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HUMAN TRAFFICKING OFFENSE IS ADDED TO THE CRIMINAL LIABILITY OF LEGAL ENTITIES ACT

On February 12, 2022, the Regulation of Law No. 21,325 on Migration and Foreigners (the "Regulation") was published in the Official Gazette. In turn, Law No. 21,325 on Migration and Foreigners (the "New Law") was enacted and published in the Official Gazette on April 20, 2021, however its entry into force was subject to the publication of the Regulation. In view of the foregoing, the provisions of the New Law came into force last February 12.

Among its amendments, the New Law adds the criminal offense of human trafficking in Article 411 quater of the Criminal Code to the list of predicate offenses of Law No. 20,393 on Corporate Criminal Liability.

Article 411 quater of the Criminal Code penalizes anyone who "by means of violence, intimidation, coercion, deception, power abuse, taking advantage of a situation of vulnerability or dependence of the victim, or the granting or receiving of payments or other benefits to obtain the consent of a person who has authority over another, recruit, transfer, harbor or receive people to be subject of any form of sexual exploitation, including pornography, forced labor or services, servitude or slavery or practices similar to it, or the extraction of human organs".

Notwithstanding the fact that the incorporation of this criminal offense broadens the list of predicate offenses of Law No. 20,393, the New Law omitted to determine specific penalties in relation to this offense, so that, as of today, there are no specific sanctions for legal entities that are criminally liable for the human trafficking offense.

The aforementioned circumstance would make inapplicable the referred offense in accordance with the principle that sets forth "there is no penalty without prior law" ("nulla poena sine lege") and, therefore, the inclusion of the human trafficking offense in Law No. 20,393 would not have an immediate effect on the corporate criminal

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liability statute, until the legislator remedies this omission.

Nevertheless, it is recommended that companies identify activities or processes that could eventually generate or increase the risk of committing the crime of human trafficking and, if necessary, adopt and implement specific controls to prevent it.

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