
TERMS AND DEFINITIONS

Criminal Liability

A summary of conditions which, if fulfilled, establish criminal liability of the perpetrator, i.e. an obligation to bear sanctions for a committed criminal offence as set forth by the Criminal Code within a criminal-law relationship, which is created upon commitment of a criminal offence between the perpetrator and the state. The conditions of criminal liability are set forth in the Criminal Code.

Criminal Offence

An unlawful act designated by the Criminal Code as punishable, which has the characteristics as set forth in the Criminal Code. Commitment of a criminal offence, i.e. fulfilment of all mandatory constituent elements of a criminal offence, forms the basis of criminal liability.

Constituent Elements of a Criminal Offence

A summary of objective and subjective elements by which the individual types of criminal offences are defined, and which distinguish them from one another. These elements are unlawfulness, individual object (protected interest), objective aspect (act, consequence and their causal relationship), subject and subjective aspect (intent, negligence).

Individual criminal offences the constituent elements of which are specified in the Criminal Code, Special Part, and all the persons concerned shall acquaint themselves with them.

Criminal Offence Committed by a Legal Entity

A criminal offence committed in the interest or within the activities of a legal entity, provided it concerned the conduct of:

- (a) statutory body or a member of statutory body, or of another person in a managerial role within the legal entity, if such person is authorized to act in the name or on behalf of such legal entity;
- (b) a person in a managerial role within the legal entity, if such person performs management or controlling activities in such legal entity, even if this person does not fall under the definition in letter (a);
- (c) a person having decisive influence over the management of such legal entity, provided the conduct of this person was at least one of the conditions for the formation of a consequence constituting criminal liability of a legal entity; or
- (d) employee or a person in similar position upon performing his or her tasks, even if he or she is not a person specified in letters (a) to (c), if the criminal offence is attributable to the legal entity.

Attributability of Committed Criminal Offence to a Legal Entity

Commitment of a criminal offence may be attributed to a legal entity, provided the criminal offence was committed:

- (a) by the conduct of bodies of the legal entity or persons specified above under letters (a) to (c);
or
- (b) by an employee specified above under letter (d) based on a decision, approval or instruction of bodies of the legal entity or persons specified above under letters (a) to (c), or because the bodies of the legal entity or persons specified above under letters (a) to (c) failed to perform measures which they should have performed under another law or which could be reasonably required of them, in particular failed to perform a mandatory or necessary

supervision over the activities of employees or other persons to whom they are superiors, or failed to take the necessary measures to prevent or avert the consequences of a committed criminal offence.

Criminal Liability of Legal Entities

Criminal liability of legal entities pertains to all offences and criminal acts specified in the Criminal Code, Special Part, with the exception of criminal offences contained in an exhaustive list (Section 7 ACLLE). A criminal liability of a legal entity is not prevented by the fact that it could not be ascertained which particular natural person acted unlawfully (Section 8(3) ACLLE). Criminal liability of the legal entity does not affect criminal liability of these natural persons, and criminal liability of these natural persons does not affect criminal liability of the legal entity (Section 9(3) ACLLE). A legal entity may be absolved from the criminal liability provided the legal entity has exerted all reasonable efforts to prevent the commitment of a criminal offence by the above specified persons (Section 8(5) ACLLE).

Tort

A tort is an unlawful act harmful to the society, which is specifically designated as tort by the law and which has the characteristics specified by the law, unless it is a criminal offence.

Liability of Legal Entities for Tort

A legal entity is the perpetrator, if the constituent elements of a tort were filled in by a natural person, who is considered, for the purposes of assessing liability of a legal entity for tort, to be a person whose conduct is attributable to that legal entity and who breached a legal obligation imposed on the legal entity, within the activity of the legal entity, in direct connection with the activity of the legal entity or for the benefit or in the interest of the legal entity; a violation of a statutory duty imposed on an organizational unit or another division which forms a part of the legal entity shall also be considered to be a violation of a statutory duty imposed in the legal entity.

A legal entity, which used another legal entity or natural person other than a natural person, who is considered to be a person whose conduct is attributable to the legal entity for the purposes of assessing liability of a legal entity, to commit tort is also the perpetrator provided the involved persons are not liable for the tort.

Liability of a legal entity for tort is not conditional on ascertaining the specific natural person who is considered to be a person whose conduct is attributable to the legal entity. An administrative body is not obliged to identify a specific natural person who is considered to be a person whose conduct is attributable to the legal entity for the purposes of assessing liability of a legal entity for tort, in particular if it is clear from the ascertained facts that the conduct constituting liability of the legal entity for tort took place within the activity of the legal entity.

Liability of a legal entity for tort does not affect the liability of natural persons for tort specified in paragraphs 1 and 2 (Section 20 of the Act on Torts), and the liability of these natural persons for tort does not affect the liability of the legal entity for tort.

Attributability of Tort

For the purposes of assessing liability of a legal entity for tort, the person whose conduct is attributable to the legal entity is considered to be:

- (a) statutory body or a member of statutory body;
- (b) another body of the legal entity or its member;
- (c) employee or a person in a similar position performing the tasks arising from such position;
- (d) a natural person fulfilling tasks of the legal entity;
- (e) a natural person used by the legal entity for its activity; or

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- (f) a natural person who acted on behalf of the legal entity, provided the legal entity used the results of such conduct.

If commitment of a tort requires a special characteristics, ability or position of the perpetrator which is a legal entity, this special characteristics, ability or position are not required of the natural person who is considered to be a person whose conduct is attributable to the legal entity for the purposes of assessing liability of the legal entity for tort.

Absolving a Legal Entity of Liability for Tort

A legal entity is not liable for tort provided it proved that the legal entity has exerted all reasonable efforts to prevent commitment of the tort.

A legal entity may not be absolved of liability for tort if it failed to perform a mandatory or necessary supervision over the natural person, who is considered to be a person whose conduct is attributable to the legal entity for the purposes of assessing liability of the legal entity for tort, or if it failed to take the necessary measures to prevent or avert the tort.

All Reasonable Efforts of a Legal Entity

The Act on Criminal Liability of Legal Entities does not specify what efforts (measures and procedures) should be exerted by the legal entity to prevent the commitment of an unlawful act, thus being able to be absolved of liability for such act. In principle, the same can be said of the Act on Torts, in which the general liberation reason is phrased similarly to the ACLLE. Therefore, as a preliminary caution, the TTC Group defines the CCP parameters as the maximum possible, and considers them to be a comprehensive system containing all measures and procedures which could be reasonably required of the subjects forming the TTC Group and each legal entity, not only to prevent the commitment of a criminal offence by its employees but also to enable that the committing or commitment of such criminal offence could be and was detected in time, or the consequences of a committed criminal offence or tort were averted. The TTC Group considers a dutiful compliance with and respect for the CCP to be one of its priorities, and a part of the company culture.