



Anticorruption Compliance in the Private Sector:

Summary of Brazil's results

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1. Methodology:

Since the beginning of this work, our idea was to make a test of the research questionnaire and of the scope of the issues we were dealing with in the area of anticorruption compliance. Having these purposes in mind, our decision was to make a pilot research before applying the questionnaire to a larger group of respondents. The results presented in this study are then based in the pilot research and for this reason are considered preliminary results.

The research questionnaire was applied to two separate and distinct subsets of subjects: publicly-held companies and lawyers, either in-house or working for law firms.

The questionnaire was submitted in an electronic format (www.surveymonkey.com) to 70 publicly-held companies, out of which twenty-seven responded.

The subset of lawyers received the questionnaire in paper format. This subset was composed by 75 lawyers who are participants of Compliance Courses both at the Master and Continuing Education Programs of FGV Direito SP (the Law School of Fundação Getulio Vargas in São Paulo). In this subset, fifty-four subjects responded the research.

In both subsets the respondents are lawyers who are involved in a daily basis in providing law assistance and /or consulting to a broad range of companies, in the following areas: (1) professional,

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scientific and technical firms, (2) manufacturing companies, (3) corporations in the services, utilities and infrastructure sectors, and (4) state-owned companies.

The results are compiled in Annex I and II, attached hereto.

2. Highlights of the research results*:

	Publicly-held companies	Lawyers
Respondents	27	54
Company size	57.5% over 500 employee	38.9% over 500 employee
Subsidiary of a foreign company?	82% no	83% no
AML applicable?	50% yes	65% yes
Anticorruption control function	Anticorruption officer (43.8%), Special anticorruption unit (56.3%)	Anticorruption officer (40.7%), Special anticorruption unit (59.3%)
Anticorruption compliance officer is	Head of the anticorruption department (40%), Employee of another department (33.3%), Employee of the legal department (26.7%)	Head of the anticorruption department (13.8%), Employee of another department (44.8%), Employee of the legal department (41.4%)
Anticorruption compliance officer is subordinated to	Company's CEO (46.7%), other officer (53.3%)	Company's CEO (67.9%), other officer (32.1%)
Anticorruption compliance officer is obliged to cooperate with	Legal department (40%), other departments (33.3%) and security department (13.3%)	Legal department (72%), financial department (60%) and security department (24%)
Is there a code of business conduct?	72% yes	73% yes
Was foreign anticorruption law taken into account in drafting the company's policy?	75% yes	65% yes
The law of which country was taken into account?	USA (66.7%), UK (33.3%)	USA (91.7%), UK (33.3%), Germany (16.7%), Canada (8.3%), Others (25%) (China, Denmark and Brazil)
Anticorruption policy was drafted	Company's employees (60%), with assistance of external consultants (26.7%), parent-company policy (13.3%)	Company's employees (73.3%), with assistance of external consultants (26.9%), parent-company policy (15.4%)



The risk-assessment system is	Non-existent (33.3%), two-level (33.3%), three-level (13.3%), multi-level (20%)	Non-existent (67.6%), two-level (21.6%), three-level (8.1%), multi-level (2.7%)
The main types of risks are	Risks of type of business (100%), risks relating to the conditions of doing business (50%), internal risks (50%), risks of business partnerships (21.4%)	Risks of type of business (67.7%), risks relating to the conditions of doing business (67.7%), risks of business partnerships (41.9%), internal risks (35.5%)
Beneficial ownership is made through	Exam of corporate documentation (50%), personal identification documents of the beneficial owner (21.4%) and oral information by business partners (28.6%)	Exam of corporate documentation (28%), personal identification documents of the beneficial owner (24%) and oral information by business partners (28%)
Does the company use anticorruption clause?	Yes (100%)	Yes (48%)
Anticorruption clause is included in	All contracts (71.4%), some contracts, depending on the sum (7.1%), some contracts, depending on the level of risk of the counterpart (21.4%)	All contracts (59.1%), some contracts, depending on the sum (13.6%), some contracts, depending on the level of risk of the counterpart (31.8%)
Violation of the anticorruption clause is cause for	Termination of the contract (71.4%), penalties (21.4%), no consequence (7.1%)	Termination of the contract (76.9%), penalties (46.2%), no consequence (11.5%)
In case of the company becomes aware of illicit acts planned or accomplished, will it conduct an investigation?	Yes (100%)	Yes (82%)
If the company is aware of a corruption offence, will it inform enforcement agencies?	In any case (33.3%), only in respect of grave crimes (66.7%)	In any case (50%), only in respect of grave crimes (50%)
Is there a hot-line?	Yes (100%)	Yes (48%)
Main problems related to low anticorruption compliance	Lack of information about need of anticorruption compliance (61.5%), absence of special supervisory body (53.8%), lack of stimulus measures (38.5%), absence of administrative liability for deficiency in anticorruption compliance control in company (30.8%)	Lack of information about need of anticorruption compliance (35.6%), absence of special supervisory body (42.2%), lack of stimulus measures (35.6%), absence of administrative liability for deficiency in anticorruption compliance control in company (40%)



* The subjects did not respond all questions. The response basis varies and is indicated in the attached reports.

