
**METODOLOGIA INVESTIGRII FRAUDELOR CE SE COMIT ÎN
SECTORUL FINANCIAR – BANCAR**

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Financial-banking criminality includes both offences committed by people not belonging to the banking system and offences committed inside banks by their own personnel, without the complicity of people from outside. In this field there is a great frequency of offences against patrimony assets and offences at one's work place or related to work, as well as those mentioned in special laws. Frequent ways of committing frauds in this field are: fraudulence involving means of payment, fraudulence involving "identity theft", fraudulence due to the use of forged documents at request and obtaining non-nominal credits, issuing means of payment by indicating a fake account from which payments should be made, opening bank accounts under fictitious names, offering accounts or subventions by breaking the law or crediting norms.

Key words: *fraud, financial-banking, law*

I. INTRODUCTION

Causes and conditions that generate financial banking criminality are most varied, but we may mention as a generating factor, mainly, the huge potential that this environment has in obtaining a significant material profit. When talking about financial banking criminality, we have in view both offences committed by people that have nothing to do with banks and offences committed inside banks by their own personnel, without the complicity of people from the outside. In order to prevent and diminish financial banking criminality, a complex and multilayered activity must be initiated, consisting mainly in : developping a data base concerning natural persons and conventional persons, developping public-private partnership with a view to preventing and reducing these kinds of deeds, ensuring professional special preparation – which should be continuous, institutionalized, assimilating current legislation regarding this field,

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checking and analyzing notifications received and registered by the unit concerning competence for this type of work, using data and information received and stocked with regard to the evolution of criminality and establishing concrete measures meant to increase the efficiency of the activities in course.

II. JUDICIARY SETTING OF OFFENCES THAT CAN BE COMMITTED IN THE BANKING FIELD

In the banking field a variety of criminal offences can occur which are established by The Penal Code; there are frequent offences against the patrimony: *theft, fraudulent financial administration, fraud, embezzlement* and work place or work related criminal offences: *abuse at work against a person's interests, abuse at work against public interests, malpractice, accepting bribery, accepting undue profits, intercession.*

Another category of criminal offences are those covered by the Banking Law, the Law regarding trading companies no. 31/1990, Accountancy Law no. 82/1991, the Law for the control of tax evasion no. 241/2005, Law no. 59/1934, regarding cheque payment, modified by Law no. 83/1994, legislation concerning transferable securities, services of financial investment and regulated commerce, no. 297/2004.

Accepting bribery (section 254 of the Penal Code) is one of the most frequent criminal offences committed in bank units. Most often taking bribery is associated with the crime of abuse at one's work place, in the sense that bank servants admit to grant credits abusively, without observing all conditions established by legal norms and special regulations of this field.

Embezzlement according to section 215 of the Penal Code represents "the appropriation, use or illegal trade by a civil servant, of money, valuables or other goods that he manages or administers, for his own or another's interest".

The criminal offence covered by *Law no. 82/1991 of accountancy*, modified by Ordinance no. 61/30 of August 2001 consisting of "intentional making inaccurate recordings, as well as the omission and deliberate

omission of recordings having as a consequence the misrepresentation of income, expenses, financial results, as well as the active and passive elements of the balance sheet constitute the criminal offence of intellectual forgery“ and can be committed by any bank servant that has such tasks among his work liabilities.

As for the perpetration of criminal offences by fraudulent use of cheques, the legal framework is covered by *Law no. 59 of May 1 1934 regarding cheque payment and section 215 subsection 4 of the Penal Code. Thus, the law establishes the following criminal offences:*

1. According to section 84 there will be a punishment by fine of 5.000-100.000 lei and imprisonment from 6 months to 1 year, with the exception of the case when the fact represents an offence sanctioned by a harsher punishment, in which case that punishment is implemented: for whoever issues a cheque without having the approval of the drawee; for whoever issues a cheque without having in the account of the payee enough cash or who, after they have drawn the cheque and before the expiration of the time limits established for the presentation, disposes otherwise, totally or partly, of the cash in bank; for whoever issues a cheque with a fake date or which lacks one of the essential elements mentioned by subsections 1, 2, 3 and 5 of sections 1 and 11; for whoever issues a cheque contrary to the disposition of the last subsection of section 6.

2. According to section 85, banks or credit institutions that are unauthorized or whose authorisation has been revoked, will be punished by fine of 100.000 to 1.000.000 lei, except for the case when the law establishes harsher sanctions, in which case those sanctions will be implemented.

