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# The Legal 500 Country Comparative Guides

## Armenia

# WHITE COLLAR CRIME

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Armenia.

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## ARMENIA

# WHITE COLLAR CRIME



### 1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

Financial crimes are defined by Chapter 32 of the RA criminal Code. Those are

1. Preparing, storing, transporting, delivering, acquiring or selling counterfeit currency, foreign currency, securities, other settlement documents or payment instruments for the purpose of sale, (Article 267)
2. Improper use of inside information (Article 268)
3. Price abuse in the securities market (Article 269)
4. Deliberately false advertising (Article 270)
5. Removing goods from the commodity market that fall into the minimum expenditure basket (Article 271)
6. Taking a bribe in the private sector (Article 272)
7. Giving a bribe in the private sector (Article 273)
8. Abusing official powers or influence resulting from them in the private sector (Article 277)
9. Illegal use of commercial, insurance, tax, customs, pension, service or bank secret information or credit history or credit information available in a credit bureau (Article 278)
10. Illegal disclosure of commercial, insurance, tax, customs, pension, service or bank secret information or credit history or credit information available in a credit bureau (Article 279)
11. Illegal entrepreneurial activity. (Article 281)
12. Creating, organizing or managing a financial pyramid (Article 282)
13. Abuses in public bidding or procurement (Article 283)
14. Anti-competition activity. (Article 284)
15. Creating or using a legal entity, its separate division, an institution for the purpose of carrying out illegal activities or concealing illegal activities, or registering as an individual entrepreneur for the same purpose (Article 285)
16. Providing false documents without supplying goods or without providing services, preparing and submitting false documents regarding expenses or income. (Article 286)
17. Illegal Activities During Bankruptcy (Article 287)
18. Deliberate bankruptcy (Article 288)
19. Making, keeping, transporting, delivering, acquiring, or using or selling counterfeit excise stamps or stamps for the purpose of sale (Article 289)
20. Failure to pay taxes, duties, or other charges (Article 290)
21. Smuggling of cash and (or) payment instruments (Article 291)
22. Inclusion of false information in declaration of beneficial owners or concealment of information to be submitted (Article 294)
23. Acquisition, sale, or assistance in the sale of property obtained by criminal means (Article 295)
24. Money laundering (Article 296)

In RA, criminal liability is defined only by the Criminal Code. The Criminal Code also contains blanket provisions. For example, the concept of price abuse in the securities market is defined by Article 171, Part 2, Clauses 1-4 of the Law on the Securities Market.

### 2. Can corporates be held criminally liable? If yes, how is this determined/attribution?

Corporates (legal entities) can be held criminally liable starting from January 1st, 2023.

The cases to initiate a criminal proceeding against a legal entity are.

1. The crime was committed by a person who has the authority to influence the activity of a legal entity, or the decisions made by it or with the permission of such a person or induced by a person representing a legal entity acting on behalf of a person and acting for the benefit of a legal entity
2. Legal entity failed to fulfil the obligations stipulated by the law or other legal act regulating its activity, which led to the commission of a crime by a person with the authority to influence the activity of a legal entity or the decisions made by it, a person representing a legal entity or an employee of a legal entity
3. The crime was committed by a person who has the authority to influence the activity of a legal entity, or the decisions made by it, by the person representing the legal entity, or through a legal entity

### **3. What are the commonly prosecuted offences personally applicable to company directors and officers?**

The RA Criminal Code was adopted on May 22, 2022, and there is not any statistics under the new criminal code. Practice shows that criminal prosecution was mainly carried out against managers and employees of commercial or other organizations for crimes of abuse of authority by the employees of commercial or other organizations; evasion from taxes, duties, or other payments; illegal entrepreneurial activity; deliberate bankruptcy; commercial bribery. Mentioned actions remained criminalized by the new Criminal Code.

### **4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?**

Criminal proceedings are initiated by the investigators.

The preliminary investigation is carried out by the investigators of the RA Investigative Committee and the Anti-Corruption Committee. Until January 1, 2023, investigators of the State Revenue Committee and the National Security Committee also have jurisdiction and the investigators of the State Revenue Committee.

### **5. Which courts hear cases of financial**

### **crime? Are trials held by jury?**

Criminal cases (including cases of financial crimes) are heard in the courts of general jurisdiction. In addition, some financial crimes will be investigated by the anti-corruption court once it is established. However, the legal framework of Armenia does not prescribe trials by jury. Only judicial instances are authorized to implement justice.

The judicial acts of Courts of general jurisdiction can be appealed to the Criminal Court of Appeal, the acts of which can be appealed to the Court of Cassation.

