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## FORMATION OF THE COUNTERACTION AGAINST RAIDING AND UNFRIENDLY TAKEOVERS OF AGRICULTURAL ENTERPRISES

**Kudryashova Sofiya. Formation of the counteraction against raiding and unfriendly takeovers of agricultural enterprises.** Modern scientific works and publications devoted to risks specific to the agricultural sector of Ukraine, for the most part, cover the issues of the impact of climatic conditions on the activities of enterprises in the agricultural sector of the economy, as well as the development of the use of financial instruments by enterprises, such as insurance and lending. Along with this, in connection with changes in the political sphere of Ukraine, the actual risk that significantly affects the situation in the agricultural industry, according to the authors of the article, is raiding. It is safe to say that raiding and acquisition have an impact on the food security of the state no less than climate or socio-economic factors, as they lead to imbalances in the overall structure of agriculture, depriving it of stability, and also force farmers to divert already limited resources from the core business and redirect them to address organizational (legal) issues.

**Key words:** risks, raiding, unfriendly takeovers, forensic examinations, agricultural enterprises.

**Кудряшова С.В. Формування процесу протидії рейдерству та недружнім поглинанням сільськогосподарських підприємств.** Сучасні наукові роботи та публікації, присвячені ризикам, притаманним галузі сільського господарства України, в своїй більшості, присвячені висвітленню питань впливу кліматичних умов на діяльність підприємств аграрного сектору економіки, а також розвитку використання підприємствами фінансових інструментів, таких як страхування та кредитування. Поряд з цим, у зв'язку із змінами в політичній сфері України, нагальним ризиком, який істотно впливає на положення в галузі сільського господарства, на думку авторів статті, є рейдерство. Термін «рейдерство» в законодавчій базі України не має чіткого визначення, ініціативи держави по запобіганню рейдерству не дають в повній мірі потрібного захисту та нерідко використовуються рейдерами в своїх цілях. Інформація стосовно фактично здійснених рейдерських захоплень, в переважній більшості, наведена на регіональних інформаційних ресурсах, та не набуває широкого наголосу. Проблема рейдерства в сільському господарстві висвітлена в науковій літературі недостатньо та потребує детального вивчення, розробки дієвих механізмів виявлення, нейтралізації та запобігання ризикам рейдерських захоплень. Можна з упевненістю говорити про те, що рейдерство та поглинання мають вплив на продовольчу безпеку держави не менший, ніж кліматичні умови або соціально-економічні фактори, оскільки призводять до дисбалансу в загальній структурі сільського господарства, лишаячи її стабільності, а також примушують аграріїв відволікати без того обмежені ресурси від основної діяльності та перенаправляти їх на вирішення організаційно-правових (юридичних) питань. Дослідження документального відображення операцій із підготовки та реалізації рейдерських захоплень в сільському господарстві здійснюється в межах виконання судових економічних експертиз. Судовими експертами за результатами проведених експертиз та досліджень виявляються та узагальнюються найбільш типові помилки, які допускаються керівниками аграрних підприємств при веденні діяльності та збільшують загрозу рейдерських захоплень. В зв'язку з цим, авторами статті пропонується поєднати практичний досвід, набутий спеціалістами в галузі експертної діяльності при дослідженні питань, пов'язаних із рейдерством в сільському господарстві, із теоретичними знаннями стосовно рейдерства, що допоможе створити дієвий механізм захисту аграрних підприємств від недружній дій з боку компаній-агресорів, а також виробити набір превентивних мір.

**Ключові слова:** ризики, рейдерство, недружні поглинання, судова експертиза, аграрні підприємства.

**Кудряшова С.В. Формирование процесса противодействия рейдерству и недружественным поглощением сельскохозяйственных предприятий.** Современные научные работы и публикации, посвященные рискам, характерным для отрасли сельского хозяйства Украины, в большинстве своем освещают вопросы влияния климатических условий на деятельность предприятий аграрного сектора экономики, а также

развитию использования предприятиями финансовых инструментов, таких как страхование и кредитование. Наряду с этим, в связи с изменениями в политической сфере Украины, актуальным риском, существенно влияющим на положение в отрасли сельского хозяйства, по мнению авторов статьи, является рейдерство. Можно с уверенностью говорить о том, что рейдерство и поглощения оказывают влияние на продовольственную безопасность государства не меньше, чем климатические или социально-экономические факторы, поскольку приводят к дисбалансу в общей структуре сельского хозяйства, лишая ее стабильности, а также вынуждают аграриев отвлекать и без того ограниченные ресурсы от основной деятельности и перенаправлять их на решение организационно-правовых (юридических) вопросов.

