PUBLICAÇÃO 90

ISSN: 0101-9562
ISSN ELETRÔNICO: 2177-7055

SEQÜÊNCIA

Estudos jurídicos e políticos

Publicação do
Programa de Pós-Graduação em Direito da UFSC

VOLUME 43 ▪ ANO 2022

UFSC PPGD

SciELO

CAPES QUALIS A1

SEQUÊNCIA – ESTUDOS JURÍDICOS E POLÍTICOS é uma publicação temática e de periodicidade quadrimestral, editada pelo Programa de Pós-Graduação Stricto Sensu em Direito da Universidade Federal de Santa Catarina – UFSC.

SEQUÊNCIA – ESTUDOS JURÍDICOS E POLÍTICOS is a thematic publication, printed every four months, edited by the Program in law of the Federal University of Santa Catarina – UFSC.

Versão eletrônica: http://www.periodicos.ufsc.br/index.php/sequencia

A publicação é indexada nas seguintes bases de dados e diretórios/
The Publication is indexed in the following databases and directories:

Base OJS	OJS
Base PKP	PKP
CCN (Catálogo Coletivo Nacional)	Portal de Periódicos UFSC
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ICAP (Indexação Compartilhada de Artigos de Periódicos)	Sumarios.org
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Ficha catalográfica

Seqüência: Estudos jurídicos e políticos. Universidade Federal de Santa Catarina. Programa de Pós-Graduação em Direito. n.1 (janeiro 1980)-.

Florianópolis: Fundação José Boiteux. 1980-.

Publicação contínua

Resumo em português e inglês

Versão impressa ISSN 0101-9562

Versão on-line ISSN 2177-7055

1. Ciência jurídica. 2. Teoria política. 3. Filosoia do direito. 4. Periódicos. I. Universidade Federal de Santa Catarina. Programa de Pós-graduação em Direito

CDU 34(05)

Catalogação na fonte por: João Oscar do Espírito Santo CRB 14/849

PUBLICAÇÃO 90

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Ano XLIII
Volume 43

DOI https://doi.org/10.5007/2177-7055.2022.e87454

Corruption, government and corporative ethics: an overview view of progress in comparative law and in Brazil

Corrupção, ética governamental e corporativa: uma visão geral do progresso no direito comparado e no Brasil

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Abstract: This work deals with on the overview of private corporate governance against corruption, as well as government initiatives to repress this phenomenon. The research problem can be formulated as follows: what are the guidelines established to characterize institutional corruption and its treatment in Brazil and in the world, both in the public and private sectors? The hypothesis is that there are numerous ways of observing corruption, as well as initiatives to deal with corruption, as well as, again, ways to avoid the implementation of these guidelines. The work is justified in view of the social relevance of the issue of corporate and governmental ethics, as well as the need for Law to work on these themes.

Keywords: Corruption. Corporate governance. Law. Corporative corruption

Resumo: Este trabalho trata do panorama da governança corporativa privada contra a corrupção, bem como das iniciativas governamentais para reprimir esse fenômeno. O problema de pesquisa pode ser formulado da seguinte forma: quais são as diretrizes estabelecidas para caracterizar a corrupção institucional e seu tratamento no Brasil e no mundo, tanto no setor público quanto no privado? A hipótese é que existem inúmeras formas de observar a corrupção, diferentes iniciativas para

lidar com a corrupção e formas de evitar a implementação dessas diretrizes. O trabalho se justifica diante da relevância social da questão da **ética** empresarial e governamental e em face da necessidade de o Direito trabalhar esses temas.

PALAVRAS-CHAVE: Corrupção. Governança Corporativa. Direito. Corrupção corporativa.

1 INTRODUCTION

This work aims to provide an overview of the approach and initiatives on corruption in Brazil and in the world. Therefore, the following research problem is established: what are the guidelines and general lines that can be established for the normative treatment of corruption and public and corporative ethics in Brazil and in the world?

Ethics management globally is a swiftly growing reality with various countries placing substantial emphasis on anti-corruption initiatives. International organizations, including the United Nations ("UN"), Transparency International ("TI"), and the Organization for Economic Cooperation and Development ("OECD") have created a number of anti-corruption creativities, for instance, the UN, promulgated an International Code of Conduct for Public Officials in 1996 (KLICH, 1996).

Moreover, the United Nations International Centre for Crime Prevention has established an Anti-Corruption Tool kit to 'help U.N. Member States and the public to understand the insidious nature of corruption, the potential damaging effect it can have on the welfare of entire nations and suggest measures used successfully by other countries in their efforts to uncover and deter corruption and build integrity (CARROLL; MEEKS, 1999). In the same vein, TI, the only global non-governmental organization dedicated to battling corruption, seeks via education and information to dishearten corrupt activities and fraudulent performances as well as foster integrity and liability to achieve better governance (GEORGE; LACEY, 2000).

According to the UN Code of Conduct, public officials shall guarantee that they accomplish their obligations and functions proficiently, commendably and with integrity, in accordance with legal statutes and administrative strategies (Durrant, 2008). They shall at all times pursue to confirm that public resources and government's funds for which they are accountable are managed in the most operative and well-organized way (Katheleen, 2000).

