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## **LEGAL AND SOCIAL RESPONSIBILITY OF BUSINESS**

The problem of offenses and legal liability for them occupies one of the leading places in legal science. Such negative phenomena as embezzlement of the state budget, corruption, withdrawal of funds offshore, the monopoly position of business in the market, etc. require special attention. The reasons for the current situation, if the analysis of the reasons for the existence of the oligarchic mafia is limited to legislation in the field of reform, are their declarativeness, aimed at solving pseudo rather than real problems. Hence the inefficiency of legislative decisions, the transformation of the fight against the above negative phenomena in its simulation. The Draft Law of Ukraine "On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic or Political Weight in Public Life (Oligarchs)" provides for the establishment of the Register of Persons with Significant Economic or Political Weight in Public Life (Oligarchs), determining the procedure for inclusion of persons in the Register and the consequences of such inclusion, introduction of declaring by public servants of contacts with persons included in the specified Register. It is projected that the implementation of the Law will affect those who have significant economic and political weight in public life (oligarchs) and their associates, as well as public servants. We have developed a model of organization of economic activity, in the conditions of which it is impossible to cause harm to the state in all the above areas. The essence of these organizational conditions requires separate consideration. It is clear that such conditions should be enshrined in the bill on de-oligarchization. This is, so to speak, the first block of issues of the bill on de-oligarchization. Such conditions should be enshrined in the bill on de-oligarchization. In addition to the above conditions, the bill on de-oligarchization should contain mechanisms to increase the social responsibility of oligarchs.

**Keywords:** anti-corruption legislation, additional bodies of control over authorities, oligarchic mafia, embezzlement of the state budget, corruption, withdrawal of funds offshore, monopoly position of business.

**Introduction.** The problem of offenses and legal liability for them occupies one of the leading places in legal science. Such negative phenomena as embezzlement of the state budget, corruption, withdrawal of funds offshore, the monopoly position of business in the market, etc. require special attention. But, despite the understanding of these problems by the current authorities, the adoption of anti-corruption legislation, the creation of appropriate structures for governance reform, the establishment of special (additional) bodies to combat these negative phenomena, assistance in reforming our foreign partners – tendencies to overcome the above offenses – no observed. On the contrary, corruption in government, embezzlement of the state budget, monopoly in the economy, distortion of competition, and the volume of market monopolization are not decreasing, but, on the contrary, are increasing.

**Review of works on this issue.** In the legal literature, issues related to the fight against the oligarchic mafia, the analysis of legislative acts in the field of reform, the declarative nature of existing acts and bills were practically not considered. Theoretical issues related to economic and legal responsibility of business were considered by well-known experts in business law, namely: O. Vinnyk, D. Zadykhailo, O. Zeldina, J. Petrunenko, O. Podtserkovnyy, V. Ustimenko, O. Shapovalova, S. Shishkin, V. Shcherbini, etc. At the same time, the country now needs to study the problems of responsibility, especially big business in business relations. In our opinion, insufficient attention is paid to the issues of social and legal responsibility of business. The purpose of this article is, first, to analyze and develop proposals to improve the concept of the draft law of Ukraine "On prevention of threats to national security associated with excessive influence of persons who have significant economic or political weight in public life (oligarchs)". Secondly, it is a study of the problems of responsibility, especially big business in business relations.

**Presentation of the main research material.** Additional control bodies have been set up: NABU, SAP, DBR, NAPC, WACS and other institutions should deal with corruption on a large scale. But, in practice, the efficiency of their activities is critically low. Our politicians and officials speak about this almost unanimously, the problems of corruption, judicial reform are the topic of discussion not only of scientists and representatives of small / medium business, but also of the majority of conscious, thinking citizens. The same is said in various measurements, studies conducted by well-known foreign foundations.

