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Corporate Criminal Liability in Selected Jurisdictions

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Comparative Summary

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This report, prepared by the staff of the Global Legal Research Directorate, surveys the law governing corporate criminal liability in selected jurisdictions from around the world, focusing on how certain categories of crime are punished. The report covers 60 jurisdictions, including 11 in the Americas, 18 in Europe (including the European Union), 15 in the Middle East, 3 in Africa, and 13 in Asia and the Pacific.

Corporations are legal persons who cannot act or have moral agency independent of their officers, managers, and employees. The jurisdictional surveys reveal four approaches to making corporations responsible for the collective wrongdoing of individual agents within the corporation:

A. Corporations may be punished for the same crimes as natural persons, though sanctions may be different;

B. Corporations may be punished for crimes only when specific provisions so prescribe;

C. Corporations are not subject to criminal liability, but administrative punishments may be imposed; and

D. The criminal liability of corporations is addressed in special legislation addressing this topic.

Most of the jurisdictions surveyed for this report fall within the first or second categories.

Among the jurisdictions in the first category, **France** and **Belgium** have a formula to convert terms of imprisonment into fines. Some jurisdictions in this category have provisions that set general rules to punish corporations, while others specify applicable punishments of corporations in each criminal provision.

In jurisdictions falling within the second category, **China** is unique in that criminal penalties for corporations are set in penal code, while other laws separately set administrative sanctions for corporations.

Germany, **Italy** and **Columbia** fall within the third category: corporations are punished not through the criminal law but by administrative fines and other administrative punishments.

Four jurisdictions, **Austria**, the **Czech Republic**, **Italy** and **Poland**, have legislated special laws to punish corporations. The **European Union** has established a system of administrative and criminal corporate liability through sectoral legislation. In the **Czech Republic** and **Poland**, the actual penalty is listed in the Penal Code.

The table that follows shows which of the above categories the jurisdiction falls, and the kind of punishments possibly imposed in each category of crime (anti-money laundering/countering financing terrorism (AMT/CFT), corruption, corporate tax evasion, violation of environmental laws, and financial and investment fraud).

Comparative Summary Table

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
Algeria	B	Criminal fines and civil and administrative penalties	–†	–	–	Criminal fines, seizure	Criminal fines, confiscation, ban of activities, procurement debarment		
Australia	A	Criminal fines							
Austria	D	Criminal fines							
Bahamas, The	A	Criminal fines and confiscation			N/A‡	Criminal fines	–	–	Other penalties under other laws[1]
Bahrain	B	N/A	–	–	Criminal and administrative fines, suspension of commercial registration	Criminal fines and revocation of project license	Criminal fines		

* Each jurisdiction is categorized under one of the following approaches to corporate liability:

A. Corporations are subject to the same crimes as natural persons.
A—1. Corporations are subject to the same economic crimes as natural persons.
B. Corporations are criminally punishable only when specified by statute.
C. Corporations are not subject to criminal punishment.
D. A specialized law holds corporations liable for criminal acts.

† "–" indicates the topic was not discussed in the jurisdiction's survey.

‡ "N/A" indicates the penalty does not apply to corporations.

[1] Civil, administrative and criminal penalties (Companies Act, International Business Companies Act, and Financial Transactions Reporting Act); Criminal fines, revocation of business license, dissolution, forfeiture of assets, and prohibition on further activities (Anti-Terrorism Act).

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
Belgium	A	Criminal fines, dissolution, prohibition from engaging in certain activities, confiscation, closure, publication or distribution of court decision							Penalties listed in Penal Code
Brazil	B	Criminal fines							
Canada	A	Criminal fines, compliance orders, remediation agreements	Criminal fines			Criminal fines, other court orders, environmental protection compliance order	Criminal fines		
Cayman Islands	A	Criminal fines, compensation for injury, forfeiture, and others	N/A	Criminal fines	N/A (no corporate tax)	Criminal fines			
China	B	Criminal fines. Entity crimes are specifically set out in the Criminal Law while the individual laws contain only administrative penalties.[2]							
Colombia	C	N/A	Administrative punishments				N/A	N/A	
Czech Republic	D	Criminal fines, dissolution, confiscation, and others[3]	Criminal fines					N/A	Penalties listed in Penal Code
Cuba	A	Dissolution of the company; temporary closure; prohibition to carry out certain business activities; government supervision; fines; publication of conviction ruling; seizure of assets; suspension or loss of economic, financial, tax, or other benefits granted by the government							Penalties listed in Penal Code
Denmark	B	Criminal fines, confiscation of assets, prohibition of conducting business or specific activities							Additional fines in e.g. Environmental Act and Work Safety Act

[2] Administrative penalties, including administrative fines, confiscation of illegal properties or illegal gains, suspension or revocation of licenses, and production or business suspension for misconduct that does not meet the threshold for criminal penalties.

[3] Other penalties are prohibition of certain activities, closure of establishments, exclusion from public contracts, restrictions on financial instruments, and publication of court decisions.

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
Egypt	B	Criminal fines	Criminal confiscation of money and financial compensation	N/A	N/A	N/A	N/A	Criminal fines	
England	A	Criminal fines	Criminal fines, civil penalties and recovery, compensation, confiscation and forfeiture orders	Criminal fines, civil penalties and recovery, compensation, confiscation and forfeiture orders, debarment from public contracts	Criminal fines and confiscation orders	Criminal fines, civil penalties and recovery orders	Criminal and civil fines		Disqualification of director under the Company Directors Disqualification Act 1986
European Union	D	N/A (no penal law)	Criminal and administrative fines, confiscation of assets, debarment (EU member states must enact penalties)						Sectoral approach for administrative and criminal liability
Fiji	A	Criminal fines						Criminal fines; suspension or revocation of license	
Finland	B	Criminal fines and confiscation and forfeiture of assets							
France	A	Criminal fines, dissolution, prohibition from engaging in certain activities, judicial supervision, closure, ban on public offerings, exclusion from public contracts, ban on making payments, confiscation, display or dissemination of court decision. (Most of these penalties can be imposed for up to five years, or on a permanent basis.)							Penalties listed in Penal Code
Germany	C	Administrative fines according to Act on Regulatory Offenses; confiscation of proceeds according to Criminal Code and Act on Regulatory Offenses; other non-pecuniary measures such as publication of names by the German Federal Cartel Office, disclosure of measures and sanctions by BaFin, or listing of offenses in German Competition Register.							
Guyana	A	Criminal fines and confiscation		Criminal fines				N/A	

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
Hong Kong	A	–	Criminal fines						Disciplinary actions[4]
India	A	Criminal fines							
Iraq	B	Criminal fines	Criminal fines, suspension of commercial activity	N/A	Criminal fines	Criminal fines, suspension of commercial activity	Criminal fines	Criminal fines, suspension of commercial activity	
Israel	A	Criminal fines	Criminal penalties, administrative seizure	Criminal fines and confiscation	Criminal and administrative fines	Criminal fines	Criminal and administrative financial sanctions[5]	Criminal fines; seizure for purpose of investigation	Companies Law, civil dissolution order
Italy	C/D	N/A	Administrative fines and other punishment			N/A	Administrative fines and other punishment		
Jamaica	A	Criminal fines and confiscation	Criminal fines				Violations by financial institutions subject to criminal fines	N/A	
Japan	B	N/A	Criminal fines						Civil dissolution order under Companies Act
Jordan	B	Criminal fines and confiscation	Criminal fines and suspension of commercial activities	N/A	–	Criminal fines	–	–	
Kuwait	B	Criminal fines	Criminal fines and suspension of commercial activity	Criminal fines	–	–	–	–	

[4] Disciplinary actions include pecuniary penalties, reprimands, remedial orders, and revocation or suspension of licenses.

[5] For violation of requirements under security law, economic competition, companies' reporting, etc.

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
Lebanon	B	Criminal fines, confiscation, closure, dissolution, and publication of the judgment	Criminal fines	N/A	–	–	–	–	
Libya	B	Criminal fines, confiscation, dissolution	Criminal fines	N/A	–	Criminal fines and confiscation	–	–	
Luxembourg	A	Criminal fines, dissolution, confiscation, exclusion from public contracts							Penalties listed in Penal Code
Malawi	A[6]	Criminal fines	Criminal fines, revocation of business license	N/A	Financial liability	N/A	Criminal fines	Criminal fines	
Malaysia	A	Criminal fines	Criminal fines, forfeiture	Criminal fines		Criminal fines, forfeiture of vehicles or ships, compensation	Criminal fines	Criminal fines, compensation	
Malta	B	Criminal fines that may be recoverable as civil debt	Criminal fines, administrative penalties, and additional sanctions[7]	Criminal fines and administrative penalties					
Mexico	B	Economic penalties based on the company's income, suspension of its activities, closure of facilities, government intervention, seizure of assets, dissolution of the company							Penalties listed in Penal Code
Morrocco	B	Criminal fines, confiscation,	Criminal fines, confiscation,	N/A	–	Criminal fines	–	–	

[6] The General Interpretation Act, which applies to all "other written law," defines the term "person" to include any company, etc., however, many criminal provisions specify if a corporate body is punished.

[7] Additional sanctions include exclusion from public benefits, aid and funding; disqualification from commercial activities; judicial supervision of activities; dissolution and winding up; and closure of the establishment used in the offense.

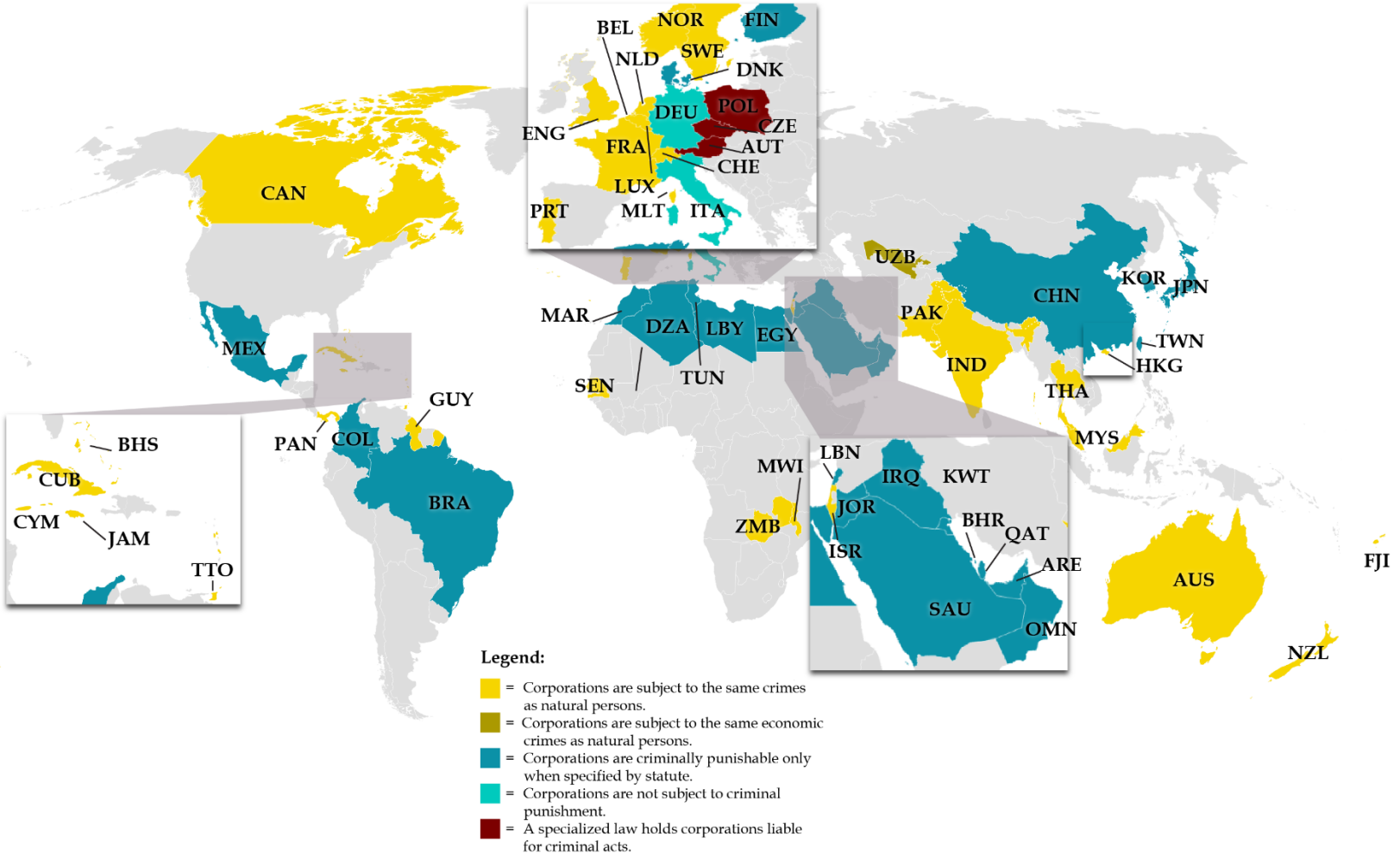
Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
		dissolution or closure, seizure and forfeiture, publication of the judgment	dissolution or suspension, publication of the judgment						
Netherlands	A	Criminal fines, asset forfeiture, and deprivation of rights							
New Zealand	A	Criminal fines							
Norway	A	Criminal fines, confiscation, forfeiture of assets, prohibition of conducting business or specific activities							
Oman	B	Criminal fines, dissolution, confiscation, closure	Criminal fines and confiscation	–	Criminal fines	–	–	–	
Pakistan	A	Criminal fines							
Panama	A	Cancellation or suspension of business license or registration for a term not exceeding five years; total or partial loss of tax benefits; disqualification from entering into government contracts, directly or indirectly, for up to five years; dissolution of the company; fine commensurate with damage caused							Penalties listed in Penal Code
Poland	D	Criminal fines, dissolution, confiscation, prohibition of certain activities, closure of establishments, exclusion from public contracts, restrictions on financial instruments, publication of court decision.							Penalties listed in Penal Code
Portugal	A	Criminal fines, dissolution	Criminal fines			–	–	–	
Qatar	B	Criminal fines	Criminal fines, suspension of commercial activity, publication of the judgment	–	Criminal fines, financial penalty for the delay of payment	N/A	–	–	
Saudi Arabia	B	N/A	Criminal fines and suspension	Criminal fines, exclusion	–	–	Suspension of commercial activity		

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
			of commercial activity	from procurements and public contracts					
Senegal	A	Criminal fines, dissolution, confiscation, prohibition of certain activities, closure of establishments, exclusion from public contracts, restrictions on financial instruments, publication of court decision							Penalties listed in Penal Code
South Korea	B	N/A	Criminal fines	Criminal or civil fines	Criminal fines				
Sweden	A	Criminal fines, confiscation, forfeiture of assets							
Switzerland	A	Criminal fines							
Taiwan	B	N/A	Criminal fines						
Thailand	A	Criminal fines	Criminal fines						
Trinidad and Tobago	A	N/A	Criminal fines and confiscation	–	Criminal fines	Criminal fines	–	–	
Tunisia	B	N/A	Criminal fines, confiscation	N/A	Criminal fines	–	–	–	
United Arab Emirates	B	Criminal fines and confiscation	Criminal fines, dissolution, closure	–		–	–	–	
Uzbekistan	A-1	Criminal fines, asset seizure, restrictions on business operations, and forced liquidation	Criminal fines				–	Restriction, suspension, or termination of investment activity	Penalties listed in Penal Code

Jurisdiction	Approach to Corporate Liability*	Penal Code	AML/CFT	Anti-Corruption	Corporate Tax Evasion	Environmental Law	Financial Fraud	Investment Fraud	Notes
Zambia	A[8]	Fines, forfeiture, and payment of compensation	Fines (for financial institutions; N/A)	N/A	N/A	N/A	–	–	

[8] The Interpretation and General Provisions Act, which applies to all "written laws" unless the law's provisions state otherwise, defines the term "person" to include "any company." The Constitution accords corporations charged with a crime the same rights accorded to natural persons facing criminal charges.

Figure 1: Approaches to Corporate Liability



Algeria

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SUMMARY Algeria's Penal Code holds corporate entities liable if they fail to comply with its provisions. A corporate entity is subject to closure if it engages in commercial activities without having entered the commercial registry. It can also face sanctions for violating Algerian measures to protect the environment as well as fines and property confiscation for breaching rules concerning foreign exchange and moving capital in and out of the country.

I. Law No. 66-156 of 1996 Establishing the Penal Code

Law No. 66-156 of 1996, as amended, holds corporate entities liable if they fail to comply with its provisions. The following criminal, civil, and administrative penalties may be imposed on a corporate entity for committing felonies and misdemeanors:

- A fine ranging from one to five times the maximum fine stipulated for a natural person under the Penal Code. The statutory maximum fine that can be imposed on corporate entities is 10 million Algerian dinar (DZD) (about US$75,030).[1]
- One or more of the following penalties:
  - dissolution of the entity,
  - closure of the corporate entity or one of its branches for a period not exceeding five years,
  - debarment from participating in government procurement for a period of no less than five years,
  - prohibition from engaging in one or more professional or social activities, directly or indirectly, either permanently or for a period not exceeding five years,
  - confiscation of the items used in committing the crime or resulting from it,
  - publication of the judgment of conviction, and
  - placing the corporate entity under judicial custody for a period not exceeding five years, with the custody focused on the activity that led to or was connected to the commission of the crime.[2]

Moreover, the corporate entity may not continue its business operations, even if such continuation is in another person's name or with other managers, directors, or board members.

[1] Law No. 66-156 of 1996 Issuing the Penal Code, as amended by Law No. (04-13) of 2004, art. 18 bis, al-Jarīdah al-Rasmīyah (Official Gazette), vol. 71, 10 Nov. 2004, p. 8, https://perma.cc/ETY7-J69D (in Arabic).

[2] Id. art. 119.

Such discontinuation must result in the liquidation of the entity's funds while preserving the rights of bona fide third parties.[3] Corporate entities, excluding the state, local authorities, and legal persons subject to public law, can be held criminally liable for crimes committed on their behalf by their agencies, legal representatives, or individuals with delegated powers.[4]

II. Law No. 75-59 of 1975 Promulgating Commercial Law

Law No. 75-59 of 1975, as amended, states that every corporate entity registered in the commercial register must state the commercial register number and location of registration in the title of invoices, requests, bulletins, advertisements, and all correspondence from the entity and signed by the entity. Any violation of these provisions can result in the imposition of a fine between DZD180 (about US$1.50) to DZD360 (about US$2.70).[5]

III. Law No. 04-08 of 2004 Issuing Conditions for Carrying Out Commercial Activities

Law No. 04-08 of 2004 regulates the rules of registration in the commercial registry. The law states that a corporate entity will be subject to closure of its premises if it engages in commercial activities permanently without registration in the commercial registry, and the closure will remain in effect until the violation is rectified. In addition to the closure, the violating entity will be subject to a fine ranging from DZD10,000 (about US$75) to DZD100,000 (about US$750).[6]

Corporate entities that engage in irregular commercial activities without registration in the commercial registry may be subject to a fine ranging from DZD5,000 (about US$38) to DZD50,000 (about US$375). The corporate entity may also face the seizure of goods and, if necessary, the seizure of any transportation used in committing the violation.[7]

Additionally, corporate entities can also be subject to a fine ranging from DZD10,000 (about US$75) to DZD300,000 (about US$2,250) if they fail to carry out the legal advertising procedures regulated under this law,[8] e.g., articles of incorporation, memoranda of understanding, articles of association, operations affecting the corporation's capital, mortgages of possession, operating leases, etc.[9]

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[3] Law No. 66-156 of 1996 Issuing the Penal Code, as amended, art. 17, al-Jarīdah al-Rasmīyah, vol. 49, 11 June 1966, p. 703, https://perma.cc/2KGY-UBGB (in Arabic).

[4] Law No. 66-156 of 1996 Issuing the Penal Code, as amended by Law No. (24-06) of 2024, art. 51 bis, al-Jarīdah al-Rasmīyah, vol. 30, 30 April 2024, p. 6, https://perma.cc/X8ER-D66B (in Arabic).

[5] Law No. 75-59 of 1975 Promulgating the Commercial Law, as amended, art. 27, al-Jarīdah al-Rasmīyah, vol. 101, 19 Dec. 1975, p. 1308, https://perma.cc/8P2D-9D25 (in Arabic).

[6] Law No. (04-08) of 2004 Issuing the Conditions for Carrying Out Commercial Activities, as amended, art. 31, al-Jarīdah al-Rasmīyah, vol. 52, 18 Aug. 2004, p. 8, https://perma.cc/E336-LGEQ (in Arabic).

[7] Id. art. 32.

[8] Id. arts. 35, 36.

[9] Id. arts. 11, 12, 14 & 15.

Furthermore, any individual who counterfeits or forges a commercial register extract or related document is subject to imprisonment for a period ranging from six months to one year and a fine ranging from DZD100,000 (about US$750) to DZD1 million (about US$7,500). In addition to these penalties, the court must automatically order the closure of the corporate entity and may also prohibit the forger from engaging in any commercial activity for a period not exceeding five years.[10]

Law No. 04-08 of 2004 holds a corporate entity criminally liable if it fails to amend the commercial register within three months of any changes in its situation or legal status, with a fine ranging from DZD10,000 to DZD100,000, along with the withdrawal of the registration until the violation is rectified.[11]

IV. Law No. 03-10 of 2003 on Environmental Protection Within the Framework of Sustainable Development

Law No. 03-10 sanctions corporate entities for any violations arising under its provisions. When violations pertain to the protection of water and the aquatic environment, the legal representative of the entity, its managers, or any other person with supervisory authority can be subject to penalties doubled at their maximum limits.[12] The doubled penalties include imprisonment for up to two years, a fine not exceeding DZD1 million, or both.[13]

Moreover, if the violation is related to air and atmosphere pollution, the entity will be subject to a fine ranging from DZD5,000 (about US$38) to DZD15,000 (about US$113). In the event of a repeated offense, the penalties increase to imprisonment for a period of two to six months, a fine ranging from DZD50,000 (about US$375) to DZD150,000 (about US$1,130), or both.[14] In such cases, the court may also prohibit the use of facilities or any immovable or movable property that is the source of air pollution until the necessary works and restorations are completed.[15]

The court may set a deadline for compliance to rectify the violation. In the event of noncompliance, the court may impose a fine ranging from DZD5,000 to DZD10,000 and a coercive fine of no less than DZD1,000 (about US$8) for each day of delay. Additionally, the court may order the prohibition of the use of polluting facilities until the necessary works and restorations are completed.[16]

[10] Id. art. 34.

[11] Id. art. 37.

[12] Law No. 03-10 of 2003 on Environmental Protection Within the Framework of Sustainable Development, art. 92, al-Jarīdah al-Rasmīyah, vol. 43, 20 July 2003, p. 20, https://perma.cc/WL56-9YD7 (in Arabic).

[13] Id. art. 90.

[14] Id. art. 84.

[15] Id. art. 85.

[16] Id. art. 86.

V. Ordinance No. 96-22 of 1966 on the Suppression of Violations of Laws and Regulations on Foreign Exchange and Moving Capital into or out of Algeria

Ordinance No. 96-22 of 1966, as amended, holds corporate entities liable for violations of its provisions. Without prejudice to the criminal liability of the corporate entity's representatives, corporate entities may be subject to criminal, civil, and administrative penalties. Specifically, corporate entities may be subject to a fine not exceeding five times the maximum fine stipulated for the offense, confiscation of the items used in committing a misdemeanor, and confiscation of any transportation used in committing a fraud.[17] Additionally, the court may impose one or more of the following penalties for a period not exceeding five years:

- prohibition from engaging in any commercial activity abroad,
- debarment from participating in government procurement, and
- prohibition from public calls for savings (preventing corporations from soliciting or raising funds from the public, e.g., issuing public securities or collecting deposits).

Furthermore, if the items to be confiscated are not seized, or if the corporate entity fails to present them for any reason, the court will impose a fine equivalent to the value of those items.[18]

[17] Ordinance No. 96-22 of 1966 on the Suppression of Violations of Laws and Regulations on Foreign Exchange and Capital Movements into or out of Algeria, as amended, art. 5, al-Jarīdah al-Rasmīyah, vol. 43, 9 July 1966, p. 12, https://perma.cc/34CC-8VM7 (in Arabic).

[18] Id.

Australia

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SUMMARY Corporate wrongdoing in Australia can be penalized at the federal level through criminal, civil, or administrative legal avenues under different laws. The Criminal Code establishes the general principles of corporate criminal liability. Fines are the most commonly imposed criminal sanctions and have been significantly increased in different areas under recent amendments. In addition, certain laws related to corporations and financial products and services now contain provisions that enable specified fines to be multiplied by 10 if the offender is a corporation, and for fines to be calculated where the only penalty for an offense is imprisonment. In addition, under general criminal law, the Crimes Act 1914 (Cth) provides that fines may be multiplied by five where the offender is a corporation.

I. Introduction

In Australia, a company may be subject to criminal liability for any offense unless the definition of the offense indicates the contrary. Notable offenses that companies can be held criminally liable for include bribery of foreign public officials, money laundering, contravening sanctions laws, and false accounting.

According to section 2C(1) of the Acts Interpretation Act 1901 (Cth), references to "persons" in Commonwealth legislation, and other expressions used to denote persons generally, "include a body politic or corporate as well as an individual." Furthermore, "[e]xpress references in an Act to companies, corporations or bodies corporate do not imply that expressions in that Act, of the kind mentioned in subsection (1), do not include companies, corporations or bodies corporate."[1]

This report outlines legislation at the Commonwealth (federal) level related to corporate criminal responsibility. State and territory laws also contain offenses and relevant enforcement powers applicable to corporations.[2]

[1] Acts Interpretation Act 1901 (Cth) s 2C, https://perma.cc/TZ64-Q8R9.

[2] See generally *Chambers Global Practice Guide White-Collar Crime 2024 Australia: Law & Practice*, Gilbert & Tobin (Jan. 6, 2025), https://perma.cc/WXD4-6LA7.

II. Types of Liability

A. Criminal Liability

The Commonwealth Criminal Code, contained in the schedule to the Criminal Code Act 1995 (Cth) (Criminal Code), codifies many federal offenses. Part 2.5 of the code sets out the general principles of corporate criminal liability in Australia and provides as follows:

- The code applies to bodies corporate in the same way that it applies to individuals, but with modifications as the criminal liability is being imposed on a company rather than an individual.
- If the physical element of an offense is committed by an employee, agent, or officer of a body corporate acting within the actual or apparent scope of their employment or within their actual or apparent authority, the physical element must also be attributed to the body corporate.
- If intention, knowledge, or recklessness is a fault element in relation to a physical element of an offense, that fault element must be attributed to a body corporate that expressly, tacitly, or implicitly authorized or permitted the commission of the offense. Such an authorization or permission may be established by proving the following:
    - that the body corporate's board of directors intentionally, knowingly, or recklessly carried out the relevant conduct, or expressly, tacitly, or implicitly authorized or permitted the commission of the offense;
    - that a high managerial agent of the body corporate intentionally, knowingly, or recklessly engaged in the relevant conduct, or expressly, tacitly, or implicitly authorized or permitted the commission of the offense. However, this is excusable if the body corporate proves that it exercised due diligence to prevent the conduct, the authorization, or permission;
    - that a corporate culture existed within the body corporate that directed, encouraged, tolerated, or led to noncompliance with the relevant provision; and
    - that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.
- If negligence is a fault element in relation to a physical element of an offense and no individual employee, agent, or officer of that body corporate has committed the fault element, then fault may exist on the body corporate's part if the body corporate's conduct is negligent when viewed as a whole – that is, by aggregating the conduct of any number of its employees, agents, or officers.[3]

Several laws refer to part 2.5 of the code as applying in the context of the offenses contained in those laws.

[3] Criminal Code Act 1995 (Cth) sch pt 2.5 div 12, https://perma.cc/G3GJ-L7PG (vol. 1), https://perma.cc/4VQS-D5JB (vol. 2).

The Crimes Act 2014 (Cth) "sets out Commonwealth powers, authorities and obligations for dealing with Commonwealth criminal offences and related matters."[4] It includes, for example, search, seizure, and arrest powers, provisions related to sentencing, and witness protection rules. Section 4B(1) of the Crimes Act provides that "[a] provision of a law of the Commonwealth relating to indictable offences or summary offences shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons."[5]

Therefore, under Australian federal law, the Criminal Code applies to bodies corporate in the same way it applies to individuals, and a body corporate may be found guilty of any offense "including one punishable by imprisonment."[6]

The Australian Federal Police (AFP) is the primary law enforcement agency responsible for investigating crimes against Commonwealth laws. It investigates alleged offending by corporations under the Criminal Code, including fraud, corruption, money laundering, and serious financial crimes that affect the Commonwealth.[7] Various other agencies also have responsibilities for enforcing laws that include offenses for which corporations may be held liable. For example, AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and financial intelligence unit.[8] The Australian Taxation Office (ATO) administers and enforces tax legislation. The Australian Competition and Consumer Commission (ACCC) ensures compliance with Commonwealth competition, consumer protection, and fair trading laws.

The Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) provides the Australian Securities and Investments Commission (ASIC) with a range of powers to respond to individual and corporate misconduct under the legislation that it administers,[9] including the Corporations Act 2001 (Cth) (Corporations Act) and other laws related to financial products and services.[10] ASIC is able to commence criminal and civil proceedings, as well as take administrative and other actions as deemed appropriate.[11]

If a Commonwealth agency believes there is sufficient evidence for a criminal offense, they refer the matter to the Commonwealth Director of Public Prosecutions (CDPP) for assessment. If a

[4] *Crimes Act 1914*, Commonwealth Fraud Prevention Centre, https://perma.cc/NE23-AZ54.

[5] Crimes Act 1914 (Cth) s 4B(1), https://perma.cc/EDN6-6CL4 (vol. 1), https://perma.cc/CX5W-5GK5 (vol. 2).

[6] Attorney-General's Department, *Commonwealth Criminal Code: Guide for Practitioners – Part 2.5 Corporate Criminal Responsibility – Division 12 – 12.1 General Principles*, https://perma.cc/B29Q-X3J6.

[7] *Money Laundering and Financial Crime*, AFP, https://perma.cc/CVB2-D3DH; *Fraud and Corruption*, AFP, https://perma.cc/V9QN-4C8K.

[8] *What We Do*, AUSTRAC, https://perma.cc/2B9N-JVB8.

[9] Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) pt 2 div 1, https://perma.cc/BL6X-DHT6 (vol. 1), https://perma.cc/ESF2-MM8P (vol. 2).

[10] *Laws We Administer*, ASIC, https://perma.cc/TG22-N3FA.

[11] *Powers*, ASIC, https://perma.cc/SC6J-HG6X.

matter is referred to the CDPP, the CDPP decides whether the evidence and public interest to prosecute is sufficient.[12]

B. Civil and Administrative Liability

Legislation may also authorize an agency to commence civil proceedings that may result in penalties or other court orders for certain contraventions of the laws it administers. In these civil penalty proceedings, a lower standard of proof applies than in criminal proceedings. The court must be satisfied on "the balance of probabilities" of the wrongdoer's actions. For example, in the context of legislation administered by ASIC, court orders may include

- relinquishment orders – to remove the financial benefit (profits gained or losses avoided) of the misconduct from the wrongdoer;
- disqualification orders – to disqualify the wrongdoer from managing corporations for any period the court considers appropriate;
- compensation orders – to compensate investors or consumers who have suffered a loss as a result of the contravention, including orders to prioritize compensation over penalties; or
- orders requiring the wrongdoer to establish a compliance, education, or training program.[13]

In its discretion, the court may make other orders such as ordering the wrongdoer to pay the Commonwealth a civil penalty up to the maximum amount in the relevant provision.

In addition to offenses and civil penalty provisions, the Corporations Act includes some administrative penalties, which are penalties "imposed automatically by force of law," instead of requiring court intervention.[14] For example, a person will be automatically disqualified from managing a corporation if he or she is convicted on indictment of certain offenses.[15] In addition, infringement notices may be imposed as an administrative alternative to pursuing both criminal prosecutions and civil penalty proceedings in some cases.

[12] *Prosecution Policy of the Commonwealth*, Commonwealth Director of Public Prosecutions (CDPP) (July 19, 2021), https://perma.cc/RM2K-U26T.

[13] *ASIC'S Approach to Enforcement*, ASIC, https://perma.cc/CKM7-DMG4.

[14] Australian Law Reform Commission, *Interim Report B: Financial Services Legislation: ALCR Report No. 139* (September 2022), https://perma.cc/A66D-HUAH.

[15] Corporations Act 2001 (Cth), s 206B, https://perma.cc/B88L-XSYG (vol. 1) https://perma.cc/36U9-CTN5 (vol. 2), https://perma.cc/RRH5-J2HR (vol. 3), https://perma.cc/E5DA-XZ87 (vol. 4), https://perma.cc/P2BP-5PP5 (vol. 5), https://perma.cc/H5QT-WXKC (vol. 6), https://perma.cc/5BVT-SBZH (vol. 7).

III. Penalty Calculations

A. Criminal Penalties

The main form of criminal penalty imposed on a corporate body is a fine.[16] Specific criminal offenses have defined maximum penalties, either expressed by a maximum number of penalty units that can be imposed or by a monetary figure. The value of a penalty unit is prescribed by the Crimes Act 1914 (Cth) and is currently AU$330 (about US$214) for offenses committed on or after November 7, 2024.[17]

Under section 4B(3) of the Crimes Act,

> [w]here a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence.

Following the Financial Services Royal Commission,[18] penalties for serious criminal offenses were significantly increased under Australia's corporations and consumer credit protection legislation. For offenses under the Corporations Act, ASIC Act, and National Consumer Credit Protection Act 2009 (Cth), where a fine is the only penalty specified for an offense, it is multiplied by 10 if the offense is committed by a body corporate. Where a fine is not specified as a penalty and the offense is punishable by 10 years imprisonment or more, companies can face the greater of 45,000 penalty units, three times the benefit gained or loss avoided, or up to 10% of annual revenue turnover.[19]

Provisions related to offenses are contained in part 9.4 of the Corporations Act, while schedule 3 establishes the penalties for many offenses under the act.

While sentencing is a matter of judicial discretion, some of the relevant considerations for federal offenses, as stated in the Crimes Act, are

- the nature and circumstances of the offense;
- other offenses that are required or permitted to be taken into account;
- whether the offense forms part of a course of criminal conduct;
- the personal circumstances of any victim;

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[16] Rachel Nicolson & Andrew Wilcock, *Corporate Criminal Liability: A Guide for Boards and Senior Management*, Allens.com.au (Aug. 3, 2022), https://perma.cc/Z79K-369G.

[17] Crimes Act 1914 (Cth) s 4AA.

[18] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (Feb. 1, 2019), https://perma.cc/YMG4-GFUV.

[19] Corporations Act 2001 (Cth) s 1311C; ASIC Act s 93E; National Consumer Credit Protection Act 2009 (Cth) s 288D, https://perma.cc/6Y7X-LKJV (vol. 1), https://perma.cc/3EFY-2SKH (vol. 2).

- any injury, loss, or damage resulting from the offense;
- the fact and timing of any guilty plea and whether this resulted in any benefit to the community, victim, or witness;
- any cooperation with law enforcement; or
- the deterrence effect of any sentence.[20]

Under the Corporations Act, serious offenses can, in certain circumstances, lead to the company being wound up.[21]

B. Civil and Administrative Penalties

Monetary penalties may be imposed by a court in civil proceedings for breaches of civil penalty provisions. The Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth) was enacted to strengthen existing penalties and introduce new penalties.[22]

Under the amendments, the maximum financial penalty for individuals for breaches of civil penalty provisions in several laws is now the greater of 5,000 penalty units or three times the benefit obtained and detriment avoided. For companies, the maximum civil penalty is the greater of 50,000 penalty units, three times the benefit obtained or detriment avoided, or 10% of annual turnover, capped at 2.5 million penalty units.[23]

IV. Penalties for Certain Types of Criminal Offenses

The following are some of the areas and laws under which corporations may be held criminally liable.[24]

A. Corruption Offenses

Following the Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024 (Cth), which came into force in September 2024, if a corporate body is found guilty of the offense of failing to prevent foreign bribery of a public official under the Criminal Code, the maximum fine that can be imposed is either 100,000 penalty units, three times the value of the benefit obtained,

[20] Crimes Act 1914 (Cth) s 16A.

[21] Corporations Act 2001 (Cth) s 461. See Nicolson & Wilcock, supra note 16.

[22] Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth), https://perma.cc/S7DM-SZEG.

[23] See Parliament of Australia, Senate, *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2019: Revised Explanatory Memoranda* 10 (2018), https://perma.cc/Y9XT-PPTN.

[24] Georgie Farrant, *Corporate Liability in Australia*, Global Compliance News, https://perma.cc/M3J6-55E6.

or if that value cannot be determined, up to 10% of annual turnover during the 12 months preceding the offense, whichever is greater.[25]

B. Offenses Related to Money Laundering and Terrorism Financing

For money laundering under the Criminal Code, the range of penalties imposed for the offense depends on the relevant circumstances, the fault element standard to be applied, and the value of the money or property involved. For example, where the money is the proceeds of crime and is worth AU$1 million (about US$648,000) or more, a company may be liable for a fine of up to AU$333,000 (about US$215,791).[26]

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) imposes obligations on financial institutions with respect to identification procedures, customer due diligence, reporting of certain transactions, record-keeping, and AML/CFT programs. The act specifies various provisions as being civil penalty provisions and also includes offenses, most of which are categorized as strict liability offenses.

Section 175 relates to civil penalty orders and provides that the maximum penalty for a body corporate is 100,000 penalty units, compared to 20,000 penalty units for a person other than a body corporate.[27] Other provisions under part 15 of the act, on enforcement, allow infringement notices to be used as an enforcement tool, and these are again subject to different penalties depending on whether the recipient of such a notice is a body corporate. Remedial directions and enforceable undertakings can also be utilized by the enforcement agency to ensure compliance with the obligations in the act.[28]

Criminal offense provisions in the act specify the penalty for the offense. For example, several offenses related to breaches of reporting requirements are subject to imprisonment for two years or 500 penalty units or both.[29]

Part 12 of the act includes various offenses related to providing false or misleading information to the enforcement agency. The maximum penalty for the more serious of these offenses is 10 years of imprisonment and/or a fine of 10,000 penalty units.

Part 17 of the act relates to vicarious liability. In terms of proof requirements, it states that part 2.5 of the Criminal Code has effect with respect to corporations.[30]

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[25] Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024 (Cth) sch 1 s 6 (new s 70.2(4) of the Criminal Code), https://perma.cc/AMZ2-QUZT.

[26] Criminal Code Act 1995 (Cth) sch ss 70.2, 141.1.

[27] Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 175, https://perma.cc/GFL9-6CUU.

[28] Id. pt 15.

[29] Id. pt 4 div 2.

[30] Id. s 231.

C. Taxation Offenses

The Taxation Administration Act 1953 (Cth) establishes the administrative framework for taxation in Australia. Part III of the act relates to prosecutions and offenses. In setting out the offenses, such as those related to failure to comply with taxation requirements and related to statements, records, and certain other acts, the provisions explicitly state whether a particular offense is one of absolute or strict liability.

The penalties for failure to comply with taxation requirements are fines of up to 20 penalty units for a first offense, 40 penalty units for a second offense, and 50 penalty units for subsequent offenses.[31] For offenses related to statements and records, penalties include fines of up to 20 penalty units for making false or misleading statements or incorrectly keeping records,[32] increasing to 50 penalty units and/or imprisonment for up to 12 months where the person acted with intent to deceive or mislead.[33] The punishments are doubled for second offenses.

The act also contains offenses related to tax file numbers that are subject to a fine of up to 100 penalty units and/or imprisonment for up to two years.[34]

Section 8ZD states that where it is necessary to establish the intent of a corporation, "it is sufficient to show that an employee or agent of the corporation by whom the act was done or omitted to be done, as the case may be, had the intention." It also provides for vicarious liability on the part of a corporation and specifies that part 2.5 of the Criminal Code does not apply to taxation offenses.

Under section 8ZF, where a corporation is convicted of a taxation offense that, if committed by a natural person, is punishable by imprisonment, or of certain prescribed offenses, the court may impose a penalty of up to five times the maximum fine for that offense.

In terms of tax evasion or tax fraud, several offenses in the Criminal Code may apply, including dishonestly obtaining Commonwealth property, obtaining financial advantage by deception, and dishonestly causing a loss to the Commonwealth. The maximum penalty for these offenses is 10 years of imprisonment.[35]

D. Environmental Crimes

The CDPP states that "[e]nvironmental crime covers a wide range of Commonwealth offences, including the illegal trade in endangered species and plants, illegal fishing, offending in protected heritage places and Commonwealth marine parks, and environmental pollution such as the

[31] Taxation Administration Act 1953 (Cth) s 8E, https://perma.cc/GL46-MA94 (vol. 1), https://perma.cc/2DJD-2G5V (vol. 2), https://perma.cc/67R4-SJEW (vol. 3), https://perma.cc/ASX6-JUK5 (vol. 4).

[32] Id. s 8M.

[33] Id. s 8V.

[34] Id. pt III div 2 subdiv BA.

[35] *Tax Fraud*, CDPP, https://perma.cc/BR8F-2GVD.

illegal disposal of waste and dumping of oil."[36] The core national environmental protection legislation, the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act), contains both civil penalty provisions and criminal offenses, including strict liability offenses, with higher penalties applied to corporations.

The EPBC Act has recently been the subject of review and reform, and enforcement of the law will be shifted to a new independent national environmental protection agency. [37] The Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024, which was introduced in May 2024 and passed by the House of Representatives in July 2024, is currently before the Senate.[38] It includes increased penalties for serious environmental crimes under the EPBC Act, "which will bring maximum fines into line with punishments for serious financial offences such as insider trading and market manipulation."[39]

Currently, the maximum penalty for breaching the act is a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 for a body corporate. The highest criminal penalties for offenses contained in parts 3 and 9 of the act are up to seven years of imprisonment and/or 420 penalty units. [40] Under the amendment bill, the same formula as that now used in the Corporations Act would apply, that is

> [w]hen a person breaches a provision that the civil penalty formula applies to, they might be required to pay the greater of 5,000 penalty units, or the value of the benefit derived and/or detriment avoided multiplied by three. When a body corporate breaches a provision the civil penalty formula applies to, they might be required to pay the greater of 50,000 penalty units, the value of the benefit derived/detriment avoided multiplied by three or 10 per cent of their annual turnover 12 months before the breach (up to a maximum of 2.5 million penalty units).[41]

In addition, pecuniary penalties for the most serious offenses under parts 3 and 9 of the EPBC Act would increase to 1,000 penalty units for individuals and 5,000 penalty units for bodies corporate.

The EPBC Act specifies that part 2.5 of the Criminal Code does not apply to offenses against the act.[42] Instead, section 498B contains the rules related to corporate criminal liability, including vicarious liability for the conduct and state of mind of directors and employees.[43]

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[36] *Environment*, CDPP, https:/ /perma.cc/6QB8-PHHT.

[37] *Environment Protection Australia*, Department of Climate Change, Energy, Environment and Water (DCCEEW), https://perma.cc/M46J-X74C.

[38] *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024*, Parliament of Australia, https://perma.cc/SHT6-R6SQ.

[39] Id.

[40] *Compliance Outcomes*, DCCEEW, https://perma.cc/5U9L-3SCW.

[41] Parliament of Australia, *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024: Explanatory Memorandum* 5 (2024), https://perma.cc/Q8NH-Q4E3.

[42] Environment Protection and Biodiversity Conservation Act 1999 (Cth) ss 7 & 498B(9), https://perma.cc/3BZC-72P6 (vol. 1), https://perma.cc/6EFN-SFDZ (vol. 2).

[43] Id. s 498B.

E. Financial Fraud

Several offenses in the Criminal Code may apply to financial fraud, including obtaining a financial advantage by deception, general dishonesty that obtains a gain or causes a loss, and general dishonesty that causes a loss to another. The maximum penalty for these offenses is 10 years' imprisonment.[44]

In addition, while there is no general corporate fraud offense under ASIC-administered legislation, section 1041G of the Corporations Act establishes a broad offense related to dishonest conduct in relation to a financial product or service. Schedule 3 of the act provides that the maximum penalty for this offense is 15 years of imprisonment. In addition, section 12DB of the ASIC Act relates to making a false or misleading representation in connection with the possible supply of financial services. The penalty for this offense is a fine of up to 2,000 penalty units.[45] As noted above, the acts provide for the fine specified for offenses to be multiplied by 10 in the case of a body corporate and for terms of imprisonment to be converted to a fine.

F. Securities and Investment Offenses

The Corporations Act contains various offenses related to, for example, market manipulation (section 1041A), making false or misleading statements likely to induce someone to buy a financial product (section 1041E), and insider trading (1043A), all of which are punishable by up to 15 years of imprisonment, as well as unlicensed conduct (section 911A), punishable by up to five years of imprisonment. In addition, the ASIC Act contains provisions on unconscionable conduct and consumer protection in relation to financial services in part 2 division 2. The penalty calculation provisions in the two laws apply to these offenses.

[44] *General Fraud*, CDPP, https://perma.cc/LV6F-LQHW.

[45] ASIC Act s 12GB.

Austria

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SUMMARY In Austria, corporations may be held liable for criminal conduct under specialized legislation designed for this purpose, the Corporate Criminal Liability Act. This special legislation is complemented by the general provisions governing criminal offenses and procedures codified in the Criminal Code and Criminal Procedure Code. Financial offenses are governed exclusively by the provisions of the Financial Crimes Act.

An association may be held liable for criminal offenses committed by its decision-makers or by employees of the association. The offense must have been committed either for the benefit of the association or resulted in a violation of the association's duties.

The Corporate Criminal Liability Act makes fines the sole form of sanction, with the maximum corporate fine set at 5.4 million euros (about US$5.65 million). With regard to financial offenses, the Financial Crimes Act also imposes fines as a sanction. In some cases, the Financial Crimes Act establishes specific penalty ranges for associations that are different from the ones for natural persons.

I. Introduction

In Austria, corporations may be held liable for criminal conduct under specialized legislation designed for this purpose, the Corporate Criminal Liability Act (Verbandsverantwortlichkeitsgesetz, VbVG).[1] The law was enacted in 2005 to implement obligations regarding the liability of, and sanctions for, legal persons resulting from the Second Protocol of the Convention on the Protection of the European Communities' Financial Interests.[2] Unlike the other European Union (EU) member states, Austria had negotiated a five-year deadline with the EU to implement the Second Protocol.[3] This special Austrian legislation is complemented by the general provisions governing criminal offenses and procedures codified in the Criminal Code (Strafgesetzbuch, StGB) and Criminal Procedure Code (Strafprozeßordnung, StPO).[4]

[*] The author wishes to thank Foreign Law Intern Maximilian Spitzley for providing research assistance for this report.

[1] Verbandsverantwortlichkeitsgesetz [VbVG], Bundesgesetzblatt [BGBl.] I No. 151/2005, as amended, https://perma.cc/USS7-K7WY.

[2] Erläuterung der Regierungsvorlage [ErlRV], 994 der Beilagen des Nationalrats [BlgNR] XXII. GP, 1, at 4, https://perma.cc/24HN-YHZF; Second Protocol of the Convention on the Protection of the European Communities' Financial Interests (Second Protocol), 1997 O.J. (C 221) 11, https://perma.cc/HJP4-RYG8.

[3] Second Protocol art. 18, para. 2.

[4] Strafgesetzbuch [StGB], BGBl. I No. 60/1974, https://perma.cc/5E3R-BQAV; Strafprozeßordnung 1975 [StPO], BGBl. I No. 631/1975, https://perma.cc/K6RG-UTYA.

The number of cases handled under the Corporate Criminal Liability Act by the Austrian Public Prosecutors' Offices has been steadily increasing. This trend is exemplified by the case numbers from 2017 and 2018.[5]

	2017	2018
Total Resolutions	178	303
Dismissal/Termination	108	220
Diversion	4	3
Indictments	25	27
Other Resolutions	41	53

II. Legal Framework

The Corporate Criminal Liability Act includes provisions for determining liability, procedural rules, and guidelines for calculating fines for the criminal behavior of the management of companies or of their employees.

A. Scope

The scope of the Corporate Criminal Liability Act is limited to "criminal offenses" committed by "decision-makers" or employees of an "association." A "criminal offense" under the Corporate Criminal Liability Act is defined as an act punishable by judicial penalty under federal or state law.[6] The Corporate Criminal Liability Act does not list any criminal offenses, such as money laundering or environmental crimes, specifically. As long as they fulfill the definition of "criminal offenses, the act applies. In contrast, offenses subject to administrative penalties by an administrative authority are generally not covered.[7] Associations covered under the Corporate Criminal Liability Act are legal persons, registered partnerships, and European Economic Interest Groupings. [8] The term "decision-makers" includes, among others, managing directors, authorized officers, members of the supervisory board or administrative board, as well as any other person exerting significant influence over the management of the association.[9]

[5] Einhard Steininger, *Vorbemerkungen*, para. 51, in: Verbandsverantwortlichkeitsgesetz Kommentar (Einhard Steininger. ed., 2nd ed. 2020).

[6] VbVG § 1, para. 1.

[7] Steininger, supra note 5, § 1 *Verbände*, para. 6.

[8] VbVG § 1, para. 2; European Economic Interest Groupings (EEIGs) are legal entities established under the EU Council Regulation (EEC) No 2137/85 to facilitate cross-border cooperation between businesses within the EU. EEIGs are formed to help members improve their economic activities without seeking profit for the grouping itself, functioning as a framework for collaboration while preserving the members' legal and economic independence; see Council Regulation (EEC) 2137/85, 1985 O.J. (L 199) 1, https://perma.cc/EUU9-WPNL.

[9] VbVG § 2, para. 1.

B. Prerequisites for Criminal Liability

Criminal liability requires that the offense was either committed for the benefit of the association or resulted in a violation of the association's duties.[10] The Corporate Criminal Liability Act further distinguishes between liability for criminal offenses committed by decision-makers and those committed by employees.

First, a company's liability can be established when there has been an unlawful and culpable commission of an offense by a decision-maker of the association in their executive capacity.[11] If such senior individuals commit a crime that benefits the association or breaches its duties, this alone is sufficient to establish the association's liability. In such cases, there is no need to separately establish a breach of a duty of care at the organizational level of the association.[12]

Second, a company's criminal liability may arise from the unlawful commission of an offense by one or more employees.[13] In addition, the company is liable if the offense of the employee was enabled or significantly facilitated by the failure of a decision-maker to exercise the due and reasonable care required under the circumstances.[14] While a standard for due and reasonable care is not defined in the Corporate Criminal Liability Act, the Vienna Higher Regional Court (OLG Wien),[15] in a 2018 decision, adopted the standard of care that a prudent and conscientious company, mindful of the legally protected values, would exercise.[16] This includes failing to implement essential technical, organizational, or personnel measures to prevent such offenses.[17] The association is therefore accused of having an inadequate internal organization which allowed the employee to commit the offense.[18]

The liability of an association for an offense and the criminal responsibility of decision-makers or employees for the same offense are not mutually exclusive.[19] Both may be held liable in criminal proceedings without excluding the responsibility of the respective other.

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[10] Id. § 3, para. 1.

[11] Id. § 3, para. 2.

[12] Michael Kubiciel & Niklas Gräbener, *Grundlinien eines modernen Verbandssanktionenrechts*, 49 Zeitschrift für Rechtspolitik [ZRP] 137, 138 (2016).

[13] Id. § 3, para. 3.

[14] Id.

[15] The Vienna Higher Regional Court is an appeals court for all civil and criminal law decisions from the regional courts of the states of Burgenland, Lower Austria, and Vienna. For an overview of the organization of the ordinary courts in Austria, see *National Ordinary Courts: Austria*, european e-justice, https://perma.cc/A7WP-KTU7.

[16] Oberlandesgericht Wien [OLG Wien], May 15, 2018, docket no. 17 BS 236/17f.

[17] VbVG § 3, para. 3.

[18] Marianne Johanna Hilf, *Die Strafbarkeit juristischer Personen im schweizerischen, österreichischen und liechtensteinischen Recht*, 126 Zeitschrift für die gesamte Strafrechtswissenschaft [ZSTW] 73, 83 (2014).

[19] VbVG § 3, para. 4.

C. Sanctions Under the Corporate Criminal Liability Act

The Corporate Criminal Liability Act provides fines as the sole form of sanction. The maximum corporate fine is set at 5.4 million euros (about US$5.65 million).[20] A corporate daily fine system is applied, based on a statutory conversion formula that translates potential prison sentences into corporate fine thresholds.[21]

The Corporate Criminal Liability Act also establishes additional criteria for determining the amount of the fine.[22] The following factors must be considered as aggravating circumstances:

- the significance of the harm or risk for which the association is responsible,
- the benefit the association gained from committing the offense, and
- the extent to which unlawful behavior by employees was tolerated or encouraged.[23]

Conversely, mitigating circumstances are to be assumed, if

- before the offense was committed, the association had already taken measures to prevent such offenses or encouraged employees to act lawfully,
- the association is only responsible for offenses committed by employees,
- after the offense was committed, the association significantly contributed to uncovering the truth,
- the association remedied the consequences of the offense,
- the association took substantial steps to prevent similar offenses in the future, or
- the offense has already caused significant legal disadvantages for the association or its owners.[24]

D. Termination of Proceedings Under the Corporate Criminal Liability Act

The Corporate Criminal Liability Act grants prosecutors discretion to refrain from or withdraw from prosecuting an association if the prosecution and sanctioning of the association appear unnecessary according to several enumerated factors.[25] These factors include the severity of the offense, the significance of the breach of duty or lack of due care, the consequences of the offense, the association's behavior after the offense, the anticipated fine, and any legal disadvantages already incurred or likely to arise for the association or its owners.[26] The act also allows for

[20] Id. § 4.

[21] Id. § 4, para. 3.

[22] Id. § 5, para. 1.

[23] Id. § 5, para. 2.

[24] Id. § 5, para. 3.

[25] Id. § 18, para. 1.

[26] Id.

diversion in corporate criminal proceedings if it would be permitted under the general provisions on diversion regulated in the Austrian Code of Criminal Procedure.[27] This is the case when the association compensates for the damage caused by the offense and imposing a fine is deemed unnecessary by the prosecution to deter the accused association or other associations from committing future offenses.[28]

E. Applicability of the Criminal Code

The Corporate Criminal Liability Act only includes provisions that were deemed essential by the Austrian legislature for addressing corporate liability.[29] Unless otherwise regulated in the Corporate Criminal Liability Act, the general rules of the Austrian Criminal Code apply to associations as long as these rules are not exclusively applicable to natural persons.[30]

F. Specific Procedural Rules

Procedural rules specific to corporate liability are set out in sections 13 to 27 of the Corporate Criminal Liability Act. These include provisions on initiating proceedings,[31] the jurisdiction of the public prosecutor's office,[32] and the interrogation of the accused.[33] In addition, the general criminal procedure provisions apply alternatively if not otherwise regulated in the Corporate Criminal Liability Act and the provisions are not exclusively applicable to natural persons.[34]

III. Special Regulations for Financial Offenses

The Corporate Criminal Liability Act stipulates that the prosecution of "financial offenses" is governed exclusively by the Financial Crimes Act (Finanzstrafgesetz, FinStrG).[35] The Financial Crimes Act provides that associations as defined under the Corporate Criminal Liability Act may also be held liable for financial offenses.[36] Liability is determined by reference to the provisions of the Corporate Criminal Liability Act.[37] Financial offenses are not generally defined in the Financial Crimes Act, but encompass the acts and omissions listed in sections 33 to 52 of the

[27] Id § 19, para. 1; StPO, §§ 198, 200, 202 & 203.

[28] VbVG § 19, para. 1.

[29] Marianne Johanna Hilf, *Die Strafbarkeit juristischer Personen im schweizerischen, österreichischen und liechtensteinischen Recht*, 126 Zeitschrift für die gesamte Strafrechtswissenschaft [ZSTW] 73, 84 (2014).

[30] VbVG § 12, para. 1.

[31] Id. § 13.

[32] Id. § 15.

[33] Id. § 17.

[34] Id. § 14.

[35] Id. § 1, para. 1; Finanzstrafgesetz [FinStrG], BGBl. I No. 129/1958, https://perma.cc/9W6A-U7T9.

[36] FinStrG, § 1, para. 2, § 28a.

[37] Id. § 28a.

Financial Crimes Act or those that are designated as financial offenses in other federal laws.[38] These offenses include tax fraud, tax evasion, and the intentional interference with monopoly rights, among others.

The determination of corporate fines is governed by the provisions of the Financial Crimes Act. In some cases, the act establishes specific penalty ranges for associations that are different from the ones for natural persons. For instance, section 38a, paragraph 2(a) of the Financial Crimes Act (tax evasion or smuggling committed as part of a criminal gang or by using force) stipulates that a corporate fine may amount to up to three times the value of the relevant financial loss. For natural persons, the fine is capped at 1.5 million euros (about US$1.6 million). For cross-border value-added tax fraud, the Financial Crime Act imposes fines of up to €8 million (about US$8.4 million) on associations, whereas the maximum fine for natural persons is €2.5 million (about US$2.6 million).[39]

[38] Id. § 1, para. 1.

[39] Id. § 40.

The Bahamas

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SUMMARY Companies operating in the Bahamas may be subject to criminal and civil penalties. Some violations are subject to summary proceedings and are punishable by fees and monetary penalties.

I. Introduction

The Commonwealth of the Bahamas operates as a constitutional parliamentary democracy and is part of the British Commonwealth. The Bahamas system of law and government is based on the Westminster model.[1]

In accordance with the Bahamas Interpretation and General Clauses Act, unless the context otherwise requires, the definition of a "person" in any statutory provisions, including offense provisions, "includes any public body and any body of persons, corporate or unincorporate . . . ."[2]

In addition to liability on all persons, there are several statutes that subject companies to specific corporate liability.

II. Specific Laws

A. Penal Code

The Penal Code imposes various penalties, including criminal fines, on persons who commit offenses prescribed by the code. The code defines a "person" as including "any body of persons, corporate or unincorporate . . . ."[3]

The code provides that "[w]hoever corrupts or attempts to corrupt any person in respect of any duties as a public officer or juror is guilty of a misdemeanour."[4] The court "may, in its discretion, sentence any person convicted before it of an offence punishable by penalty or fine, to any less penalty or fine than that prescribed by this Code, or such other statute, for the offence."[5]

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[1] *Commonwealth Caribbean Law Research Guide: Bahamas*, Florida State University College of Law, https://perma.cc/8JX5-QB5G.

[2] Interpretation and General Clauses Act No. 20 of 1976, as amended, Statute Law of the Bahamas, Government of the Bahamas On-line Legislation, § 3, https://perma.cc/98LM-GAP5.

[3] Penal Code, Act No. 15 of 1873, as amended, Statute Law of the Bahamas, Government of the Bahamas On-line Legislation, § 4, https://perma.cc/WZ34-8J7N.

[4] Id. § 462.

[5] Id. § 119.

B. Proceeds of Crime Act

The objective of the Proceeds of Crime Act is to "consolidate and strengthen provisions relating to- preventive and investigative measures against money laundering, terrorism, corruption . . . [and] the recovery of proceeds and instrumentalities of crime including providing for civil forfeiture of the proceeds of criminal conduct . . . ."[6]

In accordance with the Proceeds of Crime Act, a person who knowingly, or having reasonable suspicion, conceals or disguises proceeds of a crime commits an offense of money laundering. The acquisition, use, or possession of such proceeds are similarly prohibited. The act also penalizes failure to disclose to the authorities or making a disclosure to another person that may prejudice an investigation. Penalties prescribed for money laundering offenses include prison sentences and criminal fines.[7]

The act authorizes the court, following conviction, to issue confiscation or benefit recovery orders regarding property that constitutes proceeds or that was used in the commission of an offense.[8]

In addition, the act authorizes the Supreme Court to issue an order of civil forfeiture of property that "is or represents proceeds or instrumentalities or terrorist property."[9] The act provides for the procedures that apply to the handling of requests and to the implementation of civil forfeitures.[10]

C. Companies Act

The Companies Act imposes criminal[11] as well as civil[12] penalties on companies and officers for violation of requirements under the act. The act provides that any director or officer of the company who knowingly authorized, permitted, or acquiesced in the commission of an offense is liable to the same criminal penalty specified for that offense in the act.[13]

[6] Proceeds of Crime Act § 3, Extraordinary Official Gazette The Bahamas (May 25, 2018), https://perma.cc/E2RX-RBQP.

[7] Id. §§ 9-15.

[8] Id. §§ 33-49.

[9] Id. § 50.

[10] Id. §§ 54-61.

[11] The Companies Act No. 18 of 1992, as amended, Statute Law of the Bahamas, Government of the Bahamas On-line Legislation, §§ 288-298, https://perma.cc/A2YY-AFUK.

[12] Id. §§ 37(5) & 286(1).

[13] Id. § 288.

D. International Business Companies Act

The International Business Companies Act imposes civil penalties at rates specified on companies that violate its provisions.[14]

In addition, when an offense is committed under the act by a company, whether it is incorporated or registered under the act, and a director or officer of the company knowingly authorized, permitted, or agreed to the commission of the offense, the director or officer is guilty of that offense and is liable for the same criminal penalty specified for that offense.[15] The act provides for summary proceedings for any offense, default, refusal, or contravention for which a penalty is provided under the act.[16]

E. Financial Transactions Reporting Act, 2018

In accordance with the Financial Transactions Reporting Act, 2018, a financial institution may be liable upon summary conviction to a fine of up to 500,000 dollars for intentionally failing to comply with specified requirements such as identification, due diligence, and preserving confidentiality.[17]

In addition, a financial institution that is convicted of a violation of the act may be subject to additional sanctions and measures that are available for the competent agency. The financial institution may also be banned from pursuing the business or profession that provided the opportunity for the offense to be committed.[18]

For application of the act, a financial institution includes a company that carries a business such as insurance, cooperative credit union, or gaming, as defined under the act.[19]

F. Business License Act 2023

Fixed penalties may be imposed on corporations that violate requirements under the Business License Act. The act provides that any fee or fixed penalty charged in respect of a business license must be paid to or collected by the Financial Secretary and paid into the Consolidated Fund.[20]

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[14] International Business Companies Act 45 of 2000, Statute Law of the Bahamas, Government of the Bahamas On-line Legislation, Part XI, https://perma.cc/SN3L-YED4.

[15] Id. § 178(1).

[16] Id. § 178(2).

[17] Financial Transactions Reporting Act, 2018, Extraordinary Official Gazette The Bahamas (May 25, 2018), §§ 47-51, https://perma.cc/A8DB-WAH5.

[18] Id. § 52.

[19] Id. § 3.

[20] Business License Act 2023, Extraordinary Official Gazette The Bahamas (July 1, 2023), https://perma.cc/F39F-9D9W.

G. Central Bank of the Bahamas Act, 2020

The Central Bank of the Bahamas is authorized to impose fines on financial institutions for violation of their obligations under the Central Bank of the Bahamas Act, 2020.[21]

H. Anti-Terrorism Act, 2018

According to the Anti-Terrorism Act, 2018, a corporation that violates the provisions of the law may be subject to criminal fines, revocation of its business license, dissolution, forfeiture of assets, and a prohibition on any further activities.[22]

I. Environmental Health Services Act

Under the act, a corporation found guilty of an offense is liable on summary conviction to the penalty prescribed by this act for that offense. Where there is no specific penalty provided, it may be liable on summary conviction to a fine not exceeding 1,000 dollars, and in the case of a second or subsequent offense, to a fine not exceeding 5,000 dollars.[23]

[21] Central Bank of the Bahamas Act, 2020, Extraordinary Official Gazette The Bahamas (July 27, 2020), §§ 24 & 46, https://perma.cc/WFE8-NJKX.

[22] Anti-Terrorism Act, 2018, Extraordinary Official Gazette The Bahamas (Aug. 10, 2018), https://perma.cc/G66Q-5MVR.

[23] It appears that 1 Bahamian Dollar is about US$1, see the Money Converter, https://perma.cc/ZYZ4-UCL2.

Bahrain

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SUMMARY In Bahrain, Legislative Decree No. 21 of 2001, as amended, regulates corporate liability in the event of criminal conduct. Also, Law No. 36 of 2012, as amended, holds corporate entities criminally liable if they commit any of the offenses provided for in this law. The offenses must be committed in the corporation's name, for its account, or for its benefit. Additionally, Law No. 19 of 2006 holds legal persons criminally liable if they commit any crimes outlined in this law under the corporation's name, for its benefit, or due to an action, gross negligence, collusion, or cover-up by a board member, manager, or any official acting on behalf of the corporate entity. Likewise, in accordance with Law No. 62 of 2014, corporate entities are held criminally liable if any of the offenses provided for in this law are committed in their names, for their accounts, or through one of their governing bodies, representatives, or employees. Similarly, Law No. 31 of 2018 holds a corporate entity criminally liable if any offenses provided for in the law are committed in it's the corporation's name, on its behalf, or for its account. Lastly, Law No. 64 of 2006, as amended, holds a corporate entity liable if any of the crimes outlined in the law are committed in the corporation's name, for its account, or using any of its facilities.

I. Legislative Decree No. 21 of 2001 Promulgating the Commercial Companies Law

Legislative Decree No. 21 of 2001, as amended, regulates corporate liability in the event of criminal conduct. If a company is found to have violated any provision of this law, its implementing regulations, or any obligations related to tax compliance at the national or international level, the Ministry of Industry and Commerce may, through a reasoned decision, order the entity to cease the violation and eliminate its causes and effects, either immediately or within a specified time period determined by the Ministry.

If the corporate entity fails to comply within the specified time, the following criminal, civil, and administrative penalties may be imposed:

1. suspension of the company's commercial registration for a period not exceeding six months;
2. striking off the company's commercial registration from the Commercial Register;
3. imposition of an administrative fine that is calculated daily; and
4. imposition of an administrative fine not exceeding BHD 100,000 (approx. US$266,000).[1]

It is important to note that criminal penalties do not apply to legal persons (corporations) unless they are determined by a codified legislation.

[1] Bahrain's Commercial Companies Law, promulgated by Legislative Decree No. (21) of 2001, as amended by Legislative Decree No. 53 of 2018, art. 362 bis, Al-Jarīdah al-Rasmīyah (Official Gazette) at 17, vol. 3395, Nov. 29, 2018, https://perma.cc/9AHL-EN84 (in Arabic), https://perma.cc/Y6QV-3ATD (English translation).

II. Law No. 36 of 2012 Promulgating the Labor Law for the Private Sector

Law No. 36 of 2012, as amended, holds corporate entities criminally liable if any of the offenses provided for in this law are committed in the corporation's name, for its account, or for its benefit. Liability arises when an offense is committed as a result of an act, gross negligence, approval, or cover-up by a board member, manager, or supervisor, or any individual acting in such a capacity. In accordance with the provisions of this law, a corporate entity may be penalized with a fine that is doubled, both in its minimum and maximum limits, as prescribed for the offense. The statutory minimum fine under Law No. 36 of 2012 is BHD 50 (approx. US$133) while the maximum is BHD 1,000 (approx. US$2,660). This does not prejudice the criminal liability of natural persons according to the provisions of the law.[2]

III. Law No. 19 of 2006 with Respect to Regulating the Labor Market

Law No. 19 of 2006 holds legal persons criminally liable if they commit any crimes outlined in this law under their name, for their benefit, or due to an action, gross negligence, collusion, or cover-up by a board member, manager, or any official acting on behalf of the corporate entity. In accordance with the provisions of this law, a corporate entity is penalized with a fine that is doubled, both in its minimum and maximum limits, as prescribed for the offense. The statutory minimum fine prescribed by Law No. 19 of 2006 is BHD 100 (approx. US$266), while the maximum fine is BHD 4,000 (approx. US$10,640). This does not affect the criminal liability of natural persons under the provisions of the law.[3]

IV. Law No. 62 of 2014 with Respect to Anti-Commercial Fraud

In accordance with Law No. 62 of 2014, corporate entities are held criminally liable if any of the offenses provided for in this law are committed in their name, for their account, or through one of their governing bodies, representatives, or employees. A fine shall be imposed on the corporate entity as prescribed for the offense committed. The statutory minimum fine under Law No. 62 of 2014 is BHD 1,000 (approx. US$2,660), while the maximum is BHD 20,000 (approx. US$53,200). The competent court may also order the suspension of the corporate entity's activity related to the offense for a period not exceeding one year. In the case of recurrence, the court may extend the suspension for a period not exceeding five years or may permanently revoke the license issued to conduct the activity.[4] In addition to the penalties prescribed by law, the commodities and materials involved in committing the offense may be subject to confiscation or destruction at

[2] Law No. 36 of 2012 Promulgating the Labor Law for the Private Sector, as amended, art. 197, Al-Jarīdah al-Rasmīyah (Official Gazette) at 60, vol. 3063, Aug. 2, 2012, https://perma.cc/ERF3-9EDQ (in Arabic), https://perma.cc/M6DR-KUEA (English translation).

[3] Law No. 19 of 2006 with Respect to Regulating the Labor Market, as amended, art. 37, Al-Jarīdah al-Rasmīyah (Official Gazette) at 60, vol. 2741, May 31, 2006, https://perma.cc/7PEF-RYXK (in Arabic), https://perma.cc/3RZD-XLK5 (English translation).

[4] Law No. 62 of 2014 with Respect to Anti-commercial Fraud, art. 9, Al-Jarīdah al-Rasmīyah (Official Gazette) at 28, vol. 3178, Oct. 9, 2014, https://perma.cc/HV2C-8VGY (in Arabic), https://perma.cc/DA49-YY9J (English translation).

the violator's expense. The judgment of conviction shall be published at the entity's own expense in two daily newspapers.[5]

V. Law No. 31 of 2018 with Respect to the Promotion and Protection of Competition

Law No. 31 of 2018 holds a corporate entity criminally liable if any offenses provided for in this law are committed in its name, on its behalf, or for its account. Corporate entities may be subject to penalties with the minimum and maximum limits doubled.[6] The statutory minimum fine under Law No. 31 of 2018 is BHD 1,000 while the maximum is BHD 50,000 (approx. US$132,980). Such penalties are imposed if the offenses result from an act, omission, approval, cover-up, or gross negligence by any member of the Board of Directors, a delegated official, or any person acting in such capacity.[7]

VI. Law No. 7 of 2022 Promulgating the Environmental Law

Bahrain's Environmental Law holds corporate entities criminally liable for any offenses committed under this law and mandates precautions during activities such as exploration, drilling, construction, demolition, and the transport of waste or soil. Law No. 7 of 2022 holds such entities liable for any violations, punishable by a fine of no less than BHD 1,000 and no more than BHD 20,000.[8] The Supreme Council for the Environment (SCE) may also suspend or revoke a corporate entity's project license if the licensee violates its conditions.[9]

Any individual who manages operations, establishments, or facilities or operates machinery, tools, or devices for which the SCE has issued a decision to close or suspend such activity, is subject to imprisonment for up to one week and a fine not exceeding BHD 5,000 (approx. US$13,300), or either penalty.[10]

VII. Law No. 30 of 2018 with Respect to Personal Data Protection Law

Law No. 30 of 2018 holds corporate entities criminally liable if any of the offenses outlined in this law are committed in their names, on their behalf, or for their accounts. The entity may be subject to penalties with the minimum and maximum limits doubled.[11] The statutory minimum fine

[5] Id. art. 10.

[6] Law No. 31 of 2018 with Respect to the Promotion and Protection of Competition, art. 53(a), Al-Jarīdah al-Rasmīyah (Official Gazette) at 77, vol. 3375, July 19, 2018, https://perma.cc/ZQ5T-L268 (in Arabic), https://perma.cc/YA2U-K6BT (English translation).

[7] Id. art. 54.

[8] Law No. 7 of 2022 Promulgating the Environmental Law, art. art. 100, Al-Jarīdah al-Rasmīyah (Official Gazette), vol. 3593, Mar. 17, 2022, https://perma.cc/W5U5-TEQ9 (in Arabic).

[9] Id. art. 11, art. 50.

[10] Id. art. 109.

[11] Law No. 30 of 2018 with Respect to Personal Data Protection Law, art. 58, Al-Jarīdah al-Rasmīyah (Official Gazette) at 43, 44, vol. 3375, July 19, 2018, https://perma.cc/9PX4-Q7H7 (in Arabic), https://perma.cc/2Y2M-REG5 (English translation).

under Law No. 31 of 2018 is BHD 100 while the maximum is BHD 20,000. These offenses must result from an act, omission, approval, cover-up, or gross negligence by any member of the Board of Directors, its delegated official, or any person acting in such capacity.[12]

VIII. Legislative Decree No. 54 of 2018 Promulgating the Electronic Communications and Transactions Law

A corporate entity is held criminally liable if it commits, in its name, on its behalf, or for its account, any of the offenses stipulated in this law.[13] Under Law No. 54 of 2018, a corporate entity may be fined up to double the statutory maximum fine, which is BHD 150,000 (approx. US$400,000). These offenses must result from an act, omission, approval, cover-up, or gross negligence by any member of the Board of Directors, managers, a delegated official, or any person acting in such a capacity.[14]

IX. Law No. 64 of 2006 Promulgating the Central Bank of Bahrain and Financial Institutions Law (CBB Law)

Law No. 64 of 2006, as amended, regulates, among others, the capital markets and the offering of securities (Parts 4 and 5), including the statutory offenses of insider trading and market abuse. It holds corporate entities liable if any of the crimes outlined in this law are committed in its name, for its account, or using any of its facilities. A fine of up to BHD 200,000 (approx. US$531,915) may be imposed if the crime results from any action, gross negligence, or approval by a board member or any other official acting on behalf of the corporation.[15] The law also empowers the CBB to impose an administrative fine of up to BHD 100,000 on corporate entities[16] that violate any provisions of this law, its regulations, resolutions, or directives, or if the licensee breaches the terms and conditions of the license. The fine may be increased based on the number of violations.[17]

Furthermore, any manager, director, auditor, actuary, or any person entrusted with the management of an insurance company who fails to take the necessary measures for the formation of reserve funds in accordance with the requirements of this law, may be imprisoned for a period

[12] Id. art. 59.

[13]Legislative Decree No. 54 of 2018 Promulgating the Electronic Communications and Transactions Law, art. 26, Al-Jarīdah al-Rasmīyah (Official Gazette) at 38, 39, vol. 3395, Nov. 29, 2018, https://perma.cc/VT5H-J63T (in Arabic), https://perma.cc/G4YJ-GTAP (English translation).

[14] Id. art. 27.

[15] Law No. 64 of 2006 with Respect to Promulgating the Central Bank of Bahrain and Financial Institutions Law (CBB Law), art. 172, Al-Jarīdah al-Rasmīyah (Official Gazette)at 62, vol. 2755, Sept. 6, 2006, https://perma.cc/2DEN-G7ZB (in Arabic), https://perma.cc/6P24-NXTC (English translation).

[16] Legislative Decree No. 34 of the Year 2015 Amending Some Provisions of Law No. 64 of the year 2006, art. 68 bis 1(b), Al-Jarīdah al-Rasmīyah (Official Gazette) at 42, vol. supp. 3230, Oct. 8, 2015, https://perma.cc/ND6T-HHQ3 (in Arabic), https://perma.cc/RA7W-PVMC (English translation).

[17] Id. art. 129.

not exceeding three years and subject to a fine of not less than BHD 10,000 (approx. US$26,600) and no more than BHD 50,000, or either penalty.[18]

[18] CBB Law art. 164(3).

Belgium

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SUMMARY Under Belgian law, there are no offenses that are exclusively attributable to legal entities, such as companies, to the exclusion of individuals. Legal entities can be held criminally liable for offenses committed on their behalf by their directors, representatives, or employees, as provided under article 5 of the Belgian Penal Code. This liability exists alongside individual liability, meaning both natural and legal persons can be prosecuted for the same offense.

I. Introduction

In Belgium, corporate liability is governed by different regimes covering criminal, civil, and administrative liability. Since the reforms of company law and legislative developments in the environmental, social, and fiscal fields, the obligations of companies have been strengthened to guarantee effective regulation and protect the rights of third parties.

II. Legal Framework

The criminal liability of legal persons was introduced in Belgium in 1999.[1] This legislation was reformed by the law of July 11, 2018, which came into force on July 30, 2018.[2]

In principle, all criminal offenses established by common or special criminal law are relevant to the criminal liability of legal entities, provided that they are intrinsically linked to the achievement of their object or the defense of their interests, or that the concrete facts demonstrate that they have been committed on their behalf.

Article 5 of the Belgian Penal Code states that all legal persons can be held criminally liable for offenses directly related to the pursuit of their objectives or the defense of their interests. This liability also applies when the specific circumstances of the case demonstrate that the offense was committed on the entity's behalf. Entities considered to be legal persons include

[1] Loi du 4 mai 1999 instaurant la responsabilité pénale des personnes morales, J.O. [Official Journal] June 22, 1999, https://perma.cc/FF89-JMLH.

[2] Loi du 11 juillet 2018 modifiant le Code pénal et le titre préliminaire du Code de procédure pénale en ce qui concerne la responsabilité pénale des personnes morales, J. O. July 20, 2018, https://perma.cc/Q64T-RBPC.

- temporary and internal companies,
- ordinary partnerships (*sociétés en nom collectif*), and
- companies in formation (*sociétés en formation*).

The Penal Code provides that this principle applies to all areas of criminal law, including common criminal law, tax law, social law, and environmental law, unless specific legislation explicitly exempts certain matters.

Article 5 of the Belgian Penal Code also stipulates that a company's criminal liability does not exclude the liability of individuals who contributed to the offense, allowing for both managers and the company to be punished simultaneously for the same violation. When a legal entity is held liable based on the actions of an identified natural person, only the individual who committed the most serious fault may be convicted. However, if the identified natural person knowingly and willfully committed the fault, both the individual and the legal entity may be convicted simultaneously.[3]

Article 5 establishes the following principles:

- the physical person alone is convicted if they have used the legal entity to commit an offense for their personal benefit,
- the legal entity alone is convicted if no physical person is identified as the perpetrator of the offense,
- the legal entity is acquitted if the identified physical person acted involuntarily, and the judge determines that the fault of the physical person is more serious than that of the legal entity,
- the identified physical person is acquitted if they acted involuntarily, and the judge considers the fault of the legal entity more serious than that of the physical person, and
- the identified physical person may be acquitted if they committed the offense knowingly and willfully, at the judge's discretion.[4]

III. Penalty Calculation

A. Criminal Penalties

Article 7 of the Belgian Penal Code outlines the penalties applicable to legal entities for criminal, correctional, and police offenses. These penalties include

- fines,
- confiscation of property,

[3] Penal Code art. 5.

[4] Id. See also Marie Amelie Delvaux, *La Responsabilite Pénale des Personnes Morales*, Formations UHPC (May 5, 2011), https://perma.cc/NC7K-C7AB.

- dissolution, except for legal entities governed by public law,
- prohibition from engaging in activities within the corporate purpose, excluding public service functions,
- closure of one or more establishments, excluding those performing public service functions, and
- publication or distribution of the court's decision.

For public entities such as the federal state, regions, communities, provinces, relief zones, pre-zones, the Brussels Conurbation, communes, multi-communal zones, intra-communal territorial bodies, and the French, Flemish, and Joint Community Commissions, as well as public social welfare centers, only a conviction may be issued. Other penalties are expressly excluded.

With the introduction of criminal liability for legal entities, and given the impossibility of sentencing them to prison terms, the legislature introduced a system for converting the scale of penalties for natural persons in article 41bis of the Penal Code.

- For life sentences the fine ranges from 240,000 euros (about US$248,796) to €720,000 (about US$746,388).
- When the law stipulates either a custodial sentence, a fine, or both, the fine for a corporate entity is calculated as follows: the minimum fine is €500 multiplied by the number of months of the minimum custodial sentence, but not less than the minimum fine for the offense. The maximum fine is €2,000 multiplied by the number of months of the maximum custodial sentence, but not less than twice the maximum fine for the offense.
- For fineable offenses, the minimum and maximum amounts are those specified by law for the offense.[5]

An agent who is found criminally liable alongside the company is subject to the same type of sanctions as any other citizen, namely, imprisonment or a fine. However, they may be subject to additional penalties specific to their function such as removal from office and disqualification from exercising certain civil and political rights. Judgments imposing life imprisonment or prison terms of 15 to 20 years or longer will result in the convicts being stripped of their titles, grades, functions, jobs, and public offices.[6]

B. Penalties for Money Laundering

Article 505 of the Belgian Penal Code states that money laundering is punishable by a maximum prison sentence of five years. In addition to fines and custodial sentences, the judge may impose a special confiscation sentence on the assets that have been laundered and on those produced by

[5] Penal Code art. 41bis.

[6] Penal Code art. 19.

the laundering.[7] Using the calculation method laid out in article 41bis of the code, the maximum fine for a legal entity is €120,000 (about US$124,400).[8]

C. Penalties for Corruption

Articles 247 and 249 of the Belgian Penal Code state that money laundering is punishable by a maximum prison sentence of five years.[9] Using the calculation method laid out in article 41bis of the same code, the maximum fine for a legal entity is €120,000 (about US$124,400).[10]

D. Penalties Under Environmental Law

The "environmental offenses" decree of June 5, 2008, organizes and standardizes the levels of offenses and penalties. It applies to all parties, companies, freelancers, and even private individuals, who can therefore be inspected and punished if they fail to comply with the law. The maximum fine under the 2008 law is €10 million (about US$10.4 million).[11]

E. Penalties for Financial Fraud

In Belgian law, the concept of financial fraud is addressed under article 492bis of the Belgian Criminal Code through the criminalization of abuse of corporate assets. Article 492bis states that the maximum penalty for this offense is €500,000 (about US$518,000).[12]

F. Penalties for Tax Fraud

Violations of the Belgian Income Tax Code are punishable under article 444 of that code by a maximum fine of €500,000.[13]

[7] Id. art. 505.

[8] Id. art. 41bis.

[9] Id. arts. 247, 249.

[10] Id. art. 41bis.

