

CRITERIA FOR IDENTIFYING SUSPICIOUS MONEY RECOVERY LAWSUITS FOR THE PURPOSE OF MONEY LAUNDERING

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1. The first-round regional risk assessment report and sub-regional reports identify a regional risk that requires standard measures to be taken in order to mitigate it (the lowest level of risk). This risk is using schemes to offshore funds through enforcement means. It is often manifested in practice in the use of court judgements rendered on fictitious grounds. For example, a non-resident company files a claim with a court against a resident company seeking the recovery of funds for failure to discharge obligations on various grounds (loan, services, suretyship under other agreements, and so forth). The judiciary bodies render a judgement to recover the debt from the resident company in favour of the non-resident company and the funds are transferred in a compulsory manner. There are also various other schemes involving enforcement mechanisms or litigation (see the first-round regional risk assessment report).
2. Moreover, in a number of cases, it is possible to reach the objectives of the litigation mechanism even without the enforcement of the judgment. Funds are given the appearance of being received under a judicial act in order to lend a veneer of legality to such funds, and the criminal proceeds – with the source of their true origin concealed – therefore become legalised.
3. There are serious challenges and risks that criminal proceeds may be lost when it comes to identifying suspicious actions at the stage of enforcement of a judicial or other act.
4. Second, it is extremely difficult to identify an ML scheme at the stage of enforcement since this stage of proceedings does not involve any examination of evidence, meaning that suspicious features may be identified only in clear-cut cases. More or less covert schemes, which are prevalent in such ML cases, are highly unlikely to be identified during enforcement proceedings.
5. Third, judicial or other acts delivered in cases involving a covert ML scheme are usually enforced in the shortest possible time because the criminals want to legalise the funds as fast as possible and, to avoid being exposed, to take them out of reach of the competent bodies or to conceal their next location.
6. It is critical in this regard that the relevant officers of judicial, law enforcement, and enforcement bodies become suspicious about ML schemes as early as possible. The Russian Federation has the best and positive practices in examining claims and enforcement items. The country has established constructive and close cooperation among the judicial and law enforcement bodies.
7. Relying on information submitted by the delegations and data sourced elsewhere (open registers of court judgments in the Member States, case law reviews, national research), a list of criteria to identify suspicious claims for the recovery of funds for ML purposes was drafted and approved at the 39th Plenary Meeting (see Annex).
8. It is worth noting that a single criterion from the list or a group of criteria, in and of themselves, do not indicate that there is certainly a ML scheme in place, however, they can – when taken in totality with the facts under consideration in specific claims – suggest that a ML scheme may be potentially used, prompting the relevant competent bodies to examine them.

List of criteria for identifying suspicious money recovery lawsuits for the purpose of money laundering¹

1. Multiple filings of lawsuits with the courts by the same representatives who are not professional lawyers.
2. Multiple lawsuits on the same grounds filed by the same plaintiff against the same defendant.
3. Under contractual jurisdiction, dispute cases are serially heard by the same judge outside of territorial jurisdiction and specialisation.
4. The debtor agrees with the plaintiff's claims, but is unwilling to reach a settlement out of court.
5. The parties seek to conclude a settlement agreement in the absence of a dispute as such and when they disagree to settle disagreements out of court.
6. Young age of the party to the dispute (attainment of majority shortly before the obligation arose) in the absence of confirmed income of such party.
7. The judgment has not been enforced further voluntarily.
8. The same representatives in the courts represent the interests of the parties to the case.
9. Employees of the same legal entity represent the interests of the parties to the case.
10. The parties to the case typically have the characteristics of a shell company (multiple or nominee directors, mass registration addresses, frequent ownership changes, address changes for the place of registration, transit movement of funds (if there is an extract), etc.).
11. Negative media coverage of the company's top executives and their actions.
12. Conclusion of other civil transactions (assignment agreements, debt transfer agreements, etc.), for which there are no settlements in order to make it difficult to define the nature of the obligations.
13. The existence of contractual jurisdiction over disputes heard by a court located in a region other than where the parties were registered.
14. When carefully examined, the obligations are found to be fictitious and fabricated by the parties. For example, disputed obligations result from a supply contract that, upon careful examination, reveals signs of its negligibility (goods were not purchased or delivered; the tax authority was unaware of the delivery, etc.), or thorough examination of the disputed agreement reveals that it has the characteristics of a void transaction (for example, it was not signed by an authorized person and was not actually executed, etc.).
15. A significant amount of debt accumulated quickly or all at once.
16. The disputed agreement was concluded not long after the parties were registered.
17. The plaintiff submits a request for a postponement (exemption) from paying the state duty due to a lack of funds when bringing a lawsuit in court.
18. When comparing the documents on obligations submitted to the court in all connected cases, it is visually apparent that they all have the same format (printed in the same font, with the same spacing, etc.), indicating that they were all printed on the same machine by the same people).
19. All lawsuits in connected cases are typically filed on the same day.
20. The signatures of the same directors appear differently on different documents, which is an indirect sign that the documents may be forgeries.

¹ A single criterion or set of criteria, by itself, does not indicate the existence of a money laundering scheme, but they may allow, when combined with the facts at issue in a specific lawsuit, to suggest the possible use of a money laundering scheme and ensure their verification by the relevant competent authorities.

