

# ANTICORRUPTION COMPLIANCE IN CORPORATIONS: WICH NECESSARY STEPS MUST BE DONE

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## 1) INTRODUCTION

The present study has the purpose of analyzing Compliance, corruption and its relationship with Corporations and what needs to be done.

There has been growing concern in recent years about the proper functioning of markets and the fight against harmful conduct in society, with free trade and the elimination of corruption being prioritized.

In the context of the fight against corruption, for a long time the practice of paying bribes and kickbacks to foreign agents was clearly tolerated by several countries. This position arose from the understanding that corruption would be a "necessary evil", including its inevitability in certain emerging markets<sup>42</sup>

The strengthening of control institutions and mechanisms for the detection of illicit activities will not be sufficient if we do not involve civil society and the private sector in this struggle. The preventive aspects and implementation of corporate integrity programs that can mitigate risks and identify deviations are fundamental to the success of the anticorruption policy.

In this sense, it is necessary to seek effective and committed practices, through laws and regulations, implementation of Compliance programs, Code of Conduct and Ethics and Process Policies in the organization of the Corporations, in order to maintain fair competition and fight against corruption.

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<sup>42</sup> Mendes, Francisco Schertel. Compliance [livro eletrônico]: concorrência e combate à corrupção – São Paulo: Trevisan Editora, 2017. 15 Mb; ePUB. Position 132.

In one way or another, if a company's behavior affects one's daily lives, this makes the corporate ethics relevant along with the codes that formalize their standards. On these codes, there is much to be discussed: to what extent are they necessary, what should be standardized, what recurring rules can we identify as being part of the best market practices.<sup>43</sup>

## 2) COMPLIANCE

### 2.1 DEFINITION

The word compliance comes from the English, which means to comply. In summary, a compliance program is one that seeks compliance with the law. If this clarifies the concept, it says very little about how properly such programs are structured.<sup>44</sup>

The term compliance, in fact, is being widely commented and has been used in many different ways.

We can say that Compliance is the process of identifying and managing the regulatory and conduct risks that a firm is exposed to. Regulatory and conduct risks arise both from exposure to external requirements, such as the rules applied by regulators, and internal requirements, such as the policies and procedures that have been established and put in place by a firm.<sup>45</sup>

A long time ago, when the term was adopted as a principle (especially in banking institutions), compliance was only synonymous with legal adequacy. Over time, it was realized that it was impossible to implement compliance procedures without full knowledge of internal processes, work methodologies used, inventory policies, people management strategies, continuous improvement techniques, accounting harmonization, etc. Thus, today the concept has been enriched with the systemic approach, from the "floor" of the factory to the room of the company president. It is much more extensive than simply "interpreting laws."

### 2.2 COMPLIANCE PROGRAM

A compliance program is something organized, composed of several components, that interacts with other components of other processes and other topics, something that depends on a more complex structure that includes people, processes, electronic systems, documents, actions and ideas.<sup>46</sup>

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<sup>43</sup> Pimentel, Helio. Código de Conduta – Ética corporativa – Compliance – Governança corporativa. 2017 – Posição 140.

<sup>44</sup> Mendes, Francisco Schertel. Compliance [livro eletrônico]: concorrência e combate à corrupção – São Paulo: Trevisan Editora, 2017. 15 Mb; ePUB. Posição 404.

<sup>45</sup> Lewis, Daniel S. Compliance – A concise guide to the role of the compliance function in financial services firms. 2016 – Contents 77.

<sup>46</sup> Serpa, Alexandre da Cunha. Compliance Descomplicado. 2016. Posição 185.

The minimum components of a compliance program are<sup>47</sup>:

- a) Risk assessment and determination of risk responses;
- b) Definition of policies and procedures;
- c) Support from Senior Management;
- d) Communication and training;
- e) Due diligence of third parties;
- f) monitoring and auditing of the operation of the program;
- g) Providing a mechanism for reporting or aid, anonymously and / or confidentially, in relation to conduct, or suspected conduct, criminal;
- h) Investigation of, and responses to, conduct inconsistent with the objectives of the program;
- i) Continuous improvement (restart the cycle from item a).