As we have mentioned before, we consider the results shown above as preliminary since they were based in a pilot study for testing the methodology and the questionnaire itself.

Based on the comments made (indicated in the end pages of Annex I and II), in future researches we should consider making the questionnaire shorter, with specific questions formulated and directed to specific actors. Also, to the extent possible, we should consider the effectiveness standards recently created by Brazilian law.

As a final note, we could also consider using the questionnaire as a guideline to run oral interviews, as we believe it to be a powerful analytical tool for assessing compliance structure and practices of companies.

3. General reflections and comments based on the research

The issue of corruption is considered one of the prototypical global issues, so it was chosen to be studied by this group of the LSGI institutions. It is known that corruption is not an exclusive problem of developing economies. But, certainly, it has a very negative impact on the level of welfare of communities affected by practices involving corruption by governments and companies around the world. Therefore, it is reasonable to assume that the populations of less developed countries are hardest hit by this problem.

Particularly in Brazil the corruption problem is not new. However, the establishment of a broad and systematic corruption process is much more recent and it has strongly affected the population's life condition.



3.1. Brazil's Anticorruption Law and Decree-Law

It is interesting to mention that the bribery is a crime ruled by the Brazilian Penal Code of 1830. But only recently, Law No. 12,846, of August 1, 2013, created strict civil and administrative liability for legal entities and imposed high penalties and sanctions for a broad range of corruption offences ("Anticorruption Law").

Pursuant to article 7, VIII of the Anticorruption Law, the existence of "internal mechanisms and proceedings of integrity, audit and incentive to denounce of illicit acts and the effective application of ethics and conduct codes" may be taken into account for sanctioning purposes.

Federal Decree No. 8,420, of March 18, 2015, detailed the standards of existence and application of the integrity programs. Ostensive support of the high management to the integrity program, periodic trainings regarding the integrity program, standards of conducts, ethic code and integrity policies for employees, managers and third parties, regular risk assessments, whistleblowing and hot-line channels, investigation and sanctioning proceedings among others, are some of the standards to be applied by the governmental authority when assessing the effectiveness of the program (article 42).

All the established standards shall be applied on a case-by-case basis, taking into account the size of the company, the complexity of its management structure, its businesses and markets, its interactions with governmental entities etc. (paragraph 1 of article 42). The specific data regarding each company's compliance program shall also be subject to a special process, ruled by Portaria No. 909, of 2015.

Several of the questions made in the research have major relevance to the standards by which a Brazilian compliance program shall be analyzed and assessed. It should be mentioned that, to date and to our knowledge, no company has had its integrity and compliance program subject to test according to the new federal regulation.

3.2. Reflections and comments



The anticorruption law in Brazil is very recent and the preliminary results that we have obtained from the pilot study in many ways reflect this “newness”.

But it is easy to notice that the object “corruption” is embedded in the day to day discussions at all levels in Brazilian society. Since the scandal in the largest company in Brazil - Petrobrás - was made public some months ago, there is no one - even the common people in the streets – who is not aware of the ruinous consequences of corruption over the destinies of the population.

As far as citizens in general are well aware of these consequences, there is no reason to believe companies would underestimate the importance of combating corruption if their purpose is to survive in the economy.

For this reason, we believe that the second part of our research will be much more prolific in measuring the degree of compliance of the anticorruption law in the Brazilian companies. If a company is labeled by society as practicing “corruption activities” - real or even only perceived – the consequences for this company may be quite dramatic, both in terms of sanctions imposed by the authorities or by sanctions imposed by the market itself.

Our hypothesis is that the results we are going to reach when the research continues is that we will find an increased concern of Brazilian companies in complying more effectively with the anticorruption law in order to avoid an unsustainable situation.



