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CONCEPT AND NATURE OF TECHNOLOGY OF CORPORATE RAIDS OF ENTERPRISES

The article explores the nature and gives the definition of concept of "corporate raid" and "technology of criminal activity". Being based on the study of materials of practice as well as facts of corporate raids it defines ways, technology and specific features of corporate raid, phases, stages of committing of corporate raids of enterprises, as well as their standard procedures. The circle of persons who are directly involved in corporate raids is also determined. With the generalization of the studied material, in both theoretical and practical aspects, the basic manipulative technologies which are used in the process of corporate raids of enterprises were identified and described. In addition, special attention is paid to the "oligarchic" model of organized crime, which is the hallmark of organized criminal groups who commit raider seizure of enterprises.

Key words: corporate raid, manipulative technology, corporate raids of enterprises, technology.

Statement of a problem. Worldwide corporate raid is regarded to as a factor of imperfect political and legal structures of power in the state, as well as current legislation, lack of proper conditions for business protection, rights of holders and fair and equal competition. The primary reason for the demand for services of raiders is considered the beginning of Ukraine's transition to a market economy and active implementation of the "global" property redistribution. In recent years the demand becomes more conscious, organized and widespread due to loopholes in legislation, corruptness of executive authorities and the judiciary, instability of political situation and the redistribution of property among financial and industrial groups.

Analysis of recent achievements and publications. Questions connected with corporate raid of enterprises and their counteractions were researched by both Ukrainian and foreign authors. Among them are I. Selivanova, I. Shvaika, A. Belikov, V. Kulpinov, A. Fedorov, D. Zerkalov, P. Bulakh, V. Grigoriev, M. Iontsev, I. Kleimenov, V. Grib and others. It should also be noted that the publications on the relevant issue may be easily found in the mass media. Most of them are of a publicistic nature.

The purpose of the article is to study the technology of committing of corporate raid of enterprises.

Since the concept of "corporate raid" on the legislative level in Ukraine is not fixed, we can formulate its determination solely on the basis of circumstantial features and by drawing an analogy to what is meant by corporate raids abroad. In developed economies the concept of "corporate raid" is defined as legitimate acquisition of an enterprise by hostile takeover. This process has a strict legal regulation and occurs in a very transparent manner. In Ukraine and other CIS countries corporate raid is understood as a criminal scheme of seizure of assets of enterprises with participation of criminal groups and corrupt officials. In essence, corporate raid – is a well prepared, organized, planned, and legally "furnished" capture of the object in accordance with pre-rehearsed and pre-thought out schemes in which each link (buyer, broker, law enforcement agencies, judges, etc.) knows its function and understands his interest.¹ D. Zerkalov understands by the corporate raid the process of seizure of enterprise's property or interception of operational management using specially created and raffled business conflict.²

In the context of committing corporate raids of enterprises it is advisable to use the term "technology" because corporate raid resembles the industrial technology, which is an implementation of a complicated process of breaking it into elements combined in a system of interconnected procedures and operations.³

¹ Андрушків, Б.М., Вовк, Ю.Я. та ін. (2008). *Економічна та майнова безпека підприємства і підприємництва. Анти-рейдерство*. Тернопіль: Терно-граф, 127-128.

² Зеркалов, Д.В. (2007). *Антирейдер*. Київ: Дакор; КНТ; Основа, 21.

³ Тіщенко, В.В., Барцицька, А.А. (2012). *Теоретичні засади формування технологічного підходу в криміналістиці*. Одеса: Фенікс.

Raiders during the implementation of their plans to seize the enterprise often resort to manipulative technologies. Thus in terms of the mechanism of influence the criminal manipulations can be differentiated by such criteria as nature of manipulation. It can be simple (elementary), complicated (qualified) and very complicated (especially qualified).¹ Let us consider the two most popular manipulations among the Raiders. We will discuss the "white knight" scenario and the decline of assets value in the eyes of owners.

The "white knight" manipulative technology is successfully used not only in projects of hostile takeover. Such a play is designed for two actors. Some mysterious and aggressive investment company that floods the enterprise, its executives and major shareholders with different suits, creates internal conflicts, blackmails managers with compromising information, trying to influence the suppliers of the company and its major customers is usually considered to be a "black knight". In general, ostentatiously using all possible ways of pressure on enterprise-target, its executives and shareholders, who have the greatest stake, thus requiring immediate sale of a controlling stake at extremely low prices. In some cases, shareholders and managers of enterprise get unequivocal proposals to think about their health and the health of their relatives. Sometimes all this actions connected with continuous attempts of physical capture of the target enterprise. At some point the "white knight" "accidentally" pops up and offers the enterprise owners to save them from annoying "black knight". The value of such a salvation is a controlling interest sold to the "white knight" for a very decent price. The amount of money offered by the "white knight" for a controlling interest is always higher than a similar proposal of a "black" (but it is usually below the market value of shares). The "white knight" also takes additional commitments (e.g. to punish the offender for his unruly activities). Herewith the "white" appeals to common sense, claiming that he has more serious possibilities than the "black".

