
**COMPANIES' SOCIAL ROLE APPLIED IN SOCIETY TROUGH
COMPLIANCE MANAGEMENT TOOLS*****FUNÇÃO SOCIAL DA EMPRESA APLICADA À COMUNIDADE POR
MEIO DAS FERRAMENTAS DE GESTÃO DE COMPLIANCE*****HORÁCIO MONTESCHIO**

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ABSTRACT

Objective: The study aims to understand how compliance programs can contribute
to community, fulfilling the principle of corporate social role.

Method: The study is exploratory and was prepared through a bibliographic review
and documentary research with a qualitative methodological approach and the



hypothetical deductive scientific method, involving works on the theme of compliance and the company's social function.

Results: Through the study of compliant tools: risk assessment, codes of ethics or conduct and due diligence, we verified that compliance program results in social benefits for companies and the surrounding community, while implementing the contractual social role constitutional principle.

Contributions: Compliance program have enormous potential to bring benefits to companies, to those who are part of the business, and to the consumers who relate to them. With the benefits brought by compliance, companies certainly collaborate with community in building an ever more just, egalitarian and prosperous society, in which respect for human and social rights can be related to profit

Keywords: Companies' social role; Compliance; Community.

RESUMO

Objetivo: *O estudo pretende compreender como os programas de compliance podem contribuir para a comunidade, concretizando o princípio da função social corporativa.*

Metodologia: *O estudo é exploratório e foi elaborado através de revisão bibliográfica narrativa e pesquisa documental com abordagem metodológica qualitativa e método científico hipotético dedutivo, envolvendo obras sobre o tema do compliance e função social da empresa.*

Resultados: *Por meio estudo das ferramentas de compliance: avaliação de riscos, códigos de ética ou conduta e do due diligence, verificamos que o programa de conformidade resulta em benefícios sociais para as empresas e para a comunidade que as cerca, enquanto efetiva o princípio constitucional da função social do contrato.*

Contribuições: *Os programas de compliance têm enorme potencial para trazer benefícios às empresas, àqueles que fazem parte do negócio e aos consumidores que com eles se relacionam. Com os benefícios trazidos pelo compliance, as empresas certamente colaboram com a comunidade na construção de uma sociedade cada vez mais justa, igualitária e próspera, na qual o respeito aos direitos humanos e sociais pode estar relacionado ao lucro.*

Palavras-chave: *Função Social da Empresa; Compliance; Comunidade.*



1 INTRODUCTION

Today's society is experiencing an unprecedented profusion of commercial relationships, largely due to technological advances and the possibilities provided by the internet. The distance barriers were practically eliminated with the simplicity of a mere push of a button, allowing communication and interaction in any part of the globe. Commercial relations are being done with great simplicity and naturalness in the digital environment, resulting in the evolution of the contract as an instrument of common will expression between two or more people.

More than ever, the company's social role has ceased being a guiding principle to be a concrete objective implemented in the corporate environment, in contrast to corrupt practices, which always provoke distrust in part of the Brazilian people. As a form to combat corruption (FRANCO DE LIMA and MACIEL-LIMA, 2021) in Brazil, compliance is no longer being seen as an exclusive program of large multinationals to be applied at small and medium- sized companies.

Therefore, the purpose of this study is to analyze how companies' social role principle could impact society through compliance management tools.

In a superficial analysis, it's believed that the implementation of compliance in companies indirectly results in promotion of corporate social responsibility through the encouragement of legal, correct and ethical standards, fulfilling the companies' social role principle in the communities where enterprises are inserted.

This article offers a relevant contribution to the academic world, which lately focuses on research related to corporate governance and compliance issues, but, compared to North American law, there is still a lot to improve. In the corporate environment, this study can confirm the hypotheses formulated and become another incentive for adoption of compliance programs, contributing to the promotion of ethical and legal compliance culture.

First, this article will argue about the development of company's social function principle, and then analyze compliance in Brazilian law. Further, some basic compliance management tools will be explored, describing how they can contribute



to the community where a company is inserted. In the end, it will be presenting the conclusions and possible confirmations of formulated hypothesis.

2 SOCIAL ROLE OF THE COMPANY AT BRAZILIAN CONSTITUTION

The influence of the digital evolution on contracts meant that several innovative versions were applied, such as electronic contracts, smart contracts, among other modalities that have been developed in recent times. What does not change on contracts is the security provided to the parties to keeping a signed relationship.

Since the contract provokes a sense of legal certainty and security, under the apparent certainty that, in the event of any non-fulfill, it will be possible to resort adequate legal means to obtain due forced accomplishment or reparation equivalent to the agreement. (GRAU, 2001, p. 424) The trust placed in a contract by the parties arises from the legal certainty, which can enforce fulfillment of contract obligation, fostering a social peace through the granting of stability and security of relations contractual terms.

By providing social role of property, the Brazilian Constitution also conferred, in embryonic form, the social function of contracts, requiring a revision of contractual theory. This new way of seeing the contract gained greater relevance and material concreteness with the advent of the Consumer Defense Code (Law 8078/90), which allowed the State to interfere directly in the contractual relationship to reestablish the contractual balance, which is normally unbalanced due to inherent economic power of businesses.

