

The Necessity of Special Legal Protection for Financial Consumers

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Abstract: In recent years, around the proposition of the protection of financial consumers' rights and interests, China has introduced a series of normative measures, and initially formed a regulatory framework with financial consumers as the main body, laying a good institutional foundation for the stable development of the financial market. It is worth noting that the rapid development of Internet technology and big data technology has made more and more people participate in financial consumption transactions, and also made illegal acts that infringe on the rights and interests of financial consumers more hidden and complicated. It can be seen that the special legal protection of financial consumers is particularly important. Ignoring the effective protection of consumer rights will inevitably result in condoning market abuse, destabilizing financial stability, and possibly triggering a financial crisis. Based on fully respecting its own national conditions, China can learn from other countries' advanced experience to better safeguard the rights and interests of Chinese financial consumers.

Keywords: Financial Consumers; Financial Risk; Financial Regulation; Financial Legislation; Financial Products

1. Introduction

The global subprime financial crisis that began in 2007 originated in the financial field, but with the spread and evolution of the crisis, the global economy fell into a serious recession. Unemployment has risen sharply, a large number of bankrupt enterprises have closed down, and the real economy around the world has suffered a huge shock [1]. Since 2020, the new coronavirus epidemic has swept the world and brought a huge impact on the economies of all countries in the world. The economy is weak, and the far-reaching impact of the financial

crisis on the financial community and the world economy has not dissipated, and the rights and interests of many financial consumers have been destroyed in the storm of the financial crisis. One of the defects of financial supervision is that there is no sound and complete protection mechanism for financial consumers' rights and interests. At the end of the last century and the beginning of this century, the ideas and value orientation of financial legislation, judicature and financial supervision in some developed countries have obviously shown a tendency to strengthen financial consumer protection, while the global financial crisis that has not disappeared until now has further deepened countries' awareness of the necessity of financial consumer protection [2]. However, the definition of financial consumers is still unclear, the theory is complicated, and the practice is also varied. Therefore, the legal definition of financial consumers is particularly important, so as to build a special protection system for financial consumers that is different from ordinary consumers.

The first logical premise that needs to be addressed is why and why there should be special protection for financial consumers. If the logical starting point is not detailed, then the special protection will lose its theoretical foundation, because if financial consumers can be equated with ordinary consumers, when the rights and interests of financial consumers are harmed, there is nothing improper in applying the Consumer Protection Law. The root of the problem lies in the difference between financial consumption transaction and general commodity transaction. First, the intangibility of the transaction object. This is the most important feature that distinguishes financial transactions from general commodity transactions. For example, stocks are purchased or sold by both parties through stock exchanges. In this process, there is no substantive material for both parties to trade, so financial consumers cannot truly

perceive the quality of the transaction objects like ordinary consumers. Therefore, financial consumers actually rely heavily on the information disclosed by relevant financial institutions to influence their trading behavior. Second, professional transaction information. Similar to law, finance is highly professional, and it is generally difficult for people without relevant professional knowledge to directly enter the industry to obtain effective information. Therefore, financial institutions with professional confidence occupy an extremely favorable position and become the party holding the right to speak in trading activities. The resulting poor information is also an important reason for the need to assign special protection status to financial consumers. Third, the format of the transaction intention. Take insurance as an example, the insurance applicant and the insurance company usually settle down the intention of both sides by entering into an insurance contract. For the convenience of the transaction, this kind of insurance contract is generally prepared in advance of the form of the contract, the policyholder has limited space for this operation, can only choose to accept or not accept, in fact, the protection of the interests of the policyholder is extremely unfavorable. Fourth, the inducement of sales methods [2]. Due to the characteristics of financial products, high risk and high return are often just two sides of the same coin, and the two go hand in hand. However, the sellers of financial products tend to deliberately dilute the high-risk characteristics of financial products and beautify the characteristics of high return. Such a drastic inductive sales method will make the consumption of financial consumers tend to be irrational and blind, and because the investment and return of financial products are not proportional to each other. Therefore, compared with ordinary consumers, the rights and interests of financial consumers need special protection. In summary, the particularity of financial consumption transactions constitutes the theoretical basis and logical premise for the special protection of financial consumers. The following will focus on the legal definition of the concept of financial consumer.