[11] Décret du 5 juin 2008 relatif à la recherche, la constatation, la poursuite et la répression des infractions et les mesures de réparation en matière d'environnement, J.O. June 20, 2008, art. 2, https://perma.cc/CKV8-FRRD.

[12] Penal Code art. 492bis.

[13] Code de l'Impôt sur le Revenu [Income Tax Code] art. 449, https://perma.cc/JS9U-V25B.

Brazil

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SUMMARY In Brazil, constitutional principles state that legal entities can be held liable for criminal conduct and should be subject to penalties compatible with the nature of their acts. In 1998, separate laws defined the administrative, civil, and criminal liability of legal entities and the corresponding sanctions, including the crime of money laundering and its punishments. A federal law enacted in 2013, followed by regulations issued in 2022, holds legal entities accountable for corrupt practices or illegal actions that impact government functions or foreign administrations. Other federal laws define and punish the crime of tax evasion, crimes against the tax and economic order, and crimes against consumer relations.

I. Criminal Liability of Legal Entities

The exposure of legal entities in Brazil to criminal liability is defined in articles 173, § 5, and 225, § 3, of the Brazilian Constitution, and in Law No. 9,605 of February 12, 1998, which deals with environmental crimes and includes as penalties for infractions fines, restrictions on rights, and community service.

II. Constitutional Principles

Except for the cases provided for in the Constitution, "direct exploitation of an economic activity by the state must only be permitted when necessary for the imperatives of national security or a relevant collective interest, as defined by law."[1]

The law must establish the legal regime of public companies and mixed-capital companies and their subsidiaries that engage in economic activities of production or marketing of goods or services, dealing with:

> I— their social functions and the forms of supervision by the state and by society;
>
> II— subjection to the same legal regime as private enterprises, including their civil, commercial, labor and tax rights and obligations;
>
> III— competitive bidding and contracting of works, services, purchases and transfers, observing the principles of public administration;

[1] Constituição Federal art. 173, https://perma.cc/9H4G-BBK8.

> IV— organization and functioning of boards of directors and supervisory councils, with participation of minority shareholders; [and]
>
> V— offices, evaluation of performance and liability of administrators.[2]

Public companies and mixed-capital companies may not enjoy fiscal privileges that are not extended to private sector companies.[3] The law must regulate the relationship of public companies with the state and with society.[4] The law must repress abuse of economic power seeking to dominate markets, to eliminate competition, and to increase profits arbitrarily.[5]

Paragraph 5 of article 173 of the Constitution states that, without prejudice to the personal liability of the officers of a legal entity, the law must establish the liability of the latter, subjecting it to penalties compatible with its nature for acts that contravene the economic and financial order and the popular economy."[6]

Article 225 of the Constitution states

> Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life, and both the government and the community have a duty to defend and to preserve it [the environment] for present and future generations . . . Conducts and activities considered harmful to the environment must subject the violators, be they individuals or legal entities, to criminal and administrative sanctions, without prejudice to the obligation to repair the damages caused.[7]

III. Law No. 9,605 of February 12, 1998

In Brazil, Law No. 9,605 of February 12, 1998, provides administrative and criminal sanctions for actions harmful to the environment. It recognizes the criminal liability of legal entities and imposes sanctions, which can include fines, loss of assets, suspension of activities, and liquidation in case of criminal infractions.[8]

A. General Application

Under article 2 of Law No. 9,605, anyone who in any way contributes to the commission of a crime defined by the law is subject to the penalties imposed for the crime, to the extent of their culpability, as are the directors, administrators, board members, technical bodies, auditors,

[2] Id. art. 173, § 1.

[3] Id. art. 173, § 2.

[4] Id. art. 173, § 3.

[5] Id. art. 173, § 4.

[6] Id. art. 173, § 5.

[7] Id. art. 225, §§ 1, 3.

[8] Lei No. 9.605, de 12 de Fevereiro de 1998, https://perma.cc/F6L9-TF2K.

managers, and agents who knowingly fail to stop the criminal conduct of others when they can act to avoid it.[9]

According to article 3, legal entities will be held administratively, civilly, and criminally liable in accordance with the provisions of Law No. 9,605, in cases where the infraction is committed by decision of their legal or contractual representative, or their collegiate body, in the interest or benefit of their entity.[10] The liability of legal entities does not exclude that of natural persons, authors, co-authors, or participants in the same event.[11] Legal entities may be disregarded whenever their personality is an obstacle to compensation for damages caused to the quality of the environment.[12]

B. Sanctions

The penalties applicable separately, cumulatively, or alternatively to legal entities, in accordance with the provisions of article 3 of Law No. 9,605 are

- fines,
- restrictions on rights, and
- community service.[13]

The penalties restricting the rights of legal entities are

- partial or total suspension of activities,
- temporary interdiction of establishment, work or activity, and
- prohibition of contracting with the public authorities as well as obtaining subsidies, grants, or donations from them.[14]

The suspension of activities will be applied when entities are not complying with legal or regulatory provisions relating to environmental protection.[15] The interdiction will be applied when the establishment, work or activity is operating without due authorization, in contradiction of the authorization's terms, or in violation of legal or regulatory provisions.[16] The prohibition on contracting with the public authorities and obtaining subsidies, grants, or donations from them may not exceed a period of 10 years.[17]

[9] Id. art. 2.

[10] Id. art. 3.

[11] Id. art. 3 (sole para.).

[12] Id. art. 4.

[13] Id. art. 21.

[14] Id. art. 22.

[15] Id. art. 22, § 1.

[16] Id. art. 22, § 2.

[17] Id. art. 22, § 3.

The provision of services to the community by a legal entity can consist of

- funding environmental programs and projects,
- restoration of degraded areas,
- maintenance of public spaces, or
- contributions to public environmental or cultural entities.[18]

The legal entity established or used, predominantly, for the purpose of allowing, facilitating, or concealing the commission of a crime defined in Law No. 9,605 will be forcibly liquidated and its assets will be considered an instrument of crime and, as such, forfeited to the National Penitentiary Fund.[19]

For criminal offenses, article 49 of the Penal Code states that the penalty of a fine consists of the payment to the penitentiary fund of the amount fixed in the sentence and calculated in fine days. It will be a minimum of 10 fine days up to a maximum of 360 fine days.[20] The value of the fine day will be set by the judge and cannot be less than one-thirtieth of the highest monthly minimum wage in force at the time of the incident, nor greater than five times that wage.[21] The value of the fine will be updated, upon execution, according to the monetary correction indexes.[22]

C. Crimes Against the Environment

Chapter V of Law No. 9,605 (articles 29–69) defines the crimes against the environment and their respective punishments, which include crimes against the fauna,[23] crimes against the flora,[24] pollution and other environmental crimes,[25] crimes against urban planning and cultural heritage,[26] and crimes against the environmental administration.[27]

D. Environmental Administrative Infractions

Any action or omission that violates the legal rules of use, enjoyment, promotion, protection, and recovery of the environment is considered an environmental administrative infraction.[28]

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[18] Id. art. 23.

[19] Id. art. 24.

[20] Código Penal, Decreto-Lei No. 2.848, de 7 de Dezembro de 1940, art. 49, https://perma.cc/L6ZJ-5775.

[21] Id. art. 49, § 1.

[22] Id. art. 49, § 2.

[23] Lei No. 9.605, de 12 de Fevereiro de 1998, arts. 29–37.

[24] Id. arts. 38–53.

[25] Id. arts. 54–61.

[26] Id. arts. 62–65.

[27] Id. arts. 66–69-A.

[28] Id. art. 70.

Article 72 of Law No. 9,605 states that administrative infractions are punished with the following sanctions, in compliance with the provisions of article 6 (imposition and gradation of the punishment) of Law No. 9,605:

> I - Warning;
>
> II - Simple fine;
>
> III - Daily fine;
>
> IV - Seizure of animals, products and by-products of fauna and flora, instruments, gear, equipment or vehicles of any nature used in the infraction;
>
> V - Destruction of or rendering the product useless;
>
> VI - Suspension of sale and manufacture of the product;
>
> VII - Embargo of work or activity;
>
> VIII - Demolition of work;
>
> IX - Partial or total suspension of activities;
>
> X – (VETOED)
>
> XI - Restriction of rights.[29]

If the offender commits two or more infractions simultaneously, the penalties imposed for them must be applied cumulatively.[30]

A warning must be applied for failure to comply with the provisions of Law No. 9,605 and the legislation in force, or regulatory precepts, without prejudice to the other penalties provided for in article 72 of Law No. 9,605.[31]

A simple fine must be applied whenever the agent, through negligence or intent

> I - Warned of irregularities that have been committed, fails to correct them within the period set by the competent body of *Sistema Nacional de Meio Ambiente*, SISNAMA (National Environmental System) or by the Harbor Master's Office of the Ministry of the Navy;
>
> II - Obstructs the inspection of the bodies of SISNAMA or the Harbor Master's Office of the Ministry of the Navy.[32]

[29] Id. art. 72.

[30] Id. art. 72, § 1.

[31] Id. art. 72, § 2.

[32] Id. art. 72, § 3.

The simple fine may be converted into services for the preservation, improvement, and recovery of the quality of the environment.[33] The daily fine will be applied whenever the infraction is committed over a period of time.[34]

The seizure and destruction referred to in items IV and V of article 72 will comply with the provisions of article 25 (seizure of products and instruments) of Law No. 9,605.[35]

The sanctions indicated in items VI to IX of article 72 will be applied when the product, work, activity, or establishment are not complying with the legal or regulatory requirements.[36]

The restrictive sanctions of rights are

- suspension of registration, license or authorization,
- cancellation of registration, license or authorization,
- loss or restriction of tax incentives and benefits,
- loss or suspension of participation in official credit institutions' financing lines, and
- ban on contracting with the public administration for up to three years.[37]

The fine (for administrative infractions) is based on the unit, hectare, cubic meter, kilogram, or other relevant measure, according to the legal object harmed.[38] The value of the fine referred to in Chapter VI of Law No. 9,605 (articles 70–76) is fixed in the regulations of Law No. 9,605 and periodically adjusted, based on the rates established in the relevant legislation, with a minimum of $50,00 Brazilian Reals (about US$8.34) and a maximum of BRL$50.000.000,00 (about US$8,342,928).[39] The payment of a fine imposed by the states, municipalities, Federal District, or territories replaces the federal fine in the same case of incidence.[40]

IV. Law No. 9,613 of March 3, 1998

To prevent the use of the financial system for illicit activities, Law No. 9,613 of March 3, 1998, outlaws money laundering or the concealment of assets, rights, and values.[41]

[33] Id. art. 72, § 4.

[34] Id. art. 72, § 5.

[35] Id. art. 72, § 6.

[36] Id. art. 72, § 7.

[37] Id. art. 72, § 8.

[38] Id. art. 74.

[39] Id. art. 75. The regulation of Law No. 9,605 has yet to be enacted.

[40] Id. art. 76.

[41] Lei No. 9.613, de 3 de Março de 1998, https://perma.cc/C33Y-R8JL.

According to article 1 of Law No. 9,613, to conceal or disguise the nature, origin, location, disposition, movement or ownership of goods, rights or values arising, directly or indirectly, from a criminal offense is punishable by imprisonment for three to 10 years and a fine.[42]

Article 9 states that individuals and legal entities are subject to the obligations referred to in articles 10 and 11 of Law No. 9,613 if they have, "on a permanent or occasional basis, as their main or ancillary activity, whether cumulative or not" engaged in

> I - The raising, intermediation and application of financial resources from third parties, in national or foreign currency;
>
> II - The purchase and sale of foreign currency or gold as a financial asset or exchange instrument;
>
> III - The custody, issuance, distribution, liquidation, negotiation, intermediation or administration of securities.[43]

Article 10 outlines the responsibilities of individuals and entities mentioned in article 9 of Law No. 9,613 regarding customer identification, transaction records, and internal controls,[44] while article 11 outlines the obligations of individuals and entities, focusing on their responsibility to monitor and report suspicious transactions potentially linked to crimes defined by Law No. 9,613.[45]

Article 12 lists the administrative responsibilities and the sanctions that must be applied to the persons referred to in article 9 for failure to comply with the obligations provided for in articles 10 and 11 of Law No. 9,613.[46] The sanctions include a warning, pecuniary fine, and temporary disqualification, for a period of up to 10 years, from holding the position of administrator of the legal entities referred to in article 9, and revocation or suspension of the authorization to exercise the activity, operation or function.[47]

V. Law No. 12,846 of August 1, 2013

A. General Application

Law No. 12,846 of August 1, 2013, "provides for the objective administrative and civil liability of legal entities for carrying out acts against the public administration, whether national or foreign."[48] According to the sole paragraph of article 1, the provisions of Law No. 12,846 apply to *sociedades empresariais* (business companies) and *sociedades simples* (companies without a business

[42] Id. art. 1. Additional sections of article 1 criminalize other actions and define their punishments.

[43] Id. art. 9. The sole paragraph of article 9 further lists the individuals and legal entities that are subject to the obligations referred to in articles 10 and 11 of Law No. 9,613.

[44] Id. art. 10.

[45] Id. art. 11.

[46] Id. art. 12.

[47] Id. art. 12 (I–IV).

[48] Lei No. 12.846, de 1 de Agosto de 2013, art. 1, https://perma.cc/K7MP-V35X.

purpose), whether *personificadas* (incorporated) or not, "regardless of the form of organization or corporate model adopted, as well as to any foundations, associations of entities or people, or foreign companies, which have their headquarters, branch, or representation in Brazilian territory, created in fact or in law, even temporarily."[49]

Legal entities will be held objectively responsible, in the administrative and civil areas, for the harmful acts provided for in Law No. 12,846 carried out in their interest or benefit, exclusive or not.[50]

The liability of the legal entity does not exclude the individual responsibility of its directors or administrators or of any person, author, co-author, or participant in the illicit act.[51] The legal entity will be held responsible regardless of the individual liability of these natural persons.[52] Directors or administrators will only be liable for illicit acts to the extent of their culpability.[53]

The liability of the legal entity remains in the event of a contractual change, transformation, incorporation, merger, or corporate split.[54] In the event of merger and incorporation, the responsibility of the successor will be restricted to the obligation to pay a fine and full reparation for the damage caused, up to the limit of the assets transferred, and the other sanctions provided for in Law No. 12,846 resulting from acts and facts that occurred before the date of the merger or incorporation, "except in the case of simulation or obvious intent to defraud, duly proven."[55] The controlling, controlled, affiliated companies or, within the scope of the respective contract, the consortium members will be jointly and severally responsible for carrying out the acts detailed in Law No. 12,847, with such responsibility being restricted to the obligation to pay a fine and fully repair the damage caused.[56]

B. Harmful Acts

Article 5 states that, for the purposes of Law No. 12,846, acts harmful to public administration, national or foreign, are all those carried out by the legal entities mentioned in the sole paragraph of article 1 (as discussed in Section III.A, above), which violate national or foreign public assets, principles of public administration or international commitments assumed by Brazil.[57]

[49] Id. art. 1, sole para.

[50] Id. art. 2.

[51] Id. art. 3.

[52] Id. art. 3, § 1.

[53] Id. art. 3, § 2.

[54] Id. art. 4.

[55] Id. art. 4, § 1.

[56] Id. art. 4, § 2.

[57] Id. art. 5. Article 5 further defines acts harmful to public administration.

C. Sanctions

Article 6 states that, at the administrative level, the following sanctions will be applied to legal entities considered responsible for the harmful acts provided for in Law No. 12,846:

> I - fine, in the amount of 0.1% to 20% of the gross revenue of the last year prior to the initiation of the administrative process, excluding taxes, which will never be less than the advantage obtained, when estimation is possible; and
>
> II - extraordinary publication of the sentencing decision.[58]

The penalties will be applied *fundamentadamente* (based on law and evidence), isolated or cumulatively, according to the peculiarities of the specific case and the gravity and nature of the infractions.[59] The application of the sanctions provided for in article 6 will be preceded by the legal statement prepared by the Public Attorney's Office or by the legal assistance body, or equivalent, of the public entity.[60] The application of the sanctions provided for in article 6 does not exclude, under any circumstances, the obligation to fully repair the damage caused.[61]

In the case of section I of article 6, if it is not possible to use the criterion of the value of the legal entity's gross revenue, the fine will be from BRL6.000,00 (about US$1,001) to BRL60.000.000.00 (about US$10,million).[62]

The extraordinary publication of the sentencing decision will take place in the form of an extract from the sentence, at the expense of the legal entity, in mass media in the area of the offense and the legal entity's activities or, failing that, in a publication of national circulation as well as through the posting of a notice, for a minimum period of 30 days, at the establishment itself or at the place where the activity is carried out, in a manner visible to the public, and on the entity's website.[63]

According to article 7, the following must be considered when applying sanctions:

> I - the seriousness of the infraction;
>
> II - the advantage obtained or intended by the offender;
>
> III - the consummation or not of the infraction;
>
> IV - the degree of injury or danger of injury;
>
> V - the negative effect produced by the infraction;

[58] Id. art. 6.

[59] Id. art. 6, § 1.

[60] Id. art. 6, § 2.

[61] Id. art. 6, § 3.

[62] Id. art. 6, § 4.

[63] Id. art. 6, § 5.

> VI - the economic situation of the offender;
>
> VII - the cooperation of the legal entity to investigate the infractions;
>
> VIII - the existence of internal mechanisms and procedures for integrity, auditing and encouraging the reporting of irregularities and the effective application of codes of ethics and conduct within the legal entity;
>
> IX - the value of contracts maintained by the legal entity with the affected public body or entity;[64]

The parameters for evaluating mechanisms and procedures provided for in item VIII of article 7 will be established in a regulation issued by the federal executive branch.[65]

D. Administrative Accountability Process

The initiation and judgment of administrative proceedings to determine the liability of a legal entity are the responsibility of the highest authority of each body or entity of the executive, legislative and judiciary powers, which will act ex officio or upon request, subject to *contraditório e ampla defesa* (the right to adversarial proceedings and a full defense).[66]

The *personalidade jurídica* (legal responsibility) of the entity may be disregarded whenever it is abused to facilitate, cover up or conceal the practice of illegal acts detailed in Law No. 12,846, or to commingle assets, and all the effects of sanctions applied to the legal entity will extend to its administrators and partners with administrative powers, subject to adversarial proceedings and a full defense.[67]

E. Leniency Agreement

Article 16 states that the highest authority of each public body or entity may enter into a leniency agreement with the legal entities responsible for carrying out the acts defined in Law No. 12,846 if they effectively collaborate with investigations and the administrative process, provided that the collaboration results in the

- identification of others involved in the violation, when applicable, and
- rapid obtaining of information and documents that prove the illicit activity under investigation.[68]

[64] Id. art. 7.

[65] Id. art. 7, sole para. Decreto No. 11.129 de 11 de Julho de 2022, regulates Lei No. 12.846, de 1 de Agosto de 2013, https://perma.cc/EAQ7-JNGS.

[66] Lei No. 12.846, de 1 de Agosto de 2013, art. 8.

[67] Id. art. 14.

[68] Id. art. 16.

The leniency agreement may only be concluded if the following requirements are cumulatively met:

> I - the legal entity is the first to express its interest in cooperating in the investigation of the illicit act;
>
> II - the legal entity completely ceases its involvement in the infraction investigated from the date of proposing the agreement;
>
> III - the legal entity admits its participation in the illicit act and cooperates fully and permanently with the investigations and the administrative process, attending, at its own expense, whenever requested, all procedural acts, until their conclusion.[69]

Section 2 of article 16 determines that the conclusion of the leniency agreement will exempt the legal entity from the sanctions provided by section II of article 6 (extraordinary publication of the sentencing decision) and in section IV of article 19 (ban on receiving incentives, subsidies, grants, donations, or loans from public entities for up to five years) and will reduce the value of the applicable fine by up to two thirds.[70]

A leniency agreement does not exempt the legal entity from the obligation to fully repair the damage caused.[71] The leniency agreement will stipulate the necessary conditions to ensure the effectiveness of the collaboration and the useful result of the process.[72]

The effects of the leniency agreement will be extended to legal entities that are part of the same economic group, in fact and in law, provided they sign the agreement together, respecting the conditions established therein.[73]

The proposed leniency agreement will only become public after the respective agreement has been signed, except in the interest of investigations and the administrative process.[74] A rejected leniency agreement proposal will not constitute recognition of the practice of the illicit act investigated.[75]

In case of noncompliance with the leniency agreement, the legal entity will be prevented from entering into a new agreement for a period of three years, starting from the date the public administration becomes aware of the noncompliance.[76]

[69] Id. art. 16, § 1.

[70] Id. art. 16, § 2.

[71] Id. art. 16, § 3.

[72] Id. art. 16, § 4.

[73] Id. art. 16, § 5.

[74] Id. art. 16, § 6.

[75] Id. art. 16, § 7.

[76] Id. art. 16, § 8.

F. Judicial Liability

The responsibility of the legal entity in the administrative arena does not rule out the possibility of its judicial liability.[77]

Article 19 states that the Union, the states, the Federal District, and the municipalities, through their respective legal departments or judicial representation bodies and the Public Prosecutor's Office may file an action with a view to applying the following sanctions to legal entities whose actions violate article 5 of Law No. 12,846:

> I - loss of assets, rights or values that represent an advantage or benefit directly or indirectly obtained from the infraction, except for the rights of the injured party or third party in good faith;
>
> II - suspension or partial interdiction of its activities;
>
> III - compulsory dissolution of the legal entity;
>
> IV - prohibition of receiving incentives, subsidies, grants, donations or loans from public bodies or entities and from public financial institutions or those controlled by public authorities, for a minimum period of one and a maximum of five years.[78]

The compulsory dissolution of the legal entity will be determined when it is proven that legal personhood

- has been habitually used to facilitate or promote the practice of illicit acts, or
- has been established to hide or disguise illicit interests or the identity of the beneficiaries of the acts carried out.[79]

Sanctions may be applied individually or cumulatively.[80] The Public Prosecutor's Office, the Attorney General's Office, or the judicial representation body, or equivalent, of the public entity may request that the assets necessary to guarantee payment of the fine or full reparation for the damage caused be frozen, as provided for in article 7 of Law No. 12,846, subject to the rights of good faith third parties.[81]

In actions filed by the Public Prosecutor's Office, the sanctions provided for in article 6 may be applied, without prejudice to those provided for in Chapter VI (articles 18–21) of Law No. 12,846, where the competent authorities have failed to promote administrative accountability.[82]

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[77] Id. art. 18.

[78] Id. art. 19.

[79] Id. art. 19, § 1.

[80] Id. art. 19, § 3.

[81] Id. art. 19, § 4.

[82] Id. art. 20.

VI. Decree No. 11,129 of July 11, 2022

A. Preliminary Provisions

Decree No. 11,129 of July 11, 2022, regulates the objective administrative and civil liability of legal entities for carrying out acts against the public administration, national or foreign, as referred to in Law No. 12,846, of August 1, 2013.[83]

Law No. 12,846, of 2013, applies to harmful acts carried out:

- by a Brazilian legal entity against a foreign public administration, even if committed abroad,
- in whole or in part in the national territory or that produce or may produce effects there, or
- abroad, when committed against the national public administration.[84]

Legal entities that have their headquarters, branch, or representation in Brazilian territory, constituted in fact or in law, are subject to liability under the terms of the provisions of Law No. 12,846.[85]

The determination of the administrative responsibility of a legal entity, arising from the exercise of the sanctioning power of the public administration, will be carried out through a *Processo Administrativo de Responsabilização* (Administrative Accountability Process, PAR) or a leniency agreement.[86]

B. Administrative Responsibility

Chapter II of Decree No. 11,129 (articles 3–18) deals with administrative responsibility, including the preliminary investigation;[87] and PAR;[88] while Chapter III describes, among other things, administrative sanctions,[89] including fines.[90]

C. Fines

The fine provided for in section I of article 6 of Law No. 12,846, is based on the calculation of the gross revenue of the legal entity in the last year before establishment of the PAR, excluding taxes.[91] The values that will constitute the calculation basis may be determined, among other ways, through

[83] Decreto No. 11.129, de 11 de Julho de 2022, art. 1.

[84] Id. art. 1, § 1.

[85] Id. art. 1, § 2.

[86] Id. art. 2.

[87] Id. art. 3.

[88] Id. arts. 4–18.

[89] Id. art. 19.

[90] Id. arts. 20–27.

[91] Id. art. 20

> I - Sharing of tax information, in accordance with article 198 (§ 1)(II) of Law No. 5,172, of October 25, 1966 - National Tax Code;
>
> II - Accounting records produced or published by the accused legal entity, in Brazil or abroad;
>
> III - Estimate, considering any information about its economic situation or the state of its business, such as assets, share capital, number of employees, contracts, among others; and
>
> IV - Identification of the total amount of resources received by the nonprofit legal entity in the year prior to the establishment of the PAR, excluding taxes on sales.[92]

The factors provided for in articles 22 and 23 of Decree No. 11,129 will be assessed together for the harmful acts determined in the same PAR, considering, for the calculation of the fine, the consolidation of the gross revenues of all legal entities belonging in fact or in law to the same economic group that have committed the crimes defined in article 5 of Law No. 12,846, of 2013, or that contributed to its practice.[93]

Article 21 states that, if the legal entity has had no revenue in the last financial year before establishment of the PAR, the value of the last gross revenue calculated by the legal entity must be considered as the basis for calculating the fine, excluding taxes levied on sales, and its value will be updated until the last day of the fiscal year before establishment of the PAR.[94] In this case, the value of the fine will be determined observing the range of BRL$6.000,00 to BRL$60.000.000,00 and the minimum limit of the advantage obtained, when estimation is possible.[95]

According to article 22, the calculation of the fine begins with the sum of the values corresponding to the following percentages of the calculation base:

> I - Up to 4%, if there is a concurrence of harmful acts;
>
> II - Up to 3% for tolerance or awareness of people on the legal entity's governing or management body;
>
> III - Up to 4% in the case of interruption in the provision of public services, the execution of contracted work or the delivery of goods or services essential to the provision of public services or in the case of noncompliance with regulatory requirements;
>
> IV – 1% for the economic situation of the offender who presents general solvency and general liquidity indexes greater than one and net profit in the last financial year prior to the establishment of the PAR;
>
> V – 3% in the case of recurrence, thus defining the occurrence of a new infraction, identical or not to the previous one, classified as a harmful act by article 5 of Law No. 12,846, in less than

[92] Id. art. 20, § 1.

[93] Id. art. 20, § 2.

[94] Id. art. 21.

[95] Id. art. 21, sole para.

five years, counting from the publication of the judgment of the previous infraction; and

VI - In the case of contracts, agreements, adjustments and other similar instruments maintained or intended with the affected body or entities, in the years in which the harmful act was committed, the following percentages will be considered:

a) 1%, if the sum of the instruments totals a value greater than BRL$500.000,00;

b) 2%, if the sum of the instruments totals a value greater than BRL$ 1.500.000,00;

c) 3%, if the sum of the instruments totals a value greater than BRL$ 10.000.000,00;

d) 4%, if the sum of the instruments totals a value greater than BRL$50.000.000,00; or

e) 5%, if the sum of the instruments totals a value greater than BRL$ 250.000.000,00.[96]

In the case of a leniency agreement, the period set out in item V of article 22 will be counted from the date of execution until five years after the declaration of compliance.[97]

Article 23 states that the values corresponding to the following percentages from the calculation base will be subtracted from the result of the sum of the factors provided for in article 22:

I - Up to 0.5% in the case of noncompletion of the infraction;

II - Up to 1% in the case of:

a) Proof of spontaneous return by the legal entity of the advantage received and compensation for damages resulting from the harmful act; or

b) Nonexistence or lack of proof of advantage obtained and of damages resulting from the harmful act;

III - Up to 1.5% for the degree of collaboration of the legal entity with the investigation or investigation of the harmful act, regardless of the leniency agreement;

IV - Up to 2% in the case of voluntary admission by the legal entity of objective liability for the harmful act; and

V - Up to 5% in the case of proof that the legal entity has and implements an integrity program, according to parameters established in Chapter V (arts. 56, 57) of Decree No.11,129.[98]

[96] Id. art. 22.

[97] Id. art. 22, sole para.

[98] Id. art. 23.

The maximum percentages may only be awarded when the following conditions are met:

> I - In the hypothesis provided for in article 23 (II)(a), when the full refund of the amounts referred to therein occurs;
>
> II - In the hypothesis provided for in article 23 (IV), when admission occurs before the establishment of the PAR; and
>
> III - In the hypothesis provided for in article 23 (V), when the integrity plan is prior to the practice of the harmful act.[99]

The existence and quantification of the factors provided for in articles 22 and 23 must be determined in the PAR and evidenced in the commission's final report, which will also contain an estimate, whenever possible, of the values of the advantage obtained and the advantage sought.[100]

Article 25 establishes that, in any case, the final amount of the fine will be limited to

> I - Minimum, the highest value of the benefit obtained, when it is possible to estimate it, and:
>
> a) One tenth of 1% of the calculation base; or
>
> b) BRL$6.000,00, in the case provided for in article 21 of Decree No. 11,129; and
>
> II - Maximum, the smallest value between:
>
> a) Three times the value of the advantage intended or obtained, whichever is greater between the two values;
>
> b) 20% of gross revenue from the last year prior to the establishment of the PAR, excluding taxes on sales; or
>
> c) BRL$60.000.000,00, in the case provided in article 21, if it is not possible to estimate the value of the advantage obtained.[101]

The maximum limit will not be observed if the value resulting from the calculation of this parameter is lower than the result calculated for the minimum limit.[102] In the absence of all the factors provided for in articles 22 and 23 or when the result of addition and subtraction operations is equal to or less than zero, the value of the fine will correspond to the minimum limit established in article 25 of Decree No. 11,129.[103]

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[99] Id. art. 23, sole para.

[100] Id. art. 24.

[101] Id. art. 25.

[102] Id. art. 25, § 1.

[103] Id. art. 25, § 2.

The value of the advantage obtained or intended corresponds to the monetary equivalent of the proceeds of the illicit act, thus understood as the gains or benefits obtained or intended by the legal entity as a direct or indirect result of the practice of the harmful act.[104]

Section 1 of article 26 states that the value of the advantage obtained or intended may be estimated by applying, as appropriate, the following methodologies:

> I - By the total amount of revenue earned in the administrative contract and its amendments, deducting the legal costs that the legal entity proves to be effectively attributable to the contracted object, in the event of harmful acts carried out for the purposes of obtaining and executing the respective contracts;
>
> II - By the total value of expenses or costs avoided, including those of a tax or regulatory nature, and which would be attributable to the legal entity if the harmful act had not been carried out by the offending legal entity; or
>
> III - By the value of the additional profit earned by the legal entity resulting from action or omission in the performance of an act by the public power that would not have occurred without the practice of the harmful act by the offending legal entity.[105]

The values corresponding to undue advantages promised or paid to public agents or third parties related to them cannot be deducted from the estimated calculation referred to in section 1 of article 26 of Decree No. 11,129.[106]

With the signing of the leniency agreement, the applicable fine will be reduced according to the fraction agreed therein, observing the limit set out in section 2 of article 16 of Law No. 12,846.[107] The value of the fine may be lower than the minimum limit provided for in article 6 of Law No. 12,846, of 2013.[108]

If the signatory authority declares noncompliance with the leniency agreement due to a fault attributable to the collaborating legal entity, the full amount found before the reduction will be charged in accordance with the provisions of Section IV (article 29, collection of the fine applied) of Decree No. 11,129, deducting the fractions of the fine that has already been paid.[109]

[104] Id. art. 26.

[105] Id. art. 26, § 1.

[106] Id. art. 26, § 2.

[107] Id. art. 27.

[108] Id. art. 27, § 1.

[109] Id. art. 27, § 2.

VII. Law No. 4,729 of July 14, 1965

Law No. 4,729 of July 14, 1965, defines the crime of tax evasion, which consists of:

> I - Providing false statements or omitting, in whole or in part, information that should be provided to agents of legal entities under domestic public law, with the intention of exempting oneself, in whole or in part, from paying taxes, fees and any additional amounts due by law;
>
> II - Inserting inaccurate elements or omitting income or transactions of any nature in documents or books required by tax laws, with the intention of exempting oneself from paying taxes due to the public treasury;
>
> III - Altering invoices and any documents related to commercial transactions with the purpose of defrauding the public treasury;
>
> IV - Providing or issuing gratuitous documents or altering expenses, increasing them, with the purpose of obtaining a deduction of taxes due to the public treasury, without prejudice to applicable administrative sanctions.
>
> V - Demanding, paying or receiving, for oneself or for the taxpayer who is the beneficiary of the payment, any percentage of the deductible or deductible portion of the income tax as a tax incentive.[110]

The punishment for the crime of tax evasion is imprisonment for six months to two years and a fine of two to five times the amount of the tax.[111]

In the case of a legal entity, criminal liability for the infractions provided in Law No. 4,729 will be held by all those who, directly or indirectly linked to it, permanently or occasionally, have practiced or contributed to the practice of tax evasion.[112]

VIII. Law No. 8,137 of December 27, 1990

Law No. 8,137 of December 27, 1990, defines crimes against the tax and economic order and against consumer relations.[113]

A. Crimes Against the Tax Order

According to article 1, it constitutes a crime against the tax order "to suppress or reduce taxes, or social contributions and any accessory," through the following conduct:

[110] Lei No. 4.729, de 14 de Julho de 1965, art. 1, https://perma.cc/7CA8-ZUBW.

[111] Id.

[112] Id. art. 6.

[113] Lei No. 8.137, de 27 de Dezembro de 1990, https://perma.cc/JY47-8PYL.

> I - Omitting information or making a false statement to the tax authorities;
>
> II - Defrauding tax inspections by inserting inaccurate elements or omitting any transaction of any nature in a document or book required by tax law;
>
> III - Falsifying or altering a tax invoice, bill, duplicate, sales note, or any other document related to a taxable transaction;
>
> IV - Preparing, distributing, providing, issuing or using a document that one knows or should know to be false or inaccurate;
>
> V - Denying or failing to provide, when required, a tax invoice or equivalent document related to the sale of goods or provision of services, effectively carried out, or providing it in disagreement with the legislation.[114]

The punishment for the crime against the tax order is imprisonment for two to five years and a fine.[115] The following constitute crimes of the same nature with a punishment of imprisonment from six months to two years, and a fine:

> I - Making a false statement or omitting a statement about income, assets or facts, or using other fraud, to fully or partially avoid paying taxes;
>
> II - Failing to collect, within the legal term, the amount of tax or social contribution, discounted or charged, in the capacity of a passive subject of an obligation and which should be collected for the public coffers;
>
> III - Demanding, paying or receiving, for oneself or for the beneficiary taxpayer, any percentage of the deductible or deductible portion of tax or contribution as a tax incentive;
>
> IV - Failing to apply, or applying in disagreement with the statute, tax incentives or portions of tax released by a development agency or entity;
>
> V - Using or disclosing a data processing program that allows the passive subject of the tax obligation to have accounting information other than that which is, by law, provided to the public treasury.[116]

B. Crimes Against the Economic Order

The following constitute crimes against the economic order with a punishment of imprisonment from two to five years and a fine:

> I - Abusing economic power, dominating the market or eliminating, in whole or in part, competition through any form of adjustment or agreement between companies;

[114] Id. art. 1.

[115] Id.

[116] Id. art. 2.

II - Forming an agreement, convention, arrangement, or alliance between suppliers, aiming at:

a) Artificially fixing prices or quantities sold or produced;

b) Regionalized control of the market by a company or group of companies;

c) Controlling, to the detriment of competition, the distribution network, or suppliers.[117]

C. Crimes Against Consumer Relations

The following constitute crimes against consumer relations with a punishment of imprisonment from two to five years, or a fine:

I - To favor or prefer, without just cause, a buyer or customer, except for systems of delivery to consumers through distributors or resellers;

II - To sell or offer for sale goods whose packaging, type, specification, weight or composition is not in accordance with legal requirements, or that do not correspond to their respective official classification;

III - To mix different types of goods and merchandise, to sell or offer them for sale as pure; to mix different types of goods and merchandise of unequal quality to sell or offer them for sale at a price established for the others, which is higher cost;

IV - To fraudulently price by means of:

a) Alteration, without essential or quality modification, of elements such as the name, external sign, brand, packaging, technical specification, description, volume, weight, painting or finish of a good or service;

b) Division into parts of a good or service, usually offered for sale as a whole;

c) Bundling of goods or services, commonly offered for sale separately;

d) Notice of inclusion of input not used in the production of the good or in the provision of the services;

V - Increasing the amount charged for installment sales of goods or services, by demanding a commission or illegal interest rate;

VI - Withholding inputs or goods, refusing to sell them to anyone who intends to buy them under the conditions publicly offered, or retaining them for the purpose of speculation;

VII - Misleading the consumer or user, by means of false or misleading indication or statement about the nature or quality of the good or service, using any means, including the broadcasting or advertising;

VIII - Destroying, rendering useless or damaging raw materials or goods, in order to cause a price increase, for one's own benefit or that of third parties;

[117] Id. art. 4.

> IX - Selling, keeping in storage for sale or displaying for sale or, in any way, delivering raw materials or goods, in conditions unfit for consumption.[118]

D. Fines

In the crimes defined in articles 1 to 3 of Law No. 8,137, the fine must be set between a 10-day and a 360-days fine, as necessary and sufficient to disapprove and prevent the crime.[119]

If the judge, considering the illicit gain and the financial situation of the defendant, finds the financial punishments provided for in Law No. 8,137 to be insufficient or excessively onerous, the judge may reduce them by up to a tenth or increase them tenfold.[120]

Anyone who, in any way, including through a legal entity, contributes to the crimes defined in Law No. 8,137 must be subject to the punishments imposed thereon, to the extent of their culpability.[121]

Circumstances that may increase the penalties provided for in articles 1, 2, and 4 to 7 of Law No. 8,137 by one third to one half include

- the commission of crimes that cause serious harm to the community,
- the commission of crimes by public servants in the exercise of their duties, and
- the commission of crimes by providers of goods or services essential to life or health in relation to their provision.[122]

[118] Id. art. 7.

[119] Id. art. 8.

[120] Id. art. 10.

[121] Id. art. 11.

[122] Id. art. 12.

Canada

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SUMMARY Canada has a number of laws that impose criminal liability on companies and corporations including the Criminal Code, Competition Act, Environmental Protection Act, and the Income Tax Act, amongst other laws. Corporate criminal conduct can result in fines and/or penalties, probation orders for restitution for loss and/or damage, implementation of compliance programs, and remediation or deferred prosecution agreements, amongst other measures.

I. Introduction

Canada has a number of laws that impose criminal liability on companies and corporations including the Criminal Code, Competition Act, Environmental Protection Act, and the Income Tax Act, amongst other laws. Under the Interpretation Act,[1] the word "person" in acts of parliament "or any word or expression descriptive of a person, includes a corporation."[2] Corporate criminal conduct can result in fines and/or penalties, probation orders for restitution for loss and/or damage, implementation of compliance programs, remediation or deferred prosecution agreements, amongst other measures.

II. Canada's Criminal Code

In Canada, most federal criminal offenses are stipulated in the Criminal Code of Canada.[3] Though it contains most federal criminal law, it does not include all federal crimes which are contained in other federal laws "such as the Firearms Act, the Controlled Drugs and Substances Act, and the Youth Criminal Justice Act."[4] Section 2 of the Criminal Code defines a "person" to include an "organization."[5] The code defines "organization" to include "body corporate" and a "company."[6] It also defines "senior officer" to mean "a representative who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of the organization's activities and, in the case of a body corporate, includes a director, its chief

[1] Interpretation Act, R.S.C., 1985, c. I-21, https://perma.cc/859R-6F7L.

[2] Id. § 35(1).

[3] Criminal Code, R.S.C., 1985, c. C-46, https://perma.cc/G3LV-JUZQ.

[4] *The* Criminal Code *of Canada*, Justice Canada, https://perma.cc/RMC9-YE5T.

[5] Criminal Code, § 2.

[6] Id.

executive officer and its chief financial officer."[7] "Representative" in respect of an organization means a "director, partner, employee, member, agent or contractor of the organization."[8]

The code has separate set of rules between crimes committed by organizations requiring the Crown to prove negligence and crimes that require proof of knowledge or intent. Section 22.1 sets out the rules required to prove negligence, as follow:

> [i]n respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence if
> a) acting within the scope of their authority
> i. one of its representatives is a party to the offence, or
> ii. two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; and
> b) the senior officer who is responsible for the aspect of the organization's activities that is relevant to the offence departs — or the senior officers, collectively, depart — markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence.[9]

Section 22.2 sets outs the rules to prove other offenses committed by a corporation when a senior officer becomes a party to a crime under the following three circumstances:

> [i]n respect of an offence that requires the prosecution to prove fault — other than negligence — an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers
> a) acting within the scope of their authority, is a party to the offence;
> b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or
> c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.[10]

Corporations "cannot be imprisoned so the Criminal Code provides for fines when corporations are convicted of crimes."[11] Under section 735(1), in the case of less serious summary convictions, the code provides for a fine of up to $100,000 (about US$69,810) for corporations. For more serious, indictable offenses, "the Code already provides no limit on the fine that can be imposed on an

[7] Id.

[8] Id.

[9] Id. § 22.1.

[10] Id. § 22.2.

[11] *A Plain Language Guide: Bill C-45 - Amendments to the Criminal Code Affecting the Criminal Liability of Organizations*, Gov't of Canada, https://perma.cc/R3ML-7WCD.

organization."[12] The fine amount is left to the discretion of the court,[13] but when imposing a sentence, the court must take into account a number of factors stipulated under section 718.21 of the code.[14] Section 732.1(3.1) allows the court to impose probation orders on an organization that can include restitution ("make restitution to a person for any loss or damage that they suffered as a result of the offence") or establishing compliance programs ("policies, standards and procedures to reduce the likelihood of the organization committing a subsequent offence.")[15] PART XXII.1 allows for a remediation agreement regime to defer prosecution for specific economic crimes such as fraud and bribery if it is in the public interest and appropriate in the circumstances. The remediation agreement is an agreement between the prosecutor and organization that may include provisions to implement measures to correct or prevent future situations, repair harm to victims through reparations and restitution, amongst conditions.[16]

III. Canada's Competition Act

Canada's competition law, the Competition Act,[17] includes criminal and civil provisions that apply to corporations. The criminal offenses are under Parts VI and VII of the law and include "bid-rigging, conspiracy (price-fixing, market allocation/division, supply/output restriction and wage-fixing and no-poaching agreements between employers), deceptive telemarketing, drip pricing, foreign directed conspiracies, some misleading advertising and pyramid selling schemes."[18] Some offenses, like conspiracy, are punishable by a fine at the discretion of the court while those offenses that are hybrid in nature allow for discretionary fines on indictment or a maximum fine on summary conviction. Double ticketing is fined up to $10,000 (about US$6,981) and more serious offenses like false and misleading representations, deceptive telemarketing, and dip pricing can result in fines up to $200,000 (about US$139,620).[19] The law also allows for private right of action for damages for violation of certain criminal offenses.[20]

[12] Id.

[13] *Recognising the Principle of Corporate Criminal Liability and Applicable Penalties*, International Federation for Human Rights (FIDH), https://perma.cc/SW34-7UUG.

[14] Id.

[15] Id. § *732.1(3.1).*

[16] *Remediation Agreements and Orders to Address Corporate Crime*, Dep't of Just. Canada, https://perma.cc/LX7Y-XCKH.

[17] Competition Act, R.S.C., 1985, c. C-34, https://perma.cc/7ZGZ-B66S.

[18] *Sweeping Canadian Competition Act Amendments (Bill C-59) Passed June 20, 2024,* Steve Szentesi Law Professional Corporation, https://perma.cc/4T5W-ZPUG.

[19] *Penalties and Remedies for Non-compliance*, Competition Bureau Canada, https://perma.cc/PFE7-7A83.

[20] Marc Crandall et al., *New Private Competition Law (Anti-trust) Remedies in Canada,* Gowling WLG (Aug. 13, 2024), https://perma.cc/X6ZC-AJUN.

IV. Environmental Protection Act

Canada's Environmental Protection Act (CEPA) [21] imposes criminal liability fines for contravening certain provisions or committing designated offenses under the law. The minimum and maximum fine ranges depend on whether the company is being prosecuted on indictment or summary conviction, whether it is the first or second/subsequent offense, and whether or not the corporation is a "small revenue corporation."[22] Lower ranges of fines are applied to "small revenue corporations" which are "considered to be corporations with revenues under $5,000,000 [about US$3.5 million] in the 12 months preceding the offence in question."[23]

The law also includes an environmental protection compliance order (EPCO) regime that allows "enforcement officers to handle offences without using the court system. Its purpose is to restore an offender to compliance with the CEPA 1999 as quickly as possible."[24] The law also provides for environmental protection alternative measures (EPAMs) which are "agreements that are negotiated in order to return a violator to compliance" and are "used after a charge has been laid, and before a court trial."[25] Section 291 grants the courts additional powers to order remedial, preventative, and compliance actions in addition to the punishments for committing offenses under the law.

V. Income Tax Act

Canada's Income Tax Act [26] imposes penalties and fines for violations of its provisions. Corporations can be held criminally liable for offenses under the Income Tax Act for tax evasion, fraud, and other tax-related offenses. The law can impose fines and civil penalties on corporations for breaches of criminal offenses. "In the case of corporations, an officer, director, or agent of the corporation who authorized, assented to, acquiesced in, or participated in the commission of the offence is also liable to prosecution."[27]

VI. Anti-corruption Law

The Corruption of Foreign Public Officials Act[28] has offenses, including bribery, that apply to corporations. Though it does not stipulate fines in the law itself, the discretionary power of courts

[21] Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, https://perma.cc/XJ23-YK5W.

[22] Id. §§ 272 & 272.1; *Fine Regime under the Environmental Enforcement Act*, Gov't of Canada, https://perma.cc/63BS-5HJQ.

[23] Fine Regime under the Environmental Enforcement Act, supra note 22.

[24] *Canadian Environmental Protection Act: Environmental Protection Compliance Orders*, Gov't of Canada, https://perma.cc/2PDT-8ABV.

[25] *Canadian Environmental Protection Act and Environmental Protection Alternative measures,* Gov't of Canada, https://perma.cc/3JV3-RFC5.

[26] Income Tax Act (R.S.C., 1985, c. 1, 5th Supp., https://perma.cc/67DR-V5HG.

[27] *International Guide on Criminalization of Tax Offenses,* Baker McKenzie (April 2023), https://perma.cc/4WXC-R4W5

[28] Corruption of Foreign Public Officials Act, S.C. 1998, c. 34, https://perma.cc/U5ZU-KGYT.

to impose fines for offenses under section 735(1) of the Criminal Code can be used to punish corporations.[29]

VII. Proceeds of Crime (Money Laundering) and Terrorist Financing Act

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act[30] also contains offenses that apply to "entities" which means "a body corporate, a trust, a partnership, a fund or an unincorporated association or organization."[31] Part 5 of the act deals with offenses that include hybrid offenses allowing for fines for entities.

VIII. Financial/ Securities Related Crimes

Securities-related offenses are found in provincial securities legislation, which include monetary penalties and fines for offenses, and in the federal Criminal Code, particularly in Part X ("Fraudulent Transactions Relating to Contracts and Trade") of the code. Some of the offenses include the crimes of fraud, insider trading, tipping, wash-trading, gaming in stocks, and making a false prospectus, amongst other crimes.[32] See Part II of this report on Canada's Criminal Code and its imposition of fines.

[29] Criminal Code, § 735(1).

[30] Proceeds of Crime (Money Laundering) and Terrorist Financing Act (S.C. 2000, c. 17), https://perma.cc/Z7DR-WYMZ.

[31] Id. § 2(1).

[32] Blakes, *A Primer For In-house Counsel: Corporate And Financial Crimes: Part 5 Of 6 Securities-related Offences* 6-8 (2018), https://perma.cc/VRK2-VCG3.

Cayman Islands

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SUMMARY The laws of the Cayman Islands define "persons" as including corporations. Criminal liability is imposed on corporations in the Penal Code, Anti-Money Laundering Law, Anti-Corruption Law, Environmental Law, and Securities Investment Business Law. The Penal Code imposes punishments such as fines, compensation for injury caused by an offense, and forfeiture, among other punishments. Most laws include a provision that exposes corporate officers to vicarious liability for the crimes of the corporation.

I. Introduction

The Cayman Islands Interpretation Law states that a "person" in any law, regulations, rule, etc., includes "any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons."[1]

II. Criminal Law

The Penal Code is the main body of criminal law in the Cayman Islands.[2] The code states that "person," "owner," and "other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used include the Crown."[3] Corporations are punished through fines, and criminal liability can be imposed on company officers for certain fraud-related offenses by the company.[4] Other punishments stipulated in the code that may apply to companies are compensation for injury caused by an offense, forfeiture, or "any other punishment provided by this or any other law."[5]

III. Combating Money Laundering and the Financing of Terrorism

In the Cayman Islands, a number of laws and regulations provide the legal framework for combating money laundering and the financing of terrorism. These include the

- Anti-Corruption Act (as amended);
- Anti-Money Laundering Regulations (as amended, the **AML Regulations**);

[1] Interpretation Law (Cap. 70) (1995 Revision), https://perma.cc/CCW2-B2VB.

[2] Penal Code (2024 Revision), https://perma.cc/P3B5-WC85.

[3] Id. § 3.

[4] Id. § 256.

[5] Id. § 22.

- Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands (February 2024) (as amended, the **Guidance Notes**);
- Misuse of Drugs Act (2017 Revision);
- Penal Code (as amended);
- Proceeds of Crime Act (as amended) (the **PCA**);
- Proliferation Financing (Prohibition) Act (2017 Revision) (the **PFPA**); and
- Terrorism Act (as amended) (the **Terrorism Act**)[6]

Part 5 of the Proceeds of Crime Act covers money laundering and other criminal conduct. It applies to corporations and also includes a provision explicitly imposing vicarious criminal liability on company officers who consent to the conduct or negligently fail to prevent it.[7]

IV. Anti-Corruption Law

The main anti-corruption law is the Anti-Corruption Act,[8] which applies to corporations. It also has a provision on the vicarious liability of corporate officers.[9] Many offenses under the law can incur both fines and imprisonment. Section 44 provides for a general penalty that states that "[e]very person convicted of an offense under this Act for which no penalty is specifically provided shall be liable to a fine of five thousand [Caymanian, KYD] dollars [about US$6,040]."[10]

V. Environmental Law

Cayman Island's main environmental law is the National Conservation Law, 2013.[11] It defines "person" to include "any corporation, either aggregate or sole, and any club, society, association, entity or other body, of one or more persons."[12] Part 6 of the law deals with penalties and enforcement, and it also includes a provision called "offenses by corporations," which imposes vicarious liability on corporate officers.[13] Contraventions of the law and conviction of offenses related to protected areas and protected species can result in a fine of KYD500,000 (about US$604,400).[14]

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[6] *An Introduction to the Cayman AML/CFT/CPF Regime*, Mourant (Aug. 8, 2024), https://perma.cc/9JEA-DR89.

[7] Proceeds of Crime Act (2024 Revision) § 142(1), https://perma.cc/CV6G-5E8Y.

[8] Anti-Corruption Act (2024 Revision), (LG4, S7), https://perma.cc/7UMA-TU3M.

[9] Id. § 51(1).

[10] Id. § 44.

[11] National Conservation Law, 2013, https://perma.cc/6HNH-S948.

[12] Id. § 2.

[13] Id. § 36.

[14] Id. § 38(1).

VI. Securities Crimes

The Securities Investment Business Law regulates the conduct of persons carrying on securities investment business, including business managers, marketers, and auditors.[15] Part IV of the law deals with offenses related to the creation of false or misleading marketing and insider dealing. Section 35 makes a person liable "on summary conviction, to a fine of four thousand dollars [about US$4,800] and to imprisonment for one year" or "on conviction on indictment, to a fine of ten thousand dollars [about US$12,100] and to imprisonment for seven years."[16] Section 39 states that "[a] person who contravenes any provision or requirement of this Law for which no offence is specifically created commits an offence and is liable on summary conviction to a fine of four thousand dollars."[17] The law also provides that, when a corporation violates its provisions or the regulations issued under it with the consent or through the negligence of a person acting as a senior officer, "that person as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly."[18]

VII. Taxation Law

In the Cayman Islands, "Corporate income, capital gains, payroll, or other direct taxes are not imposed on corporations."[19]

[15] Securities Investment Business Law (2020 Revision), https://perma.cc/4NTZ-WAHX.

[16] Id. § 35.

[17] Id. § 39.

[18] Id. § 37(1).

[19] *Cayman Islands Corporate - Taxes on Corporate Income,* PwC, https://perma.cc/RJ6M-9NW2.

China

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SUMMARY In China, companies can be held criminally liable in the event of criminal conduct, but only for entity crimes specifically set out in the Criminal Law. Companies can also be punished by administrative penalties under a number of other laws. In recent years, Chinese regulators have imposed some high administrative fines to crack down on corporate misconduct.

Although, under the Criminal Law, the only form of criminal penalty for a company is a fine, the directly responsible individuals can be punished by both pecuniary and non-pecuniary penalties. Administrative penalties that can be imposed on companies are more diverse and include warnings, administrative fines, confiscation of illegal properties or illegal gains, suspension or revocation of licenses, and production or business suspension.

The Criminal Law generally does not specify the minimum and maximum amounts of fines for companies or the methodology for calculating the fines, leaving these decisions to the court's discretion. Unlike criminal fines, the range of administrative fines for specific corporate misconduct is usually spelled out in the relevant laws.

I. Introduction

In the People's Republic of China (PRC or China), companies can be held criminally liable in the event of criminal conduct, but only for entity crimes specifically set out in the Criminal Law.

Two parts comprise China's Criminal Law: Part I, "General Provisions" and Part II, "Specific Provisions." Part I includes two general provisions on entity crimes. In Part II, seven out of 10 chapters contain entity crimes, while most entity crimes are set out in Chapter III, "Crimes of Disrupting Order of Socialist Market Economy" and Chapter VI, "Crimes of Obstructing Administration of Public Order." Currently, the Criminal Law provides over 160 entity crimes.[1]

For their misconduct that does not meet the threshold for criminal penalties, companies can be punished by administrative penalties under a number of other laws, including those relating to securities and capital markets, cybersecurity, money laundering, environmental protection, and taxation. In recent years, Chinese regulators have imposed high administrative fines to crack down on corporate misconduct. For instance, in May 2024, the China Securities Regulatory Commission (CSRC) fined real estate group Evergrande's Hengda Renminbi (RMB) 4.175 billion yuan (about US$572 million) for fraudulent bond issuance and illegal information disclosure in

[1] Guoxiang Sun, 从实践到理论：单位犯罪制度的发展历程与未来展望 [*From Practice to Theory: Development History and Future Prospects of Entity Crimes*] 2 China J. Applied Juris. 119–20 (2024); Lize Nie, 单位犯罪新论 [*New Discussion on Entity Crimes*] 2–4 (2018).

accordance with the Securities Law.[2] In September 2024, the "Big Four" accounting firm PwC's auditing unit in mainland China was sanctioned with fines totaling RMB441 million yuan (about US$60 million) and a six-month business suspension over the firm's audit of Evergrande. The PwC's penalties were respectively imposed by the CSRC in accordance with the Securities Law and the Ministry of Finance in accordance with the Law on Certified Public Accountants.[3]

II. Types of Liability

A. Criminal Liability

Article 30 under Part I of the Criminal Law specifies the types of entities that can be charged with entity offenses, which include companies, enterprises, state-owned nonprofit entities, state organs, and social organizations.[4] Article 31 states that, when a company commits a crime, the company may incur a fine, and the persons who are directly in charge and other persons who are directly liable for the crime (directly responsible individuals) may also bear criminal liability, unless otherwise provided by law.[5]

While the only form of criminal penalty under the Criminal Law that can be imposed on a company is a fine, the directly responsible individuals can be punished by pecuniary and non-pecuniary penalties. Criminal penalties in the Criminal Law include principal penalties and supplementary penalties.[6] Principal penalties include public surveillance, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty.[7] Supplementary punishments, which may be imposed with or without principal penalties, include a fine, deprivation of political rights, and confiscation of property.[8]

B. Administrative Liability

Administrative penalties that can be imposed on companies are more diverse and include not only administrative fines, but also warnings, confiscation of illegal properties or illegal gains, suspension or revocation of licenses, and production or business suspension. Under the PRC Law on Administrative Penalties, a citizen, legal person, or any other organization that violates the

[2] CSRC, *Administrative Punishment Decision (Evergrande Real Estate and Its Responsible Personnel)*, [2024] No. 49 (May 21, 2024), https://perma.cc/2972-YB2P (in Chinese).

[3] *CSRC Punishes PwC, the Audit Firm of Evergrande Real Estate in Accordance with Law*, CSRC (Sept. 13, 2024), https://perma.cc/8NC8-MUB3 (in Chinese); *CSRC Administrative Punishment Decision (PwC, Zhenfeng Tang, Liwei Zhu, Xiujuan Cai)*, [2004] No. 98 (Sept. 6, 2024), https://perma.cc/733A-RN99 (in Chinese); *Ministry of Finance Administrative Punishment Decision*, Cai Jian Fa [2024] No. 304 (Sept. 6, 2024), https://perma.cc/5MYL-7EFQ (in Chinese).

[4] PRC Criminal Law (adopted by National People's Congress (NPC) on July 1, 1979, revised Mar. 14, 1997, as amended Dec. 16, 2020) art. 30, Gazette of the PRC National People's Congress Standing Committee (NPCSC), 2021 Special Edition: Criminal Law, https://perma.cc/9385-Y475 (in Chinese).

[5] Id. art. 31.

[6] Id. art. 32.

[7] Id. art. 33.

[8] Id. art. 34.

administrative order may incur an administrative penalty.[9] Administrative penalties under the Law on Administrative Penalties include the following types:

- warnings or criticism in a circulated notice;
- fines, confiscation of illegal gains, or confiscation of unlawfully obtained property or objects of value;
- temporary suspension of a permit, lowering of the qualification level, or rescission of a permit;
- restricting the production and business activities, ordering the suspension of production or business, ordering closure, or limiting practice in a field;
- administrative detention; and
- other administrative penalties as prescribed by laws and administrative regulations.[10]

C. Civil Liability

Under the PRC Civil Code, a legal person independently assumes civil liability to the extent of all of its assets.[11] If the legal representative of a legal person causes damage to others while performing duties, the civil liability will be assumed by the legal person. After assuming the liability, the legal person has the right to indemnification against its legal representative who is at fault.[12]

III. Penalties

The Criminal Law generally does not specify the minimum and maximum amounts of fines for companies or the methodology for calculating the fines, leaving these decisions to the court's discretion. There are exceptions where the fines are calculated within a specific percentage range of the amount involved in the crime (discussed below in Section III.E, Financial Fraud).

This report surveys criminal penalties for specific types of corporate misconduct and, where available, examples of the applicable administrative penalties. Unlike criminal fines, the range of administrative fines for specific corporate misconduct is usually spelled out in relevant laws.

A. Anti-Money Laundering and Combating the Financing of Terrorism

According to article 191 of the Criminal Law, an individual committing the crime of money laundering is publishable by imprisonment for up to 10 years and a fine, if the circumstances are

[9] PRC Law on Administrative Penalties (adopted by the NPCSC on Mar. 17, 1996, as revised Jan. 22, 2021) art. 4, https://perma.cc/BXV5-39XB (in Chinese).

[10] Id. art. 9.

[11] PRC Civil Code (adopted by NPC on May 28, 2020, effective Jan. 1, 2021) art. 60, https://perma.cc/5XQ3-NVWF (in Chinese), https://perma.cc/9ECH-CU6V (English translation).

[12] Id. art. 62.

serious. A company can incur a fine for committing this crime, and the directly responsible persons can incur the same penalties as those for individual offenders.[13]

According to article 120a of the Criminal Law, an individual committing the crime of financing terrorism is publishable by more than five years' imprisonment and a fine or confiscation of property, when the circumstances are serious. A company that commits this crime may incur a fine, and the directly responsible persons may face the same penalties as those for individual offenders.[14]

The PRC Anti-Money Laundering Law was passed in 2006 and revised in November 2024.[15] Chapter 6 of the law prescribes legal responsibilities for financial institutions, specific nonfinancial institutions, and other companies and individuals who violate the law.[16] Under article 55 of the newly revised Anti-Money Laundering Law, for example, financial institutions that violate specified provisions of the law, resulting in criminal proceeds and gains being disguised or facilitating terrorism financing, could be subject to a fine of up to Renminbi (RMB) 10 million (about US$1.37 million) or 20% to 200% of the amount of the money involved in the crime. If the circumstances are serious, the authorities may impose other penalties such as restricting or prohibiting the institution from engaging in relevant business activities, ordering it to suspend business for rectification, or revocation of its business licenses.[17]

B. Anti-Corruption

According to article 391 of the Criminal Law, which was revised by the most recent Amendment XII to the Criminal Law in December 2023, bribing an entity, such as a state organ or a state-owned company, is punishable by up to seven years imprisonment and a fine. A company that commits this crime may be fined, and the directly responsible persons could incur the same penalty.[18]

Article 393 provides penalties for an entity giving bribes to a state functionary, such as civil servants, certain state-owned enterprise employees, and certain employees of public institutions. According to this article, as amended by Amendment XII, the entity could be fined, and the directly responsible individuals could face up to 10 years' imprisonment.[19]

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[13] Id. art. 191.

[14] Id. art. 120-1.

[15] PRC Anti-Money Laundering Law (adopted by the NPCSC on Oct. 30, 2006, as revised Nov. 8, 2024), https://perma.cc/Y7ES-EAG7 (in Chinese).

[16] Id. ch. 6.

[17] Id. art. 55.

[18] Amendment XII to the Criminal Law (adopted by the NPCSC on Dec. 29, 2023, effective Mar. 1, 2024) art. 6, https://perma.cc/5EMN-MEF3 (in Chinese); Criminal Law art. 391.

[19] Amendment XII to the Criminal Law art. 7; PRC Criminal Law art. 393.

C. Tax Evasion

Under article 211 of the Criminal Law, a company that commits any tax collection crimes may face a fine, and the directly responsible persons may be punished in accordance with the relevant provisions of the Criminal Law governing the respective crimes.[20]

The Law on the Administration of Tax Collection provides for administrative penalties for the tax-evading activities of taxpayers, which include entities and individuals.[21] Under this law, tax authorities may seek unpaid or underpaid taxes and late payment fines while concurrently imposing a fine of 50% to 500% of the unpaid or underpaid taxes.[22]

D. Environmental Law

Article 346 of the Criminal Law states that a company committing any of the environmental crimes listed in the Criminal Law may incur a fine, and the directly responsible persons may be punished in accordance with the relevant provisions governing these crimes.[23]

Companies can incur administrative penalties, including high fines, in accordance with the environmental laws. The Water Pollution Prevention and Control Law, for example, requires enterprises, public institutions, and other manufacturers and operators to obtain relevant licenses in order to discharge specified water pollutants. Violators of this provision can be punished with a fine of RMB100,000 to one million yuan (about US$13,700 to US$137,000), and, if the circumstances are serious, the polluter may be ordered to suspend or even close the business.[24]

E. Financial Fraud

Companies can be held criminally liable for certain offenses stipulated in the Criminal Law under Part II, Chapter III, "Crimes of Disrupting Order of Socialist Market Economy," Section 5, "Crimes of Financial Fraud."[25] Under article 200, for example, a company that commits the crime of financial instrument fraud or the crime of letter of credit fraud may incur a fine, and the directly responsible persons may be punished by criminal detention, fixed-term imprisonment, or even life imprisonment and a fine.[26]

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[20] Id. art. 211.

[21] PRC Law on the Administration of Tax Collection (adopted by the NPCSC on Sept. 4, 1992, last amended Apr. 24, 2015) art. 4, https://perma.cc/KLT8-EFL9 (in Chinese).

[22] Id. art. 63.

[23] Id. art. 346.

[24] PRC Water Pollution Prevention and Control Law (adopted by the NPCSC on May 11, 1984, as amended June 27, 2017) arts. 21, 83, https://perma.cc/2KEM-M7G2 (in Chinese), https://perma.cc/SPU2-6HRR (English translation).

[25] PRC Criminal Law pt. II, ch. III, § 5.

[26] Id. art. 200.

F. Investment Fraud

Companies can be held criminally liable for a number of offenses stipulated in the Criminal Law under Part II, Chapter III, Section 3, "Crimes of Disrupting Order of Administration of Companies and Enterprises."[27] Under article 159 of this section, for example, a sponsor or shareholder of a company who, in violation of the Company Law, makes a false capital contribution or withdrawal of the contributed capital after the incorporation of the company is punishable by up to five years' imprisonment, a fine of 2% to 10% of the capital contribution, or both. If the sponsor or shareholder is a company, the company may incur a fine, and the directly responsible individuals may be sentenced to up to five years' imprisonment.[28]

Although the Criminal Law generally does not specify the amounts of fines for companies or the methodology for calculating the fines, article 160 under this section is exceptional.[29] Article 160 addresses the crime of fraudulent issuance of securities, which can result in a fine of 20% to 100% of the illegally raised funds for companies and prison time and a fine for the directly responsible individuals.[30]

The PRC Securities Law, which was first passed in 1998 and most recently revised in 2019, sets forth administrative penalties, including high fines, for corporate misconduct in issuing and trading of stocks, corporate bonds, depository receipts, and other securities lawfully recognized in China.[31] In the Evergrande case, for example, Hengda was fined primarily for fraudulent bond issuance under article 181 of the Securities Law, which can result in a fine of 10% to 100% of the illegally raised funds for a company and a separate fine of up to RMB20 million for its controlling shareholder or actual controller of the company.[32] In accordance with this article, the CSRC fined Hengda 20% of the illegally raised funds and imposed fines on the founder of Evergrande and other directly responsible persons.[33]

[27] PRC Criminal Law pt. II, ch. III, § 3.

[28] Id. art. 159.

[29] Another exception is article 190 on the crime of evading foreign exchange controls, stipulating a fine of 5% to 30% of the evaded amount for companies and prison time for directly responsible individuals.

[30] PRC Criminal Law art. 160.

[31] PRC Securities Law (adopted by the NPCSC on Dec. 29, 1998, as revised Dec. 28, 2019) art. 2, https://perma.cc/T9YC-XXZY (in Chinese).

[32] Id. art.

[33] CSRC, *Administrative Punishment Decision (Evergrande Real Estate and Its Responsible Personnel)*, supra note 2.

Colombia

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SUMMARY Corporate liability in Colombia is well-defined but dispersed across various legal instruments. While corporations themselves are not subject to criminal prosecution, their legal representatives, administrators, shareholders, and even employees can face significant sanctions for unlawful acts.

In civil and administrative contexts, corporations bear direct liability, with laws providing robust mechanisms for oversight and enforcement. Civil liability primarily arises under the Civil Code, where corporations can seek compensation for harm caused by crimes or negligence. Administrative liability of corporations is regulated by laws such as Law No. 1474 of 2011, Law No. 1778 of 2016, and Law No. 2195 of 2022, covering anti-corruption, transnational bribery, and broader misconducts.

Commercial liability ensures that corporate actions align with statutory objectives, holding administrators and shareholders accountable for breaches. Consumer liability, governed by the Consumer Protection Statute, ensures product safety and accurate consumer information, while tax and environmental liability are addressed under specific statutes, focusing on compliance and accountability.

I. Introduction

This report outlines the national legal framework for corporate liability in Colombia, encompassing criminal, civil, and administrative liabilities of corporations in addition to specific legislation addressing corporate liability related to anti-money laundering, anti-corruption, and transnational bribery.

Corporations are generally not criminally liable, but their legal representatives, administrators, and employees may face criminal sanctions for corporate-related misconduct. Civil liability primarily arises under the Colombian Civil Code, where corporations can seek compensation for harm caused by crimes or negligence.[1] Administrative liability is comprehensive, regulated by laws such as Law No. 1474 of 2011, Law No. 1778 of 2016, and Law No. 2195 of 2022, covering anti-corruption and transnational bribery by holding corporations directly liable.[2]

Commercial liability ensures that corporate actions align with statutory objectives, holding administrators and stakeholders accountable for breaches. Consumer liability, governed by the Consumer Protection Statute, ensures product safety and accurate consumer information, while tax and environmental liability are addressed under specific statutes focusing on compliance and

[1] Law No. 84, Código Civil [Civil Code], May 26, 1873, art. 2341, https://perma.cc/447Y-YJYF (in Spanish).

[2] Law No. 1474, July 12, 2011, art. 1, https://perma.cc/DS82-TSTT (in Spanish); Law No. 1778, Feb. 2, 2016, https://perma.cc/F7EL-LGEN (in Spanish); and Law No. 2195, Jan. 18, 2022, https://perma.cc/D59P-DKWD (in Spanish).

accountability in these areas.[3] These statutes do not hold the corporation liable, but rather their legal representatives, administrators, and shareholders for violations committed by the corporation.

II. Criminal Liability

Under Colombian law, corporations themselves are not subject to criminal prosecution; however, legal representatives, directors, and other stakeholders can face criminal liability for actions taken on behalf of the entity.

The Penal Code provides that when a corporation initiates, develops, promotes, or finances illegal urbanization projects, the liability extends to the legal representatives and board members of the involved corporation, who will be penalized with imprisonment of 48 to 126 months and a fine of up to 50,000 monthly minimum wages.[4]

Any individual who acquires, invests, or conceals assets derived from various illicit activities, such as money laundering, is subject to criminal penalties.[5] As an aggravating circumstance, if this conduct is committed by an individual belonging to a corporation dedicated to money laundering, the penalty must increase from one-third to one-half. If the conduct was developed by the corporation's legal representatives or administrators, the penalty will increase from one-half to three-fourths.[6]

Board members, legal representatives, administrators, or employees of a financial institution or legal cooperative that carries out loans, who use the corporation to hide or conceal money laundering activities are penalized to imprisonment from 38 to 128 months and a fine ranging from 133.33 to 15,000 legal minimum wages.[7] This penalty applies for corporations subject to the control of the Financial Information and Analysis Unit (UIAF) who deliberately fail to comply with the reports to this entity for cash transactions or for the mobilization or storage of cash.[8]

III. Civil Liability

The Penal Code grants legal entities directly harmed by a crime the right to seek compensation.[9] The Civil Code outlines the rules for liability arising from tortious acts, specifying the right to compensate those who have been harmed through a crime or by negligent acts.[10]

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[3] Law No. 1480, Estatuto del Consumidor [Consumer Protection Statute], Oct. 12, 2011, art. 2, https://perma.cc/2X7M-E6DJ (in Spanish).

[4] Law No. 599, Código Penal [Penal Code], July 24, 2000, art. 318, https://perma.cc/JM22-LBRW (in Spanish).

[5] Id. art. 323.

[6] Id. art. 324.

[7] Id. art. 325.

[8] Id. art. 325A.

[9] Id. arts. 94-95.

[10] Civil Code art. 2341.

IV. Administrative Liability

Administrative liability refers to sanctions imposed by regulatory authorities for violations of legal and regulatory frameworks.

Under Law No. 1474 of 2011, also known as the Anti-Corruption Statute, a legal entity or corporation is prohibited from entering contracts with government entities for 20 years, if any individual part of that corporation is found administratively responsible for crimes against the public administration.[11] Crimes against the public administration are under articles 397-434b of the Penal Code.[12] This prohibition extends to the company's parent companies, and subsidiaries, except for *sociedades anónimas abiertas* (publicly traded corporations).[13]

In addition, Law No. 1474 of 2011 imposes ineligibility for corporations to contract with government entities, if legal representatives or board members of private corporations, except for sociedades anónimas abiertas, have financed political campaigns for public offices with contributions exceed 2.5% of the maximum allowable campaign expenditures in the respective electoral district.[14] This ineligibility is for the period the candidate for public office is elected.[15]

Law No. 1778 of 2016, as amended, establishes specific provisions for administrative liability of corporations engaged in transnational bribery.[16] Companies are held accountable for acts of bribery committed by their employees, contractors, managers, associates, parent companies, and subsidiaries in the context of international business transactions.[17] The individuals who commit acts of transnational bribery must be in control of the corporation for the corporation to be liable.[18] The Superintendence of Corporations is responsible for investigating and sanctioning administrative violations under this legislation, including conduct committed abroad by Colombian-domiciled corporations.[19]

Sanctions under Law No. 1778 include fines of up to 200,000 monthly legal minimum wages, disqualification from contracting with the State for up to 20 years, mandatory publication of sanctions, prohibition from receiving government subsidies for 10 years, and the removal of administrators involved in the misconduct. These sanctions must be recorded in the commercial

[11] Law No. 1474 art. 1.

[12] Penal Code arts. 397-434b.

[13] Law No. 1474 art. 1.

[14] Id. art. 2.

[15] Id.

[16] Law No. 1778 art. 1.

[17] Id. art. 2.

[18] Id.

[19] Id. art. 3.

registry of the sanctioned entity.[20] Law No. 1778 also provides attenuating circumstances for the sanctions imposed.[21]

Law No. 2195 of 2022 establishes further rules on anti-corruption, and amends Law No. 1474 of 2011 to expand the corporate administrative liability regime.[22] This law introduces stricter accountability for corporations within Colombian territory. It has expanded administrative liability for foreign corporations and their subsidiaries, temporary unions or consortiums, industrial commercial corporations of the State, mixed economy corporations, and non-profit corporations.[23] The offenses include crimes against the public administration, social and economic order, the environment, and the financing of terrorism.[24] Sanctions under this law may include substantial fines of up to 200,000 monthly legal minimum wages, disqualification from government contracts, disqualification from receiving subsidies from the government for 10 years, and other administrative penalties aimed at deterring misconduct.[25]

To determine sanctions, authorities consider aggravating and mitigating factors, such as economic benefits gained, financial capacity, resistance to investigations, or implementation of compliance programs.[26] Collaborative entities providing evidence of corruption may receive reduced sanctions.[27]

Administrative investigations are subject to a statute of limitations of 10 years, starting from the date the administrators, legal representatives, or employees of a corporation or their foreign subsidiaries are convicted of a crime, as established under this law, or a guilty plea is enacted. The statute of limitation is interrupted upon the filing of charges.[28] Authorities may also lift the corporate veil to identify beneficiaries and impose liability on controlling parties.[29]

V. Commercial Liability

The Commercial Code establishes a comprehensive framework governing the liability of corporations and their participants.[30] The Commercial Code sanctions corporations for failure to

[20] Id. arts. 5 & 6.

[21] Id. art. 7.

[22] Law No. 2195 art.1.

[23] Id. art. 2.

[24] Id.

[25] Id. art. 4.

[26] Id. art. 5.

[27] Id.

[28] Id. art. 8.

[29] Id. art. 65.

[30] Decree No. 410, Código de Comercio [Code of Commerce], Mar. 27, 1971, https://perma.cc/VXQ2-4PPM (in Spanish).

provide information to authorities or engaging in commerce despite a judicial prohibition.[31] Corporations in Colombia operate within the confines of their corporate purpose and statutory provisions. Administrators are personally liable for actions performed outside statutory or legal limits and are obligated to indemnify the company, shareholders, and third parties for damages caused.[32] If the administrator is a legal entity, the respective liability will be that of the entity and of whoever acts as its legal representative.[33] Administrators, directors, and auditors are liable for providing false information to authorities, issuing certificates inconsistent with accounting reality, or otherwise engaging in acts of falsification especially to the detriment of associates or third parties.[34] Such individuals are subject to criminal penalties under the Penal Code and may face civil liability for damages caused to shareholders or third parties.[35]

VI. Consumer Liability

Colombian law, as articulated in the Consumer Protection Statute, establishes a comprehensive framework to regulate the rights and obligations of producers, suppliers, and consumers. This legal regime imposes both substantive and procedural responsibilities on producers and suppliers to ensure fairness in consumer transactions and safeguard public interest. The law applies to all sectors of the economy unless a specific regulation overrides its provisions.[36]

Corporations operating in Colombia must ensure the quality, suitability, and safety of their goods and services.[37] Producers must guarantee that their products meet advertised standards and comply with technical and health regulations.[38] The breach of these obligations results in joint liability for producers and suppliers for warranty claims. Producers and suppliers are individually held to administrative penalties, and producers are liable for damages caused by defective products.[39]

The Consumer Protection Statute specifies that producers and suppliers must guarantee consumer products are free from defects and are jointly liable for any violation on warranties.[40] The statute provides a legal warranty for consumer products that starts running from the moment the new or used product is delivered to the consumer, though specific terms vary depending on the product type. For instance, warranties for new goods are valid for a minimum of one year

[31] Id. arts. 57-58.

[32] Id. art. 200.

[33] Id.

[34] Id. art. 293.

[35] Id.

[36] Consumer Protection Statute art. 2.

[37] Id. art. 6

[38] Id.

[39] Id.

[40] Id. arts. 7 & 10.

unless otherwise stated, real estate warranties extend up to 10 years for structural stability, and used products may have up to three-month warranties.[41]

Exoneration from liability is narrowly construed and permitted only under exceptional circumstances such as force majeure, exclusive fault of a third party, the improper use of the product by the consumer, or if the consumer does not follow the instructions as indicated in the products manual.[42]

For product defects, producers and suppliers are jointly liable for any harm the products caused.[43] Consumers need only demonstrate the product's defect, the resulting harm, and the causal link between the two to establish liability.[44] However, corporations are strictly liable for damages caused by defective products when a health regulation is violated.[45] Exoneration from liability is narrowly construed and permitted only under exceptional circumstances such as force majeure, exclusive fault of the affected party, or compliance with mandatory regulations that inherently caused the defect.[46] Producers are also allowed to argue that state-of-the-art scientific knowledge at the time of production could not have revealed the defect.[47]

Producers and suppliers must provide clear, truthful, and sufficient information about their products.[48] This duty includes providing manuals, instructions for use, and warnings, all of which must be in Spanish.[49] Failure to comply with these information obligations renders corporations liable for damages resulting from inadequate or misleading information.[50] The information must encompass details necessary for proper use, maintenance, and safety.[51] Producers and suppliers can only escape liability if they prove that the information was altered or falsified without their knowledge or ability to prevent it.[52]

Advertising companies and individual advertisers are bound by the objective and specific claims made in their advertisements and will be held liable for any harm caused by misleading or fraudulent advertisement.[53] Media outlets share joint liability if gross negligence or intent is

[41] Id. art. 8.

[42] Id. art. 16.

[43] Id. art. 20.

[44] Id. art. 21.

[45] Id.

[46] Id. art. 22.

[47] Id.

[48] Id. art. 23.

[49] Id.

[50] Id.

[51] Id. art. 24.

[52] Id.

[53] Id. art. 30.

proven.[54] For products harmful to health, advertising must include clear warnings regarding their risks and usage conditions.[55] Exoneration from advertising liability is possible only when advertisers prove force majeure, unforeseeable circumstances, or that the advertisements have been falsified by an external source.[56]

VII. Tax Evasion

The Tax Statute sets forth the penalties for violations of tax law, including penalties for tax evasion or underreporting.[57] This framework assigns specific obligations and penalties to withholding agents, VAT payers, and authorized entities responsible for tax collection and reporting.

Withholding agents are directly liable for the value-added tax (VAT) amounts they are obligated to withhold. The Tax Statute establishes that penalties imposed for noncompliance with withholding duties are the sole responsibility of the withholding agent.[58] Failure to deposit withheld amounts two months following withholding results in criminal liability equivalent to embezzlement by government officials (*peculado por apropiación*) as penalized by the Penal Code.[59] This liability extends to VAT payers who fail to deposit collected sums within one month after the respective two-month period.[60]

For corporations or other entities, individuals designated as responsible for fulfilling these obligations must be identified and approved by the tax administration. In the absence of such designation, legal representatives assume liability. However, criminal liability is waived if the agent or payer fully satisfies their tax obligations, including interest and penalties, before penalties are enforced.[61]

Withholding agents are required to issue certificates, such as income and withholding certificates, within government-mandated deadlines. Failure to comply results in fines equivalent to 5% of the payments or credits associated with the unissued certificates. This penalty is reduced if the omission is corrected before or shortly after notification of the penalty.[62]

Entities engaging in fictitious transactions, income omission, or facilitating tax evasion are subject to fines equivalent to the value of the transaction. This sanction is imposed following verification of the offense by the National Tax Administration, with an opportunity for the

[54] Id.

[55] Id. art. 31.

[56] Id. art. 32.

[57] Decree No. 624, Estatuto Tributario [Tax Statute], Mar. 30, 1989, https://perma.cc/NV4T-JNDS (in Spanish).

[58] Id. art. 437-3.

[59] Id. art. 665.

[60] Id.

[61] Id.

[62] Id. art. 667.

responsible party to respond within one month.[63] Improper refunds or compensations based on inaccurate tax returns result in penalties of up to 100% of the refunded or compensated amount, with additional liability for professionals involved.[64]

Entities authorized to collect taxes must ensure accuracy and timeliness in their operations. Verification errors, such as mismatched tax identification numbers or incomplete documentation, result in fines ranging from five to 10 UVT (*Unidad Valor Tributario* or Tax Value Unit, which is a value measure established by the government to simplify tax calculations) per infraction.[65] Additional penalties apply for inconsistencies in submitted information exceeding permissible error thresholds.[66]

Late delivery of tax-related documents or electronic information incurs penalties escalating with the duration of the delay, starting from one UVT for delays of up to five days, and reaching eight UVT for delays exceeding 25 days.[67] Errors and delays in submitting required reports by authorized entities are penalized with fines up to 20 UVT per infraction.[68] This statute reduces penalties based on the extent of noncompliance. For example, sanctions are reduced by 50% if errors affect no more than 1% of documents, and by 75% if the error rate is between 1% and 1.5%.[69] However, total sanctions for a fiscal year cannot exceed 33,000 UVT.[70]

When corporations are used as mechanisms for tax evasion or fraud, the corporate veil rises, meaning that the shareholders responsible for, or who facilitated, tax evasion or fraud are held jointly liable for non-compliance of tax obligations and damages. The Superintendence of Corporations holds jurisdiction over tax evasion cases and claims for damages.[71] Furthermore, non-taxpaying entities facilitating tax evasion bear joint liability for tax evasion and sanctions, extending to board members and legal representatives.[72]

VIII. Environmental Offenses

Colombia's approach to environmental corporate liability is primarily codified under Law No. 1333 of 2009, establishing a robust legal framework to address violations of environmental regulations.[73] Under Law No. 1333 of 2009, an environmental violation is any act or omission

[63] Id. art. 669.