Furthermore, they shall be observant, fair, and impartial in functioning their tasks, particularly, in their relations with the general public, as they shall afford any excessive favored behavior to any group, entity, or individual or inappropriately discriminate against anybody, or otherwise misuse the power and authority conferred to them, and committing the peddling influence's crime (Edgardo, 1999; Cassell et al., 1997). Thus, an inclusive attitude to transparency, accountability, and implementing a range of responsibility's advocates, democratic, judicial, media, and civil society is requested (Harms, 2000; Kennedy, 1999).

In addition, The OECD have long history in the front of endorsing good governance. That OECD was involved in pushing forward the 1997 Anti-Bribery Convention that is the first universal device to combat corrupt acts in cross-border business transactions (Corr, Lawler, 1999). Also, OECD approved a proposal to advance ethical conduct in the public service that encompass "*Principles for Managing Ethics in the Public Service*," as these norms are intended to be a reference point for state members when merging the fundamentals of an active ethics management system in line with their personal political, managerial, and cultural settings. Ethical laws and codes of conducts are extensively used apparatuses in the universal moral values supervisor's toolbox[1].

[1] For example, in Brazil, the Public Ethics Committee was established in 1999 to endorse ethical behavior in the federal executive branch. It is responsible for the implementation of Ethics Management Internationally. The Federal Code of Conduct of High

In this respect, ethical codes and rulings are not, of course, adequate implements to confirm moral and proper governance. In 1999, Mike Nelson (2006, p.36) recites:

> (. . .) the problem with Codes of Conduct is that it is easy to stick them on the wall, but hard to make them stick in practice . . . without an effective development and implementation strategy which is integrated and engages with the heart and bowels issues of concern to the organization, the net result seems consistently the same: that the Code of Conduct remains a mere piece of paper, displayed or appealed to when convenient, but ignored the rest of the time.

By the same token, regarding the evaluating role of the moral and ethical codes in the European Union (EU) countries, Bossaert and Demmke (2004) stated that:

> Despite their popularity, codes of ethics make little sense unless they are accepted by the personnel, and maintained, cultivated and implemented with vigour . . . codes are useless if staff are not reminded of them on a regular basis and given continuous training on ethics. Codes are only effective if they are impressed upon the hearts and minds of employees.

Whistleblowing laws and performs fluctuate immensely all over the globe. The United States has frequent legal norms that boost and protect folks and entities who blow the whistle on those who involve in white collar crimes, especially corruption, embezzlement, misappropriation of public funds, fraud, and peddling in influence (power's abuse) (Duncan, 2020). Unlike the U.S., India anti-corruption laws does not offer the all-encompassing defense for whistleblowers (Johnson,

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Administration coordinates decentralized ethics measures in order to guarantee the adequacy of the Brazilian administration's moral values. Also, New Zealand enacted a nationwide code of conduct in 1998 that emphasizes duties expected of public officials in their professional tasks. In 1998, the UK Committee on Standards in Public Life (Nolan Committee), issued the 'Seven Principles of Public' as well.

2005). In fact, whistleblowing is theoretically illegitimate, according to civil service rules, and might even be personally dangerous.

Historically speaking, Roberta Johnson (2005) opposes, that new sorts of whistleblowers are evolving who are inspired to serve the public interest, and her study concluded that there is no straight link between law and the whistleblowing's incident and the cultural factors play a significant role in opposing corruption in some nations and in other countries they not. (Osterfeld, 1994).

Due to some foremost corruption circumstances and public servants' misconduct and politicians, citizens are progressively aware of the prominence of integrity and ethical management (Windsor; Getz, 2000). Ethical codes of conduct, deterrence (preventative) procedures, whistleblower fortification, and other techniques of firming the virtuous dimension of politics and management have stretched an extraordinary status on the agenda in several countries, especially the Arab Spring Middle Eastern and North African (MENA) region (Banfield, 1975; Gevurtz, 1987).

2 GAMING LAWS AND INSTITUTIONAL CORRUPTION: TRAP!! AND *QUO VADIS*?

"Gaming" in its numerous forms encompasses the use of technically legal instruments to undermine the intent of the law in order to gain advantages over competitors, maximize reported earnings, preserve high credit scores, reap superior personal rewards, maintain access to capital on favorable terms, just to name a few (Yingling, 2013). It is one of the most destructive forms of institutional corruption in business today (Podgor et al., 2003).

"Institutional corruption" refers to institutionally-sanctioned behavior and relationships that may be lawful but either harms the public interest or weakens the capacity of an institution to achieve its professed goals by undermining its legitimate procedures and core

values (Miller, 2013). The most noticeable consequence of institutional corruption is diminished public trust in the governance of the institution in question. While institutional changes promoting integrity, transparency, and accountability in state and economic institutions are necessary parts of any anti-corruption strategy, a long-term social foundation is required, particularly where corruption is systemic.

Social empowerment, which means expanding and protecting the variety of political and economic resources and options open to ordinary citizens, is one way to address this task (Yingling; Arafa, 2014). Social empowerment involves strengthening civil society in order to enhance its political and economic vitality, providing more orderly means of access and rules of collaboration between state and society, and escalating economic and political opportunities.

