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Foreign experience of combating corruption in the private sector

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ABSTRACT

The growing damage to the international economy as a result of corruption-related crimes is of particular importance, as is the need for a broader study of the fight against corruption. Analysis of foreign practice shows that in countries with market economies, one of the international tools to ensure the effective operation of public and private sector participants in the fight against corruption in accordance with international standards and other modern methods is an anti-corruption compliance control system.

The issues of responsibility of legal entities are also important in preventing corruption in the private sector.

The article presents the positive experience of foreign countries in the fight against corruption. These effective experiments are conditionally divided into three directions. In particular, the analysis of the anti-corruption system and its effectiveness, clear rules for the introduction of compliance control, as well as the responsibility of legal entities and the analysis of relevant legislation, the prevention of lobbying in the fight against corruption are of particular importance.

Хусусий секторда коррупцияга қарши курашишда хорижий давлатлар тажрибаси

Калит сўзлар:
давлат ва хусусий сектор
коррупцияга қарши
курашиш сиёсати

АННОТАЦИЯ

Халқаро иқтисодиётга коррупцияга оид жиноятларнинг содир этилиши оқибатида етказилаётган зарарнинг тобора ортиб бораётганлиги, коррупцияга қарши курашиш соҳасини янада кенгроқ тадқиқ этилиши долзарб аҳамият касб этмоқда.

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коррупцияга қарши комплаэнс-назорат юроидик шахслар

Хорижий амалиёт таҳлили шуни кўрсатадики, бозор иқтисодиётига эга мамлакатларда коррупцияга қарши курашиш соҳасида давлат ва хусусий сектор иштирокчиларининг халқаро стандартлар ва бошқа замонавий усулларга мувофиқ самарали фаолият юритишини таъминловчи халқаро воситалардан бири ўз таркибида коррупцияга қарши комплаэнс назорат тизими ҳисобланади. Шунингдек, хусусий секторда коррупцияни олдини олишда юридик шахсларнинг жавобгарлик ва масалалари ҳам алоҳида аҳамият касб этади.

Мақолада хорижий мамлакатларнинг коррупцияга қарши курашишга оид ижобий тажрибалари келтирилади. Ушбу самарали тажрибалар шартли равишда уч йўналишга бўлинади. Хусусан, коррупцияга қарши курашиш тизими ва унинг самарадорлиги, мувофиқ назоратини жорий этишнинг аниқ қоидалари, шунингдек юридик шахсларнинг жавобгарлиги ва тегишли қонун ҳужжатлари таҳлили, шунингдек, ноқонуний лобби ва коррупцияга қарши курашишнинг курашишни чеклашда бизнес вакилларининг ташаббуслари.

Опыт зарубежных стран в борьбе с коррупцией в частном секторе

Ключевые слова:
государственный и частный сектор антикоррупционная политика антикоррупционный комплаенс ответственность юридических лиц коррупционные скандалы.

АННОТАЦИЯ

Существенный ущерб, наносимый международной экономике преступлениями, связанными с коррупцией, имеет особое значение для более широкого исследования борьбы с коррупцией. Анализ зарубежной практики показывает, что в странах с рыночной экономикой одним из международных инструментов обеспечения эффективной работы участников государственного и частного сектора в борьбе с коррупцией в соответствии с международными стандартами и другими современными методами является система антикоррупционного комплаенс-контроля.

Обязанности и проблемы юридических лиц также важны для предотвращения коррупции в частном секторе.

В статье представлен положительный опыт зарубежных стран в борьбе с коррупцией. Эти эффективные эксперименты условно разделены на три направления. В частности, антикоррупционная система и ее эффективность; четкие правила введения соответствующего контроля, а также анализ юридической ответственности юридических лиц и соответствующего законодательства; инициативы представителей бизнеса в ограничении незаконного лоббирования и противодействии коррупции.

Anti-corruption issues, especially in the private sector, acquire particular relevance in the face of increased competition in world markets, the intensification of transnational crime, and increased damage from corruption crimes.

Corruption distorts market mechanisms, causes significant economic damage to states, negatively affects the development of competition and complicates the conditions for doing business. At the same time, it is present in all countries, regardless of the political, economic systems and other features, only the types of corruption offenses and approaches to their prevention differ.

