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# **CORPORATIONS AS SUBJECT TO CRIMINAL ACTS IN THE NEW CRIMINAL CODE**

One of the significant points in the new Criminal Code is on the issue of corporations as subject to criminal acts.

# WHAT KIND OF CORPORATIONS ARE INCLUDED AS SUBJECT TO THE CRIMINAL ACTS BASED ON THE NEW CRIMINAL CODE?

Under article 45, paragraph 2 of the new criminal code, "corporations" include: the legally incorporated entity in the form of a limited liability companies, foundations, unions, sted-owned companies, regional owned companies, or equivalent, associations either incorporated or not, business entities in the form of firms, limited partnerships, or equivalent according to the prevailing laws.



# THE ACTOR

The new Criminal Code provides a broad range of actors that can be deemed as the actors of corporate crime. The actors include managers with functional position as well as parties outside the corporation that can control the corporations.

## **Article 46 Law No.1/2023 on the Criminal Code**

*“Criminal acts by a corporation is a crime committed by a board members who have a functional position in the organizational structure of the corporation or a person based on a work relationship or based on another relationship acting in the interests of the corporation, within the scope of business or activities of the corporation, either individually or jointly.”*

## **Article 47 Law No.1/2023 on the Criminal Code**

*“Other than the provision as mentioned in Article 46, criminal acts by a corporation can be carried out by order givers, controllers, or the beneficial owners outside the organizational structure which are able to control the corporation.”*

# LIMITATION OF THE CORPORATE CRIMINAL LIABILITY

If a criminal act is committed on behalf of a corporation, the prosecution can be imposed on the corporation itself, the corporation and its board members, or the board members only.

## Article 48 Law No.1/2023 on the Criminal Code

*“Criminal acts by a corporation as mentioned in Article 46 and Article 47 can be accounted, if:*

- 1.included in the scope of business or activities mentioned in the article of association or other prevailing provisions of a corporation;*
- 2.unlawfully benefit the corporation;*
- 3.accepted as the policy of the corporation;*
- 4.the corporation did not conduct the necessary preventive actions, did not prevent the more significant effect and did not ensure compliance with the prevailing laws and regulations to prevent such criminal acts from happening; and/or*
- 5.the corporation condoned the criminal act.*

# CORPORATE CRIMINAL LIABILITY

Liability for a criminal act by a corporation may not only be limited to the corporation itself. The liability may also be imposed on the individuals involved in carrying out the criminal act and the corporate controllers.

## Article 49 Law No.1/2023 on the Criminal Code

*“Liability of a criminal act committed by a corporation as mentioned in Article 48 imposed on the **corporation, board members with the functional position, order givers, controllers, and/or the beneficial owners of the corporation.**”*

# PUNISHMENT TO A CORPORATION

## Article 118-123 Law No.1/2023 on the Criminal Code

- *Main punishment in the form of fine;*
- *Additional punishment in the form of:*
  - a. *compensation payment;*
  - b. *reparation for the damages caused by the criminal act;*
  - c. *performance of neglected obligations;*
  - d. *performance of customary obligations;*
  - e. *job training financing;*
  - f. *release of goods and benefits obtained from the criminal act;*
  - g. *announcement of the court decision;*
  - h. *certain license revocation;*
  - i. *permanent prohibition to conduct certain activities;*
  - j. *closing wholly or partially of the place of business and/or corporate activities;*
  - k. *freezing of the whole or parts of the corporation businesses; and*
  - l. *corporation liquidation.*
- *Besides that, corporation can also be imposed on certain actions such as:*
  - a. *corporation take over;*
  - b. *placement under supervision; and/or*
  - c. *placement under security.*

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