



SCCE Western Balkans (Sarajevo) Compliance and Ethics Regional Conference

Challenges in the Area of Business Compliance in Montenegro

PhD Milena Žižić, Compliance Manager

1

- Banks and insurance companies that stand out as primary, modern and developed are financial institutions in Montenegro
- The notion of business compliance in the financial sector in Montenegro is first introduced in the banking sector. Legislation gains the notion of business compliance in the Banking Act in 2008, where it is introduced as one of the key functions that builds its position in the organization of an equal footing with internal audit.
- The manner of modern business and the specific relationship between the bank and the client shall be based on trust in the application of both the local and European legislative framework.



I. Role and importance of business compliance

2

2

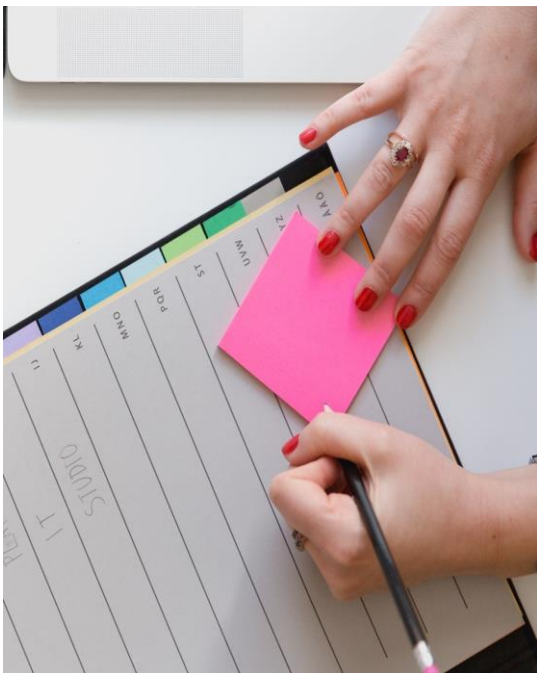
Bussines compliance

- The preventative role of bussines compliance has been established on trust.
- It is the Basel Documents that have helped the banks' compliance function to develop slowly and securely in the local financial market and to be introduced into local legislation.
- On the other hand, Solvency II in insurance companies has recognized the compliance function as one of the four key functions in the Company.
- As a result, compliance functions are slowly evolving through defensive preventative lines that act in time in order to prevent certain risks.
- The Compliance function initially had different interpretations, which were incorrect, that understood the Compliancy function in such a way that they put it in correlation with the business rather than as a function just there to preserve, enhance and assist the business.

PhD Milena Žižić, Compliance Manager

3

3



- The Compliance function is not initially understood to be a function that has a pre-audit role, it indicates possible omissions that shall to be corrected in order to avoid the risk of mismatches and even material losses.
- It took a long time for management and employees to understand the role and importance of the function and to understand it as close support even if it was recognized by the Banking Law.
- There was a general understanding that compliance is = "a cop" at a company, employees initially had a 'fear' of a official compliance officer, but with constant education about the importance of this function, prejudices disappeared.
- Compliance functions have a very significant place in financial institutions, it has formed in large telecommunications companies, but is still the most developed in banking, after more than 10 years of existence.

4

4

Compliance...

- Today, the situation is different, compliance function has evolved and has taken its place in line with internal audit in the banking sector, especially in banks whose parent banks belong to well-known international banking groups.
- On the other hand, large insurance groups that also transferred their business to the Montenegrin market through their subsidiaries were developing the business compliance function internally. Solvency II as a key document that EU insurance companies fully adhere to, and in our country, in accordance with local legislation and EU guidelines, have been recognized and first introduced the compliance function in insurance.
- Considering the above, it may be concluded that the compliance function is currently recognized in the financial sector in banks as a legal obligation and in insurance companies as a future legal obligation.
- It is precisely the lack of more precise regulation and guidance that has led to different interpretations of competencies, the way in which this function is organized, both on the regulator and on the market entity side. We still do not know how and in what way the official regulator - the Insurance Supervision Agency will evaluate the importance and impact of this function, the assumption is that this part will be elaborated with the new Insurance Law, which must be harmonized with the European one when the word is about the Insurance.
- The legislative framework should be clear and precise.

