IMPACT OF DIFFERENCES IN LEGAL RISK ASSESSMENT ON COMPLIANCE NORMS IN MULTINATIONAL CORPORATIONS

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1. VARYING LEGAL RISKS MANAGEMENT AND CREATION OF COMPLIANCE NORMS

The differences in methods of creating internal regulations observed in various corporations stem not only from legal differences, but also from different methods of estimating legal compliance risks adopted by them. These estimations are made on the basis of quantitative methods. There the legal risks management is based on continuous measurements. While performing such measurements, it is assumed that any risks accompanying activity of corporations, including non-compliance risks should be assessed similarly as it is done in the case of other operational risks.[1] Namely, it is based on two basic parameters: probability of occurrence and the severity of impact. The probability of an unwanted future occurrence is reflected in percentage terms based on the estimations of experts (best guess approach). Its analysis is made on the basis of historic observations considering the recorded past events. The impact of foreseeable consequences, on the other hand, is measured on

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[1] Interestingly, some researchers indicate there are other, less measurable, factors influencing the risk profiles of companies. This article refers to the cultural differences as one of the groups of these factors to be taken into account. It does not refer, however, to other factors, like e.g. the individual characteristics of leaders that equally could be factored into the analysis of this matter. See J.B. Delgado-García, J.M. De La Fuente-Sabaté, E. De Quevedo-Puente, *Too Negative to Take Risks? The Effect of the CEO's Emotional Traits on Firm Risk*, British Journal of Management Vol. 21, No. 2, 2010, pp. 313 ff.

the basis of the magnitude of potential losses that could be suffered by the corporation if an unwanted occurrence took place.[2]

Another key question for this kind of analyses refers to culture-related differences in the degree of acceptance of a risk level.[3] The lack of acceptance of a high level of risk entails the necessity of creating mitigating mechanisms which decrease its probability and impact.[4] The size of this risk acceptance primarily has been universally jargonized and then adopted into the official language as a risk appetite, i.e. the level of the accepted risk. Consequently, this legal risks acceptance or appetite influences the decisions on the types of risk mitigations to be applied.

Therefore, analysing the impact that cultural differences may have on the method of creating compliance norms refers to the tradition of legal cultures, yet not only.[5] The characteristics for various geographies have to be taken into account as well as the individually appropriate readiness, unique for each corporation that decides upon the particular types of risks it is ready to take.[6] Be it the risk of non-compliance with the normative environment or just the risk of suffering reputation losses. For multinationals operating simultaneously on multiple markets, it is the geographical division based on different legal systems in differing jurisdictions together with their particularities that are the criteria of thorough legal risks assessment.[7] One but not a sole variable that is taken into account in this equation is the probability of the infringement of binding regulations. Actually, this becomes the key element in the decision-making process that needs to be taken into account while researching the complexity of this issue.[8]

1.1. GENERAL FACTORS INFLUENCING THE PROCESS OF CREATING COMPLIANCE NORMS

Varying legal customs and cultures have an undeniable impact on the process of creating any norms in general. They also influence the way the compliance norms are created. They relate to the norm-creation process in different ways and refer to:

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[2] For more on legal and compliance risk monitoring and management, see E.I. Brick, N.K. Chidambaran, *Board Monitoring, Firm Risk, and External Regulation*, Journal of Regulatory Economics Vol. 33, No. 1, 2008, p. 87 ff.

[3] *Ibid.*, p. 104 ff.

[4] M. Faure, *Tort Law and Economics*, Cheltenham 2009, p. 444.

[5] L. Bebchuk, A. Cohen, A. Farrell, *What Matters in Corporate Governance?*, Review of Financial Studies Vol. 22, No. 2, 2009, p. 785.

[6] The relation between company risk management in the context of complex multinational and multicultural structures and the way these corporates are organized is a subject of separate thorough studies conducted by numerous authors. This article only briefly mentions the topic but does not aim to focus on it. For more specific texts on this subject, see S. Mathew, S. Ibrahim, S. Archbold, *Corporate Governance and Firm Risk*, Corporate Governance: The International Journal of Business in Society Vol. 18, No. 1, 2018, p. 57. Also see L. Laeven, R. Levine, *Bank Governance, Regulation and Risk Taking*, Journal of Financial Economics Vol. 93, No. 2, 2009, p. 263.

[7] See P.J. Gallo, L.J. Christensen, *Firm Size Matters: an Empirical Investigation of Organizational Size and Ownership on Sustainability-Related Behaviors*, Business and Society Vol. 50, No. 2, 2011, pp. 325–328.

[8] J.H. Bracey, *Exploring Law and Culture*, Long Grove 2006, p. 121 ff.

a) identifying the areas that should be regulated;
b) stating whether already existing regulations apply to the market, in which a given organization operates, are complete or whether they require an additional subsidiary regulation with corporate norms;
c) assessing the way in which the regulation should be introduced (e.g. how casuistic the compliance norms should be, what form they should take, what kind of internal normative act is the most appropriate for regulating a given issue);
d) adjusting compliance norms in a way that most effectively ensures that these norms are successfully applied (e.g. in what way they should be promulgated and published, how to inform about them and educate with regard to their content, but also in what way it should be decided whether and how the sanctioning of their application should be regulated);
e) establishing the way in which the interpretation of norms and the elimination of possible inconsistencies in their understanding and application should take place (e.g. what the most appropriate interpretation principles of understanding their content in accordance with the intention of the corporations creating them are.[9] In the case of corporate compliance norms, systemic interpretation rules are of bigger importance than the linguistic interpretation as well as more information whether and to what extent authentic interpretations are applied).

The observations on the impact of cultural legal differences on the method of creating compliance norms within the international corporations that operate simultaneously on multiple markets refer indirectly to such issues as defragmentation of law under intercultural conditions, conclusions on reflexive and responsive law and the problem of lack of clarity of the norms. The issue of creating compliance norms in a way that would ensure their effective use in international entities is connected in particular with the application of soft provisions considering intercultural conditions.[10] It is exactly for this purpose that the codes of ethics, different kinds of international and global standards, etc. are created internally in corporations.[11] On the one hand, they take into account the cultural specificity of given areas. On the other hand, they contribute to creating something that is referred to with the overused concept of corporate culture.[12] The impact of legal cultures is also important when it is necessary to remove natural conflicts with

[9] See R. Michaels, J. Pauwelyn, *Conflict of Norms or Conflict of Laws? Different Techniques in the Fragmentation of International Law*, [in:] T. Broude, Y. Shany (eds), *Multi-Sourced Equivalent Norms in International Law*, Oxford 2011, p. 40.

[10] See L. Benton, *Law and Colonial Cultures*, Cambridge University Press: Cambridge 2002, p. 32 ff.

[11] E.J. Rudolph, *The Board Must Take the Lead in Establishing a Corporate Culture of Ethics and Compliance*, www.corporatecomplianceinsights.com (accessed on 3/11/2019). For a role of codification of intra-corporate rules for assurance of efficiency in homogeneous implementation of rules despite unequal compliance standards, see A. Zattoni, F. Cuomo, *Why Adopt Codes of Good Governance? A Comparison of Institutional and Efficiency Perspectives*, Corporate Governance: An International Review Vol. 16, No. 1, 2008 p. 7.

