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PREVENTING AND COMBATING CORRUPTION IN CORPORATE ENTERPRISE

The role of corporate governance and its instruments in preventing and combating corruption in corporate enterprises has been determined. Modern state of corporate culture in Ukrainian corporate enterprises and influence of corruption on business development have been investigated. International legislation and experience in corruption preventing and combating has been researched. Proposals for corporate governance of companies' for preventing and combating corruption have been developed.

Keywords: *corruption, corruption preventing, corruption combating, corporate enterprise, corporate governance, business ethics.*

Problem statement

Every year billions that could be spent on the education, health care and social security in general are lost because of bribery and extortion. Corruption hinders economic development of the country. Bribery leads to additional business costs, making it a difficult burden for companies and causing inefficient use of human capital and intellectual resources, reducing their economic productivity, and harming market competition. But it is important to remember, that corruption is not a natural phenomenon, and it can be combated.

Opposition to corruption is also the last of the 10 principles of Global agreement of UN – voluntary initiative, which was supported by over 8 thousand companies and organizations in the world and by over 190 companies in Ukraine. It provides that "Businesses should work against corruption in all its forms, including extortion and bribery". By joining to the Global agreement, companies contract a duty to create and support ethical foundations of corporate culture both on strategic and operational levels.

For implementing the 10th principle of Global agreement companies are offered to follow three specific steps, such as: introduction of anticorruption policies on levels of companies, including corporate culture development; monitoring and reporting about implementation of such policies, including demonstration of cases and specific examples; and, finally, association efforts with other players of the market within industry or on more large-scale levels for collective actions.

Forming corporate culture concerning rejection of corruption inside an enterprise on the level of top managers and other personnel is an actual problem for corporate enterprises, because it is one of the basic elements of preventing and combating corruption

equally with taking corporate policy, compliance program and system of internal control.

Analysis of recent research and publications

The problem of preventing and combating corruption on the level of business entities is especially acute for Ukrainian companies, which waste nearly 10% of their profit due to the corruption. Besides, taking into account internal and external assessment of corruption level situation in Ukraine is becoming worse. According to Transparency international Index Ukraine deteriorated its position over the last few years.

On the course of European Integration declared by Ukraine, the country must reach positive results in the field of corruption prevention, dramatically reduce corruption and thus ensure normal conditions of citizen' life and efficient functioning of the business environment.

The goal of the paper is to research the role of corporate culture in preventing and combating corruption on the level of corporate enterprises studying international experience on corruption prevention and perspectives of its implementation for Ukrainian companies.

According to the most developed world practices struggle against corruption is usually concentrated in two spheres: sphere of state administration and sphere of business. And in both spheres combating of corruption is ensured by normative and legislative regulation of this problem on national and international levels.

Nowadays there are a lot of legislative acts in Ukraine concerning combating corruption starting from the Law "On combating corruption" and including the National Strategy for combating corruption and State Program for preventing and combating corruption. Both of them define legal and organizational basis of the system of preventing corruption in Ukraine, the content

and the application of preventive anti-corruption mechanisms and rules to eliminate the consequences of corruption offenses. It should be noted, that an emphasis is made on close cooperation between state bodies and private sector while realizing anticorruption Program, which can ensure public control over implementation of anticorruption legislation. However, analysis of practical results shows ineffectiveness of these initiatives. The reasons may be different, but there is no doubt that one of them is low anticorruption culture of society at all, including corporate culture. That is why, it is necessary to study international experience for solving this problem and perspectives of its implementation in Ukrainian companies.

In the USA, UK and other developed countries, legislation acts places legal responsibility on large companies for their behavior when signing a contract with overseas partners, creating pressure for internal compliance and sharing anti-corruption commitment.

Landmark documents contribute to the global corruption prevention include: UN Convention against Corruption, OECD Anti-Bribery Convention, Transparency International's Business Principles for Countering Bribery, World Economic Forum's Partnering Against Corruption Initiative, International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery and other.

World Economic Forum perfectly sums up how businesses are affected by corruption: "The private-sector monitoring organization, Transparency International, estimates that corruption equals a full three percent of the world's gross domestic product. Corruption is corrosive by its very nature because it keeps businesses from doing work in countries where bribery is prevalent, thereby limiting economic advancement. Likewise, it also significantly damages the reputation of companies that pay bribes, creating an environment of mistrust among the public". (World Economic Forum)

Corruption and bribery have great impact on an economy as the corrupted market becomes much less competitive and brings "an aggravation of economic development, increase of unfair concurrence, intensification of monopoly, expansion of shady economics and diminution of direct foreign investment" (Katarzyna Marchlewska, 2005).

