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МЕТОДИЧНІ ПОЛОЖЕННЯ СТВОРЕННЯ АУТСОРСИНГОВОЇ КОМПАНІЇ (З УРАХУВАННЯМ ОРГАНІЗАЦІЙНО-ПРАВОВОЮ ФОРМОЮ ГОСПОДАРЮВАННЯ)

Актуальність. Актуальність проблеми створення аутсорсингової компанії не виникає сумнівів, так як кількість аутсорсингових компаній, які надають аутсорсингові послуги постійно збільшується. В період кризи в Україні виникає необхідність: зменшення витрат підприємства, утримання певного сегменту ринку, збереження конкурентоспроможності на ринку, збереження певної якості послуг (робіт, товарів). Всі ці позиції можливо утримати за допомогою аутсорсингу, який необхідно використовувати на підприємстві в період антикризового управління.

Мета та завдання. Метою статті є розробка методичних положень створення аутсорсингової компанії в межах діючого інституційного забезпечення на території України. Деякі етапи створення аутсорсингової компанії можуть бути приведені на прикладі адвокатської діяльності в формі адвокатських об'єднань, адвокатського бюро, або здійснення адвокатської діяльності індивідуально (фізична особа – підприємець, самозайнята особа).

Результати. Розроблені методичні положення створення аутсорсингової компанії, на прикладі адвокатської діяльності, з урахуванням особливостей державної реєстрації різних організаційно-правових форм господарювання та системи оподаткування. Також створений алгоритм обрання спрощеної системи оподаткування у випадку реалізації проекту створення аутсорсингової компанії підприємства.

Висновки. Методичні положення створення аутсорсингової компанії складаються з шістнадцяти етапів. Автор надав рекомендації щодо внесення змін до класифікатора організаційно-правових форм господарювання. Запропоновано додати аутсорсингову компанію, як нову організаційно-правову форму господарювання з метою вдосконалення існуючої системи національних статистичних класифікацій. Внесені зміни нададуть Державній службі статистики України можливість підняти на якісно новий рівень статистичний аналіз аутсорсингових компаній в Україні.

В Україні не існує чіткої поетапної методики або інструкції створення нового аутсорсингового підприємства. Автор розробив методичку створення аутсорсингової компанії в межах інституціонального забезпечення в Україні.

В статті детально досліджено ситуацію - використання аутсорсингу при створенні аутсорсингової компанії. Також в статті поетапно розроблений алгоритм створення аутсорсингового підприємства.

Автор відокремив шістнадцять етапів створення аутсорсингової компанії. В цій статті досліджені лише п'ять етапів створення аутсорсингової компанії.

Етап 1 - визначення організаційно-правової форми господарювання. Автор запропонував нову організаційно-правову форму господарювання - аутсорсингову компанію. Таким чином необхідно внести зміни до існуючого класифікатора. В роботі розроблений алгоритм визначення організаційно-правової форми господарювання на прикладі адвокатській діяльності.

Етап 2 - визначення найменування юридичної особи. Надані практичні рекомендації щодо визначення найменування аутсорсингової компанії.

Етап 3 - визначення кількості учасників (засновників) товариства. В залежності від кількості засновників необхідно обирати певну організаційно-правову форму господарювання. Так наприклад, якщо адвокат здійснює адвокатську діяльність індивідуально без залучення найманих працівників та інших засновників, то необхідно здійснювати діяльність у формі фізичної особи – підприємця або самозайнятої особи. Тоді створювати юридичну особу не потрібно.

Етап 4 - формування статутного капіталу аутсорсингової компанії. Автор звернув увагу, що мінімальний статутний капітал встановлений для акціонерного товариства, а для товариства з обмеженою відповідальністю не встановлений. Цей етап важливий, так як учасники несуть відповідальність у межах своєї частки в статутному капіталі.

Етап 5 - складення та підписання статуту та протоколу загальних зборів учасників (засновників) товариства про створення аутсорсингової компанії. В роботі зазначені два види статутів: модельний та власний статут товариства. Модельний статут не потрібно навіть подавати до державного реєстратора. Стаття містить основні розділи статуту аутсорсингової компанії.

В наступній статті будуть розглянуті етапи з шостого по шістнадцятий.