5

5

- There is definitely a need to develop this function in other fields in Montenegro and not only in the financial sector. This opens the possibility of developing the Institute for Business Compliance and Ethics, which by its actions will make the chances and possibilities of this function to be recognized in the best light and gain their place in all companies that want to build a quality business.
- There is a chance that the Compliance function will develop more than any other in the era of digitalization and high-tech struggles. It has the potential to restore a good image to the private sector, as well as to restore the trust and reputation of state institutions.
- It is important to emphasize that in today's world in developed markets, business cannot rely solely on unscrupulous profit making, but on moderate, tactical, precise, strategic management. This type of trust that is acquired must be built on strong relationships between employees, first and foremost, who trust the holder of the compliance function, and which results in a good relationship and trust between participants.
- The challenges of business compliance are big. First of all, the way how compliance is built in a company, what are the goals of the function, what are the fields that it cares about, who is the person in charge of the compliance function, employee reaction to the compliance function and perhaps most important of all the trust that is the key of success.

6

6

Challenges ...

- The frequently asked question is how to develop this function, how to bring 'ordinary' people to employees the importance of the same?
- We can conclude that it was precisely the process of transformation and transition that led to the first being heard about the existence of this function when we pay attention at the Montenegrin market in accordance with the above mentioned.
- Compliance Officer was a person engaged in the business of reconciling internal acts with external, monitoring changes in the legal environment ...
- Function itself is a fresh start, a new energy, a new challenge, especially in small countries.
- The competence of the compliance function must entail certain characteristics that will differentiate it from other components of the internal control system.
- Thus, the responsibilities of compliance must not be interwoven with any function that is defensible in the internal control system.
- For these reasons, the business compliance function program and plan should answer how compliance works.

7

7

Be compliant...

- The size, the principle of proportionality and the diversity of the business are also critical to the development and operation of the compliance function.
- It is logical that smaller systems will satisfy one-off reports of future risks and equally flat-rate controls without clearly identifying risks and evaluating control systems.
- On the other hand, systems that seek to be well-positioned in the market with a wide variety of products will require more detailed a description, detection, methodology for measuring, monitoring and managing risk.
- As the biggest problem in the development of function is always the resources, the question is asked whether in a company with more than 300 full-time employees, one person may manage compliance quality, efficiently and effectively?
- The development of the compliance function depends not only on the organization, the regulation, but it depends primarily on the person performing the function, their enthusiasm and desire to promote it. The support of management, organization, and employee response comes after that.

8

8

Challenges in the field of business compliance

Compliance does not make one person, compliance makes the whole team of one organization.

Established organization - compliance view

Ignorance of even the notion of compliance

A large number of internal documents, obsolete, unnecessary

Ignorance of the concept and situations that leads to conflicts of interest, situations that may be classified as unethical behavior and ignorance of the concept of corrupt practices, ignorance of the system of functioning of internal controls

Now - seeing compliance

Compliance gives me security, I may rely on that opinion.

Internal documents are the products of our business processes in order to facilitate access to daily work, and at the expense of the law. It is very important for me to know how important internal acts are and how good it is when I follow the legal regulation that compliance informs me..

We are completely sure when it is necessary to recognize unethical behavior, when there is a possibility of conflict of interest, how important it is to point out the possibility of corruptive behavior. Internal controls are there to give us an overview of the good and bad sides of our business process.

9

9

Compliance...

- Compliance has a great chance to shine in the real world.
- It is looking for people full of energy who with their approach, way of work, education and personal integrity show that everything is easy to complete and follow if you have everything under control.
- Compliance requires active team involvement. The team must be made up of experienced people who are ready to contribute to the personal development of the company with their knowledge, the relationship between team and compliance must be based primarily on trust, mutual understanding, open communication, and for example-relationship:
- : I have a problem - give me an advice, give a solution and I will not be in a problem neither I nor the company, you are not the controller you are my partner ;.
- Compliance takes time, Compliance manager, through her constant training, develops curiosity and gets an interactive work environment that knows how, when and at what moment Compliance should be turned on.
- In particular, in Montenegro, not only in the field of insurance, but also in the entire market, it is necessary to give its maximum in order to extend the scope of Compliance's business to all serious companies wishing to conduct their business professionally. It is necessary to work on education on both the persons performing this function and middle management in order to extend the importance of functioning and operation of this function to all pores of social life.

