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Compliance Control, Economic Expertise and Foresight in Business Legal Risk Management

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Abstract: The authors of this study analyze problematic aspects of the interrelation of economic processes in entrepreneurial activity with certain issues of legal regulation and law enforcement. Taking into account the current problems of law enforcement, this work pays special attention to the need to apply timely practical analysis of the main legal risks of business. The problematic aspects of legal awareness on the use of expert assistance in bankruptcy, tax and economic disputes, in the investigation of economic crimes, in "shareholder" conflicts, as well as in the processes of countering corporate fraud and corruption are touched upon. The methodological basis consists of general scientific and private scientific methods of cognition of socio-legal phenomena, normative, logical, systemic, functional, retrospective analysis. A separate place is given to the study of the ability of business entities to effectively defend themselves against unjustified claims from the State, counterparties, creditors and former partners, as well as issues of effective use of tools of prevention and combating corporate fraud. According to the results of the study, the authors reveal from a scientific and law enforcement point of view the positive trend of attracting experts to prevent risks in the process of entrepreneurial activity.

Keywords: business conflict; compliance control; crime investigation; legal awareness; forensic; legal risk; anti-fraud

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Contents

I. Introduction

The concentration of legal risks in domestic business is such that entrepreneurs can be in different legal statuses on the same day — as a plaintiff and a defendant, receive a billion dollar fine, act as victims, become suspects or defendants in criminal cases. This applies fully not only to business owners, but also to the management and staff of Russian companies.

The increase in the so-called "dangerous concentration of law" in the economy is influenced by corporate conflicts and wars, economic and tax disputes, and the work of regulatory and law enforcement agencies.

"Own" and "foreign" dubious and technical counterparties, a toxic business environment where shadow settlements occupy a stable significant share, high demand for cash, corrupt entry into many markets, the possibility of appropriating other people's assets and labor results by forcing transactions in court — these factors dilute standard financial and economic transactions related to the creation of added value in the Russian economy, profit extraction.

On the one hand, companies and their owners are harmed by unscrupulous counterparties and their employees in fraudulent actions; on the other hand, the schemes and peculiarities of financial and economic activities implemented by the beneficiary and managers themselves are often in the zone of a whole range of legal risks: from violation of tax or antimonopoly legislation, restrictions in the sphere of public procurement to bankruptcy and prosecution for economic crimes.

As a rule, the realization of the real danger of such schemes comes too late — at the moment of realization of adverse consequences, when there is a statement, lawsuit, act from a disgruntled participant, counterparty, bank, tax or a law enforcement agency, from the moment when the transactions performed begin to be considered from a different angle.

The problem lies in legal awareness and legal nihilism, where a person may guess that wherever there is a questionable movement of finances, transformation of cash flow into cash with a questionable commodity equivalent, restriction of competition, substitution of a market asset for "pacifiers" and similar transactions, significant legal risks appear.

II. Methodology

When writing this work were used general scientific and private-scientific methods of cognition of socio-legal phenomena, logical, systemic, analysis, comparative-legal, normative-logical methods of

interpretation of legal norms and empirical material, expert assessment method.

Was also used in the Sections III (1, 2, 3), IV (1, 2), used method risk identification, in Section V used methods analysis of the possibility of bringing to subsidiary liability, analysis of bankruptcy causes and statistical method.

The Section VI (1, 2, 3, 4) used methods of systematization and illustration when examining the elements of corporate fraud.

III. The Current State of the Processes Taking Place

According to the theory of risk management, legal risks are risks of violation of law and contract. First of all, legal risk is associated with legal problems and restrictions, administrative fines, loss of permits, licenses. Often, for a business, legal consequences translate into losses, loss of assets, deterioration of business reputation. Moreover, the realization of the most significant legal risks can easily lead to the bankruptcy of the company with subsidiary liability of management and owners.

The most relevant and problematic branches of "compliance" in Russia now are such spheres of legal regulation as anti-fraud and corruption, tax, bankruptcy, anti-money laundering and countering the financing of terrorism (hereinafter AML/CFT), antimonopoly, budget and sanctions law.

The most dangerous violations are at the intersection of sectoral and criminal law, because when proving the intent and a large amount of damage from transactions and operations, criminal liability appears, where law enforcement agencies are involved in the orbit of social relations. In such situations it is not always useful for business.

Depending on the size of the company and the availability of resources, entrepreneurs manage legal risk in different ways. Large businesses have special units and employees: compliance officers and compliance services that are either located in legal departments or are represented as independent structures. The word "compliance", like many other foreign words in Russian, has quite easily taken root in the domestic business lexicon and become popular. Large companies

always have the opportunity to invite external consultants. Compliance services are actively provided by former big four companies (Deloitte, PricewaterhouseCoopers, Ernst & Young и KPMG) and second-tier consultants. In small and medium-sized businesses, lawyers and CEOs are in charge of "compliance", dealing with legal risks.

However, the problem of compliance with legislation is equally relevant for any enterprise, regardless of its scale, legal, legal form. Unfortunately, the effectiveness of domestic compliance often leaves much to be desired. In a large business, compliance control may be too focused on its area of expertise, leaving related risks of adverse consequences unattended.

The classic conflict of interest story is as follows: anti-fraud — taxes, where identifying and recognizing fraudulent histories in accounting leads to new underpayment situations. Moreover, risk management constructs in the form of "tracing from foreign solutions" are more difficult to understand. These circumstances lead to the fact that the conclusions of the compliance service are not always taken into account when making management decisions.

In most cases, general lawyers and entrepreneurs themselves do not always have enough time and specialized knowledge to understand the significance of this or that legal risk, to work on it in order to exclude the occurrence of unfavorable consequences of the fiasco.

Not in all cases it is possible to promptly calculate the legal risk to the end, and in some situations it is not possible at all. Moreover, within the implementation of new institutions, administrative subjects complicate the task and follow the path of introducing more and more new norms and restrictions in the studied sphere of public relations. The ongoing processes are dynamic and do not guarantee the stability of legal norms.

As everyone knows, in the recent past, interaction with a "one-day firm", as well as bankers' cashing out of funds, was considered a norm of behavior. Nowadays, such entities have had their licenses revoked, individuals are hiding from subsidiary liability, and their clients, consumers of services, having lost tax disputes in all instances, are at the stage of bankruptcy and are involved in criminal law relations. At the same time, the so-called "one-day companies" to a certain

extent have remained in the market, having transformed into dubious counterparties.

From a practical point of view, such operations are best categorized into key business processes: purchasing, storage, logistics, production, construction, finance, and fulfillment.