Ключові слова: аутсорсинг, аутсорсингова компанія, методика, інституціональне забезпечення

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METHODICAL PROVISIONS FOR CREATING AN OUTSOURCING COMPANY (WITH CONSIDERING ORGANIZATIONAL AND LEGAL FORMS OF ENTERPRISES)

Topicality. *The topicality of the problem of creating an outsourcing company does not raise doubts, because the number of outsourcing companies is constantly increasing which provide outsourcing services. During the crisis in Ukraine, there is to need in next positions: reducing the cost of the enterprise, maintaining a certain market segment, maintaining competitiveness in the market, maintaining a certain quality of services (works, goods). If the company use outsourcing at the enterprises, it will be possible to hold all these positions, during the crisis management period.*

Aim and tasks. *The aim of the article is to develop methodological provisions for creating an outsourcing company within the framework of the existing institutional support in Ukraine. Some stages of creating an outsourcing company can be given on the example of law firm in the form of an attorney company, an attorney bureau or a lawyer of individual (an entrepreneur and a self-employed person).*

Research results. *The methodological provisions were developed for creating an outsourcing company. In the article was using the example of practice of law, was taking into account the peculiarities of state registration of various organizational and legal forms of management and the tax system. Also, an algorithm has been created for the election of a simplified taxation system if to realise the case of a project to create an outsourcing company.*

Conclusion. *Methodical provisions for creating an outsourcing company consist of sixteen stages. The author provided recommendations for making changes to the classifier of organizational and legal forms of enterprenier. It was proposed to add an outsourcing company as a new organizational and legal form of enterprenier in order to improve the existing system of national statistical classifications. The changes will provide the State Statistics Service of Ukraine the opportunity to raise to a qualitatively new level the statistical analysis of outsourcing companies in Ukraine.*

There is no clear phased methodology or instructions for creating a new outsourcing enterprise in Ukraine. The author has developed a methodology for creating an outsourcing company within the institutional support in Ukraine.

The article examines in details the situation - the use of outsourcing when creating an outsourcing company. The article also gradually developed an algorithm for creating an outsourcing enterprise. Only five stages were investigated for creating outsourcing company in this article.

The author has distinguished the sixteen stages of creating an outsourcing company.

Stage 1 - the definition of the organizational and legal form of entrepreneur. The author proposed a new legal form - an outsourcing company. Therefore, it is necessary to change the existing classifier. In work the algorithm of definition of the organizational and legal form of entrepreneur on an example of lawyer activity is developed.

Stage 2 - determination of the name of the enterprise. Practical recommendations are given for determining the name of an outsourcing company.

Stage 3 - determining the number of participants (founders) of the company. Depending on the number of founders, it is necessary to choose a certain organizational and legal form of entrepreneur. So, for example, if a lawyer carries out practice of law individually without the involvement of employees and other founders, then it is necessary to carry out activities in the form of an individual, an entrepreneur or a self-employed person. Then create a company is not required.

Stage 4 - the formation of the charter capital of an outsourcing company. The author has noticed that the minimum charter capital is set for a joint stock company, but not for a limited liability company. This stage is status ant, as the participants are responsible within their share in the charter capital.

Stage 5 - drawing up and signing the charter and the protocol of the general meeting of the participants (founders) of the company on the creation of an outsourcing company. There are two types of charters in the article: model and own charter of the company. The model charter does not even need to be submitted to the state registrar. The article contains the main sections of the charter of an outsourcing company.

The next article will consist of from sixth to sixteenth stages.

Keywords: *outsourcing, outsourcing company, methodology, institutional support*

Problem statement and its connection with important scientific and practical tasks. Tax, financial, legal, accounting risks often arise because some of the enterprises due to organizational and the legal form of the enterprise are chosen incorrectly. The founders of future enterprises do not seek for help of lawyers and accountants for timely advice. As practice shows, the firstly individuals break the law, and only then they turn to qualified specialists for help.

In Ukraine, there is no clear step by step phased methodology or instructions for creating a new outsourcing enterprise. And as a result, the companies face to a huge number of problems, so they don't know how to solve these problems. In practice, such business entities have not yet managed to make a profit (or income), but they already have to pay penalties, and the manager can be held liable for various types of responsibility.

