

# Strategy Research on Legal Supervision of Private Lending

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**ABSTRACT.** *The Internet plays an irreplaceable role in social development, promoting industry innovation and changing the development model of the industry. In terms of financial business, Internet finance occupies a large proportion of the industry. Its high efficiency, fairness and wide participation have made the public's acceptance of Internet finance continue to increase. Moreover, the private lending market supported by the Internet is developing rapidly, providing funds for small and medium-sized enterprises and individuals, and alleviating the financial pressure on enterprises and individuals. However, due to the imperfect legal system of private lending in our country, there are great disadvantages in the development of the market, and it even has a bad influence on the development of individuals and enterprises. Therefore, this article studies the strategies of legal supervision of private lending, hoping to regulate the private lending market.*

**KEYWORDS:** *private lending, legal supervision, strategy, research*

## 1. Introduction

In recent years, China's real economy has achieved great development. The previous financial market system cannot satisfy the development of small and medium-sized enterprises. This has given birth to the development of private lending, especially Internet lending. With the help of the Internet, private lending breaks through the restrictions on lending location and time, and meets the needs of small and medium-sized enterprises and individuals. However, the interest rate of private lending is relatively high and has been consistently high. This is also a large burden for lenders. In addition, the lack of sound legal supervision has increased the risk of private lending. Therefore, to establish and improve the legal supervision of private lending is an important part of the development of the financial market [1]. The author combines professional knowledge to analyze the strategies of legal supervision of private lending in order to promote the standardized development of financial markets.

## **2. Analysis of private lending**

### ***2.1 The concept of private lending***

Private lending refers to the conduct of financing among and between natural persons, legal persons, and other organizations. Private lending is a civil legal act performed by civil entities independent of financial institutions approved by the national financial regulatory authority, in which the lender lends funds for use by the borrower, and the borrower repays the principal and interest within a certain period of time. The Supreme People's Court of the People's Republic of China issued the newly revised "Regulations on Several Issues Concerning the Application of Law in the Trial of Private Loan Cases" on August 20, 2020. Article 26 is amended to read, "Where the lender requests the borrower to pay interest at the contractually agreed interest rate, the people's court shall support it, unless the interest rate agreed by both parties exceeds four times the quoted interest rate on the one-year loan market when the contract was established. The term 'one-year loan market quoted interest rate' refers to the one-year loan market quoted interest rate [2] authorized by the National Inter-bank Funding Center of the People's Bank of China to release monthly from August 20, 2019." The upper limit has been drawn a new red line, and it is set at no more than 4 times the quoted interest rate of the one-year loan market (currently 15.4%); although the law has been revised, there are still a series of problems in the legal supervision practice.

According to the case of private lending disputes published on August 26, 2020 by China Judgments Online, it was found that one of the judgments tried in accordance with the new rules of the Supreme People's Court involved instalment repayment. This is the first-instance civil judgment of the People's Court of Yiling District, Yichang City, Hubei Province on the private lending dispute between Dong Jinping, Chen Junhong and Yuan Min. The case only judges whether the nominal interest rate is over the line, and does not distinguish between the nominal interest rate and the actual interest rate. It can be seen that there are still great deficiencies in the regulation of private lending by law, and that the relevant legal system is not perfect [3].

### ***2.2 The role of private lending***

Private lending is a product of the development of market economy. The credit business groups of China's formal financial institutions are state-owned large and medium-sized enterprises, which require multiple approval procedures to obtain funds. The financing of this kind of business takes a long time and has higher requirements on the creditworthiness of the enterprise. Small and medium-sized enterprises occupy a large proportion in the market, and they will also have the problem of shortage of funds in the process of development. If funds cannot be raised, the normal development of the enterprise will be affected. The approval of private loans is fast, and the requirements for guarantees and mortgages are low. Both parties can negotiate on interest rates and repayment.

### **3. The necessity of perfecting the legal supervision of private lending**

#### ***3.1 Make up for the shortcomings of private lending***

Due to imperfect systems and laws, private lending has many drawbacks in its development. For example, the interest is unreasonable. Although the financial situation of the enterprise has been improved at that time, the excessively high interest will increase the burden of the enterprise and form a vicious circle. There are also problems such as illegal absorption of public deposits and fund-raising fraud, which have seriously affected the development of the financial market [4]. In addition, information asymmetry leads to short-term capital inflows into a certain industry, which will affect the country's industrial structure.

#### ***3.2 Promote the standardized development of the private lending market***

The improvement of private lending laws can effectively reduce lending risks, provide sufficient funds for the development of small and medium-sized enterprises, and promote the development of the real economy of small and medium-sized enterprises. At the same time, the improvement of private lending laws can also enhance the country's macro-control capabilities, reduce the adverse effects caused by excessive interest rates, control the flow of private capital, prevent the excessive development of a certain industry, and promote the long-term and healthy development of the national economy [5]. In addition, it can maintain social stability and effectively avoid problems such as usury disputes and violent debt collection caused by private lending.

