The Legal Risk Map in The Activity of The Legal Departments of Companies in Uzbekistan: Taking Advanced Foreign Experience into Account

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Received: 28 Mar 2026 | Received Revised Version: 26 April 2026 | Accepted: 24 May 2026 | Published: 08 June 2026

Volume 08 Issue 06 2026 | Crossref DOI: 10.37547/tajpslc/Volume08Issue06-14

Abstract

The article examines the role of the legal risk map as a key instrument for the transition of the legal departments of companies in Uzbekistan from a reactive (claims-and-litigation) model to proactive, risk-based management. It reveals the concept and legal nature of legal risk in light of the approaches of the Basel Committee on Banking Supervision, the ISO 31000:2018 standard, the doctrine of T. Mahler and R. McCormick, and the works of CIS scholars. It systematises advanced foreign experience – the duty-of-oversight doctrine established in In re Caremark and Marchand v. Barnhill (State of Delaware, USA), the activity of the Financial Markets Law Committee (FMLC) of the United Kingdom, and the ACC Legal Operations Maturity Model. Twelve systemic problems impeding the implementation of the legal risk map in Uzbekistan are identified and analysed. Detailed scholarly conclusions and specific practical proposals are formulated, including the enactment of a statutory definition of legal risk, the wide-scale adoption of ISO 31000 in Uzbekistan, the introduction of the "three lines of defence" model and of a register of legal incidents.

Keywords: Legal risk, legal risk map, legal department, compliance, risk management, ISO 31000, duty of oversight, corporate governance, Uzbekistan, preventive jurisprudence.

Cite This Article: Prof. Ochilov B.E. (2026). The Legal Risk Map in The Activity of The Legal Departments of Companies in Uzbekistan: Taking Advanced Foreign Experience into Account. The American Journal of Political Science Law and Criminology, 8(06), 166–194. https://doi.org/10.37547/tajpslc/Volume08Issue06-14

1. Introduction

The modern economy of Uzbekistan is undergoing a period of intensive structural transformations. Since 2017 the state has been pursuing a consistent liberalization of the business climate: according to the World Bank Group, the average annual growth of GDP per capita in 2010–2022 amounted to 4.2%, outpacing the average indicators of the Europe and Central Asia region and of lower-middle-income countries, while the ratio of foreign trade to GDP exceeded 71.6% by 2022; the foreign-trade-to-GDP ratio exceeded 71.6% by 2022.

In October 2024 the Board of Executive Directors of the World Bank approved a concessional financing package of USD 800 million, directly linking support for the reforms with the adoption of legislation strengthening investor-protection guarantees and improving the business environment.

The growth of business activity, the inflow of foreign direct investment, the increasing complexity of cross-border transactions and the rapid dynamics of rule-making multiply the volume of legal uncertainty in which the modern company operates. In these conditions the traditional, predominantly reactive (claims-and-litigation) model of the legal department's work, oriented towards eliminating legal consequences that have already arisen, ceases to meet the needs of business. The preventive function of law and the proactive management of legal risks come to the fore, the central instrument of which is the legal risk map (Eng. legal risk map, legal risk register; Ger. Rechtsrisikolandkarte).

The legal risk map is a structured document (as a rule, in the format of a "likelihood–impact" matrix visualized as a heat map) that makes it possible to identify, classify, assess, rank and control the totality of an organization's legal risks. Despite the wide dissemination of this instrument in international corporate practice, in Uzbekistan it has not been systematically developed either in legislation or in doctrine, which determines the scientific and practical relevance of the present study.

The relevance of the topic is reinforced by the scale of the market reforms being carried out in the country. According to the World Bank Group's Country Economic Memorandum (2025), the share of foreign trade in Uzbekistan's GDP reached 71.6%; at the same time, over 2,000 state-owned enterprises operate in the economy, generating about 32% of GDP, while accession to the World Trade Organization is capable of increasing the country's GDP by approximately 17%.

In October 2024 the World Bank Group approved a package of support for Uzbekistan's reforms in the amount of about USD 800 million, aimed inter alia at developing the private sector and improving investor-protection legislation. In these conditions the maturity of corporate risk management and the ability of companies to demonstrate good-faith legal diligence become direct factors of investment attractiveness and business sustainability, which raises the problem of the legal risk map to the level of the national economic agenda.

The aim of the study is, on the basis of an analysis of advanced foreign experience and the national legal environment, to substantiate the role of the legal risk map as an instrument for transforming the legal departments of companies in Uzbekistan and to develop scientifically grounded proposals for its implementation.

The tasks: (1) to reveal the concept and legal nature of legal risk and of the legal risk map; (2) to systematize the methodology of constructing a legal risk map on the basis of ISO 31000:2018; (3) to generalize advanced foreign experience (the USA, the United Kingdom, the EU, institutional standards); (4) to assess the state of legal regulation and practice in Uzbekistan; (5) to identify no fewer than ten systemic problems; (6) to formulate conclusions and practical proposals.

The hypothesis of the study: the introduction of the legal risk map as a mandatory element of the legal department's activity is capable of transforming the legal function of an Uzbek company from a cost centre into a source of the creation and protection of value (value protection), reducing the frequency and severity of legal incidents and raising the investment attractiveness of the business.

The object of the study is the social relations arising in the course of the activity of companies' legal departments in managing legal risks. The subject is the legal risk map as an instrument of such management, the norms of national and foreign law, the doctrinal sources and the law-application practice that determine its content and the procedure for its use. The scientific novelty consists in the first comprehensive substantiation, for Uzbek legal scholarship, of the role of the legal risk map taking into account advanced foreign experience, and in the development of a model for its implementation.

2. Methods

The empirical and normative basis of the study was formed by four groups of sources. The first comprises the legislative acts of the Republic of Uzbekistan (the Civil Code, the Labour Code, the Tax Code, the resolutions of the President and the Cabinet of Ministers regulating the activity of the legal service, compliance control and the elimination of corruption risks). The second comprises the documents of international organizations: the BCBS Principles for the Sound Management of Operational Risk, the ISO 31000:2018 and ISO/IEC 31010:2019 standards, the ACC Legal Operations Maturity Model, the G20/OECD Principles of Corporate Governance (2023), EU Directive 2024/1760 (CSDDD), the UN Guiding Principles on Business and Human Rights, the UN Convention against Corruption, Council of Europe Recommendation CM/Rec(2014)7, the reports of the World Bank Group, the IMF (Article IV consultations) and the EBRD (the Transition Report). The third comprises the judgments of foreign jurisdictions and supranational courts (the USA, the United Kingdom, Russia, the European Court of Human Rights). The fourth comprises the monographs, textbooks, dissertations and scholarly articles of scholars of Uzbekistan, the states of Central Asia, the CIS, Europe, the Americas, Asia and Africa.

The work employs a complex of general-scientific and special-legal methods: the formal-legal method – for analyzing the definitions and norms regulating the activity of the legal department and risk management; the comparative-legal method – for comparing the Uzbek model with the approaches of the USA, the United Kingdom, the EU and institutional standards; the systemic-structural method – for presenting the legal risk map as an element of the overall system of corporate governance and risk management; the method of case-law analysis (case study) – for illustrating theoretical propositions with specific precedents; the content analysis of the documents of international organizations and of empirical surveys (the World Bank Enterprise Survey, OECD monitoring); and the method of legal modelling – for constructing an assessment matrix and a typology of the legal risks of an Uzbek company.

The theory of legal risk and its management has to date been formed predominantly in foreign scholarship. A fundamental contribution was made by T. Mahler (Tobias Mahler), professor at the Norwegian Research Center for Computers and Law of the Faculty of Law of the University of Oslo (Norway), Doctor of Philosophy (Ph.D.), whose doctoral thesis "Legal Risk Management" (2010) for the first time systematically adapted the ISO risk-management methodology to the legal context.

No less significant is the monograph by R. McCormick (Roger McCormick), senior research fellow of the London School of Economics and Political Science (LSE, United Kingdom), "Legal Risk in the Financial Markets", which proposed a distinction between legal risk of the first type (Type 1 – the risk of litigation) and of the second type (Type 2 – the risk of defective documentation and of flaws in the performance of a transaction) .

