for offenses of individuals committed abroad)?

The Corporate Criminal Code contains no provision as to its extra territorrial scope. As the criminal measures against legal entities are explicitly referred to by the Criminal Code, it can be concluded that the Corporate Criminal Code is applicable to Hungarian-seated companies wherever the criminal offence falls under the scope of the Criminal Code. For example, the Hungarian Criminal Code and the Corporate Criminal Code respectively apply if the offence sanctioned by the Criminal Code is committed by a Hungarian citizen abroad, irrespective of whether such conduct qualifies as a crime in the place of its perpetration. However, the fact that the entity to be sanctioned has its seat outside Hungary does not per se mean that the Corporate Criminal Code does not apply, since the enforcement of measures is subject to the cross-border cooperation between the affected countries in criminal matters.

How do mergers or divisions of 'convicted' companies impact newly formed entities?

Under the Corporate Criminal Code, this remains unregulated. However, the Hungarian Civil Code is clear that a company under investigation or "convicted" pursuant to the Corporate Criminal Code shall not be transformed; also a merger or division are both strictly prohibited and de jure impossible.

Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

There is no such requirement under Hungarian law, although a lack of such policies can potentially be viewed as neglecting management or supervisory obligations which has enabled the commission of the criminal offence. There are also no formally binding guidelines concerning anti-bribery and compliance.

If the policies are not defective, and most importantly, managing and supervisory obligations have also been fulfilled, the company could be exempted from liability, provided that the third case of corporate criminal liability is not applicable.

Are companies required to have in place internal guidelines pertaining to whistleblowing? If yes, what are the consequences of the lack of such policies?

Although Hungarian law recognises and expressly regulates employment whistleblowing systems, at present there is no such general requirement, and the introduction of a whistleblowing policy is left up to each company to decide. To some extent, such policies might be needed in order to demonstrate that managing and supervisory obligations are fulfilled.

However, if a whistleblowing policy is introduced, the relevant Hungarian legal provisions provide for an obligation to act on the information received from the whistleblower. In particular, it demands that the issue be investigated by the company. It also contains rules on the protection of whistleblowers (e.g. against being fired).

Poland

This chapter was drafted after a reform of Polish law on the criminal liability of corporate entities has been initiated. The 2019 Draft Act on the liability of collective entities for acts prohibited under penalty (the "2019 Draft Act") was submitted to the Polish Parliament (Sejm) in January 2019 and reached the consultation stage of the legislative process. It contained far-reaching changes to this liability. As a new Parliament has been elected and due to the discontinuation principle (the newly formed Parliament does not proceed with drafts introduced during the previous term), the 2019 Draft Act would have to be re-introduced, which has not, however, happened yet. The answers below therefore refer to the 2019 Draft Act, as well as to the act currently in force (the "2002 Act"). Please note that the finally enacted version of the 2019 Draft Act may differ from what is outlined below.

Can corporate entities be criminally liable for offences committed by their employees or business partners (or other persons)?

Yes. Both the 2019 Draft Act and the 2002 Act contain a broad definition of a corporate entity. It pertains to companies, be they corporations, partnerships, foundations, etc. A corporate entity is liable for offences committed by persons entitled to represent, take decisions, and audit the corporate entity, if their actions brought or could have brought financial benefits to the company. Liability can also be triggered by offences committed by persons allowed to act due to an abuse of rights or negligence of duties or by persons acting on behalf or in the interests of a corporate entity with the consent of the people entitled to represent it. It also covers offences committed by an entrepreneur directly cooperating with the corporate entity.

The 2019 Draft Act expands this list by including liability for offences committed by corporate bodies of the company or their members. In these cases, the actions or omissions of the perpetrators do not need to bring financial benefits to the company but need to be undertaken directly in connection with activities of this company. A corporate entity would also be liable for acts committed by its subcontractors and their employees if it benefited from them, even indirectly, and was aware or should have been aware of those actions (the 2002 Act does not stipulate liability for acts committed by employees of subcontractors).

Is the liability based on fault or risk?

