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**The “Forex” Market Fraud Investigation (Russian Experience)**

La investigación de fraudes en el mercado "Forex" (experiencia rusa)

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## Resumen

El artículo analiza las problemáticas que surgen durante la investigación de uno de los tipos de fraude más comunes en la etapa actual, que consiste en la apropiación indebida de fondos mediante la realización de operaciones de cambio de divisas en el mercado "Forex". Los autores señalan la falta real de una metodología desarrollada para investigar esos delitos. Se llega a una conclusión fundamentada de que la consecuencia de estas razones es la evasión de las personas que cometen tales actos delictivos del enjuiciamiento penal por parte de las autoridades competentes y los funcionarios en el territorio de la Federación de Rusia y, en consecuencia, la ausencia real de ejemplos exitosos de procesos judiciales. y práctica investigativa para llevarlos ante la justicia. En el marco del artículo, se realiza el análisis de la legislación, diversas fuentes oficiales y la práctica policial, en base a lo cual se fundamentan las peculiaridades de llevar a cabo algunas actuaciones investigativas y otras acciones procesales en la investigación de hechos fraudulentos cometidos en el "Forex" Mercado, por el mecanismo de este delito y la especificidad de la personalidad de las personas involucradas, se revelan.

**Palabras clave:** El Mercado "Forex", Comerciante De Divisas, Comerciante, Calificación, Fraude, Investigación, Acciones De Investigación.

## Abstract

The article analyzes the problematic issues that arise during the investigation of one of the most common types of fraud at the present stage, which consists in the misappropriation of funds by carrying out foreign exchange transactions using the "Forex" market. The authors note the actual lack of a developed methodology for investigating such crimes. A well-grounded conclusion is made that the consequence of these reasons is the evasion of persons committing such criminal acts from criminal prosecution by the competent authorities and officials on the territory of the Russian Federation and, accordingly, the actual absence of successful examples of judicial and investigative practice of bringing them to justice. Within the framework of the article, the analysis of

legislation, various official sources and law enforcement practice is carried out, on the basis of which the peculiarities of carrying out some investigative and other procedural actions in the investigation of fraudulent events committed in the "Forex" market, due to the mechanism of this crime and the specifics of the personality of the persons involved, are revealed. REICE | 128

**Keywords:** the "Forex" market, forex dealer, trader, qualification, fraud, investigation, investigative actions.

### Introduction

An analysis of empirical data shows that in 2020, 45,109 crimes were registered in the Russian Federation that were qualified by the preliminary investigation bodies as fraud committed using the capabilities of the Internet, most of which were identified by employees of the criminal investigation department (29,428), investigative bodies (8,556), subdivisions economic security and anti-corruption (1,723).

The fight against these criminal offenses is complicated by a number of factors, among which it should be especially noted: the imperfection of legal regulation of the "Forex" market in the Russian Federation, the disguise of the fraud committed here under high-risk civil law transactions, the use of forex dealers registered on the territory of foreign states, 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 fraud from criminal prosecution by the competent authorities and officials on the territory of the Russian Federation and, accordingly, the actual absence of successful examples of judicial and investigative practice of bringing them to justice.

The methodology for investigating crimes committed using the capabilities of the interbank foreign exchange market "Forex" is at the stage of formation, which, of course, affects the low degree of effectiveness of countering these criminal acts. The foregoing actualizes the topic of this article, within the framework of which some issues related to the

investigation of such crimes will be considered and appropriate recommendations will be developed.

### **Materials and Methods**

The general scientific system method was used as the main one, through which the features of the investigation of fraud carried out using the possibilities of the "Forex" market were formulated. Taking into account the specifics of the subject, the successful implementation of research tasks requires the use of a number of private scientific methods of cognition, among which it is necessary to highlight the 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 combating 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 procedural legislation in the system of legal security for the functioning of the "Forex" market, the structural-legal method is used.

The specified sociological method was used to obtain empirical results. The use of the statistical research method showed that in 2020, 45,109 crimes were registered in the Russian Federation, qualified by the preliminary investigation bodies as fraud committed using the capabilities of the Internet, most of which were revealed by the employees of the criminal investigation department (29,428), investigative bodies (8,556), units of economic security and anti-corruption (1,723).

57 pieces of preliminary verification data reports on the commission of such crimes were studied. Only one criminal case was completed at the Organized Criminal Investigation Department of the Investigative Department of the Ministry of Internal Affairs of the Russian Federation.

The sociological method made it possible to supplement the empirical base of the study and obtain representative conclusions, supported by expert opinion (22 investigators were interviewed).

