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Organizing Effective Pre-Investigations Prior to Initiating Criminal Cases of Illegal Bankruptcies of Credit Organizations

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It is difficult to investigate crimes committed when credit institutions file for bankruptcy. Moreover, there is no established procedure on how to best conduct these investigations.

Court practice shows that such cases are difficult to substantiate and that a high percentage of them are dismissed. There have been few cases in which criminal proceedings were instituted against persons guilty of causing a bank's fraudulent bankruptcy. Many reasons can be given to explain this; one is the extremely low quality of initial data used for investigation. But suppressing bankruptcy-related crime would help to decriminalize the Russian banking system, to increase its transparency and reliability, and to improve the economic security of the entire banking system.

In this article, the author reviews the pre-investigative procedures of an investigator which precede the preliminary inquiry and inquest. The main purpose of this procedure is to collect and assess information to determine if there is a sufficient amount of data establishing the crime's essential elements. The author reviews the causes for instituting criminal proceedings against persons for the fraudulent bankruptcy of a credit institution and reaches useful conclusions.

Keywords: pre-investigative procedure, verification activity, illegal bankruptcy of a credit institution, attributes of fraudulent bankruptcy, liquidator, and endowment insurance agency.

During last years the number of crimes, committed in the process of credit organizations' bankruptcy, has grown significantly. Judicial practice bespeaks of proof complexity of the given category of cases and high rate of their dismissal. This fact can be explained by many reasons, and one of them is a very poor analysis of the source material quality.

In accordance to section 140 CPC RF there are the following reasons for criminal case initiation: statement of crime, acknowledgement

of guilt, information about the committed or imminent crime, acquired from other sources. The grounds for criminal case initiation are availability of enough data, directing to elements of crime.

Sometimes an offence report availability is not enough for criminal case initiation, and, as a consequence, some additional information needs to be gathered.

In accordance to section 144 of the Criminal Procedure Code of the Russian Federation (hereinafter referred to as CPC RF) the materials,

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testifying of the facts of crime commitment, require pre-investigative calibration, which is not covered by the Criminal Procedure Law of the Russian Federation, though, such calibration is widely used on practice and in most cases it guarantees most full and efficient investigation of a credit organization's lawless bankruptcy case (after referred to as Bank).

Pre-investigative calibration precedes preliminary investigation and inquiry. The target of such an investigative action has been defined by Criminalistics and investigative practice as following: information gathering, data storage, analysis and evaluation of data sufficiency, directing to the presence of crime elements.

Judicial-investigative practice bespeaks that in most cases the reasons for criminal case initiation upon deliberate false bankruptcy can be: proofs of the Bank debt (by depositors); petition of the Bank's promoters; statement of the Bank of Russia; temporary administration petition; petition of liquidation committee (liquidator) of a credit organization; petition of competitive manager; statement of the Federal tax administration.

Temporary administration defines the presence of deliberate bankruptcy crime elements through the analysis of the credit organization's operations and transactions, which have caused significant changes in the structure and the property value (resources) of the credit organization.

In case the mentioned elements have been revealed, temporary administration sends a petition to the territorial branch of the Bank of Russia about the Bank of Russia's addressing to law-enforcement authorities with a statement of revealed facts.

The information, having been gathered in the course of investigative actions, is evaluated from several points of view:

- Its reference to the purpose and intent of the investigation;
- admissibility and practicality of the data usage (as evidentiary, as orienting);
- sufficiency of the acquired data for criminal case initiation and for processual decision-making;
- investigation prospects.¹

Taking into consideration that, the significant number of cases is initiated on the basis of the data of competitive manager's check on the presence of deliberate and false bankruptcy elements, so, it is reasonable to settle on and to consider these materials in detail.

In accordance to section 50²⁰ of the Federal law dated 25.02.1999 № 40-ФЗ «About inconsistency (bankruptcy) of credit organizations» (hereinafter referred to as the Law), the Deposits Insurance Agency presents a competitive manager in case of bankruptcy of credit organizations, having the license of the Bank of Russia for individuals' money depositing.

Within the frames of the functions, covered by section 50.21 of the Law, fulfillment, competitive manager works upon the revelation of the Bank's bankruptcy circumstances, including documentary-juristic analysis of the Bank's activity, for the purpose of revealing of queer transactions, performed by former officials of the Bank, revealing of the facts of the Bank damage infliction, determination of the persons, being guilty in causing the bankruptcy of the Bank, and also the competitive manager searchers for excuses for bringing the persons, being guilty in the bankruptcy of the Bank, to subsidiary responsibility.

CB «ROSKOMVETERANBANK» LTD (hereinafter referred to as the Bank) was admitted inconsistent (a Bankrupt) by the decision of the

¹ T. Aver'janova, R. Belkin, JU. Koruhov, E. Rossinskaja. Criminalistics: Educational Book for Institutions of Higher Education / under the editorship of professor R. Belkina. - 2- d edition. - Moscow: Norma, 2004. - 992p.

