

## Increasing Measures in Banking Criminality Control in Kazakhstan

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**Abstract:** The article is devoted to the problems of improving the measures against banking crimes. The need to increase the effectiveness of combating the crime in the banking sector of Kazakhstan is due to the fact that the law enforcement authorities of the country are responsible for preventing the banking crimes to their citizens. At that, misappropriation of funds in banking continues to develop, improving tools and means. The use of new forms of settlement and the latest achievements of scientific and technical progress against the background of misuse of legal regulation of the financial and credit activities has led to a significant increase in crime in the banking sphere. The article analyzes the Kazakh and foreign legislation on the liability for crimes in the banking sector of different countries. The new classification of these crimes is provided. Various ways of their commission, the factors that influence the prevalence of bank crimes and the problem of improving the investigation and prevention of these crimes and the solutions to these problems are studied. The reasoned conclusions that reveal different approaches to combating banking crime, which can be successfully applied in practice, are presented.

**Key words:** Banking crimes • Criminal characteristics • Investigation of the banking crimes and banking criminality control

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### INTRODUCTION

Nowadays, banking system is one of the important components of Kazakhstani economy, as this system has a significant influence on all economic processes and is meant to stabilize and improve all functions of the national economy system as a whole. As we all know in the course of banking activities funds are being re-distributed and accumulated for a further disposal and this system is crucial for millions of separate economic entities, institutions, subjects and enterprises in order to satisfy their mutual payments and obligations. Such banking transactions keep an interconnection between financial and industrial sections of economy.

Why Kazakhstan needs to increase efficiency of banking criminality control? First of all because Kazakhstan is currently undergoing a range of economic reforms and transformations, which will significantly impact structure of our economic. Second reason is establishment and intensive development of the network of commercial banks.

As we all know, all innovations in economy environment usually lead to a new forms of property related crimes and embezzlements. While development of banking and credit systems is ongoing steadily, simultaneously we can observe a growth of the crimes, which recently became more intelligent and refined.

Unfortunately, unstable social and economic situation in Kazakhstan, sharp decline in production, increase of prices, massive unemployment and increase of social and property difference between the society layers are good enough premises to increasing a number of crimes, as such tension in society is always leading to worsening of criminal situation in the country. Another premise for such unfortunate situation is of course imperfection of the current legislation, differences between the speed of economy reforms and their legislative grounds also lead to blank spaces in the civil, banking and criminal laws giving a vast variety of options to dishonest individuals to pursue their criminal endeavors.

**Key Part:** What is credit and banking sphere? It's a system of economic relations which are usually occurring in the course of cash and cashless payments, retailing of the goods and other payments not involving goods as well as circulation of information on prices within the whole credit and monetary systems. Provision of financial resources on repayable and urgent grounds with payment of percents and transformation of the credit capital into loan, activities of the banks (credit organizations) and transactions aimed at development, increasing of efficiency and security of the banking services [1, p.159].

Before we touch upon the nature of the crimes in credit and banking sphere we firstly need to describe characteristics of the crimes and their elements to have a deeper view of the issue.

Main purpose of investigation of a core reason of the crimes in credit and banking spheres is efficient resolving of tasks related to prevention of this social phenomenon. This issue is quite complex. Criminality in credit and banking systems is quite diversified and can be defined as that provoked by social and economical premises including social, political and other reasons. All such premises are closely interrelated.

Factors affecting growth of the crimes can be conditionally divided into internal and external.

The most important internal factor is a self-interest (greediness in plain description) which is applicable to both individuals and organized crime groups.

What is external factor? It is a condition of social and economic relations, these reasons can include among others weakening of the state, institutional malfunctions, chosen model of economic modifications, non-efficiency of social and economic policies and others.

External factors can be consequently divided into two major groups.

First group contains factors of the so-called macro level, in other words those of mass character of criminality.

Second group contains factors of micro level, in other words those that can lead to committing a socially dangerous crime.

The following factors can be taken as examples:

Imperfection of legal regulation and its tools in regulation of social relations between the citizens, as a result, people are not protected from unfair transactions as even criminal and legal tools are insufficient to combat them.