A compliance program cannot be isolated within the compliance area or department. The program relies on all of the organization's employees to function. It depends a lot on the support and actions of all other areas of the organization, but much more directly and clearly from the control areas (such as finance and auditing), the legal area and the areas of human resources and training, as these are areas that support, in a direct way, the implementation and operation of the pillars of a compliance program mentioned above.

If compliance seeks to comply with the law, even though it recognizes that it is impossible to completely avoid any kind of violation, and if it is a tool that leaves the inspection activity in the hands of the corporations, it is clear that a compliance program depends, of the particular structure of each entity.

Therefore, there is no single model for compliance programs, and the development of an appropriate program depends on the in-depth study of the structure of the organization, its corporate culture, the laws that apply to its activity among others.

### 2.2.1 REASONS FOR IMPLEMENTING THE PROGRAM

It is known that currently the regulatory norms of economic activities have been developed in a more complex and rigorous way, so that the compliance programs have become essential investments for the Corporations.

In extreme situations, the legal, financial and reputational wear and tear generated by non-compliance with sectoral legislation and regulation can cause large companies with a centuries-old tradition to close their doors. In this context, the main reason for investing in the construction of a robust and effective compliance program is that it is an essential tool to address the real risks that all companies face due to the greater complexity of both their activities and their regulations. Among the risks, we can highlight: broadening of the legal forms of accountability; imposition of new types

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<sup>47</sup> 2010 Federal Sentencing Guidelines Manual – <http://www.ussc.gov/guidelines-manual/2010/2010-chapter8>

of penalties and internationalization and expansion of the competent jurisdictions<sup>48</sup>

## 2.2.2. BENEFITS OF IMPLEMENTATION

One of the first benefits of implementing the compliance program is to avoid imposing sanctions. As stated earlier, regulatory standards are complex and rigorous. The program organizes business activities and creates a control mechanism for compliance with legislation, reducing the risks of convictions and penalties arising from sanctions.

One can also mention the ease in making agreements with regulatory authorities. The programs help companies to identify unlawful conduct, making it capable of reporting the offense to the investigating authority, as well as recognizing others involved, providing information and documents proving the offense, and cooperating with the investigation.

The positive impact on the Corporation's reputation should be highlighted. Public opinion is closely linked to investigations and allegations of corruption, and the implementation of a compliance program has a positive impact on the reputation of the company, having an effect on its valuation within the market.

The existence of an internal compliance control system can contribute to the improvement of the processes developed, guaranteeing efficiency and operational efficiency, identifying current failures and difficulties and suggesting improvements to the deficiencies found in processes and procedures.

Focused on specific objectives, identifying flaws in current processes, analyzing the routine of internal controls and suggesting improvements for any deficiencies found in the processes, compliance plays a very important role for a company.

## 3) ANTICORRUPTION COMPLIANCE IN CORPORATIONS

### 3.1 ANTICORRUPTION LAW

Anti-bribery and corruption compliance — and the mitigation of associated risk — continue to be some of the main challenges that companies are facing, both in their domestic markets and abroad. On a global level, we see more and more countries promulgating new and more sophisticated anti-bribery and corruption legislation as well as aggressive enforcement by government regulators. Enforcement agencies of different countries are also increasingly cooperating in their fight against corruption. In addition, more countries are introducing individual criminal liability for bribery related offences.

With globalization, corruption has ceased to be a local problem of the countries and has become a topic of global concern, leading to actions by various United Nations (UN) Committees in order to unite as many countries as possible engaged in combating which is a typical political cancer of the world.

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<sup>48</sup> Mendes, Francisco Schertel. Compliance [livro eletrônico]: concorrência e combate à corrupção – São Paulo: Trevisan Editora, 2017. Contents 462

A number of international treaties have been created to address this issue: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Organization for Economic Co-operation and Development - OECD; the Inter-American Convention against Corruption of the Organization of American States (OAS); and the United Nations Convention against Corruption, adopted by the United Nations General Assembly on October 31, 2003.

The United Nations Convention against Corruption, ratified on 31 October 2003 by the UN General Assembly, was the first legal instrument to combat corruption with global legal-political reach, with the support of 178 signatory states.

The binding nature of a number of provisions of the Convention, combined with the worldwide scale of its impact, has made it one of the most important instruments in the fight against corruption in the international community.

