



**RIGA
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LAW**

**The risk for shareholders of the company in case of rebuttable
presumption of death occurred in Latvia**

BACHELOR THESIS OUTLINE

AUTHOR: Veronika Točilkina
LL.B 2020/2021 year student
student № B018088

SUPERVISOR: Eriks Selga , LL.M

DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

ABSTRACT

This work was carried out to identify such an unlikely risk for companies as rebutted presumption of death in Latvia. Unfortunately, the law of this country is too young to face such cases in practice, for which an analysis was conducted with a law that is much older than the Latvian law, namely, English law. Moreover, a brief analysis of the two legal families in which these two countries are located was carried out in order to understand exactly how the law of one and the second country is applied.

This work is important because it helps to look at the risk to companies, which most likely few people think about, and in fact it can happen to any employee in any company. This situation is very rare, and the practice is too young to analyze it, however, the probability of such a risk already suggests that it should be taken into account.

This work is recommended for everyone who is a company's shareholder or plans to become one in the future, as well as for lawyers who work with companies, especially LTD and JSC, in order to use the necessary studies and legislation in time, as well as to know where to look for answers to questions that arise in parallel with this problem.

Key words: rebuttable presumption of death, missing persons, latvian law, dead, risk identification, shareholders, JSC, LTD.

SUMMARY

This work contains theoretical and practical parts. The theoretical part consists of elements that are important for understanding the topic, which you need to know and understand how they function in order to better understand further analysis. The practical part consists of analyses of the theoretical part.

The first chapter is devoted to the theoretical explanation of the term rebuttable presumption of death, as well as to the two types of companies that should be analyzed. The first sub-chapter deals with the term presumption of death, as well as all the important legal nuances of Latvian law that follow from this term. It reveals the Latvian law on missing persons, as well as analyzes the nuances related to the disappearance of a person and why he is considered dead after some time. It is also mentioned that the person who disappeared can be found once and analyzes what happens if he is still found. The second and third sub-chapters describe the division into two categories of companies that will be considered in the course of further analysis. More precisely, LTD and JSC, as well as their differences between the groups are described and important elements of their working capacity are confirmed by Latvian laws.

The second chapter is entirely devoted to risks. The first subchapter refers to the disclosure of the term risk, what it is used for and what types exist. Further, the risks are also identified and the concept of identification is disclosed. This helps in the future when analyzing the risks for the company's shareholders. The second sub-chapter talks about how to manage risks, to understand how to deal with the risks identified in connection with the topic. It identifies the various methods that are used to manage risks and explains them with illustrative examples.

The third chapter is devoted to all practical analyses that were made on the basis of the theoretical part with the addition of an additional theory. The first subchapter talks about Great Britain and compares English law with Latvian law. The strengths and weaknesses of both systems are highlighted. The differences between the systems of the two countries and their legal families are also explained. The second sub-chapter identifies the risks of companies and shareholders, in relation to the rebuttable presumption of death, and analyzes the law in this regard. Moreover, this subchapter provides clear examples of when this risk analysis can help, as well as what situations it can protect you from.

The conclusion highlights the main ideas and summary results of each of the chapters and helps to briefly look at what came out as a result of the analyses.

TABLE OF CONTENTS

Introduction	4
Terms and the legal aspects related to the topic in Latvia	6
The term of rebuttable presumption of death and relevant legal aspects	6
The term Ltd and relevant legal aspects	8
The term JSC and relevant legal aspects	10
2. Identification of risks for shareholders related to the term of rebuttable presumption of death occurred	12
Risk identification	12
Risk definition	Error! Bookmark not defined.
Risk identification	Error! Bookmark not defined.
Risk managing	22
3. Analyses regarding the risks for shareholders in case of rebuttable presumption of death	26
Comparing analysis of the rebuttable presumption of death in Latvia and UK	26
Conclusion	33
Bibliography	35

Introduction

The 21st century is full of various unexpected turns in the life of the entire population on the planet. Take for example the situation with the Covid-19 pandemic in which we are unfortunately still arriving. In addition, many companies face a huge number of risks in this period, rethinking and re-evaluating them as various additional restrictions are introduced. There are more and more risks for shareholders, but what if a person goes missing, let's say one of those shareholders? What if he goes missing for a long time? Question after question appears in connection with this topic, but what can be accurately determined is that problems among shareholders can arise if the last word in the company is lost. Of course, this kind of situation is quite rare, as is the probability of such a situation in general, but it is not impossible. A large number of people are lost every day around the world? and then, after some time, either they are declared alive? Or they find substantial proof of their death. What is most important is to understand how much damage this kind of situation can cause to the company. And what if the missing person, who everyone will have long considered dead, is found alive? Some historians believe that the earliest concept of risk management originated from gaming. Thousands of years before Internet users could play online poker, people in different ancient civilizations played table games and dice, which turned into chess and checkers more than two thousand years ago. Historical evidence that games gave rise to probability theory, which is important for risk management, comes from the work of Dante and Galileo. Famous mathematicians, Pascal and Fermat, wrote to each other about gambling in the 1600s, and this correspondence is believed to have given rise to the modern probability theory used today.

Risk events from any category can be fatal to a company's strategy and even to its survival. The risk assessment should be done by the companies in order to evaluate all the possible outcomes of situations as rebutted presumption of death and therefore the charter of the company must contain the relevant statutes in order to minimize the company losses. However, the risk assessment is divided into 3 stages - risk identification, risk analysis and risk evaluation. Risk identification is the important part of the risk assessment process, which takes time and effort to be analysed and evaluated. In this work it is important to identify risks of the shareholders of the companies, which hypothetically can be faced in case of the rebuttable presumption in Latvia by any company. The contracts indicate all the new items that contain exactly the same solutions to the problems that companies have faced in the past. Perhaps the same risk analysis will help some companies to review their contracts with the hiring of a person, as well as to think through a much larger number of different possible situations - not only related to the risk mentioned in the topic. Therefore, the analysis must be made overall without particularly analyzing the LTD and JSC, which already exists.

In order to better understand the causal relationship of the formed Latvian law in relation to the rebuttable presumption of death, a term that is not widely used in Latvian law, it is important to pay attention to the countries in which it originated in the common law system. In this case, the country in question is the United Kingdom. This analysis is

important for determining the strengths and weaknesses of Latvian law in relation to the topic. Due to the relatively small size of the country, as well as the not so extensive experience of Latvia, the law of the country which has been the origin of all the common law system legal family, in which the term originated and was mentioned about 60 years ago, Great Britain, has an advantage in the application and quality of its application. However, a comparative analysis will help to understand this in more detail.

According to all the above mentioned, the research questions are as follows:

- Which kind of risks do the shareholders face in case of rebuttable presumption of death occurred in Latvia and how to minimize them in case of LTD and JSC?
- What does the Latvian law states in the cases of presumption of death occurring within the shareholders' risks?
- How Latvian law differ in the concept of topic from the English law?

Methodology

This work is based on quantitative analysis, namely comparative analysis, as well as on the quantitative analysis of statistical data necessary for risk analysis. The comparative analysis is necessary in order to understand how English law differs from Latvian law in the context of the topic of work, taking into account the differences between the two legal families. Quantitative analysis is needed to better understand the risks, their impact, and the likelihood of their occurrence. Primary sources include legislation, more specifically: regulations, codes, decisions of courts, and legal acts. Secondary sources include academic literature, more specifically: books and law journals and articles, legal reviews from qualified authors.

This study is not taking specific companies and issues to be analyzed, as it analyses possible outcomes and situations in case the issue appears. There is no such case that appeared in Latvia to get analyzed.

1. Terms and the legal aspects related to the topic in Latvia

1.1 The term of rebuttable presumption of death and relevant legal aspects

In order to understand the term rebuttable presumption of death, you need to disassemble it into parts. First of all the term - death, or more precisely when a person is considered dead? There are two options, in the first - when there is physical evidence of his death, what can be essentially his corpse or remains, which, when examined, will reveal who they belong to. However, in this case it is impossible for a person to be reborn and in our case is not going to be researched. In other cases, when there is an absence of physical evidence of death, the person is considered missing. As traditionally when a person is missing, a search begins, in which both the people who reported the missing person and the police participate. The search can take a lot of time and effort, can lead to any traces of the same missing person, or conversely, do not lead to anything. So when the person is considered dead and how can he be reborn from a legal perspective are the questions the legislature and legal concepts have the answers to.

Death means that the subject of the law no longer exists. Accordingly, we need another subject of law that exists and can inherit all the property of the dead, for which we need inheritance law.¹ Therefore, inheritance law can help to understand the processes in the topic of the rebuttable presumption of death in relation to shareholders.