[64] Id. art. 670.

[65] Id. art. 674.

[66] Id. art. 675.

[67] Id. art. 676.

[68] Id. art. 676-1.

[69] Id. art. 676-2.

[70] Id. art. 676-3.

[71] Id. art. 794-1.

[72] Id. art. 795.

[73] Law No. 133, July 12, 2009, https://perma.cc/PGC7-DA42 (in Spanish).

breaching provisions under existing environmental laws, including Decree-Law 2811 of 1974, Law 99 of 1993, and other regulations or administrative acts issued by competent authorities.[74] This legislation presumes negligence or intent of the violator, shifting the burden of proof to them.[75]

Violators are subject to administrative sanctions and potential civil liability to third parties for damages. Violations encompass a wide array of activities, such as illegal trafficking of wildlife, non-compliance with environmental obligations, and harm resulting from unauthorized actions. Administrative acts with environmental content, such as licenses or contingency plans, are explicitly included within the scope of the law.[76]

The law provides for mitigating and aggravating factors in assessing environmental liability. Mitigating circumstances include voluntary admission of violations or compensation for damages before formal proceedings. Conversely, aggravating circumstances involve severe harm to natural resources, recidivism, and infractions committed in ecologically sensitive areas. The law emphasizes the responsibility of violators to mitigate or restore environmental harm.[77]

Administrative sanctions under this legal framework include monetary penalties ranging from one to 100,000 current legal monthly minimum wages, depending on the severity of the violation and the offender's financial capacity.[78] Other sanctions include temporary or permanent suspension of activities or operations, with prohibited use of facilities during the closure,[79] as well as nullification of environmental licenses, permits, or authorizations.[80]

As a penalty, the government may order the destruction of works causing environmental harm, at the violator's expense.[81] The government may also order permanent seizure of tools, products, or resources involved in violations, which may be allocated for public use.[82] Seizure of wildlife, equipment, or tools used in environmental violations, with potential destruction or reuse under specified conditions, may also be ordered.[83] Projects, works, or activities causing significant harm or operating without proper licenses may face suspension until compliance is ensured.[84] These

[74] Id. art. 5.

[75] Id.

[76] Id.

[77] Id. arts. 6-7.

[78] Id. art. 43.

[79] Id. art. 44.

[80] Id. art. 45.

[81] Id. art. 46.

[82] Id. art. 47.

[83] Id. art. 38.

[84] Id. art. 39.

sanctions do not exempt offenders from restorative measures imposed by the authorities, emphasizing a commitment to environmental repair.[85]

Environmental violations may also result in public written warnings, which are formally documented and published by authorities. These warnings often require offenders to attend environmental education courses or perform community service. Failure to comply may result in additional fines.[86] Fines collected are allocated to environmental funds dedicated to conservation and restoration efforts.[87] The statute of limitations for an environmental sanction is 20 years. Moreover, once there is a sanction, this must be imposed within five years of the administrative judgement.[88] Liability is exempted in cases of force majeure, fortuitous events, acts of third a party, or terrorism.[89]

[85] Id. arts. 40 & 54.

[86] Id. art. 37.

[87] Id.

[88] Id. art. 10.

[89] Id. art. 8.

Cuba

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I. General Rule on Criminal Liability for Corporations

Under Cuba's Criminal Code, corporations may be held criminally liable for the commission of crimes perpetrated on their behalf by their governing or management body or its representatives.[1] Individuals who co-participate in the commission of crimes attributed to corporations are penalized under a separate set of rules provided by the Penal Code.[2]

II. Penalties

Cuba's Penal Code provides that the penalties that may be imposed on corporations depend on the specifics of the case and may include the following:

- dissolution of the company;
- temporary closure;
- prohibition on carrying out certain business activities;
- government supervision;
- fines;
- publication of conviction ruling;
- seizure of assets; or
- suspension or loss of economic, financial, tax, or other facilities and benefits granted by the government.[3]

III. Crimes for which Corporations may be Held Liable

Cuba's Penal Code does not include a list of specific crimes for which corporations may be held responsible. Notably, a Cuban law firm has explained that there are several crimes included in the Penal Code that may be committed by corporations, including the following:

- environmental crimes,
- corrupt acts in government services,

[1] Ley No. 151, Código Penal, as originally enacted, art. 19.1, Gaceta Oficial, Sept. 1, 2022, https://perma.cc/D778-5A7E.

[2] Id. arts. 19, 33-60, 71-82.

[3] Id. arts. 32, 61-70, 83-85.

- tax evasion,
- money laundering, and
- fraud.[4]

[4] Diomir Hernández Torres, *Cruzando la Línea Roja: ¿Qué Delitos Corporativos están regulados en el Código Penal cubano?*, Consultores y Abogados Internacionales, https://perma.cc/3FK5-PBAQ.

Czech Republic

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SUMMARY Under Czech law, criminal liability may apply to all legal entities regardless of their legal form or status if a corporation has its registered office, branch office, business operations, or property located in the Czech Republic. Legal entities are responsible for crimes identified in the Act on Criminal Liability of Legal Entities and Proceedings Against Them, Criminal Code, and sectoral legislation. Legislation established penalties and protective measures, which may extend to fines, forfeiture of property and other assets, bans on certain business activities, and disqualification from participation in public procurement. Company officials and agents may face monetary and custodial punishment if their illegal actions rise to the level of criminal offenses.

I. Introduction

The criminal liability of legal entities, including corporations, is governed by the Act on Criminal Liability of Legal Entities and Proceedings Against Them (Criminal Liability Act.)[1] This act regulates the conditions of criminal liability of legal persons, the penalties and protective measures that may be imposed on corporations for the commission of specified criminal offenses, and the procedure in proceedings against legal persons.

Under Czech law, criminal liability may apply to any legal entities regardless of its legal form or status if the entity's registered office, branch office, business operations, or property is located in the Czech Republic.

Corporate liability arising from unlawful activity is criminal liability under Czech law. However, if the nature of a particular infringement does not reach the threshold of a criminal offense, it may be classed as an administrative offense, resulting in the administrative liability of the corporation.[2]

II. Punishment Under Criminal Liability Act

The Criminal Liability Act establishes that a corporation can be held criminally liable for offenses committed in its interest or during its operations.[3]

> (1) A criminal offense committed by a legal person is an illegal act committed in its interests or within the scope of its activities, if it acts as such

[1] Act on Criminal Liability of Legal Entities and Proceedings Against Them, No. 418/2011 Coll., https://perma.cc/9BVH-RV5T (in Czech).

[2] Id. art. 37a.

[3] Id.

> a) a statutory body or a member of a statutory body, or another person in a leading position within a legal entity who is authorized on behalf of or act[s] for a legal entity,
> b) a person in a leading position within a legal entity who performs management or control activities for this legal entity, even if he is not a person referred to in letter a),
> c) the person who exercises a decisive influence on the management of this legal entity, if his actions were at least one of the conditions for the occurrence of the consequence establishing criminal liability of a legal entity, or
> d) an employee or a person in a similar position (hereinafter referred to as an "employee") when performing work tasks, even if he is not a person listed in letters a) to c), if it can be attributed to her [sic] according to paragraph 2.[4]

In addition, a legal person may be held liable for the commission of a criminal offense if it was committed by actions of the bodies of the legal entity.

The Criminal Liability Act details the scale of sanctions for companies and provides the list of punishments, which can include forfeiture of property and other assets, monetary penalties, prohibition of certain activities, disqualification from participating in public procurement, prohibition from receiving grants or subsidies, and the requirement to publish the judgment in public media to inform the society. In some cases, a company may also be dissolved.[5]

Additionally, a court may order the confiscation of a part of a corporation's property as a protective measure. Confiscation of the replacement value, equipment, or records, together with the obligation to change or destroy certain things, mark a thing, or perform any other change, may be imposed by the court as well. The court may also limit the disposing of a thing under the terms of the Criminal Code.[6]

Under Czech law, the criminal liability of a legal entity is transferred to all its legal successors. If multiple legal successors inherit this liability, the court will consider the extent of proceeds, benefits, and advantages derived from the crime transferred to each successor, as well as their ongoing activities related to the crime, when determining the type and amount of punishment or protective measures.[7]

III. Penalties for Specific Offenses

A. Penalties for Corruption

Legal entities and individuals can be prosecuted for bribery offenses under articles 331 to 333 of the Criminal Code.[8]

[4] Id. art. 8, para. 1(a-d).

[5] Id. arts. 16-23.

[6] Id. art. 15, para. 3, art. 27, para. 2.

[7] Id. art. 10, paras. 1, 2.

[8] Criminal Code arts. 331-333.

The Criminal Code states that accepting or promising a bribe, either personally or through another individual, in relation to the procurement of matters of public interest or business dealings is punishable by up to four years of imprisonment or a ban on activity. Demanding a bribe under similar circumstances is punishable by imprisonment from six months to five years.[9]

Longer terms of imprisonment with or without property confiscation can be incurred if bribery is committed for significant personal gain or as an official.[10]

In addition, offering, providing, or promising a bribe, directly or through another, in relation to public interest procurement or personal business dealings is punishable by up to two years of imprisonment or a fine. The penalty may be increased to six years of imprisonment, property confiscation, or a fine if the act is intended to secure significant benefits or cause serious harm, especially if directed at an official.[11]

B. Penalties for Money Laundering

Act No. 253/2008 Coll., on Certain Measures Against the Legitimisation of Proceeds from Crime and Terrorist Financing (AML Act) provides the rights and responsibilities of natural and legal persons in enforcing measures against the laundering of proceeds of crime and financing of terrorism.[12]

The AML Act requires businesses and individuals to perform client identification and inspection procedures, preserve transaction information, report suspicious transactions, and maintain internal control policies to prevent money laundering. Failure to perform these duties is seen as noncompliance with anti-money-laundering regulations punishable with a fine as high as Czech Koruna (CZK) 130,000,000 (about US$5,386,420) for the most serious offenses. [13]

Money laundering and terrorist financing are criminalized under the Czech Criminal Code as separate crimes.[14] Companies may be held criminally liable for money laundering and terrorist financing if they have legal personhood.[15] A conviction for failing to disclose suspected money laundering can result in a custodial sentence of up to five years and an unlimited fine. Other sanctions, such as forfeiture of property, may be imposed in addition to imprisonment. The punishment for money laundering is up to 10 years in prison, and additional sanctions may be imposed. The Czech Criminal Code also criminalizes terrorist financing, which is punishable by up to 15 years in prison.[16]

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[9] Id. art. 332.

[10] Id. art. 331, paras. 1-4.

[11] Id. art. 333, paras. 1, 2.

[12] Act No. 253/2008 Coll., on Certain Measures Against the Legitimisation of Proceeds from Crime and Terrorist Financing (AML Act), art. 1(b), arts. 2, 8, 9 & 42-48, https://perma.cc/6U8E-WV62.

[13] Id. arts. 7-29, 43-53.

[14] Act on Criminal Code, No. 40/2009 Coll., arts. 216, 216a, https://perma.cc/D3Y3-TYU3 (in Czech).

[15] Id. arts. 312, 312(a), 312(d) & 312(f).

[16] Id. arts. 205, para. 5(b), 207, para. 3, 209, paras. 5(a), (b), 211, 212, paras. 6(a), (b), 312(d) & 312(f).

C. Penalties Under Environmental Law

According to the Criminal Code, the main penalties for environmental crimes are imprisonment and a judicial ban on professional activities.[17] Certain crimes may also be punished through forfeiture. All offenders are required to repair the damaged environment and make compensation for it. They might also face fines.[18] For companies, the fines might reach 3% to 5% of their yearly worldwide turnover or, alternatively, the equivalent of US$24,989,197 to US$41,648,662, depending on the nature of the crime.[19]

A court may also impose an additional fine if the perpetrator has obtained or at least tried to obtain a property benefit for himself or somebody else by committing an intentional environmental crime. Perpetrators who commit only a minor offense ("přečin") can be sentenced to house arrest or to community service.[20]

D. Penalties for Tax Evasion

Under articles 240-243 of the Criminal Code, legal entities may be prosecuted for tax fraud, evasion of taxes, social security insurance contributions, and any other similar mandatory payments as well as for nonfulfillment of reporting obligations in tax proceedings.

If the damage inflicted by these crimes is substantial, which, according to Czech law is an amount higher than CZK100,000 ((approximately US$4,165), the prescribed punishment is imprisonment for a period of six months to three years, or alternatively, prohibition of business activity.[21] In case of damages exceeding CZK500,000 (about US$20,672), the penalty becomes imprisonment from two to 10 years, without any alternatives.[22]

E. Penalties Under Competition Law

According to the Czech Competition Act, fines for violating the competition law can reach up to 10% of an undertaking's yearly net turnover. This applies to both individual companies and associations of undertakings.[23] The fine is capped at CZK300,000 counted daily (approximately US$12,404) in the case of an individual, and 10% of average daily turnover in case of undertakings. This fine may be repeatedly imposed in an amount of up to CZK300,000 per day unless and until

[17] Id. arts. 293–301.

[18] Id.

[19] Id.

[20] Id.

[21] Criminal Code arts. 240, 241 paras. 1-3.

[22] Id. art. 240, paras. 2, 3.

[23] Act on the Protection of Competition and Amending Certain Acts, 143/2001 Coll. of Apr. 4, 2001, arts. 22, para. 3, 22a, paras. 3, 4 & 5, https://perma.cc/JU8J-6CND (unofficial English translation by the Office for the Protection of Competition).

the obligation has been fulfilled. The total limit for the coercive fine is set at the amount of CZK10 million (about US$413,460) or 10% of the undertaking's net annual turnover.[24]

Under the Criminal Code, anyone who violates fair competition laws by engaging in activities such as misleading advertising, misleading labeling, causing confusion, exploiting another's reputation, bribery, belittling, comparative advertising, violating trade secrets, or endangering consumer health or the environment, and causes significant harm to competitors or consumers, or gains undue advantages can be punished by imprisonment for up to three years, a ban on activity, or forfeiture of property.[25]

The same penalties apply to those who, in violation of competition protection laws, engage in price-fixing, market-sharing, or other agreements that distort competition, or who seriously violate public procurement rules or financial market regulations, causing significant harm or gaining undue advantages.[26]

Offenders committing these acts as part of an organized group, repeating offenses, causing significant damage, or obtaining significant benefits face imprisonment from six months to five years, fines, or forfeiture of property.[27] Offenders causing large-scale damage, illicit benefits, or bankruptcy are punishable by imprisonment for a term from two to eight years.[28]

Violation of rules regulating the award of public contracts or granting preferential treatment to a supplier or competitor in a way that would harm others is punishable by different terms of imprisonment, which may extend up to 10 years.[29]

[24] Id. art. 22a, paras. 3, 4 & 5.

[25] Criminal Code art. 248, para. 1.

[26] Id. art. 248, para. 2.

[27] Id. art. 241, paras. 1-3.

[28] Id.

[29] Id. art. 256, paras. 1, 3.

Denmark

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SUMMARY Under Danish law, corporations and other legal persons are liable for criminal acts when the relevant law specifies that criminal punishment may be adjudicated against a legal person. The punishment is criminal penalty fines. Legal persons are subject to punishment for all crimes that are listed in the Penal Code. Additional criminal acts are prescribed in separate legislation, for example in the Environmental Protection Act and the Workplace Safety Act. Corporations, like all other legal persons, are subject to prosecution for crimes conducted by a representative of the company, as well as when it cannot be determined who that person or persons are. Corporations can be punished with criminal penalty fines. The Penal Code does not specify a minimum or maximum threshold for criminal penalty fines. The size of the fine depends on the financial situation of the corporation. With regards to criminal acts, mother corporations are typically not responsible for the acts of daughter corporations.

I. Introduction

There are several types of corporate structures in Denmark, including private and public limited companies (*aktieselskab*) [1] general partnerships (*interessentskaber*), [2] limited partnerships (*kommanditselskaber*),[3] sole proprietorships (*enkeltmandsvirksomheder*),[4] and European companies.[5] These corporations are subject to special rules with regards to establishment, operation, reporting requirements, liability, and fiduciary duties.[6] Violations of these rules are subject to penalties, which can be either imprisonment or monetary fines.[7] The Companies Act states specifically that legal persons, i.e. the limited corporation itself, may also be issued monetary fines for violations of the Companies Act.[8] Legal persons can only receive monetary fines.[9] Similarly, the Act on

[1] Bekendtgørelse af lov om aktie- og anpartsselskaber (Selskabsloven), [The Companies Act], https://perma.cc/B6WD-3U8R.

[2] 1 § Bekendtgørelse af lov om visse erhvervsdrivende virksomheder (LEV-loven)[Act on Certain Commercial Enterprises](LBK nr 249 af 01/02/2021), https://perma.cc/F6CT-EJPW.

[3] Id.

[4] Id.

[5] Bekendtgørelse af lov om det europæiske selskab (SE-loven)[European Companies Act](LBK nr 735 af 05/07/2019), https://perma.cc/W2PE-NKTZ.

[6] For the rules on limited liability corporations, see Selskabsloven, supra note 1.

[7] See e.g. 366 -368 §§ Selskabsloven.

[8] 369 § Selskabsloven.

[9] Id.

Certain Commercial Enterprises, which applies to partnerships, specifies that certain violations may be punishable with monetary fines for the legal person itself.[10]

II. Criminal Penalty Fines

Section 27 of the Penal Code provides that legal persons may be held liable for crimes provided that the criminal act is tied to a legal provision that makes the crime specifically enforceable against legal persons.[11] This also applies to state corporations and municipal corporations in their business activities as well as state agencies and other state actors and municipalities when they conduct a business activity similar to private actors.[12] The punishment is a monetary fine known as a criminal penalty fine.[13] There are no minimum or maximum monetary thresholds for criminal penalty fines in the Penal Code.[14] In addition, the Danish State Prosecutor's Office has issued guidelines confirming that there are not thresholds for criminal penalty fines for legal persons.[15] Assessment of the size of the criminal penalty fines should include the size of the corporation and its financial situation.[16]

All criminal acts specified in the Penal Code are enforceable against a legal person, including corporations, and subject to a criminal penalty fine, as expressly specified in section 306.[17]

While not all crimes are listed in the Penal Code, terrorism crimes,[18] money laundering,[19] environmental crimes,[20] corruption,[21] corporate tax evasion,[22] financial fraud,[23] and investment

[10] 23 § LEV-loven.

[11] 22-27 §§ Straffeloven [Penal Code] (LBK nr 1145 af 05/11/2024), https://perma.cc/FG76-4RB7.

[12] Id.

[13] Id. 25 §.

[14] Id. 25-27 §§ e contrario.

[15] (CIR1H nr 11550 af 17/04/2015) Rigsadvokatmeddelelsen, afsnittet: Strafansvar for juridiske personer, 15, https://perma.cc/736P-BLEK.

[16] Id. at 14-15.

[17] Id. 306 §

[18] Id. 111-132b §§.

[19] Id. 290a §.

[20] Id. 196 §.

[21] Id. 279 §.

[22] Id. 289 §.

[23] Id. 279 §.

fraud[24] are prescribed in the Penal Code. Additional criminal acts are prescribed in other statutes, for example the Environmental Protection Act[25] and the Workplace Act.[26]

Section 27 of the Penal Code prescribes that for a corporation to be held criminally liable, the criminal act must be connected to that legal person.[27] However, it need not be established specifically who within a company committed the criminal act.[28] Mother companies are typically not responsible for criminal activities of their daughter corporations.

III. Prohibition on Conducting Business

In addition to the criminal penalty fines described above, a legal person being held liable for a criminal act may also loss the right to conduct business or to conduct certain business activities.[29]

IV. Forfeiture and Confiscation of Property

Property used as part of or in furtherance of a crime, or whose acquisition results from a crime, may be forfeited and confiscated and become the property of the Danish state.[30] These rules also apply to legal persons.[31]

[24] Id.

[25] 110 § 4 para Miljøbeskyttelsesloven [Environmental Protections Act](LBK nr 1093 af 11/10/2024), https://perma.cc/MJ5T-FUQ8.

[26] 86 § Arbejdsmiljøloven [Work Environment Act](LBK nr 2062 af 16/11/2021), https://perma.cc/894T-MFPW.

[27] Id. 27 §.

[28] Id.

[29] 79 § Straffeloven; (CIR1H nr 11550 af 17/04/2015) Rigsadvokatmeddelelsen, afsnittet: Strafansvar for juridiske personer, 14, supra note 15.

[30] 75 § Straffeloven.

[31] (CIR1H nr 11550 af 17/04/2015) Rigsadvokatmeddelelsen, afsnittet: Strafansvar for juridiske personer, 15, supra note 15. See also Danish Supreme Court Decision 154/2014, https://perma.cc/NER7-T7KN.

Egypt

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SUMMARY Egyptian laws regulating companies and addressing taxation, cybercrime, environmental protection, and money laundering impose fines against corporate entities that violate them. In addition, individuals who breach these laws can face imprisonment.

I. Companies Law No. 159 of 1981

Law No. 159 of 1981 stipulates that a company, as a legal person, will not be held liable if the chairman of its board of directors or managing director has committed a criminal offense. However, Law No. 159 of 1981, as amended, holds a chairman of the board of directors or the managing director of a corporation criminally liable and punishes him or her with a term of imprisonment between two and five years that individual commits any of the following offenses:

- fraud that leads to the company's bankruptcy,
- distribution of false dividends to shareholders,
- misappropriation of the corporation's funds, or
- use of the corporate capital to fund illegitimate activities.[1]

It is important to note that criminal penalties do not apply to legal persons (corporations) unless they are expressly codified in legislation.

II. Law No. 72 of 2017 on Investment

Law No. 72 of 2017 does not hold a corporation liable if a criminal offense is committed by one of its employees. However, a corporation will be held liable if its management is aware of the criminal offense committed by one of its employees and is planning to benefit from such offense.[2] In this case, the corporation must pay a fine of no less than four times and not exceeding 10 times the fine determined by the law criminalizing the offense.[3]

[1] Law No. 159 of 1981, as amended, art. 162, al-Jarīdah al-Rasmīyah (Official Gazette), vol. 40, Oct. 1, 1981, https://perma.cc/2DCW-APXE (in Arabic).

[2] Law No. 72 of 2017, art. 92, para. 1, al-Jarīdah al-Rasmīyah, vol. 21 (duplicate), May 3, 2017, https://perma.cc/MUN2-YFGQ (in Arabic).

[3] Id. art. 92, para. 2.

III. Law No. 91 of 2005 on Taxation

Law No. 91 of 2005 holds the chairman or the managing director of a corporation criminally liable if this corporation committed the offense of tax evasion.[4] In this case, Law No. 91 of 2005 imposes the penalty of imprisonment on the chairman or the managing director. [5]

IV. Law No. 175 of 2018 on Cybercrime

Law No. 175 of 2018 holds any company that is considered as an internet service provider criminally liable when it fails to carry out a censorship order or directive issued by the competent authority against a specific website or online blog account. In this case, the internet service provider must pay a fine between 500,000 Egyptian pounds (EGP) (about US$10,000) and EGP1 million (about US$20,000).[6]

V. Law No. 207 of 2020 on Customs

In the case of corporate entities, the criminal liability related to customs crimes falls on individuals responsible for the corporation's actual management and operations.[7]

VI. Law No. 4 of 1994 on Environmental Protection, as Amended

Law No. 4 of 1994 on Environmental Protection, as amended, holds the managing director or the chairman of a corporate entity criminally liable if the corporate entity violated the law. For instance, it requires the managing director of a corporate entity to keep a written record, known as an "Environmental Record." The record describes the environmental impact of the entity's activities.[8] A managing director or chairman who violates this requirement is punishable by a term of imprisonment for not more than one year, a fine between EGP5,000 (about US$270) and EGP100,000 (about US$5,400), or both imprisonment and a fine.[9]

Furthermore, a chairman or a managing director who pollutes the environment with hazardous waste faces imprisonment for not less than one year, a fine between EGP10,000 (about US$540) and EGP20,000 (about US$1,080), or both.[10]

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[4] Law No. 91 of 2005, al-Jarīdah al-Rasmīyah, vol. 23 (annex), June 9, 2005, https://perma.cc/SY2A-T83V (in Arabic).

[5] Id. art. 133.

[6] Law No. 175 of 2018, art. 30, al-Jarīdah al-Rasmīyah, vol. 32 (bis)(c), Aug. 14, 2018, https://perma.cc/7UCX-WFNK (in Arabic).

[7] Law No. 206 of 2020, art. 78, para. 3, al-Jarīdah al-Rasmīyah, vol. 42 bis(c), Oct. 19, 2020, https://perma.cc/87DZ-526M (in Arabic).

[8] Law No. 9 of 2009 amending Law No. 4 of 1994, amending art. 22 of Law No. 4 of 1994, al-Jarīdah al-Rasmīyah, vol. 9 bis, Mar. 1, 2009, https://perma.cc/7U32-WUAZ (in Arabic).

[9] Id. art. 84.

[10] Law No. 4 of 1994 on Environmental Protection, art. 85, al-Jarīdah al-Rasmīyah, vol. 5, Feb. 3, 1994, https://perma.cc/CX76-Y72K (in Arabic).

VII. Law No. 9 of 1995 amending Law 10 of 1981 on Insurance Practices

Law No. 9 of 1995 grants the Egyptian Insurance Supervisory Authority the authority to revoke the license of an insurance company that engages in illegal practices while providing insurance services.[11]

VIII. Law No. 80 of 2002 on Combating Money Laundering, as Amended

In the case of a corporate entity, criminal liability for money laundering falls on the managing directors responsible for the actual management and operations unless they prove ignorance of the criminal actions.[12] If the crime of money laundering was committed by a person working in a corporate entity or on its behalf, the entity is subject to financial sanctions.[13] Those sanctions include confiscation of the monetary amount laundered and its proceeds as well as payment of additional financial compensation equivalent to the laundered amount.[14]

[11] Law No. 9 of 1995, art. 62, al-Jarīdah al-Rasmīyah, vol. 18 bis(a), May 4, 1995, https://perma.cc/4S9J-6692 (in Arabic).

[12] Law No. 80 of 2002, art. 16, para. 1, al-Jarīdah al-Rasmīyah, vol. 20 bis, May 22, 2002, https://perma.cc/UL2E-FNRR (in Arabic).

[13] Id. art. 16, para. 2.

[14] Law No. 17 of 2020 amending Law No. 80 of 2002, 14 bis, al-Jarīdah al-Rasmīyah, vol. 10 bis(b), Mar. 11, 2020, https://perma.cc/7T5J-Y6SZ (in Arabic).

England

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SUMMARY The criminal liability of corporations is a recognized and long established principle of the laws of England. Corporate bodies are legal persons and can commit crimes and regulatory violations that can be punished with monetary penalties. There are three ways that corporate bodies can be prosecuted for criminal offenses: through offenses in legislation; through the identification doctrine, where a person recognized as the "directing will and mind" of the corporation commits the offense, or through vicarious liability.

Companies that conduct regulated activities must also comply with regulatory obligations or face civil and/or criminal penalties. Some regulatory bodies have been provided with the power to levy financial penalties where regulations are breached.

Companies can face heavy monetary penalties, including unlimited fines, if they commit a crime. There are a variety of sentencing guidelines, and guidelines that regulators must follow, when imposing penalties and these are varied and extensive, involving multi-step processes to ensure that the circumstances of each case are taken into account.

I. Introduction

The Law Commission has stated "corporate criminal liability is a well-established feature of corporate liability and of criminal law of England."[1] Corporations in England are legal persons and are capable of committing crimes; a corporation can be held liable for torts committed by its employees or agents acting within the scope of their employment; and penalties can be imposed by regulators for companies operating in the regulated sector and that violate any regulations. These offenses can be punished with fines, which in some cases do not have a cap on the amount that can be imposed.

II. Corporate Liability

Corporations can commit most criminal offenses,[2] including the following:

- Manslaughter where a gross breach of a duty of care results in death;[3] The penalty for this offense is a fine of between £180,000 to £20 million (approximately US$230,000 to $26 million,

[1] Law Commission, *Corporate Criminal Liability: An Options Paper* (June 10, 2022), ¶ 2.10, https://perma.cc/ED4W-Y75T.

[2] *Blackstone's Criminal Practice* (David Ormerod et al, eds., 2024 ed.), ¶ A6.1.

[3] Corporate Manslaughter and Corporate Homicide Act 2007, c. 19, https://perma.cc/69RB-Y9U6.

respectively). Fines can be imposed in cases that will "inevitably force [a] company into liquidation";[4]

- failure to prevent bribery;[5]
- racial hatred;[6]
- money laundering;[7]
- conspiracy to commit an offense;[8]
- misuse of drugs offenses;[9]
- failure to prevent the facilitation of tax evasion;[10]
- failure to prevent money laundering, fraud, or false accounting;[11] and
- fraud.[12]

The following are three ways that a corporation can be prosecuted for a criminal offense:

1. If Parliament has created a specific criminal offence for corporates, such as under the Bribery Act 2010 or the Criminal Finances Act 2017;
2. Through vicarious liability, which is generally used for regulatory offences that don't require proof of fault; and
3. Through the identification doctrine, when someone who can be said to be the "directing mind and will" of a corporate commits the offence.[13]

For crimes that require proof of a mental element, the identification doctrine is used to determine if a corporate body can be held liable for crimes committed by its employees or agents. In order for corporate liability to arise, only the acts or omissions of an individual whose actions are

[4] *Archbold Criminal Pleading, Practice and Evidence* (Hon. Mark Lucraft et al, eds., 2024 ed.), ¶ 19-140a (referring to Cotswold Geotechnical Holdings Ltd [2011] EWCA Crim 1337, https://perma.cc/56PX-X46F).

[5] Bribery Act 2010, c. 23, §§ 14-15, https://perma.cc/XD42-EEJW.

[6] Public Order Act 1986, c. 64, § 28, https://perma.cc/Z8P3-M9JY.

[7] Corporate Manslaughter and Corporate Homicide Act 2007, c. 19, https://perma.cc/69RB-Y9U6.

[88] ICLR Haulage Co Ltd [1944] KB 551, referred to in *Archbold Criminal Pleading, Practice and Evidence*, supra note 5, ¶ 33.31.

[9] Misuse of Drugs Act 1971, § 21, c. 38, https://perma.cc/X2A5-QDJY.

[10] Criminal Finances Act 2017, §§ 44-52, https://perma.cc/276G-UJ56.

[11] Economic Crime and Corporate Transparency Act 2023, c. 56, https://perma.cc/AL96-W5LL.

[12] Fraud Act 2007, c. 22, § 12, https://perma.cc/42FF-22MA.

[13] Ali Shalchi, House of Commons Library, *Corporate Criminal Liability in England and Wales*, Research Briefing CBP 9027 (June 27, 2022), at 4, https://perma.cc/S5PE-4LLP.

considered to be "directing [the] mind and will"[14] of a corporation, acting within the scope of their authority,[15] may be taken into account.[16] The Court of Appeal stated

> the question: what natural persons are to be treated in law as being the company for the purpose of acts done in the course of its business, including the taking of precautions and the exercise or due diligence to avoid the commission of a criminal offence, is to be found by identifying those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company.[17]

Criminal liability extends only to actions that are within the terms of a company's memorandum and articles of association.[18]

Establishing the mental state of a person representing the directing mind has proved challenging, particularly in the prosecution of economic crimes and for large corporations.[19] A leading criminal law treatise, Blackstone's Criminal Justice, states that,

> [i]ncreasingly, doubtless in response to the perceived limitations on holding companies to criminal account because of the identification doctrine, many statutes provide particular routes to criminal liability. Tests such as that of gross negligence, expressed in terms of the way the company is managed, are also now used to criminalise corporate conduct and systems. Frustratingly, however, the texts are not uniform. For example, the [Corporate Manslaughter and Corporate Homicide Act] 2007 provides for a test predicated on gross breach of relevant duty of care in the way in which its activities are managed or organized; notably, a company can no longer be convicted of involuntary manslaughter at common law, although an officer of the company can . . . The Bribery Act 2010, s. 7 (failure to prevent bribery . . .) provides another test and the [Criminal Justice and Courts Act] 2015, s. 21 (ill-treatment or neglect by a care provider . . .) yet another.[20]

An example of Parliament legislating to fill the limitations posed by the identification doctrine is the recently enacted Economic Crime and Corporate Transparency Act 2023.[21] This act amended the identification doctrine to help facilitate the prosecution of economic crimes by corporations.

The act provides that corporate liability can be attributed to a corporation where a senior manager, acting within the actual or apparent scope of his or her authority, commits, attempts, or conspires

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[14] *Blackstone's Criminal Practice*, supra note 2, ¶ A6.2.

[15] R v ICR Haulage et al [1944] KB 551, ¶ 559 (accessed via ICLR).

[16] For an extensive review of the identification doctrine, see further Law Commission, *Corporate Criminal Liability: An Options Paper*, supra note 1.

[17] Tesco Supermarkets Ltd v Nattrass [1972] AC 153 at 200 (accessed via ICLR).

[18] Id. at 199.

[19] See, for example, Serious Fraud Office v Barclays PLC et al [2018] EWHC 3055 (QB), https://perma.cc/AH25-7DWJ.

[20] *Blackstone's Criminal Practice*, supra note 2, ¶ A6.7.

[21] Economic Crime and Corporate Transparency Act 2023, c. 56, https://perma.cc/AL96-W5LL.

to commit, or aids, abets, counsels, or procures the commission of an economic offense specified in the act.[22] These offenses include theft, money laundering, fraud, and false accounting. No offense occurs if the act or omission that forms part of the offense did not take place in the UK.[23] The term "senior manager" is defined in the act as

> in relation to a body corporate or partnership, means an individual who plays a significant role in—
> a) the making of decisions about how the whole or a substantial part of the activities of the body corporate or (as the case may be) partnership are to be managed or organised, or
> b) the actual managing or organising of the whole or a substantial part of those activities.[24]

This definition aims to cover those in the direct chain of management and those in compliance roles.[25] This introduces a second principle within the identification doctrine: this occurs in cases of corporations being prosecuted for economic crimes specified in the act and requires the individual with *mens rea* to fall within the definition of senior manager. If the offense is not listed in the 2023 act, the traditional identification doctrine applies and the individual with mens rea must be the "directing mind and will" of the corporation.

In addition to amending the identification doctrine, the Economic Crime and Corporate Transparency Act 2023 created a new offense of failing to prevent fraud, money laundering, or other economic crimes committed by employees, agents, or associated individuals, such as contractors. The offense of failing to prevent fraud, which will commence on September 1, 2025,[26] applies to large organizations, which are those that meet two of the following three criteria: employ more than 250 people, have £36 million (approximately US$46 million) annual turnover or higher and/or more than £18 million (approximately US$23 million) on its total balance sheet.[27] This provision has extra territorial defense and does not require the company to either be incorporated in, or carry on a business, or part thereof, in the UK. Thus corporations based and conducting their business entirely overseas will commit an offense under this provision if they target victims in the UK. The only defense for the corporation is if it has reasonable procedures in place to prevent fraud, or that it is not reasonable for the corporation to have these procedures in place.

This act brings liability for certain economic crimes in line with liability for offenses under the Bribery Act 2010, where companies can be held liable for failing to prevent bribery by associated

[22] Id. § 196.

[23] Id.

[24] Id.

[25] Economic Crime and Corporate Transparency Act 2023, c. 56, *Explanatory Notes*, ¶ 825, https://perma.cc/2VGA-AMGK.

[26] Economic Crime and Corporate Transparency Act 2023 (Commencement No. 3) Regulations 2024, SI 2024/1108, reg. 3, https://perma.cc/E7Y3-PW7S.

[27] Economic Crime and Corporate Transparency Act 2023, § 201.

persons[28] and the Criminal Finances Act 2017, which provides corporate liability for failing to prevent the facilitation of tax evasion.[29]

The Criminal Justice Bill 2023-2024[30] sought to apply the amended identification doctrine provided for in the Economic Crime and Corporate Transparency Act 2023, to all criminal offenses. The bill did not make it out of the report stage and was not reintroduced for the 2024-25 parliamentary session.[31]

III. Regulatory Obligations

Companies that conduct regulated activities must comply with regulatory obligations or face civil and/or criminal penalties.[32] Some regulatory bodies have been provided with the power to levy financial penalties where regulations are breached. The following are some of the major areas where a regulator can issue a monetary penalty.

A. Financial Conduct Authority

The Financial Conduct Authority (FCA) is the regulator of the financial industry and is able to impose fines on companies that fail to comply with regulatory obligations. When determining fines, the FCA has a five step approach. The first is disgorgement: it "seek[s] to deprive a firm of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this."[33] The second step involves the FCA determining a figure that reflects the seriousness of the breach. This could be based on the revenue generated from a product line or business and, in cases where the FCA uses revenue as the indicator of harm that the firm's breach may cause, it will calculate a figure based off a percentage of the firm's revenue generated relating to the breach during the period the breach occurred. Once the revenue figure has been determined, the FCA decides on the percentage of revenue to form the basis of the penalty. In making this decision, it considers the seriousness of the breach and selects a percentage between 0-20%, with the figure being determined according to the seriousness of the breach.[34] The fourth step is considering if there are any mitigating or aggravating factors that warrant the increase or decrease of the amount of the financial penalty. The fifth step is if the FCA and the firm the penalty is to be imposed on can reach a settlement agreement. If such an agreement can be made, the amount of financial penalty can be reduced.[35]

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[28] Bribery Act 2010, c. 23, § 7, https://perma.cc/XD42-EEJW.

[29] Criminal Finances Act 2017, §§ 44-52, https://perma.cc/276G-UJ56.

[30] Criminal Justice Bill, Bill 155 of 2023-24, clause 16, https://perma.cc/N4BV-KC87.

[31] *Parliamentary Bills*, UK Parliament, https://perma.cc/U3JX-6QRW.

[32] *Blackstone's Criminal Practice*, supra note 2, ¶ A6.7.

[33] Financial Conduct Authority, *The Decision Procedure and Penalties Manual*, Chapter 6, ¶ 6.5A.1, https://perma.cc/G7JL-Q74G.

[34] Id.

[35] Id.

In 2024, the FCA published over £176 million (approximately US$224 million) in fines.[36]

The FCA can also prosecute offenders for serious offenses. An example of this is provided in a case brought as a result of a company failing to comply with the obligations contained in the Money Laundering Regulations 2007,[37] subsequently replaced by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulation 2017,[38] which required regulated bodies to conduct, and continue to review, customer due diligence. The regulations provide that money laundering need not arise, simply failing to monitor customers is sufficient for an offense to be committed, as arose in the case of *FCA v NatWest Bank PLC*, where the bank pled guilty to failing to monitor a customer for a three-and-a-half-year period and was fined almost £265 million (approximately US$332 million).[39]

B. His Majesty's Treasury

The Policing and Crime Act 2017 provides His Majesty's Treasury (HM Treasury) with the ability to impose financial penalties where HM Treasury is satisfied, on the balance of probabilities, that a person has breached a prohibition or failed to comply with an obligation imposed by, or under, financial sanctions legislation.[40] HM Treasury currently has an Office of Financial Sanctions Implementation (OFSI), which oversees the Policing and Crime Act 2017 and may impose monetary penalties where, on the balance of probabilities, it is satisfied that a person either knowingly, or had reasonable cause to suspect that he or she has, breached a prohibition, or failed to comply with an obligation imposed by financial sanctions legislation.[41] The maximum monetary penalty that can be imposed ranges from 50% of the total breach, up to a total of £1 million (about US$1.24 million), whichever is the greater amount. OFSI has a three-part process when determining whether to impose monetary penalties, and then the amount of penalty to be imposed. This process consists of

1. penalty threshold
2. baseline penalty matrix
3. penalty recommendation[42]

OFSI has issued guidance noting that the penalty threshold will be met where one of the following tests are met:

[36] *2024 Fines*, Financial Conduct Authority, https://perma.cc/GFC5-2TPY.

[37] Money Laundering Regulations 2007, SI 2007/2157, https://perma.cc/Y52Y-JLKQ.

[38] Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692, https://perma.cc/KT6S-5WS5.

[39] Financial Conduct Authority v National Westminster Bank Plc (Sentencing Remarks) (Dec. 13, 2021), Judiciary of England & Wales, https://perma.cc/WN3L-YWQ2.

[40] Policing and Crime Act 2017, c. 3, § 146 & 147, https://perma.cc/77P9-DYXV.

[41] *UK Financial Sanctions General Guidance*, Office of Financial Sanctions Implementation, https://perma.cc/87UU-AKCM.

[42] Id.

- the case meets the tests in section 146(1) of the Policing and Crime Act 2017 - that is, on the balance of probabilities, there has been a breach
- the breach has involved funds or economic resources being made available to a designated person. The financial sanctions regimes are designed to prevent this
- the breach has involved a person dealing with the funds or economic resources of a designated person or entity in breach of an asset freeze
- there is evidence of circumvention. By making arrangements to circumvent the law, a person not only breaches the law but attacks the integrity of the system
- a person has not complied with a requirement to provide information, and/or
- OFSI considers that a monetary penalty is appropriate and proportionate.[43]

The baseline penalty matrix provides that OFSI works out the maximum penalty that it can impose and then determines the level that is reasonable and proportionate based on its view of the seriousness of the case, the impact of the case, and the value of the breach. The value of the breach may be estimated by OFSI. It provides a 50% reduction for the final monetary penalty for prompt and completely voluntary disclosures of a breach in serious cases, and a 30% reduction in cases that are considered most serious. OFSI has stated "[t]he baseline monetary penalty matrix therefore encourages prompt and complete voluntary disclosure of the facts of the case. It also seeks to ensure that the most serious cases receive a higher monetary penalty."[44]

OFSI issued its first monetary penalty of £15,000 (approximately US$19,000) in September 2024 to a company that received several payments for property management services from a person subject to an asset freeze.[45]

C. Environment Agency

The Environment Agency has wide ranging powers to impose variable monetary penalties, in some cases for an unlimited amount, for a number of environmental offenses.[46] The variable monetary penalty is a civil sanction that the Environment Agency can impose when the agency is satisfied, beyond a reasonable doubt, that the person has committed an offense. A variable monetary penalty may not be imposed if one has already been imposed in relation to the same act or omission that caused the offense, or if the Environment Agency has accepted an enforcement undertaking in relation to the same act or omission that caused the offense, provided the undertaking is being complied with.

The Environment Agency can make a variable monetary penalty for offenses committed by any company that has an environmental permit, such as water, waste, and agricultural companies. The offenses that a variable financial penalty may be imposed for include illegal discharges to

[43] *Financial Sanctions Enforcement and Monetary Penalties Guidance*, Office of Financial Sanctions Implementation, https://perma.cc/QM9H-KYXX.

[44] Id.

[45] Press Release, Penalty Issued for Breaches Linked to Russia's Invasion of Ukraine, Sept. 27, 2024, HM Treasury & Office of Financial Sanctions, https://perma.cc/96Q3-E8K7.

[46] Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, sch. 26A, https://perma.cc/A3NQ-2TDT.

water without a permit; illegal waste offenses, such as illegal scrapyards; and permit breaches from sites that discharge into rivers and seas, or that contribute to air pollution.[47]

The variable monetary penalty is designed to "deter organisations from polluting and increase their incentive to comply with environmental regulations."[48] The Environment Agency has stated

> [t]here are clear provisions in the Sentencing Council guidelines[49] that will ensure the level of penalties levied are proportionate to the degree of environmental harm and culpability. These include safeguards to ensure the operator's ability to pay, the size of the operator, and the degree of responsibility and harm, amongst others - all of which are taken into account when imposing a penalty.[50]

The Environment Agency has further stated that variable monetary penalties will be imposed only for serious offenses

- when there is evidence of negligence or mismanagement
- when there is an environmental impact to remove an identifiable financial gain or saving as a result of the breach
- where prosecution is not necessary or can be avoided to get the most appropriate outcome.[51]

It notes that the starting point for serious and deliberate offenses by large organizations is 1 million, with a range that extends from £450,000 to £3 million (approximately US$575,000 to $3.83 million, respectively). When determining the amount, the Environment Agency considers any compensation paid to third parties and victims; the culpability of the organization and harm caused by the offense to determine the seriousness of the offense that identifies the starting point and range for the penalty. The size of the organization and its financial circumstances are considered, along with any aggravating or mitigating factors. Once all this information is compiled, the Environment Agency will look at any economic benefit that the offense resulted in and add it to the penalty. It then considers if the "proposed penalty based on turnover is proportionate to the means of the offender . . . balance[ing] the need for the penalty to have a real economic impact with the organisation's ability to pay."[52] The Environment Agency further considers any other factors that would justify an adjustment in the amount of penalty, including any assistance and cooperation provided, along with any expenses to be incurred in order to

[47] Environmental Civil Sanctions (England) Order 2010, SI 2010/1157, https://perma.cc/46YK-XAY9.

[48] Department for Environment, Food & Rural Affairs, *Summary of Responses and Government Responses*, https://perma.cc/3VKU-547D.

[49] *Environmental Offences (Other)*, Sentencing Council (July 1, 2014), https://perma.cc/6MZW-7QED.

[50] Press Release, 'Polluters Must Pay' says Environment Secretary, as Unlimited Penalties Unveiled, July 12, 2023, Department for Environment, Food & Rural Affairs, https://perma.cc/M2B2-XK43.

[51] *Environment Agency Enforcement and Sanctions Policy*, Environment Agency, at ¶ 7.3.2, https://perma.cc/5WWV-3HBD.

[52] *Policy Paper Annex 1: RES Act – The Environment Agency's Approach to Applying Civil Sanctions and Accepting Enforcement Undertakings* (last updated Dec. 11, 2023), Environment Agency, https://perma.cc/MQR5-VKCL.

follow a compliance or restoration notice. Lastly, the Environment Agency does a final review and takes into account if the total penalty is proportionate to the offender's behavior.[53]

IV. Prosecuting Offenses

The Crown Prosecution Service states that corporate liability offenses "must be capable of being punishable with a fine (this excludes murder, treason, piracy etc.) as clearly a company or statutory corporation cannot be imprisoned."[54] The Crown Prosecution policy states that in cases where the evidence shows that there is a realistic prospect of conviction, the prosecutor must also consider

> whether or not a prosecution is in the public interest, in accordance with the Code for Crown Prosecutors. The more serious the offence, the more likely it is that prosecution will be needed in the public interest. Indicators of seriousness include not just the value of any gain or loss, but also the risk of harm to the public, to unidentified victims, shareholders, employees and creditors and to the stability and integrity of financial markets and international trade. The impact of the offending in other countries, and not just the consequences in the UK, should be taken into account.[55]

The policy sets out several criteria that should be considered when determine whether or not to prosecute an offense.[56]

V. Calculating Penalties

The Sentencing Act 2003 provides that the court must determine the appropriate level of the fine and that this must reflect both the seriousness of the offense and the financial circumstances of the offender.[57] Companies can face unlimited fines for bribery, fraud, and money laundering offenses.[58] The Sentencing Council has issued the following guidance:

- Where possible, if a financial penalty is imposed, it should remove any economic benefit the offender has derived through the commission of the offence including:
  - avoided costs;
  - operating savings;
  - any gain made as a direct result of the offence.
- The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to comply with the law.
- In considering economic benefit, the court should avoid double recovery.

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[53] Id.

[54] *Corporate Prosecutions, Legal Guidance* (Oct. 12, 2021), Crown Prosecution Service, https://perma.cc/W4VG-E5KR.

[55] Id.

[56] Id.

[57] Sentencing Act 2020, c. 17, § 125, https://perma.cc/KTW5-B7YR.

[58] *Corporate Offenders: Fraud, Bribery & Money Laundering*, Sentencing Council, https://perma.cc/92FN-YM8U.

- Where the means of the offender are limited, priority should be given to compensation (where applicable) over payment of any other financial penalty.[59]

For the offenses of bribery, fraud, and money laundering, the Sentencing Council has set out extensive guidelines to help courts determine the appropriate penalty. The guidelines provide that, when the means of the offender are limited, providing compensation to any victims of the crime through a compensation order should be the first priority and that reasons should be provided if any order is not made.[60]

The court must assess the factors of the case to determine the culpability of the offender. The Sentencing Guidelines provide a number of characteristics that should be take into account. High culpability may be demonstrated by the following factors:

- Corporation plays a leading role in organised, planned unlawful activity (whether acting alone or with others)
- Willful obstruction of detection (for example destruction of evidence, misleading investigators, suborning employees)
- Involving others through pressure or coercion (for example employees or suppliers)
- Targeting of vulnerable victims or a large number of victims
- Corruption of local or national government officials or ministers Corruption of officials performing a law enforcement role
- Abuse of dominant market position or position of trust or responsibility
- Offending committed over a sustained period of time
- Culture of willful disregard of commission of offences by employees or agents with no effort to put effective systems in place (section 7 Bribery Act only).[61]

Medium culpability may be demonstrated by the following factors:

- Corporation plays a significant role in unlawful activity organised by others
- Activity not unlawful from the outset
- Corporation reckless in making false statement (section 72 VAT Act 1994).[62]

Lesser culpability may be demonstrated by the following factors:

- Corporation plays a minor, peripheral role in unlawful activity organised by others
- Some effort made to put bribery prevention measures in place but insufficient to amount to a defence (section 7 Bribery Act only)
- Involvement through coercion, intimidation or exploitation.[63]

[59] *Fines*, Sentencing Council, https://perma.cc/482Q-FC4A.

[60] *Corporate Offenders: Fraud, Bribery & Money Laundering*, supra note 58.

[61] Id.

[62] Id.

[63] Id.

The court must then consider the amount gained, or loss avoided, as a result of the offense, which is known as the "harm figure."[64] This is then multiplied, with the percentage range set according to the level of culpability attributable to the corporation. For those with high culpability, the starting point for the harm figure multiplier is 300%, with the range extending from 250-400% based upon any aggravating or mitigating factors. For medium culpability, the starting point is 200%, with the range extending from 100-300% and for lesser culpability, the starting multiplier is 100%, with the range extending from 20-150%.[65] Once the fine level has been ascertained, the court then considers if there are any further factors that would indicate the level of the fine should be adjusted.[66] The Sentencing Guidelines require the court to consider:

> The combination of orders made, compensation, confiscation and fine ought to achieve:
> - the removal of all gain
> - appropriate additional punishment, and
> - deterrence.[67]
>
> The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.
>
> The fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.[68]

In addition to being increased, the fine may also be reduced if certain circumstances arise, such as assistance being provided to the prosecution, or a guilty plea.[69]

An example in a company being fined was shown in the first conviction of failing to prevent bribery. This occurred in 2015 and resulted in a fine of £1.4 million (approximately US$1.8 million), a confiscation order of £851,000 (approximately US$1.1 million) and £95,000 (approximately US$122 million) in costs awarded to the Serious Fraud Office.[70]

VI. Piercing the Corporate Veil

There are circumstances where a person is convicted of an offense that relates to the operation of a company and the court is required to determine any benefit the offender has obtained as a result

[64] Id.

[65] Id.

[66] Id.

[67] Id.

[68] Id.

[69] Id.

[70] *Sweett Group PLC Sentenced and Ordered to Pay £2.25 Million after Bribery Act Conviction*, Serious Fraud Office (Feb. 19, 2016), https://perma.cc/JFF3-LQXT.

of the offense they have been convicted of.[71] This is known as "piercing the corporate veil," as follows:

> there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality.[72]

These cases arise "where a person who owns and controls a company is said in certain circumstances to be identified with it in law by virtue of that ownership and control."[73] In doing so, "it means disregarding the separate personality of the company."[74]

VII. Deferred Prosecution Agreements

In response to the difficulties faced prosecuting companies using the identification doctrine, the Crime and Courts Act 2013 created deferred prosecution agreements that allow corporations charged with specified offenses to enter into an agreement with the prosecutor, under a judge's supervision, to enter into certain actions, such as paying a financial penalty or cooperating with future prosecutions.[75] The corporation will not be prosecuted as long as it follows the terms of the deferred prosecution agreement, which can include, but is not limited to, any of the following requirements:

> a. to pay to the prosecutor a financial penalty;
> b. to compensate victims of the alleged offence;
> c. to donate money to a charity or other third party;
> d. to disgorge any profits made by P from the alleged offence;
> e. to implement a compliance programme or make changes to an existing compliance programme relating to P's policies or to the training of P's employees or both;
> f. to co-operate in any investigation related to the alleged offence;
> g. to pay any reasonable costs of the prosecutor in relation to the alleged offence or the DPA. The DPA may impose time limits within which P must comply with the requirements imposed on P.[76]

[71] R v Seager; R v Blatch [2009] EWCA Crime 1303, https://perma.cc/3C56-H2HZ. See further *Archbold Criminal Pleading, Practice and Evidence*, supra note 5, ¶ 5B-216.

[72] Prest v Petrodel Resources Ltd et al, [2013] UKSC 34, ¶ 35, https://perma.cc/CC25-FUHY.

[73] Id. ¶ 16.

[74] Id.

[75] Crime and Courts Act 2013, c. 22, § 45 & sched. 17, https://perma.cc/Q696-8RVB.

[76] Id. sched. 17, ¶ 5(3).

European Union

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SUMMARY The European Union (EU) does not have a unified framework for corporate criminal liability, but instead adopts a sectoral approach for administrative and criminal liability. Corporations may incur fines, confiscation of assets, debarment, and other sanctions for misconduct. Fines are generally calculated taking into account turnover of the company and the seriousness of the offense. EU law instructs the member states to enact penalties that are effective, proportionate, and dissuasive to prevent corporate crime and ensure compliance.

I. General Approach in the European Union

While the European Union (EU) does not have a singular framework for corporate criminal liability, it has established a system of administrative and criminal liability through sectoral legislation. Corporations may incur fines, confiscation of assets, debarment, and other sanctions for misconduct. The methodology for calculating fines generally considers turnover of the company and the seriousness of the offense, with EU law instructing the member states to enact penalties that are effective, proportionate, and dissuasive to prevent corporate crime and ensure compliance.

A. No EU-wide Criminal Code

Regulating corporate liability for criminal conduct would require an EU Criminal Code that defines a set of offenses and general rules for criminal liability and is directly applicable in all member states. Such a normative structure does not exist.

However, there are certain EU laws that apply to criminal conduct of corporations. First, there are legal provisions that impose sanctions which are uniformly applicable in all member states. Second, there are national laws that are influenced by EU laws.

Where EU law calls for sanctions on corporations, it mostly leaves it to the discretion of member states to determine how to enforce effective sanctions. None of the existing EU legal acts mandate member states to introduce true corporate criminal liability, as seen in countries like the Netherlands, France, and Finland.[1] Instead, EU legislation regularly contains a wording in these provisions similar to the one found in article 9 of the Directive (EU) 2017/1371 on the Fight

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[1] Please see individual country surveys for more information on national laws.

Against Fraud to the Union's Financial Interests by Means of Criminal Law (PIF Directive),[2] as follows:

> [m]ember [s]tates shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions . . . .[3]

B. Limited Legislative Competencies of the EU

The EU does not possess sovereign statehood with unlimited legislative authority. Instead, the distribution of powers between the EU and the member states is based on the principle of conferral, meaning the EU operates only within powers explicitly assigned to it for specified objectives.[4] Powers not delegated to the EU remain with the member states, and EU institutions require a treaty-based legal basis for each legislative act.[5]

The EU treaties do not grant the EU legislature a general authority to create supranational criminal laws.[6] Under article 83, paragraphs 1 and 2 of the Treaty on the Functioning of the European Union (TFEU), the EU has a limited harmonization competence, which allows only the establishment of minimum standards for defining offenses and penalties for particularly serious crime with a cross-border dimension through directives.[7] It is generally accepted that the EU lacks the power to introduce substantive criminal laws through regulations.[8]

Within EU law, regulations and directives serve different purposes under article 288 of the TFEU. Regulations are binding in their entirety and directly applicable in all member states, automatically overriding conflicting national laws.[9] Directives, however, set objectives that member states are required to achieve but allow them to determine the form and means for doing

[2] Directive (EU) 2017/1371, 2017 O.J. (L 198) 29, https://perma.cc/V3PU-PLF9. For more information on the PIF Directive, see Jenny Gesley, *European Union: New Rules to Fight Crimes Against the EU's Budget Take Effect,* Global Legal Monitor (Aug. 7, 2019), https://perma.cc/P4AY-TDHJ.

[3] Ingo Fromm, *Auf dem Weg zur strafrechtlichen Verantwortlichkeit von Unternehmen/Unternehmensvereinigungen in Europa?*, 7 Zeitschrift für Internationale Strafrechtsdogmatik (ZIS), 279, 280 (2007).

[4] Consolidated Version of the Treaty on European Union (TEU), art. 5 paras. 1, 2, 2016 O.J. (C 202) 13, https://perma.cc/W3G8-RT77.

[5] Christian Calliess, *Art. 5 TFEU*, para. 7, in EUV/AEUV Kommentar (Christian Calliess & Matthias Ruffert eds., 6th ed. 2022); Rudolf Streinz, *Art. 5 TFEU*, para. 8, in EUV/AEUV Kurzkommentar (Rudolf Streinz ed., 3rd ed. 2018).

[6] Helmut Satzger, *International and European Criminal Law* 46 (2d ed. 2018); Kai Ambos*, Internationales Strafrecht* 434, 435 (5th ed. 2018); Bernd Hecker, *Europäisches Strafrecht,* at 118, 145 (6th ed. 2021).

[7] Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), 2016 O.J. (C 202) 47, https://perma.cc/QN82-J524; Kai Ambos, *Internationales Strafrecht* 435 (5th ed. 2018); Hecker, supra note 6, at 118, 145.

[8] Hecker, supra note 6, at 141.

[9] TFEU, art. 288, para. 2.

so.[10] Member states must implement directives into their national legal systems within a set timeframe, enabling them to adapt the laws to specific national contexts.[11]

Harmonization measures under article 83, paragraph 1 of the TFEU include setting minimum standards for defining criminal offenses for particularly serious crime with a cross-border dimension, ensuring core definitions are not undermined by alternative national interpretations. The EU's harmonization framework also applies to penalties in certain criminal domains, such as setting minimum amounts for maximum penalties, which establish a baseline for the highest possible punishment in national law. This harmonization ensures that national penalties in different member states are more or less aligned, but does not dictate the specific sentences to be imposed in individual cases.

Additionally, there are specific competence provisions within the treaties that allow the EU to directly impose punitive sanctions for certain types of conduct, such as fines for competition law violations under article 103, paragraph 2 of the TFEU.

C. Sectoral Approach for Corporate Liability

1. General

Due to the EU's limited legislative competencies, rather than adopting a comprehensive framework, the EU has opted for a sectoral approach, focusing on areas where corporate misconduct can seriously affect the internal market and public interests. This approach is implemented through a combination of regulations and directives that mandate member states align their national laws with EU objectives, particularly in areas such as fraud, environmental crimes, market manipulation, and data protection.

Through these directives and regulations, the EU has established mechanisms to hold corporations accountable in specific areas of the law. For instance, article 6 of the Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law provides that legal entities can be held liable for offenses committed for their benefit by individuals in leading positions within the corporation.[12] This liability applies whether the individual acts alone or as part of the entity's governing body, based on his or her power to represent, make decisions, or exercise control within the corporation. Furthermore, legal entities may be held accountable if a lack of supervision or control by a leading individual enables an offense to be committed for the entity's benefit by someone under its authority.

Possible sanctions, which follow the establishment of accountability of a corporation, are oftentimes determined by the member states. In this context, recital 33 of Directive (EU) 2024/1203 states

[10] Id. art. 288, para. 3.

[11] Hecker, supra note 6, at 266.

[12] Directive (EU) 2024/1203, 2024 O.J. (L. 30.4.2024), https://perma.cc/5W3W-84HZ.

> [i]n order to achieve the objectives of this Directive, Member States whose law does not provide for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive, and proportionate types and levels of non-criminal penalties as laid down in this Directive.

In member states where criminal liability for corporations is absent, administrative liability is often used as an alternative. This form of liability exists within the criminal justice sphere for "criminal-offense-like offenses" but is distinct from purely administrative matters. Regulations under EU law, such as the General Data Protection Regulation (GDPR), are directly applicable in all member states and therefore determine specific amounts for pecuniary fines in much more detail.[13]

2. *Sources of Law*

The following overview lists only a few EU laws, including directives and regulations, that impose legal consequences on corporations for criminal conduct.

a. Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests (PIF Directive)

The PIF Directive applies to criminal offenses affecting the EU's financial interests, such as fraud, corruption, money laundering, and misappropriation of funds. Under the PIF Directive, corporations may be held liable for criminal offenses committed for their benefit by persons with managerial responsibilities or those acting under their authority.[14] According to article 9 of the PIF Directive, member states must ensure that legal entities face effective, proportionate, and dissuasive sanctions. These include fines determined by national law, which must be proportionate to the damage caused to the EU's financial interests, confiscation of proceeds from the crime, as well as other measures, such as the exclusion from access to public funding or the dissolution of the legal entity.

b. General Data Protection Regulation (GDPR)

The GDPR applies to companies processing personal data. Possible liability arises from the failure to comply with data protection standards, leading to breaches of individuals' rights. Under the GDPR, corporations can be classified as data processing controllers and therefore may face administrative fines for non-compliance with GDPR requirements.[15] The GDPR sets the maximum amount for fines; it is up to the national authorities to determine an amount that is "effective, proportionate and dissuasive."[16]

[13] General Data Protection Regulation (GDPR), 2016 O.J. (L 119) 1, https://perma.cc/BK77-DDM8.

[14] PIF Directive, art. 6.

[15] GDPR, art. 4 no. 7, art. 83.

[16] Id. art. 83, para. 1.

c. Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law

Directive (EU) 2024/1203 requires member states to criminalize certain environmental offenses that have serious repercussions, such as illegal waste disposal, pollution, or trading in endangered species.[17] Under the directive, corporations may be held liable if an offense is committed for their benefit by individuals with leading positions.[18] Again, the directive grants the member states discretion over the imposition of sanctions. However, according to article 7, the sanctions under national law must be effective and proportionate.

d. Articles 101, 102 TFEU and Council Regulation (EC) No 1/2003

Article 101 of the TFEU contains a comprehensive regulation of agreements covered by EU law that restrict competition, while article 102 of the TFEU covers the abuse of a dominant position on the internal European market. Council Regulation (EC) No 1/2003 on the Implementation of the Rules on Competition, which is based on article 103 of the TFEU, empowers the EU Commission to enforce these competition rules and impose fines on companies restricting competition or abusing their market position.[19] The regulation stipulates that the amount of the fine depends on the severity and duration of the infringement and may not exceed 10% of the company's annual turnover.[20]

II. Sanctions

Sanctions for corporate misconduct under EU law, including criminal sanctions, may vary widely. Even in such cases where the EU obliges member states to impose criminal liability for certain kinds of behavior, for example in article 7 of the Directive (EU) 2024/1203 or in article 3 of the Market Abuse Directive,[21] it grants the member states discretion over the kind of liability to be imposed on corporations.

The most common form of corporate accountability under EU law is administrative liability. It often includes fines and sanctions imposed by administrative authorities, such as those related to competition law or data protection breaches. As an example, article 30 of the Market Abuse Regulation (MAR) states

> [w]ithout prejudice to any criminal sanctions . . . , Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures in relation to at least the following infringements . . . .[22]

[17] Directive (EU) 2024/1203, art. 3.

[18] Id. art. 6.

[19] Council Regulation (EC) No 1/2003, 2003 O.J. (L 1) 1, https://perma.cc/WAZ5-WH9R.

[20] Id. art. 7 para. 2.

[21] Market Abuse Directive, 2014 O.J. (L 173) 179, https://perma.cc/KF66-5GJ7.

[22] Market Abuse Regulation [MAR], art. 30, 2014 O.J. (L 173) 1, https://perma.cc/LKH3-4SEZ.

Non-criminal fines, such as those possible under article 7 of the Directive (EU) 2024/1203, may also be considered as a form of administrative liability.

A. Fines and Financial Sanctions

EU law focuses heavily on financial penalties as a deterrent to corporate wrongdoing. The methodology for calculating fines varies depending on the sector.

Concerning violations of data protection rules, the GDPR sets the maximum amount for fines, while it is ultimately up to the national authorities to determine an amount that is "effective, proportionate and dissuasive."[23] There are two tiers of fines, depending on the nature of the breach. One tier provides for fines as much as 10 million euros (about US$10.9 million), or in the case of an undertaking, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher. The other tier provides for fines up to 20 million euros (about US$21.8 million) or up to 4% of the total worldwide annual turnover, whichever is higher.[24]

A similar example can be found in the MAR. Under article 30, paragraph 2, subparagraph (j)(i) of the MAR, the maximum administrative sanctions enacted by the member states have to be at least up to 15 million euros (about US$16.3 million) or 15% of the total annual turnover of the legal person according to the last available accounts approved by the management body.

B. Additional Measures

In addition to fines and financial penalties, EU law also provides for other measures to punish a corporation, including monitorship, debarment, or corporate dissolution. One example can be found in article 9 of the PIF Directive, which obligates member states to implement the following measures, among others: exclusion from entitlement to public benefits or aid, exclusion from public tender procedures, disqualification from the practice of commercial activities, placement under judicial supervision, judicial winding-up, and closure of establishments which have been used for committing the criminal offense.

For a number of serious criminal offenses listed under article 3 of the Directive 2014/42/EU on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union, the EU instructs member states to enact laws allowing for the temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property (freezing) as well as the final deprivation of property ordered by a court in relation to a criminal offense (confiscation).[25]

[23] GDPR, art. 83, para. 1.

[24] Id. art. 83, paras. 4, 5.

[25] Directive 2014/42/EU, 2014 O.J. (L 127) 39, https://perma.cc/MB8D-49X5.

Fiji

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SUMMARY Fiji's Crimes Act 2009 includes a chapter on corporate criminal responsibility that sets out general principles as well as ways in which the physical and fault elements of offenses can be attributed to corporate entities. For fault elements, this includes examining the conduct of the board of directors and high managerial agents, as well as the corporate culture. Various other laws contain offense provisions that can be applied to corporations, including in the areas of company law, customs, cybercrime, competition and consumer law, food safety, workplace health and safety, financial services, and taxation. In several of the laws, the maximum fines established for certain offenses are higher for corporations than for individuals.

I. Introduction

Fiji's legal system is derived from the English common law system[1] and the country has a Westminster-style system of government.[2]

With respect to the interpretation of any statutory provisions, including offense provisions, the Interpretation Act 1967 defines "person" in the section 2 as including "any company or association or body of persons, corporate or incorporate."[3]

II. General Criminal and Sentencing Law

A. Crimes Act 2009

The offenses contained in chapter 3 of the Crimes Act 2009 refer to commission by a "person." The maximum penalties for offenses under the act include imprisonment and fines, or both.

Within chapter 2 of the act, part 8 is specifically headed "Corporate Criminal Responsibility." Within the part, section 51 sets out the following general principles:

> (1) This Act applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set out in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

[1] See *Find Legal Expertise in Fiji*, Commonwealth Network, https://perma.cc/4NS2-HVW9.

[2] *Our Story: History of the Parliament of the Republic of Fiji*, Parliament of the Republic of Fiji, https://perma.cc/3YEG-XT7V.

[3] Interpretation Act 1967 (No 11 of 1967) s 2, https://perma.cc/T48F-YSV4.

(2) A body corporate may be found guilty of an offence, including one punishable by imprisonment.[4]

With respect to the physical elements of offenses, section 52 provides as follows:

> [i]f a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.[5]

The fault element of an offense can also be attributed to a body corporate under section 53 of the act, as follows:

> (1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.
> (2) The means by which such an authorisation or permission may be established include–
> (a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
> (b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
> (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non compliance with the relevant provision; or
> (d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.
> (3) Sub-section (2) (b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.
> (4) Factors relevant to the application of sub-section (2)(c) or (d) include —
> (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and
> (b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.
> (5) If recklessness is not a fault element in relation to a physical element of an offence, sub-section (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.
> (6) In this section —
> "board of directors" means the body (by whatever name called) exercising the executive authority of the body corporate.
> "corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place.

[4] Crimes Act 2009 (No 44 of 2009) s 51, https://perma.cc/2W6W-RDBU.

[5] Id. s 52.

> "high managerial agent" means an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.[6]

Section 54 of the act relates to negligence of a body corporate, with the same general test set out in section 22 of the act applying.[7] Where negligence is a fault element of an offense, and no individual employee, agent, or officer of a body corporate has that fault element, "that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers)."[8] Evidence of negligence involves showing that the prohibited conduct was "substantially attributable" to "inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers," or "failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate."[9]

B. Sentencing and Penalties Act 2009

Section 31 of the Sentencing and Penalties Act 2009 provides a general power to fine an offender, in addition to or instead of any other sentence to which the offender may be liable. The maximum fine that may be imposed is that specified in the offense provision. Where no fine is fixed for an offense, "the fine which a court may impose is unlimited, but a court shall not impose an excessive fine."[10]

Section 40 of the act provides procedures for the enforcement of fines against corporations, with the court able to issue a warrant to seize property.

Section 15 of the act lists the range of sentencing orders that may be made by a court, while section 4 sets out sentencing guidelines to be applied.

Part 10 of the act relate to restitution and compensation orders.

C. Proceeds of Crime Act 1997

The Proceeds of Crime Act 1997 enables the courts to make forfeiture orders against property tainted in respect of offenses and pecuniary penalty orders in respect of benefits persons derive from the commission of offenses.[11] It also contains offense provisions related to dealing with the proceeds of criminal offending, with higher penalties applying where a body corporate commits an offense.[12]

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[6] Id. s 53.

[7] Id. s 54(1).

[8] Id. s 54(2).

[9] Id. s 54(3).

[10] Sentencing and Penalties Act 2009 (No 42 of 2009) s 31, https://perma.cc/6W2D-YE2P.

[11] Proceeds of Crime Act 1997 (No 27 of 1997) pt 2, https://perma.cc/4YQ8-DAWL.

[12] Id. pt 5.

III. Laws Containing Offense Provisions Applicable to Corporations

The following is a selection of key laws (in alphabetical order) containing criminal offenses for which corporations can be prosecuted or otherwise penalized. Some laws contain administrative as well as criminal penalties. Several statutes explicitly provide for the liability of officers of a body corporate in addition to the body corporate itself.

A. Companies Act 2015

Part 43 of the Companies Act 2015 contains various offenses as well as provisions related to proceedings and penalties. Section 625 specifies that "[s]ubject to this Act, Chapter 2 of the Crimes Act 2009 applies to offences against this Act."[13]

With respect to penalties for companies, section 627 states that "[w]here a company is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a penalty for that offence."

Where a court is satisfied that provisions in specified parts of the act, referred to as "civil penalty provisions," have been breached, it must make a declaration of contravention.[14] A person may be ordered to pay a pecuniary penalty in respect of each contravention up to a maximum of FJ$200,000 (about US$86,251) if the contravention "materially, prejudices the interests of the company or managed investment scheme, or its members," or "materially prejudices the company's ability to pay its creditors," or "is serious."[15]

B. Customs Act 1986

The Customs Act 1986 states that "person" means both legal and natural persons, unless the context otherwise requires.[16] Part 8 of the act contains penal provisions, with the penalties for many of the offenses, including customs offenses, committed by any person being a fine of up to FJ$25,000 (about US$10,781), imprisonment for up to 10 years, or both. The goods involved are also subject to forfeiture. These penalties also apply for offenses for which no special penalty is imposed.[17]

The act provides for a customs officer to issue an infringement notice that specifies a fixed penalty where the officer believes that a person has committed a prescribed offense.[18] Separate regulations apply to such notices.[19]

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[13] Companies Act 2015 (No 3 of 2015) s 625, https://perma.cc/PDU6-BX3S.

[14] Id. s 636.

[15] Id. s 638.

[16] Customs Act 1986 (No 11 of 1986) s 2, https://perma.cc/C5AM-LWKG.

[17] Id. s 143.

[18] Id. pt 18A.

[19] Customs (Infringement Notices) Regulations 2018 (LN 50 of 2018).

C. Cybercrime Act 2021

The Cybercrime Act 2021 contains various offenses related to the confidentiality, integrity and availability of computer data and computer systems in part 2, offenses related to computers and content in part 3, and other offenses in part 4.[20] The offense provisions contain maximum penalties for individuals and for bodies corporate. For example, the penalty for unauthorized access to computer systems by an individual is a fine of up to FJ$10,000 (about US$4,313) or imprisonment for up to five years, or both, while the penalty for a body corporate is a fine of up to FJ$50,000 (about US$21,560).[21] For other offenses in part 2 of the act, and for those in part 3, the maximum fine for an individual is FJ$50,000, while for a body corporate the maximum fine is FJ$100,000 (about US$43,121).

D. Employment Relations Act 2007

Under the Employment Relations Act 2007, an "employer" means "a corporation, company, body of persons or individual by whom a worker is employed under a contract of service."[22] Part 21 of the act contains offense provisions. Most offenses have penalties that apply to both individuals and corporations. Offenses related to the payment of wages, however, are subject to a fine of up to FJ$20,000 (about US$8,625) or imprisonment for up to five years for an individual, but for a corporation the fine is up to FJ$100,000.[23] A general penalty provision also states that, where a person commits an offense for which no particular penalty is provided, an individual is liable to a fine not exceeding FJ$10,000 or imprisonment for up to two years, or both, while a company or corporation or trade union is liable to a fine of up to FJ$50,000.[24]

Section 253 of the act provides that

> [w]here an offence under this Act committed by a company or corporation is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful [sic] neglect on the part of an officer of the company or corporation or person purporting to act as such an officer, the officer or person also commits the offence and is liable to the penalty for that offence.[25]

Furthermore, "[w]here in proceedings under this Act it is necessary to establish the intention of a company or corporation, it is sufficient to show that an officer, worker or agent of the company or corporation had that intention."[26]

[20] Cybercrime Act 2021 (No 3 of 2021), https://perma.cc/8U55-HKV3.

[21] Id. s 5(1).

[22] Employment Relations Act 2007 (No 36 of 2007) s 4, https://perma.cc/2YNC-BJ2W.

[23] Id. s 247.

[24] Id. s 256.

[25] Id. s 253(1).

[26] Id. s 253(2).

E. Environment Management Act 2005

Part 6 of the Environment Management Act 2005 contains offense and penalty provisions. While the offense of undertaking unauthorized developments and certain other offenses are subject to penalties applicable to both individuals and corporations,[27] the provision on pollution offenses provides that "[w]here a body corporate is convicted under this section the maximum penalty is 5 times the fine specified for that offence."[28]

For offenses related to the manufacturing, selling, supplying or distributing plastic bags or polystyrene products, any act done or omitted by an individual as an employee "must be treated as done or omitted by that individual's employer provided that the employee was acting within the course of that individual's employment," whether or not it was done with the knowledge of the employer.[29] A similar rule applies with respect to an agent-principal relationship.

Furthermore, if a corporation commits an offense under the act, "a director, officer, employee or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence also commits the offence, and is liable to the penalty prescribed for an offence, whether or not the corporation has been prosecuted or convicted."[30]

F. Fijian Competition and Consumer Commission Act 2010

The Fijian Competition and Consumer Commission Act 2010 contains provisions related to unfair and restrictive trade practices, price fixing, and consumer protection.[31] Section 129 of the act, on penalties, states that any person who contravenes provisions in part 6 of the act, on restrictive trade practices, is guilty of an offense punishable on conviction by a fine of up to FJ$1 million (about US$431,241).[32] Where a person commits an offense under the act for which no other penalty is provided, the person is liable to a fine of up to FJ$10,000 for a first offense and FJ$100,000 for a second or subsequent offense.[33] Section 129(3) provides that where the offense is committed by a body corporate, the maximum penalty is a fine that is five times that provided in any provision. The act also provides for forfeiture of any goods or articles in connection with any offense against the act.[34]

[27] Environment Management Act 2005 (No 1 of 2005) ss 43 & 44, https://perma.cc/Q2Z8-RWFD.

[28] Id. s 45(3).

[29] Id. ss 45A(4) & 45B(4).

[30] Id. s 51.

[31] Fijian Competition and Consumer Commission Act 2010 (No 49 of 2010), https://perma.cc/TH3U-F7KC.

[32] Id. s 129(1).

[33] Id. s 129(2).

[34] Id. s 129(3).

The act contains provisions related to forfeiture proceedings and the provision of compensation,[35] as well as the ability for a court to order that a person pay a pecuniary penalty.[36] The court can make compensation and other remedial orders.[37]

G. Financial Transactions Reporting Act 2004

The Financial Transactions Reporting Act 2004, Fiji's anti-money laundering and counter-terrorism financing statute, contains penalties for breaches of individual provisions, with a body corporate being subject to maximum fines greater than those applicable to individuals for several offenses. For example, breaches of requirements related to the verification of customers' identity and to report certain financial transactions are subject to fines of up to FJ$30,000 (about US$12,938) for an individual (and up to five years of imprisonment, or both) and up to FJ$150,000 (about US$64,690) for a body corporate.[38] The same penalties are set for breaches of any requirement for which a penalty is not provided.[39]

The act also contains provisions related to liabilities of employers or principals for acts done or omitted by persons as an employee or agent, and on the liability of officers in cases where a body corporate commits an offense.[40]

H. Food Safety Act 2003

Schedule 2 of the Food Safety Act 2003 establishes the penalties for offenses under the act, including fines and imprisonment. The penalties are the same regardless of whether an individual or body corporate commits the offense.[41] Section 65 provides that "[i]f a body corporate is convicted of an offence under this Act, the managing director or similar officer of the body corporate may also be charged with the same offence as if the act of the body corporate was a personal act of such director or officer."[42]

I. Health and Safety at Work Act 1996

The Health and Safety at Work Act 1996 establishes higher penalties for offenses where the convicted person is a corporation. For example, failure to comply with provisions establishing the duties of employers to their workers and to non-workers, duties of persons in control of

[35] Id. ss 136 & 137.

[36] Id. s 144A.

[37] Id. s 147.

[38] Financial Transactions Reporting Act 2004 (No 22 of 2004) ss 4(8); 13(5), (6); & 14(5), (6), https://perma.cc/92E3-H77P.

[39] Id. s 43.

[40] Id. ss 39 & 40.

[41] Food Safety Act 2003 (No 10 of 2003) sch 2, https://perma.cc/A6N5-ZVGQ.

[42] Id. s 65

workplaces and duties of manufacturers, suppliers and installers are subject to fines of up to FJ$100,000 in the case of a corporation and up to FJ$10,000 in any other case.[43]

Where no penalty is specifically provided for an offense, the applicable penalty is up to FJ$15,000 (about US$6,468) where the person is a corporation, and up to FJ$1,000 (about US$431) in any other case.[44] If the contravention was likely to cause death or bodily injury to any person, corporations may be fined up to FJ$100,000 and other persons up to FJ$10,000.[45]

Where an offense committed by a corporation

> is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of, an officer of the corporation or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.[46]

Furthermore, "[w]hen in proceedings under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention."[47]

The act provides for an inspector to issue a penalty notice where it appears to the inspector that a person has committed an offense under the act, with the person able to avoid further proceedings by paying the amount on the notice.[48]

J. Security Industry Act 2010

The Security Industry Act 2010 contains provisions related to licensing of security activities, including requirements and restrictions relating to licenses, with breaches of various provisions constituting an offense. The penalties for several offenses are higher for corporations than for individuals. For example, breaching the requirement to hold a master license in order to employ or provide other persons to carry on any security activity is subject to a fine of up to FJ$10,000 for bodies corporate and a fine of up to FJ$5,000 or imprisonment for up to two years, or both, for individuals.[49] A person who is not a master license holder who advertises that the person carries on or is willing to carry on any security activity commits an offense, which is subject to a fine of up to FJ$35,000 (about US$15,091) if the person is a body corporate or up to FJ$5,000 (about US$2,156) (or imprisonment for up to two years, or both) if the person is an individual.[50]

[43] Health and Safety at Work Act 1996 (No 4 of 1996) ss 9–12, https://perma.cc/M84D-MYHU.

[44] Id. s 66(1).

[45] Id. s 66(2).

[46] Id. s 67(1).

[47] Id. s 67(2).

[48] Id. s 48.

[49] Security Industry Act 2010 (No 57 of 2010) s 13(3), https://perma.cc/9UD2-X38L.

[50] Id. s 37(2).

A court may order that a license be suspended or revoked in any proceedings in which a licensee is convicted of an offense under the act, or of any indictable offense.[51]

The act also contains a provision regarding the ability to prosecute certain officers of a corporate body where an offense is committed by that body, whether or not the corporate body itself has been charged and convicted of that offense.[52]

K. Tax Administration Act 2009

Division 8 of part 2 of the Tax Administration Act 2009 includes provisions on administrative penalties in subdivision 1 and taxation offenses in subdivision 2.[53] Infringement notices may be issued under subdivision 3, with further regulations also applying.[54]

The penalties for the taxation offenses are fines of up to FJ$25,000 (about US$10,780), imprisonment for up to 10 years, or both. Where an offense is committed by a company, the act states that the offense is treated as having been committed by persons who were certain senior officers in the company, unless the offense was committed without the person's consent or knowledge, or he or she had exercised reasonable due diligence to prevent the commission of the offense.[55]

[51] Id. s 47.

[52] Id. s 51.

[53] Tax Administration Act 2009 (No 50 of 2009) pt 2 div 8, https://perma.cc/QNF3-U285.

[54] Tax Administration (Infringement Notices) Regulations 2018 (LN 48 of 2018).

[55] Tax Administration Act 2009 s 58.

