

Due diligence as a mechanism to strengthen integrity programs

Cindy Julieth Correa Carno¹, Luiz Felipe Ferreira², Larissa Miguel da Silveira³.

ABSTRACT

Corporate governance emerged in the 1990s, influenced by movements in the USA and Brazil aimed at improving the transparency and accountability of companies. The Brazilian Institute of Corporate Governance (IBGC), created in 1995, promoted guidelines for transparent practices. Compliance, an essential part of governance, focuses on compliance and integrity. Integrity due diligence, the process of evaluating third parties, strengthens integrity programs by mitigating corruption risks.

Keywords: Corporate governance, Compliance, Due Diligence.

INTRODUCTION

The concept of "corporate governance" has its principles in the first half of the 1990s, from a movement started mainly in the United States, shareholders identified the need to have new rules that would ensure them against the abuses of the executive boards of companies, the ineffectiveness of boards of directors and also the omissions of external audits.

In parallel, in Brazil, the trend towards good practices proved to be more practical after privatizations and the opening of the national market in the 90s.

In 1995, the Brazilian Institute of Board Members (IBCA) was created, which in 1999 changed its name to the Brazilian Institute of Corporate Governance (IBGC), created with the objective of influencing the different actors of our society in the adoption of transparent, responsible and equitable practices in the management of organizations (MONNHEIMER, 2021).

Also in 1999, the IBGC launched its first code of best corporate governance practices with the objective of contributing to the improvement of organizations operating in Brazil (ANDRADE; ROSSETTI, 2004; FONTES FILHO; PICOLIN, 2008; MONNHEIMER, 2021).

The IBGC (2017) defines the term "corporate governance" in a simple way as a system by which organizations are directed, monitored and encouraged, where the relationship between partners, management, boards and other related parties plays a fundamental role in terms of the good development of good practices and the generation of value.

¹ Federal University of Santa Catarina – SC

² Federal University of Santa Catarina – SC

³ Teaching and Engineering Foundation of Santa Catarina – SC



Consequently, in order to ensure a more ethical environment, corporate governance should be based on four principles or pillars, namely disclosure, *fairness*, *accountability*, and *compliance* (VASCONCELOS; SOARES, 2022).

For the purposes of this work, only the concept and characteristics of Compliance will be addressed.

In the conception of Coimbra and Manzi (2010), *Compliance* refers to the act of complying with standards, with the purpose of ensuring that organizations develop their activities in accordance with the relevant laws and regulations, aiming to mitigate the risk linked to reputation.

However, Trivelato *et al.* (2018), state that the concept of *compliance* also encompasses the company's mission, vision, values, and culture, as these are the elements that guide the ethical conduct of organizations.

Therefore, in order to achieve the purpose of *compliance*, organizations need to create tools, procedures, policies, and guidelines that lead their activities along the path of compliance (SOUZA, 2021).

Additionally, the Office of the Comptroller General of the Union suggests that companies that have *compliance* programs should include in their system of actions aimed at good compliance with the Laws, anti-corruption measures that reflect the concern with the occurrence of fraud in the relationship with the public sector. These measures can be implemented through an integrity program, which is essentially a specific *compliance program* for the prevention, detection, and remediation of harmful acts provided for in the Brazilian Anti-Corruption Law (CGU, 2015).

In this context, Law 12,846 (2013) presents integrity programs within the scope of Brazil, providing in its article 7, item VIII "the existence of internal integrity mechanisms and procedures" as one of the factors to be considered for the reduction of sanctions resulting from practices of harmful acts against the public administration.

Together, Decree 11,129 (2022) that regulates this Law defines in its article 57 fifteen parameters under which integrity programs will be evaluated regarding their existence, application, and effectiveness.

Among these parameters, the implementation of appropriate diligence for the hiring of third parties (*Due Diligence*) stands out.

According to Souza (2021), integrity *due diligence* can be defined as the procedures carried out prior to entering into a contract with a third party, with the objective of verifying, evaluating, and analyzing the suitability and reputation of those who are being hired.

In addition, integrity *due diligence* helps to prevent and reduce the risks of corruption, helping to avoid the objective liability that organizations assume in the relationship with third parties who incur in unlawful acts (FERREIRA; DE MELO, 2022).



Given the relevance that the use of due diligence with third parties presupposes for the strengthening and validation of integrity programs, this article seeks, through a case study at the Stemmer Foundation for Research, Development and Innovation (FEESC), to answer the central question: how are *due diligence* procedures strengthen integrity programs in organizations? To address this issue, the primary objective of the study is to demonstrate how third-party *due diligence* procedures can strengthen integrity programs.

As a strategy to achieve the general objective, the following specific objectives were defined: (i) to introduce the definitions and characteristics of the concepts of *compliance*, integrity program and *due diligence*, based on the literature review; (ii) describe the applicability of FEESC's integrity program and Integrity *Due Diligence* procedures ; (iii) analyze the guidelines adopted for the implementation of Integrity *Due Diligence* procedures at FEESC; (iv) present the results obtained in the first year of application of the Integrity *Due Diligence* procedures in the hiring of third parties by FEESC.

Considering that companies can be involved in cases of corruption or fraud due to the actions of third parties, it is important that organizations adopt appropriate checks for their hiring and supervision (CGU, 2018).

In this sense, the diligences carried out in the hiring of third parties, especially in the cases of companies that manipulate public resources, contribute to the strengthening of integrity programs and help to avoid or mitigate possible sanctions resulting from hiring third parties that have committed harmful acts against the public administration.

Thus, the research is justified as it intends to contribute to the expansion of analyses on the application of integrity *due diligence* in the hiring of third parties, since this is an essential mechanism for strengthening integrity programs. In addition, as it is a relatively new topic in Brazil and based on the little literature available, there is a great potential for development in this area.

In research carried out by De Andrade and Bizzo (2019), it was found that the qualification and control of suppliers are aspects with a high rate of non-compliance, greatly increasing the risk for the contracting company. According to the authors, these risks could certainly be reduced by implementing integrity *due diligence* procedures.

OBJECTIVE

Demonstrate how *Due Diligence* procedures strengthen integrity programs in organizations.



THEORETICAL FRAMEWORK

COMPLIANCE

According to Silva (2022), the term *compliance* can be understood as compliance with rules and regulations in order to prevent the practice of illegal acts by a company and all those who compose it.

