Research on Joint Disciplinary Mechanism for Credit Default Based on the Effectiveness of Joint Disciplinary System for Credit Default

Hao Chen

Kunming University of Science and Technology, Kunming, Yunnan, China
chikhool@163.com

Abstract: The joint disciplinary system for credit default is an important component of the current construction of the integrity system in Chinese society. It plays a role in social credit management and has achieved significant results in practice. This paper, from the perspective of institutional effectiveness, analyzes the problems of the joint disciplinary mechanism for credit default, including incomplete supporting laws, imperfect legal procedures, inadequate standard systems, and information sharing mechanisms, as well as narrow channels for remedies. Drawing on the experience of joint disciplinary measures for credit default in the United States, the paper proposes improvement strategies and suggestions, including clarifying the legal procedures for credit default punishment, improving the credit standard system, enhancing the credit information sharing mechanism, optimizing credit repair and objection mechanisms, and so on.

1. Overview of the Joint Disciplinary System for Credit Default

1.1 Concept of Joint Disciplinary for Credit Default

The joint disciplinary system for credit default, as a new regulatory tool in social credit governance, consists of various forms of punishment. It punishes defaulters by establishing cross-sector and cross-industry credit information memoranda, creating administrative "blacklists," and implementing coordinated disciplinary measures. Its purpose is to introduce obstacles to the economic and social activities of credit defaulters. In practice, joint disciplinary for credit default is further divided into judicial and administrative areas. This paper mainly explores joint disciplinary for credit default led by administrative authorities and examines its impact on credit governance and credit repair under the existing mechanism.

1.2 Implementation of the Joint Disciplinary System for Credit Default

In China, the regulations on the joint disciplinary system for credit default are scattered throughout different levels of legal norms. At the legal level, rules for excluding defaulters are explicitly stated in laws like the "Civil Servant Law," which states that individuals who have been

subject to joint disciplinary measures for credit default will not be hired. At the level of administrative regulations, memoranda for joint disciplinary for credit default are established in regulations such as the "Implementation Rules of the Personal Income Tax Law" and the "Provisional Regulations on Express Delivery," limiting the participation of defaulters' credit information in credit, credit reporting, market access, and other activities. Legal and administrative regulations are mainly aimed at industry standards and do not provide detailed descriptions of specific measures. They restrict the economic and social activities of defaulters through exclusionary rules. Rules and local regulations set specific criteria for recognizing default behaviors, identifying joint disciplinary targets, and defining specific joint disciplinary measures. However, differences in local practices have led to inconsistent recognition criteria for default behaviors and an increasing variety of punitive measures[1].

1.3 Implementation Effectiveness of the Joint Disciplinary System for Credit Default

According to data from the "Credit China" and the "National Development and Reform Commission" official websites, it is easy to see that China has achieved positive results in many areas since the implementation of the joint disciplinary system for credit default. Leading the way, 26 central departments have promoted the joint disciplinary system, signing 51 memoranda of cooperation, with 46 of them related to joint disciplinary measures for credit default, covering various areas such as statistics and market competition. According to the latest statistics, there are currently more than 60 joint disciplinary units. Through platforms like the National Development and Reform Commission and "Credit China," over 300 million companies and individuals have been subject to joint disciplinary measures. The judicial system has also fully implemented the disciplinary system. Public data shows that since the Supreme Court established the list of credit defaulters in 2013, various regions have adopted joint disciplinary measures. As a result, 12 million people have voluntarily fulfilled their obligations under the pressure of credit disciplinary measures, yielding fruitful results[2].

2. Analysis of the Current Situation of China's Joint Disciplinary System for Credit Default

2.1 Imperfect Legal Procedures of the Joint Disciplinary Mechanism for Credit Default

Firstly, there is a broad interpretation of credit default behaviors. For instance, the "Beijing Subway Passenger Code of Conduct" includes behaviors like eating inside subway cars, unauthorized entry and exit, and occupying seats, all of which are categorized as detrimental to personal credit. Many of these actions are more about ethical conduct and not necessarily equivalent to credit default behaviors.Secondly, the standards for punishment are not uniform. Currently, many regions in China have begun to establish punitive standards for credit default, but due to the lack of precise definitions, criteria, and applicability, this has led to various inconveniences in everyday use.Thirdly, from the perspective of rules and local regulations, many regional documents do not clearly define specific standards for collecting, retrieving, and maintaining the credit status of natural persons or legal entities. The specific delineation of the obligations and responsibilities of the punishing entities is also unclear, and a significant portion of the rules are actually local government management provisions with a relatively low level of effectiveness.

