



ABC* COMPLIANCE PROGRAM

Our Experience,
Your Difference!



*Anticorruption Bribery Compliance

Agenda

- ▶ Anticorruption Laws in Brazil
- ▶ International Expansion = Growth
- ▶ Risk Analysis
- ▶ Why Implement a Compliance Program?
- ▶ Compliance Program
- ▶ Best Practices
- ▶ Services
- ▶ Leniency Agreement
- ▶ Warning!



Anticorruption Laws in Brazil

- ▶ International Context
- ▶ International Treaties signed by Brazil about Anticorruption
 - ✓ The United Nations Convention Against Corruption (UN)
 - ✓ Inter-American Convention Against Corruption , signed in 1996 the Organization of American States
 - ✓ Convention on Combating Bribery of Foreign Officials in Business Transactions of Organisation for Economic Cooperation and Development (OECD)
- ▶ Influence from Laws Anti-Money Laundering and Anticorruption Laws in USA and Europe

Global Fight Against Corruption



Anticorruption Laws in Brazil

- ▶ Anticorruption in Brazil
 - Criminal Law (code) - Articles 312, 315-317, 327, 333, 337-B a 337-D
 - Governmental Purchasing Law - Law 8666/93
 - Improbity Law– Law 8429/92
 - Anti-trust/Fair Competition Law – Law 12.259/11
 - Public Employees Law 8112/1990
 - Ethics Code for Public Employees–Decree 1171/1994
 - Anti-money Laundry Law – Law 12.683/12
 - Anti-corruption Law – Law 12.846/13

Tough Laws Against Corruption



Anticorruption Law 12.846 / 13

- ▶ Administrative and Civil impact
 - Illicit conduct by the business/company
 - Loss to the government
- ▶ The law is valid for all types of companies,, foundations, associations, any foreign entity with local representation
- ▶ Shared Liability = Partners, Directors, Employees, and 3rd Parties
- ▶ Focus to reduce corruption = Corruptor
- ▶ Strictly Responsibility = vicarious liability = Duty of Control and ensure Compliance
- ▶ The law gives reduction of the penalties and benefits for companies that having a “effective” compliance program = leniency agreement + full collaboration with the investigations

Tough Laws Against Corruption



International Expansion

- ▶ Increase in untapped Market... Increase to ROI
 - New Markets.... New possibilities
- ▶ Production, Marketing, Distribution, R&D
- ▶ Benefit from presence in high growth/developing markets
- ▶ Economic Benefit... Customers, Suppliers, Increased Competitiveness and Profit
- ▶ New Products/Applications
- ▶ New Manufacturing Processes... Local Suppliers
- ▶ New Ideas and Management
- ▶ New Sales and Distribution... Local Distributors

Benefits from Strong Local Presence





RISK ANALYSIS



Risk Factors

- ▶ Political Risk
 - Government control or influence in the business strategy
 - Political Instability
 - Commercial Treaties or Protective Measures
- ▶ Economic Risk
 - Public Deficit
 - Currency Instability and Government control of the Economy
 - Interest Rate
 - Import/Export Controls, Taxes and import/export duties. Bilateral Treaties
 - Profit repatriation restrictions, or high taxes on profit repatriation

Understand the Risks... Mitigate



Risk Factors

- ▶ Business Risk
 - Culture
 - Corruption
 - Logistics
 - Operational (people, processes)
 - Image - Reputation
- ▶ Legal/Regulatory Risk
 - Litigation – consumers/customers, suppliers, etc
 - Administrative – proceedings and investigations, sanctions
 - Civil, Contractual, Criminal, Fiscal, Labor, Environmental -ESG
 - Data Security, Privacy and Client Data
 - Legal and governance model
 - Mergers, incorporations and spin offs (M&A)

Understand the Risks... Mitigate



Shared Liability

- ▶ Legal Risk
 - Holding companies and consolidated legal entities
 - Subsidiaries/JVs
 - Consortiums
- ▶ Civil Law (Art. 1.098)
- ▶ Law 6.404/76 (Art. 116)
- ▶ CVM (stock exchange regulator) – shareholders agreement, control and votes
- ▶ Public Procurement Law – Law 8666/93, Art. 33, V, and regarding Public Concessions – Law 8.987/95, Art.19, §2º.

Understand the Risks... Mitigate



Why Implement a Compliance Program?

WAIT!

- Multiple factors are considered to reduce the sanctions/penalties, among others
 - the presence of integrity internal procedures and mechanisms
 - internal audit and incentive to report concerns
 - effective application of an ethics/conduct code inside the legal entity

A Compliance Program Is a Great Investment



Why Implement a Compliance Program?

WAIT!

- reduction of 2/3 of the penalty !
- Therefore, effective and active COMPLIANCE program pays-off.