To recognize a person as dead, there is a need to contact a district court at a place of residence. To do this, is needed:

- A statement of claim indicating the reason for which it is necessary to recognize the person as dead, as well as the circumstances that threatened the missing person with death or giving grounds to assume his death from a certain accident. In respect of military personnel or other citizens who have gone missing in connection with military operations, the statement indicates the day of the end of military operations;

- Evidence of the absence of a person;
- Receipt of payment of state duty.²

The day of death of a person declared dead is considered the day of entry into legal force of the relevant court decision.³ If a person who went missing under circumstances threatening death or giving grounds to assume his death from a certain accident is recognized as dead, the court may recognize the day of his death as the day of the alleged death.⁴

Initially, the term presumption is defined as a rule of law used to assume the existence of a fact until the opposite is proved.⁵ There is a kind of "conclusive presumption", when the presumption can no longer be rebutted and the so-called rebuttable presumption. Most often, using a presumption in court remains the percentage of probability when it can be rebutted.⁶

¹ Kaspars Balodis, *Ievads Civiltiesībās* (2018), p. 38.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Leo H. Whinery, "Presumptions and Their Effect," *Oklahoma Law Review* 54, no. 3 (Fall 2001): pp. 553-572.

⁶ *Ibid.*

However, the presumption of death is not always irrebuttable. The presumption of death makes the assumption that the person is not alive anymore, however in regard to missing persons it is not always proved that person is dead. There can be no evidence that a person is dead and therefore the presumption of death in such a way can be rebutted.

...in civil cases the term "presumption" has been used to describe what has been more specifically denominated as a "rebuttable presumption," which arises from a rule of law creating a basic fact/presumed fact relationship in which a finding of the basic fact requires a finding of the existence of the presumed fact, unless it has been rebutted as may be required by law.⁷

As in our case of the missing person, for example. The disappearance of a person leaving no trace behind gives rise to curious and baffling problems in various branches of the law. The authorities show that these problems are by no means as easy to resolve as the books on Evidence suggest. After some time of searching, a missing person is considered dead if there is no news of his life. Despite the identification of missing people as dead after some time, there is a small chance that they may still be alive. There are many examples when people disappeared and turned out to be alive after some time. Thus, there were cases when people to avoid taxes also disappeared and were listed as dead, and then in some situations suddenly "came to life".

This missing persons law has a Roman law origin. Many modern civil law system countries took Roman law as a basis and modernized it over time and progress. The Republic of Latvia followed in the same way. Due to the Latvian Civil Code the law of missing persons article 377 (1) says that a missing person can be declared dead at the moment when 10 years have passed since the end of the year in which the last information about the missing person was received. However, the same article (2) says that if the missing person has reached the age of 70, then 5 years after the end of the year, when the last information about him was received, he is recognized as dead. What happens with property? Also, if the person took part in active hostilities and he went missing for a 2 year period without any news, he can be declared dead. The same article states that if the person went missing due to any mortal danger for 6 months and there is no news of him, he also can be declared presumed dead.⁸ All the property, which belongs to the dead person according to Latvian Civil Code article 379 is transferred to heirs, which are the nearest kin or spouse.⁹ However, due to the article 380 of the same regulation in case the person which was declared presumed dead returns:

...he or she may recover his or her property from the persons to whom it had been transferred (Section 379), or their heirs, but only to the extent as preserved, or for so much as the heirs have enriched themselves with such property during this period.¹⁰

The procedure of declaration of a missing person as a deceased Latvian Civil Procedure Law also provides. First of all, due to the Section 282 of Latvian Civil Procedure

⁷Leo H. Whinery, "Presumptions and Their Effect," *Oklahoma Law Review* 54, no. 3 (Fall 2001): pp. 553-572.

⁸ Kaspars Balodis, *Ievads Civiltiesībās* (2018), 77-76 p.

⁹ *Ibid.*

¹⁰ Article 380 of Latvian Civil Law (Civillikums). Available on: [Civillikums \(likumi.lv\)](http://Civillikums(likumi.lv)). Accessed on: March 31, 2021.

Law the procedure of declaration must be started in the country the last time he or she had been resident of. Then the application needs to be submitted to the court.¹¹ Also due to the Section 284:

After accepting an application, the judge shall take a decision to publish a notice in the official gazette Latvijas Vēstnesis, to be paid for by the applicant.¹²

The court, after considering it, decides that the application was justified and recognizes the missing person as dead, after which it indicates the estimated date of death or the date of filing the application if the date of death is not known, as well as a copy of the court decision is sent to the General Registry Office and the Orphan's and Custody Court for further actions on the transfer of the missing person's property.¹³

Thus, when a missing person is declared dead, his inheritance is distributed in accordance with the law, but if the person turns out to be alive, then all documents annulled in connection with his death are considered valid and the new documents concluded are annulled. According to the same Latvian Civil Procedure Law Section 287 provides the detailed procedure on it:

1. Submission of an application to the court by a person who was recognized as dead or by a person who filed an application for recognition of this person as dead or by a prosecutor.

2. After the entry into force of the court decision, a copy is sent to all the same instances as the General Registry Office for revocation of the death certificate and for publication in the official gazette of Latvijas Vēstnesis.¹⁴

The legislation provides a detailed solution in case of facing different life situations, which once again proves that the rebutted presumption of death is not that new issue, but has clearly taken place in legal practice.

1.2 The term Ltd and relevant legal aspects

A limited liability company (Ltd) is a legal entity with an authorized capital. The authorized capital consists of the contributions of the owners of the shares. The assumption can be made that the shareholders are essentially the owners of the company, since the company is managed in their interests. The directors must take into account the interests of the existing members, as they are the owners of the company. However, over time, the rights of shareholders were quite clearly reduced and limited, after which it is now difficult to say that they in any way strongly affect the life of the company. They still have some of the main operating functions, but much depends more on the board of directors.¹⁵ At the time of

¹¹ Section 282 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>. Accessed on: March 31, 2021.

¹² Section 287 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>. Accessed on: March 31, 2021.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Ross Grantham, "The Doctrinal Basis of the Rights of Company Shareholders," *Cambridge Law Journal* 57, No. 3 (November 1998): pp.554-588 Available on: <https://heinonline.org/HOL/Page?handle=hein.journals/camblj57&id=570&type=text&collection=journals>. Accessed on: March 31, 2021.

registration of the Ltd, the full capital must be paid at least 50% of the authorized capital. The remaining part is paid within one year from the date of registration of the company in the commercial register due to the section 146 of Commercial Latvian Law.¹⁶ The authorized capital can be paid both in money and in property contributions. For each property contribution, it is necessary to draw up and submit an opinion, which is prepared and signed either by an expert included in the approved list of the Register of Enterprises, or by the founders, if the total value of the property contribution does not exceed 5,700 euros, and the property contribution as a whole is less than half of the authorized capital of the company. Latvian Ltd has the right to open branches and representative offices in other countries and mostly, after registration Ltd has a right to start working immediately.¹⁷ The owners of the shares of an Ltd can be both legal entities and individuals. The minimum number is one. There are no restrictions for foreign individuals and legal entities. A foreign company may be the sole owner of a Latvian Ltd. Section 186 of the Commercial Law of Latvia defines the term “share” and its usage, however, what is more important is the rights it gives:

(3) A share gives a shareholder rights to take part in the administration of the company, in the distribution of profit and in the division of property in the case of the liquidation of the company, as well as to other rights provided for by law and the articles of association.¹⁸

The owners make so-called "global" decisions in relation to the company. For example, the appointment of the operational board, the distribution of profits.

The owners of the shares have the right to alienate their shares of capital. These conditions can be provided in the charter of Ltd, however, if they are not, then you need to follow the legislation. If an Ltd has more than one owner and one of the owners wants to sell their shares, then the seller must first offer to buy shares to other owners (the right of first refusal) and if no one wants to buy shares in the Ltd, then the seller has the right to sell the shares to any person. If the owner of the shares wants to alienate them in another way, for example, to exchange, then he must get the consent of the other owners of the shares.¹⁹

Mostly, the owners of the shares are responsible for the obligations of the Ltd only by contributing to the authorized capital. Owners of shares of a limited liability company may be liable for the obligations of an Ltd with all their personal property in some except cases:

1. During the registration of Ltd were agreed between the owners that one or more of them will be liable for the company with all the personal property.
2. One of the owners of the shares committed illegal actions, and as a result the Ltd suffered losses.
3. Due to the section 185.1(7) of the Commercial Law of Latvia the registered company is a "Small capital Ltd". In general, the minimum amount of the authorized capital

¹⁶ Section 146 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 31, 2021

¹⁷ Section 186 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 31, 2021.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

is 2800 euros, but the law provides for the possibility to register a limited liability company with an authorized capital of less than 2800 euros, however, shareholders are personally responsible for the obligations of the Ltd.²⁰

Only natural persons can be members on the operational board. The minimum number of board members is one person and there are no restrictions for foreigners. The board governing the operational part of the company. There is no ability for legal entity to be a member of the operational board, as much as auditor of the same Ltd, an incompetent person, a person who is prohibited from holding the position of a member of the operational board or a person who has been deprived of the right to engage in commercial activities or has been deprived of the right to hold the position of a member of the operational board.²¹

In Latvia, according to Lursoft, which is the Company Register of the Republic of Latvia - the largest Ltd in Latvia based on the authorized capital is real estate Ltd "Publisko aktīvu pārvaldītājs Possessor", which has an amount of EUR 446,064,930 authorized capital.²²

1.3 The term JSC and relevant legal aspects

JSC - is an open commercial company whose shares are subject to public turnover. The term of registration of a joint-stock company is 3 working days from the date of submission to the register of all necessary documents and payment of expenses. The fixed capital determined by the charter of the joint-stock company at the establishment of the joint-stock company is paid in full within the time period specified by the memorandum of association and only in monetary value due to the section 147 of the Latvian Commercial Law.²³ A joint-stock company is a legal entity whose authorized capital consists of the aggregate of the nominal value of the shares. The number of founders can be one or more and they can be individuals, legal entities, as well as personal companies, residents or non-residents of the Republic of Latvia. The joint-stock company is responsible for its obligations with all its property. The Operational Board consists of one member of the Operational Board (individual, resident or non-resident) and more. It is also mandatory to have a Council consisting of 3-20 persons.