The reasons for the current situation, if the analysis of the reasons for the existence of the oligarchic mafia is limited to legislation in the field of reform, are their declarativeness, aimed at solving pseudo rather than real problems. Hence the inefficiency of legislative decisions, the transformation of the fight against the above negative phenomena in its simulation. For example, let's focus on the draft Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Who Have Significant Economic or Political Weight in Public Life (Oligarchs)". This law is better known as the law on the status of oligarchs or the bill on deoligarchization. This Law, as follows from the Explanatory Note to the draft to this Law (Law of Ukraine "On Prevention of Threats to National Security Related to Excessive Influence of Persons Who Have Significant Economic or Political Weight in Public Life (Oligarchs)"<sup>1</sup> is developed) in order to determine the legal and organizational framework for the functioning of the system of prevention of threats to national security associated with the excessive influence of persons of significant economic and political importance in public life (oligarchs) and related persons, the content and application of appropriate measures reaction. It is substantiated that issues related to the prevention of threats to national security related to the excessive influence of persons of significant economic or political importance in public life (oligarchs) and related persons, the application of appropriate response measures, need legislative regulation. The draft law envisages amendments, in particular, to the laws of Ukraine "On the National Security and Defense Council of Ukraine", "On the Cabinet of Ministers of Ukraine", "On Central Executive Bodies", "On the National Anti-Corruption Bureau of Ukraine", "On Prevention of Corruption". "On the Prosecutor's Office", "On Privatization of State and Communal Property", "On Political Parties in Ukraine" in order to create a Register of persons who have significant economic or political weight in public life (oligarchs), to determine the procedure for inclusion of persons in the Register inclusion, introduction of declaration by public servants of contacts with the persons included in the specified Register.

It is projected that the implementation of the Law will affect those who have significant economic and political weight in public life (oligarchs) and their associates, as well as public servants. The bill assigns a key role in the fight against the oligarchs to the President of the National Security and Defense Council. The text of the bill contains many definitions related to various media – television, print and online publications, as well as to whom they may belong. This suggests that one of the main goals is to limit the influence of the oligarchs on the politics and elections given to them by the controlled media. At the same time, much less attention is paid to the influence of oligarchs on the economy, although, in fact, this is what experts expected from the initiative "to build a country without oligarchs". What exactly is proposed in the bill regarding the oligarchs? First, this is the definition of an oligarch. According to the bill, the oligarch has the following characteristics: 1) participates in political life; 2) has a significant impact on the media; 3) is the ultimate beneficiary of an economic entity that is a natural monopoly or has a monopoly position in the market for more than a year, and also maintains or strengthens such a position; 4) has confirmed assets of more than 1 million subsistence minimums as of January 1 of the corresponding year (now it is 2, 227 billion USD). At the same time, media assets are not taken into account in the calculation of the oligarch's wealth. To obtain oligarch status, you must meet at least three of the four criteria. Participation in political life is determined by the fact that a person holds the highest government positions (from president to deputy or minister, head of the National Bank and the Prosecutor General) or is a person associated with the beneficiary of a company. It is also considered for the status of an oligarch and participation in the leadership of a political party or its financing. Much attention in the bill is paid to the influence of the oligarch on the media. According to the project, media influence is determined by the fact that a person suspected in the oligarchy is a beneficiary or controller of a certain media, ie receives income or manages it. This rule can also be applied retrospectively, when such signs were at the time of enactment of the law, and then the media was in

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<sup>1</sup> Смирнов, А. (2021). Пояснювальна записка до проекту Закону України "Про запобігання загрозам національній безпеці, пов'язаним із надмірним впливом осіб, які мають значну економічну або політичну вагу в суспільному житті (олігархів)". *LIGA360* <<https://ips.ligazakon.net/document/GI05323A>> (2021, July, 19).

the hands of a "connected person", for example, the TV channel "rewritten on a cat"<sup>1</sup>. At the same time, many experts assess this bill as one that will not be able to influence the oligarchs, and therefore the danger to the state of Ukraine will remain. Why? We answer: because with their bills the government does not fight the causes of the problem of seizure of state power by the oligarchic mafia. It intends to fight specific individuals – the oligarchs. And this is either 1937 or the appearance of a struggle. Rather, the second. That is, the bill declares de-oligarchization. It may be a tool to deal with specific individuals. Say, political opponents, because mechanisms are created for subjective, voluntaristic decisions in this area. The government will voluntarily (through the National Security and Defense Council) decide who is an oligarch and who is not. This is the first. Secondly (and this is also the main reason for the ineffectiveness of the bill). It is necessary to fight not with oligarchs (specific people), but with the phenomenon itself – oligarchization, to create CONDITIONS under which they – billionaire oligarchs (and, in general, anyone) could not harm the country, its economy. The bill on de-oligarchization should establish such conditions that would not allow to negatively affect the economy and politics.

