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COMPLIANCE, ASSET RECOVERY, AND ACCOUNTABILITY

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Abstract

This paper is derived from the research project "Soft Law and Economically Sustainable Companies," conducted at the Metropolitan University, Venezuela, which monitors compliance management systems as a mechanism for achieving sustainable, responsible, and reliable companies. The purpose of this article is to establish mechanisms for the prevention of conduct derived from corruption and organized crime, responsibility, and the recovery of assets still held by third parties, resulting from the transfer of permitted risk. The result is that this conduct, in addition to affecting the stability of the economic system, damages the material assets and reputation of the companies themselves, even condemning them to disappearance. That is why a brief monitoring protocol for the securing of property and assets is proposed. The discussion highlights the duty of the guarantor to respond, for which the monitoring of international guidelines and mechanisms for the prosecution of crimes and the pursuit of assets through civil action must be considered, even if the assets are held by third parties.

Keywords: corruption, organized crime, risk prevention and mitigation, asset recovery, sustainability.

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Sustainable Development Goal(s) (SDG) to which the research work is directed

This work explicitly aligns with three Sustainable Development Goals (SDGs) established by the United Nations 2015 Agenda:

8. DECENT WORK AND ECONOMIC GROWTH

16. PEACE, JUSTICE AND STRONG INSTITUTIONS

To achieve strong organizations that guarantee justice and peace, through transparent processes aligned with the prevention of corruption crimes that affect the economic system and social goals, calling into question the corporate image and reputation.

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Introduction

Liability, especially criminal liability, is the last resort of the law and, in this area, with regard to legal persons, it originates from organizational defects resulting from a lack of leadership in the exercise of good corporate governance by senior management, together with boards of directors and shareholders' meetings, and not from isolated events. The focus should be on determining why their decision-making, cultural, and supervisory structures failed.

Consequently, it is the duty of corporate governance bodies to train the different spheres within the company, providing an open channel of communication that addresses the concerns and needs of the organization, as well as auditing processes to prevent and mitigate risks.

These objectives are linked to Sustainable Development Goals 8 and 16 of the United Nations (2015), in the sense of achieving strong organizations that guarantee justice and peace through transparent processes aligned with the prevention of corruption crimes that affect the economic system and social goals, calling into question the image and reputation of the company.

In this vein, leadership includes treating subordinates well, providing support, actively listening, recognizing talent, respecting decisions involving others, and deploying and consolidating a sustainable culture. These aspects function as key performance indicators (KPIs) in measuring environmental, social, and governance (ESG) criteria, adding value to the business.

As a corollary, it can be noted that at the meetings held in December 2025 by the plenary and working groups of GAFILAT, the Regional Policy Dialogue was held with experts in asset recovery, addressing topics such as virtual assets, corruption, organized crime, international cooperation (FATF 2018, Recommendation 38) and the fight against money laundering and terrorist financing (FATF, 2018, Recommendation 4), considered the greatest risks to economic and human development.

It should be remembered that the Compliance Officer also plays a role in consolidating these goals, as their function includes the ability to detect risks, comply with legal regulations and self-regulation, work with a risk-based approach, and create and implement strategies for better *compliance* management*,* ensuring consistency between ethics, regulations, and

strategic decisions, which is the only way to lead the company towards a sustainable economy, based on the United Nations Sustainable Development Goals 8 and 16, which seek to control all forms of corruption by reducing illicit financial sources.

It should not be forgotten that, in order to achieve sustainable business, integrity is the basis for defense against any type of risk, especially criminal risk, with the aim of preventing corruption, unfair competition, and fraud, which are so damaging to corporate image and lead to a loss of investor confidence, the subject of this research.

In this regard, the following questions arise:

How can we prevent and mitigate the risks of corruption and money laundering that could affect confidence in the company's commercial activities?

What are some of the consequences of the risks of corruption and money laundering?

Objectives

To answer the above questions, the following objectives are proposed:

General: Based on the research questions, it can be stated that the general objective of this paper is to determine how the company could be affected by not implementing risk management to prevent and mitigate corruption and organized crime.

Specific: The specific objectives are as follows:

a) To analyze some international guidelines related to the prevention and mitigation of risks and liability in the areas of money laundering, corruption, and asset recovery.

b) To establish effective mechanisms for *compliance* and good corporate governance to prevent and mitigate risks related to corruption and money laundering; and some of the legal consequences of committing crimes in these areas.

c) To evaluate how to voluntarily integrate international guidelines into the company's internal regulations in order to prevent conduct constituting crimes of corruption and money laundering that affect the integrity, image, and transparency of the organization in commercial exchanges.

Methodology

The methodology used in the research is based on a bibliographic documentary design, which is founded on the search, analysis, retrieval, and interpretation of data obtained from various sources, including academic articles and books, laws, and international regulations containing standards and recommendations, with the aim of incorporating new knowledge. The level of knowledge has been exploratory and analytical, opening up the possibility of generating new products based on the results, which are interpreted using a qualitative approach, based on the opinions and content of the documents studied (Gallardo 2017, pp. 52-53). In this vein, the research technique used is a review of physical and digital bibliographies, consisting mainly of articles in specialized journals, book chapters, books, laws, decrees, and international standards, allowing for the identification of the characteristics of the event under study, as indicated by Muñoz (2011, p. 118).