Development policies intended particularly for disempowered people and regions within a country are of particular importance (Cavanagh, 1981; Noone, 2007). It does not include wholly new remedies, but rather the sensible coordination of a multiplicity of familiar development and anti-corruption programs (Shihata, 1997). Social empowerment will not totally eliminate corruption; it can, however, provide essential sustenance for institutional reforms, weaken the combination of monopoly, discretion, and lack of accountability that makes for systemic corruption, and help institutionalize reform for the long term.

On the other hand, corruption does *not* necessarily involve violation of legal rules or principles. Rather, the relevant standards for defining institutional corruption include public interest and private procedural standards (Yingling; Arafa, 2014). In this regard, Jack Knight (1992, p.72) said:

> These twin standards show how corrosive institutional corruption can be: it involves both social injury ('*corruption by the institution*'), whether illegal or not, and institutional injury ('*corruption of the institution*').

Persistent institutional corruption—including corruption stemming from gaming the law—inevitably shapes democracy and capitalism "in a free-market economy," including how Congress and regulatory agencies monitor and control business enterprises and how markets function (Cavanagh, 1981; Daehler, 1995). This is because few institutions in a democratic society—whether in the private or public sector—can survive in the long run in the absence of public trust (Wallis, 2005; Lambsdorff, 1998).

Thus, gaming and institutional corruption in the private sector looks like a huge phenomenon and the legislative bodies has various ways to structures and designs the law (many of society' rules) that may foster institutional corruption given the strong temptation for business executives to manipulate the law (Yingling; Arafa, 2014).

These ways may comprise, first, the extensive Congressional lobbying by businesses interests seeks not only to minimize regulatory constraints but also to preserve opportunities to game or legally subvert the intent of those rules for private gain (Miller, 2013). The second plan is that purposeful gaming of society' rules by business firms is fueled by the short-term decision-making of corporate executives and investment fund managers, whose behavior is often acclimatized and reinforced by perverse incentives embedded in their compensation plans (Banaji, 2012).

The third proposition is that corporate boards of directors become complicit in the gaming of the law when they allow it to take root and persist as an acceptable organizational norm by failing to articulate and promote quality objectives or actively monitor behavior according to the standards implied by these objects (Chonko et al., 2003). Furthermore, this theme acknowledges the influence of corporations' professional advisors, such as lawyers and accountants, as these advisors often support their clients' gaming of community rules (Chonko et al., 2003).

The reason for this is because of the economic and commercial benefits of retaining these clients overwhelm the advisors' professional

responsibility—highlighting the lack of Corporate Social Responsibility ("CSR")—to uphold rules, transactions, and regulations governing business conduct (English, 2012). In this respect, scholars and experts interested in law, public policy, and political philosophy have long been working to develop a set of notions that adequately define corruption in public life (English, 2012).

According to Professor Dennis Thompson, who has been studying corruption in Congress for two decades, institutional corruption is "a form of corruption in which an institution or its agents receives a benefit that is directly useful to the institution, and systematically provides a service to the benefactor under conditions that tend to undermine legitimate procedures of the institution." (Thompson, 2005). In Thompson's paradigm, corruption is defined by institutional behavior that damages an institution's central, "legitimate" procedures (Thompson, 2005). Legitimate procedures refer to processes "necessary to protect the institution against interests that undermine its effectiveness in pursuing its primary purposes, and the confidence of the relevant publics that it is doing so" (Yingling, 2006).

Additionally, Professor Lawrence Lessig has also initiated a study of institutional corruption, primarily focused on the *public sector.* According to Lessig (2010, p.22):

> [t]he seeds of institutional corruption are planted when an entity's behavior becomes rooted in dependent relationships with outside parties that conflict with the institution's intended purpose. Institutional corruption also occurs when an organization's internal "economy of0influence"—such as performance measurement and reward systems, and leaders' directives—leads people to act in ways that compromise that organization's essential processes, espoused values, and intended purpose.

Lessig's study of Congress is a prime example of institutional in the public sector. He shows how persistent fundraising, for example, members of Congress corruption have debased the legislative process,

as powerful interests have become increasingly active in "purchasing public policy" (Heinemen, 2010). In this sense, "the corruption of a hard disk on a computer may serve as an illustrative metaphor. If the disk becomes corrupted, the computer will no longer serve its purpose—to reliably store and permit the retrieval of data" (Marks, 2016, p.15).

The language of corruption in this analogy does *not* point to the blameworthiness of any individual; rather, it emphasizes the implication of the loss of (or damage to) the data. If the data happen to be the only copy of a first novel or of a patient's medical records, the corruption of the disk will be of great consequence (Farrales, 2005).

Institutional corruption in context is clearly intended to do some work in the world, by signifying the importance of a particular institution and the way that institution is operating. It is a *call for attention and for action* (although it does not prescribe the kind of attention or action that should follow). The term is also useful in that it includes issues and concerns that other terms, such as "conflict of interest," might not (Banfield, 1958; Banfield, 1975; Bayley, 1966).

