Proceedings of ICILLP 2026 Symposium: AI Ethics, Law, Social Policy, and Governance in the Digital Age
DOI: 10.54254/2753-7048/2026.HZ39471

Criminal Conviction Issues Arising from Enterprises' Fund Circulation for Loan Fraud

Zizhu Wang

Law School, Tianjin University of Finance and Economics, Tianjin, China
wzz629629@qq.com

Abstract. In recent years, some enterprises have failed to meet banks' credit approval criteria and obtain loans due to operational difficulties. Consequently, cases where enterprises siphon bank credit funds through idle fund circulation have occurred frequently. In judicial practice, many loopholes exist in convicting such conduct, which gives rise to inconsistent judgments in similar cases. No unified and accurate conviction framework is available during trials. Major disagreements remain over defining the legal nature of fund-circulation loan fraud and setting corresponding conviction standards at the level of criminal offences. To ease trial burdens in judicial practice and fill conviction loopholes, this paper starts with the behavioural pattern of enterprises siphoning bank credit funds via idle fund circulation and the constituent elements of potentially applicable crimes. It establishes a conviction sequence of "object first, objective aspect second, subject third, subjective aspect last". This sequence prioritises the object to ensure accurate classification of similar offences, then identifies criminalisation through examination and confirmation of the actor's objective conduct, excludes improper imposition of liability by verifying subject eligibility, and finally integrates the subjective element centred on the purpose of illegal possession. It safeguards the final line of defence embodying the principle of legality and the principle of suiting punishment to crime.

Keywords: enterprises' fund circulation for loan fraud, judicial practice, loan fraud, contract fraud, loan fraud by deception

1. Introduction

In recent years, some enterprises have encountered operational difficulties such as capital chain rupture and cannot satisfy banks' credit approval requirements to apply for loans. They therefore abandon regular production and operation, fabricate trade backgrounds through fund circulation, falsify capital usage and various application documents to defraud bank credit funds and relieve capital pressure. Some actors obtain loans by deception with the purpose of illegal possession for speculation, squandering or appropriation. Such incidents keep emerging with diverse methods and complicated patterns, and sharp disputes exist over their legal characterisation. At the legislative level, the *Sixth Amendment to the Criminal Law of the People's Republic of China* in 2006 added Article 175-1 of the Criminal Law, to address the practical difficulty of proving the "purpose of illegal possession" in the crime of loan fraud. The *Eleventh Amendment to the Criminal Law of the*

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.HZ39471

People's Republic of China in 2020 abolished "other serious circumstances" as a threshold for criminalisation, and restricted "causing heavy losses" to the sole entry criterion for the crime of obtaining loans by deception. It narrows the scope of criminalisation and reflects legislators' tendency to tighten result-based liability for financial crimes and standardise the implementation of the principle of legality. Nevertheless, prominent disagreements persist in judicial practice regarding the characterisation of fund-circulation loan fraud. Such disagreements directly trigger numerous problems, including inadequate legal grounds for conviction, strained matching of constituent elements, and inconsistent identification standards for the purpose of illegal possession, which often rely on prosecutors' and adjudicators' understanding and backward reasoning based on case facts. These factors blur the boundaries between common applicable offences such as contract fraud, obtaining loans by deception and loan fraud. A unified conviction standard cannot be formed for enterprises that siphon bank credit funds through idle fund circulation, and inconsistent judgments for similar cases repeatedly emerge.

As for the above practical difficulties, academic discussions focusing on fund-circulation loan fraud and targeting a unified conviction framework remain insufficient. Existing studies mostly start from individual offences and match doctrinal interpretations of their constituent elements with diverse scenarios in judicial practice. It should be acknowledged that academia has carried out relatively thorough research on specific offences that fund-circulation loan fraud may constitute. However, these studies cannot directly resolve relevant criminalisation issues, nor can they precisely facilitate the clarification and unification of conviction frameworks in judicial practice. For instance, debates over direct intent and indirect intent do not alter the essence of "subjective intent". Disputes over doctrinal interpretations of constituent elements exert no substantial and decisive influence on the practical distinction between crime and non-crime, and between different offences. Overall, systematic analysis of conviction frameworks tailored to this specific behavioural pattern of fund-circulation loan fraud is still lacking. To accurately define the behavioural pattern and legal nature of enterprises siphoning bank credit funds through idle fund circulation, this paper sorts out relevant typical cases, combines constituent elements of financial and fraud offences and relevant theoretical controversies, and aims to summarise a structured, unified and fixed conviction framework. It is expected that, under this framework and within a unified legal regime, prudent evaluation, reasonable distinction and precise conviction can be achieved for different types of fund-circulation loan fraud.

2. Behavioural patterns and conviction dilemmas of enterprises' fund circulation for loan fraud

2.1. Legal nature and typical behavioural patterns of enterprises' "fund circulation"

2.1.1. Legal nature of enterprises' "fund circulation"

Financing transactions by way of sales between enterprises refer to financing activities among enterprises conducted in the form of commodity sales [1]. Fund circulation is one of the core forms of financing trade or financing sales. The term "loan" in this paper specifically refers to bank credit funds. Cases where enterprises illegally appropriate funds from their upstream and downstream enterprises are not within the scope of discussion in this paper.

