The International Comparative Legal Guide to:

Corporate Investigations 2018

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A practical cross-border insight into corporate investigations

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Publisher
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Global Legal Group Ltd.
59 Tanner Street
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Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Spain

Mar de Pedraza

De Pedraza Abogados, S.L.P.

Paula Martínez-Barros

1 The Decision to Conduct an Internal Investigation

1.1 What statutory or regulatory obligations should an entity consider when deciding whether to conduct an internal investigation in your jurisdiction? Are there any consequences for failing to comply with these statutory or regulatory regulations? Are there any regulatory or legal benefits for conducting an investigation?

The "phenomenon" of conducting internal investigations is quite recent in Spain, as corporations could not be held criminally liable until the reform of the **Spanish Criminal Code** undertaken by the **Organic Law 5/2010 of June 22** (in force since December 24, 2010).

Nowadays, companies are not obliged to report to the authorities illegal acts committed within the legal entity. Likewise, they do not have an obligation to investigate wrongdoings or potential crimes, but they have the option to do so if they consider it favourable for their own interests.

Thus, conducting an internal investigation goes hand in hand with the correct implementation and effective monitoring and supervision of a compliance programme. This means that if a company wants to benefit from the exonerating or mitigating circumstances of criminal liability set forth in **Articles 31 *bis* 2 and Article 31 *quater* of the Penal Code**, carrying out an internal investigation to identify wrongdoings and wrongdoers will be considered by authorities as a proactive measure that could lessen the company's eventual criminal liability in the future.

1.2 What factors, in addition to statutory or regulatory requirements, should an entity consider before deciding to initiate an internal investigation in your jurisdiction?

In addition to the strong incentives that enable the application of mitigating and exonerating circumstances of criminal liability, there are other factors a company should consider before deciding to initiate an internal investigation.

One relevant factor is the company's reputation. The name of the company can be highly damaged if it tolerates unfair or wrongful business practices and does nothing to avoid, control or investigate them and these facts are brought to public attention.

For the aforementioned reason, the possible extent of the reputational risk, which would have economic impact, is a key issue to consider before balancing whether or not to start an internal investigation.

Another factor to consider when adopting this decision is the greater or lesser willingness of the company to implement a strong corporate culture of compliance among employees. For instance, deciding to carry out an internal investigation when unlawful practices are discovered, will establish behavioural guidelines among the employees that would make them respect the company's culture and comply more rigorously with their obligations.

Finally, the legal entities should also take into account the individual liabilities of the wrongdoers and the impact that this would have for the company.

1.3 How should an entity assess the credibility of a whistleblower's complaint and determine whether an internal investigation is necessary? Are there any legal implications for dealing with whistleblowers?

The rules in Spain are peculiar in this regard and it is still not fully clear if whistle-blowers can preserve anonymity. For now, in accordance with the developing state of our jurisdiction in these matters, the reports should be considered confidential, but the whistle-blower is not anonymous.

In order to assess the credibility of a whistle-blower, the following actions should be taken:

- Identify the whistle-blower's background and whether he is reporting for the first time or if he has done it previously. In such case, determine what happened in the former cases.
- Detect the vagueness or consistency in the description of the facts.
- Check if other employees have reported connected events.
- Request supporting documentation or evidences that corroborate the whistle-blower's account of events.
- Obtain other witness accounts.
- Interview the reported persons and ascertain if their statements accord with the denounced facts.

Once all of the aforementioned features have been thoroughly analysed, the company would be in a position to determine if further investigation is needed or if it does not merit follow-up.

1.4 How does outside counsel determine who "the client" is for the purposes of conducting an internal investigation and reporting findings (e.g. the Legal Department, the Chief Compliance Officer, the Board of Directors, the Audit Committee, a special committee, etc.)? What steps must outside counsel take to ensure that the reporting relationship is free of any internal conflicts? When is it appropriate to exclude an in-house attorney, senior executive, or major shareholder who might have an interest in influencing the direction of the investigation?

