





Cooperación alemana para el desarrollo, implementada por la Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

STUDY ON COMPLIANCE FROM THE PERSPECTIVE OF THE PUBLIC SECTOR

STUDY ON COMPLIANCE FROM THE PERSPECTIVE OF THE PUBLIC SECTOR

Published by:

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Registered offices

Bonn and Eschborn, Germany.

Measure adopted in the framework of the Project Support in the Implementation of the OECD's Recommendations in the Governance Area, Sector Programme on Anti-Corruption and Integrity and the Governance, Security and Social Inclusion Sector Network on Democracy and the State in Latin America and the Caribbean.

Responsible:

Hartmut Paulsen, Director
Measure adopted in the framework of the project Support in the Implementation of the OECD's Recommendations in the Governance Area
Avda. Los Incas 172, 6th floor, El Olivar, San Isidro, Lima 27, Peru.
Phone: (51-1) 421-1333
Web: www.giz.de

Content's reviewers:

Fiorella Mayaute, Leading Advisor Erika García-Cobián, Senior Advisor

Elaboration of contents:

Susana Silva Hasembank, GIZ Consultant

First edition: Lima, Peru, November 2017.

100 copies.

Design:

R & C HOLDING S.R.L.

Diagramming

NEVA STUDIO S.A.C.

Printed, September 2018:

NEVA STUDIO S.A.C.

Legal catalogue number in the National Library of Peru N° 2018-13741

Business Name:

Cooperación Alemana al desarrollo – Agencia de la GIZ en el Perú Prolongación Arenales 801, Miraflores. Lima, Peru.

All rights reserved, total or partial reproduction prohibited by any means without express permission of the publishers.

On behalf on

Federal Ministry of Economic Cooperation and Development (BMZ) of Germany

CONTENTS

Presentation	5
Acronyms	7
Introduction	9
CHAPTER I	
Compliance in the Private Sector. A Theoretical Framework	14
1. Legal persons' liability	16
2. Compliance and its components	19
3. Compliance in private and state owned companies	39
CHAPTER II	
Compliance from the Government's Perspective	44
1. General concepts and foundations for application	46
2. Towards a model of integrity: Elements associated with integrity present in the Peruvian public administration	52
3. Particularities of government compliance by componentss	66
CHAPTER III	
Advice from the German development cooperation, implemented by GIZ	92
Final considerations	99
Bibliography	101

PRESENTATION

This document - the "Study on compliance from the perspective of the public sector" - is a contribution of the German development cooperation, implemented by GIZ to the debate on compliance and its relationship with the integrity instruments in the public sector. In effect, compliance oriented to foster integrity and fight corruption is implemented more widely in the private sector. However, it is possible to hold that its particularities and elements also match developments that have arisen in government administration.

Based on this observation and considering the logic of public management, we have preferred to call it the Integrity System for the public sector, after having collected the good international practices of the Organization for Economic Cooperation and Development (OECD), the Organization of the United Nations, the World Bank, the Latin America Development Bank (CAF), the World Economic Forum, the International Chamber of Commerce, the Basel Institute and Transparency International.

In this framework, we believe that the Integrity System is a tool that effectively leverages the implementation and articulation of efforts to foster integrity and fight corruption in State institutions. And this is so because it not only identifies the key factors of a strategy of holistic and synergistic action for integrity, but, at the same time, proposes to build it around an institutional framework based on firm, transparent and committed leadership.

Considering the complex and multi-causal problems in which the phenomenon of corruption is inscribed and given the importance of engaging in sustained efforts to accomplish the integrity of behaviors among individuals and state organizations, we hope that this document contributes to deepen the debates on the usefulness of these tools, as well as becoming a potential reference in designing cooperation measures conceived and executed by German development cooperation, implemented by GIZ, together with its partners and counterparts, to build sustainable capacities.

German development cooperation, implemented by GIZ. November, 2017.

Hartmut Paulsen

Director Support in the Implementation of the OECD's Recommendations in the Governance Area

ACRONYMS

APEC — Asia-Pacific Economic Cooperation

BMZ — Federal Economic and Development Cooperation Ministry

CAN — High Level Anticorruption Commission

CNA — National Anticorruption Council

CoST — Construction Industry Transparency Initiative

USA — United States of America

EITI — Extractive Industry Transparency Initiative

FCPA — Foreign Corrupt Practices Act

G 20 — The Group of Twenty

GIZ — German development cooperation, implemented by the Deutsche Gesellschaft für

RDM — Internationale Zusammenarbeit (GIZ) GmbH

IIRSA — Results-driven Management

INTOSAI — South American Regional Integration Infrastructure

ISO — International Organization of Supreme Auditing Institutions

ML/TF — International Organization for Standardization

MINEDU — Money Laundering and Terrorism Financing

OECD — Ministry of Education of Peru

ICB — Organization for Economic Cooperation and Development

OAS — Institutional Control Body

UNO — Organization of American States

PACI — United Nations Organization

MIP — Partnership Against Corruption Initiative

MIP — Management Improvement Program

RDB — Results-driven Budgeting

HR — Human Resources

OFG — Organization and Functions Guidelines

UNODC United Nations Office for Drugs and Crime

INTRODUCTION¹

The main asset that an entity has is its image and corporate reputation. This value is not only based on a good institutional development of a company considering the economic and financial indicators, also it is built from strict standards of integrity that ensure the consolidation of an image committed to ethics and corporate responsibility toward the community.

Thus, according to CALLE-JÓN, CASADO, MELENDO and MÉNDIZ, when they state that "corporate reputation is built based on the consistency in the perception that different stake-holders have between what the company is - mission, vision and values (identity)-, what it says - communication-, and what it does - performance-"2.

At the global level in the last 20 years, we have learned of newsworthy facts that evidenced the

involvement of big companies in serious cases of corruption and other illegal behavior, which, in several cases, have caused serious harm to their financial sustainability³ and in others, have also compromised their own subsistence in the market⁴. This context has led to a redefinition of the indispensable foundations on which to build the corporate reputation, making it necessary for it to be constructed upon principles of ethics and integrity, and that the imple-

mented prevention practices and programs sustain it.

However, in addition to the construction of a new concept of corporate reputation, in the international context has risen the necessity to identify spaces where there are cases of direct responsibility of legal persons in the face of unlawful conduct involving their governing bodies. Thus, several countries have created solid regulatory frameworks that ensure the autonomous investigation

¹ This document has been prepared based on the "consulting services for the construction of a proposal for an advisory model, from the German development cooperation, implemented by GIZ on Public Compliance" which was developed by Magister Susana Silva Hasembank.

² Riel, C.B.M. van / Fombrun, C.J., 2007). Essentials of Corporate Communication. Implementing practices for effective reputation management. New York: Routledge. In "Integridad, Comportamiento Ético y Reputación Corporativa de las Grandes Empresas Españolas. [Integrity, ethical behavior and corporate reputation among large Spanish corporations]. Callejón, Casado, Melendo and Méndiz. Madrid. 2013.

³ Settlement payments for corruption under the Foreign Corrupt Practices Act include SIEMENS (800 million dollars in 2008), ALSTOM (772 million in 2014) and KBR/ Halliburton (579 million in 2009) among the 20 largest. See http://www.fcpablog.com/blog/2017/1/3/the-2016-fcpa-enforcement-index.html

⁴ ENRON, a US energy corporation, declared bankruptcy in 2001 after unveiling of bookkeeping that resulted in a loss of over 11 billion dollars for its shareholders.

and sanction to the companies that have participated in corrupt behavior and money laundering ⁵. Without prejudice to the foregoing, while the company is exonerated from any liability regarding criminal behavior, their reputational value and image tend to be negatively affected and may even be detrimental to its financial sustainability.

Therefore, in a national and international context marked by allegations of great media repercussion on corruption and money laundering that have seriously affected big corporations. It is particularly relevant to observe the worldwide process of more and more public and private sector enterprises internalizing the importance of corporate reputation, so thus, it is indispensable to adopt higher standards of integrity and to fulfil mechanisms

for the prevention of corruption, fraud and money laundering through the implementation of *Compliance*.

Compliance, initially structured around the principle of regulatory compliance, today is not only a broader concept aimed at raising standards of integrity, but, above all, is a management tool whose main purpose is to consolidate an organizational culture based on ethics and integrity. To this end, Compliance takes as a starting point an organization's tools6 in place to prevent, detect, investigate and sanction corruption and other questionable practices, and adds and emphasizes the need to include three key elements that must be comprised in any anticorruption strategy: i) political will at the highest level, ii) risk management, and iii) articulation and monitoring of anti-corruption

efforts by a professional in charge who is empowered to discharge these duties.

this coordination However. scheme, initially devised for the private sector, is not stop there. Both ISO 19600 "Compliance Management Systems Guidelines" and ISO 37001 "Anti-bribery Management Systems - Requiriments with Guidance for Use" mention the Compliance system applies to all types of organizations, including, expressly, government entities in addition to, of course, state-owned companies. This is based on the fact that Compliance system components or elements include prevention, detection. investigation and sanctioning of corruption approaches as spelled out in the United Nations Convention against Corruption and that, therefore, apply to government administration.

⁵ Foreign Corrupt Practice Act, a United States law that introduces transparency mechanisms and the provisions related to the liability of legal entities in cases of acts of international bribery; UK Bribery Act (2010), English standard that criminalizes bribery for both natural and legal persons; Law on the Criminal Liability of Legal Entities of Chile (2009).

⁶ The first survey on the struggle against corruption in the private sector conducted in 2013 by IPSOS Peru on behalf of the High Level Anti-corruption Commission showed over 60% of the largest 250 Peruvian corporations had conduct codes in place and had set up internal controls and investigation mechanisms. Likewise, the 2012 Latin American Corruption Survey among Latin American corporate captains showed 81% had anticorruption programs in place, 69% had gift and hospitality rules, 61% reported training and awareness raising programs, and 51% had auditing, whistleblowing and investigation schemes.

That said, it is important to understand that Compliance in the public sector is governed by a rationale and serves a role other than in the private sector. Since the private sector seeks to create profits and benefits from regulated economic activities, compliance fulfills a dual role of providing legal protection against eventual illegal activities and ensuring corporate financial sustainability. In the public sector, on the contrary, the aim pursued is the serve the collective interest and general welfare, foster the creation of public value and guaranteeing the provision of services that meet general needs. For this reason, the logic of compliance should be aimed at avoiding risks that threaten to subordinate the general interest due to corrupt and irregular practices - to the particular interests of a few. Along this line, compliance in the public sector should be directly oriented to encourage mechanisms to prevent corruption and consolidate public integrity as an indispensable input for the achievement of institutional objectives.

Bearing in mind the different approaches in the private and public sectors, this document analyzes the particularities and challenges posed by the implementation of Compliance in the state administration, its necessary articulation with existing tools in the State, as well as the comparative advantages that said model would generate to increase the levels of efficiency and probity in the public function. Particular emphasis is placed on the relationship between Compliance and Internal Control, since the latter is an integral process that must be implemented and developed by all the entity's personnel in order to provide reasonable assurance that the entity's general objectives are reached. Although the final goal of Compliance is also to achieve institutional objectives, it is clear that its immediate objective is to raise the standards of integrity and ensure adequate compliance with standards and processes as an indispensable input to achieve those objectives. Having said that, the rationale behind public compliance is to consolidate as a strategic or methodological tool

that effectively contributes to the achievement of the institutional objectives of an entity, that is, its internal controls.

For this purpose, the report is structured as follows: the first chapter analyzes compliance as a new management tool that is born from the private sector in order to raise standards of integrity in a corporation, as well as prevent, detect, investigate and sanction corruption and other questionable practices. To this end, the components that make up the compliance process are analyzed through a comparative review of the main guides, manuals and principles prepared by international organizations specializing on the subject such as the United Nations Office on Drugs and Crime (UNODC), the Organization for Economic Cooperation and Development (OECD), Transparency International, the Partnership Against Corruption Initiative (PACI) of the World Economic Forum, APEC, as well as ISO 19600 and ISO 37001.

The second chapter assesses the relevance, necessity and feasibil-

ity of applying the Compliance model in the public sphere, taking into account not only the different purpose and nature of a public entity with respect to a private one, but also the complex organization and regulations that govern State entities and for which reason we focus on Peru with some references to other countries. Along this line of thinking, for each one of the components of Compliance -identified in the preceding chapter- we analyze the relationship and levels of articulation with the instances and institutions already existing in State organization. As mentioned above, the study particularly emphasizes the relation between Compliance and Internal Control, since the logic of integrality that sustains the latter (Internal Control) has contributed in many cases to the current Compliance model.

Finally, the third chapter puts forward some guidelines for the technical advice provided by German development cooperation, implemented by GIZ that may be used in capacity building projects to raise the integrity standards in government entities. These guidelines contemplate the development of a structured integrity model in public administration based on the principles that inform the implementation of Compliance in the private sector and the guidelines contained in

ISO 19600 and ISO 37001, as well as the OECD Recommendations on Public Integrity and the G20's High-Level Principles on Organizing against Corruption. In essence, the public integrity model underpins the need to consolidate within the public administration a policy to organize existing tools to optimize management and prevent, investigate and punish corruption.

For preparing this working document, in addition to the review of specialized literature on the subject and national and international standards, semi-structured interviews were conducted with local and international experts, academics and compliance officials.



PRIVATE SECTOR.

A THEORETICAL FRAMEWORK



7	The liab	ility o	flegal	persons.
	THE HAD	ILILY U	ıtegat	persons.

- **↗** Compliance and its components.
- **尽** Compliance in private and state owned companies.

12

15

35

1 The liability of legal persons

The liability of legal persons for crimes committed by its members has been widely discussed in doctrine both in Peru and abroad. Until 1970, the doctrinal position was mainly oriented to point out that a juridical person could not be subject to Criminal Law because it was a legal impossibility.

doctrinal Said development has its foundation in the Latin aphorism societas delinguere non potest -the society or the company cannot commit a crimea principle whereby criminal responsibility can only lie on a natural person, that is, the representative of the legal entity. In this line of thinking, in the face of the commission of a crime in which the legal entity has been involved, only the natural person must assume responsibility for the criminal acts, with the legal entity having only a subsidiary role or responsibility.

This theoretical and doctrinaire line has inspired various regulatory frameworks, such as Peru's, which established in Article 105 of its Criminal Code⁷ that against the punishable act committed in the exercise of the activity of any legal entity or using its organization as a conduit or cover (the punishable act), only "accessory consequences"8 ensued, which -even when they could have the same effectsdid not have the legal nature of a punishment or sanction. Precisely because of this subsidiary nature, the application of the accessory principle was circumscribed to

the scenario in which the physical and specific author of the crime had previously been criminally sentenced⁹.

This axiom has changed radically in virtue of a new vision of criminal policy based on i) recognizing the direct causal relationship of the decisions, actions, omissions and policies of a company regarding a criminal act that occurs in the business sphere, ii) "dogmatic reasons and regarding the protection of the fundamental rights of natural persons" iii) the need to generate a dissuasive

⁷ Criminal Code enacted by Legislative Decree No. 635 of April 3, 1991 as amended by Article 1, of Legislative Decree No. 982.

¹⁾ Temporary or definitive closure of premises or establishments. The temporary closure shall not exceed 5 years; 2) Dissolution of the legal entity; 3) Suspension of activities of the legal entity for a term not exceeding 2 years; and, 4) Temporary or definitive prohibition of carrying out future activities of those that involved the legal entity in the commission, favoring or concealment of a punishable act. Such temporary ban shall not exceed 5 years.

Plenary Room Agreement 7-2009/CJ-116 adopted by the Judiciary on 13 November, 2009.

¹⁰ Luis Rodríguez Ramos. Societas Delinquere Potest. New dogmatic and procedural aspects of the issue. In http://perso.unifr.ch/derechopenal/assets/files/anuario/an 1996 08.pdf

effect against the involvement of companies in unethical practices¹¹ and iv) ensure criminal acts involving a company unscrupulously pursuing financial objectives will not remain without punishment¹².

The doctrinal development has finally established the importance of recognizing the existence of the "business criminality" concept as the sum of all the crimes that are committed from a company or through collective entities¹³. In other words, it is the manifestation of economic crimes committed within the company against the company itself or against members of the company¹⁴.

The justification for the above is that the legal entity is a full-fledged hierarchical body with a clear power to govern, which should be therefore required a greater duty in avoiding certain serious irregularities, so that the company should be held liable for creating the conditions to commit a crime.

Based on these concepts and the need to avoid any impunity for criminal acts involving a company, Article 26 of the United Nations Convention Against Corruption¹⁵ established the criminal, civil or administrative liability of legal persons for their participation in corruption offenses, without prej-

udice to the criminal liability of the natural persons who have committed the crimes. Along the same lines, Article 2 of the Convention of the Organization for Economic Cooperation and Development (OECD) to Combat Bribery in Commercial Transactions¹⁶, states that "each party shall take the necessary measures, in accordance with its legal principles, to establish the responsibility of legal entities for bribery by a foreign civil servant ". Also, in interpreting this provision of the Convention, the OECD has emphasized that the regulation of the liability of moral persons "should not limit liability to cases in which the persons or the natural person who commit-

According to Antonio del Moral García, magistrate of the Spanish Supreme Court, the fact that today a company can be sanctioned in the framework of a criminal process has a greater dissuasive force to implement prevention mechanisms. In La Responsabilidad de las Personas Jurídicas: [The Liability of Legal Entities]: Societas Delinquere Non Potest..., sed puniri potest! Article published in Abogacía Española. January 18, 2016. http://www.abogacia.es/2016/01/18/la-responsabilidad-penal-de-las-personas-jurídicas-societas-delinquere-non-potest-sed-puniri-potest/

¹² Marina Roig Altozano. Doctrinal article: The Liability of Legal Entities: Societas Delinquere et Puniri Potest. Alfonso X El Sabio University, Spain. In http://noticias.juridicas.com/conocimiento/articulos-doctrinales/4746-la-responsabilidad-penal-de-las-personas-juridicas:-societas-delinquere-et-puniri-potest/

SHÜNEMANN, B., "Strafrechtsdogmatische und kriminalpolitische Grundfragen der Untermehmenskriminaliät", in wistra, nt. 2, 1982, p41 .. BAJO FERNANDEZ., M, Derecho penal económico aplicado a la actividad empresarial [Economic criminal law applied to business activity], pp. 109 ss. Citation from BACIGALUPO, Silvina. Análisis Comparado sobre las Obligaciones Derivadas de los Convenios Internacionales Contra la Corrupción. Responsabilidad Penal y Administrativa de las Personas Jurídicas. Delitos relacionados con Corrupción. [Comparative Analysis on the Obligations Derived from the International Agreements against Corruption. Criminal and Administrative Liability of Legal Entities. Crimes related to Corruption). Autonomous University of Madrid. 2013.

