Costa Rica introduces corporate criminal liability law

October 9, 2019

This summer Costa Rica became the latest country in Latin America to introduce a corporate criminal liability law, following the example of countries such as Argentina, Brazil, Chile and most recently Peru. Congress approved the Law (No. 9699) for Criminal Liability of Legal Entities on Domestic Bribery, Transnational Bribery and other Crimes on June 6 and it came into force on June 11. The law enforces criminal liability against legal entities (public or private) that are registered and domiciled in Costa Rica, and also foreign companies that have agencies, subsidiaries or branches or that carry out business in Costa Rica, in regards to criminal offenses committed by its employees or representatives that are related to corruption issues, domestic and transnational bribery, regardless of the value (the specific criminal offenses are listed in the Law Against Corruption and Illicit Enrichment and in the Costa Rican Criminal Code.) The approval of this new law is one of the commitments required by Costa Rica to enter the OECD. Prior to this, only natural persons could be held criminally liable and sanctioned in Costa Rica.

Penalties may apply to parent companies abroad for crimes committed by one of their subordinate or controlled companies on their behalf or representation, or if they obtained a direct or indirect benefit.

The law establishes different types of penalties, depending on whether it is a small or medium-sized company, or a large company:

- For large companies, the fine could go from 1,000 up to 10,000 times the statutory monthly base salary (approx. up to US$7.15 million)
- Loss or suspension of government benefits for a period of three to 10 years
- Inability to receive tax benefits
- Dissolution of the legal entity
- In case of contracts with the government, a fine corresponding to 10 percent of the total awarded
- Inability to participate in public tenders or bids for a period of three to 10 years
- Cancellation of the operating license.

Nevertheless, it is important to mention that the penalty against the company may be reduced by up to 40 percent if it is proven that:

- the company denounces the criminal act;
- the company´s governing body collaborates with the investigation;
- the company has adopted the models of organization and prevention of crimes described in the law.

This is a positive step to improving the business and compliance landscape in Costa Rica, particularly for two main reasons:

i. The new law enforces criminal liability for all types of legal entities, public or private, Costa Rican or foreign. This sends a message to business that Costa Rica is leveling the playing field. Pervasive corruption has deterred foreign investment, so there is a lot of interest to diminish corruption both at the private and the public level.
ii. Corruption is a growing concern throughout Latin America and with this new law Costa Rica has joined the fight against this problem.

Our recommendation is that in-house lawyers and compliance teams need to ensure company compliance programs are up to date. They should not only become familiar with the law but they should also have an “inside-out perspective”: from the business perspective of the company’s needs and their day-to-day operating risks, to the regulatory and political environment. They must have an in-depth understanding of their compliance programs in order to improve them and be prepared.

Finally, this new law is not only about a comprehensive understanding of the elements and implications of the local law, but also about the global anti-corruption rules and the government’s commitment to observing the rule of law.