Azevedo Sette
ADVOGADOS

ESG

ENVIRONMENTAL, SOCIAL AND CORPORATE GOVERNANCE

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INTRODUCTION

We present our series of articles, led by the partner of the Corporate M&A area, **Ana Paula Terra Caldeira**, in collaboration with the associate of the Environmental and Mining areas, **Gabriela Salazar** and the intern **Vitor Emmanuel Viana Antunes Dantas**, with insights on ESG (Environmental, Social and Governance) practices.

Do you know what this acronym means and where it stands for the performance of companies?

In the next pages, you will be able to follow our special series of articles in which we discuss the criteria, definitions, challenges, opportunities, and the importance of implementing ESG practices today as a differential and competitive advantage of your business!

We remain available to answer any questions and support on the topic.

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Changing behavior is like that. It takes a long time, sometimes generations. And it is intricately linked to the values that society has at a given historical moment. At the time of the Industrial Revolution, child labor was socially accepted. Slavery was socially accepted in Brazil between the 16th and 19th centuries. Female genital mutilation was still socially accepted in Sudan (2020) and Nigeria (2015) until recent decisions and is still practiced (behold!) in approximately 30 countries.

But change in individual behavior is sometimes triggered by a fact, event or force that falls individually. And then you suddenly find yourself not knowing whether you follow ESG practices because you really believe in those values or if you do it because everyone else is doing it. Or if you came to believe because everyone is following it. In the best style of what came first: the chicken or the egg. And then, when one who believes does and another does because everyone is doing, it becomes a snowball effect. And there is no turning back.

Just like corporate governance, compliance anti-corruption, and Data Protection, ESG practices are here to stay.

Banks already have their own financing lines for companies that have good practices (1). We are already seeing the implementation of rules, such as Decree 10, 387/20 which included projects with positive socio-environmental impacts among those that are entitled to the tax benefit established by Law 12, 431/11 (fostered bonds of infrastructure law). M & A operations already have due diligence on anti-corruption compliance and data protection. In the next step, your customers will ask (if they do not already do so!) for information about your ESG practices.

The issue of the importance of governance in organizations has been recurrent since the 1990s, especially in economies with companies of widely held stock. Scandals such as Enron and WorldCom, brought the topic up for discussion, including discussion on regulators. Laws have been enacted (Sarbanes Oxley Act is a great example), voluntary membership

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associations of good practices have become more representative (IBGC, another good example). The sustainability agenda also adhered to the companies' agenda since the 1990s with the Eco-92 conference, being mainly driven by natural disasters, such as oil spills, dam accidents and global warming. The social theme gained much relevance this year, especially with the COVID-19 pandemic.

Now, why is ESG important? Global warming, ethical and anti-corruption behavior, transparency, human dignity and equality, health, safety and well-being, generation of wealth and innovation. These and other values may be important to you because they are inherent to you, of your generation and it would be inconceivable to allow child or forced labor, as well as the dumping of polluting waste in rivers.

Without prejudice, there is also an external force pressing the adoption of such practices. There are several studies indicating that companies that adopt such practices have better financial performance (2). After all, financial return is essential for the investor and will continue to be. ESG is not philanthropy.

Movies and documentaries that address topics related to ESG:

- The Laundromat NETFLIX
- Dark Waters prime video
- Fishing with dynamites prime video
- American Factory NETFLIX

The topic gained so much importance that a White Paper was released by the World Economic Forum prepared in collaboration between the “big 4” (KPMG, Deloitte, PWC and E&Y) and Bank of America presents a series of objective criteria for measuring ESG practices adopted by companies and divides them into 4 pillars: governance, planet, people, and prosperity. The pillars have 21 central and 34 expanded metrics. This is an important sign in the standardization of metrics for the assessment of companies. It is possible that the scope of a complete audit on an acquisition, for example, includes not only technical, legal (legal due diligence), accounting and tax issues (usually performed by the big 4 or similar ones), anti-corruption issues (innovation already incorporated since 2013, notably due to Law No. 12,846), issues of adaptation to the Data Protection Act (under Law 13,709/2018), but also a concrete and measurable assessment of ESG practices.

It happens that the ESG criteria contemplate a set of multidisciplinary and transversal practices. It is necessary to have teams with the most diverse qualification professionals,

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both to implement this agenda of actions and to evaluate a good program.

Brazilian law already assigns several obligations and requirements to companies. Would it be enough to comply with the law to "pass the test"? In the United States, for example, there is no legal provision for granting maternity leave (3) or paid holidays to employees (4) and, until recently, there were still some American states that allowed women to earn less than men exercising the same functions.

