



Tool 3.4 Liability of legal persons

Overview

This tool describes the provisions of article 10 of the Organized Crime Convention, which requires the establishment of the liability of legal persons for participation in serious crimes, including trafficking in persons.

Trafficking offences and associated serious crimes are often committed through or under the cover of legal entities, such as companies or fake charitable organizations. Complex criminal structures can often hide the true ownership, clients or particular transactions related to trafficking.

Requirements under the Organized Crime Convention

Article 10, paragraph 1, of the Organized Crime Convention requires that each State party:

adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with the Convention itself.

Therefore, the obligation to provide for the liability of legal entities is mandatory, to the extent that this is consistent with each State's legal principles, in three types of case:

- For participation in “serious crimes” involving an “organized criminal group”
- For other offences established by States parties as required by the Convention itself
- For offences established by any protocol to which the State is, or intends to become, a party, including the Trafficking in Persons Protocol

Article 10, paragraph 2, of the Convention provides that “subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative”. This is consistent with other international initiatives, which acknowledge and accommodate the diversity of approaches adopted by different legal systems with respect to the liability of legal entities. Thus, there is no obligation to establish criminal liability, if that is inconsistent with a State's legal principles. In such cases, a form of civil or administrative liability will be sufficient to meet the requirement.

Article 10, paragraph 3, of the Convention requires that the liability of legal entities be established “without prejudice to the criminal liability of the natural persons who have committed the offences”.

The liability of the natural persons who perpetrated the acts, therefore, is in addition to any corporate liability and must not be affected at all by the latter. When an individual commits crimes on behalf of a legal entity, it must be possible to prosecute and sanction them both.

Article 10, paragraph 4, of the Convention requires that States “ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions”.

This is a specific provision which complements the more general requirement of article 11, paragraph 1 that sanctions must take into account the gravity of the offence. The investigation and prosecution of transnational organized crimes can be comparatively lengthy. Consequently, States with legal systems providing for statutes of limitation must ensure that the limitation periods for the offences covered by the Convention and the Protocols are comparatively long, taking into account and in accordance with their domestic law and fundamental principles (art. 11, para. 5). Whereas the provisions of article 11 apply to both natural and legal persons, those of article 10 apply only to legal persons.

The most frequently used sanction is a fine, which is sometimes characterized as criminal, sometimes as non-criminal and sometimes as hybrid. Other sanctions include forfeiture, confiscation, restitution or even closing down of legal entities. In addition, States may wish to consider non-monetary sanctions available in some jurisdictions, such as withdrawal of certain advantages, suspension of certain rights, prohibition of certain activities, publication of the judgement, the appointment of a trustee and direct regulation of corporate structures.



For more details, see the UNODC legislative guides for the implementation of the Convention and the Protocols thereto, at:
www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html