2. Reflection on the Legal Definition of Financial Consumer

The concept of "financial consumer", which has the nature of the origin of a series of legal norms,

is not a simple description or transfer of "financial consumer" as an economic concept, nor is it a simple addition of the name "consumer" and the industry "finance" in the consumer rights and interests protection law. As a legal concept, "financial consumer" should have a clear connotation and extension [3]. The core issues of consumer law definition can be summarized into two aspects: one is to define consumption in the context of consumer protection. The second is to define the subject qualification of consumers in the context of consumer protection [2]. There is a dialectical relationship between production and consumption, production determines consumption, and consumption reacts on production. According to this dialectical relationship, consumption is divided into two categories: one is production consumption, that is, the consumption of labor force and means of production for the purpose of the production of material materials; The other is the consumption of living, that is, the consumption of means of subsistence for the purpose of the reproduction of Labour power. At present, the definition of financial consumer mainly adopts the method of problem explanation, that is, the definition of consumer is applied to the concept of financial consumer. According to the Law on the Protection of Consumer Rights and Interests, the constituent elements of consumers are divided into the following three: (1) the subject is a natural person; (2) The act is the purchase or use of goods or the acceptance of services; (3) The purpose is for living needs. A typical definition of this is, "Financial consumers are individual members of society or individual investors who purchase and use goods or services provided by financial institutions to meet personal or family needs." The emergence of this concept is indeed conducive to saving judicial resources and meets the practical needs, but it also has some shortcomings. If the concept of consumers can simply be applied to financial consumers, then why do we need special legal protection for financial consumers? Is the Protection of Consumer Rights and Interests not enough to protect the rights and interests of financial consumers? It can be seen that the definition of this concept does not highlight the particularity of financial consumers and general consumers, and it is difficult to break through the existing institutional framework, which is not conducive to the construction of a special system for

financial consumer protection [3]. Take the case of Chen Yan v. PICC, a division of PICC, as an example. The plaintiff, Chen Yan, has invested in insurance against damage of commercial motor vehicles in PICC, a division of PICC, and has requested PICC, after the damage of Chen Yan's vehicle, to settle claims, but PICC, a division, has refused. Chen Yan, as the appellee, argued that according to the provisions of Article 24 of the Protection of Consumer Rights and Interests, the insurance clause adopted by the appellant belonged to the overlord clause, but the court did not adopt it. Through the analysis, it can be seen that there are several problems in the above definition of the concept of financial consumers: (1) the subject is vaguely defined: what is the object of financial consumers? Do individual members of society refer only to natural persons, but also to legal persons and other organizations? (2) Vague definition of purpose: Is it for financial needs or for life needs? (3) The definition of the object is vague: the commodities provided by financial institutions are different from ordinary commodities, most of them are not physical objects, and cannot be known by ordinary people, so simply using the word "commodity" is not rigorous enough.

3. Definition of Financial Consumer

In recent years, the protection of financial consumers in China is moving from the stage of scattered legislation to the stage of single legislation. In 2004, the Risk Management Guidelines for Personal Finance Services of Commercial Banks stipulated the principle of suitability. The Financial Innovation Guidelines for Commercial Banks in 2006 set out the principle of suitability and the customer complaint system. These are typical pieces of piecemeal legislation. However, the Notice of the General Office of the China Banking Regulatory Commission on Strengthening the handling of Customer Complaints in the Banking Industry in 2007, the Notice of the People's Bank of China on the protection of personal Financial Information by banking financial institutions in 2011 and the Management Measures for the sale of financial products of Commercial Banks, and the improvement of the customer complaint handling mechanism of banking financial institutions in 2012 The Notice on Effectively Doing a Good Job in Financial Consumer