It was only recently (after the 2000s) that the American Supreme Court, especially by the conducting vote of the late great Judge Ruth Bader Ginsburg, declared that such laws are unconstitutional.

In Brazil, the Labor Law Code (CLT) guarantees these rights and many others (some argue that even in excess) since the 1940s. We are not talking about enforcement or effectiveness of the law. It is clear that we have discrepancies in Brazil, perhaps even greater than in the United States, due to non-compliance with regulations. But for people and companies that comply with the rules, how to go further?

Companies seem to be understanding the relevance of the issue, either through voluntary personal attitudes or pressure from stakeholders. The mentality of people in this regard has been changing. There is already a consolidated culture that prevents them from falling into the temptation to do only what the law allows, without going any further. Companies that depend on capital know that if they do not adopt practices consistent with the demands of stakeholders, they can suffer many losses, “of rating, of investors, of position in rankings, of share prices” (5).

Did you find any good reason to adopt an ESG practice today?

By Ana Paula Terra Caldeira,
Gabriela Salazar and Vitor Dantas

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ARTICLE 1

ESG: THE NEW MARKET TREND

By Ana Paula Terra Caldeira, Gabriela Salazar Silva Pinto and Vitor Emmanuel Viana Antunes Dantas

ESG practices already feature the main headlines around the world and are increasingly concerning Brazilian entrepreneurs who find an expanding market with regard to the sustainability agenda.

But what does this acronym mean? What do ESG practices represent? The term ESG, although new in Brazil, emerged from the union between three agendas connected to the pillars of environment ("environmental"), responsibility and social function of the company and governance.

Applying these three letters to our current moment, it is up to us to ask a question: Did companies that have strong ESG pillars perform better during the pandemic compared to those that did not incorporate this agenda?

If you answered "yes" to that question, your perception is correct! Now, in COVID-19 times, the concern with social inequality increase reinforced the importance of ESG practices, not only due to the need to recognize the role of companies as entities that impact society, but also due to the acquired resilience, once that ESG practices strengthen companies' long-term performance (1).

And if the numbers do not lie, it is possible to translate the positive results from the ESG agenda into percentages: companies with shares listed on the Corporate Governance Index (IGC) the São Paulo Stock Exchange (Bovespa) which adopted good governance, risk and compliance practices (2) valued 122% more than other publicly traded companies that did not adopt these practices, according to a survey carried out by the consulting firm Delloite between January 2001 and April 2017.

Adherence to ESG practices provides companies with a better credit rating, higher shareholder return, lower financing costs and better financial performance, according to studies published in the Report made available by Anbima in 2019 (3). According to a study carried out by JP Morgan (4), actions related to sustainable investments performed better than traditional ones in this challenging 2020.

ESG practices can encompass several agendas, such gases, waste management, gender and as valorization of employees, ethical behavior in organizations, reduction of the emission of gases, waste management, gender and diversity equity policies, equal pay, among others,

depending on the company and the sector in which it operates. The return may come with the added value resulting from these agendas, such as an improvement in your company's reputation in the market and, subsequently, in the medium/long term, in attractive financial results (5).

However, not everything is flowers in the ideal world of ESG. Implementing practices aligned with this agenda requires behavioral and cultural changes, in addition to a lot of relationships with people and entities. This costs time and money and goes beyond the many obligations and challenges that entrepreneurs are already subject to under the law. But as was the case with issues related to corporate governance, anti-corruption compliance and Data Protection, ESG is already in fashion and those who are well dressed will take the lead.

For the fruits to be harvested, the ESG practices adopted by the companies must be effective, i.e., they must be applicable and relevant to the company and the sector in which it is inserted, as it is through "materiality" that such practices will bring the desired results. Otherwise, companies may incur into the undesirable "Greenwashing", a name applied to the covert adoption of ESG practices that do not correspond, in reality, with the policies and actions of that company, in which case the reputational damage is greater than doing nothing.

As a way of making ESG practices more measurable, the four largest auditing companies in the world (KPMG, E&Y, PwC and Deloite) recently prepared a white paper establishing objective parameters for the assessment and measurement of ESG practices worldwide. The expectation is that these parameters, which are based on 4 general principles (Governance, People, Planet and Prosperity) (6), will guide ESG practices in companies from now on.

In this new market trend, delivering only financial gains is not enough. The success of this new era will be featured by entrepreneurs who translate their actions into social impact. In the words of Larry Fink, CEO of BlackRock, the largest asset manager in the world: "to prosper, each company will have to deliver not only financial performance, but also show how it makes a positive contribution to the society" (7). And even if the recipe for success is not unique, it is certain that ESG practices can be great allies for achieving that prosperity.