1.-Relevant aspects of money laundering, corruption, and asset recovery

In order to establish which assets should be subject to prosecution and recovery, it must first be understood that, as referred to by the Financial Action Task Force (FATF, 2018, Recommendation 4), the assets must have the following characteristics:

- They must be property or assets derived from criminal activities.
- They must have been appropriated or are in the possession of organized crime organizations.
- They are property that has been used as tools or instruments for the commission of criminal acts, such as vehicles or digital systems.
- They may be subject to seizure or forfeiture,
- They must be the same property or its derivatives or equivalents.

In any case, the competent authorities shall be responsible for identifying and tracing the property and the illegality of its origin, since it may be the case that it is not in the possession of the person, proceeding to its seizure and requesting its confiscation from the court. When the assets are in the possession of a different person and are held by third parties in good faith, but it is established that the asset constitutes a larger estate of illicit origin, a civil action for forfeiture may be brought to pursue the asset.

1.1.-Risk assessment

The purpose of risk assessment is to understand the company's exposure to risks in order to make informed decisions regarding its management. Risk consists of the uncertainty that exists regarding factors that could affect the achievement of objectives.

Problems are known current situations, such as not having responsible suppliers or not having all customer identification, which could lead to penalties for deficiencies in the due diligence process on third parties, which could affect the corporate image and even lead to the commission of crimes such as fraud or money laundering. Another scenario, for example, could arise from not knowing the context of the company or not having a code of ethics and disciplinary regime; or, even if these exist, they may not be known to staff, revealing a lack of commitment to the principles and values of the organization. In terms of risk management, all of this could lead to acts of corruption with legal consequences for the company and its representatives.

Any type of risk, whether credit, *compliance*, market, financial, labor, ethical, or governance, can lead to acts of corruption, especially when attempts are made to cover up shortcomings in prevention with fraudulent or bribery-related conduct, and even money laundering.

Based on the probability of a risk occurring and the impact it may have if it does occur, there is a duty to prioritize them from a very high level to a very low level. When analyzing the risk inherent in these acts of corruption, fraud, or money laundering, we usually refer to inherent risk, while residual risk refers more to the remaining possibilities after evaluating mitigation measures, once the study has been carried out within each risk scheme and which form part of the tolerance margin and whose determination is also established qualitatively from very high to very low. (OECD 2013, p.12).

When using a heat map, each color represents a higher or lower level of risk based on the probability of impact for each process or overall. This assessment allows for the adoption of appropriate mechanisms to prevent, mitigate, and act in the event that the risk materializes. It is therefore important that such assessments are carried out frequently within the company, taking advantage of any aspect that leads to changes in structure, business, dividends, or mergers to carry out this assessment, rather than waiting a year or six months to do so. In this process, it is essential that the different high-level spheres (directors, partners, and administrators) are involved and report periodically to the regulatory bodies.

Continuing with the assumption of a risk-based approach in order to achieve corporate governance, Castro and Cano recommend that organizational management comply with international standards issued both in the Basel II agreement and the pronouncement of the Organization for Economic Cooperation and Development (OECD), and that the code of good corporate governance contain clear procedures that commit the members of an organization. In this regard, the authors indicate that good governance

> seeks to ensure the proper management and administration of companies, especially those listed on the stock exchange, in order to protect the rights of investors and other stakeholders, promoting transparency, productivity, competitiveness, and the integrity of institutions.(...) It is based on logical principles such as fairness, honesty, solidarity, and justice, both towards stakeholders and society in general, which cannot be affected by the unscrupulous actions of white-collar criminals entrenched in the power of corporations and public companies. It is not a question of identifying good corporate governance with a simple code of ethics or code of conduct, which, according to observations, is reflected only in theory and not in the feelings of those who read it (2004, p.22).

With regard to the implementation of the guidelines of the Organization for Economic Cooperation and Development, for the assessment to be effective, it must include:

> Who owns the process and who are the key stakeholders?
>
> How much time will be invested in the process?
>
> What type of data should be collected and how?
>
> What external resources are needed?
>
> What framework will be used to document, measure, and manage corruption risk? (2013, p. 10).

To achieve this goal, and based on the PACI Principles, it is important to consider the possible risks to which the probabilities of corruption occurring should be projected, such as:

- Checking whether the country with which you intend to do business has a high risk of bribery[1]
- Assessing the exposure to bribery of the sectors in which the company operates
- Find out the terms of payment and the clarity of commissions
- Controls that must be carried out to assess the integrity of its suppliers, partners, and customers.
- In the case of a supplier, it must be clear what the customers' expectations are in order to combat bribery.
- Be informed and aware of the laws and regulations that affect the business environment (OECD, 2008, p.10).

