CSCanada
International Business and Management
Vol. 15, No. 1, 2017, pp. 25-36
DOI:10.3968/9873

ISSN 1923-841X [Print]
ISSN 1923-8428 [Online]
www.cscanada.net
www.cscanada.org

Legal Supervision on Consumer Finance Companies in China

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Supported by Law Students Innovation Program of College of Political Science and Law, Hebei University "Legal Supervision on Consumer Finance Companies in China" (Y2016ZFCXKT05); Social and Scientific Program of Hebei University "Research on Some Problems of Corporate Governance and Financial Law" (1408058).

Received 13 June 2017; accepted 5 August 2017
Published online 26 August 2017

Abstract
With the increasing development of China's consumer finance companies in China, the regulation of consumer finance companies is becoming more and more important. With the introduction of the *Pilot Administrative Measures for Consumer Finance Companies*, China's supervision on consumer finance companies has been improved, but there are still many problems, especially related to the regulatory legal issues of funds. Based on analyzing the current situation of China's consumer finance companies and combined with foreign regulatory revelation, this paper discusses how to solve the legal problems of consumer finance companies in China, and puts forward some relevant countermeasures and suggestions.

Key words: Consumer finance; Consumer finance company; Legal supervision

Zhao, J. L., & Shang, G. H. (2017). Legal Supervision on Consumer Finance Companies in China. *International Business and Management, 15*(1), 25-36. Available from: http://www.cscanada.net/index.php/ibm/article/view/9873
DOI: http://dx.doi.org/10.3968/9873

INTRODUCTION

The advent and development of consumer finance companies has not only provided more choice for consumer, but also has changed China's economy development, which is accelerating financial system reform, promoting financial product innovation, and improving people's living standards. In order to ensure the healthy and sustainable development of consumer finance companies in China, a more scientific and professional legal regulation on consumer finance companies is increasingly urgent. To improve supervision on consumer finance companies will be conducive to their better playing a role in Chinese economy development.

Based on the characteristics of consumer finance companies, with the growth of people's income, changes in consumer attitudes and the characteristics of consumer finance companies, market potential in China is huge. According to the statistics of People's Bank of China from 2008 to 2014, the national personal consumption of balance of loans rose from RMB 3.72 trillion yuan up to 15.36 trillion yuan, the average annual compound growth rate is 13% (Chen, 2015). At the same time, the scale of the provision of personal short-term consumer loans has grown to $325 million (Ibid.). It can be seen that China still has a huge room for development in consumer finance that traditional commercial banks cannot reach and the development of consumer finance companies can fully cover this part of market space. Consumer finance companies can help consumers obtain consumer products and services at a faster rate. Moreover, the development of consumer finance companies in promoting inclusive finance has a clear meaning. The data of Boston Consulting Group (BCG) show that as of 2014 the balance of personal consumer loans is about 7.7 trillion yuan, China's personal consumer loan balance is expected to grow to 17.5 trillion yuan in 2018.[1] It is not difficult to see that in the future with the economy restructuring, consumer upgrading, consumers

[1] Antfinancial research institute: Report on China's Consumer Finance Trends, February 2016.

promoting consumer awareness and other driving factors, China's consumer financial market will expect a rapid development. Based on the legal situation of consumer finance companies in China, this paper aims to explore how to scientifically and rationally regulate the development of China's consumer finance companies from the perspective of law. This paper tries to learn the experiences for reference from other jurisdictions, especially in the area of financial regulation, and put forward some advises and suggestion for Chinese legal supervision.

1. THE EMERGENCE AND DEVELOPMENT OF CONSUMER FINANCE COMPANIES IN CHINA

With economy development taking on a new normal which is characterized by structural slowdown, the growth point changes significantly in both the demand side and the supply side in China. While the effect of consumption in economy growth looms large, especially in case of insufficient external demand, boosting domestic demand and expanding consumption becomes the key to deal with the economy recession, turning into the important determinants of transformation and sustainable growth of China's economy. In the contemporary era, consumer finance is a new type of financial situation, and has become an important part of national economy, although it has not been paid more attention to. As the growth of China's economy, the economic pattern that simply relied on important and export has gone, and how to boost domestic demand and promote the development of domestic economy has become a realistic problem. Under the global financial crisis, the economic pattern of export-oriented has met with unprecedented difficulties. Therefore, in case of lacking of external demand, stimulating domestic demand is the key to solve economy recession. The development of consumer financial companies is consistent with the state strategy on expanding domestic demand. Thus consumer finance sectors have received wide attention in recent years, especially in the key stage of economic transformation and upgrading. In recent years, many consumer financial companies are developing increasingly.

In practice, consumer finance company has been developing for nearly eight years in China. In 2004, Home Credit Group set up an office in Beijing, China. In 2007, it set up China Head Office of Home Credit in Futian central district CBD, Shenzhen. From then on, the experiment of consumer finance started forming in the region of Guangdong, and provided consumers with installment payment business of mobile and computer. On November 5, 2008, the central government proposed the strategy for expanding domestic demand and promoting economic growth, and introduced a stimulus package about four-trillion-dollar.[2] In 2009, China introduced the "Pilot Administrative Measures for Consumer Finance Companies" (hereinafter referred to as the "Measures"), which first clearly definites the term of consumer finance companies in legal documents. This also means that "consumer finance company" is formally incorporated into the field of economic development and legal regulation. With the introduction of the "Measures", the professional consumer finance companies began preliminary pilot, allowing respectively setting up consumer finance companies in Beijing, Shanghai, Tianjin, Chengdu. Tianjin set up Home Credit Consumer Finance, Chengdu set up Jincheng Consumer Finance, Shanghai set up BOC Consumer Finance, Beijing set up Bank of Beijing Consumer Finance Company. At this point, China's consumer finance sector is really going into the crowd's vision. In December 2013, the China Banking Regulatory Commission (CBRC) revised the "Measures", and the number of China's consumer finance companies changed from the original 4 expanded to 16. The revised "Measures" abolishes the business area restrictions, changes the provision that current consumer finance companies can only be registered in the administrative area of the provisions of the business area. Based on the risk can be controlled, the revised "Measures" allows consumer finance companies to carry out off-site business by relying on retailer outlets rather than setting up branches. After 2014, China has appeared several consecutive entrepreneurial consumer finance companies including Billions Finance, Shenzhen Haida Fei Financial Services Company, Paymax, the Fenqile which former Tencent product director Xiao Wenjie created for college students, the sudden emergence of the Qufenqi which Luomin created, and other companies (Zhou & Zhang, 2016). At the same time, both Haier Cash and Industrial Consumer Finance Corporation were established.[3] By April 2016, both Jinshang Consumer Finance Corporation,[4] which were located in northwest China and Shengjing Bank Consumer Finance[5]in northeast China respectively, obtained the business license before April 19. At this point, China's consumer finance companies and companies involved in consumer finance are increasing across the country. As of April 2017, the consumer finance