But how can these measures be implemented? Follow our series of articles related to the subject.

1 LAVAL, Luísa. O que é ESG e por que esse conceito ganhou importância no mundo dos negócios. Accessed on: October 08, 2020
2 EXAME. Os dados confirmam: boas práticas de governança valorizam ações. Accessed on: October 08, 2020
3 ANBIMA. Guia ASG: Incorporação dos aspectos ASG nas análises de investimento. Accessed on: October 08, 2020
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ARTICLE 2

ESG AND MINING: THE KEY TO SUCCESS?

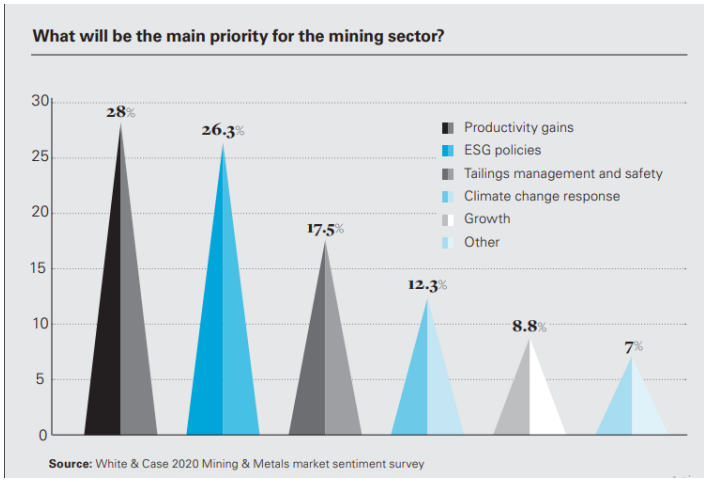
By Ana Paula Terra Caldeira, Gabriela Salazar Silva Pinto and Vitor Emmanuel Viana Antunes Dantas

The mining sector has been experiencing challenges in recent times, mainly regarding the safety of the dams and the relationship with communities, which are agendas very highlighted in the media. Thus, mining companies are having to reinvent themselves to adapt to the increasingly strict requirements of the market and legislation. In this regard, can the adoption of ESG practices represent a key to success?

The answer is yes. As explained in the first article of our series, ESG practices have already taken an essential role in the decision-making of investors and in the market ranking, in addition to translating themselves into financial benefits, reputation improvements and efficiencies in your internal organization. ESG practices are here to stay and those who do not adapt to this scenario will be left behind.

A survey carried out by the law firm White & Case (1) points out that ESG policies are the second highest priority for the mining sector in 2020, as can be seen in the graph ic on the right:

In the international context, it is worth highlighting the publication, in August of of this year, by the International Council on Mining and Metals (ICMM), United Nations Environment Program (UNEP) and Principles for Responsible Investment (PRI), of the Global Industry Standard on Tailings Management (2). It is a global guideline for tailings management that includes 15 principles and 77 auditable requirements to be internalized by companies. The document presented contains 6 six main pillarsaxes that encompass actions and practices aimed, for example, at addressing affected communities; tailings; management and governance; public disclosure and access to information -– pillars, therefore,axes in an intrinsic dialogue with the ESG agenda.



At the national level, and given the challenges of the market and Brazilian regulation (which, especially in relation to dam regulation, has been substantially modified to provide for stricter obligations for miners), players in the mineral sector in Brazil are beginning to be inspired in the world trend indicated by the study conducted by firm White & Case. Along these lines, several actions are being implemented by companies in the mining sector in order to materialize the ESG pillars in their operations. The sector's routine has been, in this context, satisfactorily guided by diverse practices that range from capturing sustainable investments for extractive projects to commitments to reduce greenhouse gas emissions through progressive replacement of the fleet of trucks and "off-road" trucks. The actions that drive the incorporation of the ESG agenda in mining do not stop there and include other initiatives, such as the implementation of a matrix of 100% renewable energy in certain mining operations.

It is interesting to note that the movement in favor of incorporating ESG practices in the mining sector goes beyond the initiative of the business sector and finds incentives from the regulator itself, the Brazilian National Mining Agency ("ANM"). ANM, through its Collegiate Directorate and specialized Advisory, has been working in a mediation process between miners and communities inserted in the context of the mineral operation, and has already obtained relevant results in the composition of interests among the different stakeholders.

With these examples in mind, it is easy to understand why it is important to adopt ESG practices in mining. After all, as stated above, the market is more vigilant, customers are more demanding and given the global trend of adopting ESG practices, Brazilian companies will become increasingly aware of their role as agents that impact society (3).