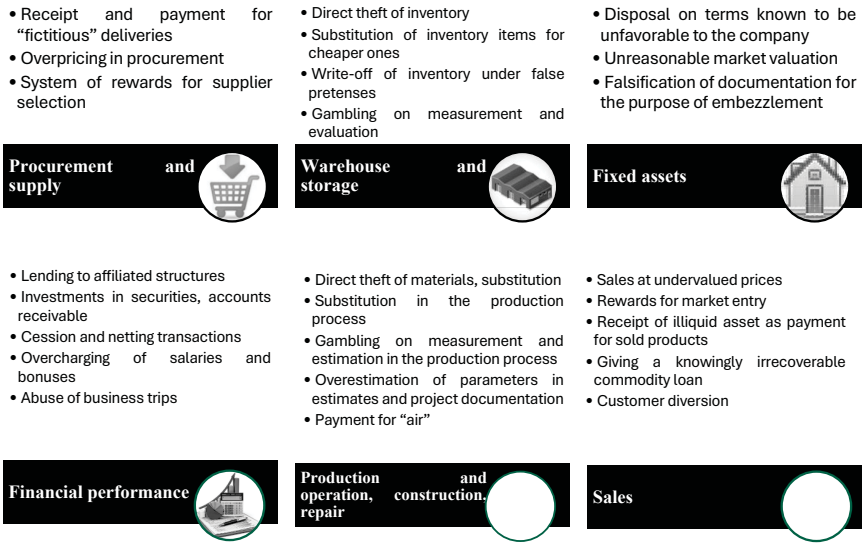

Figure 1. Anomalies in key business processes

The interconnectedness of legal risks causes a "domino effect", when one unfavorable event starts to cause a whole chain of negative legal consequences. For example, field tax audits often lead to criminal proceedings and bankruptcy of companies, as the revealed amounts of arrears are high, as they are calculated rather one-sidedly (Ryazantseva, 2019, p. 91), without taking into account real business transactions. In turn, in bankruptcy the entrepreneur has the risk of losing not only the business, but also his own property through bringing to subsidiary liability, taking into account the accusatory bias of the administrative entity. In the framework of criminal investigations, some law enforcement officers, without objectively clarifying the circumstances,

see only criminal intent in the activities of a business entity. This aspect should address the issue of specialized knowledge, which in most cases is overlooked.

Unfortunately, against the background of risk management according to translated textbooks, the role of specialized knowledge in the management of legal business risks is still in the shade. Risks in the highlighted business processes (procurement-storage-production-financing — realization) manifest themselves in three main planes:

1. economic sense of transactions and operations, their real impact on the balance sheet and financial results;

2. compliance of the transaction and operation with the law/ contract/regulations/market conditions/common business practices;

3. status of counterparties, further chain of financial and economic transactions, directions and ultimate goals of asset movement, transformation and substitution.

When examining transactions and operations in the above three dimensions, the following "traffic light" can be identified.

III.1. Definitely "Red" Zone

1) Interaction with technical organizations that do not have normal operations (mass purchases of goods and services, loans, and other money transfer operations are typical for managers and founders) (Efimov et al., 2021).

At one of the seminars with judges, when analyzing such a scheme, the question was asked — why a business steals money from itself. The reasons for transferring money from a current account to a cash or cryptocurrency case are really quite numerous. The main leitmotifs are:

— personal use (avoiding dividend distribution);

— tax avoidance (contributions to funds when partially undeclared salary, VAT, profit tax on purchases, tax on dividends);

— making various kinds of corrupt payments (it is difficult to pay a bribe from a current account).

When it becomes clear that these transactions are not a corporate fraud of hired employees, but a cash-in-transit, about which the management and owners of the company were aware, and there are any

other persons interested in the financial results (minority participants, creditors, investors), the entrepreneur runs the risk of being held criminally liable for embezzlement at his own enterprise.

2) Carrying out transactions with any counterparty. In this case, its status does not matter when market assets are replaced by technical assets on the company's balance sheet or a fictitious debt is recognized on the balance sheet.

Practice shows that, even with the most leisurely actions of law enforcement agencies, there are not many grounds for defensive counterarguments in the red zone. Withdrawal of money to technical companies and substitution of a market asset for the assets of a so-called "pacifier" through a series of transactions and firms can be easily identified and documented by bank statements, accounting documents and counterparty processing.

In such situations, it may help to prove the reality of the transactions for which the money is transferred, or to prove the market conditions of the transactions. If with the help of economic expertise it is possible to prove that the money left the company for real reasons (for example, the technical firm actually delivered goods, which were sold), then there are grounds to enter into disputable relations with the law enforcement agency regarding the qualification of the specified action or inaction as a crime.

III.2. Operations from the "Orange" Zone

1. Interaction with individual entrepreneurs (hereinafter IE) and self-employed persons who carry out financial and economic activities only with a separate company, especially if they have previously been in an employment legal relationship.

2. Relationships with organizations that have signs of doubtful activities (they have real financial and economic activities, but the share of expenses for taxes, salaries, rent is small in the payment turnover, there is a small headcount with obvious transit or other schematic operations).

3. Implementation of cessions, offsets, whereby a marketable asset is removed from the company's balance sheet and a non-technical asset

of lower value, of the value difficult to measure and of questionable utility is put on the company's balance sheet.

In the orange zone, where purchases from sole proprietorships and dubious firms, relationships with offshore firms, as well as substitution of assets with less liquid ones, the chances of protection increase. Here, economic expertise and research, if conducted in time, can play a decisive role in the realization of risk (Efimov et al., 2021).

In the majority of high-profile cases, it was the experts who managed to decide the fate of the dispute or criminal case. Among the problematic aspects in this segment it is necessary to state the circumstances of reality. In criminal cases economic expertise is formed by state experts of law enforcement agencies. In this situation, one of the main risks is the fact that experts and investigators are often located in neighboring offices. When it comes to complex data, experts often take the investigative accusatory version as a basis for the conclusion. In the ruling on the appointment of the expert examination and in the expert's report, a corresponding reservation is made about this.

At the same time, the validity of this approach raises objective doubts — too close interaction between experts and the investigator contradicts the basic principles of expert activity. When an expert takes a disputable investigative version as his/her initial data, it obviously limits his/her independence and objectivity.

III.3. Operations from the "Yellow" and Conditionally "Green" Zone

The transactions enumerated below are less dangerous:

1. "risking" improvements in accounting and reporting without withdrawing assets,

2. interaction with offshore firms,

3. any unprofitable operations where the transparency of the cash flow is lost and its real beneficiary is hidden.