Finland

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SUMMARY Legal persons may be issued "community fines" for certain criminal activity in Finland. Community fines, which are effectively monetary penalties, range from 850 euros (about US$885) to €850,000 (about US$885,000). Not all crimes are subject to community fines, and the act must be carried out in the business activity of the legal person. Almost 90% of all community fines are issued as a result of occupational safety violations. In 2021, a community fine was issued by the Finnish Supreme Court for money laundering when an association providing online gambling enabled a customer to use stolen money on its site, effectively meeting the criteria for money laundering. The court found that the association had been negligent by not banning the customer from the platform after flagging the customer as a potential money launderer and sanctioned the legal entity with a community fine and confiscation of the money that the customer had deposited. Property used as part of a crime may be forfeited and confiscated from legal persons and become property of the state.

I. Introduction

A. Types of Legal Entities

Under Finnish law, there are several types of legal person, including the following:

- bankruptcy estate,
- cooperative,
- death estate,
- economic association,
- foundation,
- limited company,
- limited liability company,
- limited partnership,
- mutual insurance company,
- mutual non-life insurance association,
- partner shipping company,
- pension foundation or fund,
- public authority,
- public company,

- public enterprise,
- public law association,
- religious association,
- savings bank,
- solo trader,
- state church, and
- tax association.[1]

The most common business form is limited company,[2] followed by solo trader.[3]

B. Criminal Activity

Under Finnish law, criminal activity is regulated in the Penal Code.[4] Legal persons are not automatically liable for all crimes, but may be liable for criminal acts through the issuance of community fines in certain specified cases.[5]

II. Community Fine

Under Finnish law, legal persons (corporations, associations or foundations) may be sentenced to a "community fine" (*samfundsbot* or *yhteisösakkoon*) for certain crimes.[6] The community fine is a monetary fine ranging from 850 euros (about US$885) to €850,000 (about US$885,000).[7]

Section 1 of chapter 9 provides that a legal person (corporation) can be criminally liable when

> [an offense is] committed in the course of the activities of a corporation, foundation or other legal person, a "community fine" shall be imposed at the request of the prosecutor if such a penalty is prescribed for the offence in this Act. (13.5.2011/441)
>
> The provisions of this Chapter do not apply to offences committed in the exercise of public authority.[8]

[1] Statistikcentralen, *Juridisk form*, https://perma.cc/9TTW-2PDH.

[2] Suomi, *Aktiebolag*, https://perma.cc/3T69-GTS6.

[3] See Suomi, *Enskild näringsirkare*, https://perma.cc/P246-B7U5.

[4] Strafflag [Penal Code] (FFS 1889/39), https://perma.cc/M4ZH-TMHV (in Swedish); Rikoslaki [Penal Code] (1889/39) https://perma.cc/8BP2-XY5B (in Finnish).

[5] 9 ch. Penal Code.

[6] 6 ch. 1 §; 9 ch. 1 § Penal Code.

[7] 9 ch. 5 § Penal Code.

[8] 9 ch. 1 § Penal Code. Translation from Swedish by author.

In order for the corporation to be liable, the act must be conducted by a person in the corporation's leadership or a person who has the right to act for the corporation. Specifically, section 2 of chapter 9 of the Criminal Act provides that

> A legal person is sentenced to a "community fine" if someone who belongs to one of its statutory bodies or otherwise belongs to its management or exercises actual decision-making power within the legal person has been involved in the crime or has allowed the crime to be committed or if the legal person's activities have not observed the care and caution required to prevent the crime.
>
> A "community fine" is sentenced even if it is not possible to investigate who the perpetrator is or if the perpetrator is not sentenced to punishment for some other reason. However, a "community fine" is not sentenced for a victim's crime that the victim does not report for prosecution, unless a particularly important public interest requires that prosecution be brought.[9]

Not all crimes are subject to community fines for legal persons. The penal code must specifically state that criminal liability for legal entities is available for the crime.[10] When issuing a community fine, the courts look to the severity of the crime, the size of the corporation, and the acts or negligence of the corporation, among other factors.[11] If multiple criminal acts have been committed, one community fine is issued for all the criminal activity.[12] Crimes that could qualify for a community fine under the evaluation process described above include, among others,

- money laundering,[13]
- terrorist financing[14],
- corporate tax evasion,[15]
- environmental law crimes,[16]
- financial crimes,[17] and
- fraud.[18]

[9] 9 ch. 2 § Penal Code. Translation from Swedish by author.

[10] 9 ch. 1 § Penal Code.

[11] 9 ch. 6 § Penal Code.

[12] 9 ch. 8 § Penal Code.

[13] Regulated in 32 ch. 6 § Penal Code.

[14] Regulated in 34 ch. 5 § Penal Code.

[15] Regulated in 29 ch. 1 § Penal Code.

[16] Regulated in 48 ch. 1 § Penal Code.

[17] Regulated in, e.g., 38 ch. 4-5 §§ Penal Code and 40 ch. 9-11 §§ Penal Code.

[18] Regulated in 36 ch. Penal Code. For liability for legal persons, see 36 ch. 9 § Penal Code.

The Penal Code specifies the crimes for which legal entities may be liable, including those related to

- copyright,[19]
- alcohol,[20]
- tax evasion,[21]
- marketing,[22]
- competition,[23]
- bribery,[24]
- misuse of trade secrets,[25]
- corporate espionage,[26]
- accounting,[27]
- money laundering,[28]
- illegal dealing in stolen goods,[29]
- counterfeiting crimes,[30]
- nuclear and public danger crimes,[31]
- terrorism,[32]
- fraud,[33]

[19] 49 ch. 7 § Penal Code.

[20] 50a ch. 5 § Penal Code.

[21] 29 ch. 10 § Penal Code (including tax fraud and aggravated tax fraud).

[22] 30 ch. 13 § Penal Code.

[23] Id.

[24] Id. and 16 ch. 17 § Penal Code.

[25] 30 ch. 13 § Penal Code.

[26] Id.

[27] Id.

[28] 32 ch. 14 § Penal Code.

[29] Id.

[30] 33 ch. 7 § Penal Code.

[31] 34 ch. 13 § Penal Code.

[32] 34a ch. 8 § Penal Code.

[33] 36 ch. 9 § Penal Code.

- money counterfeiting crimes,[34]
- communication crimes,[35]
- data misuse and breaches,[36]
- postal crimes,[37]
- fraudulent use of European Union (EU) funding,[38]
- nuclear energy and explosive crimes,[39]
- imports and exports,[40]
- occupational safety and health offenses and usury-like discrimination crimes,[41]
- environmental crimes, [42]
- hate crimes,[43]
- crimes against public order,[44]
- sex crimes,[45]
- defamation crimes,[46] and
- human trafficking.[47]

While community fines are available for a range of crimes, its use in practice appears limited. According to the Finnish government, most of the community fines issued (almost 90%) are issued as a result of occupational safety violations.[48] It appears the reason for the underutilization

[34] 37 ch. 16 § Penal Code.

[35] 38 ch. 12 § Penal Code.

[36] 35 ch. 8 § Penal Code and 38 ch. 12 § Penal Code.

[37] 38 ch. 12 § Penal Code.

[38] 40 ch. 15 § Penal Code.

[39] 44 ch. 17 § Penal Code.

[40] 46 ch. 13 § Penal Code.

[41] 47 ch. 9 § Penal Code.

[42] 48 ch. 9 § Penal Code.

[43] 11 ch. 15 § Penal Code.

[44] 17 ch. 24 § Penal Code.

[45] 20 ch. 25 § Penal Code.

[46] 24 ch. 13 § Penal Code.

[47] 25 ch. 10 § Penal Code.

[48] Statsrådet, *Orsakerna till att Juridiska Personers Straffansvar Sällan Tillämpas har Utretts* (Jan. 22, 2021), https://perma.cc/5TRB-UH3X.

of the community fine sanction is that courts and prosecutors perceive other crimes as the result of an individual's action, and the individual is prosecuted separately.[49]

In 2021, the Finnish Supreme Court affirmed a lower courts issuance of a €250,000 community fine (about US$300,000 at the time) in a case where a legal entity that provided online gambling services (*penningautomatförening*) had reported that an online gambling patron consistently deposited large amounts of money that did not match the patron's income level.[50] Although the legal entity reported the activity as possible money laundering in accordance with Finnish law, the user was allowed to continue gambling on the site for nine months after the report.[51] The court found that, while the conduct (receiving and storing large amounts of money derived from a criminal act) was not intentional, the legal entity was negligent for continuing to allow the patron access to the site.[52] Additionally, the legal entity was issued a confiscation penalty.[53]

In its decision, the court addressed when legal persons are criminally liable for crimes that result from their activities. Specifically, the court declared that

> For a legal person to be criminally liable, it is therefore required that the crime has been committed in the legal person's activities. This presupposes that the perpetrator is in a certain relationship to the legal person and has a position in its organization, and that they act in this capacity when they commit the crime on behalf of the legal entity or for its benefit. A prerequisite for a legal person to be sentenced to punishment is that the crime can be attributed to the perpetrator in a way that is assumed in the penal provision that applies to the act. Here, so-called anonymous culpability may also come into question. Anonymous culpability is a question of when it can be shown with certainty that the requirements for a crime have been met in the activities of a legal person and the perpetrator is obviously someone in its management or in its service, but it is impossible to identify the perpetrator.[54]

III. Forfeiture and Confiscation

Finland regulates the forfeiture and confiscation of property acquired and used as part of a crime listed in its Penal Code.[55] Such property, including any interest on such property, property that has replaced the property, or other property that stems from the benefit of the crime may be

[49] Id.

[50] Finnish Supreme Court Decision, KKO:2021:6, https://perma.cc/2VPU-LS45 (in Finnish); https://perma.cc/5HMC-B5PF (in Swedish).

[51] Id.

[52] Id.

[53] Id.

[54] Id. para. 10.

[55] 10 ch. Penal Code.

confiscated and forfeited.[56] Confiscated and forfeited property becomes the property of the state.[57]

In addition, as an EU member state, Finland must follow EU law. The EU has adopted a directive on asset recovery and confiscation, which must be transposed by the member states by November 23, 2026.[58]

[56] Id. 10 ch. 2 §.

[57] Id.

[58] Directive (EU) 2024/1260 of the European Parliament and of the Council of April 2024 on Asset Recovery and Confiscation, 2024 O.J. (L 1260), 1, https://perma.cc/VVW6-W2MZ.

France

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SUMMARY Under French law, corporations can be held criminally liable for offenses committed on their behalf by their representatives. Penalties for corporations typically include fines, which are often higher than those for individuals—usually five times the amount. In addition to criminal liability, corporations may face administrative sanctions imposed by specific regulatory agencies, which can include monetary penalties. These administrative proceedings operate independently of, but do not preclude, criminal proceedings.

I. Introduction

Under French law, companies may be held accountable under criminal, civil, and administrative law. This liability is governed mainly by the Civil Code, the Criminal Code, and the Commercial Code. Most of the texts of the Criminal Code and Commercial Code apply equally to natural and legal persons, unless explicitly stated otherwise.

Corporations can be held liable for all categories of offenses, including those relating to economic, accounting, financial, or labor law. This includes offenses such as tax fraud, concealed work, deceptive commercial practices, and corruption. The same offenses can involve individual liability and/or corporate liability. While there are no offenses unique to legal entities, certain legal frameworks, such as financial, environmental, or competition law, implicitly target companies more frequently due to the nature of the activities regulated. The same offense, such as tax fraud or corruption, can involve individual liability (e.g., a director) and/or corporate liability.

II. Types of Liability

A. Criminal Liability

1. General Principles of Criminal Liability

The criminal liability of legal entities is established by article 121-2 of the French Penal Code. This article stipulates that legal entities may be held criminally liable for offenses committed on their behalf by their organs or representatives.[1] Companies are only criminally liable if they have legal personality, which excludes de facto companies and joint ventures.[2] Legal entities may be held

[1] Penal Code art. 121-2, https://perma.cc/WX2Z-JRL5.

[2] Id. See also *Mémento pratique Francis Lefebvre, Sociétés commerciales* (Editions Francis Lefebvre, 2024), bibliographic information available at https://lccn.loc.gov/2002204343.

criminally liable for any infringement of the law, except for those relating to the press,[3] and audiovisual communication.[4] These exceptions mainly concern provocation, defamation, and public insults.

Therefore, for a company to be held criminally liable,

- the offense must be committed by an organ or representative of the company,
- the act must be carried out on behalf of the company, and
- the offense must be provided for by law, even if the law does not explicitly mention legal entities.[5]

Under article 121-2 of the Penal Code, the criminal division of the Court of Cassation, the French Supreme Court (*Cour de Cassation*), requires the clear identification of the organ or representative who committed the offense on behalf of the legal entity to establish its criminal liability.[6]

The term "organ" includes individual organs, such as a chairman, managing director, or chief executive officer, as well as collective organs, such as a board of directors, executive committee, or risk assessment committee. A "representative" may refer to a de jure or de facto manager, with the status determined on a case-by-case basis. It can also include an individual, whether an employee or not, who holds a de facto or de jure delegation of authority.[7] In its ruling of June 21, 2022, the Court of Cassation held that within a group of companies, one company can serve as the organ or representative of another company in the group under the meaning of article 121-2 of the Penal Code.[8]

A foreign company whose registered office is located abroad may be held criminally liable if it has committed an offense on French territory and enjoys legal personality under French law.[9]

The criminal liability of a legal entity may coexist with the liability of the individuals responsible for the offense. Article 121-2, paragraph 3 of the Penal Code clarifies that holding a legal entity criminally liable does not exclude the prosecution of natural persons as perpetrators or accomplices of the same offense.[10]

[3] Loi du 29 juillet 1881 sur la liberté de la presse, art. 43-1, https://perma.cc/FF94-UPRU.

[4] Loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle, art. 93-4, https://perma.cc/TK4K-3U9N.

[5] Penal Code art. 121-2.

[6] Cour de cassation, criminelle, chambre criminelle, 11 avril 2012, 10-86.974, https://perma.cc/LBA5-RFRV.

[7] Cour de cassation, criminelle, chambre criminelle, 23 mai 2023, 22-83.516, https://perma.cc/Y7HR-Z5PL.

[8] Cour de cassation, criminelle, Chambre criminelle, 21 juin 2022, 20-86.857, https://perma.cc/R6ZQ-4W3C.

[9] Penal Code art 113-2.

[10] Id. art. 121-2.

2. Criminal Liability for Unintentional Offenses

Article 121-3 of the Penal Code addresses unintentional offenses and establishes liability for recklessness, negligence, or failure to meet a legal or regulatory obligation of prudence or safety, provided such conduct is punishable by law. However, an individual is exempt from liability if he or she exercised normal care, considering the nature of his or her duties or functions, his or her skills, and the resources at his or her disposal.[11] In determining a natural person's criminal liability, it is necessary to distinguish whether his or her unintentional fault directly caused the damage or only indirectly contributed to it. This distinction does not apply to legal entities. Consequently, an unintentional fault committed by an organ or representative of a legal entity that indirectly causes damage can still engage the entity's criminal liability.[12]

B. Civil and Administrative Liability

Corporate civil liability arises when a loss caused by a company's activities gives rise to an obligation to pay compensation. This can include material, personal, or moral damage, resulting for example from defective products or contractual breaches. A company director's civil liability is governed by article 1240 of the Civil Code, which states that "any act of man, which causes damage to another, obliges the person by whose fault it occurred to repair it."[13] This liability may be incurred for mismanagement, failure to comply with the company's bylaws, or breaches of tax and social security obligations.

Administrative liability may be incurred in specific cases, notably when a company holds a public service concession and causes harm to users or third parties. Administrative litigation is governed by the principles of fault-based and no-fault liability.[14]

III. Penalties

A. Criminal Penalties

Criminal sanctions applied to companies are mainly pecuniary, with fines proportional to the seriousness of the offense and the company's resources. The maximum rate of fines imposed on legal entities is set at five times the rate for natural persons.[15] In the case of a crime for which no fine is imposed on individuals, the maximum fine incurred by the legal entity is €1,000,000 (around US$ 1,049,000).[16]

[11] Id. art. 121-3.

[12] Cour de cassation, criminelle, Chambre criminelle, 2 octobre 2012, 11-85.032, https://perma.cc/Q4MZ-WRFG.

[13] Civil Code art. 1240, https://perma.cc/S85P-WSFG.

[14] Tribunal des conflits, du 8 février 1873, https://perma.cc/G7PW-T9GV.

[15] Penal Code arts. 131-38, 131-41.

[16] Penal Code art. 131-38.

The judge may also impose additional penalties, such as a ban on certain activities or an obligation to bring the company's practices into line. Penalties applicable to legal entities are set out in article 131-37 et seq. of the Penal Code, which includes fines and additional penalties listed in article 131-39. Under article 131-38 of the code, the maximum fine applicable to legal entities is five times the fine set for natural persons by the law punishing the offense.[17]

Additionally, penalties for companies found guilty of criminal behavior are listed in article 131-39 of the Penal Code and include:

- dissolution of the legal entity,
- prohibition from exercising certain professional or social activities,
- placement under judicial supervision,
- closure of establishments,
- exclusion from public contracts,
- ban on public offerings of securities,
- ban on issuing cheques or using payment cards,
- confiscation,
- display or dissemination of court decision,
- confiscation of an animal involved in the offense,
- ban on keeping an animal, and
- ban on receiving public aid.

Most of these penalties can be imposed for up to five years, or on a permanent basis. Confiscation is automatically incurred for crimes and misdemeanors punishable by more than one year's imprisonment, except for press offenses. The article also specifies that some of these penalties do not apply to public corporations, political parties, trade unions, and employee representative bodies. [18]

Where provided for by law, an offense may be punished by requiring a legal entity to submit, under the supervision of the French Anti-Corruption Agency, for a maximum period of five years, to a compliance program designed to ensure the implementation of certain anti-corruption measures.[19]

[17] Penal Code art. 131-38.

[18] Penal Code art. 131-39.

[19] Penal Code art. 131-37.

B. Civil and Administrative Penalties

Civil penalties are primarily intended to compensate for the damage caused, in accordance with article 1240 of the Civil Code. In the event of multiple directors at fault, article 1310 of the Civil Code stipulates that "joint and several liability is de jure between the co-debtors of an obligation contracted jointly and severally."[20]

In administrative matters, the Labor Code provides a general framework for the application of administrative fines. Under the terms of article L8115-1 of the Labor Code, these fines may be imposed in the event of:

- non-compliance with maximum daily and weekly working hours,
- failure to observe minimum daily and weekly rest periods,
- failure to count working hours,
- non-compliance with minimum wage rates, and
- failure to provide sanitary facilities, catering and accommodation, and failure to comply with technical protection requirements during building and civil engineering works.[21]

Sanctions can also include administrative fines or corrective measures, often imposed by regulatory authorities such as the CNIL or the Financial Markets Authority (*Autorité des marchés financiers*).[22]

C. Penalties under Environmental Law

Article L229-25 of the Environment Code requires large companies, local authorities, and public institutions to draw up and publish a greenhouse gas (GHG) emissions balance sheet, together with a transition plan to reduce them. These reports are regularly updated and integrated into existing systems such as climate-air-energy plans.

Data must be transmitted electronically to the administrative authority. Failure to comply can result in financial penalties of up to €50,000 (about US$ 51,832), or €100,000 (about US$ 103,665) in the event of a repeat offense.[23]

Violations of French environmental laws can be fined to up to €500,000 (about US$512,505);[24] if committed by a moral person, the fine can reach up to €2,500,000 (about US$2,591,625) in accordance with article 121-2 of the Penal Code.[25]

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[20] Civil Code art. 1240.

[21] Labor Code art. L8115-1, https://perma.cc/CCF6-KRDC.

[22] CNIL Délibération SAN-2020-003 du 28 juillet 2020, Aug. 5, 2020, https://perma.cc/F7XT-996H.

[23] Environmental Code art. L229-25, https://perma.cc/KN4N-QQJN.

[24] Id. art. L541-46.

[25] Penal Code art. 121-2.

D. Penalties for Money Laundering

Money laundering is punishable by five years of imprisonment and a fine of €375,000 (about US$388,743) and €750,000 (about US$ 777,487) when committed habitually or by an organized gang.[26] The maximum fine for legal entities is €3,750,000 (about US$ 3,887,437), in accordance with article 121-2 of the Penal Code.[27]

E. Penalties under Competition Law

The maximum amount of the penalty for being found in breach of competition law by the Competition Authority (*Autorité de la Concurrence*) is 10% of the highest worldwide pre-tax sales achieved during one of the last completed financial years.[28]

For associations of undertakings, the maximum amount is equal to 10% of the sum of the total worldwide sales achieved by each member active on the market affected by the infringement.[29]

F. Penalties for Corruption

Under French law, the maximum fine for bribery is €2,000,000 (about US$2,073,300) or twice the amount of the proceeds of the offense, whichever is greater.[30] According to article 121-2 of the Penal Code, for legal entities, the maximum fine is €10,000,000 (about US$10,366,500) or twice the amount of the proceeds of the offense, whichever is higher.[31]

G. Penalties for Fraud

In French law, fraud is defined as the act of deceiving a natural or legal person by using a false name or capacity, abusing a legitimate capacity, or employing fraudulent maneuvers. This deception leads the victim, to his or her own detriment or that of a third party, to transfer funds, securities, or other property, provide a service, or agree to an act that creates an obligation or discharges one.[32]

The maximum fine for fraud is 1,000,000 euros (about US$1,036,650), and 5,000,000 euros (about US$5,183,250) if committed by a legal entity following article 121-2 of the Penal Code.[33]

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[26] Id. art. 324-1.

[27] Id. art. 121-2.

[28] Commercial Code art. L464-2, https://perma.cc/RX22-JZFA.

[29] Id.

[30] Penal Code art. 433-1.

[31] Id. art. 121-2.

[32] Id. art. 313-1

[33] Id. art. 121-2.

H. Penalties for Tax Fraud

Article 1741 of the General Tax Code stipulates that the fine for tax fraud may be as high as €3,000,000 (about US$3,109,950), which may be increased to double the proceeds of the offense.[34] Following article 121-2 of the Penal Code, this fine can reach €6,000,000 (about US$6,219,900) or double the proceeds of the offense multiplied by five if committed by a legal entity.

I. Penalties under Consumer Protection Law

Article L241-1-1 of the Consumer Code provides for a civil fine for professionals who continue to use unfair terms in similar contracts, despite a final court ruling that they are unfair.

This fine can reach €15,000 (about US$ 15,550) for an individual and €75,000 (about US$77,748) for a legal entity, and up to 4% of average annual sales or €2,000,000 (about US$2,073,300) for large-scale infringements, particularly at the European level.

The court may also order publication or dissemination of the decision, at the offender's expense.

J. Penalties under Labor Law

Article L8231-1 of the Labor Code prohibits "marchandage," defined as a lucrative operation involving the supply of labor that causes harm to employees or circumvents social legislation. Similarly, article L8241-1 condemns the illicit loan of manpower, which consists in making employees available illegally, outside the framework provided by law. The penalties applicable to legal entities found to have committed these offenses are those listed in article 131-39 of the Penal Code mentioned above.

K. Alternative Penalty

The "Sapin 2" law of December 9, 2016, introduced the Public Interest Judicial Agreement (CJIP) as an alternative to criminal liability for legal entities in specific, narrowly defined cases.[35] Since the law's enactment, the Public Prosecutor may propose a CJIP to legal entities charged with corruption, influence peddling, tax fraud, or laundering proceeds from these offenses. As of December 24, 2020, this option has also extended to environmental offenses. By entering into a CJIP, a legal entity can avoid criminal prosecution in exchange for paying a public interest fine and/or implementing a compliance program.[36]

[34] General Tax Code art. 1741.

[35] Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique, J. O. Dec. 10, 2016, https://perma.cc/Z9BY-Q7T9.

[36] *La convention judiciaire d'intérêt public*, Agence Française Anticorruption, https://perma.cc/73B9-TUQ5.

Germany

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SUMMARY In Germany, corporations may not be held criminally liable. Even though corporate criminal liability has been a regular topic of debate, none of the many legislative proposals has been adopted. However, corporations may be sanctioned under administrative law. The rule permits imposing fines on legal entities or equivalent associations of persons if one of their management personnel commits a criminal offense or an administrative offense (reference offense) that either violates the obligations of the legal entity or association or was intended to result in its enrichment. In addition, the legal person's proceeds derived from a crime committed by a natural person on its behalf may be confiscated. Lastly, non-pecuniary measures may also be imposed on a company, such as publishing the names of those involved by the German Federal Cartel Office, disclosing measures and sanction decisions by the Federal Financial Supervisory Authority, or listing certain economic offenses of the company in the German Competition Register.

I. General Approach in Germany

Under German law, criminal penalties against corporations are not possible. Reform attempts in recent years have failed due to a lack of consensus within the legislature.[1] However, legal entities and associations of individuals may be sanctioned under administrative law or subjected to other non-criminal penalties and measures.

A. No Criminal Sanctions Against Corporations

In Germany, corporations cannot be the object of criminal prosecutions, as they lack the capacity to act and to bear culpability, which are requirements for criminal sanctions under the Germany system.[2] Under traditional legal doctrine, the criminal punishment of legal entities is considered

[*] The author wishes to thank Foreign Law Intern Maximilian Spitzley for providing research assistance for this report.

[1] Recent examples are the Draft Law on the Introduction of Criminal Liability for Companies and other Associations (Entwurf eines Gesetzes zur Einführung der strafrechtlichen Verantwortlichkeit von Unternehmen und sonstigenVerbänden, https://perma.cc/9T93-GJ5G), which was discussed at the Conference of Justice Ministers in 2013, the Cologne Draft of an Association Sanctions Law (Kölner Entwurf eines Verbandssanktionsgesetzes, 1 Neue Zeitschrift für Wirtschafts-, Steuer- und Unternehmensstrafrecht [NZWiSt] 1 (2018)) presented by a research group of law professors in 2017, and the Draft Law to Combat Corporate Crime (Entwurf eines Gesetzes zur Bekämpfung der Unternehmenskriminalität, Bundesrat-Drucksache [BR-Drs.] 440/20, https://perma.cc/JWA5-RN58) by the Federal Ministry of Justice from 2019.

[2] Petra Wittig, *Wirtschaftsstrafrecht*, at 133 (5th. ed. 2018).

incompatible with the principle of culpability, which is inherent in the rule of law.[3] The concept of action under German criminal law is tied exclusively to human behavior. Consequently, only natural persons qualify as offenders, because legal entities lack the capacity for intent and cannot act with the aim of achieving a specific outcome.[4]

B. Sanctions under Administrative Law

Corporations may be sanctioned under administrative law according to the Act on Regulatory Offenses (Gesetz über Ordnungswidrigkeiten, OWiG).[5] The rule permits imposing fines on legal entities or equivalent associations of persons if one of their management personnel commits a criminal offense or administrative offense (reference offense) that either violates the obligations of the legal entity or association or was intended to result in its enrichment.

1. Prerequisites for Sanctions

Section 30 of the Act on Regulatory Offenses applies to all relevant forms of corporations under German law. In particular, limited liability corporations, stock corporations, and partnerships are covered by the scope of the regulation.[6]

The perpetrator of the reference offense has to be a person responsible for the management of the business or undertaking of a legal person or association of persons. The provision does not require that the person holds a formal legal position in the business to tie liability to the business or enterprise, because it also mentions the factual management of the business or enterprise as an equivalent to formal legal positions typically held by the leadership.[7]

To impose an administrative fine, it is not necessary to identify a specific officer or representative who committed a wrongdoing. It suffices to demonstrate that someone acting on behalf of the legal entity in a capacity defined by law committed an offense.[8] The offense may also arise from a culpable failure to adequately supervise lower-ranking employees.[9] This aims to ensure that

[3] The relevant legal discussion in Germany is based on the ancient roman doctrine "societas delinquere non potest," which translates to "corporations cannot be held criminally liable." See Thomas Weigend, *Societas Delinquere Non Potest*, 6 J. Int'l Crim. Just. 927, 930 (2008).

[4] Gert Vermeulen et al., *Liability of Legal Persons for Offences in the EU*, 44 IRCP-series 23 (2012).

[5] Gesetz über Ordnungswidrigkeiten [OWiG], Mar. 25, 1952, Bundesgesetzblatt [BGBl.] I at 602, as amended, § 30, https://perma.cc/CFL2-RFZS (original), https://perma.cc/Z6BN-UCGS (English translation, updated through Mar. 14, 2023).

[6] Wittig, supra note 2, at 171.

[7] OWiG, § 30, para. 1, no. 5.

[8] Id. § 30, para. 4. This interpretation was confirmed by the Federal Court of Justice (Bundesgerichtshof, BGH), Germany's supreme court for criminal and civil jurisdiction, see BGH, Feb. 8, 1994, docket no. KRB 25/93, 7 Neue Zeitschrift für Strafrecht [NStZ] 346 (1994). See also Thomas Weigend, supra note **Error! Bookmark not defined.**, at 931; Alexander Meyberg, *OWiG § 130 Verletzung der Aufsichtspflicht in Betrieben und Unternehmen*, para. 133, in Beck Online Kommentar OWiG (Jürgen Graf ed., 44th. ed. 2024).

[9] OWiG, § 30, para. 4.

businesses and enterprises implement proper and adequate measures to prevent company-related offenses.[10]

As a result, the relevant state authority may impose an administrative fine on a legal entity based solely on evidence that one of its employees committed a criminal or administrative offense on its behalf and that a responsible officer failed to prevent or deter the offense through proper oversight.

Finally, the management personnel must have acted in the interests of the legal entity or association of persons. It is not sufficient if they acted solely in their own interest.[11] Consequently, offenses committed by employees to the detriment of the company cannot serve as valid underlying offenses.

2. Determination of Sanctions

The competent authority determines the amount of the fine imposed, taking into account factors such as the nature of culpability, the severity of the conduct, and the specific provisions violated by the perpetrator.[12] According to section 30, paragraph 2 of the Act on Regulatory Offenses, the regulatory fine shall amount to no more than ten million euros (about US$10.3 million) in the case of a criminal offense committed with intent, and no more than five million euros (about US$5.25 million) in the case of a criminal offense committed negligently. However, section 17, paragraph 4 of the Act on Regulatory Offenses stipulates that the regulatory fine must exceed the financial benefit that the perpetrator has obtained from committing the regulatory offense. If the statutory maximum does not suffice for that purpose, it may be exceeded.

The corporate fine is typically imposed in addition to the sanctioning of the perpetrator of the reference offense, namely the management personnel who acted on behalf of the association. This fine is generally levied within a combined proceeding addressing both the individual offender and the legal entity ("combined solution").[13]

C. Confiscation of Proceeds

Even though corporations may not be held criminally liable, the German Criminal Code (Strafgesetzbuch, StGB) allows the confiscation of a legal person's proceeds derived from a crime committed by a natural person on its behalf.[14] Section73b of the Criminal Code governs the confiscation of proceeds of a crime from third-party beneficiaries, which may include corporations on whose behalf the perpetrator acted. The confiscation encompasses the entirety of

[10] Susanne Beck, *OWiG § 130 Verletzung der Aufsichtspflicht in Betrieben und Unternehmen*, para. 4, in Beck Online Kommentar OWiG (Jürgen Graf ed., 44th. ed. 2024).

[11] Benjamin Krenberger & Carsten Krumm, *§ 30 Geldbuße gegen juristische Personen und Personenvereinigungen*, para. 36, in OWiG Kommentar (Benjamin Krenberger & Carsten Krumm eds., 8th. ed. 2024).

[12] BGH, May 9, 2017, docket no 1 StR 265/16, https://perma.cc/LSY9-NPXJ; Meyberg, supra note 8, para. 103.

[13] Wittig, supra note 2 at 173, 174.

[14] Strafgesetzbuch [StGB], Nov. 13, 1998, BGBl. I at 3322, as amended, https://perma.cc/RS4K-GUZA (original), https://perma.cc/LK9B-J99V (English translation, updated through Nov. 22, 2021).

the beneficiary's proceeds, with only limited opportunities to deduct expenses incurred by the third party.[15] If the reference offense falls outside the scope of the Criminal Code but constitutes an administrative offense, section 29a of the Act on Regulatory Offenses provides for a comparable confiscation measure.

D. Other Measures Against Corporations

Non-pecuniary measures may also be imposed on a company, such as the publication of the names of those involved (commonly referred to as "naming and shaming") by the German Federal Cartel Office (Bundeskartellamt) or the disclosure of measures and sanction decisions by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin).[16] Additionally, corporations that have already been fined under section 30 of the Act on Regulatory Offenses in combination with certain economic offenses, such as fraud or tax evasion, may be listed in the German Competition Register.[17] This electronic database is maintained by the Federal Cartel Office and lists certain economic offenses committed by companies.[18] The register simplifies the process for public contracting authorities to determine whether a company must or may be excluded from a procurement procedure.

II. Legislative Developments

The necessity to reform criminal liability for corporations in Germany is regularly discussed by politicians, legal practitioners, and legal scholars.[19] The latest legislative effort was initiated in 2019 with the proposal of the Association Sanctions Act (Verbandssanktionengesetz).[20] According to the then-proposed law, companies would have faced fines of up to 10% of their average global group revenue in the event of criminal offenses. Furthermore, the company itself would have become the subject of criminal law at the center of a new sanctioning procedure.[21] However, the proposal was dropped in 2021 over disputes regarding internal investigations.[22]

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[15] StGB, § 73d, para. 1.

[16] Gesetz gegen Wettbewerbsbeschränkungen [GWB], July 27, 1957, BGBl. I at 1081, as amended, § 53, para. 5, https://perma.cc/VF5Q-798Z (original), https://perma.cc/FJ2W-9ACM (English translation, updated through Oct. 25, 2023); Gesetz über den Wertpapierhandel [WpHG], July 26, 1994, BGBl. I at 1794, as amended, § 124, https://perma.cc/3B2P-FY8Y (original), https://perma.cc/9JUY-FBLC (English translation, updated through May 16, 2019). See also Wittig, supra note 2, at 132.

[17] Wettbewerbsregistergesetz [WRegG], July 18, 2017, BGBl. I at 2739, as amended, § 2, https://perma.cc/5VUR-VPPM (original), https://perma.cc/LN6M-HMKU (English translation, updated through June 28, 2023).

[18] Authorized public officials involved in procurement processes can access the database via the Federal Cartel Office's official website, https://perma.cc/6KGX-FVN5.

[19] Charlotte Schmitt-Leonardy, *Unternehmenssanktionsrecht 2.0?,* 11 Strafverteidiger [StV], 773, 774 (2024).

[20] The Association Sanctions Act was proposed as article 1 of the Draft Law to Combat Corporate Crime; see Entwurf eines Gesetzes zur Stärkung der Integrität in der Wirtschaft, supra note 1.

[21] Simone Kämpfer et al., *Unternehmensverteidigung unter Geltung des Verbandssanktionengesetzes*, 22 Neue Zeitschrift für Gesellschaftsrecht [NZG], 848, 849 (2020); Sijad Allahverdiyev & Marvin Othman *"Verbandssanktionengesetz" - Corporate Liability for Germany?*, 23 German Law Journal [GLJ], 637, 640 (2022).

[22] Allahverdiyev & Othman, sura note 21, at 648.

Since then, no comprehensive legislative proposal addressing corporate liability for criminal conduct has been introduced in the German Bundestag (parliament) or has been the subject of serious debate.

III. Impact of European Union Legislation on German Law

The European Union (EU) does not have a unified framework for corporate criminal liability, but instead adopts a sectoral approach.[23] Consequently, the general provision on corporate liability in Germany, section 30 of the Act on Regulatory Offenses, is not directly influenced by EU law.

Sector-specific regulations at the European level are instead implemented through the German Criminal Code or corresponding sectoral legislation, such as competition or environmental law. For instance, Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law (PIF Directive) addresses criminal offenses affecting the EU's financial interests.[24] Article 9 of the PIF Directive requires member states to ensure that legal entities face effective, proportionate, and dissuasive sanctions. Germany has addressed this obligation by amending existing provisions in the Criminal Code and enacting a new criminal statute specifically aimed at protecting the EU's financial interests, the EUFinSchStG.[25] In conjunction with section 30 of the Act on Regulatory Offenses, these provisions apply to legal entities and thus fulfill Germany's obligations under the PIF Directive.

[23] For more detailed information on EU legislation, see the EU survey in this report.

[24] Directive (EU) 2017/1371, 2017 O.J. (L 198) 29, https://perma.cc/V3PU-PLF9. For more information on the PIF Directive, see Jenny Gesley, *European Union: New Rules to Fight Crimes Against the EU's Budget Take Effect,* Global Legal Monitor (Aug. 7, 2019), https://perma.cc/P4AY-TDHJ.

[25] Gesetz zur Stärkung des Schutzes der finanziellen Interessen der Europäischen Union [EUFinSchStG], June 19, 2019, BGBl. I at 844, as amended, https://perma.cc/2UR5-PT9B.

Guyana

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SUMMARY Companies operating in Guyana may be subject to pecuniary fines for violations of the law. Some violations are subject to summary proceedings and are punishable by fees and monetary penalties.

I. Introduction

Guyana gained its independence from the United Kingdom on May 26, 1966. "On February 23, 1970, Guyana declared itself a 'cooperative republic' and cut all ties to the British monarchy."[1] The legal system of Guyana is based on British common law.[2]

In accordance with Guyana's Interpretation and General Clauses Act, the definition of a "person" in any written law and in any public document, "includes any body of persons, corporate or unincorporate . . . ."[3]

In addition to liability of all persons, there are several statutes that subject companies to specific corporate liability.

II. Specific Laws

A. Criminal Law (Offenses) Act

The Criminal Law (Offenses) Act defines a "person" as including "companies in relation to the acts and things they are capable of doing and owning respectively."[4] The act contains special provisions regarding "fraud relating to companies" that apply to position holders at companies.[5] The act also prescribes penalties for the offenses of "bribery and corruption" that, in the case of commission by an agent, may be punishable by imprisonment and criminal fines.[6]

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[1] Tim Merrill, ed., *Guyana: A Country Study* (Washington, D.C.: GPO for the Library of Congress, 1992), cited at Errol A. Adams, *Guyana Law and Legal Research*, GlobaLex (2020), https://perma.cc/MG3B-5WKC.

[2] *Commonwealth Caribbean Court Systems: Guyana*, The University of the West Indies, https://perma.cc/G3T7-D5RE.

[3] Interpretation and General Clauses Act No. 8 of 1970, as amended, Laws of Guyana (LOG), § 5, https://perma.cc/XXW2-KWKJ.

[4] Criminal Law (Offenses) Act No. 18 of 1893, as amended, LOG Ch. 8:01, https://perma.cc/9B7D-93SJ.

[5] Id. §§ 202-207.

[6] Id. §§ 332-337.

B. Companies Act

The Companies Act imposes criminal penalties on companies and officers that violate requirements under the act. The act also provides for the grant of "civil remedies" against companies, such as issuing restraining orders, and requiring payment of legal fees and interim costs. [7]

The act lists several offenses that specifically apply to companies, including failure to attach a form of proxy to notices of meetings of shareholders without reasonable cause, or failure to provide shareholders with documents required under the act.[8] Companies guilty of perpetrating such offenses are liable on summary conviction to fines at a rate of 30,000 dollars (about US$143). Any director or officer of the company who knowingly authorized, permitted, or acquiesced in the commission of an offense that is the subject of the conviction of the company is liable to the same criminal fine specified for that offense in the act and to imprisonment for six months.[9]

C. Business Names Registration Act

The Business Names Registration Act imposes registration requirements, under conditions enumerated, on firms, including two or more corporations who have entered a partnership and who have a place of business for profit in Guyana.[10] The act provides that "where a corporation is guilty for an offense under this act, every director, secretary and officer of the corporation who is knowingly a party to the default shall be guilty of alike [sic] offence and liable to alike [sic] penalty."[11] The act imposes criminal fines on a number of offenses prescribed.[12]

D. Financial Institutions Act

The Financial Institutions Act requires companies that engage in banking business to be licensed. Violation of the registration requirements is liable upon summary conviction to fines at the rates prescribed.[13]

E. Anti-Money Laundering and Countering the Financing of Terrorism Act

Provisions of the act apply to financial institutions as well as to any person, including corporations. A corporation that violates the provisions of the act may be subject to pecuniary penalty and the forfeiture of assets. [14]

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[7] The Companies Act No. 29 of 1991, as amended, Division L, LOG Ch. 89:01, https://perma.cc/96MB-QBS9.

[8] Id. §§ 145, 155, & 521(1)(b).

[9] Id. § 521(2).

[10] Business Names Registration Act No. 11 of 1919, LOG Ch. 90:05, https://perma.cc/239P-2XSQ.

[11] Id. § 21.

[12] See e.g., id. §§ 11-13, 15, 16.

[13] Financial Institutions Act No. 1 of 1995, LOG 85:03, https://perma.cc/9Z66-6WSB.

[14] Anti-Money Laundering and Countering the Financing of Terrorism Act No. 13 of 2009, § 2, LOG Ch. 10:11, https://perma.cc/6PQL-LVPR.

F. Environment Protection Act

The Environment Protection Act provides that a corporation found guilty of an offense is liable to any of the pecuniary penalties prescribed for that offense. Where the offender is a body corporate it is liable to a fine of not less than twice the prescribed penalty.[15]

G. Corporation Tax Act

The corporation tax imposed under this act is "under the care and the management of the Guyana Commissioner General of Inland Revenue."[16] Whereas non-filing of a tax return in a timely manner is subject to a fine at a rate of a fixed amount, other violations may subject offenders to a fine based on the Commissioner's assessment, or to summary convictions at rates determined under the act. [17]

[15] Environment Protection Act No. 11 of 1996, as amended, Fifth Schedule, LOG Ch. 20:05, https://perma.cc/89VG-B9KS.

[16] Corporation Tax Act No. 30 of 1970, as amended, LOG Ch. 81:03, https://perma.cc/E3BY-NF5Y.

[17] Id. Penalties, p. 43.

Hong Kong

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SUMMARY In Hong Kong, corporations can be held liable for both statutory and common law offenses. Under the Interpretation and General Clauses Ordinance, the word "person" includes any public body and any body of persons, corporate or unincorporate. Under the Criminal Procedure Ordinance, a company's criminal liability can be extended to the directors.

Hong Kong's Anti-Money Laundering and Counter-Terrorist Financing Ordinance provides for both criminal and civil penalties for noncompliance of financial institutions and their employees. The Securities and Futures Ordinance provides for the power of the Securities and Futures Commission to impose disciplinary sanctions on regulated persons and creates civil and criminal regimes to regulate market misconduct. In addition to pecuniary penalties, disciplinary actions outlined in these laws include reprimands, remedial orders, and revocation or suspension of licenses.

I. Introduction

Hong Kong's legal system is based on the common law and supplemented by statutes.[1] In Hong Kong, corporations can be held liable for both statutory and common law offenses, even if the offense involves *mens rea*.[2] A corporation cannot be guilty as a principle of offenses that by their very nature require a natural person, such as bigamy or perjury, or offenses for which the sole punishment is the death penalty.[3]

Under Hong Kong's Interpretation and General Clauses Ordinance, the word "person" includes any public body and any body of persons, corporate or unincorporate, and this definition applies notwithstanding that the word "person" occurs in a provision creating or relating to an offense or for the recovery of any fine or compensation.[4]

According to the Criminal Procedure Ordinance, a company's criminal liability can be extended to the directors. Section § 101E states that

> [w]here a person by whom an offence under any Ordinance has been committed is a company and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company, or any person

[1] *Hong Kong: The Facts, Legal System*, GovHK (July 2024), https://perma.cc/Y9JF-LTVV.

[2] Halsbury's Laws of Hong Kong, Vol. 20, Criminal Law 145 (2nd ed., 2022).

[3] Id. 146.

[4] Interpretation and General Clauses Ordinance (Cap. 1) § 3, Hong Kong eLegislation, https://perma.cc/68HM-MAN8.

> purporting to act as such director or officer, the director or other officer shall be guilty of the like offence.[5]

II. Anti-money Laundering and Combating the Financing of Terrorism

A. Organized and Serious Crimes Ordinance

Under section 25(1) of the Organized and Serious Crimes Ordinance, a person commits an offense if, knowing or having reasonable grounds to believe that such property in whole or in part directly or indirectly represents any person's proceeds of an indictable offense, he or she deals with that property.[6] The offense is punishable by up to 14 years' imprisonment and a fine of HK$5 million (about US$642,000).[7]

B. Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO)

The AMLO provides for both disciplinary actions to be taken by the relevant authorities and criminal penalties for noncompliance of financial institutions and their employees.

For example, under section 5(6) of the AMLO, a financial institution commits an offense, if, with intent to defraud any relevant authority, it contravenes a specified provision under the AMLO.[8] Under section 5(8), if a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, with intent to defraud the financial institution or any relevant authority, causes or permits the financial institution to contravene a specified provision, the person commits an offense.[9] The maximum criminal penalty for these offenses is a fine of HK$1 million (about US$124,000) and imprisonment of seven years.[10]

Section 21 of the AMLO empowers the relevant authorities to take disciplinary actions, including public reprimands, remedial orders, and a pecuniary penalty not exceeding the higher of HK$10 million (about US$1.3 million) or three times the amount of profit gained or costs avoided by the financial institution as a result of the contravention.[11]

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[5] Criminal Procedure Ordinance (Cap. 221) § 101E, https://perma.cc/D77D-MAPZ.

[6] Organized and Serious Crimes Ordinance (Cap. 455) § 25(1), https://perma.cc/DBH5-8CVF.

[7] Id. § 25(3).

[8] Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) § 5(6), https://perma.cc/52ZW-AH9W.

[9] Id. § 5(8).

[10] Id. §§ 5(6) & 5(8).

[11] Id. § 21.

III. Securities and Futures Ordinance (SFO)

The SFO provides for the power of the Securities and Futures Commission to impose disciplinary sanctions on regulated persons. The ordinance also creates civil and criminal regimes to regulate market misconduct.

A. Disciplinary Sanctions

Part IX of the SFO gives Hong Kong's Securities and Futures Commission (SFC) the power to impose disciplinary sanctions on a regulated person. Under section 194, if the SFC finds a regulated person's conduct suggests it is guilty of misconduct or not fit and proper, the SFC may impose a pecuniary penalty of not exceeding HK$10 million or three times the amount of profit gained or loss avoided, whichever is higher. The fine may be imposed separately or in addition to other disciplinary sanctions, such as revocation or suspension of licenses or public or private reprimands.[12]

The term "regulated person" refers to a licensed person, a responsible officer of a licensed corporation, or a person involved in the management of the business of a licensed corporation.[13] According to the SFC, regulated persons subject to the SFC disciplinary sanctions include "licensed corporations or registered institutions; representatives and responsible officers of licensed corporations; executive officers, relevant individuals and former relevant individuals of registered institutions; and those who are not licensed or otherwise given a regulatory approval but are involved in the management of a licensed corporation or registered institution."[14]

B. Civil and Criminal Regimes

The SFO creates both civil and criminal regimes to regulate market misconduct, under Part XIII and Part XIV, respectively. Market misconduct includes insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information, and stock market manipulation.[15]

Part XIII sets out the civil proceedings before the Market Misconduct Tribunal (MMT). If it appears to the SFC that market misconduct has or may have taken place, the SFC may institute proceedings before the MMT.[16] The SFC must obtain the consent of the Secretary for Justice in order to institute the MMT proceedings.[17] The MMT has the power to

> order a person identified to as having engaged in market misconduct pay to the Government of the Hong Kong Special Administrative Region an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market

[12] Securities and Futures Ordinance (Cap. 571) § 194, https://perma.cc/Z8RK-6FVC.

[13] Id. § 194(7).

[14] *Disciplinary Proceedings*, SFC (July 21, 2023), https://perma.cc/6KSW-9HDS.

[15] Securities and Futures Ordinance § 245(1).

[16] Id. § 252.

[17] Id. § 252A.

> misconduct in question. The MMT may also make an order that the person shall not, without leave of the Court of First Instance, be a director, liquidator, or receiver or manager of a corporation or acquire, dispose of or deal in any securities, etc.[18]

Under section 281 of the SFO, a person who has committed a relevant act in relation to market misconduct is liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the market misconduct.[19]

Part XIV of the SFO sets out market misconduct offenses. According to section 303, a person who commits an offense under this part is punishable by a fine of HK$10 million and imprisonment for 10 years.[20]

IV. Prevention of Bribery Ordinance (POBO)

Section 4 of the POBO prohibits "any person," whether in Hong Kong or elsewhere, from offering any advantage to a public servant as an inducement to or reward for that public servant performing certain acts in their capacity as a public servant without lawful authority or reasonable excuse.[21] The maximum penalty for bribery is a fine of HK$500,000 (about US$64,300) and imprisonment for 10 years.[22]

[18] *Introduction*, Market Misconduct Tribunal, The Government of the Hong Kong Special Administrative Region, https://perma.cc/J9R7-HNWA.

[19] Id. § 281(1).

[20] Id. § 303.

[21] Prevention of Bribery Ordinance (Cap. 201) § 4(1), https://perma.cc/6W9Q-4R9B.

[22] Id. § 12(1).

India

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SUMMARY India has a number of laws that impose criminal liability on companies and corporations, including the Bharatiya Nyaya Sanhita, 2023 (which recently replaced the Indian Penal Code, 1860); the Companies Act, 2013; the Prevention of Corruption Act; the Environment Protection Act; the Securities and Exchange Board of India Act, 1992; and other regulatory acts. Corporations are held criminally liable mostly through fines and/or penalties. Most statutes in India have a provision that imposes vicarious liability on companies and their officers. The Companies Act also includes a provision that allows a court to windup a company for certain fraud related conduct.

I. Introduction

In India, a number of laws impose corporate criminal liability, including the Bharatiya Nyaya Sanhita, 2023[1] (which recently replaced the Indian Penal Code, 1860[2]); the Companies Act, 2013;[3] the Prevention of Corruption Act;[4] the Environment Protection Act;[5] the Securities and Exchange Board of India Act, 1992;[6] and other regulatory acts.

According to the *ICLG Business Crime Laws and Regulations* for India,

> [a]n earlier view was that a company/legal entity does not have the *mens rea* for the commission of an offence. However, various judicial decisions have clarified that a company/legal entity is in the same position as any individual and may be convicted of a breach of statutory offences including those requiring *mens rea*.[7]

The Supreme Court of India has held that when "both a fine and imprisonment is [sic] required as punishment for any offense, a corporate company will simply receive a fine."[8] Most statutes in India have a provision that imposes vicarious liability on companies and their officers, such as

[1] Bharatiya Nyaya Sanhita, 2023, https://perma.cc/KC82-UGSG.

[2] The Indian Penal Code, https://perma.cc/46QJ-WMHB.

[3] The Companies Act, 2013, https://perma.cc/3EA4-H88V.

[4] Prevention of Corruption Act, 1988, https://perma.cc/Y4EC-U6FG.

[5] The Environment Protection Act, 1986, https://perma.cc/T4XS-VFVX.

[6] Securities and Exchange Board of India Act, 1992, https://perma.cc/AT8J-4EM9.

[7] Sumeet Kachwaha, Tara Shahani, *Business Crime Laws and Regulations India 2025*, ICLG (Oct. 16, 2024), https://perma.cc/DJD6-A2JC.

[8] Vansh Bhatnagar & Gunjan Sharma, *Can Companies Commit Homicide: Navigating Corporate Criminal Liability in Cases of Homicide,* National Law University, Jodhpur's The Criminal Law Blog (Jan. 31, 2024), https://perma.cc/SY2W-Q837.

> where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly . . . .[9]

II. Bharatiya Nyaya Sanhita, 2023

Under the Bharatiya Nyaya Sanhita, 2023 "person" includes "any company or association or body of persons, whether incorporated or not."[10] Offenses include forgery, criminal breach of trust, and embezzlement. Companies that are liable for offenses face a maximum or minimum fine and in some cases, the statutes do not specify the fine amounts. In those circumstances, "the amount of fine to which the offender is liable is unlimited, but shall not be excessive."[11]

III. Companies Act

India's main companies law is the Companies Act, 2013. Penalties for offenses that apply to companies are based on fines.[12] Section 271(1)(e) stipulates that one of the circumstances under which a court or tribunal may wind up a company is when a court

> is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.[13]

IV. Prevention of Corruption Act

India's corruption prevention law is the Prevention of Corruption Act. It includes offenses related to exercising undue influence or bribing public servants. These can apply to corporations and are punishable by a fine.[14] Section 9 stipulates that

> [w]here an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

[9] Kachwaha & Shahani, supra note 7.

[10] Bharatiya Nyaya Sanhita, 2023, § 2(26).

[11] Id. § 8(1).

[12] The Companies Act, 2013, § 2.

[13] Id. § 271(1)(e).

[14] Prevention of Corruption Act, 1988, §§ 8 & 9.

a) to obtain or retain business for such commercial organisation; or

b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.[15]

The definition of commercial organization includes "a body which is incorporated in India and which carries on a business, whether in India or outside India" and "any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India."[16]

V. Environmental Protection Act

Contraventions of the provisions of the Indian Environmental Protection Act can be committed by companies and are punishable with a fine that "may extend to one lakh rupees [about US$1,157]" and "in case the failure or contravention continues, with additional fine which may extend to five thousand rupees [about US$58] for every day during which such failure or contravention continues after the conviction for the first such failure or contravention."[17] There is also a provision on how a company and officers under the company are treated for offenses under section 16. [18]

VI. Securities and Exchange Board of India Act, 1992

Securities fraud, unfair practices related to securities, and insider trading are criminally prohibited under the Securities and Exchange Board of India (SEBI) Act, 1992.[19] Contraventions of the provisions of the SEBI Act can be committed by companies and are punishable with a fine that "may extend to twenty-five crore rupees [about US$2.9 million]"[20] and "[i]f any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable" with a "fine, which may extend to twenty-five crore rupees."[21]

[15] Id § 9.

[16] Id.

[17] Id § 15(1).

[18] Id § 16.

[19] Kachwaha & Shahani, supra note 7.

[20] Securities and Exchange Board of India Act, 1992, § 24(1).

[21] Id. § 24(2).

VII. Prevention of Money Laundering Act, 2002 (PMLA)

Offenses related to money laundering are dealt with in the PMLA,[22] which applies to corporations. The law defines a person as including "a company . . . an association of persons or a body of individuals, whether incorporated or not, [and] every artificial juridical person, not falling within any of the preceding sub-clauses."[23] A corporation can be punished with a fine that is unspecified or that has no maximum limit.[24] Monetary penalties can be imposed on corporations that are "reporting entities" for violations of obligations under the act, including on maintenance of records,[25] which consist of "not . . . less than ten thousand rupees [about US$116] but may extend to one lakh rupees for each failure."[26]

VIII. Tax Crimes

Tax crimes "such as tax evasion, smuggling, customs duty evasion, VAT evasion and tax fraud" can be found under the Income Tax Act, 1961, the Customs Act, 1962, the Central Sales Tax Act, 1956, the Central Excise Act, 1944, and the Central Goods and Services Tax Act, 2017. Under the Income Tax Act,[27] the law defines a person to include "a company . . . an association of persons or a body of individuals, whether incorporated or not, [and] every artificial juridical person, not falling within any of the preceding sub-clauses."[28]

[22] Prevention of Money Laundering Act (PMLA), https://perma.cc/YS87-MJGA.

[23] Id. § 2(1)(s).

[24] Vijay Pal Dalmia, *Balancing Justice And Deterrence: Section 4 Of The PMLA*, Mondaq.com (Sept. 20, 2023), https://perma.cc/72JJ-JAA2.

[25] *Maintenance of Records*, Financial Intelligence Unit India, https://perma.cc/Y3CR-MDDJ.

[26] PMLA, § 13.

[27] Income Tax Act, 1961, https://perma.cc/4HGJ-UFUM.

[28] Id. § 2(31).

Iraq

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SUMMARY Penal Code Law No. 111 of 1969, as amended, Law No. 23 of 1983 Promulgating the Customs Law, and Law No. 39 of 2015 issuing Anti-Money Laundering and Terrorist Financing Law hold corporate entities criminally liable for offenses committed by their representatives, directors, or agents on their behalf or in their names. Moreover, Law No. 30 of 1984 holds corporate entities liable for violations of provisions related to maintaining commercial records, adopting a trade name, or registering the entity in the commercial register.

I. Law No. 111 of 1969 Promulgating the Penal Code

Law No. 111 of 1969, as amended, holds corporate entities criminally liable for offenses committed by their representatives, directors, or agents on their behalf or in their names. Corporate entities may be sanctioned through fines, confiscation, and preventative measures prescribed by law. If the law imposes imprisonment for a crime, it shall be substituted for a fine for corporate entities.[1] The Penal Code, as amended, states that the statutory minimum fine for violations is IQD 50,000 (approx. US$38), with the maximum being IQD 200,000 (approx. US$156). For misdemeanors, the statutory minimum is IQD 200,001, with a maximum being IQD 1,000,000 million (approx. US$763). In the case of felonies, the minimum fine ranges from IQD 1,000,001 million to IQD 10 million (approx. US$7,632).[2]

Corporate entities may also be subject to suspension, which entails a prohibition on engaging in the activities for which they were established, even if those activities are conducted under a different name or management. The suspension period, as prescribed by law, ranges from three months to three years if a felony or misdemeanor is committed by a representative, director, or agent in the name of, or on behalf of, the corporate entity, with the individual subject to imprisonment for a period of six months or more.[3]

Furthermore, in the event of recidivism, the court may order the dissolution of the entity and the liquidation of its assets.[4]

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[1] Law No. 111 of 1969 Promulgating the Penal Code, art. 80, Al-Waqā'i' al-'Irāqīyah (Official Gazette) at 10, vol. 1778, Sept. 15, 1969, https://perma.cc/T5JD-RLWF (in Arabic).

[2] Law No. 6 of 2008, Amending Law No. 111 of 1969, art. 2, Al-Waqā'i' al-'Irāqīyah at 1, vol. 4149, Apr. 5, 2010, https://perma.cc/PTJ8-WT2P (in Arabic).

[3] Law No. 111 of 1969 arts. 122, 123.

[4] Id.

II. Law No. 30 of 1984 Promulgating the Trade Law

Law No. 30 of 1984 holds corporate entities liable for violations of provisions related to maintaining commercial records, adopting a trade name, or registering the entity in the commercial register. Corporate entities found in violation may be subject to a fine ranging from IQD 100 (approx. US$0.08) to IQD 1,000 (approx. US$0.8).[5] Additionally, if a corporate entity establishes or invests in a warehouse without obtaining the required license, it is subject to a fine ranging from IQD 500 (approx. US$0.4) to IQD 5,000 (approx. US$4), along with its closure.[6]

III. Law No. 39 of 2015 Issuing Anti-Money Laundering and Terrorist Financing Law

Without prejudice to the criminal liability of natural persons involved, Law No. 39 of 2015 imposes sanctions on a corporate entity for the crimes outlined in this law if committed by its representatives, directors, or agents acting for the entity's benefit and on its behalf. The corporate entity is subject to the fines and confiscation measures prescribed for such crimes under this law.[7]

The judgment must include the confiscation of funds involved in the crime, along with the proceeds, profits, or any instrument used or intended for use in committing the offense. If confiscation or enforcement of the judgment on these funds is not feasible, their equivalent value is confiscated, whether in the possession of the corporate entity or a third party, without prejudice to the rights of bona fide third parties.[8] No penal or disciplinary liability is imposed on any person who, in good faith, reports a suspicious transaction in accordance with the provisions of this law or provides information or data related to such a transaction, even if the report is later proven incorrect.[9]

The corporate entity is jointly liable for any financial penalties and compensation awarded if the crime is committed by one of its employees on its behalf or for its benefit.[10] The statutory minimum fine for violating the provisions of this Law is IQD 1 million, with the maximum being IQD 250 million (approx. US$190,750).[11]

[5] Law No. 30 of 1984, Promulgating the Trade Law, as amended, art. 38, Al-Waqā'i' al-'Irāqīyah at 233, vol. 2987, Apr. 2, 1984, https://perma.cc/33P7-GGQ3 (in Arabic).

[6] Id. art. 215, para. 2.

[7] Law No. 39 of 2015 Issuing Anti-Money Laundering and Terrorist Financing Law, art. 46(1), Al-Waqā'i' al-'Irāqīyah at 36, vol. 4387, Nov. 16, 2015, https://perma.cc/2K78-8NJQ (in Arabic), https://perma.cc/BP66-B3B2 (English translation).

[8] Id. art. 38, para. 1, 2.

[9] Id. art. 48.

[10] Id. art. 46, para. 2.

[11] Id. arts. 39, 44.

IV. Law No. 14 of 2010 Issuing the Competition and Antitrust Law

In accordance with the Competition and Antirust Law, corporate entities may be subject to fines ranging from a minimum of IQD 1 million to a maximum fine of IQD 3 million (approx. US$2,300) for violations of this law.[12]

V. Law No. 1 of 2010 Issuing the Consumer Protection Law

Without prejudice to the criminal liability of natural persons, who may face imprisonment of up to three years, Law No. 1 of 2010 holds corporate entities criminally liable for violating its provisions. Violations of the obligations and prohibitions laid out in this law result in a fine of no less than IQD 1 million for corporate entities.[13]

VI. Law No. 23 of 1983 Promulgating the Customs Law

Law No. 23 of 1983, as amended, holds corporate entities liable for the actions of their employees and those acting on their behalf with respect to duties collected by customs, as well as fines and confiscations stipulated by this law.[14] Corporate entities may be subject to the following customs fines:

1. six times the value of prohibited goods;
2. three times the value and customs duties for prohibited, restricted, or monopolized goods;
3. four times the customs duties for goods subject to customs duties, if they are prohibited, restricted, or monopolized, provided that the fine is not less than the value of the goods; and
4. a customs fine equivalent to 35% of the value of goods not subject to customs duties that are considered prohibited, restricted, or monopolized goods.[15]

The sanctions listed above may be doubled if those responsible for the smuggling have prior offenses.[16] Additionally, the corporate entity may be subject to the confiscation of goods involved in the smuggling offense. If the goods cannot be seized, the court may order the confiscation of assets equivalent to their value. The court may also order the confiscation of any means of transportation, tools, or materials used in the smuggling, except for ships and airplanes, unless they were specifically prepared or rented for this purpose.[17] These customs fines and

[12] Law No. 14 of 2019 Promulgating the Competition and Antitrust Law, art. 13 para 1, Al-Waqā'i' al-'Irāqīyah at 40, vol. 4147, Mar. 9, 2010 https://perma.cc/7V5D-ZLTQ (in Arabic), https://perma.cc/7Q2V-ECZZ (English translation).

[13] Law No. 1 of 2010, Issuing the Consumer Protection Law, art. 10 para 1, 2, Al-Waqā'i' al-'Irāqīyah at 7, vol. 4143, Feb. 8, 2010, https://perma.cc/RTG4-TU7D (in Arabic), https://perma.cc/C56L-AF6U (English translation).

[14] Law No. 23 of 1983, as amended, issuing the Customs Law, art. 224, Al-Waqā'i' al-'Irāqīyah at 200, vol. 2985, Mar. 19, 1984, https://perma.cc/S2U8-G495 (in Arabic), https://perma.cc/47BR-SXNW (English translation).

[15] Id. art. 194, para. 1(b).

[16] Id. art. 194, para. 2.

[17] Id. art. 194, para. 1(c).

confiscations, as stipulated in this law, are considered civil compensation for the Customs Administration. As a result, they are not subject to the provisions of amnesty laws unless explicitly stated otherwise.[18]

Furthermore, violations related to customs entry declarations may result in a fine of no less than twice and no more than four times the amount of the customs duties.[19] But violations related to customs export declarations may result in a fine not exceeding the value of the goods and no more than twice their value. A fine of at least twice and up to four times the amount of illegally received drawbacks may be imposed for export declarations that result in unlawfully benefiting from a duty refund exceeding IQD 5 (approx. US$0.0008).[20]

[18] Id. art. 188.

[19] Id. art. 197.

[20] Id. arts. 198, 199, 200.

Israel

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SUMMARY Israel's criminal law does not distinguish between an individual person and a corporation for purposes of criminal liability. Corporations may be subject to financial penalties. Some offenses are punishable by increased fines if committed by corporations.

In addition to criminal liability, corporations may be liable under legislation that establishes specific agencies to supervise enforcement of their provisions. Such laws authorize, under the conditions enumerated, the adjudication and imposition of administrative monetary sanctions for violation of their respective legal requirements.

I. Introduction

In accordance with the Interpretation Law, 5741-1981, any reference in legislation to a person includes, by implication, a corporation. Therefore, the law does not distinguish between an individual and a corporation for the purpose of imposing criminal liability.[1]

In addition to criminal penalties for committing offenses under Israel's Penal Law,[2] Israeli law provides specific regulatory agencies with the authority to impose financial sanctions on corporations under specific legislation that enables the respective agencies to impose financial fines for violations of corporations' legal obligations. Such legislation includes the Securities Law, 5728-1968, as amended,[3] the Companies Law, 5759-1999,[4] the Economic Competition Law, 5748-1988,[5] and the Income Tax Ordinance.[6]

II. General Criminal Liability

The Penal Law 5733-1977, as amended, specifically addresses the criminal liability of corporations. It provides that a corporation is criminally liable for committing an offense where the law determines that criminal intent or negligence need not be proven (strict liability offenses) or when the offense has been committed by a person while discharging his or her duties in the corporation.

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[1] Interpretation Law, 5741-1981, SH 5741 No. 1030 p. 302, as amended, up-to-date text available at the Nevo Legal Database (Nevo), https://perma.cc/45LS-XDWF (all Nevo texts are in Hebrew, by subscription).

[2] The Penal Law 5733-1977, as amended, SH 5733 p. 226, as amended, Nevo, https://perma.cc/CC66-JAJA.

[3] The Securities Law, 5728-1968, SH 5728 No. 541 p. 234, as amended, Nevo, https://perma.cc/29FG-9VXK.

[4] Companies Law, 5759-1999, SH. 5759 No. 1711 p. 189, as amended, Nevo, https://perma.cc/75Y3-C48Y.

[5] Economic Competition Law, 5748-1988, SH 5748 p. 128, as amended, Nevo, https://perma.cc/3AZB-T2KY.

[6] Income Tax Ordinance, Dine Medinat Israel (New Version), as amended, Ch. 2, F- G, § 195 B-I., Nevo, https://perma.cc/SJW3-ZJGK.

No liability is imposed, however, if there is no criminal intention or negligence and the corporation proves that it did everything possible to prevent the offense.[7]

The Penal Law further provides that a corporation is liable for committing an offense that requires proof of criminal intent or negligence, if

> under the circumstances of the case and in view of the person's role, authority, and responsibility in the management of the affairs of the corporation, the act through which the person committed an offense, and his or her criminal intent or negligence, must be regarded as the act, thought, or negligence of the corporation.[8]

The law clarifies that with an offense committed by omission, when the duty to perform an act is imposed directly on the corporation, it does not matter whether the offense can also be attributed to a particular officer of the corporation.[9]

III. Criminal Penalties

Corporations may be subject to higher penalties for specific offenses. The Penal Law, for example, provides that a corporation convicted of the publication and disclosure of information regarding prostitution of minors may be fined at a rate of double of the amount imposed on individuals convicted of such offenses.[10]

The Securities Law, 5728-1968, imposes fines on corporations that violate its provisions at a rate of five times the rate of those that may be imposed on individuals who commit the same offenses.[11]

IV. Policy for Prosecuting and Punishing Corporations

According to the State Attorney Office guidance, a corporation is prosecuted when there is a legal and evidentiary basis, and public interest, in its prosecution. Some key factors the prosecution must consider when evaluating the public interest in prosecuting a corporation include the following:

- the severity and circumstances of the offense;
- the characteristics of the suspected corporation and the degree of failure in the culture of compliance with the law in the corporation;
- the degree of involvement of senior officers of the corporation in the commission of the offense;

[7] Penal Law §§ 22 & 23(a)(1).

[8] Id. § 23(a)(2).

[9] Id. § 23(a)(3).

[10] Penal Law § 205A-D.

[11] The Securities Law, § 53.

- the degree of cooperation of the corporation with the investigation and the degree of its contribution to the investigation;
- the harm that will result from the prosecution of the corporation;
- alternative means of enforcement;
- change of control of a corporation or a material change in the way the corporation operates; and
- the criminal record of the corporation.[12]

V. Administrative Penalties

Several laws authorize agencies to impose administrative penalties on persons, including corporations, that violate their requirements. The adjudication of violations is done through adjudicating organs established by the respective laws.

A. The Securities Law

The Securities Law establishes the Israel Securities Authority (the authority) "to safeguard the interests of the investing public in securities, as determined in this law."[13] The authority may impose administrative penalties on companies that violate the Securities Law. Payment of such penalties does not detract from the criminal liability of a person due to the violation of a provision under the law.[14]

In determining the appropriate fine, the authority should consider factors such as the scope of the company's underwriting obligations, and, in the case of a corporation whose main business is the issuance of financial products, the value of the net liabilities.[15]

Penalties for corporations that offer securities to the public range from NIS 30,000 (about US$8,295.00) for corporations with equity under NIS 50,000,000 (about US$13,825,000), to NIS 500,000 (about US$138,250) for those whose equity exceeds NIS 835,000,000 (about US$230,877,500).[16]

Violations of the law by corporations that are committed to purchasing securities offered pursuant to a prospectus if the public does not purchase them, or pursuant to a prospectus to sell them to the public, are subject to penalties ranging from NIS 20,000 (about US$5,530) to NIS 160,000 (about US$160,000), depending on the scope of their commitments. Violations by corporations whose main business is the issuance of financial products are punishable by fines ranging from NIS 250,000 (about US$69,125) to NIS 1,000,000 (about US$276,500), depending on

[12] Prosecution Policy in Criminal Prosecution and Punishment of a Corporation, State Attorney Guidance No. 1.14 (Oct. 2, 2019), Office of the State Attorney, https://perma.cc/Q5F4-VSZ5 (in Hebrew).

[13] The Securities Law § 2.

[14] Id. § 52YH.

[15] The Securities Law § 52O.

[16] Id. 6th Addendum.

the net value of their liabilities.[17] In a continuing violation, 2% will be added to the monetary penalty amount for each day the violation continues, subject to the conditions enumerated under the law.[18]

B. The Companies Law

The Companies Law authorizes the Registrar of Companies, if it believes, based on reasonable grounds, that a corporation has committed offenses specified in the law, such as not submitting required reports or paying dues, to impose a monetary fine on the company in the amount of NIS 8,860 (about US$2,445).[19] The amount of fines is doubled in cases when the Registrar has reasonable grounds to believe that a non-profit corporation has violated its obligation to declare its non-profit status when it applied for registration or when a foreign company has neglected to register and pay its registration fees in accordance with the law.[20]

The administrative penalties that may be levied "do not detract from the authority of a prosecutor to file an indictment for an offense under this law for which a financial sanction may be imposed under this section, for reasons that will be recorded."[21] The Registrar of Companies may request the dissolution of a company that has failed to pay its penalty under circumstances prescribed by the law.[22]

C. Economic Competition Law, 5748-1988

The law establishes a tribunal for competition and an agency for competition for determining whether certain arrangements constitute unlawful monopolies, including by mergers. If the tribunal sees, upon application by the agency's commissioner, that there is a reasonable concern that because of a merger of companies, competition in the industry will be significantly harmed or the public will be harmed, it may order the separation of the merged companies.[23]

Violation of the requirements under this law may be subject to criminal penalties punishable by imprisonment for individuals and fines in the case of corporations, in accordance with amounts listed in the law.[24]

The law further authorizes the agency's commissioner to impose administrative financial sanctions on any person, including a corporation, that violates the law.[25] The amount of the fine

[17] Id.

[18] Id. § 52S.

[19] Companies Law § 354.

[20] Id. §§ 346 & 354.

[21] Id. § 361(a).

[22] Id. § 362.

[23] Economic Competition Law, 5748-1988, § 25.

[24] Id. §§ 47-48.

[25] Id. Ch. G1.

may be up to NIS 1,150,530 (about US $318,006.49). The law specifies that if the violator is a corporation and has, in the year preceding the fiscal year in which the violation is committed, a sales turnover exceeding NIS 10 million (about US $2,764,000), the commissioner may impose on it a financial sanction of up to 8% of such sales turnover, provided that the amount of the sanction does not exceed NIS 115,053,500 (about US$ 31,800,787).[26]

If a person violates a requirement to provide information, documents, notebooks, or other documents issued pursuant to the law, the commissioner may impose a financial sanction on him or her under the provisions of this chapter, in the amount of up to NIS 345,160 (about US$95,402); If the violator is a corporation and has, in the year preceding the fiscal year in which the violation is committed, a sales turnover exceeding NIS 10 million, the commissioner may impose a financial sanction of up to 3% of such sales turnover, provided that the amount of the sanction does not exceed NIS 9,204,280 (appr. US $ 2,543,142.56).[27]

D. Income Tax Ordinance

Administrative sanctions in the form of financial fines are also prescribed under the Income Tax Ordinance on individuals and corporations alike. The law authorizes the commissioner to impose fines at amounts prescribed for failure to file reports online.[28] Payment of a financial sanction will not detract from the criminal liability for the offense.[29]

E. Anti-Money Laundering and Countering Terrorism

The Fight against Terrorism Law, 5776-1916, as amended, authorizes the Minister of Defense, at the request of the head of the Israel Security Agency (ISA) or the head of another security authority, through the head of the ISA, to issue an administrative seizure order against a terrorism organization, incorporated or not, under conditions enumerated in the law.[30] The law imposes penalties on joining terrorism organizations, providing support, and other activities associated with such organizations.[31]

The law further regulates the forfeiture of the property seized under the administrative seizure as relevant.[32] It authorizes the police to issue certain restraining orders against terrorism organizations under conditions enumerated.[33]

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[26] Id. § 50D(a).

[27] Id. § 50D(b).

[28] Income Tax Ordinance, Ch. 2, F- G, § 195B-I.

[29] Id. § 195H(a).

[30] Fight against Terrorism Law, 5776-1916, § 56, SH 5776 No. 2556 p. 898, Nevo, https://perma.cc/MLM5-QBJE.

[31] Id. Ch. C.

[32] Id. § 66.

[33] Id. Ch. F.

F. Combating Criminal Organizations Law

The Combating Criminal Organizations Law, 5763-2003 authorizes the forfeiture of property connected with an offense following a criminal conviction, as well as civil proceedings commencing at the request of the District Attorney, in connection with property used or intended to be used in the commission of an offense, or property that is obtained or intended to be obtained as the reward or which is obtained because of its committal.[34]

G. Prevention of Hazards Law

The Prevention of Hazards Law, 5721-1961, imposes double or quadruple fines as relevant on corporations that violate its provisions.[35]

[34] Combating Criminal Organizations Law, 5763-2003, SH 5763 No. 1894 p. 502, as amended, Nevo, https://perma.cc/K4TL-EMDJ.

[35] Prevention of Hazards Law, 5721-1961, SH 5721 No. 332, p. 58, Nevo, https://perma.cc/CGT8-BUTA.

Italy

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I. Introduction

Since at least 2000, Italy has enacted specific legislation punishing certain actions by corporations that damage shareholders and creditors or, by interfering with the normal functioning of markets, the public at large. In general, the legislation identifies as punishable conduct that involves false factual representations.

The legislation includes punishments that can include administrative sanctions, monetary fines, and imprisonment against the corporation itself or the corporate officers who, while in a position of control, were involved in prohibited behavior on the corporation's behalf.

Law No. 300 of 2000 directs the government to issue regulations on the administrative liability of legal persons and entities without legal personality, establishing the rules and criteria for the determination of such liability.

In 2001, Legislative Decree No. 231 introduced the criminal liability of companies for certain listed actions committed by high-ranking company officers. The same legislation codifies civil liability consequences for a company itself arising from forbidden behavior. Law No. 366 of 2001 also expands the list of corporate activities considered criminal under Italian law.

II. Law No. 311 of 2004, Financial Law of 2005

Law No. 311 of 2005 aims at combating and preventing illicit use of public funding. In this context, it required all entities and companies that receive public funding from the Italian government or from the European Union (EU)—even if under the form of exemptions, incentives or tax breaks—in the area of start-ups, professional development and training, use of workers, and tax relief for personnel assigned to production activities, to adopt specific organizational and operational measures before October 31, 2005, to prevent such acts, in compliance with the principles set out in Legislative Decree No. 231 of 2001.[1]

III. Decree No. 201 of 2003, on the Procedure for Ascertaining Administrative Offenses of Legal Entities, Companies, and Associations

Per Decree No. 201 of 2003, associations representing regulated entities must communicate to the Ministry of Justice, through the General Directorate of Criminal Justice, their codes of conduct

[1] Legge 30 dicembre 2004, n. 311 Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2005), No. 82, https://perma.cc/6FWV-F7B4.

containing specific indications for the adoption and implementation of organizational and management models.[2]

IV. Legislative Decree No. 61 of 2002, on Criminal and Administrative Offenses Concerning Commercial Companies

Legislative Decree No. 61 of 2002 (L.D. No. 61) contains various provisions related to the criminal and administrative responsibility of commercial companies, including the following:

A. False Corporate Communications

Per L.D. No. 61, directors, general managers, auditors and liquidators who, with the intention of deceiving the shareholders or the public and in order to obtain an unjust profit for themselves or others, in the balance sheets, reports or other corporate communications required by law, addressed to the shareholders or the public, present material facts that do not correspond to the truth even if they are the subject of evaluations or omit information whose communication is required by law on the economic, patrimonial or financial situation of the company or the group to which it belongs, in a manner suitable to mislead the recipients on the aforementioned situation, are punished with imprisonment of up to one year and six months.[3] The same actions causing patrimonial damage to shareholders or creditors are punished with imprisonment from six months to three years.[4]

Punished conducts also include the passing of information on assets owned or administered by the company on behalf of third parties.[5] Excluded are false statements or omissions

- that do not significantly alter the representation of the economic, patrimonial or financial situation of the company or group to which it belongs, or
- that determine a variation in the economic result of the financial year, gross of taxes, not exceeding 5% or a variation in the net equity not exceeding 1%.[6]

Also excluded are acts resulting from appraisals which, considered individually, differ by no more than 10% from the correct ones.[7]

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[2] Decreto 26 giugno 2003, n. 201 Regolamento recante Disposizioni Regolamentari relative al Procedimento di Accertamento dell'Illecito Amministrativo delle Persone Giuridiche, delle Societa' e delle Associazioni anche Prive di Personalita' Giuridica, ai sensi dell'Articolo 85 del Decreto Legislativo 8 Giugno 2001, n. 231 [Decree No. 201], art. 5.1, https://perma.cc/TX3W-9PTJ.

[3] Decreto Legislativo 11 aprile 2002, n. 61, Disciplina degli illeciti penali e amministrativi riguardanti le societa' commerciali, a norma dell'articolo 11 della legge 3 ottobre 2001, n. 366 [L.D. No. 61], art. 1.1, amending article 2622, para. 1 of the Civil Code [C.C.], https://perma.cc/DPW9-F664.

[4] Decreto Legislativo 11 aprile 2002, n. 61, amending C.C., art. 2622, para. 1.

[5] Id. amending C.C. art. 2621, para. 2.

[6] Id. amending C.C. art. 2621, para. 3.

[7] Id. amending C.C. art. 2621, para. 4.

Exculpating circumstances include those where the false statements or omissions

- do not significantly alter the representation of the economic, patrimonial or financial situation of the company or group to which it belongs, or
- determine a variation in the economic result of the financial year, gross of taxes, of no more than 5 percent or a variation in net equity of no more than 1%.[8]

Excluded from punishment are acts that are the consequence of appraisals which, considered individually, differ by no more than 10% from the correct one.[9]

B. False Statement

L.D. No. 61 punishes any persons who present false information or conceal data or news in the prospectuses issued for soliciting investments or inclusion on regulated market listings, or in the documents to be published on the occasion of public purchase or exchange offers, in a way that is likely to mislead the recipients with the aim of obtaining an unjust profit for themselves or for others, and with knowledge of the falsity and an intent to deceive the recipients.[10] If the conduct has not caused financial damage to the recipients, the penalty is imprisonment for up to one year.[11] If the conduct has caused financial damage to the recipients, the penalty is imprisonment for one to three years.[12]

C. Pecuniary Sanctions Arising from Corporate Crimes

The following corporate crimes committed in the interest of the company, by directors, general managers or liquidators or by persons subject to their supervision, generate pecuniary sanctions against the respective company:[13]

- false social communications,[14]
- false corporate communications to the detriment of members or creditors,[15]
- dissemination of prospectuses containing false information about the company,[16]

[8] Id. amending C.C. art. 2622, para. 5.

[9] Id. amending C.C. art. 2622, para. 6.

[10] Id. amending C.C. art. 2623, para. 2.

[11] Id.

[12] Id.

[13] Id. art. 3.2, adding art. 25-ter, para. 1 to Decreto Legislativo 8 giugno 2001, n. 231 Disciplina della Responsabilita' Amministrativa delle Persone Giuridiche, delle Societa' e delle Associazioni anche Prive di Personalita' Giuridica, a Norma dell'Articolo 11 della Legge 29 settembre 2000, n. 300 [L.D. No. 231 of 2001] art. 1.1, https://perma.cc/AGT7-7CXT.

[14] Decreto Legislativo 11 aprile 2002, n. 61, adding art. 25-ter(a) to L.D. No. 231 of 2001.

[15] Id. adding art. 25-ter(b) to L.D. No. 231 of 2001.

[16] Id. adding art. 25-ter(d) to L.D. No. 231 of 2001.

- false statements in reports or communications of auditing firms,[17]
- falsification of reports or communications from audit firms,[18]
- obstruction of control or supervisory activities over the company,[19]
- fictitious formation of capital,[20]
- undue return of company contributions,[21]
- illegal distribution of profits and reserves,[22]
- unlawful transactions in company shares or quotas of the company or controlling company,[23]
- transactions to the detriment of creditors,[24]
- undue distribution of company assets by liquidators,[25]
- illicit influence on the shareholders' assembly,[26]
- stock market manipulation,[27] and
- obstruction of the functions of public supervisory authorities.[28]

V. Legislative Decree No. 231 of 2001

"L.D. No. 231 introduced the regime of so called 'administrative responsibility of legal entities for crimes committed in their interest or to their advantage' and created an independent system of liability that supplements the criminal liability of the natural persons who are the physical perpetrators of crime." [29] Its provisions apply to entities with legal personhood and to companies and associations without legal personhood,[30] excluding "the state, territorial public

[17] Id. adding art. 25-ter(f) to L.D. No. 231 of 2001.