Banking Law no. 58/1998, republished, establishes in Section 3 a few prohibitions:

1. Clause 7 forbids any natural person who acts on their own behalf or on behalf of someone else or as an administrator or representative of an entity that is not authorized as a credit institution to carry on an activity of drawing deposits or other redeemable funds from the public or an activity of drawing and/or administration of amounts of money resulting from the association for the purpose of saving and granting credits in a collective system.

2. Clause 8 forbids any person that doesn't have a licence issued by the National Bank of Romania, to use the name of bank or words derived from

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that name, in relation to an activity, a product or a service, except for the case when this use is established or acknowledged by law or by an international agreement, or when the context in which the word bank is used shows without a doubt that it has nothing to do with banking activities.

In any kind of advertising, official deeds, contracts or other documents of this kind, initials, sigles, emblems or other elements of identification of a bank that functions in Romania or which seems to have something to do with Romania may be used only by and in relation to a branch of the bank, including in its naming.

For the purpose of performing specific activities, foreign credit institutions can use on the territory of Romania the name they use in their native country, without encroaching on the dispositions regarding the use of names such as "savings bank for the dwelling field", "bank" or other terms used in Romania, which denote credit institutions. When there is a danger of mixing up names, the National Bank of Romania may demand that the name of the credit institution in question be accompanied by an explanatory note.

3. Article 9 forbids any foreign credit institution to carry on an activity in Romania, except for the case when the activity is carried on through a branch for which an authorization has been issued by the National Bank of Romania.

4. Article/section 10 forbids any entity that is not authorized as a credit institution to engage, on its own behalf or on behalf of someone else, in an activity of drawing deposits and/or other redeemable funds from the public, in an activity of issuing electronic currency or in an activity of drawing and/or managing sums of money which are the result of association for the purpose of saving and crediting in a collective system.

The interdiction established in subsection 1 does not apply in the case of drawing deposits and other redeemable funds:

a) by the Romanian state or by a member state or by regional authorities or authorities of the local public administration of the Romanian state or of a member state;

b) by international public agencies in which the Romanian state or one or several member states take part as members;

c) in the cases specifically established by the Romanian legislation or by the national legislation of a member state or in the community legislation, provided that these activities are subject to an adequate regulation and control, with a view to protecting depositors and investors.

Article 109 establishes that the perpetration by natural persons of deeds mentioned in section 3 of chapter I represents a criminal offence and is punished by imprisonment from one month to 2 years or by fine.

Article 110. Opening bank accounts under fictitious names constitutes a criminal offence and is punished by imprisonment from 2 to 7 years.

Law no. 78/2000 is a special penal and penal procedural law, which came into being for the purpose of "establishing measures of prevention, identification and sanctioning of acts of corruption" (article 1).

The law specifies and limitates the categories of natural persons that it applies to, as special active subjects. For this purpose, it even establishes special rules of behaviour in performing work related duties by persons specifically nominated, in order to prevent acts of corruption. These persons are compelled to perform their work tasks or those specially entrusted, with the strict observance of the law and of deontological norms. They are also compelled to ensure the protection and fulfillment of the rights and legitimate interests of citizens, without making use of their function in order to obtain goods or other undue profits for themselves or for others.

Persons who hold a public position, as well as those who hold a managerial position, going up from the position of manager included, at the level of autonomous state-owned companies, national companies, trading companies with a state capital, financial banking institutions are compelled to state amount of their fortune in the terms established by Law no. 115/1996. The refusal to state the proof of income determines the start of the internally generated procedure of fortune checking.

The law also establishes that the persons specifically nominated are under the obligation of stating, within 30 days from receiving it, any direct or indirect donation or hand gifts received in relation to the exercise of their function or duties, except for those of symbolic value (art. 4).

Chapter III of the law mentions the deeds that are considered as criminal offences, their content being due to be completed by some non-penal stipulations of the same law, by the dispositions of the Penal Code and by the penal dispositions contained in other governmental decrees (Law no. 31/1990, Law no. 87/1994, Law no. 141/1997, Law no. 21/1999, etc.).

