



## PREVENTION OF CORRUPTION

[Decree-Law No. 109-E/2021, of 9 December](#), which establishes the General Regime for the Prevention of Corruption (GRPC), was published in the Portuguese Official Gazette, introducing several new legal obligations.

We outline below the legal duties of companies, aimed at preventing corruption and related offenses.

### > Subject Entities

The following entities are subject to the GRPC:

- a) **Portuguese companies with 50 or more employees.**
- b) **Branches** in Portugal of foreign entities with 50 or more employees.
- c) Services and legal persons of the **direct and indirect administration of the State**, the **autonomous regions**, **local authorities** and the **corporate public sector** with 50 or more employees.
- d) **Independent administrative entities** with functions of regulating the economic activity of the private, public and cooperative sectors. And,
- e) **Bank of Portugal.**

### > Corruption and related offenses

Include: **crimes of corruption, improper receipt and offer of advantage, embezzlement, economic participation in business, graft, abuse of power, prevarication, influence peddling, laun-**

**dering or fraud in obtaining or diverting a subsidy, subvention or credit**, as provided in the Criminal Code, the Code of Military Justice and other applicable legislation.

#### > Regulatory compliance program

Companies shall adopt and implement a regulatory compliance program that includes, at least:

- **Plan to prevent risks of corruption and related infractions (PPR);**
- **Code of conduct;**
- **Training program;** and,
- **Reporting channel.**

The objective of the regulatory compliance program is to prevent, detect and sanction acts of corruption and related offences carried out against or through the subject entities.

#### > Appointment

A person from the company management or equivalent should be appointed as **responsible for regulatory compliance** to guaranty and control the application of the regulatory compliance program, performing the functions independently, permanently and with decision-making autonomy, with internal information and necessary human and technical resources.

#### > Plan to prevent risks of corruption and related offenses (PPR)

Subject entities shall draw up a PPR covering their entire organisation and activity, including areas of management, direction, operation or support.

PPR should include:

- i) The **areas of activity at risk** of the practice of acts of corruption and related offenses, as well as the identification, analysis and classification of **risks and situations** with exposure to such acts, considering the sector and the geographical areas in which the entity operates.
- ii) The **probability of occurrence** and the **foreseeable impact** of each situation, in order to allow **grading** its risk.
- iii) **Preventive and corrective measures** to reduce the likelihood of occurrence and the impact of identified risks and situations.
- iv) In situations of high or maximum risk, the **most comprehensive prevention measures**, with priority implementation. And,
- v) The appointment of the **overall responsible** for the implementation, control and review of the PPR, which may be the same person responsible for regulatory compliance.

The implementation of the PPR is subject to **control** and an **interim evaluation report** should be prepared in October for situations identified with high or maximum risk, as well as an **annual evaluation report**, in April of the following year, containing the quantification of the degree of implementation and the forecast for the full implementation of the identified preventive and corrective measures.

The PPR shall be **reviewed every three years** and the subject entities shall ensure the **publicity** of the PPR and reports to its employees, via intranet and official website, if applicable, within 10 days of its issuance.

#### > Code of conduct

Subject entities should adopt a code of conduct that establishes the set of **principles, values and rules of action of all managers and employees in matters of professional ethics**, considering the risks of exposure and criminal provisions regarding corruption and related offenses.

At least, the code of conduct should identify **disciplinary sanctions** that may be applied in the event of non-compliance with the rules contained therein and **criminal sanctions** associated with acts of corruption and related offences.

For each infringement committed, the subject entities should issue a **report** containing the rules breached, the penalty imposed, and the measures adopted or to be adopted.

The code of conduct should also be **revised every three years. It should be publicised to the employees**, via intranet and official website, if applicable, within 10 days after issuance.

#### > Denunciation channels

Subject entities must have internal denunciation channels and follow up on **acts of corruption and related offenses denounced**, according to Law No. 93/2021, of 20 December.

About the General Regime for Whistleblower Protection, please see [here](#) our published article.

#### > Training and communication

Subject entities shall ensure that all their leaders and employees are carrying out **internal training programs**.

The subject entities must also make an effort to **communicate** to the entities with which they are connected the implemented policies and procedures for preventing corruption and related offenses.

### > Evaluation system and internal control procedures

Companies should implement **mechanisms for evaluating the regulatory compliance program** in order to assess its effectiveness and ensure its improvement.

The evaluation system integrates the **internal control procedures**, covering the main risks of corruption identified in the PPR, and may include, for example, a organisation plan, policies, methods, procedures and good control practices defined by those responsible, which should contribute to ensuring the development of activities in an orderly, efficient and transparent way.

For **public procurement**, procedures and internal control mechanisms shall be included in appropriately publicised procedure manuals.

### > Prior evaluation procedures

Companies shall implement **prior risk assessment procedures** for third parties acting on their behalf, suppliers and customers. Procedures should be adapted to the risk profile of the assessed entity and capable of enabling the identification of beneficial owners, image and reputation risks, as well as business relationships with third parties, in order to identify possible conflicts of interest.

### > Misdemeanours

Notwithstanding the civil, disciplinary or financial liability, the misdemeanours regime of the law referred above provides for various administrative offenses — for example, not having a PPR, a code of conduct or an internal control system — in breach of applicable legal obligations, which are punishable by fines of up to € 3,740.98 for natural persons, and between € 1,000.00 and € 44,891.81 for legal persons, depending on the type of misdemeanour. Fines are applied by the National Anti-Corruption Mechanism (MENAC).

[Decree-Law No. 109-E/2021, of 9 December](#) enters into force on **7 June 2022**. However, its misdemeanours regime is deferred, producing only effects 1 or 2 years after, depending on whether the offender is a large or a medium-sized enterprise, respectively ●