Of particular significance for substantiating the transition from a reactive to a proactive model is the international proactive (preventive) law movement, systematically presented in peer-reviewed editions indexed in the Scopus database. Its methodological foundations were laid by Helena Haapio, associate professor of commercial law at the University of Vaasa (Finland) and an international contract counsel of the company Lexpert, and by George J. Siedel, professor of business law (Williamson Family Professor) at the Ross School of Business of the University of Michigan (USA), who, in the article Using Proactive Law for Competitive Advantage (American Business Law Journal, 2010) and the monograph A Short Guide to Contract Risk substantiated the transition from the passive "defusing" of contracts to the proactive management of legal risks and the creation of value for business . This line is developed by Thomas D. Barton (California Western School of Law, USA), Gerlinde Berger-Walliser (University of Connecticut, USA) and Soile Pohjonen (Finland). The latest research of this school is devoted to the prevention of disputes through the proactive design of contracts.

In parallel, an autonomous conception of risk governance took shape in European scholarship. Ortwin Renn, professor and head of the Chair of Environmental Sociology of the University of Stuttgart (Germany), in the fundamental monograph Risk Governance: Coping with Uncertainty in a Complex World proposed an integrative model for dealing with risk (assessment – evaluation – management – communication), while M.B.A. van Asselt (Maastricht University, the Netherlands), together with O. Renn, developed it in the journal Journal of Risk Research. These approaches are methodologically close to the conception of the legal risk map.

In American scholarship the problematics of risk management and compliance are most systematically presented in the works of Geoffrey P. Miller, professor of law (Stuyvesant P. Comfort Professor of Law) at New York University School of Law (NYU, USA), co-director of the Program on Corporate Compliance and Enforcement, author of the world's first academic course "The Law of Governance, Risk Management, and Compliance". G. Miller regards the compliance function as an autonomous legal discipline ensuring an organization's compliance with applicable legal requirements.

The comparative-legal dimension of corporate governance, to which the management of legal risks is closely adjacent, is comprehensively revealed in the collective monograph "The Anatomy of Corporate Law" authored by leading scholars of the USA, Europe and Asia – R. Kraakman (Harvard), H. Hansmann (Yale), E. Rock (New York University), P. Davies (LSE, United Kingdom), G. Hertig (ETH Zurich), K. Hopt (director of the Max Planck Institute, Hamburg, Germany) and H. Kanda (Hideki Kanda, professor emeritus of the University of Tokyo, Japan). The authors analyse the “strategies for reducing agency problems” (legal strategies), which include institutional control over risks.

The author team of this comparative-legal monograph includes, in particular, John Armour and Luca Enriques (University of Oxford), Mariana Pargendler (Getúlio Vargas Foundation, FGV, Brazil) and Wolf-Georg Ringe (University of Hamburg), which ensures coverage of the legal orders of Europe and Latin America.

In Asian scholarship the questions of proactive legal design are developed by Marcelo Corrales Compagnucci, Doctor of Law (LL.D.) of Kyushu University (Japan) .

In the African (South African) tradition of corporate governance, risk management is institutionalized in the King Report on Corporate Governance, prepared by the King Committee under the chairmanship of Professor Mervyn E. King, a retired judge of the Supreme Court of South Africa. The current edition – King IV (2016) – enshrined the “apply and explain” principle and directly attributed risk and compliance management to the duties of the governing body. In African scholarship the problematics of directors' duties, risk management and the protection of stakeholder interests are developed by Irene-marié Esser, professor at the University of South Africa (Unisa) and senior lecturer at the University of Glasgow; M.E. King himself generalized his approaches in the monograph The Corporate Citizen: Governance for all entities, which contains a section on the relationship between risk and corporate governance.

The doctrinal foundation of risk theory in the post-Soviet space was laid as early as the Soviet period. The monograph by V.A. Oigenzicht (professor of the V.I. Lenin Tajik State University, Dushanbe) “The Problem of Risk in Civil Law” is recognized as a classic; it for the first time systematically developed the theory of the allocation of risks and defined risk as the subject's psychological attitude towards the result of his own actions or those of other persons, expressed in the conscious acceptance of negative consequences. In the scholarship of the CIS states the problematics of legal risks are developed by Yu.A. Tikhomirov, Doctor of Juridical Sciences, professor, scientific director of the Institute of Legislation and Comparative Law under the Government of the Russian Federation, who defines legal risk as the probable occurrence of an event and the performance of actions entailing negative consequences for the realization of a legal decision and capable of causing damage to the sphere regulated by it .

The questions of the liability of the bodies of a legal entity and of corporate legal relations were elaborated in detail in post-Soviet doctrine by A.E. Molotnikov (Candidate of Juridical Sciences, associate professor of the Department of Entrepreneurial Law of the Faculty of Law of Lomonosov Moscow State University) and D.V. Lomakin (Doctor of Juridical Sciences, professor of the Department of Civil Law of the same faculty).

The corporate-law dimension of liability for the management of legal risks is developed in the doctrine of the CIS states by I.S. Shitkina (Doctor of Juridical Sciences, professor of the Department of Entrepreneurial Law of the Faculty of Law of Lomonosov Moscow State University) and O.V. Gutnikov (Doctor of Juridical Sciences, chief research fellow of the Institute of Legislation and Comparative Law under the Government of the Russian Federation); the case law of the CIS states has established the director's duty to organize properly the management system of a legal entity .

The general-theoretical foundation of legal riskology is laid in the monograph by professor A.A. Aryamov, “The General Theory of Risk: A Legal, Economic and Psychological Analysis”.

The questions of the concept, classification and allocation of risks in law continue to be elaborated in the latest research as well: M.Yu. Osipov proposed a classification of risks in law, while F.A. Vyacheslavov investigated the allocation of risks as an autonomous category of civil law. With regard to the corporate sphere, the works of I.S. Shitkina, professor of the Department of Entrepreneurial Law of the Faculty of Law of Lomonosov Moscow State University, head of the master's programme “Corporate Law”, are of fundamental significance; they reveal the organization of legal work and the system of corporate governance, which form the institutional environment for the legal risk map.

With regard to the legal support of business – the function most closely related to the subject of the present study – the works of I.V. Ershova, professor, Honoured Lawyer of the Russian Federation, head of the Department of Entrepreneurial and Corporate Law of the Kutafin Moscow State Law University (MSAL), prepared in co-authorship with G.D. Otnyukova and L.V. Andreeva, are foundational , as is the textbook edited by

E.P. Gubin, Doctor of Juridical Sciences, professor of Lomonosov Moscow State University, and P.G. Lakhno.

In the legal scholarship of Central Asia a weighty contribution to the theory of private law was made by M.K. Suleimenov, professor, academician of the National Academy of Sciences of the Republic of Kazakhstan, director of the Research Institute of Private Law of Caspian University (Almaty), who regards law as a system in which risk management acts as a function of reconciling private and public interests. In Uzbekistan the civil-law foundation was laid by the works of Kh.R. Rakhmankulov, academician of the Academy of Sciences of the Republic of Uzbekistan, professor, one of the authors of the official Commentary to the Civil Code of the Republic of Uzbekistan; however, the category of the legal risk map as an autonomous management instrument has not been systematically developed in domestic doctrine.

Institutional approaches to the management of legal risks are enshrined in the acts of international organizations – the Basel Committee on Banking Supervision (BCBS), the International Organization for Standardization (ISO), the Association of Corporate Counsel (ACC), the G20/OECD Principles of Corporate Governance (2023), the documents of the World Bank Group, the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD), as well as in the recommendations of the Council of Europe on the protection of whistleblowers. At the same time, no comprehensive scholarly-applied studies of the role of the legal risk map specifically in the conditions of Uzbekistan have been conducted, which determines the scientific novelty of the work.

The geographical coverage of the doctrinal base includes scholars of Uzbekistan (Kh.R. Rakhmankulov, O. Okyulov, B.B. Samarkhodzhaev), Central Asia (M.K. Suleimenov – Kazakhstan, V.A. Oigenzicht – Tajikistan), the CIS states (Yu.A. Tikhomirov, A.A. Aryamov, I.S. Shitkina et al.), Europe (T. Mahler, R. McCormick, K. Hopt, P. Davies), the USA (G.P. Miller, R. Kraakman, H. Hansmann, E. Rock), Asia (H. Kanda – Japan) and Africa (M.E. King – South Africa) . The empirical surveys of Uzbekistan's business environment relied, in particular, on the World Bank Enterprise Survey of 2024, the IMF Article IV consultations (2024) and the EBRD Transition Report 2024–25.

3. Results

1. The concept and legal nature of legal risk. In international regulatory practice legal risk is institutionalized as a constituent part of operational risk. The Basel Committee on Banking Supervision, in the document “Principles for the Sound Management of Operational Risk” (2011), defines operational risk as the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and expressly states that this definition includes legal risk.

