

Credit for Consumption and Consumer Rights Protection in China

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Abstract—In view of the economic growth in China and the increase in the people's salary levels, and as a result of pompous development of cyber consumption that has been observed in recent years, the ordinary consumer tends increasingly to turn to financial products and services, from traditional means such as bank loans, to new cyber tools such as overdraft in online shopping. The legal framework in China, however, does not offer specific mechanisms to protect the rights and interests of financial consumers, being almost silent in particular on the issue of excessive lending to ordinary customers by financial institutions in the use of powers and benefits attached to them.

I. THE EVOLUTION OF THE CREDIT ENVIRONMENT FOR CONSUMPTION IN CHINA

As shown by the statistics, the loans granted for consumption at a national level increased from 17.2 billion yuan in late 1997 to 8877.785 billion yuan in the end of 2011, representing 18.77% of GDP[1]. By the end of 2012, the numbers had reached 10440 billion yuan, as calculated by the People's Bank of China, meaning an increase of about 600 times the amount estimated at the end of 1997 and representing 16.42% of the credit balance of financial institutions. The proportion it occupies in the total value of loans increased from 0.23% in 1997 to 18.05% at the end of 2013[2]. The total amount of credit extended for consumption throughout China was 142,165.522 billion and 171,153.907 billion in the years 2013 and 2014, respectively, having already reached 168,568.934 billion yuan in the first 10 months of 2015. With a population of 1.3 billion people, this means an average consumer credit of 129 668 yuan per person was granted in 2015 in China[3].

The data also indicate that the economic losses suffered annually at national level for non-compliance are added in about 600 billion yuan. The rate of non-repayment of loans for consumption has been increasing, reaching 9.35% in 2012, reaching 17% in certain types of loans[4].

A. Credit for Short-term Consumption by Credit Card our manuscript electronically for review.

Taking into account only the consumer credit by credit card the data indicates that in 2012 the amount of consumption nationwide by credit card represented 32% of total consumption value in retailing. 391 million credit cards were issued by China in 2013, representing an increase of 18.03% compared to the end of 2012. By the end of 2013, the

total amount of the credit line of the credit cards was 4570 billion yuan, an increase of 31.17% over the previous year; the amount of the refund within the prescribed period was 1840 billion yuan, representing an annual increase of 61.80%; the average value of the credit line open to every credit card is 11,700 yuan, with an effective utilization rate of 40.29%, meaning an increase of 7.63%[5].

Given the completeness of data on all types of consumer credit, short-term credit has shown a trend of rampant annual growth, with numbers rising from 27,735.001 billion in 2013 to 35115.002 billion in 2014, having already reached 36151.07 billion in the first 10 months of 2015, exceeding 1.03 times the total amount of 2014[6]. Based on a population of 1.3 billion people in the first 10 months of 2015 the amount of credit granted in the short term was, on average 27809 yuan per person. If we compare this figure with the disposable income per capita at national level which, according to statistics released by the State was 20,167 yuan for 2014[7]. We find that only this short-term type of credit represents 1.38 times the disposable amount of income per capita. It can be said, therefore, in this respect, that China is in serious danger of excess credit.

B. The Credit for Small Amount of Consumption In The Financial-cybernetic System

Under the emerging financial-cybernetic system in recent years in China, the major online platforms, hand in hand with the traditional financial sector, came to offer more affordable services in lending for cyber consumption of small amount. For example, one of the largest e-commerce platforms in China, JD, launched in 2014 the first financial cyber-product credit payment targeting individual users, called "BaiTiao", through which users can make purchases in the platform by paying 3-24 installments, benefiting from a line of credit to a maximum of 15,000 yuan, a service fee of about half the rate charged by banks for similar products, ranging from 0-0.5% to each installment with interest exemption within a maximum period of 30 days. The application procedure and credit opening line of "BaiTiao" can be completed online within 1 minute. Across the country there are total 15 major banks supporting this service, having substantially identical functions to those of a credit card, allowing the consumer to repay the credit by means of new loans.

