

# Clients often choose wrong governance model

Due to the economic crisis, some Portuguese public companies chose to adopt an American or British-style governance model, but these are insufficient

One of the biggest challenges clients currently face with regard to corporate governance is choosing a governance model that is suitably aligned with their business objectives, according to Paulo Olavo Cunha, of counsel at Vieira de Almeida.

Olavo Cunha adds that, consequently, the choice of an inappropriate model of governance is the biggest mistake clients often make. In addition, another mistake clients make is disregarding the requirements of the relevant supervisory and regulatory bodies.

"Some corporate governance faults have been brought to light due to the financial crisis," Olavo Cunha says. "When the crisis emerged, the existing mechanisms failed to comply with best practice criteria. The European institutions issued an 'action plan' in which the European Commission launched recommendations in priority sectors, namely board duties, remuneration, exercise of shareholder rights and risk

management."

Olavo Cunha points out that, as a result of the crisis, some Portuguese public companies adopted a model of corporate governance similar to that of the "American or British model", which involves "a board of directors, comprising an audit committee". He adds: "The purpose of the audit committee is to assist the board of directors in verifying the company's financial reports and accounts, as well as the independence of the auditor, and also oversee the performance and compliance of the company with regard to the regulatory and legal framework."

However, Olavo Cunha says that these measures are not enough to ensure sufficient levels of supervision. "We strongly believe that internal supervision may be identified as one of the trends of the last year."

He adds that some clients do not understand the importance of corporate governance and do not adapt their governance structures to meet the latest requirements.



Paulo Olavo Cunha

## Commercial law and public law converging

The dynamics of the legal market are shifting with the result that there is now a greater convergence between commercial law and public law, according to Jordi Casas, a partner at Roca Junyent in Barcelona.

Casas says business is not just about what you do but how you do it – the wealth of additional regulatory and public law provisions means companies have to fuse business acumen with adherence to best practice.

"Law firms must offer traditional legal services but also need to cater for individual sectors," Casas says. "One of our main priorities is explaining to clients how best to comply with these increasing demands."

Casas cites the example of life sciences firms that spin-off from universities or hospitals, and which are suddenly exposed to many new regulatory burdens. "These start-up businesses are facing all sorts of legal questions relating

to M&A, intellectual property protections, tax and compliance," Casas says. "They need great lawyers but specifically great lawyers who know about life sciences." As another example, Casas highlights the food industry, which he says faces new regulatory challenges related to the characteristics of food products, traceability – "from farm to fork" – and food security.

To meet client demands, Roca Junyent adopted an integrated approach to commercial and compliance advice by forming a regulated industries team. "We have many lawyers that specialise in certain sectors and have held senior positions in public authorities," Casas says. They include Manuel Silva, a state attorney and state councillor, state attorney Rosa Sanz, Yolanda Puiggros, former director of legal services and administrative procurement at the Consorci de Salut i Social de Catalunya, and Joan Mier, who worked for more than 15 years at the Secretariat General of the Council of the European Union.



Jordi Casas