

# INTEGRITY PROGRAM

*Guidelines for Legal Entities*

OFFICE OF THE COMPTROLLER GENERAL  
**BRAZIL**

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The content of this publication aims at clarifying the concept of the Integrity Program under Law N° 12,846/2013 and its regulations and to provide guidelines which may assist companies in developing or improving a program of this sort. This document is intended solely for the purpose of guidance and thus is neither binding nor a legal rule. The guidelines herein presented do not create rights or guarantees, whether related to an evaluation of the Integrity Program within a proceeding to determine liability under Law N° 12,846/2013 or any other administrative or judicial procedure or proceeding.



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# Introduction

Corruption is an evil that affects all. Governments, citizens and companies endure its effects on a daily basis. Besides diverting resources that would otherwise be allocated for the implementation of public policies, corruption is also responsible for distortions that directly impact business activities due to unfair competition, over-invoicing and restricted business opportunities. The fight against corruption calls for enhanced and continuous efforts, including of companies, which have an invaluable role in this context.

Law N° 12,846/2013, of August 1, 2013, the so-called Anti-Corruption Law or Clean Company Act, sets forth in Brazil civil and administrative strict liability of legal entities for acts committed against national or foreign public administration performed in the legal entities' interest or benefit. The passing of the Law has drawn the attention to the necessity of fighting corruption and has caused intense debate within the Brazilian business sector, particularly among companies concerned about the possibility of being imposed serious penalties in administrative liability proceedings.

Besides its punitive nature, said Law also provides for important anti-corruption

measures, which can be considered as mitigating factors in liability proceedings. This set of measures is known as Integrity Program and will be described in this publication.

This document aims at clarifying the concept of Integrity Program under Law N° 12,846/2013 and its regulation by Decree N° 8420/2015, of March 18, 2015. It also provides guidelines to assist companies in developing or improving policies and instruments aimed to prevent, detect and remedy wrongful acts committed against the public administration, such as bribery of national and foreign public agents, frauds within public bidding processes and hindrances to investigative or inspection activities of public bodies, entities or agents.

The initial part of this document presents an overview of the concept of Integrity Program in accordance with the Anti-Corruption Law, as well as the five pillars for its development and implementation: commitment and support of the legal entity's senior management; an internal department; profile and risk analysis; structuring of rules and instruments, and continuous monitoring strategies. After that, each of them is addressed in detail, with a focus on important aspects companies must take into consideration when developing or improving their own Integrity Programs.



# Integrity Program: overview

Article 41 of Decree N° 8420/2015 defines an Integrity Program as follows:

*“For the purposes of this Decree, an integrity program is, within the context of a legal entity, the set of internal mechanisms and procedures of integrity, audit and incentivized reporting of irregularities as well as the effective enforcement of codes of ethics and conduct, policies and guidelines aiming to detect and remedy embezzlement, fraud, irregularities and illegal acts practiced against national or foreign public administration.”*

According to the concept above, the Integrity Program focuses on providing anti-corruption measures aimed to prevent, detect and remedy wrongful acts against national or foreign public administration as set forth in Law 12,846/2013. Companies that already have a compliance program, i.e. a structure for effective compliance with laws in general, must make sure their anti-corruption measures are integrated into the existing program. Even companies that already adopt measures of such nature, mainly to comply with foreign anti-bribery legislation, must make sure such measures are adjusted to the Brazilian law, particularly with regard to frauds within public bidding processes and the execution of contracts with the public sector.

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THE INTEGRITY PROGRAM IS A SPECIFIC COMPLIANCE PROGRAM AIMED TO PREVENT, DETECT AND REMEDY THE WRONGFUL ACTS SET FORTH IN LAW N° 12,846/2013, PARTICULARLY BRIBERY AND FRAUDS WITHIN PUBLIC BIDDING PROCESSES AND THE EXECUTION OF CONTRACTS WITH THE PUBLIC SECTOR.

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## The five pillars of the Integrity Program

### **1 : Commitment of senior management (“tone at the top”)**

The permanent support of the company's senior management is mandatory for the promotion of a culture of ethics and respect of laws and for the effective implementation of the Integrity Program.

### **2: An internal department responsible for the Integrity Program**

The internal department needs to be autonomous, independent and unbiased, must have sufficient material, human and financial resources to be able to effectively operate and must have direct access, when necessary, to the company's highest decision-making body.

### **3: Profile and risk analysis**

The company must know its own processes and organizational structure, identify its area of business, its main business partners and the level of interaction with the national and

foreign public sector, thus being able to assess the risk of committing the wrongful acts set forth in Law N° 12,846/2013.

#### **4: Structuring of rules and instruments**

Based on the company's characteristics, profiles and risks, each company must create or update its code of ethics or conduct and its rules, policies and procedures to prevent irregularities; develop irregularity reporting or detection mechanisms (red flags; reporting channels; whistleblower protection mechanisms); and define disciplinary and remediation measures for cases of violation. For a vast and effective dissemination of the Integrity Program, each company must also create a communication and training plan with specific strategies for each of its target audiences.

