



Network Brazil

# CADERNO DO PACTO

VOLUME 2 • ANTI-CORRUPTION WORKING GROUP • DECEMBER 2015



2030 AGENDA:  
ETHICS IS A  
SUSTAINABLE  
DEVELOPMENT  
PURPOSE

ADVANCES AND  
CHALLENGES IN TWO  
YEARS OF THE CLEAN  
COMPANY ACT

*COMPLIANCE:  
THE IMPORTANCE  
OF INTEGRATING  
DISCOURSE WITH  
PRACTICE.*

HOW TO CONDUCT  
RISK ASSESSMENT  
ACCORDING TO THE  
BUSINESS SCENARIO

## ANTI- CORRUPTION

CULTURE OF INTEGRITY AND ETHICS IN BUSINESS



Network Brazil

The UN GLOBAL COMPACT NETWORK BRAZIL thanks the organizations that sponsored this edition of the CADERNO DO PACTO: ANTI-CORRUPTION, thus allowing this knowledge to be shared through printed and digital copies.

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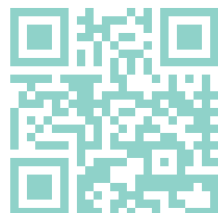


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# ETHICS DEFENSE



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We are going through a historical moment in Brazil, with significant changes in law for the purpose of fighting corruption. We had a major advancement with the Clean Company Act or ANTI-CORRUPTION Act (Act no. 12,846/13), as Brazil can comply with international ANTI-CORRUPTION treaties the country has signed, such as OAS, OECD and the UN Global Compact.

The private sector is a relevant part of this fight against corruption, so it must have a robust integrity program. The topic of compliance must demand visibility and explicit support by the organizations' senior managements. This must permeate the entire company or institution and may be promoted on all its levels. Each individual must know that is part of a system that is against corruption and fraud so its his or her duty.

To paraphrase UNESCO: "Since corruption is born in the minds of men, it is in the minds of men that the defenses of ethics must be constructed.

The Global Compact in Brazil is an ally to help in this search for a more transparent and righteous society, providing educational material on the topic and conducting workshops on how to structure an integrity program and assess risks in companies of different sizes and sectors. We participate actively both in domestic and international ANTI-CORRUPTION mobilization and engagement events, along with several partners, such as Ethos Institute.

We would like to invite you to read this Global Compact Network Brazil notebook, where you will find information, testimonies and considerations on how to advance this topic.

Enjoy your reading.

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# JOIN US



OLGA PONTES

Compliance, Risk Management and Ethics Line at Braskem, Coordinator of the UN Global Compact Network Brazil Anti-corruption working group

Corruption is a major obstacle for social and economical development all over the world.

Corruption is bad for companies, societies and governments. It is essential to fight it. In this regard, new ANTI-CORRUPTION laws and regulations are being approved all over the world. Simultaneously, companies are beginning to take robust and effective actions to mitigate legal and reputation risks in order to ensure the sustainability of their business.

The anti-corruption Principle of the United Nations Global Compacts summons companies to fight all forms of corruption by aligning their strategies and operations for that purpose. The ANTI-CORRUPTION Theme Group of the Global Compact Network Brazil acts by supporting companies in those efforts. We promote learning spaces, constructive dialogue and exchange of experiences, thus influencing persons and companies and allowing them to understand the risks and opportunities involved in the fight against corruption. To achieve this, we have conducted workshops to discuss the importance of effective compliance programs, presenting the best practices for prevention and mitigation of corruption risks. We provide training to conduct a corruption risk assessment and translate important Global Compact documents into Portuguese.

In this notebook you will find a summary of the actions by this working group and interesting expert considerations about the legal framework and entrepreneurial challenge in the fight against corruption. Share this publication on your relationship network and make the Global Compact values and principles accessible to other audiences.

If you are interested in exchanging experiences and discussing best ANTI-CORRUPTION practices, if you wish to engage in collective actions and influence companies and leaders on matters of transparency and integrity, we invite your company or organization to join this working group.

# WHAT IS THE GLOBAL COMPACT?

FOR 15 YEARS, THE WORLD'S LARGEST CORPORATE CITIZENSHIP INITIATIVE HAS BEEN WORKING TOWARDS AN AGENDA FOR SUSTAINABLE DEVELOPMENT AND THE DEVELOPMENT EVEN BETTER COMPANIES



Created by the United Nations to encourage the business community to foster an inclusive, sustainable global economy, the Global Compact is the world's largest voluntary corporate responsibility initiative. It operates in 162 countries and has over 13,000 participants, including companies and non-profit organizations.

It works to encourage businesses and the society to build shared value by adopting the Ten Principles universally accepted in the fields of human rights, labor, the environment, and the fight against corruption.

Signatories that join the Global Compact — small to large organizations in the business, academic, and civil society sectors — are given direct access to the UN's expertise in terms of sustainability and the chance to actively help put together the UN's Development

Agenda in collaboration with governments and the civil society. To that end, they assume the commitment of publishing an annual report on the progress as they implement the Ten Principles. By so doing, they contribute to the transparency, dialogue, and global knowledge about the topic.

Since September 2015, the Global Compact has been headed by Danish Lise Kingo. She has replaced German economist Georg Kell, who had helped found the Compact along with the former UN General-Secretary Kofi-Annan. Deputy Chair of the Danish Nature Foundation, Lise is a member of the boards of Grieg Star Group and C3 Collaborating for Health, and chairperson of the Danish Council for Corporate Social Responsibility.

#### THE GLOBAL COMPACT IN BRAZIL

The Global Compact believes in many challenges and opportunities for companies are specific to each country's circumstances and cultural context. Therefore, on a national level the Compact operates through its local networks. Founded in 2003, the Brazilian Global Compact Network is the fourth largest local network in terms of the number of participants. More than 700 companies and non-profits organizations have signed in.

Head organizations quartered in an office shared with the UN in São Paulo, the Brazilian Network works in collaboration with the United Nations Development Program (UNDP) and is managed by a committee set up by 38 major sustainable organizations and leading companies in strategic sectors for the Brazilian economy.

The Brazilian Network's participants can take part in local initiatives and opportunities such as working groups, public surveys, and collaborative projects, aside from helping drafting and promote business principles, for instance. Internationally, they can join platforms such as Caring for Climate.

#### GLOBAL COMPACT IN THE WORLD

162  
countries

13,000  
signatories

+50  
local networks in all  
continents

#### AND IN BRAZIL

4<sup>th</sup>  
local network

700+  
signatories\*

430+  
companies

270  
non-profit  
organizations

\*In October 2015

# BRAZILIAN NETWORK WORK GROUPS

## VEHICLES OF KNOWLEDGE AND COORDINATION TO PUT IDEAS AND PRINCIPLES IN PRACTICE

Created to implement the Global Compact's values, the Working Groups (WGs) are genuine collaborative laboratories dedicated to building a culture of sustainability and innovation within organizations and communities.

Their activities include discussing relevant topics for business, training, and improvement strategies through workshops and webinars, disseminating good practices and knowledge, and above all encouraging partnerships by means of collaboration projects with institutions that work on intersecting topics.



### ENERGY AND CLIMATE

Coordinated by:  
**CPFL  
ENERGIA**

Created to be a hub of influence on society and a proactive knowledge-seeking group, this WG has encouraged the engaged companies to lead the discussion of topics like mitigation, adaptation, and carbon pricing. One of its strategies is to coordinate with other climate-oriented business initiatives to carry out joint actions such as events, documentaries, and COP participations. Internationally, it works in line with the Caring for Climate platform. Energy-wise, it encourages partnerships and projects on topics such as energy efficiency and the increase of renewable sources in the country.



### ANTI-CORRUPTION

Coordinated by:  
**BRASKEM**

Focused on the ethics and good governance of sustainability, the WG has provided training in compliance systems based on its own methodology developed by its members in an effort to mitigate risks. It also translated the Guide for Anti-Corruption Risk Assessment into Portuguese and released it in October 2015, and promoted the Fighting Corruption in Sport Sponsorship and Hospitality guide.



### HUMAN RIGHTS AND LABOR

Coordinated by:  
**ITAIPU  
BINACIONAL**

Dedicated to the social aspect of sustainability, the WG has been discussing the role of corporations in guaranteeing human rights in the communities where they do business. Its agenda includes issues like gender equality, immigrants and refugees, rights of LGBT people and people with a disability, fight against racism and forced labor, and promoting the Ruggie Framework, which guides the application of human rights to the corporate environment.



### FOOD AND AGRICULTURE

Coordinated by:  
**AMAGGI**

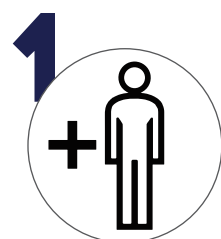
The WG has worked to promote the six Food and Agriculture Business Principles dedicated to food security, respect for the environment and human rights, knowledge transfers, and other topics. The principles were created based on 20 global consultations including over 1,000 businesses, UN agencies, and civil society organizations. In Brazil, the WG has sought to secure the sector's business leaders' commitment to the Compact's principles.



# THE 10 PRIN CIPLES' FOCUS

THE GLOBAL COMPACT  
ADVOCATES TEN  
UNIVERSAL PRINCIPLES  
DERIVING FROM FOUR  
DECLARATIONS MADE  
BY THE UN: IT INVITES  
COMPANIES TO BUILD  
A NEW ECONOMY  
GROUNDED ON MORE  
VALUES AND A MORE  
SUSTAINABLE FUTURE

## HUMAN RIGHTS



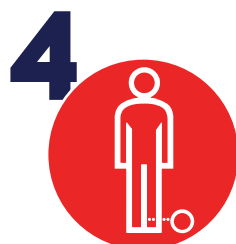
Business should support and respect the protection of internationally proclaimed human rights



Make sure they are not complicit in human rights abuses



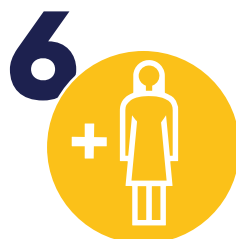
Businesses should support freedom of association and the effective recognition of the right to collective bargaining



The elimination of all forms of forced and compulsory labor



The effective abolition of child labor



The elimination of discrimination in employment and occupation



Businesses should support a precautionary approach to environmental changes



Undertake initiatives to promote greater environmental responsibility



Encourage the development and diffusion of environmentally-friendly technologies

## ANTI-CORRUPTION



Businesses should work against corruption in all its forms, including extortion and bribery

### THE GLOBAL COMPACT'S IMPACT

Over 15 years advocating for its Ten Principles, the Global Compact has obtained significant changes to corporate practices, the corporate operating environment, and dominant worldviews. The history of this work and these changes is outlined through in 16 findings across those three areas and examined in the report *Impact: Transforming Business, Changing the World*, released this year as part of the celebrations of its 15th anniversary and available at [unglobalcompact.org/library](http://unglobalcompact.org/library).

Considering the Compact's efforts to change our perception of the purpose and responsibility of business and inspire a new narrative around business as a force for good, it is almost impossible for a global company today to avoid having sustainability on the agenda. But there is still a long way to go and the publication outlines three pathways for the future.

# THE AGENDA FOR 2030

IN SEPTEMBER 2015, AT THE 70<sup>th</sup> SESSION OF THE UN GENERAL ASSEMBLY, WORLD LEADERS FROM THE 193 COUNTRIES PLEDGED TO ADOPT A NEW GLOBAL AGENDA. THE SUSTAINABLE DEVELOPMENT GOALS INCLUDE 17 COMMITMENTS COMPRISING 169 TARGETS SEEKING TO ELIMINATE POVERTY, FIGHT INEQUALITY AND INJUSTICE, AND OVERCOME THE CHALLENGE OF CLIMATE CHANGE. IN ALL COUNTRIES. FOR ALL PEOPLE



[www.globalgoals.org](http://www.globalgoals.org)

“THE NEW AGENDA IS A PROMISE BY LEADERS TO ALL PEOPLE EVERYWHERE. IT IS A UNIVERSAL, INTEGRATED AND TRANSFORMATIVE VISION FOR A BETTER WORLD. AN AGENDA FOR SHARED PROSPERITY, PEACE AND PARTNERSHIP. IT CONVEYS THE URGENCY OF CLIMATE ACTION. IT IS ROOTED IN GENDER EQUALITY AND RESPECT FOR THE RIGHTS OF ALL. ABOVE ALL, IT PLEDGES TO LEAVE NO ONE BEHIND. THE TRUE TEST OF COMMITMENT TO AGENDA 2030 WILL BE IMPLEMENTATION. WE NEED ACTION FROM EVERYONE, EVERYWHERE.”