Corruption negatively affects the activities of business structures. According to experts from Deloitte (an international network of consulting and auditing companies - ed.), about 30 percent of corruption offenses occur in the private sector, on average, each business entity loses five percent of the annual proceeds from corruption crimes. Thus, the average losses incurred due to exceeding the official powers of the owners / senior management are estimated at 573 thousand dollars, committed by the management of companies - 180 thousand and committed by employees - 60 thousand.

Corruption in the private sector:

harms the interests of both society and the state, as well as the lives and health of citizens;

undermines the foundations of free competition; deteriorates the business climate, the quality of corporate governance, the reputation of companies, and their investment attractiveness;

increases negative selection in the markets for goods, works, services, monopoly and protectionism;

forms the competitiveness of the national economy, sharply reduces the quality of state management of the economy, threats to political stability and security;

devalues democratic values, occurs cultivation of the ideals of permissiveness, acquisitiveness, impunity, etc.;

decreases the quality of goods and services, increases its cost, expands the sphere of the “shadow economy”;

decreases the income received by shareholders and owners of companies, the number of the company's counterparties, their orders and contracts;

provokes the growth of official and organized crime, increases the risk of money laundering abroad.

Not only business structures are indirectly affected by corruption in the private sector. Damage is done to the interests of shareholders, counterparties and clients.

In order to prevent corruption in the private sector, both the international community and a number of states are taking measures to improve the legal, organizational and institutional mechanisms in this area.

With the adoption of the UN Convention against Corruption on October 31, 2003, this requirement began to be implemented in an imperative manner everywhere. In accordance with Art. 12. “Each state party shall take measures, in accordance with the fundamental principles of its domestic legislation, prevent corruption in the private sector, strengthen accounting and auditing standards in the private sector and, where appropriate, establish effective, proportionate and dissuasive civil, administrative or criminal sanctions for non-compliance with such measures” [1].

Conventionally, the fight against corruption in the private sector can be divided into several main areas.

The first direction is the development of anti-corruption measures in the private sector.

We are talking about the introduction of effective mechanisms to identify and analyze corruption-dangerous areas of activity, assess and manage legal and financial risks in the event of corruption relations, ensure comprehensive protection of business from various legal, tax, economic, reputational, sanctions and other threats, called anti-corruption compliance (compliance - literally means action in accordance with the requirements of the law) [2].

Compliance control was introduced in 1906, when the United States established the Agency for Verifying the Compliance of the Pharmaceutical and Food Industry with Generally Obligatory Anti-Corruption Rules [3].

The scandals of the 60-70s of the twentieth century, and, in particular, the Watergate scandal, which revealed numerous cases of corruption, including in private companies, initiated the rapid development of compliance in the United States. The result of these scandals was the adoption of the FCPA, the Foreign Corrupt Practices Act of 1977, which established strict control rules for the maintenance of accounting and financial records, as well as rules for relations with government officials.

In the early 90s the United States has adopted the Federal Sentencing Guidelines, which provide clear guidelines for creating an effective compliance program, including ethical rules, and were amended in 2004 with provisions on the need for management to know the basic conditions of compliance programs.

With the adoption of the SOX, Sarbanes-Oxley Act of 2002, the requirements for the financial reporting of organizations have been seriously tightened, the obligation has been established for companies to adopt codes of corporate conduct, as well as to submit reports to American regulators. Since 2002, any company listed on the New York Stock Exchange is subject to U.S. law, in accordance with which it is obliged to implement a corporate compliance system (CSS) [4]. Compliance with laws, regulations and standards in the area of compliance usually deals with issues such as adhering to appropriate standards of market conduct, managing conflicts of interest, treating clients fairly and ensuring fair consultation with them, due diligence of counterparties, and prohibition of illegal actions against government officials, declaration of interests, income and expenses.

According to the laws, regulations and standards in the area of compliance usually concerns issues such as adhering to appropriate standards of market conduct, managing conflicts of interest, treating clients fairly and ensuring conscientiousness in advising clients.

Compliance also includes specific areas such as:

counteraction to legalization of proceeds from crime and financing of terrorism;

ensuring the ability to identify and resolve conflicts of interest, including potential ones;

the inevitability of the application of disciplinary measures in case of violation by employees of compliance standards;

providing employees and third parties with the opportunity to confidentially and, if desired, anonymously report possible violations of compliance standards via the hotline or by e-mail;

development of documents and procedures to ensure the compliance of the company’s activities with current legislation;

protection of information flows, anti-fraud and corruption, the establishment of ethical standards of conduct for employees, etc..