The complex application of the described research methodology made it possible to substantiate proposals for improving the criminal procedure legislation in the Russian Federation; to develop a set of tactical recommendations for conducting investigative and other procedural actions in the investigation of fraud committed using the "Forex" market; develop proposals to improve the effectiveness of measures to prevent these crimes. REICE | 130

As a result of the application of this methodology, ways were identified for further improvement of legislation and specific practical activities of investigators to investigate fraud committed using the capabilities of the "Forex" market.

### **Result and discussion**

Fraud, which consists in the theft of funds by carrying out foreign exchange transactions using the Forex market, is today one of the most widespread crimes in the Russian Federation. This is due to a number of objective and subjective factors, including: the problems of legal regulation of the Forex market, the disguise of fraud committed here as high-risk civil transactions, the use of forex dealers registered in foreign countries, 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 absence of successful examples of judicial and investigative practice of bringing them to justice, as well as compensation for damage to victims who suffer multimillion-dollar losses from this criminal activity.

According to the analysis of the 57 pieces of preliminary verification data reports we studied, containing reports on the commission of such crimes, shows, for the most part, procedural decisions were made in the form of a decision to refuse to initiate a criminal case. Today in the Russian Federation there is only one positive example of a successful investigation of such a crime by the Organized Crime Investigation Department of the Investigative Department of the Ministry of Internal Affairs of Russia on charges of members of an organized group of persons under Part 7 of Art. 159 of the Criminal Code

of the Russian Federation in the theft of funds from citizens by fraudulent actions on an especially large scale, under the guise of providing services for organizing trades (transactions) on the "Forex" market.

Thus, it is obvious that the modern Russian practice of investigating crimes committed using the capabilities of the interbank "Forex" market is at the stage of formation. REICE | 131

The analysis of empirical materials carried out within the framework of this study shows that the reason for initiating a criminal case (conducting a preliminary check) on the fact of fraudulent actions committed using the capabilities of the interbank "Forex" market, in most cases, is a statement by a person who has been harmed by a crime. As a rule, an applicant for this category of cases is an individual who, on his own behalf and at his own expense, carries out trading activities on the "Forex" market, using the service of a forex dealer (broker) to increase his capital.

Information received from the Central Bank of the Russian Federation can also act as a pretext (Pushkarev et al., 2021, p. 395-406). It should be noted that for the period of 2015-2020 the employees of the Department of Counteracting Unfair Practices of the Bank of Russia and its structural divisions identified more than 685 organizations and Internet projects that have signs of a financial pyramid.

Data on the reviewed criminal actions may also contain materials received from the Russian Center for Regulation of OTC Financial Instruments and Technologies (CROTCFIT – a self-regulatory organization of forex dealers), the Federal Antimonopoly Service, as well as materials from prosecutorial inspections and operational developments. Such information, as a rule, is supported by the relevant conclusions of the specialists of the indicated departments. These conclusions should become the subject of serious analysis for the investigator, including for the formulation of further questions to be clarified during the interrogations (interrogations) of the defendants and the appointment of the appropriate expert examinations.

Interaction with the investigating authorities and other interested departments plays a key role for the investigator at all stages of the investigation, since it is they who have the

maximum information about the bona fide and unscrupulous participants in the foreign exchange financial market.

Any information that contains signs of a crime may serve as the basis for initiating a criminal case, provided that it is obtained in accordance with the law by the participant in the criminal process who is authorized to carry out such actions. REICE | 132

The subject of evidence of fraud committed using the capabilities of the interbank Internet currency of the "Forex" market is the following circumstances:

– the event of a crime, namely the presence of the fact of the commission of a set of actions accompanied by deception and/or abuse of trust in relation to a specific person or persons (traders) by creating in him (them) confidence in the possibility of increasing the financial resources invested by him (them) in a legal way, and in fact, with the aim of taking possession of the property belonging to him (them) with causing damage to him (them).

These actions are carried out through the use of financial instruments and the possibilities of the interbank foreign exchange of the "Forex" market: having our own website and office, providing clients attracted under the pretext of earning money in the "Forex" market, services for managing their account, assisting in training, as well as providing (false) information about currency quotes and the general state of the foreign exchange market; application by members of an organized group of specialized software developed by them, implemented in the software environment of the Metatrader trading platform, or using its software; withdrawal of funds of a client-trader to offshore or their transfer to cryptocurrency through dummies, which, with the proper skill, can be found in "DarkNet", etc. (Klimina, 2019, p. 275-280). Thus, the use of virtual currencies makes it extremely difficult not only to investigate a crime (Pushkarev et al., 2020, p. 330-335), but also compensation for damage caused (Nguyen et al., 2021, p. 211-220);

– the involvement of a certain person involved in committing a fraud committed using the capabilities of the interbank foreign exchange Internet of the "Forex" market, its specific role and nature of actions (if the crime was committed with complicity - the head of the

organization, staff manager, broker, employee, their awareness of organized criminal activity group), guilt, purposefulness and ulterior motifs;

– circumstances characterizing the personality of the accused (citizenship, a license to carry out the relevant activities, special education, necessary knowledge, experience in the foreign exchange market, convictions, whether he was prosecuted for such crimes, is he wanted, etc.);

– the nature and size of the damage caused (determined based on the amount that was invested by the trader in investments under the control of fraudsters).