Moscow Arbitrary Court, case A40-9725/06-124-31B dated 07.04.2006. In the course of the competitive manager's verification, it was revealed, that the Bank had performed some transactions on the threshold of the bankruptcy: the Bank had sold cash liquid bank-papers of the credit organizations CJSC «Gazprombank» and JSCB «Rosbank» on the total amount of 35 billion of rubles. The given bank papers of the credit organizations constituted a significant part of the liquid assets of the Bank, the competitive manager considered, that there were elements of siphoning off the most liquid Bank assets, and in connection with the fact, on 21.03.2007 the competitive manager sent a statement of the mentioned individuals' guilt determination in causing the bankruptcy of the Bank to the Moscow Arbitrary Court.²

The competitive manager sent a pronouncement upon the presence of deliberate bankruptcy elements in the Bank case to the Investigative Committee of the MVD of Russia. There was initiated a criminal case on grounds of *corpus delicti*, covered by section 196 CC RF.

In accordance to section 14 of the Provisional Rules of arbitrary manager's verification for the presence of elements of false and deliberate bankruptcy³ the pronouncement includes the following data:

- a) The date and the place of pronouncement compilation;
- b) The data about the arbitrary manager and about self-regulatory organization, which member the arbitrary manager is;
- c) the name of the arbitrary court, the case registration number, the date of the arbitrary court decision making of the appropriate bankruptcy procedure promulgation and the date of the

arbitrary court decision making of the arbitrary manager approval;

d) Full name and other requisites of the debtor;

e) Conclusion about the presence (absence) of the elements of false or deliberate bankruptcy;

f) Calculations and proofs of conclusion of false bankruptcy elements availability (unavailability);

g) calculations and proofs of conclusion of false bankruptcy elements presence (absence), including the debtor's transactions and the debtor administration organs' operations (acts of omission), having been analyzed by the arbitrary manager, and also the debtor's transactions and the debtor administration organs' operations (acts of omission), which have become the reason or could be the reason of non-creditworthiness appearance or its increase and (or) have inflicted the debtor a real financial damage, simultaneously with such the damage estimation (if it is possible to define its value);

h) Justification of verification performance impossibility (in case of absence of necessary documents).

Basing on the verification results, a motivated judgment of the elements presence (absence) of deliberate and false bankruptcy is prepared. In case the arbitrary manager pronounces that it is necessary to check on the presence of criminal elements in the given case and to solve the question of criminal case initiation, then investigative officers make arrangements for bringing to a civil and (or) a criminal responsibility of the persons, being guilty in the bankruptcy and having inflicted damage to the Bank.

On this stage, crime investigator must analyze the quantity and the essence of the

² <http://www.asv.org.ru/liquidation/detail.php> the State Corporation «Deposits Insurance Agency» - Information of the course of bankruptcy proceeding.

³ RF Government decree dated 27.12.2004 №855 «Provisional Rules Approval of arbitrary manager's verification for the presence of elements of false and deliberate bankruptcy».

transactions, directed to siphoning off the Bank's assets, the necessity and economical justification of the transactions' conclusion; to check on the availability of the documents, proving the queer transaction performance and reflecting the movement of funds with reference of the transaction performance; to study the circle of banks and organizations, having taken part in the credit organization's assets siphoning; to fulfill other actions, directed to the checking on the data sufficiency for criminal case initiation.⁴

Investigation practice bespeaks that it is impossible to avoid all the mistakes during determination of elements presence of deliberate and false bankruptcy, and during the salvation of the problem of criminal case initiation, as far as all the verification materials, as a rule, carry only the information of the case objective side, i.e. of the mechanism of a crime commitment, but do not allow to get a necessary insight into its subjective side. That is why, criminal cases of scienter false bankruptcy of the Bank are initiated most often only on the basis of suppositional conclusions

that, there are all the criminal elements present in the actions of the subjects. To decrease the probability of unjustified decision-making of criminal case initiation is possible only with a help of a thorough study by the crime investigator of all the source materials, of a deep analysis and estimation of all these factual data, contained in the materials. On the stage of decision-making of criminal case initiation it is necessary for the crime investigator to get explanations of the competitive manager, having performed the audit of the Bank upon the elements presence of false or deliberate bankruptcy. Moreover, in case of necessity, before a criminal case being initiated, the crime investigator must get explanations of all the persons, having been responsible for financial activity of the Bank in the pre-bankruptcy period.

On the given stage authorized agencies and executive officers must analyze the information of crime and to make processual decision to start preliminary investigation or to refuse from criminal case initiation.

⁴ V. Larichev, P. Vlasov, E. Lozhkina, V. Ulejchik. Investigation of scienter bankruptcy and illegal actions during the bankruptcy of credit organizations. / Under the editorship of professor V. Larichev. – Moscow: Spark, 2006. –244p.