### 3.1.1 FCPA

O *Foreign Corrupt Practices Act* (FCPA), the American Anti-Corruption Act, is an American law enacted by the US Congress in 1977 to create civil, administrative, and criminal sanctions in the fight against international commercial corruption. This law applies to American individuals and companies who, in commercial activity abroad, use corruption in the foreign public power to obtain or retain commercial transactions in that country. Likewise, this law creates an administrative structure to combat the practice of corruption in international business transactions<sup>49</sup>.

Until mid 1997, there was no international consensus on the illegality of this type of conduct, the payment of bribes to foreign public authorities was even encouraged in many countries, including developed nations. For example, the French tax code allowed French companies to deduct from their income tax any expenses they owed abroad, including those intended to "grease palms" of foreign government officials. It was only with the introduction of Article 39-2a that the Code Général des Impôts<sup>50</sup> began to prohibit such deduction.

The FCPA was approved following extensive investigation that pointed to massive and widespread corruption in business involving the interests of the United States overseas. Congress was especially concerned that the United States oil companies had made large payments to government officials in Japan, the Netherlands, and Italy. In addition to reducing the damage caused by corporate corruption, the FCPA also sought to improve the United States' image abroad and strengthen relations with allies.

The Securities and Exchange Commission (SEC) is responsible for the civil enforcement of the FCPA, including its anti-bribery provisions and about books and records. The Department of Justice (DOJ) is responsible for all criminal enforcement of the statute and for the application of anti-bribery provisions against non-issuers.<sup>51</sup>

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<sup>49</sup> <https://www.conjur.com.br/2012-abr-11/fcpa-cria-sancoes-combate-corrupcao-comercial-internacional>.

<sup>50</sup> General Tax Code.

<sup>51</sup> FOREIGN CORRUPT PRACTICES ACT: A BRIEF ANALYSIS OF THE LAW THAT GAVE RISE TO THE INTERNATIONAL FIGHT AGAINST CORRUPTION. NUNO M. M. S. COELHO.

The FCPA aims to curb two illicit business activities: bribery and false or inaccurate accounting. The FCPA anti-corruption provisions prohibit payments made with "corrupt intent" to obtain or maintain business with "foreign officials" operating on their "official capacity".

In the current global market, Foreign Corrupt Practices Act risk needs to be on the radar screen of most companies<sup>52</sup> – large and small, public and private, and across industry sectors. Given the current enforcement theories of the Department of Justice and Securities and Exchange Commission, FCPA risk is not always apparent from reading the statute. There is no way for business organizations to truly eliminate FCPA risk, but such risk can be effectively managed and minimized through pro-active policies and procedures and other means of risk assessment.

### 3.1.2 UKBA

The UK's Bribery Act 2010 (the Act) which came into force on 1 July 2011 represents a strengthening of the UK position on bribery and corruption and an important development in global anti-bribery legislation. In keeping with the US Foreign Corrupt Practices Act (FCPA), the current global benchmark, the Act makes bribery of foreign public officials an offense and extends beyond company employees to include the behavior of third parties acting on behalf of a company.

However, in certain respects the Act goes further than the FCPA. The Act:<sup>53</sup>

- a) Covers all bribery, not just those that involve public officials
- b) Makes no exception for facilitation payments made to expedite routine governmental actions
- c) Makes it a corporate offense to fail to prevent bribery
- d) Makes it an offense not only to give but also to receive a bribe

Most compliance practitioners are keenly aware of its application to UK based companies or subsidiaries for bribery of governmental officials and private.<sup>54</sup> Many companies have understood that these types of activities are illegal under the Foreign Corrupt Practices Act (FCPA) in connection with foreign governments and foreign and foreign governmental officials and some companies focused on these types of schemes when they involve private, nongovernmental actors. However, the Bribery Act prohibitions apply to inbound schemes that involve bribery as well. These include bribery of UK Company or subsidiary's employees. Most companies focus on the outbound schemes so we thought it might be a propitious time to review the different types of fraud schemes that might be covered by the Bribery Act for inbound actions.

## 3.2. SOME EXAMPLES IN THE EU

### 3.2.1 GERMANY

The German Criminal Code neither imposes criminal liability on legal entities nor expressly

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<sup>52</sup> Best Practices Under the FCPA and Bribery Act – How to Create a First Class Compliance Program – Contents 140.

