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# Problems of Financial Investigation and Recovery of Stolen Assets\*

V.V. Zemskov<sup>a</sup>✉, V.I. Prasolov<sup>b</sup>

Financial University, Moscow, Russia

<sup>a</sup> <https://orcid.org/0000-0001-7402-5524>; <sup>b</sup> <https://orcid.org/0000-0003-0321-4111>

✉ Corresponding author

## ABSTRACT

In the context of the globalization of national economies, the processes of recovering stolen assets are becoming a difficult task, requiring their tracing and detection not only in our country but also in foreign jurisdictions. Not only country's law enforcement agencies but also corporate governance bodies should play an active role in the process of detecting and recovering stolen assets. In this regard, the improvement of methodological tools that facilitate the tracking, detection and recovery of stolen assets is of scientific and practical interest and ensures the relevance of the study. The purpose of the study is to improve the mechanisms for countering the withdrawal of assets by unscrupulous owners, interest groups. The authors apply methods of dialectical scientific cognition based on a set of recognized private scientific and general scientific methods: formal-logical, comparative-legal, statistical, intersectoral legal analysis. The scientific novelty of the research is the identification of negative factors affecting the volume of stolen assets, their impact on the economic health of the state, private sector, and the improvement of methods for detecting and recovering assets. The results of the study help the authors to identify the main problems of detection and recovery of stolen assets, formulated the directions of the strategy for the return of stolen assets, formalized the processes of tax administration in countering the legalization of illegally obtained property. The recovery of stolen assets is an extremely time-consuming process which requires not only collective action of government agencies but also effective interstate cooperation within the legal framework. The paper presents a comparative analysis of the legislation of a number of countries. The authors identify deficiencies in the Russian law, which does not fully prescribe the procedure for detecting and returning stolen assets to the territory of the country. The authors conclude that in order to improve the mechanisms for countering the withdrawal of assets, it is necessary to apply an integrated approach, improving the legislation of the Russian Federation and fostering collective action of the country's law enforcement agencies, private sector, and society to successfully confront new challenges and threats. The results of the study may be used to improve the competence of law enforcement officers involved in detecting and returning stolen assets, as well as to develop a more successful methodological and evidence base approach in countering the legalization of illegally obtained property.

**Keywords:** the withdrawal of assets; assets recovery; money laundering; cash-out transaction; misappropriation and embezzlement; abuse of power; financial security

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## INTRODUCTION

Currently, the Financial University is one of the largest scientific and educational complexes that provide educational services on training financial investigation analysts and experts in the field of economics, management, and finance. One of the features of modern economic science is the increased attention of economists to legal institutions conducting comprehensive research including the issues of tracing and recovering assets. As part of the development of scientific, expert-analytical, and innovative activities of the Financial University, an international discussion was held with the participation of representatives of law enforcement agencies of foreign countries from Germany, France, the Netherlands, Belgium, Hungary, Lithuania, as well as of the Federal Financial Monitoring Service. The experts noted that in the modern world, the detection and recovery of assets is an urgent problem for all countries. Some experts estimate that developing countries lose about US\$ 20–40 billion annually due to bribery, misappropriation of funds, and other financial misconduct. Most of the proceeds of crime find a “safe haven” in the world’s financial centers. These illicit flows represent a drain on social services funds and economic development programs leading to global impoverishment. Many developing countries have attempted to recover the stolen assets [1, p.65]. A number of successful high-profile cases involving international cooperation have shown that asset recovery is possible. However, this is a complex practice that requires collective action and cooperation of national agencies and ministries in different jurisdictions, as well as the ability of law enforcement agencies in different countries to track and protect assets and use different legal tools, whether it is criminal forfeiture, non-conviction based confiscation, civil claims or other alternatives.

Based on the results of the presentation of the participants in the discussion, it was possible to identify those unresolved problems associated with the tracing and detection of stolen assets using various financial instruments that are relevant for Russia. It was repeatedly noted that in the Russian Federation “2 trillion rubles are laundered annually, and about 1 trillion rubles are transferred abroad” [2, p. 70].

