

Seventh Title: Corporate Criminal Liability

Art. 102

Liability under
the criminal law

¹ If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour shall be attributed to the undertaking. In such cases, the undertaking shall be fined up to 5 million francs.

If the offence committed falls under Articles 260^{ter}, 260^{quinquies}, 305^{bis}, 322^{ter}, 322^{quinquies} or 322^{septies} paragraph 1 or is an offence under Article 4a paragraph 1 letter a of the Federal Act of 19 Dec. 1986¹ on Unfair Competition, the undertaking shall be penalised irrespective of the liability under the criminal law of any natural persons provided the undertaking must be accused of failing to take all the reasonable organisational measures that were required in order to prevent such an offence.²

³ The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

⁴ A undertaking within the meaning of this title is:

- a. any legal entity under private law;
- b. any legal entity under public law with exception of local authorities;
- c. companies;
- d. sole proprietorships.

Art. 102a

Criminal
proceedings

¹ In any criminal proceedings against the undertaking, it shall be represented by one person who has the unrestricted power to represent the undertaking in civil law matters. If the undertaking fails to appoint such a representative within a reasonable time, then the investigating authorities or the court will decide which person of those entitled to represent the undertaking in civil law matters will represent the undertaking in the criminal proceedings.

² The person who represents the undertaking in the criminal proceedings shall have the same rights and obligations as any accused. The other persons mentioned in paragraph 1 are not obliged to give evidence in the criminal proceedings against the undertaking.

³ If a criminal investigation is initiated against the person who is representing the undertaking in the criminal proceedings due to the same or a related set of circumstances, then the undertaking must appoint a different representative. If required, the investigating authority or the court shall appoint a different person to represent the undertaking in accordance with paragraph 1 or, in the event that no such person is available, a suitable third party.

¹ SR 241

² Wording according to Art. 2 No. 2 of the Federal Decree of 7 Oct. 2005 on the Adoption and Implementation of the Strafrechtsübereinkommens und des Zusatzprotokolls des Europarates über Korruption, in Kraft seit 1. Juli 2006 (AS 2006 2371 2374; BBl 2004 6983).