BAN KI-MOON, UN General Secretary.

In 2000, the United Nations set eight Millennium Development Goals to fight extreme poverty and improve the life of communities across the world. The goals allowed 700 million people to escape poverty. As countries acknowledged such success, they agreed this agenda should be expanded to deal with the challenges of a more complex, and connected world. During the Conference on Sustainable Development, or

Rio+20, a working group was set up to present the recommendations of a new agenda for the following 15 years.

The product of a negotiation process that involved unparalleled participation by the civil society, the 17 Sustainable Development Goals, which Pope Francis has called “an important beacon of hope,” seek to meet universal needs in five areas: People, the Planet, Prosperity, Peace, and Partnerships.



# RESPON- SIBILITIES WITH OPPOR- TUNITIES

COMPANIES ALIGNED  
TO THE SDG ARE MORE  
COMPETITIVE.

# 95%

of those surveyed  
in Brazil prefer  
products and  
services from  
companies  
aligned with  
the SDs.

In a survey coordinated by the PwC consulting company among businessmen, executives and the general public in 16 countries, Brazil tops the rank of services and products provided by companies working in alignment with the Sustainable Development Goals (SDG). Among those surveyed, 95% say they prefer companies supporting the SDG with actions to improve the lives of everyone in the planet. India comes in second (87%), followed by Argentina (86%), China (85%) and South Africa (85%).

Another prominent finding is the number of professionals committed to SDG in Brazil. 60% of those surveyed in various fields of knowledge state that the SDG are important to business, both locally and globally.

The SDG commitment rank is topped by Argentina: 80% believe that companies should take the SDG in consideration when making a deal. Next comes Malaysia (70%), South Africa (69%), United Kingdom (67%) and Germany (66%).

The survey also found that the percentage of professionals concerned with the SDG is nearly three times that of the general public: 92% of the surveyed stated that the topic is important for the planet, against only 33% of the general public. Until 2030, 71% in the private sector intend to take actions focused on the SDG. However, only 13% of the surveyed businessmen and executives said they found the right tools to achieve the SDG in their workplace.

The survey heard 2015 professionals in the fields of communications, chemistry, energy, engineering, finance, health, construction, retail and technology of the five continents, between June and July this year.

See the survey in its entirety:  
<https://goo.gl/cSjcvj>



## BUSINESS COMPASS

Publication teaches how  
to integrate the SDG

Produced by the Global Compact, the Global Reporting Initiative (GRI) and the World Business Council for Sustainable Development (WBCSD), SDG Compass is a publication helping to identify business opportunities presented by the Sustainable Development Goals and also to reduce risks and include sustainability in the core of the organizations' strategy through these Goals. Companies are encouraged to determine their priorities based on the assessment of their positive and negative aspects under the SDG, considering their value chain.

Available at:  
<https://goo.gl/2ZlfnV>

# A MORE ETHICAL FUTURE

DIALOGUE BETWEEN THE  
PRIVATE SECTOR AND THE  
UNDP IN THE ALIGNMENT  
OF THE SDG 16.



ÉRICA MÁSSIMO MACHADO  
UNDP Brazil Program Analyst

In the definition of the Sustainable Development Goals, fight against corruption and promotion of good governance are contemplated in SDG 16: promote peaceful and inclusive societies for a sustainable development, provide access to justice for all and build effective, responsible and inclusive institutions at all levels. Among its 12 targets, those directly related to the topic are:

- **Target 16.5:** substantially reduce corruption and bribery in all their forms;
- **Target 16.6:** develop effective, accountable and transparent institutions at all levels;
- **Target 16.7:** ensure responsive, inclusive, participatory and representative decision-making at all levels;
- **Target 16.10:** ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

For its reach regarding the framework of public policies, programs and projects, the Brazilian government stands out on an international level for its innovative approach to the issue of corruption, for instance, with the Access to Information Act (Act 12,527/2011) and the ANTI-CORRUPTION Act (Act 12,846/2013) and regulations thereof. Beyond the legal framework, greater concern for and mobilization regarding governance,

risk management and compliance program is noticeable in the private sector, especially in large companies, thus evidencing a mature understanding of an integrity culture.

In spite of the efforts and advancements both in the public and private sectors, the United Nations Development Program (UNDP), understands that corruption in Brazil is still endemic. It is also important to understand or even describe corruption, how it happens and its impacts. Under this perspective, the UNDP has been working focused on actions to prevent and monitor its effects, as it understands that this is one of the possible means to perform early risk mapping and management and thus create a protection framework both for companies and their employees.

The UNDP approaches corruption prevention based on four dimensions: global, institutional, collective and individual. Corruption prevention must be viewed as an integrated action of several instances and management levels base on discussion and construction methods leading to greater individual, collective and institutional commitment. The participation of individuals makes the most of individual and even collective knowledge, while creating greater responsibility, promoting the institutional culture of good governance and allowing for diffuse risk control. Thus, the methodologies and tools developed by the UNDP for its work in this field favor participatory, collectively designed process, focused on specific market sectors. The sectoral focus enables the dialogue between peers and facilitates the exchange of experiences. It also allows the entire productive chain to work in an integrated fashion.

We believe that this exchange of knowledge may be effective for the attainment of the SDG 16 goals, which is essential to prevent corruption from continually reinforcing the inequality bases, thus compromising Brazil's democratic principles.



# COMPANIES ARE PART OF THE SOLUTION

## INTERVIEW: OLAJOBI MAKINWA, HEAD OF ANTI-CORRUPTION AND TRANSPARENCY INITIATIVES FOR THE GLOBAL COMPACT



For the Head of Anti-corruption and Transparency Initiatives for the Global Compact, Olajobi Makinwa, the definition of “corruption” – misuse of entrusted power, almost always motivated by greed – applies not only to politicians and public officials, but also company CEOs and CFOs. In this interview, she assesses the efforts to engage companies in the fight against corruption.

### IS THE ORIGIN OF CORRUPTION ALWAYS THE GOVERNMENTS?

→ Many companies believe that it is the government that steals, solicits bribe, practices extortion and that the companies are always the victims. But the companies often instigate such bribery. As they are part of the problem, they are also part of the solution. The action

against it begins by refusing bribes and creating policies to mitigate such acts. And it is necessary to communicate these policies to the employees, so they are engaged and it becomes a collective action.

### ARE COMPANIES MORE OPEN TO DISCUSS CORRUPTION?

→ They have realized that it is good to share experiences, work together, as all of them face the same risks and issues. Sharing what is learned is what the Global Compact tries to do by means of the 10th Principle. We have a Working Group on a global level made up of companies of different regions and countries to establish and agenda and priorities for each year, determine the challenges and tackle them together. If you look at the companies’ progress report, few

reported corruption issues. It is still not the way we would like it to be, but it grew that way. Likewise, a few years ago there were no company policies for their suppliers and today they are expanding. These are important changes, but they must take shape. My hope is to have a large number of them engaged, not only to comply with the law, which is good, but also for believing in doing business with integrity, which strengthens their own brands.

### HOW DO YOU EVALUATE THE RESULTS ALREADY OBTAINED WITH THE 10TH PRINCIPLE OF THE GLOBAL COMPACT?

→ Eleven years ago, when the Global Compact added a tenth principle asking companies to help fight corruption in all its forms, you and I could not be talking about corruption in the private sector. No one talked about it; it was a thing of the governments. But the companies realized that corruption is a risk for them – there are legal, reputation and financial risks. Now they are evaluating corruption not only because of the risks, but because of integrity. Their staffs, investors and customers want to work, invest and buy products from clean companies. Things have changed. Another change was that, 11 years ago, even in the Global Compact we had no resources and tools like we do today, a large library with accessible documents for free.

### HOW DO YOU EVALUATE THE TARGET FOR CORRUPTION IN SDG 16?

→ The SDG are an international negotiation involving many governments, a common document. They must be ratified by means of national laws, with implementation commitments. So we have the SDG 16 agenda for 2030, but also the United Nations Convention against Corruption and several national laws. One complements the other

and all have to work together so we can achieve the best results. The companies’ support is essential for this success. Of course we cannot speak of eradicating corruption, but we can identify it, so as to not accept it or not support it in a pathway towards sustainable development. In environment, human rights and labor matters, corruption is the shortcut that will not allow us to attain the robust sustainability we seek.

### WHAT IS THE BEST WAY TO IDENTIFY IT?

→ In 2009, the Secretary-General of the United Nations, Ban Ki-Moon, stated that corruption kills. You see this in schools where buildings collapse or in boats that sink, and children die. They say the problem is licensing, enforcement, but the source of it is corruption. We must put a face to it. There is always a human being behind corruption. How many people could we treat in hospitals, how many children could go to school or be fed with the money that is stolen? When we speak about major corruption, we are speaking about a large amount of money. If it were an economic activity, it would be the third in the world, amounting to 5% of the world’s GDP. Every year, 1 trillion dollars are lost with bribery. Imagine this trillion for the education sector in Brazil or in my country, Nigeria? We must change the perception and approach to corruption in society, showing that it is not a practice without effects, but it is the denial of rights and suffering.

### IS IT POSSIBLE TO MAKE THE INTERNAL ENVIRONMENT MORE ETHICAL IN THE COMPANIES?

→ Many companies are discussing the question of ethics, of how to conduct business with integrity and not just checking compliance items. We do this to encourage companies to implement the 10th

principle of the Global Compact, but also in collaboration with other sister initiatives, such as the Principles for Responsible Entrepreneurial Education, by which, within the scope of the Siemens Integrity Initiative, a set of anti-corruption tools was designed to teach university students, the future business leaders, that corruption should not be a part of the business strategy. We also work in close collaboration with the Principles for Responsible Investment, further encouraging the dialogue between investors and companies in the engagement against corruption.

### BRAZIL IS CURRENTLY THE 69TH COUNTRY IN THE TRANSPARENCY INTERNATIONAL RANK OF CORRUPTION PERCEPTION. HOW IS IT POSSIBLE TO ADVANCE?

→ In the European Union, the cost of corruption reached 120 billion Euros in 2014. The laws are there, but we must look at how they are implemented. Practice is what matters. When there is no impunity it is possible to win the confidence of the people, not just in the government, but in the companies, in the staffs. It is not something concerning only major corruption, it goes through the entire system of the country, it is about you and me. When people realize that this is working – for everyone, not just for some – the perception changes.

### CAN THE CURRENT CORRUPTION SCANDALS IN BRAZIL BE BENEFICIAL TO SOCIETY?

→ I believe crises happen to companies, individuals and governments, which must be capable of readjusting to prevent it from happening again. When we have challenges in our lives, only the fools do not learn from them. This is a great opportunity for us to redirect ourselves, consider where we want to go, learn from our mistakes to avoid repeating them.

# 5%

of the GDP or 3 trillion dollars is the amount of the world’s corruption per year. It is estimated that USD trillion is lost with bribery alone.



Corruption has an impact on all aspects of society: infrastructure, housing, healthcare, sanitation and the democratic institutions – and the vulnerable groups are disproportionately affected.

# CON TEXT

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THE FIGHT AGAINST CORRUPTION IN BRAZIL IS FAR BETTER EQUIPPED WITH A NEW SET OF THAT ARE LAW ALREADY PRODUCING RESULTS. BUT THERE IS STILL A LONG WAY TO GO.





