

THE IMPORTANCE OF PROMOTING INTEGRITY IN THE PRIVATE SECTOR

Office of the Comptroller General (CGU)

1. The importance of promoting integrity in the private sector

Corruption, which is defined as the abuse of public power for private benefit, is one of the main obstacles to economic and social development throughout the world. Considering that this phenomenon also distorts the logic of fair and loyal competition and minimizes the growth of markets, the private sector, together with governments and civil society, is a key player for ensuring the effectiveness of anti-corruption policies. For this purpose, many enterprises throughout the world have been adopting integrity policies with the aim of strengthening the business environment.

Businesses can contribute to fighting corruption by taking a firm stance to prevent and combat this evil through integrity practices capable of creating benchmarks for socially responsible relations with the government, society, and all the different governmental levels and spheres of the State. Reflecting ethical principles, enterprises consolidate and transmit their posture internally and to external agents such as customers, suppliers, the communities in which they operate, and the general public.

2. What does it mean to be an upstanding business?

An upstanding company is one that encourages and fosters good corporate practices internally and externalizes these practices to its partners – customers, suppliers, etc – disseminating its values and developing a network that behaves responsibly and takes action to build a society committed to ethical values.

An upstanding company is one committed to disseminating its anticorruption rules to its staff and collaborators, so that they may be fully complied with. In addition, it makes a true effort to prevent any form of bribery and to foster legality and information transparency, particularly information involving contributions to political campaigns. From this perspective, drawing up a code of conduct which sets out ethical values to be followed and rules to discipline the behavior of its agents is the initial landmark for a business to clearly define what it expects from those it keeps relations with.

Apart from drawing up a code of conduct, a company should base its staff selection processes on ethical principles, establish mechanisms for disseminating and ensuring compliance with its code of conduct, set up an ethics committee with educational and monitoring responsibilities, and establish internal control and audit systems with sufficient authority to reduce the vulnerability of the organization to existing risks, seeking to identify and correct any deviations from the company's policies, parameters and guidelines.

3. CGU Actions

Aware of this reality, the Office of the Comptroller General (CGU) has been working in partnership with the private sector to reinforce the importance of the role played by enterprises in

promoting an environment of integrity and in combating corruption. The creation of this website is another action designed to provide clarifications and guide enterprises interested in fostering and advancing practices of integrity in their corporate environment. Check other actions CGU has been taking to encourage enterprises to adhere to integrity policies in their corporate environment and to collaborate with those committed to promoting integrity and combating corruption:

a. Creation and maintenance of the Registry of Companies not in Good Standing or Suspended – CEIS – in the Transparency Portal – www.transparencia.gov.br.

b. Creation of a hot site (www.cgu.gov.br/oecd) and distribution of primers on the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions to over 20,000 exporting enterprises.

c. Forwarding of Ministerial Announcements to dozens of exporting enterprises to disseminate the OECD Convention and criminalization of the act of bribing foreign public officials in international business transactions, as provided for in article 337-B of the Penal Code.

d. Cooperation with the Ethos Institute of Business and Social Responsibility with the aim of supporting the *Empresa Limpa* (Clean Company) campaign.

e. Publication of a manual called A Responsabilidade Social das Empresas no Combate à Corrupção (the social responsibility of enterprises to combat corruption) in June 2009, in partnership with the United Nations Office on Drugs and Crime (UNODC), which involved workshops that were held to promote a dialogue on corporate anticorruption practices.

4. Collective Actions: Directives to Enterprises

Sectoral Pacts Initiatives Against Corruption

1. Defense Industry Initiative - DII (www.defenseethics.org)

Enterprises that participate in the DII initiative supply systems, professional services, weapons, technology, and construction materials and services to the US Defense Department. When they become DII signatories, these enterprises commit to adopt and apply the highest standards of business ethics and conduct. The DII initiative seeks to promote an ethical culture in each company of the defense industry that participates in it.

Signatory enterprises work to share best practices with the aim of creating an organizational culture in which ethics and compliance are key elements. Signatory companies seek to advance the goal of ensuring observance of the highest ethical standards and of encouraging their staff to adopt an ethical behavior in their activities.

