

ÉTICA & COMPLIANCE

NA CONSTRUÇÃO

— **CBIC** —

GUIDELINES ON ETHICS
AND COMPLIANCE FOR
INSTITUTIONS AND
COMPANIES IN THE
CONSTRUCTION INDUSTRY

CBIC

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GUIDELINES ON ETHICS AND COMPLIANCE FOR INSTITUTIONS AND COMPANIES IN THE CONSTRUCTION INDUSTRY

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ÉTICA & COMPLIANCE

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PRESENTATION

Brazil goes through a period of big changes, requiring new paradigms in business relationships, especially between public authorities and citizens. This scenario requires a firm stand of the construction industry and the real estate market concerning the strengthening of the premises that guide its performance and reinforce mechanisms that prevent damages that are recurring nowadays. Ethics in businesses is a crucial business attribute for good performance of the companies and their respectability in society. In this sense, in order for the construction industry to stay ahead, it must act to go beyond the care it already takes and update its tools and premises on a permanent basis. More than consolidating its practices, this initiative will be a contribution to the country, serving as a reference to other business segments.

The care and respect for business ethics are not a novelty in the construction industry or in the Brazilian real estate market; this positioning has been reaffirmed on many occasions. Acts such as the ones leading up to publicizing of the concepts presented in the Letter of Belo Horizonte, in 1991; the development of a code of ethics for the industry, in 1992; the contribution that led to the creation of Law 8,666, sanctioned in 1993; and the day to day reality puts us in a position of vanguard in this debate.

At a time when ethics and compliance go from being the expression of good practices to becoming business attributes, it is up to the industry to modernise and strengthen existing mechanisms to keep itself updated with the new Brazilian business environment. Consistent with the position that marks its trajectory, and in partnership with SESI Nacional, the CBIC has mobilized re-

nowned experts to identify the most modern concepts and tools of management, whose adoption established premises that are part of the tradition of the industry in dealing with projects, in public ventures and policies, modernizing its practices.

With this **Code of Ethics & Compliance for Institutions and Companies of the Construction Industry**, we put at the disposal of the industry and country more modern premises and initiatives that are aligned to international standards, that improve the rules of operation of CBIC and will serve as a reference and suggestion for entities and their associated companies to establish their own compliance policies. This volume brings a code of ethics that is a reference: guidelines on compliance and political representation; a code of conduct on competition for the construction industry and the real estate market; and a guide on corruption risk assessment.

Premises present in the Global Pact, an initiative proposed by the United Nations (UN) as an incentive to the adoption of corporate social responsibility and sustainability policies, were added to the framework of actions and rules of conduct in place. These initiatives are supported by the CBIC, but not only that: the organization mobilized experts with notable knowledge, experience and respectability recognized to organize practical guides useful for day-to-day activities of the construction industry.

With these documents, the CBIC fulfills its role of explaining the position of the construction industry and real estate market and also provides the necessary reference to the industry to keep updated with the most innovative practices on this issue and the new business environment in Brazil. Enjoy these guidelines!

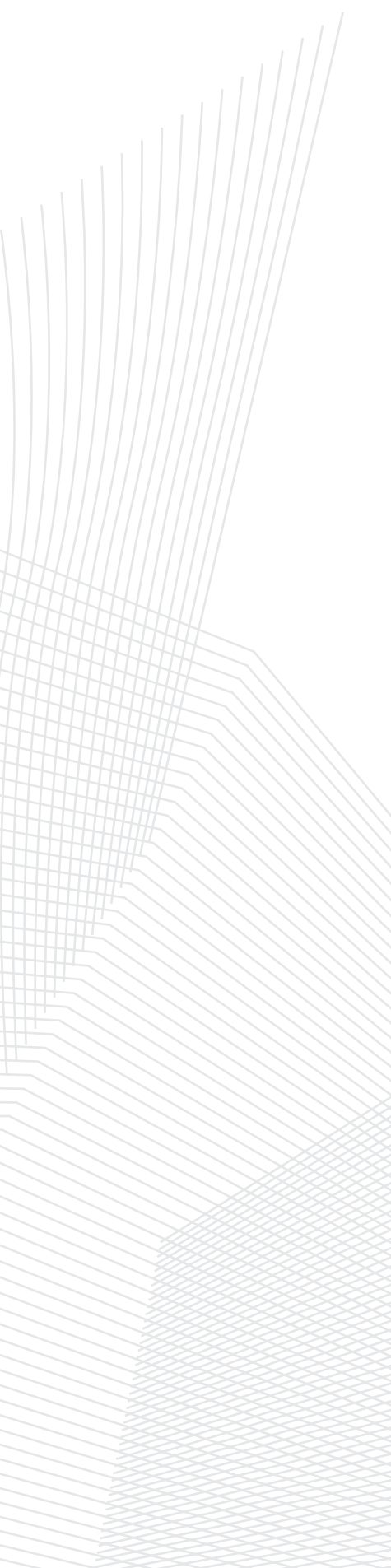
José Carlos Rodrigues Martins

President of the Brazilian Chamber of Construction Industry (CBIC)





1. BASIC FRAMEWORK OF A CODE OF ETHICS



INTRODUCTION

The increasing adoption of compliance policies by corporations in Brazil is a recent phenomenon, but it is, in fact, process of consolidation. Nowadays, one lives in the age of reputation, certain actions can tarnish and eventually destroy the corporate image, and the company might not have enough time to defend itself. No wonder, one of the sentences transformed into mantra by today's managers is one that says "it takes twenty years to build a reputation and only five minutes to destroy it" (Warren Buffet).

Add to that the fact that all employees of a company are also seen as the company's official or unofficial spokespeople. In this sense, it is not enough to have a good marketing and press relations department to avoid crises. Everyone that makes up the business should be involved, from the highest leader to the construction workers, advisors and suppliers.

However, having made the decision to draw up and implement a compliance policy, the company will come across a topic that is still poorly defined. Likewise, it is difficult to find success stories, as companies make the news exactly when someone breaks the rules, and this action is found out. There is an old saying about the activity of the press that states that its activity consists of the art of separating the wheat from the chaff and

publishing the chaff. Effective compliance policies exist to prevent crises and keep businesses away from bad press.

There is an important debate going on, especially in the UN Global Pact on the Fight against Corruption. These forums are engaged in synthesizing experience gathered in various countries and provide guidelines that can guide business owners and business managers in the development and implementation of ethics management policies in private relations and in the relation with government. These are the main sources of this reference work.

In addition to international references, the long history of the CBIC in ethical issues and experience in the approval of the Bidding Law and the Charter of Belo Horizonte are also used as reference.

In this sense, the following document is a reference code based on the latest discussion about this topic and the knowledge accumulated by CBIC over the past decades. Obviously, it does not exhaust the discussion, but provides guidelines from which interested parties may be directed to create effective policies to prevent crises, increase security in market practices, enhance reputation of their companies and increase their assets.

1. BASIC FRAMEWORK OF A CODE OF ETHICS

A code of ethics is a means to transform the values and principles of an institution or company into effective conduct of its employees. In order to do that, besides behavior regulations, it should provide a frame-

work to establish its implementation, target audiences and communication channels to receive complaints and guidance as well as set penalties.

- Mission
- Vision
- Values
- Definition and instructions on how to use the code of ethics
- Construction Industry Principles
- International ethical standards
- Target audiences
- Penalties
- Compliance framework
- Agreement

REFERENCE CODE MISSION, VISION AND VALUES

This section is abstract and subjective, and it should contain the values and objectives that led to the creation of the institution or company and guide its operations. In addition to the private objectives of its initiatives, the commitment to the development of society in its economic, social and environmen-

tal aspects must also be present (mission); the interest to be recognized as a trusted provider of products and market practices (vision); and the characteristics upon which its decisions are based, such as integrity, respect, transparency, responsibility, trust and confidentiality (values).

DEFINITION AND INSTRUCTIONS ON HOW TO USE THE CODE OF ETHICS

This Code of Ethics and Conduct is the official document that presents guidelines on ethical conduct for institutional and business activities, and it should be followed by all employees connected to them. These guidelines should be followed by professionals, regardless of position, acting directly or indirectly in stages of planning, production, communication, marketing and related activities.

The responsibility for enforcing these guidelines in this Code, as well as studies aimed at its permanent updating, will be in charge of the management of the institution or company (or other company levels that can be created for this purpose).

This document aims to be integrated into professional relations in the organization as a complement, for all the organisation, to the compliance with laws in force. Thus,

from the moment this code is officially received, it becomes the responsibility of that individual who receives it.

The implementation of a code of conduct involves monitoring, accountability and legal mechanisms as well as the creation of a permanent channel for receiving complaints and dispelling any doubts (it is important to add a description of penalties, communication channels and framework for applying it).

In any case, the higher-ranking worker may also provide all the necessary guidance for each case in order to deal with any question.

It is unacceptable not to clear up any possible doubts in relation to attitudes that are not in accordance with the Code of Ethics and Conduct implemented. Therefore, it should be followed, and it is recommended that, in situations that cast doubts regard-

ing ethical conduct, the following questions should be asked:

- Is this situation provided for in the Code of Ethics and Conduct?
- Can your decision cause damage and negative consequences for the organization?
- Can you make a decision independently or do you need to check with your immediate superior?
- What is your intention when making the decision?

After this precondition is met, in case the person making the decision is not sure about the adequacy, it is recommended that the information should be shared with the supervisor or relayed immediately to the channel for dialogue on ethical issues.

GENERAL PRINCIPLES OF THE CONSTRUCTION INDUSTRY

- Construction activity is conducted with the purpose of promoting the well-being of people and the community.
- The buildings must necessarily provide users favorable conditions concerning physical and mental health; hygiene; safety; protection; and comfort.
- The construction activity cannot profit from unethical, illegal or immoral procedures.



The following duties must be met by construction workers and all others involved in the construction industry chain:

- Find new procedures and techniques that progressively aim to improve quality, increase productivity, rationalize time, financial resources and materials. This should be done in order to reduce the costs, the possible environmental and social impacts and the final selling price.
- Refuse to do the activity in conditions that are not in accordance with the security and stability of the building.
- Do not delegate to unskilled third parties services and parts of the construction that put the final quality of the construction at risk.
- Follow the projects, stick to the specifications without demanding to use selective brands, comply with the technical standards issued by ABNT and, failing that, compatible standards.
- Comply with the determinations of the supervision and the local, state and federal regulation in order to obtain a final result

that is compatible with standards present in the contract.

- Seek technological development, taking into account not only the replacement of people by equipment and construction processes, but, preferably, the improvement of working conditions and productivity of workers and other people involved.
- Stimulate, as a priority, the adoption of equipment in high-risk activities that may statistically cause greater damage to the health and integrity of workers.
- Adopt the principles of quality and productivity so that its benefits are enjoyed equally by all stakeholders involved.
- The construction activity must be exercised without discrimination based on religion, race, gender, nationality, sexual orientation, color, age, physical disability, social status, political opinion or opinion of any other nature.
- Eliminate any activity that means forced or compulsory labor.
- Abolish child labour completely.



INTERNATIONAL ETHICAL STANDARDS

- **Confidentiality:** professionals should not disclose confidential or proprietary information without prior permission unless such disclosure is required by applicable laws or regulations.
- **Disclosure:** professionals should make all appropriate disclosures before and during the execution of a service. If, after disclosure, a conflict cannot be settled or mitigated, the worker should withdraw from the project or get consent in writing from the parties involved so that he or she can proceed.
- **Fiduciary Duty:** professionals should be honest, transparent and reliable in all their financial transactions.
- **High standards of service:** professionals should only provide services when they are competent and qualified to do so, and ensure that any employee or associate helping with the provision of the services has the necessary skills to perform them.
- **Integrity:** professionals must act with honesty and fairness in all their relationships and must not mislead or try deceive another person. Their advice should be based on valid evidence.
- **Respect:** professionals must provide services that honor clients, third parties and stakeholders in the context of the applicable rules of law, including social and environmental areas.
- **Responsibility:** professionals have an obligation to be considerate with their clients and take into account rights and interests of third parties and other stakeholders.
- **Transparency:** professionals must not misinform regarding product information or terms of service to be provided and must present relevant documentation or other material in plain and intelligible language.
- **Confidence:** professionals must be reliable in their professional communications and recognize that their professional conduct matters to maintaining public confidence in real estate-related jobs.
- **Verification:** professionals should continually assess the services they provide in order to ensure their consistency with the evolution of ethical principles and good practices.

TARGET AUDIENCE

1. COLLABORATORS

- The activity of the institution or company must provide working conditions that ensure safety, hygiene, good health and protection, as well as salary and professional incentive compatible productivity, enhancement of work and rationalization of time and material resources.
- Search constantly, in every possible perspective, alternatives for improvement and adjustment of working conditions.
- Preserve, under any circumstances, professional freedom, not accepting and not imposing any restrictions to this autonomy that may go against the ethics, moral and the dignity of people in general.
- Support freedom of association and the effective recognition of the right to collective bargaining, either by decent payment or working conditions that are consistent with professional ethics.

- Ensure compliance with labour legislation and provisions contained in collective agreements signed for the construction industry.
- Provide wages that are compatible with gains of productivity and professional qualification of workers.
- Promote refresher courses for workers.
- Continually improve knowledge and use scientific and technical progress for the benefit of working conditions and the final result of the construction process.
- No kind of harassment, be it sexual or moral, will be tolerated because it is not acceptable to harm the dignity of the individual.
- The use of drugs and alcohol is not allowed when performing work duties nor the execution of the work under their influence.

2. ASSOCIATIONS AND TRADE ASSOCIATIONS

- Do not use the trade associations with the intent of obtaining purely individual benefits, unless those individual benefits are of real interest, according to the principle of legal equality, to the other associates.
- Be a role model for its members in relation to ethical conduct.

3. CLIENTS

- Indicate the appropriate solution to the client, acting in accordance with recognized practices, and respect the technical and legal standards in force in the country.
- Not to practice professional acts that are harmful to the client, even if provided for in public bid rules, project or specification, which can be characterized as collusion, omission, malpractice, recklessness or negligence.
- Ensure the customer an end product that will please him/her as a result of accurate advertising, thorough contracts and clear and correct information so as to make sure, in any of the phases, that the final product is compatible with what they were hired for.

- Report pressure coming from contracting parties, representatives, brokers and others designed to obtain benefits and other undue advantages as a result of immoral, illegal and unethical actions.

4. SUPPLIERS

- Apply, whenever possible, regional materials and techniques and, if there are no restrictions, use workforce available in the region.
- Be aware that, in the works whose activities are shared by more than one middleman, when hiring, the responsibility of each participant must be defined. In the case of subcontracting, the principal contractor will not be able to avoid responsibility attributed to him or her, unless expressly indicated and when legally possible.
- Report any action by suppliers that may configure cartel practices, undue concessions, opposition to free competition and other predatory actions to the free market.