# AGA INST IMPU NITY

## ADVANCEMENTS OF THE CLEAN COMPANY ACT TO FIGHT CORRUPTION IN COMPANIES AND GOVERNMENTS.



The ANTI-CORRUPTION Act seeks to change the behavior of companies through the objective responsibility of corporations. Their risks are directly related to the conduct standards and internal controls they adopt.

In late 2015, amidst the scandals uncovered in Brazil, for the first time corruption exceeded unemployment, violence, education and healthcare as the Brazilians' greatest concern, according to the Datafolha Institute, which has been surveying the topic on an annual basis since 1996. This understanding by the society is extremely important to intensify the cultural and legal changes necessary to fight this evil that weakens laws, corrupts elections, kills people and hampers the full development of a country, thus aggravating the very issues of healthcare, education, violence and employment that some are trying to resolve. The cost of corruption to the world is estimated to be in the order of 3 trillion dollars per year, according to the World Bank.

In recent years, Brazil has made advancements to address the problem. Act no. 12,846/13, known as the Clean Company Act or ANTI-CORRUPTION Act, in force since January 2014, is mentioned by experts as one of the strongest and strictest laws in comparison to similar one in other parts of the world, focused on fighting corruption practices involving public bodies and government employees.

It has its origin in commitments undertaken in the year 2000, when Brazil ratified the Convention on Combating Bribery of Foreign Public Officials of the Organization for Economic Cooperation and Development (OECD). "It was a lengthy process and the publication only happened in 2013, and it is believed that the social pressure of the street demonstrations that year accelerated its approval. But thanks to it, Brazilian regulators now have many guidelines and details on how to conduct investigations, administrative proceedings, computation of penalties and compliance programs in the companies", says the leading partner of Deloitte's forensic department in Brazil, Trevor Schumacher. He is an expert in fraud, bribery and

international corruption risk management and he notes some of the most relevant aspects of the new law for corporations:

**Objective responsibility:** corporations can be held liable in corruption cases, regardless of proof of fault. This applies both for companies in Brazil and Brazilian companies doing business in other parts of the world. "This is the strongest point which is different from laws in other countries. It is enough to have an action, the result thereof and connection, and this should speed up the proceedings."

Liability may also happen through the act of third parties. "It is no longer enough to say I didn't do it but someone else did. If it was done on the company's behalf, the company will be held liable. This is more encompassing than in other international laws. And in a merge and acquisition, you also buy your partner's liability."

**Harmful acts:** offering undue advantage is enough to be held liable. It does not mean only money, but also travels, gifts, courses, treatments or other benefits. Likewise, the liability applies for third parties:

Those who offer such advantages (partners, suppliers, representatives or service providers), and also for beneficiaries, in the case of relatives, friends, partners or "dummies" for the involved person. "Nowadays, 99% of bribes are paid by third parties. It is a major risk nowadays, as there is less control, but the companies will be held liable."

**More severe penalties:** the amount of penalties may be as much as 20% of the company's gross annual revenue, or up to 60 million reais, when such gross annual revenue cannot be computed. In court, it may lead to the mandatory dissolution of the corporation. "How the penalties will be imposed in practice is still the great question."

**Public official:** corruption involving a public official is not restricted to an inspector, mayor or deputy. "The law made this category more encompassing, including direct and indirect public servant or even foreigners, in all powers of the Republic." This includes from school teachers to professionals in companies partially owned by the government, foundations and typical providers of public services.

**Scope:** The Law may be enforced by the Government, states and municipalities, also with jurisdiction over Brazilian companies doing business in foreign countries. "Brazil has more than 5,000 cities, i.e., the proceedings may be initiated anywhere. Whether or not it will be consistent is something we are still observing, to see how it will work in practice".

### Shared liability

For the Executive Secretary of the National Internal Control Board, Raphael Rodrigues Sore, the ANTI-CORRUPTION Act emerges in a moment of transformation of the public administration. "A new set of laws has appeared in recent years, such as the Access to Information Act, the Fiscal Responsibility Act a little behind and the Administrative Corruption Act, with the 1988 Constitution. With these rules we left behind a bureaucratic model by which we expected the State to solve all public problems by itself and moved to a shared liability model in the networked society. The ANTI-CORRUPTION Act is a part of that", he says.

According to him, government corruption continues to be the State's responsibility, but now this task is shared with companies and society. "This is what the Access to Information Act is about, social control. When the State opens its information so that each citizen can become an inspection agent, the State shares this responsibility without disclaiming its own", he explains.

# 99%

of bribes are paid by third parties. It is a major risk nowadays, as there is less control, but the companies will be held liable.



Investigating government corruption continues to be the State's responsibility, but now this task is shared with companies and society.

# THE LAW HAS CAUGHT ON

## EFFECTS, ADVANCES AND CHALLENGES IN NEARLY TWO YEARS OF THE CLEAN COMPANY ACT

BY CARLOS HENRIQUE DA SILVA AYRES  
member of Trench, Rossi e Watanabe Advogados

The Clean Company Act (CCA), no. 12,846/13, is changing the corruption-fighting scenario in Brazil. Even though there haven't been that many convictions under the CCA – some convictions have been reported on state courts and a few dozen cases being heard in federal courts – it has provided significant advancements in the fight against this evil in Brazil.

However, it should be noted that the relatively small number of convictions under the CCA should not be interpreted negatively, as the law is not enforced retroactively for punishment. Thus, the unlawful acts occurring while the law is in force take some time to be detected investigated and prosecuted.

### REGULATIONS OF THE CCA

Several regulations have been enacted since the entry into force of the CCA. In March 2015, Federal Decree 8,420/2015 listed 16 assessment parameters for the compliance programs. It also covered other aspects of the CCA, detailing administrative proceedings and sanctions, computation of fines, leniency agreements and registration of sanctioned entities. Furthermore, in April 2015, the Federal Controller General Office issued four new regulations connected to the CCA:

- Administrative Rule 909/2015: establishes the procedure for the evaluation of compliance programs – the elements of the compliance programs are listed in Decree 8,420/2015;
- Administrative Rule 910/2015: includes rules concerning the administrative proceedings and leniency agreements;
- Normative Instruction 1/2015: establishes a method for the calculation of the gross revenue and taxes to be excluded for fine calculation purposes;
- Normative Instruction 2/2015: concerns the registration of information in the National Registry of Disreputable and Suspended Companies - CEIS and the National Registry of Punished Companies – CNEP. Such regulations, in principle provide greater legal security to the corporations. Finally, it should be noted that states and cities have also regulated the CCA in their respective jurisdictions.

### COMPLIANCE EXPANSION

Even before entering into force, the law led to the creation of integrity programs, mainly by Brazilian companies that were not subject to foreign ANTI-CORRUPTION laws, such as the American FCPA and the British Bribery Act. Considering that under the CCA corporations may be held responsible for unlawful acts of third parties if such acts are practiced to the benefit or in

the interest of such corporations, many companies began to demand that their third parties have ANTI-CORRUPTION programs in place as a condition to execute or renew agreements. Other Companies went further and are demanding that the suppliers also have compliance programs in place. Furthermore, under the CCA, if a company holds 10% or more shares of the other company, even if not owning the controlling interest in such company, the first company may be punished with a fine and also damages for the violations committed by the associated company. Because of this, several investors are conditioning their contribution upon the existence or implementation of an ANTI-CORRUPTION compliance program observing certain previously agreed rules. This way, more than a mitigating factor for any sanctions, having such program in place becomes a competitive advantage.

### CHALLENGES IN THE EXECUTION OF LENIENCY AGREEMENTS

The possibility of executing leniency agreements under the CCA in alignment with the international experience and the Brazilian antitrust laws is an important tool in the fight against corruption and other harmful acts in Brazil. But it is a new concept for most Brazilian authorities. The way the leniency agreement is structured in the law, it does not exempt the corporation from all sanctions. On the contrary, the entity is still susceptible to significant sanctions. Furthermore, multiple authorities may have jurisdiction to punish the same conduct.

Companies have experienced major difficulties in negotiating leniency agreements. This process has been extremely complex, especially in state and city jurisdictions, among other reasons for lack of knowledge by the authorities. It is essential for the competent authorities to get involved in the agreements and become aware of their importance in the fight against corruption in Brazil, as they provide legal security to those concerned. Otherwise, this important tool will be doomed to failure.

### DIFFERENCES BETWEEN LENIENCY AND STATE'S EVIDENCE

Three situations are more prominent in Brazil: search and seizure in several companies have been conducted by means of information obtained through a leniency agreement; facts obtained through the turning of state's evidence, along with other evidence, are used to substantiate the conviction of members of a criminal organization that has stolen from public coffers; companies try to enter into a leniency agreement with Federal Controller General Office for corruption acts practiced by employees to maintain their agreements with the Federal Government.

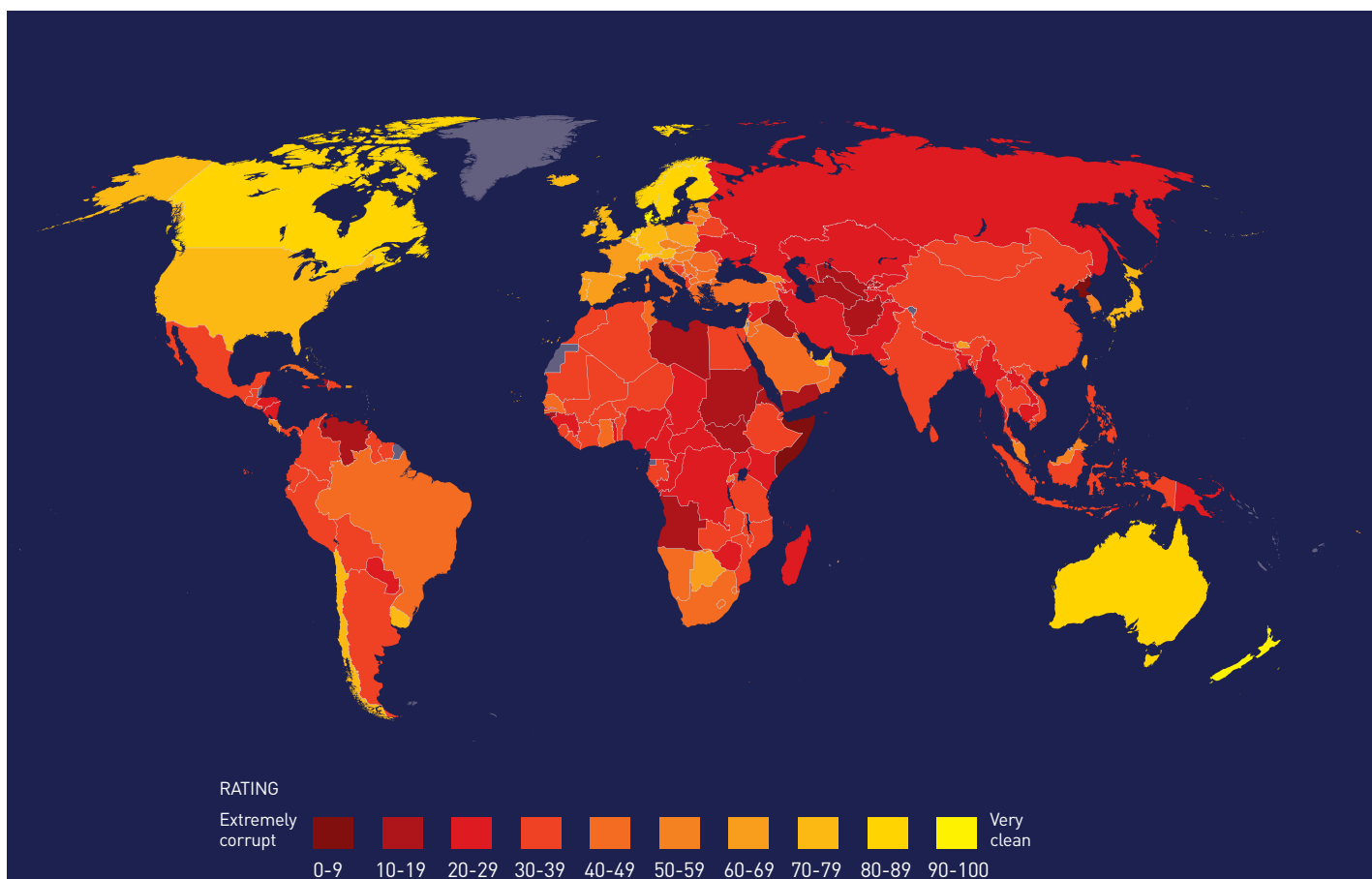
In order to understand the difference between the aforementioned "agreements", with their requirements, benefits and duties, see the main features of each of the three types existing by now in Brazil:

