

SPAIN'S FIGHT AGAINST BRIBERY - SJ BERWIN

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Companies and their executives now face a significant threat of criminal prosecution if suspected of engaging in corrupt behaviour.

Las empresas españolas y sus ejecutivos se enfrentan a la amenaza de un proceso criminal tras la

introducción de la nueva normativa, lo que es contrario a la percepción de ciertos tipos de conducta corporativa delictiva, dice Alfredo Guerra de SJ Berwin.

The introduction in 2010 of a new Penal Code brought with it the transposition of rules echoing earlier reforms targeting bribery by public sector officials, says Alfredo Guerrero, Litigation Partner at SJ Berwin in Madrid. And these are now beginning to bring judicial results.

"We have seen a 'Big Bang' as far as criminal proceedings relating to bribes or inducements paid or received by executives," he says. "We have moved very rapidly from an era where there was an almost tacit acknowledgement, even acceptance of such behaviour, to the current zero tolerance approach."

While no one doubts the sense of such legislation, Guerrero adds, it does bring challenges. "There has been no period of social or legislative progression, and so company executives may perceive themselves as facing criminal charges for acts that they did not believe to be illegal."

The Penal Code now targets both clear and tacit corruption, whether undertaken through intermediaries or directly by company officers, seeking to 'receive, solicit or accept a benefit or advantage of any kind' in the purchase or sale of goods or the procurement of professional services, he explains. The penalties range from six months to four years in prison, professional disqualification and a fine equivalent of up to three times the benefit or advantage received.

Criminal sanctions also apply to legal entities where offences are committed in their name, with the reach of the law extending even to activities undertaken beyond Spain's borders.

"In this respect, there is the intention to follow, for example, the UK Bribery Act, which has had a very significant impact on corporate behaviour," says Guerrero. But as with the UK, he adds, Spain has some way to go before the courts are able to set definite parameters of what is and what isn't acceptable behaviour.