10

10

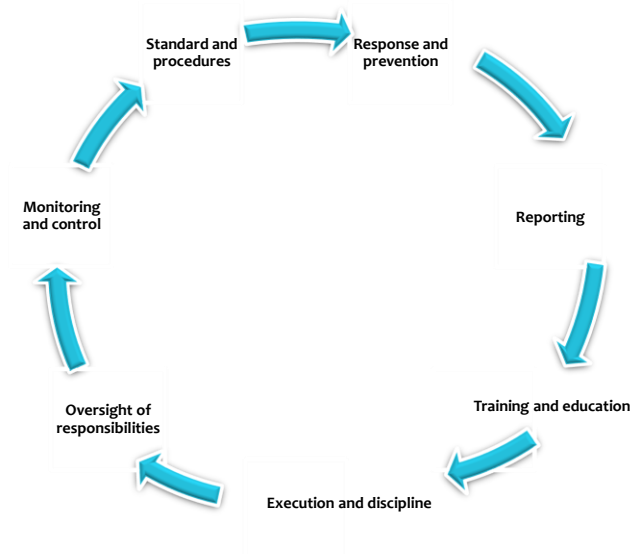
Policies, Standards, Plan...

- It is important to emphasize that management's intentions must be sincere, that compliance requires the complete support of top management of a company.
- It is necessary to send a clear message to all employees that the Compliance Authorized Person is, in fact, a good partner and not a Controller, that it should cooperate with it in an open, honest manner precisely in order to identify, monitor and manage Compliance risks.
- It is also very important to emphasize that the compliance officer has the challenge to deal sometimes with the conflicting interests of compliance of the company on the one hand and the intentions of the sales departments on the other, therefore compliance is on the same side as the sales side.
- The adoption of policies, a working plan, standards for implementing the compliance function, and the budget of the Compliance department is necessary to establish a business compliance function.

11

11

Demonstration of business compliance procedures in the company



12

12



- For the end of this session, the always well-asked question is where to go, what we aim for, what shall we do in the course of action, and what may simply cause a risk for something else?



13



14

14

Corruption ...

- The very term of corruption appears even more distant, we may say that it was defined as a socially negative phenomenon in Roman law.
- It was recognized as an offense that could be defined as giving, receiving or soliciting benefits with the intent to influence the 'other party' in connection with its business.
- The word corruption was a topic for discussion and definition of the term itself by philosophers such as Machiavelli, Montesquieu and Aristotle as 'a sign of the bleeding of the moral values of society'.
- Therefore, the corruption is an immoral and unethical phenomenon, very damaging that affects the advocacy of one's own interests rather than the common.
- However, today's experience, cannot be regarded as corruption not only from the aspect of morally harmful but also as a cause of state inefficiency.
- The most common forms of corruption are nepotism - abuse of office for private purposes and bribery.
- Corruption is the phenomenon most prevalent in the relationship between the private and public sectors.
- An occurrence in which, by way of a promise, by offering money or other benefits, another person is mentioned who has some responsibility or is an acting authority to act outside his legal rights, obligations and duties.

Term corruption...

15

15

Corruption ...

- Corruption exists both in the area of public affairs (within state affairs) and in the private sector. It may be expressed precisely in the relationship between the public and the private sector, through tender procedures, nepotism, etc.
- Corruption threatens a wide variety of social relations, public and private relations, collection of taxes, duties and other obligations, obtaining and issuing various types of permits, approvals, obtaining employment or providing health services.
- *Transparency International Organization* has provided the most acceptable definition for corruption:
- **"Corruption is an abuse of entrusted power for your own benefit."**
- The World Bank as the largest international financial institution has accepted this definition and supplemented it
- **"Corruption is misuse of public service in order to get personal gain."**



Term corruption...

16

Corruption ...

- Montenegro is one of the countries in transition that encountered problems from the past when it was a communist state on its way to democracy.
- The communist legacy, then a long period of democratic transition, privatization has greatly slowed down the processes of Europeanization and brought to delay of access to EU membership.
- All countries in transition, including Montenegro, face with the problems from the past that are reflected in the inherited condition:
- Corruption was pervasive;
- Then the enactment of new laws is also the reason for "passing" some laws that are not suitable for corruption;
- Privatization, which took place in unsettled conditions, is a fertile ground for corruption, difficult to prove and its stronghold is in contentious privatization contracts.
- Corruption in Montenegro is still at a high level, and it represents a major problem not only in everyday life, but its impact has significant consequences on the business sector, which reflects on potential problems with foreign investors, and thus on the overall development of the economy and trade.

