

Communication concerning the decision of the Curia of Hungary  
in criminal case n° Bfv.I.1.381/2017

Pursuant to section 2, subsection (2) of Act no. CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law (hereinafter referred to as the Legal Entities' Criminal Liability Act), such measures may be applied to a legal person if the accused person, acting as the executive officer of a limited liability company that had been liquidated as a result of fraudulent bankruptcy, intentionally diverted assets from the liquidated company in favour of a newly established limited liability company, thus the accused person's criminal offense resulted in a financial gain realised by the latter legal person.

The court of first instance found the first accused guilty of the crime of fraudulent bankruptcy committed as co-perpetrator [section 290, subsection (1), points a) and b) and subsection (2) of Act no. IV of 1978 on the Criminal Code] and guilty of the crime of forgery of public documents committed as accomplice [section 274, subsection (1), point c) of Act no. IV of 1978 on the Criminal Code]. Consequently, the court cumulatively sentenced him to a one year and eight months imprisonment – the implementation of which was suspended for a three-year long probation period – and imposed on him a five-year long prohibition to exercise the functions of an executive officer in a business entity.

The court of second instance partially modified the first instance judgement, and found the first accused guilty of the crime of fraudulent bankruptcy committed as co-perpetrator [section 404, subsection (1), points a) and b), and subsection (2), point a) of Act no. C of 2012 on the Criminal Code] and guilty of the crime of forgery of public documents [section 342, subsection (1), point c) of Act no. C of 2012 on the Criminal Code]. The high court increased the accused person's imprisonment to two years and his probation period to four years.

Upon the competent prosecutor's motion, the high court also imposed a fine of 6 000 000,- HUF on the limited liability company represented first by the first accused and then by the second accused, the spouse of the first accused on the basis of section 2, subsection (1), point a) of the Legal Entities' Criminal Liability Act. The remainder of the first instance judgement was upheld by the high court.

Based on section 416, subsection (1), point b) of Act no. XIX of 1998 on the Code of Criminal Procedure and section 24, subsection (3) of the Legal Entities' Criminal Liability Act, the legal representative of the limited liability company on which the fine had been imposed submitted a petition for judicial review to the Curia against the final court decision.

The petitioner argued that the crime of fraudulent bankruptcy committed by the first accused had been completely unrelated to the newly established limited liability company on which the fine had been imposed. The establishment, pursuant to section 2, subsection (1) of the Legal Entities' Criminal Liability Act, of the criminal liability of a legal person due to the commission of a criminal offense by its executive officer requires that the latter person perpetrate his criminal acts within the legal person's area of business and that, as a consequence, the legal person obtain a financial gain or that the criminal acts, at least, aim at obtaining such gain.

The Curia found the petition for judicial review to be ill-founded.

Based on the established facts of the case, it is undoubtedly clear that the first accused, acting

as the executive officer of the limited liability company that had been liquidated as a result of his criminal offense, intentionally diverted assets from the liquidated company in favour of the newly established limited liability company. The accused person's criminal acts resulted in the insolvency of the liquidated company, therefore he was found guilty of the crime of fraudulent bankruptcy. The first accused decreased the assets of the liquidated company by diverting them to the newly established company that was also represented by him, the whole transaction resulted in a financial gain realised by the latter company.

According to section 2, subsection (2) of the Legal Entities' Criminal Liability Act, criminal measures may also be applied to legal persons if the criminal offense resulted in a financial gain realised by them, or if the criminal offense was committed through them and their executive officer, representative, employee, officer, manager or supervisory board member was aware of the criminal acts.

It is an unquestionable fact that the criminal offence committed by the first accused aimed at and resulted in obtaining a financial gain for the legal person concerned. The case's facts also clearly show that the first accused, as the registered executive officer of both legal persons, was well aware of the commission of the criminal acts, since he intentionally perpetrated the crime of fraudulent bankruptcy, with the aim of diverting assets from the liquidated company to avoid the satisfaction of its creditors.

Budapest, the 14<sup>th</sup> of June 2018

Criminal Department of the Curia of Hungary