Compliance control is institutionally a structure consisting of highly qualified specialists, which creates an attractive perception of the company's activities and its top management. The correct attitude of the company's management to the compliance control function creates conditions for effective control of the risks of loss of profit, reduces the potential probability of losses of an intentional or unintentional nature.

In connection with the financial scandals that took place in the United States in 2008, the Dodd-Frank Act of 2010 established a number of additional measures aimed at strengthening the fight against corruption and ensuring transparency in transactions in financial markets [5].

Currently, almost all foreign corporations listed on the US financial market have implemented compliance services.

In 2010, the UK adopted the Anti-Corruption Act (The UK Bribery Act, 2010) aimed at combating corruption both within the country and abroad.

In more than 150 countries around the world, the implementation of corporate compliance control is mandatory.

The second direction of countering corruption in the private sector is the establishment of liability of legal entities for failure to take measures, as well as the inducement of government officials to commit corruption crimes.

In the legal doctrine of common law countries, the institution of liability of legal entities, including for corruption offenses, has been operating for more than two hundred years. In 1909, the US Supreme Court recognized the constitutionality of the criminal liability of legal entities [6].

The process of introducing legal entities into the sphere of influence of criminal law in civil law countries intensified in the 80s of the twentieth century, and especially in the 90s - in connection with the adoption of new criminal codes. For example, in 1976 the criminal liability of legal entities was established in the Netherlands, in 1982 - in Portugal, in 1992 - in France, in 1995 - in Finland, in 1997 such liability was introduced by the PRC.

Introducing the institution of liability of legal entities in countries the EU was preceded by the adoption of Recommendation No. (88) 18 of the Committee of Ministers of the Council of Europe member states on liability of legal entities for offenses committed in the course of their business activities, Civil Law Convention on Corruption of the Council of Europe, on the criminalization of corruption (CoE, 1999), the Convention for the Protection of the Financial Interests of the European Community and its Protocols 2002 etc.

Later, this requirement was enshrined in the UN Convention against Corruption, Art. 26 states: “A State party shall take such measures as, subject to its legal principles, may be necessary to establish the liability of legal persons for participation in the offenses established in accordance with the Convention. The liability of legal entities can be criminal, civil or administrative” [7].

Currently, the institution of criminal liability of legal entities exists in the legislation of more than 50 countries. In particular, Australia, England, Belgium, Hungary (since 2001), Denmark, Israel, Ireland, Iceland (since 1998), Canada, China (since 1997), the Netherlands (since 1976), Norway (since 1991), Poland (since 2002), Romania (since

2004), Slovenia (since 1999), USA, Finland (since 1995), France (since 1992), Switzerland (since 2003) and other countries, including the former USSR.

The corruption scandals of the 2000s contributed to the activation of the implementation of liability of legal entities in foreign countries years with the participation of top managers of a number of large companies. As an example, we can cite scandals with BAE Systems, Great Britain (2006 the amount of bribes was £ 2 billion), Hyundai Motor, Korea ($ 130 million, 2007), Baker Hughes Inc. ($ 219 million, 2007), Siemens, Germany ($ 1.4 billion, 2008), Petrobras, Brazil ($ 3.8 billion, 2014), USA ($ 138 million, 2012), TeliaSonera, Vimpelcom and MTS Sweden, Russia, (TeliaSonera $ 360 million, MTS $ 380 million, VimpelCom $ 150 million, 2012–2015.), Samsung Group, Korea (43.3 billion won, 2017), Volkswagen, Germany (750 thousand euros, 2019) and others[8].

In 2019, Ericsson paid $ 520.6 million to the Justice Department, $ 458.4 million to the US Securities Commission, and $ 81.5 million in interest for out-of-court settlement. In 2019, the Munich prosecutor's office has charged Airbus with over 100 bribes to officials.

In the United States, corporations can be punished with a variety of criminal sanctions, including liquidation, fines, probation (a trial period), etc.

In 2005, the Criminal Code of the Republic of Latvia included Chapter VIII-1 “Compulsory measures applied to legal entities” containing Article 70.2, which established that the following types of basic compulsory measures can be applied to legal entities: liquidation; limitation of rights; confiscation of property; monetary recovery, as well as the following types of additional coercive measures: confiscation of property and compensation for damage.