**Ключевые слова:** риски, рейдерство, недружественные поглощения, судебная экспертиза, аграрные предприятия.

**Formulation of the problem.** The scientific developments, which are devoted to the problem of raiding and unfriendly takeovers, do not take into account the peculiarities of agrarian enterprises' economic activity. Modern publications that raise the issue of raiding in agriculture cover certain events and are informational in nature.

Identifying the risks that influence the activity of agricultural and industrial enterprises badly, native scientists focus on the identification, analysis, and development of mechanisms for counteracting and preventing the climatic (natural) risks.

In this regard, the authors emphasize that the study of the problem of identifying the risks for agrarian enterprises, which are connected with raiding and unfriendly acquisition and development of measures to minimize them, should be utilitarian and effective.

**Current researches and publications analysis.** The problem of raiding and unfriendly acquisitions has been studied by many scientists and analysts. However, scientific concepts and recommendations on the ways of counteracting raider attacks, that were suggested, have not become applicable. Numerous attempts to introduce the scientific recommendations in the development of targeted programmes to reduce the level of raiding, as well as corruption in the branches of the economy and public administration in the field of management, in our country or in its regions, confirmed that the information received by the scientists does not allow them to be effectively used to solve certain practical tasks over the fragmentation and unsystematic nature. [1]

**The article's goal.** Forensic expertise and researches help to investigate the elements of practical implementation of some methods of the illegal takeover of agricultural enterprises. The goal of these researches is to confirm the calculation of the amount of damage caused by the abduction, illegal harvesting or damage to agricultural enterprises, the determination of the property share when the participant leaves the company and the order of enterprise income display and distribution, etc.

**General material formulation.** The agricultural harvest theft or damage is an instrument in a severe competition as it leads to damage to the enterprise, increase in debt, and loss of assets inevitably, which, in turn, can cause bankruptcy.

Such hostile actions can be met by any enterprise, regardless of its size, volume of land resources that it processes, and its profitability.

Yaroslava Borka states that there is no official statistics on the number of raider seizures of agrarian business or land plots in Ukraine. Unofficial sources give the following data: 1,690 raider seizures have been registered in

Ukraine since 2013, 539 of them have taken place during the last 1.5 years. The largest number of raider attacks (414) occurred in 2017. The smallest number of seizures (234) was registered in 2014.

However, the real statistics must be different, as raider attacks are usually accompanied with the support of corrupt law enforcement officers who, according to a criminal offense, do not submit data to the Unified Register of Pre-trial Investigations. There are also cases when criminal proceedings are initiated under other articles of the Criminal Code of Ukraine (in particular, self-rule, hooliganism, illegal enrichment, illegal use of weapons, military supplies or explosives, etc.). [2]

We can confirm this thesis with the publication of Olena Sukmanova, the Deputy Minister of Justice on State Registration, who states that the analysis of the work of the Commission for the consideration of complaints in the field of state registration under the Ministry of Justice (the anti-raider commission) demonstrates that all the complaints, which are received by the commission, can be divided into two groups: those with the signs of raider hijacking, and those that can be called illegal and criminal acts.

The first group includes cases where property and property rights are passed to a new owner, for instance, because an old owner has overdue debts. Usually, it is a credit obligation to the bank or other creditors.

Overdue monetary obligations create a rapid increase in debts, which leads to confiscation of property to repay them. [3]

Raiders use one more tool for raider hijacking – conflicts between participants and shareholders of enterprises and disputes between shareowners and tenant companies.

The second group includes counterfeiting of documents and court decisions, execution of registration based on a non-existent court decision, theft of the crop, unauthorized seizure of land, unlawful removal of arrests, even within the framework of criminal proceedings or the landowner's signing of several lease agreements.

