

IBERIAN LAWYER

May/June 2012



In and out of Africa

Curing the capital

Madrid Report

Litigate to accumulate

Activity on the rise

Opening up the profession

The implications of the bailout

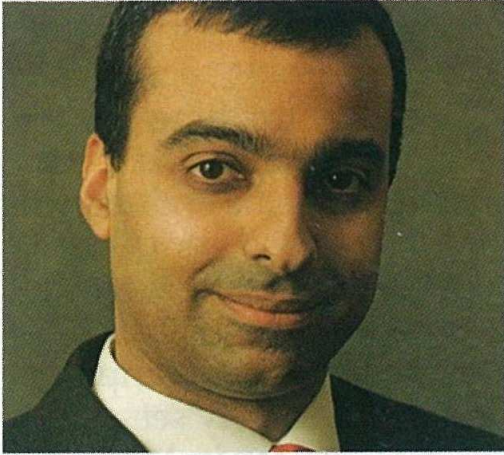
The fight
against corruption

Regulatory compliance:
Ignore at your peril

Calling in the
expert witnesses

www.iberianlawyer.com

A different angle on compliance



Pedro Duro

Siempre es refrescante el poder tratar un tema desde otro ángulo, en este caso es la visión del cumplimiento normativo desde la responsabilidad penal. Son aún muchas empresas las que ignoran sus obligaciones y las consecuencias de su incumplimiento, afirma Pedro Duro, de Sérvulo.

It is always refreshing to approach a subject from a different angle, in this case taking a criminal liability perspective on compliance; too many Portuguese companies ignore their compliance obligations and that is a serious concern, experts warn.

“In Portugal, international companies and those listed on the capital markets usually have decent compliance structures,” explains Pedro Duro, a Senior Associate at Sérvulo & Associados in Lisbon and former member of the Ministry of Justice’s Legal Policy and Planning Office. “Organisations outside of these, only tend to approach compliance once they have a problem with it.”

Duro – a criminal lawyer advising on compliance liabilities – believes that some smaller companies think implementing a compliance system is too expensive so prefer to “take the risk”. Regulators, however, are increasingly looking at stronger enforcement across

the board, so companies need to be careful if they do not have an adequate compliance or reporting system in place.

Duro advises clients to “layer” responsibilities as the CEO and the Board do not want to be held liable for the actions of others. A clear framework allows everyone in a business to understand – and assume – their responsibilities and potential liabilities.

“I had one recent case where the CEO was called up by a regulator over some potentially unlawful pricing issues,” he says. “As there was a compliance framework, the CEO could identify that it was an acceptable administrative error by a certain individual, which satisfied the court.”

Duro has already tested clients by asking staff for something that contravenes the process and sees whether it gets reported. After all, he adds, it is better that he finds a flaw rather than the regulator.