This is how the problem of corruption and de-oligarchization could be solved. Relevant experience is available. The Americans, for example, consider such an organization to be good, in which even the most mediocre person will not be able to cause great damage to the system. And they have created such organizational conditions, built a system of government in which the oligarchs do not harm, but on the contrary benefit society. As you know, it is American billionaires who created the economy of the United States: Rockefeller – the oil industry, Andrew Carnegie – the metallurgical industry, Henry Ford – the automotive industry, Alexander Bell – the telecommunications industry. Thanks to them, America has become the most powerful economy in the world. All billionaires have spent and continue to spend huge sums on charity. Rockefeller, despite the bad attitude of society to him during his life, was included, as noted, in the list of creators, pillars of the American economy. Unlike the Ukrainian oligarchs, he did not receive a branch of the economy as a gift. Rockefeller himself created an entire industry that still remains one of the leading in the United States. The successor to Standard Oil, known as ExxonMobil, is one of the largest oil companies in the world. In addition, the entrepreneur has created the Rockefeller Foundation, which funds many areas in science, education, culture, social sphere, including projects to combat poverty.

Americans: Jeff Bezos (Amazon.com), Bill Gates (Microsoft), Warren Buffett (Berkshire Hathaway), Larry Ellison (Oracle), Mark Zuckerberg (Facebook), Michael Bloomberg (Bloomberg), Larry Page (Google). Most of them are not oligarchs in the classical sense of the word. That is, they are not directly related to politics. The only exception is former New York Mayor Bloomberg, who managed to join the ranks of both Republicans and Democrats. As a billionaire and owner of numerous media outlets, he is well suited to identify him as an oligarch under the Law on the Prevention of Threats to National Security Related to the Excessive Influence of Persons with Significant Economic or Political Significance in Public Life (Oligarchs). However, Michael Bloomberg is not a threat, but, on the contrary, a powerful source of success for the US economy. And this makes American oligarchs significantly different from Ukrainian ones. Historically, American oligarchs have created economies, enriched themselves, multiplied national wealth, and thus gained influence over power. Ukrainians – on the contrary: through access to power, national resources, got the opportunity to get rich<sup>2</sup>. The oligarchs in Ukraine emerged as a result of the collapse of the socialist system, when much of the state property became their property. They continue to treat the state budget as a source of enrichment. In addition, their business is often linked to Russia, especially oil and gas, and they are dependent on Russia. At the same time, their American "colleagues" became rich primarily because of the benefits and advantages that other businessmen gave them – because of the conspiracy that the government was fighting. The mass consumer even benefited from the conspiracy because it helped lower prices, ruining competitors or forcing them to succumb to the dictates of the oligarchs. Ukraine's wealthy, holding a monopoly position in the market of petroleum products, air transportation, steel, etc., on the contrary, keep prices high, from which the final consumer suffers. Today in the United States, unlike in Ukraine, there is no reason to fight the oligarchs as a phenomenon. As for the organizational conditions under which the oligarchs, these conditions are considered in the publication "Research: how the oligarchs affect the economy of Ukraine to the detriment of our country", the results

<sup>1</sup> BBC News Україна (2021). *Закон про деолігархізацію в Раді: як Зеленський "мінусуватиме" олігархів* <<https://www.bbc.com/ukrainian/news-57342328>> (2021, July, 19).

<sup>2</sup> Ільченко, В. (2021). *Як боротися з олігархами. Американські практики* <<https://www.ukrinform.ua/rubric-world/3247428-ak-borotisa-z-oligarhami-amerikanski-praktiki.html>> (2021, July, 19).

