

# Business Crime and Investigations in Armenia: Overview

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## CORPORATE MANSLAUGHTER Regulatory Provisions and Authorities

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

Armenian criminal legislation does not currently include the crime of corporate manslaughter and legal entities cannot be prosecuted and be criminally liable. However, under an adopted draft Criminal Code that will enter into force on 1 January 2023, legal entities will become subject to potential criminal liability under the Armenian criminal law.

Company directors and employees can be responsible for offences by the company resulting from their decisions or inactions if the individual has a sufficient connection to the crime.

See *Question 2*.

#### Offences

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

#### Criminal Manslaughter

**Elements.** Legal entities cannot currently be prosecuted and be criminally liable. However, under an adopted draft Criminal Code, which will enter into force on 1 January 2023, legal entities will become subject to potential criminal liability under the Armenian criminal law.

The new law provides for all types of legal entities to be held directly criminally liable for committed offences, including non-resident legal entities and their branches. However, the following legal entities are exempted and will not be subject to potential criminal liability:

- The Armenian state and state bodies.
- Local government bodies.
- Legal entities in which the Armenian state has shares.
- The Central Bank of Armenia.

Under Article 123 of the new Criminal Code, for a legal entity to be criminally liable, one of the following conditions must apply:

- The crime was committed on behalf and for the benefit of the legal entity by an individual who either:
  - was a member of the supervising or executive body;

- had authority to give instructions to the legal entity, influence its activities or decisions, or represent it.
- The legal entity had not fulfilled its obligations under the law or other legal act regulating its activities, which led to the commission of a crime by an individual authorised to influence the activities of the legal entity or its decisions.
- The offence was committed by an individual either:
  - with authority to give instructions to the legal entity or influence its activities; or
  - representing, acting on behalf of or through the legal entity.

In some circumstances, company officers such as directors as well as employees can be responsible for offences by the company resulting from their decisions or inactions. Directors and employees can be guilty of a specific crime listed in the Criminal Code if they have a sufficient connection to the crime. A director would therefore not necessarily be held criminally liable for a death relating to an action taken by the company if there was no connection to their duties. Instead, the employee directly responsible for the relevant breach would be liable.

The crimes relating to personal injury and death under Chapter 16 of the current Criminal Code, and Chapters 23 and 24 of the new Criminal Code, include:

- Murder.
- Murdering in a state of severe mental agitation.
- Causing death through negligence.
- Causing serious damage to health.
- Causing moderate damage to health.
- Causing light damage to health.
- Causing severe or moderate damage to health in a state of severe mental agitation.
- Causing serious damage to health through negligence.
- Causing moderate damage to health through negligence.

Further specific offences include:

- 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.

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**Penalties.** Under the new Criminal Code, the criminal penalties available to be applied to a legal entity include:

- Fines.
- Temporary termination of the right to engage in certain types of activities.
- Compulsory liquidation.
- Prohibitions on conducting activities in Armenia.

The penalties for crimes by individuals giving rise to injury or death in a corporate context can include fines, arrest and imprisonment, depending on the gravity of the breach. Ancillary orders such as confiscation of the proceeds of crime, where relevant, are also available in Armenia.

For aggravated murder, the punishment can be life imprisonment. The penalty for other crimes listed above, depending on the gravity, are:

- Imprisonment of up to seven years.
- Arrest/detention of up to three months.
- Fines of up to AMD250,000.

Both in the framework of a criminal case and separately, a civil suit can be filed for compensation for material damages caused by a crime. There are no civil penalties.

**Right to bail.** The suspect can be detained by a decision of the court following the investigator's or the prosecutor's application, or on the court's own initiative while considering the criminal case.

However, the investigative bodies can arrest a person suspected of committing a crime for a 72-hour period without a court order if:

- The person is caught during or after committing an offence.
- The witnesses directly identify the person as the offender.
- There are traces on the body, clothes, apartment or car of the person that indicate that the person committed the offence.

(Article 129, Criminal Procedure Code.)

