



## **Criminal Liability of Companies**

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#### **1. General**

**1.1. Can a company be prosecuted in your jurisdiction in a similar way as an individual offender? Please explain the main differences, if any.**

No, there are no specific criminal laws that allow the prosecution of companies in a way similar to individuals. Moreover, scholars understand that it is not possible to apply the existing criminal legislation to companies, only natural persons may be subject to criminal laws.

**1.2. Can other types of sanctions under criminal law been imposed on companies? Describe the major types of sanctions and their legal prerequisites.**

According to Uruguayan law no criminal sanctions may be imposed on a company or legal entity. However other sanctions may be imposed, as described in question 1.3 below.

- 1.3. Are there any other kinds of sanctions in other fields of law which can be imposed on companies following the commission of an offence by its directors, managers or employees (e.g. fines, dissolution of a company, etc.)? Please describe the relevant sanctions and summarize the legal prerequisites.**

Provided the directors, managers, employees etc. are acting on behalf of the company, other penalties may be imposed as described in question 3.1 below.

If such persons are not acting on behalf of the company, they will be personally liable, but no sanction will be imposed on the company.

## **2. Criminal Liability of Companies**

- 2.1. What types of sanctions can be imposed on a company? What is the minimum/maximum punishment for each sanction? If the sanctions distinguish between certain types of offences please describe the sanctions for the most relevant offences or groups of offences.**

N/A

- 2.2. What are the legal requirements for each type of sanction?**

N/A

- 2.3. Is the prosecution of a company confined to certain types of offences or to offences committed by certain hierarchy of company staff? If yes, please explain in more detail.**

N/A

- 2.4. How will acts (or omissions) of individuals (directors, managers, employees) be attributed to a company? Can acts or omissions be attributed if the individual violated only internal (but not statutory) rules or regulations?**

N/A

- 2.5. How will mens rea of the company be established?**

N/A

- 2.6. Is there a strict liability of a company for certain kinds of offences for which mens rea is not required? Please describe for which kind of offences mens rea is necessary and for which not.**

N/A

**2.7. Is it necessary to identify and/or convict the individual offender in order to prosecute a company?**

N/A

**2.8. What additional defenses (except of lack of offence) can a company raise?**

N/A

**2.9. Can a company avoid punishment if it is sufficiently organized, has duly instructed its directors, managers or employees and has taken reasonable care to exert control on its directors, managers or employees? What extent or organizational requirements and control are necessary to avoid conviction?**

N/A

**2.10. Can certain kinds of sanctions been executed during the investigative phase of a criminal proceedings (e.g. preliminary seizure of bank accounts, attachment of claims)?**

N/A

**2.11. Can both the individual offender and the company been convicted for the same offence?**

N/A

**2.12. Can a parent/group company been prosecuted for offences being committed within a subsidiary?**

N/A

### **3. Criminal Sanctions on a Company**

**3.1. What other types of sanctions but a criminal punishment can be imposed on a company? Please describe the types of sanctions and their legal requirements.**

There is a wide variety of administrative sanctions in the Uruguayan legislation. The most common administrative sanctions are a) warning, b) observation, c) fine and d) temporary or definitive closure. These sanctions are applied in a gradual way by the competent authorities depending on the breached law or regulation.

In cases in which a government authorization is necessary to carry out certain activity (for example radio, banking, etc.); the competent authority may revoke the same as a consequence of the breach of applicable laws and regulations.

**3.2. Is the imposition of these sanctions confined to certain types of offences? Describe the most relevant sanctions and types of offences?**

Yes, applicable laws and regulations define the possible sanctions for each kind of offence.

As a general rule all companies (corporations and limited liability partnerships) are subject to the control and supervision of the Executive Power. According to Decree N° 486/001 the Executive Power (through the “Auditoría Interna de la Nación”) may impose different sanctions depending on the different offences.

The most common sanctions are the imposition of fines and warnings. The most common offences are the failure of companies to submit information to the Auditoría Interna de la Nación within the applicable terms and parameters (failure to communicate increase in capital, failure to inform bylaws modification, etc).

Also applicable to all companies are sanctions related to breach of tax laws and regulations. In such case, there are more specific sanctions: a) penalty interest in the case of late payments; b) fines in the case of contravention (the breach of laws or regulations that impose formal duties), c) payment of one to fifteen times the amounts omitted in case of tax evasion (any fraudulent act done with the intention of obtaining an undue enrichment for oneself or a third party at the expense of the rights of the State to receive a tax). Any occultation or deception that induces public agents to accept as payment a lower amount than the applicable one is regarded to be a fraudulent act, d) payment of one to five times the amounts omitted omission of payment (any unlawful act other than the ones referred to in letters a, b and c which represents a decrease in the amount of taxes paid).

Additionally, the same general sanctions referred to in 3.1 apply in certain areas of activities (banking, consumer defense, etc.) in the case of breach of the laws and regulations applicable to them.

**3.3. What defenses can a company raise against these offences?**

The defenses a company can arise vary from case to case. However, as a general rule, a company can argue that it has abided by the applicable laws and regulations. Another common defense is prescription, which can be alleged in administrative and judicial proceedings.

**3.4. Can such sanctions been executed during the investigative phase of a criminal proceedings?**

As stated in our answer to question 1.1 no criminal proceedings can be initiated against companies.

In relation to administrative proceedings, please note the following.

