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Lawsuits judged by CVM: analysis of the main infractions committed by independent auditors

Juicios juzgados por CVM: análisis de las principales infracciones cometidas por auditores independientes

Processos julgados pela CVM: análise das principais infrações cometidas por auditores independentes

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Abstract

Purpose: The purpose of this article is to analyze the main infractions committed by independent auditors in the sphere of the Brazilian Securities and Exchange Commission from 2010 to 2020.

Methodology: The study is characterized as descriptive and documentary with a qualitative approach. Information from administrative sanctioning processes judged by CVM in the period 2010 to 2020 was used to identify characteristics such as the profile of the accused and the penalties applied, which were submitted to correlation analysis to verify if there is any direct relationship of these variables with the infractions committed.

Results: The study points out that among the most recurrent infractions are "Absence of planning and audit procedures that lead to divergences in the independent auditor's report" and "Irregularities in the External Quality Review Program", which represent 39.47% and 34, 21% of the analyzed sample, respectively. In the correlation analysis, it was identified that the occurrence of infraction "b" is linked with the "repeat infractions" charges and the "temporary suspension" penalty. In addition, it was evident that the increase of "repeat infractions" charges are mainly linked to the increase of defendants classified as "non Big Four".

Contributions of the Study: The results of the study show users of financial statements the motivation for filing lawsuits against independent auditors with the CVM and the infractions they committed with the aim of contributing to the improvement of compliance with auditing standards and procedures by revealing the most recurrent infractions under different methodologies and periods. It also presents the degree of correlation between the infraction committed, the profile of the accused (segregating into Big Four and not Big Four) and the penalty applied.

Keywords: Independent auditor, CVM, Infractions.

Resumen

Objetivo: El propósito de este artículo es analizar las principales infracciones cometidas por auditores independientes en el ámbito de la Comisión Nacional de Valores de Brasil de 2010 a 2020.

Metodología: El estudio se caracteriza por ser descriptivo y documental con un enfoque cuali-cuantitativo. Para identificar características como el perfil del imputado y las sanciones aplicadas, se utilizó información de los procesos administrativos sancionadores juzgados por la CVM en el período 2010 a 2020, las cuales fueron sometidas a análisis de correlación para verificar si existe alguna relación directa de estas variables con la infracciones cometidas.

Resultados: El estudio señala que entre las infracciones más recurrentes se encuentran "Ausencia de procedimientos de planificación y auditoría que den lugar a divergencias en el informe del auditor independiente" y "Irregularidades en el Programa de Revisión Externa de Calidad", que representan el 39,47% y el 34,21% de la muestra analizada, respectivamente. En el análisis de correlación, se identificó que la ocurrencia del delito "b" se vincula con los imputados "reincidentes" y con la pena de "suspensión temporal". Además, se evidenció que el aumento de los "reincidentes" está principalmente vinculado al aumento de los clasificados como "no Big Four".

Contribuciones del Estudio: Los resultados del estudio muestran a los usuarios de los estados financieros la motivación para entablar una demanda contra los auditores independientes ante la CVM y qué infracciones cometieron con el objetivo de contribuir a la mejora del cumplimiento de las normas y procedimientos de auditoría, revelando las infracciones más recurrente bajo tres metodologías y periodos diferentes. También presenta el grado de correlación entre la infracción cometida, el perfil del imputado (segregando los Big Four y no Big Four) y la sanción aplicada.

Palabras clave: Auditor independiente, CVM, Infracciones.

Resumo

Objetivo: O objetivo deste artigo é analisar as principais infrações cometidas por auditores independentes na esfera da Comissão de Valores Mobiliários no período de 2010 a 2020.

Metodologia: O estudo caracteriza-se como descritivo e documental com abordagem qualitativa. Utilizou-se das informações de processos administrativos sancionadores julgados pela CVM no período de 2010 a 2020 para identificar características como o perfil dos acusados e as penalidades aplicadas, as quais foram submetidas a análise de correlação para verificar se há alguma relação direta dessas variáveis com as infrações cometidas.

Resultados: O estudo aponta que entre as infrações mais recorrentes estão “Ausência de planejamento e procedimentos de auditoria que acarretam em divergências no relatório do auditor independente” e “Irregularidades no Programa de Revisão Externa de Qualidade”, as quais representam 39,47% e 34,21% da amostra analisada, respectivamente. Na análise de correlação, identificou-se que a ocorrência da infração “b” está vinculada com os acusados “reincidentes” e com a penalidade “suspensão temporária”. Além disso, evidenciou-se que o aumento de acusados “reincidentes” está ligado principalmente ao aumento de acusados classificados como “não *Big Four*”.

Contribuições do Estudo: Os resultados do estudo evidenciam aos usuários das demonstrações financeiras a motivação da abertura de processos contra auditores independentes junto à CVM e quais as infrações por eles cometidas com o intuito de contribuir para a melhoria do cumprimento das normas e procedimentos de auditoria pela revelação das infrações mais recorrentes sob três metodologias e períodos diferentes. Apresenta ainda o grau de correlação existente entre a infração cometida, o perfil dos acusados (segregando Big Four e não Big Four) e a penalidade aplicada.

Palavras-chaves: Auditor independente, CVM, Infrações.

1 Introduction

The audit of financial statements consists of the process of collecting and analyzing evidence on assertions based on objective criteria and, successively, the communicating of its conclusion to interested parties through an audit report, which is a technical instrument that aims to formally present to the audited entity and to the interested public the result of the work carried out, as well as their comments, conclusions, recommendations and the necessary measures that must be taken by the administration (Pereira, 2018).

External or independent audit services, considered one of the mechanisms of corporate governance, play a broad and important role in the administration of companies and in the economy of a country, as they provide several benefits, among which, better control over business risk, better business management and efficiency of business activities, greater security for users of accounting information and discouragement of fraud. However, the greatest benefit of the auditing activity is in the supply of a Market failure: the lack of information from economic agents. The absence of external auditing in the current financial

market would be extremely harmful, in terms of increasing transaction costs and making business unfeasible. In this situation, it is intuitive that investors would be more resistant to investing their resources, generating two alternatives: in the first, assurance and greater returns would be required; in the second, the transactions would not happen for fear of investors (Pereira, 2018).

