

AEB Open Security & Compliance Event
“Combating corruption in Russia: challenges and way forward”

**The compliance officer’s role in the internal control system:
duties and responsibility**

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Contents:

- Is there an obligation to set up a control system?
- How should the control system be organized? Role of the compliance officer: duties and responsibility

1.1. Is there an obligation to set up a control system?

- Russian securities legislation
 - ✓ The quarterly report should contain a **detailed analysis of risk factors** associated with the acquisition of outstanding issuable securities.
 - ✓ The quarterly report should be approved by the authorized body of the issuer, and should be signed by the individual holding the position of chief executive officer of the issuer and the chief accountant of the issuer, who **thereby confirm the reliability of all information contained in the report** (Article 30 of the Law *On the Securities Market*).
 - ✓ The individuals signing the quarterly report are jointly and severally liable for losses caused by the issuer to an investor and/or holder of securities as a result of the presence in the report of **inaccurate, incomplete and/or misleading information** that they have confirmed (Article 30 of the Law *On the Securities Market*).

1.2. Is there an obligation to set up a control system?

- Goals of accounting:
 - ✓ formation of complete and reliable information on the organization's operations and its property position;
 - ✓ provision of information for monitoring compliance with Russian legislation in the performance of business operations and their feasibility;
 - ✓ prevention of negative results from the organization's business operations.

- The laws of Russia stipulate the performance of internal controls over financial and business operations.

- The company's annual report should contain a description of the key risk factors associated with the company's operations.

1.3. Is there an obligation to set up a control system?

- The Russian Code of Corporate Governance recommends
 - ✓ the establishment of internal control procedures for financial and business operations;
 - ✓ the creation of a risk committee by the board of directors consisting of independent directors;
 - ✓ the performance of control over the creation of the risk management and risk assessment system.

1.4. The control system: foreign law

- The *Sarbanes–Oxley Act 2002* applies not only to companies listed in the USA but also to foreign subsidiaries.
- The key rules that must be followed are:
 - ✓ Management is obligated to declare to the Security and Exchange Commission that the submitted financial statements are accurate. Companies violating this requirement in the USA are subject to a fine of up to USD 5 million or a prison term of up to 20 years.
 - ✓ The company is obligated to have a control committee, which is responsible for the appointment and supervision of auditors, and should consist of independent directors.
 - ✓ The company is obligated to establish an internal control system (Disclosure Control and Financial Control), which should ensure that critical information on the company is available as soon as possible.
 - ✓ The obligation to establish efficient disclosure control and procedures. Individuals in management are subject to personal material liability in the event of violations.

1.5. Anti-corruption measures: liability for commercial bribery

- For the payment of **unlawful consideration in the name of a legal entity**, for example, exceeding 20 million rubles, a legal entity is subject to an administrative penalty in the amount of 100 times the amount of the consideration, but not less than 100 million rubles, with confiscation of the subject of the consideration.
- **“Active” commercial bribery** is punishable by (i) a fine of 10 to 50 times the amount of the bribe, with the loss of the right to hold certain positions or engage in certain activities for a period of up to two years, or (ii) custodial restraint for a period of up to two years, or (iii) compulsory labor for a period of up to three years, or (iv) imprisonment for the same period.
- **“Passive” commercial bribery** is punishable by (i) a fine of 50 to 70 times the amount of the bribe, with the loss of the right to hold certain positions or engage in certain activities for a period of up to three years, or (ii) compulsory labor for a period of up to five years, with the loss of the right to hold certain positions or engage in certain activities for a period of up to three years, or without such loss, or (iii) imprisonment for a period of up to seven years, with a fine of 40 times the amount of the bribe.

1.6. Anti-corruption measures: foreign law

- Any company whose securities are traded on the US stock market is subject to **the laws of the United States**, which stipulates that companies are liable for giving bribes to officials of a foreign government and/or violations in their system of internal control and accounting
 - US Foreign Corrupt Practices Act

- Any company whose securities are traded on the UK stock market is subject to the **law of the United Kingdom** which entered into force from 1 July 2011
 - UK Bribery Act of 2010

1.7. Is there an obligation to set up a control system?

- Foreign norms compel the establishment of a compliance system, i.e. a set of procedures governing the behavior of personnel as regards observing statutory and ethical norms in (at a minimum) the area of fighting corruption and money laundering.
- And what of Russian law?
- One of the principles of a democratic, law-based state is the rule of law.
- The rule of law means the totality of requirements, deviation from which entails legal liability.
- The inevitability of legal liability compels the legal entity and its bodies to scrupulously and consistently comply with the law.

1.8. Liability (legal risks)

- The imposition on an individual of administrative or criminal liability does not release a **legal entity** from administrative liability for this violation.
 - Examples of punishment of a legal entity:
 - fines
 - confiscation of tools or items
 - suspension of operations of the enterprise
- The imposition on a legal entity of administrative liability does not release a culpable **individual** from administrative or criminal liability for this violation.
 - Examples of punishment of an individual:
 - loss of a special right;
 - disqualification;
 - arrest;
 - imprisonment.