The authorized capital must be at least EUR 35 000. When applying for registration of the company, a minimum of 25% (but not less than EUR 35 000) of the signed share capital must be paid. The remaining part is paid during the year. For some types of joint-stock companies, the law provides for an increased authorized capital (for example, insurance companies or pawn shops).²⁴

²⁰ Section 185 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 31, 2021.

²¹ Section 187 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 31, 2021.

²² Lursoft statistika | 10 lielākās "SIA" pēc pamatkapitāla. Available on: https://www.lursoft.lv/lursoft_statistika/?&id=166&pcurr=EUR&aid=. Accessed on: March 31, 2021.

²³ Section 147 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 31, 2021.

²⁴ *Ibid.*

A share is a security that confirms the shareholder's participation in the authorized capital of the JSC, and also gives the right to make certain decisions in relation to the JSC, to receive dividends and a liquidation quota (in case of liquidation). A joint-stock company may issue shares of different categories, with different amounts of rights (for example, voting rights, rights to receive dividends, etc.). Shares of the same category give the same rights. A joint-stock company may issue preferred shares, which give special rights to receive dividends and a liquidation quota. But preferred shares do not give voting rights. Shares can be registered and bearer. Data on the owners of the birthday shares are recorded in the register of shareholders. The issue of bearer shares is registered with the Latvian Central Securities Depository and the rights arising from the share belong to the shareholder. Shares can be publicly traded (shares can be sold in a regulated financial instruments market). Shares can be paper-based or dematerialized. Bearer shares can only be dematerialized. The minimum nominal value of one share is 10 euro cents. The nominal value of shares of different categories may be different. The nominal value of any share must be divided without remainder by the minimum nominal value, as well as by 10 euro cents.²⁵

Just as in relation to an Ltd, the owners of the shares of a joint-stock company can be legal entities and natural persons. The minimum number is one and the maximum number of shareholders is not limited. Foreign individuals and legal entities can also be shareholders (but there may be nuances in connection with certain types of activities).²⁶

The rights (voting rights) of shareholders depend on the category of shares. Unless otherwise specified in the articles of association or in the law, the shareholders' meeting shall take a decision by a majority vote of those shareholders present who have the right to vote.²⁷

The shareholders (joint-stock meeting) decides on the appointment of the Board of Directors, the distribution of profits, and the appointment of remuneration for the Operational Board and the Board of Directors. The Shareholders' Meeting must be convened in the administrative territory where the legal address of the Joint-stock company is registered, unless otherwise specified in the articles of association.²⁸ For example, if the legal address of the joint-stock company is in Riga and the charter does not specify the place of the meeting, then the shareholders' meeting should be convened in Riga.

The Operational Board is responsible for the operational management of the joint-stock company.²⁹ The minimum number of members of the operational board is one individual.³⁰ But if the shares are in public circulation, then the minimum number of board members is three individuals.³¹ Members of the operational Board represent the Joint Stock

²⁵ Section 147 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 30, 2021.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

Company jointly, unless otherwise specified in the charter.³² The Board elects the board for a five-year term, unless a shorter term is specified in the charter.³³ The operational Board has a quorum if more than half of the members of the operational Board participate in the meeting of the operational Board.³⁴ If the charter does not require more votes, then the board makes its decision by a simple majority vote.³⁵ The operational Board is required to submit a written report to the Board of Directors meeting quarterly and to the Shareholders meeting yearly.³⁶

The Board of Directors is the controlling body of the joint-stock company and also represents the interests of shareholders in the interval between meetings of shareholders.³⁷

The Board of Directors appoints the members of the Operational Board and oversees the work of the Operational Board.³⁸ The operational board must consist of at least three capable individuals (if the shares are in public circulation, then the minimum number is five individuals).³⁹ The maximum number of board of Directors members is 20.⁴⁰ Shareholders elect the board of Directors for a term of no more than five years.⁴¹ The Board of Directors has the right to request a report on the status of the JSC from the Operational Board at any time and to get acquainted with all the actions of the Operational Board.⁴² The Board of Directors also has the right to check the registers, documents, cash register and all the property of the Joint-stock company.⁴³ The Board of Directors has a quorum if more than half of the members of the Board of Directors take part in the meeting. Just like the operational board, the board Board of Directors takes decisions by a simple majority vote, unless the charter provides for a larger majority.⁴⁴

In Latvia, according to Lursoft, which is the Company Register of the Republic of Latvia - the largest AS in Latvia based on the authorized capital is real estate "Latvenergo AS", which has an amount of EUR 790,347,849 authorized capital.⁴⁵

2. Identification of risks for shareholders concept and terminology

2.1 Risk identification

Any purposeful human activity is directed to the future, which means there is always a time gap between the initial effort, followed by the cost of resources and the final result.⁴⁶

³² *Ibid.*

³³ *Ibid.*

³⁴ Section 147 of the Civil Procedure Law. Available on: <https://likumi.lv/ta/en/en/id/5490>. Accessed on: March 30, 2021.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Lursoft statistika | 10 lielākās "Akciju Sabiedrības" pēc pamatkapitāla. Available on: https://www.lursoft.lv/lursoft_statistika/?&id=165. Accessed on: March 31, 2021.

As a matter of fact, the final result is obviously not determined, which means it is not reliably predictable due to the influence of a large number of factors.⁴⁷ This circumstance was the source of the development of such terms as risk and uncertainty, the concept of which is closely related to each other. Historically, the term "risk" was created on the basis of a person's awareness of possible adverse outcomes and dangers in the course of events related to a particular activity.⁴⁸ With the establishment of commodity-money relations, risk also becomes an economic category. As an economic category, risk takes into account the possibility of deviation of the results of economic activity from the set goals.⁴⁹ It is important to note that the term "risk" is usually understood as the probability of an enterprise losing part of its resources, losing revenue, or incurring additional expenses as a result of certain production and financial activities.⁵⁰ In other words, the main task of risk management is to get the maximum profit from business activities by reducing the degree of threats.⁵¹ Frankly speaking to get the optimal ratio of profit and expenses for a business.⁵²

A risk factor is a sign that is somehow connected in the future with the occurrence and manifestation of risk.⁵³ Risk factors are prerequisites that increase the probability or reality of the occurrence of events that may have a negative impact on the course of activity of the company.⁵⁴

In order to make any management decision, there is a need for information. On this basis, the manager will consider the options and algorithms of actions, choosing the best ones. In an economic environment, information streams change very quickly. As a matter of fact, something that was relevant yesterday may no longer have any value today. Therefore, any work with information should be characterized by efficiency.⁵⁵

Unfortunately, there does not exist a template that can be used to analyze possible danger in any variant of the environment. Only general forms and recommendations for specific cases are used. In fact each manager chooses the decision-making system that is comfortable and efficient for himself, suitable for a particular company and given the environment.⁵⁶

⁴⁶ Juris Uzulans, "Risku Vadība projektu kontekstā. Available on: [RiskiOK10_7.6.2010.indd \(biblion.lv\)](#). Accessed on: March 31, 2021.

⁴⁷ *Ibid.*

⁴⁸ Charles Yoe, *The Basics, Principles of Risk Analysis*, 10.1201/b11256 (1-22), (2011).

⁴⁹ Financial Risks and risk analysis at the company x. Available on: [FINANCIAL RISKS AND RISK ANALYSIS AT THE COMPANY "X" | Volčková | INDIVIDUAL. SOCIETY. STATE. Proceedings of the International Student and Teacher Scientific and Practical Conference \(ru.lv\)](#). Accessed on: March 31, 2021.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Risk management in merger and acquisition transaction. Available on: [Управление рисками в сделках слияний и поглощений \(cyberleninka.ru\)](#). Accessed on: March 31, 2021.