This is how the deceivers usually act. But such actions cannot be considered as a raider seizure. It may be a theft, a documents forgery, a fraud or a robbery, that is, offenses, which have a clear definition in the Criminal Code.

When someone says that a harvest seizure is raiding, he/she sows the wind, reaps the whirlwind because, at such a rate, all property crimes will soon be considered as raids. [3]

We notice that factors from the first group are a direct consequence of the factors presented in the second group. That is, the accumulation of debt obligations of agricultural enterprises in most cases, except for natural disasters and negligence in servicing loans, is directly connected with

theft, damage to the crop and property, and disputes over land assets of the enterprise. Small agricultural enterprises often hold sowing campaigns using credits or on the pledge of the future harvest. Meanwhile big agrarian enterprises can attract borrowed capital for expanding production and creating new activities: complementary or substitutional.

In this regard, if enterprises show an increase in payables or losses in their financial statements (as a result of property offenses committed against them), it directly influences the financial sustainability of such enterprises, their investment attractiveness, and credit history. O. M. Yurchenko stated in his publication that payables can be used as a method of raider seizure in case of a presentation by the creditor to a one-time payment. [4]

T. Tkachuk shares this opinion and says that in the second half of the 90s, the most popular way of taking ownership was doing it through payables. It is still popular nowadays. The overdue debts of the enterprise are bought up from the small creditors, and then they are consolidated and presented to a one-time payment. The inability of the company to pay off its debt obligations gives rise to bankruptcy or sanitation with all the relevant consequences. The factory, which is being rehabilitated, cannot be controlled either by its owner or management. The main operating person is a manager of sanitation – as a rule, it is one person, and it is easy for a raider to bribe him/her.

The weakest point of the majority of enterprises is the top management, that is, the control bodies. These are people whose weaknesses the raider uses first and foremost. The director has sufficient powers and may provide fast withdrawal of property from his enterprise to the structures that are controlled by a raider. So, the owner of the factory remains with shares that do not cost anything. Management can easily provoke financial problems at the plant, for example, by authorizing the purchase of raw materials at inflated prices or by borrowing loans at very high interest. It is possible to persuade management to act in favour of the raider in different ways: from ordinary bribery to blackmail, criminal prosecution, and threats. The attack through the management in state enterprise is the cheapest because there is no good control over the owner's activity.

This way is more complex than corporate seizure but it is not less effective since it is difficult to find an enterprise that does not owe anything to anyone. In such a situation, raiders study the credit history of the company and look for a way to file a case in bankruptcy against the enterprise. Then the raider can act in several ways – either to buy company debts and thus to obtain a majority in the council of creditors, or to arrange with other creditors to appoint his arbitration manager. During the bankruptcy of the enterprise, the arbitration manager actually performs the functions of the head of such an enterprise, and so he/she can handle the enterprise as a full owner. Meanwhile, the shareholders don't have any influence on the enterprise. [5]

Thus, according to the authors, property crimes in agricultural enterprises can be a way of preparing for the implementation of raider actions. Delaying this, paying no attention or investigating such crimes slowly can significantly affect the statistics of raider hijackings, which threaten the stability of the agrarian sector and the state food security as a whole.

Appealing to the court and conducting forensic expertise concerning the resolution of issues about the compensation of the harm caused by the affected enterprises

require the mobilization of considerable material and intellectual resources and time.

Practicing lawyers, such as G. Podvezko, emphasize in their publications that agricultural and industrial enterprises should form a protective system against raids independently. The protective system can be created from a set of legal instruments that already exist. Therefore, the protective system in agricultural and industrial enterprises can be divided into two parts: preventive measures and measures that are applied during the raider attack.

Raising an issue of preventive measures, I want to emphasize that a good manager is one who manages his own risks. That's why the first thing that the owner or management of agricultural and industrial enterprises should do is to identify the risks that can be created for the attractiveness of raider hijacking. This will require a legal audit of the company's activities. It is a very deep and thorough work on the analysis of the condition of the enterprise and its operation. There is a complete examination since the moment of an enterprise establishment and the members-founders to the relationship with the shareholders and counterparties. Such an audit has several positive results. After this procedure, the owner has a third, independent assessment of readiness and ability to counteract the raiders, which is more objective and impartial. It is also possible to estimate the actual state of affairs in the enterprise, and examining them you can find out problems that could be left out of attention but require an urgent solution. However, the main thing is that having identified risks, you can clearly manage them.

