

Brazil's new Anti-Corruption Law: Implications for Companies

Sérgio Nogueira Seabra

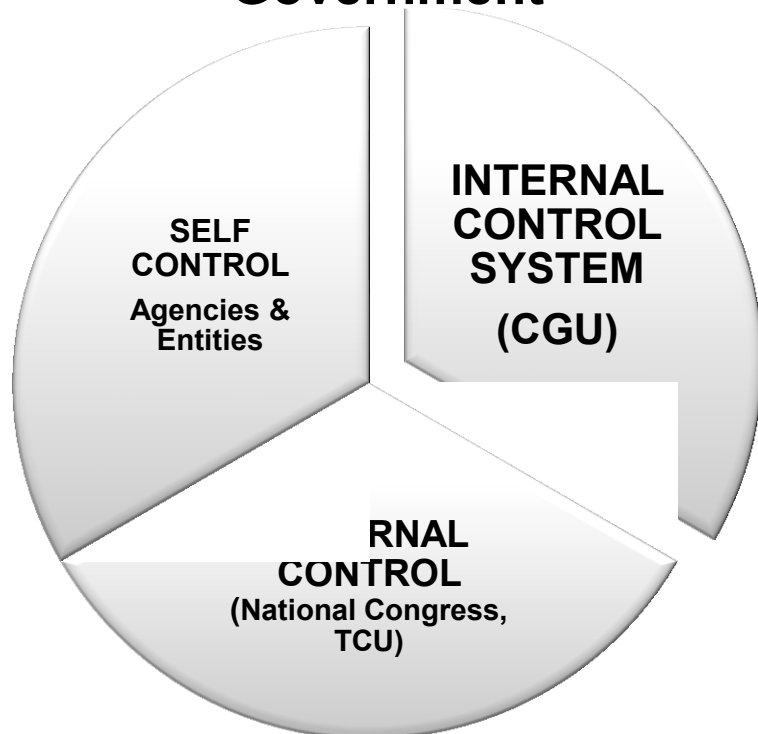
Federal internal control Secretariat

CGU

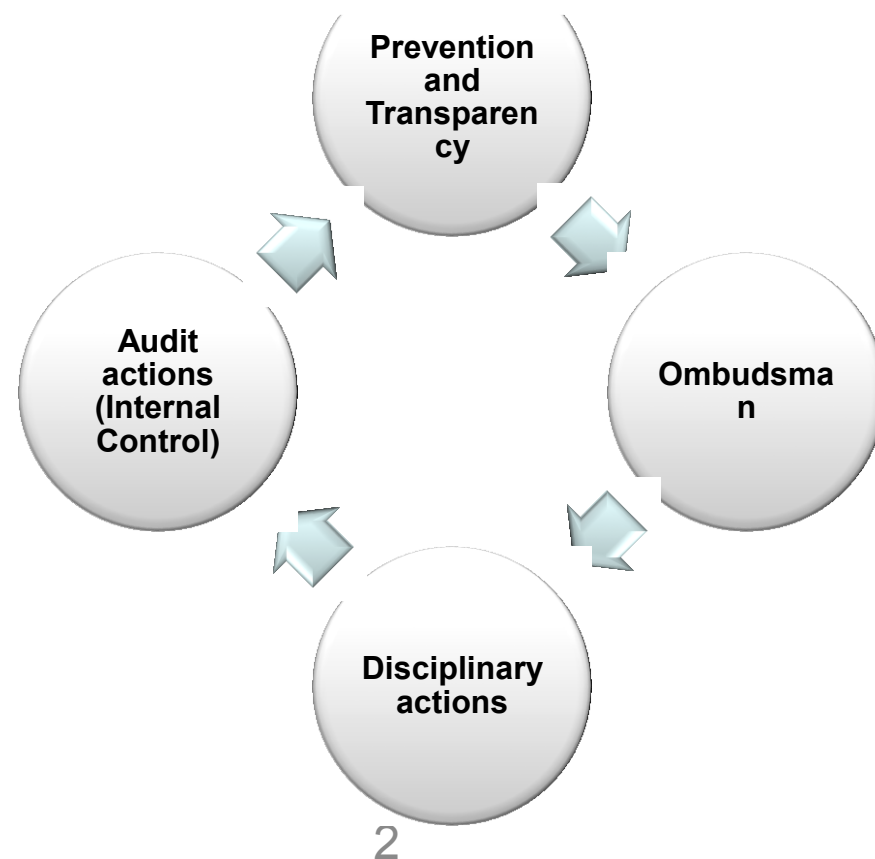
The Internal Audit Unit and
the Anti-Corruption Agency of the Brazilian Federal Government

Institutional Framework

Internal and External Control System of Federal Government



Functions of CGU:



Main Audit Types

- **Annual Account Audits;**
- **Program Audits:**
 - **by priorities;**
 - **by random selection of municipalities;**
- **Investigative and Special Audits ;**
- **Joint Operations with Federal Police;**