<sup>53</sup> The UK Bribery Act Developing an anti-corruption compliance framework – from [http://www.ey.com/Publication/vwLUAssets/UK\\_Bribery\\_Act\\_Developing\\_an\\_anticorruption\\_compliance\\_framework/\\$FILE/EY\\_UK\\_Bribery\\_Act\\_-\\_Developing\\_anticorruption\\_compliance\\_framework.pdf](http://www.ey.com/Publication/vwLUAssets/UK_Bribery_Act_Developing_an_anticorruption_compliance_framework/$FILE/EY_UK_Bribery_Act_-_Developing_anticorruption_compliance_framework.pdf)

<sup>54</sup> Best Practices Under the FCPA and Bribery Act – How to Create a First Class Compliance Program – Contents 2910.

allows for compliance programs to mitigate or eliminate liability. However, legal entities may mitigate the risk of being exposed to fines under the German Administrative Offence Act<sup>55</sup>.

The German Criminal Code does not recognize the absence of a compliance program as a crime. However, failure to implement adequate measures to supervise the company and its employees and to prevent illegal conduct may constitute an administrative offense by the company and the company representatives. If misconduct known to the management continues, there is a risk that failure in stopping the misconduct can be viewed as aiding and abetting by the management and thus, could cause its criminal liability.

German civil courts are in the process of establishing a best practice. The District Court in Munich recently handed down a decision that defines the compliance-related duties of the board of directors of a German stock corporation. The key points of the decision are the following:

(a) As a consequence of his duty of legality, each board member is obliged to organize and monitor the company in a way that no violations of law such as bribe payments to foreign public officials or foreign private persons occur. A board member violates his duties if he implements a deficient compliance system and if he does not sufficiently monitor the compliance system.

(b) In case of a respective risk exposure, a board member only complies with his organizational duty if he implements a compliance organization aiming at damage prevention and risk control. Decisive factors for the extent of the compliance organization are type, size and organization of the company, applicable laws, geographical presence and previous compliance incidents.

(c) The adherence to the duty of legality and therefore the implementation of an effective compliance system are joint obligations of all board members. The board is obliged to obtain on a continuous basis comprehensive information about known compliance incidents. The board must assess whether the implemented compliance system is adequate to prevent violations against compulsory laws.

(d) Cross-border bribe payments constitute violations of the law and may not be justified by arguing that economic success in corrupt markets would otherwise not be possible. Strict rules apply to the implementation of a compliance system to prevent bribe payments.

### 3.2.2 ITALY

Companies may be held directly liable for certain crimes listed under Decree 231<sup>56</sup> that are committed on behalf of, or for the benefit of, the company by individuals who have operational and/or representative authority. This category includes: (i) individuals who represent or manage the company or any relevant autonomous business unit or de facto manage and control the company (“Representatives”); and (ii) individuals who are subject to the direction and supervision of the Representatives.

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<sup>55</sup> <https://globalcompliance.com/anti-corruption/anti-corruption-laws-around-the-world/>

<sup>56</sup> Law 231/2001 regarding administrative liability of companies – and advise on actions to be taken.

A company's liability under Decree 231 is assessed by the criminal judge in the same trial for the prosecution of the individual who allegedly committed the crime, and the sanctions set forth by Decree 231 are usually applied to the company by the same criminal court's decision upon the request of the public prosecutor.

The relevant courts may apply, among others, the following relevant sanctions:

- Temporary suspension from conducting business.
- Suspension or revocation of any authorizations, licenses or permits held by the legal entity with respect to the business unit connected with the crime.
- Prohibition from negotiating and entering into contracts with public administration entities, except for contracts relating to public services.
- Pecuniary fines quantified as quotas and ranging from a minimum of 100 quotas to a maximum of 1,000 quotas; since the amount of each quota ranges from a minimum of EUR 258 to a maximum of EUR 1,549, pursuant to Decree 231, the relevant Courts may therefore apply pecuniary fines ranging from a minimum of EUR 25,800 to a maximum of EUR 1,549,000.