For Bento (2018), *compliance* is the set of actions carried out in order to comply with the legislation and specific standards of each sector and each company.

Likewise, it is possible to define *compliance* as a set of practices and disciplines adopted by companies with the aim of aligning their corporate behavior with compliance with government laws and policies (XAVIER *et al.*, 2017).

However, it is necessary not to confuse *compliance* with simple compliance with standards, because according to the authors Ribeiro and Diniz (2015), the scope of *compliance* is much broader, including procedures and ethical standards that guide the behavior of the institution in its market and the behavior of its employees in the performance of their duties.

For the author Belarmino (2020), *compliance* aims to ensure the correct functioning of organizations' internal controls, reducing risks and disseminating an ethical culture consistent with compliance with the laws applicable to each business. As a result, the author highlights that *compliance* contributes to improving the organization's reputation in the market.

On the other hand, it is worth noting that *compliance* is a strategic tool that is not limited to large corporations or a particular sector. On the contrary, any type of company can adapt it according to its needs and possibilities. This is because the demands of the current market have more frequently demanded ethical conduct from organizations (BELARMINO, 2020).

In this sense, mention can be made of third-party organizations that, due to their activities of public and social interest, such as education, health, culture, social assistance, science and technology, among others, end up relating to the public sector in various ways. These organizations need to develop compliance programs and mechanisms that allow them to prevent irregularities and generate trust with the public administration (DE MELO, 2021).

Therefore, *compliance* practices have been increasingly encouraged in partnerships between third sector entities and public agencies, in order to avoid losses that may be caused by possible violations of the rules by these organizations (NEVES, 2019).

In summary, for a company to be in *compliance*, it is necessary to verify that its internal processes are compatible with current legislation and develop practices and measures that ensure that this compliance is maintained. In this context, integrity programs, as an instrument for the prevention of fraud and corruption, are an essential part of *compliance*.



INTEGRITY PROGRAMS

According to Bento (2018), the adoption of integrity programs has become a trend in organizations. In general terms, it is possible to say that such programs are necessary and opportune to the reality of the current market, because in addition to being provided for in the existing anti-corruption legislation, there is also a growing demand from the market itself for companies to adopt ethical conduct and commitment to good organizational practices (BELARMINO, 2020).

Therefore, it is important to emphasize that an integrity program must be adjusted to the reality of each organization, considering aspects such as size, type of activity, sector of activity and organizational culture (COIMBRA; MANZI, 2010).

This last aspect plays a fundamental role in the implementation of the integrity program, as the degree of commitment of people and adherence to the company's culture depends to a large extent on the success of its implementation (ANTONIK, 2016; SOBREIRA FILHO *et al.*, 2019).

Thus, it is crucial that the managers of an organization are clear that for the implementation of an integrity program, the involvement of the company as a whole, especially the top management, is essential, because it is intended to insert a new integrated, ethical and transparent organizational culture (BENTO, 2018).

It is common for many companies to decide not to implement integrity programs under the assumption of high costs. However, it may happen that these entities end up incurring higher costs if acts of corruption occur that result in sanctions and reputational damage (DE CASTRO, 2016).

According to Aquino and Souza (2020), to make an integrity program sustainable, it is necessary to ensure sufficient resources for its development, encourage employee commitment, define performance indicators, and continuously monitor whether the program's guidelines are being put into practice.

Other relevant elements for the development of a solid integrity program include the establishment of policies, the elaboration of a code of conduct and ethics, the monitoring of integrity risks, the creation of a whistleblowing channel and the continuous training of employees (RIBEIRO; DINIZ, 2015).

In addition to these components, *due diligence* is carried out, which is a fundamental pillar of integrity programs. This mechanism allows you to select suppliers that are aligned with the organization's ideals and ethical principles. In addition, it helps to mitigate the risk of the company being held responsible for any corrupt practices of third parties (AQUINO; SOUZA, 2020).

DUE DILIGENCE

In the business sphere, *due diligence*, as stated by Raupp and Warken (2009), can be described as a process of verifying information in order to assess the risks and opportunities related to a transaction or



business. The authors highlight that *due diligence* is a broad process that involves different areas, and its scope is defined based on the commercial operation to be carried out.

Ruiz-Armengol (2022), defines *due diligence* as the prudent care that must be exercised in assessing the risks that affect a specific business transaction. Similar to the previous authors, Ruiz-Armengol (2022) understands that *due diligence* is a global process that integrates several spheres, each requiring specialized knowledge and should be addressed separately. Some of the areas of application of *due diligence* are: Legal DD, Commercial DD, Financial DD, Environmental DD, among others.

Thus, it is possible to determine that *due diligence* is a multidisciplinary mechanism that can be used with different objectives. For example, in an investment process, prior diligence is essential, as it allows the investor to identify the existing risks and their scope, serving as a basis for the decision to proceed or not with the investment (VINACHES; DE PARGA, 2022).

In the conception of Franca Filho *et al.* (2019), *due diligence* procedures began to be used as a precautionary or preventive tool from the *Securities Act* of 1933, enacted in the United States after the New York Stock Exchange crisis. The purpose of the Law was to reduce the risks associated with the purchase and sale of securities and shares in the securities market.

In Brazil, with the entry into force of the Anti-Corruption Law (12,846/13) and in view of the imminent risk of administrative and civil liability of companies that directly or indirectly practice acts against the public administration, integrity due diligence began to be implemented, being regularized by Decree 11,129/22.

According to Alegretti (2021), international anti-corruption legislation, such as the *US Foreign Corrupt Practices Act (FCPA)* and the *UK Bribery Act (UKBA)* of the United Kingdom, also provides for the liability of companies for acts of corruption perpetuated by third parties in their interest or benefit. This makes *integrity due diligence* an essential mechanism for the prevention and control of crimes.

This approach is oriented to the ethical integrity of organizations, through the assessment and mitigation of corruption risks in supply chains (SOARES *et al.*, 2022).

In Souza's (2021) view, although *integrity due diligence* procedures must be carried out prior to the signing of a contract with third parties, nothing prevents them from also being conducted during and after the execution of the contract for supervision purposes.

The performance of integrity diligences in the hiring of third parties may allow, in addition to the identification of risks, the implementation or adaptation of measures to mitigate the risks raised; the establishment of new internal controls and the inclusion of contractual clauses relevant to each situation (SOUZA, 2021).

