



## The Superintendence of the Securities Market ("SMV") publishes the second version of the draft ("Draft): "Guidelines for the Implementation and Operation of the Prevention Model" ("Guidelines"), for the purposes of the provisions of Law No. 30424, Act regulating the administrative liability of legal entities

Through Resolution SMV No. 011-2020-SMV/01, published in the Official Gazette El Peruano, on November 13, 2020, the SMV ordered the publication of the Draft, containing a new version of the Guidelines, which, without being mandatory, set out the recommendations and good practices for those legal entities included in the scope of Law No. 30424, Act regulating the Administrative Liability of Legal Persons (the "Law"), and its regulations, adopted by Supreme Decree 002-2019-JUS (together with the Law, the "Legal Framework"), have a tool that serves as a referential support in the design, implementation and operation of their prevention model in order to prevent the commission of the crimes provided for in Article 1 of the aforementioned law ("Prevention Model").

This alert describes the main novelties of this new version of Guidelines with respect to the one previously published under Resolution SMV No. 021-2019-SMV/01, which are described below:

**1** The following general considerations to be taken into account in the adoption of the Prevention Model are established:

- Normative consistency,
- Participatory approach,
- Binding and general application,
- Simplicity,
- Organizational culture,
- Self-regulation.

**2** Greater emphasis is placed on the duty of the governing, administrative or senior management body of the legal entity to encourage the commitment and participation of the organization's employees and managers, as well as business partners and interested parties.

**3** It is noted that, in unplanned contexts or situations that may significantly affect the business continuity or impact the normal development of the legal entity, a proactive leadership and an active role is taken, including the approval or adaptation of policies or business continuity plans and the implementation of fluid communication channels, in order to mitigate risks associated with new situations, and support is provided to the administrative and/or management body in order to help overcome the challenges that this special context poses to achieve the corporate purpose.

**4** With regard to the minimum elements to be included in a Prevention Model, as listed below, the following is provided:

### **A. Identification, assessment and mitigation of risks**

The following strategic phases are foreseen for crime risk management:

- » **Preliminary stage:** Define operational roles and responsibilities, operational processes and oversight responsibility.
- » **Risk identification:** Review and identify activities, operations and/or processes that have a higher exposure to the risk of crimes.
- » **Risk assessment and analysis:** Estimate the magnitude of the risks of committing crimes that are inherent to the activities or operations of the legal entity.

➤ **Risk mitigation:** Based on the identification, assessment and analysis of the risks of committing crimes that are inherent to the activities or operations, assume and implement controls and measures for prevention, detection or correction.

For all the above phases, a reference list of actions that could be taken and measures that could be considered to accredit the implementation of this element of the Prevention Model is established.

The Guidelines also indicate that it is a good practice for the process of risk identification, assessment and mitigation to be carried out; prior to the development of any new activity; and that significant changes in the form of organization and development of activities as a result of Covid-19, are incorporated in the update of the above mentioned process. Likewise, in the event that digital transformation processes are carried out, or the migration of the work of their collaborators to teleworking or remote work modalities, attention must be paid to the associated risks and their controls (IT risks, protection and processing of information).

In addition, it is stated that such processes must be duly documented, as well as their frequency, sources, data collection, among others. Such documentation must be kept.

## **B. Prevention Manager**

It is established that he/she has a key role in promoting and encouraging compliance with previously established policies and objectives, and ensures the application, implementation, compliance and continuous improvement of the Prevention Model. It is specified that it may be a person or a body, and that in the case of MYPES, its functions may be carried out by the management body. The Guidelines establish as a good practice that the person in charge of prevention must participate in the organization's strategic and operational decision-making, as well as in the process of creating and/or modifying the job profiles of employees.

It is also specified that the role of the prevention officer is not necessarily full-time (although it is recommended for large and medium-sized companies), nor does he/she need to belong to the internal structure of the organization.

The Guidelines set out, as a good practice, some criteria for the choice of the prevention officer.

## **C. Implementation of complaints procedures**

It is noted that, in accordance with good practice, the complaint procedure involves having a complaints channel, the implementation of whistleblower protection policies, the establishment of an internal investigation procedure and disciplinary measures.

The Guidelines also include a reference list of actions that could be taken for the implementation of such a channel and measures aimed at confidentiality, protection and custody of information. It is established that it is a good practice that the internal investigation process must provide that the person who investigates must not be the same person who has the authority to sanction. According to the Guidelines, the legal person may carry out the investigation or entrust it to a third party.

## **D. Dissemination and regular training of the Prevention Model**

It is specified that the duty to disseminate the Prevention Model also includes the training of its managers, and it is emphasized that such dissemination must aim at achieving a culture of corporate integrity, trust, ethics, integrity and compliance at all levels of the legal person. It is established that such activities may be delegated to third parties.

The Guidelines also state that it is a good practice to make available to employees, managers, business partners and interested parties a channel for guidance and answering queries regarding any of the elements of the Prevention Model.

## E. Assessment and continuous monitoring of the Prevention Model

It is specified that in addition to monitoring and reviewing the adequacy of the Prevention Model, the necessary improvements to that model must be implemented, all of which must be documented. It is also states that this process must be carried out at least once a year, and may be conducted directly by the legal entity or by specialized third parties.

For each of the above elements, a reference list of actions that could be taken to accredit the implementation and evidence the operation of the respective element is included.

**5** The Guidelines specify that, although micro, small and medium-sized enterprises ("MSMEs") are not obliged to incorporate in their prevention models all the minimum elements indicated, if they are at a higher level of exposure or risk to the possible commission of a crime, they must adapt the implementation of the Prevention Model for such purpose.

**6** The Guidelines specify that, as part of the best practices, the legal entity must carry out *due diligence* on its clients, suppliers, collaborators, consortium partners and companies with which it will carry out any corporate reorganization, as well as on its contractors, agents, intermediaries, other business partners and interested parties, and the branches and subsidiaries of the companies with which it shall carry out any corporate reorganization.

In addition, the Guidelines include reference actions that they suggest be implemented in the development of the aforementioned due diligence regarding knowledge of the following:

- Its main business partners,
- Collaborators who join the legal entity.

**7** On the other hand, the Guidelines point out that international experience establishes some recommendations for carrying out due diligence, such as establishing different levels of due diligence based on risk; performing continuous monitoring of due diligence processes; having measures for continuous follow-up of the business relationship with business partners and stakeholders; having a system for keeping relevant documentation; and performing post-merger or post-acquisition audits, among others.

**8** Regarding the SMV's participation in the issuance of the technical report referred to in the Legal Framework, which has the evidentiary value of institutional expertise, the Guidelines specify that the certifications obtained by the respective legal entity, related to risk management system, compliance management or anti-bribery management system, from specialized entities in Peru or abroad, may be taken into account by the SMV but with referential value, not being binding for that entity.

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