Independent auditing is a fundamental service without which creditors, investors and other stakeholders would have to rely only on financial information disclosed by the companies' own management, which tend to be more optimistic about their situation than an external opinion (Stuart, 2014). However, independent auditing services have been going through a crisis of values with society in recent decades, due to the numerous hypotheses of cases in which frauds were committed by administrators with the co-participation or inefficiency of auditors. Accounting irregularities involved a very large proportion of auditors and renowned companies, being considered accounting scandals. We can mention the bankruptcy of the auditing company Arthur Andersen, due to the services provided in the companies Enron Corporation and WorldCom, which were judged for artificially inflating profits (Pereira, 2018).

A recent example, in 2020, was the denouement of the process involving KPMG due to deficiencies in the audit provided to the companies Mondial SA and Hercules SA, through a term of commitment (Securities Commission [CVM], 2020a). Considering this context and that the audit lives on the credibility deposited by its recipients, the following research problem arises: "What are the main infractions committed by independent auditors in the lawsuits judged by the CVM?". Thus, the objective of the study is to analyze the lawsuits judged by the CVM involving independent auditors, in order to identify the main infractions committed. The analysis of the processes is limited to the sanctioning administrative processes judged by the CVM, from 2010 to 2020.

The development of the study is justified by clarifying to the users of the audited statements the motivation for opening processes with the CVM and the participation of the independent auditors. To the independent auditors themselves, this work is collaborative, as it shows the importance of complying with the rules and penalties applied in the event of non-compliance. The results can serve as a basis for improving procedures and establishing areas that require more attention, preventing errors and infractions from recurring.

2 Theoretical Reference

2.1 Independent Audit

The external audit, according to Coelho and Ribeiro (2013) and Pereira (2018), can be defined as the process carried out by an independent auditor that aims to ensure the reliability and credibility of the accounting information transmitted by business managers in the financial statements through the audit report, considering the Brazilian Accounting Standards (NBC) and other applicable legislation. The NBC TA 200 (R1) (2016) provides for the general objectives of the independent audit:

The objective of the audit is to increase the degree of confidence in the financial statements by users. This is achieved through the expression of an opinion by the auditor as to whether the financial statements have been prepared, in all respects material in accordance with an applicable financial reporting framework.

There are several reasons that lead companies to hire an external auditor, which may be due to a legal obligation; to fulfill the obligations of the articles of incorporation and bylaws; as an action of internal control defined by the company's shareholders or owners; by imposition of a bank or supplier; for purposes of sale, incorporation, merger or spin-off of the company (Almeida, 2019). The four largest companies specializing in auditing and consulting in the world, known as the Big Four, constitute large networks with independent companies present in almost every country. They are: Deloitte Touche Tohmatsu (DTT), Ernst & Young (EY), KPMG and PricewaterhouseCoopers (PwC) (Coelho & Ribeiro, 2013).

In Brazil, the independent audit of the financial statements is mandatory for publicly traded limited liability companies, regardless of their economic size, equity situation or profitability, as provided for in Law no. 6,404/76; to large privately held companies, regardless of the corporate type, in accordance with Law no. 11,638/07; to financial institutions and other institutions authorized to operate by the Central Bank of Brazil, pursuant to Resolution no. 3,198/04 of the Central Bank; to insurance companies, capitalization companies and open supplementary pension entities, pursuant to Resolution no. 312/14 of the National Council of Private Insurance; to investment funds, in accordance with Instruction no. 409/04 of the CVM and to philanthropic entities with revenues exceeding R\$ 4.8 million, according to Law no. 12.101/09 (Pereira, 2018).

2.2 Competencies of the Independent Auditor

The independent auditor can be an individual or legal entity, must have a bachelor's degree in Accounting Sciences, be registered with the Regional Accounting Council (CRC) of the State of its jurisdiction, according to Resolution no. 560 of the Federal Accounting Council (CFC) and be registered in the National Registry of Independent Auditors (CNAI). When working in an organization subordinated to the Central Bank of Brazil (Bacen), Private Insurance Superintendence (Susep) or Securities Commission (CVM) you must be registered with the respective body. To obtain registration in these bodies, the accountant must have passed the technical qualification exam (Coelho & Ribeiro, 2013).

In addition, the CVM, through Instruction no. 308/99 determines that the accountant, in order to exercise the profession of independent auditor, must have worked in the audit activity, in the national territory, for at least five years, not necessarily consecutive, from the date of registration with the Regional Accounting Council (Almeida, 2019).

The auditing activity, according to Attie (2018) must be carried out in a clear way, conveying all possible credibility, and it is not admissible to have any doubts regarding the auditor's honesty and moral standards. This professional must be someone provided with balance and dignity, in compliance with professional ethical principles that are fundamentally based on: independence, integrity, efficiency and confidentiality. Bearing in mind that your opinion will influence other people, who have commercial and financial interests, such as owners, shareholders, suppliers and customers.

2.3 Securities and Exchange Commission (CVM)

The Securities and Exchange Commission (CVM) is an autonomous entity, linked to the department of the treasury, created through Law no. 6,385 1976, with the main objective of regulating and inspecting the capital market in Brazil (Almeida, 2019). The article 26 of Law no. 6,385 (1976) establishes that the financial statements of publicly-held companies and

of societies, companies or institutions that participate in the intermediation and distribution system of securities can only be audited by auditing companies or independent auditors, registered with the CVM. It is incumbent upon the CVM to establish the procedures and conditions for the registration of the independent auditor, and to inspect the losses that they cause to other parties due to negligence or willful misconduct in the exercise of their function.

