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Models of the anti-corruption "compliance control" system in foreign countries and their specific aspects: The example of the US and UK legislation

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Annotation The article includes the necessity of creating an anti-corruption "compliance-control" system, its international models, specific features of the system, positive achievements of implementation in the private sector, and scientific and comparative analyzes of legal norms in this direction, on the example of the legislation of the USA and Great Britain.

Keywords: US model, US SOX and FCPA laws, extraterritorial, Enron scandal, UK model, Bribery Act, procedures, due diligence.

In the international experience, the emergence of the anti-corruption "compliance control" system is one of the effective trends reflected in the national legislation of most developed foreign countries. By itself, in this process, the policy of the states in this field is related to the introduction of the "compliance-control" system into its national practice, which aims to improve the internal departmental control mechanisms of each state organization, including the private sector.

It should be noted that the introduction of the "compliance-control" system and the reflection of these relations in foreign legislation created unique models in their experience.

At the same time, if we look at the history of the development of today's economically developed countries, the system of "compliance control" in the activities of state organizations and the private sector has become an integral part of the corporate culture that allows building business according to high corporate standards.

Accordingly, it is precisely the developed countries and their positive practices in this field that allow us to understand this direction from a wider comparative perspective, in the analysis and clarification of its specific aspects from a scientific and methodological point of view.

In particular, below we will consider the "models" of the compliance control system that are widely used in the international experience as an example of the experience of foreign countries.

The "American model" of the "Compliance-control" system: the introduction of the compliance control system to fight against corruption in the economic development of the United States, the emergence of corporations and companies with large economic potential in the country, and if corruption is a problem in their activities, another aspect is the fact that the US markets are becoming the world's economic center. it happened.

The legal consolidation of this system in the US legislation was in 1977 with the "Foreign Corrupt Practices Act of 1977" [1] and in 2002 with the "Sarbanes-Oxley Act of 2002" [2] adoption of the compliance control system mainly created the "US model" of fighting corruption in the foreign activities of companies.

Emergence of these laws and relations in it

It is possible to consider the specific aspects of the organization of the "compliance-control" system, dividing it into 2 stages.

The first stage is related to the adoption of the "Act on Combating Corruption Abroad". American compliance expert Anna Ebergard in her scientific article shows that the adoption of the FCPA and the main requirement in it is the establishment of a compliance service within corporations and companies [3].

The requirements of the "Compliance-control" system mainly apply to companies with state participation, as a result of its analysis, the following specific aspects can be shown:

strict control rules have been established, incorporating the anti-corruption policy;

accounting forms and requirements for financial documents were introduced;

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strict rules have been established regarding the company's relations with state officials and foreign state officials;

no material to any foreign official, as well as candidates for political positions and political parties Procedures for combating corruption cases aimed at creating, promising or offering any kind of immaterial benefits are defined.

According to the jurisdiction of this legislation of the USA, it was determined that it will be fully applied to the activities of not only the citizens of the country, but also any physical and legal entities (national and foreign) regardless of their citizenship.

Due to the extraterritorial nature of the FCPA, not only business entities registered in the United States, but also foreign companies operating in the United States are focused on regulation.

 If it is doing business in the USA;

 if commercial shares of foreign business entities are listed on the state stock exchange;

 If the US has established a special relationship or cooperation with corporations and companies, and the activities of companies acting on their behalf, the requirements of the law will be applied [4].

In addition to the creation of an effective management system of internal accounting reporting and financial activity of legal entities, this law provides timely identification and prevention of corruption risks when establishing cooperation with their counterparties (parties entering into contracts in civil legal relations), and to be free from corruption-related offenses in general activities. determines the introduction of measures to ensure

The FCPA is implemented by ensuring the transparency and accuracy of accounting controls as one of the main measures to prevent corruption in the activities of legal entities. It is mandatory for every organization, regardless of the form of activity, to maintain an accounting control system independently in accordance with the principles of transparency in order to minimize the cases of effective corruption and prevent the cases of economic violations, and it is also the law that defines the mandatory rules aimed at preventing cases of counterfeiting in any form. It can be understood that it contains elements of the "community-control" system. Based on this, in the "Trade and Commerce" section of the law, "report forms; accounting books, records and management accounting; The order of orders" and the requirements set for them are listed:

(A) ensuring the regularity of the transactions and financial transactions carried out in the company in clear, transparent and fair numbers of accounts;

(B) execution of contracts and transactions between companies only with the general or special permission of the management

(C) preparation of financial statements in the structure of transactions, focus on accounting principles or prevention of possible corruption risks is of particular importance [5].

In our opinion, a brief analysis of the law shows that the main task of the "compliance-control" services organized in the activities of public and private sector participants is to protect the reputation and image of the organization, the company, and to systematically implement mechanisms to prevent corruption risks in relations with counterparties. It can be seen to include procedures for creating and complying with legal requirements.

