

To conduct a survey in nowadays Brazil about sensitive issues like corruption or compliance mechanisms is a very difficult task.

Many lawyers approached by us said they would like to cooperate with the survey but they had express orientation from the upper levels of their companies not to answer any questions related to these subjects. Even the formal guarantee of non-disclosure of the company name was not sufficient to obtain a considerable number of answers.

Despite all these difficulties it was possible to go ahead with the survey even considering that we could get only a small number of responses when compared with the large number of Brazilian companies which are potentially included in such a survey.

The survey was conducted only with corporate lawyers. That means that the respondents were lawyers who work directly with compliance issues inside a company. For reasons of focus, we decided to exclude from this survey lawyers who work in law firms even if they are involved in the area of compliance. In our view, obtaining answers from lawyers who work directly on compliance issues inside a company would give us a better understanding of the structure and importance companies place in the compliance activities.

Our survey is comprised of 29 answers given by corporate lawyers. Most of the questions posed in the survey were fully answered by the respondents. Some of the questions were not answered by all the respondents but the number of NR's were very small. Again, the level of responses depended on the perceived sensitiveness each respondent gave to the question.

The largest number of respondents work in the transformation industry (26%), followed by financial activities, insurance and related services (22%). We had also responses from lawyers

working in areas such transport, building, information and communication, health services, agriculture, accommodation, among others. In all, the main areas of business activities in the Brazilian economy were included in this small sample.

The companies are in their majority (62%) Brazilian companies. The remaining 38% of the companies are branches of foreign companies, mainly from United States. There are also companies whose headquarters are in United Kingdom, Italy, France, South Korea, Belgium and Germany.

When asked if the company is obliged to carry out internal controls in accordance with the anti-money laundering law, 65% of the respondents gave a yes as answer. Only 28% said that their company has no obligation in this respect.

Regardless of the specific obligation, all companies have an anti-corruption control system. Most of the companies have an especial anticorruption department dealing with compliance and corruption issues (59%). In the absence of a specific department, the companies have at least an anticorruption executive (41%). In general, the executive entitled to deal with compliance and corruption is positioned in different areas inside the structure of the company. In some cases there is an Anticorruption Director (18%), or an employee from the Legal Department (21%), or an employee from a Money Laundry Department (7%), or even on people working in different departments inside the company, such as Audit, Finance, and Internal Controls. The anticorruption officer reports generally to the company's CEO (52%), but there is also a "joint control" exerted by either the Audit Committee (48%) and/or the Company Board (52%).

It is important to notice that all companies surveyed have a Code of Business Conduct or a Code of Ethics. Considering that these are large companies and/or branches of foreign companies, this is not a surprising result. In respect of having an internal document for dealing specifically with anticorruption matters 79% of the respondents said that the company has such a document. For 52% of the respondents the company took into consideration foreign anticorruption laws when drafting its anticorruption policy. A large majority of these rules were based in similar rules adopted in U.S companies (64%), with a significant number from U.K companies (28%). Regardless of the origin of these rules, the drafting of the internal document was made basically by the employees of the company (65%) or with the assistance of external consultants (23%). In 22% of the cases the internal document was based exclusively in the equivalent document written by the companies' headquarters.

An important issue about the anticorruption policies adopted by the companies surveyed is related to the standards and procedures which are included in the structure of the anticorruption document prepared by these companies.

We have listed 15 topics and/or procedures in the questionnaire and asked to the respondents for their answers. Of course, this was an open-ended question, allowing them to respond to more than one item. The idea was to check which items were comprised in the document prepared by the company and the frequency each item was referred.

The items are listed below in a decreasing order of citations:

| <u>Item</u> | <u>Standards and/or procedures</u>        | <u>% of answers</u> |
|-------------|---|---------------------|
| 1           | Anticorruption clauses in contracts       | 76                  |
| 2           | Organization of internal procedures       | 72                  |
| 3           | Gifts and hospitality                     | 72                  |
| 4           | Monitoring anticorruption practices       | 66                  |
| 5           | Procedure to report conflict of interests | 62                  |
| 6           | Training for employees                    | 59                  |
| 7           | Effective Board participation             | 55                  |
| 8           | Training during employees hiring          | 52                  |
| 9           | Procedures for financial transactions     | 52                  |
| 10          | Criteria for risk assessment              | 45                  |
| 11          | Financial support to political parties    | 45                  |
| 12          | Legal audit                               | 31                  |
| 13          | Charity                                   | 31                  |
| 14          | Interaction with affiliates/subsidiaries  | 31                  |
| 15          | Promotions                                | 21                  |

Not surprising, the anticorruption clauses in the contracts signed by the company appear in the top of the list with a 76% citation index. It is through contracts that most companies interact with the external world, including suppliers and clients. For this reason, the protection against possible future problems in terms of relationship

with third parties are normally established in a formal contract. Of course, the organization of internal procedures themselves are part relevant in the anticorruption policy with a 72% citation index. Employees and third party contractors should be aware of the internal policies applied by the company when dealing with compliance and corruption issues. It is interesting to notice that employees training is cited by “only” 59% of the respondents meaning that the anticorruption culture is still not completely spread over the companies surveyed.