The article 35 of CVM Instruction no. 308 (1999), mentions that the independent auditor, a natural person and the independent auditor, a legal person, and their technicians responsible may be punished when they do not act in accordance with the rules that regulate the securities market; when performing disqualified or fraudulent auditing, falsifying or omitting information; and when they use information from the audited entity in their favor or to favor other parties. Through article 11 of Law no. 6,385 (1976), the CVM is empowered to judge and impose punishment on violators of the securities market, individually or cumulatively: a) warning, b) fine, c) temporary disqualification of up to 20 years, d) suspension of authorization or registration of activities, e) temporary prohibition of up to 10 years or 20 years, according to the framework of the infraction provided for in this law.

2.4 Sanctioning Administrative Proceedings

In order to supervise the technical areas of the CVM, including the performance of the independent auditor, since 2009 a Biennial Risk-Based Supervision Plan (SBR) has been carried out, which aims to identify, analyze, evaluate and define market risks treatment actions, as well as contributing significantly to the development, efficiency and integrity of the capital market in Brazil (CVM, 2020b). The Biennial Plan must follow a logical structure of stages, as shown in Figure 1.

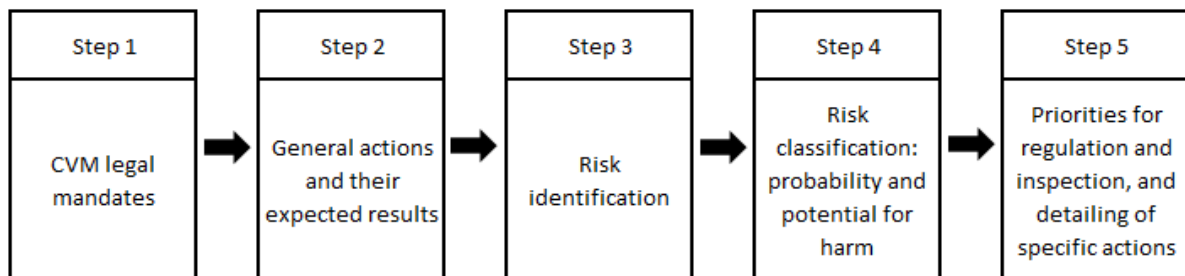


Figure 1 Stages of the Risk-Based Supervision system.

Source: Adapted SBR 2019-2020 Biennial Plan.

The risks identified in Step 3 of Figure 1 are classified according to the level of probability of occurrence and potential for damage, which can be low, medium low, medium high and high, according to article 22 of CVM Resolution no. 757/16. Priority inspection risks are more likely to occur and have greater potential for harm. According to the SBR 2019-2020 Biennial Plan, if any evidence of irregularity is found, clarifications may be requested from the auditors and, if they do not justify the evidence, warning letters will be issued or Sanctioning Administrative Proceedings will be initiated to identify the responsibilities (CVM, 2020b).

The CVM Instruction no. 607 (2019) regulates the sanctioning administrative process, providing for the investigation of administrative infractions, the procedures of the proceedings, the determination of penalties, the administrative agreement and the term of commitment in processes supervised by the CVM. According to article 65 and 66 of the same

instruction, in the penalty dosimetry, with the exception of the warning penalty, the base penalty will be first fixed and, sequentially, aggravating and mitigating factors (Table 1), which can increase or reduce the penalty by up to 25%.

Table 1

Fatores Aggravating and mitigating factors in penalty dosimetry

Aggravating Factors	Mitigating Factors
I - the systematic or repeated practice of irregular conduct	I – the confession of wrongdoing or the provision of information relating to its materiality
II - the high damage caused	II - the offender's good record
III - the expressive advantage obtained or intended by the violator	III - the regularization of the infraction
IV - the existence of material damage to the image of the securities market or of the segment in which it operates	IV - the good faith of the accused
V – the commission of an infraction through ruse, fraud or simulation.	V – the effective adoption of internal mechanisms and procedures for integrity, auditing and incentives to report irregularities, as well as the effective application of codes of ethics and conduct within the scope of the legal entity, evaluated by a public or private entity of recognized expertise.
VI - the compromise or risk of compromise of the issuer's solvency	
VII – the violation of fiduciary duties arising from the office, position or function that he holds.	
VIII – the concealment of evidence of the infraction through ruse, fraud or simulation.	

Source: Adapted from CVM Instruction 607/19.

2.5 Responsibility for Errors and Frauds

According to Longo (2015), the primordial responsibility for detecting and preventing fraud lies with the management of the audited company and the respective governance directors, who must not only assess the risks of fraud and implement adequate controls for its detection and prevention, as well propagate a culture of honesty and ethical behavior throughout the entity, adopting rigorous attitudes if fraud is identified. Attie (2018) cites that the audit examination of an entity's financial statements aims to express an opinion on their characteristics, and it is not the auditor's role to discover fraud and other irregularities. However, the audit work is based on methodologies and criteria that provide reasonable assurance about the totality of the data mentioned in the financial statements under examination.

However, the auditor cannot disregard the possibility of being liable for losses caused to other parties for not showing significant frauds, due to negligence in the application of auditing standards. NBC TA 240 provides for the liability of the auditor in relation to fraud, highlighting that he has a duty to analyze whether the information presented in the financial statements, including that contained in the management report, clearly presents the financial and equity situation, and to disclose any non-compliance with legal and regulatory provisions (Attie, 2018).

3 Methodology Procedures

The research, documentary and descriptive (Gil, 2018), sought to identify the main infractions committed by independent auditors and describe them explicitly, in order to contribute to their reduction.

Data collection took place between January and February 2021 and used as a basis the information presented in the lawsuits judged by the Securities and Exchange Commission (CVM), between the years 2010 and 2020, available on its website at the link (<http://conteudo.cvm.gov.br/deciso/es/pesquisa/pesquisa.html#gsc.tab=0>). The search was carried out by consulting through the fields "Processes", "Judged processes", "Judgment decisions", using as a filter the term "SNC" (Superintendence of Accounting and Auditing Standards) and the period "01/01 /2010" to "25/01/2021", considering that since 2017 the processes are posted late. 87 processes were identified, of which 67 apply to research (Table 2).

