

ABENGOA: AN EMPHASIS ON RISK MANAGEMENT

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The work of the Abengoa legal department has moved beyond legal issues to encompass regulatory, compliance, and most of all risk management. It is a way of working that better reflects the way the company assesses new project and business opportunities, says the Head of the Legal Department, Armando Zuluaga.

Es fundamental para el trabajo del departamento jurídico de Abengoa comprender cómo puede su trabajo tener un impacto positivo en las operaciones de la empresa en todo el mundo. Así, la competencia de sus asesores jurídicos excede la técnica jurídica para abarcar cuestiones de reglamentación y cumplimiento normativo, así como la evaluación de riesgos y la planificación. En este marco, Armando Zuluaga, Director del Dpto. de Asesoría Jurídica de Abengoa, presenta a su equipo las oportunidades en las que desarrollar una carrera profesional más gratificante. As Head of the Legal Department of Abengoa, Armando Zuluaga oversees one of the largest inhouse legal departments among Spain's IBEX35 companies. It is a role that has changed

fantastically since he first joined in 2000, he says. The legal team has increased from eight lawyers to over 90 and the company's operations now extend to over 70 countries.

Significant also has been the impact that this expansion has had on the nature and type of work that he and his team now routinely oversee and undertake.

'Much of Abengoa's emphasis is now in highly regulated sectors, notably energy and telecoms, and this inevitably impacts on what we do. Legal and compliance issues are clearly very important but so now is risk management and risk mapping – we analyse the issues around every new project that is proposed.'

Matrix

Established in Seville in 1941 by two engineers to manufacture an electrical meter, Abengoa today operates across six continents, counts around 21,000 employees, and in 2007 reported a turnover of €3.2bn. Over 60% of the company's revenue is now generated outside of Iberia.

Abengoa is perhaps now best known for its emphasis on renewable energy and sustainability, and built its first solar energy plant in 1984, but it was not until the 1990s that it moved away from conventional manufacturing to focus on information technology, renewable energy, biofuels, and environmental issues.

Abengoa is now organised into five business groups: Abengoa Solar, Abengoa Bioenergy, Befesa (environmental services), Telvent (information technologies), Abeinsa (engineering and industrial construction), as well as having a central corporate function and the Focus-Abengoa Foundation.

Given the diversity of operations, the legal team at Abengoa operates on both a corporate and business level and who the lawyers report to depends very much on a functional basis, explains Zuluaga.

'Five lawyers operate within the company's central corporate function, which is divided between Madrid and Seville, with the remainder located within the five business divisions, and around the world. We currently have lawyers in the US, Canada, Australia, China, the Netherlands, Brazil, Uruguay, Mexico, Peru, and of course Spain.'

Abengoa's lawyers operate within two distinct but interconnected matrices, he says. 'The lawyers in the divisions report both to the CEOs of the individual business units, but also ultimately to me. The business managers oversee what and when to do things, and I oversee how they do it. We have local people on the ground where it is justified, depending on both the volume and the value of the legal work that needs to be handled.'

The corporate legal team, he says, comprises lawyers with dedicated responsibility for transactional and M&A, corporate and project financing, international arbitration and regulatory issues.

'These are senior people who were all doing this type of work at law firms before they joined Abengoa. The team can therefore add real value to projects that are being undertaken and they are usually involved in every transaction the company undertakes, working alongside the lawyers in the business divisions, and when necessary, external legal advisers.'

Matter management

The types of legal issues the in-house teams at Abengoa routinely handle and what is therefore outsourced to law firms is determined by very clear guidelines, says Zuluaga.

'There are internal processes to help our lawyers, and the businesses, determine when to contact an external lawyer. The issue is decided to a large degree by the risk profile of the individual project.'

Before an external law firm can be consulted a risk assessment of the matter is made, a proposal is drawn up highlighting the key issues, and three separate fee quotations are sought – all of which has to be approved at a corporate level.

'We operate a panel of 14 law firms to which certain types of matters must always be referred. Beyond these there is a degree of flexibility as to which law firms can be approached, for example because a firm has no local office, but the preference is very much towards the pre-selected panel.'

Zuluaga emphasises that within the legal teams no distinction is made between 'domestic' or 'cross-border' issues. 'The scale of Abengoa's operations means that the law firms we use are selected precisely because of the types of issues we routinely face and the locations in which we are likely to have them.'