### **4. Problems in the legal supervision of private lending**

#### ***4.1 Unsound laws***

Imperfect laws are currently an important factor affecting the orderly development of the private lending market. The regulatory provisions on the private lending market are scattered in many laws, and their effectiveness is relatively low compared with the relevant legal regulations on formal financial lending. There is no professional and effective law to comprehensively restrict private lending [6]. The decentralization of the law leads to differences in solving problems, which cannot meet the development needs of society. Therefore, it is necessary to establish a sound legal system to regulate private lending.

#### ***4.2 Lack of comprehensive supervision***

The lack of comprehensive supervision is also an important reason for the endless emergence of private lending problems. The incomplete supervision

mechanism makes private lending mostly subject to ex-post supervision. The powers and responsibilities of various supervisory entities are not clear, the division of labor is not in place, and there is no efficient supervision and coordination of private lending. There is also insufficient openness and transparency of private lending, and it is impossible to detect the risks of lending in time and prevent problems before they occur. The method of supervising and investigating legal responsibility after the fact will amplify the adverse effects of the problem.

#### ***4.3 Incomplete credit reporting system***

The credit investigation system is imperfect, especially when online lending is borrowed in a virtual environment, which makes the information of both borrowers and lenders unclear, and there is a great economic risk. Borrowers can fabricate their own information, and the information reviewer's ability to discern information is insufficient. For example, common online lending platforms lure investment and then disappear, and the interests of investors are severely damaged [7]. There is also the leakage of personal information, where lenders sell or use personal information to threaten borrowers for private gain.

#### ***4.4 Inadequate control of online lending risks***

Inadequate risk control of online lending is also a problem that cannot be ignored in the current private lending market. The Internet provides more platforms for public investment and promotes the rate of return on investment. This has prompted many people to transfer their savings to lending platforms, leading to illegal acts such as usury and illegal fund-raising. There is also the risk of money laundering in online lending platforms. Due to the lack of loan review and tracking, coupled with its own virtual nature, the online lending platform itself hides huge risks.

### **5. Strategy analysis of legal supervision of private lending**

#### ***5.1 Raise the public's legal awareness about private lending***

The development of the private lending market requires the establishment of a sound legal system. The private financial market has effectively supplemented the deficiencies of the formal financial market and has greatly promoted the development of my country's economy. Therefore, the state should increase its attention to the private lending market, and protect the citizens' right to free financing from the legal level [8]. The other is to raise the public's awareness of the legal system when participating in private lending. In particular, it is necessary for the public to conduct strict audits on online lending platforms, invest and lend after multiple considerations, and seek legal help as soon as a problem occurs.

### ***5.2 Improve the online loan management system***

Many businesses in online lending are in a gray area that cannot be supervised by law. For this reason, it is necessary for the state and the government to establish a sound judicial system for current online lending and clarify the boundaries of lending activities. Improve the online lending management system, use the system to restrict online lending, make clear provisions on the nature, status, supervisory body, and responsibilities of online lending, and conduct comprehensive legal regulations on related criminal offenses and civil infringements [9]. Strengthen the application of regulatory technology and establish a multi-level regulatory technology system, such as using big data to manage online lending.

### ***5.3 Improve the personal credit system***

Establish and improve the personal credit system. Credit is an important criterion for measuring whether an individual has the ability to borrow. Although China's credit information market has been developing for many years, it has not formed an orderly development system, lacking system planning, qualification certification, etc. There is no effective exchange of information between credit reporting agencies. Private lending cannot be verified on the individual's ability to repay. Information fraud is serious in the virtual world, which harms the interests of both borrowers and lenders. Therefore, it is necessary to establish credit files, review personal information, strengthen cooperation with private platforms, give play to the advantages of the network, and improve the social credit investigation system [10].

### ***5.4 Establish an entry system for the lending industry***

In order to promote the development of private lending, an industry access system must be established. The current low threshold for online lending provides an opportunity for criminals, leading to uneven online lending platforms within the industry. Therefore, regulatory authorities need to establish an access system to conduct a comprehensive review of the qualifications, capital, and technical conditions of online lending registrants, and establish an effective industry access system.

## **6. Conclusion**

The rise of private lending has injected new vitality into economic and financial development. However, it is undeniable that due to the irregular development of the lending market, some professional lenders have harmed the interests of borrowers and disrupted the order of the financial market for their own interests. Therefore, it is necessary to improve the private lending laws and use the law to strictly supervise the lending market. Moreover, incorporating private lending into China's financial regulatory system will help promote the steady and healthy development of the

national economy. It is necessary to actively promote the establishment of a sound process for Internet credit, shorten the loan time, eliminate factors that interfere with normal lending, and achieve a win-win situation for both borrowers and lenders. This article still has a lot of deficiencies in the strategy research on the legal supervision of private lending, and the author will continue to conduct research and analysis in the future.

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