Lascurain, Juan Antonio. Compliance, debido control y unos refrescos [Compliance, due control and refresher notions.] In: Arroyo, Luis and Adán Nieto (Directors) (2013). El Derecho Penal Económico en la era del Compliance. [The Economic Criminal Law in the era of Compliance.] Valencia: Tirant lo Blanch, p. 127
United Nations Convention against Corruption approved by Resolution 58/4 of the General Assembly of October 31, 2003.

¹⁴ United Nations Convention against Corruption approved by Resolution 58/4 of the General Assembly of October 31.

¹⁵ United Nations Convention against Corruption approved by Resolution 58/4 of the General Assembly of October 31.

¹⁶ Convention to Combat Bribery of Foreign Public Servants in International Business Transactions adopted by the Negotiation Conference of the Organization for Economic Cooperation and Development, 21 November, 1997.

ted the crime are prosecuted and convicted"¹⁷.

In addition to the international regulatory framework, in Comparative Law, more and more countries are now choosing to create a legal framework where the responsibility of the legal entity is independent from the responsibility of the individual. In Europe, the countries that have adhered to the model of direct liability of legal persons are "Holland (article 15 WED

(1950-article 51 CC (1976), Portugal (article 11 CC, 1982), Sweden (Chapter 36, 7, 1991), France) articles 121-2 ss. CC 1992-1994), Finland (Chapter 5, 8 CC, 1995), Denmark (25 PC, 1996), Slovenia (article 33 PD, 1996), Belgium (Article 5 CC, 1999), Poland (2002), Switzerland (2003), Austria (L 23 Dec. 2005), Spain (Article 31 CC, 2010)"18.

Elsewhere, express legislation is in place that establishes the autonomy or direct responsibility of

legal persons with respect to natural persons: United States (Law on Corrupt Practices Abroad, 1977), Guatemala (Article 38 of the Criminal Code), Jamaica (Section 14 of the Prevention of Corruption Act), Chile (Law on Criminal Liability of Legal Entities), Mexico (Article 11 of the Federal Criminal Code, and Federal Anticorruption Law in Public Procurement), Panama (Article 51 of the Criminal Code)¹⁹, and the United Kingdom (UK Bribery Act).

¹⁷ Annex I: Good Practice Guide to apply specific articles of the Convention to Combat the Bribery of Foreign Public Servants in International Business Transactions.

¹⁸ Bacigalupo, Silvina. Análisis Comparado sobre las Obligaciones Derivadas de los Convenios Internacionales Contra la Corrupción. Responsabilidad Penal y Administrativa de las Personas Jurídicas. Delitos relacionados con Corrupción. [Comparative Analysis on the Obligations Derived from the International Agreements against Corruption. Criminal and Administrative Liability of Legal Entities. Crimes related to Corruption.] Autonomous University of Madrid. 2013. Page 34.

¹⁹ OECD, Organization for Economic Cooperation and Development. The Liability of Legal Entities for Corruption Crimes in Latin America.

2 Compliance and its components

In 1975, media scandals in the United States related to irregular payments by companies such as Gulf Oil, Northrop, Mobil Oil and Lockheed to public officials and political parties of foreign countries where they operated, led to a general questioning of the meaning of doing business²⁰

Particularly, a scandal involving Lockheed corporation was a source of great concern in the US Congress, since the irregular payments by that company to the Japanese Prime Minister, the Inspector General of the Dutch Armed Forces and Italian political parties took place while the company was governed by rules from the US administration governing a 250-million-dollar loan. In addition, as the Washington Post editorial pointed out at the time, Lockheed was not just another US company operating abroad, but the most important US defense contractor and owned its existence to various federal loans and guarantees regarded abroad as a US government power or agency. This development significantly

hurt not only the company but also the country²¹.

These media scandals and the existence of reputational risk provided the context for enacting the Foreign Corrupt Practices Act (FCPA), which, in addition to clearly establishing the direct criminal responsibility of legal entities, with a view at raising ethical business standards, required "American corporations for the first time to appoint a Compliance Officer to avoid such practices". Thus, the FCPA is "the embryo of all anticorruption systems that have been subsequently evolved"²².

Originally, the principle of compliance aimed at ensuring compliance

with the rules containing legal obligations for the company and its personnel. Hence, its intimate relationship with what specialists call Legal Compliance or Regulatory Compliance, which account fo the fact that in many cases this task was entrusted to corporate legal departments.

However, present corporate governance requires this function to transcend the legal sphere. In fact, the basis of Compliance is not only to avoid situations that lead to a criminal sanction, but, above all, to raise the company's ethical standards through compliance with internal regulations, good practices, and sectoral regulations so that will consolidate

²⁰ Koehler, Mike. The Story of the Foreign Corrupt Practices Act. In http://moritzlaw.osu.edu/students/groups/oslj/files/2013/02/73.5.Koehler.pdf.

^{21 14} September, 1976. From Koehler, Mike. The Story of the Foreign Corrupt Practices Act. In http://moritzlaw.osu.edu/students/groups/oslj/files/2013/02/73.5.Koehler.pdf.

²² Legal Compliance. Blog. Bonatti: Penal and Compliance. In https://www.bonattipenal.com/legal-compliance-i-una-breve-historia/

and guarantee its reputational value.

That said, compliance - in its broadest meaning - is defined as the function of promoting in the company an organizational culture aimed at fulfilling its own general and specific scope obligations. In this regard, the Spanish Compliance Association defines compliance as the function "charged with the tasks of prevention, detection and (compliance) risk management through the operation of one or several compliance programs, contributing to promote and develop a culture of compliance within the organization". (Underlined by the author.)

For purposes of defining a conceptual framework on compliance, it is relevant to highlight the possibility more than one compliance program may be in place depending on the company's type of oper-

ations or the greater risks to which it is exposed. Thus, for example, a mining company can implement, due to the high specificity of its work, an environmental compliance program, in addition to money laundering or anti-corruption programs.

Much has been said about the minimum components and characteristics of a compliance program. SIEBER has focused on the actors involved in the process of identifying a company's internal values and procedures based on which he identifies three compliance models: 1. Self-regulatory compliance coming exclusively from the world of economics; 2. State and private co-regulatory compliance; and, 3. Pure state compliance²³.

While self-regulation in a strict sense gives companies a broad discretion and state regulation makes all the major decisions, co-regulation is characterized by the fact that the state's provisions set more or less detailed precepts or create structures that foster self-regulation or make self-regulatory measures binding. For this reason, co-regulation is called regulated self-regulation, an intermediate scheme combining self-regulation and state regulation, that allows a margin of discretion to those who must specify the program and the formulas to foster or push for adoption²⁴. This is concretely embodied in the inclusion of criteria for the objective attribution of criminal liability to the company, based on faulty or non-existent business organization, thus forcing companies to adopt mechanisms to prevent crime²⁵.

Thus, SIEBER systematizes the structural elements of compliance programs that could prevent

²³ Cfr. Sieber, Ulrich. Programas de compliance en el derecho penal de la empresa. Una nueva concepción para controlar la criminalidad económica. [Compliance programs in the criminal law of the company. A new conception to control economic crime.] In: Arroyo, Luis and Adán Nieto (Directors) (2013). The Economic Criminal Law in the era of Compliance. Valencia: Tirant lo Blanch, p. 77

²⁴ Sieber, Ulrich. Programas de compliance en el derecho penal de la empresa. Una nueva concepción para controlar la criminalidad económica. [Compliance programs in the criminal law of the company. A new conception to control economic crime.] In: Arroyo, Luis and Adán Nieto (Directors) (2013). The Economic Criminal Law in the era of Compliance. Valencia: Tirant lo Blanch, p. 77

²⁵ Carlos Gómez-Jara Diez: Modelos de Autoresponsabilidad Penal Empresarial. Propuestas globales contemporáneas. [Models of Corporate Criminal Self-Responsibility. Contemporary global proposals] Rodona. Navarra, 2006.

the criminality of companies and against companies, as follows:

- Definition and communication of the business values and objectives that must be respected, analysis of the corresponding specific risks within the company as well as the consequent establishment and publicity of the provisions that must be respected and the procedures for companies and their workers:
- Rationale for the responsibility at the highest hierarchical levels for the defined obiectives. values and procedures to avoid corporate crime; setting responsibilities for middle management by creating a specialized business unit (compliance department), as well as the education and training of the company's employees;
- Creation information of systems for the discovery and clarification of crimes, especially of internal controls on persons and objects, duties to inform, channel of complaints for the reception of anonymous complaints, determination of the procedure to be used in cases of suspicion that should be clarified (involving the compliance department as well as eventually State agencies) and the use that should be given to the results of the investigations (reporting directly to the company's top management), as well as the permanent adaptation and improvement of the respective compliance programs;
- Participation of auditors and external controls regarding certain elements of the compliance program and its external evaluation;

- Introduce internal measures to punish abuse;
- Setting up effective structures to encourage the execution and improvement of the aforementioned measures²⁶.

Notwithstanding Sieber's academic description of the components of compliance, it should be noted that compliance is not a fixed concept whose components are a closed mandatory list that must necessarily be implemented, as this depends on the nature and risks that every company or entity faces. In this logic, compliance is a strategy composed of a set of variable actions oriented -in the immediate term- to raise integrity standards and prevent corruption and other questionable practices with the ultimate goal of efficiently fulfilling the institutional objectives of the entity.

²⁶ Sieber, Ulrich. Programas de compliance en el derecho penal de la empresa. Una nueva concepción para controlar la criminalidad económica. [Compliance programs in corporate criminal law. A new approach to control economic crime]. In: Arroyo, Luis y Adán Nieto (Directores) (2013). El Derecho Penal Económico en la era del Compliance [Economic criminal code in the age of compliance]. Valencia: Tirant lo Blanch, p. 75.

For example, at an international level there are specialized institutions in the field that have devel-

oped guidelines recommending compliance models whose components do not correspond exactly to others, as detailed in the following table:

Table 1. Compliance components according to international guides and manuals

Institution / International Organization	Document	Content	Components linked to ethics
OECD	Guidelines for Multinational Companies 2011	Recommendations on good corporate governance and respect for local regulations	 Risk management Due diligence Transparency Program and Code of Ethics Irregularity prevention policies Protection of whistleblowers Communication Supervision and monitoring Respect for human, labor, environmental, and tax rights.
OECD	Recommendations to strengthen the fight against bribery 2009	Recommendations for the implementation of the OECD Anti-Bribery Convention	 Ethics and compliance program Anti-bribery policy Reporting channels Independent audits and controls

Institution / International Organization	Document	Content	Components linked to ethics
OECD	Good Practice Guide on Internal Controls, Ethics and Compliance. 2009	Recommendations to prevent, detect and investigate bribery	 Risk management Internal control and audits Programs or Ethics and Compliance Plan Policy on gifts, payments, trips, etc. Supervision and monitoring Top Management commitment Transparency Independent manager Due diligence Communication and training Disciplinary processes Complaints and protection of whistleblowers
OECD	Principles of Good Corporate Governance 2004	Guidelines on corporate social responsibility	 Transparency Communication Internal control and audit Clear definition of responsibilities Right and independence of shareholders Program or code of ethics Top Management commitment
OECD	Guidelines on Corporate Governance of Public Enterprises 2011	Guidelines to increase competitiveness, efficiency and transparency	 Right and independence of shareholders Transparency Communication Integrity Free competition

Institution / International Organization	Document	Content	Components linked to ethics
CAF	Corporate Governance Guidelines for State Enterprises 2010	Guidelines to increase competitiveness, efficiency and transparency	 Leadership and commitment of senion management Transparency Monitoring Right and independence of shareholders Communication Integrity Free competition
UNO	World Pact Global Compact	General principles of good business operation	 Policies of respect for human, environmental and labor rights. Anti-corruption policy
UNO	Anticorruption program on ethics and compliance for companies. Practical Guide.	Recommendations to implement integrity compliance programs in companies	 Top Management commitment Risk management Ethics and compliance program or plan Transparency Controls and audit Communication and training Complaints and protection of complainants Supervision and monitoring Program official (empowerment and independence)

Institution / International Organization	Document	Content	Components linked to ethics
	Integrity Compliance	Internal standards and principles that can guide	 Antifraud code of conduct, collusion, and other coercive practices
	Guidelines 2010	companies to implement compliance models	 Senior Management Commitment - Leadership
			 Independent and empowered compliance officer
			Risk management
World Bank			 Internal due diligence policies, conflict of interest, gifts, political contributions, charitable donations, facilitation payments, fraud and questionable practices).
			 Internal controls and audit
			 Communication and training
			 Reporting and protection of whistleblower
			 Investigation and sanction
	Principles to	Principles to implement	 Anti-corruption program or plan
	counteract bribery	compliance and integrity	Code of ethics
2	2009	programs	 Internal policies prohibiting bribery, political contributions, donations, gifts, staff recruitment and purchases.
			 Supervision and monitoring
World Economic Forum			 Responsible for an empowered and independent program.
			Due diligence
			Communication and training
			 Channel of complaints and concerns
			 Internal controls and audit
			 Support collective anti-corruption actions (agreements)

Institution / International Organization	Document	Content	Components linked to ethics
International chamber of trade	Rules against corruption 2011	Rules to promote business integrity and discard prohibited practices	 Top Management Commitment Policy against prohibited practices Empowered and independent program manager Supervision and monitoring Due diligence Training and incentive Controls and audit Communication Monitoring compliance with objectives Reporting channel and queries Investigation and sanction External certification Support collective anti-corruption actions (agreements)
FCPA Foreign Corrupt Practices Act	Hallmarks for an effective compliance program 2013	10 steps to guide companies to implement compliance	 Top Management Commitment Code of conduct with policies and procedures Independent and empowered manager Risk assessment Training and accompaniment Disciplinary measures and incentives Due diligence Reporting and investigation channels Evaluation and permanent improvement Integration of supplier companies to their compliance system

Institution / International Organization	Document	Content	Components linked to ethics
Basel Institute	Compliance functions principles in banks 2005	Principles for the implementation of the compliance function in banks	 Top management commitment Responsible for the program with empowered an independent program leader Conflict of interest policy Transparency Communication Risk management Supervision, monitoring and reporting Control and audit
Transparency International	Business Principles to Counter Bribery. 2002	Practical implementation guide against bribery	 Prohibition of bribery Participatory anti-corruption program or plan Risk management Policy prohibiting political or charitable contributions, facilitation payments, gifts Program Manager Due diligence Staff recruitment policy Training and communication Reporting channel and advice Internal control and audit Monitoring and review

Institution / International Organization	Document	Content	Components linked to ethics
NTP-ISO 37001	Anti-bribery Management Systems 2017	Guidelines to implement an anti-bribery management system	 Evaluation of the company's context Leadership and commitment of senior management Anti-bribery policy with implementation and compliance manager Action plan defined in terms of risk management Support and resources for implementation Appropriate personnel hiring processes Communication and training Knowledge management policy Due diligence Controls and audit Similar gifts and benefits policy Reporting channels, anonymous reporting and whistleblower protection Investigation and sanction mechanisms Evaluation, monitoring and supervision of the anti-bribery system Continuous improvement of the system

As the development of the documents cited in Table 1 is absolutely valid, for the purposes of preparing this document, a comparative analysis of the components in each of the documents has been carried out and the following common denominators have been identified in a model of compliance:

a) Commitment of senior management.

The commitment of senior management is the political will of the highest authorities of the entity to establish an organizational culture based on integrity. It supposes providing permanent support to all the activities and actions oriented to attaining this goal, as well as establishing the necessary instances and allocating sufficient funds to contribute to that purpose. Their commitment needs to be stated expressly before the collaborators themselves, stakeholders and the public in general.

manifestation The of such commitment can take various shapes. For example, through the approval, implementation and dissemination of an ethics and compliance program, approval of a code of conduct for the entity, updating of integrity policies, conducting training events on ethics, incentivizing staff for taking initiatives aimed at raising standards of integrity, transparency of decisions adopted, constant communication with collaborators, active participation of the authorities in the activities for the sake of integrity, exemplary adherence to the values that sustain the culture of integrity, among others.

It is vital to guarantee a real commitment, that is, not only that expressed in writing, but materialized in the behavior, attitude, example, support and participation of senior managers in activities aimed at promoting a culture of integrity. In fact, to limit oneself to the signing of commitments, or to have written documents that

are not oberved by the highest authorities of the entity, would have a totally effect adverse on the purpose sought.

In addition to the concrete manifestation of senior management's commitment, the Practical Guide for Businesses of the United Nations suggests the following actions:

- "Speaking at employee meetings about the fundamentals and importance of the program;
- Publicly praising those employees who have applied the company's values in practice, even in the event that the act has resulted in the loss of a business opportunity for the company (eg, the rejection of a contract that could only be won through an act of corruption);
- Addressing relevant business partners (eg, joint ventures, supplier agents) and other external stakeholders (eg, investors);
- Mentioning the anti-corruption commitment in publications

for the external public, such as the annual report or the corporate civic responsibility report;

- Participating in training and communication activities; and,
- Behaving as a role model"²⁷.

b) Risk management.

This component is one of the most important components of the Compliance structure or model since it provides the starting point in defining the emphasis and priorities to be assigned to activities for the prevention, detection and response of corruption.

Within the risk approach, it is essential to understand that all public and private entities, as well as individuals, are exposed to different types of risks without that implying a priori that there are weaknesses in the entity.

Thus, the risks can be economic, liquidity, operational, credit, financial, market, political, legal and

reputational, it being so that in each of them we can find actors and internal processes (personnel of the corporation itself, processes of purchase, etc.) or external actors and processes (partners or suppliers, economic recessions, social conflicts, etc.).

The importance of identifying risks and analyzing the size of their potential impact lies at the foundation of the actions that need to be undertaken to reduce the risks' incidence. In this way, the risk approach allows making more and better informed decisions, which guarantee adequate envisaging and planning of preventive and control measures.

Since an entity faces different types of risks, it is necessary to identify those that are directly related to corruption or improper practices. In this regard, although the Practical Guide for Developing an Anti-Corruption Ethics and Compliance Program for UNODC Companies identifies

legal, commercial and reputational risks as the ones related to corruption in a company, they can also include risks of various other types of irregular events (fraud, money laundering and terrorism financing) in which a company could potentially incur through its personnel.

