

公司欺诈是一个全球性的问题并有弥漫之势。在公司发达的美国早已受到法学界的广泛关注。在我国，随着现代企业制度的建立，公司在经济领域日渐处于支配地位，公司欺诈的危害日益突显。

# 公司欺诈性 财产权转让行为 及其法律控制

汪华志 著

公司欺诈性财产权转让是公司欺诈的重要形式之一，其欺诈行为代表公司行为，并以公司名义所进行的，其目的和动机是为了拖延、阻碍、欺骗其债权人而进行的各种财产权转让行为。公司欺诈性财产权转让行为不仅严重损害了债权人的利益，更是对社会经济基础的诚实信用原则的挑战。尽管各国都立法加以控制，但其隐蔽性极强，往往披上了合法的外衣。其表现形式更是多种多样，可存在于公司的各种交易之中，因而总是禁而不止。解决这一问题的关键是加强对公司欺诈性财产权转让的理论研究，分析其表现形式，揭示其本质，完善控制公司欺诈性财产权转让行为的各项法律制度，并完善立法加强控制。

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# 公司欺诈性财产权转让 行为及其法律控制

**Corporate Fraudulent Conveyances  
and Its Legal Supervision**

汪华志 著

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## 内 容 提 要

欺诈是一个古老的话题，在人类社会之初就有欺诈现象，人类一直都在试图控制欺诈。然而，直至今今天，欺诈现象仍然盛行。公司欺诈是随着公司这一组织形式的产生而出现的欺诈现象。公司欺诈是一个全球性的问题并有弥漫之势，在公司发达的美国早已受到法学界的广泛关注。在我国，随着现代企业制度的建立，公司在经济领域日渐处于支配地位，公司欺诈的危害日益凸显。公司欺诈性财产权转让是公司欺诈的一种重要形式。它是指有权代表公司行为，并以公司名义所进行的，其目的和结果是为了拖延、阻碍、欺骗其债权人而进行的各种财产权转让行为。公司欺诈性财产权转让行为不仅严重损害了债权人的利益，更是对作为市场经济基础的诚实信用原则的挑战。尽管各国都立法加以控制，但其隐蔽性极强，往往披上了合法的外衣。其表现形式更是多种多样，可存在于公司的各种交易之中，因而总是禁而不止。解决这一问题的关键是加强对公司欺诈性财产权转让的理论研究，分析其表现形式，揭示其本质，完善控制公司欺诈性财产权转让行为的各项法律制度，并完善立法加强控制。

本书第一章对公司欺诈性财产权转让行为的法理进行分析。本章以分析欺诈的含义及民事欺诈的构成要素开始。这是本文研究的逻辑起点，因为公司欺诈性财产权转让行为本质属于民事欺诈。尽管世界各国对欺诈所下的定义表述各不相同，但揭示的本质却相同。特别是在构成要素上有一致性。构成民事欺诈一般包括如下几个要素：因欺诈而使表意人陷入错误并作出错误的意见



## 公司欺诈性财产权转让行为及其法律控制

表示；欺诈人须有故意；必须有欺骗行为；被欺诈人权利受到损害。

公司欺诈性财产权转让行为是指有权代表公司行为，并以公司名义所进行的，其目的和结果是为了拖延、阻碍、欺骗其债权人而进行的各种财产权转让行为，它分为事实欺诈和推定欺诈。公司欺诈性财产权转让行为具有如下法律特征：是违背诚实信用原则的行为；是损害第三人利益的行为；是以合法形式掩盖非法目的的行为；是无效行为或可撤销的行为。

公司欺诈性财产权转让行为与一般民事欺诈行为存在如下区别：在行为的构成要件方面存在差异；行为的损害对象不同；从行为的结果看，尽管一般民事欺诈行为和公司欺诈性财产权转让行为都属于可撤销行为，但两种撤销权实体主体与程序主体的关系不同。公司欺诈性财产权转让行为的构成要件包括：主体要件；主观要件；客观要件。

公司欺诈性财产权转让行为的成因源于：市场经济的消极因素；人性弱点；立法不完善；一些法律制度本身所具有的负面影响；社会信用体系的缺失。对公司欺诈性财产权转让行为进行法律控制是十分必要的。