Companies may avoid the risk of incurring liability pursuant to Decree 231, provided they adopt an effective compliance program, that is, a Model of Organization, Management and Control that is able to prevent and detect the commission of crimes (the "Model"), and ensure that the Model and related internal procedures are actually implemented. Therefore, the Model, if correctly implemented and constantly updated, would have the effect of exempting the company from liability arising from crimes committed by its Representatives.

### 3.2.3 SWEDEN

The Swedish Penal Code does not specifically recognize compliance programs as instruments to mitigate or eliminate the liability of legal entities before the crime of corruption has been committed. However, legal entities could partly mitigate their criminal liability if they adopt an effective compliance program.

As described above, a company that is found not to have done what could be reasonably expected to prevent bribery may receive a corporate fine. By adopting a compliance program, a legal entity reduces the risk of not having done what can reasonably be expected to prevent bribery from taking place and thereby, the risk of receiving a corporate fine is reduced. However, a compliance program is not an effective defense if the bribery has been committed by individuals in leading positions or with special responsibility for supervision. If a corporate fine is issued, the existence of a compliance program may reduce the amount of the fine.

### 3.2.4 AUSTRIA

Legal entities may be held responsible for a criminal offense committed by a decision maker or by an employee if the offense was committed for the benefit of the company or the commission of the offense violated legal obligations of the association.

It is in the event that a criminal offense is committed by an employee that compliance programs may help mitigate or eliminate criminal liability. The law states that companies may only be held liable for criminal offenses committed by their employees if the commission of the offense was made possible (or essentially facilitated) due to the fact that the decision makers disregarded

reasonable and necessary diligence. This is possible through a flaw in the implementation of essential technical, organizational or staff-related measures for the prevention of such crimes. These measures include, for example, guidelines, trainings and controls. Which measures are considered necessary have to be assessed on a case-by-case basis, depending on the size, structure, sector, etc. However, an effective compliance program may constitute a mitigating/eliminating factor.

Pursuant to the VbVG<sup>57</sup>, the prosecution also has discretion on whether or not to prosecute associations or conditionally withdraw from the prosecution. In deciding whether to apply these measures, the prosecution will take into account, inter alia, the conduct of the entity after the offense and will factor in the taking of preventive measures. The adoption of a compliance system will be considered as such a preventive measure.

### 3.3 MEASURES TO BE IMPLEMENTED

In the organizational environment, the Compliance area, the exercise of its function, should not be seen as a "sheriff", but as an area that advises, guides, anticipates potential risks based on the regulatory, codes and policies defined by the disseminated to all Stakeholders and Shareholders. Compliance should be seen as a "guardian", whose mission is to ensure the balance and sustainability of the company and to value organization and people<sup>58</sup>.

As most States do not provide for criminal liability for the absence of a compliance program, ideally there would be a provision in the legislation of that program. It is a way of minimizing and / or avoiding corruption in corporations.

Designing an effective anticorruption compliance program that meets the requirements of many different jurisdictions appears to be a difficult task. Multinational companies must take note of the broad global consensus that has developed around what governments and international organizations expect from corporate anticorruption compliance programs. While there is no one-size-fits-all program - and one company should keep in mind the applicable local laws - this global standard is a necessary measure.

The commonly accepted core components of an effective anti-corruption program include:<sup>59</sup>

§ Support and commitment from the top. Senior management and boards of directors should create a "tone at the top" that promotes a culture of compliance. In evaluating a company's compliance, U.S. authorities say they will consider "whether senior management has clearly articulated company standards, communicated them in unambiguous terms, adhered to them scrupulously, and disseminated them throughout the organization.

§ A clearly articulated and visible corporate policy. According to the FCPA Guide, written anti-corruption policies and/or codes should be clear, concise, and accessible to all employees and to those conducting business on the company's behalf.

§ Making compliance the duty of individuals at all levels of the company. While "tone at the top" and written policies are necessary components of a compliance program, they are not sufficient in and of themselves. A commitment to compliance must be reinforced by

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<sup>57</sup> Association Liability Law.

<sup>58</sup> Guia Prático Sobre Compliance, Lei Anticorrupção e PLD/FT – Andrea Carvalho – Contents 109.

<sup>59</sup> <http://www.fcablog.com/blog/2014/5/1/anti-corruption-compliance-meeting-the-global-standard.html>

middle-management and others throughout the organization, as the OECD<sup>60</sup> Guide and World Bank Guidelines emphasize.