The identification and evaluation of these three types of risks (legal, operational and reputational) must certainly lead to the need to adopt actions aimed at preventing the commission of any event that could generate a legal consequence such as a fine, compensation payments or incarceration of any of its collaborators, but it must also lead to prevent any event that affects the company's reputation. Indeed, in regards of corporate reputational risk, a company must not only adopt legal compliance measures, but also measures to observe integrity standards that avoid any situation that questions its business ethics.

c) Compliance and integrity policies

A compliance model must be based on a set of policies, procedures and actions that the entity must implement in order to a) treat (transfer, absorb or mitigate) the identified risks, b) comply with the general and specific regulations applicable to the entity, and c) raise the integrity standards of the legal entity.

In this regard, it is important to reflect the compliance model's clearly defined policies into documents that guide staff on what can and cannot be done, guidance for employees and expected behaviors from the staff to ensure the entity's integrity culture. Along this line, it is important to visualize and materialize the following elements:

Anti-fraud, anti-corruption and anti-ML / FT policy. It is comprised of the principles and rules that employees and business partners must take into account in any process within and outside the entity. This policy should contain clear concepts that make it easier for staff to understand the definitions and modalities of fraud and corruption (as well as their differences) included in the internal standards, which could put them at risk of incurring illegal or questionable practices pursuant to the regulations of the country where the entity is located, as well as in the applicable international conventions.

- Conflict of Interest Policy, which must identify situations of conflict between the institutional interests of the company for which the collaborator works and the personal interests that the employee may have or represent. The policy should establish the mechanisms of prevention, detection and management, as well as the reputational limits and risks that can entail a situation of even only potential conflict.
- Gift Policy, where specific rules are defined regarding what can be received or not as a gift, the limits of entertainment

gifts, the procedures regarding how to proceed before a donation, its registration, situation or context, the identification of gift givers, etc. These rules should establish a clear difference between what can be either a representation gift or "facilitation". The gift policy must include both the limits of what a collaborator can receive and the limits of what the company delivers as representation. Along these lines, political or charitable contributions, as well as travel expenses, should be included in the policy.

A Due Diligence Policy requires the prior identification of the relations that the company has with its stakeholders, as well as the level of interrelation and eventual impact in front of a problem that could affect the external actor. This interrelation determined the level of diligence required, which can range from transmitting the policy to demanding the same standard is adopted by the company. • Integrity Incentives and Recognition Policy. As important as the timely detection and sanction of personnel that engage in questionable practices, is the recognition of good practices and compliance with the standard. This implies a proactive stance on the part of the entity in order to motivate, through recognition, the adoption of good practices supported by values.

In order to give visibility and strengthen each of the policies, they can be prepared and approved separately. However, it is also possible they can materialize in a single document such as the institutional code of ethics or its internal work regulations.

However, complementary to the definition of the institutional integrity policy and the fight against corruption, it is important to establish strategies to guarantee compliance with said policy, which

may be contained in an action plan with scheduled activities, with indicators and definition of those responsible for its execution. All the staff should be involved in its execution, and preparation should be a participatory process within the entity, with a clear definition of tasks and efforts.

The entity's policy, as well as its action plan, should be known not oney by its personnel, must also be shared with other stakeholders and the general public to facilitate monitoring. It is also important to set mechanisms for continuous monitoring of the plan through measurement indicators that, in turn, allow a feedback and learning process to give sustainability to the compliance model.

d) Transparency and accountability

Companies must inform their collaborators and stakeholders

about their progress in creating their integrity policy and achievements of their compliance program, including the dissemination of any sanctions imposed. This strengthens the commitment of the entity and generates greater confidence and legitimacy.

Regarding the mandatory or not access to information, the levels of legal requirement for transparency differ between a public and a private entity²⁸. Public companies are governed, for the most part, by the regulatory framework applicable to public entities that establishes the obligation of State entities to provide information to the citizens, except when such information is secret, reserved or confidential.

In the case of private companies, there is no specific legal framework that obliges companies to make information transparent. However, it is a good practice to

In Peru, Supreme Decree No. 043-2013-PCM that approved the Conformed Text of the Transparency and Access to Information Law establishes the obligation of State entities to provide information to the citizens, except when said information has a secret, reserved or confidential nature. This obligation also applies to private entities that manage public resources (such as Peruvian state-owned companies under the scope of FONAFE). In the same line, Colombia has enacted Law No. 1712, Law on Transparency and the Right of Access to National Public Information of March 6, 2014; Chile has Law 20,285, Law on Transparency of Public Service and Access to Information of August 20, 2008, amended on January 5, 2016.

generate mechanisms of maximum transparency - safeguarding confidential or reserved information according to its business line to build trust by collaborators and stakeholders. One way to realize this will is by joining transparency initiatives in the private sector such as the Extractive Industry Transparency Initiative (EITI) ²⁹, the Transparency in the Construction Sector Initiative (CoST) ³⁰ or the Open Contracting Partnership³¹.

Transparency being a crucial element in any strategy to prevent corruption and guarantee integrity, it is essential to regulate adequately the mechanisms of access to information, considering that, in the case of public entities, this component should have a higher level of regulation and verification of compliance with active and passive transparency.

e) External and internal controls, and auditing

The accounting, economic and financial management of an entity must be permanently monitored and controlled in order to ensure compliance with the applicable rules and processes, as well as ensuring corrective measures against non-compliance.

In this regard, in every public and private entity there are processes and instances in charge of internal and external control, whether prior, simultaneous and subsequent, as well as mechanisms to audit the execution of resources. Notwithstanding these existing and mandatory tools, it is a priority for the entity to guarantee that the control tasks are carried out in the most impartial and truthful way possible so they will result in sound evaluation of actual events within the entity.

For this purpose, it is essential to differentiate the functions of External Control, Internal Control, Audit and Risk Management, taking into account the indistinct denomination that frequently these functions receive in both the public and private sectors.

Regarding control, its purpose and types, it is essential to resort to audits' fundamental principles included in the Lima Declaration on the Basic Lines of Government Control³². Article 1 of that document establishes that "the institution of control is immanent to the public financial economy". Control is not an end in itself, but an essential part of a regulatory mechanism that must point out, in due course, the normative deviations and infractions of the principles of legality, profitability, usefulness and rationality of financial operations, in such a way that the appropriate corrective measures can be

²⁹ See https://eiti.org/es

³⁰ See http://www.constructiontransparency.org/home

³¹ See https://www.open-contracting.org/?lang=es

³² INTOSAI. Declaration of Lima on the Basic Control Lines. Approved by the IX INTOSAI Congress gathered in Lima in 1977.

adopted in each case, the responsibility of the guilty body can be determined, the corresponding compensation can be demanded or the determinations that impede it can be adopted to, at least, hinder the repetition of such infractions in the future".

Control, then, emerges as a basic principle for all types of organizations, whether public or private and may be prior or subsequent, as well as internal or external. External control is performed by an organ or entity outside the organizational scheme of the institution that must be controlled, that is, independent from the entity. In the case of private companies, this control is carried out by independent auditing corporations; and, in the case of public entities, it is carried out by the Supreme Audit Institutions. Peru defines external control as "the set of policies. norms, methods and technical procedures, which the Comptroller General or another organ of the System may apply (...)"33.

Internal Control, unlike external control, as stated in the Lima Declaration, is carried out within the entity by bodies that "necessarily depend on the director of the department in whose organization they were created". Thus, in private corporations, the Internal Control function is performed by auditing bodies within the framework of corporate governance principles.

In public entities, according to the Guide for Internal Control Rules of the Public Sector (INTOSAI GOV 9100), Internal Control is defined as the "integral process carried out by management and personnel, and is designed to deal with risk and to give reasonable assurance that in achieving the mission of the entity, the following management objectives will be achieved:

- Orderly, ethical, cost effective, efficient and efficacious execution of operations.
- Compliance with obligations.
- Compliance with applicable laws and regulations.
- Safeguarding of resources to avoid losses, misuse and damage ".

Internal Control is a broad-based comprehensive process that seeks to ensure compliance with the institution's mission and, as such, must be carried out by all the staff of the entity as an inherent part of Demming's management and continuous improvement cycle in each of its four stages, namely i) Plan, ii) Do, iii) Verify, and iv) Act.

That said, without prejudice to each or entity or country's model of Internal Control³⁴ in their implementation, the entities should be clear that the success of Internal Control and,

³³ Article 8° under Law 27785, Ley Orgánica del Sistema Nacional de Control y de la Contraloría General de la República [Organic Law of the National Control System and the Comptrollership of the Republic*]. July 2002.

Internal controls have evolved standardized concepts for easier enforcement by corporations and state entities. The most used and referred models include: i) COSO, Committee of Sponsoring Organizations of the Treadway Commission (USA), ii) CoCo, Criteria of Control Board (Canadá), iii) ACC, Australian Control Criteria (Australia), and iv) CADBURY (UK).

therefore, in the achievement of institutional objectives, depends significantly on the organizational development, knowledge and operational capacity of the human capital that sustains the entity. Hence, the importance as a prior step to establishing an Internal Control management strategy of identifying existing risks in order to mitigate them efficiently and effectively.

This, precisely, is a point of meeting and full convergence between the Compliance model and the Internal Control model and. therefore, this section presents Risk Management as a component of the Compliance model. However, despite the fact that risk assessment and management is associated both with the implementation of Internal Control and Compliance, it (Risk Management) must be understood as an indispensable management tool that has a weight and importance of its own in the efforts to optimize institutional results and preventing corruption.

Finally, beyond the name of the instances in charge of the external and internal control functions, the existence of both functions must be guaranteed, as well as the adequate provision of logistical conditions for their optimal development of them.

For this, it is essential to take into account the following: 1) the process of hiring, designing and appointing the personnel in charge of the control processes must be very careful to have in place not only qualified and competent professionals, but, above all, honest people who can resist any type of interference; 2) the necessary conditions must be provided to guarantee that the control processes are carried out periodically, complying, for that purpose, with the rules enacted by the regulatory organizations or governing bodies in the matter; 3) it is necessary to engage the senior management of the entity by reporting results, in order to introduce the required corrections in a timely manner.

f) Communication and training

The communication component is of vital importance to align the collaborating personnel of the company with the institutional objectives and with the ethical priorities of management. Communication must ensure that all the messages and policies are not only transmitted but also incorporated into the daily tasks inside and outside the company, in order to build a robust ethical organizational culture.

For this, it is advisable to ensure the following:

- Induction to the incoming staff regarding the policy of the entity, through the delivery of simple and didactic manuals, or workshops.
- Differentiated training by levels of responsibility.
- Ongoing training to promote ethical behavior, identify the possible infractions in which a collaborator may incur; the

differences between an offense and a crime, as well as the different types of crimes. Training should also involve disclosing the possible sanctions that such infractions or crimes entail.

- Involvement of management personnel in training activities.
- Existence of information channels, be it the website, emails or mural bulletins. Also, if necessary, releases in greater national scope open media.

Along the same line, the communication process must also - in a different dimension - reach the stakeholders and the general public not only to make known what is being done, but also, from the viewpoint of social responsibility, to push to adopt better standards of integrity throughout the community.

g) Complaints channel and mechanisms to foster complaints

In order to strengthen and guarantee the effectiveness of the

supervisory and control mechanisms of the entity, it is essential to have an effective channel for the processing and effective resolution of complaints. This channel should seek to facilitate the filing of complaints, for which it is advisable to enable the required mechanisms on the web, create a special email account, open a telephone line with due guarantees, and establish a mechanism for the direct and personal filing of complaints. The purpose of all this is to build confidence in potential whistleblowers or informers in order to achieve the ultimate objective of encouraging reporting and identifying and punishing the perpetrators of prohibited or questionable practices.

Likewise, to foster whistleblowing, it is essential to establish mechanisms to guarantee anonymity in filing complaints and / or the reserve of the identity of the whistleblowers, and to establish protection mechanisms for whistleblowing. To do this, the entity must provide specific protection measures against eventual arbi-

trary dismissal, harassment or hostile attitudes to the detriment of whistleblowers.

Creating complaint channels is a passive function of the entity. The existence of the complaint mechanism is disseminated to then expect for information to arrive. In this regard, it is advisable to establish additional mechanisms to identify workers that could potentially incur bad practices in future. Such mechanisms are, for example, polygraph or integrity tests.

Hand in hand with the reporting mechanisms, pre-established procedures must be ensured to investigate irregular events and, if appropriate, sanction them. To that extent, it is not enough to have a clear procedure, but also to ensure adequate conditions for the sanctioning body to objectively exercise its functions. A totally feasible and legal alternative in this respect is the outsourcing of the processing of complaints to avoid possible staff bias.

As part of the necessary persecutory work that the entity must

perform with respect to questionable practices, a mechanism to secure the complaint before third party competent authorities must also be generated to hear the irregular facts.

h) Ongoing oversight and monitoring

As indicated above, Compliance is a set of policies and procedures aimed at consolidating an ethical culture in the entity. To do this, the policies and procedures are defined based on the identification of existing risks, which, for the rest, are not static. Therefore, it is essential to periodically evaluate the validity of the risk analysis that gave rise to the Compliance model, to identify its effectiveness, the gaps that could exist, the sufficiency of the program for a stakeholder, etc. Based on this evaluation, which should be preferably performed annually, the program must be adjusted by expanding actions, modifying them or emphasizing certain aspects for a particular interest group.

i) Compliance program official

In order for Compliance components to fulfill the purpose for which they are implemented, it is essential that the company entrusts the function of follow up, oversight and evaluation of the program to a person with leadership qualities, highly empowered by the highest level of authority at the entity and with autonomy in the development of his/her functions.

Thus, at least the following should be foreseen:

The official must have all the logistical conditions that the program or model of intervention requires according to the risks. In this line, the dimensioning of the logistics, human resources and budget support of the organic unit that supports its task, will depend on the sensitivity of the company's business line, as well as the inherent risk to which the entity is exposed.

- The official must be a senior official appointed by the highest instance of the entity. This official should report to the board or the owner of the entity.
- Without prejudice to appointment by and trust of top management, it is essential to guarantee full autonomy and independence of the functions to be developed in order to achieve objective and real monitoring and control function.
- It should be kept in mind that the Compliance Officer does not own the existing risks or the entity's control processes. This official develops a monitoring and articulation function among the management departments responsible for these processes. Hence the maximum importance of the hierarchical level and empowerment received from the board.
- Notwithstanding said limitation, there is nothing to prevent the entity from seeking to assign the Compliance Offi-

cial certain functions related to the promotion of ethics and integrity, and the fight against corruption. Thus, for example, it is entirely feasible and, even advisable, to assign the Compliance Officer tasks related to transparency, ethics training (in coordination with human resources), promotion of communication and dissemination (in coordination with the press area), incentives for good practices, reception and processing of complaints, and management of whistleblower protection mechanisms.

 The Compliance Official must guarantee a process of permanent accompaniment and induction to personnel in the topics associated with the Compliance program, and assume the role of consultation instance regarding the doubts that may exist in the compliance or not of the established ethical precepts by the entity.

3 Application of compliance in private and state-owned companies: a model for liability of legal persons in Peru

a) Normative framework: Law No. 30424 as amended by Legislative Decree No. 1352

Taking as reference the English, Spanish and Chilean regulatory frameworks regarding the regulation of the liability of legal persons, Peru has adopted the model of direct responsibility of legal persons by issuing Law No. 30424 that establishes the administrative responsibility of legal persons, and its amendment, Legislative Decree No. 1352, that expands the cases of criminal liability.

For this purpose, article 3 of such law and its amendment establish the rules for the attribution of administrative responsibility of legal persons, which depends on the behavior of certain persons linked to the entity. Thus, the legal entity will be responsible when any of the crimes of generic active bribery, transnational active brib-

ery, specific active bribery, money laundering and financing of terrorism (Article 1 of the Law) have been committed on their behalf or on behalf of the entity and for its benefit, whether direct or indirect, by:

- Its partners, directors, de facto or legal administrators, legal representatives or attorneysin-fact of the legal entity, or its affiliates or subsidiaries.
- ii. The natural person who, being subject to the authority and control of the persons mentioned in the preceding paragraph, committed the offense under their orders or authorization.
- iii. The natural person indicated in the preceding paragraph, when the commission of the crime was possible because the persons mentioned in section a. have failed to fulfill their duties of supervision, vigilance and control over the activity

entrusted, in response to the specific conditions surrounding the case.

In regards of the criteria of attribution of responsibility of the legal person, the third paragraph of Article 3 under the Law specifies that legal persons who have the status of mother companies will be responsible and punished provided that the natural persons of their affiliates or subsidiaries, who commit any of the crimes of generic active bribery, transnational active bribery, specific active bribery, money laundering and financing of terrorism, have acted under their orders, authorization or with their consent.

According to article 4 of the Law, the administrative responsibility of the legal entity is independent from the criminal responsibility of the natural person. This responsibility can be mitigated or aggravated according to certain

parameters set forth, respectively, in articles 12 and 13 of the aforementioned amended law.

With regard to the nature of the liability of the legal entity, it is necessary to specify that even if the Peruvian regulatory framework refers to the "administrative" responsibility of the legal entity, such responsibility is a criminal one insofar as i) it is attributed in connection to an alleged crime; and ii) its prosecution and investigation take place in the framework of criminal proceedings. It is true that the type of sanction to be applied has an administrative connotation insofar as, in relation to the confirmation of the (criminal) responsibility of the juridical person, article 5 of the Law indicates that, the judge, at the request of the Public Prosecutor's Office may mandate, as the case may be, any of the following administrative measures:

i. "A fine not less than two times nor more than six times the actual or expected profit earned through the commission of the offense, without prejudice to the special provisions on said measure provided for in Article 7 of Law No. 30424, as amended by Legislative Decree No. 1352.

- ii. Prohibition to conduct business, in any of the following modalities:
 - Suspension of corporate activities for a period not under six months nor longer than two years.
 - Prohibition to carry out future similar activities to those for whose accomplishment the offense has been committed, or which it favored or covered up.
 - The prohibition may be temporary or final. A temporary prohibition shall not be shorter than one year nor longer than five.
 - Final prohibition to participate in contracts with the State.
- iii. Cancellation of licenses, concessions, rights and other administrative or municipal authorizations.
- iv. Closing of premises or establishments, temporarily or

permanently. The temporary closure is not shorter than one year nor longer than five.

v. Dissolution.

Peruvian law, drawing upon the Spanish and Chilean models, has established aggravating, mitigating and exonerating measures. In particular, the purpose of this consultancy is to emphasize these last two aspects insofar as they are related to the need to establish a prevention model.

b) The prevention model

Pursuant to article 4 under the Law, the administrative responsibility of the legal entity is separate from the criminal responsibility of the natural person. This responsibility can be mitigated or aggravated according to the parameters set forth, respectively, in articles 12 and 13 of the aforementioned reformed law.

