

#12



UNIC

BUSINESS INTEGRITY DIGEST

Compliance in the
agricultural sector

December 2019



As a follow-up of the recent Digest on [Interacting with Third Parties while doing business in Ukraine: Overview](#) UNIC proceeds sharing best practices with the UNIC members to help them improve their compliance and business integrity level.

The UNIC team would like to recognize the efforts of the Digest working group from Kernel company:

- Olena Dubovska, Compliance Officer
- Anatolii Udivanov, Head of legal service
- Olena Bogusheva, Lead Manager, Quality Management System

We hope that the guidelines can make a practical contribution to concerted effort to create better transparency in your companies.

Gaiane Karakashian,
Head of the UNIC Secretariat

SECTION I: LEGAL FRAMEWORK OF COMPLIANCE

The function of compliance remains new to Ukraine's agribusiness. Counteraction to corruption and all other manifestations of fraud in the agricultural sector means a long-term organized effort, and Ukraine pays much attention to it due to the country's ongoing ambition to integrate into the international space. The implementation of the compliance function allows participants of all business segments to act more effectively, promoting the atmosphere of trust and transparency both on the domestic market and on the global arena. The inclusion of compliance measures in day-to-day operating processes will help minimize risks and establish the right business culture complying to both national and international legislation.

The implementation of the compliance principles in the activities of Ukrainian companies, in particular, in the agricultural sector, proceeds from the support for international and national initiatives and the creation of an anti-corruption ideology in business.

COMPLIANCE SPECIFICS OF THE AGRICULTURAL SECTOR

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Ukraine lives under conditions of intensive political restructuring which includes creation and improvement of the national legislation and support for international anticorruption initiatives. As seen from this aspect, one distinctive of Ukraine's agribusiness is the fact that Ukrainian agricultural companies supply agricultural products to external markets. Therefore, the local agricultural products must meet the requirements of all business partners.

To be able to successfully develop their business at the international level, it is important for Ukrainian agricultural companies to confirm that the offered raw materials and products have been grown and produced by enterprises whose business is in line with the requirements of the applicable laws, world quality standards, and established ethical and operational norms of business in combating corruption and fraud, as well as risk management with regard to international sanctions.

INTERNATIONAL AND UKRAINE'S LEGISLATION

The strengthened economic cooperation between Ukraine and other world countries created conditions for joining efforts in combating corruption. Such cooperation develops within the framework of international

organizations for whom the corruption prevention and counteraction is a business priority.

Ukraine has ratified and is intensively implementing the core international anti-corruption acts:

- United Nations Convention against Corruption ratified by Ukraine in Law No. 251-V dated October 18, 2006.
https://zakon.rada.gov.ua/laws/show/995_c16
- Council of Europe Criminal Law Convention on Corruption No. 173 effective October 18, 2006 in Ukraine.
https://zakon.rada.gov.ua/laws/show/994_101
- United Nations Declaration against Corruption and Bribery in International Commercial Transactions.
https://zakon.rada.gov.ua/laws/show/995_369
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Exterritorial Legislation

Exterritoriality of legislation played an important role in the implementation of compliance principles in business, in particular, in the agricultural sector. Among the international acts that have a significant impact on the fight against corruption in Ukraine, the following should be highlighted:

- The U.S. Foreign Corrupt Practices Act (FCPA) effective since 1977 – www.justice.gov

- The U.K. Bribery Act/UKBA effective since June 01, 2011 – www.legislation.gov.uk
- Law of France SAPIN II – www.legifrance.gouv.fr

The scope of these laws covers anticorruption activities, prohibiting bribery of foreign officials, including representatives of foreign bodies of state power, public international organizations or their representatives, and individuals in commercial organizations.

It is worth noting that in Ukraine the extraterritorial principle is already reputed as an effective anticorruption instrument.

Ukraine: Anti-Corruption Laws

The international practice of compliance implementation has a history of many years behind, a developed database of legislative acts and a number of precedents to improve them. All this complex allows using international initiatives as a legal framework for the national legislation in the aspect of compliance policy implementation in all business sectors both at the governmental level and in the internal business processes of companies.

To counter corruption in Ukraine, Ukrainian legislators have adopted the following laws of Ukraine:

- "On the National Anti-Corruption Bureau of Ukraine" (2014), "On Corruption Prevention" (2014), "On Public Procurement" (2010), "On Preventing and Countering Legalization

(Laundering) of Proceeds from Crime, Financing of Terrorism and Proliferation of Weapons of Mass Destruction” (2014)

In addition, in order to improve the effectiveness of fight against corruption in Ukraine, amendments have been made to the Criminal Code of Ukraine, the Administrative Code of Ukraine, decrees of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, orders of the Ministry of Justice of Ukraine, resolutions of the National Agency on Corruption Prevention, etc.