Regarding the effective application of *integrity due diligence*, it is essential that the company has previously defined the conditions that must be met for a third party to be submitted to the integrity risk



assessment process. This assessment consists of the detection of *red flags* that, depending on their level of risk, enable the development of mitigation measures in a timely manner (FERREIRA; DE MELO, 2022).

It is observed that *due diligence* is a tool that contributes significantly to the success of integrity programs, providing confidence and security to organizations as it protects them from possible consequences of unlawful acts by third parties. This positive impact is evidenced by the growing interest of researchers in the area, as shown in Chart 1.

Table 1

Related Works	
Author(s)/year	Study
Alegretti (2021)	The author investigated the fundamentals of <i>Petrobras' integrity due diligence</i> from the perspective of Multi-level Governance. Concluding that the company's <i>due diligence policy</i> is supported by the aforementioned theory, which seeks to give recognition and flexibility to the different actors in the formulation of public policies.
Souza (2021)	The author demonstrated the importance of using <i>due diligence</i> within integrity and legality in hiring third parties in Brazilian private companies. The North American Anti-Corruption Law (FCPA), the Anti-Corruption Law (12.846/13) and the Brazilian Civil Code were used as a theoretical framework and basis for the research.
Ferreira and De Melo (2022)	The authors analyzed the application of diligence with third parties in order not to "stifle" relationships and bring effectiveness in the process of preventing the occurrence of illicit acts, through the classification of integrity risk. The results suggest greater effectiveness when criteria are adopted that focus on the third parties most exposed to integrity risk, <u>allowing greater monitoring and reaction capacity when there is suspicion of illegal acts.</u>
Soares (2022)	The author improved the Telco company's integrity due diligence process by implementing a technological artifact that automated risk classification. As a result, a manual, subjective and voluminous process was replaced by an automated model that performs pre-approval of low-risk contracts, and allows for more efficient and effective contract management.

Source: prepared by the authors (2024).

The authors Alegretti (2021) and Souza (2021), highlight in their studies the importance and legality of *due diligence* as an integrity mechanism. Ferreira and De Melo (2022), on the other hand, propose a view of *due diligence* in the sense of not hindering or tying up the hiring processes and relationships with third parties. Soares (2022) optimized the risk classification for the effectiveness of *due diligence*.

METHODOLOGY

The methodology chosen to achieve the objective of the research is descriptive with a qualitative approach. The data collection techniques used include interviews with the integrity program coordinator, as well as analysis of policies, guidelines and reports associated with the operation of the integrity program and *due diligence* in hiring third parties.



Following the view of Gil (2008), the research is of the documentary type, with a bibliographic review being carried out for the proper foundation of the study, and using data collected from primary sources such as the *Due Diligence program* of FEESC

Initially, a brief contextualization of the company object of study is presented, considering aspects such as sector of activity, nature of activities, social impact, relationship with public administration, among other relevant information for the understanding of the research. Next, the specific guidelines and functionalities of the integrity program and integrity *due diligence procedures* of the entity in question are described.

For the development of the methodology, information was consulted and extracted directly from the company's website and internal instruments, such as the normative instructions that instituted the integrity program and *due diligence*, associated policies, the code of ethics and conduct, in addition to the profile and compliance reports for the evaluation of the integrity program. Interviews were also conducted with the coordinator of the integrity program, making it possible to access the software (BI) used to analyze the information generated in the application of integrity *due diligence* procedures.

STEMMER FOUNDATION FOR RESEARCH, DEVELOPMENT AND INNOVATION (FEESC)

The Stemmer Foundation for Research, Development and Innovation (FEESC) is a private non-profit organization, established in 1966. It was founded on the principles of legality, impersonality, morality, publicity, economy and efficiency.

Since its creation, its statute has provided for conditions that would guide an ethical and upright posture of the members of the administration. FEESC was established as a foundation to support higher education institutions and scientific and technological institutions, with the main activity of managing teaching, research and extension projects, and institutional, scientific and technological development.

Currently, FEESC is accredited by a joint act of the Ministries of Education and Science and Technology and Innovation as a foundation to support the Federal University of Santa Catarina (UFSC), the Federal Institute of Santa Catarina (IFSC), the State University of Santa Catarina (UDESC), the Federal University of Latin American Integration (UNILA), the Mineral Resources Research Company – CPRM, the Federal Institute of Santa Catarina (IFC), the Brazilian Company of Hospital Services linked to the University Hospital of UFSC (EBSERH-HU/UFSC) and more recently the Federal Institute of Paraíba (IFPB).

As a support foundation, FEESC has played a fundamental role throughout its history in the generation and transfer of knowledge to society. As a result, it has become an influential agent for the scientific and technological development of the country. Therefore, there is an inherent social



responsibility that motivates FEESC to make commitments that allow it not only to fulfill its functions and serve society effectively and sustainably, but also to do so within the law and with integrity.

In this context, FEESC has a well-defined and structured purpose, vision and mission that serve as guidelines in the execution of its activities to achieve its purposes:

Vision: To promote scientific, technological, economic and social development, through research, teaching and knowledge transfer, serving society in an effective and sustainable way.

Mission: To be a foundation of excellence in the technological and social area, acting within the principles of legality, impersonality and efficiency, in the search for the improvement of its relations with society.

Purpose: To enable relevant partnerships for society and the university environment, promoting mutual development and innovation, through transparent and excellent management.

FEESC INTEGRITY PROGRAM

In the development of its activities, FEESC enters into contracts and agreements with other public and private entities in order to enhance innovation and scientific and technological research, thus contributing to the relationship with the external productive environment.

Due to its purposes of managing projects carried out by its supported institutions, FEESC has a direct relationship with the public administration, since, in addition to all its supported entities being public entities, a large part of the resources that finance the projects also have public origin.

In view of the above, FEESC noted the need to adopt measures and actions that promote ethics and integrity in the institutional environment and that offer transparency to society.

Therefore, the Board of Trustees, as the highest authority of the Stemmer Foundation for Research, Development and Innovation, through Normative Instruction No. 02/CC/2019, instituted its integrity program under the definition and guidelines provided for in Decree 8,420/2015 (revoked by Decree 11,129/2022).

