

Business crime and investigations in Armenia

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CORPORATE MANSLAUGHTER Regulatory provisions and authorities

1. What is the main legislation relevant to corporate manslaughter?

The criminal legislation of Armenia does not enshrine the crime of corporate manslaughter. Legal entities are not subjects of crime under Armenian criminal law.

However, if, for instance, a person dies as a result of non-compliance with health and safety rules established in the corporation, the individual responsible for maintenance will be held responsible for committing a crime rather than the legal entity (*Article 157, Criminal Code (Violation of labour protection rules)*).

Offences

2. What is the specific offence that can be used to prosecute corporate manslaughter?

At the moment, legal entities cannot be prosecuted and be criminally liable for any crime.

Current law

Legal persons cannot be held criminally liable under the Armenian Criminal Code. Certain officers, such as the directors (heads of executive bodies) can be responsible for committing offences that are a result of implementing their decisions. These include crimes listed in the Criminal Code, including crimes against economic activities, such as illegal entrepreneurial activity, fictitious entrepreneurial activity, undertaking exchange of currency without a licence, creation of a financial pyramid, money laundering, financial fraud, deliberate bankruptcy, fictitious bankruptcy, illegal anti-competition activity, illegal use of a trade mark, commercial bribe, tax evasion, deceiving costumers, and so on. The director is not held criminally liable for any death in the corporation, but the employee who is responsible for the maintenance of health and safety rules. The director may be accused for named crime in case it is nexus to violation of his duties.

Proposed law

The new Criminal Code Bill has been published and will be presented to Parliament, although it is not known what amendments will be made. Unlike the current law, the draft provides that the following types of organisations can be held directly criminally liable for committed offences:

- All type of legal persons, except for legal entities which shareholder is the state of Armenia.
- International organisations (except organisations that have immunity, such as international organisations).
- Non-resident legal persons, including their branches.
- The following persons cannot be held criminally liable for any crimes:

- The State of Armenia.
- Communities (local self-governance units).
- State bodies.
- Legal persons in which the State has shares.

The offences for which legal persons can be held criminally liable are listed in the Criminal Code Bill (*Article 127 of the Draft*). The following offences result in criminal liability for legal persons in case of death in the corporation:

- Breach of safety rules at nuclear energy facilities (*Article 329*).
- Violation of security rules during construction, mining or other works (*Article 333*).
- Breach of safety rules in explosive atmospheric objects (*Article 334*).
- Breach of fire safety rules (*Article 335*).

To be criminally liable legal persons must meet at least one of the following conditions:

- The offence was committed by an individual, who had the authority to act on behalf of the legal person and while implementing their duties.
- The offence was committed by the employee of the legal person and as a result of bad management.
- The offence was committed for the benefit of the legal person by an individual who was a member of the supervising or executive body, or an individual who had the authority to give instructions to the company or influence its activities or decisions.
- The offence was committed by another person for the benefit of a legal person, but an employee/member of the supervising or executive body assisted in committing the crime.

Defences

3. What defences or exemptions are available and who can qualify?

General defences are applicable. The main defences are listed in Articles 72-75 of the Criminal Code and include:

Exemption from criminal liability in case of repentance. A person who has committed a minor or medium-gravity offence for the first time can be exempted from criminal liability if they have voluntarily pleaded guilty, co-operated in investigations, and compensated for the harm caused by the offence (*Article 72*).

Exemption from criminal liability in case of reconciliation with the victim. A person who has committed a minor offence can be exempted from criminal liability if they have reconciled with the victim and have compensated the harm caused to victim (*Article 73*).

Exemption from criminal liability due to change of situation. A person who has committed a minor or medium gravity offence for the first time can be exempted from criminal liability if their acts have ceased to be dangerous to the public as a result of a change in situation (*Article 74*).

Exemption from criminal liability as a result of expiry of the period of the limitation. A person will be exempted from criminal liability if the statute of limitation for crime has expired since the date on which the offence has been deemed completed (*Article 75*).

These defences are not relevant in situations when a person dies as a result of non-compliance with safety rules of the corporation.

A special defence (exemption from criminal liability) is available for the following types of crimes:

- Illegal entrepreneurial activity.
- Fictitious entrepreneurial activity.
- Deliberate bankruptcy.
- Fictitious bankruptcy.
- Tax evasion.

A person who has committed one of the above crimes will be exempted from criminal liability if they provide reimbursement for the damages caused, and pay all penalties. This special defence is not relevant to situations when a person dies as a result of non-compliance with safety rules of the corporation.

