

MAKING THE COMPANY LIABLE: SPAIN'S REFORMED PENAL CODE - GARRIGUES

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As a result of legislative changes a company may now find itself criminally liable for certain offences, a significant change in the basic principles of Spanish criminal law

The reform of Spain's Penal Code echoes moves across the European Union to combat bribery in the private sector and of foreign public officials, but also brings new criminal liability for companies, says Florentino Orti, Head of the Criminal practice at Garrigues.

"Another intention is to adapt the law and to provide a response to what has become known as the 'new political' or 'criminal debates' that have arisen in criminal and corporate circles."

The reform introduces a new element to the Spanish legal system enabling legal entities to be held criminally liable for certain crimes and sets out punishments which in the most serious cases could mean a company's dissolution.

“Undoubtedly the establishment of a new criminal liability for legal entities is the most sweeping and decisive change to what was one of the main basic principles of the Spanish criminal legal system, that a company could not commit a crime,” he says. Until now corporate entities could only face financial fines for criminal acts committed by executives but they never faced strict criminal liability. The reforms impose penalties in cases in which a corporation could be considered criminally liable, and in the most serious cases could lead to the dissolution of the legal entity or a temporary or permanent ban on carrying out any of the activities in which the crime was committed, prompted or concealed.

No modification has been made regarding the criminal liability of Company Directors in an insolvency, but they may still find themselves potentially liable for a fine and imprisonment for up to six years in the most serious criminal bankruptcies.

“The Courts have an obligation to act proportionally and to look to rehabilitate offending organisations and to take into account the position of the person who committed an offence. In general the intention is to prevent the continuation of criminal activities and limit their economic or social consequences.”

As to the nature and extension of the penalties imposed on legal entities, Spanish Courts also have to act proportionally and to consider the intention to prevent the continuation of criminal activities, says Orti.

“Criminal judges must take into account the economic and social consequences of any potential penalty imposed, especially to the employees, and the position within the entity of the person who committed an offence.”