FEATURES OF THE QUALIFICATION OF FRAUD COMMITTED USING THE OPPORTUNITIES OF THE FOREX MARKET

INTRODUCTION

Over the past two decades, currency exchange in the Russian Federation has ceased to be a priority only for banks and official organizations. An analysis of the current situation in this market suggests that one of the most common types of fraud in modern Russia is the commission of these crimes by conducting currency transactions using various platforms in the global information and telecommunications network Internet. The seriousness of the problem implies the need for its prompt solution using the resources of both the legislative and law enforcement blocks. Issues related to the qualification of theft in the Forex market have not yet become the subject of scientific study. The consequence of this is the lack of appropriate methodological recommendations and insufficient professional training of persons conducting preliminary investigations in such criminal cases. The above circumstances determine the relevance of the topic of this article, which will address the issues of qualification of fraudulent actions committed in the Forex market and develop appropriate recommendations.

MATERIALS AND METHODS

As the main one, a general scientific system method was used, through which the features of the qualification of fraud committed using the opportunities of the FOREX market were formulated. Considering the peculiarities of the subject, the successful implementation of research tasks requires the use of a number of specific scientific methods of cognition, among which, first of all, it is necessary to distinguish comparative legal and structural legal.

Within the framework of the comparative legal method, it should be noted that it is possible to compare the mechanisms for countering crimes committed in the Forex market within the framework of national legislation. In order to study the interaction of legal institutions to determine the place of criminal legislation in the system of legal security of the functioning of the Forex market, the structural-legal method is used. The specific sociological method was used to obtain empirical results. The application of the statistical method of the study showed that in 2020 in the Russian Federation, 45,109 crimes were registered, qualified by the preliminary investigation bodies as fraud committed using the Internet, most of which were identified by the criminal investigation Department (29,428), investigative bodies (8556) and economic security and anti-corruption units (1,723) (THE CENTRAL BANK HAS WARNED ABOUT THE RISK OF DOUBLE FRAUD WITH THE RETURN OF MONEY FROM FOREX).

We studied 57 materials of preliminary verification of reports on the commission of such crimes. Only one criminal case was completed in the Department for the Investigation of Organized Criminal Activities of the Investigative Department of the Ministry of Internal Affairs of the Russian Federation.

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We studied 57 materials of preliminary verification of reports on the commission of such crimes. Only one criminal case was completed in the Department for the Investigation of Organized Criminal Activities of the Investigative Department of the Ministry of Internal Affairs of the Russian Federation.
The sociological method of the study (22 investigators were interviewed) allowed us to supplement the empirical base of the study and to obtain representative conclusions supported by expert opinion.

The comprehensive application of the described research methodology allowed us to substantiate proposals for improving the criminal legislation in the Russian Federation; to develop a set of recommendations for the legal assessment of acts that encroach on the Forex market; to develop proposals for improving the effectiveness of measures to prevent crimes that encroach on the Forex market.

As a result of the application of this methodology, several ways were developed to further improve the legislation and specific practical activities of investigators to investigate fraud committed using the opportunities of the FOREX market.

RESULTS ANALYSIS

Forex (from the English FOReign Exchange - foreign exchange) is an interbank currency market with free prices, quotes on which are formed around the clock without restrictions and fixed values. This platform unites four regional markets: Asian, Australian, European, and American.

At the same time, the existing problems of legal regulation of the Forex market in the Russian Federation should be noted, the disguise of fraud committed here under high-risk civil transactions, the use of forex dealers registered in foreign countries, the difficulties arising in connection with obtaining information from foreign operators. The consequence of this in most cases is the evasion of persons involved in such criminal acts from criminal prosecution by the competent authorities and officials on the territory of the Russian Federation and, accordingly, the actual lack of successful examples of judicial and investigative practice of bringing them to justice.

As the analysis of the 57 materials of the preliminary check, which contain reports of the commission of such crimes, shows, for the most part, procedural decisions were made in the form of a decision to refuse to initiate criminal proceedings. Today in the Russian Federation there is only one positive example of successful investigations of such crimes by the Directorate for investigating organized crime Investigation Department of the Ministry of Internal Affairs of Russia on charges of members of an organized group of individuals under part 7 of article 159 of the Criminal Code of the Russian Federation for embezzlement of citizens' funds by fraudulent actions on a particularly large scale, under the guise of providing services for organizing trades (transactions) on the Forex market (REFERENCE MATERIALS OF THE SD OF THE MINISTRY OF INTERNAL AFFAIRS OF RUSSIA FOR 2019–2020).

The modern Russian practice of investigating crimes committed using the opportunities of the interbank foreign exchange market Forex is in the process of formation, and most of such actions at the stage of preliminary investigation are qualified as fraud under Part 4-7 of Article 159 of the Criminal Code of the Russian Federation.

