

# Research on the Regulation of the Offense of Illegal Absorption of Public Deposits

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## Abstract

With the rapid development of China's economy, the financial market has become increasingly prosperous and strong, and the continuous innovation of business operation mode and capital flow mode has provided opportunities for the crime of illegally absorbing public deposits. The number of cases, the value involved and the number of people involved have continuously created a record high. The judicial practice shows that there are some problems in the legal regulation of the crime of illegally absorbing public deposits and it is urgent to strengthen it. The main problems are the vagueness of crime, the lack of crime prevention mechanism and the poor effect of social punishment. In combination with judicial practice, analyzing on the problems existed in the regulation of illegal absorb public deposits crime reasons, and advances some regulation problems of illegal absorbing public deposits crime path to cope with the situation.

## Keywords

Financial Crime, Essential condition of crime, Criminal punishment.

## 1. Introduction

Illegal absorption of public deposits refers to the absorption of funds openly for unspecified objects in society in violation of legal provisions. In judicial practice, criminals generally to high interest as a temptation to deceive the victims, publicity to attract investment, absorption of unspecified objects in the community deposits. According to the law, absorb public deposits business belongs to commercial banking business, need to be approved by the relevant management department. However, illegal public deposit taking does not obtain the qualification or approval of any relevant departments, this crime is out of the financial supervision, so that the credit of the financial market and the people's legitimate property rights and interests are at high risk, jeopardizing the order of financial management, and triggering the instability of the society.

## 2. Overview of the Crime f Illegal Absorption of Public Deposits

### 2.1. The illegal absorption of public deposits crime background and regulatory system

#### 2.1.1. The background of the crime of illegal absorption of public deposits

Illegal absorption of public deposits crime legislation, in our country has experienced the process from scratch. Initially, our country published the 1979 criminal code, due to the limitations of the economic system at that time, did not sprout the crime of illegal absorption of public deposits, the crime of illegal absorption of public deposits has no room for survival, the 1979 criminal law has no provisions on the crime of illegal absorption of public deposits. These two behaviors have seriously undermined the national financial management system, disturbed the financial order, and aroused public concern[1]. the criminal code published in

1997 codified the crime of illegal absorption of public deposits as an independent crime in the criminal law, but did not specify the specific crime of illegal absorption of public deposits. The “Interpretation of the Supreme People's Court on a Number of Issues concerning Specific Application of the Law on the Trial of Illegal Collections of Funds in Criminal Cases”, which was published in 2010, further clarified the characteristics of this crime. Further clarified the characterization of the crime, listing ten situations in which public deposits can be absorbed and attaching an underpinning clause, as well as determining the criteria for identifying specific crimes.

### **2.1.2. Regulatory system of the crime of illegal absorption of public deposits**

In our country, the crime of illegal absorption of public deposits is mainly regulated from the aspects of criminal law and administrative regulations. This is because the crime of illegally absorbing public deposits not only violates the criminal law, but also has the property of administrative offense. In the criminal law to regulate the crime to play a role in combating and punishing, in the administrative regulations to regulate the crime can play a role in preventing and regulating. The judicial practice about the illegal absorption of public deposits in criminal cases constantly encountered all kinds of thorny problems, the supreme people's court, the supreme people's procuratorate, the ministry of public security has promulgated the relevant judicial interpretation: “the national court hearing financial crime cases work symposium summary” the main text on the crime of illegal absorption of public deposits [the supreme people's court] [law [2001] No. 8] [2001.01.21 Issued] [2001.01.21 Implemented]; Provisions on the Standards for the Filing of Criminal Cases under the Jurisdiction of Public Security Organs (II) on the Crime of Illegal Absorption of Public Deposits in the main text [Supreme People's Procuratorate, Ministry of Public Security] [Gongtongzizhi [2010] No. 23] [2010.05.07 Issued] [2010.05.07 Implemented]; and Interpretation of Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases of Illegal Fund Raising” [Supreme People's Court] [Fa Shui [2010] No. 18] [2010.12.13 Issued] [2011.01.04 Implemented]; ‘Notice on the Determination of the Nature of Criminal Cases of Illegal Fund Raising’ [Supreme People's Court] [Fa [2011] No. 262] [2011.08.18 Issued] [2011.08.18 Implemented], etc[2].

