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## **COMPLIANCE-POLICY AS A COMPONENT OF THE COMPANY'S CORPORATIVE STRUCTURE**

**Object.** *The object of the article is in development of conceptual framework for implementation of the compliance-policy as a component of the company's corporate structure.*

**Methods.** *In the process of investigations the following was used: lexico-semantic and logical analysis, comparison (for clarification of prerequisites for origination and cognitive loading of the term «compliance»); grouping, graphical method (for detachment of functional vectors of general requirements to the compliance policy).*

**Results.** *The problem aspects on implementation and realization of the compliance-policy in practice of domestic and foreign corporations were distinguished, the functional vectors of the compliance-policy were detailed.*

**Scientific novelty.** *There were proposed and detailed the general functional vectors of the compliance-policy ensuring unification of approaches to implementation and realization of the compliance-policy.*

**Practical importance.** *The obtained results are aimed at optimization of quality corporate culture formation and realization process.*

**Key words:** *compliance, corporate policy, risk, compliance department, compliance policy.*

**Problem definition in the general form and connection with the most important scientific or practical tasks.** The present management conditions require from progressive companies' management applying the risk-oriented approach for minimization of legal and reputation risks for the purpose of timely warning about infringement of legislative regulations and norms, internal procedures, incorrect business behavior etcetera. System management of such risks within the framework of the compliance-policy being an innovative and prospective trend in construction of transparent corporative culture is the most uninvestigated one in terms of this system organization and functioning.

**Analysis of the latest researches and publications.** The term "compliance" has recently occurred in the national business practice, and has still not found the appropriate generally recognized Ukrainian-language translation. Already nowadays one may often encounter on sites of large corporations the information about Compliance program (or policy) which is an integral part of corporate culture ("Siemens", "Ferrostaal", "AES", "DFEC", "GRINN", "Kamaz" Ltd, "Volksbank" PJSC etc.)

However, despite of novelty and being of compliance-policy in demand of business structures in Ukraine and CIS countries, covering by compliance control of all major sectors of any business, the appropriate national scientific researches are insufficient.

Research of issues on implementation and efficient functioning of the compliance system in Russia is made in publications of O. Pustovalova [1], A. G. Terekhova [2], O. Chernyshevych [3], M. A. Shalimova [4,5]; in Ukraine, compliance in the banking sector is considered by L. Pravdyva [6], A. L. Tsiusiak and I. L. Tsiusiak [7], the master classes within the framework of FormulaS project are given.

The Ukrainian scientists and experts emphasize the necessity to implement the compliance policy as a component of the company's corporate structure, however, extra attention is to be paid to: analysis of essence, purpose and organizational rules of the compliance policy; formation of requirements to the procedure of development and approval of the compliance policy; performance evaluation of individual compliance arrangements.

**Formation of objects of the article.** The object of the article is development of conceptual framework for realization of the compliance policy as a component of the company's corporate culture.

To achieve this object the following problems were set and solved:

- the prerequisites of origination and cognitive loading of the term "compliance" were investigated;
- the practice of domestic and foreign corporations in implementation and realization of the compliance policy was analyzed, and conclusions were made;
- the functional vectors of general requirements to the compliance policy were distinguished and detailed.

**Statement of basic research materials with complete substantiation of obtained scientific results.**

In the opinion of some experts, the history of the term's origination dates back to the terroristic attack in the United States of America on September 11, 2001. At that time the government laid the banks under obligation to create an individual service for Anti-money laundering and terrorist financing. It should be noted that though the trials to solve the problem of corruption and adherence to ethic principles at the legislative level began in 1960-1970, the most widely spread was the Sarbanes–Oxley Act and the 8<sup>th</sup> Directive of the European Union as a response to infringement of corporate ethics norms and legislation by large corporations.

In the popular meaning the term "compliance" originates from the English verb "to comply" and means agreement, accordance. The Oxford English dictionary contains the following tem definition: it is an action in accordance with a request or command, obedience.

The broadly defined system of compliance control must ensure control over adherence to the international and national regulatory documents, internal procedures, rules approved at the company/organization and the main moral and ethical behavior principles.