The liability is based on fault. The liability may result from faulty organisation of the company or lack of due diligence in the choice of or supervision over the perpetrator. Under the 2019 Draft Act, however, liability for a company's body's (in most cases management board) action or omission is risk based.

Are there any defences available?

Yes. A company can argue that it exercised due diligence in the choice of or supervision over the perpetrator or that the organisation of the operations of the company was not faulty in a way which enabled the crime to be committed. The 2019 Draft Act also provides an exemplary list of what constitutes an organisational flaw: failure to implement policies and procedures in the case of the threat of an offence being committed or in the case of negligence, a failure to delimit the scope of the managing bodies of the company, its departments, as well as its employees, a failure to designate a compliance unit and, finally, the managing body or its members' knowledge about the irregularity. Even in the case of the existence of an organisational flaw, the company will not be subject to liability if it demonstrates that all persons authorised to represent it and exercise supervision acted with due diligence. It is unclear whether and how those defences apply to the actions of the company's bodies or their members envisaged by the 2019 Draft Act.

What conduct of individuals may result in such liability? Is there a closed catalogue of crimes for which companies can be punished?

The 2002 Act provides an exhaustive list of crimes and tax offences which, when committed by an individual, can lead to the liability of a corporate entity. This catalogue has been extended over the years and includes bribery, corruption, mismanagement, and credit fraud. The 2019 Draft Act introduces liability for any crime, including criminal negligence, as well as for any tax offence.

Are corporate entities required to vet their business partners (or associates)?

There is no express requirement to vet business partners under either the 2002 Act or the 2019 Draft Act. Nevertheless, a lack of due diligence in choosing or supervising business partners, representatives, or employees who commit an offence constitutes one of the prerequisites of corporate liability. Therefore, a proper vetting of business partners can be viewed as exercising due diligence.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

Under the current regulation, the individual has to be finally convicted in order to establish the liability of a corporate entity. This, coupled with the length of the proceedings against individuals, was one of the reasons why corporate entities were rarely prosecuted. The 2019 Draft Act adopts an entirely different rule. Proceedings against a corporate entity could be conducted in parallel or even independently of proceedings against an individual.

Do the regulations apply extraterritorially? Can a corporate entity be liable for offences of individuals committed abroad?

The 2002 Act contains an unclear referral to the liability of a "foreign entity". As there is no relevant case law in this respect, a possible interpretation is that it covers only Polish branch offices and representative offices of foreign business entities. The 2019 Draft Act contains specific extraterritorial rules. Liability applies to entities with their registered seats in Poland or operating in Poland. If the entity has its seat outside Poland and operates outside of Poland, then either the offence or its effect has to take place in Poland. A foreign entity can also be liable if the offence has been directed against the interests of Poland, its citizens, or a Polish entity. Since cross-border enforcement may be difficult, the 2019 Draft Act allows the authorities to refrain from pursuing foreign entities.

What penalties can be imposed on a company?

Under the 2002, Act the court can impose a fine of PLN 1,000 to 5,000,000 but not higher than 3% of the income in a given accounting year. Under the 2019 Draft Act, the court would be able to impose a fine ranging from PLN 30,000 to 30,000,000 (which can be doubled in certain aggravating circumstances). Other penalties under both acts include forfeiture of objects/profits gained as a result of the offence or used for the purpose of committing the offence, prohibition on participating in public procurements, prohibition on advertisement, prohibition on the use of public aid, rendering the judgment available to the public. The 2019 Draft Act introduces, i.a., dissolution of an entity connected with the forfeiture of all of its assets, prohibition on conducting certain commercial activity, and the obligation to return the public aid received, permanent or temporary shutdown of the division of the company and the obligation to pay exemplary damages of up to PLN 5,000,000.

What interim measures may be applied (by court/ prosecutor)?

Under the 2002 Act, interim measures can be imposed solely by the court. These include a prohibition on mergers, divisions, and transformation of the entity, a prohibition on participating in public procurements, a prohibition on encumbering and selling certain assets. The 2019 Draft Act enables the interim measures to be applied by the prosecutor with the approval of the court (or the court itself). The measures applied by the prosecutor are effective until finally nullified by the court. This means that without court supervision measure can in fact stand unaffected for a significant period of time. The 2019 Draft Act also provides for some new interim measures, i.e. imposition of compulsory management over the company, prohibition on advertisement, prohibition on concluding agreements of a certain sort, prohibition on conducting certain commercial activity, freezing the pay-out of public aid.