The direct object of the crime under consideration is a group of public relations that regulate the implementation of transactions for the purchase or sale of foreign currency, payment documents in foreign currency, as well as when performing operations on the movement of foreign capital. The public danger of criminal acts committed by illegal forex dealers-scammers acting under the guise of providing services in the Forex market is primarily to undermine confidence in bona fide participants in the domestic financial market, as well as causing property damage to specific traders. The subject of the crimes under consideration is non-cash funds in the currency of the Russian Federation and foreign currency.

The objective side of fraud committed using the capabilities of the interbank Forex currency market is characterized by the forex dealer (or broker) committing a complex of active criminal actions to withdraw, isolate and turn in favor of the guilty person or other persons the funds of the trader-investor for the purpose of their theft. On the basis of judicial interpretation, the forms of expression of the actions described above are deception or abuse of trust (RESOLUTION OF THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION NO. 48).
The amount of damage caused to the trader is determined based on the amount that was invested under the control of the fraudulent broker. Proving the nature and extent of the damage caused by fraudulent actions in the Forex market is complicated by the fact that most of the transactions performed are currency transactions that occur on the territory of foreign countries, where such actions are not legally recognized as criminal (IVANOV, ESINA, FADEEV, CHASOVNIKOVA & ZORINA, 2020; IVANOV, FADEEV, ALIMAMEDOV & DUNG, 2020; IVANOV, TOKAREVA, SHEPELEVA, CHASOVNIKOVA & STATSUKY, 2020). In addition, revenues may be transferred swindler with a managed brokerage account of a customer (imaginary asset management) in cryptocurrency under the pretext of saving the amount of money and avoid the depreciation of a currency, in which initially the operation was carried out. Further, the reverse withdrawal to the national currency is limited by the lack of legal regulation of cryptocurrency in Russia.

The place of commission of fraud of this type is the global telecommunications network Internet, in which specialized platforms trading operations of the Forex currency market are carried out. As for the time of the commission of the crime, this composition is a continuing crime, since it consists of a number of identical actions aimed at a single goal – the theft of traders’ funds by deception or abuse of trust. The beginning of a criminal action is the conclusion of a contract for the provision of services for trading or the moment of depositing funds into the account of the company (in the absence of the contract as a form of agreement) or the date of opening a brokerage account or the date of transfer of the account to the trust management of Forex dealer. In accordance with the court’s interpretation of the end of the scams in the Forex market, there is the time period when the Forex dealer was able to withdraw funds of defrauded client in the area that is not accessible to law enforcement agencies (offshore) and retaining the ability to return the money supply in the form of “pure money”, so they got a real opportunity to use or dispose of client money in their sole discretion.

The way to commit fraud in the Forex market for the broker is to mislead (deception or abuse of trust) the trader by convincing the latter of the possibility of almost instant earnings or the increase of personal capital. This method is implemented through the use of a set of special actions involving the use of the Internet space and other digital technologies. One of the key figures is the forex dealer (broker). Currently, four forex dealers legally operate on the territory of the Russian Federation: Finam, VTB Forex, PSB Forex, and Alfa Forex. However, there are “gray” companies in this market – foreign financial organizations that provide services to Russians from abroad without a license from the Bank of Russia, and so-called “black brokers”.

As noted above, in the Russian Federation, the brokerage is a legal activity, for which a license is issued by the Central Bank of the Russian Federation (FEDERAL LAW “ON THE SECURITIES MARKET” DATED APRIL 22, 1996, NO. 39-FZ). Such a document can be issued to a legal entity or individual to perform the functions of an intermediary in various areas, including performing operations on the Forex market. At the same time, a forex dealer has the right to carry out its activities only after joining a self-regulating organization in the field of the financial market, which unites forex dealers in accordance with the legally established procedure (FEDERAL LAW “ON SELF-REGULATORY ORGANIZATIONS IN THE FINANCIAL MARKET” DATED JULY 13, 2015 NO. 223-FZ).

The broker’s salary is a commission from transactions. In the course of its activity, the broker, on the basis of the concluded agreement, provides a trading platform to another participant of the financial market – a trader registered in a particular brokerage company and wishing to trade on the Forex market or another platform. The trader has a periodically replenished trading deposit, which, as a rule, is located on the personal account of the broker.

In Russia, Forex is mainly used for speculative trading through dealing centers and banks, which is conducted using leverage (financial leverage – money provided by a broker to use and increase profits and the size of operations performed). Today, brokers offer clients a variety of services that partially or completely do not fall under the current regulation of brokerage activities. For example, an online stock store, where shares are sold as a regular product under a dealer scheme with the possibility of paying with a plastic card through online systems, or a portfolio of securities formed by the client independently on the basis of recommendations provided by the broker. An example of another service provided by a broker is auto-tracking.
when transactions on a client’s account automatically reproduce the strategy of a certain manager. The fraudulent broker is in no hurry to withdraw the trader’s funds in their personal account, referring to various force majeure circumstances and assuring the client that the money will soon be transferred to their account.

