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MANAGEMENT OF CORRUPTION RISKS: LAW PROBLEMS OF IDENTIFICATION AND LEGAL ASSESSMENT OF PROBABILITY OF MANIFESTATION

Abstract. The legal problems of identification and evaluations of the probability of corruption risks manifestation are analyzed in the article. Found, most of anti-corruption measures of the authorities are formal and amount to the adoption of political documents. The purpose of the article is the theoretical substantiation of the components of the process of managing corruption risks and motivating the most appropriate methods of risk assessment. The following is proposed in the article: the anti-corruption control is understood as a system of checks aimed at identifying corruption risks and assessing the implementation of anti-corruption measures at the enterprise; the corruption risk is understood as the probability that an event of a corruption offence or the offence related to corruption will occur, which will negatively influence the achievement of the enterprise’s goals and objectives. It is recommended that the reasons for corruption risks are conditions that encourage (stimulate), cause or allow a person in the course of his or her functional duties, to commit unlawful acts characterized by deceit, concealment or misuse of trust in order to obtain money, property or services, as well as to evade the payment of funds for personal gain. The realization of corruption risk is manifested in various types of corporate fraud, in particular, illegal appropriation of assets, corruption as a result of conflict of interests, fraud involving the manipulation of accounting (reporting) data. It is stated that the main criterion that determines the probability of corruption risk manifestation is the frequency of cases of committing a corruption offence, taking into account the time limits. In this regard, there are risks with a low, average and high level of manifestation probability.

Keywords: corruption risks, identification, legal estimation, corruption control, law.

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Вказана. Проаналізовано економічні та юридичні проблеми ідентифікації та оцінки ймовірності прояву корупційних ризиків. Установлено, що більшість антикорупційних заходів органів влади має формальний характер і зводиться до ухвалення документів політичного характеру. Мета статті полягає в теоретичному обґрунтуванні складових процесу управління корупційними ризиками та умотивовування найбільш доцільних методик оцінювання ризиків. Запропоновано: під антикорупційним контролем розуміти систему перевірок, спрямованих на ідентифікацію корупційних ризиків та оцінювання виконання антикорупційних заходів на підприємстві; під корупційним ризиком розуміти ймовірність того, що відбудеться подія корупційного правопорушення чи правопорушення, пов’язаного з корупцією, яка негативно вплине на досягнення підприємством зазначених цілей і завдань. Рекомендовано причинами корупційних ризиків вважати умови, що заохочують (стимулюють), викликані або дозволяють експлуатацію особистій виконаний нею функціональних обов’язків незаконних дій, що характеризуються обманом, приховуванням або зловживанням довірою з метою отримання грошових власності або послуг, ухилення від сплати грошових коштів у цілях особистої наживи. Реалізація корупційного ризику проявляється різними вигідами корпоративного шахрайства, зокрема: незаконне привласнення активів; корупція в результаті конфлікту інтересів; шахрайство, пов’язане з маніпулюванням обліковими (звітними) даними. Вказано на основний критерій, що визначає ймовірність прояву корупційного ризику, під яким слід розуміти частоту випадків вчинення корупційного правопорушення з урахуванням часових меж. У зв’язку з цим доцільно вирізняти ризики з низьким рівнем ймовірності прояву, середнім і високим рівнями.

**Ключові слова:** корупційні ризики, ідентифікація, правова оцінка, корупційний ризик, корупційний контроль, право.

Формула: 0; рис. 1; табл. 1; бібл. 10.
УПРАВЛЕНИЕ КОРРУПЦИОННЫМИ РИСКАМИ: ЮРИДИЧЕСКИЕ ПРОБЛЕМЫ ИДЕНТИФИКАЦИИ И ПРАВОВАЯ ОЦЕНКА ВЕРОЯТНОСТИ ВОЗНИКНОВЕНИЯ