In contrast to work addressing illegal transactions and conduct, it is vital to focus on the socially destructive corruption's aspects, as it should be noted that the three of four most common forms of trust-destroying private sector behavior; as documented by scholars and practitioners are: (a) violating norms of fairness; (b) tolerating conflicts of interest, and (c) exploiting cronyism in business-government partnerships (Turner; Hulme, 1997).

Further, the fourth key form of institutional corruption in the private sector is the gaming of the law by business executives, often supported by their external legal and accounting advisors (Leff, 1964; Leys, 1965). This increasingly ubiquitous behavior, because it is perhaps the least visible variant of institutional corruption, and has, therefore, received much less systematic analysis than the first two (Rose-Ackerman, 1999). Hence, the fundamental strategies suggested for curbing gaming and institutional corruption as much more work remains to be to mitigate such behavior.

This include and should focus on confronting rule-making issues, as lobbying is at the center of most rule-making activities involving business (Rose-Ackerman, 1999). However, in thinking about remedies for the kind of lobbying that leads to diminished public trust in business, it is imperative to distinguish between lobbying aimed at securing new rules and regulations place that adverse restraints on productive invention and lobbying intended to conserve opportunities for gaming (Johnson; Kwak, 2010).

Moreover, addressing rule-following ("Gaming") problems in business should be considered. Potential remedies for the time horizon problem are less scary than those for the rulemaking problem, but will also require extreme patience and steady commitment (Koehler, 2012). The short-term decision horizon of corporate executives and fund directors is often at the heart of their decisions to engage in gaming (Arafa, 2011). From that perspective, changing public policies that influence private sector behavior, and voluntarily changing business and commercial policies and practices within firms to encourage long-term decision horizons are the principal approaches to extending the time horizon of executives and investment managers (Lessig, 2010).

On the other hand, public policy measures, in which the range of public policy, administrative, and regulatory options related to extending time horizons include restricting hedge fund activities in some way to limit the volume of border fund trading; introducing a transaction tax to raise trading costs; and changing capital gains taxes to favor long-term holdings (Margolis; Bettcher, 2005; Foster, 2010). Certain economic and political factors do, however, constrain all three alternatives (Henning, 2001). Business Policy Actions ("Codes of Ethics and Effective Leadership") is very essential, as it is increasingly apparent that introducing business policies and practices aimed at restricting short-termism and its two derivatives—gaming and institutional corruption—requires institutional leadership committed to high ethical standards and values related to society' rules

(Arafa, 2011). Recent corporate scandals, specifically in Europe and United States reveal that developing and distributing corporate codes of conduct is rarely enough to curtail gaming and ethical drift (Arafa, 2011).

It is a deep commitment to "quality" objectives, meaning compliance not only with the law but also with the principles underlying it and with ethical ideals that promote public trust (Méon; Sekkat, 2005). When corporate boards and their delegated agents fail to build sustained obligations to such values or neglect to provide clear guidelines for responsible action, they put the institution's reputation and its very future at risk (Williamson, 1979). The key to achieving quality objectives and preserving public trust lies in three organizational commitments: qualitative attention, balanced incentives, and active monitoring.

Qualitative Attention (Andrews, 1989). Through corporate stories, it is obvious that without persistent attention to the qualitative aspects of individual and group performance, the chances of developing an organizational environment conducive to thoughtful social and ethical deliberation are minimal (Andrews, 1989). For this reason, negotiation and review of personal and business plans must include attention to the organization's qualitative objectives and ethical standards, such as the protection of corporate integrity and reputation, truth-telling, formal performance management (Andrews, 1989), compliance with the intent of society's rules and regulations, and a host of other possible goals in addition to whatever standard, quantitative measures the plans may require (Andrews, 1989).

Well-adjusted Incentives. A commitment to the qualitative aspects of organizational performance requires a disciplined approach to incentives. For example, the policies governing financial incentives for corporate executives and investment fund managers require serious rethinking (Sporkin, 1998). Other ideas for curbing short-termism include paying out annual bonuses over a certain period of time and

basing "clawback" provisions on substantial changes in investment performance (Schwenke, 2000). Executive officers should also be subject to clawback, so that a company may recover from current and former officers' compensation based on measures later found to be erroneous (including estimates of product performance) or misrepresentations of corporate performance (Salbu, 2000).

Likewise, limiting executive reliance on evading and derivative transactions, as they weaken the connections among executive pay, long-term results, and corporate governance practices, including commercial securities and collaterals (Bebchuk, 2010). Likewise, *Active Auditing and Monitoring.* Audits of critical decisions by boards of directors are as important as internal audits by management in building a strong organizational commitment to quality objectives and high-performance standards (Salbu, 2000). Control of corporate affairs and board oversight is essential. Additionally, extensive and expensive documentation of internal controls by management, and annual review of these controls by outside accountants or consultants, is required. Working at detecting and monitoring the societal benefits and costs of incentive structures will also help achieve quality goals in corporations (Andrews, 1989).