What is the statute of limitations in relation to corporate liability?

Under the 2002 Act, ten years after the individual that committed the crime has been sentenced the company cannot be sentenced for a fine, forfeiture, and other measures under the 2002 Act. The 2019 Draft Act does not provide any limitation period.

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

The 2002 Act has not been frequently used in practice. According to statistics prepared by the Ministry of Justice, in 2017 only 14 cases were reported, in 2016 – 25 cases, in 2015 – 14 cases, in 2014 – 31 cases, in 2013 – 26 cases. The analysis also revealed that the fines imposed on the entities were for small amounts. It is believed that the main reason for such a low number of cases is the need to sentence (the judgment has to be final) the individual perpetrator first. This is supposed to change with the enactment of the 2019 Draft Act.

How do mergers or divisions of 'convicted' companies impact on newly formed entities?

Under the 2002 Act this remains unregulated. One may therefore argue that in the absence of an express regulation, the legal successor of a company cannot be subject to liability under 2002 Act in the case of merger, division, or transformation. In contrast, the 2019 Draft Act contains detailed rules in this respect. Their main effect is that the transformation of the corporate entity does not affect liability. All entities formed as a result of a merger, division, or transformation are liable under the act for an offence committed before the merger, division, or transformation. In the case of a division, both created entities are jointly liable for paying a fine or exemplary damages, although the liability is limited to the value of the assets transferred. The same joint liability exists if the entity transfers its assets at an undervalued price. However, in the case of a merger, division, or transfer of assets, the entity can be exempt from liability if it demonstrates that its bodies, representatives, and employees did not know and could not have known about the criminal offence, even if they had been diligent. This limitation of liability does not apply to SPVs, created specifically in order to effect a merger or division.

Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

There is no such requirement under Polish law, although a lack of such policies can potentially be viewed as an organisational flaw, which is one of the prerequisites of liability under the 2002 Act. There are also no formally binding guidelines concerning anti-bribery and compliance. However, the Central Anti-Corruption Bureau publishes the Anti-Corruption Handbook. It provides guidelines, among others, on gifts and donations. In addition, the Warsaw Stock Exchange published its guidelines on anti-corruption compliance and whistleblowers' protection. It refers to the companies listed on the Warsaw Stock Exchange but could also serve as a code of best practice in the area, thus being more widely implemented. The 2019 Draft Act provides some guidelines as to what an effective policy should contain by referring to the need to designate a compliance unit and indicating the scope of authority of managing bodies, departments or employees. If the policies are not defective, and the company was not at fault in the choice of or supervision over the perpetrator, the company could be exempted from liability.

Are companies required to have in place internal guidelines pertaining to whistleblowing? If yes, what are the consequences of a lack of such policies?

At present there are no such general requirements, although some entities are required to have whistleblowing policies (e.g. AML law provisions, as well as sector provisions applicable to banks, stipulate an obligation of having a whistleblowing system in place). To some extent having such policies might be needed in order to demonstrate that there was no negligence in the organisation of the entity (see answer to question 5 above).

The 2019 Draft Act provides for an obligation to act on the information received from the whistleblower. In particular, it demands that the issue be investigated by the management bodies and/or the compliance unit. It also contains rules on the protection of whistleblowers (e.g. against being fired). The main penalty for not acting on the information passed on by the whistleblower is a doubling of the fine that can be imposed on the company from PLN 30,000,000 to 60,000,000.

Romania

Can corporate entities be criminally liable for offences committed by their employees or business partners (or other persons)?

Yes. Pursuant to the Romanian Criminal Code, legal entities, except for state and public authorities, may be held criminally liable for offences committed in the performance of the legal entity's commercial activity, in its interests, or on its behalf. Public institutions, such as state-owned hospitals, will not be held criminally liable for actions taken in the exercise of their public role/function, but can be criminally liable for offences committed while acting outside such public functions.