[12] J.B. Delgado-García, J.M. De La Fuente-Sabaté, E. De Quevedo-Puente, *Too Negative to Take Risks?...*, p. 322.

local provisions that consist in the necessity to harmonize the mode of operating of these corporations on different markets for their own interest and due to demands expressed by their regulators.[13]

1.2. CULTURE-RELATED MATTERS GOVERNED BY COMPLIANCE NORMS

The observations of the corporate compliance practices lead to the conclusion that different traditions and legal cultures may refer to very different understanding of the following issues:

a) corporate governance,[14]
b) approach to the necessity of ensuring the operation of a corporation in a transparent manner and assuring corruption prevention,
c) ensuring efficient flow of information about clients and employees,[15]
d) approach to the matter of Corporate Social Responsibility.[16]

The analysis of cultural differences in relation to the attention and importance they receive in the field of creating corporate compliance norms consists to a large extent of generalisations. These generalisations in the analysis of cultural differences in relation to legal norms involve certain simplifications. Still, despite their obvious flaws, all the generalisations are characterised by the three below-mentioned functions.

Firstly, they may be a point of reference to some adopted assumptions and interpretations. For example, the observations prove that corruptive acts in Nordic European countries will be construed and defined differently than corruptive acts in some Middle East or Asian countries.[17]

Secondly, they make it easier to foresee certain behaviour types. Due to that, they facilitate introducing norms that are appropriate and corresponding with the aim. This is an especially valid feature that concerns the interpretation and application of these norms.

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[13] The difficulties in harmonising internal norms within corporations are also due to many other different reasons, see, e.g. G. Bierbrauer, *Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism Between Kurds, Lebanese and Germans*, Law and Society Review Vol. 28, No. 2, 1994, pp. 243–264.

[14] R. Aggarwal, I. Erel, R. Stultz, R. Williamson, *Differences in Governance Practices Between US and Foreign Firms: Measurement, Causes and Consequences*, Review of Financial Studies Vol. 23, No. 3, 2009, p. 3140; W.H. Starbuck, *Why Corporate Governance Deserves Serious and Creative Thought*, The Academy of Management Perspectives Vol. 28, No. 1, 2013, p. 17.

[15] L. Bebchuk, A. Cohen, A. Farrell, *What Matters…*, p. 801 ff.

[16] Interestingly, this issue is currently of interest to shareholders, but also of media and other external entities to such an extent that banking institutions include information on it in their annual financial statements, next to financial reports, e.g. dozens of pages of the annual report of HSBC Holdings plc for 2013 are devoted to it. See HSBC Holdings plc., Report of the Directors: Corporate Governance 2013, pp. 329–371.

[17] For comments on understanding certain terms deeply rooted in the European legal cultures, see A. Sulikowski, *Z zagadnień teorii i filozofii prawa. W poszukiwaniu podstaw prawa*, Acta Universitatis Wratislaviensis No. 2878, 2006, p. 235 ff.

Thirdly, they help building self-consciousness both among persons appointed to apply these norms (this refers to the boards' members of corporations, lawyers, compliance officers), and among all other addressees thereof.[18]

The impact of cultural legal differences on individual compliance tasks relates to many areas regulated by internal corporate norms that include compliance metanorms regulating non-compliance risk assessment and norms introduced internally in the form of policies and procedures.[19] The non-compliance risk assessment is usually performed in corporations according to the formalised processes. They consist of discussions within the framework of committees on different organizational levels, they are regulated within the formalised analyses, they are stress-tested, properly measured, regularly reported, etc.[20] It has become a formal necessity as all elements that may impact the magnitude, probability of occurrence or financial results of a corporation have to be recorded, measured and reported.[21]

Moreover, from the business point of view, the non-compliance risk, as one of the elements of operational risk should be assessed in accordance with the methodology of assessing the operational risk adopted by a given corporation. To avoid a frequent deficiency that the general documentation referring to operational risk assessment may often be based on information that is insufficient for the application of the analysis of non-compliance risk management, a separate methodology related specifically to the non-compliance risk assessment is often created. At the same time, compliance units' tasks include ensuring that the non-compliance assessment is consistent with the applied elements of assessment, control and regular monitoring of other operational risks and with the general risk assessment procedures.[22]

1.3. HARMONISING COMPLIANCE NORMS DESPITE CULTURAL DIFFERENCES

Ensuring the harmonisation of compliance norms despite differences or even against differences resulting from cultural diversities consists of establishing coherent rules of applying tools such as the above-mentioned compliance reports. These rules specify that it is necessary to identify all binding legal provisions, whose application may encounter obstacles as a result of which a substantial non-compliance risk may occur.[23] Identification of these provisions leads to recording them in compliance

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[18] See R. Cotterell, *The Concept of Legal Culture*, [in:] D. Nelken (ed.), *Comparing Legal Cultures*, Brookfield 1997, p. 15 ff.

[19] B. Roach, *A Primer in Multinational Corporations*, [in:] A.D. Chandler, B. Mazlish (eds), *Leviathans: Multinational Corporations and the New Global History*, Cambridge University Press: Cambridge 2005, pp. 21–23.

[20] I.E. Brick, N.K. Chidambaran, *Board Meetings, Committee Structure, and Firm Value*, Journal of Corporate Finance Vol. 16, No. 4, 2010, pp. 533–553 *passim*.

[21] D. Diavatopoulos, A. Fodor, *Does Corporate Governance Matter for Equity Returns?*, Journal of Accounting and Finance Vol. 16, No. 5, 2016, p. 39 ff.

[22] C. Mallin, *Corporate Governance*, 4th edn, Oxford University Press: Oxford 2013, p. 51 ff.

[23] Apart from the subject of analysis of this paper, there are other supra-regional factors having influence on corporations in different jurisdictions. One of such factors is the supervisory role of the regulators with regard to the issues systemically important for the appropriate

reports or in other similar documents that strive to map all relevant non-compliance risk areas. It is the accountability of companies being part of the multinationals and ultimately of the mother companies to ensure that these documents fairly reflect the relevant risks of the areas in which they render services, that they are complete and consistent with the actual state of affairs.[24] These documents are subsequently presented to the appropriate global compliance structures that after the collection of such summaries are able to make a comprehensive assessment whether the whole group operates in compliance with the binding legal and regulatory provisions.[25] These documents include also information allowing them to perform internal controls encompassing the assessment of significant non-compliance risks.

Creating and updating these documents that include compliance reports is an important part of compliance employees' obligation regardless of the fact that their obligations in this respect are much broader and more comprehensive.[26] They consist in supporting individual business specialists in matters related to compliance with legal provisions taking into consideration the local cultural diversities and conditions. It is delivered through the direct involvement in creating compliance norms, performing control activities, monitoring, reporting, etc.

Thus, the scope of obligations of compliance officers in multinational corporations comprises the non-compliance risk assessment. It mainly refers to these areas of corporations' activities that are supported by and ascribed to them. Still, these areas may have their cultural specificity. All the risks the management of which was entrusted to the compliance units are identified and assessed with the aim of planning appropriate preventive measures or measures minimising their consequences if they materialise. According to the procedures created in corporations, such assessments of non-compliance risk are documented and periodically reviewed in order to ensure that the identified risks are complete and their rating remains updated.[27]

There is an expectation that the risk assessment is reviewed each time when such a need arises, namely in the situation of poor results discovered by external controls, negative outcome of compliance reviews, and unsatisfactory assessments resulting from reports prepared by internal or external auditors. These assessments are detailed to the extent that they enable identifying areas requiring particular approach and focusing on matters that need specific attention. Analyses show that the most frequent example applies to compliance with anti-money laundering provisions.