Insufficient control over banks' activities, which include among others insufficient accounting audits, low quality of due diligence companies and insufficient professional level of banking employees and auditors.

Lack of efficient quality control system over the banks can be explained by prevailing of state organizations among the founders of many banks. Therefore, such organizations are not interested in control over bank's activities and efficient disposal of the property.

As for the low quality of due diligence companies it can be explained by weakness of the state control. In particular, at initial stage of activities of due diligence services such issues as licensing were not foreseen as well as establishment of special chamber (service) of auditors. Of course a certain role is played by competition and rival between due diligence organizations, which in its turn have them be more flexible and issue favorable conclusions to the clients even such conclusions are not one hundred percent correct and honest.

Inefficient control over setting-up a capital stock of commercial banks. Thus, at initial stage of commercial banks development a practice of increasing a capital stock of the bank at expenses of the credits was accepted as a general practice.

Activities of such commercial banks related certain risks to those who invest as well to stability of the credit system as a whole, therefore risks of bankruptcy are sharply increasing.

Insufficient control over legality of opening of the bank accounts.

Materials collected with regards to commercial banks as per results of conducted inspections and available with Central bank of Kazakhstan confirm rough violations while opening accounts and in the course of concluding transactions conducted by legal entities. In particular, plenty of accounts were opened without following a proper legal procedure and required paperwork.

Below is an excerpt from the article which investigated elements of various crimes and their interrelations, why some elements prevail in one category of crimes and in other category they are not so prevailing.

The concept of situational crime started to gain recognition in the late 1940s when Edwin Sutherland (1947) argued that crime was either "historical"-influenced by previous personal history, or "situational"-the environmental factors encompassing

the crime scene. Although acknowledged by the majority of criminologists, the concept of “situation” was not their primary focus and remained ignored up until the 1970s when it regained interest. Michael Gottfredson and Travis Hirschi, for instance, asserted that although criminality is a necessary condition, it alone is not sufficient for a crime to be committed: crime requires situational incentives found in the form of motivation and opportunity (Hirschi and Gottfredson, 1986). [2] set of data used to characterize a way of committing a crime, subject of crime, portrait of a criminal. As for a way of investigation a crime we can firmly state that a reason of any crime in credit or banking criminally is money.

Investigation of the crime is a complicated and long process that involves various circumstances, people, etc. Circumstances should be investigated thoroughly as in most cases insignificant event in life can lead to committing a crime. Therefore, such way of investigation is called as consequential (way of investigation).

Analysis of scientific literature revealed a range of such consequential situations typical for crimes in credit and banking activities.

Such authors as N.N. Osadin and A.M. Dyachkov were keen in specifying certain means and options in classification of the crimes, so based on their theory we will now try to develop a model of a typical crimes:

- Embezzlement by means of fraud with securities by heads of the banks or other financial structures while concluding agreement for cashing such securities with representatives of various organizations and companies.
- Embezzlements by heads of the Joint Stock Companies by means of concluding loan agreements with citizens.
- Misappropriation by means of deception or abuse someone’s trust while taking monetary funds or jewels in exchange of the loans and credits in pawn-shops, etc;
- Embezzlement of banking loan by means of concluding transaction via falsified person;
- Embezzlement via fraud with international (stolen or fraudulent) plastic cards;
- Embezzlement of money received by heads of financial structures via agreement of property loan of the citizens;
- Misappropriation and peculation of money from settlement accounts of citizens and legal entities by officials of the banks or other credit organizations;

- Embezzlement of money from settlement account of organization by materially responsible person of such organization;
- Evasion of repayment of the credit obtained by legal entity;
- Provision of falsified or false information on financial state of the company before taking a credit;
- Receiving of credit on favorable conditions by the legal entity (or private entrepreneur) using a falsified documents;
- Hiding of information with respect to funds available on account of the company while undergoing a process of bankruptcy by responsible persons of the bank and company’s heads, etc [3, p.56].