⁵⁴ *Ibid.*

⁵⁵ Sheila Jasanoff, "Relating Risk Assessment and Risk Management," *EPA Journal* 19, no. 1 (January/February/March 1993): pp. 35-37. Available on: [Core U.S. Journals - HeinOnline.org](#)

⁵⁶ Charles Yoe, *The Basics: Principles of Risk Analysis 2011*, 10.1201/b11256: pp. 1-22).

It is important to note that the object and subject of management is the risk itself.⁵⁷ Depending on the type of the risk, these are capital investments that are subject to danger, various economic relations between economic entities. For example, insurance, credit, partnership relations of cooperation. The subjects of risk management are people who, through specific management methods, influence the object of management.⁵⁸ In practice, this function is usually performed by managers, financial advisors, insurance specialists, and securities specialists.⁵⁹ Effective interaction between the object and the subject of threat management is possible only if the necessary information is available and is circulating between them.⁶⁰

Meanwhile, risk assessment is used to analyze the impact of identified risks on the company, which includes the use of the probability of occurrence and the possible amount of damage.⁶¹ If a quantitative assessment cannot be carried out due to a lack of data, the risks should be assessed on the basis of qualitative criteria.⁶² Also, visualization using a risk portfolio can be useful for risk assessment, as much as the analysis and evaluation of the interaction of individual risks.⁶³ In the most cases, minor individual risks combined with each other often present significant existential risk and require other measures in the context of risk management.

Although there is a confidence that a project will be successful, there is always a chance that something will go wrong.⁶⁴ Risk management is an ongoing activity, so there is a need to continue identifying and registering new risks as they arise over the course of the company's operations.⁶⁵

There are several common risk qualifications:

1. Preventable risk. These are internal risks that arise within the organization that can be controlled and must be eliminated or eliminated. Examples are the risks associated with unauthorized, illegal, unethical, improper or inappropriate actions of employees and managers, as well as the risks of failures in normal business processes.⁶⁶ Of course, companies should have a tolerance zone for defects or errors that will not cause serious damage to the enterprise and for which achieving complete avoidance will be too expensive.

⁵⁷ Marvin Rausand, *Risk Assessment: Theory, Methods and Applications* (John Wiley: 2011). Available on: [Risk Assessment: Theory, Methods, and Applications - Marvin Rausand - Google Books](#). Accessed on: March 8, 2021

⁵⁸ Marvin Rausand, *Risk Assessment: Theory, Methods and Applications* (John Wiley: 2011). Available on: [Risk Assessment: Theory, Methods, and Applications - Marvin Rausand - Google Books](#). Accessed on: March 8, 2021

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ R.S. Khatta, *Risk Management* (Global India Publications: 2008), p.3.

⁶⁵ Marvin Rausand, *Risk Assessment: Theory, Methods and Applications* (John Wiley: 2011). Available on: [Risk Assessment: Theory, Methods, and Applications - Marvin Rausand - Google Books](#). Accessed on: March 8, 2021

⁶⁶ Charles Yoe, *The Basics: Principles of Risk Analysis 2011*, 10.1201/b11256: pp. 1-22).

But in general, companies should strive to eliminate these risks, as they do not gain strategic benefits from taking them.⁶⁷ An employee who bribes a local official may bring the company some short-term profit, but over time, such actions will lead to a decrease in the value of the company. This category of risk is best managed through active prevention: monitoring operational processes and directing people's behavior and decisions towards desired norms. Since there is already a sufficient amount of literature on the rules-based approach, we refer interested readers to the HR Management sidebar instead of the detailed discussion of best practices in this review.⁶⁸

2. Strategic risks. The company voluntarily takes on some risks in order to increase the revenue from its strategy. A bank takes on credit risk, for example, when it borrows money; many companies take on risk through their research and development. Strategic risks are very different from preventable risks because they are not inherently undesirable.⁶⁹ A strategy with high expected returns usually requires the company to take significant risks, and managing these risks is key to generating potential benefits. BP agreed to the high risk of drilling several miles below the surface of the Gulf of Mexico because of the high cost of the oil and gas it hoped to produce. Strategic risks cannot be managed using a rule-based management model. Instead, you need a risk management system designed to reduce the likelihood that the perceived risks actually materialize, and to improve the company's ability to manage or contain risk events if they occur. Such a system would not prevent companies from taking on risky ventures; on the contrary, it would allow companies to take on risky ventures with higher returns than competitors with less effective risk management.⁷⁰

3. External risks. Some risks arise as a result of events outside the company and are beyond its influence or control. Sources of these risks include natural and political disasters and major macroeconomic shifts.⁷¹ External risks require another approach. Since companies cannot prevent such events, their management should focus on identifying (usually evident in retrospect) and mitigating their impact. Companies need to adapt their risk management processes to these different categories.⁷² While a regulatory compliance approach is effective for managing avoidable risks, it is completely inadequate for strategic risks or external risks that require a fundamentally different approach based on open and explicit risk discussions. However, this is easier said than done; Extensive behavioral and organizational research has shown that people have strong cognitive biases that prevent them from thinking about risk and discussing it until it's too late.⁷³

Also, more precisely risks are divided into:

⁶⁷ *Ibid.*

⁶⁸ Charles Yoe, *The Basics: Principles of Risk Analysis 2011*, 10.1201/b11256: pp. 1-22).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

1. Market risk. The overall risk of financial losses associated with changes in prices for all products that make up the portfolio. It includes interest rate risk, currency risk, stock risk, and commodity risk. Interest rate risk or interest rate risk is a financial risk because a product loses its value as a result of a decrease or increase in interest rates. Currency risk is the financial risk of losing the value of an investment due to changes in exchange rates. Stock risk is the possibility of incurring capital losses between the time an asset is acquired and the time it is resold. Commodity risk directly affects companies engaged in the production and processing of raw materials and energy.⁷⁴

2. Credit risk. The financial risk that the quality of repayment by the borrower will be reduced, which may lead to a drop in the cost of debt security.⁷⁵

3. Liquidity risk. Financial risk of not being able to resell securities due to insufficient transaction volume. We are talking about a liquid market, when the volume of transactions is high enough to be able to sell securities without problems.⁷⁶

4. Investment risk. "Risk" in investments means fluctuations in returns (blurring). Small fluctuations in returns are called "low risk" and large fluctuations are called "high risk". For example, when comparing a venture capital company's shares with Toyota shares, the price of the venture shares may fluctuate significantly compared to Toyota shares. In this case, venture capital stocks are riskier.⁷⁷

5. Operational risk. Operational risk corresponds to potential losses caused by errors committed by human or material resources: software crashes, fraud, input errors, etc.⁷⁸

6. Legal risk. It can be defined as the risk of imposing judicial or administrative sanctions, significant financial losses or damage to reputation as a result of violation of mandatory norms of law or regulation, or self-regulation.⁷⁹

7. Tax risk. The implementation of a tax risk management system should not only facilitate management and resolution, but also reduce tax risks.⁸⁰

8. Informational risk. information that is processed correctly has become an important asset. The higher the value of the information, the more vulnerable the company becomes in the event of data loss (for example, due to data leaks, cyber attacks, or fraud).⁸¹

9. Marketing risk. The four marketing risks that companies face in today's business world:

- brand perception and value;
- affiliation (negative associations when partners lose their reputation));
- ad campaign failure;
- inadequate marketing strategy.⁸²

⁷⁴Charles Yoe, *The Basics: Principles of Risk Analysis 2011*, 10.1201/b11256: pp. 1-22)

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

All the risks must be identified before they become a problem. Mostly, the risk identifying process includes - finding, recognizing and describing the risks, and all of them can influence the achievement of the goals.⁸³ Historical data, theoretical analysis, informed opinions, expert advice, and stakeholder input are usually used to identify company's risks.⁸⁴ As a result of the process of identification and qualitative risk analysis, a Risk Register is formed, containing:

- list of identified risks (type and name);
- main causes (factors) of risk occurrence;
- the main consequences of the implementation of the risk;
- risk description;
- probability of risk occurrence;
- list of potential response actions;
- those responsible for a particular risk.⁸⁵

The methods of identification includes:

- Brainstorming session;
- The Delphi Method;
- Method 635;
- Nominal group method;
- Crawford cards;
- Structured or partially structured interview;
- Risk Map;
- Causal analysis;
- Bow Tie Analysis;
- Rose of Risks;
- Decision Tree Analysis;
- Scenario analysis;
- The "What if" method.⁸⁶

Expert assessment methods are methods of organizing work with specialists and processing expert opinions.⁸⁷ Expert assessments are individual and collective. Experts involved in risk identification and analysis should have access to all the information available to the developer project information, have a sufficient level of creative thinking and the

⁸² *Ibid.*

⁸³ ISO. Available on: <https://www.iso.org/obp/ui/#iso:std:iso:31000:ed-1:v1:en>. Accessed May 07, 2021.