According to expert assessment, it is difficult and sometimes impossible to trace assets transferred abroad unless urgent measures are taken to detect them [3, p. 89]. Assets transferred to the international financial system are quickly transferred from one state to another. Their traces of origin are lost in a variety of transactions from account to account, from bank to bank. They are split up, combined, and transferred to other jurisdictions to cover their tracks.

The main issues requiring urgent solutions as follows:

- detection and identification of assets abroad;
- solving the problems of the private sector to detect and recover stolen assets.

## METHODS

The main research methods are the method of dialectical scientific knowledge, based on a set of recognized private and general scientific methods: formal-logical, with the help of which the interpretation of legal norms is given; comparative legal, which allowed for a comprehensive analysis, assessment and comparison of various aspects; statistical, including collection, analysis, and synthesis of data; method of cross-sectoral legal analysis, which made it possible to consider legal institutions in the context of sectors of the economy. At the same time, a standard assessment system was used. The main document ensuring the processes of detection, identification, and seizure of assets abroad is the requirement of the federal legislation on the identification of

the debtor's property within the framework of bankruptcy procedures,<sup>1</sup> the UN Convention,<sup>2</sup> the recommendations of the Financial Action Task Force on Money Laundering (FATF),<sup>3</sup> legislation of foreign state, as well as ratified international treaties of the Russian Federation.

The analysis of the norms of international law in the field of reversion a property into the state revenue, in respect of which information has not been provided confirming its acquisition with legal income, should begin with the European Convention for the Protection of Human Rights and Fundamental Freedoms, where, according to Art. 1 of Protocol No. 1 does not provide for the full and unlimited inviolability of private property, but only its unconditional respect within the framework of state legislation and the principles of international law. In addition, according to the United Nations Convention against Corruption,<sup>4</sup> adopted in 2003 by the UN General Assembly, combating corruption is an inherent responsibility of all countries, as it affects their economies, leading to serious threats to the stability, sustainability and security of society, by undermining the structure, democratic and ethical values of the state, they harm the progressive development of the country.

The crime of illicit enrichment criminalizes “an unexplained increase in the welfare of a public servant during his tenure”. Article 20 of the UN Convention against Corruption contains the most widely quoted definition of illicit enrichment: “a significant increase

in the assets of a public official that he or she cannot reasonably explain in relation to his or her legitimate income”.<sup>5</sup> Illicit enrichment is classified as an “acquisitive crime” in the sense that, like money laundering, fraud, and theft, it is related to those who receive illicit income. Illicit enrichment legislation serves a procedural purpose, effectively helping law enforcement agencies in situations where they do not have sufficient evidence to prove that public officials engaged in bribery, embezzlement, or other offenses that anticipate illegal proceeds.

## RESULTS

In the course of the study, shortcomings of the Russian legislation were identified, which do not fully ensure the procedure for identifying and returning stolen assets to the territory of Russia. As Russian practice shows, the activities of the General Prosecutor's Office of the Russian Federation on the return of stolen assets to the territory of Russia are at an insufficient level.<sup>6</sup> This is connected, on the one hand, with the collection and generalization of information on unfair enrichment, on the other hand, with the need for a special check, according to the results of which, when confirming the illegal origin of financial assets, the prosecutor's office is filing a lawsuit to reverse this property into state revenue.

In this case, it is the defendant's responsibility to prove the legitimacy of income sources for the acquisition of property, which is fully consistent with paragraph 5 of Art. 31 of the UN Convention against Corruption. States Parties may consider establishing a requirement for the perpetrator to prove the legitimate origin of the alleged proceeds of a crime or other

<sup>1</sup> Federal Law of the Russian Federation of October 26, 2002, No. 127-FZ “On Insolvency (Bankruptcy)”. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_39331/](http://www.consultant.ru/document/cons_doc_LAW_39331/) (accessed on 15.10.2020).