1 The OECD recommends consulting: http://www.transparency.org/policy_research/surveys_indices/cpi

1.2.-Some guidelines on corruption control

From the point of view of corruption risk prevention and mitigation, there are a number of international instruments that establish guidelines for companies and other organizations, aimed at providing guidance and recommendations on this issue. The most notable, from a review of international regulations, are the following:

a.- The United Nations Convention against Corruption (2004, in force since 2005) seeks to ensure that States implement the recommendations domestically through legislation. Among the novel aspects contained in the convention is the inclusion of corporate corruption and the criminal liability of legal persons. In this regard, the convention establishes:

> Article 26. Liability of legal persons 1. Each State Party shall take the necessary measures, in accordance with its legal principles, to establish the liability of legal persons for their involvement in offenses established in accordance with this Convention. 22 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil, or administrative. 3. Such liability shall be without prejudice to the criminal liability of natural persons who have committed the offenses. 4. Each State Party shall in particular ensure that effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions, are imposed on legal persons held liable in accordance with this article. (UN, 2004, art. 26, pp. 22-23).

It should be noted that the Convention already foresaw the possibility of conflicts of interest arising when hiring a former public official. In this regard, the Convention establishes:

> Article 12, e) Prevent conflicts of interest by imposing appropriate restrictions, for a reasonable period, on the professional activities of former public officials or on the employment of public officials in the private sector after their resignation or retirement, where such activities or employment are directly related to the functions performed or supervised by those public officials during their tenure (UN, 2004, art.12, p.20).

b.-The Anti-Corruption Code of Conduct for Enterprises (Asia-Pacific Economic Cooperation Forum – APEC)

The Chilean Parliamentary Observatory analyzes the problems of corruption in the Asian region. In this regard, it notes that, based on the Corruption Perceptions Index , corruption remains a common evil in Asia and little progress has been made in controlling it. (Asia Pacific-Parliamentary Observatory, 2023, par. 2). However, it indicates that

> From a comparative regional perspective, five Asia-Pacific countries appear among the top 20 in the global ranking: New Zealand (2); Singapore (5); Hong

> Kong (12); Australia (13); and Japan (18). A little further down are South Korea (31); China (45); and Malaysia (61). For its part, the world's largest democracy, India, ranked 85th. (Asia Pacific-Parliamentary Observatory, 2023, par. 6)

However, Malaysia faces serious corruption issues, notably the cases of former Prime Minister Jajib Razak and Deputy Prime Minister Muhyiddin Yassin, involving bribery related to the approval of projects and even involving banking institutions (Asia Pacific-Parliamentary Observatory, 2023, par. 8).

c.-The Business Principles to Counter Bribery of the Anti-Corruption Alliance.

As noted in the document presented by the World Economic Forum, a multisectoral team of companies cooperating with Transparency International and the Basel Institute on Governance, among others, participated in the development of the PACI Principles. The principles provide a framework of good practices in corruption risk management.

These best practices aim to achieve sustainability through good governance, both in the private and public sectors, within and outside the territory of States, incorporating the International Chamber of Commerce (ICC) Standards of Conduct to combat extortion and bribery, based on ethics, integrity, and responsibility, both in domestic and international trade.

The purpose of these Business Principles is to ensure that all companies, including SMEs, implement good business practices and make them part of their culture. In this regard:

- It is important to understand the business context, since those who do not know the company will not be able to understand its objectives, values, and practices.
- Know how to identify risks that will always be future and always present
- Based on the risks, establish what practices will be used to counteract the risks, in this case bribery.

The document begins by defining corruption as: *the misuse of power, which is used by the person(s) to whom it was entrusted for their own particular benefit*, indicating that the most common form is the acceptance of bribes. (Transparency International, 2008, p.6).

Similarly, it states that compliance with these principles will have the following advantages or benefits, namely:

- Having a reputation as an ethical company increases your chances of being selected as a supplier by large multinationals and of gaining better access to international markets. A track record of integrity will improve your chances of winning government business contracts.

- With a good anti-bribery program in place, your company and its partners will be better protected against legal sanctions, loss of licenses, and blacklisting.
- If you are considering selling your company, a good reputation will make it more attractive to potential buyers.
- An ethical company is a good place to work, fostering good labor relations and a pleasant environment.
- Your company will be more attractive to financial organizations.
- You, and not some bribe payer or collector, will be the owner of your company and the one in control of its business decisions. Your organization will save money that might otherwise be wasted on bribes, gifts, and incentives. (Transparency International, 2008, p.7)

d.- The Organization for Economic Cooperation and Development (hereinafter OECD) Good Practice Guidance on Internal Controls, Ethics, and Compliance seeks *to encourage companies to establish and implement effective internal controls and ethics and compliance programs, as well as measures to prevent and detect bribery of foreign public officials in international business transactions* (OECD, 2010, p.1).

These guidelines also seek the implementation of good practices by *professional organizations and associations that play an essential role in supporting companies in their efforts*. (OECD, 2010, p.1). To achieve this, it is necessary to implement effective internal controls that respond to the size and particular characteristics of the company.