2.2 Inconsistent Criteria for Identifying Credit Default Behaviors

There are different standards for identifying credit default behaviors in various regions, primarily manifested in the inconsistent classification of credit default behavior types. Credit default

punishment refers to various punitive measures for all types of credit default behaviors, including warning interviews, increased inspection frequency, cancellation of preferential policies, disqualification from bidding, and joint disciplinary measures, among others. Each region has its own classification criteria for credit default behaviors. For example, the "Shanghai Social Credit Regulations" only categorizes credit default behaviors into general credit default behaviors (Article 30) and serious credit default behaviors (Article 31). The "Jiangsu Province Measures for the Punishment of Natural Persons for Credit Default (Trial)" classifies credit default behaviors into general credit default behaviors (Article 13), relatively serious credit default behaviors (Article 19), and serious credit default behaviors (Article 22). Although these normative texts have the issue of relatively low effectiveness standards, they do provide reference models for more refined legislative work. Therefore, it can be said that the punitive authorities can only make scientifically based judgments on credit default behaviors by taking the substance and degree of harm of such behaviors as the main criteria [3].

2.3 Inefficient Information Sharing Mechanism

The effective implementation of joint disciplinary measures requires the establishment of a robust information sharing mechanism among multiple government departments to ensure efficient information flow. Currently, due to limitations in hardware, communication, and coordination systems, many regions have inadequate information disclosure and sharing, leading to issues such as slow updates and inconsistent data, which hinder the effectiveness of the system. Furthermore, the data formats used by various departments are not uniform, leading to the problem of "information barriers" and "information silos." This issue is particularly pronounced at the county level in remote areas.

2.4 Inadequate Joint Disciplinary Remediation Mechanism

Firstly, there are insufficient channels for remediation. The current channels for remediation of joint disciplinary actions mainly include administrative reconsideration and litigation. However, administrative litigation faces challenges in identifying the responsible party and addressing actions that are not subject to legal recourse. For instance, identifying the responsible entity for joint disciplinary actions can be challenging. According to administrative regulations, only state agencies and authorized organizations have legal subjectivity. However, in practical operations, when, for example, the railway department imposes penalties that restrict someone from riding high-speed trains, the court may recognize the railway department's legal subjectivity, making it difficult to initiate administrative litigation. Besides the railway corporation, many other social organizations, military institutions, and similar entities that are subject to joint disciplinary actions also face challenges in being included in the legal subjectivity. Secondly, the remediation methods are not clear. As for the adverse consequences resulting from joint disciplinary actions, the country has not yet introduced related compensation regulations and specific measures, leading to inadequate protection for individuals affected by these actions. The mechanisms for administrative agencies and related organizations to rectify and correct their actions are also incomplete, making it difficult to support remedial activities by the entities subject to joint disciplinary actions.

3. Borrowing from the Experience of Joint Disciplinary Measures for Credit Default in the United States

The legal system for joint disciplinary measures for credit default in the United States is well-developed. Starting from the 1960s, the United States has introduced a series of laws and

regulations, including the Fair Credit Reporting Act, the Truth in Lending Act, the Credit Card Issuance Act, the Fair Credit Billing Act, the Fair Credit and Charge Card Disclosure Act, the Home Mortgage Disclosure Act, and the Credit Repair Organizations Act. These laws and regulations have created a well-structured system with multiple agencies overseeing the process [4].