A Compliance Program Is a Great Investment



Compliance Program

1. Policies and Procedures – Defined and Communicated
2. Compliance Mrg/team
3. Effective Training
4. Effective Communication
5. Monitoring Internal Controls
6. Compliance Structure
7. Preventive/Corrective Actions

ROBUST = Preventive + Analytical + Corrective



Best Practices

- Top management with clear commitment to integrity/compliance. “The tone comes from the TOP Management.”
 - TOP-DOWN Culture
 - Effectiveness metrics
 - Ethic Channel (Whistleblowing Policy)
- Compliance is a duty of all directors, employees and 3rd parties, and vendors.
 - Insert contract clauses with compliance obligations
 - monitor
- Active Compliance Program in continuous evolution. “Live and active organism inside the company”.

Competitive Advantage: Transparency & Compliance



Best Practices

- Simple, clear and affirmative Compliance Policies.
- Internal Controls adequate and effective.
- Constant and effective Communication covering all levels of the company and its employees.
- Updates and continuous follow-up

Understand the Business... Establish Policies



Best Practices

- Positive and real incentives for Compliance... Clear and effective disciplinary actions against abuses/non-compliance to company policies.
- Communication channels to facilitate the reporting of concerns with absolute confidentiality. (Ombudsperson and Open Reporting Channel, Ethic Channel – helpline)

Business Strategy & Conflict Management



Pitfalls of non-compliance to LAC

- ▶ Cumulative or isolated Penalties
 - Administrative
 - Judicial
- Accidents, reparation of losses, financial and reputational losses
- Reparation of entire loss (always)
- Higher exposure of officers, Directors & Partners – Legal Procedures against personnel.
- Bankruptcy, judicial dissolution, suspension of operations = piercing the company veil risk = affecting directors/managers



Pitfalls of non-compliance to LAC

- Prohibition for new business and no access to government financing
 - prohibition to sign new contracts with the government and have any official incentive/benefit (Tax, Custom, Finance)
- Communication of the guilty verdict
 - Federal Executive Branch, the National Registry of Punished Companies (CNEP= Cadastro Nacional de Empresas Punidas), and
 - National Registry of Inapt and Suspended Companies (CEIS= Cadastro das Empresas Inidôneas e Suspensas), in accordance with articles 87 and 88 of Law 8.666.
- M&A: Responsible (Civil law) for activities before company was acquired
- Vicarious Liability: Responsible for activities from employees, suppliers and 3rd party vendors



To do list

- Legal/Policy Assessment, and risk management effectiveness
- Compliance Program strategy/definition – internal controls and policies/ethics code and contingency plans
- Compliance Program Implementation – internal, suppliers and 3rd parties
- Customers and Suppliers Due diligence – training and contracts
- Acquisition (M&A) Due diligence– prevention on civil responsibility regarding past occurrences