The normative success of the Consumer Defense Code greatly contributed to the Civil Code of 2002 (Law 10.406/2002), that was able to effectively incorporate the social role of contract and started to have its major importance recognized, in accordance with the provisions of articles 421 and 2035 of the Civil Code. (MIRANDA, 2010, p. 101-102)



The aforementioned transformation of the theory and constitutional protection given to contracts are largely due to the constitutionalization of rights phenomenon, according to which, "the entire legal order must be read and apprehended under the lens of Constitution, in order to realize the values enshrined in it."¹ (BARROSO, 2005, p. 27) The so-called constitutional interpretation gave prominence to the social role of contract principle, directly affecting personal and commercial relations in search for harmony with text of the Constitution, with special emphasis on the human dignity principles, that guides and serves as reference to all other constitutional rights, establishing as a true lighthouse.

Thus, the social role of contracts principle ends up assuming an internal effectiveness, related only to parties, and another external effectiveness, that transcends the contractual relationship and affects society. All in detriment of the private interest, always surpassed by the supremacy of public interest, which seeks to achieve objectives superior to mere will of the contractors. (MIRANDA, 2010, p. 104)

Although contracts are not requirements for the existence of business activity, the existence of a social contract for the formation of a company is common, constituting and establishing the company's management rules, leading scholars to understand that the social role does not only apply to contract's theory, but also to business activity. In order to understand the concept of companies' social role according to Brazilian norms, the foundations of the democratic rule of law must be understood, with special attention to the free enterprise and social values of work principles. (OLIVEIRA, 2019, p. 59)

In business sphere, social function represents the benefits of business activity on communities, ranging from economic development and job generation, to income distribution and the promotion of social benefits, affecting positively the communities where companies are inserted. (OLIVEIRA, 2019, p. 56)

In addition to collaborating with the generation of employment and financial gain, companies also pay taxes and can directly help the community, often taking on

¹ In portuguese: *"toda a ordem jurídica deve ser lida e apreendida sob a lente da Constituição, de modo a realizar os valores nela consagrados"*



a role that the Government is unable to perform with satisfactory results. Thus, it is common for companies to take care of public space and social services through keeping of squares, management of environmental parks, education incentives, cultural and sports sponsorships. In all examples mentioned, business activity contributes to the well-being of society, and to the constitutional objective of seeking a fairer, more egalitarian society with respect for fundamental human rights.

Bringing together the social benefits that can come from business activity, it must be concluded that a company can be an aggregator of value in community which it is inserted, thus conferring the aforementioned social function arising from constitutional norm. This implementation of constitutional principles and social rights can be boosted with greater prominence when business activity is practiced and encourages the adoption of ethical postures and respect for the legal system. (FLENIK, 2019, p. 78)

Doing the right thing, obey the law and promoting collective well-being are goals pursued by compliance programs that could affect all society, from the perspective of companies' social role principle. Before, however, we must establish the premises of compliance in Brazilian law.

3 COMPLIANCE IN BRAZIL

Contracts can be seen as a means of social transformation and progress in achieving a social role, but it is also used as a instrument for hidden purposes of self-benefit through illicit or immoral practices, through corruption, a practice that unfortunately is widespread in Brazil, associated with a very low ethical standards in Brazilian society.

In Brazilian society, the public good is seen as “free of charge”, or without an owner, but not as a collective property of society. Thus, what is “free of charge” can be replaced without direct cost to the person who stole it away or consumed it, although, in reality, the bill has to be paid by all taxpayers. This perception of public goods is a great oversight in Brazilian's society, more like a miscomprehension than



legal principle, and it spreads in the public administration as new ways of taking advantage of the collective goods are sought, however, unintentionally following principles of public law, resulting in illegal practices. (FLENIK, 2019, p. 68)

To help fight corruption, the compliance was created, which is still a little widespread practice in Brazil, but is already consolidated in legal systems of many developed countries. The term compliance comes from the verb in English to comply, which means to act in accordance with a standard, an internal instruction. It has as meaning the act or procedure that seeks to ensure compliance with the regulatory standards of a given sector. (BLOK, 2014, p. 25)

Compliance can also be synthetically defined as the search for accordance with law and harmony with the set of rules, behaviors and ethical attitudes, whose purpose is both in preventive action and in guaranteeing the company's valuation. (ZIEBELL. FALCÃO, 2020, p. 453) Analyzing the concepts, it can be concluded that compliance also pursues conformity with ethical standards and that they bring benefits to the community through the practice of acts that seek the common good.

The institute was imported from North American legal system, where its importance has been recognized since the 70s, when the Foreign Corrupt Practice Act (FCPA) of 1977 was published as a response to a series of white-collar crimes involving important authorities in American society and foreign governments, using the US banking structure. Over time, the institute has been improved not only in government, but also becoming a permanent policy in the corporate world and influencing the decision-making process of investors and consumers, who notably prefer to invest in companies in which compliance is massively adopted because they have lower risk of corruption scandals or financial embezzlement that could spoil their investments.