Entrepreneurs should not neglect the problem of corruption, because corruption piles up expenses of companies and diminish its benefits, such as:

- cost price of product rises;
- doesn't enable to enlarge investment due to the internal recourses;
- creates unfair competition;
- breaks the principle of equity in privatization;
- limits the direct foreign investments for companies;

- creates problems for start – up;
- abates the administration and abolishes the innovation;
- makes difficult to find new companions;
- creates grounds for informal economy.

According to the United Nations, corruption causes reduced investment or even disinvestment, with many long-term effects, including social polarization, lack of respect for human rights, undemocratic practices and diversion of funds intended for development and essential services (United Nations).

Therefore the issue of fighting corruption should not only be tied to the politics and law implementation. Tackling corruption and bribery from a corporate perspective is a significant step towards solving this problem as a whole.

There are different types of corruption that exist in the business world. The most common type of bribery, are payments and gifts. Embezzlement is abusing the money by the person which is in charge of it. Extortion is achieving gains using threats and violence.

The World Bank indicates a few situations in which we can face corruption. Among others there are two connected to business: when private firms and individuals seek to reduce costs imposed on them by government as well as when government transfer financial benefits to companies during the privatization process or by signing procurement contracts. Corruption usually occurs when business meets the government. In such situations corruption is a way of lowering costs or dividing monopoly rents. However offering bribes can also be a way of creating business relations among the companies. It is acting against the free market rules.

As a result corruption forces companies to doctor the books and financial reports exaggerating their cost claims in order to cover up their bribery expenses.

Presentation of the main material

There are a few ways of avoiding as well as fighting corruption by private sector companies. First of all company should avoid entering the markets where bribery and corruption is necessary to survive. Not paying bribes would mean very high costs and financial insolvency. Withdrawing from the market is avoiding the choice between paying bribes and going bankrupt. Nevertheless on most markets bribery is not a necessity – it is the way to compete and overhead the other players. What is more, companies in most cases act on one market and it is impossible for them to withdraw.

According to the World Bank opinion an effective anticorruption strategy for multinationals builds on creating a competitive private sector through implementation of a fair, competitive, honest and transparent private sector and thus hinders broad-based economic development.

Three important issues which play a key role in combating corruption by corporate companies are the following:

- Good Corporate Governance – Weak institutions for corporate governance not only result in inefficiency, they encourage corruption. Poorly governed managers often use their positions to extract favors from the state which they can later expropriate, rather than reinvest into restructuring their own firms, to avoid sharing their gains with other stakeholders (World Bank, 2005).

- Business Associations – They are a means of engaging in collective action, providing a more powerful since unified voice and protecting the single firm from potential backlashes or competitive disadvantages while pursuing ethical business practices. Business associations can serve as legitimate instruments to represent collective interests in the formulation of law and policy (World Bank, 2005).

- Transnational Cooperation – The international community has mobilized to develop instruments against transnational corruption. A number of international conventions that have the aim of intensifying and harmonizing the detection and punishment of transnational corruption have been taken.

The establishment of strong corporate governance within a company is one of a key ways to address corruption problem. Corporate governance provides transparency and accountability to the decision-making process, supporting ethical behavior of a company. Good corporate governance and business ethics play fundamental role in corruption prevention.

A very important instrument for preventing corruption at corporate companies is code of conduct. It supports the company as an organization giving employees clear rules they should obey in order to add value to the company and to make it successful. In that sense complying with the social responsibility rules is increasing company's development. Therefore it is also the way to tackle the internal problems especially corruption.

“Individual ethical principles are usually covered by internal codes of conduct, which consist of guidelines for staff on how to behave when confronted with dilemmas such as conflict of interest, gifts, theft, insider training, pay-offs and bribery” (Kolk, Van Tulder, and Welters, 1999). In many situations employee may simply not know how to act when corruption occurs. The code of conduct should show him the way to react and as a result should be a way to avoid such situations and fight with bribery. What is more it is also a clear signal to the business partners as well as competitors, clients and civil servants that the company would never accept the offer that could be treated as a corruption.