#### **5: Continuous monitoring strategies**

Each company must define procedures to assess the applicability of the Integrity Program to its modus operandi and develop mechanisms of continuous improvements and adjustments of any deficiencies encountered in any of its areas. The company must also ensure that the Integrity Program is part of its daily routine and is integrated into other related areas, such as human resources, legal department, internal audit, and accounting and financial department.

The picture below shows the guiding pillars of an Integrity Program:



**Attention: There is no one size fits all integrity program!**

Each Integrity Program must be developed to meet the company's needs according to the characteristics and risks of the company's business area.



It is imperative that each company do a self-assessment and learn its needs and specific characteristics to define an adequate Integrity Program. Please find below a detailed description of each of the pillars of an Integrity Program.

## 1. Commitment and support of senior management

The commitment of the company's senior management to ensure integrity in public and private relations and thus with the Integrity Program is the foundation for the development of an organizational culture in which both employees and third parties<sup>1</sup> effectively adopt an ethical conduct. An Integrity Program that is not supported by the senior management<sup>2</sup> has little or no practical value. The lack of commitment of senior management leads to the lack of commitment of other employees, which makes the Integrity Program "remain only on paper".

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THE FOUNDATION OF AN  
EFFECTIVE INTEGRITY PROGRAM  
LIES IN THE PERMANENT SUPPORT  
AND COMMITMENT OF THE  
SENIOR MANAGEMENT TO THE  
DEVELOPMENT OF A CULTURE OF  
ETHICS AND INTEGRITY.  
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The company's senior management can demonstrate its commitment to the Integrity Program in many different ways. For example, the CEO and other officers can reaffirm their commitment by including the subject in their speeches, thus showing they are aware of the company's ethical values and policies. The senior management may also include the assessment of the

effectiveness of integrity actions as a permanent or frequent agenda in its meetings or conferences with managers and other members of the company's middle management. The allocation of adequate resources for the implementation of the Integrity Program is without a doubt another important indication of commitment, as it will be discussed in the next topic.

Senior managers must epitomize good conduct, by promptly adhering to the Integrity Program. Furthermore, they must publicly and overtly affirm the importance of the values and policies that shape the Program, whether explicitly, internally or publicly, or through written statements. On the one hand, their commitment to ethics and integrity must be shown to the internal public such as employees and managers of several levels, who should be aware of the seriousness of the program and that they are expected to abide by its rules. On the other hand, the commitment must be clear also to third parties, clients and society at large.

Furthermore, the commitment must also be demonstrated through oversight and direct or indirect monitoring of the implementation of the Program. In the case of signs of

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<sup>1</sup> Third parties are those who can act for the interest or benefit of a legal entity, making it accountable in accordance with Law N° 12,846/2013, such as suppliers, contractors, intermediary agents and associates.

<sup>2</sup> The company's highest hierarchy level members, holding positions with high decision-making powers at a strategic level and even the Board of Administration, if applicable.



irregularities or lack of effective integrity measures, the senior management must ensure ways of improving the Program and adopt the applicable corrective measures.

The behavior of senior managers in the event of a wrongful act is of the utmost importance. The participation of senior managers in wrongful acts is clearly indicative of lack of corporate commitment. The conduct of managers who, albeit aware of irregularities, do not take the applicable measures or who deliberately avoid learning about any facts that would hold them accountable clearly shows lack of commitment to the Integrity Program.

Lastly, the company must make sure that middle managers are aware of the commitment of senior managers, so that they can also support the initiative. It is imperative that this level of management uphold and adopt integrity values, rules, policies and procedures in its goals and directives. Otherwise, even if senior managers are strongly committed, employees may feel driven to circumvent the rules. Hence, it is imperative that managers emphasize that wrongful acts against the company's principles and national or foreign public administration will not be tolerated, even if this means not closing deals.

## 2. Internal department responsible for the Integrity Program

After making a commitment to ethics and integrity, senior managers must take the measures needed to create an internal department responsible for developing, implementing and monitoring the Integrity Program. Adequate financial, material and human resources must be allocated to ensure the internal department will be able to put the Program in place.

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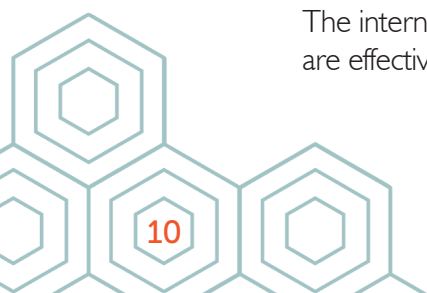
THE INTERNAL DEPARTMENT RESPONSIBLE FOR THE INTEGRITY PROGRAM MUST HAVE SUFFICIENT FINANCIAL, MATERIAL AND HUMAN RESOURCES AS WELL AS THE AUTONOMY TO PERFORM ITS ACTIVITIES.

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Not only must the area have sufficient resources but it must also be able to coordinate its efforts with areas directly responsible for the performance of activities such as dissemination, training, operating the reporting channel and other procedures to ensure that the actions will be actually performed in consonance with the definitions set forth in the Program.

The internal department responsible for the Integrity Program must have the autonomy to take decisions and implement any actions necessary for its regular functioning and have the authority to make the necessary changes. In some circumstances, the suggested corrections may imply outlays, increased work, changes in the routine, or additional training in several areas of the company. Nevertheless, the senior management must support any significant risk mitigation corrections, even if they are considered to be costly by some sectors of the company.