At the same time, the Committee specifies that legal risk includes, but is not limited to, exposure to fines, penalties, or punitive damages resulting from supervisory actions, as well as private settlements.

Professor R. McCormick proposed a recognized typology: legal risk of the first type (Type 1) is connected with the risk of being held liable (the risk of judicial and regulatory prosecution), while legal risk of the second type (Type 2) is connected with the defectiveness of legal documentation and flaws in the performance of a transaction. The historical impulse for recognizing legal risk as an autonomous category was the judgment of the House of Lords in the case of Hazell v. Hammersmith and Fulham London Borough Council [1992] 2 AC 1, after which the Bank of England established the Legal Risk Review Committee and, later, the Financial Markets Law Committee (FMLC).

Table No. 1.

TYPOLOGY OF LEGAL RISKS

Basis of classification	Type of risk	Content	Approach to management
After R. McCormick	Type 1	Risk of litigation, sanctions and non-performance of obligations	Compliance, procedures, controls

After R. McCormick	Type 2	Risk of changes in the law and of legal uncertainty	Monitoring of legislation, scenario analysis
After R. Kaplan and A. Mikes	Preventable	Internal breaches of rules and procedures	Rules, internal control, compliance
After R. Kaplan and A. Mikes	Strategic	Taken on knowingly for the sake of expected benefit	Management within the risk appetite
After R. Kaplan and A. Mikes	External	Uncontrollable external events	Scenario planning, stress tests

In the ISO 31000:2018 standard “Risk management – Guidelines”, risk is defined as the effect of uncertainty on objectives, and risk management as coordinated activities to direct and control an organisation with regard to risk. This universal approach is fully applicable to legal risk as well.

Figure No. 2.

THE PROCESS OF LEGAL RISK MANAGEMENT UNDER ISO 31000:2018

<table>
<tr><td colspan="5">⟳ Communication and consultation (at all stages)</td></tr>
<tr><td>① Establishing the context</td><td>② Identification</td><td>③ Analysis</td><td>④ Evaluation</td><td>⑤ Treatment</td></tr>
<tr><td colspan="5">⟳ Monitoring and review (continuously)</td></tr>
</table>

In the scholarship of the CIS states legal risk is regarded as a multi-aspect category combining an objective (the uncertainty of the legal environment) and a subjective (the behaviour of participants) side. Generalizing the approaches set out above, legal risk is understood in the present work as the measurable likelihood of the occurrence for an organization of adverse legal consequences (losses, liability, invalidity, loss of a right, reputational damage) as a result of the uncertainty of the legal environment, defects in legal decisions or non-compliance with regulatory requirements.

The civil-law nature of legal risk as the allocation of adverse pecuniary consequences is revealed in detail by E.A. Sukhanov, professor, head of the Department of Civil Law of the Faculty of Law of Lomonosov Moscow State University: risk acts as one of the systemic institutions of civil law. The dogmatics of corporate relations and of the civil-law liability of persons managing a legal entity are developed by D.I. Stepanov (head of the Department of Corporate Law of the Alekseev Research Centre of Private Law under the President of the Russian Federation) and O.V. Gutnikov (chief research fellow of the Institute of Legislation and Comparative Law under the Government of the Russian Federation), who substantiated the conception of corporate liability as an autonomous type of civil-law liability .

The risk-oriented analysis of insolvency (bankruptcy) as a special legal status is developed in the works of S.A. Karelina (professor of the Department of Entrepreneurial Law of Lomonosov Moscow State University), while the dogmatics of corporate law are developed in a collective textbook with the participation of A.V. Gabov (corresponding member of the Russian Academy of Sciences) and D.V. Lomakin (professor of MSU) .

2. The legal risk map as an instrument: the methodology of construction. The legal risk map is an applied projection of the universal ISO 31000 risk-management process onto the legal function. The process includes: establishing the context; identifying risks; analysing them (assessing likelihood and impact); comparative evaluation (ranking); treatment (selecting response measures); monitoring, review, communication and consultation.

Table No. 3.

STAGES OF CONSTRUCTING THE LEGAL RISK MAP

AND THE ALLOCATION OF RESPONSIBILITY

Stage	Content	Responsible unit ("line of defence")
Establishing the context	Determining the scope, assessment criteria and the company's risk appetite	Board of directors, management
Identification	Identifying legal risks across business processes, contracts, disputes and rule-making	Legal department, process owners (1st line)
Classification	Assigning to types (Type 1 / Type 2), categories and sources	Legal department (2nd line)
Assessment	Determining likelihood and impact, constructing the matrix and the heat map	Legal department, risk management (2nd line)
Ranking	Prioritising risks by zones (low / medium / high)	Legal department (2nd line)
Treatment (control)	Selecting measures: avoidance, reduction, transfer, acceptance; assigning responsible persons	Legal department, business units
Monitoring and review	Maintaining a "living" map, dashboards, early-warning indicators	Legal department; internal audit (3rd line)

In practice the map is constructed in the form of a matrix in which likelihood of the risk's materialization is plotted on one axis and the severity of its impact on the other; their intersection gives the risk level, visualized by colour (green – low, yellow – medium, red – high). Below is a model version of a legal-risk assessment matrix for an Uzbek company (Table No. 4).

Table No. 4.

LEGAL-RISK ASSESSMENT MATRIX (HEAT MAP):

LEVEL = LIKELIHOOD × IMPACT

Likelihood \ Impact	Minor (1)	Moderate (2)	Major (3)	Critical (4)
High (4)	M 4	H 8	H 12	H 16

Medium (3)	L 3	M 6	H 9	H 12
Low (2)	L 2	M 4	M 6	H 8
Rare (1)	L 1	L 2	L 3	M 4

Legend: L – low risk level (acceptable, monitoring); M – medium (requires reduction measures); H – high (requires immediate response and escalation to the management level).

Each identified risk is assigned in the map: a code and category; a description of the scenario; a source (norm, contract, body); an assessment of likelihood and impact; a level (from Table No. 4); an assigned response measure (avoidance, reduction, transfer – for example, insurance – or acceptance); a responsible person (risk owner); a deadline; and an early-warning indicator. The map is a "living" document and is subject to periodic review.

The mapping methodology relies on the achievements of modern risk-management science. Robert S. Kaplan (Baker Foundation Professor at Harvard Business School, USA) and Anette Mikes (professor at the University of Lausanne, Switzerland) proposed dividing risks into three categories – preventable, strategy and external – which is directly applicable to the typology of legal risks and the choice of response measures when constructing a heat map. The applied foundations of enterprise risk management were laid by James Lam (adjunct professor of finance at Babson College, USA; the first Chief Risk Officer in history) in the monograph Enterprise Risk Management: From Incentives to Controls, as well as by the works of J.R.S. Fraser and Betty J. Simkins (professor at Oklahoma State University, USA) and R.R. Moeller, who systematized the COSO ERM model. The theoretical framework is complemented by the works of S. Bainbridge (William D. Warren Distinguished Professor of Law, University of California, Los Angeles), who substantiated the conception of "director primacy", and R. Kagan (University of California, Berkeley) on "adversarial legalism", which raises the legal costs of business.

A risk-based methodology of regulation was substantiated by J. Black (professor of law at the London School of Economics and Political Science; head of Nuffield College, University of Oxford), while the strategic significance of legal knowledge for the company and the link between legal risk and the duty of oversight were revealed by R. Bird (professor of business law at the University of Connecticut); the regulatory-technological dimension is presented in the works of K. Yeung (professor at the University of Birmingham) . A comparative-legal methodology was systematically set out by M. Siems (professor of private law and market regulation at the European University Institute, Florence).

The sociological dimension of risk management is revealed in the works of Michael Power (professor of accounting at the London School of Economics and Political Science, director of the ESRC Centre for Analysis of Risk and Regulation): in the monograph Organized Uncertainty he shows that the spread of risk management generates a demand for the provability and documentability of management actions, turning internal control into an autonomous institution.

Methodologically close is the approach of "management-based regulation" of Cary Coglianese (Edward B. Shils Professor of Law, University of Pennsylvania; director of the Penn Program on Regulation), which shifts the emphasis from detailed prescriptions to the construction and assessment of internal risk-management systems. The peculiarities of American "adversarial legalism", which raises the legal and litigation costs of business, were described by R. Kagan (University of California, Berkeley).