In most cases, "the client" will be the Chief Compliance Officer, the Corporate Legal Counsel or the Legal Department as they are usually to whom the employees report wrongdoings, as well as who initially verifies the credibility and risk or extent of the denounced facts.

Sometimes, it can be difficult for an external counsel to ascertain that the contact person from the company is non-biased by internal conflicts and has no potential exposure to the facts under investigation.

Even though intuition plays an important role when determining the independence of the contact, the two basic steps to follow are: (i) to check the reporting structure of the company; and (ii) to identify in which department or level of the company the unlawful facts were allegedly committed.

If no suspicious connection is made, the external counsel may assume that the reporting relationship is free of internal conflicts. Notwithstanding, any red flag that arises from the communications should be taken into account and be examined in greater detail.

A good way to avoid the conflict problem is to have three different and separate lines of reporting: one to the Compliance Officer; another one to the Legal Department; and lastly, to the Board of Directors.

Finally, any person who might interfere in the course of the investigation should be walled off from it, no matter which department he/she works at or what work position he/she holds.

2 Self-Disclosure to Enforcement Authorities

2.1 When considering whether to impose civil or criminal penalties, do law enforcement authorities in your jurisdiction consider an entity's willingness to voluntarily disclose the results of a properly conducted internal investigation? What factors do they consider?

Please note that in this chapter, when referring to self-disclosure to authorities, we are talking about criminal risks that could also imply civil liability derived from the crime.

That being the case (a criminal exposure linked or not to civil liability), when a company decides to voluntarily and timely disclose the wrongdoing to the authorities after conducting an internal investigation, it will always be considered positive and, therefore, the potential penalties may be less severe and/or the monetary penalty may be reduced.

Thus, to self-disclose and cooperate in further inquiries will always be advantageous to legal entities, since they have a starting point to negotiate with Prosecutors and judicial authorities.

Authorities may consider the following factors when an entity discloses the results of an investigation:

1. the willingness to cooperate after reporting and the extent of the cooperation;
2. the timing of the disclosure;
3. the nature of the conduct disclosed;
4. the pervasiveness of the conduct within the company;
5. the pre-existence of a compliance programme which was holistic, appropriate, effective and efficient; and
6. any remedial or disciplinary actions taken by the entity.

2.2 When, during an internal investigation, should a disclosure be made to enforcement authorities? What are the steps that should be followed for making a disclosure?

The most appropriate time to make the disclosure to authorities is once the internal investigation is closed and the investigators have finished the final report which contains all findings and conclusions about the irregular facts.

To proceed to a disclosure at an earlier stage will only make sense in cases of great gravity or if the authorities have prior knowledge of the facts from other sources such as third parties, media publications, anonymous reports, etc.

Before making a disclosure, the company must address the following features: (i) the potential penalties the entity could face also considering mitigating and exonerating circumstances of criminal liability; (ii) the subsequent consequences for the company; (iii) how, when and to whom to disclose the facts; and (iv) the likelihood of further legal proceedings of other kinds arising as a result of having disclosed the information, e.g. data privacy, labour proceedings, civil proceedings, administrative actions, etc.

2.3 How, and in what format, should the findings of an internal investigation be reported? Must the findings of an internal investigation be reported in writing? What risks, if any, arise from providing reports in writing?

A good way to proceed is to make an appointment with the Public Prosecutor Office and then present the facts, findings and conclusions reached.

If the alleged crimes are of an economic nature or include corruption, it is better to report them to the Anticorruption Prosecutor Office, based in Madrid.

Moreover, and if the aforesaid crimes are not included, the company should report to the local Prosecutor of the place where the offence was committed.

At first, it is wiser to report the wrongdoing verbally and negotiate with the Prosecutor and to only provide the written information or documentation, if requested later or if it is beneficial for the company.