In that sense, the administrative responsibility of the legal entity can be mitigated if any of the following circumstances occur:

- The objective, substantial and decisive collaboration in the clarification of the criminal act, even before the beginning of the intermediate stage.
- ii. Preventing the harmful consequences of the crime.
- iii. Total or partial remediation of damage.
- iv. The legal entity's adoption and implementation of a prevention model, after the commission of the crime and before the beginning of the oral trial.
- v. The certification that the minimum elements of the prevention model were partially adopted.

However, pursuant to the third paragraph of article 3 and paragraphs 17.1 and 17.4 of article 17 of the Law, legal persons may be exempt from liability and, therefore, free from the application of any administrative measure when:

- i. "Any of the crimes of generic active bribery, transnational active bribery, specific active bribery, money laundering and terrorist financing, would have been committed exclusively for the offender's own benefit or in favor of a third party other than the legal person.
- ii. "The legal entity had adopted and implemented in its organization a prevention model prior to the commission of the crime.
- iii. "The partners, directors, administrators, legal representatives or attorneys-in-fact, as well as the natural persons linked to the legal entity, commit any of the crimes of generic active bribery, transnational active bribery, specific active bribery, money laundering and financing of terrorism, while eluding fraudulently the **prevention model** duly implemented by the legal entity".

Indeed, pursuant to Article 17.1 of the Law, the legal entity is exempt from liability if, prior to the commission of any of the crimes of generic active bribery, transnational active bribery, specific active bribery, money laundering and financing of terrorism, it adopted and implemented in its organization a prevention model appropriate to its nature, risks, needs and characteristics, consisting of adequate surveillance and control measures to prevent them or significantly reduce the risk of their commission.

Accordingly, Article 18 of the Law establishes a procedural condition through which the exemption from liability of the legal entity that has adopted and implemented a prevention model becomes effective. In effect, it is prescribed that the prosecutor before formalizing the preparatory investigation must have a technical report from the Superintendency of the Securities Market³⁵ (SMV) that analyzes the implementation and opera-

³⁵ The Superintendency of the Securities Market (SMV) is a specialized technical agency attached to the Ministry of Economy and Finance whose purpose is to ensure the protection of investors, the efficiency and transparency of the markets under its supervision, the correct formation of prices and the dissemination of all the information necessary for such purposes. It has legal status under internal public law and enjoys functional, administrative, economic, technical and budgetary autonomy. See: http://www.smv.gob.pe/index.aspx

tion of the prevention model. If the technical report of the SMV, which has the substantiative value of an institutional expert's advice, establishes that the implementation and operation of the prevention model before the commission of the crime were appropriate, the prosecutor shall order the proceedings to be filed through a duly grounded decision.

The **prevention model** shall be regarded as substantive and adequate for a procedure provided it meets the minimum standards or elements enshrined in article 17.2 of the law under analysis, which are the following:

- i. "Appoint a person in charge of prevention, who must exercise his / her position independently and must be appointed by the highest administrative body of the legal person or its agent. In micro, small and intermediate size enterprises, the prevention duties may be discharged directly by the administrative body.
- ii. **Identify, evaluate and mitigate risks** to prevent the commis-

sion of the crimes of generic active bribery, transnational active bribery, specific active bribery, money laundering and financing of terrorism through the legal person.

- iii. Implement procedures for whistleblowing.
- iv. Disseminate the prevention model and conduct training periodically.
- v. Continuously evaluate and monitor the prevention model." (Author's emphasis.)

Regarding the components of the prevention model, compared to the international standards detailed in section 1.2 herein, a substantial difference emerges as regards its development and specificity. Thus, while the outlined compliance models have as their common denominator, for example, the commitment of senior management, codes of ethics, policies regarding conflicts of interest, gifts, political contributions and donations, due diligence, and internal controls and

auditing, among others, the Peruvian prevention model does not mention them.

In this regard, even though the exonerating or attenuating clause refers to compliance with this minimum model, its implementation should consider the purpose and grounds of the standard, namely to avoid the commission of illegal acts by legal persons. This requires implementing the greatest number of preventive measures to build an organizational culture that coherently and comprehensively shields the entity from any questionable potential offense by a collaborator.

This position is particularly legitimate and valid when read systemically in regards to subsection c) of Article 3 under Law N° 30424, as amended by Legislative Decree N° 1352. In effect, the provision establishes that «Legal persons are administratively responsible for the crimes indicated in article 1, when these have been committed in their name or on their behalf and for their benefit, directly or indirectly, by : (...) c) The natural

person indicated in the preceding paragraph, when the commission of the offense was possible because the persons mentioned in subsection a) have violated their duties of supervision, surveillance and control over the entrusted activity, in attention to the specific situation of the case (...)". (Author's emphasis.)

On the basis of this provision, the entity is not only prevented from giving undue orders (subparagraph b.) but is also obliged to take all necessary measures to ensure that personnel - even of their own free will - do not engage in questionable practices. Thus, it would not be enough to adopt and implement the components of the Prevention Model contained in Article 17.2 of the legal standard under review,

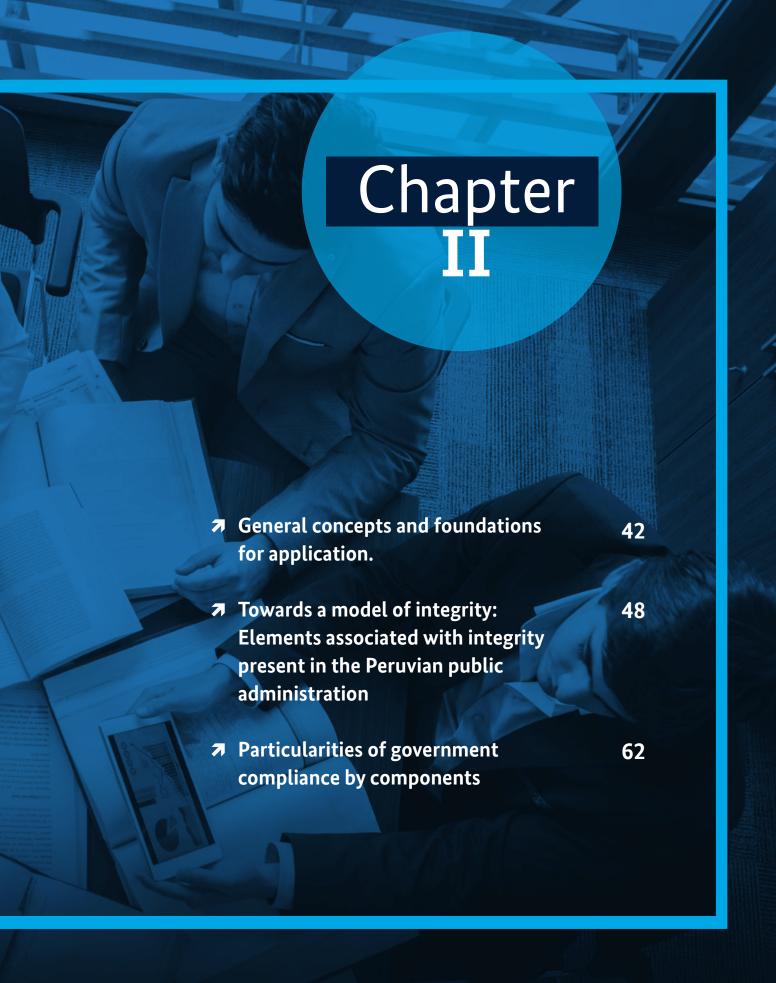
but the entity's senior management should seek to ensure ethical behavior at all levels of the entity, avoid conflicts of interest, act in a transparent manner, establish control and audit mechanisms, avoid gifts and any type of undue economic contribution, to create an umbrella that is broad enough to protect the entity from any undue practices by its personnel³⁶.

On the other hand, paragraph 17.3 of Article 17 of the Law refers to the prevention model and establishes that, in the case of state owned enterprises or combined status companies, the prevention model is exercised without prejudice to the competencies and powers that correspond to the institutional control bodies as

well as all the bodies that make up the National Control System. This adds a very special feature in the case of public sector companies given the specific roles and characteristics of their internal controls, which in many cases are similar to those of the compliance model. In this sense, in the Peruvian case it is necessary to connect and align the objectives of the compliance model and the Internal Control System's to prevent duplications and parallel enforcement. In this sense, the compliance model -as a strategy for ensuring compliance with higher integrity standards- can contribute to the optimal implementation of internal controls and so ensure the achievement of the entity's institutional objectives.

³⁶ Although the Law establishes that its regulations will develop the contents of the prevention model suitable to the diverse characteristics of the legal entity, such regulations have not yet been enacted. However, that fact should not hamper legal entities from implementing their respective prevention models, as set forth in Article 17.1 of the Law.





1 General concepts and grounds for enforcement

Just as in the 70s and 80s, innovations in the management of large corporations were an important source of inspiration for the public sector to guide public management towards results, today what has been learned in compliance programs of private companies can inspire a reform of public administrations to introduce controls designed on the basis of an adequate identification of risks, while taking due account of the differences between both areas.

According to Adán Nieto³⁷, compliance programs in private companies that arose in response to the amendments to the codes that establish the criminal or administrative responsibility of legal persons, and led to actions to prevent illegal acts in private economic organizations could be adapted to public companies or entities in order to prevent corruption by their employees and managers.

Latin American nations, severely affected by the corruption scandals associated with the mega-infrastructure works implemented

in several countries across the region, mainly by Brazilian multinational companies, provide an ideal scenario for political authorities not only to reinforce the public institutions to prevent corruption, but also to undertake a major reform aimed at establishing clearer controls and responsibilities.

The unveiling of the many acts of corruption associated with large economic infrastructure projects linked to the processes of South American integration (IIRSA Initiative) and the "Lava Jato" case today allows leaders and communities of experts from different countries

to have a lot of information about how the mechanisms of corruption related to criminal practices such as bribery and "market sharing" have operated. The information is vast and important and the region could enjoy an anti-corruption "spring" that should be based on the implementation of different preventive policies on several fronts.

Countries -including Chile, Brazil, Colombia, Peru, the US and Canada- have succeeded in implementing legislation that requires companies to put in place compliance programs as an incentive so

³⁷ Nieto, Adán. "De la Ética Pública al Public Compliance: Sobre la prevención de la corrupción en las administraciones públicas". [From public ethics to public compliance: preventing corruption in public administraciones públicas y partidos políticos" [Public Compliance: Preventing corruption in state administration and political parties.] Ediciones de la Universidad Castilla-La Mancha, Spain. 2014.

that the consequences of corrupt practices do not affect their financial sustainability and their permanence in the market. This for some experts like Adán Nieto³⁸ has generated the perception that there has been a privatization of the fight against corruption, since the legislative powers through modifications to the criminal codes and the norms of corporate law have induced in several countries to introduce compliance programs and have led private companies to take important internal measures to establish mitigation mechanisms to prevent business corruption.

Along these lines, compliance programs have also favored the implementation of due diligence procedures for supplier companies or for companies with which some type of strategic or commercial alliance can be made, which require that related companies have also compliance programs that mitigate corruption risks.

However, an important point to note is that since private companies are frequently and significantly related to State entities, in public administrations there are no risk mitigation measures or internal policies of the same importance or with equal centrality of the compliance programs that are beginning to be demanded in the private sector.

In the public sector, based on the distrust of the citizens with respect to their political authorities and officials, progressively, administrative through laws. directives and regulations, adminsystems have istrative created for planning and execution of the budget, the prioritization of investments, acquisitions and hiring, and through controls in order to limit the discretion of government agencies in those aspects that are most vulnerable to corruption. Beyond the rigidities that such administrative systems may generate in the decision-making processes, these management control mechanisms are necessary and should constitute in themselves the adequate support to limit corruption. However, despite their important contribution to the reduction of discretion, history shows that these administrative systems have not turned out to be as efficient as required to contain corruption.

Proof of the low effectiveness of corruption risk treatment mechanisms through procedural controls, is that countries such as Peru with eleven basic administrative systems and with a Law of Code of Ethics of Public Function that establish mandatory compliance procedures have not been able to prevent or contain the corruption of the most visible mega-works, nor the administrative corruption that systematically corrodes the legitimacy of their authorities.

Throughout the region, the Lava Jato scandal has exposed the

³⁸ Nieto, Adán. La privatización de la lucha contra la corrupción" [Privatizing the fight against corruption.] Publicado en Arroyo y Nieto, "El derecho penal económico en la era del compliance". [Economic criminal law in the era of compliance.] Tirant lo Blanch. Valencia, Spain. 2013.

enormous weakness of the control systems and of the Supreme Audit Institutions or General Comptrollerships in the region, in order to detect in time the most guestionable practices of public entities. For this reason, much of the disclosure of the great corruption linked to the mega-infrastructure works comes from the media or from rewarded whistleblowing, which have taken place in Brazil due to the joint action of the Office of the Prosecutor and the Judiciary of said country and that have had an enormous impact in third countries.

So, the valid question to ask is what are the factors determining the low effectiveness of these systems and procedures? Beyond the circumstantial aspects of the organization of each entity and country, the common denominators are: i) the dispersion of controls; ii) the diluted responsibilities and the

lack of coordination and articulation between different authorities, iii) the low levels of effectiveness and preparation of the personnel in charge of decision-making; and iv) the absence of assessments of corruption risks and other questionable practices. In essence, these are structural conditions of the organization of public administration.

In this regard, the compliance controls procedures have been complemented with codes of ethics for public administrations and with the development of mechanisms for transparency and promotion of denunciation. However, they have not allowed states to effectively face illicit actions in the public entities.

In response to such structural deficiencies, countries have advanced in establishing internal control mechanisms to strengthen

the performance of the first operational line in every public entity. This first line, composed of operational management, is directly responsible for the execution of processes aimed at compliance with the institutional objectives of the entity and, therefore, owner of the risks inherent to those processes³⁹.

Thus, in the logic of strengthening the first operational line, the current of the new public management has revolved around strategies for Results driven Management (RDM) 40 or, more specifically, Results driven Budgeting (RDB). These strategies seek to better identify institutional priorities and measure the relationship between the resources allocated and the results obtained by the target population of the policies. In this sense, even when these instruments focus rather on aligning the policy objectives with

^{39 &}quot;Las Tres Líneas de Defensa para una Efectiva Gestión de Riesgos y Control. Declaración de Posición". [The Three Lines of Defense for Effective Risk Management and Control. Position Statement.] The Institute of Internal Auditors. January 2013.

⁴⁰ According to Kaufmann, Sanginés and García Moreno, the pillars of RDM are i) planning, ii) budget, iii) public financial management; iv) management of programs and projects; and v) monitoring and evaluation. Kaufmann, Sanginés and García Moreno. "Construyendo Gobiernos Efectivos: logros y retos de la gestión pública para resultados en América Latina y el Caribe". [Building effective governments: achievements and challenges of public management for results in Latin America and the Caribbean.] IDB, 2015.

the objectives of public spending programs than on the fight against illicit actions or corrupt practices, if the pillars of RDM work, its mechanisms are a powerful weapon to prevent corruption. This, insofar as - by promoting rationality in the allocation of resources - it prevents pressure of the interest groups to subordinate the decisions of allocation of resources from the State to the interests of the particular groups.

In fact, RDM has led to the implementation of effective mechanisms such as inter-administrative contracts (or results-driven-management agreements) and incentives for public operators. Inter-agency contracts establish quantity, quality and efficiency goals that public managers are committed to meet, while incentives are the support of contracts that induce public operators to meet determined quality, coverage or cost savings goals. The most effective incentives are monetary, but there may be non-monetary incentives such as cash rewards or salary increases. Non-monetary rewards can include recognition of good practices, national or international training or other prizes.

Other essential and complementary tools introduced by public administrations to make rational public decisions are the reform of civil service and public management programs⁴¹ that incentivize public administrators to accomplish results.

South Korea is a good example of incentives for staff performance. Chile, for its part, is a pioneer country through its Management Improvement Program (MIP) in the introduction of incentives to public operators, since the MIP introduced collective monetary incentives to improve the performance of Chilean entities. On the other hand, in Peru there is

evidence that the meritocratic selection by competencies and the monitoring, accompaniment and evaluation of public managers would configure an effective intervention to achieve management results⁴².

Nevertheless, even in countries that have implemented RDB strategies and currently have advanced models for the implementation of internal control, the problems associated with corruption in any of its forms and manifestations have remained and perception of corruption has increased over time.

That said, it cannot be concluded that these tools for the prevention of corruption and these models for improving and optimizing public management are not efficient and necessary. On the contrary, they are totally valid and indispensable in the logic of guaranteeing the best use of State resources for

⁴¹ In Peru, the Public Managers Body seeks to ensure high quality management in strategic positions of the State. It was created through Legislative Decree 1024 and to date it is operating in institutions of the central government, local government and regional governments. http://www.servir.gob.pe/gerencia-publica/gerentes-publicos/quienes-somos-cgp/

⁴² Corrales, Andrés and Joel Manyari. "Resultados de directivos públicos: la experiencia del cuerpo de gerentes públicos de Perú". [Results by public managers: the experience of the body of public managers of Peru] XXI CLAD Congress. Chile, November 8-11, 2016-

the benefit of the general interest, but they need to be strengthened under a different logic and approach.

Indeed, up to now, these mechanisms for optimizing public management and tools for the prevention of corruption have frequently been established inorganically and lacked a systematic approach, thus hindering the generation of intelligent synergies based on a solid articulation within the institution.

Therefore, it is essential to consider recommendations from specialized agencies in the field, but above all, review positive experiences around the world, where these strategies have been articulated around a public policy that focuses on a centralized coordination whose responsibility is assumed by a person (or office) duly empowered to do so, as posited by the Compliance model in the private sector.

Precisely, along this line, as a product of the continuous analysis of models of intervention against corruption in different countries, the OECD has developed a set of recommendations on integrity in public administration where a cross-cutting element is the need for vertical and horizontal articulation "to favor coherence and avoiding duplications and gaps, and to share and benefit from the lessons learned derived from good practices" 43.

Along the same lines, the G-20⁴⁴ has developed High Level Principles on the Organization against Corruption where it expressly recognizes as a central principle of the anti-corruption organization within public entities the articulation and coordination of anti-corruption measures through the implementation of coordination units or the designation of contact persons that assume the coordination and monitoring role that guarantees the consistent

application of anti-corruption measures.

However, it is not possible to conclude in a categorical way the need to implement a single model since this will depend on the particularities of each entity, the risks that it presents, the vulnerabilities, the strength of its institutional structure, the organization's size, the field where it operates and, even, the geographical place and the environment in which it is located. Thus, the better the mechanisms of internal control and optimization of management work (from strategic planning to the evaluation of results), the lower will be the risks of corruption. The weaker the institutions or administrative systems, the greater the need to properly assess risks and the effectiveness (high or low) of controls and mechanisms to mitigate corruption risks.