The internal department must also be competent to ensure that any signs of irregularities are effectively investigated, even if they involve other sectors or senior management



personnel. It is also imperative that it be entitled to report, when necessary, directly to the company's highest hierarchy level.

Furthermore, in order to ensure independent participation of people working

in the integrity or related area, mechanisms must be adopted to protect these people against arbitrary punishment resulting from the performance of their regular duties.

### 3. Profile and risk analysis

An Integrity Program must be developed according to the company's size and characteristics, based on information such as:

- market sector in which the company operates in Brazil and abroad;
- organizational structure (internal hierarchy, decision-making process and the main duties of administrative and executive boards, departments or sectors);
- number of employees and other collaborators;
- level of interaction with the public administration, particularly considering the importance of processes for obtaining governmental authorizations, licenses and permissions within the company's activities, the number and amounts of contracts signed with public entities and bodies, the frequency and importance of using third parties in interactions with the public sector;
- equity interest involving legal entities as controlling, controlled, affiliated or
- consortium-member companies

The structuring of an Integrity Program depends not only on the company profile analysis but also on an assessment of risks that takes into account the characteristics of the markets in which the company operates (local culture, level of government regulation, corruption case history). The assessment must take into consideration mainly the likelihood of perpetration of frauds and acts of corruption within public bidding processes and procurement, and the impact of these wrongful acts on the company's activities. The rules, policies and procedures to prevent, detect and remedy the commission of any undesirable acts will be based on such identified risks.

The mapping of risks must be periodic, so that new risks can be identified, whether arising out of changes to the statutes in force or the issuance of new regulations, or out of internal changes in the company, such as entering new markets or business areas or opening new branches.



## RISK MANAGEMENT

### 1. Identifying risk situations

Mapping situations or factors that can facilitate, mask or contribute to the practice of wrongful acts against national or foreign public administration.

### 2. Creating risk mitigation policies

Based on this assessment, developing policies to increase control of risk situations and reduce the likelihood of practice of wrongful acts.

### 3. Periodic risk analysis and policy update

Changes in the risk scenario may lead to the need for adjustments and even reformulations of policies and controls established by the company.

The company must be alert to situations which can facilitate or mask the offer of an undue advantage to a public agent, or contribute to the perpetration of frauds within public bidding processes and government procurement. Please find below some risk situations mainly under the Anti-Corruption Law:

#### **Taking part in public bidding processes**

Taking part in public bidding processes and the execution of administrative contracts are situations with a high likelihood of frauds or corruption. Article 5 of Law N° 12,846/2013<sup>3</sup> sets forth several acts against public administration concerning these circumstances.

#### **Obtaining licenses, authorizations and permits**

When requesting licenses, authorizations or permits, employees or third parties may be inclined to offer undue advantages to public agents or accept solicitations from these agents to benefit the company.

<sup>3</sup> Art. 5 of Law 12,846/2013:

*"Wrongful acts against public administration are defined as follows (...):*

*(...)*

*IV - with respect to public bidding and government procurement:*

- a) to thwart or defraud, through an adjustment, arrangement or any other means, the competitive nature of public bidding processes;*
- b) to prevent, disturb or defraud the execution of any act related to a public bidding process;*
- c) to remove or try to remove a bidder by means of fraud or by the offering of any type of advantage;*
- d) to defraud public bidding processes or bidding-related contracts;*
- e) to create, in a fraudulent or irregular manner, a legal entity with the purpose of participating in a public bidding process or of entering into a contract with the public administration;*
- f) to gain undue advantage or benefit, in a fraudulent manner, from amendments or extensions of contracts executed with the public administration without authorization in the Law, in the notice of the public bidding or in the respective contractual instruments; or*
- g) to manipulate or defraud the economic and financial balance of the contracts executed with the public administration;"*

## Contact with public agents during inspections

Having contact with public agents during inspections may lead employees or third parties to offer undue advantages or accept solicitations to influence the outcome of the inspection.

## Hiring public agents

When hiring public agents, the company must be particularly diligent to make sure the selection has been made based on the public agent's expertise and with the purpose to provide technical advice about the company's decisions. Otherwise, it may seem that the public agent was hired to be given facilitated access to bodies or authorities or to obtain privileged information. Additional procedures may be stipulated to check whether the relevant remuneration is compatible with the quality and the importance of the services rendered by the public agent to avoid dissimulation of undue payment as provision of services. Furthermore, hiring people who have a relationship with public agents (family members, partners etc.) may mask the granting of undue advantage.

The company must also check if under the conflict of interests regulation the public agent can be hired.

## Hiring former public agents

When hiring former public agents, the company must make sure they are not obliged to remain suspended for a period (quarantine) from the sector where they worked when they were civil servants or public employees. Additional procedures can be established to check whether the relevant remuneration is in alignment with the quality and importance of the service rendered to prevent a previous promise of an undue advantage (made when the public agent was in office) - from being concealed as provision of services.

## Offering hospitality, freebies and gifts to public agents

Offering hospitalities, freebies and gifts as courtesy to public agents or people related to them may constitute the granting of undue advantage.

If the company has business relations with other countries or wishes to enter the international market, it must pay even more attention to this matter because of the risk of committing transnational bribery.