Because of this trend, banks have already started to adopt lines of credit, financing programs and interest reduction for companies that adopt ESG practices, such as Banco Santander, BNDES and the World Bank (4). A famous case reported in recent months refer to the mining company Sigma, which obtained a financing of US$ 45 million with the bank Société Générale, for its lithium project, in which good conditions were obtained due to the adoption of ESG practices by the company, such as "Green Mining" and "Local Community" initiatives (5).

Wilson Brumer, president of the board of directors of the Brazilian Mining Institute (IBRAM), stressed that "following ESG standards, as managing water resources, reducing energy consumption, and promoting diversity, will determine the success of mining companies in the fundraising. If behaviors do not change, projects will no longer attract banks and investors" (6). It is a conscious reflection and marked by a tone of caution and attention. If we cannot live without mining, we will reach a time when mining cannot live without the incorporation of ESG practices.

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ARTICLE 3

ESG, DIVERSITY, AND DATA PROTECTION. WHAT DO THEY HAVE IN COMMON?

By Ana Luiza de Deus Mendonça, Ana Paula Terra Caldeira and Luiza Elena Ribeiro Cardoso

They have much more to do with it than just a mix of letters. ESG is the acronym that translates the contemporary concept of practices adopted by some companies with focus on sustainability (Environmental), social responsibility (Social) and governance (Governance).

Without warning, the year 2020 surprised everyone, dramatically altering the global context. Social isolation, lockdown, and closed borders due to the coronavirus. At the same time, we are experiencing a wave of protests in several countries against systemic racism, and several manifestations regarding the need to increase diversity in companies at the most different levels. It is a moment that invites us to think as individuals, organizations, government, and society.

In this scenario, some of the topics addressed in the social spectrum of ESG practices involve gender equality, the company's relationship with its employees, suppliers, partners, customers, and the communities in which it operates, and respect for diversity (as introduced in the article ESG: The new market trend).

The concern for a more sustainable future in all areas, including the social one, brings changes to the corporate world. Just as an example, data show that the priorities of new generations are intrinsically linked to social responsibility, there being researches (1) showing that 73% of millennials would pay more for sustainable products or solutions.

Following this trend, the World Economic Forum recently launched (September 2020) a report (White Paper) prepared in a collaborative manner between the main auditing companies in the world, the so-called "big four" (Delloite, EY, KPMG, PwC) and Bank of America, which consolidates a set of standard proposals for metrics to measure ESG practices. The recommended metrics are divided between 4 pillars aligned with the Sustainable Development Goals (SDGs) established by the UN: governance, planet, people, and prosperity. There are 21 central metrics and 34 expanded indicators to help companies to measure and report, more consistently, the progress in relation to achieving ESG goals. Companies are encouraged to disclose the largest number of practiced metrics that they consider to be relevant and appropriate in the "disclose or explain" format.

One of the metrics for evaluating ESG

practices in the social or people sphere addresses dignity and equality. In this regard, risks related to child labor, forced labor, equal pay for men and women, occupational health and safety, development of future skills and also diversity and inclusion are evaluated, and in this respect, such evaluation should indicate the percentage of employees by category, age, gender, and other indicators of diversity (ethnicity, sexual orientation, disability, religion, etc.).

The paper states that empowerment and the promotion of social and economic inclusion, regardless of age, sex, disability, ethnicity, or religion are important aspects of people management. They point out that gender and ethnicity/culture diversity, especially at the management level, has a direct correlation with financial and non-financial performance (which was already pointed out by studies carried out by McKinsey) (2) and improves the stability of companies. Companies with greater diversity are more likely to innovate, attract talent, improve the relationship with their consumers, improve employee satisfaction and maintain licenses to operate. They see tangible and non-tangible benefits and believe that diversity and inclusion will be a key to future business models.

Once the relationship between ESG and diversity is clarified, another issue remains to be addressed: what does all this have to do with Data Protection?

Protecting personal data is protecting people. The rules established by the General Data Protection Act (LGPD) guarantee the rights and security of people in relation to the data that they, in confidence, whether as employees or customers of companies, provide. Adopting a Data Protection compliance program, more than fulfilling a legal obligation, is a practice of respecting the data collected and, consequently, respecting people, and social responsibility.

