

Doing Business in Chile

Guide 2025

CRIMINAL COMMERCIAL LAW AND WHITE COLLARS CRIMES



EXECUTIVE SUMMARY

In Chile, legislation considers two principal laws relating to criminal commercial law. The first is the new Economic Crimes Law (the ECL, Law No 21.595) published in August 2023, which broadens the catalogue of economic crimes and toughens the applicable penalties. The second is Law No. 20.393 which regulates the criminal liability of legal entities.

This article considers the application of Law 21.595 in relation to the systemisation of economic crimes, the incorporation of new crimes and offenses, new penalties and sanctions, and the strengthening of custodial sentences.

It also explores and explains how the law is applied in cases of crimes involving disloyal administration, insider trading, incompatible negotiation, and others.

Finally, it covers the criminal liability of legal entities, and specifically the impact of Law 21.595 on economic crimes.



II. LAW No. 21.595 - ECONOMIC CRIMES AND ENVIRONMENTAL OFFENSES

Systematisation of economic crimes

To hold someone accountable for a crime in Chile, the Prosecutor must prove that the person committed an act or an omission, as stipulated in the law, with specific intent or by negligence.

Previously, there were some laws, including the criminal code, which covered criminal offences relating to business activities, and potentially applicable to managers and directors, but there was not a statute specifically applicable to them.

Several very public cases happened which caused social pressure to update and strengthen the law relating to these types of offenses, including imprisonment of offenders in severe cases. The ECL was introduced on August 17th 2023 to resolve this situation.

The ECL identifies some existing and some new offenses under the category of Economic Crimes and stipulates the rules and penalties that are specific to them. It also restricts the application of alternative sanctions to this type of offense, ensuring that those who commit Economic Crimes serve their sentences by means of effective custodial punishment.

The ECL holds four categories of offenses that may be summarized as follows:

- (i) First Category: Offenses that will always be considered as Economic Crimes.

For example: collusion; stock exchange offenses; providing false information to the Financial Market Commission; commercial bribery; abuse of majority position in the board of directors; falsification of balance sheets.

- (ii) Second Category: Offenses that will be considered Economic Crimes to the extent that (i) they are committed in the exercise of an office, function or position in a company; or (ii) they are committed for the economic or other benefit of a company.

For example: fraud; threats; tax and customs fraud and violations; IT offenses; murder and injury; fraudulent alteration of public instruments; offenses against intellectual and industrial property.

- (iii) Third Category: Offenses committed by public officials, in which someone within a company has intervened - as



perpetrator or accomplice - or when they bring some benefit (of any nature) to a company.

For example: bribery; breach of confidentiality; unlawful enrichment.

- (iv) Fourth Category: In general offenses that relate to embezzlement and money laundering, to goods derived from an Economic Crime of any of the other categories, or when the embezzlement or laundering was perpetrated in the exercise of a position or function of the company, or for the benefit (of any nature) of a company.

Offenses committed as defined in the first category of the ECL will always be considered as economic crimes punishable by severe penalties and with limited potential to plea against imprisonment. Offenses defined in the other categories may still result in directors being found liable under the provisions of the criminal code or other criminal laws.

It should be noted that the ECL only covers offenses committed in medium to large enterprises and excludes micro and small enterprises.

Incorporation of new crimes and offenses

Environmental Crimes - The ECL introduces several new offenses into the legal system. They include environmental violations such as illegal waste disposal, failure to carry out environmental impact assessments, protection of ecosystems, unauthorized extraction of water in water stressed situations, or other acts which cause serious environmental damage through willful or negligent conduct.

In total there are 6 new environmental offenses which entail penalties. Sentences ranging from 61 days to 5 years imprisonment can be given for the contravention of the regulations, and up to 10 years for offenses relating to actual environmental damage. Mandatory fines are also established which range from 120 to 120,000 UTM, roughly equivalent to between US\$ 8,000 to US\$ 8,000,000.

In addition to the above, the ECL covers offenses under the hunting law, the Forestry Law, and offenses under the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

The law also expands the scope of money laundering offenses by significantly broadening the range of predicate crimes that can trigger a money laundering charge. This includes incorporating various new economic and environmental offenses into the list of activities that, if they involve illicit gains, could lead to money laundering prosecutions.



New penalties and sanctions, and strengthening of custodial sentences

New penalties and sanctions:

The ECL introduces several significant changes to the penalty system. One of the most notable is the replacement of the traditional “absolute fines” with a “fine-days” system. This approach calculates the fine by multiplying the convicted person’s average daily net income by the number of days determined according to the specific offense.

Another key innovation of the ECL is the expanded use of profit confiscation. This measure applies to all convictions for economic crimes, allowing authorities to seize illicit profits. The law permits the confiscation of these profits even without a prior conviction, such as in cases where illicit gains are inherited from someone else.

The law includes sanctions that extend beyond financial penalties. These include prohibitions on entering contracts with the state, disqualification from holding public office, and bans on serving in managerial positions or as a director within companies.