The typology of the legal risks of an Uzbek company, relevant for constructing the map, is presented in Table 5.

Table No. 5.

TYPOLOGY OF THE LEGAL RISKS OF AN UZBEK COMPANY

(FOR MAPPING PURPOSES)

Risk category	Content and typical scenarios
Regulatory (legislative)	Frequent changes in regulatory requirements, retroactivity, inconsistency of subordinate legislation; the risk of non-compliance with licensing and sectoral requirements.
Contractual and documentary	Defectiveness of documentation, incompleteness of terms, defects of form, invalidity of transactions, inconsistency of arbitration clauses (Type 2 risk under McCormick).
Litigation-procedural	Claims by counterparties, consumers, employees; enforcement proceedings; the risk of losing and of recovery (Type 1 risk).
Compliance and anti-corruption	Breach of anti-corruption, antimonopoly and tax legislation and of AML/CFT legislation; sanctions by regulators.
Corporate	Disputes between participants, challenges to decisions of bodies, breach of shareholders' rights, the liability of officers.
Labour	Unlawful dismissals, breach of the procedure for formalisation, disputes over compensation; bullying and harassment in the workplace.
Tax and customs	Additional assessments, penalties and fines as a result of the incorrect qualification of operations and documentation.
Cross-border and sanctions-related	Conflicts of applicable law, recognition of foreign judgments, secondary sanctions, currency restrictions.
Intellectual property	Infringement of rights to trademarks and copyright objects, including in advertising; risks in the use of AI content.
Reputational (secondary)	Damage to business reputation and brand value derived from other legal risks.

3. Advanced foreign experience.

3.1. The United States of America: **the duty of oversight.** The most developed legal model of liability for the management of legal risks was developed by the courts of the State of Delaware. In the case of In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996), Chancellor W. Allen formulated the doctrine according to which the board of directors is obliged in good faith to ensure the functioning of a reasonable information and reporting system enabling legal risks to be identified in a timely manner; in that case the absence of such a system led to sanctions exceeding USD 250 million .

The doctrine of corporate compliance and the duty of oversight in the USA is developed by W. Laufer (professor at the Wharton School of the University of Pennsylvania), E. Pollman (Perry Golkin Professor of Law, University of Pennsylvania Carey Law School) and H. Sale (professor of law at Georgetown University), who develops the conception of the "publicness" of the corporation.

The evolution of the duty of oversight and of the compliance function in US doctrine was generalized by J. Arlen (Norma Z. Paige Professor of Law, New York University; director of the Program on Corporate Compliance and Enforcement) and S. Buell (professor of law at Duke University). The political-economic and theoretical foundations of corporate governance were revealed by R. Gilson (professor of Stanford and Columbia universities), M. Roe (David Berg Professor of Law, Harvard Law School), R. Romano (Sterling Professor of Law, Yale University) and L. Stout (professor of corporate and business law at Cornell University).

Table No. 6.

KEY JUDGMENTS ON THE DUTY OF OVERSIGHT

(CAREMARK AND ITS EVOLUTION)

Case	Jurisdiction, year	Legal position	Source
Graham v. Allis-Chalmers	Delaware (USA), 1963	In the absence of "red flags", the board is not obliged to build a monitoring system	188 A.2d 125 (Del.)
In re Caremark	Delaware, 1996	Duty to create a reasonable information and reporting system	698 A.2d 959 (Del. Ch.)
Stone v. Ritter	Delaware, 2006	Caremark as an element of the fiduciary duty of good faith	911 A.2d 362 (Del.)
Marchand v. Barnhill	Delaware, 2019	Oversight of a "mission-critical" risk (product safety)	212 A.3d 805 (Del.)
In re Clovis Oncology	Delaware, 2019	Control of compliance with regulatory requirements (clinical trials, FDA)	2019 WL 4850188 (Del. Ch.)
In re Boeing	Delaware, 2021	Safety as a mission-critical risk; duty of monitoring	C.A. No. 2019-0907 (Del. Ch.)
In re McDonald's	Delaware, 2023	Extension of the duty of oversight to officers	C.A. No. 2021-0324 (Del. Ch.)

The duty-of-oversight doctrine received further development in the judgment of the Delaware Supreme Court in the case of Stone v. Ritter (2006): the court confirmed that the Caremark criteria constitute a necessary condition of directors' liability for oversight, and placed this duty within the framework of the fiduciary duty of loyalty and good faith. In that case the shareholders of the bank AmSouth Bancorporation sought to hold the directors liable for the company's payment of about USD 50 million in fines for violations of the legislation on bank secrecy and anti-money-laundering (BSA/AML). A doctrinal analysis of these cases is presented in the works of Stephen M. Bainbridge, professor of law at the University of California, Los Angeles School of Law (UCLA, USA).

The practical application of the oversight doctrine to the management of mission-critical risks is illustrated by the case of In re The Boeing Company Derivative Litigation (2021): the Delaware Court of Chancery recognized flight safety as a zone of mandatory oversight by the board of directors and found that the board had not created a system for monitoring the operational safety of the 737 MAX aircraft; the case was settled for a record USD 237.5 million with the adoption of corporate reforms. This precedent confirms the value of the legal risk map as an instrument for identifying and monitoring mission-critical risks.

The conception of "mission-critical" oversight was confirmed by the judgment in In re Clovis Oncology, Inc. Derivative Litigation (2019): the Delaware Court of Chancery indicated that in a highly regulated sphere the board of directors is obliged to track the "red flags" of compliance with regulatory requirements (the procedure for clinical trials and regulatory approval), and that ignoring such signals constitutes a breach of the duty of oversight. The evolution of this duty in doctrine was generalized by J. Arlen (Norma Z. Paige Professor of Law, New York University; director of the Program on Corporate Compliance and Enforcement).

The evolution of the oversight doctrine was continued by the judgment in In re McDonald's Corporation Stockholder Derivative Litigation (2023): the Delaware Court of Chancery for the first time recognized that the duty of oversight is borne not only by directors but also by officers – within the limits of their sphere of responsibility, including the Chief Legal Officer with respect to legal matters; the occasion was ignored "red flags" about harassment . The institutional role of "gatekeepers" – lawyers, auditors and other professionals – in the system of corporate governance was substantiated by J. Coffee Jr. (Adolf A. Berle Professor of Law, director of the Center for Corporate Governance at Columbia University, USA). At the international level the employer's duty to identify and assess the risks of violence and harassment is enshrined in ILO Convention No. 190 (2019), which directly includes this category in the map of legal and compliance risks.

The Caremark doctrine received development in the judgment of the Delaware Supreme Court in the case of Marchand v. Barnhill, 212 A.3d 805 (Del. 2019). The case is connected with an outbreak of listeriosis caused by the products of the company Blue Bell Creameries, which led to the deaths of three persons. The court, under the chairmanship of Chief Justice L. Strine, established that the board of directors had not created any system for monitoring and reporting on the risk of product safety that was key for a food company – it had no specialized committee, did not receive regular information on the results of inspections and did not react to alarming signals – and recognized this as a breach of the fiduciary duty of loyalty. Thereby liability was confirmed for the "utter failure" to make good-faith efforts to control mission-critical risks.

The precedents of Caremark and Marchand are of direct significance for substantiating the legal risk map: they transform it from an optional management convenience into an instrument for discharging the fiduciary duty – documentary evidence that the company has built and operates a system for identifying, assessing and escalating material legal and regulatory risks. The absence of such a system in itself becomes a ground for the liability of the management bodies.

In the case of Marchand v. Barnhill, 212 A.3d 805 (Del. 2019), the Delaware Supreme Court (opinion of Chief Justice L. Strine) reinstated the claim against the board of directors of the company Blue Bell Creameries: the outbreak of listeriosis, which led to the deaths of three persons and the recall of all products, was a consequence of the board's failure to implement any system for monitoring product safety – a "mission-critical" area. The court qualified the inaction as a breach of the fiduciary duty of loyalty.

The significance of this line of precedents for the subject of the study is fundamental: the legal risk map serves as documentary evidence that the organization has in good faith implemented a reasonable system for identifying and monitoring legal risks, and thereby serves as an instrument for protecting both the company itself and its management from liability.

3.2. The United Kingdom: the institutionalization of legal risk. The British model is characterized by the early institutionalization of the category of legal risk: the establishment by the Bank of England of the Legal Risk Review Committee and the subsequent activity of the Financial Markets Law Committee (FMLC), which systematizes the sources of legal uncertainty, created a methodological basis for managing Type 1 and Type 2 risks. This model demonstrates the value of sectoral infrastructure for the identification of legal risks.