In fact, there are some risks of providing reports in writing:

- more evidence can be used against the company;
- the report can be leaked to undesired sources; and
- some facts that the company does not want disclosed may be shared unintentionally.

3 Cooperation with Law Enforcement Authorities

3.1 If an entity is aware that it is the subject or target of a government investigation, is it required to liaise with local authorities before starting an internal investigation? Should it liaise with local authorities even if it is not required to do so?

Legal entities are not required to liaise with the authorities despite the fact that they are aware of an ongoing investigation.

On the one hand, if a judicial proceeding is already initiated and the Court requires information or documentation from the company which is not a defendant, it would have to comply with its legal duties and provide the Court with what was required.

On the other hand, if the company is a defendant in a criminal proceeding, despite the ruling of the Spanish Supreme Court **STS 514/2015 of September 2** (replicated in other rulings) stating the conviction of legal persons should be based on the inalienable principles of criminal law, there is a great debate about whether the right to a fair defence provided in **Article 24 of the Spanish Constitution** applies to legal entities. If this were the case, companies would not have an obligation to provide the information or documentation required.

Nonetheless, the company will always be in a better position if it liaises with the authorities as higher penalties will be avoided and mitigating and/or exonerating circumstances of criminal liability will apply, lessening potential fines and judicial actions to be taken against legal entities.

3.2 Do law enforcement entities in your jurisdiction prefer to maintain oversight of internal investigations? What level of involvement in an entity's internal investigation do they prefer?

It is still too early to tell which position the enforcement authorities would prefer in relation to internal investigations in Spain, since the criminal liability of legal entities is very new in our jurisdiction.

Although it has been around for eight years, since the **Organic Law 5/2010 of June 22** came into force (December 24, 2010), very few entities have been sentenced by the Courts, meaning that companies are still processing the extent of their responsibility and the penalties that can be imposed on them.

In addition, the reform of the **Spanish Criminal Code** implemented by the **Organic Law 1/2015 of March 30** (in force since July 1, 2015) brought more certainty on how a compliance programme should be undertaken and how that affects the criminal liability of legal persons, which is why the implementation of such programmes is now taking shape and internal investigations are starting to emerge.

3.3 If regulatory or law enforcement authorities are investigating an entity's conduct, does the entity have the ability to help define or limit the scope of a government investigation? If so, how is it best achieved?

Nothing has yet been defined in our jurisdiction in this regard, but the entity can always offer help to the authorities with the investigation, provided that such investigation is not secret.

Note that the company knows its business functioning better than an outsider and therefore may identify the information needed or the alleged wrongdoers much quicker than the authorities. However, limiting the scope of the investigation will be very difficult.

3.4 Do law enforcement authorities in your jurisdiction tend to coordinate with authorities in other jurisdictions? What strategies can entities adopt if they face investigations in multiple jurisdictions?

Yes, if needed.

Nowadays, many internal investigations cross borders, as entities are becoming more global every day.

Facing an international investigation is not an easy task, so coordination is the key issue to attain satisfactory results. A good strategy to achieve that is to centralise the investigation team where the wrongdoing was committed.

Henceforth, one should identify the experts in every country where the investigation could have any type of impact so that they can provide assistance about legal issues, jurisdiction specialities and attorney-client privilege doubts that may arise in the course of the investigation.

Finally, one should establish a clear reporting line among all the teams in different countries so that no relevant information, documentation or recommendation is missed.

4 The Investigation Process

4.1 What unique challenges do entities face when conducting an internal investigation in your jurisdiction?

One of the greatest challenges in our jurisdiction is that there are not many experts in conducting investigations, nor entities which have fully implemented holistic compliance programmes, which makes it more difficult to identify wrongful conducts.

Another challenge is access to employee devices and the processing of their data for the purposes of the investigation. First, most companies do not have IT policies that specify which access may be granted to their devices or under what circumstances; second, there are specific and strict provisions on data privacy and labour law that the company has to comply with; and third, there are contradictory resolutions from Spanish Courts with regard to the access a company can have to these data/devices.