Circumstances excluding criminality and punishability of the act are also subject to establishment and proof; mitigating and aggravating punishment; which may entail release from criminal liability and punishment (Kadnikov et al., 2021, p. 664-668).

Analysis of scientific literature and law enforcement practice allows us to assert that the investigator conducting the investigation needs to carefully study and summarize all the information he has about the fraud committed using the capabilities of the Internet currency of the "Forex" market, the number of locations of the offices of the members of the criminal group, determine the priorities, associated with the search and removal of significant computer information (Root, 2012, p. 27).

It is advisable to instruct the employees involved in investigative actions in detail, identify the priorities for finding the necessary information, assess the situation on the spot, use special knowledge and technical means, as well as focus their attention on the procedurally correct seizure of objects and documents.

It is necessary to recommend that the investigator, when carrying out investigative actions (inspection of the scene of the incident, search, interrogation), give priority to the locations of the company's servers. The server is often located outside the territory of the Russian Federation (Turkey, Cyprus, USA, etc.). However, in the course of the activities of affiliated structures, there are additional and intermediate servers, also used in the commission of criminal activity, providing communication between companies and being within reach.



The results of such an investigative action as a seizure are of great evidentiary value in cases of fraud committed using the capabilities of the interbank of the "Forex" market.

In the course of the investigation, the following are subject to seizure and careful examination by the investigator as part of the examination:

- constituent documents of the broker's firm, including the brokerage license, if any;
- documents confirming an agreement on the provision of services to a trader in the foreign exchange market on behalf of a false broker;
- an extract from the register of transactions on the online trading platform where the trade took place;
- listing of transactions, including transactions of crediting funds to a brokerage account and other materials of interest to a criminal case.

A search in this category of cases can be carried out in the offices of firms engaged in the provision of dealer services within the "Forex" market, at the main place of work and residence of the suspects.

Before starting the search, the investigator must, first of all, take measures to prevent possible damage and destruction of information, as well as control the uninterrupted power supply of computer equipment in order to prevent data loss.

In addition, when conducting a search or other procedural action related to the seizure of items, in particular when seizing mobile communications and electronic computers from a group of persons, first of all, it is necessary to find out who owns one or another means of mobile communication and electronic computing technology. The corresponding entries are made about this in the protocol of the investigative action. As practice shows, failure to comply with this simple requirement subsequently makes it difficult or even impossible to establish the roles of individuals in a criminal group.

Often, mobile communications and electronic computers used by the defendants in order to conceal their criminal activities are blocked by passwords. The simplest way of secrecy and the impossibility of extracting information in the gadget is to reset the content and

phone settings, as well as enter the wrong password (more than 10 times) to unlock the device.

When seizing mobile communications or electronic computers, the investigator, using the help of a specialist, must establish the presence or absence of passwords on the seized devices. In order to avoid the loss of data contained in the correspondence carried out by accomplices of criminal activity through “messenger” programs, which can be deleted remotely, all seized devices must be immediately switched to “airplane mode”.

These circumstances make it necessary during the seizure of mobile communications equipment to immediately inspect them in order to avoid the loss of evidentiary information by making “screenshots” with correspondence by regular means.

Special attention should be paid to the fact that computer information can be recognized as evidence only if the material medium on which it is contained was obtained in accordance with the law. The actual location of the physical medium (remotely located server or computer) is usually unknown. It seems possible only to fix the e-mail address of the website page and the domain name of the public Internet. The site is a collection of electronic documents (files) of an individual or organization in a computer network, united under one address (domain name or IP address). All sites taken together make up the World Wide Web, where communication unites segments of information from the world community into a single whole, a database and communications on a planetary scale.

The website is an ordered system of pages linked by hyperlinks. The site page has its own unique address on the Internet and is a kind of program written using HTML commands, through which the formation of the page image is controlled when the user accesses it. To obtain information about the person in charge of the content of the site, you can contact the Russian Research Institute for the Development of Social Networks (RosNIIROS), which registers domain names in the “.ru” and “.rf” zones.