Protection, the Measures for Handling Insurance Consumer Complaints and the Guidelines on the Protection of Consumer Rights and Interests of the Banking Industry in 2013, are separate legislation that specifically provides for a certain type of financial consumer protection measures or financial consumer protection for a certain type of product [3]. It can be seen that the legal protection system for financial consumers in our country is gradually improving. However, while establishing the relevant legal system, we should focus on the following aspects: (1) The scope of the object of protection should be clearly defined. Financial consumers are at a disadvantage in the financial market mainly due to "information asymmetry" and "strength asymmetry". The "strength asymmetry" here should be understood as the knowledge of a certain financial product has exceeded the cognitive scope of the financial consumers. For example, the elderly go to financial institutions to buy financial products. At this time, the financial institution has the obligation to fully explain the nature, return and risk of the financial product. On the contrary, there should be no special protection for financial consumers who are fully capable of understanding relevant information, i.e. "strength symmetry", although they are in a position of "information asymmetry". (2) While drawing on the useful experience of other countries, we should not be divorced from our own realities. Since the reform and opening up, China's economic development is rapid, but there are also many problems in the economic field. As a late developing country, we can learn from other countries' experience and lessons on the issue of financial consumer protection, and at the same time, we should also make adjustments and improvements based on the actual situation of our country, so that it is more in line with our national conditions and development needs. For example, for the more advanced measures such as the "consumer financial protection fund" in the United States, due to the different national conditions of the two countries and the current situation of our economic development, it is not suitable to learn from this experience. Based on this, the legal definition of financial consumers in our country should be: financial consumers refer to natural persons, legal persons or other organizations that have, are or are planning to buy or accept the goods or services provided by financial institutions, but professional investors are

excluded. It can be seen from this concept that the objects referred to as financial consumers are not only limited to natural persons, but also include legal persons and other organizations, covering a wider scope, and the interests of some non-natural persons who are in a vulnerable position or do not know much about financial information can be included in the scope of legal protection. At the same time, those who have reached a certain level of investment expertise and financial knowledge should not be considered "financial consumers" but "professional investors." Because the reason for the special protection of financial consumers is because of its "information asymmetry" and "asymmetrical strength", professional investors often have a keen sense of smell and awareness of information in the financial field, can peel the cocoon from the complex information, and even obtain greater benefits from it. Therefore, there is no huge disparity in strength between professional investors and operators. Therefore, it should not be the object of special protection. It can be seen that the sorting out of the concept of financial consumers has far-reaching significance for the protection of financial consumers.

4. Legislative Principle

In March 2007, the sub-prime mortgage crisis broke out in the United States, and people focused their attention on the protection of financial consumers. Throughout the formation process of the subprime crisis, the excessive credit of financial institutions to the public has caused a large number of credit risks. Taking credit cards as an example, financial institutions issued credit cards without a complete assessment of the economic status, repayment ability, credit level, etc., the total credit of the American public soared from \$238.6 billion in 1990 to \$977 billion at the end of September 2008, while the bad debt rate of credit cards increased by 18%. This market abuse exposed serious flaws in the regulation of financial institutions in the United States that did not provide necessary protections for financial consumers. It seems fair to say that the biggest lesson to be learned from the financial crisis is to truly implement the protection system of financial consumers' rights and interests [4]. Due to the information asymmetry in the financial field and the "limited rationality" of financial consumers, special protection should be given to

financial consumers, and certain principles should be followed while protecting them. There are two main principles, the first is the principle of special protection, the second is the principle of moderate protection.

One of the biggest characteristics of the financial market is the asymmetry of information, which leads to the balance of rights and obligations between operators and consumers always leaning toward operators. Moreover, according to the above analysis, the difference between financial commodities and general commodities also leads to the obvious disadvantage of consumers, so special protection is required for consumers. To ensure that the rights and interests of consumers in the financial market can be fully protected. First of all, the financial commodities in the financial market are mixed, and consumers are often unable to fully identify and authenticate financial commodities due to the limitations of their own financial knowledge, which leads to impulsiveness and blindness of consumers when purchasing financial commodities. In view of this situation, the legislation can appropriately increase the obligation of financial institutions to explain financial products, for example, some consumers are buying financial products for the first time, the relevant financial institutions must give detailed and detailed explanations to financial consumers, that is, financial institutions fully fulfill the obligation of information disclosure. Secondly, financial regulation legislation often lacks the content of financial institutions' liability for civil damages to consumers. If there is no provision on civil liability, financial institutions do not need to bear any statutory civil liability to investors even if they have illegal acts and infringe on the rights and interests of consumers, so deceptive transactions of financial institutions cannot be effectively prevented [5]. When there is a dispute between financial institutions and financial consumers, financial consumers are often in a disadvantageous position and bear more risk of losing in litigation. Appropriately reducing the burden of proof of financial consumers is the best way to protect their rights and interests, and turn the inclined protection of financial consumers into. Financial institutions and financial consumers are not completely opposed to each other, and the purpose of strengthening the supervision of financial institutions is not to deliberately increase the obligations of financial

