

The Analysis of Legal Supervision System for Third-party Payment in the Internet Era

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Abstract: The rise of the internet finance industry is an inevitable result of the economic development in the information age. The rapid rise of Internet finance has gradually become an important pillar force of the financial industry because of financial finance, investment and payment realized by Internet finance, and other financial services promoted by Internet finance. In recent years, third-party payment has gradually become an important part of the internet finance industry with its unique advantages. As a new payment method, the booming development of third-party payment has not only added new impetus to the social and economic development, but also brought a series of legal risks. Although China's legal supervision of it is constantly advancing, there are still shortcomings. Therefore, this article analyzes the problems existing in the legal supervision system of third-party payment, and proposes relevant suggestions for China to improve its supervision, in order to promote the healthy development of China's third-party payment industry in the future.

1. Introduction

After entering the 21st century, China has already entered the era of information economy with the Internet economy as its main feature. Many traditional industries will undoubtedly be impacted by the Internet revolution [1]. The third-party payment industry is a product of this era. As a new transaction model, it rapidly penetrated people's daily lives with its advantages of low transaction costs, convenient and fast use, and high security. Data shows that from 2016 to 2020, China's third-party mobile payment transaction volume increased from 58.8 trillion yuan to 249.2 trillion yuan, and is expected to reach around 288.1 trillion yuan in 2021; from 2016 to 2020, China's third-party Internet payment transaction volume increased from 19.9 trillion yuan to 21.8 trillion yuan, and is expected to reach around 23.6 trillion yuan in 2021. The third-party consulting agency iResearch's "2022 Third-Party Payment Industry Research Report" predicts that by 2026, the transaction volume of third-party enterprise payment can reach 40.99 trillion yuan, of which the proportion of industrial Internet payment transaction volume is 74.1%, accounting for approximately 303.74 trillion yuan. In the face of the rapidly developing third-party payment industry, studying its legal regulatory system has important theoretical value and practical significance.

2. Overview of Legal Regulation of Third-Party Payment

2.1. Basic Issues of Third-Party Payment

2.1.1. Interpretation of the Connotation of Third-Party Payment and Determination of Legal Nature

In China, the network payment business conducted by non-financial institutions with licenses is third-party payment. Enterprises, under the conditions of legal qualifications, establish a convenient and fast channel between payers and receivers by signing contracts with major commercial banks and using their gateways. Based on effective integration of transaction and logistics information, third-party payment institutions gather a large number of small-scale payment transactions that are generally not participated in by traditional commercial banks, resulting in large-scale transaction data and deposited funds. This is the practical application of "long-tail theory" in the network payment industry and the fundamental motivation for the development of third-party payment [2,3].

Regarding the legal classification of third-party payment institutions, they themselves consider themselves as intermediary institutions. For example, a US third-party payment service provider, PayPal, believes that its role in the transaction process is only to act as an agent for users and manage customer funds. Alipay also stipulates in its service agreement: "Alipay only serves as an intermediary company..." However, China has made regulations on this issue in the "Payment Service Platform Management Measures" - non-financial institutions, but scholars still hold different opinions theoretically, among which non-bank financial institutions are the most widely accepted.

2.1.2. Analysis of Legal Relationships in Third-Party Payment

The main legal relationships in the third-party payment transaction process are as follows: First, between the third-party payment institution and traditional commercial banks. The traditional commercial banks related to it mainly include two types. First, as the outsourcing institution of the signing bank, it should complete the behavior according to the bank's instructions. Therefore, the two parties form a service contract relationship, which is a legal relationship between equal civil subjects. Secondly, a regulatory legal relationship is formed with the client's deposit bank, because the regulatory rules authorize the deposit bank to have the responsibility of supervising the third-party payment institution. Second, between the third-party payment institution and the user. In the transaction process, the main legal relationships formed between the buyer and seller and the third-party payment institution are the following three types: first, in the process of fund transfer, the two parties form a commission contract legal relationship. Specifically, the content of the commission contract formed between the buyer is payment on behalf of the buyer, and the content formed between the seller is collection on behalf of the seller. Secondly, in the process of fund custody, the two parties form a custody contract relationship. Its customer reserve funds are not its own assets, but are held on behalf of users. Third, in the transaction process, there may also be a legal relationship of credit guarantee between the two parties.

2.2. Explanation of Legal Regulation of Third-Party Payment

The legal regulation issues involved in the third-party payment industry include many aspects. Firstly, regarding the regulatory body, there are two levels: the central bank's macro-regulation of third-party payment enterprises and the entire industry, and the deposit bank's regulation of payment institutions' customer reserve funds [4]. Regarding the regulatory scope, as far as the central bank's regulation is concerned, its main regulatory mechanism is to establish macro-regulation mechanisms from the aspects of market access and exit, customer funds, and anti-money laundering, while the

main regulatory responsibility of the deposit bank is mainly focused on fund management.

3. My Country's Problems with the Legal Regulatory System of Third-Party Payments

3.1. Unclear Regulatory Model

The existing financial industry laws and regulations in my country are based on traditional financial industries and are difficult to meet the development needs of the emerging third-party payment industry. By understanding foreign regulatory models, there are two main models of institutional regulation and functional regulation. The former focuses on regulating the third-party payment institution itself, while the latter focuses more on regulating the specific business it engages in. However, it is still unclear which regulatory model should be adopted for third-party payment institutions in my country, leading to a lack of focus on regulation.