The investigative bodies can also arrest a person without grounds, but for no longer than 36 hours.

A period of detainment of the accused by the court at the pre-trial stage can be extended by the court for up to two months, where justified by complexity of the case, which can be extended by periods of two months to up to one year in exceptional cases. The period of detainment is counted from the moment of the actual detainment of the person.

**Defences.** The general defences listed in Articles 72 to 75 of the Criminal Code and the analogous Articles 81 of the 83 of the new Criminal Code are applicable to offences committed by individuals in a corporate context. These include exemption from criminal liability in cases 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/Article 81).
- **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 compensated for the harm caused to the victim (Article 73/Article 82).
- **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 due to a change in the situation (Article 74). However, this is not implemented in the new Criminal Code.

- **Expiry of limitation period.** A person will be exempted from criminal liability if the statute of limitation for the crime has expired since the offence was completed (Article 75/Article 83).

A special defence giving rise to 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 these crimes is exempted from criminal liability if they reimburse the damages caused and pay all penalties.

These defences (other than expiry of the limitation period) are not applicable to serious crimes such as where a breach has resulted in death or injury.

### **Enforcement**

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### **3. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate manslaughter? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.**

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#### **Investigative Authorities**

**Investigation and enforcement powers.** Pre-trial investigation and trial proceedings are separated in Armenian criminal law. Pre-trial investigations are conducted by one of the following bodies under the supervision of the Prosecution Office (or when the case is highly complex, an investigation group may be created with include investigators from various investigative bodies):

- **Police.** The police conduct initial procedures such as:
  - interviewing witnesses and suspects;
  - crime scene investigation;
  - inspections;
  - obtaining evidence; and
  - requesting expert reports.
- The police then transfer the case to investigative bodies.
- Generally, the police (through operational-investigative divisions) are the first authority to deal with an offence and to take the necessary steps to protect evidence. Most business crimes are revealed by police operational-investigative divisions conducting operational-investigative procedures.
- **Investigation Committee.** The Investigation Committee is responsible for investigating criminal cases that are not entrusted to the other investigative bodies. In practice, the Investigation Committee investigates most criminal cases.
- **Investigation Department of the National Security Service.** This is an investigative body that investigates cases of money laundering, crimes related to financial pyramid schemes, terrorism, terrorism financing, state treason, espionage and so on (Article 190, Criminal Procedure Code).
- **Investigation Department of the State Revenue Committee.** This body conducts investigations into tax and customs-related crimes.

- **Prosecution Office.** The Prosecution Office is responsible for:
  - supervising the legitimacy of the preliminary investigation;
  - conducting criminal prosecutions in court;
  - appealing against the court verdicts and other decisions.

A notification of a crime can be submitted to the police or any investigative body (such as the Investigative Committee). If the case falls outside of the body's competence, it will refer the notification to the competent investigative body or the Prosecution Office. The crime notification or complaint can be written or verbal, and can be brought by individuals, legal entities or the media. After the submission of a crime notification, the authorities have ten days to decide whether to start a criminal case or to refuse to investigate (a refusal can be appealed).

The investigative authorities are responsible for implementing pre-trial proceedings under the Criminal Procedure Code and can:

- Collect evidence.
- Decide whether to adopt investigative measures (such as interrogation and confrontation, search and seizure, acquisition of evidence and so on).
- Adopt coercive measures under their own authority or apply to the court to adopt coercive measures.

After the Prosecution Office approves the charges and the case made by the investigative bodies, the prosecutor forwards the case to the court with jurisdiction over the case.

**Power to charge.** A person can be accused of committing a crime if there is sufficient proof that the person committed the crime. Where proof is available, the investigator (and not the prosecutor) makes a reasoned decision whether to bring charges against that person, which is the first step towards officially recognising the person as accused. Once charges have been brought, the specific charges must be presented against the accused person no later than 48 hours after the investigator's decision to bring charges was made. The deadline for presenting the charges can be extended if the accused attempts to evade the investigation.

