

別紙 4

報告番号	※	甲 第	号
------	---	-----	---

主 論 文 の 要 旨

論文題目

The Regulatory Framework of Peer to Peer Lending in China A Perspective on The Mechanism of Soft-Law and Co-Regulation

氏 名

陳 弘益 (CHEN Hung-Yi)

論 文 内 容 の 要 旨

The industry of Peer-to-Peer lending (hereafter P2P lending) in China grows up rapidly in recent years. Meanwhile, there are also many P2P lending platforms going bankrupt and huge number of investors suffering from losing their investment. Recent report that tracks Ezubao, a P2P lending platform, regarded as perpetrating the largest Ponzi scheme in P2P lending history of China, there are at least 900,000 victims involved, with a total cumulative loss amount of nearly 50 billion CNY. In order to enhance market transparency of P2P lending, relevant authorities in China, such as China Banking Regulatory Commission (CBRC) in central government level, Economic Crime Investigation Detachment and Bureau of Financial Work in every municipality, have already taken measures for addressing the large-scale wave of bankruptcy in P2P lending industry. Nevertheless, there is no remarkable effects by aforementioned measures. According to statistics, there are still 746 P2P lending platforms going bankruptcy in 2015.

Recent literatures have suggested that self-regulation system of P2P lending as the UK should be taken into consideration for developing relevant regulation in the Chinese market. However, this research argues that it is not realistic for directly borrowing the concept of self-regulation from the UK and implementing it in China given that the social contexts are different, such as market transparency and independence of association. Instead of self-regulation mechanism from the UK, this study suggests to find out possible alternative self-regulation models in Chinese P2P lending industry, which is “Credit Rating Agencies (CRAs)”. With the empirical study in China, this Dissertation found that CRAs could enhance market transparency. Meanwhile, the statistics also show the importance of the objectiveness of CRAs. Namely, this study argues that CRAs of P2P lending is more efficient for enhancing market transparency of P2P lending market but there still remains problems for further improvement.

This dissertation will conduct relevant analysis through five chapters. In Chapter 1, this study will provide an overview of P2P lending in China and point out current regulation has no remarkable effect on reducing frauds. In Chapter 2, the failure of hard-law on online finance is analyzed for understanding the reasons of inefficient regulation provided by Chinese authorities. In addition, soft-law and co-regulation models will also be addressed to understand their advantages on regulation of online finance, such as P2P lending. In Chapter 3, this research will compare social context of P2P lending between the United Kingdom and China, especially on economical, hard-law, soft-law, and co-regulation perspectives to understand whether self-regulation model in the UK could be transplanted into China. In Chapter 4, this part argues that credit rating agencies of P2P lending is

more applicable in China based on an empirical study. However, the problems of credit rating agencies, such as objectiveness, are not solved yet. The final chapter of this dissertation analyses whether credit rating agencies of P2P lending is regulated and how to regulate for enhancing market transparency of P2P lending.

1.1. Problems of Peer-to-Peer Lending in China

Peer-to-Peer lending is a mechanism of lending without a conventional bank. This is an intermediary system for people doing lending or borrowing funding on the Internet. P2P lending provides high-technology services to reduce the cost of manually examining of each person's financial credit. For reasons of efficiency, P2P lending platforms can be a supplement to the current banking system, especially in micro finance. However, this study found there are several major problems of P2P lending in Chinese market, which may deter its further development because of four factors.

1.1.1. Lack of Market Transparency

The industry of Peer-to-Peer lending (P2P Lending) in China develops rapidly in recent years. Meanwhile, there are also many P2P lending platforms going into bankruptcy and a huge number of investors have been suffering from losing their investment. In December 2015, Ezubao (e租宝) is regarded as perpetrating the largest Ponzi scheme in P2P lending history of China. According to a recent report that tracks Ezubao, at least 900,000 victims are involved, with a total cumulative amount of nearly 50 billion CNY.

