

THE BUSINESS RISKS INVOLVED IN PORTUGAL'S FIGHT AGAINST CORRUPTION - SÉRGIO FILIPE

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A recent study highlights how businesses should approach anti-corruption, and lawyers must help manage the risks involved, says Sérgio Filipe at Siemens

Un estudio reciente subraya los modos y prácticas empresariales relativos a la gestión de actividades corruptas y el papel preventivo que pueden tomar los abogados, afirma Sérgio Filipe, de Siemens. El estudio profundiza en una serie de instituciones y agencias que son clave en la sociedad portuguesa para promover las políticas de anti-corrupción en las empresas.

The level of exposure to risk that businesses face is increasing and measures to mitigate should be put in place, according to the first National Integrity Study in Portugal by Transparência e Integridade, Associação Cívica, a chapter of Transparency International.

The Study analyses the fight against corruption in Portugal based on several institutional pillars of our society, from the legislature and judiciary to political parties and anti-corruption agencies. Among others, it looks at the governance of entities, political connections, external audits by regulatory bodies, internal audits and public private partnerships.

The private sector

One of the aspects of this study examines the position of the private sector in relation to corruption, which is extremely relevant for the business sector.

Businesses have to acknowledge that corruption is an area of risk, and an assessment of their level of exposure must be undertaken so that they can adapt their internal processes with any measures necessary. This assessment has to be based on the amount of exposure the private organisations face in relation to the regulations relevant to their industry sector.

Portugal already has legislation on corruption in the private sector, and in 2010 changed its criminal provisions regarding the corruption of public officials. In the UK, the UK Bribery Act has recently been enacted, and, similar to the Foreign Corruption and Practices Act (FCPA) in the US, has implications that can be felt across many jurisdictions.

Under the principle that legal and compliance risks follow the direction of the business, and bearing in mind that in this climate more and more companies are looking to exploit new markets, it is important to note that this can increase risk exposure, which has to be mitigated. One way of doing this is by putting compliance systems at the heart of the business and so tackle the problem from the start. Whether businesses recognise this as a priority, however, is another matter.

The trade-off is the evaluation of the risk the organisation is exposed to versus the costs that it will have to face in order to implement a systemic approach to analysing and hedging that risk. On the other hand, increased transparency will up the level of confidence investors have in a business, making it more attractive to new capital.

The in-house legal perspective

For the in-house counsel, what the Study shows is that, as a first step, it is key to get a complete understanding of the legislation with which the business must comply. Second, they should be analysing internal culture and processes to make sure that any gaps are being closed that could lead to being exposed to risk. This will allow a proper assessment of the risks involved and give the required input for an appropriate plan to be developed.

For the external law firm, this may come as a request for new services from businesses that need to understand the legal environment they are in, as well as requiring support and guidance on deploying a systemic approach towards anti-corruption policies and procedures.

Going forward

The Study suggests two ways ahead. First, companies should invest in the business to raise awareness among all its employees of corruption and the risks involved, and second, they should increase the monitoring process by the regulatory bodies over a business's supervisory board.

As a result, both in-house and external counsel will be faced with new demands — on the one hand, from new regulation, and on the other from the need to create and maintain a structure that will allow businesses to respond to those new challenges.

Good practices, among others, show that sustainable businesses sign and follow the United Nations Global Compact's ten principles, in particular the 10th principle: "Businesses should work against corruption in all its forms, including extortion and bribery."

Overall, the Study kicks off what I believe is an important debate, but at the end of the day it is our responsibility, as lawyers, and we must act in order to help companies to maintain sustainable businesses and reduce their exposure to risk and corruption.

Sérgio Filipe is Cluster Compliance Officer at Siemens in Portugal, responsible, among others, for risk management, compliance and transparency.

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