Table 2*List of processes analyzed*

Process No.	Infraction	Penalties
15/90	d / acquitted	Warning
RJ2009/12495	D	Fine
RJ2010/8588	D	Fine
RJ2010/16893	Acquitted	-
RJ2010/9582	D	Fine
RJ2011/280	D	Fine
RJ2012/10465	A	Fine
RJ2011/14365	D	Fine
RJ2012/7471	B	Fine
RJ2013/4367	A	Fine
2017/06	D	Temporary suspension / temporary ban
RJ2013/7589	Acquitted	-
RJ2013/9766	A	Fine
RJ2013/11697	E	Fine
RJ2013/13151	B	Fine
RJ2013/13481	B	Fine
RJ2014/4395	D	Fine
RJ2013/9762	D	Fine
RJ2010/3695	d / f / acquitted	Fine
RJ2013/5682	D	Fine
RJ2014/13534	C	Fine
RJ2014/14839	b / d / f	Fine
RJ2015/10858	B	Fine
RJ2014/12058	D	Fine
RJ2015/11472	B	Fine
RJ2015/11936	B	Fine
RJ2015/12090	B	Fine
RJ2014/7199	D	Fine
RJ2013/13480	c / e	Fine
RJ2013/13355	d / f / acquitted	Fine
RJ2014/11830	G	Fine
RJ2015/11473	B	Temporary suspension
RJ2015/10367	B	Fine
RJ2014/9399	B	Fine

RJ2015/10699	B	Fine
RJ2015/11471	B	Fine
RJ2015/10642	g / d / acquitted	Fine
RJ2016/8901	extinct punishment	-
RJ2015/13670	D	Fine
RJ2014/13581	G	Fine
RJ2014/14763	D	Fine / temporary suspension
RJ2014/7704	B	Fine / temporary suspension
RJ2016/8902	B	Fine
RJ2016/8905	B	Temporary suspension
RJ2015/11941	B	Fine
RJ2017/5914	B	Temporary suspension
RJ2015/13006	c / d	Fine
RJ2017/5701	B	Fine
RJ2016/4453	d / f	Fine
RJ2016/8900	C	Fine
RJ2016/8903	B	Fine
RJ2017/2272	B	Fine
RJ2017/5913	B	Fine
RJ2017/5916	B	Temporary suspension
RJ2015/13093	d / acquitted	Fine
03/2011	D	Fine
RJ2016/5789	D	Fine
RJ2016/2245	d / f / acquitted	Fine
RJ2017/5917	B	Fine
RJ2017/5918	B	Fine
RJ2015/13127	D	Fine
RJ2016/2476	D	Fine
RJ2017/0136	D	Fine
RJ2018/8643	Acquitted	-
RJ2017/1238	Acquitted	-
RJ2017/5981	B	Fine
RJ2017/1334	d / f / acquitted	Fine

Source: *Research data.*

For the analysis and treatment of the data, it addressed subjective aspects such as the analysis of judgments, their causes, classifications and penalties and objective aspects, such as the statistical analysis performed through tables, graphs and correlation analysis.

As limitations of the method, the study uses for the analysis, legislation in force at the time of analysis and judgment of the processes, disregarding its validity in periods before or after its application, for example, CVM Instruction no. 308/99 revoked in 2021 by CVM Resolution no. 23/21.

4 Results and Analyzes

4.1 Analysis of Infractions

In order to analyze the infractions committed in the sanctioning administrative processes, a detailed survey of the infractions was carried out, with 76 infractions referring to 67 processes being evidenced. The number of infractions exceeds the number of cases due to the fact that some of them present more than one infraction. Sequentially, the infractions were grouped according to similarity, for this, the description of the process and the rules violated were taken into account (Table 3).

It is important to highlight that some articles of CVM Instruction n. 308 (1999) have a very broad approach and therefore are referenced in more than one infraction classification, such as article 20, which mentions that the auditor in the exercise of its function, as well as its partners and members of the technical staff, must observe the standards issued by the CFC and the technical pronouncements of IBRACON with regard to professional conduct, the exercise of the activity and the issuance of audit reports.

Table 3

Classification of infractions identified in the Sanctioning Administrative Proceedings judged by the CVM

Infraction	Description	Violated Norms
A	Failure to comply with the Continuing Professional Education Program (PEPC)	Article 1 of CVM Resolution no. 570/09 Article 2 of CVM Resolution no. 570/09 Article 34 of CVM Instruction no. 308/99
B	Irregularities in the Quality External Review Program	Article 33 of CVM Instruction no. 308/99 Article 20 of CVM Instruction no. 308/99
C	Non-observance of the independent auditors rotation rule	Article 31 of CVM Instruction no. 308/99
D	Absence of audit planning and procedures that lead to discrepancies in the independent auditor's report	Article 19 of CVM Instruction no. 308/99 Article 20 of CVM Instruction no. 308/99 Article 25, I, item "a", "c" and "d" of CVM Instruction no. 308/99 Article 4, items I and V, of CVM Instruction no. 38/84
E	Irregular performance as an independent auditor	Article 1 of CVM Instruction no. 308/99 Article 2 of CVM Instruction no. 308/99
F	Failure to submit a detailed report to the audited company's management	Article 25, II, of CVM Instruction no. 308/99
G	Non-compliance with a set of rules	Article 20 of CVM Instruction no. 308/99 Article 25, II and I, items "a" "c" and "d" of CVM Instruction no. 308/99 Article 31 of CVM Instruction no. 308/99 Article 8, §4, of CVM Instruction no. 356/01

Source: Research data.

According to Table 3, it is possible to verify that the infraction a - Non-compliance with the Continuing Professional Education Program (PEPC) is confirmed through the infraction of the provisions of article 1st and 2nd of CVM Resolution no. 570/09, combined with article 34 of CVM Instruction no. 308/99. The infractions classified in this first group present two situations: failure to comply with the minimum score required by the CFC or not forwarding the certificate issued by the CRC to the CVM.