Thus, typical (consequential) situations raised out of investigation of the crimes being committed in credit and banking sphere are quite diverse and bright.

Types of the crimes being committed in financial and credit spheres are being investigated by different sciences such as criminology, criminal law, etc. In a criminal law such notion as “mean of the crime” is used to separate one crime from another action; as one action can contain signs of the crime while other cannot. Criminal process includes a mean of committing a crime to a circle of circumstances which need to be investigated and proved before issuing a final conclusion or ruling.

A crime, committed in banking or credit sphere is differ from other crimes, as financial crimes require more preparation and such stage can be very complicated. We shall admit that committing financial crime is impossible without a prior investigation of circumstances, situation, premises to possibilities of misappropriation of someone’s property.

Majority of crimes in banking and credit sphere were committed using falsified documents by bank employees, firms, companies and institutions, as well as by victims.

Attempts to “wipe tracks” have their own and typical signs. In majority of cases criminals attempting to wipe their tracks such as falsification or destruction of the documents, setting up a false alibi, departure abroad, non-show up in investigator’s office, simulations, etc.

We should note that each type of the crime we are now reviewing has a range of typical tracks, which can be used to reveal such crime at initial stage. Having analyzed such tracks we can develop our preliminary scenario of the crime or even determine personality of a criminal.

How can we do that? Easily, using means of committing a crime (time, place, environment, special circumstances) and internal factors (such as thoughts, feelings, emotions, physiological state of the criminal his general and professional background). Therefore, we can assume that certain type of criminal chooses certain type and approach in committing a crime.

Personality as a subject of our investigation is an inspiration to scientists as well. Each science has its special approaches to a subject of investigation, as in order to determine personality of a criminal, we need to investigate his social connections and relations, as only in society a person can develop his personality. Therefore, we can assume that personality is a certain accumulation of social relations and interconnections. Investigation of financial crimes is usually started from initiation of the criminal cases based on various reasons.

Financial sphere of the state related to accumulation, distribution and disposal of the state and private monetary funds is most appealing to the criminals both individual and working in organized criminal gangs. In this sphere a plenty of crimes is being committed, including frauds, etc., most commonly using securities and financial documents. Using such securities and documents criminals can document any transaction of monetary nature between individuals or legal entities.

As we all aware success of investigation process depends on the abilities of investigator to look deeper and through the circumstances to identify nature, "core" of the crime to go further with investigation. Investigator is usually using commonly accepted practices such as developed categories and subcategories of the crimes, its features and details to have a successful start of investigation, as well successful completion of investigation process.

Therefore, in order to successfully complete investigation investigator shall know or have a perception of developed characteristics or various crimes to have a right investigation start and right approach.

In criminology, method of investigating a crime is being developed applicable not only to criminal and legal classification of the crimes but with an aim to optimize the mentioned methods. Surely most principals in criminology have already been developed and available.

Such notion as "financial crime" is a complicated and versatile from criminology point of view, as such notions are falling under quite a vast group of the various crimes having common features and principals when it comes to so called "criminal shades".

In the study of these concepts it is appropriate to turn to foreign law that "opens up new horizons for jurists, allows better understanding the law of the country, for the specific features of this law are very clearly identified in comparison with other systems. Comparison can arm a lawyer with ideas and arguments that will not come only from a very good knowledge of the country's law" [4, p.38].

In modern English law there are a number of crimes related to the banking sector. They are all united with the notion "Bank fraud", which is literally translated as bank fraud.

So, in English law the crimes in the banking sector are associated with the generic concept of fraud. Fraud according to the English criminal law is a broad definition of the form of financial crimes, including "non-violent dishonest appropriation of any financial gain or causing a financial loss" [5. p.11].

The Oxford Dictionary of the Law of 1997 provides civil-legal definition of fraud, i.e. a false impression created by intentional or reckless statement or conduct for material gain.