However, without prejudice to the risks and the minor or major

³ Recommendation of the OECD Council on Public Integrity.

⁴⁴ Informal group consisting of 19 countries from the most industrialized and developed countries and the European Union with representatives of the World Bank and the International Monetary Fund. The objective of this forum is to address issues related to the global financial system in order to guarantee international financial stability.

prevention mechanisms required by an entity, a central element that cannot be ignored is the need to have an articulating mechanism for the different strategies or elements that must be present in a prevention or integrity model in the public sector. In that logic, having a coordination unit or contact person as the G-20 postulates is a strong recommendation to consider when implementing a model of institutional integrity.

In this regard, although it is true that all starts with the political will that as a premise must exist at the highest level of an entity and that, therefore, the monitoring and supervision of the anti-corruption policy should be guided by the owner, it is also true that this work involves a set of coordination actions that for reasons of

time and concentration of strategic and operational tasks cannot be assumed by said owner or by the highest administrative authority of the entity. Indeed, it should be considered that good public managers who are in the first line of defense of an entity and that, as such, are oriented to results cannot devote themselves to monitoring the mechanisms of prevention of corruption risks, because they must concentrate in the results and the fulfillment of the most important government goals assigned to them. Therefore, in line with what is proposed in the Model of the Three Lines of Defense, "in a perfect world, perhaps only one line of defense would be necessary to ensure effective risk management; in the real world, however, a single line of defense can often be insufficient" 45.

Therefore, to prevent corruption and protect the governing bodies, it is important not only that public entities should adopt protocols and procedures to clearly define the roles and responsibilities that correspond to each internal actor, but that the entities have a responsible Assume the task of articulation, monitoring and supervision of prevention, detection, investigation and punishment of corruption strategies. For the purposes of better development of this task, the responsibility should fall on a professional with a high hierarchical level and solid empowerment, which, depending on the risks existing in the entity, can rely on an organic body that guarantees the fulfilment of its mandate.

2 Towards a model of integrity: elements associated with integrity in Peruvian public administration

a) Organizational structure of State entities for the fight against corruption

In the framework of the evaluation of the application of the compliance model in the public sector, it is necessary to analyze the organizational structure that exists in the public administration to prevent, detect, investigate and punish corruption. The following section reviews the particularities and complexities that should be considered to enforce such organizational structure. Its evaluation starts from a review of existing different legal instruments, policies and strategies applied in the public administration.

In Peru, in order to increase the levels of integrity and efficiency

within public entities, as well as to prevent, detect, investigate and punish corruption, different tools have been implemented since the 2000s, such as transparency, accountability, citizen participation, complaint, grievance and denunciation mechanisms, codes of ethics. Likewise, laws have been issued that establish policies to prevent conflicts of interest, which require the declaration of the assets held by a public official, to record how conflicts of interest are addressed, and to define the sanctions applicable in case of non-compliance.

Beyond the suitability of the existing legal framework or the effectiveness of its enforcement, these norms and policies given in inorganic way over time do not have a common thread within the public administration that allows them to be structured around a model or a integrity system and, even worse, that allow to monitor systemically its level of compliance.

Despite the absence of a clearly established model of integrity, it is of interest to examine the current process where starting with the existing elements, different entities of public administration have begun to build integrity models often organized around common patterns of intervention.

The reason for this process has been not only the growing concern over the cases of corruption registered in the last three decades⁴⁶, but also the internalization of the need to have an anticorruption agency (at a national and institutional level) pursuant to the

⁴⁶ According to information registered in the "Map of Corruption" Platform of the Office of the Special Prosecutor for Corruption Crimes, as of December 2016, a total 32,925 of corruption offenses nationwide had been prosecuted.

provisions in Article 6 of the United Nations Convention against Corruption⁴⁷.

In this process, two stages can be distinguished. The first one between 2001 and 2013, characterized by the setting up of an Anti-Corruption Agency in the Peruvian State, to create an instance of strategic inter-institutional coordination for defining policies and strategies against corruption.

The second stage, beginning in 2013, was mainly inspired by the National Anti-Corruption Plan 2012-2016, which established as Specific Objective No. 1 the "effective articulation and inter-institutional coordination for the fight against corruption" and as part of

this objective, the need to establish coordination mechanisms and anti-corruption strategies within the entities. To this, the issuance of Legislative Decree No. 1327 and its regulations is added, a rule that raises as an alternative for the processing of complaints of corruption the creation of anti-corruption bodies in each of the entities of the Public Administration, called Integrity Offices Institutional⁴⁸.

i. First stage: National Anti-Corruption Agency

Currently, the terminology used internationally to define instances of coordination for the prevention and fight against corruption is varied. The United Nations Convention against Corruption

calls them the Corruption Prevention Body, and in an indistinct manner the countries call them anti-fraud, transparency, anti-corruption, good practice, etc. offices. For the purposes of this document, the Meagher definition will be used for whom Anti-Corruption Agencies are public agencies whose primary function is to articulate and centralize a leadership in one or more areas of public policies to combat and prevent corruption⁴⁹. In the Peruvian case, there were various attempts to establish an adequate body to be responsible for proposing policies in the fight against corruption and to coordinate and promote compliance with them. Thus, between 2001 and 2009, anti-corruption agencies were successively created under "commissioner" and "czar"

⁴⁷ Article 6. Organ or bodies for the prevention of corruption.

[&]quot;1. Each State Party, in accordance with the fundamental principles of its legal system, shall guarantee the existence of an organ or bodies, as appropriate, responsible for preventing corruption with measures such as:

a) The application of the policies referred to in article 5 of this Convention and, where appropriate, the supervision and coordination of the implementation of those policies; b) The increase and dissemination of knowledge in the area of corruption prevention.

^{2.} Each State Party shall grant the body or bodies mentioned in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, so that they may perform their functions effectively and without undue influence. They must be provided with the material resources and specialized personnel that are necessary, as well as the training that said personnel may require for the performance of their duties. (...) ".

⁴⁸ Legislative Decree No. 1327 that establishes protection measures for the complainant of acts of corruption and sanctions complaints made in bad faith. Published in El Peruano, on January 6, 2017.

⁴⁹ Meagher, Patrick. Anticorruption agencies: Rhetoric versus reality. The Journal of Policy Reform, Volume 8, 2005. p. 69-103.

models, which did not consolidate in time and were dismantled in a short time⁵⁰.

Finally, on January 28, 2010, the High Level Anticorruption Commission (CAN)⁵¹ was created as a space for articulation and coordination that brings together the heads of the main public entities, civil society and the business sector, with the aim to propose short, medium and long-term policies aimed at preventing and combating corruption in Peru.

Subsequently, in 2013, in order to consolidate the institutional framework of this articulation space, Law No. 29976⁵² was issued, raising the legal status of the High Level Anticorruption Commission, and better defining its function



of inter-institutional coordination and articulation, at the national level as subnational levels. Beyond the functional limitations of every space of articulation, the High Anticorruption Commission exhibits important achievements⁵³ that merit its strengthening and greater empowerment, as recommended by the Presidential Integ-

rity Commission⁵⁴ and the OECD Study on Integrity in Peru⁵⁵.

Compared experiences

Apart from important differences in terms of their composition, scope and powers, most of the countries of the region have concentrated the functions of promoting integrity and preventing corruption in a state-level instance (Annex 2). In spite of this, there is no clear attempt to implement systems or models of integrity aimed at public entities' establishing integrity offices or related entities under a properly articulated strategy.

The following are the experiences of Colombia, Chile, Honduras and Guatemala.

⁵⁰ The National Commission for the Fight against Corruption and the Promotion of Ethics and Transparency in Public Management and Society (2001), the National Anticorruption Council (2005) and the National Anti-Corruption Office (2007).

⁵¹ Supreme Decree No. 016-2010-PCM.

⁵² Law issued by the Congress of the Republic and published in the official newspaper El Peruano on January 4, 2013.

⁵³ The CAN's powers are limited to coordination and articulation, as well as to the proposal of short, medium and long-term anticorruption policies. Among the most important achievements are i) the coordination and advocacy for the approval of Law N° 30111 that includes the penalty of fine for corruption offenses, ii) the coordination and advocacy for the approval of Law N° 30424, Law of Administrative Responsibility of Legal Persons, iii) coordination and advocacy for the approval of Law N° 30076 as it modifies Article 102 of the Criminal Code and establishes the confiscation of the proceeds of corruption crimes that underwent transformations, iv) the implementation of the Online Registry of Visits that exposes in real time the procedures of interest in public administration, v) Peru's membership in the OECD Working Group on Bribery in International Commercial Transactions.

⁵⁴ Recommendation 98 of the Report of the Presidential Integrity Commission. Stop corruption, the great battle of this time. December 2016

⁵⁵ OECD (2017), OECD Study on Integrity in Peru: Reinforcing the integrity of the public sector for inclusive growth, OECD Studies on Public Governance, OECD Editions, Paris. http://dx.doi.org/10.1787/9789264271470-es. P. 30-46.

Colombia: National Commission for Moralization / Secretary of Transparency

The main antecedent of an anticorruption agency in Colombia dates back to 1995, when the National Moralization Commission was created by Law 190, led by the President of the Republic for coordination and collaboration among public entities involved in the fight against corruption.

Despite the innovation that represented this space for the time, it failed to consolidate and was reformed and restructured in 1997 and in 1999. With the approval of the new Anticorruption Statute, through Law 1474 (2011), the National Moralization Commission was reactivated under a much more participatory and plural approach. Its agenda focused on 4 specific topics:

- The formulation and approval of the Comprehensive Public Anti-Corruption Policy
- The review of the progress of the Single Window of Complaints project
- Review of progress of the

- Transparency and Anticorruption Observatory project
- The follow-up and construction of guidelines for the Moralization Regional Commissions

The Colombian experience shows the interesting articulation between this open and participatory platform with the Transparency Secretariat, created in 2011, as an executive body for the design and implementation of the Integral Policy of Transparency and the Fight against Corruption, and advice and support body to the President of the Republic. This model allows the Transparency Secretariat to articulate and monitor the agreements adopted within the Moralization Commission without depending on its decisions to discharge its executive function.

Chile: Probity and Transparency Commission

The Ministerial Commission for Administrative Probity and Transparency in Public Administration was created on August 31, through Decree No. 16. It is attached to the General Secretariat of the Presidency. Its main objective is to provide advice and guidance to the various bodies of the State administration on issues related to regulatory compliance and the adoption of good integrity practices.

It is chaired by the Sub Secretary General of the Presidency of the Republic, and has a technical secretariat to discharge its roles. Chile's Commission of Probity and Transparency is more of an instance of advice to the Executive rather than a space for the articulation of policies.

Honduras: National Anticorruption Council

The National Anticorruption Council (CNA) was created in 2005 (Decree N° 7/2005) with the aim of becoming an instance of civil society, conceived as a totally independent body, with legal personality, indefinite duration and its own assets, which it mainly exercises the functions of proposing policies and strategies to prevent and fight against corruption.

This organism is a very special case in Latin America, because it was created by a Decree of the Legislative Power, establishing the legal obligation of the state to finance part of its budget and at the same time include 12 civil society organizations.

This anti-corruption agency mainly exercises the following functions:

- Agree with the competent government entities on the implementation of the actions contained in the National Anticorruption Strategy and its action plans. In this regard, it articulates directly with the Mission of Support Against Corruption and Impunity in Honduras of the OAS.
- Collaborate with the authorities in the design of mechanisms for monitoring and evaluating anti-corruption policies.
- Foster the design of strategic anti-corruption and/or pro-transparency alliances between institutions of the public and private sectors, both domestic and foreign.
- Promote a national culture

- against corruption in all sectors of society, through permanent awareness and citizen awareness campaigns.
- To hear, through the Executing Unit, the reports of cases and situations made known to it, transferring, as appropriate, such report and recommendations to the competent public bodies.

<u>Guatemala: Presidential Commis-</u> <u>sion on Transparency and Elec-</u> tronic Government

The Presidential Commission of Transparency and Electronic Government was created by Governmental Agreement N° 360-2012, on December 26, 2012, with the purpose of supporting the actions of the ministries and institutions of the executive body linked to the strengthening of transparency, combat corruption and foster openness in government.

The Commission sits the Vice President of the Republic, who chairs it; and, the Secretary of Executive Coordination of the Presidency,

charged with Executive Coordination. Its main functions are:

- Coordinate strategies, actions or proposals to the effect that the dependencies of the Executive Body include in their annual planning, activities for the promotion of transparency, electronic government, the fight against corruption and open government;
- Promote a culture of transparency and against corruption;
- Support citizen care and guidance on transparency issues, promote and encourage their participation.
- Follow up and ensure the implementation of international commitments on transparency, electronic government, combating corruption and open government;
- Ensure the harmonization of projects, programs and actions of technical and financial assistance that international organizations or international cooperation agencies execute in Guatemala on issues regarding transparency, electronic government, the fight against

corruption and open government.

ii. Second stage: Institutional Integrity Bodies

As mentioned above, when the National Anti-Corruption Plan 2012-2016 addressed the need to develop anti-corruption strategies and actions within public entities a process began to consolidate anti-corruption technical bodies, mainly in the executive power.

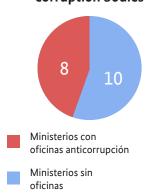
The creation of these offices, however, did not happen in an organic or orderly manner due to the absence of a regulatory framework that would issue the guidelines for their creation, name them and define their functions, competencies, composition and location within of the organizational structure of the entity. For this reason, various entities created offices designed to prevent corruption and assigned them roles that were different

from those of others created for the same purpose. Thus, in some cases, the existing anti-corruption offices were limited to functions of integrity promotion, while others, such as the Inspectorate of the Internal Sector, articulated functions of prevention, detection, investigation and punishment (through the Police Disciplinary Court)⁵⁶.

Subsequently, after the publication of Legislative Decree N° 1327, which establishes protection measures for the complainant of acts of corruption and sanctions complaints made in bad faith, the Regulation was approved (Supreme Decree 010-2017-JUS), which proposes to set up optional Institutional Integrity Offices. This rule states that the Integrity Offices, in addition to addressing matters specific to the Legislative Decree related to reporting and protecting whistleblowers, should also undertake tasks related to the promotion of institutional integ-

Figure 1

Peru: Ministries with anticorruption bodies



Source: Ministries' web pages, and organization and functions laws and regulations.

Prepared by the authors.

rity and ethics in their respective entities.

Currently, public entities increasingly tend to create anti-corruption bodies, based on the aforementioned legislative decree. Thus, according to graph out of a total of 18 ministries⁵⁷, 10 (55%) with an institutional integrity office or department.

⁵⁶ Recommendation 98 of the Report of the Presidential Integrity Commission. Stop corruption, the great battle of this time. December 2016

⁵⁷ Excluding the Office of the Cabinet's Chief.

Along the same lines, the government agencies attached to ministries are currently also setting up integrity offices, such as Essalud⁵⁸ and Proinversión⁵⁹.

Regarding their denomination and functions, although these still differ from each other, there is a clear tendency to consolidate more and more offices of integrity in the logic not only raised by Leg. D. 1327 already mentioned, but, above all, and most relevant, with a view at integrating the different strategies of prevention of corruption existing in an entity, as noted in the following table.

⁵⁸ Executive Resolution N° 539-PE-ESSALUD-2017 set up the Integrity Office pursuant to Leg. D 1327

⁵⁹ Supreme Decree N° 185-2017-EF published on June 24, 2017, included the Office of Integrity and Transparency within the entity's organizational structure, pursuant to Leg. D. 1327

Table 2. Functions of the Integrity Bodies in Peruvian

Ministry	Integrity Body	Principal functions
Ministry of Development and Social Inclusion	 Office for the Promotion of Institutional Integrity and Ethics. (ROF: D.S. 006-2017-MIDIS - 03/03/2017) 	 Formulate, implement and monitor the Anti-Corruption Plan of the Sector Promote ethics and transparency Follow up complaints of corruption Protect whistleblowers Evaluate accusations
Ministry of Education	 General Office of Transparency, Public Ethics and Anticorruption (ROF: D.S. 001-2015-MINEDU - 01/31/2015) 	 Promotion of ethics and transparency Open government Propose plans and standards in transparency, public ethics, fight against corruption Capacity building in matters of ethics, transparency, internal control, administrative responsibility and fight against corruption Follow-up of administrative offenses connected to acts of corruption Create complaint follow up mechanisms Access to public information Internal control
Ministry of Health	 Transparency and Anticorruption Office (ROF: D.S. 011-2017-SA - 04/24/2017) 	 Supervision of the Standard Transparency Portals Transparency, access to public information, ethics, integrity and fight against corruption Open Government Complaints follow up
	 Office of Integrity and Fight against Corruption (ROF: D.S. 010-2014-HOUSING - 04/03/2017) Integrity and Anti-Corruption Commission (R.M. 023-2017-HOUSING - 01/24/2017) 	 Formulate and monitor the ministry's Anti-Corruption Plan Identification of risks Promoting ethics, transparency and the fight against corruption Follow up on accusations of corruption

Ministry	Integrity Body	Principal functions		
Ministry of Interior	 Institutional Integrity Office: Office of Control, Compliance and Trust Office of Internal Affairs (ROF: D.S. 004-2017-IN - 02/24/2017) 	 Supervision and control Administrative investigations of administrative offenses Internal control Promoting ethics, transparency and the fight against corruption Monitoring and follow up of corrective measures 		
Ministry of Production	 Office of Prevention and Fight against Corruption (ROF: D.S. 002-2017-PRODUCE - 01/02/2017) 	 Formulate and monitor the Anti-Corruption Plan of the Sector Promoting ethics, transparency and the fight against corruption Follow up on allegations of corruption Design strategies, mechanisms and indicators for risk management 		
Ministry of Justice and Human Rights	 Office of Integrity and Fight against Corruption (ROF: D.S. 013-2017-PCM) 06/21/2017 	 Formulate anti-corruption plan Risk management Receive, systematize and follow up on allegations of corruption Protect whistleblowers Training in coordination with HR Conduct and supervise corruption prevention activities Internal control 		

Ministry	Integrity Body	Principal functions
Ministry of Energy and Mines	Office of Institutional Integrity ROF: D.S. 016-2017-EM	 Accept corruption reports Protect complainant Training in coordination with HR Prepare and approve Anticorruption Plan Formulate strategies, plans and guidelines to strengthen integrity and prevent corruption Promote values Strengthen ethics, transparency, political neutrality Manage risks Supervise and conduct dawn raids Promote a culture of values Sensitize and communicate with civil society and partner companies Follow-up of implementation of the Internal Control and follow-up of OCI recommendations.
Ministry of Agriculture and Irrigation	 Ethics and Transparency Commission (R.M. 531-2016-MINAGRI - 10/17/2016) 	 Formulate, implement and monitor the Anti-Corruption Plan Recommend actions to guarantee ethics, transparency and political neutrality. Promotion and diffusion of values Support dissemination and training activities in ethics, transparency and political neutrality Support promotion of access to information for the citizen Encourage citizen watch
Ministry of the Environment	 Public Ethics and Integrity Working Group (R.M. 179-2017-MINAM - 03/07/2017) Working Group on Ethics and Public Integrity of the Environment Sector (R.M. 183-2017-MINAM - 04/07/2017) 	 Formulate, implement and monitor the Anti-Corruption Plan of the Sector Guarantee ethical behavior Build capacities in public ethics and integrity Complaints handling mechanisms Review and evaluate the sworn statement of interests to avoid conflicts of interest

As noted above, although there is no uniformity in the name and mandate of these anti-corruption bodies, they share the following functions:

- Risk identification and handling
- Formulation, implementation and evaluation of Anti-Corruption Plans
- Promotion of ethics, transparency and integrity
- Training, in coordination with the directly responsible area
- Care and follow-up of complaints, and protection of whistleblowers
- Follow-up on the treatment or processing of complaints
- Internal control and monitoring of compliance with the recommendations made by the Institutional Control Bodies
- Supervision and monitoring of prevention efforts.
- Links and internal and external coordination with the bodies or bodies in charge of these processes.