ANNEX I:

ANTI-CORRUPTION COMPLIANCE CONTROL IN COMPANY

QUESTIONNAIRE

SECTION 1. GENERAL INFORMATION

1. MAIN COMPANY AREA OF ACTIVITY:

- AGRICULTURE, LIVESTOCK, FORESTRY PRODUCTION, FISHERIES AND AQUACULTURE.
- EXTRACTIVE INDUSTRIES
- TRANSFORMATION INDUSTRY
- ELECTRICITY AND GAS
- WATER, SEWAGE, WASTE MANAGEMENT ACTIVITIES AND DECONTAMINATION.
- BUILDING
- TRADE; AUTOMOTIVE AND REPAIR OF MOTORCYCLES.
- TRANSPORT, STORAGE AND MAIL.
- ACCOMMODATION AND MEALS
- INFORMATION AND COMMUNICATION
- FINANCIAL ACTIVITIES, INSURANCE AND RELATED SERVICES.
- REAL ESTATE ACTIVITIES
- PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES,.
- ADMINISTRATIVE ACTIVITIES AND SUPPLEMENTARY SERVICES
- PUBLIC ADMINISTRATION, DEFENCE AND SOCIAL SECURITY.
- EDUCATION
- HUMAN HEALTH AND SOCIAL SERVICES
- ARTS, CULTURE, SPORT AND RECREATION.

- HOUSEHOLD SERVICES
- INTERNATIONAL INSTITUTIONS AND OTHER EXTRA-TERRITORIALS ORGANIZATIONS

2. OTHER LINES OF ACTIVITY:

3. IS YOUR COMPANY A BRANCH OF A FOREIGN COMPANY?

- Yes



No

If so, in which country your parent company is incorporated in?

4. IS YOUR COMPANY OBLIGED TO CARRY OUT INTERNAL CONTROL IN ACCORDANCE WITH ANTI-MONEY LAUNDERING LAW?

Yes

No

Section 2. PLACE OF ANTI-CORRUPTION COMPLIANCE CONTROL IN THE STRUCTURE OF THE COMPANY.

2.1. WHO PERFORMS FUNCTIONS OF ANTI-CORRUPTION COMPLIANCE CONTROL IN THE COMPANY?

Anti-corruption compliance officer

Special anti-corruption unit (department)

2.2. ANTI – CORRUPTION COMPLIANCE OFFICER IS

Director of anti-corruption compliance department

Employee of Security unit (department)

Employee of Legal unit (department)

Employee of AML unit (department)



Employee of another unit (department) (specify which one)

3. ANTICORRUPTION OFFICER IS ENTITLED TO REPORT TO:

	YES	NO
CEO of the Company	()	()
Audit Committee	()	()
Administrative Council	()	()
Another company director	()	()
Please Specify: _____		

SECTION 3. CODE OF BUSINESS CONDUCT

3.1. Is there a code of business conduct (business ethic) in the company?

Yes No

SECTION 4. ANTI-CORRUPTION POLICY

1. DOES THE COMPANY HAVE ANTI-CORRUPTION POLICY AS A SPECIAL INTERNAL DOCUMENT?

() Yes

() No

2. DID THE COMPANY TAKE INTO ACCOUNT FOREIGN ANTI-CORRUPTION LAWS WHEN DRAFTING ITS ANTI-CORRUPTION POLICY?

() Yes

() No

3. IF SO, THE RULES OF WHICH COUNTRY WAS USED? (YOU CAN MARK MORE THAN ONE OPTION)



- UK
- Germany
- Canada
- USA
- Switzerland
- Other countries (please specify) _____

4. ANTI-CORRUPTION POLICY WAS DRAFTED (YOU CAN MARK MORE THAN ONE OPTION)

:

- By the employees of the company
- With the assistance of external consultants
- On the basis of anti-corruption policy of foreign parent company

5. THE FOLLOWING STANDARDS AND PROCEDURES ARE INCLUDED IN THE STRUCTURE OF YOUR ANTI-CORRUPTION POLICY (YOU CAN MARK MORE THAN ONE OPTION)

- financial support of political parties (if company in principle supports or plans to support political parties)
- legal audit
- charity
- anti-corruption clauses in business contracts
- interaction with affiliates, subsidiaries, affiliated companies
- monitoring the implementation of anti-corruption policy
- organization of internal procedures for corruption prevention
- effective participation of the Company Board (Executive and Administrative Council)
- gifts and hospitality
- procedure to report conflict of interest
- procedure for financial transactions controls with risk of possible relationships with corruption
- procedures and risk assessment criteria
- promotions



- anti-corruption training on admission in the company
 - training for employees
 - other topics and procedures. Please specify:
-

Section 5. RISK ASSESSMENT

1. COMPANY RISK ASSESSMENT SYSTEM IS:

- there is no risk assessment system
 - a two-level system
 - a three-tier system
 - a multilevel system (please specify)
-

2. THE MAIN TYPES OF RISKS ARE: (YOU CAN MARK MORE THAN ONE OPTION)

- geographical risks
 - risks related to the type of business
 - risks related to conditions of doing business
 - risks of business partnership (politically exposed persons and their relatives, companies with ownership or state control)
 - risks related to financial transactions
 - internal risks
 - other risks (please, specify)
-

