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TACTICAL OPERATIONS USED IN INVESTIGATING OF FINANCIAL FRAUD

Abstract. *The problems of researching the legal nature of financial fraud are examined. The necessity of adapting national terminology in the domain of financial fraud investigation with the European one, where there is a wider interpretation of the category «fraud» is substantiated. The author analyzes basic typical tactical operations that are used in the investigation of financial fraud.*

Keywords: *a fraud, a financial fraud, the tactical operation, methods of committing financial fraud, investigating of financial fraud.*

Actuality of theme. Fraud, which takes place in finance, infringes on the most important economic relationships – the relationships with the formation, distribution and use of funds, causes multimillion damage for national economy and the welfare of citizens, undermines development of business and investment activity. According to Interpol, the revenue of fraudulent financial dealers' activities exceed the income of all crimes in the economic sphere and came in second place after the drug trade. Analysis of forensic practice, current legislation and the literature suggests that this is due to the imperfection of the banking and criminal law, jurisprudence contradictions, lack of sufficient experience in most of the investigative and operational staff, lack of general method regulations for investigating criminal offenses in the financial sector, outdated existing guidelines for law enforcement and others. That's why the research of tactical operations used in the investigation of financial fraud is important.

Analysis of recent research and publications. To the researching of problems of providing forensic investigations of fraud with financial resources are devoted the works of such local and foreign scientists in the field of criminalistics, criminal law, criminology, as: L. Arkusha, O. Bandurka, A. Bojko, I. Danshyna, O. Dzhuzha, A. Dolgova, V. Driomina, A. Zakaliuk, I. Iljina, O. Kalman, O. Karpovych, V. Larichev, G. Matusovskyi, V. Pyvovarov, V. Popovych, E. Streltsov, V. Tacij, S. Cherniavskiy and others [8, p. 231].

Setting objectives. The aim of the article is to research the legal nature of fraud with financial resources and to analyse the basic models of tactical operations used in its investigation.

Presenting main material. According to the Art. 222 of the Criminal Code of Ukraine, financial fraud is a provision of false information to public authorities, the authorities of the Autonomous Republic of Crimea or local municipalities, banks or other creditors to obtain subsidies, subventions, grants, credits or exemptions on taxes in the absence of a crime against property [1].

However, due to the legal integration of Ukraine into the European Union, adapting of national terminology in this area with the European one, where there is a wider interpretation of the category «fraud», should be considered.

In particular, one of the primary sources of the definition of this term in the European Union is the EU Council Act of 26 July 1995, which determinesthe Convention on the Protection of the European Communities' Financial Interests.

This document provides the following definitions of «fraud»:

– fraud against the expenditure: any act or deliberate omission involving the use or presentation of false, inaccurate or incomplete information or documents, resulting in misappropriation, embezzlement or misuse of conservation funds from the general budget of the European Communities or budgets managed by the European Communities or on their behalf; failure of information in violation of a specific obligation, which leads to the same result; the use of funds for purposes other than those for which they were issued;

– fraud against income: any act or deliberate omission involving the use or presentation of false, inaccurate or incomplete information or documents which has the effect of reducing illicit resources of general budget of the European Communities or budgets managed by the European Communities or on their behalf; failure of information in violation of a specific obligation, which leads to the same result; misuse of legitimate profits, which leads to the same result [9, p. 128].

International audit company Pricewaterhouse Coopers focuses on fraud among economic crime and financial irregularities. Thus, the World Review of Economic Crimes 2011 fraud in economics is defined as deliberate deception in order to steal money, property or legal rights [11, p. 15].

Under the provisions of the International Auditing Standard on Auditing MCA (ISA) 240 fraud is the deliberate action of one or more individuals among leadership, management, employees or third parties that is the use of deception to obtain illegitimate or illegal benefits [10].

Association of Certified Fraud Investigation Specialists (ACFE) provides such definition of fraud as: the use of official position for personal gain by misuse or theft of organization's property or resources. In addition, the Association provides the main types of fraud: fraud against the interests of legal entities – internal (Internal Fraud), external (External Fraud) and fraud against individuals (Fraud Against Individuals) [8, p. 233].

Considering such complex and specific nature of financial fraud, its identification, detection and investigation requires a separate set of actions. It should be noted that the determination of method of committing a crime is defined by the Art. 91 of Criminal Code of Ukraine as a fact that must be proved in criminal proceedings [2]. The method of committing a crime and the information about it is the basis for: constructing of forensic characteristics of certain types of crimes; identifying the relationship between structural characteristics; construction and nominating of versions; planning and organization of the investigation; designing features of specific investigative tactics (search) operations; forecasting mechanism of the offense; developing measures to prevent criminal offenses [3, p. 207].

The greatest interest in terms of these issues are now represented by the current research of typical tactical operations in the relevant methods of investigation. Tactical operation can be defined as a set of investigations, search operations and organizational measures to implement intermediate objectives investigations in specific investigative situation. In this sense, the researchers proposed a number of tactical operations as the general plan («A document», «The search of the accused», «Accessories», «Neutralization of counteraction of investigation», etc.) as individual plan («A borrower», «A creditor», «Providing of pecuniary damage», «Corrupt ties», etc.). Let's analyze them in detail.

Tactical operation «A document» is a universal operation, which occupies an important place in the hierarchy of tactical operations of initial phase of financial fraud's investigation. The priority of its conducting is due to the fact that since the beginning of the investigation there is a high likelihood of destruction or concealment of documents used in committing financial fraud.