Article 56. For the purposes of the provisions of this Decree, an integrity program consists, within the scope of a legal entity, of the set of internal mechanisms and procedures for integrity, auditing and incentive to report irregularities and the effective application of codes of ethics and conduct, policies and guidelines, with the objective of:

- I - Preventing, detecting and remedying deviations, frauds, irregularities and unlawful acts practiced against the public administration, national or foreign; and
- II - Foster and maintain a culture of integrity in the organizational environment.

Thus, there are three objectives contemplated in article 1 of IN 02/CC/2019 that FEESC intends to achieve with the integrity program:

- I - To adopt the best practices to maintain, in a process of constant improvement and strengthening, an institutional environment guided by ethics and probity;
- II - To encourage upright behavior within the scope of FEESC; and III – To promote the adoption of institutional measures and actions aimed at the prevention, detection, punishment and remediation of ethical deviations, administrative offenses, acts of fraud and corruption.



In addition, for the purposes of the provisions contained in the normative instruction, three concepts are defined within the scope of FEESC's integrity program. First, the term "integrity program" refers to the set of institutional measures established for the prevention, detection, punishment and remediation of corrupt practices, fraud, irregularities and ethical and conduct deviations.

Secondly, the concept of "risk to integrity" covers vulnerable aspects that may facilitate the occurrence of corruption, irregularities and/or misconduct that compromise the institution's objectives.

Finally, the "integrity plan" is the document that contains all the integrity measures that must be adopted in a given period, and must be approved by the foundation's senior management.

As for the bases that consolidate integrity programs, the Office of the Comptroller General of the Union provides a guide of "guidelines for private companies" in order to assist in the construction or improvement of such programs, highlighting that this document is merely indicative and does not have a normative character.

Among the guidelines contained in the guide, the following pillars of the integrity program are listed: I. commitment and support from senior management; II. Instance responsible for the integrity program; III. Profile and risk analysis; IV. Structuring of rules and instruments and V. continuous monitoring strategies.

Thus, in accordance with the CGU guidelines, FEESC in article 3 of IN 02/CC/2019 defines the four axes that structure its integrity program.

Art. 3 The Integrity Program of the Santa Catarina Teaching and Engineering Foundation – FEESC – has the following fundamental axes of action:
I - Commitment and support of senior management;
II - Strengthening of integrity instances;
III - Analysis, evaluation and management of integrity risks;
IV - Actions for continuous monitoring of the attributes of the integrity program.

In addition, an integrity plan was prepared based on the mapping of integrity risks and the evaluation of existing measures. This, with the intention of identifying weaknesses and proposing mitigation actions. This plan includes the following factors: scope of the program, standards of ethics and conduct, communication and training strategies, reporting channels and monitoring measures that contribute to the improvement of processes.

Finally, it highlighted the performance of the integrity program group, which is endowed with autonomy and sufficient resources for the proper performance of its activities, in addition to timely access to the other sectors of the entity, including the highest levels of the hierarchy.

The board of directors is responsible for setting up the integrity group as well as granting its members the following competencies: coordinating the integrity program, offering guidance and training to other employees and promoting complementary actions.



FEESC, in order to strengthen its integrity program, has prepared several normative instruments and used tools and mechanisms that ensure its effectiveness and solidity.

FEESC INTEGRITY *DUE DILIGENCE*

Among the initiatives taken by FEESC's Board of Trustees, in support and commitment to the Foundation's Integrity Program, the approval through Normative Instruction 05/CC/202 of the Third Party Relationship Policy stands out.

This policy is part of the set of instruments prepared by the entity to strengthen its integrity program.

FEESC's third-party relationship policy defines the guidelines and guidelines that need to be adopted in the procedures for selection, contracting, payments, supervision and contractual management related to legal entities, as suppliers or service providers, observing the standards of integrity, ethics and conduct stipulated by the entity.

The objective of the aforementioned policy is "to ensure that the relations of FEESC and its employees with third parties are guided by integrity, ethics and the applicable legal standards in all its phases".

One of the guidelines provided for in FEESC's third-party policy is the registration and prior assessment of risks (*due diligence*). At this point, it is determined that all third parties in the process of contracting by the Foundation are subject to the application of integrity *Due Diligence* procedures. This process is regulated by normative instruction 02/DIR/2022 approved by the Director of the foundation, as the competent authority.

The integrity *Due Diligence* procedure aims to "assess and measure the risks of non-conformities related to reputation and integrity in FEESC's relationship with suppliers and service providers".

It is worth noting that the diligences prior to the hiring of third parties can be carried out in any case that the entity deems appropriate, however, article 3 of IN 02/DIR/2022 defines eight hypotheses in which the *Due Diligence* procedure is mandatory, and it is sufficient that the third party fits only one of them:

- I - Has powers to represent and/or act on behalf of FEESC, especially with Public Agents;
- II - Interacts with the Government as part of its provision of services or supply of products;
- III - Has the total value of the contract equal to or greater than R\$ 500,000.00 (five hundred thousand reais), including subsequent addendums;
- IV - When the coordinator/requester declares to be the exclusive supplier and the total value of the contracting of services is equal to or greater than R\$ 50,000.00 (fifty thousand reais);
- V - Has a commission or success fee stipulated in its contract;
- VI - In the legal entity ranked first in the Bidding and Public Selection processes;
- VII - Legal entities that have been registered in the National Registry of Legal Entities for less than ninety (90) days;



VIII – Allegations of involvement with the practice of corruption, money laundering, environmental crimes, slave labor or other illegal acts have been identified during the basic verification.

Sole Paragraph. In the case of amendments, if it is found that it has exceeded the limit of R\$ 500,000.00 (five hundred thousand reais), it must be forwarded to the person in charge of the due diligence for analysis before signing the amendment.

Regarding its operationalization, FEESC's integrity *Due Diligence* consists of investigating relevant information about a given third party, so that it is possible to identify imminent integrity risks (*red flags*), develop mitigation actions when pertinent and make decisions about whether or not to continue hiring that third party.

Due to the investigative process carried out during the application of the DDI, FEESC signals the aspects that can be verified in relation to the third party, including its directors, administrators and partners, in addition to the means that the entity can use to collect the information, such as software, public databases and specific consultancy.

