

**Law no. 301/2004 was published in the Official Gazette of Romania no. 575 of 29 June 2004 approving the new Romanian Criminal Code (herein after referred to as the “Code”)**

## Criminal liability of legal entities

### General aspects

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The Code shall, pursuant to article 512 thereof, come into effect one year as of its publication in the Official Gazette, i.e. on 29 June 2005.

According to opinions already stated by the legal doctrine, the Code contains numerous novelties, many of which give the Code a less repressive character, in accordance with the principles and regulations on human rights and liberties.

One of the new notions featured by the Code is the criminal liability of a legal entity, which represents the subject matter of this informative note.

According to the Code, legal entities are criminally liable in the cases stipulated by the law, for crimes committed in their name or for their interest by their bodies or representatives. The state, as well as public authorities and institutions cannot be held criminally liable.

The criminal liability of a legal entity does not exclude the criminal liability of the individual who has committed the crime.

According to the Code, crimes are classified, depending on their seriousness, into felonies and misdemeanours.

## Crimes

The special part of the Code indicates the crimes for which legal entities may be held criminally liable, such as:

- non-compliance with legal provisions regarding the authorisation of building works and quality in buildings;
- breach of trust through perpetration of fraud on creditors, fraudulent management, deceit (including fraudulent issuance of checks or other payment instruments), money laundering;
- non-compliance with regulations regarding import and export operations, unfair competition, embezzlement, deceptive trade practices in connection with quality merchandise;
- illegal transfer of contributions made to a company's share capital or of a company's assets, non-compliance with the fiscal regime of alcohol and mineral oils;
- certain violations of the European Communities' financial interests;
- breach of intellectual property rights, IT data and systems;
- breach of sequestration, prevention of competition in public auctions;
- bribery, influence peddling;
- non-adoption of legal industrial safety measures and non-compliance with industrial safety rules;

- anti-environment actions that are deemed as felonies and misdemeanours;
- adulteration of foodstuffs or other products, non-compliance with recyclable wastes provisions;
- a) breach of the secrecy of correspondence and manufacturing or use of electronic listening devices for intercepting communication.

## Penalties

The penalties provided by the Code for the crimes committed by legal entities include:

- *main penalty*: imposition of a fine ranging between ROL 10,000,000 and ROL 10,000,000,000.

The fine to be imposed to the legal entity as a main penalty is determined by the Court in relation to the penalty provided by the law for the individual who committed the crime.

We should mention that, according to the new structure of penalties applicable to natural persons, the main penalties are classified into penalties for felonies (life detention and severe detention from 15 to 30 years) and penalties for misdemeanours (imprisonment from 1 year to 15 years, imprisonment from 15 days to 1 year and the fine in the form of fine-days, from 5 days to 360 days, each day corresponding to an amount of between ROL 100,000 and ROL 1,000,000).

- *Complementary penalties*:

- (i) dissolution of the legal entity;
- (ii) suspension of the company's activity or of one of its activities for a period ranging between 1 to 3 years;
- (iii) prohibition to participate in public procurement procedures for a 1 to 5 year-term;
- (iv) prohibition of access to certain financial sources for a 1 to 5 year-term;
- (v) posting of the conviction sentence or its publication in the Official Gazette, in the media.

Save for dissolution, the other complementary penalties can be imposed cumulatively, totally or partially.

## Conclusion

The criminal liability of legal entities is a juridical notion also encountered in other law systems with longer experience in democracy (e.g., the French law).

As the doctrine has already stated, the adoption of these criminal norms by the Romanian law system will certainly be a challenge for theoreticians but in particular for the criminal law practitioners.

We believe that such innovation will also be a challenge to the theoreticians and practitioners of commercial law, given that numerous crimes may be committed under the umbrella of business and corporate activities.

The introduction of legal entities' criminal liability will also have an impact on the shareholders and management of such legal entities, at least by inducing them to exhibit a higher level of prudence.

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