INTERACTION THROUGH ASSOCIATIONS

Apart from the anticorruption legislative framework, agricultural sector representatives act through business associations operating on the market. This interaction allows outlining the circle of issues facing sector participants in order to obtain professional consultations from experts and prepare petitions to government authorities. The key advantage of participation in associations is the possibility of feedback from the state at the level of organizations. Individual petitions from agricultural business representatives regardless of their forms of ownership are less effective in terms of communicating and resolving issues as compared with petitions from associations.

Agribusiness, as well as other business areas in Ukraine, is constantly at risk of corruption. The implementation of the compliance function based on international anticorruption

requirements will contribute to raising the level of trust to Ukrainian agricultural companies on the global arena, attracting investments and implementing innovations, and will make a positive example of partnership within the country, become an instrument of protection for shareholders, investors, top management, and other stakeholders from anticorruption risks.

SECTION II: IMPLEMENTATION PRINCIPLES OF AN EFFECTIVE COMPLIANCE PROGRAM

The world practice of creating and implementing anticorruption programs is well-developed and extra-territorial. The Ukrainian experience of compliance implementation in agricultural companies is currently in progress, seeing adaptation to national realities. The fact that in the period from May 2018 to April 2019, Ukraine become one of the top three leading countries exporting agricultural products to the EU* testifies to the huge importance of the adoption of international compliance values by domestic agricultural companies.

Although the agricultural business has started only recently to introduce compliance, the available mechanisms and methods based on international practice, taking into account the requirements of national legislation, allow sharing the achievements

*<https://www.epravda.com.ua/rus/news/2019/07/1/649235/>

in and methodologies of adapting anti-corruption practices and developing effective corruption detection programs.

Compliance Control Structure and Strategy Implementation

The purpose of a successfully implemented compliance function in an agricultural company is to protect shareholders, top management, the staff, and contractors from compliance risks. As in other areas of a company's activities, the starting point for an anticorruption program is a relevant initiative from the management, so to speak, “an instruction from above”, a decision of the company's board of directors.

The board of directors and the general director play the key role in maintaining the compliance culture and risk management. They are responsible for assessing the existing compliance function, check compliance risk management, approve compliance policies and procedures for the company, etc.

The following company representatives manage and implement the compliance strategy:

- compliance officer – responsible for the implementation of the compliance function, ensures compliance with national and international anticorruption requirements, regime of economic sanctions, reports to the general director and the board of directors

- company management - responsible for day-to-day compliance risk management, observance of the regulatory requirements and internal policies and procedures of the company.

The implementation of the compliance function in the company's business processes is in stages as follows:

- 1) risk analysis and preparation of strategy implementation routes;
- 2) creation and development of the compliance function;
- 3) extended integration with business, and monitoring.

Implementation and Development of the Compliance Function

The basis of an effective compliance function is a balanced compliance program and its competent implementation to prevent, identify, and eliminate potential risks.

The factors of increased compliance risk in the operation of agricultural companies include: the degree of government supervision in a specific jurisdiction; reliability of the persons dealing with government bodies on behalf of the company; business strategies currently in use; interaction with tax and customs authorities; dependence of the company's business on specific licenses/permits, etc.

The components of the compliance system can be divided into three groups:

Preventive measures:

- Corporate code and Compliance policies and procedures. These include: Policy to regulate conflicts of interest and counter fraud and corruption, Security Policy, HR Policy, Procurement Policy, Risk Management Policy, Equal Opportunities and Cultural Diversity Policy, Policy of Sustainable Development and Corporate Social Responsibility, Code of Conduct with Suppliers, Procedure for the receipt and consideration of information received through the hot line channels, Procedure for business gifts and hospitality management, Procedure of the protection of informers, Procedure of the interaction with local communities, Procedure for charitable payments, Corporate investigation procedure, Contractor verification procedure, etc.
- Regular reporting to the Board of Directors. Establishment of the position of compliance officer.
- Training, communication, and individual consulting support for employees of all organizational units.

Violation detection mechanisms:

hot line; monitoring / audit / corporate investigations; informer protection program, contractor verification.

Corrective measures:

Monitoring of the implementation of corrective measures; implementation of internal controls; disciplinary mechanism.

As is seen, the compliance system is not a code of theoretic rules, but an effective tool based on real-life practice.