In addition, for the adoption of ESG practices related to diversity and inclusion - especially in the improvement of selection processes and analysis of the current structure of companies to leverage their improvement - it may be necessary to collect sensitive data from the affected groups (data that reveal racial or ethnic origin and data related to sexual orientation, or religion, for example). Storing and processing such data under the terms provided for in the Data Protection Act (attempting whenever possible to anonymize such data and ensure the safety of its storage at all possible levels) will be of fundamental importance for the effectiveness of the practice, guarantee of safety and building of a relationship of trust with the people who are providing this data to the company, in addition to the mitigation of risks related to the penalties provided for in the Data Protection Act, as well as reputational damages resulting from leaks.

Just as the adoption of practices that keep companies in alignment with ESG has proven to be profitable, the lack of data protection and the occurrence of leaks and situations of disrespect to the subjects can also generate serious damages. Thus, ESG, diversity and Data Protection walk together to propel companies to the new upcoming realities.

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ARTICLE 4

AGRIBUSINESS AND ESG PRACTICES: WHAT IS IMPORTANT TO KNOW?

By Ana Paula Terra Caldeira, Gabriela Salazar and Vitor Emmanuel Viana Antunes Dantas

Like other sectors of the economy, agribusiness is being strongly impacted by discussions about ESG initiatives. And the question that remains is: Is this sector prepared for this new reality? How is the current situation?

First of all, it is known the representativeness that the agribusiness sector has in the Brazilian economy. According to data from the CNA (Brazilian Confederation of Agriculture and Livestock), in 2019, agribusiness corresponded to 21.4% of Brazil's GDP (1). In this regard, the participation of the sector in discussions on ESG practices is extremely important.

The environmental agendas are not new, especially in agribusiness, in view of the state regulation that has been in existence for some time through some sparse laws. However, with the growth of the ESG agenda, customers, society, and the market are increasingly demanding with respect to the consumption of the so-called "green products", which are those whose producers are committed to the environment throughout their production chain. Beyond that pillar, climate change, working conditions and scarcity of natural resources are also important points to agribusiness. They are part of the ESG agenda and, therefore, must be priorities for the sector.

In the pandemic scenario, the agribusiness sector is in alert, due to the direct manipulation of food, debates about contamination, quality inspection in the production chain and food safety (2), which are intrinsically related to ESG practices. According to the professor and manager of the Sustainability Center of Fundação Dom Cabral, Heiko Spitzeck: "The sectors that export most are mining and agribusiness. They are also the ones that most impact the environment and depend on foreign investments. Everyone who is connected to markets outside Brazil will be charged more in relation to the best environmental, social and governance practices" (3).

Thus, due to the high demand in the sector for compliance with ESG parameters, the adaptation of ESG practices becomes increasingly urgent. About this topic, the former Minister of Agriculture, Alysson Paolinelli (4) states that: "Agriculture stopped being extractive a long time ago. There are still a lot of producers - from small to large - using our resources in an extractive way and do not replace them, and this must be reduced. It takes a great effort from government

and society to increase technical agriculture, which replaces the natural resources it uses. More than that, the activity needs to generate income for those who work in it". Therefore, with a technical agribusiness based on innovations, the tendency is the improvement in social, environmental, and economic issues.

As an attempt to guide and unify ESG parameters and create a global metric, the four largest auditing companies in the world (PwC, Delloite, E&Y and KPMG) launched, in September 2020, an international report (White Paper) with the pillars that should be sought by the market, divided into four guiding principles: Principles of Governance, Planet, People and Prosperity (5).

In the report, in accordance with the particularities of the agribusiness, some important proposals stand out, notably in the environmental sustainability agenda:

I) As to climate change, it is strongly suggested the (a.i) decrease of the emission of greenhouse gases and (a.ii) the implementation of the recommendations of the Task Force on Climate-related Financial Disclosures (6).

II) As to the degradation of nature, ecological sensitivity is suggested, reporting the number of lands and the area, in hectares, owned, leased, or managed in regions close to protected areas.

III) Regarding the use and availability of drinking water, it is suggested to report the amount of water withdrawn, consumed, and the percentage that it represents in regions with high or very high water stress according to the WRI Aqueduct Water Risk atlas (7) tool, in addition to providing all this information to the entire value chain.

In another important pillar for agribusiness, "People", the report highlights the importance of diversity, inclusion, equal pay, gender equity, prohibition of child, forced, or compulsory labor, the preservation of health and well-being and, finally, development of skills for the future. All these parameters must be considered in a pro-ESG company, which, in turn, should not be limited to them, since the agenda is open and social issues are numerous.

Therefore, ESG practices, in addition to being applicable to the agribusiness sector, are already required at several levels and, failure to adopt them may be seen as a negative factor in the face of the market, investors and funders, customers, and suppliers.

There is no doubt that agribusiness, as an essential production sector for human development, will play a valuable role as one of the main drivers for the resumption of economic growth, especially in Brazil, a country with a long tradition in this business.

