

# Research on Risks of Internet Finance and Legal Preventive Countermeasures

Zhao Yuwen

Armed Police Engineering University, Xi'an, Shaanxi, 710086, China

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**Abstract:** Internet financial platform has developed well in recent years because of its characteristics of convenient investment and rich income. However, it cannot be ignored that there are still various risks and deficiencies of legal regulation behind the booming development of Internet financial platform. Based on the author's study and practical experience, this paper first analyzes the main types of Internet financial risks, and then puts forward the legal preventive countermeasures of Internet financing platform.

## 1. Introduction

On December 16, 2015, General Secretary Xi Jinping also expressed his views on the Internet economy and its illegal risk regulation at the World Internet Conference. The Internet finance has just developed in China, and it is different from the developed capital markets in North America and Europe that the Internet finance in Europe and the United States is mainly focused on crowd-funding, and its research has been relatively mature, what is more, it forms its corresponding regulatory legal system and institution system according to the research results[1]. At present, the research focus of Internet finance in China is still in the field of risk control and legal supervision. Therefore, China should carefully comb the existing financial laws and regulations, and draw up a set of legal regulation scheme to promote the development of Internet finance and to seek the coordination of financial order supervision.

## 2. The Main Types of Internet Financial Risks

### 2.1 Legal policy risk.

The relative fuzziness of Internet financial legislation makes it not good for the prosperity and development of financial markets. Although several regulations were promulgated before 2005, such as the Law on Electronic Signatures of the People's Republic of China, the Interim Measures for the Administration of Internet Banking, and the Service Specification for Network Trading Platforms, but it was challenged by new business type from Internet finance. Firstly, the legal position of the organization is not clear and business boundaries are blurred. The uncertainty of boundaries leads to regulatory function intersection that you are responsible, I am responsible, or everybody is responsible, or regulatory vacuum that everyone has to manage, ultimately nobody cares. The former increases the input of administrative cost and reduces the administrative efficiency, while the latter inevitably touches the bottom line of illegal fund-raising and illegal management, and enters into the legal grey zone. Once breaking through the bottom line, Internet finance will become a shadow bank or treasury[2].

### 2.2 Systematic technical risk.

The developed computer communication system is very important to the completion of Internet financial business. If the nature of Internet finance is credit, then the core of Internet finance is probably technology. In addition to the "labor pain" in the development of technology, such as the imperfection of key management and encryption technology, the poor security of TCP/IP protocol, the easy spread of virus, network fraud, computer hacker attack, and the loss of funds of trading subjects, the total paralysis of computer system will also cause the business not to work properly. With the rapid development of the Internet financial market, Yu Ebao processes countless data and

information every day. Compared with traditional payment methods, third-party payment is much simpler and more convenient. However, the user information security and transfer security in transaction process is worrying[3]. In the third party payment, the party can pay or even withdraw successfully only through inputting the relevant information of the bank card, name and certificate number and mobile phone number. In the transaction practice, the payment behavior without user authorization is most common and is also the most worrying behavior for the customer, which depends on the development of the technology level, the perfect payment technology and the verification mechanism to a great extent.

### **2.3 Information security risk.**

With the development of Internet technology, the carrier of information disclosure from the original paper carrier to the network carrier is no longer confined to the expression hole. The traditional way of information disclosure is carried out in the paper version, and the content can not be arbitrarily deleted or modified unless the corresponding explanation is given. However, the information disclosure in the network environment is more manifested as the temporary of information because of the pursuit of information timeliness. Not only the speed of information update is amazing, what is more, some of the misguided and even illegal information is also deleted in the tendency of lightning to hide others ears by the parties because of their clever circumvention of the law. As a result, it is difficult to obtain the relevant evidence materials in the later period of accountability, and the responsibility can not be confirmed.

### **2.4 Financial crime risk.**

With the continuous development of Internet finance, the combination of traditional money laundering and Internet technology makes the way of money laundering more covert and more specialized, and prevention work is more difficult to carry out. The risks of BitCoin laundering is divided into two categories, one is the potential risk that occurs only if BitCoin enters the circulation area extensively. The other is the existing risk of money launderers using BitCoin as a tool to eventually put on a legal coat and convert it into legal tender, which is also the main risk. On December 5, 2013, the People's Bank of China, together with the Ministry of Industry and Information Technology, the Banking Regulatory Commission, the Securities Regulatory Commission and the Insurance Regulatory Commission jointly issued the Circular on Preventing the Risk of BitCoin, in which the government's current attitude towards BitCoin is clearly defined and the obligations of BitCoin trading platforms for anti-money laundering is particular emphasized. However, due to the uniqueness of BitCoin, the standard of anti-money laundering obligations of BitCoin trading platform is not well applied, so industry self-discipline is especially important at present[4].

