

SPANISH COMPANIES MUST ACT NOW ON COMPLIANCE - CLIFFORD CHANCE

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It is crucial that companies act now and ensure they have a compliance programme in place, despite the fact that the reforms to Spain's 2010 Criminal Code have been delayed, according to Bernardo del Rosal, Of Counsel at Clifford Chance in Madrid. Del Rosal says an increasing number of medium-sized companies are seeking advice on compliance. "Unlike the vast majority of larger companies who already comply with international regulations and simply need to adapt existing requirements, many mid-sized companies are only just starting to operate abroad, and have incomplete programmes in place."

Del Rosal says that when the 2010 Criminal Code was approved, medium-sized companies did seek advice at the time, but faced with a law that did not properly define a potentially criminally liable situation, or clarify what "due control" was and its effect, there was very little incentive to act. "Many companies came to us and asked whether they should invest in compliance, but when they asked how it was going to be useful to them to avoid responsibility, the answer from us was that it was still under discussion, so as many were in economic difficulty, they postponed the decision to act."

However with clearer legislation that makes businesses criminally liable, not only for certain crimes committed by their directors or employees, but for failing to adopt the necessary due control, determining the scope of what exactly can be done by a legal entity in order to make this liability disappear has become essential. "Now, it's not about whether to have a compliance programme, but when to have it in operation," says del Rosal. "Regardless of the legislative delay, in things that benefit the defendant, a judge will be able to apply the benefits of the programme – therefore, it is important for companies to act now."