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TO OFFER OR PAY AN UNDUE MONETARY ADVANTAGE OR AN UNDUE ADVANTAGE OF ANOTHER NATURE TO A FOREIGN PUBLIC EMPLOYEE IN ORDER TO INFLUENCE HIS OR HER BEHAVIOR IN OFFICE CONSTITUTES TRANSNATIONAL BRIBERY.

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Companies should be cautious when offering and providing hospitality, freebies and gifts to public agents. Depending on the situation, those acts can be construed as an undue advantage not only under Law N° 12,846/2013, but also under other statutes, such as the FCPA<sup>4</sup> (Foreign Corrupt Practices Act) and the UK Bribery Act<sup>5</sup>.


## Setting unattainable targets and other ways of pressuring employees

Pressuring employees to achieve unrealistic targets, such as winning contracts, may lead them to make irregularities, in violation of the company's integrity-related principles and

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4 More information available at <http://www.justice.gov/criminal/fraud/fcpa/>.

5 More information available at <https://www.gov.uk/government/publications/bribery-act-2010-guidance>.



policies. Monitoring the company's target policy is important so that employees are not influenced to close deals no matter what, to the detriment of an ethical conduct.

### **Offering sponsorships and donations**

The distribution of sponsorships and donations may be used as a means to mask the granting of an undue advantage to a public agent. For this reason, it is imperative that the company know the institutions and the people who receive such benefits, i.e., that the company be alert to its own relationships with public agents and closely follow up on the results of these practices.

### **Hiring third parties**

The participation of third parties in relationships between the company and the public sector constitutes a high risk to the company's integrity, for third parties represent the interest of the company but they neither belong in the company's workforce nor are they directly subordinated to the company. According to Law N° 12,846/2013, companies can be accountable for all wrongful acts they may have committed in their benefit or interest. Thus, it is imperative to continuously monitor the conduct of those authorized to perform acts for the benefit or interest of the company, irrespective of the nature of their relationship.

### **Mergers, acquisitions and corporate restructuring**

Mergers, acquisitions and corporate restructuring may represent risk situations, for the company may bear liabilities for wrongful acts committed before the transaction. Hence, it is important that the company that did not contribute to the perpetration of such acts be aware of that risk and adopt effective prior verification procedures.

## **4. The structuring of rules and instruments**

### **4.1. Standards of ethics and conduct**

The standards of ethics and conduct constitute the behavior expected of all employees and managers of the company. It is advisable that such standards be included in the same document, which is commonly known as "code of ethics or conduct". The company may have two documents that complement each other: one that deals with the company's values and principles (code of ethics) and another which sets forth the conduct to be followed by the members of the company (code of conduct). It is important that such standards of behavior are clear and followed by everyone and that they are easily accessible to the external public, particularly business partners and clients.

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THE CODE OF ETHICS OR CONDUCT IS AN IMPORTANT TOOL FOR COMMUNICATION BETWEEN THE COMPANY, ITS EMPLOYEES AND SOCIETY WHEREBY THE COMPANY CAN SPELL OUT ITS EXPECTED OR FORBIDDEN BEHAVIORS.

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The content of the code generally comprises the values of the organization and the main rules and policies adopted by the company. Under Law N° 12,846/2013, the code of ethics or conduct must:

- a) spell out the company's principles and values related to ethics and integrity matters;
- b) mention the company's policies to prevent frauds and wrongful acts particularly related to the company's relations with the public sector;
- c) expressly forbid:
  - c.1) promising, offering or giving directly or indirectly an undue advantage to a national or international public agent or to a person related to him or her;
  - c.2) frauds in public bidding processes or national or international government procurement;
  - c.3) offering undue advantage to a competing bidder;
  - c.4) hindering the actions of inspection authorities.
- d) explain the existence and use of reporting and clarification channels regarding integrity matters;
- e) set forth a prohibition of retaliation to whistleblowers and mechanisms to protect them;
- f) contain provisions on disciplinary measures for violation of the company's rules and policies.

The code must be written in clear and concise language and be applied to the company's several target audiences. Above all, it must be a source of consultation for the company's internal public and, if applicable, business partners, regarding how to behave, how to decide and on what criteria decisions should be based whenever business integrity is involved. For such, the document must be periodically updated, according to the company's new needs resulting from changes in laws or regulations in the organization or in its areas of activities.

## 4.2. Risk mitigation rules, policies and procedures

The rules, policies and procedures to prevent and detect the occurrence of irregularities based on identified risks must be coordinated among each other and be easily understandable and applicable to the company's routine. For example, the policies must specify their objectives, procedures, target audience, periodicity, responsible units and monitoring methods.

Some types of internal controls may be used to mitigate several risks and, therefore, are common to several policies. That is the case, for example, of the adoption of several approval levels of certain procedures which, depending on the level of the risk identified, may include even approval by the area responsible for the Integrity Program.

These are some examples of risk mitigation policies that were mentioned in the previous chapter. Please bear in mind that each company must take into consideration its own profile and risks when implementing its policies.





## Policy on relation with the public sector

Several risks call for the need for the company to establish standards to determine how the company's representatives must act when dealing with public agents. A clear and effective public sector relations policy is able to mitigate risks related to the participation in public bidding processes and government procurement; tax payment; the obtainment of licenses, authorizations and permissions; inspection or regulation situations; the hire of current and former public agents, among other risks.