It should be noted that fraud committed using the opportunities of the Forex market, as a rule, has a group character due to the scale of this criminal activity, its structural organization, and target orientation. The initiators of the crime, in their initial planning and distribution of the roles of accomplices, are aware that the risks of prosecution, including in the case of violations related to the organization of attracting citizens’ funds to the activities of a forex dealer in the territory of the Russian Federation, are minimal due to the remoteness of the company’s location. Some crimes are committed exclusively as cybercrimes (PUSHKAREV, GAEVOY, SKACHKO, KOLCHURIN & LOZOVSKY, 2019).

As a rule, the participants of an organized group create a network of affiliated companies on the territory of the Russian Federation that are not legally related to the activities of a forex dealer, which are engaged in attracting new customers and distributing advertising products. Among other things, one or more sites in the High Yield Investment Program (HYIP) format are launched in the Internet space, the so-called HYIP sites that promise a high return on investment, although Part 2 of Article 28 of the Federal Law of March 13, 2006. No. 38-FZ “On Advertising” (FEDERAL LAW OF MARCH 13, 2006 NO. 38-FZ “ON ADVERTISING”) contains a direct ban on advertising with the promise of profitability. Many such sites are arranged on the principle of financial pyramids. HYIP sites position themselves as investment funds.

To attract interest to their pseudo-legal offer, criminals usually use the principles and methods of social engineering: people are taught that the company is growing rapidly due to a supernova, a super-modern idea that no one else knows about, and it brings an unprecedented high yield. To strengthen the company’s image, this offer is advertised by media personalities who enjoy a high degree of trust among the population (famous actors, singers, etc.), as well as by creating special groups in social networks.

In the case of the Forex market, the client is offered to top up the account through the electronic wallet “Yandex.Money”, WebMoney, etc., and place bets on currency exchange rates. Investors are first interested in showing high financial results as bait. In fact, the client’s money immediately goes into the pocket of the owner of the HYIP site. The amount on the account in the client’s personal account and the charts of successful trades that they see are fictitious. The client can not withdraw money, they only submit a request for withdrawal. For the first time, the client is paid an impressive amount – so he is motivated to invest more and bring friends for 3-5% of their investments. At the second request for withdrawal, the forex dealer begins to drag out time to evade the execution of the request, for which they offer the client to perform a set of some, often made up conditions (to provide a passport, etc.).

The real situation is that the site organizers do not bring transactions to the market, but conduct them on the principle of clearing, that is, offsetting between clients within the site. In the terminology of Forex market players, this is called “trading in the kitchen”. Thus, the forex dealer, in order to create the appearance of legitimate activity, performs some calculations within the cyclical system of companies, without withdrawing clients’ funds outside its perimeter.

Some schemes of pyramid finance disguised as Forex (for example, Forex Trend, Panteon Finance, Forex MMCIS Group) offer their clients false trading on PAMM accounts (Percentage Allocation Management Module). The trader deposits their own money to the PAMM account and publishes an offer for investors: they can top up the same PAMM account and thus transfer the money to the trader in trust. Forex platforms publish trading charts of traders for several years so that the investor can choose the most successful players. Depending on the terms of the offer, the investor receives 30-50% of the profit from their investments, if it occurs. The clients of a financial pyramid believe that they put money on such PAMM accounts and can withdraw profit at any time through the X – Change electronic and digital currency exchange site, which provides a favorable rate with interest. Subsequently, as noted by Viktor V. Pushkarev, cryptocurrency is used as a means of legalization of income obtained by criminal means (PUSHKAREV, ARTEMOVA, ERMAKOV, ALIMAMEDOV & POPENKOV, 2020).
The established affiliated companies provide further support to clients related to reducing the volume of complaints received when funds are lost from the balance sheets of trading accounts and developing a set of measures to convince investors that only their actions in combination with the volatility (price variability) of the market led to the loss of deposited funds. All of this together allows to carry out extremely profitable criminal activities for the organizers for a long time, based on the use of the lack of financial literacy of the population, as well as the use of technical equipment of the company’s activities in order to ensure the ability to control and influence the result of the client’s trading operations.

The duration of the existence of this criminal structure is based, among other things, on the inability of clients to demand the return of funds deposited to trading accounts under the pretext of their "loss" in the Forex market, the volatility of the market, and the lack of professional training of investors themselves.

