Optimization of Supply Chain Management in the Russian Federation Concerning Financial Investment and The Practice of Its Enforcement

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***Abstract*— Extensive economic, productive and commercial developments in the present era have forced businesses to actively participate in network and supply chain chain-based economies. The tendency towards this approach, although it has brought advantages and profitability for network member firms and supply chains, has also led to many problems and complexities for managing the financial flows, liquidity and working capital of their firms and business partners. Last time the alarming situation, prevailing in Russia in the sphere of activity of "financial pyramids", causes growing concerns. This article is devoted to analysis of the financial investment fixed in the Supply chain of Russia "Organization of activities to attract monetary funds and (or) other property". Integrating financial services into supply chain management will not create a new (financial) product. It is however about realizing unused opportunities for cost reductions.**

***Keywords*—** *supply chain management, legislative technique, financial fraud, differentiation of responsibility, financial investment.*

1. Introduction

In the context of high inflation, unstable situation in the socio-economic sphere, the internal and external shocks (oil prices, coronavirus, etc.) individuals and organizations seek to preserve their savings and to extract all the possible benefits from the various investment options. The Internet is full of opportunities for the safe investment of capital with minimal risk and promises of high returns from using various investing, partnership and other programs. In fact, all these offers provoke the illusion of profit, obviously unattainable for the subject of economic activities and individuals, who invest their capital into circulation of unscrupulous financiers. Such organizations, that attract capital to some financial pyramids, are characterized by the absence of the license for activity on attraction of funds of citizens, equity and other assets, reliable information about the financial situation and massive advertising in the mass media and the Internet with the promise of income or other benefits, which are several times more, than a market opportunities. The functioning of these organizations has a negative impact into the financial market, leads to the loss of funds of a significant part of the population, causes other harmful effects. Unfortunately, despite of the 1990s bad experience ("MMM", "Khoper-invest", etc.), many Russians continue to use the services of "financial pyramids" in hope of quick profit in large volumes against the background of unresolved economic and social problems [1]. This relates, particularly unfortunately, the elderly people. Organizations often raise funds under the guise of investments in cryptocurrency (the nature of which is due to the low financial literacy in Russia is still in the rank of terra incognita), including allegedly produced by Facebook and Telegram. In addition, they offer to invest into construction and agricultural projects, as well as in shares of companies that are soon to be placed on IPO in the exchange market, that promise investors enormous interest in the form of dividends, etc.

It is well-known, that the decision of above-mentioned problem was devised by introducing of Russia in 2016 new Supply chain management "Organization of activities to attract monetary funds and (or) other property". However, a stable and uniform practice of the implementation of this provision has not been formed so far.

2. Characteristic of a supply chain management in Finance Rules

An object of this crime is the procedure of raising funds or other property from physical persons and (or) legal entities, envisaged by Civil Code of the Russian Federation, the Law of the RSFSR of 26/06/1991 № 1488-1 (as amended on 26/07/2017) "About investment activity in the Russian Federation" and some other normative legal domestic acts of the Russian Federation.

The objective party of a crime is expressed in the organization of activities to attract monetary funds or other property of physical persons and (or) legal entities on a large scale (in excess of 2 million 250 thousand rubles), when payment of income and (or) providing a particular benefit for "investors" are made at the expense of borrowed funds and (or) other property of the other new "contributors" in the absence of investment and (or) other activities, related to use of borrowed funds and (or) other property in an amount comparable to the amount of borrowed funds and (or) other property.

It is obvious, that the supply chain is a formal one, it relies to be completed upon receiving funds or other property in a specified amount (crediting money to the account, introducing them to the cashier, etc.). The subjective party is expressed exclusively in the direct intention for the organization of these activities. The subject of a crime - a person under the age of 16, in fact, who organized the raising of funds or other property. Finally, the Part 2 of Supply chain provides an aggravating circumstance - particularly large volume, which forms a monetary amount exceeding 9 million.

