

According to the new Spanish Criminal Code, a company shall be held criminally accountable for the felonies committed in its name or on its behalf and to its benefit. In October 2011, the Spanish Criminal Procedure Law has been modified in order to regulate the role of a defendant company in a criminal proceeding.

[Regarding which felonies does the Criminal Code foresee criminal liability to legal persons?](#)

The Spanish Criminal Code foresees company's criminal liability just for the following white collar crimes:

- Discovery and revelation of secrets and hacking
- Fraud
- Punishable insolvency
- Damages on computer programs or electronic documents
- Felonies against intellectual and industrial property, the market and consumers
- Money laundering
- Felonies against the Exchequer and Social Security
- Forgery of credit and debit cards and travellers' cheques
- Bribery
- Influence peddling
- Felonies of corruption in international commercial transactions
- Offences against the rights of aliens
- Felonies concerning organisation of the territory and town planning
- Felonies against natural resources and the environment
- Felonies related to nuclear energy and ionising radiations
- Offences of risk caused by explosives and other such agents
- Felonies against public health

[When shall a legal person be held criminally responsible?](#)

A legal person shall be held criminally accountable for the felonies committed (i) in its name or on its behalf; (ii) and to its benefit:

- By its legal representatives, *de facto* or *de iure* administrators or by any natural person who has a management or supervisory position based on a power of representation or authority to make decision on behalf of the legal person
- For a criminal offence where the lack of due supervision by the aforementioned natural persons has made possible the commission of the criminal offence

[What penalties are applicable to legal persons?](#)

Penalties applicable to legal persons are as follows:

- Fines by quotas or proportional
- Dissolution of the legal persons
- Suspension of its activities for a term that may not exceed 5 years
- Closure of its premises and establishment for a term that may not exceed 5 years
- Definitive or temporary prohibition to carry out the activity through which it has committed, favoured or concealed the felony in the future
- Barring from obtaining public subsidies and aid, to enter into contracts with the public sector and to enjoy tax or Social Security benefits and incentives for a term that may not exceed 15 years
- Judicial intervention in order to safeguard the rights of workers or creditors for the time deemed necessary which may not exceed 5 years

Moreover, keep in mind that the company held criminally responsible will be subject not only to criminal prosecution but also to civil liability and an irreparable injury to its commercial reputation.

Does the Spanish Criminal Code foresee any mitigating circumstances?

A company's criminal accountability can be mitigated if:

- The company confess the felonies committed to the authorities, prior to having knowledge of judicial proceedings being brought against them
- The company collaborates in the investigation of the events, providing new and decisive evidence
- The company repairs or decreases the damages caused by the felony
- The company establishes effective measures in order to prevent and discover felonies that might be committed in the future

What can be done to eliminate or reduce the risk of the company's criminal liability? Is it useful to develop a compliance program?

The development of a corporate compliance program can reduce and even eliminate the risk of the company's criminal liability.

Moreover, an effective compliance program will permit the company to:

- Identify problematic areas and prevent many potential violations
- Promote a corporate culture of compliance
- Inform management and employees of the legal and ethical conduct standards required by the company and the industry
- Early detection of a wrongful act will allow the company to decide whether to report to authorities

Should you need more information, please contact:

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