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MV COMPLIANCE

LABOR COMPLIANCE &
CORPORATE SOCIAL RESPONSIBILITY

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ABSTRACT

Corporate social responsibility (CSR) and labor compliance pursue going beyond legal compliance issues. The purpose of both is not simply to fulfil legal expectations, but making the environment and relations with stakeholders beyond mere compliance with the Law.

Although CSR is not a plain concept, CSR is whereby business entities voluntarily incorporate social, environmental and ethical standards into their operations. CSR is built on three pillars: PROFIT (economic), PEOPLE (social) and PLANET (environmental area) – the triple “P”. Labor compliance is included in the PEOPLE, social pillar of CSR.

Labor compliance’s purpose is keeping a safe and healthy work environment and giving all employees a fair treatment by labor control mechanisms: (i) for employees, by providing for additional control over the employer’s actions, fair compensation, equal opportunities for recruitment and protection against abuse of office and discrimination; and (ii) for employers, by enabling them to hire qualified employees and to require employees to carry out their duties with due diligence.

The current level of CSR and labor compliance is mainly relied on the culture of each organization and the extent of its ethical governance. Companies, which approach CSR and labor compliance to help achieving their overall business goals, will do far more than comply with their legal obligations and avoid fines.

The absence of a compliance culture with adequate instruments to address ethics, equality and transparency issues, may be harmful for stakeholders. Bearing this in mind, this paper reviews mandatory and voluntary labor compliance instruments for organizations to handle, among others, with non-discrimination, equal pay, anti-harassment, close the gap for women and fight against corruption matters.

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LABOR COMPLIANCE
STANDARDS AND PRINCIPLES

STANDARDS AND PRINCIPLES

Successful organizations have in common a commitment to conduct businesses according to high international standards and principles and to build a corporate culture in line with these standards.

Labor compliance standards are included in the most international acts, of which the three fundamental United Nations agreements on human rights: the Universal Declaration; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights.

Labor compliance standards are also incorporated into the core conventions of the International Labor Organization, as well in acts adopted at the European Union level and those approved by local law, namely the Fundamental Law (*Constituição da República Portuguesa*), the Portuguese Labor Code and complementary legislation.

Among these standards and principles, the principle of equality is established, inter alia, in the Universal Declaration of Human Rights, which also includes provisions on social rights emphasizing the need of a social security system and the important role of work, healthcare and education.

As to the right to work, the Declaration establishes that “Everyone has the right to work, free choice of employment (...) and protection against unemployment”, as well as “the right to equal pay for equal work”, and regarding healthcare, “Motherhood and childhood are entitled to special care and assistance.”

The European Union Charter of Fundamental Rights provides that “Equality between men and women must be ensured in all areas, including employment, work and pay”, specifying that “Every worker has the right to protection against unjustified dismissal and the right to working conditions which respect his/ her health, safety and dignity”, including “(...) the right to the limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.”

All these standards and principles reinforce the idea of equality as non-discrimination and fair opportunity in labor context serving the purpose of ensuring citizens’ well-being and conciliating free market and social justice. These are the grounds of the European Social Model.

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HARD LAW AND SOFT LAW

HARD LAW AND SOFT LAW

Anglo-Saxon systems often distinguish hard law from soft law. 'Hard law' generally refers to legal obligations that are binding to the parties involved and which can be legally enforced before a court. The term 'soft law' is used to denote agreements, principles and declarations, which are quasi-legal instruments, but do not have any legally binding force, or whose binding force is somewhat weaker than the binding force of traditional law, also referred to as hard law. Examples of soft law instruments are statements, principles, code of practice, guidelines, policies.

Customarily, "soft law" is associated with international law, although more recently it has been transferred to other spheres of domestic law. For labour matters, soft law is complementary to hard law. Labor compliance preferably results from the interaction between hard and soft law instruments.

In Portugal, mandatory obligations and instruments of labor compliance may vary according to the entity type. For instance, State-owned companies or stock exchange listed companies are subject to stricter requirements. This does not, however, mean that other entities may not follow the same compliance standards or even different standards voluntarily applied according to their ethical culture practices.

Regardless of the type of organization, there are common mandatory rules, including:

- Use of biometric data for employees' attendance control only and the retention biometric data for the strictly required time (Article 18 of the Portuguese Labor Code);
- Prohibition of use of remote surveillance means in the workplace to monitor employees' professional performance (Article 20/1 of the Portuguese Labor Code);
- Prohibition of discriminatory practices before hiring and on the job (Articles 30 and 31 of the Portuguese Labor Code);
- Record-keeping of employees' working hours and overtime work (Articles 202 and 231/1 of the Portuguese Labor Code);
- Preparation and display of employees' holiday schedule until April 15 each year (Article 241/9 of the Portuguese Labor Code);
- Record-keeping of employees' disciplinary sanctions (Article 332 of the Portuguese Labor Code).

