

PRINCIPLES OF THE COMPLIANCE PROGRAM OF INDUSTRIAL ENTERPRISE

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SUMMARY

Occupying a leading position in the industry, the enterprise should be aware of its high responsibility for transparency, ethics and the legitimacy of doing business. In order to maintain and maintain its high business reputation to the state, shareholders, customers, partners, competitors and the society as a whole, the company throughout its operations must actively develop a corporate system to ensure compliance with applicable laws and ethical business conduct ("compliance"). To achieve this goal, the enterprise must be guided by certain principles.

The basic principles of compliance are determined by the Basel Committee on Banking Supervision in the document "Compliance and Compliance Function in Banks". This document was issued by this committee in April 2005. In spite of the fact that initially the Basel Committee defined compliance principles for the banking sector of the economy, at the present time they basically approach the activities of any enterprise or institution.

At the same time, as the results of our studies show, there are certain differences in the structures and content of compliance principles, which depend on the scope of application of the program's compliance (banks, institutions, industrial enterprises, etc.).

INTRODUCTION

The emergence of compliance in the world is associated with the globalization and internationalization of the world financial system. Given the international and trans-territorial nature of many financial transactions, it can be said that the level of non-financial risks has grown significantly over the past ten years.

The ideology of «compliance» calls for compliance with the company's internal policies and procedures and is realized by creating conditions in which individuals representing the organization will act in accordance with high professional and ethical standards.

To date, in Western countries, compliance is present in financial institutions, manufacturing enterprises, in medicine, trade and other industries. In the vast majority of companies there are and are adhered to the following documents: the code of corporate ethics; Policy of reporting violations of ethical standards; The policy of the «China Wall» (to delineate the information field in the activities of the organization with a view to preventing conflicts of interest and creating conditions for fair competition); The policy of accepting and donating gifts, invitations to events; Policy on countering money laundering and financing of terrorism; Policy on cooperation with regulatory bodies; Privacy policy.

TWO APPROACHES TO THE ORGANIZATION OF COMPLIANCE FUNCTIONS

Based on the analysis of the existing practice of organization of the compliance function in banks, two most common approaches to compliance can be distinguished.

1) *A compliance-based approach* (known in Western countries as a «rule based approach»). This approach assumes a minimum level of organization of compliance in the bank - only what is imperatively required by law.

2) *A risk based approach*. This approach is recommended to foreign banks both by national regulators and international structures (the Wolfsberg Group, the Basel Committee on Banks and Banking Supervision). In Ukraine, it is also recommended for implementation by the central bank. However, it should be noted that until now in Ukrainian banking practice this approach is less common than the norm-based approach, while in Europe it is dominant. Thus, compliance control, born in foreign companies, confidently took the place of an obligatory element of the activities of Western companies, both financial and representatives of the real sector. In Ukraine, compliance came relatively recently and at the moment does not have a strong legislative base and has not received wide distribution in domestic business. This state of affairs actualizes the processes of studying, implementing and using the compliance of practice in the Ukrainian economy.

PRINCIPLES OF THE COMPLETION

The basic principles of compliance were determined by the Basel Committee on Banking Supervision in April 2005 in the document «Compliance and Compliance Function in Banks», issued by this committee. Despite the fact that initially the Basel Committee defined compliance principles for the banking sector of the economy, at the present time they are basically based on the activities of any enterprise or institution.

The basic principles of compliance should include the following:

1. Responsibility of the top management of the enterprise for general control of compliance risk management. Compliance begins with the top management of the enterprise. Compliance will be particularly effective in a corporate culture that complies with standards of integrity and reliability and where the board of directors and executive bodies are examples. This applies to every employee in the company and should be considered as an integral part of banking. The company must adhere to high standards in the performance of activities and always strive to comply with both the spirit and the letter of the law. Inattention to the influence of their actions on their shareholders, customers, employees and markets can lead to a significant extent to negative lighting and reputation damage, even if no law is violated. The Board of Directors must approve the company's compliance policy, a document on the basis of which a constant and effective compliance function is created and at least once a year assesses the effectiveness of management in this area. This principle asserts that the management bodies of the organization should be responsible for the proper observance of policies and directly coordinate activities in the field of compliance on an equal basis with the coordination of business units. This is one of the most important aspects, on which the effectiveness of the entire compliance system directly depends.

