

NATIONAL CONGRESS APPROVES BILL THAT SYSTEMATIZES ECONOMIC CRIMES AND ATTEMPTS AGAINST THE ENVIRONMENT AND EXPANDS THE CRIMINAL LIABILITY OF LEGAL ENTITIES

On May 15, 2023, the Chilean Congress approved the Bill that systematizes Economic Crimes and Attempts against the Environment (the "**Bill**"). Thus, the Bill was sent to the President of the Republic for its enactment into law, subject to the preventive control to be carried out by the Constitutional Court.

The Bill innovates in a series of matters, among which the following stand out:

- The systematization of offenses related to business activity under four major categories of crimes that correspond to the so-called "**Economic Crimes**";
- The creation of new offenses (e.g., a new title is incorporated to the Criminal Code called "Attempts against the environment", the creation of the figure of labor exploitation of employees, etc.);
- The inclusion of new offenses based on the crime of money laundering typified in Article 27 of Law No. 19,913;
- The establishment of new penalties and sanctions, as well as the strengthening of the existing ones, seeking that the custodial sentences are effectively complied with by those who incur in the commission of an Economic Crime; and
- The exponential growth of the number of predicate offenses for which legal entities may be criminally liable, as well as the amendment of certain criteria referred to the attribution of criminal liability and the legal requirements that the Crime Prevention Models ("**CPM**") must comply with.

Systematization of economic crimes

The Bill's classification of offenses related to business activities under the category of Economic Crimes, makes these offenses subject to a series of rules and penalties that are specific to them.

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Likewise, the Bill restricts the application of alternative sanctions to this type of offenses, thus ensuring that those who commit Economic Crimes serve their sentences by means of effective custodial punishment.

The systematization made by the Bill consists of four categories of offenses that may be summarized as follows:

First Category: Offenses that, under any circumstances, will be considered as Economic Crimes.

For example: collusion; stock exchange offenses; offense of providing false information to the Financial Market Commission; commercial bribery; offense of abuse of majority position in the board of directors; falsification of balance sheets.

Second Category: Offenses that will be considered Economic Crimes to the extent that (i) they are committed in the exercise of an office, function or position in a company; or (ii) they are committed for the economic or other benefit of a company.

For example: fraud; threats; tax and customs fraud and violations; IT offenses; murder and injury; fraudulent alteration of public instruments; offenses against intellectual and industrial property.

Third Category: Offenses committed by public officials, in which someone within a company has intervened - as perpetrator or accomplice - or when they bring some benefit (of any nature) to a company.

For example: bribery; tax fraud; breach of confidence offenses; unlawful enrichment.

Fourth Category: In general, embezzlement and money laundering offenses. All those offenses that relate to goods derived from an Economic Crime of any of the other categories, or when the embezzlement or laundering was perpetrated in the exercise of a position or function of the company, or for the benefit (of any nature) of a company.

It should be noted that the Bill only includes offenses committed in the development of activities of medium or large enterprises, excluding micro and small enterprises.

Incorporation of new offenses

The Bill introduces a series of new offenses into the legal system, highlighting the addition of a new title to the Criminal Code entitled "Attempts against the environment". There are 6 new environmental offenses, which entail penalties ranging from 61 days to 5 years of imprisonment for crimes of mere danger (de mero peligro), and up to 10 years of imprisonment for those crimes that generate damage (de daño). Additionally, mandatory fines ranging from 120 UTM (approx. USD\$ 9,500) to 120,000 UTM (approx. USD\$ 9,530,000) are established.

Among these new environmental offenses, there are some offenses that penalize specific conducts (e.g., omission of environmental impact assessment) or that protect certain ecosystems (e.g., extraction of water in areas of temporary reduction or water scarcity). Nevertheless, it is worth mentioning the incorporation of offenses that penalize general violations against the environment, such as the crime of environmental pollution and the offense of negligent or imprudent pollution; all of which is a new feature in our jurisdiction.

New predicate offenses for the offense of money laundering

The Bill also introduces modifications regarding money laundering since it broadens the catalogue of its predicate offenses. Thus, it includes the environmental crimes referred to in section II above, offenses under the Hunting Law, offenses under the Forestry Law, and offenses under the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

New penalties and sanctions, and strengthening of custodial sentences

New penalties and sanctions:

The Bill abandons the system of "absolute fines" and incorporates a system of "fine-days", which consists of multiplying the average daily net income of the convicted person by the number of days of the conviction.

Another innovation of the Bill is the confiscation of profits, which applies to all convictions for Economic Crimes. But, even without prior conviction, this sanction could be applied, as in the case of illicit profits inherited from a person.

Penalty determination system:

A new system of mitigating and aggravating circumstances is established for those who commit Economic Crimes, based on two categories:

- Culpability: according to the position held by the person in the organization (the higher the hierarchy, the higher the penalty; the lower the hierarchy, the lower the penalty) and the manner of acting in that position (higher intervention, higher penalty, lower intervention, lower penalty);
- Extent of the Damage: the generation of damage or harm and the efforts to mitigate it influence the assessment of the penalty.

Strengthening of custodial sentences:

The Bill reduces the eligibility for in-freedom alternative criminal sanctions, to promote the effective enforcement of custodial sentences. Thus, for "major" sanction, the alternative sanction of probation is eliminated, and the requirements for other forms of alternative punishment are increased (e.g., it is not possible to apply the mitigating circumstance of "irreproachable previous behavior" for Economic Crimes).

Criminal liability of legal entities

The Bill introduces numerous changes to the Corporate Criminal Liability Act (hereinafter, the "**CCLA**"), highlighting the following:

- The catalog of predicate offenses that trigger criminal liability for legal entities is substantially expanded. Indeed, the Bill renders companies -regardless of their size- liable for all offenses included in the four categories described above, even when they do not meet the requirements to be considered as Economic Crimes. This means that the legal entity will be liable for more than 200 new offenses.
- The CCLA's application is broadened. Under the Bill, legal entities under private law, public companies created by law, State companies, corporations and universities, political parties, and religious legal entities under public law are all criminally liable.
- The conditions for holding liable legal entities are eased. In this respect, it will no longer be required that the offense be committed in the interest or for the benefit of the legal entity. It is sufficient that the offense is committed by someone inside the company, or third parties that manage services for it, with or without its representation, and that the perpetration of the act is favored or facilitated by the

lack of an adequate DMP.

- New penalties are established. The system of "day-fines" and confiscation of profits as indicated in section III above is incorporated.
- The figure of the "Supervisor" is created. The court may impose the legal entity the subjection to a Supervisor, either as a preventive measure or as a sanction, when it determines the lack or insufficient implementation of a CPM. The Supervisor may issue mandatory instructions and impose conditions for the operation of the CPM, the non-compliance of which may result, in the most serious circumstances, in the replacement of the governing bodies or the appointment of a provisional administrator.
- Additional requirements are expressly added to the CPM. For the CPM to operate as an exonerating circumstance for liability, the Bill adds a series of new requirements such as (i) the existence of secure whistleblower channels; (ii) the training of collaborators; and (iii) the performance of periodic evaluations by independent third parties.

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