Several standards can be established to prevent the contact with public agents from facilitating the offer or granting of undue advantages. For example, rules that impose a rotation of employees who have had contact with public agents, so as to reduce the possibility of flaws, or rules that forbid conferences between only one employee of the company and public agents.

Another common type of control is the determination that processes involving high risk activities be subject to approval by a high hierarchy level or by the integrity department. For example, a single employee should not autonomously validate documents to be submitted for the company to participate in a public bidding process due to the risk of falsification or fraud in the process. Also, existing or former public agents and people related to them should not be hired unless emphasis is given to the technical nature of the hire. Nevertheless, caution should be taken so that an excessive number of approval levels is not created, which would dissipate responsibility and prevent the identification of the people responsible for such irregularities.

The company may also limit the power of employees in charge of sensitive transactions by adopting well-defined decision-making parameters. For example, the price definition in a proposal to participate in a bidding process must strictly follow pre-established technical parameters aligned with the prices charged by the company in similar situations. Limited power in stipulating price prevents the process from being influenced by arrangements between bidders, cooking the books etc.

## Policy on offering hospitality, freebies (brindes) and gifts

A relationship with the public sector often involves matters related to freebies, gifts and hospitality, so it should be given special attention as it requires the adoption of specific rules and policies by the company. The company must be aware that in general there are rules on the prices of freebies allowed to be given to public agents. Also, offering gifts or defraying travel expenses may be used to mask the granting of undue advantages, so the company's integrity policy must be adequate to avoid such situations.

Obviously, it is not the case that common and legitimate business practices should be prohibited. It is not infrequent that companies invite representatives of governments of countries where they wish to do business to show the company facilities or to present a product or technology. Invitations to business fairs and product exhibitions, receptions and social and business dinners, and offering gifts and presents on these and other occasions are commonplace.

In general, these practices are legitimate ways for the company to promote its work, spread its name and brand, and introduce its products and services to the external market. However, specific caution should be taken so that the invitation made or the



gift offered is not considered to be a wrongful act resulting in the imposition of fines and other sanctions.

Hospitality costs generally include expenses with travel, accommodation, food and transport which may be necessary, for example, to enable the presentation of products or company facilities to a business partner, invitations to events promoted by the company or even supported or sponsored social events. Depending on the situation or circumstances in which they occur, however, defraying a trip to a public agent who has decision powers over a given project the company wishes to approve may actually represent bribery to influence the result of the process.

It is imperative that the company create an internal policy on the offer and granting of freebies, gifts and hospitality which immediately establishes what is and what is not acceptable. Some guidelines should be followed by all companies regarding the creation of their policies, irrespective of the peculiarities of the market in which they operate:

- offering freebies, gifts and hospitality cannot be associated with the intention to obtain undue gains for the company, to recompense someone for a contract awarded or characterize an implicit or explicit exchange of favors or benefits;
- before offering any type of hospitality, freebies or gifts, the employee or representative must ensure that his or her act complies with the local rules and the legislation regarding transnational bribery (ex.: FCPA, UK Bribery Act, Law N° 12,846/2013) and

the policies and internal rules of the legal entity of the person who will receive the hospitality, freebie or gift;

- expenses must be reasonable and in accordance with the local legislation, the limits of which must be stipulated by the company itself;
- no type of hospitality, gifts or presents may be provided with unreasonable frequency or to the same receiver in a way that may suggest suspicion or impropriety;
- invitations involving travel and related expenses must be clearly associated with the company's activities whether to promote, show or present products and services or to enable the performance of potential contracts;
- indicators must be created for the employee himself to be able to develop his critical ability to assess how reasonable it would be to propose a given action regarding hospitality or an offer of gifts or presents. For example, employees can be guided by a basic list of questions: what is the intention involved? Besides promoting the company's business, does the action involve anything that should be kept in secret? Would reporting the situation to the external public - for example, as a news article of a high circulation newspaper - represent a drawback to the company? Would the company be misinterpreted?
- employees or representatives must be told who in the company they should turn to should they have any questions about practical situations involving hospitality, freebies or gifts.



## Policy on accounting records and controls

Establishing strict accounting records procedures is essential for identifying improprieties. Bribery as well as other wrongful practices is usually disguised in the accounting records through legitimate payments such as commissions, consultancy fees, travel expenses, education grants, entertainment etc.

Under Law N° 12,846/2013, in the case of accounts in situations that involve risks to integrity, the company must establish control rules that ensure more detailed accounting records, that is, analytical records and with an elaborate background history. For example, they may include the reasons for the need for hiring certain services, information on the price paid and the market price, reasons for payment of amounts above the market price, information on the delivery of a product or service, and comments on the quality of the service provided vis-à-vis the price paid.

The accounting records must be reliable so that they allow for the monitoring of expenses and revenues, and facilitate the identification of any wrongdoings. For example, the company must consider the possibility of nominating an area or a person to be in charge of monitoring accounting records in situations that involve higher risks to integrity. Identifying atypical characteristics of transactions or changes in the patterns of revenues (an unpredictable sharp increase in the number of administrative contracts in a given region, for instance) or in the patterns of expenses (hiring services for a price higher than the market price or a sharp reduction of the amount paid for a certain tax, for instance) may indicate that something wrong is going on.

