

Amendments to Chile's Corporate Criminal Liability Law Enter Into Force – The Importance of Strong Crime Prevention Programs –

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I Introduction

On January 21, 2020, a group of representatives in the lower chamber of the Chilean Congress submitted a motion to systematize economic and environmental crimes, arguing that the then-existing Chilean criminal law was inadequate to address this specific time of criminal activity. According to the proponents of the new law, the fight against “white collar” crimes, which normally are committed by persons with relatively higher education and social position, required modernization of the weak Chilean law, specifically, strengthening of various matters, such as the applicability and likelihood of custodial sanctions, the amount of fines, the method of holding legal entities criminally liable.¹ The result of the legislative debate was Law No. 21,595 (“Economic Crimes Law” or “Law”), which introduced substantial changes to legal regime related to Chile’s economic crime. Among the many revisions, the Economic Crimes Law systemizes economic crimes, expands corporate liability, adds new types of crimes, new sanctions, and new rules for determination of penalties, and specifies requirements for certain crime prevention programs. According to the Chilean government, the Law introduced improvements to Chilean criminal law by creating a special system for “white collar” crimes and decreasing feelings of impunity in those who may commit them.²

As discussed in more detail below, Chilean law treats some crimes as “economic” in and of themselves, while other crimes normally are viewed as “common” crimes, but can be regarded as economic crimes in certain circumstances. Whether a crime qualifies as “economic” impacts both the applicable sanctions and the manner in which a company can be held liable for crimes committed by its personnel or others related to its business. Thus, it is critical for Chilean companies and foreign investors to understand how the legal regime related to economic crime applies to them, and how to protect themselves in the event of prosecution by Chilean authorities.

In principle, the Economic Crimes Law entered into force after its publication on August 17, 2023, but a significant portion of its provisions, which implement amendments to Law 20393 (“Corporate Criminal Liability Law”) entered into force more recently, on September 1, 2024, which makes this an opportune time to review

¹ Library of Chile National Congress, History of Law No. 21.595, Motion 13205-07, at <https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/8195/> (in Spanish).

² Chilean Government, “Know the 5 keys of the law against economic and environmental crimes,” August 21, 2024, at <https://www.gob.cl/noticias/claves-ley-delitos-economicos-medioambientales-cuello-corbata-penas/> (in Spanish).

the content of the Economic Crimes Law.³ This newsletter briefly explains some of the main features of this law, in particular the changes to the Corporate Criminal Liability Law that came into effect recently, and emphasizes the importance of companies investing in strong crime prevention programs to safeguard their businesses in Chile’s increasingly stringent legal environment.

II Main Content of the Economic Crimes Law

1. New Categories of Economic Crimes

The Economic Crimes Law lists and systematizes crimes previously governed only by various other laws into four categories, based on the manner in which the crimes qualify as “economic.” It is worth noting that the specific category to which a crime belongs does not affect the applicability of the legal regime of economic crime. The special regime created by the Economic Crimes Law applies to all categories equally; however, the requirements for crimes to be regarded as economic differ. The four categories can be summarized as follows:

Category	Description	Examples
First category	Crimes that always are considered economic, regardless of the circumstances of their commission.	Crimes against the securities market, certain banking crimes, cartels, and withholding information during an investigation by the Chilean competition agency.
Second category	Crimes that will be considered economic if committed in the exercise of a charge, function, or position within a company, or when committed to obtain an economic or other benefit for a company. ⁴	Certain tax crimes and environmental crimes (see section II.2 below).
Third category	Crimes that will be considered economic if committed by a public official, provided that a person acting in the exercise of a charge, function, or position within a company intervened, or the crime was committed to obtain an economic or other benefit for a company.	Embezzlement of public resources, bribery.
Fourth category	Money laundering, or possessing, receiving, or commercializing robbed, stolen, or otherwise illegally obtained goods, which are considered economic crimes when the relevant goods come from conduct that qualifies as an economic crime pursuant to one of the other categories.	

³ As further discussed in section II.4.(2), after the Economic Crimes Law entered into force, the scope of legal entities that can be held criminally liable was broadened to include entities other than companies. However, for convenience, this newsletter uses the term “corporate” criminal liability. Similarly, this article refers to “companies” as the main subject of corporate criminal liability, although, strictly speaking, other legal entities can be held criminally liable also.

⁴ Please note that the requirements for this category relate to the position of the person committing the crime “or” the benefit sought or obtained for the company, which demonstrates that these crimes can be considered economic even in absence of a benefit to a company. This has a significant impact on companies’ criminal liability, since the Corporate Criminal Liability Law permits a company to be held liable for crimes that fall within any of the four categories explained herein. We discuss this further in section II.4 below.