2. The responsibility of the executive bodies for the effective management of compliance risks, including the adoption and delivery of compliance policy to employees of the enterprise, ensuring its compliance and reporting to senior management on compliance risk management, the creation of a permanent and effective compliance function as part of the implementation of the policy Enterprise compliance.

The executive bodies of the enterprise are responsible for accepting a written compliance risk policy containing the basic principles that management and employees must follow and describing the main processes for identifying and managing compliance risks at all levels in the organization. Clarity and transparency can be provided by common standards for all employees of the enterprise and special rules relating only to certain groups of employees.

The duty of the executive bodies to enforce the compliance policy entails the obligation to ensure that appropriate corrective or disciplinary measures are taken in case of violations. The executive bodies with the help of compliance functions should:

- at least once a year to identify and assess the main aspects of compliance risks facing the bank, and plans for their management. Such plans should deal with any problems (policies, procedures, actual execution) related to the effectiveness of managing existing compliance risks, as well as the need to introduce changes and additions to the specified policies or procedures in the event that new compliance risks are identified as a result of the annual compliance assessment -risk;

- at least once a year report to the Board of Directors or the Board of Directors Committee on compliance management at the enterprise to help board members make an informed decision about how effectively the company's compliance risk management is implemented;

- immediately submit a report to the board of directors or the committee of the board of directors on any material losses related to compliance violations (for example, violations that may entail a significant risk of legal or regulatory sanctions, significant financial loss or loss of reputation).

The practice of compliance indicates that often the implementation of the compliance function meets resistance from business units, including from the top management of the organization, because it runs counter to the interests of business: the compliance service takes such measures as «cutting off» partners and clients, Having a dubious reputation, prohibition of certain operations, etc. In this case, it is necessary to build an organizational structure in such a way as to give the compliance service all the necessary rights and powers, and its personnel must have high status in the hierarchy of the organization and independence in the part of decision-making.

The executive bodies of the enterprise are responsible for creating a constant and effective compliance function at the enterprise as part of implementing the company's compliance policy. The executive bodies must take the necessary measures to ensure that the enterprise can rely on a constant and effective compliance function that meets the following principles.

2.1. ***The compliance function at the enterprise must be independent.*** The concept of independence includes four interrelated elements, each of which is discussed in more detail below. First, the compliance function should have an official status. Secondly, the head of compliance with the general responsibility for coordination of compliance risk management in the bank should be appointed. Thirdly, the compliance function staff, and in particular the Compliance Officer, should not be in a situation where there may be a conflict of interest between their responsibilities in managing compliance risks and any other duties incumbent upon them. Fourth, the compliance function staff must have access to the information and personnel necessary for the performance of their duties.

The concept of independence does not mean that the compliance function can not work closely with management and employees of various divisions. In reality, the working relationship between the compliance function and the units should help identify and manage compliance risks at an early stage. The various elements described below should be considered safety measures that help to ensure the effectiveness of compliance functions, despite the close working relationship between the compliance function and the units. The way in which the safety measures are implemented depends to some extent on the specific duties of individual employees of compliance functions.

2.2. ***High official status of compliance function and the head of the Compliance Service.*** The compliance function should have an official status at the enterprise in order to obtain an appropriate position, authority and independence. This can be provided for in the company's compliance policy or other official document. The contents of this document

should be brought to the attention of all the personnel of the enterprise. This document should address the following issues related to the compliance function:

- its role and responsibilities;
- Measures to ensure its independence;
- its interaction with other functions in the bank and the internal audit service;
- in cases where compliance duties are performed by employees of different departments,
- how these responsibilities are shared between departments;
- her right to access to information necessary for her to perform her duties, and, accordingly, the duty of the bank's employees to cooperate in providing this information;
- her right to investigate possible violations of the compliance policy and, if necessary, to appoint outside experts to perform this task;
- its right to freely express and disclose its findings to the executive bodies, as well as, if necessary, to the board of directors or the committee of the board of directors;
- its obligations to report to the executive bodies;
- her right to direct access to the board of directors or the committee of the board of directors.