Enforcement

4. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate manslaughter? What are the authorities' powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

Investigatory authorities/prosecution powers

Pre-trial and trial proceedings are separated in the Armenian criminal law and relate for all criminal offences. Pre-trial investigation is conducted by one of the following bodies under the supervision of the Prosecution Office (when the case is of high complexity, investigation group may be created which can include investigators from various investigative bodies):

- Police that conducts initial procedures (such as interviewing, crime scene investigation, inspections, obtaining samples, requesting expert reports) and transfers the case to investigative bodies.
- The Investigation Committee. The Investigation Committee is responsible for investigating criminal cases which are not entrusted to the other investigative bodies mentioned below. In practice, the Investigation Committee investigates most criminal cases.
- Special investigation service. This body is responsible for investigating cases involving leading officials of the legislative, executive and judicial bodies with regard to their official position or crimes committed at the time of holding official positions (*Article 190, Criminal Procedure Code*).
- Investigation department of the National Security Service. It's an investigative body which investigates cases of money laundering, crimes related to financial pyramids, terrorism, financing the terrorism, state treason, espionage, and so on (*Article 190, Criminal Procedure Code*).
- Investigation Department of the State Revenue Committee. This body conducts investigations of tax and customs-related crimes.

- Prosecution Office. Prosecution office is responsible for supervising pre-trial investigation and presentation of the case in court.

Generally, the police (often through its operative-investigative divisions), is the first authority to deal with an offence and to take the necessary steps to protect evidence. Many crimes are revealed by operative-investigative divisions conducting operative-investigative procedures.

A statement of crime can be submitted to the police or any investigative body (such as the special investigation committee). When the case is out of a certain body's competence, it refers the statement to the competent investigative body or the prosecution office. The statement of crime is a written or verbal complaint and must be addressed to one of the investigative bodies mentioned above. The complaint can be brought by physical persons, legal entities and mass media. After the submission of a statement of a crime the authorised authorities have ten days to decide whether to start a criminal case or to refuse to investigate (a refusal can be appealed).

The main authorities responsible for implementing pre-trial proceedings set by the Criminal Procedure Code are investigative authorities. They collect evidence, decide whether to adopt investigative measures (such as interrogation and confrontation, search and seizure, acquisition of samples, and so on), adopt coercive measures under their own authority, or apply to the court to adopt coercive measures. After the prosecutor approves the indictment, the prosecutor forwards the case to the court that has jurisdiction over the case.

Prosecutors are state officials, who conduct, within the limits of their competence, criminal prosecution, supervise the legitimacy of the preliminary investigation and inquest, support the prosecution in court, and appeal against the court verdicts and other decisions.

Powers of interview

The investigative bodies are responsible for interviewing witnesses, suspects or the accused.

A witness can be interrogated about any aspect that is significant for the case, including about the character, personal characteristics of the suspect, the accused, the injured person, and other witnesses.

The suspect or the accused and their family members can refuse to give an interview [that supplies evidence] against themselves or their relatives.

Powers of search/to compel disclosure

The investigator can conduct a search if he or she has sufficient grounds to suspect that in a particular location or in another place or within the possession of a person, there are instruments of crime, objects and valuables acquired by way of a crime, as well as other items or documents, which can be significant for the case. A search requires authorisation of the Court of General Jurisdiction of First Instance (see below, Court orders or injunctions).

The investigator can conduct seizure when necessary to take objects and documents significant for the case, if it is known for sure where they are.

Data not protected by law can be disclosed as a result of investigative proceedings. If it relates to the disclosure of information which is protected by law (bank information, information from notary, and so on), the authorities must obtain court authorisation for its disclosure.

Powers to obtain evidence

The investigative bodies have a right to obtain evidence by conducting investigative proceedings that relate to the accused and relevant third parties. Investigative proceedings include:

- Examination (interviewing) is the process of questioning the accused, witnesses and victims (*Chapter 20, Criminal Procedure Code*).
- Identification. The procedure of identifying the accused (material evidence), during which the witness or victim can recognise the accused (material evidence) among the group of similar persons (materials) (*Articles 221-224, Criminal Procedure Code*).
- Exhumation.
- Confiscation, search and seizure of property (see above, Powers of search/to compel disclosure).
- Interception of written, telephone, mail, telegraphic and other communication.
- Wire-tapping.
- Obtaining samples of DNA, blood, clothes or other things that can be used for the expert reports and the investigation.

The authorities can obtain evidence abroad under the international treaties through applying for the legal assistance of the competent authorities in a foreign country.