of which are presented by O. Kutyshenko<sup>1</sup>. The publication notes that the Center for Economic Strategy has issued an analytical document "Release the captured state of Ukraine." "State capture" refers to a type of corruption, namely the exercise of political influence through changes in laws, policies, regulations to obtain unfair benefits for a particular business. The authors analyzed the risks it creates for the economy and society. Here are the main theses of this study. There are the following types of seizure of the state: 1) seizure of the regulator (for example, in the case of natural monopolies); 2) capture of the budget (in case of receiving preferences with the use of budget funds) and 3) capture of state enterprises. In Ukraine, based on the results of the analysis, there are risks of all types of state occupation. As a result, Ukrainian oligarchs cause great harm to the state. Yes, DTEK deliberately lowered electricity prices. As a result, state-owned Energoatom and Centerenergo, as well as other market participants independent of the non-monopolist, suffer. The expert explained what the oligarch wanted<sup>2</sup>. According to media reports, DTEK's CEO is using such monopoly blackmail to try to get the bill № 5600 to be removed from parliament, which, among other things, provides for an increase in the environmental tax on CO2 emissions. Thus, R. Akhmetov's DTEK has excessive market power and uses it to put pressure on the authorities. It is clear that the losses of the state of Ukraine from the actions of the oligarch are huge. After all, the energy sector is one of the strategically important and failure in its work is an extremely serious threat to national security. In order to neutralize this threat, to exclude the possibility of harm to the state, it is necessary to develop such organizational conditions that would prevent damage in all these areas of seizure of the state (seizure of the regulator, seizure of the budget and seizure of state enterprises). We have developed a model of organization of economic activity, in the conditions of which it is impossible to cause harm to the state in all the above areas. The essence of these organizational conditions requires separate consideration. It is clear that such conditions should be enshrined in the bill on de-oligarchization. This is, so to speak, the first block of issues of the bill on deoligarchization. In addition to the above conditions, the bill on de-oligarchization should contain mechanisms to increase the social responsibility of oligarchs. The problem of corporate social responsibility first began to develop in the West in the 1950s. It was at this time that Howard Bowen's seminal work, *Corporate Social Responsibility*, emerged, in which the author argued that business decisions should pursue not only economic but also social interests.

Further development of the problem of social responsibility of entrepreneurs was associated with the huge role that business plays in society. In the modern world in the West, every business entity is aware that if it is only about its own interests in a modern market economy, it will not work effectively. Thus, all business standards, customs, professional requirements, all corporate culture in business are aimed not only at making a profit, but also at fulfilling high social obligations. It is believed that a corporation is more than an economic institution – it is a socio-economic organism. It has its own mechanisms of self-regulation that impose higher standards on it than the state. Otherwise, the loss of image, business reputation, complete economic failure. According to SN Shishkin, the social responsibility of business should be understood as the obligation of business entities to carry out such activities that not only do not violate the law, the interests of society, contractors, but also participating in solving social (public) problems. Corporate social responsibility in this sense is nothing more than the positive responsibility of business entities. Moreover, this is a real embodiment of the principle of partnership in business relations not only horizontally but also vertically. The principle of partnership of economic entities as a principle of business law presupposes business cooperation of these entities, not their assistance to each other in fulfilling obligations<sup>3</sup>. The implementation of such provisions in the bill on de-oligarchization will be in line with world practice<sup>4</sup>, as well as contribute to the achievement of the objectives of this document. Conclusions from this study and prospects for further exploration in this direction. The problem of offenses and legal liability for them occupies one of the leading places in legal science. Such negative phenomena as embezzlement of the state budget, corruption, withdrawal of funds offshore, the monopoly position

<sup>1</sup> Кутишенко, О. (2017). Дослідження: як олігархи впливають на економіку України. *LBTV* <[https://lb.ua/economics/2017/03/27/362142\\_doslidzhennya](https://lb.ua/economics/2017/03/27/362142_doslidzhennya)> (2021, July, 19).

<sup>2</sup> Загребельська, А. (2021). Компанії олігарха Ріната Ахметова навмисно обвалили ціни на електроенергію в Україні. *Українські Національні Новини Інформаційне Агентство* <<https://www.unn.com.ua/uk/news/193501>> (2021, July, 19).

<sup>3</sup> Шишкин, С. Н. (2004). Вопросы ответственности в предпринимательских отношениях. *Развитие хозяйственного законодательства на современном этапе: Материалы международной научной конференции 29 апреля 2004 года*. Москва: Проспект, 127-128.

<sup>4</sup> Griffith Sean, J. (2016). Corporate Governance in an Era of Compliance. *William & Mary Law Review*, 57, 6.

of business in the market, etc. require special attention. We have developed a model of organization of economic activity, in the conditions of which it is impossible to cause harm to the state. Such conditions should be enshrined in the bill on de-oligarchization. In addition to the above conditions, the bill on de-oligarchization should contain mechanisms to increase the social responsibility of oligarchs.

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