The British tradition of corporate and financial law is represented by E. Ferran (professor of company and securities law at the University of Cambridge, Fellow of the British Academy) and C. Hodges (emeritus professor of justice systems at the University of Oxford, OBE), who develops the conception of "ethical business practice and regulation" (ethical business regulation). The duty of directors to inform themselves of the company's affairs and not to abstain from control over delegated functions was confirmed in the case of the collapse of the bank Barings.

The British and pan-European tradition of regulating financial and legal risks is represented by N. Moloney (professor of financial markets law at the London School of Economics and Political Science) and J. Armour (Hogan Lovells Professor of Law and Finance, (University of Oxford) together with J. . Gordon (Richard Paul Richman Professor of Law, Columbia University). A comparative-legal methodology of corporate governance was systematically developed by K. Hopt (professor, emeritus director of the Max Planck Institute for Comparative and International Private Law, Hamburg), as well as by M. Moore and M. Petrin (University College London).

3.3. Institutional standards and the Association of Corporate Counsel (ACC). The Association of Corporate Counsel (ACC) – the world's largest professional association of corporate counsel – developed the Legal Operations Maturity Model (ACC Legal Operations Maturity Model, version 2.0), enabling a legal department to assess the level of maturity of its functions (early, intermediate, advanced), including functions aimed at anticipating and reducing risks (tracking new norms, trends in consumer complaints, deficiencies identified in the course of audits).

In doctrinal terms this line is developed by J. Miller (G.P. Miller), professor of law at New York University School of Law, who regards the compliance function as an autonomous legal institution ensuring built-in (ex ante) control over compliance with applicable legal requirements and thereby complementing the judicial (ex post) mechanism of liability; the legal risk map is a working instrument of such a function.

3.4. Risk-management standards. A universal methodological framework is set by ISO 31000:2018 and the conception of the "three lines of defence", according to which responsibility for risk management is borne by: the first line – operational management; the second – the control and compliance functions (including the legal function in its risk-oriented part); the third – internal audit. At the inter-state level this framework is enshrined by the G20/OECD Principles of Corporate Governance (2023): according to Principle V, the board of directors is obliged to oversee the risk-management system and the mechanisms ensuring the company's compliance with applicable legislation (tax, competition, labour, human rights, environmental, equal-opportunity, digital security and personal-data protection). A comparative overview of foreign sources is presented in Table No. 7.

A risk-based approach to the management of compliance risks is also enshrined in the international standards of the Financial Action Task Force (FATF).

Table No. 7.

COMPARATIVE OVERVIEW OF FOREIGN APPROACHES

RELEVANT TO THE LEGAL RISK MAP

Source / jurisdiction	Key mechanism	Significance for the risk map
USA (Delaware): Caremark / Marchand	The board's fiduciary duty to implement and control a risk-monitoring system	The risk map – evidence of good-faith oversight and protection against liability

United Kingdom: FMLC / Bank of England	Sectoral infrastructure for identifying sources of legal uncertainty	Methodology for classifying Type 1 / Type 2 risks
BCBS (Basel)	Legal risk as part of operational risk; principles of management	Accounting for legal risk in loss data; integration into operational risk management
ISO 31000:2018 / 31010:2019	Universal process and risk-assessment techniques	Methodological framework for constructing the map
ACC (USA/worldwide)	Legal Operations Maturity Model	Benchmarking of the legal department's proactive risk functions
G20/OECD (2023)	Board oversight of risk management and compliance (Principle V)	The risk map – an instrument for discharging the duty of oversight
South Africa: King IV (2016)	Risk and compliance management as a duty of the governing body	The risk map – an element of "apply and explain"

3.5. The European Union and the UN: risk-based due diligence. The latest vector of the institutionalization of legal risk is set by Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence (Corporate Sustainability Due Diligence Directive, CSDDD). The Directive obliges the companies falling within its scope to implement risk-based due diligence: to integrate it into policy and risk-management systems, to identify and assess actual and potential adverse impacts on human rights and the environment, to prioritise them by the severity and likelihood, and it provides for civil liability for failure to discharge these duties.

The extraterritorial effect of the Directive is of fundamental importance: through chains of activities, its requirements extend to counterparties from third countries as well, including Uzbek exporters (textiles, fruit and vegetable products, chemicals) supplying goods to the EU market. Thereby, for export-oriented companies of Uzbekistan, the construction of a legal risk map becomes not an optional management practice but a condition of access to the European market and a factor of competitiveness.

The methodological basis of such an approach is the Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in 2011, which introduced the standard of "human rights due diligence" – identifying, preventing and mitigating adverse impacts. In the sphere of countering corruption, a similar framework is set by the UN Convention against Corruption (UNCAC, 2003), to which the Republic of Uzbekistan is a party and which requires the implementation of preventive anti-corruption measures in the public and private sectors.

Thus, in EU law and in the standards of the UN the legal risk map acquires a new quality: from an internal management instrument it is transformed into a normatively expected element of due diligence, the failure to discharge which entails legal liability and reputational losses, and for Uzbek companies– also barriers in cross-border trade.

Table No. 8.

COMPARISON OF INTERNATIONAL RISK-MANAGEMENT STANDARDS

Parameter	COSO ERM (2017)	ISO 31000:2018	"Three Lines" (IIA, 2020)	King IV (2016)
Developer	COSO (USA)	ISO (international)	Institute of Internal Auditors	Institute of Directors of South Africa
Subject	Integration of risk management with strategy and performance	Principles and process of risk management	Allocation of roles and responsibilities	Principles of corporate governance and ethics
Key idea	Risk as part of value creation	Risk-based thinking, the management cycle	Risk owners / control / audit	"Apply and explain", responsible leadership
Role of the legal department	Co-owner of legal risks, integration into ERM	Methodology of identifying and assessing legal risks	Second line: compliance, legal support	The legal component of ethical governance

The doctrinal basis for integrating sustainable development into corporate law and EU law is developed by Beate Sjåfjell (professor, Doctor of Juridical Science, University of Oslo; visiting professor at the College of Europe), including in the collective work The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability (edited by B. Sjåfjell and C.M. Bruner, University of Georgia) and in works with J. Mähönen (University of Oslo) on reforming the duties of the board of directors for sustainable companies .

It is expedient to supplement the comparative coverage with the experience of Asia and Africa. In Asian scholarship comparative corporate governance is developed by Gen Goto (professor of law at the University of Tokyo, Japan), Umakanth Varottil (professor at the National University of Singapore) and Dan W. Puchniak (professor of law at Singapore Management University), who investigate the limits of the transplant effect of Western models into Asian legal orders . In African scholarship Emmanuel Adegbite (professor of corporate governance), Chris Ogbechie (professor at the Lagos Business School, Nigeria) and C.C. Okeahalam analyses corporate governance in the conditions of emerging markets and substantiate the need to adapt universal standards to the national institutional context – a conclusion significant for Uzbekistan as well . Also, in Asian scholarship comparative corporate governance is developed by D. Puchniak (professor of law at Singapore Management University; editor-in-chief of the Asian Journal of Comparative Law) and H. Kanda (professor emeritus of the University of Tokyo) . The African and Latin American perspectives are represented by K. Amaeshi (professor at the University of Edinburgh; the conception of "Africapitalism") and M. Pargendler (professor at Harvard Law School; previously – the Law School of the Getúlio Vargas Foundation, São Paulo, Brazil) .

Corporate law and risk regulation in Asia are studied by W. Shen (KoGuan Distinguished Professor of Law, Shanghai Jiao Tong University) and U. Varottil (professor of law at the National University of Singapore) . The African tradition of corporate governance is represented by the South African school – R. Cassim, M.F. Cassim and F.H.I. Cassim, the authors of the fundamental work “Contemporary Company Law”.

The Asian palette is supplemented by the research of Robin Hui Huang (professor of law at the Chinese University of Hong Kong) on the corporate and financial law of China and the comparative works of Chao Xi (professor at the Chinese University of Hong Kong) on boards of directors. In Central Asia the theory of corporate law is systematically developed by F.S. Karagusov (Doctor of Juridical Sciences, professor, chief research fellow of the Institute of Private Law of Caspian University, Kazakhstan): his conclusions on modernizing the structure of companies and forming the board of directors are relevant for Uzbekistan as well. In African scholarship F. Nakpodia (Durham University) and K. Amaeshi (University of Edinburgh) develop the conception of “Africapitalism”, linking corporate governance with the institutional context of developing economies.

