Julio, 2018
Newsletter 20

International Legal Partners

Actualidad Legal / Legal News

Chile • Ecuador • Germany • Mexico • Peru • Spain

Chile:
The new challenges of Compliance in Chile

Compliance is an area of law that is constantly developing, updating and adapting itself to new market dynamics and new risks associated with the globalized world and the rapid exchange of information.

Read more | 4 minutes

Chile:
Los nuevos desafios del Compliance en Chile

El compliance es un área del derecho que está permanentemente en desarrollo, actualizándose y adaptándose a las nuevas dinámicas de mercado y a los nuevos riesgos que conlleva el mundo globalizado y el rápido intercambio de información.

Leer más | 4 minutos

Germany:
The Bundestag (Federal Parliament) enacts class action („Musterfeststellungsklage“)

Read more | 2 minutes

Alemania:
El Parlamento Federal (Bundestag) aprueba introducción de Demandas Colectivas („Musterfeststellungsklagen“)

Leer más | 2 minutos

Mexico:
Minutes worked in excess may be computed as extra hours

Read more | 1,5 minutes

México:
Los minutos excedentes trabajados podrán computarse como horas extras

Leer más | 1,5 minutos

Peru:
Portfolio of Mining projects 2018

Read more | 2,5 minutes

Perú:
Cartera de proyectos de construcción de Mina 2018

Leer más | 2,5 minutos

Spain:
The Impairment Test: What is it? How to do it? Why?

Read more | 4 minutes

España:
Impairment Test (Test de deterioro) ¿Qué es? - ¿Cómo hacerlo? - ¿Por qué?

Leer más | 4 minutos

The new challenges of Compliance in Chile

Estudio Jurídico Otero

Chile

Compliance is an area of law that is constantly developing, updating and adapting itself to new market dynamics and new risks associated with the globalized world and the rapid exchange of information. In our country, where this is a relatively new matter, at first and with the entry into force of Law 20.393 in 2009 (law on the criminal liability of legal persons), compliance was only considered from the point of view of the four restricted crimes punished by said law which are: financing of terrorism, money laundering, bribery and receiving stolen property. Thus, for a time it was thought that it was enough to have a certified model of prevention of the aforementioned crimes to exempt themselves from this responsibility. At almost 10 years of the entry into force of the law, it has become clear that the mere existence of a model of prevention is not enough.

Indeed, in these years during which the study of compliance has been progressing, it has become clear that focusing only on preventing these four crimes is insufficient and that a modern perspective needs to be given to compliance, which implies understanding this concept in a global manner, incorporating not only "hard law" to crime prevention models, but creating a culture of compliance that permeates the entire company and raises the legal and ethical standards, creating good governance within the company and getting ahead of the legislation.

The question arises,

Is it worthwhile to invest in this modern view of compliance?

The answer seems to be yes. Investing in this area now will help save in the future and will create more growth opportunities for the company.

The new international legal requirements make it imperative for Chilean companies who want to participate in the global market that they adopt more stringent policies and controls. There are already many Chilean companies that must comply with the international standard, whether it is because their parent companies are foreign or because they work with foreign customers or suppliers. These companies have been forced to adapt to international standards such as the new General Regulation of Data Protection of the European Union, which also affects Chilean companies that process data of residents or people who transit through the European Union or who have business with companies or individuals of the European Union; the Foreign Corrupt Practices Act of the United States, which cost SIEMENS $800 million in 2008; the Patriot Act, and the UK Bribery Act, among others.

Additionally, our legislation is permanently developing itself and advancing towards international compliance levels, which we can see with the recent constitutional enshrinement of the right to the protection of personal data through Law 21.096, with the imminent entry into force of the new law on data protection and the need that current social movements have made manifest of greater regulations to safeguard the dignity and integrity of people in cases of harassment and abuse of all kinds.

