

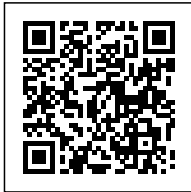
"NO APPETITE FOR TESCO LAW"

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Most lawyers are happy to remain self-regulating, say the Group of Experts, with doubts over the prospect for outside investment in firms.

El Grupo de Expertos de Iberian Lawyer afirma que la mayoría de abogados prefieren autorregularse. Los abogados que respondieron al cuestionario del

Grupo de Expertos de Iberian Lawyer sugieren que los cambios recientes en el Reino Unido y derivados de las Reformas Clementi, donde la Law Society ha transferido sus funciones regulatorias a un ente externo y la posibilidad de que empresas - como los supermercados TESCO- puedan ser propietarias de despachos de abogados, es algo impensable por ahora en España.

Sin embargo, y a pesar de presentar cierta preocupación en relación con la eficacia de las organizaciones y los cuerpos reguladores existentes, una reforma profunda no parece formar parte del orden del día.

Despite concerns regarding the effectiveness of the current organisation and regulation of the legal profession in Spain and Portugal, wholesale reform is not currently on the agenda. Moreover, respondents to the latest survey of Iberian

Lawyers' Group of Experts suggest that the recent changes in the UK following the Clementi Reforms, where the Law Society has passed over its regulatory role and businesses – including the supermarket Tesco – will be able to own law firms, are highly unlikely. The listing of a law firm on the Stock Exchange, as recently seen in Australia, it seems, will not be happening soon.

This does not mean, however, that Iberia's lawyers are unanimous in their support of the status-quo. "Clients have been trying to tell us for a long time – that there are many rotten apples in our yard," says Pedro Cardigo at ABBC in Lisbon. "If the Portuguese Bar does not address these issues quickly and efficiently the remedies proposed by Clementi – the lack of transparency that led to a perception that there was a clear conflict between the Bar's promotional, regulatory and disciplinary responsibilities – consumer protection

oriented rules from Brussels will impose similar measures in Portugal."

In Spain Charles Coward, originally a US-trained attorney, also thinks that such changes should be adopted or at least considered, although he is unsure whether there is the necessary consensus for reform. "I think there is merit to the proposition that the regulatory body that has the responsibility for representation of members' interest should be separated from the body that has responsibility for disciplinary regulation of activities of lawyers. The independence of this second body should be clearly established and protected in order to guarantee that it functions effectively. This would be consistent with the approach that has been followed in other countries as well as in connection with other regulated activities."

Do you believe that the current reforms in the UK legal profession will be followed in Spain and Portugal?

"There has already been a step towards this in Spain (for example ending the Law Society Ethics Tribunals – Tribunales de Honor). However I understand that in some areas, eg the setting of ethical standards for lawyers, they will stay under the control of the Bar Associations." Francisco Prol, Prol & Asociados

"The present challenge is to find a structure to accommodate lawyers' careers and keep them motivated when the market is not growing – which seems to be the general outlook at the moment. This is the most pressing challenge currently and the possibility of multidisciplinary practices is not really even on the agenda for discussion." Fernando Ferreira Pinto, Sérvulo

"There are more advantages to the current system than others could potentially provide. Additionally, this kind of change would be very difficult to implement in Portugal where traditionally we are not in favour of de-regulation." Gonçalo da Cunha, FCB-Legal

"I think Spanish law firms are still far away from being affected by this type of change. My impression is that we all take the weight of our professional responsibility very seriously." Anonymous

"Yes. Greater transparency, perceived fairness and independence would be achieved if the body which regulates is not also the one which considers and applies disciplinary sanctions. At the very least this would assist in improving the public's perception of the legal profession." Jorge Santiago Neves, Barrocas Sarmiento Neves

"It is important that the regulation of lawyers within the judicial system is kept independent from the State to keep the balance of justice. Portuguese Lawyers would always look at it as a disadvantage and prone to political interference sooner or later. So far history has failed to show a better way to do so but has excelled in presenting far worse solutions." Nuno Brito Lopes, PLMJ

"The regulation and application by Bars of ethical and professional standards in Spain's larger law firms to law firms in Spain is to say the least outdated." Anonymous

What do you see as the risks or opportunities of outside investment in law firms?

