



New crimes for which a company may be liable in Spain

Law 1/2019, of 20 February, amending Law 10/1995, on the Criminal Code, transposing several Directives of the European Union

The amendment of the Spanish Criminal Code that we are referring to in this article entered into force on 13 March 2019 and has several implications for entities that operate in Spain. First, it increases the number of conducts that may be considered as a crime as well as the number of cases in which legal entities may be criminally liable. There is also a significant increase in the penalties that may be imposed on companies for such crimes. Below we refer to those aspects of the amendment that we understand may be more interesting for companies operating in Spain.

Use of privileged information

Until now the Criminal Code has only considered the use of privileged information as a crime if such use was made aiming to gain a benefit in the context of a regulated market. From now on the use of privileged information is also a crime if it is made outside a regulated market. There is an increase in the number of uses of privileged information that may be considered as a crime. The mere illicit communication of privileged information and recommending or inducing a person to use privileged information are now also considered to be criminal offenses.

Until the amendment of the Code only persons who had access to privileged information due to their professional or business activities (including members of management bodies of companies, shareholders and other persons who have access to privileged information during the performance of their duties) could be accused of having committed a crime for use of

privileged information. After the amendment, the use of privileged information can result in criminal liability not only for persons who have access to such privileged information during the performance of their duties but also for persons that obtain such information for any other reason and use it knowing that it is privileged.

Bribery and embezzlement

With regards to bribery and embezzlement, the definition of who is a “public official” is broadened as it now also includes any person that carries out any public service, as well as foreign and European Union public officials.

Before the amendment, legal entities were not subject to criminal liability for embezzlement. After the amendment, legal entities that manage public funds may also be charged with criminal liability for embezzlement.

After the amendment, bribery among private parties not only exists when a company’s director, manager, employee or associate receives, asks for or accepts an unjustified benefit or advantage to illicitly favor another person, but also when what any of such persons receives, asks for or accepts is not the benefit or advantage itself but the mere promise of such benefit or advantage.

As a conclusion, it is advisable to review the criminal compliance systems of companies operating in Spain, in order to update their current policies and procedures and to include provisions regarding the new crimes for which companies can be charged with criminal liability.