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INFORMATION DIGEST
SUBJECT: CRIMINAL LAW

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THE ALGORITHM OF ACTIONS IN CASE OF THE OPENING OF CRIMINAL PROCEEDINGS

With the entry into force of the new Criminal Procedure Code of Ukraine unscrupulous law enforcement officers made it easier to use the criminal proceedings, in order to influence business. About the beginning of the pre-trial the managers or owner of the company may find out after a considerable period to be a real threat of criminal prosecution. The basis for the beginning of the investigation may be just an inspection report of the supervisory authority, or the application of any physical (legal) persons. At the same time investigation has an opportunity to actively intervene in economic activity. Guaranteed to avoid the possibility of entering into such a situation is extremely difficult.

The signal, so to say, "marker" for possible criminal proceedings may be harmless at first sight, investigator requests for seemingly irrelevant information. Many entrepreneurs in such cases, unfortunately, acts pretty typical, relying solely on in-house lawyers, and shifting them to communicate with law enforcement agencies. Meanwhile, being specialists, primarily in corporate law, business lawyers do not give a proper assessment of possible criminal risks.

The correct decision and actions of companies' management is - as early as possible resort to the services of specialized lawyers who understand the strategy and mechanisms of law enforcement. Moreover, the services of qualified lawyers in the field of criminal law should be used at the stage of receiving requests of law enforcement and giving any explanation.

Such business activities may be the key to minimize the risk of being called to criminal responsibility and to avoid financial losses for the company.



BUSINESS PROTECTION FROM PROSECUTION

Under the conditions of Ukrainian reality factor of criminal procedure is widely used for the purpose of unfair competition. Corruption, proxy battle, business wrestling away - our realities, which, in turn, deter also foreign investors.

What is the algorithm for effective protection and what business owners should do to minimize the risk of criminal prosecution:

- do not ignore the results of any inspections economic activity, to appeal acts in accordance with the established procedures, including the judicial, by which the facts of "violations" in the company were found;
- to challenge the actions of the regulatory and law enforcement agencies, to initiate the updates in Unified Register of Pre-Trial Investigations and the beginning of criminal proceedings against them using offensive strategy as well;
- in case of any, even "harmless" at first sight, requests from law enforcement agencies receiving, to assess the legal risks of providing information and / or documents competently;
- to give any explanations and evidence to law enforcement agencies only in the presence of and after consulting with a lawyer;
- to actively use civil protection mechanisms (such as claims about protection of business reputation);
- do not rely on the effectiveness of corruption "solution" of the problem;
- do not rely solely on the corporate lawyers and promptly as possible, contact a lawyer who specializes in criminal law.

Only well-qualified lawyers can built a mechanism to protect the interests of the company and the sequence of correct legal actions can "nullify" the risk of criminal proceedings.



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LEGAL DEFENCE

High-quality and effective protection of the interests of business in the court greatly minimizes the risk of criminal proceedings and their negative consequences for the business.

According to the current Criminal Procedural Law, representing the interests of persons in criminal proceedings may not be carried out by all the lawyers, but only attorneys, details of which are included in the Unified Register of Advocates of Ukraine.

The most common forms of participation in criminal proceedings may be:

- the protection of the interests of persons suspected (accused) in criminal offenses;
- legal service to the owners and officials of the companies in case of questioning as witnesses or performing their participation in other investigative actions;
- representation of the interests of individuals and entities that act as victims or civil plaintiffs in criminal proceedings;
- representation of the interests of individuals and legal persons acting as civil defendants in criminal proceedings (for example, for the crime of their employees while on duty, and the subsequent recovery of damages from the company);
- lodging a complaint on a judgment in appeal and cassational procedure in the prejudicial inquiry and during the court proceedings.



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RISKS AND COMMON MISTAKES OF BUSINESS OWNERS

What are the risks for business entails the opening of criminal proceedings?

These are the possibility of an unlimited number of unscheduled inspections and audits of a business entity; withdrawal of the financial documents of the company; questioning the owners and management; the active intervention of "law enforcement" in the commercial activities of contractors and partners; the arrest of accounts and so forth.

