

REQUIREMENTS FOR A CRIMINAL RISKS PREVENTION PLAN

As we already explained in our last memo, the recent Amendment to the Spanish Criminal Code (Organic Law 1/2015, March 30th) foresees criminal risks prevention plans as a way of extenuating entities from their responsibility. Here we are going to summarize the requirements that, according to article 31bis.5 these plans must meet:

FIRST: Evaluation of criminal risks.

The development of a Prevention Plan requires some analysis and evaluation about the company's risk of being declared responsible for a crime. The idea is to individualize the risk factors.

The information necessary to determine the crimes in which the company may incur through its employees, managers or administrators, relates to the following fields:

- If the company already has any kind of prevention measures.
- Social and commercial structure of the company.
- Working structure of the company including a description of the position and role.
- Organizational structure and delegated roles.
- Composition of the Management Body and description of its roles.
- Business or activities of the Company.
- Relationship between the company and other companies, public administrations and individuals.

Once the information is analyzed, the evaluation will be done not only regarding the company itself but also the individuals who, because of their position in the company, may incur in a wrongful act.

SECOND: Code of conduct in the criminal scope.

Once the risks are analyzed, the expected behavior from employees and directors will be clearly established.

THIRD: Control design and mitigating measures.

Based on the results from the risk valuation, the appropriate controls will be established in order to prevent their commission. For this purpose, the company must appoint some people responsible of the enforcement of criminal law that will procure the accomplishment of the controls, and will supervise their evolution.

The program should also regulate how the delegation to the people responsible for these measures has to be done, what their roles will be, and their authority in the situations where managers or employees avoid those controls.

The Board of Director or the Administrators of the company should be properly informed about the content of the Program and how it is being developed.

FOURTH: Establishment of communicating proceedings.

The prevention plan must include the appropriate proceedings directed to the correct communication to both managers and employees about these controls, establishing the different ways of informing.

It will be compulsory to inform those people in charge of the observance of the plans about any eventual risk or breachings.

FIFTH: Establishment of information channels.

Suitable information channels are necessary to guarantee that both managers and employees may confidentially report the commission of the crimes.

SIXTH: Proceedings for the improvement and review of the Program.

The appropriate review and update proceedings for both the program and the internal audit will be established, and the people responsible for those roles will be determined.

SEVENTH: Establishment of disciplinary and incentive measures.

The legal Entity must promote the imposition of penalties for those who do not observe the measures established in the Prevention Plan.

EIGHTH: Companies' intervention after the commission of the crime.

The Plan must foresee the measures and policies to respond to the commission of the crimes.

NINTH: Economic resources.

The Plan must include management models for the financial resources designed to avoid the commission of those crimes that are trying to be prevented.