Independence of compliance functions, implying the presence of an official status in the organization, the presence of a compliance manager with a common responsibility for coordinating compliance risk management, excluding the possibility of a conflict of interests of the compliance function staff between their responsibilities for managing compliance risks and other duties assigned to them, Access to information and personnel for the performance of their duties. The status of the compliance leader should be quite high. It must be either a member of the executive bodies or subordinate to a sole executive body or a member of the management board not associated with the management of business units.

Independence of the head of the compliance function and any other employees who are responsible for compliance may be affected if they find themselves in a situation of a real or potential conflict between their compliance duties and other duties. It is preferable for the compliance service to ensure that the employees of the compliance functions perform only compliance duties. The Compliance Service at the same time recognizes that this is not always appropriate in smaller enterprises, smaller units or local controlled entities. Therefore, in such cases, the compliance function staff can perform tasks that are not related to compliance, provided that there is no potential conflict of interest. Independence of the compliance function staff can also be affected if his remuneration is related to financial results in the direction of economic activity in respect of which he performs the duties of compliance. However, remuneration related to the financial results of the bank as a whole is usually acceptable.

2.3. Access to information and staff. The compliance function should have the right, on its own initiative, to contact any member of the staff and to access the documents and archives necessary for the performance of its duties.

The compliance function should also be able to perform its duties on its own initiative in all departments of the enterprise in which there is compliance risk. It should have the right to investigate possible violations of the compliance risk management policy and seek assistance from specialists of the enterprise (for example, a legal service or an internal auditor) and, if necessary, involve outside specialists for this task.

The compliance function should always be able to inform the executive bodies about inconsistencies or possible violations revealed as a result of its investigations, without fear of retaliation or disapproval from management or other employees of the credit institution. Although the compliance function is usually subordinate to the executive, it must also have the right to direct access to the board of directors or the board committee, bypassing the usual lines of subordination when it seems necessary. In addition, it may be advisable for the board

of directors or committee of the board of directors to meet with the head of compliance functions at least once a year, as this will help the board of directors or the committee of the board of directors to understand how effectively the company's compliance risk management is implemented.

2.4. Availability of resources for effective fulfillment of duties in the field of compliance. Carrying out a full-fledged compliance program at an industrial enterprise requires certain material and intellectual costs.

Resources that are made available to the compliance function should be sufficient and appropriate to ensure effective compliance management in the bank. In particular, the personnel of the compliance function must have the necessary qualifications, experience and professional and personal qualities to perform their duties. The compliance function staff should be familiar with the laws, regulations and standards relevant to compliance risk management and their practical impact on the bank's operations. The professional skills and skills of employees in compliance functions, especially with regard to monitoring the latest changes in laws, regulations and standards relevant to compliance risk management, should be supported by the organization of regular systematic education and training. It is impossible to carry out the compliance function without adequate resource support or funding on a residual basis. This will be the most inefficient investment.

2.5. Professionalism of the staff. Personnel responsible for the development and implementation of compliance policies (compliance controllers) must have the necessary qualifications, experience, professional and personal qualities to coordinate the work and development of this direction. In particular, the personnel of the compliance function must have the necessary qualifications, experience and professional and personal qualities to perform their duties. The compliance function staff should be familiar with the laws, regulations and standards relevant to compliance risk management and their practical impact on the bank's operations. The professional skills and skills of employees in compliance functions, especially with regard to monitoring the latest changes in laws, regulations and standards relevant to compliance risk management, should be supported by the organization of regular systematic education and training.

The compliance function should assist the executive bodies: in training staff on compliance issues and act as a contact point in the bank in connection with requests for this topic from its employees; In the adoption of written instructions for employees on the appropriate implementation of laws, regulations and standards, through policies and procedures, as well as other documents such as guidance for compliance management, internal codes of conduct and practical instructions.