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operating in the territory of the European Union. See further on the subject in M. Fedorowicz, *Nadzór na rynkiem finansowym w Unii Europejskiej*, Warsaw 2013, p. 379 ff.

[24] J.V. Frias-Aceituno, L. Rodríguez-Ariza, I.M. Garcia-Sánchez, *Is Integrated Reporting Determined by a Country's Legal System? An Exploratory Study*, Journal of Cleaner Production Vol. 44, 2013, p. 50.

[25] I. Love, *Corporate Governance and Performance around the World: What we Know and What we Don't*, World Bank Observer Vol. 26, 2011, p. 44.

[26] See, e.g. T.M.J. Moellers, *Sources of Law in the European Securities Regulation – Effective Regulation, Soft Law and Legal Taxonomy from Lamfalussy to de Larosière*, European Business Organisation Law Review Vol. 3, No. 11, 2010, p. 379 ff.

[27] P.R. Wood, *International Legal Risk for Banks and Corporates*, London 2014, p. 97.

Importantly, the core of such processes of harmonisation of the compliance approach consists of the introduction of regularity despite differences.[28] The efficiency of the process requires that such actions should not take place on a one-off basis. There are areas that involve particular care and a structured approach due to either the economic interest of corporations or the recommendations of regulators. These comprise diligence in relation to client service, particular attention to high risk clients (including dealing with politically exposed persons) and monitoring the suspicious transactions.

To cope with the cultural differences, it is assumed that each kind of activity should be described in detail in instructions and procedures in order to ensure unified non-compliance risk management despite differences stemming from particularities of specific markets. The responsibility for applying compliance requirements introduced in corporations and for assuring their application as stated in instructions, procedures and other forms of compliance regulations practically rests within the management of corporations. In practice it means both: ensuring that the companies and their employees act in compliance with these norms and that these regulations are easily accessible for all addressees. This also means the employees, contractors and business partners are properly trained in regard to the scope of the content of these regulations and that they are aware of requirements imposed on them. Simultaneously, it remains the responsibility of compliance officers, who know the cultural and market specificity of a given area, to secure that the management, that includes the formal boards of a corporation, have appropriate control mechanisms at their disposal in order to ensure that these norms are in compliance with the binding legal provisions. In this case, the verification takes place also periodically, that is together with the regularly performed assessments, monitoring and reviews.[29]

The requirements referring to the manner of conducting activity and maintaining compliance are included in coherent sets of procedures of the structure that may be applied in the daily work.[30] Although the concept of one set of procedures is usually a recommended solution, decisions that recommend creating separate procedures with reference to individual compliance areas are often taken due to practical reasons. It is also an obligation of the compliance officers to ensure that managements of corporations are timely notified of necessary updates of compliance regulations both due to the pace of changes taking place within the corporations themselves and due to changes within their legal and regulatory environment.

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[28] M.A. Glynn, *Review of "The Institutional Logics Perspective: a New Approach to Culture, Structure and Process (by Thronton, Ocasio & Lounsbury)"*, Administrative Science Quarterly Vol. 58, No. 3, 2013, pp. 493–495.

[29] S.A. Zahra, J.A. II Pearce, *Boards of Directors and Corporate Financial Performance: a Review and Integrative Model*, Journal of Management Vol. 15, No. 2, 1989, p. 291 ff.

[30] There are also exceptions, such as areas in which certain compliance procedures do not lie within the scope of everyday activities, an example being private securities transactions made by bank employees.

2. DIFFICULTIES IN APPLYING COMPLIANCE NORMS DUE TO CULTURAL DIFFERENCES

The complexity of the analysis of compliance norms in international companies results also from the fact that cultural differences play a particular role not only in their creation, but also in the approach to applying these norms.[31] Namely, the same terms may convey a completely different meaning in different legal cultures and similarly in different cultures in general.[32] Therefore, it is equally important to use appropriate terms as it is to take into account the cultural context while applying them. Multinational corporations often propose in their interpretation rules to use common sense while formulating guidelines regarding the application of these norms.[33] This approach is meant to enable them to partly minimise cultural differences present in various jurisdictions where they operate.[34] Therefore, apparently, despite of the fact that the term "common sense" is not a juridical one, it is widely used in the practice of interpreting norms created within international corporations.[35] As it turns out, applying unified rules based on the common understanding of certain terms regardless of cultural differences appears to be the easiest but also the most helpful interpretation hint.

As a simple example of a tool supporting the first signs of legal or compliance risks assessment is a commonly known warnings of "too – to" directed to employees. The practical examples of use of such rules are "too hot to handle", "too good to be true", etc. However, anecdotally, some expressions that have made a career recently regarding banks not coping well with the latest crisis, like "too big to fail", did not become a universal interpretation rule. The condition for their effectiveness is the existence of legal and compliance risks management and control mechanisms.[36] Theoretical difficulties with the application of compliance rules due to cultural differences presented in this article refer to the individual types and methods of harmonisation of their application irrespective of cultural differences within given multinational corporations.

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[31] The difficulty in application of compliance despite the cultural specificities is not new and can be universally observed across and regardless the industries. See P.J. Robertson, J.V. Speier, *Organizing for International Development: a Collaborative Network-Based Model*, International Journal of Technical Cooperation Vol. 4, No. 2, 1998, p. 169.

[32] For cultural differences in understanding changes taking place in law in connection with frequent withdrawals of countries from their traditional role and global commercial organizations taking over their place, see A.C. Aman, *The Democracy Deficit: Taming Globalization Through Law Reform*, New York 2004, p. 139 ff.

[33] P.J. Robertson, J.V. Speier, *Organizing for International Development…*, p. 175.

[34] See J. Winczorek, *Systems Theory and Puzzles of Legal Culture*, Archiwum Filozofii Prawa i Filozofii Społecznej No. 1(4), 2012, p. 106 ff.

[35] A "common sense test" term is used in the practice of interpretation of corporate norms comprising recommendations of specified actions for the assessment of which such recommendations should be announced in a given legal environment.

[36] See S. Schelo, *Bank Failing or Likely to Fail*, [in:] *Restoring Confidence. The Changing European Banking Landscape*, London 2014, p. 23.

2.1. CULTURE-RELATED DIFFICULTIES IN APPLYING COMPLIANCE NORMS

The analysis of the influence of legal cultures on application of compliance norms indicates a closer look at the difficulties related to the same issues which have been previously listed as those relating to difficulties in formulating these norms. [37] Seven types of issues presented below describe the identified difficulties.