- Some of the best practices recommended by the OECD for controlling corruption are:
- Absolute, explicit, and visible support and commitment from senior management to adapt internal controls, ethics programs, and compliance programs to prevent and detect international bribery.
- A visible and clearly articulated corporate policy prohibiting international bribery.
- Compliance with this prohibition and with internal controls and ethics and compliance programs is the responsibility of all individuals in the company.
- The oversight of ethics and compliance programs or measures relating to international bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or supervisory boards, should be the task of one or more corporate officers with an adequate level of management autonomy, resources, and authority.

- Ethics programs and measures designed to prevent and detect international bribery, applicable to all directors, officers, and employees, and generally to all entities over which the company has effective control,

- Ethics programs and measures designed to prevent and detect international bribery should, where appropriate and subject to contractual agreements, include third parties such as agents or intermediaries, consultants, representatives, distributors, contractors, and suppliers, consortia, and mergers, and should also include the following essential elements: i) Duly documented risks related to contracting. ii) iii) Informing business partners about: the company's commitment to legally prohibit international bribery, the company's ethics programs, and its measures to prevent such phenomena. Seeking a reciprocal commitment from business partners.

- A financial and accounting system that includes internal control systems designed to ensure the proper recording of books, records, and accounts, in order to guarantee that they cannot be used for international bribery or to conceal such acts.

- Measures designed to ensure communication and ongoing, documented training at all levels of the company on company ethics and programs or measures relating to international bribery.

- Appropriate measures to monitor ethics programs or measures against international bribery at all levels of the company.

- Appropriate disciplinary procedures to address, among other things, violations at all levels of the company of laws against international bribery and company ethics, as well as compliance with programs or measures related to international bribery.

- Effective measures to: Provide guidance and direction to directors, officers, employees, and, where appropriate, business partners on compliance with the company's ethics programs and measures, including when timely legal advice is required in foreign jurisdictions.

- Promote internal reporting, confidentially to the extent possible, providing protection to directors, officers, employees, and, where applicable, business partners who do not wish to violate professional or ethical standards in accordance with the instructions or pressure of their superiors, such as directors, officers, employees, and, where applicable, business partners who wish to report in good faith and with reasonable evidence violations of the law or professional and ethical standards that have occurred in the company.

- Take appropriate measures to respond to such reports.

- Periodic reviews of ethics and compliance programs and measures, designed to evaluate and improve their effectiveness in preventing and detecting international bribery, taking into account relevant measures in the field and involving international and industry standards. (OECD, 2010, p.3-4)

e.· Guidelines for Integrity Compliance (World Bank)

This document from the beginning of the millennium analyzes the duty to take responsibility for problems arising from poor risk management that affect the reputation and economic stability of the company, for which it is essential to develop a culture of ethics, compliance, and integrity within the organization.

In this regard, the World Bank identifies several essential elements, such as:

- Leadership: The senior management of the disqualified party and its boards of directors or similar bodies must show commitment and provide firm, explicit, visible, and active support for the institutional integrity compliance program developed by that party (the "program") and its implementation, both in letter and spirit.

- Individual responsibility: The program is mandatory, and it is the duty of all individuals at all hierarchical levels of the disqualified party.

- Compliance function: The supervision and management of the program is the responsibility of one or more senior officials, who must have an adequate level of autonomy, sufficient resources, and the authority to implement it effectively. (World Bank, 2000, p.2).

These guidelines also include some internal policies that must be implemented, such as designing a practical and effective program that articulates the environment with the values, procedures, and measures aimed at preventing, detecting, mitigating, and correcting any misconduct. To this end, it is important to observe due diligence with regard to internal and external *stakeholders* and to prohibit the receipt of gifts of any kind, political contributions or donations, or payments to expedite processes in public or private entities.

f.- The International Chamber of Commerce's Rules for Combating Corruption

These are voluntary standards for corporate self-regulation aimed at improving the level of integrity in business transactions between companies and their commercial partners and even with public institutions. This self-regulation goes beyond the legal system, filling gaps due to the absence or expiration of existing regulations, and forming part of prevention management.

It includes as essential aspects a risk-based approach, pointing out that corporate self-regulation is applicable in the context of both national legislation and international legal

instruments. Its voluntary adoption and implementation by companies promotes a high degree of integrity in commercial transactions, whether between companies and public bodies or between companies themselves.

It contemplates a risk-based approach whereby:

> any company, regardless of its size, nature, business activities, geographical presence, or sector, can adopt and implement these Rules following an effective risk-based approach. This involves identifying, assessing, and understanding the specific risks to which the company is exposed and taking appropriate mitigation measures. (ICC, 2023, p.5).