Term corruption...

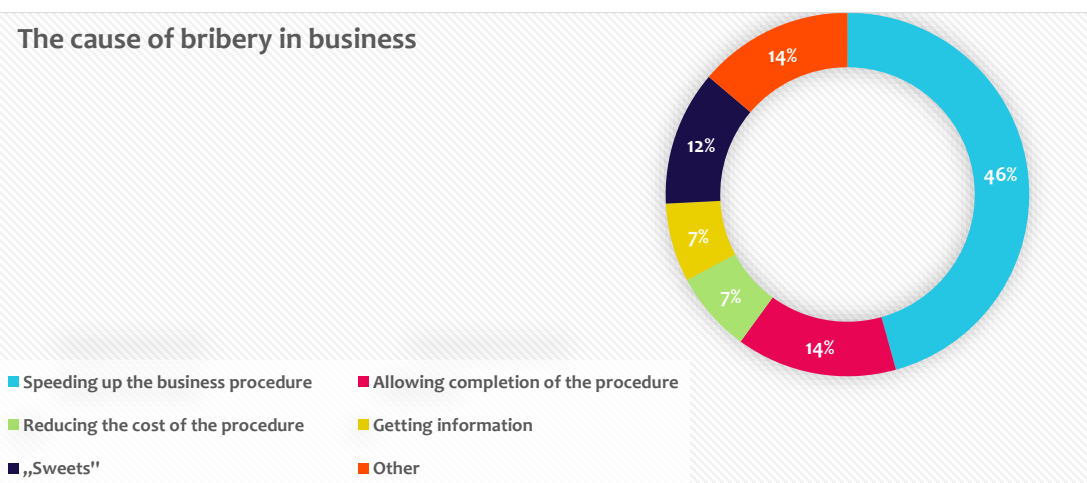
17

17

Corruption ...

- Surveys given in Montenegro Corruption Report from 2016 prepared by the Union of Employers of Montenegro and Mr Edin Koljenović give, among other things, an overview entitled 'Why everything is bribed in Montenegro' from the perspective of business entities 1:

The cause of bribery in business



Source - Business, Corruption and Crime in Montenegro(2013), UNODC RAI

18

18

Corruption ...

- Current researches have shown that the most common is the bribery of civil servants by businesses.
- Particularly prevalent in businesses trying to evade legal obligations by bribery.
- Often, lack of information tells us about what corruption is, what constitutes corrupt behavior and leads to the unconscious acceptance of a bribe, which may be in cash or a gift, leads to corrupt behavior of civil servants.
- In its provisions, the Criminal Code of Montenegro recognizes the receipt and bribery and the penalties provided for in the event that an official is found to have committed the crime of giving and taking bribery. The minimum sentence of imprisonment is 3 months and up to 15 years.
- Possible sources of corruption in business in Montenegro occur in every segment of the business, which implies the existence of excessive state regulation and branched bureaucracy.
- It is necessary to create a modern and efficient legislative framework with clear rules in order to reduce the fertile ground for corruption, where information is readily available, procedures are simple and cost-effective and where there is a quality regulatory system.



Term corruption...

19

19

Corruption ...



- In the last few years, the business environment in Montenegro has significantly improved.
- The Assembly has adopted a set of laws that are largely in line with EU standards, and which are certainly good ground for establishing a new economic system in Montenegro.
- Significant institutional reforms have also been implemented in key sectors: financial sector, fiscal system, payment system, corporate restructuring, etc.
- It may be said that much has been done in the regulatory and legislative parts, but that in practice, more need to be done to implement these reforms in order to ensure that ME meets the standards of a competitive market economy.
- Montenegro has made a huge progress in the area of anti-corruption, but is still late in meeting some of the measures in the negotiation process with the EU, both in terms of adopting and adapting legislation and implementing it.
- Bearing in mind that a large number of institutions are involved in this area, Montenegro shall to strengthen its overall capacity.
- The Assembly adopted the legislative basis for an independent anti-corruption agency with the authority on December, 2015 in order to conduct administrative investigations, which became operational from January 1st, 2016.
- The Agency for the Prevention of Corruption officially began its office with the entry into force of the new Anti-Corruption Law from 2016.

Term corruption...

