



THE CONCEPT AND SIGNIFICANCE OF FINANCIAL INVESTIGATION: INTERNATIONAL STANDARDS AND FOREIGN EXPERIENCE, ANALYSIS OF NATIONAL LEGISLATION

R.Kh.Rakhimov

Senior Lecturer of the Academy of the General Prosecutor's
Office of the Republic of Uzbekistan

ABSTRACT

The article is devoted to the analysis of studies by foreign scholars regarding the theory of financial investigation, in particular, the term “financial investigations”. The article discloses the international experience in the field of regulation of financial investigations and the use of this concept in national legislation.

KEY WORDS

FATF, financial investigation, proceeds of crime, criminal activity, money laundering, terrorist financing, predicate offense, money, property, seizure, confiscation, forensic.

Introduction

The rapid development of the economy, the improvement of payment systems, the introduction of new technologies in the financial system, in turn, create a number of difficulties in investigating economic crimes.

This problem is due to the increase in the number of crimes of this type, the multi-episode nature of crimes, high social risk, various new financial schemes using modern electronic technologies not only in the Republic of Uzbekistan, but also abroad, as well as the consequences of the scale of criminal activity.

Therefore, an effective financial investigation of a criminal case has several factors such as specifics of the situation, the knowledge and skills of a person conducting the investigation.

However, theoretical underpinnings play an important role in the study of this concept. Unfortunately, currently the shortcomings of theoretical concepts and rules make it difficult to develop a unified policy in the fight against economic crime.

At the same time, in our opinion, this problem is primarily related to the concept of "financial investigation". Recently, the term "financial investigation" is widely used not only in foreign, but also in the system of application of national law.

In particular, the term “financial investigation” is widely used in the activities of the Financial Action Task Force on Money Laundering (hereinafter referred to as FATF) and its regional groups.¹

¹Decree of the President of the Republic of Uzbekistan No. UP-6252 “On approval of the strategy for the development of the national system of the Republic of Uzbekistan on combating the

National organizations gain knowledge and skills on the concept of "financial investigations" in the assessment processes, trainings and seminars conducted by FATF member states to study the compliance of the system of combating money laundering, terrorist financing and financing of weapons of mass destruction with international standards.²

It should be noted that the concept of "financial investigation" in science has not been studied and is not normatively defined in the legislation. The revision of the FATF recommendations enhanced a focus on the practical components of a system for combating money laundering and terrorist financing.

One of the main tasks was to strengthen the role of standards that define the scope of functions, responsibilities and powers of law enforcement agencies in conducting financial investigations of crimes related to money laundering and terrorist financing. As a result, the updated FATF recommendations determine financial investigations as a key element of the recommendations applied by the law enforcement agencies.³

As defined in the FATF Recommendations, the term "financial investigation" refers to the investigation of the financial aspects of criminal activity. The main purpose of the financial investigation is to identify and document the facts of the movement of funds in the course of criminal activity. The link between the origin of the funds, the recipients of the funds, when they were received and where they are stored can be evidence and a source of information about criminal activity.

Determining the scope of criminal activity, identifying criminal connections and groups, searching for criminal assets, sources of terrorist financing and other assets subject to confiscation, as well as collecting evidence that can be used in court, all these will contribute to an overall increase in the effectiveness of the measures carried out by Uzbekistan against money laundering and terrorism financing.

To this end, the FATF Recommendations set out general principles for conducting financial investigations for various types of legal systems and law enforcement agencies. According to the recommendations, the main objectives of the financial investigation are:

- identification of criminal proceeds, search for assets and application of the procedure for confiscation of assets using preliminary measures such as freezing, arrest, when necessary;
- initiation of criminal cases on money laundering, when necessary;
- revealing the financial and economic foundations, undermining transnational criminal ties and gaining knowledge about the types and nature of criminal schemes.
- collection of evidence in a criminal case.