Finally, considering the number and complexity of their processes, it is advisable that large companies conduct independent external audits of their accounting records.

## Policy on hiring third parties

To reduce the likelihood of the company being involved in cases of corruption or fraud in bidding processes or government procurement because of acts performed by third parties, it is essential to conduct appropriate checks for hiring and supervising suppliers, vendors, intermediary and associate agents, among others, particularly in situations posing a high risk to integrity.

The immediate purpose of a third party hire is not to mediate relationships with the public administration. However, that may happen during the performance of a contract, which would pose risks to the company. For example, hiring international shipping services requires payment of tax at the border. Accordingly, the service provider could commit wrongful acts to benefit its client and hence be held liable under the Anti-Corruption Law.

It is advisable that before hiring a third party, a company should check whether the individual or legal entity has any records of wrongful acts against the public administration. If the third party is a legal entity, the company should also check whether it has an Integrity Program that can reduce risks of irregularities and whether the legal entity agrees with the company's ethical principles.

The company must also consider the possibility of using contract clauses setting forth the following obligations of the third party, among others:

- a commitment with integrity in public-private relationships and with the standards and policies of the company hiring its services, including a provision for application of its Integrity Program, if that is the case;
- contract termination in the event the third party commits a wrongful act against national or international public administration;
- payment of compensation should the company be held responsible for wrongful acts committed by the third party.

The company hiring the third party must also adopt ways to periodically check whether the third party is acting according to what was agreed to under the contract and whether it acts against the company's own values or the law.

There are several red flags of the possibility of third parties being involved in frauds or the granting of undue advantages to public agents, such as requests for payment to the third party in an unusual manner (in cash, in foreign currency, to several accounts, to accounts in countries other than the country of incorporation of the company or of the provision of services) and agreements with unclear purposes. Another red flag is the use of "success clauses", which provide that the third party will only be paid (or will receive an additional amount) if it succeeds in performing the services. Success clauses may make the third party feel pressured to resort to any means to increase its earnings. Furthermore, the additional payment for success may serve to mask in the accounts the undue advantage provided to the public agent.

## Policy on merger, acquisition and corporate restructuring

To prevent responsibility for wrongful acts committed by another company with which the company is involved by virtue of a merger, acquisition or corporate restructuring, the company should adopt measures to check whether the other company is or has been involved in wrongful acts against national or foreign public administration, and whether it has any vulnerabilities that pose risks to integrity.

After verifying signs of irregularities (through the examination of documents, corporate books, financial statements, expiration dates of licenses and authorizations, processes and procedures, research on public and internet databases and other media), the company may identify the need for conducting more detailed investigations which may enable it to decide whether or not to proceed with the merger or the acquisition. If the company decides to proceed, it should take measures according to the parameters of its Integrity Program, which may include checking whether the target company has cured the problems, applied disciplinary sanctions, reported to the public administration and effectively cooperated with the investigations.

After the conclusion of a corporate transaction, the rules and procedures of the Integrity Program must be analyzed to be applied as many adaptations may be necessary, depending on the vulnerabilities, the structure and the areas of activity of the new company. By adopting these measures, the company shows its continuous commitment to business integrity.



## Policy on sponsorship and donation

A company that is committed to business integrity must pay attention to the background of those who will receive its financing, sponsorships or donations, to prevent its image from being associated with frauds or corruption.

Should the company decide for this type of action, it is advised to have specific policies that establish rules and criteria for the selection of the beneficiaries as well as concerning monitoring the projects approved. Even if it decides not to make any philanthropic donations, or sponsor or finance political parties, it is imperative that the company clearly publicize this decision to all of its employees, third parties and society in general, by expressly forbidding this practice in its code of ethics or in another document that is more appropriate for this. Anyway, it is essential that the company establish and publicize the procedures to be adopted in actual situations.

If the donation or sponsorship have a high risk profile, it is important that the company create mechanisms to check whether the relevant amounts are being used for the legitimate purposes for which they were initially allocated. Regardless of the risk profile, the company may adopt contract clauses that establish a commitment to the correct use of resources. Furthermore, they may provide for the imposition of sanctions in the case of violation of the commitments undertaken. Moreover, the company must check whether the beneficiary institution has a connection with a public agent, as the donation or sponsorship may be used to mask the granting of undue advantage.

Whichever the case, the prior checking of a possible background in a case of corruption or fraud is an important stage in the process for approval. Likewise, maintaining transparency in donations,

sponsorships and financing is another mechanism that helps prevent wrongful acts and increase control of any such transfers.

## 4.3. Communication and Training

Investing in communication and training is essential for an effective Integrity Program. The values and guidelines of the main integrity policies adopted by the company, which are usually included in the code of ethics and conduct, must be widely disseminated and accessible to all stakeholders. Managers, employees, and even, as the case may be, third parties in charge of applying the policies, must be appropriately trained.

### Communication

The code of ethics or conduct and any other documents dealing with business integrity must be available at places that are easily accessible for all, such as the internet or the company's intranet. Due to the nature of their work, some employees cannot have access to computers, so the company must arrange for effective strategies of dissemination other than computers, such as printed materials or fixing the documents at visible places for all.