<sup>2</sup> Conference of the States Parties to the United Nations Convention against Corruption of May 27–29, 2019. URL: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/V1905974r.pdf> (accessed on 15.10.2020).

<sup>3</sup> URL: <https://pasmi.ru/archive/253308/> (accessed on 15.10.2020).

<sup>4</sup> UN Convention against Corruption Adopted by General Assembly Resolution 58/4 of October 31, 2003. URL: [https://www.un.org/ru/documents/decl\\_conv/conventions/corruption.shtml](https://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml) (accessed on 15.10.2020).

<sup>5</sup> See above.

<sup>6</sup> General Prosecutor's Office of the Russian Federation “Review of the practice of detecting and returning from abroad assets obtained as a result of committing crimes”. URL: [http://gochs.tomsk.gov.ru/upload/docs/Obzor\\_po\\_vozvratu\\_aktivov\\_file\\_122\\_189\\_3706.pdf](http://gochs.tomsk.gov.ru/upload/docs/Obzor_po_vozvratu_aktivov_file_122_189_3706.pdf) (accessed on 15.10.2020).

asset subject to confiscation, insofar as such a requirement is consistent with the basic principles of their national law. Defendants, in particular, can provide evidence of the receipt of an asset under civil law transactions, for example, an investment of funds received under a loan agreement, a donation agreement, maternity capital. At the same time, imposing on the owner of the disputed property the burden of proving the

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fact of its acquisition on legal income does not exclude the right of the court, considering the actual circumstances of the case, to reverse into state income only that part of the property, the legitimate acquisition of which has not been proven [4, p. 320].

Since the granting of the relevant powers by the Federal Law "On Control over the Compliance of Expenditures of Persons Holding Government Positions and Other Persons with Their Incomes" (from 01.01.2013 to 31.12.2019), the prosecutor's office has initiated more than 1.5 thousand control procedures, 243 (16%) statements of claim for the conversion of property objects into the income of the Russian Federation, for which the officials did not provide information proving their acquisition with legal income. These are cars, land, residential and non-residential premises. Courts satisfied 81% of prosecutors' claims.

*Table 1* presents the dynamics of cases in courts of general jurisdiction.

The recommendations of the Financial Action Task Force on Money Laundering (FATF), which worked in Moscow from March

11 to March 29, 2019, has noted the need for further development of this tool. The Panel has found that Russia was not actively involved in capital recovery efforts. The Central Bank sent only 47 inquiries abroad about 240 clients of 99 foreign banks over 2017–2018.<sup>7</sup>

Bloomberg calculated that in 25 years the value of assets withdrawn from Russia could reach an astronomical US\$ 750 billion, which is equivalent to half of the country's GDP.<sup>8</sup>

It is the financial and credit sphere of Russia that is currently one of its most vulnerable links from the point of view of economic security.

During the discussion, representatives of foreign countries spoke about the problem of proving misappropriation of property, focusing on the insufficient evidence collected, as well as on the lack of evidence of the acquisition of foreign assets at the expense of funds received from the commission of corruption crimes in Russia. As a result, the national courts of foreign states refuse to seize the property of the defendant [5, p. 120].

In a number of cases, prosecutors do not have the appropriate qualifications and knowledge necessary to analyze and collect sufficient evidence of the legalization of a stolen asset outside of Russia. To improve the skills of law enforcement officials, a practical guide has been developed to help those who are struggling with the strategic, organizational, investigative, and legal challenges associated with the recovery of stolen assets. [6] It is difficult to disagree with the authors of this guide, who rightly believe that stolen asset has taken gigantic proportions, threatening the economic security of states. Stolen funds are difficult and sometimes impossible to find unless appropriate measures are taken in a timely manner. We fully agree with the authors

<sup>7</sup> URL: <https://pasm.ru/archive/253308/> (accessed on 15.10.2020).

<sup>8</sup> URL: <https://expert.ru/2020/09/24/ofshoryi/> (accessed on 15.10.2020).