## **2.2. Criminal Characteristics of the Offense of Illegal Absorption of Public Deposits**

### **2.2.1. The seductive and deceptive nature of the offense**

Temptation and deception are the most significant features of the crime of illegal absorption of public deposits, which are mainly manifested in the creation of false images to tempt and deceive the victims when committing the crime. Criminals usually create false prosperity with high profits and bright prospects, coupled with the sugar-coated bombs of sweet words and honeyed phrases, so that the victims will be attracted by the high profits and gradually lower their psychological defenses, and ultimately find it difficult to resist the temptation and lose the ability of discernment, believing in the lies of the criminals and putting their deposits in the hands of the criminals. Criminals lies will be their own savings for the so-called “lending” or “investment”[3].

### **2.2.2. Networking and organization of criminal means**

Shanxi Province's largest P2P platform Jinshang loan - Hao Xiaohai, Hao Yali, Hao Xiaodong, Jin Yujun guilty of fund-raising fraud case, Hao Xiaohai and others to build a new Jinshang network borrowing platform, in the absence of any qualifications and without the approval of any department, specializing in operating the loan network platform business, Hao Xiaohai as the company's legal person, Hao Yali as the company's supervisors and finances, Hao Xiaodong as the company's supervisors and technical maintenance, Jin Yujun as the General Manager of the company. Hao Xiaohai and others clear division of labor, “each in his own way”, and the use of

the advantages of the network, expanding the geographic area and the scope of the victims, within a short period of time can be illegal to absorb a large amount of money. From the case can be seen, networking and organization to illegal public deposit taking crime has brought convenience and speed.

### **2.2.3. Publicity and sociality**

Illegal absorption of public deposits crime and other crimes with hidden different, such as theft, refers to the illegal possession for the purpose of secretly stealing public and private property behavior, and illegal absorption of public deposits crime is open, in order to lure the victims to actively participate in the investment, the criminals will usually be open to the community to propaganda, its propaganda is open to the public that is the community of unspecified objects, the so-called public is The so-called openness refers to the opening up of the public without concealment.

## **3. Analysis of the Criminal Composition of The Crime of Illegal Absorption of Public Deposits**

### **3.1. The crime of illegal absorption of public deposits the subject of the crime**

“Liu Yumou and others lured many middle-aged and elderly people to participate in the” jadeite wear raise ‘business fund-raising fraud, illegal absorption of public deposits case’ in Liu Yumou and others have reached the age of criminal responsibility, with the capacity for criminal responsibility, then meet the main body of the crime of illegal absorption of public deposits requirements They constitute the main body of the crime. According to the second paragraph of Article 176 of the Criminal Law of the People's Republic of China, a unit can also be the subject of this crime. The unit crime is generally based on the principle of double punishment, which is supplemented by single punishment. As long as the relevant subject does not have the qualification of publicly absorbing public deposits, and engages in the behavior of illegally absorbing public deposits or disguisedly absorbing public deposits, affecting the financial order and endangering the social stability, and meets the criteria for filing a case for prosecution, then it constitutes a crime[4]. According to the provisions of the relevant judicial interpretations, the staff of financial institutions use their position to facilitate the misappropriation of public funds for illegal lending, violating the relevant provisions of the criminal law, in accordance with the name of the crime they have been punished, constituting their corresponding crime, not to the crime of illegal absorption of public deposits.

### **3.2. The subjective aspect of the crime of illegally absorbing public deposits**

As mentioned above, “LiuYuMou and others entice many middle-aged and elderly people to participate in the” jadeite wear raise “business fund-raising fraud, illegal absorption of public deposits case”, LiuYuMou and others is to achieve their own enrichment of criminal purpose and intentionally. But negligence does not constitute the crime of illegal absorption of public deposits, for example, bank employees due to gross negligence error announced the news of the bank interest rate increase, resulting in the bank to absorb a large number of public deposits, such behavior does not constitute the crime of illegal absorption of public deposits.

### **3.3. The object of the crime of illegal absorption of public deposits**

The so-called object of the crime refers to the legal interests specifically violated by the unlawful infringement. The object of crime reveals the object of crime, is the specific externalization of the object of crime. The criminal object of this crime is the deposit of the non-specific object of society. The “deposit” is different from what we usually call “funds”, and we must be careful not to equate “deposit” with “funds”. It must be noted that “deposits” cannot be equated with “funds”, leading to conceptual confusion. “Liu Yumou and others lured many middle-aged and

elderly people to participate in the “Jade Dai Yang” business fund-raising fraud, illegal absorption of public deposits case “in the violation of the object of the crime is a large number of victims of the deposits, which led to chaos in the financial market order, undermining the order of the State's financial management[5].