On the other hand, other e-commerce platforms of the largest in China such as Alibaba and Suning have also come to offer payment services to benefits such as "Ant Check Later", "Ren Xing Fu" and "1Qianbao". In Alibaba, for example, consumers can benefit from a credit line of about 6,000 yuan, without accounting for interest if payment is

made within 10 days of the transaction, charging up, after the deadline, only 0.05% of the amount to pay, as a service fee, with interest exemption within a maximum period of 41 days. In turn, Suning also came to launch the service "credit for all" in recent days. During the November 11, Suning offered through "Ren Xing Fu", credit lines for a total of 30 billion to 13 million people, achieving a grant in Shanghai of 160 million yuan on the same day[8]. On the other hand, Alibaba and China CITIC Bank offers a cyber-credit card which application and award can be made briefly via online, with a credit line from 200 yuan. Another credit card, provided by Tencent with bank collaboration, can be easily requested by Wechat application, with a 5,000 yuan credit limit, lifetime exemption from annual fees and 50 days of interest-free. The application and confirmation of such credit cards is carried out within one minute without the need for physical attendance, no verification of the original identity card, not even the signature of the applicant, disregarding thus the principle of "physical trinity" followed in the concession of credit for consumption in the banking sector in order to promote online shopping by consumers even when illiquid[9].

In short, we can say in general that the financial-cybernetic system of China is in a state of "lack of access and regulatory rules, and lack of audit institutions" by taking the oversight bodies, to some extent, an attitude of "tacit consent" to the creation of new forms, which is increasing exponentially risks for the consumer.

II. LEGAL CREDIT FRAMEWORK FOR CONSUMPTION AND PROTECTION OF RIGHTS AND INTERESTS OF FINANCIAL CONSUMERS IN CHINA

The concept of "financial consumer" has not been specified in Chinese law, having been mentioned in an official document for the first time in the "Instructions on financial innovation of commercial banks", issued by the Regulatory Commission of Banking Activity.

A. Lack of Protective Legislation of the Rights and Interests of Financial Consumers Broad Impact

The Law of the People's Republic of China on the Protection of Consumer Rights and Interests (hereinafter, Consumer Law) was enacted in 1993 and amended twice, respectively in 2009 and 2013, the most recent version came into force on March 15, 2014. Nevertheless, an amendment of 2013 did not come to introduce a legal notion for "financial consumer". China adopts, as of this moment, an individualized legislative model by industry sector, in regards to exploration and to supervision and there is no legislation to date that uniformly protects consumers in the financial domain. For example, the Consumer Law of 2013 mainly deals with the protection of consumer acts in general; the Law on Commercial Banks particularly protects the safety of deposits, with no specific regulations against acts detrimental to the interests of clients charged by banks abusing their position of prevalence. Similarly, there are no concrete rules that specifically regulate the financial consumption or excessive credit in Contract Law, in China's

People's Bank Law, in the Law of Supervision and Banking Sector Management, in Insurance Law, in Transferable Securities Law or the Advertising Law, resulting in a lack of operability in resolving financial conflicts and an increased difficulty in protecting the rights and interests of financial consumers requiring a higher degree of specialization.

B. Institutions Protective of the Rights And Interests Of Financial Consumers

The high degree of complexity and innovation of financial products has shown the inability of the Consumer Association in protecting the rights and interests of financial consumers, which has focused more on consumer protection of traditional products and services. Against this background, 4 specialized services to protect the rights and interests of financial consumers, in line with the individualized control model by sector it was necessary to distribute the financial consumer protection responsibilities to the regulatory authorities of each sector. On the other hand, an online database was set up to protect the rights and interests in the financial consumption by the People's Bank (www.12363.org) as well as an open line for information and complaints (12363) as a protection platform.