第二章分析公司欺诈性财产权转让行为的表现形式。欺诈性财产权转让的典型形式包括：无偿转让行为；欺诈性婚姻财产转让；合伙转让；丧失赎回权抵押物买卖；关联公司内部相互充当保证人；融资收购。公司欺诈性财产权转让最为典型的形式包括：融资收购中的欺诈性财产权转让、关联交易中的欺诈性财产权转让及公司向内部关系人的优先清偿行为。我国公司欺诈性财产权转让的典型形式包括：以不合理低价转让资产欺诈债权人；利用企业改制欺诈性转让资产；关联公司间欺诈性转让资产；通过抵押权设置欺诈性转让资产；公司与股东人格混同、财产混同、业务混同借以欺诈性转让资产；合谋串通后以相互诉讼的方



式欺诈性转让资产。本章最后对公司的公益性捐款是否构成欺诈性转让进行探讨，认为公司的合理公益性捐款不构成欺诈性财产转让。

第三章探讨公司欺诈性财产权转让行为法律控制的源与流。欺诈性财产权转让法是控制以诈害债权人为目的进行欺诈性转让行为的法律，从本质上看，它就是控制公司欺诈性财产权转让行为立法的“源”。欺诈性财产权转让法的产生有两个条件：一是欺诈性转让行为的出现；二是法制对欺诈性转让行为规制的缺失。从法制史看，罗马法是控制欺诈性财产权转让立法的源头；《伊丽莎白法案》是世界上最早控制欺诈性财产权转让行为的立法；《统一欺诈性转让法》是控制欺诈性财产权转让行为立法在现代的完善。

控制公司欺诈性财产权转让行为立法的一般规律是：有公司欺诈性财产权转让行为就有控制该行为的立法；分散立法、共同控制；控制公司欺诈性转让行为立法产生与发展的直接动因是公司欺诈性转让行为的猖獗。控制公司欺诈性财产权转让行为立法的发展趋势是：对欺诈性转让行为的制裁日趋严厉；立法内容的趋同化加强；立法的国际化是其未来发展的方向。

第四章研究民法对公司欺诈性财产权转让行为的控制。从民法的任务、民法的功能及民法的原则看，控制公司欺诈性财产权转让行为是民法的根本任务。民法对公司欺诈性财产权转让行为的控制是通过一些具体民事制度，如债权人撤销权制度、不安抗辩权制度实现的。债权人撤销权通过赋予受欺诈债权人对债务人欺诈性财产权转让行为的撤销权，使其失去效力而达到控制欺诈性财产权转让行为的发生和对受害人进行救济。不安抗辩权对欺诈性财产权转让行为的控制实质上是一种预防措施。另外，行为人还可以通过契约对欺诈性财产权转让行为进行控制，如当债务人财产状况严重恶化影响债权人的债权时可根据约定限制债务人



转让其财产。

民法对公司欺诈性财产权转让行为的控制发挥着重要作用。但民法所发挥的作用仍然是有限的，具有一定的局限性。

第五章研究破产法对公司欺诈性财产权转让行为的控制。控制公司欺诈性财产权转让是破产法的任务之一，各国破产法都无一例外地有控制公司欺诈性财产权转让行为的内容。破产法对公司欺诈性财产权转让行为的控制也是通过一系列制度实现的，如破产无效行为制度、破产撤销权制度、破产管理人制度和破产清算人制度，等等。

破产法可谓是控制公司欺诈性财产权转让行为的重要法律。1986年的《中华人民共和国企业破产法（试行）》虽然确立了一系列控制欺诈性转让行为的制度，但存在一定的缺陷。2006年8月27日通过的《中华人民共和国企业破产法》进行了一定的完善：完善了撤销权与无效行为制度；确立了财产管理人制度；对旧破产法中关于临界期的规定进行了修改。

第六章研究公司法对公司欺诈性财产权转让行为的公司法控制。规范公司的各种行为是公司法的重要任务，公司从事欺诈性财产权转让以诈害其债权人的行为理所当然地成为各国公司法的规范对象。公司法对公司欺诈性财产权转让行为的控制有一个显著的特点，它是通过一系列的法律制度和原则来实现的。如现代公司法中的公平控制原则、“揭开公司的面纱”制度、公司清算制度、董事对公司债权人的民事责任制度，等等。