Finally, and a great reason to invest in compliance, are the risks the company faces when incurring in crimes when there are no adequate policies. Some of the main risks are reputational risk and penalties for lack of compliance with the duty of supervision and management. In this regard, when the company faces a conflict of compliance, the opinion the consumer gets of the company is seriously affected, since compliance is closely related to ethics, morality and common sense. Regardless of whether or not the consumer knows the law or not, upon learning that a company has incurred in reprehensible behavior, he will have immediately a negative opinion about it. This, added to the globalized world in which we live, with an unlimited and immediate access to communications, in which news and value judgments run very quickly, makes this one of the main risks of not having the sufficient safeguards in the development of the business. An example of the above is the case of the Chilean collusion of toilet paper in which the consumers themselves indirectly punished the involved companies by not buying their products.

As regards the duty of supervision and direction, we must take into account that in Chile what is punished is the lack of them by the company, which not only creates greater demands for the companies but also moves the border of the fiduciary duties of the directors. In this sense, when taking measures of compliance and generating a compliance culture, the commitment of the directors, partners and managers of the company, which is transmitted through the already well-known “tone of the top”, i.e., the conviction from the top of the company of the need for good practices in all the areas of development of the corporate line of business, is essential.

In this way, the new challenge for compliance in Chile will arise at the time of deciding to generate a crime prevention model, at which time the company’s management will have to choose to address the company’s compliance only from a classic outlook, limiting itself to generating safeguards only for the already classic four crimes or else doing it from a modern outlook in order to access international markets and avoid economic and reputational risks, getting ahead of the law, raising adequately risks in various areas, such as environmental, data protection, labor, harassment, free competition, among others, setting safeguards according to their specific line of business, establishing controls and creating a compliance culture within the company, prior to the entry into force of new laws.

Germany: The Bundestag (Federal Parliament) enacts class action („Musterfeststellungsklage“)

ILP Global Mertens Thiele
Germany

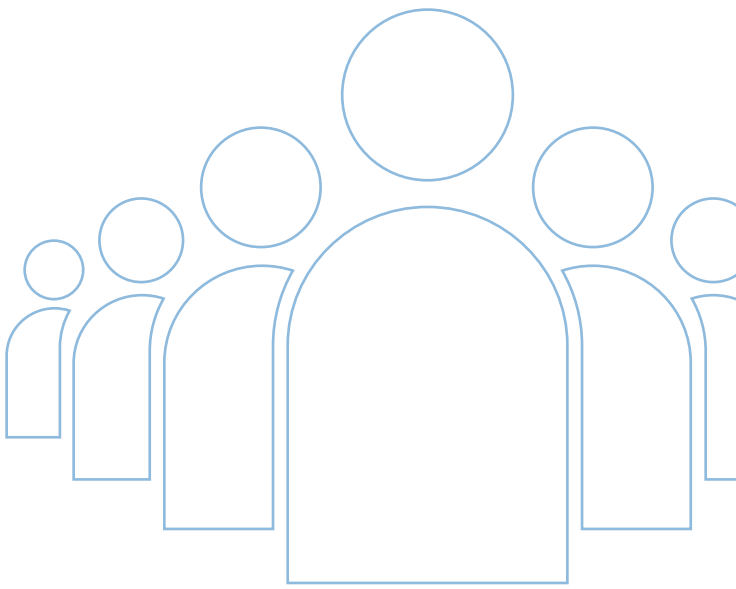
The Bundestag has recently enacted for the first time in Germany´s history the legal concept of class action, namely the so called „Musterfeststellungsklage“ or „one for all action“, a concept which has been a core approach in anglo-saxon law practice for decades. This new approach is meant to help consumers to assert their rights and claims more easily and without bearing a sometimes prohibitive commercial risk when bringing to court powerful corporations, enhancing thereby substantially consumer protection.

The enacted legal concept provides the clearence of (general) legal questions up front in the frame of class action. On the legal ground gained thereby, each entitled consumer will still have to bring forward his specific claims in an individual follow up proceeding, however therefore being able to rely on the already cleared general legal questions. The class action is supposed to be conducted by especially qualified Consumer Protection Associations (Verbraucherschutzverbände) only.

Although there is still a controversy going on regarding the details of the legal reform, all major stakeholders agree that it is a step into the right direction to embrace class action, which is widely considered to support consumers and thereby enhance the democratisation of our legal system. One possibly determining factor has been the so-called „Dieselskandal“ or „Diesel Scandal“, the usage of deceit software by Volkswagen and other major manufacturer´s in order to manipulate emissions for the sake of complying with strict EU and US emission limits.

