



Observatoire ARGA

**Criminalization of Corporate and Managerial Decisions in Politico-
Economic Conflicts:
Risk Assessment for Rule of Law and Investment Climate in Latin
America**

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EXECUTIVE SUMMARY

Across Latin America, a persistent structural risk is emerging: corporate conflicts, regulatory disputes, and managerial decisions are increasingly transformed into criminal proceedings. This “criminalization” of business and management activity affects not only owners and senior executives but also key employees and counterparties.

The issue is not the existence of criminal liability for economic crimes. Rather, it lies in scenarios where criminal procedure is used as an instrument of pressure in politico-economic conflicts and as a mechanism for redistribution of control over assets. Criminal proceedings carry a high destructive potential: arrests, preventive measures, searches, asset freezes, and public statements by law enforcement may generate immediate economic damage that is often disproportionate to the procedural stage and evidentiary quality.

The result is a “rule-of-law stress effect”: legal uncertainty, increased investment risk, defensive compliance by financial institutions, and accelerated capital migration. The long-term impact includes erosion of institutional trust and deterioration of the investment climate.

This report provides:

- a typology of criminalization of corporate decisions;
- a map of procedural disproportions that amplify misuse risks;

- a model of secondary effects on banks, markets, and investment flows;
- a Rule-of-Law Stress Test and early warning indicators;
- a package of safeguards for prosecutors, courts, regulators, and development institutions;
- recommendations for the OAS on shaping a regional agenda and expert dialogue.

PROBLEM STATEMENT AND ANALYTICAL FRAMEWORK

2.1 Defining “criminalization” in this report

Criminalization of corporate and managerial decisions refers to recurring scenarios in which:

- commercial or corporate disputes are shifted into the criminal-law domain;
- criminal procedural measures are used as instruments of leverage;
- criminal prosecution alters the balance of power within economic conflicts.

2.2 Why this constitutes a systemic risk

Such scenarios become systemic when they:

- undermine predictability of the business environment;
- increase cost of capital;
- trigger defensive compliance and de-banking;
- incentivize relocation of assets and corporate structures;
- create pressure on courts and prosecutors in politically sensitive cases.

2.3 Methodology

This report relies on:

- typological analysis (patterns rather than individual cases);
- institutional mapping (prosecution, courts, regulators, banks, media);
- analysis of secondary economic effects;
- safeguard checklists (procedural guarantees, proportionality, evidentiary standards).

TYOLOGY OF CRIMINALIZATION OF CORPORATE DECISIONS

3.1 General logic

Criminalization of corporate decisions appears as a recurring structural pattern in which criminal-law instruments are used to achieve objectives beyond legitimate prosecution of economic crime.

The issue is not lawful investigation of fraud or corruption. Rather, it concerns situations where criminal proceedings become elements of economic or political pressure.

3.2 Core scenario types

Type 1. Shareholder or corporate conflict → criminal case

- dispute among shareholders or beneficial owners;
- initiation of complaints to law enforcement;
- opening of criminal investigation under economic crime provisions;
- procedural pressure on management;
- shift in control over assets or corporate governance.

Each stage may formally comply with legal standards, yet the cumulative effect generates pressure outside civil or corporate dispute resolution mechanisms.

Type 2. Regulatory or contractual dispute → criminalization of managerial decisions

- conflict with a regulator or counterparty;
- reinterpretation of management decisions as criminal conduct;
- charges brought against executives;
- parallel administrative and criminal pressure.

Type 3. Politico-economic conflict

- involvement in politically sensitive sectors;
- shifts in political or economic context;
- use of criminal proceedings as leverage for asset redistribution or strategic pressure.

Type 4. Hybrid scenarios

In practice, corporate, political, and regulatory factors often intersect, amplifying the impact of criminal proceedings.

PROCEDURAL DISPROPORTIONS AND PRESSURE MECHANISMS

4.1 Imbalance of procedural stages

In certain jurisdictions, criminal proceedings may advance more rapidly than judicial oversight mechanisms.

Early investigative stages may involve:

- searches and seizures;
- arrests or preventive measures;
- public announcements by authorities;
- asset freezes.

Assessment of evidentiary sufficiency may occur significantly later.

4.2 Pressure through preventive measures

Application of preventive measures to executives can:

- affect negotiation dynamics;
- disrupt company operations;
- incentivize rapid concessions in corporate disputes.

4.3 Informational factor

Public communication regarding investigations may:

- create reputational damage prior to judicial determination;
- trigger defensive compliance by banks;
- lead to termination of commercial relationships.

4.4 Economic consequences of procedural actions

Even temporary measures may result in:

- suspension of projects;
- loss of financing;
- decline in company valuation;
- reputational harm.

The cumulative impact is often disproportionate to the procedural stage and evidentiary base.

SECONDARY EFFECTS: BANKS, MARKETS, INVESTMENT, DE-BANKING, CAPITAL MIGRATION

5.1 Reaction of the banking sector

Banks respond to criminal-law signals more rapidly than to their procedural resolution. Even early-stage investigations may lead to:

- enhanced transaction monitoring;
- suspension of operations;
- account closures;
- denial of credit or financial services.

Defensive compliance becomes the dominant strategy, as regulatory risk outweighs commercial benefit for financial institutions.