They do not lead to real damage, at most the dispute around them may be in the area of lost profits or additional tax and customs charges. However, the opponents of such operations can be represented by both "red" and "orange" with the ensuing consequences (Shakhov, 2024).

Moreover, a significant volume of operations and transactions with various degrees of dubiousness, the spread of fraudulent schemes and lack of trust between market participants make other quite normal economic facts ("green zone") to be considered "under the microscope" and to find something in them.

IV. Economic Expertise in Criminal and Arbitration Cases

Economic expertise in many criminal and arbitration cases is almost as mandatory as forensic expertise. This type of expertise is appointed in those situations when accounting documents and economic information are closely related to the circumstances to be proved. If a criminal or arbitration case in one way or another affects the analysis of facts of financial and economic activities of organizations and citizens, and the knowledge of the court and investigator is insufficient for such analysis, an expert study of accounting documents is required.

Information, which is established by an expert, is used primarily to prove the objective side of a crime or a civil tort. By means of conclusions of the expert about facts of financial and economic activity it is the investigator and the court, and not the expert, that establish such important circumstances as ways of committing a crime (violations), its traces, the size of the damage caused, the causal link between the act and the consequences.

Economic expertise in arbitration and civil cases is extremely multi-tasking, the following groups of issues can be distinguished (Wewel et al., 2024, pp. 10–14):

— the conformity of the reflection of the performed operations with the rules of accounting;

— compliance of synthetic and analytical accounting data with primary accounting documents;

— availability of the necessary amount of funds on the settlement accounts of organizations for repayment/payment/payment of accounts payable, wages and other liabilities;

— on the grounds on which there was a movement of funds on settlement accounts (cash) of organizations;

— on the amount of taxes and fees not assessed and not paid by the taxpayer;

— about the borrower's creditworthiness;

— the completeness and timeliness of repayment of borrowed funds;

— changes in the debtor's financial condition, the impact of transactions and operations and other economic factors on such changes;

— on establishing the share of the company's founders in the division of profits, assets to be distributed;

— the existence of misstatements in the financial statements, their impact on the company's fulfillment of its obligations, and the correct calculation of certain financial indicators.

— on recreating distorted records;

— on the amount of received losses and lost profits on transactions, etc.

IV.1. Tax Risks and Compliance of the Company's Activities with the Requirements of the Tax Legislation

Tax control over the past 10 years has made a powerful leap forward. Tax authorities have become high-tech, learned to collect and analyze a significant amount of data on the taxpayer, its financial and economic activities, other data in state databases.

With full information about the taxes calculated and paid by taxpayers at their disposal, inspectors compare them with commodity chains from their database AIS "Tax-3" (including from the connection of electronic purchase and sales books for value added tax), with data on the movement of money on settlement accounts (received in real time from banks), information on property, owners, connections from such databases as "Unified State Register of Legal Entities", "Fedresource", "Rosreestr". Also, the tax authority easily and gladly uses data from "FCS", "Civil Registry", "Ministry of Internal Affairs". If, based on the results of such a comparison, the tax authority finds gaps in the real volume of transactions that create tax bases (revenue, property) and declared, then claims on the chains are made to the real business.

The tax authority can quite easily separate a taxpayer "with the potential to pay" from disputable and technical counterparties. In the course of the desk work and "pre-verification" analysis, inspectors find inconsistencies in the comparison of data on tax bases, and at first demands and questions are sent to the company with the task to "clarify". In answering these questions, as well as monitoring the situation with tax planning, there is a benefit of engaging specialists, as inspectors quite often come to questionable and unsubstantiated conclusions, which should be double-checked with the help of independent experts.

As a rule, the claims of the tax authority are built around 6 main issues (Freedman et al., 2019, pp. 74–116):

1. shifting the tax burden to technical counterparties,

2. artificial fragmentation of business in order to leave the general taxation system,

3. other issues of the "abuse of a right": an attempt to offer another qualification for transactions "agent/commissioner — supplier", "loans/investments — realization", etc.,

4. gray salary and half-gray payments to staff to avoid paying insurance premiums and "PIT" (Personal Income Tax),

5. disputes around evaluation of assets to reduce property tax: the cadastral value, qualification as movable or immovable property,

6. concealment of the tax base: an income, a part of activity, a volume of property.

The general attitude in the country is formulated, "taxes must be paid". If the taxpayer did not want to voluntarily induce and clarify, then the heavy artillery — "tax audit" enters the fray. Tax authorities are developing, including in the framework of digitalization — the use of electronic resources, the development of evidence. However, these resources are often used to "scare to pay", rather than to delve into the facts, which may turn out to be very controversial. Tax authorities do not accept primary documents for formal reasons and without special knowledge in various spheres of social relations, make unilateral conclusions.

Facts that require the application of specialized knowledge are often not deeply elaborated in a tax dispute, because neither the tax authority nor the taxpayer does not involve experts. There are whole blocks of

issues that in a tax dispute, in fact, cannot be established without the help of experts, but the tax authority becomes such an expert itself or invites its own experts.

At the same time, the tax authority may come to unfounded conclusions that require additional verification by independent experts on the following issues:

— the volume of supplies of goods, works, services, their cost and quality;

— the taxpayer's own labor;

— the ability to produce a volume of output without resources;

— creating all the documents on one computer;

— forged documents and stuff.

All the above-mentioned sets of questions are disclosed through setting appropriate tasks for the experts. Through their solving the experts can determine the following answers to the questions:

1. the true market value of goods, works, services, other tasks of appraisal expertise;

2. the actual volume of construction and installation works, other types of works, other tasks of construction-technical and technological expertise;

3. technological parameters necessary for the production of goods, the performance of work;

4. the presence/absence of forgeries in documents, other tasks of forensic examinations;

5. changes in electronic documents, other e-discovery and computer forensics challenges.

Appraisers, commodity experts, builders, criminalists, and IT specialists are actively involved in the establishment of such circumstances.

However, there is also an economic, analytical set of questions:[1]

— determination of actual tax liabilities using the calculation method, the tax reconstruction method, and mixed methodology;

— calculation of the tax consequences of adding and removing operations when modeling business processes within a group of companies;

[1] Tax Reconstruction, (2022). Available at: https://www.nalog.gov.ru/rn12/news/activities_fts/12395197/ [Accessed 15.04.2025].