✖ It is not therefore a prerequisite to be a Spanish firm to advise on Spanish issues, he says. Clifford Chance, Linklaters and Jones Day are all panel firms, and each has a Madrid office, while the company also uses Perez-Llórca, Cuatrecasas or Garrigues for disputes or project Financing. US-based Shearman & Sterling is also a panel member, and which has offices across Europe, Asia and in Brazil. Zuluaga says he places emphasis not only on firms technical legal abilities but also on their understanding of sector developments to help highlight the types of issue that Abengoa may face when entering new markets.

'Of course an insight will only get you so far but it certainly helps prepare you for the real problems you encounter when you actually start a project in a country,' he notes.

Risk analysis

Fundamental to the work that the Abengoa legal teams undertake, and how the group assesses new projects and opportunities, is through dedicated risk assessment, says Zuluaga.

'We make a thorough analysis of all the potential legal, finance and technical issues that may impact on a project and the results of which will determine whether we move ahead or not.' Such developments, he says, are indicative of the lawyers increasing move away from a purely legal role to a more strategic function, encompassing legal, regulatory and compliance issues.

'What is important now is not only what we do, but that how we do them really adds value to the company and its divisions, and an important part of this is to ensure that we retain as much of the knowledge that we generate as possible.'

Abengoa's own IT division, Telvent, has created a sophisticated know-how and knowledge management system for the legal department, says Zuluaga, which enables teams to access and record issues as they arise, and to enables the businesses divisions to plug in.

'We have a very dynamic and complex database system and technical tools, that enables us to record and comment on issues, and outcomes, and to which anyone engaged in a particular project can have online access – it means that we do not have to rely on emails or other unstructured communications to ensure that everyone who needs to can know the status of any given matter.'

Career options

Looking ahead, Zuluaga sees a growing emphasis of the legal team's work towards compliance and regulatory issues, and an increasing reliance on the department's risk management and technical tools.

✖ 'We are in an amazing situation where we not only have to assess the legal and business risks we can contemplate but even those we may not even have thought of until a few months ago. We now assess the credit worthiness of the finance institutions that want to invest or underwrite in our

projects, to help highlight any potential future problems.' Such a remit, and tools, reinforces Zuluaga's belief also that an in-house role can offer an equally, if not more, stimulating career than that found within a law firm, and highlights the very different perceptions of the company lawyer role across countries.

'At Abengoa we recruit both graduate and qualified lawyers but in Spain, unlike the US or UK, there is still a perception that a position within a company legal department is somehow less demanding. I can tell you that at Abengoa the absolute opposite is true. Additionally, we also believe that both, professional development and personal life need to be compatible, so conciliation for us is a must. To that end, planning and efficiency are basic drivers we need to work on a day to day basis'

Lawyers within his legal department must have a technical legal understanding equivalent to the external lawyers they use, but fundamentally they must also understand that it is not viable to offer a mere academic analysis of the law. In 2004 Telvent was the first Spanish company to list on NASDAQ, and as a group Abengoa is increasingly focused on renewable and sustainable energy developments. In 2008 it will make a projected €101m investment in research and development – Abengoa Solar's 11 megawatt (MW) PS-10 project located at Soli^ocar close to Seville is the world's first commercial thermo-solar plant, and a further 280MW \$1bn plant is now planned in Arizona. It will be the largest solar power plant in the world.

'We have to be really in touch with the business and to understand how it innovates and may change. Our lawyers have responsibility for specific business projects and clearly need to appreciate how a legal issue will impact a commercial situation,' says Zuluaga.

Befesa is leading the way in desalination technologies, Telvent is looking to commercialise communications services carried along power lines, and Abeinsa is undertaking pioneering research into reducing CO₂ emissions through the use of nanotechnology. In addition, Abengoa Bioenergy is now the world's second largest bioethanol producer.

It is vital also that the lawyers in the legal department also have career development opportunities, says Zuluaga. 'In addition to the two days training that our panel law firms are required to provide each year, our lawyers also have the opportunity to develop their business, finance and other skills,' he says. 'We offer senior lawyers the option to switch to a non-legal management role in the company, and so this is vital preparation. As a company we believe in not leaving things to chance.'