Although one could argue that the creation of specialized institutions for protection of the rights and interests of financial consumers is a major step forward, the individual regulatory model continues to present a number of weaknesses. 1) There is a lack of powers for each institution, as well as resources allocated to consumer protection, with cities that have only two part-time employees for conflict resolution. The Banking Regulatory Commission, in turn reserves only 1 to 2 million yuan for this purpose[10]. Moreover, in the absence of a uniform law for financial consumer protection, the remedies provided under the administrative regulations of the People's Bank have little effect with hardly deterrent against financial institutions and sometimes necessary to obtain the cooperation and assistance of industry management services and trade, financial offices of the government and the financial sector association. 2) Given the emergence of cross-sector financial products, the 4 audit institutions remain in a state of poor communication and cooperation between them, sealing the flow of information and without any guarantee scheme against the lack of balance of information and power between the financial institution and the consumers. The decentralized control has caused difficulties of coordination and increased costs and decreased work efficiency, all at the expense of financial consumer protection requirements. The problem is further aggravated, with no mechanisms of clear and transparent regulation in cases of protection of financial consumers' rights in third-party online payment. 3) There is a lack of appreciation for the protection of investors within the philosophy of financial management. At the moment, the financial supervisory services continue to lean towards control of regularity and risks of financial institutions without due appreciation for the protection of consumer rights, resulting in a lack of balance between its intervention in financial institutions activities and consumer protection. 4) The institutions have adopted the petition model in resolving

financial conflicts. That is to say that in case of disputes arising from financial consumption, normally the consumer must complain to the credit institution itself, only resorting to protective institutions in the event of denied treatment or silence within a specific period by the financial institution or when the consumer becomes dissatisfied with the obtained response. However, the lack of specific mechanisms of alternative dispute resolution discourages the rapid treatment of conflicts.

C. The Latest Legislative Developments in The Financial Consumer Protection

In November 2015, the General Office of the State Council issued the "Guiding opinions for strengthening the protection of works on the rights and interests of financial consumers," demanding the establishment of coordination mechanisms at the central level and at the level of local governments for the protection of rights and interests by the People's Bank, together with the Banking Regulatory Commission, the Transferable Securities Regulatory Commission and the Insurance Activity Regulatory Commission. More is established in that normative instrument that financial institutions should provide sufficient respect and guarantee on its own initiative for the basic rights of financial consumers to asset security, information, self-determination, fair business, to compensation claims, to education, respect and information security.

On the other hand, in the face of rampant development of the financial-cyber sector, in 2015, the "Guiding Opinions on Promoting the Healthy Development of Internet Finance" the first complex and multifaceted set of regulatory standards of the main financial and cyber products such as online payment and loan online, the collective financing, the sale of online funds, insurance and cyber trust, finances of cyber-consumption, heralding the start of an era of regulation of the financial-cyber sector "according to the law." Then they set out the following recommendations for consumer protection: 1) the online payment institutions by third parties should create effective mechanisms for isolation of risks and rights and interests of customer's protection. They must provide sufficient information of the customer service and clearly alert about risks, they cannot exaggerate the nature and functions of payment services as an intermediary. They are subject to the supervision of the People's Bank. 2) Information disclosure should be strengthened with regard to consumer interests, such as information concerning the content of contracts of financial and cyber products and disclaimer clauses, and should monitor and punish illegal conduct or irregular operators in the use of standard contract terms to harm the legitimate rights and interests of consumers. 3) Must strengthen the security of cyber information and properly store customer data and information from transactions, prohibiting the sale and unlawful disclosure of personal data of customers. 4) Must establish diversified dispute settlement mechanisms for online solutions, for spot treatment, for the complaints lodged with the supervisory authorities, as well as for mediation by a third party, arbitration and litigation

proceedings.

III. THE CURRENT STATE OF PROTECTION OF RIGHTS AND INTERESTS OF FINANCIAL CONSUMERS IN CHINA

From the perspective of behavioral finance, there is a huge gap of knowledge about the transactions and financial products in most investments between ordinary consumers and companies. The structural complexity of financial products hardens the perception of the characteristics of financial products or services, the effects and impacts are perceived only after a certain time so it is very likely these may conclude unfavorable business to the consumer.