However, it is necessary to broaden the vision and realize that the essentiality of the sector must also be transposed to the incorporation of the ESG agenda in its operation. And if we can objectively address the question raised in the title of this article, the finding is easily identifiable: the economic impulse to be featured by the sector (along with mining) will provide even more robust and long-term benefits if it is guided by the ESG agenda, which will add increments and improvements in the environmental, social and governance

spheres of the activities conducted by the players of the sector. This is important to know!

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ARTICLE 5

INFRASTRUCTURE AND ESG: WHAT IS THE IMPACT OF THIS NEW PARADIGM ON THE SECTOR?

By Ana Paula Terra Caldeira, Frederico Bopp Dieterich, Gabriela Salazar and Vitor Emmanuel Viana Antunes Dantas

The COVID-19 pandemic has certainly had a severe impact on countless countries, markets, and companies. Eight months after the beginning of the pandemic, what is sought is the economic recovery and, in Brazil, in the post-pandemic scenario, the Infrastructure sector assumes a fundamental role. According to the Federal Government, private investments in this sector are essential for economic recovery and prosperity (1). In fact, with the approval of the "spending ceiling", public investment in infrastructure was limited and its expansion depends more and more on the private sector. This instigates some relevant reflections on the theme proposed in this article: are ESG practices impacting the infrastructure sector? Is the private sector more demanding with respect to the established criteria?

It is important to understand the role of the Infrastructure sector as responsible for stimulating development, attracting investments, generating jobs, increasing competitiveness, and facilitating logistics and quality of life in a continental country like Brazil. Therefore, the participation of this sector in discussions on ESG practices is extremely important.

BlackRock, the largest asset manager in the world, expressed a vote against the officers of 49 companies in the world for failing to act against climate change (2). BlackRock's decision reinforces the worldwide trend of valuing companies that adopt ESG practices in their business decisions.

In addition, the search for alternative sources of sustainable energy is increasingly valued, which forces companies dependent on fossil fuels to reinvent themselves and seek measures to reduce their environmental impact, such as Petrobras, which created, in 2008, the subsidiary "Petrobrás Biocombustível", responsible for the production of biofuels with social and environmental responsibility (3). Another positive example of the adoption of ESG practices in companies of the infrastructure sector is Cosan, which, in addition to the environmental issues of reduction of greenhouse emissions (4), was also concerned with issues related to governance, proposing more transparency through a simpler corporate structure, in addition to giving the same voting rights to all investors (5).

On the other hand, in the face of the corruption scandals related to the Car Wash Operation and involving large companies of the sector, it has become essential to value

good corporate governance practices and compliance, including to show the market the relevant changes driven by companies. With this in mind, the Ministry of Infrastructure created, through Ordinance No. 102/20 (6), the Infra+ Integridade Seal that aims to reward companies of the transport infrastructure sector that ensure institutional and public integrity, representing, therefore, an advancement in the adoption of ESG practices in the sector. This initiative is similar to the Agro+ Integridade Seal, created by the Ministry of Agriculture, Livestock and Food Supply.

In addition to the internal benefits for companies and the market, the adoption of ESG practices can facilitate financing and loans for infrastructure projects. Santander, for example, created a credit line of BRL 5 billion for basic sanitation projects that comply with ESG metrics, which represents a huge advance and a timely stimulus in the valuation of these criteria (7).

The current moment more than ever requires investment in infrastructure and the companies should not miss the opportunity to modernize and expand assets in this sector under new ESG investment standards. This is the signal of private equity investment managers, such as IG4 Capital, in the person of its CEO, Paulo Mattos.

In order to guide and unify the measurement parameters of ESG practices and create a global metric, as highlighted in our previous article, the four largest auditing companies in the world (PwC, Delloite, E&Y and KPMG) launched, in September 2020, an international report (White Paper) with the pillars and guiding principles that should be sought by the market: Principles of Governance, Planet, People and Prosperity (8).

It can be suggested, for the Infrastructure sector, under the terms set forth in the report, the following propositions:

1 In the "Prosperity" pillar, investments in infrastructure and essential public services are indicated as extremely important factors of economic contribution for the growth of employment and the generation of long-term wealth and prosperity, as well as for the social vitality of the community. Among other factors, the extent of the development of infrastructure investments, and the current and expected positive or negative impacts on local communities and economies will be measured.