Follow up of the results of the Audits

Control

CGU

Disciplinary Board

Agencies

Federal Police

**Ministries
Managers**

**Federal
Court of
Accounts**

**Senate
Chamber of Deputies**

**Office of the
Public Prosecutor**

**Office of the
Attorney
General**

Outcomes

**Managerial
Improvements**

**Political
Control**

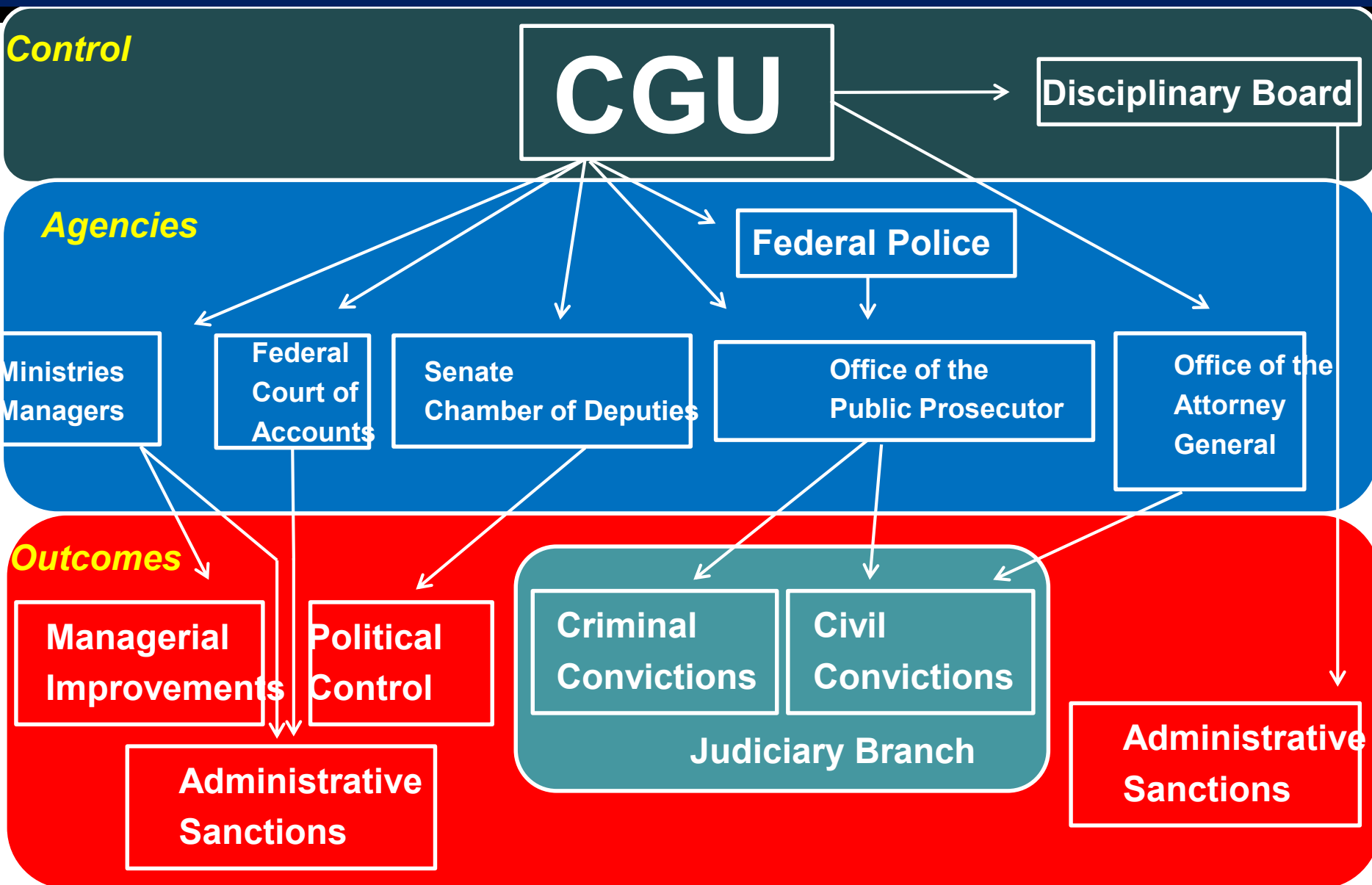
**Administrative
Sanctions**

**Criminal
Convictions**

**Civil
Convictions**

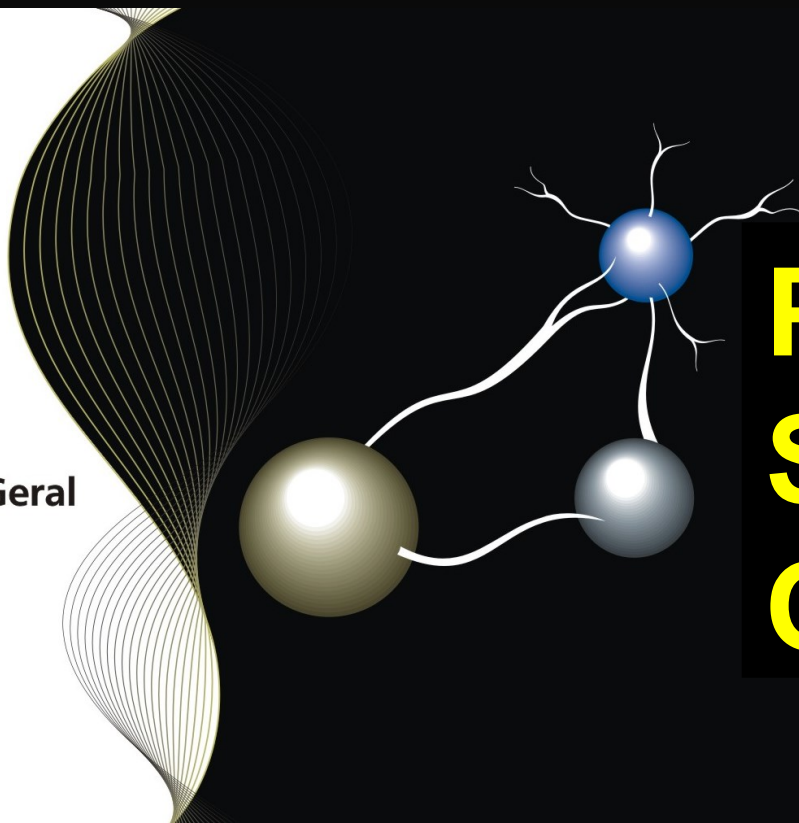
Judiciary Branch

**Administrative
Sanctions**





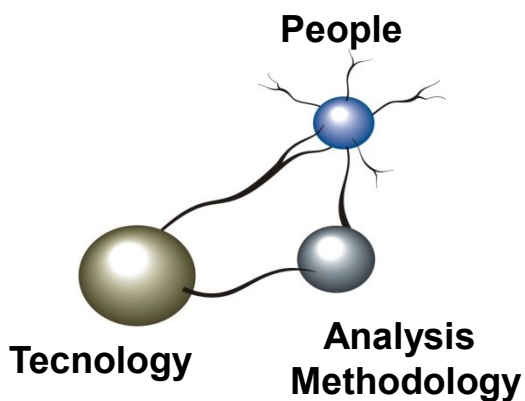
Controladoria-Geral
da União



Public Spending Observatory

Data-matching and
Tracking System

Methodology



Audit Tracks and Working Themes

- ✓ Federal Government Corporate Card.
- ✓ Government Purchases.
- ✓ Per Diems and Travel Allowances.
- ✓ Outsourcing
- ✓ Family Stipend Program (Bolsa Família).

Government Purchases



1. **Business connection between bidders.**
2. **Relationship between bidders and the public servants.**
3. **More than one "exclusive" supplier.**
4. Noncompliance with proposal submission deadlines.
5. **Fractioning to avoid more strict bidding modalities.**
6. Proposal submissions prior to publication of bid notices.
7. Registration of proposals on non-business days.
8. Possibility of competition in no-bid processes.
9. **Bidders with the same address.**
10. Newly formed companies participating in Bids.
11. **Improper contract Amendments (above the established limit).**

Transparency Portal



do Governo Federal

Punished companies

**Public Officials
Information**

CONSULTAS

Despesas

Receitas

Convênios

Empresas Sancionadas

Entidades Impedidas

Servidores

GRÁFICOS E DOWNLOADS

Download de Consultas

Portal em Gráficos

INFORMAÇÕES

Sobre

Dados

Aprenda

Notícias

Controle Social

Licitações e Contratos

Cadastre-se

Receba informações sobre

DESPESAS

RECEITAS

CONVÊNIOS

CEIS

CEPIM

SERVIDORES

Despesas - Empenho, liquidação e pagamento

Atualização diária (a partir de maio de 2010)

Use a pesquisa para encontrar dados detalhados da financeira do governo federal, com possibilidade de filtragem pela fase de despesa (empenho, liquidação e pagamento).

**Expenditures and Revenues:
Daily updates**

Despesas - Pagamento

Atualizado

