
The entry into force of the LO 1/2015 of July 1st introduces significant changes in terms of criminal liability of legal entities with regards to the current legislation, extending the scope of the punishable in the framework of the legal entity either (i) for the extension of the concept of the perpetrator of the crime to those who are authorized to make decisions on behalf of the company or those with management powers; and (ii) regarding the concept of criminal liability of companies for the crimes committed on their behalf or on their own initiative, and in their direct or indirect profit.

The ultimate goal of this new model governed by Article 31 of the Penal Code is to extend the criminal liability of legal entities not only for the offenses committed in their sphere of organization, but for those committed by omission of caution. The penalties established for the companies are heavy penalties and include measures such as fines, license suspension, judicial intervention, temporary closure or even the dissolution of the company.

The criminal liability in case of crimes committed by the employees of the company is extended to the those cases where there has been a breach of the supervision duties over them establishing the need to implement effective models of crime prevention involving surveillance measures and internal control.

With these Compliance Programs Models it is intended to transfer to the board of directors and managers of a company the commitment to operate ethically in the market. For this reason, the compliance program shall:

- Detail a Code of Ethics and Conduct.
- Contain a map and risk reports. Identify the activities within there can be crimes committed.
- Establish protocols and control systems that expresses the due diligence of the company in the decision-making and its implementation.
- Create a supervisory body, of the prevention model implemented (Compliance Officer).
- Stablish mechanisms to inform the possible risks and breaches of the prevention model to the agency responsible of monitoring and controlling the compliance program.
- Conduct models of managing of the financial assets to prevent the commission of crimes such as implementing systems for receiving complaints (also called...
Whistleblowing) for employees, suppliers, customers and others. So they can report these irregularities before the company.

- Establish mechanisms for periodically review and verify the fulfillment of the compliance program, initiating internal corporate investigations in case of its infringement and establishing penalties for the breach of those measures.

Is it sufficient implementing a Compliance Program Model to exonerate criminal liability? The answer is no. Only will be exempted from criminal liability those companies that proves not only that they have implemented a compliance program, but also must prove that it has been effective and can be demonstrated in the context of a criminal proceeding. Efficacy will be measured pursuant (i) an economic parameter, that is, that the company has invested in preventive measures to discourage possible offenders, both as containment (preventing the attempted crime) and reaction (if consummated the crime canceling or minimizing the effects of the legal order), and (ii) pursuant a legal parameter, that is, that the result of that economic investment lead to committing the crime within the company is not profitable.

Finally, which companies are forced to implement a compliance program? All companies, including PYMES, public corporations, political parties and trade unions, as well as sports clubs and civil associations.

Regarding the new existing regulatory framework in this scope, the duty of due diligence of directors and managers of companies entails special attention to the establishment of Compliance Programs Models adapted to the parameters of the company to avoid as far as possible the criminal liability of the company and naturally, their directors and managers.

The information contained in this note should not be regarded in itself as specific advice on the matter discussed, but only a first approach to the subject. Therefore it is highly recommended that the recipients of this note search professional advice about their particular case before taking specific measures or actions.
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