The investigative bodies can obtain evidence by conducting investigative proceedings. Investigative proceedings can include the following procedures:

- Examination (interviewing). The investigative authorities can interview victims, witnesses, suspects or the accused (*Chapter 20, Criminal Procedure Code*). A witness can be interrogated about any aspect that is significant for the case, including about the character or personal characteristics of the suspect, accused, injured person and other witnesses.
- The suspect or the accused and their family members can refuse to give evidence against themselves or their relatives.
- Identification. This is the procedure for identifying the accused and any material evidence, during which the witness or victim recognises these as such (*Articles 221 to 224, Criminal Procedure Code*).
- Confiscation, search and seizure of property. The investigator can conduct a search if it has sufficient grounds to suspect that, in a particular location or within the possession of a person, there are instruments of crime, objects and valuables acquired by way of crime, or other items or documents that could be significant for the case. A search requires authorisation of the Court of General Jurisdiction of First Instance.
- The investigator can conduct a seizure if necessary to take objects and documents significant for the case, provided there is certainty where these are located.
- Data not protected by law can be required to be disclosed in investigative proceedings. If information is protected by law

(such as bank information, information from a notary and so on), the authorities must obtain court authorisation for its disclosure.

- Interception of written, telephone, mail, telegraphic and other communications (with judicial authorisation).
- Obtaining samples of DNA, blood, clothes or other evidence for expert reports and the investigation.

The authorities can obtain evidence from other jurisdictions in accordance with international treaties by applying for the legal assistance of the competent authorities in the foreign jurisdiction.

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

- Decisions connected with the detention of the accused.
- Apartment search warrants.
- Intercepting confidential telephone conversations, postal, telegraph and other communications.

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 there is a suspicion that the accused may:

- Hinder the investigation.
- Increase the damages caused by the crime.
- 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 a suspension from work if it is not necessary.

The Criminal Procedure Code allows for the arrest of property (that is, preventing property from being transferred or moved to secure property as a remedy in a civil claim and to cover court expenses or where the property may later be declared as illegally acquired and confiscated). However, there are some types of property that cannot be confiscated, 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).
- Materials necessary for the professional activity of the accused (except for cases when the accused is banned from engaging in certain activities by court order and those items are made of precious materials or have a historical or artistic value).

## SAFEGUARDS

### 4. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

#### Abuse of Investigatory Powers

The right to a fair trial is guaranteed by the Armenian Constitution and the Criminal Procedure Code. The decisions and reasoning of the European Court of Human Rights (ECHR) must be implemented in Armenia for cases that are factually identical, during both the pre-trial procedure and judicial examination.

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Legal representation is guaranteed for all parties participating in the criminal procedure. Free legal representation is guaranteed for certain persons such as:

- Family members of servicemen who died while protecting the borders of Armenia.
- Disabled persons of the 1st and 2nd grade.
- Convicts.
- Unemployed persons.
- Refugees.
- Torture victims.
- Persons with mental disorders treated in a mental hospital.
- Single pensioners.
- Children without parental care.

(Article 41, Law on Advocacy.)

Free legal representation is provided by the Public Defender's Office of the Chamber of Advocates.

The Criminal Procedure Code provides that evidence obtained unlawfully is inadmissible. It is illegal to use evidence in criminal procedures 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 other legal actions.

Collected evidence and data is kept in secrecy during the pre-trial investigation. 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.

### Appeal Process

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.

There is a three-stage judicial system to secure the right to a fair trial. At first instance, the case is heard by the Court of General Jurisdiction of First Instance. On appeal, the case 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 the judgment. In case of new circumstances, a complaint must be lodged within four months after the claimant knew or should have known about the new circumstances (Article 426, Criminal Procedure Act). A final appeal can be brought before the Court of Cassation.

The actions and decisions of the prosecution and investigation during the pre-trial investigation can also be subject to appeals to the court.

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## Civil Suits and Settlement

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### 5. Can private parties bring civil suits for cases of corporate manslaughter?