Now – about the problems. It is necessary to focus on emerging practice in the complexities of differentiation of a crime, fixed in Supply chain management. Analysis of these articles and their law-enforcement practice lead to the conclusion, that the main criterion for their distinction is the intent of the subject. If an intention of a person aimed at the theft of "investors" funds in the absence of actual business activities, his actions should be qualified as fraud. According to the clarification, contained in paragraph 12 of the resolution of Plenum of the Supreme Court of 30/11/2017, No. 48 "About court practice on cases about swindle, assignment and waste", in the case, when an intention of the persons aimed at the theft of somebody's property by deception or abuse of confidence under the guise of raising funds or other property of citizens or legal entities for the purposes of investment, business or other lawful activities which he actually didn't carry out, the violation, depending on the circumstances of the case, constitutes a fraud or a fraud, associated with deliberate failure of contractual obligations in the sphere of entrepreneurial activities, additional qualification under supply chain management is not required [2].

According to Plenum, the judicial practice on criminal cases is enforced respectively. In this case it was determined, that "the intent of the convict was aimed solely at illegal and uncompensated seizure of cash from victims". Such exemptions were a kind of deception of victims giving them incomplete and inaccurate information: about the alleged investment activities in order to encourage the victims to sign loan agreements, future high interest and their return to the original terms; the company has a long period of successful work. The vast majority of victims were elderly people, so it was much easier to deceive them, in particular when K. A. and managers, who were not aware of his criminal intent, began to refer to temporary financial difficulties, promising to fulfill obligations under the treaties later. During proceedings it was ascertained, that "K. A. objectively understood the impossibility to return to all the victims the invested funds. In this particular case the investors were given the promises to get higher interest, and in the absence of any activity of the companies, that brings real profit" [3].

The findings, mentioned in Judgement of the Presidium of the Moscow City Court dated 24/05/2019 No. 4U-2168/2019, are also very significant. In this decision the appeal court approved with the judicial acts of lower courts that the actions were qualified under part 2 of Art. 159 (16 offences), part 3 of Art. 159 (38 offences), part 4 of Art. 159 (4 crimes). There is the extract from the reasoning part of this decision: "As proved by the totality of evidence, concerning the case, K. acted with an intent aimed at the stealing of victim cash, not having any intentions and real possibilities to fulfil the obligations, having signed a contract, taken victims funds, and, as a result, he had stolen them. From registration and legal Affairs, as well as Bank statements it is obvious, that the organizations since their creation have not carried out any financial activities, including investment activities on the financial market, but

since 2011 K. with partners have stolen victim's cash" [4].

In the absence of intent of the subject to steal depositor's money (or a lack of proof of that is the same from the procedural point of view) the offense is measured by Supply chain management[2] of Code. An obvious example is the Decree of Presidium of Samara Regional Court dated 29/06/2018 No. 44U-185/2018, which was recognized under part 1 of supply chain management as a legitimate verdict. The cassation instance agreed with this qualification. Money was entrusted by victims to the convicts on the basis of the financing or cooperation agreements. Money was transferred voluntarily (some victims did it several times), without any pressure on them after getting some information from friends and ads about the activity of the following companies: "Volga-invest" Ltd., "Kama-invest" Ltd., "Capital sur plus" Ltd., "Iz invest" Ltd., "Ural Finance" Ltd., "Vyatka invest" Ltd. Thus, victims received profit from their investment. Bodies of preliminary investigation and the court did not prove the intent of S. R., V., H., M. S. and E to steal the property of victims before the financing and cooperation agreements had been signed" [5].

We also add, that fraud is more dangerous crime in comparison with the organization of the financial pyramid. Naturally, therefore, that the most dangerous forms of fraud acts in an organized group, in especially large amount of sums or causing deprivation of housing right of a citizen – the maximum sanction prescribes deprivation of liberty up to ten years. But according to the sanction of part 2 of Supply chain management the most severe punishment term is up six years. It seems, that those mentioned differences in blameworthiness are justified. Any fraud person is being cheated or abused, i. e. he does not understand that he becomes a victim of criminals. In the case of supply chain management, victims often realize that they invest money in a "pyramid" but they hope to earn "fast buck" and cash it out before the collapse of the "pyramid". That is, they are often aware of the risk of losing money, but go on for the sake of last enrichment. They ignore the fact that "free cheese is only available in a mousetrap". This, of course, does not exempt the "pyramid builders" from responsibility, but, nevertheless, reduces the severity of their violation in comparison with the classic larceny.