[18] Id. adding art. 25-ter(g) to L.D. No. 231 of 2001.

[19] Id. adding art. 25-ter(h) to L.D. No. 231 of 2001.

[20] Id. adding art. 25-ter(i) to L.D. No. 231 of 2001.

[21] Id. adding art. 25-ter(l) to L.D. No. 231 of 2001.

[22] Id. adding art. 25-ter(m) to L.D. No. 231 of 2001.

[23] Id. adding art. 25-ter(n) to L.D. No. 231 of 2001.

[24] Id. adding art. 25-ter(o) to L.D. No. 231 of 2001.

[25] Id. adding art. 25-ter(p) to L.D. No. 231 of 2001.

[26] Id. adding art. 25-ter(q) to L.D. No. 231 of 2001.

[27] Id. adding art. 25-ter(r) to L.D. No. 231 of 2001.

[28] Id. adding art. 25-ter(s) to L.D. No. 231 of 2001.

[29] HRIC, *Italian Legislative Decree No. 231/2001: A Model for Mandatory Human Rights Due Diligence Legislation?* (Nov. 2019), https://perma.cc/QVG5-V3LM.

[30] L.D. No. 231 of 2001 art. 1.2.

entities, other noneconomic public entities, as well as entities performing functions of constitutional importance."[31]

A. Crimes Committed Abroad

Entities with their main headquarters in Italy are subject to prosecution in Italy for a crime committed abroad, provided that the state where the crime was committed does not prosecute them for the crime.[32]

B. Liability of an Entity

An entity is liable for crimes committed in its interest or to its advantage by persons

- holding representative, administrative or management roles in the entity or in one of its organizational units with financial and functional autonomy,
- who exercise, even de facto, the management and control of the company, or
- subject to the direction or supervision of such persons.[33]

An entity is not liable if such persons acted in their own exclusive interest or in the interest of third parties.[34] The entity is liable even when the perpetrator has not been identified or is not chargeable, or the crime is extinguished for a reason other than amnesty.[35]

C. Penalties for Administrative Offenses

The penalties for administrative offenses resulting from a crime are

- pecuniary sanctions,
- interdictory sanctions,
- confiscation, and
- publication of the sentence.[36]

Interdictory sanctions are

[31] Id. art. 1.3.

[32] Id. art. 4.1.

[33] Id. art. 5.1.

[34] Id. art. 5.2.

[35] Id. art. 8.1.

[36] Id. art. 9.1.

- a ban on performing an activity,
- suspension or revocation of authorizations, licenses or concessions key to the commission of the offense,
- a bar on contracting with the public administration, except to obtain the performance of a public service,
- exclusion from concessions, financing, contributions or subsidies and the possible revocation of those already granted, and
- a prohibition against advertising goods or services.[37]

A pecuniary sanction is always applied for administrative offenses resulting from a crime.[38] Reduced payments are not allowed.[39]

1. Application of Interdictory Penalties

Interdictory penalties are applied when at least one of the following conditions occurs:

- the entity has derived a significant profit from the crime, which was committed by individuals in a senior position or by persons subject to the direction of others when the crime was facilitated by serious organizational shortcomings, or
- the crimes are repeated.[40]

Interdictory sanctions have a duration between three months and two years.[41]

2. Repair of the Consequences of the Crime

Without prejudice to the application of pecuniary sanctions, interdictory penalties do not apply when, before the first hearing on the case, the entity has

- fully compensated the damage and eliminated the harmful or dangerous consequences of the crime or has in any case effectively worked towards this end,
- eliminated the organizational deficiencies that caused the crime by adopting and implementing organizational models suitable for preventing crimes of the same type, or
- made the profit obtained available for the purposes of confiscation.[42]

[37] Id. art. 9.2.

[38] Id. art. 10.1.

[39] Id. art. 10.4.

[40] Id. art. 13.1.

[41] Id. art 13.2.

[42] Id. art. 17.1.

3. Publication of Conviction Sentence

The respective judge may order the publication of the conviction sentence when an interdictory penalty is applied to the entity.[43]

4. Confiscation

Upon conviction, the judge must always order the confiscation of the crime's price or profit against the entity, except the monies that can be returned to the injured party.[44]

Confiscation may also concern sums of money, goods or other assets of value equivalent to the crime's price or profit.[45]

5. Failure to Comply with Interdictory Penalties

Anyone who continues to perform activities at an entity that has been punished with an interdictory measure in disregard of the obligations or prohibitions inherent in such penalty is punishable with imprisonment from six months to three years.[46]

D. Entity's Responsibility for Pecuniary Penalties

An entity may pay a pecuniary sanction only with its own assets or with corporate funds.[47]

The transformation of an entity does not terminate the entity's liability for prior crimes.[48]

In the event of a merger, including by incorporation, the resulting entity is liable for the crimes for which the entities participating in the merger were responsible.[49]

In the transfer or assignment of a company whose activities involved a crime, the transferee is jointly and severally liable for the pecuniary consequences of the crime, within the limits of the company's value.[50]

[43] Id. art. 18.1.

[44] Id. art. 19.1.

[45] Id. art. 19.2.

[46] Id. art. 23.1.

[47] Id. art. 27.1.

[48] Id. art. 28.1.

[49] Id. art. 29.1.

[50] Id. arts. 33.1 and 33.3.

VI. Law No. 366 of 2001, Delegation for the Reform of Company Law

Law No. 366 of 2001 directs the government to adopt legislative decrees containing the organic reform of the regulation of joint-stock companies and cooperatives and the regulation of criminal and administrative offenses concerning commercial companies, in compliance and coherence with EU legislation.[51]

Law No. 366 defines "legal persons" as entities with legal personality, except the state and other public bodies exercising public powers.[52]

Law No. 366 provides for the criminalization of a series of corporate activities, including

- Falsehood in the balance sheet, reports or other corporate communications addressed to the public, as required by law, which occurs when directors, general managers, auditors and liquidators present material facts that do not correspond to the truth, even if they are the subject of evaluations, that are capable of misleading the recipients on the economic financial situation or total assets of the company or the group to which it belongs, with the intention of deceiving the members or the public, or when they omit information on the company's situation with the same intention.[53] The conduct must be aimed at obtaining an unjust profit for oneself or for others, and the false or omitted information must be relevant and such as to significantly alter the representation of the economic or financial situation or total assets of the company or the group to which it belongs, also through the provision of "appropriate parameters for cases of estimative evaluations."[54] Punishment is also forthcoming when the information concerns assets owned or administered by the company on behalf of third parties.[55] Separate criminal offenses exist depending on whether the conduct carried out has caused financial damage to shareholders or creditors.[56] If it has not, the penalty is imprisonment for up to one year and six months;[57] if it has, the penalty is imprisonment from six months to three years.[58]
- Falsity in prospectuses required for soliciting investment or admission to listing on regulated markets, or in documents to be published on the occasion of public purchase or exchange offers, with the awareness of the falsity and the intention of deceiving the recipients, or publishing false information capable of misleading or concealing data or news with the same intention.[59] The conduct must be aimed at obtaining an unjust profit for oneself or for others,

[51] Legge 3 ottobre 2001, n. 366, Delega di Riforma del Diritto Societario [Law No. 366], art. 1.1 and 1.2, https://perma.cc/76KU-3ZW7.

[52] Law No. 300 art. 11.2.

[53] Law No. 366 art. 11.1(a)(1).

[54] Id.

[55] Id.

[56] Id.

[57] Id. art. 11.1(a)(1.1).

[58] Id. art. 11.1(a)(1)(1.2.1).

[59] Id. art. 11.1(a)(1)(2).

and must be capable of deceiving the recipients.[60] Differentiated sanctions are established depending on whether the conduct carried out has or has not caused financial damage to the recipients.[61] If no financial damage was caused, the penalty is imprisonment for up to one year;[62] if it has, the penalty is imprisonment from one to three years.[63]

- Falsehood in the reports or communications of the auditing firm, consisting in the fact that the audit managers, in the reports or in other communications, with the awareness of the falsity and the intention to deceive the recipients of the communications, falsely attest or conceal information concerning the economic or financial situation or total assets of the company, entity or subject being audited.[64] The conduct carried out must be aimed at obtaining an unjust profit for themselves or for others and must be capable of deceiving the recipients about the situation.[65] Differentiated sanctions apply depending on whether the conduct carried out has or has not caused financial damage to the recipients.[66] If no financial damage was caused, the penalty is imprisonment for up to one year;[67] if it has, the penalty is imprisonment from one to four years.[68]
- Impeded control, i.e., when the directors prevent, by concealing documents or other means, the performance of auditing activities required by law, to other corporate bodies or to auditing companies.[69] Hefty administrative penalties apply, without barring imprisonment of up to one year when damage is caused to shareholders.[70]
- Undue return of contributions, i.e., when the directors return shareholders' contributions, , other than cases of legitimate reduction of the share capital, or release shareholders from the obligation to make such contributions.[71] The penalty of imprisonment of up to one year applies.[72]
- Illegal distribution of profits and reserves, i.e., when directors distribute profits or advances on profits not actually earned or allocated by law to reserves, or when they distribute reserves, even if not constituted by profits, which cannot by law be distributed.[73] The penalty of

[60] Id.

[61] Id.

[62] Id. art. 11.1(a)(1)(2.1).

[63] Id. art. 11.1(a)(1)(2.2).

[64] Id. art. 11.1(a)(1)(3).

[65] Id.

[66] Id.

[67] Id. art. 11.1(a)(1)(3.1).

[68] Id. art. 11.1(a)(1)(3.2).

[69] Id. art. 11.1(a)(1)(4).

[70] Id.

[71] Id. art. 11.1(a)(1)(7).

[72] Id.

[73] Id. art. 11.1(a)(1)(8).

imprisonment for up to one year applies.[74] The reimbursement of profits or reserves before the deadline for the approval of the company budget extinguishes the crime.[75]

- Illicit operations concerning company shares or quotas or control of the company, in that the directors who purchase or subscribe to such shares or quotas cause damage to the integrity of the share capital and reserves that are not distributable by law.[76] The penalty of imprisonment of up to one year applies.[77] The reimbursement of profits or reserves before the deadline for the approval of the company budget extinguishes the crime.[78]
- Transactions to the detriment of creditors, in that directors, reduce share capital or merge the company with other companies or divisions in violation of legal provisions protecting creditors, causing damage to creditors.[79] The penalty of imprisonment from six months to three years applies.[80] Compensation for damages to creditors before trial extinguishes the crime.[81]
- Undue distribution of company assets by liquidators, i.e., when liquidators distribute company assets among shareholders before paying company creditors or setting aside the sums necessary to satisfy them, causing damage to creditors.[82] The penalty of imprisonment from six months to three years applies.[83] Compensation for damages to creditors before the trial extinguishes the crime.[84]
- Fiduciary disloyalty, i.e., when directors, general managers and liquidators, who, in a situation of conflict of interest, carry out or contribute to deliberate acts of disposal of the company assets in order to procure for themselves or others an unjust profit, or other advantage, intentionally cause financial damage to the company.[85] Such actions are also punishable when committed regarding assets owned or administered by the company on behalf of third parties, causing financial damage to them.[86] The profit of the associated company or of the group is not considered unjust if it is offset by advantages, even if only

[74] Id.

[75] Id.

[76] Id. art. 11.1(a)(1)(9).

[77] Id.

[78] Id.

[79] Id. art. 11.1(a)(1)(10).

[80] Id.

[81] Id.

[82] Id. art. 11.1(a)(1)(11).

[83] Id.

[84] Id.

[85] Id. art. 11.1(a)(1)(12).

[86] Id.

reasonably foreseeable, deriving from the connection or from belonging to the group.[87] The penalty of imprisonment from six months to three years applies.[88]

- Disloyal conduct, in that directors, general managers, auditors, liquidators, and audit managers perform or omit acts in violation of the obligations inherent to their office, following the giving or promise of benefits, resulting in damage to the company.[89] The penalty of imprisonment for up to three years applies.[90] Those who give or promise the benefit are also subject to punishment.[91]
- Undue influence on the assembly, that is, when persons fraudulently procure a majority in the assembly with the aim of obtaining an unjust profit for themselves or others.[92] The penalty of imprisonment from six months to three years applies.[93]
- Failure to call a meeting, i.e., when directors and auditors fail to call a shareholders' meeting when required by law or the company bylaws, even if no specific deadline for the call is mentioned.[94] A hefty administrative pecuniary sanction applies, which is increased by a third when the obligation to call the meeting is the result of losses or a legitimate request by the shareholders.[95]
- Stock market manipulation by spreading false news or carrying out simulated operations or other frauds concretely capable of causing a significant alteration in the price of financial instruments or of significantly affecting the public's confidence in the financial stability of banks or banking groups.[96] A penalty of imprisonment from one to five years applies.[97]

Furthermore, Law No. 366 directs the government to issue legislation punishing false communications to public supervisory authorities, obstruction of the performance of the relevant functions, and failure to communicate to the authorities by directors, general managers, auditors, and liquidators of companies, entities or subjects as required by law.[98]

[87] Id.

[88] Id..

[89] Id. art. 11.1(a)(1)(13).

[90] Id.

[91] Id.

[92] Id. art. 11.1(a)(1)(14).

[93] Id.

[94] Id. art. 11.1(a)(1)(15).

[95] Id.

[96] Id. art. 11.1(a)(1)(16).

[97] Id.

[98] Id. art. 11.1(b).

Disclosure of confidential company information is an aggravating circumstance under Law No. 366 when the act is committed by directors, general managers, auditors or liquidators or by those who carry out the accounting audit of the company.[99]

At the request of the injured parties, in the event of conviction or application of the penalty for certain crimes, Law No. 366 provides for the confiscation of the product or profit of the crime and of the assets used to commit it. When it is not possible to identify or seize the assets, sums of money or assets of equivalent value may be confiscated.[100]

Finally, Law No. 366 mandates the inclusion of specific rules on the administrative liability of companies in the event that a crime is committed, in the interest of the company, by directors, general managers or liquidators, or by persons subject to their supervision when the act would not have occurred if they had exercised proper supervision.[101]

VII. Law No. 300 of 2000, Ratifying EU Treaties Related to Corruption

Law No. 300 of 2000 ratifies and implements several EU treaties related to corruption, and it directs the government to issue regulations on the administrative liability of legal persons and entities without legal personality.[102]

Under Law No. 300, the president of the Republic of Italy ratified the following international instruments:

- the Convention on the Protection of the Financial Interests of the European Communities of 1995,
- its First Protocol signed at Dublin in 1996,
- the Protocol on the Interpretation by Way of Preliminary Rulings by the Court of Justice of the European Communities of the Convention, with Annexed Declaration, signed at Brussels in 1996,

[99] Id. art. 11.1(c).

[100] Id. art. 11.1(f).

[101] Id. art. 11.1(h).

[102] Legge 29 settembre 2000, n. 300, Ratifica ed esecuzione dei seguenti Atti internazionali elaborati in base all'articolo K. 3 del Trattato dell'Unione europea: Convenzione sulla tutela degli interessi finanziari delle Comunita' europee, fatta a Bruxelles il 26 luglio 1995, del suo primo Protocollo fatto a Dublino il 27 settembre 1996, del Protocollo concernente l'interpretazione in via pregiudiziale, da parte della Corte di Giustizia delle Comunita' europee, di detta Convenzione, con annessa dichiarazione, fatto a Bruxelles il 29 novembre 1996, nonche' della Convenzione relativa alla lotta contro la corruzione nella quale sono coinvolti funzionari delle Comunita' europee o degli Stati membri dell'Unione europea, fatta a Bruxelles il 26 maggio 1997 e della Convenzione OCSE sulla lotta alla corruzione di pubblici ufficiali stranieri nelle operazioni economiche internazionali, con annesso, fatta a Parigi il 17 dicembre 1997. Delega al Governo per la disciplina della responsabilita' amministrativa delle persone giuridiche e degli enti privi di personalita' giuridica [Law No. 300], https://perma.cc/HMT5-BTG7.

- the Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, signed at Brussels in 1997, and
- the OECD Convention on Combating Bribery of Foreign Public Officials in International Economic Transactions, with Annex, signed at Paris in 1997.[103]

In general, these treaties punish embezzlement, extortion, corruption, and incitement to corruption of members of EU bodies, EU officials, or officials of foreign states.[104]

A. Confiscation

Per Law No. 300, the presiding judge must always order the confiscation of the assets constituting the profit or the price gained in the event of conviction for any of the crimes provided by law, unless they belong to a person not involved in the crime.[105] When this is not possible, the confiscation must be of goods that were available to the offender having a value corresponding to the profit.[106]

B. Undue Receipt of Grants to the Detriment of the State

Any persons who, through the use or presentation of false declarations or documents or attesting to untrue things, or through the omission of due information, unduly obtain, for themselves or for others, contributions, financing, subsidized loans or other disbursements of the same type, however denominated, granted or paid by the state, by other public bodies or by the EU, are punishable by imprisonment from six months to three years.[107]

C. Delegation to the Government of Regulation of the Administrative Liability of Legal Persons and Entities Without Legal Personality

Law No. 300 requires the government to issue a legislative decree on the administrative liability of legal persons and companies, or associations or entities without legal personhood that do not perform functions of constitutional importance,[108] in accordance with the following criteria:

[103] Id. art. 1.1.

[104] Id. art. 3.1, adding 322-bis to the P.C.

[105] Id. adding 322-ter, para. 1 to the P.C.

[106] Id. art. 3.1, adding 322-ter, para. 1 to the P.C.

[107] Id. art. 4.1, adding 316-bis to the P.C.

[108] Id. art. 11.1.

- administrative sanctions must be effective, proportionate, and dissuasive,[109]
- entities will be liable for the payment of fines within the limit of their common fund or corporate assets,[110]
- the profit or price of the crime, or its equivalent, will be confiscated[111]
- in particularly serious cases, other sanctions will apply in addition to pecuniary sanctions,[112] including the following:
    - temporary closure of the factory or commercial office,[113]
    - suspension or revocation of authorizations, licenses or concessions key to the commission of the offense,[114]
    - temporary suspension from performing the activity and possible appointment of a substitute to ensure the continuation of the activity as necessary to avoid harm to third parties,[115]
    - temporary ban on contracting with the public administration,[116]
    - temporary exclusion from benefits, financing, contributions or subsidies, and possible revocation of those already granted,[117]
    - temporary ban on advertising goods and services,[118] and
    - publication of the conviction sentence.[119]
- in the event of violation of the obligations and prohibitions relating to the sanctions, Law No. 300 imposes the penalty of imprisonment from six months to three years for the individual responsible for the violation,[120]

[109] Id. art. 11.1(f).

[110] Id. art. 11.1(h).

[111] Id. art. 11.1(i).

[112] Id. art. 11.1(l).

[113] Id. art. 11.1(l)(1).

[114] Id. art. 11.1(l)(2).

[115] Id. art. 11.1(l)(3).

[116] Id. art. 11.1(l)(4).

[117] Id. art. 11.1(l)(5).

[118] Id. art. 11.1(l)(6).

[119] Id. art. 11.1(l)(7).

[120] Id. art. 11.1(p).

- the presiding judge must apply administrative sanctions against the entities, ensuring the effective participation and defense of the entities in the various phases of the criminal proceedings,[121]
- administrative sanctions expire five years after the commission of the crimes,[122]
- a national register of administrative penalties is established,[123] and
- shareholders, partners or associates of an entity that has been found to have administrative liability for corporate acts—unless they have consented or have carried out, even indirectly or de facto, management, control or administrative functions—may withdraw from the company or association or entity, forcing the liquidation of their shares.[124] In such cases, those individuals must request the presiding judge to appoint a special curator to carry out the liquidation of their shares.[125]

VIII. Legislative Decree No. 231 of 2007, Implementation of EU Law on Money Laundering and Terrorist Financing

Legislative Decree No. 231 of November 21, 2007, implements EU Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, setting forth monetary penalties against corporations.[126]

L.D. No. 231 contains a broad definition of "financial intermediaries," setting forth their obligation to adequately verify their customers' financial activities in order to prevent money laundering and terrorist financing.[127] In particular, L.D. No. 231 establishes penalties for the physical persons who, on behalf of the corporation, commit certain punishable actions,[128] but it also imposes monetary penalties for financial entities involved in the criminal actions.[129]

[121] Id. art. 11.1(q).

[122] Id. art. 11.1(r).

[123] Id. art. 11.1(s).

[124] Id. art. 11.1(t).

[125] Id.

[126] Decreto Legislativo 21 novembre 2007, n. 231, Attuazione della Direttiva 2005/60/CE Concernente la Prevenzione dell'Utilizzo del Sistema Finanziario a Scopo di Riciclaggio dei Proventi di Attivita' Criminose e di Finanziamento del Terrorismo nonche' della Direttiva 2006/70/CE che Ne Reca Misure di Esecuzione, https://perma.cc/J3XV-GBF2.

[127] Id. arts. 11, 15.

[128] Id. art. 55.

[129] Id. arts. 56(4), 57 & 58.

Jamaica

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SUMMARY Companies are subject to the same requirements that are imposed on physical persons. Several laws specifically impose criminal penalties on companies that violate their provisions. Some violations are subject to summary proceedings and are punishable by monetary penalties.

I. Introduction

Jamaica gained independence from the UK on August 6, 1962, and now operates as a parliamentary democracy in the British Commonwealth.[1] The Jamaican legal system inherited the common law system from England.[2]

In accordance with the Jamaican Interpretation Act, unless inconsistent with the construction or otherwise expressly provided, the term "person" in any statutory provisions, "includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons."[3]

In addition, there are several statutes that subject companies to specific corporate liability.

II. Specific Laws

A. Companies Act

The Companies Act imposes financial penalties on companies that fail to file their annual returns.[4] The rate of fines on a company and its officers for every day of default may not exceed the amount of the default as is specified in the law, or if the amount of the fine is not so specified, the daily rate should not exceed 50,000 dollars [about US$318].[5] Offenses punishable by a fine under the act may be adjudicated in a summary manner by the Residents' Magistrate's Court.[6]

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[1] *Commonwealth Caribbean Law Research Guide: Jamaica*, Florida State University College of Law, https://perma.cc/M87U-ZCH5.

[2] *Legal System*, Supreme Court Jamaica, https://perma.cc/Q9Z9-K697.

[3] Interpretation Act No. 8 of 1968, as amended, Laws of Jamaica, Revised Statutes, https://perma.cc/68SU-WYZU.

[4] Companies Act No. 10 of 2004, Laws of Jamaica, Revised Statutes, § 121, https://perma.cc/KN3M-SJFC.

[5] Id. § 384.

[6] Id. § 385.

B. Financial Institutions Act

In accordance with the Financial Institutions Act, 2018, a financial institution may be liable upon summary conviction to a criminal fine at rates determined by the act.[7]

C. Banking Services Act

A company's director or officers, as well as the company itself, may be liable for criminal penalties for offenses committed with consent or attributed to any failure to exercise all reasonable diligence by the director or officers of the company.[8]

D. The Banking Act

The act provides that a ""bank" means any company licensed under this Act to carry on banking business." Violators of the provisions of the act may be tried summarily before a Resident Magistrate. Banks may be subjected to fines following conviction.[9]

E. Terrorism Prevention Act

The provision, use of, or dealing with property or services for "terrorist purposes" constitutes an indictable offense punishable by a life sentence for an individual and, in the case of a body corporate, a fine.[10] Similar punishments are imposed on offenses such as participation in activities of a terrorist group, facilitating terrorist activities, commission of, or instructing the commission of, an offense for a terrorist group.[11]

The act also imposes penalties on entities that fail to comply with examination or production orders. Such penalties may be determined upon summary conviction before a Resident Magistrate and are

a) in the case of an individual, a fine not exceeding one million dollars [about US$6,378.31] or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment; or

b) in the case of a body corporate, a fine not exceeding three million dollars [about US$19,135].[12]

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[7] The Financial Institutions Act 16 of 1992, as amended, Laws of Jamaica, Revised Statutes, § 42, https://perma.cc/L4R5-XJ57.

[8] The Banking Services Act 6, 2014, Laws of Jamaica, Revised Statutes, § 129 & Seventh Schedule, https://perma.cc/2XNK-P9B6.

[9] The Banking Act 17 of 1992, as amended, Laws of Jamaica, Revised Statutes, https://perma.cc/B8RH-GMZQ.

[10] The Terrorism Prevention Act 18 of 2005, as amended, Laws of Jamaica, Revised Statutes, §§ 4-6, https://perma.cc/HDH3-ME69.

[11] Id. §§ 7-12.

[12] Id. § 22(2); Exchange-Rates.org, https://perma.cc/F4MR-R8KN.

F. Income Tax Act

Under the act, offenders may be criminally indicted and if convicted ordered to pay a fine. Some offenses may be subject to summary conviction by the Resident Magistrate.[13]

G. The Proceeds of Crime Act

The Proceeds of Crime Act 1997 enables the courts to make forfeiture orders against property tainted in respect of offenses and pecuniary penalty orders in respect of benefits persons have derived from the commission of offenses. It also contains offense provisions related to contravention with restraining orders[14] and dealing with the proceeds of criminal offending, with higher penalties applying where a corporate body commits an offense.[15]

H. Corruption Prevention Act

In accordance with the Corruption Prevention Act,

> [a] person commits an act of corruption if he offers or grants, directly or indirectly, to a public servant any article, money or other benefit, being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public function.[16]

The act further imposes liability on any person who "instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption."[17]

The act also criminalizes corruptive acts in relation to foreign states. It provides that

> [a]ny citizen or resident of Jamaica or **any corporation**, either aggregate or sole, any club, society or other body of one or more persons, who offers or grants, directly or indirectly, to a person performing a public function in a foreign state, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for any act to be performed by or for the omitting to do any act by that person in the performance of that person's public functions, commits an act of corruption. [emphasis added by author][18]

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[13] The Income Tax Act 31 of 1971, as amended, Laws of Jamaica, Revised Statutes, §§ 99-104, https://perma.cc/2HJE-RCJZ

[14] The Proceeds of Crime Act 4 of 2007, as amended, Laws of Jamaica, Revised Statutes, § 39(1)(a-b), https://perma.cc/X38L-83L8.

[15] Id. §§ 92, 93 & 98.

[16] Corruption Prevention Act 18 of 2000, as amended, Laws of Jamaica, Revised Statutes, § 14(2), https://perma.cc/2HAT-K8K7.

[17] Id. § 14(3).

[18] Id. § 14(4).

The commission of acts of corruption is punishable by criminal fines, imprisonment and confiscation of property of the public servant involved under conditions enumerated. Corporations convicted of committing acts of corruption will be subject to criminal fines.[19]

[19] Id. § 15.

Japan

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SUMMARY Criminal laws in Japan do not apply to legal persons unless they have a provision that expressly allows legal persons, in addition to natural persons, to face criminal liability. Although the Penal Code does not have such a provision, other laws discussed in this report do, and they expose corporations to criminal fines. As a civil sanction, a court may order dissolution of a company under the Companies Act.

I. General Rule

It is understood that criminal provisions do not apply to legal persons, including corporations, unless laws have "dual criminal liability provisions (両罰規定)" that punish legal persons in addition to natural persons.[1]

II. Penal Code

The Penal Code does not have dual criminal liability provisions;[2] therefore, it is not applicable to corporations.

III. Anti-Money-Laundering Measures and Countering the Financing of Terrorism

A. Act on Prevention of Transfer of Criminal Proceeds

The Act on Prevention of Transfer of Criminal Proceeds has provisions that impose fines on corporations.[3] For example, it obligates specified businesses, such as financial institutions, to confirm the identity of clients when they conduct certain transactions with them.[4] When Japan's Financial Agency finds a business is violating this duty, the agency orders to the business to fulfill the obligation.[5] If a corporation's representative, agent, an employee or contractor does not follow

[1] 法人企業の処罰 [Punishment of Legal Persons and Corporations], Legislative Bureau, House of Councillors, https://perma.cc/4DPG-T7NU. See also 郷原信郎 [Gohara, Nobuo], 日本の法人処罰を考える(1)「法人の犯罪行為」の基本的理解 [*Considering Corporate Punishment in Japan (1) A Basic Understanding of "Corporate Criminal Activities"*], 日経 BizGate (Aug. 31, 2028), https://bizgate.nikkei.com/article/DGXMZO30893200240520180000007 (archiving prohibited).

[2] Penal Code, Act No. 45 of 1907, amended by Act No. 55 of 2023, https://perma.cc/5WSU-HFQK (translation as amended by Act No. 72 of 2017).

[3] 犯罪による収益の移転防止に関する法律 [Act on Prevention of Transfer of Criminal Proceeds], Act No. 22 of 2007, amended by Act No. 97 of 2022, art. 31, https://perma.cc/2PVU-SQN8.

[4] Id. art. 4, para. 1.

[5] Id. art. 18.

such an order by the agency, in addition to punishing the person who committed the violation, the agency will fine the corporation up to 300 million yen (US$2 million).[6]

B. Act on Punishment of Organized Crimes and Control of Proceeds of Crime

The Act on Punishment of Organized Crimes and Control of Proceeds of Crime makes a corporation subject to criminal fines when its representative, agent, employee or contractor violates listed provisions in connection with the business of the corporation.[7] One such provision regards concealment of the proceeds of a crime. A natural person who conceals the proceeds of a crime is punishable by imprisonment for not more than 10 years, a fine of not more than JPY5,000,000 (US$32,000), or both.[8] If a corporation's representative, agent, employee, or contractor commits such a crime in relation to the corporation's business, the corporation is subject to the same amount as a fine.[9]

C. Act on Punishment of Financing of Offenses of Public Intimidation

Collection of funds or other benefits by a person who intends to commit an act of public intimidation, or provision of funds or another benefit by other persons to a person who intends to commit such an act, is punishable under the Act on Punishment of Financing of Offenses of Public Intimidation.[10] These persons are punishable by imprisonment for not more than 12 years, a fine of not more than JPY12 million (US$76,400), or both. If a corporation's representative, agent, employee or contractor has committed the offense with regard to the business of that corporation, the corporation is punishable by the same fine in addition to the offender.[11]

IV. Anti-Corruption Measure

Although crimes of corruption under the Penal Code do not apply to corporations, a corporation that provides wrongful gains to foreign public officials is punishable by a fine of not more than JPY 1 billion (US$6.7 million) under the Unfair Competition Prevention Act.[12]

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[6] Id. arts. 25, 31.

[7] 組織的な犯罪の処罰及び犯罪収益の規制等に関する法律 [Act on Punishment of Organized Crimes and Control of Proceeds of Crime], Act No. 136 of 1999, amended by Act No. 97 of 2022, art. 17, https://perma.cc/W2S4-E2VH (translation as amended by Act No. 63 of 2019).

[8] Id. art. 10.

[9] Id. art. 17.

[10] 公衆等脅迫目的の犯罪行為等のための資金等の提供等の処罰に関する法律 [Act on Punishment of Financing of Offenses of Public Intimidation], Act No. 67 of 2002, amended by Act No. 97 of 2022, arts. 2, 3, https://perma.cc/53RM-LKT7.

[11] Id. art. 8.

[12] 不正競争防止法 [Unfair Competition Prevention Act], Act No. 47 of 1993, amended by Act No. 51 of 2023, art. 18, para. 1, art. 21, para. 4, & art. 22, para. 1, https://perma.cc/U4M5-E7HK.

V. Tax Evasion

The Corporate Tax Act states that, in the event that the corporation tax is evaded by falsehood or other wrongful acts by its representative, a corporation is punishable with a fine not more than JPY 10 million.[13]

VI. Environmental Crime

Various environmental laws prescribe criminal fines for corporations that violate the laws. Among them, the Act on Waste Management and Public Cleaning sets one of highest fines for corporations. It states that when a representative, agent or employee of a corporation has conducted the collection, transport or disposal of municipal waste or industrial waste as an unlicensed business, it is punishable by a fine of not more than JPY 300 million.[14]

VII. Financial Fraud

Submitting or publishing false financial statements may be punished under Japan's laws. For example, under the Financial Instruments and Exchange Act, when issuing new securities or distributing existing securities, if the number of parties to be solicited and the total issue price, among other factors, meet certain criteria, a securities registration statement must be submitted to the government.[15] The statement must include the number of securities to be issued, the total amount of the issuing securities, and the total amount of capital contribution.[16] A corporation that submits such documentation with a false statement is punishable by a fine of not more than JPY 700 million (US$4.46 million).[17]

VIII. Investment Fraud

Fraudulent acts are punishable under the Penal Code. Although corporations are not subject to code, they may be punished if their representatives commit fraud for the corporations and their acts violate other laws. For example, if a representative sells corporate bonds by deceiving purchasers that they will generate profits, and the transaction is made in violation of the reporting requirements of the Financial Instruments and Exchange Act, the corporation is punishable by a fine of not more than JPY 500 million (US$3.17 million).[18]

[1313] 法人税法 [Corporate Tax Act], Act No. 34 of 1965, amended by Act No. 8 of 202474, art. 74, para. 1, art. 159, para. 1, & art. 163, para. 1, https://perma.cc/F7RP-6HNM.

[14] 廃棄物の処理及び清掃に関する法律 [Act on Waste Management and Public Cleaning], Act No. 137 of 1970, amended by Act No. 68 of 2022, art. 7, para. 1, art. 25, para. 1, & art. 32, para. 1, https://perma.cc/W495-YLQX.

[15] 金融商品取引法 [Financial Instruments and Exchange Act], Act No. 25 of 1948, amended by Act No. 32 of 2024, art. 5, https://perma.cc/T9WM-B2XK (translation is as amended by Act No. 68 of 2022).

[16] 企業内容等の開示に関する内閣府令 [Cabinet Office Ordinance on Disclosure of Corporate Information], Ministry of Finance Ordinance No. 5 of 1973, amended by Cabinet Office Ordinance No. 53 of 2024, attached form 2: 有価証券届出書 [Securities Registration Statement], https://perma.cc/4LU8-CDYK.

[17] Financial Instruments and Exchange Act, art. 197, para. 1, art. 207.

[18] Id. arts. 197-2, 207.

IX. Civil Liability

Under the Companies Act, if an executive director or corporate officer who carries out the corporation's business continuously or repeatedly commits an act that violates criminal laws and regulations despite receiving a written warning from the minister of Justice, the minister, shareholders, creditors or any other interested parties can file a petition for the dissolution of the company. If a court finds that the existence of a company is unallowable for securing public interests, it may order its dissolution.[19]

[19] 会社法 [Companies Act], Act No. 86 of 2005, amended by Act No. 70 of 2019, art. 824, para. 1, item 3, https://perma.cc/C2Z5-VSVF (translation as amended by Act No. 63 of 2015).

Jordan

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SUMMARY In Jordan, the Penal Code and laws regulating insurance practices, combating money laundering and terrorism financing, and protecting the environment all provide punishment for corporations that violate their provisions. Depending on the particular law violated, punishment can be in the form of fines, confiscation of property, suspension of business, or dissolution of the corporation.

I. Law No. 16 of 1960 on the Penal Code

Law No. 16 of 1960 on the penal code stipulates that corporations other than governmental, public and official institutions are criminally liable for offenses committed by their representatives, directors or agents working under their name or on their behalf.[1] The law punishes violating corporations with fines and confiscation of properties.[2]

II. Law No. 22 of 1997 on Commercial Companies

Law No. 22 of 1997 on commercial companies, as amended, holds a corporation liable for any criminal act by its board of directors or managing directors working under its name or on its behalf carried out against bona fide third parties that deal with the corporation.[3]

III. Law No. 12 of 2023 Amending Competition Law No. 33 of 2004

Law No. 12 of 2023 amending Competition Law No. 33 of 2004 punishes corporations engaged in anti-competition practices with a fine between 2% and 10% of the total annual value of sales earned as a result of the practices.[4]

IV. Law No. 20 of 2021 on Combating Money Laundering and Terrorism Financing

Law No. 20 of 2021 on combating money laundering and terrorism financing punishes a corporation when its board of directors, managers, representatives, or employees commit the crime of money laundering on its behalf or for its account by a fine of no less than double the

[1] Law No. 16 of 1960, art. 74(2), al-Jarīdah al- Rasmīyah, vol. 1487, Jan. 1, 1960, https://perma.cc/9JTQ-D6G2.

[2] Id. art. 74(3).

[3] Law No. No. 22 of 1997, art 156(1), https://perma.cc/JTA8-JWDB (in Arabic).

[4] Law No. 12 of 2023 amending law No. 33 of 2004, art. 20 (amended), al-Jarīdah al-Rasmīyah, vol. 5851, June 14, 2023, https://perma.cc/RZ95-SS82 (in Arabic).

value of the funds reaped from the offense and no more than 500,000 Jordanian dinars (JOD) (about US$705,200).[5]

Additionally, a court may decide to cease the operations of the violating corporation completely or partially for a period between one month and one year. In case of repetition, the court may dissolve the corporation and cease its commercial activities permanently.[6]

V. Law No. 17 of 2023 on Cybercrimes

Law No. 17 of 2023 sanctions a business when its managing director or employees commit any of the crimes detailed in the law by the closure of the business and the suspension of its activities for a period between three months and one year.[7]

VI. Law No. 12 of 2021 on Insurances Practices

Law No. 12 of 2021 holds insurance companies liable if one of its board of directors, a managing director, or an employee commits a crime.[8] The law allows the Jordanian Central Bank to impose a fine on the company.[9] The bank may also cancel the company's license to work in Jordan.[10]

VII. Law No. 6 of 2017 on Environmental Protection

Law No. 6 of 2017 imposes fines on corporations that violate environmental protection rules, based on the severity of the violation. They range between one JOD100,000 (about US$141,000) and JOD10 million (about US$14.1 million).[11] Furthermore, this law allows the Jordanian Ministry of Environment to order the closure of the offices of the violating establishment temporarily until it rectifies the environmental violation.[12]

[5] Law No. 20 of 2021, art. 32(a), al-Jarīdah al-Rasmīyah, vol. 5743 (Sept. 16, 2021), https://perma.cc/Z4VM-W8ZM.

[6] Id. art. 32(b).

[7] Law No. 17 of 2023, art. 31(a)(4), al-Jarīdah al-Rasmīyah, vol. 5874, Aug. 13, 2023, https://perma.cc/7RSM-6S4K (in Arabic).

[8] Law No. 12 of 2021, art. 42(a), al-Jarīdah al-Rasmīyah, vol. 5718, May 16, 2021, https://perma.cc/F644-5VYY (in Arabic).

[9] Id. 43(9).

[10] Id. 43(16).

[11] Law No. 6 of 2017, art. 21(b), al-Jarīdah al-Rasmīyah, vol. 5455, Mar. 19, 2017, https://perma.cc/LW6H-4F9N (in Arabic).

[12] Id. art. 18(d).

Kuwait

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SUMMARY Corporations may be held liable under Kuwaiti laws for actions such as restraining competition, corruption (including bribery and tax evasion), money laundering, financing terrorism, fomenting social discord, and cybercrimes. Potential punishments include fines, debarment from government contracting, revocation of licenses, liquidation, and judicial guardianship. Punishments given to legal entities do not necessarily preclude punishment of natural persons involved in the crimes.

I. Law No. 1 of 2016 Promulgating the Companies Law

Law No. 1 of 2016, as amended, stipulates that, without prejudice to a more severe penalty provided for in any other law, any company that fails to remedy violations identified in a Ministry of Commerce and Industry report, which is presented to its general meeting within the period specified by the ministry,[1] will be punished with a fine of not less than 5,000 Kuwaiti dinars (KWD) (about US$16,380) and not exceeding KWD50,000 (about US$163,800).[2]

Furthermore, any member of the board of directors, manager, member of the supervisory board, auditors, and employees may be subject to imprisonment for a term not exceeding three years and a fine of not less than KWD10,000 (about US$32,800) and not exceeding KWD100,000 (about US$327,000), or either of these penalties for committing crimes of fraud and deception as set forth in the law.[3] It is important to note that criminal penalties do not apply to legal persons unless they are defined by legislation.

II. Law No. 72 of 2020 on the Protection of Competition

Law No. 72 of 2020 states that the Competition Protection Authority (CPA) disciplinary board may sanction companies for failure to comply with the law. Accordingly, the CPA's disciplinary board may sanction companies for violating economic concentration procedures (a transaction resulting in a change of control over an entity), merger review notification procedures, and for the submission of misleading or incorrect information related to a concentration filing, with a fine of up to 10% of the parties' total revenue during the previous fiscal year, legal action, and freezing of the transaction.[4]

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[1] Kuwait's Companies Law, promulgated by Law No. 1 of 2016, as amended, art. 114, al-Jarīdah al-Rasmīyah (Official Gazette) p. 36, vol. 1273, Feb. 1, 2016, https://perma.cc/N5KU-GDWR (in Arabic), https://perma.cc/G7WQ-SYER (English translation).

[2] Id. art. 305.

[3] Id. art. 303.

[4] Kuwait's Competition Protection Law No. 72 of 2020, its executive regulations and relevant decisions, art. 34(1), (2) & (3), al-Jarīdah al-Rasmīyah p. 8, vol. 1507, Nov. 1, 2020, https://perma.cc/KXJ8-UDEC (in Arabic);

If a company submits misleading or incorrect information or fails to comply with requests for information or any obligation imposed by the CPA within one month of receiving official notification, the CPA may impose a financial penalty of up to 1% of the company's total revenue from the previous fiscal year.[5]

III. Law No. 2 of 2016 on Establishing the Kuwait Anti-Corruption Authority

Corporate entities may face a fine not exceeding double the penalty stipulated for corruption offenses under article 22 of Law No. 2 of 2016, including crimes such as bribery, abuse of power, counterfeiting, forgery, evasion of custom duties, and tax evasion.

IV. Law No. 16 of 1960 Promulgating the Penal Code, as Amended

Law No. 16 of 1960, as amended, holds corporate entities liable for crimes related to corruption if the crime was committed in the entity's name or on its behalf.

Corporate entities may also be subject to a fine not less than KWD20,000 (about US$65,500) and not more than KWD100,000 (about US$327,500) if they intentionally provide false data, conceal information, or withhold documents related to the commission of any of the corruption crimes specified in article 22 of the law.[6]

Additionally, a corporate entity may be deprived of practicing its commercial activities, directly or indirectly, for a period not exceeding three years. The corporate entity may also debarred from participating in government procurement with government agencies for a period not less than three years or have its business operations ceased. Additionally, the corporate entity may be subject to liquidation, or a judicial guardian may be appointed to manage its funds.[7]

V. Law No. 106 of 2013 on Anti-Money Laundering and Combating the Financing of Terrorism

Law No. 106 of 2013, as amended, holds corporate entities liable for any crimes related to money laundering committed in their name or on their behalf.[8] Without prejudice to the criminal liability of natural persons, any corporation that commits money laundering or terrorism financing crime is punishable by a fine of not less than KWD50,000 (about US$163,500) and not more than KWD1

Law No. 72 of 2020, its executive regulations and relevant decisions, posted on the official website of Kuwait's Competition Protection Agency, https://perma.cc/RDD2-HLS9 (in Arabic).

[5] Id. art. 34(4), (5) & (6).

[6] Law No. 2 of 2023, amending Law No. 31 of 1970, issued to amend Law No. 16 of 1960, promulgating the Penal Code, art. 60, al-Jarīdah al-Rasmīyah p. 6, vol. 1619, Jan. 22, 2023, https://perma.cc/M3GH-4AZK (in Arabic).

[7] Id. art. 59(2).

[8] Law No. 106 of 2013 on Anti-Money Laundering and Combating the Financing of Terrorism art. 2, al-Jarīdah al-Rasmīyah p. 4, vol. 1137, June 23, 2013, https://perma.cc/87VD-MY9Q (in Arabic).

million (approx. US$3.3 million), or an amount equivalent to the total value of the funds involved in the crime, whichever is higher.[9]

A corporate entity may be prohibited from conducting its commercial activities, directly or indirectly, for a period not exceeding five years, or it may have its business operations ceased temporarily or permanently. The corporate entity may also be subject to liquidation, or a judicial guardian may be appointed to manage its assets. A judgment issued by conviction is published in the Official Gazette.[10]

VI. Legislative Decree No. 19 of 2012 on the Protection of National Unity

Legislative Decree No. 19 of 2012 holds corporate entities criminally liable for any actions or statements that incite hate, sedition, or discrimination in Kuwait based on gender, race, religion, tribe, sect, or similar grounds. Without prejudice to the criminal liability of natural persons, corporate entities may be subject to a fine ranging from KWD10,000 (about US$32,700) to KWD200,000 (about US$654,000). Additionally, their commercial licenses may be revoked, prohibiting them from engaging in trade.[11]

VII. Law No. 63 of 2015 on Combating the Crimes of Information Technology (Cybercrime Law)

Law No. 63 of 2015 holds the legal representative of a corporate entity liable if it is proven that they failed to perform their duties or knowingly contributed to the commission of a crime. Corporate entities are held liable if any offense is committed in their name, for their account, or on their behalf, and may be subject to compensation and fines. The statutory minimum fine is KWD500 (about US$1,640), while the statutory maximum is KWD50,000 (about US$163,500).[12]

[9] Id. art. 32.

[10] Id.

[11] Legislative Decree No. 19 of 2012 on the Protection of National Unity art. 3, al-Jarīdah al-Rasmīyah p. 1, vol. 1102, Oct. 21, 2012, https://perma.cc/6XCR-T2LX (in Arabic).

[12] Law No. 63 of 2015 on Combating the Crimes of Information Technology art. 14, al-Jarīdah al-Rasmīyah p. 8, vol. 1244, July 12, 2015, https://perma.cc/V726-78E4 (in Arabic), https://perma.cc/CY84-YSWT.

Lebanon

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SUMMARY In Lebanon, the Penal Code, as amended, holds corporate entities criminally liable for violations of its provisions. Additionally, Law No. 81 of 2018 on Electronic Transactions and Personal Data Law and the Consumer Protection Law, as amended, impose fines on corporate entities for violating its provisions. Furthermore, Law No. 244 of 2021 Promulgating Public Procurement Law and Law No. 44 of 2015 Issuing the Anti-Money Laundering and Terrorist Financing hold a corporate entity criminally liable for the actions of its directors, board members, representatives, and employees when such acts are carried out in the entity's name or by utilizing its resources.

I. Legislative Decree No. 340 of 1943 Promulgating the Penal Code

The Penal Code, as amended, holds corporate entities criminally liable for violations of this law. Corporate entities are criminally liable for the actions of their directors, board members, representatives, and employees when these acts are conducted in the entity's name or using its resources. Corporate entities may be subject to fines, confiscations, closure, dissolution, and publication of the full judgment or a summary of the judgment in one or more newspapers at the expense of the entity.[1]

Corporate entities may be subject to fines ranging from LBP 100,000 (approx. US$1.10) to LBP 2 million (approx. US$22).[2] If the entity commits a terrorism financing offense, it is subject to a fine of at least the value of the amount paid, but not exceeding three times the amount.[3]

A corporate entity may also be ordered to cease its operations if its directors, management staff, representatives, or employees commit, on its behalf or using its resources, an intentional felony or misdemeanor. In such cases, these individuals may be subject to imprisonment for a minimum of two years.[4] The closure may last for a period of no less than one month and no more than two years. Without prejudice to the rights of bona fide third parties, this includes the cessation of all activities by the corporate entity, even if its name has changed or it has different directors or management staff.[5]

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[1] Legislative Decree No. 340 of 1943 Promulgating the Penal Code, as amended, arts. 73, 129, 135, 210, Al-Jarīdah al-Rasmīyah (Official Gazette) vol. 4104, Oct. 27, 1943, https://perma.cc/F95M-UPKD (in Arabic).

[2] Id. art. 111.

[3] Law No. 77 of 2016, Amending Legislative Decree No. 340 of 1943, art. 316bis, Al-Jarīdah al-Rasmīyah vol. 52, Oct. 27, 2016, https://perma.cc/46B7-M36C (in Arabic), https://perma.cc/5AB5-G6YZ (English translation).

[4] Legislative Decree No. 340 of 1943 art. 108.

[5] Id. art. 110.

Additionally, the court may order the dissolution of the corporate entity in the following cases:

1) if it does not comply with the legal requirements for establishment;
2) if the purpose of its establishment is unlawful or if it actually aims to serve such a purpose;
3) if it violated the legal provisions prescribed under the penalty of dissolution; and
4) if its operations were suspended pursuant to a final decision issued less than five years ago.[6]

The dissolution of the corporate entity results in the liquidation of its assets, and the directors, management staff, and any individuals personally responsible for the offense are legally disqualified from establishing or managing a similar corporate entity.[7]

II. Law No. 659 of 2005 Issuing the Consumer Protection Law

The Consumer Protection Law, as amended, imposes fines on corporate entities for violating its provisions. The statutory minimum fine that may be imposed on corporate entities is LBP 4 million (approx. US$45), while the statutory maximum is LBP 1 billion (approx. US$11,131).[8] Such violations include non-compliance with safety standards, food fraud or tampering, consumer poisoning, illness, death, or the spread of an epidemic, committing fraud in the nature of the goods and services, counterfeiting trademarks, and resorting to schemes to corrupt the analysis of goods or relying on fraudulent data.[9]

III. Law No. 81 of 2018 on Electronic Transactions and Personal Data Law

Law No. 81 of 2018 sanctions corporate entities for violating its provisions. Corporate entities may be subject to fines ranging from LBP 500,00 (approx. US$6) to LBP 200 million (approx. US$2,200).[10] In the event of a repeat offense, the court may order an increase in fines by one-third to one-half.[11] The court may also order the suspension of the entity's activities for a period ranging from one month to a maximum of two years.[12]

Without prejudice to the rights of bona fide third parties and the individuals directly involved, the court may order the seizure and retention of IT evidence, which includes hardware, software, data, applications, IT traces, and similar items. The process of seizing, retaining, analyzing, examining, or transferring data and software between authorities is documented, including the actions taken, the authorities involved, and the method of transfer.[13] The court may, at its

[6] Id. art. 109.

[7] Id. art. 110.

[8] Law No. 659 of 2005 Issuing the Consumer Protection Law, as amended, arts. 108 to 120, Al-Jarīdah al-Rasmīyah vol. 6, Feb. 10, 2005, https://perma.cc/HYT4-M2AQ (in Arabic).

[9] Id.

[10] Law No. 81 of 2018 on Electronic Transactions and Personal Data Law, arts. 114,116,536, Al-Jarīdah al-Rasmīyah vol. 9341, Nov. 10, 2018, https://perma.cc/TXF7-4H77 (in Arabic).

[11] Id. art. 108.

[12] Id. art. 536.

[13] Id. arts. 123, 124.

discretion, asses the evidential value and authenticity of the IT evidence, provided that the evidence is not altered in any way during seizure, retention, or analysis.[14]

The Public Prosecution may temporarily suspend certain electronic services, block websites, or freeze accounts for a period not exceeding 30 days. The period may be renewed only once, with a justified decision.[15] The court hearing the case may, in its final decision, order the suspension of electronic services, the blocking of websites, or the cancellation of accounts on such websites.[16]

IV. Law No. 44 of 2015 Issuing the Anti-Money Laundering and Terrorist Financing Law

Without prejudice to the criminal liability of natural persons involved, Law No. 44 of 2015 imposes sanctions on corporate entities for the crimes outlined in this law. Corporate entities may be subject to a fine not exceeding LBP 100 million (approx. US$1,100) or a fine not exceeding twice the amount laundered. This does not preclude the enforcement of administrative penalties and sanctions stipulated in other laws and regulations.[17] Terrorist financing operations or related activities are subject to the penalties stipulated in the Penal Code, as amended.[18]

V. Law No. 4461 of 2000 Promulgating the Customs Law

Law No. 4461 of 2018, as amended, sanctions corporate entities for violating its provisions. These sanctions include fines, compensations, confiscations, and seizures of smuggled goods. The statutory minimum fine that may be imposed is LBP 100,000, while the statutory maximum is LBP 20 million (approx. US$223).[19] In addition to regulatory confiscations, corporate entities may be subject to the following monetary penalties:

1. In cases involving the seizure of goods, means of transport, and objects used to conceal fraud:
    a. a fine equal to two to three times the value of the duty if the seized goods are not prohibited, restricted, or monopolized;
    b. a fine equal to three to four times the value of the duty for highly taxed goods, goods subject to revenue duty by the Higher Council of Customs, or goods under customs police control;
    c. a fine equal to two to three times the value of the duty, including customs duties, for prohibited or monopolized goods; or

[14] Id. art. 122.

[15] Id. art. 126.

[16] Id. arts. 125, 126.

[17] Id. art. 13, para. 4.

[18] Law No. 44 of 2015 Issuing the Anti-Money Laundering and Terrorist Financing Law, arts. 3, 13, Al-Jarīdah al-Rasmīyah vol. 48, Nov. 26, 2015, https://perma.cc/TW88-UNUT (in Arabic); https://perma.cc/H3XW-4RZ5 (English translation).

[19] Law No. 4461 of 2000 Promulgating the Customs Law, as amended, arts. 361, para 4; 426 to 428, Al-Jarīdah al-Rasmīyah vol. 60, Dec. 22, 2001, https://perma.cc/JS28-HK4E (in Arabic).

d. a fine equal to one to two times the value of the duty, including customs duties, for restricted goods.

2. In cases where the goods, means of transport, and objects used to conceal fraud evade seizure and cannot be recovered or taken into custody, the court may impose a penalty on the violating entity equal to the value of the goods, means of transport, and items used to conceal the fraud, in addition to the monetary penalties stipulated in this law. The value shall be based on the market value at the time the fraud occurred. If it is impossible to assess or approximate the value of the goods and items exempt from seizure, the fine shall range from LBP 1 million (approx. US$11.13) to LBP 10 million (approx. US$111.4).[20]

VI. Law No. 244 of 2021 Promulgating Public Procurement Law in Lebanon

Corporate entities are held criminally liable for the actions of their directors, board members, representatives, and employees when such acts are carried out in the entity's name or by utilizing its resources.[21] These entities may be subject to criminal, disciplinary, and financial sanctions, including fines, debarment, and the confiscation of any profits obtained through fraudulent or corrupt practices. These decisions are subject to publication by the contracting authorities, whether in the official gazette, local newspapers, or online platforms. Additionally, in cases where the performance guarantees are not submitted, the bid security shall be subject to forfeiture.[22]

If corporate entities violate the provisions related to transparency and integrity, they may be subject to fines ranging from two to three times the expected benefit or actual financial gain of the violation. If it is not possible to accurately determine the value of the expected material benefit, a fine ranging from 20 to 30 times the minimum wage in effect at the time of violation shall be applied.[23]

If corporate entities abuse their right to file a bidding appeal, they shall be fined an amount ranging from 20 to 200 times the minimum wage in effect at the time of violation. This fine is imposed at the request of the appeals committee when the corporate entity repeatedly abuses its right to object, such as when appeals are rejected three consecutive times or when it is proven that the appeal was filed solely to delay the process or with no legitimate grounds.[24]

Furthermore, a corporate entity may be debarred for a period of one year for a first-time violation, starting from the date the initial debarment decision is published. For a second violation, the entity may face debarment for two years, starting from the date the second debarment decision

[20] Id. arts. 421, 423.

[21] Law No. (244) of 2021 Promulgating Public Procurement Law in Lebanon, art. 112, para. 6, Al-Jarīdah al-Rasmīyah vol. 30, July 29, 2021, https://perma.cc/YT2K-P77J (in Arabic).

[22] Id. arts. 34, para. 3; 112.

[23] Id. art. 112, para. 1(1), (2).

[24] Id. art. 112, para. 4.

is published. For a third violation, the corporate entity may be debarred for a period of five years.[25]

[25] Id. art. 40, para. 1(2).

Libya

Muneera Al-Khalifa
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SUMMARY In Libya, Law No. 2 of 1954 Promulgating the Penal Code holds corporate entities criminally liable for violating provisions related to illegal organizations and advocating actions against the State. Law No. 5 of 2022 on Combating Cybercrimes punishes any person responsible for the management of a corporation with imprisonment if such an individual commits any of the crimes specified in this law in the corporate entity's name. Furthermore, Law No. 15 of 2003 Promulgating the Protection and Improvement of the Environment Law imposes fines against corporate entities who violate its provisions.

I. Law No. 2 of 1954 Promulgating the Penal Code

Law No. 2 of 1954, as amended, holds corporate entities criminally liable for violating provisions related to illegal organizations and advocating actions against the State. Upon conviction, the court may order the confiscation of money, goods, documents, and other items used in the commission of the offense or obtained through it by any means. The penalties may also include the dissolution of the corporate entity and the closure of its headquarters.[1] Additionally, a corporate entity may also be subject to the fine specified in the sentence, with the minimum fine set at 10 piasters, equivalent to 0.10 LYD (approx. US$0.02).[2]

A corporate entity may further be subject to confiscation of the items obtained or acquired through the offense, whether a conviction or judicial pardon has been issued. Additionally, confiscation may apply to items whose manufacture, use, possession, or disposal is considered an offense in itself, even if no conviction is issued.[3] Upon sentencing, or in the event of a judicial pardon, confiscation may also extend to items used or intended for the commission of the offense, as well as to items whose manufacture, possession, use, or disposal is prohibited unless the appropriate license from the relevant administrative authorities is obtained.[4]

II. Law No. 5 of 2022 on Combating Cybercrimes

In accordance with Law No. 5 of 2022, any person responsible for the management of a corporate entity shall be subject to imprisonment for at least one year if an employee commits any of the crimes specified in this law in the entity's name and for its benefit, and the crime occurs as a result

[1] Law No. 2 of 1954 Promulgating the Penal Code, as amended, art. 210, Al-Jarīdah al-Rasmīyah (Official Gazette) special vol. 3, Feb. 20, 1954, https://perma.cc/XS8D-4EUG (in Arabic).

[2] Id. art. 26.

[3] Id. art. 163.

[4] Id. art. 164.

of the manager's breach of his or her duties. Additionally, the court may order the dissolution of the corporate entity if it determines that the entity's primary purpose is to engage in cybercrimes.[5]

III. Law No. 6 of 2022 Issuing the Electronic Transactions Law

Without prejudice to the personal criminal liability of the individual who committed the crime, Law No. 6 of 2022 holds the legal representative of the corporate entity criminally liable and subject to the same penalties prescribed for violations of this law, if it is established that his or her failure to perform his or her duties contributed to the commission of the crime. The corporate entity will also be held jointly liable for any financial penalties and compensation imposed if the crime was committed on its behalf, in its name, and for its benefit.[6] The statutory minimum fine for violating this law is LYD 3,000 (approx. US$625), and the statutory maximum is LYD 10,000 (approx. US$2,083).[7]

IV. Law No. 24 of 2023 on the Prevention of the Settlement of Foreigners and Illegal Immigration

Law No. 24 of 2023 holds the legal representative of a corporate entity criminally liable for harboring, employing, or facilitating the entry of a foreigner, knowing that the foreigner intends to settle in Libya, and failing to report the foreigner's presence and the reason for his or her stay to the relevant authorities. The legal representative shall be subject to imprisonment for a period not less than five years and a fine not exceeding LYD 10,000.[8]

The corporate entity shall be penalized with the closure of its premises and the revocation of its licenses for violating the provisions of this law. Additionally, it may be subject to the confiscation of its funds and assets related to the violation.[9] Furthermore, the judge may also order the expulsion of the legal representative of the corporate entity.[10]

V. Law No. 11 of 2016 on the Protection of Public Morality

Law No. 11 of 2016 holds the owner and the individual responsible for managing a corporate entity liable for violations of the law's provisions and requirements concerning the protection of public morality and decency. They may be subject to imprisonment for a period no less than one

[5] Law No. 5 of 2022 on Combating Cybercrimes, art. 48, Al-Jarīdah al-Rasmīyah at 19, vol. 1, Jan. 16, 2023, https://perma.cc/M56Q-G8QQ (in Arabic).

[6] Law No. 6 of 2022 Issuing the Electronic Transactions Law, art. 82, Al-Jarīdah al-Rasmīyah at 54, vol. 1, Jan. 16, 2023, https://perma.cc/4ZEP-6F52 (in Arabic).

[7] Id. art. 81.

[8] Law No. 24 of 2023 on the Prevention of the Settlement of Foreigners and Illegal Immigration in Libya, art. 3, Al-Jarīdah al-Rasmīyah at 418, vol. 12, Oct. 3, 2023, https://perma.cc/7LEM-DCLD (in Arabic).

[9] Id. art. 4.

[10] Id. art. 7.

year and not more than three years, along with a fine ranging from LYD 100 (approx. US$21) to LYD 300 (approx. US$63).[11]

The court may also order the closure of the corporate entity. The Minister of Interior and local authorities may, prior to the issuance of the judgment, issue an administrative decision to temporarily close the corporate entity, if necessary, to preserve public morality.[12]

VI. Law No. 15 of 2003 Promulgating the Protection and Improvement of the Environment Law

Law No. 15 of 2003 holds corporate entities liable for environmental pollution resulting from their activities or operations that threaten human health or environmental safety. This liability arises from contamination of air, seawater, water sources, or soil, or from the disruption of the balance of living organisms. Corporate entities that violate provisions related to air pollution may be subject to a fine no less than LYD 1,000 (approx. US$208) and no more than LYD 5,000 (approx. US$1,042). [13]

Corporate entities may be subject to fines ranging from LYD 50,000 (approx. US$10,417) to LYD 100,000 (approx. US$20,367) for disposing chemical substances, radioactive materials, gases, toxic substances, or explosives into the sea or Libyan territorial waters with the intent to discard or store them. Additionally, fines ranging from LYD 5,000 to LYD 15,000 (approx. US$3,125) may be imposed for dumping waste, garbage, sewage, fuel residues, or tank deposits into the sea or Libyan territorial waters.[14]

Furthermore, corporate entities may be subject to fines ranging from LYD 50,000 to LYD 100,000 for discharging oil, oil mixtures, wash tanks, bilge water, or ballast water into the sea or Libyan territorial waters. Upon recidivism, the fine shall be not less than LYD 200,000 (approx. US$41,667) to LYD 300,000 (approx. US$62,500).[15] In all cases, the court may order the confiscation of the tools used in committing the violation whenever it deems necessary.[16]

[11] Law No. 11 of 2016 on the Protection of Public Morality, art. 3, para. 1, Al-Jarīdah al-Rasmīyah at 219, vol. 4, Apr. 24, 2016, https://perma.cc/Y2HC-W5WV (in Arabic).

[12] Id.

[13] Law No. 15 of 2003 Promulgating the Protection and Improvement of the Environment Law, art. 65, published in Mudawwanat al-Tashrīʿī (Legislation Code) of 2003, vol. 4, year 3, https://perma.cc/CB4B-YWG9 (in Arabic).

[14] Id. art. 66.

[15] Id. art. 67.

[16] Id. art. 64, para. 2.

Luxembourg

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SUMMARY Under Luxembourg law, the criminal liability of corporations is governed by the Law of March 3, 2010. For a corporate entity to be held criminally liable, three conditions must be met: the offense must be committed by a director or official body of the company, in the name of the legal entity, and in its interests. This liability applies to all legal entities, except the State and communes, and includes those governed by foreign law. Penalties for corporate entities can include fines, special confiscation, exclusion from public contracts, or dissolution.

I. Introduction

The criminal liability of companies under Luxembourg law is governed by the law of March 3, 2010, which amended and supplemented the Penal Code and the Code of Criminal Procedure. This law established the principle of the criminal liability of legal entities, bringing the regime applicable to companies into line with that applicable to natural persons.

Under Luxembourg law, there are no offenses that are exclusively attributable to legal entities, such as companies, to the exclusion of individuals. Both natural and legal persons can be held liable for the same offenses, provided the necessary legal criteria are met. For legal entities, liability arises when offenses are committed by their organs or representatives acting on their behalf and within their authority.

II. Criminal Liability

The criminal liability of legal entities was introduced into Luxembourg law by the law of March 3, 2010.[1] It was further amended by the law of March 12, 2020.[2] For this liability to be incurred, the following three cumulative conditions must be met:

- the offense must have been committed by a de jure or de facto director, or an official body of the company, such as the board of directors, the management board, the delegate in charge of day-to-day management, the auditor, or the general meeting;
- the offense must have been committed in the name of the legal entity; and
- the offense must have been committed in the interests of the legal entity.[3]

[1] Loi du 3 mars 2010 introduisant la responsabilité pénale des personnes morales dans le Code pénal et dans le Code d'instruction criminelle et modifiant le Code pénal, le Code d'instruction criminelle et certaines autres dispositions législatives, J. O. Mar. 11, 2010, https://perma.cc/NEY9-HEBW.

[2] Loi du 12 mars 2020 portant modification du Code pénal, J. O. Mar. 16, 2020, https://perma.cc/E4SG-DSH5.

[3] Penal Code art. 34, https://perma.cc/J234-R22E.

This liability applies to corporate entities with legal personality, which include

- legal persons governed by private law, such as
    - commercial companies (such as public limited liability companies, general corporate partnerships, limited corporate partnerships, private limited liability companies, companies constituted under civil law, and cooperative companies);
- legal persons governed by foreign private law;
- nonprofit legal persons governed by private law; and
- public law corporations vested with a public service mission.[4]

However, corporate liability does not apply to the state or local authorities. In addition to corporate liability, Luxembourg law does not preclude individual liability for natural persons involved in the commission of a relevant offense.[5]

III. Penalties

A. Criminal Penalties

Article 34 of the Penal Code states that legal entity may be declared criminally liable and incur the penalties set out in articles 35 to 38. These articles define the penalties that legal entities may incur as follows:

- fines in accordance with the terms and conditions set out in article 36. The minimum fine is €500 (about US$520). In criminal cases, the maximum fine is €750,000 (about US$781,173). In correctional matters, the maximum fine is double that set for natural persons by the law penalizing the offense. The maximum fine may be quintupled for certain serious offenses, including
    - crimes and offenses against State security;
    - acts of terrorism and terrorist financing;
    - enforced disappearance;
    - violations of laws relating to prohibited weapons in connection with a criminal association or organization;
    - human trafficking and procuring;
    - drug trafficking in connection with a criminal association or organization;
    - money laundering and concealment;
    - illegal interest-taking, active and passive corruption, private bribery;

[4] Loi du 10 août 1915, concernant les sociétés commerciales, arts. 100-2, 100-3, https://perma.cc/X8MU-TL48.

[5] Id.

  - aiding illegal entry and residence in connection with a criminal association or organization; and
  - illegal employment of illegally staying third-country nationals in connection with a criminal association or organization;[6]
- special confiscation, which occurs when an offense is punishable by imprisonment for natural persons under the law that punishes the offense, and may be imposed as the principal penalty on the legal entity, even if it is not provided for by the specific law applied;
- exclusion from participation in procedures for the award of public contracts and concession contracts; and
- dissolution, which may be ordered if the legal entity was intentionally created or, in the case of a felony or misdemeanor punishable by a custodial sentence of three years or more for natural persons, has been diverted from its purpose to commit the incriminating acts. However, dissolution does not apply to legal entities governed by public law that may be held liable. The decision to dissolve the legal entity includes a referral to the competent court for liquidation.[7]

B. Penalties for Money Laundering

Article 506-1 of the Luxembourg Penal Code states that money laundering is punishable by a maximum fine of €1,250,000 (about US$1,295,812.)[8] Using the calculation method laid out in article 37 of the same code, the maximum fine for a legal entity is €6,250,000 (about US$6,479,062).[9]

C. Penalties for Corruption

Article 246 of the Luxembourg Penal Code imposes a maximum fine of €187,000 (about US$193,850) for acts of corruption.[10] This fine can be increased to €250,000 (about US$259,162) for acts of corruption involving a magistrate.[11] Using the calculation method laid out in article 37 of the same code, the maximum fine for a legal entity is €1,125,000 (about US$1,295,812).[12]

D. Penalties under Environmental Law

Article 75 of the Law of July 18, 2018, on the protection of nature and natural resources states that the maximum fine for violations of Luxembourg environmental laws is €750,000.[13]

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[6] Penal Code art. 37.

[7] Penal Code art. 38.

[8] Id. art. 506-1.

[9] Id. art. 37.

[10] Id. art. 246.

[11] Id. art. 250.

[12] Id. art. 37.

[13] Loi du 18 juillet 2018 concernant la protection de la nature et des ressources naturelles, J. O. Aug. 5, 2018, art. 75, https://perma.cc/EJG4-Y569.

E. Penalties for Tax Fraud

The law of December 23, 2016, sets the maximum fine for fiscal fraud to an amount equal to six times the tax evaded or of the refund unduly obtained.[14]

[14] Loi du 23 décembre 2016 portant mise en œuvre de la réforme fiscale 2017, J. O. Dec. 27, 2016, art. 7, https://perma.cc/BE6C-8MXX.

Malawi

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SUMMARY Various laws in Malawi impose criminal or civil sanctions on companies for certain acts. These include the Financial Crimes Act, the Taxation Act, and the Petroleum (Exploration and Production) Act. Laws such as the Penal Code, the Corrupt Practices Act, and the Environmental Management Act hold natural persons responsible for decisions made on behalf of companies. In contrast, while the Customs Act attributes crimes committed by a company's representatives to the company, the Occupational Safety, Health, and Welfare Act holds both the company and its representatives jointly accountable for such offenses.

Importantly, the definition of the term "person" in all of the country's laws, unless specifically excluded, include companies.

I. Introduction

The "certificate of incorporation: effect of certificate" clause of the Companies Act of 2014 states that

> [f]rom the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, having perpetual succession and power to hold land.[1]

Various laws in Malawi are relevant to instances in which companies commit certain offenses. These include offenses committed under the Penal Code of 1930, the Financial Crimes Act of 2017, the Corrupt Practices Act of 1996, the Taxation Act of 1964, the Petroleum (Exploration and Production) Act of 1983, the Environmental Management Act of 2017, and the Occupational Safety, Health and Welfare Act of 1997.

The General Interpretation Act, which applies to all "other written law" enacted before or after its enactment—unless the law or the act's provisions state otherwise—defines the term "person" to include "any company, association, or body of persons, corporate or unincorporate."[2] Thus, companies could potentially face criminal liability even in cases where the applicable legislation does not explicitly stipulate it.

[1] Companies Act § 15 (2) (Apr. 1, 1986; revised through Dec. 31, 2014), https://perma.cc/X4FK-NRBW.

[2] General Interpretation Act § 2 (Aug. 26, 1966; revised through 2014), https://perma.cc/5MDV-6GDV.

II. Applicable Laws

A. Penal Code

Under the Malawi Penal Code, references to "person" appears to be largely limited to natural persons. For instance, the code states that ""person" and "owner" and other like term when used with reference to property includes corporations of all kinds and any other association of persons capable of owning property, and also when so used includes the Government."[3] Crimes committed by companies appear to be attributed to natural persons involved. The Penal Code states that

> [w]here an offence is committed by any company or other body corporate, or by any society, association or body of persons, every person charged with or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and shall be liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.[4]

When a body corporate is criminally liable, the Penal Code appears to make specific reference. For instance, a body corporate may commit a money laundering crime for which it is liable to a fine of Malawi Kwach (MWK) 10 million (about US$9,770).[5]

B. Financial Crimes Act

The act criminalizes failure by a body corporate to comply with a production order. A body corporate commits an offense under this act if, in response to a production order requiring it to provide a document to the competent authority, it

(a) fails to comply with the order without reasonable cause; or

(b) produces or makes available a document that it knows is false or misleading in a material way, without informing the competent authority of its inaccuracy and failing to provide any correct information in its possession.[6]

The applicable penalty on conviction is a fine of K50 million (about US$28,834).[7]

The act also criminalizes money laundering and a legal person who commits the offense is, on conviction, liable to a fine of K500 million (US$288,340).[8]

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[3] Penal Code § 4 (1930; revised through 2018), https://perma.cc/3Z5F-6P3H.

[4] Id. § 24.

[5] Id. § 331A.

[6] Financial Crimes Act § 111 (Dec. 31, 2017), https://perma.cc/YLL8-AZNN.

[7] Id.

[8] Id. § 42.

The act further imposes an obligation on financial institutions to report customers' identities under certain circumstances and failure to do so is an offense subject to a fine of K50 million.[9] If a customer is unable to produce evidence of identity, the financial institution must refuse to proceed with the activity in question and report the matter to the relevant authority.[10] Failure to follow the proper procedure is subject to a fine of K50 million and revocation of the institution's business license.[11]

The act also criminalizes terrorist financing stating that anyone who, directly or indirectly, provides or receives funds, or attempts to do so, with the intention that they be used, or knowing that they will be used to carry out a terrorist act, by a terrorist, or by a terrorist organization, commits an offense.[12] If the offender is a legal person, the applicable penalty is K250 million fine (US$144,170) and the revocation of the person's business license.[13]

A company may also be found criminally liable under the "other terrorist financing offences" clause of the act, which provides that

> (1) Any person who solicits, receives, provides or possesses money or other property, enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available, for the purposes of commission of a terrorist act, or for a terrorist or proscribed organization, commits an offence and shall be liable, on conviction—
>
> (a) in the case of a natural person, to imprisonment for twenty-five years;
>
> (b) in the case of a legal person, to a fine of K250,000,000 and revocation of a business licence.
>
> (2) For the purpose of proving the offence under this section, it is an irrelevant fact whether the funds were actually used in carrying out a terrorist act.[14]

C. Corrupt Practices Act

The focus of the Corrupt Practices Act appears to be accountability of natural persons and it does not seem to include provisions imposing civil, administrative, or criminal liability on companies for involvement in corrupt practices.[15]

[9] Id. § 16.

[10] Id. § 19.

[11] Id.

[12] Id. § 43.

[13] Id.

[14] Id. § 44.

[15] Corrupt Practices Act (Feb. 15, 1996; updated through 2014), https://perma.cc/4J4H-S36Q.

D. Taxation Act

According to the Taxation Act, the term "person" "includes an individual, a partnership, a company, a corporation, a trust, a club, a society, an organization, a public authority and an association."[16] A company that fails to pay its taxes is subject to financial liability, which may be calculated based on the amount of unpaid taxes.[17] This liability can be as high as 30% of the unpaid tax amount.[18]

E. Customs Act

The Customs Act treats violations of its provisions by company representatives as violations by the company itself. Specifically, any contravention of its provisions by a person acting as a director, manager, secretary, or other similar officer, or as a partner of a company, firm, society, or other body of persons, is deemed to be an infringement by the company, firm, society, or body of persons.[19] Unless a specific penalty is provided in the act for the offense, the penalty for violating any provision of the act is a fine of K10,000 (about US$6) or three times the value of the goods involved in the offense, whichever is greater.[20]

F. Petroleum (Exploration and Production) Act

Under the Petroleum (Exploration and Production) Act, a company or corporation that engages in petroleum exploration or production operations without a license commits an offense and is, on conviction, liable to fine of K50,000.[21]

The act also states that petroleum may not be removed from land unless it is for sampling and analysis with the written consent of the Commissioner for Petroleum Exploration and Production, under a license and in accordance with the terms of the license, or if permitted by a relevant law.[22] A company or corporation that violates these requirements commits an offense and is subject to a fine of K5,000 (about US$3).[23] Companies and corporations may also be held directly accountable for the following:

> (a) in, or in connexion with, any application under this Act, or in response to any invitation or requirement of the Minister or the Commissioner under this Act, knowingly or recklessly gives information which is false or misleading in a material particular;

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[16] Taxation Act § 2 (Jan. 1, 1964; updated through 2014), https://perma.cc/4REZ-JN87.

[17] Id. § 84E.

[18] Id.

[19] Customs Act § 141 (1969; updated through 2018), https://perma.cc/2BQL-V2UR.

[20] Id. § 143A.

[21] Petroleum (Exploration and Production) Act § 2 (Mar. 30, 1983; updated through 2014), https://perma.cc/5LV8-U8TZ.

[22] Id. § 71.

[23] Id.

> (b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;
>
> (c) places or deposits, or is accessory to the placing or depositing of, any petroleum or substance in any place with the intention of misleading any other person as to the possibility of a petroleum reservoir existing in that place;
>
> (d) tampers with samples of minerals, rock or petroleum taken in the course of exploration or production operations by adding to or taking from any such sample any substance, or by in any way modifying the physical or chemical properties of any such sample, with the intention of misleading any person as to the existence, extent or content of a petroleum reservoir, ...[24]

A company or corporation convicted for any of these offenses is liable to a fine of K20,000 (about US$12).

Significantly, the act includes a provision with general application: "offence committed by body corporate." The act states that

> [w]hen, an offence which, has been commuted [sic] by a body corporate is proved to have been commuted with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.[25]

G. Environmental Management Act

It appears that the Environmental Management Act holds natural persons in charge of corporate bodies accountable for offenses committed by the organization. Under the "liability of bodies corporate" clause of the act, if an offense is committed by a body corporate, every director, manager, or similar officer of the organization is held liable for the offense.[26] However, an individual will not be held liable if they can prove to the court that they were unaware of the act constituting the offense, did not consent to it, and were not complicit in it.[27] Additionally, the person must show that they took reasonable steps to prevent the offense, considering all the circumstances of the case.[28]

H. Occupational Safety, Health and Welfare Act

The "offences" clause of the act provides that when a company commits an offense under its provisions, and it is proven that the offense occurred with the consent, involvement, or neglect

[24] Id. § 76.

[25] Id. § 75.

[26] Environmental Management Act § 115 (Apr. 30, 2017), https://perma.cc/4QGB-LXTL.

[27] Id.

[28] Id.

of any chairman, director, manager, secretary, or other officer of the company, both the company and the responsible officer shall be deemed guilty of the offense.[29] The "general penalty" clause of the act states that if a person is found guilty of an offense for which no specific penalty is provided, they shall be liable to a fine of K10,000.[30] If the offense persists, they will incur an additional fine of K500 for each day it continues.[31]

[29] Occupational Safety, Health and Welfare Act § 82 (Dec. 8, 1997; updated through 2014), https://perma.cc/B2A9-ZER9.

[30] Id. § 83.

[31] Id.

Malaysia

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SUMMARY Some provisions in the Malaysian Penal Code may be applicable to corporations, with "person" defined to include companies; however, the penalties of fines and imprisonment are often not stated in the alternative so it is unclear if they would apply to corporations or only to natural persons. In 2018, a specific corporate criminal liability provision was added to the Malaysian Anti-Corruption Commission Act 2009 to allow a commercial organization to be prosecuted where a person associated with it bribes another person with the intent of obtaining an advantage for the organization. Other statutes that contain provisions that appear to be applicable to corporations include those in the areas of anti-money laundering, company law, securities, competition, consumer protection, customs, environmental protection, financial services, occupational health and safety, and taxation. The majority of these laws do not have separate penalties applicable to corporations. Many contain similar provisions regarding the joint liability of corporations and their officers for offenses under the law.

I. Introduction

Malaysia is a common law jurisdiction, with a separate Islamic law (Shariah) system for certain matters,[1] and has a system of government modelled on the Westminster parliamentary system. One article notes that "[t]he concept of criminal liability of corporations in Malaysia stems from the fact that, as a common law country, it had to adopt the identification and the vicarious liability doctrine to prosecute corporate crime."[2]

The Interpretation Acts 1948 and 1967 state that references to "person" in any laws to which the act is applicable "includes a body of persons, corporate or incorporate."[3] The act also contains provisions applicable to penal provisions in other legislation, including that the imposition of a penalty by any written law is not a bar to civil action and liability for special damages, that penalties prescribed by laws are deemed to be maximum penalties, as well as provisions on enforcing certain orders and the application of fees, fines, and forfeitures.

[1] See *Southeast Asian Countries Law: Malaysia*, University of Melbourne Library, https://perma.cc/CL7E-CD9S; *The Law Guide: Malaysia*, University of Hong Kong Libraries, https://perma.cc/23XM-EW2N.

[2] Hasani Mohd Ali et al., *Corporate Culture as a Means of Proving Mens Rea in Corporate Criminal Liability under Malaysian Anti-Corruption Law*, 33 J. Undang-Undang dan Masyarakat 119, 125 (Dec. 2023), https://perma.cc/SU4A-6NYG.

[3] Interpretation Acs 1948 and 1967 (Act 388) s 4, https://perma.cc/KZ5C-76GF.

II. Criminal Law Statutes

A. Penal Code

Section 11 of the Penal Code defines "person" as including "any company or association or body of persons, whether incorporated or not."[4] Offenses are categorized as "serious," being punishable with imprisonment for a term of 10 years or more, or "non-serious," being punishable with imprisonment for not more than 10 years.[5] One commentator states that

> it is seemingly open to argument that a corporation will be excluded from serious or non-serious offences, as it is not able to be subjected to imprisonment. This is notwithstanding that the word "person" under Section 11 of the Penal Code covers any company or association or body of persons, whether incorporated or not.[6]

Chapter XVII, containing offenses against property, contains further definitions of "agent," "company," "director," and "officer" for the purposes of certain listed provisions. These provisions contain offenses such as dishonest misappropriation of property, criminal breach of trust, and cheating. The punishments for these offenses primarily involve terms of imprisonment, as well as some provisions still referring to whipping, but also state that an offender "shall also be liable to a fine."[7] However, these penalties are not stated in the alternative, and therefore arguably only seem to envisage the commission of the offenses by natural persons.[8]

Chapter VIA of the Penal Code, containing offenses related to terrorism, includes section 130T, which specifies that, where one of a list of offenses has been committed by a body corporate,

> any person who, at the time of the commission of the offence, was a person responsible for the management or control of the body corporate, which includes a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, shall be guilty of that offence and shall be liable to proceeded against and punished accordingly unless he proves that--
> a) the offence was committed without his consent or connivance; and
> b) he had exercised all such due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.[9]

The terrorism offenses in the chapter include penalties of imprisonment and state that convicted persons shall also be liable to a fine; however, as above, these penalties are not stated in the alternative.

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[4] Penal Code (Act 574) s 11, https://perma.cc/TK4N-MDRV.

[5] Id. ss 52A & 52B.