Infraction b - Irregularities in the External Quality Review Program, the second most recurrent in the analyzed period, is characterized by non-compliance with article 20 and article 33, both of CVM Instruction no. 308/99. Most of the defendants punished for this infraction were selected to submit to the Program, but they did not indicate the name of their reviewing auditor until the scheduled date. In one case, the name of the reviewing auditor was indicated, however, he was not formally hired.

In this group, the infractions that pointed out divergences in the work carried out by the review auditor were also classified, which is characterized by infraction to article 20. Among them, it is possible to mention: the lack of independence of the reviewed auditor in relation to the reviewing auditor (item 22 of NBC PA 11), the failure to issue a report with an adverse opinion and the mention of the limitation found during the works (items 36 and 39 of NBC PA 03 in force at the time of the facts), the absence of working papers that show the performance of the review procedures and the origin of the conclusions and opinions (items 2 and 3 of NBC T 11 - IT 2 in force at the time of the facts).

The infraction c - Failure to observe the independent auditors rotation rule is among the least frequent. This classification refers to non-compliance with article 31 of CVM Instruction no. 308/99. The practice of this infraction also violates the independence requirement required in independent auditing engagements, as quoted in NBC PA 290 (R2) (2017): “the use of the same senior staff in an audit engagement for a prolonged period of time creates threats of familiarity and self-interest”.

In the infractions classified in group “c”, the following scenarios were found: the audited company maintained a contract with the same independent auditor for a period longer than five fiscal years and/or the auditing company was replaced, however, another company was hired that had the same technical manager. As of 2019, it is no longer allowed for the same technical officer to participate in more than one Independent Auditor - Legal Entity registered with the CVM, pursuant to article 11 of CVM Instruction no. 308 (1999). With this change, the number of lawsuits related to this infraction is expected to decrease in the coming years.

The infraction d - Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report is due to non-compliance with article 19, 20 and 25, item I, sub-items “a”, “c” and “d”, of CVM Instruction no. 308/99. The article 4, items I and V, of CVM Instruction no. 38/84 is also cited for regulating the independent audit activity at the time of the events.

The processes classified in this fourth group were identified with infractions related to planning and procedures in the audit work and/or discrepancies in the report issued by the independent auditor. Failure to comply with audit planning and procedures determined by regulatory bodies to independent auditors directly impacts the report that will be issued, therefore, these infractions were unified in the group in question.

The procedures not carried out are: failure to identify and assess the risks of material misstatement (Item 7, of NBC TA 200), failure to monitor the audited entity's internal controls (Items 3, A111 and A112, of NBC TA 315), failure to obtain audit evidence in relation to services provided by a third party to the audited entity (Items 20, A42 and A44, of NBC TA 402), failure to observe the criteria for adopting sampling in the audit work (Items 5 to 8, all of NBC TA 530), failure to adopt procedures to assess the ability of the audited entity to continue (item 16 of NBC TA 570).

In addition, inconsistencies were observed between the information gathered and the auditor's final conclusion (Item 11, of NBC TA 230), absence of policies and procedures to

address and resolve differences of opinion (items 43 and 44 of NBC PA 01), absence exception due to missing or flawed explanatory notes (item 38 of NBC T 11 – IT5 in force at the time of the facts). There was still a failure for not ensuring the procedures used by the entity to quantify the estimates (paragraphs 11.2.11.3 of NBC T 11 in force at the time of the facts). The absence of these procedures resulted in an unqualified report, or a report with qualifications, when the right would be a disclaimer of opinion, and/or lack of sufficient evidence to support the conclusions presented.

The infraction e - Irregular performance as an independent auditor was the least common in the analyzed period. The article 1 of CVM Instruction no. 308 (1999) is clear when mentioning that the independent auditor must be registered with the CVM to work in the securities market. And in the case of Independent Auditor - Legal Entity, the article 2 of the same instruction mentions that the technical responsible persons authorized by the company to issue and sign audit reports must also be registered with the CVM. However, in the infractions grouped in this classification, the performance of an independent auditor with suspended registration and a technical officer without registration with the CVM was identified.

The infraction f - Failure to forward a detailed report to the management of the audited company is due to non-compliance with article 25, item II, of CVM Instruction no. 308/99. In the processes classified in this item, the auditor failed to prepare and send the detailed report to the audited company, giving rise to the infraction. The report is relevant to the audited company, because through it the independent auditor describes his suggestions and recommendations, in order to regularize the entity's procedures.

Due to the fact that some infractions in the sample are characterized by non-compliance with several standards, for which only one penalty was applied, classification g – Non-compliance with a set of auditing standards was necessary. In this classification, infractions that simultaneously failed to comply with the instructions mentioned above were grouped. It should be noted that the infraction d - Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report appears in all processes of this group. In addition to the infractions already mentioned, there was an infraction to article 8, §4, of CVM Instruction no. 356/01, specific to investment funds, due to the failure to examine the published quarterly statements.

Figure 2 shows the main infractions committed by independent auditors, in which it is possible to verify that infractions “d” and “b” stand out from the others, representing 39.47% and 34.21% respectively. Next, the infraction “f” stands out, but with a much smaller reiteration, corresponding to 7.89%. Infractions “a”, “c” and “g” appear with the same frequency, corresponding to 5.26% of the sample. Classification “e”, in turn, is the most uncommon in the analyzed period, representing only 2.63% of infractions.

