



Among commercial transactions, not every deal has a happy ending. Sometimes, as a buyer, you may have paid for your goods, but the seller neither sends you the goods nor refund your money. In such case, you might be once wondering whether the seller could be sued on criminal grounds? In this publication, we will briefly analyze under what circumstances a party may have committed the crime of contract fraud under PRC Criminal Law for your reference.

### Executive Summary

- There are five situations that may constitute contract fraud and three sentencing criteria.
- The contract fraud can be qualified as entity crime or/and personal crime.
- How to differentiate criminal contract defraud from civil contract dispute.

## I. Definition of Contract Fraud under the PRC Criminal Law.

Article 224 of the PRC Criminal Law is the provision regulating contract fraud, under which five situations that constitute contract fraud and three sentencing criteria for contract outline the contract fraud under the PRC Criminal Law.

### (I) Five Situations that Constitute Contract Fraud.

Whoever, during the course of signing or fulfilling a contract, commits any of the following acts to defraud money or property of the other party for the purpose of illegal possession may be guilty of contract fraud according to Article 224 of the PRC Criminal Law:

(1) signing a contract in the name of a fictitious entity or in the name of another entity;

(2) offering as guaranty forged, altered or invalidated instruments or any other false property right certificates;

(3) having no ability to fulfil a contract, inveigling the other party into continuing to sign and fulfil a contract by way of fulfilling a contract that involves a small amount of money or fulfilling part of the contract;

(4) escaping and going into hiding after receiving the other party's goods, payment for goods, down payment or property for guaranty; or

(5) defrauding the property of the other party by other means.

### (II) Three Sentencing Criteria for Contract Fraud.

Under Article 224 of the PRC Criminal Law, there are three sentencing criteria for contract fraud, which are set forth below:

(i) if the amount involved is "relatively large", the criminal shall be sentenced to fixed-term imprisonment of no more than 3 years or criminal detention and shall also, or shall only, be fined;

(ii) if the amount involved is "huge", or if there are other serious circumstances, the criminal shall be sentenced to fixed-term imprisonment of no less than 3 years but no more than 10 years and shall also be fined; and

(iii) if the amount involved is "especially huge" or if there are "other especially serious circumstances", the criminal shall be sentenced to fixed-term imprisonment of no less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property.

It is expressly provided under the PRC law that criminal liability could be pursued if the amount obtained via contract fraud reaches RMB20,000, which means that an amount of RMB20,000 could be deemed as reaching criterion (i) above ("relatively large" involved amount). But, the national PRC laws do not expressly provide detailed standard for criteria (ii) and (iii).

In practice, the PRC courts may refer to sentencing criteria set for crime of fraud. There are also three sentencing criteria for fraud, under which an amount of RMB30,000 to RMB500,000 could be deemed as reaching criterion (ii - "huge"), and an amount over RMB500,000 could be deemed as reaching criterion (iii - "especially huge").

Some provinces also set their own criteria. For example, in Guangdong province, in some economically well-developed cities, such as Guangzhou, Shenzhen, for individual crime of contract fraud, an amount of RMB300,000 to RMB1,500,000 could be deemed as reaching criterion (ii), and an amount over RMB1,500,000 (inclusive) could be deemed as reaching criterion (iii); while in some economically less-developed cities, such as Zhanjiang, Chaozhou, an amount of RMB200,000 to RMB1,200,000 could be deemed as reaching criterion (ii), and an amount over RMB1,200,000 (inclusive) could be deemed as reaching criterion (iii). For legal entity crime of contract fraud, the criteria would be 5 times the criteria for the above individual crime of contract fraud.

## II. Legal Entity Crime vs. Personal Crime.

Under the PRC Criminal Law, except for crimes whose subject could only be constituted by individuals, such as murder, there are crimes, mostly economic crimes, whose subject could also be constituted by legal entities. In general rules of the PRC Criminal Law, Article 30 sets out the principle of legal entity crime, which provides that if a company, enterprise, institution, or organization conducts harmful behaviors against the society, and such behaviors are defined as legal entity crime under the PRC law, then such legal entity shall bear criminal liability. The PRC Criminal Law explicitly provides in its specific rules about which crime could be committed by legal entity. In other words, if specific rules of the PRC Criminal Law do not explicitly provide that legal entities could be the subject of a specific crime, then the subject of such crime could only be individuals.

Under a legal entity crime, both the legal entity and the persons who are directly in charge of the legal entity and the other persons who are directly liable for the crime shall be punished. To be specific, in case of contract fraud, the persons who are directly liable for the crime shall be punished in accordance with the provisions of the PRC Criminal Law, and the legal entity, its legal representative and the persons in charge of the legal entity can be punished as well.

## III. Difference between Criminal Contract Fraud and Civil Contract Dispute.

Under the PRC Criminal Law, a crime is generally consisted of four elements, which are subject, object, subjective aspect, and objective aspect. The four elements that constitute the crime of contract fraud are:

Subject: individual or legal entity.

Object: property rights of others and economic order of the society.

Subjective aspect: actual intent for the purpose of illegal possession of properties of others.

Objective aspect: in the process of signing or performing the contract, defraud properties of others via fictional facts or other methods, and the amount involved is relatively large.

Only when the behaviors of an individual or a legal entity meet the four elements above may possibly constitute the crime of contract fraud under the PRC Criminal Law; otherwise, disputes arise in ordinary commercial transactions may only be civil contract disputes.

If a person does not have the purpose of illegal possession to defraud money from others, such person may not bear criminal liability, and relevant dispute may only constitute civil dispute.

### Conclusion.

In ordinary commercial transactions, if parties trade on the basis of good faith, normally, civil contract dispute will not constitute contract fraud. But, if a party defraud money or property of others for purpose of illegal possession, such party may have committed contract fraud under the PRC Criminal Laws.

So next time, if, unfortunately, you have paid for something but receive nothing from the seller, neither the goods nor the refund of your money, you would know that you might encounter a contract fraud. In such case, it is advisable for you to contact your legal consultant in time to protect your legitimate interests.

We hope this publication would be helpful to you if you meet a possible contract fraud.

ASIALLIANS and its partner law firm WANG JING & CO. has extended expertise and experience in contract fraud and criminal cases in China. Please contact us for further assessment of your case.

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