Use a pesquisa para encontrar dados detalhados das despesas de pagamento do governo federal, com possibilidade de filtragem por entidade, por programa, por ação e por finalidade.

**Transfers to other
entities**

**Expenditures on
Specific Programs**

Transferências de Recursos

Exercício (Selecione) ▼

- ☐ por Estado/Município
- ☐ por Programa
- ☐ por Ação
- ☐ por Finalidade

(Selecione)

**Federal Government
Direct Expenditures**

Consultas Temáticas

Use a pesquisa para consultar transferências de recursos ou gastos diretos do governo em situações específicas.

- ☐ Bolsa Família
- ☐ Erradicação do Trabalho Escravo - PETI
- ☐ Garantia Safra
- ☐ Prestações Pagas

☐ Cartão de Pagamento do Governo Federal - CPGF

(Selecione) ▼

☐ Pescador Artesanal

Gastos Diretos do Governo

Exercício (Selecione) ▼

UMA NOVA CONSULTA
PARA VOCÊ

Imóveis
Funcionais

GRANDES EVENTOS

COPA 2014

Transparência em 17 lugares

Jogos RIO 2016

**Transparência nos
Estados e Municípios**

Valores dos recursos
federais repassados para
estados, municípios e DF



MEASURES AGAINST IMPUNITY



**Enforcement on
companies**



PORTAL DA TRANSPARÊNCIA do Governo Federal

[Fale conosco](#) | [Glossário](#) | [Perguntas Frequentes](#) | [Links](#) | [Manual](#)Acesso rápido

Você está em:

[Início](#) » [Servidores](#) » **Expulsões**

CADASTRO DE EXPULSÕES DA ADMINISTRAÇÃO FEDERAL

[baixar mais dados](#)

Selecione o(a) "Nome do servidor" para obter o detalhamento

Caso queira outra classificação, clique no título da coluna correspondente

CPF	Nome do Servidor	Órgão de Lotação	Punição Aplicada
***.384.374-**	JÚLIO CÉZAR COSTA DE MEDEIROS	MINISTÉRIO DA FAZENDA	DEMISSÃO
***.061.575-**	ANDERSON GUILHERME DE FREITAS	INSTITUTO FEDERAL DE EDUCAÇÃO, CIÊNCIA E TECNOLOGIA DE SERGIPE	DEMISSÃO
***.187.927-**	ANNA KARINA DE MATOS DESLANDES	MINISTÉRIO DA SAÚDE	DEMISSÃO
***.354.987-**	ANTONIO CARLOS DA ROCHA ALVES	MINISTÉRIO DA SAÚDE	DEMISSÃO
***.802.977-**	CARLOS ALFREDO DOS SANTOS RODRIGUES	MINISTÉRIO DA SAÚDE	DEMISSÃO
***.201.367-**	TELMA DIAS MENDES	MINISTÉRIO DA SAÚDE	DEMISSÃO
***.530.707-**	ALOÍSIO DE ALMEIDA FELICIO	INSTITUTO NACIONAL DE SEGURO SOCIAL	DEMISSÃO
***.769.066-**	DNILSON CARLOS DIAS	UNIVERSIDADE FEDERAL DE GOIÁS	DEMISSÃO
***.396.157-**	ELIOMAR PEREIRA DA SILVA	INSTITUTO NACIONAL DE SEGURO SOCIAL	DEMISSÃO