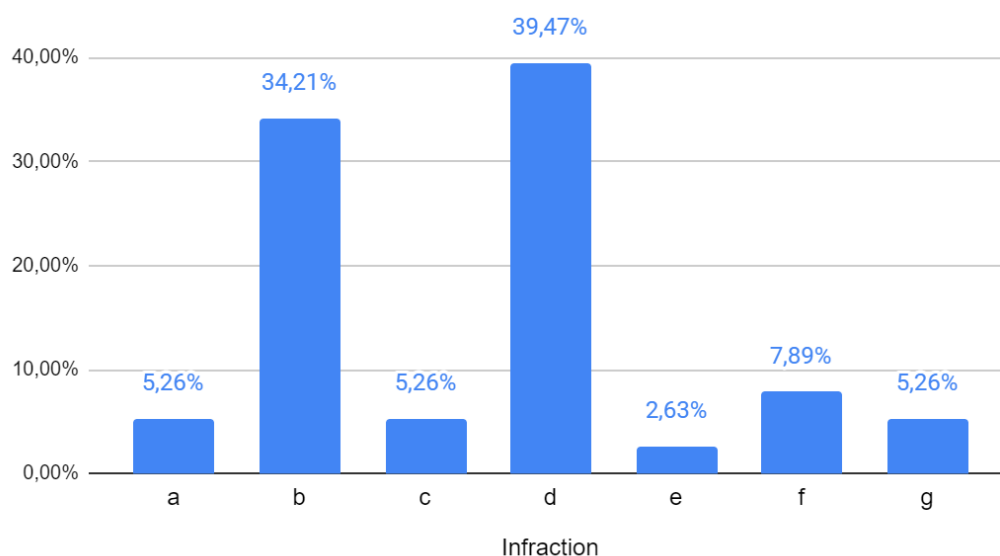


Figure 2 Main infractions committed by independent auditors

Source: Research data

4.2 Analysis of the Accuseds

Of the 76 offenses committed, 118 accused were identified. Due to the accusations against legal entity independent auditors, the auditing company and its technical managers are held responsible. According to article 2 of CVM Instruction no. 308 (1999), technical managers correspond to partners and other accountants who have a professional relationship with the audit firm. The aforementioned article also mentions that the Independent Auditor – Legal Entity is co-responsible for its technical managers with regard to professional conduct, the exercise of the activity and the issuance of opinions and audit reports.

In the analysis of the profile of the accused, it was verified how many were characterized as repeat offenders (not necessarily of the same infraction). According to the survey data, the recidivism rate reaches more than a quarter of the accused (28%), demonstrating that many of the punished accused commit offenses again.

The accused were also classified as “Big Four” or “Non Big Four”. The term “Big Four” refers to the four largest auditing companies in the world, leaders in the sector for their technical qualifications and credibility. Of the 118 accused of violating auditing standards, 16.9% belong to the “Big Four” group and 83.1% belong to the “Non-Big Four” group.

4.3 Penalties Analysis

In the analysis of the cases, 118 penalties were identified applied to a total of 118 accused and referring to 76 infractions. The penalties applied in the period were: warning, fine, temporary suspension and temporary ban, as shown in Figure 3.

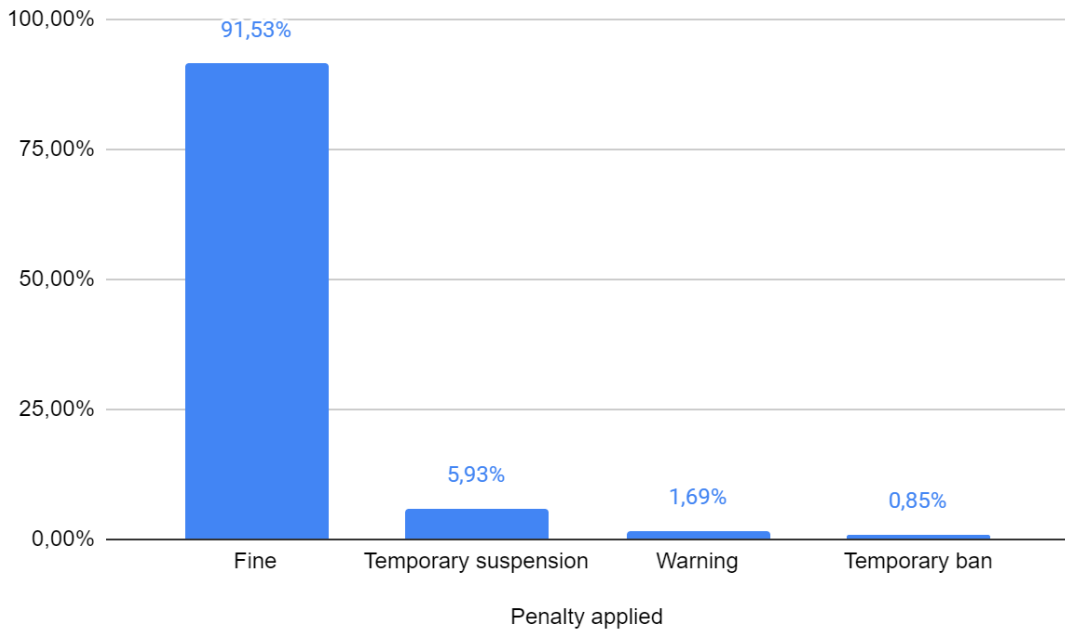


Figure 3 *Penalties applied*

Source: Research data

It can be seen in Figure 3 that the most applied penalty is the fine (91.53%), followed by suspension with 5.93%, warning with 1.69% and finally the temporary ban with 0.85 % of total penalties. The penalties applied were related to the infraction committed to verify if the infractions have any specific penalty, as shown in Figure 4.