The inclusion of conflicts of interest in Article 8 is noteworthy, as it establishes that they must be mitigated, *since they can affect a person's judgment in the performance of their duties and responsibilities* (ICC, 2023, Art. 8, p.8). In this vein, companies must supervise and manage conflicts of interest with respect to their managers, supervisors, third parties, and employees, among others. It also establishes a prohibition on hiring former public officials before a reasonable period of time has elapsed since they left office, as a measure to prevent acts of corruption, in line with the United Nations Convention Against Corruption.

g.-ISO 37.001-2021 Standard of the International Organization for Standardization

Standard 37001-2025 provides tools for establishing the requirements and guidance to be followed in the implementation of anti-corruption management systems, so that companies are able to prevent, detect, and mitigate bribery on a voluntary basis, incorporating these guidelines into their self-regulation.

The approach taken by this standard covers both *compliance* and the development of a sustainable culture of transparency, trust, and integrity, with a risk-based approach within an anti-corruption management system. This system serves to prevent and mitigate risks and, as a last resort, to assume responsibility for damages associated with bribery.

1.3.-Main standards on asset legitimization

To understand the issue, it is important to note that the Financial Action Task Force (hereinafter FATF), created in 1989 as an intergovernmental body, has the following objectives:

> set standards and promote the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, proliferation financing, and other threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF

> also seeks to identify vulnerabilities at the national level in order to protect the international financial system from misuse (GAFISUD, 2012, p.6).

The *40 FATF Recommendations*,[2] , establish guidelines for states and organizations to enable them to identify and manage the risks of money laundering, terrorist financing, and proliferation of weapons of mass destruction, requiring them to establish policies to combat these behaviors. In this regard, they must implement preventive measures in designated sectors, especially in the financial sphere, such as supervision and responsibility for ensuring prevention, international cooperation, transparency, communication and information, reporting of suspicious activities, regulated entities, politically exposed persons, beneficial owners, and customers.

To cite one example, in Venezuelan positive law, public supervisory bodies within the financial sector such as the National Superintendency of Banks (SUDEBAN), the National Securities Market Superintendency (SUNAVAL), and the National Insurance Sector Superintendency (SUDEASEG) have issued regulatory standards on the prevention of organized crime such as money laundering and terrorist financing and good corporate governance, such as:

- Resolution 025-2025 issued by the Venezuelan Ministry of Finance through the Superintendency of Banking Sector Institutions (hereinafter SUDEBAN) on March 20, 2025, entitled "Regulations for the management and supervision of the risks of money laundering, terrorist financing, and financing the proliferation of weapons of mass destruction" in order to regulate, prevent, and mitigate these activities in banking sector institutions (SUDEBAN, 2025, art. 1), which replaced SUDEBAN Resolution 083-18, granting only 30 banking business days as the period for compliance (SUDEBAN, 2025, art. 126), and is aimed at regulated entities in this sector subject to inspection, supervision, surveillance, regulation, control, and sanctioning by the Superintendency of Banking Sector Institutions. (SUDEBAN, 2025, art. 2).

- Providence No. SAA-01-0536-2024 of the Superintendency of the Insurance Sector contains the: Rules on risk management for money laundering, terrorist financing, financing the proliferation of weapons of mass destruction, and other illegal activities in the insurance industry (2024).

  It also stipulates that regulated entities must implement, update, and innovate appropriate, sufficient, and effective measures to identify risks based on their weighting as high, moderate, or low (SUDEASEG, 2024, art. 2), always under the supervision of SUDEASEG. It also includes as obligated parties the Designated Non-Financial Businesses and Professions (DNFBP): those designated by the Financial Action Task Force (FATF) and which may be at risk of being used for money laundering, terrorist

2 They were created in 1990 and are frequently updated, with updates being adopted by states within their regulations.

financing, or financing the proliferation of weapons of mass destruction and other illegal activities. (SUDEASEG, 2024, art. 4).

It also refers to due diligence as the principle that allows risks to be identified so that they can be mitigated and weaknesses to be corrected, through a set of mechanisms (rules, policies, procedures, processes, and management) designed in accordance with a risk-based approach and through specific actions that ensure compliance with principles, values, and policies (SUDEASEG, 2024, art. 6, numeral 10).

It also refers to suspicious activities as unusual transactions that, due to their characteristics, are unrelated to the economic activity of the customer, intermediary, service provider, or employee and exceed or fall outside the normal parameters established for a given market range.

- Providence 025-2025 of the National Securities Market Superintendency, which sets out the Rules on the Management and Supervision of Money Laundering Risks and other crimes for entities controlled by SUNAVAL, applies to regulated entities consisting of natural or legal persons subject to SUNAVAL control, as well as entities that directly or indirectly participate in the securities market. However, it also incorporates designated non-financial activities and professionals (2025, art. 4), which include: casinos, real estate agents, precious mineral traders, registries and notaries, accountants, administrators, lawyers, economists, service providers, and personal firms.

In general, the new regulations include as regulated entities non-financial professional activities (hereinafter APNF) related to casinos, bingo halls, gambling, the purchase and sale of precious and semi-precious metals, the purchase and sale of precious and semi-precious stones, lotteries, luxury goods stores, shows, chemical laboratories, construction, the purchase and sale of real estate, art objects, cell phone services, archaeological objects, and even political parties. They also require enhanced due diligence in activities such as trusts, correspondent banking, and OSFLONG. It also highlights the duty to appoint a Compliance Officer and the supervision of internal audits by the Board of Directors.