Pesquisar:

Saiba Mais

- [Mais informações](#)
- Entre em contato: [Corregedoria-Geral da União \(CRG\)](#)

From 2004 to February 2015
5.206 expulsion penalties were applied to



PORTAL DA TRANSPARÊNCIA

Saiba como o Governo Federal aplica o dinheiro público

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CONSULTAS

[Transferências de Recursos](#)[Gastos Diretos](#)[Convênios](#)[Empresas Sancionadas](#)

INFORMAÇÕES

[Sobre o Portal](#)[Origem dos Dados](#)[Aprenda Mais](#)[Notícias](#)[Controle Social](#)

Cadastro Nacional de Empresas Inidôneas e Suspensas - CEIS

imprimir

O Cadastro Nacional de Empresas Inidôneas e Suspensas (CEIS) é um banco de informações mantido pela Controladoria-Geral da União que tem como objetivo consolidar a relação das empresas que sofreram sanções pelos órgãos e entidades da Administração Pública das diversas esferas federativas.

Vários entes federados possuem cadastros sobre o assunto, alguns possibilitam a consulta mediante o CNPJ das empresas e outros em forma de lista. O CEIS reúne em único local uma relação de empresas proveniente de diversas fontes, resumindo os dados de forma acessível, indicando os seguintes campos:

- O CNPJ (número no Cadastro Nacional de Pessoas Jurídicas);
- Nome da empresa (razão social ou nome de fantasia);
- Data inicial e final da sanção;
- Órgão sancionador;
- Fonte da informação

Isso possibilita a visualização do total de empresas suspensas, impedidas ou inidôneas e facilita a consulta por nomes e fontes.

Ao consolidar dados de várias fontes e traduzir a linguagem técnica para uma estrutura mais acessível, o CEIS aumenta a transparência sobre o assunto. Além disso, para preservar a fidedignidade das informações o CEIS traz a indicação da fonte, o que possibilita ao internauta aprofundar sua consulta caso deseje o contato direto com o órgão sancionador.

Consulte:

- [Lista de empresas declaradas inidôneas](#)
- [Lista de empresas suspensas](#)

sanções que uma empresa pode sofrer e seus motivos:

ção de Inidoneidade
ção e/ou impedimento2,200 debarred
companies/suppliers2,600 temporarily suspended
companies/suppliers



PORTAL DA TRANSPARÊNCIA

Saiba como o Governo Federal aplica o dinheiro público

Fale conosco | Glossário | Perguntas Frequentes | Links

CONSULTAS: Transferências • Gastos Diretos • Convênios • Empresas San

em dos Dados • Aprenda

cial

Firm's identification

Identification of the
Public Body responsible
for the sanction

State

Source of
information

LISTAGEM DAS EMPRESAS INIDONEAS

imprimir

Dados da empresa declarada inidônea		Dados da sanção		Órgão sancionador		Origem da informação	
CNPJ/CPF	Nome/Razão Social	Data inicial	Data final	Nome do Órgão/Entidade	UF	Fonte	Data
04.306.966/0001-02	AA COMÉRCIO E REPRESENTAÇÕES LTDA.	05/08/06	05/08/09	TCU	DF	TCU	31/10/08
00.272.966/0001-88	ABITARE ENGENHARIA E CONSTRUÇÕES LTDA	17/05/03	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
15.585.565/0001-55	ADALBERTO DA SILVA BARRETO	18/03/06	18/03/09	TCU	DF	TCU	31/10/08
50.693.126/0001-67	AGOMIL MATERIAIS PARA CONSTRUÇÃO LTDA-EPP	28/06/05	**	CTO.REF.DROGAS	SP	Governo do Estado de São Paulo	11/11/08
54.387.188/0001-00	ALFREDO SERRA SILVA	21/02/02	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
08.684.913/0001-86	AMPLA ENGENHARIA E CONSTRUCAO DE OBRAS PREDIAIS E VIARIAS LTDA	24/09/08	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
00.758.460/0001-83	ARIKARM SANEAMENTO E HIGIENIZ. S/C LTDA	01/10/05	**	GAB SECRETARIO	SP	Governo do Estado de São Paulo	11/11/08
01.856.601/0001-63	BETAMAQ TRTORPEÇAS LTDA.	21/12/07	**	Secretaria de Estado de Cultura	MG	Auditoria Geral do Estado de Minas Gerais	31/10/08
05.471.999/0001-70	BRASPTEL PRODUTOS E ARTEFATOS GRÁFICOS LTDA	10/09/07	**	TJ	SP	Governo do Estado de São Paulo	11/11/08
04.775.224/0001-26	BRATI TECNOLOGIA DA INFORMAÇÃO LTDA	29/01/04	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
96.464.581/0001-91	CARLOS ALBERTO DOS SANTOS IMPRESSOS - ME	01/07/03	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
07.649.066/0001-56	CAROLINE PRIANTE DOS REIS VASCONCELLOS ME	19/09/08	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
03.780.506/0001-59	CELSE JOSÉ TUKACA - ME	29/04/03	**	UNICAMP	SP	Governo do Estado de São Paulo	11/11/08
86.513.694/0001-86	CHIP SHOP DISTRIBUIDORA LTDA	30/01/07	30/01/10	TCU	DF	TCU	31/10/08
60.397.361/0001-45	CIA TEXTIL NIAZI CHOHI	18/10/05	**	FUND CASA	SP	Governo do Estado de São Paulo	11/11/08