2. New Environmental Crimes

The Economic Crimes Law establishes a series of new crimes, which are part of a catalog of 261 economic crimes,⁵ including a whole new section of the Criminal Code dedicated to environmental crimes.⁶ These crimes include the commission of certain acts without completing a mandatory environmental impact assessment, the release of certain substances in violation of emissions standards, illegal extraction of water resources, and others, and may qualify as economic crimes in the second category described above.

3. New Sanctions Regime

The Economic Crimes Law also establishes a new system to determine and apply relevant sanctions to economic crimes, since the previous regime was considered inadequate to address economic crimes.⁷ Some of the relevant amendments include:

(1) Special Extenuating and Aggravating Circumstances

A refashioned set of extenuating and aggravating circumstances were incorporated, to address economic crimes in particular. These include “extenuating,” “very qualified extenuating,” “aggravating,” and “very qualified aggravating” circumstances, which impact the grade of the penalty to be imposed, depending on how many circumstances concur. Examples of “very qualified aggravating circumstances” are situations in which a convicted violator actively exercised a high position within the organizational hierarchy of a company, or where the convicted person exerted pressure on her/his subordinates so they would contribute to perpetration of a crime.

(2) Higher Chances of Custodial Measures

Many economic crimes can be punished with imprisonment; in these cases, the Economic Crimes Law restricted the possibility of substituting non-custodial measures for imprisonment.⁸ There now is a higher chance that persons liable for economic crimes actually will be sentenced to custodial penalties, either via imprisonment or alternative measures like house arrest.

(3) Additional Sanctions


In addition to imprisonment, the Economic Crimes Law states that all economic crimes will be punished with

⁵ Diario Constitucional, “About the new Economic Crimes Law,” November 25, 2024, at <https://www.diarioconstitucional.cl/reportajes/sobre-la-nueva-ley-de-delitos-economicos/> (in Spanish).

⁶ The Chilean legal system provided for environmental infringements before the Economic Crimes Law entered into force, but the new Law codified a series of practices relating to environmental protection and made violations subject to criminal penalties.

⁷ Chilean Government, “Know the 5 keys of the law against economic and environmental crimes,” August 21, 2024, at <https://www.gob.cl/noticias/claves-ley-delitos-economicos-medioambientales-cuello-corbata-penas/> (in Spanish).

⁸ In specific circumstances, Chilean criminal courts can substitute or replace certain less restrictive measures, which imply oversight over the criminal but not full confinement, for imprisonment. The Economic Crimes Law limits (i) the scope of substitutive measures that can be adopted by courts in cases involving economic crimes, and (ii) the circumstances in which substitutive measures can be applied.



finances and incapacities. The law introduced a new system of day-fines, which are determined based on the custodial penalty imposed and the income of the person liable. Incapacities refer to the inability to (i) hold public positions, (ii) exercise managerial positions at certain stock companies and State enterprises, and (iii) enter into contracts with the State.

In addition, all economic crimes must be punished by confiscation of the earnings obtained through the crimes. Moreover, the Economic Crimes Law allows for confiscation of earnings even before conviction of the offender(s) in certain situations.

All potential sanctions actually imposed, i.e., imprisonment (or alternative measures), fines, incapacities, and confiscation shall apply simultaneously.

4. Expansion of Corporate Criminal Liability

A substantial portion of the Economic Crimes Law is dedicated to provisions that amend the Corporate Criminal Liability Law that entered into force on September 1, 2024. These new rules suggest a paradigm shift in the corporate criminal liability regime and significantly expand the scope of circumstances in which companies can be held criminally liable. Some of the most important changes include:

(1) More Base Crimes

The Economic Crimes Law broadened the catalog of crimes for which companies can be held criminally liable, including without limitation all crimes that fall within the four categories mentioned in section II.1 above, whether or not the crimes ultimately are deemed to be “economic.”

(2) More Entities Liable

Since the recent amendments came into force, the Corporate Criminal Liability Law applies not only to private entities but also to (i) public companies established by law, (ii) State enterprises, (iii) State corporations⁹, (iv) State universities, (v) political parties, and (vi) religious legal entities. While items (i) to (vi) naturally refer to Chilean entities, private entities may include both entities incorporated in Chile and those from other countries.

According to the general rule of territoriality that applies to Chilean criminal law, crimes committed in Chile are subject to Chilean courts' jurisdiction; thus, foreign companies and other private legal entities can be held criminally liable for actions committed in Chile by the entities or their employees, provided that other elements of corporate criminal liability concur.¹⁰ However, additional proceedings may be necessary to enforce a condemnatory ruling against foreign entities.

