

Relevant criminal aspects for company partners and directors

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Maria Carolina de Moraes Ferreira is a lawyer with more than 15 years of experience and extensive knowledge in highly complex cases, including her participation in Operation Car Wash. She is also experienced in fraud prevention and high risk cases. Her expertise extends to the implementation of compliance programmes, plea bargaining and leniency negotiations, internal investigations and administrative proceedings in companies in various sectors.

Having worked in the construction, sanitation, industrial, food, pharmaceutical, financial institutions and hospital laundry sectors, Maria Carolina also provides advisory and preventive services to her clients. She is also experienced in handling multidisciplinary cases involving environmental, corporate, fiscal, administrative, LGPD and other areas of law.

With a degree in Law from the Pontificia Universidade Católica (PUC-SP), Maria Carolina de Moraes Ferreira has a post-graduate degree in General Theory of Crime from the University of Coimbra, in Portugal, and a specialization in Economic Criminal Law from PUC-SP. She also has a post-graduate degree in Criminal Compliance from the same institution.

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Relevant criminal aspects for company partners and directors

This e-book aims to explore the main criminal issues that directly impact partners and company directors. In today's legal scenario, in which the personal liability of partners for crimes committed in the corporate sphere is increasingly in focus, it is crucial that executives understand the risks to which they are exposed.

Here, we highlight important topics such as criminal liability, environmental crime, cybercrime and the recent issue of the use of artificial intelligence, as well as discussing essential preventive practices to mitigate these risks.

Maria Carolina de Moraes Ferreira

Liability and jurisprudence

Criminal liability of partners and directors

The criminal liability of partners and directors is one of the most critical issues for companies. Although it is widely known that legal entities can only be held liable for environmental crimes, many are unaware that partners and directors can also be held criminally liable for any actions or omissions committed in the corporate sphere. However, Brazilian legislation requires a clear causal link to be demonstrated between the partner's/director's conduct and the crime in question.

Recent case law

Brazilian courts have reinforced that the mere status of partner or manager is not enough for criminal liability. It is necessary to prove that the representative had knowledge of or was directly involved in the criminal practice. Recent STJ decisions have blocked criminal proceedings against partners who had no direct involvement in the company's illegal acts.

Environmental crimes and the liability of partners

Although the legal entity is directly responsible for environmental crimes, the consequences can reach the partners and directors if there is proof of intent or negligence in the management of the company's processes. Failure to comply with environmental regulations can implicate the partners, even without any actual environmental damage.

Examples of environmental crimes

Besides pollution and wildlife crime, other types of environmental crime include improper transportation of hazardous materials or operating without a proper licence are examples of practices that can lead to criminal liability. In this context, it is essential that companies maintain their licences and take preventive measures to avoid criminal liability for directors and partners.

Cybercrime and corporate victims

With the increasing digitalization of companies, cybercrimes such as system intrusions and data leaks have become a constant concern. Companies are often targeted by hackers looking to exploit security breaches, and often partners are held responsible for failing to ensure that corporate and customer data is properly protected.

Responsibility in data protection

The General Data Protection Law (LGPD) increases companies' responsibility for protecting personal information. Partners and directors could eventually be held criminally liable if it is proven that they were negligent or omitted to protect this information.

Artificial intelligence and new criminal challenges

The use of artificial intelligence (AI) in companies brings with it a new range of legal concerns. In some countries, the inappropriate use of AI is already being discussed from a criminal perspective, especially in areas such as facial recognition and the automation of critical decisions. In Brazil, this issue is in the regulatory phase, but partners and directors need to be aware of the risks.

Responsible use of AI in companies

As AI becomes part of everyday life for companies, it is essential that executives understand how to implement it responsibly and safely, ensuring that its use does not violate rights or laws. Negligence in the use of these technologies can lead to criminal liability for partners and/or directors.

The defense of the victim's interests in criminal proceedings

Many entrepreneurs believe that criminal law is restricted to defending the accused, but there is a crucial role for criminal lawyers in defending companies and/or their legal representatives who have been victims of crimes. In many cases, the company can act as an assistant to the prosecution, assisting in the investigation and seeking compensation for damages, including property.

The importance of the assistant prosecutor

The presence of a lawyer in the role of assistant prosecutor is vital to ensure that the company receives due compensation for the damage suffered. Good legal assistance can speed up the accountability of the guilty parties and the reparation of the damage caused to the company or its managers.

The role of internal audits and investigations

One of the best ways to avoid criminal implications is through prevention, by auditing and carrying out frequent internal investigations. By monitoring suspicious activities and assessing compliance with regulations, the company can protect itself from potential legal and criminal problems in the future.

Prevention

The criminal liability of partners and directors is one of the most critical issues for companies. Although it is widely known that legal entities can only be held liable for environmental crimes, many are unaware that partners and directors can also be held criminally liable for any actions or omissions committed in the corporate sphere. However, Brazilian legislation requires a clear causal link to be demonstrated between the partner's/director's conduct and the crime in question.

Monitoring and compliance

A robust compliance program can be one of the most effective tools for preventing crime. Continuously monitoring company operations to ensure compliance with laws and regulations prevents irregular or negligent practices from resulting in criminal liability for partners and directors. This is especially relevant in high-risk areas, such as the environment and the financial sector, where proactive action can save the company from severe sanctions.

Integration between the compliance department and the company's criminal legal team can be essential in identifying faults and implementing corrective measures before the problem materializes.

Training and internal policies

Another effective preventative measure is the continuous education of employees and the implementation of strict internal policies that regulate risky behavior. Training on ethical practices, data protection, fraud prevention and environmental responsibility is essential for creating a corporate culture that prioritizes compliance and responsibility.

The training should also cover the legal obligations of partners and directors, such as their personal liability in possible crimes committed by the company, minimizing the risk of prosecution for omission or negligence.

Internal audits

Periodic audits in sensitive areas of the company, such as the financial area and regulated operations (environmental, tax, etc.), are key to identifying potential risks before they become legal problems. A preventive approach, with a review of operational and contractual practices, can identify vulnerable points that could result in criminal liability in the future.

Criminal legal advice in the company

Many partners and directors see corporate criminal law as something to be activated only in cases of crisis, but having a criminal consultancy can prevent problems from happening in the first place. Having a criminal law department that is integrated into the company's strategic planning allows preventive measures to be discussed and implemented in advance, shielding the company from potential criminal exposure.

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