Moreover, employees are not accustomed to being part of an internal investigation and may be reluctant to share all the information they have about the investigated facts because they are afraid of the possibility of disciplinary action which the company can impose upon them.

4.2 What steps should typically be included in an investigation plan?

The investigation plan should address:

- the person within the company to whom the findings of the investigation should be reported (Compliance Officer, Legal Counsel, Board of Directors, all three of them, etc.) and the agenda for communications;
- the document collection and review of the documentation, including the employees' consent to access their devices and to review their e-mails, clearing up criminal, data protection and employment law concerns;
- interviews to be conducted: identify the persons; the order; if they will take place in person, telephonically or via videoconference; and where are they going to be conducted;

- retention of external experts to provide support and detailed knowledge in the analysis or collection of documentation (forensic), consultants, appraisers; and
- delivery of the work and format of the report.

4.3 When should companies elicit the assistance of outside counsel or outside resources such as forensic consultants? If outside counsel is used, what criteria or credentials should one seek in retaining outside counsel?

The assistance of an outside counsel will be determined according to the nature of the facts reported, the positions the wrongdoers hold, the expertise required for conducting the investigation and any other matters, such as the reputational impact.

When there is suspicion of the commission of a crime, it is always advisable to retain an outside counsel to assure independence in the course of the investigation, as well as to guarantee the authorities the objectivity of the results achieved.

It is a key determinant to hire an outside counsel experienced in conducting investigations, and it is preferable that such attorney is specialised in corporate crimes and compliance programmes' implementation.

Finally, any time an electronic device and or/electronic data needs to be analysed, copied or processed, the company should retain forensic consultants. In the same way, the company should hire any outside resource needed to assist with the investigation.

5 Confidentiality and Attorney-Client Privileges

5.1 Does your jurisdiction recognise the attorney-client, attorney work product, or any other legal privileges in the context of internal investigations? What best practices should be followed to preserve these privileges?

Yes. Spanish legislation recognises the professional secrecy of attorneys.

Such secrecy is enshrined in the right to personal privacy (**Article 18.1 CE**) and the right to a fair defence (**Article 24 CE**), and releases them from the obligation to report events of which they are aware as a result of the explanations of their clients (**Article 263 of the Criminal Procedure Act LECrim**) and to testify regarding those events that the accused has disclosed in confidence to their attorney as the person entrusted with their defence (**Article 416.2 and 707 LECrim**). Such exemption applies to the production of documents in criminal proceedings at the request of the court and to any other measure of investigation authorised by the court for the purposes of seizure of the requested documents.

Spanish case law has established two requirements that must be met by communications between companies and their attorneys in order for them to enjoy the protection of professional secrecy: on the one hand, the communications must be made within the scope of and in the interests of the rights of defence of the client (which includes not only information subsequent to the commencement of the proceedings, but also prior communications in relation to the matter investigated in such proceedings); and, on the other hand, the communications in question must be with an independent attorney (external counsel).

5.2 Do any privileges or rules of confidentiality apply to interactions between the client and third parties engaged by outside counsel during the investigation (e.g. an accounting firm engaged to perform transaction testing or a document collection vendor)?

Any interactions and/or communications that take place during an internal investigation where an outside counsel is engaged will be confidential and, in principle, protected by professional secrecy.

Nevertheless, professional secrecy in Spain is not absolute and is not applied consistently as, in certain cases, the judicial authorities may gather documents or information subject to such secrecy.

5.3 Do legal privileges apply equally whether in-house counsel or outside counsel direct the internal investigation?

The case of *US v. Akzo Nobel Chemicals International B.V.* sheds light on the limitations of legal professional privilege for in-house lawyers. European Union laws also consider in-house lawyers as less independent than outside counsel and therefore their professional secrecy has a much more limited application.

In the same line, only outside counsel communications will be protected by professional secrecy in Spain.

