
骗取贷款罪司法认定的法律思考

摘 要

我国设立了骗取贷款罪，由于在本罪中有许多不明晰之处，使得该罪在司法认定中有不同处理。在骗取贷款罪的司法认定中有一些做法没有划清经济纠纷与刑事案件的界限，将一些贷款纠纷认定为骗取贷款罪，这与我国支持民营企业发展的政策导向相去甚远。在审判阶段应发挥审判职能，坚持罪刑法定原则，准确适用骗取贷款罪，为企业家营造良好的法治环境。

文章分为四个部分，本文的第一部分为骗取贷款罪的构成要件。第二部分分析了认定骗取贷款罪之中的矛盾，主要为对重大损失和其他严重情节、欺骗手段、其他金融机构、有足额担保的骗贷行为以及因果关系的处理不一。第三部分提出了造成认定本罪矛盾的原因，主要由于对立法规定中不明晰的地方存在认定偏差。第四部分对于上述的不同处理提出了协调骗取贷款罪认定的建议，主要为明确法条、危害行为的标准、行为对象所在机构性质、危害结果以及因果关系。希望通过这四方面的论述能够对准确认定骗取贷款罪带来一些启发。

关键词： 骗取贷款罪；司法认定；重大损失；欺骗手段；金融机构

ABSTRACT

China has established the crime of defrauding loans. Because there are many unclear points in the crime of defrauding loans, the crime has dissimilar treatment in judicial determination. In the judicial determination of the crime of defrauding loans, there are some practices that do not make a distinction between economic disputes and criminal cases. And some loan disputes are regarded as crimes of defrauding loans, which is far from the policy orientation of supporting the development of private enterprises in China. At the trial stage, the judge should exercise the trial function, adhere to the legal principle of crime and punishment, and accurately apply the crime of fraudulent loan to create a good legal environment for entrepreneurs.

The full text is divided into four parts. The first part is the composition of the crime of defrauding loans. The second part is to analyze the contradictions in determination, which are mainly the different treatments of significant loss, fraud behavior, other financial institutions, fraudulent loans with enough guarantees, and causal relationship. The third part proposes the reasons for the contradiction of judicial determination, mainly due to the discrepancies in the identification of the unclear legislative provisions. The fourth part presents suggestions on coordinating the judicial determination of the crime of defrauding loans for the above-mentioned different treatments, which mainly include clarifying the law, the standards of the harmful act, the harmful results and causal relationship. I hope that the article with four aspects of discussion can bring some inspiration to accurate determination of the crime of defrauding loans.

Keywords: Crime of defrauding loans; judicial determination; heavy losses; deception means; financial institutions

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