It is important to clarify that, in addition to these aspects, there may still be verifications of other information that is not included in the list of article 6 of the IN as follows:

- I - history of involvement in cases of corruption, unethical and/or illegal conduct;
- II – existence of police or civil inquiries, judicial and administrative proceedings and investigations of any nature;
- III - negative media in general;
- IV - relationship with the Government;
- V - technical capacity to perform the service;
- VI - reputation in the market; VII - existence of potential or actual conflicts of interest;
- VIII – commitment to ethics and the level of familiarity with the legislation that prescribes integrity, including corporate governance, compliance and anti-corruption rules;
- IX – registrations in the CEIS (National Registry of Disreputable and Suspended Companies), in the CNEP (National Registry of Punished Companies) and in the CEPIM (Registry of Impeded Private Non-Profit Entities).

Likewise, cases may be presented in which it is necessary to fill out integrity forms and/or interview with the third party's legal representative, in order to clarify doubts raised during the analysis.

Subsequently, cases in which the analyses carried out warn of situations of risk of corruption, reputation or integrity may go through an administrative integrity procedure where additional documentation may be requested.

The conclusion of the *due diligence procedure* can result in two scenarios, the first is the issuance of an opinion with reservations that is forwarded to the executive board for deliberation on the hiring of the third party. In turn, the board of directors may forward the opinion to the Ethics Commission for an additional opinion.



The second scenario is the issuance of a favorable opinion to the third party, which is also forwarded to the Ethics Committee for its information, ending the process with the approval of the executive board and the continuity of the hiring or renewal.

Finally, third parties who are considered unfit by the executive board are prevented from entering into contracts with FEESC and will only be able to participate in future negotiations with the foundation through a new integrity due diligence analysis.

DEVELOPMENT

The Stemmer Foundation for Research, Development and Innovation (FEESC), in line with the guidelines of Law 12.846/13 and demonstrating its commitment to spreading an ethical organizational culture and relationships based on high standards of integrity, developed its integrity program in 2019. Since then, FEESC has implemented, through the integrity plan, several actions to materialize in practice what was planned on paper.

In this way, over the last few years, the Foundation has developed normative instruments and tools that contribute to the strengthening of the integrity program, reaffirming the engagement not only of senior management, but of the Foundation as a whole. The following are the policies and rules that must be observed by everyone who relates to FEES:

Table 2

<u>ANO</u>	<u>POLÍTICAS E NORMAS</u>
2021	1) Código de Conduta Ética ¹⁹ , 2) Canal de Denúncias ²⁰ , 3) Regimento Interno, e a 4) IN que regulamenta as atribuições e responsabilidade dos coordenadores.
2022	1) Política de Controle de Registros e Contabilidade 2) Política de Relacionamento com o Setor Público 3) Política de Relacionamento com Terceiro 4) Processo de Due Diligence de Integridade

Source: Compliance Report – Integrity Program Evaluation – 2023

Additionally, as FEESC is a Foundation that supports public institutions and is responsible for the management of resources from the public sector, it is essential that it is protected from any unlawful act. This includes not only direct actions, but also those carried out for their benefit, that is, acts committed by third parties with whom they have business relationships or act on behalf of the entity.



The CGU in its manual of "Integrity Program - Guidelines for Private Companies" contemplates the hiring of third parties as a situation of risk to the integrity of organizations. The "Practical Manual for the Evaluation of the Integrity Program in PAR" provides a series of criteria considered for the evaluation of integrity programs, including the performance of due diligence prior to the hiring of third parties.

Next, in chart 3, a comparison was made between the evaluation criteria made available by the CGU and the guidelines adopted for the application of Integrity *Due Diligence* by FEESC.

Chart 3 – Comparative CGU guidelines/FEESC guidelines

11.1. The prior diligences carried out by the legal entity to hire third parties include:	
a) Verification of third-party involvement in corruption/fraud against the public administration?	In the application of <i>FEESC's Due Diligence</i> , the following can be verified in relation to the third parties evaluated: the history of involvement in cases of corruption, unethical and/or illegal conduct; reputation in the market and registrations with CEIS, CNEP and CEPIM, among others.
b) Verification of integrity programs?	Commitment to ethics and integrity and familiarity with corporate governance, <i>compliance</i> and anti-corruption rules are verified.
c) carrying out in-depth diligences in relation to third parties for entering into partnerships, such as consortia, associations, joint ventures and special purpose companies?	FEESC's <i>Due Diligence</i> procedure is carried out through specific software and in-depth research in databases, media and others. A request may be made to fill out integrity forms and/or interview with a representative or legal representative of the third party, in order to resolve any doubts, and the contact must be properly documented.
11.2. The rules on carrying out due diligence prior to hiring third parties:	
a) Do they favor the hiring of third parties that present a low integrity risk?	There may be exemption from FEESC's <i>Due Diligence</i> procedure or application of a simplified procedure, when a situation of low integrity risk is identified, or due to the value and duration of the contract. It is important to note that this also applies to low-risk companies.
b) establish the need for taking measures to minimise the risk of hiring a third party, if the result of the diligences carried out indicate high integrity risk in the hiring?	After the closure of the proceedings the opinion issued is with reservation, the FEESC Ethics Committee may propose control measures to mitigate the identified risks.
c) they may make it impossible to contract or the formation of the partnership, if it is verified high risk of integrity of the third?	Third parties considered unfit by the Executive Board are prevented from contracting with FEESC.
11.3. Is there segregation of function between those who carry out the diligences and those responsible for carrying out the contracting?	The person responsible for hiring the third party is different and belongs to a different sector from the person who performs the integrity <i>due diligence</i> procedure.
11.4. there is participation of the area responsible for the Integrity Program in the Carrying out the diligences?	Yes, the Ethics Committee may be called upon to issue an additional opinion on the evaluation of third parties who present reservations.
11.5. Documents were submitted demonstrating that the diligences of third parties are applied by the legal entity, such as forms completed by third parties, emails requesting information from third parties and assessments of the third parties' risk profile?	FEESC has in its archives all the documentation that proves the application of integrity <i>due diligence</i> procedures, which can be made available when requested.