Practice shows that implementation of this strategy may lead to takeover of enterprise, and its former owners, who signed the appropriate agreements on their own free will are not even aware that they were "cheated" on and "black and white knights" are the same team temporarily divided into two parts. It should be noted that in some very rare cases the true "white knight" comes to help. However, a real "white knight" is most commonly related to an enterprise-target on continuous partnership, and appears far before the 'appropriate' time.

Technology of hostile takeover of a target enterprise which is based on reduction of the cost of the asset in the owner's eyes is not an innovative thing. There are plenty of options of using this method by the aggressors. In some cases, the fight with target enterprise involves activists of environmental organizations, whose task is to prove the circumstances that the activity of an enterprise brings harm to the environment and human health. If the activity of the enterprise is suspended, enterprise will face at least redevelopment or relocation to the industrial zone, what requires significant investments. In other cases, the media organize large-scale campaign to discredit the products produced by a target enterprise, and people stop buying those goods.

Some of the ways to reduce the cost of the asset in the owner's eyes have the legal grounds. If privatization agreement is contested, certain result of the trial would inevitably lead to restitution, and all shares acquired before with violation of applicable law, will be returned to the state.²

According to I. Vozgrin technology of criminal activity is the nature and dynamics of the processes that constitute the mechanism and the way of committing of crime.³ Thus, based on the above definition, we can identify such key components of technology of committing of corporate raid of enterprises as the mechanism and the way.

M. Kleimenov, considering the mechanism of corporate raids of enterprises, identifies the following typical procedures of such capture:

- intelligence;
- evaluation of protection of a victim enterprise;
- designing of a scheme of enterprise capture;
- capture realization.⁴

¹ Клейменов, М.П., Федоров, А.Ю. (2008). *Криминальное манипулирование в сфере экономической деятельности: криминологическая характеристика и предупреждения*. Омск: ГП Омск. обл. тип., 97.

² Фёдоров, А.Ю. (2010). *Рейдерство и корпоративный шантаж (организационно-правовые меры противодействия)*. Москва: Волтерс Клувер, 50.

³ Возгрин, И.А. (2003) *Введение в криминологию: история, основы теории, библиография*. Санкт-Петербург: Юрид. центр Пресс, 34.

⁴ Клейменов, М.П. (2012). *Криминология*. Москва: Норма, 418.

Let us stop at their more detailed consideration.

1. Intelligence involves obtaining of maximum information about the capturing object and contains legal and criminal intelligence.

Legal Intelligence is based on the study of available (open) sources: information about the financial condition of the enterprise; if there is indebtedness on credit the raider buys them and draws up lawsuit on behalf of the new creditor. Simultaneously, lawyers prepare a documentary basis for the takeover; hostile enterprise buys shares of the company and the management link of the victim receives a bunch of lawsuits and gets confused and distracted from the direction of the main strike. This method is used in the implementation of complex schemes of appropriation of another's property, in which court decision legalizes falsified documents. A forced takeover based on a court decision occurs a bit later.

Criminal intelligence is oriented, firstly, on collection of classified information, and secondly, for information of compromising character. In addition, criminal Intelligence is usually carried out by illegal means (covert surveillance, interception of telephone conversations, etc.). A lot of attention is paid to history of the establishment and privatization of the company to identify vulnerabilities on the acquisition of ownership of this business. The condition of real conflicts among shareholders, "smoldering" conflicts in the company, "forgotten" conflicts, external corporate conflicts, which involve in the target enterprise are also precisely analyzed. The personal life of top management and significant shareholders – individuals are studied as well¹.

2. Evaluation of protection of a victim enterprise. At this stage the possibilities of capturing object in organization of protection gets analyzed. The security system, the number, preparedness and professionalism of its staff, logistical support, relations with private security structures and law enforcement bodies, judicial, local and state authorities is taken into account. This stage ends with drawing up a plan of neutralizing potential defenders of object. Physical protection of aggressors is usually carried out by private security companies.

3. Designing of scheme of enterprise capture. The scheme provides two options: without the use of force and with its application. The choice of the option depends on features of the object. The forced capture is applied at high probability of active resistance of the owner. The election of this variant is also motivated by the ability to quickly implement such actions as changes to the register of shareholders, sale of the property. To design scheme of the capture the hostile enterprise studies ownership structure of an object, storage location and accessibility of the register of shareholders, the cost of neutralizing the local courts, law enforcement bodies, authorities, providing PR-cover action if it is necessary.