20

20

Responsibilities of the Agency

- Establish the existence of conflict of interest in the exercise of public function and take measures for its prevention;
- Control restrictions in the exercise of public function;
- Conduct control of receiving gifts, sponsorships and donations;
- Conduct control of the data from the Report on income and assets of public officials;
- Give an opinion on the existence of threats to the public interest that indicate the existence of corruption and make recommendations for preventing threats to the public interest and the whistleblower protection;
- Monitor the adoption and implementation of Integrity Plans, make recommendations for their improvement and assess the efficiency and effectiveness of Integrity Plans in accordance with this Law;
- Adopt acts under the jurisdiction of the Agency in accordance with the law;
- Initiate and conduct proceedings for establishing the violation of the provisions of this and other laws governing the responsibilities of the Agency;
- Cooperate with the competent authorities, higher education institutions and research organizations and other entities, in order to implement the activities in the area of prevention of corruption;
- Keep records and registers in accordance with this Law;
- Conduct educational, research and other preventive anti-corruption activities;
- Exercise regional and international cooperation in prevention of corruption, etc.

Term corruption...

21

21

Anti-corruption measures

- In order to create an environment desirable for investing in Montenegro, a number of measures must be considered, which, together with the public and private sector alone, may have positive effects.
1. It is necessary to create adequate regulation, which implies proper and clear interpretation and consistent application;
 2. Enhance the cooperation of the public and private sectors and ensure a greater level of transparency of work and the application of ethical principles in public administration;
 3. Consider the reducing possibility of taxes, fees, fees, especially in those areas where high tax levies may lead to corrupt behavior;
 4. Enhance the application of ethical principles in public administration;
 5. Improvement and education of the importance of applying ethical principles;
 6. Establishing better quality control of the work of state bodies and public administration services;
 7. Ensuring the whistleblower anonymity shall be guaranteed, raising awareness of the entire society in the fight against corruption;
 8. Regularly and openly informing the public about all cases of corruption practices, as well as the participation of individuals in them, and informing the competent authorities about sanctions implemented on persons who participated in corruption.

Term corruption...



22

Business Ethics

- A very significant effect in the fight against corruption may also have education on raising awareness of the moral evaluation of the economy and business behavior and the introduction of ethics in all business relationships.
- Practice has shown that precisely because of the importance of business ethics, NGOs and trade unions are increasingly advocating that funds from 'funds' be used for so-called 'ethical investments', which would mean that they are used for those businesses and companies who do not use corruption in their business, respect the law, especially the right of workers, protect and care for natural resources.
- Business ethics are particularly important in the private sector, and very useful for both employees and the entire company.
- It is so important for the state government to make every effort to elevate the private sector from the same problem as well as it is important to fight corruption at the highest level.
- Transparency International has implemented a survey on the presence of corruption and therefore Montenegro is ranked on 67th position and has a significant advantage over the Western Balkan countries (Albania, Kosovo, BiH, Serbia), Croatia is in the 60th position in the same survey.
- As it is very important to develop defense lines in this process, so specifically in my company the Compliance function deals with this issue.
- As you can conclude from the previous presentation of the Legislation, it is mainly based on the public sector, but bearing in mind recommendations and good practices for creating a suitable ground for business, we do the following:
- We follow all laws and regulations in this area;
- We follow reports and research specifically, elaborated methodologies for assessing the risk of corruption in regulations in Montenegro;

Term corruption...

23

23

Business Ethics

- We constantly educate employees on the importance of recognizing corrupt behavior;
- In this regard, we have adopted an internal act on Anti-Corruption Policy, which is a serious document that is in line with EU legislation and good practice;
- We recognize the notion of whistleblowers in a company, we have a person in charge of handling these applications and special documents to protect their identity and integrity;
- We have mandatory clauses very well elaborated in contracts with all business partners adjusted to contract values;
- We have an open mail address for reporting any suspected corrupt behavior;
- A code of ethics has been incorporated throughout our business;
- Last but not least, an open relationship with employees and mutual security for resolving any possible concerns regarding indications of corrupt behavior.

Term corruption...