Corruption and bribery control vector

The anti-corruption legislation and the codes and procedures created on its basis govern the relations between agricultural companies and other market participants, including representatives of the public sector, contractors, and individuals. The key risk areas in this matter include:

- Provision of an illegal benefit to an official;
- Business relations with contractors involved in corrupt activities;
- Financing of political parties, organizations, and movements, charitable and sponsorship projects with the ultimate goal of commercial advantages;
- Coverage of any expenses incurred by civil servants and their close relatives (or in their interests) with the ultimate goal of commercial advantages, including their travel, accommodation, entertainment, PR campaign, and other costs;

- Involvement of intermediaries, partners, agents, joint ventures, or other persons to carry out any actions that contradict the principles and requirements of the corporate code or the rules of applicable anti-corruption legislation;
- Inaccuracy or falsification of the company's business and financial reporting.

The vector of compliance-control of agricultural companies is tasked to prevent such situations. To address the potential risks, three lines of defense are introduced. Specifically, the management is responsible for managing risks in business operations. In fact, compliance is an integral part of the risk management system, performance control, and prompt verification. The internal audit generates needed recommendations as a source of independent, regular, and comprehensive risk management checks.

Risk Management Tools

In order to ensure the absolutely fair and open work, counter corruption and fraud, and prevent conflicts of interest, agricultural companies may use the following tools:

- A corporate code to be implemented and observed, whose rules have been communicated to each staff member without exception through training sessions or online courses. Such a corporate code is a guarantee of transparency and honesty in relations with colleagues, shareholders,

investors, and partners.

- An anti-corruption clause developed and included in each agreement and contract. The anti-corruption clause which includes binding guarantees and obligations to comply with the anti-corruption legislation and international sanctions regime.
- A contractor verification procedure to be implemented to manage the risk of cooperation with unreliable contractors and observance of the regime of international sanctions.
- The Security Department checks business partners for the presence of risk factors such as sanctions, corruption, money laundering, terrorist financing, etc. If a contractor meet certain criteria, it becomes subject to an additional risk assessment process conducted by a compliance officer.
- A code of conduct with suppliers introduced into business practice, a code that regulates observance of the principle of strict abiding to law, relations with partners, compliance with the environmental protection rules, etc.
- Limits set on business gifts and business hospitality.
- All gifts and facts of business hospitality exceeding the specified limits are required to be registered in the internal register and available in the public domain for the staff.

- A 24-hour hotline to be set up for reporting violation facts and suspicions.
- Prohibition of harassment of persons who report violations.
- Internal investigations and disciplinary penalties on the perpetrator if a reported violation finds confirmation.
- Checking job applicants at the time of hiring for negative reputation and facts revealing a potential conflict of interest.
- Control of employment of former civil servants.
- Declaration of cases involving conflicts of interest between employees, upon the results of which regulatory action is taken.
- Updating the internal work regulations as an element of disciplinary mechanism
- Individual consultations to employees if there are different readings of the same situation or to better understand the rules and principles of the company's corporate code and compliance policy.

The implementation of the compliance function ensures the fulfillment of legal requirements to the state and partners, improves confidence in effective risk management and has a positive effect on the results of the company's operations, and achievement of the set goals,

that is, directly promotes the company's reputation on both the domestic and international markets.

SECTION III: AGRIBUSINESS: CORPORATE SOCIAL RESPONSIBILITY AND PARTICIPATION IN NON- GOVERNMENTAL ORGANIZATIONS

The formation of preconditions for sustainable development of the state in general and its specific regions depends on growth not only in the industrial potential, but also in the natural resource, demographic, research and technological, recreational, information, and socio-cultural potentials. An integral part of this process is corporate social responsibility of agricultural enterprises in the locations of their business. The social and communal activism of agribusiness representatives is manifested in their interest in the life in the regions of their presence, development and implementation of development programs that meet the needs of the location where they conduct their agricultural activities.

Agricultural companies study the needs of the regions, find contractors, allocate funds for the construction of schools and roads, promote the creation of jobs, invest in energy-saving

technologies, etc. All this has a positive effect on the development of Ukrainian villages in general and on the agricultural sector in particular, of the infrastructure of regions, expansion of social opportunities for residents, etc. At the same time, the intensive development of regions and initiatives of agricultural companies often create compliance risks, particularly, when it comes to cooperation between business and local representatives.