Environment where corruption thrives

- Low capability for the detection of irregularities;
- Perception of Impunity;
- Limited transparency and social control;
- Perception of corruption as a standard or even as being necessary for closing deals.
- Cultural Aspects (Ethics, moral values and integrity, “short cuts”)

corruption in the private sector

- Increased Transparency;
Access to Information
- More effective audits;
- Use of information technology in the identification of red flags or irregularities
- Joint investigations
- Promotion of social control

- Administrative proceedings take less time (Laws 8.112, 12.846; 8.666 and 10.520)
- Civil Liability (Law 12.846)

Enhancing the
capability for
the detection
of irregularities



Dissuasive
Punishing



Creating a scenario in
which its best for the
company to invest in
ethics and integrity
than to believe in
impunity



Promoting the
adoption of
integrity
measures

Law 12.846/2013: Punitive Aspects

- Strict Liability
- Harmful acts against the National and Foreign Public

Administration

- Dissuasive penalties
- Quicker proceedings
- Due process
- Possibility of leniency agreement

Administrative (punishment of inapt companies; dissuasive fines and publishing of the sentence "name and shame")

Judicial (forfeiture of property and rights; suspension of activities, compulsory dissolution, among others)

- **Power to open and judge the case:**
 - Direct administration - Minister
 - Indirect Administration - highest authority of the entity
 - Office of the Comptroller General: concurrent power to open, arrogate and judge
- Deadline for **completion** of the proceedings: **180 days**, extendable
- **Single process** - decides on the violations of Law 12,846 + debarrement of Law No. 8.666/93 + similar penalties
- **Request of revision** to the same authority without appeal to the President

Law 12.846/2013 : Strict civil and administrative liability

- Administrative sphere:
 - fine in the amount of 0.1% to 20% of the gross revenues
 - extraordinary publication of the condemnatory decision
- Civil sphere:
 - loss of the assets, rights or valuables representing the advantage or profit obtained from the wrongdoing
 - partial suspension or interdiction of its activities
 - compulsory dissolution
 - prohibition from receiving incentives, subsidies, grants, donations or loans (from 1 to 5 years)

Factors influencing the establishment of sanctions

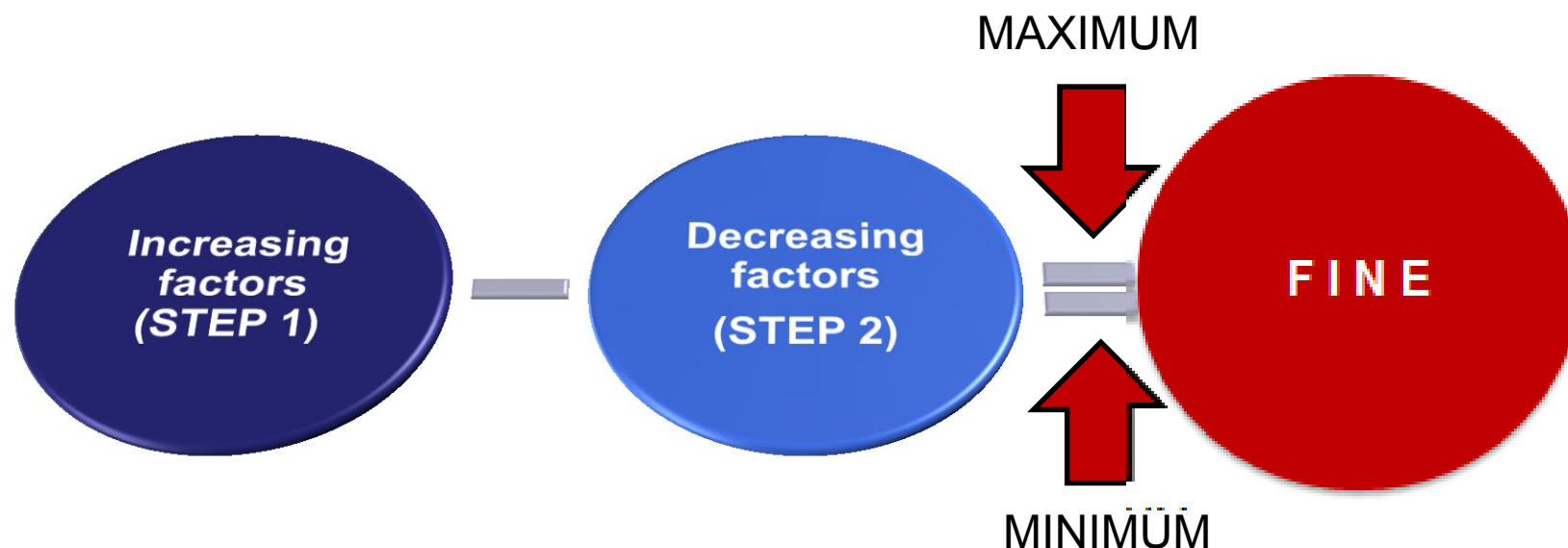
Increased by:

- ✓ Seriousness of the offense
- ✓ Advantage obtained or intended
- ✓ Offender's economic situation
- ✓ Negative effect produced
- ✓ Value of contracts with the public sector

Decreased by:

- ✓ Offense not consummated
- ✓ Existence of internal mechanisms and procedures of integrity (compliance program)
- ✓ Cooperation of the legal entity to the investigations

- Result of the SUM (step 1) and SUBTRACTION (step 2) of percentages of the gross sales of the Company
- MAXIMUM AND MINIMUM (step 3): Calibration of the value



STEP 1 – SUM

INCREASING FACTORS	(+)
Continuity of the offense	1% to 2,5%
Tolerance on the part of company high level	1% to 2,5%
Suspension of public works or services	1% to 4%
Offender's favorable economic situation	1%
Relapse	5%
Total value of the intended or established contracts with the Administration	1% to 5%