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Article 1081 of the Civil Code allows for civil suits in cases of corporate manslaughter. Where the deceased had financial dependants, the following have the right to compensation:

- Persons who were under the guardianship of the deceased or that had the right to be under their guardianship by the day of the deceased's death, including:
  - minors, before they reach the age of 18 years;
  - students over the age of 18 in full-time instruction, until they graduate or reach the age of 23;
  - women over the age of 55 and men over the age of 60, for life;
  - disabled persons, for the period of disability.
- A child of the deceased person born after the deceased's death.
- The deceased's parents, spouse, family member, regardless of their capacity to work, who do not work and are engaged in the care of children, grandchildren, brothers and sisters of the deceased who were under the guardianship of the deceased and that have not reached the age of 14 (or who are over the age of 14 but need nursing care).
- Persons that were under the guardianship of the deceased and that have lost capacity to work within the five years after the deceased's death.

Multiparty actions are allowed in Armenian civil procedure.

See *Question 11*.

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### 6. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of corporate manslaughter?

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The authorities cannot use civil powers to punish or reach a settlement with a perpetrator, as civil actions can only be used by the victims based on their statement of claim or application. Persons participating in a case can then exercise their procedural rights and seek to judicial protection at their own discretion.

Punitive damages are not possible under Armenian law.

There is no system for deferred prosecution agreements in criminal cases.

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## HEALTH AND SAFETY OFFENCES Regulatory Provisions and Authorities

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

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A wide range of legislation relevant to health and safety offences has been adopted, such as the Law on Medical Assistance and Service of the Population.

In addition, a wide range of provisions covering criminal negligence are set out by Chapters 23 and 24 of the Criminal Code. See *Question 2*.

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## Offences

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

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#### Health and Safety Offences

**Elements.** In addition to the general crimes relating to personal injury and death (see *Question 2*), the Criminal Code also provides for crimes that unintentionally cause damage to health or death and that may be related to business activity. These include:

- Violation of labor safety rules.
- Making or selling counterfeit wine or fake vodka or other counterfeit alcoholic beverages.
- Violation of safety rules during mining, construction or other works.
- Violation of safety rules at nuclear power plants.
- Violation of safety rules in explosive objects.
- Violation of fire safety rules.
- Illegal circulation of radioactive materials.
- Hiding information about circumstances dangerous to human life or health, where committed by a person responsible for providing such information to the population.
- Releasing or selling goods, works or services that do not comply with safety requirements.
- Illegally engaging in private medical or pharmaceutical activities, or producing or selling counterfeit drugs.

**Penalties.** The penalties for criminal offences giving rise to injury or death can include fines, arrest and imprisonment, depending on the gravity of the breach. See *Question 2, Criminal Manslaughter: Penalties*.

For unintentional health and safety crimes, depending on gravity of the crime, the punishment can range up to:

- Ten years of imprisonment.
- Two months of arrest.
- A fine of AMD500,000.

**Right to bail.** See *Question 2, Criminal Manslaughter: Right to bail*.

**Defences.** There are no special defences or exemptions for criminal health and safety offences. For the general rules, see *Question 2, Criminal Manslaughter: Defences*.

#### Enforcement

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### 9. Which authorities have the powers of prosecution, investigation and enforcement in cases of health and safety offences? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

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See *Question 3*.

## SAFEGUARDS

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### 10. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

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See *Question 4*.

#### Civil Suits and Settlement

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### 11. Can private parties bring civil suits for health and safety violations?

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Under Article 1078 of the Civil Code, a person who has suffered personal injury is entitled to sue the responsible individual or legal entity for:

- Lost salary income. Under Article 1079 of the Civil Code, the amount of lost salary income subject to compensation is determined as a percentage of the average salary the injured person received before the injury. The percentage is determined according to the degree of loss by the injured person of occupational capacity and, in the case of loss of specific occupational capacity to work, the degree of loss of general capacity to work.
- Additional expenses arising due to the deterioration of health, including the costs of:
  - medical treatment, supplementary nutrition, acquisition of medicines, prosthetics, nursing care or therapy;
  - any special means of transport;
  - obtaining another profession.
- The injured person must establish that they need the support and care, and that they do not enjoy the right to receive them free of charge.

