

CASE ALERT:

Lying on the social housing application form about household income and net asset value is considered document forgery.

Uniform Judicial Interpretation

In Case No. 19/2022, the Court of Final Appeal (“CFA”) issued a uniform judicial interpretation¹ and ruled that false declarations present in social housing application forms, including those pertaining to household income and net asset value, amount to document forgery. The decision came as a response to conflicting interpretations and opposing solutions concerning the same fundamental legal issue: (i) whether the statement should be deemed a “document” under Article 243(a) of the Criminal Code, and, subsequently, (ii) whether the applicant's submission of a false or inaccurate statement constitutes the crime of document forgery.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The uniform judicial interpretation of Case No. 19/2022 was issued following two conflicting decisions from the Second Instance Court:

Criminal Appeal Case No. 372/2021

The Second Instance Court ruled that the household income and net asset value statement used for social housing applications is considered a “document” according to Article 243(a) of the Criminal Code. Therefore, if an applicant makes a false declaration on this statement, they are committing the crime of document forgery as per Article 244(1)(b) of the same code. As a result, the defendants were found guilty and sentenced for this crime.

Criminal Appeal Case No. 504/2021

The Second Instance Court determined that the statement in question did not meet the criteria of being a document of criminal law significance as outlined in Article 243(a) of the Criminal Code. Additionally, the Court concluded that the falsity of said statement did not qualify as a crime of document forgery. As a result, the Court confirmed the verdict of acquittal issued by the lower Court.

Since there are diverging interpretations of law and opposing solutions on the same basic legal problem, the Public Prosecutions Office sought a uniform judicial interpretation from the CFA.

LEGAL ANALYSIS

The definition of “document” is crucial in the context of document forgery, according to the CFA. Unlike the definition set out in the Civil Code, legislators have created their own definition of document for criminal purposes. Article 243(a) of the Criminal Code defines a document as both an expression of intention or cognition and an actual mark of a thing. However, Article 355 of the Civil Code defines a document as any object prepared by a person to represent or display a person, thing, or fact, which is a much broader definition than that given in the Criminal Code.

Under the Criminal Code, a document must substantially represent a person's will, be suitable for proving its content and legally relevant facts and be able to identify its author. A legally relevant fact is any fact that creates, modifies, or extinguishes a legal relationship.

CFA indicated that the application for social housing involved in this appeal was governed by Administrative Regulation No. 25/2009 and Order of the Chief Executive No. 296/2009² that required applicants to submit a completed and signed application form and a statement of household income and net asset value. The statement is contained in a written document, comprehensible to its recipient, and its author can be identified.

According to the CFA, the statement contained in the application is a legally relevant fact that can be used to create a legal relationship. It reveals the financial standing of the families intending to apply for social housing and is a relevant factor for allocating social housing. Therefore, applicants must provide accurate information about their property status to ensure fairness and justice.

CFA concluded that the statement of household income and net asset value should be considered a “document” referred to in Article 243(a) of the Criminal Code. Therefore, submitting false information on such matters would constitute document forgery. The statement has probative function and can serve as an important basis for determining whether the applicant qualifies for social housing, particularly considering the practical difficulties of investigating and verifying the property status of the applicants. Failure to provide accurate information could harm the welfare of society and the public interests of unspecified groups.

RULING

The CFA decided that lying on the social housing application form about household income and net asset value is considered document forgery, which is a crime provided in Article 244(1)(b) of the Criminal Code. Therefore, the defendants' appeal was rejected, and their convictions for document forgery were upheld.

¹ Uniform Judicial Interpretation is necessary when the decisions of the judgments on the same issue are opposite to each other. Uniform judicial interpretation of the CFA constitutes a mandatory judicial interpretation on the courts of Macau since its publication in the Official Gazette.

² They were later repealed by Law No. 17/2019 and Administrative Regulation No. 30/2020, respectively.

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