institutions, but mainly for the good operation of financial markets. The principle of limited protection for financial consumers mainly needs to consider two elements: first, the nature of the transaction, because the nature of the transaction determines the complexity of the transaction and the acceptability of financial consumers. For more complex financial products that are difficult for ordinary financial consumers to understand, the relevant financial institutions should fulfill the obligation of detailed explanation. For relatively simple financial products that can be understood by ordinary financial consumers, there is no need to impose excessive explanatory obligations on financial institutions. Second, it is even more important to be clear about who financial consumers are. It can be seen from the analysis that the financial consumers who take special protection refer to the groups who are at a disadvantage due to "information asymmetry" and "strength asymmetry". For the groups with professional knowledge and strength, they are professional investors, and there is no need to take special protection measures.

5. Practical Significance

The steady development of commodity economy is the result of the game between consumers and operators. In the financial field, financial institutions occupy a dominant position, compared with the huge financial consortia, financial consumers appear to be weak. Operators naturally grasp the information of commodities and understand the advantages of commodities, while financial consumers are only passive recipients. When one side of the game is at an unfair disadvantage, it will bring many adverse effects on the healthy development of the economy. Therefore, the protection of financial consumers is particularly necessary. George, American economist. In 1907, George Akerlof introduced information economics to analyze this product market and put forward the famous "lemon market" theory. This theory points out that in the case of information asymmetry, people are prone to "adverse selection" and other behaviors, which will lead to abnormal and negative resource allocation results in market competition, that is, "bad money drives out good money" [6]. Due to information asymmetry, most of the information related to the goods is held by the operators, and consumers do not understand the quality of the

goods and other related information, so they are not willing to pay high prices to buy the goods at the beginning. There is no denying that although the market is flooded with good and bad goods, there are still some high-quality goods worth buying at a high price, these goods generally cost more and the price is relatively high. Due to the lack of adequate price compensation, these high-quality goods will gradually withdraw from the market, but some low-quality goods remain in the market, when consumers find themselves at the average price to buy only low-quality goods, they will greatly reduce their desire to buy, willing to pay for this price will also be reduced. When this vicious circle reaches a balance, there are few high-quality goods left in the market, and only those of lower quality or lower quality are left, which is the "lemon phenomenon" in the market. It can be seen that the reason for the emergence of "lemon phenomenon" is the poor information caused by information asymmetry, and operators are reluctant to fully display product information because of factors such as safeguarding their own interests, so the status of operators and consumers is not equal. In general, in the market environment, operators are in an advantageous position, consumers are in a disadvantageous position, if the consumer is not given special protection, it will inevitably increase the conflict between operators and consumers, so that the whole financial market cannot operate normally, therefore, to give special protection to financial consumers is the proper meaning of maintaining the financial environment.

6. Reference Measures

6.1 Improvement of the Legal System for the Protection of Financial Consumer Rights in the United States

The 1960s was a very important period in the history of the American consumer movement. Under the dual background of social demand and government promotion, the US Congress enacted a series of financial consumer protection laws starting from 1968. These include the Lending Integrity Act (1968), the Fair Housing Act (1968), the Fair Credit Reporting Act (1970), the Flood Disaster Prevention Act (1973), the Fair Credit Closing Act (1974), the Equal Credit Opportunity Act (1974), the Real Estate Transfer Procedure Act (1974), and the Home Mortgage Disclosure Act Act (1975), Consumer Leasing

Act (1976), Community Reinvestment Act (1977), Fair Debt Collection Act (1977), Financial Privacy Act (1978), Electronic Funds Transfer Act (1978), Federal Trade Commission Improvement Act (1980), etc. In addition, other federal laws, such as the Sherman Act, Chapter 13 of the Bankruptcy Code, and the Federal Trade Commission Act, are also important laws to protect the rights and interests of financial consumers [7]. The protection of financial consumers in the US financial law mainly involves three aspects: information disclosure, civil rights (such as equal credit opportunity, etc.), protection of consumer privacy and prevention of abuse of power in the process of credit issuance, collection and reporting [8]. Thus, it can be seen that the United States is relatively complete in the construction of the legal system for the protection of financial consumer rights, basically realizing the full coverage of the financial field, from real estate, credit to electronic finance, providing a basic and due legal system guarantee for the protection of financial consumer rights. Since entering the 21st century, China's financial field has achieved rapid development, the establishment of Shanghai International financial Center, the People's Bank of China and the State Administration of Foreign Exchange jointly issued 23 financial measures to stimulate the recovery of the financial field. However, from the current point of view, China's protection of financial consumers is still inadequate, and the relevant laws are not perfect. The more the economy develops, the more it should be prevented from jumping out of the legal framework. Without the support of corresponding laws and regulations, the protection of financial consumers will have no foothold. In this regard, the legal system of the United States is a worthy reference object, and we should build a perfect legal protection system for financial consumers on the basis of learning from China's current economic development.