MANDATORY RULES



Record-keeping of employees' working hours



Record-keeping of disciplinary sanctions



Record-keeping of overtime work



Preparation and display of employees' holiday schedule

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LABOR COMPLIANCE TOOLS

LABOR COMPLIANCE TOOLS

OVERVIEW

Detailed attention to labor compliance matters on non-discrimination, equal pay, anti-harassment, close the gap for women and minorities, fight against corruption and related offences, have been growing with major changes brought by local laws. To follow these changes, employers are compelled to apply a set of policies, procedures, and actions, of which:

- Code of Ethics and Conduct;
- Anti-Harassment Policy;
- Gender Equality Plan;
- Gender Pay Gap Report;
- Employees' Training Plan;
- Corruption Risk Management Plan.

Depending on the type of organization, some of these instruments are mandatory (e.g., employers hiring seven or more employees must adopt an Anti-Harassment Policy; an Employees' Training Plan is mandatory for a all companies, except for very small companies).

CODE OF ETHICS AND CONDUCT

The Code of Ethics and Conduct is one of main instruments to embed the company in a social responsibility culture. It has three main goals: (i) set the fundamental principles and values of the company; (ii) define the standards of conduct which employees must follow, regardless of their position or function; and (iii) inform all stakeholders interacting with the company on the fundamental ethical guidelines applicable in relations between employees and shareholders, investors, customers, suppliers, and society in general.

To ensure compliance with ethic principles and values of your company, a whistleblowing platform may help address wrongdoings such as fraud and misconduct. Companies that fail to recognise, address, and ultimately put an end to such violations, risk exposing themselves to legal, social, and reputational sanctions.

The appointment of an Ethics Committee – directly reporting to the Board of Directors – may also have a relevant role. The Ethics Committee's purpose is to promote and strengthen good practices, as well as clarify doubts, issue opinions on matters relating to compliance with the Code of Ethics and Conduct and carry out the necessary inspections and diligences with a view to solving irregularities.



LABOUR COMPLIANCE TOOLS

ANTI-HARASSMENT POLICY

Harassment is a means of violence and abuse. In general, harassment is an unwelcome recurring behavior (gesture, attitude, etc.) intended to affect a person's dignity or create an intimidating, hostile, degrading, humiliating or destabilizing environment in the workplace.

Moral harassment may include verbal attacks with offensive or humiliating content or indirect acts, including psychological or physical violence. The four categories of moral harassment are: social isolation, professional discrimination, intimidation and personal humiliation.

Sexual harassment may comprise attempts at physical contact, disturbance, requests for sexual favors in exchange of benefits, blackmail, and even use of force or strategies to compel the other person's willingness.

To give awareness on the need to prevent and fight against harassment situations in the workplace and ensuring each employee the right to work in a good dignity conditions environment, employers hiring seven or more employees must prepare and publish an Anti-Harassment Policy.

The drafting of this policy should follow the guidelines issued by the local authority for equality in labor and employment ([*Comissão para a Igualdade no Trabalho e no Emprego*](#)).

GENDER EQUALITY PLAN (GEP)

Employers must keep an integrated approach as to the promotion of equality of opportunities on grounds of age, sexual orientation, religious or similar philosophical belief, race, disability, political opinion, sex, pregnancy/maternity leave, married status/civil partnership status.

To achieve these goal, employers must approve a Gender Equality Plan (GEP) to promote equal treatment and opportunities between women and men, end sex-based discrimination and safeguard conciliation between personal, family, and professional life.

For listed companies, public sector companies and local public sector companies, a GEP is mandatory.

For State-owned companies, the GEP is ruled by the Ministers' Council Order 19/2012 of March 8, 2012; Decree-Law 133/2013, of October 3, 2013; and the Ministers' Council Order 18/2014, of March 7, 2017. Law 62/2017, of August 1, 2017, then extended the obligation to implement a GEP to companies listed on the stock exchange.

A GEP is a good CSR practice and hence well-recommended to be applied by employers in general, even though they are not bound by mandatory rules.

LABOR COMPLIANCE TOOLS

GENDER EQUALITY PLAN (GEP)

Order 18/2019, of June 17, 2019, lists the mandatory matters to be covered by a GEP. Employers, when drafting a GEP, must be aware that the GEP must handle the following matters:

- Equal conditions before hiring and on the job;
- Equal pay;
- Parenthood safeguards; and
- Conciliation between personal, family, and professional life.

The drafting of a GEP may require additional care, as a GEP must follow a specific legal procedure, as well as a set of guidelines issued by the local authority for equality in labor and employment ([*Comissão para a Igualdade no Trabalho e no Emprego*](#)). A GEP must include, inter alia, a diagnosis of the current company's status, and the measures to be applied by the employer, including new measures, if needed, for the GEP to be effectively applied.

The GEP will be subject to review by the local authority, which has powers to control whether the relevant measures are being put into practice and to recommend revised and additional measures. The GEP must be prepared/reviewed by employers on an annual basis.

GENDER PAY GAP REPORT

Historically, women's average pay is lower than men. Since last decade, specific measures have been created to mitigate this scenario, even though the gender pay gap persists.