STEP 2 – SUBTRACTION

DECREASING FACTORS	(-)
Illicit act not completed	1%
Damages repaired	1,5%
Degree of colaboration with investigations	1% a 1,5%
Self disclosure of irregularities to the authorities	2%
Compliance program	1% a 4%

3rd step – minimum and maximum values

When it isn't possible to use the gross revenue, the fine amount will be fixed between R\$ 6,000.00 and R\$ 60,000,000.00

MINIMUM: the higher value amongst:

- the benefit obtained by the company; and
- 0.1% of gross sales, net of taxes

MAXIMUM: the lowest value amongst:

- 20% of gross sales, net of taxes; and
- 3 times the benefit obtained by the company

benefit obtained (or intended) by the company

*** CONCEPT ***

Revenues
deriving
from the
illicit act



Amount that was
paid or
promissed to
public agent

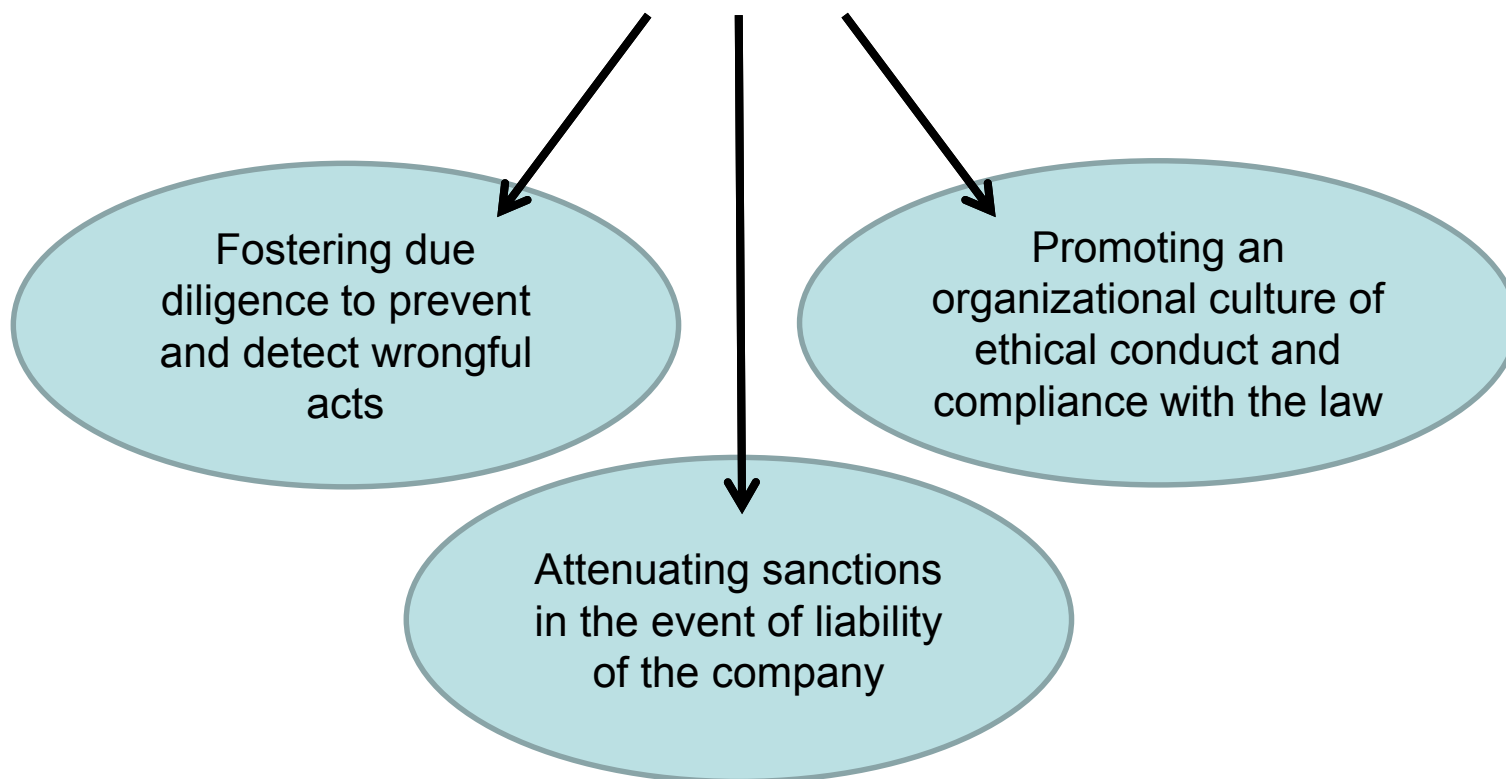


Real costs
and
expenses

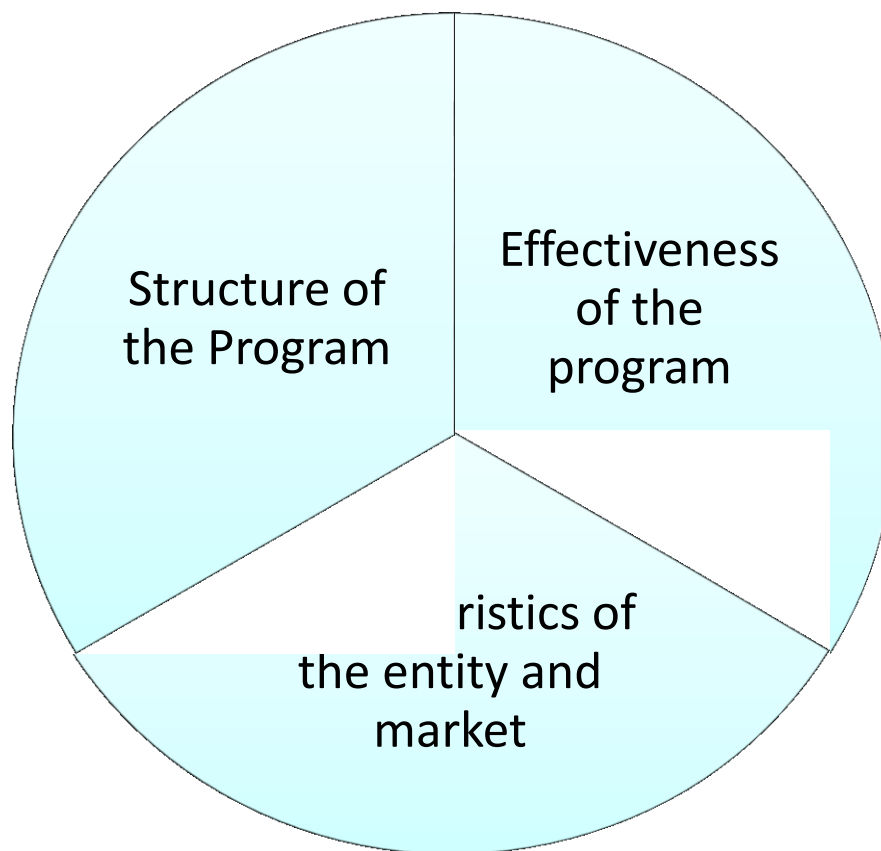


ADVANTAGE

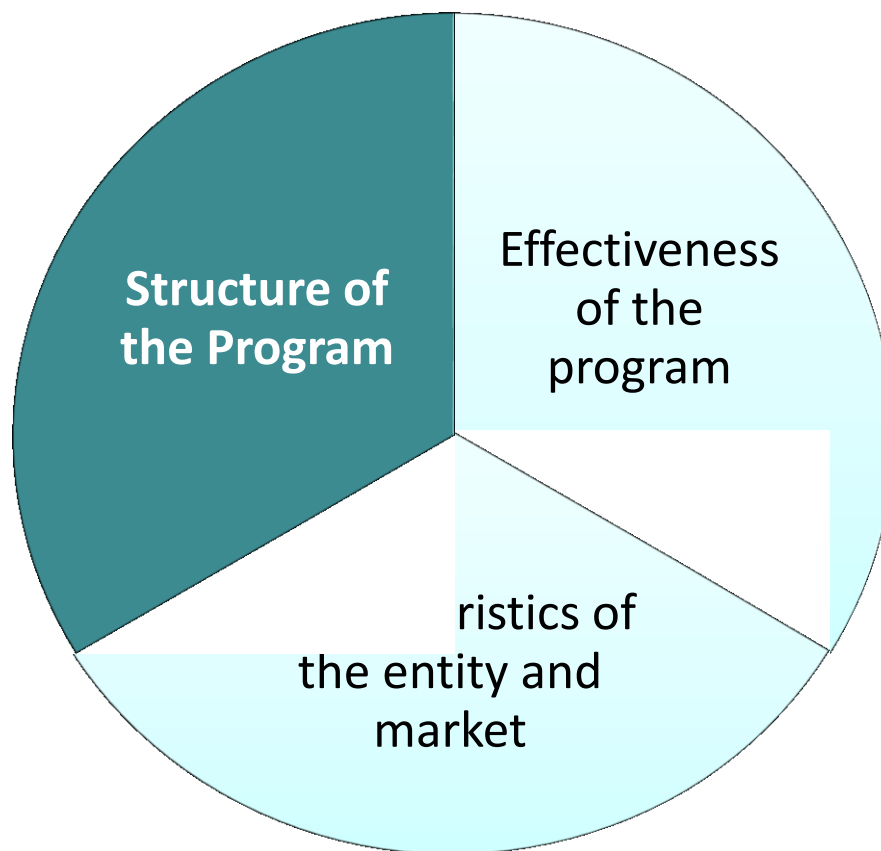
Law 12.846/2013 directly encourages the adoption of a compliance programs



Evaluation of the mechanisms and procedures of Integrity (compliance) shall consider:



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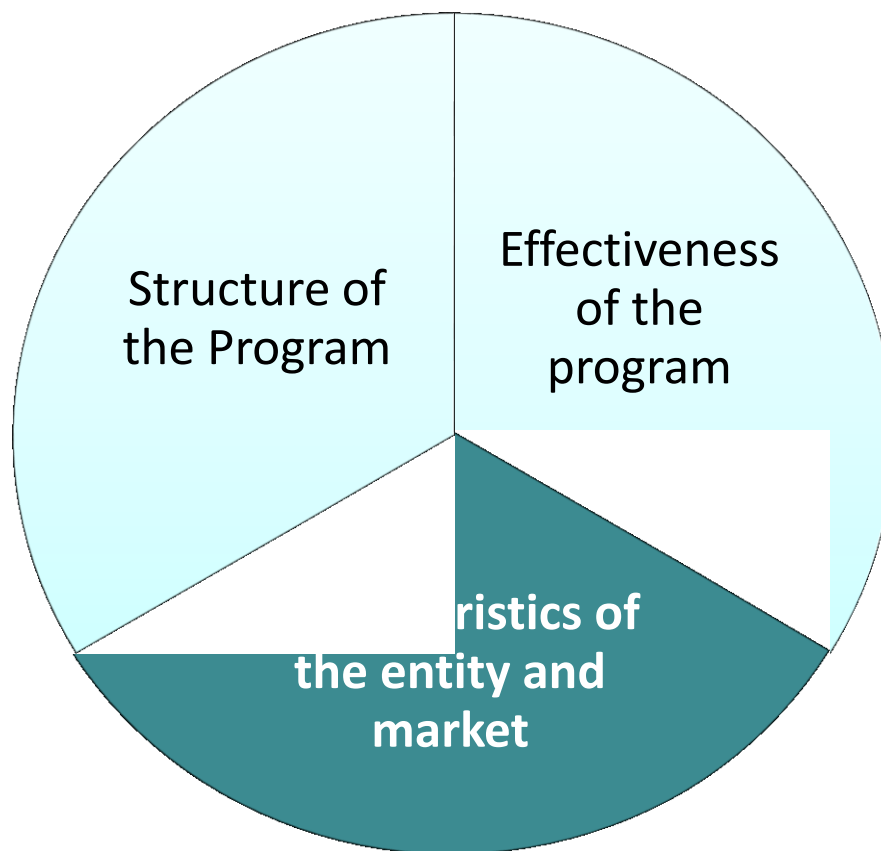