The theoretical circle holds diverse views on the legal characterisation of fund circulation. Some scholars summarise it as a financing model labelled as sales but essentially a loan, which realises the circulation and lending of funds [2]. Some scholars point out that circular financing trade contracts

DOI: 10.54254/2753-7048/2026.HZ39471

are the customary term used in China's judicial practice for similar transaction structures labelled as sales but essentially for financing [3]. Other scholars state that the essence of financing trade lies in the parties' true intention to conduct inter-enterprise fund financing or lending, while they sign sales contracts in nominal form [4]. In addition, long-standing and substantial disagreements exist in judicial practice over the validity of financing trade contracts. The mainstream judicial tendency at present follows strict financial regulatory logic, and invalidates such contracts on grounds of false declaration of intent, covering illegal purposes by legal forms, and harming public interests. Nevertheless, some courts uphold the validity of these contracts.

It should be noted that civil adjudication focuses on settling fund ownership and benefit distribution, while criminal adjudication focuses on assessing criminal illegality and subjective fault. Therefore, the civil characterisation of financing trade has basically settled as "labelled as sales but essentially financing". Findings on contract validity do not automatically determine the overall judgment of conviction and sentencing under criminal law. Such civil characterisation can only provide background information for criminal evaluation and cannot replace the legal basis for conviction in criminal cases. The criminal characterisation of fund-circulation loan fraud shall integrate multiple factors, and sweeping conclusions must be avoided.

2.1.2. Typical behavioural patterns of enterprises' fund circulation for loan fraud

Numerous doctrinal definitions describe the behavioural patterns of corporate fund circulation. Early scholars defined fund circulation as financial sectors decoupled from the real economy [5]. Later scholars divided fund circulation in the broad sense into two categories: first, monetary funds return to their starting point without going through industrial processes; second, stagnation and slowdown in the flow of monetary funds [6]. Subsequent scholars shifted their perspective to the enterprise level, noting that financing transactions by way of sales between enterprises are financing activities among enterprises conducted in the form of commodity sales [1]. Other scholars expanded their vision to the financial market and stated that fund circulation manifests as funds moving between different financial markets and institutions, making "fictitious circulation" within the financial system [7]. It can be seen that doctrinal disputes over the characterisation of inter-enterprise fund circulation mainly centre on enterprises' abnormal fund transfer arrangements and fictitious production and operation that generate no real economic benefits, with diverse behavioural structures.

However, the above definitions fail to accurately capture the special structure of fund circulation carried out by enterprises for the purpose of defrauding bank credit funds. Based on the foregoing theories, the behavioural pattern of fund-circulation loan fraud discussed in this paper can be summarised as follows: actors or enterprises, for the purpose of defrauding, or even illegally possessing and squandering bank credit funds, adopt circular fictitious trade among three or more parties and other means to make funds circulate across different markets and institutions without being injected into the real economy, thereby defrauding bank funds and even causing substantial losses to banks.

2.2. Analysis of typical crimes involving fund-circulation loan fraud

2.2.1. Crime of contract fraud

This offence is governed by Article 224 of the *Criminal Law of the People's Republic of China*

DOI: 10.54254/2753-7048/2026.HZ39471

(Revised 2023) (hereinafter referred to as the *Criminal Law*)[1]. Where fund-circulation loan fraud by enterprises constitutes this offence, such cases mostly involve fraud against upstream and downstream enterprises and substantial losses incurred by these enterprises. This category is excluded from our discussion, and this paper only addresses the conduct of enterprises siphoning bank credit funds. For fund-circulation loan fraud, a key point in identifying this offence is that the crime can be committed by a unit. The case of Hunan Tieshun Materials Co., Ltd. and Mi Lixia for contract fraud [8] clarifies that at the level of unit crime, where a company suffers severe losses, is insolvent, and knows it has no actual capacity to perform contracts, the unit and relevant actors, with the purpose of illegal possession, induce financial institutions to form mistaken understanding by fabricating facts, trick these institutions into signing contracts and delivering funds. Both the unit and its directly responsible supervisors constitute the crime of contract fraud.

The above case illustrates the conviction logic for applying this offence independently. This logic is not a product of individual judges' discretionary power, but an inevitable reflection of differences in institutional design among various crimes. Analysing this offence from a jurisprudential perspective: first, the object of this crime is a complex object [9]. Its objective aspect consists of defrauding a relatively large amount of property from the other party by means of fabricating facts and concealing truth during the conclusion and performance of contracts. Its subjective aspect is direct intent, and its subject is a general subject. Second, both judicial summaries and doctrinal interpretations stress that the identification of this offence for fund-circulation loan fraud hinges on the subject. Unit loan fraud cannot be punished under the crime of loan fraud, and may be characterised as contract fraud instead. As stated in the *Minutes of the National Court Symposium on the Trial of Financial Criminal Cases* (hereinafter referred to as the *Minutes*), where a unit clearly aims at illegal possession and defrauds loans from banks or other financial institutions by concluding and performing loan contracts, and the conduct satisfies the constituent elements of contract fraud under Article 224 of the Criminal Law, the unit shall be convicted and punished for contract fraud [10]. Accordingly, this part of the conviction path can be generalised: when fund-circulation loan fraud is committed by a unit with the purpose of illegal possession, the unit and persons with direct liability shall be held criminally liable under contract fraud, since loan fraud is not applicable to unit subjects. This rule can fill the punishment gap of loan fraud to a certain extent.

Combining the behavioural patterns valued in practice and the eligibility elements highlighted in doctrinal research, two scenarios where fund-circulation loan fraud constitutes contract fraud can be sorted out: first, the victims of corporate fund-circulation loan fraud are upstream and downstream enterprises other than financial institutions; second, the conduct meets the constituent elements of contract fraud while barriers exist for applying the crime of loan fraud.

