

# Legal Alert - New Law on Economic Crimes

## Key aspects of the New Law on Economic and Environmental Crimes

### 1. Background

With its publications in the Official Gazette, the new Law on Economic and Environmental Crimes (**New Law**) entered into force with few exceptions, such as the amendments to Law 20,393<sup>1</sup>, which will enter into force 13 months after.

The New Law supplements current legislation related to economic and environmental crimes by (i) creating the concept of economic crime; (ii) establishing a special regime of penalties for individuals who commit these crimes; (iii) expanding the list of criminal offences for which companies and individuals could be liable, including a whole new regulation on environmental crimes; and (iv) amending and strengthening the regime of criminal liability of legal entities.

### 2. Key aspects of the New Law

#### A. Criminal liability of individuals

The New Law introduces modifications to the criminal liability of individuals who, while working within a company, take part in the commission of a criminal offence that qualifies as an economic crime. Thus, the New Law establishes that certain crimes shall be considered as economic crimes, and subsequently be ruled by this new regulation, in any of the following cases:

1. Certain offenses will always be considered as an economic crime, regardless of the context in which they occur (e.g., crimes under the Securities Market Law, crimes under the General Banking Law, crimes under the Corporations Law, among others).
2. Offenses that are perpetrated (i) in the exercise of a post, function, or position within a company; (ii) or perpetrated for the benefit of the company, either financially or any other kind of benefit. If any of such conditions are met, this category includes environmental

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<sup>1</sup> Law that establishes the criminal liability of legal entities.

crimes, fraud, computer related crimes, tax crimes, unfair administration, bribery, among others.

3. Offenses related to public officials in which an individual, fulfilling the requirements (i) or (ii) indicated in the previous point, intervene as perpetrator or accomplice. This category includes embezzlement of public funds, undue contributions to political campaigns, among others.
4. Accessory offenses that may be committed in conjunction with other offenses, with the purpose of concealing the proceeds of criminal activity, such as money laundering or receiving of stolen goods, as long as the preceding crime is an economic crime according to the previous criteria.

If the crime committed is categorized as an economic crime, then a different regime of sanctions and penalties is applicable, which is expressed in the following:

- Determination of the sanction: the specific sanction to be applied to the offence's perpetrator or accomplice is established under a special regime of mitigating and aggravating circumstances for criminal liability, such as the economic profit obtained or the offender's position within the company, which hinders the possibilities to reduce the applicable sanction.
- Substitution of penalties: the New Law restricts the possibilities of serving penalties of less than five years of imprisonment in freedom (through a substitution of penalties).
- Fines: a new method for calculating fines is established. For individuals, criminal offences might lead to fines up to USD\$24 million while for legal entities, fines can amount up to USD\$150 million.
- Disqualifications: perpetrators of economic crimes will be sanctioned with disqualification from holding public office, from contracting with the State<sup>2</sup> and from holding managerial positions in private companies<sup>3</sup>.
- Forfeiture: economic crimes will always entail the forfeiture of the profits generated as a consequence of the crime.

## B. Criminal liability of legal entities

The New Law broadens the scope of legal entities subject to criminal liability, including State companies, universities, private companies, companies created by Law, political parties and legal entities under public Law. Additionally, the range of criminal offences than can be attributable to companies increased materially, comprising all offences that can be qualified as "economic crimes" under the New Law.

The legal standard for a company to be criminally liable are also broadened. Under current legislation, the criminal offence must be committed "*in the interest or for the benefit of the*

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<sup>2</sup> If the inability to contract with the State is imposed on an individual, this inability extends to any company, foundation, or corporation in which the convicted individual is directly or indirectly a shareholder, owner or a member with the power to influence the administration.

<sup>3</sup> Specifically, the inability to hold management positions includes board or chief executive positions in publicly offered securities companies; stock exchanges; public offering funds; corporations and limited liability companies subject to the supervision of the Chilean Securities and Exchange Commission (CMF); insurance and reinsurance companies; banks; other entities engaged in credit operations; savings and credit cooperatives; and, in general, companies subject to CMF supervision.

*company.” The New Law replaces this parameter by criminal offences that are committed “within the framework of the company's activity.”*

The New Law also states that individuals can trigger criminal liability of the company. This will occur when the crime is committed by a person within the company, or by a person providing services to the company, with or without its representation, provided that the commission of the act is favoured or facilitated by the lack of effective implementation of an adequate crime prevention model. Also, any person who holds a position within a third party who provides services to the company (e.g., contractors) could potentially expose it as long as there is a property relationship among them.

In relation to Crime Prevention Models (**CPM**):

- The New Law provides that only an effectively implemented CPM will exempt the company from criminal liability. Consequently, the New Law encourages companies to identify in advance the activities or processes that may expose them to the risk of committing any of the new criminal offences for which they may be criminally liable.
- Some additional legal requirements for effectively implemented CPMs are (1) the existence of secure channels for reporting; (2) the training of collaborators; and (3) the performance of periodic evaluations by independent third parties.
- In sum, the standard for the CPM to serve as an exemption from criminal liability is raised. For this reason, the New Law establishes a period of one year from its publication in the Official Gazette for companies to adapt their CPMs to this new legal framework.

## Contacts

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