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# ESG TRENDS | GOVERNANCE COMPLIANCE AND CORPORATE CRIMES

7<sup>TH</sup> EDITION

PINHEIRONETO  
ADVOGADOS



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# INTRODUCTION

The Environmental, Social and Governance (ESG) issue has gained an undeniable relevant importance and influence in the Brazilian corporate segment in recent years. There has been an increasingly clear and urgent call from society and market for companies to adapt to this new tendency, making corporate governance the main element in this process.

The seventh edition of ESG Trends e-book series brings discussions on governance aspects. Within ESG subject, this pillar consists of a system of rules, practices and procedures according to which a company is managed and controlled. In this context, the corporate governance represents a system of

principles, purposes and practices that guides the business management for companies to be managed in a transparent manner, balancing the interests of their stakeholders (shareholders, senior management executives, employees, customers, suppliers, financiers, government and community) and aligning them with the company strategy.

In ESG context, the governance pillar becomes a true implementation, guarantee and protection mechanism of the “E” (environmental) and “S” (social) pillars. This is because the corporate governance will establish the company’s priorities and allow projects and policies related to the environment and social

issues to be discussed and approved.

Compliance, in turn, comes as an integral and essential part of corporate governance for adapting companies to the legislation and, also, to the moral and ethical conduct required by society, mainly through risk management, development of policies and procedures, as well as the prevention and identification of wrongdoings, which may vary from possible acts of corruption or absence of environmental license, to human rights violations.

In future editions, we will continue to analyze the governance issue based on aspects related to taxation and General Data Protection Law (LGPD).





# COMPLIANCE AS A GOVERNANCE INSTRUMENT

Compliance is a management instrument introduced in the corporate governance system to assist in the development of processes, projects, programs and procedures to avoid unwanted conduct and occurrence of risks not allowed by law, particularly to prevent the occurrence of corporate crimes.

While ESG issue has gained relevance and generated discussions in Brazil, especially last year, compliance rules has been applied by most of companies in the country, at least since 2014, with the entry into force of the Anti-Corruption Law ( Law 12,846/2013).

Accordingly, although ESG concept is certainly more comprehensive than the one encompassing compliance, companies will be able to use their compliance sector as a strategic tool and fundamental basis to create and adapt to a sustainable culture.

Compliance will be able to assist the corporate governance to provide risk assessment, develop existing policies and procedures, and identify and investigate possible violations, by means of existing whistleblower channel and investigation procedure.

This is because, although compliance is just a part of corporate governance, its focus covers any type of possible wrongdoing, including those relating to the environment and social issues, particularly human rights.



# COMPLIANCE AND HUMAN RIGHTS

Human rights should be respected in the corporate environment, mainly, by means of dissemination of a healthy, welcoming and equitable work environment, which complies with labor rules and combats abuse and harassment. Said topics have always been within the scope of compliance.

We believe that the relationship between compliance and human rights has been and will be relevant in the coming years, because, in the post-pandemic world, issues related to the sustainable work environment will remain in the spotlight, due to the changes caused by social isolation and home office.

In this context, assuming that any violation of human rights is an unlawful act, the corporate governance and compliance should be adopted (i) as a means of preventing violation of human rights in the corporate activities and (ii) in a manner compatible with protection of human rights.

It is true that good compliance practices may be used by the company to include in its policies and procedures the protection of human rights, based mainly on the National Guidelines on Business and Human Rights provided for in Decree No. 9,571 of November 21, 2018.

These are the compliance mechanisms that may be implemented, depending on the sector and company structure:

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- Conducting human rights due diligence, which includes an assessment of the actual and potential impact of the company's activities (risk assessment) on human rights, in order to identify, prevent, mitigate and repair the negative impacts of its activities;
  - Structuring a compliance program that has policies and procedures aimed at protecting and improving human rights;
  - Conducting investigations into cases involving human rights violations;
  - Providing employees, senior members of the company and third parties with training courses, to raise their awareness on the subject;
  - Including clauses in the company's contracts, which provide for the obligation of third parties and partners to comply with Human Rights protection rules.
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In addition, considering its business sector and risky activities, the company may adopt specific policies and procedures to interact with certain vulnerable groups such as indigenous people, children and adolescents, workers in conditions similar to slavery.

We also recommend the implementation of periodic ESG reports to inform to the market the results, investments, projects and efforts adopted by the company to protect Human Rights.



# NON-DISCRIMINATION COMPLIANCE

It is notorious that, within the human rights topic, we have experienced a strong public outcry for combating discrimination, whether based on gender, race, color or sexual orientation.

In this sense, corporate governance, supported by compliance with a focus on sustainable development and the protection of human rights, must be based on the principle of equity. That is, the company have to ensure fair and equal treatment to stakeholders (shareholders, managers, employees, consumers, workers and civil society) to ban any act of discrimination and non-equal treatment.