Elements of the structure of a compliance program:

- Support and commitment from senior management
- Standards of conduct, policies and procedures
- Education and training of employees
- Recurrent risk assessment
- Reliable accounting records
- Internal controls
- Procedures to prevent fraud in bidding processes and within contracts with the public sector
- Compliance oversight
- Whistleblowing channel

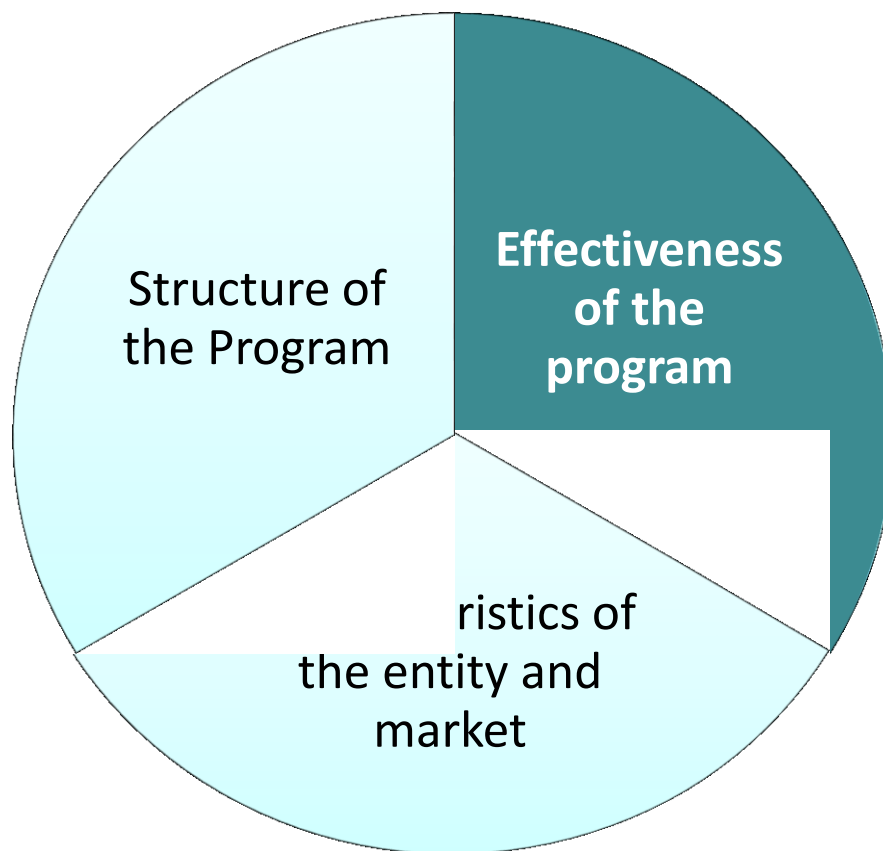
- Disciplinary actions
- Remediation and response procedures (in the event of a wrongful act)
- Due diligence before hiring of agents, consultants, intermediaries, etc., and supervision thereof
- Due diligence before and during mergers and acquisitions
- Monitoring, auditing and updating the compliance program
- Transparency as regards donations to political parties and campaigns

Evaluation of the mechanisms and procedures of Integrity (compliance) shall consider:



- Number of employees
 - Hierarchical complexity and amount of departments and sectors
 - Use (and number) of intermediaries, consultants and sales representatives
 - Market sector
 - Countries in which it operates
 - Level of interaction with the public sector (and relevance of permits, licenses and authorizations for the entity)
 - Number and location of subsidiaries
 - Whether it is formally recognized as small enterprise
- ❖ Small enterprises will have a different treatment – less formality will be demanded of their integrity measures and some parameters will not apply.

Evaluation of the mechanisms and procedures of Integrity (compliance) shall consider:



Examples of effectiveness (which depends on the facts of the case and on the characteristics):

- Prompt notice to the authorities
 - Enforcement of disciplinary actions
 - Changes to the program (based on risk assessments and after occurrence of wrongful acts)
 - Involvement of senior management
 - Level of attendance to trainings
- (...)

- **REQUIREMENTS:**

- Be the first to come forward and demonstrate its willingness to cooperate in antitrust cases
- Completely ceases its involvement in the wrongful act
- Admits its participation in the wrongful act
- Permanently cooperate with the investigations
- Offer proof of its involvement in the illicit act

- Expected **RESULTS** :

- Identification of others parties
- Quicker obtainment of evidence

- Duty to fully repair the damage

- Exclusive prerogative of the Office of the Comptroller General within the Federal Executive Branch

- Possible **BENEFITS** for the company:
 - Exemption from extraordinary publication of the condemnatory decision
 - Exemption from the prohibition from receiving incentives, subsidies, grants, donations or loans
 - Reduction of fines up to 2/3
 - Exemption from debarrement
- The agreement will be negotiated in up to 180 days (extendable)
- Company loses benefits if agreement is disrespected
- Adoption of ***compliance*** program will be a requirement



Office of the Comptroller General

Federal internal control Secretariat

sfcgsgab@cgu.gov.br