Besides, as correctly noted by experts, "the real motive for the decision of the legislator to implement supply chain management "Organization of activities to attract monetary funds and (or) other property" is not only the inability of the enforcers to use the opportunities of criminal law for purposes of criminal-legal struggle against financial pyramids, but also legal properties of the norms (norms) about liability for fraud, discrepancy of certain elements of the fraud signs of pyramid schemes" [6].

3. Design flaws of a crime under Supply chain management

Analyzing the problems of practical implementation of Supply chain management, we should focus on the shortcomings of the amended regulations, which reduce the efficiency of its application. First, it draws attention to the fact that the objective side in part 1 and part 2 of Supply chain management constitutes not the activity itself by raising funds and (or) other property with signs "a financial pyramid", but only its organization.

However, there is, in our opinion, every reason to assert, that the real will of the legislator in reality was aimed to industrialization not only organizational activities to establish and operate a "Ponzi scheme". It is appropriate to refer to the explanatory note of the draft law of the Russian Federation in 2016, by which Supply chain management was introduced. Thus, the dominating motive of this innovation pointed by its developers was absence of criminal prohibition of functioning of financial pyramid: "Despite threats that "financial pyramids" bring to socio-economic stability of the society, the current legislation of the Russian Federation does not contain any form of ban on their establishment and functioning". Thus, it was supposed to prohibit not only the organization, but also the activity itself.

However, it is logical and meets the legal practice to create similar offences. Thus, according to supply chain management "Illegal entrepreneurship", a criminal offence is carried out as entrepreneurial *activities* without registration or without a license, according to supply chain management "Illegal organization and conduct of gambling" – the illegal organization and (or) *conducting* gambling; under Supply chain management "Illegal banking" – banking *activities* in breach of the rules. And, as we know from the

theory of construction of supply chain, "the lawmaker must try to use "isomorphism" (the same structures) in the design of formulations similar crimes" [7].

Finally, the Supply chain management was introduced in the Russian Federation simultaneously with the addition of the Art. 14.62 "Activities to attract monetary funds and (or) other property" to Administrative Code, which fixed "builders of financial pyramids", the scope of dealings of whose has not reached the scale of large size. Thus, the legislator made the so-called inter-branch differentiation of responsibility for the creation and maintenance of "financial pyramids". However, the objective side of the administrative violation according to Art. 14.62 of the Administrative code forms either "the organization or the *realization* by the individual activities to raise funds and (or) other property...". Of course, inter-sectoral differentiation of the responsibility should be continuity supplied between violations in different branches of law, which mistakenly has not been done by federal lawmaker in the analyzed case.

Thus, there is no doubt that we are dealing with a defect in the regulatory structure of the crime, provided by the Supply chain management. As it is known, the enforcement of criminal law by analogy is prohibited. Therefore, it is necessary to recognize, that executing of activities of a "financial pyramid" today is not in the framework of supply chain management. It is not a secret that the practice (albeit poor) of application of this supply chain is widely interpreted. Besides, a very extensive range of actions fall under the concept of "organization", for example, registration of the legal entity, sheltering the "financial pyramid", performing its management functions, including team management, purchase or rent and so on. But, nevertheless, speaking strictly from the standpoint of law (any other approach must not be in practice), because of the above mentioned error of the legislator nowadays Supply chain management has a gap. In order to eliminate this gap, it is advisable to change part 1, Supply chain management to the following edition: "the Implementation of activities on attraction of monetary funds and (or) other property...". In case of realization of such idea the actions of the individuals, who don't directly carry out the activity of "financial pyramids", but deliberately participate in them, will be subject to qualifications.