	Leniency agreement for violation against economy	Turning state's evidence	Leniency agreement for corruption acts
Application	Crimes and violations against economy	Crimes practiced by a criminal organization	Harmful acts to the Brazilian or a foreign government or unlawful acts in biddings.
Legal instruments	Sections 86 and 87 of Law 12,529/2011	Sections 4-7 of Law 12,850/2013	Sections 16 and 17 of Law 12,846/2013
Body in charge	General Superintendence of the CADE (Administrative Economic Defense Board)	Police or Prosecutor (federal or state)	Highest authority of the public body (in the federal jurisdiction, the Federal Controller General Office)
Who is eligible?	Individuals or entities	Only individuals. Entities only in the case of environmental crimes.	Only entities.
Publicity for other countries	By means of waiver (authorization by the lenient party)	Countries that have entered a cooperation agreement with Brazil.	By means of waiver (authorization by the lenient party)
Civil effect	End of the punitive action or sentence reduction by 1/3 to 2/3. Does not exclude legal redress for victims.	Not applicable.	Reduction of up to 1/3 of the sentence, reduction of the publication of sentence and exclusion of legal redress, but the lenient party must repair the damage caused.
Criminal effects	Termination of the punishability of crimes against economy, crimes under the bidding law and criminal association.	Legal pardon or punishment reduction by 1/3 to 2/3; replacement of imprisonment for restriction of rights; not being denounced.	Not applicable.
Other benefits	Extension to the companies of the same economic group and their employees, and secrecy regarding the offer.	Protection actions, preservation of anonymity, sentence served by a special system.	Extension to the companies of the same economic group.
Cooperation	Identification of the other parties involved, obtainment of violation evidence, bearing the costs involved with the cooperation.	Identification of the other parties involved; disclosure of information on the criminal organization, prevention of criminal actions, recovery of amounts obtained by the criminal organization and locating victims, if any.	Identification of the other parties involved, expeditious obtainment of violation evidence, bearing the costs involved with the cooperation.
Requirements	Be the first to notify the violation, completely cease the violation, if there is not enough evidence of the violation, admit to it and offer full cooperation.	Voluntary and effective cooperation for reduction of sentence or substitution thereof. In order not to be denounced, the person turning state's evidence cannot be the leader of a criminal organization and must be the first to cooperate.	Be the first to notify the violation, completely cease the violation, admit to it and offer full cooperation.
Ratification	CADE (Administrative Economic Defense Board) Tribunal	Judge	The same body in charge.
Plus	Possibility to notify other violations in order to obtain the benefits.	If turned after sentence is passed, the sentence may be reduced by half or eventually changed to a less severe prison regimen.	Not applicable.
Negative	Information provided cannot be considered admission or recognition of the unlawful act.	Evidence produced cannot be used against the cooperating party.	Does not entail recognition of an unlawful act.
Compliance	Still under analysis.	Not applicable.	May mitigate the sentence.

Knowing about each method of cooperation with public authorities for the determination of unlawful acts is only the first step. The second and more complex step is answering any questions that may arise in a situation in which the company must or wishes to cooperate and involves the jurisdiction of several public bodies. The answers depend on the peculiarities of each case and for this reason can only be given by a multidisciplinary group of lawyers capable of preparing and defending the best strategy to meet the company's needs and guarantee the benefits to which the company is legally entitled.

By HELOÍSA ESTELLITA e FILIPE BATICH, Trench, Rossi e Watanabe Advogados





### CORRUPTION PERCEPTION

In the Transparency International Index, Brazil is in the 69th position out of 175 countries, with a score of 43 points – considered the worldwide average. The higher the rating, less corruption is perceived in the country. While Denmark tops the rank with 93 points, Somalia and North Korea are tied in the last position with 8 points.

In the Americas, whose average is 45 points, Canada accumulates 81 points, holding the 10th general position, while Venezuela holds the 161st position with 18 points, the worst corruption perception in the continent.

#cpi2014  
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# GOING FUR THER

**WHY IS THE  
PROSECUTION OFFICE  
CAMPAIGN IS IMPORTANT  
TO MAKE THE FIGHT  
AGAINST CORRUPTION  
MORE EFFECTIVE.**



THAMÉA DANELON VALIENGO  
 Federal Prosecutor and a member of the  
 ANTI-CORRUPTION Center of the Prosecution  
 Office in São Paulo (SP)

As a result of the expressive negative results caused by corruption – according to the UN, 200 billion reais per year are misapplied in Brazil – several laws have appeared in our legal system to control and fight this evil. Even though corruption is present in all countries, it is extremely devastating in less developed nations, with the smallest education and social condition indices. Brazil is among these countries, holding the 69th position in the corruption perception rank of Transparency International organization.

This alarming scenario has led to the creation of laws intended to fight this pathology, such as the Fiscal

Responsibility Act, the Transparency Act and the recent Anti-corruption Act or Clean Company Act. In alignment with this, the “10 Actions Against Corruption” campaign is born, as part of the remarkable Jet Washing Operation, a taskforce made up of members of the Federal Prosecution office, Federal Police and Federal Revenue Service, among others, which has investigated and found one of the major misapplication of public funds in Brazil. Even though the Jet Washing operation is being successful, it is not sufficient to change the current situation of institutionalized corruption in Brazil. In the words of its coordinator, prosecutor Deltan Dallagnol, the Operation is only treating a tumor, and it is imperative to treat the entire cancer, which depends on the urgent transformation of our legal and procedural system.

Thus, the campaign appears in a historical and favorable time for the implementation of material, possible and efficient changes. In the same fashion as the approved Clean Record Law, the campaign aims to obtain 1.5 million signatures in the entire Brazilian territory for the 10 actions designed by the Prosecution Office to be submitted to the National Congress in the form of law drafts proposed by the people. The purpose is to make the fight against corruption effective by increasing the punishments for these crimes, adopting preventive actions, changing the statute of limitations for crimes, holding political parties liable and making the legal system more expeditious and efficient, for instance, by reducing the number of merely procrastinating appeals, among other points – without any violation to or limitation of the constitutional right to opportunity to be heard.

The new anti-corruption tools, such as the Clean Company Act are indeed innovative and, to an extent, effective. However, in order for systemic, effective and actually innovative changes to take place, the basic



200 bilhões de reais  
 são desviados no  
 Brasil por ano,  
 segundo estimativas  
 da ONU.

laws governing the investigation of corruption acts, the prosecuting and punishment thereof must be changed. These are the Penal Code, the Codes of Penal and Civil Procedure and the Administrative Corruption Act.

One of the purposes of the campaign is to change the Penal Code and the Heinous Crime Act so that the minimum sentence for corruption crimes is changed from two to four years. And that bribery involving high amounts (above BRL 70,000 approximately) be considered a heinous crime. This action is extremely necessary, as a minimum two years' sentence is replaced by restriction of rights, which is less severe, served out of jail and may be benefited by the Christmas pardon or other unreasonable penal and procedural benefits. Thus, with an increase in the sentence for corruption crimes, which will happen proportionally to the damage caused or unlawful advantage obtained, this crime will be treated as being of high risk, just like homicide, making the corrupt agent serve more time behind bars.

Another purpose of the campaign is to change the appellate system. The experience and current studies on the matter demonstrate that, as a rule, an action to investigate corruption is only completed after 10-15 years because of an excessive number of appeals and its inefficient procedural steps. Instead of protecting the right of defense, these steps only procrastinate the action unnecessarily, resulting in the applicability of the statute of limitations and impunity.

After the sought-after approval by the National Congress, the 10 actions would be effective immediately, affecting thousands of criminal and civil actions seeking punishment for this practice, turning corruption into a high-risk crime with severe punishment and expeditious procedures, resulting in a more justice, dignity and respect for society.

## LEARN ABOUT AND SUPPORT THE CAMPAIGN



[www.dezmedidas.mpf.mp.br](http://www.dezmedidas.mpf.mp.br)

# 1.5<sub>mi</sub>

million signatures in the entire Brazilian territory are necessary for the 10 actions designed by the Prosecution Office to be submitted to the National Congress in the form of law drafts proposed by the people.

# LEARN MORE ABOUT THIS TOPIC

## ANTI-CORRUPTION WEBSITES, PUBLICATIONS AND REFERENCE TOOLS.



### [Thefightagainstcorruption.org](http://thefightagainstcorruption.org)

The website provides on-line training on ethical issues and dilemmas related to the enforcement of the United Nations Convention against Corruption. The Global Compact and the United Nations Office on Drugs and Crime have developed six interactive modules with nearly five minutes each, simulating frequent situations of the corporate world.

### [Transparency.org](http://transparency.org)

In the Transparency International website it is possible to check surveys, statistics and the Corruption Perception Index all over the world.

### [Business-anti-corruption.com](http://business-anti-corruption.com)

Guides, on-line training, laws and other information.

### [Fcpamericas.com](http://fcpamericas.com)

Blog with coverage and analysis of corruption issues in Latin America.

## PUBLICATIONS

### [Integrity Program – Guidelines for Private Companies](http://goo.gl/nWcuXe)

Federal Controller General Office compliance guidelines. <http://goo.gl/nWcuXe>

### [Brazilian Companies in Foreign Countries – Relationship with Foreign Governments, Hospitality Policy and Gifts](http://goo.gl/LWCQs2)

Apex-CGU ANTI-CORRUPTION Primer. <http://goo.gl/LWCQs2>

### [FCPA Resource Guide](http://goo.gl/8eZvgS)

How to apply the U.S. Foreign Corrupt Practices Act. <http://goo.gl/8eZvgS>

### [Bribery Act Guide \(2010\)](http://goo.gl/hymOnV)

Guidelines to apply the UK Bribery Act. <http://goo.gl/hymOnV>

### [Anti-Corruption Ethics and Compliance Handbook for Business \(2013\)](http://goo.gl/piVZnv)

Publication of the OECD, UNODC and World Bank. <http://goo.gl/piVZnv>

### [United Nations Convention against Corruption \(2003\)](http://goo.gl/ubL80n)

<http://goo.gl/ubL80n>

### [Internal Control – Integrated Structure](http://goo.gl/WNRBeJ)

Coso [Committee of Sponsoring Organizations of the Treadway Commission] for internal controls in the risk management process of a compliance program. <http://goo.gl/WNRBeJ>





# CHALLENGES AND PROPOSITIONS

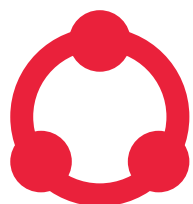
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FROM THE ADOPTION OF INTERNAL CONTROL MECHANISM TO A CORPORATE INTEGRITY CULTURE FAVORING THE ENGAGEMENT IN COLLECTIVE ACTIONS, THE PARTICIPATION OF THE PRIVATE SECTOR IN THE FIGHT AGAINST CORRUPTION HAS SEVERAL TOOLS THAT ARE ESSENTIAL TO ITS SUCCESS.



# INTEGRITY IN PRACTICE

## LEARN THE REQUIREMENTS TO IMPLEMENT A STRONG COMPLIANCE PROGRAM AND ITS BENEFITS.



The constant support and commitment from the senior management to the creation of an ethics and integrity culture in the company is the basis for an effective integrity program.

More than shareholders and governments, society has been observing the actions of companies, how they work, where they obtain their production inputs and how they treat their employees. With the Clean Company Act, which began to hold companies liable for corruption acts practiced even by third parties on their behalf, it became imperative for companies to establish a culture of transparency and ethics in their management activities in order to achieve other gains and sustainability of the business sector.