Regarding these functions. although each of them has a regulatory framework for their application, and defined roles and responsibilities in their implementation, it is also true that in practice, these corruption prevention tools have not had the expected result and impact. On the contrary, the existence of these tools in a context in which the perception of corruption does not diminish, begins to generate in the operators a worrying mistrust regarding the validity and necessity of these tools for the prevention of corruption.

The problem, however, lies not in the tools themselves but in the disjointed application of these and in the little or no supervision and monitoring function at the entity itself, as detailed below.

a) Transparency

Peru has a regulatory framework rigorously mandating public enti-

ties to observe the citizens' constitutional right to information. However, it is a matter of concern that despite Law N° 27806 on Transparency and Access to Public Information⁶⁰ was enacted more than 15 years ago, it is still not fully complied with. In effect, as the Ombudsman's Office points out, 60.1% of the complaints received by the Ombudsman between 2003 and 2012 were referred to expiration of deadlines⁶¹.

Since transparency is the central axis in corruption prevention policies, in January 2017, following the Mexican and Chilean models, the Peruvian government issued Legislative Decree N° 1353 to create the Authority for Transparency in order to strengthen the "enforcement" mechanism of the Transparency Law. In this regard, although the new regulatory framework presents limitations precisely regarding monitoring, supervision and sanctioning, creating the Authority for Transparency is - albeit timid

⁶⁰ The Single Conformed Text of the Law on Transparency and Access to Information was approved by Supreme Decree No. 043-2003-PCM, April 24, 2003.

⁶¹ Ombudsman's Office Ten-Year Balance of the Law of Transparency and Access to Public Information 2003-2013. Ombudsman Report No. 165. Lima 2013. p. 107

- a step towards institutionalizing "enforcement".

In that line, the articulation role that integrity offices begin to assume within public entities can be very valuable to consolidate the work of the Authority for Transparency, and improve the levels of supervision and monitoring in order to guarantee compliance with transparency regulations.

b) Internal controls

In line with the above, despite the fact that in Peru internal controls has been in place since 2006⁶² as a powerful tool to consolidate and strengthen comprehensive integral public management and, thus, prevent corruption, implementation in public administration remains weak.

In this regard, a study conducted by the Office of the Comptroller General of the Republic in 2014 revealed that on a scale of 0 to 100, where the higher the degree of progress, the National Government obtained a score of 36, the regional level earned 20, and the local level also got 20; that is, an average implementation score of 25%⁶³.

Beyond the strengths and gaps, advances and setbacks in regulations to put in place internal controls, administration operator critically fail to understand what are internal controls. Permanent confusion with external controls - exercised by the Institutional Control Body (OCI) and directly dependent on the Office of the Comptroller General of the Republic - does not allow the public servant to "appropriate" and introduce daily controls in all tasks they carry out in public

administration. Staff do not interiorize controls as inherent to their work and the management cycle, and mistakenly perceive them as a hindrance or a formal additional control that must be performed by a third party.

This situation, added to the weak implementation process above all, the limited empowerment of the entity in charge of conducting it⁶⁴, does not contribute to an adequate understanding of internal controls to optimize the entity's integral management that will guarantee it reaches its institutional objectives. In this line of thinking⁶⁵, connecting the integrity offices seeks to help meet the entity's mission, and should be seen as a window of opportunity to consolidate internal controls, all the more so as one of the functions that is increasingly consolidated in the integrity offices is risk

⁶² Law N° 28716 for the Internal Control of State Entities. April, 2006.

⁶³ High Level Anticorruption Commission. Report on the Final Evaluation of the Implementation of the National Anti-Corruption Plan 2012-2016. Presidency of the Council of Ministers. November 2016 p. 53

⁶⁴ Following the same rationale of the Internal Control Standards and the Guide for the Implementation of Internal Control approved by Comptroller Resolution No. 320-2006-CG and 458-2008-CG, respectively, the Guide for the Implementation and Strengthening of Internal Controls in State Entities approved by Comptroller's Resolution N° 004-2017-CG, is established in its disposition 7.1. referred to the Planning Phase.

⁶⁵ INTOSAI GOV 9100. Guide for the Internal Control standards of the Public Sector.

identification and management which starts from the recognition of this methodological tool that provides an essential basis for programming, planning and defining intervention policies in the entity.

c) Monitoring disciplinary administrative procedures

The function assigned to the integrity offices that follow-up disciplinary administrative procedures is sustained not only by the slowness of procedures, but, in many cases, also their prescription, which results in the adverse perception of growing impunity.

In this regard, however, various instances and disciplinary administrative procedures have been

restructured since Law N° 30057, the Civil Service Law⁶⁶, was passed,. Nonetheless, limited staffing at the technical secretariats of administrative procedures, added to the "lack of clarity in practice regarding the overlapping of regimes, in particular among HRM bodies of public institutions"⁶⁷, carries the risk of "fragmentation (ie, cases are not carried forward under any regime) and / or unequal action (that is, actions taken in one regime are not reflected or recognized by another)"⁶⁸.

The inherent risk then, lies not only in the confusion generated by a dual system with limits that are not entirely clear but, particularly, in the inaction to which this can lead with the potential increase in impunity. In this regard, without prejudice to the reforms that should be made along the recom-

mendations made by the President's Integrity Commission⁶⁹ and the OECD Study on Integrity in Peru⁷⁰, integrity offices –with full respect for the autonomy of the disciplinary bodies- should focus on how processes are carried out in order to avoid impunity.

d) Attention and followup of complaints

Attention and management of complaints to protect whistleblowers is an express function assigned to integrity offices by Legislative Decree N° 1327. However, it is necessary to order and delimit functions because of similar confusion in the human resource management of the entities with respect to the competencies, the disciplinary administrative procedures, and reception of the

⁶⁶ Civil Service Law N° 30057, published on July 4, 2013.

⁶⁷ Organization for Economic Cooperation and Development. OECD. OECD Study on Integrity in Peru: Reinforcing the integrity of the public sector for inclusive growth. OECD Studies on Public Governance. Éditions OCDE, Paris. Paris. http://dx.doi.org/10.1787/9789264271470-es. p. 210

⁵⁸ Idem

⁶⁹ Recommendation N 8: "Establish a single administrative liability regime for public servants that has a complete list of infractions and sanctions." Final report of the Presidential Integrity Commission. p. 8,

⁷⁰ OECD Recommendation: "In the medium and long term, in order to further reduce impunity and protect the rights of the accused, Peru should consider moving towards an administrative disciplinary regime with a single inventory of infractions and corresponding sanctions, and a clearer delimitation of jurisdictions and institutional responsibilities ". OECD Study on Integrity in Peru. p. 198

complaints, as also regarding the role of CGR, through SINAD and

SERVIR, through their technical secretariats, created by the rules

on the matter that have been issued, as noted below.

Table 3. Legal framework on administrative complaint procedures

Legal framework	Facts of complaint	Before whom
General Administrative Procedure Law	Facts contrary to established order	Administrative authority of the entity where the event occurs
Law 30057, SERVIR Law, SERVIR regulation (Article 101)	Disciplinary offense or breach of the Code of Ethics for the Public Function	Technical Secretariat of PAD of the entity where the event occurs
Law 29542, Whistleblower Protection Law in the administrative field and effective collaboration in the criminal field	Arbitrary or illegal acts, actions or omissions by public officials and servants, and breach of existing legal provisions that affect or jeopardize the function or public service	National Complaints System (SINAD) / OCI Office of the Comptroller General of the Republic
Leg. D.1327, Whistleblower Protection Law	Acts of corruption in public administration	Institutional Integrity Office of the entity where the event occurs

3 Peculiarities of compliance in government

Promoting integrity in public administration means developing and maintaining a solid organizational culture built on clear policies and defined processes to promote expected standards of ethical behavior. This modern view of public administration establishes a symbiotic relationship between, on the one hand, performance, responsibility and results and, on the other, the ethical behavior of civil servants, where it is not possible to develop one aspect without the other.

The Organization for Economic Cooperation and Development (OECD) points out in this regard the need to deploy government efforts that are capable of anticipating integrity risks. Thus, where corruption finds space to proliferate, democratic institutions must be strengthened to implement reforms that correct the errors that give rise to this phenomenon.

Prioritizing institutional strengthening matches the model of the Three Lines of Defense where, within the framework of institutional cohesion and coordination,

the first line of defense pursues the proper implementation of internal policies and procedures to ensure activities are consistent with the goals and objectives. For this, it necessarily requires structural conditions that precisely support the effective execution of policies and procedures. These structural conditions are human capital, the organization of the entity, the clear definition of roles and responsibilities and a solid regulatory framework that gives fluidity to the processes.

In this thinking, to protect the fundamental role of the first line

of defense, there is a need to "help create and / or monitor the controls of the first line"71 so as to ensure that (said first line) "is appropriately designed, implemented and operated as planned." This protection function that falls under the second line of defense must be complemented with risk identification and management, assistance in process development, as well as the monitoring of the adequacy and effectiveness of internal controls, the accuracy and integrity of information, compliance with laws and regulations. and timely remediation of deficiencies" 72.

⁷¹ The Three Lines of Defense for Effective Risk Management and Control. Position Statement: The Institute of Internal Auditors. January 2013. p. 4,5.

⁷² Iden

Since this model largely supports the approach of cohesion, articulation, coordination, strengthening of the structural conditions with a view at achieving the compliance model's institutional objectives and integrity, it is necessary to evaluate each of the components that comprise it through the complex structure of public administration for the purpose of determining whether it applies.

It must be recognized and accepted, however, that the models and strategies for the prevention of corruption in private companies cannot be directly applied to public entities. The great difference between public and private entities is that the former are subject to various administrative systems (procedures) and the latter operate outside of these systems, though

subject to the discipline of market competition.

On the other hand, while private entities have a clear orientation to profit and the performance of managers is measured by the profits earned for shareholders, it is not so difficult to align the profit effort with the objectives of obtaining profits from the shareholders. In contrast, in the State, public entities, when orienting themselves to the general interest (which is an intrinsically diffuse concept since it is composed of different interests of population groups affected by public policies), it is much more difficult to align the particular objectives of public officials with the general interest. This means that in public entities it is much more difficult to detect and punish inappropriate behavior, questionable practices or

corruption because the nature of public entities makes it difficult to measure the relationship between the performance of the entity and the behavior of public operators.

These substantial differences in the contexts where private companies and public entities operate determine that compliance can hardly be fully adapted to the public sphere. However, the philosophy behind compliance based on cohesion, articulation, coordination, identification of risks, strengthening of the institutional structure and integrity are elements to which the new public management aspires and which can be embodied in an integrity model that starts with the components of private compliance that takes into account the particularities and complexities of the public function, as detailed in Table No. 4 below.

Table 4.Public integrity model

Component	Sub Component	Conceptual scope	References	Some suggested actions
1. Senior Management		Any strategy of integrity and fight against corruption must start from the manifest and real political will of the highest authority of the entity. To this end, the head of the institution must have clearly established not only the importance of implementing an anti-corruption strategy, but above all, the need to prioritize and empower the officials and bodies that carry out this function. The commitment of senior management is the starting point to establish a true culture of integrity.		

Component	Sub Component	Conceptual scope	References	Some suggested actions
1. Senior Management	1.1. Signing of documents of commitment or compliance of implementation of internal control or anti-corruption policies	The head or steering body, as well as the management bodies, explicitly express their commitment which can be translated into the signing of documents of commitment to directly undertake the implementation of internal controls.	 Guide for Internal Control Standards of the Public Sector INTOSAI 9100 (hereinafter INTOSAI Guide GOV 9100) Good Practice Guide on OECD internal controls, ethics and compliance (hereinafter, OECD Guide) UN Ethics and Compliance Anticorruption Guide (hereinafter, UN Guide) ISO 37001 	 Sign a letter of commitment for implementation and compliance with internal control standards. Publish the commitment of senior management on the website. Periodically update the letter of commitment, ensuring that it is signed by the new senior officials should changes intervene.

Component	Sub Component	Conceptual scope	References	Some suggested actions
1. Senior Management	1.2. Creation of an integrity office or adoption of an integrity model	The integrity model is the set of processes and policies aimed at preventing corruption and other questionable practices in an entity. Its implementation is materialized through an integrity office with i) general coordination functions of all the elements of the model, and ii) specific functions to promote ethics and integrity, risk management, supervision, monitoring of internal control.	 INTOSAI GOV 9100 Guide High Level Principles of the G-20 for an organization against corruption (hereinafter G-20 Principles) OECD Guide UN Guide ISO 37001 	 Modify the organizational structure of the entity by incorporating this office or this function. If it is a state owned entity, approve by means of a board agreement to set up an integrity office and adopt the integrity model (with its components). Conduct internal dissemination actions regarding the creation of the integrity model and the functions of the integrity office, emphasizing the importance of consolidating an organizational culture oriented towards business ethics Provide external dissemination actions aimed at the different stakeholders of the entity through written communication media (bulletins, press releases, letters), urging them, in addition to direct their business policy to the same objective. Communicate to the community in general the new policy adopted through interviews in written, radio and television media.

Component	Sub Component	Conceptual scope	References	Some suggested actions
	1.3. Visibility of integrity as an institutional objective of	The visibility of integrity involves making explicit the priority that the entity gives to ethics. Integrity must be seen as an inherent condition of public service.	■ INTOSAI Guide GOV 9100)	 Modify the norm and / or regulation of the entity incorporating integrity and ethics as institutional objectives
			■ OECD Guide	
	the entity		■ UN Guide	Incorporate integrity and ethics
			■ ISO 37001	in all management documents that the entity prepares for the future.
1. Senior Management				 Incorporate a clear public policy focused on business ethics into the entity's management philo- sophy.
				 Explicitly state policy in all institutional spaces and events (private and public), media appearances or others.
				 Ensure compliance of this policy not only in the institutional sphe- re, but also in the private sphere.

Component	Sub Component	Conceptual scope	References	Some suggested actions
2. Risk manage- ment		Risk management involves identifying the processes most vulnerable to crimes against public administration, but also to other questionable practices that are contrary to ethics, and from there on proposing actions (controls) for their mitigation.		
	2.1. Identification, evaluation and mitigation of processes or activities that generate risks in the face of corruption and other questionable practices.	The identification of risks requires identifying the most vulnerable and most critical processes of the entity, and preparing actions to control and mitigate them. Planning based on the identification of risks allows us to better understand the entity, actively involve the staff in the objectives of the entity, and better organize it according to prioritized objectives and optimize management.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Carry out an evaluation and identification of risks prior to the definition of the policy and institutional plan for integrity and fight against corruption. Consider the provisions and methodology established in the internal control regulations for the risk identification process. Update the risk analysis and risk mitigation processes annually, according to the methodology used.

Component	Sub Component	Conceptual scope	References	Some suggested actions
3. Integrity Po- licies		The integrity policies of each entity must be framed within the National Policy on Integrity and the Fight against Corruption. The policy is not a plan or a strategy, but rather a position of the entity in front of sensitive issues that in a second moment must materialize in a plan of action.		
	3.1. Code of ethics	This document identifies the corruption practices and breaches of ethical and integrity principles that should not be committed and indicates the actions that must be taken to prevent, detect, investigate and sanction them. This can be a major integrating document incorporating the other policies detailed in this item.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Include the policies for gifts, conflict of interest, eventual political contributions, philanthropic contributions, trips and account billing, among others, into the Code of Ethics. Incorporate in the Code of Ethic examples for their better unders tanding and application. Integrate the Code into the Internal Work Regulations in order to define the conducts that are infractions, and their investigation and sanction mechanisms. Clearly define responsibilities by hierarchical function and intervention in each process.

Component	Sub Component	Conceptual scope	References	Some suggested actions
3. Integrity Po- licies	3.2. Conflict of Interest Policy	Identification of potential collision situations between the public interest and the personal, commercial, political or family interest of a certain official or server. It also involves identifying the level of tolerance of the entity against potential and apparent conflicts of interest.	OECD Guide.UN GuideISO 37001	 Require senior officials of the entity and those who are in a sensitive position, to state their interests in a sworn statement. Establish guidelines to identify potential conflicts of interest in the entity. This depends a lot on the activity carried out by the entity, the context, the personnel, the geographical area, the stakeholders, Establish clear rules for staff to abstain from functions in the event of conflicts of interest. At least the following must be defined: Degree of consanguinity and affinity, according to the functions and type of relationship with the stakeholders. Years of personal, commercial and political limit, according to the functions and the type of relationship with the stakeholders. Liability in case of breach. Consider ways to avoid potential and apparent conflicts of interest. Build an internal database of the commercial, family and political relations of the personnel to identify staff links.

Component	Sub Component	Conceptual scope	References	Some suggested actions
3. Integrity Po- licies	3.3. Policy toward gifts, gratuities, hospitality and others.	Entity rules that set limits to giving or accepting gifts, donations, political contributions, invitations and tributes. The background of a document of this nature is to avoid future real, potential and apparent conflicts of interest.	OECD Guide.UN GuideISO 37001	 Design a specific policy clearly including the following: Types of gifts, Hospitality, Travel or entertainment that are acceptable or not, Limits to their monetary value, Characteristics of the counterparty, Nature of the commercial relationship, Timeliness.