Thus, the governmental decree in question incriminates three categories of corrupt actions, namely: *criminal offences of corruption (art. 6-9)*, *criminal offences assimilated to offences of corruption (art. 10-16)*,

III. WAYS OF MANIFESTING AND COMMITTING OF FRAUDS IN THE FINANCIAL BANKING SYSTEM

a) Ways of committing frauds through means of payment. By empowering persons that are not well prepared in the field to hold functions of administrator, commercial manager, economic manager, one may easily manipulate them into using means of payment that most often, after the payment operation has been initiated, are found not to be covered by the cash in the account, damaging the institutions they were issued for. Thus, we may encounter, in everyday life, various situations, such as: the cheque was issued without the authorization of the drawee; the cheque or the bill to order was rejected because of total or partial lack of cash in bank, when the person wants to pay before the expiration of the term of payment; the cheque was issued with a fake date or it lacks an obligatory mention; the bill to order with the settling day in sight was rejected for total or partial lack of cash in bank, when the person comes to do the payment in due time;

b) Ways of committing frauds by "identity theft". In practice, there are situations when identity documents are forged by applying photographs that don't belong to the titleholder for the purpose of founding bubble companies. By the agency of the company established this way, accounts are open in banks, the forgers contact other merchants with whom they conclude various agreements on the basis of which they carry out payments by using cheques or bills to order that are subsequently found to cover no cash in bank.

c) Ways of committing frauds by using forged documents when requesting and obtaining non-nominal credits;

d) Issuing means of payment by indicating a fake account from which payments should be done;

- e) Opening bank accounts under fictitious names;*
- f) Offering credits or subventions by violating the law or crediting norms;*
- g) The use by natural or conventional persons of credits or subventions for other purposes than those they were granted for.*

IV. GENERAL ACTIVITIES TAKING PLACE IN THE INVESTIGATION OF CRIMINAL OFFENCES IN THE FINANCIAL BANKING FIELD

When experts from fraud investigation are notified by complaint, denunciation or internally generated inquiry, the complaint, denunciation or inquiry will be recorded in the registry of the police unit in question and the material and territorial competence of the police officers will be checked.

If the officer turns out to lack competence in performing the activity of criminal inquest, he/she will make up an invited paper, proposing the transfer of competence to the prosecution department competent in continuing investigations.

The transfer of the entire brief to the prosecution department that supervises the activity of criminal inquest for the purpose of providing the single number of registration and for the appointment of a prosecutor meant to supervise the activity of criminal inquest in question.

In order for the inquest to proceed according to the plan and to reach its goal, the plan of the inquest will be made up, information will be gathered from the territory for the purpose of identifying persons that are suspect of committing the crime, while, for conventional persons, the identification of their legal representatives will also be taken into account. Moreover, the briefs of trading companies involved in the case will be analysed in order to determine the registered office, the residence for tax purposes, secondary offices (work spots, branches, representations, storehouses, warehouses), the companies and persons in question being checked out in the existing data base.

In some situations, by observing the conditions established by art. 91¹- 91⁴ of the Rules of Criminal Procedure, audio-visual interceptions can

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be performed which are necessary in order to gather evidence or information in the respective case.

The criminal activity of suspect persons who are preparing, are committing or have committed illicit deeds in the financial banking field will be documented in a qualified way, and in the case when there is information concerning the perpetration of complex criminal offences or information about groups of offenders, the documentation will be done by using more complex techniques of investigation, including surveillance with a view to identifying the persons who ask for credits, persons with whom they come into contact, persons who furnish the forged documents, or who contribute to obtaining such documents, the investigation of addresses and places frequented as it results from the effective surveillance of the suspect person, where there is a possibility of identifying both the forged documents and the means for operating the forgery. In the case when the persons involved make use of forged documents, technical – scientific reports, as well as criminal expertises of the documents will be made.

The investigation of financial banking frauds continues with the hearing of the persons involved in the case from different positions, the confiscation of the documents and the goods that will be used as means of evidence and evidence in the trial, as well as the preparation of flagrancies or the performance of the bodily and domiciliary searches.

Among the persons heard for the case there are: persons who hold positions of leadership and control, associations and administrators of credit institutions or banks; bank clerks with prerogatives concerning the granting of credits, the checking of the deposited documents; the dealers, the brokers, the financial advisers who make credits easier to obtain.

When searches are performed, several things must be taken into account: documents regarding bank credits (contracts, abstracts of account, insurances, bank guarantees, etc.); documents regarding commercial activities (memoranda of association, deeds of assignment, stamps, work cards, etc.); sales agreements for various goods, invoices issued by trading companies for the goods in question; identity documents that don't belong to the persons present in the dwelling that is being searched; agendas, personal registers, any other document connected to the banking or commercial activity.

Another important aspect that must be taken into account is the identification at this stage of movable goods and fixed property that belong

to the doers or to their families with a view to applying throughout the trial of ensuring measures for the recovery of the prejudice caused.

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