2.6. Compliance is the collective task of the team. The compliance function should advise the executive bodies on laws, regulations and standards relevant to compliance risk management, including informing about the latest developments in this area. Instruction and training

The compliance function should assist the executive bodies:

- in training staff on compliance issues and act as a contact point at the enterprise in connection with requests for this topic from its employees;
- in accepting written instructions for employees on the appropriate implementation of laws, regulations and standards through policies and procedures, as well as other documents such as guidance for compliance management, internal codes of conduct and practical instructions.

One of the most common misconceptions is the opinion of the organization's employees that the compliance controller is the only person in the organization who is obliged to deal with mitigating legal and reputational risks. However, the compliance unit can not physically monitor all emerging risks independently, as it often does not interact with the client and does not handle the relevant information, and therefore is not in a position to identify all the

problems that arise in the units and other issues subject to the policies. Therefore, one should not only explain to all employees of the organization formal requirements for compliance policy, their meaning and consequences of non-compliance, but also clearly state the duties of each employee to comply with these requirements. It is very important to provide quality information in the form of training, seminars and further training - only it gives the corresponding effect.

2.7. Identification, assessment and analysis of compliance risk. The compliance function should proactively identify, document and analyze compliance-related risks, including the development of new products and business procedures, the proposed establishment of new types of economic and customer relations, or significant changes in the nature of these relations. If the bank has a committee for new products, the compliance function should be there.

The compliance function should also study methods for assessing compliance risk (for example, using dynamic indicators) and use these estimates to better assess compliance risk. As a tool for developing indicators of dynamics, the technology of combining or filtering data can be applied, which can indicate potential problems of compliance risk management (for example, a growing number of customer complaints, unusual transactions or payments, etc.). The compliance function should evaluate the compliance of the procedures and instructions of the enterprise with compliance, monitor the timely elimination of identified shortcomings and, if necessary, propose changes.

2.8. Control, verification and reporting. The compliance function should monitor compliance by the credit institution with all laws, regulations and standards applicable to its activities by performing sufficient and representative testing. Reports on the results of such inspections are transmitted in the direction of compliance of the compliance function in accordance with the internal procedures for enterprise risk management.

The head of the compliance function should regularly report on compliance risk management to the executive bodies. These reports are compiled on the basis of the compliance-risk analysis conducted during the reporting period, including changes in compliance risk characteristics, based on relevant assessments such as dynamics indicators summarizing the identified violations and / or deficiencies and describing the recommended corrective measures for their elimination, As well as the corrective measures already taken. The reporting format should correspond to the characteristics of compliance risks and enterprise performance.

2.9. Interaction with internal audit. The scope and scope of the compliance function should be regularly checked by the internal audit service. Along with the rest of the organization, the proper implementation of compliance policies should be monitored through internal audits and audits. In this case, it is necessary to separate the functions of internal control and compliance functions, but at the same time - to ensure their effective interaction in identifying compliance risks. The risk of inefficient compliance risk management should be included in the methodology for risk analysis in the internal audit service, and an audit program should be adopted to verify the adequacy and effectiveness of the compliance function in the bank, including testing of control procedures commensurate with the estimated level of risk. The compliance function and the internal audit service should be independent of each other in order to guarantee the independence of the verification of the compliance function. It is therefore important that the enterprise has a clear understanding of how the responsibilities for risk analysis and verification are distributed between these two functions and that it is documented (for example, in the enterprise's compliance risk management policy or related document such as the protocol). The internal audit service must certainly inform the compliance officer of the audit results related to compliance.

2.10. **Compliance program.** Compliance responsibilities should be performed in accordance with the compliance program reflecting the planned compliance function, such as implementing and verifying policies and procedures, assessing compliance risk, testing compliance compliance, and training compliance officers. The compliance program should be tailored to the risks and should be supervised by the compliance function manager to ensure that the various activities are properly reflected and that the risk management services are coordinated.