⁸⁴ *Ibid.*

⁸⁵ Iwona Gorzen-Mitka, "Risk Identification Tools -Polish Msmes Companies Practices," *Problems of Management in the 21st Century*, Vol. 7 (2013). Available on: [Gorzen-Mitka_Vol.7.2.pdf \(scientiasocialis.lt\)](#). Accessed on: March 5, 2021.

⁸⁶ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

⁸⁷ *Ibid.*

necessary knowledge in the relevant subject area and to be free from personal preferences in relation to the project (not to lobby for it).⁸⁸

The method of collective idea generation ("brainstorming") is a method of obtaining certain results in the course of joint reasoning. It can be divided into 6 stages:

Stage 1-formation of a group of participants (by number and composition).⁸⁹

Stage 2-drawing up a problem note. The problem note is compiled by the working group (the survey organizers) and contains two descriptions: a description of the method of "brainstorming", its rules, techniques; a description of the problem situation, disclosure of the goals pursued by the survey organizers.⁹⁰

Stage 3 - generating ideas or directly interviewing experts.⁹¹

Stage 4-systematization of the ideas expressed in the third stage.⁹²

Sequence:

- a) A nomenclature list of all the ideas expressed is compiled;
- b) Duplicate and complementary ideas are identified, which are combined and formulated in the form of one complex idea;
- c) A list of ideas is compiled by group.⁹³

Stage 5-destruction (destruction, criticism) of systematized ideas. At this stage, the composition of experts changes, it is recommended to leave a small number of people who are most highly qualified in the field under consideration.⁹⁴

Stage 6-evaluation of critical comments and drawing up a list of practically acceptable ideas.⁹⁵

The "635" method is one of the types of brainstorming. The numbers 6, 3, 5 indicate six participants, each of whom must write down three ideas within five minutes. The leaf moves in a circle. Thus, in half an hour, everyone will write down 18 ideas to their asset, and all together — 108.⁹⁶

The purpose of the Delphi method is to develop a program of consecutive multi-tour individual surveys. The individual survey of experts is usually conducted in the form of questionnaires. Then their statistical processing is carried out and the collective opinion of the group is formed, the arguments in favor of various judgments are identified and generalized.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

The processed information is reported to the experts, who can correct it, while explaining the reasons for their disagreement with the collective judgment. This procedure can be repeated up to 3-4 times.⁹⁷

This method has three features:

- a) anonymity of experts, i.e. the participants are not familiar, and if they are familiar, they do not know what the participants are doing;
- b) multi-level procedure for interviewing experts through their questionnaires;
- c) using the results of the previous round.⁹⁸

The nominal group method allows you to identify and arrange the risks in order of their importance. This method involves the formation of a group of 7-10 experts.⁹⁹ Each participant individually and without discussion lists the visible risks of the project.¹⁰⁰ Then there is a joint discussion of all the identified risks and a second one. individual drawing up of the list of risks in order of their importance of the Crawford Card.¹⁰¹ The essence of this technique is as follows. A group of experts of 7-10 people gathers.¹⁰² Each participant of the mini-study is given ten cards.¹⁰³

The moderator asks the question: "What is the most important risk in this project?" All respondents should write down the most important risk in their opinion in this project.¹⁰⁴ At the same time, there should be no exchange of views. After that, the question is repeated many more times. The participant cannot repeat the same risk in the response.¹⁰⁵

An interview is a focused discussion between two or more people that is conducted in order to collect practically relevant and reliable data necessary to answer control questions and achieve research goals.¹⁰⁶

Structured interviews are standardized and are conducted using questionnaires containing pre-prepared and identical questions for all participants.¹⁰⁷

A partially structured interview is similar to a structured one, but it provides more freedom when discussing the problem under study.¹⁰⁸

When conducting partially structured interviews, the analyst should have a list of topics to discuss or questions to be answered, and these topics and questions may change during the interview process.¹⁰⁹

⁹⁷ Iwona Gorzen-Mitka, "Risk Identification Tools -Polish Msmes Companies Practices," *Problems of Management in the 21st Century*, Vol. 7 (2013). Available on: [Gorzen-Mitka_Vol.7.2.pdf \(scientiasocialis.lt\)](#). Accessed on: March 5, 2021.

⁹⁸ *Ibid.*

⁹⁹ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

A risk map is a graphical and textual description of a limited number of risks of an enterprise, located in a rectangular table, on one "axis" of which the materiality (the strength of the impact, the significance of the risk, possible losses, consequences) is indicated, and on the other the probability of its occurrence.¹¹⁰

Materiality (the force of the impact, significance, consequences, possible loss) represents a characteristic of the degree possible impact of a risk event (the direct financial losses, missed opportunities (consequential financial loss), failure to meet goals and objectives, etc.).¹¹¹ For commercial entities it can be measured in monetary terms as the assessment of possible losses from a risk event (for example, stop production line, shortfall of production plan and sales plan – damage in the form of lost profits).¹¹²

The probability of risk determines the probability of occurrence of a risk event that causes damage. Probability can be estimated using statistical models, fuzzy logic methods, and expert methods.¹¹³

The risk map, in most cases, is presented in the form of a dotted diagram, the axes of which are the intervals of materiality values (strength of influence, significance, consequences) and probabilities, conditionally defined by low, medium and high degrees.¹¹⁴

The methodology for building a risk map involves several steps:

Step 1. Calculation of the relative levels of probability and materiality (impact strength, significance, consequences) of risks.¹¹⁵

Step 2. Determining the intervals for building the risk map and forming the fields.¹¹⁶

Step 3. Drawing the points on the risk map, the coordinates of which are formed by the values of the relative levels of probability and materiality (impact strength, significance, consequences) of the risks.¹¹⁷

In general, the risk mapping process advantage is that it is possible to highlight and prioritize risks.

A causal diagram (sometimes called the "fishbone" diagram) is used to graphically display the relationship between the risk and the causes (factors) that affect its occurrence.¹¹⁸

The diagram makes it possible to identify key risks and identify the causes (factors) that affect the occurrence of risks.¹¹⁹

When the diagram is constructed, the causes (factors) of risks are divided into key categories: person, working methods (technology), mechanisms, material, control, and

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

environment. Their number in the construction of the chart can be reduced depending on the considered risk.¹²⁰

The bow-tie method of risk analysis is a schematic way of describing and analyzing risk from its causes to its consequences. The essence of the method is to display the risk (risk event), as well as all sources of risk, possible consequences and other related entities, on a single diagram. The resulting diagram is shaped like a well — known piece of clothing—a bow tie, and that is why this method of risk assessment is so called.¹²¹

The rose and spiral of risks is used: to illustrate the ratio of different risks affecting the analyzed project; to visually represent the ratio of risks of different compared projects for the purpose of their selection.¹²² Risky areas of the project are identified, based on expert assessments (usually on a ten-point scale), a rose or star is built in the form of a ray scheme (the number of rays – according to the number of risks assessed, the length of the beam – depending on the risk score). Then, a risk spiral is built.¹²³

Quantitative risk analysis of the project is based on probability theory, mathematical statistics, and the theory of operations research.¹²⁴ To carry out a quantitative analysis of project risks, two conditions are necessary: the presence of a basic calculation of the project and the conduct of a qualitative analysis.¹²⁵ The objective of quantitative risk analysis is to numerically measure the impact of changes in project risk factors on the behavior of project performance criteria.¹²⁶

Scenario analysis is a technique of risk analysis, which, along with the basic set of project source data, considers a number of other data sets that, according to the project developers, may occur during the implementation process.¹²⁷

Analysis of project development scenarios allows you to assess the impact on the project of a possible simultaneous change in several variables through the probability of each scenario.¹²⁸

Decision Tree is a graphical representation of the decision-making system in risk conditions, when states of nature are specified, their probabilities of occurrence and possible options for actions with associated income and / or losses.¹²⁹

The decision tree analysis method allows you to consistently present alternative solutions with their output data and the corresponding uncertainty. The construction should start with the initial event or the decision made. Next, you need to build paths for the

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

development of events, determine the results that can be obtained when implementing events, and the various decisions that can be made.¹³⁰

The decision tree has five elements:

1. Decision points – the node of choice-are the moments of time when the choice of alternatives occurs (indicated by a square).¹³¹

2. The points after which the development of events can go in several directions are called event nodes and are marked with a circle.¹³²

3. Branches - lines connecting the decision points to the points of a random event, as well as lines originating from the points of a random event. The branches coming from the decision point show possible alternative solutions, and the lines coming from the random event nodes represent alternative event possibilities.¹³³

4. Probabilities - numerical values located on the branches of the tree and denoting the probability of occurrence of these events.

The corresponding probabilities (assigned) to each scenario are usually written in parentheses next to each branch.