The first of them refers to compliance recommendations related to building corporate governance and organizational structure inside companies being part of a capital group.[38] In companies within the common law jurisdictions there is one board being the main directing body, in the framework of which their members possess executive or non-executive competences.[39] Therefore, they perform various functions, with various engagement expected, including their participation in boards' committees.[40] The differences apply also to the understanding of responsibilities of persons performing similar roles within different local structures with respect to regional structures and vice versa – regional ones with respect to global structures.[41]

A distinctive example illustrating difficulties with the unified application of the same compliance norms, depending on cultural aspects is the whole range of issues related to the corruption prevention. Influence peddling, i.e. accepting unlawful benefits in exchange for rendering certain services or rendering them in a way that is in line with the expectations of the person offering these benefits, may be regarded as a criminal activity not only in a situation when none of the parties is a public entity. It is always so when the result turns to the detriment of other entities and

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[37] Considerations on different functions that law has, depending on cultural legal traditions, are separate and remaining outside of the scope of this analysis, although indirectly connected with this matter. Regarding in particular the communicative function, including the function of programming and coding social behaviour through legal rules under the analysed cultural conditions, see N. Luhmann, *Law as a Social System*, Oxford 2004, p. 173 ff.

[38] R. Bozec, Y. Bozec, *The Use of Governance Indexes in the Governance-Performance Relationship Literature: International Evidence*, Canadian Journal of International Sciences Vol. 29, No. 1, 2012, pp. 79–89.

[39] P. Andres, V. Azofra, F. Lopez, *Corporate Boards in OECD Countries: Size, Composition, Functioning and Effectiveness*, Corporate Governance: An International Review Vol. 13, No. 2, 2005, p. 201 ff. On the independence of non-executive board directors in the context of compliance assurance within corporates, see E.M. Fogel, A.M. Geier, *Strangers in the House: Rethinking Sarbanes-Oxley and the Independent Board of Directors*, Deleware Journal of Corporate Law Vol. 32, No. 32, 2007, pp. 33–72 *passim*.

[40] On the correlation between the board members' engagement and the overall results of companies, see: N. Vafeas, *Board Meeting Frequency and Firm Performance*, Journal of Financial Economics Vol. 53, No. 1, 1999, pp. 113 ff.; M.A. Valenti, R. Luce, C. Mayfield, *The Effect of Firm Performance on Corporate Governance*, Management Research Review Vol. 34, No. 3, 2011, p. 270.

[41] About the importance of rethinking the role of appropriate structuring of corporations' layers and the scope of accountabilities in particular in relation to their responsibilities before the shareholders and the companies themselves, see: W.H. Starbuck, *Why Corporate Governance…*, p. 19. On other examples of local-regional and regional-global levels manifesting in interpretation of corporate social responsibility policies within corporates and the discrepancies thereof, see: R. Streurer, A. Martinuzzi, S. Margula, *Public Policies on CSR in Europe: Themes, Instruments and Regional Differences*, Corporate Social Responsibility and Environmental Management Vol. 19, No. 4, 2012, pp. 15–21.

involves losses of shareholders or other market participants.[42] The understanding of the same terms may, however, be completely different in such a case. Therefore, it is important to create clear guidelines with regard to the benefits that must not be accepted in a given situation, that may be accepted and that actually ought to be accepted.[43]

Similarly, compliance norms relating to the issue of exchanging information between entities belonging to the same capital group are differently construed and applied within the same corporation. Especially, this is the case if these are the entities or at least the higher-ranked representatives of those entities who perform functions at a decision-making level of the organizational structure. The issue refers also to the exchange of information concerning clients, which in case of certain types of entities (e.g. financial institutions) involves particularly sensitive data, and to information on the rules of cooperation with the clients.

Relations with investors, media, suppliers and third parties in general are the areas where the manner of applying internal corporate norms differ within the same capital group due to cultural legal differences. Examples of such areas include media treated as a significant partner of public trading, deserving reliable and possibly complete information regarding the matters which may be subject to information requests. This is the case in jurisdictions where democratic rules of law are well established and applied. However, this matter looks completely different in the countries where political systems are characterised by deficiency of democracy and where transparent information for a wider public is not a commonly adopted standard.

Similarly, as in the case of relations with media, the approach to market regulators very often depends on the maturity of democratic institutions in a given jurisdiction and on the presence of a tradition of open cooperation between private sector companies and public administration. In mature jurisdictions, these relations are usually based on a partnership, consultations and allow lobbying within the clearly determined frameworks conducted in accordance with transparent legal rules. In the developing countries, usually the inequality in the relationship between a citizen and the state makes it impossible to shape the regulatory reality for the society's common good.

An element differing significantly, depending on the tradition and legal maturity of jurisdictions, is the approach to regulations which shape the relations between employees and employers. In global corporations, there is a tendency towards broadening interpretation of norms referring to the guarantee of employees' rights extended into involving employees in the consultation process regarding any matter that relates to the development of a company. At the same time, in many other corporations, including those acting on international markets, there are still appalling

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[42] R. Bozec, M. Dia, *Governance Practices and Firm Performance: Does Shareholders' Proximity to Management Matter?*, International Journal of Disclosure and Governance Vol. 12, No. 3, 2015, pp. 185–209.

[43] Regarding cultural differences in understanding what is and what may not be in compliance with law, see, e.g. S.S. Silbey, *Legal Culture and Cultures of Legality*, [in:] J.R. Hall, L. Grindstaff, M.Ch. Lo (eds), *Handbook of Cultural Sociology*, London–New York 2010, p. 472.

practices of exploitation of employees, extortion of their absolute obedience or even limitation of their freedom through unacceptable practices, like for example confiscating their passports.[44] All in apparent accordance with provisions of internal norms binding these corporations.[45]

As much as in the case of interpretation of norms, cultural differences may also be reflected in the application of recommendations resulting from compliance norms adopted in international corporations. An example could be an approach to norms specifying recommendations concerning tasks within the scope of the Corporate Social Responsibility (CSR) and the impact of these norms on a company's image.[46] Still, it may also be otherwise: normative regulations specifying the activity of corporations in this area are a benchmark for a desired behaviour.[47] They may become the means of internalisation of values by the addressees of theses norms and, thus, through the acceptance of normative obligations created by a corporation its activities are regarded as worth following.[48] Therefore, in spite of different cultural backgrounds the employees come from, behaviour that contributes to building a coherently positive image of the corporation which conducts socially responsible activity is promoted among them.[49]

Intricacies connected with the interpretation of norms in multicultural corporations were also noticed by the Basel Committee with regard to banks that operate in various countries within different legal jurisdictions. The Committee points out that in any such case there should be procedures of identifying and evaluating probability of non-compliance risk occurrence, including in particular the risk of reputational losses of a bank as a consequence of non-compliance with the compliance norms or their incorrect interpretation. This type of situation may take place when a bank offers products or when a bank decides to conduct activities in some of these areas

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[44] Depriving employees of passports as a guarantee to ensure loyalty remains still a widely used practice in service centres of banks and other international corporations in some developing countries.

[45] Regarding limitation of employee and human rights by corporations participating in world trade, see M.B. Likosky, *The Silicon Empire: Law, Culture and Commerce*, London 2005, p. 185 ff.

[46] S. Shanahan, S. Khagram, *Dynamics of Corporate Responsibility*, [in:] G.S. Drori, J.W. Meyer, H. Hwang (eds), *Globalization and Organization. World Society and Organizational Change*, Oxford 2006, p. 196 ff.