Table

**Cases of reversion of movable and immovable property to the state revenue in 2013–2019**

	2013–2016	2017	2018	2019
Cases with a decision	19	32	80	112
Satisfied Claims	12	29	67	89
Dismissed cases to satisfy the claims	7	3	13	23
Funds awarded for recovery on secured claims, RUB	Data is unavailable	5,983,067	24,746,338	32,056,708

Source: compiled by the authors on the reports on the work of the courts of general jurisdiction for the consideration of civil and administrative cases in the first instance over the year. URL: <http://www.cdep.ru/index.php?id=79&item=4891> (accessed on 15.10.2020).

on the need to develop practical measures for extrajudicial confiscation and return of assets. However, it should be emphasized that the proposed measures require updating due to the use of digital technologies in criminal practice.

Another drawback of the country's law enforcement agency in the strategy of the asset recovery procedure is the absence of an approved conceptual apparatus of the term "asset". This, in our opinion, makes it difficult to perform the required actions to detect assets. It should be emphasized that for the preparation of financial statements<sup>9</sup> the following definition of an asset is used: "assets are economic assets, control over which the organization has obtained as a result of a fait accompli of its economic activities and which should bring it economic benefits in the future. Future economic

benefits are the ability of assets to directly or indirectly contribute to the flow of cash to the entity". It is necessary to define the conceptual basis for the identification and return of assets to the territory of Russia. Within the framework of this article, the return of assets will be understood as the legal process of tracing, identifying, and recovering funds stolen (withdrawn) by persons who have committed illegal actions, have not proven the legitimacy of the acquired property owned by them, their family members, affiliates, and hidden in foreign jurisdictions.

The procedure for tracing and recovering assets obtained illegally from abroad is more complicated [7, p. 64]. At the same time, the actions of the state to repatriate the proceeds of crime hidden in foreign jurisdictions are complicated by the difference and inconsistency of the legislative acts of different states on the procedure for the seizure and confiscation of assets. These assets include cash in bank accounts, financial instruments, real estate, movable

<sup>9</sup> The concept of accounting in the market economy of Russia, approved by the Methodological Council for Accounting under the Ministry of Finance of the Russian Federation on December 29, 1997. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_17312/](http://www.consultant.ru/document/cons_doc_LAW_17312/) (accessed on 15.10.2020).



property, art and artifacts, and precious metals.

The effectiveness of the application of measures for the search, identification, seizure, and confiscation of property in Russia is directly related to the ability of law enforcement agencies to timely establish the presence and location of the relevant property, as well as to prove its connection with a crime [8, p. 545].

### STAGES OF ASSETS RECOVERY

The asset recovery process, in our opinion, may consist of several stages:

- tracking;
- freezing;
- arrest and seizure;
- confiscation;
- return of assets.

The tracking process locates the stolen assets. At the same time, the main method of this stage is the creation of a paper trail through a financial investigation of the disputed property, as well as the preparation of written requests to foreign countries in order to confirm or not confirm the location of the assets.

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***Bloomberg calculated that in 25 years the value of assets withdrawn from Russia could reach an astronomical US\$ 750 billion, which is equivalent to half of the country's GDP.***

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After receiving the evidence base on the location of assets, the procedure for freezing them begins with an appeal to law enforcement agencies in order to block existing accounts.

With the help of the procedure for the seizure of disputed assets, the goals of limiting the rights to alienate an asset in favor of third parties are achieved [9, p. 72].

The mechanism of confiscation of stolen property contributes to its reversion to the state revenue to compensate for the damage caused.

For each step, procedural procedures should be established to identify and document the evidence base for the recovery of stolen assets, considering how the process in one state will affect the detection and recovery of assets in other jurisdictions. In this case, the UN Convention, where a separate chapter was devoted to this issue, can serve as a methodological basis for the return of stolen assets. Based on the recommendations of the UN Convention, there are several directions of the strategy for the recovery of stolen assets.

