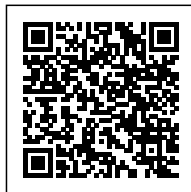


ADDRESSING CORRUPTION ON A GLOBAL SCALE - OSBORNE CLARKE

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Even if a company is based in Spain, it can still be liable for breaches of the law of other jurisdictions, therefore corporate responsibility is paramount

As the crisis is compelling Spanish companies to internationalise, performing and expanding as a global business requires careful navigation of, among others, cross-border anticorruption rules and regulations that are as numerous as they are complex, says Silvia Steiner, a Partner at Osborne Clarke in Barcelona. "What has and is still emerging is a growing body of knowledge concerned with addressing and preventing fraud and corruption worldwide."

Additionally, some jurisdictions, such as the US through its Foreign Corrupt Practices Act and the UK with its Bribery Act, have allocated a great amount of human and financial resources to assure effective compliance with their regulations. "Such a huge expectation of accountability for business conduct worldwide brings with it considerable resources to enforce the rules," she explains. Steiner recommends companies tap into this knowledge when looking at their existing approach. "Companies either need to create and implant policies and procedures to control their activities in

those countries where they operate, or to enhance and revisit them from a cross-border perspective.”

External support

Steiner stresses that a law firm is ideally placed to help with this, as it can be very difficult to do so without the assistance of outside counsel with experience and knowledge of how authorities, such as the US Securities and Exchange Commission or US Department of Justice, should be interpreted. She also points to the advantages of using a law firm that has the benefit of international exposure. “If a law firm is lucky enough to have multinational clients who are active in numerous countries worldwide, you get a lot of experience in how businesses are run in each, so it’s easier to help implement and create policies and procedures, and know what occurs locally and what they should be aware of.”

Risk assessment

For a company to implement and create effective compliance policies and procedures, it is vital to carry out an initial risk assessment. This should include asking the right kind of questions, says Steiner, including about the countries in which it intends to operate, what and how the business is to be launched, and the potential risks.

A commercial and competition law specialist herself, she knows how law firms handle every element of compliance because they are already doing it. The ‘it’ being everything from drafting, reviewing, implementing and following up compliance policies and procedures, to verifying due diligence on third parties, day-to-day advice on red flags in the light of threats and standard compliance contractual provisions.

“You need to look, for example, at whether you will interact with public officials as defined by these foreign regulators, and, if you are, then you have to reinforce and process it in relation to that interaction,” she explains. “You also need assistance in implanting these policies and procedures worldwide – not just at Headquarters but also in all subsidiaries, taking into account, if necessary, more restrictive local laws and regulations.”

Training

Having assessed the key risks to the business, brand and reputation, it is imperative to act on the knowledge, by way of practical training tailored to day-to-day activities.

“For a company to be compliant, it is very important that everybody in key departments is trained on what they have to take into account,” says Steiner. “We try to be very practical and talk about specific sectors, and let employees be active so they get a real and thorough understanding of the issues they may face and how to deal with them.”

It is by enabling a company to come up with their own definitive ‘best practice’ guide that they can create a uniform set of standards, which can simultaneously address their widespread needs while complying with the highest and strictest level of cross-border anti-corruption regulations.

Ultimately, however, Steiner believes that the focus on training has to begin at management level, to ensure a company is fully committed to anti-fraud and anti-corruption initiatives. “The first body that must be aware of the importance of compliance with cross border regulations is that which rules, so it is very important to set the tone at the top,” she says. “The board of directors needs to be conscious of what a deviation from any rule or regulation could imply, because the sanctions and penalties, both financial and criminal, could devastate a business.”