3 THE CSR IN COMMERCIAL THEORY: CSR BASICS IN THE GLOBALIZATION VEIL

Without hesitation, businesses play a critical role in tumbling and ultimately eradicating corrupt performs transnationally. The mass media have covered numerous circumstances of businesses and enormous enterprises inducing public officials in order to gain a private interest ("competitive advantage") in businesses (Schouten, 2007). The development and improvement of international trade and cross-border profitable dealings repeats greater economic and gainful amalgamation under the umbrella of globalization

(Jenkins, 2005). Well recognized CSR affords several companies with a reputational competitive edge and is a critical part of publics' awareness of any corporation (Arafa, 2011). Many understand corrupt deeds as an awkward problem relating exclusively to public officials and white-collar workers, yet this is an imprecise perception (Arafa, 2011).

Similar to environmental rights, employment rights, and human rights, rights to be free from bribery exemplify a serious aspect of the CSR field (Hills et al., 2009). To inspire comprehensive change in CSR, public servants must not only set goals and generate enhancements in the areas of labor rights, ecological rights, and human rights, but they must also work toward removing corruption, bribery, and disgraceful behavior from corporate culture (Williams, 2002).

In this domain, various businesses have claimed generally that transparency and accountability lessen corruption and that administrative (clerical) and decision-making integrity are decisive in achieving better governance (Heineman; Heineman, 2006). In this sense, CSR experts identify and concede that "corruption distorts market competition, breeds cynicism among citizens, destroy democracy, undermines the rule of law, damages government legitimacy, and corrodes the integrity of the private sector" (Heineman; Heineman, 2006, p.85). In terms of CSR, the government's role is one as the "*State Guard*" within the free market (capital) economy.

Conspicuously, the OECD played a dynamic and self-motivated role in CSR when it executed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention") in 1997. The agreement requires all signatories to take footsteps to proscribe the payment of bribes to foreign public representatives, to foster partnership among nations in pursuing prosecutions, and to launch appropriate severe sanctions on firms as well as individuals who violate these provisions (Yeoh, 2007; Robbins, 2008; Holliday, 2002).

In the same vein, legislative, executive, and judicial assistances from state governments, along with civil society organizations, as Non-governmental Organizations ("NGOs") and private sector establishments, could further the program against corrupt practices, as shameful corporate manner is an offense that is universal in scope, it becomes vital, and perhaps even indispensable, to craft a new set of procedures concerning the international commercial dealings (Pratt, 1991). For CSR to prosper, the international community must pay greater care and courtesy to globalization, governance, corporate sector accountability, sustainable development, fiscal and economic ethics, operational leadership, and business tool reliability (Logan et al., 1997).

Therefore, the key task is to abolish corruption, or at least fighting it, while increasing social awareness (George et al., 2000). Besides, to cultivate and enhance CSR, the private sector must share the responsibility, as the business community must become enthusiastic to combat against corruption, as that will is a spirited and central component of CSR in battling corrupt undertakings in business relations (Arafa, 2011).

Ethical leadership is central if codes of conduct are to be obeyed to and used to positively control the proper and honorable behavior of employees. If corporate employees consider company leadership corrupt, codes of conduct will fall into contempt (Bondy et al., 2006). Consequently, codes are only as good as the leaders who believe in them (Kitzmueller, 2010). It should be renowned that the International Chamber of Commerce ("ICC") adopted, in 1996, a more stringent code of ethics defining strategies to fight extortion and bribery in international businesses (Vanasco, 2007). Provisions of the code comprise a proscription on accepting bribes and inducements, requirements for enterprises to adjust payments by their agents, and procedures concerning auditing and recordkeeping and checking prohibited payments or masked (slush) resources, funds, and assets (Olsen, 2010).

4 IMPARTIAL COMPETITIVE INTERNATIONAL FREE MARKETS AND THE 2003 UNITED NATIONS CONVENTION AGAINST CORRUPTION ("UNCAC"): IS IT A FRESH UNIVERSAL TEST FOR CSR?

A backbone inquiry that necessitates crucial attention from both the business and CSR communities is competitive disadvantage. If a company or a business firm is corrupting and enticing a foreign public authorized servant in order to execute a contract, other businesses are likely to adopt the equivalent attitude to continue to be competitive (Arafa, 2011). Nonetheless, today with the acceleration in foreign direct investment ("FDI") in emerging markets, worldwide competition has once again incentivized crooked business activities in securing business contracts (Arafa, 2011). In light of the fact that transnational firms from OECD countries are unwilling to be the first to engage in corruption because they are more likely to get trapped and penalized, countries in emerging markets must also lead their multinational enterprises toward vigorous CSR ideals in their universal marketable transactions (Cruver, 1999; Hess, 2012).

In the nonexistence of active implementation in developing and emerging markets, if multinational corporations from OECD countries want to endure competitive, they require to level the playing field with their intercontinental counterparts (Nichols, 2009; Nichols, 2004). This demands mutual and collective efforts between CSR professionals and the business sector (Sen, 2011). Unethical and illegitimate corporate manner also misleads competition between multinationals and small and medium sized enterprises ("SMEs") (Heineman; Heineman, 2006).

Since competition between multinational companies and SMEs is constrained, it must be addressed in order to lessen corrupt actions from businesses at all economic heights (Arafa, 2011). As a result, it is imperative to mark corruption also in SMEs in order to have an

inclusive policy and wide-ranging plan against all corruption sorts all over the globe, precisely in the MENA area (Arafa, 2011).