### **6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)**

To initiate criminal proceedings a crime report is required. A crime report can be submitted by individuals, the state or local self-government body or its official in connection with the implementation of its activities, from the body carrying out operative-investigative activity, investigator, prosecutor, or judge in connection with the exercise of their powers.

In each case of receiving a report, the investigator immediately, but not later than within 24 hours, files a protocol on initiating criminal proceedings.

The police conduct raids from time to time mainly for the purpose of finding weapons and drugs, wanted persons and property. If any trace of a crime is found during such actions, a criminal proceeding shall be initiated on that certain case. The investigator has broad powers to obtain documents and other evidence

### **7. What powers do the authorities have to conduct interviews?**

Interviews are included in the list of investigative actions. Those are the activities of the state body aimed at collecting evidence. Investigators are not limited and can ask any question that may lead to acquiring information about the crime, circumstances of the case. In addition, the investigators may also conduct a face-to-face interview (confrontations) if there are significant inconsistencies in the testimony of the two persons.

### **8. What rights do interviewees have regarding the interview process? (E.g. Is**

**there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)**

The substance of the rights of the person who is being interrogated is dependent on the procedural status they have. Nevertheless, anyone can be interviewed in terms of presence of their representative (attorney). The witness is obliged to testify correctly and answer all questions. Whereas the accused has the right to remain silent. It is interesting that the previous regulations allowed the accused to remain silent and to give false testimony. However, newly passed regulations do not allow the accused to give false testimony. The summons for questioning shall state the fact underlying the initiation of the proceedings and its legal assessment. The interrogation is videotaped (this rule is postponed until there will be provision of equipment). Certain individuals who have access to information by virtue of their position or status (attorneys, judges, investigators, the Human rights defender, priest-confessors) are exempted from testifying.

**9. Do the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?**

The issue of criminal liability of a person who committed a crime outside the territory of the Republic of Armenia, provided for by the criminal law, is resolved by the Criminal Code of the Republic of Armenia. For instance, if the committed act is aimed against the interests of the Republic of Armenia, a citizen of the Republic of Armenia, including a person with dual citizenship, as well as a stateless person permanently residing in the Republic of Armenia, against the rights and freedoms of a person or legal entity, a refugee residing in the Republic of Armenia, seeking asylum or receiving asylum, the person can be prosecuted in the Republic of Armenia and the issue of their criminal liability is decided in accordance with the Criminal Code of Armenia.

**10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?**

In addition to national legislation, criminal proceedings are regulated by international treaties. Below mentioned are several examples of the mentioned treaties:

- Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (adopted in 1993),
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (adopted in 1990),
- Convention on Laundering, Search, Seizure and confiscation of the proceeds from crime and on the financing of terrorism (adopted in 2005),
- Civil Law Convention on Corruption (adopted in 1999),
- Criminal Law Convention on Corruption (adopted in 1999).

There are several bilateral international agreements that are also used within cooperation.

**11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?**

The right of legal assistance is guaranteed by the Constitution. Everyone has the right to legal assistance. In case by law a person can receive free legal assistance. The body implementing the procedure is not authorized to prohibit the presence of the lawyer in the procedure performed with the participation of their client. To our evaluation the right of a person to receive legal assistance includes the right attorney-client privilege. As the rejection to ensure the attorney-client privilege makes the legal assistance pointless. Hence, the communication between the attorney and the client is protected.

The defense attorney cannot be testified about the confidential information. The information disclosed to the lawyer is considered a confidential information and the state authorities have no authority to obtain or reveal it.

The only exceptions are defined by the Law on Money Laundering and Combating the Financing of Terrorism regarding suspicion of money laundering or terrorist financing being prepared.

**12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?**

A person to whom the body conducting the proceedings offers to disclose such information or provide such

materials, which may later reasonably be used or interpreted to the detriment of them, their spouse, or a close relative, has the right to refuse to disclose such information or provide materials.

Collecting, storing, or using information or material that is protected by the attorney-client privilege is prohibited.

During the proceedings, interference with a person's correspondence, telephone conversations and other forms of communication can be implemented only by a court decision, in the cases and in the order established by law.

During the proceedings, information relating to a person and containing medical, notary, banking or related secrets can be collected only by court decision, in the cases and in the order prescribed by law.

Except for the inspection of the scene of the incident, other evidentiary and procedural actions in the person's apartment can be performed by the court decision or with the consent of the given person. In any case, the search, seizure, and inspection of the apartment, which is not considered an inspection of the crime scene, can be carried out only by a court order.