But if the attack finally happened, it is necessary to act on a certain algorithm, which you should have in advance. You must realize that the raider did not come for you to run your business. His/her main goal is to access the assets of the company quickly, and then re-register it for other individuals for further resale or to seize it openly. Therefore, first of all, it is necessary to stop the rapid attack of the raiders.

G. Podvezko emphasizes that providing protective measures against the raiding attack, you should realize that time is very important. Raider is already ahead of the attacked enterprise, so it's necessary to act quickly, decisively, and in parallel directions. In such a way, systemic actions will help to slow down the raiders' actions. [6]

The analysis of expert practice on the issues of confirmation of the size of losses calculations from property crimes in agrarian enterprises helps to determine the efficiency of preventive measures held by agricultural enterprises, as well as to identify bottlenecks in the formation of algorithms for countering raiders in cases of an already committed raider attack.

Generalization of expert practice gives the opportunity to the enterprises to avoid the most typical mistakes of the agrarian enterprises in the process of resolving disputes.

Considering damage caused by property crimes as a precondition for raider capture or acquisition, it is necessary to start with the determination of damage (loss) given in the legislation of Ukraine.

The concept of damages and their compensation are established in the civil and economic codes of Ukraine.

Thus, according to Article 22 of the Civil Code of Ukraine, "*Compensation for Damages and Other Methods of Compensation for Property Damage*" provides:

1. *A person who has suffered damage as a result of the violation of his/her civil right has the right to compensation.*

2. *Losses are:*

1) *the forfeiture, which a person had over the destruction or damage of the thing, as well as the expenses that a person had or should have to restore his/her violated right (actual damage);*

2) *the income that a person could actually have under usual circumstances if his/her right had not been violated (lost profit)” [7].*

*Under the Commercial Code of Ukraine No. 436-IV as of January 16, 2003:*

*“Article 224. Compensation for losses”*

1. *A participant in economic relations, who has violated an economic obligation or established requirements for the implementation of economic activities, should compensate for the damage caused to an entity whose rights or legitimate interests are violated.*

2. *Losses are the expenses of the controlling party, loss or damage of his/her property, as well as income that was not received, which the controlling party would have received in case of proper fulfilment of the obligation or observance of the rules of economic activity by the other party.*

*“Article 225. Composition and amount of damages”*

1. *The amount of damages which should be compensated by a person who committed a commercial offense should include:*

– *the value of the lost, damaged or destroyed property determined in accordance with the requirements of the legislation;*

– *additional costs (penalties that were paid to other entities, the cost of additional works, additional expenditures, etc.) incurred by the party who has suffered damage as a result of a violation of the obligation by the other party;*

– *unearned profit (loss of profit), for which the party who has suffered damage has the right to count on in case of the proper performance of the obligation by the other party;*

– *material compensation of the moral damage in cases provided by law” [8].*

Based on the above, the goal of expertise and studies on the total amount of pecuniary damage (losses) caused to the enterprise as a result of deterioration, theft or extermination of the harvest is the documentary and arithmetic confirmation of pecuniary damage calculations carried out by the affected enterprises.

The objects to study are documented costs of the company, an estimated amount of unearned profits, and possible additional costs. The expert analyses the documents on business activities, accounting and tax accounting, which confirm the implementation and reflection of the cost for purchasing crop, fertilizers, consumables for equipment, employees' salary, services of outside organizations, etc., that is incurred costs, as well as documents that confirm the intentions of the enterprise in the harvest realization, in order to calculate the amount of unearned profit (lost profits). The data from the Office of Statistics on the average cost of a particular culture, stock exchange certificates, trading contracts on the future harvest and others are the sources of information in such cases.

Conducting research, an expert takes into account the compliance of the submitted documents with the requirements of the current legislation on this issue, as well as the comparability of the data given in the calculation, the data of accounting documents and business activities of the enterprise.

Summarizing the expert practice, the authors highlighted the main mistakes made by agrarian enterprises in the compilation and documentary justification for calculating the amount of damage caused to the enterprise:

– the discrepancy of the data on the cost of works, services, materials specified in the calculation, as indicated in the payment documents;

– the units of measurement heterogeneity or difference in the name of a certain position in different documents;

– the inconsistency in the registration of documents submitted for examination to the requirements of the current legislation,

– inadequate documentary justification of the costs specified in the calculation, etc.