— establishing the source of the value-added tax on a "tree of relationships" (where graphically shows the relationship between the company, its suppliers, contractors of the second and subsequent links);

— confirmation/proof of economic feasibility of transactions and operations;

— establishing the cash flow and the real beneficiary of the tax savings.

It is advisable to engage experts within the framework of challenging the results of tax control, when it is necessary to verify the conclusion of an expert examination conducted at the initiative of the tax authority, since it is not excluded that the tax authority may have missed important circumstances that require special knowledge to be established.

Among the topical tax disputes there are procurement relationships with "technical or dubious counterparties", which are at the top of the list. After an audit, the tax authorities completely exclude VAT deductions and do not include the costs in corporate income tax expenses. This approach leads to significant additional tax charges, which for many companies become unaffordable and lead to bankruptcy.

And if the taxpayer has really technical operations and paper expenses, such an approach of the tax authorities is reasonable, then in the case of real operations and the use of dubious counterparties only to increase the trade markup, the complete zeroing of such operations deprives the taxpayer of all actual expenses incurred in the purchase of goods (works, services) from a real supplier.

Not always links between companies indicate a desire to obtain tax savings. A good economic analysis can show that signs of splitting in borderline situations are artificial and do not correspond to the real financial and economic activity of the taxpayer.

IV.2. Tax Reconstruction

Tax reconstruction is the determination of tax consequences of a transaction (transactions) based on their real economic sense, when the actual tax liabilities are calculated taking into account the expenses actually incurred by the taxpayer and the VAT deductions (from the

calculation if the taxpayer has not permitted any violations) (Bykova, 2020, pp. 24–31).

Not always within the framework of tax control real expenses of the taxpayer are taken into account in full, which violates the established procedure for calculation of a profit tax and a VAT, when the amount of tax payable is determined on the basis of revenue from the sale of goods (works, services) without taking into account real expenses, while the fact of the transaction and its expenses is not questioned. This approach violates the fundamental principle of taxation stipulated in Art. 3, Para. 3 of the Tax Code of the Russian Federation: "Taxes and fees must have an economic basis and may not be arbitrary".

In order to challenge the tax authority's calculation of tax liabilities, a taxpayer must submit a counter-calculation based on proper evidence. Where a taxpayer in the course of an on-site tax audit and consideration of a case in court fails to provide proper evidence and a counter-calculation based on it, indicating that the Inspectorate's calculation of tax liabilities does not correspond to the actual conditions of its economic activity, as well as other documents and/or information that could refute the legality of the Inspectorate's position, the court shall decide in favor of the tax authority.

Thus, in the course of tax audits and tax litigation it is important to take an active position and defend your right to apply tax reconstruction, and it is possible to engage specialists to calculate actual tax liabilities. The application of tax reconstruction allows to exclude only that part of expenses, which is taken into account in the calculation of corporate income tax and the application of tax deductions for a VAT, which falls on "technical" companies. As a result, the amount of additional charges for a VAT and a corporate income tax and, accordingly, the amount of fines and penalties is significantly reduced.

V. Economic Expertise in Pre-bankruptcy and Crisis Situations

Bankruptcy in the post-Soviet space has long been associated with a means of avoiding debts. Transferring assets to a new circuit, imitating work with creditors, allowed many entrepreneurs to restart their

business, shifting their debts to the shoulders of suppliers, employees and the State, causing damage to them (Makhorkina, 2022, pp. 32–38).

However, at present we see the opposite trend, which is characterized by an excessive fascination with subsidiary liability, which owners, management, employees and even their family members are trying to be brought. With the current instability of the economy, jumps in external economic conditions and currency exchange rates, sanctions and counter-sanctions imposed on entire sectors of the Russian economy, gaps in the state regulation, and the consequences of the pandemic, the number of objective market bankruptcies is growing.

Establishing the date and causes of bankruptcy are fundamental questions that must be answered by arbitration and criminal court judges in bankruptcy proceedings. Without resolving these questions, it is impossible to establish who and what led the debtor to bankruptcy and to hold these persons criminally and vicariously liable or liable for losses caused or embezzlement committed.

Before turning to the arbitration court there is a process of confrontation between the beneficiary and the debtor's managers and the real creditors, which is attempted to be administered by a bankruptcy trustee, often affiliated with one of these two groups. In the process of investigating criminal cases under Art. 195, 196, 197 of the Criminal Code of the Russian Federation, as well as Art. 159 and 160 of the Criminal Code of the Russian Federation, for companies associated with bankruptcy, there is a need to establish the circumstances of insolvency, analyze unprofitable operations and asset withdrawal transactions.

Judges face objective problems in establishing the key circumstances of bankruptcy: it is necessary to obtain and study a significant amount of materials characterizing the financial and economic activities of the debtor and its interrelated counterparties. Over 95 percent of such materials are contracts, bank statements, primary accounting documents, purchase and sales books, and accounting registers, including those submitted in electronic form — in these matters judges do not always have enough specialized knowledge and resources to assess correctly.

Thus, it seems appropriate to involve specialists in the case and appoint a financial and economic expertise.

The tasks of financial and economic expertise largely correlate with the key bankruptcy circumstances that need to be established by the law enforcer when determining the grounds for liability:

1. the date of objective bankruptcy (experts determine the dynamics of the financial condition, clearing financial statements from suspicious transactions, establish the date of the insufficiency of property to satisfy creditors' claims);

2. the cause of bankruptcy (experts study and rank the factors that negatively affected the financial condition, determine by a factor analysis the degree of influence of each transaction, operation or other fact of economic activity);

3. the presence of suspicious transactions (experts examine and identify economic materials of information on unprofitable and economically inexpedient operations by means of the automated accounting system);

4. the presence of external negative factors and the degree of their influence on the financial condition (the task of the court and experts coincides) (Timchenko, 2024);

5. the role of the beneficiary, management and other controlling persons in the crisis situation, whether the bankruptcy filing date has been missed (experts determine the date of insufficiency of assets to meet obligations);

6. grounds for bringing controlling persons to subsidiary liability for losses (experts determine the date of the insufficiency of property to satisfy creditors' claims and the cause of bankruptcy, carry out an analysis of transactions and external factors).

In fact, it is impossible to establish the cause of bankruptcy in a company where there was at least some scale of real financial and economic activity without conducting a factor analysis. It is also impossible to establish the date of objective bankruptcy without a market evaluation of assets, clearing the financial statements from the suspicious transactions established by the court and the expert.