Аннотация. Проанализированы экономические и юридические проблемы идентификации и оценки вероятности проявления коррупционных рисков. Установлено, что большинство антикоррупционных мер органов власти носит формальный характер и сводится к принятию документов политического характера. Цель статьи состоит в теоретическом обосновании составляющих процесса управления коррупционными рисками и вымотивирования наиболее целесообразных методик оценки рисков. Предложено: под антикоррупционным контролем понимать систему проверок направленных на идентификацию коррупционных рисков и оценки выполнения антикоррупционных мероприятий на предприятии; под коррупционным риском понимать вероятность того, что произойдет событие коррупционного правонарушения или правонарушения, связанного с коррупцией, которая негативно повлияет на достижение предприятием определенных целей и задач. Рекомендуется причинами коррупционных рисков считать условия, поощряющие (стимулирующие), вызывающие или позволяющие совершения лицом при исполнении им функциональных обязанностей незаконных действий, характеризующихся обманом, сокрытием или злоупотреблением доверием с целью получения денег, собственности или услуг, уклонением от уплаты денежных средств в целях личной наживы. Реализация коррупционного риска проявляется различными видами корпоративного мошенничества, в частности: незаконное присвоение активов; коррупция в результате конфликта интересов; мошенничество, связанное с манипулированием учетными (отчетными) данными. Указано на основной критерий, определяющий вероятность проявления коррупционного риска, под которым следует понимать частоту случаев совершения коррупционного правонарушения с учетом временных границ. В связи с этим целесообразно выделять риски с низким уровнем вероятности проявления, средним и высоким уровнем.

Ключевые слова: коррупционные риски, идентификация, правовая оценка, коррупционный риск, коррупционный контроль, право.

Формул: 0; рис. 1; табл. 1; библ. 10.

Introduction. The problems related to corruption do not disappear from the mass media during the entire period of the independence of Ukraine, while the negative fact of the active dissemination of these phenomena and their increased penetration into all spheres of life of the state and society is constantly stated. To overcome the impact of corruption risks in the sphere of

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business relations of enterprises of Ukraine, the Anti-corruption Act [1] was introduced, aimed at defining the general principles of preventing corruption and fraud in the activities of legal entities.

However, most of anti-corruption measures of the authorities are formal and amount to the adoption of political documents. Meanwhile, Ukraine is ranked 6th in the world by the level of corruption risks (45% of enterprises confirmed corruption), yielding only to such countries as Russia (71%), South Africa (62%), Kenya (57%), Canada (56%) and Mexico, where 51% of enterprises recorded corruption [2].

According to survey results, 50% of respondents in the field of financial services, 43% of respondents in the field of energy and mining and 40% of respondents in the field of communication, regularly encounter the corruption and fraud cases in their activities. It is clear that the level of economic crimes at the enterprises of Ukraine could be much lower if every case of corruption was detected and a fraudster was punished. However, statistics state that 51% of corporate fraudsters commit more than 20 crimes before being caught, while another third part still commits over 50 crimes. In most cases, catching a fraudster and proving his guilt can be possible (if at all possible) in three years, while in 22% of cases it is possible to detect a fraudster in more than ten years [3, p. 189].

Such disappointing statistics motivate business entities to find effective mechanisms of managing the corruption risks.

**Research analysis and problem definition.** Despite the fact that numerous domestic and foreign developments of scientific and practical nature are devoted to the problems of business risk management, in which the directions for identifying risks are outlined, the tools for evaluating their consequences are grounded and the measures for leveling the risk manifestation are defined, their use in managing the corruption risks is getting complicated by the uncertainty of the theoretical and methodological apparatus for identifying and evaluating of the latter. The first steps to overcome this problem were made by the National Agency for the Prevention of Corruption, which in December 2016 developed and approved the Methodological Recommendations for the Evaluation of Corruption Risks [4]. However, they are mostly theoretical in nature and concern the activities of the authorities, and therefore little shed light on the management of corruption risks of business entities.

**Research results.** According to the anti-corruption legislation of Ukraine, *corruption risk* is understood as the probability that the event of a corruption offence or the offence related to corruption will occur, which will negatively affect the achievement of the enterprise’s goals and tasks [1].

In order to distinguish the corruption risks from the risks of business activities, their classification becomes important. Therefore, there are such types of risks as:

- normative and legal corruption risks related to contradictions or fuzzy regulation in the legislation of the provisions on the performance by certain officials of their functions and tasks;
- organizational risks connected with the unclear definition of procedures of the performance by certain officials of their functions and tasks [4].

In their turn, the organizational risks by the function (place) of their emergence are divided into personnel, financial and economic, administrative or control and oversight.

The process of managing the corruption risks involves their identification, assessment and substantiation of measures for leveling the risk manifestations. Identification of corruption risks is understood as determination of the causes of corruption risk in the activities / omissions of personnel or owners of the enterprise that may contribute to their committing the corruption offence. The reasons for the corruption risks are conditions that encourage (stimulate), cause or allow the a person in the course of his or her functional duties to commit unlawful acts characterized by deceit, concealment or misuse of trust in order to obtain money, property or services, as well as to evade the payment of money for personal gain.