In terms of corruption risk assessment, 24% of the respondents said their companies have not a risk assessment system. In the remaining 76% where corruption risk assessment is taken into consideration, the main types of risk appointed were (a) risks related to the type of business of the third party (72%), risks related to the condition of doing business (45%), risks related to financial transactions (45%), internal risks (45%). The data used by companies for risk assessment are by large the financial statements provided by the third party companies (69%), followed by commercial databases (59%), mass media information (48%), and legal databases (48%). In average, companies use 4 different sources when trying to assess risks, but this number ranges from only one source to up 7 different ones. Most of the companies look for more than 3 different sources when trying to assess risks on third party companies.

Latin America is considered a region of high-risk of corruption by the respondents. There were some citations on Africa, Middle East, India, Russia and China when applying the questionnaire but the majority of the respondents placed countries in Latin American on the top of their concerns about corruption. A word of cautiousness should be taken at this stage since all the respondents are engaged in doing business mainly in Latin America and their perceptions

may be somewhat distorted by this fact. In the types of business associated with higher risks, the public sector had the largest number of answers. Even though a large number of the companies surveyed do not have the public sector as a client, more than 50% of the respondents mentioned the risks of dealing with the public sector when dealing with corruption issues.

In terms of specific anticorruption clauses in their contracts, 90% of the respondents said there is an anticorruption clause in the contracts. Of these, 75% said that such clauses exist in all contracts, while 7% said that the clauses exist on some contracts depending on the amount involved, and other 7% said that clauses exist on some contracts depending on the other party risk level.

For 83% of the respondents, the breach of an anticorruption clause is reason for the termination of the contract, while for 38% there are reasons for the application of penalties (with or without termination).

Generally, the anticorruption clauses in the contracts include (a) provisions guaranteeing assurance of anticorruption procedures and negative consequences for persons reporting acts of corruption (52%), (b) right to conduct an audit of anticorruption policy in a partner (38%), (c) information sharing on disclosed facts of corruption (28%), and (d) disclosure of final beneficiaries owners (21%).

In terms of conducting an investigation in case of a completed (or planned) corruption offence 90% of the respondents said the company will proceed with an investigation. The investigation will be conducted by the area in charge of the anticorruption control in the company (77%), by the security department (8%), or by an

external organization (15%). If the investigation leads to an ascertainment of the corruption fact (confirmation of a corruption evidence), the information is reported to government authorities only in cases stipulated by law (82%) or in any situation (18%).

When asked about the existence of a hot-line as communication channel for reporting possible cases of corruption in the company, 83% of the respondents said there is a hot-line, while 10% said there is not such a channel. In the existence of a hot-line channel, in 45% of the cases it is operated by a third-party operator, and in 38% it is operated by an employee of the company. The hot-line may be used anonymously in 73% of the companies, while in 10% of them there is a need of disclosing personal data.

In terms of cooperation with affiliates and subsidiaries in respect of anticorruption policies, in 66% of the cases it was declared that the affiliates and subsidiaries have anticorruption procedures based in the parent company, while in only 14% of the cases they have their own anticorruption policies.

Finally, when asked about the main problems faced by companies in the sphere of anticorruption compliance control, the answers pointed out to the following issues: (a) the significant anticorruption control costs for the company (41%); (b) lack of effective participation of the company board (41%); (c) lack of stimulation and training measures (34%); (d) absence of a specific monitoring body in the company (28%), (e) lack of information about the need of anticorruption controls in the company (24%); (f) lack of administrative responsibility for deficiencies in anticorruption controls (24%), and deficiencies in legislative regulations (21%).

Some suggestions were made by the respondents for the improvement of anticorruption standards controls. In their opinion, it is necessary the full support of the Board and a total commitment of the higher levels of a company including the provision of finance and human resources for dealing with this question. It was also mentioned the need of an efficient monitoring system inside the company mainly in the cases where public agents are involved. Most of the respondents argued that it is extremely important to disseminate a culture of good practices against corruption inside the company, including continuous training for employees and also specific training during the hiring process of new labor. In addition, it was mentioned the importance of a quick investigation process of corruption cases within the company, with the consequent application of the correspondent penalties when the corruption is finally verified.