

中加刑事司法合作项目

China - Canada Criminal Justice Co-operation Project

金融欺诈的预防和控制

PREVENTION AND CONTROL OF FINANCIAL FRAUD

主编 陈光中 丹尼尔·浦瑞方廷

EDITORS IN CHIEF: CHEN GUANGZHONG

DANIEL PREFONTAINE

副主编: 雷 铨 樊崇义 杨 诚

DEPUTY EDITORS: LEI XIAN, FAN CHONGYI

VINCENT YANG

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金融欺诈的预防和控制

——'98 北京预防和控制金融
欺诈国际研讨会论文集

**PREVENTION AND CONTROL
OF FINANCIAL FRAUD
——PAPERS FOR '98 INTERNATIONAL
SYMPOSIUM ON THE PREVENTION
AND CONTROL OF FINANCIAL FRAUD**

主编：陈光中 丹尼尔·浦瑞方廷

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本书主编:陈光中(左3) 丹尼尔·普瑞方廷(右3)

Editors in Chief: Chen Guangzhong(Left 3)

Daniel Prefontaine(Right 3)

本书副主编:雷铤(右4) 樊崇义(左1) 杨诚(右1)

Deputy Editors: Lei Xian(Right 4), Fan Chongyi(Left 1)

Vincent Yang(Right 1)

前 言

中国自实行改革开放以来,金融业出现了空前的繁荣和发展。但另一方面,随着金融体制改革的不断深入,金融领域的欺诈和诈骗案件日益增多,诈骗数额惊人。在近年发生于中国的经济诈骗案中,金融诈骗案约占 30%,个别地区高达 40%,甚至 50%。单位犯罪和跨国越境的犯罪案件的数量也呈增长的趋势。

在国际上,随着全球经济的一体化程度不断提高,金融诈骗活动也越来越猖獗。据估计,每年金融诈骗活动涉及的金额高达数千亿美元。针对这些情况,世界各国对金融欺诈的预防和控制也需要加强合作。

中国为预防和控制金融诈骗犯罪,在新刑法中增加了关于金融犯罪的规定,并推进金融体制的改革。为了交流经验,并促进国际合作,我们五位编者在两年前决定筹备召开一次大型国际研讨会。1998 年 10 月 19 日至 22 日,中国政法大学(刑事法律研究中心承办)、中国国家检察官学院和加拿大刑法改革与刑事政策国际中心在北京联合主办了'98 北京预防和控制金融欺诈国际研讨会。来自中国、加拿大和亚洲、欧洲、北美洲九个国家和地区及国际组织的 150 多位专家共同探讨了国际银行、证券、贸易和投资领域中金融欺诈的问题,探讨了预防和控制措施,研究了对法律和法规进行改革的建议,并且建立和加强了中外组织之间在实际操作层面上的重要联系。本次研讨会的召开,对进一步推进金融体制改革,预防和控制金融领

域里的欺诈和诈骗活动,以及加强有关国际合作都产生了重要影响。

'98 预防和控制金融欺诈国际研讨会受到中外各界的高度重视,中国全国政协副主席孙孚凌及中央政法机关的有关领导出席了开幕式,中国司法部副部长肖建章、最高人民检察院副检察长张穹、中国人民银行副行长刘明康、加拿大驻华大使霍华德·贝祥(Howard Balloch)阁下在开幕式上致辞。

本次研讨会的召开亦引起了中国各大媒体的注意,人民日报、中国日报、法制日报、中央电视台、中央人民广播电台都作了报导。为了将这次会议的成果及时发表,供教学、科研及司法和金融实际部门参考,我们决定出版会议的论文集和其他资料。

本书的出版得到了海南省辽海律师事务所、深圳市公安局和加拿大国际发展署的大力支持,在此表示我们诚挚的感谢。

本书是中外专家、学者共同合作的结果。收入本书的论文,中文部分附外文摘要,外文部分附中文摘要,摘要及正文均由作者提供。中方由樊崇义教授负责本书总体设计及中文编辑工作,加方由杨诚博士负责本书的英文编辑工作。对于其中可能会有错误和不足,欢迎社会各界人士指正!