The emergence of risk-cause is connected with the factors of uncertainty that exist in the internal and external environment of the enterprise and directly affect the level of corruption. The realization of corruption risk is manifested by various types of corporate fraud. In particular,
(according to the results of surveys of domestic business entities in 2015, the main consequences of the corruption risks manifestation are as follows:

- misappropriation of assets (73% of Ukrainian enterprises);
- corruption as a result of interests conflict (60% of respondents);
- fraud involving the manipulation of accounting (reporting) data (30% of respondents).

Therefore, the most common consequence of the corruption risk manifestation is traditionally the use of property in one’s own interests. Theft, embezzlement, payment for unworked time, the use of an official car are considered to be almost a norm, and not an exception to the rules.

Corruption as a result of conflict of interests is caused by a person’s private interest in the area in which he or she performs his or her official duties, which may affect the objectivity or impartiality of his or her decisions. This kind of corruption consists in the fact that the manager or employee of the company conspires with those who are not working for this company. The most popular and highly unprofitable types of internal corruption include:

- commercial bribery of employees of the enterprise by partners or competitors in order to accelerate or stimulate the solution to the problem in their favour;
- unauthorized cash rewards;
- intentional understatement of prices for products or overestimation of the purchase price of material assets by appointment with the counteragent in order to obtain further kickbacks from him.

According to PricewaterhouseCoopers, 62% of the surveyed managers stated that the greatest damage was caused by kickbacks received by employees from contractors or suppliers [3, p. 188]. The kickback allows the supplier to unreasonably overprice or supply poor-quality goods and services, and provides the purchaser with preferential terms of the deferment of payment, which in most cases turns into receivables.

The third by scale is the fraud involving the frame-up of primary records. The employees of the financial department, the accounting department, the sales and purchasing departments, as well as top management of the enterprise have the greatest opportunities for committing these types of fraud (77%).

In addition to investigating the causes and consequences, the procedure of identifying the corruption risks involves their location, that is, the identification of those processes and operations in the course of which there is the highest probability of committing the corruption offences by employees and owners in order to obtain personal benefits as well as benefits for the enterprise.

Despite the fact that the list of risk areas for each enterprise will be individual (taking into account the specifics of its activities), they will be generated within the functional systems provided in Table 1.

Traditionally, the sources of information for identifying and further assessing the impact of corruption risks are as follows:

- interviewing (sociological survey), questionnaires (including anonymous) of employees of the enterprise;
- introduction of a hot line by using the Internet or telephone;
- analytical data concerning the dynamics of changes within the most risky operations;
- the results of inspections conducted by the controlling bodies, as well as internal inspections and official investigations;
- the legal review of the contractual system and counteragents.

According to the results of world surveys conducted by the Ernst & Young audit company in 2015, the respondents (72%) referred the anti-corruption control to the most effective sources of identification of corruption risks. By its popularity it has left behind such traditional sources of information as the availability of a hotline for anonymous reporting of cases of corruption and fraud (32%) and the legal review of counteragents (10%).
Figure 1. Structural and consequential relationship between the places of emergence, causes and consequences of individual corruption risks
The use of internal control tools in the system of anti-corruption measures provides on average the identification of 44% of fraud cases and the reduction of financial losses from abuse by almost 50%. In most cases it refers to sale and purchase operations, tax optimization schemes and agreements with importers, in which the consequences of fraud are considered not only financially severe, but also destructive for business [5, p. 51].

The anti-corruption control is understood as a system of checks aimed at identifying corruption risks and assessing the implementation of anti-corruption measures at the enterprise. The generalization of ways and methods of anti-corruption control in performing the task related to the identification of corruption risks in the activities of business entities is given in the table 1.