24

24



III. Preventive action through the functionality of the internal control system

25

Internal control

- Internal Controls System is very important in one company and has a preventive character, and it brings benefits and has the effect of preventing the occurrence of risks to the business in the long run.
- The functionality of the Internal Control System and its monitoring in many companies are just one area of compliance monitoring.
- The purpose of the Internal Control System is to provide at least:
 - The successful and efficient operation of the Company;
 - Achievement of the set strategic goals of the Company;
 - Responsible execution of tasks;
 - Reliability of information;
 - Timeliness of reporting;
 - Efficiency of risk management system;
 - Business Compliance;
 - Property protection;
 - Preserving the reputation and brand of the Company.

26

Internal control

- Internal control is an integral part of the Internal Control System.
- It is embedded in one or more business processes within a company and it represents a rule or procedure, intended to oversee the implementation of key activities in a particular process.
- The system of internal controls in an organization should be consisted of:
 - Internal Control Systems;
 - Risk assessments;
 - Internal controls;
 - Communication and reporting;
 - Surveillance activities.
- It is also very important to emphasize that the Internal Control System must be based on the fundamental values and ethical principles that should be contained in an internal document called the Code.

Internal control

27

27

Internal control

- It is desirable that an internal control system in one organization shall be consisted of:
 - Rules contained in laws and other regulations, internal acts and other written orientations to the management;
 - Procedures provided for internal acts and other written instructions;
 - Organizational structures;
 - The authorization system.
- It is necessary to create a Business Process Register in one organization with identified internal controls in relation to each business process and risk assessment of them according to the already established Risk Assessment Methodology in order to get a better assessment of the Internal Control System.
- In this way, we will be able to see which business processes are at the highest risk for business compliance and which processes need to be refined by existing internal controls in order to act preventively.
- Business function holders in one organization identify and evaluate risks in their area of business and take them into account when setting up and implementing internal controls in all business function processes for which they are responsible.

Internal control...

28

28

Internal control

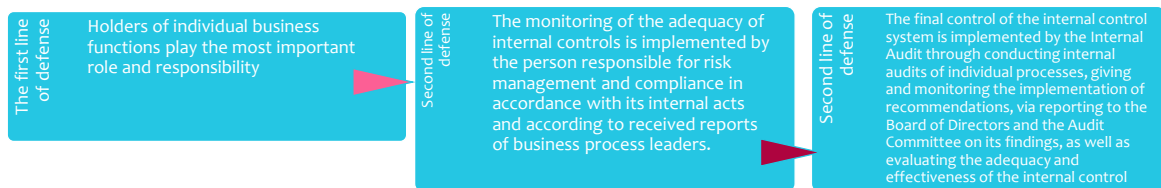
➤ Internal controls are:

1. Manual (requires greater commitment of employees during their implementation);
2. Partially manual (combined manual and automatic, for example: automatic data transcription and manual review);
3. Automatic (embedded in IT support systems).

➤ Recommendation:

- ✓ Internal controls are shaped when carrying out key stages of the process (for example: ensuring the regularity of transactions with right holders of a contractual relationship, ensuring proper and up-to-date reporting to external supervisory and other government bodies).
- ✓ Internal controls must be implemented in all organizational units, in all business and operational processes.

JURISDICTIONS OF DEFENSE LINES IN INTERNAL CONTROL SYSTEM



Internal control

29

29


Internal control

- The Internal Control System covers the entire organization, including management, board of directors, key and business functions and all employees.
- A well-established Internal Control System may be the strongest link in an organization's defense chain against risk.
- The importance of the preventive action of a well-functioning Internal Control System is invaluable.
- The involvement and cooperation of the entire organization is required in order to function this system.
- The purpose is to create such a system that will be of sufficient quality to alert a potential business failure as a potential risk that needs to be eliminated immediately in the current business.
- It is concluded that the functionality of the internal control system must be monitored on a continuous basis and should be reported regularly from the above mentioned information.
- It is desirable to control the functionality of the Internal Control System on a quarterly basis across all organizational units, and to assess the adequacy of the Internal Control System on the basis of the processed inputs provided by the business process holder.
- In case of inappropriate evaluations of the functionality of the Internal Control System, immediately check the current state and start eliminating bad controls, adding new quality ones and testing their functionality.
- It should be implemented within five units through a guide designed in such a way that the entire business may be covered by it, as a good example by which this assessment shall be made. These are: (questions about the internal control environment, risk identification and assessment, control activities, internal communication methods and supervision).


Internal control


30


30




Thank You

PhD Milena Žižić 

+38269337719 

milena.zizic@lo.co.me 

Lovcen insurance, Member of Triglav Group 

31