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THE ECONOMIC AND LEGAL ASPECTS OF UKRAINIAN BANKS' REPUTATION ASSESSMENT

Summary. The article is devoted to an investigation of results, developed through the analysis of the terminological essence of the concept of "goodwill" (business reputation); the economic significance of goodwill as an indicator of the business reputation value is determined; the existing in the legislative framework and scientific literature variety of the following indicator's value calculations is under analysis; particular ways to improve the procedure of economic evaluation of the reputation of a bank, to increase the level of protection from the effects of unfair competition, are proposed.

Key words: business reputation, goodwill, business reputation of banks, intangible assets, business reputation value.

Introduction. In the system of Ukrainian National Economics the existing banks foundations take the place of the chief mediator in the financial market, performing with a wide range of functions, from cash management services for individuals and entities to regulation of the money supply and money proposal throughout the whole country.

According to analytical reviews, made by «Forinsurer» and based on official statistics, provided by the National Bank of Ukraine, «the number of operating banks in Ukraine on the date of 01.10.2016 amounted to 100 banks, 40 of which were established with foreign capital, including 17 with 100% foreign capital. The share of foreign capital in the authorized capital of banks amounted to 56%. Revenues of banks for the period of 9 months during 2016 amounted to 140.1 billion UAH, expenses – to 151.8 billion UAH. Return on assets of Ukrainian banks for October 1, 2016 was 1.23%» [1]. It should be noted, that the vast majority of banks in Ukraine, according to an investigation of the big and major banks' reputation and in terms of their «goodwill-factor» for the second quarter of 2012 (has hold since 2010 and published by the research company NOKs fishes), has negative dynamics of reputation ranking [2]. The following tendency to reputation rating increase is considered to be actual for banks with Ukrainian capital shareholders and for ones with foreign capital as well.

According to Art. 2 of The Legislation Code of Ukraine «On Banks and Banking», business reputation is «the data, collected by the National Bank of Ukraine, on the compliance of the natural or legal entities actions, including the head of legal entities and owners of substantial participation in such entity, legal requirements, business practice and professional ethics, and information integrity, professionalism and managerial abilities of an individual» [3]. Accordingly, the bank's business reputation depends not only on

its market position as a financial institution, but also on the image of the existing institution and its «top officials» – owners, directors and managers.

Since the negative dynamics of reputation of operating in Ukraine banks is manifested in reduced customer loyalty to the use of their services, this, in its turn, leads to a decrease in the total number of banking institutions. For example, as stated for April 1, 2015, the License of National Bank of Ukraine was provided for 148 banks (including 46 banks with foreign capital), and for 01.01.2017 it was given only to 96 participants, including 38 ones with foreign capital). A loss for operating banks was estimated at the level of 158.482 billion UAH on 1 January, 2017 [4; 5]. In this situation, accumulated over the years an image of the financial institution and its «top officials» is an important factor to ensure financial and economic stability and competitiveness.

The relevance of research is related to the fact that the negative dynamics of the banks' reputation is considered to be one of the indicators for implementation of adjustments or major changes in the existing management strategies for institution to prevent loss of competitive position on the market, for reducing the number of clients, monetary damages and others. The subject of investigation for the following research is defined as an indicator that determines business reputation in monetary terms.

Short review on scientific sources and publications. Terminology essence of goodwill (business reputation) is presented in a large number of sources, including legal documents, publications of economists and experts [2; 6; 7; 8]. As the results of research reveal, *business reputation of banks* is, first of all, an *information product* that reflects the public attitude to the financial institution and is an effective means of managing public trust. Today the problem of improving the reputation of banks is less explored, as evidenced by the rather small number of publications on the following subject. Attention of current scientists' research issues is focused on investigation of intangible component of business value, including the value of goodwill as company reputation. However, these works reveal the essence of the concept of goodwill and business reputation in terms of financial and legal points of view, avoiding the economic nature of this category. In the oncoming research an issue of degree of goodwill's influence on the effectiveness of the of banks must be examined from an economic point of view.