On the other hand, over and again, the United Nations has wanted to take on the scourge of corruption in numerous legal and political frameworks. These scraps and efforts have largely taken the form of creativities that were not binding in nature (Deming, 2005). One of these actions was pursued via the United Nations Commission on International Trade Law ("UNCITRAL") (Deming, 2005). Likewise, in 2000, a number of members of the UN signed the United Nations Convention Against Transnational Organized Crime ("UN Organized Crime Convention"). Corruption activities, counting active and passive domestic bribery and corporate organized wrongdoing, were criminalized by this treaty (Arafa, 2011). Even bribery of foreign public officials is included but criminalization was not made binding.

The most recent, and conceptually most aspiring, international convention addressing transnational corruption is the United Nations Convention Against Corruption ("UNCAC") of 2003 (Alshorbagy, 2011). The UNCAC is the broadest of all the assigned multilateral anti-corruption agreements to address the bribery of public officials in the conduct of international business (Deming, 2005). Generally speaking, this treaty underscores six essential principles with respect to the mandatory and optional measures applicable to both the public and private sectors, covering accounting and auditing standards (recordkeeping) and the advancement of codes of conduct and compliance programs for private corporations; enforced and optional criminalization, comprising obligations about public and private sector bribery, peddling in influence, and illicit enrichment; the accessibility of private rights of action for the victims of corrupt practices (civil compensations); extensive anti-money laundering practices; international cooperation in the investigation and prosecution of cases, enclosing collection actions, over extradition and mutual (judicial) legal assistance; and assets recovery (Tarun, 2010).

Following this serious step, the CSR program has innovated and accomplished a sequence of events for training pressure on the private business sector to reflect the social, cultural, and environmental values of their corporate performs. At both the domestic and international scales, the attack against corruption has advanced and ensued through a gradually cohesive legal framework of multilateral agreements, domestic laws, and legal principles (LOW, 2005). Until lately, CSR campaigners have largely left corruption to the jurisdiction and control of government and national law implementation and prosecution authorities, yet, CSR consultants have started application mechanisms through teamwork's correlation and partnership with the business private sector (Arafa, 2011).

CSR specialists should keep in mind that while the potential of the U.N. agreement is great, its efficiency depends on the level of state action. The motivation for anti-corruption and its combination in the corporate citizenship plan are two of the most dynamic enlargements, as they add a better market integrity and hold the promise of enriched governance in the public and private domains similarly (Adeyeye, 2011; Tanzi; Davoodi, 1997; Tanzi, 1998). While one of the initial goals for the CSR movement is to apply burden on domestic governments to appliance and impose the UNCAC covenant, as CSR authorities should hold the business sector to higher standards of liability (especially criminal culpability), ethical veracity, and transparency values through health managerial actions and policy ingenuities (Tanzi, 1994; Tanzi, 1995).

5 INTEGRITY/COMPLIANCE SYSTEMS: LIGHTS FOR FIGHTING AND CONTROLLING CORRUPTION?

Considering the elements discussed, it can be seen that corruption negatively affects state actions, reducing public funds that should be allocated to public policies, as well as the private sector, by

creating an operational cost that the market is no longer accepting to pay. These factors justify the international movement to combat and control corruption as described above.

In order to strengthen these actions, it is important to analyze compliance systems as a new paradigm to be implemented in companies, aiming to prevent and combat illicit conduct in disagreement with the regulations presented. For Maeda (2013, p. 167), compliance programs reflect the "efforts adopted by the private sector to ensure compliance with legal and regulatory requirements related to its activities and observe principles of ethics and corporate integrity". In general, corporate compliance programs are based on seven essential elements, which are:

> 1) the establishment of compliance standards and procedures, (2) high-level management leadership and oversight of the compliance and ethics program, (3) delegation of powers to the authority responsible for the program, (4) measures to communicate standards and procedures, (5) monitoring, auditing, and evaluation practices to achieve compliance and ensure program sufficiency, (6) discipline, incentives, and enforcement actions applied to promote compliance, and (7) organizational responses to malpractices. conduct with a view to future prevention of misconduct and deficiencies in the correction program. The guidelines also require that the seven elements be adjusted and implemented in light of a periodic risk assessment. (McGuffey; Soldan, 2006, p.9-10).

These elements address any program, regardless of company size. Initially, compliance programs were designed for large corporations, as they occupy the largest spaces in the international media, especially in cases of corruption scandals. One example is the significant repercussion of allegations of corruption involving the German multinational Siemens. However, compliance is not only applied to large corporations.

As highlighted by McGuffey and Soldan (2006), programs must be developed in the right measure for the size of the company. Thus,

the authors propose a program compatible with the size and financial resources available to the organization. According to the authors (2006, p. 8), designing programs suitable for smaller companies is justified because: "between 2000 and 2005, for example, the vast majority of condemned organizations were those with less than 200 employees" (McGuffey; Soldan, 2006, p.10).