Through scientific analysis, it can be understood that, based on the experience of the USA, the main task of "compliance" is aimed primarily at prevention (prevention) of any forms of corruption based on the principle of independence of each participant in accordance with the general rules.

The second stage, the further development process of regulatory improvement of the "compliance-control" system in the USA, coincides with the adoption of the next law "Sarbanes-Oxley Act" (SOX) in the USA.

In the scientific analytical article "The Enron scandal that led to the adoption of the Sarbanes-Oxley Act" by the American economist Professor Rosemarie Carlson, who led to the adoption of the Sarbanes-Oxley Act, the adoption of this law is associated with deep problems in the corporate governance system of large companies in the United States and dishonest leaders of the companies. It is argued that it is the result of a series of related corruption cases.

That is, in the early 2000s, "Enron, WorldCom and Global Crossing"

It is related to the occurrence of major financial and corruption scandals involving companies and corporations [6]. One of the main reasons for the occurrence of such cases was the lack of strong anti-

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corruption mechanisms in the internal departmental system of the organization, and it can be said that these cases were the reason for the adoption of the SOX law.

The law further improved the "US model" by extending the anti-corruption policy, which constitutes a "compliance-control" system, to the activities of enterprises.

The law, through its anti-corruption policy, which constitutes a "compliance-control" service, "US mod eli" was further improved. The law significantly and comprehensively strengthens the requirements for the financial reporting of companies and organizations and the process of its preparation. Unlike the FCPA, the obligation of a corporate code of conduct, which is mandatory for public organizations and, in turn, for companies of all forms, has been established.

Another unique aspect of the law was that, since 2002, any company and corporation participating in the New York Stock Exchange (NYSE) in the United States must unconditionally obey the requirements established by the laws of the United States in the field of combating corruption, and it has an anti-corruption "compliance control". ” established obligations to introduce the system.

Here, US compliance expert Allen Roberts

He has carried out scientific research on the analysis of SOX, in which he points out the following main aspects in the regulation of the compliance service.

Accordingly, it will be possible to analyze the rules related to the organization of the "compliance control" system in accordance with the requirements of the law in several parts.

Scope of compliance provisions in the Sarbanes-Oxley Act. The law requires business activity directly in the United States

applied to all national and foreign companies and their subsidiaries (subsidiary companies) operating through the stock exchange. The auditing requirements of SOX apply to accounting firms that perform audits of companies. Private companies, charities, and not-for-profit organizations generally follow only certain accounting requirements of SOX.

Protection of whistleblowers about corruption offenses. In accordance with norms such as "responsibility for financial reporting" in Article 302 of SOX and Article 404 "management and evaluation of financial control" [7], the management of the company is directly responsible for the accurate and transparent documentation of financial statements, the proper organization of anti-corruption mechanisms, and the effective operation of the compliance service. was determined to be.

In order to ensure true transparency in the company's activities, it specifies the specific rules of the procedure for informing the "compliance-control" structure or authorized state bodies in this direction about violations related to corruption.

Internal Audit Policy of SOX. The audit policy, which is another solid structural element of the "Compliance-control" service,

It is reflected in Articles 101-109 of SOX, which includes the norms related to accounting control and auditing procedures.

Every company that is subject to the requirements of the law has established a "Society of Supervisory Boards for the Management of Financial Statements of Companies", and it is established as a mandatory rule that companies conduct audits at least once a year in order to check that their activities are free of corruption risks. In this process, in order to prevent any appearance of conflict of interest, external audit firms are involved that are not related to the company's activities. Another specific provision of the law is that the results of the audit conducted by the auditor should be presented not to the representatives of the company, but to the "Audit committee" (Audit committee) [8], which is a state body.

It can be understood that the intervention of the state in these processes consists in collecting information about the extent to which the company is free from corruption risks and making a conclusion decision on this.

It should be said that in the process of conducting scientific research within the framework of the scientific dissertation, a number of scientists and experts in the scientific field have expressed doubts about the emergence of "compliance control" and its consolidation in the US legislation, and especially that its development is related to the adoption of the Sarbanes-Oxley Act. It was witnessed that it was covered in detail through his articles.

As a clear example of these, Allen B. Roberts "Demystifying Sarbanes-Oxley: Suggestions for Public and Private Company Preparedness and Compliance with Employment and Whistleblower Provisions", Susan

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Lorde Martin "Compliance Officers: More Jobs, More Responsibility, More Liability" Anne Eberhardt " How the Foreign Corrupt Practices Act Came to Be", Rosemary Carlson "The Enron Scandal That Prompted the Sarbanes-Oxley Act", E. Ivanov "Compliance control against corruption in the BRICS countries", Jeff J. Marville and Jeru J. Burgdoerfer In a number of scientific articles, such as "Compliance Programs for Private Companies", specific aspects of the above-mentioned laws and their classification have been specifically addressed.