In Brazil, the term compliance gained importance after the publication of Law 12.846/2013, called the Anti-Corruption Law, born from a bill sent to the National Congress by the Federal Executive in 2010, as a result of international commitments that Brazil assumed as a signatory of the Convention on the Organization for Economic Cooperation and Development's Combating Corruption of Foreign Public Officials in International Business Transactions, in which the signatories committed to



creating a legislation to combat bribery. The project remained inert for about three years, but ended up being approved in an attempt by the Brazilian National Congress to provide answers to society that was faced with various corruption scandals, especially from the federal government level.

The Brazilian anti-corruption law was clearly inspired by the US Foreign Corrupt Practices Act and introduces the liability of the legal entity involved in cases of corruption committed in their self-interest or self-benefit. (BLOK, 2014, p. 2) In order to regulate the Anti-Corruption Law, the Decree 8.420/2015 was also published, which provided for the objective administrative liability of legal entities for the practice of acts against the Public Administration, national or foreign. (CAVALARI, 2020, p. 42)

The Anti-Corruption Law applies to Brazilian and foreign companies that have "registered office, branch or representative in Brazilian territory" and the prohibited acts are all those related to domestic and foreign Public Administration, such as bribery to public officials, promise, offer or direct donation or indirect of undue advantage to a public agent or third party related to it and to fraud in public contracts, bids and other acts. The individual partner of any type of business company, whether endowed with legal personality or not, is within the scope of the law, so that even informal business activities do not escape legal rigor. (BLOK, 2014, p. 5)

Law 12.846/2013 provides a reduction in sanctions for lawbreaker companies who cooperate with the authorities and prove that they have internal programs to encourage inspection and prevent other irregularities. After the publication of the Anti-Corruption Law, it allowed direct advantages to be obtained for companies that practiced compliance as a permanent policy, benefiting them with lighter punishments when applying punishments for breaking the law.

In order to enjoy the legal benefits, companies must adopt the following measures: Create an effective Compliance Program; Apply successive training to its employees and outsourced; Perform anti-corruption Due Diligence in corporate transactions and management of business partners; Create monitoring system; Establish means for investigating irregularities in its environment. (BLOK, 2014, p. 3)



Offering benefits such as the reduction of punishments for those who implement compliance programs may, at first look, to be a paradox, as explained: if the company has a compliance program, in theory, it should be able to avoid the commitment irregularities, otherwise the adopted compliance program is totally ineffective. Thus, transgressor companies would benefit from lighter penalties for having inefficient compliance programs in their structure.

In another perspective, if compliance is considered as a culture of behavior and not merely as a series of goals to be achieved in a project, it is possible to see a chance of the Anti-Corruption Law resulting in an evolution of business behavior, even with the paradoxical problem already pointed out.

At first glance, it can be wrongly understood that the compliance program will only serve as a way to reduce the sanctions imposed against the lawbreaker corporations by obtaining discounts on fines. However, the market incorporates a series of other conformity aspects into compliance, which are not directly related to corruption, but to an effective fulfilment of the law, protection of human rights and collective well-being.

For example, besides demanding the observance of legal rules and preventing corruption, compliance helps to promote the humanization of the corporate environment, prohibits practices that violate the physical and moral integrity of employees and customers, combats situations of moral or sexual harassment, ensures conformity with labor rights and information security. (OLIVEIRA, 2019, p. 57-58)

All the commitment assumed by the compliance program does not fail to observe the need to obtain profit as companies' primary purposes, without which, the business activity would be terminated, making any social contribution impossible.

Compliance also requires proof of results and the work of professionals who really believe in what they practice, not just creating a "fake" accordance. The compliance culture grows and multiplies the more it is exercised, because corporations in a compliant situation seek and grow together, fostering businesses based on good practices, resulting in reduced expenses and obtaining profit by encouraging good practices.



However, implementing compliance in all Brazilian companies is a very difficult task to be accomplished. In general, compliance is not widespread in national business, and 100% Brazilian companies that operate any type of compliance program are rare. (BLOK, 2014, p. 3) In this negative statistic, small and medium-sized companies are leaders, characterized by leaving aside risk management and other processes, with the objective of spending less time and reducing costs to remain in business.

In addition, low management training is also motivated by the fact that the vast majority of small and medium-sized companies are managed by families, not having a professionalized administration capable of managing risks and mitigating losses arising from acts that can be performed by the members of the owning family. (RODRIGUES, 2020, p. 178)

From the established premises, there is no doubt that the challenges are many and compliance still faces a lot of resistance in Brazilian business field, mainly due to the costs to implementing a good program. Regarding the expenses to be incurred, these should be seen as an investment in the company, which will yield results in the future a reduction of financial losses resulting from corruption, such as, reduction in financial sanctions, reduction of labor liabilities, and intangible asset that will become to be part of corporation, embodied in the companies ethical and responsible position towards the community. (FLENIK, 2019, p.80)

About the positive product of the compliance use in the corporate environment and how these results contribute to the companies' social role as a constitutional principle, the next topic of this research will be reserved.