The main adaptation needs for smaller companies are in the following aspects: disseminating the culture of compliance within the organization, and considering that small and medium-sized organizations are much more dependent on their top management, because they have less management levels, a fact which increases the transparency of decisions taken by senior management. Instead of a faceless organization, employees of smaller organizations tend to know senior management, their business ethics and management style, which increases the visibility of managers' conduct and the need to set a good example.

Compliance programs are not imposed on any company. However, some legislations have created mechanisms to mitigate the effects of sanctions. In some cases, there is the possibility of the total exclusion of the responsibility of legal entities, when they have implemented good systems to promote ethics in relations with public authorities. although

An example of this is the English law UK Bribery Act, in force since 2010. This law makes companies responsible for practices considered corrupt. Although, if the company proves the implementation of a compliance program, the liability of the legal entity can be removed (Maeda, 2013).

Two elements are identified in this English law. First, it made sanctions more severe for legal entities that, in their desire to negotiate with the government, offer advantages to public agentes. On the other hand, it mitigated sanctions if the violator (legal entity) demonstrates that it has adequate programs to inhibit corrupt practices and promote practices in accordance with ethical and legal standards regulated in internal rules, for example, codes of ethics.

In Brazil, significant advances have been made on this topic. As an example, initially, the country agreed with the international community to collaborate with the anti-corruption policy. Internally, the country has been developing important control instruments, such as those already described in this study, and legal measures such as the Administrative Improbity Law and the Anti-Corruption Law.

The last legislation mentioned is in agreementline with international guidelines. In this regard, Brazil was a signatory to three important conventions: the United Nations Convention against Corruption, of the UN; the OAS Inter-American Convention against Corruption; and the OECD Convention on Combating Corruption of Foreign Public Officials in International Business Transactions. In compliance with these international commitments, Federal Law No. 12,846/2013 was enacted and it is analyzed below.

At first, the referred law did not advance in relation to criminal liability, as occurred in England, Spain and the United States. Brazilian law preferred not to criminally sanction legal entities. This has been criticized because, for some (Costa and Fernandes, 2013) it should have followed the international trend.

For others, the practical effects of this measure would be few, since the main criminal sanctions are those that restrict freedom, which are impossible to apply to legal entities. Other sanctions, such as fines, administrative and civil liability, can be applied. Furthermore, according to Capanema (2013), administrative and civil processes are faster, so the possibility of criminal liability could delay the other two processes. Furthermore, according to Capanema (2013), administrative and civil processes are faster than criminal ones. Hence, criminal liability could still delay the other two kind of processes.

The law is addressed to national and foreign legal entities that have any activity in Brazil. Article 2 contemplates strict liability, which applies regardless of proving guilt or intent in the practice of acts. In this sense, for sanctions to be applied, it is enough to prove: the action or omission (in this respect, compliance will have an important effect),

the damage, material or not, to the State, and the link between the action/omission to the damage, namely the causal link. A problem with this article is the requirement that such acts have been performed in "their interest or benefit, exclusive or not". In the case of an act for the exclusive benefit of a third party the article is not applicable, what makes the application of sanctions unfeasible.

Moreover, the liability imposed by law can be determined even if the perpetrators of the fact have not been identified. And if its authorship is being investigated in the judicial sphere, this does not interrupt or suspend the progress of the administrative process. Regarding the authors of the infractions, the incidence of the anti-corruption law does not exclude the personal responsibility of the authors in other spheres of responsibility.

In this way, the authors may be held liable civilly, criminally and administratively. This means that the legal entity has no advantage in omitting agents suspected of having broken the law. On the contrary, if they collaborate with the investigations, they may benefit from the reduction of sanctions provided for.

Article 4, §1, of the Anti-Corruption Law provides that in the event of a merger or incorporation, the successor's liability will be restricted to the payment of a fine and full compensation for the damage caused, up to the limit of the transferred assets, without the sanction of publication of the administrative decision. Although the provision excludes from this mitigating case duly proven cases of simulation or evident intention of fraud, it is pointed out that this treatment gives rise to maneuvers.

Among them is the break-up into smaller companies, with the smaller ones being responsible for irregular activity. If minors are discovered, they join others and leave all their capital (which may be small) to pay the fine and damages. It is important to consider that if this equity is insufficient, one cannot seek to complement the value, even in the face of incorporation into a larger corporation. It would have been better if the law had required that, in cases of mergers and

incorporations, individuals should be extra careful to investigate the conduct of legal entities incorporated or to whom they merge, under penalty of being held accountable for the acts performed by them.

The Anti-Corruption Law did not exhaustively regulate compliance instruments. It mentions in article 7, item VIII, that the existence of internal mechanisms and procedures for integrity, audits and reports of irregularities can mitigate administrative sanctions.

The legislation could have described these measures taking into account that it is not enough to claim the existence of a compliance program, if it is insufficient or only formally exists. In Brazil, there are no legal guidelines for compliance in private organizations, but in 2021, Decree 10,756/21 establishes the "Public integrity systems of the Federal Executive Branch", which represented an advance.

The title of this topic is a question (Integrity/Complinance Systems: Lights for Combating and Controlling Corruption?). As conclusion, it is time to answer it. Corruption is a complex phenomenon that can assume several nuances and involves actors of different levels and segments. As a result, no single instrument will be able to stop corruptive practices. Therefore, there is a need to think and implement a set of actions aimed at the public power, the market and society to fight and prevent corruption.