5. PUBLIC AUTHORITIES

- Before starting a dialogue with the Government, the institution or company must have defined the subject that will be treated. This subject will be necessarily lawful, ethical and relevant to the company represented by him or her.
- Lawful subject is one that does not go against law. Knowledge of whether a certain subject in a dialogue is lawful is a fundamental duty of the institution or company, as well as being aware of its ethical boundaries.
- The institution or organisation has to address the public official suitable for the dialogue. Knowing the position of the public official present in the dialogue, his or her scope of action is essential so that the dialogue will be established legitimately. After all, the act practiced by an incompetent public agent is null and void.
- It is forbidden to require a public official for him or her to go beyond his or her scope of action.

- The representative of the institution or company must comply with the hierarchical system in which he or she is inserted and limit himself or herself to deal with matters that he has authorization to handle.

- Decree No. 4,334/2002 is the main regulation on granting audiences to individuals. Private citizens who intend to have an audience with public officials must:

- mention in advance the subject that will be addressed;
- suggest a date and time to meet;
- identify all private citizens who will be taking part;
- explain the interest in the subject;

- In turn, the public agent must:

- be accompanied by at least another agent;
- create the record of the hearing.

- No representative of the institution or company can offer—and the public authority cannot receive—any private source payment that is not in accordance with the law or receive transportation, lodging or any special favors from a private citizen that might raise doubt about his or her probity or good reputation.

- Public authorities cannot accept gifts, except gifts that have no commercial value and do not exceed the value of R\$100.00 (a hundred reals).

PENALTIES

The institution or company shall provide for administrative penalties that its employees will face. It is important to define

the regulation according to the legal system that requires specialized assistance in its preparation.

STRUCTURE OF COMPLIANCE (COMPLIANCE OFFICE)

It is also important to establish communication channels for complaints and guidance for employees, in addition to highlighting a framework to create and perform the supervision, training, updating of regulations and

their application. It is recommended that it should be connected to high-ranking leadership of the institution or company, but it should keep autonomy to hire, for example, external audits periodically.

TERM OF COMMITMENT

I declare that I have read and understood the code of ethics and conduct of the institution/company, being aware of the guidelines and principles of conduct established. I commit myself to complying with the standards laid down by it, seeking assistance in case there are any doubts and informing the institution/company about possible violations.

Name: _____

Area: _____

Place and date: _____

Signature: _____





2. STANDARDS FOR POLITICAL REPRESENTATION



INTRODUCTION

The transformation Brazil is undergoing makes ethics a business attribute that will make the difference in the performance of companies and will greatly shape their perception by society, directly affecting its position on the domestic market and in the international arena. This scenario requires a profound knowledge of the laws in force, and the updating and the consolidation of compliance initiatives, in order to close loopholes that may allow corrupt practices and permanently renew the commitment to fight it. This group of tools has a strategic role in the governance of entities and private companies as an important sign of their degree of organization, maturity and reliability.

Thus, the Brazilian Chamber of the Construction Industry (CBIC) and National SESI created this Compliance Guide—rules for political representation, describing a group of rules and initiatives that should provide guidance to the construction industry and the Brazilian real estate market, pointing out how to insert compliance on a daily basis in the industry and its relationship with the various target audiences, especially the public administration in its various levels. The siege to corruption is already part of the agenda of the organizations in the industry, in trying to uphold the highest standards of performance and in the search for the reversal of its side effects, like the market cartels, the practice of unfair competition, the rising number of works with low quality or unfinished, the increased costs for businessmen and, consequently, the misuse of public funds.

In its first edition, this document fulfills the task of establishing and clarifying concepts linked to political representation, the natural

activity of business entities and trade associations, and it presents a practical guide that shows actions to take to maintain such relationships within the highest ethical standards in force. To encourage greater understanding around the subject, this guide also introduces the Anti-Corruption Law commented in a simple and clear way, in order to make it easier to shield company practices and documents. The goal is to establish and formalize a legal framework for the activity of representation of construction industry entities—CBIC itself and its associates—and companies connected to the government, formalizing practices observed by the industry and inserting others, that are desirable to the full achievement of the objectives proposed.

The guide presented here consolidates the knowledge accumulated over many years of hands-on learning of democratic dialogue in the shape of a code of conduct. It intends to serve as a reference so that associated entities and companies can create their own guides of compliance in the area of political representation and dialogue with public sector. The document is organized in such a way that the public entities and companies can use their concept and their legitimacy to create their compliance documents in order to deal with public authorities.

With these guidelines on Compliance, the CBIC fulfills its role of guiding the positioning of the construction industry and real estate markets, showing the expectation in the industry for a more comprehensive action to disseminate solutions in this field, as well as offer the industry reference to keep it in tune with the latest practices about this subject. Enjoy these guidelines!

2. STANDARDS FOR POLITICAL REPRESENTATION

THE BASIS FOR LEGITIMACY: THE RIGHT TO DIALOGUE

The dialogue with the government is a right of the individual and legal entities that is available only in democratic countries. It was established and, until today, is intertwined with the right to petition, founding principle of modern constitutions, which says the citizen has the right for the state to analyze a solution for his or her problem.

The right to dialogue is critical to the evolution of democracy, because it takes to the competent authorities the longings and demands of society, and it is also an integral part of a harmonious coexistence between the government and the governed.

THE BASIS OF LEGITIMACY

Ensuring the legitimacy of the dialogue between the government and governed allows its participants the certainty of legality. The way to ensure it is to respect fully the elements that make up a legitimate dialogue.

Legitimate dialogue = legitimate reason + able interlocutors + appropriate manner

A legitimate reason is a licit, relevant and ethical reason that leads the interlocutors to dialogue.

Eligible interlocutors are those who have authorization to deal with the subject. On one hand, the public official involved in dialogue must have legitimacy given by his or her position. On the other hand, the citizen must be the legitimate representative of the company that participates in the dialogue.

The manner of dialogue is essential to the maintenance of its legitimacy. In many cases, the reason is legitimate, and the interlocutors are eligible to deal with the matter. However, the manner of dialogue is improper, making it illegitimate.

COMPLIANCE GUIDE

PRINCIPLES AND OBJECTIVES OF THE POLITICAL REPRESENTATION IN THE CONSTRUCTION INDUSTRY

1 - Defend the principles of representative democracy, the market economy and free enterprise with the appreciation of work and sustainable development.

2 - Support, represent and defend, including in court, the rights and interests of the construction industry and the real estate market, at a national level, in accordance with the Federal Constitution and the remaining legislation.

3 - Promote the development of the construction industry and real estate market, through actions of the following nature:

A - In the scope of the Executive Branch, seek ways to participate in the definition of policies for the development of the sector, at a regional and national level, and in the regulations that concern the activities of the business segments that it represents, claiming the right to a seat in groups that deliberate or advise; spaces in forums, conferences, commissions and technical groups coordinated or organized by the Executive Branch; proposing or collaborating with the work of

reformulation and improvement of public policies and government programs;

B - In the context of the Legislative Branch, support projects of interest to the industry and oppose those that can lead to disorganization of the production and market relations, participating in public hearings and debating with legislators;

C - Stimulate and participate in events, with the presence of representatives of justice, in order to discuss the application of the legal institutes interference with market relations and production linked to sectors that they represent; besides promoting studies on the consequences of the procedures, in the scope of administrative and judicial actions, to sources of investment, to the health of companies to business safety.

LEGITIMATE REASON

Before starting a dialogue with the government, the citizen must define the subject that will be treated. This subject should be necessarily lawful, ethical and relevant to the company he or she represents.

A - Lawful business is one that does not go against the law. Knowing whether a certain subject in the dialogue is lawful is a funda-

mental duty of the entity or company, as well as knowing its ethical limits.

The relevance of the subject to the company is an essential element so that there is legitimate reason. What other reason, if not a subject of interest to the company represented by the citizen, would cause the beginning of a dialogue with the government?

ELIGIBLE INTERLOCUTORS

In the case of the dialogue between the private sector and the government, there will be at least two public agents and two private agents present. The legitimacy of this dialogue depends on the legitimacy of these interlocutors to represent the government and organization.

A - An eligible public agent fit is the one that has jurisdiction and authority given by his or her position to treat the subject present in the dialogue. Within the public administration, in any level -, each agent has duties and limitations according to his or her position. Knowing the function of the public official present at the dialogue, his or her scope of activity, is key so that the dialogue might done in a legitimate manner. After all, the act practiced by a non-eligible public agent is null and void.



B - It is forbidden to require a public official to go beyond his or her scope of action.

The private agent, in turn, also has limitations in his or her scope of action. He or she should obey the hierarchical system of the company and limit himself or herself to deal with matters for which it has specific authorization. The private agent must also be effectively connected to the company that he or she represents, whether it is a labor or contractual link.

The difference between eligibility of the public agent and the private agent is that the first can make the act null and can lead to opening an administrative proceeding against the public agent. The second does not invalidate the dialogue, but it casts doubts over its legitimacy.

FORM OF DIALOGUE

The form is the most complex element of legitimacy in a dialogue. It is related to both the manner in which the dialogue is conducted as well as the acts performed during its implementation.

Decree number 4,334/2002, of the Presidency of the Republic, is the main rule on concessions of hearings to individuals. The private agent who wants to have a hearing with a public agent must:

- mention in advance the subject that will be addressed;

- suggest a date and time to meet;
- identify all participating private agents;
- explain the interest in the subject.

In turn, the public agent must:

- be accompanied by at least another public agent;
- create the record of the hearing.

Another fundamental document is the code of conduct of high-ranking public administration, which aims to ensure the standard of ethical behaviour of people appointed by the President of the Republic. The non-compliance with those rules does not necessarily imply violation of law; it means ignoring a moral commitment, following its principles further legitimizes the public-private dialogue, and it should also be observed by private agents in dealing with any public agent.

The private agent cannot offer, and the public authority cannot receive, any payment from a private source that is not in accordance with the law, nor receive transportation, lodging or any favors of individuals that enable conditions that may cast doubts about his or her probity or good reputation.

The public agent is allowed to participate in seminars, conferences and similar events, as long as he or she makes public any payment, as well as the travel costs by the organiser of the event who must not be interested in the decision that will be made by the authority.

The private agent cannot offer, and the public authority cannot receive, any payment from a private source that is not in accordance with the law.

The public authority is prohibited from accepting gifts, except in cases in which they have no commercial value. In other cases, gifts may not exceed the value of R\$100.00 (a hundred reais).

It might also be considered undue advantage of the public agent to have his or her dinner paid, receive tickets to sporting and entertainment events in general or take trips paid for by a private agent. All these practices should be avoided by the private agent.

Another important point is the use of a suitable communication channel to establish a dialogue. As a rule, the appropriate channel is the official:

- personal conversations should be conducted in the workplace of the public agent;
- correspondence should be addressed to official addresses: official email; official address;
- telephone contact should be made to an official landline telephone number of the public agent.

There are several cases in which it is unfeasible to restrict dialogue with public agents to the official means of communication. There are several situations that can lead the dialogue to take place in unofficial or even private means of communication:

- message exchanges on WhatsApp or SMS;
- phone calls to the public agent's cell phone;
- meetings in bars and restaurants;
- meetings in hotels or airports when in transit;
- meetings in social events.

In these cases, it is imperative that the private agent makes sure to focus on the legitimate reason of dialogue and keep a record of the meeting and report what was discussed at the meeting. In case it is necessary, the private agent will have the ability to prove that a dialogue took place, who were the people involved, as well as presenting the reason for this dialogue. That way, even if it is led in a

reprehensible manner, the reasons and interlocutors can be protected.

- Exchange of SMS messages and on WhatsApp, as well as emails sent to private addresses, must be saved and archived for the purposes of attesting to the legitimacy of the subject matter.
- Date and time of calls to unofficial numbers of a public agent should be written, as well as the number.
- Meetings in bars and restaurants must be recorded in writing with the date and place, and, in case it is inevitable to pay the whole check, the receipt must be filed.
- In many cases, unexpected meetings with public agents at airports, social events or hotels end up taking place. In these cases, the private agent should record, in writing, their occurrence, specifying location, day, time, people present and subject matter.

DISCLAIMER

The whole process narrated above points to the need for a formalization of the political dialogue. It is a demand not only in Brazil, but also in other countries with more advanced regulation between the public and private sectors. Obviously, registering all meetings inaugurates a new transparency culture of accountability which the Brazilian society is still not used to, but that has to happen.

Accordingly, in the future, it is possible to say that every meeting will be preceded by a disclaimer (or a warning) that will assure the formal characteristic of occasion and the need for everything to be recorded. This effort should be carried out jointly among all participants. Therefore, it is suggested that one must seek an institutional pact between businessmen and public agents on the benefits of transparency and security that this manner to engage in dialogue will bring to all sides.





3. ANTI-CORRUPTION LAW ANNOTATED

LAW **12.846**,
AUGUST 1ST, 2013

3. ANTI-CORRUPTION LAW ANNOTATED

LAW 12.846, AUGUST 1ST, 2013

INTRODUCTION

The Law 12,846, from August 1, 2013, which provides for civil and administrative accountability of legal entities for the practice of acts against Public Administration, national or foreign, better known as “Brazilian Anti-Corruption Law,” represents an important legal framework for the protection of the Public Administration against corruption, and it brings important innovations to the Brazilian legal system.

In spite of the innovations mentioned ahead, in legislative terms, control of administrative morality, the fight against corruption and its classification as a crime were already provided for in our codified law, such as the Penal Code (Decree 2848/1940), the People’s Action Law (Law 4,717/65), the administrative Misconduct Law (Law 8.429/1992), the Public Procurement Law (Law 8,666/93), the Clean Record Law (Complementary Law 135/2010) and the Law of Defense of competition - CADE (Law 12.529/11), among others.

However, one of the great innovations of the Anti-Corruption Law was to enable the allocation of strict liability, in the administrative and civil fields, to legal entities for the practice of acts considered harmful to the Public Administration. Before the enactment of the Anti-Corruption Law, this liability was only attributed to individuals. Thus companies now become directly liable for the practice of acts considered harmful to public property and the Public Administration.

Since the law 12,846/2013, the result of a worldwide trend to fight corruption has particular importance to the subject dealt with in the CBIC project named “Ethics and Compliance,” we are going to cover the main points and legal aspects regarding: I – Origin and Scope; II–Harmful Acts; III–Administrative and Judicial Accountability Initiative–Penalties and Administrative Proceeding; IV–Program of Integrity in Companies–Compliance; V–Leniency Agreements; VI–Registers; VII–General Provisions; VII–Conclusion.

Companies now are directly liable for acts considered detrimental to public assets and the Public Administration.

