

Corporate Law Briefing: Special Edition

# Liability of Corporate Entities in Cases of Bribery: Newly Enacted Provisions Under Law 5090/2024

- A. The Introduction of Liability of Corporate Entities in Cases of Bribery in the Greek Legal Order
- B. The Prerequisites for the Activation of Article 134
- C. Penalties and Other Circumstances
- D. Jurisdiction of Greek Courts

## A. The Introduction of Liability of Corporate Entities in Cases of Bribery in the Greek Legal Order

1. On 23 February 2024, Law 5090/2024 (the **Law**) introduced Article 134, which established the liability of legal persons in cases of bribery (the **Liability**). Such legal persons include all types of corporate entities, such as Sociétés Anonymes (SA), Limited Liability Companies (EPE) and Private Companies (IKE).
2. According to its explanatory report, the Law was adopted in order to bring Greek legislation in line with international standards, as defined by international contractual texts, including Article 2 of the OECD Convention.
3. Institutionalizing Liability requires the establishment of a framework regarding the criminal process to be followed. It is clarified that the legal person is a party to the criminal trial and has the rights of the accused, except those that belong exclusively to a natural person, as mandated by the Charter of Fundamental Rights of the European Union (*CJEU C-203/21 Delta Stroy*).
4. Greek legislation up to the enactment of the Law was restricted mostly to the civil and/or administrative liability of legal persons, while any criminal liability was reserved for the natural person with representation or decision-making powers. Therefore, the introduction of the Liability is unprecedented in Greek legislation.

## B. The Prerequisites for the Activation of Article 134

1. In particular, the Liability arises if a natural person commits either of the following offences:
  - a. Bribery of political persons (as per Article 159A of the currently in force Greek criminal code (GCC));
  - b. Bribery of public servants (as per Article 236 GCC and as the term 'public servant' is defined in Article 13 GCC);
  - c. Receipt of bribery and bribery of judicial officers (as per paragraph 2 to 4 of Article 237 GCC);
  - d. Trading of influence – Intermediaries (as per paragraph 2 A of Article 237A GCC);
  - e. Complicity in any of the above offences.
2. The natural person must:
  - a. act either individually or as a member of a body of the legal person; and
  - b. hold a managerial position or have representation powers or authorization to make decisions or to exercise control (the **Responsible Person**).
3. Additionally, the offence must be carried out for the benefit or account of the legal person.
4. It is noted that:
  - a. the Liability is independent of the civil, disciplinary or criminal liability of the natural persons associated with the legal person;
  - b. a penalty imposed as per Section 3 below is also executed against the universal or special successor of the legal person, up to the value of the assets transferred to each (e.g. corporate transformations, mergers & acquisitions etc), while in cases where more special successors exist, they are jointly and severally liable for the below mentioned penalties.

## C. Penalties and Other Circumstances

1. The following penalties are applied to the legal person in cases where the prerequisites under Section 2 are met:
  - a. A fine ranging from €50,000 to €10,000,000: This fine can reach up to double the pre-tax annual net profits of the legal person if profits exceed €10,000,000.
  - b. If any of the offences under Section 2 were carried out by a hierarchically inferior executive or an agent due to the lack of supervision or control by the Responsible Person, a fine ranging from €10,000 to €5,000,000 is imposed. The fine can reach up to the amount of the pre-tax annual net profits of the legal person, if such profits exceed €5,000,000.
  - c. Cumulatively or alternatively to the above-mentioned fines, a revocation or suspension of the operating license or prohibition on continuing the respective business activity may be imposed. This could be permanent or temporary, for a period ranging from 1 month to 2 years, or for a period of up to 1 year, in the case of the fine under Section 3(ii).

2. The reference year for the imposition of these fines is the year during which the offence or the last individual act of the offence was committed.
3. For the imposition of these fines, all relevant circumstances are taken into account and in particular:
  - a. the gravity and duration of the violation;
  - b. the degree of responsibility of the legal person;
  - c. the financial position of the legal person;
  - d. the amount of the resulting or intended illegal benefit;
  - e. the damages of third parties resulting from the offence;
  - f. the actions of the legal person after the offence, particularly the conduct of an internal investigation, which may have contributed to shedding light on the offence;
  - g. the repetition of the offence.
4. Special attention should be given to the fact that once an irrevocable judgment is issued, a copy is sent to the Independent Public Revenue Authority and the Unified Public Procurement Authority. By virtue of this, the competent authorities may exclude the relevant legal person from tenders and public contracts.

#### **D. Jurisdiction of Greek Courts**

1. In principle, Greek criminal courts have jurisdiction on all offences committed within the territory of Greece. However, pursuant to paragraph 6 of Article 134, the jurisdiction of the Greek criminal courts is also established when the above offences are committed abroad, regardless of the nationality of the perpetrator, even if:
  - a. the act is not punishable according to the laws of the country in which it was committed; or
  - b. no complaint was submitted by the victim; or
  - c. no relevant request was submitted by the Government of the country where the misdemeanor was committed.

**KEY CONTACTS****Lambros Belessis**

Partner

lbelessis@bernitsaslaw.com

**Yolanda Kalogirou**

Associate

ykalogirou@bernitsaslaw.com

This Briefing is intended to provide general information and is not meant to constitute a comprehensive analysis of the matters set out herein or to be relied upon as legal advice. It is not meant to create a lawyer-client relationship. Legal and other professional advice should be sought before applying any of the information in this Briefing to a specific situation.

Bernitsas Law Firm is a partnership of attorneys regulated by Presidential Decree 81/2005 and Law 4194/2013, as currently in force, with its registered address at 5 Lykavittou Street, Athens 106 72, Greece. If you no longer wish to receive Briefings from us, please click here to [Unsubscribe](#).