Financial investigation consists in the collection and analysis of all available information in order to carry out criminal prosecution, deprive the perpetrators of criminal proceeds and means of committing a crime.

Criminals generally prefer to maintain some level of control over their assets, which usually results in a paper trail that leads back to the perpetrator. The paper trail can also lead to other offenders and possibly to the location where the evidence and means of committing the crime are located.

legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" dated June 28, 2021. National Database of Legislation as of 06/29/2021, No.06/21/6252/0617. <http://old.lex.uz/docs/5482739>.

²See V. Teplov Financial investigation, Litres., 2018., Moscow. - P. 3-6.

³FATF Financial Investigation Guidelines: Operational Issues June 2012 Paris. – P. 8.

The ability of law enforcement agencies to conduct financial investigations and having access to financial and other information is vital to the effective fight against money laundering, predicate offenses and terrorist financing offences.⁴

Such investigations usually lead to the identification of other, previously unknown crimes, as well as assets that were acquired with the proceeds of crime and, therefore, may be subject to confiscation. At the same time, predicate crimes are any actions related to the receipt of criminal proceeds.⁵

It should be noted that the use of information of a financial nature, i.e. information relating to banking transactions, funds in accounts and property is of personal importance and the use of this information requires confidentiality. In this regard, the bodies authorized to conduct financial investigations are required to know the norms of the legislation on the rights and freedoms of the individual.

According to the FATF recommendations, each country should have a competent authority to conduct financial investigations of cases of money laundering, predicate crimes and crimes related to the financing of terrorism. It is also necessary to create bodies authorized to search, identify and seize property and other assets subject to confiscation.

Financial investigation should be an integral part of the overall strategy for combating crime. Based on this, it is necessary to develop comprehensive legislative measures that will reflect the role of financial investigation as an integral part of the work of law enforcement agencies in Uzbekistan.

Clear goals and objectives, targeted measures, sufficient resources, training for investigators, and use of data are all elements of an effective financial investigation strategy in any country. It should be noted that the recommendations use the term “parallel financial investigation”, which means conducting a financial investigation simultaneously with the underlying crimes, money laundering and terrorist financing.

Law enforcement authorities should conduct a parallel financial investigation when investigating this type of crime or send materials to such a competent authority for financial investigation.

Financial investigations can be carried out not only by the preliminary investigation or law enforcement agencies, but also by other competent authorities. For example, in the Russian Federation, the Federal Financial Monitoring Service - Rosfinmonitoring, not being a law enforcement agency, conducts financial investigations in the field of money laundering and terrorist financing.

Following the recommendations of the FATF, the study of foreign experience in this area shows that for the first time financial investigations were applied in the United States. In particular, the conduct of a financial investigation by the US Department of the Treasury is characterized by the identification

⁴FATF Recommendations: International Standards on Combating Money Laundering, the Financing of Terrorism and the Financing of Proliferation of Weapons of Mass Destruction. 2012 February., ITMCFM., 2012. - P. 141.

⁵United Nations Convention against Transnational Organized Crime (Adopted by General Assembly resolution 55/25 of November 15, 2000). - Art. 2 and 6. https://www.un.org/ru/documents/decl_conv/conventions/orgcrime.shtml.

and recording of cash flows from financial crimes and the study of financial documents related to this activity.⁶

In the structure of the US Department of the Treasury, the Internal Revenue Service and its divisions (Internal Revenue Service, IRS), the Office of Terrorism and Financial Intelligence (TFI) have been created to detect and investigate financial crimes.

The Ministry's Counter-Terrorism and Financial Intelligence Service includes the Financial Crimes Enforcement Network (FinCEN), which is engaged in combating money laundering and other financial crimes by investigating suspicious and large-scale monetary transactions, maintaining a database on such transactions and ensuring the exchange of information with competent authorities in the fight against financial crimes.

The main task of these units during the financial investigation is to identify funds associated with criminal activity and document their movement. Hence there is a high probability of detecting criminal activity by examining the facts proving where the money came from, who received it and when, how it was done.

