

# Analysis of Criminal Law Regulation on Illegal Fund-raising Behavior of Internet Finance

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**Abstract:** As for nowadays market economy system, Internet finance has begun to become an important financing channel, which is welcomed by the public with its novelty and liveliness. Therefore, in terms of the Internet finance, the criminal law should formulate corresponding limits to ensure the punishment demand for illegal fund-raising, so as to be consistent with the development goals of the Internet economy. This paper is to analyze the criminal law regulations related to illegal fund-raising of Internet finance.

## 1. Introduction

Since the illegal Internet fund-raising incidents such as “Micro-venture investment” occurred, China has severely cracked down on illegal fund-raising in Internet finance, and strictly regulated it at the level of criminal law. This has played a key role in effectively maintaining the financial order of the Internet and ensuring the security of user's property. This paper analyses the criminal law regulation of illegal financing in Internet finance.

## 2. Analysis of Illegal Fund-raising from the Perspective of Criminal Law Theory

### 2.1 Definition

As the name implies, illegal fund-raising refers to all illegal fund-raising activities. In the article of criminal law, the following explanations are given to illegal fund-raising: the first is the crime of illegally absorbing public deposits featured with openness, illegality, society and lure, which violates relevant laws and regulations, absorbs public deposits in disguised form, destroys the order of financial market stability. The second is the crime of fund-raising fraud, which aims at illegal possession and uses various fraudulent methods to realize illegal fund-raising, thus infringing people's property rights<sup>1</sup>.

### 2.2 Types

Through a deeply study of the provisions of the criminal law, illegal fund-raising is mainly divided into the following types in the general regulation of the criminal law, the first is the type of investment and operation, namely, there is a certain relationship between the fund-raiser and the investor in terms of production and sales, which transfers the ownership from the surface, and then through the construction of the leasing relationship, it is easy to guarantee the expected benefits of the investor. The second type is selling financial products fraudulently, namely, to use false descriptions to convince investors of various financial products and induce investors to buy these funds, bonds and other products. Most of these propaganda are legal, but the final fund-raising is illegal. The third is the type of non-governmental organizations fund-raising, namely, by means of their respective agreements or promises, to lure members to pay high interest, finally make they pay a large amount of membership fees, and then illegally raise funds by robbing Peter to pay Paul.

### **3. Problems in Criminal Law Regulation of Illegal Fund-raising Behavior in Internet Finance**

#### **3.1 Network Crowd Funding**

Network crowd-funding is a public fund-raising behavior that fund-raisers use information technology to attract unspecified investors. The first is donation crowd-funding, since this kind of behavior is not specially regulated presently, so there are some problems in the legitimacy of this behavior, such as whether the donees's promise of providing help in return are credible or not, and whether the spiritual returns are included in the range of returns. The second is award crowd-funding, which is nearly consistent with the aggregation of funds for uncertain subjects by means of network information technology. Therefore, this kind of behavior is largely on the edge of the criminal law regulation of illegal fund-raising. It is likely to be illegal fund-raising if the information released by the fund-raiser is false, or the fund-raiser misappropriates part of the project funds and produced an impact on the order of the Internet. The third is the equity crowd-funding, which has been emphatically defined under the vision of financial field. For an enterprise, crowd-funding of equity must be achieved through a specific crowd-funding intermediary platform, not through other institutions or platforms. From this we can see its professional requirements, therefore, institutions without permission can easily be included in the scope of the regulation of criminal law<sup>2</sup>.

#### **3.2 Network Payment**

First of all, we should judge the behavior of payment through Internet platform to see if it involves illegal fund-raising in the criminal law. The first is to judge the act of collecting funds by penalty, to start publicity of funds without business permission, and to judge whether the relevant requirements of the criminal law are violated. The second is the judgment of whether the deposit of funds can be sentenced, namely, the business of entrusted payment included in some payment platforms, in which the seller delivers the goods to the buyer by express delivery. In this stage, the purchase loan is collected by the platform, so the corresponding fees are generated. Its original provisions cannot be confused with the platform's own funds, but there is no clear provision for its ownership. If the platform misappropriates the funds, it will be related to the criminal law regulation of illegal fund-raising. Thirdly, the crime of infringing on the interest on behalf of advance payment, that is, the deposit of funds by malicious payment or deferred payment by Internet payment platform or e-commerce platform, should belong to consumers in the original period, but because of technical reasons, the retention of funds has been caused, in terms of its form, this behavior has been in line with relevant regulations of criminal law.

