

Empowering Professionals

# IACA ALUMNUS

the magazine

Issue XVII, February 2018

Interview

Paul van  
Lange

MACS 2015 - 2017

Impact Stories  
and Graduation

Alumni 2017

Year in  
Review



IACAlumnus - the magazine is the alumni magazine of the International Anti-Corruption Academy (IACA), addressing alumni around the world who have participated in and, in general, completed at least one of IACA's programmes or activities.

IACAlumnus - the magazine welcomes contributions by alumni. As a forum to exchange ideas and latest developments, and feature the career paths of our alumni, we seek to provide you with a medium to stay connected. To contribute to the magazine please contact [alumni@iaca.int](mailto:alumni@iaca.int).

IACA reserves the right to select and edit any contribution to suit the publication. We will not consider contributions that have already been published, in any form, in print or online.

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## Welcome Word

Dear Alumni,

IACA staff would like to wish you a happy and successful new year! In this issue of the magazine we wanted to look back at 2017 – a great year for our alumni association, in which we welcomed 527 new alumni who participated in our programmes and trainings. We therefore wanted to share with you an overview of who they are. At the same time, we want to thank all IACAlumnus contributors in 2017, without whom this magazine would not have existed.

Apart from that, on 5 December 2017 IACA celebrated the graduation of 22 students of our Master in Anti-Corruption Studies. A part of this issue is dedicated to them: to their lives, studies, research focus, and on the graduation itself. We spoke with Pawan Kumar Sinha from India, awarded best master's thesis, about his inspirations and main findings.

Besides looking back at the last year, in this issue we also want to look forward. We included a contribution by Felicitas Colombo from Argentina on a prominent current issue in the crime sector, cryptocurrencies. We are very glad to include two additional contributions from Latin America, highlighting our excellent alumni network in this region. The first one is from Sebastián Hamel, who explained to us the role of external collaborators of the Judiciary in Chile. The second is from Maurício Moreira Menezes, who covers the business anti-corruption principle in the Brazilian legal system. Pawan Kumar Sinha and Mallika Mahajan shared with us the co-authored article entitled: Game of Betrayals: A Strategy to Combat Bribery in Public Service. Finally, we also sat down with Paul van Lange, Professor of Social Psychology and Head of the Section of Social Psychology at the VU University in Amsterdam, to discuss the nexus between corruption and psychology.

We hope you will enjoy reading this issue of the IACAlumnus magazine and we are already looking forward to receiving your contributions for the next one.

Sincerely,  
 The Alumni team

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EDITORIAL DATE: 26 JANUARY 2018

# IACA ALUMNI MAPPING



01. Afghanistan
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10. Azerbaijan
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15. Belgium
16. Benin
17. Bhutan
18. Bolivia
19. Bosnia and Herzegovina
20. Botswana
21. Brazil
22. Bulgaria
23. Burkina Faso
24. Burundi
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28. Chile
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31. Congo
32. Costa Rica
33. Côte d'Ivoire
34. Croatia
35. Cyprus
36. Czech Republic
37. Democratic Republic of the Congo
38. Denmark

STATUS AS OF 14 DEC 2017

The boundaries and names shown and the designations used on this map do not imply any official endorsement or acceptance by the International Anti-Corruption Academy (IACA). No official endorsement or acceptance is implied with regard to the legal status of any country, territory, city, or any area or its authorities, or with regard to the delimitation of frontiers or boundaries. This map was produced to the best of common knowledge.

- |                        |                              |                 |                            |  |                                  |                               |
|------------------------|------------------------------|-----------------|----------------------------|--|----------------------------------|-------------------------------|
| 39. Dominican Republic | 58. India                    | 77. Luxembourg  | 96. Pakistan               | 115. Sierra Leone                              | 133. Trinidad and Tobago         | 149. Bermuda                  |
| 40. Egypt              | 59. Indonesia                | 78. Madagascar  | 97. Panama                 | 116. Singapore                                 | 134. Tunisia                     | 150. British Virgin Islands   |
| 41. El Salvador        | 60. Iraq                     | 79. Malawi      | 98. Papua New Guinea       | 117. Slovakia                                  | 135. Turkey                      | 151. Cayman Islands           |
| 42. Estonia            | 61. Ireland                  | 80. Malaysia    | 99. Paraguay               | 118. Solomon Islands                           | 136. Uganda                      | 152. Kosovo                   |
| 43. Ethiopia           | 62. Islamic Republic of Iran | 81. Malta       | 100. Peru                  | 119. Somalia                                   | 137. Ukraine                     | 153. Montserrat               |
| 44. Fiji               | 63. Israel                   | 82. Mauritius   | 101. Philippines           | 120. South Africa                              | 138. United Arab Emirates        | 154. State of Palestine       |
| 45. Finland            | 64. Italy                    | 83. Mexico      | 102. Poland                | 121. South Sudan                               | 139. United Kingdom              | 155. Turks and Caicos Islands |
| 46. France             | 65. Japan                    | 84. Mongolia    | 103. Portugal              | 122. Spain                                     | 140. United Republic of Tanzania |                               |
| 47. Gambia             | 66. Jordan                   | 85. Morocco     | 104. Qatar                 | 123. Sudan                                     | 141. United States of America    |                               |
| 48. Georgia            | 67. Kazakhstan               | 86. Mozambique  | 105. Republic of Korea     | 124. Swaziland                                 | 142. Uruguay                     |                               |
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| 51. Greece             | 70. Kyrgyzstan               | 89. Nepal       | 108. Russian Federation    | 127. Syrian Arab Republic                      | 145. Viet Nam                    |                               |
| 52. Grenada            | 71. Latvia                   | 90. Netherlands | 109. Rwanda                | 128. Tajikistan                                | 146. Yemen                       |                               |
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| 55. Haiti              | 74. Liberia                  | 93. Nigeria     | 112. Senegal               |  |                                  |                               |
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| 57. Hungary            | 76. Lithuania                | 95. Oman        | 114. Seychelles            |  |                                  |                               |