In addition to establishing the application of financial sanctions, the FATF has also established that asset recovery measures be implemented, stating:

> Countries should adopt measures similar to those set out in the Vienna Convention, the Palermo Convention, and the International Convention for the Suppression of the Financing of Terrorism, including legislative measures, that allow their competent authorities to freeze or seize and confiscate the following, without prejudice to the rights of bona fide third parties: (a) laundered property, (b) proceeds of, or instruments used in, or intended for use in, money laundering offenses or predicate offenses, (c) property that is the proceeds of, or was

> used in, or was intended to be used or allocated for use in, the financing of terrorism, terrorist acts, or terrorist organizations, or (d) property of equivalent value (GAFISUD, 2012, p. 11).

Similarly, the FATF has recommended that countries have supervisory bodies in place to track and secure assets that are subject to confiscation. By 2010, the possibility of implementing confiscation without criminal conviction was already being considered, giving rise to civil prosecution through the asset forfeiture procedure.

In Venezuela, in this regard, situations in which the lack of proof of the legality of the assets and the existence of a level of qualified good faith in which the person demonstrates that they acted with the necessary prudence and were not in a position to know the illicit origin, result in the extinction of ownership with the consequent declaration of ownership in favor of the State, as provided for in the Organic Law on Asset Forfeiture (2023, art. 5, numeral 3).

In view of the above, Jiménez and Urbina define the extinction of ownership as

> a civil action of a patrimonial nature by which the State, in the exercise of its constitutional functions of preventing criminal activities associated with corruption, deprives individuals of the ownership of their property without the requirement of a prior criminal conviction, once the conditions set forth in the special legislation designed under international parameters on the matter have been met (Jiménez and Urbina, 2023, p. 63).

In any case, it should be reiterated that the position of guarantor of the supervisory bodies for the purposes of determining liability, and in this sense

> positive punitive law, serves as a limit to ensure certainty as to which behaviors the legislator has expressly considered incorporating into the legislation as punishable under positive law—administrative or criminal—in a limited manner. This guarantee of legal certainty for the defendant constitutes a limit on arbitrariness; however, it facilitates the skillful actions of those who take advantage of scientific and technological advances to engage in risky and sometimes reckless conduct, which serves to avoid sanctions, even though they are aware of the possible negative consequences (Vaudo, 2024, p.499).

On the other hand, reviewing another example related to the criminal sphere and regarding possible liability for the commission of crimes, Bacigalupo cites that Article 31 (bis 2 and 5) of the Spanish Criminal Code contemplates as a cause for exemption from criminal liability of legal persons, the fact that a model of organization and management of appropriate surveillance and control measures has been followed to prevent crimes through the effective management of *compliance* risks in business activities (2021, p.261).

In any case, for the company to be liable, it is important that there has been a transfer of the permitted risk, whether through intent, negligence, or omission, when the control and supervision mechanisms of the management bodies, compliance officers, and other supervisors in the area of *compliance* have failed. It is important to note, as Acuña points out, that

> *compliance* is an area of self-regulation of internal rules which, among other aspects, is intended to prevent and reduce criminal risks in business activity. Hence, a level of risk arises that is required of those who hold the position of guarantor, which must be greater for the assets they protect related to human rights, but always based on the absence of criminal sanctions when the permitted risk has not been transferred (2025, p.83).

There are many rules in both civil and criminal law that even contemplate the criminal liability of partners, directors, and administrators for exceeding the permitted risk in criminal matters. In Venezuela, there are provisions in the Commercial Code itself (1955, arts. 915 et seq.) that provide for prison sentences applicable by the criminal judge in cases of fraudulent bankruptcy, carried out with the aim of deceiving creditors, including by giving priority to a credit or falsifying the economic situation of the company, which can be extended to the administrator. Generally, in these cases, criminal liability also applies for attempting to deceive the tax authorities through the crime of tax insolvency, as set out in the Organic Tax Code (2020, art. 122).

3.-Design of a protocol for the pursuit of assets

In the asset forfeiture procedure, especially with regard to Venezuelan legislation,[3] based on the provisions of the law, it is necessary to design a technical protocol that goes through a preliminary investigation by the Public Prosecutor's Office and, due to the suspicion of the illegality of the origin of the assets, either temporary seizure measures may be ordered by the control judge to guarantee the results of the criminal proceedings that culminate in confiscation; or, follow the civil route of extinction of ownership of the assets that were in the possession of someone who did not acquire them in good faith, it being understood that this must be qualified. In effect, today good faith is a matter of public order and cuts across all areas of law. With regard to the matter of termination of ownership, the Organic Law on Termination of Ownership (2023, art. 37) requires qualified good faith on the part of the apparent owner, who "shall proceed in a diligent, prudent, and blameless manner...". It is also a guarantee for domestic and foreign investors, since compliance in good faith generates trust and preference when conducting any business.

The procedure comprises two phases: an investigation conducted by the Public Prosecutor's Office and a judicial phase.

