

The use of the term compliance in order to improve the efficiency of companies

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Abstract. The purposes of the study are: to reveal the meaning of the term “compliance”; to define the use of the term “compliance” in the Russian environment; to determine how the term “compliance” functions in Russian legislation; to find out what different definitions, functions, and scope of use of compliance can be found in the legal field. The article discusses the importance of compliance in various fields: legal, economic, and management. In Russian legislation, the definition of the term “compliance” is not disclosed or applied more locally. Based on the Russian and Western definitions of the concept, this article offers an interpretation of the “compliance” definition. The article analyzes compliance procedures that should not only monitor compliance with current legislation, but also act as a risk-oriented model and take into account factors that affect the implementation of any type of economic activity. In order to reduce possible business risks and comply with legislation on the part of organizations, and to address the issue of responsibility of entrepreneurs on the part of state control and Supervisory authorities, it is necessary to implement a compliance system. The main principles for implementing compliance control are also highlighted. Compliance control should apply not only to a legal entity and its structural elements, but also to a group of individuals. The implementation of compliance control is important not only for business entities, but also for state control and Supervisory organizations, since compliance control allows you to determine the integrity of a business in carrying out its commercial activities, and is also a mitigating circumstance in determining responsibility and punishment.

Keywords: compliance, business activity, compliance procedures, administrative control

1 Introduction

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In 1991, after the collapse of the USSR, a new state was formed – the Russian Federation, which began to actively develop a market economy. The consequence of this was the integration of the state into the world economy, as well as the formation of new legislation regulating entrepreneurial activity as an integral part of the market.

As a warning of risks associated with business, it is worth, first, to note compliance – any action performed in accordance with a specific request.

This term is applicable to different areas: medicine, audit, psychology, production. Compliance is of particular importance in the field of jurisprudence: it is often viewed as a mechanism to ensure the implementation of legislation and regulations. However, this definition is incomplete due to its narrowness and lack of a clear definition of the term in legislative acts.

Problem Statement. We should consider the concept of “compliance” from the point of view of a system of rules and mechanisms/tools, the purpose of which is to normalize commercial turnover through risk management, which applies to any activity, and also to determine the main functions, goals and scope of compliance. **Research Questions.** What is the meaning (definition) of the term “compliance”? What is the scope of the term? How was the term implemented in the field of Russian legislation and other spheres of social life? What definitions, functions and areas of application of the term compliance are possible in the legal field?

2 Methods

The formal legal, comparative, functional, linguistic methods were used in the study. The authors in their article, analyzing the use of the term “compliance” in the social and legal sphere, have also relied on the work of such researchers as Davydova [1, 2], Filimonova [3], Makarov [4], who use in their works such a method as linguistic. In addition to the above, the authors of the works have turned to scientific studies, which analyzed such services as tourism, education, as well as the sphere of public services, implemented using digital technologies [5], *Public Services in the Modern Russian State and Digital World*. The works in which the sphere of legal relations and their transformation under the influence of digital technologies have been considered [6]. Ivanova [7] has written about compliance and relations of property rights of business entities to cultural heritage objects. Bokareva and Karaivan [8] have written about antimonopoly compliance and prospects for its implementation in Russian legislation.

3 Results and discussion

In accordance with English terminology, the term “compliance” should be considered as the execution of an action on any request or instruction. This interpretation is broader and applicable to various areas. So, in medicine, compliance means obtaining the consent of the parties for treatment; in management – compliance with internal requirements; in psychology – a positive reaction to any request; in production – compliance with technological requirements, identification of defects and their elimination; in audit – confirmation from the outside of the compliance of business results with requirements and reality. If any requirement from these and other areas is not met, this is followed by legal consequences, however, when they occur, the term “compliance” usually does not appear due to the lack of its legal confirmation. Nevertheless, the actual meaning of this term – the behavior of the

subject (appropriate or inappropriate) – is still taken into account when determining the legal qualification of consequences. For example, if a patient neglects a doctor's advice, does not follow a prescribed regime, takes medicine without a doctor's approval, or refuses treatment, the patient's behavior is considered reckless. The degree of negligence and further consequences should be considered individually and separately, depending on the case itself and its circumstances (psychological and physical condition of the victim, features of the disease, situation, and so on).

Compliance is also widespread in the legal field. So, according to the Civil Code of the Russian Federation of 11/30/1994 No. 51-FZ (hereinafter referred to as the Civil Code of the Russian Federation), part one, article 53.1, liability for losses to a legal entity arising through the fault of authorized representatives from this legal entity or its leading members who did not implement or illiterately fulfilled their obligations to select and control the activities of representatives of a legal entity, counterparties under civil law contracts, employees of a legal entity, as well as the improper organization of the legal entity management system is a sign of lack of compliance, considered as a risk management system in managing an organization, which are not reasonable or as part of a business.