21. The legal successor has not compensated the original creditor for the right of claim.
22. Banks describe the Company's activities as transit, questionable in terms of AML/CFT legislation; information about banks' refusal to open accounts within the context of the application of AML legislation is known (this information may be requested, if necessary, from credit institutions serving the parties).
23. The disputed obligations arise from bills of exchange and there are no original bills of exchange.
24. The tax authorities may inform that the director is a nominee (information about the person or the ability to act by proxy is unreliable, etc.).
25. Information on the parties' legal addresses' unreliability is available.
26. According to credit institutions, a legal entity's accounts do not experience any turnover.
27. The scheme involves groups of the same individuals that are recoverers who have family or other connections.
28. Credit institutions apply anti-money laundering measures to the parties to the case, preventing them from withdrawing money and forcing them to appear in court.
29. The parties to the proceedings are registered in different regions or countries, whereas their beneficiaries are concentrated in one region or country, in an effort to obstruct further investigations.
30. The plaintiff is controlled by or related to the debtor (including through the debtor's top management).
31. The original lawsuit's obligations concern the provision of intangible services.
32. The case materials lack reliable confirmation of the provision of intangible services (consulting, representation of interests, and transfer of intellectual property). The provided methodology for calculating the economic effect obtained from the use of intangible services is questionable (obviously overestimated or underestimated), and there are no documents and information confirming the provided calculations.
33. The debtor is a legal entity with an extensive ownership or counterparty structure that creates significant difficulties in tracking the movement of funds or verifying counterparties.
34. Information about the debtor's corporate disputes is available.
35. The creditor organization is not the manufacturer of the particular product it claims to have supplied, and there are no non-cash financial transactions for the purchase of these products from the supplier organization.
36. Companies are represented by attorneys-in-fact; top managers, founders are elderly or registered in remote areas.
37. Low cost of assignment of the right of claim.
38. The third party assigned to handle debt recovery is a non-resident.
39. The non-resident has not actually made a non-cash payment to the original creditor in accordance with the assignment agreement, or the amount of such a payment is disproportionate to the amount of the assigned debt.
40. The amount transferred from a legal entity's account is equal to the account's balance, and after the transfer of the specified amount, the account is empty and no new money is received.
41. The applicant was registered with the tax authority not long before submitting his application for an overpayment of taxes.
42. The amount of tax payable in the declaration provided by the applicant for the time when the tax was paid for him by a third party is zero, meaning he did not have to pay any tax.
43. Failure of a legal entity to provide a valid explanation for the transfer of the disputed amount to satisfy fictitious tax obligations of the other person before that person had submitted a tax return.

44. Indicators of the transit nature of a legal entity's financial transactions – funds are received from various counterparties with characteristics of shell companies and subsequently transferred to the accounts of various individual entrepreneurs in order to withdraw money from bank cards later.
45. Money is transferred from a company card issued to employees of an organization whose operations correspond to the characteristics of a shell company.
46. Numerous transfers made throughout the day to the personal accounts of several different subscribers' mobile operators.
47. Mobile subscribers are registered with mobile operators independently of the legal entity sending the money and do not use the number to which the money is sent.
48. The mobile subscriber signs a contract with the operator and cancels it immediately after receiving the remittances.
49. There is a sizable difference between the object's cadastral value and the parties' valuation of it without any disagreements about the transaction's logic or viability from an economic standpoint.
50. In the application, the plaintiff, who is a natural person, alleges that the loan (usually a significant amount) was made to a legal entity in cash; cash receipt orders, acts of acceptance and transfer of funds and receipts are presented as evidence of the reality of the relationship.
51. The funds are not credited to the settlement account of the legal entity, who is a borrower, and a closer examination reveals that the natural person is financially incapable of providing such a loan amount.
52. The plaintiff refuses to provide information about the sources of the funds transferred under the loan agreement or states that they are personal savings (however, the lack of officially certified income allows to conclude that it is impossible to accumulate such amounts).
53. There is no record that money has been deposited into the borrower's bank account, and there is no cash book or book for tracking cash receipt and cash payment orders.
54. A motion to change the party in the case is filed at the first court hearing and is not contested by the parties.
55. Legal entities to which multiple transfers were made had financial links with each other and met the criteria of a dormant company, not conducting real financial and economic activities.
56. The company's top management's protracted failure to get in touch with the bank and law enforcement agencies after learning of the "disposal of the account by unidentified persons".
57. Making contact with law enforcement agencies in order to give the impression that a crime is being committed by unidentified individuals.
58. Inability to pay back the interest on the credit line with own funds; the repayment of the interest is made possible by receiving money from legal entities under related transactions.
59. The parties to the transaction lack fixed assets, and the legal entity's employee count suggests that it is impossible to conduct production-related activities.
60. Numerous settlement accounts are opened in various banks for a small legal entity.
61. The legal entities' accounts show that no payments have been made for the declared type of activity, no expenses have been incurred for paying salaries, and it has not been proven that the plaintiffs have engaged in joint business activities.
62. Filing false tax returns on the assets of a legal entity before it is liquidated in order to avoid making payments to creditors.
63. Application by banks to a legal entity prior to its liquidation of anti-money laundering measures as part of the implementation of AML legislation in the form of refusal to execute a client's order to conduct a transaction or the termination of a bank account agreement.
64. A liquidated legal entity has the characteristics of a shell company.

65. Lack of information regarding the satisfaction of creditors' claims during a legal entity's liquidation.
66. A legal entity's liquidator, sole founder, and petitioner for the start of bankruptcy proceedings are all the same person.
67. The occurrence of an insured event involving significant insurance benefits immediately after the conclusion of the insurance contract.
68. Other actions or decisions that, alone or in combination with other factors, indicate the planned or executed laundering of criminal proceeds.