The comparative-legal toolkit for analyzing legal risks is enriched by the works of C. Milhaupt (William F. Baxter–Visa International Professor of Law, Stanford University) and K. Pistor (professor of comparative law at Columbia University): on the material of corporate crises they show how the quality of legal institutions affects economic development. The British doctrine of directors' duties and of board accountability was systematically set out by E. Keay (professor of corporate and commercial law at the University of Leeds), while the modern theory of corporate governance was set out by M. Moore and M. Petrin (University College London). The African tradition of corporate and social-entrepreneurial law is represented by T. Mongalo (associate professor of law at the University of the Witwatersrand, South Africa).

4. The state of legal regulation and practice in Uzbekistan. The status and functions of the legal department in Uzbekistan are determined by Resolution of the President of the Republic of Uzbekistan of 19 January 2017 No. PP-2733 “On Measures for the Radical Improvement of the Activity of the Legal Service” and by the Regulation on the Legal Service of State Bodies and Organizations approved by it, as well as by Resolution of the Cabinet of Ministers of 1 May 2017 No. 250.

The institutional context of legal-risk management in developing jurisdictions, including Uzbekistan, is revealed in the World Bank's World Development Report 2017 Governance and the Law, which links the effectiveness of state policy with the quality of legal institutions and the rule of law.

An institutional assessment of corporate governance in the countries of operations, including Uzbekistan, is carried out by the European Bank for Reconstruction and Development (EBRD) within the framework of sectoral corporate-governance assessments, noting Uzbekistan's significant progress since 2017.

Table No. 9.

INSTITUTIONAL INDICATORS OF UZBEKISTAN

Indicator	Value	Dynamics / position	Source
Corruption Perceptions Index (CPI), scores 0–100	2024: 32	2019→2023: rise 25→33 (+8); 2024: −1 point	Transparency International
CPI ranking	2023: 121/180	Improvement of 5 positions over the year	Transparency International
Rule of Law Index (WJP)	2024: 83/142	Steady growth since 2016; strengths – order and security, criminal justice	World Justice Project
Enterprise Survey (WBES) 2024	response rate 77.7%	Assessment of obstacles to business (corruption, courts, taxes, etc.)	World Bank Enterprise Surveys

Figure No. 10.

DYNAMICS OF THE CORRUPTION PERCEPTIONS INDEX (CPI) OF UZBEKISTAN, 2019–2024 (SCORES, 0–100)

Year	Dynamics (score, 0–100)	Score
2019		**25**
2020		**26**
2021		**28**
2022		**31**
2023		**33**
2024		**32**

It is telling that the normative model directly encourages reactive, claims-and-litigation activity: the employees of the legal service receive a quarterly bonus in the amount of 5% of the sum recovered through the pre-trial and judicial settlement of disputes in the organization's favour (with an established maximum amount). Thereby work with legal consequences that have already arisen, rather than with prevented ones, is stimulated.

In parallel, a compliance contour has been formed: by Presidential Decree of 29 June 2020 No. UP-6013 systems of internal anti-corruption control ("compliance control") were introduced in many organizations, while by Presidential Resolution of 11 May 2022 No. PP-240 the mechanisms for assessing and eliminating corruption risks were improved; a number of large companies implemented an anti-corruption management system to the ISO 37001:2016 standard.

The newest and most significant step in this direction was the direct legislative enactment of risk-mapping instruments in the anti-corruption sphere. By the Law of the Republic of Uzbekistan of 22 June 2026, No. ZRU-1155, the Law "On Combating Corruption" was supplemented by Articles 19^1 "Identification and Assessment of Corruption Risks" and 19^2 "Formation of a Corruption-Risk Map". According to Article 19^1, state bodies and organizations are obliged to identify their functions with an elevated level of corruption risks, to form a list of positions with a high corruption risk and to carry out an assessment of corruption risks on a mandatory basis, while the methodology for their identification and assessment is approved by the Anti-Corruption Agency jointly with the Ministry of Justice. Article 19^2 introduces a corruption-risk map, formed in the breakdown of state bodies and organizations, territories and spheres for the purposes of determining and minimizing the level of corruption; the map is built on the basis of corruption-crime statistics, an analysis of law-application practice, the results of sociological surveys on the population's attitude towards corruption, data on the effectiveness of anti-corruption policy and information from the bodies carrying out the countering of corruption, and is maintained by the Anti-Corruption Agency. The institutional support of this mechanism is provided by the compliance and internal anti-corruption control structures of state bodies and organizations, provided for by the new Article 8^3, on which the systematic analysis, assessment and prevention of corruption risks are directly imposed. Thereby the Uzbek legislature for the first-time institutionalized risk-mapping as a normatively enshrined, methodologically supported and mandatory element of anti-corruption governance. This is of fundamental significance for the present study for three reasons. First, it confirms the receptiveness of national law to the risk-mapping methodology and creates a starting point for extending this approach from the narrow anti-corruption sphere to the entire totality of an organization's legal risks – that is, for the transition from a corruption-risk map to a comprehensive legal risk map. Second, since the new norms directly cover state bodies, organizations and enterprises with state participation, they affect precisely that segment of the economy (over 2,000 enterprises, about 32% of GDP) which is noted above as a zone of concentration of latent legal and corruption risks. Third, the corruption-risk map relates to the legal risk map as the particular to the general: the former covers predominantly one of the types of legal risks singled out in the present work (compliance and anti-corruption risk, Table No. 5), whereas the latter integrates the management of all categories of legal risks into a single system of “three lines of defence”.

However, the data of independent monitoring testify to the immaturity of the risk culture. According to the baseline report of the fifth round of the OECD's monitoring of anti-corruption reforms in Uzbekistan (2024), the Corporate Governance Code is of a recommendatory nature, while companies, despite the existence of the institution of the business ombudsman, do not report cases of corruption for fear of negative consequences; non-competitive procurement in 2023 accounted for more than half of the value volume of public procurement.

In domestic educational and scholarly literature, entrepreneurial-law problematics have been developed (for example, the textbook on economic (entrepreneurial) law edited by O. Okyulov, Doctor of Juridical Sciences, professor of Tashkent State University of Law; the works of Professor B.B. Samarkhodzhaev on investment law); however, the category of the legal risk map as an autonomous management instrument is not systematically presented in it.

The structure of the national economy gives the problem particular acuteness. According to the assessment of the World Bank Group, over 2,000 state-owned enterprises operate in Uzbekistan, accounting for about 32% of GDP; this sector is characterized by a weakness of corporate governance and limited transparency. In combination with the predominance of non-competitive procurement (more than half of the value volume of public procurement in 2023, according to OECD data), this forms an extensive field of latent legal and corruption risks, which, in the absence of a risk map and of a system for their escalation, remain unmanageable up to the moment of their materialization in the form of disputes, sanctions and reputational losses.

The need to strengthen the corporate governance of state-owned enterprises, to raise the qualifications of management, the independence of boards of directors and transparent reporting (including the transition to IFRS) is also indicated by the International Monetary Fund following the Article IV consultations (2024), separately noting the importance of adopting a law on the protection of whistleblowers and a law on conflicts of interest.

The case law of neighboring legal orders also serves as a useful reference point. In the Russian Federation the conception of “due diligence” in selecting a counterparty was introduced at the level of the highest judicial instance by Resolution of the Plenum of the Supreme Arbitrazh Court of the Russian Federation of 12 October 2006 No. 53 and was subsequently enshrined in Article 54.1 of the Tax Code of the Russian Federation. This experience shows that the preventive verification of counterparties and the documentary recording of its results – a typical element of the legal risk map – may become a legally significant circumstance affecting the allocation of liability.

5. The legal risk map in the system of corporate governance: the “three lines of defence” model. The results of the comparative analysis make it possible to place the legal risk map within the architecture of corporate governance through the “three lines of defence” model, which has received international recognition (the Institute of Internal Auditors, IIA, 2020). The first line consists of the operational and business units that take on and bear risk; the second line consists of the control, compliance and risk-management functions, to which, in its risk-oriented part, the legal department – which forms and maintains the legal risk map – also belongs; the third line is internal audit, which independently assesses the effectiveness of the first two. The legal risk map acts as the connecting document, ensuring the exchange of information between the lines and the escalation of material risks to the level of the board of directors.

Table No. 11.

