

## **Release from criminal liability of legal entities in Lithuania**

Lithuanian Criminal Code foresees the criminal liability not only of natural persons, but of legal entities as well. Article 20 of Criminal code stipulates that a legal entity shall be held liable for those criminal acts, which are explicitly indicated as being possible to be incriminated to legal entities (despite such regulation – the list of such criminal acts is broad and includes all major offences).

A legal entity shall be held liable for the criminal acts committed by a natural person if a criminal act was committed for the benefit or in the interests of this legal entity, despite natural person acting independently or on behalf of the legal entity, provided that he, while occupying an executive position in the legal entity, was entitled:

- to represent the legal entity, or
- to take decisions on behalf of the legal entity, or
- to control activities of the legal entity.

Also a legal entity may be held liable for criminal acts where such acts have been committed by an employee or authorized representative of the legal entity as a result of insufficient supervision or control by the person occupying an executive position.

Legal entities are owned, controlled by and acts through natural persons, who have the power to change ownership, activity, personnel, property and any other details of legal entities. Such changes can be done due to various reasons including market situation, pursuit of profit, and these changes can also be done to mitigate or even eliminate criminal responsibility for the legal entity.

Article 36 of Lithuanian Criminal Code stipulates that a person who commits a criminal act shall be released from criminal liability where a court acknowledges that before opening of the hearing of the case in the court this person had lost its dangerous character due to a change in circumstances. Defense of accused legal entities may take advantage this regulation since it is indifferent to both natural persons and legal entities.

The law does not specify as to what extent the change in circumstances must occur, so it is the discretion of the courts to decide if the article 36 (concerning the release from criminal liability due to loss of the dangerousness) shall be applied, after evaluating the circumstances of each particular case.

In a recent decision Lithuanian Supreme Court has ruled that sale of shares of private limited liability company to a sincere and unrelated third person along with changes of executives, name and activity made this company to lose the dangerousness and these were sufficient grounds to release it from criminal liability for the offenses made by the previous executives. Supreme court dismissed the arguments of prosecutor regarding the severity of the crime, continuity of the legal entity and the inevitability of punishment.

More complex are the questions when legal entities end (due to liquidation or reorganization) before the decision concerning their criminal liability is made. Lithuanian laws do not explicitly regulate such situations, so the answers are to be found in the court practice.

Whilst liquidation of legal entities could be equated to death of natural persons (in regards of termination of criminal case), consequences of reorganization of legal entities have not yet reached the evaluation of Lithuanian Supreme Court.

Each case is strongly dependent on its own factual circumstances, but the key question is if it is only the analogy to death of natural person that can be drawn to reorganization of legal entity in regards of criminal liability. This question is related to the theoretical concept of legal entities, and opinions of scientists are not sound whether there is only a single answer to it.

While the new court practice is soon to be formed – it is expected that such practice would not leave the possibilities to misuse the instruments of civil laws in order to avoid criminal liability. What direction Lithuanian Supreme court will choose – we are still to find out.