In the US experience, the concept of financial investigation is somewhat broader, that is, the process includes not only crimes in the financial sector, but also other crimes committed using the financial sector.

For example, in American practice, the financial aspects of the drug business are also considered financial crimes.

According to William Fox, director of the US Financial Crimes Enforcement Service, the main task of the service's experts is to help law enforcement agencies identify the financial aspects of money laundering.⁷

The value of financial investigation as a practical activity lies in the application of a set of guidelines on the use of accounting, financial analysis, banking and other applied economic sciences in order to determine the financial component of criminal activity.

Some scholars believe that the concept of financial investigation coincides with the term "forensic". In particular, A. Enof and P. Omegbon described this term as an activity that includes audit, forensics and financial tools to detect fraud.

At present, this activity is widely used mainly in the private sector, i.e. activities aimed at exposing fraud and corruption of company employees, which is carried out through the analysis of financial documents and the study of computer programs and technologies.⁸

We cannot fully agree with this definition, since in accordance with international standards financial investigation is a type of activity carried out by law enforcement agencies specially authorized by the state.

As is the case with some private sector companies, audits conducted by audit firms to ensure internal financial stability do not fully include the concept of financial investigation, and these bodies cannot be included in the list of entities conducting financial investigations. At the same time, it is advisable to

⁶ Lebedev I.A., Efimov S.V. Financial investigations: Russian practice and foreign experience Audit statements. 2018. No. 10. pp. 74-77. <https://wiseeconomist.ru/poleznoe/42641-finansovye-rassledovaniya-rossijskaya-praktika-zarubezhnyj-opyt>.

⁷ The Americans call us to intelligence. Interview with William Fox // Rossiyskaya Gazeta. - 2005. - N 3780. <https://rg.ru/2005/09/09/finrazvedka-usa.html>.

⁸ Fedotov N.N.: Forensics - computer forensics - M.: Legal World, 2007. - P. 12-13.

use these organizations, the information they provide, as an auxiliary force and resource in conducting financial investigations.

In the activities of law enforcement agencies, forensic activity consists in collecting and evaluating evidence for crimes committed using computer technology.⁹ In our opinion, forensic examination is part of the financial investigation and is the subject of discussion when carried out by law enforcement or other authorized bodies.

Russian scientists E. Kondratyeva and A. Goryunov, who conducted research in this area, characterized the financial investigation as the study and collection of evidence of crimes committed in connection with money.

V. Efimov and A. Brodunov argued that financial investigations consist of the investigation of economic crimes, internal audits and supervisory functions performed by the state.¹⁰

According to N. Stakanova and T. Tatarovskaya, who also conducted the research in this area, financial investigation is the study of the financial side of criminal activity, i.e. the identification and accounting of cash flows obtained by criminal means.

They noted that when conducting financial investigations, it is advisable to ensure interdisciplinary communication, which implies the presence of economic (identification and study of the economic mechanism of the offense), legal (qualification of offenses), criminological (collection, study and consolidation of documents), forensic and psychological (identification of the psychological characteristics of a person who has committed economic crimes) factors of financial investigation.

Local scholars U. Nigmatzhanov and D. Khamzaev described the concept of financial investigation as a comprehensive study of the financial aspects of crimes, emphasizing the need for additional knowledge for a comprehensive study and an objective assessment of financial transactions.¹¹

In our opinion, when conducting a financial investigation of economic crimes, timely identifying ways to legalize proceeds from crime, studying the movement of funds and other property, taking immediate measures to seize such property, it is important to have knowledge and skills in the field of auditing financial, judicial and accounting, criminologic analysis.

In this regard, it is advisable to introduce special courses on financial investigation, including parallel financial investigations, for law enforcement officers at the level of specialized educational institutions and institutions that provide departmental training and retraining.

Based on the results of studying international standards and the experience of foreign countries, we will consider how the process of financial investigation of crimes related to money laundering is regulated by national legislation.