4 RELATIONS BETWEEN COMPLIANCE AND THE COMPANY'S SOCIAL ROLE

The importance of a compliance program is usually revealed in times of crisis, as there is a great distance between the mere creation and the effective practice of ethical values in companies. The biggest and richest companies involved with corruption scandals recently denounced in Brazil already had actions or even



specific compliance sectors, however it did not prevent the practice of illegal actions, mainly because such practices came from the top of the companies. (FLENIK, 2019, p. 84)

A good compliance program can be summarized in the following benefits: Establishes a mechanism for prevention, detection and remediation of illegal conduct, contrary to the company's internal guidelines and rules; Provides guidance to employees on how to act with other employees, government officials, consumers and business partners; Establishes the concept of a healthy corporate culture, based on the company's written internal policies; Creates an internal procedure for reporting and handling complaints received by company about inappropriate behavior or violating anti-corruption rules and laws; Possibility of exemption or reduction of penalty; Protection of the company's image and stakeholders. (BLOK, 2014, p. 23)

A compliance program can take on different levels of complexity, depending on the type of activity performed, assets and complexity of the business structure. There are compliance sectors aimed at ensuring compliance with criminal and labor laws, others aimed at tax, environmental and consumer rights regulation.

Although it can have several aspects, a basic compliance program must have the following characteristics: Commitment and support of the company's senior management; Compliance area must be independent; Risk mapping and analysis; Establishment of controls and procedures; Creation of internal means of communication and training; Existence of mechanisms that make it possible to receive complaints from employees and third parties, maintaining confidentiality and preventing retaliation; Existence of written policies on anti-corruption, gifts, donations, and management of company resources used to develop work or promote leisure time. (BLOK, 2014, p. 26-27)

Compliance management tools are proposed to combat "integrity risks", which also impact the pursuit of the organization's objectives, attributions or mission. Such risks are characterized as organizational vulnerabilities that can favor or facilitate situations of breach of integrity, such as, for example, the request or receipt of undue amounts by public agents, abuse of power, use of public funds for private



purposes, situations that configure conflict of interest, nepotism, among others. (CGU, 2017, p. 13)

Normally, the violation of legal norms results in legal sanctions imposed by the State, making one of the main objectives of the compliance program to prevent State intervention in the company, which can turn its attention to its main objectives.

Despite the protectionist and individualistic character, corporate compliance can generate positive effects beyond the company, positively contaminating the society in which the company is inserted, bringing it benefits for trying to avoid abuses by conquering markets and in the pursuit of profit. (OLIVEIRA, 2019, p. 59) Based on the above, it is possible to correlate companies' social role principle to compliance, since the former depends on strict legal compliance for its effectiveness, while compliance acts directly through absolute accordance with law. (OLIVEIRA, 2019, p. 83)

As explained above, the companies' social role principle stems from the constitutionalization of law, a path taken by legal science after the Second World War, when it sought to disentangle the positivist literalism in order to understand law as a broader system, in which human person dignity should be prioritized, as a legal system fundamental vector. (MIRANDA, 2010, p. 16) As a result, contract law began to be affected by public order impositions such as police power, "protective" impositions of the Labor Law, antitrust legislation, low-income consumer protection, etc. (GRAU, 2001, p. 430) Thus, the contract is no longer a simple instrument for reconciling the will of two parties, but it is assume a prominent role at the constitutional level.

As a result of this rights harmonization, profit is no longer the main objective of companies, since they started to have social responsibility and also added to their objectives the search for respect for the law, human dignity, ethical responsibility and social contribution. In the current economic scenario, characterized by mass consumption relations and the formation of large economic groups, there is a need to demand from the company a social counterpart to its performance. (MIRANDA, 2010, p. 64)



Through the social function, the entrepreneur is required, when acting, to also fulfill social interests, without necessarily eliminating their right to property and free enterprise. (MIRANDA, 2010, p. 81) This balance represents a notion of an efficient and fair social role, as it allows the business society to fulfill its corporate purpose and carry out its activities within the field of legality, in accordance with laws and benefiting the people who relate to it. (OLIVEIRA, 2019, p. 69)

The concern for corporate social responsibility ends up providing greater security in corporate contractual relations, as the culture of complying with the law and doing what is right ends up being disseminated and replicated almost automatically. The search for greater security in contractual relationships gains another valuable ally, if it is observed that compliance aims to achieve the purposes of legal conformity by companies, consolidating the culture of compliance, through the implementation of processes that seek to eliminate risks by anticipating them, correcting failures and mitigating losses.

Companies that execute and encourage the practice of ethical conduct and social responsibility have certainly realized that their behavior has become a true "business asset", making the corporation the object of desire of workers and investors who see there an environment conducive to greater profitability.