[2] On November 5, 2008, the executive meeting of the State Council examined and deployed measures to further expand domestic demand to promote economic growth steady and rapidly, which the tenth measure proposed to increase financial support for economic growth, by the end of 2010 about 4 trillion yuan investment.

[3] The analysis of the current status and future direction ofconsumerfinance.http://www.sinotf.com/GB/News/1002/2016-08-18/0NMDAwMDIwODY0NA.html

[4] China Banking Regulatory Commission Reply [2016] No.25: China Banking Regulatory Commission approved the preparation of Jinshang Consumer Finance Corporation.

[5] China Banking Regulatory Commission Reply [2015] No.634: China Banking Regulatory Commission approved the preparation of Shengjing Bank Consumer Finance.

companies approved by the China Banking Regulatory Commission are about 22.[6]

2. THE CURRENT SITUATION OF LEGAL SUPERVISION ON CONSUMER FINANCE COMPANIES AND THE PROBLEMS OF SUPERVISION ON CONSUMER FINANCE COMPANIES IN CHINA

The consumer finance companies as mentioned in the "Measures" refer to the non-banking financial institutions which are established within the People's Republic of China upon the approval of China Banking Regulatory Commission (CBRC) for providing consumption-oriented loans for the resident individuals within China under the principle of small sum and dispersion instead of absorbing the deposit of the general public. This is the first time to definite consumer finance companies in the legal document, which also implies that "consumer finance company" is formally incorporated into the field of economic development and legal regulation. Consumer finance company's personal loan business is based on credit. People can achieve early consumption, and consumer finance companies charge intermediate interest on loans. Although its business is similar to commercial banks, the consumer finance company only provides small loans for the purpose of profit and does not take in public deposits. Therefore, consumer finance companies are defined as commercial non-bank financial institutions.

The "Measures" provides that the establishment of consumer finance companies shall be subject to the approval of the CBRC. The Banking Supervision Law of China provides that the supervision and administration of other financial institutions that are approved by the state banking regulatory agency shall be governed by the provisions of this Law. Therefore, the development of consumer finance companies shall be supervised by the CBRC and The Banking Supervision Law of China. At the same time, the measures provide for the requirements for the establishment of consumer finance companies. For example, the measures provide that consumer finance companies shall not only comply with the Company Law of China and the provisions of the Articles of Association of the CBRC, but also need to build up effective corporate governance, internal control and risk management systems. The Company Law of China has a comprehensive provision on fundamental aspects of company, which provides a standard and basis for the consumer finance company. In terms of business, the consumer finance company's business includes personal loan business, and the Loan General Rules issued by the People's Bank of China provided detailed rules on loan management, loan procedures and loan interest rates, which provided the norms and standards for the implementation of personal finance business of consumer finance companies. To a large extent, these legal documents provide a legal basis and protection for the development and supervision on consumer finance companies in China.

2.1 The Current Situation of Legal Supervision on Consumer Finance Companies in China

2.1.1 External Supervision

2.1.1.1 The CBRC Is Charged With the Supervision on Consumer Finance Companies

The establishment and development of consumer finance company are to implement the macroeconomic policies of the Party Central Committee and the State Council which is "Ensuring growth, adjusting structure, promoting reform and improving people's livelihood". The consumer finance company is consistent with the economic development and the new economic form of the implementation of the national policy. It is one of the important additions to traditional commercial banks. In 2008, the CBRC submitted recommendations to set up consumer finance companies in Beijing, Shanghai and other large cities. In May 2009, the CBRC drafted the Consumer Finance Company Pilot Management Measures (Draft) and opened to the community for comments on the Internet. Now the result of the implementation of the Measures is: the banking regulatory agency supervises the management of consumer finance companies and their business activities in accordance with the law. Under the Banking Supervision Law of the People's Republic of China, the supervision and administration of other financial institutions that are approved by the state banking regulatory agency shall be governed by the provisions of this Law. Therefore, it is determined that the CBRC is the supervisor of consumer finance company.

2.1.1.2 Regulation on Market Access

China adopts the approval system for the market access of consumer finance companies, which is not only need to meet the conditions of the Measures, but also need to be approved by the CBRC. Consumer finance company should be in line with the Company Law of China and other provisions of the CBRC such as a place of business operations appropriate, safety measures and other facilities. In addition, there are many aspects of legal regulation on its market access.

First, the review of registered capital. The review of registered capital should base on the registered capital requirements of other non-bank financial institutions and should consider its demands on the initial business operations. It requires that the registered capital of consumer finance company should be a one-time payment of monetary capital, and the minimum amount of monetary capital is RMB 300 million or the equivalent

[6] Been licensed consumer finance companies has reached 22. Retrieved from http://news.p2peye.com/article-495028-1.html

freely convertible currency. That is to say, unlike ordinary companies, consumer finance companies are not allowed to use land use rights, intellectual property or other non-monetary forms as investments, but only in form of money which must be its own full amount of paid capital. It can be seen in the review of registered capital that the requirements for consumer finance companies are more stringent.