For this purpose, a program made up of five core components and four program elements accompanying them was created:

- Core Components: established core values, leadership commitment, risk assessment, clear ethics and business conduct policies, and regular program assessment and evaluation.
- Program Elements: communication plan and awareness initiatives, awareness training, inquiry and reporting mechanisms, and code of conduct.

In addition, when they become DII signatories, the enterprises commit to observe the six guiding principles of the initiative:

- Have and adhere to a written Code of Conduct.
- Train employees in this Code.
- Encourage internal reporting of violations of the Code, within an atmosphere free of fear of retribution.
- Practice self-governance through the implementation of systems to monitor compliance with federal procurement laws and the adoption of procedures for voluntary disclosure of violations to the appropriate authorities.
- Share with other firms their best practices in implementing the principles, and participate annually in the “Best Practices Forum” held by DII.
- Be accountable to the public.

2. The Bavarian Construction Industry's Ethics Management Initiative (www.bauindustrie-bayern.de/englisch.html)

In 1996, the Bavarian Construction Industry Association launched a Certifying Business Coalition with the aim of promoting integrity in the construction industry and improving its reputation, pre-qualifying enterprises to take part in tenders. Ten years later, the Association launched the Ethics Management Initiative, which 45 construction companies adhered to. This Initiative is mainly focused on anticorruption actions, with ethics management as a backdrop.

To take part in the Initiative, interested enterprises must commit to implement an ethics management system based on the principles of the initiative, accepting to be audited one year after they join it. If the audit is successful, the company is awarded a certificate of the initiative and can be audited again within a predetermined period. If problems are detected in the audit, the company has a chance to improve its ethics management system before being re-audited. If the company still fails to abide by the principles of the initiative after a second audit, it is excluded from it.

Apart from improvements in the image of the civil construction industry and in the credibility of the signatory companies, positive aspects that lead companies to join the Initiative include growth in their brands and in the number of new members and expansion of the Initiative to other regions in Germany. As this certification arrangement is promoted, public awareness is enhanced, generating benefits for the companies.

5. How integrity principles and policies can be implemented

Enterprises may face difficulties to recognize the best way to implement integrity policies and principles. The most frequent doubt is related to the starting point to make organizations adopt such principles and policies. This article presents suggestions from two renowned international organizations - Transparency International (TI) and the Organization for Economic Cooperation and Development (OECD) - on the subject, bearing in mind that the OECD methodology is to be applied to multinational corporations. However, it should be highlighted that there is no single solution for all enterprises: for each type of organization, there are more appropriate strategies and policies to be implemented.

- Transparency International Six-Step Implementation Process

Transparency International – TI – has developed a six-step strategy for enterprises to implement an anticorruption program, namely:

Step 1: Decide to adopt a no-bribes policy

- Obtain commitment to no-bribes policy “from the top”.
- Decide to implement an Anti-bribery Program.
- Opt for a transparency policy.
- Appoint senior manager/crossfunctional Project Team.

Step 2: Plan implementation (actions to be carried out by the Project Team)

- Define specific company risks/review current practices.
- Review all legal requirements, to check those that should be changed or reinforced.
- Draw up policies and develop an Anti-bribery Program.
- Get commitment from management and staff.

Step 3: Develop a detailed Anti-bribery Program (actions to be carried out by the Project Team)

- Integrate no-bribes policy into the organizational structure of the company and assign responsibilities.
- Review ability of service functions to support new program.
- Develop detailed implementation plan that includes adapting the HR policies, communications procedures, and training programs of the company.
- Set up complaints function.
- Prepare to minimize possible incidents along the program.

Step 4: Implement Program

- Communicate Antibribery Program internally and externally.
- Run training courses for employees and business partners.
- Deal with incidents.
- Review role of Project Team.

Step 5: Monitor

- Regular reviews of the company's practices and of the antibribery program.
- Capture knowledge from incidents.
- Hire external assurance providers (auditors).
- Review use of complaints channels.

Step 6: Evaluate and Improve

- Receive feedback from monitoring.
- Evaluate effectiveness of the Program.
- Develop improvements to Program.
- Report to Management.
- Board review and sign-off on Program.

For more information, kindly read the [full plan](#) at the Transparency International website.

