UDC 343
SRSTI 10.21.65

SOME ISSUES OF COUNTERING THE LEGALIZATION (MONEY-LAUNDERING) OF PROCEEDS FROM CRIME AND THE FINANCING OF TERRORISM

Salimov Kairat Maratovich[1]
Master of Arts in Public Policy, lawyer of the Chamber of Legal Consultants «Eurasian Chamber of Lawyers»; Astana c., Republic of Kazakhstan; e-mail: salimovkaira@gmail.com

Nizami Yermek
Master of Legal Sciences, lawyer, co-founder of the Chamber of Legal Consultants «Eurasian Chamber of Lawyers»; Astana c., Republic of Kazakhstan, e-mail: yermek.nzm@gmail.com

Abstract. *This article addresses the issues of combating money laundering and terrorist financing, as well as enhancing the national security system in accordance with international standards (AML/CFT) and the financing of the proliferation of weapons of mass destruction as set by the Financial Action Task Force (FATF).*

The events of January 2022 in Kazakhstan demonstrated that the groups responsible for crimes, riots, and mass looting in Almaty and other major cities had a clear plan. It is suspected that the financing of these groups to carry out terrorist actions in the country was sourced both domestically and internationally.

The authors analyzed the Law of the Republic of Kazakhstan «On Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism» (hereinafter – the Law of August 28, 2009) and proposed new solutions, including the adoption of two separate laws: «On Combating Legalization (Laundering) of Proceeds from Crime» and «On Combating Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction».

Additionally, the authors conducted an analysis of certain terms and definitions used in sector-specific legislation and concluded that clarification is needed. For example, defining a beneficiary or beneficial owner can be a complex process. In some jurisdictions, only individuals owning a certain percentage of shares (e.g., more than 25%) are considered beneficial owners. This allows for the evasion of disclosure if ownership is structured in such a way that no single beneficiary reaches the threshold.

Keywords: *terrorism, terrorist financing, legalization, money laundering, national security, Criminal Code, beneficiary*

ҚЫЛМЫСТЫҚ ЖОЛМЕН АЛЫНҒАН КІРІСТЕРДІ ЗАҢДАСТЫРУҒА (ЖЫЛЫСТАТУҒА) ЖӘНЕ ТЕРРОРИЗМДІ ҚАРЖЫЛАНДЫРУҒА ҚАРСЫ ІС-ҚИМЫЛДЫҢ КЕЙБІР МӘСЕЛЕЛЕРІ

Қайрат Маратұлы Салимов
Мемлекеттік саясат саласындағы гуманитарлық ғылымдар магистрі, «Еуразиялық заңгерлер палатасы» заң консультанттары палатасының заңгері; Астана қ., Қазақстан Республикасы; e-mail: salimovkaira@gmail.com

Ермек Низами
Заң ғылымдарының магистрі, заңгер, «Еуразиялық заңгерлер палатасы» заң консультанттары палатасының тең құрылтайшысы; Астана қ., Қазақстан Республикасы; e-mail: yermek.nzm@gmail.com

[1] *Author for correspondence*

Аннотация. *Бұл мақалада Қылмыстық жолмен алынған кірістерді жылыстатуға және терроризмді қаржыландыруға қарсы іс-қимыл, сондай-ақ халықаралық стандарттарға (АЖ/ТҚҚ) сәйкес ұлттық қауіпсіздікті қамтамасыз ету жүйесін жетілдіру және Қылмыстық жолмен алынған ақшаны жылыстатуға қарсы күрестің қаржылық шараларын әзірлеу тобын жаппай қырып-жою қаруын таратуды қаржыландыру мәселелері қарастырылған.*

2022 жылдың қаңтарында өткен елдегі оқиғалар Алматыда және басқа да ірі қалаларда қылмыстар, тәртіпсіздіктер мен жаппай қиратуды ұйымдастырған топтардың нақты сценарийі бар екенін көрсетті. Республикада террористік әрекеттерді іске асыру үшін осы топтарды қаржыландыру ел ішінде де, шетелде де қаржыландырылды деп есептейміз.

Авторлар «Қылмыстық жолмен алынған кірістерді заңдастыруға (жылыстатуға) және терроризмді қаржыландыруға қарсы іс – қимыл туралы» Қазақстан Республикасының Заңын (бұдан әрі – 2009 жылғы 28 тамыздағы заң) талдап, осы мәселеде шешудің жаңа жолдарын, оның ішінде «Қылмыстық жолмен алынған кірістерді заңдастыруға (жылыстатуға) қарсы іс-қимыл туралы» және «Терроризмді қаржыландыруға және жаппай қырып-жою қаруын таратуды қаржыландыруға қарсы іс-қимыл туралы» екі дербес заң қабылдау.