I. ORIGIN AND SCOPE

The law 12,846/2013 is the result of legislative initiative of the Federal Executive Branch. It was published in the DOU (Federal Official Newspaper) 8/2/2013, coming into force in February of 2014.

In fact, the legislative initiative of the Federal Government happened due to international agreements, such as the Inter-American Convention against Corruption, of the OAS (ratified by Federal Decree 4,410/2002); Convention on the Fight against the Corruption of Foreign Public Officials in International Trade Transactions, the OECD (ratified by Federal Decree 3,678/2000); and the United Nations Convention against Corruption (5,687 Decree/2006).

Among the foreign laws that fight corruption, the best known are the American–Foreign Corrupt Practices Act–FCPA (1977) and the law of the United Kingdom–The UK Bribery Act (2010).

The American legislation, for example, provides for individuals' sentence of imprison-

ment of five (5) years and fines of up to US \$250,000 and, for companies, fines of up to US \$2,000,000. In relation to fraudulent book-keeping, it provides for imprisonment of up to 20 years for individuals and for the legal entities, fines of up to US \$2,500,000 for infringement, in addition to the fines levied by the US Securities and Exchange Commission.

The legislation of the United Kingdom, already regarded as one of the most stringent, provides for imprisonment of up to 10 years and fines without limit, both people and companies can be liable. Corporate crime, for example, involves strict liability due to omission on the part of an organization to prevent the payment of bribes by an associated individual (employees, agents or subsidiaries). When this infringement is committed, the only reasonable defense on the part of the company is the demonstration of the existence of mechanisms and procedures appropriately deployed to prevent the practices of bribery by people associated with it.



Accountability for unlawful acts committed by the directors or managers of the legal entity is subjective, that is, it depends on the proof of intent or fault of the perpetrator.

One of the most significant innovations of the Law 12,846 /2013 is the adoption of **strict liability** concerning the company, making proof of intent or fault (negligence/ recklessness) of the company unnecessary. The only thing necessary is the **chain of causation** between the unlawful practice and the interest/benefit for the company to the imputation of liability to the legal entity that committed the crime.

The law also applies to the practice acts by a **legal entity** against the **National Public Administration** (direct or indirect public administration of any of the levels of government: Federal, State, Federal District and of Municipalities) **or foreign legal entity** (foreign companies that have headquarters, subsidiary or representation in the Brazilian territory; organizations and state entities or diplomatic representations, as well as legal entities controlled directly or indirectly by a foreign government. The law also applies to harmful acts practiced by a Brazilian legal entity against the foreign Public Administration, even if they were committed abroad.

It should be noted that the **concept used by law for defining corporate entities is broad**, encompassing both limited and

unlimited companies, regardless of the form of organization and adopted corporate model, foundations, associations of entities or persons and consortia. In this broad concept, **trade unions and class entities are also included**, both being associative entities.

However, accountability for unlawful acts practiced by directors or managers of the legal entity is **subjective**; that is, it **depends on the proof of intent or fault of the perpetrator**. Thus, in the case of subjective liability, besides demonstration of the chain of causality (always needed) between the damage and the conduct of the perpetrator, it must be shown that the harmful act (action or omission) was practiced with intent or fault (negligence/ recklessness) of the legal entity.

In the case of **consortia** (besides the controlling partners, subsidiaries and affiliates), the **liability is joint** in the context of their consortium agreement. This liability is restricted to the payment of the fine and the full compensation of the damage.

The liability of the legal entity in the administrative sphere does not exempt it from liability in the judicial sphere.

II. DETRIMENTAL ACTS

Constitute the harmful acts to the National or Foreigner Public Administration, those practiced by legal people acting against:

- I - National or foreign **public propriety**;
- II - **Public Administration principles**. And
- III - **International commitments** made by Brazil.

It is important to emphasize the Law 12.846/2013, that can be acknowledged as the “Anti-Corruption Law,” is way more inclusive than the terminology and the meaning of the term “corruption.” Actually, there is not a part in which such a term is referred expressively; it is mentioned as a “harmful act.” The representation of the infractions mentioned on the law goes further; there-

fore, the crime of corruption mentioned on the Criminal Code, where, theoretically, that the harmful act practiced, for example, one of the Public Administration principles (Legality, Impersonality, Morality, Publicity and Efficiency, among others) in order to be categorized as a harmful act to the Public Administration.

Among the special regulations that have the subject as an interface, emphasizing the following: CP, Administrative Improbability Law, Money Laundry Law, Antitrust, Illegal Competition, Biddings, Tax Responsibility, White-Collar Crime and Criminal Association, among others.

HARMFUL ACTS, LISTED BY THE ANTI-CORRUPTION LAW:

- **To promise, offer or give, directly or indirectly, an illegal advantage to a public agent or a third party.** Observing that this infraction comprises Art. 333 of the CC – Active Corruption (offering or promoting illegal advantage to a public employee in order to determine, practice, omit or delay the trade act), that are not required at the Anti-Corruption Law, the action or omit the acts of a public employee or offering the illegal advantages.
- **Demonstrably, to finance, to fund, to sponsor or in any form or to endow the practice of harmful acts mentioned on the Law** (without corresponding);
- **Demonstrably, to be the filed legal or natural person in order to hide or to dissimulate their real interests our identity in order to take benefits of the acts practiced** (without corresponding);



REGARDING BIDDING AND CONTRACTS:

- **To interfere or to defraud, through an adjustment, combination or any other expedient, the competitive nature of the public bidding procedure** (specifically regarding the Art. 90 of Law 8.666/93, which requires the intention of the agent in getting advantage from the award of the tender object. See also similar provisions in Law 12.529 / 11, Article 36, CADE, Antitrust);
- **To prevent, to hinder or to defraud the performance of any act of lawfully thorum procedure** (Art. 93 of Law 8666/93);
- **To remove or to ignore the bidder, through fraud or offering any kind of advantage** (Art. 95 of the Law 8666/93);
- **To defraud public bidding or resulting contract** (without corresponding);
- **To create, fraudulently or irregularly, a legal person to participate in public bidding or enter into administrative contracts** (without corresponding);
- **To obtain advantage or undue benefit, fraudulently, modifications or extensions of contracts signed with the Public Administration, without authorization by law, act in the call or in their contractual instruments** (Art. 92 of the Law 8666/93);
- **To manipulate or to defraud the economic and financial balance of contracts with the Public Administration** (without corresponding and disturbing, in that there is no clear and objective definition of the subject).

Generally, it is noticed that the offences are very open, generic, including indeterminate legal concepts, with possibilities for various interpretations, that may generate, in theory, 34 different possibilities based on the same fact.

The possibilities of infractions, on the bidding part, for example, the law reunites faults mentioned at Law 8.666/93 and includes others correlated with penalties already mentioned. The risk of doubling the sanction for the same typical fact– bis in idem.

Take, for example, the so-called “price-fixing,” which can be summarized as a coordinated action between competitors to eliminate

competition by increasing the price of products offered.

According to CADE (Law 12.529 / 11), the ‘formation of cartel’ is considered a violation of the economic order (administrative offense). The Public Procurement Law (Law 8666/93) and the Law of Crimes against the Tax and Economic Order (Law 8,137/90), is a crime. In the Anti-Corruption Law (Law 12,846/13), it is a civil and administrative infraction, and the administrative pardons (the CADE Law) and civil (Anti-corruption) do not reach the criminal. So, the question is: can leniency be used as a criminal confession?

III. ADMINISTRATIVE AND JUDICIAL ACCOUNTABILITY

A legal entity may be held liable under both the administrative and the judicial framework or both.

3.1 - ADMINISTRATIVE PENALTIES

- **Penalty of 0,1% (a tenth percent) to 20% (twenty percent) of gross income for the last year** prior to the initiation of administrative proceedings, excluding taxes, which will be not less than the advantage obtained when possible estimated. If you cannot use the criterion of turnover, the fine will be **R\$6.000,00 (six Thousand reais to R\$ 60.000.000,00 (sixty million))**.

- **PUBLICATION OF THE SENTENCE**, in large circulation media in the area of practice of the offense and the company operates at its own expense; in an announcement set in the company for 30 days, visibly to the public and on the Internet.

- Such penalties can be applied individually or cumulatively and do not exclude the obligation of full compensation of the damage caused.

- In the application of sanctions, shall be taken into account: the severity of the infraction; the advantages obtained or envisaged; the consumption or not the offense; the degree of injury or danger of

injury; the negative effect produced by the infringement; the economic situation of the offender; cooperation for the investigation of offenses; the existence of mechanisms and internal integrity procedures, auditing and encouraging the reporting of irregularities and **the application of codes of ethics and conduct within the legal person (COMPLIANCE); and the value of contracts held by the legal person with the damaged organ.**

- The parameters for evaluation of internal integrity procedures (**COMPLIANCE**), by **Federal Decree 8.420, on March 18th 2015.**

- The forecast is for **establishment of specific administrative process for full compensation for the damage** that is independent of the application of penalties laid down.

3.2. - ADMINISTRATIVE PROCEDURE OF ACCOUNTABILITY (PAR)

- The establishment and judgment of the administrative procedure for determining the responsibility of the legal person will fit the highest authority of each agency or entity of Executive legislative and judiciary at all levels (federal, state, Federal District and Municipalities). This competence can be delegated.



- The agencies act ex officio or at the instigation;
- The conduct of administrative proceedings based upon a commission of servers that can propose, provisionally, the suspension of the effects of the act or process. The committee may require the legal representative body of the public entity necessary legal measures, including search and seizure. It will commission up to 180 days to complete the process.
- At the federal level, the CGU will have concurrent jurisdiction and may attribute processes.
- After the defense of the legal entity, report of the trial of in-auradora authority commission, with no payment of assessed values (fines), the credit will be enrolled in outstanding debt.
- Forecast the law of the possibility of **disregarding the legal personality of the company**, based on abuse of rights or provocation of balance confusion, depending on the effects of sanctions on the partners with management powers.

In view of the administrative autonomy, the more than 5,000 municipalities are competent individuals to initiate, conduct, judge and apply sanctions provided for in the law; they will even appreciate and judge the

integrity systems (compliance) deployed in enterprises, since the existence of such integrity systems in the log infrastructure company serves to mitigate the penalty (fine) imposed. One concern is whether the majority of municipalities are provided stop (and equipped) for such a task, especially in the area of personnel with experience and qualification for driving matter of this order of magnitude.

Another great innovation that can generate even court challenges is the possibility of **disregarding the legal personality of the company by administrative decision**. Until then, to be disregarded, the legal personality of the company, the legal proceedings were necessary, whose prediction came expressed even in the Consumer Protection Code. From the edition in an Anticorruption Law, in theory, any municipality may, in via administrative, apply the institute. The subject of driving of such magnitude in the internal angle of the Administration itself cause uncertainty and concern for the same reasons mentioned above, notably the lack of qualified human resources, materials and operational resources at thousands of Brazilian municipalities, coupled with the risk of political use of the law.

Taking into consideration the administrative autonomy, the most of 5,000 cities will be able to set up, lead, judge and apply the sanctions as provided by law.

3.3 - SANCTIONS JUDICIARIES

Due to the practice of harmful acts as provided by the law, the Brazilian Federal Union, the States, the Federal District and the Cities, through their respective public law offices and Public Prosecution Service of Brazil (MP), will be able to judge actions related to the application of the following sanctions towards the legal entities which have broken the law:

- Forfeiture of the goods, rights and values that represent advantages or direct or indirect profit obtained with the infraction;

- Suspension or partial interdiction of activities;
- Compulsory dissolution of the legal entity;
- Prohibition on receiving incentives or loans of public agencies;
- Unavailability of goods as a payment guarantee of fine or full compensation of the damage.

The sanctions can be cumulative or not. The judge can demand search and seizure.

IV. INTEGRITY PROGRAM (COMPLIANCE)

In the application of the sanctions, the law provides some criteria (already mentioned in the item 3.1) that have to be taken into consideration. Among them, it is important to highlight that the existence of mechanisms and internal procedures of integrity, auditing and incentive to the denouncement of irregularities and effective enforcement of ethical codes and behavior in the field of legal entity is a mitigating factor, and it can reduce the value of the fine. In this sense, besides the recognized merit in itself in the adoption of policies and healthy practices in the business activity, the measurement can still make the difference when the imputation of the penalties apply to the companies that have adopted such program.

As provided by the Decree 8.420/205, when the dosimetry of the penalty (the fine calculation) a **reduction from 1 to 4% of the gross earnings** of the legal entity if there is evidence that the company is involved and applies a program of integrity, as provided by the parameters in the mentioned decree.

his program of integrity also known as Compliance, in fact, is a management mechanism of adopted risks by the companies, which had its origin in the financial market and has extended for the most diverse private and public organizations. A more literal translation would be "in conformity with the laws and internal and external regulations". The objectives are the control and the mitigation



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of risks, the verification of healthy practices inside the company and the probity in the development of business activities among others. According to experts, 64% of the risks are from outsourcing companies that the organizations work with, then the importance of a program that aims at mitigating the risks.

The parameters of evaluation of a program of integrity are provided by the Decree 8.420/15, which has been established 16 applicable parameters to the medium/large companies, nine of these parameters being applicable to micro and small companies. The Decree establishes that the program of Integrity be structured, applied and updated according to the characteristics and the risks of business activities involved.

The parameters provided by the Decree 8.420/2015 are the following:

- I. Engagement of the high board of directors of the legal entity, including the councils, shown by the visible support and unmistakable to the program;
- II. Patterns of behavior, ethical code, policies and procedures of integrity applicable to all employers and administrators, regardless of the position and the function;
- III. Patterns of behavior code, ethical code, policies of extended integrities, whenever it is necessary, towards third parties, such as

providers, outsourcing companies, brokers and corporate members;

- IV. Periodic trainings on the program of integrity;
- V. Periodic analysis of risks to make necessary adaptations to the integrity program;
- VI. Accounting registers that demonstrate completely and precisely the transactions of the legal entity;
- VII. Internal controls that make sure the ready elaboration and confidentiality of the reports and the financial statements of the legal entity;
- VIII. Specific procedures for fraud and illicit trade prevention in the field of bidding processes, in the execution of the administrative contracts or in any interaction with the public sector, done by third parties, such as tax payments, subject to tax verification or obtaining of license authorizations, licenses, permissions and certificates;
- IX. Independence, structure and authority of an internal responsible instance by the application of the program of integrity and oversight of its enforcement;
- X. Channels of denouncement of irregularities, openly and widely advertised to the employers and the third parties, and the mechanisms related to the protection of denouncer in good faith;

XI. Disciplinary measurements in case of violation of the program of integrity;

XII. Procedures that ensure the ready interruption of irregularities or infractions detected and the timely compensation of the damages done;

XIII. Appropriate diligence for hiring and, according to the case, supervision of the third parties, such as providers, outsourcing companies, brokers and corporate members;

XIV. Verification, during the processes of emerging, acquisitions and corporate restructuring, undertaking of irregularities or illicit acts or the existence of vulnerabilities in the legal entities involved;

XV. Continuous monitoring of the program of integrity, aimed at the improvement in the prevention, detection and combat to the occurrence of the harmful acts as provided by the Art. 5º of the Brazilian Law 12.846, in 2013;

XVI. Transparency of the legal entity in relation to the donations for candidates and political parties;

For the evaluation of Program of integrity of the micro companies or small companies, the regulations of parameters above were reduced to meet the subparagraphs: I, II, IV, VI, VII, VIII, XI, XII, XVI.