5. The expected value (consequences) is the quantitative expression of each alternative located at the end of the branch.¹³⁴

2.2Risk managing

These are 5 risk management strategies that can be used to manage the risks in the project. Each team finds itself using a combination of techniques, choosing strategies that best match the risks of their project and the people's skills. However, when approaching a potential risk, a written form action plan in a risk log and kept in line with the latest developments in risk management is required.¹³⁵

There is no zero risk in project management. There is always a chance that the project will not go according to plan. Therefore, the idea is to anticipate and limit as much as possible the risks that may arise, in an attempt to reduce their impact on the smooth operation of the project.¹³⁶

When starting a project, the set up risk management is required: identifying weaknesses in the project, thinking about actions to prevent risks, and thinking about ways to solve/eliminate them. By preparing in this way, you will avoid destabilization in the event of unforeseen events.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

¹³⁴ *Ibid.*

¹³⁵ R.S. Khatta, Risk Management (Global India Publications: 2008), p.3.

¹³⁶ R.S. Khatta, Risk Management (Global India Publications: 2008), p.3.

It is impossible to anticipate all the risks, but a thorough risk analysis is a good way to guarantee the success of the project.¹³⁷

Evasion is the best way to control losses. This is because, as the name suggests, you are completely risk averse. If your efforts to prevent losses have been successful, then the probability that you will incur a loss (from this particular risk factor) is 0%. This is why evasion is usually the first of the risk control methods considered. This is a means of completely eliminating the threat. For example, an investor wants to buy shares in an oil company, but oil prices have fallen significantly over the past few months. There is a political risk associated with oil production and a credit risk associated with an oil company. He assesses the risks associated with the oil industry and decides to avoid participation in the company. This is known as risk avoidance.¹³⁸

Loss prevention is a method that limits, rather than eliminates, losses.¹³⁹ Instead of avoiding the risk entirely, this method accepts the risk, but tries to minimize the loss as a result. For example, storing inventory in a warehouse means that it is susceptible to theft. However, since there is really no way to avoid this, a loss prevention program has been developed to minimize the potential risks.¹⁴⁰ This program may include patrolling the territory, installing video cameras, and having secure storage facilities.¹⁴¹

Loss reduction is a method that not only accepts risk, but also accepts the fact that loss can result from risk. This method aims to minimize losses in the event of any type of threat. For example, a company may need to store flammable materials in a warehouse. The company's management understands that this is a necessary risk, and decides to install modern water sprinklers in the warehouse. In the event of a fire, the amount of losses will be minimized.¹⁴²

Partitioning is a method of controlling risk that involves dispersing key assets. This ensures that if something catastrophic happens in one place, the impact on the business will be limited to the assets in that place only. On the other hand, if all the assets were in this place, then the business would face a much more serious problem. An example of this is when a company employs a geographically diversified workforce.¹⁴³

Duplication is a risk control method that essentially involves creating a backup plan. The failure of the information systems server should not stop the entire business. Instead, the backup or emergency server should be easily accessible in the event of a primary server

¹³⁷ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

¹³⁸ Antonio Borghesi. *Risk Management: How to Assess, Transfer and Communicate Critical Risks* (Italy: Springer-Verlag:2013.)

¹³⁹ Paul Hopkin, *Fundamentals of Risk Management: Understanding, Evaluating and Implementing Effective Risk Management* (The Institute of Risk Management: 2010, 2012)

¹⁴⁰ *Ibid.*

¹⁴¹ Antonio Borghesi. *Risk Management: How to Assess, Transfer and Communicate Critical Risks* (Italy: Springer-Verlag:2013.)

¹⁴² *Ibid.*

¹⁴³ Antonio Borghesi. *Risk Management: How to Assess, Transfer and Communicate Critical Risks* (Italy: Springer-Verlag:2013.)

failure. Another example of duplication as a risk control method is the company's use of a disaster recovery service.¹⁴⁴

Diversification is a risk control method that allocates business resources to create multiple business lines that offer different products and / or services in different industries. With diversification, a significant loss of income from one business line will not cause irreparable damage to the final financial result of the company.¹⁴⁵

Risk management helps to find ways to respond to identified and assessed risks.¹⁴⁶ Different measures and strategies should help balance opportunities and risks, however, must be adapted to the overall corporate strategy.¹⁴⁷

Creating a risk list is a good starting point, but it's not enough. There is a need for an action plan for each risk to be able to manage them effectively.¹⁴⁸

There are 5 main ways to manage risk, which consist of: acceptance, prevention, transfer, mitigation, and exploitation.¹⁴⁹ Here is a detailed look at each of them.

1. Risk acceptance means that although it has been identified and registered in the risk management software, there is no need for taking any action. There is just an acceptance that it can happen and a decision to deal with it if it does. This is a good strategy that can be used for very small risks - risks that won't have any big impact on a project if they perhaps happen, and can be easily dealt with if or when they occur. In any case, creating an alternative risk management strategy or taking risk management measures can take a long time, so it is often better to use the resources.¹⁵⁰
2. Risk prevention or in other words avoiding risk. This is a good strategy for cases where risk has a potentially large impact on a project. For example, if the company's finance team is busy managing corporate accounts in January, putting the team through a training course in January to learn a new process is not a good idea. There is a risk that the bills will not be made, as in January they will all be too busy to attend training sessions or apply new knowledge, even if they do attend seminars. Instead, it would be better to avoid January for training entirely and change the project plan and reschedule the training for

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Oliveira, Ualison Rébula De, Fernando Augusto Silva Marins, Henrique Martins Rocha, and Valério Antonio Pamplona Salomon. "The ISO 31000 Standard in Supply Chain Risk Management." *Journal of Cleaner Production*. March 15, 2017. Available on: <https://www.sciencedirect.com/science/article/pii/S0959652617304894#bib18> Accessed on: May 07, 2021.

¹⁵⁰ Marvin Rausand and Stein Haugen. *Risk Assessment: Theory, Methods, and Applications*. Hoboken, NJ: John Wiley & Sons, 2020.

February, for example, when the main part of the accounting work will be finished.¹⁵¹

3. Risk transfer is a risk management strategy that is rarely used and is usually found in projects where more than one party is involved. In essence, it is a transferring influence and risk management to someone else. For example, if there is a third-party contract to write the code of a software, the risk that errors will occur in the code can be transferred to it. They will then be responsible for managing this risk, possibly through additional training. Typically, transfer arrangements are written into project contracts. Insurance is another good example. If you are transporting equipment as part of your project and the van is involved in an accident, the insurance company will be responsible for providing new equipment to replace the one that was damaged.¹⁵² The project team acknowledges that an accident may occur, but they will not be held responsible as it is now the responsibility of the insurance company.
4. Risk mitigation is probably the most common risk management technique used to assess risk, as much as the easiest to understand and the easiest to implement. What mitigation means the limitation of the impact of risk so that if it occurs, the problem it creates is much smaller and it is much easier to find ways of dealing with it. For example, by launching a new washing machine, the sales department needs to demonstrate it to customers and there is a risk that the sales department will not understand the product enough to make a good product presentation with all the necessary information. As a result, they will make less sales of it, and there will be less revenue for the company. The mitigation strategy in this situation will be to provide good training for the sales team. There may still be a chance that some team members either don't understand the product, or they can skip the training, or they simply aren't experts in washing machines, they have not any will to learn something new about them and never will, but the risk impact will be much less, as the biggest part of the team will be able to effectively demonstrate the new product. So, it is an easy way to mitigate the impact, as in the example, and also to mitigate the likelihood of the appearance of such issues. The actions will be generally the same, however, sometimes it is needed to complete multiple tasks to

¹⁵¹ Oliv Oliveira, Ualison Rébula De, Fernando Augusto Silva Marins, Henrique Martins Rocha, and Valério Antonio Pamplona Salomon. "The ISO 31000 Standard in Supply Chain Risk Management." *Journal of Cleaner Production*. March 15, 2017. Available on:

<https://www.sciencedirect.com/science/article/pii/S0959652617304894#bib18> Accessed on: May 07, 2021.

