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COMPLIANCE RISK MANAGEMENT IN THE BANK AFTER THE CHANGES FROM 2017 IN POLAND

INTRODUCTION

Compliance risk management in banks operating on the Polish banking market is a process that has been functioning for years. However, it was only the changes in the legal status that were introduced in 2017 that made the process legally regulated. This process is therefore strictly defined, and the performance of obligations results directly from the generally applicable provisions of law.

The legal basis for the functioning of organizational units responsible for compliance risk management are the provisions of the Act of 29 August 1997 Banking Law¹,

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¹ Uniform text: Journal of Laws of 2017, item 2361.

Regulation of the Minister Rozwoju i Finansów of March 6, 2017 on the risk management system and internal control system, remuneration policy and detailed method of estimating internal capital in banks². An important act that does not have the status of generally applicable regulations, but is implemented by banking market entities, is Recommendation H of the Polish Financial Supervision Authority³ (regarding the internal control system in banks) adopted by the KNF Resolution of 25 April 2017. The recommendation details the provisions of the above-mentioned Minister's Regulation Development and Finance. It is treated as supervisory body by supervised entities.

THE RISK MANAGEMENT SYSTEM IN THE BANK

The provisions of the Banking Law define the principles of conducting banking activity, establishing and organizing banks, branches and representative offices of foreign banks, as well as branches of credit institutions and the principles of banking supervision, resolution proceedings, liquidation and bankruptcy of banks (Article 1 of the Act). In the provisions of this act, the definition was adopted, according to which a bank is a legal person established in accordance with the provisions of acts, acting on the basis of permits authorizing to perform banking activities burdening with risk funds entrusted with any repayable title (Article 2 of the Banking Law). A distinction was also made between banks, based on a territorial criterion, on domestic banks, understood as banks established in the territory of the Republic of Poland and foreign banks, i.e. banks established in the territory of a non-member state.

According to art. 9 of the Banking Law, there is a management system in the bank that is a set of rules and mechanisms relating to the decision-making processes taking place in the bank and to the assessment of banking operations. Under this management system there is at least a risk management system and an internal control system. In accordance with the successive provisions of the Banking Law, the tasks of the risk management system are identification, measurement or estimation, control and monitoring of risk occurring in the bank's operations to ensure the correctness of the process of setting and implementing specific objectives of the bank's operations. In turn, according to the content of art. 9c of the Act, the aim of the internal control system is to ensure:

- 1) effectiveness and efficiency of the bank's operations;
- 2) reliability of financial reporting;
- 3) adherence to the risk management principles at the bank;
- 4) compliance of the bank's operations with legal regulations, internal regulations and market standards.

As part of the internal control system, the bank must separate:

² Journal of Laws of 2017, item 637.

³ In Polish: Komisja Nadzoru Finansowego (KNF).

1) control function aimed at ensuring compliance with control mechanisms concerning, in particular, risk management at the bank, a control function aimed at ensuring compliance with control mechanisms concerning, in particular, risk management at the bank,

2) compliance organizational unit tasked with identifying, assessing, controlling and monitoring the risk of non-compliance of the bank's operations with the law, internal regulations and market standards, and presenting reports;

3) independent internal audit unit that is tasked with auditing and evaluating, in an independent and objective manner, the adequacy and effectiveness of the risk management system and the internal control system, excluding the internal audit unit.

Banking law, in art. 9f par. 1 point 1, grants the Minister Rozwoju i Finansów the competence to issue a regulation regulating the detailed functioning of the risk management system and the internal control system in banks.

The MRiF Regulation sets out, *inter alia*, detailed manner of functioning in the banks of the risk management system and the internal control system, including the mode of anonymous reporting to the indicated member of the management board or supervisory board of violations of law and the bank's ethical procedures and standards.