[1] Article 224 of the Criminal Law of the People's Republic of China (Revised 2023): Whoever, for the purpose of illegal possession, defrauds a relatively large amount of property from the other party during the conclusion or performance of a contract, under any of the following circumstances, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and shall also or only be fined; if the amount is huge or there are other serious circumstances, fixed-term imprisonment of not less than three years but not more than ten years shall be imposed together with a fine; if the amount is especially huge or there are other especially serious circumstances, fixed-term imprisonment of not less than ten years or life imprisonment shall be imposed together with a fine or confiscation of property: (1) signing contracts in the name of a fictitious unit or by impersonating another person; (2) using forged, altered or invalid bills or other false certificates of property rights as security; (3) without actual capacity to perform contracts, inducing the other party to continue signing and performing contracts by performing small-value or partial contracts first; (4) absconding after receiving goods, payment for goods, advance payment or security property from the other party; (5) defrauding property from the other party by other means.

DOI: 10.54254/2753-7048/2026.HZ39471

2.2.2. The crime of obtaining loans by deception

This offence is stipulated in Article 175-1 of the *Criminal Law*[2]. Fund-circulation loan fraud that constitutes this offence generally refers to circumstances where the actor obtains bank loans by deceptive means, yet the purpose of illegal possession cannot be proven. For example, in the case of Xu Yusheng for obtaining loans by deception [11], the defendant repaid part of the principal and interest, and the bank had not exhausted remedies against the guarantor. The judicial holding confirmed that the available evidence failed to prove the defendant's intent to illegally possess the loan, so the crime of loan fraud was not established, and the defendant should be convicted of obtaining loans by deception. Another example lies in the case of Wang Xiaowang and Weifuer Company for obtaining loans by deception [12]. Its judicial holding states that the crime of obtaining loans by deception requires the actor's deceptive conduct to seek the right to use the funds rather than ownership. As such, factors such as whether the actor possesses repayment capacity do not affect the characterisation of this offence, which corresponds to the rule that the purpose of illegal possession is not required for this crime. In addition, the judicial holding of the case of Guangye Iron and Steel, Zhongte Iron and Steel and Guangye Holdings for obtaining loans by deception and bill acceptance [13] clarifies that even when various "deceptive means" exist, active repayment after the case arises and acquisition of victim understanding will rule out a finding of the purpose of illegal possession.

It follows that the objective conduct of this offence largely overlaps with that of loan fraud, yet the subjective element does not require the "purpose of illegal possession". This distinction makes it a supplementary offence for regulating fund-circulation loan fraud. The legal grounds for identifying this crime are summarised as follows. First, the mode of conduct falls within the scope of recognised deceptive means. For instance, fabricating trade backgrounds and loan purposes, and overstating corporate financial status and repayment capacity in fund-circulation loan fraud amount to fabricating facts and concealing the truth. Providing false purchase and sales contracts for loan applications counts as submitting false certificates and materials, and covering up capital destinations equals unauthorised alteration of loan usage. Second, the subjective intent excludes the purpose of illegal possession. Most actors in fund-circulation loan fraud adopt deceptive tactics to borrow new loans to repay old ones and occupy funds on a revolving basis merely to ease short-term capital pressure. Their conduct carries no subjective intent to permanently infringe the financial institution's right to dispose of funds. Third, the conduct causes heavy losses to financial institutions or involves other serious circumstances.

Under the combined effect of the above judicial holdings and jurisprudential analysis, fund-circulation loan fraud constitutes the crime of obtaining loans by deception in three scenarios: the actor lacks the purpose of illegal possession yet causes heavy losses to financial institutions; the

[2] Article 175-1 of the Criminal Law of the People's Republic of China (Revised 2023): Whoever obtains loans, bill acceptances, letters of credit, bank guarantees or other credit facilities from banks or other financial institutions by deceptive means, thereby causing heavy losses to such banks or financial institutions, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and shall also or only be fined; if exceptionally heavy losses or other especially serious circumstances are caused, the offender shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, and shall also be fined. Where a unit commits the offence mentioned in the preceding paragraph, the unit shall be fined, and the persons in charge with direct responsibility and other persons directly liable for the offence shall be punished in accordance with the provisions of the preceding paragraph.

DOI: 10.54254/2753-7048/2026.HZ39471

actor seeks the right to use rather than ownership of the funds; the actor engages in revolving trade or fabricates trade backgrounds without the purpose of illegal possession.

2.2.3. The crime of loan fraud

This offence is identified under Article 193 of the *Criminal Law*[3]. The threshold for conviction for fund-circulation loan fraud under this offence is relatively high, as multiple elements must be verified and the conduct needs to satisfy several statutory criteria; it is also possible for multiple offences to be established within one single case. For example, the judicial holding of the case of Zhang Xinghuang and others for loan fraud and obtaining loans by deception [14] confirms that multiple factors including the defendant's knowledge of lacking repayment capacity, fabrication of loan purposes, personal use of loan proceeds and long-term failure to repay support a finding of the purpose of illegal possession, hence constituting loan fraud. The judicial holding in the case of Su Moumou for loan fraud [15] highlights multiple presumptive circumstances for the purpose of illegal possession: the defendant knew he had no repayment capacity yet fraudulently obtained large amounts of funds, concealed and diverted funds, squandered funds recklessly and refused repayment. These acts satisfy multiple presumptive circumstances laid out in the *Minutes*, and he was convicted of loan fraud based on his personal conduct. As a special example, the judicial holding of the case of Shao Zhenhong for obtaining loans by deception and loan fraud [16] proposes combined punishment for multiple crimes: the defendant obtained loans by deceptive means and caused exceptionally heavy losses, which constituted the crime of obtaining loans by deception; when the same conduct is coupled with the purpose of illegal possession, it also constitutes loan fraud.

