



ForensicFocus

Understanding the New Argentine Law on Corporate Criminal Liability No. 27401

Aligning your company with the new rules

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Today's reality

- Recently, scandals involving fraud, bribery, and corruption in both the private and public sectors have been on the agenda in many countries and jurisdictions.
- Regulators and legislatures worldwide are taking steps to bring an end to these crimes, in some instances by renewing efforts to enforce existing laws. In South America, for example, recent hefty fines imposed on multinational companies are evidence of regulators' increasingly strict application of anti-corruption laws.
- On November 8, 2017, the Argentine Congress passed the Law on Corporate Criminal Liability No. 27401 (the Law) to fight crimes against the public administration and transnational bribery. Effective as of March 1, 2018, the Law aims to align the Argentine system with international standards imposed by the Organisation for Economic Cooperation and Development (OECD).

Main changes brought by the new law

The Law is intended to raise awareness among companies on how they can prevent corruption, specifically with efforts to strengthen organizational culture, controls, and anti-fraud policies as well as their processes and systems.

The Law states that all private legal entities (either national or foreign, including partially state-owned entities) will be held criminally liable for the crimes committed by:

- Their owners, partners, shareholders, representatives, directors, or employees under their supervision, either directly or indirectly, while acting on their behalf
- Their (i) suppliers, contractors, agents, and distributors; (ii) controlled companies; and (iii) merged or acquired companies.

The crimes punishable by this new Law are as follows:

- Bribing a government official
- Falsifying financial statements and reports
- Influence peddling (national or transnational).



The Law provides for several sanctions such as fines (from two to five times the undue benefit obtained); suspension of legal entity status, business activity, patents, or trademarks; prohibitions from taking part in public bidding processes of any type; and losses of subsidies or other benefits. However, companies may be exempt from the Law's penalties and rules concerning administrative liability if they comply with each of three conditions. To attain this exemption, a company must:

- Voluntarily report a crime, as specified by the Law, after conducting its own detection or internal investigation process
- Demonstrate that it implemented an adequate control and supervision system (an Integrity Plan) before the events under investigation occurred
- Return any improper benefit resulting from the crime.

Consequently, an important aspect of compliance with the Law is the establishment of an Integrity Plan that includes the following components:

- A code of ethics or code of conduct
- Communication and training
- Clear support of the board and top management
- Periodic risk assessments
- Internal channels to report irregularities, including the protection of individuals submitting the report against retaliation
- Investigation protocols
- Procedures to test the integrity and reputation of third parties, business partners, and entities undergoing corporate transformation and acquisition processes
- Specific procedures for contract performance or any other interaction with the public sector
- Ongoing monitoring and evaluation of the effectiveness of the Integrity Plan
- Identification of an individual responsible for the Integrity Plan.

Complying with the new law

Compliance efforts offer companies new opportunities to review their governance and controls programs, which are critical to maintaining their organizations' business value and reputations for strong anti-corruption stances.

An effective approach to align your company with the Law's requirements has four components:

- Diagnosis of the company's needs based on the risks and adequacy of existing controls intended to mitigate such risks, considering the company's business as well as its level of interaction with the public sector, size, and economic capacity

- Design of the components of the Integrity Plan and leading market practices to prevent, detect, correct, and report to the relevant authorities criminal offenses falling within the scope of the Law
- Implementation of new controls across the company, assigning responsibilities and resources to an in-house individual who will be responsible for developing, coordinating, and supervising the Integrity Plan
- Evaluation of the design and operating effectiveness of controls through control self-assessment, substantive testing, routine monitoring, and separate evaluations.
- Identify the functions and duties of individuals responsible for developing, coordinating, and supervising the Integrity Plan and how it interacts with other areas of the company
- Designate protocols for the receipt and investigation of reports, corrective actions, provision of information to third parties, and cooperation with the investigation of the report
- Investigate suspected corruption using a methodology accepted by regulators
- Communicate via channels available to all individuals (employees, clients, contractors, suppliers, and any other third parties) to submit reports on irregularities
- Establish procedures to test the integrity and reputation of third parties, using a global corporate intelligence network with access to specific databases by jurisdiction
- Evaluate, update, and/or draft specific procedures for administrative contract performance or any other interactions with the public sector
- Perform adequate anti-bribery and anti-corruption due diligence procedures in the event of a merger/acquisition process.

Action items

Companies can take specific measures to prevent, detect, and respond to corruption:

- Evaluate, update, and/or draft the company's Code of Conduct according to the industry's leading market practices
- Develop training and communication programs on prevention, detection, and response to the crimes falling within the scope of the Law
- Assess fraud and corruption risks in the company's business processes, and identify gaps or weaknesses in controls (manual and automatic) and improvement opportunities



Contact us

Amanda Rigby
Principal, U.S. Forensic Services Leader

T: 312-665-1953
E: amandarigby@kpmg.com

Geronimo Timerman
Managing Director, Forensic Services

T: 305-913-2744
E: gtimerman2@kpmg.com

Author:

Ana Lopez Espinar
Partner, KPMG Argentina

T: +541148915668
E: ablopez@kpmg.com.ar

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