"I see a number of risks (in particular as far as the independence of legal practitioners is concerned) and no particular advantage."
Ricardo Oliveira, PLMJ



"To accept investment from outside will be a risky decision that will dramatically affect the way in which the legal profession performs, although certain capital investments could in some cases accelerate the expansion of some Iberian firms."
Francisco Guijarro, Hammonds

"Provided that independence, professional secrecy and conflicts of interests are safeguarded – which is not an easy proposition (but not too different from the challenge multidisciplinary practices have faced and overcome eg in Spain and in Germany) – I think that the advantages will be larger than the risks."
Pedro Cardigos, ABBC

"Having equity investors that are not legal professionals working in the firm but who are able to exercise the pressures of an equity owner will

inevitably lead to conflicts and a lack of independence." Charles Coward, Uría Menéndez

"Spain will be the first to experience partnerships between lawyers and investors and Portugal will follow some years later. Provided that the control of lawyers' activities remain with lawyers and that appropriate regulatory rules and survey are put in place, I don't see any risks." Manuel Castelo Branco, Gonçalves Pereira Castelo Branco

Other respondents hold even stronger views. "The role of the Law Society in England regarding the activity of large law firms and that of the Spanish Bars is in no way comparable," suggests one Spanish lawyer. "Prior to talking about the latest developments in the UK (some of them already contained in the Ley de Sociedades Profesionales) it may be useful to compare rules on conflicts of interest, confidentiality, client privilege, chinese walls, money laundering, liability insurance, etc. as well as the actual authority and activity of the Spanish Bar over large partnerships."

The majority opinion in Spain, however, like Portugal, is that change may be a long time coming. "I don't think it will happen in Portugal," says José Miguel Júdece, a founding partner at PLMJ. "I was the President of the Portuguese Bar Association that made the most effort to modernise the profession and I was against that evolution. Anyway the Portuguese Bar is now in a much more conservative mood than during my mandate."

In fact many respondents suggest that Portugal is further away than Spain from adopting change. Until 1979 the establishment of law firms was not permitted with lawyers required to conduct their business entirely independently. Given that these changes are relatively recent further significant structural changes are unlikely to come any time soon, says Fernando Ferreira Pinto at Sérvulo.

"Recent exploratory attempts to create multidisciplinary firms - with accountants, lawyers and economists - in Portugal have not been accepted by our Bar Association and thus we are sure that the idea of allowing non-lawyers to become partners would face powerful resistance from our governing body," he says.

"Disciplinary matters relating to lawyers are already entrusted to a special body (the Conselho Superior) which is independent from the President and the Governing Body of the Bar," says Manuel Castelo Branco, "and currently even shows some signs of disagreement on some aspects of



the governance of lawyers' interests."

Gonçalo da Cunha at FCB-Legal agrees but, like some other, sees some disadvantages to the current system. "The Bar is often a corporative institution adverse to social changes and has difficulty in the representation of the diverse interests of lawyers and law firms."

The latest Group of Experts survey also asked the extent to which Iberian law firms would be seeking outside funding – now possible in Spain up to 25% following recent changes in the Ley de Sociedades Profesionales.

Javier Fernández-Samaniego at Bird & Bird sees two possibilities where the ownership of law firms may change in the future: either where business professionals gain a share in equity profits (eg a law firm head of finance or marketing) or in the very limited cases where outside investment is required by a law firm. This might be possible, he says, for volume work (eg mass residential conveyancing or debt) requiring investment in IT systems, where a firm is seeking rapid acquisition or where the partners want to realise the value of their business. "Why should an advertising agency or a tax consultancy be able to realise a capital gain for their owners but lawyers are not allowed to," he asks.

Most believe, however, that there may be little appetite from investors to take a minority share in a law firm where they may have little control over the firm as a whole and, ultimately, their investment.