The *first direction* is the recognition of the debtor in bankruptcy proceedings on the territory of Russia and further recognition of the bankruptcy of Russia abroad. The advantage of this direction is the receipt from the bankruptcy administrator of the Russian Federation of the necessary information about the structure of a foreign asset and the establishment of control over it.

The *second direction* is to apply directly to a foreign court with a petition for bankruptcy or the introduction of a foreign bankruptcy procedure in addition to the Russian case. In this case, the court of a foreign state will appoint a local manager who will look for assets and distribute them among creditors in this state.

The *third direction* is the recognition and enforcement of the decision of the Russian court abroad, obtaining court orders on the seizure of assets and disclosure of information, etc.

Within the framework of the *fourth direction*, a separate case is initiated in a foreign court, which will allow an active campaign to trace and identify the foreign asset of the debtor. But there are also negative factors in this direction. The fact is that in a number of cases, foreign legislation may not consider the claims of Russian

creditors at all or establish a different priority, for example, taking into account the priority of satisfying the claims of foreign creditors.

Although each of these areas deserves equal attention from the point of view of ensuring the efficiency of the entire process of asset recovery, the criterion of efficiency is mainly the “confiscation” of assets, that is, the deprivation of property acquired as a result of criminal actions, which entails the transfer of it into the ownership of the state [9, p. 65]. According to some experts, confiscation of property should be distinguished from other forms of gratuitous seizure of property into state ownership. At the same time, it is noted that in the domestic legislation there is no alternative of foreign procedures and rules for confiscation of property, which do not require conviction and establishment of a person’s guilt in committing a criminal act [10].

Summarizing the considered directions, we can formulate an unambiguous conclusion that the cost of the procedure for returning foreign assets to the territory of Russia may turn out to be less than the costs incurred, which may induce individual creditors to abandon legal proceedings or join forces to detect stolen assets.

### **ECONOMIC AND LEGAL ASPECT OF THE LEGALIZATION (LAUNDERING) OF THE PROCEEDS OF CRIME**

To ensure the sustainable development and existence of a democratic society, effective methods and legal mechanisms are required to protect public relations from criminalization and abuse of state power, the legitimacy of which is largely based on public trust. Consequently, the legislative body that initiates these legal mechanisms has the right to establish increased requirements for the reputation of public officers in order to eliminate doubts about their moral qualities and, accordingly, the legitimacy and disinterestedness of

their actions as public power holders [11, p. 200]. This conclusion is consistent with the provisions of the UN Convention against Corruption, the preamble of which states that preventing and eradicating corruption is the responsibility of all states since it affects their economies, poses serious threats to the stability and security of society, undermines democratic and ethical values, justice and harms sustainable development.

Money laundering contributes to the establishment of control of certain criminal communities over certain sectors of economic activity, the financing of terrorism, the growth of corruption, encourages the means of unfair competition [12, p. 30].

Both the legal aspect of money laundering and the economy are expressed in various forms of economic damage. The literature has repeatedly noted that the harm from money laundering must be considered simultaneously from the point of view of law and economics [13, p. 171].

The latter is especially important since the scale of money laundering can lead to deformation of key areas of life: tax, budget, monetary, as well as to a decrease in the effectiveness of the macroeconomic policy pursued in the state, an increase in a negative impact on the development and efficiency of market mechanisms. According to the IMF, the total amount of legalized money in the world is about 2–5% of world GDP. Accordingly, on an annualized basis, this amounts to 0.9–2.4 trillion US dollars, which actually contributes to the global business cycle and cash flow. Money laundering is closely related to many macroeconomic consequences, among which we single out an unpredictable change in demand for the money supply, an increase in the volume of fluctuations in transnational capital and foreign exchange flows as a result of unpredictable cross-border foreign exchange transfers, etc.<sup>10</sup>

<sup>10</sup> IMF Annual Report. URL: <https://www.imf.org/external/pubs/ft/ar/2019/eng/assets/pdf/imf-annual-report-2019-ru.pdf> (accessed on 15.10.2020).