According to the rules on combating corruption, proposed by ICC, a great role is given to proper

financial accounting of companies' transactions, which includes the following steps for preventing corruption:

a) all financial transactions should be adequately identified and properly and fairly recorded in appropriate books and accounting records available for inspection by their Board of Directors or other body with ultimate responsibility for the Enterprise, as well as by auditors;

b) there must be no “off the books” or secret accounts and no documents may be issued which do not fairly and accurately record the transactions to which they relate;

c) there must be no recording of non-existent expenditures or of liabilities with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose;

d) cash payments or payments in kind should be monitored in order to avoid that they are used as substitutes for bribes; only small cash payments made from petty cash or in countries or locations where there is no working banking system should be permitted;

e) no bookkeeping or other relevant documents should be intentionally destroyed earlier than required by law;

f) independent systems of auditing must be in place, whether through internal or external auditors, designed to bring to light any transactions which contravene anticorruption principles of the company or applicable accounting rules and which provide for appropriate corrective action if the case arises;

g) all provisions of national tax laws and regulations should be complied with, including those prohibiting the deduction of any form of bribe payment from taxable income.

ICC also recommends that each Enterprise should implement an efficient Corporate Compliance Program reflecting enterprise rules and principles on preventing and combating corruption, based on the results of a periodically conducted assessment of the risks faced in the enterprise's business environment, adapted to the enterprise's particular circumstances and with the aim of preventing and detecting corruption and of promoting a culture of integrity in the enterprise.

Each enterprise should consider including all or part of the following good practices in its program. In particular, it may choose, among the items listed hereunder, those measures which it considers most adequate to ensure a proper prevention against corruption in its specific circumstances, no such measure being mandatory in nature:

a) expressing a strong, explicit and visible support and commitment to the Corporate Compliance Program by the Board of Directors or other body with ultimate responsibility for the enterprise and by the enterprise's senior management (“tone at the top”);

b) establishing a clearly articulated and visible policy reflecting anticorruption rules and binding for all directors, officers, employees and third parties and applying to all controlled subsidiaries, foreign and domestic;

c) mandating the Board of Directors or other body with ultimate responsibility for the enterprise, or the relevant committee thereof, to conduct periodical risk assessments and independent reviews of compliance with anticorruption rules and recommending corrective measures or policies, as necessary. This can be done as part of a broader system of corporate compliance reviews and/or risk assessments;

d) making it the responsibility of individuals at all levels of the enterprise to comply with the enterprise's policy and to participate in the Corporate Compliance Program;

e) appointing one or more senior officers (full or part time) to oversee and coordinate the Corporate Compliance Program with an adequate level of resources, authority and independence, reporting periodically to the Board of Directors or other body with ultimate responsibility for the enterprise, or to the relevant committee thereof;

f) issuing guidelines, as appropriate, to further elicit the behavior required and to deter the behavior prohibited by the enterprise's policies and program;

g) exercising appropriate due diligence, based on a structured risk management approach, in the selection of its directors, officers and employees, as well as of its business partners who present a risk of corruption or of circumvention of anticorruption rules;

h) designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding of corrupt practices;

i) establishing and maintaining proper systems of control and reporting procedures, including independent auditing;

j) ensuring periodic internal and external communication regarding the enterprise's anti-corruption policy;

k) providing to their directors, officers, employees and business partners, as appropriate, guidance and documented training in identifying corruption risks in the daily business dealings of the Enterprise as well as leadership training;

l) including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the enterprise's anti-corruption policy;

m) offering channels to raise, in full confidentiality, concerns, seek advice or report in good faith established or soundly suspected violations without fear of retaliation or of discriminatory or disciplinary action. Reporting may either be compulsory or voluntary; it can be done on an anonymous or on a disclosed basis. All bona fide reports should be investigated;

n) acting on reported or detected violations by taking appropriate corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the enterprise's policy;

o) considering the improvement of its Corporate Compliance Program by seeking external certification, verification or assurance; and

p) supporting collective action, such as proposing or supporting anti-corruption pacts regarding specific projects or anti-corruption long term initiatives with the public sector and/or peers in the respective business segments.

The regulatory environment needs to be supported with individual leadership and organizational commitment aimed at building an ethical organization.

The peculiarities of corporate enterprises management are usually connected with relations between all groups of stakeholders, especially with managers and owners. For maintaining effective relationship between the providers of capital and company managers, high levels of trust must exist between the two groups. For sufficient levels of trust to occur, four overarching principles of corporate governance need to be in place:

- Transparency: Directors must make clear to the providers of capital and other key stakeholders why every material decision was made.

- Accountability: Directors should be held accountable for their decisions and account to shareholders by submitting themselves to appropriate scrutiny.

- Fairness: All shareholders should receive equal consideration by the directors and management with a sense of justice and avoidance of bias or vested interests.

