

New federal judicial precedent on corporate criminal liability.

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On September 22, 2023, one of the first precedents interpreting the law of corporate criminal liability regime in México was published by our federal Court¹.

This regime was promoted in 2016 by legal reforms that gave rise to Article 11 BIS of the Federal Criminal Code and modified the scope of Article 421 of the National Code of Criminal Procedures, to induce the Public Prosecutor's Office to investigate the organizational structure of companies and the identity of corporate board members. The purpose of this regime is for the Prosecutor's Offices to verify whether, in the face of the commission of a crime, a company complied or failed to comply with its obligation to prevent it through organizational strategies. These omissions may give rise to the criminal liability of the company, independently of that assumed by the individual members of the Board of Directors, for not instructing the implementation of corporate criminal compliance programs or systems.

The precedent that comes from our Circuit Courts addresses the figure and the procedural moment of the indictment of a corporation.

The case involved the indictment and Prosecutor's request for the Court to move forward in the investigation procedure and later trial against a company accused of committing fraud; however, the Court resolved and allowed such request as if it were a natural person without ruling on the special precepts applicable to a company invoked by the prosecution.

The legal criterion resolved that it was illegal to issue an order to move forward the investigation under judicial supervision, given that the Court should have ruled according to the special procedure established for corporations under Articles 421 to 425 of the National Code of Criminal Procedures.

This precedent reinforces both substantive and procedural aspects of corporate criminal liability that should be taken into consideration by executives, investors, and members of the Board of Directors in the corporate sphere. In the first place, because it implies the progress of legal actions and resolutions of the Prosecutor's Offices and jurisdictional bodies taken to prosecute legal entities, which results in relevant impacts on the patrimony, operations, reputation, and commercial relations of the companies.

¹ AUTO DE VINCULACIÓN A PROCESO CONTRA PERSONAS MORALES O JURÍDICAS. DEBE DICTARSE CONFORME AL PROCEDIMIENTO PARA PERSONAS JURÍDICAS ESTABLECIDO EN LOS ARTÍCULOS 421 A 425 DEL CÓDIGO NACIONAL DE PROCEDIMIENTOS PENALES. 2023. Digital Registry: 2027227. Tribunales Colegiados de Circuito. Undécima Época Tesis: VI.2o.P.6 P (11a.)

Secondly, because it highlights the risk factors that expose a company to corporate criminal liability when a criminal act is committed in its name, on its behalf, for its benefit or with its material, financial, human, technological or information technology means, due to the intentional or negligent acts or omissions of its employees, directors, management bodies or related third parties.

The criterion makes clear the need to build an ethical business culture and makes it necessary to reflect on the importance for business organizations to identify and assess the criminal risks in their operations, and to comply with their duty to implement preventive controls through specialized criminal compliance strategies.

Our Firm has the capabilities to advise our clients in matters of ethical control and preventive criminal compliance, in the development of criminal risk analysis, in the design, implementation and operation of Criminal Management and Control Systems through our ESG Criminal Compliance Platform and to represent them in corporate criminal litigation.

For any questions or comments regarding this note, please contact our expert team.

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