In March 2015, federal decree no. 8,420/15 which regulated the new law established a set of processes and mechanism that legal entities must implement internally for the purpose of detecting and rectifying unlawful acts such as misapplication of funds, fraud and other irregularities practiced against public, national or domestic governments. Without specifying a ready model to be followed, the 16 items are guidelines for a compliance or integrity program to be implemented in a manner suitable to the company's business activities, size and exposure.

"Compliance programs were something that only regulated companies had, such as telephone companies and banks, as they had to report a number of practices as required by the regulation agencies. With the Anti-corruption Act and other additional demands such as the new BM&F-Bovespa market for companies that want to go public; FCPA, the American law affecting some Brazilian companies doing business in the United States; the codes of the Brazilian Corporate Governance Institute (IBGC), the compliance function has become essential, regardless of the sector in which the company does business", explains Camila Araújo, leading partner of Deloitte's Corporate Governance Center.

In the event of an unlawful act, the program is considered by the enforcement body, also to mitigate possible sanctions, such as fines. "A leniency agreement is a direct result of the compliance program. If the company has an effective and well-structured system, based on the senior management commitment, an irregularity, if any, is considered exceptional. An employee violated the company's own rules and not just government regulations. Thus, the rationale is to cooperate with the enforcement authority and the penalties will be smaller", explains Renato Capa-

nema, general coordinator of Integrity of the Office of the Federal Controller General Office.

The contrary is also true. "The case of the Jet Washing Operation is emblematic. In trials, the prosecutor and the judge often ask whether the company had a compliance program in place and whether it conducted an internal investigation of unlawful acts. The negative answers are used in the omission theories of the Prosecution to try to hold the managers liable", says attorney-at-law Carlos Henrique da Silva Ayres, of the firm Trench, Rossi e Watanabe Advogados.

The Federal Controller General Office, the main internal control body of the government, responsible for assessing the robustness of the compliance actions of companies investigated in unlawful acts, establishes five pillars for an integrity program:

- 1.Commitment and support from the senior management:** and essential and permanent condition for the promotion of an ethical and law-abiding culture;
- 2.Department in charge:** must have autonomy, independence, impartiality, material, human and financial resources;
- 3.Profile and risk analysis:** the company must know its processes and organizational structure;
- 4.Structuring of rules and instruments:** the company must know its processes and organizational structure;
- 5.Strategies for continuous monitoring:** it is necessary to establish procedures to verify the applicability of the Integrity Program to the company's method of operation and its constant improvement.

Some companies mention the inherent cost of a compliance program to justify the postponement of the implementation thereof, but

they must consider that the financial loss and damage to its image through the corruption risks can be even greater. Furthermore, given the objective liability concept created by the Clean Company Act, many companies have been demanding others, especially suppliers to also adopt an integrity program, in order to prevent situations such as slave work at the end of its productive chain, for instance. Thus, a compliance system gains market value and the decision about its implementation also follows the economical rational, as a competitive factor against competitors.

Finally, with the maturity of the integrity programs, the companies also gain, with more security; markets become more transparent; and the entire society becomes more ethical.

### UNDERSTAND COMPLIANCE

Compliance means acting according to the legal and regulatory provisions, policies and guidelines established by the organization, apart from avoiding, detecting and treating any deviations that may happen. Supported by other lines of defense, such as internal audit and the risk committee, it exercises a governance function, but also communication, being a link between the senior management and the company's operating department, to assess and monitor risks and monitor control efforts. For this reason, its main benefits are:

- Strengthening corporate governance;
- Minimizing fines and notices of violation;
- Improving the perception of the internal environment and the labor relations

In order to be effective, a compliance program must have:

- Clear purposes, with well-defined structure, resources and guidelines;
- Independence;
- Full access to information;
- Direct access to the CEO and the Board;
- Authority and responsibility to monitor problems covering the entire organization;
- Communication with regulators;
- Periodical reports to the board and the audit, giving opinion when asked;
- Participation in business, governance and control committees;
- Risk-based methodology to conduct its management and monitoring.



It is essential for each company to perform self-analysis and know its needs and specifics to define the integrity program that best suits its situation.

# COMPLIANCE IN 16 STEPS

As a strategic part of promoting transparency and fighting corruption, the Global Compact Network Brazil, with support from the Anti-corruption Theme Group, has been promoting workshops since 2013 about the implementation of compliance systems and mitigation of risks as a way to expand knowledge and exchange experiences. Four have been held in São Paulo (SP) and Curitiba (PR). The last one, in 2015, was adapted for small and medium companies with support from Sebrae. "It is of vital importance for small, medium and microenterprises to get moving in the structuring and implementation of its integrity programs, as the Clean Company Act is for all of them, regardless of size or industry.

The Global Compact is devoted to helping its signatory companies in this transformation journey through ethics and transparency", says Marcos Muniz Rossa, sustainability superintendent of the Libra Group and Vice-President of the Global Compact in Brazil.

The first condition to design an integrated compliance program suitable to the company's own needs is to make sure that the company is aware of its values, potential risks and vulnerable areas; the second is to apply this knowledge, incorporating these elements as part of this culture to create practices and processes with this purpose.

In the methodology developed in partnership with the Ethos Institute, Petrobras, Braskem, PwC and Libra Group, the 16 implementation items of the Decree 8,420/15 (which also contemplate indirectly the 10 hallmarks of the Guide to the U.S. Foreign Corrupt Practices Act) are organized in four groups according to their characteristics. Each of them must be analyzed in depth regarding purposes and performance, internal and external performance and possible opportunities, based on key questions for each requirement.

## ⚠️ 1. COMPLIANCE CULTURE

Compliance culture must be built on the recognition of its importance by the company and the dissemination of information about the topic to all employees, as lack of knowledge is still one of the main initial barriers.

1. **Commitment from the company's Senior Management**, including the boards, evidenced by visible and unequivocal support to the program.
2. **Conduct standards, code of ethics, integrity policies and procedures**, applicable to all employees and managers, regardless of position of title held.
3. **Conduct standards, code of ethics and integrity policies extended** to third parties, when necessary, such as suppliers, service providers, intermediaries and associates.
9. **Independence, structure and internal authority** responsible for the application of the integrity program and enforcement thereof.

## ✅ 2. RISK MANAGEMENT

This is considered the most critical and complex step, as it generally involves new processes and behaviors in the company. It requires clear rules, well-define values and good understanding of the relationships in the public-private and private-private contexts.

4. **Periodical training** on the integrity program
5. **Periodical risk assessment** to arrange for the necessary adjustments to the integrity program.
6. **Reliable accounting records** (audit).
7. **Internal controls** guaranteeing the information – reliable reports and financial statements of the company.
8. **Specific procedures to prevent fraud and unlawful acts** in bidding process, in the performance of administrative agreements or in any interaction with the public sector, even if mediated by third parties, such as the payment of taxes, subjection to inspections or obtainment of authorization, licenses, permits and certificates.
16. **Transparency of the corporation in donations** to candidates and political parties.

## 🗨️ 3. REPORTING AND REMEDIATION CHANNELS

Few companies have ombudsmen or an internal committee for reporting. The challenge is to ensure reliability and impersonality in the process so that the informer may report violations without suffering any kind of retaliation.

10. **Irregularity reporting channels**, open and broadly disseminated among employees and third parties, and featuring mechanisms to protect good faith informers.
11. **Disciplinary actions** in case of integrity program violation;
12. **Procedures ensuring the immediate cessation** of detected irregularities or violations and timely remediation of any damages caused.

## © 4. CONTINUOUS IMPROVEMENT

It is necessary to know the entire value chain with which one works and extend the concern with integrity and transparency to partners and suppliers, considering their cultural differences.

13. **Due diligence in the engagement and supervision** of third parties, such as suppliers, service providers, intermediaries and associates.
14. **Checking irregularities, unlawful acts or vulnerabilities** in the companies involved in the case of mergers, acquisitions and corporate restructuring.
15. **Continuous monitoring of the integrity** program seeking the improvement thereof in the prevention, detection and fight against the occurrence of the harmful acts under Law 12,846 of 2013.

## ❓ KEY QUESTIONS

For each item, assess:

- What is its importance for your company?
- Does it have processes concerning it? If yes, which ones?
- Are the processes sufficient or suitable to prevent fraud or corruption?
- What are the difficulties in implementing process concerning it?
- What is the starting point?
- What are the areas with the greatest corruption risks in your company? Does your company have a matrix of corruption risks and actions to mitigate them?



# AVOID SURPRISES

## CORRUPTION RISK ASSESSMENT IS STRATEGIC AND MANDATORY IN A COMPLIANCE SYSTEM



**Download  
in Portuguese**

[www.pactoglobal.org.br/artigo/144/Publicacoes-Rede-Brasileira](http://www.pactoglobal.org.br/artigo/144/Publicacoes-Rede-Brasileira)

Ignore its own risks has become the greatest risk for a company. Claiming ignorance when being surprised or caught in acts of corruption is not longer accepted easily. In the eyes of the law, someone who didn't know should have the means to know, as the identification of possible threats is what establishes prevention and control to, if not reduce them, at least eliminate them. In this regard, Risk Assessment becomes essential to protect the company's performance and reputation.

Since risk assessment detects vulnerabilities and defines control mechanisms as a response, it is also responsible for adjusting the compliance system to the company's situation, a requirement of the Anti-corruption Act. "Risk assessment is like people, no two are alike. It is something hard to get done, as it must consider the particulars of the business. It is not possible to copy someone else's model", says the head of Compliance, Internal Audit, Risk Management and Ethics at Braskem, Olga Pontes.

That is why, after the engagement of the senior management, this step is considered the second most important by many experts. "It is where the intelligence if a compliance system is located, as it determines the scope of action. If we check all the laws, there will be 30 to 40 thousand compliance items that a company must meet. Am I going to monitor the risks? Some may be already controlled by initiatives from other departments while others are unattended", says Camila Araújo, leading partner of Deloitte's Corporate Governance Center.

Thus, an efficient risk assessment means understanding the company, its regulatory and financial challenges, the environment in which it does business and whom one is dealing with, as it is the integration and communication link between the operating departments and the senior management.

### HOW TO DO IT

In order to help companies of any business or size to start identifying, categorizing, monitoring and fighting its risks, the Global Compact, with help from Deloitte, developed a methodology based on the understanding of what corruption is and all its possible means of dissemination. These contents can be found in the Corruption Risk Assessment Guide. Published in 2015 in Portuguese and produces with the collaboration of anti-corruption experts, non-governmental organizations and business professionals, the guide includes actual and practical implementation examples, applying to all companies.

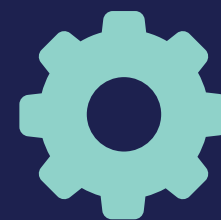
"This publication provides greater safety in the implementation of a compliance program. For us, it was a gain in terms of affirmation, as it showed that we are on the right path," says Alexandre Mugnaini, technical coordinator of the implementation project of the Integrated Corporate Risk Management System of Itaipu Binacional.

### FORMS OF CORRUPTION

Risk assessment must remove the masks that hide its many faces:

- Bribery (kickbacks, donations, facilitation payments)
- Conflict of interest
- Collusion (cartels, bid rigging, price fixing)
- Revolving door
- Patronage
- Illegal information brokering
- Use of privileged information
- Tax evasion

### RISK ASSESSMENT IN SIX STEPS



#### 1. Establish the process

- It is necessary to understand the company's scenario, its possible corruption-related problems and which objectives are expected from the Risk Assessment.
- Planning of various actions to identify actual risk exposure, defining who owns the processes, the necessary resources, how the data will be collected and, especially, the risk tolerance level



#### 2. Identify the risks

- Data collection by means of documents, interviews, workshops, surveys, etc. The fact must be considered that there are specific processes, countries and departments with increased corruption risk exposure.
- Identification of risks among the reasons for which corruption takes place, means of occurrence and how it is disseminated. Everything must be documented.



#### 3. Rate the inherent risk

- It is the time to assess the identified risks without taking the existing controls into consideration.
- The rating is done through the combination of the probability of occurrence and potential impact of each risk, considering the tolerance level and who the involved persons are.