第七章分析公司欺诈性财产权转让行为的法律责任。公司欺诈性财产权转让行为的具体表现形式多种多样，而每一种行为对债权人利益的损害程度、对社会的危害大小各不相同。因而行为人所承担的法律后果也不相同。因此，控制公司欺诈性财产权转让行为有一个责任体系，这个责任体系由民事责任、行政责任和刑事责任构成。



公司欺诈性财产权转让行为在一般情况下属于民事行为，因而民事责任是其主要的责任形式。这种责任属于侵权的民事责任。民事责任的形式主要是：返还原物、恢复原状及赔偿损失。我国公司欺诈性财产权转让行为民事责任应作如下完善：对受诈骗害的债权人给予更多的民事救济手段；增加公司从事欺诈性财产权转让行为的惩罚性民事责任。

行政法律责任是指行为人违反法律、行政法规的规定，行为尚未构成犯罪时，应承担的法律责任。无效民事行为因其违法性，行为人往往要承担行政责任。公司欺诈性财产权转让行为中有些属于无效法律行为，因而也适用行政责任。

刑事法律责任是法律责任中最为严厉的一种。在公司欺诈性财产权转让行为造成了严重社会危害，法律明确规定应承担刑事责任时，可适用刑事责任。刑事责任的适用对控制公司欺诈性财产权转让行为发挥了重要作用。各国都有公司欺诈性财产权转让行为刑事责任的规定。

第八章为本文的结论与建议。控制公司欺诈性财产权转让行为是一项复杂的系统工程。我们应做好以下方面的工作：建立我国社会信用体系；加强对公司欺诈性财产权转让行为的行政监督与管理；完善公司欺诈性财产权转让行为控制的立法。

我国社会信用体系建设应包括以下主要内容：建立起社会信用管理法律体系；建立征信制度；建立信用中介机构。

通过行政手段加强对公司欺诈性财产权转让行为控制应做好以下几个方面的工作：完善有关控制公司欺诈性财产权转让行为的法规、规章；设立专门管理公司欺诈性财产权转让行为的机构。

建立一套以控制欺诈性财产权转让行为为目的的法律体系。该法律体系应由《反欺诈性财产权转让行为法》、《公司法》、《破产法》、《刑法》和即将制定的《民法典》以及一些法规、





规章构成。

本书的核心主题是对公司欺诈性财产权转让行为进行剖析，通过分析现象揭示其本质，并对控制公司欺诈性财产权转让行为的各项民商事法律制度进行研究，发掘制度的价值和功能，指出存在的不足，提出加以完善的设想。



## Abstract

As one of the oldest topic, fraudulence existed from the very beginning of human society. Since then, human people have tried to control fraudulence, but there still exists fraudulences nowadays. Corporate fraudulence is a kind of cheating phenomena along with the appearance of the organizations of corporations. As a worldwide problem with a tendency of pervasion, corporate fraudulence has already drawn the attention of experts in legal field. With the establishing of modern enterprise system in China, corporations are gradually becoming the leading position in economic domain, thus the harmfulness of corporate fraudulence is increasingly sticking out. As one of the most widely used format, CFC (corporate fraudulence conveyance) refers to all kinds of conveyances that are transferred under the name of corporation and with the purpose of delaying, hindering and cheating creditors. CFC not only harms the interests of the creditors severely but also challenges the basic principle of market economy. Although many countries have made laws, it is difficult to eliminate CFC because of its concealment and licit appearance; it manifests in many kinds of forms and indwells in all kinds of corporate transactions. The key point to this problem is to intensify its theoretic studies, that is, to analyze its manifested appearances, to post its essence, to consummate the legal system to limit CFC.