# The business anti-corruption principle in the Brazilian legal system

by Mauricio Moreira Menezes



**Mauricio Moreira Menezes** holds a Doctor of Law Degree from the University of the State of Rio de Janeiro (UERJ) Law School. He is a professor of Business Law at UERJ Law School and partner of the law firm Moreira Menezes, Martins, Miranda Advogados. Mauricio is specialized in business law including corporate, mergers and acquisitions, capital market, banking, business contracts, bankruptcy, anti-corruption, and arbitration. He has published various legal works and is member of various bodies including the Corporate Responsibility and Anti-Corruption Commission of the ICC. Mauricio attended the 7<sup>th</sup> edition of IACA Summer Academy 2017, and Module V of IACA's Master in Anti-Corruption Studies in late 2017.

The anti-corruption phenomenon corresponds to a broad and complex movement to prevent and suppress corruption involving governments, companies, and transnational and multilateral entities, both public and private. It is part of a culture and line of thought that has surged ahead, carried by a “global third wave”, identified as that in which countries that adhere to international conventions adopt internal measures to comply with global standards.

In this decade, Brazil has made great progress in this respect, in particular by means of Law No. 12.846 (“Anti-Corruption Law”) enacted in 2013 with the objective of satisfying the commitments made to the international community, especially through ratification to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Convention against Corruption, which determine that the signatory States shall hold companies accountable for corrupt acts committed against government entities and apply civil, criminal and/or administrative sanctions on those responsible for corrupt practices.

The “backbone” of the Brazilian Anti-Corruption Law is a single topic: accountability of companies for acts of corruption. To deter such acts, this law created two new categories of strict liability for business organizations, the first to obtain compensation from miscreants for damages caused and the second to impose penalties on companies involved in graft, irrespective of determination of culpability.

In this sense, the Anti-Corruption Law profoundly modified the concept of liability in the Brazilian legal system, establishing a new basis for the standard of conduct to be observed by business entities. The main consequence is the obligation to adopt effective internal measures to deter corruption, which has produced significant repercussions in the legal structure of companies.

In harmonizing these effects with the ideals of the legal system, a new principle to guide interpretation of the rules of business law has been created, which can be called the principle of business anti-corruption.

In other words, the substantial increase in the severity of the regime of organizational liability (strict liability) for corrupt acts strengthens the defense of the principle of corporate anti-corruption as a new principle of business law. Under this principle, the duty to indemnify victims (the public) for the harm done by corruption is deemed to be a consequence of business activity and therefore is not ascribed as a liability of the entrepreneur or of the manager. In sum, the business organization shall severally indemnify any person against any loss incurred as a result of corruption.

The defense of the anti-corruption principle, which can be traced to constitutional law, is one of the founding principles of Brazilian democracy, along with equality, federalism, and republicanism, among others. The constitutional foundation of such principle is also reflected in other jurisdictions, like in the United States. Many prominent American legal scholars advocate the idea that the American Constitution was drafted, in a broad sense, to combat corruption (“the Constitution was designed for fighting corruption”).<sup>1</sup>

Returning to Brazilian law, the status of the anti-corruption principle as a cornerstone of the constitutional order is now well-accepted, arising from the interpretation applied by the Federal Supreme Court regarding the limits on campaign financing by corporate entities, in judging Direct Action for Unconstitutionality No. 4650 on September 17, 2015.<sup>2</sup>

The financing of election campaigns is an important matter in discussions about fighting corruption, since it tends to make elected officials more beholden to the interests of business organizations than to the public at large. In this respect, Article 7 (3) of the UN Convention against Corruption states that “Each State Party shall also consider taking appropriate legislative and administrative measures (...) to enhance transparency in the funding of candidatures for elected public office, and where applicable, the funding of political parties.”

In line with this recommendation, the Brazilian Supreme Court ruled partly in favour of the pleadings put forward in Direct Action for Unconstitutionality No. 4650, declaring unconstitutional the legal provisions that authorized companies to fund election campaigns.