### **3.4. The objective aspect of the crime of illegally absorbing public deposits**

The “public” refers to the majority of people or unspecified objects, including natural persons and units. For example, as mentioned above, “Liu Yumou and others lured many elderly people to participate in the” jadeite wear raise “business fund-raising fraud, illegal absorption of public deposits case”, Liu Yumou and others through false propaganda jadeite wear raise the business of the added value of the company's capital rich, The size of the investment returns, only earn benefits and other promises of high returns and high profits, and actively implement a series of illegal absorption of public deposits, including the preparation and implementation of a series of behaviors, that is, the objective aspects of the crime of illegal absorption of public deposits. At the same time, in addition to the provisions of the Criminal Law, if the behavior includes the following circumstances, it shall also be recognized as the crime of illegally absorbing public deposits: 1. The behavior of illegally absorbing public funds by using the packaging of the legal operation of the institution or enterprise. 2. Public propaganda has been carried out through cell phone emails, social media, TV advertisements, etc. 3.

## **4. Problems in the Criminal Law System of Illegal Public Deposit-taking Offenses**

### **4.1. The illegal absorption of public deposits crime characterization fuzzy**

Illegal absorption of public deposits crime characterization fuzzy mainly has two points: first, illegal absorption of public deposits in the crime of “deposit” in judicial practice is improperly expanded or narrowed understanding, some cases of “funds” is interpreted as “deposit”, which makes the illegal absorption of public deposits crime become a qualitatively fuzzy crime, or even a criminal law system. “Deposit”, which makes the crime of illegal absorption of public deposits become a qualitatively ambiguous crime, or even become a ‘pocket’ crime, with which the crime can be defined as this crime, such as the crime of illegal absorption of public deposits and the crime of fund-raising and fraud, the boundaries of which are not clear. The difference only lies in whether “for the purpose of illegal possession” and “the use of fraudulent means” to cheat the victim's deposits or funds, so there will be abuse of the crime because of the vague characterization and unclear boundaries.

### **4.2. Illegal absorption of public deposits crime prevention mechanism is missing**

With the development of the economy and the expansion of the financial market, the means of illegal public deposit-taking crimes are endless. Whether it is criminal law regulation or administrative regulations, are lagging. Laws and regulations are lagging behind the socio-economic development, but the criminal means will change with the socio-economic development, there are new forms constantly appear. Illegal absorption of public deposits crime prevention mechanism is missing mainly the following three points: First, the concept of prevention is insufficient. The pace of supervision inevitably lags in the emerging economic field, giving space for illegal and criminal behavior to survive and opportunities to take advantage of. Secondly, the supervision of the financial sector by the administrative authorities needs to be strengthened. Illegal absorption of public deposits crime has a double illegal nature, before the criminal law to regulate it, the administrative organs can give full play to its role, but in judicial practice, some administrative organs failed to accurately positioning, effective

performance of their duties, resulting in administrative organs of the part of the financial field of the supervision of the vacancy[6].

#### **4.3. Illegal absorption of public deposits crime punishment of social effect is terrible**

The lenient criminal law punishment is difficult to achieve the purpose of deterrence and prevention and education. Criminals will choose to take risks under the temptation of high profits, ignoring the law, and continue to commit illegal and criminal acts, resulting in more serious harm to society. Secondly, it is difficult to recover the stolen goods from illegal public deposit-taking crimes. After the crime, the relevant authorities to intervene, the criminals have caused a certain degree of property loss to the victim, coupled with the lack of evidence or destruction, to the recovery of stolen goods has increased the difficulty, and at this time, the criminals or the transfer of illegal gains or have been unable to repay the victims of the lawful property, resulting in some of the victims can not recover the property and dissatisfaction, resulting in the negative emotions of antagonism to take extreme means of expression of dissatisfaction, radicalizing social conflicts, jeopardizing the social order. Radicalization of social conflicts, endangering social security.