[47] D. Prior, J. Surocca, J.A. Tribo, *Are Socially Responsible Managers Really Ethical? Exploring the Relationship Between Earnings Management and Corporate Social Responsibility*, Corporate Governance: An International Review Vol. 19, No. 3, 2008, pp. 160–177; J.P. Sánchez-Ballesta, E. García-Meca, *Ownership Structure, Discretionary Accruals and the Informativeness of Earnings*, Corporate Governance: An International Review Vol. 15, No. 4, 2007, p. 681.

[48] For more on the subject of growing Corporate Social Responsibility in the context of corporations' role as "global private authorities", shaping proactive social behaviour expected by themselves by means of normative instruments, see R. Shamir, *Corporate Social Responsibility*, [in:] B. de Sousa Santos, C.A. Rodriguez-Garavito (eds), *Law and Globalization from Below*, Cambridge 2005, p. 92 ff.

[49] Regarding the compliance role in building inner coherence of companies through the involvement of employees in CSR activities, see R. Hurley, X. Gong, A. Waqar, *Understanding the Loss of Trust in Large Banks*, International Journal of Bank Marketing Vol. 32, No. 5, 2014, p. 350 ff. For the French perspective on the same matter as confronted with the international context, see A.B. Antal, A. Sobczak, *Corporate Social Responsibility in France: a Mix of National Traditions and International Influences*, Business and Society Vol. 46, No. 1, 2007, pp. 9 ff.

that would not be permitted on the territory where it is headquartered. In spite of that, the banking groups striving to unify their offer, sometimes decide to introduce such offers on the markets where they are not permitted to do so. Frequently, the interpretation of compliance norms which provides for the possibility of conducting such activities is the way to ensure the uniformity of the offer. This type of practices is most common when the interpretation of compliance norms at the local level is transferred to the regional or global one.[50] The interpretation of compliance norms should, however, be treated as a fundamental sphere of compliance risk management within a corporation.

Often, some of the strictly defined, specific compliance tasks, mostly encompassing the activities indirectly related to the core of the company's activity, may be outsourced. Most often, this type of outsourcing is performed at a supra-local level. Then, entities conducting these activities are the subject of the proportionate oversight of local compliance units. Therefore, the whole responsibility for maintaining full compliance, including avoidance of misunderstandings with regard to the interpretation of compliance norms, remains as a core of the compliance management within the multicultural corporate environment.

2.2. ENSURING CONSISTENCY IN THE APPLICATION OF COMPLIANCE NORMS

To ensure consistency in the application of compliance norms, corporations operating in multiple countries establish procedures that ensure that personnel with substantive capabilities are appointed to positions within the compliance area. These personnel are granted the possibility of transferring information on any doubts with regard to an inappropriate application of these norms directly to the companies' boards.[51] Several most frequent types of situations in which consultations in this respect take place are presented below:

a) The planned launch of new products or services or the change of a risk appetite described earlier or proposed change of target client base.
b) The planned changes in the corporate or management structure of a corporation.[52]
c) The planned implementation of a new or an amended legal or regulatory requirement.

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[50] The complexity of sustaining uniformity in the interpretation of internal regulations increases along with the size of a company. Thus, the challenge is especially complex within the framework of global corporations. Contrary to this assumption, size and coverage of global companies may themselves be mitigators for misinterpreting risks. See more on the topic in F. Zona, A. Zattoni, A. Minichilli, *A Contingency Model of Boards of Directors and Firm Innovation: The Moderating Role of Firm Size*, British Journal of Management Vol. 24, No. 3, 2013, p. 299 ff.

[51] R.B. Adams, B. Hermalin, M.S. Weisbach, *The Role of Boards of Directors in Corporate Governance: a Conceptual Framework and Survey*, Journal of Economic Literature Vol. 48, No. 1, 2010, pp. 58 ff.

[52] H.Y. Baek, D.R. Johnson, J.W. Kim, *Managerial Ownership, Corporate Governance, and Voluntary Disclosure*, Journal of Business and Economic Studies Vol. 15, No. 2, 2009 p. 46 ff.

d) Other planned changes that may have at least an indirect impact on the current interpretation of compliance norms, such as outsourcing, when third parties that have not undergone the proper induction are to perform activities for a corporation that are related to its core operations.
e) The occurring risk of regulatory infringements or situations in which regulatory bodies negatively assess certain type of activity of a corporation.
f) Internal or external audit reports that indicate any kind of regulatory problems occurring with regard to the activity conducted by a corporation.
g) An increased number of clients' complaints related to the withdrawal of certain products or entire types of activity by a corporation, which may indicate a non--compliance with certain legal provisions or infringement of internal compliance norms by employees.
h) The occurring requirements of corrective actions or any other matters related to the reputational risk resulting from supervisory recommendations or directly from legal provisions.

The compliance officers obliged to prepare annual plans and reports on the assessment of non-compliance risk usually refer in those reports to matters related to the observed application of compliance norms. These annual reports include proposed tasks with regard to the monitoring and control of the application of compliance norms together with the proposals of guidelines, procedures and planned trainings for employees with regard to the application of these norms. The content of those reports and plans is usually agreed on with the boards of corporations.[53] In practice, compliance units' tasks also comprise ensuring ample resources, including budgetary, human and technological ones and training plans necessary for the completion of the tasks in the action plans established to ensure the uniform application of the compliance norms.

Assuring uniformed application of the compliance norms within the various traditions and legal cultures is a complex task. Internal procedures referring to the rules of the functioning of compliance require not only presentation of periodical reports on the fulfilment of adopted plans. These procedures should also comprise information on the division of responsibilities to ensure the consistent application of compliance norms. An appropriate description of obligations of the management and other employees who have been entrusted with the obligations related to those matters should also be provided within those procedures.[54]

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[53] R.B. Adams, B. Hermalin, M.S. Weisbach, *The Role of Boards of Directors…*, pp. 73–75.

[54] The quotation from the internal (confidential) procedure regarding the ensuring of uniform application of compliance norms in one of international banks: "The compliance role is to support the management in fulfilling its obligations. It is connected with a proactive support in identification and assessment of risk, taking into account non-compliance risk, in monitoring, reporting and certification, as well as in promoting corporate culture based on the compliance with uniformly understood legal provisions and the optimization of relations with regulatory bodies."

3. DIFFERENCES IN INTERPRETING COMPLIANCE NORMS

In the practice of corporations operating on multiple markets, in case of a conflict of norms stemming from different jurisdictions, the choice of interpretation methods allowing one to determine the content of these norms that should be applied in an individually analysed situation becomes a particularly interesting matter. However, in a situation when a non-compliance cannot be eliminated as it stems from the contradicting dispositions resulting from the content of these norms and when it is impossible to establish a common and non-contradicting content for the norms that remain in such a conflict, this issue extends to the methods of taking a decision on which of these norms the organization should comply with.[55] In other words, the decision is taken which of these norms are predominant and apply in practice to the corporation activities. There are examples of complications resulting from culture--related conflicts of legal norms and supervisory regulations, and they represent problems with different interpretations of the same or similar notions. Methodological mistakes that consist in ignoring the cultural differences of multinational corporations result in inconsistencies in the common comprehension of the actual meaning of these norms.