### Table 1

<table>
<thead>
<tr>
<th>Types of risk</th>
<th>Methods of anti-corruption control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risks connected with abuse of management of their official duties in commanding finance and material resources</td>
<td>1) restriction of access to information; 2) unplanned inventory of assets; 3) selective documentary verification of the activities of individual officials; 4) questionnaire of the enterprise staff in order to identify the corruption risks; 5) the use of coefficient analysis for assessing the financial statements adequacy</td>
</tr>
<tr>
<td>Risks caused by the conflict of interests</td>
<td>1) blitz-diagnostics of the financial condition of the enterprises (suppliers and customers), which have delay in repayment of receivables, or goods supply; 2) assessment of the state of economic reliability of counteragents lobbied by officials; 3) the questionnaire for the enterprise staff in order to identify the cases of using by the official of his powers to provide the individual subordinates with advantages and privileges</td>
</tr>
<tr>
<td>Personnel risks which are related to: - the lack of procedures for assessing the staff reliability and loyalty to the enterprise; - the use by the official of his powers to negatively influence the persons to whom he or she has a hostile attitude, or provoke to commit corruption actions</td>
<td>1) the participation in personnel rating (verification of loyalty); 2) questioning the witnesses; 3) the search for documentary evidence; 4) carrying out the official investigations concerning the identification of the facts of violating the labour legislation regulations; 5) informing the enterprise personnel about the facts of detecting the corruption schemes and cases of fraud.</td>
</tr>
<tr>
<td>Risks caused by the abuse of the officials related to financial operations of their powers</td>
<td>1) the use of methods of assessing the adequacy of accounting information; 2) unplanned inventory of financial assets; 3) a selective documentary check of the activity of individual officials; 4) financial investigations using the methods of business intelligent service</td>
</tr>
</tbody>
</table>

The main characteristic that determines the impact of the corruption risk on the financial and reputational state of the enterprise is its level.

The risk level is an indicator grounding the permissible rates of losses from risky operations that do not violate the principles of sound economic management of this entity and ensuring its economic security. It is characterized by the combination of two factors: the probability of risk
manipulation involving expert assessment, and the strength of losses incurred as a result of the risk requiring the quantitative assessment.

According to the methodology of the National Agency on Corruption Prevention [4], the main criterion that determines the probability of corruption risk manifestation is the frequency of cases of corruption offences taking into account the time limits. In order to establish the frequency of corruption violations, it is reasonable to use the expert evaluation method, which requires the creation of a group of experts from specialists of their own enterprise and / or invitees who have the proper knowledge, intuition and experience in identifying the corruption risks. The quality of the selection of experts, and hence the accuracy of expert evaluation depend on the availability of appropriate specialists, as well as the permissible level of expenses for their maintenance.

To substantiate the adequacy of the results of expert assessment the ranking techniques are used. Thus, the first rank (1 point) is assigned to the risk with a low level of manifestation probability, which is characterized by a low probability of committing a corruption offence that was not previously committed at the enterprise (a high level of uniqueness of committing a crime). The second rank (2 points) is assigned to the risk with an average level of manifestation probability, which is characterized by isolated facts of corruption offences committed over the past three years, but it is probable that they will be repeated within the next three years. The third rank (3 points) is assigned to the risk with a high level of manifestation probability, which is characterized by high probability of committing a corruption offence within the next few months (up to one year) and the obligation of its occurrence in future.

**Conclusion.** The conducted studies provide an opportunity to formulate a number of principles that determine the current format of the manifestation of corruption risks and reveal the elements of the mechanism for managing them.

1. The corruption risk is understood as the probability that an event of a corruption offence or the offence related to corruption will occur, which will negatively influence the achievement of the enterprise’s goals and objectives.

2. The reasons for corruption risks are conditions that encourage (stimulate), cause or allow a person in the course of his or her functional duties, to commit unlawful acts characterized by deceit, concealment or misuse of trust in order to obtain money, property or services, as well as to evade the payment of funds for personal gain. The realization of corruption risk is manifested in various types of corporate fraud, in particular, illegal appropriation of assets, corruption as a result of conflict of interests, fraud involving the manipulation of accounting (reporting) data.

3. The important characteristic that determines the impact of corruption risk on the financial and reputational state of the enterprise is its level. It is characterized by a combination of two factors, namely, the probability of risk manifestation which involves the expert assessment and the strength of losses, incurred as a result of risk manifestation which requires quantitative assessment.

4. The main criterion that determines the probability of corruption risk manifestation is the frequency of cases of committing a corruption offence, taking into account the time limits. In this regard, there are risks with a low, average and high level of manifestation probability.

5. The most problematic aspect of managing the corruption risks is the assessment of the consequences of risk manifestation. Thus, further research in this field of knowledge should be aimed at finding the most reasonable methods of assessing the impact of the risks on the financial and economic results of the enterprise.

**Література**


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