[6] Usharani Balasingam, *Corporate Criminal Liability: Some Reflections for Malaysia*, 14(4) Institutions & Economies 115, 122 (Oct. 2022), https://perma.cc/VTF8-VLXD.

[7] See e.g. Penal Code ss 403 (dishonest misappropriation of property), 406 (punishment for criminal breach of trust), 417 (punishment for cheating).

[8] Balasingam, supra note 6, at 121.

[9] Penal Code s 130T.

In contrast, a number of offense provisions in the Penal Code do state that the punishment can be either be imprisonment or fines, or both. For example, the offense of forgery, under chapter XVIII, is punishable with imprisonment for up to two years, a fine, "or with both."[10] However, due to their wording, some of the provisions can clearly only apply to natural persons.

B. Malaysian Anti-Corruption Commission Act 2009

Amendments made in 2018 to the Malaysian Anti-Corruption Commission Act 2009 included the addition of section 17A to the act, which came into effect in June 2020.[11] This provision introduced the concept of corporate criminal liability into the legislation, stating that

> (1) A commercial organization commits an offence if a person associated with the commercial organization corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person or another person with intent—
> (a) to obtain or retain business for the commercial organization; or
> (b) to obtain or retain an advantage in the conduct of business for the commercial organization.
>
> (2) Any commercial organization who commits an offence under this section shall on conviction be liable to a fine of not less than ten times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of pecuniary nature, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding twenty years or to both.
>
> (3) Where an offence is committed by a commercial organization, a person—
> (a) who is its director, controller, officer or partner; or
> (b) who is concerned in the management of its affairs,
> at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.
>
> (4) If a commercial organization is charged for the offence referred to in subsection (1), it is a defence for the commercial organization to prove that the commercial organization had in place adequate procedures to prevent persons associated with the commercial organization from undertaking such conduct.
>
> (5) The Minister shall issue guidelines relating to the procedures mentioned in subsection (4).
>
> (6) For the purposes of this section, a person is associated with a commercial organization if he is a director, partner or an employee of the commercial organization or he is a person who performs services for or on behalf of the commercial organization.

[10] Id. s 465.

[11] Press Release, MACC, Section 17A Malaysian Anti-Corruption Commission (MACC) Act Enforced on 1st June 2020 (June 1, 2020), https://perma.cc/TM6D-J2BL.

(7) The question whether or not a person performs services for or on behalf of the commercial organization shall be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between him and the commercial organization.

(8) For the purposes of this section, "commercial organization" means–
  (a) a company incorporated under the Companies Act 2016 [Act 777] and carries on a business in Malaysia or elsewhere;
  (b) a company wherever incorporated and carries on a business or part of a business in Malaysia;
  (c) a partnership–
    (i) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or
    (ii) which is a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743] and carries on a business in Malaysia or elsewhere; or
  (d) a partnership wherever formed and carries on a business or part of a business in Malaysia.[12]

The Prime Minister's Department has issued guidelines on adequate procedures in accordance with subsection 17A(5).[13]

III. Laws Containing Offense Provisions Potentially Applicable to Corporations

The following statutes, in alphabetical order and non-exhaustive, contain various offense provisions that appear to be applicable to corporations in Malaysia.[14]

A. Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

Malaysia's anti-money laundering and counter-terrorism financing legislation contains several offenses, including money laundering (punishable with imprisonment and a fine) and structuring transactions to evade the reporting requirement (punishable with a fine or imprisonment or both), as well as reporting obligations imposed on financial institutions.[15] A general offense provision applies to contraventions of any provision or any requirements or directions under the act. For the general offense, if no other penalty is provided for, the person shall be liable for a fine of up to MYR1 million (about US$222,826).[16] In addition to the penalties prescribed for the offenses, the

[12] Malaysian Anti-Corruption Commission Act 2009 (Act 694), as amended, s 17A, https://perma.cc/94Q9-ES6D.

[13] Prime Minister's Department, *Guidelines on Adequate Procedures Pursuant to Subsection (5) of Section 17A Under the Malaysian Anti-Corruption Commission Act 2009*, https://perma.cc/EJH2-8WLE.

[14] For discussion of corporate criminal liability in Malaysia see N.Y. Yusoff & R. Hassan, *Corporate Criminal Liability in Islamic Banks in Malaysia*, 14(3) ISRA Int'l J. of Islamic Finance 363 (2022), https://perma.cc/GU9D-D9KX; Balasingam, supra note 6.

[15] Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) ss 4, 4A & pt IV, https://perma.cc/8668-27VA.

[16] Id. s 86.

act states that every offense punishable under the act is a seizable offense.[17] Part VI of the act relates to freezing, seizure, and forfeiture of assets.

Section 87 of the act provides that where an offense is committed by a body corporate or an association of persons, a person who is its "director, controller, officer, or partner" or who is concerned in the management of its affairs at the time of the commission of the offense

> is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.[18]

An individual may be prosecuted regardless of whether or not the body corporate has been convicted of the offense,[19] and an individual's liability does not affect the criminal liability of the body corporate.[20] The provision also provides for vicarious liability for acts and omissions of agents or officers of a person, unless the person provides that the offense was committed without his or her knowledge or consent and he or she took all reasonable precautions to prevent the act or omission.[21]

B. Capital Markets and Services Act 2007

Section 372 of the Capital Markets and Services Act 2007 contains a general penalty, applicable to offenses for which no penalty is expressly provided, of MYR1 million or imprisonment for up to five years or both.[22] Section 374 provides that persons convicted under the act are liable to pay compensation to a person who suffered loss or damage as a result of the offense.

Section 367 relates to the concurrent liability of officers of a body corporate where the body corporate has committed an offense, as well as providing for vicarious liability of an employer for the actions of an employee.

There are also offenses related to investigations and other activities carried out under the Securities Commission Malaysia Act 1993. Section 138(3), for example, provides that where a person who is an employee of a body corporate contravenes any provision of the act, the body corporate shall be deemed to have contravened that provision.[23]

[17] Id. s 90.

[18] Id. s 87(1).

[19] Id. s 87(2).

[20] Id. s 87(3).

[21] Id. s 87(4).

[22] Capital Markets and Services Act 2007 (Act 671), https://perma.cc/5TW3-7HCP.

[23] Securities Commission Malaysia Act 1993 (Act 498) s 138(3), https://perma.cc/2V68-MEJC.

C. Companies Act 2016

Part V, division 2 of the Companies Act 2016 contains provisions on enforcement and sanctions and on general offenses.[24] Section 588 contains a general penalty for contravening or failing to comply with provisions of the act or with any directions, with the penalty either being that applicable to the particular provision or the one set in the section. Under this section, an individual may be subject to a fine of up to MYR50,000 (about US$11,141) or to imprisonment for up to three years, or both; "a person other than an individual" may be subject to a fine of up to MYR50,000.[25]

Some of the general offense provisions also contain separate penalties for individuals and corporations. For example, the offense of making or authorizing the making of false and misleading statements is punishable by a fine of up to MYR3 million (about US$668,450) if the offender is a corporation, or imprisonment for up to three years or a fine of up to MYR3 million, or both, in the case of an officer of the corporation.[26]

D. Competition Act 2010

The Competition Act 2010 sets out anti-competitive practices and provisions related to investigation and enforcement. It contains a general penalty provision that establishes two levels of punishment for bodies corporate and others, as follows:

> [a]ny person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—
>
> (a) if such person is a body corporate, to a fine not exceeding five million ringgit, and for a second or subsequent offence, to a fine not exceeding ten million ringgit; or
>
> (b) if such person is not a body corporate, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding two million ringgit or to imprisonment for a term not exceeding five years or to both.[27]

Section 63 of the act relates to the concurrent liability of officers of a body corporate, who may be charged severally or jointly in the same proceedings as a body corporate. If the body corporate is found to have committed the offense, the officer "shall be deemed to have committed that offence" unless he or she proves that the offense was committed without his or her knowledge and the he or she took all reasonable precautions and exercised due diligence to prevent the commission of the offense.

Section 64 preserves the right of persons who suffer loss or damage as a result of an infringement of the act to bring civil proceedings against any enterprise.

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[24] Companies Act 2016 (Act 777), https://perma.cc/E6HZ-37AX.

[25] Id. s 588.

[26] Id. s 591.

[27] Competition Act 2010 (Act 712) s 61.

E. Consumer Protection Act 1999

Part 2 of the Consumer Protection Act 1999 contains prohibitions on misleading and deceptive conduct, false representation, and unfair practices. Part 3 relates to the safety of goods and services. Section 25, within part 4 of the act, states that contraventions of provisions in parts 2 and 3 are offenses punishable by different penalties depending on whether the person is a body corporate or not, as follows:

> (a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit;
>
> (b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding six years or to both.[28]

Section 143 relates to the liability of certain officers of a body corporate that has committed an offense under the act, with such an officer "deemed to have committed that offence unless he proves that the offence was committed without his knowledge, consent or connivance and that he took reasonable precautions and had exercised due diligence to prevent the commission of the offence."[29] Section 144 provides for liability of the principal when an offense under the act is committed by an employee or agent of the principal.[30]

Section 145 provides a general penalty for offenses for which no penalty is expressly provided in the act, with a body corporate subject to a fine of up to MYR100,000 (about US$22,283) for a first offense and MYR200,000 (about US$44,565) for a second or subsequent offense. For other persons the fines are half these amounts, and an individual can also be imprisoned for up to three years, or up to five years for second and subsequent offenses.[31]

F. Customs Act 1967

Part 14 of the Customs Act 1967 contains offenses and penalties. There is no reference to or distinction in the penalties for bodies corporate in the listed offenses.[32] However, section 140 relates to the liability of certain officers where a "company, a firm, a society an association or other body of persons" has committed an offense.[33]

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[28] Consumer Protection Act 1999 (Act 599) s 25(1), https://perma.cc/C6B9-T8WT.

[29] Id. s 143.

[30] Id. s 144.

[31] Id. s 145.

[32] Customs Act 1967 (Act 235) ss 133–138, https://perma.cc/V4QH-9VE8.

[33] Id. s 140.

G. Environmental Quality Act 1974

Offenses contained in the Environmental Quality Act 1974 include failing to comply with a license issued under the act, emission of pollution into the atmosphere without a license, emission of noise pollution without a license, emission of soil pollution without a license, pollution of water without a license, discharge of oil into Malaysian waters without a license, and a prohibition on open burning.[34] Section 41 provides a penalty for offenses for which no specific penalty is contained in other provisions.[35] The penalties for offenses under the act include fines or imprisonment, or both, and no distinction is made as to the penalty levels for individuals and bodies corporate.

Section 43 relates to the liability of certain officers where an offense is committed by a "company, firm, society or other body of persons," as well as the liability of principals where a contravention is committed by any "clerk servant or agent when acting in the course of his employment."[36]

The act also contains provisions on the seizure of vehicles or ships,[37] and provides that a person convicted of an offense may also be ordered to pay compensation to any other person who suffered loss or damage to any property.[38]

H. Financial Services Act 2013

The Financial Services Act 2013 contains multiple offenses applicable to financial institutions. The penalties for "persons" convicted under the act, which include fines and imprisonment or both, do not make distinctions based on whether the offender is a body corporate or an individual. Section 247 clarifies that "[w]here the penalty of imprisonment has been provided for an offence under this Act, such penalty shall not apply to a body corporate convicted of the offence."[39]

Section 249 relates to the liability of officers of a body corporate where the body corporate has committed an offense. An individual can be prosecuted for an offense whether or not the body corporate has been prosecuted or convicted, and the penalty of imprisonment applies to an individual convicted of an offense notwithstanding that this penalty does not apply to the body corporate.[40]

[34] Environmental Quality Act 1974 (Act 127) ss 16, 22–25, 27, 29A, https://perma.cc/8K92-TWLW.

[35] Id. s 41.

[36] Id. s 43.

[37] Id. ss 46A–46D.

[38] Id. s 46E.

[39] Financial Services Act 2013 (Act 758) s 247, https://perma.cc/ZQ2N-WNBT.

[40] Id. s 249.

I. Income Tax Act 1967

The Income Tax Act 1967 includes provisions related to the income tax payable by individuals and by companies and other entities. Part 8 of the act relates specifically to offenses and penalties and contains offenses such as failure to furnish a tax return, a country-by-country report, or contemporaneous transfer pricing documentation; submitting incorrect returns; and willful tax evasion.[41] The offenses are applicable to any "person," which is defined in the act as including "a company, a body of persons, a limited liability partnership and a corporation sole."[42] The penalties for the offenses include fines or imprisonment or both, and there is no distinction in the levels of fines applicable to individuals and corporate entities.

J. Islamic Financial Services Act 2013

As with the Financial Services Act 2013, the Islamic Financial Services Act 2013 contains various offenses applicable to Islamic financial institutions, which offer financial services in accordance with Shariah. The act also contains a provision related to the inapplicability of the penalty of imprisonment to a body corporate,[43] as well as a provision on the liability of company officers acting in their official capacity.[44]

K. Occupational Health and Safety Act 1994

The Occupational Health and Safety Act 1994 contains offenses applicable to employers, including offenses of breaching certain duties[45] and discrimination against an employee.[46] It also contains duties and related offenses applicable to manufacturers.[47] The penalties for these offenses, and the general penalty provision,[48] do not distinguish between individuals and bodies corporate. The penalties include fines or imprisonment or both. Section 56 of the act states that where a person convicted in respect of an offense is a body corporate, "it shall only be liable to the imposition of a fine provided therefor."[49]

Section 52 of the act relates to the liability of certain officers where a company, limited liability partnership, firm, society or other body of persons commits an offense. Such officers may be charged severally or jointly in the same proceedings with the company or other entity.[50]

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[41] Income Tax Act 1967 (Act 53) ss 112–114, https://perma.cc/FAB8-BERV.

[42] Id. s 2(1).

[43] Islamic Financial Services Act 2013 (Act 759) s 258, https://perma.cc/76V5-HUVY.

[44] Id. s 260.

[45] Occupational Safety and Health Act 1994 (Act 514) s 19 (available in Lawnet, by subscription).

[46] Id. s 27.

[47] Id. ss 20–23.

[48] Id. s 51.

[49] Id. s 56.

[50] Id. s 52.

L. Personal Data Protection Act 2010

The Personal Data Protection Act 2010, which was recently amended in September 2024, contains personal data protection principles and various provisions related to complaints, investigations, and enforcement. The principles apply to "data controllers," being persons who "either alone or jointly or in common with other persons processes any personal data or has control over or authorizes the processing of any personal data, but does not include a data processor."[51] A data controller who contravenes the principles commits an offense and, if no exemption applies, is liable to a fine or imprisonment or both.[52] Other offenses are also contained in the act, such as the unlawful collection of personal data[53] and breaches of provisions related to the registration of data controllers.[54] The penalties for offences in the act include fines or imprisonment or both, and there is no distinction in the levels of fines based on the type of entity involved.

The act specifies that it applies to persons in respect of personal data if the person is established in Malaysia and the personal data is processed by that person or any person employed or engaged by that establishment, or the person is not established in Malaysia but uses equipment in Malaysia for processing personal data. This includes an individual, a body incorporated under the Companies Act 1965, or a partnership or other unincorporated association formed under the laws of Malaysia.[55]

Section 130 of the act relates to the liability of officers of a body corporate where the body corporate commits an offense. Such officers may be charged severally or jointly in the same proceedings with the body corporate.[56]

[51] Personal Data Protection Act 2010 (Act 709) s 4, https://perma.cc/UMQ9-ZSGM, as amended by Personal Data Protection (Amendment) Act 2024 (Act A1727), https://perma.cc/V3MM-HRFG.

[52] Id. s 5(2).

[53] Id. s 130

[54] Id. ss 18, 19.

[55] Id. s 2.

[56] Id. s 133.

Malta

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SUMMARY The Interpretation Act provides that directors, managers, secretaries, or other similar officers of a corporation acting in their official capacity can be liable for criminal offenses. There is a defense, with the burden of proof being on the defendant who must show the offense was committed without his or her knowledge and that he or she exercised due diligence to prevent the commission of the offense.

Some pieces of legislation further extend this liability to the corporate body itself. For example, the Criminal Code provides that corporate bodies can be liable for offenses in its Title III, which includes offenses such as bribery and extortion. The Prevention of Money Laundering Act provides that that corporate bodies can be liable for any punishment imposed upon officers, directors, or persons representing them if they are convicted of a money laundering offense and this offense was for the benefit, either in whole or part, of the corporate body. In some cases, the law provides regulatory bodies with the ability to impose administrative penalties.

I. Introduction

Corporate liability is a legal concept that has been developed in Maltese legislation over the past 50 years. In 1975, article 13 of the Interpretation Act introduced liability for offenses for directors, managers, secretaries, or other similar officers of a corporation acting in their official capacity. The Interpretation Act provides a defense, with the burden of proof being on the defendant, that arises where "the offence was committed without his knowledge and . . . he exercised all due diligence to prevent the commission of the offence."[1]

As a result of this act, the liability extends across all criminal offenses for individuals acting in this capacity. In some cases, the corporate body itself can be found liable for an offense. For example, the Criminal Code provides that corporate bodies can be held liable for offenses in Title III of the code and the Prevention of Money Laundering Act provides that corporate bodies can be liable for any punishment imposed upon their officers, directors, or persons representing them if they are convicted of a money laundering offense and this offense was for the benefit, either in whole or part, of the corporate body.[2]

The liability of corporate bodies for environmental offenses appears to be limited to the individuals listed in article 13 of the Interpretation Act. However, there are a number of significant administrative penalties that can be imposed on corporate bodies by the various regulatory bodies established under the various environmental acts.

[1] Interpretation Act, cap. 249, art. 13, https://perma.cc/VNN8-Y6XG.

[2] Prevention of Money Laundering Act, cap. 373, art. 3, https://perma.cc/5P5N-DHDG.

Due to the number of criminal offenses, and regulatory penalties associated with these offenses, that corporate bodies can face, this report provides a necessarily brief overview of a select number of offenses.

II. Criminal Offenses

The Criminal Code of Malta provides that corporate bodies can be held liable for offenses in Title III of the Code, which contains '*Crimes Against the Administration of Justice and Other Public Administration*', if two criteria are met. The first is that the offense must have been committed by an individual who was a director, manager, secretary, or principal officer in a corporate body, or who otherwise represented the corporate body or had authority to make decisions or exercise control within the corporate body. The second criteria is that the individual must have committed the offense for the benefit, either in whole or part, of the corporate body.

When both of these criteria are met, the individual who committed the offense "shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate."[3] The corporate body can be held liable for a fine that ranges from a minimum of €20,000 to a maximum of €2 million (approximately US$21,000 and $2.1 million, respectively) that is recoverable as a civil debt.[4]

Thus corporations can be held liable for any criminal offense contained in Title III of the Criminal Code, provided the offender was in a significant role, as specified in the Criminal Code, and committed it for the benefit of the corporate body. Offenses in Title III of the Criminal Code include, but are not limited to, extortion, bribery, corruption, and perjury.[5]

The Criminal Code further specifies that corporate bodies can be held liable when an individual is convicted of a human trafficking offense where the offense was committed for the benefit, either in whole or part, of the corporate body. The offense varies from the general corporate liability provision above as its commission must simply have been "rendered possible because of the lack of supervision or control by a person"[6] who was a director, manager, secretary, or principal officer in a corporate body, or who otherwise represented the corporate body or had authority to make decisions or exercise control within the corporate body.[7] The corporate body can be held liable for a fine that ranges from a minimum of €10,000 (approximately US$10,500) to a maximum of €2 million.

[3] Criminal Code, cap. 9, https://perma.cc/KNS2-T435.

[4] Id. art. 121D.

[5] Id.

[6] Id. art. 248(4)(c).

[7] Id. arts. 121 and 248E(4).

III. Money Laundering

The Prevention of Money Laundering Act prohibits money laundering and terrorist financing and corporate bodies can be held liable for any punishment imposed by the court if their directors, managers, secretaries, principal officers, or those who otherwise represent the corporate body or have authority to make decisions or exercise control within the corporate body committed the offense for the benefit, either in whole or part, of the corporate body.[8]

Money laundering is defined in the act as

i. the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
ii. the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
iii. the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
iv. retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; Cap. 9.
v. attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
vi. acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v).[9]

Those convicted of money laundering offenses can be fined up to €2.5 million (approximately US$2.6 million).[10] The court has additional sanctions it may impose on corporate bodies convicted of a money laundering offense, which include

i. the exclusion from entitlement to public benefits or public aid;
ii. the temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;
iii. the temporary or permanent disqualification from the practice of commercial activities;
iv. the placing under judicial supervision;
v. its dissolution and winding up;
vi. the temporary or permanent closure of establishments which have been used for committing the offence.[11]

[8] Prevention of Money Laundering Act art. 3.

[9] Id. art. 2(1).

[10] Id. art. 3(1).

[11] Id. art. 3.

Where corporate liability arises, it is a defense for directors, managers, secretaries, or other similar individuals acting in their official capacity to prove the offense was committed without their knowledge, or that they exercised due diligence to prevent the commission of the offense.[12] The burden of proof is on the defendant to prove these facts.

The act established the Financial Intelligence Analysis Unit to prevent, detect, and effectively combat money laundering and the funding of terrorism.[13] In addition to any criminal penalties, the Financial Intelligence Analysis Unit can impose administrative penalties of between €1,000 to €250,000 (approximately US$1,050 and US$263,000, respectively) on directors, officers, and other representatives of a body conducting a relevant activity or relevant financial business if "an act or omission, whether intentional or due to gross negligence, including through the lack of proper oversight of subordinates, caused or contributed to the commission of any such contravention."[14]

The Money Laundering Act requires financial authorities and other bodies to take active steps to implement internal controls and policies to prevent money laundering, implement and conduct customer due diligence procedures,[15] and report suspicious transactions to the Financial Intelligence Analysis Unit. If these obligations are not complied with, the corporate body can face a fine that ranges from a minimum of €50,000 (approximately US$52,000) to a maximum of €2.5 million.[16]

In cases of serious, repeated, or systemic contraventions of the Prevention of Money Laundering and Funding of Terrorism Regulations in regulated activities,[17] the Financial Intelligence Analysis Unit has the ability to impose an administrative penalty of €1 million (approximately US$1.02 million) or, in cases where the benefit of the contravention can be determined, up to twice the amount of benefit. For relevant financial businesses, the penalty is up to €5 million (approximately US$5.25 million), unless this "is deemed not to be effective and dissuasive in the view of the serious, systemic and repeated nature of the contraventions committed," the administrative penalty can up to 10% of the total annual turnover of the business.[18]

The Prevention of Money Laundering and Funding of Terrorism Regulations provide that any person or body that fails to comply with a lawful requirement, order, or directive issued by the Financial Intelligence Analysis Unit can be subjected to an administrative penalty of between €1,000 to €46,500 (approximately US$48,800) that can be levied for each separate failure to

[12] Id. art. 3(2).

[13] Id. arts. 15-16.

[14] Prevention of Money Laundering and Funding of Terrorism Regulations, SL 373.01, reg. 21, https://perma.cc/DEK8-DSV8.

[15] As set out in the Prevention of Money Laundering and Funding of Terrorism Regulations, SL 373.01, reg. 7.

[16] Prevention of Money Laundering Act, art. 3.

[17] The terms 'relevant activity' and 'relevant financial business' are defined in regulation 2 of the Money Laundering and Funding of Terrorism Regulations.

[18] Id. reg. 21.

comply.[19] These penalties can be imposed as a one-time fixed penalty, a daily cumulative penalty, or both and must be used in an "effective, proportionate and dissuasive" manner.[20]

In addition to the penalties under the Money Laundering Act and its regulations, the Proceeds of Crime Act provides for the forfeiture and confiscation of the proceeds of crime, any property that facilitated the crime, and all property involved in a money laundering offense.[21]

IV. Tax Evasion

Evading tax is a criminal offense under Malta's Income Tax Management Act. The penalties for tax evasion depends upon the type of tax evasion. Omitting any income; making a false statement or entry in any return, document or statement prepared or submitted for the purposes of the Income Tax Management Act; providing a false answer in response to any question or request for information; and preparing, authorizing the preparation of, or maintenance of false books or accounts are punishable with a fine of €700 to €3,500 (approximately US$720 to $3,600).[22]

Using, or authorizing the use of, fraud; or possessing, controlling, making, adapting, supplying or offering to supply, any article for use in altering, destroying, erasing or concealing information or evidence that is relevant for the purposes of the Income Tax Management Act, or altering, destroying concealing, covering up or making false entries in records, are offenses punishable with a fine of €6,000 to €10,000 (approximately US$6,175 to $10,300).[23]

In addition to the fine, for each offense committed the person is liable for three times the amount of tax they tried, or assisted a person, to evade on top of the original tax they were liable for.[24]

V. Environmental Laws

Maltese law provides for a number of environmental offenses. This section provides a broad overview of some of these offenses and how corporate bodies and their officers are held liable for any damages.

The Environment Protection Act defines the term "person" as "a body or other association of persons whether granted legal personality or not and shall include Environmental Voluntary Organisations."[25] The majority of environmental laws appear to provide that if a corporate body commits an offense or fails to comply with regulatory requirements, the wrongs are attributable to the directors, managers, secretaries, or other similar officers of corporation and the action lies

[19] Id.

[20] Id.

[21] Proceeds of Crime Act, cap. 621, https://perma.cc/N9CY-GSGV.

[22] Income Tax Management Act, cap. 372, art. 52, https://perma.cc/UNZ2-9MPH.

[23] Id.

[24] Id.

[25] Environment Protection Act, cap. 549, https://perma.cc/66GA-FS92.

against them rather than the corporate body itself.[26] The approach taken with regard to administrative penalties appears to vary from this. For example, the Environment Protection Act provides that corporate bodies can be subject to administrative penalties for failing to comply with any provisions of the Environment Protection Act when the infringement is

> proved to have been committed with the consent, or involvement of, or to be attributable to, any gross negligence on the part of a person being a director, manager, secretary or other officer, however so described, of such body corporate or a person who was purporting to act in any such capacity then such person and such body corporate shall be responsible for the said infringement and shall be jointly and severally liable for the payment of any administrative penalty imposed by the Authority as a consequence thereof.[27]

The Environmental Protection Act requires companies in regulated sectors, such as waste management, to comply with strict requirements and obtain permits. It is an offense to fail to comply with these requirements and is punishable with a fine of up to €2.5 million.[28] The Environment Protection Act established the Environment and Resources Authority as the regulatory body responsible for enforcing the laws and regulations made under the act and provides it with the power to impose administrative fines of up to €100,000 (approximately US$102,000) for each contravention, and €1,500 (approximately US$1,530) for each day of non-compliance on anyone that fails to comply with any provision of the Environment Protection Act.[29]

The Waste Management (Waste Control) Regulations SL 549.63 contain a number of offenses, including dumping waste illegally, failing to manage hazardous waste safely and failing to obtain permits for waste treatment and disposal. As noted above, the provisions of the Interpretation Act provide that any offenses under this regulation by a corporation may be attributable to directors, managers, secretaries, or other similar officers of the corporation. These offenses are punishable with a fine for the first offense that can range from €1,165 to €2,330 (approximately US$1,188 to US$2,377). For the second offense, the fine can range from €2,330 to €4,660 (approximately US$4,755).[30]

The Climate Action Act established the Climate Action Authority as the regulatory body under the act. The Climate Action Authority has a number of powers, and it may issue decisions and enter into undertakings with corporate bodies. The Climate Action Act provides the authority with the power to impose administrative penalties on any person that infringes the act, or regulations made under it, or who fails to comply with any directive or decision given by it. In cases where the Climate Action Authority makes a decision that is not complied with, it can impose a fine of up to €100,000 for each contravention, or €1,400 (approximately US$1,428) for each day of non-compliance. In cases where an undertaking has been entered into with a

[26] Interpretation Act, art. 13.

[27] Environment Protection Act, art. 80.

[28] Id. art. 84.

[29] Id. art. 80.

[30] Waste Regulations, SL 549.63, reg. 35, https://perma.cc/3MYQ-XZKA.

corporate body that is not complied with, the Climate Action Authority can impose an administrative fine of up to 10% of the total turnover of the business.[31] The act further provides the Minister with the ability to make regulations providing the Climate Action Authority with the power to impose administrative fines of up to €1 million on any person, including a corporate body, that contravenes any part of the act or regulations made under it.[32]

The Crimes Against the Environment Act provides that for a number of offenses, such as discharging or emitting materials into air, soil, or water that causes, or is likely to cause, the death or harm to people, or substantial damage to animals or plants, or substantial damage to the air, soil, or water quality.[33] The penalty for these offenses ranges from a fine of between €1,000 to €2.5 million, based on the type of offense and harm caused.

[31] Climate Action Act, cap. 643, art. 33, https://perma.cc/UL72-6KNL.

[32] Id. art. 15.

[33] Crimes Against the Environment Act, cap. 522, art. 3, https://perma.cc/ZG7Z-EKKH.

Mexico

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I. General Rule on Criminal Liability for Corporations

Under Mexico's criminal law, corporations may be held criminally liable only for certain crimes listed by penal statutes, the main statute being the Federal Penal Code. Some crimes are included and described in the code, while others are listed by the code but described in other federal laws.[1] Furthermore, Mexican states have the authority to legislate on criminal responsibility for corporations in their respective jurisdictions.[2] This report focuses on penal statutes in force at the federal level.

Mexico's National Code of Penal Procedure provides that a corporation may be held liable for the commission of a crime if

> the crime was committed in the name of, on behalf of, for the benefit of, or through the means provided by the legal entity; therefore, even when the crime is not committed in the name of, or on behalf of, the legal entity, if the latter receives any benefit from it or provides the means (e.g., computers or cars) used in the commission of the crime, the legal entity may be responsible for the crime committed.[3]

II. Penalties

Mexico's National Code of Penal Procedure provides that the penalties that may be imposed on corporations depend on the specifics of the case and may include the following:

- economic penalties based on the company's net income,
- suspension of its activities,
- closure of facilities,
- judicial intervention,
- seizure of assets,
- dissolution of the company.[4]

[1] Código Nacional de Procedimientos Penales, as amended through 2024, art. 421, Diario Oficial de la Federacion [DOF], Mar. 5, 2014, https://perma.cc/7VMG-L3V6. See also Código Penal Federal, as amended through 2024, art. 11Bis, DOF, Aug. 14, 1931, https://perma.cc/M6KZ-8CXP.

[2] Código Nacional de Procedimientos Penales art. 421.

[3] Id. See also Antonio Cárdenas Arriola et al, *Mexico: Determining Criminal Liability at Federal and Local Levels* sec. 8, Glob. Investigations Rev. (Nov. 13, 2024), https://perma.cc/2XSD-HMLG.

[4] Código Nacional de Procedimientos Penales art. 422. See also Código Penal Federal art. 11Bis; Jonathan Edward Adams, Claudia Aguilar Rangel, *White-Collar Crime 2024: Mexico: Trends and Developments: Overview of the Corporate Criminal Liability Regime*, Chambers and Partners (Oct. 24, 2024), https://perma.cc/B6E3-QL3Z.

III. Specific Crimes for which Corporations may be Held Liable

As stated above in section I, corporations may be held criminally liable for certain crimes listed by penal statutes. The main penal statute is the Federal Penal Code, and many of these crimes are described in this code, including the following:

- **Influence peddling in government services**: This crime is committed by a public servant who, by him or herself or through a third party, improperly facilitates the performance of any government act in exchange of economic benefits for him or herself.[5]
- **Fraud:** The crime of fraud is committed by anyone who, by deceiving the victim or by taking advantage of the error in which he or she is found, illicitly obtains an undue profit.[6]
- **Operations with resources of illicit origin (money laundering):** This crime is committed by someone who acquires, disposes, administers, possesses, exchanges, converts, deposits, withdraws, gives, receives, or for any reason, invests, transfers, or transports within Mexico's territory, resources, rights, or goods of any nature, while being aware that they are the proceeds of an illegal activity.[7]
- **Environmental crimes:** There are a number of crimes aimed at punishing different acts that damage or negatively impact natural resources.[8]
- **Tax crimes:** Similarly, there are a number of crimes aimed at punishing several acts that constitute tax evasion.[9]

[5] Código Penal Federal arts. 11Bis-A(V), 221-III.

[6] Id. arts. 11Bis-A(XII), 386, 388.

[7] Id. arts. 11Bis-A(XIV), 400Bis.

[8] Id. arts. 11Bis-A(XV), 414-416, 418-420.

[9] Id. art. 11Bis-B(VIII).

Morocco

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SUMMARY In Morrocco, Law No. 1.59.413 states that corporate entities may only be sentenced to financial penalties. Law No. 43.05 on Anti-Money Laundering Law imposes fines on corporate entities and a term of imprisonment on individuals. Law No. 15.95 of 1966 on the Commercial Code imposes fines on violators who are corporate entities. Law No. 28.00 of 2006 Relating to Waste Management and Law No. 31.08 Promulgating the Consumer Protection Law impose fines on violators as well.

I. Royal Decree No. 1.59.413 of 1962 Promulgating the Penal Code

Law No. 1.59.413 states that corporate entities may only be sentenced to financial penalties, in addition to civil and administrative preventative penalties, which include the following:[1]

1. dissolution of the entity;[2]
2. confiscation of the items used in committing the crime or resulting from it, or items that are harmful, dangerous, or prohibited by law to possess;[3]
3. closure of the entity that was used to commit the crime. The closure of a corporate entity, either permanently or temporarily, may be ordered if it has been used to commit a crime, whether through the misuse of a license or permit obtained or by failing to comply with administrative regulations. A judgment ordering the closure of a corporate entity results in the prohibition of the corporation from engaging in the same activity at that establishment. The period of temporary closure shall be no less than ten days and not more than six months;[4]
4. asset seizure and forfeiture; and[5]
5. publication of the judgment of conviction.[6]

In accordance with the Penal Code, the statutory maximum fine that may be imposed on corporations is MAD 10 million (approx. US$1.02 million).[7]

[1] Law No. (1.59.413) of 1962 Promulgating the Penal Code, as amended, art. 127, Al-Jarīdah al-Rasmīyah (Official Gazette) at 1264, vol. 2640bis, June 5, 1963, https://perma.cc/P6R8-WVMJ (in Arabic).

[2] Id. arts. 47, 17-308.

[3] Id. art. 62.

[4] Id. arts. 62, 90.

[5] Id. art. 36.

[6] Id. arts. 36, 62.

[7] Id. arts. 218-1-1, 218-2, 218-5.

II. Law No. 43.05 on Anti-Money Laundering Law, As Amended, Supplementing and Amending the Penal Code

Without prejudice to the penalties that may be imposed on managers or any employee complicit in committing money laundering, corporate entities may be subject to fines ranging from MAD 500,000 (approx. US$51,000) to MAD 3 million (approx. US$306,000) for engaging in money laundering.[8]

Pursuant to Law No. 43.05, as amended, a judgment of conviction for the crime of money laundering must include the total confiscation of items, tools, and properties used or intended to be used in the commission of the offense, as well as the proceeds derived from such crime or their equivalent value, while preserving the rights of third parties acting in good faith. The court may also order the dissolution of the corporate entity and/or the publication of the final judgment of conviction at the entity's expense. Additionally, the court may suspend the corporation's operations, either temporarily or permanently.[9]

Additionally, the King's representative at the competent court of first instance, the public prosecutor at the Court of Appeal in Rabat, or the investigating judge may also order the seizure of the corporation's property suspected of involvement with individuals, organizations, or activities related to money laundering and terrorist financing crimes, even if such crimes were not committed within the Kingdom of Morrocco.[10]

III. Law No. 15.95 of 1966 Issuing the Commercial Code

Corporate entities may be subject to a fine ranging from MAD 10,000 (approx. US$1,020) to MAD 20,000 (approx. US$2,040) if they engage in domiciliation activities without submitting the required declaration to the competent authority, which is essential to ensure compliance with tax and legal regulations.[11]

IV. Law No. 28.00 of 2006 Relating to Waste Management and Disposal

Corporate entities are held criminally liable for any environmental crimes committed under this law. In cases of joint liability, corporate entities that deposit or store hazardous waste with a natural or legal person who is not licensed to do so are jointly and severally liable with that person

[8] Royal Decree No. 1.07.79, Implementing Law No. 43.05 of 2017 on Anti-Money Laundering Law, as amended by Law No. 12.18 of 2021, supplementing and amending the Penal Code of 1962, art. 574-3, para. 2, Al-Jarīdah al-Rasmīyah at 1359, vol. 5522, May 3, 2007, https://perma.cc/59LA-STPN (in Arabic); see also Law No. 12.18 of 2021, Al-Jarīdah al-Rasmīyah at 4167, vol. 6695, June 14, 2021, https://perma.cc/AM6J-SAP5 (in Arabic); see generally the Updated Anti-Money Laundering Law Collection posted on the official website of Morocco's Constitutional Court, https://perma.cc/6DXA-RNKC (in Arabic).

[9] Royal Decree No. 1.07.79 art. 574-5.

[10] Id. art. 19.

[11] Royal Decree No. 1.96.83, Implementing Law No. (15.95) of 1966 Promulgating the Commercial Code, Al-Jarīdah al-Rasmīyah at 2185, vol. 4418, Oct. 3, 1996, https://perma.cc/4BCS-EDDP (in Arabic), as amended by Law 89.17 of 2019, art. 544-9, Al-Jarīdah al-Rasmīyah at 145, vol. 6745, Jan. 21, 2019, https://perma.cc/XL35-2QYS (in Arabic).

for any damages resulting from the waste. [12] The statutory minimum fine for violating this law is MAD 200 (approx. US$20), while the statutory maximum is MAD 2 million (approx. US$204,000). [13] Furthermore, the penalties are doubled in the event of a repeated offense, provided that the same offense, or an offense with a similar nature, is committed within six months of the date of the first conviction.[14]

V. Law No. 43.20 of 2020 on Trust in Electronic Transactions

Without prejudice to the penalties imposed on managers and responsible representatives of corporate entities, corporations are held criminally liable for any violations of this law, with penalties doubled for corporations. The statutory minimum fine for violating this law is MAD 10,000, and the statutory maximum is MAD 500,000, both of which are doubled for corporate entities. [15] In the event of recidivism, the penalties stipulated in this law are doubled. A corporation is considered a recidivist if, after being previously sentenced for any violation under this law, it commits the same violation within four years from the completion of the penalty's execution or the expiration of its statute of limitations.[16]

VI. Law No. 31.08 Promulgating the Consumer Protection Law

Corporate entities may be subject to fines ranging from MAD 50,000 (approx. US$5,100) to MAD 1 million (approx. US$102,000) for violating provisions related to advertisements. For implementation purposes, the court may issue an order to submit the relevant documents. In the event of refusal, the court may order the seizure of the documents or take any appropriate investigative measures. The competent court may impose a fine of MAD 10,000 for each day of delay, starting from the date set for submitting the requested documents.[17]

The same penalties apply if the corporation refuses to provide the required supporting documents or advertisements, fails to follow suspension orders, or misses the deadline for corrective announcements. If convicted, the court may order the publication or posting of the judicial ruling and require corrective announcements at the corporation's expense. The offense occurs once the advertisement is made, viewed, or received by the consumer. The court

[12] Royal Decree No. 1.06.153 of 2006, Implementing Law No. 28.00 Relating to Waste Management and Disposal, as amended, art. 34, Al-Jarīdah al-Rasmīyah at 3747, vol. 5480, Dec. 7, 2006, https://perma.cc/3LVH-GJU8 (in Arabic).

[13] Id. arts. 70 to 79.

[14] Id. art. 81.

[15] Royal Decree No. 1.20.100 of 2020, Implementing Law No. (43.20) on Trust in Electronic Transactions, art. 73, Al-Jarīdah al-Rasmīyah at 281, vol. 6951, Jan. 11, 2021, https://perma.cc/V2UN-XQKT (in Arabic).

[16] Id. art. 74.

[17] Royal Decree No. 1.11.03 of 2011, Implementing Law No. 31.08 Issuing Consumer Protection Law, as amended, art. 174, Al-Jarīdah al-Rasmīyah at 1100, vol. 5932, Apr. 7, 2011, https://perma.cc/6T5K-8Q5L (in Arabic).

determines the content, method, and deadline for these announcements. If the corporation fails to comply, the public prosecutor can ensure the publication at the corporation's expense.[18]

These measures are enforceable regardless of any appeals. The suspension can be lifted by the court or authority that ordered it and expires if the case is dismissed or the defendant is acquitted. Appeals to lift suspensions can be made to the competent court, which must issue a decision within ten days from the date of receiving the case file. Additionally, the managers of the corporate entity are held accountable for their involvement and may be penalized under the Penal Code.[19]

Furthermore, corporate entities may be subject to fines ranging from MAD 50,000 to MAD 1 million for violating provisions related to off-premises sales[20] and the provisions related to exploitation of the consumer's weakness or ignorance.[21] With regards to loan contracts, corporate entities, along with their managers or representatives, bear joint and several liability for damages resulting from non-compliance with the procedures stipulated in Articles 77 to 83 governing loan contracts.[22]

[18] Id. art. 175.

[19] Id.

[20] Id. art. 180; see generally arts. 47 to 51.

[21] Id. art. 184; see generally art. 59.

[22] Id. art. 187.

Netherlands

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SUMMARY In the Netherlands, corporations are subject to criminal liability equivalent to that of natural persons under article 51 of the Dutch Criminal Code, with liability determined by whether the conduct can be attributed to the corporation's "sphere." Sanctions include fines, asset forfeiture, and deprivation of rights, with fines potentially reaching 10% of the company's annual turnover in severe cases. The Economic Offenses Act complements this framework by addressing breaches of sectoral laws, such as environmental and financial regulations. Procedural rules ensure equal treatment of legal and natural persons, with legal entities represented in court by managing directors.

I. Introduction

In the Netherlands, the criminal liability of legal entities and corporations is equivalent to that of natural persons. In addition to the general provisions in the Dutch Criminal Code (Wetboek van Strafrecht), which are supplemented by procedural rules in the Dutch Code of Criminal Procedure (Wetboek van Strafvordering), Dutch law has specialized legislation that addresses economic crimes, the Economic Offenses Act (Wet op de economische delicten).[1] This specialized legislation is particularly relevant in the corporate context.

II. Legal Framework

The main provision addressing the question whether corporations may be held liable for criminal conduct is article 51, paragraph 1 of the Dutch Criminal Code. It stipulates that "[c]riminal acts can be committed by natural persons and legal entities."

A. Scope

The scope of the Dutch regulations on corporate criminal liability is broad. Under article 51 of the Dutch Criminal Code, legal entities are, in principle, capable of committing any offense. Consequently, all criminal offenses outlined in the Dutch Criminal Code may result in corporate liability.

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[1] Wetboek van Strafrecht, March 3, 1881, Staatsblad van het Koningrijk der Nederlanden [Stb.] 1881, no. 35, as amended (Dutch Criminal Code), https://perma.cc/HX2K-G4PX; Wetboek van Strafvordering, Jan. 15, 1921, Stb. 1921, no. 14, as amended, https://perma.cc/FNR7-JTLY; Wet op de economische delicten, June 22, 1950, Stb. 1950, no. K 258, as amended, https://perma.cc/8KYS-FX8M.

Article 51, paragraph 3 of the Dutch Criminal Code clarifies that unincorporated companies, partnerships, shipping companies, and "special-purpose assets"[2] are equivalent to legal persons. Although the European Union legal entity Societas Europaea (SE)[3] is not explicitly mentioned in the paragraph, SE is nevertheless intended to be covered due to its potential qualification as a Dutch legal person.[4]

B. Prerequisites for Criminal Liability

Article 51 of the Dutch Criminal Code does not establish specific legal requirements for the criminal liability of legal persons. Instead, it has been left to the courts, primarily the Dutch Supreme Court (Hoge Raad, HR), to develop the precise criteria in practice.

1. Objective Criteria

The Dutch Supreme Court has held that the criminal liability of a legal entity depends on whether the conduct in question can be reasonably attributed to it.[5] In 2003, the court held that the reasonable attribution of conduct depends on the specific circumstances of each case, including the nature of the conduct. Conduct could be attributed to a corporation if it occurs within the corporation's "sphere." Relevant factors for determining what belongs to the corporation's sphere include

- The conduct was carried out by an employee or someone acting on behalf of the legal entity.
- The act aligns with the corporation's usual business activities.
- The act provided a benefit to the corporation.
- The corporation had the ability to prevent the act but either tolerated or condoned it, or similar actions were accepted or condoned in the past.[6]

For an attribution of behavior to the corporation's sphere, it is sufficient if one of these criteria is met.

[2] Special-purpose assets refer to assets set aside for a specific purpose that do not have legal personality and do not belong to a (legal) person. See Hoge Raad [HR], June 14, 2024, docket no. 21/04201, para. 4.2.2, ECLI:NL:GHSHE:2021:2629, https://perma.cc/MA5M-TNF6.

[3] Societas Europaea is a European public limited company established under Council Regulation (EC) No 2157/2001, allowing businesses to operate across the European Union under a single legal framework. See Consolidated Version of Council Regulation (EC) No 2157/2001, 2001 O.J. (L 294) 1, https://perma.cc/Y9E7-D3Z7.

[4] M. M. Dolman, *art. 51, para. 1*, in Strafrecht, Tekst & Commentaar (C.P.M. Cleiren et al. eds., 13th. ed. 2020).

[5] HR, Oct. 10, 2003, docket no. 02229/02 E, para. 3.4, ECLI:NL:HR:2003:AF7938, https://perma.cc/4AJ9-7WFL.

[6] Id.

2. Subjective Criteria

Due to the equal application of general criminal law rules to both natural and legal persons, a conviction of a legal entity also requires proof of the subjective elements for criminal liability.[7] Depending on the underlying offense, intent or negligence must be proven.

Intent can be indirectly attributed to a corporation by imputing the mental state of a natural person who was partially or fully involved in the criminal conduct to the corporation. According to the explanatory memorandum of article 51 of the Dutch Criminal Code, this attribution depends on the corporation's internal organization and the role and responsibilities of the individual within the organization.[8]

C. Sanctions Under the Dutch Criminal Code

Article 51, paragraph 2 of the Dutch Criminal Code holds that

> 2 [i]f a criminal offence is committed by a legal person, criminal proceedings may be instituted and the penalties and measures provided for by law, if appropriate, may be imposed:
>
> 1. against that legal entity, or
> 2. against those who gave orders for the act, as well as against those who actually directed the prohibited act, or
> 3. against those mentioned under 1. and 2. together.[9]

The general provisions on criminal penalties in Dutch law are found in article 9, paragraph 1 of the Dutch Criminal Code. Of the penalties listed there, including imprisonment, only fines can be imposed on legal entities. This also applies to the additional penalties mentioned in article 9, in particular the deprivation of certain rights and the forfeiture of assets.

Article 23, paragraph 4 of the Dutch Criminal Code establishes six fine categories, each specifying the maximum allowable fine within its respective range:

- first category: 410 euros (aboutUS$430),
- second category: €4,100 (about US$4,300),
- third category: €8,200 (about US$8,600),
- fourth category: €20,500 (aboutUS$21,500),

[7] HR, Apr. 26, 2016, docket no. 15/00447, para. 3.4.2, ECLI:NL:HR:2016:733, https://perma.cc/Y693-BAE9.

[8] Kamerstukken II, 1975/76, no. 13655, 3, 19, https://perma.cc/5SZM-USC9; Emma van Gelder & Cedric Ryngaert, *Report on Prosecuting Corporations for Violations of International Criminal Law: Jurisdictional Issues. National Report - The Netherlands*, at 115-16, https://perma.cc/F5SA-KKWS.

[9] Dutch Criminal Code art. 51, para. 2.

- fifth category: €82,000 (about US$86,000),
- sixth category: €820,000 (about US$860,000).[10]

Concerning the punishment of legal entities, article 23, paragraph 7 of the Dutch Criminal Code allows imposing a fine of the next higher category if the maximum fine is deemed insufficient by the court to adequately punish the offense. In cases where a fine in the sixth category is permitted but remains inadequate, a fine of up to 10% of the legal entity's annual turnover from the preceding financial year, meaning the total income made by the company over the last financial year, may be imposed.[11]

Article 33a of the Dutch Criminal Code sets out specifics concerning the confiscation of objects related to criminal offenses. Of significant economic importance is the provision that states that objects belonging to the convicted person, or that they can use wholly or partly for their own benefit, and which were obtained wholly or largely by means of or from the proceeds of the criminal offense, may be confiscated.[12]

III. Supplementary Provisions and Special Regulations

A. Procedural Rules

The procedural rules of the Dutch Code of Criminal Procedure also apply to proceedings involving legal persons. A special provision regarding the representation of legal persons in court is codified in article 528 of the Dutch Code of Criminal Procedure. According to this provision, the legal person is represented by its managing director, whose presence may be ordered by the court under article 528, paragraph 3.

B. Dutch Economic Offenses Act

Beyond the Dutch Criminal Code, the Economic Offenses Act (EOA) establishes criminal penalties for breaches of various regulatory requirements set forth in sectoral laws, such as environmental licensing regulations or customs legislation. Since violations of these laws may result in criminal penalties under the EOA, corporate liability may also be invoked under its provisions.

1. Definition of Economic Offenses

Article 1 of the EOA defines the term "economic offenses." These include, among others, violations of certain provisions of the Dutch Banking Law (Bankwet 1998), the Dutch Environment Act (Omgevingswe and the Dutch Money Laundering and Terrorist Financing Act (Wet ter voorkoming van witwassen en financieren van terrorisme).[13]

[10] Id. art. 23, para. 4.

[11] Id. art. 23, para. 7.

[12] Id. art. 33a, para. 1(a).

[13] Bankwet 1998, Mar. 26, 1998, Stb. 1998, no. 200, as amended, https://perma.cc/9WLP-QU55; Omgevingswet, Mar. 23, 2016, Stb. 2016, no. 156, as amended, https://perma.cc/6NPC-D3M8; Wet ter voorkoming van

2. Sanctions

In addition to the general penalties outlined in article 6 of the EOA, which include fines of the fourth and fifth categories as defined in article 23 of the Dutch Criminal Code, article 7 provides for supplemental penalties. These include, for example, the total or partial closure of the convicted person's business where the economic offense was committed for a period not exceeding one year, as well as the total or partial deprivation of certain rights or the full or partial denial of certain benefits that are or could be granted to the convicted person in connection with their business by the government for a period not exceeding two years.

witwassen en financieren van terrorisme, July 15, 2008, Stb. 2008, no. 303, as amended, https://perma.cc/5ZJZ-HVPD.

New Zealand

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SUMMARY Under New Zealand law, offenses are generally applicable to any "person," which is defined as including a corporation and other legal entities. The general criminal and sentencing law therefore apply; however, the crime of homicide is drafted in a way that excludes corporate liability, as it refers to human beings. Statutes governing certain areas also contain offenses applicable to corporations, including in relation to money laundering, company law, customs and exercise, harmful digital communications, workplace health and safety, environmental law, consumer protection law, and tax law. In many cases, the fines for which corporations are liable are higher than those for natural persons. For example, the specified fines are five times higher under the customs legislation and health and safety legislation; four times higher under the Harmful Digital Publications Act 2015; and three times higher under the Fair Trading Act 1986.

I. Introduction

New Zealand is a common law jurisdiction and has a Westminster-style system of government.[1]

The Legislation Act 2019 contains "definitions of terms for all legislation," with "person" defined as including "a corporation sole, a body corporate, and an unincorporated body."[2]

The Legislation Design and Advisory Committee's *Legislation Guidelines* state that

> [l]egislation should be very clear about which people are potentially liable for the criminal offence—that is, whether "any person" is potentially liable or only a particular subset of people.
>
> Criminal liability may be imposed on an individual or a corporate body. The meaning of "person" includes, by default, a corporation sole, a body corporate, and an unincorporated body, unless specific case law or legislation states differently.
>
> In relation to corporate liability, unless the legislation specifies otherwise, the general rule is that a director or member of a corporation (for example, a shareholder of a company) is not vicariously liable for the acts of the corporation (but could be liable as a secondary party if he or she knew of the offending and encouraged or assisted it). However, a corporation may be vicariously liable for the acts of its employees or agents.

[1] See Rosa Polaschek, *Access to New Zealand Law*, GlobaLex (Jan. 2019), https://perma.cc/Q9W4-ELFS.

[2] Legislation Act 2019 s 13, https://perma.cc/7NTM-YNU8.

> A corporation can also be directly liable if the acts of an employee or agent can be attributed to it.[3]

In terms of establishing sentencing levels for offenses when drafting legislation, the guidelines advise that

> [i]f offending is in a commercial context, it may be appropriate to provide for a variable fine, such as a fine linked to the commercial benefit derived from the offending. Proposals for such penalties should be discussed with the Ministry of Justice at an early stage. Since those types of fines can result in very large, indeterminate penalties being imposed in a criminal context, there should be compelling justification for a commercial gain penalty.[4]

II. General Criminal Law

A. Crimes Act 1961

The Crimes Act 1961 defines "person, owner, and other words or expression of the like kind" as including "the Crown and any public body or local authority, and any board, society, or company, and any other body of persons, whether incorporated or not, and the inhabitants of the district of any local authority, in relation to such acts and things as it or they are capable of doing or owning."[5]

Section 7A of the act provides for extraterritorial jurisdiction with respect to certain terrorism offenses, including where the person charged is "a body corporate, or a corporation sole, incorporated under the law of New Zealand."[6]

The offenses of bribery of public officials expressly apply to a body corporate or corporation sole if

> (a) an employee of the body corporate or corporation sole does an act that would constitute an offence under subsection (2); and
> (b) the employee does the act, in whole or in part, with the intent to benefit the body corporate or corporation sole; and
> (c) the employee, in doing the act, is acting within the scope of their authority as an employee of the body corporate or corporation sole.[7]

[3] Legislation Design and Advisory Committee, *Legislation Guidelines: 2021 Edition* ch 24 pt 6 (last updated Sept. 2021), https://perma.cc/WGW2-A8M5. For a general overview of corporate criminal liability in New Zealand, see Willam Fotherby et al., *New Zealand: Exploring the Comprehensive Investigations Regime*, Global Investigations Review (Nov. 13, 2024), https://perma.cc/RW98-VUDR.

[4] Id. ch 24 pt 7.

[5] Crimes Act 1961 s 2, https://perma.cc/VYN5-64MV.

[6] Id. s 7A(1)(a)(iv).

[7] Id. s 105C(2A).

The section further states that a body corporate or corporation sole does not commit the offense "if it has taken reasonable steps to prevent the offence."[8] However, if the body corporate or corporation sole is charged with an offense, "it is to be presumed, unless the body corporate or corporation sole puts the matter at issue, that it did not take reasonable steps."[9] The fine that can be imposed for the offenses refers to commercial gain, with the maximum fine being

> (a) $5 million [about US$2.8 million]; or
> (b) if a court is satisfied that an offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain.[10]

The section provides that the above subsections related to corporate liability for bribery apply only to the stated offenses, and "do not preclude the liability of a body corporate or corporation sole under any other provision of this Act."[11]

Other offenses in the act may potentially apply to corporations, depending on their wording. However, this does not include, for example, homicide, with one commentator explaining in a 2015 article that

> [a] corporation may not be convicted of manslaughter in New Zealand. A person is defined in the Crimes Act as both natural and legal persons. However, the language of s 158 limits the ambit of a potential charge of homicide to the "killing of a [human being] by another". The verdict reached in *R v Murray Wright Ltd* unequivocally confirmed as a principle that the "human being" requirement prevents a company from being liable for homicide. This element of s 158, at a minimum, would require amendment to the term person in order for a manslaughter charge to be brought against a corporation. However, this does not deny the ability of a corporate body to be liable as a secondary party to a homicide committed by an individual. The relevant Crimes Act provision governing the ambit of secondary participation, s 66, does not contain the same language of a "human being".[12]

B. Criminal Procedure Act 2011

Section 6 of the Criminal Procedure Act 2011 establishes categories of offenses, ranging from category 1 to category 4, with category 1 being offenses not punishable by imprisonment, category 2 being offenses punishable by a term of imprisonment of less than two years, category 3 being offenses punishable by a term of imprisonment for life or for two years or more, and category 4 being offenses listed in schedule 1 of the act.[13] For categories 2 and 3, the act states

[8] Id. s 105C(2B).

[9] Id. s 105C(2C).

[10] Id. s 105C(2E).

[11] Id. s 105C(4). For discussion of corporate liability for bribery offenses, see Cameron Wood, *Sentencing Corporations for Corruption and Bribery*, 10 Pub. Int. L. J. of N.Z. 219 (2023), https://perma.cc/B5JR-WWT8.

[12] Mitchell Spence, *No Soul to Damn? Revisiting the Case for Corporate Manslaughter in New Zealand*, 2 Pub. Int. L. J. of N.Z. 122, 127 (2015), https://perma.cc/9KJ7-YAUJ.

[13] Criminal Procedure Act 2011 s 6(1), https://perma.cc/YMJ9-H3DA.

that these include offenses that, if committed by a body corporate, are punishable only by a fine, but that would be punishable by the relevant term of imprisonment if committed by an individual.

Section 25(5) provides that "[i]f a body corporate is charged with an offence, the limitation period within which a charging document must be filed is the period that would apply to a natural person charged with the same offence, irrespective of the penalty that may be imposed against the body corporate."[14]

The act itself includes an offense of publishing information about a request for a sentence indication or about a sentence indication that has been given.[15] It also includes an offense of breaching a suppression order, other orders, or of provisions in the act.[16] The penalties for these offenses distinguish between whether the person convicted of the offense is an individual or a body corporate, with individuals punishable by imprisonment and bodies corporate punishable by a fine.

C. Sentencing Act 2002

The Sentencing Act 2002, applicable with respect to all offenses, lists the purposes of sentencing in section 7 and sentencing principles in section 8.[17] It also sets out aggravating and mitigating factors that can be considered by a court when sentencing offenders.[18] Part 2 subpart 1 of the act relates to monetary penalties, specifically reparation and fines, with the financial capacity of the offender able to be taken into account for both types of sentences, as well as other matters.[19] The court may order the offender to make a declaration as to financial capacity that accords with the requirements in section 42 of the act.[20]

The act also contains provisions on the forfeiture of vehicles and instruments of crime for qualifying offenses.[21]

D. Criminal Proceeds (Recovery) Act 2009

The Criminal Proceeds (Recovery) Act 2009 establishes rules and procedures for the forfeiture of property that has been "derived directly or indirectly from significant criminal activity" or "that represents the value of a person's unlawfully derived income."[22]

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[14] Id. s 25(5).

[15] Id. s 63.

[16] Id. s 211.

[17] Sentencing Act 2002 ss 7 & 8, https://perma.cc/UNY9-89R9.

[18] Id. s 9.

[19] Id. pt 2 subpt 1.

[20] Id. ss 35, 41 & 42.

[21] Id. ss 127–142Q.

[22] Criminal Proceeds (Recovery) Act 2009 s 3(1), https://perma.cc/M2JC-H7BY.

In 2022, the Commissioner of Police sought civil forfeiture orders for the profits and assets of a commercial entity after the business pleaded guilty to offenses related to health and safety and hazardous substances, involving the death of a worker. This was the first instance of such orders being sought against a business, with the legislation most commonly applying to organized criminal groups involved in drug dealing and money laundering.[23] The case was subsequently settled in 2024,[24] so there was no substantive court decision on whether or not the police can seize assets obtained from regulatory offending under the Criminal Proceeds (Recovery) Act 2009.

The Ministry for the Environment has also published a guidance document on recovering the proceeds of crime in the context of environmental law.[25]

III. Offenses and Penalties in Other Legislation

The following non-exhaustive list of statutes, in alphabetical order, contains criminal offenses with which corporations may be charged.

A. Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act 2009)

Part 2 of the AML/CFT Act 2009 sets out requirements for financial institutions with respect to preventing and reporting transactions potentially involving money laundering and the financing of terrorism. Part 3 of the act relates to enforcement, including civil penalty proceedings and offenses. Penalties for different types of offenses are provided in individual sections, with bodies corporate being liable for considerably larger fines than individuals. For example, particular offenses are subject to a term of imprisonment of up to two years or a fine of up to NZ$300,000 (about US$168,215), or both, while a body corporate or partnership is liable for a fine of up to NZ$5 million.[26]

B. Companies Act 1993

The Companies Act 1993, which forms the core of New Zealand's corporate regulatory system,[27] contains offenses that are specifically applicable to the company and every director of the company. Subsections 373(1) and 373(2) set out the penalties for companies for different groups

[23] Blair Keown et al., *When Profits Become Criminal Proceeds: Could Forfeiture Become Routine for Corporate Crime?*, Bell Gully (Oct. 27, 2021), https://perma.cc/L9FT-CCZB; *Novel Health and Safety Proceeds of Crime Case Settled*, MinterEllisonRuddWatts (Oct. 24, 2024), https://perma.cc/GP55-VJJT.

[24] Press Release, New Zealand Police, Millions to be Forfeited Following Workplace Death (Oct. 21, 2024), https://perma.cc/7GHN-27W7.

[25] New Zealand Government, *Recovering the Proceeds of Crime – Referral to the Asset Recovery Units: A Guide for Environmental Enforcement Agencies*, https://perma.cc/DL7W-8VXY.

[26] Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ss 100 & 105(1), https://perma.cc/3T5N-4FJQ.

[27] *Corporate Regulation in New Zealand*, New Zealand Companies Office, https://perma.cc/8R57-HHVK.

of offenses, while section 374 contains the penalties for directors.[28] The fine levels are the same for both companies and directors.

C. Customs and Excise Act 2018

The Customs and Excise Act 2018 contains multiple offenses related to the entry of goods. For relevant offenses, the specified maximum fine for a body corporate is five times that applicable to an individual.[29]

Section 394 relates to corporate liability under the act, as follows:

> (1) In this section, enterprise means any body corporate, partnership, trust, or other business.
> (2) If an enterprise commits an offence under this Act, the following persons also commit the offence:
> (a) every director, manager, secretary, officer, or agent of the enterprise who participated in, directed, authorised, acquiesced in, or assented to the act or omission:
> (b) every person who—
> (i) purports to act in the capacity of director, manager, secretary, officer, or agent of the enterprise; and
> (ii) participated in, directed, authorised, acquiesced in, or assented to the act or omission.
> (3) An individual who commits an offence as provided for in this section is liable on conviction—
> (a) to the penalty prescribed for an individual by the section or regulation creating the offence; or
> (b) if there is no penalty so prescribed for an individual, to the penalty so prescribed for the offence.
> (4) To avoid doubt, a person may be convicted of an offence as provided for in this section, even if the enterprise has not itself been charged with, or convicted of, the offence.[30]

Section 395 relates to the liability of a principal and an agent, with declarations made or other acts done by an agent in the course of his or her agency being attributable to the principal, and the principal being liable to the penalties imposed under the act.[31]

D. Fair Trading Act 1986

The Fair Trading Act 1986 includes provisions on unfair conduct, consumer information, product safety, safety of services, and consumer transactions and auctions. Section 40 of the act provides that contraventions of these provisions is an offense, with different fine levels

[28] Companies Act 1993 ss 373 & 374, https://perma.cc/W9CE-MW5L.

[29] Customs and Excise Act 2018 ss 13, 15, 25, 27, 38, 46, 52, 68, 69, 71, 84, etc., https://perma.cc/M2PG-UR6V.

[30] Id. s 394.

[31] Id. s 395.

applicable to particular breaches and higher fines applying in the case of a body corporate; a body corporate is subject to a fine three times that applicable to an individual.[32]

In terms of the mental elements of offenses, section 45 provides that

> (1) Where, in proceedings under this Part in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of the provisions of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within the scope of that person's actual or apparent authority, had that state of mind.
> (2) Any conduct engaged in on behalf of a body corporate—
> (a) by a director, servant, or agent of the body corporate, acting within the scope of that person's actual or apparent authority; or
> (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, servant or agent—
> shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.[33]

E. Financial Markets Conduct Act 2013 (FMCA)

Under the FMCA, "person" is defined broadly as including "any entity," while "entity" means a company or other body corporate; a corporation sole; a trust; or an incorporated body.[34] Offenses in the act include knowingly failing to comply with financial reporting standards; knowingly failing to comply with climate standards; and various offenses relating to defective disclosure and false statements. Different penalties apply for these offenses depending on whether the offender is an individual or not, with the fines for companies and other entities being five times that applicable to individuals.[35]

Sections 535 and 536 of the act enable the state of mind and conduct of directors, employees, or agents to be attributed to a body corporate or other principal.[36]

F. Health and Safety at Work Act 2015 (HSWA)

The HSWA defines "person" as including "the Crown, a corporation sole, and a body of persons, whether corporate or unincorporate."[37] The act uses the term "person conducting a business or undertaking," or PCBU, which has certain health and safety duties under the act.[38]

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[32] Fair Trading Act 1986 s 40, https://perma.cc/Y6EX-GTM5.

[33] Id. s 45.

[34] Financial Markets Conduct Act 2013 s 6, https://perma.cc/QDH8-262B.

[35] Id. ss 53, 461I, 461ZG & 510.

[36] Id. ss 535 & 536.

[37] Health and Safety at Work Act 2015 s 16, https://perma.cc/F338-FJKF.

[38] Id. ss 17 & pt 2 subpt 2.

Under section 44, if a PCBU has a duty or obligation under the act, an officer of the PCBU "must exercise due diligence to ensure that the PCBU complies with that duty or obligation."[39] Several offenses apply with respect to the duties, with different levels of penalties applicable to an individual who is not a PCBU or officer of a PCBU, an individual who is a PCBU or an officer of a PCBU, and "any other person."[40] The highest fines apply to the latter category, which includes corporate entities, with fines being five times higher than those applicable to individuals who are PCBUs or officers of PCBUs. This approach of fines for non-individuals being five times higher than for individuals applies to all other offenses under the act.

Section 50 provides that an officer of a PCBU may be convicted of an offense against section 44 whether or not the PCBU has been convicted of an offense relating to the duty of obligation.[41] Section 151 states that the court must apply the Sentencing Act 2002 in determining sentences, with particular regard to specific provisions and other listed matters.[42] Section 153 enables the court to make "adverse publicity orders" against an offender, with subsequent provisions enabling other types of orders, including orders for restoration and work health and safety project orders.[43]

Section 160 of the act provides that

> [i]f, in any civil or criminal proceedings under this Act in respect of any conduct engaged in by a person other than an individual, being conduct in relation to which any provision of this Act or regulations applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, employee, or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind.[44]

Section 161 provides that

> [c]onduct engaged in on behalf of a person (other than an individual) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by that person:
> (a) an officer, employee, or agent of the person acting within the scope of his, her, or its actual or apparent authority:
> (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, or agent of the person, given within the scope of the actual or apparent authority of the officer, employee, or agent.[45]

[39] Id. s 44(1).

[40] Id. pt. 2 subpt 4.

[41] Id. s 50.

[42] Id. s 151.

[43] Id. s 153.

[44] Id. s 160.

[45] Id. s 161.

G. Harmful Digital Publications Act 2015

Under this legislation, a court can make various orders related to online material published by, or the conduct of, a defendant. Breaching such orders is an offense.[46] Other offenses include causing harm by posting a digital communication and posting intimate visual recordings without consent.[47] The penalties applicable to these offenses are different depending on whether the offender is a natural person or a body corporate, with fine levels being four times higher for a body corporate.

H. Resource Management Act 1991

Section 338 of the Resource Management Act 1991 lists various offenses related to, for example, certain environmental protection duties and restrictions, the discharge of harmful substances in the coastal marine area, a failure to comply with enforcement orders.[48] The penalties for offenses are contained in section 339, with a higher fine applying in the case of any person other than a natural person, as follows:

> (1) Every person who commits an offence against section 338(1), (1A), or (1B) is liable on conviction,—
> (a) in the case of a natural person, to imprisonment for a term not exceeding 2 years or a fine not exceeding $300,000:
> (b) in the case of a person other than a natural person, to a fine not exceeding $600,000 [about US$336,429].[49]

In addition, section 339B enables the court to order a person "to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing a commercial gain."[50]

Section 340 relates to the liability of a principal for the acts of its agents and employees. It also provides that if a person other than a natural person is convicted of an offense, a director is also guilty if certain factors are proven.

I. Tax Administration Act 1994

The Tax Administration Act 1994 contains various offenses and penalties, including offenses categorized as absolute liability and strict liability offenses, knowledge offenses, tax evasion, and offenses in relation to inquiries and court orders.[51] The penalties imposed under the act do

[46] Harmful Digital Communications Act 2015 s 21, https://perma.cc/XBL7-V3YG.

[47] Id. ss 22 & 22A.

[48] Resource Management Act 1991 s 338, https://perma.cc/B4HP-ZDFW.

[49] Id. s 339(1).

[50] Id. s 339B(1).

[51] Tax Administration Act 1994 ss 143, 143A, 143B, 143F & 143G, https://perma.cc/P4RC-XXK5.

not distinguish between natural and legal persons. A breach of a tax obligations may result in a taxpayer being liable "to a civil penalty or, on conviction, to a criminal penalty, or both."[52]

Section 147 of the act provides for the concurrent liability of employees and officers of a body corporate where the body corporate has committed an offense against the act and that offense "was caused by an act done or carried out by, or by an omission of, or through knowledge attributable to, the employee, agent, or officer" or "is evasion committed by the employee, agent, or officer."[53]

[52] Id. s 149(1).

[53] Id. s 147.

Norway

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SUMMARY In Norway, corporations (by definition to include company, cooperative, association or other association, sole proprietorship, foundation, estate, or public enterprises) are liable for criminal acts and subject to corporate criminal fines. The provision is general and could apply to any criminal act. An individual determination, based on the subjective culpability of the corporation, must be made in each case. The Penal Code sets no minimum or maximum thresholds for the monetary amount of the corporate criminal fine. It appears the provision is most commonly used in workplace injury cases.

I. Introduction

In Norway, there are several different kinds of corporate enterprises that must register in a specific corporate registry.[1] Specifically, joint stock companies also known as private limited companies (a*ksjeselskaper*), [2] public limited companies (*allmennaksjeselskaper*), [3] European companies (*europeiske selskaper*),[4] other commercial companies (*andre næringsdrivende selskaper*),[5] cooperatives and European cooperatives (*samvirkeforetak og europeiske samvirkeforetak*), [6] and commercial foundations (*næringsdrivende stiftelser*). [7] In addition, sole proprietorships (*enkeltpersonforetak*) must also register.[8]

Violations of corporate obligations specified in the corporate acts are subject to imprisonment or monetary fines.[9] In addition, corporations and their representatives are liable for criminal acts as specified in the Penal Code.[10]

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[1] Section 2-1 Lov om registrering av foretak (foretaksregisterloven) [Corporate Registry Act] (LOV-1985-06-21-78), https://perma.cc/B8AY-LL34.

[2] Lov om aksjeselskaper (aksjeloven) (LOV-1997-06-13-44) [Private Limited Corporation Act], https://perma.cc/NE6X-KZ4J.

[3] Lov om allmennaksjeselskaper (allmennaksjeloven) [Public Limited Corporation Act], (LOV-1997-06-13-45), https://perma.cc/346U-7YBU.

[4] Lov om europeiske selskaper (SE-loven)(LOV-2005-04-01-14)[Act on European Companies], https://perma.cc/4JXF-MZCU.

[5] Lov om ansvarlige selskaper og kommandittselskaper (Selskapsloven)[Corporate Partnership Act](LOV-1985-06-21-83), https://perma.cc/MK2Q-NVSZ.

[6] Lov om europeiske samvirkeforetak (SCE-loven)[Act on European Corporate Partnerships](LOV-2006-06-30-50), https://perma.cc/4LVK-RM5K.

[7] Lov om stiftelser (stiftelsesloven)(LOV-2001-06-15-59)[Act on Foundations], https://perma.cc/UAB2-FUW6.

[8] Section 3-5 Lov om registrering av foretak (foretaksregisterloven)(LOV-1985-06-21-78).

[9] See e.g. 19-1, 19-2 §§ Aksjeloven.

[10] Lov om straff (straffeloven)[Penal Code](LOV-2005-05-20-28), https://perma.cc/FQ9L-7M99.

II. Corporate Criminal Fines

A. Legislation

Under Norwegian law, starting in 1991, corporations could be criminally liable for their acts, including in cases when an individual committing the action could not be identified.[11] Thus, it is sufficient that a criminal act can be connected to the corporation, not a specific individual within the corporation.[12] The law specifically applies to corporations (*foretak*), defined as "company, cooperative, association or other association, sole proprietorship, foundation, estate or public enterprises."[13]

Section 28b provides that an individual assessment must be made in each case to determine if a corporate criminal fine shall be issued, specifically prescribing that

> [w]hen deciding whether a corporation shall be punished under Section 27, and when imposing the punishment, consideration shall be given to, among other things
> a) the preventive effect of the punishment,
> b) the seriousness of the offense, and whether anyone acting on behalf of the enterprise has shown guilt,
> c) whether the corporation could have prevented the offense by guidelines, instruction, training, control or other measures,
> d) whether the offense was committed to promote the interests of the corporation,
> e) whether the corporation has had or could have obtained any benefit from the offense,
> f) the corporation's financial capacity,
> g) whether other sanctions as a result of the offense are imposed on the corporation or anyone who has acted on its behalf, including whether any individual is imposed a punishment, and
> h) whether an agreement with a foreign state requires the use of corporate punishment.[14]

The Penal Code sets no minimum or maximum monetary thresholds for the criminal fine.[15]

As specified above, legal persons may be liable for any act that is criminalized. Norway criminalizes, among other acts, financing of terrorism,[16] money laundering,[17] corruption,[18] tax

[11] 27-28 §§ Lov om straff (straffeloven)[Penal Code](LOV-2005-05-20-28), https://perma.cc/FQ9L-7M99.

[12] In the legal history of the provision, the purpose was described as to ensure that corporations were liable for crimes committed where a person could not be identified as well as when cumulative errors by several different persons, each on their own not criminal, but in aggregate criminally negligent, would be covered. NOU 1989:11 at 8, on file with author, also available at https://www.nb.no/items/URN:NBN:no-nb_digibok_2012062705110.

[13] Id. Section 27, para. 2 Penal Code.

[14] Id. Section 28.

[15] Id. Sections 27 and 28, *e contrario*.

[16] Chapter 18 (sections 131-146) of the Penal Code.

[17] Section 337 of the Penal Code.

[18] Sections 387, 388 of the Penal Code.

evasion[19], environmental crimes,[20] financial crimes,[21] and investment fraud,[22] which may all be subject to corporate criminal fines depending on the individual circumstances of the case.[23]

B. Supreme Court Precedent

1. HR-2015-02557-A

While corporate fines may be issued for any criminalized activity, they appear most common in cases of workplace injuries. For example, in 2015, the Supreme Court of Norway found a corporation liable following an incident where an employee was injured because the workplace was not sufficiently lit.[24] While the Supreme Court recognized the inherent deterrent nature of the corporate criminal fine in cases of workplace injuries and issued a corporate fine of NOK 100,000 (about US$8,900),[25] it also noted that, while common, there is not an automatic presumption that such a penalty be issued in all workplace injury cases.[26]

2. HR-2021-797-A

In 2021, the Norwegian Supreme Court issued a NOK 30,000 (about US$3,500) criminal penalty to a pizzeria for employing a person who lacked a work permit.[27] The court found that objective culpability could not be used as the legal standard, but that subjective culpability on part of the corporation must be determined.[28] The court argued that Norway's obligations under the European Convention on Human Rights, and specifically case law from the European Court of Human Rights, required that.[29] Recent commentary on Supreme Court case on non-criminal fines, however, suggests that the Supreme Court no longer holds the same view on corporate criminal fines.[30]

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[19] Sections 378, 379 of the Penal Code.

[20] Section 240 of the Penal Code.

[21] For specific financial crime provisions, see chapter 30 of the Penal Code.

[22] See sections 371, 385, 386 of the Penal Code.

[23] Section 27-28 of the Penal Code.

[24] Norwegian Supreme Court Decision of December 22, 2015, HR-2015-02557-A, (sak nr. 2015/1842), https://perma.cc/45PY-XXBD.

[25] Id. ¶ 47.

[26] Id. at ¶ 35.

[27] Supreme Court Decision HR-2021-797-A, https://perma.cc/6DFS-3U7N (in Norwegian), https://perma.cc/8T5M-A8CK (in English).

[28] Id.

[29] Id.

[30] See Kjetil Kolsrud, *Høyesterett Avlyser sin egen Avlysning av Foretaksstraff på Objektivt Grunnlag*, Rett24 (June 28, 2023), https://perma.cc/3KQ6-BH9T.

III. Prohibition on Conducting Business

In addition to the corporate criminal fine mentioned above, the corporation may also be punished by no longer being allowed to conduct business or to conduct certain business activities.[31]

IV. Forfeiture and Confiscation of Property

In addition to the penalties mentioned above, property that has been used in or that derives from a crime may be confiscated and become the property of the state.[32] This penalty applies also to corporations.[33]

[31] Section 27, para. 3 Penal Code. See also Section 56 of the Penal Code.

[32] Chapter 13 (sections 66 to 76) of the Penal Code.

[33] Section 27, para. 3 of the Penal Code.

Oman

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SUMMARY In Oman, Royal Decree No. 7 of 2018 holds corporate entities criminally liable for crimes committed by their representatives, directors, or agents acting on their behalf or in their name. Royal Decree No. 18 of 2019 Issuing the Commercial Companies Law, Royal Decree No. 30 of 2016 Promulgating the Anti-Money Laundering, and Royal Decree No. 47 of 1981 on the Corporate Income Tax Law impose fines on corporate entities and the penalty of imprisonment on individuals.

I. Royal Decree No. 7 of 2018 Promulgating the Penal Law

Royal Decree No. 7 of 2018, as amended, holds corporate entities criminally liable for crimes committed by their representatives, directors, or agents acting on their behalf or in their name. The penalties imposed on corporate entities are limited to fines and other appropriate ancillary punishments prescribed by law.[1] These ancillary punishments include dissolution, closure, or confiscation.[2] Furthermore, if a corporate entity participates in the criminal activities of an organized criminal group, it shall be punished by a fine no less than OMR 10,000 (approx. US$26,000) and not exceeding OMR 50,000 (approx. US$130,000), along with the dissolution of the entity.[3]

II. Royal Decree No. 18 of 2019 Issuing the Commercial Companies Law

The statutory minimum fine for violating the Commercial Companies Law is OMR 3,000 (approx. US$8,000), while the maximum fine is OMR 50,000.[4] Any individual who violates the provisions of this law may subject to fines and/or imprisonment. The term of imprisonment ranges from a minimum of six months to a maximum of three years.[5]

Royal Decree No. 18 of 2019 states that fines imposed on a company due to violations of the law or the company's articles of association by the board of directors during the previous financial year must be deducted from the board's remuneration or from the remuneration of the member

[1] Royal Decree No. 7 of2018 Promulgating the Penal Law, as amended art. 21, Al-Jarīdah al-Rasmīyah (Official Gazette) at, vol. 1226, Jan. 14, 2018, https://perma.cc/V783-7UKW (in Arabic), https://perma.cc/S25H-FR3D (English translation).

[2] Id. art. 275.

[3] Id. art. 149(2).

[4] Royal Decree No. 18 of 2019 promulgating the Commercial Companies Law, art. 306-309, Al-Jarīdah al-Rasmīyah at 87, vol. 1281, Feb. 13, 2019, https://perma.cc/92S6-QM33 (in Arabic), https://perma.cc/GV3W-LA7G (English translation).

[5] Id. arts. 306, 307.

responsible for the violation, unless the board determines that the violation was not due to any fault or negligence on their part.[6]

III. Royal Decree No. 30 of 2016 Promulgating the Anti-Money Laundering Law

The Anti-Money Laundering Law holds corporate entities liable if any member of the board of directors, its delegated official, or any representative acting in such capacity, fails to comply with the law, either intentionally or through gross negligence, and the violation was in the interest or on behalf of a corporate entity. In such cases, the corporation may be subject to a fine not less than OMR 50,000 and not exceeding OMR 100,000(approx. US$260,000).[7]

Additionally, if the violator is a corporate entity accused of providing false data, declarations, or information about currencies or bearer negotiable instruments, or concealing facts that should have been disclosed, it is subject to a fine not less than OMR 10,000 and not exceeding the value of the funds subject in the crime.[8] In the event of a conviction, the competent court orders the confiscation of the money laundered, along with its proceeds, income, and interests generated, as well as the instruments used to commit the offense. If the laundered money and instruments used cannot be located or have dissipated, the court may confiscate funds of equivalent value.[9]

IV. Royal Decree No. 12 of 2011 Issuing the Cyber Crime Law

Without prejudice to the criminal liability of natural persons, Royal Decree No. 12 of 2011 holds a corporate entity criminally liable if any of the offenses outlined in this law are committed in its name, on its behalf, or for its account by the president, any member of the board of directors, or any authorized employee, with their approval, or due to their gross negligence or harboring. The entity may be subject to double the maximum fine prescribed by law. The statutory minimum fine under the Law is OMR 100 (approx. US$260), while the maximum is OMR 100,000.[10]

In all cases, and without prejudice to the rights of bona fide third parties, the law mandates the confiscation of all devices, programs, or equipment used in committing any of the stipulated crimes. The law also orders the blocking of the website where the crimes were committed and the closure of the violating entity's offices for a period to be determined by the competent court, depending on the circumstances and conditions of the crime. In addition to these sanctions, if the crime was committed by an expatriate who is convicted for a terrorism related crime or an offense against public morals, the court may order deportation.[11]

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[6] Id. art. 311.

[7] Royal Decree No. 30 of 2016 Promulgating the Anti-Money Laundering Law, art. 96, Al-Jarīdah al-Rasmīyah at 42, vol. 1149, June 2, 2016, https://perma.cc/YAY6-C64S (in Arabic), https://perma.cc/N4N9-VXEH (English translation).

[8] Id. art. 98.

[9] Id. art. 100.

[10] Royal Decree No. 12 of 2011 Issuing the Cyber Crime Law, art. 29, Al-Jarīdah al-Rasmīyah at 14, vol. 929, Feb. 6, 2011, https://perma.cc/YG6K-MTLK (in Arabic), https://perma.cc/8JA2-F7WP (English translation).

