

The Supreme People's Court's Interpretation of Several Issues Concerning Specific Application of Law in the Trial of Criminal Cases about Illegal Fundraising, which was adopted at the 1502nd meeting of the Judicial Committee of the Supreme People's Court on November 22nd 2010, are hereby promulgated and will come into force as of January 4th 2011.

December 13th, 2010

No. (2010) 18 of Judicial Interpretation

The Supreme People's Court's Interpretation of Several Issues Concerning Specific Application of Law in the Trial of Criminal Cases about Illegal Fundraising

(Adopted at the 1502nd meeting of the Judicial Committee of the Supreme People's Court on November 22nd 2010)

In order to punish in accordance with laws those criminal activities such as illegal money collection from the public and/or fraud in financing, the judicial interpretation of the several issues concerning the specific application of the law in the trial of criminal cases about illegal fundraising shall be as follows:

Article 1: Any conduct of soliciting fund from the social public (including firms and individuals) which is in violation of provision of China financial administration act and meet the following four circumstances at the same time, unless otherwise specified by Criminal Law, shall be identified as **illegally soliciting public deposits or pooling public deposits in disguised form** as defined in article 176 of the Criminal Law:

1. Soliciting fund without the approval from competent authorities or through imitating the form of lawful operation;
2. Making publicity to the society through channels like media, presentation conference, flyers or SMS, etc;
3. Promising to refund the principal and interest in kind, in cash or in shares or repay within a certain period of time;
4. Soliciting fund from the social public, namely non-specific object.

Fundraising without publicity to the society but only among families, friends and relatives or among specific persons in a company should not be identified as illegal money collection or disguising for public deposit.

Article 2: Any one of the following activities which is involved in Article 1.1 of this interpretation shall be convicted as the crime of illegally soliciting public deposits in accordance with the provision of article 176 of the Criminal Law and be punished accordingly:

1. Illegally soliciting fund by means of principal-refund sales, sublease promise after sales, agreed redemption, selling fractional property ownership, etc., without the actual content of property sales or not for the purpose of property sales;
2. Illegally soliciting fund by means of transferring forest property and entrusted management;
3. Illegally soliciting fund by means of entrusted planting (cultivation), rent of land for planting (cultivation) or associated planting (cultivation);
4. Illegally soliciting fund in form of commodity buy-back or consignment instead of selling real commodity or providing real service, or not for the purpose of selling commodity or providing service;
5. Illegally soliciting fund by means of fictitious equity transfer or offering fictitious bonds without the actual content of issuing shares and bonds;
6. Illegally soliciting fund by means of pretending to be offshore fund and/or offering fictitious fund without actual content of raising fund;
7. Illegally soliciting fund by means of pretending to be the insurance companies and forging insurance documents without actual content of insurance sales;
8. Illegally soliciting fund in form of buying a share for investment;
9. Illegally soliciting fund in form of entrusted assets management;
10. Illegally soliciting fund under the name of non-governmental organizations or civil society organizations;
11. Other conducts of illegally soliciting funds.

Article 3: He who illegally solicits or disguises for public deposits under any one of the following circumstances shall be prosecuted for criminal liability in accordance with relevant laws:

1. Where the amount of public deposit illegally solicited or disguised to raise by any individual reaches over two hundred thousand RMB (200,000 RMB) or that by any company reaches over one million RMB (1,000,000 RMB);
2. Where any individual solicits or disguises for public deposit from over thirty (30) persons or any company, from more than one hundred and fifty (150) persons;
3. Where the amount of the direct economic loss of the depositor reaches over one hundred thousand RMB (100,000 RMB) due to illegally soliciting or disguising for public deposit by any individual, or that reaches over five hundred thousand RMB (500,000 RMB) by any company;
4. Where resulting in adverse impact on the society or other grave consequences.

Any one of the following circumstances shall be defined as **huge amount or with other serious principles** as provided in the article 176 of the Criminal Law:

1. Where the amount of public deposit illegally solicited or disguised by any individual reaches over one million RMB (1,000,000 RMB) or that by any company reaches over five million RMB (5,000,000 RMB);
2. Where any individual solicits or disguises for public deposit from over one hundred (100) persons or any company, from more than five hundred (500) persons;
3. Where the amount of the direct economic loss of the depositor reaches over five hundred thousand RMB (500,000 RMB) due to illegally soliciting or disguising for public deposit by any individual, or that reaches over two point five million RMB (2,500,000 RMB) by any company;
4. Where resulting in extremely adverse impact on the society or other extremely serious consequences.

The amount of public deposit illegally solicited or disguised for shall be calculated on the basis of the total amount of the fund solicited by the performer. The amount that has been returned before and/or after the crime has been convicted can be taken into consideration as one of the principles of discretionary sentencing.