11.6. In contracts entered into with third parties:	
a) there is a clause establishing the obligation to comply with ethical standards and the prohibition of fraud practices and corruption (anti-corruption clause)?	Contracts, projects or other instruments that bind FEESC to third parties shall contain, whenever possible, an anti-corruption clause, which shall include, among other obligations, the duty to comply with the Code of Ethical Conduct and other internal regulations of the Foundation.
b) Is there a provision for the application of penalties and/or contractual termination in case of non-compliance with ethical standards and the practice of fraud and corruption?	All contracts entered into by FEESC include an anti-corruption and integrity clause. In the contracts, it is also provided for the termination of the same in cases of non-compliance with any of the clauses inserted in them.
11.7. The PJ presented copies of contracts entered into proving the existence of an anti-corruption clause and Provision for the application of a penalty for its non-compliance?	At the time requested, FEESC has the ability to provide the necessary and pertinent evidence.
11.8. The PJ failed to present evidence of diligence to hiring and supervision of third parties. To indicate YES as an answer, the evaluator must have answered NO (zero) to all other questions from the item 11.	It does not currently apply.

Source: Prepared by the authors (2024).

The table above allows us to verify that the guidelines of FEESC's Integrity *Due Diligence* procedures are aligned with the CGU's evaluation criteria, this compliance, in addition to generating confidence in relation to the veracity of the implementation and application of *due diligence procedures*, ratifies the Foundation's qualification in its internal processes.

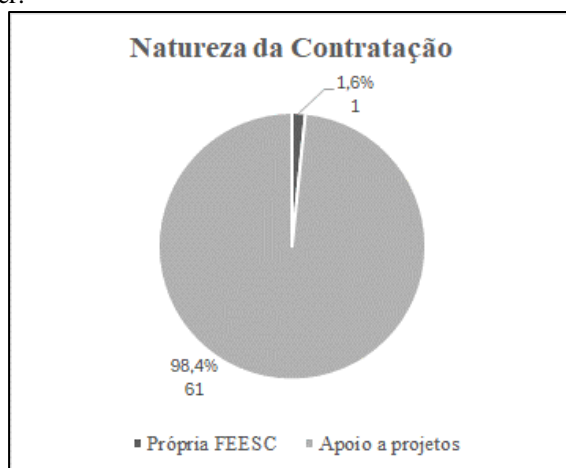
RESULTS OBTAINED IN THE PERFORMANCE OF *INTEGRITY DUE DILIGENCE* BY FEESC IN 2023.

The results presented below correspond to the performance of *Due Diligence procedures* in the hiring of third parties by FEESC in 2023. During this period, 62 third parties (suppliers and/or service providers) were selected who fit into any of the hypotheses defined by the Foundation based on the risks previously raised.

The data showed that, of the eight hypotheses defined, the third fit into only three of them. Most of them were classified in the hypothesis "VI - In the legal entity ranked first in the Bidding and Public Selection processes". The second hypothesis with the highest number of third parties framed was "IV - When the coordinator/requester declares to be an exclusive supplier and the total value of the contracting of services is equal to or greater than R\$ 50,000.00 (fifty thousand reais)". Finally, the hypothesis with the lowest incidence of the three was "III – Has the total value of the contract equal to or greater than R\$ 500,000.00 (five hundred thousand reais), including subsequent addendums".

Regarding the nature of the contracts evaluated, it should be noted in graph 1 that 61 of them were contracts within the scope of projects managed by the Foundation and only 1 to provide services directly to FEESC. These results reflect the reality of the entity as a foundation to support the development of teaching, research and extension projects, and institutional, scientific and technological development in which the involvement of large volumes of resources is common, which presupposes potential integrity risk.

Graph 1. Nature of the contract. In dark gray FEESC itself; in light gray project support. A higher value indicates a percentage; lower value indicates absolute number.

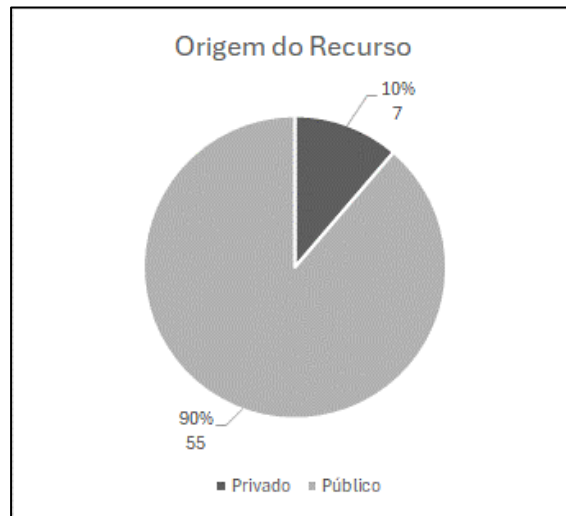


Source: Prepared by the authors (2024).

Regarding the origin of the funds, graph 2 shows a great predominance of public resources that went through FEESC's *Due Diligence* analyses. Of the total number of third parties evaluated, 90% would be contracted for projects financed with public resources, and only 10% with private resources.

From this perspective, it is evident that integrity *due diligence* is a mechanism that offers significant security in the protection of resources. Its application strengthens the Foundation's Integrity Program, given that by protecting the resources of the public administration and ensuring that contracted third parties do not have tendencies to acts of corruption, a large part of the program's objectives are achieved.

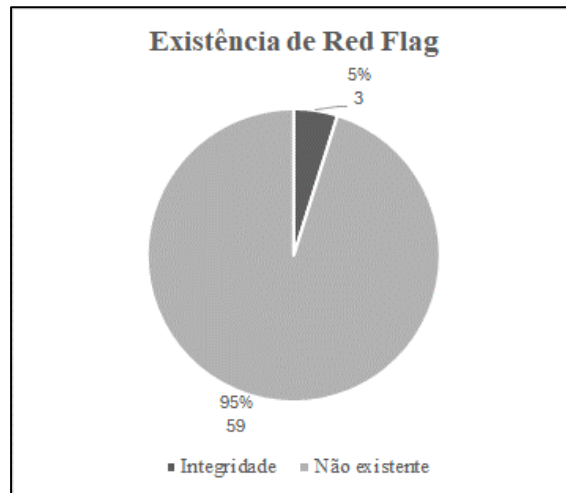
Graph 2. Source of the resource. In private dark gray; in public light gray. A higher value indicates a percentage; lower value indicates absolute number.



Source: Prepared by the authors (2024).