In-house counsel are bound to the company (the client) by means of an employment relationship and therefore not considered independent. Thus, their communications with the entity might not be protected under Spanish legal privilege.

For that reason, it is always recommended to retain an outside counsel to conduct internal investigations.

5.4 How can entities protect privileged documents during an internal investigation conducted in your jurisdiction?

With regard to the protection of personal documents of employees, attention should also be drawn to the Spanish Labour Act (*Estatuto de los Trabajadores*), which provides that, in the performance of their work, employees have a general right to personal privacy and due consideration of their dignity (**Article 4.2.e of the Spanish Labour Act**). This means that any searches carried out on them or on their personal lockers or property must be carried out respecting the safeguards set forth in **Article 18 of the Spanish Labour Act**. However, irrespective of the provisions of employment laws, such protection does not apply when, within the context of criminal proceedings, the Judge instructs that the company be searched.

Thus, the Examining Magistrate has the authority to conduct any enquiries which they believe may shed light on the events under examination as Judges are required to investigate any indication of a crime, there being no restrictions as to what may be found.

However, any measures of investigation which violate fundamental rights (the intervention of personal communications, the search and raid of private premises, etc.) may only be agreed to in exceptional circumstances and are subject to reasoned authorisation by the Court in the form of a court order.

Nevertheless, if an information request is made to a company under investigation, it can claim its constitutional rights under **Article 24.2 of the Spanish Constitution** (**CE**) – primarily, the right to a fair defence and not to incriminate oneself, and the right not to give a statement against oneself – and could, therefore, not respond to the request made.

Please note, as stated before, it is as yet unclear whether the said rights are applicable up-front to legal entities, notwithstanding the ruling of the Spanish Supreme Court **STS 514/2015 of September 2**.

Despite the above, an order issued by the Judge could force the company to eventually produce the document, when such document is vital for ascertaining the material facts of the case.

5.5 Do enforcement agencies in your jurisdictions keep the results of an internal investigation confidential if such results were voluntarily provided by the entity?

Not necessarily. If the authorities deem it necessary to initiate a criminal proceeding after receiving notice of the commission of unlawful activities, the findings of the internal investigation reported by the company might not remain confidential and could subsequently be shared during the course of the corresponding criminal proceeding.

Notwithstanding, if the authorities do not initiate criminal actions, the usual practice would be to keep the results of the internal investigation confidential.

6 Data Collection and Data Privacy Issues

6.1 What data protection laws or regulations apply to internal investigations in your jurisdiction?

The following laws and regulations apply in terms of data privacy during investigations:

- LOPD: Spanish Data Protection Act (**Organic Law 15/1999, of December 13**, for the Protection of Personal Data).
- RLOPD: Spanish Data Protection Regulation (**Royal Decree 1720/20007, of December 21**), that approves the Regulation that develops **Organic Law 15/1999, of December 13**, for the Protection of Personal Data.
- Data Protection Directive: Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- Directive 2016/680 of the European Parliament and of the Council of April 27, 2016 with regard to the protection of natural persons in the processing of their personal data by the competent authorities for prevention, investigation, detection and prosecution of criminal offences or the execution of criminal sanctions and on the free movement of such data.

6.2 Is it a common practice or a legal requirement in your jurisdiction to prepare and issue a document preservation notice to individuals who may have documents related to the issues under investigation? Who should receive such a notice? What types of documents or data should be preserved? How should the investigation be described? How should compliance with the preservation notice be recorded?

It is not a legal requirement or a common practice to issue a document preservation notice when carrying out an investigation, although this procedure should be contemplated in the policies listed in the compliance programme of the company.

Notwithstanding the above, after conducting the interviews, employees should always be warned about the preservation of the relevant documents for the investigation.

Furthermore, companies are required by law (Commercial Code, General Taxation Law, Labour Law, etc.) to preserve the documents for a period of time, depending on the nature of such documents. A company should inform its employees about those data storage periods.