It can thus be seen that difficulties in identifying the "purpose of illegal possession" constitute the core reason for inconsistent judgments in similar cases in judicial practice. This offence also carries a high conviction threshold. Its jurisprudential basis is summarised as follows. First, the conduct satisfies the statutory objective elements. Loan fraud refers to conduct of defrauding a relatively large amount of bank loans by fabricating facts or concealing the truth. In fund-circulation loan fraud, forged documents and proof of title transfer count as use of false supporting documents, signing false sales contracts constitutes use of false economic contracts, and fabricating loan purposes falls under defrauding loans by other means. Second, the actor harbours the purpose of illegal possession. Some actors know they lack repayment capacity yet fraudulently secure large loans, then squander the funds or engage in speculative activities, conceal fund destinations and refuse repayment. Such circumstances may preliminarily prove the purpose of illegal possession.

Accordingly, fund-circulation loan fraud commonly constitutes loan fraud in three scenarios. First, the actor knows he has no repayment capacity, defrauds loans and fails to repay for a long

[3] Article 193 of the Criminal Law of the People's Republic of China (Revised 2023): Whoever, for the purpose of illegal possession, defrauds loans from banks or other financial institutions under any of the following circumstances, and the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount is huge or there are other serious circumstances, fixed-term imprisonment of not less than five years but not more than ten years shall be imposed together with a fine of not less than 50,000 yuan but not more than 500,000 yuan; if the amount is especially huge or there are other especially serious circumstances, fixed-term imprisonment of not less than ten years or life imprisonment shall be imposed together with a fine of not less than 50,000 yuan but not more than 500,000 yuan or confiscation of property: (1) fabricating false reasons such as introducing capital or projects; (2) using false economic contracts; (3) using false supporting documents; (4) using false title certificates as security or repeating security beyond the value of collateral; (5) defrauding loans by other means.

DOI: 10.54254/2753-7048/2026.HZ39471

time. Second, the actor conceals fund destinations, squanders funds recklessly and refuses repayment. Third, a special scenario, in which the same actor's conduct falls into any of the above categories, yet may simultaneously constitute both loan fraud and obtaining loans by deception because of different evaluation priorities.

2.3. Defects of solely convicting fund-circulation loan fraud under the above crimes

2.3.1. Sole conviction for contract fraud may confuse legal interests and blur the civil-criminal boundary, with loopholes in conviction rules

The core problem lies in the downgrade and confusion of protected legal interests. Fund-circulation loan fraud infringes financial institutions' ownership of credit funds. Sole conviction for this offence may downgrade financial institutions to ordinary contract counterparties. The protected legal interest shifts from the financial regulatory order and financial institutions' ownership of credit funds to ordinary property rights, and financial fraud is downgraded to an ordinary property crime. The higher-level legal interests that ought to be protected are thus hollowed out. In other words, when only contract fraud is applied, the evaluation focuses on the contractual fraud means rather than the actor's infringement on financial institutions' ownership of credit funds and disruption of the financial regulatory order. The legal interests harmed by fund-circulation loan fraud cannot be fully protected.

As for obstacles to the element of mistaken cognition, it is not rare for banks to know or should have known the truth in fund-circulation loan fraud, and collusion exists in many cases. When bank staff know of the false trade background or even actively cooperate and issue loans illegally, the requirement of mistaken cognition cannot be satisfied.

Regarding the blurred civil-criminal boundary, most actors in such cases have genuine operational and financing needs. Judicial practice has no unified standard to distinguish whether such conduct is commercial speculation or criminal fraud. If conviction is merely based on false contracts, there is a risk of criminalising civil disputes, which violates the principle of unification of subjectivity and objectivity, the principle of legality and the principle of suiting punishment to crime.

2.3.2. Sole conviction for obtaining loans by deception may create regulatory gaps and ambiguous conviction standards

In terms of regulatory gaps, fund-circulation loan fraud may fall outside criminal punishment if no actual loss occurs and no other serious circumstances exist. Examples include cases with sufficient collateral, or cases where the principal and interest are fully repaid through borrowing new loans to repay old ones. Some scholars argue that loan fraud with sufficient collateral should not constitute a crime; loan fraud where the borrower repays principal and interest voluntarily before case filing also does not constitute a crime [17]. Nevertheless, practice cannot focus only on results. If the deceptive loan-seeking conduct indeed infringes financial institutions' ownership of credit funds and undermines the financial regulatory order, sole conviction or even non-conviction will leave the damaged legal interests without adequate protection.

Moreover, academia has highlighted inconsistent conviction standards. First, standards for defining "deceptive means" diverge. The deceptive nature of fund-circulation loan fraud must be judged by the whole false circular trade background. Some scholars hold that not every false act satisfies the constituent elements of the crime of obtaining loans by deception [18]. Not all

DOI: 10.54254/2753-7048/2026.HZ39471

mandatory documents required by the *General Rules on Loans* are relevant to the conduct elements of this offence. As a systematic deceptive practice, fund-circulation loan fraud lacks a clear analytical framework for constituent elements under criminal law. Second, conviction becomes difficult when the financial institution is aware of the deception. If staff with loan approval authority in the financial institution know or should know the fraudulent nature, the conduct is closer to collusion than fraud. If loan officers do not form mistaken cognition but know the deception and collude with the applicant, the financial institution as a unit may still be regarded as the defrauded party, and the applicant may still be guilty of obtaining loans by deception or loan fraud. However, whether an institutional entity can be the "defrauded subject" remains controversial. Such disagreement creates barriers to establishing the crime of obtaining loans by deception when institutional staff have prior knowledge.