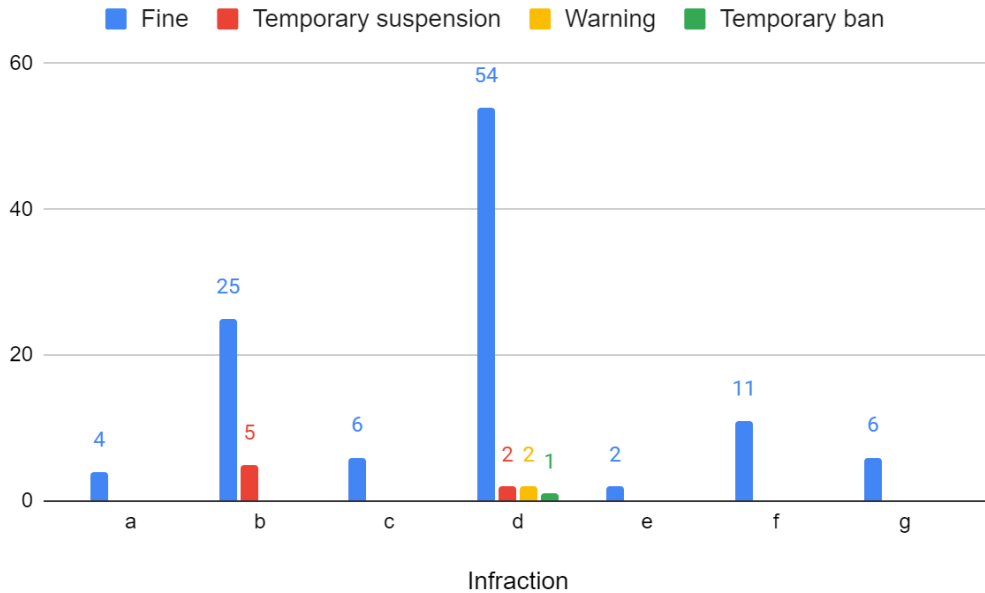


Figure 4 *Penalties applied versus infractions committed*

Source: Research data.

The fine is present in all infractions. The temporary suspension penalty is applied only to the infraction b - Irregularities in the External Quality Review Program and d - Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report. The warning and temporary ban penalties were found only for the infraction d - Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report.

As shown in Figure 4, the cases in which suspension penalties were applied are mainly linked to infraction b - Irregularities in the External Quality Review Program. However, the same infraction has a high amount of fines. This variation is mainly explained by the amendment of article 33 of CVM Instruction no. 308 (1999), from 2017 onwards, failure to comply with the External Review Program of Quality in at least 2 of the last 5 years results in suspension of the independent auditor's registration. In cases where the auditor is convicted of the infraction in question, but already has the registration suspended due to a previous conviction, the penalty of a fine is applied. The suspension period of the applied auditor registration is 2 or 5 years.

In violation d - Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report, the four penalties identified in the analyzed sample are applied (warning, fine, temporary suspension and temporary ban). This diversification among the penalties applied is due to the magnitude of the irregularities committed and their impact on the securities market, in addition to the interference of the temporality factor. The rest of the infractions are characterized only by the application of the fine penalty. The monetary values of the fines applied to the infractions of the analyzed sample vary from R\$ 3,500.00 to R\$ 1,000,000.00.

4.4 Correlation Analysis

Correlation analysis is a parametric form that presents the level of association between two variables. The correlation can be either positive or negative, ranging from +1.0 to -1.0. The closer to +1, the greater the association, that is, the variables move in the same direction, 0 represents that there is no correlation and the closer -1 indicates an inverse correlation, in this case, the variables move in the opposite way (Collis & Hussey, 2005). For the analysis of the results, the following interpretation was considered:

Table 4

Interpretation of the results obtained in the correlation analysis

Result	Interpretation
Greater than 0.9 positive or negative	Very strong correlation
From 0.7 to 0.9 positive or negative	Strong correlation
From 0.5 to 0.7 positive or negative	Moderate correlation
From 0.3 to 0.5 positive or negative	Weak correlation
From 0 to 0.3 positive or negative	Very weak correlation

Source: *Adapted from Collins & Hussey (2005).*

In the correlation analysis (Figure 5) no representative negative correlation was identified. However, a strong correlation was identified between infraction b - Irregularities in the External Quality Review Program and the accused classified as "repeat offenders" and very strong between this infraction "b" and the penalty "temporary suspension". The

infraction “d” presented a very strong positive correlation with both types of profiles of defendants and types of penalties, with the exception of the “suspension” penalty and “recurring” defendants.

	Infraction committed							Accuseds profile				Penalty applied			
	a	b	c	d	e	f	g	big four	no big four	repeat offender	not repeat offender	warning	fine	suspension	prohibition
a	1														
b	-0,17	1,00													
c	-0,17	-0,17	1,00												
d	-0,17	-0,17	-0,17	1,00											
e	-0,17	-0,17	-0,17	-0,17	1,00										
f	-0,17	-0,17	-0,17	-0,17	-0,17	1,00									
g	-0,17	-0,17	-0,17	-0,17	-0,17	-0,17	1,00								
big four	-0,21	-0,21	-0,21	0,99	-0,21	-0,06	-0,06	1,00							
no big four	-0,28	0,44	-0,22	0,80	-0,33	-0,14	-0,28	0,77	1,00						
repeat offender	-0,35	0,71	-0,19	0,56	-0,19	-0,27	-0,27	0,51	0,93	1,00					
not repeat offender	-0,23	0,10	-0,23	0,95	-0,34	-0,06	-0,20	0,94	0,93	0,74	1,00				
warning	-0,17	-0,17	-0,17	1,00	-0,17	-0,17	-0,17	0,99	0,80	0,56	0,95	1,00			
fine	-0,27	0,23	-0,22	0,91	-0,32	-0,10	-0,22	0,90	0,97	0,82	0,99	0,91	1,00		
suspension	-0,23	0,92	-0,23	0,23	-0,23	-0,23	-0,23	0,18	0,75	0,93	0,47	0,23	0,58	1,00	
prohibition	-0,17	-0,17	-0,17	1,00	-0,17	-0,17	-0,17	0,99	0,80	0,56	0,95	1,00	0,91	0,23	1,00

Figure 5 Correlation analysis

Source: Research data.

When analyzing from the point of view of the profile of the accused, it is noted that the fact that they are repeat offenders is definitely linked to infraction “b”. The “repeat offender” rate also correlates strongly with defendants classified as “non-Big Four”, that is, as the number of repeat offenders increases, the number of “non-Big Four” defendants also rises. The accused classified as “Big Four” are punished mainly for the infraction “d”.

