

# Corporate raiding and Mongolia

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*A danger to public health –*

*Corona virus*

*A danger to the economy –*

*Corporate raiding*

The countries that were late to adopt the free market economy, especially the former member states of the Soviet Union, experience a challenge not less critical than COVID 19: Corporate raiding.

“Raid, raider or raiding” in English or “рейдерство, налет, набег, рейдерский захват” in Russian is a criminal law term used to describe a felony such as seizure, robbery or plundering of other’s property, which has recently found its embodiment again elsewhere.

Originated in England, “raiding” was initially a military term used to denote an attack or robbery of enemy ships sailing on the high seas. Later, the offences of such nature spread ashore in the United States and became a common descriptor for the illegal acquisition of other’s business. More recently, however, in the 1990s,

the seizure or robbery of property, businesses, or shares against the will of their legal owners proliferated in the former Soviet Republics and the crime of corporate raiding spread wide and deep for a short span of time.

In the beginning, raids were conducted by blunt means such as direct force, intimidation, forgery of corporate documents etc. It didn’t take long until the methods of this crime were honed and became far more organized, thus increasing the severe consequences for society. Although it varies in each country’s given circumstance, criminals generally choose the following path: perpetrators with covetous motivation obtain information about other’s property illegally from banking, financial, taxation or insurance organizations or law enforcement agencies and paralyze the target business operation under the cover of law enforcement or judicial agencies. These include, among other things, fabricating false charges, blackmailing through unlawful searches or investigation, delaying or shutting down operations, freezing assets or bank accounts on trivial grounds, imposing excessive fines, withholding business licenses for bargaining or coercion, and mislead the public by spreading fake news. At the end, the criminals manage not only to

seize or distribute other’s assets among themselves or get the business bankrupt, but also to induce formal warrants or orders to restrict the personal rights and freedom of the victim. In some countries, the authorities discovered a pattern where people were pressured to gift their companies on the occasion of wedding or birthday celebrations. Moreover, individuals with public official badge or seal can be turned into criminal collaborators, conspirators, or thieves when corrupt government officials are bribed, or perpetrators have their agents appointed to relevant positions in the government. In other words, government organizations and officials abuse their authority and privileges granted by law for villainous acts and employ unimaginable schemes and scenarios.

Present-day raiders work tirelessly to make their criminal activities appear legal; thus legal and regulations must be amended regularly to keep up with the pace and complexity of corporate raiding.

Researchers, politicians, and lawyers increasingly call for firm actions to combat corporate raiding as it poses the great danger of rendering country’s economic development and advancement to a dead end.

To tackle the issue, some countries

with rampant corporate raiding have revised their existing criminal code by adding a special chapter and provisions for corporate raiding. To enforce the law, governments now impose harsher punishment for such crime and focus on the healthy, fair, and transparent operation of law enforcement agencies. For example, Kazakhstan has codified that if government or law enforcement officials are found to be corroborating in a corporate raiding scheme, they shall be imprisoned up to 10 years and banned from their professional practice.

In Kyrgyzstan, profitable businesses were so frequently forced to declare bankruptcy and swallowed up by the misuse of the country’s bankruptcy law that the courts have been disbanded and restructured from the ground up.

The Russian Federation, where about 700 thousand cases had been annually recorded in the early 2000s, benefited from stabilized economic growth and increased foreign investments after exerting sheer force of the government to get corporate raiding under control.

2019 saw the Ukrainian Rada (parliament) establish a new specialized court dedicated to rule on corporate raiding cases within 24 hours of a complaint being filed. Since the actions of the crooked are far more effective and fast-paced than ordinary people (paradox), such court with fast review process was deemed necessary. After all, Ukraine has witnessed a sharp decline in raiding cases, hence the

improved of businesses environment.

Corporate raiding, at extreme, can be spotted being committed even at higher levels of a government. This often causes domestic courts and law enforcement organizations being unable to adjudicate or investigate cases fairly, thus making foreign or international courts or arbitral tribunals the last resort for justice. As a matter of fact, in May of this year, the Hague Court of Appeals ruled that USD 57 million compensation to be paid to the former shareholders of Yukos. The litigation is still continuing.

Identifying the existence of corporate raiding in Mongolia no longer requires studies, glasses, or microscopes. Putting aside the all-too-familiar cases, it is worthwhile to note the following: Mongolia has been globally acclaimed for its success in preventing the COVID-19 pandemic. This must be emulated in a consistent and determined fight against corporate raiding on all levels to cut it at its roots. Only then, can the country prosper as a decent economy which is self-reliant and not at the mercy of others.

Entrepreneurs and citizens can work efficiently and contribute to the development of their motherland Mongolia as long as they are healthy and confident in an environment free from the threat of being deprived of their wealth. This is a simple truth and essential prerequisite for development.

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