

Public Sanctioning Law and Compliance

Master in L&M 3E 2023/2024

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Class Schedule 9:00-13:00

Introduction

This course deepens the relationship between law enforcement and compliance. It is divided into two large blocks: the first deals with general principles and problems of law enforcement and compliance and the second is dedicated to sectoral issues, specifically in the context of banking, financial markets, competition, data protection and corruption prevention.

Goals

The course aims to cover, in an integrated and comprehensive manner, the main problems and challenges that companies and their leaders face in front of law enforcement, providing students with up-to-date training in terms of public sanctioning law in general and its multiple extensions. The course also challenges students to internalize the advantages of adapting the attitude of companies to the multiple legal and regulatory requirements that impinge on them. In this context, this course promotes objective answers and solutions, incorporating the practical knowledge necessary for the design of compliance programs and effective internal control systems for the application of these programs.

Methods

The course follows a comparative law perspective, covering the USA, given its pioneering character in these matters, as well as Germany, Spain, Italy, and Portugal, in continental Europe, where the same matters have assumed a growing importance, in legislation, case law and literature. The development and densification of subjects are versatile, and the teacher must meet the interests of students to dose each of the points of the syllabus, while respecting the need to address the syllabus in its entirety.

Course Contents

FIRST PART – FUNDAMENTAL CONCEPTS

- I. Independent Agencies.
- II. Regulatory, Supervisory and Sanctioning Powers.
- III. Sanctioning Administrative Law, Criminal Law, and Regulatory Law.
- IV. Duties of Information and Collaboration. The Privilege Against Self-Incrimination.
- V. Corporate Liability in Criminal Law.
 1. Group of Companies Liability.
 2. Procedural Issues.
 3. Relevance of Compliance.
- VI. Criminal Liability of Natural Persons.
 1. Criminal Liability of Administrators, Managers, and Beneficial Owners.
 2. Criminal Liability of Compliance Officers.
 3. Criminal Liability of Auditors.
- VII. Administrative Inspections and Searches.
 1. Distinctions and Problems.
 2. In-House Lawyers, and the Attorney-Client Privilege.
 3. Procedural Issues.
- VIII. The Portuguese Competition, Regulation, and Supervision Court.
 1. Sanctioning Administrative Liability.
 2. Devolutive Effect of the Appeal.
 3. Reformatio in peius.

SECOND PART – LAW ENFORCEMENT AND COMPLIANCE IN PARTICULAR

1. Banking Activity.
2. Financial Markets.
3. Competition.
4. Data Protection.
5. Anti-Corruption.

Assessment

Students will be evaluated based on:

- a) A written exam – 24 hours take-home exam (50%);
- b) Their participation in class and written assignments (50%);

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In German:

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- REEB, Philipp, *Internal Investigations – Neue Tendenzen privater Ermittlungen*, Berlin: Duncker & Humblot, 2011.
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