[11] Id. art. 32.

V. Royal Decree No. 50 of 2019 Promulgating the Foreign Investment Law

The Foreign Investment Law imposes administrative penalties on foreign corporate entities for violations of the law, its implementing regulations, and executive decisions. The Ministry of Industry and Commerce notifies the entity to correct the violation within a period not exceeding 30 days from the date of receiving the notification. This period may be extended if a valid reason is proved.[12]

If the foreign corporate entity fails to correct the violation within the specified period, the following sanctions may be imposed: (a) deprivation of all or some of the incentives and benefits stipulated in this law; (b) suspension of commercial activity for a period not exceeding six months; or (c) revocation of the license in the event of repeated violations.[13] The implementing executive regulations specify the terms and procedures for imposing any of these sanctions.[14]

VI. Royal Decree No. 47 of 1981 on the Corporate Income Tax Law

Royal Decree No. 47 of 1981 stipulates that the Tax Committee may impose a fine of OMR 2,500 (approx. US$6,500) in cases of tax evasion on the corporate entity, responsible employee, or both.[15] Managers, directors, or authorized employees who commit tax evasion may be subject to a fine up to OMR 5,000 (approx. US$13,000) and/or imprisonment for up to five years.[16] Moreover, any individual who prepares, submits, aids, abets, assists, or induces a company to prepare or submit any false statement shall be subject to a fine of up to OMR 5,000 and/or imprisonment for up to three years.[17]

[12] Royal Decree No. 50 of 2019 Promulgating the Foreign Investment Law, art. 28, Al-Jarīdah al-Rasmīyah at 16, vol. 1300, July 1, 2019, https://perma.cc/FP59-WU4X (in Arabic).

[13] Id. art. 29.

[14] See Ministerial Decision No. 72 of 2020 Issuing the Executive Regulations of the Foreign Investment Law, Al-Jarīdah al-Rasmīyah, vol. 1436, June 14, 2020, https://perma.cc/8ZKU-DHAD (in Arabic).

[15] Royal Decree No. 47 of 1981 on the Corporate Income Tax Law, art. 37, Al-Jarīdah al-Rasmīyah at 156, 158, vol. 218, May 18, 1981, https://perma.cc/RZ52-DQGG (in Arabic).

[16] Id. art. 40.

[17] Id. art. 41.

Pakistan

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SUMMARY Pakistan has a number of laws that impose criminal liability on companies and corporations, including the Penal Code and other regulatory acts. Corporations that are held criminally liable are punished mostly through monetary fines, but they can also incur penalties that restrict their ability to do business. Most statutes in Pakistan also have a provision that imposes vicarious liability on companies and their officers. In addition, the Companies Act includes a provision that allows a court to windup a company for certain fraudulent or otherwise unlawful conduct.

I. Introduction

In Pakistan, a number of laws impose criminal liability on corporations, including the Penal Code and other regulatory acts. Some legal consequences can include monetary fines, debarment from government contracts, suspension of business licenses, and the winding up or dissolution of a corporation.[1] The Companies Act includes a provision that allows a court to windup a company for certain fraudulent or otherwise unlawful conduct.[2] Most statutes have a provision that imposes vicarious liability on companies and their officers.

II. Penal Code

Pakistan's Penal Code applies to corporations and companies.[3] The term "person" used in offense provisions includes any "[c]ompany or Association, or body of persons, whether incorporated or not."[4] Most offenses include the provision of a fine, which is either unspecified or includes a maximum amount. Section 63 of the code stipulates that [w]here no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive."[5]

[1] Junaid Almas Ali, *Understanding Corporate Criminal Law in Pakistan: A Comprehensive Guide*, SM Almas Assocs., https://perma.cc/APE2-ZLKW.

[2] For the circumstances under which a court can windup a company, see the Companies Act, 2017, § 301, https://perma.cc/8HX2-QAZZ.

[3] Pakistan Penal Code, https://perma.cc/A44W-QKEC.

[4] Id. § 11.

[5] Id. § 63.

III. Anti-Corruption Laws

Pakistan's main framework to deal with corruption is composed of the National Accountability Ordinance, 1999,[6] and the Prevention of Corruption Act.[7] The ordinance includes the following definition of "person":

> "Person" unless the context otherwise so requires, includes in the case of a company or a body corporate, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company or body corporate or any one exercising 2 [direct] control of the affairs of such company or a body corporate; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having any interest in the said firm, partnership or proprietorship 2 [concerned or having direct control thereof];[8]

The offense of corruption and corrupt practices applies to companies and corporations and is punishable by a fine. Many of the offenses found in the schedule of the law that may be relevant also include punishment with a fine, but most of them do not include a maximum amount.

IV. Environmental Protection Act

Pakistan's main environmental protection law is the Pakistan Environmental Protection Act, 1997.[9] "Person" is defined under the act as a "legal entity" including a "company" and a "corporation."[10] Contraventions or failure to comply with certain sections of the law can result in penalties and fines. Section 18 of the law on "offences by bodies corporate" provides for vicarious liability of the corporation and its officers.

> 18. Offences by bodies corporate.—Where any contravention of this Act has been committed by a body corporate, and it is proved that such offence has been committed with the consent or connivance or, or is attributed to any negligence on the part of, any director, partner, manager, secretary or other officer of the body corporate, such director, partner, manager, secretary or other officer of the body corporate, shall be deemed guilty of such contravention along with the body corporate and shall be punished accordingly: Provided that in the case of a company as defined under the Companies Ordinance, 1984 (XLVII of 1984), only the Chief Executive as defined in the said Ordinance shall be liable under this section.[11]

[6] National Accountability Ordinance, 1999, https://perma.cc/WGS9-CHG2.

[7] Prevention of Corruption Act, 1947, https://perma.cc/NM4S-EN3N.

[8] Id. § 5(p).

[9] Pakistan Environmental Protection Act, 1997, https://perma.cc/Q4HK-GCAS.

[10] Id. § 2(xxxii).

[11] Id. § 18.

V. Anti-Money Laundering Act

The Anti-Money Laundering Act, 2010,[12] is the main federal legislation that governs the "prevention of money laundering and combatting terrorism financing in Pakistan." Under the act, "person" means any natural or legal person. "Legal person" includes companies. For example, money laundering by a "legal person" is punishable by a fine, which "may extend up to one hundred million rupees [about US$1.16 million]."[13]

VI. Tax Evasion

Corporate taxation provisions can be found in the Income Tax Ordinance, 2001.[14] The term "person" includes "a company or association of persons incorporated, formed, organised or established in Pakistan or elsewhere."[15] A "company" is further defined under section 80(2)(b) of the ordinance.[16]

Part X includes a table of offenses to which a monetary penalty is assigned. Part XI of the ordinance deals with offenses, including tax-evasion-related offenses, and prosecution with stipulated fines for conviction. Section 200 imposes vicarious liability on companies and their principal corporate officers.

VII. Securities and Financial Crimes

Financial and securities crimes are found in a number of laws, including the Securities Act, 2015.[17] Part X deals with insider trading, and Part XI addresses other market abuses like false trading, market-rigging transactions, and market manipulation. Section 159 states the punishments for offenses, which include specific fines and penalties for companies.[18] For example, section 159(1)(b) states that a company is liable for insider trading "to a fine which may extend to three hundred million rupees [about US$3.5 million] or three times the amount of gain made or loss avoided by such company, or loss suffered by another person, whichever amount is higher."[19] An offenses related to market abuses "in the case of a company" result in a "fine which may extend to three hundred million rupees."[20] The vicarious liability of directors or managing officers of companies is set out under section 166.[21]

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[12] Anti-Money Laundering Act, 2010, https://perma.cc/SK7P-MSRF.

[13] Id. § 4(2).

[14] Income Tax Ordinance, 2001, https://perma.cc/MXK8-F65G.

[15] Id. § 80(1)(b).

[16] Id. § 80(2)(b).

[17] Securities Act, 2015, https://perma.cc/K93J-N67L.

[18] Id. § 159.

[19] Id. § 159(1)(b).

[20] Id. § 159(2)(b).

[21] Id. § 166.

Panama

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I. General Rule on Criminal Liability for Corporations

Under Panama's Penal Code, corporations used or created for the purpose of committing a crime may be held criminally liable for the crime even if the corporation does not benefit from it.[1]

II. Penalties

Panama's Penal Code provides the penalties that may be imposed on corporations, which, depending on the specifics of the case, may include

- cancellation or suspension of a business license or registration for a term not exceeding five years,
- total or partial loss of tax benefits,
- disqualification from entering into contracts with the government, directly or indirectly, for a term of up to five years,
- dissolution of the company, or
- fines commensurate with the damage caused.[2]

III. Attribution of Criminal Liability to Corporations

Panama's Penal Code does not include a list of specific crimes for which corporations may be held responsible. A legal commentator has explained that the lack of such a list theoretically allows prosecutors to pursue criminal charges against corporations for any crime, provided that pertinent incriminating evidence is available.[3]

[1] Código Penal De La República De Panamá, as amended, art. 51, Gaceta Oficial, May 22, 2007, https://perma.cc/7M72-EJZ4.

[2] Id.

[3] Orestes Arenas Nero, *La Responsabilidad Penal de las Personas Jurídicas en Panamá*, Estudios Penales Y Criminológicos (May 14, 2024), https://perma.cc/7B63-7YUL.

Poland

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SUMMARY The legal framework for corporate liability is governed by the Criminal Code, Code of Administrative Violations, and the Act on Liability of Collective Entities for Punishable Offenses. The Act on Liability of Collective Entities for Punishable Offenses specifically targets corporate entities and outlines the conditions under which they can be held liable for criminal offenses. The Polish Criminal Code addresses individual criminal liability, but certain provisions indirectly relate to corporate entities, particularly regarding the attribution of criminal liability to individuals acting on behalf of a corporation. Criminal punishment is usually in the form of a fine but can extend to restrictions on business activities and termination of a company. Administrative fines are imposed by national regulators and subject to administrative law procedures. Civil law norms apply for resolution of commercial disputes and enforcing corporate obligations. Corporate entities can be punished for the failure to comply with norms established by other laws in line with provisions of the Criminal or Administrative Codes or norms established by individual legal acts.

I. Introduction

The Act on Liability of Collective Entities for Punishable Offenses regulates criminal liability for economic and fiscal crimes committed by corporations.[1]

Legal entities can be held criminally liable for crimes committed by individuals acting on behalf of the corporation if those acts are within the scope of their duties. A company becomes criminally liable if, through the illegal actions of its officers, it gains or could have gained any benefit, whether financial or not.[2] If an individual commits a criminal act, the individual may face criminal liability and, subsequently, criminal liability may be imposed on the corporation for which the individual works.[3] The liability may be incurred by every legal person, excluding the State Treasury, local government units, and their unions.[4]

Cases of corporate criminal liability are within the jurisdiction of the district court in whose judicial circuit the offense was committed. If the offense was committed abroad, then jurisdiction over the case belongs to the district court in whose judicial circuit the collective entity has its registered office.[5] In some circumstances, usually when the court decides that the case is very

[1] Act on Liability of Collective Entities for Punishable Offenses of October 28, 2002, consolidated text September 26, 2014, https://perma.cc/JS9N-EJ4R (in Polish).

[2] Id. art. 3.

[3] Id. art. 2.

[4] Id. art. 2, para. 1.

[5] Id. art. 24.

complicated or has public significance, it can be referred to the regional court, which then serves as the court of first instance.[6]

A corporation may be held liable for mismanagement, public corruption, corruption in business, credit and subsidy fraud, money laundering, crimes related to making repayment of creditors impossible and reducing their satisfaction, failure to file a bankruptcy petition on time, and insider trading.

Other offenses are specified in laws that regulate specific areas of economic activity.

II. General Principles of Criminal Liability

According to the Act on Liability of Collective Entities for Punishable Offenses, corporate liability can arise when an offense is committed by a natural person who is an entrepreneur and acts on behalf of and in the name of the company, makes decisions in its name, or exercises internal control, and whose actions resulted in abuse of authority or neglect of duty. [7]

A corporation can be held liable for an offense committed by an individual if a valid conviction for the crime has been issued, or if the prosecution terminates proceedings against the individual and initiates proceedings against the corporation in their place.[8]

A corporation held liable for criminal offenses committed by its employees or representatives faces fines, restrictions on business activities, forfeiture of profits gained through criminal acts, and liquidation.[9] Directors or managers can also bear civil or administrative liability if they failed to prevent the crime.[10] The same provisions are confirmed by the Criminal Code, which states that corporations other than governmental, public, and official institutions are criminally liable for crimes committed by their representatives, directors, or agents working under the corporation's name or on its behalf. [11]

If the company is found liable for any of the crimes committed by the relevant individual, the court may apply a fine ranging from PLN 1 million (approximately US$244,000) to PLN 5 million (approximately US$1.2 million.) A fine must not be higher than 3% of the revenue generated in the financial year in which the offense was committed.[12]

A fine is increased by one-half of the prescribed punishment if the offense is repeated within five years.[13]

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[6] Id. art. 25.

[7] Id. art. 3, paras. 1-3.

[8] Id. art. 4.

[9] Id. art. 8, paras.

[10] Id. art. 7.

[11] Criminal Code of Poland, adopted Jun. 6, 1997, https://perma.cc/X3JJ-QP5K (in Polish).

[12] Id. art. 7.

[13] Id. art. 13.

Other forms of punishment imposed on companies found responsible for committing criminal offenses are

- the forfeiture of profits obtained through criminal activity;[14]
- a ban on conducting certain activities (promotion, advertising, receipt of grants and subsidies, applying for public-procurement contracts) for a period of one to five years; and [15]
- publicizing the judgment against the entity.[16]

Sanctions cannot be imposed 10 years after a judgment has been passed by the court in the case of individual persons.[17] In addition, the collective entity may try to settle the dispute with a plea bargain.[18]

During a trial, the court can impose preventive measures prohibiting a corporation from completing a merger, demerger, or transformation. A company can be banned from competing for public procurement. A court consent may be required for encumbering or disposal of company's property.[19]

The Criminal Code mainly criminalizes three types of economic activities. These are as follows:

- crimes against economic relations
    - breach of trust in business relations,
    - credit and subsidy fraud,
    - insurance fraud,
    - money laundering,
    - fraudulent action of a debtor against their creditor,
    - intentional bankruptcy or conversion of a business entity with the aim of avoiding due payment to the creditor,
    - acting to the detriment of debtors by satisfying claims of only some of them, and
    - falsifying identification marks and expiry dates of products;
- crimes against money and securities trading
    - falsification of money and securities and putting them into circulation,
    - disseminating false information in documentation relating to trade in securities, and
    - counterfeiting of official marks of value and putting such a sign into circulation;

[14] Id. art. 11, para. 2, art. 12.

[15] Id. art. 9, para. 1, (1-4), (6).

[16] Id.

[17] Id. art. 14.

[18] Id. art. 22.

[19] Id. art. 26(a), paras. 1 & 2.

- crimes against bribery and trade in influence
    - passive and active bribery,
    - falsification of a document,
    - procuring an attestation by deceitful misleading of a public official, and
    - use of falsified documents.[20]

The Criminal Code provides that an individual who submits false documents or documents attesting untruth, or dishonest statements regarding his or her circumstances that are of significance for the obtaining of a loan, bank loan, loan guarantee, grant, subsidy, or a public procurement faces imprisonment for a term of three months to five years.[21]

Anyone who, while indebted to multiple creditors, hinders, or diminishes their ability to collect by establishing a new business entity and transferring assets to it faces imprisonment for a term of three months to five years. The same penalty applies to anyone who causes his or her own bankruptcy or insolvency while indebted to multiple creditors.[22]

Under the Criminal Code, criminal sanctions can be imposed on anyone who counterfeits or alters Polish or foreign currency, other legal tender, or any document entitling the holder to receive money or containing an obligation to pay capital, interest, or profit shares, or who removes cancellation marks from such currency or documents. Offenders face imprisonment for a minimum of five years up to 25 years. Those individuals who circulate, store, transport, or assist in selling or concealing counterfeit or altered currency or documents face imprisonment for one to 10 years.[23]

The Criminal Code further specifies that representatives of corporate bodies can be held liable when they disseminate false information or conceal crucial information in documentation related to the trading of securities, which affects the buying, selling, or holding of those securities. They shall face imprisonment for up to three years.[24]

In addition, anyone who counterfeits or alters a certified measuring or testing instrument for use in economic transactions faces a fine, restriction of liberty, or imprisonment for up to 2 years. The same penalties apply to anyone who uses, or stores for economic transactions, a counterfeit or altered measuring or testing instrument.[25]

[20] Criminal Code arts. 228-230, 270-273, 296-314.

[21] Id. art. 297.

[22] Id. art. 301, paras. 1 & 2.

[23] Id. art. 310, paras. 1 & 2.

[24] Id. art. 311.

[25] Id. art. 315, paras. 1 & 2.

III. Civil and Administrative Liability

For most of the corporate offenses, companies are fined in line with the provisions of the Code of Administrative Violations. Fines can be imposed by local courts or by regulatory agencies through administrative procedures.[26]

Aggravated forms of certain offenses related to business transactions and property interests in civil law, typically prosecuted under administrative law, are classified as criminal offenses if they result in particularly severe consequences and the financial impact of the crime surpasses a specified threshold.[27]

IV. Offenses and Penalties Under Other Legislation

A. Money Laundering and Financing of Terrorism

Failure to fulfil obligations under the Act on Counteracting Money Laundering and Financing of Terrorism may constitute a criminal offense punishable by imprisonment for a term ranging from three months to eight years. Financial institutions are required to comply with the established preventive measures.[28]

B. Unfair Competition

Crimes constituting unfair competition include infringement of business secrets, copying a product, and organization and management of avalanche sales.[29] Perpetrators of these crimes are subjects to fines, restrictions of liberty, or imprisonment for a period of up to two years.[30]

C. Competition and Consumer Protection Violations

The Competition and Consumer Protection Act is aimed at ensuring that corporate conduct has a positive impact on competition and consumer rights.[31] This act includes provisions that hold corporations liable for engaging in anticompetitive behavior or infringing upon consumer rights. Administrative and criminal liability is foreseen for these violations.[32]

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[26] Code of Administrative Violations of Jun. 14, 1960, https://perma.cc/6SR4-WGHY (in Polish).

[27] Criminal Cde, art. 306b.

[28] Act on Counteracting Money Laundering and Financing of Terrorism of March 1, 2018, arts. 76, 82, 156, https://perma.cc/NPQ9-LNRR.

[29] Act on Combating Unfair Competition of April 16, 1993, https://perma.cc/2U76-KRDV (in Polish).

[30] Id. arts. 23, 24.

[31] Act on Competition and Consumer Protection of February 16, 2007, https://perma.cc/92WA-RFW6 (in Polish).

[32] Id. art. 106b, art. 106c.

D. Fiscal Crimes

In Poland, tax offenses are covered by the Fiscal Criminal Code.[33] Under article 24 of the Fiscal Criminal Code, a legal entity may be fully or partially liable for a fine imposed on an individual who commits a fiscal offense, whether as a proxy, manager, employee, or acting in any other capacity, if the entity obtained or could have obtained a financial benefit from the offense.[34]

The Fiscal Criminal Code introduces four categories of tax crimes for which a collective entity may be held liable including: crimes against tax obligations and settlements in respect of grants or subsidies; crimes against customs duties and rules of foreign trade in goods and services; crimes against foreign exchange; and crimes against organizing gambling games.[35] Even if a crime was committed by an individual, a company represented by the individual must return the financial benefit obtained as a result of the crime.[36] In addition, article 10 of the Fiscal Criminal Code regulates corporate liability for crimes committed abroad by its representatives or subsidiaries.

E. Violation of Securities Regulations

A company may be held liable for unauthorized issuance of securities and failure to comply with rules related to their handling. Punishment in the form of fines may be imposed by the national regulator or courts.[37]

F. Banking Law Violations

Under the Banking Law, a collective entity can be fined by the National Financial Supervisory Commission for unauthorized banking activities, improper representation as a credit institution, and failure to disclose financial documents.[38] Fines can go up to PLN 20 million. (approximately US$4.8 million). Company officials may face imprisonment for up to five years.[39]

G. Violation of Personal Data Protection Rules

Under the Personal Data Protection Act, a company can face criminal liability if it processes personal data unlawfully or without authorization, potentially leading to fines, restrictions on liberty, or imprisonment of individuals responsible within the company, with the severity of the penalty depending on the nature and scale of the data breach involved.[40]

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[33] Fiscal Criminal Code of September 10, 1999, https://perma.cc/JG47-WALS (in Polish).

[34] Id. art. 11.

[35] Fiscal Criminal Code arts. 54 - 56, 58- 80, 85 - 107.

[36] Id. art. 25, para. 5

[37] Act on Securities of January 15, 2015, arts. 1, 38-41, 43, 43a, 47, 87-98, https://perma.cc/8YMF-BENP (in Polish).

[38] Act on Banking of August 29, 1997, art. 171, https://perma.cc/YZ99-5FUJ (in Polish).

[39] Id. art. 171, para. 1.

[40] Act on Personal Data Protection of May 10, 2018, https://perma.cc/M5TS-8UEG (in Polish).

While the act primarily targets individuals, companies can be held liable for the actions of their employees if a data breach occurs due to negligence or lack of proper data protection practices within the organization.[41]

H. Penalties Under Environmental Law

Environmental crimes are prosecuted under criminal law, which includes specific provisions targeting environmental pollution and violations of environmental protection regulations. One such provision states that "anyone who causes significant damage to the plant or animal world shall be liable to imprisonment for a term of six months to eight years."[42]

Chapter XXII (Offenses Against the Environment) of the Criminal Code introduces liabilities for environmental crimes resulting from economic activities that may lead to the production of environmentally harmful waste, dust, gases, liquids, or radioactive substances. It places an emphasis on environmental protection as a "primary good."[43] Under the Criminal Code, collective entities may be held liable for environmental offenses committed by their representatives without the prior requirement of a final conviction of the offender.

Specific liability for companies is established by the Act on Substances that Deplete the Ozone Layer[44] and the Act on Chemical Substances and Preparations.[45] Companies can be held criminally liable under these acts if they intentionally or negligently violate relevant regulations.

While companies can be held liable, the primary responsibility for criminal acts lies with individual members of the management board or employees directly involved in the illegal activities. Detailed regulations are implemented to manage the production, import, export, and usage of dangerous chemicals and ozone depleting substances.[46]

Companies found guilty of violating laws on environmental protections can face significant fines, restrictions on operations, and potential legal consequences for the individuals involved.[47]

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[41] Id. art. 108.

[42] Criminal Code, arts. 181-188.

[43] Criminal Code, Chapter XXII, Offenses against environment.

[44] Act on Substances that Deplete the Ozone Layer and on Certain Fluorinated Greenhouse Gases of May 15, 2015, https://perma.cc/HU78-ZRN7 (in Polish).

[45] Act on Chemical Substances and Preparations of January 11, 2001, art. 1, https://perma.cc/CR67-GEM7 (in Polish).

[46] Act on Substances that Deplete the Ozone Layer and on Certain Fluorinated Greenhouse Gases, arts. 6, 10, 13a; Act on Chemical Substances and Preparations, arts. 31-33.

[47] Act on Substances that Deplete the Ozone Layer and on Certain Fluorinated Greenhouse Gases, arts. 52, 53; Act on Chemical Substances and Preparations, art. 34.

Portugal

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SUMMARY Under the Portuguese Constitution, the state is responsible for ensuring efficient market functioning, promoting balanced competition, preventing monopolies, and addressing practices harmful to the public interest. It encourages business activity, particularly for small and medium-sized enterprises, and oversees compliance with legal obligations.

The Penal Code holds legal entities and anyone who acts in their name or on their behalf liable for criminal activities. Separate legislation establishes the criminal liability of legal entities for corruption crimes practiced in international and private activities and for violations of the rules regulating taxes. A decree-law enacted in 2021 created an entity in charge of preventing corruption and established a regime for preventing it.

I. Constitutional Principles

As stated in article 80(c) of the Portuguese Constitution, the social-economic organization is based, among other things, on the freedom of initiative and business organization within the scope of a mixed economy.[1]

In the economic and social areas, the state is primarily responsible, among other things, for ensuring the efficient functioning of markets, guaranteeing balanced competition between companies, countering monopolistic forms of organization, and repressing abuses of dominant positions and other practices harmful to the general interest.[2]

The state encourages business activity, particularly small and medium-sized companies, and monitors compliance with the respective legal obligations, especially by companies that pursue activities of general economic interest.[3] The state can only intervene in the management of private companies on a transitional basis, in cases expressly provided for by law and, as a rule, upon prior judicial decision.[4]

[1] Constituição da República Portuguesa, VII Revisão Constitucional (2005), art. 80(c), https://perma.cc/N74U-6GKF. An English-language version of the Portuguese Constitution is available on the website of the Portuguese Assembly of the Republic, https://perma.cc/BG94-K943.

[2] Id. art. 81(f).

[3] Id. art. 86(1).

[4] Id. art. 86(2).

II. Penal Code

A. Responsibility of Individuals and Legal Entities

Except as provided in section 2 of article 11 of the Penal Code, in cases specifically provided for by law, only natural persons are subject to criminal liability.[5]

Under Penal Code article 11, section 2, with the exception of the state, legal or equivalent entities exercising the prerogatives of public power and organizations governed by public international law can be liable for the following crimes, among others:

- breach of trust,
- bribery,
- corruption of officials,
- counterfeiting,
- embezzlement,
- extortion,
- fraud,
- influence peddling,
- money laundering,
- perjury,
- sex trafficking,
- sexual abuse of minors and other vulnerable persons,
- slavery,
- theft,
- trafficking in human organs,
- usury, and
- violation of safety rules.

Legal or equivalent entities incur liability when a crime is committed

> a) In their name or on their behalf and in their direct or indirect interest for people who occupy a leadership position within them; or

[5] Código Penal, Decreto-Lei No. 48/95, de 15 de Março, as amended by Lei No. 15/2024, de 29 de Janeiro, art. 11(1), https://perma.cc/8GAQ-YVL2.

> b) By anyone acting in their name or on their behalf and in their direct or indirect interest, under the authority of the people referred to in the previous paragraph, due to violation of the duties of surveillance or control incumbent on them.[6]

It is understood that the bodies and representatives of a legal entity and whoever has the authority to exercise control over its activity occupy a leadership position, including non-executive members of the management body and members of the supervisory body.[7]

For the purposes of criminal liability, entities equivalent to legal entities are civil societies and de facto associations.[8]

A legal or equivalent entity is not liable when its agent has acted against express orders or instructions from those entitled to issue them.[9]

The responsibility of legal entities and equivalent entities does not exclude the individual responsibility of their agents, nor does it depend on their liability.[10]

> A legal or equivalent entity's split or merger does not extinguish criminal liability. A legal or equivalent entity resulting from a merger can still be held liable for the commission of the crime, as can those resulting from a split.[11]

Section 9 of article 11 states that, without prejudice to the right of recourse (*direito de regresso*), people occupying a leadership position are subsidiarily responsible for the payment of fines and compensation for which the legal or equivalent entity is held liable, in relation to crimes

> a) Carried out during the period of exercise of the position, without your express opposition;
>
> b) Previously committed, when it was their fault that the assets of the legal entity or equivalent entity became insufficient for the respective payment; or
>
> c) Previously practiced, when the definitive decision to apply them was notified during the period of exercise of their position and the lack of payment is attributable to them.[12]

Under the terms of section 9 of article 11, where several people are responsible, their responsibility is joint and several.[13] If fines or compensation are applied to an entity without legal

[6] Id. art. 11(2).

[7] Id. art. 11(4).

[8] Id. art. 11(5).

[9] Id. art. 11(6).

[10] Id. art. 11(7).

[11] Id. art. 11(8).

[12] Id. art. 11(9).

[13] Id. art. 11(10).

personality, they must be paid out of the common assets and, if these are insufficient, from the assets of each member, jointly.[14]

B. Sanctions

Chapter VI of the Penal Code (arts. 90-A to 90-M) defines the sanctions for legal entities. Article 90-A states that, for the crimes provided for in section 2 of article 11 of the Penal Code, the main penalties of fine or dissolution apply to legal and equivalent entities.[15]

For the same crimes and those provided for in special legislation, the following additional penalties may be applied to legal entities and equivalent entities:

- judicial injunction,
- prohibition against carrying out activities,
- prohibition against entering into certain contracts or agreements with certain entities,
- deprivation of the right to subsidies, grants, or incentives,
- closure of an establishment, and
- publication of the sentencing decision.[16]

For the same crimes and those provided for in special legislation, the following substitute penalties may be applied to legal equivalent entities, as an alternative to a fine:

- admonition,
- good conduct bail, and
- judicial surveillance.[17]

The court specially mitigates the penalty, in accordance with article 73 of the Penal Code (special mitigation terms) and in addition to the cases expressly provided for by law, in accordance with the provisions of article 72 (special mitigation of the punishment), taking into consideration measures that the legal or equivalent entity adopted and implemented before the commission of the crime to prevent such crimes.[18]

The court applies an additional punishment with the main or substitute punishment whenever it is appropriate and necessary to achieve the purposes of the punishment, notably because the legal

[14] Id. art. 11(11).

[15] Id. art. 90-A(1).

[16] Id. art. 90-A(2).

[17] Id. art. 90-A(3).

[18] Id. art. 90-A(4).

entity has not yet adopted and implemented an adequate regulatory compliance program to prevent the practice of the crime or crimes of the same type.[19]

The court replaces the fine with an alternative punishment that adequately and sufficiently achieves the purposes of the punishment, considering the adoption or implementation by the legal entity or equivalent entity of a regulatory compliance program appropriate to prevent the commission of the crime or crimes of the same type.[20]

1. Fines

The minimum and maximum limits of the fine applicable to legal entities and equivalent entities are determined taking as a reference the prison sentence provided for natural persons.[21] One month of imprisonment corresponds, for legal and equivalent entities, to 10 fine days.[22] Whenever the punishment applicable to natural persons is determined exclusively or alternatively in a fine, the same fine days apply to legal or equivalent entities.[23]

The fine is set in days, in accordance with the criteria established in section 1 of article 71 of the Penal Code (determination of the fine), and if, after commission of the violation, the legal entity has adopted and executed until the date of the hearing of instruction a regulatory compliance program with suitable control and surveillance measures to prevent crimes of the same nature or to significantly reduce the risk of their occurrence, that will be taken into account.[24]

Each fine day corresponds to an amount between 100 euros (€) (about US$105) and €10,000 (about US$10,487), which the court sets depending on the economic and financial situation of the convicted legal entity and its burden on the workers, with the provisions of sections 3 to 5 of article 47 of the Penal Code (deadlines for paying the fine) being applicable.[25]

Once the deadline for paying the fine or any of its installments has passed without payment being made, the assets of the legal entity or equivalent entity will be executed.[26] A fine that is not paid voluntarily or coercively cannot be converted into subsidiary imprisonment.[27]

[19] Id. art. 90-A(5).

[20] Id. art. 90-A(6).

[21] Id. art. 90-B(1).

[22] Id. art. 90-B(2).

[23] Id. art. 90-B(3).

[24] Id. art. 90-B(4).

[25] Id. art. 90-B(5).

[26] Id. art. 90-B(6).

[27] Id. art. 90-B(7).

2. Admonition

According to article 90-C of the Penal Code, if a legal entity or equivalent entity must be subject to a fine of no more than 240 days, the court may limit itself to issuing a warning, applying correspondingly the provisions of sections 2 and 3 of article 60 of the Penal Code (admonition).[28] The admonition consists of solemn oral censure given in a hearing, by the court, to the legal representative of the legal entity or equivalent entity or, failing that, to another person who occupies a leadership position within it.[29]

3. Good Conduct Bail

If a legal entity or equivalent entity must be subject to a fine of no more than 600 days, the court may replace it with a good conduct bail, between €1,000 and €1 million (about US$1,050 to US$1.05 million), for a period of one to five years.[30] The bail is forfeited to the state if the legal equivalent entity commits a new crime for which it is convicted within the period and will be returned if no new crime is committed.[31] Bail can be provided by means of a deposit, pledge, mortgage, or bank guarantee.[32] The court revokes the good conduct bail punishment and orders compliance with the fine determined in the sentence if the legal entity or equivalent entity does not provide bail within the set period.[33]

4. Judicial Surveillance

If a legal entity or equivalent entity is subject to a fine of no more than 600 days, the court may limit itself to ordering its monitoring by a judicial representative, for a period of one to five years, so that the representative may carry out inspections of the activity that led to the conviction, as well as inspections of effective compliance with a regulatory compliance program with suitable control and surveillance measures to prevent crimes of the same nature or to significantly reduce the risk of their occurrence.[34]

The court may limit itself to determining the monitoring of the legal or equivalent entity by a judicial representative, for a period of one to five years, so that this controls the adoption or implementation of a regulatory compliance program appropriate to preventing the commission of the crime or crimes of the same type.[35]

[28] Id. art. 90-C(1).

[29] Id. art. 90-C(2).

[30] Id. art. 90-D(1).

[31] Id. art. 90-D(2).

[32] Id. art. 90-D(3).

[33] Id. art. 90-D(4).

[34] Id. art. 90-E(1).

[35] Id. art. 90-E(2).

The judicial representative does not have power to manage the legal entity or equivalent entity.[36] The judicial representative informs the court of the evolution of the activity of the legal entity or equivalent entity every six months or whenever deemed necessary.[37]

The court revokes the penalty of judicial surveillance and orders compliance with the fine determined in the sentence if the legal entity or equivalent entity

- commits a crime after conviction, demonstrating that the purposes of the judicial surveillance sentence could not be achieved through it, or

- fails to adopt or implement the regulatory compliance program.[38]

5. Dissolution

The penalty of dissolution is decreed by the court when the legal or equivalent entity was created with the exclusive or predominant intention of committing the crimes indicated in section 2 of article 11 of the Penal Code or when the repeated practice of such crimes shows that the legal or equivalent entity is being used, exclusively or predominantly, for this purpose, by whoever occupies a leadership position in it.[39]

6. Judicial Injunction

The court may order the legal or equivalent entity to take the following steps:

> a) The adoption and execution of certain measures, especially those necessary to cease the illicit activity or avoid its consequences; or
>
> b) The adoption and implementation of a regulatory compliance program with appropriate control and surveillance measures to prevent crimes of the same nature or to significantly reduce the risk of their occurrence.[40]

The court determines the period within which the legal or equivalent entity must comply with the injunction after the sentence becomes final.[41] The punishment of judicial injunction is cumulative with the additional punishments of prohibition to enter into contracts and deprivation of the right to subsidies, grants, or incentives.[42]

[36] Id. art. 90-E(3).

[37] Id. art. 90-E(4).

[38] Id. art. 90-E(5).

[39] Id. art. 90-F.

[40] Id. art. 90-G(1).

[41] Id. art. 90-G(2).

[42] Id. art. 90-G(3).

7. Prohibition Against Entering into Contracts

The prohibition against entering into certain contracts or contracts with certain entities is applicable, for a period of one to five years, to legal or equivalent entities.[43]

8. Deprivation of the Right to Subsidies, Grants, or Incentives

The deprivation of the right to subsidies, grants or incentives granted by the state and other public legal entities is applicable, for a period of one to five years, to legal entities or equivalent entities.[44]

9. Prohibition of Carrying Out Activities

Article 90-J of the Penal Code states that the prohibition of the exercise of certain activities may be ordered by the court, for a period of three months to five years, when the crime has been committed in the exercise of those activities.[45] When a legal entity or equivalent entity commits a crime punishable by a fine of more than 600 days, the court may order the definitive ban on certain activities.[46] In this case, the court may rehabilitate the legal entity or equivalent entity if it has conducted itself, for a period of five years after serving the main sentence, in a manner that makes it is reasonable to assume that it will not commit new crimes.[47]

10. Closure of Establishment

Article 90-L determines that the closure of an establishment may be ordered by the court, for a period of three months to five years, when an infraction was committed within the scope of the respective activity.[48] When a legal or equivalent entity commits a crime punishable by a fine of more than 600 days, the court may order the definitive closure of the establishment.[49] In this case, the court may rehabilitate the legal or equivalent entity and authorize the reopening of the establishment if it has been carried out, for a period of five years after the main sentence has been served, in a way that makes it is reasonable to assume that it will not commit new crimes.[50]

The application of the punishment of closure does not prevent the transfer of the establishment or the assignment of rights of any nature, related to the exercise of the activity, carried out after the initiation of the process or after the commission of the crime, unless the acquirer is in good faith.[51]

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[43] Id. art. 90-H.

[44] Id. art. 90-I.

[45] Id. art. 90-J(1).

[46] Id. art. 90-J(2).

[47] Id. art. 90-J(3).

[48] Id. art. 90-L(1).

[49] Id. art. 90-L(2).

[50] Id. art. 90-L(3).

[51] Id. art. 90-L(4).

The closure of the establishment does not constitute a just cause for the dismissal of workers nor a basis for the suspension or reduction of the payment of their respective remuneration.[52]

11. Publicizing the Sentencing Decision

The sentencing decision is always published in cases where the penalties provided for in articles 90-C, 90-J, and 90-L of the Penal Code are applied and may also be published in other cases.[53]

Whenever the punishment of publicity of the sentencing decision is applied, this is carried out, at the expense of the convicted entity, in a means of social communication to be determined by the court, as well as through the posting of a notice, for a period of not less than 30 days, in the commercial or industrial establishment itself or at the place where the activity is carried out, in a manner clearly visible to the public.[54]

Publicizing the sentencing decision is made by means of an extract, which contains the elements of the infraction and the sanctions applied, as well as the identification of legal entities or equivalent entities.[55]

III. Law No. 83 of August 18, 2017

Law No. 83 of August 18, 2017, establishes preventive and repressive measures to combat money laundering and the financing of terrorism.[56] Law No. 83 defines money laundering as the conduct detailed and punished by article 368-A of the Penal Code.[57] Articles 3 and 4 list the financial and nonfinancial entities, including persons and professions, that are subject to Law No. 83.[58]

IV. Law No. 20 of April 21, 2008

Law No. 20 of April 21, 2008, establishes the criminal liability regime for corruption crimes committed in international trade and private activity.[59] Legal and equivalent entities are liable, in general terms, for the crimes described in Law No. 20.[60] The punishments provided in Law No. 20 can only apply if the act does not incur a more severe punishment under another legal

[52] Id. art. 90-L(5).

[53] Id. art. 90-M(1).

[54] Id. art. 90-M(2).

[55] Id. art. 90-M(3).

[56] Lei No. 83/2017, de 18 de Agosto, art. 1, https://perma.cc/X2X7-TEC2.

[57] Id. art. 2(1)(j)(i).

[58] Id. art. 83.

[59] Lei No. 20/2008, de 21 de Abril, art. 1, https://perma.cc/FF7J-UHNV.

[60] Id. art. 4.

provision.[61] The provisions of the Penal Code must apply subsidiarily to the crimes detailed in Law No. 20.[62]

A. Crimes

1. Active Corruption to the Detriment of International Trade

According to article 7 of Law No. 20, anyone who personally or through an intermediary with their consent or ratification,

> gives or promises to a national, foreign or international organization official, or to a national or foreign political office holder, or to a third party with their knowledge, a financial or nonfinancial advantage, which is not due to him, in order to obtain or retain a business deal, a contract or other undue advantage in international trade, must be punished with a prison sentence of one to eight years.[63]

2. Passive Corruption in the Private Sector

Article 8 of Law No. 20 states that any private sector employees who personally or through an intermediary with the employees' consent or ratification request or accept a financial or nonfinancial advantage for themselves or a third party that is not due to them for any act or omission violating their duties must be punished with a prison sentence of up to five years or a fine of up to 600 days.[64] If the act or omission is likely to cause a distortion of competition or financial loss to third parties, the perpetrator must be punished with a prison sentence of one to eight years.[65]

3. Active Corruption in the Private Sector

Anyone who personally or through an intermediary with the consent or ratification of the perpetrator gives or promises someone a bribe in exchange for a financial or nonfinancial advantage that is not due to them must be punished with a prison sentence of up to three years or a fine.[66] If the conduct is intended to obtain or is likely to cause a distortion of competition or financial loss to third parties, the perpetrator must be punished with a prison sentence of up to five years or a fine of up to 600 days.[67] An attempted bribery is punishable.[68]

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[61] Id. art. 6(1).

[62] Id. art. 6(2).

[63] Id. art. 7.

[64] Id. art. 8(1).

[65] Id. art. 8(2).

[66] Id. art. 9(1).

[67] Id. art. 9(2).

[68] Id. art. 9(3).

B. Combating Corruption and Economic and Financial Crime

The conduct described in article 7 of Law No. 20 is considered a crime of corruption for the purposes of the provisions of article 1(1)(a) of Law No. 36 of September 29, 1994 (undue receipt or offering of advantage, corruption, embezzlement, and economic participation in business), which establishes measures to combat corruption and economic and financial crime.[69]

V. Decree-Law No. 20-A of January 15, 1990

Decree-Law No. 20-A of January 15, 1990, approved the legal framework for non-customs tax offenses.[70] It applies to violations of the rules regulating taxes and other tax payments.[71] The legal framework encompasses tax violations of the rules regulating personal income tax, corporate income tax, and municipal contributions as well as other taxes, regardless of their nature and the identity of the tax creditor, and also the rules of the tax benefits statute.[72] For the purposes of the framework, any typical, unlawful and negligent act, declared punishable by a previous tax law, constitutes a tax infraction.[73]

A. Criminal Liability of Legal Entities

Legal entities and similar entities are responsible for the crimes provided for in the legal framework when committed by their bodies or representatives, in their name and in the collective interest.[74] The liability of the entities does not exclude the individual liability of their respective agents.[75] The liability of a legal entity is excluded when its agent has acted against express orders or instructions from the person entitled to issue them.[76]

B. Punishments Applicable to Tax Crimes

The penalties applicable to tax crimes are a fine of up to 1,000 days and alternative imprisonment in case of nonpayment of the fine.[77] The determination of the extent of the punishment, within the limits defined by law, will be made in accordance with the applicable provisions of the Penal Code and considering, whenever possible, the damage suffered by the National Treasury.[78]

[69] Id. art. 10; Lei No. 36/94, de 29 de Setembro, https://perma.cc/37KH-C9HK.

[70] Decreto-Lei No. 20-A/90, de 15 de Janeiro, art. 1, https://perma.cc/6TM7-53ZF.

[71] Id. ANNEXO, art. 1(1).

[72] Id. art. 1(2).

[73] Id. art. 2.

[74] Id. art. 7(1).

[75] Id. art. 7(3).

[76] Id. art. 7(2).

[77] Id. art. 9.

[78] Id. art. 10(1).

However, the alternative system of imprisonment for unpaid fines does not apply when a legal entity or tax-equivalent entity is responsible.[79]

C. Fines

The fine is set in days, with a minimum of 10 and a maximum of 1,000.[80] Each daily fine corresponds to an amount between 1,000 and 100,000 Portuguese escudos, in the case of a natural person, and between 5,000 and 500,000, in the case of legal entities or tax-equivalent entities, which the court will set based on the economic and financial situation of the convicted person and his personal expenses.[81] There are no additional charges applied to the fine.[82]

The following additional punishments are also applicable to tax crimes:

> a) Deprivation of the right to receive subsidies or grants granted by public entities or services;
>
> b) Suspension of tax benefits granted unilaterally by the tax administration or prohibition of obtaining them;
>
> c) Prohibition of the exercise of activities that depend on a public title or authorization or approval from a public authority.[83]

These punishments may not last more than three years from the final conviction.[84]

> The punishments referred to in items a) and b), of paragraph 1 [above], must specify both the subsidies and tax benefits affected by the conviction, and may only, in either case:
>
> a) Recur on patrimonial powers granted to the convicted person and directly related to the duties whose violation was criminally punished;
>
> b) Relate to tax incentives that are not inherent to the legal regime applicable to the benefited thing or right.[85]

These punishments may only be applied if the other conditions set out in the provisions of the Penal Code are met and when the agent is convicted of a tax crime and sentenced to a fine of more

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[79] Id. art. 10(2).

[80] Id. art. 11(1).

[81] Id. art. 11(2). The currency in Portugal was the Portuguese escudo until January 1, 1999, when the euro was introduced in the country. The Portuguese escudo was removed from circulation on February 28, 2022. At the time of the changeover, 10,000 escudos were worth approximately 50 euros. *Portuguese Escudo*, eXchangeRate.com, https://perma.cc/W3GP-E86R.

[82] Decreto-Lei No. 20-A/90 art. 11(3).

[83] Id. art. 12(1).

[84] Id. art. 12(2).

[85] Id. art. 12(3).

than 100 days.[86] Compliance with a fine never exempts a person from paying the tax due and legal additions.[87]

D. Tax Crimes

1. Tax Fraud

Whoever, with the intention of obtaining undue financial advantage for himself or for another,

> a) Conceals or alters facts or values that must be included in the declarations that, for tax purposes, are presented or provided so that the tax administration, specifically, determines, evaluates, or controls the taxable base; or
>
> b) Enters into a simulated legal transaction, whether in terms of value or nature, or through the interposition, omission, or replacement of persons, aimed at reducing tax revenue or obtaining an unjustified tax benefit, will be punished with a fine of up to 1000 days.[88]

2. Abuse of Tax Trust

Whoever, with the intention of obtaining for himself or for another an undue financial advantage and being legally obliged to deliver to the tax creditor the tax contribution that he deducted under the terms of the law, fails to make such delivery in whole or in part, must be punished with a fine of up to 1,000 days.[89] For these purposes, the tax benefit must also be considered to be that which was deducted on behalf of the taxpayer as well as that which, having been received, there is a legal obligation to pay, in cases where the law so provides.[90] These provisions are applicable even if the deducted benefit is of a parafiscal nature and can be paid independently.[91]

3. Frustration of Tax Credits

Anyone who, knowing that he must pay a tax already collected or in the process of being assessed, sells, damages, hides, makes disappear or encumbers his assets with the intention of, in this way, frustrating, in whole or in part, the collection of the tax will be punished with a fine of up to 1,000 days.[92]

VI. Decree-Law No. 109-E of December 9, 2021

Decree-Law No. 109-E of December 9, 2021, creates the National Anti-Corruption Mechanism (*Mecanismo Nacional Anticorrupção*, MENAC), an independent administrative entity, with legal personality under public law and powers of authority, endowed with administrative and

[86] Id. art. 12(4).

[87] Id. art. 17.

[88] Id. art. 23(1).

[89] Id. art. 24(1).

[90] Id. art. 24(2).

[91] Id. art. 24(3).

[92] Id. art. 25.

financial autonomy, which carries out activities at the national level in the field of preventing corruption and related offenses,[93] and it establishes the general regime for preventing corruption (*regime geral da prevenção da corrupção*, RGPC).[94]

A. Scope of Application of the RGPC

The RGPC is applicable to legal entities with headquarters in Portugal that employ 50 or more workers and to branches in the national territory of legal entities with headquarters abroad that employ 50 or more workers.[95] The RGPC is also applicable to services and legal entities of the direct and indirect administration of the state, autonomous regions, local authorities, and the public business sector that employ 50 or more workers as well as independent administrative entities that regulate economic activity in the private, public, and cooperative sectors and the Bank of Portugal, without prejudice to the provisions of Section 4 of Decree-Law No. 109-E.[96]

The Banco de Portugal is not subject to the provisions of the RGPC regarding matters relating to its participation in the performance of the tasks assigned to the European System of Central Banks.[97]

B. Definition of Corruption and Related Offenses

For the purposes of the RGPC, corruption and related offenses are understood to be the crimes of corruption, undue receipt and offering of advantage, embezzlement, "economic participation in business," extortion, abuse of power, malfeasance, influence peddling, money laundering or fraud in obtaining funds or diversion of a subsidy, grant, or credit, as detailed in

- the Penal Code,
- Law No. 34 of July 16, 1987 (crimes of responsibility of political office holders),
- the Code of Military Justice (Law No. 100 of November 15, 2003),
- Law No. 50/2007, of August 31 (criminal liability regime for behaviors likely to affect the truth, fairness, and correction of the competition and its outcome in a sporting activity),
- Law No. 20 of April 21, 2008, and
- Decree-Law No. 28 of January 20, 1984 (anti-economic and public health violations).[98]

C. Regulatory Compliance Program

The covered entities adopt and implement a regulatory compliance program that includes, at the least, a plan for preventing risks of corruption and related offenses (*plano de prevenção de riscos de*

[93] Decreto-Lei No. 109-E/2021, de 9 de Dezembro, art. 1(a), https://perma.cc/MR2X-2TC9.

[94] Id. art. 1(b).

[95] Id. ANNEXO, art. 2(1).

[96] Id. art. 2(2).

[97] Id. art. 2(4).

[98] Id. art. 3.

corrupção e infrações conexas, PPR), a code of conduct, a training program, and a reporting channel, to prevent, detect, and sanction acts of corruption and related offenses, carried out against or through the entity.[99]

The entities covered must designate, as a senior management member or equivalent, a person responsible for regulatory compliance, who ensures and monitors the application of the regulatory compliance program.[100] The person responsible for regulatory compliance performs the functions independently, permanently, and with decision-making autonomy, and must be assured by the respective entity that they have the internal information and the human and technical resources necessary for the good performance of this function.[101] If the entities covered are in a group relationship, a single person responsible for regulatory compliance may be designated.[102]

D. Corruption Risk Prevention Plan

According to section 1 of article 6 of Decree-Law No. 109-E, the entities covered must adopt and implement a PPR that covers their entire organization and activity, including administration, management, and operational or support areas, and that contains

> a) The identification, analysis and classification of risks and situations that may expose the entity to acts of corruption and related infractions, including those associated with the exercise of functions by the holders of administrative and management bodies, considering the reality of the sector and the geographical areas in which the entity operates;
>
> b) Preventive and corrective measures that reduce the probability of occurrence and the impact of the risks and situations identified.[103]

Section 2 of article 6 states that the PPR must include

> a) The areas of activity of the entity at risk of committing acts of corruption and related offenses;
>
> b) The probability of occurrence and the foreseeable impact of each situation, to allow the grading of risks;
>
> c) Preventive and corrective measures that reduce the probability of occurrence and the impact of the risks and situations identified;
>
> d) In situations of high or maximum risk, the most exhaustive prevention measures, with their implementation being a priority;

[99] Id. art. 5(1).

[100] Id. art. 5(2).

[101] Id. art. 5(3).

[102] Id. art. 5(4).

[103] Id. art. 6(1).

e) The designation of the person generally responsible for the execution, control, and review of the PPR, who may be responsible for regulatory compliance.[104]

E. Code of Conduct

Article 7 of Decree-Law No. 109-E states that the entities covered must adopt a code of conduct that establishes the set of principles, values, and rules of action for all managers and workers in terms of professional ethics, considering the criminal standards applying to corruption and related offenses and the risks of exposure of the entity to these crimes.[105]

The code of conduct identifies, at a minimum, the disciplinary sanctions that, under the law, may be applied in the event of noncompliance with the rules contained therein and the criminal sanctions associated with acts of corruption and related infractions.[106]

F. Reporting Channels

The entities covered must have internal reporting channels and follow up on reports of acts of corruption and related offenses in accordance with the provisions of the legislation transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019, on the protection of persons reporting breaches of European Union law.[107]

The entities covered are liable for the infringements provided for in the legislation transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019, especially regarding noncompliance with the reporting provisions, under the terms provided for in the legislation.[108]

G. Training and Communication

The entities covered must ensure that internal training programs are carried out for all their managers and employees, with a view to ensuring that they are aware of and understand the policies and procedures implemented to prevent corruption and related offenses.[109] The content and frequency of training for managers and workers must consider the different exposure of managers and workers to the identified risks.[110]

H. Internal Control System

According to section 1 of article 15 of Decree-Law No. 109-E, the public entities covered must implement an internal control system proportional to the nature, size, and complexity of the entity and the activity

[104] Id. art. 6(2).

[105] Id. art. 7(1).

[106] Id. art. 7(2).

[107] Id. art. 8(1).

[108] Id. art. 8(2).

[109] Id. art. 9(1).

[110] Id. art. 9(2).

it pursues, and which is based on appropriate risk management, information, and communication models, in all areas of intervention, especially those identified in the respective PPR.[111]

I. Infringements

Section 1 of Article 20 of Decree-Law No. 109-E states that, without prejudice to any civil, disciplinary, or financial liability that may apply, the following is punishable as an infringement (*contraordenação*):

> a) Failure to adopt or implement a PPR or the adoption or implementation of a PPR lacking one or more of the elements referred to in sections 1 and 2 of article 6 of Decree-Law No. 109-E;
>
> b) Failure to adopt a code of conduct or the adoption of a code of conduct that does not consider criminal standards relating to corruption and related offenses or the risks of the entity's exposure to these crimes, pursuant to section 1 of article 7 of Decree-Law No. 109-E;
>
> c) Failure to implement an internal control system, as provided for in Section 1 of article 15 of Decree-Law No. 109-E;[112]

Such infringements are punishable by a fine

- ranging from €2,000.00 to €44,891.81 (about US$2,068 to US$46,412), in the case of a legal or equivalent entity, and
- up to €3,740.98 (about US$3,868), in the case of individuals.[113]

J. Liability for Infringements

Individuals and legal or equivalent entities are liable for the commission of the offenses provided for in the RGPC, in accordance with the following paragraphs.[114]

Legal or equivalent entities are liable for the infractions detailed in Decree-Law No. 109-E when the acts have been committed by the "holders of their bodies," agents, representatives, or workers in the exercise of their respective functions or in their name and on their behalf.[115] The liability of the legal or equivalent entity is excluded when the agent acts against the entity's express orders or instructions.[116]

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[111] Id. art. 15(1).

[112] Id. art. 20(1).

[113] Id. art. 20(2). Article 20 of Decree-Law No. 109-E further defines other infringements and corresponding fines.

[114] Decreto-Lei No. 109-E/2021 art. 21(1).

[115] Id. art. 21(2).

[116] Id. art. 21(3).

The "holders of the administrative body" or directors of legal or equivalent entities, the person responsible for regulatory compliance, and those responsible for the management or supervision of areas of activity in which an administrative infraction is committed are responsible for the infractions defined in Decree-Law No. 109-E when they commit the acts or when they knowingly or negligently fail to adopt the appropriate measures to put an end to them immediately.[117] The liability of legal entities does not exclude or depend on the individual liability of these individuals.[118]

K. Subsidiary Liability

The "holders of the management body" or directors of legal or equivalent entities are subsidiarily liable:

> a) For the payment of fines applied for infractions committed prior to the period of office, when through their fault the assets of the legal entity or equivalent entity have become insufficient for payment;
>
> b) For the payment of fines applied for infractions committed prior to the same period, when the final decision applying them is notified during the period of exercise of the position and the lack of payment is attributable to them.[119]

If there are several people responsible under the terms of the previous paragraph, their liability is joint and several.[120] Insufficient assets are presumed, in particular, in the event of a declaration of insolvency and dissolution and closure of liquidation.[121]

L. Additional Sanctions

Legal entities governed by private law that commit any of the offenses provided for in section 1 of article 20 of Decree-Law No. 109-E may be subject to the additional sanction of publicizing the conviction, due to the seriousness of the act and the respective guilt.[122] The publication of the conviction is made, in full or in extract, at the expense of the offender, especially in a national, regional, or local newspaper, whichever is most appropriate, as well as on the official MENAC website for a period of 90 days.[123]

[117] Id. art. 21(4).

[118] Id. art. 21(5).

[119] Id. art. 22(1).

[120] Id. art. 22(2).

[121] Id. art. 22(3).

[122] Id. art. 23(1).

[123] Id. art. 23(2).

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SUMMARY Law No. 11 of 2004 Issuing the Penal Code holds corporate entities criminally liable for offenses committed by their representatives, managers, and agents acting on their behalf or in their name. Furthermore, Law No. 11 of 2015 Promulgating the Commercial Companies Law, Law No. 13 of 2016 Promulgating Personal Data Privacy Protection Law, Law No. 24 of 2018 Promulgating the Income Tax Law, and Law No. 30 of 2002 Issuing the Environmental Protection Law impose fines against corporate entities who violate their provisions.

I. Law No. 11 of 2004 Issuing the Penal Code

Law No. 11 of 2004 holds corporate entities criminally liable for offenses committed by their representatives, managers, and agents acting on their behalf or in their name, with a fine not exceeding a maximum limit of QAR 500,000 (approx. US$137,400). This does not negate the individual perpetrator's liability, who may be subject to the appropriate penalty set out in law.[1]

II. Law No. 11 of 2015 Promulgating the Commercial Companies Law

If a company violates the provisions of this law or its implementing decisions, the corporate entity shall be investigated, and disciplinary sanctions may be imposed, including the following: (1) notification; (2) reprimand; (3) prohibition of the violator (whether the chairperson, board member, manager, or representative) from working, either permanently or for a specific period; (4) imposition of a fine not exceeding QAR 10,000 (approx. US$2,750) per day for an ongoing violation; and/or (5) imposition of a fine not exceeding QAR 1 million (approx. US$275,000).[2]

III. Law 20 of 2019 on Combatting Money Laundering and Terrorism Financing

Law No. 2 of 2019, as amended, imposes a penalty on corporate entities for offenses committed by their representatives, managers, or agents acting on their behalf, or authorized to exercise authority in their name, with a fine no less than QAR 4 million (approx. US$1.1 million), and no more than QAR 8 million (approx. US$2.2 million), or three times the maximum fine prescribed for the crime committed, whichever is greater.

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[1] Law No. 11 of 2004 Issuing the Penal Code, as amended, art. 37, Al-Jarīdah al-Rasmīyah (Official Gazette) at 67, vol. 7, May 30, 2023, https://perma.cc/QX6L-LKH4 (in Arabic), https://perma.cc/7RVH-9Y52 (English translation).

[2] Law No. 11 of 2015 Promulgating the Commercial Companies Law, as amended by Law No. 8 of 2021, art. 324(1), Al-Jarīdah al-Rasmīyah at 63, vol. 10, Aug. 8, 2021, https://perma.cc/M3P2-8QE4 (in Arabic), https://perma.cc/9VLC-RXZM (English translation).

Without prejudice to the individual perpetrator's liability, a corporate entity may be prohibited from conducting its commercial activities, either directly or indirectly, permanently or temporarily. Alternatively, its business operations may be suspended either temporarily or permanently, or the entity may be subject to liquidation, or a judicial guardian may be appointed to manage its assets. The judgment of conviction shall be published at the entity's own expense in two daily newspapers.[3]

IV. Law. No 14 of 2014 on Cybercrime Prevention Law

In accordance with the provisions of the Cybercrime Prevention Law**,** corporate entities are penalized with a fine not exceeding QAR 1 million if one of the crimes stipulated in the law is committed in their name or on their behalf.[4]

In all cases, and without prejudice to the rights of bona fide third parties, the law mandates the confiscation of devices, programs, or equipment used in committing any of the stipulated crimes, as well as the confiscation of any funds obtained from such crimes. The law also orders the closure of the offices of the violating entity or the blocking of the website where the crimes were committed.[5]

V. Law No. 13 of 2016 Promulgating Personal Data Privacy Protection Law

In accordance with Law No. 13 of 2016, and without prejudice to the liability of natural persons, corporate entities shall be penalized with a fine not exceeding QAR 1 million if one of the crimes stipulated in the law is committed in their name or on their behalf.[6]

VI. Law No. 24 of 2018 Promulgating the Income Tax Law

Law No. 24 of 2018, as amended in 2022, holds corporate entities criminally liable if they use fraudulent methods, forge any books, registers, documents, or statements, commit any of the crimes in the law, intentionally avoid tax registration, or take any action to prevent the employees of the General Tax Authority from performing their duties. In such cases, the corporate entity may be subject to a fine not exceeding three times the amount of tax due.[7]

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[3] Law No. 20 of 2019 on Combatting Money Laundering and Terrorism Financing, as amended in 2021, art. 77, Al-Jarīdah al-Rasmīyah at 60, 61, vol. 19, Sept. 25, 2019, https://perma.cc/2BRW-SKDB (in Arabic), https://perma.cc/6DLH-6XDD (English translation).

[4] Law. No. 14 of 2014 on Cybercrime Prevention Law, art. 48, Al-Jarīdah al-Rasmīyah at 33, vol. 15, Oct. 2, 2014, https://perma.cc/P2B3-JQ25 (in Arabic), https://perma.cc/B8DU-DCXM (English translation).

[5] Id. art. 53.

[6] Law No. 13 of 2016 promulgating the Personal Data Privacy Protection Law, art. 25, Al-Jarīdah al-Rasmīyah at 26, 27, vol. 1, Jan. 17, 2019, https://perma.cc/D7RL-2N7H (in Arabic), https://perma.cc/2TRX-FY2L (English translation).

[7] Law No. 24 of 2018 Promulgating Income Tax Law, as amended, art. 26, Al-Jarīdah al-Rasmīyah at 15, vol. 15, Dec. 29, 2016, https://perma.cc/SMP4-YBTX (in Arabic), https://perma.cc/QLV4-5K3N (English translation).

Additionally, corporate entities that fail to pay the tax within the periods prescribed by law or fail to remit the amount of tax deducted by the specified dates, shall be subject to a financial penalty of 2% of the due tax amount for each month of delay or part thereof, provided that the penalty does not exceed the total tax due.[8]

VII. Law No. 30 of 2002 Issuing the Environmental Protection Law

If a corporate entity, under its name and for its benefit, violates the provisions of this law, its legal representative shall be criminally liable as an accomplice and subject to the penalties stipulated in this law.[9] The statutory minimum fine for violating Law No. 30 of 2002 is QAR 1,000 (approx. US$275), while the maximum fine is QAR 500,000. The term of imprisonment may extend up to a maximum of three years.[10]

The legal representative of the corporate entity shall be exempt from punishment if it is proven that the offense occurred without his or her knowledge, under compulsion, or to his or her detriment, or if another person acted on his or her behalf in exercising authority, or if he or she made reasonable efforts to prevent the offense but was unsuccessful.[11]

[8] Id. art. 24(2).

[9] Law No. 30 of 2002 Issuing the Environmental Protection Law, art. 74, Al-Jarīdah al-Rasmīyah at 287, vol. 11, Sept. 29, 2002, https://perma.cc/Q96Y-VDCK (in Arabic), https://perma.cc/GM7C-QZ9Z (English translation).

[10] Id. arts. 67-71.

[11] Id. art. 74.

Saudi Arabia

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SUMMARY In Saudi Arabia, the Law on Combating Bribery, the Law on the Environment, the Law on Anti-commercial Fraud, the Law on Trademark, and the Law on Anti-cybercrime, among others, impose fines on corporate entities.

I. Law on Combating Bribery

The Law on Combating Bribery of June 6, 1992, sanctions a corporation, which is held criminally liable when one of its employees or a managing director commits the crime of bribery for the corporation's benefit. The law stipulates that when the managing director or an employee of a company is convicted of committing the offense of bribery for its benefit, the company must pay a fine not exceeding 10 times the value of the bribe and must be banned from entering public procurements and public contracts with ministries and government entities. However, the Council of Ministers (Cabinet) may abolish this ban upon the lapse of at least five years from the date of the court conviction.[1] It is important to note that criminal penalties do not apply to legal persons (corporations) unless they are determined by codified legislation.

II. Law on the Environment

The Law on the Environment of July 19, 2020, imposes a variety of penalties on corporations that commit the offense of polluting the environment. These penalties are based on the magnitude of the crime. For instance, corporations polluting the environment could pay a fine not exceeding 20 million Saudi Riyals (about US$5.3 million). The Ministry of the Environment may also cancel its permission for a corporation that impacted the environment negatively to operate in a specific field. Also, the ministry might suspend this permission until the corporation rectifies the environmental violation.[2]

III. Law on Anti-cybercrime

The Anti-cybercrime law of March 27, 2007, orders the confiscation of tools and equipment of corporations providing internet services for committing a cybercrime. The law also orders the closure of the offices of the violating corporation and the suspension of its commercial activities.[3]

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[1] Anti-bribery Law Promulgated by Royal Decree No. M/36 (June 6, 1992), art. 19, Bureau of Experts of the Saudi Cabinet, https://perma.cc/P6EG-44UJ.

[2] Law on the Environment Promogulated by Royal Decree No. M/165 (July 19, 2020), art. 38, Bureau of Experts of the Saudi Cabinet, https://perma.cc/URS2-9D2P (in Arabic).

[3] Anti-cybercrime Law Promulgated by Royal Decree No. M/17 (Mar. 27, 2007), art. 13, Bureau of Experts of the Saudi Cabinet, https://perma.cc/Q565-9HTE (in Arabic).

IV. Law on Anti-commercial Fraud

If a corporation commits the crime of commercial fraud, the Law on Anti-commercial Fraud of October 10, 2008, orders the closure of the offices of the violating corporation for a period not exceeding one year.[4]

V. Law on Competition

The Competition Law of March 6, 2019, sanctions any corporation that engages in anti-competitive practices with a fine not exceeding 10% of the total annual sales violating the competition law, or a fine not exceeding 10 million Saudi Riyals (about US$2.7 million).[5]

VI. Law on Money Laundering

Under the Law on Money Laundering of October 25, 2017, a corporate entity is criminally liable for the crime of money laundering if the criminal offense was committed in its name or for its account. Additionally, the criminal liability of a corporation does not exclude the criminal liability of its chairman, members of the board of directors, employees, and auditors.[6] Any corporate entity that commits a money laundering offense shall be punished by a fine of no more than 50 million Saudi riyals (aboutUS$13.3 million) and no less than the equivalent of double the full value of the funds that were the objects of the offense.[7] Furthermore, such corporate entity could be prohibited permanently or temporarily from engaging in certain licensed activities, directly or indirectly, or can be ordered to close down its offices, permanently or temporarily.[8]

VII. Law on Trademarks

In instances of repeated violations of its provisions, the Trademarks Law of August 7, 2002, sanctions a violating corporation with the closure of its place of business for a period between 15 days and six months and payment of double the fine for offenses specified in this law.[9]

VIII. Law on Anti-commercial Concealment

The Law on Anti-commercial Concealment of August 20, 2020, prohibits any Saudi commercial entity from enabling a foreign entity to practice in the Kingdom of Saudi Arabia an

[4] Anti-commercial Fraud Law Promulgated by Royal Decree No. M/19 (Jan. 10, 2008), art. 20, Bureau of Experts of the Saudi Cabinet, https://perma.cc/P43G-QDU8 (in Arabic).

[5] Competition Law Promulgated by Royal Decree No. M/75 (Mar. 6, 2019), art. 19, Bureau of Experts of the Saudi Cabinet, https://perma.cc/TX6C-WAA2.

[6] Anti-money Laundering Law Promulgated by Royal Decree No. M/20 (Oct. 25, 2017), art.3, https://perma.cc/74RR-TVTC (in Arabic).

[7] Id. art. 31(1).

[8] Id. art. 31(2).

[9] Trademarks Law Promulgated by Royal Decree No. M/21 (Aug. 7, 2002), art. 45, Bureau of Experts of the Saudi Cabinet, https://perma.cc/2P7D-6LFF.

economic/commercial activity without obtaining a license. This law states that the Saudi corporate entity commits the offense of commercial concealment when it allows the unlicensed foreign commercial entity to practice a commercial/economic activity by using its name, license, or commercial registration.[10] This law sanctions violating commercial entities with confiscation of their proceeds.[11] Additionally, this law allows the court to dissolve the violating commercial entity, revoke its commercial license, and prohibit it from practicing any commercial or economic activities for five years.[12]

[10] Anti-Commercial Concealment Law Promulgated by Royal Decree No. M/4 (Aug. 20, 2020), art. 3, Bureau of Experts of the Saudi Cabinet, https://perma.cc/B53T-2U8X.

[11] Id. art. 10(1).

[12] Id. art. 12(1).

Senegal

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SUMMARY In Senegalese law, Article 45-1 of the Penal Code holds legal entities criminally liable for offences committed by their representatives in the entity's interest. This liability is cumulative, applying to both the entity and the involved natural persons. Penalties include fines, dissolution, activity prohibitions, establishment closures, and other restrictive measures.

I. Introduction

In Senegal, recent amendments to the Penal Code have clarified and strengthened the framework for corporate criminal liability. Article 45-1 of the Senegalese Penal Code outlines the conditions for liability, specifies the types of offenses included, and details the penalties that can be imposed on legal entities.

II. Criminal Liability

The general system of corporate criminal liability in Senegalese law is governed by Article 45-1 of the Penal Code, as amended by Law No. 2021-33 of July 23, 2021.[1] According to this article, legal entities are criminally liable for offenses committed on their behalf, by their organs or representatives. This liability is a liability by representation, which means that the wrongful acts must be imputed to their organs or representatives and committed in the interest of the legal entity. An act committed "in the interest" of a legal entity refers to actions taken in the course of activities aimed at ensuring the organization, operation, or objectives of the legal entity. This applies even if the legal entity itself does not benefit from the act or derive any profit from it.[2]

All offenses that may, in principle, be committed by a natural person, as perpetrator, co-perpetrator, or accomplice, can also be attributed to legal entities. It is not necessary for an offense, whether intentional or not, to have resulted in the actual conviction of an organ or representative of the legal entity for the latter to be held criminally liable.[3]

Article 45-1 of Penal Code stipulates that the criminal liability of a legal entity does not exclude that of natural persons who are perpetrators or accomplices in the same acts. The Penal Code does not provide for substitute liability, but for cumulative liability.[4]

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[1] Code pénal (Penal Code), art. 45-1, bibliographical information available at https://lccn.loc.gov/2022494646.

[2] Papa Assane Touré, *Droit Pénal Général Sénégalais : Tome 2 La responsabilité pénale et la sanction pénale* 122 (Harmattan: Sénégal, 2024), https://perma.cc/KRR6-MQRW.

[3] Id. at 112.

[4] Penal Code art. 45-1.

Corporate bodies include executives such as the managing director, general manager, chief executive officer, or chairman of the board of directors. The criminal liability of legal entities is subject to two additional conditions: the governing body must have acted under the conditions imposed by law or the articles of association, and within the limits of its legal or statutory powers.[5]

Only moral persons with legal personality can be declared criminally responsible for an offense. In the case of commercial companies, the acquisition of legal personality is subject to the corporation's registration in the Trade and Real Estate Credit Register. [6]

Criminal law in Senegal applies equally to natural persons, regardless of their nationality, and similarly to foreign legal entities whose criminal liability is sought for offenses committed on Senegalese territory. Article 45-1 of the Penal Code does not differentiate based on the nationality of the legal entity.

III. Penalties

A. Criminal Penalties

Criminal penalties for legal entities under Senegalese law are defined in the Penal Code and in specific laws such as Act No. 2018-13 of April 27, 2018, on the repression of offenses under the Uniform Acts adopted pursuant to the Treaty on the Harmonization of Business Law in Africa (OHADA).

Under article 45-1 of the Penal Code, legal entities may face the following penalties:

- Fines: Legal entities are liable to a fine at a maximum rate equal to five times that set for natural persons by the law punishing the offense.
- Dissolution: This applies if the legal entity was created to commit an offense or was diverted from its lawful purpose to do so, particularly in cases involving crimes or misdemeanors punishable by more than five years' imprisonment for individuals.
- Prohibition of Activities: A ban, either permanent or for up to five years, on directly or indirectly engaging in one or more professional or social activities.
- Closure of Establishments: Permanent closure, or closure for up to five years, of any establishment used in the commission of the offense.
- Exclusion from Public Contracts: Disqualification from participating in public procurement contracts, either permanently or for a maximum of five years.
- Prohibition on Public Offerings: A ban, either permanent or for up to five years, on making public offerings.

[5] Id. at 115.

[6] Acte Uniforme Révisé Relatif au Droit des Sociétés Commerciales et du Groupement d'Intérêt Economique, OHADA, Jan. 1, 2014, art. 98, https://perma.cc/DXC7-ZU6Z.

- Restrictions on Financial Instruments: A prohibition, for up to five years, on issuing checks (except certified checks or those enabling withdrawals from the drawee) and using payment cards.
- Confiscation: Article 45-1 of the Criminal Code also stipulates the confiscation of any item used or intended to be used to commit the offense, or any item that is the product of the offense. Confiscation involves the transfer of ownership of all or part of the property belonging to the convicted person to the State.
- Publication of the Decision: Posting or disseminating the court's decision, either in the press or through electronic means of communication accessible to the public.

B. Penalties for Money Laundering

Article 37 of the 2004 Anti-Money Laundering Act mandates that individuals found guilty of a money laundering offense be fined three times the value of the assets or funds involved.[7] Article 42 states that legal entities, excluding the State, involved in money laundering offenses will be fined five times the amount imposed on individuals. This does not preclude the conviction of these individuals as perpetrators or accomplices in the same acts.[8]

The amount of the fine must be multiplied by five when a legal entity is found guilty of money laundering in accordance with 45-1 of the Penal Code, which requires the maximum fine for legal entities to be set at five times the rate for individuals.[9]

C. Penalties for Corruption

Anyone guilty of acts constituting corruption will be punished with a fine equal to twice the value of the promises, or things received or asked for.[10] In application of article 45-1 of the Penal Code, a legal entity found guilty of corruption must be at least 750,000 francs (about US$1,185).[11]

D. Penalties under Environmental Law

The maximum applicable fine for violations of the Environmental Code, when considering the quintuple multiplication of fines for legal entities in article 45-1 of the Penal Code, is 10,000,000

[7] Loi n°2004-09 du 6 février 2004, lutte contre le blanchiment des capitaux, art. 37, https://perma.cc/PTR3-UARG.

[8] Id. art. 42.

[9] Penal Code art. 45-1.

[10] Penal Code art. 160.

[11] Id. art. 45-1.

francs (about US$15,850) for operating polluting facilities in violation of the code, [12] sea pollution violations,[13] air pollution violations,[14] and noise pollution violations.[15]

E. Penalties for Financial Fraud

The maximum applicable fine for financial fraud, [16] when considering the quintuple multiplication of fines for legal entities in article 45-1 of the Penal Code, is 5,000,000 francs (about US$7,923).

F. Penalties for Tax Fraud

The maximum applicable fine for financial fraud, [17] when considering the quintuple multiplication of fines for legal entities in article 45-1 of the Penal Code,[18] is 125,000,000 francs (about US$198,080).

[12] Id. art. 20.

[13] Id. art. 41.

[14] Id. art. 52.

[15] Id. art. 61.

[16] Id. art. 379.

[17] Code General des Impots, art. 679, https://perma.cc/KD5H-JA72.

[18] Penal Code art. 45-1.

South Korea

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SUMMARY Under Korean laws, in principle, only natural persons are subject to criminal prosecution. However, if a law has a provision that states a corporation is punishable in addition to a natural person who acted for the corporation, it is punishable. The fines are usually set in a range of potential amounts; however, the amount of a fine may be multiplied by the amount of the benefit to a company or of the loss to the victim.

I. General Rule

The Korean Criminal Act does not have a provision regarding punishment of legal persons.[1] It is understood that "[u]nder Korean laws, only natural persons are subject to criminal prosecution and punishment. However, exceptions exist where specific statutory provisions ("joint penal provisions") allow for the imposition of corporate criminal liability for certain offences" in addition to individuals.[2] Even in such a case, if the corporation has paid due attention to or conscientiously supervised the relevant affairs in order to prevent the criminal act, it is not punished.[3]

II. Anti-Money-Laundering Law

The main law to regulate money laundering is the Act on Reporting and Using Specified Financial Transaction Information.[4] Under the act, an individual person who operates virtual asset transactions without filing a report is punishable by imprisonment for up to five years or by a fine not exceeding 50 million won (KRW) (approximately US$34,000).[5] If a representative, an agent or an employee of the corporation commits the crime in conducting the business affairs of the corporation, in addition to punishment of the natural person who committed the act, the corporation is punishable by a fine of the same amount.[6]

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* At present, there are no Law Library of Congress research staff members versed in Korean. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant resources currently available in the Law Library and online.

[1] Criminal Act, Act No. 293, Sept. 18, 1953, amended by Act No. 19582, Aug. 8, 2023, https://perma.cc/ZH5D-SHGA.

[2] Soo Bong Jung et al., *White-Collar Crime 2024: South Korea* § 1.5, Chambers and Partners (Oct. 24, 2024), https://perma.cc/2ES9-J5QK.

[3] All joint penalty provisions found in this research allow this exclusion.

[4] Act on Reporting and Using Specified Financial Transaction Information, Act No. 6516, Sept. 27, 2001, amended by Act No. 18662, Dec. 28, 2021, https://perma.cc/K6GL-GQRL.

[5] Id. art. 17.

[6] Id. art. 19.

III. Anti-Corruption Legislation

The crime of offering a bribe under the Penal Act is not applicable to a corporation.[7] However, there are other acts that punish bribery and corruption. The Improper Solicitation and Graft Act punishes broader acts than the Penal Act. The Improper Solicitation and Graft Act states that no public servant can accept, request, or promise to receive any money, goods, etc. exceeding KRW1 million (approximately US$685) at a time or KRW3 million (approximately US$2,055) in a fiscal year from the same person, regardless of any connection to his or her duties.[8] To offer, promise to offer, or express any intention to offer money or valuables to a public servant's spouse is also prohibited.[9] Where a representative, agent or employee of a corporation offers, promises to offer, or expresses an intention to offer money, goods, etc. more than the limit to a public servant or his or her spouse in connection with the affairs of the corporation, the person is punishable by a fine not exceeding KRW30 million (approximately US$20,547).[10] In addition, the act imposes civil fines on corporations that violate its provisions. For example, if the offer just described is made for a third party, that party is punishable by a civil fine not exceeding KRW10 million (approximately US$6,850).[11]

For the bribery of a foreign official, the Act on Combating Bribery of Foreign Public Officials in International Business Transactions sets a fine not exceeding KRW1 billion (approximately US$684,900) for a corporation, in addition to the punishment of the individual actor.[12] If the benefits derived from such bribery exceed KRW500 million (approximatelyUS$342,450), the corporation must be punished by a fine of not less than two but not greater than five times the benefit.[13]

IV. Tax Evasion

Under the Punishment of Tax Offenses Act, a person who evades a tax is punishable by imprisonment for not more than two years or by a fine not more than double the amount of tax evaded.[14] Depending on the circumstances of the crime, heavier punishment is imposed. In such a case, the person is punishable by imprisonment for not more than three years or by a fine not

[7] Criminal Act art. 133.

[8] Improper Solicitation and Graft Act, Act No. 13278, Mar. 27, 2015, amended by Act No. 18576, Dec. 7, 2021, art. 8, para. 1, https://perma.cc/Q5XJ-AV27.

[9] Id. art. 8, para. 5

[10] Id. art. 22, para. 1, sub-para. 3, art. 24.

[11] Id. art. 23, para. 2, sub-para. 1, art. 24. The translation says it is an "administrative" fine. However, it is imposed by a court. Therefore, we have characterized it as a "civil" fine.

[12] Act on Combating Bribery of Foreign Public Officials in International Business Transactions, Act No. 5588, Dec. 28, 1998, amended by Act No. 18470, Oct. 8, 2021, arts. 3, 4, https://perma.cc/3AHN-5RWZ.

[13] Id.

[14] Punishment of Tax Offenses Act, Act No. 9919, Jan. 1, 2010, amended by Act No. 16108, Dec. 31, 2018, art. 3, para. 1, https://perma.cc/3V5Z-YHHF.

more than three times the amount of tax evaded.[15] If a representative, agent or employee of a corporation commits the offense in connection with the business of the corporation, it is also punishable by the same amount of fine.[16]

V. Environmental Law

There are many environmental laws that punish corporations. For example, the Act on The Control And Aggravated Punishment of Environmental Offenses punishes a person who has inflicted danger or injury to human life or health by illegally discharging pollutants, resulting in the death of another person due to occupational or gross negligence, by imprisonment for not more than 10 years or a fine not exceeding KRW150 million (approximately US$102,730).[17] If the representative, agent or employee of a corporation commits such an offense in connection with affairs of the corporation, the corporation is punishable by the same amount of fine, in addition to the punishment of the person.

VI. Financial and Investment Fraud

Financial and investment fraud may violate various financial laws in South Korea. Corporations are punishable by a fine under joint penalty provisions of these laws. For example, if a representative, agent or employee of a corporation makes a false statement in the public disclosure of a tender offer, the corporation is punishable by a fine not exceeding KRW200 million (approximately US$137,000) under the Financial Investment Services and Capital Markets Act.[18]

[15] Id.

[16] Id. art. 18.

[17] Act on the Control and Aggravated Punishment of Environmental Offenses, Act No. 10616, Apr. 28, 2011, amended by Act No. 17063, Feb. 18, 2020, art. 3, paras. 1, 2, art. 5, para. 2 & art. 10, https://perma.cc/K44X-U3QS.

[18] Financial Investment Services and Capital Markets Act, Act No. 8635, Aug. 3, 2007, amended by Act No. 19566, July 18, 2023, arts. 134, 444 & 448, https://perma.cc/H6U3-CT6Q.

Sweden

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SUMMARY Only private persons are convicted of crimes in Sweden. However, corporations may be issued corporate penalties (*företagsbot*), considered a special legal effect (*särskild rättsverkan*), when they commit criminal activities through intent or negligence. Corporate penalties are essentially monetary fines issued at between 5,000 Swedish Kronor (SEK) (about US$450) and SEK 10 million (about US$910,000). In 2020, a special severe (*förhöjt* – literally, elevated) corporate penalty (*förhöjd företagsbot*) took effect, increasing the cap for large corporations to SEK 500 million (aboutUS$45 million). Municipal and state entities that conduct business activities may be issued a corporate penalty.

In addition to corporate penalties, corporations may also lose licenses, receive administrative sanctions, be prohibited from entering into public procurement bids, or have property confiscated and forfeited (*förverkade*) as a result of being used in criminal activity.

I. Introduction

A. Types of Corporate Entities

The following are the five types of business enterprises (corporations) in Sweden:

- limited liability corporation,[1]
- trading company,[2]
- limited partnership,[3]
- sole proprietorship,[4] and
- financial association.[5]

Each of these business forms provide for criminal punishment (monetary or imprisonment) of the owners and founders in cases where they violate the laws governing these types of businesses. In addition, the corporation may also receive monetary fines for criminal activities.