¹⁵² Oliveira, Ualison Rébula De, Fernando Augusto Silva Marins, Henrique Martins Rocha, and Valério Antonio Pamplona Salomon. "The ISO 31000 Standard in Supply Chain Risk Management." *Journal of Cleaner Production*. March 15, 2017. Available on:

<https://www.sciencedirect.com/science/article/pii/S0959652617304894#bib18> Accessed on: May 07, 2021.

reduce the likelihood of risk occurring, and multiple separate tasks to reduce the impact of risk if it occurs.¹⁵³

5. Risk acceptance, prevention, transfer and mitigation are great for cases where the risk has a negative outcome for the project, but what if the risk has a positive outcome? For example, the risk that the new washing machines will be so popular that there will be a lack of staff to hold demonstrations? This is a positive outcome risk — something that would benefit the project and the company if it happens. In these cases, it is needed to maximize the likelihood that the risk will happen, as everyone is interested in this kind of outcome and therefore there is no point in stopping or minimizing the likelihood of such an outcome. Exploitation is a risk management strategy used in such situations of positive risk outcomes. Important to look for ways to make this positive outcome to occur, or ways to amplify the impact if it does. An additional way to help the risk happen is training the additional sales staff to also demonstrate the benefits of the washing machine and make more additional marketing to increase the likelihood that the new machine will have a lot of demand, and there are people who can make presentations if necessary.¹⁵⁴

All risk management should be subject to monitoring, which is usually carried out by an internal audit. In this way, it helps to monitor and ensure the quality and functionality of risk management and all the tools used. At the same time, there should also be a transfer of risk information, by which all relevant data can be transferred to the responsible person in a timely manner, which raises awareness of the company's risks.¹⁵⁵

3. Analyses regarding the risks for shareholders in case of rebuttable presumption of death

3.1 Comparing analysis of the rebuttable presumption of death in Latvia and UK

The United Kingdom can be called one of the countries in which the concept of the presumption of death was born. But in order to understand how it originated, you need to go back to the roots. There are many different levels of legal systems in the world. The circumstances of the place, time and conditions of the development of certain peoples objectively formed various national legal systems. At the same time, at each individual period of time and in each specific situation, the convention principle came into force, which, among

¹⁵³ *Ibid.*

¹⁵⁴ Oliveira, Ualison Rébula De, Fernando Augusto Silva Marins, Henrique Martins Rocha, and Valério Antonio Pamplona Salomon. "The ISO 31000 Standard in Supply Chain Risk Management." *Journal of Cleaner Production*. March 15, 2017. Available on:

<https://www.sciencedirect.com/science/article/pii/S0959652617304894#bib18> Accessed on: May 07, 2021.

¹⁵⁵ *Ibid.*

other objective factors, contributed to a certain uniformity in the ideas of law.¹⁵⁶ This is what led to the formation of families of law, i.e., the totality of national legal systems of individual states, united by common essential features.¹⁵⁷

In each individual state of Europe, the formation of the national legal system was based on the study of Roman law and was connected with the recording of the country's customary law in precise and clear terms, the organization of these customary law norms into a certain system.¹⁵⁸ The Romano-Germanic legal system, to which Latvia belongs, is characterized by the view of law in its relationship with morality as a requirement of due, the optimal generalization of the rule of law, the division of law into public and private, the allocation of various branches of law.¹⁵⁹ In this family, civil law is particularly fully developed, which is reflected in the science of civil law. The legal systems of the Romano-Germanic family have well-developed legislation.¹⁶⁰ If for a long time the main source of law in this family was the doctrine, then in the modern era the rule of law is recognized among other sources of law.¹⁶¹ In the States of this legal family, the Constitution is the main law, the systematization of legislation is carried out, and codes are in force. The forms of state legal acts are decrees, regulations, administrative circulars, and others. The Romano-Germanic legal family is characterized by a well-developed judicial system, and within a certain framework, the importance of judicial practice as a source of law is recognized.¹⁶² Of course, the importance of judicial practice among the sources of law in the Romano-Germanic legal family differs significantly from the English common law. The doctrine and general principles of law have a certain significance as sources of law in the countries of the Romano-Germanic system.¹⁶³ The practice of the courts of these countries shows that both the doctrine and the general principles are used in the interpretation and application of laws. The idea and sense of justice, the idea of a combination, a compromise of various interests, including private interests and the interests of the state and society, are expressed in the legal understanding.¹⁶⁴

In the countries of the Romano-Germanic legal family, including Latvia, the dominant position is occupied by a normative legal act in which the legal norms are scientifically justified and have a legislative origin.¹⁶⁵ However, normative legal acts are not able to cover

¹⁵⁶Gordley, James. "Comparative Law and Legal History." *The Oxford Handbook of Comparative Law*, 2006, 752-74. doi:10.1093/oxfordhb/9780199296064.013.0024. Available on: [Comparative Law and Legal History - Oxford Handbooks](#). Accessed on: May 11, 2021

¹⁵⁷ *Ibid*

¹⁵⁸ *Ibid*

¹⁵⁹Gordley, James. "Comparative Law and Legal History." *The Oxford Handbook of Comparative Law*, 2006, 752-74. doi:10.1093/oxfordhb/9780199296064.013.0024. Available on: [Comparative Law and Legal History - Oxford Handbooks](#). Accessed on: May 11, 2021

¹⁶⁰ *Ibid*

¹⁶¹ *Ibid*

¹⁶² *Ibid*

¹⁶³ *Ibid*

¹⁶⁴ *Ibid*

¹⁶⁵ *Ibid*

a number of typical cases that would fit into the actual composition of a particular court case, so in the practice of courts use precedent. In the context of legal globalization, the judicial precedent is widely introduced into the legal system of Latvia, as well as the normative legal act expands its scope in the Anglo-Saxon legal family.¹⁶⁶

A characteristic feature of judicial precedent is that it demonstrates respect for a single decision of the High Court, which indicates the position of the court that corresponds to justice in this case, most flexibly reflecting the needs of the time and place.¹⁶⁷ That is why the judicial precedent is considered as a mandatory norm for lower courts. A positive feature of the precedent is its ability to partially eliminate gaps in the legislation.¹⁶⁸ This feature of the precedent is implemented in the countries of the Romano-Germanic legal family, where the dominant form of law is a normative legal act. It is quite clear that the legislator cannot cover in the norms of the legislation all the variety of specific situations that develop in life, and therefore only the courts eliminate the gaps in the legislation. With regard to certain branches of law, the recognition of precedent as a form of law will create favorable conditions for the further development and improvement of the regulatory system.¹⁶⁹

The common law system was established in England after the Norman Conquest, and in the course of history, the English common law became the basis of a very large family of common law. This family currently includes the legal systems of all, with some exceptions, English-speaking countries.¹⁷⁰

It should be noted that English common law is not the law of Great Britain, it applies to the territory of England and Wales, and Scotland, Northern Ireland, the English Channel Islands and the Isle of Man are not subject to English law.¹⁷¹ The Common law is a law common to all of England, where local customs were in force prior to this period.¹⁷²

Questions of procedure in the royal courts of justice played a crucial role in the formation of the common law.¹⁷³ If in the countries of the Romano-German legal system, lawyers gave priority to the issues of establishing the rights and obligations of subjects, issues of substantive law, then in England, the main attention of lawyers was focused on procedural issues — procedure first of all.¹⁷⁴

The term presumption does not appear mainly in Latvian law, as it is considered a native term of common law. The basic principle of the presumption of death in English law

¹⁶⁶ *Ibid*

¹⁶⁷ *Ibid*

¹⁶⁸ *Ibid*

¹⁶⁹ Gordley, James. "Comparative Law and Legal History." *The Oxford Handbook of Comparative Law*, 2006, 752-74. doi:10.1093/oxfordhb/9780199296064.013.0024. Available on: [Comparative Law and Legal History - Oxford Handbooks](#). Accessed on: May 11, 2021

¹⁷⁰ *Ibid*

¹⁷¹ *Ibid*

¹⁷² *Ibid*

¹⁷³ *Ibid*

¹⁷⁴ *Ibid*

implies the recognition of a person as dead, unless proven otherwise.¹⁷⁵ The term was established due to the fact that in the 18th and 19th century there were a large number of cases of missing persons due to undeveloped communication.¹⁷⁶ The presumption included two aspects that must have been observed, or rather, the first of which the missing person could be considered dead 7 years after his disappearance, but in the 7 year since his disappearance, it was considered that it would not be possible to find him alive, and the second person should disappear abroad, but in practice, the second rule was most often not observed.¹⁷⁷

In order to apply the presumption of death to the situation, the court considers 4 facts that must necessarily appear:

1. the person must have been missing for 7 years or more;
2. without any news of him being alive;
3. by persons who are likely to have heard; and
4. all sorts of investigations were conducted and efforts were made.¹⁷⁸

Moreover, for cases where the exact date of death of a person can not be established, such as in the case of a missing person-the court decided that it is correct to consider 7 years from the moment of the loss of a person, but you can use the presumption of death only at the end of the seventh year, and it will start from January 1 of the new year.¹⁷⁹

When compared with Latvian law, English law uses the presumption 3 years earlier, which essentially increases the chance that a person may be found alive later and will have to make many different re-registration and legally significant movements.¹⁸⁰ However, this 7-year rule no longer follows from the experience of the country, but rather from history, which has long been accepted, which means that it probably does not greatly affect the statistics of the use of the rule that the presumption can be rebutted.¹⁸¹

The biggest problem with applying the presumption of death in English law is that it is quite difficult to establish it for a missing person. Basically, a greater number of cases have the fact that the missing person "heard somewhere", which continues to search for him and means that even if he could be confused with someone, then the countdown of 7 years begins anew. Thus, the presumption of death in modern cases is used quite rarely, since judges hold on to any method to avoid declaring a person as dead.¹⁸² However, in Latvian law, unfortunately, the number of cases is too small to analyze them. As for the cases where the presumption can be rebutted - there are even fewer of them. Unfortunately, this is such a

¹⁷⁵ D. Stone, "The Presumption of Death: A Redundant Concept," *Modern Law Review* 44, no. 5 (September 1981): 516-525 Available on: Law Journal Library - HeinOnline.org Accessed on: May 11, 2021

¹⁷⁶ Stone, *supra* note 175.

