

## DOING BUSINESS IN PERU WITH COMPLIANCE

Over the past few years, Peru has seen significant legal reforms in its corporate compliance regime to strengthen the anticorruption regulation and promote corporate governance. However, the increasing the complexity of doing business in the country, requires foreign companies to seek expert guidance when incorporating or doing business in Peru.

Peru is one of South America most attractive locations for foreign companies to set up business. It offers high levels of economic stability – the highest in the region – although the sheer extent and speed of the recently introduced reforms has meant many corporations have had difficulty ensuring compliance with these new rules in order to fight against corruption.

The latest changes introduced by these laws, specifically by the laws which regulate criminal liability of legal entities, could result in serious harm to them, since it will no longer be enough to have prevention or compliance systems in place to ensure the company is not held responsible for the crimes committed by senior management. Thus, the law states that the legal entity will be administratively responsible when the crimes have been committed in their name or on their behalf and for their direct or indirect benefit, by:

a) Its partners, directors, de facto or legal administrators, legal representatives, or proxies of the legal entity or its affiliates or

subsidiaries, under any modality of authorship or provided for in the penal Code.

b) The person who, being subject to the authority and control of the people mentioned in the previous paragraph, has committed the crime under their orders or authorization.

c) The person indicated in the proceeding paragraph the commission of the crime has been possible due to the people mentioned in literal “a” have breached their duties of supervision, vigilance, and control over the entrusted activity, in attention to the specific situation.

To avoid responsibility, legal entities must have a prevention model, which must be prepared based on their risk profile and must have at least:

- An individual overseeing prevention, appointed by the highest administrative body of the legal entity or whoever acts in its place, who must exercise their function independently. In the case of micro, small and medium-sized companies, this position may be held directly by the administrative body.
- Identified risk mitigation actions.
- Implementation of complaint procedures.
- Dissemination and periodic training of the prevention model.
- Evaluation and continuous monitoring of the prevention model.

The only case in which legal entities will be exempt from liability for the commission of crimes will be if they adopted and implemented in their organization, prior to the commission of the crime, or to significantly reduce the of their commission. However, they will be responsible, even when they have a prevention program, when the crime is committed by their partners, directors, de facto or legal administrators, legal representatives or proxies, with control capacity.

In case of the latter, only a fine will be applicable.

In this sense, however appropriate the prevention model may be, it will not be enough for the legal entity to not be responsible if the crime was committed by senior management, as well as by their legal representatives or attorneys.

It is important to mention that the following will be extenuating circumstances of the administrative responsibility of legal entities:

- The objective, substantial and decisive collaboration in clarifying the criminal act, even before the beginning of the intermediate stage.
- The prevention of the harmful consequences of the crime.
- Total or partial repair of the damage.
- The adoption and implementation by the legal entity, after the commission of the crime and before the start of the oral trial, of a prevention model.
- Partial accreditation of the minimum elements of the prevention model.

Among the applicable administrative sanctions are the following:

- Fine, the amount of which will depend on:

- If the amount of the benefit obtained or expected to be obtained can be determined, the fine will be no less than double and nor more than six times that amount.
- If the amount of the benefit obtained or expected to be obtained cannot be determined, the fine will be not less than 10 and nor more than 10,000 UIT.

- Disqualification in any of the following modalities:

- Suspension of social activities for a period of not less than 6 months and nor more than 2 years.
- Prohibition to carry out in the future activities of the same nature as those in which the crime was committed, favored, or concealed. This prohibition can be temporary (not less than 1 year nor more than 5 years) or permanent
- Cancellation of licenses, concessions, rights and other administrative or municipal authorizations.
- Cessation of its premises or establishments on a temporary basis (not less than 1 year and nor more than 5 years) or definitively.
- Dissolution.

There are many steps to follow in order to continue doing business in Peru. It is important that entities apply the new regulations of compliance, to avoid being held responsible for the crimes committed by its board.

We remain at your disposal for any questions or queries on the matter.

Sincerely,



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