2.11. **A set of specific duties of compliance functions** involves assisting the executive bodies of the enterprise in effective management with compliance risks. Responsibilities of the compliance function at the enterprise are to assist the executive bodies in the effective management of compliance risks faced by the enterprise. If some of these responsibilities are performed by employees of different departments, the division of responsibilities between departments should be clear. The main ones are:

- consultations (executive bodies on laws, regulations and standards and informing about the latest developments in this area);
- coaching and training (assistance in training staff on compliance issues);
- identifying, evaluating and analyzing compliance risk (proactively identifying, documenting and analyzing compliance risks, including the development of new products and business procedures, new types of relationships);
- monitoring, verification, reporting (the head must regularly report to the executive bodies);
- responsibilities and interaction established by law;
- formation, implementation and monitoring of the compliance program.

Not all compliance duties are necessarily performed by the «Compliance Department» or «Compliance Department». Responsibilities for compliance can be performed by employees of different departments. In some enterprises, for example, the legal department and the compliance department may be different departments; The Legal Department may be responsible for advising the management on laws, regulations and standards relevant to compliance risk management and for drafting instructions for employees, while the compliance department may be responsible for monitoring compliance with policies and procedures and reporting to management. In other enterprises, compliance components may be located in the operational risk management division or the risk management unit in the enterprise as a whole. If the responsibilities are shared between departments, the distribution of responsibilities for each department should be clear. Appropriate cooperation mechanisms should also exist between all departments, as well as with the compliance officer (for example, with regard to providing appropriate advice and information and information exchange). These mechanisms should be sufficient to ensure that the compliance officer adequately discharges his responsibilities.

3. Foreign economic integration. Enterprises can operate on an international scale through local controlled entities or branches or in other jurisdictions where they do not have a physical presence. Legislative or regulatory requirements may vary in different jurisdictions, and they may also differ depending on the type of activity carried out by the bank or the form of its presence in the jurisdiction.

Enterprises that decide to operate in a particular jurisdiction must comply with local laws and by-laws. For example, enterprises operating in the form of a subsidiary organization must comply with the legislative or regulatory requirements of the jurisdiction of the host. In some jurisdictions, special requirements may also apply to branches of foreign enterprises. Local organizations must ensure that the compliance risk responsibilities specific to a particular jurisdiction are met by persons with sufficient experience and knowledge of local

requirements, supervised by the compliance officer, who acts in conjunction with other risk management functions in the enterprise.

Working in accordance with the principles of compliance, enterprises build not only a reliable compliance process, reducing their reputational risks, but at the same time facilitate their work with international counterparties, since among the requirements when establishing partnerships, there is an increasing number of policies and organization of the compliance process. Leading world practices. In connection with the integration of Ukrainian business into the world economy, the need for proper reflection of the world's leading compliance practices in the policies and procedures of local organizations and enterprises is evident. Proper compliance with the basic principles of compliance and their effective implementation lead to the establishment of the principle of fairness in the relations between market participants, minimizing legal and reputational risks, and directly affect the success and integrity of the organization itself and the welfare of its personnel, which ultimately increases business efficiency.

4. Outsourcing. Certain tasks of compliance functions can be transferred to outsiders, but they must be under appropriate control by the head of compliance function. Compliance risk management should be considered one of the main areas of risk management in the organization.

The joint forum (the Basel Committee on Banking Supervision, the International Organization of Securities Commissions and the International Association of Insurance Supervisors) developed general principles of outsourcing for regulated organizations recommended for enterprises. The enterprise must ensure that outsourcing mechanisms do not interfere with effective oversight by its supervisory authorities. Regardless of the volume in which certain tasks of compliance are delegated to outsiders, the board of directors and executive bodies continue to be responsible for complying with all applicable laws, rules and standards.

5. You should not fetish compliance (compliance for business, but not business for compliance). It is very important to understand that there is a certain line, after which the compliance function not only minimizes the risks, but also limits the business. The areas where compliance risks are least likely to exist and where the organization can not afford activities should be identified. Correct designation of this face, without its displacement in one direction or another, contributes to the most effective organization of the work process, without conflicts with other units and minimizing the risk. At the same time, it is necessary to monitor market trends and changes in legislation to timely correct this aspect.

