

BOARD SECRETARIES MUST BE MORE VIGILANT FOLLOWING LEGAL CHANGES

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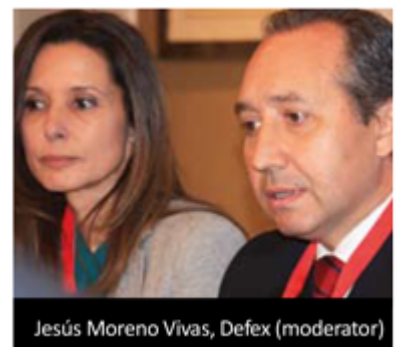
Amendments to law mean board secretaries should take a supervisory role in relation to compliance and should ideally have a legal background

Secretaries of the board of directors need to be increasingly vigilant following changes to Corporate Law, attendees at an event organised by Diligent and Iberian Lawyer in Madrid heard. The role of board secretaries has grown in importance as a result of the changes, which demand greater professionalism among boards of directors and elevate what previously amounted to mere recommendations for good governance into the legal sphere.

The Corporate Law reform stipulate that secretaries of the board must supervise compliance, but one obstacle to this is that, in both listed and non-listed firms, the secretary of the board is from a financial background and may lack the capacity to deal with the new regulatory framework ushered in by the modifications. And with an increased level of diligence expected from them, secretaries of the board will be obliged to play a more prominent role.

Diligent business development director Laura Espinosa highlighted the importance of "board portal solutions" in facilitating the secretary's role by allowing for secure digital storage and distribution, while minimising preparation time for board meetings. In addition, IT systems facilitate the management of the "lifecycle" of documents, which liberates the secretary of the board from tasks that distract them from more pressing duties.

But there are other challenges facing those in the role of secretary of



the board, attendees heard. One participant remarked that, from the perspective of a family-run, non-listed firm, having a secretary of the board without a legal background is inconceivable. The position forms part of a company's efforts to distinguish itself, by its work and the way it operates, and the secretary's role is to transmit the importance of that to the board members. There needs to be a process of persuasion to ensure the company is complying with norms, the participant added. "What we must understand from the new laws is that not only is it a question of doing things well, but demonstrating that they are being done well," said Espinosa.



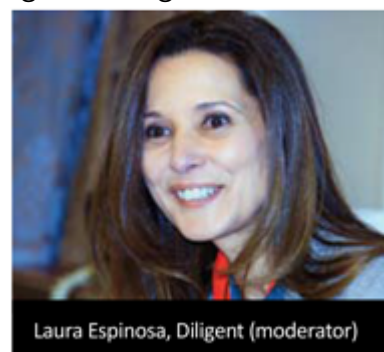
Board directors scared?

In the majority of companies, there is not a secretary of the board but rather a super-secretary, according to Juan Venegas, corporate general counsel at Adveo. "As well as being secretary of the board, they are responsible for governance, compliance – and often legal services – and after acquiring the digital platforms they end up being IT experts for the board," he said.

What may scare boards of directors most now in the wake of the modifications to the laws is their own level of responsibility, attendees heard. The law has served as leverage, along with compliance, to allow boards of directors to become aware of how the transparency that the law stipulates should function. It is about implementing a policy of compliance across the company, starting from the top and it is no longer enough to have a plan of compliance, but you have to demonstrate that you are carrying it out, Venegas said. The role of the secretary of the board has strengthened and has become that of a legal adviser.

Another challenge faced by family-owned companies that have become listed is resistance to change, one participant remarked. Companies previously saw laws as a distant parameter, but now these are suddenly seen as encroaching on the company and one of the big challenges is how companies adapt to that change.

One company secretary told the event there has been an evolution in the way that board members decide on sensitive issues as the new reforms on criminal law create a greater awareness of compliance and due diligence. Inevitably, this has helped to reinforce the role of secretaries of the board and in-house legal advisers, increasing their collaboration to make sure that they go hand-in-hand due to the necessary changes in the corporate culture of compliance.



High-risk sport

Event: The Big Impact of Regulation – The Monitoring Duties of Board Secretaries

Location: Madrid

Moderators: Jesús Moreno Vivas (Defex); Laura Espinosa (Diligent)

The legislative changes mean board secretary has an obligation to get to know the law and to apply it, as well as imposing the necessary control to ensure compliance among board members. Event participants also heard that there has been a change in the way secretaries of the board understand the concept of loyalty – loyalty no longer refers to a question of nodding in agreement or hearing what they want to hear, but rather a question of advising on principles,

values and norms that are to be applied within a company. There has also been an evolution in terms of an increase in the legal risk associated with the role of the secretary of the board, which has made it one that could be equated to a "extreme sport", one attendee said.

However, the role is clearly for a lawyer, given its complexity and the legal risks involved, participants in the event heard. Alberto Alonso Ureba, partner at Baker & McKenzie said: "One of the key roles played by the secretary of the board is implementing and developing the relations between the board and the management and keeping up a steady contact with the board chairman. To that end, he is also responsible for setting a management agenda, setting out the issues to be

tackled – all this enables the efficient performance of directors' oversight, as well as follow-up action taken by the board."