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MIRANDA
Miranda & Associados Sociedade de Advogados, SP, RL

COMPETITIVE ADVANTAGE

Companies that implement high standards of compliance will have an edge over their market rivals – this realisation represents a major opportunity for law firms




With businesses increasingly waking up to the idea that good compliance offers a competitive advantage – rather than being a regulatory burden – demand for compliance-related legal advice is on the rise. Indeed, lawyers say that after a period of time when clients seemed content to simply automate compliance functions, there is now a realisation among businesses that they need the input of lawyers when it comes to designing, implementing and monitoring compliance programmes.

The commercial imperative for good compliance is now clear – failing to adhere to high standards of compliance can result in multi-million-euro fines and even, ultimately the closure of a business.

DEVASTATING CRISES

Companies now recognise that high quality corporate governance and compliance gives them a significant competitive advantage in the market and this represents a major opportunity for law firms. “Strong corporate governance and compliance programmes are critical for companies that seek

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to maintain high performance and avoid devastating crises,” says Cuatrecasas partner **Álvaro Botella Pedraza**. “Knowing how to manage a crisis is another interesting aspect of the new challenges in compliance.” Botella Pedraza adds that companies should not think the only compliance risk they face is criminal-related. “The risk is not attending to the real root of the issue, which has commercial, administrative, labour and penal aspects,” he explains. “And a good lawyer has to consider reputational risks or consequences as well.” Botella Pedraza also says international companies should not neglect the activity of their subsidiaries in the mistaken belief that their risks do not affect the parent company. “Only a good global programme will give peace of mind to this type of company,” he argues. The fact that compliance has become a more mainstream concern means that professionals working in



this field now have expertise in a wider range of areas, such as tax, governance and data protection, says **Benjamin Prieto**, partner at Andersen Tax & Legal. As a consequence, multidisciplinary practices are in a better position to provide the comprehensive advice clients need, it is argued. “In the end, law firms have to make the effort to coordinate cross-departmental teams and invest in computer tools to offer the appropriate advice and mitigate the risks.” Prieto adds: “Risks analysis is, without a doubt, the keystone of compliance, and consequently analysing the specific risks of each business is one of the most important elements when developing an efficient compliance programme.

POTENTIAL CRIMINAL OFFENCES

The biggest opportunities for law firms do not lie in carrying out corporate audits to ascertain a company's criminal risk and then developing compliance measures to avoid, or mitigate, criminal offences, says Herbert Smith Freehills senior associate **Miguel García-Casas**. He adds: “We think that greater opportunities will arise in connection with companies' internal reactions (and internal protocols) where an incident with potential criminal consequences) takes place due to the conduct of one of the company's employees or directors.” García-Casas says the biggest compliance-related risks faced by clients relate to the strategy that a company will follow after a potential criminal offence has been committed. “Companies must decide either to



support the employee or director involved or, alternatively, to focus primarily on defending the company's interests,” he explains. Data protection, anti-money laundering and terrorism financing are areas that represent the biggest opportunities for law firms, according to Morais Leitão partner **Tiago Félix da Costa**. He adds that this is partly due to the “recent approval and entering into force of the EU Regulation on Data Protection and the law for the prevention of money laundering and terrorism financing, which require the approval and implementation of complex and in-depth compliance programmes”. Law firms should also expect a significant amount to work related to anti-corruption matters “especially considering the number of criminal cases related to corruption practices that have been initiated against companies in recent years, says Félix da Costa.



ÁLVARO BOTELLA PEDRAZA

REPUTATIONAL RISK

Morais Leitão managing associate **Duarte Santana Lopes** says the risks associated with non-compliance broadly fall into three categories: possible sanctions; financial risk; and reputational risk. "The first relates to the sanctions that can be imposed on companies and individuals that carry out non-compliant practices; the second derives not only from the fines that can be applied but also from the loss of business that is frequently associated with an accusation; and the third, which is normally the most severe for companies, is related to the market perception of non-compliant companies." Businesses are now aware of the need to turn to specialist external advisers to help them analyse and evaluate the risks of money laundering and terrorist financing in their organisations and this represents a significant opportunity for law firms, according to PLMJ partner

Alexandra Mota Gomes.

He adds: "They are also seeking help in defining and implementing internal policies to prevent and mitigate those risks." The biggest risks clients face in the context of compliance are the consequences of the breach of their legal obligations in the fight against money laundering and terrorist financing, explains PLMJ senior associate **José Maria Formosinho**. "Failure to comply with these obligations is punishable with fines of between €5,000 and €5,000,000 – it is also punishable with additional penalties which may, in the most serious cases, mean the closure of the establishment for two years or a prohibition on operating for three years."

CYBER-PROTECTION

Media scrutiny of criminal and regulatory cases, as well as the enforcement of anti-money laundering laws represent big opportunities for law firms, according to Vieira de Almeida partner **Sofia Ribeiro Branco**. She adds that, following a period in which the trend was for clients to automate compliance processes, they are now "returning their attention to the need for complementary legal advice to design, implement and monitor their compliance programmes". Ribeiro Branco says the major compliance risks clients currently face relate to cyber-protection, the environment, corruption and failure to implement compliance processes.

Potentially significant sources of work for law firms include providing anti-corruption awareness initiatives for clients and helping them to provide training to their employees,

says Miranda of counsel

Catarina Veiga Ribeiro. She adds that lawyers also have the opportunity to "make clients aware that an adequate compliance programme and an internal code of conduct aligned with local laws may be very helpful in court, mitigating or even excluding corporate responsibility". Data protection is another major area of work for law firms. Veiga Ribeiro says: "Significant amendments to the legal framework require a continuous updating of processes, files, databases, and, consequently, companies' legal responsibility – corporate entities must be aware of their duty to process personal data in strict compliance with the law and for the sole purpose for which it has been received or collected."

CCA Law Firm partner **Henrique Salinas** says, generally speaking, regulatory developments related to data protection and anti-money laundering are helping to increase awareness of corporate compliance among clients. "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," he says. "We also have many clients which work in Spain and decide to come to Portugal. One of the first things they do is ask us for a compliance programme, partly because the Spanish Penal Code provides that companies which have implemented procedures aimed at preventing criminal behaviour within the organisation will be exempt from criminal liability if any cases are brought." ■