These disadvantages show that people who are responsible for the registration of accounting documents and tax records of the enterprise for the pre-trial work are unskilled and inexperienced.

Inconsistencies and mistakes in the calculations conducted by the enterprises affect the amount of damages, documented and arithmetically confirmed by the results of the examination significantly.

Based on the above, the authors state that the correctness and accuracy of documentary registration affect the success of solving legal issues by agrarian enterprises, therefore, they should be careful choosing skilled staff because it is possible to have undesirable consequences, saving money on this issue.

Work with the staff of the agrarian enterprise is an important component of preventive measures in developing a system for protecting agrarian enterprises from the risks of raiding or unfriendly takeovers.

The raider definition in western literature, as well as domestic publications on the role of competitive investigation in preventing raider attacks and takeovers, also confirms this fact.

Some foreign sources define raiding as a situation, in which an enterprise accepts (invites, lures away) the employees from competitor firms, giving them more wages, new career opportunities in exchange for information about the financial situation, plans and products of the firm-competitor [9]. T. Tkachuk also shares this opinion discussing the role of competitive investigation in preventing raider attacks and takeovers [6].

Ukrainian scientists, in particular, I. Y. Zaitseva, distinguish the following risks, besides the risks of unfriendly takeovers (raids) connected with the emergence and compensation of losses and the personnel policy influence:

– the risk of management authority misuse;

– the risk of not following the inside procedures of the company;

– the risk of a possible corporate conflict;

– the risk connected with the development strategy of the enterprise [10].

According to the authors, this group of risks is directly related to the legislative and statutory and documentary regulations of the enterprise.

The requirements for the organizational and legal form of activities of agricultural enterprises and the obligatory information, which should be contained in the constituent documents, are the goals and subject of the enterprise, management of the enterprise, rights and responsibilities of management and participants (shareholders and stockholders), the stock company property, the sources of formation

and the directions of the received income distribution, and other significant aspects of functioning. They are regulated by the following laws: Law of Ukraine "On Agricultural Cooperation" dated July 17.07.1997, No. 469/97-VR; Law of Ukraine "On Cooperation" dated 10.07.2003 No. 1087-IV; Law of Ukraine "On Business Associations" dated 19.09.1991, № 1576-XII.

Expert examination of transactions for the allocation of property shares at the exit of the participant from the company and the income display and distribution, which is dividends accrual and payment, income on shares, corporate payments, etc., documentary confirmation of the size of the land bank of the enterprise and connection between the agrarian business operations and economic activity, confirm their negative impact on the adequate work of agrarian enterprises. These operations can lead to the diversion of financial resources of the enterprise, changes in the structure of its assets, their reduction, and the emergence of additional tax or credit liabilities.

The application of an expert approach is to compare the practical implementation of such operations with the constituent documents of the enterprise and the requirements of the current legislation of Ukraine.

The generalization of expert practice on the given questions shows that the clear formulation of goals and objectives of the agrarian enterprise, the list of powers, rights,

and responsibilities of management and members of the society (co-operative), the regulation of internal procedures and consolidation of these data in the constituent documents of the enterprise, their unambiguous interpretation, and the requirements conformity to the current legislation help to reduce the above risks of raider attacks and unfriendly takeovers.

**Conclusions and prospects of further research in this sphere.** To sum up, we can conclude that the formation of a protective system against the risks of raider attacks and unfriendly takeovers by agrarian enterprises must be carried out by agrarian enterprises taking into account the following preventive measures:

- conducting an independent audit of activities to identify weaknesses in the work of the enterprise,
- selection of skilled staff and making it motivated;
- clear regulatory and legal regulation of activities, internal procedures of the enterprise, powers, rights, and responsibilities of management and participants.

The authors note that great importance for the agrarian enterprises to develop an algorithm of action under the conditions of an already carried out raider attack is to systematize and generalize the practices of different enterprises in similar situations, as well as the application of expert practice in this process. It will help to avoid common mistakes, to use financial resources effectively, and to save time.

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