Secondly, the current version of this Article evaluation concept of "*comparable* amounts" is used. That is, criminal prosecution it is necessary to establish, that individuals don't do any business, connected with borrowed funds, *in amounts, which are comparable with the volume of borrowed funds*. "Pros" and "cons" of evaluation concepts are well known by lawyers. On the one hand, such notions allow to take into account the diversity of situations and in this sense allow to provide the flexibility of law. On the other hand, the content of the evaluation concepts is not formalized, so its establishment is based on the mercy of the enforcers, and therefore using such categories, traditionally, cast a particular challenge. For example, to establish a large size of funds (when applying Supply chain management is one position, and quite another – lack of business of "comparable volume". Since the characteristic of large size is formalized by the legislator in the note to supply chain, in the first case it is sufficient to prove, that a person has received the money (at the expense of the organization or to its cash register, etc.) in excess of 2 million 250 thousand rubles. In the second case there's an obvious problem, what is considered to be a "comparable" volume?

In the theory of legislative technique drafters of bills are recommended to create new amendments, as a General rule, using a formally-defined language. It allows to provide a formal definition of the rule of law and, as a consequence, more understandable to an addressee of the law. In turn, the use of evaluative terms should be an exception to this rule.

Therefore, the reasonable question appears, whether it is possible not to use the assessment basis "comparable" in the Article? In contrast to qualitative evaluation of the feature of "particular cruelty", the estimated feature of "comparable amount" is quantitative and manageable, in our view, for formalization. Public danger of the "financial pyramids" means, that the "builders" either do not do any other (normal) business activities, but raising funds, or do it, but in less scale than it is required to perform their obligations to all investors (depositors). Therefore, in edition of Supply chain management, it appears, that it was necessary to refer directly to this feature of "financial pyramids" (in the "total equal to or greater than the amount..."), but not to deceive, complicating significantly perception and enforcement of the difficult criminal legal norm.

By the way, this lack of Supply chain management caused justifiable doubts in the relevant Committee of the Parliament: "...the Project contains the normative evaluative concepts, such as "comparable amounts". As the Constitutional Court of the Russian Federation repeatedly marked in its Judgements, the provisions of supply chain should be clearly defined" [8].

Unfortunately, despite this note, made by Committee of the State Duma in the final edition of this rule, the estimated concept of "comparable amount" has been retained. However, investigative and judicial practice "signals" which due to this defect, the law enforcement bodies are reluctant to enforce Supply chain management[2] of Code. Therefore, to optimize the rule and the practice of its application, it is desirable in the nearest period to replace the evaluation of the phrase, "in a volume comparable to the volume of attracted monetary funds and (or) other property" to the formally defined "in the volume equal to the volume of attracted monetary funds and (or) other property".

Thirdly, the qualitative differentiation of criminal responsibility in law is recognized as one of the important directions of supply chain policy. Accordingly, the condition for the effective and fair application of criminal rule of prohibition is consecutive and profound differentiation of criminal responsibility for offenders.

It has already been noted, that responsibility for the organization of such "financial pyramid" activities is graded only with a single aggravating circumstance – a very large size (volume) of funds (other property), i.e. exceeding the threshold amount of 9 million rubles. Looking through the sustainable development, which provide liability for related crimes (implementation of other types of illegal economic activities), then, in addition to the above feature, the legislator, in order to foster responsibility, often uses features of committing a crime in a group of persons upon a preliminary collusion or organized group, or using by offenders their official position.