The scope of individuals who may trigger criminal liability of a corporate entity is very broad and includes legal representatives (e.g. a director or manager), employees, agents, and even third parties who commit criminal offences for the benefit or in the name of the entity. In practice, for a corporate entity to be criminally liable, the investigative body must prove that the entity benefited from the criminal activity of the individual perpetrating the offence or that the conduct was performed by the individual within the scope of his or her services for the corporate entity (whether under an employment contract, services contract, or otherwise).

Is the liability based on fault or risk?

Under Romanian law, criminal liability is based on fault and it follows the direct liability model. In the case of corporate criminal liability, the subjective element (mens rea) of the alleged crime will be assessed independently of the individual who perpetrated the offence. To be able to attribute fault to a legal entity, the investigative body must establish that: (i) the crime was the result of a decision taken by the corporate entity's governing bodies, the corporate entity's poor organization, or insufficient security measures; or (ii) the corporate entity's governing bodies knew or should have known about the criminal activity of the individual.

Are there any defences available?

Yes. If defendants decide to challenge the subjective element of the alleged crime, it is necessary to clearly demonstrate their lack of intent by identifying the internal compliance efforts the corporate entity took to prevent its employees from committing unlawful acts. To this extent, a company's anti-bribery policy may be used as a defence strategy to argue that the corporate entity had diligently taken all necessary measures to prevent employees or third parties from engaging in any misconduct. However, there is no legal requirement for law enforcement authorities to consider a company's policy when assessing its criminal liability, but it may however act as a mitigating factor before a court of law. Romanian law provides that a court may consider certain circumstances related to the offence which are indicative of a reduced level of risk/threat posed by the offender, as a judicial mitigating circumstance. A company's corporate culture may, depending on the circumstances effectively at play, lead the investigative body not to trigger its criminal liability or, at least, it may constitute a judiciary mitigating factor, in which case the penalty imposed could be reduced. During the early prosecution phase, it is important that defence plans consider challenges related to evidence-gathering to preserve valuable arguments regarding the objective element of the offence in court.

What conduct of individuals may result in criminal liability for crimes for which companies can be punished? Is there a closed catalogue of crimes?

There is no closed catalogue of crimes for corporate criminal liability; corporate criminal liability extends to any crime committed in the performance of the legal entity's object of activity, in its interests, or on its behalf.

Are corporate entities required to vet their business partners (or associates)?

There is no express requirement under Romanian law to vet business partners.

However, a lack of due diligence in choosing or supervising business partners, representatives, or employees who commit an offence could lead to corporate criminal liability. Therefore, a proper vetting of business partners can be viewed as exercising due diligence.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

The proceedings are usually carried out as one, for both the individual and the corporate entity, but they can also be conducted independently. Moreover, due to the fault-based liability system, it is possible that the condition of fault be met with only one of the two (i.e. the company may be convicted, while the individual is acquitted, or vice versa).

Do the regulations apply extraterritorially? Can a corporate entity be liable for offences of individuals committed abroad?

Generally, Romanian criminal law applies to offences committed on Romanian territory. An offence is construed to have been committed on Romanian territory if it was perpetrated in Romania, an act of instigation or aiding and abetting was performed in Romania, or the results of an offence occurred (even if in part) on Romanian territory.

Additionally, in certain situations (i.e. where the punishment limits for the alleged crime exceed ten years' imprisonment, dual criminality, or the crime was committed in a place that is not subject to any state's jurisdiction), the Romanian Criminal Code also applies where a Romanian citizen or Romanian legal entity commits a criminal offence abroad (unless an applicable international treaty says otherwise).

What penalties can be imposed on a company?

Fines are the main criminal penalties applicable to companies. Fines can range from RON 3,000 (approximately EUR 640) to 3,000,000 (approximately EUR 640,000). The penalty can be increased by a third (up to a maximum of RON 3,000,000) if the company perpetrated the crime with the purpose of obtaining a financial gain for the company. Ancillary penalties (effective after conviction) include dissolution of the company and possibly also suspension of the activities of the company, shutting down offices of the company, or prohibition on participating in public procurement procedures.