§ *Oversight by the senior corporate officers with autonomy, resources and authority.* The responsible corporate officer (or officers) "must have appropriate authority within the organization, adequate autonomy from management, and sufficient resources to ensure that the company's compliance program is implemented effectively," the FCPA Guide states. Indeed, Russian law requires the designation of an officer and a department or structural unit responsible for the prevention of corruption and related offenses. In other countries, like Canada, companies are expected to establish "direct reporting obligation to independent monitoring bodies," which oversee compliance with applicable standards of conduct.

§ *Generally applicable compliance measures focused on high-risk areas.* The OECD Guidance recognizes there is no standard compliance program: an effective program, "should be developed on the basis of a risk assessment addressing the individual circumstances of a company." High-risk areas, the OECD says, include: "gifts; hospitality, entertainment and expenses; customer travel; political contributions; charitable donations and sponsorships; facilitation payments; and solicitation and extortion." The FCPA Guide similarly underscores that companies should design a compliance program that takes into account relevant risk factors.

§ *Ensuring the compliance of third parties.* A compliance program should not be limited to mitigating risks presented by a company's direct employees. The OECD advises multinational companies to perform documented due diligence of business partners, inform business partners of the company's commitment to compliance, seek a reciprocal commitment, and monitor compliance.

§ *Financial and accounting procedures, including a system of internal controls.* Brazil's new Clean Company Act, when applying penalties, considers the existence of internal controls, including audits, that ensure the integrity of a company's operations. The FCPA Guide emphasizes that internal controls are especially important where corruption risks are high -- so a financial services company would be expected to devise and employ different internal controls than a manufacturer.

§ *Periodic communication and documented training.* Anti-corruption training is not a one-time event, and, as the The FCPA Guide suggests, training sessions include hypothetical situations that are specific to the trainee's day-to-day work experiences.

§ *Encouragement and positive support for compliance.* Companies also should reward their employees for good behavior. For example, the FCPA Guide recommends incorporating adherence to compliance as a "significant metric for managements" bonuses.

§ *Appropriate disciplinary procedures to address violations.* Just as carrots are important to an anti-corruption compliance program, so are sticks. Anti-corruption rules are only effective if they are enforced.

§ *Guidance, advice, confidential reporting and whistleblower protections.* An effective program must provide resources for company employees and relevant third parties to obtain compliance information, help answer questions, and be able to report potential or actual misconduct.

§ *Periodic reviews.* A compliance program that remains static is likely to become ineffective as risks shift. The FCPA Guide therefore suggests that companies may: (1) use "employee surveys to measure their compliance culture and strength of internal controls, identify best practices and detect new risk areas and/or (2) "targeted audits to make certain that controls on paper are working in practice."

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<sup>60</sup> Organisation for Economic Co-operation and Development.

### 3.3.1 RISK PREVENTION

Risks are events with negative impacts on achieving an objective. Risks are potential, not certain, events.<sup>61</sup>

As well as defining the risks, it is important to define the prioritization of risks. With this, you can plan the application of resources in the treatment of those risks that are most relevant to the company at a given moment, directing what to do in each of the risks with strategies and risk management.<sup>62</sup>

After assessing the risks and identifying the applicable rules, it is necessary to create compliance policies and procedures, such as:

a) A "Code of Conduct" document is essential to serve as a starting point and to introduce, in a simple and direct way, the various components of the Compliance Program;

b) Each of the policies and procedures must, of necessity, be linked to an already constant theme in the code of conduct;

c) All policies and procedures should be available in a centralized or decentralized repository - physical or electronic, and should be readily available when needed;

d) The language used in the policies and procedures should be clear, accessible and easy to understand for all company employees.<sup>63</sup>

### 3.3.2 CODE OF CONDUCT

The Code of Conduct in companies is a set of rules that establishes values and guides the actions of a certain group of employees according to the principles of the organization. Business ethics comes to be the attempt to achieve the highest degree of realization within the company of the values in which its members believe, by conviction, generating external and internal responsibility on the part of the top management and the entire business community for the possible consequences of each action.<sup>64</sup>

In practice, the set of rules adopted by an organization is often called a code of ethics, code of conduct, or code of ethics and conduct.