In order to attract capital from investors, P2P lending platforms engaging

Ponzi scheme normally promise their investors a high interest rates from qualified borrowers with good credits or collaterals. However, purported borrowers on P2P lending platforms may not be existed. In order to attract investors, some P2P lending platforms tend to list some fake loan project with high return rates. Hence, the interests of investors are paid by money received from later investors rather than borrowers. The information between investors and a platform is asymmetry. Accordingly, some P2P lending platforms do not provide true information and investors have not enough ability to evaluate the information provided by a platform in Chinese market.

Ezubao is not the only case of Ponzi scheme by P2P lending business. In May 2016, Esudai (e 速贷), a P2P lending platform established in 2010, is alleged that Esudai illegally took in deposits from the general public under Article 176 of Criminal in China by the police office of Huizhou, Guangdong province of China. The case of Esudai involved at least 330,000 investors and 7 billion CNY . As a result, the market transparency of Chinese P2P lending industry at this stage needs to be improved, especially the asymmetry information between a P2P lending platform and investors, which causes a lot of frauds by Ponzi scheme.

1.1.2. Ineffectiveness of Current Regulation

Relevant authorities in China, such as China Banking Regulatory Commission (CBRC) in central government level, Economic Crime Investigation Detachment and Bureau of Financial Work in every municipality, have already taken measures for addressing the large-scale wave of bankruptcy in P2P lending industry. Even with all the efforts of regulatory agencies in China, guidelines and

proposed bills, many significant frauds caused by P2P lending continued not undetected in China for years until they developed at large scale of both their swindled investors and illegal capital amount. Moreover, these frauds of P2P lending platforms have been conducted repeatedly and severely in recent years. The scale of defrauded investors and whole amount of investment in China may still not be fully unveiled because only huge damages have high possibility of being reported by mass media and concerned by judicial authorities.

Already 38 cases have been decided by local court or high court since 2013 based on electric judicial database in China. All of these cases resulted with imprisonment or fine. The average penalty of prison is around five years. Under current legal framework, frauds of P2P lending are solved by criminal law. According to statistics published by Wangdaizhijia (网贷之家), one of CRAs in Chinese P2P lending industry, there are 746 P2P lending platforms going bankruptcy in 2015. Compared to statistics in 2014, which is 254, the number of problematic platform of P2P lending increased almost three times.

Consequently, even with Chinese government regulatory authorities under extreme pressure and providing several guidelines to deter Ponzi scheme caused by P2P lending from 2011, many Ponzi schemes resulted from P2P lending have operated for several years and wreak tremendous damages on the lives of innocent investors and the economy as well. The current regulation against fraud of Chinese P2P lending is still ineffective.

1.1.3. Imperfect Independence of Industry Association

The industry association of P2P lending in the UK, P2PFA, is a

fundamental part of regulating P2P lending industry before relevant regulation is issued by the UK authorities. Recent literature has suggested that self-regulation system of P2P lending as the UK should be taken into consideration for developing relevant regulation in China. However, this dissertation argues that it is not realistic for borrowing the concept of self-regulation in the UK, which is association-based system to be implemented into China. The association in the UK is market-driven, as shown in part (b) of , the association is bottom-up mechanism and have mutual communication channel with government. In contrast, associations relating to P2P lending in China is relatively government-driven, such as National Internet Finance Association of China (NIFA), as shown in part (a) of , the association is more like top-down mechanism. In this regard, the industry association may be extension of power from government in China rather than autonomy for self-regulation in the UK. Specifically, there remains the gap of association practice between the UK and China. Without independence, the self-regulation function may not be realized.

1.1.1.4. Defective Objectiveness of Credit Rating Report in Chinese P2P lending

Without sophisticated practice and independence of association mechanism as the UK in China, it is difficult to have functionalized association. Therefore, this dissertation argues that credit-rating agencies of P2P lending in China, as shown in part (c) of Figure 2, which are unique features and market-driven based, existed for several years, should be considered as a choice to reduce asymmetry information issue between P2P lending platforms and investors, addressing recent problems of P2P lending platforms. In other words, how to enhance market

transparency for reducing information asymmetry through credit-rating agencies of P2P lending industry as supporting current legal mechanism in China is a critical issue in Chinese P2P lending industry.