While in the US every customer has been compensated with a single payment of USD 5.000,00, in Germany there has been granted no compensation at all, leaving it to the customer to pursue his corresponding rights at court and taking to this respect substantial commercial risks.

The new law will probably enter into force as from 1st of November, just in time to enable Consumer Associations to initiate class action against Volkswagen before prescription takes place at the end of the year in most of the cases.



Mexico: Minutes worked in excess may be computed as extra hours

Bitar Abogados

Mexico

Dear Friends and Clients,

Last June, the Second Chamber of the Supreme Court of Justice of the Nation resolved over a contradiction of thesis labeled 107/2018, stating:

> Overtime. The minutes worked beyond the regular working day are cumulative and shall be paid as provided by law under hour units, calculated weekly.

Articles 66 and 67 of the Federal Labor Law provide that the calculation of time going beyond the regular workday will be computed by week and shall be accumulated within such term, as this will determine the double or triple payment of overtime. In this sense, if the hours can be accrued, as interpreted from the precepts of articles 2 and 3 of the law in question as provided by Article 18, the same consideration shall be given to minutes which together may sum full hours per week legally payable in terms of law. Thus, minutes and fractions of hours exceeding the workday are cumulative by week to result in full hours, legally payable, provided that such time is evidenced as overtime in the work time records.

Consequently, the minutes or fractions of hour exceeding the workday are payable, if they result in full hours per week. We invite you to apply this criteria in your work centers to avoid any claim for payment overtime.

Peru:
Portfolio of Mining Projects 2018

Estudio Laos, Aguilar, Limas & Asociados

Peru

Recently, the Ministry of Energy and Mines has published the relation of projects for 2018 as well as for the period that goes from 2018-2022, showing the economic growth in Peru and the invitation to investors for the provision of services as consultancy, exploration, environmental impact, sale of goods and machinery, among others.

Likewise, this project portfolio will allow foreign investors to celebrate consortium contracts with Peruvian companies for sub-contracting in work as construction, metal-mechanics, waste treatment, transport and others.

Finally, the consolidation of this portfolio of mining projects establishes the possibility to the investors of mining, opening divisions in Peru for sale of goods and machinery related to the sector in the same conditions as a local provider and without need to be provided with permission of the Peruvian State.

The estimated investment of portfolio projects is US $58,507,000 of global investment amounts. Until 2017, US $3,850,000 (6.6%) were executed, leaving us $54,657,000 (93.4%) pending to invest in projects that would run between 2018 and 2027.

For a better analysis, the investment periods have been divided into 3:

1 *Investments executed up to 2017:*
US $3,850,000 (6.6% of the total investment amount).

2 *Investments to be executed between 2018 and 2022:*
US $20,819,000 (35.6% of the total investment amount)

3 *Investments to be executed after 2022:*
US $33,839,000 (57.8% of the total investment amount).

→ 2017 = US$ 3,850 millions = 6,6% total investment

2018-2022 = US$ 20,819 millions = 35.6% total investment

2022 → = US$ 33,839 millions = 57.8% total investment

This is an interesting opportunity for vendors and foreign investors established in Peru for the supply of its goods and services directly or indirectly related to mineral exploitation, being our law firm in the capacity and experience to provide the legal framework necessary for the opening of branches, companies, legal advice for consortiums and business consulting about labor, tax and accounting.

Projection of Investment 2018-2022

In 2018 it´s expected an investment amounting to US$ 2,154 million, which represents 10% of total investments to be carried out in the period 2018-2022. At the same time, the government has planned an investment of US$ 2,929 million for 2019, meaning an

increase of 36% compared to the previous year.

The investments projected for 2020 continued the trend growing with US$ 4,668 million, meaning a growth of 59% compared to the previous year. Likewise, it is expected that 2021 is the year of greatest growth for investment during the period 2018-2022 with an amount of US$ 6,522 million which represents a growth of 40% compared to the previous year.

Finally, an investment of US $4,546,000 is projected for the 2022, meaning a reduction of 30% compared to the previous year.

The portfolio of mine construction projects covers those projects whose objective is the development and/or construction of a mine, either new (Greenfield), enlargement or replacement of existing ones (Brownfield), or re-use of tailings (Greenfield).