FUNCTIONS OF THE LEGAL DEPARTMENT IN THE "THREE LINES OF DEFENCE" MODEL

Line	Subject	Role of the legal department
1st line (risk owners)	Business units, operational management	Legal support of transactions, pre-contractual assessment (legal due diligence), advice
2nd line (control)	Compliance, risk management, the legal department	Maintaining the legal risk map, monitoring legislation, methodology, control of compliance
3rd line (independent assurance)	Internal audit	Independent assessment of the effectiveness of legal control and of the risk map
Governing body	Board of directors, management	Approval of the risk appetite, oversight (duty of oversight), response to "red flags"

Figure No. 12.

THE "THREE LINES OF DEFENCE" MODEL

AND THE PLACE OF THE LEGAL DEPARTMENT (IIA, 2020)

Governing body (board of directors): accountability to stakeholders		
① First line	② Second line	③ Third line
Risk owners: operational management, business units	Control functions: compliance, risk management, the legal department (maintaining the map)	Internal audit: independent objective assurance

It is precisely at this level that the duty-of-oversight doctrine, formulated in the cases of In re Caremark and Marchand v. Barnhill, acquires its practical expression: the board of directors is obliged to satisfy itself of the existence of a working system for identifying, assessing and escalating legal risks, while the risk map and the register of incidents serve as documentary confirmation of the good-faith discharge of this duty. Attaining an advanced stage of maturity under the ACC Legal Operations Maturity Model presupposes that the legal department does not react to events that have already occurred but systematically forecasts and prevents them, relying on the risk map as a continuously updated management instrument.

An authoritative source of the three-lines-of-defence model is the updated edition of the Institute of Internal Auditors (IIA) – The Three Lines Model (2020), which shifted the emphasis from a purely defensive function to the creation of value and the interaction of the first (operational units), second (compliance and risk management) and third (internal audit) lines under the oversight of the governing body. The theoretical foundations of corporate governance, into the system of which the legal risk map is embedded, were developed by R.I. (Bob) Tricker – the author of the first book under the title Corporate Governance (1984) and of the fundamental textbook Corporate Governance: Principles, Policies, and Practices (Oxford University Press) – and by Christine A. Mallin. At the level of international standards, risk-based due diligence is enshrined by the OECD Due Diligence Guidance for Responsible Business Conduct (2018).

The behavioral side of compliance is emphasized by D. Langevoort (professor at Georgetown University, USA): the effectiveness of control is determined by a “culture of compliance”, and not only by formal procedures. The regulatory lessons of the financial crisis for the architecture of supervision are generalised in a collective monograph with the participation of N. Moloney (professor at the London School of Economics).

The empirical measurement of compliance and the institution of the independent monitor are studied by V. Root Martinez (professor of law at Duke University), while the logic and limits of the criminal-law treatment of corporations are studied by S. Buell (professor of law at Duke University). The standards for the protection of whistleblowers were clarified by the European Court of Human Rights in the judgment of Halet v. Luxembourg (2023), developing the criteria of the case of Guja v. Moldova with regard to the balance between the public interest and harm to the employer.

The applied value of the model for Uzbekistan consists in the fact that many legal risks, traditionally remaining out of sight, become manageable only where a map and channels of communication exist. An illustrative example is the risks connected with bullying and harassment in the workplace: without a formalized channel for reporting (whistleblowing), an assessment of the likelihood and severity of consequences and the establishment of response measures, such risks materialize into labour disputes, reputational damage and sanctions. Their inclusion in the legal risk map, alongside contractual, regulatory and corruption risks, transfers their management from the plane of reaction to the plane of prevention.

The significance of reporting channels is confirmed both by international standards and by case law. The Council of Europe, in Recommendation CM/Rec(2014)7, called upon states to create normative, institutional and judicial mechanisms for the protection of whistleblowers and to encourage internal procedures for reporting violations within organizations .

The European Court of Human Rights in the case of Guja v. Moldova (Grand Chamber) recognized that the dismissal of an employee for the good-faith disclosure of information of public interest violates Article 10 of the Convention for the Protection of Human Rights, and formulated six criteria for the lawfulness of such disclosure. Thereby the legal risk connected with the persecution of a whistleblower receives judicial protection, while its mapping and the provision of a protected channel become for the company a means of reducing both labour-law and reputational risk.

4. Discussion

On the basis of a comparison of foreign experience and national practice, twelve systemic problems impeding the full-fledged implementation of the legal risk map in the activity of the legal departments of companies in Uzbekistan are singled out.

Problem 1. Conceptual-terminological uncertainty. In the legislation of Uzbekistan there are no statutory definitions of “legal risk” or “legal risk map”. The concept of “risk” is used fragmentarily (predominantly with regard to corruption and fiscal risks), without a single methodological framework. The absence of a generally accepted conceptual apparatus makes impossible the uniform identification and comparison of risks between units and companies, and also complicates the normative enactment of a duty to map them.

Problem 2. The reactive paradigm and the normatively enshrined incentives towards it. As shown above, the current model of bonuses for the legal department (5% of recovered sums) institutionally entrenches a claims-and-litigation orientation. The lawyer is motivated to “win disputes” rather than to “prevent” their arising. Meanwhile, international practice (Caremark, Marchand) and the ISO 31000 standard proceed from the priority of prevention. There is a value-and-incentive contradiction between the national norm and the advanced approach, requiring a correction of the system of assessing the effectiveness (KPI) of the legal function.

Problem 3. The absence of a national methodology and standard of mapping. The ISO 31000:2018 standard and the ISO/IEC 31010:2019 techniques are not localised and not adapted for the legal function; there are no national methodological recommendations on the identification, assessment (likelihood × impact), ranking and treatment of legal risks. As a result, even motivated companies are compelled to reinvent the methodology, which generates incomparability and a low quality of assessments.

Problem 4. The organisational disunity of the legal, compliance and risk functions. The legal service (PP-2733), anti-corruption compliance (UP-6013) and financial risk management in Uzbek companies, as a rule, operate in isolation, without integration into a single "three lines of defence" model. The legal risk map, which requires cross-functional interaction and escalation to the level of the board, turns out to be "ownerless". Foreign experience shows that it is precisely the board of directors that bears the fiduciary duty to ensure a working monitoring system (Marchand), whereas in Uzbekistan this duty is not normatively articulated.

The effectiveness of the compliance and risk functions is determined not only by formal structures but also by behavioral factors. As the research of Benjamin van Rooij (professor at the University of Amsterdam) and Adam Fine, as well as of Eugene Soltes (professor at Harvard Business School, author of the book Why They Do It), shows, rules in themselves do not ensure lawful conduct if they are not reinforced by organizational culture and motivation; the legal risk map and the register of incidents serve as instruments of such behavioral tuning .

At the same time, excessive formalization generates the "compliance paradox": this is pointed out by W. Laufer (the Wharton School, USA), who substantiated the risk of shifting liability under formal compliance, S. Griffith, who described the "era of compliance" in corporate governance, and B. Garrett (professor at Duke University School of Law, USA), who showed in the book Too Big to Jail the limits of the criminal prosecution of corporations. Their conclusions confirm that the legal risk map is valuable not in itself but as an instrument of substantive, rather than imitative, risk management.

Finally, the structure of incentives and accountability of management, which affects the propensity to take on legal risks, was revealed by L. Bebchuk (James Barr Ames Professor of Law, Economics and Finance, director of the Program on Corporate Governance of Harvard Law School) and J. Fried in the book Pay without Performance, while the political-economic roots of the "strong managers, weak owners" configuration were revealed by M. Roe (David Berg Professor of Law, Harvard Law School) .

Problem 5. The problem of the quantitative assessment of legal risk. Basel attributes legal risk to operational risk and presupposes its measurability; however, in practice quantitative assessment (through expected losses = likelihood × impact) is hampered by the qualitative nature of many legal risks and by a deficit of statistics. The absence of methods for translating legal scenarios into monetary and probabilistic values reduces the evidentiary force of the map for financial management and the board.

Problem 6. A deficit of data and the absence of registers of legal incidents. An effective map is calibrated on historical data about incidents (a legal loss event database): disputes lost, fines, transactions declared invalid. In Uzbekistan there are neither corporate registers of legal incidents nor sufficiently open and structured judicial statistics suitable for actuarial analysis. This deprives the assessment of risks of an empirical basis.

