

THE COSTS OF NOT COMPLYING - BAKER & MCKENZIE

Posted on 05/07/2012



Cecilia Pastor

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Rafael Jiménez-Gusi

With corporate liability high on the agenda, Spanish businesses are having to confront the issue of compliance

The recession is intensifying the glare of the authorities, as well as the media, on Spanish business practices. Historically, this was not such an issue as many had few obligations in terms of corporate

liability. However, Cecilia Pastor, Partner and Head of Compliance at Baker & McKenzie in Madrid, points to a "turning point" some 18 months ago that changed everything. "The Criminal Code was enacted in December 2010 and, for the first time, Spanish companies were made liable for their business actions."

Any corporate wrong-doings or compliance oversights could have serious ramifications in the criminal courts. It has prompted a sudden change of heart among Spanish businesses, says Pastor. Many of the larger companies that had expanded abroad had a better awareness of legal responsibilities, especially in regards to the tough laws in the US and UK, such as the amended Foreign Corrupt Practices Act or the Bribery Act 2010. More domestic players have been forced to confront the issue and develop detailed compliance processes.

Rafael Jiménez-Gusi, Partner and Head of Compliance at Baker & McKenzie in Barcelona says that, while the Spanish system is not as strict as other international regimes, and enforcement has been minimal so far, companies and their legal departments need to increase awareness of compliance requirements.

"Businesses must know the rules in Spain as well as markets like the US, UK and Germany in order to protect themselves on a local and global level, and we recommend a five-stage process," he says.

"Develop a clear strategy for leadership, undertake a thorough risk assessment, improve standards, controls, training and communications, and boost monitoring, auditing and responses."

With possible sanctions, including prohibiting public tendering, the closure of the business, fines and even prison terms – abroad and now in Spain – non-compliance could be a costly, if not fatal, mistake for a company.