### **5. Improvement Path of The Criminal Law System for The Crime of Illegally Absorbing Public Deposits**

#### **5.1. To clarify the qualitative standards of the crime of illegal absorption of public deposits**

“Funds” refers to the production and operation of industrial and commercial activities in the necessary capital, but also can refer to the state financial allocation for the prosperous development of the national economy, to ensure the stable operation of the social economy of material or currency. In judicial practice, to clarify the boundaries of “deposits” and “funds”, can not be arbitrarily “deposits” for expanding or narrowing the interpretation, but also according to the crime of illegal absorption of public deposits and At the same time, according to the crime of illegal absorption of public deposits and fraudulent fund-raising elements, delineate the boundaries between the two, improve the relevant laws and regulations, to prevent illegal absorption of public deposits to become the infamous “pocket” crime. Secondly, the subjective purpose of the crime of illegal absorption of public deposits must be clearly defined, the criminal law provisions only provide for the crime of illegal absorption of public deposits subjective intent, that is to say, the implementation of the criminal act of illegal absorption of public deposits and actively pursuing or indulgence in the occurrence of the harmful results, there are no other specific conditions.

#### **5.2. Improve the prevention mechanism of illegal absorption of public deposits crime**

In the context of China's rapid economic development, illegal public deposit-taking crime disrupts the national financial order, destabilizes the society, and it is difficult to recover the stolen goods, easy to cause irrecoverable losses, so it is urgent to improve the precautionary consciousness of the whole society, and improve the crime prevention mechanism. First, the illegal absorption of public deposits is a typical crime with a dual nature of the crime should be strengthened administrative law enforcement and criminal justice collaboration, reasonable adjustment and refinement of the functions of various organs and departments, and strive to break through the barriers to cooperation between departments, to give better play to the supervision and management functions of various departments, and to set up a more complete system of crime prevention mechanisms. At the same time, it is necessary to improve the

corresponding laws and regulations, and departments at all levels should further strengthen the importance of preventing the crime of illegally absorbing public deposits. Secondly, the publicity mechanism should be strengthened to enhance the concept of prevention. All organs and departments should give full play to the role of grass-roots cadres to carry out planned and effective supervision of the financial market in their jurisdictions, and should detect the first signs of illegal public deposit-taking crimes before it's too late, and pay special attention to suspected offenders. Third, accelerate the improvement of the financial market credit system. Illegal absorption of public deposits crime is mostly built on the basis of the victim's trust in criminals, criminals take deceptive and seductive means, the purpose is to deceive the victim's maximum degree of trust, so as to complete the crime.

### **5.3. Enhancing the punitive effect of illegal public deposit-taking crimes**

In the enhancement of illegal absorption of public deposits in this aspect of the effect of punishment, need the joint efforts of all departments, crack down on crime, maximize the loss for the people. First, to enhance the strength of criminal penalties, raise the upper limit of punishment for property-based crimes, supplemented by a prison term, detention and other free sentences. Victims of illegal public deposit-absorbing crimes suffer property losses, and raising the upper limit of penalties for property is consistent with the principle of appropriateness of crime and punishment, and is conducive to better combating and punishing crime. Occupational prohibition qualifying penalties can be increased to prohibit tainted persons from re-engaging in finance-related industries based on their credit files, which can effectively prevent recidivism. Secondly, the problem of difficulty in recovering stolen goods should be dealt with. Increase publicity to enhance investors' awareness of crisis prevention.

## **6. Conclusion**

The rapid flow of funds in various fields of the financial industry, China's booming financial market and the loopholes in the supervision of the illegal absorption of public deposits for the illegal absorption of the crime of the survival of the environment, resulting in a surge in the number of cases of the crime, and China's illegal absorption of public deposits in the regulation of the crime of the problem is the normative mechanism lagging behind the development of the economy, i.e., laws, regulations and administrative supervision can not keep pace with the development of a variety of innovative financial industries. The current problems in the regulation of illegal public deposit-taking are due to the fact that the regulatory mechanism lags behind economic development, i.e., the pace of laws and regulations and administrative supervision cannot keep pace with the development of various innovative financial industries, which leads to difficulties in identifying, obtaining evidence, and recovering stolen goods and recovering damages, etc., in judicial practice, of which the most prominent ones are the problems in the three aspects of ambiguity in characterization, absence of a crime prevention mechanism, and ineffectiveness in punishing society. These three aspects of the problem have an important connection with various areas of social life, and the vague characterization may lead to the crime of illegal public deposit-taking becoming a "pocket crime", which is not conducive to the fairness and impartiality of the judiciary, thus lowering the majesty of the law and the social credibility of the law enforcement agencies. The lack of a preventive mechanism will lead to an increase in the number of crimes and victims, which in turn will lead to a crisis of social stability. The poor social effect of punishment will lead to the emergence of more such crimes or the recurrence of such crimes by those who have been punished.

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