When data is obtained by illegal measures, the person has the right to appeal against the decision, which may result in recognizing the obtained evidence inadmissible.

### **13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?**

According to the Criminal Code of the Republic of Armenia, criminal responsibility is not provided for the successor of the organization. However, these regulations are not yet used in practice.

### **14. What factors must prosecuting authorities consider when deciding whether to charge?**

Public criminal prosecution against a person is initiated by the supervising prosecutor's decision based on facts proving the commission of a crime.

In the decision to initiate criminal prosecution, the person's first name, last name, patronymic and other necessary information about them, the factual basis of the accusation - the essence of the alleged act, the place, time, method and other circumstances of execution, as far as they are determined by the available evidence, as well as the relevant article of the Criminal

Code or the part of the article or the point by which responsibility is provided to the person for the commission of the act (legal evaluation of the act). Hence, the person has an undeniable right to be aware of legal and factual basis of their accusation.

In the event that a person is charged with several actions provided by different articles, parts or clauses of the Criminal Code, the factual basis and legal assessment of each of them shall be indicated in the decision.

### **15. What is the evidential standard required to secure conviction?**

When making a verdict, the court resolves the following issues:

1. have the factual circumstances (deed) attributed to the accused been proven?
2. has the criminal illegality of that act been proven?
3. has it been proven that the accused committed the act?
4. has it been proven that the accused is guilty of committing the given act?

In case of a negative answer to any of the mentioned questions, the court issues a verdict of acquittal.

In case of affirmative answer to all the mentioned questions, the court issues a guilty verdict

A guilty verdict cannot be based on assumptions and is made only when the accused is proven guilty of the crime during the trial. The guilt of the accused in committing the crime can be considered proven if the court, guided by the presumption of innocence, based on the results of proper evidence, concludes that the accused is guilty

### **16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?**

Statutory limitations are defined by the criminal law. There are different terms for crimes of different gravity. There are certain exceptions to this rule, but they do not apply to financial crimes. Statutory limitations shall not be considered after a person is charged. This means that avoidance of criminal proceedings cannot be used to benefit from limitations.

**17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?**

Mechanisms for investigating financial crimes in a short period of time are not defined by law. At the same time, in case of evasion from taxes, duties or other fees, a person is released from criminal responsibility if they have fully paid the unpaid taxes, duties or other fees and the penalties calculated for their non-payment as defined by the article of the Criminal Code stipulating the criminal liability for this action.

**18. Is there a mechanism for plea bargaining?**

There is a plea bargain procedure, which applies only when the accused pleads guilty.

In order to apply for the conciliation procedure, the accused submits a motion during the preliminary hearings. After granting the motion to apply for conciliation proceedings, the public prosecutor starts negotiations with the accused and their defence attorney in order to reach an agreement. In the event that the damage caused by the crime has not been compensated, but the victim has not objected to the application of conciliation proceedings, the public prosecutor, with the consent of the victim, involves the victim in the negotiations. The agreement is considered reached from the moment the accused, their defence counsel, the public prosecutor and the victim, in case of participating in the negotiations, sign the protocol of agreement.

A conciliation procedure cannot be applied if:

1. the accused is accused of committing a particularly grave crime;
2. one of the several defendants involved in the proceedings objects to the application of conciliation proceedings;
3. the accused does not have a defense attorney or submitted the motion without consulting a defense attorney;
4. the public prosecutor objects on legal or factual grounds to the application of conciliation proceedings;
5. it is apparently justified that the damage

caused by the crime has not been compensated, and the victim objects against the application of the conciliation procedure.

**19. Is there any requirement or benefit to a corporate for voluntary disclosure to a financial crime authority?**

As an advantage, the RA Criminal Code stipulates that a legal entity may avoid criminal liability if the legal entity's participants, shareholders, or equity holders have taken reasonably necessary measures to prevent the commission of a crime by persons having the authority to influence the legal entity's activities or decisions made by it, but the actual commission of the crime was impossible to disrupt. However, this is not mandatory.

**20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?**

As the regulations allowing to impose criminal liability on legal entities has not entered into force yet it is not possible to evaluate the effectiveness of guidelines, as well as any leniency or discount policies.

**21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?**

As the regulations allowing to impose criminal liability on legal entities has not entered into force yet it is not possible to evaluate the ways of protection from criminal prosecution.

**22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?**

The measures of criminal legal intervention applied to a legal entity are not used yet:

1. Fine
2. Temporary suspension of the right to engage in a certain type of activity
3. Compulsory liquidation,
4. The ban on carrying out activities in the territory of the Republic of Armenia.