Thus, the implementation of compliance programs results in an initial expense, but in a short period of time it would become an intangible asset of the company, incorporating market values, not only in the prevention of financial losses with corruption and penalties, but also in the added value that corporate conduct now has. (FLENIK, 2019, p. 80-81)

When it is understood that accordance with legal obligations will generate positive effects for the community, it is clear that implementation of a compliance program becomes an involuntary ally for the fulfillment of corporate social role. (OLIVEIRA, 2019, p. 72) As a result of the adoption of ethical and legal practices, the corporation, which has social responsibility and commitment to the constitutional values of social justice and human dignity, ends up harmonizing the ability to generate profits while contributing to the community's development. (MARTINS. KNOERR, 2016, p 05)



In addition, companies that fulfill their social function through compliance will certainly have more committed, happy, healthy and productive employees, so that business policies will also lead to a good social reputation, currently a business asset with high potential to generate profits. (MARTINS. KNOERR, 2016, p 15)

Once the relationship between compliance and the companies' social role has been defined, it remains to be analyzed how this interaction takes place in practice. For the purposes of this article, we sought to analyze some of the most basic tools of a compliance program, including risk assessment, codes of ethics or conduct and due diligence, which will be addressed individually in the search for answers about their possible collaboration with effectiveness of the social function of the companies.

5 CONTRIBUTIONS OF COMPLIANCE MANAGEMENT TOOLS TO SOCIETY

5.1 RISK ASSESSMENT

It is known that risks are part of the business world and companies are subject to them, as there is no way to guarantee unconditional success in all activities. In some areas, risk is part of business activity, and it can generate greater opportunities and profits, meeting the maxim that greater risk, brings greater possibility of profit. (RODRIGUES, 2020, p. 200)

One of the most basic tools of a compliance program is the risk assessment, which consist in various surveys that are carried out on the business performance and the types of infractions and misconduct that can be practiced in these environments.

The purpose of risk assessment is even more thoughtful, as being able to establish which risks are emerging, identify existing controls and means of mitigating losses, delimiting areas where the risks can be adjusted or mitigated through compliance controls. Its benefits include better visibility of the risk areas, strengthening strategic thinking, knowledge of the business, and it also allows for the



necessary strategic actions to be taken to adjust and improve the compliance program based on the identified risks. (RODRIGUES, 2020, p. 178)

So, how to measure whether risk assessment makes any contribution to the communities where companies are inserted? Initially, it should be recognized that risk management is extremely important for the companies' compliance area, as knowing the risks allows to avoid losses and ensure accordance with standards, regulations and laws, thus ensuring the search for high ethical standards of action through the pillars: prevention, detection and correction. (RODRIGUES, 2020, p. 201)

Compliance risks materialize when laws, regulations, code of conduct or internal policies are not complied with, so their consequences can include financial loss and damage to reputation, resulting from any legal or regulatory sanctions. (IBGC, 2017, p. 33)

When carrying out a risk assessment, the company undergoes a real investigation in which the survey of its activities, the inspections it suffered, its legal violations, its internal practices and before third parties, the behavior of its employees and its business partners, is carried out. In each of these phases there may be risks of legal non-compliance resulting from involuntary error or corrupt practices.

In the risk assessment, operational, financial and compliance risks which a company is exposed, can be identified, those that could impact the organization's ability to achieve its strategic objectives. When measuring risks, a compliance program focuses mainly on potential threats related to non-compliance with legislation, policies, code of ethics or conduct, any irregularity that could lead to fines or penalties and damage to reputation. (RODRIGUES, 2020, p. 178)

A correct assessment of business risks can help a corporation to position itself before society, by reviewing its practices, missions and objectives. It is also possible to verify, for example, whether the inspections of the Public Power are receiving due attention both in the preventive aspect and in the collaborative aspect, when the tax procedure has already started.

The tool proves to be fundamental for the achievement of ethical and legal standards, perpetuating a virtuous cycle of sustainability, since when assessing a



risk, it is possible to prevent and detect illegal acts and, if they occur, it can mitigate the damage and correct the failures so that they do not recur. (RODRIGUES, 2020, p. 201)

It is also possible to assess that a company can add value to its image and reduce the risk of negative damage to public opinion by identifying social and economic development agendas that have affinity with its activities, such as encouraging affirmative policies for reduction of inequalities, education encouragement, first job opportunities, insertion in the labor market of people with special needs and graduates of professional rehabilitation after suffering accidents or illnesses at work.

In an increasingly globalized world, connected, in search of development and the common good, risk assessment can collaborate with the pursuit for a company's identity in society, bringing employees and consumers engagement, resulting in good practices that at the same time offer some contribution to the community and still result in profit.

A company that practices risk assessment will certainly take greater precautions in its legal relationships, which will result in doing business with greater security when implemented in the company's day-to-day activities, during negotiations and also in the so-called pre-contractual phase. An efficient risk assessment will bring greater legal security to all the businesses performed, because before they are carried out, it is possible to anticipate the practical, legal and ethical problems of the legal relationship and to find solutions in advance that allow corporations not to suffer financial losses or even of reputation.