To apply the principle of equity and fairness in the business context, any discriminatory behavior and practice must be avoided and banned.

The so-called Non-discrimination Compliance consists of a set of rules and procedures related to corporate governance to prevent, identify and remedy discriminatory practices of any kind and create an environment of harmony and respect for diversity.

In this sense, tools used in compliance - such as risk assessment, integrity tests for employees, mapping of contingencies, creation of diversity committees, implementation of a whistleblower channel and preparation of a code of ethics and conduct - jointly with the principles and good corporate governance practices not only prevent discriminatory conduct, but also guide the company and employees on how to deal with situations involving such conduct.

It is worth bearing in mind that the practice of an act of discrimination may cause the company not only damage to its image and reputation and risk of civil and/or labor lawsuits, but may also give rise to criminal liability of legal representatives involved in such practice.

Practices of discrimination or prejudice based on race, color, ethnicity, religion, national origin or homophobia are considered crimes pursuant to Law 7,716/1989, and may result in imprisonment from one to five years and a fine, depending on how the crime is committed.

However, the reason for companies to invest in diversity and fight discrimination is not only to avoid punishment. It is proven that said policies add value and bring several benefits to companies.

Diversity in the professional environment has been increasingly seen as a key to innovation. This is because diversity encourages interaction, respect and the exchange of ideas, contributing to the company's financial

and cultural growth. By including professionals with diverse profiles, companies tend to notice an improvement in decision-making, as this is carried out by a diverse team, which analyzes the issues from different points of view, and benefit from the strengthening of their institutional image with the stakeholders.

A survey published in “Harvard Business Review”, Brazil edition, in 2015, based on the analysis of 170 Brazilian companies, found that, in places where diversity is recognized and practiced, the existence of conflicts is up to 50% lower than in other organizations, in addition to increasing employee engagement and proactivity by 17% . In addition, another survey carried out by “Harvard Business Review” pointed out that companies that work with

diversity policies have 45% more chances of increasing market share, which is directly linked to increased competitiveness of the company .

In this context, corporate governance, assisted by compliance, should promote diversity in companies, through the implementation of projects focused on increasing diversity and inclusion in the company's workforce, aiming at (i) hiring and retaining persons with different origins, sexual orientation, religion, color, race, among others; (ii) increasing the representation of women, black persons and LGBTQIA+ in leadership positions and (iii) offering benefits and assistance aimed at the permanence of persons who may be in a position of educational or social vulnerability; among others.

- 1 BORIN, Fernanda; FIENO, Priscila, SAMPAIO, Bernardo. Diversidade: Inclusão ou Estratégia. Harvard Business Review, Brazil Edition, October 2015, p. 86-90.
- 2 HEWLETT, Sylvia Ann; MARSHALL, Melinda; SHERBIN, Laura. How Diversity Can Drive Innovation. Harvard Business Review, December 2013. At: <<https://hbr.org/2013/12/how-diversity-can-drive-innovation>>.



# WHAT CAN WE EXPECT?

Compliance can and should be used by companies as an important and strategic tool for the development and consolidation of ESG culture.

Similarly to other regulatory and compliance areas, there is no singular correct or regular way to create effective policies and procedures for protecting the environment and social policies. To be in line with good compliance practices, the work should take into account the business activity, size, risk situations and sensitive areas of each company.

It is important to keep in mind that robust compliance is not only a prevention mechanism, used to mitigate the company's liability risks, but it may also be a vehicle for encouraging a sustainable culture, protecting social and environmental issues and respecting the human rights, topics that have been and should be increasingly valued.

In the context of globalization, the reputation of companies is extremely relevant given the high competitiveness and transparency provided by the computerized world, which presents a large field of techniques such as “naming and shaming” that may taint the reputation of companies and interfere in their performance.

In addition, the bad reputation of companies with regard to conduct that involves damage to human rights may raise questions and reservations on the part of investors, given the possibility that the company is constantly subject to a decreased market value and to inspection and /or investigation by public authorities.

Accordingly, corporate governance should have compliance as its best ally to create and implement policies and procedures aimed at building sustainable corporate environments and protecting human rights.





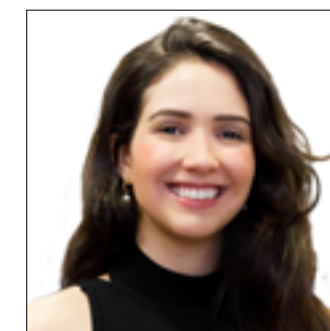
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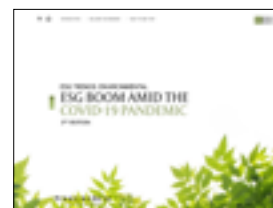
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