

The reform brings about a technical improvement in the regulation of the criminal liability of legal persons, aiming to provide an adequate definition of the content of “due control”, the breach of which is the basis for criminal liability.

This puts an end to the interpretative doubts that had arisen from the previous regulation, and certain recommendations that had been made in this regard by a number of international organisations have been assumed. In any event, the scope of the obligations of said “duty of control” is subject, generally, to the size of the legal person.

Thus, art. 31 bis of the Criminal Code is modified in order to itemize the scope of liability of legal persons to the following cases:

- For offences committed in the name or on behalf of any legal person, and to its direct or indirect benefit, by their legal representatives or by those who, acting individually or as members of a body of the legal person, are authorised to make decisions in the name of the legal person or hold powers of organisation and control therein.
- For offences committed in the exercise of corporate activities and on behalf and for the direct or indirect benefit thereof, by those who, subject to the authority of the natural persons mentioned in the previous paragraph, have committed the acts by seriously breaching the duty of supervision, surveillance and control of the activity given the specific circumstances of the case.

In accordance with the foregoing, the new reform includes cases in which, despite the legal person having incurred in the above cases of liability, it is exonerated by having applied the “due control” measures and requirements, which are the following:

1. That the government body has adopted and executed, prior to the perpetration of a crime, a plan that includes surveillance and control measures to prevent crime or to significantly reduce the risk of perpetration thereof.
2. That the supervision of the operation and compliance of the prevention model implemented has been entrusted to a body of the legal person with autonomous powers of initiative and control.
3. That the perpetrators of the crime have committed the crime in an individual manner and fraudulently escaping the prevention and control measures.
4. That the management body has not acted in a negligent manner, either neglecting or omitting its crime control task.

Therefore, in the event that the legal person has met with all “due control” requirements, it shall be exonerated from any liability in the event of any of the cases under which, in principle, the company would be held criminally liable.

On the other hand, the reform does not forget the “*small sized legal persons*”, that is, the so-called SMEs, establishing that the supervision of the operation and compliance with the model of prevention implemented to meet the “duty of control” requirement can be entrusted to the company government body itself.

Lastly, the reform has created a new section regarding “Business Corruption Crimes”, which includes bribery to obtain competitive advantages (whether private sector corruption or the corruption of a foreign public official).

This modification brings about a number of improvements designed to guarantee the application of these precepts in all cases where, by payment of bribes, for one’s own benefit or that of a third party, advantageous positions are obtained in economic relations.