Second, the review of investor qualification. In China, the investors of consumer finance company are divided into major investors and general investors; while the main contributor is divided into financial institutions and non-financial enterprises (those contributors are not less than 30% of the registered capital of the proposed consumer finance company). For both types of major contributors, the review focuses on financial strength, reputation, risk control, etc. For example, the requirements of the operating income of non-financial enterprises in last year not less than 30 billion yuan or equivalent of freely convertible currency (consolidated financial statements caliber), and the net assets of non-financial enterprises at the end of year are not less than 30% of total assets (consolidated financial statements), requiring financial institutions with more than 5 years of experience in the field of consumer finance and so on.

Third, a review of qualifications of directors and senior management personnel. The qualifications for directors and senior management personnel are subject to approved administrative licensing procedures. The directors and senior management personnel should not only meet the conditions of the CBRC but also obtain the approval of the CBRC to serve.

2.1.1.3 Regulation on Market Operation

The supervision on the operation of consumer finance companies is an important aspect of risk prevention, which is conducive both to consumer finance companies to overcome their own limitations and to the protection of social and public interests as well as the legitimate rights and interests of financial consumers.

First, the regulation on the scope of business. The customer groups of consumer finance companies must be individual residents in China. At the same time, the legal documents on use of consumer loans also make a strict restriction that the loans are limited to consumption and are not permitted to purchase houses and cars. In addition to personal consumer loan business, in order to ensure the consumption of financial companies, the Measures provides that consumer finance companies could also be approved by the CBRC to carry on other business such as business of accepting shareholders' domestic subsidiaries, domestic shareholders' deposits, and borrowing from domestic financial institutions etc.

Second, the limit on the amount of loans. The consumer loan issued by consumer finance company to individual should not exceed customer's risk tolerance and the borrower's loan balance should not exceed RMB 200,000.

Third, the regulatory scope of business cooperation. Consumer finance companies can outsource their businesses, but the outsourced businesses should not be closely related to loan decision-making and core technology for risk control. It need develop a binding management system for business outsourcing, including decision-making procedures for outsourcing business, evaluation on and management for outsourcing, measures and contingency plans to control the confidentiality and security of business information etc. In new management system, it is the most important that company should report major risks and corresponding risk aversion measures to the CBRC before signing outsourcing agreement.

Fourth, the supervision on funds. As loan business is concerned, Consumer finance companies and commercial banks are different. Consumer finance company loans are unsecured, which is the advantages of consumer finance company's service. However, this also means that the role of credit is greater. The credit risk of consumer finance companies is higher than that of banking institutions. It makes the risk control of consumer finance companies more stringent. In addition to rigid requirements of registered capital, the "Measures" require company to establish a comprehensive and effective risk management system and provide a series of regulatory indicators. The CBRC will make appropriate adjustments to the above-mentioned indicators in accordance with requirements of prudential supervision such as asset loss reserve adequacy ratio shall not be less than 100%, or investment balance shall be not higher than 20% of net capital and so on.

Fifth, the protection of the rights and interests of the borrower. Consumer finance company is obligated to keep personal information provided by borrower, and should not use improper and unlawful means such as threatening, intimidating or harassing when the borrower fails to repay the loan principal and interest according to the contract. Moreover, company's business should be open and transparent. Company should fully fulfill the obligation to inform the borrower of information on loan business. In contract, company needs to specify the amount of loans, duration, price, repayment and other information so that borrower could have a clear understanding.

2.1.1.4 Regulation on Market Exit

Regarding the exit mechanism, the measures provide that when consumer finance company is terminated by dissolution, being revoked or declared bankruptcy, the liquidation shall be handled in accordance with relevant laws and regulations of the State. At the same time, when consumer finance company terminates, the related foreign exchange management should also comply with relevant provisions of the State.

2.1.2 Internal Self-Regulation

The internal supervision on enterprises is actually the internal self-supervision and self-management. On one hand, consumer finance company should continue to improve its governance structure; on the other hand, it should improve its management mechanism. The internal self-regulation of consumer finance companies is more reflected in decision-making mechanisms and oversight mechanisms.

2.1.2.1 Effective Decision-Making Mechanism

The decision-making bodies within company usually include the shareholders' meeting, the board of directors and the senior management, each of which exercises different rights/authorities to make a decision effective. The Company Law of China provides for the division of company's decision-making power/authority. Reasonable combination and allocation of power/authority are the premise of effective decision-making and quick implementation. Therefore, it is necessary to deal with the checks and balances of the internal power of the shareholders' meeting, the relationship between the shareholders' meeting and the board of directors, and the relationship between the board and the manager. Under the corporate governance with the separation of modern ownership and management, it is easier for consumer finance companies to improve decision-making efficiency and make decisions.

2.1.2.2 Effective Supervision Mechanism

For the supervision mechanism of consumer finance companies, in addition to the board of supervisors to perform their duties in accordance with company law, the other two important aspects are supervision on consumer credit contracts and supervision on debtor-creditor relationship.

The management process of personal loans within consumer finance companies will inevitably involve consumer credit contracts, which are mostly format contracts. In order to improve the efficiency in the course of business. Since the loans are based on credit and the credit situation of the masses is not clear, the issuance of loans will inevitably encounter the problems arising from transaction risk and credit risk. The supervision on consumer credit contracts includes a review of contract itself, as well as an investigation of the credit status of client group, which is an important aspect of consumer finance companies in internal controls and avoiding risks.

Consumer finance companies will have a debtor-creditor relationship when accepting deposits from subsidiaries and domestic shareholders. Although this part of deposit is different from that of public deposit, the purpose is to provide financing for consumer finance company. However, the nature of shareholder deposits is still not clearly defined and the distribution of interest and shareholders' equity is not clearly defined either. Therefore, the supervision on debtor-creditor relationship should be to ensure that the funds at the same time shall not infringe the interests of shareholders.

2.2 The Problems Existing in the Supervision on Consumer Finance Companies in China

Consumer finance companies being as a form of company, China's relevant legal system has made a relatively perfect principle of regulatory requirements in all stages of the company. However, the problem is the insufficiency of financial supervision in the relevant legal system.