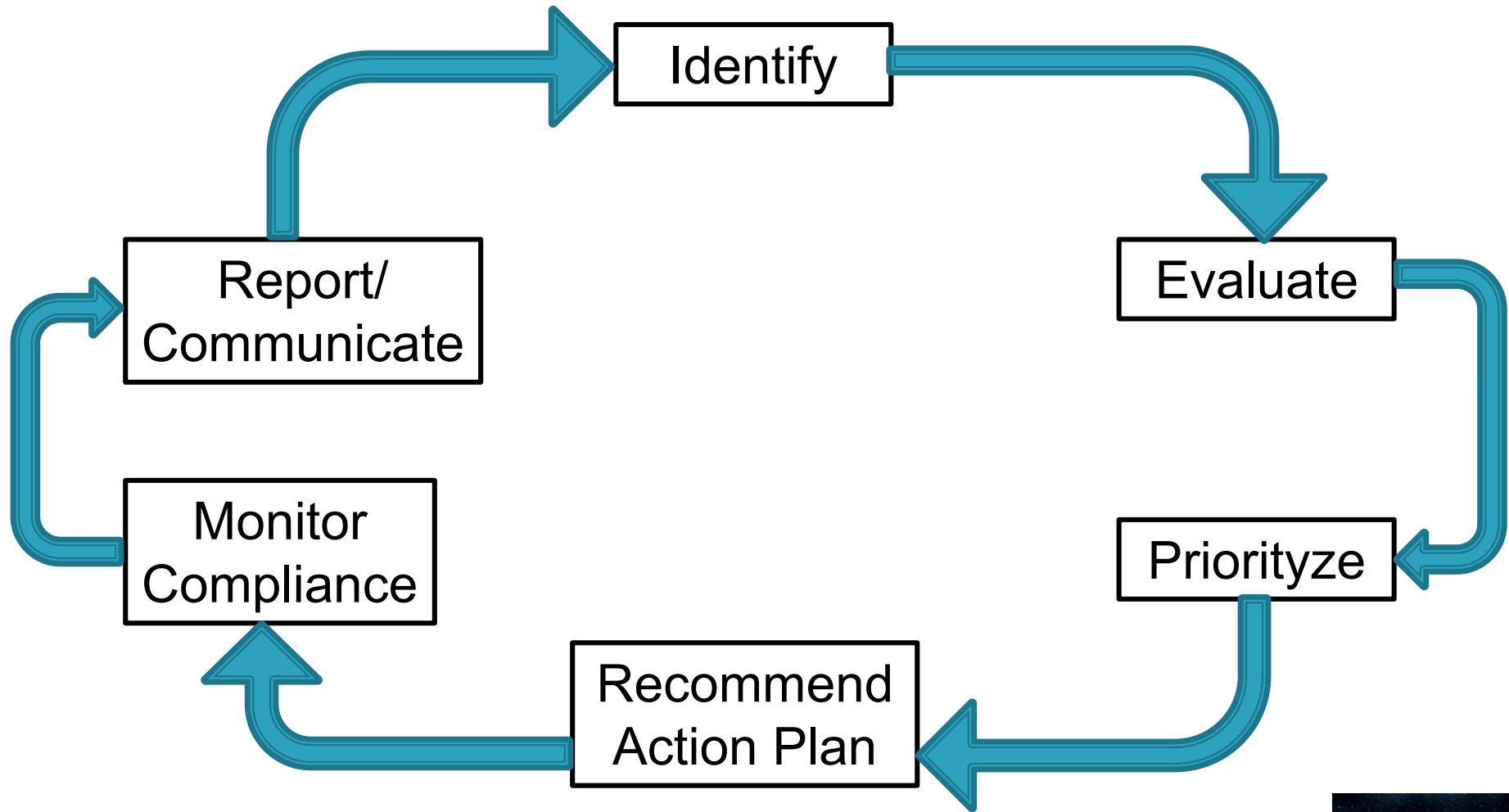


To do List

- Training– awareness of controls and compliance culture commercial practices new ethic conduct.
- Internal Auditing/Monitoring – before and after program implementation, reevaluate, test, adapt
- Consulting regarding Preventive/Corrective actions
- General Counsel/Compliance Independence from Management – Commercial internal and external policies, Controls and risks evaluation
- Statutory Compliances
- Certifying each 3rd party to a firm's compliance policies and partners expectations



Know Your Business/Mapping



Defense Alternatives

**RISK-Based MANAGEMENT
COMPLIANCE**

Internal/External Audit

**HELPLINE – Ethic Channels
INTERNAL INVESTIGATIONS
SELF-DISCLOSURE**



SELF-DISCLOSURE ?
=
LENIENCY AGREEMENT
+
REPAIR LOSSES

**POSSIBLE ONLY WHEN THERE IS A
SOLID COMPLIANCE PROGRAM**



Leniency Agreement Repair Losses

- ▶ Accept inquiry terms/prosecutor input and Repair losses
- ▶ Collaborate with investigations and administrative process
- ▶ Exemption possible for some sanctions applicable during administrative process (regulamentary or discretionary)
- ▶ Reduce penalty up to 2/3 of the value of the applicable penalty



3RD PARTY CONTRACTING – MITIGATE RISKS
ONLY VALID DEFENSE: EFFECTIVE AND ACTIVE COMPLIANCE PROGRAM



WARNING

3rd Parties & Labour Issues

- ▶ Transaction where payment or benefit can be received by government employee or family member
- ▶ Bribing reputation
- ▶ Excessive commission payment, paid in cash, foreign currency or other irregular means
- ▶ 3rd parties hired by government employees or family members or which have a close relationship with government employees
- ▶ 3rd parties recommended by government employees
- ▶ Weird financial transaction, like requirement to remit payment to bank account in country different from where the service is being provided or requirement to pay to more than one bank account.
- ▶ 3rd party refuses to sign Code of Conduct and Compliance Program, or to accept contractual terms and conditions and/or training and monitoring



WARNING

3rd Parties & Labour Issues

- Officers and Directors responsibilities and liabilities
- Managers and middle level employees
- Lower level managers and employees
- Review all contractual relationships with suppliers/distributors/3rd Parties
- Sales representatives, Channel Partners
- Other collaborators



Antitrust issues

- ▶ Pitfalls in Corporate Agreements – cartel, bid rigging, M&A (pre and post acquisition).
- ▶ Complaints from Bidders
- ▶ Multiple Contracts below Procurement Thresholds and Supplier Chain

Anti Money Laundry issues

- ▶ Book and Records System – Follow the Money
- ▶ Petty Cash or Administrative cost – policy against corruption
- ▶ Anti-Money laundering – Know your Customer/associates



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