In the English criminal law theory there is no unanimity of views on criminal law concept of crime in the financial sector and in this sense according to the dictionary, the following types of criminal behavior may be attributed to fraud: cheating (fraud), conspiracy (plot), cybercrime (computer crime), defrauding (deception) (referring to General legal offense-conspiracy to defraud), dishonesty (improbability), false pretence (false statements) and forgery (fake) [6, p.197].

This is the type of crime, where the main way of commissioning is deception, "dishonesty" and the actions carried out by "fraudulent means" through which the infringement on the property or other rights owned by the state, individuals and legal entities are committed.

The English criminal law doctrine distinguishes different types of deception, accompanying fraud, that are characterized by the following:

- The use of false statements. If the statement was true, a person can not be convicted of a crime;
- Intentional or reckless character. Simple negligence (carelessness), or negligence is not sufficient to convict a person of a crime; while if the defendant believes his statement true, then he is not considered negligent, no matter how unreasonable his statement is;

- Cheating may be expressed in words or in behavior;
- Cheating can be expressed in the form of the action and in the form of inaction. Inaction is a crime only when certain acts was the responsibility of the perpetrator;
- Cheating can be expressed by an implicit statement [7, p.30].

Subject of violations from initial stage to the final is of course nothing else but money either those belong to the state or private companies in local currency or foreign currency or maybe in the form of property or goods.

Means of committing financial crimes are quite diversified. Commonly, such crimes have a three stage structure, which means a crime has initial, middle and final stage. Moreover, all three stages of such crimes are obvious and recognizable.

When using fraudulent cheques in financial crimes (as cheques are considered as securities containing unconditional written offer of issuer to payer (bank) to proceed with payments within the limits of indicated amount, the above mentioned three-stage crime scenario is used and obvious).

Financial crime is an illegal receiving a loan and uncharitable avoidance of satisfaction of accounts payable. Preparation to illegal receiving of the loan or preferential terms financing and conclusion credit agreement usually come down to falsification of documents representing subject above-noted crime. In particular, personal data of client, constituent and statutory documents, book accountings (annual quarter and monthly), reference of guarantee made, forecasting plan, arrival of funds to the account borrower and technical-and-economic provisions of draw-downs and etc are fabricated. For this purpose, necessary documents of forms, for example, some of enterprise's seal impressions for composition of guarantee letter can be stolen or form sheets and all the rest of requisites of guarantee letters and other documents can be falsified either, including, by the help of photocopying and etc.

In case of forethought, malicious avoidance of reimbursement of loan debt, as a rule, created a pseudo company by on nominee name or by foreigner passport, fabricating conditions of financial resources, at the expense of which, customer is about to pay back a loan, data of belonging pledged property to borrower, about liquidity and assessment of that property etc.

Directly committal of given crime is expressed in an action of borrower leading to untimely reimbursement or unrecoverable loan causing large disbenefits to bank. For example, at the time of indirect use, borrower conduct actions to obtain received credits, contradicting to requirements, which attached to standard acts, regulated of granting of state credits, as well as credit agreements (distributes received money as a commercial loans to own employees or other persons as gift loan, pays for trips for himself and for "necessary" people abroad, puts received credit to depository account in other commercial banks and etc.). These methods are applied by the cheaters in all countries [8, p.27].

Tools and ways of masking of alike crimes are usually analyzed in the process of their preparation and operations performed after receiving of the loan and allow them not to be revealed signs of criminal behavior immediately (fabricating of represented data of household and financial conditions and another data, suppression of facts in improper use of credit and etc.). Delay or non-return of received credits maybe associated with purposed or fictitious bankruptcy. In methods of commitment of these crimes, there are a lot of common things with discussed above. Generally, for purposes of dishonesty owner or leader of profit-making organization happens similar deceitful practice (tangled accounting and reporting in order to disguise the profits and withdrawal in whole or in part, the funds (including loans) are used for other purposes; funds illegally transferred to the accounts of other enterprises and abroad through fictitious contracts and contracts; products are sold at reduced prices deliberately, banks provide false information about the debtor's insolvency, etc.).