Сонымен қатар, авторлар салалық заңнамада қолданылатын кейбір ұғымдар мен анықтамаларға талдау жүргізіп, оларды нақтылау қажет деген қорытындыға келді. Сонымен, бенефициарды немесе бенефициарлық меншік иесін анықтау қиын процесс болуы мүмкін. Кейбір юрисдикцияларда бенефициарлық меншік иелері тек акциялардың белгілі бір пайызынан астамы бар адамдар болып саналады (мысалы, 25% - дан астам). Бұл иелік ету бенефициарлардың ешқайсысы шекті деңгейге жетпейтіндей бөлінсе, ақпаратты ашудан жалтаруға мүмкіндік береді.

Түйінді сөздер: *терроризм, терроризмді қаржыландыру, заңдастыру, қылмыстық жолмен алынған кірістерді жылыстату, ұлттық қауіпсіздік, Қылмыстық кодекс, бенефициар*

НЕКОТОРЫЕ ВОПРОСЫ ПРОТИВОДЕЙСТВИЯ ЛЕГАЛИЗАЦИИ (ОТМЫВАНИЮ) ДОХОДОВ, ПОЛУЧЕННЫХ ПРЕСТУПНЫМ ПУТЕМ И ФИНАНСИРОВАНИЮ ТЕРРОРИЗМА

Салимов Кайрат Маратович
Магистр гуманитарных наук в области государственной политики,
юрист Палаты юридических консультантов «Евразийская палата юристов»;
г. Астана, Республика Казахстан; e-mail: salimovkaira@gmail.com

Низами Ермек
Магистр юридических наук, юрист, сооснователь Палаты юридических консультантов «Евразийская палата юристов»; г. Астана, Республика Казахстан;
e-mail: yermek.nzm@gmail.com

Аннотация. *В данной статье рассмотрены вопросы противодействия отмыванию доходов, полученных преступным путем, и финансированию терроризма, а также совершенствование системы обеспечения национальной безопасности в соответствии с международными стандартами (ПОД/ФТ) и финансированию распространения оружия массового уничтожения Группы разработки финансовых мер борьбы с отмыванием денег, полученных преступным путем (FATF).*

Прошедшие в январе 2022 года события в стране показали, что у группировок, устроивших преступления, беспорядки и массовые погромы в Алматы и других крупных городах был четкий сценарий. Предполагаем, что финансирование этих группировок для реализации террористических действий в республике финансировалось как внутри страны, так и за рубежом.

Авторы проанализировали Закон Республики Казахстан «О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию террориз-

ма»[2] (далее – Закон от 28 августа 2009 года) и предложили новые пути решения в этом вопросе, в том числе принятие двух самостоятельных законов «О противодействии легализации (отмыванию) доходов, полученных преступным путем» и «О противодействии финансированию терроризма и финансированию распространения оружия массового уничтожения».

Помимо этого, авторы провели анализ некоторых понятий и определений, используемых в отраслевом законодательстве, и пришли к выводу, что требуется их уточнение. Так, определение бенефициара или бенефициарного собственника может быть сложным процессом. В некоторых юрисдикциях бенефициарными собственниками считаются только лица, владеющие более определенного процента акций (например, более 25%). Это позволяет уклоняться от раскрытия информации, если владение распределено таким образом, что ни один из бенефициаров не достигает порога.

Ключевые слова: *терроризм, финансирование терроризма, легализация, отмывание доходов, полученных преступным путем, национальная безопасность, Уголовный кодекс, бенефициар.*

DOI: 10.52026/2788-5291_2025_80_1_316

Introduction

Money laundering serves as a means to conceal the illegal origin or use of funds under the guise of legitimate means. The legalization (laundering) of criminal proceeds and the financing of terrorism pose serious threats to global security and economic stability, causing financial damage and fostering organized crime and extremism. Combating these phenomena has become a priority for states and the international community.

The modern world faces new challenges associated with the rapid development of technology and the globalization of financial markets. Traditional methods of combating money laundering and terrorist financing often prove to be insufficiently effective, necessitating the adoption of innovative approaches and the use of modern technologies. In this context, cooperation between states, financial institutions, and international organizations becomes crucial.

There are many methods of money laundering and legalization of income. One such method involves the use of cryptocurrencies and Bitcoin wallets for transactions. These tools can be associated with ransom payments, the sale of illegal goods, ordering DDoS attacks, and financing terrorism. Terrorist financing is not coincidentally highlighted as one of the methods of money laundering, as the legalization of criminal proceeds often aims at providing financial support to terrorist organizations [1, p.184].

The existence of mechanisms that legitimize the use of funds derived from the shadow economy encourages criminals to engage in further illegal activities, causing significant harm both to the economies of individual countries and to international economic relations as a whole [2, c .129].