3 Organic Law on Asset Forfeiture. Official Gazette No. 6,745 Extraordinary of 04/28/2023.

In the preliminary phase, the investigation is opened, and the assets of illicit origin, consisting of movable and immovable property and other assets, must be located and sufficient evidence must be presented to the court to demonstrate that they were acquired without the due diligence and caution required, especially when referring to large estates.

Once the Public Prosecutor's Office has filed the lawsuit, the court will be asked to issue precautionary measures to guarantee the outcome of the trial, whether named or unnamed. The most notable of these are the prohibition of disposal or encumbrance, occupation, and freezing of accounts, among others.

In cases where the procedure for asset forfeiture or confiscation without conviction is followed, the lawsuit is filed by the Public Prosecutor's Office before the judge with jurisdiction over asset forfeiture. It should be noted that this is a purely financial action, independent of the criminal trial.

There must be an evidentiary phase in which the defendant and the plaintiff present evidence and can oppose and challenge it, in order to guarantee the right to due process enshrined in the Constitution (1999, Articles 26 and 49). The judge must determine the unlawful origin of the property and use of the assets, as well as verify the condition that there is no qualified good faith, such as, for example: the asset was acquired at a price well below the actual price; the purchaser did not verify the legal transfer of the asset; the assets are located in tax havens; the assets were transferred without complying with the corresponding requirements and daily limits, among others. To determine the facts, the rules relating to the assessment of evidence established in the Code of Civil Procedure shall apply.

Based on Article 1160 of the Venezuelan Civil Code (1983), good faith in contracts is the basis of corporate compliance. *Bona fides*, or good faith, in Rome extended to the characterization of man as honest. (Jiménez and Urbina, 2025, pp. 72-77). Based on this good faith and to ensure transparency in the fulfillment of commitments, today it is necessary to comply not only with the provisions of positive law, but also to act through self-regulation.

For this reason, risk prevention and mitigation must be carried out by managers and administrators, implementing due diligence in processes in order to ensure proper management of operational and legal, compliance, ethical, environmental, social, and governance risks, both in risk management and prevention, establishing indicators that will allow for the prediction of possible adverse consequences.

It is also important that there be clarity regarding financial information and who the ultimate beneficiaries are, as well as what mechanisms the company has in place to protect investors, how minority shareholders' money is invested, reporting of suspicious activities, among other fundamental aspects to preserve the economic and reputational integrity of the company.

Once the ruling declaring the forfeiture of the assets has been issued and signed, they pass to the State and must be transferred to the body responsible for their custody and subsequent auction.

In Ecuador, for example, there is a *Technical Guide to Asset Recovery and Confiscation (*Pan American Development Foundation, 2024) that serves as an instrument for asset recovery, but through a mechanism known as criminal confiscation, which in these cases takes various forms. In this same vein, to answer the question: What are some of the consequences that arise from the risks of corruption and asset laundering? As contemplated in the Venezuelan Anti-Corruption Law (2022), confiscation derives from the legal consequence of committing a crime, with or without a criminal conviction. The purpose is to deprive the natural or legal person of ownership of assets derived directly or indirectly from crimes considered particularly harmful to the population or public property (organized crime, bribery, fraud, and drugs). It also seeks the return of assets and capital to society, even if they are in the possession of third parties. Ecuadorian law also refers to the classification of confiscation as direct confiscation, confiscation from third parties, confiscation of equivalent value, and confiscation of the means of perpetration.

In these asset recovery processes—whether through traditional confiscation, confiscation without conviction, or asset forfeiture—it is important to seek international cooperation in order to track, pursue, and seize assets abroad and issue the relevant precautionary measures to ensure the outcome of the judicial process.

For these reasons, apart from the possible conviction for a crime, based either on the fact that the object of the business is itself illegitimate or because the permitted risk has been exceeded, including here the failure to observe due diligence and the failure to demonstrate qualified good faith in obtaining the assets, there may be, as mentioned above, a loss of the asset may occur, even through civil proceedings, such as asset forfeiture, which has been in place in Venezuela since 2023. These consequences lead us to answer the research question: What are some of the consequences of the risks of corruption and asset laundering?

Discussion

From the review of international regulations, it can be seen that the adoption of due diligence, following the OECD guidelines, becomes the evidentiary mechanism par excellence with respect to qualified good faith. In this sense, the company or individual must argue with facts that, in addition to having adequate regulations, it also implemented the utmost diligence in the implementation and monitoring of its risk management systems, thus being able to prove due planning and transparent action in risk prevention and mitigation.

Based on these parameters, it can be seen from the various academic works cited throughout the article that companies, in their work of supervising and monitoring the various processes, cannot limit themselves to legal requirements, as these are not always sufficient, and must look beyond positive legislation to the horizons of voluntary compliance; all of this based on international norms and standards (Vaudo, 2024, p.104). To this end, it is essential to voluntarily adopt good practices and international guidelines, especially those that address risk-focused management and the triple impact of *compliance* on organizational policies and resources, which also generates positive results in the social sphere for the creation of greater well-being for the population; and, in the environmental sphere, promoting the preservation of environmental conditions (Vera and Velasco, 2022).