Attempts of judges to solve these issues independently are possible in obvious situations where there were actually no real assets, and financial and economic activity is characterized by two-three operations, but in most cases of bankruptcy of real medium and large businesses

establishing the key circumstances of bankruptcy without involving experts and specialists is impossible, there is a high risk of coming to wrong conclusions.

In this case, the analogy with the pathological examination and the conclusion about the cause of death is quite appropriate. Even if the head was severed, the death could have occurred first from a drug overdose, which the court cannot establish without an expert.

In the "bankruptcy" set of questions, the role of preventive actions and research is extremely important. It is specialists who can promptly suggest that bankruptcy cannot be avoided and it is necessary to prepare for it. Then the next important issues become the tasks of effective "pre-bankruptcy" preparation of the debtor and its managers and beneficiaries, an analysis of risks of bringing to subsidiary liability and recovery of losses.

In fact, the flip side of a compliance audit is a forensic audit.

VI. Forensic

The classic "anti-fraud" formula "the more a business spends on defense, the fewer problems it has" does not work in Russia. Economic crimes as real parasites "live and multiply" in a company, regardless of its size, margins, or industry. It is clear that if the owner of a small family firm is maximally involved in all business processes, perfectly understands where and how the added value is created and how costs are formed, it is difficult but possible to deceive him, because even here there are brave and enterprising employees ready to surprise even the most experienced owner and director. This issue is of particular relevance in corporate relations of medium and large businesses, where owners, management and control are dispersed and remote from real business processes.

Many consultants selling fraud protection (especially foreign-made ones) will strongly disagree with our opinion. It would seem that everything necessary for effective counteraction has been created and is functioning perfectly: several lines of defense have been built, employees have undergone "anti-fraud" training, the security service, the internal audit and even a hotline are working, control automation

has been completed and a system of competence and responsibility sharing has been implemented.

However, fraudsters overcome this defense: software is put "for a tick", does not see the whole picture of financial and economic activity, internal, information security service and auditors cannot control each operation, documents are destroyed, internal regulations written on the basis of foreign practice do not take into account domestic specifics, fraud penetrates into the gray areas of tax optimization, stimulating the formation of unions in organized groups and much more.

Fraudulent schemes are becoming more and more complex. Thanks to the elimination of bad banks, the growth of culture and financial literacy of business in general, now only in the most extreme and uncontrolled cases buy "air" from a one-day firm, but such schemes continue to occur.

Forensics consulting can be divided into two areas:

1) debugging the business fraud prevention system;

2) properly responding to and documenting business abuses, followed by litigation or other intelligible prospect.

There are three main elements of corporate fraud: embezzlement of assets, corruption and false reporting (Skipin et al., 2017, pp. 13–21). Asset theft can include fraud, embezzlement, misappropriation, embezzlement, and even regular theft, if committed in the company. This includes all schemes to withdraw assets from the company, when cash and other assets leave the company without equivalent counter-performance of obligations: either they are simply taken away, or some empty, non-equivalent or technical assets are supplied.

When an asset is withdrawn, a shortage is created in the accounting, but if the criminals are more skilled and realize that the shortage will be revealed during the inventory, when the asset is used, they will take actions to hide the shortage or balance it out.

For example, the money is out, but there appeared a bill of exchange of LLC "Three Horses", it is unclear when we will sort out how liquid it is and how much it is actually worth. If something was stolen in the process of production, it can be written off, so that the shortage is not hidden, that under some spoilage, the norms of the increased write-off in the process of machine operation — the main thing is that the book

balance with the actual on such stock came together. Moreover, in such a case the theft of assets will not be discovered so easily.

Falsification of reporting is all schemes of data distortion, committed to conceal the real financial state in order to deceive the investor, creditor, owner, controller. There are plenty of reasons to falsify reports — to postpone the collapse of the business, to get a bonus, benefits, to deceive the inspection from the parent organization about the real state of affairs in the subsidiary company, etc.

Corruption can be "price" or "non-price". "Price" — is associated with embezzlement and leads to the withdrawal of an asset from the business to an unscrupulous counterparty who, by corrupting our employees and managers, obtains non-market terms of cooperation.

"Non-price corruption" does not directly affect assets, they do not decrease, and they do not go out, but at the same time corporate employees, using their official position, do some useful things for counterparties and get money for it: for example, they moved products to some more prominent shelf, and so on. "Non-price corruption" does not lead to embezzlement and direct losses, but it is also very dangerous in terms of reputation.

In corporate fraud in general, harm is done to the company and its beneficiaries, and traces are reflected in accounting and other economic information. Falsification of accounting and reporting are very common ways of concealing traces of embezzlement or certain preparations for its commission.

"Constructor" abuse consists of the following operations (Skipin et al., 2017, pp. 13–21):

1. deceit and (or) a use of an official position;

2. a "physical" withdrawal (and sometimes removal) of stolen (received) funds from the company;

3. hiding traces of fraud, creating an allowance for embezzlement.

These operations may proceed sequentially, in parallel, or even ahead of each other.

Thus, the creation of a provision for theft precedes the fact of theft itself. Documents concealing the shortage and write-off entries for a natural loss may be made simultaneously with the removal of assets from the enterprise.

Corporate frauds are committed (individually or jointly) by:
— personnel;
— management, top management;
— counterparties;
— third parties.

We also have stories of business beneficiaries themselves pulling margins out of the company by rather crude means, evading tax payments and dividends to minority owners. These schemes are no longer classic forms of corporate fraud, since the harm is primarily caused to the State and minority shareholders, but they carry extremely high criminal risks for such beneficiaries.

As a rule, personnel fraud should be detected by primary documents and analytical registers reflecting transactions in the area of responsibility of employees. Anomalies here are tied to specific transactions and assets to which a particular employee has access. Analytical accounting registers and primary documents reflect incomprehensible interrelationships, procedures and events, such as new addresses of other firms, additional registers, deviations both downward and upward in the volume of product deliveries, assortment structures, prices, etc.

In order to detect employee fraud, it is necessary to go beyond simply fixing the right document, checking it for compliance with the law and internal regulations, it is necessary to understand the authenticity of the document and the reality of the transactions it reflects (writing off inventory for a natural loss in the amount of 50 million rubles seems to fit all regulations, but in reality it reflects the concealment of embezzlement). Management fraud is more pronounced in reporting and synthetic registers, as the impact of their misconduct on the enterprise's operations is large.

Anomalies in the business processes and activities of an enterprise can be identified by identifying alarming trends and events. For example, substitution of some assets for others, unusual transactions at the end of the reporting period, high debts or a large share of overheads, faster growth of expenses compared to revenues, etc.