⁹Medvedev I.V.: Computer forensics "forensic" and cybercrime in Russia., Prologue., 2013. -p. 67-68. Access mode: <https://cyberleninka.ru/article/n/kompyuternaya-kriminalistika-forenzika-i-kiberprestupnost-v-rossii>.

¹⁰Efimov V.S., Brodunov A.N.: Mechanisms of financial investigations in domestic practice. Economics #5. 2015. -S. 55-58. Access mode:<https://cyberleninka.ru/article/n/mehanizmy-finansovyh-rassledovaniy-v-otechestvennoy-praktike>.

¹¹Nigmatzhanov U.U., Khamzaev D.D.: Training law enforcement officers on financial investigations is a matter of time. // Bulletin of the Academy of the General Prosecutor's Office of the Republic of Uzbekistan. No. 4 (40)., 2019. // Dosiup mode: Internet:<https://proacademy.uz/postfiles/sets/xc/4l/index.html>.

According to the Law of the Republic of Uzbekistan “On counteracting the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction” dated August 26, 2004, it was established that a specially authorized state body analyzes information on transactions with cash or other property, in order to identify signs of legalization of proceeds from crime, if there are sufficient grounds or upon request, send to the authorized bodies materials on transactions with funds or other property related to proceeds of crime.¹² However, this provision of the Law does not fully cover the concept of financial investigation.

It should be noted that in recent years in the Republic of Uzbekistan, special attention is being paid to the concept and procedure for conducting financial investigations. In this regard, a number of seminars and trainings had been organized with the participation of international experts, in particular, experts from the Eurasian Group (EAG) on money laundering and terrorist financing, the UN Office on Drugs and Crime, the Organization for Security and Cooperation in Europe on the procedure for conducting financial investigations on money laundering and terrorist financing, as well as on interagency cooperation regarding these issues.

Consistent work is carried out in Uzbekistan to combat the legalization of proceeds from crime, financing of terrorism and proliferation of weapons of mass destruction. In particular, on the basis of the norms and principles of international law, about 100 legislative and by-laws have been adopted, and a solid legal and institutional framework has been formed in this area. Also, practical measures aimed at strengthening cooperation had been realized in cooperation with more than 20 authoritative international organizations.¹³

In order to increase the effectiveness of countering the legalization of proceeds from crime, the financing of terrorism and proliferation of weapons of mass destruction, there was adopted the Decree of the President of the Republic of Uzbekistan No. UP-6252 dated June 28, 2021. The Decree brought into force the “Development Strategy for the national system of the Republic of Uzbekistan to combat the legalization of proceeds from criminal activity, financing terrorism and financing the proliferation of weapons of mass destruction”.

According to the decree, the main tasks are to further strengthen the state policy in this area, ensure the implementation of the FATF standards and other international legal acts in national legislation, further increase the efficiency of government bodies, improve the skills of civil servants, as well as retrain employees of financial organizations that carry out transactions with cash and other property.

¹² Law of the Republic of Uzbekistan dated August 26, 2004, No. 660-II “On counteracting the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction” // National Database of Legislation as of January 16, 2019, No. 03/19/516/2484 and of October 5, 2020, No. 03/20/640/1348). <http://old.lex.uz/docs/284542>.

¹³ Decree of the President of the Republic of Uzbekistan No. UP-6252 “On approval of the strategy for the development of the national system of the Republic of Uzbekistan on combating the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction” dated June 28, 2021. National Database of Legislation as of June 29, 2021, No. 06/21/6252/0617. <http://old.lex.uz/docs/5482739>.

In our opinion, financial investigation is the collection and study of information about any form of property, money, other assets or transactions and operations of individuals and legal entities for the following purposes:

- identification and monitoring of proceeds of crime, funds intended for the financing of terrorism, criminal items and other property, including the equivalent of property that can be transferred and confiscated by the state;
- compensation for harm caused by a crime;
- disclosure of criminal activity, identification of criminal schemes and connections, as well as disclosure of participants in the crime;
- establishment of other circumstances and evidence relevant to the case.