The documents must be written in a way that can be understood by its target audience. The guidelines must be clearly and precisely conveyed without any ambiguous messages. Also, if the company's headquarter is located abroad, at least part of the documents must be available in the language spoken at the relevant place, mainly those related to risks identified at that place.

Dissemination can be done through internal newspapers, posters, e-mail and news in the company intranet. It is important that employees are aware of reporting channels, whistleblower protection policies and the possibility of reporting suspicious cases. To ensure that all will be aware of the code of ethics and integrity policies, the company may, for example, request that employees sign a statement of awareness.

Lastly, the company must also maintain communication channels to provide guidelines on and clarification to queries regarding aspects of the Integrity Program. The channels must be free and easily accessible to all in the company and open to third parties and the public, if that is the case.

## Training

The company must have a capacity-building plan to train people on the content and on practical aspects of the integrity guidelines and policies. The rules will not be effective unless people are able to apply them. All in the company need to be trained on the values and general guidelines of the Integrity Program.

With regards to specific policies, such as rules to prevent wrongful acts within bidding processes and government procurement or accounting records control rules, the company may offer specific training particularly targeted at people who deal directly with such activities.

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IT IS IMPERATIVE THAT THE COMPANY KEEP A REGISTER OF THE TRAINING PERFORMED, CONTAINING THE DETAILS OF ALL WHO HAVE BEEN TRAINED AND ON WHAT TOPICS, AS THIS MAY BE NEEDED TO PROVE ITS EFFORTS IN IMPLEMENTING THE INTEGRITY PROGRAM.

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For greater effectiveness, the training should include practical situations, case studies and guidelines on how to solve dilemmas. Periodic training is recommended so that new employees can be trained and already trained employees can be updated.

It should also be stressed that the company must ensure that employees actually attend the training sessions and it may make attendance compulsory in some cases. Furthermore, attendance incentives should be put in place, such as attaching career promotion to attendance to periodic Integrity Program training.

## 4.4. Reporting Channels (hotline)

A company with a well-structured Integrity Program must offer reporting channels, thus increasing the possibility of awareness of irregularities.

The company must assess the need for adopting different means for receiving reports, such as reporting comment boxes, telephone or Internet. Companies whose employees do not have computers with Internet access must provide alternatives to online reporting. It is also imperative that the reporting channels be accessible to third parties and the external public.



To secure effective reporting channels, the company must secure a policy for the protection of whistleblowers acting in good faith, for example, anonymous reporting and prohibition of retaliation against whistleblowers.

The company may also provide for confidentiality rules to protect those who, albeit identified in the company, may wish to remain unknown to the public.

Compliance by the company with the rules of anonymity, confidentiality and prohibition to retaliation is an essential factor for the company to gain the trust of those who have something to report. Furthermore, ideally, the company should have means for the whistleblower to follow up on the progress of his report, as transparency in the process can confer greater credibility to procedures.

## 4.5. Disciplinary actions

A provision for application of disciplinary measures resulting from the violation of the integrity rules is important to secure seriousness to the Program, which must not be limited to a set of rules “on paper only”. Even more important is assurance that the measures established will be applied in the event of demonstrated irregularities.

The company must provide written rules that specify the disciplinary measures established and the cases to which they apply. They must also specify the procedures adopted as well as which area is responsible for investigating the facts and responsibilities.

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DISCIPLINARY RULES MUST SET FORTH THE AREA OR PERSON  
RESPONSIBLE FOR DECIDING ON THE APPLICATION OF SANCTIONS  
AND DESCRIBE FORMAL PROCEDURES TO BE FOLLOWED.

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The sanctions set forth must be in proportion to the type of violation and the level of responsibility of the parties involved. Precautionary measures may also be adopted, such as the preventive removal of managers and employees who may hamper or influence due investigation into the report.

The company must ensure that no manager or employee will be spared from suffering disciplinary sanctions by virtue of his or her position in the company. That is essential to maintain the credibility of the Integrity Program and employee engagement. It is important to realize that the rules apply to all and that all are subject to disciplinary measures in the event of violation.

## 4.6. Remediation actions

Signs of the occurrence of wrongful acts against national or foreign public administration should lead the company to initiate an internal investigation, based

on which the applicable measures must be taken. Internal measures should focus on procedural aspects to be adopted in the investigations, such as: deadlines, persons responsible for investigating the reports, identification of the department or authority to which or whom the results of the investigations must be reported.



If the investigation confirms the occurrence of a wrongful act involving the company, measures must be taken to secure the immediate interruption of the irregularities, provide solutions and repair the effects caused. For example, the company can improve the program to avoid a repeated problem or the occurrence of new faults. It may also apply disciplinary sanctions on the parties involved. The adoption of these measures should be spread to employees and third parties to stress to the public that the company will not tolerate any wrongful acts.

The company must also use the data obtained in the internal investigation to promote an effective cooperation with the public administration. Notifying the appropriate authorities about the wrongful act, providing information and clarifying questions may benefit the company in the event of an administrative liability proceeding<sup>6</sup>.