Analysis of recent publications on the problem. The author investigated in how to open an outsourcing company [1]. The author noted that in order to open a company it takes from about twenty to twenty five thousand dollars of USA, including payment for advertising, maintenance of the company. The competition of the outsourcing services market is fierce, and therefore there will be very few customers from the very beginning.

The author emphasized that confidentiality and reputation in the outsourcing services market are the great importance for the outsourcing company.

Kovalenko O. investigated the business plan of an outsourcing company, the initial costs, their payback, risks. However, Kovalenko O. identified only two types of outsourcing: production of outsourcing, outsourcing of business processes. The author forgot to mention the third type of outsourcing, namely: IT outsourcing. It-outsourcing ranks first among others in the Ukrainian market. Kovalenko O. noted the initial costs for the creation of an outsourcing company: registration of an enterprise, rental of premises and redecorating, purchase of office equipment, advertising costs [2]. Shopina T. investigated a brief scheme, where she noted part of the shadow economy scheme, briefly depicted how a small outsourcing company works [3]. However, the author marked all tax rates incorrectly. Obod P. developed a manual for creating an outsourcing company [4].

None of the authors investigated and developed a phased methodology for creating an outsourcing company, so the research topic is relevant and requires development.

Allocation of previously unsolved parts of the general problem. The researchers investigated the outsourcing company, but the authors did not develop methodological provisions for setting up an outsourcing company, did not advise the central government or local self-government bodies to change the current legislation and did not regulate the organizational and legal form, such as an outsourcing company.

Formulation of research objectives (problem statement). The author develops methodological provisions for creating an outsourcing company with a breakdown into stages, which may consist of certain steps and algorithms. The aim of the author is to investigate five stages in this article.

An outline of the main results and their justification. The enterprises and individuals – entrepreneurs carry out business activities.

Economic activity in [5] refers to the activities of economic entities in the field of social production, aimed at the production and sale products, works or the provision of services of a value nature, which have a definite value.

There are three situations in which enterprises may use outsourcing in business [6]. So the research is dedicated to the creation of outsourcing company on the example of practice of law.

Legal entities (enterprises, institutions, organizations), individuals – entrepreneurs, self-employed persons carry out economic activities in the field of social production, aimed at the production and sale of products, works or the provision of services of value nature, which have a price determination [5].

In the Odessa region, in 2017, the number of companies is 127 773, including 103750 individuals - entrepreneurs [7].

In the fourth quarter of 2018, the volume of services provided to consumers by the enterprises of the services sector of the Odessa region, amounted to 19791.3 million UAH.

In the structure of the total volume of services provided by economic activity, transport, warehousing, postal and courier services accounted for the largest share (67.4% of total services). The share of services in conducting various real estate transactions (7.9%) and in the field of information and telecommunications (7.3%) was noticeable. The volume of services provided to the population amounted to UAH 2797.6 million. (14.1% of the total) [8].

Law activities are progressively carried out solely by lawyers. Representation of another person in court is performed by lawyers, as well as protection against criminal charges, which is provided by Art. 132-2 of Constitution of Ukraine [9].

Representation is performed solely by prosecutors or lawyers: from January 1, 2017 - in the Supreme Court, from January 1, 2018 - in the courts of appeal, and from January 1, 2019 - in the courts of first instance. Representation of public authorities and local self-government bodies in courts exclusively by prosecutors or lawyers shall take place from January 1, 2020.

In business circulation in Ukraine, this phenomenon was called "the monopoly of lawyers for representation in court". Accordingly, the number of lawyers is constantly increasing.

Thus, there is a tendency for an increase in the number of lawyers practicing, so they work as individually, an attorney bureau, an attorney company.

According to Art. 1 of the Law of Ukraine "On the Bar and Practice of Law" of July 5, 2012 №. 5076-VI (Law № 5076-VI), practice of law - independent professional activities of an attorney in the domain of provision of legal defense, representation and other types of legal assistance to a client [10].

The first stage: to determinate of the organizational and legal form of business. In Ukraine, DC 002:2004 [11] provides a definition and the exhaustive list of legal forms of economic activity in Ukraine.

