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**THE NATIONAL LAW ON THE EXTINCTION OF DOMAIN  
IN THE CONTEXT OF CRIMINAL COMPLIANCE.**



The National Law on the Extinction of Domain ("LNED"), whose decree was published in the Official Journal of the Federation on August 9, 2019, was issued for the purpose of unifying in national rules that will govern the procedures through which the federal and state authorities may resolve the loss of property rights of individuals and corporations.

The loss of property rights actions will be directed to assets whose legitimate origin cannot be established and in respect of those constituting an instrument, object or product of an unlawful act.

Because of its scope, the LNED gave rise to a wide-ranging debate not only on its value as an instrument to effectively combat organized crime, but also on the risks the new law pose to the activities of companies that lawfully act on a daily basis as positive and necessary economic factors in our country.

It is therefore important to know the central provisions of this new Act and to highlight the importance of preventive criminal compliance systems, which are even more important today to mitigate the risk of corporate criminal liability and the loss of property rights.

The extinguishment of the domain of assets shall proceed through the action of the Public Prosecutor's Office through a judicial proceeding of a civil nature. This procedure will be autonomous, distinct and independent of the criminal process although it is possible that the prosecutors obtain data and evidence from the criminal investigations of the federal and state Department of Justice.

The requirements for the Public Prosecutor's Office to act on the property of an individual or corporation are the following:

1. The existence of an unlawful act related to organized crime, kidnapping, drug or human trafficking, auto theft, extortion, corruption offences, crimes in the field of hydrocarbons, oil and petrochemicals, concealment and money laundering;
2. The existence of any asset of illicit origin or destination;
3. The causal link between these two elements, and
4. The knowledge that the property holder or the knowledge that a corporation should have had in relation to an illicit act.

This means that even though the extinction of domain procedure has autonomy over that of a criminal nature, the two are related. The procedure may be initiated, for example, as a result of a corporate criminal liability investigation.

While most of the facts leading to the extinction of asset domain are related to the activities of the organized crime, it is important to bear in mind that LNED is linked to the National Anti-Corruption System and the strategies to combat crimes in the hydrocarbons sector, which are areas close to licit economic activity. The extinction of the domain also results in respect of acts of concealment of a crime which enhances the number of offences through which the extinction of dominance can be reached for corporations.

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The concealment of an unlawful event may occur within any corporation, when its executive staff or control bodies become aware of a crime that has been committed on behalf of the legal person, for its benefit or with its means, failing to act in a timely manner to prevent it and subsequently not reporting it to the Public Prosecutor's Office.

This new regulation, and the knowledge that a corporation must have about the origin and destination of potentially illicit assets that could enter its operations, represents an important risk factor that need to be considered by its compliance officers. All corporations are now obliged to comply with proper organizational controls to prevent criminal acts.

In relation to the preventive criminal compliance strategies to which companies are obligated, Article 15 of the LNEED lays down the specific actions that must be taken in order to presume the good faith acquisition and destination of assets. These actions include the timely payment of taxes and contributions, evidence of the lawful acquisition of their assets, the authenticity of the contracts, the factual impediments to identify that an asset was used as an instrument, object or product of an unlawful act, as well as timely discovery to the competent criminal authority of the unlawful use of property. All the above require compliance officers to update criminal risk analyses, policies and criminal control measures within companies, training of staff, as well as documentation of corporate actions directed at preventing illegal acts and the use of assets related to crimes.

### **Conclusions.**

The National Law on the Extinction of Domain represents an extraordinary instrument for combating organized crime, corruption, money laundering and impunity in our country.

However, in the realm of business and corporate activity it will require the development of criminal compliance strategies, internal policies and controls to prevent that the use of illicit assets cause risks of criminal indictment and the extinction of property rights for corporations.

***Corporate Criminal Liability and Compliance Practice***

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