### **TAX ADMINISTRATION AS A TOOL TO COUNTERACT LEGALIZATION OF ILLEGALLY ACQUIRED PROPERTY**

Tax administration can be recognized as one of the segments of the economic and legal mechanism for detecting and identifying the property as illegally acquired, during which tax evasion schemes are disclosed by subjects of both state and private economic activity.

It is correct to highlight the following methods of tax evasion in economic activities:

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*The cost of the procedure for returning foreign assets to the territory of Russia may turn out to be less than the costs incurred, which may induce individual creditors to abandon legal proceedings or join forces to detect stolen assets.*

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I. Complete concealment of business activities (lack of tax registration; failure to submit tax returns).

II. Partial concealment of economic activity (distortion of the tax base/object of taxation, tax fraud).

The development of tax administration should also be seen as an important factor in increasing the efficiency of detecting and identifying the property as illegally acquired. Indeed, due to the improvement of the quality of tax administration, business transparency indicators are also growing, and there is also a voluntary abandonment of semi-legal schemes in order to reduce tax risks.

In the context of the global information economy, the Federal Tax Service of Russia considers the informatization of tax authorities and the automation of tax procedures to be the main direction in the development of tax administration. Information technology can reduce

transaction costs, including the relationship between tax authorities and taxpayers, by making all processes more transparent, including monitoring the “purity” of real estate transactions. As a result of the high technological level of internal control over the ASK VAT, some fly-by-night firms have left the market, as the cost of cashing out funds through VAT schemes has increased significantly.

Not only the number of persons with Internet access has increased, but also the number of transactions carried out without identifying counterparties. As known, in order to prevent fraud, the role and responsibility of banks in financial transactions are increasing. Finally, the strengthening of globalization processes with the corresponding complication of tracking financial transactions also predetermines the exceptional importance of modern information technologies of tax control.

One of the most significant advances in the application of new information technologies for office tax audits is the typology of tax evasion schemes, which has not yet been fully developed. The currently known schemes (“chains”) are still relatively small, but it can already be concluded that all of them, in one way or another, consist in the fact that a subject evading tax obligation is built into the business perimeter. Predictive analytics methods can hold significant promise in the implementation of the task of countering tax evasion.

When the template is applied to a dataset based on campaign results, rather complex cross-regional tax evasion patterns can be identified early on.

Among the measures of tax administration, we will single out such an electronic resource of the Federal Tax Service of Russia as individual account of taxpayers (legal entities, individual entrepreneurs, individuals). The Tax Code of the Russian Federation introduced a rule according to which a



taxpayer, including an individual, is obliged, in the absence of any object of property in his personal account, to voluntarily add the type of property and its official registration data.

However, in any case, the problem of legalizing property arises before tax evaders. With all the common concepts and forms of legalization, let us single out such content of legalization as the creation through transactions of civil law grounds for acquiring a legal right to money or other property obtained illegally [14, p. 20]. At the same time, as a rule, the following main methods of legalization are distinguished:

- financial transactions, primarily on a large scale, based on illegally acquired funds and other assets;
- non-financial transactions with property, other assets acquired as a result of criminal activity.

The Federal Law “On Counteracting the Legalization (Laundering) of Criminally Acquired Incomes and Financing of Terrorism”, in terms of transactions with monetary funds or other property, defines them as actions with monetary funds or property, regardless of the form of conduct, committed by individuals/legal entities, individual entrepreneurs with the aim of establishing, terminating or changing the rights and obligations associated with them. Thus, in fact, two concepts — “financial operation” and “deal” are combined.