Compliance Tools as Part of Corporate Social Responsibility

The special feature of agricultural social responsibility is the relations with landlords and local communities. The cooperation of agribusiness with landlords is based on the principles of honesty and transparency. These principles are declared in business regulations, company charters and procedures. Representatives of agricultural companies closely communicate with landlords to understand the needs of the region, to study the social, economic, and environmental problems of the location, local budgeting, etc.

In order to interact with local communities on the compliance principles, the following tools are used:

- ✓ general meetings in locations;
- ✓ annual approval of the budget and the development plan for the region based on general meeting decisions;
- ✓ expense reporting (reports and internal accounting documents);

- ✓ audits of budget spending as intended;
- ✓ consulting;
- ✓ speeches of the compliance officer at general meetings;
- ✓ checking of contractors for presence of stakeholders, etc.

The corporate social responsibility of agricultural companies creates infinite opportunities for the development of the regions of presence. Taking into account the fact of Ukraine's ongoing geographic export expansion, the development of new markets will be impossible without improving various aspects of business, relations with the state and representatives of local communities. The comprehensive development includes quality products, pricing, and implementation of world business communication standards. An additional benefit from the implementation of a compliance strategy in the area of corporate social responsibility efforts of companies is the creation of an effective tool for changing the old business practices in the regions and a way for replacing the stereotypes of corrupt cooperation with new transparent models.

SECTION VI: FINISHED PRODUCT STANDARDS AND CERTIFICATION IN THE AGRICULTURAL SECTOR

One distinctive of the agricultural business lays in the fact that the producer is responsible for the entire chain of stages of the product's life cycle,

from growing to the finished product. Moreover, the agricultural products produced in Ukraine are part of the general export, representing the country all over the world, and as such, it must comply with international quality and safety standards.

As for the national legislation, agricultural companies are governed by laws and state standards that regulate the production of products that fall within the scope of operation of agribusiness. In particular, if a company specializes in grains and oilseeds, food products on their basis and animal feed, it is governed on Ukraine's market by the laws "On the Basic Principles and Requirements for the Safety and Quality of Food Products," "On Grain and the Grain Market in Ukraine," "On Safety and Hygiene of Feeds" etc.

International Standards

To preserve the competitive advantage on external markets, it is important not only to observe the national legislation, but also to confirm compliance with the requirements of other countries (http://www.consumer.gov.ua/ContentPages/Vimogi_Krain_Svitu/97/). This need gains even more weight in light of Ukraine's association agreement with the European Union, which requires the approximation of the national legislation to the requirements of EU directives (https://europa.eu/european-union/law/find-legislation_en).

All this acts as a precondition for the confirmation of voluntary certification for

compliance with international standards (<http://www.fao.org/fao-who-codexalimentarius/codex-texts/list-standards/ru/>).

Specifically, the following international standards are of interest to agricultural companies:

- ✓ ISO 9001 – Quality management systems
- ✓ ISO 22000 requirements, a food products safety management system. Production and supply chain organization requirements
- ✓ FSSC 22000 – food safety system certification (ISO 22000 + ISO / TS 22002-1 + additional requirements)
- ✓ IFS food – international featured standards for food This is a standard for food product quality and safety inspections <https://www.ifs-certification.com/index.php/en/standards/251-ifs-food-en>
- ✓ GMP + B1 – Production, Trade, and Services
- ✓ GMP + B3 – Trade, Collection and Storage & Transshipment
- ✓ GMP + B4 – intermodal road/rail transport, chartering <https://www.gmpplus.org/en/certification-scheme/gmpplus-fsa-certification/b-documents/>
- ✓ ISCC – EU – International Sustainability and Carbon Certification – EUROPEAN UNION <https://www.iscc-system.org/process/audit-and-certification-process/iscc-system-documents/>

Possible Risks Arising from Non-Compliance

Loss of control and failure to meet the requirements of the national legislation and international standards threatens to create the following zones of risk:

- 1) Risk of products of non-conforming quality is the most important risk targeted by all

certified systems of management, including both preventive measures and further detection of incidents. Under an advanced culture of compliance with laws and rules, such incidents are completely impossible. An effective tool for preventing and promptly responding to such risks is imitation of situations of their detection in the operational environment.

- 2) Reputational risks – in a competitive environment pose a development threat to a company of any type of business.
- 3) Loss of consumer confidence, which directly leads to financial losses.

Thus, observance of applicable requirements compliance and the compliance policy should be extended to each link in the company's operation chain in order to counter corruption and legal violations – from growing to finished product logistics.