Penalty determination system:

The ECL introduces a new method of judging the level of is established for those who commit Economic Crimes. It considers both mitigating and aggravating circumstances and is based on two categories:

- (i) Culpability: according to the position held by the person in the organization (the higher up the hierarchy, the higher the penalty; the lower down the hierarchy, the lower the penalty); and the level of involvement whilst acting in that position (higher involvement, higher penalty, lower involvement, lower penalty)
- (ii) Extent of the Damage: the amount of damage or harm caused, and the efforts to mitigate it, will influence the assessment of the penalty.

Strengthening of custodial sentences:

The ECL tightens the conditions for alternative criminal sanctions, particularly those that allow offenders to serve their sentences outside of prison. The alternative sanction of probation is eliminated for major offenders, who will automatically face mandatory prison time. The requirements for other forms of alternative punishment are also increased, so for instance it is not possible to apply the mitigating circumstance of “irreproachable previous behavior”.



III. CRIMES OF DISLOYAL ADMINISTRATION, INSIDER TRADING, INCOMPATIBLE NEGOTIATION, AND OTHERS

Disloyal Administration (abuse of trust)

This crime involves actions by an individual in a position of trust within a company or organization who abuses their authority to cause harm to the entity they are supposed to protect. This could include mismanagement or self-serving decisions that compromise the interests of shareholders or other stakeholders.

This offense is considered aggravated when: (i) the disloyal or unfair administration is executed on the assets of certain persons with respect to whom the duties of protection are greater, namely, a guardian, tutor or curator of an incapacitated person; and (ii) when the unfair administration is carried out by the administrator of the assets of a publicly traded or special corporation (whose purpose is to protect minority shareholders).

Sentences range from imprisonment for 61 to 540 days for lesser offenses, and from 3 years and one day to 5 years for more severe offenses. There are also fines ranging from 5 to 300 UTM (USD \$332 to \$19,963), depending on the amount of the damage.

Insider trading

The Securities Market Law imposes penalties on any individual who engages in transactions based on insider information. This includes acquiring or disposing of securities, whether for themselves or on behalf of another party, either directly or indirectly. Additionally, the law penalizes the act of cancelling or modifying an order related to these securities if such actions are influenced by insider knowledge.

Punishment applied for abuse of insider information is imprisonment:

- Minor severity - 541 days to 3 years
- Medium severity - 3 years and 1 day up to 5 years
- Maximum severity - 5 years and one day to 10 years



Incompatible negotiation

This crime involves individuals in positions of power or high authority who exploit their roles for personal gain by engaging in or showing interest in negotiations, actions, contracts, operations, or management activities that they are supposed to oversee in a different capacity. For example:

- A public servant who displays interest in a business or operation they are responsible for regulating or managing due to their official position would be violating this law.
- Similarly, a director or manager of a publicly traded or special corporation who shows interest in any business dealings or management activities involving the corporation also commits this offense.

A recent modification to the law specifically limits the criminal liability of directors and managers of public and special corporations. This change narrows the scope of offenses for which these individuals can be held responsible, focusing primarily on actions that directly involve or impact their corporate duties.

This crime is serious and carries a prison sentence ranging from 541 days to 5 years. Fines ranging from half to twice the value of the interest taken in the business are also applied.

Abusive agreements by the Board of Directors

The ECL introduced Article 134 bis to the Securities Market Law, specifically targeting abusive practices by individuals who hold a majority position on the board of directors of a corporation. This article sanctions those who exploit their majority position to push through an agreement that benefits themselves or others at the expense of other shareholders, without bringing any real benefit to the corporation itself. It carries a prison sentence ranging from 61 days to 5 years.

Falsifying balance sheets and other records

This offense penalizes individuals who provide or approve the provision of false information on crucial aspects related to the patrimony, financial, or legal situation of a company. Such misrepresentation can significantly impact stakeholders, leading to misinformed decisions and potential financial harm.

This crime is serious and carries a prison sentence ranging from 541 days to 5 years.



Commercial Bribery

This offense, outlined in Article 287 bis, penalizes various forms of bribery and corruption. Specifically, the law targets any employee, agent, manager, or board member who requests or accepts an economic or other benefit, either for themselves or a third party, in exchange for favouring or having favoured one bidder over another in the course of their duties. Similarly, the law punishes anyone who gives, offers, or agrees to give such a benefit to an employee, agent, manager, or board member with the intent of influencing them to favour one bidder over another.

Trade secrets violations

The law sanctions anyone who, without the consent of the legitimate owner, accesses a commercial secret through illegal means, such as unauthorized interference, with the intent to either disclose the secret or gain economic advantage from it. The Criminal Code further penalizes individuals who, under a confidential duty—whether by law or contract—reveal or allow others to access a commercial secret without the owner's consent. In both cases, anyone who gains access to a commercial secret without the owner's consent and subsequently takes advantage of it for economic gain can also be sanctioned.

This crime is serious and carries a prison sentence ranging from 541 days to 5 years.