It is hard to disagree with the conclusion of some scholars that developing countries face particular challenges, as their control mechanisms for combating money laundering are often still underdeveloped. While mechanisms for legitimizing criminal proceeds are present in countries with economies of any type, it is believed that the least resistance occurs in developing countries that have not yet established a comprehensive and effective system for fighting money laundering. These countries also suffer more from the negative consequences of this phenomenon due to their smaller economies, which means relatively larger scales of such activities and associated problems [3, c .69-76; 4, p.76; 5, p.29].

In the realities of Kazakhstan, it is necessary to agree that the institutions responsible for controlling this area are insufficiently developed and existing mechanisms are ineffective for detecting and preventing financial crimes, which creates obstacles to transparency of financial transactions and combating the legalization of criminal proceeds. The lack of specialized institutions, qualified personnel, and limited resources complicate the monitoring of financial flows.

One of the important legal instruments for combating financial crimes and protecting national security is the Law of the Republic of Kazakhstan «On Counteraction of Legitimization

[2] *Закон Республики Казахстан от 28 августа 2009 года № 191-IV «О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма» https://adilet.zan.kz/rus/docs/Z090000191_ (дата обращения: 20.06.2024).*

(Laundering) of Incomes Received by Illegal Means, and Financing of Terrorism»[3], adopted on August 28, 2009. This law demonstrates Kazakhstan's commitment to international standards, such as the FATF recommendations, which enhances the country's international image and facilitates its integration into the global economic system.

A continuation of the implementation of international standards can undoubtedly be seen in the Law of the Republic of Kazakhstan «On the Return of Illegally Acquired Assets to the State»[4] adopted on July 12, 2023 (hereinafter – the Law of July 12, 2023), which has played a significant role in strengthening the fight against money laundering and the legalization of criminal proceeds.

Even before the adoption of the Law of July 12, 2023, critics argued that creating a new mechanism for the return of illegally transferred assets or the confiscation of property obtained through criminal means seemed unnecessary, as existing criminal, criminal procedural, and civil procedural legislation already includes comprehensive and interconnected mechanisms that align with the requirements of international public law in combating corruption, countering the legalization of criminal proceeds, and financing terrorism. Furthermore, they expressed concerns that the adoption of the law in its current form could lead to instability in civil transactions, a deterioration in the investment climate, and a reduction in lending to economic sectors due to fears of losing collateral rights [6; 7].

In this context, we agree with the opinion of Kaliakperova E.N., who points out that various participants, including executive authorities, law enforcement agencies, and judicial bodies, are involved in the asset recovery processes. Risks may arise if there is an imbalance of power or if one branch of government disproportionately influences or controls the asset recovery process. The legal framework should provide a clear system of checks and balances to prevent abuse of power and ensure the independence of the judiciary [8, c. 265-266].

A lot of special legal literature is devoted to the problems of countering the legalization (laundering) of proceeds from crime and the financing of terrorism, and it is sufficiently covered. Due to the vastness of the study of public relations, we propose to conditionally divide it into countering the legalization (laundering) of proceeds from crime and separately financing terrorism. This article will mainly be devoted to the issues of countering the legalization of illegal money.

Materials and methods

The article uses formal logical and dialectical methods, comparative legal, empirical analysis, as well as quantitative, qualitative and special methods of scientific research.

Results and discussion

A notable example of combating money laundering is the establishment of the Commission on Organized Crime[5] by the President of the United States in 1983. The primary goal of the Commission was to identify the nature of traditional organized crime, as well as emerging organized criminal groups, the sources and scale of their revenues, and how organized crime utilizes its proceeds.

In addition, the U.S. «anti-money laundering» system includes a comprehensive set of regulations, such as the Bank Secrecy Act (BSA), which governs the rules for financial institutions and compliance obligations for monitoring suspicious transactions, clients, and screening; the USA PATRIOT Act of 2001, which controls cross-border transactions; the Money Laundering Control Act; the Intelligence Reform and Terrorism Prevention Act; and other legislative acts [9].

Under French law, money laundering and the proceeds of crime are recognized as a type of corruption-related offense. A distinctive feature of French legislation is that financial intermediaries independently decide whether a transaction is suspicious, unlike in other countries where legal regulations provide clear criteria for what constitutes a «suspicious» transaction and require mandatory reporting of such transactions to authorities responsible for combating money laundering [10, p.285].

The Kazakh legislation defines the concept of a «suspicious transaction» and lists the criteria for such an operation. Meanwhile, we believe these criteria are not clear and it is impossible

[3] Закон Республики Казахстан от 28 августа 2009 года № 191-IV. «О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма» https://adilet.zan.kz/rus/docs/Z090000191_ (дата обращения: 22.06.2024).