Each document or data has its own preservation period established by law, but it should be noted that the Criminal Code has increased the statutes of limitation for crimes against Public Treasury and Social Security so that the general retention period for financial, accounting and labour data should be increased to at least 10 years.

6.3 What factors must an entity consider when documents are located in multiple jurisdictions (e.g. bank secrecy laws, data privacy, procedural requirements, etc.)?

Any factors should be taken into account.

Each jurisdiction has different procedures and applicable laws regarding document seizure and data processing and transfer, so before the company gathers any documentation it should consult the experts on such jurisdiction to proceed accordingly.

6.4 What types of documents are generally deemed important to collect for an internal investigation by your jurisdiction's enforcement agencies?

Some of the most important groups of documents to be collected for an internal investigation are the e-mails exchanged between employees and/or former employees and those received/sent to third parties that are related to the facts of the case.

Additionally, all kinds of contracts, agreements, financial statements, bank accounts, account movements and accounting documents are very relevant when it comes to economic crimes.

6.5 What resources are typically used to collect documents during an internal investigation, and which resources are considered the most efficient?

In order to guarantee the document collection process, the company should retain external experts, usually forensic, and document review services providers.

The most common and efficient practice used by these experts in this case is to create copies of the backup server of the company as well as the laptops and devices used by the employees, but owned by the company. It is very important that the company has a clear and specific IT policy in this regard, and with regard to data protection issues and employment law guarantees and policies.

Finally, it is better to create the above-mentioned backup in the presence of a Public Notary and then deposit with him the copy obtained.

In such way, the search and processing of the relevant data will be done in the copy and not in the original, which will guarantee accuracy and protect the data from any electronic manipulation.

6.6 When reviewing documents, do judicial or enforcement authorities in your jurisdiction permit the use of predictive coding techniques? What are best practices for reviewing a voluminous document collection in internal investigations?

Usually, when reviewing voluminous documentation, the experts use processing tools that enable a keyword search.

Retaining experts to do this job is the best way to ascertain that the investigators and/or the entity do not access the private and personal data of the wrongdoers or the data of any other employees who are collaborating with the investigation and have granted access.

7 Witness Interviews

7.1 What local laws or regulations apply to interviews of employees, former employees, or third parties? What authorities, if any, do entities need to consult before initiating witness interviews?

Any employment law requisites and guarantees should be taken into account when conducting interviews with employees.

Furthermore, any interviewed individual will be guaranteed the set of constitutional rights; among others, the right to honour, privacy and personal reputation, the right to dignity, no discrimination, etc.

In Spain, there is no need to consult any authorities before conducting interviews.

7.2 Are employees required to cooperate with their employer's internal investigation? When and under what circumstances may they decline to participate in a witness interview?

Employees are required to cooperate with their employer during an internal investigation; not doing so can be considered a cause of dismissal on disciplinary grounds or of any other disciplinary actions.

In order to make employees better understand their duty to cooperate, they should be instructed and trained on the company's compliance programme, and the obligation the latter has to comply with the penal regulations to mitigate or exonerate its criminal liability.

Notwithstanding the above, prior to conducting an employee's interview it is crucial that the attorney informs such employee that he represents the legal entity and not the employee individually.

7.3 Is an entity required to provide legal representation to witnesses prior to interviews? If so, under what circumstances must an entity provide legal representation for witnesses?

Entities are not required to provide legal representation to witnesses prior to interviews.

However, there may be serious cases in which the interviewer can warn the witness of the need for an attorney. That said, if he refuses to contact an attorney, the interview can continue as scheduled, because providing legal representation is not required by law.

Finally, note that if the company itself decides to provide legal representation to employees, this could lead the investigation to come to a standstill as the employees, wrongdoers or not, could be reluctant to cooperate.