¹⁷⁷ Stone, *supra* note 175.

¹⁷⁸ Stone, *supra* note 175.

¹⁷⁹ Stone, *supra* note 175.

¹⁸⁰ Stone, *supra* note 175.

¹⁸¹ Stone, *supra* note 175.

¹⁸² Stone, *supra* note 175.

small probability that a person can be found alive 10 years after the disappearance, which may seem like a miracle.¹⁸³

Due to the different legal system, English law, in addition to the principle of applying the presumption, uses the case law in its practice, which is not enough in Latvian practice. However, the Latvian Civil Code is a set of certain rules that can be interpreted slightly differently and applied to a larger number of situations where in English law, for each individual case, you will have to look for a very similar case on the basis of which you could use the presumption of the death of a missing person.¹⁸⁴

Thus, it can be assumed that Latvian law, having recorded general features of application in this kind of situation, has a more flexible nature, which in turn simplifies the process of registering a person as dead, but most likely in the following process, taking into account that the person will be found alive - unfortunately, Latvian law contains a very small number of instructions that are inherently unlikely to have been used often, but English law has more of this kind of experience and will be able to cope with the task of re-registration more accurately, faster and most likely more effectively on the basis of case law and a more precisely developed registration system.

3.2 Risk identification within the Ltd and JSC regarding the term of rebuttable presumption of death

Potential risks should be considered exclusively within the scope of the topic, namely rebutted presumption of death. Moreover, it is important to identify the risks that directly affect the shareholders of the companies LTD and JSC.

In order to identify all possible risks for the shareholders within the scope of the topic, it is needed to refer to the main risk studied - the risk of rebutted presumption of death. This risk may be directly related to the fact that a person should be considered dead for a long period of time, which means that it refers to a missing person. This can be either one of the ordinary employees, or someone from the board of the company, which means one of the shareholders. If this is an ordinary employee, then surely the contract should contain a clause stating that the employee is dismissed unilaterally if he does not go to work during the period of time specified in the contract. Thus, further news about the arrival of such a person dead may not have a strong impact on the company. However, if there is no such clause in the contract, or the management considers it necessary not to dismiss an employee while he is considered missing, then news about the presumption of such a person dead can clearly serve as bad advertising for the company, which in turn will affect the earnings of the shareholders. For example, if a person working in a certain company has disappeared for a long time and then is declared dead, then such advertising will cast doubt on the desire of people to work with this company, as well as the desire of consumers to contact this company. However, if one of the shareholders goes missing, it is impossible to dismiss him, which means that the

¹⁸³ Stone, *supra* note 175.

¹⁸⁴ Stone, *supra* note 175.

company must be under the leadership of the other shareholders for the time of his search. According to Latvian law, during the search for such a missing person, his property, and therefore shares, are given to a trustee, such as a wife or a close relative. Then, with the presumption of the death of such a shareholder, according to the law, the rights to his share of the company pass with his will or are divided among the heirs, or in the absence of the closest relatives or heirs, the share of the company passes to the state, from which one of the equity participants can buy this share.

Continuing the logical chain, you can determine a number of other resulting risks, for example, that the company's shares will either have to be redistributed, or they will be owned by a person who has not previously taken part in the management of this company and may not know what the management of the company is in general, and may not be very interested in the development of the company. The risks associated with the emergence of a new shareholder form a number of problems that take time to be resolved, namely, the restructuring of the company's management structure. This, in turn, can cause discontent among employees, which in turn will lead to a number of layoffs. Moreover, the problem of different interests pursued by different shareholders may be unsolvable, and due to the fact that consensus will be difficult to find, it may lead to the collapse of the company.

Also continuing the same logical chain, the presumption of death can be rebutted, since the missing person can be found even after a very long time alive. Thus, in the case of an ordinary employee, he is most likely already dismissed long ago and is most likely unlikely to be hired back, but this option is not excluded. But in this case, it is not a risk for the shareholders and not even a risk for the company. The maximum that such a situation can cause is bad advertising for a company that refuses to hire a person who went missing 10 years ago. However, if the shareholder is still alive, then due to the legislation, the share - as property that previously belonged to him will return to his possession, regardless of who it was sold or given to, however, there is always a possibility that during this time the company could have already managed to liquidate. Also, there is still a huge risk that it will be impossible to trace the sale and transfer of shares in the future, after 10 years, due to the already impressive number of transactions made with the purchase or exchange, accordingly, the shares will not be able to return after the same 10 years. If the company has not yet managed to liquidate, then the risk that the company's management structure will have to be reviewed again is highly likely and has unpleasant consequences. Thus, the composition of the company's board in the case of the same rebutted presumption is reviewed twice, which takes a fairly large amount of effort and time.

In this case, due to the fact that both types of companies LTD and JSC have a similar risk identifier due to the subject matter, so it is worth taking them separately, but in this context together.

Furthermore, the identified risks do not have a huge impact on the companies and on the shareholders, since the probability of such risks is very small. Unfortunately in Latvia there is not yet much practice in this regard, and therefore the legal norms that exist are very

small and are not tested by various nuances and deviations in situations. The same way, the legal system cannot provide a court practice for all cases and faces a problem when such cases appear. It is especially difficult for lawyers in such matters when there are not enough legal norms, as well as too few existing cases that could be relied on.

It would be very appropriate to create a legally meaningful document in order to monitor the risks of companies and the impact of such risks. Companies take quite a lot of risks in various areas and issues, which makes them worry about every little thing in the life of companies. Such a document would make it possible to remove some part of the responsibility for such risks from the company, as well as from the shareholders. In this way, the shareholders risk that having worked for 10 years with the company's reallocated shares and pursuing perhaps more global goals, suddenly, a missing shareholder may appear, who may have once owned a large percentage of shares and will have to give up the company's shares to him, and no one knows what this may lead to, perhaps even to the collapse of the company.

Conclusion

This was quite an interesting analysis in an exceptional way, since this kind of topic may not occur to many people, especially to the company's shareholders and the risk management department. There can highlight the most significant conclusions made during the work.

Firstly, one of the global problems of Latvian law in this context is the rebuttable presumption of death, and also in the contexts arising from this topic, there is not a sufficient number of sources of law. The courts have almost never encountered such practices, which means that it is likely that it will be difficult to determine the answers to the resulting questions. Because of this, lawyers will have to turn to numerous literature in order to find answers to questions. However, if we compare Latvian law with English law, we can say that the United Kingdom has more experienced courts, due to the fact that the country exists longer, as well as a separate legal family, which clearly indicates that the legal system is more stable and has more answers to numerous questions.

Latvian law is more flexible because of its legal family, since the law mainly uses legal norms that can be interpreted differently depending on the situation, which means that it is not necessary to look for a precedent for each case, as for example in English law, where the precedents are very different in their details and can not always be applied to similar cases.

Secondly, the identification of risks showed that this topic does not cause a very strong impact on the shareholders, since the probability of such situations is quite small, and the impact is not so large. The only thing that is true is that this situation causes problems in the re-registration of a huge amount of documentation and the redistribution and restructuring of the company's management and shares between the shareholders. This kind of work takes a lot of time, effort and attention. Moreover, this kind of risk for the company can be formed by the fact that after 10 years of absence, you will suddenly have to give a share of the company to such a person who has not participated in the life of the company for 10 years and may not understand at all that the company may pursue completely different interests and already be set up even for other activities. This may affect the rest of the shareholders as well.

Thirdly, in this case, the company's LTD and JSC should be considered as similar in general risks in this area of the company. Yes, companies have different structures and may pursue different goals, but the risks in this case are the same.

Fortly, all risk management should be subject to monitoring, which is usually carried out by an internal audit. In this way, it helps to monitor and ensure the quality and functionality of risk management and all the tools used. At the same time, there should also be a transfer of risk information, by which all relevant data can be transferred to the responsible person in a timely manner, which raises awareness of the company's risks.

To conclude, this topic should have clearly more publicity than it has, it should be much more actively included in the teaching program, since recently criminal actions in

Latvia are increasing, which may lead to more frequent cases of this kind, but this will be clearer in 10 years and this issue can be addressed in 10 years... Unless, of course, the missing person is not over 70 years old, because then it is possible to return to this issue in 5 years.

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