[4] Закон Республики Казахстан от 12 июля 2023 года № 21-VIII ЗРК. «О возврате государству незаконно приобретенных активов» https://adilet.zan.kz/rus/docs/Z2300000021 (дата обращения: 22.06.2024).

[5] Ronald Reagan. President's Commission on Organized Crime. - The American Presidency Project. – 1983. – July, 28. https://www.presidency.ucsb.edu/documents/executive-order-12435-presidents-commission-organized-crime (date of reference: 20.06.2024).

to unambiguously determine what is included in the concept of a «suspicious transaction». This leads to different interpretations and inconsistent application in different contexts.

The Law of August 28, 2009, defines a «suspicious transaction involving money and (or) other property (hereinafter referred to as a suspicious transaction)» as a client's transaction (including an attempt to carry out such a transaction, a transaction in progress, or an already completed transaction) that raises suspicions that the money and (or) other property used for its execution are the proceeds of criminal activity, or that the transaction itself is aimed at the legalization (laundering) of proceeds from criminal activities, the financing of terrorism, or other criminal activities.

We do not dispute the existence of this concept, but we want to draw attention to its vagueness, since the definition is not clear enough and can be interpreted in different ways, which makes it difficult to apply it in practice.

Under the previous Rules for the Submission of Information by Financial Monitoring Entities on Transactions Subject to Financial Monitoring and the Criteria for Determining a Suspicious Transaction[6] of September 30, 2020 (hereinafter – The 2020 Rules), 81 criteria were identified. However, in the current Rules[7] of February 28, 2022 (hereinafter – The 2022 Rules), this list has been expanded to 145 criteria.

Throughout the text of both the 2020 Rules and the 2022 Rules, phrases like «suspicions arise» and «there is reason to believe» are used to indicate that a transaction may be conducted for the purpose of money laundering or financing terrorism. In our opinion, these phrases are vague and overly broad, allowing financial monitoring entities to scrutinize any transaction under the guise of «suspected terrorism financing».

The vagueness of these definitions can lead to legal uncertainty and potential misuse. As a result, judicial authorities and law enforcers might make decisions based on subjective opinions, undermining the principles of legal certainty and predictability. Furthermore, dishonest individuals or organizations could exploit these vague definitions to avoid responsibility or obligations.

For regulatory and oversight bodies, such ambiguous terms complicate the process of monitoring and assessing compliance. This could result in ineffective control measures and hinder the proper implementation of the legislation.

As we noted earlier regarding the FATF recommendations, they represent international standards for combating money laundering and terrorist financing. Compliance with FATF Standards is mandatory for any UN member country, in accordance with UN Security Council Resolution 1617 of July 29, 2005[8].

Reference:

The first 40 FATF Recommendations were developed in 1990 as an initiative to protect financial systems from individuals laundering funds obtained through drug trafficking. In 1996, the Recommendations were revised for the first time to reflect emerging trends and methods of money laundering and to expand their scope beyond the laundering of drug proceeds. In October 2001, FATF expanded its mandate to include the issues of financing terrorist acts and terrorist organizations, and adopted Eight (later expanded to Nine) Special Recommendations to combat terrorist financing. The FATF Recommendations were revised a second time in 2003 and, together with the Special Recommendations, have been recognized by more than 180 countries as the international standard for combating money laundering and terrorist financing (CML/TF)[9].

Thus, one of the key objectives in the operational aspect of combating money laundering and terrorist financing is to raise the standards in the work of law enforcement agencies (FATF Recommendations 30 and 31) with the aim of expanding and strengthening the functions, responsibilities, powers, and tools available to law enforcement for effectively conducting financial investigations in cases of money laundering, terrorist financing, and the tracing of criminal assets.

---

[6] Приказ Министра финансов Республики Казахстан от 30 сентября 2020 года № 938. Зарегистрирован в Министерстве юстиции Республики Казахстан 30 сентября 2020 года № 21340 «Об утверждении Правил представления субъектами финансового мониторинга сведений и информации об операциях, подлежащих финансовому мониторингу, и признаков определения подозрительной операции». https://adilet.zan.kz/rus/docs/V2000021340#z701 (дата обращения: 01.07.2024.)

[7] Приказ Председателя Агентства Республики Казахстан по финансовому мониторингу от 22 февраля 2022 года № 13. Зарегистрирован в Министерстве юстиции Республики Казахстан 24 февраля 2022 года № 26924 «Об утверждении Правил представления субъектами финансового мониторинга сведений и информации об операциях, подлежащих финансовому мониторингу, и признаков определения подозрительной операции». https://adilet.zan.kz/rus/docs/V2200026924#z8 (дата обращения: 01.07.2024).

[8] Официальный сайт Организации Объединенных Наций. Резолюция Совета Безопасности ООН от 29 июля 2005 года № 1617 https://main.un.org/securitycouncil/ru/s/res/1617-(2005) (дата обращения: 22.06.2024).

