

## Legal Alert: new crimes that can be charged to legal persons



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Law 20.393, which establishes the Criminal Liability of Legal Persons, contemplates a list of crimes for which these entities may be criminally liable.

The list was extended at the beginning of this year by means of Law 21.412, which adds the crimes of the arms control law, and with the approval of the Regulation provided by Law 21.325, which incorporates the crimes associated with illegal migration.

Thus, crimes that may be charged against a Legal Person are:

- (i) Bribery of a national and foreign public official,
- (ii) Money laundering,
- (iii) Receiving stolen property,
- (iv) Financing of terrorism,

- (v) Misappropriation,
- (vi) Unfair administration,
- (vii) Corruption between private parties,
- (viii) Incompatible negotiation,
- (ix) Fisheries crimes,
- (x) Fraudulently obtaining unemployment insurance benefits,
- (xi) Non-observance of isolation or other preventive measure ordered by the sanitary authority in case of epidemic or pandemic,

**(xii) Offenses under the firearms control law, and**

**(xiii) Offenses associated with illegal migration.**

**a) Arms Control Law Offenses**

Legal Persons may be criminally liable for the crimes contemplated in Title II of Law 17.798 on Arms Control. This law punishes those who organize, belong to, finance, endow, help, instruct, or incite the creation and operation of private militias, combat groups or militarily organized parties; the possession or carrying of weapons, devices or ammunition, the manufacture, import, commercialization, distribution, sale, delivery in any capacity and use of fireworks, pyrotechnic articles and other devices of similar nature, their parts or pieces, among others.

In this case the legal person is convicted for the crimes of the Arms Control Law, it may be subject to the following sanctions:

- (a) They shall be jointly and severally liable for the civil effects of those illicit acts in which their firearms have been used, those who have abandoned them, have not communicated or denounced their loss, robbery or theft in a timely manner. In the case of legal persons, the joint and several liability shall extend to both the legal person and its legal representative.
  - b) Prohibition to enter into acts and contracts with the State;
  - c) Fines of up to 300,000 UTM for fiscal benefit; and
  - d) Dissolution or cancellation of the legal person.

**b) Crimes associated with Illegal Migration**

Legal persons may be criminally liable for the crime of **human trafficking** described in article 411 *quater* of the Criminal Code, which punishes those who "by means of violence, intimidation, coercion, deception, abuse of power, taking advantage of a situation of vulnerability or dependence of the victim or by granting or receiving payments or other benefits to obtain the consent of a person who has authority over another one, recruit, transfer, harbor or receive persons to be subjected to any form of sexual exploitation, including pornography, forced labor or services, servitude or slavery or practices similar to it, or the removal of organs".

Thus, companies must include in their compliance programs policies to prevent the conducts described in Article 411 *quater*, whose hypotheses may occur within an organization, such as human trafficking for forced labor or services, servitude, slavery or practices analogous to these.

It is necessary that companies identify the activities or processes that could generate or increase the risk of committing the crimes included in Law 20.393 and, if necessary, adopt and implement specific controls to avoid them, along with updating their corresponding procedures, internal policies and Crime Prevention Manuals.

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