2.3.3. Sole conviction for loan fraud may lead to misalignment of constituent elements and insufficient legal grounds

Difficulties in proving subjective intent arise because most actors only intend to occupy funds temporarily and gain profits through circular turnover, rather than possess them permanently. Their mindset is often a reckless attitude similar to gambling. Whether this mindset can be treated as direct intent with the purpose of illegal possession is hotly debated in both theory and practice. Inconsistent judgments for similar cases frequently occur, and no unified, clear analytical and conviction framework exists.

The problem of subject ineligibility stems from the fact that the *Criminal Law* does not recognise units as subjects of this offence. Yet in judicial practice, fund-circulation loan fraud is usually decided and carried out in the name of enterprises, and benefits mostly accrue to the unit. If only this offence is considered, the unit cannot be held criminally liable, which creates an obvious punishment gap. In judicial practice, treating corporate conduct as individual conduct of involved persons through a dispersed and penetrating approach also suffers from weak legal justification.

Difficulties in objective characterisation lie in the lag of the fraudulent methods listed in criminal law provisions. Modern fund circulation involves complex operations such as closed-loop trade with three or more parties where the initial seller is also the final buyer, and reverse fund flow. These are combined effects of multiple acts and cannot be directly classified into one specific statutory category. They sometimes have to rely on the catch-all clause "defrauding loans by other means", which raises the risk of analogy application.

3. Analysis of the root causes of conviction defects in fund-circulation loan fraud

3.1. Difficulties in identifying subjective purpose with the purpose of illegal possession as the main dividing line

The difficulties in identifying subjective purpose are reflected in the following respects. First, proof is indirect in nature, so subjective purpose is objectified and cannot be proven directly and purely. Second, the boundary between illegal possession and illegal use is blurred. The mixed mindset of actors in fund-circulation loan fraud cannot be simply split by the existing binary framework of possession or use, making accurate evaluation impossible. Third, there is a regulatory gap in law for the state of recklessness. Under the current Criminal Law framework, there is no clear imputation path for actors' fluke mentality. Fourth, the will of the unit and the will of individuals are mixed. Most fund-circulation loan fraud is jointly committed by multiple actors for unit interests or

DOI: 10.54254/2753-7048/2026.HZ39471

personal interests respectively, and there are evidentiary barriers to separating and identifying these two types of subjective will.

From a macro perspective of fund-circulation loan fraud in practice, most actors hold a mixed mindset of gaining profits through circular turnover and temporary use of funds. This mindset is neither a bona fide temporary capital turnover nor a pure purpose of illegal possession. Subjectively, they may intend to repay the funds, yet objectively they adopt deceptive means and cause heavy losses to financial institutions. This inherently ambiguous subjective issue falls into the grey zone between "possession" and "use", trapping judicial practice in a dilemma.

From a micro perspective of specific conviction, a comparison between the Zhang Xinghuang case and the Xu Yusheng case shows that both cases involve actors defrauding loans with false documents and causing losses to financial institutions. Nevertheless, the former was convicted of loan fraud because the defendant knew he had no repayment capacity, concealed the true use of funds and failed to repay for a long time. The latter was only convicted of obtaining loans by deception because available evidence failed to prove the purpose of illegal possession and bank staff were involved. The same objective conduct of submitting false documents to defraud loans and the same harmful consequence of losses lead to entirely different conviction outcomes merely because of divergences in identifying subjective purpose.

3.2. Taking the compatibility of subjects as one condition for application of law gives rise to conviction disparities

When an enterprise commits fund-circulation loan fraud in its own name and for its own interests with the purpose of illegal possession, loan fraud does not impose punishment on units. This creates the problem of subject ineligibility for judicial authorities. Three common approaches are adopted in such circumstances.

First, the unit conduct is decomposed and pierced through to be treated as individual conduct for the application of loan fraud. For instance, in the Su Moumou case, the court treated the loan conduct of three companies as Su Moumou's personal conduct. This approach contains logical flaws. A unit decision is essentially a joint decision of decision-makers. If actors carry out fund-circulation loan fraud as relevant liable persons, the public and private attributes of their conduct cannot be clearly separated. Forcing such conduct to be defined as individual conduct simply because the offence is not applicable to units essentially distorts the factual finding to satisfy the subject element, which violates the principle of basing decisions on facts and taking law as the criterion. Its assumption that "unit members commit non-unit conduct" often contradicts the organisational features of fund-circulation loan fraud, such as collective decision-making and layered distribution of benefits, and lacks solid legal grounds.

Second, evaluation of the purpose of illegal possession is abandoned, and the unit is held criminally liable for the crime of obtaining loans by deception. This offence applies to units, yet this approach essentially negates the actor's graver subjective culpability. The statutory penalty for obtaining loans by deception is lower than that for loan fraud. Such practice results in a mismatch between culpability and punishment. Actors with the same degree of culpability as required for loan fraud only receive lighter sanctions, which undermines the deterrent and disciplinary functions of punishment.

Third, evaluation of the purpose of illegal possession is retained, but contract fraud is adopted to prosecute the unit so that the subject satisfies eligibility requirements. This approach carries risks of downgrade and confusion of legal interests. Contract fraud mainly infringes the market economic order and public and private property rights, while loan fraud harms the financial regulatory order

DOI: 10.54254/2753-7048/2026.HZ39471

and the security and ownership of credit funds held by financial institutions. Characterising unit loan fraud that should be evaluated as financial crime as contract fraud in essence conflates two types of legal interests of different natures, conceals the substantive harm of fund-circulation loan fraud to the financial order, and deviates from the fundamental principle of suiting punishment to crime and criminal liability.