Power of arrest

Arrest can be executed by the court's decision following the investigator's or the prosecutor's application or on the court's own initiative while considering the criminal case. A person suspected of committing a crime can be arrested without the court order if:

- They are caught during or after committing an offence.
- The witnesses directly point to that person as the offender.
- There are traces on the body, clothes, apartment or car of the person that indicate that they committed the offence (*Article 129, Criminal Procedure Code*).

The period of detainment of the accused at the pre-trial stage can be extended up to one year, in exceptional cases due to the complexity of the case. The period of detainment is counted from the moment of the actual detainment of the person.

Court orders or injunctions

The court has a supervisory authority over some pre-trial proceedings, such as:

- The passing of judicial decisions connected with the arrest.
- Apartment search warrants.
- Imposing restrictions on the confidentiality of communications, by intercepting telephone conversations, postal, telegraph and other communications.

The court structure for criminal cases in Armenia is as follows:

- First instance: Court of General Jurisdiction of First Instance.
- First instance appeal: Appeal Criminal Court.
- Final court of appeal: Cassation Court.

The right to a fair trial is recognised during court trial (see *Question 7*).

The pre-trial authorities and court have no extra-territorial jurisdiction. The relevant regulatory authorities interact with overseas regulators within the framework of legal assistance prescribed by international treaties.

Under the Criminal Procedure Code, the prosecutor, the inquiry body and the investigator with the consent of the prosecutor can suspend the accused from work if they are a state employee and there is a suspicion that they may hinder the investigation or recovering damages caused by the crime, or will continue to be involved in criminal activities while holding their post.

The court, judge or prosecutor, as well as the investigator or inquiry body, can decide to cancel suspension from work can be cancelled where it is not necessary.

The Criminal Procedure Code allows for the arrest of property (that is, preventing the property from being disposed of as a remedy to secure property in a civil claim and to prevent possible seizure, and to cover court expenses). However, there are some types of property, which cannot be arrested, such as household appliances, clothing, footwear, linen, bedding and baby accessories (except luxury goods and articles made of precious materials or having historical or artistic value), or materials necessary for the professional training of the accused (except for cases when the accused is banned from engaging in certain activities by court order and if those items are made of precious materials or have a historical or artistic value).

5. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

A person can be accused of committing a crime if there are grounds to do this, that is, sufficient proofs exist attesting that the person committed the crime. Where proofs are available, the investigator (and not the prosecutor) makes a reasoned decision whether to implead (bring charges against) that person, which is the first step to officially recognise the person as accused. Once the person has been impleaded, the specific charges of which they are accused must be brought against that person no later than 48 hours after the investigator's decision to implead was made, however, no later than the day of presenting the charges or the day of compulsory appearance. The deadline for presenting the charges can be extended if the accused hides from the investigation.

CONVICTION AND PENALTIES

6. What are the penalties for corporate manslaughter?

As there is no crime of corporate manslaughter in Armenia, there are no specific sanctions for it.

Sentences are explicitly specified in the Criminal Code. Based on several circumstances (including the damage caused), different criminal liabilities can be prescribed, including a fine or imprisonment. Arrest of property can be used as a remedy to secure property in civil claims, to prevent potential seizure and to cover court expenses (see *Question 4, Court orders or injunctions*). Even though, the arrest of property as a sanction is not for the crime of violation of labour protection rules, but still the property can be arrested for covering civil claim and court expenses.

The sanctions in some provisions set further limits for special types of crimes to exclude individuals from carrying out certain types of activities after conviction. For instance, for illegal business, the court can impose a ban on holding certain positions or engaging in certain business activities. This type of sanction is common for economic crimes, or for crimes, which can be mainly committed by persons within certain professions.

SAFEGUARDS

7. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

The right to a fair trial is accepted and guaranteed by the Constitution and the Criminal Procedure Code. The decisions and reasoning of the European Court of Human Rights must be

implemented in Armenia for cases that are factually identical, during both the pre-trial procedure and judicial examination.

Legal representation is guaranteed for all parties participating in the criminal procedure. Free legal representation is guaranteed for certain types of persons and in some cases is prescribed by law. Free legal representation is provided to the family members of the servicemen who died while protecting the borders of Armenia, the disabled persons of the 1st and 2nd grade, the convicts, the unemployed, the refugees, torture victims, persons with mental disorders treated in a mental hospital, single pensioners, children without parental care and other similar categories of persons (*Article 41, Law on Advocacy*). Free legal representation is provided by the Public Defender's Office of the Palace of Advocates.

The Criminal Procedure Code provides that evidence obtained unlawfully is inadmissible. In criminal procedure it is illegal to use evidence obtained by:

- Force, threat, fraud, violation of dignity, or other illegal actions.
- Violation of the rights to defence and additional guarantees prescribed by the Code for persons unable to use the language of the court proceedings.
- A person not qualified to conduct a criminal case, carry out an investigation or any other legal actions.