4.5 Comparison Analysis with Previously Conducted Studies

Comparing the results of the study in question with the research previously carried out by Carraro, Fusiger and Silva (2015) and Silva (2020) we have the most recurrent infractions committed by independent auditors within the scope of the CVM under three different methodologies and periods. Table 5 lists the main results obtained in the studies mentioned with the present study.

Table 5
Comparison of results obtained in related studies

	Carraro et al. (2015)	Silva (2020)	This study (2020)
Period analyzed	2007- 31/08/2013	2017-2019	2010 - 25/01/2021
Number of processes analyzed	267	82	87
Number of infractions identified	13	28	76
Most recurring infractions	1 - Inadequate report 2 - Audit Planning and Procedures: absence or inadequate execution 3 - Problems with the Independent Auditor Registration	1 - Non-submission to the Quality External Review Program 2 - Non-observance of Accounting Rules 3 - Non-observance of Professional Norms for Auditing	1 - Absence of audit planning and procedures that lead to discrepancies in the independent auditor's report 2 - Irregularities in the Quality External Review Program 3 - Failure to submit a detailed report to the audited company's management
Main punishments applied	1 – Fine 2 – Warning 3 - Temporary suspension	1 – Fine 2 - Temporary suspension 3 - Fine and Temporary Suspension	1 – Fine 2 - Temporary suspension 3 – Warning

Source: *Adapted from Carraro et al. (2015) Silva (2020) and research data.*

Table 5 shows a large difference between the three studies when comparing the number of infractions identified with the number of processes analyzed, this is because in this study the data collection was carried out in a more specific way to find the processes that really apply to research and successively make the analysis of a longer period feasible.

When relating the amount of infractions identified in the research by Carraro et al. (2015) with the results of this study, there is an increase in infractions committed by independent auditors. The samples used were from 7 and 11 years old, in which 13 and 76 infractions were evidenced, respectively, denoting that in the present study the amount of infractions found was practically six times greater.

Referring to the study by Silva (2020), in the classification "Breach of Accounting Standards", the lack of adequate presentation of debts acquired by the audited company is mentioned. In the "Non-observance of Professional Auditing Standards", contractual termination by the independent audit firm without observing the requirements of the professional standard is mentioned. In the present study, these infractions are classified as "Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report". Carraro et al. (2015) in their analysis also identified among the most committed infractions the presentation of an inadequate report and the absence or inadequate performance of audit procedures and planning. Therefore, when comparing the main infractions found in the studies, it is evident the persistence of this infraction over the years and at the same it is possible to affirm that this infraction is one of the most recurrent.

Regarding the most applied penalty, the conclusion is common, since in both studies the fine is the most frequent punishment. Over the years, the warning penalty has decreased, while the suspension penalty shows an increase in the number of cases, which shows a more severe action by Organs supervisory and regulatory bodies.

5 Final considerations

The study aimed to identify the infractions most committed by independent auditors through the qualitative-quantitative analysis of sanctioning administrative processes judged by the CVM in the period from 2010 to 2020. 87 processes were analyzed, of which 67 apply to the research, reaching to 76 infractions committed. The most recurrent infractions refer to classification b - Irregularities in the External Quality Review Program and d - Absence of planning and audit procedures that lead to discrepancies in the independent auditor's report, corresponding to 34.21% and 39.47% respectively.

It is noteworthy that the infraction “d”, in addition to being the most frequent in the analyzed period, is also the most impacting on the financial market due to the penalties imposed and the fact that it causes divergences in the independent auditor's report, which, in turn, it is the means of publishing the conclusions obtained by the auditor and that will influence the decision-making of investors, owners, financial institutions and other stakeholders. Therefore, it is inferred that there is a low commitment of the independent auditor with information users.

When analyzing the penalties attributed to the infractions of the processes belonging to the sample, it was found that the fine penalty is the most applied. However, it is not possible to state that there is a specific penalty for each infraction, or a differentiation of the penalty for the accused being a repeat offender. This is due to the fact that several aspects related to the offense and the accused are considered in the dosimetry of the penalty, in addition to the seriousness of the offense and the offender's recidivism. Therefore, it is understood that each case is treated individually, considering its particularities. There is an exception in the occurrence of infraction “b” in a repeating manner within a period of 5 years. In this case, the penalty of temporary suspension is applied, as determined by the amendment of the CVM in article 33 of CVM Instruction no. 308/99 in 2017.

Regarding the profile of the accused, it was found that 28% are repeat offenders, which have a very strong positive correlation with the accused characterized as “non-Big Four”. Among the infractions committed by the repeat offenders, there is infraction b - Irregularities in the External Quality Review Program and d - Absence of planning and audit procedures that lead to divergences in the independent auditor's report.

Finally, it is important for the independent auditor to follow the rules issued by responsal bodies, since the CVM is increasingly strict in its inspection actions and in the application of penalties. As well as, to fulfill its responsibility to provide a reliable and consistent audit report with the financial-economic situation of the audited company, and successively correspond with the posture expected by a gatekeeper of the securities market. Because, as seen, the main role of the independent auditor is not to prevent and discover errors or fraud, but it is his/her duty to analyze whether the financial statements represent the real situation of the company and disclose any inconsistency with the legal provisions.

The results of the study show users of financial statements the motivation for opening lawsuits against independent auditors with the CVM and which infractions they committed in order to contribute to improving compliance with auditing standards and procedures by

revealing the most serious infractions. recurring payments under three different methodologies and periods. It also presents the degree of correlation between the infraction committed, the profile of the accused (segregating the big four and not the big four) and the penalty applied.

As limitations of this research, the fact of using legislation applicable at the time of analysis and judgment of cases, does not allow generalizing the results to periods not included in the study. The repeal, updating or effectiveness of new instructions and CVM rules applicable to similar processes in different periods may present different results from this research.

For future studies, it is suggested to analyze the terms of commitment and administrative agreements accepted by the CVM, involving independent auditors. In order to analyze the representativeness of the processes that are finalized through these, and to compare if the main infractions committed by independent auditors follow the results found in this study.

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