According to § 3 para. 1-5 of the MRiF Regulation, a risk management system and internal control system in the bank are organized at three independent levels. The first level consists of risk management in the operating activity of the bank. The second level consists of at least: risk management by employees at specifically appointed positions or in organizational units, regardless of risk management in the operational activity (first level) and the activity of the compliance unit. The third level, in turn, consists of the activity of the internal audit unit. At all three levels, within the framework of the risk management system and the internal control system, the bank's employees in the course of performing their official duties appropriately use control mechanisms, or independently monitor compliance with control mechanisms.

According to § 4 of the MRiF Regulation the bank's management board, implements and ensures the operation of the risk management system and the internal control system as well as the procedures for anonymous reporting of violations of law and the bank's procedures and ethical standards, in particular by:

1) providing an organizational structure adjusted to the size and profile of the risk incurred and enabling effective performance of tasks;

2) development, adoption and connection of bank management strategies with the risk management system, internal control system, remuneration policy and the process of internal capital assessment and maintaining the level of own funds at a level not lower than the estimated internal capital of the bank;

3) development, adoption and implementation of strategies and policies and ensuring the implementation of the plans in accordance with the adopted rules of internal legislation, and monitoring their observance;

- 4) establishing appropriate reporting principles, including the rules of management board reporting to the supervisory board;
- 5) ensuring transparency of the bank's operations and adoption and introduction of information policy principles;
- 6) introduction of necessary adjustments and improvements of the management system in the event of changes in the size and profile of risk in the bank's operations and economic environment factors or detection of irregularities in the functioning of the management system.

The Bank's management board is responsible for ensuring that the bank's operations comply with applicable law, including the bank's operations under the laws of another country and the bank's links to other entities that could impede effective management. The supervisory board supervises the implementation of the risk management system and the internal control system. In addition, the supervisory board is required to assess their adequacy and effectiveness. In order to perform these tasks, the supervisory board in particular:

- 1) selects members of the management board with appropriate qualifications to perform the designated functions,
- 2) approves the bank management strategy adopted by the management board and supervises its adibe by,
- 3) monitors the effectiveness of activities performed by members of the management board in connection with the implementation of their tasks in the field of management system,
- 4) supervises adibe by compliance policies and procedures.

In accordance with § 7 of the MRiF Regulation, as part of the risk management system, the bank manages risk by undertaking the following activities:

- 1) risk identification,
- 2) measuring or estimating this risk,
- 3) risk control,
- 4) risk monitoring,
- 5) risk reporting.

Risk management is based on internal regulations and relevant analyzes. As part of risk control, the bank hedges itself against or mitigates risk by introducing risk control mechanisms appropriate to the scale and complexity of the bank's operations. Risk management in the bank is implemented by the management board as part of the duties assigned to it, and:

- 1) at the first level in the operating activity of the bank,
- 2) at the second level through employees on specifically appointed positions or in organizational units, regardless of the compliance organizational unit activity.

The bank's management board is responsible for designing, implementing and ensuring the operation of the risk management system, in particular through:

- 1) determination of the bank's current and future readiness to take risk,
- 2) development and adoption of risk management strategies,
- 3) introduction of a division of tasks carried out in the bank, ensuring independence of risk management at the first level from risk management at the second level,
- 4) supervising risk management at the first and second level,
- 5) developing and accepting policies and ensuring the implementation of procedures on the basis of which the risk management system in the bank is to function, in accordance with the adopted principles of internal legislation and monitoring their abide by,
- 6) supervising the size and risk profile of the bank, including the risk related to the activities of subsidiaries,
- 7) establishing reporting principles on the types and size of risk in operations, in a manner allowing monitoring the level of risk in the bank by organizational units of the bank.