[9] Рекомендации ФАТФ: Международные стандарты по противодействию отмыванию денег, финансированию терроризма и финансированию распространения оружия массового уничтожения https://cbr.ru/Content/Document/File/132941/St10-21_RU.PDF (дата обращения: 22.06.2024).

FATF Recommendation 30 stipulates that «in all cases involving serious, income-generating offenses, when dealing with money laundering, predicate offenses, and terrorist financing, such authorized law enforcement agencies must, on their own initiative, conduct a parallel financial investigation».

The analysis of legislation in countries that are members of the Eurasian Group on Combating Money Laundering and Financing of Terrorism reveals the absence of legislative acts regulating the institution of parallel financial investigations. The obligation to conduct such investigations is found in interdepartmental acts of prosecuting authorities or in the acts of supervisory bodies.

We think that this approach is ineffective because there is no legislative mandate requiring pre-trial investigation bodies to conduct parallel financial investigations, nor is there an adequate system of oversight in place.

Let's consider the regulation of the financial investigation institution as it is outlined in the Criminal Procedure Codes of the Netherlands and Estonia.

In the Netherlands, the procedure for conducting financial investigations is governed by Chapter 9 of the Dutch Criminal Procedure Code[10], titled «Criminal Financial Investigation», which consists of 8 articles.

Article 126 states that in cases of suspected serious criminal offenses, which may result in a fine of the fifth category and where significant financial gain could have been obtained, a criminal financial investigation may be initiated based on a reasoned authorization from the investigating judge upon the request of the prosecutor responsible for solving the crime.

According to the same article, the prosecutor is required to inform the court about the progress of the financial investigation, either at their discretion or at the court's request.

Article 126a defines the powers of the investigator conducting the financial investigation, including the right to request information about the assets of the suspect or convicted person. Articles 126b and 126c establish the prosecutor's powers, allowing them to authorize searches, seize documents, and arrest assets. If the prosecutor determines that there are no grounds to continue the investigation or if they decide to refer the criminal case to court, they must decide to terminate the investigation and are required to notify the investigating judge (Article 126f).

In Estonia, the procedure for conducting financial investigations is regulated by Chapter 16^1 of the Estonian Code of Criminal Procedure, titled «Proceedings for the Confiscation of Means of Crime, Direct Object of Crime, and Property Obtained by Criminal Means»[11].

Notably, this chapter allows for a financial investigation to be conducted both during the investigation of the primary criminal offense and within a two-year period after the conviction in the primary criminal case becomes final (Article 403^1).

In cases of particular complexity or extensive circumstances related to confiscation, the prosecution has the right to initiate the preparation of a confiscation request in separate proceedings.

Article 403^2 specifies the circumstances that must be proven in the confiscation proceedings.

The responsibility for establishing these circumstances within the framework of confiscation proceedings lies with the investigative body, which is required to submit a report to the prosecutor following the investigative actions (Article 403^4).

In turn, the prosecutor may return the report for further refinement to the investigative body, terminate the confiscation proceedings due to the impossibility of confiscation or lack of grounds, or submit a confiscation request to the court.

Within the framework of confiscation proceedings, a plea agreement process is allowed (Clause 3, Article 403^6).

If the confiscation proceedings are conducted in parallel with the main criminal case, the court, by its ruling, resolves the issue of confiscation upon the prosecutor's request after the conviction for the crime that serves as the basis for the confiscation has come into legal force.

We support the views of some Kazakh scholars [11; 12] that the structure of a financial investigation may consist of sequential and interrelated stages:

1) A parallel financial investigation conducted alongside or within the framework of a traditional preliminary investigation;

2) Pretrial proceedings for the confiscation of property obtained by criminal means without a court conviction;

---

[10] *Уголовно-процессуальный кодекс Нидерландов https://eurcenter.net/wp-content/uploads/2020/09/Code-of-Criminal-Procedure-of-the-Netherlands.pdf (дата обращения: 02.07.2024).*

[11] *Уголовно-процессуальный кодекс Эстонии https://www.juristaitab.ee/sites/default/files/seaduste-tolked/%D0%A3%D0%93%D0%9E%D0%9B%D0%9E%D0%92%D0%9D%D0%9E-%D0%9F%D0%A0%D0%9E%D0%A6%D0%95%D0%A1%D0%A1%D0%A3%D0%90%D0%9B%D0%AC%D0%9D%D0%AB%D0%99%20%D0%9A%D0%9E%D0%94%D0%95%D0%9A%D0%A1%2021.03.2023.pdf (дата обращения: 02.07.2024)*

3) A financial investigation based on a legally binding conviction.