2 In the topic "Planet", the importance of access to drinking water and basic sanitation is highlighted as a basic and essential human right. It is also proposed the review of the solid waste disposal plans, in addition to adopting policies to reduce greenhouse gas emissions and others, in order to combat air pollution. In this context, the new sanitation regulatory framework, which is the object of the Federal Law No. 14,026/2020 (published on 07/16/2020), will boost the sector and the Brazilian economy, with projections and goals for infrastructure and the universalization of services for the Brazilian population.

3 Regarding governance, it is suggested the adoption of anti-corruption policies, by promoting internal training for employees, measurement of incidents-

of corruption faced by companies, and the discussion of initiatives and engagement of shareholders in order to develop an internal and external anti-corruption environment.

4 In the social aspect, specifically on "People", the search for gender and racial equality among employees is recommended, as well as equal pay, and the adoption of policies aimed at respecting human rights, fighting child labor and slavery-like work.

The challenges are numerous, but it is certain that the infrastructure sector, due to its relevance in the national scenario and through the incorporation of the ESG agenda in its practices, will encourage the adoption of this agenda by other sectors of the economy, promoting the maturation of a new market level, in which business success will be significantly influenced by the materialization of ESG practices.

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ARTICLE 6

GOVERNANCE IN ESG

By Ana Paula Terra Caldeira, Gabriela Salazar and Mariana Viotti

The fall in confidence in national institutions and companies, especially after the scandal of Petrobrás and the Car Wash operation, was a stimulus for corporate governance - the "G" factor of the acronym ESG, to gain prominence in Brazil: the traditional pillars of transparency, equity, accountability, and corporate responsibility, became familiar to the Brazilian business scenario.

But in the ESG culture, governance goes far beyond that.

To verify whether governance effectively reflects a company's culture, values and social responsibility, the following metrics should be considered (1):

I) The definition of corporate objectives, notably regarding economic solutions, and environmental and social issues;

II) The composition of the high administration (independence, diversity, representativeness, remuneration, among other aspects);

III) Stakeholder engagement;

IV) Ethical behavior (through anti-corruption and compliance policies, for example); and

V) The effective identification and management of risks and business opportunities, as well as elements that demonstrate effective governance.

All these "new" elements seal the understanding that the ESG aspects (environmental, social and governance), are, in reality, inseparable and cross-cutting.

Now, for the implementation of initiatives that, at first sight, would be characteristics of the "social" pillar, such as the implementation of basic sanitation for a community, for example, a company must necessarily deal with public authorities and, in this scenario, resort to governance in order not to violate the provisions of the Anti-Corruption Law (Law 12,846/2013), especially in the following points: (i) not undertake, offer, or give, even if indirectly, any good of value (gift, lunch, travel, gift, free service provision, benefits, etc.) to a public agent or person related to it; (ii) not expect any government benefit in return for your good deed; (iii) not use the company to hide a personal interest in your action; and (iv) not difficult any inspection by public bodies.

In the same regard, in any "S" actions involving donations, governance will be responsible for dictating the processes, validating suitable institutions, and rendering accounts, in accordance with the specific internal policies of the company.

Governance is also about diversity, inclusion, and compliance with the rules to which the company is subject, of any nature, whether environmental, regulatory, tax, and labor, always being present in the implementation of the other ESG aspects.

Governance is the guiding thread of corporate culture. In corporate instruments, such as Articles of Incorporation and Articles of Association, Shareholders' Agreement, and in instruments such as the Code of Conduct, the internal and external relations of a company and its stakeholders are regulated, guidelines for good practices are given, transparency is promoted, and an ethical culture of inclusion and respect for the environment is fostered. However, for governance to be effective, it is not enough to simply invest in the formal structuring of these documents, such as the Code of Conduct and the anonymous reporting channel, but a solid compliance culture is needed, with the support and engagement of the senior management.

In this regard, the Brazilian Institute of Corporate Governance (IBGC), author of the Code of Best Corporate Governance Practices, is a great ally, promoting various initiatives and guidelines in favor of effective governance.

Therefore, it is essential that all company employees, essential in each function they perform, internalize governance practices, and represent living examples of the principles and guidelines contained in the company codes and manuals. Therefore, it is not enough that the governance criteria are admirable as paper records, but do not find resonance in the practice of those who perform the day-by-day tasks of the company, in all its fronts of action and in all its pillar of collaboration.

Among the main guidelines of the IBGC, we have the capillarity of this agenda across all segments of an institution to enable good governance, even though this represents a permanent challenge for its managers in maintaining their relevance and engaging new employees.

Through good governance, and the transparency intrinsic to it, it is possible to mitigate risks and deal with conduct violations even before they occur, boosting the reliability and, consequently, the reputation and resilience of a company, by reflecting the organizational values and culture.