A. The Right to Consumer Information and the introduction of the Principle of Adequacy

The lack of financial and legal knowledge and also the weak sensitivity to risk on the part of the Chinese population in general has led to the hasty adherence of some financial consumers, even without specialized financial knowledge. This group of consumers does not have much notion of the financial rights they enjoy, nor do they have enough information or knowledge about the functions and usefulness of products offered by financial institutions or about the rights and duties of both parties. Added to this, some banks neglect the consumer's right to obtain truthful information when dealing with credit cards, with frequent violations of the right to consumer information. Starting from the lack of criteria for the collection of service charges of bank cards - items and collection criteria are defined by the bank itself, standing at its discretion the increase of new fees or change the billing criteria. Then, it is the lack of transparency of safety information from bank cards - studies show that banks have not properly fulfilled its duties regarding the reporting, alert, secrecy and disclosure. Finally, after the creation of the credit delivery system, the protection of the right to consumer information is still prone to some obstacles.

Studies indicate that 35.99% of financial consumers show dissatisfaction about the lack of explanation of the content of products and the imposition of the risks of investments by banks; 34.32% considers there is an insufficient explanation of the terms in standard contracts by bank employees[11]. The protection of the right to consumer information demands that financial institutions fully comply with their duty to clarify that banks adequately inform investors of the risks they run, to carry out the risk assessment without any deceptive, fraudulent, concealing or nifty act. In providing opinions to clients and before any activity involving the issuance of decisions on the assets of the clients, one should always provide bases and foundations that justify them in the analysis report and in the decision itself, in order to ensure their suitability, precluding any act of improper lobbying.

The creation of the People's Bank credit research system allowed, moreover, the recovery and damage of the rights and interests of financial consumers by commercial banks, in particular the rights to information, privacy and compensation in the credit research domain. On the other hand, the legislative inertia translated in the absence of complementary mechanisms to the "Regulation on the

Administration of Credit Investigation Industry" has also hindered the implementation of the rights and interests of consumers. It should be noted, as an example, that not all commercial banks warn on certain aspects of contracts for the opening of lines and credit cards that "the lack of full and timely repayment shall give rise to adverse effects", with up to 10% of consumers who say they have not received a verbal warning from the bank in dealing with their own formalities. The fact that some banks did not warn the consumer, by phone, SMS or other means of the negative consequences of breach of repayment as agreed or when they do so without standardizing the related content, it leads to situations where consumers are unenlightened about "how to properly use the overdraft credit card", "which conducts generate harmful consequences" and "what are the impacts of these consequences on future loan applications", letting them mistakenly believe that a few days delay or a few yuan debts do not cause negative consequences to their personal credit or that the negative record will be erased from the credit report after that repayment. On the other hand, most banks have internal rules, unknown to the vast majority of consumers, such as "The credit request will be rejected when the personal credit report contains the breach of reimbursement in more than N benefits".

According to statistics given by some scholars, when faced with the calculation of credit interest for consumption only 27% and 24% of respondents belonging to the age groups of 23-28 years and 50-69 years, respectively, were able to answer correctly, this problem is further accentuated in the case of consumers with lower academic qualifications and lower income, which can only have ideas, knowledge and skills limited to assess the appropriateness, costs and risks of the product concerned. Under consumer credit, behavioral finance came to reveal the ease of the consumer to underestimate the risks with good expectations about future income, thus taking more responsibility for privileging the momentary and spontaneous consumption, requiring credit cards even beyond creditworthiness, such a decision which is often regretted. In China, many financial institutions, for competitive reasons, confer privileges to attract clients to credit cards, such as the supply of goods, exemption from the annual fee, the interest exemption on the reimbursement, the provision of medical health checks, aviation insurance and passage via the VIP access to the plane. At the same time, there have been established evaluation and incentive mechanisms for employees, who while exercising their activities tend to neglect proper consumer protection in exclusive pursuit of better results and more business without proper review of credit and the capacity of the holder, which can often get a credit card provided he has a business card. In this regard, a study indicates that 36.12% of consumers consider that there is financial incentive for the use of credit by banks.