Organizational and legal form of economic activity (OLF) - a form of carrying out economic (in particular entrepreneurial) activity with an appropriate legal basis, which determines the nature of relations between the founders (participants), the regime of property liability for the obligations of the enterprise (organization), the order of creation, reorganization, liquidation, management, distribution of profits, possible sources of financing, etc. [11]. Some of the provisions of SC 002: 2004 are outdated and contain no longer relevant OPFs: an open joint stock company and a closed joint stock company.

On April 29, 2009, the Law of Ukraine "On Joint Stock Companies" of September 17, 2008 № 514-VI [12] entered into force, which obliged all closed and open joint-stock companies to bring their charters and local documents (regulations) of joint-stock companies within two years. So the founders of joint-stock companies have to change the name in accordance with the requirements of the above law. As a conclusion, SC 002: 2004 needs to be amended by the OPF: a closed joint stock company to a private joint stock company, an open joint stock company to a public joint stock company.

Organizational and legal forms can be: farms [13] private enterprise, municipal unitary enterprise, foreign enterprise [5], joint stock companies [12], limited liability company (LLC), additional liability company, full partnership, limited partnership [14] and others.

In [15] a complete list of organizational and legal forms of non-residents that do not pay income tax is approved.

In Canada - full partnership, limited partnership, trust, extra provincial company. In the United Arab Emirates - a free economic zone company, a free economic zone enterprise, a free economic zone limited liability company, a limited liability company, an individual private enterprise, an international business company. In Japan - a full partnership, a limited partnership investment partnership, a limited partnership, a company in the form of a limited partnership, a company in the form of a full partnership, dormant partnership.

In Ukraine, 143 companies are registered in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Social Groups [16] as outsourcing companies. Currently, the State Statistics Service of Ukraine does not record outsourcing companies in Ukraine, due to the fact that there is no such legal form of managing OLF in SC 002: 2004. Therefore, we recommend that the corresponding changes be made to SC 002: 2004 by adding new OLF "outsourcing company".

So, SC 002: 2004 contains the following OPF: an attorney bureau and attorney company.

According to Part 3 of Art. 4 of Law of Ukraine № 5076-VI and Clause 3.2.6., 3.2.7, Clause 3.2., Clause 3.9.1. Clause 3.9.SC 002:2004, the following organizational forms of practice of law exist: self-employed person (individual activity), attorney bureau, attorney company (creation of company). However, you can engage in individual practice of law even in the form of an individual entrepreneur.

In this way, the founders (members) of company need to determine the number of lawyers and the form of legal advice the right of the organization of the lawyer's form. If the lawyer wants to work exceptionally independently, the lawyers should to optimize the taxable and to work as individual-entrepreneurs.

If the numbers of founders are two lawyers and more, then you need to set up an attorney company (Fig. 1).

So, Fig. 1 has an algorithm (that is easy for people in Ukraine), which should be able to help new players in market of outsourced services for creating outsourcing company. The author displayed the algorithm as example practice of law. The algorithm consists of the three registration decisions, as individuals, Attorney Bureau, Attorney Company. But, Fig. 1 doesn't consist of responsibility for the activities of the members of outsourcing company. If the members of outsourcing company register attorney bureau, attorney company, they should be responded only their share in authorized capital. But if people register OLF such as: the full company, individual-entrepreneur, self-employed person they will have to response of their activities which all their property.

When the founder of outsourcing company try to choose of OLF correctly, they should to identify the specific of activities, all economical activities of company, to identify the character of work, to determine the speed of the operation.