As we could see, the Program of Integrity is a group of integrated measurements to be adopted and effectively applied by the companies, small/medium or large ones; the individual adoption of one single parameter is not enough.

One of the criticisms that has been voiced in relation to the parameters pointed out by the mentioned decree is the fact that the demands would be very sophisticated, with high financial and comparative costs, whose diligence would be doable only by large domestic and/or multinational companies, the ones that have already experienced in this reality.

Another worrisome fact is the government official's capacity of evaluation of the Integrity Programs established by the companies. This person, many times, does not have the necessary profile to carry out the task.

The General Comptroller's office of the Federal Union-CGU, by the Ordinance 909, of 07/04/2015, edited the rules related to the evaluation of the programs of integrity. Despite being a federal regulation, we understand that it will be the base for the States, Federal Districts and the Cities to adapt their own regulations.



V. LENIENCY AGREEMENT

Law 12.846/2013 provides, by the articles 16 and 17, the Public Prosecution Service of Brazil with means to make an agreement with the responsible of criminal actions. As such they may help with the investigation and with the administrative process, when the result of this collaboration is: I) the identification of all involved parties in the infraction; II) and the fast access to the information and documents that prove the illicit act under investigation.

In its original version, the law still provided 03 (three) requirements for the conclusion of the agreement: I – the company would have to be the first to be willing to cooperate; II – totally end its involvement in the infraction; III – admit its participation in the illicit act.

The law also enforced that the conclusion of the agreement would release the companies from the sanctions of publication of condemnation and the prohibition on receiving incentives or loans and would reduce the fine applied in until 2/3.

The position of MP in relation to the leniency agreements as provided by law was not one of the most favorable ones because the law has simply granted to the Public Prosecution Service of Brazil the role played, for example, by The General Comptroller's of-

fice of the Federal Union (GCU). Being the Public Prosecution Service of Brazil an independent government agency, with the public office of being the law enforcer, it is not associated with (obliged to) respect to the agreements made. In this sense, regardless of the fact that the company has concluded a leniency agreement, the MP can even start administrative investigations and lawsuits against the company, also considering the fact that only the federal Brazilian governmental sector is composed of CGU, AGU, TCU, CADE, Federal Police, among others.

Due to the uncertainties created by the participation of many different government agencies and respective results, which could complicate agreements as provided originally by the Brazilian Law 12.846/13, the Provisional Measure 703 was issued on 18th December 2015, whose objective was the change of the original version of the Anti-Corruption Law, notoriously in the parts referred to the leniency agreements.

The Brazilian President has highlighted, in the Exposition of Reasons, that the objective of the changes is the improvement of the law to reach a more effective and faster application of the leniency agreements to be concluded, making possible at once the participation of



The changes introduced by the MP 703/15 in the Law 12.846/13, from our point of view, enabled to make the rules more flexible before the regulation of the leniency agreement

the control internal agencies and of the MP, preserving the continuity of the economic activity and the preservation of the jobs and impeding the filing of lawsuits of improbity and any other actions against the company by the same fact of the leniency agreement. According to the Exposition of Reasons, the measurement was also aimed at protecting the Audit Office of the Federal Union in the verification of damage to the public treasury, when it is understood that the value as provided by the agreement is not enough for the full compensation of the damage.

In fact, the changes introduced by MP 703/15 by the Law 12.846/13, from our point of view, enabled the rules to be more flexible before the regulation of the leniency agreement, with the objective of stimulating the conclusion of the agreements, enable the reduction of the penalties, the filing lawsuits which could happen over the same object and the resuming of contracts with the Public Prosecution Service of Brazil. The main changes introduced by the MP are the following:

- Exclusion of the disposition that provides the obligatory of the legal entity to confess its participation in the illicit action to the conclusion of the agreement;
- Exclusion of the demand that the legal entity be the first one to open the conclusion of the agreement;
- Inclusion of the possibility that the legal entity be the first one to open it, can grant the full pardon of the penalty, and that it is not applicable to any other sanction of pecuniary nature;
- Inclusion of the participation of the MP and the Public Law Offices in the conclusion of the agreements and order of the signed agreements to the respective Audit Office for the verification of eventual damages to the public treasury;
- Inclusion of the provision that releases the legal entity from the restrictive sanctions to the law of bidding and hiring with the Public Administration, when the agreement conclusion is done, with the reduction of the penalty in until two thirds, not being applicable any other sanction of pecuniary nature;
- Inclusion of provision that prevents the Public Law Office from judging or establishing lawsuits of improbity and other lawsuit actions that impose the legal sanctions of forfeiture of goods, suspension of the activities, compulsory dissolution, prohibition on receiving loans;



- Addition of a provision preventing the filing or the continuation of the already filed action in the case of agreement with the participation of the Public Advocacy in conjunction with the Federal Prosecution Service;
- Addition of a provision authorizing the suspension of administrative proceedings related to public tenders and contracts on the same fact of the leniency agreement and its filing when the full compliance with it;
- Extending the range of the agreement to companies belonging to the same economic group, provided they signed together;
- Addition of a provision authorizing amortization, considering the economic capacity of the company when the agreement stipulates the obligation to pay for the caused damages;
- Addition of a provision that excludes the company's liability in court, if there is provision in the leniency agreement;
- Inclusion of the company's commitment to compulsory implementation or improvement of its mechanisms of program integrity;
- Revocation of § 1 of Art. 17 of Misconduct Act, which forbade transaction or agreement in the framework of a misconduct action.

VI. REGISTRY

CREATION OF A NATIONAL REGISTRATION OF PUNISHED COMPANIES - CNEP, within the Federal Executive Branch, which will bring together and give publicity to sanctions imposed by agencies or entities of the Executive, Legislative and Judicial branches of all levels of the government.

NATIONAL REGISTER OF DISREPUTABLE AND SUSPENDED BUSINESS - CEIS, established under the Federal Executive (CGU) on advertising sanctions by agencies or entities of the Executive, Legislative and Judicial branches of all the spheres of the government, in accordance with the Law of bids in Arts. 87 and 88 (sanctions).

VII. GENERAL PROVISIONS

1. The authority not adopting measures to investigate the facts is criminally, civilly and administratively liable;
2. The powers of CADE and the Federal Prosecution Service regarding violations of the economic order are not excluded in the face of the law;
3. The application of the sanctions law does not affect the accountability processes and applying penalties arising from acts of misconduct (Law 8,429 / 11) or the unlawful acts set forth in Law 8,666 / 93 and Law 12,462 (DRC).

The Liberal Social Party (PSL) filed a direct action of unconstitutionality (**ADI 5261**),

no at the Supreme Court, with an injunction to suspend the effectiveness of questioned provisions. The party says that the law, by adopting the Comprehensive Risk Theory, violated the Constitution, establishing no transcendence for penalties and ensures due process. In short, it turns against strict liability companies (because the law does not allow exclusive responsibility and enables accountability of PJ by third party). The rapporteur Minister is Marco Aurelio.

In a monocratic decision of 23.03.2015, that Minister has not granted the pleaded injunction, deciding to stand by the final judgment, with still no definition to date.

VIII. CONCLUSION

Administrative and judicial sanctions are severe; the fines can derail a company, and the sector of construction and real estate is considered a high-risk sector.

The adoption by companies of mitigating risk measures can make a difference in cases of judicial and administrative proceedings (compliance).

Companies will have to be adjusted in relation to internal controls (e.g., contracts, suppliers, checking the red flags), spreading the culture of good practice and effective

implementation of a risk and business integrity management program.

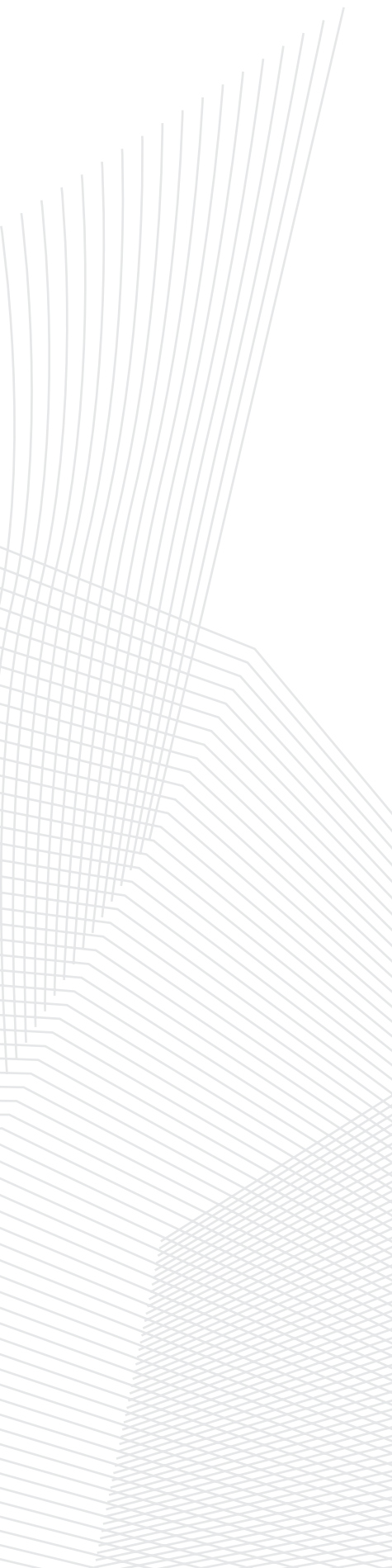
In this context, the importance of professional associations for the regulation of their respective sectors becomes clear with the development and implementation of integrity programs (compliance), according to the specifics of the activity practiced business ties and the objective reality of each one, observing both the regulation of the matter in Law 12,846 / 2013, the Provisional Measure 703/2015, the Federal Decree 8.420 / 2015 in Ordinance 909/2015 CGU, among others.

The companies will have to adjust with regard to internal controls, spreading the culture of good practice.





4. CORRUPTION RISK ASSESSMENT



INTRODUCTION

The Project Ethics and Compliance in construction released by CBIC—Brazilian Chamber of Construction Industry in May 2015, with the co-realization of the National SESI, includes conducting a series of interventions, training programs and a provision guideline with content for its members and all the business organizations of the segment, whose main objective is to support the implementation, strengthening and consolidation of a current and consistent management model of ethics and compliance in all its businesses.

Although recognized as the basic principles that guide business decisions, effective management of ethics will depend, ultimately, on the spontaneous attitude of business leaders at the crucial moment of each of your choices and decisions.

For this reason, and, unfortunately, the best control system and the most comprehensive code of conduct may be insufficient to ensure proper ethical conduct, if the basic values and principles of organizations are not in line with the law, but much more

than that, do not prioritize integrity and transparency.

Nevertheless, the CBIC believes that a strong working strategic orientation, integrated dissemination mechanisms and updated and didactic structured processes, in simple and accessible language, form the basis for a new positioning of the segment on the subject.

And the fundamental commitment of the main leaders of the industry, whose history is full of examples of genuine ethical commitments, translate into practice the greatness and importance of the construction industry in relation to the Brazilian industry as a whole.

Therefore, this guide is designed to serve as a reference in understanding the main fundamentals and definitions of ethics and integrity and to how to be used as a guideline methodology step-by-step for organizations to properly assess their risks, to structure a simplified system and effective management of ethics and compliance, and use it with fullness in all its relationships and operations.

4. CORRUPTION RISK ASSESSMENT

THE COMMITMENT OF ORGANIZATIONS TO SOCIETY

Corporate social responsibility is a form of management that is defined by an ethical and transparent relationship of the company with all the stakeholders with which it relates, and the establishment of business goals compatible with the sustainable development of society, preserving environ-

mental and cultural resources for future generations, respecting diversity and promoting the reduction of social inequalities¹. Thus, to ensure your company has a license to operate in society, it is necessary to guide decisions based on ethical principles and sustainability.

WHAT IS ETHICS, AFTER ALL?

Ethics sets the standards of right and wrong that determine how humans should act in certain situations in relation to their rights, principles, values, bonds or equity, and this allows people to live in society and pursue their common and individual interests. Ethics defines our interaction with others, in all our relationships.

ETHICS AND MORALS

In the universe of standards and social values, ethics and moral coexist, but it is important to know the different meanings of each term. Ethics is the set of principles and values that establishes human conduct. Morality is the set of rules acquired through culture, education, tradition and daily life, and these guide human behavior within a society. The concrete way ethics is divided depends on each culture, which is always

different from the other. This different way we call the moral. Of ethics, there is only one for all. There are many types of morals, depending on the different ways humans organize their lives².

ORGANIZATIONAL VALUES

The values correspond to the ethical principles and beliefs adopted by an organization to govern and direct its activities. The values are identified according to the posture and attitude of the people who are part of the organization. They must withstand time and be independent of the activity area.

Do you know your company's values?

1 - Instituto Ethos, 2015.

2 - Ética e moral: que significam? Leonardo Boff, 2015.



ETHICAL DILEMMAS

Every day, both in our personal and in our professional lives, we face situations that lead us to question how best to act. Having an ethical conduct means facing the discomfort of these dilemmas and decide how

to act on them. A good culture of principles and values and well- established and distributed rules can help in decision-making. But if you have doubts, you can always ask a few questions:

Would you feel uncomfortable if the **action** or **situation** was posted on social networks or a blog?

Would you be uncomfortable reading in a newspaper about the **attitude** you want to take, or a story saying that it would make the situation last longer?

Would you have trouble telling your child or spouse about the **situation**?

If you answered **yes** to either of these questions, you probably should not opt for this action because it potentially involves some unethical attitude.

If you still have any doubts, consider this:

- Consider how the stakeholders (employees, community, shareholders, suppliers,

government, etc.) will be affected by the decision.

- Não pense apenas em estar dentro dos parâmetros da lei. Pense se é certo ou não.
- Seja imparcial, recusando-se a favorecer alguns em detrimento de outros de uma forma que não seja a correta.
- Faça algumas perguntas:



What situation is provided for in the code of conduct?



Your decision may cause negative consequences and damage to the organization?



What is your intention when making the decision?



Can you make the decision on your own or do you need to contact your superior?