## **3. Countermeasures on Legal Risk Prevention of Internet Financing Platform**

### **3.1 Raising the entry threshold of Internet financing platform and defining the minimum amount of registered capital.**

Raising the entry threshold from the source is another recognition of the platform's own credit by the local financial supervision department based on the characteristics that Internet financing platform is virtual and investors are difficult to investigate the platform's credit before investing. The rejection of unscrupulous businesses and individuals from the source provides a healthy environment for the Internet finance industry, which also helps to reduce the risk to investors because of their low level of awareness of the platform. The author believes that when the local financial supervision department registers and puts on recording the Internet financing platform, it can set different minimum registered capital according to the proportion of the investment income of the financial products engaged in, at the same time, and it should make sure that the registered capital should be paid-up capital. In the specific legislative design, the author believes that reference can be made to the provisions of article 127 of the Securities Law of the People's Republic of China.

It can adjust the minimum amount of registered capital, but not less than the minimum requirement of registered capital according to the principle of prudent supervision and the risk degree of the network financial platform made by the State Council Banking Regulatory Authority.

### **3.2 Perfecting the exit mechanism of Internet financing platform and establishing liquidation system.**

At present, there is a blank in the exit regulation of Internet financing platform by laws and regulations, which leads to the common phenomenon that the platform runs out after absorbing investors' funds. Interim Measures for the Management of the Business Activities of Network Lending Information Intermediary Institutions only stipulates the premise of the legal liability that the platform will be subject to administrative punishment if the the platform has not reported major risks and disposition in accordance with the regulations, as for the specific circumstances under which the platform should withdraw from the Internet financial market, and what legal procedures should be performed before withdrawing from the market, it does not define clearly. The author believes that because the Internet financing platform needs to be registered with the commerce and industry bureau, and recorded by the financial supervision department of the place of registration after obtaining a business license, it is similar to the formalities for the establishment of a company in our country that both require business registration. On the issue of setting up an exit mechanism for the Internet financing platform, it may refer to the relevant provisions of enterprise bankruptcy law in China[5]. If the Internet platform cannot operate normally, it can introduce the concepts of bankruptcy application, administrator, creditors' meeting, and so on. In the event of a legal situation in which the financial platform is unable to pay off its debts due, the debtor (that is, the financial platform) can apply to the court for reorganization, settlement or bankruptcy, and the investor can apply to the court for the debtor's reorganization or bankruptcy, identify the debtor's property and liquidate it in order to prevent the platform from running away and the interests of investors and financiers are impaired.

### **3.3 Introducing financial management platform risk fund and defining the appropriate defendant status of the platform and the role of "quasi intermediary".**

When a financier defaults on a debt that falls due, investors are at risk of having a hard time suing. In order to solve the above problems, the author believes the platform should be responsible and check the credit of the financier when the financier enters into the platform to apply for financing because the platform plays the role of "matchmaking". In litigation, the investor as one of the litigants will bear the huge cost of finding and verifying the defaulting party, and will affect the normal litigation efficiency because of the uncertainty of both parties in the relationship between creditor's rights and liabilities. It should be noted that the Interim Measures for the Management of the Business Activities of Network Lending Information Intermediary Institutions characterizes the Internet financing platform as an intermediary, and it is not responsible for the proper performance of the specific debts of the financiers. However, in the whole process of financing transaction, only the Internet financial platform is relatively certain, and it has the obligation to audit the credit of the financier. Therefore, the author thinks that when the financier defaults, the investor can sue the financial platform as the defendant to solve the dilemma of the investor litigation.

Then, when investors find the financier in default, they are possible to make sure the appropriate defendant of the financial platform based on the laws and regulations considering the convenience of litigation. As for how the platform is responsible, the author thinks that when the financier enters into the platform to finance, the platform can set up the venture funds by collecting a certain proportion of funds. When the financier defaults, the platform pays to the investor for financier through the venture funds, then it recovers from the defaulting financing party. The establishment of venture funds may be regulated by the China Securities Regulatory Commission in accordance with articles 116 and 117 of the Securities Law. Certainly, the above assumption of the author has some conflict with the idea of defining the platform as an intermediary institution in the Interim Measures for the Management of the Business Activities of Network Lending Information Intermediary Institutions. According to the Contract Law, the "quasi intermediary" is defined as the person who

only engages in intermediary service and gets paid for making the contract established, but not be responsible for whether the contractual obligations of the parties to the contract are fulfilled or not. Considering the non-specificity of the financier and the specificity of the information mastered by the platform, when the financier defaults, the platform will also bear the responsibility once the financier sues the financial platform.

#### **4. Summary**

Internet financing platform is a new mode of financial management, but the current laws and regulations are still blank, people are facing many risks when choosing Internet financing platform for investment financing. The author believes that the Interim Measures for the Management of the Business Activities of Network Lending Information Intermediary Institutions has positive significance to the operation of Internet financial management platform and the existing legal regulation of supervision. At the same time, only by referring to the relevant provisions of China's securities law and enterprise bankruptcy law, raising the entry threshold of the platform, introducing the exit mechanism centered on the liquidation system, and clarifying the legal nature of the Internet financial platform in litigation "quasi intermediary" can we solve the litigation difficulty in the infringement of investors' rights and interests, which is also an effective way to avoid the risk of Internet financing.

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