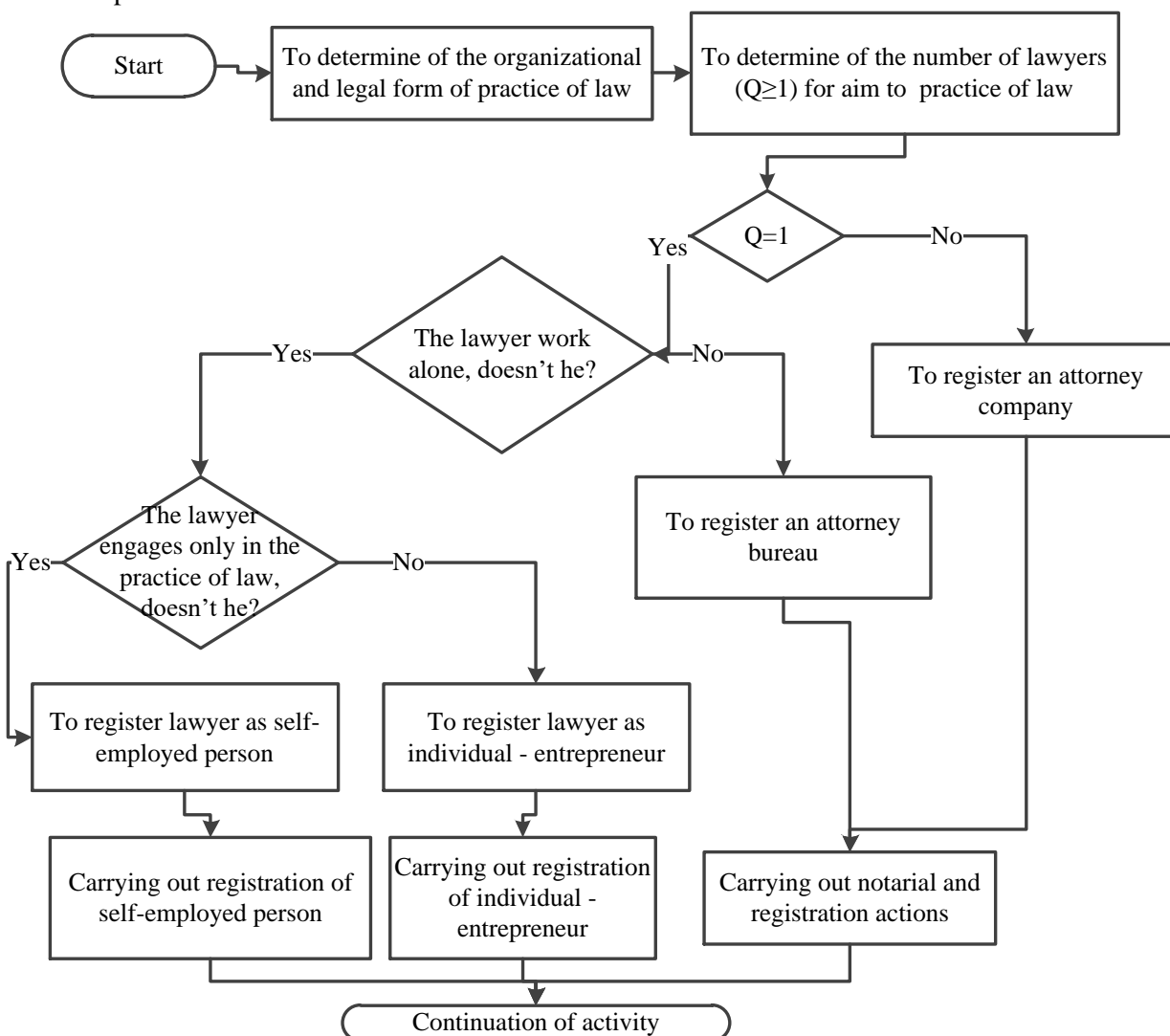


Fig. 1. The algorithm of determining the organizational and legal form of management on the example of practice of law

There is next list of several reasons why some lawyers can't work independently constantly in Ukraine.

- The judges appoints to trial the cases in the different courts in one time;
- The participants of the cases and the judges delay the consideration of the cases in the courts, because the courts are overloaded;
- The lawyers need to consult of their colleagues, to exchange the experience or to receive the advice from their colleagues;
- Some lawyers are specialist of material law, but another lawyers are specialist of procedural law;

- The legislation is constantly changing, so the lawyers work as principle as “one lawyer write the procedural documents, other lawyer is speaker in court in Ukraine”;
- Some lawyers aren't punctual, so the problems will be arise with due dates in the courts, etc.

So, The author recommend in practice of law next OLF: an attorney bureau, an attorney company, because their responsibility is limited to their charter capital.

However, if practice of law is not the main type of economic activity, due to the fact that the lawyers often combine practice of law with scientific, creative, research work, so the author recommends that they should choose an individual form of activity.

