

New legal reforms on corporate criminal compliance

Corporate criminal liability and compliance – July 30, 2020

New legal reforms on corporate criminal liability and corporate crimes

On July 22, 2020, the Decree 257/2020 was published introducing reforms to the Criminal Code of the State of Yucatan that explain in detail the content of corporate criminal compliance programs in Mexico.

The reform has great relevance at the national level, first of all, because it adds Yucatan to the list of States that like the Federation have activated the system of corporate criminal liability that allows legal persons to be subjected to investigation, prosecution and criminal judgment.

Secondly, it clearly provides the minimum elements to be contained in corporate criminal compliance programs, a topic highly relevant to the work of compliance officers and the internal control committees of a corporation.

Article 16 bis of the abovementioned Criminal Code includes new corporate offences. The new catalog incorporates the crime of risk of contagion of diseases such as COVID-19, food and drink associated crimes, dispossession of land, and even the injuries and corporate homicide.

Articles 16 Quater and Sixties of the Yucatan Criminal Code solve the question concerning the requirements and standards that must be met by corporate compliance programs to exclude corporate criminal liability. These new provisions add to the description already made by the Criminal Code of Quintana Roo and the Criminal Code of Spain.

In this context, we can conclude that a Corporate Criminal Compliance Program, should include:

- I. The designation of a Compliance Officer and/or Committee with autonomous powers tasked with the duty to oversee the effectiveness of internal criminal controls, as well as monitoring the operation and effectiveness of the organizational model designed to prevent crime.
- II. The implementation of appropriate surveillance and control measures to prevent offences and to significantly reduce the risk of listed crimes commission.
- III. Identification of corporate activities through which criminal offences may be committed;
- IV. The adoption of protocols and procedures that guaranty corporate commitment to prevent crime;
- V. Appropriate financial resource models to prevent crimes;
- VI. The commitment of the governing or administrative bodies to allocate resources to the prevention of crime;
- VII. The imposition of the obligation to report potential risks and non-compliance to the Officer and/or Internal Control Committee;
- VIII. The establishment of an internal disciplinary system that adequately sanctions non-compliance with the preventive controls, and
- IX. Periodic verification of the crime prevention model and its possible modification when relevant violations of its provisions are revealed, or when changes occur in the organization control structure or activity.

The reforms are consistent with the design and operation requirements of compliance programs recognized in countries such as the United States. However, although these new provisions are indicative of the minimal standards for crime control, Compliance Officers should go further in order to prevent corporate crime. Compliance Programs in México can benefit from the Guidelines for the Evaluation of Corporate Compliance Programs, issued by the US Department of Justice Criminal Division recently updated in June 2020.

The reform of the Yucatan Criminal Code will promote the creation of new criteria in our federal Courts, by giving content to the corporate obligation to comply with "due organizational control" provided for in article 421 of the National Code of Criminal Procedures.

This is of great significance in 2020 in the context of the recent cases announced by the President and by the Attorney General's Office, which show how the federal administration has used corporate criminal liability and the criminal indictment of legal persons to reach extensive plea bargain agreements than already sum more than 1.5 billion US dollars.

Should these measures have an adverse effect on you, please do not hesitate to contact our team with expertise in corporate criminal liability and compliance, who can be of assistance:

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