Component	Sub Component	Conceptual scope	References	Some suggested actions
3. Integrity Po- licies	3.4. Due Diligence Policy according to each stakeholder	Requirement to the actors with whom the entity relates (suppliers, counterparts in agreements, users, other public entities, etc.) of certain requirements. This requirement must be part of a policy in which filters and controls are defined differently in relation to each one of them.	■ OECD Guide. ■ UN Guide ■ ISO 37001	 Identify the relationships with the different stakeholders (customers, suppliers and counterparts): Companies and natural persons providing goods and services. Define filters and controls for each type of business relationship Establish requirements and incentives for stakeholders to adopt the same standards of integrity assumed by the entity. Adopt as a good practice the signing of integrity commitments prior to contracting with suppliers. Ensure anti-corruption clauses are included in contracts. Implement data analysis systems and information cross referencing to which the entity relates.

Component	Sub Component	Conceptual scope	References	Some suggested actions
3.	3.5. Incentive and recogni- tion policy of personnel	Establish criteria to publicly recognize staff for the values of honesty, honesty, punctuality, solidarity, etc.	■ UN Guide ■ ISO 37001	 Establish levels of recognition and / or prizes for the fulfillment of values. Establish periodic dates for competitions and awards. Publicly acknowledge the outstanding behavior of staff in news events.
Integrity Policies	3.6. Recruit- ment policy	Definition of procedures, filters and controls for personnel recruitment. It also defines the major controls depending on the level of greater or lesser vulnerability	 Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Identify positions that are sensitive to security and integrity. Put in place more strict filters to recruit personnel in sensitive positions. Evaluate the possibility of using more rigorous filters such as the use of a polygraph in sensitive positions.

Component	Sub Component	Conceptual scope	References	Some suggested actions
4. Transparency, disclosure and accountability		Transparency is a public management tool and the most important mechanism for the prevention of corruption.		
	4.1. Active transparency	Active Transparency is all information that the public entity disseminates through the internet (web page), written, radio or television media. There is information that, pursuant to the single conformed text of the Transparency and Access to Information Law, must be kept on the website.	 Open Government Declaration. INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide. UN Guide ISO 37001 	 Ensure full compliance with transparency and access to information standards. Upload the complete information of the recommendations of the control bodies. Upload complete information on the remunerations and benefits of the staff to the website Make visible institutional agendas and other transparency mechanisms of daily activities of high authorities. Permanently update information on sworn statements of income, assets and income, and interests. Ensure complete information on the web page of the implementation of internal controls Include information on anti-corruption actions on the website as part of the implementation of the integrity model.

Component	Sub Component	Conceptual scope	References	Some suggested actions
4. Transparency,	4.2. Passive transparency	Passive transparency is the information held by the entity and that, not being reserved, secret or confidential, must be delivered by the entity to the public that requests it.	 Open Government Declaration. INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide. UN Guide ISO 37001 	Implement online system of requests for access to information to facilitate information and follow-up requirements.
disclosure and accountability	4.3. Classified information.	Exceptions to transparency include secret, confidential and reserved information, that the entity must classify in advance. For this purpose, it is necessary to explicitly assign this function to a civil servant.	 Open Government Declaration. INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide. UN Guide ISO 37001 	 Keep updated the classification criteria (and the classification itself) of the information that exists in the entity. Depending on whether or not reserved and secret information exists, the entity must have a previously classified information record.

Component	Sub Component	Conceptual scope	References	Some suggested actions
5. Implemen- tation of the Internal Con- trols System				
	5.1. Imple- mentation of the Internal Control System	Internal controls are precautionary actions, and their simultaneous and subsequent verification carried out by the entity itself. Their objective is to ensure the correct management of resources, goods and operations.	 INTOSAI GOV 9100 Guide OECD Guide UN Guide ISO 37001 	 Ensure effective compliance with Internal Control standards, through empowerment to the implementing body. Entrust the entity's integrity office, or the person discharging this role, with the monitoring function, in order to assist in its implementation. Implement a section on the entity's website to report on progress in implementing internal controls.
	5.2. Govern- ment control	External governmental controls are performed by the Supreme Audit Institution (SAI) of each country. It is external and ex post by nature, and its purpose is to ensure the adequate use of public resources.	 INTOSAI GOV 9100 Guide Declaration of Lima (INTOSAI 1977). OECD Guide UN Guide ISO 37001 	 Provide adequate logistical support to the SAI so that it can carry out its work with efficiency, efficiency and celerity. Fulfill in a timely manner the recommendations made by the SAI.

Component	Sub Component	Conceptual scope	References	Some suggested actions
5. Implemen- tation of the Internal Con-	5.3. External control by independent audit firms	External controls are part of the governmental controls carried out periodically targeting financial audits, computer systems, environment, among others. They are performed by external audit companies, which, as certified and specialized third parties, guarantee objectivity and impartiality in the evaluation.	 INTOSAI GOV 9100 Guide Declaration of Lima (INTOSAI 1977). OECD Guide UN Guide ISO 37001 	 Provide adequate logistical support to the SAI so that it can carry out its work with efficiency, efficiency and celerity. Fulfill in a timely manner the recommendations made by the SAI.
trols System	5.4 Internal audit (for state owned compa- nies)	Internal audit consists in the control and monitoring of compliance with institutional objectives through a systematic and comprehensive approach to improve the effectiveness of the entity's risk management, control and corporate governance processes.	 Declaration of Lima (INTOSAI 1977). OECD Guide UN Guide ISO 37001 	 Provide adequate logistical support for the functions of the Internal Audit Office, if available. Comply with the recommendations made Guarantee the autonomy and independence of the auditor, as well as level of training and professional standing.

Component	Sub Component	Conceptual scope	References	Some suggested actions
6. Communication and training				
	6.1. Integrity induction to incoming staff	The induction involves the delivery to the staff in the entity of information referred not only on the operation, mission and vision of the organization, but also, information about ethical principles and integrity, as well as the sanctions to be applied.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Prepare and implement modules or activities to raise awareness about integrity policies for the personnel joining the entity. Draft induction manual
	6.2. Ongoing integrity policies training	The concepts of integrity and the mechanisms of prevention, investigation and sanction of questionable practices must be permanently disseminated and addressed by the entity. Since the lack of integrity is a recurring issue in society, in general, it is essential to reiterate the concepts and emphasize the need to be extremely rigorous to avoid even apparently irregular acts.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Prepare an annual training program to educate staff on current regulations, policies and procedures to prevent corruption, and foster ethics and integrity; they must be appropriate to the level of responsibility of the personnel to whom they are addressed. This program must translate into a Communications Plan.

Component	Sub Component	Conceptual scope	References	Some suggested actions
6. Communica- tion and trai-	6.3. Integrity policy communication to stakeholders	The integrity policy must be communicated not only within the entity, but also to suppliers, counterparts of agreements, other entities, and the general public. This is also part of the due diligence, since it is required to make known the real will of the entity to follow the integrity principle to, from there, invite stakeholders to adopt the same parameters.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Incorporate in the regular communications with stakeholders reference to the integrity policy of the entity.
ning	6.4. Work climate assessment	In order to require staff the highest standard of integrity compliance, they must find satisfaction in their work, recognition for it, and be motivated and sufficiently incentivized. Therefore, to address any requirement, need, concernor job dissatisfaction, they must be identified through work environment evaluations.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide ISO 37001 	 Carry out surveys to evaluate the work environment, and existing relationship and communication. Organize feedback workshops with staff to evaluate results.

Component	Sub Component	Conceptual scope	References	Some suggested actions
6. Communica- tion and trai- ning	6.5. Evaluation of the stake- holder satis- faction level	The assessment of the level of satisfaction of stakeholders is a process of continuous improvement that allows the entity to identify internal problems for the purpose of its improvement.	 INTOSAI GOV 9100 Guide Principles of the G-20 OECD Guide UN Guide 	 Carry out periodic client satisfaction surveys of service and care among groups of stakeholders.
			■ ISO 37001	

Component	Sub Component	Conceptual scope	References	Some suggested actions
7. Whistle- blowing				
	7.1. Imple- mentation of complaints channel.	The complaints channel assumes the existence of a clear, simple and visible mechanism that allows and facilitates any person (be it worker or user) to file a complaint for a questionable practice in which a collaborator of the entity might have incurred.	OECD Guide.UN GuideISO 37001	 Develop and implement a procedure for reporting, investigating and sanctioning acts of corruption and other questionable practices. Implement mechanisms for receiving complaints at the reception desk, or website, by email and telephone, and face-to-face.
	7.2. Anony- mous comp- laints	Anonymous reporting allows the complainant to present a communication or report of irregularity without requiring identification.	OECD Guide.UN GuideISO 3700.	■ If not available, expressly establish the possibility of receiving and answering anonymous complaints, provided they are grounded and sufficients to start an investigation.
	7.3. Whistle- blower protec- tion	Protection mechanisms are processes that safe-guard a whistleblower from retaliation (be it physical aggression, harassment at the work site or dismissal).	OECD Guide.UN GuideISO 37001	 Establish protective measures for complaining personnel. As a minimum, it is suggested to con- sider: Reserved identity Protection from dismissal or ha- rassment at work

Component	Sub Component	Conceptual scope	References	Some suggested actions
	7.4. Irregularity detection me- chanisms	They are tools through which the entity proactively identifies irregularities among its personnel. The objective is to identify minor irregularities among workers that could later pose major problems. Eg: integrity tests, anonymous user.	■ UN Guide ■ ISO 37001	 Adopt proactive mechanisms to detect early unsuitable personnel. Evaluate implementing the anonymous user mechanism and integrity tests aimed at confronting staff with situations at the limit of ethical behavior. It is not a criminal imputation mechanism, but rather an administrative one.
7. Whistle- blowing	7.5. Research mechanisms	Mechanisms of immediate response to the commission of an alleged act of corruption or questionable practice. These mechanisms must be independent, rapid and effective in order to eradicate any perception of impunity.	■ OECD Guide. ■ UN Guide ■ ISO 37001	 Establish a processing and investigation channel for fraud, corruption and other questionable practices. Establish clear levels of responsibility and competence for the training phase and the decision phase (sanction). Guarantee the existence of a Prosecutor's Office or, as the case may be, the actions of the administration of justice, with the purpose of channeling and following up on the denunciations that will be sent to the Public Prosecutor's Office.

Component	Sub Component	Conceptual scope	References	Some suggested actions
	7.6 Internal normative framework of infractions and disciplinary measures	Offenses that are duly specified, in clear, simple language, covering all possible assumptions of questionable practices.	OECD GuideUN GuideISO 37001	 Keep an updated Internal Work Regulations of the entity. Adapt the Regulations to the policies and the Code of Ethics.
7. Whistle- blowing	7.7. Discipli- nary bodies	Instances within the entity responsible for hearing, investigating and punishing.	OECD GuideUN GuideISO 37001	 Strengthen the investigation and sanctioning bodies at the level of each entity, ensuring that they have the staff and the appropria- te logistical resources in order to guarantee speedy action.
				 Guarantee independence and autonomy in the decisions of staff in charge of applying sanctions in the entity.

Component	Sub Component	Conceptual scope	References	Some suggested actions
8. Oversight and monitoring of the integrity model				
	8.1. Evaluate the effectiveness of integrity model components	It involves reviewing the effective enforcement of the strategy to prevent questionable practices. It also means adapting to new processes, situations, risks and stakeholders.	 INTOSAI GOV 9100 Guide OECD Guide UN Guide ISO 37001 	 Evaluate annually the effectiveness, efficiency and sustainability of each of the components and sub-components that make up the entity's integrity model. Design measurement indicators Analyze comparatively and over time the information related to comply with components and subcomponents, as applicable. Organize participatory evaluation workshops. Apply internal surveys among staff to assess the model.
	8.2. Evaluation of operations within the integrity model department (Office of Institutional Integrity)	A review of the organizational structure to decide if it is adequate to ensure compliance.	 INTOSAI GOV 9100 Guide OECD Guide UN Guide ISO 37001 	 Evaluate the model's effective- ness, efficiency and sustainability compared to the support provi- ded by the enforcing expert or department.

Component	Sub Component	Conceptual scope	References	Some suggested actions
9. Integrity mo- del manager				
	9.1 Creation and imple-mentation of an Institutio-nal Integrity Office, coordinating unit or contact person	 The entity's institutional integrity official must be fill a high ranking position in the entity's organizational structure. Empowerment derives from filling a high position. It supposes the public support of senior management to the integrity policy monitoring function. The duties of the manager must be independent of any particular burden or interest. Therefore, the full independence of the official in charge must be guaranteed when discharging his/her functions and making pertinent recommendations. For the optimal discharge of the official's duties, appropriate resources must provided. 	 INTOSAI GOV 9100 Guide OECD Guide UN Guide ISO 37001 	 Modify the organizational regulations of the entity and set up the Integrity Office, endowed with the following characteristics: In charge of monitoring and oversight of compliance with the integrity model. The office must report directly to senior management in order to guarantee a high hierarchical positioning and adequate empowerment for the monitoring functions to be carried out. The designated person must be solvent and independent to guarantee autonomous decisions and evaluations. The Integrity Office should be created as the permanent consultation body for the better understanding and application of the National Policy of Integrity and Fight against Corruption and the National Plan of Integrity and Fight against Corruption 2018-2021. Adequate and sufficient resources must be available for optimal work.

Component	Sub Component	Conceptual scope	References	Some suggested actions
9. Integrity model manager	9.2. Accompanying function	The person in charge of the Institutional Integrity Office or the official to whom this task is assigned must perform, mainly, a guiding and accompanying role, rather than an auditing function.	 INTOSAI GOV 9100 Guide OECD Guide UN Guide ISO 37001. 	 Accompany and guide the different areas in the fulfillment of their responsibilities as regards the integrity model. Answer inquiries regarding the relevance of adopting a certain action in light of the ethical principles that inform this Model.

ADVICE FROM THE GERMAN DEVELOPMENT COOPERATION,

IMPLEMENTED BY GIZ



Sustainable Development Goal No. 16 highlights the importance of promoting just, peaceful and inclusive societies, for which it defines that the rule of law and development are significantly related to and reinforce each other. Thus, this objective is to concentrate efforts on the promotion of universal access to justice and the construction of responsible and effective institutions at all levels, for which it raises the need to fight against corruption in the countries.

Committed to these guidelines, the Federal Ministry for Economic Cooperation and Development (BMZ) of Germany provides international technical cooperation through the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, in order to develop sustainable capacities in the countries where it provides its assistance.

In this framework, GIZ conceives that capacity development is a holistic process through which people, organizations and societies mobilize, retain, adapt and expand their capacity to make development sustainable⁷³. Likewise, the

GIZ understands that both the technical knowledge and the ability of the actors to negotiate and reconcile divergent interests and foster an enabling environment are valuable elements to achieve sustainable improvements over time. In this logic, the GIZ is involved with its counterparts and partners in supporting the attention required to address complex issues and build, jointly with and committed to them, the possible solutions that add value to their work.

One of the problems requiring the technical assistance of the German development cooperation, imple-

mented by GIZ is the promotion of integrity and the fight against corruption, as a complex and multi-causal issue. Against this backdrop, the joint construction of mechanisms that contribute towards the realization of an Integrity and Anti-Corruption Model turns out to be a key issue that can help counterparts in their search for solutions.

For this reason and to develop the concepts around a model of integrity applicable to public sector entities that is the subject of this document, it is highly recommended that the German development cooperation, implemented

⁷³ Dutzler, Barbara. "Capacity Development and Supreme Audit Institutions: GIZ's Approach". In Supreme Audit Institutions Accountability for Development. GIZ and INTOSAI. Ed. 2013. Nomos Verlagsgesellschaft. Baden-Baden, Germany. p. 51.

by GIZ provide technical advice to public entities in the countries of the Latin American and Caribbean region to build models of integrity.

Nonetheless, in order to ensure that such technical advice is sustainable and impacts public policies aimed at benefiting the general interest and effectively raise standards of integrity, it is suggested that, as a prior step, the existence of a minimum framework of conditions in the entity should be evaluated.

Thus, in the logic of considering the feasibility and sustainability of implementing the integrity model in a State entity, it would be convenient to evaluate the different components that have been outlined in previous chapters, so that technical advice can be based on the knowledge of key elements that allow building with the counterparts a strategy incorporating sustainable objectives and results.

Regarding the **Commitment of Senior Management**, it is important:

 To identify and understand the rules of integrity applicable to

- entities and companies in the public sector.
- To identify and understand specific rules on internal control that require public entities and public sector companies to issue declarations or minutes of commitment regarding integrity policies, the fight against corruption or internal controls.
- If those standards exist, verify if those statements or minutes have been signed.
- If they exist and have not been signed, suggest compliance.

In regards of **Risk Management**, we suggest:

- To verify the existence of a risk assessment and management policy, for which the risk assessments of the previous 2 years may be required.
- If there is a risk management policy, evaluate whether the risk assessment and management has been formulated according to internationally known models such as the UN, ISO, IIA
- To evaluate whether the identification and evaluation of operational, commercial and financial

- risks are related to reputational and corruption risks.
- To evaluate if the identification and evaluation of risks (including reputational risks) have been carried out in a participatory manner and with the intervention of specialized third parties in the matter.
- Require the control process maps according to the risks.
- Verify the existence of risk mitigation action plans.
- Verify that risk assessment and management are reviewed annually and in a participatory manner by staff.

When delving into Integrity **Policies**, it would be convenient to:

- Require documentation stating the entity's integrity policy, which may be included in codes of ethics or in the internal work regulations.
- Verify that such documents include policies on prevention of conflicts of interest, gifts, contributions, travel, rendering of accounts, use of public resources.
- If there are policies, verify the specific and clear determi-

- nation of responsibilities by levels of participation, intervention and control.
- Verify the fulfillment of the delivery and presentation of sworn statements of income, assets and rents, and of the interests of the obliged subjects, according to the applicable regulatory framework.
- Verify the existence of a policy on the evaluation of contract, commercial and inter-institutional relations carried out by the entity with a focus on integrity and prevention of corruption.
- Require information on the recognition policy for staff complying with ethical and institutional values.
- Evaluate the existence and relevance of personnel hiring policies and, if possible, assign filters in hiring processes in case of sensitive positions (heads, fund management, information management and databases).
- Verify the existence of action plans to ensure compliance

- with existing policies or to specify the adoption of integrity policies and the prevention of corruption.
- If an action plan is in place, verify it is continuously monitored through indicators and attainment of goals, deadlines and appointment of officials in charge.