Thus, the introduction of parallel financial investigations into Kazakhstan's criminal procedure is a timely and necessary measure to enhance the effectiveness of combating money laundering and terrorist financing. A parallel financial investigation will allow for the analysis of financial flows and the identification of hidden assets related to criminal activities alongside the criminal investigation.

This approach contributes to a more comprehensive disclosure of crimes and helps establish the connection between criminal actions and their financial consequences. This is particularly important in the context of complex financial schemes and international crime, where traditional investigative methods may prove insufficient.

Moreover, the implementation of parallel financial investigations will create conditions for improved coordination between law enforcement agencies, financial institutions, and other stakeholders. This will enhance cooperation and information sharing, which, in turn, will facilitate the faster and more effective detection of financial crimes.

Conclusion

An analysis of the Law of August 28, 2009, shows that it addresses not only issues related to combating the legalization (laundering) of proceeds from criminal activities but also the financing of terrorism. The preamble of the Law states that it establishes the legal framework for countering the legalization (laundering) of proceeds from criminal activities and the financing of terrorism, as well as regulating the relationships between financial monitoring entities, authorized bodies, and other government agencies in the Republic of Kazakhstan. The Law also outlines mechanisms for implementing targeted financial sanctions to prevent and combat terrorism, its financing, and the proliferation of weapons of mass destruction and their financing.

Since the issues addressed in the Law of August 28, 2009, while related, are generally distinct, it is proposed to adopt two separate laws: «On Countering the Legalization (Laundering) of Proceeds from Criminal Activities» and «On Countering the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction».

Another issue within this legal framework is the definition of the beneficiary or beneficial owner.

According to the glossary of special terms used in the FATF Recommendations, beneficiaries are defined as individuals or groups of individuals who receive charitable, humanitarian, or other types of assistance through the services of non-profit organizations.

The glossary also provides a definition of a beneficial owner, referring to the individual(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is conducted. This definition also includes those who ultimately exercise effective control over a legal entity or arrangement[12].

In addition, Kazakhstani legislation, specifically Article 1 of the Law of August 28, 2009, defines a «beneficial owner» as an individual who: directly or indirectly owns more than twenty-five percent of the shares in the authorized capital or placed (excluding preferred and repurchased by the company) shares of a client that is a legal entity; exercises control over the client in another manner; or is the person on whose behalf the client conducts transactions with money and/or other assets.

The terms «beneficiary» and «beneficial owner» are absent from the relevant Law of the Republic of Kazakhstan dated August 31, 1995, №2444 «On Banks and Banking Activities in the Republic of Kazakhstan»[13], which we think is illogical.

In Russian legislation, the definition is identical to that in Kazakhstani law: a «beneficial owner» is an individual who ultimately, directly or indirectly (through third parties), owns (holds a dominant interest of more than 25 percent in the capital of) a client that is a legal entity or has the ability to control the actions of the client. The beneficial owner of a client that is an individual is considered to be that person, except in cases where there are grounds to believe that the beneficial owner is another individual[14].

We agree with R.I. Akhmetshin, who indicates that a beneficial owner is usually considered in

[12] *Рекомендации ФАТФ: Международные стандарты по противодействию отмыванию денег, финансированию терроризма и финансированию распространения оружия массового уничтожения https://cbr.ru/Content/Document/File/132941/St10-21_RU.PDF (дата обращения: 22.06.2024).*

[13] *Закон Республики Казахстан от 31 августа 1995 года «О банках и банковской деятельности в Республике Казахстан» https://adilet.zan.kz/rus/docs/Z950002444_#z1454 (дата обращения: 01.07.2024).*

[14] *Федеральный закон от 07.08.2001 N 115-ФЗ (ред. от 21.12.2021) «О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма». http://www.consultant.ru/document/cons_doc_LAW*

several aspects: concerning corporate structure, income, and property [13, c.43].

The approaches used in different branches of legislation are not identical. Of all the areas where the definition of a beneficial owner is relevant at the national level, the Russian Federation has primarily chosen the area of anti-money laundering.

In international agreements on the avoidance of double taxation, a beneficiary is considered to be a legal or natural person who receives income to which they have a substantive right[15].

According to T. Greenberg, the process of identifying the ultimate beneficial owner is quite complex. The identity of the true beneficial owner and the source of their income are often concealed, and the focus shifts to legal entities such as corporations, trusts, foundations, and limited partnerships. The use of intermediaries can further complicate the process, and in some jurisdictions, the legislation allows this by not prohibiting banks from treating intermediaries as owners in the absence or shortage of information about the actual client. In banks that use a threshold method for determining beneficial ownership (e.g., where banks are required to check only beneficial owners with more than a 25% stake), politically exposed persons may have more opportunities to conceal their involvement. FATF conducted a thematic study to identify vulnerability areas in corporate finance for money laundering, as well as risk factors that should help detect the misuse of funds [14, c.54].

