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New Act on the Liability of Collective Entities

In the Government Legislative Centre a new Act has been published on the liability of collective entities. It replaces the current ineffective regulation. The new provisions are to be a tool with which to combat prohibited acts committed by collective entities and will also apply to acts committed before the new law comes into effect.

Who is affected by the new law?

The new law applies to all legal persons, commercial companies, capital companies, commercial companies with state participation and Polish branches of foreign entities.

How will proceedings against entities change?

The Act revolutionises the approach to the liability of collective entities. The proceedings themselves will take place **regardless** of proceedings against an individual and can be initiated **if there is reasonable suspicion and when it is in the public interest**.

In order to secure the course of the proceedings, **special administration and property security** could be applied against an entity. The Act also allows application of preventive measures, e.g. ban on promotion and advertising, **ban on competing for public contracts** during the proceedings, or suspending disbursement of grants or subsidies.

What penalties can be imposed on collective entities?

The new law provides for severe sanctions: financial penalties of up to **PLN 30 million** (with the possibility for this to be doubled) or winding-up or liquidation of the entity and criminal measures, e.g. in the form of the mandatory imposition of a **ban on competing for public contracts** if the offence involves, e.g. corruption.

When does an entity's liability start?

According to the new law, a collective entity will be liable for a prohibited act that:

- is committed in connection with the activity conducted by the entity,
- obtained even an indirect benefit from an act committed by, inter alia, its employees, a person acting on behalf of or in the interests of the entity, a person acting under civil contracts, a business partner or attorney-in-fact.

What to do to protect yourself?

Liability of an entity depends to a great extent on taking due care. Failure to take due care can be divided into failure to take due care in **selection and organisation**.

Due care in organisation will be of great importance as the law for the first time specifies internal solutions that should be implemented at an entity. First and foremost, the rules of procedure in the event of irregularities and the scope of liability of the entity's bodies should be specified, as should the body that will supervise compliance with the law in the organisation (compliance officer).

As the Act does not contain a closed list of solutions, but merely lays down their minimum scope, a comprehensive compliance system may be effective security for the entity. Implementation of such regulations may allow the exclusion of fault of an entity if an offence is committed by an individual.

An effective compliance system involves risk mapping and identification of critical processes, appointment of a compliance officer, development of procedures for dealing with reports of irregularities, regular staff training, business compliance audits and implementation of an effective whistleblowing system.

NB!
Implementing an effective compliance system may protect an organisation against liability under the new law!

Why is whistleblowing important?

The Act is the first to regulate the situation of whistleblowers and to guarantee them broad protection. It will be mandatory for proceedings to be conducted in respect of all whistleblower report and then for any irregularities to be remedied. In practice, this means that the entity will be obliged to implement an effective system for **internal reporting of irregularities** and to lay down precise **rules of procedure for dealing with irregularities reported**.

If the entity does not conduct proceedings in the event of reported abuse and does not remedy any irregularities disclosed, and the report concerns the same matter in which proceedings are pending, **the penalty for the act may be doubled**.

Critically, if a whistleblower finds violations of workers' rights related to an irregularity reported, in addition to compensation and reinstatement at work, the court may award him/her **a monetary performance of up to PLN 1 million, which the company will have to cover**.

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