



5. КОНТРОЛЬ, АУДИТ І АНАЛІЗ: ВИДИ ТА БАГАТОЦІЛЬОВИЙ ХАРАКТЕР В ПРОЦЕСІ СУСПІЛЬНИХ ТРАНСФОРМАЦІЙ

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COMPLIANCE AUDIT OF ANTIMONOPOLY LEGISLATION

The term "compliance" today has become synonymous with effective, efficient and ethical management. A growing number of companies use the compliance system for the production and marketing of products. Experience shows that where the compliance system is an integral part of corporate governance, there are real prerequisites for increasing the competitiveness of the enterprise and its products, improving its technical and economic performance, creating a favorable socio-psychological climate.

In modern views on the problems of internal control, various attempts to combine and convert the experience of sociology, political science, jurisprudence and psychology in the economic dimension are becoming increasingly popular. Compliance is undoubtedly one such approach. The central link that connects compliance with other social sciences is the notion of a norm, which is developed, for example, within the framework of law, but specific mechanisms for its implementation are related to economic entities at the micro level. The concept of norm is connected with institutionalism, which is another integrative direction in economic theory. The norm is easily interpreted as an element of the concept of "institution", the development, use and modification of which leads to transactional costs. The training manual presents various approaches to the content and essence of the concept of compliance.

Compliance management is often associated only with monitoring of the media or social networks for negative reviews or publications. In practice, the procedures for evaluating antimonopoly legislation, managing the risk of loss of business reputation are no less, and perhaps even more closely related to the analysis of counterparty credit risks and compliance risks, because require verification of the existence of beneficiaries in lists of sanctions and anti-corruption lists. According to a study conducted by the Economist Intelligence Unit, the risk managers of major European organizations rated reputational threats as the most significant of all possible (see figure), while the most important factors of reputational risk were the speed of information dissemination through international communication channels and the strengthening of regulatory requirements.

Nevertheless, the goal of any antimonopoly compliance program in the final result is to reduce the risk of violation of the antimonopoly law. The Antimonopoly Committee of Ukraine agrees with this approach, which recently declares its intention to develop a standard compliance program. Development of a standard compliance program by the Committee is an absolute plus in advocating compliance with antitrust laws. At the same time, it is important to understand that there



is no universal compliance rule and that each compliance program should be developed taking into account the many factors and specific risks that arise in the process of each individual company's activities.

Antimonopoly compliance is becoming more popular in Ukraine. Compliance with the antimonopoly legislation becomes especially relevant for companies operating in areas that are under the special control of the Antimonopoly Committee of Ukraine, in particular markets for pharmaceuticals, petroleum products, tobacco products, retail, etc. The first step in introducing an antimonopoly compliance program into business ethics The company is aware of the fact that antitrust regulation is relevant to its activities. Due to the increasing publicity of the activities of the Antimonopoly Committee, regular publications on the fines applied, as well as information on ongoing investigations, this step is not difficult for many companies. More and more companies come to the understanding that in addition to potentially high penalties, violation of the antimonopoly legislation entails significant reputational risks, while a well-designed and competently developed compliance program allows the company to more confidently carry out its day-to-day activities and make prompt decisions in conditions of not always unequivocal legislative regulation. Yet it is worth noting that most Ukrainian companies start to think about the need to develop and implement an antimonopoly compliance program only after they have already had experience with the Antimonopoly Committee of Ukraine and have resorted to the help and / or protection of lawyers. In such cases, the development of compliance programs should start with a clean sheet. In representative offices or subsidiaries of large foreign companies, the compliance system, as a rule, is already working at the global level, in which case it must be adapted to national legislation, as well as the potential risks that the company may encounter in its work in Ukraine

Moreover: competently built compliance structure not only protects the enterprise from sanctions by preventing offenses, but also protects it from external encroachments. Unfortunately, too often the opportunities for effective integration of compliance control and enterprise security are not being used properly.

In Ukrainian practice, often with the concept of internal control, the concept of internal audit is identified, which leads to an understanding of these phenomena as identical. At the same time, it must be recognized that internal audit is, albeit an essential, but still a component of the internal control system.

The work on integrating the interaction of the risk management service of the enterprise and its business units that "own" (creating, generating) risks should be conducted on a continuous basis and be sure to be monitored by top management. The most balanced in this respect and one of the optimal strategies for constructing an integrated risk management system is the viewpoint set out in the standards of the Institute of Internal Auditors, according to which the so-called three-level protection model is the most stable and effective [1].

A conceptual diagram of the three levels of protection of an industrial enterprise from compliance risks is presented in Fig. 1.