#### 4. Identify and rate mitigating controls

- Assessment of the internal structure and mapping of all initiatives, processes, activities and controls assumed by the company to reduce the inherent risk exposure detected.
- The controls may be general or specific, preventive (seeking to raise awareness) or detective (detecting deviations).



#### 5. Calculate residual risk

Verification of the remaining risks after the application of the control mechanisms – a calculation that can be either qualitative or quantitative. The low, medium and high ratings may be strong indications for the management of where the greatest corruption risk exposure may be.



#### 6. Develop the action plan

- The final step involves acting on the residual risks that are out of the company's tolerance level. This answer must be pragmatic and selective and may go beyond the improvement of the internal controls.
- Engagement of the responsible departments that will prepare the action plan. The compliance are must monitor it and report it to the control bodies.

# TEST

## ANSWER HOW YOU WOULD HANDLE EACH SITUATION IN PRACTICE AND ASSESS YOUR TOLERANCE TO CORRUPTION.

By CAMILA GUALDA  
SAMPAIO ARAUJO (Deloitte)

1. You work in the financial department of the company "COMPANY", quoted in the stock market, in which 50% of the shares are held by a public company. You are experiencing financial problems because of your father's health treatment. Your best friend is looking for investment options and makes you an offer: loan you 100,000 reais in exchange for advice – is it worth it to invest in COMPANY or not? Giving such advice:

- a) Does not amount to corruption, as it is for a noble reason – your father's treatment.
- b) Will only be a corruption act of anyone learns of this fact.
- c) Does amount to a corruption act.

2. You have a gas station and you have contacted other gas station owners in your neighborhood to obtain an agreement to set the price of ethanol at BRL 2.30 per liter. Thus, everyone would transfer the recent tax increase announced by the government to the consumer in a fair and organized manner. Your offer:

- a) Amounts to the formation of cartel and should not be tolerated.
- b) Should be replicated in the market as a best practice.
- c) Is acceptable, as it guarantees that consumers in the neighborhood will all buy ethanol for the same price.

3. Your company is building a new wind farm to meet the demand for power of a Brazilian state that has been experiencing "blackouts". Your environmental analyst tells you that the environmental agent responsible for licensing the operation has asked for a contribution of BRL 2,000 to speed up the licensing. The agent says he will donate the money to a charity for children with cancer. What advice would you give to your employee?

- a) Make the contribution, as everyone will benefit from it: the company will begin operating the wind farm in a shortest time; the population will have access to electrical power; and the children with cancer will receive a donation.
- b) Make the contribution, but just this once, as the noble end justifies the means.
- c) Do not make the contribution.

4. The pharmaceutical company NEEDLE, with branches in Switzerland and Japan, has used the National Registry of Legal Entities number of its head office in Brazil to engage your strategic consultation company, which also has an office in Malta, to conduct a survey. The work was done by your staff in São Paulo and your National Registry of Legal Entities appears in the commercial agreement. The NEEDLE executive officer suggested paying for your services from his Swiss office directly to your office in Malta in order to reduce the tax burden on the transaction. The suggested solution:

- a) Is legal both in Brazil and abroad, as both companies have branches in Europe.
- b) Amounts to tax evasion, as the services were performed in Brazil by Brazilian entities.
- c) As Switzerland and Malta offer tax advantages that are openly advertised in the market, the transaction is legal, and Brazil must reduce its taxes in order to gain tax competitiveness.

5. Your fire extinguisher company, FIRE, donated BRL 1 million to the campaign of the new mayor-elect in your town. The donations came from legal sources and were transparently reported to the Electoral Justice. As FIRE's CEO, you:

- a) May request reciprocity from the mayor as a vote of thanks, in the form of public notices containing Technical Requirements favorable to the company (the only producer of type A extinguishers in the region).
- b) Should not request reciprocity.
- c) May request reciprocity, provided FIRE is not the only company to benefit from it, for instance, support for the enactment of a law increasing the number of required extinguishers in each building in town.

6. You are the commercial manager of a company that has established a mid-time (5 year) strategy to increase the percentage of winning bids in the wind power industry in a Brazilian state. The CEO has instructed you to study for a competitive examination to get a job in this state's renewable power purchase department. You may leave the company as soon as you're approved and earn a greater salary than the current one. Furthermore, your company may obtain internal influence in the government to achieve better results in future bidding processes. This strategy:

- a) Is ethical and valid, as it depends on the principles of meritocracy – study and pass the competitive examination.
- b) Is valid provided it is kept secret.
- c) Should not be adopted, as it consists of a "revolving door".

7. João and Ricardo work for a public company. The former has been working for 5 years and the latter, for 4 months. João entered by means of a competitive examination (the only possible way) and eventually became marketing manager through his quality work. Ricardo, on the other hand, has recently graduated from an excellent MBA in the United States, was referred by his uncle, who is a sales officer for the company, to hold the position of sales manager without going through the selective process. Ricardo's admission:

- a) Should not be tolerated, as it amounts to patronage.
- b) May be tolerated. Both deserve to hold the position of managers, the first because he built a solid career and the second because of his education.
- c) May be tolerated, provided his employment contract is a provisional one and he takes a competitive examination in the next three years.

8. You are a commercial manager and invites a tax auditor, Mário, to a dinner in which 20 bottles of alcoholic drink are consumed. You volunteer to pay the bill, as you expect the auditor to be less severe in his analysis in return. Your company does not allow for the reimbursement of alcoholic drinks, but you suggest to the waiter that he can issue the bill with the total amount stated as "Meals". Evaluate:

- a) The auditor's conduct cannot be reproached. The dinner and the consumption of drinks took place out of the working hours.
- b) Your conduct was correct, as the dinner had professional purposes. The company must bear all the expenses.
- c) Both conducts were incorrect.

9. You are an internal auditor for a company and during an audit of the purchase process in one of the units, you find many deficiencies to be reported to the senior management. João, the purchase manager, a father of five children, decides to offer you a week in his beach house for you and your family. Discreetly, he suggests that you make moderate recommendations, since you have created a friendship link after six weeks working together. Furthermore, a critical report would endanger João's job and would compromise the future of his children. As for the week in the beach you:

- a) Do not accept it and prepare a pragmatic report, reflecting the actual findings, regardless of the emotional aspects involved.
- b) Accept it, as it is a free offer. In return, you may prepare less severe recommendations, as the possibility of João being fired may compromise the quality of life of his children.
- c) Do not accept it, but prepare less severe recommendations.

10. Your best female friend works for a technical consulting company that is taking part in a public bid for the company you work for. She asks you what the available budget is for the execution of the project in order to better inform the preparation of the bid. As this is confidential information, you:

- a) Answer the question informally and the fact is kept secret.
- b) Answer the question in exchange for a promise of discount in the total amount of the bid to be prepared, which will benefit the company.
- c) Do not answer the question, as it would be an act of corruption.

### ANSWERS

Add up the questions. The closer to zero, the smaller you degree of tolerance to corruption.

1. A or B = 1 / C = 0 (insider trading); 2. A = 0 / B or C = 1 (cartel); 3. A or B = 1 / C = 0 (facilitation payment); 4. B = 0 / A or C = 1 (tax evasion); 5. B = 0 / A or C = 1 (bribery); 6. C = 0 / A or B = 1 (revolving door); 7. A = 0 / B or C = 1 (patronage); 8. C = 0 / A or B = 1 (forged expenses/influence in a public agent's opinion); 9. A = 0 / B or C = 1 (promotional trip); 10. C = 0 / A or B = 1 (privileged information).



## LEADER'S VISION

**THE COMMITMENT FROM THE SENIOR MANAGEMENT TO FIGHT CORRUPTION IS ESSENTIAL TO STRENGTHEN A COMPLIANCE PROGRAM IN COMPANIES, ENGAGE EMPLOYEES AND THIRD PARTIES.**

“

The fight against corruption in all its forms must begin with the leaders and permeate the entire organization and society. Each individual must be made aware as a professional and as a citizen of his or her attitude and role in the prevention of unlawful or corruption acts. The barrier against the temptation of corruption will only be strong when we all join together for this purpose.”



MARCELO ARAUJO,  
President of the LIBRA Group

“

Our focus was always to the sense that compliance and integrity begin with the people that make up the company. Especially nowadays, and in areas where there is greater perception of corruption risk, such as Latin America, the challenges happen on a daily basis, demanding a robust compliance program. A Code of Conduct is the beginning of this process, but it is not enough. Several initiatives must be implemented for detection, prevention and response to compliance issues, with continuous improvements. This internal work has clear external effects: a company's degree of influence in society is very big. A culture of ethics and integrity creates a virtuous circle including commercial partnerships with companies featuring the same degree of care with its reputation and manner of doing business, and employees with more engagement.”



JORGE LOPEZ,  
President of 3M Brazil

“

We are experiencing a joyful awakening to the fight against corruption and the damages it causes to society. This topic requires assertive and immediate initiatives so that the bad effects can be treated and lead to a safe and fair business environment. We must be attentive to the recently created legal provisions and invest in their utilization in our companies and especially in our lives. Companies must come to the forefront and use their power to educate and, most of all, give an example of ethical conduct, implementing their integrity programs, considering from elementary interpersonal relationship acts through the most refined risks inherent to business.”



ILTON TARNOVSKI,  
Vice-President of Dudalina

“

Education is one of Brazil's greatest challenges and it is not different in the field of compliance. Few universities provide subjects focused on the discussion of ethical dilemmas in companies. Building the capacity of employees is one of the strong points in Siemens' compliance system. Our training sessions are periodical and add up to more than 93,000 hours. Another initiative is the “Manager Kit”, incorporated worldwide under the name “Integrity Dialogue”, which encourages the discussion of compliance topics among all teams, regardless of their field.”



PAULO RICARDO STARK,  
President of Siemens Brazil

“

Based on our experience, we noted that the singularity of binational companies leads to the construction of a regulated and transparent management model, which is necessary to support consensual decision-making, which usually happens in companies like these and are determining for corruption risk management. The implementation of a set of actions and controls in alignment with the principles of the Global Compact and Transparency.org demonstrate Itaipu's commitment to transparency, ethics and integrity, thus mitigating the corruption risk in the entity.”



JORGE MIGUEL SAMEK,  
Brazilian general officer of ITAIPU

“

Transparency and ethical conduct has motivated us to strengthen our governance and compliance processes. This way, we evolve towards what is right and what is best for society.”



CARLOS FADIGAS,  
President of Braskem



# PLAY CLEAN

## GLOBAL COMPACT GUIDE TEACHES TO FIGHT CORRUPTION IN SPORTS SPONSORSHIP AND HOSPITALITY ACTIONS BETWEEN COMPANIES.

By MARINA FERRO, coordinator of Projects, Entrepreneurial Practices and Public Policies of the Ethos Institute

The year 2016 will be marked by the Olympic Games in Rio de Janeiro. As important as having doping-free athletes in the competitions is to ensure the same integrity in the organization of the Games in all the related events, especially those involving the relationship between companies and governments. In this regard, the Global Compact offers and important guidance tool and stimulus to good practices to companies: the publication Fighting Corruption in Sports Sponsorship and Hospitality Actions – a Practical Guide.

The purpose is to contribute to corruption prevention in marketing actions of companies and help them invest in sports tournaments. On its 52 pages, the Guide points the most recurring risks and proposes a methodology to improve transparency and ethics in agreements and accounting in sports sponsorship. It also addresses another common form of support, known as “hospitality actions”, which is the exchange of favors between sponsors and sports entities.

Its contents were built collectively by means of contributions and experts from all over the world, such as the United Nations Office on Drugs and Crime (UNODC), Ethos Institute, Transparency International, Fach-

verband für Sponsoring und Sonderwerbeformen e.V and the Humboldt-Viadrina School of Governance. Seven companies have also taken part in the preparation of the document: Coca-Cola, ENI, Microsoft, MTN Nigeria, Petrobras, Sanlam and System Capital Management.