False information may be inserted to the document in different ways: proper introduction to the document records that are not true. This document retains features and details of real (made on the appropriate form, containing the names and positions of the people who should sign it, etc.), but data inserted in it (text, digital materials, etc.) are false (intellectual forgery); full of fake document forgery is applied to the entire document both in form and content; partial forgery, that is inserting of false information in the document, such as destruction or correction of the text, individual words and numbers by any technique (financial forgery). Counterfeiting is also introducing additional data and a fake signature of the official, changing the date of issue of the document, fixing on a print fake stamp paper, etc. [3, p. 209]. Therefore, with the document review are set: type of a document; by whom and when it was issued; mode; content; text modification features, details, external influence.

During the investigation of the document mode attention is paid to the form compliance, generally used for such documents. During the immediate reports' document review attention is paid to the number and date of issue and whether the document is registered in the appropriate log. It is advisable to verify the calculations in the documents and their compliance with the imposed requirements.

During the inspection of manufactured printing method of the document attention is paid to the shape, size and uniformity font; matching top and bottom lines of the base line; availability and accuracy of protective equipment; precision reproduction of prints and symbols; stamping method; quality of material and cover paper document; way to cut and shape the edge of the paper; dye location uniformity of strokes, lines form of the outer edge of the stroke, the degree of intensity of the dye; signs of seal, made with the help of offset printing. If the document is not made with printing method, the features of type of its implementation are set (there are possible grammatical errors, inequality of lower base line, differences in font, traces of the writing instruments' use; pale coloring on strokes, etc.; different width of letters' and numbers' strokes, intersection, surface of cliché prints etc.) [5, p. 97].

Pagination, coincidence of series and numbers are checked. Particular attention is paid to the analysis of location of rims text seal on the photo and the adjacent areas of the paper to identify signs that may indicate glue photos or image replacing on it.

Also, the logical conformity of all details (collection or divergence of dates, content of the text of stamps and seals, compliance with the practical ability to perform actions specified in the document for some time, a certain number of people with technical means or without them) is analyzed, the real possibility of passing events (processes referred to in the document) is evaluated. Handwriting of different document's parts and signatures executed on behalf of various individuals are examined [6].

Typical tactical operation «Accomplices» provides a set of investigative actions and other measures to search for information about all the participants and the role of each in committing a crime. For methods of crimes committed in the public sector investigation, such type of actions are common, that caused numerous facts of group attacks. Depending on the level and content of a special technique, according to the concretized tactical tasks, referred tactical operation can be determined: set of certain acts performers', such as people who forged the documents, produced fake letterheads, seals and stamps, created a fictitious company, transferred money in cash etc.; detection of all members of an organized group, a criminal organization; establishing an organizer; determine the role of each accomplice in the commission of each offense; establish the involvement of certain individuals to a crime etc. [7, p. 206].

Typical tactical operation «Corrupt ties» should be recovered in the majority of the techniques' investigating of financial fraud. It's no secret that the business «access» to a budget, other state property is often caused by corrupt ties and not only by bribery, but also by enriching family relationships, using of office for certain lobbying firms and others. The elucidation of corrupt ties in the course of investigation will not only set the investigating of other crimes or committed individual components episodes, but also will solve other tasks aimed at finding and fixing additional evidence of criminal activity, neutralization of possible counteraction to investigation.

Typical tactical operation «Wanted accused» is characterized by investigative techniques that require consideration of a typical investigation of the situation when the accused hides from the investigation. It is more typical for the complex, continuous cases of material damage in the investigation of financial fraud. In this case, the defendants often try to hide in other countries. So, tactical operation may provide measures aimed not only to locate the accused, but also to organize events within international assistance in criminal proceedings [7, p. 206].

Tactical operation «A borrower» is performed in a situation where the information about committed financial fraud is available, but offender is not established. In this situation actions of the investigator should be aimed at identifying people who were interested in obtaining the loan. These may be people whose income is directly dependent on the results of business enterprises or people who at the time of obtaining the loan were in a difficult financial situation (large personal debts, received terms of returning previously received loans, etc.).

Committing a financial fraud sometimes is impossible without the criminal conspiracy of lender's and borrower's representatives. The relationship between lender and borrower is that an employee of a credit institution under undue advantage contributes to the commission of financial fraud. This is especially inherently for the issuance of state targeted credits. In this situation it is advisable to conduct the tactical operation «A creditor» [4].

While committing financial fraud, the state and other creditors have substantial material damage. The tactical operation «Providing compensation of material damage» is conducted for its reimbursement, which aims to: 1) the establishment of availability and location of property (movable and immovable), bank accounts belonging to the offender; 2) setting the amount of damages; 3) measures to ensure the safety of property and money and so on.

Typical tactical operation «Neutralization of investigation's counteraction» includes in the most general terms series of measures aimed at early detection of attempts to counteract the investigation, the possibility of preventing them, and in other cases - to overcome. In turn, forms and methods of such counteraction are so diverse that require different options of reduced tactical operations: prevent attempts to destroy documents and other evidence of the crime; prevent external interference in the investigation; neutralization of illegal defenders' acts; neutralization of influence on the process; neutralizing the impact on stakeholders; neutralizing attempts to create a negative public opinion about the process of investigation with the help of the media, etc. [7, p. 206].

Conclusions. The criminal situation in the economy of Ukraine shows that there are appearing criminal groups who specialize in committing financial fraud, using previously unknown criminal mechanisms, international relations, new technologies. There is a need to improve existing and develop new approaches for solving this problem, and important among them are the organization and conduct of tactical operations. That is why it is necessary to determine with forming of each separate financial fraud's forensic investigation techniques the full range of tactical problems in the respective typical investigative situations, evaluation of their complexity and development of tactical operations model for solving the most complex problems. That's why, knowing the nature of tactical operations used in the investigation of financial fraud, will allow law enforcement agencies to detect signs of the specified offense, clarify the mechanism of its commission and ensure effective investigation into financial fraud.

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