3.2. Insufficient Regulatory Content

3.2.1. Imperfect Market Access Mechanism Increases Regulatory Difficulties

Firstly, clarifying the legal status of the subject is the basis for determining its rights and obligations. According to the "Management Measures", third-party payments belong to non-financial institutions' payment services, but in fact, the business involved in third-party payment institutions does have financial attributes, such as fund clearing and settlement business, which conflicts with the positioning of "non-financial institutions". Secondly, regarding the minimum registered capital limit for third-party payment institutions, my country adopts a standard based on geographical division, which is 100 million yuan nationwide and 30 million yuan at the provincial level [5]. However, such a division is actually somewhat unreasonable because the cross-regional nature of online transactions is an important feature, so basing it on geographical location is inconvenient.

3.2.2. Lack of Anti-Money Laundering Rules Leads to Frequent Crimes

According to the basic rules of anti-money laundering, most financial criminals tend to choose areas with relatively loose regulatory systems when choosing crime areas. Due to the virtual nature of the Internet, it is easier to hide the true source and flow of transaction funds, and it is difficult for third-party payment institutions to distinguish them. Therefore, it is relatively easy for criminals to use false transactions on third-party payment platforms to achieve their money laundering purposes. In addition, at present, most countries focus on regulating traditional financial institutions such as banks for anti-money laundering, and the regulatory efforts for non-financial institutions that undertake bank outsourcing business are insufficient. Compared with traditional bank payments, third-party payments are more likely to become areas of financial crime. In addition, as economic globalization expands, the demand for cross-border transactions has gradually increased, and the scope of third-party payment services has expanded to cross-border trade [6]. Black money and hot money from overseas are more likely to enter my country through money laundering and investment channels.

3.2.3. Poor Management of Customer Funds Leads to Financial Security Risks

Firstly, in online transactions, the payment by the buyer and the receipt by the seller are not completed at the same time, but there is a delay, so there is inevitably a risk of fund stagnation during this process. According to existing regulations, third-party payment institutions must legally open a special account for payment funds in a commercial bank, and opening an account in a commercial

bank will inevitably generate interest. From the perspective of the "Civil Law", the ownership of the interest generated by the reserve fund does not belong to the payment institution, but the institution only acts as a custodian. However, in practice, most payment institutions do not really attribute these interests to users. Secondly, my country stipulates that payment institutions can only establish reserve fund deposit accounts in one commercial bank and must report to the central bank, but in practice, it is inevitable that many banks will be opened, and reporting may not be timely or false, which increases the difficulty of supervision [7]. Finally, my country prohibits third-party payment institutions from calling customer funds without authorization, which not only reduces the efficiency of fund circulation but may also potentially harm consumers' rights and interests.

4. Suggestions for Improving the Legal Regulatory System of Third-Party Payments in My Country

4.1. Adopt a Comprehensive Regulatory Model

In the tide of Internet finance development, the traditional institutional regulatory model is difficult to adapt to the trend of development. My country should improve traditional regulatory concepts, grasp the relationship between comprehensive supervision and key supervision, and use a combination of functional regulation and institutional regulation to achieve the best regulatory effect [8]. In addition, a classification regulatory system can be adopted, applying different models based on the business characteristics of different institutions.

4.2. Improve the Specific Content of Regulatory System

4.2.1. Clarify the Market Access System for Third-Party Payment Institutions

Firstly, regarding the legal nature of third-party payment institutions, because their business does have financial attributes, they can be defined as quasi-financial institutions to facilitate financial supervision that is appropriate for their businesses. Secondly, in setting the registered capital standard for third-party payment institutions, it is recommended to draw on the United States and the European Union and establish a unified standard for licenses, strictly review the qualifications of enterprises, not only facilitate supervision but also conducive to improving the quality of enterprises entering the market.

4.2.2. Establish a Sound and Effective Anti-Money Laundering System

In the anti-money laundering category, in addition to establishing a large or frequent transaction reporting system, the following measures can be adopted: First, strictly review user information. For example, when registering, in addition to reviewing their basic information, users can also provide valid identity documents for multi-channel verification. Second, establish a cooperation mechanism between financial institutions and judicial agencies to form an effective joint force to combat crime. For example, when verifying user information, public security departments can be requested to assist in providing the greatest guarantee of information authenticity [9]; third, strengthen cross-border cooperation in anti-money laundering and learn from each other to detect possible loopholes in cross-border trade in a timely manner to take corresponding remedial and resolving measures to prevent such crimes from occurring.

4.2.3. Improve the Customer Fund Custody System

Regarding the supervision of customer funds, my country expressly prohibits third-party payment

institutions from investing without authorization. However, this is not a long-term solution because funds themselves have liquidity, and restricting this liquidity will reduce the efficiency of fund circulation, and it is difficult to achieve in practice. In this regard, the European Union's approach is worth learning from. Although it is not completely prohibited to use customer funds, the available funds, investment direction, and conditions are strictly limited. For example, investment areas are limited to stable areas, and dynamic supervision is conducted. In addition, regarding the interest generated by customer reserve funds, it is first clarified that they belong to users, and their use can refer to the United States, which is used to purchase commercial insurance, benefiting both parties significantly [10].

5. Conclusion

The development of the third-party payment industry meets and guides the consumption demand of society. As a new payment method in modern society, it brings great convenience to both parties of the transaction, but also harbors many risks. It is not enough to rely solely on the self-discipline of the industry and enterprises to solve these problems. What is needed is proactive regulation. Therefore, it is urgently necessary to establish a sound legal regulatory mechanism to regulate the behavior of third-party payment institutions through legal means and provide correct guidance for their future development. However, the Internet finance industry is constantly changing and innovating, and the establishment and improvement of regulatory mechanisms still needs to be further tested and improved in practice.

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