

## Legal Alert: Important amendments to the Act on criminal liability of legal entities



May 30, 2023 | By [Mauricio Halpern](#), [Andrea de la Vega](#), and [Cristóbal de la Maza](#)

On May 15, Congress passed a Bill that formalizes economic crimes and environmental offenses and adjusts the penalties applicable.

Of particular interest among the laws modified by the Bill is Act 20.393, which establishes the criminal liability of legal entities, and undergoes four major changes:

**1. Expansion of the catalog of crimes and legal entities susceptible of incurring criminal liability.** More than 100 new economic crimes are included, which are related to:

- i. the Securities Market Act;
- ii. the General Banking Act;
- iii. the Act on Transparency, Limit and Control of Electoral Expenditure;
- iv. the Tax Code;
- v. the Customs Ordinance;
- vi. the Act on bank accounts and checks;
- vii. the Environment;
- viii. the Mining Code;

- ix. the General Telecommunications Act;
- x. the General Act of Urbanism and Construction;
- xi. the Intellectual Property Act; and
- xii. Decree Act 3,500 which regulates the Pension System, especially with respect to employers.

The Bill also incorporates the following legal entities as criminally liable under Act 20,393: **companies, corporations and universities of the State, political parties, and religious legal entities of public law.**

**2. Modifications to the assumptions of criminal liability.** The new regulation extends responsibility for criminal acts past the main executives of the company to any person who: (a) holds a position or function in it, or (b) provides services to it by managing its affairs before third parties, with or without its representation.

Any of these persons may bring about the criminal liability of the company, provided that the perpetration of the crime has been favored or facilitated by the lack of an effective implementation of an adequate model for the prevention of such crimes.

Thus, the implementation of a Crime Prevention Model becomes even more important. Indeed, the new Article 4 of Act 20,393 expressly states that the only way to be exempted from criminal liability is to have a Crime Prevention Model effectively implemented by the legal entity. Although this article does not refer to the “certification” of the model, it states that must consider “seriously and reasonably” some aspects, such as the **“provision for periodic evaluations by independent third parties and mechanisms for improvement or updating based on such evaluations.”**

Similarly, the Bill modifies the **minimum content** that a Crime Prevention Model must include, establishing the following aspects:

- i. Identification of **activities or processes** that imply a risk of criminal conduct.
- ii. Establishment of **protocols and procedures** to prevent and detect criminal conduct, which must necessarily consider **safe channels for reporting** and **internal sanctions** for non-compliance. These protocols, procedures and internal sanctions must be communicated to all employees and referred to in employment contracts and agreements with third parties.
- iii. Assignment of **one or more responsible persons**, with independence, faculties, access to the administration and resources, modifying the current single person figure.
- iv. The reference to the former model certification, which was voluntary, is eliminated and replaced by a **mandatory evaluation by independent third parties.**

**3. Autonomous and independent criminal liability.** The Bill also states that, regardless of the liability of the physical person who committed the crime, it is possible to criminally punish the legal person.

**4. Changes to the penalties.** The catalog of penalties will include the application of “per day-fines” and the supervision of the legal entity. Additionally, new regulations on confiscation are included, where every conviction for an economic crime may lead to the confiscation of profits. The Bill even establishes the possibility of confiscation of profits obtained through an economic crime without the need for a prior conviction.

## Next steps

The provisions will enter into force on the day of publication of the law in the Official Gazette, which is expected to occur soon. Notwithstanding the above, the amendments to Act 20.393 will enter into force 12 months after publication, which gives companies time to implement or update their Crime Prevention Model.

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