The novelty of the article concerns the development of a set of recommendations for improving the legislative framework for the business reputation assessment. It's implemented on the basis of the analysis, generalization and systematization of the information, contained in the legislative framework of Ukraine, Regulations

(Standards) of Accounting, international financial reporting standards, scientific and professional articles, the Internet resources, as well as on banks accounting papers.

The purpose of present paper, therefore, is to investigate economic, legal and social essence of banking institution's business reputation as one of the factors in increasing its competitiveness in the national and global markets, to provide proposals for improvement of the procedure of economic assesment of bank's business

reputation by elaboration of the legal framework for estimation of business reputation and specification of the notion of goodwill.

Statement of the problem. Discussion and interpretation of results. A term «goodwill» first came in use in England (it was first introduced into accounting practice in 1897 by an English professor Lawrence Dixie, who interpreted it as a benefit derived from the reputation and commercial ties of the acquired company, as well as from loyal customers who will remain faithful to the firm, even

Table 1

The definition of «goodwill» in national and international legal documents [5; 15; 16; 17]

Legal Act	A definition of the notion of goodwill	A procedure for goodwill calculating
The order for accounting of transactions, related to privatization and lease of state-owned enterprises, approved by the Ministry of Finance of Ukraine, 16.12.1993, p. № 109	Asset, which is accounted within intangible assets in the account 04 «Intangible Assets» and is defined as the excess of the quantity of potential profitability of a state enterprise over its value as an integral property complex.	$G = PP_{pof} - V_{pc}$, where G is an amount of goodwill; PP _{pof} – potential profitability of enterprise; V _{pc} – value of an enterprise as unique property complex.
The Legislation of Ukraine «On the Profit Taxation of Enterprises» dated 28.12.1994. № 334/94-VR (the 1 st edition)	«The set of measures, aimed at increasing profits of enterprise, without a corresponding increase in active operations, including the use of best management skills, a dominant position in the market of goods (activities, services), new technologies, etc.» (Art. 1.7). Also, as noted in the Article 9.4.5, the goodwill is an intangible asset , on which depreciation isn't calculated.	$G = PP - UP$, where G is an amount of goodwill; PP – purchase price; UP – usual price (residual price) of these assets.
Regulation (Standard) of Accounting 19 «Business Combinations», approved by the Ministry of Finance of Ukraine 07.07.1999, № 163	Assets of enterprise, which occurs during the acquisition of companies or their mergers , and is defined as the difference between the actual purchase price of business on the date of transaction and buyer's share in the fair value of the identifiable assets and liabilities, unforeseen liabilities.	$G = PP - BS_{fv}$, where G is an amount of goodwill; PP – purchase price; BS _{fv} – buyer's share in fair value of the identifiable assets, liabilities, unforeseen liabilities on the date of transaction.
The Taxation Code of Ukraine, 02.12.2010 № 2755-VI	The cost of business reputation, «an intangible asset , the value of which is determined as the difference between the market price and the book value of assets as integral property complex, resulting from the use of best management qualities, the dominant position in the market of goods, services, new technologies, etc.» (Art. 1.14.40) The cost of goodwill is not subject for amortization.	$G = MP - BV$, where G is an amount of goodwill; MP – market price of a company; BV – balance value of an enterprise's value as an integral property complex.
The International Financial Reporting Standard 3. Business Integrations (an official translation of the latest version of 01.01.2012)	This is an asset that is expected to bring future economic benefits, arising in the process of consolidation or acquisition of business , and which can not be individually identified and separately recognized.	$G = TC + UnCS + FVE + B_{IA+C}$, where G is a cost of goodwill on the date of purchase; TC – transferred compensation, which includes the fair value of the customer assets, liabilities, incurred by a purchaser to the former owners of the acquiree, and the equity shares, issued by a buyer; UnCS – amount of any uncontrolled share in the acquiree as the equities in a subsidiary that aren't owned by parent enterprise; FVE – occurs only on a base of phased business integration and exists as the fair value at the date of acquisition of the equities, that has been retained by buyer in the acquiree; BIA+C – amounts balance at the acquisition date of acquired identifiable assets and commitments (that meet the criteria for recognition of assets and liabilities, listed in the «The Conceptual Framework for the Preparation and Presentation of Financial Statements»), estimated at fair value.

when the owner changes) in the first half of the 15th century [6]. It originates from the English *goodwill* [gud'will], which has been derived from 2 words: *good* (smbd/smith of a high standard or quality) and *will* (used to show that someone is willing or ready to do something). At the same time, combined together, those two words are understood as notion of *good will*, so can be interpreted in other languages in its direct meaning properly [9]. By the way, in the Legislation Code of the Russian Federation a term «goodwill» isn't in use. Instead, they use notion «business reputation» [7].