OECD Guidelines for Multinational Corporations:

The OECD Guidelines for Multinational Corporations were drawn up to ensure that the activities of these enterprises are in tune with the governmental policies of their country and of countries in which they have operations, so as to strengthen the foundations for mutual trust between enterprises and the societies in which they operate, contributing to improve the climate for foreign investments, among other benefits.

The Guidelines are divided into categories such as corruption (combating bribery), jobs and industrial relations, environment, competition, among others.

In relation to the category on corruption, the OECD recommends that enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. Not use subcontracts, purchase orders or consulting agreements as means of channeling payments to public officials.

2. Ensure that remuneration of agents is appropriate and for legitimate services only.

3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honor these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery and extortion.

4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programs and disciplinary procedures.

5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.

6. Not make illegal contributions to candidates for public office or to political parties or to other political organizations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

Source: www.oecd.org/dataoecd/56/36/1922428.pdf and www.fazenda.gov.br/sain/pcnmulti/diretrizes.asp

6. Good Practices to Promote Integrity in the Private Sector

Codes of Conduct

Why should enterprises develop and implement codes of conduct?*

Enterprises should implement codes of conduct because they:

- Provide criteria or guidelines for people to feel safe as they comply with ethical standards.
- Ensure homogeneity in how specific issues are addressed.
- Enhance integration among a company's staff.
- Favor an optimum work environment that leads to quality production, high productivity and, as a result, more business and higher profits.
- Create more sensitivity among collaborators for them to seek to ensure the well-being of customers and suppliers and, consequently, their satisfaction.
- Stimulate the commitment of all stakeholders in preparing the document.
- Protect public interests and the interests of professionals who contribute to the organization.
- Facilitate the development of healthy competitiveness among competitors.

- Consolidate customer loyalty and fidelity.
- Attract clients, suppliers, collaborators and partners who behave according to high ethical standards.
- Add value to and strengthen a company's image.
- Ensure a company's sustainability.

The document Formulação e Implantação de Código de Ética em Empresas - Reflexões e Sugestões (Drawing up and implementing a Corporate Code of Ethics - Reflections and Suggestions), prepared by the Ethos Institute, is a good source for hints on how to develop and implement a code of conduct.

A guide is available at www.s145828053.websitehome.co.uk/codesofconduct.html which describes, in a step-by-step fashion, the stages involved in creating an efficient Code of Conduct, always making it clear that each code is unique, as it should clearly define the unique traits of each enterprise.

According to the 1st Survey on Codes of Ethics in Brazil, which was carried out by the Brazilian Institute for Ethics in Business and used information reported by the *EXAME Melhores e Maiores* magazine published by the Abril publishing house in 2006, 75% of all Codes of Ethics set out rules for the relationship between the staff of companies and their different stakeholders, showing how enterprises are concerned with meeting the interests of all publics they relate to in their daily business operations.

Assistance Against Money Laundering

Law n. 9,613/98 was passed for the purpose of strengthening measures against money laundering. For this purpose, that law created the Council for Financial Activities Control, established crimes of money laundering or concealment of goods, rights and values and set forth rules for cooperation on the part of some legal entities.

As for private corporations, some of them are required to assume certain obligations related to combating money laundering. Corporations falling under the list of institutions contemplated in article 9 are subject to the provisions set out in the above-mentioned Law:

Article 9 - The obligations set forth in articles 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as a principal or secondary activity, together or separately, in any of the following activities:

I - Receiving, acting as brokers and investing third parties' funds, in national or foreign currency;

II - Purchase and sale of foreign currency or gold as a financial asset;

III - Acting as securities custodian, issuer, distributor, clearer, negotiator, broker, or manager;

Sole Paragraph. The same obligations shall apply to the following:

I - stock, commodities, and futures exchanges;

II - insurance companies, insurance brokers, and institutions involved with private pension plans or social security;

III - payment or credit card administrators and consórcios (consumer funds commonly held and

managed for the acquisition of consumer goods);

IV - administrators or companies that use cards or any other electronic, magnetic or similar means, that allow the transferal of funds;

V - companies that engage in leasing and factoring;

VI - companies that distribute any kind of property, including cash, real estate, and goods, or the rendering of services, or give discounts for their acquisition by means of lotteries or other similar methods;

VII - branches or representatives of foreign entities that engage in any of the activities referred to in this article, which take place in Brazil, even if occasionally;

VIII - all other legal entities engaged in the performance of activities that are dependent upon an authorization from the agencies that regulate the stock, exchange, financial, and insurance markets;

IX - any and all national or foreign individuals or entities, who operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents, or who represent in any other way the interests of foreign legal entities that engage in any of the activities set forth in this article;

X - legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;

XI - individuals or legal entities that engage in the commerce of jewelry, precious stones and metals, objects of art, and antiques.