3.1. COMPLICATIONS RESULTING FROM THE CONFLICT OF LAWS AND SUPERVISORY REGULATIONS

International corporations conducting activity in multiple jurisdictions encounter conflicts of legal norms and supervisory regulations in multiple configurations.[56] The most typical of them is the one in which it is desirable from the point of view of the management of the whole capital group to introduce internal norms or to order the application of the existing norms that are inconsistent with legal norms binding in one or more jurisdictions on the territory of which the corporation conducts its activity. In consequence, lawyers and compliance officers, whose tasks are to ensure that the corporation remains compliant with the entire normative order, take numerous measures aimed at resolving the existing conflicts. When decisions that aim at selecting the interpretation of the content of various norms are taken, they refer to the available interpretation rules that would make it possible to resolve such conflicts.

In this context, it is worth analysing the approach to this issue from the point of view of the choice of interpretation rules and more precisely, their relevance. Despite

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[55] Regarding the culture-forming power of decisions as to whether a provision of law is binding, see B. Maurer, *The Cultural Power of Law? Conjunctive Reading*, Law and Society Review Vol. 38, No. 4, 2004, p. 843 ff.

[56] Large multinational corporations adjusting their activity to local conditions change these conditions themselves, thus becoming regarded as more significant influence agents with regard to what currently global business trading is than politicians or international political organizations' structures. See J. Micklethwait, A. Wooldridge, *The Company: A Short History of a Revolutionary Idea*, Washington 2005, p. 159 ff.

a different content of conflicting norms, the reference to the available interpretation rules allows determining a uniform content that would enable the corporation to remain compliant with the entire normative order in a given area and also that would meet the requirements of the corporation management.[57]

On the other hand, not all the interpretation rules may be applied in this kind of situations to the same extent. This is different than in the case when the content of a given norm is simply ambiguous and other references have to be made to obtain a meaning free from ambiguities. In the case of a conflict of several norms, particularly belonging to different orders, not all of these references prove to be equally appropriate.

Deliberating on the tasks of the compliance units co-responsible for managing the major risks in corporations, one has to indicate that their key role and particularly complicated challenge consists of ensuring the conformity of their operations with all norms that apply to them. This concerns also situations in which conflicts of simultaneously binding norms occur. These take place when a decision on the method of interpreting the content of these norms or on the rejection of the application of certain norms cannot be resolved otherwise. Frequent cases of this type have a decisive impact on the direction of a corporation's activity.

3.2. COMPLICATIONS RESULTING FROM DIFFERENCES IN UNDERSTANDING OF THE SAME TERMS

The matter of complication of the above tasks recurs due to the fact that conducting complex activities the corporates operate within various jurisdictions, which implies that they are exposed to the risk of different understanding of the same content of the same or similar norms. Unavoidable conflicts may, therefore, result not only from the differences between the content of norms binding in different jurisdictions, the compliance with which is a premise of the activity conducted by corporations. Such conflicts may also stem from differences in the methods of interpretation of these norms, and more precisely from a different understanding of notions to which the content of these norms refers to.[58] Therefore, the role of selecting appropriate interpretation rules is so important in the compliance activity. In the light of the multiplicity of legal systems in which global corporations operate, the choice of interpretation rules is based on the criteria determined by a corporation. The most important of them is the criterion of practical use. This means that such interpretation rules have to be adopted that make it possible to eliminate potential contradictions or gaps originating from cultural diversity. The consequence of this kind

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[57] Determining the uniform content of internal norms within a corporation has a direct impact on the efficiency of the management processes and the ultimate performance of the company. For more on this, see S. Bhagat, B. Bolton, *Corporate Governance and Firm Performance*, Journal of Corporate Finance Vol. 14, No. 3, 2008, pp. 257–273 *passim*.

[58] Regarding differences in the interpretation of similar legal norms in different jurisdictions, see W. Twining, *Social Science and Diffusion of Law*, Journal of Law and Society, Vol. 32, No. 2, 2005, p. 210 ff.

of interpretation measures is attaining the coherence of the normative framework of the corporation's activity. It is, therefore, worth having a closer look at the most commonly used interpretation rules according to the criterion of usefulness in relation to corporations operating in diversified legal cultures.[59]

The simple use of grammatical interpretation rules based on the analysis of the content of a norm resulting from a linguistic meaning of a normative utterance is rather limited. The difficulty in the case of grammatical interpretation rules results both from the fact of the multiplicity of languages in which the norms may be expressed and from the fact that the meaning of expressions used in norms is often related to their conventional content, which is strictly associated with a cultural context and given as a result of norm-setting measures under specific conditions of a given jurisdiction. Moreover, this conventional meaning may overlap with difficulties resulting from the multiplicity of languages itself. The inconsistency of understanding of the meaning of expressions that a norm comprises, stemming from the multiplicity of languages, results from the frequent inability to ascribe the same meaning to seemingly the same terms. This is due to the fact that assuming that certain expressions are identical is erroneous as a consequence of the prerequisite that translation means a faithful reflection of the entire content included in a denominated term. This, however, may not be correct.[60] Translation difficulties arise not only in the case of complex notions referring to definitions created by the doctrine and ruling practice (e.g. what a bribe is in some low transparency highly corrupted regimes and what it is in, say, Scandinavian countries), but also in the understanding of the basics for formulating utterances with normative modal verbs and expressions such as "should", "has to", "must", "has an obligation", "is obliged", etc. A precise translation of such expressions always requires some reference to legal cultural context.[61]

Functional interpretation rules may, on the other hand, be applied in the interpretation of norms with divergent meanings and stemming from different legal orders. However, the difficulty consists here, in the first place, of the fact that it is necessary to have a full knowledge of functions these norms should serve in order to be able to make their appropriate interpretation. This difficulty results from the fact that the functions for which these conflicting norms have been created may be difficult to identify or unclear. And even if clear, they may remain contradictory similarly to these norms whose interpretation by means of identifying the initial functions was supposed to be helpful. It is not uncommon that trying to eliminate a contradiction which initially appears while interpreting a norm, it turns out that the functions that were supposed to be fulfilled by these norms are completely

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[59] Regarding contradictions in the practice of interpreting norms by social institutions, including business ones with respect to cultural differences, see: P. Ewick, S.S. Silbey, *The Structure of Legality: The Cultural Contradictions of Social Institutions*, [in:] R.A. Kagan, M. Krygier, K. Winston (eds), *Legality and Community*, Berkeley 2002, pp. 149–155.

[60] For more on the subject of the linguistic aspect of law, see J. Jabłońska-Bonca, *Wprowadzenie do Prawa. Introduction to Law*, Warsaw 2012, p. 28.

[61] See L. Rosen, *Law as Culture: An Invitation*, Princeton 2006, p. 76 ff; also L. Klapper, I. Love, *Corporate Governance, Investor Protection and Performance in Emerging Markets*, Journal of Corporate Finance Vol. 10, No. 5, 2004, pp. 705–707.

different. Thus, referring to these functional rules in this context does not facilitate the effective determination of the uniform content of these norms. It is similar in the case of purposive interpretation rules whose application, in theory, may and should be the most appropriate one. The difference being that in this case it is always necessary to clearly communicate the goal, i.e. the desirable effect that should be attained by individual entities of which the corporation is composed. Such communication is expected to lead to elimination of a contradiction and to introduce uniform interpretation of the same norm in different jurisdictions.

Systemic interpretation rules, on the other hand, could be applied here to a lesser extent. Unless the system itself, being a point of reference for the interpretation, is treated differently, i.e. as a whole set of all internal and external norms binding in all jurisdictions in which an individual entity operates, and applied with regard to this entity.