The Brazilian contribution took place by means of a number of public consultation to several companies that participated in the Global Compact 10th Principal taskforce, the Working Group of the Entrepreneurial pact for Integrity and against Corruption and the Companies and Investors Committee of the Clean Games project, both coordinated by the Ethos Institute, apart from workshops and actions with the business sector entities involved with the major sports events of 2014 and 2016. The purpose was to encourage integrity in the relationships of companies with the Government and promote social, economical and environmental responsibility of the investments in the major sports events in Brazil. The entire preparation process for the manual took nearly two years and the greatest challenge was creating a general formula for prevention and fight against corruption that could be used by any company or sports entity in the world, as the specifics of the anti-corruption law and other structural and cultural aspects, for instance, vary from country to country.

### MANUAL FOR BRAZIL

The Portuguese version of the Guide was published by the Global Compact Network Brazil on the opening day of the 2014 Fifa World Cup. The topic remains relevant in Brazil with the Olympic and Paralympic Games next years, but it goes beyond the big events, as there are many sports tournaments regularly held in Brazil. The Guide focuses several models that can be used such as, for instance, sample codes of conduct for sports entities and company policies for hospitality donations, giving out gifts and disseminating the procedures for the internal policies implemented.



There are billions of sports fans all over the world and the economical importance of broadcasting rights, merchandising, tickets and events and touring marketing around sports is huge and cannot be overestimated.

Another major contribution of this publication was the in-depth discussion of six steps to prepare a corruption prevention program in sports sponsorship and hospitality actions: commitment, assessment, definition, implementation, measuring and communication.

References and instruments helping to mobilize and point to possible pathways for the companies, such as the guide Fighting Corruption in Sports Sponsorship and Hospitality Actions, are increasingly important to help us in a collective construction demonstrating engagement and global concern with the topic. It is only through this summation of efforts that we will be able to build an incorruptible business environment and give an actual and unique contribution to solve the problem of corruption and advance together towards fair competition and ethics.



The sport contributes to the development as a tool for support peace, human dignity, health and education. Sport is, therefore, a critical aspect of Corporate Sustainability.

### SPORTS PACT

During the launch of the English language Guide, in December 2013 in New York, Brazil suggested a collective action among companies and sports entities for the purpose of preparing an agreement to put its recommendations into practice. The idea was well received and materialized nearly two years later. In October 2015, the Pact for Sports – Sectoral Pact among Sponsoring Companies for Integrity, Management and Transparency in Brazilian Sports was presented to society.

A first worldwide, the voluntary agreement was signed by twenty Brazilian company sponsoring Brazilian sports, which promise to undertake a number of commitments for the purpose of contributing to the culture and practice of a professional, modern

and efficient management for the segment. This initiative seeks to use the influence of sponsors to improve the management of Brazilian sports entities. Among the actions is the creation of a system of indicators and the preparation of a guide for the implementation of parameters for the entities. Confederations, federations and clubs will be invited to take part in the preparation of metrics. The Sports Pact is a partnership between the entity Atletas pelo Brasil, made up of sportspersons and former athletes of different sports and generation fighting for the development of sports and Brazil – along with **Ethos Institute** and **LIDE Esporte**, with support from Mattos Filho Advogados. Learn more about this initiative in [www.pactopeloesporte.org.br](http://www.pactopeloesporte.org.br)



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# COLLECTIVE ACTION

**FOR THE GLOBAL COMPACT, THE FIGHT AGAINST CORRUPTION IS ONLY POSSIBLE THROUGH THE JOINT EFFORT OF COMPANIES, GOVERNMENTS AND CIVIL SOCIETY ORGANIZATIONS.**

While individual actions by companies are important, they are not sufficient to put an end to corruption. On the contrary, anyone acting honestly, but alone, runs the risk of losing deals in unfair competitions. That is why the Global Compact has encouraged collective actions against corruption. No matter the origin of corruption, its damaging effects are felt by all – governments, companies and societies – and all of them must fight it.

Collective Action is a cooperation process among various concerned parties. An alliance of organizations thinking how the problem can be address and resolved from multiple angles, so the impact of the individual action can be increased.

There are several ways to establish a collective action on local, regional or global level, such as integrity pacts, ANTI-CORRUPTION declarations, initiatives based on principles, education and training. When companies join forces with governments, community and non-governmental organization, this effort enables to:

- ✓ Deeply understand the corruption issues;
- ✓ Consolidate knowledge and technical and financial resources to obtain greater impact.
- ✓ Create solutions perceived as more credible, acceptable and sustainable.
- ✓ Promote a more stable and favorable business environment.
- ✓ Help guarantee fair competition and equitable conditions for all concerned parties.
- ✓ Supplement the current ANTI-CORRUPTION efforts in vulnerable regions and sectors, in which government or industry regulations are not strong.



## UNITED WE STAND

In order to give directions to companies and individuals on how to implement collective actions against corruption, the Global Compact launched this year the Practical Guide for Collective Action Against Corruption. The English language publication offers a theoretical and conceptual approach to Collective Action as an ANTI-CORRUPTION tool, and also practical, describing and analyzing the results of 28 initiatives in different countries, involving the joint participation of Companies, NGOs and Governments. Brazil is contemplated with the "Clean Games Inside and Outside of the Stadium" project, organized by the Ethos Institute, which works on behalf of transparency and social control of investments for the 2014 World Cup and 2016 Olympic and Paralympic Games. Access:

[www.unglobalcompact.org/library/1781](http://www.unglobalcompact.org/library/1781)

# CALL TO ACTION

Apart from promoting and encouraging collective actions in the fight against corruption, the Global Compact calls the companies to take part in another joint initiative on this topic: the Call to Action. It is an appeal made by the private sector to governments, encouraging them to establish ANTI-CORRUPTION measures and implement associated policies to establish good governance systems. Invited to add their names to this declaration, the companies undertake to seek transparency and to their part in the fight against corruption.

## What Call to Action asks to governments:

- Observance of the principles of the United Nations Convention against Corruption by strengthening policies, laws and application mechanisms to create equitable competition terms;
- Commitment to reduce the cor-

ruption risks of public purchase processes and large scale project agreements;

- Engagement in competitive and transparent bidding by means of public disclosure in all cases involving government agreements;
- Greater transparency regarding revenue received by governments from companies of the private sector.

This broad movement already has more than 260 companies and investors responsible for the management of 3.5 trillion dollars in assets. See some benefits and the importance of signing the Call to Action:

- ✓ Demonstrate leadership and awareness in matters of integrity, promoting the company's efforts to integrate ANTI-CORRUPTION measures in its strategy and operations and inspiring other companies to do the same;
- ✓ Obtain competitive advantage in the attraction of investors, employees and consumers guided by a sustainability vision;
- ✓ Encourage fair competition in the market by means of clean transactions;
- ✓ Contribute to the implementation and strengthening of ANTI-CORRUPTION laws and regulations.

To participate, your company just has to sign and send to the Global Compact the declaration of support to the Call to Action and its commitments to prevent corruption in all its forms, including extortion and bribery. This position is presented on an international level to the Secretary-General and Ambassadors of the United Nations and on a national level by means of contacts between the local networks of the Global Compact and the governments, for the purpose of reaffirming the commitment of the private sector to end corruption.



260 companies and investors have signed the Call to Action, amounting to the management of USD 3.5 trillion in assets.

## WHO HAS SIGNED

Meet the Brazilian companies that support the Call to Action\*:

- Abril Group
- Add Value
- Banco Industrial e Comercial
- Boldrini Serviços de Energia Elétrica
- Braspag
- Boticário Group
- Camargo & Campos Recursos Humanos
- Copel
- Copagaz Distribuidora de Gás
- Disoft
- Eletromil Engenharia e Energia
- Embraer
- Engpiso Engenharia e Soluções Integradas
- Global Village Telecom
- Libra Group
- HI Technologies
- ISAE/ FGV
- Itaipu Binacional
- Itaú Unibanco
- Laboratório Sabin de Análises Clínicas
- Light
- MPD Engenharia
- New Space Processamento e Sistemas
- Newland Empreendimentos Imobiliários
- Nogueira, Elias, Laskowski & Matias Advogados
- Oi
- OS-Santa Catarina
- Okena Servicos Ambientais
- Petrobras
- Reserva
- Ricca RI
- Sabará Químicos e Ingredientes
- Sabesp
- Sociedade Beneficente Israelita Brasileira Albert Einstein
- Tecpron
- TOTVS
- Unimed do Brasil
- Unimed Cuiabá
- Unimed de Avaré
- Unimed Jaboticabal
- Valpasa Indústria de Papel
- ViiV Innovation
- Whirlpool

\*In December/2015



# CONSIDERATIONS

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HOW TO ENCOURAGE THE DEBATE OF ETHICS, ADVANCE THE ANTI-CORRUPTION ACTIONS AND CONSOLIDATE AN INTEGRITY CULTURE IN COMPANIES AND IN SOCIETY.



# ACT ETHI CALLY

## AN INTEGRITY CULTURE GOES FAR BEYOND THE FORMALITIES OF COMPLIANCE.



CELINA CARPI

Engineer and Attorney-at-law, President of the Decision-making body of the Ethos Institute, shareholder and member of the Board of Directors of the Libra Group

In an increasingly complex work – in which exposure, public judgment and social pressure become broader and more intense – it is predictable and desirable that companies from all sectors and dimensions get moving towards the matter of Ethics.

Weakness in conduct, flexibility regarding the compliance with laws, unfair competition, the underground search for advantages – among other reproachable business behaviors – represent huge risks to image, reputation and the perpetuity of the organizations. In a global society, tired of successive scandals and subversion of basic and univer-

sal values, the level of intolerance to unethical behavior only increases.

Control systems and codes of conduct are essential for the accounting that all companies must submit to their stakeholders. They serve as guidelines for the behavior of employees, suppliers and partners, and for this reason they are almost perceived as “insurance” for the business.

However ensuring an ethical attitude in a company goes beyond the formalities of compliance. They are not a purpose in themselves, but means to build something greater and more effective: an Integrity Culture leading each professional to ponder on the ethics contained in each everyday choice, in any dimension of life. The practice of pondering before acting and weighing between individual and collective interests are the materialization of an Ethical Action in the business community.

It is impossible to build a corporate integrity culture guiding all the decisions and acts without the commitment from the business leaders. Believing and disseminating an ethical discourse, encouraging its everyday application and giving an example to the group must be part of the mission of the main executives of a company. Without this, even the best manuals and the most robust control systems become but lifeless documents. Doing business ethically is a daily exercise of coherence.

Leaders must be the guardians of values and the main disseminators of culture, an exercise which begins in the choice of people who will make up their teams. Any professional – from the president to the worker – must recognize himself or herself in the values of the companies where he or she works for things to flow naturally, with reduced risks.

The next step is to establish incentive systems leading the entire company to seek what I call “good competitiveness”. Result goals are

part of everyday life and of the business operation – and there is nothing wrong with that. Companies will only have a relevant social role – creating jobs, distributing wealth, developing innovations – if they are healthy organizations, including financially. There is no sin in the fact that their professionals work to meet these goals with determination or, in the market jargon, “aggressively”.

The bad thing, in this case, is usually in the means chosen to achieve the established goals.

The company values – and its ethical principles – are the sole and true limiters of this aggressiveness. When the results are obtained at all costs, regardless of the employed means, the loss, initially, is of the society. In the mid to long term, the loss is of the business itself. History shows us that lack of ethics eventually becomes a competitive disadvantage. A company that does not work for the equilibrium of its business ecosystem has short future.

Companies like this may earn a lot of money for a short time. But they are doomed to failure, to extinction. Businesses that disregard their surroundings, adopting an “anything goes” approach, lose vital energy trying to manage the risks caused by their modus operandi. It is almost always a useless effort. Society is increasingly well-equipped to discover and punish any kind of fraud or corruption. The price to pay is high. It may be contempt or irrelevance. When the limit is reached, it costs one’s own survival.

The appreciation of companies choosing a sound growth through ethical means and punishment to those that place their own interests above those of the society have consequences that reach far beyond the business environment. I am convinced that companies – the fruits of a historical process – have the power to transform, for better or for worse, the environment where they are located.