5.2 Market effects

Criminal proceedings involving executives or beneficial owners may:

- reduce asset valuations;
- complicate mergers and acquisitions;
- increase cost of borrowing;
- trigger termination of contracts with international partners.

Even if proceedings are later discontinued, restoration of market position may require significant time.

5.3 Investment climate

Repeated criminalization of managerial decisions contributes to perceptions of legal unpredictability.

Investors factor in:

- risk of criminal prosecution of management;
- potential asset freezes;
- unpredictability of judicial practice;
- political sensitivity of certain sectors.

Consequences include:

- increased cost of capital;
- reduction in foreign direct investment;
- reallocation of investment toward more stable jurisdictions.

5.4 De-banking and financial isolation

Criminal cases involving executives or shareholders often trigger financial restrictions:

- closure of accounts;
- refusal by international banks to process payments;
- termination of correspondent relationships;
- increased transaction costs.

Even without conviction, companies may be effectively excluded from the financial system.

5.5 Capital migration and structural relocation

Under elevated legal risk, businesses tend to:

- relocate assets to more stable jurisdictions;
- use offshore or multi-layered structures;
- minimize exposure to high-risk sectors;
- diversify banking relationships.

The long-term result may include erosion of domestic investment bases and weakening of national financial systems.

INTERNATIONAL COOPERATION AND CROSS-BORDER ESCALATION

6.1 Transnational impact of criminal cases

In a globally integrated financial environment, national criminal cases rarely remain purely domestic. Information related to investigations may:

- circulate through international legal cooperation channels;
- appear in compliance and adverse media databases;
- influence risk assessments by foreign banks and regulators.

This leads to cross-border amplification of consequences even at early procedural stages.

6.2 Impact on international transactions

Companies involved in criminal proceedings may face:

- refusal of international payment processing;
- enhanced due diligence by counterparties;
- restricted access to capital markets;
- difficulties engaging with international financial institutions.

6.3 Role of international institutions

Multilateral organizations and development banks increasingly consider:

- rule-of-law conditions;
- predictability of judicial systems;
- risks of politicized or disproportionate criminal enforcement.

Negative dynamics in these areas influence investment decisions and financing availability.

EARLY WARNING INDICATORS: RULE-OF-LAW STRESS TEST

7.1 Purpose of indicators

Early identification of criminalization risks allows:

- reduction of potential misuse;
- strengthening of institutional trust;
- improvement of investment predictability;
- enhancement of legal system resilience.

7.2 Possible indicators

Regulators, international institutions, and analytical bodies may monitor:

- growth in economic crime cases without corresponding convictions;
- use of criminal proceedings in corporate disputes;
- frequency of asset freezes prior to judicial determination;
- correlation between ownership changes and criminal cases;
- increased de-banking of companies under investigation.

7.3 Institutional stress testing

Assessment of procedural resilience may include:

- speed of judicial oversight over investigations;
- proportionality of preventive measures;
- transparency of prosecutorial procedures;
- availability of compensation or remediation mechanisms.

SAFEGUARDS: MEASURES FOR PROSECUTORS, COURTS, REGULATORS, AND DEVELOPMENT INSTITUTIONS

8.1 For prosecutors and investigative bodies

- strengthened evidentiary thresholds at early stages;
- internal oversight for high-impact economic cases;
- limitation of public statements prior to judicial review.

8.2 For courts

- expedited review of restrictive measures;
- proportionality assessment of arrests and asset freezes;
- mechanisms for revision of excessive procedural actions.

8.3 For financial regulators

- guidance on proportionality in banking restrictions;
- dialogue with financial institutions on de-banking risks;
- monitoring of systemic economic effects of criminal proceedings.

8.4 For development institutions and international banks

- consideration of procedural risks in project evaluation;
- support for rule-of-law standards;
- analytical monitoring of institutional resilience.

ROLE OF THE OAS: REGIONAL AGENDA, INSTRUMENTS AND FORMATS

The Organization of American States may:

- facilitate expert dialogue on criminalization risks;
- initiate regional typology studies;
- promote exchange of best practices;
- support rule-of-law standards;
- encourage institutional transparency and proportionality.

CONCLUSION

Criminalization of corporate and managerial decisions within politico-economic conflicts represents a systemic risk for rule of law and investment climate stability across Latin America.

A balanced framework combining effective criminal enforcement with procedural safeguards and proportionality can:

- strengthen trust in legal institutions;
- improve investment climate predictability;
- reduce misuse risks;
- enhance financial and institutional resilience.

This report aims to support professional dialogue on strengthening institutional stability and ensuring predictable legal environments across Latin America.

APPENDIX A. TERMINOLOGY

Criminalization of corporate decisions — transformation of corporate disputes into criminal proceedings.

Defensive compliance — precautionary measures taken to minimize regulatory exposure.

De-banking — termination of banking services.

Rule-of-law risk — risk affecting legal predictability and institutional trust.

APPENDIX B. CHECKLIST FOR PROCEDURAL RESILIENCE ASSESSMENT

- sufficiency of evidentiary basis;
- proportionality of measures;
- availability of judicial oversight;
- procedural transparency;
- economic impact assessment.