3.3. RISK-BASED INTERPRETATION OF COMPLIANCE NORMS

Under conditions of probable inconsistency in the understanding of norms that results from cultural factors described herein and from the high volatility of a corporation's legal environment, the interpretations aimed at eliminating inconsistencies are very often of creative nature. Analysing such an effect, it is worth referring to the phenomena described in the literature on creative interpretation. There are several situations when the constitutive theory of the interpretation is applied by courts in which such interpretation may be of creative nature, at the same time these situations are not the only ones that may be identified. These are: interpretation of legal terms, interpretation of open terms, broadening and restrictive interpretation, as well as the interpretation of ambiguous, unclear or other terms whose meaning raises justified doubts.[62] When resolving conflicts of overlapping norms in a corporation operating in several jurisdictions, similar functions performed in the course of their interpretation may be observed, although this refers to a completely different situation. In this case an interpretation of creative nature may be conducted exactly when the interpretation concerns norms remaining in conflict that cannot be resolved and stemming from the difference seen from the point of view of legal system cultures. The interpretation of the meaning of the conflicting norms is made in this situation from the point of view of the economic interest derived from the overall business activity conducted by a corporation.

The complex normative reality, in which a corporation operates in the first place requires from the corporation, in practice from the unit responsible for compliance, to take up a task of determining an appropriate, uniform understanding of a content of different and potentially conflicting norms as early as at the stage of understanding legal terms and notions. This does not only apply to particularly complicated terms, but also to terms which are commonly used. In the case of norms

[62] See L. Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian*, Warsaw 2005, p. 271 ff.

stemming from different legal, regulatory and court ruling cultures, references to such commonly used terms as "data protection", "banking secrecy", "third party", "actions brought against an employee decision" or even seemingly such obvious terms as "supervisory board" or "law" (sic!) require making an interpretation effort aimed at eliminating a conflict situation.

In this context, it is a relatively difficult challenge to interpret the open terms, i.e. those whose meaning is not fully determined and should be derived from a current wider normative and legal context, but also from the social and axiological one.[63] Bearing in mind the fact that the context may differ significantly in each jurisdiction in which a given corporation operates, interpreting open terms may be particularly difficult. In this case the broadening and restrictive interpretation and in particular its creative, constitutive character may prove to be very helpful. Taking into account the economic interest of a given corporation and adjusting to it the range of terms used in norms, it is possible to achieve a close meaning of the content of norms formulated in different legal systems.

The norms governing the activity of international corporations are not a complete, clearly defined and coherent set of terms by means of which legislators determine the sphere of required actions for given entities. Just as J. Austin presented it in relation to law in general, they are not a set of norms recognized by them on the basis of the source test, specified in the concept of H.L.A. Hart by the recognition rule. These norms are a dynamically changing interpretation fact, with regard to which searching for uniform, determined semantics makes no sense. According to such interpretative approach, the task of compliance officers is to seek the most appropriate interpretation. This is to be done by eliminating contradictions in understanding of norms and values in the context of the cultural background.[64] Such reference to cultural contexts in the interpretation of different and changing with time norms may be compared with R. Dworkin's idea of constituting law as a joint writing of a novel by generations of authors adding their chapters to the text.[65]

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[63] For the role that the social norms invoked in the communication between regulatory bodies and regulated entities play, including how useful they become for the enhancement of the effectiveness of a message and how the reference to these norms currently facilitates the interpretation of the content of legal norms, see S. Martin, *98% of HBR Readers Love this Article. Businesses are just Beginning to Understand the Power of Social Norms*, Harvard Business Review, October 2012, p. 23.

[64] It is defining of the cultural context that becomes crucial in the process of interpreting legal norms each time, particularly in confronting these norms with the social roles they play. T.W. Aldorno writes that including the spirit of an era in the term "culture" indicates the administrative point of view from the very beginning, which tasks are, looking from the perspective of persons of higher rank in the hierarchy: gathering, dividing, assessing and organizing. T.W. Aldorno, *Culture and Administration*, [in:] J.M. Bernstein (ed.), *The Culture Industry: Selected Essays on Mass Culture by Theodor W. Aldorno*, London 1991, p. 93.

[65] M. Zirk-Sadowski, *Wprowadzenie do filozofii prawa*, Warsaw 2011, p. 170 ff.

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IMPACT OF DIFFERENCES IN LEGAL RISK ASSESSMENT ON COMPLIANCE NORMS IN MULTINATIONAL CORPORATIONS

Summary

International corporations operating within the multijurisdictional environment are confronted with the daily challenge of staying in compliance with constantly varying legal and regulatory risks. To assure the conformity with the binding norms, they have to introduce complex internal legal and compliance management mechanisms. These mechanisms consist of the risk identification, assessment and mitigation measures. The core of the difficulty results from the cultural differences in the legal and regulatory systems on the diversified territories in which global corporations operate. The commonly used remedy applied by corporations that strive to assure the legal and regulatory uniformity across the geographies are internal compliance norms. However, the universally introduced compliance norms trigger both difficulties in applying them due to the cultural differences and, for the same reasons, problems caused by

various interpretations of those norms. The legal workarounds addressed in this article show how corporations deal with the challenge of their multicultural legal and regulatory surroundings.

Keywords: international corporations, compliance, legal and regulatory risks, differences in legal cultures, interpretation rules, supervisory regulations

WPŁYW RÓŻNIC W OCENIE RYZYK PRAWNYCH NA NORMY *COMPLIANCE* W KORPORACJACH MIĘDZYNARODOWYCH

Streszczenie

Międzynarodowe korporacje działające w środowisku wielojurysdykcyjnym stoją przed codziennym wyzwaniem zachowania zgodności ze stale zmieniającym się ryzykiem prawnym i regulacyjnym. Aby zapewnić zgodność z obowiązującymi normami muszą one wprowadzać złożone wewnętrzne mechanizmy kontroli zgodności z prawem. Mechanizmy te obejmują identyfikację, ocenę i środki ograniczające to ryzyko. Istota trudności wynika z różnic kulturowych w systemach prawnych i regulacyjnych na różnych terytoriach, na których działają globalne korporacje. Powszechnie stosowanym środkiem zaradczym wykorzystywanym przez korporacje, które dążą do zapewnienia jednolitości działania we wszystkich regionach geograficznych, są wewnętrzne normy zgodności. Jednakże uniwersalnie wprowadzane normy zgodności powodują zarówno trudności w ich stosowaniu ze względu na różnice kulturowe, jak i z tych samych powodów problemy spowodowane różnicami w ich interpretacji. Omówione w artykule rozwiązania prawne pokazują, jak korporacje radzą sobie z wyzwaniami związanymi z wielokulturowym otoczeniem prawnym i regulacyjnym.