4. Elaboration of the conviction path centred on the "purpose of illegal possession"

The identification of the purpose of illegal possession serves two major functions. First, it draws the line between civil fraud and criminal fraud. Second, once the conduct enters the scope of criminal evaluation, it distinguishes different criminal offences. In fund-circulation loan fraud, if an enterprise only seeks to ease short-term capital pressure and has genuine willingness and capacity to repay, the conduct shall be evaluated under civil rules and treated as fraudulent financing. If the actor knows that repayment is impossible yet defrauds loans on a large scale, or uses the funds for speculation or squandering, the purpose of illegal possession may be established and the conduct shall be judged under criminal law. Within criminal evaluation, the actor may commit loan fraud or contract fraud if the purpose of illegal possession exists. If such purpose is absent, the actor can only be convicted of obtaining loans by deception even if heavy losses occur. Accurate identification of the purpose of illegal possession is not only critical to distinguishing crime from non-crime and one offence from another, but also a practical guarantee for implementing the principle of suiting punishment to crime.

4.1. Coordinated subjective-objective rules for identifying the purpose of illegal possession

4.1.1. Primary identification standard: illegality and long-term possessive nature of subjective intent

Illegality in the purpose of obtaining and using funds constitutes the primary element of the purpose of illegal possession, and it contains two tiers. The first tier concerns illegal acquisition of funds: the actor adopts deceptive tactics such as fabricating trade facts, signing false trade contracts, forging financial data and other supporting documents, and concealing the true use of loans, to induce financial institutions to form mistaken cognition and hand over funds against their true will. The second tier concerns illegal use of funds: after obtaining funds, the actor uses them in ways that deviate from the purposes stipulated in the loan contract or violate legal provisions, for example, repaying old debts, making high-risk investments, lending funds at usurious interest rates, or reckless personal squandering. It should be noted that these two tiers of "illegality" must both be considered. If an actor obtains funds by deception but strictly uses the funds for normal production and operation as agreed, the purpose of illegal possession can hardly be established. Conversely, if an actor obtains funds legally but subsequently alters or conceals the true use of funds, squanders the funds or absconds, the actor may form the purpose of illegal possession after receiving the funds and thereby commit the offence. A typical feature of fund-circulation loan fraud is that both forms of illegality often coexist, which provides an objective basis for identifying the purpose of illegal possession.

The long-term possessive nature of funds serves as an important criterion to distinguish illegal possession from illegal use and to determine whether the actor holds the purpose of illegal possession. The core of obtaining loans by deception lies in acquiring the right to use funds, namely illegal use. The core of loan fraud lies in acquiring ownership of funds, namely illegal possession.

DOI: 10.54254/2753-7048/2026.HZ39471

The fundamental distinction between the two offences lies in whether the actor intends to infringe the financial institution's ownership of credit funds. Judgement on this distinction can be made based on three points. First, whether the actor takes actions to evade repayment, such as concealing fund destinations, transferring assets, or absconding; the Su Moumou case is a typical example. Second, whether the actor arbitrarily changes fund purposes, such as spending funds on non-operational consumption or high-risk speculation inconsistent with the agreed loan purpose, which indicates that the actor denies the financial institution's ownership of the funds. Third, whether the actor occupies the funds for a long time. For instance, in repeated circular fund circulation, the actor continuously and long-term excludes the financial institution's control over the funds by borrowing new loans to repay old ones.

Overall, illegality and long-term possessive nature are dialectically unified and mutually supportive for identifying the purpose of illegal possession. The illegality of conduct lays the objective foundation, separates civil fraud from criminal fraud, and provides objective grounds for the intervention of criminal law and its evaluation system. The long-term possessive nature of subjective intent sets a reasonable standard for subjective imputation. It requires the actor to intend permanent possession of the funds after illegal acquisition, and supplies a more solid basis for evaluating subjective elements under the principle of legality. Together they form the substantive connotation of the subjective element of the purpose of illegal possession in fund-circulation loan fraud.

4.1.2. Comprehensive identification standard: clarification and summary of objective facts and exempt circumstances

As stated above, the purpose of illegal possession is a mental state that cannot be proven directly and can only be inferred from objective acts. In judicial practice, inconsistent inference standards are a core cause of inconsistent judgments in similar cases. To address this problem, a two-way identification mechanism of inference followed by rebuttal should be established on the basis of existing judicial precedents, so as to ensure accurate identification of the purpose of illegal possession and sufficient legal grounds.

From the positive perspective, reasonable inference is built upon full summary of objective facts. Drawing on the judicial holdings of the foregoing typical cases, the purpose of illegal possession may be preliminarily inferred if any of the following circumstances applies: the actor knows that repayment is impossible or the enterprise is severely insolvent, yet continues to carry out circular trade and defrauds loans on a large scale; after obtaining funds, the actor uses the funds for purposes inconsistent with the contract, mainly for debt repayment, usurious lending, speculation and other high-risk activities or personal reckless spending; the funds are not entirely diverted from legitimate purposes, but a large proportion is misused, or the invested risky activities are far removed from normal production and operation; the actor refuses repayment through corporate restructuring, conceals fund destinations or even withdraws capital; the actor forges or alters key documents such as financial instruments, title certificates and guarantee papers. These acts occur at different stages including application document preparation, loan submission, contract signing and fund use. Given their high degree of seriousness, each can independently serve as important evidence for inferring the actor's subjective intent to illegally possess bank loans.

From the negative perspective, summarised rebuttable circumstances provide auxiliary verification. Inference rules must be matched with rebuttal mechanisms to avoid the risk of imputation by deducing the actor's motive from pre-set conclusions formed by judicial personnel. Rebuttal grounds that the actor may raise include the following: the funds are mainly used for

DOI: 10.54254/2753-7048/2026.HZ39471

agreed purposes or other normal production and operation; the actor takes active remedial measures after the capital chain breaks; the financial institution actually knows or ought to know the deceptive means, namely it has not formed or could not form mistaken cognition; the failure to repay arises from operational risks, market fluctuations and other factors unrelated to the actor's subjective purpose of illegal possession.

