Compliance mechanisms and climate change

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With vaccination against covid-19 advancing rapidly in Brazil, and a more solid footing for the expected economic recovery, attention has turned to the economy. Growing geopolitical interest in preserving the environment and increasing concerns over climate change, especially considering COP26, have made green issues an inseparable part of doing business, becoming the new "best practice".

From this perspective, corporate compliance programs have room to accommodate various mechanisms and controls that can effectively contribute to the new vision of the world which inevitably will also be a reality for Brazilian business, either at its own initiative, or through the demands by commercial partners.

According to a report published in 2020 by the Organisation for Economic Cooperation and Development (OECD) on ESG (Environmental, Social and Governance) investing, various criteria must be taken into account when determining whether a given company adheres to ESG practices. Of note on the environmental side are

- emissions,
- energy efficiency,
- pollution,
- the supply chain, and
- corporate ethics.[1]

The intersection between the environmental pillar of ESG and Compliance is obvious. Compliance deals with corporate ethics within companies, and through internal rules and regulations that compose the company's integrity/compliance program, can establish elements that serve to identify, remedy and prevent practices that may be contrary to ESG principles.

Companies can adopt mechanisms in their compliance programs designed to identify polluting activities or poor use of resources that the company may not be aware of: making sure that collaborators are familiar with the company's program and the company's policies, and are encouraged to report issues, helps bring problems to light so they can be dealt with. Environmental issues can also be highlighted in compliance reviews and training.

In supply chains, the now-familiar supplier background checks can be adapted to identify environmental risks, especially in light of the risk of criminal liability (mentioned below).

Corporate Ethics is a more subjective topic, where "tone at the top" is a necessary element: managers must transmit to staff the importance of making compliance policies effective, since issues related to corporate ethics are fundamental to a company's continuity. A necessary part of "tone at the top" is the message that management transmits through action under the company's compliance program.

Sometimes, of course, a company's business carries inherent risk. An example would be a company that produces pollutant waste, or that employs pollutant products transported by itself or by third parties. In such cases, regulators and authorities expect that the company's risk assessments will thoroughly address environmental issues and incorporate them into the structure of the company's business activities.

In cases where third parties are engaged in polluting or potentially polluting activities, companies can consider that possibility of extending certain policies under their compliance programs to third parties, where applicable, with a view to expanding environmental protections to businesses that are part of their supply chain.

In fact, under Brazilian law, the only type of criminal liability that companies can have is for environmental crimes, which only underlines the need to assess and manage the risks associated with violation of environmental laws and illegal practices.

An effective compliance program is the expression of a company's culture and values. The intersection between environmental issues and corporate compliance means that compliance can have a preventive and proactive role, in addition to remediation. Accommodating modern concepts of environmental protection in a structured compliance program has the potential not just to protect companies from criminal and civil liability, but to be a turning point toward a green economic recovery.

NOTES:

[1] Available at https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf. Page 23. Accessed October 25, 2021.

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