The most typical mistakes of business in criminal proceedings are:

- frivolous relation to the "harmless", at first sight letters - requests law enforcement authorities to provide information;
- ignoring of such requests, or the granting of excessive information;
- do not appeal against acts of inspections and / or actions of officials of regulatory authorities (which, as a rule, will melt the basis for a prosecution);
- providing initial explanation or evidence as witnesses without the services of a lawyer; as a consequence, the relation of excessive information to the inquest;
- groundless hope for resolution of the problem by the in-house lawyers of the company;
- attempts to "deal with a problem" by the corrupt practices that can temporarily remove the "symptoms", but do not cure the "disease". As a result, the problem continues to exist as a "time bomb."



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CRIMINAL OFFENSES REQUIRE PROPER LEGAL ALGORITHMS



I had been working in prosecution authorities for 18 years. I resigned voluntarily. The main factor that influenced my decision was the inability to achieve real results in the existing law enforcement system, despite all the efforts made over the last few years.

Mykhaylo Kundenko, Head of criminal Law Department at Firm of attorneys "Syutkin and Partners»

I realized that to change the system from the inside is virtually impossible. These changes were not supported by the existing legal assistance system in the state. Many law firms seek quickly close complex issues.

I was lucky to find like-minded people who work in the Firm of attorneys "Syutkin and partners" and seek to realize in Ukraine the European and the world's best standards of legal services. It is important not to close / solve problems, as accepted among Ukrainian businessmen, but to develop right strategies and algorithms, study the history of the client's problems, identify root causes of existing problems. Only in this way it is possible to give a qualitative estimation of the situation and to resolve it legally correct.

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"INVESTMENT UNATTRACTIVE" OR UKRAINIAN REALITY - THE CRIMINAL PROCEEDINGS AS A WAY OF INTERVENTION IN THE BUSINESS

THE RIGHT DECISIONS AND ACTIONS OF THE COMPANY MANAGEMENT –

as early as possible recourse to the services of specialized lawyers who understand the strategy and mechanisms of law enforcement - is the key to minimizing the risk of being brought to criminal responsibility and to avoid financial losses for the company.

CORRECT ACTION:

- do not ignore the results of any economic activity inspections, to appeal acts in accordance with the established procedures, including the judicial, by which the facts of "violations" in the company were found;
- to challenge the actions of the regulatory and law enforcement agencies, using, including offensive strategy - to initiate the updates in Unified Register of Pre-Trial Investigations and the beginning of criminal proceedings against them;
- when receiving of any, even "harmless" at first sight, requests from law enforcement agencies, to assess competently the legal risks of providing information and / or documents;
- to give any explanations and evidence to law enforcement agencies only in the presence of and after consulting with a lawyer.

THE MAIN RISKS AND ERRORS OF COMPANIES' MANAGEMENT:

- unlimited number of unscheduled inspections and audits.
- withdrawal of financial documents
- interrogations of owners and company officials
- interference in the commercial activities of contractors and partners
- seizure of accounts etc.

In the current realities the quality protection of the interests owners and managers of business entities can only get by referring to a lawyer as soon as possible at an early stage. Only under such conditions it is possible to minimize government intervention in economic activity and the risk of criminal prosecution.

Michail Kundenko

Head of the criminal law department of Firm of attorneys "Syutkin&Partners".



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PROGRAMM KAPITAL



What are the possible risks for business after the opening of criminal proceedings?

- First of all these are various audits, withdrawal of documents, interrogations of owners, management, searches. All these actions entail a frustration of the enterprise marketing and disclosure of commercial, banking secrecy to counterparties.

What are the common mistakes of business owners?

- Owners rely on their corporate lawyers. For those who work directly in the company. But, as practice shows, 90% of these lawyers - I will not doubt their professional abilities - but nevertheless, they are working in the business. They are not related to criminal proceedings, and do not know all the tactics and techniques of law enforcement.

Qualitative legal support of your business at every stage - from initiation to conclusion of agreements - will preserve and increase your capital.