If still in doubt, look to your superior or contact the communication channel provided by your organization. If you are an important leader for the organization, call your team and discuss the matter in the most

transparent and deep way as possible. Take responsibility to seek the best solution.

But remember: the best way to deal with these dilemmas is to avoid them happening at all.

ORGANIZATIONAL CULTURE

The organizational culture was defined by Schein (1984) as:

“The set of basic assumptions invented, discovered or developed by a group of people when learning how to deal with problems of external adaptation and internal integration, which have worked well enough to be considered valid and taught to new members as the correct manner of realizing, thinking and feeling these problems.”

Each organization has its own culture and, when it is strongly established, it is possible to recognize it by means of architecture, ceremonies, behavior, hierarchy, rituals, office positioning, objects, dressing code, ethical principles and beliefs.

Culture is **dynamic**, meaning it can change throughout the years. But it is important to understand that changing culture is a long process that demands alignment and involvement of all leaders, establishment of formal

procedures within the organization, education of all employees and permanent monitoring.

The public of interest or stakeholders are those who affect or are affected by the activities of an organization. Suppliers, customers, members, employees and community are some of the possible stakeholders.

A work environment in which ethic culture prevails is the one that prioritizes the employees' rights and promotes loyalty, honesty, transparency, empathy and tolerance regarding the treatment of its public of interest. When organizations comply with laws and treat their stakeholders in a consistent and fair manner, their employees start to trust their managers and internalize the company's values as if they were their own values.

CORRUPTION

Corruption occurs when you use the power that has been entrusted to you for illegal private profits. This means waiving ethics, morality, tradition, laws and civil virtues for your own benefit. UN Global Compact has defined some of the several manners in which corruption may be found³:

- **Bribery:** it is defined by offering, promising, giving, accepting or requiring advantage (financial or cash) as a manner of inducing action, which is illegal, anti-ethic or a break of confidence for not acting. Bribery may be presented in the following ways:

- **Kickbacks:** they are a way of bribery performed to one customer after a company has received a contract, occurring in

departments that take decisions regarding contracts.

- **Facilitation payments:** it is about usually small payments made in order to ensure or accelerate the performance of a routine or necessary action to which the payer has right, either legally or not, for instance, the payment made in order to accelerate products release at the customs office.

- **Political and beneficiary donations, sponsorship, trips and promotional expenses:** These are legal activities for entities, but they have to be observed with attention, because there might be abuse being used as maneuver for bribery.



- **Conflicts of interest:** A conflict of interest occurs when a person or entity, which has any obligation with the company, has a conflicting interest, obligation or commitment. The existence of a conflict of interest does not characterize, alone, corruption, but it may arise when a director, employee or third party breaches a contract or his/her obligation with the entity, acting in favour of other interests.
- **Collusion:** it may occur in different ways, the most popular being bid rigging, cartel and price fixing.
 - **Bid rigging:** competitors conspire to raise prices in situations in which purchasers acquire goods and services alluring competitors' proposals. Essentially, competitors previously agree who shall send the winning bid for an agreement established through a bidding competitive procedure, and it is not necessary for all proposers to participate on the collusion.
 - **Cartel:** secret agreement or collusion between companies in order to commit illegal actions or frauds. Usually, cartel involves price fixation or market rigging through definition of production and supplying quotas.
 - **Price fixation:** agreement established among competitors in order to raise, fix

or keep sales prices for goods and services. It is not necessary for all competitors to agree to charge exactly the same price or to all competitors of a given industry to join the collusion.

- **Revolving door:** this is about corruption connected to the movement of high position-levels employees of the public sector to positions of the private sector and vice versa.
- **Sponsorship:** act of favouring a person, who is selected regardless of his/her qualifications, merit or right for a job or benefit due to affiliations or connections.
- **Agency of illegal information:** this is about the obtainment of corporate confidential information through illegal methods.
- **Use of privileged information:** transaction of bonds made when a person behind the negotiation knows non-public substantial information and breaches his/her obligation of keeping confidentiality of such knowledge.
- **Tax evasion:** non-payment of taxes to the government of a given jurisdiction in which the referred tax is due by person, company or trust fund, which should be a contributor in that jurisdiction.

UNITED NATIONS CONVENTION AGAINST CORRUPTION

The United Nations Convention against Corruption represents UN positioning in the fight against corruption. It is a document composed by 71 articles and gathers issues such as prevention, penalty, recovery of goods and international cooperation.

The Convention purposes are:

- To promote and strengthen measures to avoid and fight corruption in a more efficient manner.

- To promote, ease and support international cooperation and technical assistance in the prevention and fight against corruption, including the recovery of goods;

- To promote integrity, obligation of rendering account and due management of public issues and goods.

Brazil has ratified UN Convention against Corruption in the Legislative Decree No. 348, of 18 May, 2005, and enacted the Presidential Decree No. 5687, of 31 January, 2006.

ANTICORRUPTION LAW⁴

In force since January, 2014, Law No. 12846/2013, named Anticorruption Law or Clean Company Law, is intended to punish companies involved in practices related to corruption applying fees at the order of 20%, at the maximum, over the company's billing. Decree No. 8420/2015 regulates several aspects of the legislation, such as criteria for the calculation of the fee, parameters for assessment of compliance programs, rules for the signature of leniency agreements and provisions about national registration of the punished companies. These procedures

are under the General Comptroller's Office (CGU) liability.

LIABILITY ASCERTAINMENT

The Law gives the General Comptroller's Office (CGU) exclusive competence to establish, ascertain and judge injurious acts to the national and foreign Public Administration, as well as to draw up procedures for assessment of regularity or correction in progress. The accountability administrative procedure committee shall be composed by two effective servers who shall have up to 180 days to conclude the procedure. This term may be extended

Law 12846/2013 is intended to punish companies involved with practices related to corruption, applying fees at the order of 20%, at the maximum, over the company's billing.

CALCULATION OF THE FEE VALUE

In accordance with the law, the punishment for the injurious act shall never be lower than that value of the advantage earned. The calculation of the fee value is the result of the sum and subtraction of the percentages falling up the gross billing of the company considering the variants provided on Article 7 of Law 12846. The limits are 0.1% to 20% over the gross billing of the last calendar year previous to the institution of the administrative procedure, excluding taxes. In the event it is not possible to use the company's gross billing, the fee value shall be limited between R\$6 thousand to R\$60 million.

COMPLIANCE/INTEGRITY PROGRAM

From the Decree, integrity mechanisms and procedures, audit, application of code of ethic and conduct and motivation for report of irregularities that should be adopted by the company and monitored by CGU are established. According to the document, the integrity program should be structured, applied and updated according to the current features and risks of each corporate entity activity, which, by its side, should ensure permanent improvement and adaptation of the referred program.

Decree No. 8420/2015 also defines on which parameters the compliance programs are assessed. They are:

- I.** Commitment of the corporate entity high board of directors, including councils, highlighted by the visible and unequivocal support to the program;
- II.** Conduct Standards, code of ethic, integrity policies and procedures, applicable to all employees and managers, regardless position and duty exercised;
- III.** Conduct Standards, code of ethic and integrity policies extended, as necessary, to third parties, such as suppliers, services providers, intermediary agents and stockholders;
- IV.** Frequent training on the integrity program;

V. Frequent assessment of risks in order to perform necessary adaptations to the integrity program;

VI. Accounting records that may reflect, in a complete and accurate manner, the corporate entity transactions;

VII. Internal controls that ensure prompt preparation and reliability of reports and financial statements of the corporate entity in question;

VIII. Specific procedures to avoid fraud and illegal acts in the scope of bidding procedures, at the execution of administrative agreements or in any other interaction with the public sector, even if intermediated by third parties, such as tax payments, subjected to inspections or obtainment of authorizations, licenses, permissions and certificates;

IX. Independence, structure and internal instance authority responsible for the application of the integrity program and monitoring of its compliance;

X. Channels for report of irregularities, open and widely disclosed to employees and third parties, and for mechanisms intended for the protection of the good faith complaints;

XI. Disciplinary measures in the event of violation of the integrity program;

XII. Procedures that ensure the prompt interruption of irregularities or violations detected and timely remediation of the damages generated;

XIII. Appropriate diligence for contracting and, according to the event, supervision of third parties, such as suppliers, services providers, intermediary agents and associated;

XIV. Verification, in the course of processes of merger, acquisition and corporate restructuring, of committing irregularities or illegal acts or the existence of vulnerabilities in the corporate entities involved;

XV. Continuous monitoring of the integrity program aiming its improvement in the prevention, detection and fight against the

occurrence of injurious acts provided in the Article 5 of Law 12846, of 2013;

XVI. Transparency of the corporate entity regarding donations for candidates and political parties.

XVII. The company's operation regarding these parameters shall influence the dosimetry of sanctions that may be applied.

LENIENCY AGREEMENT

The leniency agreement is the adjustment that enables the offender to participate in the investigation with the purpose of preventing or repairing damages of collective interest.

Once the leniency agreement is proposed, CGU may require the records of administrative procedures in progress in other bodies or entities of the Federal Public Administration that regard the factual objects of the agreement. Since the leniency agreement

is met, the corporate entity has the right to: exemption of publication of the punitive decision; exemption of the prohibition of receiving financial incentive, subsidies, grants, donations of public bodies or entities; and exemption or attenuation of punishment restrictive to the right of bidding and contracting and reduction of the fee value. However, the obligation for integral repair of the damage remains.

REGISTERS

Generated by CGU, National Registers of Punished Companies (CNEP) and Not Idoneous and Suspended Companies (CEIS) gather corporate entities which suffered sanctions based on Anticorruption Law and other laws, such as Bidding and Agreements Law. Data are provided by the Three Powers and three spheres of the Federation bodies and entities.

“Many companies believe that the government is the one which steals, which asks for bribery, which practices extortion and they are always the victims. However, for many times, they are the ones who instigate the bribery. As they are part of the problem, they are also part of the solution. The action against this starts with the refusal of payment of bribes and the creation of policies aiming to mitigate such acts. It is necessary to communicate these policies to their employees so they get engaged ending by being a collective action”.

Olajobi Makinwa Chief of the Global Compact for Anticorruption and Transparency

COMPLIANCE

The word compliance in English comes from the verb to comply and is used in the business environment to identify the activities

Michaelis Modern Dictionary
English & Portuguese

comply
com.ply

1 acquiesce, yield, conform, obey,
consent, assent.

2 meet, satisfy, correspond to, obey,
to be in accordance with.

To comply with: acquiesce,
accede, to be subjected to

of an organization to ensure the compliance with the laws in force under its operation.

Compliance, usually, is established by means of integrity formal programs that should foster a culture that stimulates ethical conduct and commitment with the compliance with the legislation so as to avoid and detect criminal practices.

Compliance with laws is an ethical obligation of an organization. However, there are events in which, even being within the limits of the law, the company has unethical behavior. That is why compliance and ethic should always be together in order to ensure the best manner of acting.

CORPORATE ETHICS

A company is considered ethical when it acts according to the moral principles and the rules of good procedures accepted by society⁵. The ethical behavior towards all the public interest is the only way its profit can be morally acceptable.

When ethics and culture of compliance rule the behavior of an organization, countless benefits can be listed:

- Elimination of spending on irregular payments (bribery, pay-off, "hush money")
- License to work
- Identification and neutralization of risks
- Improvement in the image and in the organization reputation
- Moral legitimacy to demand ethical behavior from stakeholders (mainly suppliers and employers)
- Advanced identification of problems
- Building of solid relationships with business partners
- Reduction of spending on contingencies (fines, interruption of activities, lawyers, etc.)

ETHICS AND THE CONSTRUCTION INDUSTRY

The last few years have been challenging in relation to problems concerning the lack of ethics and corruption. Big operations of investigation have been carried out and have shown us how many businesses are being conducted in Brazil, through embezzling high amounts of money, bribery and corruption. And the construction industry is not immune to it. On the contrary: in some cases, some companies of the sector have been the main perpetrators of big scandals.

Some problems related to ethics in the segment of building industry are corruption, nepotism, lack of health and safety of work, breaking work laws, high index of accidents, stealing from building sites, not meeting the deadlines of construction delivery, irresponsibility in the delivery of final products to the clients, impunity and materials and activities developed by the sector with potential harm to the environment, among others.

In a survey on ethics carried out by CBIC – Brazilian Construction Industry Chamber, in 2015, with executives of entities of construction, the study showed that:

- There is a generalized perception that corruption is more a problem related to the public sector.
- The competition is more disloyal in the public construction sites.
- A bureaucracy and the low quality of public service create spaces for the “selling of facilities,” and the solution is a management reformulation.
- In the cases of these non-ethical behaviors, the damage is more obvious in the image of the sector for the population.

By all means, the ethical management is still barely found in the sector. By the way, when we talk about this subject, it seems to be more related to the lack of transparency, agility and professionalism of the public sector than to something related to the own companies’ problem.

All these aspects create a great opportunity to prioritize ethics and compliance in the sector of construction industry in order to take it to the right path of ethical and sustainable development, in which, it is, indeed, its rightful place.



HOW TO CREATE A CULTURE OF ETHICS IN THE WORKPLACE

In environments in which the culture of ethics prevails, it is easier to do the right thing than the wrong one!

However, we don't always work in a place like that. There are situations in which the sector is corrupted and the businesses carried out

in the chain of value, most of the time, only happen through the payment of bribery.

Changing this culture of corruption will not happen overnight. It requires planning, and the results will be seen in the medium and long term.

SIGNS OF DANGER FOR THE IMPLEMENTATION OF AN ETHICAL CULTURE:

- Focus on the short term. Changing the culture is not fast and demands patience.
- There is no behavior code.
- Postponing measurements to promote ethics, due to immediate financial costs, without thinking about future benefits.
- Only worrying about following the laws, not evaluating whether the behavior is ethical.
- Having the idea that acting ethically is only important for the company reputation.
- Lacking of clear procedures and widely known.

ESSENTIAL STEPS TO CREATE A CULTURE OF ETHICS IN YOUR ORGANIZATION:



Define the values!

The company needs to have its values defined, to believe them and not make any exception in any business situation.



Teach!

Make sure the organizational values are recognized and taught to the employers. Promote training, integrate new employers and monitor the development through evaluating development.



Lead by example!

Do not forget that it is essential for the high leadership to be compatible with the values and principles, in such a way that they show in their behavior and attitudes. It is essential that managers and company owners be models for all.



Communicate!

The values and principles, just like the behavior code, must be on the walls, in the reports and must be considered in the employers' evaluations. There is no gain if an employer delivers a job carried out in an ethical way. Ethics and business must walk together.



Establish formal programs!

The ethical programs and compliance (or integrity) are essential for the implementation of engagement of the organization.

ETHICS MANAGEMENT AND COMPLIANCE

In order to reduce the effect of problems and administer the ethics inside an organization as much as possible, it is necessary to use some resources and tools to implement, disseminate and control the attitudes and actions of all the people involved.

