

# **CORRUPTION IS A STRATEGIC ISSUE: TOP MANAGEMENT SHOULD BE THE SOURCE OF A COMPANY'S ETHICS AND IN-HOUSE LAWYERS ARE THE PEOPLE THAT MAKE IT HAPPEN.**

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**Since the introduction of the Criminal Code in December 2010, companies have been developing internal regulations to catch up with the new rules and avoid risks that could be devastating to the company.**

A group of General Counsel and Heads of Legal of large companies met at the recent Iberian Lawyer In-House Club Master Class, in collaboration with Osborne Clark, to discuss the challenges they face in terms of corruption, especially the impact these unlawful acts have outside Spanish borders.

Recent years have seen international anti-corruption legislation being developed more stringently in certain countries, for example in the UK and US with the Bribery Act, Foreign Corrupt Practices Act (FCPA) respectively - which is forcing companies to comply with strict anti-corruption practices when operating worldwide, and giving their respective jurisdictional authorities broad powers to enter, investigate and punish companies with interests in the UK or US.

Although many companies still haven't developed strict protocols or processes to prevent illegal or corrupt activities, most have codes of ethics and Regulatory Protocols that offer employees the information necessary to avoid or prevent actions that are considered corrupt. However, many attending the Master Class admitted that they require further models to achieve these processes or

protocols, as it is not something that is culturally imbedded in the DNA of many companies.

Most participants stated that if they didn't receive direct support from top management, then no preventive action was taken. Management must be the first to lead by example and, if instances of illegal or corrupt activity arise, they should be able to discipline employees or executives and even report them so that a culture of 'a clean company' is integrated throughout the organisation.

Multinational companies represented in the debate showed greater 'structural' sensitivity when it came to the effectiveness of disciplinary systems or anti-corruption protocols. The debate analysed in depth the intentions of domestic companies to integrate international standards (US or UK) into their own systems, and respect them at all levels, which, according to the participants, is not just a legal issue but a key commitment to increase competitiveness of the business internationally. Many said they had lost out in international pitches for projects because they did not meet certain compliance requirements or had a 'black spot' in the history of the company.

### **The bipolarity of in-house lawyers**

An interesting topic surrounded the role of in-house lawyers. Theoretically, the in-house lawyer must defend the interests of the company. But when also assuming the role of Director of Compliance, they take on a number of functions almost 'police-like' in nature, where they must assume the role of defender of the 'ethics' of the business, which is not always compatible with the defence of the internal interests of the company.

The trend seems to be to separate the two functions, and outsource the compliance function, although in-house lawyers could still serve on the Compliance Committee to coordinate joint actions.

### **Who has the 'actual' ability to complain and discipline?**

It is interesting to note that it is the employees themselves that must feel like they have the ability to report those who have been identified as corrupt or who they believe are undertaking illegal activities. The question is how safe they feel in reporting a colleague or superior.

The in-house lawyers who attended the Master Class felt that the concept of 'tipping off', even using an external phone line anonymously, is not something that is currently happening in Spain.

Many consider as key those in senior management positions, and say they are afraid to act against their 'boss', in fear of losing their jobs. Participants discussed the models used by multinational companies, which creates a 'pool' of secretaries or personal assistants thereby breaking the link between an individual and a direct superior, sharing resources and breaking the trend to 'use' company resources for personal reasons.

Corruption and bribery is very widespread in certain parts of the world, said Silvia Steiner, a Partner at Osborne Clark in Madrid, especially in the southern hemisphere. Today, Spain has a very high level of active and passive corruption that can put international business at risk and also incur fines.

Although Spain still lacks case law regarding fines related to illicit or corrupt activities, it is recommendable to start working not only on anti-corruption protocols but also on attitudes.

[Click here to see the photos of the event](#)