In the regulatory framework of independent Ukraine, the word «goodwill» was first used in international agreements between Ukraine and Finland [10], Denmark [11], the People's Republic of China (PRC) [12], Mongolia [13], Egypt [14] relating to issues on mutual defense, investment and investment incentives. However, these documents only indicated that the goodwill was included into the capital attachment and investment.

The introduction of the term «goodwill» in the Ukrainian legislation system was directly related to the processes of denationalization and privatization, the purpose of which was to change the structure of the national economy, as the dominance of state ownership did not meet market conditions. Since 1993, Ukraine has adopted a number of legal documents, which was attached to the definition of goodwill and procedure for its calculation (see Table 1 beneath).

The table shows that the term «goodwill» was introduced in the Ukrainian Legislation system in 1993, **goodwill is an intangible asset**, the use of which can help increase enterprise's profits, it comes into existence in the process of **companies acquiring or their mergers**, is a component of capital of the entity, since it is an asset, the use of which is considered to be economically profitable in future, and its cost can be estimated, and the following asset is not a subject for amortization. With the entry into force The Taxation Code of Ukraine *goodwill was officially recognized as an indicator of the company's business reputation value*. Also, some particular issues in relation to reputation and its value, defined as *goodwill*, are determined by the accounting standards and regulations, as AR(S) 27 «Intangible Assets, Held for Sale, and Discontinued Operations» and AR(S) 28 «The Impairment of Assets' Profitableness». From a legal point of view those relations, which occur in case of unlawful use of the entity's business reputation or in case of willful damage, are regulated by the Commercial Code of Ukraine, the Code of Ukraine on Administrative Offenses.

In Ukrainian banking practice the determination and procedure for goodwill calculating are fully consistent with The International Standard of Financial Statements 3, which was reflected in the 1st Chapter of the 7th Section of The Instructions for Accounting of Fixed Assets and Intangible Assets of Banks in Ukraine. The value of goodwill is shown separately in The Statement of Financial Conditions of the Bank, defined as «Balance».

Thus, today a lot of definitions of «goodwill» and formulae of its calculating exist, but ultimately they reflect the fact that goodwill is a long-term intangible asset, that is a price, that buyers are willing to pay to the bank for its business reputation, its business interrelations with other institutions, that is all that provides a potential return on its assets.

According to national and international accounting standards, goodwill is calculated only in cases of privatization, purchase and merger of banks. However, the need to determine the value of goodwill occurs in other cases in the course of normal operations and significantly affects the possibility for effective management of the institution. Thus, there is a significant need to find methods of calculating goodwill to determine the value of the business reputation

of the bank during the procedure of reorganization, the implementing decision about finding investors; in case of the additional stock of securities, in determination the indicators of the effectiveness of the banking institutions' development and planning its activities forward, in transferring a bank under the management of other entities, etc.

The fall of the banks' reputation is closely correlated with the situation on the international and domestic markets, affected by a number of factors: monetary policy (there is a risk of hryvnya's devaluation), market competition, investment climate, media activity and more. Ukraine today has a high level of political risks, unstable economy, and particular part of the national economics exists in an underground sector. In addition, the banking system of Ukraine is in a large dependence on foreign capital (41% of capital) [6]. Thus, «according to S & P (Standard & Poor's), about 25% of the Ukrainian market is controlled by European players. Thus, 60% of external debt of the Ukrainian «daughters» of these banks are liabilities to parent structures. Those, who are tired of waiting profits, leave our market» [6].