In accordance with the provisions of Russian legislation, financial transactions include, first of all, banking transactions defined as such by the current Civil Code of the Russian Federation, for example:

- attracting funds from individuals and legal entities, individual entrepreneurs in deposits;
- investing the funds received on its own behalf and at the same time accepting all associated costs for itself;
- settlement and cash services for the clients of the credit institution;
- carrying out collection operations;

- implementation of interbank and cross-border transfers;
- issuance of guarantees for loans from third parties, providing for the fulfillment of obligations in cash;
- conclusion of contracts of assignment or contracts of trust management of funds;
- finance lease agreements.

Financial transactions are actions aimed at solving a specific problem of the organization and management of monetary relations arising from the formation and use of cash flows. Consequently, a financial transaction is a transaction between individuals or legal entities associated with the transfer of ownership of any type of property, including cash.

#### **PROBLEMS OF PRIVATE SECTOR IN THE SPHERE OF DETECTION AND RECOVERY OF STOLEN ASSETS**

One of the problems of the private sector in terms of the recovery of withdrawn assets from the control of the owner is the sale of assets to third parties prior to the commencement of bankruptcy proceedings. In this case, the sale of assets occurs at reduced prices, which contributes to the rapid onset of bankruptcy due to an increase in losses from economic activities and the inability to pay off accounts payable. Moreover, the sale can be carried out by both affiliated and independent third parties. In this case, such tools are used as the execution of an assignment agreement, assignment of the right of claim, factoring, etc., which allow the withdrawal of assets with impunity, if it is impossible to prove the fact of collusion in the absence of signs of ownership [15, p. 310].

Arbitration managers and the internal control system of a business entity should provide significant assistance in detecting and recovering stolen assets. They are obliged to focus their attention on the processes of committing suspicious transactions, which can occur during both normal and unusual activities.

The liquidator should be suspected of having signs of illegal withdrawal of assets abroad on the following grounds:

- the presence of a significant volume of transactions for unusual transactions;
- conclusion of transactions with the terms of the mandatory provision of a pledge of assets significantly exceeding the transaction amount;
- the use of fly-by-night firms in the chain of business operations;
- participation in the economic turnover of such financial instruments as a bill of exchange, the issuance of loans without collateral;
- the presence of financial transactions with affiliated persons, etc.

To confirm illegal withdrawal of assets abroad, it is necessary to launch procedures for the financial examination of business transactions carried out in previous years, as well as filing a petition to the General Prosecutor's Office of the Russian Federation for seizure, blocking of foreign accounts and recovery of stolen goods [16, p. 45].

The internal control system in the process of detecting and recovering stolen assets should operate with such evaluative categories as "fairness", "reasonableness", "violation of the law" since it is very difficult to understand when the risks of entrepreneurial activity are allowed and when the management of the business entity is ineffective.

The estimated value or professional judgment of the internal control entity, which, relying on advanced information technology, can identify signs of suspicious and unusual transactions, plays an important role in the development of preventive and servicing measures to combat asset stripping. At the same time, they must have a formalized form so that it is possible to develop and implement control procedures in the internal control system.

## VIRTUAL ASSETS: CONTROL ISSUES

Virtual assets have become another issue. In the modern world, there is a constant increase in crimes with their use, this indicates the insufficient work of law enforcement agencies. It is necessary to develop tools for legal regulation and control of the turnover of virtual assets [17, p. 62]. Today, digital assets in Russia are in a gray zone, so they need to be legalized and recognized at the legislative level. The Central Bank of the Russian Federation is working on solving this problem.<sup>11</sup>

An important step in this matter was the adoption in Russia of the Federal Law of July 31, 2020, No. 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation". This legal act governs and regulates the issuance, accounting, and circulation of digital financial assets. The law introduces the concept of "digital assets", in accordance with which digital rights are recognized. They also include monetary claims, possible rights to issue securities, participation in the authorized capital of a closed joint-stock company, the requirement to transfer equity securities to other information systems.

Another concept introduced by this law is "digital currencies", which is understood as a set of some digital data (code or special record) located in the information environment. They can be accepted as a means of payment, not being an official currency on the territory of the Russian Federation or another state, or as investments without a person responsible for fulfilling obligations, with the exception of the system operator, who ensures the functioning and procedure for issuing this means of payment [17, p. 60].

