

ACT

ON THE RESPONSIBILITY OF LEGAL PERSONS FOR THE CRIMINAL OFFENCES

I. GENERAL PROVISIONS

Article 1

(1) This Act establishes the prerequisites of punishability, punitive measures and criminal proceedings for criminal offences of legal entities.

(2) The legal persons as referred to in this Act shall also be foreign persons considered legal persons to the Croatian law.

Application of criminal legislation

Article 2

Unless otherwise prescribed by this Act, the provisions of the Criminal Code, the Criminal Procedure Act and the Law on the Office for the Prevention of Corruption and Organized Crime shall apply to legal persons.

II. PREREQUISITES OF PUNISHABILITY

Foundation of responsibility of legal persons

Article 3

(1) The legal person shall be punished for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or third person.

(2) Under the conditions referred to in paragraph 1 of this Article the legal person shall be punished for the criminal offences prescribed by the Criminal Code and other laws prescribing the criminal offences.

Responsible person

Article 4

The responsible person within the meaning of this Act is a natural person in charge of the operations of the legal person or entrusted with the tasks from the scope of operation of the legal person.

Attributing the guilty of a responsible person to the legal person

Article 5

- (1) Responsibility of legal person is based on the guilt of the responsible person.
- (2) The legal person shall be punished for the criminal offence of the responsible person also in cases when the existence of legal or actual obstacles for establishing of responsibility of responsible person is determined.

Exclusion and limitation of responsibility of certain legal persons

Article 6

- (1) The Republic of Croatia as a legal person may not be punished for a criminal offence.
- (2) Units of local and regional self-government may be punished only for criminal offences that have not been committed in their execution of public authority.

Responsibility in case of change in the status of a legal person

Article 7

- (1) If the legal person ceases to exist before the completion of the criminal proceedings, a fine, security measures, public pronouncement of judgement and confiscation of illegally gained benefit may be pronounced on the legal person which is its general legal successor.
- (2) If the legal person ceases to exist after coming into effect of the validity of the judgement, i.e. after the completion of the criminal proceedings, a fine, security measures, public pronouncement of judgement and confiscation of illegally gained benefit are executed to the provisions of paragraph 1 of this Article.
- (3) The legal person in bankruptcy shall be punished for the criminal offences committed before filing for bankruptcy or during the bankruptcy proceedings.

III. PENALTIES AND OTHER PUNITIVE MEASURES

Types of punitive measures

Article 8

- (1) For their criminal offences, legal persons may be imposed penalties, and pronounced suspended sentences and security measures.
- (2) For their criminal offences, legal persons may be punished with fines or termination of the legal person.

Fines

Article 9

(1) The prescribed fine for criminal offences committed by legal persons shall not be less than 5.000,00 kuna nor exceed 5.000.000,00 kuna.

(2) In case of the legal person's failure to pay the fine within the specified period of time, the same shall be collected under coercion.

Amount of a fine

Article 10

(1) If the criminal offence is punishable by imprisonment for a term of up to one year, the legal person may be punished by a fine of 5.000,00 to 2.000.000,00 kuna.

(2) If the criminal offence is punishable by imprisonment for a term of up to 5 years, legal person may be punished by a fine of 10.000,00 to 3.000.000,00 kuna.

(3) If the criminal offence is punishable by imprisonment for term of up to 10 years, legal person may be punished by a fine of 15.000,00 to 4.000.000,00 kuna.

(4) If the criminal offence is punishable by imprisonment for a term of up to 15 years or by long-term imprisonment, the legal person may be punished by a fine of 20.000,00 to 5.000.000,00 kuna.

Imposition of a fine for criminal offences committed in concurrence

Article 11

If the court has imposed fines on a legal entity for two or more criminal offences committed in concurrence, the single fine may not exceed the sum of individual fines or the highest fine determined by the law.

Termination of legal person

Article 12

(1) The penalty of termination of the legal person may be pronounced if the legal person has been established for the purpose of committing criminal offences or if the same has used its activities primarily to commit criminal offences.

(2) The penalty of termination of the legal person may not be pronounced on units of local and regional self-government, political parties and trade unions.