One way to make the organization's adherence to rules explicit and formal is to create a code of conduct. The main idea of the code is to make it clear to every employee that the company cares and cares about the law and wants to be an environment for creating and expanding corporate

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<sup>61</sup> COSO Enterprise Risk Management – Integrated Framework, Executive Summary – [https://www.coso.org/documents/coso\\_erm\\_executivessummary.pdf](https://www.coso.org/documents/coso_erm_executivessummary.pdf)

<sup>62</sup> Serpa, Alexandre da Cunha. Compliance Descomplicado. 2016. Contents 317.

<sup>63</sup> Serpa, Alexandre da Cunha. Compliance Descomplicado. 2016. Contents 436.

<sup>64</sup> MARINHO, L.H.L. Controle Gerencial: padrões de conduta ética nos negócios em uma empresa multinacional – um estudo de caso. 1999. 134p.

culture that reflects that desire.<sup>65</sup>

Compliance and corporate governance are two concepts closely linked to corporate ethics. Being in compliance is, first and foremost, to follow the legislation. Corporate governance refers to transparency. It is the system by which companies and other organizations are directed, monitored and encouraged, involving relationships between partners, board of directors, board of executive officers, supervisory and control bodies and other stakeholders.<sup>66</sup>

In this way, the company and its employees must strictly follow the legislation. If you are not sure how to proceed in a specific situation, the employee should call the ethics committee to indicate the correct way of acting, advised by the legal department always necessary.

In corporate governance, the company and its employees always seek the accuracy of their accounting records, both for the legal aspects and for the necessary transparency regarding management and shareholders.

The creation of a specific pipeline manual is a viable alternative and is within reach of any company. No matter how comprehensive an organization's code of conduct may be, it will never be able to anticipate all risk situations to which its employees and employees will be exposed because of the business reality of the legal provisions.

The ideal is to promote a true commitment between employees and codes of conduct, by investing in specialized training and by setting goals and standards of conduct. In this respect, the International Chamber of Commerce (ICC) practical compliance guide points out some interesting strategies for promoting and disseminating the integrity culture in the company, among which:<sup>67</sup>

a) Adoption of an annual "compliance day" to reaffirm the company's commitment message with its code of conduct.

b) Elaboration of booklets and guides on its compliance program, in order to raise awareness among its employees beyond what already exists in the code of conduct.

c) Use of examples from the media (newspapers, websites) about damage to the reputation of companies that did not adopt compliance practices (companies convictions by Cade, or by corruption, for example).

d) Didactic presentation of successful compliance experiences, especially what can be extracted from them to improve the company's performance.

### 3.3.3 COMMUNICATION AND TRAINING

In implementing any compliance program, an in-house communication channel is essential.

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<sup>65</sup> Mendes, Francisco Schertel. Compliance [livro eletrônico]: concorrência e combate à corrupção – São Paulo: Trevisan Editora, 2017. Contents 1782.

<sup>66</sup> Código de Conduta – Ética Corporative Compliance Governança corporativa – Helio Pimentel – 2017. Contents 441.

<sup>67</sup> International Chamber Of Commerce. ICC Antitrust Compliance Toolkit.

The purposes are guidance to employees, as well as communicating potential illicit.

The Compliance Program would not work if it were not effectively communicated to everyone. It is extremely important that the Code of Conduct and other documents and issues related to the Compliance Program are communicated and available in easily accessible locations.

Principles and codes of ethics are seldom sufficient in themselves. They must be accompanied by dissemination actions, promoting the development of a corporate culture through a consistent strategy. It is in this context that the training of employees, through communication and training, is a strategic tool for prevention and guidance so that professionals act in an ethical manner and in accordance with the laws and standards of the company. The objective is to deepen the employees' knowledge of legal requirements and responsibilities, as well as corporate guidelines, enabling them to identify, prevent, treat and communicate situations of risk or with signs of irregularities.

The credibility and reputation of an organization are also a direct reflection of the performance of its employees. Rather than having compliance policies aligned with strategic objectives, companies should focus on the human aspect, since the development of integrity in business practices is more linked to behavioral changes than to corporate ethics and compliance guidelines and guidelines.