The second stage. Determine the name of the company. After the founders of the company have decided on the name, it should be checked for identity in The United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (the United State Register). If we turn to history, the state registrars previously reserved the names of company for two months and no one could register a company with the same name. However, gradually there is no need in the reservation of the name; due to the free access to the United State Register information from the Ministry of Justice of Ukraine [17], in addition to restricted information, including state secrets. If the founder (member) or his representative does not check the name of company for identity, it leads to financial risks during registration of company, which will be manifested in the increasing price of expenses for legal, notarial and administrative services. It is also necessary to take into account in determining the name of the legal entity the requirements for the name of the legal entity, which are reflected in [18]. Some legal entities have additional requirements for their name. For example, the name of an attorney bureau should include the name of the lawyer who created it [10].

The name of the legal entity must include information on its legal form and name.

There are also peculiarities of the name of some companies and their separate divisions: credit unions [19], banks [20], pension funds [21-22], co-investment institutions [23], chamber of commerce [24], and others.

The status of higher education institutions is important. The types of status are national or state. For example, it should be borne in mind that the status of the national institution of Ukraine is granted by decree of the President of Ukraine [25].

The third stage: Determine the number of members (founders) of the company.

The number of participants is not limited in limited liability companies. The founders of the company can be companies and individual persons.

The fourth stage: Formation of the authorized capital of the outsourcing company.

The size of the authorized capital of the company consists of the nominal value of the shares of its members, expressed in the national currency of Ukraine. If the founders are non-residents (foreigners) and want to make foreign investments in the form of the formation of authorized capital in foreign currency, then the authorized capital is displayed in foreign currency and the equivalent in UAH at the NBU exchange rate at the moment of signing the charter is obligatory.

As a rule, the size of the members of the company in the authorized capital is also determined in percentage, which is in proportion to the nominal value of each share.

Each member of the company must fully contribute within six months from the date of state registration of the company, unless otherwise provided by the charter.

The minimum size of the authorized capital of a joint-stock company is 1250 minimum wages based on the minimum wage rate in effect at the moment of creation (registration) of a joint-stock company [12]. Thus, in the case of registration of a joint stock company during 2019, the authorized capital of the joint stock company is 5 216 250 UAH. Therefore, we do not recommended creating joint stock companies. The minimum amount of authorized capital for a limited and additional liability company, limited partnership and full partnership is not established.

The fifth stage: preparation and signing of the charter and decision of the minutes of meeting of the members of the outsourcing company creation.

There are two main types of a charter: model and own company statute.

The charter of a limited liability company (LLC) must contain information about the type of company, the object and aim of its activity, composition of members, name, size and procedure of the authorized capital formation, the procedure for distribution of profits and losses, the composition and competence of the bodies of the company and the order of their decision making, including a list of questions requiring a qualified majority of votes, information on the size of each participant's shares, the size, composition and procedure of their contributions, the size and procedure for forming a reserve background in, order

transmission (transfer) of shares in the authorized capital procedure for signing the charter, the procedure for amending the constitution and procedure of liquidation and reorganization of the company.

Model charter of LLC [26], which contains the following sections: general provisions, legal status of LLC, participants of LLC, authorized capital of LLC, property of LLC, profit of LLC and its use, procedure for covering losses, funds of LLC, bodies of LLC, general meeting, executive LLC body, an audit commission, a labour collective of LLC, an accounting and reporting, procedure of making amendments to the charter, termination of LLC.

The advantage of the model charter of the LLC is that you do not need to submit to the charter registrar at registration, but only need to put a corresponding mark in the registration card.

There are the standard forms of a charter of an attorney company and an attorney bureau on the official website of the National Bar Association of Ukraine [27].

Conclusions and perspectives of further research. Methodological provisions for creating an outsourcing company, which consists of certain stages, have been developed. The author of this article gave the recommendations of introducing changes to some classifiers, including the suggestion to add such an organizational and legal form of management as an outsourcing company. In the future, there will be studies of the types of economic activities of outsourcing companies in Ukraine, including a methodology for transferring them to outsourcing. The author researched five stages of creating outsourcing company in details, so the next article will consist of from sixth to sixteenth stages. The main development of science and further research will be to improve the classification of economic activities in Ukraine.

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