A major premise of the business of a consumer finance company is the adequacy and continuity of funds. As personal loans are based on credit, company often confronts relatively large risk of mortgage loans and the non-performing loan ratio (hereinafter referred to NPL ratio) continued to increase. Therefore, due to the influence of risk factors, it is necessary to ensure adequate capital reserves and capital chain, and to reduce NPL ratio. Only in this way can company keep going on its business. However, for the supervision on funds, relevant laws in China are still inadequate.

2.2.1 Capital Adequacy Ratio

When consumer finance companies accept deposits from subsidiaries and domestic shareholders to carry out unsecured loan business, the loan business risk is relatively high. The funds of company in various stages are both the important content of consumer finance company's control and the supervision of the CBRC. How to control the flow of funds is an important aspect of risk control. At the same time, combined with actual operation, many consumer finance companies have limited funds. In the context of increasingly strong consumer demand, although the measures have set the funding adequacy standards, there are still a small number of consumer finance companies which have a high risk of breakage of capital chain. The newly revised Measures in 2013 expanded investor types, encouraging more consumer resources with the advantages of private capital to enter into the field of consumer finance, and amended the main investor terms. Thus, the whole process of capital flow involves a variety of legal relationships.

2.2.2 Financial Fraud

Since the size and business of most current consumer finance companies are limited, they will outsource some business to intermediary partners. Since state regulatory oversight of capital flows lacks detailed scrutiny, some unlawful intermediary partners abuse the guarantee, or even bypass the regulation and take the consumer finance company as a "cash pool" in the name of the borrower. They lend money for other purposes, resulting in financial fraud risk. In July 2016, cooperated with the guarantee company, asset management companies, other intermediary companies as well as Bank of Beijing

Consumer Finance Company expand customers. But the intermediary companies applied for loans in the name of individual users from Bank of Beijing Consumer Finance Company. However, this money did not go to the borrower's account. No.199 administrative penalty decision documents of Beijing's Banking Supervision Authority (2015) on Bank of Beijing Consumer Finance Company impose an administrative penalty of 1.5 million yuan, which is just one of the problems that financial regulation is not in place. In recent years, consumer finance is in a high-speed development stage on network, while the black households cash, fraud and other negative words is frequent, even the illegal phenomenon is frequent. The reason, on one hand, is that the consumer finance companies' own risk control is not in place; on the other hand, the regulatory measures lack follow-up supervision on the flow of funds and also lack effective regulation on the partners.

2.2.3 The Non-Performing Loan (NPL) Ratio

On December 15, 2016, Mao Wanyuan, the representative of the CBRC said in the banking industry routine press conference that as of the end of 2016, the total consumption of consumer finance company was 107.723 billion yuan, the loan balance was 97.029 billion yuan and the average NPL ratio is 4.11%.While 4.11% of the NPL ratio is not only far more than the average bank, and grows quickly (Mao, 2017). According to the CBRC data, at the end of September 2015, the total market of consumer finance industry was more than 510 billion yuan, the loan balance was 46 billion yuan, the service customers were more than 560 million, the NPL ratio was 2.85%.[7] In other words, in the period of one year from the end of September 2015 to the end of 2016, the NPL ratio increased by 1.26%and the annual growth rate up to 44%. In 2014, the China's banking industry operation report showed that the NPL ratio of consumer finance company was only 1.56% (Ibid.). Since there is no clear upper limit on the law, the NPL ratio has brought some difficulties to the regulation on funds. Although the level of the NPL ratio of consumer finance companies is generally higher than the level of banks, the overall development of the industry is good. It is important to improve the construction of social credit system and strengthen company's own risk control gradually. Of course, the legal system should also be timely to develop relevant standards to avoid unreasonable growth and to realize legislative supervision on funds.

At the same time, China's Consumer Finance Companies are still in its infancy. As of March 2017, the consumer finance companies approved by the CBRC are only about 20 or so.[8] However, there are numerous non-licensed companies that carry out consumer credit business, and there is still a lack of detailed supervision on these companies in injection, lending and recycling of funds.

3. THE DEVELOPMENT AND SUPERVISION ON CONSUMER FINANCE COMPANIES IN OTHER JURISDICTIONS AND THEIR ENLIGHTENMENT TO CHINA

3.1 The Development and Supervision on Consumer Finance Companies in Other Jurisdictions

Consumer finance companies have developed in other jurisdictions for a long time. The development of consumer finance companies in the West can date back to the beginning of the twentieth century (Xu & Wang, 2010).

The consumer finance business of America started in the jewelry industry, and family financial company started to dabble in consumer credit in 1878. The consumer-finance firm was the only consumer lender until 1930s (not including the folk "usury"). At that time, to regulate social gap between the rich and the poor and to ease social contradictions, the United States improved the minimum wage standard constantly, levied on the high income and protected the low-income people objectively, which made most people capable of purchasing. During the development of social insurance and medical insurance, the state preferred borrowing to save, which provided the basis for the development of consumer finance, especially after the establishment of social security administration in 1930s. The credit system of the United States became increasingly perfect, which provided social credit basis for the development of consumer finance. In 1960s, consumer finance companies began to become more specialized (Zhang, 2009).

In early stage, there was consumer finance in British which was scattered, and their operation of business was limited. In the middle of 1900s, the fraud in transaction and default led parties do not trust each other, which promoted the advent of credit reporting company or a credit bureau to provide credit service by the state, therefore the first credit reporting company in the world was founded in London in 1830. Until the 1980s, the mixed business began to appear in Western countries. The United Kingdom relaxed financial control, which triggered financial big bang and the Banking act of 1987took effect in 1986 (Xu & Wang, 2010). A batch of super financial institutions gradually emerged in the UK, and their

[7] 2015, in China's consumer finance roundtable forum, the speech of the deputy director of non-silver of China Banking Regulatory Commission Mao Wanyuan.

[8] Been licensed consumer finance companies has reached 22. Retrieved from http://news.p2peye.com/article-495028-1.html

business areas cover a broad range. They began to pay attention to customer higher requirements for personalized service. At the same time, the credit reporting company also formed and developed. In this development period, consumer finance was increasing rapidly.

