

## **A Study on the Legal Regulation of Intercivil Lending**

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**Abstract:** At present, due to the rapid development of the Internet economy, the social impact caused by high interest rates of private lending is far greater than in the past, but China still lacks legal regulation of high interest rates of private lending, so it is of practical significance to study the issue. In the face of several major problems at this stage, I believe that the high interest rate of private lending interest rate should be identified as more than 36% of the actual annual interest rate, and the use of legislation plus judicial interpretation of the collocation to regulate the disguised high interest rate of private lending, only with professional and high interest private lending included in the scope of legal adjustment, but also the need for the state to introduce a series of incentives to make up for the lack of funds. The law is not omnipotent, and it is more important for the state to promote economic development in a multi-dimensional and coordinated manner.

### **1. Introduction**

As an important component form of private financing, private lending occupies an important position in China's capital market. In recent years, due to the rapid development of finance and other fields, private lending has also given rise to a variety of forms, including high interest rate private lending among professional money lending, which has a relatively bad impact on society. However, at present, China still lacks the regulation of it. Due to the rapid development of the internet economy, the forms of private lending are also changing rapidly, and the social impact caused by high interest rate private lending will be far greater than in the past, and this reality is still to be solved. And in today's academic world, there are many studies and discussions on the crime of private lending at high interest rates. Therefore, the legal regulation of high interest rate private lending in professional money lending is a subject worthy of study, and the study of this issue has certain practical significance[1.2].

### **2. Current Status of Research**

#### **2.1 Current Status of Domestic Research**

In terms of jurisprudence, the separate regulation of private lending at high interest rates in the context of professional lending is conducive to alleviating the "expansionary pressure" of the crime of illegal business operation and safeguarding the modesty and rigour of the law. In economic terms, private lending at high interest rates that exceeds the limits of freedom of contract can, on the one hand, affect the safety and stability of the financing market and, on the other, erode social justice. Therefore, there is a need to regulate private lending that is professionally and highly profitable[3].

#### **2.2 Current Status of Foreign Research**

In recent years, there has been an increasing number of studies on the legal regulation of private lending at high interest rates in China, but Western countries do have more experience on this subject. Currently, both European and American law systems and civil law countries have made corresponding legislation to regulate private lending at high interest rates. In the United States, it is up to the states to define whether lending involves high-interest private lending, and each state has its own statutory cap on commercial credit rates, beyond which it is illegal. There are also regulations in Canada, France and Australia[4].

### 3. Existing Problems and Analysis of Causes

According to the main views of the current academic community, scholars in China are more in favour of two views that the lending rate should not exceed four times the LPR and 36% of the annual interest rate[5]. The scholars who hold the first opinion that the high interest rate of private lending rate is defined as more than four times the LPR believe that the benchmark lending rate can reflect the market changes in a timely manner and that adopting four times the LPR as the measure of high interest rate of private lending is more conducive to economic construction, reflecting but bringing with it the problem that the benchmark lending rate is a changing concept and does not meet the clear requirements of criminal legislation[6]. LPR rise, the loan contract is concluded when the high interest rate of private lending, to recover the loan is no longer a high interest rate of private lending, then the two ways to identify inconsistent. The adoption of the standard of four times the LPR is prone to cause problems in the identification of private lending at high interest rates, and is more easily manipulated, which can cause some difficulties in practice. Scholars who adopt the second standard, i.e. an annual interest rate not exceeding 36%, believe that this standard is relatively more in line with socio-economic needs and is superior in terms of regulation[7].

In addition to the above problems, there are still problems with private lending in China, including the controversial interest rate standards for private lending at high interest rates, the possible difficulties in regulating private lending at disguised high interest rates, the fact that there is still a gap in the legal regulation of private lending at high interest rates, and the fact that the legal regulation of private lending at high interest rates is likely to cause a shortage of funds in the financing market[8].

### 4. Responses

The issue of regulating the interest rate of high interest rate private lending is the focus of the regulation of high interest rate private lending. Based on the analysis of the two interest rate standards, I believe that the interest rate of high interest rate private lending should be recognized as the actual annual interest rate of more than 36%, on the one hand, the adoption of this interest rate standard is in line with the requirements of precise legislation, the judge can not implement different measurement standards for the same type of cases. On the other hand, it is easier to apply in practice. At present, China's judicial enforcement and settlement capacity is still lacking, and such a management model is easier to operate and can give the market a reasonable expectation, compared to the adoption of the standard does lack a certain degree of scientific, but still desirable, and more in line with the actual needs[9].

According to data from the Magistrates' website, the number of private lending cases with high interest rates decided using the 36% interest rate has been increasing since 2018, which is sufficient to see that the 36% figure is now more commonly used in practice.

For the regulation of disguised high-interest private lending, legislation plus judicial interpretation should be adopted, and in the article regulating high-interest private lending separately, it should be clearly written that “this article regulates all forms of high-interest private lending”, that is, at the legal level, all types of high-interest private lending are regulated, which fundamentally reflects This is to reflect the spirit of our legislation and to give reference to the courts when the relevant interpretation is not yet available. The specific determination of what constitutes disguised high interest rate private lending should be subject to judicial interpretation by the two high courts at various times, a feature common to laws relating to the economy. This solution strikes a balance between stability and flexibility, and also reduces the uncertainty of the legislation.

By further thinking about the mode of regulation of high interest rate private lending, what form of high interest rate private lending should be regulated, I believe that in view of the needs of China's economic development and respect for freedom of contract, China's high interest rate private lending should not be regulated for the time being non-professional high interest rate private lending, on the one hand, for the freedom of contracting, on the other hand, because of its

occasional and social harm is small, while the regulation is difficult and extensive, should be adjusted in other ways, that is, the contractual agreement to exceed a certain rate of interest is not protected by law. The above are not serious cases. The law regulates private lending with high interest rates as a regular business; multiple lending; that is, with “professional” and “multiple”, so it is professional lending with high interest rates that should be regulated. At the same time, if the amount of private loans with high interest rates is very large, and in view of the frequent violent collection efforts in society, causing serious social impact, the degree of regulation should be reflected in the specific regulation.

Due to the huge profits and the difficulty of financing and borrowing for some specific groups of people, it is inevitable that both the supply and demand sides of the money will inevitably choose private lending with high interest rates. If the law only regulates the supply and demand side, but does not channel the large amount of money demanded by the society, the high interest rate private lending will only return to its original state. In order to fill the shortage of funds caused by the withdrawal of high-interest private lending from the financial market, the state needs to introduce a series of incentives for banks to carry out innovative reforms, and to establish a comprehensive multi-level government-enterprise financing guarantee agency for micro and small enterprises. Provide more financing options for the financing community.

There is no doubt that the legal regulation of private lending at high interest rates to combat private lending at high interest rates is a powerful means of state regulation. But we should also have a clear understanding: legal regulation of high interest rates in professional lending can only be used as a bottom line to prevent, but more importantly, whether a more scientific and multifaceted legal system can be constructed to regulate high interest rates in private lending. To this end, China's legislators and scholars need to continue to explore how to build a scientific and effective financial system system to add to China's economic development and inject fresh blood.

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