XII – individuals or legal entities that engage in the commerce of luxury or high-value goods or in activities that involve large amounts of cash. (Colocar texto da norma em página separada e colocar outro link para o texto oficial?)

The obligations these entities are required to fulfill are divided into two types: customer identification and record-keeping (articles 10 and 10A of Chapter VI) and reports of financial transactions (article 11 of Chapter VII).

CHAPTER VI

Customer Identification and Record-Keeping

Article 10. The legal entities referred to in article 9 hereof shall:

I - identify their customers and maintain an updated record in compliance with the provisions set forth by the competent authorities;

II - keep an up-to-date record of all transactions, in national and foreign currency, involving securities, bonds, credit instruments, metals, or any asset that may be converted into cash, and that exceeds an amount set forth by the competent authorities and in accordance with the requirements they may issue;

III - Comply with notices sent by the Council established under article 14 hereof, within the time period stipulated by the competent judicial authority, which shall be processed in a confidential manner.

Paragraph - 1 In the event that the customer is a legal entity, the identification mentioned in item I of this article shall include the individuals who are legally authorized to represent it, as well as its owners.

Paragraph 2 - The reference files and records mentioned in items I and II of this article shall be kept during a minimum period of five years, counted from the date the account is closed or the date the transaction is concluded and the competent authorities may decide, at their own discretion, to extend this period of time.

Paragraph 3 - The registration under item II of this article shall also be made whenever an individual or legal entity, or their associates execute, during the same calendar month, transactions with the same individual, legal entity, conglomerate or group that exceed, in the

aggregate, the limit set forth by the competent authorities.

Article 10A. The Central Bank shall keep a centralized record that will constitute the general registry of current account holders and customers of financial institutions, as well as of their attorneys.

made, for example, through the reporting of suspect operations to public agencies in charge of detecting and combating corruption, such as COAF, CGU, Audit Accounts, and the Public Prosecutor's Office. (Nota do tradutor: este parágrafo parece solto no meio do texto)

CHAPTER VII

Reports of Financial Transactions

Article 11. The legal entities referred to in article 9 hereof:

I - shall pay special attention to any transaction that, in view of the provisions set forth by the competent authorities, may represent serious indications of the crimes referred to in this law, or that may be related to them;

II - shall inform the competent authorities, within a period of twenty-four hours, and abstain from advising their customers of this action, about:

a) any and all transactions listed in item II of article 10 that entail an amount that exceeds the limits, terms, and conditions set forth by the competent authorities for this purpose, with the identification referred to in item I of the same article; (Wording according to Law n. 10,701 of July 9, 2003)

b) the proposal or the execution of a transaction referred to in item I of this article.

Paragraph 1 - The competent authorities referred to in item I hereof shall establish a list of transactions that could characterize the kind of operations contemplated herein, considering their basic features, the parties and amounts involved, the implementation, the means of execution, or the lack of economic or legal justification.

Paragraph 2 - Information imparted in good faith, pursuant to the provisions set forth in this article, shall not generate any civil or administrative liability.

Paragraph 3 - The individuals or legal entities that are not subject to a specific control or regulator agency, shall provide the information referred to in this article to the Council for Financial Activities Control (COAF), in the form provided for by the Council. (Colocar texto da norma em página separada e colocar outro link para o texto oficial?)

It should also be stressed that non-compliance with the obligations listed in articles 10 and 11 of the Law can lead to the application of the following sanctions contemplated in article 12: warning, pecuniary fine, temporary disqualification for holding the position of manager of the enterprises mentioned in article 9 and annulment of the authorization to operate or function.

Companies not subject to the discipline of the above-mentioned Law, however, can help in combating money laundering, even though they are not under any obligation to do it.