1.9. Actual risks

- Reviews of the supervisory authorities, investments in protection rather than development.
- Blacklisting, rejection of bids.
- Loss of business reputation.
- Reduction in enterprise value.

1.10. Is there an obligation to set up a control system?

- Business Judgment Rule
- Executive bodies are liable to the company for losses caused to the company by their culpable actions (inaction).
- When exercising their rights and performing their duties, they should act in the interests of the company, and exercise their rights and perform their duties reasonably and in good faith.
- When determining the grounds and scope of liability, normal business practices and other circumstances relevant to the case should be taken into consideration

1.11. Is there an obligation to set up a control system?

- The obligation to set up a control system is not established *de lege lata*.
- There is no court practice in respect of the obligation of the executive body to prevent violations of the law by a legal entity, and in respect of a mitigation of liability if an internal control system is in place.
- In practice, by virtue of the principle of the rule of law, a legal entity requires a control system to comply with the law and avoid violations of the law.

2. Control system: Functions, objectives

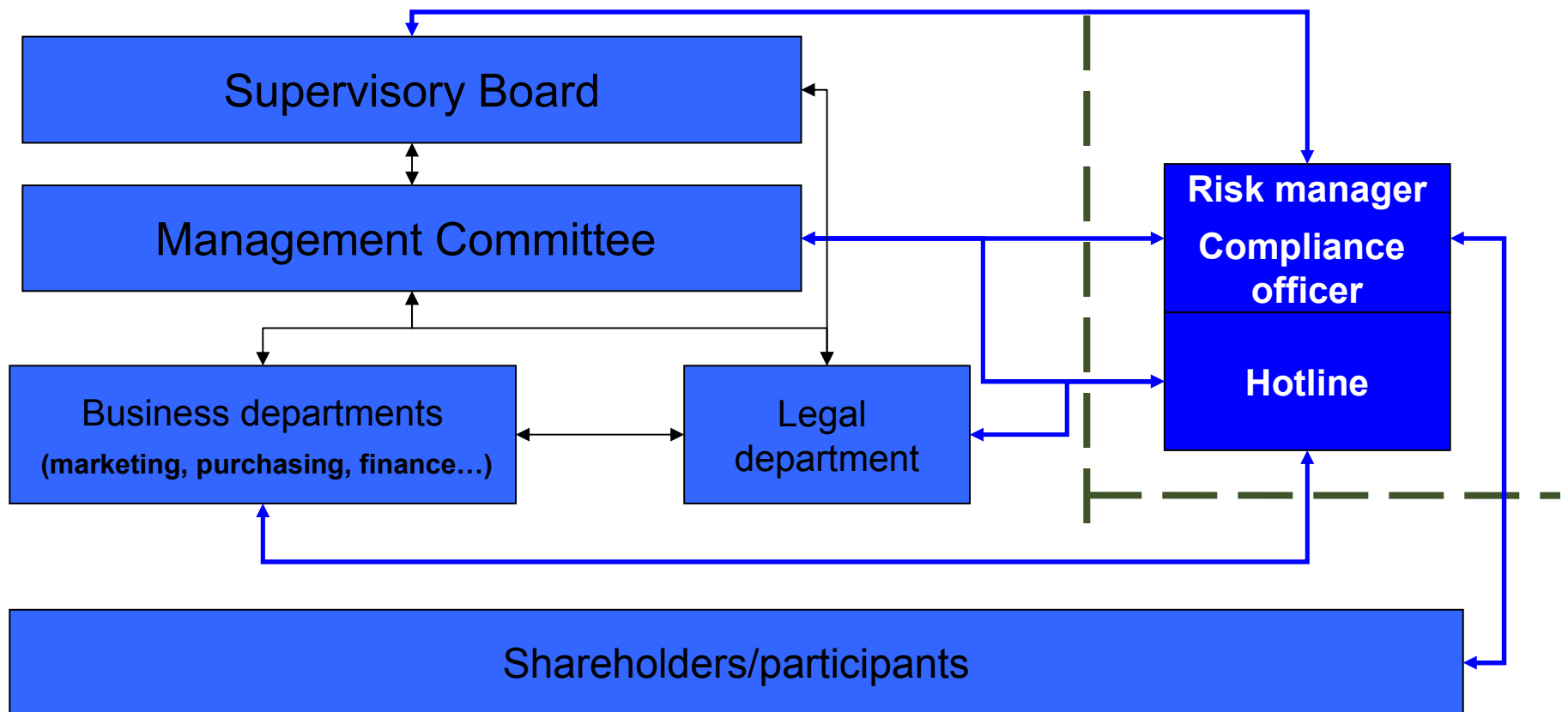
- ▶ Function of risk mitigation
- ▶ Informational function (establishment of transparency/accumulation of information for management for decision-making purposes)
- ▶ Control function (ownership control over management)
- ▶ Marketing function

2. Elements of the control system

- Identification of risks that threaten the enterprise.
- Determination and allocation of functional duties (appointment of a risk manager/compliance officer).
- Personnel training.
- Monitoring of compliance with established rules.
- Disciplinary measures.

2. Control system

An example of the structure of the control system (information/receipt of approval)



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