

TAKING CORPORATE RESPONSIBILITY - ISLAW

Posted on 05/07/2012



Rocío Merlino

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Cultural and structural weaknesses are still the main challenges in encouraging Spanish companies to address compliance requirements

Los obstáculos culturales o estructurales son los que estimulan a las empresas españolas a priorizar los sistemas de cumplimiento normativo internos. Si lo comparamos con otros países europeos, España no ha sido de los países más proactivos en introducir estándares y procedimientos para el cumplimiento normativo, con el riesgo que esto conlleva, afirma Rocío Merlino, de ISLAW Abogados.

Compared to other EU countries such as the UK and France, Spain has not been the most proactive in implementing standard guidelines and frameworks for compliance structures, says Rocío Merlino, a Partner in the Madrid office of ISLAW Abogados. However, an interest in corporate social responsibility (CSR), increased international obligations and recent legislative initiatives are helping to reform attitudes.

To have an effective compliance programme, she says, companies must establish policies to prevent non-compliant conduct. ISLAW Abogados is in fact currently conducting internal audits of companies to prevent potential areas of non-compliance.

Businesses must promote a corporate culture including a commitment to comply with the law and standards of business integrity. The Board of Directors must have knowledge of the programme and ensure that middle management are assigned specific responsibilities in its implementation, says Merlino. "Spanish businesses tend to make the ethical commitment at a high level, but their governing authority usually fails to involve specific individuals and middle management in its execution."

Merlino has experience of compliance both as an external lawyer and in-house, specifically as legal counsel for Spain and Portugal of Praxair, the US-listed industrial gases organisation. She says that this has helped her understand how compliance functions within a company.

"Compliance is very different if you are a company insider," she comments. "External law firms usually prefer to focus much more on legal processes, whereas in-house counsel are more focused on getting the job done. My background allows me to form an opinion on what the most important factors are for such a company operating in Spain."

Cultural changes

Any US company operating in Spain has to balance domestic and foreign matters, says Merlino. Compliance in the US is more advanced than the Spanish system. The post-Enron environment has led to a plain compliance structure for US companies, but clearly Spain is still lacking in standard guidelines for compliance programmes.

This lack of general guidelines has resulted in compliance being less of a priority in Spain. Merlino, however, thinks that things are starting to change, albeit slowly. Spanish companies, for instance, have begun to embrace the notion of CSR more widely.

CSR programmes will often involve clear company-wide policies on issues such as the environment and workplace processes, which can form the foundation of a knock-on compliance initiative. As such, despite a lack of specific regulations, there is a cultural shift.

"Compliance is not quite a stand-alone sector within a company, but it is going that way," says Merlino. "CSR is not the same as compliance as it tends to be more about the external perception of a firm as an ethical business rather than focusing on legal requirements. Even so, it is an important first step in developing a compliance regime."

Added benefits

She believes that installing a proper compliance structure gives added benefits to many companies. For instance, a deliberate framework provides an effective corporate defence shield – for a company and the board – by mitigating any possible criminal responsibilities under the 2010 liability legislation.

"The benefits to the employees of a compliance programme are also noticeable," Merlino adds.

"There are clear communications throughout all levels of an organisation, it gives workers a better understanding of their responsibilities and also helps retain talent."

An increasing challenge stems from the internationalisation of compliance. Anyone operating regionally needs to be flexible because compliance requirements vary across jurisdictions, she adds, otherwise they run the risk of not complying with either local or international rules.

"There have been problems in the past between the regimes in the US and France, for example," Merlino says. "The US Sarbanes-Oxley Act requires US-listed companies to have an employee hotline to report any non-compliance matters. This created a challenge for US companies operating in France as such a system had to deal with specific conflicts with local data protection regulations." Countries are starting to work together to ensure that such problems are avoided, but the increasingly complicated nature of differing legal regimes creates challenges, particularly in the areas of data protection, labour law and privacy protection. Merlino advises that a better compliance

and communication structure can help immensely.