During the judicial examination, the prosecution and defence have equal rights to access and introduce evidence. All evidence is examined by the court during the proceedings and is evaluated concerning its admissibility. All evidence is examined to check whether it is sufficient to determine the case.

There is a three-stage judicial system to secure the right to a fair trial (see *Question 4, court orders or injunctions*). At first instance, the case is heard by the Court of General Jurisdiction of First Instance. On appeal it is heard by the Appeal Criminal Court. It is possible to appeal based on the facts and issues of law. The time limit for appeal is one month after the delivery of judgment. In case of new circumstances, a complaint must be lodged within four months after the claimant has known or could have known about them (*Article 426, Criminal Procedure Act*). A final appeal can be brought before the Court of Cassation.

HEALTH AND SAFETY OFFENCES

Regulatory provisions and authorities

8. What are the main regulatory provisions and legislation relevant to health and safety offences?

A wide range of legislation relevant to health and safety offences has been adopted, including legislation relating to the environment, combating terrorism, trafficking and other legislation, for example:

- Law on Medical Assistance and Service of the Population.
- Law on Identification and Assistance of Trafficking and Exploitation Victims.
- Law on Evaluation of the Influence on Environment.

A wide range of provisions covering offences against health and safety are set out by Charters 16, 18, 23, 25, 26, 27, 28, 32, 33 of the Criminal Code.

Offences

9. What are the specific offences relating to health and safety?

The specific offences relating to health and safety are as follows:

- Crimes against life and health such as wilful infliction of serious damage to health, infecting with HIV, and so on.
- Crimes against human freedom and dignity, including trafficking, kidnapping, illegal deprivation of freedom.
- Crimes against public security such as terrorism, hostage taking, and so on.
- Crimes against digital data security.

Defences

10. What defences or exemptions are available and who can qualify?

No special defences or exemptions for health and safety offences are set out in criminal law. For general rules, see *Question 3*.

Enforcement

11. Which authorities have the powers of prosecution, investigation and enforcement in cases of health and safety offences? What are the authorities' powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

See *Question 4*.

12. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

See *Question 5*.

CONVICTION AND PENALTIES

13. What are the penalties for health and safety offences?

There are no specific sanctions for health and safety offences. The sanctions can vary from fine to imprisonment according to the Criminal Code.

SAFEGUARDS

14. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

See *Question 7*.

ENVIRONMENTAL OFFENCES

Regulatory provisions and authorities

15. What are the main regulatory provisions and authorities responsible for investigating environmental offences?

The main regulatory provisions relating to environmental offences are included in the following:

- Mining Code, and regulations adopted on the basis of it.
- Law on Evaluation of the Influence on Environment.
- Water Code.

These legal acts provide the relevant measures and their requirements regarding mining, appointing experts to evaluate the influence on environment, using water resources or carrying out reclamation works.

The Criminal Code sets out the environmental offences that lead to criminal liability. The Code of Administrative Offences sets out the offences that lead to administrative liability.

Offences

16. What are the specific offences relating to the environment?

The Criminal Code provides for the following environmental crimes:

- Breach of environmental safety rules when implementing work.
- Wilful distortion or concealing information on environmental pollution.
- Failure to take measures to eliminate the consequences of environmental pollution.
- Breach of safety rules when handling dangerous chemical and biological materials and waste.
- Breach of safety rules for handling chemical or bacteriological agents or poisonous materials.
- Breach of established veterinary rules or rules against plant diseases and vermin.
- Pollution of water.
- Pollution of air.
- Pollution of soil.
- Breach of rules for protection and use of soil.
- Illegal tree and bush cutting.
- Illegal harvesting of water flora and fauna.
- Other crimes.

Some negative consequences must occur to qualify actions as crimes under these provisions.

Only individuals can be liable in the context of criminal law, although this may change under a revised Criminal Code (see *Question 2*). Legal persons can be liable for administrative acts adopted by the administrative bodies.

Defences

17. What defences or exemptions are available and who can qualify?

There are no specific defences or exceptions. General defences are applicable (see *Question 10*).

18. Which authorities have the powers of prosecution, investigation and enforcement in cases of environmental offences? What are the authorities' powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

See *Question 4*.

19. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

See *Question 5*.

CONVICTION AND PENALTIES

20. What are the penalties for environmental offences?

There are no specific sanctions for environmental offences. The sanctions can vary from fine to imprisonment according to the Criminal Code.

SAFEGUARDS

21. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

See *Question 7*.

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