Chapter 1 analyzes the legal truth of corporate fraudulent convey-



ances. At the beginning of the chapter, the meaning and the elements of fraud in civil law are analyzed. It's the beginning of the essay logically, for corporate fraudulent conveyances belong to fraud in civil law. Although the definition of fraud is different in each country all over the world, the essence of it is the same. Especially the elements of fraud are the same. The elements of fraud in civil law are made up of: the expression of idea to make the opposite into mistake; the intent to cheat; the conduct to cheat; the right of the cheated is harmed.

Corporate fraudulent conveyances refer to the dealings which are made by the persons who can do them in the name of the corporation. The aim and the result of them are to delay, hinder and cheat its creditors. It is divided into actual fraud and constructive fraud. The legal characters of corporate fraudulent conveyances include: the conducts against the doctrine of sincerity; the conducts harming the rights of the third; the conducts with legal format and with illegal intent; void or avoidable acts.

The difference between corporate fraudulent conveyances and common fraud in civil law lies in three facts: the elements of the acts are different; the harmed object of the acts is different; the legal results of the two acts are different. The composing elements of corporate fraudulent conveyance include: the elements of subject; subjective elements; the elements of impersonality.

The cause of formation of corporate fraudulent conveyance lie in: the negative elements of market economy; the weakness of human nature; the faultiness of law; the negative influence of some legal systems; lack of social credit system. So the legal supervision of corporate fraudulent conveyances is very necessary.

Chapter 2 analyzes the features of corporate fraudulent convey-



ances. The typical behaviors of corporate fraudulent conveyances include: voluntary conveyances; fraudulent marriage settlements; conveyances in partnership; foreclosure sales; inter corporate guarantees; leveraged buyout. The most typical behaviors of corporate fraudulent conveyances include: leveraged buyout; inter corporate fraudulent conveyances; corporate fraudulent preference and so on. The typical corporate fraudulent conveyances in China include: conveying assets at unreasonable lowprice; fraudulently conveying assets during enterprise's reform; conveyances between inter corporates; setting mortgage to convey assets fraudulently; confusing the assets of the company to depose debts; to litigate in cahoots to depose debts, and so on. At the end of the chapter, whether the donation for commonweal is fraudulent conveyance is discussed.

Chapter 3 studies the history of the law of corporate fraudulent conveyances. Fraudulent conveyance law is the source of prohibiting corporate fraudulent conveyances. The condition of fraudulent conveyance law includes the conducts of fraudulent conveyance and the lack of the law.

In the history of legal system, Roman law is the source of fraudulent conveyance law. Elizabeth Statute is the first legislation of fraudulent conveyance. Uniform Fraudulent Conveyance Act is the most perfect modern legislation for fraudulent conveyances.

The disciplinarian of lawmaking for corporate fraudulent conveyances is; where there are corporate fraudulent conveyances, there is the legislation for it; the direct cause of legislation of corporate fraudulent conveyances is the popularity of the conducts. The trends of legislation of corporate fraudulent conveyances are ; the sanctions of the behavior becomes gradually scathing; the lawmaking contents tends to



assimilate ; the internationalization of the lawmaking is the direction of its future development.

Chapter 4 studies the supervision of corporate fraudulent conveyances by civil law. It is the fundamental mission of civil law to control the corporate fraudulent conveyances, by the task, the function and the principal of civil law. The supervision of corporate fraudulent conveyances by civil law is completed by some legal systems in civil law, such as creditors' avoidance and the rights of deraignment. The creditors are redressed by avoiding fraudulent conveyances. The creditors' derangement is to guard against fraudulent conveyances. In addition, the creditor can control the fraudulent conveyances by contract. Civil law plays great role in controlling fraudulent conveyances, but it's role is still limited.

Chapter 5 studies the control of corporate fraudulent conveyances by bankruptcy law. To control corporate fraudulent conveyances is one of the missions of the bankruptcy law. The control of corporate fraudulent conveyances by bankruptcy law is completed by some legal systems, such as the system of void acts in bankruptcy, the system of avoidance in bankruptcy, the system of administrator, the system of liquidator, and so on.

Bankruptcy law is very important on controlling CFCs. Although the Bankruptcy Law of 1986 in China set up a series of systems to forbid fraudulent conveyances, there are many faults of them. The new Bankruptcy Law consummates them as following: consummating the system of void acts; setting up the system of trustee in bankruptcy; correcting the critical scheduled time in bankruptcy.

