

August, 2010

▶ OPPORTUNITIES OF THE NEW CRIMINAL LIABILITY FOR LEGAL ENTITIES ACT IN CHILE

Since coming into force, last December 2009, little has been said about the new Criminal Liability for Legal Entities Act.

This is not consistent with the important innovations introduced by this law to our legal system: On one hand, it breaks with the fundamental principle of Criminal Law by which criminal responsibility is only recognized to individuals and, on the other hand, it gives form to a system of crime prevention that, if implemented correctly, may exempt companies from criminal liability, the major target of this rule.

In this new legal scenario, where companies face significant new challenges, the scope of the crimes addressed by the law must be clear and, in turn, take advantage of all the potential that the crime prevention system provides.

In relation to the first aspect, giving the law a first glance it may be concluded that it only refers to a limited list of offenses that can be attributed directly to the company, such as money laundering, terrorist financing and bribery of domestic or foreign public officials. In this regard, bear in mind that **the traditional association of money laundering crimes to drug trafficking is not accurate**. This offense also includes the contact or concealment of funds -in some cases even because of inexcusable negligence -coming from a wide range of crimes closer to business, such as insider information in the stock market or obtaining credits based on false or incomplete data, with damage to financial institutions. Also, it is necessary to consider that bribery does not materialize just by obtaining an illegal action from a public official in exchange for money, but by the simple offer of money.

In relation to a second issue ruled by this law, it seems important to emphasize the protection that the compliance system can offer to the company and its employees beyond the scope of this law. Indeed, the crime prevention system of Law 20.393 allows for the exemption of criminal responsibility to the company in relation to the crimes defined by this law, but **implemented properly it can also prevent other crimes that are normally related to business**, such as tax offenses, public health offenses, informatics crimes and disclosure of trade secrets. The significant importance that compliance has achieved in countries such as Germany or Spain, who do not recognize criminal liability of companies, is a clear example of its virtues of preventing crimes by employees. The significant importance that compliance has achieved in countries such as Germany or Spain, who do not recognize criminal liability of companies, is a clear example of its virtues of preventing crimes by employees.



If you have any questions regarding the matters discussed in this memorandum, please contact the following attorney or call your regular Carey contact.

Gonzalo Fernández
Partner

+56 2 2928 2203
gfernandez@carey.cl

This memorandum is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43th Floor.
Las Condes, Santiago, Chile.
www.carey.cl

The enactment of Law 20.393 **improves the positioning of our country in the international arena** -which was one of the recommendations of the OECD when accepting our country as a member. The correct implementation of the prevention system, can improve the positioning of the company in relation to its commercial partners, the public opinion, increasingly sensitive to the social effects of these kind of crimes, and in regards to the State itself, that could reward this good practice in public procurement as well as in its role as supervisor.

From this perspective, more than a source of new costs for the company or a limitation to it, and beyond the preventive effect on crimes or defense of criminal sanctions, **the new law model of self regulation can turn into an interesting competitive advantage.**