

LEGAL COMPLIANCE PROGRAMME

- The reformed Legal Code establishes that the existence of a prevention programme, which substantially reduces the risk of the juridical person committing a crime, is cause for that juridical person's exemption from penal responsibility.
- The juridical person is exempted from responsibility if the following conditions are fulfilled:
 - That the administrative body had, before any crime was committed, adopted and implemented organisational and administrative measures including supervision and control best suited for the prevention of crimes of such a nature, or to significantly reduce the risk of such crimes being committed.
 - That the supervision and implementation of, and compliance with, the established prevention measures had been the responsibility of an organ of the juridical person with autonomous powers for initiative and control, or had been legally entrusted with the task of supervising the efficacy of the juridical person's internal controls.
 - That the individual perpetrators had committed a crime by fraudulently eluding such established organisational and preventive measures.
 - That there had been no omission or deficient exercise of its supervisory and control responsibilities on the part of the juridical person's organ of control.

PROGRAMME IMPLEMENTATION STAGES

1. Identification of risk activities. Establishment of the protocols for adoption and implementation of decisions.
2. The availability of sufficient financial resources to impede the commission of the crimes to be prevented.
3. The establishment of the obligation to inform the organ whose responsibility it is to supervise the implementation and observance of the prevention model about possible risks or failures to comply.
4. The establishment of a disciplinary system to adequately sanction failures to comply with the measures established by the model.
5. The regular appraisal of such stipulations and, if needs be, their modification should significant infractions be detected or there be important changes in the organisation, control structure, or the organisation's activity.

- The post of Compliance Officer, responsible for supervision and control focussed on the prevention of the commission of crime, came into existence as a result of the numerous financial and accounting scandals that have occurred in companies over recent years. For this reason, countries have increased the number of national and international regulations intended to ensure transparency and faithful observance of the law.
- The measure affects all Spanish companies regardless of their size, all small- and medium-sized companies and the self-employed, it being obligatory for them to have such a figure on their staff or to contract external professionals to fulfil the requirements of this Law.
- Their role is both the legal and regulatory one to be fulfilled in companies as well as being an ethical and moral one.
- The significance and importance of of this new figure is due, in great measure, to the reform of the Penal Code and that Code's recognition of the juridical person's penal responsibilities, since it is the juridical person who must supervise and administer all questions concerning compliance with the Law.