The results of the preliminary diligences, carried out by FEESC in the contracting of suppliers and service providers, in the period from January to December 2023, pointed to the existence of only 3 cases of *integrity red flag*. In general, these *red flags* corresponded to possible conflicts of interest. After the appropriate investigations and analyses, the company decided that these were low-risk companies, and it was sufficient to apply relevant mitigation measures for the continuation of the contract.

Graph 3. Existence of *red flag*. In dark gray *red flag* of integrity; in light gray no *red flag*. A higher value indicates a percentage; lower value indicates absolute number.



Source: Prepared by the authors (2024).

To conclude the presentation of the data obtained in the first year of application of integrity *Due Diligence* procedures of the Stemmer Foundation for Research, Development and Innovation (FEESC), two points should be highlighted. First, the total value of the contracts evaluated was approximately



R\$ 13,513,542.73 (thirteen million, five hundred and thirteen thousand, five hundred and forty-two reais and seventy-three cents), the vast majority of which were resources of public origin.

Second, for the *identified red flags*, risk mitigation measures were implemented, including declarations of absence of kinship or any form of favoritism, in addition to the anti-corruption and integrity clauses included in the contracts with third parties. Due to the minimal exposure to integrity risks found, all third parties that underwent *the due diligence* assessment in 2023 were approved.

FINAL CONSIDERATIONS

The article presented a case study of the Stemmer Foundation for Research, Development and Innovation (FEESC) in which the integrity Due Diligence *procedure* in the hiring of suppliers and service providers of the organization in the year 2023 was analyzed. The main objective was to demonstrate the contributions of this mechanism in strengthening integrity programs.

The implementation of the FEESC Integrity Program, its guidelines, objectives and characteristics was detailed, aiming to highlight the relevance of this tool for organizations. The study highlighted that integrity programs are a system that includes tools, mechanisms, practices, policies and various actions aimed at preventing acts of corruption against the public administration. In this sense, *due diligence* represents an effective mechanism that shields organizations from unlawful acts committed by third parties related to them.

Regarding the achievement of the main objective, the results obtained with the application of Integrity *Due Diligence* by FEESC confirmed the importance of this mechanism for strengthening the Foundation's Integrity Program. This was evident when observing that the total value of contracts in the year was R\$ 33,655,143, of which R\$ 13,513,543 went through *Due Diligence*, representing 40% of the resources allocated to hiring third parties in that year. In addition, most of these resources are of public origin, which increases their significance.

Given the magnitude of the amounts protected through the diligences applied, the relevance of integrity *Due Diligence* for the entity's Integrity Program is undeniable. Without this tool, the organization would hardly have achieved the same results.

It is worth noting that this does not only apply to FEESC, the case of the Foundation is an example that demonstrates that *due diligence* is an essential tool for strengthening the integrity programs of organizations in general.

It was also observed that it is very important to define the specific conditions and criteria for the selection of third parties that will be evaluated. This can ensure more effective results, facilitating more appropriate contract management. Otherwise, there is a risk of hindering the internal processes of organizations and ending up harming both the company itself and the third parties involved.



In the case of FEESC, for example, being an entity that manages a considerable amount of resources, this careful selection is essential to identify third parties that truly assume a risk to the integrity of the entity.

The main challenge observed in the application of *third-party due diligence* refers to the time it may take for third parties to fill out the forms and return the requested information. This presents a challenge for the Foundation, considering that the projects managed are subject to schedules that need to be met.

It is concluded that the research shows that *integrity due diligence* is a fundamental mechanism to strengthen integrity programs, allowing the identification of potential risks arising from third parties and providing the opportunity to prevent and/or mitigate these risks. Thus, organizations can avoid their association in acts of corruption.



REFERENCES

- Alegretti, S. (2021). A legalidade do DDI–Due Diligence de Integridade da PETROBRAS com base na doutrina da Multi-level governance. *Journal of Law and Regulation*, 7(2), 157-174.
- Andrade, A., & Rossetti, J. P. (2004). *Governança corporativa: Fundamentos, desenvolvimento e tendências*. São Paulo: Atlas.
- Antonik, L. R. (2016). *Compliance, ética, responsabilidade social e empresarial*. Rio de Janeiro: Alta Books.
- Aquino, G., & Souza, K. S. (2020). Compliance no Terceiro Setor: Desafios da implantação do programa de integridade no SEBRAE Ceará. *Revista de Empreendedorismo, Negócios e Inovação*, 5(2), 105–126. <https://doi.org/10.36942/reni.v5i2.363>. Available at: <https://periodicos.ufabc.edu.br/index.php/reni/article/view/363>. Accessed March 29, 2024.
- Belarmino, A. P. (2020). O compliance na percepção de micro e pequenos empresários. *Revista Metropolitana de Governança Corporativa*, 5(2), 65.
- Bento, A. M. (2018). Fatores relevantes para estruturação de um programa de compliance. *Revista da FAE*, 21(1), 98-109.
- Brasil, Decreto nº 11.129, de 11 de julho de 2022. Regulamenta a Lei nº 12.846, de 1º de agosto de 2013, que dispõe sobre a responsabilização administrativa e civil de pessoas jurídicas pela prática de atos contra a administração pública, nacional ou estrangeira. *Diário Oficial da União*, July 12, 2022. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/decreto/d11129.htm. Accessed March 25, 2024.
- Brasil, Decreto nº 8.420, de 18 de março de 2015. Dispõe sobre a responsabilização administrativa de pessoas jurídicas pela prática de atos contra a administração pública, nacional ou estrangeira e dá outras providências. *Diário Oficial da União*, March 19, 2015. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/decreto/D8420.htm. Accessed March 25, 2024.
- Brasil, Lei 12.846, de 1 de agosto de 2013. Dispõe sobre a responsabilização administrativa e civil de pessoas jurídicas pela prática de atos contra a administração pública, nacional ou estrangeira, e dá outras providências. *Diário Oficial da União*, August 2, 2013. Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112846.htm. Accessed March 25, 2024.
- Coimbra, M. A., & Manzi, V. A. (2010). *Manual de compliance: Preservando a boa governança e a integridade das organizações*. São Paulo: Atlas.
- De Andrade, V. F., & Bizzo, W. A. (2019). Responsabilidade social empresarial no Brasil segundo a SA 8000: Estudos de caso e a correlação com a cadeia de suprimentos. *Revista Produção Mais Limpa*, 210, 1022-1032.