⁹ State enterprises and State corporations are the two forms in which the Chilean state can conduct entrepreneurial activity, and differ in how they are created and whether they are subject to the supervision of certain regulators.

¹⁰ There are some limited exceptions to the principle of territoriality in Article 6 of the Chilean Courts Organic Code; for example, when crimes are committed in Chilean vessels while on the high seas or on a Chilean warship in another country's territory. Most of these exceptions refer to crimes committed by Chilean people or foreign people working as public servants, or crimes not included among those for which companies may be held criminally liable.

(3) Changes to Attribution of Criminal Liability

After the amendments introduced by the Economic Crimes Law, companies and other relevant legal entities can be liable for crimes “perpetrated within its activities by or with the intervention of a person who holds a charge, function, or position within the organization, or who renders services managing the entity’s matters before third parties, with or without representation powers, provided that the perpetration of the crime was favored or facilitated by the lack of effective implementation of an adequate crime prevention program by the legal entity.”

It is possible to draw two important, related conclusions from this language. First, it is not necessary that a company obtain a benefit from a crime to be held criminally liable, although a company will not be liable if the crime is committed *exclusively* against the company. Second, crimes must be favored or facilitated by the lack of an effective crime prevention program; therefore, these programs now are the only way for companies to be exempt from criminal liability (see section II.5 below).

(4) New Sanctions: Day-fines and Supervisor Appointment

In addition, the Economic Crimes Law revised the catalog of available sanctions for companies and other relevant legal entities, which is now comprised of (i) termination of the legal personality, (ii) incapacity to enter into contracts with the State, (iii) loss of fiscal benefits and prohibition to receive them, (iv) appointment of a supervisor, (v) day-fines, (vi) confiscation of earnings, and (vii) publication of an excerpt of the sentence. The different sanctions will be implemented based on the severity of the crime.

The main innovation is the incorporation of the day-fines system and the appointment of a supervisor. While fines within certain ranges were a possible sanction even before the Economic Crimes Law, the Corporate Criminal Liability Law now establishes a day-fines system similar to the one described above and mandates that corporate criminal liability be punished with fines in addition to other appropriate penalties.

Appointment of a supervisor can be imposed as a precautionary measure or as a sanction, if a company or legal entity does not have or has an insufficient crime prevention program in place (see section II.5). The supervisor is appointed for a period between six months and two years and is charged with ensuring that the relevant company or legal entity implements or improves its crime prevention program at an appropriate level.¹¹

5. New Requirements for Crime Prevention Programs

While the existence of crime prevention programs was considered by the Corporate Criminal Liability Law even before the latest amendments, the Economic Crimes Law introduced additional requirements that make these programs the cornerstone of corporate criminal liability. As mentioned above, since the current law does not require companies to benefit from base crimes committed by their personnel or related persons to be held liable for those crimes, crime prevention programs are the only way for companies to avoid certain types of criminal liability.

¹¹ A regulation on implementation of the supervisory system was enacted recently, via Decree 97 of the Justice and Human Rights Ministry, dated July 1, 2024 and published on September 26, 2024.

The current provisions state that for a crime prevention program to be used to escape liability, it must seriously and reasonably consider the following elements, in a manner consistent with the relevant organization's purpose, business, size, complexity, resources, and activities:

- Identification of the activities and processes that give rise to potential risks.
- Establishment of protocols and procedures to prevent and identify criminal conduct. In particular, programs must include secure whistleblowing channels and internal sanctions if infringements occur. Protocols and procedures must be communicated to all employees effectively and expressly incorporated into the company's labor agreements.
- Appointment of persons responsible for the application of the relevant protocols, who must have adequate independence and authority.
- Periodic assessments by independent third parties, including improvement mechanisms based on the third party feedback. For companies to be exempt from criminal liability, independent assessments must be performed on a periodic basis.

III Key Takeaway: The Importance of Strong Crime Prevention Programs

As discussed above, the Economic Crimes Law made a series of important changes to the Chilean economic crime regime, increasing the number of practices that can be considered economic crimes and revising the liability attribution rules in a manner that strengthens punishments for this kind of criminality. In addition, the Economic Crimes Law introduced substantial changes to the Corporate Criminal Liability Law, by expanding the scope of circumstances in which companies and other legal entities can be held criminally liable.

Two of the key amendments to the Corporate Criminal Liability Law are the fact that companies can be criminally liable even if they do not derive any economic benefit from the relevant practice, and that the effective implementation of adequate crime prevention programs is the only way for companies to protect themselves against criminal sanctions. Thus, it is vital for companies with activities in Chile to evaluate the adequacy of their existing crime prevention programs under the current rules, and to design and implement effective programs if they have not done so yet.

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