### 12. Can individuals and/or legal entities reach a civil settlement with the appropriate authority for health and safety violations?

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See *Question 6*.

#### ENVIRONMENTAL OFFENCES Regulatory Provisions and Authorities

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

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

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

These legal acts set the relevant measures and requirements in relation to:

- Mining.
- Appointing experts to evaluate effects on the environment.
- Using water resources.

- Carrying out restoration works.

The environmental offences that give rise to criminal liability are set out in the Criminal Code, while administrative offences are set out in the Code of Administrative Offences.

### Offences

#### 14. What are the specific offences relating to the environment?

**Elements.** The Criminal Code provides for the following environmental crimes:

- Breach of environmental safety rules when implementing work.
- Wilful distortion or concealing of 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 when 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 the protection and use of soil.
- Illegal tree and bush cutting.
- Illegal harvesting of water flora and fauna.
- Other crimes.

**Penalties.** Some negative consequences must occur to qualify actions as crimes under these provisions. In most cases, when the negative consequences do not occur, the conducts are treated as administrative offences.

For criminal environmental offences, depending on gravity of the crime, the punishment can be:

- Imprisonment of up to ten years.
- Arrest/detention for up to two months.
- Fines of up to AMD500,000.

**Right to bail.** See *Question 2, Criminal Manslaughter: Right to bail*.

**Defences.** The general criminal defences are applicable. See *Question 2, Criminal Manslaughter: Defences*.

### Enforcement

#### 15. Which authorities have the powers of prosecution, investigation and enforcement in cases of environmental offences? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

See *Question 3*.

### Safeguards

#### 16. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

See *Question 3*.

### Civil Suits and Settlement

#### 17. Can private parties bring civil suits for environmental offences?

In general, it is not possible for an individual to bring a civil lawsuit for environmental breaches. However, under Article 216.6 of the Administrative Procedure Code, an environmental non-governmental organisation can represent the legal interests of a group of individuals in the field of environmental protection.

#### 18. Can individuals and/or legal entities reach a civil settlement with the appropriate authority for environmental offences?

See *Question 6*.

### MODERN SLAVERY

#### 19. What are the general concerns regarding modern slavery in your jurisdiction?

Modern slavery is not defined in Armenian legislation, and nor there are any cases regarding the modern slavery in Armenia. However, any kind of forced labour can be prosecuted as human trafficking under Article 132 of the Criminal Code.

There are no general requirements for human rights-related reporting or disclosure in Armenian legislation, but there are some criminal provisions that are similar. For example:

- Under Article 335 of the Criminal Code, it is a crime not to report a serious or particularly serious crime that is being prepared (but this only applies where there is foreseeability of death or other serious consequences).
- Under the Labour Code, there is a requirement to obtain the written consent of one of the parents, the adoptive parent or the guardian or custodian if a minor under the age of 16 years is employed.

### REFORM, TRENDS AND DEVELOPMENTS

#### 20. Are there any impending developments or proposals for reform?

Under an adopted draft Criminal Code, which will enter into force on 1 January 2023, legal entities will become potentially subject to criminal liability under the Armenian criminal law. See *Question 2*.

According to the explanations submitted to the Human Rights Defender by the Ministry of Labour and Social Affairs, a legal basis for the expansion of state control over the fulfilment of the requirements of labour legislation was adopted as a result of co-operation with the ministers of the National Assembly, which will be vital for complying with business and human rights standards. In particular, from 1 July 2021, in addition to control over the

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application of healthcare and safety norms, state control will be exercised over:

- The fulfilment of the requirements of labour legislation.
- Other labour law norms.
- Collective employment contracts.

According to the explanation given by the Ministry in January 2020, the list of measures to ensure the implementation of those laws is being developed and agreed on with the interested bodies.

## Practical Law Contributor Profiles

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- Legal support for Evolution Studio, establishing office in Armenia.
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