When a company detects its vulnerabilities, it can avoid errors and involuntary illegal acts, as well as those deliberately practiced by employees or third parties, resulting in the achievement of legal compliance. In addition, the risk assessment can also indicate which social collaborations may be the object of a company, directly combating the vices that are afflicting the corporate environment.

For example, if a company is at high risk of sexual harassment by its employees or against its employees, it may apply specific efforts to repel such conduct through educational and advertising campaigns that can be expanded



beyond the internal environment. This is one of the simplest examples, but it can demonstrate how risk assessment has the potential to increase the company's collaboration in the search for human dignity, not only for its workers, but for the entire community in which it operates. As a result, risk assessment ends up contributing to the pursuit of constitutional purposes that result in the corporate social role.

5.2 CODES OF ETHICS OR CODES OF CONDUCT

A considerable part of a companies' financial losses stems from losses arising from its own employees. A conversation with any owner or manager will reveal that a significant percentage of employees end up practicing avoidable acts that result in financial losses, such as wasted materials, lack of punctuality, damage to company assets and inadequate treatment with consumers, customers and even other contributors.

Just as the Brazilian worker was not educated to assimilate that the public good belongs to everyone, including himself, business assets are often seen as a "problem of the boss", including the burden and bonuses of the business management. Assumptions of this kind are harmful to the company, the state and society as a whole, insofar as an exacerbated individualistic view represents the social backwardness experienced by the Brazilian people, who have difficulties in understanding the concept of public goods or collective heritage.

Fortunately, the corporate universe is moving, albeit slowly, towards a change in behavior, starting to educate part of society for the common good without waiting for the State to take some action. Many companies are educating their employees and customers so that everyone can enjoy an evolved society in terms of citizenship and civility, instilling a moral conscience, or a new social pact, seeking the realization of fundamental and social rights.

The new behavior parameters are generally established through business conduct codes (or business ethics codes) that reveal institutionalized parameters to guide the companies' internal and external posture, making public and clear for the



whole society what are the missions, values and views of that institution before the community in which it is inserted. (FLENIK, 2019, p. 83)

The compliance program can be described as a form of self-regulation by the company, with the respective department being a kind of guardian of the company's internal rules and the legislation applicable to the institution. In addition, there is also a standardization of ethical and moral behavior acceptable by the organizational structure, all carried out through the institution of Codes of Ethics or Codes of Conduct. (OLIVEIRA, 2019, p. 56)

Currently, these codes are growing in relevance not only in the corporate internal environment, but becoming a company's assets, and all who are part of it, should cultivate the values exposed there and put them into practice in administrative and labor postures, stimulating the experience of their contents. The positive behaviors encouraged by companies end up being expanded outside the corporate environment as well, becoming part of the lives of entrepreneurs and employees. (FLENIK, 2019, p. 83)

There is a pressing need for ethical and honest conduct to be incorporated into companies' activities, becoming part of the common routine both at work and in the personal life of employees, otherwise ethical and legal guidelines remain dormant in the text of the codes of ethics. As in any activity commonly performed by man, the habit leads to the normalization of a certain conduct, facilitating its maintenance.

As demonstrated, the codes of conduct are not only intended to make employees follow the law, but also encourage the adoption of socially beneficial conduct based on ethics and respect for society. The behaviors encouraged by the companies are not limited to the work environment, but end up being transported by the employees themselves to their families and to their social environment. Thus, a single employee can positively "contaminate" their spouses, children, relatives and neighbors, helping to spread culture of correctness and the common good. In this way, companies contribute to the pursuit of constitutional principles of human dignity and the work social value, therefore it fully exercises the corporate social function.



5.3 DUE DILIGENCE

The next compliance management tool to be analyzed is due diligence, which consists of gathering information about a certain object. This tool started being used initially in the capital market, to gather information about companies that intended to make shares available in a public offering to verify the degree of risk that such shares could offer depending on the company's history. Over time, the use of due diligence has expanded, becoming almost essential to ensure the success of large corporate societies' reorganization operations, such as purchase, sale or corporate mergers. (BLOK, 2014, p. 27)

Although initially created to be used in corporate mergers, acquisitions and incorporations, the aforementioned compliance management tool is currently also used as a method of analyzing the profile of employees and third parties who relates with the company, assuming the designations of know your employee and know your partner respectively. Due diligence is also used to study the profile of consumers who relate with the companies, in this case assuming the maxim: "know your customer".

When applying the due diligence process in the context of merger and acquisition of companies, the following types and issues are analyzed, regarding their legal and ethical regularity: Corporate, tax, labor aspects, contractual relations, asset title, environmental issues, consumer relations. However, an aspect of high importance in a due diligence analysis is the ability to predict potential contingencies that such aspects may generate and to be able to know the probability of damage or loss in the future. (BLOK, 2014, p. 28)

When carrying out a corporate transaction, a company is not only valued by the value of its equity or shares. It is necessary to assess whether it can cause losses in the future due to reasons arising from its behavior in the past, or improper actions that were not corrected during the merger or acquisition of the company.