<sup>11</sup> Public consultation report. URL: [https://cbr.ru/analytics/dok/dig\\_ruble/](https://cbr.ru/analytics/dok/dig_ruble/) (accessed on 10.02.2021).

It is possible to cite a large number of legal precedents on digital currencies in both international and Russian law enforcement practice, despite the lack of proper regulation of these issues in the legislation.

The first operation to confiscate bitcoins can be considered the liquidation by US law enforcement agencies of one of the largest anonymous digital drug markets SilkRoad. Its assets were sold at four bitcoin auctions for a total of US\$ 30 million at the exchange rate for the period of transactions. Further, the seizure and sale of confiscated cryptocurrency in the United States have become commonplace.

In Russia, the decision of the Ninth Arbitration Court of Appeal, which in May 2018, considered the case on the sale of property in the event of personal bankruptcy, became a precedent. The court obliged the debtor to provide the bankruptcy administrator with access to the contents of the crypto wallet to be included in the bankruptcy estate and thereby recognized the cryptocurrency as property. In connection with the recommendations of the FATF (International Financial Action Task Force on Anti-Money Laundering), the plenary session of the Supreme Court in February 2019 ruled that Art. 174 and 174.1 of the Criminal Code on money laundering should also apply to cryptocurrencies.

We believe, the main method for implementing the mechanism for tracking, identifying, and confiscating digital assets should be international rules governing the control over the circulation and emission of cryptocurrencies. At the same time, it is required to develop and determine the legal status of virtual assets, as well as standards for determining the procedures associated with their turnover. Including for the implementation of the principles of confiscation, it is necessary to form official crypto accounts of government agencies, the procedure for storing the seized cryptocurrency, its implementation, since for

the most part, it has great volatility, therefore it must be promptly converted into national payment instruments.

## CONCLUSIONS

Having studied and summarized the practice given in the article on the formation and development of mechanisms for the system of seizure and recovery of assets, we can conclude that only the use of an integrated approach in identifying problems related to the confiscation and recovery of assets, especially in extrajudicial practice, a detailed study of this issue, the implementation of measures on the assessment of national risks and threats, the preparation and approval of new international legal acts in the field of combating money laundering and the financing of terrorism, as well as the strict implementation of their provisions at the national level will allow the global financial system to successfully confront new challenges.

The integration in this area will be determined by the system of cooperation between law enforcement agencies of states with commercial structures and, first of all, the credit and financial sector, auditors, arbitration managers, and specialists in internal control.

An urgent solution is required for financial and legal problems caused by the limited competence of law enforcement agencies to collect evidence abroad, as well as the need to overcome banking, commercial and other types of secrets protected by law, both on the territory of individual states and jurisdictions, and in cyberspace when using crypto-assets by the organized crime for their illegal purposes. This task will have to be performed in difficult conditions, given the fact that crypto-assets are increasingly being used and introduced into the system of legal economic relations and are becoming more available for citizens to use in their daily activities. To develop an effective economic and legal mechanism, it is necessary to harmonize the legislation

of the Russian Federation, to combine the efforts of law enforcement agencies and civil society in the search and punishment of those responsible for the illegal withdrawal and use of assets. The methods proposed in the article are of undoubted interest for law enforcement agencies, whose functions include countering the withdrawal of assets, detection, and recovery of illegally acquired or stolen assets, as well as for the private sector when conducting fraud investigations into the illegal withdrawal of assets.

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## ABOUT THE AUTHORS



**Vladimir V. Zemskov** — Dr. Sci. (Econ.), Prof., Department of Economic Security and Risk Management, Financial University, Moscow, Russia  
VVZemskov@fa.ru



**Valerii I. Prasolov** — Cand. Sci. (Pol.), Assoc. Prof., Department of Economic Security and Risk Management, Financial University, Moscow, Russia  
VIPrasolov@fa.ru

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