Japan is the country whose consumer finance started earlier in Asia. During1950s and 1960s after World War II, non-bank finance companies such as Vendor, Sanyo Commercial began to appear in Japan, and they provided small loans to working class. In late 1960s to 1970s, the folk finance companies began to hand out credit cards to the general consumer, while the consumer finance companies of United States and other foreign countries entered into Japan. At the same time, with the improvement of Japanese residents living and changes in consumer attitudes, consumer finance companies came into being.

After development of decades, consumer finance companies became very common in developed countries such as America, Japan and Europe. There formed a highly mature and huge professional credit market, which has now become the main mechanism of consumer loans. It also made up the imperfect and vacancy of banks and other financial institutions in the credit market and developed a new direction for financial business.

With the gradual improvement of the relevant legal system, it is visible that the development of foreign consumer finance companies benefits from two aspects. On one hand, the national social credit system is becoming more and more perfect; on the other hand, the concept of social consumption tends to consumer credit. The perfection of social credit system can provide credit support for consumer finance company's business, while the consumption idea provides a broad market demand.

3.1.1 The Regulation on Consumer Finance Companies in the USA

The premise of regulation on American consumer finance companies is sufficient legal basis. The federal government of the United States also had enacted a series of acts for consumer finance in the last 10 years, and initially formed a complete set of legal systems. The consumer finance industry in America was restricted by many federal acts and implementing rules, for example, Truth in Lending Act (TILA), which was promulgated in 1968 and significantly modified in 1980, was the earliest promulgated in the field of consumer credit and could adjust the market-credibility in America; air Debt Collection Practice Act (FDCPA), promulgated in 1978 and Equal Credit Opportunity Act (ECOA), promulgated in the same year. All of these acts provided legal support for American consumer finance companies in their development. In addition, Fair Credit Billing Act (FCBA) was specifically introduced in 1974, and after that, Electronic Fund Transfer Act (EFTA) was promulgated soon. They both regulated the relationship between borrowers and lenders. However, under the political and economic system of the United States, almost the specific provisions on consumer finance companies belong to state legislation, especially the licensing procedures, lending rates and information disclosure obligations. Each state has its own characteristics.

Upon sufficient legal basis, the external regulation on consumer finance companies mainly reflected in market access and market-operation. With respect to the regulation on market access, some conditions and principles in setting up a consumer finance company, which United States Federal Trade Commission and Federal Reserve Board are responsible for reviewing, are similar to China. These include checking the background of major shareholders, directors and senior managers, their net capital and other factors. Although the requirements of initial capital of each state are different, the amount is generally small, for example some states require only \$25,000. In terms of time limit, the entire process of approval only spends 60 to 90 days, which is 9 months shorter than the bank's approval time limit.

As regulation on market operation is concerned, the review factors are mainly reflected in restrictions on funding sources, lending rates and the protection of debtors. American consumer finance company's business scope is broad, including buying cars and durable consumptive goods, repaying credit cards— pay for the loan, marriage, house decoration- and paying medical expenses and so on. First, the funding sources of consumer finance companies can't absorb general public deposits but can raise funds by borrowing funds from banks, inter-company borrowing, issuing corporate bonds and commercial paper, IPO and turning asset to securities. Second, every state in the USA is not same on regulations on lending rates because lenders mainly come from working-class or career-unstable groups. So the risk of the loan is higher than other kinds of loans, and most states in the USA have high interest rates. For example, if you want to grant a loan in Louisiana, the interest rate ranges from 29% to 35% in accordance with different amount and duration. Third, lenders are not allowed to receive more loan than that of legal permission, and they must return the overcharged money. Otherwise, the lender who does not want to return the money will pay twice the cost of the loan or ten times the extra charge, but no more than 100 times (Zhang, 2009). Furthermore, consumer finance companies still should disclose all direct and indirect costs in order to ensure for debtors' related rights, by which debtors can supervise consumer finance companies. Creditors in the USA should mark some warning clauses which debtors can notice when they read loan contract. For example, the consumer has right to cancel the loan contract if they are tempted by the seller, and the borrower has the right to choose any necessary insurance according to current policy (Ibid.).

Since most specific provisions on consumer finance companies belong to State legislation, the Uniform Consumer Credit Code (UCCC, 1968) couldn't be generally adopted in every state. American states have their own legal framework. Now interest rate, date, type of loan, size of loan, and the highest rate of credit insurance in each state are different. It not only gets interstate operators into trouble, but also brings government challenges in regulating consumer finance companies.

3.1.2 The Regulation on Consumer Finance Companies in Japan

The customers of Japanese consumer finance companies are citizens. The consumer finance company grants loans within the limits permitted by national law in accordance with consumer demand. Also, the legal basis for Japanese consumer finance companies is also sufficient, including the Money Lending Business Act which was formulated in 2005, Interest Rate Restriction Law and the Money-Lending Business Control and Regulation Law which were both revised in 2006, and the Installment Sales Act revised in 2008, and so on. All of the above-mentioned laws strengthen financial regulation in Japan.

With respect to regulation on market access, the Financial Services Agency is responsible for reviewing qualifications of lenders, net assets, and examining qualifications of business managers. Regulation on market access of consumer finance companies is more focused on the subject qualification and nature of loan organizations. If loan organizations engage in loan business, they must be registered. It is conducive for the suppression of illegal lending institutions. As for regulation on net assets, Japan government has raised market-entering standard to ensure the appropriateness of activities of borrowers. The borrower's net assets are required to be no less than 50 million yen whether they are citizen (originally 3 million yen) or company (originally 5 million yen). For those who qualify of the minimum net asset requirements of lending institutions, the terms are divided into two phases. In the first phase, their net asserts must reach 20 million yen within one and half years after the commencement of the Money-Lending Business Control and Regulation Law. In the second phase, their net asserts must reach 50 million yen within the next two and a half years after the first phase. As for the regulation on qualification of business managers, Japan government introduced the examination system of Business Manager Qualification. Each business department must appoint a manager who passes the above-mentioned exam, which becomes a mandatory requirement to ensure business compliance (Ibid.).