3. FOR THE PURPOSES OF RISK-ASSESSMENT THE COMPANY USES THE FOLLOWING DATA:

- accounting statements
- commercial databases
- lists of international sanctions
- lists of foreign countries sanctions



- data from commercial registries
- list of persons banned from hiring
- legal databases
- property and real state registries
- mass media information
- other sources (please specify)

4. WHICH COUNTRIES/REGIONS DO YOU CONSIDER TO BE HIGH RISK LEVEL?

5. WHICH TYPES OF BUSINESS DO YOU CONSIDER TO BE HIGH RISK LEVEL?

SECTION 6. IDENTIFICATION OF BENEFICIAL OWNERS OF COMPANIES - BUSINESS PARTNERS

1. IDENTIFICATION OF BENEFICIAL OWNERS IS MADE:

- According to oral information provided by business partners
 - By virtue of personal identification document of final beneficial owner
 - By virtue of statutory documents of all companies in a chain, which allow to show who is the beneficiary
- not applicable

SECTION 7 – ANTI-CORRUPTION CLAUSE

1. DOES THE COMPANY INCLUDE ANTI-CORRUPTION CLAUSES IN ITS CONTRACTS?



yes

no

2. IF YES, CLAUSE ANTI-CORRUPTION IS INCLUDED IN:

all contracts

some contracts, depending on their value

some contracts, depending on the other party's risk level

some contracts, depending on

(please,specify): _____

3. ANTI-CORRUPTION CLAUSE INCLUDES: (YOU CAN MARK MORE THAN ONE OPTION)

- Disclosure of final beneficial owners
- Information sharing about disclosed facts of corruption
- Responds on requests as required to implement anti-corruption program within an agreed timeframe
- Right to conduct an audit of anti-corruption policy of a partner
- Refusal of partner employees stimulation in company's own interest
- Provisions guaranteeing confidence of anti-corruption procedures and negative consequences for persons reporting the facts of corruption
- Other sections and provisions (please, specify)

4. BREACH OF ANTI-CORRUPTION CLAUSE IS A REASON FOR:

Termination of a contract

Penalties



- There are no any consequences

SECTION 8. INTERNAL INVESTIGATIONS

1. IF COMPANY GETS INFORMATION ABOUT COMPLETED (OR PLANNED) CORRUPTION OFFENCE, IS THE COMPANY GOING TO CONDUCT AN INVESTIGATION?

- yes
- no

2 . INVESTIGATION / AUDIT WILL BE CONDUCTED BY:

- employees responsible for anti-corruption control department of the company
- security department
- external organizations

3 AFTER ASCERTAINMENT MADE BY INVESTIGATION / AUDIT (IF CONFIRMED A CORRUPTION EVIDENCE), THE INFORMATION IS SENT TO GOVERNMENT AUTHORITIES

- in any situation
- only in cases stipulated by law

SECTION 9. HOT-LINE

1. IS THERE HOT-LINE IN COMPANY?

- yes
- no

2. IF YES, THE COMMUNICATION CHANNEL (HOTLINE) IS OPERATED BY:

- Company employees
- a third-party operator



3. THE COMMUNICATION CHANNEL (HOTLINE) MAYBE USED:

- anonymously
- with personal data specification

Seção 10. COOPERATION WITH AFFILIATES AND SUBSIDIARIES

1. THE AFFILIATED AND SUBSIDIARY COMPANIES:

- have their own anti-corruption policies
- have anti-corruption measures based on those of the parent company
- not applicable

Section 11. MAIN PROBLEMS IN THE SPHERE OF ANTI-CORRUPTION COMPLIANCE CONTROL

1. IN YOUR OPINION WHAT ARE THE MAIN PROBLEMS KEEPING DOWN ANTI-CORRUPTION COMPLIANCE CONTROL?

- legislative regulation
 - lack of information about the need for anti-corruption controls in the company
 - lack of stimulation / training measures
 - lack of administrative responsibility for deficiency in anti-corruption controls in companies
 - absence of specific monitoring body
 - significant anti-corruption control costs for the company
 - effective participation of the Company Board
 - other problems (please, specify)
-
-

2. WHAT ARE YOUR SUGGESTIONS FOR IMPROVEMENT OF ANTI-CORRUPTION STANDARDS CONTROLS:



SECTION 12. SUGGESTIONS OR COMMENTS ABOUT THIS RESEARCH

1. DO YOU HAVE ANY QUESTION OR COMMENT ABOUT THIS RESEARCH? IF YES, YOU CAN USE THIS SPACE TO SEND YOUR OPINION.