SECTION V: RECOMMENDATIONS ON HOW TO FOLLOW COMPLIANCE PROGRAM REQUIREMENTS IN AGRICULTURAL COMPANY

The energetic efforts to implement compliance in Ukraine is proof is the interest of national business in creating a transparent business model and of its

orientation to international integration. The anti-corruption policy as a component of compliance plays a key role in these processes. In view of this, Ukrainian companies continue to improve the existing tools and intensively implement new effective mechanisms for combating corruption in their business processes. An integrated approach to the implementation of a compliance system and creation of a powerful control vector will facilitate the establishment of transparent relations among all market participants.

The measures to effectively implement a compliance program should include:

- Analysis of the existing business processes for corruption and compliance risks, with their subsequent revision and updating, if necessary.
- Development of policies and procedures corresponding to the company's areas of business, regulating them include risk minimizing mechanisms along with a list of disciplinary and administrative sanctions for failure to comply with them.
- Updating of information systems, databases, and software programs in accordance with the principles of personal data protection.
- Assistance to employees in relevant actions through individual training.
- Work with incidents, including the practice of imitating their occurrence in the operational process as preventive and educating events, as

well as the resolution and analysis of actual cases to avoid such situations in the future.

- Introduction of a hotline to receive information about breaches of the rules of business conduct and corporate ethics. To increase trust in this tool among the staff, the operational principles of the hotline must be clearly stated in the company's internal documents.
- Protection of employees/third parties reporting corruption facts. The global anti-corruption practice involves the development of instructions regulating the application procedure, the mechanism of internal verification of reported facts, and confidentiality guarantee.
- Corporate Compliance Trainings It is important that such training courses are regular and customized to the area of work of employees. One example may be courses intended for managers working the most corruption-prone areas (such as procurements, contacts with civil servants, etc.).
- Corporate newsletters, news on the corporate portal about anti-corruption legislation updates, as well as detected corruption facts and their consequences.
- Creation of a register of gifts whose value exceeds the limit set in the internal rules. It is important to keep this register accessible for all employees and auditors.

- Checking of contractors, business partners, suppliers, consultants, brokers, and third parties for corruption and sanction risks, countering of money laundering and tax financing.
- Development of the anti-corruption clause which includes binding guarantees and obligations to comply with the anti-corruption legislation and international sanctions regime. Inclusion of the anti-corruption clause in contracts and agreements.

Principles of Compliance Measurement

An important element of compliance strategy implementation is regular implementation progress checking. Compliance is measured using the following principles:

- 1) Level of compliance culture. Includes the company's top management's compliance with "instructions from above"; the relevant behavior of the staff (involvement, attitude, ability to recognize potential compliance non-conformity); absence of repeated violations; rapid-response corrective actions, as well as the staff's 100 percent knowledge of the company rules.
- 2) Protection of informers. The protection system should be built on the principle of reinforcing the trust and confidence of employees. For this purpose, reports of possible violations should be placed in a

positive context.

At the same time, investigations are carried out promptly, with unavoidable punishment of the perpetrators.

- 3) Effective compliance risk management. Includes identification of the most important risks, systematic monitoring of effective controls, updating or implementation of additional controls, shortened time for the implementation of recommendations on the audit results.
- 4) Attention not only to the issues of fraud, but also to unethical behavior or misconduct.
- 5) Effective compliance policies and procedures. The list of rules should bind the operational activities with compliance requirements. In this field, an important step for every company is to create and implement a unified system of regulated business processes with sufficient built-in internal controls. The basis for such a system is a risk-oriented approach, activity structuring, and identification of business process owners. Internal standards should clearly and transparently define the rules for implementing business processes and areas of responsibility of the participants, while keeping intact the powers distribution rules. All regulatory documents should be timely revised and supplemented, as well as updated to be brought into line with ongoing changes in the applicable legislation and compliance requirements.

The absence of the compliance function, an insufficient level of control or implementation of it is immediately felt in companies in all spheres of their business and interaction with the state. The negative consequences of such a state of affairs include a bad business reputation, lost investment attractiveness, financial losses (fines, defaults on contracts, suspension of account transactions, invalidation of specific transactions), risk of sanctions, forced audits, etc.

In contrast, the uncompromising regular work to implement compliance helps avoid the above risks, increase business transparency, attract international capitals both to the company and to the country, thus promoting growth in the country's economic potential on the global stage. Compliance is an important element of business, regardless of the company's area of presence and registration. In addition, compliance is a way of raising public awareness about the rules of business, tolerance, and respect for oneself and others. The implementation of the compliance principles depends on each of us.



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If you would like to receive further information on any of the matters discussed in this Business Integrity Digest, please contact us at info@unic.org.ua.

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