Conclusion and Proposals. The results of the following study allow us to conclude that the business reputation of the bank is one of the most important means to obtain competitive advantages together with such attributes of modern business as a trade name, brand, etc. It is based on previous quantitative and qualitative performance of the institution, with projected paths of its development in the future. Effective management of business reputation of the bank is used to minimize the impact of external factors on its functioning and to ensure a stable customer base and mutually beneficial business contacts regardless of the phase of the economic cycle development.

Establishment of a positive business reputation is one of the ways of obtaining extra profits. However, identification of it as an economic resource is only possible by calculating the value of goodwill. This is a complex process of evaluation of subjective characteristics of the bank, which provide the loyalty of its customers, partners, employees, public authorities, in monetary equivalent. That is an assessment of the factors that enable banking institutions to obtain higher revenues as compared to other financial and credit institutions (competitors).

Economic evaluation of business reputation is carried out, using qualitative and quantitative methods. Qualitative methods are the best to use during normal activities to monitor the market competitiveness of the bank. They allow banks to get relevant information on changing their position on the market very quickly, enabling rapid response and adjust of its strategy and tactics of market behavior. With the use of quantitative methods they determine goodwill as an indicator of the value of company's business reputation. Goodwill is one of the most important and most controversial components of intangible capital banking institution because it is difficult to assess the future economic benefits and competitive advantages on the availability and use of this resource.

One of the conditions of improving of domestic banks' reputation and competitiveness is to provide the legal framework for the assessment of business reputation and determination of goodwill. Therefore, there is a real need for the following steps: 1) to give a definition of the notion «the business reputation of banks» in The Law of Ukraine «On Banks and Banking» as follows: **the business reputation of financial and credit institution** is a social and economic category, which emerges only as a result of purchase and sale transactions or merger of enterprises, accompanying an enterprise during the whole period of operation and existing for some period

of time after its closure or liquidation; reflects public attitude to a financial institution and can be estimated and expressed in monetary terms; 2) to include a set of peculiarities of goodwill accounting in AR(S) 8 «The Intangible Assets»; 3) to allocate goodwill into AR(S) 8 «The Intangible Assets» and The instructions on accounting of fixed assets and intangible assets of banks in Ukraine in a separate group of intangible assets due to the impossibility of its identification with the constituents of existing groups; 4) to determine at the legal level, that in order to prevent frauds in the sector of businesses' cost calculations, the value of goodwill should be documented by experts of audit company; 5) to increase existing amount of penalties, fixed in Art. 1643 of The Code of Administrative Offenses in Ukraine, and add the obligatory compensation for damages in proportion to the economic benefits that the bank has not received as a result of unlawful actions of third parties.

Therefore, we observe an essential need for further research in the field of developing methods of goodwill calculating, depending on the purposes of usage of information on a value of business reputation.

Provided proposal are listed to improve the procedure of economic evaluation of the reputation of a bank, to improve the level of protection from the effects of unfair competition and increase the accuracy of determining the cost of banking.

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Дзюба С.Г., Агібалова Т.М. Економіко-правові аспекти оцінки ділової репутації банків в Україні

Анотація. У статті окреслено результати аналізу термінологічної сутності поняття «гудвіл» (ділова репутація), визначено економічну значущість гудвілу як показника вартості ділової репутації, проаналізовано розмаїття методів розрахунку вартості цього показника, що існують на сьогодні у законодавчій базі й науковій літературі, запропоновано шляхи вдосконалення процедури економічної оцінки ділової репутації банків і підвищення рівня її захищеності від впливу недобросовісної конкуренції.

Ключові слова: ділова репутація, гудвіл, ділова репутація банків, нематеріальний актив, вартість ділової репутації

Дзюба С.Г., Агібалова Т.Н. Экономико-правовые аспекты оценки деловой репутации банков в Украине

Аннотация. В статье рассмотрены результаты анализа терминологической сущности понятия «гудвил» (деловая репутация), определена экономическая значимость гудвила как показателя стоимости деловой репутации, проанализировано существующее в законодательной базе и научной литературе многообразие расчетов стоимости этого показателя, предложены пути совершенствования процедуры экономической оценки деловой репутации банков и повышения уровня ее защищенности от влияния недобросовестной конкуренции.

Ключевые слова: деловая репутация, гудвил, деловая репутация банков, нематериальный актив, стоимость деловой репутации.