Training and communication efforts can involve trainings, campaigns, forums, videos and training of multiplier agents to identify, treat and communicate risk situations. Strategies vary according to company profile, but engagement is essential for a culture of integrity within organizations.

The program implemented by Siemens<sup>68</sup> is a good example of active concern with open channels of communication, not only with the internal public, but with any external agents that somehow relate to the company, such as suppliers, partner companies and joint ventures. The program titled Tell us is a direct line for informers who wish to communicate possible illicit, whether they are employees of Siemens or not.

The informant may have the identity concealed and must be protected by any retaliation from his superiors. It is a 24-hour-a-day channel, open in almost all languages, with worldwide reach, and operated by a Siemens independent body, which ensures that anonymity is guaranteed to informers. This independent body is responsible for transferring the information directly and integrally to the Legal Compliance Department for careful analysis.

### 3.3.5 COMMITMENT TO ETHICS

Ethics is the part of philosophy responsible for researching the principles that motivate, distort, discipline or guide human behavior, especially reflecting on the essence of norms, values, prescriptions and exhortations present in any social reality.<sup>69</sup>

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<sup>68</sup> Mendes, Francisco Schertel. Compliance [livro eletrônico]: concorrência e combate à corrupção – São Paulo: Trevisan Editora, 2017. Contents 1862.

<sup>69</sup> HOUAISS, 2012.

Business ethics is focused on ethical and transparent behavior between the company and all its stakeholders, that is, it is the good and sincere relationship between the organization and all its stakeholders. In the same way that ethics establishes the laws that determine the moral conduct of personal and collective life, business ethics determines the moral conduct of a company, whether public or private.<sup>70</sup>

The Code of Ethics and the commitment of top management to its dissemination and compliance are bases of the socially responsible company. Formalizing the company's ethical commitments is important so that it can communicate consistently with all partners. Given the dynamism of the social context, it is necessary to create mechanisms to update the code of ethics and to promote the participation of all involved.

The existence of ethical standards alone does not guarantee ethical behavior. They must be publicized and monitored in companies, so that the rules of conduct are known and well understood by all who work in them.

To this end, companies must establish an ethics committee with educational and monitoring responsibility. This will be the development of strategies and policies to promote ethics, as well as its dissemination, training, and orientation, to apply the rules of conduct to the routine of employees.

Members of the Ethics Committee should have in-depth knowledge of the company's policy - its standards, rules, goals and targets - and be aware of the responsibility of its work, as well as maintaining an unblemished reputation.

The commitment of a company to ethical values and principles depends, essentially, on the conduct adopted by its employees and other agents acting on its behalf. Thus, the company's efforts to disseminate values and ethical principles are important in order to achieve a change of behavior.

#### **4) CONCLUSION**

Both for financial costs and social costs, corruption is one of the greatest obstacles to the development of each state, affecting public and private institutions, intensifying political instability, distorting competition, affecting competitiveness and free market mechanisms, deteriorating the quality of products and services, mitigating trust in economic agents, and ultimately increasing transaction costs.

There is no way we can effectively fight corruption if we do not think of a collective commitment to overcome this complex phenomenon, which considers not only social and cultural aspects, but also the way in which states, companies and individuals face the issue. Its harmful effects directly impact the lives of thousands of people who do not have access to quality services, jobs, health and decent work, among others.

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<sup>70</sup> <http://www.administradores.com.br/artigos/negocios/a-importancia-da-etica-empresarial-como-fator-competitivo-para-o-mercado/103308/>

The need to combat corruption has led companies to worry about measures to be implemented to avoid being held hostage.

If everyone is committed to this culture, it is certain that damage to reputation, legal sanctions, financial loss, and compromise of business continuity will be far from organizational reality.<sup>71</sup>

There is much to be done by companies. The important thing is to be committed and aware that implementing measures to combat corruption is a matter of business survival. It is necessary to find qualified and qualified professionals to act in areas of compliance.

Paul McNulty, a former US attorney general, said: "If you think compliance is expensive, try not to be."

In fact, the losses are great for corporations that do not follow a compliance program. Corruption can be costly if the new standard is to be worth it. The company can be held liable for acts of corruption committed by employees and suppliers, regardless of the proven guilty, and the value of the fines can reach very high values.

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