Słowa kluczowe: międzynarodowe korporacje, normy zgodności (*compliance*), ryzyka prawne i regulacyjne, różnice w kulturze prawnej, zasady interpretacji, przepisy nadzorcze

INFLUENCIA DE DIFERENCIAS EN LA VALORACIÓN DE RIESGOS JURIDICOS A LAS NORMAS DE *COMPLIANCE* EN EMPRESAS MULTINACIONALES

Resumen

Las empresas multinacionales que operan en el ámbito multijurisdiccional tienen reto a diario de observar el riesgo jurídico y regulador que cambia constantemente. Para garantizar el comportamiento de acuerdo con las normas vigentes han de introducir complejos mecanismos internos de conformidad con derecho. Estos mecanismos comprenden identificación, valoración y medidas que restringen dicho riesgo. La dificultad reside en diferencias culturales en los sistemas jurídicos y reguladores en diferentes teritorios, en el cual actúan empresas multinacionales. La medida común preventiva que se aplica por las empresas multinacionales que pretenden garantizar la uniformidad de actuaciones en todos regiones geográficos son nomas internas de conformidad. Sin embargo las universales normas de conformidad empleadas causan tanto dificultades de su aplicación debido a diferencias culturales, como dificultades

ocasionadas por las diferencias de su interpretación debido a las mismas razones. Las soluciones analizadas en el artículo demuestran cómo las empresas multinacionales reaccionan a los retos relativos al ámbito jurídico y regulador multicultural.

Palabras claves: empresas multinacionales, *compliance*, riesgo jurídico y regulador, diferencias culturales en sistemas jurídicos, reglas de interpretación, regulaciones de supervisión

ВЛИЯНИЕ РАЗЛИЧИЙ В ОЦЕНКЕ ПРАВОВЫХ РИСКОВ НА СООТВЕТСТВИЕ (*COMPLIANCE*) СТАНДАРТАМ В МЕЖДУНАРОДНЫХ КОРПОРАЦИЯХ

Резюме

Международные корпорации, действующие в мульти-юрисдикционной среде, сталкиваются с ежедневной проблемой необходимости соответствия постоянно изменяющимся правовым и нормативным рискам. В целях обеспечения соответствия действующим стандартам, они должны установить комплексные внутренние механизмы контроля за соблюдением закона. Данные механизмы охватывают меры по идентификации, оценке и ограничению упомянутых рисков. Сложности состоят в культурных различиях законодательных и нормативных систем на различных территориях, на которых действуют глобальные корпорации. Проверенным средством, повсеместно применяемым корпорациями, которые стремятся обеспечить единый стиль деятельности во всех географических регионах, являются внутренние стандарты соответствия. Однако повсеместно вводимые нормы соответствия вызывают как трудности, связанные с их соблюдением, вызванные культурными различиями, так и трудности, вызванные различиями в их интерпретации по этим же причинам. Обсуждаемый в статье правовой подход к их решению позволяет проследить, как корпорации справляются с проблемами, связанными с мультикультурной нормативно-правовой средой.

Ключевые слова: Международные корпорации, *compliance*, правовой и нормативный риск, культурные различия в законодательных системах, правила толкования, надзорные нормы

UNTERSCHIEDSEINFLUSS IN RECHTLICHER RISIKOEINSCHÄTZUNG AUF DIE COMPLIANCENORMEN IN INTERNATIONALEN KORPORATIONEN

Zusammenfassung

Internationale Korporationen, die in multiplen Gerichtshoheiten wirken, stehen alltäglich vor der Herausforderung, die Konformität mit ständig wechselnden rechtlichen und regulativen Risiken einzuhalten, um diese mit geltenden Normen zu gewährleisten, müssen sie komplexe, interne Kontrollmechanismen der Rechtskonformität einleiten. Diese Mechanismen umfassen die Identifizierung, Einschätzung und die Mittel, die das Risiko einschränken. Der Schwierigkeitsclou resultiert aus Kulturdifferenzen in rechtlichen und regulativen Systemen in verschiedenen Gebieten, in welchen globale Korporationen wirken. Eine allgemein angewandte Hilfsmaßnahme benutzt von Korporationen, die nach Aktivitätseinigkeit in allen geografischen Regionen streben, sind Compliancenormen, wenn man diese doch universell

einführt, verursachen sie Anwendungs- und Implementierungsschwierigkeiten wegen Kulturunterschieden, darüber hinaus Schwierigkeiten wegen Auslegungsunterschieden aus denselben oben genannten Gründen. Die im vorliegenden Artikel besprochenen Rechtslösungen deuten darauf hin, wie Korporationen angesichts Herausforderungen in einem multikulturellen rechtlichen und regulativen Umfeld zurechtkommen.

Schlüsselwörter: internationale Korporationen, *Compliance*, rechtliches und regulatives Risiko, Kulturunterschiede in Rechtssystemen, Auslegungsregel, Aufsichtsregulationen

L'IMPACT DES DIFFÉRENCES DANS L'ÉVALUATION DES RISQUES JURIDIQUES SUR LES NORMES DE CONFORMITÉ DANS LES ENTREPRISES INTERNATIONALES

Résumé

Les sociétés internationales opérant dans un environnement multi-juridictionnel sont confrontées au défi quotidien de se conformer à des risques juridiques et réglementaires en constante évolution. Pour assurer le respect des normes applicables, elles doivent mettre en place des mécanismes internes complexes de contrôle du respect de la loi. Ces mécanismes comprennent l'identification, l'évaluation et les mesures d'atténuation. L'essence des difficultés résulte des différences culturelles existant entre les systèmes juridiques et réglementaires des divers territoires où des sociétés multinationales opèrent. Les normes de conformité internes sont un recours commun utilisé par les sociétés qui s'efforcent d'assurer l'uniformité des opérations dans toutes les régions géographiques. Cependant, les normes de conformité universellement introduites posent à la fois des difficultés d'application dues à des différences culturelles et des difficultés causées par des différences d'interprétation pour les mêmes raisons. Les solutions juridiques abordées dans l'article montrent comment les entreprises relèvent les défis liés à l'environnement juridique et réglementaire multiculturel.

Mots-clés: sociétés internationales, conformité, risques juridiques et réglementaires, différences culturelles dans les systèmes juridiques, règles d'interprétation et règles de surveillance

IMPATTO DELLE DIFFERENZE NELLA VALUTAZIONE DEI RISCHI LEGALI SUGLI STANDARD DI CONFORMITÀ NELLE AZIENDE MULTINAZIONALI

Sintesi

Le multinazionali che operano in un ambiente multigiurisdizionale si trovano quotidianamente davanti alla sfida di mantenere la conformità nei confronti con i rischi legali e normativi in continua evoluzione. Per garantire la conformità alle norme vigenti, devono implementare i complessi meccanismi interni di conformità con la legge. Tali meccanismi comprendono l'identificazione, la valutazione e le misure che limitano questo rischio. L'essenza della difficoltà risiede nelle differenze culturali nei sistemi giuridici e normativi dei diversi territori in cui operano le imprese globali. Una contromisura comune utilizzata dalle aziende che cercano di assicurare la coerenza dell'attività in tutte le aree geografiche è rappresentata dagli standard

di conformità interna. Tuttavia, le norme di conformità universalmente applicabili creano sia difficoltà di applicazione (dovute a differenze culturali) sia difficoltà di interpretazione (dovute a differenze di interpretazione per le stesse ragioni). Le soluzioni legali discusse nell'articolo mostrano come le multinazionali affrontano le sfide legate al contesto giuridico e normativo multiculturale.

Parole chiave: aziende multinazionali, conformità, rischi legali e normativi, differenze culturali nei sistemi giuridici, regole di interpretazione, regolamenti di vigilanza

Cytuj jako:

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