In the economic context, compliance should be considered as a mechanism of economic control and prevention of adverse consequences, taking into account economic and other features [9, 10], corporate control at the enterprise (micro level) [11] and an instrument of state economic policy (macro level). So, in tax policy, tax compliance acts as a key tool for its formation, and is also implemented as functions of tax administration bodies that carry out tax policy, its legality and ensure the effective implementation of the tax mechanism [12].

In the context of management, risks are determined by internal and external uncertainty, as well as possible and already occurring events (clauses 2.1, 2.10, 2.11, "GOST R ISO 31000-2010. National standard of the Russian Federation. Risk management. Principles and guidelines", approved and introduced into force by Order of Rosstandart dated 21.12.2010 No. 883-st). According to clause 3.17 of ISO 19600-2014 "Compliance management systems — Guidelines", compliance is an activity of an entity aimed at compliance with the requirements set to a legal entity with the help of corporate culture and influence on the actions of employees [13].

In countries with a common law system, such as the United Kingdom or the United States, compliance has been used for a long time, since in these countries the business culture and openness of companies are widely developed [14]. However, due to the change in the paradigm of the business concept, the concept of "compliance" requires revision, which is traditionally associated with external factors and observing the law. The new model of this concept involves not only assessing the company's business practices, but also reducing responsibility due to the creation of a compliance control system [15].

As mentioned earlier, the definition of the term "compliance" is not disclosed in Russian legislation. This term is used more locally, for example, in the banking sector or in the internal documents of specific enterprises. Some elements of the term "compliance" can be found in Federal Law No. 273-FL of December 25, 2008 "On Combating Corruption", which defines measures to prevent corruption, such as: open public procurement, implementation of certain standards and rules, appointment of persons responsible for prevention of corruption, determination of official conduct and adherence to a code of ethics. However, compliance procedures should be applied not only in the anti-corruption area, but also in other legal areas: public administration; antimonopoly, environmental, tax regulation; measures to counterterrorism and so on.

In companies, compliance is implemented in different ways: some of its types (labor, corporate, tax) are necessary for any organization, while others are necessary if there are some specific features or a certain field of activity (for example, corporate procurement compliance, anti-money laundering co-compliance, etc.) terrorism financing, cultural

heritage compliance, etc.). Since the term “compliance” is practically absent in Russian legislation, compliance procedures are often not obligatory, and the responsibilities of an entity include only determining potential risks, their impact strength and consequences.

If a company is legally obliged to apply certain compliance procedures, then it is the company that will determine their content. Their content mostly depends on the organization’s attitude to possible risks and its internal policy as a whole. The state should take measures to develop competition and support entrepreneurship, as well as to ensure compliance with antimonopoly legislation (subparagraph 1 of clause 3 of the Decree of the President of the Russian Federation of December 21, 2017 No. 618 “On the main directions of state policy for the development of competition” (together with the “National Plan for the Development of Competition in the Russian Federation for 2018–2020”).

In the legal field, you can find various definitions, functions, and scope of compliance. Some place an emphasis on external control of compliance — a form of regulation of entrepreneurial activity based on current legislation and requirements from the state [16], others – on the internal control of an economic entity, which does not exclude observing the legislation, but is based on internal goals and the interests of the organization [17].

In a narrow sense, compliance is considered as an observance of legislative acts by entrepreneurs [18] or as a set of anti-corruption measures of corporate culture established by the state or local regulatory legal acts that are mandatory and aimed at increasing the competitiveness and protection of society and the state [19].

As measures to improve the antimonopoly activities in clause 2.1 of the Strategy for the Development of Competition and Antimonopoly Regulation in the Russian Federation for the period 2013-2024 (approved by the Presidium of the Federal Antimonopoly Service of Russia on 03.07.2013) it is proposed by the state the development of antimonopoly institutions, as well as the adoption of norms stimulating the implementation of compliance measures to prevent violations of antimonopoly legislation.

These concepts represent a narrow definition of the term “compliance”, based on the consequences and goals of implementing compliance procedures (for example, preventing violations of antimonopoly legislation and suppressing identified violations, as well as minimizing their consequences).

4 Conclusion

The introduction of compliance control is important not only for business entities, but also for state control and supervisory organizations, since compliance control allows determining the conscientiousness of entrepreneurship in carrying out commercial activities, besides it is a mitigating circumstance in determining liability and punishment. Compliance should be considered not only as a mechanism of administrative control carried out under antimonopoly regulation, but also as a way of an entrepreneur’s self-control for foreseeing risks and minimizing their negative consequences.

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