6 DECISIONS, CORRUPTION AND ITS TREATMENT IN BRAZIL

The corruptive act (LEAL, 2014), in reality, must be understood as a corruptive decision. The social actor has before him several options about his conduct. It chooses, however, an option that violates a public good – and consequently the duties of honesty with the public thing. Given the fact that corruption schemes are usually fixed, that is, they are carried out by the collusion of several agents, then it is possible to say that this is again a unity of decisions.

The treatment of corruptive acts in Brazil is multimodal (Osório, 2010). It is possible to say that there are three main legal lines of confrontation of a corruptive act that are already practical: the sanction of the agents, the annulment of the act and the recovery of the damage.

For each of the fronts there are multiple actions and possibilities, with multiple actors as well. Whether intentional or not, the fact is that the multiplicity of ways to deal with the corruptive act is an obvious advantage – which, however, has not generated the necessary effectiveness, as is known.

For example, with regard to the sanction of agents, they can be punished administratively within the Public Administration itself, they can respond judicially with administrative sanctions and also criminally. With regard to the recovery of the damage, this can be done both in the criminal action itself and in civil actions brought by specialized bodies and by the public administration itself. Finally, the annulment of the administrative act is so open that any of the people can file the action.

It is evident that the corrupt decision will not amount to an administrative act. The administrative act will have a certain appearance of legality. As the effect of the corrupt act is to obtain some advantage not connected to the public interest for the individuals and administrators involved, it is necessary, however, to previously analyze what motivated the issuance of the aforementioned administrative act. Thus, due to the effective social consequences of an administrative act (enriching a public servant, for example), it will be possible to induce the cause of a certain corruptive act.

Due to the formality of administrative acts, and the lack of means of detecting the motives of administrative acts, only their social consequences, then it becomes necessary to analyze corrupt decisions in their creation process in the widest possible way (Luhmann, 2002). In fact, it is possible that the bidding for a work or public work contract is sound and in accordance with market prices. Thus, formally there will be no means of attacking this corruptive act on the three aforementioned fronts (Luhmann, 2004).

Some corruptive decisions, therefore, can only be dealt with if the administrative hiring process is dealt with at its birth. This would be the case of works and health services that are not connected to any public interest. If works and services are not connected to any public interest, but there is a forecast in the budget, even if a bidding is canceled there is always the "danger" of the bidding being held again and the public property violated. Thus, the solution will be to cancel the budget forecast itself, as defined below.

7 CONCLUSION

This work aims to provide an overview of the approach and initiatives on corruption in Brazil and in the world. Therefore, the following research problem is established: what are the guidelines and general lines that can be established for the normative treatment of corruption and public and corporative ethics in Brazil and in the world? Further, the fourth key form of institutional corruption in the private sector is the gaming of the law by business executives, often supported by their external legal and accounting advisors. Hence, the fundamental strategies suggested for curbing gaming and institutional corruption as much more work remains to be to mitigate such behavior. Moreover, addressing rule-following ("Gaming") problems in business should be considered.

The short-term decision horizon of corporate executives and fund directors is often at the heart of their decisions to engage in gaming. Certain economic and political factors do, however, constrain all three alternatives. Recent corporate scandals, specifically in Europe and United States reveal that developing and distributing corporate codes of conduct is rarely enough to curtail gaming and ethical drift. When corporate boards and their delegated agents fail to build sustained obligations to such values or neglect to provide clear guidelines for responsible action, they put the institution's reputation and its very future at risk.

The key to achieving quality objectives and preserving public trust lies in three organizational commitments: qualitative attention, balanced incentives, and active monitoring. Consequently, codes are only as good as the leaders who believe in them. It should be renowned that the International Chamber of Commerce ("ICC") adopted, in 1996, a more stringent code of ethics defining strategies to fight extortion and bribery in international businesses. A backbone inquiry that necessitates crucial attention from both the business and CSR communities is competitive disadvantage. In light of the fact that transnational firms from OECD countries are unwilling to be the first to engage in corruption because they are more likely to get trapped and penalized, countries in emerging markets must also lead their multinational enterprises toward vigorous CSR ideals in their universal marketable transactions. In the nonexistence of active implementation in developing and emerging markets, if multinational corporations from OECD countries want to endure competitive, they require to level the playing field with their intercontinental counterparts. This demands mutual and collective efforts between CSR professionals and the business sector.

Considering the elements discussed, it can be seen that corruption negatively affects state actions, reducing public funds that should be allocated to public policies, as well as the private sector, by creating an operational cost that the market is no longer accepting to pay. These factors justify the international movement to combat and control corruption as described above. In order to strengthen these actions, it is important to analyze compliance systems as a new paradigm to be implemented in companies, aiming to prevent and combat illicit conduct in disagreement with the regulations presented. It chooses, however, an option that violates a public good – and consequently the duties of honesty with the public thing. Given the fact that corruption schemes are usually fixed, that is, they are carried out by the collusion of several agents, then it is possible to say that this is again a unity of decisions.

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Received: 2022.04.11
Accepted: 2022.05.25

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