

Amendments to the corporate criminal liability act enter into force

On August 17th, 2023, Law No. 21,595 on Economic Crimes (the "Law") was published in the Official Gazette. The publication of the Law brought with it several innovations of socioeconomic order, among which the following stand out, the systematization of the offenses related to the business activity under four categories of criminal offenses; the creation of new criminal offenses, such as, for instance, the incorporation of a new title to the Criminal Code called "Attempts against the environment"; and the establishment of new penalties and sanctions, as well as the strengthening of existing ones.

The Law also included a series of amendments to Law No. 20,393 on Criminal Liability of Legal Entities, but they only could be understood to be in force as from the first day of the thirteenth month following its publication, i.e. September 1st, 2024.

Indeed, yesterday those amendments became effective, which, in general, imply an exponential growth of the number of predicate offenses for which legal entities may be criminally liable, as well as the amendment of certain criteria referred to the attribution of criminal liability and the legal requirements that the Crime Prevention Models ("CPM") must comply with.

Among the several amendments included to the Law No. 20,393, we can highlight the following:

- 1 The catalog of predicate offenses that trigger criminal liability for legal entities is substantially expanded. Indeed, now renders companies -regardless of their size- are liable for all offenses included in the four categories described above, even when they do not meet the requirements to be considered as Economic Crimes. This means that the legal entity will be liable for more than 250 new criminal offenses.
- 2 Application of Law No. 20,393 is extended. Legal entities under private law, public companies created by law, State companies, corporations and universities, political parties, and religious legal entities under public law are all criminally liable.
- 3 The conditions for holding liable legal entities are eased. In this respect, it will no longer be required that the offense be committed in the interest or for the benefit of the legal entity. It is sufficient that the criminal offense is committed by someone inside the company, or third parties that manage its services before others, with or without its representation, and that the perpetration of the act is favored or facilitated by the lack of an adequate CPM.
- 4 New penalties are established. The system of fine-days and confiscation of profits is incorporated.
- 5 The figure of the "Supervisor" is created. The court may impose the legal entity the subjection to a Supervisor, either as a preventive measure or as a sanction, when it determines the lack or insufficient implementation of a CPM. The Supervisor may issue mandatory instructions and impose conditions for the operation of the CPM, the non-compliance of which may result, in the most serious circumstances, in the replacement of the governing bodies or the appointment of a provisional administrator.
- 6 Additional requirements are expressly added to the CPM. For the CPM to operate as an exonerating circumstance for liability, the amendments add a series of new requirements such as (i) the existence of secure whistleblower

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43
Las Condes, Santiago, Chile.
www.carey.cl

channels; (ii) the training of collaborators; and (iii) the performance of periodic evaluations by independent third parties.

It is important to note that some provisions cannot yet be understood to be in force, among them, the imposition of criminal liability for the commission of the offense of collusion by legal entities, since it is subject to a series of penalties, sanctions and measures that the legislator must dictate for its applicability; and, in turn, the sanction of subjection to a supervisor, since it is subject to the issuance of a regulation, which, to date, has not occurred.

AUTORES: *Guillermo Acuña, Rodrigo Aldoney, Pablo Albertz, Eduardo Alcaíno.*