Bodies carrying out operational-search activities, pre-investigation checks and investigations are entitled to carry out financial investigations at any stage of their actions. Particular attention should be paid to the involvement of relevant specialists and the establishment of investigation teams.

It is advisable to establish the obligation to conduct a financial investigation for the following crimes:

- a) infliction of damage in large amount or receipt of criminal proceeds;
- b) money laundering, including if the main crime was committed outside the territory of Uzbekistan;
- c) if the crime is of a terrorist nature, including the financing of terrorism.

In other cases, financial investigations may be carried out by decision of the competent authorities, including with the priority of predicate crimes, for which the risk of money laundering is assessed as “very high” or “high” according to the results of the investigation. Any act that generates criminal proceeds is a predicate crime (including robbery, bribery, tax evasion, murder for financial gain, human trafficking, arms or drug trafficking, etc.).

In paragraph 2, the Resolution of the Supreme Court of the Republic of Uzbekistan No.1 dated February 11, 2011 “On some issues of judicial practice in cases of legalization of proceeds from criminal activity” the concept of the predicate crime is defined.

According to the Resolution of the Supreme Court, criminal funds or other property are obtained through the commission of an intentional, socially dangerous act that preceded their legalization (the predicate crime). Hence, regarding predicate crimes financial investigations can be conducted in the following ways:

- by means of carrying out operational-search activities;
- implementation of procedural actions in accordance with the Code of Criminal Procedure;
- implementation of financial analysis and other measures by the specially authorized state body for combating the legalization of proceeds from crime, the financing of terrorism and proliferation of weapons of mass destruction;
- data collection using information resources;
- use of data from open sources of information, information resources of foreign countries and the Internet;
- other measures provided for or not prohibited by law.

In conclusion, it should be noted that the financial investigation is a set of measures aimed at ensuring the strengthening of the national system for combating money laundering and the financing of terrorism, identifying and investigating predicate crimes, money laundering and terrorist financing, increasing the effectiveness of the investigation, collecting and summarizing evidence, identifying sources of funds and other property, their arrest with subsequent confiscation.

Conducting financial investigations includes operational-search activities to determine the proceeds of crime, the commission of procedural actions in accordance with the criminal procedure legislation, the conduct of financial analysis by a specially authorized body using information resources, information on the Internet and can be carried out at any stage of criminal investigation. Therefore, the main purpose of the financial investigation is to identify and ensure the confiscation of stolen funds, property, proceeds from crime, and other property for their subsequent confiscation.

Based on the above analysis, we consider it appropriate to propose the following definition of the term “financial investigation”: *financial investigation* is an activity of law enforcement agencies or other authorized bodies to investigate financial aspects of criminal activity, by collection and study of information about any form of property, money, other property obtained as a result of crimes committed through actions of individuals and legal entities.

Thus, in our opinion, not defining the concept of a financial investigation and the procedure for its conduct by legislation leads to an incomplete study of the financial aspects of criminal activity, detecting criminal proceeds and other property, as well as the confiscation of criminal proceeds and other property by the state/ The gaps if this area of study create conditions for the repeated commission of a crime by individual perpetrators or criminal groups.

For the purpose of a comprehensive study of the financial aspects of economic crimes, full disclosure of proceeds of crime, ensuring their confiscation and full disclosure of the methods of the crime the following proposals are made:

- For the purpose of timely detection and suppression of cases of legalization of proceeds from crime, there is a need to develop of a regulatory document at the government level that establishes the procedure for conducting financial investigations, including parallel financial investigations;
- There should be introduced special courses on combating money laundering, terrorism financing and the proliferation of weapons of mass destruction in the curricula of higher educational institutions;
- There is a need for development of practical recommendations on combating the legalization of criminal proceeds, financing of terrorism and financing the proliferation of weapons of mass destruction, as well as the creation of special educational and methodological and other literature;
- There should be introduced curricula to improve the qualifications and professional training of employees of higher educational institutions, including civil servants, as well as those responsible for training in combating such crimes.