In the opinion of Yu. Bondarenko, compliance is an integral part of the company's corporate culture, according to which execution by each employee of his own official duties, including making decisions at all levels, must meet the standards of legality and good faith established by the company to carry out its business" [8, P.31].

At the modern stage the specified term is widely used in activity of foreign companies and is an integral function of their management starting from the middle 1990-s.

Every year the International Compliance Association (the ICA founded in Great Britain in 2001 consolidates more than 10 000 specialists of different world countries) in association with the University of Manchester Business School and Business Academy "Ernst and Young" implements a training program for awarding the international qualification of "ICA International Diploma in Compliance". On November 2, 2011 in Moscow the First annual conference of ICA "Compliance in Russia and CIS" in association with the Moscow Times and Dow Jones was held, and also the solemn ceremony of presentation of the First annual premium of ICA in Russia and CIS "Compliance 2011"<sup>1</sup> took place.

According to study of PwC Russia "Round table. Compliance culture", on October 06, 2011, compliance as an element of corporate culture includes such policies and procedures: corporate behavior code; policy of acceptance and presentation of gifts; policy on conflict of interests; bribery and corruption policy; Anti-money laundering policy; confidential data policy etc.

Distribution of compliance in Ukraine was in the first place in the financial and banking sector [6,7] and in medicine.

Relating to banking sector, in 2005 the Basel Committee on Banking Supervision published a document "Compliance and the compliance function in banks"<sup>2</sup>[9].

Based upon this document, in Ukraine the obligation to apply the compliance policy (compliance risks management policy) is regulated and formalized by law in the Decree of the NBU No. 98 dated 28.03.2007. The compliance risk is a risk of legal sanctions, financial losses or loss of goodwill as a result of the banks' failure to execute the Ukrainian legislative requirements, regulatory acts, internal provisions and rules, as well as standards of self-governing organizations, which are applied to its activity. Disability to anticipate influence of improper actions of the bank officials may cause negative public attention and damage the bank's goodwill, even if the Ukrainian legislation requirements were not infringed [10, art. 1.6].

In medicine compliance (sometimes there can be found a term "комплаєнтність" (compliantness) as a trial to find a single generally accepted Ukrainian-language translation" means the extent of the patient's behavior compliance with the doctor's recommendations; disagreement or reluctance of the patient (by objective or subjective reasons) to stick to the doctor's assignments.

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<sup>1</sup> According to information on site [www.ey.com.ua](http://www.ey.com.ua).

<sup>2</sup> Unofficial translation of the document was made by the Bank of Russia and notified to the credit organizations (Letter of the Central Bank of Russia dated 02.11.2007 no. 173-T).

In Ukraine the compliance policy has been lately recognized and implemented into activity of large corporations, not limited by banking sector and medicine. For example, the “DFEC compliance policy” approved in 2011 includes such compliance procedures in the context of their purpose and principles of achievement that acquire organization: internal ethic requirements management; legislative and regulatory requirements management; prevention of insider information misuse; monitoring the fulfillment of commitments under financial attractions; corrupt practices and financial crimes prevention; management of officials’ personal responsibility risks<sup>3</sup>.

It should be noted that a great quantity of domestic and foreign corporations of non-banking sector in their approval of compliance policy use the samples of similar documents being in free access, unfortunately, without regard to their own specific nature and ignoring that fact that compliance risks for companies of different industries will be different.

For instance, according to official information of CJSC “Corporation “GRINN”, under the Order dated 01.02.2012 no.49c The Group’s compliance policy contains absolutely identical principles that had been earlier approved by “KAMAZ” OJSC (Order dated 19.10.2011. no.240).

These factors allow making the following conclusions:

1. The business structures, when implementing foreign experience of compliance application, have no thorough understanding of its essence, purpose, organizational rules etc. (compliance activity is identified with internal audit, risk management, due diligence).

The main purpose of internal audit is in monitoring of risks and performance evaluation of internal control systems; purpose of the due diligence procedure is to help the buyer or investor to clarify the most important/essential facts relating to business/company, which he intends to acquire / to which he intends to invest. But compliance is aimed at organization of compliance risk management system and current monitoring of these risks. Risk management is aimed at management of all kinds of risks; however, not all of them are compliance risks.