The model of the three lines of protection makes a clear distinction between three separate functions, namely management, risks and control (supervisory functions, such as risk management and compliance) and, in fact, internal audit ("last line protection "). Thus, the model describes the relationship between groups of workers (divisions) of an industrial enterprise:

- A group that carries risks (creates, generates risks) and manages these risks (the first line) are risk owners who manage risk at the operational level;
- The group that oversees (second line). These are controllers that monitor, analyze and monitor risks;
- A group that provides an independent guarantee (third line of protection). They are auditors, providing an independent evaluation of the functioning of the internal control system as a whole.

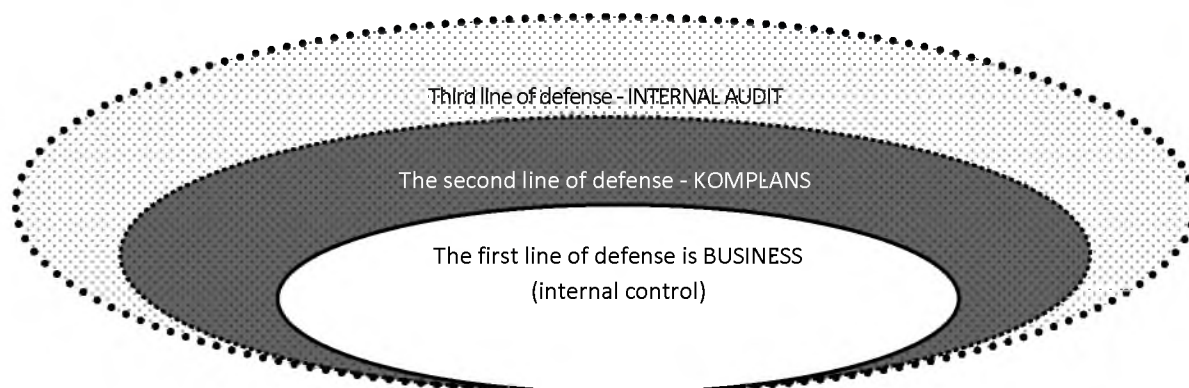


Figure 1. Conceptual diagram of three levels of protection

It should be borne in mind that at the moment, due to undeveloped corporate governance, certain industrial enterprises adhere to this approach, in which each structural unit is oriented only to its direct, strictly limited functionality. In this case, when the model of the three levels of protection is adapted, there will actually be no first line in the form of business units that manage risks at their level. Accordingly, this imbalance will create more work for the second line of defense, while forming serious barriers to the development of a common culture of risk management in the enterprise.

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BELARUSIAN INSOLVENCY PERFORMANCE IN 2017

According to the Supreme Court of Belarus, on January 1, 2017, there were 3,094 cases of bankruptcy (in January 2016 – 2,576), of which 96.6% or 2,988 cases related to the bankruptcy of private enterprises (in January 2016 – 97.3% or 2,506).

In spite of all modern changes in present Belarusian bankruptcy (insolvency) legislation Republic of Belarus stayed only on 69 place in Doing Business 2017 rank (DB Rank) [1].

Table 1 lists the overall ‘Ease of Doing Business’ rank (out of 190 economies) and the rankings by each topic. As we can see, the Belarusian level of ‘Resolving Insolvency’ topic increase on +26 positions. To analyze the efficiency of insolvency frameworks across economies, Doing Business measures for insolvency proceedings of domestic entities: Time; Cost, and Outcome.

The time for creditors to recover loans is recorded in calendar years from the company’s default until the payment of some or all of the money owed to the bank. The cost of proceedings is recorded as a percentage of the value of the debtor’s estate and includes court fees and government levies; fees of insolvency administrators, auctioneers, assessors and lawyers; and all other fees and costs. The outcome for creditors depends on whether the distressed company emerges from the proceedings as a going concern or its assets are sold piecemeal. The rate is recorded as cents on the dollar recouped by secured creditors through reorganization, liquidation or debt collection (foreclosure or receivership) proceedings [3].

Based on the time, cost and outcome of insolvency proceedings the recovery rate is calculated in each economy. So, recovery rate is a function of the time, cost and outcome of insolvency proceedings against a local company. The recovery rate is recorded as cents on the dollar recovered by secured creditors through judicial reorganization, liquidation or debt enforcement (foreclosure or receivership) proceedings. The calculation takes into account the outcome: whether the business emerges from the proceedings as a going concern or the assets are sold piecemeal. Then the costs of the proceedings are deducted (1 cent for each percentage point of the value of the debtor’s estate). Finally, the value lost as a result of the time the money remains tied up in insolvency proceedings is