Whenever an administrative procedure that can result in the application of a sanction has been initiated, there is an obligation to inform the company of the same. After notification the private party is offered a term in which it can provide evidence and all information it deems relevant to the investigation. After this stage is concluded, the administrative area adopts a decision on the issue, which can result on the application of a sanction. When this happens the company is offered a 10 day term, after the notification of the sanction, so as to reject the decision and file for an administrative appeal.

The administrative appeal can have up to three stages depending on who has imposed the sanction in question.

After the administrative recourses are concluded, the company is offered a 60 day term after the notification of denial or expiration of the term in which the administration must act in which it can file for the annulment of the administrative act that imposes the sanction, before the Tribunal de lo Contencioso Administrativo (hereinafter “TCA”). It is important to mention that this is an autonomous body different from the Judicial Power. The TCA can only annul administrative decisions which are in violation of the law or have been adopted by abuse of power. Thus, the TCA cannot modify or reduce sanctions; it can only declare null the administrative decision by which the sanction was imposed.

#### **4. Procedural Issues in Cases of Corporate Liability**

**4.1. Does the prosecution have discretion to prosecute or not a company? Which aspects will the prosecution take into account?**

N/A

**4.2. At what stage during an investigation/proceeding does a company have the status as a suspect or similar status?**

N/A

**4.3. Does a company have the rights to remain silent (nemo tenetur se ipsum accusare), to refuse production of documents, to deny access to company site without search warrant, to refuse testimony, to answer questions or to any other suspects rights? Who exerts these rights if investigations are made against the company’s directors?**

N/A

**4.4. When will a company be informed that it is or can become prosecuted?**

N/A

- 4.5. Can the directors, managers or employees be witness in proceedings against a company? Does this also apply if the directors, managers or employees are suspects themselves?**

N/A

- 4.6. Will there be a joint proceeding against the company and the individual offender?**

N/A

- 4.7. Does the proceeding against a company differ from that against an individual suspect? If yes, describe the elemental differences.**

N/A

## **5. Procedural Issues on Other Criminal Sanctions**

- 5.1. Does the prosecution have discretion to impose or not a sanction on a company? Which aspects will the prosecution or court take into consideration?**

As explained in our answer to question 3.3 no criminal sanctions may be imposed on companies.

In relation to administrative sanctions, the government has discretion to analyze the facts and decide with respect to the sanctions, acting, however, within the maximums and minimums set by the laws and regulations.

When deciding on the application of a sanction the administration will normally analyze the importance of the law or regulation violated, intention, previous violations, the amount of the damage (in cases in which a damage results of the breach), etc.

- 5.2. Does the company, have the status of a suspect or a similar status and at what stage in proceedings?**

N/A

- 5.3. When will the company be informed that the prosecution is considering to impose sanctions or have sanctions imposed?**

No prosecution applies in respect of companies.

In relation to administrative liability, as stated in question 3.3, before adopting any measure that can result in the application of sanctions to a private party, the

administration must inform this situation to the company, who is given the opportunity to present all the evidence it deems necessary.

**5.4. Which procedural rights does a company have when it is at risk that sanctions might be imposed?**

Please see 3.4. above.

**5.5. Will there be joint proceedings against the company and the individual offender?**

Since no criminal proceedings may be initiated against a company, there are no joint criminal proceedings.

**5.6. Does the proceeding against a company differ from that against an individual suspect? If yes, describe the elemental differences.**

N/A

**6. Criminal Liability of Directors or Managers**

**6.1. Can directors or managers be criminally held liable for offences committed by other individual directors, managers or employees? Which legal concepts apply in your jurisdiction?**

Directors or managers cannot, in principle, be criminally held liable for offences committed by other individual directors, managers or employees.

In the matter of criminal conduct, and as a consequence of the application of general principles, the liability of the members of the directors or managers arises from their personal and individual involvement in the criminal act. In this case the general provisions on criminal felonies are applicable, notwithstanding the fact that there is a specific legal provision dealing with directors which have fraudulently transferred or emptied the company of all its assets (Law Nr. 14095).

Directors, who may sufficiently prove that they had no intervention in illicit acts or had no knowledge of such act or expressed their opposition to the same, shall be exempted from such responsibility.

The only specific provision regarding directors' or administrators' criminal liability is set forth in law 2230 which applies to a corporation's bankruptcy. Such law establishes as a crime the fraud or fraudulent alteration of the balance sheet of the company, committed by the directors of a corporation in bankruptcy or judicial liquidation. This provision only applies when the company is in a bankruptcy procedure or reorganization.

The only possible way in which a director or manager may be found criminally liable for the actions of an employee is if such employee was used as a means to commit a

crime. That is, the actual author of the crime would be the director which for example gave orders to the employee who physically carried out the actions which constitute the criminal conduct.

**6.2. What are the legal requirements for a criminal liability of directors and managers for offences committed by others?**

There are no legal requirements established in Uruguay. As we have stated in 6.1 directors are criminally liable for their own conduct.

**6.3. Does a criminal liability arise only from the fact that another director, manager or employee was not adequately selected, instructed, supervised or the company not adequately organized?**

No.

**6.4. What recommendations do you have to exclude or minimize criminal liability risks of directors of a company?**

Directors must oppose (with such opposition being evidenced if possible in the relevant minutes of directors' meetings or if not, in other written means) to any decision that may derive in criminal liability.

As criminal responsibility may derive from not acting diligently as a director, it is advisable that directors have adequate control over the company so as to avoid criminal liability due to negligence. In order to do this they must be able to prove they have conducted their office with due diligence. They must ensure to perform all activities necessary to protect the interests of the corporation, especially when the same contradict the interests of the shareholders.