What interim measures may be applied (by court/ prosecutor)?

The prosecutor, the preliminary chamber judge, or the court may order (and in cases of corruption, tax evasion, money laundering - must order) - as precautionary measures - garnishment or asset freezing.

Preventive measures may be ordered by the court at the proposal of the prosecutor and include a prohibition on the initiation or suspension of a procedure to dissolve, liquidate, merge, or divide the legal entity; and a prohibition on disposing of assets, concluding certain legal acts (such as entering into agreements) or commercial activities. To ensure compliance with the above measures, the court may also order the entity to post bail consisting of a minimum of RON 10,000 (approximately EUR 2,100). There is no maximum bail amount under Romanian law.

What is the statute of limitations in relation to corporate liability?

The statute of limitations rules are the same for both personal and corporate criminal liability. Depending on the fine limits, the general statute of limitations ranges from three to 15 years. The limitation period will be interrupted by the performance of any procedural act (that must be communicated to the suspect or defendant, as per decision no. 297/2018 ruled by the Constitutional Court of Romania) in the criminal file and a new limitation term shall start after each interruption. If the statute of limitations term exceeds twice the limitation period due to interruptions or suspensions, the period shall be considered completed and, therefore, the individual or corporate entity can no longer be held criminally liable (except for certain crimes, such as genocide, crimes against humanity, war crimes, and murder).

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

Yes, the provisions related to corporate liability are used in practice. According to a study released by the Organization for Economic Co-operation and Development in 2015, between 2010 and 2013, a total of 463 legal entities were indicted in Romania. Another study indicates that from 2006 (the year when corporate criminal liability was introduced in Romania) to 2013, 21 legal entities were convicted in Romania and penalised with fines ranging from RON 2,500 to RON 1,000,000.

In one recent case, RCS-RDS, the leading provider of television and internet services in Romania, was convicted of money laundering and was fined RON 1,250,000 (approximately EUR 265,000) and EUR 3,100,000 and RON 655,124 was seized.

How do mergers or divisions of convicted companies impact on newly formed entities?

In cases of loss of the legal personality due to a merger, absorption, or demerger after an offence is committed, the criminal liability will be transferred to the successor company.

Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

There is currently no obligation for corporations operating in Romania to have anti-bribery policies or other compliance policies in place. However, they can act as a mitigating factor which may result in reducing or excluding the company's liability. Depending on the size of the company and the industry in which it operates, it is often considered a sign of a healthy corporate culture to have an anti-corruption policy in place (whether on a standalone basis or incorporated into, e.g, the Internal Regulation/Employee Handbook of the company).

Are companies required to have in place internal guidelines pertaining to whistleblowing? If yes, what are the consequences of a lack of such policies?

No, companies are not required by law to have internal guidelines on whistleblowing, which is not amply regulated in the private sector.

Slovakia

Can corporate entities be criminally liable for offences committed by their employees or business partners (or other persons)?

Yes, legal entities can be liable for criminal acts committed by their statutory body or a member of a statutory body, persons performing control or supervision within the entity, other persons entitled to represent the entity or decide on its behalf, based on Act No. 91/2016 Coll., on the Criminal Liability of Legal Entities (the "**Act**"), effective since 1 July 2016.

A criminal act is attributable to a legal entity if it was committed either for its benefit, in its name, or within or through its operations (activity). A criminal act is also considered to be committed by the legal entity if under the aforesaid conditions one of the above stated persons, by his/her insufficient supervision or control representing his/her duty, enables another person, even negligently, to commit a crime within the scope of the authorisations granted by the legal entity.

Is the liability based on fault or risk?

Under Slovak law, criminal liability of legal entities (i.e. corporate criminal liability) is based on the attributable character of a criminal act.

As a criminal law principle, fault (typically intention, exceptionally negligence) must be present in order for an act to qualify as a criminal act.

However, fault can be examined only in relation to individual persons, not legal entities. A criminal act may be attributed to the legal entity even if it has not been determined whose fault it was (for example when a collective statutory body acted in the name of the legal entity).

