

# Legal Alert

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## Environmental Offences

### Announcement of Stricter Criminal Policy Towards Collective Entities

As from 1 September 2022, collective entities may be held liable for environmental offences committed by their representatives without the prior requirement of a final conviction of the offender. The requirement of a prior conviction of the offender was a major obstacle to the prosecution of environmental offences. The amendment increased the penalties carried by environmental offences.

Yet, the amended provisions do not seem to have had the desired effect, as the **Deputy Attorney General has issued an order requiring Regional Prosecutors to improve their outcomes in the application of the provisions of the statute, particularly in the area of acts against the environment.**

#### What is supposed to happen?

**Regional prosecutors have been tasked with reviewing cases involving environmental offences and making full use of their capabilities provided for under the statute.**

A basic condition for a collective entity to be held liable under the statute is that there is a specific link between the natural person who is the perpetrator of the offence and the collective entity, if the offender's conduct has or could have benefited the collective entity, even if the benefit is non-pecuniary in nature.

The requirement of a prior conviction of the offender for a collective entity to be held liable does not apply, inter alia, to the following offences:

- pollution of the environment to a significant extent (Article 182 § 3 of the Criminal Code).
- illegal storage of waste (Article 183 § 1 CC)

- importing or exporting hazardous waste without the required permit or in violation of the terms and conditions of such a permit (Article 183 § 5 CC)
- other offences addressed in Chapter XXII of the Criminal Code and other laws.

**Sanctions imposed under the statute can be very severe and include:**

1. a fine of between PLN 10,000 and PLN 5,000,000;
2. a security injunction for a potential fine over or forfeiture of the property of a collective entity, consisting for example in:
  - a) seizure of movable property, wages, receivables in a bank account, or another receivable or other property right;
  - b) establishment of a compulsory mortgage over a real property;
  - c) appointment of an administrator for an enterprise or farm;
3. a ban on promotion or advertising of the business, products manufactured or sold, or services provided;
4. a ban on the use of grants, subsidies, or other forms of financial support relying on public funds;
5. a ban on bidding for public contracts.

Moreover, as regards environmental offences, the requirement to first obtain a judgment establishing an individual's criminal liability for such an offence, which was required for a collective entity to be held liable under the statute, has been removed.

Given the announced changes in the prosecutors' approach, it is likely that prosecutors will file motions against collective entities based on evidence collected in the already pending proceedings against individuals without waiting for their final resolution.

## How can we be of help?

We will prepare a comprehensive analysis of the legal risks associated with pending proceedings in cases involving environmental offences. In the event of likely non-compliance with the requirements of environmental legislation, we will help establish the facts, assess the risk of such proceedings, and advise on how to best reduce or eliminate the risk of liability.

### Contact us!



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