The Supreme Court’s position strengthens the idea that the anti-corruption principle is a foundation of democracy, essential for the formation of the Republic and assurance of popular representation and equal treatment before the law.

Pragmatically, the anti-corruption principle aims to assure equality of business organizations regarding treatment by the government and public officials, in the sense that all firms are given equal opportunities to exercise and develop their activities.

This principle of the constitutional system, endowed with high valorative content, is specified in detail in the Anti-Corruption Law, especially regarding the organization of businesses.

The most relevant arguments in favour of full acceptance of anti-corruption as a principle of commercial law are the amplitude, the universal character, and normative force of the anti-corruption principle with respect to business organizations, so that application of this principle is legally demanded in the different spheres of business activity.

Based on this reasoning, the anti-corruption principle should preside over the formation of the company, so that it functions as the primary guideline to be followed by the organization.

On the other side of the coin, the anti-corruption principle must also orient the behaviour of agents of the public administration, in the sense of assuring transparency, objectivity, and efficiency in the obtainment of registrations and licenses necessary to open a business.

In the ordinary course of business, the anti-corruption principle is closely related to satisfaction of the socioeconomic function of companies, in the sense of making a fair profit while also benefiting society and not obtaining unfair advantages by underhanded means. Hence, there is a close correlation between the two principles (socioeconomic function and anti-corruption).

Corruption committed in the course of business affairs directly interferes in competition by overriding the meritocratic criterion of choosing suppliers based on efficiency, according to which the business entity should strive to offer products and services with good quality and reasonable price in light of market practices, and be fairly rewarded for these efforts. In the final analysis, ethical competition drives economic and social development.

In an environment in which corruption flourishes, such a criterion is replaced by obscure ones, nourished by promises of illicit advantages, deviation from purpose and murky dealings between agents, outside the bounds of legality.

Businesses that observe good competitive practices face a series of difficulties when they compete with those that resort to corruption, because they do not have access to privileged treatment obtained through channels of doubtful legality. This obviously raises their transaction costs, hence the need to neutralize the unjust and anticompetitive position of corrupt firms, or simply allocate efforts in markets where the playing field is level, with access to business opportunities on an equitable basis.

In turn, public agents generate inefficiency when they give unfair advantage to companies willing to pay bribes, be it in awarding public contracts, issuing licenses, or enforcing tax laws, to name a few areas where corruption tilts the playing field. Therefore, as stressed by Donatella Della Porta and Alberto Vannucci, corruption, including in the private sphere, inherently involves unfair competition.<sup>3</sup>

As framed by Norberto Bobbio, the business anti-corruption principle should be interpreted as promoting rights and encouraging virtuous actions and transformations, in service to the sustainable exercise of business activity and protection of the legitimate interests of all stakeholders affected by that activity.<sup>4</sup>

In conclusion, in light of the Brazilian Anti-Corruption Law and the Constitution of the Federative Republic of Brazil, it can be stated that the business anti-corruption principle is in the centre of the nation’s system of business law, alongside principles like enterprise, free competition, socioeconomic function of companies, good faith in business, protection of private investment, consumer protection, environment protection, among others.



## ENDNOTES

<sup>1</sup> TEACHOUT, Zephyr. Constitutional Purpose and the Anticorruption Principle. *Northwestern University Law Review*, Evanston, IL, v. 108, pp. 200-217, February 14, 2014. Available at: <<http://www.northwesternlawreview.org/online/constitutional-purpose-and-anti-corruption-principle>>. Consulted on: October 22, 2016. In 2009, through an article published in the *Cornell Law Review*, she advocated the following: “The Constitution carries within it an anti-corruption principle, much like the separation-of-powers principle, or federalism. It is a freestanding principle embedded in the Constitution’s structure, and should be given independent weight, like these other principles, in deciding difficult questions concerning how we govern ourselves. Corruption has been part of our constitutional dialogue since the beginning, but in the last 50 years – and particularly since *Buckley v. Valeo* gave corruption a relatively weak role in the constitutional scheme – the concept of corruption has been unbound from the text and history of the document itself” (TEACHOUT, Zephyr. The Anti-Corruption Principle. *Cornell Law Review*, Ithaca, NY, v. 94, pp. 342-414, January 2009, p. 342. Available at: <<http://scholarship.law.cornell.edu/clr/vol94/iss2/8>>. Consulted on: October 21, 2016).

<sup>2</sup> Federal Supreme Court, en banc. ADI no. 4650. Reporting Judge: Justice Luiz Fux. Brasília, judged on September 17, 2015, published in the DJe on February 24, 2016.

<sup>3</sup> DELLA PORTA, Donatella; VANNUCCI, Alberto. Mani impunte: vecchia e nuova corruzione in Italia. [S.l.]: Gius, Laterza & Figli, 2007, pp. 129-130.

<sup>4</sup> BOBBIO, Norberto, Da estrutura à função. Translated by Daniela Beccaccia Versiani. Barueri, SP: Manole, 2008, pp. 13-14.



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