7.4 What are best practices for conducting witness interviews in your jurisdiction?

Some tips to consider when conducting interviews to obtain better results are:

- Plan in advance the persons who are going to be interviewed and the order of the interviews.
- Analyse the witnesses' background and relation to the facts.
- Give the witness notice of the existence of the investigation and the nature of the facts investigated, unless it is strictly necessary to proceed unannounced.
- Be flexible and provide the witness with a range of dates to choose to be interviewed.
- Conduct the interview in person and in the company's facilities. Interviews should be individual and conducted in a separate, comfortable room.
- Prepare the interview outline, as well as the general warning messages, and the supporting documentation for each interview.
- The interviewer should be a person with 'soft skills' so as to provide a more relaxing atmosphere for the witness to share the information more openly.
- Inform the witness that the interviewer represents the company and not him individually, that information can be disclosed at the sole decision of the company, instructing him to preserve the relevant documents and data for the investigation, etc.
- Remind the witness to maintain the confidentiality of the interview and inform him of possible future contact in order for him to provide further information or documentation.
- Take notes of the explanations given by the witness and also his reactions to questions. Then draft a complete report of the interview.

7.5 What cultural factors should interviewers be aware of when conducting interviews in your jurisdiction?

In Spain, people pay close attention to interpersonal relationships. People are usually open and friendly so, when conducting interviews, it is important to create a personal bond with the interviewee and to show closeness to him/her.

The more comfortable the witnesses feel, the more information they will share, so the soft skills of the interviewer are a key factor that must be considered.

7.6 When interviewing a whistleblower, how can an entity protect the interests of the company while upholding the rights of the whistleblower?

The interviewed whistle-blower will have the same rights and/or privileges than any other witness interviewed during the course of an internal investigation.

The entity, of course, will advise him that the information provided is confidential, although not anonymous. Furthermore, the entity will assure the whistle-blower that there will be no retaliation against him for reporting the wrongdoings and/or wrongdoers.

At the end of August 2017, the European Parliament made a proposal to fight against corruption and other illegal conducts committed within companies by strengthening the protection to whistle-blowers. The proposal includes granting them legal protection, guaranteeing confidentiality, providing them with economic and psychological support if needed and even conferring them compensation for damages.

7.7 Is it ever appropriate to grant "immunity" or "amnesty" to employees during an internal investigation? If so, when?

It is usually not appropriate.

When an internal investigation starts, the company is not yet sure who will be directly involved in the investigated irregular facts, so granting "immunity" or "amnesty" to employees can be a double-edged sword.

If the entity grants "immunity" to the wrongdoer without knowing it and he is dismissed later on, then the company will have to face difficult labour proceedings in which it will have to readmit him or pay him vast amounts of money.

In addition to this, we have a peculiarity in Spain with regard to criminal proceedings: a Public Prosecutor can allege the commission of any public offence, meaning that no matter the "immunity" or "amnesty" granted by the company, a criminal proceeding can be opened against the wrongdoer by the Public Prosecutor.

7.8 Can employees in your jurisdiction request to review or revise statements they have made or are the statements closed?

There are not specific provisions in the Spanish jurisdiction regarding the revision of statements by interviewees during an internal investigation.

Notwithstanding, if the witness is not hostile, the revision can be offered, keeping a track record.

7.9 Does your jurisdiction require that enforcement authorities or a witness' legal representative be present during witness interviews for internal investigations?

No, in the Spanish jurisdiction it is not required for any third party to be present during the witness interviews for internal investigations.

8 Investigation Report

8.1 Is it common practice in your jurisdiction to prepare a written investigation report at the end of an internal investigation? What are the pros and cons of producing the report in writing versus orally?

Usually, it is more common practice to prepare a written investigation report.

Mainly, the pros of producing the report in writing are: (i) it allows the entity to have a better understanding of all the steps taken by the investigators, the documents that have been analysed and the conclusions reached; (ii) the investigators can ensure that they do not miss any information that needs to be shared with the entity; and (iii) it offers an easier way to provide the information to the authorities in the future or, at least, provides an outline for doing so.