- De Castro, J. M. G. (2016). Apontamentos sobre a adoção das boas práticas de governança nas organizações do Terceiro Setor: Importância da adoção de um programa de compliance efetivo, à luz da Lei n. 12.846/2015. *Revista Quaestio Iuris*, 9(2), 1012-1030. <https://doi.org/10.12957/rqi.2016.22574>. Available at: <https://www.e-publicacoes.uerj.br/quaestioiuris/article/view/22574>. Accessed March 27, 2024.
- De Melo, M. L. C. (2021). A importância do processo de aplicação do compliance como ferramenta estratégica na gestão de uma organização do terceiro setor (Master's thesis, Programa de Pós-Graduação em Engenharia de Processos, Universidade Federal do Pará). Available at: <http://repositorio.ufpa.br/jspui/handle/2011/13584>. Accessed March 28, 2024.
- De Oliveira, R. F., & De Melo, F. A. M. (2022). Due diligence—Uma abordagem voltada para a mitigação de risco no relacionamento com terceiros. *Revista FAPAD-Revista da Faculdade Pan-Americana de Administração e Direito*, 2, e068. <https://doi.org/10.37497/revistafapad.v2i1.68>.
- Ferreira, R. D. O., & De Melo, F. A. M. (2022). Due diligence – Uma abordagem voltada para a mitigação de risco no relacionamento com terceiros. *Revista Fapad - Revista da Faculdade Pan-Americana de Administração e Direito*, 2(1), e068. Available at: <http://dx.doi.org/10.37497/revistafapad.v2i1.68>. Accessed March 28, 2024.
- Franca Filho, M. T., et al. (2019). Mercado de arte, integridade e due diligence no Brasil e no MERCOSUL cultural. *Revista de la Secretaría del Tribunal Permanente de Revisión*, 7(14), 260-282. Available at: <http://dx.doi.org/10.16890/rstpr.a7.n14.p260>. Accessed March 27, 2024.
- Fontes Filho, J. R., & Picolin, L. M. (2008). Governança corporativa em empresas estatais: Avanços, propostas e limitações. *Revista de Administração Pública*, 42, 1163-1188.
- Gil, A. C. (2008). *Métodos e técnicas de pesquisa social* (6th ed.). São Paulo: Atlas.
- Souza, F. N. L. (2020). Due diligence na contratação de terceiros: Ferramenta necessária para a boa governança corporativa nas empresas privadas? *Revista Fronteiras Interdisciplinares do Direito*, 2(1), 105-117. <https://dx.doi.org/10.23925/RFID.V2I2.54834>. Accessed June 18, 2024.
- IBGC. (2017). *Caderno de Governança Corporativa: Gerenciamento de riscos corporativos – Evolução em governança e estratégia* (Série Cadernos de Governança Corporativa, 19). São Paulo, SP: IBGC. ISBN: 978-85-99645-50-5.
- Lopes, A. B. (2004). *A teoria dos contratos, governança corporativa e contabilidade*. São Paulo: Atlas.
- Melo, F. A. M. (2020). Análise de risco para os programas de integridade (compliance): O fortalecimento da tomada de decisão multicritério. *Diretor-Geral*, 20271, 16-24.
- Monzheimer, M. (2021). *Due Diligence Obligations in International Human Rights Law: The Origins of Due Diligence in International Law*. Cambridge University Press, 78-115. Available at: <https://doi.org/10.1017/9781108894784>. Accessed March 29, 2024.
- Neves, G. K. S. (2019). *Compliance, accountability e desempenho de entidades do terceiro setor: Um estudo de caso na APAE-DF* (Bachelor's thesis, Universidade de Brasília). Available at: <https://bdm.unb.br/handle/10483/22822>. Accessed March 28, 2024.



- Ribeiro, M. C. P., & Diniz, P. D. F. (2015). Compliance e lei anticorrupção nas empresas. *Revista de Informação Legislativa*, 52(205), 87-105.
- Raupp, F. M., & Warken, R. M. (2009). Utilização da due diligence em processos de fusão e aquisição. *Pensa Contábil*, 11(45).
- Ruiz-Armengol, F. E. (2022). Due diligence desde una perspectiva financeira. *Revista de Contabilidad y Dirección*, 34, 41-54.
- Silva, H. J. D. (2022). Compliance e integridade empresarial - A valoração ética na governança corporativa. *Revista Meritum*, 17(1), 129. <https://doi.org/10.46560/meritum.v17i1.9026>.
- Silveira, A. D. M. (2010). *Governança corporativa no Brasil e no mundo: Teoria e prática*. Rio de Janeiro: Elsevier.
- Soares, L. T., Junior, A. M., & Da Silva, A. A. (2022). Aprimoramento de processo de due diligence de integridade como instrumento de controle de anticorrupção em empresa de telecomunicações. 8º EMPRAD.
- Sobreira Filho, E. F., Leite, F. P. A., & Martins, J. A. M. (2019). Ética empresarial como base de sustentação do programa de compliance: Uma breve análise sobre a ética, a integridade e o compliance. *Relações Internacionais no Mundo Atual*, 2(23), 99-125.
- Souza, F. N. L. (2021). Due diligence na contratação de terceiros: Ferramenta necessária para a boa governança corporativa nas empresas privadas? *Revista Fronteiras Interdisciplinares do Direito*, 2(1), 105-117. <https://dx.doi.org/10.23925/RFID.V2I2.54834>. Accessed March 27, 2024.
- Trivelato, B. F., Mendes, D. P., & Dias, M. A. (2018). A importância do gerenciamento de riscos nas organizações contemporâneas. *Refas-Revista Fatec Zona Sul*, 4(2), 1-20.
- Vasconcelos, Y. L., & Soares, A. P. (2022). Gestão de conformidade (compliance): Reflexões sobre o impacto na estrutura e desempenho da governança. *Research, Society and Development*, 11(15), e74111536872-e74111536872.
- Vinaches, F. J., & De Parga, M. J. (2022). Due diligence desde una perspectiva legal. *Revista de Contabilidad y Dirección*, 34, 97-110.
- Xavier, D. F. S., et al. (2017). Compliance uma ferramenta estratégica para a segurança das informações nas organizações. VI SINGEP-Simpósio Internacional de Gestão de Projetos, Inovação e Sustentabilidade, 13, 1-17.