Consequently, when asking the question: How can we prevent and mitigate the risks of corruption and money laundering that could affect confidence in the company's business activities? It is necessary to start from the guidelines provided by the authors mentioned in this research and some international guidelines.

As reported by the Rules of the International Chamber of Commerce (ICC, 2023), in order to implement an effective corporate compliance program (Art. 11), it is necessary to comply effectively, conducting periodic evaluations of compliance policies and verifying the movement of risks within the business environment, especially when the activities carried out require increased supervision due to the particular circumstances of the company and, therefore, greater vulnerability to corruption and organized crime activities. These policies must lead to the construction of a sustainable and responsible corporate culture. These Rules, as well as those contained in the Guide to Good Practices on Internal Controls, Ethics, and Compliance of the Organization for Economic Cooperation and Development (OECD, 2010), the Business Principles for Countering Bribery of the Alliance Against Corruption (Transparency International, 2008, p. 6), and some ISO standards, establish that there must be:

a) Commitment from the Board of Directors, senior management, executive management, and employees with management responsibility,

b) Autonomy and resources to oversee and coordinate the corporate compliance program,

c) Risk assessment through independent reviews of compliance with these rules, and recommendation of corrective measures or policies,

d) Due diligence based on a risk management approach,

e) Clear and accessible policies and guidelines,

f) Ongoing training and communication on compliance policies,

g) Effective and secure reporting channels and internal procedures, as indicated in ISO Standards 37002-2021 and 37008-2023, issued by the International Organization for Standardization. In cases of money laundering or corruption, the company must inform the relevant authorities of the investigations carried out for this purpose.

h) Supervision, auditing, and reporting of suspicious activities.

i) Implementation of corrective and disciplinary actions,

j) Continuous improvement with a view to certification,

k) Clarity in financial reports. Internal and external audits based on ISO 19011 and 37301 standards from the International Organization for Standardization. These reports must be transparent and issued by individuals who have no ties to the company or any other conflict of interest.

On the other hand, Acuña (2025, p. 83), Vaudo (2025, p. 499) and Bacigalupo (2021, p. 261) agree that the level of risk required of those in a position of responsibility should be higher for the assets they protect, which are often linked to human rights, but always taking into account the non-application of criminal sanctions when the permitted risk has not been exceeded. In any case, it was possible to observe the existence of direct channels for the recovery of large amounts of capital derived from crimes of corruption and money laundering, through mechanisms such as confiscation without conviction and asset forfeiture, even with respect to third parties (who have as their defense the demonstration of qualified good faith), as indicated by Jiménez and Urbina (2023, p.63), in line with international guidelines issued by organizations such as the OECD, the ICC, the United Nations, and the World Bank, which recommend the implementation of prompt and effective prevention and asset recovery mechanisms that deliver real results.

Consequently, if a *compliance* program is properly developed and managed in accordance with best practices, based on the recommendations and guidelines formulated by standardization bodies and other international entities that monitor the development of corruption and organized crime around the world, better results can be achieved and progress made towards preventing these acts that cause so much damage to the economic system and corporate image, avoiding the criminal penalties provided for in positive law.

Conclusions

There are a number of international instruments containing guidelines for the prevention and mitigation of risks and the prosecution of corruption and organized crime. These documents include the United Nations Convention against Corruption, the Guidelines of the Organization

for Economic Cooperation and Development, those of Transparency International, and those of the ICC, to name a few.

The voluntary adoption of the recommendations contained in these guidelines within corporate regulations is necessary, but it is also necessary to implement systems for managing, evaluating, and monitoring compliance policies, rather than just paper management. This is achieved by developing a sustainable organizational culture.

There must be positive law provisions that provide for penalties for these crimes, such as those contained in our Anti-Corruption Law (2022) and the Organic Law Against Organized Crime and the Financing of Terrorism. In addition, our positive legislation includes the Organic Law on Asset Forfeiture (2023), which provides for the possibility of pursuing property and assets, even those held by third parties, as long as they are suspected of being the product or proceeds of such crimes.

On the other hand, a series of sub-legal regulations in the financial sphere aims to incorporate the 40 Recommendations of the Financial Action Task Force as requirements for operating in sectors such as banking, insurance, and the stock market. However, effective supervision, international cooperation, reporting of suspicious activities, and punishment of criminal conduct are required, as well as strict control measures to ensure improved assessment and restoration of confidence for future investments.

With regard to the asset forfeiture procedure, it is important to have a protocol of action that begins with the opening of a preliminary investigation by the Public Prosecutor's Office when there is suspicion of the illicit origin of large amounts of capital, through the recovery procedure provided for in the Asset Forfeiture Law, even if the assets are in the possession of third parties, since this mechanism constitutes an expedited procedure in the face of the possible deterioration or loss of assets seized through criminal proceedings, which in Venezuela must await conviction and confiscation as decreed in the criminal sentence.

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