

EXECUTIVE SUMMARY

CRIMINAL RISK PREVENTION MANUAL

GUGGENHEIM BILBAO

1. INTRODUCTION

Since its opening in October 1997, the Guggenheim Museum Bilbao has become a cultural icon in Spain and abroad, as well as an example of integrity and transparency, having implemented a number of internal control and action protocols in all areas of the organization, as well as a Code of Ethics and Good Practice.

2. CRIMINAL LIABILITY OF LEGAL PERSONS

The criminal liability of legal persons is codified in Spanish law in Organic Law 5/2010, of June 22, on Amendments to the Criminal Code, introducing Article 31 bis, subsequently amended by Organic Law 1/2015, of March 30, and by Organic Law 10/2022, of September 6.

According to the aforementioned laws, legal persons are criminally accountable for:

- i. Crimes committed on their behalf, and to their direct or indirect benefit, by their legal representatives or by individuals acting on their own or as members of a body related to the legal person in question, who are authorized to make decisions on its behalf or who have managerial and/or control powers within the aforementioned body (first accusation principle).
- ii. Crimes committed in the exercise of social activities on their behalf, and to their direct or indirect benefit, by individuals who are subject to the authority of the persons mentioned in (i) above and who are able to commit a crime because the persons mentioned in (i) above have failed to fulfil their supervision, surveillance, and control duties, all specific circumstances considered (second accusation principle).

The Spanish Criminal Code includes a closed list of crimes for which legal persons shall be accountable.

In order to fulfil the duty of control set forth in Article 31 bis of the Criminal Code, an organization must implement an effective compliance program for criminal risk prevention. A compliance program is an internal control and surveillance system, aimed at preventing crime and offences within an organization wherever possible, or facilitating their identification and mitigating the risk of their being committed significantly.

Article 31 bis of the Spanish Criminal Code as amended by Organic Law 1/2015, of March 30, sets out the requirements for a compliance program to be effective.

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As a general rule, a compliance program should include measures to ensure that an organization's activity unfolds according to law, taking the type and size of the organization, as well as its kind of business, into account, and to prevent or reduce the risk of crime, or to detect it as soon as possible.

3. COMPLIANCE PROGRAM FOR CRIMINAL RISK

PREVENTION

Taking further steps in its commitment to ethics and compliance, the Guggenheim Museum Bilbao has implemented a Compliance Program for the Prevention of Criminal Risk, including the following:

1. Code of Ethics and Good Practice.
2. Code of Conduct.
3. Criminal Risk Prevention Manual.
4. Internal Whistleblowing System Policy.
5. Allegation Management Procedure.

The Compliance Program is applicable to all three organizations that are part of the Guggenheim Museum Bilbao:

- Fundación del Museo Guggenheim Bilbao;
- Tenedora Museo de Arte Moderno y Contemporáneo de Bilbao, S.L.; and
- Inmobiliaria Museo de Arte Moderno y Contemporáneo de Bilbao, S.L.

Therefore, it is a common program, shared by the Foundation, Tenedora, and Inmobiliaria.

This means that all the program's elements, including regulatory elements, organic elements (Compliance Committee) and control elements (whistleblowing hotline, sanction system) are common to all three organizations.

More indirectly, the Compliance Program is also applicable to the individuals and organizations that are related to the Museum: customers, advisors, suppliers, and so on.

4. CODE OF ETHICS AND GOOD PRACTICE

The Code of Ethics and Good Practice reflects the ethical commitment that guides the Museum's activity, laying down the operational principles and good practices undergirding individual and collective behaviors at the Museum from the perspective of

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ethics and responsibility. It was adopted by the Executive Committee and the Board of Trustees of the Foundation in their meetings on December 14, 2015, and by the Board of Directors of Tenedora and Inmobiliaria in their meetings on March 17, 2016.

In particular, the Code of Ethics and Good Practice:

- Contains the required behaviors and guidelines.
- Sets forth a series of standards and behaviors to lay the foundations of a relationship of trust between the Museum and the community.
- Is an action guide for everyday work and management in terms of the scope of individual responsibility.

The Code of Ethics and Good Practice rests on the following principles and values, which guide the Museum's activity:

1. Sensitivity and respect for art.
2. Integration into the art community.
3. Commitment to quality.
4. Customer orientation.
5. Educational approach.
6. Financial approach.
7. Integration and cooperation with other Guggenheim Museums.
8. Commitment to society.
9. Trust in people.
10. Family-responsible organization promoting equal opportunity in diversity.

5. CODE OF CONDUCT

Based on the principles and values laid down in the Code of Ethics and Good Practice, the Code of Conduct was adopted by the Executive Committee and the Board of Trustees of the Foundation, and by the Board of Directors of Tenedora and Inmobiliaria in their meetings on June 20, 2016. It gathers the behavior guidelines to be followed by all the individuals involved in the management, operation, and functioning of the Museum, regardless of their hierarchical level, in particular, employees, executives, members of the governing bodies, volunteers, suppliers, and partners, depending on their relation to the Museum. In the Code of Conduct, the behavior guidelines are grouped into the following categories:

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1. Legal compliance and conduct duties.
2. Active policy against discrimination and promoting equal opportunity.
3. Safety in the workplace.
4. Transparent management and anti-corruption policy.
5. Conflict of interest.
6. Prevention of money laundering and the financing of terrorism.
7. Respect for the environment.
8. Duty of confidentiality.
9. Intellectual and industrial property.
10. General art exhibition rules.
11. General art acquisition and clearance rules.
12. General art recording, documentation, and management rules.
13. General art conservation and protection rules.
14. General research and archiving rules.