(3) Apart from the penalty of termination of the legal person the court may also impose a fine upon the legal person.

(4) After the judgement on termination of the legal person becomes final, liquidation shall be carried out.

Suspended sentence

Article 13

(1) Instead of a fine the court may pronounce a suspended sentence on the legal person and simultaneously determine that the fine shall not be collected if the legal person does not commit another criminal offence within the time specified by the court, which may not be shorter than one or longer than three years.

(2) Suspended sentence may be pronounced for criminal offences punishable by imprisonment for a term of up to three years, and the court has imposed a fine on the legal entity in the amount of up to 50.000,00 kuna.

Statute of limitations

Article 14

(1) The limitation period for criminal prosecution against a legal person is determined in accordance with the sentence prescribed for the perpetrator of the criminal offence.

(2) Fines cannot be claimed upon expiration of a period of three years after pronouncement of the judgement or revocation of the suspended sentence by which it was imposed.

(3) There is no statute of limitations for termination of the legal person.

Types of security measures

Article 15

Apart from other penalties the court may impose one or more of the following security measures on the legal person: ban on performance of certain activities or transactions, ban on obtaining of licenses, authorizations, concessions or subventions, ban on transaction with beneficiaries of the national or local budgets, and confiscation.

Ban on performance of certain activities or transactions

Article 16

(1) A ban on performance of certain activities or transactions may be imposed on one or more activities or transactions, the performance of which was a criminal offence.

(2) A ban on performance of certain activities or transactions may be imposed on the legal person on the basis of court judgement for the period of one to three years as of the moment the judgement becomes final, if further performance of certain activities or transactions would be a danger to life, health or security of persons, or hazardous to property, or economy, or if the legal person has already been punished for the same or similar criminal offence.

(3) A ban on performance of certain activities or transactions may not be imposed on units of local and regional self-government and political parties.

Ban on obtaining of licenses, authorizations, concessions or subventions

Article 17

(1) Ban on obtaining of licenses, authorizations, concessions or subventions as issued by government bodies or units of local and regional self-government may be imposed on the legal person in case of a threat that such obtaining of licenses, authorizations, concessions or subventions might instigate the same to commit another criminal offence.

(2) The security measure referred to in paragraph 1 of this Section shall be imposed for a period of one to three years after the court judgement becomes final.

Ban on transaction with beneficiaries of national or local budgets

Article 18

(1) A ban on transactions with beneficiaries of the national or local budgets may be imposed on the legal person in case of a threat that such operations might instigate the same to commit another criminal offence.

(2) The security measure referred to in paragraph 1 of this Article shall be imposed for a period of one to three years after the court judgement becomes final.

Confiscation

Article 19

The security measure of confiscation is imposed under the conditions referred to in Article 80 of the Criminal Code.

Confiscation of illegally gained benefit

Article 20

(1) The court shall confiscate from the legal person the illegally gained benefit as a proceeds of the criminal offence.

(2) The illegally gained benefit referred to in paragraph 1 of this Article means any increase or prevention of a decrease of the legal person's property in consequence of the commission of a criminal offence.

(3) The illegally gained benefit obtained in consequence of the commission of a criminal offence shall be confiscated on the basis of the judgement which establishes the commission of the criminal offence. The amount of the illegally gained benefit shall be determined by the court after studying the entire property of the legal person and relation of the same to the offence committed..

(4) Should it be established that it is impossible to confiscate the illegally gained benefit consisting in money, rights or objects, the court shall oblige the legal person to pay the full replacement value in money. In determination of such value in money the court shall take into consideration the market value of material assets or rights at the moment of judgement.

(5) The illegally gained benefit shall be confiscated also in cases when it is kept by third persons on the basis of any right whatsoever, if under the circumstances of such gain the same knew or could know and was/were supposed to know that the value was gained in consequence of the commission of a criminal offence.

Public pronouncement of judgement

Article 21

(1) Public pronouncement of judgement may be determined by the court in cases when it is established on the basis of the significance of the criminal offence that there are good reasons to inform the public of the final judgement.