As for the regulation of market operation, Japanese laws mainly concern interest rate and business. As for interest rate, Japanese government stipulated that the annual lending rate is not more than 15%-20% and the excessive part is invalid. The amount of credit is no more than 1/3 of the borrower's annual income. While Japanese Supreme Court also adjudges all consumer finance companies to return the over-charged part to borrowers (So far there are still lawyers in Japan advocating this right for borrowers). This restriction makes many loan organization closed down, for instance Takefuji, which was one of the biggest loan-companies in Japan. Many Japanese consumer finance companies survived through mergers or acquisitions after the promulgation of this decree (Zhang, n.d.). In terms of business regulation, Japan has set up a special credit investigation agency, so that consumer finance companies can obtain the borrower's credit from a dedicated credit investigation agency. In order to effectively control the total amount of borrower borrowing and achieve the indirect supervision on funds, the consumer finance company has the right and obligation to investigate the repayment ability of the borrower. For the collection of loans, Japan has limited the time and manner of the collection of consumer finance companies. For instance, companies are not allowed to collect loans continuously for 24 hours and companies shall not threaten the borrower. At the same time, the debtor's ongoing debt collection activities during the day were included in the prohibition list.

Strict legal constraints gradually led consumer finance company into a development track of legalization and standardization (Zhang, 2016). However, we should also note that in 2006 Japan stipulated that the interest rate exceeding the limit of the "Interest Rate Restriction Law" would be invalid, the annual interest rate of the consumer loan company should not exceed 20%, and that the excess portion of the interest should be returned to the lenders. The provision, which was fully implemented from June 18, 2010, hindered the development of Japan's consumer finance companies at the time (Shi, 2016). As of June 18, 2010, more than 60% of nearly 4,000 registered consumer credit companies in Japan have not yet registered with the credit information agencies, and they are prohibited from issuing new loans. 2011 is the most difficult year for Japanese consumer finance industry, and the speed of economic development had slowed after 2011 (Ibid.).

3.1.3 The Regulation on Consumer Finance Companies in the UK

Strictly speaking, the British consumer finance company refers to the consumer credit company whose main business is specifically designed for those with lower credit rating and small personal credit customers. These companies offer customers a higher interest rate (such as a rate of £25 for a fixed amount), a smaller amount (£50-750), and a quicker payment (in the same day) (Xu & Wang, 2010).The legal basis for regulation on consumer finance companies in the UK is mainly embodied in the Consumer Credit Act (CCA) of 1974, the Data Protection Act(DPA) promulgated in 1998, and the Financial Services and Markets Act promulgated in 2000 and so on.

After the second big bang in the end of 20th century and the beginning of 21st century, the UK began to implement government-driven financial integration characterized by unified financial regulation. The financial regulatory reform has made a major breakthrough and made the UK become the first country to implement unified financial supervision in the world. However, because of the complexity of British financial companies and the UK financial institutions' long pursuing the principle of specialization and self-regulation, the regulation is also dominated by self-regulation by the industry association. In the UK, it must be authorized by the Office of Fair Trading (OFT) to engage in consumer credit. Moreover, the Financial Services Authority (hereinafter referred to FSA) began to play a unified regulatory function of financial institutions in 1998, and it became the most authoritative financial regulatory agencies in the world. However, in fact, the industry self-discipline in the UK financial regulatory system plays a more important role (Ibid.).

As to regulation of market access, the UK has a loose licensing system, which requires that agencies engaged in consumer credit, consumer leasing or supplementary credit operations should acquire a license (Zhou et al., 2001). The issuance of licenses belongs to the authorities of FSA. The organizations that are not allowed to engage in consumer credit transactions would bear relevant civil, administrative, or criminal liabilities.

In terms of regulation on market operation, the UK has established debt management services and debt collection systems. The UK clarifies the debtor-creditor relationship between the applicant and the holder by law, and regulates bad debt collection behavior. The UK has imposed sanctions on lenders who damage the interests of consumers. For example, the UK strengthened the regulation on pre-contract behavior of lenders and the marketing practices of lenders before credit transactions. In addition, the UK imposed restrictions on the lenders who sell outside the place of business and prohibited lenders from marketing to minors (Zhou & Xia, 2002).

3.2 The Reference Significance of Legal Supervision on Consumer Finance Companies in Other Jurisdictions to China

First, in the field of consumer credit, other jurisdictions' regulatory experience is worthy of learning for reference. In 2009, China promulgated the Measures, and China's consumer finance companies started its preliminary pilot. In 2013, the Measures were revised in terms of investor type, the proportion of investor's shareholding, business area, and business operation. In China, the "Measures" is the only current legal document enacted specifically for consumer finance companies. Due to the nature of company and its business, consumer finance company will also be subject to the Banking Supervision Law of China, Company Law of China, General Rules for Loans promulgated by People's Bank of China, and other laws and regulations.

The federal government of the US has enacted a series of acts for consumer finance in the past 10 years, and initially formed a complete set of legal systems. Japan has paid special attention to the default risk and the liquidity risk of consumer finance companies, and has introduced a number of specific laws and regulations, for example, the Money-Lending Business Control and Regulation Law for business regulation, and Interest Rate Restriction Law for interest rate regulation. In context of its own financial regulatory regime, the UK has focused on strengthening legislative oversight on market access and consumer protection. Whether in terms of consumer finance company or in terms of consumer credit, other jurisdictions have a lot of specific laws and regulations.

In China, the provisions in the "Measures" and the "Banking Supervision Law of China" are relatively specific to consumer finance companies. But from the 2009 consumer finance company pilot set up. In the past eight years, China has not yet introduced more refined legal regulation. Other related laws and regulations are macroscopic, and are difficult to cover this new form of economy. Of course, China should avoid having a variety of different legal frameworks, which may bring problems to regulation and management. In addition, China should also take into account the actual situation of consumer finance companies so as to avoid preventing the development of consumer finance companies.