This is why it was established in art. 2 of the "Guiding opinions for strengthening the protection on works on the rights and interests of financial consumers" (2015), issued by the General Office of the State Council, the need to establish an adequacy regime for the financial consumer demanding an assessment and hierarchical dynamic risk management and

the technical complexity of financial products and services by financial institutions as well as an improvement on the evaluation system of appetites for risk, knowledge and ability of risk tolerance of the financial consumer, so to provide a proper product or financial service to the financial consumer, with an explanation of the possible risks involved. It was also emphasized by the Director of the Protection Services of the Rights and Interests in the Financial Consumption of the People's Bank of China, which because of the unrelenting growth of vulnerable consumer groups of rural citizens, seniors and students should not force them to accept credit, taking into account the actual creditworthiness of each one. Art. 4 of the Guiding opinions, in turn, highlights the issue of protection of the right to financial consumer information by requiring financial institutions to make available information that may influence the decision of the financial consumer in an accessible and timely, accurate, precise and complete and sufficient warning of risk and may not provide fraudulent information in order to exaggerate what the product yields, to hide their risks, make misleading or cunning disclosure.

B. The Rights to Privacy, Property Security and Fair Business

In the financial-cybernetic system, consumer property security tends to be more permeable to injury, at the same timing giving rise to the problem of information leakage. Indeed, under the security certification model for payment now adopted by most cyber platforms, when data leakage is verified the user can see their capital easily removed by third parties. The payment made via mobile phones, their users often receive check messages, which facilitates the interception of data by hackers. When traditionally the payment was made after verification of personal identity through the cards, now payment through the Internet and mobile phones cannot ascertain the real identity of the operator, requiring only the insertion of the user's account password and the security code, which greatly increases the risks. Recently, with the new possibility of payment via the QR code, although it simplifies the payment process it also opens up a door for hackers. Banks, by entrusting third party sources of cyber payment, are to exempt them from the certification process, which means to a certain extent a violation of the services entered into with the customer agreement. In the event of any damage, the consumer will have to face a complicated process if he wants to claim compensation against the bank or payment institution, in particular if the operator has altered the background data or the clauses, turning the burden of proof to the consumer, who will see their risks aggravated. Thus provides art. 10 of the Guiding Opinions that financial institutions should guarantee the right to security of financial consumer data and take effective measures to enhance the control of third party institutions, clarify the rights and duties of respect from both sides and prevent and strictly control the risks of leakage of financial consumer information to ensure the safety of the data.

That is why it was established in art. 5 of the Guiding Opinions, the obligation of financial institutions to guarantee the right to self-determination of the financial consumer,

giving due respect to the consumer's willingness to comply with the laws, rules and regulations, leaving the consumer to choose and decide freely to acquire a particular financial product or to accept a given financial service, forbidding the purchase and enforced sale, the sale of products or services bundled against the will of the financial consumer, the imposition of additional unreasonable conditions and using cunning means of incitement to purchase other consumer products. Art. 3 underlines the guarantee of the right to property security of the financial consumer, requiring financial institutions diligent exploration activities, the adoption of strict measures of internal control and scientific means of technical control, strict demarcation between the institution's own property and the assets of the clients, prohibiting the misappropriation or appropriation of client funds. Art. 6 guarantees the right to a fair deal of financial consumers by banning the inclusion of business conditions in violation of the principle of justice as well as the aggravation of the financial liability of the consumer or the limitation or exclusion of their legitimate rights in adhesion contracts, it is also prohibited to restrict the legal means of consumer protection and reduce or exclude the liability of the institution that may be due for damage caused to the rights and interests of financial consumers.