Proper compliance with the basic principles of compliance and their effective implementation lead to the establishment of the principle of fairness in the relations between market participants, minimizing legal and reputational risks, and directly affect the success and integrity of the organization itself and the welfare of its personnel, which ultimately increases business efficiency.

CONCLUSIONS AND RECOMMENDATIONS

Thus, the implementation of economic activity in accordance with compliance principles implies the realization of legality in the activities of the enterprise and ensuring its legitimacy. However, it should be noted that compliance, as compliance with mandatory rules, as a principle of the organization's activity is a broader concept than the legality of carrying out entrepreneurial activities, and compliance as a state is, on the contrary, broader than the legitimacy of the organization's activities and the rule of law in the corresponding segment of social relations. Therefore, very often compliance is not only the lawful, but also ethical conduct of business, which means carrying out entrepreneurial activities in accordance with internal corporate norms and in accordance with the rules that are adopted in a particular

industry. As a result, the division of compliance into a legal and ethical aspect presupposes two levels of compliance control. The first level consists in compliance with external rules that the economic entity as a whole must fulfill. The second level implies compliance with the requirements of the internal control system, established to ensure compliance with external requirements.

REFERENCES

- Belyayev Y.K. (2013) Primeneniye instrumentov komplayens-kontrolya dlya optimizatsii korporativnogo upravleniya farmatsevticheskimi kompaniyami / YU.K.Belyayev // Izvestiya UrGEU.- №1 (45). – S.45-50.
- Bondarenko Y.U. (2008) Effektivnoye upravleniye compliance-riskami: sistemnyy podkhod i kriticheskiy analiz / YU.Bondarenko // Korporativnyy yurist. - № 6. – 2008. - S. 31–34.
- Kirillov R.A. (2014) Teoreticheskiye osnovy upravleniya regulyatornym riskom v sisteme vnutrennego kontrolya banka // Izv. Sarat. un-ta Nov. ser. Ser. Ekonomika. Upravleniye. Pravo. 2014. №4. S.628-633
- Kobeleva T.O. (2011) Yelektrotekhnichna galuz Ukraini: suchasniy stan ta perspektivi rozvitku // T.O. Kobeleva // Visnik NTU «KhPI». – № 26. – S. 34-43.
- Kocziszky Gy. & Veresné Somosi M. (2017): Komplaens kak preduprezdeniya krizisa. VIII. Mizdunarodna naukovo- prakticna konferencija: Strategija innovativnogo rozvitku ekonomiki (SIDEK 2017).
- Kosenko A.P., Kotsiski D., Maslak O.I., Pererva P.G. & Sakay D. (2009) Ekonomicheskaya otsenka innovatsionnogo potentsiala. – Kharkov-Mishkolz : NTU „KhPI”, Mishkolz.tekhn.un-t. – 170 s.
- Kotsiski D., Pererva P.G. & Kosenko A.P. (2010) Strategichne upravlinnya virobnichim potentsialom i pidvishchennya konkurentospromozhnosti pidpriemstva / D. Kotsiski, P. G. Pererva, A. P. Kosenko // Visnik Natsionalnogo tekhnichnogo universitetu «KhPI». – Kh. : NTU «KhPI». – Vipusk 62. – S. 112-118.
- Malikhin D.V. (2009) Osobennosti organizatsii komplayens-kontrolya v rossiyskikh bankakh.- Vnutrenniy kontrol v kreditnoy organizatsii.- № 2.- S.32-36.
- Pererva P.G., Kocziszky G., Szakaly D. & Veres-Somosi M. (2012) Technology transfer.— Kharkiv-Miskolc: NTU «KhPI», 2012. — 668 p.
- Shalimova M.A. (2011) Upravleniye komplayensom: postroyeniye vzaimodeystviya podrazdeleniy.- Vnutrenniy kontrol v kreditnoy organizatsii. - № 1. – S. 33-36.