Problem 7. The personnel-and-competence gap. The training of lawyers is oriented towards procedural and rule-making work rather than towards risk analytics, statistics and the design of control procedures. The role of a "legal risk officer" is absent from staffing structures. By the logic of the ACC Maturity Model, the transition to the advanced level requires new competences and roles, the deficit of which slows implementation.

Problem 8. The weak integration of anti-corruption and compliance risk into the map. OECD data testify that companies do not disclose information about corruption incidents, while the Corporate Governance Code remains recommendatory. This means that the most sensitive category of legal risks falls out of the map or is reflected in it formally. Without a culture of confidential reporting (whistleblowing) and the protection of whistleblowers, the map does not reflect the real picture of risks. The adoption of Law No. ZRU-1155, which supplemented the Law "On Combating Corruption" with Articles 19^1 and 19^2 (the identification and assessment of corruption risks and the formation of a corruption-risk map maintained by the Anti-Corruption Agency), substantially reduces the acuteness of this problem for the state sector and enterprises with state participation, while the guarantees of encouragement and protection of persons who have reported corruption introduced by the same reform (the new parts of Article 28) partially make up for the deficit of reporting channels. At the same time, these mechanisms are so far limited to the anti-corruption sphere and the circle of state bodies and organizations;

the task is to integrate the specialized corruption-risk map into a single legal risk map of the organization and to extend the analogous logic to the private sector.

Problem 9. Regulatory instability and "legislative risk". The high dynamics of rule-making during the period of reforms, alongside its undoubted benefits, generates an autonomous legislative risk – the risk that a legal decision lawful at the moment of its adoption will lose force or change its consequences. As Yu.A. Tikhomirov notes, risk is inherent in the legal sphere itself and is subject to forecasting; consequently, the monitoring of normative changes must be built into the map as an early-warning indicator.

Problem 10. Contractual and documentary risks (Type 2). In the conditions of the growth of cross-border transactions (under foreign law, with arbitration clauses), the second-type risk under McCormick – of defective documentation and of flaws in performance – increases. Inconsistency of the applicable law and the forum, defects of form, and unaccounted-for currency and sanctions restrictions are capable of nullifying the economic effect of a transaction. The mapping of contractual risks at the stage of pre-contractual work (legal due diligence) has not yet become a standard.

Problem 11. The absence of a doctrine of liability for the oversight of legal risks. In the law of Uzbekistan there is no doctrine analogous to the duty of oversight in the Caremark/Marchand cases that would turn the implementation of a legal-risk-management system into a legal duty of the management bodies. As a result, the board of directors and management have no legal incentive to finance and maintain the legal risk map.

Problem 12. The technological gap and the absence of digital tools. Maintaining a "living" map on the scale of a large company is impossible without specialized GRC systems (governance, risk and compliance) and legal-tech tools ensuring risk registers, dashboards and the automatic monitoring of changes in legislation. The deficit of such solutions and of integration competences keeps the map at the level of a static table that quickly loses relevance. Adjacent to this are the growing geopolitical, sanctions-related and cross-border risks of a transit economy, as well as the general immaturity of the risk culture and of the "tone at the top" (ISO 31000 attributes human and cultural factors to the key principles of risk management).

5. Conclusion

Legal risk represents the measurable likelihood of the occurrence of adverse legal consequences as a result of the uncertainty of the legal environment, defects in legal decisions or non-compliance with regulatory requirements; institutionally it is recognized as part of operational risk (BCBS) and is amenable to management under the universal ISO 31000 methodology.

The legal risk map is not an accounting formality but an instrument of strategic management that transforms the legal function from a cost centre into a mechanism for creating and protecting value; it simultaneously serves as evidence of good-faith oversight protecting the company and its management (in the logic of Caremark/Marchand).

Advanced foreign experience (the fiduciary duty of oversight in the USA; the institutionalization of legal risk and the FMLC in the United Kingdom; the ISO and Basel standards; the ACC Maturity Model) forms an integral methodological and institutional basis, suitable for reception taking into account the national specificity of Uzbekistan.

The national model is characterized by a reactive paradigm, normatively enshrined incentives towards claims-and-litigation work, conceptual uncertainty, the organizational disunity of the legal, compliance and risk functions, a deficit of methodology, data, competences and digital tools, as well as the absence of a doctrine of liability for the oversight of legal risks.

The implementation of the legal risk map is capable of yielding a measurable effect: a reduction in the frequency and severity of legal incidents, an improvement in the quality of corporate governance and in investment attractiveness, which is consistent with the priorities of the reforms supported by the World Bank Group and the OECD.

On the basis of the foregoing, a complex of measures is proposed at the normative, methodological, organizational and technological levels:

The normative level. To enshrine in the Regulation on the Legal Service (in development of PP-2733) the duty to maintain a legal risk map, and in the Corporate Governance Code – a recommendation on the fiduciary liability of the board of directors for the functioning of a legal-risk-management system (the reception of the duty-of-oversight standard). To introduce statutory definitions of “legal risk” and “legal risk map”. The already accomplished institutionalization of the identification and assessment of corruption risks (Article 19¹) and of the corruption-risk map (Article 19²) by Law No. ZRU-1155 may serve as a methodological and normative support for such enactment: it is expedient to use it as a national model, to ensure the methodological compatibility of the methodology approved by the Anti-Corruption Agency and the Ministry of Justice with ISO 31000:2018, and to extend the logic of risk-mapping from the anti-corruption sphere to the entire spectrum of legal risks.

Reform of KPIs. To correct the system of assessing the legal department by supplementing the indicator of recovered sums with indicators of prevented damage, of the share of contracts that have undergone a risk assessment, and of the dynamics of the number of legal incidents; to eliminate the incentive contradiction that encourages exclusively reactive work.

The methodological level. To develop and approve (for example, by the Ministry of Justice jointly with the Agency “Uzstandart”) national methodological recommendations on the management of legal risks on the basis of the localization of ISO 31000:2018 and ISO/IEC 31010:2019, including a model “likelihood × impact” matrix (Table 1) and a typology of risks (Table 2).

The organizational level. To implement the “three lines of defence” model, integrating the legal service, anti-corruption compliance (UP-6013) and risk management; to introduce the role of a legal risk officer; to establish procedures for escalating high risks to the level of the board of directors and for the periodic (no less than quarterly) review of the map.

Information infrastructure. To create corporate registers of legal incidents (a legal loss event database) and to stimulate the disclosure of sectoral judicial statistics; to introduce protected reporting channels (whistleblowing) with the protection of whistleblowers for the adequate reflection of compliance risks. A starting point here may be the electronic register of persons found guilty of corruption offences (Article 27¹ of the Law “On Combating Corruption”) already introduced by Law No. ZRU-1155, as well as the encouragement and protection of whistleblowers enshrined by the same reform: these instruments set a national model for creating corporate registers of legal incidents and protected reporting channels.

The personnel level. To include disciplines on legal riskology, compliance and legal-tech in the programmes of law schools (Tashkent State University of Law) and of the professional development of the employees of legal departments; to develop risk-analytics competences.

The technological level. To introduce, in stages, GRC and legal-tech tools ensuring the maintenance of a “living” map, dashboards for management and the automatic monitoring of changes in legislation as an early-warning indicator of legislative risk.

Contractual work. To standardize the pre-contractual assessment of risks (legal due diligence) and the mapping of second-type contractual risks (under McCormick), including the verification of the applicable law, the forum, the form and the sanctions-and-currency restrictions in cross-border transactions.

Readiness for due diligence (CSDDD-readiness). For export-oriented companies – to integrate in advance into the legal risk map the requirements of risk-based due diligence under Directive (EU) 2024/1760, the UN Guiding Principles on Business and Human Rights and the UN Convention against Corruption, so that compliance with these standards becomes a factor of preserving access to the EU market and of raising competitiveness, rather than a source of unforeseen liability and trade barriers.

Figure No. 13.

THE MAIN DIRECTIONS OF THE PROPOSALS

(BY THE “CONCLUSION” SECTION)

Complex of proposed measures for improving the management of legal risks		
① Normative level	② Reform of the legal department's KPIs	③ Methodological level

④ Organisational level ("three lines")	⑤ Information infrastructure	⑥ Personnel level
⑦ Technological level (GRC / legal-tech)	⑧ Contractual work (legal due diligence)	⑨ Readiness for CSDDD

The implementation of the proposals set out will make it possible to transform the legal departments of companies in Uzbekistan from a "fire-brigade" model into a model of a strategic business partner, and to turn the legal risk map into a systemic instrument of preventive jurisprudence corresponding to advanced international standards.

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