In general, labour law imposes employers to promote a transparent pay policy based on objective criteria and on an evaluation of different job requirements.

For State-owned companies, subject to stricter requirements, the Ministers' Council Order 13/2013, of March 8, 2013, envisages to promote equal opportunities between men and women and eliminate wage differences, labor market segregation and other forms of discrimination in the public business sector.

Ministers' Council Order 18/2014, of March 8, 2014, also imposes State-owned companies to prepare a Gender Pay Gap Report every three years and where they review employees' salaries, in order to identify and mitigate gender salaries gap.

The Gender Pay Gap Report must be made available to all employees and be publicised on the company's website.

LABOR COMPLIANCE TOOLS

EMPLOYEES' TRAINING PLAN

Currently, professional training is a need and condition to achieve competitive proficiency in the labor context. Professional training is essential to the growth and improvement of each business.

Training is a comprehensive and ongoing process of getting and increasing professional skills that prepare employees to better perform their jobs. The goal of professional training is to respond to a set of challenges and incorporate employees' training needs into the mission and strategic objectives of the organization, including, inter alia, providing better qualifications to young people entering the job market, to employees with disabilities or at risk of unemployment or belonging to groups with social inclusion needs.

For this purpose, the Portuguese Labor Code imposes employers to provide employees with professional training, which must be organized by means of an Employees' Training Plan.

Employers are obliged to provide professional training sessions (by itself or through third-party providers) to employees, who must attend these training sessions.

CORRUPTION RISK MANAGEMENT PLAN

A Corruption Risk Management Plan is mandatory for all public entities, including those governed by private law, that carry out management activities involving public money and assets. This plan aims to prevent corruption activities and related offences. The Corruption Risk Management Plan must identify the possible risks of corruption (according to a risk matrix) within the organization and define the measures required to eliminate or reduce such risks.

For public entities, the guidelines to design a Corruption Risk Management Plan are set out in two different recommendations: the Recommendation of November 7, 2012; and the Recommendation of July 1, 2015. These guidelines impose that the plan details: (i) the risks identified per each entity's business unit; (ii) a list of preventive measures to eradicate or mitigate the identified risks; and (iii) the employees in charge for managing the Corruption Risk Management Plan.

Public entities must also prepare an annual report on the implementation of the Corruption Risk Management Plan, explaining which measures to face the identified risks were taken and the relevant outcomes. In case some failures are identified, the annual report must refer them and the performed measures.

AT A GLANCE

LABOR COMPLIANCE TOOLS	CODE OF ETHICS AND CONDUCT	ANTI-HARASSMENT POLICY	GEP AND GENDER PAY GAP REPORT	EMPLOYEES' TRAINING PLAN	CORRUPTION RISK MANAGEMENT PLAN
MANDATORY RECIPIENTS	STATE OWNED COMPANIES	EMPLOYERS WITH ≥ 7 EMPLOYEES	STATE OWNED COMPANIES AND LISTED COMPANIES ON STOCK EXCHANGE	EMPLOYERS (EXCLUDING MICRO ENTREPRISES)	PUBLIC ENTITIES
OTHER RECIPIENTS	EMPLOYERS	EMPLOYERS	EMPLOYERS	EMPLOYERS	EMPLOYERS
CONSEQUENCES FOR FAILURE TO COMPLY	REPUTATIONAL DAMAGES LOSS OF COMPETITIVENESS	FINES REPUTATIONAL DAMAGES	REPUTATIONAL DAMAGES NO PUBLIC REVIEW AND ACCREDITATION	FINES LOSS OF ATTRACTION OF TALENT	LOSS OF COMPETITIVENESS

TIPS



CREATE A CODE OF ETHICS AND CONDUCT WITH PLAIN AND CLEAR LANGUAGE



PROMOTE AWARENESS AMONG EMPLOYEES ABOUT THE IMPORTANCE OF COMPLYING WITH THE STANDARDS



REMINDE YOUR EMPLOYEES THAT THE GOOD EXAMPLE COMES FROM THE TOP MANAGEMENT



IMPLEMENT STRONG POLICIES AND PLANS, E.G., ON GENDER EQUALITY, NON-HARASSEMENT, PAY GAP



CREATE INTERNAL REPORTING CHANNELS



MAKE IT CLEAR THAT THE COMPANY IS NOT INVOLVED IN ETHICALLY DOUBTFUL PRACTICES



MONITOR REGULARLY COMPLIANCE PROGRAMS REVIEWING LABOR RELATED RISKS

ABOUT US

MACEDO VITORINO is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry and projects. We are known for our professional and client oriented approach to complex and difficult matters.

Since the incorporation of the firm in 1996 we have been involved in several high profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, etc.. We have also acted on many complex disputes and restructurings.

We are mentioned by The European Legal 500 in twelve of its fifteen practice areas, including banking and finance, capital markets, project finance, corporate and M&A and litigation.

The firm is also recognised by IFLR 1000 and Chambers and Partners for its work in project finance, corporate finance, corporate and M&A, TMT, dispute resolution and restructuring and insolvency.

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