Chapter 6 studies the control of corporate fraudulent conveyances by company law. It is a very important mission of company law to reg-



ulate the dealings of corporations. The CFCs are certainly the objects regulated by company law. An outstanding character of the control of CFCs by company law is that it is implemented by a series of systems and rules, such as equitable subordination doctrine, lifting the veil of company, the system of liquidation of company, the system of the director's liability to creditors of the company, and so on.

Chapter 7 analyzes the legal liability of corporate fraudulent conveyances. The legal liability system is constituted by the civil liability, the administrative liability and the criminal liability.

Corporate fraudulent conveyances belong to civil acts. So civil liability is the main format of liabilities. The formats of the civil liability mainly include: restoring the thing, the instauration original shape and making up for loss. The civil liability of CFC in China should be consummated as following: offering more relieves for the harmed creditors ; punitive civil liability should be added.

The administrative liability is for those who break laws or statutes, but it is not a crime. Some CFCs belong to void acts. The conductor will be charged with administrative liability for void acts.

The criminal liability is the most scathing kind of all the legal liability. When the CFCs do great harm to the society to the extent to a crime, criminal liability will be applied. The application of criminal liability plays a great role in controlling CFCs. There are provisions of criminal liability of CFCs in every country in the world.

Chapter 8 is the textual conclusion and suggestion. It is a very complex systematic project to control CFC. It should start with the following three aspects: setting up our social credit system; intensifying the administrative supervision and management of CFC; enhancing the legislation of our legal system, especially the law of controlling CFC.



## 公司欺诈性财产权转让行为及其法律控制

The construction of credit system in our country includes: setting up administrative legal system of social credit; setting up credit inquiry system; setting up social credit agency organization.

A legal system for the supervision of CFC should be constructed. The system is made up of the law against fraudulent conveyance, the company law, the bankruptcy law, the criminal law, the civil code and so on.

The core topic of the essay is to analyze the features of corporate fraudulent conveyances and to disclose it's essence. By studying some legal systems of the supervision of corporate fraudulent conveyances in civil law, the value function and fault of them are disclosed. At the end, some suggestions to perfect them are put forward.



引 论	/1
第一章 公司欺诈性财产权转让行为法理分析	/14
第一节 欺诈及其要素	/14
一、欺诈释义	/14
二、民事欺诈的构成要素	/16
第二节 公司欺诈性财产权转让行为及其特征	/18
一、公司欺诈性财产权转让行为界定	/18
二、公司欺诈性财产权转让的行为特征	/20
三、公司欺诈性财产权转让行为与一般民事欺诈行为的关系	/25
第三节 公司欺诈性财产权转让行为的构成要件	/27
一、主体要件	/27
二、主观要件	/28
三、客观要件	/31





第四节 公司欺诈性财产权转让行为法律控制的理论基础	/34
一、公司欺诈性财产权转让行为的成因	/34
二、对公司欺诈性财产权转让行为法律控制的必要性	/37
第二章 公司欺诈性财产权转让的表现形式	/41
第一节 欺诈性财产权转让的一般形式	/41
一、无偿转让行为 (Voluntary Conveyances)	/41
二、夫妻间欺诈性财产转让 (Fraudulent Marriage Settlements)	/43
三、合伙财产转让	/44
四、丧失赎回权抵押物买卖 (Foreclosure Sales)	/44
五、关联公司内部相互充当保证人 (Inter Corporate Guarantees)	/45
六、融资收购 (Leveraged Buyout, LBO)	/46
第二节 融资收购与公司欺诈性财产权转让	/47
一、融资收购及其法律特征	/47
二、融资收购引发的欺诈性财产权转让问题	/48
第三节 关联交易与公司欺诈性财产权转让	/49
一、关联交易及其特征	/49
二、公司利用关联交易从事的欺诈性财产权转让行为	/51
第四节 关系人的优先受偿行为与公司欺诈性财产权转让	/52
一、关系人的优先受偿行为及特征	/52
二、对内部人的优先清偿是公司欺诈性财产权转让的表现形式	/54
第五节 我国公司欺诈性转让财产的	