

Webinar: International Criminal Compliance: Spain, Chile and Mexico

On March 25, this session organized by César Zárate, Alfredo Moreno and Joaquín Rodríguez, partners of ECIJA in Spain, Chile and Mexico, was held with the purpose of sharing the regulation and experience of each country in the implementation of criminal compliance systems, through a Q&A session.

Today we share with you the memories of this meeting with its highlights for Mexico:

What is the current state of compliance global wide and how important is it within international organizations?

International events such as the Subprimes, Panama Papers and Cambridge Analytica have caused the regulation of compliance systems to increase and evolve in recent years worldwide, leading to the fact that nowadays special attention must be paid to the ethical standards of business conduct.

For the three countries analyzed, Spain, Chile, and Mexico, this led to the criminal liability of legal entities, since economic fines were not necessarily inhibiting non-compliance.

From the moment this nuance of criminal liability is given, companies have to start paying more attention to the implementation of measures to reduce the risk of committing illicit conducts.

In consequence, there has been a trend towards the regulation of compliance systems in several areas. Anti-money laundering, combating terrorism, personal data protection, and even the prevention of workplace harassment are examples of the issues that are being regulated in the legislation of the three countries, which makes the implementation of compliance systems critical.

In our country there is a draft law on corporate due diligence which derived from the General Recommendation No. 37 on the Respect and Observance of Human Rights in the Activities of Businesses issued by the National Human Rights Commission on May 21, 2019. If approved, this law would become the first of its kind in Latin America.

To learn more about the fundamental issues addressed by this initiative, herein is a link to a note on the subject: [Mexico: Corporate "Due Diligence" in the field of Human Rights: the new challenge for companies.](#)



What crimes can legal entities be liable for in each country?

In 2014, the criminal liability of legal entities was incorporated into the Mexican legal system. This is regulated both at the federal level, in the Federal Criminal Code, and at the local level, in some of the criminal codes of the 32 States of Mexico.

The general rule is that the liability of legal entities is limited to the catalog of crimes in the Federal Criminal Code and its correlatives provisions in the criminal codes for the States of Mexico.

However, at this point in time, only the federation and three States (JAL, QROO and VER) have a catalog of crimes. This means that in those states in which there is no catalog of crimes, legal entities may be criminally liable for all crimes provided for in their laws.

The regulation of the State of Quintana Roo is probably the most advanced. It largely imports the principles of the Spanish criminal code, which has served as a guide for the development of criminal compliance systems worldwide.

Among the crimes contemplated in the federal catalog are fraud, operations with resources of unlawful sources, tax fraud, copyright crimes, to mention a few. The federal catalog is quite broad and there are certain differences with those established at the local level.

What are the minimum and essential elements of a crime prevention system?

In Mexico, there is no uniform regulation in this regard, since it is not contemplated at the federal level, however, it is contemplated in the legislation of some states; for example, the Criminal Code of Quintana Roo, establishes that the prevention system must comply with the following requirements:

1. Identify the activities susceptible for the commission of the crimes, which shall be prevented;
2. Adopt protocols or procedures to guarantee the consent of the legal entity in its legal acts, its decision making and its subsequent execution, in order to prevent crimes;
3. To have adequate financial resource management models to prevent the commission of crimes, and commitments of the directive or managing bodies to allocate funds to crime prevention.



4. Report possible risks and non-compliances to the body in charge of monitoring the operation and observance of the prevention model;
5. To establish a disciplinary system that adequately sanctions non-compliance with the preventive measures established in the model; and
6. To periodically verify the model and eventually modifying it in case relevant breaches of its provisions are evidenced, or if changes occur in the organization, its control structure or in the activity conducted, that makes them necessary.