4.2. The complete conviction path can be summarised as "first object, then objective element, next subject, and finally subjective element"

When determining conviction, the actor's purpose corresponding to the constitutive requirements of the offence should be treated as the primary consideration, while the deceptive means adopted by the actor serve as the secondary consideration. These two lines of reasoning mutually support each other. If undue emphasis is placed merely on deceptive means, for example, convicting a defendant of contract fraud simply because contractual deceptive tactics are used, the core legal interest infringed by fund-circulation loan fraud will be overlooked. The financial regulatory order, the safety of credit funds and financial institutions' ownership over such funds will be conflated with ordinary property rights, resulting in the downgrade of legal interests that ought to be protected. Conversely, if undue emphasis is placed merely on subjective purpose, for example, labelling all conduct with the purpose of illegal possession as loan fraud, flaws will arise in the legal review of subject eligibility and the accurate identification of victims. This approach violates the criminal law principle of suiting punishment to crime and undermines precise assessment of each constitutive element.

4.2.1. Review of the object to identify the category of offence

In fund-circulation loan fraud, starting the conviction analysis from objective facts can effectively avoid loopholes caused by premature subjective presumption by judicial officers. If funds are directly obtained from banks or other financial institutions, the core legal interests infringed are the financial regulatory order, fund safety and the financial institution's ownership of its credit funds; the conduct shall first be evaluated under the framework of financial crimes. If the victims are upstream and downstream enterprises or mere contractual counterparties that are not financial institutions, the primary legal interests harmed are the market order within the socialist market economic order or more narrowly defined property rights. In this case, the civil or criminal nature of the conduct must first be distinguished. If the conduct is confirmed to fall within the scope of criminal evaluation, it shall then be examined to determine whether it constitutes contract fraud.

Prioritising review of the object can effectively remedy the defects of downgrading or conflating protected legal interests caused by isolated conviction. It helps target conduct that defrauds bank credit funds through deceptive means such as fund circulation and disrupts the financial regulatory order and market economic order, so that infringed legal interests can receive comprehensive and precise protection. Meanwhile, criminal law emphasises both punishing crimes and protecting human rights, as well as regulating and preventing offences. Prior clarification of the object is not only a core step for judicial authorities in conviction and a way to prevent misclassification by establishing clear and unified conviction standards, but also guides enterprises and relevant responsible persons through precedents so that they can develop clear and accurate understanding of their behaviour in loan transactions.

DOI: 10.54254/2753-7048/2026.HZ39471

4.2.2. Review of the objective element to confirm criminal liability

Two overarching dimensions must both be satisfied in the review of objective elements: first, whether the actor has engaged in deceptive conduct by fabricating facts or concealing the truth; second, whether such conduct has caused the statutory harmful consequence. Based on the foregoing discussion, deceptive means can be grouped into four categories. The first category is fictitious transactions: three or more parties sign false trade contracts, and funds flow through multiple layers of circulation before returning under the borrower's control. This type of conduct corresponds to "using false economic contracts" under Article 193[4](2) and "defrauding loans by other means" under Article 193(5) of the *Criminal Law*. The second category is false documents: actors alter financial data, forge financial instruments, title certificates or security documents, fabricate corporate revenue and overstate repayment capacity, inducing banks to grant loans under mistaken cognition. This corresponds to "using false supporting documents" under Article 193(3) and "using false title certificates as security" under Article 193(4) of the *Criminal Law*. The third category is false loan purpose: fabricating the intended use of funds, which matches "fabricating false reasons such as introducing capital or projects" under Article 193(1) of the *Criminal Law*. The fourth category is a fictitious overall trade framework: no actual movement of goods, multi-party coordinated fabrication of transactions and book-entry fund circulation. This form of deception can only be confirmed after reviewing the entire transaction chain. As for harmful consequences, statutory thresholds for criminal prosecution are clearly defined. For the crime of obtaining loans by deception, reviewers must examine whether heavy losses have occurred. For loan fraud and contract fraud, reviewers must examine whether the amount is relatively large or especially huge. In accordance with Article 22 of the *Provisions on the Standards for Filing and Prosecuting Criminal Cases under the Jurisdiction of Public Security Organs (II)*[5], the threshold for heavy losses is 500,000 yuan, and the threshold for a relatively large amount is 50,000 yuan.

---

[4] Article 193 of the Criminal Law of the People's Republic of China (Revised 2023): Whoever, for the purpose of illegal possession, defrauds loans from banks or other financial institutions under any of the following circumstances, and the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount is huge or there are other serious circumstances, fixed-term imprisonment of not less than five years but not more than ten years shall be imposed together with a fine of not less than 50,000 yuan but not more than 500,000 yuan; if the amount is especially huge or there are other especially serious circumstances, fixed-term imprisonment of not less than ten years or life imprisonment shall be imposed together with a fine of not less than 50,000 yuan but not more than 500,000 yuan or confiscation of property: (1) fabricating false reasons such as introducing capital or projects; (2) using false economic contracts; (3) using false supporting documents; (4) using false title certificates as security or repeating security beyond the value of collateral; (5) defrauding loans by other means.