In conclusion, it can be said that the adoption of the "Sarbane-Oxley Act" is considered one of the main factors in the real development of "compliance control" in the USA, and the following aspects can be pointed out separately:

1) every country participating in the US market since 2002 by law it was established as a conditional rule to introduce internal departmental anti-corruption mechanisms within day companies;

2) established as a mandatory rule the adoption of the corporate code of ethics, the adoption of which is mandatory for all types of companies and is one of the main elements of the "compliance-control" system;

3) the law established the legal procedure for protecting whistleblowers about corruption offenses;

4) The organization, which is one of the main elements of "compliance-control" with the law, includes a number of effective elements in its activities, such as preventing conflicts of interest, maintaining a transparent order of economic legislation, and assessing possible corruption risks in personnel policy.

The "UK model" of the "Compliance-control" system:

The next appearance of the formation of the "compliance control" system to fight corruption in the world economy is related to the legislation of Great Britain. The UK Bribery Act [9] was passed on 8 April 2010 and came into force on 1 July 2011.

This law is one of the widely discussed foreign acts in the field of combating corruption and widely discussed by foreign countries and international companies. The main reason for such discussions at the international level is the obligation to apply the provisions of this law not only in Britain, but also to foreign companies and individuals who are not British citizens.

A number of norms of the law had a significant impact on the reorganization of the anti-corruption policies of companies of various foreign countries.

In this regard, we analyze the development of the compliance control system to fight against corruption through a number of provisions reflected in the British law under research in the scientific work and the uniqueness of the "Great Britain model" in this field. The impact of the law on the development of anti-corruption compliance services not only in Britain, but also in various foreign countries and companies depends on several factors.

The first reason is that most provisions in the law contain clear mechanisms to protect companies from corruption offenses and their criminal liability.

UK law does not require companies to adopt an anti-corruption policy or to appoint dedicated departments and staff with separate staffing units to carry out anti-corruption tasks. In this case, the law envisages the establishment of "Adequate procedures" (Adequate procedures) [10] to prevent corruption in the organization of the company's activities. The introduction of these procedures in companies is the main factor for the proper organization of anti-corruption activities, and there is no need for the organization of separate entities. Implementation of such procedures in companies is an effective system for protecting them from criminal liability related to corruption.

Also, these procedures, in addition to the risk of liability of the companies, also serve the results of maintaining the image of the activity in a uniform manner, protecting it from various risks that damage its reputation.

The second reason is that the provisions of the UK Bribery Act apply directly to foreign companies, or that such influence is exercised through British companies.

Section 9 of the Act contains specific recommendations to establish a "British model" of anti-corruption compliance monitoring. Procedures and regulations aimed at preventing corruption offenses in companies according to it

Guidance published by the UK Ministry of Justice states that it should be developed in accordance with the above recommendations.

In 2011, the Ministry of Justice recommended 6 principles aimed at introducing anti-corruption procedures in companies:

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Proportionality of procedures. In this case, the procedures introduced should correspond to the level of risk faced by the company, its size and the characteristics of the business.
Responsibilities of senior management. In this case, the top management and owners of the company should take measures to prevent crimes related to corruption by the company's employees and take measures to form an intolerant attitude towards corruption in the employees.
Risk assessment. Corruption risks in the company should be assessed taking into account internal and external risks. Risk assessment should be conducted periodically and its results should be formalized.
Due diligence (due diligence). The company must apply appropriate procedures to persons acting on behalf of or on behalf of the company to reduce the occurrence of corruption-related crimes.
Communication (including teaching). Company employees
and enforce an anti-corruption policy among its partners i, including measures for their continuous training should be taken.
Monitoring of procedures. The company should regularly monitor the anti-corruption procedures and make changes to them when necessary [11].
Based on the above analysis, there are several key features of the UK anti-corruption legislation in the organization of the compliance control system rules:
includes a set of specific mechanisms aimed at preventing such acts of persons prone to commit corruption, bribe takers;
liability for corruption offenses affecting not only UK companies and their officers, but also foreign companies;
the organization of companies on the basis of "Responsive Procedures" which organizes the fight against corruption is defined as an obligation not only for companies registered in Great Britain, but also for foreign companies operating in the country;
British legislation, unlike US legislation, not only determines the liability of public sector officials for corruption crimes, but also for corruption cases that occur within the framework of relations between private companies and private sector officials for corruption crimes;
The law does not clearly define what constitutes a bribe and its amount, but it can consider cash payments and various services that lead to corruption, such as a free membership to an expensive sports club or the use of a car, and recommends specific measures to prevent such compliance risks. .

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