Hence, ideally, the company should previously identify the bodies responsible for investigating and punishing such wrongdoings, according to the sphere and power involved, and the Integrity Program should establish the procedures to be followed concerning cooperation with investigations pending in government bodies. In some cases, the company's participation is concentrated in a given municipality; in other cases, it is simultaneously related to the local and the federal governments; in other cases, it can have repercussions in other countries, given the broadness of jurisdiction in some foreign legislations.

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<sup>6</sup> According to article 7, item VII of Law N° 12,846/2013, companies may be imposed reduced sanctions if they cooperate to the investigations. In the case of execution of a leniency agreement, effective cooperation is a requisite that constitutes identifying the parties involved in the offense and rapidly obtaining information and documents that prove the wrongful acts under investigation (article 16, I and II).

The company may also conduct independent investigations to secure the credibility and impartiality of the information obtained. Furthermore, the scope of investigation must be proportionate to the scale of the irregularities. If one of the involved parties works in other branches or areas of the company, the scope of investigation might have to be broadened to check if the wrongful acts were replicated in other situations.

## 5. Continuous monitoring strategies

The company must develop a monitoring plan to check the effective implementation of the Integrity Program and enable the identification of flaws which may need to be corrected or improved. A continuous monitoring of the Program also allows the company to promptly respond to any new risks that may arise.

Monitoring may be done upon the collection and analysis of information from several sources, such as:

- periodic reports on the routine of the Integrity Program or related investigations;
- a pattern of complaints from the company's clients;
- information obtained from the reporting channel;
- government regulatory or inspection agency reports.

Besides analyzing the existing information, the company may, for example, interview employees to check if they are aware



of the company's values and policies, if they have been following the stipulated procedures and if the training has brought practical results.

In the event of non-compliance with the rules or the existence of flaws that hamper the expected results, the company should take measures to solve the problems identified.

Besides regular monitoring, depending on its characteristics, the company may submit its integrity policies and measures to an audit to ensure that the established measures are effective and in accordance with the company's needs and specific characteristics.

Irrespective of any specific measures adopted by the company, the monitoring process requires that special attention be given to some matters such as:

- Has the company been properly monitoring the application of the policies related to its main risk areas?
- Has the internal department responsible for the Integrity Program been conducting the monitoring process objectively, independently and autonomously with regards to the monitored areas?
- Does the monitoring process cover all the areas of the company involved in the implementation of the Integrity Program?
- Have the results indicated in previous audits, Integrity Program monitoring processes and other review mechanisms been considered and corrected?
- How has the company responded to the questions identified during the monitoring process? Are action plans developed for the correction of the identified flaws? Is there an area in charge of overseeing action plans?





# Conclusion

It should be emphasized that the guidelines herein presented address the basic elements of an Integrity Program. Therefore, each company must consider the need for adapting an integrity program to its specific characteristics. A program with measures that not personalized according to the specific characteristics of the company tends to be ineffective and may be considered inexistent in a liability proceeding.

Furthermore, the five pillars which have been spelled out throughout this document do not present satisfactory results if they are considered or applied separately; but should rather operate as a unit and a system so as to enable the continuous improvement of the company's Integrity Program.

## INTERDEPENDENCE BETWEEN THE FIVE PILLARS OF THE PROGRAM

The Integrity Program should be understood as an organic structure that will only work provided that its pillars are harmoniously connected. For example, its continuous monitoring or a change in the company's risk scenario may indicate the need for revision of some rules and instruments. In turn, the commitment of the senior management and the autonomy of the internal department responsible for the Program are determining factors for the implementation of the established rules and instruments, particularly those related to the application of sanctions and remediation of irregularities.

The assessment of the Integrity Program may be used both for the application of sanctions - as a factor for fine reduction - and the execution of a leniency agreement. In the latter case, the company must undertake the commitment to adopt, apply or improve the Integrity Program in its future transactions.

Accordingly, in the event of an administrative liability proceeding, the Integrity Program will constitute an element of defense for the company, thus, the importance of giving special attention to documenting any and all implemented actions so as to prove their effectiveness. It is also imperative that the company be familiar with the regulations on this matter, such as Ordinances N° 909<sup>7</sup> and N° 910<sup>8</sup>/2015, issued by the Office of the Comptroller General (CGU).

Lastly, it is undeniable that the sanctions and requirements established in the Anti-Corruption Law have brought to light important reflections on the role of companies in the fight against corruption. Nevertheless, more than just avoiding possible sanctions, companies should realize that investing in integrity is good for the business itself, regardless of the aspect of attribution of responsibility. Companies that are committed to integrity have been

<sup>7</sup> Ordinance N° 909, of April 7, 2015 provides for the assessment of integrity of programs of legal entities. A company that is involved in an investigation of a wrongful act under Law N° 12,846/2013 must submit two basic documents for assessment of its Program: the profile report and the compliance report

<sup>8</sup> Ordinance N° 910, of April 7, 2015, defines the procedure for investigation of administrative responsibility of the legal entity by means of the Administrative Accountability Procedure (PAR) and for the execution of the leniency agreement.



increasingly sought after by the market. These companies have a competitive advantage over their competitors and differential criteria in obtaining investments, credit or financing. Building a business environment of integrity allows for growth into a market where ethical companies gain a competitive edge in the corporate world.



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