Similarly, committed fraud with foreign currency loans obtained to pay for allegedly imported goods, but in fact taken with a view to the transfer of currency to the personal accounts of foreign banks (transfer rates Kazakh partner a foreign partner as payment, although it is known that any supplies not will, getting called credit fictitious company, liquidated after the transfer of money abroad, deliberate overstatement in the official contract prices for imported goods in order to transfer money difference to personal accounts abroad, etc.) [9, p. 23].

Very close by way of making the so-called "credit" criminal acts are illegal business, pseudo-entrepreneurship and illegal banking. However, these crimes are usually in different forms,

such as medical and other assistance, or a variety of services (including banking), to carry out the registration and licensing procedure, causing major damage to citizens or becoming dangerous to life and health; sham the creation of a commercial organization as a legal entity with no intention to carry out business activities (in order to get a loan and use off-label, etc.).

Situation, down or created by criminals to commit such crimes, in particular is influenced by various inconsistencies, contradictory provisions of our undeveloped financial legislation, some ill-conceived decisions and undeveloped implementation mechanism solutions in the field of financial activities, etc.

When used for criminal purposes checks, shares, payment of plastic cards and credit memos, such bases may be evidence of the fact that the documents submitted to the bank and plastic cards-in place of reckoning for them, are falsified. In the event of default and willful refusal to repay its base is (materials of the bank) to exhaust them all the means at its disposal the means to the debtor at the debtor's behavior in the presence of an offense that is subject to the criminal law. In the case of illegal business and banking foundations are evidence of unlicensed activities of commercial firms or banks and the data of the occurrence of these structures major damage to citizens or other business entities. If financial crimes are committed by organized crime groups, the starting material for a criminal case usually appears Information inquiry body [10, p.31].

We propose to consider the crimes committed in the credit and banking in their by the offender, of which you can already get an idea of the method of the crime, the subject of a criminal assault, a typical effect of the situation.

One of the conditions for successful completion of investigation of the crime is ability of investigator to correctly analyze and evaluate situations and circumstances of the criminal case in accordance with the legislation of the Republic of Kazakhstan.

Problem of consequential situations attracted attention of criminologists, list of the works on this subject includes a plenty of monographs, dissertations, special books, articles, etc. Nevertheless not all the aspects have been duly reviewed in special literature.

When proposing a version or scenario of the crime, consequential situation is quite important at initial stage of investigation.

What is required in a process of reviewing committed crimes in the sphere of banking affairs and granting credits? We need to stick to provisions of criminal sciences, have a complex version, assumptions,

several possible scenarios and maybe explanations of certain details of committed crime.

In a process of completion of initial investigative steps and collection of evidences and ascertaining typical versions, replacement of vulnerable versions with more certain, changing over from hypothesis to firm versions, typical private version should be done to ensure all possible ways were taken to find a right approach in completion of investigation. Preliminary stage also includes collection of new information informative documents towards a potential suspect.

## CONCLUSIONS

In order to increase efficiency of the measures in combating banking crimes we need to take more strict and refined measures to combat them, in particular:

- In order to ensure economic independence of the Republic of Kazakhstan we need to ensure modern legislative accompaniment to ongoing economic reforms. Whilst legislation should proceed with development of certain means and tools to protect economic system of the state from illegal attempts of the criminals, reforms of the state and law-enforcement bodies and establishment of special services to maintain supervision and control.
- Ways and means of committing crimes in banking and credit systems indicate necessity in preliminary checkups of the documents by the banks before granting credits, check authenticity of the documents, its content and supervision over consumption of the money granted as a credit, check property or goods given as deposit.
- Investigation of the crimes in banking and credit sphere requires not only the investigator's knowledge in economics; but he should be able to define and distinguish how a certain crime can affect economic system, its individual links, besides, investigator should be able to correctly evaluate the collected evidences. Therefore, investigators should be prepared and trained in such spheres as accounting, banking, due diligence and audit, as all this can be done within the frameworks of special training sessions or even special techniques and programs can be developed to facilitate the investigation process. Nevertheless, participation and assistance of the experts and professionals of the companies, institutions, state and private of course is still in high demand during the investigation of financial crimes.

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