It is important to set up a formal program for the guidelines to be followed

by the organization and to be defined by an organized process, being disseminated on every level and its results to be monitored.

To establish an **Ethical Program and Compliance**, it is necessary to follow some paths:

Steps are described to be followed.



TOP LEADERSHIP COMMITMENT

When we talk about a leader, it is possible to think about the company owner, the administrative council, board of directors or its main manager. Regardless of the size of the organization, the leadership has an essential role in adhering to the values and principles of the organization. It is one of the main cornerstones of organizational culture based on ethical values.

The engagement of leadership creates credibility, and the employers are keen on identifying themselves with the values of the organization where they work. However, if the leader's behavior is inconsistent with the disseminated values, probably an ethical program will fail.

HOW SHOULD THE ETHICAL LEADER ACT?

- The leader should set the largest example of ethical behavior. This person must know the company values, which must show in their attitude.
- They should focus on the organization's success, and not only on their own success.
- They should hire people based on criteria of competence and honesty, and develop them to their maximum potential in order to share and teach them the values.
- The leader should stimulate the creation of an environment in which it is possible to talk openly about ethics and values and even make it possible for the employers to discuss the subjects they do not agree with and help them to find solutions. This attitude makes everybody appropriate the values easily, and it is favorable for the engagement.
- Being an ethical leader is not a synonym for being a "nice" leader. In some situations, it is necessary that they make decisions for the good of the business, like firing staff, for instance. In this case, the ethical leader needs to be transparent and communicate in the most effective way as possible.

SETTING THE FRAMEWORK OF ETHICS MANAGEMENT AND COMPLIANCE

It is essential that the organization points out people who are responsible to take care of the ethical administration and compliance. The size and the kind of structure depend on the size of the organization and the resources available for this subject.

The main functions of this structure will develop the following things:

- Evaluate the business environment and recognize the risk areas.
- Guide and monitor the ethical development in the organization.
- Evaluate and recommend improvements in the control system of risks (politics, code of behavior, trainings, monitoring).
- Receive denouncements and questions on the program, evaluate and answer them, always with the suitable confidentiality.
- Develop training on ethics.
- Promote discussions on the theme.
- Other activities related to the strategy and to the operation of program.

In all cases, the organization has to point out a person to be the “owner,” the **management leader**. This person must have direct access to the organizational leaders, and has to deliver a periodic report on the development of the program.

Whenever it is possible, the organization can create an **Ethical Committee and Compliance**, a group formed by employees, representatives of several areas, who

play this role additionally with their main roles, and they have to help the management leader in the accomplishment of the ethical program.

In large companies, there can be an **Ethical Department and Compliance**. In this case, due to the business complexity, experts are hired to work specifically on the implementation and on the control of the Ethical Program and Compliance.

SETTING OR UPDATING ORGANIZATIONAL VALUES

The values of the organization are the basis for the Ethical Programs and Compliance. In case your organization already has a formal value statement, the ideal scenario is to make a periodic review.

In order for the values to be defined or updated, it is recommended to consult with the

leaders and the employers together. It can be done, more effectively, by group dynamics, electronic questionnaires or even asking for the employers’ suggestions on paper, by email or ballot.

The following questions can help you to organize a discussion to identify these values:



Which behavior do we expect to see in people of our organization we make a point of?



If our organization were a person, which attitudes would they like to be remembered by, recognized and admired?



Which message do we send to our clients in the communication channels (site, social media, print materials, advertisements)?

After making some questions, it is possible you have a list with many values. So, it is necessary to set an order of priority. To do so, it is recommended to make the following questions to eliminate some values that are not indispensable.

- Are the values related to what we believe?
- Are the values inspiring?

- Are the values compatible with our vision and with what we intend to reach in a few years?
- Can the values be applied to our business or only to people?
- What is the main target audience of our organization?
- Is the message in advertisement and publicity coherent with these values?

Check the list below with suggested values that your organization should have:

Ethics	Innovation	Loyalty
Honesty	Excellence	Teamwork
Safety	Trust	Creativity
Quality	Respect	Diversity
Social Responsibility	Justice	Leadership
Social Sustainability	Engagement	Client satisfaction

After the definition of values, it is important **to communicate them** to all organizations and **include them** in all communication

channels, like: site, social media, administration reports and trainings.

DEVELOPING A CODE OF CONDUCT

The code of ethics is a set of rules, rights and duties that serves as a guide to orientate the ethical behavior within an organization or a sector. It is a formal statement that encompasses the values, principles, culture and social and environmental performance of the organization, and is an important vehicle for communicating the leadership commitment to a culture of ethics, integrity and compliance.

The document must clearly indicate the values and principles of the organization, the conduct patterns expected in various situations and the appropriate disciplinary action in case of a violation of the code. It is recommended, if possible, that the company's views and mission to indicate an alignment of its conduct with their goals be displayed in the code.

MISSION	VISION
It is the raison d'être of the organization. It is the purpose of its existence.	Represents where the organization wants to go! The vision is a plan, a dream, a mental idea that describes what the organization wants to accomplish objectively in the next years of its existence. It should be inspiring, clear and concise.

Some topics usually covered in codes of conduct are rules for receiving invitations, giveaways and gifts; conviviality rules (discrimination, clothing, social networking and diversity); harassment (moral, sexual, abuse of authority); rights and duties of the employee; protection and use of company assets; protection of confidential information;

institutional communication and representation; sustainability; corruption; product quality and service; hiring and promotion criteria; interest conflicts; and conduct in relation to the diverse public that composes the organization target (customers, suppliers, community, government, media, competitors, trade unions).

Codes of conduct may be developed by internal working groups and must take into account the opinion of the target consumer of the organization.

It is essential to have a friendly language, simple and adequate to readers.

WHAT CANNOT BE MISSING ON A CODE OF CONDUCT:

- Message from the president or owner of the organization
- Organizational values
- Code Applicability (only for employees or extended to the target consumer)
- Instructions on how to contact the communication channel and complaints
- Guidelines to help deal with ethical dilemmas
- Answers to frequently asked questions
- Commitment and adherence agreement

The code developing process or revision can follow the following stages:

- ✓ Definition/update of organizational values
- ✓ Risk analysis of ethics and compliance
- ✓ Analysis and comparison with similar organizations codes of conduct
- ✓ Definition of topics and structure
- ✓ Wording of the code of conduct

After the completion of the writing and revision process, it is important to plan the launch of the new code of conduct in the organization's communication channels and ensure that the proper guidelines are given to all people comprehended by the document.

The revision and periodic updating of the code of conduct should be in the planning of the organization.

Obs.: an international coalition with representatives from all over the world are developing a global code of ethics for the segment. The CBIC is participating in this initiative, along with other organizations, and will disseminate the results of this work to all his associates.

For more information:
www.iescoalition.org

CORRUPTION RISK ASSESSMENT

An assessment or risk analysis is needed to identify the areas that are most susceptible to the violation of laws and address them to compliance policies. The risk analysis is an activity that should be carried out frequently, especially when there are changes in a process or in the market to assess potential vulnerabilities to fraud, corruption and violations. For example, if there is a change of a supplier of raw materials whose value chain there has been found to be slave labor, it is essential that the risk analysis be done.

The risk analysis is used to identify⁶:

- Behaviors and activities that may lead to any violation of laws

- The probability of each behavior and activity
- The estimated impact of each occurrence

For the proper risk analysis to take place, it is necessary to have a detailed survey that can be done through interviews and meetings with employees from different areas, customers and suppliers. Furthermore, visits to branches of the organization and the market are suggested.

The UN, through its Guia de Avaliação de Risco em Corrupção, (Risk Assessment in Corruption Guide), launched in 2015, establishes the following stages for the implementation of risk analysis in an organization:



The stages are described below:

1 - ESTABLISH THE PROCESS:



A fundamental contributor to the success of a corruption risk assessment is generally the accession of senior executives and others charged with governance, for ex-

ample, the board of directors in relation to the roles and responsibilities of various persons interested in the corruption risk assessment. Without the support of

the high-level, risk assessments may lose momentum, prevent or inadequately deal with certain problems or have their quality affected by other executives and managers who choose not to participate.

The overall responsibility for the corruption risk assessment should be taken by those in charge of governance in a company, as the board of directors or the equivalent oversight body (e.g., trustees, consultants, supervisors, etc.), or by committee of the board designated for this function (e.g., audit committee, a governance committee or risk management committee).

For companies that do not have a board of directors or committee in charge of governance, the overall responsibility can be given to people at the senior executive level.

In addition to the members of senior management, other functions involved may be compliance, ethical, legal, internal audit, risk management, sales and marketing, procurement, shipping, accounting and finance and human resources.

It may be valuable to involve individuals from different levels in the company, such as senior management and the operational team. The senior staff generally knows how the function should operate, and the lowest level of personnel knows the practical operation. It is also recommended to involve individuals from multiple locations and operating units, if applicable. In certain industries, geographies and organizational structures, other functions also become important as a development function, responsible for building new units in places with high risk of bribery, often practiced to obtain the necessary governmental approvals and permissions.

At this initial stage, it is necessary to take a survey of internal and external factors relevant to the organization's operations to better understand the corruption risks, schemes and potential legal consequences.

Your company can organize a workshop led by the area responsible for the management of ethics, to address the topic of corruption, confirming that the company may be exposed to risks and identify the stages to explore the exposition.

Your company can organize a workshop led by the area responsible for the management of ethics, to address the topic of corruption, confirming that the company may be exposed to risks and identify the steps to explore the exposition.

The questions below may be of guidance in this process:

• **Economic and political environment**

- The construction sector has been struggling with investigations related to problems with corruption. What are the main issues raised? Has our organization has been affected in some way?

- How many parts of the organization depend on participation in bids to close the deal?

- How much of the organization's revenue in which I work comes from public sources?

• **Supply chain stages**

- Is there the potential for child and forced labor in jail?

- Do the suppliers have a history of problems, such as non-legal compliance, corruption, bribery, conflicts of interest?

• **Laws and regulations, new or existing**

- Do we have knowledge regarding the laws that govern our activity?

- Did we take any action in relation to the Anti-Corruption Law?

• **Employee Performance**

- Has the misconduct of employees in relation to the acceptance of gifts, bribe-taking, etc. already been observed?

- When hiring new employees, does the organization seek references?

• **Assessment of the competitive environment**

- Does the competition usually pay bribes or kickbacks in order to gain an advantage in the negotiations?

- Does a cartel regime exist?

- What is our market share?

• **Previously found problems relating to the non-compliance of laws, corruption, conflicts of interest, bribery.**

- Did we receive a fine after a public audit?

In the process of establishment, it is important to define how the risks will be recorded and classified. Figure⁷ below provides an example of a form that can be used for risk assessment documentation.

Location / region: Business:	
Corruption risk factor:	Influence of environment, competition, etc.
Corruption risk	Corruption type (e.g., bribery, collusion, etc.).
Corruption scheme	Detailed description of how corruption can be found.
Probability of occurrence	Is the chance of corruption occurring high, medium or low?
Potential impact	Will the impact on business be high, medium or low?
Inherent risk	The probability of each risk occurring and the impacts on the organization, if it materializes.
Anti-corruption control	What measures will be adopted by the company to reduce the chances of corruption occurring?
Mitigation control classification	Will the measures taken be effective to mitigate corruption?
Residual risk	Risks that do not have control with the measures taken are high, medium or low?

7 - Formulário adaptado do Guia de Avaliação de Risco de Corrupção – ONU (2015).

2 - THE RISKS



After making the initial survey, the organization needs to identify and list the risks inherent to each situation listed in the previous item.

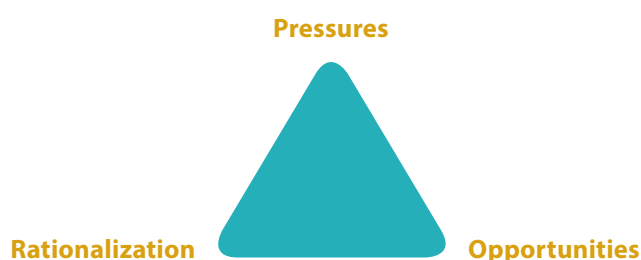
The form to be used for this includes the collection of data through documents, interviews, workshops, consultations, etc. It must be considered that there are processes, countries and specific sectors that increase the exposure to the risk of corruption.

To direct the discussion in the search for the risk factors inherent to the business, try asking the following questions:

- In this situation, is there a risk of corruption occurring in our organization?

- In this situation, is there a high risk of there being no compliance with laws or the payment of bribes or kickbacks?

Risk factors are reasons why corruption occurs in a company based on its environment, including the nature of its operations and locations. One way to illustrate the risk factors is to observe the Donald Cressey 16 Fraud Triangle, which defines three elements and conditions (risk factors) that allow the occurrence of fraud: pressure, opportunity and rationalization. Although this triangle was developed in relation to the risk of fraud, it can also be used in the identification of risk factors regarding corruption. By applying the Fraud Triangle to assess the risk of corruption, the following elements should be taken into account:



Specifically, in relation to the risks to industries, of which the organizations of the construction segmentation are included, while some corruption risks may be applicable to many or all industries, others may be more specific to a particular industry segment. Depending on the industry sectors in which or with which the company does business, the

probability of corruption being a real incident can vary considerably. A distribution of cases of corruption by industry as a percentage of all cases can be found in the "Relatório para as Nações sobre Abuso e Fraude Ocupacional" (Report to the Nations on Abuse and Occupational Fraud), made on 2012, by the ACFE: <http://www.acfe.com/fraud-resources.aspx>.

For the construction sector, most important fraud scheme in accordance to the survey is the corruption, which includes conflicts of interest, bribery, kickbacks, illegal gratuities and extortion.

Although this study does not aim to be statistically reliable research, and seeing that the corruption cases usually constitute a smaller proportion of fraud cases in the total of all fraud cases, the variation of the results between industries to the same extent is largely consistent with the experience of specialists in the field of corruption.

Note: When identifying corruption risks specific to the industry for its sector (or sectors in which your business partners operate), an analysis of media reports can be considered. What significant corruption schemes were discovered in the sector recent past? What parties were involved? Does your company or your business partner have connections here as well?

The differentiation of risk among the reasons why corruption occurs, its forms of occurrence and the environment on which it is propagated must be properly documented.

3 - CLASSIFY THE INHERENT RISK



In this stage, a classification should be made by assessing the probability of each risk occurring and the impact on the organization, in case it materializes. For each risk listed in the previous item, consider that the probability of each identified corruption scheme must be evaluated without taking into account the controls installed in the company. In other words, imagine a company where there are many opportunities for perpetrating the corruption scheme because of the lack of an adequate control environment. With this scenario, what is the probability of a corruption scheme occurring? The administration must take into account the likelihood of the execution of the corruption scheme by a person, or a group of persons acting in collusion.