In addition to anomalies in financial reporting, they can also be observed in the organizational structure of the enterprise: an overly

complex organizational structure, the use of services of banks and financial institutions with dubious reputation, frequent changes of third-party consultants, lawyers, auditors and others.

A typical corporate fraudster who causes maximum damage is a man, 35–50 years old and in the prime of life. He is a family man, married, has children, an active lifestyle, sports, tourism, smart, well — educated, and knows how to do maximum damage. Gives the impression of a self-confident and honest person. He works with confidential information, does not want to go on vacation, will not let anyone into his area of responsibility. And let us just say that it is often a shock to the company that it is this seemingly good employee who causes harm.

On average, the damage caused by fraud amounts to at least 5 % of companies' revenue, which is quite significant. The longer the scheme drags on, the more losses fraud causes. "Anti-fraud systems"[2] are complicate, but do not hinder. Earlier it was said that "anti-fraud systems" are quite effective in fighting fraud, and that indeed the hotline, the division of responsibilities, competencies, the introduction of anti-fraud regulations have a good effect and significantly reduce fraud risks. However, now all these innovations and systems have been introduced and fraudsters have gradually adapted to them. At present, the "anti-fraud system" makes it difficult, but not so much hindering, because the fraudsters have adapted to the "anti-fraud control".

Misreporting is increasingly contributing to theft; it is now seen as a related process. In this case, computer programs aimed at identifying signs and symptoms of fraud are essential.

Only a few percent of counterparties remain technical companies with no activity at all. Today, this process involves so-called "hybrids" — companies that actually have real financial and economic activities. Therefore, the problem of analysis is now shifting from analyzing counterparties to identifying anomalies in the business processes and operations themselves. And this task has an increased level of complexity, incomparable to loading a query into Spark or Contour Focus.

[2] What is Antifraud: what is it and how does it work? (2024). Available at: https://ria.ru/20240930/antifrod-1975059835.html?ysclid=m36c9gnj2q541182216 [Accessed 17.04.2025].

Being aware of the patterns of fraudulent schemes reflected in accounting information, it is possible to build a fairly effective system of their timely detection, using the work with the company's databases. Understanding how the realization of a scheme is reflected in accounting and other economic information allows you to create protocols for responding to primary information. Prompt detection of a suspicious anomaly will contribute to the timely establishment or prevention of the fact of fraud, improving the effectiveness of the anti-fraud system as a whole.

All stories of long-term unpunished large-scale fraud are primarily based on the lack of quick response to such anomalies. The human brain is structured in such a way that, given the abundance of information, no clear details and figures remain in the memory even for a month, let alone for longer periods of time.

VI.1. The First Set of Anomalies — Traces of How Fraudsters Overcome Internal Controls

So, our firm has already implemented some internal procedures, separation of competencies, various kinds of physical controls, observations, perimeter, there is accounting, an auditor who makes sure that everything is correctly reflected, there is an internal auditor who is responsible for the effectiveness of internal control in general.

In such a case, the fraudsters realize that the company is really struggling with fraud. In such a case, these individuals do not give up, they try to overcome these internal control procedures. And by doing so, they are framed, because their steps and actions related to overcoming internal control procedures also leave the necessary trace.

Fraudsters attempt to partially or completely remove some transaction, operation, and possibly even an asset, from control. For example, they realize that there is a procurement procedure in progress, and if the purchase is over 500 thousand rubles, such persons will fall under all the specified controls. What should be done? Split the lot into 10 purchases of 499 thousand rubles each and get away from tender procedures.

It can also be simulated that we do not have authorization or approval for a transaction. Fraudsters simulate a force majeure for urgent actions. If we do not make a purchase of office equipment now, and before that it burned down because of a short circuit in the bank, customers will come in and the bank branch will simply not be able to perform its main function — we will lose much more than a small deviation in the purchase. Often in procurement, internal control tools are overcome through so-called "bookmarks" in technical documentation. By introducing such bookmarks, fraudsters evade external competition, leaving only their own "in the competition", who dictate their own terms and conditions, which are far from market conditions.

A number of employees have not taken vacation for many years. Why? Workaholics do not want to give up a job they love or, in fact, they realize that no one should be allowed to approach their computer.

Connecting functions that do not connect can be another tool. It is a socially useful topic when people try to substitute each other. Especially such "socialization" and friendship are dangerous when these functions are deliberately divorced, e.g., a buyer, a warehouse worker, an accounting or a treasury employee who pays the money and who later also checks it. Such deviations from the protective functions of internal control are quite easily algorithmized and introduced into the operation of a special program.

VI.2. The Second Set of Anomalies

The Second Set of Anomalies is how accounting and management accounting reacts to the fact that fraud is probably being committed. We will see obvious formal mechanical things in accounting: something is wrong with a primary document, something is wrong with a register, some information noise gets to the reporting. We can see that accounting fails, and collecting such information noise is a separate topic, and it is perfectly programmable in special products.

Possible deviations exist in the design of primary accounting documents. Why is a primary accounting document drawn up? To show that a financial or business transaction has been made and there was a reason for its entry into the accounting system.

Indicators for deficiencies in "primary accounting records" are easily automated if the accounting system supports scanned copies of primary documents. The most elementary deviation is the absence of a primary document. Various reasons can be given as an explanation: drowned, burned, lost.

There are no required details in the documents, such as a seal or signature.

There is no correspondence in different copies of the same document. One delivery note in the warehouse and another in the workshop: all details are the same, but there are discrepancies in quantities in the nomenclature.

In the primary documents, there is a lack of matches for end-to-end data transfer, etc.

Formal anomalies can be traced in the accounting and management records. What can fraudsters do with registers? They try to hide the fact of committing fraudulent actions.

There is a significant variety of authorized and unauthorized accounting adjustments. There is already a great control system sewn inside the accounting, which is very much underestimated when countering fraud. If the "primary accounting documents" reflect specific operations, then in the accounting in the aggregate form a set of operations, their results can be harmful to the company. How the expense side is formed, how it turns into income, what is the movement in assets and liabilities.

If such a system begins to fail to comply with accounting rules, it is necessary to move to the main "super element" of the fraud prevention system that provides the maximum opportunity for analytics.

VI.3. The Third Set of Anomalies

The third set of anomalies is analytical anomalies. Within the framework of this analysis, we see that it was unambiguously different before, according to historical internal company data. And moreover, if we look at our colleagues nearby, at our industry colleagues, we will see that they do not have anything close to this, either — our economic information reflects a clearly incomprehensible process.