Therefore, the Act introduced the term "attributability", which is examined in relation to legal entities.

Are there any defences available?

A criminal act by an individual will not be attributed to the legal entity if, taking into account the subject of the legal entity's activities, manner in which the criminal act was committed, consequences and circumstances of the criminal act, the failure to fulfil the control and supervision obligations on the side of the legal entity's body or one of the above stated persons, was negligible.

What conduct of individuals may result in such liability? Is there a closed catalogue of crimes for which companies can be punished?

The Act contains an exhaustive list of criminal acts by individuals for which legal entity may be liable, for e.g fraud and embezzlement.

Are corporate entities required to vet their business partners (or associates)?

There is no statutory obligation to vet business partners or associates.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

Even though an attributable act by an individual is necessary to give rise to the criminal liability of a legal entity, it is not required that a particular individual who acted on behalf of a corporation be identified or convicted. As a result, the proceedings can indeed be conducted independently.

Do the regulations apply extraterritorially? Can a corporate entity be liable for offences of individuals committed abroad?

Yes, a legal entity with its registered seat in Slovakia could be liable for a criminal act committed abroad.

Additionally, a foreign corporate entity could be liable for criminal acts committed abroad for the benefit or to the detriment (if it is also considered a criminal act in the place where it was committed) of a Slovak legal entity, citizen, or a foreign national with permanent residence in Slovakia.

What penalties can be imposed on a company?

A court may impose the following penalties: dissolution (with liquidation), forfeiture of the property of the legal entity (in whole or in part) or of a particular item, a fine of EUR 1,500 to 1,600,000, prohibition on certain actions, disqualification from participation in public tenders, disqualification from receiving grants and subsidies, disqualification from receiving aid and support from EU funds, or publication of a court's judgment. Additionally, as a protective measure, a court may impose confiscation of an item being a protective measure imposed in a criminal proceeding against a individual person if, for e.g, it is an item owned by the company and it was obtained through a criminal act of that individual person.

What interim measures may be applied (by court/ prosecutor)?

If the known facts indicate that the accused legal entity is liable for the committed criminal act and on the basis of its acting or other facts there is a reasonable concern that it will continue with the criminal activity, or complete the criminal act which it attempted, or commit the criminal act that it had planned or threatened to commit, the court may oblige the legal entity to deposit a certain sum or item with the court, or to act or refrain from acting, as well as prohibit it from disposing of certain items or rights.

What is the statute of limitations in relation to corporate liability?

A legal entity cannot be found liable after the lapse of a limitation period stipulated by the Criminal Code for the specific criminal act which may be attributable to the legal entity (from 3 to 30 years).

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

This is a recent law and the first court rulings were in late 2018. Those cases referred to indirect corruption, bribery, tax evasion, and tax fraud. In all cases the individual persons, through whose actions the criminal acts were committed, represented the statutory body of their respective corporate entities. The known sanctions imposed so far were fines of up to EUR 8,000 and disqualification from entrepreneurial activities.

How do mergers or divisions of 'convicted' companies impact on newly formed entities?

Criminal liability of a dissolved legal entity passes on to all of its legal successors; this shall also apply to all outstanding penalties. However, if the legal entity is merged, divided, dissolved or its legal form is changed during the enforcement proceedings, on a motion of its legal successor, the court shall decide whether or to what extent the outstanding penalty applies to that legal successor as well.

Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

It is not mandatory under the Act. Individual compliance policies may be mandatory under special acts, e.g. the Anti-Money Laundering Act (297/2008 Coll.). However, a lack of or defects in the policies may limit the possibility of using them as a supportive argument within exculpation efforts.

Are companies required to have in place internal guidelines pertaining to whistleblowing? If yes, what are the consequences of a lack of such policies?

Only companies with at least 50 employees and public authorities are obliged to have internal regulation pertaining to whistleblowing under Act No. 307/2014 Coll. on Certain Measures Related to the Reporting of Anti-Social Activities. A failure to fulfil this obligation may be sanctioned by a fine of up to EUR 20,000.