On the other hand, the cons are: (i) the report can be leaked to unwanted third parties; and (ii) it may include facts and findings that the company does not want to disclose.

8.2 How should the investigation report be structured and what topics should it address?

In order for the entity to better understand the conclusions reached by the investigators and the steps taken during the internal investigation, we consider that the final report should be structured as follows:

1. Summary of the events that lead to the internal investigation and the retention of external counsel and any other experts.
2. Summary of the relevant background information of the case.
3. Analysis of the investigation process, evidence collected and findings:
   a) Review of the compliance programme.
   b) Analysis of documentation and relevant remarks about the documentation analysed.
   c) Interviews conducted with employees, former employees and third parties, identifying names and positions of the interviewees and unusual statements made by them.
   d) Other expert reports needed (forensic, appraisals, etc.).
4. Conclusions.
5. Recommendations (if necessary).

Mar de Pedraza
De Pedraza Abogados, S.L.P.
Calle Antonio Maura 10, 3º
28014 Madrid
Spain

Tel: +34 91 532 39 43
Email: mar@depedrazaabogados.com
URL: www.depedraza.com

Mar de Pedraza is the managing partner of De Pedraza Abogados. Prior to establishing this boutique law firm in 2011, she worked extensively as a white-collar crime lawyer at some of the most prestigious Spanish and multinational law firms, such as Garrigues and Baker & McKenzie. She studied at the Universidad Complutense of Madrid (1996) and the Università degli Studi di Bologna (1995), and has been a member of the Madrid Bar Association since 1997.

Ms. de Pedraza specialises in white-collar crime (such as offences against financial and socio-economic interests, fraud, criminal insolvency, misappropriation, misrepresentation and falsification of documents, corporate offences, bribery, offences against the tax and social security authorities, among others) in corporate compliance and internal investigations.

Mar de Pedraza has been recognised as an expert by various directories and publications. She was the winner of one of *Iberian Lawyer*'s 40 under Forty Awards 2013, currently being ranked in Band 1 by *Chambers Europe*.

Paula Martínez-Barros
De Pedraza Abogados, S.L.P.
Calle Antonio Maura 10, 3º
28014 Madrid
Spain

Tel: +34 91 532 39 43
Email: paula.mbarros@depedrazaabogados.com
URL: www.depedraza.com

Paula Martínez-Barros graduated in law from the Complutense University of Madrid (2008), and has been a member of the Madrid Bar Association since 2009.

Before joining De Pedraza Abogados (October 2015), she worked for several years at the international law firm Baker & McKenzie in the area of white-collar crime and corporate compliance. She holds a Master's degree in Business Administration from the University of San Diego (California, 2015), focusing on Corporate Finance and International Business. She completed a semester exchange programme at SDA Bocconi School of Management in Milan. She also completed two "*Compliance Officer*" expert programmes from *Thomson-Aranzadi* (2016).

With business and law studies behind her, Ms. Martínez-Barros is specialised in white-collar crimes, the implementation of corporate compliance programmes of national and multinational companies and internal investigations.

De Pedraza
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De Pedraza Abogados is a boutique law firm specialising in criminal law, committed to providing its clients with highly sophisticated criminal law advice. Its specialist legal advisory services cover the traditional pre-litigation and litigation side of criminal law cases, in which it represents clients as the defence or prosecution, and the more novel "preventive" side of corporate defence and compliance, which has become a central part of criminal law advice since December 2010.

Criminal Law Practice

De Pedraza Abogados is able to act before the various criminal law courts in defence of the interests of individual or corporate clients – either as defence or prosecution lawyers – at all stages of the proceedings, including *vis-à-vis* any relevant public registries.

Corporate Compliance

As a result of our impeccable and in-depth knowledge of the applicable national and international law, at De Pedraza Abogados we advise companies which may be in any way subject to the jurisdiction of the Spanish criminal courts, ensuring that they have a suitable corporate compliance system in place in order to prevent or mitigate criminal liability.

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com