The implementation of these proposals will serve to ensure the timely detection and seizure of funds and other property obtained by criminal means, the prevention of new crimes, and the suppression of the activities of criminal groups.

List of References:

1. United Nations Convention against Transnational Organized Crime (Adopted by General Assembly resolution 55/25 of November 15, 2000).
//Internet:https://www.un.org/en/documents/decl_conv/conventions/orgcrime.shtml.
2. FATF Recommendations: International Standards on Combating Money Laundering, the Financing of Terrorism and the Financing of Proliferation of Weapons of Mass Destruction, 2012 February, ITMCFM, 2012.
3. FATF Financial Investigation Guidelines: Operational Issues, June 2012, Paris.

4. Law of the Republic of Uzbekistan dated August 26, 2004, No. 660-II "On counteracting the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" //National Database of Legislation, 01/16/2019, No. 03/19/516/2484; October 05, 2020, No. 03/20/640/1348). <http://old.lex.uz/docs/284542>
5. Decree of the President of the Republic of Uzbekistan No. UP-6252 "On approval of the strategy for the development of the national system of the Republic of Uzbekistan to combat the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" dated June 28, 2021 // National Database of Legislation, 06/29/2021, No. 06/21/6252/0617. <http://old.lex.uz/docs/5482739>
6. Resolution of the Plenum of the Supreme Court dated February 11, 2011 No. 1 of the Republic of Uzbekistan "On some issues of judicial practice in cases of legalization of proceeds from crime" // <http://old.lex.uz/docs/1766551>.
7. Lebedev I.A., Efimov S.V. Financial investigations: Russian practice and foreign experience. // Auditor's sheets. 2018. No. 10. <https://wiseeconomist.ru/poleznoe/42641-finansovye-rassledovaniya-rossijskaya-praktika-zarubezhnyj-opyt>
8. Efimov V.S., Brodunov A.N.: Mechanisms of financial investigations in domestic practice. Economy. 2015. No. 5. <https://cyberleninka.ru/article/n/mechanizmy-finansovyh-rassledovaniy-v-otechestvennoy-praktike>.
9. Teplov V., Financial investigation. // Litres., 2018., Moscow.
10. Nigmatdzhonov U.U., Khamzaev D.D.: Training law enforcement officers on financial investigations is a matter of time. // Bulletin of the Academy of the General Prosecutor's Office of the Republic of Uzbekistan. 4 (40)., 2019. // <https://proacademy.uz/postfiles/sets/xc/4l/index.html>.
11. Fedotov N.N.: Forensics - computer forensics. // M.: Legal world, 2007.
12. Medvedev I.V.: Computer forensics "forensics" and cybercrime in Russia. // Prologue, 2013. // <https://cyberleninka.ru/article/n/kompyuternaya-kriminalistika-forenzika-i-kiberprestupnost-v-rossii>.
13. Kondratieva E.A., Goryunov A.R.: On the issue of developing a scientific definition of financial investigations. // Bulletin of the Financial Academy. 2003 No. 1 (25).
14. Pimenov N.A.: Financial investigations: main approaches. // Bulletin of the Financial Academy. 2003. No. 1 (25). // <https://cyberleninka.ru/article/n/finansovye-rassledovaniya-osnovnye-podhody>.
15. Stakanova N.S., Tatarovskaya T.E.: Conceptual basis for financial investigations. // Humanitarian Scientific Bulletin. 2020. №2.// <https://zenodo.org/record/3763989#.YbXMu71BxPY>.
16. The Americans are calling us to reconnaissance. Interview with William Fox // Rossiyskaya Gazeta. - 2005. - N 3780. // <https://rg.ru/2005/09/09/finrazvedka-usa.html>.