2. Unavailability of compliance expert training centers in Ukraine.

3. Shortcomings in developed and approved compliance policies: there is a neglected fact that compliance risks for companies of different industries are different; using the term “Compliance principles” it goes rather about “requirements” or “priorities” of compliance policy that means meeting the adopted rules; incorrect formation of some “principles”. Hence, “principle of development and implementation of measures aimed at compliance risks reduction” in fact is implemented by execution actually of all other principles; “internal ethic requirements management” and “personal responsibility risks management” relate to prevention of conflict of interests etc.; low efficiency of some compliance measures.

It goes about so-called “feedback” (early information) - rendering an opportunity to the company’s customer and employees to be free in notifying of

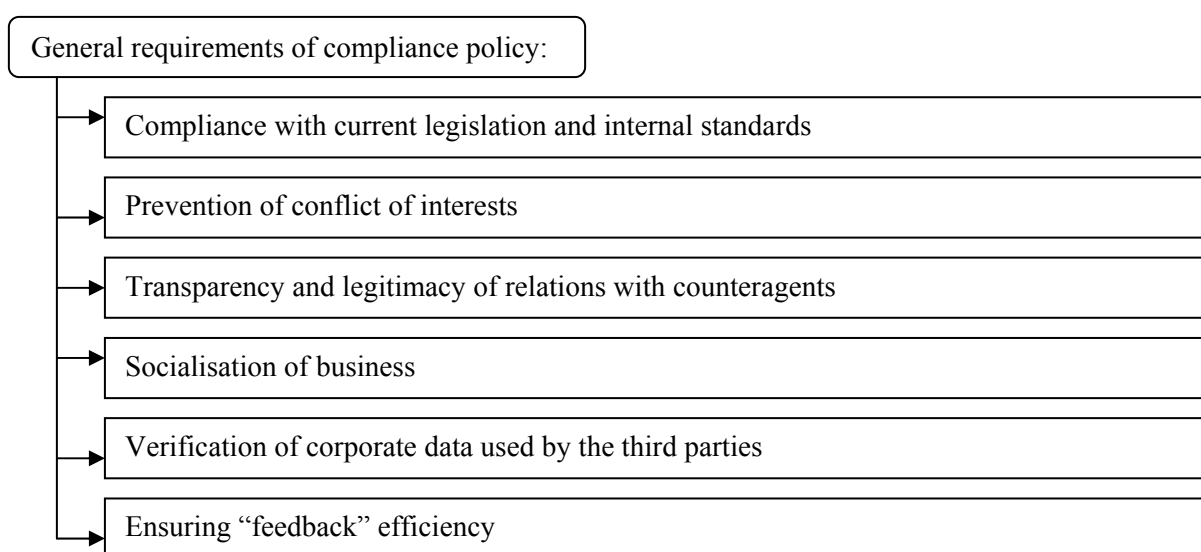
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<sup>3</sup> According to information on site of Donetsk Fuel and Energy Company: dtek.com.

their concern about illegal, unethical or doubtful practice, without being afraid of possible sanctions or prosecuting: “Volksbank” PJSC proposes to use “Form of notification of improper actions”, corporation Siemens realized the function of “Tell Us” etc.

However, according to the world and national practice and given the human mentality such “hot lines” are insufficiently effective. According to research results regarding matters of bribery risks management in Europe in 2009 carried out by experts of audit firm “Ernst & Young”, the “Hot line” in Internet and the “Hot line” have been recognized the least effective measures in bribery control: 21 and 12% of respondents, respectively.

We believe that compliance policy requirements must be divided into general, attributable to any companies, and specific ones, attributable to this very corporation (pic. 1).



Pic. 1 – Functional vectors of general requirements of compliance policy (policy of conformance)

Let us consider each requirement in details.

1. Compliance with current legislation and internal standards: regular monitoring of changes in legislation relating to activity of a corporation; informing and training of key personnel in respect of changes in legislation; analysis of risks and opportunities connected with legislative changes; regular monitoring of compliance with internal standards; interaction and cooperation with external and in-house regulatory authorities; audit opinion analysis.
2. Prevention of conflict of interests. “Conflict of interests” must be interpreted as available or eventual conflict between personal (private) interests and official or professional duties of a person, or a conflict arising during execution of inconsistent duties by such person.
3. Transparency and legitimacy of relations with counteragents (suppliers, contractors, customers etc.): checking of a new business partner and subsequent monitoring of character of relations with it; Anti-money laundering and terrorist

financing; monitoring of transactions with affiliated persons; conveys compliance monitoring.