We believe that from the standpoint of the criminal process in order to identify and solve crimes, an Internet site can be considered as a kind of another document, the peculiarity

of which lies only in a specific form of presentation of computer information, without changing the very essence of the concept of a document. We believe that computer electronic documents on the content and connection with a crime can be attributed to other documents that are admitted as evidence if the information contained in them is significant for establishing the circumstances specified in Art. 73 of the Criminal Procedure Code of the Russian Federation and Art. 84 of the Criminal Procedure Code of the Russian Federation.

In accordance with Art. 176 of the Code of Criminal Procedure of the Russian Federation for the purpose of fixing and procedural registration, an investigative examination of the page of a specific Internet site is carried out. Preparation for viewing a page of an Internet site involves obtaining relevant information about the existence of the information you are looking for on a particular Internet site. Such information can be obtained promptly, through a targeted search on the Internet, as well as during the study of documents, other electronic information, interrogation of witnesses, suspects, accused.

Employees of the "K" subdivision of the Ministry of Internal Affairs of Russia, who are engaged in the fight against crimes in the field of computer information and have special training and technical means, can provide important assistance in this. For these purposes, you need a computer connected to the Internet, with the appropriate software, and a printer. In accordance with the provisions of the Code of Criminal Procedure of the Russian Federation, attesting witnesses who have a general understanding of the work of the Internet can be involved in the examination. The search for the relevant Internet site is carried out using Internet search engines. When the desired site and its connection are found using a screenshot (screenshot), a snapshot of the specified web pages is taken. Screenshot programs allow you to capture a full or partial screen image. It is recommended to take a general snapshot of the entire screen, and if necessary, take a detailed snapshot of small fragments of the image. The obtained images must be saved in a computer, copies of them must be made and onto a USB memory stick (flash card) or other electronic information carrier. Pictures should be printed (preferably in color) on paper. In addition, it is possible to print a page of the site directly from the monitor without

using programs to create a screenshot. To do this, just give the command "print" and the entire page will be printed on the printer.

The inspection protocol reflects all actions to search for and fix an image of the website. REICE | 137  
The computer, its location, the IP address of the computer, the computer system used, the designated domain name of the Internet site, as well as the name of the file and its text content are indicated. It is advisable to copy the name of the file to be searched to a computer and to another electronic data carrier, or to print it on paper. This will help you to quickly return to the specific information of the corresponding website later.

The domain name will allow you to determine the IP address of the author of the information of interest. It should be emphasized that the inspection of the Internet site should be carried out without delay, since the initiator of such information can easily delete it. Based on the results of this investigative action, as indicated above, in accordance with Art. 176 of the Code of Criminal Procedure of the Russian Federation, a protocol of examination of documents is drawn up and a "printout" of the page is attached to it.

Thus, we can conclude about a fundamentally different inspection, which differs from the traditional inspection of the document by the technology and content of the actions performed. The document itself is a materially recorded and printed on paper image of the corresponding page of the Internet site. It should be noted that the very image of the page of the Internet site is examined, and the printed page acts as an additional means of fixation, allowing you to save virtual information and place it in the materials of the criminal case. Accordingly, as sources of evidence in accordance with Art. 83 and 83 of the Code of Criminal Procedure of the Russian Federation are simultaneously the protocol of the inspection of the document and the document in the form of a printout of the image of the corresponding page of the site.

Taking into account the foregoing, one should once again focus on the need for a specialist with the necessary knowledge to participate in the production of the corresponding procedural action. In his presence, servers, electronic storage media and

other mobile devices, as well as the corresponding pages of Internet sites, seized during an inspection of the scene of an incident, a search or by means of seizure, should also be examined for the presence of e-mails, user manuals, installation files of programs, even the most insignificant volumes, and other information that allows you to recreate the crime event and collect the necessary evidence of the involvement of certain persons involved in it (Savka, 2021).

### **Conclusion**

The analysis of legislation, various official sources and law enforcement practice, carried out within the framework of this article, made it possible to identify some features of the investigation of fraud committed using the "Forex" market, which are due to the specifics of the methods of this crime, the place and time of the criminal actions, as well as the characteristic features of the person who carries out them. This circumstance gives the law enforcement officer the opportunity to correctly determine and most effectively implement the algorithm of the necessary investigative and other procedural actions at one stage or another of the investigation, and, ultimately, contributes to the formation of the necessary evidence base. The scope of this article does not allow considering all the problematic aspects arising in connection with the investigation of fraud committed using the Forex market. The formation of an appropriate investigation methodology should be the subject of further scientific research.

It should be noted that the developed methodology for investigating crimes committed in the Forex market should be appropriately reflected in the training courses on criminal procedure law taught within the framework of bachelor's and master's programs. Taking into account the fact that, due to the specifics of higher education in the Russian Federation, the training of specialists of the corresponding profile is carried out not only by universities and departmental educational institutions, but also by technical universities, this will require additional expand the circle of your worldview".

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