The Impairment Test: What is it? How to do it? Why?

ILP Abogados

Spain

Conventional Wisdom says large corporations accounting are built from the bottom to the top. All starts with P&L ... and the accounting "flows". But how is it possible? Cash is Cash, and invoices, payroll, Social Security Costs, Taxes, Rents ...are not magnitudes you can revert. How can you "manipulate" an accounting?

Accounting is nothing more than a system used to register and control the economic operations of a company. This system enables the analysis of a company through its financial statements. To this affect, there are common standards in place like the IAS (The International Accounting Standards), that govern how this data is reported. Generally, all of the companies in the business world follow the IAS, since national regulations are adapted from these same regulations.

These accounting norms mark the standards of how a company should present their financial statements. The main objective of which is to give an accurate reflection of a company's situation.

The IAS therefore, regulates how economic operations should be registered, so that they reflect the true state of the company.

In this collaboration we are going to focus on a small portion of these accounting rules:

The Impairment of Assets

Impairment is the estimated loss of value of an asset. There are certain circumstances that reduce the value of an asset that a company has purchased until it is eventually depreciates fully. The impairment reflects how in accounting it is often difficult to recover the full value of the asset.

The impairment of assets is regulated in standard 36 (IAS 36). A standard that is applicable to all assets, except those that have specific rules of regulation. For example, Stocks (regulated in IAS 2) and assets from employee remuneration (IAS 19). In the same way, financial instruments have their own specific standards (IAS 39) which regulate how impairment should be allocated.

In Spain, companies register their accounts based on the provisions of the General Accounting Plan (GAP, Royal Decree 1514/2007). Standards that translate the international regulation of accounting matters to the national level.

In turn, in Spain the so called ICAC (Institute of Accounting and Account Auditing). The ICAC is an autonomous body, but is dependent on the Ministry of the Economy, who has the ability to approve GAP development standards. It is the case of the impairment of assets for which the ICAC dictated its resolution in 2013.

The resolution of the ICAC on September 18th, 2013 aims to develop the criteria for the value of impaired assets. The resolution is compulsory for all Spanish companies regardless of their legal form.

The resolution from the ICAC establishes that an asset is considered to be impaired when its book value exceeds its recoverable amount. This circum-

stance obliges a company to recognize a loss on the income statement.

In general, testing should be performed when there is evidence of impairment. These indications can be either external or internal. Indications that depend on variations in market values are considered external indicators. For example, changes in the external environment (legal, technological, etc.). On the other hand, evidence of the obsolescence of an asset (not foreseen in the assets depreciation schedule) is considered an internal indicator.

However, it is both advisable and convenient to perform the impairment test at least once a year. Even though the test is obligatory to complete annually for intangible assets.

How do we determine the recoverable value of an asset?

Both the resolution of the ICAC and the international regulations (IAS 36) define the recoverable value as the greater of the following:

- Fair Value of an Asset (minus the sales cost)
- Value in Use

We understand fair value to be equivalent to an assets market value. The value that a third party would be willing to deliver for the asset, under normal market conditions.

On the other hand, the value in use refers to factors that are internal or those specific to the company. The present value of the expected future cash flows, under normal market conditions. Future cash flows are calculated by estimating projections with inputs and outputs from the use of the asset. Usually the calculation is projected over the life of the asset, applying a suitable discount rate. This discount rate will take into account the time value of money and specific risks related to the asset.

It is a method similar to the one applied for the valuation of a company by the discounting of cash flows.

¿How is the impairment of an asset reflected?

Once the impairment test has been carried out, the company must record a loss on its income statement.

Once the impairment loss has been recognized, the company must adjust the amortization of the following periods.

At times, the impairment of value recorded in a period may be subject to change, which is called the reversal of the impairment. These reversions are recorded as income on the income statement.

Conclusion

The assets acquired by companies change throughout their lives and sometimes require a reduction in value. In order for financial statements to represent the true standing of a company, companies must continuously analyze the value of their assets. While simultaneously detecting when impairment exists and then decreasing and registering the assets value.

The impairment test is an analysis that must be carried out by companies so that their assets reflect their true value.