If with accounting we looked at how correctly the system works, then here we look not at accounting standards, but at the business process itself, we understand all its specifics, we compare ourselves with ourselves two years ago, three months ago, we trace historical data on the same business processes. We compare ourselves to industry peers, compare ourselves to the industry average. We use basic red flags on key fraudulent schemes.

Issuance and payment of invoices for non-existent goods, works and services

Non-deliverable supply refers to the fact that goods are not delivered, but cash or other assets leave the company and air, non-existent tangible goods or work/services are "bought".

How and what indicators might work?

First of all, if we talk about the red flag system, it is the analysis of historical data, from which we can see the appearance of anomalies. For a long time, in order to produce a certain volume of finished products, the company purchased a specific volume of nomenclature, materials, semi-finished products and at some point some anomaly occurs — the volume of 2–3 nomenclatures increases, but at the same time the volume of finished products does not change.

How does the abnormality usually manifest itself?

This may be a change in the technological map, the recipe of production or a non-commodity supply. Especially this red flag is triggered when the company has changed counterparties, and more dubious counterparties have appeared after verified large market counterparties.

Playing on the price in procurement

This story is related to the situation when a company buys some real materials, goods or services and at the same time overpays — the purchase price differs from the market price. Here the anomaly is identified by analyzing intra-group and intra-company prices from verified suppliers — they are compared with the price of specific current purchases. There can be different explanations, for example, at a certain point in time it was necessary to buy a given volume of goods/services/materials, current suppliers could not supply such volume and had to buy from a new supplier at an expensive price.

In our practice we have a case where one of the bank's branches urgently purchased office equipment because they had a serious power surge and their internal system could not withstand it, which resulted in some of the computers failing. It made it necessary to make a purchase outside of all the rules, as the branch had to continue working. The procurement was done at a higher price due to the urgency. In this case, the defense was able to prove the necessity of the purchase by arguing that the situation was out of the ordinary. After a detailed investigation the situation was resolved.

Such anomalies provide a comparison with the intra-company price for a certain historical period that the supplier should be analyzing, what will explain this or that purchase, how the purchased goods/services/materials were used.

Subsequently, if the material is collected for the initiation of criminal proceedings, it is good to support not only the internal company facts (the price is different), but also external analysis of the market, to show that if the purchase was made from third parties, the price could be significantly lower (for the judicial perspective the desirable range of overstatement can be of at least 25–30 %).

Just as in the first scheme, here it is tracked where the money went, and if in the case of a commodity-free supply it will be the entire cost, then in the "price game" it is not the entire cost of non-existent goods that is tracked, but the revenue part (markup), which will either be distributed between the supplier and dishonest employees of the company, or, if the game is fully controlled by the supplier, will be fully taken by dishonest employees of the company. It should not be forgotten that the supplier in such a scheme may be affiliated.

Remuneration for selecting a supplier, granting him favorable conditions

These are examples of both price and non-price corruption, when there are no "special" non-market conditions in terms of the price or quality when purchasing goods, services, materials. In this case, the "procurement department" does not directly harm the company, but all other things being equal, a particular supplier is selected and given priority. This priority will be repaid by transferring cash or other assets to a specific person in the "procurement department".

Here an anomaly can be expressed in the fact that the share of a particular supplier is clearly increasing, while it does not stand out much from the rest. For example, for 3 years it had 10 % for some nomenclature, and then its volume of supplies to the company began to grow sharply. Here it is necessary to pay attention to the relationship between the "purchasing department" and a particular counterparty, perhaps it will be possible to identify their connectedness. Such an anomaly will be expressed in the fact that the supplier does not give special discounts, but for some reason they choose him more often. But at the same time, the defense may have its own justification — the delivered goods are of the right quality, delivery is made without violation of terms, and that is why they are chosen more often, so this "red flag" should be actively checked.

Direct theft of inventory without concealment

Moving into the storage unit, we continue to see our purchases now turning into our inventory

— what has been purchased is inventoried and goes into the warehouse. It should be noted that if there is direct theft without concealment, a shortage is naturally formed, which will eventually be detected and reflected in the accounting system. Naturally, the theft itself does not occur at the moment of detection of the shortage, but when the inventory was taken directly from the warehouse, workshop, office, surveillance perimeter.

In accounting, the shortage is recognized after the inventory, or a particular material, semi-finished product needed in production has not been found. Also, by the way, a video surveillance system can work, but the key thing is that such situations were not noticed in time. In such a case, it is impossible to understand and analyze who did it and when it was done, since dozens, hundreds of people may have access to the warehouse.

In this case, "red flags" work well, which, depending on how storage is going, what volumes are purchased, what volumes are released, show a rough cut of historical data — how much there should be, if something changes. If there is a sharp increase or a sharp decrease, it is possible to analyze in which shifts, when exactly these anomalies occurred. To

deal with such situations, it is crucial to notice them in time with the help of video surveillance, or with the help of physical control.

Due to the inventory manipulations, such employees, who understand the control and security systems, try as much as possible to delay the moment of exposure, the discovery of shortages and try to fictitiously write off the missing materials, or replace with a cheaper analog.

For example, a particular team with a foreman and warehouse workers of a construction company exchanged Italian materials for similar Belarusian materials. Italian materials were sold, and Belarusian materials from the warehouse were installed on various objects. In this situation it is clearly seen that in the future, due to the unscrupulous actions of employees, there may be serious consequences for the company in its relations with customers.

There are situations when economic crimes lead to more serious consequences, not related to material damage, but to consequences such as harm to health. Theft in warehouses of large companies that work in the system of additional drug provision or situations when medicines are substituted for counterfeit drugs can be good examples. Consumers take the necessary medicines for their benefits, which were financed by the State, and later, instead of the expected positive effect, the health of a person, on the contrary, may worsen due to counterfeiting. First of all, it is pharmacies that fall under suspicion, but when we find out the situation deeper, it turns out that it is the fault of employees working in large warehouses with medicines.

Writing-off under a fictitious pretext

Fictitious pretexts can be simulated theft, fire, flood, shrinkage within the norms or the use of raw materials above the norms. In such a situation “red flags” work well. Write-offs under a fictitious pretext without replacement are detected quite quickly, because on historical data we can observe that within the normative limits shrinkage, shrinkage of 0.5 % is written off, and then this data changes by 1 % and continues to remain on the upper part of the limit of the allowable standard. This is definitely a red flag that needs to be monitored, as any increase in shrinkage is definitely a violation in the storage process and must be dealt with. It is also an indicator that this anomaly may

not be negligence and violation of the technological process, but theft. In such situations, measurement and estimation of the inventory takes place, especially when bulk solids, products with a watery consistency or certain irreducible balances in petroleum products are used as raw materials in production.