(2) The court shall decide that the judgement should be publicized in its entirety or in parts, and determine the period of such publication. A publicized judgement may contain the injured party's name only with its consent.

(3) The court shall decide in which media the judgement referred to in paragraph 1 of this Article. The media shall publicize the above mentioned judgement at the expense of the sentenced legal person.

Notification on pronounced punitive measure

Article 22.

(1) The court shall, after the judgement convicting the legal person becomes final, by virtue of its office, inform the competent body for keeping of the criminal records, court or other registry in which this legal person is entered into, in order to register the criminal offence or the punitive measure.

(2) In the notifications referred to in paragraph 1 of this Article, it shall be stated the following data exclusively: name of the court, number of judgement and the date of proclamation of final judgement, name of the company, i.e. name of the legal person, seat and the registry number of the legal person, criminal offence, penalty and the security measure, if pronounced.

IV. CRIMINAL PROCEDURE

Joinder

Article 23.

(1) For a criminal offence committed by the legal person and the responsible person, joined proceedings shall be conducted and a single judgement shall be passed.

(2) If no criminal proceedings may be instituted or conducted against the responsible person for legal or any other reasons whatsoever, the proceedings shall be instituted and conducted against the legal person only.

Decision on criminal prosecution as per principle of purposefulness

Article 24

A public prosecutor may act pursuant to Article 175 of the Criminal Procedure Act in case that the legal person possesses no property or the same is so insignificant that it would not be sufficient to cover the costs of the criminal proceedings, or if bankruptcy proceedings are conducted against the legal person.

Territorial jurisdiction

Article 25

(1) If it is uncertain within which jurisdictional territory the criminal offence has been committed or if the offence has been committed outside the territory of the Republic of Croatia, jurisdiction shall have the court within the jurisdictional territory of which the domicile or residence of the accused is located, i.e. the accused legal person is seated.

(2) A private charge may as well be filed with the court within the jurisdictional territory on which the accused legal person is seated.

Institution of criminal proceedings upon motion

Article 26

If the motion for prosecution has been submitted only against the responsible person, the public prosecutor can by virtue of the office institute the criminal proceedings for the same criminal offence against the legal person as well.

Representative of the accused legal person

Article 27

(1) The accused legal person in the criminal proceedings shall be represented by its representative who is authorized to undertake all actions which can be undertaken by the accused.

(2) The accused legal person can have only one representative. The representative of the accused legal person may be any legally competent physical person who speaks the Croatian language.

(3) The representative shall be designated by the legal person's body or the persons representing the legal person pursuant to the law, a decision made by the authorized governmental body, the articles of association, the memorandum of incorporation or a decision made by the legal person's body. If the representative is not authorized to represent the legal person by virtue of any other right, the same shall be authorized to represent the legal person on the basis of a power of attorney in writing. Such power of attorney may also be recorded in the minutes of the court conducting the proceedings.

(4) The court is obliged to establish the identity of the legal person's representative and to inspect his/her power of attorney to participate in the proceedings. The legal person is obliged to serve a brief to the court, by which it has designated its representative, and the proof of his/her authority.

(5) The legal person's representative may not be the person summoned as a witness in the same proceedings or the person against whom the criminal proceedings are conducted for the same criminal offence.

Designation of the representative

Article 28

(1) In the first summons the court shall warn the legal person that it is obliged to designate its representative within eight days upon receipt of the summons.

(2) If the legal person fails to designate its representative within the time referred to in paragraph 1 of this Article the same shall be designated by the court before which the proceedings are conducted.

(3) If the legal person ceases to exist before the judgement becomes final, i.e. before completion of the criminal proceedings, and has its general legal successor, the successor shall be obliged to designate its representative within eight days upon cessation of the legal person. Otherwise, the representative shall be designated by the court before which the proceedings are conducted.

(4) If the legal person designates its representative contrary to Article 27 paragraphs 2 and 5 of this Act, the court conducting the proceedings shall summon the same to designate another representative within eight days and to serve the appropriate brief to the court. If the legal person fails to designate its representative within the above mentioned time, the same shall be designated by the court before which the proceedings are conducted.