4. Capture realization. Before an assault conversations with guards of enterprise take place: bribing or intimidation, depending on the professional level of the staff. After that an assault team gets prepared. It is usually equipped with:

- camouflage uniforms;
- bulletproof vests;
- rubber batons;
- gas or pneumatic light weapons;
- smoke bombs.

On the day of direct capture (usually Friday, weekend, or pre-holidays, when the vigilance of management of captured enterprise weakened) assault groups come to the enterprise. A lawyer for legal neutralization must be present in case law enforcement bodies try to interfere. Capture starts after the sign of the leader of assailants, sometimes it happens after a smoke bomb is thrown to the territory of enterprise and capture occurs under the guise, with usage of the special devices and physical force against guards and employees. Assailants usually receive necessary instructions in advance. A special accent is usually made on the following requirements:

- no facial injuries;
- prohibition of lethal or harmful special techniques usage;
- prohibition of firearms usage and refraining from violence against law enforcement bodies.

Captured enterprise gets blocked, cabinets of a management, accounting department and HR are occupied, the financial, accounting and administrative documents, also the round seal are seized. Then hired

¹ Осипенко, О.В. (2005). *Защита компании от недружественного поглощения и корпоративного шантажа*. Москва: Юркнига, 31-35.

employees of private security company defend captured object, and lawyers at this time formalize documents of enterprise for new owners.¹

Talking about the ways of committing corporate raids of enterprises, the most widespread ways may be defined:

- buying small share holdings;
- buying debts of the company;
- deliberate reducing of the cost of the enterprise and the acquisition of its assets;
- deliberate bankruptcy;
- contestation of ownership;
- bribing managers of the company;
- publication of "tailor-made" materials in favor of "aggressors";
- threatening the current managers.²

Corporate raids allow planning and committing such criminal actions as forgery of documents, knowingly false report of a crime by a particular person, bribing of a person who has an authority to open pretrial investigation, unlawful imprisonment and even contract killing. Raiders in their arsenal have "tailor-made" deputy inquiries in the legislature, adoption of the necessary decrees by the executive, professional design and implementation of PR-technologies.

Work of PR-technologists in operations to capture consists of the following main directions:

- conduct research in order to segment shareholders and identify motivations of each group;
- development of strategies of buying and tactics of targeted impact on the audience;
- participation in the negotiations;
- organizing and holding public events (fees of shareholders, rallies, etc.);
- training of persons who are buying shares;
- organizing PR-campaigns in the media (MSM).³

Active interaction with the media is typical for legalized organized crime. The latter in a high degree is legalized in the broad spectrum of economics, finance and security.⁴

Raider groups mostly are legalized criminal units which represent the oligarchic model of organized crime. In its turn oligarchic model is characterized as "hourglass" where along with center (governing core), which includes the "oligarchs", representatives of political parties, famous journalists and editors, criminal authorities, is also identified legal (top) and hidden (lower) level. The top level includes financial, economic, informational, political, detective and guard segments. Lower level consists of banks under criminal control, corrupt government officials and mass media, illegal power structures.⁵

According to V. Larichev, "currently organized criminal units for taking control over the highly profitable enterprises stick to the following agenda:

1. Seek to get into ownership this enterprises. For this purpose the following steps are carried out:

- buying shares of enterprises or whole enterprises on illegally obtained money;
- use prescribed by law bankruptcy procedures and other schemes of change of owners and management.

2. Assign "their people" on key positions in enterprise by force or deception for the disposal of the profit.

3. To the same purpose (getting a solid profit) in some cases forcing enterprise managers to the transactions with commercial structures under their control."

To implement these actions they actively use representatives of public authorities or law enforcement officials as well as private security structures, security services.⁶

¹ Фёдоров, А.Ю. (2010). *Рейдерство и корпоративный шантаж (организационно-правовые меры противодействия)*. Москва: Волтерс Клувер, 46.

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³ Паскаль, Т. (2006). PR-технологии в войнах за предприятия. *Советник*, 1, 31.

⁴ Гриб, В.Г., Макиенко, А.В. (1999). *Организованная преступность и средства массовой информации*. Москва, 101.

⁵ Гриб, В.Г., Макиенко, А.В. (1999). *Организованная преступность и средства массовой информации*. Москва, 13-21.

⁶ Ларичев, В.Д. (2003). *Преступность в сфере экономики (теоретические вопросы экономической преступности)*. Москва: ВНИИ МВД России, 104.

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