

➤ EFFECTS ON THE CRIMINAL LAW of Law No. 21,314 which regulates market agents and pension advisors

On April 13, 2021, Law No. 21,314 ("New Law") was published in the Official Gazette, which sets forth new transparency requirements and reinforces the responsibilities of market agents, regulates pension counseling and other matters indicated therein.

Article 1 of the New Law modifies Law No. 18,045 ("LMV Act") in the following aspects relevant to criminal law:



1. Amends article 59 of the Securities Market Law:

1. It modifies the heading of this article, increasing the minimum of the contemplated penalty for the crimes contained in the article, from 541 days to 3 years and 1 day. The foregoing implies that currently the penalty for crimes related to the Securities Market Law will range from 3 years and 1 day to 10 years.
2. It modifies the offense contemplated in letter d) of article 59, the new text being the following: *"d) The partners of external audit companies who maliciously issue a statement or deliver false information of the financial situation or other matters on which they have expressed their opinion, certification, opinion or report, regarding an entity subject to the control of the Commission. Those who provide services in an external auditing company and alter, hide or destroy information of an audited entity, with the aim of obtaining a false opinion about their financial situation, will suffer the same penalty. "*
3. It modifies the offense contemplated in letter f) of article 59, replacing the expression "managers" with "managers and main executives", which implies that it includes the main executives of an issuer of public offering securities (together with the directors, administrators and managers, who were already considered) as possible active subjects of the crime of malicious false declaration in (i) the deed of issuance of public offering securities; (ii) in the registration prospectus; (iii) in the background information attached to the application for registration; (iv) in the information that must be provided to the Commission or to holders of public offering securities; or (v) in the news or propaganda disclosed by them to the market. Likewise, the norm replaces the recipient of the information, since in accordance with Article 1 of the "New Law" the expression "Superintendencies of Securities and Insurance or of Banks and Financial Institutions" was modified by "the Commission for the Financial Market", also called "The Commission".

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4. It adds a new offense to the list, now contemplated in letter h) of the article, consisting of the following text: *"h) Directors, administrators, managers and senior executives of an issuer of public offering securities, a stock exchange or a securities intermediary, who provide false information or make malicious false statements to the board of directors or to the management bodies of the entities managed by them, or those who carry out the external audit or risk classification thereof, as the case may be."*

II. *Modifies Article 60 of the "LMV":*

1. It modifies its first subsection by increasing the minimum penalty assigned to the crimes contained therein, from 61 days to 541 days, leaving the penalty range from 541 days in prison to 10 years.
2. It modifies the offense contemplated in letter b), sanctioning those who act directly or indirectly, without being registered in the Registries of the law or under a suspended or canceled registration, as an external audit company, including this situation to those already contemplated: stock brokers, securities dealers and risk rating agencies.
3. It modifies the crime contemplated in letter d), including among the possible active subjects of the crime, **those who, by reason of their position in the external audit companies**, have confidential information on the issuers classified or audited and reveal the content of said information to third parties. Before the modification, the offense included only the partners, administrators, and any person who by reason of their position in the rating companies, had access to said information.
4. It adds a new subsection 2, in which it excludes the application of the general rules set forth by the Criminal Code for the determination of the penalty, applicable to the crimes contemplated in letters e), g) and h) of Article 60 only, establishing the following special rules:
 - a. *"If there are no mitigating or aggravating circumstances in the act, the Court may go through the entire length of the penalty indicated by law when applying it."*
 - b. *"If there are one or more mitigating circumstances and no aggravating circumstances, the court will impose the penalty in its lower degree. If there are one or more aggravating circumstances and no mitigating circumstances, the penalty will be applied in its highest degree."*
 - c. *"If mitigating and aggravating circumstances concur, their rational compensation will be made for the application of the penalty, graduating the value of one and the other, and will also consider the extent of the evil produced by the crime."*
 - d. *"The Court may not impose a penalty that is greater or lower than the framework set forth by law, unless the circumstances established in articles 51 to 54 of the Criminal Procedure Code."*

III. *Lastly, the New Law modifies Article 61 of the LMV:*

1. The minimum penalty associated to the crime of spreading false or biased information increases, from 61 days to 541 days, being the current range of punishment imprisonment from 541 days to 5 years.
2. Likewise, the penalty is also increased in the event that the conduct is carried out by the person who, due to his or her position, activity or relationship, in the Commission or in an entity supervised by it, could possess or have access to privileged information, being the penalty from 3 years and 1 day to 5 years of imprisonment.