编者:中国政法大学刑事法律研究中心主任陈光中教授

中国国家检察官学院院长雷铨教授

中国政法大学樊崇义教授

加拿大刑法改革与刑事政策国际中心蒲瑞方廷主任

加拿大刑法改革与刑事政策国际中心中加刑事司法
合作项目主任杨诚博士

一九九九年三月

Preface

Since the launch of economic reform, China has witnessed an unprecedented growth in her financial industries. However, when the reconstruction of the financial system continues, there has also been a continuing increase in the incidence of financial fraud in China. Major fraud cases are often disclosed in recent years, involving a huge amount of defrauded property. According to official data, cases of financial fraud now account for about 30% economic fraud cases in the country and 40 – 50% in some regions. Cases of corporate crime and transnational crime are also increasing during these years.

In other parts of the world, along with globalization, financial fraud has posed a major threat to the integrity of the world financial industry and economic stability. Hundreds of billions of dollars are defrauded every year. Countries in the world must work together to enhance their cooperation in preventing and controlling financial fraud.

To combat financial fraud, China has introduced new provisions into her Criminal Law and is reforming the financial system. Two years ago, to promote the exchange of ideas and experience, the five editors of this book met in Beijing and decided to work together in developing and organizing a major international symposium. We are glad to see that we have successfully developed and accomplished this project as part of the China – Canada Criminal Justice Co – operation Program. This was achieved with the gracious

support of our colleagues in the Chinese and Canadian Preparation Committees, patrons and sponsors, the Chinese Government and the Canadian Government, and many other organizations and individual experts.

In October 19 - 22, 1998, the International Symposium on the Prevention and Control of Financial Fraud was held in Beijing, China. Under our direction, this event was jointly organized by the China University of Political Science and Law (through its Centre for Criminal Law and Justice), the International Centre for Criminal Law Reform and Criminal Justice Policy in Canada and the National Prosecutors College of China. Over 150 experts from China, Canada and seven other Asian, European and North American countries and from international organizations attended the Symposium. They discussed issues in combating financial fraud both in the banking and securities industries and in international trade investment. They also exchanged expertise for the prevention and control of fraud, recommended reforms to the legal and regulatory systems, and established working - level relations among their institutions.

The Symposium was the first high - profile international event of its scope and nature held in the People's Republic of China. Mr. Sun Fulin, Vice Chairman of the National Political Consultation Congress, and other senior officials of China's national legal institutions attended the opening ceremony. Deputy Minister of Justice Mr. Xiao Jianzhang, Vice President of the Supreme People's Procuratorate Mr. Zhang Qiong, Deputy President of the People's Bank of China Mr. Liu Minkang delivered speeches at the opening ceremony. His Excellency Howard Balloch, Ambassador of Canada to China, delivered two speeches at both the opening and closing sessions and hosted a reception at the Canadian Embassy.

This Symposium will have an important impact on the development of international cooperation in this field. China's Central Television (CCTV),

the Central Broadcasting Radio Station of China, the China Daily, the Legal Daily and some other Chinese national press provided coverage of the Symposium. We are glad to publish this book to promote the use of the Symposium papers by education and research institutions and the relevant legal and financial institutions.

We gratefully acknowledge the Canadian International Development Agency, Liao Hai Law Firm of Hainan Province and the Shenzhen Public Security Bureau for providing financial support for the publication of this book.

The publication of this book is a result of the joint effort of Chinese and foreign experts and scholars. The individual authors provided their papers and the abstracts. There are English abstracts for the Chinese papers and Chinese abstracts for the English papers. The Chinese editors are responsible to the overall design of the book and the editing of the Chinese texts. Dr. Vincent Yang on behalf the Canadian side edited all the English texts in this book. We welcome the readers to point out our errors and recommend improvement.

The Editors

Chen Guangzhong, Professor and Director, CCLJ

Daniel Prefontaine, Q.C., Executive Director, ICCLR & CJP

Lei Xian, Professor and President, NPC

Fan Chongyi, Professor, Board Member, CCLJ

Vincent Cheng Yang, Ph.D., Director,

China - Canada Criminal Justice Cooperation Program, ICCLR & CJP

March, 1, 1999

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