If you put red flags in the receiving, transfer area — at this stage, all raw materials are poured and then sent to storage and production — then such anomalies are detected. At many large production facilities that work with this kind of materials, this process is already automated. In our practice, there have been several expert examinations when it was obvious that red flags had been triggered, otherwise shrinkage would not have been detected, as the employees acted very carefully — everything was carefully poured and measured.

Production Unit

Manufacturing processes can be diverse, but as in a warehouse, the first mechanical action may be to steal products and take them out of the control perimeter. Of course, if there are many such situations, it will cause serious damage to the business. But, of course, such theft will be detected much faster than in a warehouse, because in a warehouse stored goods are not always immediately written off, while in the same production, anyway, all equipment, materials and semi-finished products are used and have their function.

In this situation, where the theft has already occurred, the most important thing is to counter the theft in a timely manner with a physical perimeter and hot spot detection. Even in this situation, red flags will be appropriate because it is obvious how much product should have been written off and why there are more inputs left in the finished product than indicated on the technical card. In addition, just like in the warehouse, a mirror method is also possible, i.e., substitution of materials exactly during the production process. It is roughly the same here.

Playing on the measurement of assets in the production process is already a more complex mechanism, which manifests itself in the theft of scraps that can be used to make unrecorded products, or in general, taking away those raw materials that are used in the production of more complex products, and where a large amount of different nomenclature

is indeed wasted. Usually workers, various technical engineers and technologists are in collusion, and such "friendship" can entail changes in the technical chart to hide traces of theft. It is worth considering the different technological processes, the description of material quantities, the use of specific equipment and realizing that many equipment can deteriorate over time. With technical expertise, it will be possible to prove that standards were overestimated and this allowed semi-finished products to be stolen.

Sales Block

In the set of questions devoted to sales the schemes are mirror opposite to purchases. In this case, the opposite situation is observed, the sale is carried out at an undervalued price or there is a sale without a payment and for long product credits. This is where the "red flags" of automation control, which work exactly the opposite way and are very often interconnected with purchases for a particular nomenclature, with their subsequent sale or sale of finished goods. However, there are also more complex anomalies that show how many products were purchased, how many are stored, what was done with these products in the production process, when the finished goods reached the warehouse and when they turned into receivables and money.

The financial investigator is a unique expert specialty that uses specific techniques to investigate economic information. Financial investigations are aimed at documenting embezzlement, corruption, illegal financial transactions and other misconduct by managers, employees and third parties and are conducted by the following team of specialists:

1. analysts (economists with specialized knowledge in accounting and tax accounting, financial analysis, anti-fraud);

2. IT specialists (computer scientists, with specialization in digital forensics);

3. lawyers (dealing with economic crimes punishable under the Criminal Code of the Russian Federation);

4. builders, appraisers, commodity specialists, technologists — if their participation is required;

5. information providers (detectives, paid databases of general and specialized information).

VI.4. Algorithm of Comprehensive Financial Investigation

A comprehensive financial investigation is generally conducted according to the following algorithm:

1. clarifying the initial data of the terms of reference, understanding of the operation of anti-fraud systems in the company (availability of a hotline, counterparty files, DLP (Data Loss Prevention) systems, automation of controls, red flags system);

2. extracting and sorting out client information (automated accounting system, mail, computer data, video surveillance, DLP system reports, other computer information);

3. interviewing;

4. analyzing an array of electronic data;

5. analyzing the information from automated accounting systems, including the use of software packages to identify accounting anomalies;

6. analyzing paper documents — primary documents, registers, contracts;

7. reinforcement by external sources (databases, social networks);

8. forming a judgment on the presence of signs of abuse, preparing a conclusion.

As a result of the "forensic audit" a specialist's conclusion is formed, which can be used for filing a criminal complaint, litigation, labor relations, formation of a negotiating position.

VII. Conclusion

The current situation in the issues of interaction between the business community and representatives of the expert sphere indicates the presence of a number of problems on organizational, legal and financial issues, which require comprehensive resolution. The importance, value and competitive advantage of an advanced business-lawyer-expert nexus, where everyone understands each other's capabilities is beyond doubt.

This system is most optimal if measures to prevent negative legal consequences are taken through the restructuring of business processes and refusal of risky operations (risk avoidance). If a dangerous situation

cannot be avoided and the operation must be carried out, the company prepares in advance for possible negative consequences through the system of compensation and risk distribution (a response strategy is discussed and formed with lawyers and explanations and justifying documents are provided). Such a preventive system saves material and time resources significantly. Involvement of experts at a later stage, when the stage of realization of legal risks has come, in general reduces the effectiveness of the strategy, because it is necessary to act early, it leaves chances for victory in case of involvement of qualified specialists.

The strength of "compliance expertise" lies in the fact that it is a comprehensive approach to all possible risks, which are interrelated not only with the branches of law, but also with the highlighted business processes.

This study has highlighted the danger of focusing on only one risk while neglecting others. Often entrepreneurs see only the option of risk avoidance and believe that structural consulting and business process redesign will destroy their profits, not realizing the existence of other countermeasures, such as compensation, distribution or localization of risk.

Thus, highlighting the positive aspects of the compliance audit, which provides an opportunity to record and search for relationships on the main vulnerabilities, it should be noted its functionality to perform the following operations:

1. automation and detection of anomalies and dubious transactions in "anti-fraud" and corruption, creation of an efficient system for countering corporate fraud;

2. establishment of effective online verification not only of the status of counterparties, but also of the transactions and operations performed with them, and effective protection against their claims;

3. prevention and mitigation of tax risks, protection against claims of the tax authority, increasing the probability of winning in court proceedings;

4. timely detection of a crisis in financial condition and avoidance of major risks in bankruptcy;

5. automation of the process of identifying doubtful transactions in terms of AML/CFT (Anti-Money Laundering and Countering the Financing of Terrorism), sanctions and currency regulation;

6. establishing a system of "red flags" in dealing with criminal risks and action protocols, including when interacting with law enforcement agencies;

7. establishment of interconnections in the work of all the allocated subsystems and a single expert structure for identifying and managing risk in financial and economic activities.

The neglect of the above-mentioned processes and the specialized knowledge of experts in the protection of the rights of entrepreneurs seems unacceptable and discrediting of their activities.

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