#### **3.3 P2P Internet Loan**

This kind of online lending is the borrowing behavior between individuals through the Internet platform, which is within the scope of private lending. Because the industry of online lending has a low market access threshold, and external supervision is not very strict, it is easy to make improper capital transactions into illegal fund-raising. The main problems faced by this kind of behavior are as follows: first, the application of credit enhancement method to achieve false transactions. Secondly, the establishment of conviction for excessive fund-raising is also specified in the regulation of criminal law. Thirdly, whether there is illegal fund-raising in the creditor's own business.

### **4. Countermeasure of Criminal Law Regulation on Illegal Fund-raising Behavior in Internet Finance**

#### **4.1 Standardization and Specificity of the Recognition Criteria of the Object of Illegal Possession**

The purpose of illegal possession is a major element in property crime, therefore, this element has become the main standard of identification of illegal fund-raising in Internet finance. Firstly, the context of "possession" should be clarified. The definition of possession in criminal law is quite

different from that in real right. In criminal law, possession is only to determine whether there is a fact of controlling or controlling property in reality, but in the process of confirmation, the relevant principles of property law should be observed. The second is to take “excluding meaning” as the core, not “using meaning” as the core. Thirdly, the ability to return should be recognized. In this process, evasion of recovery should not be regarded as the sole criterion, but should be considered in many aspects. Only when the refusal to return or disposal of property is clearly stated, can it be regarded as the purpose of illegal possession.

#### **4.2 Adjustment of the Standards for the Identification of Illegal Fund-raising Behavior**

With continuous development of technology, the identification standard of illegal fund-raising in Internet finance should also keep pace with the times. Firstly, the financial management rules of the Internet should be taken as the criteria for identifying illegal fund-raising. The second is that the returns of illegal fund-raising must be tangible, and the value of property can be clearly defined, namely, the material property that can be seen, touched and counted can be used as compensation. Thirdly, the criteria for criminalization of illegal fund-raising should be clarified and refined. Fourthly, for non-specific subjects, we should not only limit ourselves to the consideration of the relationship between fund-raisers and investors, but also focus on the measurement of their financing purposes, otherwise we can identify them as financing for non-specific individuals.

#### **4.3 Adjustment of the Role and Manner of Property Losses in the Identification Criteria**

In Internet finance, illegal fund-raising will cause property loss, and most of these transactions exist in complex virtual online transactions, so appropriate adjustments in the rules of criminal law should be made. Usually, the core element of property crimes is the loss of property. Therefore, in the process of identifying illegal fund-raising, it can be regarded as a major component. Meanwhile, the scope of property loss in criminal law should be clearly defined, and the focus of loss of static jurisdiction should be considered. At the same time, the value of lost property for the purpose of victims should also be taken into account. Only in this way can the calculation method of amount be effectively changed, and the conviction standard stipulated in the law be guaranteed.

### **5. Conclusion**

To sum up, the identification and interpretation of illegal fund-raising in Internet finance in China's current criminal law need to be further regulated and adjusted. Firstly, the illegal fund-raising behavior, purpose and property loss need to be summarized and improved, so that the criminal law regulation of this behavior can be further strengthened in terms of systematisms, pertinence and timeliness, which will be more conducive to the overall construction of our legal system. Secondly, the regulation of criminal law by means of illegal acts in Internet finance will make the economic order in Internet well maintained, which has a very positive role in promoting the security, harmony, stability and legal system of market economy. In this way, the environment of the Internet will be fairer, and the good norms of Internet transactions will be realized.

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2) College-level Project of Harbin Finance Institute “Historical Investigation and Today's Reference Research on Financial Innovation and Legal Reform in the Liberated Areas of Harbin”.

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