(5) The representative of the accused legal person shall be designated by the president of the court on the basis of a resolution served to the person designated as the representative and to the legal person. These persons have the right to appeal against the resolution, which does not postpone the execution of the same.

Delivery of resolutions and letters to the legal person

Article 29

The resolutions and letters addressed to the legal person are delivered to the address of its representative or to the legal person's seat or its subsidiary.

Bringing in

Article 30

If the duly summoned representative fails to appear and to justify his/her absence, the court may issue a warrant to bring in, provided that it has been clearly indicated in the summons that in case of failure to appear the same shall be brought in.

Costs of the representative

Article 31

(1) The fee and necessary expenses of the representative shall be part of the costs of the criminal proceedings.

(2) Necessary expenses of the designated representative in the proceedings for the criminal offences for which the same is prosecuted by virtue of the office shall be advanced from the budget of the authorities conducting the criminal proceedings and are later refunded by the persons obliged to refund the same pursuant to the provisions of the Criminal Procedure Act.

Defense counsel

Article 32

(1) The accused legal person may have a defense counsel. The power of attorney for the defense counsel is given by the persons authorized to represent the legal person as referred to in Article 27 paragraph 3 of this Act.

(2) The legal person and the responsible person against whom the criminal proceedings are conducted for the same criminal offence may have one and the same defense counsel, provided that it is not contrary to the interests of their defense.

(3) The provisions of the Criminal Procedure Act regarding mandatory defense shall not apply to the accused legal person.

Contents of indictment

Article 33

Apart from the parts prescribed by the Criminal Procedure Act, the indictment against the accused legal person shall contain also the company name, its registered seat, the company registration number, name and surname of its representative, date of birth, and address and citizenship and the number of passport if the representative is a foreign national

Main trial

Article 34

(1) At the main trial, in the joined proceedings against the legal person and the responsible person, the first person to be asked to enter his/her plea on each count of the charge shall be the responsible person and then the representative of the legal person.

(2) The order of production of evidence at the main trial in the joinder against the legal person and the responsible person shall be determined in accordance with the responsible person's plea to the charge, regardless of the plea of the representative of the legal person. The first person to be interrogated shall always be the responsible person and then the representative of the legal person.

(3) Upon the completion of production of evidence, the prosecutor's and the injured party's closing arguments, the defense counsel of the legal person presents his/her argument first, and then the representative of the legal person, the defense counsel of the responsible person and the responsible person.

(4) The court may decide that after the plea of guilty of the legal person the main trial could take place in the absence of the representative of the legal person who was duly summoned, provided that his/her presence is not much needed.

Contents of judgement

Article 35

Apart from the parts prescribed by the Criminal Procedure Act, the judgement passed in the proceedings against the accused legal person shall also contain the following:

1) in the introductory part of the judgement, the company name of the accused legal person, its registered seat, the company registration number, name and surname of its representative, date of birth and the address, country issuing the passport and passport number if the representative is a foreign national,

2) in the sentence, the company name of the accused legal person and its registered seat.

Precautions against the legal person

Article 36

(1) If distinctive circumstances support the concern that the accused legal person could repeat the criminal offence or complete the attempted offence or perpetrate the offence it threatens to commit, the court shall order the following precautions:

1) ban on performance of certain activities or transactions,

2) ban on transactions with beneficiaries of the national or local budgets,

3) ban on obtaining of licenses, authorizations, concessions or subventions.

(2) The court may decide on a precaution referred to in paragraph 1 item 1 of this Article if further performance of certain activities or transactions would be a danger to life, health or safety of people or hazardous to property, or economy. This measure may not be imposed on units of local and regional self-government, political parties or unions.

(3) The court may upon motion of the public prosecutor or by virtue of the office issue a resolution for the purpose of banning all status changes that might lead to termination of the accused legal person. Such ban shall be entered into the register of companies or other register.

(4) The resolution on precaution shall be entered into the register of companies or other register by virtue of the office.

Article 37

This Act shall come into force six months as of the date of its publication in »National Gazette «.

Class: 740-02/02-01/02

Zagreb, 11th September 2003