Two out of three aggravating features, in our opinion, are justifiably ignored by the legislator in the creation of the qualified in part 2 of Supply chain management, i.e. a group of persons on preliminary arrangement and the use of official position. In fact, how the official practice shows, implementation of activities of "financial pyramid" in most cases is inconceivably to be done alone, and without using official position. As a rule, activities of "pyramid" are provided on the part of legal entity, the managers of which (actual or formal) are responsible under the supply chain management. Of course, from the point of view of criminal law these individuals use their position. Accordingly, in case of addition of this Article with a feature “using official position”, the share of enforcement of part 1 in practice will be very tiny. The same situation will happen after implementation in part 2 of Supply chain management another feature – “group of persons by prior collusion”, which constitutes an attribute of majority of such crimes. In this regard, one of the founders of the domestic theory of differentiation of responsibility professor Lev L. [9] noticed correctly, that "the features, which are given the status of aggravating circumstances, should not be the norm for most crimes with the basic crime".

However, the introduction in the analyzed criminal rule another aggravating circumstance – “committed in an organized group” seems possible. This feature is not "the norm" for criminal practice of "building" a financial pyramid and at the same time increases significantly the level of public danger of committed crime. Therefore, in order to improve the differentiation of the responsibility de lege ferenda the disposition of part 2 of Supply chain management should be changed: "The act, committed: a) in especially large amount (volume); b) by an organized group".

From the point of view of restoration of social justice and the violated rights of citizens and legal persons the result, reflected in the prosecution of the unscrupulous "creators" of the financial pyramid, is not the most important aim. The investment of considerable funding dictates the necessity of protection property interests – to return back the assets (cash, etc.) or to compensate the costs in some other way, that investors incurred as investments in favor of the financial pyramid.

That’s why it is necessary to protect the economic and social interest of victims of financial pyramids by implement into special exemption from criminal liability. In this case, the condition of release should be provide, that the amount of attracted monetary funds (other property) must be compensated not just in full volume [10], but with additional payment of percent for wrongful use of funds of depositors. It is obvious, that organizers of financial pyramids illegally use attracted money

from individuals for a long time, increasing turnovers of illegal activity (the scope of criminal activity), attracting new "clients" for investment, worsening volumes of caused damages. Thus, in terms of inflation the amount of attracted money will be inevitably depreciated, so people incur losses. That's why de lege ferenda it is necessary to provide as a condition of exemption from criminal responsibility under this Article full damage compensation and additional interest compensation (the similar example is the exemption for tax offenders who must pay all fines for each day of delay of fulfillment of their tax obligations, which are considered as a sort of compensation for the budget).

4. Findings

It is worth noting, that struggle against organizers of financial pyramids is considered as one of the major directions of criminal-legal policy of Russian Federation. It is obvious, that administrative measures for "builders" of pyramids and other sanctions seem not strict, so impunity allows them to reap huge profits, deceiving citizens and legal entities, avoiding legal responsibility. The implementation to the national Criminal law with the Supply chain management[2], aimed at curbing pyramid schemes, should be welcomed. Unfortunately, revealing defects of legislative technique, as well as ignoring basic rules of differentiation of responsibility by the legislator, lead to failures in law-enforcement practice and cause a reduction of punitive potential of supply chain.

5. Conclusion

It's obvious, that effective criminal law reaction against illegal attraction of money resources (other property) of citizens and legal entities for creation of financial pyramids constitutes priority in the counteraction against economic crime in Russia. What's why current criminal legislation needs to be improved.

It is necessary to broaden the scope of criminalization of the actual operating activities of financial pyramids (but not just activities), which will correspond to the legislator logic, the spirit of Law and comply with the rules of differentiation of legal liability for similar offences.

The legislator needs to delete in the current edition of the supply chain management evaluation concept of "comparable scope," which causes difficulties for law enforcement bodies to identify and combat with illegal activities of financial pyramids and reduce the action potential of Supply chain management.

In order to improve existing legal regulation due to the deepening of differentiation of responsibility it is necessary to expand the scope of Supply chain management[2] with a new aggravated formal features, and a special type of exemption from criminal liability, which will encourage unscrupulous organizers of financial pyramids to compensate the whole damage and other losses to victims in order to legally avoid responsibility.

We hope, that our legislator and law-enforcement practice will search further for effective measures to counter "financial pyramids" and that in the foreseeable future fight against this social and economic "evil" will be significantly strengthen.

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