Second, as for the regulatory body, the main agencies in the USA are the Federal Trade Commission and the Federal Reserve Board. In Japan, the main institution is Japan Financial Services Agency. After the second financial big bang, the UK also established unified financial regulatory model. However, the UK financial institutions have long pursued the principle of specialization and self-regulation; therefore, self-regulation has become a unique feature of its regulation on consumer finance company. In China, the "Measures" of 2013 abolishes the restrictions on business area of consumer finance companies. Now the main regulatory body of consumer finance company in China is the CBRC. Owing to different development levels of various regions, the business development of consumer finance company would be different, which will bring regulatory body with pressure and challenges. Learning from British the model of self-regulation, we could ease the pressure of regulatory body and could provide support for the off-site business of consumer finance companies. Especially in the area of capital supervision, the combination of unified regulation and self-regulatory supervision can better monitor company's business operations and reduce risk.

Third, funds are an important guarantee for both existence and development of the company, so regulation of funds is very important. The supervision on consumer finance companies mostly involves interest rates. In addition to maintaining the interests of borrowers, the main purpose of supervision is to ensure adequacy and liquidity of company's funds. For example, the US interest rate restrictions are looser, and most states in the US basically set a higher interest rate standard. While in Japan, the regulation on interest rates for protecting the interests of borrowers is harmful to the interests of consumer finance companies, and the promulgation of the regulation makes many companies fail. Therefore, in this regard, we can learn from the different standards of the USA and give each region appropriate discretion to ensure the interests of company and consumer. Of course, this approach should conform to economic development of various regions in China and should obey the guidance from central government.

Fourth, we should strengthen protection of borrowers' rights and interests, which is an important aspect of the regulation of funds. The USA, Japan and the UK all emphasize the protection of rights and interests of borrowers to vary degrees. The American "Fair Debt Collection Practice Act" of 1978 regulates the relationship between consumers and lenders or related agencies. In Japan, the "Loan Industry Act" in 2010 regulates the lending rate ceiling and prevents usury, and Article 21 of the "Lending Business Control Act" provides that "companies are not allowed to collect loans continuously for 24 hours and companies shall not threaten the borrower" and so on. In the UK, the "Consumer Credit Act" of 1974 increases the protection of consumers. However, in China, only Article 31 and Article 32 of the "Measures" stipulate the legitimacy of protection and collection of personal information of borrower, i.e. consumer finance companies shall not use the improper means such as threat, intimidation and harassment. The protection of human rights and interests is insufficient. In foreign legislation, the value orientation of the protection of borrower's rights and interests is emphasized. This is what we could learn. In addition, we also should not limit the development of consumer finance companies immoderately.

4. SUGGESTIONS ON STRENGTHENING LEGAL SUPERVISION OF CHINA'S CONSUMER FINANCE COMPANIES

The internal supervision of consumer finance companies needs to optimize the environment of corporate governance, improve the optional system of senior personnel, innovative the model of business, and strengthen risk prevention and controllability. All mentioned above make the relevant supervision and management better. For external supervision, this section will make recommendations on some issues of external regulation.

4.1 To Improve Regulatory Laws and Regulations on Consumer Finance Companies

Improving both external and internal supervision of consumer finance companies need to improve the relevant laws and regulations. From the aspect of macro legal system, the legislation on consumer credit in other jurisdictions is complete. Although there is no specialized legislation on consumer finance company in some countries, we can find the legal basis from their consumer credit laws and regulations. China's consumer credit market is affected by a number of factors, including frugal consumption, imperfect social security system and imperfect credit system. China's consumer credit market hasn't been fully developed for a long time, which makes a lack of relevant legislation on consumer credit system. With the development of consumer credit market and the improvement of personal credit system, we should speed up consumer credit legislation, especially on interest rate, collection, borrower protection, loan condition and so on. In addition to revising *General Rules for Loans*, *Guarantee Law of China*, *Contract Law of China* and other laws and regulations so as to regulate related issues of consumer finance, we should formulate some workable laws and regulations such as *Consumer Credit Act* to improve the relevant legislation level of consumer finance companies, forming a more targeted, unique set rules of consumer finance company. At the same time, with the establishment of consumer finance companies, the establishment of branches would no longer be subject to geographical restrictions, and cross-regional consumer finance companies would gradually appear. As for the central government regulation of consumer finance companies, we could borrow the management regulations of the USA for reference and improve related legal provisions of consumer finance companies in China. Notably, we need to have a macroscopic legal standard to clarify the range of relevant standards to avoid forming a variety of legal frameworks which bring problems to regulation.

4.2 To Strengthen Legal Protection of Rights and Interests of Borrowers

In aspect of external supervision, the lack of legal protection of borrowers' rights and interests is a major shortcoming of the current "Measures". Therefore, the relevant laws of protection of the rights and interests of borrowers should also be established. China could refer to *Fair Credit Reporting Act* (FCRA), *Uniform Consumer Credit Code*, *United States Bankruptcy Code* and other acts to develop laws and regulations so to adapt to China's conditions. For example, in USA, lenders are not allowed to receive more loan than that of legal permission, and they must return the overcharged money. Otherwise, the lender who does not want to return the money will pay twice the cost of the loan or ten times the extra charge, but no more than 100 times. The consumer has right to cancel the loan contract if they are tempted by the seller, and the borrower has the right to choose any necessary insurance according to current policy. Therefore, Chinese law can draw on these norms to stipulate the rights and obligations of both sides. The relevant laws of China can draw on these rules and make legal norms more effective in coping with changeable situations. At the same time, China should establish a special protection agency for the rights and interests of borrowers to strengthen.

After the financial crisis, many developed market economy countries got to know that the regulation of consumer finance companies is divided into two areas, i.e. rules of promoting consumer finance companies and the protection of the interests of borrower. Therefore, foreign countries have strengthened the legal protection of the interests and rights of borrowers. For example, Japan's "Interest Rate Restriction Law", or established special borrower protection agencies such as FSA in the UK. At present, the protection of borrowers in the "Measures" in China is limited to collection methods and personal information protection (which are mentioned in the above), other aspects of the rights and interests of the borrower are seldom involved. With further development of consumer finance companies in China, the disputes between borrower and consumer finance company will inevitably increase. For the time being, relying on our current regulatory measures and legal norms may encounter difficulties. Therefore, China should learn from the relevant experience of Japan and the UK. While avoiding a tragedy similar to that of Japan, we could formulate detailed provisions related to the interests and rights of the borrower and specifically set up borrower protection agency to play a post-supervisory dispute resolution function. Certainly, another important role for the agency is to protect borrower's rights and interests.