THE COMPLIANCE ORGANIZATIONAL UNIT AND COMPLIANCE RISK MANAGEMENT

According to § 37 of the MRiF Regulation, it is the responsibility of the compliance organizational unit to be responsible:

- 1) development of the regulations of the functioning of the compliance organizational unit, defining at least the purpose, scope and detailed operating principles of the compliance organizational unit,
- 2) performing activities specified in points 4-8 on the basis of the regulations of the functioning of the compliance organizational unit and procedures and methodologies,
- 3) documenting activities specified in points 4-8,
- 4) identifying the compliance risk, in particular by analyzing bank's legal regulations and internal regulations, market standards and the results of internal explanatory proceedings conducted by compliance organizational unit,
- 5) assessment of compliance risk by measuring or estimating this risk,
- 6) design and implementation risk control mechanisms based on the compliance risk assessment,
- 7) monitoring the size and profile of compliance risk after applying risk control mechanisms,
- 8) periodic reporting of compliance risk to the management board and the supervisory board or committee audit if appointed.

According to § 39 MRiF Regulation the management board and the supervisory board approve the regulations governing the functioning of the compliance organizational unit.

Similar recommendations in this respect are provided for by the recommendation of the KNF.

According to the KNF's opinion, the bank should separate the compliance unit and provide it:

- 1) appropriate location in the organizational structure, which should result from the bank's statute; in addition, the compliance unit should report directly to the president of the management board or a member of the management board who was entrusted with the competence in the supervision of compliance risk;
- 2) define in a formal manner its rights and obligations and ensure independence; the bank's management is responsible for the mechanisms that ensure the independence of this cell;
- 3) ensure appropriate status for the managing person this organizational unit and its employees, by defining in detail the duties and entitlements as well as the procedure for appointing and dismissing and the amount of remuneration.

Compliance risk management, in the opinion of the KNF, should include the identification, assessment, control, monitoring and reporting of the compliance risk by the compliance organizational unit as a process. The risk of non-compliance itself should be defined by the bank, and as part of the risk management process the bank should:

- 1) identify compliance risk and specify the scope of information used to identify this risk;
- 2) assess the identified compliance risk by quantitative measurement or qualitative estimation;
- 3) design, implement and apply risk control mechanisms;
- 4) monitor the size and the risk profile;
- 5) define the reporting principles for the implementation of the compliance organizational unit tasks to the bank's management and the supervisory board;
- 6) ensure that reports are submitted to the bank's management board and the supervisory board or audit committee if it has been appointed.

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Summary: The compliance organizational unit, in a legal environment dictated by changes to the regulations of 2017, is a key organizational unit in the bank's organizational structure, which has been assigned tasks related to the broadly understood risk compliance management. For the proper functioning of compliance organizational unit, it was guaranteed its proper location and the status of the head of the compliance organizational unit and employees performing these tasks. In contrast, the compliance risk management process, understood from 2017 as a set of specific elements and tasks (identification, assessment, control, monitoring and reporting), is one of the key processes that make up the bank's risk management system.

Keywords: risk management, compliance, banking risk, KNF's guidelines

ZARZĄDZANIE RYZYKIEM BRAKU ZGODNOŚCI W BANKU PO ZMIANACH Z 2017 R. W POLSCE

Streszczenie: Niniejszy artykuł ma charakter opisowy i poznawczy. Zamysłem autora jest przybliżenie poza granicami kraju problematyki zarządzania ryzykiem braku zgodności i usytuowania komórki ds. zgodności po zmianach zewnętrznego w stosunku do banku otoczenia prawnego i rekomendacji nadzorczych Komisji Nadzoru Finansowego. Mimo że zarządzanie ryzykiem braku zgodności i system kontroli wewnętrznej (wcześniej jako kontrola wewnętrzna) w bankach działających na polskim rynku bankowym to procesy funkcjonujące od lat, dopiero zmiany stanu prawnego, które wprowadzono w 2017 r., spowodowały, że proces zarządzania ryzykiem braku zgodności jest prawnie reglamentowany przez akty prawne prawa powszechnie obowiązującego. Jest już zatem ściśle określony, a wykonywanie obowiązków w tym zakresie wynika bezpośrednio z przepisów prawa.

Słowa kluczowe: zarządzanie ryzykiem, compliance, ryzyko braku zgodności, zarządzanie ryzykiem braku zgodności