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Способы подготовки к совершению незаконного участия в предпринимательской деятельности

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Аннотация

Оказывая негативное воздействие на общественное правовое сознание, участие должностного лица в предпринимательской деятельности подрывает доверие у большей части граждан РФ к органам власти и управления, наносит ущерб государственной власти, интересам государственной службы и службы в органах местного самоуправления. Незаконное участие в предпринимательской деятельности носит латентный, длящийся характер, для его выявления, предупреждения, пресечения, а также построения частной методики расследования необходимо знать способы подготовки данного преступления. Автором анализируется совершаемые действия должностного лица и доверенного лица по учреждению подконтрольной организации в форме создания и реорганизации. Знание способов подготовки незаконного участия в предпринимательской деятельности обеспечивает возможность выдвинуть общие и частные версии, способствуют правильному планированию расследования, ведению целенаправленного поиска материальных последствий преступления, установлению преступника, правильной квалификации преступного деяния, исследованию всех обстоятельств, подлежащих доказыванию

Ключевые слова: криминалистическая характеристика, должностное лицо, предпринимательская деятельность, подконтрольная организация.

Methods of preparation for committing illegal participation in entrepreneurial activity

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Abstract

Having a negative impact on public legal consciousness, the participation of an official in entrepreneurial activity undermines the trust of the majority of citizens of the Russian Federation in government and administration, damages state power, the interests of public service and service in local government. Illegal participation in entrepreneurial activity is latent, lasting, in order to identify, prevent, suppress, and also build a private investigation technique, you need to know how to prepare this crime. The author analyzes the actions performed by an official and a proxy to establish a controlled organization in the form of creation and reorganization. Knowing the ways of preparing illegal participation in entrepreneurial activity provides the opportunity to put forward general and private versions, contribute to the proper planning of the investigation, the conduct of a targeted search for the material consequences of the crime, the identification of the offender, the correct qualification of the criminal act, the investigation of all circumstances to be proved

Key words: forensic characteristics, official, entrepreneurial activity, controlled organization.

To achieve the main goal of the investigation of illegal participation in entrepreneurial activity - its disclosure, it is necessary to establish all the circumstances included in the subject of evidence of this criminal act [1]. For the correct and timely detection, receipt and investigation of evidence, it is necessary to know the methods of preparation, commission and concealment of a crime, which are of no small importance for the practice of constructing a methodology for investigating crimes in general and illegal participation in entrepreneurial activity in particular.

Knowledge of the mechanism of the crime provides the opportunity to put forward general and private versions, build investigation planning, conduct a focused search for the material consequences of the crime, identify the offender (official and proxy), correctly qualify the criminal act, and investigate all circumstances to be proved.

Preparatory actions consist in making an official decision on the establishment of an organization engaged in entrepreneurial activity. An official, pursuing the goal of obtaining a benefit (usually of a property nature) during the creation of an organization, should provide such an organization with benefits, advantages or protection in another form in the future, otherwise there will be no corpus delicti.

It is important for the investigation to establish a specific moment when an official or a proxy joins the organization under control. So, an organization can be created before the appointment of an official to the position held by him. For example, the entry of the subject of a crime into the membership of the organization before taking up a position in state or municipal bodies and his withdrawal from the composition with admission to the civil service. In this case, the person, wishing to continue the actual management of the organization, includes his relatives (other proxies) in the composition of the organization's participants, then leaves the composition of the participants.

An institution can be expressed not only in the form of creating an organization, but also through merger, separation, separation and transformation (reorganization). The purpose of this state registration may be tax evasion, redistribution of assets between a newly created legal entity and a previously registered one, and concealment of illegal participation in entrepreneurial activity.

When an organization is established in the form of creation by an official and (or) a controlled person, the organizational and legal form of the created organization is determined and a list of documents necessary for state registration is formed depending on:

— the proposed type of economic activity and tax regime;
— nature of corporate governance;

— accounting; difficulties in reorganizing or liquidating a legal entity;
— responsibility of the company, founders (participants) and the executive body to creditors;
— the nature of the proposed provision of controlled organization of benefits, advantages, other protection;
— the specifics of the withdrawal of funds from the organization.

As a rule, a commercial organization is established in the form of a limited liability company, although an institution in a different legal form is also permissible. For example, the establishment of an economic partnership by an official in order to provide her with advantages in obtaining state funding within the framework of the state program for the development of agriculture and the regulation of markets for agricultural products, raw materials and food.

Thus, confirmation of the official's involvement in the establishment of a controlled organization in the form of creation is the presence of official documents and certified originals of the constituent documents, a certificate of state registration of a legal entity and tax registration, and upon reorganization, a deed of transfer. The formation and submission of documents for the purpose of state registration of a legal entity can be carried out by a subordinate official on his direct instructions [2].

The identification of the official's involvement in the initial actions taken after making an entry about the organization under control in the unified state register of legal entities will determine the moment from which he participated in the organization's management and will allow him to establish his involvement in the transactions made by the organization and the possible provision of benefits and advantages or other protection.

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