

Changes in Spanish Anti-bribery Legislation

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I. Spanish Legal Framework

- Criminal liability for legal entities
- Bribery public servant or authority
- Corruption of foreign officials or/and officials of an international organization
- Private Bribery
- Influence peddling
- Compliance program as a defense strategy

I. Spanish Legal Framework (2)

– Changes in the Spanish Criminal Code

Effective since December 2010

– Relevant Developments for companies

- Criminal liability for the legal entity but limited to certain crimes only.
- Expands the concept of the corruption crime
- Increases the penalties for corruption crimes
- Introduces as a new crime Private Bribery

II. Criminal Liability of the Legal Entity

- All legal entities except Public Administration and public entities
- Limited to a number of crimes
- “Liability Transfer” for criminal actions committed by the legal representatives and the directors *de facto* o *de iure*
- “Organizational defect” → Employees of a legal entity “could commit the (criminal) acts because the company failed to exercise proper control over them”

II. Criminal Liability of the Legal Entity (2)

NEW PENAL CODE

- Criminal liability of legal entities only with regard to the following crimes:
 - a. Organ trafficking (Article 177 *bis*)
 - b. Prostitution and corruption of minors (Article 189 *bis*)
 - c. Illicit access to computer data and programs (Article 197.3)
 - d. Fraud (Article 251 *bis*)
 - e. Criminal insolvencies (Article 261 *bis*)
 - f. Sabotage and computer damage (Article 264.4)
 - g. Crimes relating to the market and consumers and private corruption (Article 288)
 - h. Money reception and laundering (Article 302.2)

II. Criminal Liability of the Legal Entity (3)

NEW PENAL CODE

- i. Tax and Social Security crimes (Article 310 *bis*)
- j. Crimes against workers' rights (Article 318 *bis*.4)
- k. Crimes against urban planning (Article 319.4)
- l. Environmental crimes (Articles 327 y 328.6)
- m. Crimes relating to spills and ionizing radiation (Article 343.3)
- n. Manufacture, handling, transport, and holding or marketing of explosives (Article 348.3)
- o. Sale of toxic or narcotic drugs or promotion of use (Art. 369 *bis*)

II. Criminal Liability of the Legal Entity (4)

NEW PENAL CODE

- p. Falsification of credit cards or traveler's checks (Article 399 *bis*)
- q. Bribery (Article 427.2)
- r. Influence peddling (Article 430)
- s. Corruption of a foreign official or international organization (Article 445.2)
- t. Criminal organizations or groups (Article 570 *quater*)
- u. Financing of terrorism (Article 576 *bis.3*)

II. Criminal Liability of the Legal Entity (5)

- Punishments for legal entities
 - a. Fine
 - b. Dissolution of the entity
 - c. Suspension of activity
 - d. Closure of premises and establishments
 - e. Prohibition to engage in a given activity
 - f. Disqualification for receiving subsidies and public aid, for contracting with the public sector, and for enjoying tax and Social Security benefits or incentives
 - g. Court intervention to safeguard workers' and creditors' rights

II. Criminal Liability of the Legal Entity (6)

NEW PENAL CODE

Mitigating circumstances for criminal liability of the legal entity

- To have confessed the crime
- To have cooperated in the investigation
- To have repaired or diminished the damages
- To have established, before the trial begins, effective measures to prevent and detect crimes

Need to adopt an effective Compliance Program

- i. To take advantage of mitigation circumstances
- ii. To avoid criminal liability for “organizational defect”

III. Bribery public servant or authority

“Passive bribery”

Public servant of authority receives or requests a reward/
benefit:

- i. to act or refrain to act in accordance with his or her duties
- ii. to do what is his/her duty as public servant or authority

III. Bribery public servant or authority (2)

“Active bribery”

Private individual who offers or promises to a public servant or authority a reward benefit:

- i. to act or refrain to act in accordance with his or her duties
- ii. to do what is his/her duty as public servant or authority

III. Bribery public servant or authority (3)

What is considered “a reward/benefit”?

- Anything of value (money, services, good, free use of assets, etc.)
- No “the minimums” rule
 - i. the reward should not be socially acceptable
 - ii. the reward should be sufficient to influence the public servant decision
- Case by case basis

IV. Corrupting of foreign public servant or a public servant of an international organization

- Similar to Bribery of a public servant

V. Influence peddling

- Private individual that influences the decisions of a public servant or authority benefiting from his personal relationship with him/her in order to obtain for him or third party an economic benefit
- No economic compensation for the public servant is required

VI. Private bribery

- To offer a benefit or advantage to a director, manager, employee or associate of a commercial entity in the context of a commercial relationship with the intent to secure preferential treatment for the offeror in breach of the recipient's obligation
- To request or accept an unjustified benefit or advantage by a director, manager, employee or associate of a commercial entity in exchange for a breach of his/her obligations.

VI. Private bribery (2)

- No result (payment) is required
- Only for non socially acceptable gifts
- Sufficient to influencing other person's decision to breach his or her obligations

VII. Compliance program as a defense strategy

- No obligation by law of a compliance program
- No indication of its structure and elements
- Effectiveness



Thank you!

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