The Central Bank of the Russian Federation notes a growing trend in the offers of financial services on the Internet (STATISTICAL DATA OF THE FEDERAL STATE INSTITUTION “MAIN INFORMATION AND ANALYTICAL CENTER OF THE MINISTRY OF INTERNAL AFFAIRS OF RUSSIA”). As a rule, it is the advertising of illegal financial services, including on the Forex market. At the same time, on the Internet, many offers from companies that promise to help return money to citizens affected by fraudulent actions are published. In practice, such companies often deceive consumers and extort money from them, knowing in advance that it is impossible to return the lost funds since when choosing a foreign Forex dealer, the consumer loses the right to judicial protection. Or their service consists in drawing up a complaint for a certain fee and sending it to the Bank of Russia or law enforcement agencies, which the consumers may well write themselves. As a result, the consumer is deceived twice.

The subject of fraud in the Forex market, in addition to the general characteristics, must have a special one – to be a participant in the foreign exchange market. As a rule, these are men, whose average age is 30-35 years, who have special knowledge in the field of economics and programming, experience in trading platforms that provide the opportunity to trade in the foreign exchange market, skills in handling cryptocurrency, as well as converting the national currency into electronic form. They are well educated, have developed logical thinking, leadership skills, and psychological manipulation techniques. Their actions are always logically verified and consistent. The subjective side of fraud in the Forex market is characterized by a deliberate form of guilt, self-serving motivation, and a targeted orientation in the form of theft of the trader’s funds.

CONCLUSIONS
The analysis of the legislation, various official sources, and law enforcement practice carried out within the framework of this article allowed us to identify the features of the qualification of fraud committed using the Forex market, which are due to the signs of its objective side and the specifics of the subjects involved in this. This circumstance gives the law enforcement officer the opportunity to correctly distinguish this crime from other similar criminal actions and determine the directions of their detection, disclosure, and investigation.

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Features of the qualification of fraud committed using the opportunities of the forex market

Características da qualificação de fraudes cometidas utilizando as oportunidades do mercado forex

Características de la calificación de fraude cometido utilizando las oportunidades del mercado forex

Resumo

O artigo analisa um dos tipos mais comuns de fraude no momento, que é a apropriação de fundos através da realização de transações cambiais utilizando o mercado Forex. Os autores destacam as peculiaridades desses funcionamento do mercado, que complicam o processo de investigação da fraude cometida aqui (a falta de regulamentação legal na Federação Russa, o disfarce dos crimes cometidos sob operações civis de alto risco; o uso de traficantes de câmbio registrados no território de países estrangeiros, dificuldades decorrentes da obtenção de informações de operadores estrangeiros). Conclui-se razoável que a consequência desses fatores é a evasão de pessoas que cometem tais atos criminosos a partir de processos criminais pelas autoridades competentes e funcionários do território da Federação Russa e, consequentemente, a real falta de exemplos bem-sucedidos da prática judicial e investigativa de trazê-los à justiça.

Keywords: Mercado forex. Negociante forex. Qualificação. Fraude. Investigação.

Abstract

The article analyzes one of the most common types of fraud at present, which is the appropriation of funds by performing currency transactions using the Forex market. The authors highlight the peculiarities of this market functioning, which complicate the process of investigating the fraud committed here (the lack of legal regulation in the Russian Federation, the disguise of the crimes committed under high-risk civil transactions; the use of forex dealers registered in the territory of foreign countries, difficulties arising in connection with obtaining information from foreign operators). A reasonable conclusion is made that the consequence of these factors is the evasion of persons who commit such criminal acts from criminal prosecution by the competent authorities and officials on the territory of the Russian Federation and, accordingly, the actual lack of successful examples of the judicial and investigative practice of bringing them to justice.

Keywords: Forex market. Forex dealer. Qualification. Fraud. Investigation.

Resumen

El artículo analiza uno de los tipos más comunes de fraude en la actualidad, que es la apropiaciación de fondos mediante la realización de transacciones de divisas utilizando el mercado Forex. Los autores destacan las peculiaridades del funcionamiento de este mercado, que complican el proceso de investigación del fraude cometido aquí (la falta de regulación legal en la Federación de Rusia, el disfraz de los delitos cometidos en transacciones civiles de alto riesgo; el uso de comerciantes de divisas registrados en el territorio de países extranjeros, las dificultades que surgen en relación con la obtención de información de operadores extranjeros). Se ha llegado a la conclusión razonable de que la consecuencia de estos factores es la evasión de las personas que cometen esos actos delictivos del enjuiciamiento penal por las autoridades y funcionarios competentes en el territorio de la Federación de Rusia y, en consecuencia, la falta real de ejemplos satisfactorios de la práctica judicial y de investigación de llevarlos ante la justicia.

Keywords: Mercado forex. Distribuidor forex. Calificación. Fraude. Investigación.

Palavras-chave: Mercado forex. Negociante forex. Qualificação. Fraude. Investigação.

Palabras-clave: Mercado forex. Distribuidor forex. Calificación. Fraude. Investigación.