It should be noted that the general rule for the implementation of crime prevention systems is the implementation of international standards in order to achieve adequate identification, control and mitigation of risks. For example:

- ISO 19600:2014 Compliance Management Systems.
- UNE 19601:2017 Criminal Compliance Management Systems
- UNE 19602:2019 Tax Compliance Management Systems
- ISO 37001:2016 Anti-Bribery Management Systems
- ISO 37301:2020 Compliance Management Systems which has been recently approved and substitutes ISO 19600.

Is the coordination of the different compliance committees worldwide important in an international company?

The coordination of the Compliance Committees in an international company is essential in order to implement a harmonious and consistent system that will allow transmit to all collaborators the ethical principles and general policies of the company.

The coordination of the Committees is also relevant from the point of view of Compliance itself, since it is possible that companies of the corporate group are not only bound by their legislation of origin, but by that of the different countries with which the company has established relationships or in which it operates. For example, companies may be criminally liable in their own country for the acts of their foreign subsidiaries, whether for lack of due control or diligence.

Companies have been inclined to adopt Compliance Systems based on both national and international standards due to the competitive advantage it represents in the market, such as ISO's, NOM's and NMX's in the case of Mexico. For example, some ISO's require the parent company to certify its subsidiaries abroad, which necessarily requires a coordinated communication of the Compliance Committees.



What could be the implications of not having a criminal compliance system in case a crime is committed within a company?

Certain companies require their suppliers to comply with certain compliance standards, which although not mandatory by law, are requirements under their internal policy for the establishment of a business relationship. In practice, the risk of being left out of the market is one of the reasons that has led Mexican companies to implement a compliance system.

However, from a legal point of view, compliance systems make an important difference, since having them in place can be considered a mitigating factor and even an exemption from criminal liability for the legal entity, which in the event of the commission of a crime can be sanctioned with a fine, public reprimand, closure, dissolution, suspension or prohibition of activities, temporary disqualification to participate in public bids, judicial intervention and confiscation of assets.

Should the criminal compliance system be integrated into the company's overall compliance structure?

Given that the company's conduct may have implications in various areas of law, it is advisable that these systems be integrated into the overall compliance structure of companies in order to establish cross-cutting policies and protocols for risk mitigation. For example, the protocol for dealing with cases of workplace violence will have implications for the treatment of the personal data of the persons involved, which must be regulated and aligned with the company's privacy policies.

Is there any legal requirement to be considered in each country for the implementation of a disciplinary system in order for it to be legally valid?

Disciplinary measures are the sanctions that the employer may apply if the employee incurs in a general or specific infringement according to the Internal Labor Regulations (RIT); for example: reprimand, suspension, dismissal, etc. If the conduct committed by the employee does not fall within any of the general or specific infringements set forth in the RIT, the employer will not be able to apply any disciplinary measure, even if the infringement or disciplinary measure are regulated in other internal policies of the company (e.g., policies, protocols, codes or manuals).

As a result, coordination between multinational companies becomes again relevant; for example, a global code of conduct will not be effective in Mexico, if it is written in another language, is not signed by the workers, and is not directly referred to and sanctioned in the RIT.



Could an example of a mechanism implemented for the minimization of a specific criminal risk be given?

For example, company vehicles have been used for drug dealing. The commission of this crime can be prevented by establishing appropriate entry and exit controls in a company's supply chain.

To access the complete recording of this webinar, click the following [link](#).

ECIJA México, S.C.¹

Joaquín Rodríguez
jrodriguez@ecija.com

Alejandro Linares
alinares@ecija.com

Adalberto Méndez
amendez@ecija.com

Berenice Sagaón
bsagaon@ecija.com

¹ All rights reserved, ©, ECIJA México, S.C., Insurgentes Sur 1605, Piso 10, Módulo D, Benito Juárez, Ciudad de México, C.P. 03900, 2021. All rights reserved. Any reproduction, distribution, public communication, public disclosure, transformation, whether total or partial, translation and any and all other acts or forms of exploitation of this work are expressly prohibited, except with prior written express authorization from ECIJA México, S.C.