In accordance with Article 40 of the Civil Code of the Republic of Kazakhstan «1. A legal entity may be established by one or more founders. 2. The founders of a legal entity may be the owners of property or their authorized bodies or persons, and in cases specifically provided for by legislative acts, other legal entities. At the same time, legal entities that own property on the right of economic management or operational management may be founders of other legal entities with the consent of the owner or his authorized body, unless otherwise provided by the laws of the Republic of Kazakhstan. 3. The founders of a legal entity may not have any advantages over other participants of this legal entity who are not its founders, except in cases provided for by legislative acts of the Republic of Kazakhstan»[16].

Thus, a beneficial owner of a legal entity can also be another legal entity. This means that corporate structures can be interconnected through ownership chains. In such cases, one legal entity can be a beneficiary (recipient of benefits) from another legal entity, creating complex corporate networks.

For example, a holding company might own shares in a subsidiary, making it the beneficial owner of the assets and income of that subsidiary. This structure can be used for tax optimization, risk management, or enhancing control over the business.

However, the presence of beneficial owners in the form of legal entities also presents challenges in terms of transparency and accountability. Complex corporate structures can make it difficult to identify the real owners, increasing the risks of money laundering and corruption. Therefore, many jurisdictions require the disclosure of beneficial ownership information, including cases where the beneficial owner is another legal entity, to ensure greater transparency in financial transactions and combat financial crimes.

In light of the above, we propose to include legal entities in the definition of «beneficial owner» in the Law of August 28, 2009.

In this study, we were unable to cover all issues related to combating money laundering and terrorist financing. However, we plan to address these topics in detail in our upcoming articles. This will allow us to analyze current issues more thoroughly and propose effective solutions in the fight against financial crimes.

Authors' contributions

Salimov K.M. – collection, analysis, revision, design of literature, final approval for publication;

Nizami Y. - article concept, processing of data for the article, study of bibliographic sources, transliteration.

_32834/7f756f0b351492331efccfd82ac5f928dcf7bbea/ (дата обращения: 01.07.2024).

[15] Кто такой бенефициар или бенефициарный владелец в ЕС и Великобритании? https://imperiallegal.com/ru/media/articles/who-is-a-beneficiary-or-a-beneficial-owner/ (дата обращения: 01.07.2024).

[16] Гражданский кодекс Республики Казахстан от 27 декабря 1994 года. Общая часть. https://adilet.zan.kz/rus/docs/K940001000_ (дата обращения: 01.07.2024)

REFERENCES

1. Kazbayeva A.G., Ismagulov K.E. Analysis of the efficiency of legislation on countering the legalization (money-laundering) of proceeds from crime and the financing of terrorism // Научно-правовой журнал «Вестник Института законодательства и правовой информации Республики Казахстан». – 2022. - №3 (70)-2022. – PP.181-188.

2. Эскиндаров М.А. Международный кредит. – М.: Кнорус, 2019. – 432 с.

3. Хейфец Б.А. Деофшоризация российской экономики: возможности и пределы – М.: Институт экономики РАН, 2013. – 63 с.; Хейфец Б.А. Роль оффшоров в глобальной экономике // Мировая экономика и международные отношения. – 2008. – №11. – С. 69-76.

4. Medina L., Schneider F. Shadow Economies All Around the World: What Did We Learn Over the Last 20 Years // Washington DC: International Monetary Fund. – 2018. - Working Paper 18/17. – P. 76-81.

5. Schneider F. Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Findings // Economics of Security Working Paper. – 2010. - №26. – P. 29-35.

6. Сулейменов М.К. Экспертное заключение по проекту Закона Республики Казахстан «О возврате государству незаконно приобретенных активов». Информационная система «ПАРАГРАФ» https://online.zakon.kz/Document/?doc_id=31839852&pos=354;-51#pos=354;-51 (дата обращения: 23.06.2024).

7. Абжанов Д.К. Почему закон о возврате активов будет иметь разрушительные последствия. Информационная система «ПАРАГРАФ» https://online.zakon.kz/Document/?doc_id=32469798 (дата обращения: 23.06.2024).

8. Калиакперова Е.Н. Monitoring legislation in the field of asset recovery // Научно-правовой журнал «Вестник Института законодательства и правовой информации Республики Казахстан». – 2024. - Том 2. - №77 (2024). – С.261-266.

9. Orlova Oxana. Правила о противодействии отмыванию доходов в США. Крупнейший портал о международной защите и диверсификации активов https://internationalwealth.info/foreign-bank-accounts/pravila-o-protivodejstvii-otmyvaniju-dohodov-v-ssha (дата обращения: 23.06.2024).

10. Меньших А.А. Уголовная ответственность за отмывание денежных средств, полученных незаконным путем, по законодательству Франции // Журнал зарубежного законодательства и сравнительного правоведения. – 2015. - № 4. – С.684-690.