[5] Article 22 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing and Prosecuting Criminal Cases under the Jurisdiction of Public Security Organs (II) [Case of obtaining loans, bill acceptances or financial instruments by deception (Article 175-1 of the Criminal Law)]: Whoever obtains loans, bill acceptances, letters of credit, bank guarantees or other credit facilities from banks or other financial institutions by deceptive means, causing direct economic losses of over 500,000 yuan to such banks or financial institutions, shall be placed on file for prosecution. See also Article 45 of the same Provisions [Case of loan fraud (Article 193 of the Criminal Law)]: Whoever, for the purpose of illegal possession, defrauds loans from banks or other financial institutions in an amount of over 50,000 yuan, shall be placed on file for prosecution.

DOI: 10.54254/2753-7048/2026.HZ39471

4.2.3. Review of the subject to allocate liability and review of the subjective element to finalise conviction

Review of the subject resolves the issue of liability allocation. If the conduct is carried out by the enterprise's actual controller or legal representative in an individual capacity and the funds are controlled personally, the offence shall be treated as a natural-person crime. If the conduct is decided by the unit's decision-making body and performed for the benefit of the unit, the unit and persons with direct liability shall be held criminally liable. It should be noted that because loan fraud is not applicable to units, even when the purpose of illegal possession is proven, the unit cannot be prosecuted for loan fraud. Instead, the unit and its directly liable personnel may be charged with contract fraud, or the crime of obtaining loans by deception may apply, or combined punishment for multiple offences may be imposed appropriately based on the facts.

After the above three layers of review are completed, the review of subjective elements determines which offence the defendant shall finally be held liable for. Based on all case evidence and in strict compliance with the principle of unification of subjectivity and objectivity, the purpose of illegal possession shall be assessed following the identification framework established in Section 4.1 for full and accurate characterisation of the conduct. If the purpose of illegal possession cannot be proven, only the crime of obtaining loans by deception may be established. If the purpose of illegal possession exists, a unit offence may constitute contract fraud, while a natural-person offence may constitute loan fraud. Through the four layers of review, conviction and sentencing are completed within a unified and sound evaluation system, constrained by the principles of legality and suiting punishment to crime and a fixed legal framework.

5. Conclusion

The criminal characterisation of corporate fund-circulation loan fraud is essentially an issue of demarcating the boundary between new forms of financing and fraud offences. This study demonstrates that divergent judgments in similar cases in judicial practice stem from structural defects arising from isolated conviction and loopholes caused by inconsistent standards for identifying the purpose of illegal possession. Accordingly, this paper proposes a unified conviction path prioritising the review of the object of crime. Only the coordinated application of this multi-layered review framework and the principle of unification of subjectivity and objectivity can standardise the conviction of fund-circulation loan fraud. While effectively punishing financial crimes, this approach prevents improper intervention of criminal law into market financing activities. It safeguards financial stability and the sound development of the socialist market economy, and helps enterprises clearly recognise the insurmountable dividing line between innovative financing and criminal conduct.

References

[1] Wang, F. B. (2015). Identification of financing-oriented sales between enterprises and discretion in determining liability. *People's Judicature*, (13), 57–62.

[2] Research Group of the Wuhan Intermediate People's Court, Hubei Province, Pan, T., & Zhang, Q. (2023). An empirical study of judicial approaches to disputes involving financing-oriented circular trade. *Applicable Law*, (5), 152–158.

[3] Li, J. W. (2023). Research on the legal characterization and validity regulation of financing trade contracts. *Law Review, 41*(3), 151–16[page range incomplete in the original reference].

[4] Lü, B. X. (2020). An empirical study of financing trade and recommendations for judicial adjudication. *People's Judicature*, (31), 81–87.

DOI: 10.54254/2753-7048/2026.HZ39471

[5] Wan, C. Z. (2013). The game behind "financial idling." *Financial Expo*, (9), 40–41.
[6] Geng, T. J. (2014). Capital idling: Forms, causes, and prevention. *Guizhou Social Sciences*, (4), 72–77.
[7] How can banks' funds be allowed to circulate fictitiously? (2017). *Leadership Decision Information*, (7), 10.
[8] Intermediate People's Court of Xiangtan, Hunan Province. (2017). Criminal judgment (Case No. [2017] Xiang 03 Xing Chu 11).
[9] Chen, X. Y. (2003). Identification of the crime of contract fraud. *Applicable Law*, (5), 48–51.
[10] Supreme People's Court of the People's Republic of China. (2001). Notice on issuing the minutes of the national conference on the trial of financial crime cases (Document No. Fa [2001] 8).
[11] People's Court of Taigu District, Jinzhong, Shanxi Province (formerly the People's Court of Taigu County). (2019). Criminal judgment (Case No. [2019] Jin 0726 Xing Chu 77).
[12] Intermediate People's Court of Jingdezhen, Jiangxi Province. (2016). Criminal ruling (Case No. [2016] Gan 02 Xing Zhong 22).
[13] People's Court of Binjiang District, Hangzhou. (2014). Criminal judgment (Case No. [2014] Hang Bin Xing Chu 182).
[14] High People's Court of Anhui Province. (2016). Criminal judgment (Case No. [2016] Wan Xing Zhong 57).
[15] Intermediate People's Court of Chaozhou, Guangdong Province. (2015). Criminal ruling (Case No. [2015] Chao Zhong Fa Shen Jian Xing Zai 2).
[16] Intermediate People's Court of Zhumadian, Henan Province. (2020). Criminal ruling (Case No. [2020] Yu 17 Xing Zhong 346).
[17] Sun, G. X. (2016). Misconceptions and corrections in the judicial determination of the crime of obtaining loans by deception. *Studies in Law and Business, 33*(5), 50–57.
[18] Zhang, M. K. (2019). The structure of the crime of obtaining loans by deception. *Tsinghua University Law Journal, 13*(5), 18–35.