Ukraine

Can corporate entities be criminally liable for offences committed by their employees or business partners (or other persons)?

Under Ukrainian law, legal entities are not subject to purely criminal liability. At the same time, legal entities can still be subject to criminal sanctions pursuant to the Criminal Code of Ukraine in the case of certain offences (described in section 4 below) committed by officers, agents, or any other person acting on behalf or in the interest of a legal entity (together the "**Agents**") (the "**Underlying Crimes**"). Additionally, a legal entity can be subject to criminal sanctions if the entity's anti-corruption officer fails to properly exercise his duties in accordance with the legal entity's constituent documents on prevention of corruption that resulted in a corruption-related crime being committed (the "**Failure to Prevent Bribery**").

Is the liability based on fault or risk?

The court can apply criminal sanctions to a legal entity once the individual that committed the underlying crime is convicted. Formally, the application of sanctions to the legal entity does not depend on any additional conditions (e.g. absence of adequate internal control/supervision, failure to report, and the absence of effective compliance policies).

Are there any defences available?

If the application of criminal sanctions against a legal entity is sought in connection with the Failure to Prevent Bribery, the legal entity can potentially argue that the its anti-corruption officer properly exercised his duties to prevent corruption and implemented all measures envisaged by the legal entity's constituent documents and anti-corruption policy (e.g. regularly conducting training sessions and ensuring that employees are familiar with the anti-corruption laws/policy) and such measures were sufficiently effective for the prevention of bribery. However, so far there have been no court precedents dealing with this type of defence.

What conduct of individuals may result in such liability? Is there a closed catalogue of crimes for which companies can be punished?

There is a closed list of Underlying Crimes which can lead to application of criminal sanctions to a legal entity. These crimes are listed in Article 96-3 of the Criminal Code of Ukraine and include crimes related to terrorism, corruption, national security, money laundering, etc.

Are corporate entities required to vet their business partners (or associates)?

Ukrainian law does not prescribe any general obligation for corporate entities to vet their business partners, in particular to conduct a business due diligence of contractual partners. Vetting business partners per se cannot be used as a legal defence against application of criminal sanctions to a legal entity. At the same time, an obligation to conduct a due diligence of clients is prescribed for certain categories of entities and persons (such as banks, insurance companies,, companies rendering tax consultancy services, providers of services related to virtual assets, etc.) under Ukrainian anti-money laundering (the "AML") legislation. The AML law provides for a risk-oriented approach. The entitled bodies should identify clients in the risk criteria by considering factors such as geographical location and place of registration. They should evaluate the servicing institutions involved in any transaction in compliance with the AML, including the type of services rendered and other factors the entitled bodies consider proportionate and necessary.

In order to initiate proceedings against a corporate entity, does the individual need to be convicted first or can the proceedings be conducted independently?

In order to initiate proceedings against a legal entity, the individual that is suspected of committing an Underlying Crime must be served with a suspect notice. Conviction of the relevant individual is not required for merely initiating proceedings against the legal entity. However, in order to impose sanctions against the legal entity, the respective individual needs to be tried and convicted by the court. The court may apply criminal sanctions against the entity in the ruling convicting the individual perpetrator.

Do the regulations apply extraterritorially? Can a corporate entity be liable for offences of individuals committed abroad?

A foreign legal entity can be subject to criminal sanctions in Ukraine only if its agent (individual perpetrator) was convicted of the Underlying Crimes in the areas of terrorism, national security, organised crime or interference in the operations of Ukrainian public authorities. Although the Criminal Code is silent on the place of conviction of the relevant individual (there is no court practice on this question either), it may be argued that such individual would need to be convicted in Ukraine. The Agent, either a Ukrainian or a foreigner, can be convicted for committing the relevant crime in Ukraine or abroad (however, in the case of a foreign agent who commits a crime abroad, this applies only to serious crimes, e.g. terrorism financing, which infringe on the rights/freedoms of Ukrainian nationals and/or the interests of Ukraine). In turn, a Ukrainian legal entity can be subject to criminal sanctions in Ukraine if its agent was convicted for the Underlying Crimes mentioned in section 4 above which were committed abroad.