IV. PERSPECTIVES AND SUGGESTIONS FOR THE PROTECTION OF FINANCIAL CONSUMERS IN CHINA

Given the complexity and technicality of the financial consumption, the ordinary consumer devoid of professional knowledge will not be able to carry out a full assessment of the appropriateness of costs and credit risks for consumption and will have his interests threatened in the face of the rigidity of the membership contract and the ease of monopolization of credit institutions. Faced with incessant and attractive promotions of credit institutions, the consumer is often taken to consume irrationally and asking excessive credit, giving rise to insolvency and personal disrepute. On the other hand, the financial consumer is not empowered to apply sanctions when he sees his rights violated, he can exert a deterrent influence with the damaging institution and, therefore, in case of conflict, bear high costs in time and money. Compared with the financial institutions, the financial consumer comes at a position of economic vulnerability, which reduces the chances of effectively defending their rights. In this respect, the creation of a legal and financial system centered on financial consumer, implying the adjustment of the traditional right branches will promote the realization of material justice in protecting the weaker negotiating party.

Bearing in mind the specific situation of excessive lending in China, we offer the following suggestions, calling for the consecration of the following basic protection rules under credit for consumption:

- Conception of credit-development products according to user needs, design and development of marketing channels with consideration to the characteristics of different consumers and setting

rates and prices with regard to financial ability of the consumer, in order to promote the appropriate credit product for the correct consumer;

- Rendering of credit-services under the condition of consumer creditworthiness and indebtedness being secured; diligent approval of the limit value of the credit line, with a full assessment of the capacity of the elderly and student consumer;
- Maintenance of sufficient communication with the consumer in an accessible and timely manner, ensuring accessibility and transparency of information concerning the rates, the interest rates and terms of service in order to materialize the rule of the broad grant of information;
- Supervision of the activities of financial institutions and their employees, prohibition of illegal lobbying to ensure respect for the consumer, elimination of corruption and illegal acts in granting credit for consumption and strengthening corporate social responsibility and consumer education;
- Protection of the inviolability of consumer privacy, forbidding the use of data and consumer information on activities unrelated with credit granting or prohibited by law, prohibition of arbitrary disclosure of consumer data;
- Establishment of improved mechanisms for complaint and reaction to enable the timely and effective resolution of conflicts, in order to optimize the credit granting services.

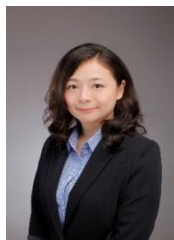
The financial consumer protection system in China still has much room for progress. China must prepare as swiftly as possible a comprehensive law on financial consumer protection in order to solve the current problems of the use of administrative documents in substitution of the law, the coexistence of various administration centers according to the normative documents of administrative level and low rank thereof, ensuring that the new law will be implemented in a complete, objectively, timely and fair manner. Financial institutions must assume their responsibilities in dealing with complaints from financial consumers, creating hierarchical mechanisms within their structures in order to optimize its procedures, both in reception and in the handling of complaints, as well as whether to create a system of consultation the case, to improve the quality and efficiency in reacting to complaints from financial consumers, to establish tripartite mechanisms of mediation and arbitration for financial conflicts, thus forming a diverse set of resolution mechanisms since conciliation between parties, mediation, arbitration and, finally, to judicial remedies in order to timely solve disputes arising from financial consumption, the judicial system must also ensure that financial consumers the possibility of recourse to the latter route, at affordable conditions and in a timely manner. In the long run, one should insist on strengthening the right to financial consumer education and the intensification of their teaching through the organization or active participation in financial literacy awareness activities, the development of comprehensive and daily actions of continuing education to the consumer

financial, in order to raise the level of financial literacy of consumers of all age groups, assisting the financial consumers in enhancing their evaluation skills and self-protection when faced with financial products and services, enhancing financial consumer culture and its action of consciousness according to good faith. Finally, it is necessary to create an internationally concerted legal system for limiting the excess of credit for consumption and for the comprehensive protection of the rights and interests of financial consumers.

Research, and education reform projects. And she won the distinguished teaching achievement awards.

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