Due diligence can bring legal reliability as any company can be the object of acquisition or merger, a common fact in the business. Therefore, it is not enough for a company to prove profitable, it is also necessary for it to demonstrate that it will not



result in future losses as a result of irregular practices or operational failures that could not be detected by a good compliance program.

To be profitable in a corporate transaction, a company needs to comply since its creation and ensure that its business practices are legal and ethical, while companies that do not have a healthy standard of behavior will be considered high risk, no longer being considered for future acquisitions or mergers as they present a high probability of losses.

A well-known example of how due diligence could have given greater security to a corporate transaction and avoided high financial losses is the purchase of Yahoo, a digital services and research giant, by Verizon, a telecommunications company, which occurred in the year of 2016 for a value of \$4.8 billion. In the situation, just two months after Yahoo was acquired, there was a data leak, affecting no less than 500 million users profiles, as a result of security breaches that occurred in 2013 and 2014, therefore, well before the sale of the company. As a result of the data leak, Verizon had to pay \$35 million in fines and saw Yahoo's market value drop by \$350 million. (TRAUTMAN. ORMEROD, 2017, p. 1233)

The case cited is an example of how companies that failed to maintain a high standard of integrity can cause losses after being sold and shows how due diligence is an important tool in preventing financial losses. In the same way that financial matters are analyzed, integrity data can also be collected, such as the existence or not of cases of corruption, moral and sexual harassment and the practice of labor analogous to slavery.

An analysis of the labor and tax liabilities can also indicate whether the object of the corporate transaction may negatively contaminate the acquiring company's environment or culture, and it may be recommended not to carry out the intended corporate transaction. As a result, companies that do not practice compliance and do not adopt good social practices are no longer interesting for the market precisely because they do not exercise any kind of social role.

If due diligence is routinely performed in the corporate world, only companies that prove profitable and that exercise a social function will be desired in the market for the purposes of mergers, acquisitions and incorporations.



Due diligence in its other modalities, know your customer, know your partner and know your employee, developed with business expansionism. Historically, business was mostly done locally, or when done remotely, it included long-established partners with whom they often had personal relationships. But the development of commerce at a global level brought the need for faster sales, at the lowest price and with faster delivery, bringing with it the question about the real need or possibility of doing business only with people or companies that you already know. (MULHOLLAND, 2005, p. 60)

To help companies know who they are doing business with, a compliance tool called know your customer, or "know your customer" was developed, generally applied in more advanced compliance programs, in which studies are carried out to know your audience target, including preferences, behaviors and consumption trends. Through this tool it is possible to identify how the consumer sees the company, what reasons made him choose the product offered, how the interaction with the product occurs, as well as the positive and negative contributions resulting from this interaction.

The "Know Your Customer" procedure was created by the banking sector and follows a recommendation of the Basel Committee, in which banks must establish a set of well-defined rules and procedures with the objective of knowing their customers, seeking to identify and know the origin and constitution of the client's equity and financial resources. It is a critical element in the management of banking risks, as its correct use helps protect the reputation and integrity of institutions and the banking system, reducing the possibility of banks becoming instruments or victims of financial crimes. (ABBI, 2005)

The "Know Your Customer" process can be deployed in other facets, one of which allows the analysis of business partners, as the maxim "Know Your Partner". This aspect applies to the analysis of partner companies, or service providers which they do business with. The company's management must manage the relationships and agreements with third parties, evaluating the degree of risk that these third parties bring to the organization's business.



Minimum investigation procedures proportional to the level of the contractual relationship maintained must be carried out when contracting and renewing the contract, under penalty of irregular practices by the partners resulting in risks of corruption, violation of labor, tax, antitrust rules, among others. (ABBI, 2005)

Currently, technology provides real-time data on everyone, in different measures. Regarding companies, it is not difficult to obtain data about their corporate composition, their financial health, their assets, the lawsuits in which they are involved, as much of this data is public, or at least non-confidential, with simple access. In a society where every step of companies is monitored, it is important to maintain relationships with partners or companies who share the same worldview and who seek to collaborate to reduce inequalities and promote the common good, considering that objectives in common can be achieved more easily through concerted efforts.

In the business world, nobody grows alone. It is important to have good partnerships based on common goals and not simply because of personal affinities or vested interests, which can result in unsuccessful partnerships.

Through "Know Your Partner", it is possible to assess those with whom you do business and obtain details of their objectives, their financial health, their commitment to legal compliance and their contribution to the community where it operates.

It is not uncommon for well-known brands with global reach, with finances more solid than many countries, to damage their reputation because part of their supply and distribution chain contains companies that are recognized for disrespect of labor standards, disrespect of human dignity, work analogous to slavery, excess of overtime, payment of unworthy wages, among other situations that should no longer exist in today's world, but which are the reality in the vast majority of poor or low-developed countries. The compliance program will ensure that these partners are no longer sought after in the market, being gradually replaced by new partners who demonstrate that they are in legal accordance.

In the labor sphere, due diligence takes on the characteristic of "Know Your Employee", in which the worker is the target of behavior research. In this scenario,



knowing the human material that makes up a company can result in different benefits, allowing for an understanding of the existence or not, of a common profile of employees and also anticipating possible points of ethical or moral weakness.