In this structure, it is recommended that the probability assessment be expressed as the probability that the event occurs in the next

12 months. Such a structure should be adjusted as needed to suit the corruption risk management objectives of the company. Some of the factors to be considered when estimating the probability of each corruption scheme includes:

- The nature of the transaction or the process to which the scheme relates (for example if there is an interaction with government officials);
- Incidents of corruption scheme that occurred earlier in the company;
- Incidents of corruption scheme in the company sector;
- The corruption culture in the local environment in the region where the scheme would be perpetrated;
- The number of individual transactions relating to scheme;

- The complexity of the scheme and the level of knowledge and skill required to execute it;
- The number of people needed to perpetuate the scheme;
- The number of people involved in the approval or process analysis or transaction concerning the scheme.

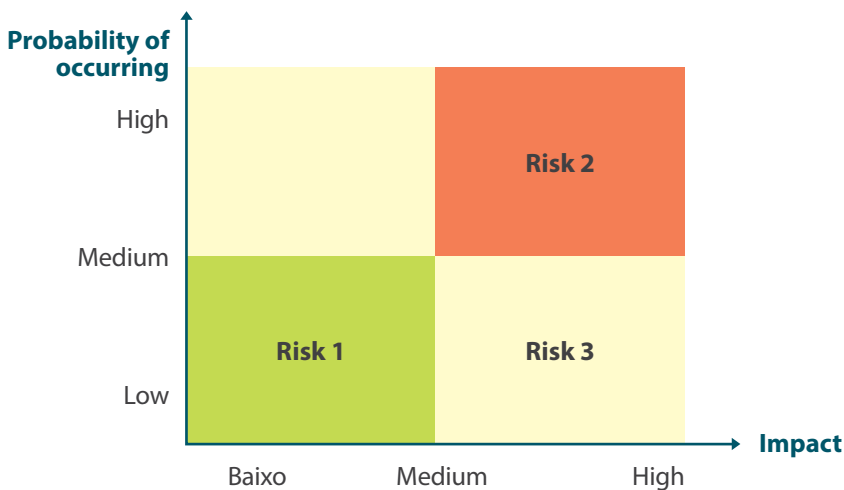
For companies with multiple locations and operating units, the probability of occurrence of each corruption scheme may vary between different locations and operating units. For example, the bribing of a government official

for customs clearance may be more likely in certain countries and less likely in others.

Based on these factors and for each risk listed in the previous section, do the following analysis:

- 1) The probability of the risk occurring is high, medium or low?
- 2) If the risk is materialized, are the impacts to the organization high, medium or low?

One way to view this analysis is by putting the results on a chart:



In this case, Risk 1 has a high probability of happening and a high impact to the organization; therefore, the actions to mitigate it

should be more urgent than actions to reduce Risk 3, which has a high impact for the organization; however, it is unlikely to happen.



4 - IDENTIFY AND CLASSIFY THE MITIGATION CONTROLS



Anti-corruption controls are unique, as they go beyond the typical controls in transaction levels, which are most often designed to prevent financial mistakes.

For the purpose of this discussion, all initiatives, activities, controls and processes established or assumed by the company for the mitigation of risk are indicated as “corruption risk mitigation controls.”

Is important to map controls and other mitigation activities for all risks or corruption schemes, because the controls must be compatible with the potential outcomes and the probability of misconduct. When the inherent risk is determined for the identified schemes, the risk assessment can continue from the identification and cataloging of controls and installed risk mitigation processes.

While some controls operate across the company as part of the general control environment, many others are integrated into business processes belonging to individual functions, including procurement and logis-

tics, or through the management of operations associated with a specific geographical area or business segment. Some controls may be of a financial nature or the responsibility of a financial function (for example, approval of a travel expense report or the payment authorization for a supplier invoice). Others may be in the legal environment or compliance (for example, analysis process and contractual language, direct lines of whistle blowing), while others may belong to human resources (for example, employee background checks), or business leaders (for example, senior management tone).

Thus, identifying and cataloging controls, as well as identifying corruption risk factors and schemes described above can involve several people in the company. For small and medium companies, the identification of controls can usually be centralized in certain persons responsible for the business processes. For these companies, programs and controls may not be documented formally, and, thus, it would be im-

Map controls and other mitigation activities for all risks or corruption schemes is important, because the controls must be compatible with the potential outcomes and probability of misconduct.



portant to identify people and functions that know the existing controls in this area. Besides that, certain practices, such as segregation of duties and procedures and formal written policies, may not exist in these companies due to resource restrictions. It is even more important for these companies to identify the mitigation that is currently in place or that is practical by nature, even if it is not documented as part of this exercise.

Information about relevant controls can be obtained by various means. Although the analysis of the control documentation and process is a major stage, it is usually complemented by interviews and surveys with the interested parties that can help to identify the appropriate controls. Besides that, during this stage, the team or person that directs the corruption risk assessment activity can also check with those responsible for the business process if the controls and identified mitigation programs are really working according to the policy and process. This verification can sometimes illustrate certain procedures that, although they are a part of a written policy, were not put into practice.

When developing a list of documents to be viewed and a list of people to be inter-

viewed, besides specific questions, it can be useful to understand several possible control classifications. Here are the most common:

1. General Controls (organization level) versus specific controls (process or business level);
2. Preventive controls versus detective controls.

Below are some examples of indicators in accordance with the types described above:

NORMAL GENERAL CONTROLS ANTI-CORRUPTION AT AN ORGANIZATIONAL LEVEL:

- A formal program of anti-corruption compliance;
- An obligatory compliance and anti-corruption committee to analyze or receive updates of all high-risk transactions;
- Written Standards (i.e., the code of conduct and anti-corruption and other related policies);
- Communication and anti-corruption training for employees;
- The tone of the senior management and middle management;
- Employee background check.

BUSINESS SPECIFIC CONTROLS:

- A process to document a business need to hire a service from a supplier;
- Screening/prior diligence of the supplier with specific aspects, such as background check, screening according to lists of politically exposed persons (“PEPs”), verification of references and credentials, prior commitments, reputation and a sample of the work product analysis (depending on the risk level);
- Supplier compliance certification (initial and periodic intervals, for example, annually), with certification and confirmation of anti-corruption policy, supplier code of conduct, etc.

PREVENTIVE ANTI-CORRUPTION CONTROLS

- Have a formal anti-corruption program with a defined structure, property, reporting lines, planned activities and periodic measurement of effectiveness;
- Written patterns (code, anti-corruption policies);
- Communication and anti-corruption training, including a resource library.

ANTI-CORRUPTION DETECTION CONTROLS

- Audit of the expenses report;
- Third-party periodic monitoring (for example, performance evaluation, “re-certification”);
- Whistleblower system, investigation process and case management;
- Exit interviews;
- Corporate audit, transaction auditing, third-party audit.

After identifying the process controls, classifying the risk mitigation controls of the company can be critical to determine residual risks. Before the control classification can begin, the companies must think about the desired depth of the exercise, the criteria used, the classification scale and the data collection mechanisms available (e.g., surveys, interviews, document review etc.)

There are many different ways to classify and report the effectiveness of the mitigation controls. A simple qualitative scale can be used to classify each set of controls that carefully mitigate a risk or corruption process as (I) effective/low risk, medium/partially effective or low risk/ineffective risk or (II) very low risk/very effective, effective/low risk, medium/partially effective risk, high risk/reasonably effective and ineffective/very high risk.

Alternatively, a quantitative scale with scores carefully applied to each process or corruption scheme may be used.

For the classification of the controls to be effective, it is necessary that the sources and data collection are comprehensive. Some forms of this activity are:

- The evaluation and analysis of internal documents;
- Live interviews;
- Research about the “control environment and compliance”;
- Workshops and focus groups;
- It is important to involve only individuals who know the process or control being classified, including those responsible for the process;

5 - CALCULATE THE RESIDUAL RISK



After classifying the internal controls that reduce the risk of each corruption scheme, the next stage is to determine the level of residual risk. Residual risk is the measure of remaining risk after considering the impact of controls on risk reduction. It is a factor of the inherent risk and control classification.

Despite the implementation of anti-corruption programs and its internal controls for risk mitigation, it is still possible that such schemes occur. Thus, there will usually be some residual level of risk for each corruption scheme. A zero residual risk is theoretically possible for a specific corruption scheme, but such a null risk usually occurs only if the scheme is not relevant to the company's operations, for example, because it does not conduct business in a particular country in a particular industry or in a certain way.

How much the risk of a corruption scheme is mitigated by internal controls depends on how well the controls are designed, implemented and operated to effectively reduce that risk. Controls that are well designed to mitigate risks arising from one or more corruption schemes that have been implemented appropriately and are operating effectively in practice can greatly reduce the risk resulting from a particular corruption scheme.

The selected approach to determine the residual risk of corruption of each scheme depends on the approach used to determine the inherent risk and controls classifications.

If a qualitative scale, as "high/medium/low" risk, is used for inherent risk classifications and controls classification, then a similar scale can be readily used for residual risk

A zero residual risk is theoretically possible for a particular corruption scheme, but such a null risk usually occurs only if the scheme is not relevant to the company's operations.

classification. For example, if a scheme is classified as having an inherent high risk, and no effective control is identified to mitigate the risk arising from the scheme, then the control risk classification would also be high, and the residual risk would continue to be high. On the other hand, if strong controls to mitigate the risk inherent high scheme are identified, the control risk would be low, and the residual risk would probably be determined as low.

The residual risk classification provides, to the administration, an assessment of where the greater exposure to the risks

of corruption may be. A high residual risk classification would mean that a high inherent corruption risk is substantially mitigated by controls, leaving a residual risk that can seriously affect the company.

An average residual risk would mean that the corruption scheme is of an inherently high risk, and partially mitigated by controls or of inherently medium risk and not substantially or by any means mitigated by controls. Low residual risk means that the corruption scheme is of an inherently risk classified as low, or is substantially mitigated by controls.

6 - DEVELOP THE ACTION PLAN



The residual risk of each corruption scheme can be assessed by the company to determine whether a response to the risk of corruption is necessary and, if so, what the desired elements of the plan are. A central determinant of the response plan is the tolerance level or inclination to risk, which will vary depending on the company and the segment to which it belongs.

No other risk mitigation is required for a corruption scheme that has a residual risk within the risk tolerance set by management and approved by those exercising governance, something that does not happen with the construction segment.

Even so, if the residual risk is low, management may choose to implement additional

risk mitigation if it believes that the benefit in costs may be advantageous but not essential.

For any corruption scheme with a higher residual risk than the risk tolerance set by management and approved by those exercising governance, action is needed to reduce the risk until it is within the desired tolerance limits. For these items, a response plan of corruption risk is required.

Some responses to the risks of corruption involve decisions that are not always possible, as changes in the scope of the business, for example, by avoiding or interrupting the conduction of business in some places, industry segments or markets because the risk is considered impossible to mitigate enough and confidently, or even to transfer the risk to third parties through contractual terms.

Historically, the most common response to residual corruption risks was, and remains, the implementation of improvements to internal controls to improve risk mitigation and enhance certain anticorruption controls.

In any case, it should be noted that not all companies have the same resources and funds at their disposal to invest in the same level in the anticorruption compliance program.

Some may only want to deal with programs and controls in relation to what they consider the most significant exposition areas, while others may want to deal with the interest to maintain a more robust anticorruption compliance program or “best in class.” Although the need for a response should be evaluated based on

the tolerance of risk and in the restrictions on company resources, both can vary from one company to another.

Following the tendency of companies to establish business strategies based on sustainable development principles, this guide gives priority to projects that materialize and disseminate an ethics management and compliance in all perspectives of your business.

Thus, the topics described below will seek to prioritize all topics which equip and enable the companies and its stakeholders to attain a level of excellence in the management of ethics despite the cultural challenges and existing policies in the country.

After completion of the risk analysis, the next stage is to formalize the compliance policy.

ADOPTING A COMPLIANCE POLICY

The compliance with applicable laws and regulations should be a basic condition for a company to operate, so the compliance policy is the formal document that details the procedures and behaviors expected for each area of

the organization in order to ensure legal compliance and prevent corruption. In addition, the policy should detail how the monitoring will be done and present the disciplinary measures to be applied in case of violation.

A COMPLIANCE POLICY MUST COVER THE FOLLOWING TOPICS:

- Objectives
- Who it is destined to?
- Concepts and definition of technical or legal terms
- Main legislation governing business
- Risk analysis results
- Attitudes and behaviors expected in risk situations
- Instructions on how to contact the communication channel and complaint
- Consequences of misconduct and disciplinary measures

As the code of conduct, the compliance policy should be reviewed periodically, especially if there's some fact that impacts the legal compliance, for example, the emergence of new laws.

POLICIES AND WRITTEN PATTERNS

Essential questions for an efficient risk evaluation regarding the written patterns of the company include:

- Do our policies correctly reflect our risk and provide the necessary guidance to our employees?
- Do we have the right policies? We need to adapt our policies, in case we act in different regions and the risk result is identified differently in them in our assessment.

ESTABLISHING DIRECT LINES OF COMMUNICATION FOR ETHICS AND DENOUNCEMENTS

With the function to respond to questions, receive complaints, hear improvement suggestions and complaints, it is crucial that the organization makes available a direct line of communication so its target consumers can access it. This channel can be made available by the company or even by professional associations. In this case, the line could be directed to all associated organizations, and the entity would bring exemption when judging a complaint.

This communication medium can be an email address, an urn, a phone number, an application for Smartphone or even an ombudsman represented by people. This channel should offer the possibility for the people to identify themselves, but must be able to receive anonymous complaints.

It is imperative that the chosen line of communication has credibility and ensures the confidentiality of the issues addressed.

COMMUNICATION AND TRAINING

One of the very important stages in the Ethics and Compliance Program is your communication. Some channels may be used to promote it, such as brochures, videos, articles sent by e-mail, murals, posters around great viewing locations (for example, in the time clock), direct mail, general correspondence and live trainings.

This training should be mandatory for all employees and, where appropriate, for some stakeholders. This training is essential to strengthen the values and ethical standards

and give guidance regarding risk mitigation. It should contain the main contents of the code of conduct and compliance policy, case studies, and provide guidelines for the way to deal with the ethics and compliance issues on a daily basis.

This important tool can help change behaviors and reduce irregularities. The training is also an excellent opportunity to hear recommendations, suggestions and questions of the employees.

It is also possible to seek the involvement of other public entities, such as suppliers or customers, by inserting clauses related to the theme in contracts and agreements. Thus, it is possible to formally ensure the communication of the ethical position of organization.