With regard to transparency, open data and accountability, it is necessary to:

- Verify that the entity complies with the legal requirements of active transparency through a review of its transparency portal or web page. Likewise, to require actions to disseminate information of the entity through frequent physical or virtual newsletters, publications in the media, and statements.
- Evaluate whether published or disseminated information is friendly, accessible and timely.
- Require information or statistics on information and compliance requests. Verify if there is a virtual mechanism

- for citizens to follow up on their requests for information.
- Verify if information is properly classified by criteria of exceptionality. Verify if denials to provide information comply with the proper support and regulatory requirements.

Regarding internal, external controls and audit, it is particularly relevant:

- To identify and understand the institutional framework that supports the operation of internal and external controls in the country.
- To evaluate the autonomy and independence of the control bodies, as well as their adequate allocation of resources so they can properly discharge their functions.
- To require information on the implementation of external and internal control, as well as their degree of implementation.
- Verify the existence of mechanisms to follow up on the recommendations made by the bodies in charge of both controls.

With reference to the subject of **communication and training**, it is advisable to:

- Evaluate the existence of a communications plan and the incorporation of actions to disseminate the integrity policy.
- Verify the existence of communication mechanisms for actions linked to promoting integrity and preventing corruption.
- Require information from induction programs for new personnel regarding obligations, integrity standards, institutional policy, catalog of infractions and possible sanctions in case of infringement. Review the consistency of such programs, and determine if there are entry and exit evaluations, and comprehension tests.
- Verify in the training plan the scheduling of ongoing training activities for personnel on topics aimed at promoting integrity and preventing corruption.
- Require information on training by level of staff responsibil-

- ity and if senior management participates and interacts.
- Evaluate whether the training activities are carried out based on prior information on the needs of the staff according to studies or specialized surveys on the work environment.

In relation to the **whistleblower component**, it is especially important:

- Determine the existence of an effective mechanism for receiving and processing complaints of corruption.
- If it exists, verify that this mechanism has reception channels via a reception window, web page, email, telephone line and/or faceto-face filing.
- Evaluate the possibility of receiving anonymous reports.
- Evaluate protection mechanisms for the complainant, such as the reservation of identity and job stability.
- Identify the existence of investigation, hearing and sanctioning bodies. Evaluate the reasonable allocation of

- personnel to carry out such work compared to the total number of personnel, the size of the entity, and the recurrence of complaints and irregularities.
- Verify the existence of internal work regulations or code of ethics clearly listing offenses and the corresponding applicable.

It should be noted that with regard to *supervision and monitoring* of the integrity model, it is necessary to:

- Verify the existence of monitoring mechanisms for activities aimed at promoting integrity and preventing corruption.
- Require information on the use of monitoring indicators.
- Verify evaluation-based feedback processes.

As the *Integrity Model Manager* is a key actor, it is necessary:

If there is an office in charge of implementing a policy aimed at preventing corruption and promoting integrity, to verify that:

- Such office reports directly to senior management
- The person in charge is empowered by senior management and has an open channel to the highest relevant authority.
- The designated official is solvent and independent to guarantee autonomy in making decisions and evaluations.
- The office provides accompaniment and absolution
- of permanent consultation with staff on issues of ethics, integrity and the fight against corruption.
- The office and its manager have adequate and sufficient resources for an optimal job.

FINAL CONSIDERATIONS

- 1. Compliance is a tool based on regulatory compliance. Nevertheless, its scope goes beyond legal compliance. Currently, the concept lies aims at building an organizational culture oriented to ethics and integrity as an essential condition to guarantee an adequate service.
- 2. The way compliance evolves varies according to the needs and characteristics of an entity. For this reason, different international organizations specialized in the subject have developed guidelines for the implementation of a compliance model, and differences in the approaches and in the definition of their components.
- 3. Common denominators emerge from the comparative analysis of the most important international documents on the subject allowing to identify the components that -without prejudice to the private or public nature of an entity- must be guaranteed in order to consolidate an organizational culture

- oriented to integrity. In this line, the emerging model of public compliance or integrity in the public sector has the following components: i) Commitment of senior management; ii) Risk management; iii) Compliance and integrity policies; iv) Transparency and accountability; v) Internal, external and audit controls: vi) Communication and training; vii) Whistleblowing channel; viii) Supervision and monitoring of the prevention model; and, ix) Compliance official.
- 4. The analysis of the organizational structure of public administration to prevent and combat corruption, as well as the need to prioritize a prevention approach that ensures adequate provision of public service, is not only possible but, above all, necessary to promote and support the implementation of integrity models in the public sector.
- 5. The integrity model in the public sector, although it includes mechanisms to challenge

- questionable practices (detection and punishment), fundamentally rests on a prevention approach to coordinate existing efforts and support the first line of defense (the officials responsible for the entity's mission and logistics processes) in the optimal performance of their functions. It is to that extent that the entity in charge of the compliance or integrity model must have a guiding and articulating approach rather than a sanctioning attitude, a task that, moreover, is discharged by other instances in the entity.
- 6. Within the framework of a policy of integrity and the fight against corruption, it is highly advisable to support efforts to create technical bodies that develop integrity and anti-corruption strategies in a more intense and articulated manner within public entities.
- 7. In order to initiate a technical advisory effort for counterparts of the countries supported by the German development cooperation, implemented by

GIZ, it is advisable to analyze the existence and, if applicable, the progress status of the components recommended by good international practices referred to in section 3. This exercise will help to strengthen the design and implementation of projects in a way that more accurately points to the development of sustainable capacities.

BIBLIOGRAPHY

International Conventions

- Inter-American Convention against Corruption. 1997
- Convention to combat bribery of public servants in international commercial transactions. 1997
- United Nations Convention Against Corruption. 2004

Rules and regulations

- Código de Buen Gobierno Corporativo para las Empresas en el ámbito de FONAFE.
- Código Marco de Control Interno de las empresas del Estado, aprobado según Acuerdo de Directorio Nº 001-2006/028 – FONAFE.
- Código Marco de Ética de los trabajadores de las empresas del Estado, aprobado según Acuerdo de Directorio Nº 010-2006/004-FONAFE.
- Constitution of Peru.
- Decreto Legislativo N° 635 que aprueba el Código Penal.
- Decreto Legislativo N° 728, Ley de Productividad y Competitividad Laboral (LPCL).
- Decreto Legislativo N° 1031, que promueve la Eficiencia de la Actividad Empresarial del Etado.
- Decreto Legislativo N° 1037, Promueve la inversión privada en proyectos de construcción de viviendas de interés social a fin de mejorar la competitividad económica de las ciudades.

- Decreto Legislativo N° 1135, Ley de Organización y Funciones del Ministerio del Interior
- Decreto Legislativo N° 1266, Ley de Organización y Funciones del Ministerio del Interior
- Decreto Legislativo N° 1327 que establece medidas de protección para los denunciantes de actos de corrupción y sanciona denuncias de mala fe, y su Realamento.
- Decreto Legisltaivo N° 1352. que Amplía la Responsabilidad Administrativa de las Personas Jurídicas.
- Decreto Supremo Nº 030-2002-PCM, que aprueba el reglamento de la Ley Marco de Modernización del Estado.
- Decreto Supremo Nº 043-2003-PCM, Texto Único Ordenado de la Ley de Transparencia y Acceso a la Información.
- Decreto Supremo Nº 016-2010-PCM, crea la Comisión de Alto Nivel Anticorrupción.
- Decreto Supremo Nº 119-2012-PCM, que aprueba el Plan Nacional de Lucha Contra la Corrupción 2012-2016.
- Decreto Supremo Nº 004-2013-PCM, aprueba la Política de Modernización de la Gestión Pública.
- Decreto Supremo Nº 010-2014, modificado el 4 de marzo del 2017.
 Reglamento de Organización y

- Funciones del Ministerio de Vivienda, Construcción y Saneamiento.
- Decreto Supremo N° 001-2015-MINEDU. Reglamento de Organización y Funciones del Ministerio de Educación
- Decreto Supremo N° 004-2016-PCM, que aprueba la Política Nacional de Modernización de la Gestión Pública.
- Decreto Supremo Nº 006-2017-MIDIS. Reglamento de Organización y Funciones del Ministerio de Desarrollo e Inclusión Social.
- Decreto Supremo Nº 011-2017-SA. Reglamento de Organización y Funciones del Ministerio de Salud.
- Decreto Supremo Nº 004-2017-IN. Reglamento de Organización y Funciones del Ministerio del Interior.
- Decreto Supremo N° 002-2017-PRODUCE. Reglamento de Organización y Funciones del Ministerio de la Producción.
- Decreto Supremo Nº 013-2017-PCM. Reglamento de Organización y Funciones del Ministerio del Ministerio de Justicia y Derechos Humanos.
- Decreto Supremo N° 016-2017-EM. Reglamento de Organización y Funciones del Ministerio de Energía y Minas.
- Decreto Supremo Nº 185-2017-EF, que incluye en la estructura orga-

- nizacional de PROINVERSIÓN la Oficina de Integridad y Transparencia.
- Decreto Supremo Nº 092-2017-PCM, aprueba la Política Nacional de Lucha Contra la Corrupción.
- Ley N° 26702, Ley Marco de Modernización de la gestión del Estado.
- Ley N° 27785, Ley Orgánica del Sistema Nacional de Control y de la Contraloría General de la Repúliba.
- Ley N° 27806, Ley de Transparencia y Acceso a la Información Pública y su Reglamento.
- Ley N° 28716, Ley de Control Interno de las Entidades del Estado.
- Ley N° 29733, Ley de Protección de Datos Personales y su Reglamento.
- Ley N° 29743, Ley que modifica la Ley de Control Interno de las Entidades del Estado.
- Ley N° 29976, Ley que eleva a rango de Ley la norma de creación de la Comisión de Alto Nivel Anticorrupción.
- Ley N° 30372, Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros.
- Ley N° 30424 que Regula la Responsabilidad Administrativa de las Personas Jurídicas por el Delito de Cohecho Activo Transnacional.

- Ley N° 30057, Ley del Servicio Civil.
- Lineamiento corporativo del Sistema de Control Interno para las instituciones bajo el ámbito de FONAFE.
- Lineamiento de ética y conducta de las empresas del Estado bajo ámbito de FONAFE.
- Resolución Ministerial N° 531-2016-MINAGRI.
- Resolución Ministerial N° 183-2017-MINAM
- Resolución de Contraloría Nº 0458-2008-CG, Guía para la Implementación del Sistema de Control Interno en las Entidades del Estado.
- Resolución de Contraloría Nº 004-2017-CG, Guía para la Implementación y Fortalecimiento del Sistema de Control Interno en las Entidades del Estado.
- Resolución SBS No. 272-2017.
 Reglamento de Gobierno Corporativo y de la Gestión de Riesgos.
- Resolución de Presidencia Ejecutiva N° 539-PE-ESSALUD-2017 que crea la Oficina de Integridad de ESSALUD.
- Poder Judicial. Acuerdo Plenario N° 7-2009/CJ-116. 13 Noviembre 2009
- Foreign Corrupt Practices Act. United States. 1977
- UK Bribery Act. 2010.

References

- Agnic, Tamara y Susana Sierra.
 Corrupción a la Carta. Ediciones
 Chile. 2017. Chile editions. 2017.
- Asociación Española de Compliance. El Libro Blanco de la Función de Compliance. Madrid. Marzo 2017.
- Astudillo Meza, Guillermo y Sandra Jiménez Montes. Programas de Cumplimiento como Mecanismos de Lucha Contra la Corrupción: Especial Referencia a la Autorregulación de las Empresas. En Derecho y Sociedad. N° 45. pp. 63-73.
- Bacigalupo, Silvina. Análisis Comparado sobre las obligaciones derivadas de las Convenciones Internacionales contra la Corrupción. Responsabilidad Penal y Administrativa de las Personas Jurídicas. Universidad Autónoma de Madrid. 2013.
- Bacigalupo, Silvina y Lizcano, Jesús. Responsabilidad penal y administrativa de las personas jurídicas en delitos relacionados con la corrupción. Colección Estudios Nº 1. Eurososical. Madrid, 2013.
- World Bank, UNODC and OECD. (2013). Anticorruption Ethics and Elements of Compliance: Manual for Companies. World Bank, UNODC and OECD.
- World Bank. Integrity Standards Guidelines.
- Basel Institute. Compliance and

- the *Compliance* Function in Banks. Basel Committee on Banking Supervision. 2005.
- CAF. Corporación Andina de Fomento. Lineamientos de Gobierno Corporativo para Empresas del Estado. 2010.
- Callejón, Casado, Melendo and Mendiz. Integridad, Comportamiento Ético y Reputación Corporativa de las Grandes Empresas Españolas. Congreso Nacional EBEN. Madrid 2013.
- International Chamber of Commerce. Rules of the International Chamber of Connerce to Combat Corruption. 1977.
- Caro Coria, Carlos. Derecho Penal Económico. Jurista Editores. Lima, 2016. Tomo I.
- High Level Anticorruption Commission. I Survey "Fight against Corruption from the Private Sector". IPSOS Peru. 2013.
- High Level Anticorruption Commission. Report on the Final Evaluation to Implement the National Anti-Corruption Plan 2012-2016. Presidency of the Council of Ministers. Lima, 2016.
- Presidential Integrity Commission.
 Stopping corruption, the great battle of this time. December 2016.
- Corrales, Andrés and Joel Manyari.
 Resultados de directivos públicos: la experiencia del cuerpo de

- gerentes públicos de Perú. XXI Congreso CLAD. Chile, 8-11 de noviembre del 2016.
- Del Moral García, Antonio. La Responsabilidad de las Personas Jurídicas: Societas Delinquere Non Potest..., Sed Puniri Potest. In Abogacía Española. January 2016.
- Defensoría del Pueblo. Balance a Diez Años de Vigencia de la Ley de Transparencia y Acceso a la Información Pública 2003-2013. Informe Defensorial Nº 165. Lima, 2013.
- Dutzler, Barbara. "Capacity Development and Supreme Audit Institutions: GIZ's Approach", in Supreme Audit Institutions Accountability for Development. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and International Organization of Supreme Audit Institutions (INTOSAI). Ed. 2013. Nomos Verlagsgesellschaft. Baden-Baden, Germany.
- EY. 2015. Survey on Government, Risk and Compliance.
- EY. Business Integrity and Corporate Compliance Services Methodology.
- G-20. High Level Principles for the Organization against Corruption.
- Gómez-Jara Díez, Carlos. Modelos de Autorresponsabilidad Penal Empresarial. Propuestas Globales Contemporáneas. Ed. Rodona. Navarra, 2006.

- INACAL. (2017). NTP 37001.
 Sistemas de gestión antisoborno.
 Requisitos con orientación para su uso. Lima: INACAL.
- Institute of Internal Auditors. The Three Lines of Defense for Effective Risk Management and Control. Position Statement. January 2013.
- International Standards Organizations. ISO 19600. Compliance Managemente Systems Guidelines.
- INTOSAI GOV 9100. Guide for the Internal Control standards of the Public Sector.
- Kauffman, Sanginés and García Moreno, Building Effective Governments: Achievements and challenges of public management for results in Latin America and the Caribbean, IDB, 2015
- Koehler, Mike. The Story of the Foreign Corrupt Practices Act. Ohio State Law Journal. Vol. 73.5.
- Lascuraín, Juan Antonio. Compliance, debido control y unos refrescos. In: Arroyo, Luis and Adán Nieto (Directores) (2013). El Derecho Penal Económico en la era del Compliance. Valencia: Tirant lo Blanch
- Meagher, Patrick. Anticorruption agencies. Rethoric versus reality. The Journal of Policy Reform. Volume 8, 2005.
- Nieto, Adán. La Privatización de la lucha contra la corrupción". Publi-

- cado en Arroyo y Nieto, "El derecho penal económico en la era del compliance". Tirant lo Blanch. Valencia, España. 2013.
- Nieto, Adán, De la Ética Pública al Public Compliance: sobre la prevención de la corrupción en las administraciones públicas. En Public compliance Prevención de la corrupción en administraciones públicas y pratidos políticos. Directores. Ed. de la Universidad de Castilla. La Mancha, 2014.
- Nieto, Adán. Responsabilidad Social, Gobierno Corporativo y autorregulación: sus influencias en el derecho penal de la empresa. Polít. crim., No 5, 2008, A3-5, pp.1-18. [http://www.politicac-riminal.cl/n_05/a_3_5.pdf]
- United Nations Office on Drugs and Crime. Practical Guide. Anticorruption Program of Ethics and Compliance for Companies.
- Organization for Economic Cooperation and Development. OECD.
 Guidelines for Multinational Companies. 2011.
- Organization for Economic Cooperation and Development. OECD.
 Guidelines on the Corporate Governance of Public Enterprises.
 Paris. 2011.
- Organization for Economic Coop-

- eration and Development. OECD. Principles of Corporate Governance. 2004.
- Organization for Economic Cooperation and Development. OECD.
 Annex I. Guide of Good Practices to apply specific articles of the Convention to Combat the Bribery of Foreign Public Servants in Commercial Transactions.
- Organization for Economic Cooperation and Development. OECD.
 Annex II. Guide to Good Practices on Internal Control, Ethics and Compliance with Standards for Companies. 2010.
- Organization for Economic Cooperation and Development. OECD.
 The Liability of Legal Entities for Corruption Crimes in Latin America.
- Organization for Economic Cooperation and Development.
 OECD. OECD Study on Integrity in Peru: Reinforcing the integrity of the public sector for inclusive growth. OECD Studies on Public Governance. Éditions OCDE, Paris. http://dx.doi. org/10.1787/9789264271470-es
- Organization for Economic Cooperation and Development. OECD.
 Recommendations on Public Integrity.

- Procuraduría Especializada en Delitos de Corrupción de Perú. Plataforma Mapa de la Corrupción. https://www.google.com/ maps/d/viewer?mid=18Jjm-HjdeCGJ-vY5h55bo27pb_M&hl=en_ US&ll=-9.848694040211242%2C-78.9414265574224&z=4
- Rodríguez Ramos, Luis. Societas Delinquere Potest. Nuevos Aspectos Dogmáticos y Procesales de la Cuestión.
- Roig Altozano, Marina. La Responsabilidad de las Personas Jurídicas: Societas Delinquere et Puniri Potest. Universidad Alfonso X El Sabio. España.
- Sieber, Ulrich. Programas de Compliance en el Derecho Penal de la Empresa. Una nueva concepción para controlar la criminalidad económica. In: Arroyo, Luis and Adán Nieto (Directores) (2013). El Derecho Penal Económico en la era del Compliance. Valencia: Tirant lo Blanch, p. 75.
- International Transparency. Business Principles to Counter Bribery.
 December 2002.
- Universal Corporate Compliance. At www.universalcorp.com/ compliance.
- World Economic Forum. Partnership Against Corruption Initiative.