What penalties can be imposed on a company?

If the company is found liable, the court can impose a fine based on double the amount of the illegally obtained benefits or, if the unlawful benefits were not received or their amount is impossible to determine, the court is entitled to impose a fine of up to UAH 1,700,000 (ca. EUR 51,500). It can also order the confiscation of the company's assets or its liquidation. Additionally, the legal entity can be required to hand over illegally obtained profits and compensate caused damage.

What interim measures may be applied (by court/ prosecutor)?

If the entity is investigated in connection with an Underlying Crime punishable by confiscation, then the court can order the freezing of the legal entity's assets (upon application of the prosecutor/investigator).

What is the statute of limitations in relation to corporate liability?

A legal entity cannot suffer criminal sanctions if, depending on the type of the crime committed, 3 to 15 years have passed since the crime was committed. For example, the sanctions cannot be imposed on the legal entity after 5 years for public bribery and 10 years in relation to crimes linked to terrorism financing.

Are the provisions related to corporate liability used in practice? Are there any notable cases? What in practice are the typical and most severe sanctions?

There are very few cases where criminal sanctions have been imposed on legal entities. In two cases relating to public bribery, fines have been imposed on the liable companies.

How do mergers or divisions of 'convicted' companies impact on newly formed entities?

As a general rule, in the case of a reorganisation of a legal entity (merger, acquisition, division, transformation, etc.), the property, as well as the civil rights and obligations of respective legal entity, shall pass to its successors - the surviving (newly created) legal entities. These surviving (newly created) legal entities in certain cases can inherit the risk of being subject to criminal sanctions in connection with the Underlying Crimes or a Failure to Prevent Bribery related to the legal entity-predecessor (Article 96-4 of the Criminal Code).

Is it mandatory for companies in your jurisdiction to have anti-bribery and/or other compliance policies in place?

Only certain categories of legal entities are obliged to have an anti-corruption policy in place. These include medium and large state/municipal enterprises, as well as companies where the state/municipality holds a shareholding exceeding 50%, and legal entities taking part in public procurement proceedings. The law does not provide for any specific mandatory requirements as to the content of an anti-corruption policy. Instead, Article 63 of the Law of Ukraine on the Prevention of Corruption provides a suggested list of provisions that can be included in the anti-corruption policy. In addition, the National Corruption Prevention Agency of Ukraine adopted on 2 March 2017 a Model Anti-Corruption Policy of a Legal Entity, which provides an outline of the structure and provisions of an anti-corruption program for Ukrainian legal entities. A lack of a mandatory anticorruption policy bars legal entities from taking part in public procurement.

In addition, in theory the effective implementation by the legal entity's anti-corruption officer of the entity's anti-corruption policy should potentially help the legal entity to avoid the application of criminal sanctions for Failure to Prevent Bribery. However, even if the anti¬corruption policy of a legal entity itself was not defective, but the entity's anti-corruption officer otherwise failed to properly exercise its duties on prevention of corruption, such legal entity could still be subject to criminal sanctions.

Are companies required to have in place internal guidelines pertaining to whistleblowing? If yes, what are the consequences of a lack of such policies?

The law does not impose any requirements for legal entities to have internal guidelines on whistleblowing. The law merely provides a recommendation for legal entities to include such provisions in their anti-corruption policies. Similarly, the Model Anti-Corruption Policy drafted by the National Corruption Prevention Agency contains certain provisions dealing with the means for reporting corruption and protection of whistleblowers. At the same time, Ukrainian anti-corruption law provides for protection of whistleblowers and is applicable regardless of whether there is an internal policy regulating this issues.These statutory requirements essentially concern the provision of legal aid to the whistleblowers, prohibition on persecution and discrimination of whistle-blowers, confidentiality of information about the reward, etc. The law also establishes an obligation of public legal entities, as well as companies where the state/ municipality holds a shareholding exceeding 50% and legal entities taking part in public procurement proceedings, to establish a communication line within the legal entity for employees to report corruption and corruption-related offences and to shape the reporting culture.

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