IV. CRIMINAL LIABILITY OF LEGAL ENTITIES

Impact of the Law no. 21.595 on economic crimes

Law No. 20.393, commonly referred to as the Corporate Criminal Liability Act (CCLA), establishes the criminal liability of legal entities in Chile for a specific set of offenses, known as the “underlying offenses.” These underlying offenses include crimes such as embezzlement and disloyal administration, among others.

The CCLA establishes a system of attributing criminal liability to the legal entity itself, separately from that of the individuals involved in the offense. As such, both could be found criminally liable, the individual as the perpetrator,



accomplice, or accessory, and the company for failing to fulfill its duties of direction and supervision, which should have been carried out through the proper implementation of a Crime Prevention Model.

The ECL itself introduces significant changes not only for individuals, but also for legal entities. It exponentially increases the number of predicate offenses for which legal entities can be held criminally liable. It also revises the criteria for attributing criminal liability to legal entities. This includes a closer examination of whether the offense was committed for the benefit of the legal entity and whether there were adequate crime prevention models in place within the organization.

It's important to note that while the changes introduced by the ECL for individuals are already in effect, the provisions concerning legal entities will come into force in September 2024.

Offences or wrongful acts that form the foundation for the criminal liability of legal entities

All legal entities, regardless of size, whether public or private, for-profit or non-profit, must comply with regulations that establish their criminal liability while conducting operations in Chile. Compliance with these regulations is essential to mitigate or eliminate any contravention.

Criminal liability of legal entities may arise from a long list of more than 250 offences, most of which are listed in the recently enacted law on economic crimes. It includes offences related to corruption, fraud, security law, tax law, and environmental breaches, etc.

For a legal entity to incur criminal responsibility, a predicate offence must be committed in the interest of or for the benefit of the entity by individuals who have the duty and authority to manage and oversee its affairs. This includes owners, controllers, representatives, and senior executives of the company, along with the employees under their direction and supervision.

The entity can be held criminally responsible if the offence is committed within the scope of the activity of the entity, but not necessarily for the benefit or in the interests of the entity. The Only exceptions are when the offence is committed solely to the detriment of the entity itself.



Compliance with managerial and supervisory duties - Crime Prevention Model

A legal entity is deemed to have complied with its managerial and supervisory duties if it has already established and implemented an organisational structure and procedures designed to prevent such crimes prior to any occurrence taking place. The prevention system should be audited and certified by an appropriate organisation.

The adoption and implementation of such a model do not prevent the Public Prosecutor (Ministerio Público) from investigating and prosecuting the legal entity. However, it makes the case to be proven significantly more difficult for the prosecutor. In addition to meeting the specific requirements of a particular offence, the prosecutor must demonstrate that the model has not been effectively implemented, is inefficient, or has failed to fulfil its purpose. This includes proving any circumstances that indicate a significant neglect of the entity's compliance duties, beyond the boundaries of the preventive model.

Features of the Prevention Model

The Prevention Model must contain the following minimum features and requirements:

- o. Identification of the activities or processes of the legal entity that pose a risk of criminal activity.
- o. Establishment of protocols and procedures to prevent and detect criminal conduct in connection with the activities referred to in the previous point, which must necessarily include secure channels for reporting and internal sanctions in the event of non-compliance.
- o. Designation of one or more persons responsible for the application of such protocols, with adequate independence, with effective powers of direction and supervision and direct access to the administration of the Legal entity.
- o. Provision for periodic evaluations by independent third parties and mechanisms for improvement or updating based on such evaluations.



Autonomy and transfer of criminal liability of a legal person

The criminal liability of a legal entity is distinct from that of the individual who committed the crime, such as bribery. Consequently, the legal entity may be held accountable even if the criminal liability of the individual involved in the act of bribery is extinguished due to legal proceedings being suspended against them or for any other legal reason.

The criminal liability of the legal entity persists in the event of a fine being imposed, even in cases of conversion, merger, takeover, or voluntary termination of the legal entity. The responsibility is transferred to the corporation formed through such actions. In the case of a corporation's division, the liability applies individually to all corporations resulting from the division process.

In cases of dissolution of a corporation for profit by agreement of the partners or owners, criminal responsibility passes to the partners and participants in the capital distribution.

Penalties applicable to the legal entity

Due to the unique nature of legal entities, the penalties they face differ from those typically applied to individuals. Penalties for legal entities can include fines, total or partial loss of tax benefits, temporary or permanent prohibitions from contracting with government agencies, and even dissolution or cancellation of their legal existence.

It is worth noting that the new Law on Economic Crimes introduced a so-called system of "days-fine" (*días-multa*), according to which the amount of the fine is determined by (i) the average daily net income of the legal entity in the year prior to the initiation of the investigation against the company; and (ii) the seriousness of the offence, based on the imprisonment penalty imposed by the law. In the most serious cases, the fine can reach approximately USD 200,000,000.

Mitigating and aggravating factors related to the offence are also considered, including the amounts of money involved, the size and nature of the entity, compliance with regulations and technical rules, the extent of harm caused, and the social and economic consequences.

The penalty may entail publication of a summary of the conviction in the Official Gazette or a national newspaper, as well as confiscation of the proceeds of the crime.