Moreover, this study also finds that issues of corruption of CRAs should not be ignored. The evaluating process of a rating report published by CRAs is relatively not transparency. CRAs may charge “advisory fee” for promising upgrading rank of a P2P lending platform as a P2P lending platform with poor performance may tend to pursue their ranking in rating report.

Though CRAs are regulated by several regulations in China, the definition and scope only cover CRAs of debt market rather than P2P lending. Namely, there is no specific regulation for dealing with corruption caused by rating report of P2P lending in China. Without auxiliary measures for reducing risks of CRAs of P2P lending in China, the goal of disclosure for market transparency could not be realized. In other words, the objectiveness of CRAs is necessary to be ensured to gain the trust from investors. Based on the trust from investors, the ranking provided by CRAs will have regulatory impact on P2P lending platforms. Therefore, this study is dedicated to developing mechanism of improving objectiveness of CRAs in Chinese P2P lending industry. The objectiveness of report published by CRAs in Chinese P2P lending industry is not yet solved and need to be improved.

1.2. Summary of Chapters

Chapter 1 briefly discusses the key aspects of P2P lending in China by pointing out relevant problems addressed by this dissertation, which includes lack of market transparency, ineffectiveness of current regulation, imperfect

independence of industry association, and defective objectiveness of CRAs in Chinese P2P lending industry.

Chapter 2 firstly indicates that the rapid and diversified development of modern society increases the burden of government sector. The regulatory role of government has highly been challenged, for instance, the industry of financial technologies, known as Fintech, has been widely spread in recent years. Without enough knowledge of this innovative industry, financial authorities face difficulties of their poor regulation, over-regulation, and under-regulation, which show the ineffectiveness of hard-law on innovative industry. In order to pursue regulatory effectiveness, this dissertation analyzes the role of soft-law from institutional perspectives, including industry association and CRAs. Nonetheless, the issues, such as anti-competition in industry association and abuse of discourse power in CRAs should be regulated by hard-law. Therefore, hard-law should be assisted by soft-law to improve its effectiveness in modern society and soft-law should be supported by hard-law to ensure its legitimacy. The co-regulation between hard-law and soft-law become indispensable in modern society.

Chapter 3 provides background information about P2P lending and its regulatory development in the United Kingdom and China including economical, hard-law, soft-law, and co-regulation perspective to understand the structure of market characteristics and successful factors how public and private sectors working together to pursuing market transparency in British and Chinese P2P lending industry. This chapter further examines whether relevant regulations in the United Kingdom may be implement into Chinese market and found that history, industry practice, and market structure between these two countries

remains a huge gap to achieving the goal.

Chapter 4 attempts to seek alternative regulatory models and argues that CRAs of P2P lending is more applicable in China to enhance market transparency. In order to prove this hypothesis, this Chapter provides an empirical analysis on CRAs of P2P lending in China and found its positive impact on P2P lending industry. However, this Chapter also indicates the problems of CRAs, such as independence and objectiveness, are not solved yet. This chapter further analyzes whether CRAs of P2P lending are regulated and how to regulate for enhancing market transparency of P2P lending. This part found that CRAs of P2P lending are neither regulated by current regulations nor proposed bills. Relevant measures, such as independence, rule of avoidance, disclosure, and liability should be taken into consideration of its regulatory framework.

Chapter 5 concludes that a mixture regulatory framework between hard-law and soft-law is indispensable in the rapid and diversified development of modern society, especially Fintech, such as P2P lending in China. Therefore, this dissertation analyzes the soft-law from institutional perspectives, including industry association and CRAs. The soft-law role of industry association in the UK is highly based on its independence and neutrality. Without similar characteristics, it is difficult to transplant into China at the moment. Given that CRAs are constituted by a third-party rather than stakeholders of industry association, the independence may be more easily ensured in Chinese market. Nonetheless, abuse of discourse power by CRAs, such as corruption and over-ranking, should be prevented by hard-law. Consequently, this dissertation proposes that the P2P lending industry in China should be co-regulated by CRAs

from soft-law perspective with supporting measures from hard-law to ensure the function of CRAs.