

Anti-corruption measures and criminal liability applicable to legal persons

The Colombian Government wants to establish anti-corruption measures, as set out in a number of proposed regulations that are going through their readings in Congress.

Specifically, to prevent corruption in the private sector, legal persons in private law can now be charged with criminal liability, in addition to the criminal liability of natural persons already existing under law.

Criminal liability applicable to legal persons, as distinct from the liability of natural persons, may be transferred across companies even if they are merged, broken up or taken over, and will entail penalties such as disbarment from certain activities, removal of board directors, senior managers or legal representatives, and the shutting down of the legal person, or fines. Furthermore, companies will be required to adopt compliance models and to put in place crime-prevention measures such as financial-resource management models designed to prevent felonies from being committed, and, in the event of non-compliance with the policies that have been rolled out, disciplinary arrangements to apply commensurate penalties.

To this end, the Bill supports the creation of a corruption-prevention network; adjustments to the disciplinary structure, including disbarment for up to 20 years from hiring the individuals or companies responsible for the disciplinary breaches; reductions in penalties for those being disciplined if they cooperate in the disciplinary actions; raising the corporate veil from companies involved in corrupt acts (which is different from the criminal liability applying to legal persons); the adoption by state institutions of a system for preventing, controlling and mitigating the risk of corruption, and implementing business-ethics programs.

The intention is also to put in place transparency mechanisms for public-sector employees, such as the requirement to prepare statements of the goods acquired by civil servants in the previous five years, which must be submitted to the tax authorities; and the restriction of direct procurement (ie, purchases not subject to the public tender process) to ten per cent (10%) of public institutions' budgets.

The Bill also proposes introducing new procedural instruments to improve efficiency and provide more opportunities for investigating crimes relating to acts of corruption.