- Responsibility: Directors should carry out their duties with honesty, probity, and integrity.

Proper corporate governance is especially important for corporate enterprises for which the main benefit of good governance is being able to raise outside capital through a stock exchange. Corporate governance introduces internal controls that foster accountability and disclosure. Augmented with ethical codes of conduct and the leadership's tone from the top, proper corporate governance mechanisms are an important risk mitigation tool that can translate into palpable benefits. A study of S&P 500 firms by Deutsche Bank illustrated that firms with strong or improving corporate

governance outperformed those with poor or deteriorating governance practices by about 19 percent over a two-year period.¹⁰ Similarly, a study conducted by Harvard and Wharton researchers found that 1,500 U.S.-based firms with better governance had faster sales growth and were more profitable than their peers. Good governance matters for stock returns and performance over time as well. Firms with weaker shareholder rights earn significantly lower returns, are valued lower, and have poorer operating performance. Firms with better governance present less agency risk to shareholders, resulting in lower cost of equity capital. And greater equity rates equal higher returns on investment relative to the cost of capital.

Thus, investors are willing to pay extra for well-governed companies, therefore, better corporate governance increases company's value.

Conclusions

Practice of international companies shows the necessity of implementing the high level of corporate governance for preventing and combating corruption at the level of enterprise. Good corporate governance, despite all other factors, includes development of corporate culture, which also contributes to preventing corruption. It should be mentioned that corporate culture is sense of being an instrument of preventing and combating corruption includes a wide range of elements, such as:

- Code of conduct. Development of the code gives an opportunity to enterprise personnel to take right decisions in conditions of uncertainty and can decrease the possibility of actions connected with corruption.
- Proper financial accounting. Means preparation of financial reports, keeping and dissemination of financial information in accordance with international standards and in accordance with anticorruption legislation.
- Corporate Compliance Program. The document, which will show negative enterprise attitude towards corruption; list of actions, which can be qualified as potentially corrupted; measures, which will be taken to prevent and combat corruption and enterprise principles for preventing corruption.

It should be highlighted that corruption has a very negative impact on the development of economy starting from an enterprise and striking the whole world economy. Corruption is one of the main reasons why foreign investors are afraid to put up their capital in Ukrainian companies. To prevent and combat corruption it's important to struggle with corruption starting from the level of enterprise, which will finally have a positive impact on the level of corruption in the state and world economy. Nevertheless, good corporate

governance practices will not work efficiently if there is no improvement in the overall legal and regulatory climate of the country.

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ПОПЕРЕДЖЕННЯ ТА БОРОТЬБА З КОРУПЦІЄЮ В КОРПОРАТИВНИХ ПІДПРИЄМСТВАХТ.В. Момот¹, В.І. Торкатюк¹, Жорж Аль Джаммаль²¹Харківський національний університет міського господарства ім. О.М. Бекетова, Харків²Харківський національний університет радіоелектроніки, Харків

Визначена роль корпоративного управління та його інструментів в галузі попередження і боротьби з корупцією в корпоративних підприємствах. Досліджено сучасний стан корпоративної культури українських корпоративних підприємств і вплив корупції на розвиток бізнесу. Проаналізовано міжнародне законодавство і досвід в області попередження і боротьби з корупцією. Розроблено пропозиції щодо вдосконалення корпоративного управління компаній з питань попередження та боротьби з корупцією.

Ключові слова: корупція, запобігання корупції, боротьба з корупцією, корпоративне підприємство, корпоративне управління, бізнес-етика.

ПРЕДУПРЕЖДЕНИЕ И БОРЬБА С КОРРУПЦИЕЙ В КОРПОРАТИВНЫХ ПРЕДПРИЯТИЯХТ.В. Момот¹, В.И. Торкатюк¹, Жорж Аль Джаммаль²¹Харьковский национальный университет городского хозяйства им. О.М. Бекетова, Харьков²Харьковский национальный университет радиоэлектроники, Харьков

Определенная роль корпоративного управления и его инструментов в области предупреждения и борьбы с коррупцией в корпоративных предприятиях. Исследовано современное состояние корпоративной культуры украинских корпоративных предприятий и влияние коррупции на развитие бизнеса. Проанализированы международное законодательство и опыт в области предупреждения и борьбы с коррупцией. Разработаны предложения по совершенствованию корпоративного управления компаний по вопросам предупреждения и борьбы с коррупцией.

Ключевые слова: коррупция, предотвращение коррупции, борьба с коррупцией, корпоративное предприятие, корпоративное управление, бизнес-этика.