The United States has a relatively comprehensive credit reporting system that collects various public and private credit-related information, providing financial institutions, employers, landlords, and other entities with credit assessment standards and effective evaluation criteria. Firstly, in the United States, judgments and compensations are imposed on defaulters as economic penalties, and these penalties are enforced through authoritative agencies that seize the property of defaulters. Secondly, the United States employs a diverse range of punitive measures within its joint disciplinary actions for credit default. These measures include travel restrictions, fines, imprisonment, and various other forms of penalties. Credit ratings are used to comprehensively assess credit default behaviors, taking into account the severity, domain, and consequences of these behaviors. The appropriate punitive measures are then applied, whether individually or in combination, to match the severity of the default behavior, optimizing the effectiveness of the punitive measures. Thirdly, some communities in the United States have adopted a new type of punitive measure. Through social networks, they initiate credit assessments, gaining public recognition and supervision of credit assessments. This increases public participation in joint disciplinary measures for credit default, empowering the public to engage in credit governance. Leveraging the role of social credit punishment and integrating social resources and capabilities, they strengthen the oversight role of social organizations, promote cross-sector collaboration, and employ mandatory governmental punitive measures. This approach guides individuals and businesses with good credit histories and complete credit systems to emerge as social credit benchmarks, thus exerting a positive influence on social guidance [5].In summary, the United States effectively leverages power across various sectors and levels in its joint disciplinary measures for credit default, and it has achieved better results in credit governance. Initiatives like the "Moral Watchlist" in Los Angeles and the drunk driving punitive system in New Jersey have shown favorable governance outcomes. There are many valuable lessons that can be drawn from the American experience.

4. Suggestions for Improving the Joint Disciplinary Mechanism for Credit Default

4.1 Enhancing the Legal Procedures for Credit Default Punishment

4.1.1 Clarifying the Setting Entities and Authorities for Credit Default Punishment

Currently, China lacks procedural regulations for setting credit default punishments. From the national level to the local level, various administrative departments, including market supervision, housing, transportation, culture, and more, can all establish documents related to social credit and set credit default punishments. This has led to a crisis of overgeneralization in credit default punishment. To address this issue, legislation should first specify the entities responsible for setting credit default punishments and define the authorities of different entities. This is a prerequisite for proceduralizing credit default punishment. It is recommended that government departments at the municipal level and above, as well as prosecutorial offices and courts at the municipal level and above, be designated as punishment entities. Commercial enterprises should not be considered punishment entities, and their internal credit systems should not apply their credit data across different network platforms, enterprises, or sectors [6].

4.1.2 Improving the Implementation Procedure for Credit Default Punishment

Credit default rules can be seen as the "credit laws" that constrain social entities. Their formulation should follow the basic principles of general legislation. However, unlike other forms of legislation, credit default punishment is designed to penalize the "credit default" behaviors of social entities. Since some illegal behaviors may fall within the scope of credit default punishment, it is important to ensure that the illegality in question possesses a "credit default" nature. Not all illegal behaviors should be included in credit default punishment, or else the legitimacy of credit default punishment will be in question. Therefore, when setting credit default punishment, in addition to following general legislative regulations, three rules need to be adhered to. First, the necessity and legitimacy of credit default punishment measures should be demonstrated. Second, a public participation or hearing process should be established during the formulation, ensuring that the set punishment has contractual aspects rather than being solely dictated by administrative agencies. Third, there should be a sufficient period of public notice and promotion for the legislation on credit default punishment to ensure that the public is aware that a violation of these regulations will constitute a credit default [7].

4.2 Enhancing the Credit Standard System

The credit standard system serves as the foundation for establishing the credit default punishment system. It's important to create a comprehensive set of credit indicators and rating systems, making credit rating standards more precise, comprehensive, and actionable. Gathering and organizing credit information for both businesses and individuals is crucial, and this entails strengthening the collection, aggregation, organization, and storage of credit data resources. Additionally, promoting the sharing and exchange of public and private data is essential to further facilitate the interoperability of credit information [8].Standardizing and managing the credit standard system is crucial. This can be achieved by enacting relevant laws and regulations and issuing normative documents to regulate the behavior of credit rating agencies and information management entities. This ensures that credit assessment and supervision are conducted in a scientific, compliant, and fair manner. Interagency coordination and cooperation should also be strengthened to facilitate the integration of credit rating agencies and credit information management agencies across various sectors, resulting in unified standards and platforms. This allows credit information from different areas, regions, and industries to be integrated and coordinated. Finally, enhancing credit publicity and education is important, with a focus on recognizing and incentivizing trustworthy behavior. By highlighting and showcasing instances of trustworthiness, various segments of society can be encouraged to develop a sense of trustworthiness, collectively advancing the construction of a trustworthy society.