Those who illegally solicit or disguise for public deposits but use them in the normal manufacturing or business operation and can return the entire solicited fund within the required time can be exempt from criminal penalty; if an act is obviously of minor importance, it shall not be deemed as a crime.

Article 4: Those who implement the activities provided in Article two (2) of this Judicial Interpretation in a fraudulent way for the purpose of illegal possession shall be convicted of the crime of fraud financing and will be punished in accordance with the provision of article 192 of the Criminal Law.

Any illegal fundraising in a fraud way which involves in any one of the following circumstances shall be identified as **for the purpose of illegal possession**:

1. When the raised fund cannot be returned since it is not used in the manufacturing or business operation, or the ratio between the amount of the total raised fund and those used for the manufacturing or business operation is not well balanced at all;
2. Where the raised fund cannot be returned due to the profligacy;
3. Where absconding with the raised fund;
4. Where using the raised fund in the criminal activities;
5. Where surreptitiously withdrawing or transferring the fund or hiding the property to evade the repayment of the fund;

6. Where hiding or destroying the accounting records or pretending to go bankrupt or go out of business to evade the repayment of the fund;
7. Where refusing to reveal where the fund is to evade the repayment of the fund;
8. Other circumstances that can be identified as illegal possession.

The purpose of illegal possession in the crime of fraud financing must be identified on the basis of the actual situation. Where a certain part of the illegal fundraising activities of the performers is involved in the purpose of illegal possession, only that monetary portion resulting from that part of illegal fundraising activities shall be identified as the crime of fraud financing and will be punishment accordingly. Where some of the performers of the common crime of illegal fundraising have the purpose of illegal possession but the rest of them do not have the common intent and common activities for illegal fundraising, those with the purpose of illegal possession shall be convicted of the crime of fraud financing and will be punished accordingly.

Article 5: Where an individual makes a fraud financing of over one hundred thousand RMB (100,000 RMB), such amount shall be identified as a **relatively large amount of money**; that of over three hundred thousand RMB (300,000 RMB), **a huge amount of money** and that over one million RMB (1,000,000 RMB), **an extremely huge amount of money**.

Where a company makes a fraud financing of over five hundred thousand RMB (500,000 RMB), such amount shall be identified as **a relatively large amount of money**; that of one point five million RMB (1,500,000RMB), **a huge amount of money**; that over five million RMB (5,000,000 RMB), **an extremely huge amount of money**.

The amount of fraud financing shall be calculated on the basis of the actual amount cheated by the performer but deduct what has been returned before the crime is revealed. Those spent by the performer as advertising expenses, finder's fee, rebates, or used for kickbacks and giveaway shall not be deducted. Interests paid by the performer for carrying out the fraud financing shall be added into the fraud amount unless otherwise it is used to offset the unreturned principal.

Article 6: Where issuing stock shares, enterprise bonds and corporate bonds to the unspecified persons in the society or issuing them in the form of equity transfer to an specific group of persons without the approval of the competent authorities in China, when the total amount of persons is over two hundred (200), such activities shall be identified as **unauthorizedly issuing shares, enterprise bonds or corporate bonds**, which is stipulated in the article 179 of the Criminal Law. Where constituting a crime, it shall be convicted as the **Crime of Unauthorizedly Issuing Shares, Enterprise Bonds and Corporate Bonds** and will be punished accordingly

Article 7: Where under the serious circumstance of unauthorizedly issuing fund shares to solicit the fund without the approval of the relevant laws, which is in violation of governmental regulations and

rules in China, the offender shall be convicted of the crime of illegal operation and punished in accordance with the provision of the article 225 of the Criminal Law.

Article 8: Where any advertising operator and/or advertising publisher violates the governmental regulations in China and takes advantage of the advertisement to make a hoax promotion for the commodities or services related to the illegal fundraising activities, those under one of the following circumstances shall be convicted of the Crime of Hoax Advertising in accordance with the provision of article 222 of the Criminal Law:

1. The amount of unlawful income reaches over one hundred thousand RMB (100,000 RMB);
2. Resulting in severe harms or serious impact on the society;
3. Having been given administrative penalty more than twice due to taking advantage of the advertisement for hoax promotion within two (2) years;
4. Being involved in other serious circumstances.

If one is fully clearly aware that another one is involved in the fraudulent issue of shares and bonds to illegally solicit public deposits, or unauthorized issue of shares and bonds for fraud financing, or is conducting other criminal activities like organizing and guiding illegal multi-level marketing, but still provide advertising promotion for that one, such person will be convicted as an accomplice of the corresponding crime.

Article 9: In case of any discrepancy between the judicial interpretation published previously and this one, the later will prevail.