

## Spanish SMEs struggling to adapt to criminal code reforms

Many companies do not invest enough time creating decent compliance programmes, with some mistakenly thinking ‘cut and pasting’ a programme is sufficient



María Hernández

Spanish companies, particularly small to medium-sized enterprises (SMEs), are still struggling to meet increasingly onerous corporate compliance standards. Reforms to the criminal code, which came into force in 2015, have significantly raised the profile of compliance and made it a key part of any corporate defence against criminal liability. However, most companies have yet to adapt to meet these new requirements, warns María Hernández, partner at Eversheds Sutherland and head of the firm’s Spanish corporate compliance department.

“My view is zero risk will never exist because a corporation cannot get into the mind of someone who wants to break the law, but what they must do is show that they did as much as possible to train staff,” says Hernández. “One of the mistakes that companies make is having a strong culture of compliance, but failing to document anything – you need to prove what you did, and you need to provide the evidence that you made a lot of effort.”

While companies increasingly

recognise that they must act on compliance – especially given the monetary sanctions and reputational damage that might occur if things go wrong – many don’t invest enough time in creating a decent compliance programme. “The number one mistake is that companies think they can copy and paste a corporate compliance programme and then they think they have a programme,” says Hernández. “You need to tailor your own programme and you need to communicate it to, and train, your employees and third parties.”

The importance of tailoring a programme is especially important in industries that interact with third parties. One example is the hospitality industry – for example, the criminal risk that could arise if prostitutes use hotel rooms for their business.

“Clients need to realise that third parties are the ones that can leave companies exposed to certain crimes,” says Hernández. “So third party programmes are very important.”

## New data protection and anti-money laundering regulations raising awareness of need to be compliant



Henrique Salinas

Recent regulatory developments related to data protection and anti-money laundering are increasing awareness of corporate compliance among clients in Portugal, according to CCA Ontier partner Henrique Salinas.

The EU’s General Data Protection Regulation and its fourth Anti-Money Laundering Directive are driving an increase in demand for corporate compliance services in Portugal, although many corporates still fail to appreciate the importance of having a strong compliance function, Salinas says. “A lot of companies aren’t aware of the importance of corporate compliance and they only have a compliance officer if it is mandatory.”

Regulated sectors including banking and finance and life sciences have traditionally had a better understanding of compliance issues, but awareness is growing in all areas of business, Salinas remarks. Changes to the Spanish

Criminal Code – which introduced criminal liability for directors – have had an impact on the Portuguese market, he adds. “This kind of provision does not exist in Portugal, but we have close business ties with Spain and we often work with Spanish clients who need to adapt their compliance programmes to Portuguese legislation.”

The risks faced by clients range from financial penalties to criminal proceedings or even the suspension of their activity, Salinas says. The impact of reputational damage can be significant, says Salinas, who points to EDP – Energias de Portugal’s stock market troubles as an example of the impact of non-compliance on even well-established businesses. “The fines are substantial, and with the most serious offences, companies face a temporary suspension of activity or even the shutting down of the company.”