6.2 The Maturity of the UK Financial Services Regulatory System

On February 1, 2001, the UK financial services and Markets Act 2000 came into effect, which means that the financial services Agency (FSA) has become the unified regulator of the UK financial markets. Since then, the FSA no longer regulates specific financial institutions, but regulates the entire financial market and

financial services in accordance with the regulatory objectives set by the FSMA [9]. The establishment of FOS has played a crucial role in the protection of financial consumers in the UK. In the 1970s and 1980s, the British economy developed rapidly and the financial field made great progress, which gave birth to a large number of financial products. However, due to the professionalism of financial knowledge and the lack of relevant knowledge among consumers of most financial products, the information asymmetry between financial investors and financial institutions has further intensified, and many scandals in the financial field have evolved, such as Maxwell's abuse of pension insurance and mis-selling of personal funds [10]. In 2001, the FSA became the sole regulator of the financial sector in the UK, and at the same time, the FSA established the Financial Ombudsman Service (FOA) in accordance with the requirements of the FSMA to provide a convenient channel for disputes between financial consumers and financial institutions. As an institution set up by FSA, FOA has independent operation, but its supervision of financial institutions is subject to the constraints of FSA. Its independence is reflected in the fact that the budget and the use of funds of the FOA are strictly separate, the FSA is responsible for approving the annual budget plan, and the FOA is responsible for the specific use of funds. At the same time, the FOA is subject to the FSA's supervision. From the specific rules implemented by FOS, important rules such as case handling fee raising rules and case dispute handling procedures are also formulated by FOS, but they must be approved by FSA in the end. In addition, the FOS must work closely with and be accountable to the FSA. The Chairman of the Board of directors of FOS shall report to the FSA quarterly on the implementation of the work plan, and submit annual reports on the performance of the company's various functions during the year.

It can be seen that the operation of the FOS not only maintains its independence, but also closely cooperates with and is bound by the FSA, fully reflecting the legislative principle of mutual cooperation and preventing the abuse of power. From the perspective of the means of financial consumer protection in the UK, in fact, the establishment of a specialized institution to centrally resolve disputes between financial consumers and financial institutions has greatly

improved the efficiency of dispute resolution, provided a professional channel for the maintenance of the rights and interests of financial consumers, and injected stability into economic security and social development. China's economic development is rapid, a variety of financial products emerge in an endless stream, and there are a large number of financial consumers in China, most of whom are ordinary people without relevant professional knowledge. If special protection measures cannot be taken for these groups, it will not be conducive to the stable development of China's economy. Therefore, China can learn from the British measures in this respect, combined with our national conditions to establish a specialized institution to solve disputes between financial consumers and financial institutions, so as to save judicial resources in resolving similar disputes, but also to better protect the interests of financial consumers.

7. Conclusions

Financial consumer protection is particularly important and urgent in today's increasingly diversified financial products and increasingly complex financial market environment, and it is also a value orientation that must be preserved for the long-term and stable development of the financial industry. Therefore, in such a social background, the introduction of the Financial Consumer Protection Law and a series of laws surrounding financial consumer protection are particularly important. At the same time, the Financial Consumer Protection Law should establish the concept of comprehensive supervision of financial activities, respect the law of the development of financial markets, and clarify the scope and boundaries of supervision that need to be included. We should adhere to the principle of differentiation of financial consumers and take more targeted protection measures for financial consumers with different backgrounds. It is also necessary to fully learn from other countries' management experience on the basis of respecting its own national

conditions, so as to provide vitality and legal guarantee for its own economic activities.

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