Companies committed to acting

within ethical boundaries and willing to defend this way of being influence those around it. They help build a fairer society, with equal opportunities and rules for all, rewarding both personal and collective efforts. It is a position of belief with a pragmatic vision. After all, I don’t believe that there can be sound companies in sick societies.



The practice of pondering before acting and weighing between individual and collective interests are the materialization of an Ethical Action in the business community.

**“WHEN THE RESULTS ARE OBTAINED AT ALL COSTS, REGARDLESS OF THE EMPLOYED MEANS, THE LOSS, INITIALLY, IS OF THE SOCIETY. IN THE MID TO LONG TERM, THE LOSS IS OF THE BUSINESS ITSELF. HISTORY SHOWS US THAT LACK OF ETHICS EVENTUALLY BECOMES A COMPETITIVE DISADVANTAGE.”**

# BINA TIONAL GOVER NANCE

## HOW ITaipu HAS BEEN STRUCTURING ITS COMPLIANCE AND RISK MANAGEMENT SYSTEM.



**MARGARET GROFF**  
is an Engineer and Project manager of  
the implementation of Corporate Risk and  
Compliance of Itaipu Binacional



**ALEXANDRE MUGNAINI**  
is a civil engineer, Financial executive officer  
of Itaipu Binacional and Chair of the board  
of the Coge Foundation.

In the last two years, ITaipu Binacional has been gathering efforts to formalize a compliance system and integrated management of corporate risks. The purpose is for the system to actually formalize the observance of the essence of the national laws of Brazil and Paraguay and international rules referencing good corporate governance, apart from complying with what is established by the Binational Treaty that created Itaipu.

A company organized by the Governments of Brazil and Paraguay, with shareholder Eletrobras (BR) holding 50% of the shares and Ande (PY) holding 50%, Itaipu Binacional has privileged the definition of clear and transparent procedures since the formalization of its treaty, so that its management principles could be established. The purpose was always to reconcile the understandings of both nations regarding electrical energy generation as defined in the Treaty, with its commitment to an ethical and transparent management.

Because of its sui generis nature of a legally international company, and as it plays an essential role for both countries, considering the interests both of the company and of the actors that make up its working environment, since the promulgation of the Itaipu Treaty in 1973, transparency, ethics and zero tolerance to unethical conduct have been some of the essential guidelines of its governance.

Some examples of this conduct took place when the Itaipu entity was organized on May 17th 1974. An independent and autonomous Internal Audit was created, answering directly to the Board of Directors, and it was also mandatory to engage and External Audit, seeking to audit its accounting processes and publication of financial statements.

It should be further noticed that, as a measure of checks and balances regarding the actions of shareholders representing Brazil and

Paraguay, both hold an equal interest in Itaipu. Therefore, they have the same number of representatives both in their Board of Directors and their Executive Board, which required the development of a shared and integrated management model.

Over the years, several administrative actions were incorporated to its management model, which contributed to the maturity of governance and consequently to the improvement of the internal controls seeking among other purposes, corruption prevention.

In 2002, a Code of Conduct and an Ethics Committee were approved based on a binational consensual decision. The purpose was to strengthen the values created by Itaipu and expand the capacity to assess any deviations by its employees from these values.

Subsequently, with the full energy generation, the importance of the company being modernized and the complexity of its business processes, the implementation of an integrated financial management system (Enterprise Resource Planning – ERP) was necessary, which took place in 2006. This move was extremely important to improve the internal controls and enable the implementation of new tools that could contribute to the modernization of the management, which ultimately happened.

With the implementation of ERP, it was possible to begin management by processes, project management and adjust the controls of Itaipu's business processes to the provisions of the Sarbanes-Oxley (SOX) Act, including the creation of an ombudsman office with autonomy of action and independence. By doing this, the company was clearly undertaking a public commitment to ensure transparency and correctness in its management, as well as the authenticity of its financial statements.

Once management mechanisms allowing the formalization of the

Senior Management's commitment to ethics and transparency had been implemented, with a clear message to its shareholders and stakeholders about the responsibility with which its financial management is conducted, Itaipu hired internationally renowned rating companies to assess its financial solidity and consequently its capacity to honor its debts. It should be noted that, in all assessments, Itaipu got an Investment Grade rating both in domestic and in foreign currency.

The commitment from the company management to the fight against corruption by entering into the Global Compact and signing the UN Call to Action should also be noted, reaffirming its commitment to cooperate with the end of this damaging practice in relationships between companies and governments.

As a signatory both of the Global Compact and the Management Transparent.org, apart from its commitment to sustainability, Itaipu intends to make its suppliers aware of the problems associated to corruption, as well as of the advantages of early detection of its risks and implementation of internal and external policies and actions to pro-

mote transparency. To achieve this, it has created the Code of Conduct for Suppliers, encompassing the commitment to the three sustainability pillars and seeking to ensure successful formal relationships with Itaipu.

The Corporate Risk Management system, which is in its final implementation phase, has emphasis on centralizing and integrating the several existing compliance control and corruption prevention tools in the company, which will contribute even further to risk mitigation.

In short, over its 41 years of binational history, Itaipu has built a unique management model for the generation of clean and renewable energy reconciling the interests of both countries. In this context, taking actions such as corruption prevention is much more than a compliance need – it represents strategic aspects for better management thereof. By acting under this perspective, the essential thing for the company was to establish a management model that actually improved its internal controls for the observance of both domestic and foreign laws, in a broader vision, which is of corporate governance.

**“TAKING ACTIONS  
SUCH AS CORRUPTION  
PREVENTION IS  
MUCH MORE THAN A  
COMPLIANCE NEED —  
IT REPRESENTS  
STRATEGIC ASPECTS FOR  
BETTER MANAGEMENT  
THEREOF.”**



# THE VALUE OF EXEM PLE

**THE BEST SUPPORT A  
LEADER CAN LEND TO A  
COMPANY'S COMPLIANCE  
IS OBSERVE IT  
IN PRACTICE**



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The best known anti-corruption laws in the business world, such as the American FCPA (Foreign Corrupt Practices Act), British UKBA (United Kingdom Bribery Act) or even The Brazilian Clean Company Act, Law 12,846/13, all point to the engagement of the senior management as the first and foremost pillar of legally effective compliance programs. Specifically for Brazil, Federal Decree 8,420/2015, which regulates the Brazilian law, states in its section 42 that this commitment, evidenced by the visible and unequivocal support from the leaders, is a parameter to assess the program's effectiveness.

This "visible and unequivocal support", named buy in, is the motivator for companies fomenting compliance programs to decide to invest part of the time of their senior executives in the creation of training programs, preparation of written and audiovisual messages, execution of codes of ethics or conduct distributed to the thousands of employees in companies run by them.

There is no doubt that these excellent practices meet the legal provision concerning buy in. If leaders allot time in their busy agendas to raising awareness about compliance, the employees, who often follow the steps of those on top to advance their careers, will understand that it is suitable to adopt the same priorities.

However, what is the effect of this endorsement or word of approval by the leaders when these same executives, often also business owners, get arrested or involved in corruption scandals or other kinds of corporate deviations? More specifically, how can a corporate compliance program survive if, although it features a high buy in, one or more of the company's senior executives were exposed to noncompliance in violation of the laws or the company's code of ethics?

A situation often found in 2015, especially in Brazil, the impact that an ethically weak boss or with improper priority may cause to the company or his or her subordinates is catastrophic, and may range from staff discouragement and loss of talent to actual loss of market value, image and reduced revenue. This demonstrates that, even though buy in provides legal effectiveness to the compliance programs, it is not sufficient if it leaves the company's senior management out of the integrity policies and rules.

With this, I bring for consideration the fact that buy in, to be fully effective, must be supplemented by the leader's devotion in following his own words by way of example to his or her subordinates. Such leadership feature is referred by another corporate phrase quite common in foreign countries: walk the talk.

Leading by example, or walk the talk, is not only more effective than demonstrating buy in, but it is also easier to be conducted by the company's senior management. I shall explain: far easier than preparing opening speeches for a compliance training session, or demand that any absent employees attend the next edition, is for the leader to just participate in the training session together with his or her employees. With the leader in attendance, which argument can the subordinate use to justify his or her absence? If the leader has obtained the certificate, why shouldn't anyone in his or her staff?

In this regard, it is interesting to mention a rather unusual comparison: there are several studies and theories demonstrating that executives and corporate environments featuring high resilience and ethical sustainability have far more in common with the military than most people imagine. The Do former soldiers make better CEO's, survey, conducted by finance

teachers of the Kellogg School of Management in the United States, Carola Frydman and Efraim Denmetech, has recently caught my attention.

She found that, in periods of crisis, companies run by CEOs with military experience have better performance, as they have learned to make decisions under pressure. The decisions by these CEOs are more conservative, as they have learned to consider the risk of losing human lives in their strategies. These executives are also less susceptible, in the order of 70%, to get involved in corporate fraud, thus not exposing the corporations to major compliance crises.

Making a comparison between the study and the effectiveness of compliance programs, we can consider that a decision by the leader in times of crisis must adopt governance principles – decisions based on facts and free of conflicts of interest; always remember the effects of his or her decisions in the lives of his or her subordinates; and always give the example.

Leaders who submit to policies and activities in full do not cause compliance catastrophes, which may also occur by omission, and create a positive legacy for their subordinates to follow and eventually replace them, thus contributing to consolidate sustainable operation and a distinguished corporate culture. This is done in schools to develop leaders in the Brazilian Army, a 365-year institution with the highest reliability level among domestic institutions in the Confidence in Justice Index - ICJBrasil of FGV/SP in 2014, abiding by the saying that "the word convinces, but the example proves".

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# TO WARDS INTER NATIO NALI ZATION

## HOW COMPLIANCE IN BRASKEM IS BEING STRUCTURED FOR GLOBAL ACTION.



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Braskem is now the world's sixth biggest petrochemical company in production capacity and the leading company of the Americas in the production of thermoplastic resin. It has shares listed in the São Paulo Stock Exchange (Bovespa), the New York Stock Exchange (NYSE) and the Madrid Stock Exchange (Latibex).

Acting in compliance with the rules and best practices has been an essential premise for Braskem, for which reason, since its creation in 2002, the company invests and improves its actions in the field of compliance, with the so-called Entrepreneurial Safety Program.

In 2010 Braskem began an ambitious internationalization project with the purchase of the propylene business of Sunoco Chemicals in the United States and Dow Chemical in the United States and Germany. Furthermore, it developed the 21 Ethylene Project in Mexico, with the Mexican petrochemical company Idesa as a minority partner. This is the largest investment in the history of Mexican petrochemical industry.

A number of strategic actions have been implemented for the Entrepreneurial Safety Program to follow Braskem's internationalization process, with its initiatives extended to countries where the Company does business. These actions have been defined for the essential purpose of maintaining the Program's effectiveness in Braskem's global scope of business. These actions can be divided into the following pillars:

- **People:** We have strengthened the corporate structure in Brazil and added the support of key areas to the Compliance Program. We have a single ethics committee for the entire global operation. Capacity building and training sessions are taught by each country's local staff, under the guidance of the Corporate Compliance team.

- **Processes:** In order to simplify, standardize and provide quality to its processes, Braskem has adopted an integrated business management project named Formula Project, which has consolidated the entrepreneurial management model, supporting the Company's growth and internationalization, as well as the expansion of the internal control environment. We have a single Code of Conduct and we also have a single process for reports received from the Braskem Ethics Line channels in each country where we do business. We have implemented a single management platform for the knowledge of internal policies, guidelines and procedures.

- **Technology:** We have implemented a continuous monitoring for risk indicators in key processes, as well as a global solution for Risk Management and Compliance. We have automated the testing of the key automatic controls.

Braskem's Compliance Program is constantly subject to assessment and improvement. The results obtained demonstrate that it is possible to expand its scope and improve its effectiveness with the incorporation of best practices obtained in each place where Braskem does business.

SUSTAINABLE COMPANIES ARE WORTH MORE!



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