4.3 Improving the Credit Information Sharing Mechanism

Cross-departmental sharing of credit information is key to implementing joint credit default punishment and enhancing the effectiveness of the system. Building a robust credit database is fundamental, and integrating credit data from various departments and industries is crucial. In-depth integration should be promoted to facilitate the construction of a national public credit information system that covers the entire Chinese economic and social system. This system should encompass information related to credit transactions, investments and assets, tax payments, and illegal activities, creating a comprehensive credit information network that covers all credit subjects, various types of credit information, and different scope contents. This will establish a standardized, unified, authoritative, and accurate national credit archive, providing effective coverage of the

property forms and information system content of the subjects of execution. Using efficient credit monitoring measures will help address the root causes of enforcement difficulties, promote comprehensive governance, and enhance government law enforcement efficiency and the overall credit service capacity of society [9].

4.4 Optimizing Credit Repair and Dispute Resolution Mechanisms

The purpose of credit punishment is to correct the behavior of defaulters and create a fair society. Therefore, establishing robust channels for credit repair is crucial. Combining the severity of the punishment and the rating of the credit default behavior, a tiered and gradual credit recovery system should be implemented based on the remediation and performance of the defaulters. This can effectively contribute to the efficacy of social governance.Additionally, in the current situation where China's joint credit default punishment system is not fully developed, creating a dispute resolution mechanism for defaulters can reduce the infringement of rights resulting from wrongful or excessive punishment. This mechanism also imposes corresponding burdens on the entities that enforce the punishment, preventing the abuse of punitive powers. Providing credit subjects who have been wrongly judged as defaulters with channels for appeals and corrections, establishing a just, open, and fair appeal and correction mechanism, and clearly defining the conditions, procedures, and outcomes of appeals and corrections are important steps to promptly withdraw incorrect credit punishment measures [10].

5. Conclusion

The joint credit default punishment mechanism plays a crucial role in building a credit society, creating a favorable market environment, and instilling a culture of integrity that requires the deterrence of punishment. By promoting the collective involvement of the government, businesses, the public, and other stakeholders, China can advance the construction of its social credit system and the promotion of integrity culture, effectively curbing default behavior, and better safeguarding public interests and social stability. Furthermore, it is essential to further enhance the scientific, regulatory, and operational aspects of the joint credit default punishment mechanism, to increase the transparency and fairness of punitive measures. This will help establish a comprehensive, healthy, stable, and sustainable environment of trust.

References

[1] Men Zhongjing. Stigma of Joint Credit Default Punishment and Its Legal Control. Law Forum. 2019(6): 18-26.
[2] Chang Jian et al. Social Governance Innovation and Construction of an Integrity Society. Beijing: China Social Sciences Press. 2016: 28-35.
[3] Zhang Tao. Local Practices and Legal Control of Personal Credit Scoring: An Analysis of Seven Cities Including Fuzhou. Administrative Law Research. 2020(1): 116-129.
[4] Song Zhequan. Research on the Credit Effects of China's Joint Credit Default Punishment System: Evidence from Severe Environmental Violations and Defaults. Credit. 2023, 41(09): 37-44+51.
[5] Xia Jinlai. Research on the Joint Credit Default Punishment System in the Financial Field. Law Review. 2022, 40(06): 96-105.
[6] Sun Yuan. Legal Control of Administrative Joint Credit Default Punishment. Hunan Forum. 2022, 35(02): 39-52.
[7] Luo Peixin. Restraining Public Power and Protecting Private Interests: A Brief Discussion on Social Credit Legislation. Political and Legal Forum. 2018(6): 170-180.
[8] Yuan Wenhan. Administrative Law Interpretation of Credit Regulation. Administrative Law Research. 2019(1): 18-31.
[9] Wang Ruixue. Research on Credit Tools in Government Regulation. Chinese Law Studies. 2017(4): 158-173.
[10] Liu Ying. Legal Basis and Typified Implementation of Credit Repair. Chinese Credit. 2019(12): 112-117.