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CRIMINAL LAW FLASH - CHANGES IN CRIMINAL LIABILITY OF LEGAL ENTITIES

new risks to be covered

new opportunities to be utilized

Dear Clients and Business Partners

This Newsletter is prepared to inform you on an important development in the regulation of criminal liability of legal entities in the Czech Republic. Relevant changes will become effective on **1 December 2016** based on an Amendment to the Czech Criminal Liability Act.¹

The Amendment represents **new risks** to be covered, as well as it represents, in comparison with the current regulation, an **opportunity to mitigate related risks** of Czech legal entities to be held criminally liable for actions of its employees, with potential severe sanctions (even dissolution of the legal entity or imposition of material fines).

Both can be covered by a **set of measures to be adopted by the legal entities**. The criminal law team of RD Legal is fully available to review the measures you currently have in place and to adjust them so that your protection against criminal liability of legal entities, when considering the specifics of your business operations, is fully set based on the new regulation. Alternatively, based on your preference, we may also implement the standard set of measures we have available for this topic.

I am available to meet you in person and discuss all aspects in detail.

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¹ Czech Act No. 183/2016 Coll., on criminal liability of legal entities and proceedings against them, as amended

Introduction into criminal liability of legal entities in the Czech Republic

The concept of criminal liability of legal entities was introduced in the Czech Republic effective on **1 January 2012**, i.e. it exists for 4 years already. It is based on the so-called principle of **attributability of criminal liability to legal entities**. It means that only natural person can commit a criminal offence, but his/her action can be attributed to the legal entity, which is sanctioned afterwards. Thus, one criminal offence committed by the relevant person can cause criminal liability of both natural person and legal entity or just one of them – only natural person in case that the legal entity exempts itself from criminal liability.

For incurring criminal liability of a legal entity, the following conditions must be met:

- i. a **particular criminal offence** is committed (i.e. relevant action of a legal entity under the Criminal Liability Act);
- ii. by a **particular person** (i.e. the management - statutory bodies or other persons authorized to act on behalf of a legal entity, performing management or supervisory activities, etc., or the employees of such legal entity);
- iii. the criminal offence is committed **on behalf of a legal entity, in its interests, or in the context of its business activities**;
- iv. the criminal offence is committed **intentionally**, unless it is stated in the Criminal Code that the individual criminal offence may be also committed **by negligence**.

Criminal liability of legal entities after 1 December 2016

The criminal liability of legal entities will change as follows based on the Amendment:

1.	The criminal offences	The Amendment extends the list of criminal offences which can be committed by Czech legal entities.
2.	The principle of attributability	It narrows the range of persons whose conduct can be attributed to Czech legal entities.
3.	The possibility of exemption from criminal liability	It extends the possibility of Czech legal entities to exempt themselves from such criminal liability.

Measures to be adopted – criminal law “compliance programme”

To cover risks arising from criminal liability of legal entities, i.e. to exempt relevant legal entity from its potential criminal liability for illegal conduct of its management or employees, it supposed to be **applied all efforts that could be justifiably expected to avoid committing of illegal conduct by these persons**.

Thus, the Amendment provides some additional options how to mitigate potential criminal liability of legal entities, by implementing set of internal measures which are generally called a “**compliance programme**”.

Such “*compliance programme*” may consist of different individual instruments from various areas

(antitrust compliance; financial and tax compliance; environmental compliance; IT compliance, etc.), such as:

- i. establishment of the position of director for compliance programme (so-called “*compliance officer*”);
- ii. adjustment and/or adaptation of regulations, directives (mainly labour directive, code of ethics, etc.);
- iii. incorporation of content of compliance programme to business activities;
- iv. employee training and seminars for persons of the Management;
- v. internal control systems, etc.

Typical business activities' related criminal offences

We list below criminal offences that typically can be committed in daily business activities		
1.	Bribery	Legal entity provides, offers or promises of a bribe in relation to conducting own business or business of another; etc.
2.	Subvention Fraud	Legal entity states false or grossly distorted information or conceals material information in an application for administration of a grant, subvention, or if it uses funds for other purpose.
3.	Credit Fraud	Legal entity states false or grossly distorted information or conceals material information when concluding a loan contract or when drawing credit or if it, without the consent of the creditor, uses funds for other purpose.
4.	Evasion of Taxes, Fees and Similar Compulsory Payments	Evasion of taxes or other payments in the sense of pretending of lower range of this duty or denying of this duty or elicitation of a privilege on their payment.
5.	Evasion of Tax, Social Security Insurance Fee	Failure to fulfil the legal obligation to pay tax for another person.
6.	Distortion of Data on Status of Management and Assets	Failure to keep accounting books, records, etc. or their change, destruction or damage, or statement of false or grossly distorted data in them.
7.	Environmental Damage and Environmental Hazard	Environmental damage or environmental hazard in greater extent on larger territory, able to make bodily harm or death, also by negligence.
8.	Causing Bankruptcy	Legal entity makes expenses grossly disproportional to its property relations, makes loans to other persons, though it is grossly disproportional to its property relations, conducting beyond the usual entrepreneur risk a transaction or business that does not belong to regular enterprise activities of the legal entity or is grossly disproportional to its property relations.

We look forward to discuss with you the above as well as any other "hot topic" of Czech law.

Sincerely

RD Legal team