Initially it showed its relevance in the banking sector, in which those who engage in illegal or unethical practices are willing to pay significant amounts to corrupt the employees of institutions in order to obtain the relaxation of security controls as a way to facilitate money laundering crimes.

Therefore, procedures were established to provide adequate knowledge of employees working in banking institutions, starting from the hiring of the employee and remaining in force with training and programs aimed at preventing and combating financial crimes, as well as related maintaining an ethical and professional conduct. (ABBI, 2005)

Through this technique it is also possible to identify what the employees' desires, the ways they see the company and how they evaluate the work environment itself. This instrument allows any problems arising from relationships in the work environment to be anticipated, offering employees solutions to problems that the company could not possibly be aware of, except through an objective study.

In terms of the company's social function, maintaining a healthy work environment results in dignity for workers, who feel valued through their workforce and reduces their chances of being co-opted to commit acts of corruption. The work environment in which harmony among employees prevails, results in more productive working hours and workers more engaged in the company's mission, replicating the culture of compliance.

By avoiding relationships with suppliers or partners involved in corruption or disrespect for human and labor rights, due diligence allows the harmful practices reported to cease to be profitable for the exploiters, who will have to offer better working conditions for their own employees, or in cases of corruption, it will have a ripple effect in the implementation of permanent compliance programs with partner companies.

If every corporation with high economic assets seeks to relate only to other companies that also practice compliance, the culture of compliance will promote the



common good and the corporate social function by complying with standards and providing better working conditions, resulting in a greater profitability for those who have invested in law enforcement. In all situations, due diligence helps partner companies, employees, third parties, suppliers and customers to seek to relate only to those who practice the conduct of compliance.

According to the above, an ethical and moral culture of compliance is being expanded, resulting in better working conditions, greater security in contractual relations, protection of the environment and certainly in greater profit by the reduction of financial losses resulting from corruptive practices.

6 FINAL CONSIDERATIONS

The current world has brought different changes to the contract institute, such as digital contracts and smart contracts. At the same time, its relevance was highlighted and raised to the constitutional level, through the recognition of its social role. Neoconstitutionalism brings together the common good and private interests in the search for a fairer, more egalitarian and prosperous society, giving the contract a prominence never seen as an instrument of transformation and social improvement. Even with so many new facets and renewed relevance, ways are sought to guarantee contractual security, allowing for business to be carried out with the lowest possible risk level.

The countless corruption scandals discovered in Brazil in the last decade have intensified the search for trustworthy companies that demonstrate credibility and have ethics and transparency in their actions, making it essential to adopt internal mechanisms that can prevent and regulate such practices. (CAVALARI, 2020, p. 41) From this need, the Compliance program emerges, as way for companies to self-regulate and act within the legality, a method that has been widely disseminated and implemented in large multinational companies that is beginning to be observed with greater attention by other smaller national companies. (ZIEBELL; FALCÃO, 2020, p. 457)



In this scenario, compliance, despite being a new institute, has been disseminated as a great instrument for expropriating corruption, encouraging good practices and, consequently, seeking the common good, having several management tools that can be implemented in the corporate environment to allow that a company suffers less financial losses resulting from illegal acts, and thus obtains greater profits. The compliance culture can also generate direct and indirect social benefits for societies where the companies are inserted, not only as a way to save money, but above all, as a way to promote common good, spread the culture of doing what is right and promoting social and ethical values.

Also, the consolidation of and compliance culture (TEIXEIRA and RODRIGUES, 2021) in Brazil will encourage Brazilian entrepreneurs to invest in internal control policies to comply with rules and regulations, in order to mitigate risks, thus avoiding the institution's commitment to illegal conduct, as well as strengthening the company's image before society in general and, in particular, before its customers, partners and employees. (BLOK, 2014, p. 24)

As a result, compliance can provide greater security in business, through implementation of its management tools, among which, risk assessment, "Know Your Customer" and due diligence were the object of the study, concluding that in all the situations analyzed, the tools have great potential to promote positive social changes providing the companies' social role effectiveness as a constitutional principle to be pursued.

Knowing your workfield, your product and the risks involved in the activity are important for company to take position, add greater value to its brand, define its objectives and its contribution to community. Drawing profiles of those with whom the company relates, whether consumers, employees or business partners, also result in more beneficial practices for those involved, as it is possible to provide a better product or service to be offered, a healthier business environment in which everyone seeks the best results and productivity.

Requiring that a partner company has legal and ethical practices since its foundation, under penalty of not considering it interesting in the corporate mergers



and acquisitions market, also results in safer business for all involved, since companies in compliant seek and encourage new one's business with each other.

From this study analysis, it was possible to conclude that compliance program implementation and dissemination have enormous potential to bring benefits to companies, to those who are part of the business, and to the consumers who relate to them. With the benefits brought by compliance, companies certainly collaborate with each other for the constitutionally established social role of building an ever more just, egalitarian and prosperous society, in which respect for human and social rights can be related to profit.

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