The company "Natura", which was a pioneer in the adoption of these measures in Brazil, already occupies the 2nd place (2) in the world ranking of reputation in corporate responsibility, behind only the Danish Lego, and still plans to invest 800 million dollars (3) (equivalent to BRL 4 billion reais in the current exchange rate) in the next ten years so that all companies in the group (such as Avon and The Body Shop) implement a program of sustainability and return benefits to the society.

The investment represents almost 9% of the company's market value (BRL 48.5 billion reais) in B3, but Natura is already enjoying the results of this engagement.

In the action of the Father's Day, led by Thammy Miranda (transgender Brazilian politician), Natura's actions rose 6.7% in response to its alignment with inclusion policies (4).

Although the adoption of ESG practices is a competitive advantage for the business, Brazil is still crawling. However, it is already perceptible the change in corporate behavior and in consumers themselves, who are increasingly interested in impacting products and services (on environmental and social levels).

Undoubtedly, the COVID-19 pandemic boosted discussions on the ESG agenda and placed the debate on the pillars of this agenda at the center of the definition of strategic plans for the growth of companies. The path to the effective implementation of the ESG agenda is long and challenging, but we are certainly on the right direction, driven by the perception that the future success of organizations will inevitably result from their ability to contribute to social well-being and preservation of the environment. There is no better motivation!

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Brazil is historically a much more regulated economy in comparison with the US and certain European countries, especially when considering employees rights and environmental protection laws. Thus, certain practices that could be considered ESG practices these days in other places of the world were already mandatory in Brazil since the past. Some of them are outdated and needs to be enhanced and modernized under the new world order but practices of this nature are not new to Brazilian entrepreneurs.

ENVIROMENTAL

Since the 1980´s, Brazilian regulation requires companies operating in Brazil with potential environmental impact to comply with solid waste management, pollution control and sustainable use of natural resources.

SOCIAL

Brazilian labor laws established back in the 1940´s under a very employee protective regime provides for several rules aiming at preserving employees dignity and equality, as well as health and well-being.

GOVERNANCE

Brazilian Corporations Law dates back to the 1970´s and provides for minimum guarantees and rights for minority shareholders protection, social purpose of the company, executives term, composition and compensation, as well as accountability and corporate reponsibility. Braziilan Stock Exchange has stricter rules for publicy owned companies with higher levels of corporate governance. More recently, anticorruption law has strenghted ethical behaviour requirements.

SELECTED ESG LINKED BONDS´ ISSUANCES IN BRAZIL

ESG practices are becoming more and more important to Brazilian companies and forcing companies to go beyond existing mandatory regulations.

SEPTEMBER 2020

1st emission made by a Latin American company which includes a financial penalty if the company does not comply with the environmental milestones for reduction of gas emissions.

Suzano issued abroad US$500 million green bonds or sustainability linked notes.

Boticario issued in the Brazilian market R$ 1 billion 5 year bonds linked to sustainability goals subject to the use of 100% renewable energy in certain plants and increase in recyling solid waste. Compliance will be assessed anually. Interests will be reduced annualy 10bp if goals are met.

DECEMBER 2020

1st emission made by a Brazilian public financial institution.

BDMG issued a USD50 million bond in NYSE to finance social and environmental projects which are alligned with United Nations Sustainable Development Goas - SDGs. Interamerican Development Bank Invest has acquired 100% of the bonds.

JANUARY 2021

Minerva and **Marfrig** joined the Corporate Sustainability Index - ISE, from the Brazilian Stock Exchange - B3, which congregates companies with best ESG practices. Valid from January 4, 2021 to December 30, 2021.

Itaú issued US$ 500 million subordinated bonds due in 10 years providing that 30% of the resources shall be granted for sustainable business and 70% of the resources shall be granted for business with social responsability impact.

1st level 2 emission of a Brazilian bank related to ESG practices.

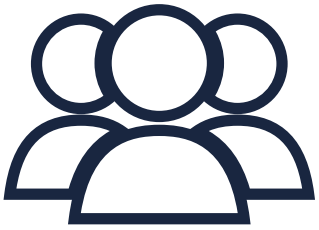
WHAT WE DO | OUR SERVICES

GOVERNANCE

- Governance and Integrity Program
- Issuance of Debentures
- Legal advice on ESG financial products

PLANET

- Environmental Legal Advice
- Environmental Risk Analysis
- Energy and Climate Demands



PEOPLE

- Data Protection Program
- Legal Advice on Labor Issues
- Analysis of Labor Risks

PROSPERITY

- Assessment and Monitoring of ESG Practices
- Mediation and Relationship with Stakeholders

Azevedo Sette
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