

CLIENTS NEED A CLEAR STRATEGY AND DETAILED PROCEDURES FOR HANDLING A CRIMINAL INVESTIGATION

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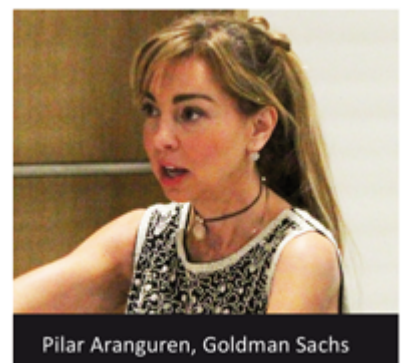


External legal counsel can be used to test controls and train staff – including IT personnel – on how to prevent risks associated with failing to safeguard information

Having a clear strategy and detailed procedures in place is key to minimising risks when facing a criminal investigation, attendees at a recent Iberian Lawyer compliance event in Madrid heard. Panelists speaking at the event – which was held in partnership with CMS Albiñana Suárez de Lezo – said that in order for compliance programmes to be effective, it was important that they are in accordance with the Spanish penal code. As the person responsible for fulfilling the company's commitment to compliance, the compliance officer has a direct role to play in this process, and consequently risks being involved in criminal investigations as a witness or a defendant if they fail in their duties.

Responsibility for wrongdoing

However, with ultimate responsibility for any wrongdoing resting with company directors, external counsel are best-placed to defend their interests. External lawyers can advise the company's in-house function on how to act in the event of a criminal investigation, for example by responding to requests from the authorities without offering additional information which they are not required to provide. External legal counsel can also perform adequate tests of controls, and train key members of staff, such as IT personnel, on how to prevent risks associated with failing to safeguard information.



Using forensic experts

Participants were also told that companies are increasingly aware of the importance of allocating resources to the compliance function, and that having a dedicated compliance officer will become the norm in future. One of the duties of compliance officers is to raise the alarm if they detect any irregularities, and it is therefore paramount that the independence of the compliance function is preserved.



With regard to internal investigations, attendees heard that the best approach is to use forensic experts as they have the right tools and are best placed to evaluate possible liabilities. Directors must encourage a culture of compliance and balance the need to have the right preventative measures in place, while ensuring compliance concerns do not interfere with the smooth running of the business.

Event: *All that Glitters is not Gold: Compliance programmes and the criminal process*

Location: Madrid

In collaboration with: CMS Albiñana & Suárez de Lezo