11. Ахпанов А.Н., Юрченко Р. Об институте финансового расследования при производстве по уголовным делам https://journal.zakon.kz/4551147-ob-institute-finansovogo-rassledovanija.htmlpdf (дата обращения: 07.07.2024).

12. Казиев З.Г., Ахпанов А.Н. Стратегия развития уголовно-процессуального права и законодательства Республики Казахстан // Научно-правовой журнал «Вестник Института законодательства и правовой информации Республики Казахстан. – 2019. - №3 (57). – С. 78 – 89.

13. Ахметшин Р.И. Налоговые аспекты деофшоризации: мировые тенденции в зеркале российской действительности // Закон. - 2014. - № 6. – С. 43-47.

14. Гринберг Т. Политически значимые лица: Руководство для банков по предотвращению финансовых злоупотреблений. – М.: Альпина Паблишер, 2012.- 185 с.

REFERENCES

1. Kazbayeva A.G., Ismagulov K.E. Analysis of the efficiency of legislation on countering the legalization (money-laundering) of proceeds from crime and the financing of terrorism // Nauchno-pravovoj zhurnal «Vestnik Instituta zakonodatel'stva i pravovoj informacii Respubliki Kazahstan». – 2022. - №3 (70)-2022. – S.181-188.

2. Jeskindarov M.A. Mezhdunarodnyj kredit. – M.: Knorus, 2019. – 432 s.

3. Hejfec B.A. Deofshorizacija rossijskoj jekonomiki: vozmozhnosti i predely – M.: Institut jekonomiki RAN, 2013. – 63 s.; Hejfec B.A. Rol' offshorov v global'noj jekonomike // Mirovaja jekonomika i mezhdunarodnye otnoshenija. – 2008. – №11. – S. 69-76.

4. Medina L., Schneider F. Shadow Economies All Around the World: What Did We Learn Over the Last 20 Years // Washington DC: International Monetary Fund. – 2018. - Working Paper 18/17. – R. 76-81.

5. Schneider F. Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Findings // Economics of Security Working Paper. – 2010. - №26. – R. 29-35.

6. Sulejmenov M.K. Jekspertnoe zakljuchenie po proektu Zakona Respubliki Kazahstan «O vozvrate gosudarstvu nezakonno priobretennyh aktivov». Informacionnaja sistema «PARAGRAF» https://online.zakon.kz/Document/?doc_id=31839852&pos=354; 51#pos=354;-51 (data obrashhenija: 23.06.2024).

7. Abzhanov D.K. Pochemu zakon o vozvrate aktivov budet imet' razrushitel'nye posledstvija. Informacionnaja sistema «PARAGRAF» https://online.zakon.kz/Document/?doc_id=32469798 (data obrashhenija: 23.06.2024).

8. Kaliakperova E.N. Monitoring legislation in the field of asset recovery // Nauchno-pravovoj zhurnal «Vestnik Instituta zakonodatel'stva i pravovoj informacii Respubliki Kazahstan». – 2024. - Tom 2. - №77 (2024). – S.261-266.

9. Orlova Oxana. Pravila o protivodejstvii otmyvaniju dohodov v SShA. Krupnejshij portal o mezhdunarodnoj zashhite i diversifikacii aktivov https://internationalwealth.info/foreign-bank-accounts/pravila-o-protivodejstvii-otmyvaniju-dohodov-v-ssha (data obrashhenija: 23.06.2024).

10. Men'shih A.A. Ugolovnaja otvetstvennost' za otmyvanie denezhnyh sredstv, poluchennyh nezakonnym putem, po zakonodatel'stvu Francii // Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedenija. – 2015. - № 4. – S.684-690.

11. Ahpanov A.N., Jurchenko R. Ob institute finansovogo rassledovanija pri proizvodstve po ugolovnym delam https://journal.zakon.kz/4551147-ob-institute-finansovogo-rassledovanija.htmlpdf (data obrashhenija: 07.07.2024).

12. Kaziev Z.G., Ahpanov A.N. Strategija razvitija ugolovno-processual'nogo prava i zakonodatel'stva Respubliki Kazahstan // Nauchno-pravovoj zhurnal «Vestnik Instituta zakonodatel'stva i pravovoj informacii Respubliki Kazahstan. – 2019. - №3 (57). – S. 78 – 89.

13. Ahmetshin R.I. Nalogovye aspekty deofshorizacii: mirovye tendencii v zerkale rossijskoj dejstvitel'nosti // Zakon. - 2014. - № 6. – S. 43-47.

14. Grinberg T. Politicheski znachimye lica: Rukovodstvo dlja bankov po predotvrashheniju finansovyh zloupotreblenij. – M.: Al'pina Pablisher, 2012.- 185 s.