

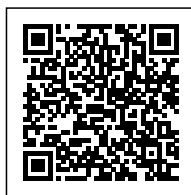
ADJUSTING TO A CHANGING REGULATORY WORLD - ROCA JUNYENT

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Companies and banks in Spain's financial capital are getting accustomed to new regulatory regimes, both to avoid criminal sanctions as well as attract future investment

En los últimos seis meses han crecido las necesidades de las empresas en cuanto a asesoramiento sobre gobierno corporativo. Ello se debe en gran medida a la reciente reforma del Código Penal, afirma Juan Alberto Urrengoechea de Roca Junyent en Madrid. El aspecto más significativo de la reforma es la introducción de la responsabilidad penal de las personas jurídicas.

Madrid is the epicentre for Spain's top corporate and financial institutions. After a difficult few years

following the slowdown in the economy, the latest aspect of corporate life to come under the spotlight are the internal structures and operations of the country's top businesses. The last six months has seen an uptake in companies' requirements for corporate governance advice. The driver behind much of this is the need to comply with Spain's new Criminal Code. The most significant aspect of the Code, which was passed into law in December 2010, is the dismissal of the old rule that companies cannot commit crimes. Now, for the first time, businesses can be held criminally liable.

"The new law has provided an interesting source of work for the Spanish law firms," says Juan Alberto Urrengoechea, a Partner at Roca Junyent in Madrid. "More and more companies are now requiring legal advisers to draft protocols to adhere to the regulations."

The rules brought Spain into line with other major EU countries, including France, Germany and the UK, and effectively mean that the directors of a company can be held liable for any criminal wrongdoings that occur within the business. Companies can also face severe action if found to breach the Code. These sanctions range from being banned from public tenders, being closed down or even court action.

The main safeguard for companies is to prove they have a control system, such as internal reporting and transparency structures. This will be a businesses' main defence against any liability cases, says Urrengoechea.

"Companies are keen on drawing up stringent due diligence and corporate governance models that would show to the authorities that all possible actions had been taken."

Taking it to the banks

Beyond corporations' enhanced responsibilities, the local banking market is also requesting further advice on their operations. Unlike criminal liability, however, this advice concentrates on internal business structures.

The push has been prompted by the mass consolidation amongst the local savings banks (cajas). A portfolio of major deals closed in 2010, which saw the number of cajas slashed from 43 to 17.

Notable deals included the €4.2bn merger between Caixa Catalunya, Caixa Tarragona and Caixa Manresa and the €1.1bn tie-up merger between Caixa Sabadell, Caixa Terrassa and Caixa Manlleu.

"There has been a lot of consolidation and now these banks are looking at the next stage, which will require new regulation from the Bank of Spain," says Urrengoechea.

Earlier in the year the Bank of Spain warned that the cajas could be exposed to up to €100bn of bad debt principally because of poor real estate investments.

Indeed, the likes of Alicante-based Caja Mediterráneo (CAM) are already facing nationalisation over their spiralling debts. As such, cajas are requiring advice to change from the historic locally-run, not for profit model into a more commercial venture and all the regulatory issues that this entails.

On one level, this will make cajas more robust in terms of future stability. Urrengoechea points out also that the sector is now primed for external investment and that shifting their business models is vital if the cajas are to attract outside interest.

"Firstly, cajas have to go from a public entity to a publicly-traded entity, which requires a change in structure. This paves the way for private equity funds and foreign investors to purchase or take a stake in them."

It is clear that many of Spain's largest companies and banks need to get to grips with new sets of rules if they are to reshape and flourish in a new economic and regulatory environment.