6. CRIMINAL RISK PREVENTION MANUAL

While The Code of Ethics and Good Practice and the Code of Conduct contain the ethical principles and the general rules to be followed by all Museum members, the Criminal Risk Prevention Manual, adopted by the Executive Committee and the Board of Trustees of the Foundation, and by the Board of Directors of Tenedora and Inmobiliaria in their meetings on June 20, 2016, is the fundamental document, structuring the Museum's approach to the prevention of criminal risk.

The manual was developed to improve compliance in the Museum, meeting the international standards for effective crime prevention programs beyond the stringent levels already in place.

The manual deals with every aspect of criminal risk prevention: control structure in the organization, assessment of criminal risk, relevant internal procedures and controls in the Museum, and others. Moreover, for specific issues, the manual refers to other elements in the Compliance Program.

The manual is divided into two sections, dealing with general and specific issues.

The general part contains the following:

- Scope of application.

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- Museum activity and associated criminal risk.
- Organizational control structure.
- Compliance Committee.
- Main decision-making bodies in the Museum.
- Regulatory compliance and ethical culture.
- Compliance Program awareness and information.
- Program monitoring and follow-up.
- Allocation of sufficient resources for program implementation and monitoring.
- Internal Whistleblowing System.
- Allegation Management Procedure and sanction system.
- Program review and continuous improvement.

The special part deals with the following issues:

- Crimes specifically related to the Museum's activity.
- Adequate internal rules and control to the prevention of the aforementioned crimes in the Museum.
- Internal bodies to reduce the risk of the aforementioned crimes being committed.

7. INTERNAL WHISTLEBLOWING SYSTEM POLICY

The Museum's Internal Whistleblowing System is the tool made available to employees, managers, and third parties within the scope of Law 2/2023, of 20 February, regulating the protection of individuals who report infringements and the fight against corruption (Whistleblower Protection Act), to report on alleged infringements or acts that are deemed illegal. The system is regulated by the Internal Whistleblowing System Policy, available on the [Museum website](#).

The administrator of the MGB Internal Whistleblowing System will be the Compliance Committee, in charge of checking the proper functioning of the system.

Reports on acts that are deemed illegal in the Internal Whistleblowing System can be oral, written, or oral/written. Oral communications should be addressed to the managing administrator.

As to written communications, they can be submitted through three different channels:

- i. email, sent to:

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canaldenuncias@guggenheim-bilbao.eus

- ii. postal mail, sending a letter to:
GUGGENHEIM MUSEUM BILBAO
Attn. Internal Whistleblowing System Administrator
Abandoibarra Etorbidea, 2, 48009 Bilbao, Spain
- iii. special [form](#) on the website.

8. ALLEGATION MANAGEMENT PROCEDURE

Every allegation sent through the different channels of the Internal Whistleblowing System will first be analyzed by the managing administrator, who will make sure that the personal data of both the whistleblower and the person concerned by the allegation are treated confidentially. Likewise, if the whistleblower chooses to remain anonymous, the Museum will respect this choice, in accordance with the Whistleblower Protection Act. Enquiries will be conducted guaranteeing the presumption of innocence of the person concerned by the allegation and respecting the honor of everyone involved.

If the allegation is proven to be true, the administrator of the Internal Whistleblowing System will suggest the adoption of sanctions according to the seriousness of the offence. If there is evidence that the offence may constitute a crime, the administrator must report it to the Spanish Public Prosecutor's Office. In addition, if there is evidence that the offence may affect EU financial interests, it will be reported to the European Public Prosecutor's Office.

In addition to administrative sanctions and/or criminal punishment, disciplinary sanctions will be imposed if applicable.

The administrator of the Internal Whistleblowing System will be vigilant of acts taken in retaliation or reprisal, including threats and attempts at retaliation, against the whistleblower for having reported on the acts subject to prosecution.

9. ORGANIZATIONAL CONTROL STRUCTURE

The Museum's organizational structure for the prevention of criminal risk rests on:

- i. the existence of a common body for the Foundation, Tenedora and Inmobiliaria – the Compliance Committee – with its own power of initiative and control, in charge of checking the proper functioning of the system and monitoring

- observance of the Compliance Program;
- ii. the involvement and full cooperation of senior management in all three organizations in the prevention of criminal risk and the effective implementation of the common Compliance Program; and
- iii. the allocation of budget and staff resources for the exercise of the Compliance Committee's functions.

10. COMPLIANCE COMMITTEE

The Compliance Committee is the body whose specific functions are the implementation, review and control of the Compliance Program. Its members include the Chief Officer, the Deputy Director for Human Resources and Quality Management, the Deputy Director, General Counsel and Secretary, the Chief Financial Officer, and the Deputy Director for Legal Counsel and Internal Control.

The functions of the Compliance Committee are:

- i. To oversee the implementation of the Compliance Program.
- ii. To communicate the most relevant amendments in the Museum's Code of Conduct.
- iii. To make an assessment of the Compliance Program on an annual basis, considering what could be changed, especially in connection with unregulated risk and procedures that could be improved.
- iv. To put forward adequate rules and internal controls for approval for the prevention of crime in the Museum.
- v. To take all the necessary actions for an adequate implementation of the Compliance Program.
- vi. To check the implementation of the Compliance Program on a regular basis.
- vii. To oversee Museum staff training regarding the Compliance Program.
- viii. To admit and process the allegations submitted through the Internal Whistleblowing System.
- ix. To conduct internal enquiries into acts that may constitute a crime, an administrative offence or an infringement of the provisions in the manual, and to suggest the sanctions to be imposed by the relevant bodies.
- x. To keep a record of all the allegations submitted through the hotline of the Internal Whistleblowing System.