[1] Aktiebolagslag [Limited Liability Corporation Act] (SFS 2005:551), https://perma.cc/NUL7-LAHH.

[2] Lag om handelsbolag och enkla bolag [Act on Trading Partnerships and Solo Traders] (SFS 1980:1102), https://perma.cc/DBK5-3A45.

[3] Id. 1 ch. 2 §.

[4] Id.

[5] Lag om ekonomiska föreningar [Act on Financial Associations] (SFS 2018:672), https://perma.cc/FV58-RC33.

1. Limited Liability Corporations

The most common corporation in Sweden is the limited liability corporation (*aktiebolag*, AB), which literally means stock company. The creation of an AB requires monetary investment but also provides limited liability for the owners of the company.[6] The owner of an AB can be either a physical or legal person. An AB can be privately owned or publicly traded.[7] ABs comprise 44% of all corporations in Sweden.[8]

Owners and directors of limited liability corporations may be sanctioned with monetary fines or imprisonment as a result of violating the Corporate Act.[9] Moreover, certain violations of the Corporate Act, including failure to pay taxes or produce an annual report, may result in forced liquidation of the corporation.[10]

2. Trading Companies and Limited Partnerships

A trading company (*handelsbolag*) is a corporation of no less than two persons who have agreed to conduct business activities together and have registered their corporation in the Trade Registry (*Handelsregister*).[11] The partners are jointly and severally responsible for the obligations of the partnership.[12]

A limited partnership (*kommanditbolag*) is a version of the *handelsbolag* where one of the owners has limited their responsibility to only correspond to the financial contribution they have made to the corporation.[13] Certain violations of the rules for trading partnerships may result in the liquidation of the partnership.[14]

3. Sole Proprietorships

Sole proprietorships (*enskild näringsverksamhet*), meaning firms that have only one owner (*enskild firma*) and that are unincorporated, are the second most common business form, accounting for 36% of all businesses.[15]

[6] 1 ch. 3, 5 §§ Aktiebolagslag.

[7] Id. 1 ch. 2 §.

[8] SCB, *Företagsregistret*, https://perma.cc/8XEF-REFF.

[9] 30 ch. 1-3 §§ Aktiebolagslagen.

[10] Id. 7 ch. 11 §.

[11] 1 ch. 1. § Lag om handelsbolag och enkla bolag (1980:1102), https://perma.cc/DBK5-3A45.

[12] Id. 12 ch. 20 §.

[13] Id. 1 ch. 2 §.

[14] Id. 2 ch. 25 §.

[15] SCB, *Företagsregistret*, supra note 8.

4. Financial Associations

Financial associations (*ekonomiska föreningar*) are associations that serve the financial interest of their members. By law, at least three members must not be investing members.[16] Punishments for violations of the obligations of the Act on Financial Associations are found in chapter 22 of the act.[17] Financial associations may also be liquidated based on certain violations of the act, including for failure to produce an annual report.[18]

B. Legal Obligations of Corporations

Each business form is regulated by its own business act, which specifies the obligations tied to the specific type of corporation.[19] Violations of these acts are punishable with fines or imprisonment as well as liquidation of the business.[20]

C. Crimes by Businesses

Under Swedish law, most crimes are regulated in the Criminal Code (*Brottsbalken*).[21] This includes activities that constitute corporate fraud or investment fraud.[22] Corruption is not a separate crime; such acts fall under other criminalized fraudulent behavior.[23]

As discussed above, violations of corporate responsibilities are regulated in the separate corporate statutes.[24]

In addition, certain activities while conducted as a business are also criminalized through activity-specific legislation. For example, some environmental crimes and sanctions are regulated in the Environmental Code, including specific environmental sanction fines to be paid by the responsible corporation.[25] The taxation of legal persons is governed by chapter 6 of the Income Tax Act.[26] Violations of the Income Tax Act are regulated in a separate Tax Crime Act.[27] Corporate punishments for criminal violations of the Tax Crime Act, the Environmental Code, and other

[16] 2 ch. 1 Lag om ekonomiska föreningar.

[17] Id. 22 chapter.

[18] Id. 17 ch. 11 §.

[19] See Aktiebolagslagen, Lag om handelsbolag och enkla bolag, and Lag om ekonomiska föreningar.

[20] See Section I.A, above.

[21] Brottsbalken (BrB) [Criminal Code] (SFS 1962:700), https://perma.cc/7MBP-QPMK.

[22] 9 chapter BrB.

[23] Criminal Code *e contrario*, see also Kommittédirektiv Straffrättsliga åtgärder mot korruption och tjänstefel, https://perma.cc/F5GT-7J3U.

[24] See ABL, Lag om handelsbolag och enkla bolag, and Lag om ekonomiska föreningar.

[25] Chapters 29 and 30 of the Miljöbalk [Environmental Code] (SFS 1998:808), https://perma.cc/647Q-PYGM.

[26] Ch. 6 Inkomstskattelagen [Income Tax Act] (1999:1229), https://perma.cc/6FWK-DND5.

[27] Skattebrottslag [Tax Crime Act] (SFS 1971:69), https://perma.cc/V5DE-9U39.

special legislation that include imprisonment for natural persons are carried out through a special corporate fine under the Criminal Code (see Section II, below).[28]

II. Corporate Penalties as Separate Legal Effect

Only private persons are convicted of crimes in Sweden. However, corporations may be issued corporate penalties.[29] Note that the monetary penalty is not to be equated with a criminal sanction (such as pecuniary fines or imprisonment) but a separate legal consequence, known as "special legal effect" (*särskild rättsverkan*), [30] and thus, distinguishable from normal sentences and sanctions.[31]

Under Swedish law, crimes conducted as part of a business activity may be punished with a corporate penalty (*företagsbot*), payable to the state.[32] This includes any form of violation of law, including manslaughter, terrorism, financing terrorism, tax violations, violating environmental law, food safety regulations, traffic violations, committing fraud, smuggling prohibited items, etc.[33]

The Criminal Code, in chapter 36, section 23, details when a corporation may be issued these corporate penalties.[34] Only crimes that are prescribed more severe punishments than monetary fines may incur a corporate penalty.[35] This typically means that the crime must be subject to day fines or imprisonment.[36] Corporate penalties are mandatory prosecution crimes, meaning the prosecutor must prosecute, if the conditions for the penalty are met.[37] The crime may either have been intentional or a result of negligence.[38] Notably, no person needs to be prosecuted or convicted for the corporate penalty to apply. It is sufficient that the crime was committed, with intent or negligence, as part of a business operation.[39] The corporate penalty applies also to municipal and state actors that conduct business activities.[40]

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[28] 36 ch. 23 § Brottsbalken (BrB) [Criminal Code] (SFS 1962:700), https://perma.cc/7MBP-QPMK.

[29] Id.

[30] 1 ch. 3, 8 §§ BrB. See also Christer B Jarlås, *Företagsbot – är det ett Straff, en Sanktion eller en Ineffektiv Rättsverkan?*, Norstedts Juridik (Apr. 17, 2023), https://perma.cc/572A-DJDS.

[31] 36 ch. 23 § BrB. For the legislative history, see Prop. 1985/86:23 [Government Bill] Företagsbot, 14, https://perma.cc/9Z3G-D8FZ.

[32] 36 ch. 23, 28 §§ BrB.

[33] See Åklagarmyndigheten, Rättslig vägledning 2024:12, Företagsbot, 5 https://perma.cc/TQB5-6SY8.

[34] 36 ch. 23 § BrB.

[35] Id. See also Åklagarmyndigheten, supra note 33.

[36] Id.

[37] See Åklagarmyndigheten, supra note 33, at 5.

[38] Id. at 6.

[39] 36 ch. 23 § BrB.

[40] 36 ch. 23 § BrB.

Specifically, section 23 of chapter 36 provides that

> A company shall be imposed a corporate penalty for an offence if a more severe penalty than a fine is prescribed for the offence and the offence has been committed in the exercise of
> 1. business activities,
> 2. such public activities that can be equated with business activities, or
> 3. other activities that a company carries out, if the offence has been likely to lead to a financial advantage for the company.
>
> In order for a company to be imposed a corporate fine, it is also required that
> 1. the company has not done what could reasonably have been required to prevent the offence, or
> 2. the offence has been committed by
> a) a person with a leading position in the company, based on the authority to represent the company or to make decisions on its behalf, or
> b) a person who has otherwise had special responsibility for supervision or control of the activities.
>
> A company refers to sole traders and legal persons.
>
> The first paragraph does not apply if the offence has been directed against the company.[41]

By law, a corporate penalty may range from SEK 5,000 (about US$450) to SEK 10 million (about US$910,000) and should correspond to the severity of the crime.[42] In 2020, a special severe (*förhöjt* – literally, elevated) corporate penalty (*förhöjd företagsbot*) was instituted, increasing the cap for large corporations to SEK 500 million (about US$45.3 million).[43] The corporate penalty may be issued in addition to personal sanctions against an officer or employee of a company. Moreover, if several crimes have been committed, one penalty will be issued for all the criminal acts.[44]

Corporate penalties can be issued alongside sentences for the individual persons committing the acts or separately. For example, in an environmental offense case where the officers and employees of the corporation had committed the crimes and were sentenced to imprisonment, the court also ruled that the corporation should pay SEK 500,000 as a corporate penalty (down from the requested SEK3 million).[45]

[41] 36 ch. 23 § BrB. Translation by author.

[42] 36 ch. 23, 24 §§ BrB.

[43] Id. 36 ch. 25 §; Skärpta straffrättsliga sanktioner mot företag, https://perma.cc/J47W-M2F7; Prop. 2018/19:164 Skärpta straffrättsliga sanktioner mot företag, https://perma.cc/6Z27-AW42; SOU 2016:82 En översyn av lagstiftningen om företagsbot, https://perma.cc/6HQY-CGWN.

[44] 36 ch. 24 § BrB.

[45] Administrative Court of Appeals (RH 2013:48), https://perma.cc/XN9U-E7LP.

In November of 2024, the Prosecution Authority (Åklagarmyndigheten) issued a guideline on the issuance of corporate penalties.[46] The guidelines specify when corporations will receive the ordinary penalty and when a corporation must receive the severe penalty.[47] The guideline defines a large corporation as a corporation that is publicly traded, or meets one of three characteristics: It has an average of 50 employees, its annual profit is more than SEK 40 million or its net turnover exceeds SEK 80 million.[48] Using these guidelines, the penalty should be increased using a table using the amount of the corporation's capital to determine the increase, for example, the penalty for a corporation with less than 100 million in assets will be calculated using a factor of 2, while the penalty for a corporation with more than 70 billion in assets will be calculated using a factor of 50.[49] However, if the assets are bound in production facilities or there are special capital requirements for an industry, lower multiplication factors may be used.[50] Although it is the prosecutor who carries the burden of proving that the higher factors should be used, the guidelines specify that no additional information other than the corporation's own annual report is needed.[51]

The use of corporate penalties varies across criminal activities and industries. For example, corporate penalties amount to 95% of all sanctions related to workplace injuries, including manslaughter.[52]

According to industry reports, it appears that the new higher penalties have not been used by the courts, and that the typical corporate penalties remain within the lower span.[53] In practice, some penalties have nevertheless increased. For example, one corporation's fines were increased by a factor of seven using the method described above.[54] In 2023, a total of five corporate penalties for manslaughter were issued.[55] The highest one totaled SEK 14 million (about US1,285,000).[56]

A. Confiscation and Forfeiture

Property used as part of a criminal activity or in furtherance of a crime, by either a natural person or a legal person, may be confiscated and forfeited.[57] Also, proceeds derived from crime, such as

[46] Åklagarmyndigheten, Rättslig vägledning 2024:12, Företagsbot, 24, https://perma.cc/TQB5-6SY8.

[47] Id.

[48] Id. at 24.

[49] Id. at 25.

[50] Id. at 26.

[51] Id.

[52] Christer B Jarlås, *Företagsbot – är det ett Straff, en Sanktion eller en Ineffektiv Rättsverkan?*, Norstedts Juridik (Apr. 17, 2023), https://perma.cc/572A-DJDS.

[53] Dagens arbete, *Inga Höjda Böter för Företagen i Sikte*, https://perma.cc/Z58G-LSVM.

[54] Dagens Arbete, *Nu Kan det Svida Mer för Företag att Slarva med Arbetsmiljön,* https://perma.cc/AZM9-PRWT.

[55] Id.

[56] Id.

[57] 36 ch. 3-22 §§ BrB.

income, may be forfeited and confiscated.[58] Items and funds confiscated or forfeited become property of the state.[59]

B. Other Legal Effects of Criminal Activities

As discussed above in Section I.A, businesses and corporations may be liquidated in certain situations.

Under Swedish law, only natural persons can be prohibited from conducting business.[60] Sweden's anti-money-laundering and counter-terrorism financing legislation provides that violations of its legislation will result in the beneficial owner (*verklig huvudman*) being prohibited from conducting business.[61]

Persons or businesses that have previously committed crimes are prohibited from entering into public procurement bids.[62] Corporations that have failed to pay taxes or social fees are also subject to exclusion.[63]

[58] 36 ch. 3 § BrB.

[59] 36 ch. 28 § BrB.

[60] Lag om näringsförbud [Act on Prohibition on Trade] (SFS 2014:836), https://perma.cc/C3BH-D8PG.

[61] Lag om åtgärder mot penningtvätt och finansiering av terrorism [Act on Measures Against Money Laundering and Financing of Terrorism] (SFS 2017:630), https://perma.cc/4585-L9Y9.

[62] 13 ch. 1 § Lag om offentlig upphandling (SFS 2016:1145); see also *Uteslutning*, Upphandlingsmyndigheten, https://perma.cc/79VK-XPNU.

[63] Id. 13 ch. 2 § Lag om offentlig upphandling.

Switzerland

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SUMMARY The central basis for corporate criminal liability in Switzerland is article 102 of the Swiss Criminal Code. It does not constitute an independent offense but rather serves as a norm of criminal attribution, whereby the so-called predicate offense committed by employees is attributed to the company. Article 102 provides for a fine of up to 5 million Swiss Francs (approximately US$5.6 million) as a sanction against the company. Key factors for determining the fine include the severity of the offense and the resulting harm, as well as the extent of the organizational deficiency.

I. Introduction

In Switzerland, companies may be independently prosecuted and fined based on a central criminal provision in the Swiss Criminal Code.[1] According to the explanatory message from the Swiss Federal Council (Bundesrat), the country's government, the primary motive for introducing corporate criminal liability in Switzerland was to address cases of corporate crime where "organized irresponsibility" prevented individual accountability, meaning no individual could be held criminally responsible under traditional criminal law.[2] Section 102 of the Swiss Criminal Code does not constitute an independent offense but rather serves as a norm of criminal attribution, whereby the so-called predicate offense committed by employees is attributed to the company.[3]

II. Legal Framework

The central basis for corporate criminal liability in Switzerland is article 102 of the Swiss Criminal Code (Strafgesetzbuch, StGB), which entered into force on October 1, 2003.[4] This provision

[*] The author wishes to thank Foreign Law Intern Maximilian Spitzley for providing research assistance for this report.

[1] Schweizerisches Strafgesetzbuch [StGB], Dec. 21, 1937, Systematische Rechtssammlung [SR] 311.0, as amended, art. 102, https://perma.cc/9KTK-2B9Q (original), https://perma.cc/6GR3-22PH (English translation).

[2] Botschaft zur Änderung des Schweizerischen Strafgesetzbuches (Allgemeine Bestimmungen, Einführung und Anwendung des Gesetzes) und des Militärstrafgesetzes sowie zu einem Bundesgesetz über das Jugendstrafrecht, Sept. 21, 1998, Bundesblatt [BBl.] 1999, 1979 (2141), https://perma.cc/QU22-E4KE.

[3] Bundesgericht [BG], Dec. 12, 2019, docket no. 6B_31/2019, 146 Entscheidungen des schweizerischen Bundesgerichts [BGE] IV 68 (73 et seq.), https://perma.cc/4Z4L-MREK; Bundesstrafgericht [BStGer], Dec. 14, 2016, docket no. BB.2016.359, para. E. 4.1, https://perma.cc/CL9Y-RMYR.

[4] Bundesgesetz über die Finanzierung des Terrorismus, Mar. 21, 2003, Amtliche Sammlung [AS] 2003, 3043, https://perma.cc/3WHY-XT9F.

establishes a general rule for attributing criminal conduct by members of a company and is thus applicable to all areas of criminal offenses.

A. Personal Scope of Application

The personal scope of application of article 102 of the Swiss Criminal Code is limited to "companies."[5] This includes private-law legal entities, public-law legal entities (excluding territorial authorities), partnerships, and sole proprietorships.[6] The list encompasses relevant legal forms commonly used for economic activities, such as joint-stock companies, limited partnerships with shares, and limited liability companies.[7] Legal entities and companies established under foreign law are also encompassed by the provision, both in its wording and its intended purpose.[8]

B. Material Scope of Application

The material scope of application differs between article 102, paragraph 1 of the Swiss Criminal Code and article 102, paragraph 2. Paragraph 1, which is tied to the unlawful predicate offense committed by a member of the company, covers all types of felonies and misdemeanors and is not restricted to specific criminal offenses.[9] It states that

> If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking shall be liable to a fine not exceeding 5 million francs.

Paragraph 1 stipulates that if a felony or misdemeanor is committed within a company and cannot be attributed to a specific natural person due to inadequate organizational structures, the offense is attributed to the company itself.

In contrast, under article 102, paragraph 2 of the Swiss Criminal Code, the company is held liable for select criminal offenses independent of the liability of a natural person due to inadequate organizational structures. These crimes include, among others, endangering public safety with weapons,[10] terrorism financing,[11] and money laundering.[12]

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[5] StGB, art. 102, para. 1.

[6] Id. art. 102, para. 4.

[7] Stefan Heimgartner, *Art. 102 Strafbarkeit*, para. 23, in StGB Kommentar (Andreas Donatsch, ed., 21st ed. 2022).

[8] Stefan Trechsel & Marc Jean-Richard-dit-Bressel, *Art. 102 Strafbarkeit*, para. 6, in Schweizer Strafgesetzbuch Praxiskommentar (Stefan Trechsel & Mark Pieth, eds., 4th ed. 2021).

[9] StGB, art. 102, para. 1. See Section II.C, below, for the prerequisites for criminal liability.

[10] Id. art. 260.

[11] Id. art. 260 (quinquies).

[12] Id. art. 305 (bis).

While article 102, paragraph 1 of the Swiss Criminal Code holds the company liable on a subsidiary basis when a natural person has committed an offense, article 102, paragraph 2 allows holding both the company and the natural person involved in such offenses liable.[13]

C. Prerequisites for Criminal Liability

The criminal liability of a corporation under article 102, paragraphs 1 and 2, requires the fulfillment of two prerequisites.

First, the offense, as specified in the wording of the provision, must have been committed in the course of business activities and within the scope of the company's purpose. This is intended to exclude corporate liability for private offenses or so-called "excess acts" by employees.[14] The offense must stem from conduct attributable to the typical activities of the company and at least potentially aligned with achieving its objectives.[15]

Second, there must be a deficiency in the necessary organizational structure within the company. Under paragraph 1, this deficiency must prevent the attribution of the offense to a specific individual, whereas under paragraph 2, it must have been a cause for the company's failure to prevent the offense. Organizational structure refers to the processes and functions designed to address recurring situations by establishing rules and ensuring compliance through monitoring mechanisms.[16]

Article 102, paragraph 1 of the Swiss Criminal Code establishes, as previously mentioned, a subsidiary form of corporate criminal liability that is contingent upon the criminal liability of the actual perpetrator, namely a natural person.[17] The provision specifies that corporate liability can only be assumed if organizational deficiencies within the company prevent the attribution of the criminal act to a specific natural person. Nevertheless, the predicate offense must be sufficiently proven, both objectively and subjectively, as a prerequisite for corporate liability. This requirement is not met if, for instance, the public prosecutor terminates an investigation against employees or refrains from initiating proceedings, leaving key aspects of the offense unresolved.[18]

Moreover, Swiss courts have ruled that neither a corporate restructuring nor the initiation of insolvency proceedings precludes the continuation of criminal proceedings against the company.[19]

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[13] Günter Heine, *Reform des Kartell(straf)rechts in der Schweiz – Anstöße für Deutschland?*, 127, 128, in Festschrift für Hans Achenbach (Uwe Hellmann & Christian Schröder eds., 2011).

[14] Stefan Heimgartner, supra note 7, at para. 11.

[15] BStGer, June 30, 2023, docket no. CA.2022.12, https://perma.cc/K6KY-XT7J; Trechsel & Jean-Richard-dit-Bressel, supra note 8, para. 12; Heimgartner, supra note 7, at para. 11.

[16] Trechsel & Jean-Richard-dit-Bressel, supra note 8, para. 22.

[17] Heimgartner, supra note 7, at para. 4.

[18] BG, Oct. 11, 2016, docket no. 6B_124/2016, 142 BGE IV 333, https://perma.cc/DUM4-RJCP.

[19] Obergericht des Kantons Solothurn [OGer SO], Nov. 19, 2015, docket no. STBER.2011.32, https://perma.cc/4772-5XMJ; BStGer, supra note 3.

D. Sanctions Under Article 102 of the Swiss Criminal Code

Article 102 of the Swiss Criminal Code provides for a fine of up to 5 million Swiss Francs (approximately US$5.6 million) as a sanction against the company. Key factors for determining the fine include the severity of the offense and the resulting harm, as well as the extent of the organizational deficiency. Additionally, the financial capacity of the company must be considered.[20]

III. Supplementary Provisions

As previously mentioned, article 102 of the Swiss Criminal Code serves solely as an attribution norm, linking corporate liability to general criminal offenses. Key issues, such as the statute of limitations for corporate liability, are determined by the characteristics of the predicate offense, such as the prescribed penalty.[21]

The general grounds for exemption from criminal liability under articles 52-55 of the Swiss Criminal Code also apply to companies.[22] This includes the possibility of refraining from prosecution under article 53 of the Swiss Criminal Code if the victim has been compensated for the damages, loss, or injury and certain other requirements are met.

Specific procedural rules that govern proceedings against companies may be found in article 112 of the Swiss Criminal Procedure Code (Strafprozessordnung, StPO).[23] This provision includes fundamental rules regarding the representation of companies and the consolidation of proceedings.[24] Companies enjoy the same rights as accused individuals. These rights are exercised by their representatives under article 112, paragraph 1 of the Swiss Criminal Procedure Code. In the absence of special rules for companies, the general procedural provisions applicable to natural persons apply.[25]

[20] StGB, art. 102, para. 3.

[21] Id. art. 97; Trechsel & Jean-Richard-dit-Bressel, supra note 8, para. 7.

[22] Marianne Johanna Hilf, Die Strafbarkeit juristischer Personen im schweizerischen, österreichischen und liechtensteinischen Recht, 126 Zeitschrift für die gesamte Strafrechtswissenschaft [ZSTW], 73, 96 (2014).

[23] Schweizerische Strafprozessordnung [StPO], Jan. 1, 2011, Systematische Rechtssammlung [SR] 312.0, as amended, https://perma.cc/P7EW-KJJP (original), https://perma.cc/D942-C5PD (unofficial English translation).

[24] Id. art. 112, paras. 1-4.

[25] Hilf, supra note 22, at 83.

Taiwan

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SUMMARY In Taiwan, criminal liability of the legal person is not regulated under general criminal law but in subsidiary criminal laws. When a legal person is involved in criminal conduct and bears responsibility, criminal penalties are imposed. Criminal penalties imposed on legal entities are predominantly monetary sanctions. Administrative sanctions can also be imposed on certain misconduct of legal persons.

Under the Money Laundering Control Act, for example, if a representative, agent, employee, or other practitioners of a legal person violate the specified provisions while performing their duties, in addition to punishing the offender, the legal person may be fined up to 10 times the amount, unless the best efforts have been made to prevent the violation. The authority may also impose administrative fines on financial institutions or designated nonfinancial enterprises, if they fail to report the suspicious transactions.

I. Introduction

Taiwan follows a civil law system. Under the Civil Code, there are two types of legal person: corporations and foundations.[1] In this report, unless otherwise specified, the term "legal person" will be used when discussing corporate criminal liability.

The criminal liability of a legal person is not addressed in the Criminal Code of the Republic of China (Criminal Code), which serves as the general criminal code. Rather, corporate criminal liability is regulated under various subsidiary criminal laws.[2] Given that legal persons only have limited capacity to bear criminal punishments, the criminal penalties imposed on legal entities are predominantly monetary sanctions.[3]

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[*] Yu-Chen Tsai, foreign law intern at the Law Library of Congress, contributed to this report.

[1] Civil Code (promulgated May 23, 1929, last amended Jan 20, 2021) arts. 25–65, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/X4H8-KLZZ (in Chinese), https://perma.cc/MW2Y-54NT (English translation).

[2] Chen-Hsien Lin, 兩罰制下法人過失責任之證明及法人得否緩刑之實務爭議 [*Proof of Corporate Negligence Liability under the Dual Penalty System and the Dispute over Whether Corporations Can Receive Probation*], 28 Taiwan Bar J. 76, 76 (Sept. 15, 2024), https://perma.cc/2ZF7-EJGC (in Chinese); Tze-Tien Hsu, 公司負責人對於公司逃漏稅捐的刑罰與行政罰問題─釋字六八七號後有關犯行參與論的學理續造 [*The Issues of the Criminal Punishments and Administrative Sanctions of Corporate Responsible Persons for the Tax Evasion of the Corporation: A Theoretical Proposal of the Determination of Accomplices after J.Y. Interpretations No. 687*], 26 Soochow L.R. 93, 99 (July, 2014), https://perma.cc/QW6V-M38G (in Chinese).

[3] Zuigao Fayuan 110 Niandu Taifeizi Di 31 Hao Xingshi Panjue (Taiwan Sup. Ct. Jan. 13, 2021), Judgment Database of Judicial Yuan, https://perma.cc/4XC6-F95P (in Chinese).

II. Criminal Code

Legal persons are generally not recognized as having criminal capacity and cannot be criminal defendants, unless otherwise specified.[4] In the Criminal Code, there are no special provisions to punish legal persons committing a crime.

However, under the Criminal Code, items used in the commission of a crime, prepared for a crime, or resulting from a crime, which belong to a legal person, may be confiscated.[5] Also, the illegal proceeds will be confiscated if the legal person

- knowingly acquires the illegal proceeds from the offender,
- obtains the illegal proceeds from the offender for free or at a cost that is considerably not disproportionate, or
- acquires the illegal proceeds because the offenders commit the illegal act on behalf of the legal person.[6]

III. Laws Containing Offenses Applicable to Legal Person

Corporate criminal liability is regulated under various subsidiary criminal laws. Administrative sanctions can also be imposed on certain types of misconduct of legal persons. This report surveys some but not all the laws that contain offenses applicable to legal persons.

A. Money Laundering Control Act (MLCA)

Article 6 of the MLCA requires virtual asset services providers and third-party payment services providers to complete anti-money laundering prevention and service capacity registration. Providers that have not completed the registration are not allowed to provide virtual asset services. Violation of this provision by natural persons will result in imprisonment, criminal fines, or both. Legal persons may be fined up to 10 times the amount imposed on individual offenders, in addition to the penalties applied to the individuals.[7]

In certain cases, both administrative and criminal fines can be imposed on legal persons. For example, article 19 governs the criminal penalty for individuals involved in money laundering, which is punishable by up to 10 years' imprisonment and a criminal fine of NT$100 million (about

[4] Zuigao Fayuan 91 Niandu Taishangzi Di 6980 Hao Xingshi Panjue (Taiwan Sup. Ct. Dec. 11, 2002), Judgment Database of Judicial Yuan https://perma.cc/4P25-SL37 (in Chinese).

[5] Criminal Code of the Republic of China (promulgated Jan. 1, 1935, last amended July 31, 2024) art. 38, para. 3, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/Q6J7-Q73Y (in Chinese), https://perma.cc/9WCC-SFNJ (English translation).

[6] Id. art. 38-1, para. 2.

[7] Money Laundering Control Act (promulgated Oct. 23, 1996, last amended July 31, 2024) art. 6, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/S3SR-AMPP (in Chinese), https://perma.cc/73V4-8XMT (English translation).

US$3.03 million).[8] If a representative, agent, employee, or other practitioners of a legal person violates this provision while performing his or her duties, in addition to punishing the offender, the legal person may be fined up to 10 times the amount. However, to encourage the legal person to actively prevent violations, it stipulates that liability can be exempted when best efforts are made to prevent the violation.[9] Additionally, the authority may impose administrative fines on financial institutions or designated nonfinancial enterprises, if they fail to report the suspicious transactions involving activities specified in article 19 and a few other articles. These administrative fines may be imposed each time the violation occurs.[10]

B. Act to Implement United Nations Convention against Corruption (Implement Act)

Effective in 2015, the Implement Act states that all provisions in the United Nations Convention against Corruption of 2003 (UNCAC) have domestic legal status.[11] Under article 26 of UNCAC, the liability of legal persons is established for their involvement in offenses defined under UNCAC. Also, the liability of legal persons may be criminal, civil, or administrative.[12]

C. Tax Collection Act

Under article 41 of the Tax Collection Act, a taxpayer who evades tax payment by fraud or other unlawful means may face imprisonment for up to five years and a fine of up to NT$10 million (about US$303,000). If the amount of tax evasion exceeds NT$50 million for a profit-seeking enterprise, the taxpayer may be subject to imprisonment for up to seven years and a fine of up to NT$100 million.[13]

Article 47 of the act states that criminal punishments for a taxpayer, a tax withholder, or a tax collection agent as stipulated in the act apply to the responsible person of a company.[14] The legislative history of article 47 suggests that a legal person, as a taxpayer, cannot be subject to custodial sentences.[15]

[8] Id. arts. 2 & 19.

[9] Id. art. 23, para. 1.

[10] Id. art. 13.

[11] Act to Implement United Nations Convention against Corruption (promulgated May 20, 2015) art. 2, para. 1, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/L4LD-B8GT (in Chinese), https://perma.cc/MQW8-HU22 (English translation).

[12] United Nations Convention Against Corruption, art. 26, Oct. 31, 2003, 2349 U.N.T.S. 41, https://perma.cc/A32Y-BDCY.

[13] Tax Collection Act (promulgated Oct. 22, 1976, last amended Dec. 17, 2021) art. 41, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/5XS6-U4XE (in Chinese), https://perma.cc/8EEW-KNHA (English translation).

[14] Id. art. 47.

[15] *Legal History*, Legal Database of Legislative Yuan, https://perma.cc/RPB6-SGX8 (in Chinese).

Administrative fines may also be imposed on legal persons in certain circumstances. For example, a legal person may be fined for failing to maintain the required accounting records.[16]

D. Environmental Laws

1. Marine Pollution Control Act

Under article 45 of the Marine Pollution Control Act, if a representative, agent, employee, or any other practitioners of a legal person commit the offenses specified in articles 40 to 44 of the act while performing their duties, in addition to the penalties imposed on the offenders, criminal fines under the relevant articles may be imposed on the legal person.[17] For example, under article 41, if the offender discharges wastewater (sewage) into specified areas adjacent to the sea without obtaining permission, the offender will face imprisonment and criminal fines.[18] The legal person is also subject to the criminal fine in accordance with article 45.

2. Petroleum Administration Act

The Petroleum Administration Act seeks to regulate and protect the environment within the petroleum sector.[19] Article 40, for example, addresses situations where a legal person engages in the wholesale business of gasoline or diesel oil without proper registration. Violations of the provision result in administrative fines.[20] If the violation leads to public endangerment, both the responsible individual and the company itself face criminal penalties. The legal person incurs a criminal fine between NT$600,000 (about US$18,000) and NT$3 million (about US$91,000).[21]

E. Fraud Crime Hazard Prevention Act

The Fraud Crime Hazard Prevention Act aims to prevent fraud crime through the inappropriate use of finance, telecom, and internet.[22] Under this act, when a representative, agent, employee, or any other practitioners of a legal person commit fraud in the execution of their duties, both the individual offender and the legal entity may be held liable. In addition to penalizing the individual offenders, the legal entity is subject to criminal fines, the amount of which is determined by the specific article of the act violated by the natural person. However, criminal

[16] Tax Collection Act art. 45.

[17] Marine Pollution Control Act (promulgated Nov. 1, 2000, last amended May 31, 2023) art. 45, para. 2, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/M7FC-8P74 (in Chinese), https://perma.cc/EP6W-5NW2 (English translation).

[18] Id. art. 18, para. 1 & art. 41.

[19] Petroleum Administration Act (promulgated Oct. 11, 2001, last amended June 28, 2023) art. 1, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/32ZX-YC9B (in Chinese), https://perma.cc/J3E3-8N6R (English translation).

[20] Id. art. 40, para. 1, subpara. 1.

[21] Id. art. 40, para. 3 & para. 4.

[22] Fraud Crime Hazard Prevention Act (promulgated July 31, 2024) art. 1, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/H5YZ-CJRH (in Chinese), https://perma.cc/TF62-L7MY (in English).

liability may be exempted if the legal person is the victim of the crime or has fulfilled its supervisory responsibilities to prevent the offense.[23]

F. Securities and Exchange Act

Article 20 of the Securities and Exchange Act states that "during the public offering, issuing, private placement, or trading of securities, there shall be no misrepresentations, frauds, or any other acts which are sufficient to mislead other persons."[24] Violation of this provision are punished with imprisonment and a criminal fine.[25] Unless otherwise specified under articles 177-1 and 178-1 of the act, if a legal person or a foreign company violates any provisions of the act, the responsible individual is penalized according to the article violated.[26]

Both articles 177-1 and 178-1 of the act impose administrative fines on legal persons when violating specified articles. For example, under article 74, as specified in 177-1, a securities underwriter cannot acquire any securities that are underwritten or sold on a best-efforts basis during the underwriting period.[27] The violation of this provision results in an administrative fine not exceeding the purchase price of the acquired securities, with the fine no less than NT$240,000 (about US$7,000).[28]

G. Banking Act

The Banking Act outlines various offenses applicable to banks, accompanied by corresponding regulatory measures. Articles 125, 126, 127-1, 127-2, and 127-5 stipulate penalties only for natural persons when offenses are committed by a legal person.[29] For example, if a company limited by shares violates its commitment to offer certain property as security and subsequently pledges or mortgages that same property,[30] the directors and any individuals involved in the decision may be sentenced to imprisonment for up to three years, criminal detention, and/or a criminal fine of up to NT$1.8 million (about US$55,000).[31]

[23] Id. art. 45.

[24] Securities and Exchange Act (promulgated Apr. 30, 1968, last amended Aug. 7, 2024) art. 20, para. 1, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/6NQS-YCT6 (in Chinese), https://perma.cc/76PZ-FMW9 (English translation).

[25] Id. art. 171, para. 1, subpara. 1.

[26] Id. art. 179.

[27] Id. art. 74 & 177-1.

[28] Id. art. 177-1.

[29] Banking Act (promulgated Mar. 28, 1931, last amended June 28, 2023) art. 125, 126, 127-1, 127-2 & 127-5, Laws and Regulations Database of the Republic of China (Taiwan), https://perma.cc/49UA-WXHS (in Chinese), https://perma.cc/KC96-4XMF (English translation).

[30] Id. art. 30.

[31] Id. art. 126.

In cases where a responsible person, agent, employee, or other staff member of a legal person violates articles 125 to 127-2 while performing his or her duties, both the responsible individual and the legal person face penalties. The type of sanction for the legal person may be an administrative or criminal fine in accordance with the relevant provisions.[32]

[32] Id. art. 127-4.

Thailand

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SUMMARY Though there is no legal norm that specifies that criminal provisions are generally applicable to legal persons (i.e. corporations), the Supreme Court has maintained such position. Laws analyzed in this report criminally punish legal persons.

I. Legal Framework

The Thai Penal Code[1] is silent on corporate criminal liability though some other laws have specific provisions on the criminal liability of a legal person (referred to as a juristic person in Thai legislation). The Thai Civil and Commercial Code recognizes that a corporation enjoys some of the same rights and duties as a natural person does and such rights and duties are distinguished from those of its shareholders. A corporation's will is declared through its representatives and its business is carried out through its representatives.[2] Though scholars argue the issue, according to an article written by a Thai judge, the Supreme Court has decided that a legal person can be the subject of, and can be punished for, criminal offenses. The judge wrote

> [i]n Supreme Court Decisions Nos. 787-788/2506, the Court laid down a precedent where the representative of a legal person acted in the scope of his authority and in accordance with the objectives of such a legal person in a manner that such legal person benefited from such an act, and such legal person was accountable and held criminally liable for such an act.[3]

II. Anti-Money Laundering

The Anti-Money Laundering Act, B.E. 2542, has a provision that specifically punishes a legal person that has committed the offense of money laundering. Such a crime is punishable by a fine

* At present there are no Law Library of Congress research staff members versed in Thai. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant resources currently available in the Law Library and online.

[1] Criminal Code, B.E. 2499 (1956), as amended by Criminal Code (No. 17), B.E. 2547 (2003), https://perma.cc/9XCY-GLXH. The code was most recently amended by Criminal Code (No. 29), 2565 BE (2022), https://perma.cc/TFH2-Z8A8.

[2] Civil and Commercial Code, Book 1, 2, B.E. 2466 (1923), as amended, sec. 66, 67, https://perma.cc/57KM-X4P4.

[3] Bhornthip Sudti-autasilp, *Corporate Crime and the Criminal Liability of Corporate Entities in Thailand,* UNAFEI Resource Material No.76 at 95 (Dec. 2008), https://perma.cc/5AMR-675G.

of not less than 200,000 baht (about US$5,780) but not exceeding 1,000,000 baht (about US$28,900).[4]

III. Anti-Corruption

The Organic Act on Anti-Corruption, B.E. 2561, also has a provision that specifically punishes legal corporations.[5] It prescribes, first, the punishment of an individual offender. A person who gives, offers to give, or promises to give any property or benefit to a public official, foreign public official, or an official of a public international organization with an intent to induce such person to wrongfully perform, not perform, or delay the performance of any duty in his or her office can be punished with imprisonment for a term not exceeding five years, or a fine not exceeding 100,000 baht (about US$2,978), or both.[6] Regarding legal persons, it states that, if the offender is associated with a legal person and the action was taken for the benefit of the legal person, and the legal person does not have appropriate internal control measures in place to prevent the commission of such offense, the legal person is deemed to have committed the offense and may be punished by a fine of one to two times of the damages caused or benefits received.[7]

A person associated with a legal person means a representative, employee, agent, affiliated company, or any person acting for or on behalf of such legal person, regardless of whether having the power or authority to take such action.[8]

IV. Tax Evasion

According to the Revenue Code, B.E. 2481, a person who evades or attempts to evade paying company income tax with false information, by fraudulent or deceitful acts, or other acts of a similar nature, can face imprisonment for a term of three months to seven years and a fine of 2,000 baht (about US$60) to 200,000 baht.[9]

In addition, a person who fails to pay taxes within the time limit must pay a surcharge of 1.5% per month, or fraction thereof, of the amount of tax payable, excluding the amount of fees.[10]

[4] Anti-Money Laundering Act, B.E. 2542 (1999), amended by Anti-Money Laundering Act (No. 4), B.E. 2556 (2013), sec. 5, 61, https://perma.cc/3SSQ-J3W7.

[5] Organic Act on Anti-corruption, B.E. 2561 (2018), https://perma.cc/337Q-35ED.

[6] Id. sec. 176, para. 1.

[7] Id. sec. 176, para. 2.

[8] Id. sec. 176, para. 4.

[9] Revenue Code, B.E. 2481 (1938), as amended, sec. 37, https://perma.cc/3R3H-VW2C.

[10] Id. sec. 27.

V. Environmental Law

There are several laws to protect the environment. One of them is the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535.[11] Its penal provisions are applicable to legal persons.[12]

For example, a corporation that illegally encroaches upon or occupies public land to act in a manner which results in the destruction, loss, or damage to natural resources worthy of being conserved, or causes the occurrence of pollution that has an impact on the environment within the limits of designated environmentally protected areas can face a fine not exceeding 500,000 baht (approximately US$14,460).[13] In addition, where such an unlawful act results in the destruction, loss, or damage to natural resources owned by the State or belonging to the public domain, civil liability is imposed, meaning the corporation must compensate the State for the total value of natural resources so destroyed, lost, or damaged.[14]

VI. Financial and Investment Fraud

The Securities and Exchange Act, B.E. 2535, has criminal penalty provisions that apply to both a natural person and a legal person.[15] For example, a corporation cannot sell newly issued securities in the category of shares, debentures, and others as specified by the Securities and Exchange Commission (SEC), unless the company has obtained an approval from the SEC, and the registration statement and draft prospectus have been filed with the SEC by the promoters of a public limited company. Another exception exists if the offer for the sale of newly issued securities by a public limited company "is made entirely to its shareholders in proportion of their existing shareholding and in consideration of full payment for value offered."[16] A person who contravenes this law faces imprisonment for a term not exceeding two years or a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than 500,000 baht, or both.[17]

The Securities and Exchange Act also imposes civil sanctions. For example, a person who informs, disseminates, or certifies any statement or information that is false or materially misleading about the financial condition, business operation, price of securities, or any other information related to a securities issuing company in such a manner that is likely to have an effect on the price of securities or the decision making on securities investment faces imprisonment not exceeding two

[11] Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992), amended by Enhancement and Conservation of National Environmental Quality Act (No. 2), B.E. 2561 (2018), https://perma.cc/S7U3-5KYX.

[12] Id. sec. 111.

[13] Id. sec. 99.

[14] Id. sec. 97.

[15] Securities and Exchange Act, B.E. 2535 (1992), Securities and Exchange Act (No. 6), B.E. 2562 (2019), sec. 300, https://perma.cc/E7D9-PUKM.

[16] Id. sec. 33, 65.

[17] Id. sec. 268.

years or a fine from 500,000 baht to 2 million baht (about US$59,559), or both.[18] In addition, a civil penalty may be imposed at an amount not exceeding two times the benefit that such person received or should have received from committing such offense, but not less than 500,000 baht, and in cases where the benefit is incalculable, the amount of the civil penalty is from 500,000 baht to 2 million baht.[19]

[18] Id. sec. 240, 296.

[19] Id. sec. 317/1.

Trinidad and Tobago

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SUMMARY Companies operating in Trinidad and Tobago may be subject to criminal penalties for violating its laws. Some violations are subject to summary proceedings and are punishable by fees and monetary penalties.

I. Introduction

Trinidad & Tobago is a two-island country that became independent from the United Kingdom on August 31, 1962.[1] The legal system of Trinidad and Tobago derives from English common law, and the Supreme Court exercises judicial review of legislative acts.[2]

In accordance with the Interpretation Act, "[w]ords in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons." [3]

The Interpretation Act further provides that

> [w]here an offence committed after 31st December 1979 . . . by a body corporate under a written law is proved to have been committed with the consent or connivance of a director or other officer concerned in the management of the body corporate or any person who is purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.[4]

In addition to general liability that applies to all "persons," there are several statutes that subject companies to specific corporate liability.

II. Specific Laws

A. Companies Act

The Companies Act imposes criminal penalties on companies and officers for violation of requirements under the act. The act provides that any director or officer of the company who knowingly authorized, permitted, or acquiesced in the commission of an offense is liable to the

[1] *Commonwealth Caribbean Law Research Guide: Trinidad and Tobago*, Florida State University College of Law, https://perma.cc/FU8K-CUW2.

[2] *Trinidad and Tobago*, CIA: The World Factbook, https://perma.cc/NP2D-RAQR.

[3] Interpretation Act No. 2 of 1962, as amended, § 16(1), Laws of Trinidad and Tobago (LTT), https://perma.cc/98LM-GAP5.

[4] Id. § 70.

same criminal penalty specified for that offense in the act.[5] The act allows complainants to request and obtain "civil remedies" such as "derivative actions," and "restraining oppression," against companies under conditions enumerated in the act.[6]

B. Income Tax Act

The Income Tax Act provides that

> any person guilty of an offence under this Act . . . unless some other penalty is specifically provided for any such offence, [is] liable on summary conviction to a fine . . . . The provisions of this Act shall not affect any criminal proceedings under any other written law.[7]

Other types of orders include forfeiture of assets. [8]

C. Corporation Tax Act

A company which fails, neglects, or refuses to furnish a return of income for the year after six months from the time required to file the return, is liable for a penalty of 1,000 dollars (about US$148) for every six months or part thereof during which such failure, neglect, or refusal continues.[9]

D. The Proceeds of Crime Act

The Proceeds of Crime Act establishes procedures for the confiscation of proceeds of certain offenses[10] and prescribes penalties for money laundering offenses.[11] The act provides that a financial institution or listed business that "knows or has grounds to suspect that the property is criminal property, if it or he fails to take reasonable steps to implement or apply procedures to control or combat money laundering in accordance with the regulations . . . commits an offence of money laundering." [12] Failure to disclose knowledge or suspicion of money laundering similarly constitutes an offense.[13]

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[5] Companies Act 35 of 1995, as amended, § 517A, LTT Ch. 81:01, https://perma.cc/PF6C-HNB4.

[6] Id. Division 12.

[7] Income Tax Act 34 of 1938, as amended, §§ 119 & 123, LTT Ch. 75:01, https://perma.cc/B42K-DFP2.

[8] Id. § 119A.

[9] Corporation Tax Act § 19A, LTT Ch. 75:02, https://perma.cc/U7LS-4NWF.

[10] The Proceeds of Crime Act 55 of 2000, as amended, Part I, LTT Ch. 11:27, https://perma.cc/757M-W2DE.

[11] Id. Part II, § 53.

[12] Id. § 45(2).

[13] Id. § 52.

The commission of money laundering offenses is punishable by prison sentences and criminal fines at levels corresponding to whether the offenders were adjudicated under summary conviction or on conviction on indictment.[14]

E. Financial Institutions Act

The Financial Institutions Act regulates banks and other financial institutions. The act defines a "financial institution" as "a company which carries on or used to carry on all or any aspects of banking business or business of a financial nature."[15] Violations of the provisions of the act are punishable by pecuniary penalties as well as by prison sentences for individuals.[16]

F. Central Bank Act

The Central Bank of the Trinidad and Tobago is authorized to impose fines on financial institutions for violation of their obligations under the Central Bank Act. Where a financial institution is convicted of contravening the duty to pay or charge interest at the rate fixed by the Central Bank, in addition to fines, its license may be suspended or revoked.[17] The act defines a "financial institution" as "a company licensed under the Financial Institutions Act."[18]

G. Anti-Terrorism Act

The Anti-Terrorism Act establishes several offenses and imposes penalties on financial institutions and on legal entities that violate its requirements. A "financial institution" has the meaning assigned to it in the Proceeds of Crime Act, whereas a "legal entity" is defined by the act as "a body corporate, foundation, partnership, association or other similar body that can establish a permanent customer relationship with a financial institution or otherwise own property."[19]

The financing of terrorism is punishable by imprisonment for twenty-five years and a fine of five million dollars (about US$732,500) for an individual offender, or a fine at a rate of five times this amount in the case of a legal entity.[20] A violation of the legal reporting requirements that apply to financial institutions is a criminal offense. Any person who contravenes the reporting requirements is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.[21] The act imposes additional fines at different rates on violations of other

[14] Id. § 53.

[15] Financial Institutions Act 26 of 2008, as amended, preamble and § 2, LTT Ch. 79:09, https://perma.cc/5S44-NH6F.

[16] Id. §§ 117-18.

[17] Central Bank Act 23 of 1964, § 44B, LTT Ch. 79:02, https://perma.cc/69WE-GZE9.

[18] Id. § 2.

[19] Anti-Terrorism Act, Act 26 of 2005, as amended, §§ 2, 22A(3), LTT Ch. 12:07, https://perma.cc/YN87-TJZ6.

[20] Id. § 22C(5).

[21] Id.

requirements that specifically apply to financial institutions, such as providing an authorized officer with false information, etc.[22] In addition, the act provides for "seizure and forfeiture of terrorist property" under procedures enumerated in the act.[23]

H. Environmental Management Act

Any person who knowingly or recklessly endangers human life or health by violating the provisions of the act, or who violates "ethical standards prohibitions" is liable for a fine and imprisonment for a term defined in the act.[24] Under the act, a "'person' includes any individual or any firm, business, company, enterprise, body corporate, trust, unincorporated association, partnership, or governmental entity, however constituted."[25]

[22] Id. § 24B.

[23] Id. Part VIII.

[24] Environmental Management Act 3 of 2000, as amended, §§ 70, 94-96, LTT Ch. 30:35, https://perma.cc/EQN4-YHRT.

[25] Id. § 2.

Tunisia

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SUMMARY In Tunisia, Law No. 36 of 2015 on Reorganizing Competition and Prices and Law No. 52 of 2018 Issuing the National Business Register Law impose fines on corporate entities violating the law. Also, Law No. 26 of 2015 Promulgating the Fight Against Terrorism and the Prohibition of Money Laundering Law and Decree No. 54 of 2022 on Combating Cybercrime impose fines and order the dissolution of corporate entities.

I. Law No. 36 of 2015 on Reorganizing Competition and Prices

Law No. 36 of 2015 stipulates that if a corporate entity engages in fraud or attempts to achieve unlawful profits by raising prices or applying them unlawfully—such as falsifying accounts, concealing accounting documents or maintaining hidden accounts, issuing fake invoices, or secretly paying or receiving value differences during transactions—the general directors, managers, agents, and/or anyone authorized to represent the corporation be held personally liable, rather than the corporation itself. These individuals are subject to a fine ranging from TND 500 (approx. US$163) to TND 50,000 (approx. US$16,300). Additionally, accomplices are subject to the same penalty.[1] It is important to note that criminal penalties do not apply to legal persons (corporations) unless they are determined by codified legislation.

II. Law No. 26 of 2015 Promulgating the Fight Against Terrorism and the Prohibition of Money Laundering Law

Law No. 26 of 2015, as amended, holds corporate entities criminally liable for committing any of the terrorist offenses outlined in this law, especially when such offenses reflect the primary purpose of the entity's establishment, provide any form of benefit, or generate income for it. The entity is also held liable if it is found to have provided direct or indirect support to individuals, organizations, or activities involved in terrorist offenses, as defined under this law. In cases of liability, the corporate entity may be subject to a fine equivalent to the value of the funds obtained from the terrorist activities. In any event, the fine must not be less than five times the amount applicable to a natural person, with the statutory maximum penalty for natural persons under this law set at TND 200,000 (approx. US$65,000).[2]

In addition, the court may order the suspension of the entity's activities for a period of five years or order its dissolution. Prosecuting the corporate entity does not preclude the imposition of

[1] Law No. 36 of 2015 on Reorganizing Competition and Prices, arts. 54, 55, Al-Rā'id al-Rasmī (Official Gazette) at 2772, vol. 77-78, Sept. 25 & 29, 2015, https://perma.cc/FQ5Y-Y2M7 (in Arabic).

[2] Law No. 26 of 2015 Promulgating the Fight Against Terrorism and the Prohibition of Money Laundering Law, as amended, art. 7, Al-Rā'id al-Rasmī at 2164, vol. 63, Aug. 7, 2015, https://perma.cc/BPS5-2F9W (in Arabic).

penalties on its representatives, managers, partners, or agents if their personal liability for the criminal act is established.[3]

If their personal liability for the terrorist offense is established, managers, representatives, agents, partners, and auditors of corporate entities may be subject to imprisonment ranging from six to 12 years, along with a fine not less than TND 50,000 and not more than TND 100,000 (approx. US$32,500). This applies if such individuals, by any means—whether directly or indirectly—deliberately conceal or facilitate the concealment of the true origin of movable or immovable property, income, or profits belonging to a corporate entity. This also includes the acceptance of deposits under a false name or their integration with other funds, with knowledge that the purpose is to finance individuals, organizations, or activities linked to terrorist offenses. These provisions apply regardless of whether the origin of these funds is legitimate or illicit.[4]

This does not preclude the prosecution of the corporate entity if it is found that the money laundering operations were conducted through the entity, for its benefit, or generated income for it. If it is determined that money laundering was the entity's primary objective, the corporate entity shall be subject to a fine equivalent to five times the amount applicable to natural persons, which may be increased to match the value of the laundered funds. This does not exclude the application of disciplinary and administrative penalties on the corporate entity as prescribed under this law, including the suspension of its activities for a specific period or its dissolution.[5]

III. Decree No. 54 of 2022 on Combating Cybercrime

Corporate entities may be held criminally liable and subject to fines if they commit any of the offenses regulated under this decree, provided that the offense was committed for their benefit, generated income for the entity, or constituted the purpose for which the corporation was established.[6] The fine imposed must be equivalent to five times the amount levied on a natural person, with the statutory maximum penalty for natural persons under this decree set at TND 100,000.[7]

The court may also prohibit the corporation from continuing its activities for a maximum period of five years or order its dissolution. This does not preclude the imposition of penalties prescribed in this decree on the corporation's representatives or managers found personally liable for these offenses.[8]

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[3] Id. art. 7.

[4] Id. art. 36, para. 3.

[5] Id. art. 96; see also Law No. 9 of 2019, Amending Law No. 26 of 2015 on the Fight Against Terrorism and the Prohibition of Money Laundering Law, art. 28, Al-Rā'id al-Rasmī at 236, vol. 9, Jan. 29, 2019, https://perma.cc/YEG5-N4MH (in Arabic).

[6] Decree No. 54 of 2022 on Combating Cybercrime, art. 30, Al-Rā'id al-Rasmī at 2949, vol. 103, Sept. 16, 2022, https://perma.cc/C67Y-3C43 (in Arabic).

[7] Id. art. 23.

[8] Id. art. 32.

IV. Decree No. 115 of 2011 Promulgating the Freedom of the Press, Printing, and Publishing Law

In the event that a corporate entity lends its name to the owner or the financier of a general news publication to conceal the identity of the true owner, the criminal liability will extend to the chairman of the board of directors, the chairman of the supervisory board, the agent, and/or the managers.[9]

V. Law No. 52 of 2018 Issuing the National Business Register Law

Law No. 52 of 2018 holds corporate entities liable for providing incomplete data during registration, renewal, deletion, or while rectifying missing information in the register. Corporations may be subject to fines, which are doubled for corporate entities. The statutory minimum fine for natural persons is MAD 1,000 (approx. US$325), and the statutory maximum is MAD 5,000 (approx. US$1,630). These amounts are doubled when imposed on corporate entities.[10]

Similarly, if corporate entities provide incorrect registration numbers on their checks or other business-related documents, or if they violate the requirements associated with the commercial registration license, they may be subject to fines. For natural persons, the statutory minimum fine is MAD 250 (approx. US$81), and the statutory maximum is MAD 10,000 (approx. US$3,300). These penalties are doubled when imposed on corporate entities.[11]

VI. Law No. 91 of 1988 on the Establishment of a National Agency to Protect the Ocean

Law No. 91 of 1988 holds corporate entities liable for engaging in activities that may cause environmental pollution. Corporate entities conducting activities that generate pollution—whether solid, liquid, gaseous, or of other forms—are required to eliminate or reduce the resulting waste.[12] The corporate entity may be subject to a fine ranging from MAD 100 (approx. US$33) to MAD 50,000, depending on the severity of the violation. Furthermore, the competent court may order the closure of the entity. The responsible agency has the authority to reconcile with the corporate entity, and such reconciliation would bring an end to the prosecution.[13]

[9] Decree No. 115 of 2011 Promulgating the Freedom of the Press, Printing and Publishing Law, art. 25, Al-Rā'id al-Rasmī at 2563, vol. 84, Nov. 4, 2011, https://perma.cc/RC2R-2VBB (in Arabic).

[10] Law No. 52 of 2018 Issuing the National Business Register Law, art. 54, Al-Rā'id al-Rasmī at 4652, vol. 89, Nov. 6, 2018, https://perma.cc/RYL7-YZSZ (in Arabic).

[11] Id. art. 58.

[12] Law No. 91 of 1988 on the Establishment of a National Agency to Protect the Ocean, art. 8, Al-Rā'id al-Rasmī at 1088, vol. 52, Aug. 2, 1988, https://perma.cc/XA25-BLY6 (in Arabic).

[13] Id. art. 11.

United Arab Emirates

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I. Federal Law No. 31 of 2021 on the Penal Code

Federal Law No. 31 of 2021 on the Penal Code of the United Arab Emirates stipulates that a corporation is liable for any criminal act committed for its account or in its name by the corporation's representatives, directors, or agents. In such a case, the court may only impose fines upon the violating corporation, confiscation of its assets, and other measures provided in the law. However, if the criminal sanction entails other principal sanctions in addition to a fine, only a fine that does not exceed AED 5 million (about US$1.5 million) will apply. Additionally, a term of imprisonment may apply to the representatives, directors, or agents of the corporate entity.[1]

II. Federal Decree Promulgating Law No. 32 of 2021 on Commercial Corporations

The Federal Decree Promulgating Law No. 32 of 2021 on Commercial Corporations provides that a corporation is liable for any act carried out by the person authorized to manage such a corporation. Similarly, the corporation is liable for any act carried out by the corporation's representatives, agents, and employees.[2]

III. Federal Law No. 4 of 2012 on Anti-trust

Federal Law No. 4 of 2012 penalizes corporations that violate safe practices of competition or commit the offense of abuse of dominant position with a fine between AED 500,000 (about US$136,000) and AED 5 million.[3]

IV. Federal Decree Promulgating Law No. 29 of 2021 on the Entry and Residence of Foreigners

The Federal Decree Promulgating Law No. 29 of 2021 punishes corporations if their representatives, agents, employees, or managing directors violate the provisions of this law. Punishments include the closure of their offices and the suspension of their commercial activities for a period not exceeding six months and payment of a fine.[4]

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[1] Law No. 31 of 2021, art. 66, al-Jarīdah al-Rasmīyah (official gazette), vol. 712 (annex), Sept. 26, 2021, https://perma.cc/NC27-3W22 (in Arabic).

[2] Law No. 32 of 2023, art. 23, al-Jarīdah al-Rasmīyah, vol. 712, Sept. 26, 2021, https://perma.cc/8UKZ-UVPC.

[3] Law No. 4 of 2012, art. 16, al-Jarīdah al-Rasmīyah, vol. 542, Oct. 23, 2012, https://perma.cc/T6C4-DWF9 (in Arabic).

[4] Federal Decree Promulgating Law No. 29 of 2021, art. 28, al-Jarīdah al-Rasmīyah, vol. 712, Sept. 26, 2021, https://perma.cc/7FK9-X8LX (in Arabic).

V. Federal Decree Promulgating Law No. 20 of 2018 on Combating Money Laundering

The Federal Decree Promulgating Law No. 20 of 2018 on Combating Money Laundering holds the corporation as a legal person criminally liable if criminal conduct is committed in its name or on its behalf intentionally. [5] Furthermore, this law sanctions corporations when their representatives, managers, or agents commit offenses for their account or in their names with a fine between AED 500,000 and AED 50,000,000 (about US$13.6 million).[6] If the corporation is convicted of terrorism financing crimes, the court can order its dissolution and permanent closure of its offices.[7]

VI. Federal Decree Promulgating Law No. 36 of 2021 on Trademarks

The Federal Decree Promulgating Law No. 36 of 2021 on Trademarks holds a corporation criminally liable if it used a commodity in a way that suggested that the commodity's geographical origin is not the true one to mislead the public about this origin.[8] Similarly, this law holds a corporation criminally liable if it counterfeits a trademark or imitates it in a way that misleads the public.[9]

The law punishes the violating corporation with a fine between 100,000 AED (about US$27,226) and AED 1 million (about US$272,000).[10] In case of repetition, the amount of the fine is doubled. Furthermore, the court may order the closure of the violating establishment, and the confiscation of the tools, machines, or materials involved in the crime.[11]

VII. Federal Decree Promulgating Law No. 34 of 2021 on Countering Rumors and Cybercrimes

The Federal Decree Promulgating Law No. 34 of 2021 holds the managing director of a company criminally liable if it is proven that he or she was aware of the criminal offense and did nothing to prevent it or report it. Furthermore, this law stipulates that the managing director of a corporation shall be punished with criminal penalties prescribed for the crimes cited in this law.[12]

Furthermore, the corporation is criminally liable if its employees commit the offenses cited in this law in its name or for its benefit. In this case, the corporation pays fines imposed by this law.[13]

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[5] Federal Decree Promulgating Law No. 20 of 2018, art. 4, al-Jarīdah al-Rasmīyah, vol. 637 (annex), Sept. 30, 2018, https://perma.cc/6R89-2ECP.

[6] Id. art. 23(1).

[7] Id. art. 23(2).

[8] Federal Decree Promulgating Law No 36 of 2021, art. 39(1), al-Jarīdah al-Rasmīyah, vol. 712 (annex), Sept. 26, 2021, https://perma.cc/2T8R-PX55.

[9] Id. art. 49(1).

[10] Id. art. 49, para. 1.

[11] Id. art. 51, para. 2.

[12] Federal Decree Promulgating Law No. 34 of 2021, art. 58, al-Jarīdah al-Rasmīyah, vol. 712 (annex), Sept. 26, 2021, https://perma.cc/JG7P-S2MQ.

[13] Id.

Uzbekistan

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SUMMARY Corporate liability is established within the criminal law framework. Corporations can be held liable for a range of offenses, including economic crimes, corruption, fraud, tax evasion, and environmental violations. The specific provisions detailing these offenses and the applicable penalties for corporate entities are outlined in the Criminal Code and various laws and regulations. Individual employees and executives can be held liable for committing crimes in the course of their official duties. Offenses not meeting the scale of a crime are treated as administrative violations punishable by fines.

I. Introduction

The Criminal Code of Uzbekistan outlines the provisions for corporate criminal liability, allowing companies to be held responsible for economic crimes as well as fraud, bribery, and environmental violations committed by their employees acting within the scope of their duties.[1]

Under Uzbek legislation, when a corporation is found guilty of a crime, potential sanctions include substantial fines, asset seizure, restrictions on business operations, and even the possibility of forced liquidation in severe cases. While the company can be held liable, individual employees or executives involved in the criminal activity can also face personal criminal charges depending on the circumstances.

Furthermore, corporate criminal liability is governed by a broad range of laws and regulations that define the duties and responsibilities of legal entities and their representatives concerning criminal actions.

II. Penalties for Specific Offenses

A. Penalties for Corruption

In Uzbekistan, anticorruption norms are primarily enshrined in the Act on Combating Corruption and articles 192(9), 192(10) and 210–214 of the Criminal Code. These provisions criminalize bribery offenses in the private and public sectors.[2]

The Act on Combating Corruption includes measures directed at preventing corruption in the sphere of social and economic development and entrepreneurship.[3]

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[1] Criminal Code of Sept. 22, 1994, No. 2012-XII, https://perma.cc/9D68-QQYX (in Russian).

[2] Anti-Corruption Law, No. O'RQ-419, of Nov. 24, 2016, https://perma.cc/KKZ3-2GW6 (in Russian).

[3] Act on Combating Corruption, No. ZRU-416 of Nov. 24, 2016, art. 20, https://perma.cc/HK99-7AWN (in Russian).

Uzbekistan's Criminal Code criminalizes corruption in the form of abuse of office, embezzlement, forgery, offering or accepting a bribe, extortion, mediation in bribery, bribing an employee of a state body, an organization with state participation or a citizens' self-governance body, and laundering of the proceeds of these crimes.[4]

The Criminal Code provides the grounds for applying criminal sanctions to legal entities. It specifies that a crime is considered committed in the interests of a legal entity or for the benefit of a legal entity by the legal entity's official, founder, employee or by any other person when it resulted in gaining pecuniary advantage, evasion of pecuniary or other liability envisaged by the law, obtaining property rights or exemption from property-related obligations, or other unlawful privileges.[5]

Penalties for this crime may include imprisonment for three to 12 years, along with the confiscation of property.[6] In addition, giving a bribe on an especially large scale or in the interests of an organized group is punishable by imprisonment for a term of 10 to 15 years.[7] Acting as an intermediary in bribery on a particularly large scale or in the interests of an organized group is punishable by two to five years of imprisonment.[8]

Under the Criminal Code, officials who misuse their positions to commit illegal acts or embezzle government funds for personal gain are committing corruption. Punishments for such crimes may include imprisonment with or without confiscation of property.[9]

Those who organize or facilitate corrupt activities, or allow others to do so, face legal consequences.[10] Punishments may also involve imprisonment for a term of five to eight years and property confiscation.[11]

Acceptance of bribes is punishable by

- a fine in the amount of 50 to 100 Basic Calculation Value (BCV)[12] units,
- compulsory community service of 300 to 360 hours,

[4] Criminal Code arts. 168, 192(9), 192(10), 210-214, 243.

[5] Criminal Code art. 192.

[6] Id. arts. 210, 211.

[7] Id. art. 211.

[8] Id. art. 212, para. 3.

[9] Id. art. 212.

[10] Id. art. 213.

[11] Id. arts. 210-213.

[12] The amount of calculation units (Basic Calculation Value, BCV) is established periodically by the Government of Uzbekistan annually and is based on various financial indicators. The current amount of BCV is equal to UZS 375,000 (approximately US$29) and has applied since October 1, 2024. Decree of the President of the Republic of Uzbekistan on Increasing Amounts of Wages, Pensions and Benefits of Aug. 12, 2024, No. UP-108, art. 2, https://perma.cc/8KZU-SA2V (in Russian).

- correctional labor of one to two years,
- restriction of freedom from one to three years, or
- imprisonment of up to three years.[13]

Articles 193(1), 193(2), and 611 of the Code on Administrative Liability establish administrative liability for some types of corruption offenses.[14] For example, bribing an employee of a state body, an organization with state participation, or a citizen's self-government body entails the imposition of a heavy fine.[15]

B. Penalties for Money Laundering

The Law on Counteracting Legalization of the Proceeds of Crime, Terrorism Financing and Financing Proliferation of Weapons of Mass Destruction (AML Law) provides for the rights and responsibilities of natural and legal persons in enforcing measures against the laundering of the proceeds of a crime.[16]

The AML Law's measures apply to citizens of the Republic of Uzbekistan, foreign citizens and stateless persons, legal entities, their branches and representative offices that carry out transactions with cash or other property on the territory of the Republic of Uzbekistan and abroad in accordance with international treaties of the Republic of Uzbekistan, and to state bodies exercising control on the territory of the Republic of Uzbekistan over the conduct of transactions with cash or other property.[17]

Individuals found guilty of violating the AML Law will be held liable in accordance with the existing criminal procedure.[18]

Article 243 of the Criminal Code of Uzbekistan defines money laundering as the legalization of the proceeds of a crime by knowingly acquiring, concealing, or transferring funds obtained through criminal activity to disguise their illegal origin. Individuals convicted of money laundering can face imprisonment for a term of five to 10 years and fines depending on the amount of money laundered and the circumstances of the crime.[19]

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[13] Id. art. 214.

[14] Code on Administrative Liability of Sept. 22, 1994, https://perma.cc/LE67-MGKD (in Russian).

[15] Id. art. 193(1.)

[16] Law on Counteracting Legalization of the Proceeds of Crime, Terrorism Financing, and Financing Proliferation of Weapons of Mass Destruction, No. 660-II of Aug. 26, 2006, https://perma.cc/MR4M-95E4 (in Russian).

[17] Id. art. 1(1).

[18] Id. art. 24.

[19] Criminal Code art. 249.

Article 179(3) of the Code on Administrative Liability establishes administrative liability for a violation of the law on counteracting legalization of the proceeds of crime, terrorism financing and financing proliferation of weapons of mass destruction.[20]

C. Penalties Under Competition Law

The Law on Competition defines criteria for identifying a dominant market position, introduces the concept of superior bargaining power, sets out antimonopoly compliance requirements for certain business entities, clarifies the requirements for obtaining preliminary consent for certain transactions, and imposes financial sanctions for violations of the law.[21] Superior bargaining power is defined as the ability of a business entity or a group of entities that does not have a dominant position to render unilateral influence on the determination of terms of a transaction, a territory of sales, and the price of goods or services. An abuse of superior bargaining power is prohibited in the same way as an abuse of dominance.[22]

The law imposes penalties for anticompetitive practices by business entities, in addition to administrative responsibility envisaged for officials.[23] Abuse of a dominant position and superior bargaining power in a commodity or financial market by an unreasonable increase in prices for socially and strategically significant products for business can incur a penalty of 5% of the revenue from the transactions received within the violation period, up to the last three years.[24]

Carrying out mergers, joining business entities, and acquiring participating interest in the authorized capital of business entities without obtaining prior consent from the state regulator when such consent is required can incur a fine to the legal entity in the amount of 1,000 BCV (currently equivalent to US$29,000.)[25] In addition, violation of the rules against limiting competition during the mergers, consolidations, and acquisitions of legal entities can incur an administrative sanction in the form of a fine in the amount of one to three times the BCV. If a violation is committed repetitively within one year, a fine in the amount from five to 10 times the BCV applies to individuals, and 10 to 20 times the BCV applies to officials of legal entities.[26]

The penalty for committing unfair competition practices against business entities is 2% of the revenue from the transactions received within the violation period, up to the last three years.[27]

Failure to provide or untimely provision of information and provision of inaccurate or false information about a business entity to the state regulator is punishable by a fine of 50 BCV (approximately US$1,350.) Violation of legal requirements concerning bidding, public

[20] Code on Administrative Liability of Sept. 22, 1994, https://perma.cc/LE67-MGKD (in Russian).

[21] Law on Competition, No. ZRU- 850 of Feb. 14, 2023, arts. 4, 6, https://perma.cc/5C77-R6X2 (in Russian).

[22] Id. art. 4.

[23] Id. art. 42, paras. 1-3, 6.

[24] Id. art. 42, para. 1.

[25] Law on Competition art. 42, paras. 1, 46.

[26] Id.

[27] Id. art. 42, para. 4.

procurement, operators of electronic tenders, and organizers can entail a penalty of 3% of the initial price of the subject of the bidding.[28]

Additionally, the Criminal Code punishes actions aimed at discrediting a competitor, damaging the business reputation of an economic entity, and disseminating knowingly false, inaccurate or distorted information. Such acts are punishable by a fine of 50 to 100 BCV, compulsory community service of up to 360 hours, or up to three years of correctional labor.[29]

D. Penalties for Tax Evasion

Under the Tax Code, a failure to file tax returns on due dates can incur a fine in the amount of 1% of the unpaid tax for each day of delay, but not more than 10% thereof in total. Concealing or understating the amount of taxable assets can incur a fine amounting to 20% of the taxable assets.[30]

The Criminal Code imposes increased penalties for intentional tax violations if they are committed in large amounts or repeatedly. The penalty can be a fine of up to 150 BCV, correctional labor for up to two years, or arrest for up to six months. An especially large amount of tax evasion will be punished with a fine from 300 to 600 BCV or imprisonment from three to five years. [31]

Violation of budgetary and cost-estimation discipline in a financial year, committed on a large scale, is punishable by a fine of up to 50 BCV, compulsory community service of up to 240 hours, correctional labor of up to one year.[32]

E. Penalties Under Environmental Law

In Uzbekistan, corporations can face criminal liability for environmental damage, with the legal framework encompassing various aspects of environmental protection and pollution control.

The Law on the Protection of Nature outlines environmental protection principles, including the right of individuals and legal entities to sue for the discontinuation of ecologically negative activities.[33]

The Criminal Code defines specific offenses related to environmental harm, including pollution and damage to land, water, or air that result in significant consequences, such as mass disease,

[28] Id. art. 42, para. 5.

[29] Criminal Code art. 192.

[30] Tax Code of the Republic of Uzbekistan of Dec. 25, 2007, No. ZRU -136 (version of Dec. 30, 2019), new edition of Jan. 1, 2023, https://perma.cc/EZJ3-DSEX (in Russian).

[31] Criminal Code art. 184.

[32] Id. art. 184(1).

[33] Law on the Protection of Nature, No. 754-XII of Dec. 9, 1992, arts. 1-3, https://perma.cc/KA3E-3XS6 (in Russian).

animal death, or other severe harm. The Criminal Code specifies penalties for various environmental offenses, including imprisonment, fines, and correctional labor.[34] Penalties include fines ranging from 100 to 200 BCV, deprivation of a specific right for up to five years, compulsory community service of up to 360 hours, or correctional labor for up to three years.[35]

Environmental crimes resulting in a person's death are punishable by restriction of freedom for one to three years or imprisonment for up to three years with deprivation of a specific right.[36]

[34] Criminal Code arts. 193-198.

[35] Id. art. 196.

[36] Id. art. 194.

Zambia

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SUMMARY Various laws in Zambia deal with the issue of criminal responsibility of bodies corporate. These include the Penal Code of 1931; the Financial Intelligence Centre of 2010; Income Tax Act of 1966; the Environmental Management Act of 2011; the Prohibition and Prevention of Money Laundering Act of 2010; and the Occupational Health and Safety Act of 2010. The Penal Code, the Income Tax Act, and the Prohibition and Prevention of Money Laundering Act hold both the body corporate and its representatives expressly criminally liable for the commission of a crime. The other laws appear to attribute the criminal responsibility of a body corporate to its representatives unless they can show that they were not involved or took measures to prevent the crime. Significantly, the Interpretation and General Provisions Act defines the term "person" in the country's laws to include a body corporate, meaning that a company may be held criminally liable for any offense under any of the above listed laws.

I. Introduction

The "legal status of registered company" clause of the Companies Act of 2017 states that "[a] company registered in accordance with this Act, acquires a separate legal status, with the name by which it is registered, and shall continue to exist as a corporate until it is removed from the Register of Companies."[1] The act defines the term "corporate" as "an entity, including a company or body corporate, that is separate and distinct from its owners and which is recognised as such by law and acts as a single entity."[2] In addition, the "capacity, powers and rights of company" clause of the act states that

> [a] company shall have—
> (a) perpetual succession and a common seal, capable of suing and being sued in its corporate name and shall, subject to this Act, have power to do all such acts and things as a corporate may by law, do or perform;
> (b) subject to this Act and to such limitations as are inherent in its corporate nature, the capacity, rights, powers and privileges of an individual; and
> (c) the capacity to carry on business and exercise its powers in any jurisdiction outside Zambia, to the extent that the laws of Zambia and of that jurisdiction permit.[3]

The Interpretation and General Provisions Act, which applies to all "written laws" enacted before or after its enactment—unless the law or the act's provisions state otherwise—defines the

[1] Companies Act § 16 (Nov. 17, 2017), https://perma.cc/92KJ-MJKX.

[2] Id. § 3.

[3] Id. § 22.

term "person" to include "any company, association, or body of persons, whether corporate or unincorporated."[4] The Constitution accords corporations charged with a crime the same rights accorded to natural persons facing criminal charges.[5]

Various laws in Zambia are relevant to the issue of criminal offenses committed by companies. These include offenses committed under the Penal Code of 1931; the Financial Intelligence Centre of 2010; the Income Tax Act of 1966; the Environmental Management Act of 2011; the Prohibition and Prevention of Money Laundering Act of 2010; and the Occupational Health and Safety Act of 2010.

II. Applicable Laws

A. Penal Code

It appears that a 2007 amendment to the 1931 Penal Code[6] introduced a new division to the Code (Division VIA), titled "vandalism to public and private property," which includes a provision on "offences by body corporate, etc."[7] This provision states that

> (1) Where an offence is committed by an institution and it is proved that the offence—
> (a) was committed with the consent or connivance of an officer of the institution; or
> (b) was attributable to neglect on the part of an officer of the institution;
> the officer and the institution shall be guilty of the offence.
> (2) In this section—
> (a) in the case of an institution which is a body corporate, "officer" includes—
> (i) a director, manager or Secretary;
> (ii) a person purporting to act as a director, manager or Secretary;
> (iii) if the affairs of the body are managed by its members, a member; and
> (iv) any other person concerned in the management of the body corporate;
> (b) in the case of an institution which is a partnership, "officer" means a partner; and
> (c) in the case of an institution which is an incorporated association other than a partnership, "officer" means a person concerned in the management or control of the association.
> (3) Where an institution is fined in terms of subsection (1), that institution shall be liable, where the offence for which sentence is passed is in respect of—
> (a) vandalism of public or private property essential or incidental to the provision of a necessary service, to a fine of five hundred thousand

[4] Interpretation and General Provisions Act §§ 2 & 3 (Oct. 24, 1964), https://perma.cc/8YHC-ZVCF.

[5] Constitution of Zambia § 18 (1991; rev. through 2016), https://perma.cc/QCN3-BDJY.

[6] Penal Code (Nov. 1, 1931), https://perma.cc/AN9S-K6M5.

[7] Penal Code (Amendment) Act, 2007, § 6 (§§ 341A-341K in the Penal Code), (Aug. 30, 2007), https://perma.cc/K988-JUHC.

> penalty units and in the case of a second or subsequent offence, to a fine of five hundred and fifty thousand penalty units;
> (b) vandalism of public buildings, infrastructure or other property, in the case of a first offence, to a fine of three hundred thousand penalty units and in the case of a second or subsequent offence, to a fine of three hundred and fifty thousand penalty units;
> (c) vandalism of a computerised system, to a fine of four hundred thousand penalty units;
> (d) vandalism of road signs and road signals, to a fine of two hundred thousand penalty units; and
> (e) vandalism of navigation signs and signals, to a fine of two hundred thousand penalty units.[8]

The "imprisonment" clause of the Penal Code provides "[a] person convicted of a felony, other than manslaughter, may be sentenced to pay a fine in addition to imprisonment: Provided that, where such person is a corporation, the corporation may be sentenced to a fine instead of imprisonment."[9]

Under the code, non-physical penalties that may be applicable to corporate bodies include fines, forfeiture, and payment of compensation.[10]

B. Financial Intelligence Centre Act

This act attributes crimes committed by a body corporate to its representatives unless they can show they were not involved or that they took reasonable actions to prevent the commission of the crime. It states that

> [w]here an offence under this Act is committed by a body corporate or unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.[11]

Applicable penalties under this act include fines, administrative penalties, and cancellation of a license.[12]

[8] Penal Code § 341I, Note that one penalty unit is equivalent to 180 Zambian Kwacha (about USD$6.5). Fees and Fines Act § 3 (Jun. 3, 1994; a version amended through 2013), https://perma.cc/7LKX-VBC4.

[9] Penal Code § 26.

[10] Id. § 24.

[11] Financial Intelligence Centre Act § 52 (Nov. 29, 2010), https://perma.cc/V8K8-EFZ9.

[12] Id. §§ 42-49.

C. Anti-Corruption Act

Much like the Financial Intelligence Centre Act, this act also attributes criminal responsibility to its representatives for crimes committed by a corporate body unless they can show they were not involved or that they took reasonable actions to prevent the commission of the crime. The act states

> [w]here an offence under this Act is committed by a body corporate or unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.[13]

Applicable penalties include fines and forfeiture of proceeds or property acquired as a result of corruption and restitution.[14]

D. Income Tax Act

Similar to the acts noted above, the Income Tax Act attributes offenses of a corporate body to its agents unless they can show that they were not involved or they tried to prevent the commission of the offense, stating that

> [w]here any offence under this Act has been committed by a body corporate, every person who, at the time of the commission of the offence was a director, general manager, secretary or other similar officer of such body corporate or who was acting or purporting to act in any such capacity, shall also be guilty of that offence, unless he proves that the offence was committed without his knowledge or consent, and that he exercised all such diligence to prevent the commission of the offence, as he ought to have exercised, having regard to the nature of his functions in such capacity and in all the circumstances.[15]

The main applicable penalty under the Income Tax Act appears to be fines.[16]

E. Environmental Management Act

It appears that the Environmental Management Act holds natural persons in charge of corporate bodies accountable for offenses committed by the organization unless they can show that they were not involved or they tried to prevent the commission of the offense. It states that

> [w]here an offence under this Act is committed by a body corporate or an unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the

[13] Anti-Corruption Act § 50 (Apr. 12, 2012), https://perma.cc/5EN4-Q4GF.

[14] Id. §§ 16, 41, 42 & 69.

[15] Income Tax Act § 103 (Apr. 1, 1966; version amended through 1997), https://perma.cc/67N8-D7A6.

[16] Id. §§ 79A, 84, & 98-103.

> offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.[17]

Applicable penalties include fines, forfeiture, and a host of administrative orders/penalties (restoration orders, imposition of a preventive order, compliance orders, as well as protection, repair and cost orders).[18]

F. Prohibition and Prevention of Money Laundering Act

The "offences committed by body of persons" clause holds both a body corporate and natural persons acting on its behalf criminally liable when it commits an offense, stating

> [w]here an offence under the provisions of this Act is committed by a body of person, whether corporate or unincorporated—
> (a) the body of persons shall be guilty of an offence and liable upon conviction to a fine not exceeding four hundred thousand penalty units; and
> (b) every person who, at the time of the offence, acted in an official capacity for or on behalf of such a body of persons, whether as a Director, Manager, Secretary or other similar capacity, or was purporting to act in such capacity and who was involved in the commission of that offence, shall be guilty of that offence;
> and shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years, or to both.[19]

G. Occupational Health and Safety Act

The Occupational Health and Safety makes accountable natural persons in charge of corporate bodies for offenses committed by the organization unless they can show that they were not involved or they tried to prevent the commission of the offence, stating

> [w]here an offence under this Act is committed by a body corporate or an unincorporate body, every director or manager of the body corporate or an unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.[20]

Under the Occupational Health and Safety Act, it appears that the main applicable penalties are fines.[21]

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[17] Environmental Management Act § 126 (Apr. 15, 2011), https://perma.cc/S844-DB6M.

[18] Id. §§ 15, 25, 31, 32, 35, 47, 54, 60, 77, 78, 80, 103-106, 111, 117-125.

[19] Prohibition and Prevention of Money Laundering Act § 8 (Nov. 29, 2010), https://perma.cc/4QWU-BNTJ.

[20] Occupational Health and Safety Act § 36 (Nov. 19, 2010), https://perma.cc/4EQK-2VFQ.

[21] Id. §§ 16, 19, 21-23, 26, 34 & 35.