Therefore, to protect the rights and interests of borrowers, we should improve the legal provisions concerning borrowers and establish a special borrower protection agency as soon as possible.

4.3 To Strengthen Supervision on Funds

During the development and operation of consumer finance company, the funds are inseparable from its business innovation, business cooperation, strategic development and other aspects. The problem of flowing money can easily trigger a series of risks. At each stage of the company operation, effective supervision on funds is conducive to regulation on consumer finance company business, which is also an important aspect of external regulation.

4.3.1 To Strengthen Supervision on Funds

The revised "Measure" in 2013 clearly specifies the conditions of financial institutions and non-financial companies as main investors of consumer finance companies, for instance investment source should be genuine and legitimate. In addition, it is not allowed to use borrowed money as an investment stake. The registered capital of a consumer finance company shall be paid-in monetary capital which shall be paid once and for all. The floor registered capital shall be 300 million yuan or an equivalent amount of a convertible currency. At the same time, the "Measures" also stipulated the regulatory indicators for consumer finance companies to ensure the source and adequacy of funds. Combined with company's business situation, the laws in China have made relatively perfect rules for regulation on funds when the company is established.

However, with regard to the source of funds and the adequacy of the funds, the source of funds is limited because of the characteristics of consumer finance company itself. Consumer finance companies do obtain business license from CBRC, and they may lend their own funds to borrowers. In addition, they may acquire funds through borrowing from peers and get other sources of low-cost funds. However, most prominent Internet consumer finance companies do not have these above-mentioned advantages. Therefore, in the second half of 2016, driven by financing needs from consumer finance institutions and traditional financial institutions, the asset-backed securitization (hereinafter referred to as ABS) products related to consumer finance are becoming more and more normalized. Meanwhile, to ensure the adequacy and liquidity of consumer finance company is becoming an important aspect of regulation on consumer finance companies. At present, the CBRC regulates the ABS of Bank of China and the ABS of some securities institutions. How other consumer finance companies are able to ensure adequate liquidity is still a question. In addition, the regulation of the ABS also lacks clear legal positioning. Therefore, on the one hand, it is important to promote the ABS of consumer finance company to ensure abundant flow of funds for consumer finance companies and reduce the pressure of financing. On the other hand, it is necessary to strengthen supervision on cash pooling, such as adopting flexible standards that satisfy the standards of consumer finance companies with their own characteristics rather than the standard of traditional financial institutions to ensure loans and business volume in legal regulation. Of course, it requires flexible regulation from regulatory agencies. Simultaneously, the consumer finance companies themselves need to strengthen risk controls.

Moreover, it's worth improving companies lending. In practice, in order to ensure their performance and avoid the limitations of the "Measures", many companies or cooperation channels deliberately ignore the risks associated with the generally relatively high NPL ratio, lending funds in the name of consumption to the borrower while the actual use of funds lacks uninterrupted supervision. Although this practice ensures the amount of credit, it sacrifices the amount of money to be returned, even the benefit of the company. Although company is committed to risk control, in fact, it is not enough. Therefore, First of all, our laws and regulations should develop legal specific clear upper limit standards of the NPL ratio of consumer finance companies. Second, we should strengthen the risk awareness of both the consumer finance companies and cooperation channels, and we should strengthen the obligations and responsibilities of partners. For the time being, China should review the qualifications of the partners and consumer bills. In addition to this, China may build a flexible management agency or platform for consumer finance. Certainly, the flexible management agency or platform needs to be combined with lots of consumer scenarios. And to do that, our regulatory agencies need to give qualified institutions or platforms certain authority. The establishment of management platform is conducive to achieving uninterrupted supervision on funds. And the establishment of management platform is conducive to avoiding the unknown direction of funds.

Finally, in the aspect of the funds to be returned, consumer finance company itself is rarely involved in the collection business. Most companies outsource such services to cooperative corporation. Faced with this situation, China should strengthen the regulation on information docking and guide the development of feasible operational regulations. At the same time, only relying on consumer finance company's own risk control cannot avoid the joint fraud of cooperative service providers. The establishment of a flexible consumer finance management platform is an effective way to achieve uninterrupted supervision on funds. The reasons to do so include as follows: On one hand, it would not affect the business of consumer finance companies and cooperative service providers; on the other hand, the real use of funds can only be achieved through the financial management agencies or platforms. And the circulation process will be transparent and controllable, which is helpful for reducing regulators' pressure.

4.3.2 To Establish a Flexible Management Platform for Consumer Finance

The consumer finance management platform can be established in banking financial system or independently established outside the banking system. The consumer financial management platform is directly supervised by the CBRC. Furthermore, it also needs to be given legal status by law, making itself the only channel of the funds flow of consumer finance business.

When a consumer financial company lends funds, the funds would be put on the management platform, and the management platform would pay for borrowers directly. This platform can avoid illegal intentions, and can avoid the fraud risk of cooperation service providers, achieving the authenticity and effectiveness of funds. When consumer finance company recovers funds, borrower should return funds to the management platform. For malicious customers, the management platform can limit or cancel their consumer qualification on platform for a certain period of time, and send their records to consumer finance companies. In this way, the flow of borrower's consumer loan is restricted or blocked. This approach can avoid the continued increase in NPL rate, and can provide information resources for the construction of national personal credit system. At the same time, the platform would record consumer finance company's loan behaviors and send the records to register customers, which could make the business efficiency of consumer finance companies transparent. It is also conducive to forming benign competition within this industry and cracking down shell companies. For cash loans, consumers need to submit the vouchers to ensure the real consumer intent because of the low consumption quota.

It will need the leadership of the CBRC to set up a flexible management platform and control related risks. Further, it also needs the relevancy of the financial system and the consumption platform. The consumer finance management platform is the only media of the funds flow of consumer finance business and is an important part of national personal credit system. The establishment of consumer finance management platform will be of more significance for perfecting financial system and capital management in China.

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