COMMUNICATION

The training, like almost all other aspects of an effective anticorruption compliance program, must take into account and be based on the company's risk profile. Essential questions answered by an efficient risk

assessment about the company's training plan includes:

- Are there specific subsections of our functional basis (for example, the middle-manager employees) that require additional training? Do the middle managers need additional training?
- Do we measure the quality and thoroughness of the training materials and test the employees' retention of the subject?
- What is the frequency and duration of the training?

HANDLING DENOUNCEMENTS AND VIOLATIONS OF THE PROGRAM

All communications received by the ethical lines (questions, suggestions or complaints) should be centralized in a single database, e.g., a spreadsheet.

To ensure the credibility of the channel, it is important that two points are observed:

- Ensure that there is a quick investigation and response in case if requested.

- Ensure confidentiality in the treatment of questions, suggestions or complaints.

Each organization can define its own way of handling received communications. However, it is essential that this is always done with the same criteria and follow the same procedures and can be performed by the ethics and compliance management leader, by the committee or even the leadership of the organization.

AUDITING AND MONITORING

The success of the Ethics and Compliance Program also depends on regular assessments made for the constant updating or for the identification of violations of the law, of the compliance policy and the code of conduct. The business environment is dynamic, and changes such as supplier changes or new legislation, for example, can affect the organization's performance in this area.

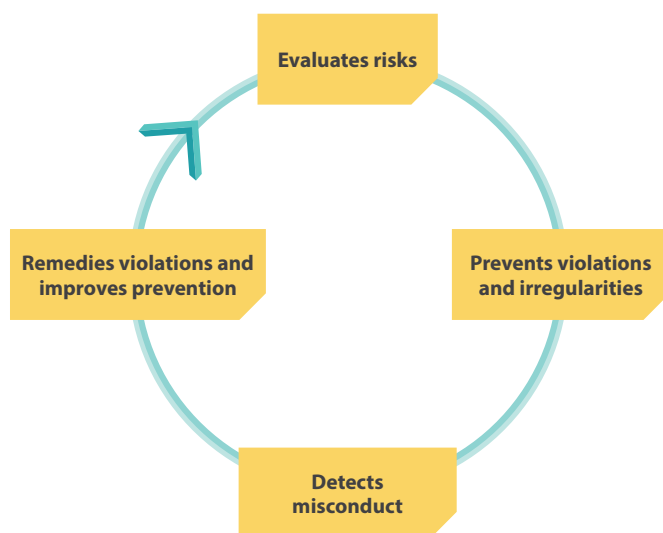
The monitoring of the effectiveness of the program is the responsibility of the leader of the ethical management. He must define the performance indicators and constantly monitor them through meetings, audits and periodic reports.

PERIODIC REVIEWS OF THE ETHICS AND COMPLIANCE PROGRAM

The Ethics and Compliance Program should evolve following the changes in the operations and how the organization responds to market conditions. The program must be reviewed at least every two years or when this is needed, for example, for the adequacy due to changes in regulations or legislation. The revision does not necessarily im-

ply a radical change in the program. It can be made just to ensure that the program remains up to date.

The constant monitoring and the communication channel can provide recommendations and can help identify these modifications needs. An Effective Ethics and Compliance Program⁸:



OUTER INITIATIVES

There are some initiatives that prioritize ethics and anti-corruption policies. By joining them, your organization gets an external endorsement of its commitment in relation to ethics.

GLOBAL PACT

The Global Pact is an initiative developed by former U.N Secretary-General Kofi Annan in order to mobilize the international business community to adopt, in its business practices, fundamental and internationally accepted values in the areas of human rights,

relations labor, environment and anti-corruption reflected in 10 principles.

This initiative includes the participation of United Nations agencies, companies, unions, non-governmental organizations and other partners needed to build a more inclusive and equitable global market.

With the social, political and economic challenges, more than ever, many companies recognize the need to collaborate and make partnerships with the government, the civil society and the United Nations.

8 - Cultivating a Culture of Compliance, 2015.

This increasing understanding is reflected in the rapid growth of the Global Pact. With more than 12,000 participants from business-

es and other interested parties from over 145 countries, it is the largest voluntary corporate responsibility initiative in the world.



PRINCIPLES OF THE GLOBAL

HUMAN RIGHTS

1. Businesses should support and respect internationally recognized human rights protection, and
2. Ensure their non-participation in the violation of these rights.

WORK

3. Support by the companies, of the freedom of association and the effective recognition of the right to collective negotiation;
4. The elimination of all forms of forced or compulsory labor;
5. The effective abolition of child labor;

6. The elimination of discrimination in the workplace.

ENVIRONMENT

7. Businesses should support a preventive approach to environmental challenges;
8. Undertake initiatives to promote greater environmental responsibility;
9. Encourage the development and diffusion of environmentally friendly technologies.

AGAINST CORRUPTION

10. As empresas devem combater a corrupção em todas as suas formas, inclusive extorsão e propina.

Joining the Global Pact has some implications for an organization. They are:

- 1) To make commitment for the gradual implementation of the ten principles. It is expected that the signatories undertake a number of changes in its activities, so that the Global Pact and its principles make a part of its strategy, culture and daily activities.
- 2) Be transparent, that is, inform publicly and continuously (annually) the progress in implementing the principles (through the Progress Communications presentation).
- 3) Maintain a dialogue with stakeholder groups (the company's interest groups).
- 4) The commitment also suggests the selection of suppliers in a way that all those who provide the company also comply with the principles of the Pact.
- 5) In specific cases of large, medium and small companies that have a global activity, the Pact commitment is global, that is, for all its operations worldwide.
- 6) Entities participating in the Pact and that are not companies have a specific role, through which it is expected to promote the Pact throughout its sphere of influence

The Global Pact is important to signal the commitment of an organization to improve its performance in subjects relating to the principles. A radical change is not expected, but rather a commitment to planning and implementation processes that will lead to

the evolution of the organization. It is not an initiative that only large companies may take, but also small and medium-sized businesses, trade unions, NGOs, etc.

It is advisable that all employees receive information on the Global Pact, extending to all the company's commitment. The process must gradually ensure that the policies and procedures are transversal, covering not only the designated responsible, but all the different areas of the company. The involvement of the administration during the entire process is essential. Learning from best practices is also essential.

O Pacto Global pode ser assinado por empresas e também organizações sem atividade empresarial, como: sindicatos, ONG's, entidades de classe. Para uma organização se tornar signatária, é necessário que seja preenchido um formulário de adesão *on-line*, que se encontra no *site* do Pacto Global e anexe uma carta de adesão assinada pelo presidente da organização. Nessa carta, a organização se compromete com os 10 princípios.

O formulário e o modelo da carta de adesão são encontrados no site <http://www.pacto-global.org.br/artigo/58/Como-Aderir>.

Depois, é importante que a organização nomeie uma pessoa responsável por implementar e monitorar um processo que proporcione seu progresso nos 10 princípios.

A CBIC é signatária do Pacto Global desde 2015.

The Global Pact is important to signal the commitment of an organization to improve its performance on issues related to the principles.



CORPORATE PACT FOR INTEGRITY AND AGAINST CORRUPTION

The Corporate Pact for Integrity and against Corruption aims to unite companies to promote a more principled and ethical market and eradicate bribery and corruption.



A number of organizations took part in its creation, including the Instituto Ethos, the

By becoming signatories to the pact, the companies undertake to disseminate the Brazilian anti-corruption legislation to its employees and stakeholders, so that it is fully complied.

Patri Relações Governamentais & Políticas Públicas, the Programa das Nações Unidas para o Desenvolvimento (United Nations Development Programme-PNUD), the Escritório das Nações Unidas contra Drogas e Crime (United Nations Office on Drugs and Crime -UNO- DC), the World Economic Forum and the Comitê Brasileiro do Pacto Global (Brazilian Committee of the Global Pact.).

By becoming a signatory of the pact, the companies undertake to disseminate the Brazilian anti-corruption legislation to its employees and stakeholders, so that it is fully complied with. Moreover, they undertake to prohibit any form of bribery, to work towards the legality and transparency in the contributions made to political campaigns and strive for the transparency of information and cooperation in investigations when necessary.

To join the corporate Pact for integrity and against corruption, the company should register on the website <http://www.empresalim-pa.ethos.org.br/index.php/empresa-limpa/pacto-contra-a-corrupcao/quero-aderir>.

In addition to this, each year, the companies that are signatory to the Pact must answer a set of 70 questions, which deals with the commitments made at the signing of the Pact. The monitoring has the following objectives:

- To monitor commitments.

- To provide visibility and transparency to the integrity practices of the signatory companies.
- To strengthen the Corporate Pact for Integrity Against Corruption.
- To make a diagnosis regarding the companies that signed the Pact.
- To generate reference from the practices of the signatory companies.
- To generate individual reports guiding the development of companies in relation to integrity.

REGISTER EMPRESA PRÓ-ÉTICA- CGU



The Cadastro Nacional de Empresas Comprometidas com a Ética e a Integridade (Cadastro Empresa Pró-Ética) is a initiative of the Controladoria-Geral da União and the Instituto Ethos, which evaluates and disseminates companies voluntarily engaged in building an environment of integrity and trust in business relationships, including those involving the public sector.

The Pró-Ética objectives are:

- To recognize good practices in the promotion of integrity and preventing corruption in companies that voluntarily adopted the desired and necessary measures to create a

more principled, ethical and transparent environment in the private sector and its relations with the public sector;

- To raise the awareness of companies about their role in fighting corruption when they position themselves positively for preventing and fighting illegal and unethical practices and in defense of socially responsible relationships;
- To encourage, within the private sector, the implementation of measures to promote ethics and integrity and against corruption;
- To reduce the risks of fraud and corruption in relations between the public sector and the private sector.

To register, the company must follow the following steps:

1) Register on the website of the Controladoria Geral da União – CGU (<http://www.cgu.gov.br>).

br/assuntos/etica-e-integridade/setor-privado/empresa-pro-etica/acessar-sistema) to request the system access code.

2) Access the system and complete the analysis of the profile and the evaluation questionnaire.

3) Send the data within the stipulated time. The evaluation takes place annually, so it is important to follow the deadlines directly in the CGU website.

4) The profile and the questionnaire are evaluated by the Comitê Gestor, (Management Committee), composed of representatives of the CGU, Instituto Ethos and ten institutions.

5) If approved, to receive the EMPRESA PRÓ-ÉTICA seal, the company must sign the Commitment to Ethics and Integrity Agreement.

LET'S GET DOWN TO BUSINESS!

The CBIC makes themselves available to assist in implementing an ethics and compliance management system in your organization.

An **Ethics and Compliance Program** will have been successful when it gets to a level at which the behaviors required by the Code of Conduct and the compliance policies are so ingrained in the culture of the organization that it will be replicated without the need to resort to reading documents.

However, a culture in which ethics predominates is not achieved by an email from the president or the owner of the organization supporting the program or a training session. It requires investment of time and effort at all levels of the organization.

To believe in ethical management is to believe in the sustainability of your organization.

Because of that you must be resilient! Do not give up at the first difficulty and reap the rewards in the future!

Count on us!



ATTACHMENT - CHECKLIST

Recent years have taught that behavior guides without effective implementation of policies are unable to avoid problems. The development of a compliance policy, therefore, involves strategies that go beyond the codes of behavior. It needs to include actions for the involvement of leaders, employees and other stakeholders with which the company relates, such as suppliers and the government.

This point is particularly important because, in many countries, where the anti-corruption legislation provided for the (non)-existence of codes of conduct by the companies involved as a mitigating element worth

punishing, were updated to allow relief only if it is proven that the company also endeavored to implement an ethics management policy.

The checklist presented below includes these two steps, the regulation of construction and the adoption of effective measures for their implementation. In this sense, internationally recognized initiatives have been brought together to help, in a practical and objective way, companies adopt compliance policies within their governance structures (and strongly suggest that they do).

CHARACTERISTICS OF CORPORATE CULTURE

Initiative	Yes	No	Note
The company has long-term planning and a vision?			
The company has already adopted an ethics management policy?			

REQUIREMENTS FOR IMPLEMENTATION OF COMPLIANCE POLICY

Initiative	Yes	No	Note
Is the top management committed?			
Is there willingness for partnership with government oversight agencies and civil society?			
Are there both structure and resources to design and implement the code of ethics (compliance management, ethics committee, etc.)?			

RISK STUDY

Initiative	Yes	No	Note
Mapping of all processes involving all activities of the company.			
Risk identification.			
Classifying existing risks.			
Controlling the mitigation of risk.			
Calculating residual risk.			
Developing an action plan.			

CODE OF ETHICS

Initiative	Yes	No	Note
Mission/Vision/Values			
Definition and instructional use of the code of ethics.			
Ethical principles and standards established in the form of regulations.			
Definition and description of target audiences.			
Penalties			
Compliance framework: creation of ethical management structure.			
Agreement			

ACTION PLAN

Initiative	Yes	No	Note
Establish lines of communication and receiving complaints accessible to employees, customers and external public.			
Create communication strategies and training of employees.			
Create a framework for monitoring and enforcing compliance rules.			
Monitor and audit the program (possibly by external consultants).			
Periodically review the compliance policy.			
Calculate residual risk.			
Develop an action plan.			



USEFUL LINKS

Cadastro Empresa Pró-Ética:

<http://www.cgu.gov.br/assuntos/etica-e-integridade/setor-privado/cadastro-empresa-pro-etica>

CBIC - Câmara Brasileira da Indústria da Construção

www.cbic.org.br

Corrupção e integridade: conceitos de A a Z – FIEMG

<http://www.fiemg.org.br/admin/BibliotecaDeArquivos/Image.aspx-?ImgId=10407&TabId=8132&portalid=176&mid=16650>

Decreto Nº 8.420, DE 18 de março de 2015

http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8420.htm

Lei nº12.486/2013 - Lei Anticorrupção/ Lei da Empresa Limpa

http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12846.htm

Implantando o Pacto Global das Nações Unidas. Pacto Global - Primeiros passos

http://www.pactoglobal.org.br/Public/upload/ckfinder/files/Publicacoes/Primeiros_Passos_do_Pacto_Global.pdf.

Pacto Global:

<http://www.pactoglobal.org.br/>

Pacto empresarial pela integridade e contra a corrupção:

<http://www.empresalimpa.org.br>

Programa de Integridade – Diretrizes para Empresas Privadas - Guia de orientação para *compliance* da CGU:

<http://www.cgu.gov.br/Publicacoes/etica-e-integridade/arquivos/programa-de-integridade-diretrizes-para-empresas-privadas.pdf>

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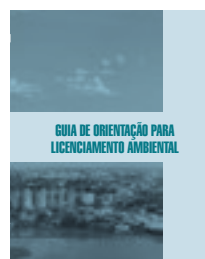
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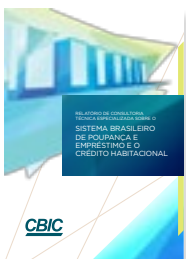


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