

# COURTS' VIEW OF CORPORATE CRIMES IS UNPREDICTABLE - DE PEDRAZA ABOGADOS

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**With few judgments having been passed in relation to corporate compliance, there is considerable doubt about how courts will deal with offences**

Clients are anxious about conforming with the reformed Spanish Criminal Code but, with an absence of prior judgments relating to corporate compliance, it can be difficult to predict exactly how potential criminal offences committed by companies will be viewed by the courts. Mar De Pedraza, managing partner of De Pedraza Abogados, says that it is, at present, unclear to what extent the courts will seek to punish compliance-related crimes.

## **Criminally liable**

What are the issues that are high on clients' list of priorities? "Clients are concerned about meeting all the requirements of a law that is changing quickly within the space of a few months," says De Pedraza of the reformed Criminal Code. As a result of the reforms, companies will now be held criminally liable for certain crimes committed by their directors or employees if it is found they failed

to implement the controls necessary to avoid such crimes. "Understandably, clients are looking to us as they want to feel secure about what they are doing," De Pedraza says.

Lawyers with expertise in white-collar crime and corporate offences, are regularly being called upon to help companies address this increase in liability by developing a good compliance programme, according to De Pedraza.

"We not only establish where the weaknesses are, we help them to understand and manage the risks – to train people to raise a hand without necessarily having a clear idea about what has happened."

### **Forbidden acts**

But while companies do now realise the importance of conduct, the main challenge that lawyers face is to make them understand exactly how serious the problem of a forbidden act might be. This job is not made any easier by the fact that there are no court precedents to quickly determine the scope of liability.

"There are a lot of investigations taking place but with no final judgments, we will have to wait up to two years to find this out," says De Pedraza. "We don't have a proper sense yet of what the court thinks of corporate compliance, of companies responsibility and of its degree."

However, given that there is an absence of previous cases, Spanish lawyers instead draw on cases in foreign jurisdictions in order to add value and reinforce client confidence.

"I have to make it crystal clear that while I can't predict what is to come, through my knowledge and my training – and my relationships with supreme court judges, the public prosecutor's office and examining magistrates – I can get a sense of the environment and how it will play out," De Pedraza says. "This is what I can offer my clients – the best of my knowledge."

### **General consensus**

The discussions within the legal community about how the issue of corporate compliance will be viewed by the courts are ongoing, De Pedraza explains. "In my experience, the public prosecutor's office, the examining magistrates and in particular, the supreme court judges, are already participating in a lot of the debates," she says. "Forums are a key opportunity to get the general consensus on the ground, to know what these people think, what their criteria is, and what the opinions are – from this, I can then establish my own point of view to do my work."

### **Information sharing**

What are the next steps? By taking steps to gather information and share knowledge, the legal community is seeking to establish a framework that can be adopted by companies in future, De Pedraza says.

She also points out that a compliance learning community has emerged that is keen to share ideas about best practice. "To be honest, I prefer to discuss and share the information on an official basis, as it fosters a feeling that we are all seeking clarity together," says De Pedraza. By continually seeking knowledge to stay ahead, De Pedraza hopes to provide a useful guide for others to follow. "I'm very aware that until we have some previous compliance judgments, for the next couple of years the lawyer's point of view will also establish a useful precedent."