In accordance with Article 107-3 of the Criminal Code of Georgia, the types of punishments imposed on legal entities are liquidation, deprivation of the right to engage in activities; fine and deprivation of property.

The third area of countering corruption in the private sector is the suppression of illegal lobbying activities in promoting the interests of business structures in government institutions.

The term Lobby (lobbyism) (from the English “Lobbi” corridor, covered area) [9] in its modern interpretation came into wide use in the United States in the twentieth century [10] when this term began to denote the purchase of votes of deputies in Congress. In 1946, the United States passed the Lobbying Act, which defined the concept of lobbyism and obliged lobbyists and lobbyist organizations to register in the prescribed manner.

In accordance with Art. 5 of the UN Convention against Corruption “Everyone ... develops and implements or conducts an effective and coordinated anti-corruption policy that promotes public participation and reflects the principles of law and order, good governance of public affairs and public property, honesty and integrity, transparency and accountability”. In recent years, there has been an increase in the number of international recommendations and standards in the field of legal regulation of lobbying activities [11].

An example is the Recommendation Lobbying in Europe - Hidden Influence, Special Access 2015 by Transparency International, Parliamentary Assembly of the Council of Europe Recommendation 1908 (2010) on lobbying in a democratic society, 1744 (2010) [12], on extra-institutional participants in the democratic system , Venice Commission Reports CDL-DEM (2011) 002 on the legal framework for lobbying in Council of Europe member states [13], CDL-AD (2013) 011 on the role of non-institutional participants in the

democratic system (lobbying) [14]. In 2010, OECD member countries adopted the "10 principles of transparency and integrity in lobbying activities" [15].

In the publication Legislative Lobbying Toolkit, prepared under the Program Concept of Cooperation (PCC) within the framework of the Eastern Partnership initiative of the Council of Europe and the European Union, lobbying refers to direct or indirect communication with a public official with the aim of influencing a legislative, executive or administrative decision [16].

As of 2020, special laws on lobbying at the national level operate in more than 20 countries around the world. Their exact number depends on what criteria to use when attributing a document to the law. The depth and content of the laws varies widely. Lobbying activity is normatively regulated in Germany (Bundestag Regulations, 1972,), in Georgia (Law of Georgia on Lobbying Activity, 1998), in Brazil (a Law on Lobbying Activity was adopted in 1985,), in Lithuania (Law no. VIII-1749 on lobbying, 2000), in Israel (Law on Lobbying, 2008) in Austria (Law on Transparency of Lobbying and Representation of Interests, 2012, Lobbying Code of Conduct, 2013), in Hungary (Government Regulation 50/2013, 2006), in Ireland (Law on the Regulation of Lobbying, 2015), in Poland (Law on Lobbying in the Legislative Process, 2005), in Slovenia (Law on Integrity and prevention of corruption, 2010), in Montenegro (Law on lobbying No. 52/2014).

An important requirement of the legislation on lobbying is to determine the maximum amount spent on lobbying. Thus, the Law of the US State of Hawaii defines that "A lobbyist is any individual who, in any reporting period, spends more than $ 750 on lobbying.

Under the laws of the US State of Maryland, a lobbyist is one who "in connection with or for the purpose of exerting influence on any act of the executive branch, spends at least US $ 100 for gifts, including food, drinks and special events for one or more officials or employees of the executive branch, spends at least US $ 2,000, including in the form of costs for salaries, payment for work under the contract, postal services, communication services, electronic services, advertising, printing and delivery services, with the direct purpose of agitating others to appeal to an official with the aim of influencing a legislative or executive act, or spends at least $ 2,500 to pay compensation to one or several organizations with mandatory registration.

As we can see, the fight against corruption and its manifestations in the world has long assumed a systemic character. Our country has its own unique path of development, but the legislators of the republic, together with the regulatory authorities, we think, have something to take into account, choosing the solutions that are optimal for the national mentality.

We believe that the widespread implementation of compliance control systems in economic entities of our country will largely minimize the risks of corruption, enhance the business reputation of national companies, provide access for domestic producers to world markets, enhance the country's investment attractiveness, and prevent negative manifestations in the economy.

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