The following types of penalties are defined for managers or employees of organizations

**Fine:** The fine is set as the main punishment for crimes of minor crimes and medium gravity, in the amount of five to fifty times the monthly income of the person who committed the crime.

**Public works:** Public work is the performance of unpaid work by the convicted person during their free time from studies or work at the place designated by the court and determined by the competent body, which does not endanger their physical or mental health. Public works, with the consent of the convicted person, are set for no more than 4 hours a day for minor crimes and medium gravity crimes, with a duration of 60-270 hours.

**Restriction of liberty:** The restriction of liberty is to keep the convict under supervision at home without interrupting their studies or work. Restriction of liberty is prescribed for minor crimes and medium gravity crimes for a period of 6 months to 3 years.

The court, imposing a restriction of liberty, prohibits the person who committed the crime from visiting various entertainment or other institutions, organizing, participating, or attending certain events or changing the place of residence or being absent from home for certain hours without the consent of the competent authority exercising control over the convicted person. One or more prohibitions may be imposed on the convict.

**Short-term imprisonment:** Short-term imprisonment is the detention of a convict in a penitentiary institute in strict isolation from society.

Short-term imprisonment is assigned to a person who has not previously been sentenced to deprivation of liberty, who has committed minor crimes and medium gravity crimes, for a period of 15 days to 2 months.

**Imprisonment:** Imprisonment is imposed for a period of 3 months to 20 years. The Criminal Code also provides life imprisonment, but not for financial crimes.

The provisions of the Criminal Code regarding the type of punishment for restriction of liberty shall enter into force on July 1, 2023.

### 23. What rights of appeal are there?

The legal framework of appeals has gone through several structural changes in the context of the new Criminal Procedure Code. In particular, the new regulations are more systematized. Firstly, the new CPC

regulates the rules of appeals in general. Secondly, the procedure before the Criminal Court of Appeal and the Court of Cassation is stipulated. Thirdly, the new CPC stipulates the appeals in frames of pre-judicial stage of proceedings. Lastly, the cases of exceptional appeals are regulated.

Act of the court, as well as act of the public participant of criminal proceedings, such as the e.g. the investigator or the prosecutor, (this frame includes the decisions, actions and inactions by those public officials) can be appealed by a private participant in the criminal proceedings, such as e.g. the accused or the defender, as well as by any other person whose legal interests are related to the given criminal proceedings act, in frames of the established procedure within a seven-day period, if no other term of appeal is established by Criminal Procedure Code.

The act of head of investigative body, of the investigator can be appealed to the supervising prosecutor, the procedural act of the supervising prosecutor can be appealed to the superior prosecutor, the judicial act may be appealed to a higher court. In the cases provided by law, the procedural act of the public participant may be appealed directly to the court. Otherwise, private participant of the criminal procedure in order to appeal an act, action or inaction to the court, is firstly obliged to appeal it before the prosecutor.

### 24. How active are the authorities in tackling financial crime?

To the best of our knowledge there is no special approach to financial crimes. Apart from certain investigative actions and tactics which can be carried out in frames of certain types of crimes the approach to the investigation does not differ significantly. In particular, the main aim of the state organs is to uncover the crime. The tools are being chosen based on the circumstances of the case. But there is no tangible difference between the active status of the investigation of financial crimes, except for the paperwork volume of some financial crime cases.

### 25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

Both the legislative and the executive explicitly targeted the sphere of corruption. An anti-corruption investigative body has been established, which also investigates cases related to some financial crimes. In addition, an anti-corruption court is planned to be established. The

jurisdiction of the anti-corruption court also includes certain financial crimes.

**26. Have there been any landmark or notable cases, investigations or developments in the past year?**

No significant financial crimes were investigated during the past year. Not to mention some corruption crimes.

**27. Are there any planned developments to the legal, regulatory and/or enforcement framework?**

It is planned that the provisions of criminal liability of legal entities will enter into force on January 1, 2023.

Which is a massive change in frames of Armenian legislation.

**28. Are there any gaps or areas for improvement in the financial crime legal framework?**

Firstly, the RA Criminal Code does not distinguish the crimes for which legal entities can be held criminally liable. As a result, it turns out that legal entities can be held liable for all types of crimes which might cause practical difficulties. It is necessary to clearly define the list of crimes for which legal entities can be held liable.

The Criminal Code does not regulate the issue of liability of legal entities in case of its reorganization. The lack of regulation can be problematic to implement.

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