4. Socialisation of business: compliance monitoring of corporate labor safety and environmental standards; analysis of claims or suits connected with infringement of rights of employees, customers, counteragents, with violation of environment protection requirements; evaluation of transparency and efficiency of motivation, bonus, promotion at work systems; analysis and absence of facts of discrimination by sex, race, religion, age, geography etc.

5. Verification of corporate data used by the third parties: monitoring of publications on activity of corporation; revelation of facts of corporate right's infringement; analysis of claims and suits regarding completeness and authenticity of information submitted; preventing occurrence in the mass media of deliberately distorted information on securities, their assessment, prospects and plans of the company; control over access and illegal distribution by employees of internal corporate information; prevention of insider information misuse.

6. Ensuring "feedback" efficiency (early informing) - rendering an opportunity to the customers and employees of the company to be free in notifying their concern relating to illegal, unethical or doubtful activity; strengthening the practice of timely and open discussion of problems; immediate informing about unethical behavior from the part of managers, employees, partners.

**Conclusions on the specified problems and prospects of follow-up studies in the given direction.** Hence, the compliance policy or "policy of conformity" has a complex character (includes work of several departments) aimed at formation of a unified approach to compliance risks management. Such a policy is a component of corporate structure, and Code of corporate ethics, Official duties, other internal provisions are verified for compliance with it. The compliance policy (as well as social, personnel policies) adopts a unified approach of the company to a definite purpose – compliance of activity of the whole company and its individual employees with legislative requirements and internal standards to prevent from legal sanctions, financial losses or loss of goodwill.

In our opinion, creation of compliance department is reasonable only for the corporations carrying out their activity in the countries with different cultural environment or such that have a great quantity of staff and combine several kinds of activity. In other case creation of such a department is not economically feasible, because some compliance requirements are executed by the legal department (1,4), internal safety department (2,5), financial department (3), public relations department (4,5) etc. and controlled by the internal audit service. Creation of one more controlling body will cause duplication of functions, and there is still a risk that the highest controller will infringe definite standards.

The prospect of follow-up studies of this direction is detalization of specific requirements of compliance policy and individualization of measures regarding their compliance evaluation.

#### **References:**

1. Pustovalova, E. (2012), "Effective compliance for successful business", *Remedium*, No. 4, pp. 8-11.

2. Terehova, A.G. (2011), "Transformation of compliance and risk-management in the internal checking system", *Vnutrennii kontrol v kreditnoi organizatsii*, No. 1, pp. 28-32.
3. Chernyshevich, E. (2012), "From practice of hike to introduction: that in basis?", *Remedium*, no. 4 pp. 15-17.
4. Shalimova, M.A. (2011), "Management of compliance: construction of co-operation of subdivisions", *Vnutrennii kontrol v kreditnoi organizatsii*, No. 1, pp. 33-36.
5. Shalimova, M.A. (2009), "Organization of effective compliance-subdivision in the Russian bank", *Vnutrennii kontrol v kreditnoi organizatsii*, no. 4, pp. 90-97.
6. Pravdyva, L. (2011), "Improvement of corporate management in banks and management of risk-compliance", *Visnyk NBU*, July, pp. 10-13.
7. Tsiutsiak, A.L. and Tsiutsiak, I.L. (2011), "Introduction of the compliance-checking system in the home independent financial checking and audit system", *Naukovo-informatsiyni visnyk "Ekonomika"*, No. 3, pp. 200-206.
8. Bondarenko, Yu. (2008), "Effective management compliance-risks: approach of the systems and walkthrough", *Korporativnyi yurist*, No. 6, pp. 31-32.
9. Central Bank of Russia, (2012), About recommendations of the Basel committee on a bank supervision 06.02.2012 year, No. 173-T (Letter).
10. National Bank of Ukraine (2007). About approval of Methodical recommendations in relation to perfection of corporate management in the banks of Ukraine 28.03.2007 year, No. 98 (Resolution).