

Research on the Protection of Financial Consumer Rights from a Legal Perspective

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Abstract: Amid the transformative waves of financial technology, the financial consumer ecosystem has undergone profound changes, posing unprecedented challenges to the protection of financial consumer rights. Issues such as information leakage, asymmetric information, and obstacles to rights protection have become increasingly salient. These challenges stem from multifaceted factors, including the lagging regulatory model of segmented supervision, insufficient consumer literacy, cognitive biases, and the inadequacy of financial education. Comparative legal practices in countries such as the United States, the United Kingdom, Japan, and South Korea offer valuable insights for China. However, China's current legal governance framework reveals significant shortcomings, including the absence of specialized legislation and the generalization of legal provisions. To effectively address the predicaments surrounding the protection of financial consumer rights, measures such as strengthening financial education, refining market entry and exit mechanisms, and establishing diversified dispute resolution frameworks should be implemented.

Keywords: Financial Consumers; Rights Protection; Legal Governance Framework

1. The Current Status and Challenges in the Protection of Financial Consumer Rights

1.1 Challenges of Information Leakage and Privacy Protection

The internet, characterized by its unparalleled openness, has profoundly reshaped the ecosystem of financial consumption. While this openness facilitates financial transactions, it simultaneously exacerbates the challenges of safeguarding consumer privacy. In recent years, the severity of privacy breaches has escalated, marked by increasing speed and scale. The

causes of financial consumer information leakage primarily fall into two categories: first, negligence in security infrastructure or flaws in hardware systems within financial institutions, which allow malicious actors to access consumer data unlawfully; second, the deliberate sale of customer information by institutions motivated by profit.

The scope of modern financial consumers' personal information extends far beyond traditional identifiers such as names, addresses, gender, and educational background. It now includes granular data such as website visitation frequencies and historical financial product purchase records. Technology platforms like Ant Financial and JD Finance integrate consumer personal data and competitor pricing information into algorithmic pricing models. However, consumers remain largely unaware that their data is being analyzed algorithmically and often cannot discern when their authorization is required. Consequently, traditional "notice-and-consent" legal frameworks struggle to address these challenges effectively.

1.2 Information Asymmetry and Misleading Financial Advertising

Information asymmetry has long been an intractable structural issue in financial markets. In traditional financial settings, disparities in resource endowments and information access create a natural imbalance between financial institutions and consumers. With modern algorithmic tools, businesses can effortlessly extract extensive consumer data, yet consumers, lacking transparent information, are unable to fully comprehend product risks. This asymmetry not only undermines consumers' right to know but also directly compromises the quality of their decisions. As weaker parties in transactions, consumers often lack bargaining power during contract formation. Businesses frequently employ

lengthy and convoluted contract terms to disclaim liability and shift risks onto consumers, who, in many cases, "agree" without being fully informed.

Such asymmetry also provides fertile ground for misleading financial marketing practices. Some businesses exploit consumers' limited financial literacy by exaggerating returns or concealing risks to attract investments.

To address these issues, China has introduced legislative mechanisms mandating information disclosure. However, financial institutions often use highly specialized and technical language, rendering the disclosed information inaccessible to the average consumer and failing to bridge the information gap effectively.

1.3 Difficulties in Financial Consumer Rights Protection and Barriers to Legal Remedies

The 2020 White Paper on Financial Consumer Protection highlights the difficulties financial consumers face in safeguarding their rights. These challenges are primarily reflected in two areas: limited access to redress channels and the obstacles associated with litigation.

1.3.1 Limited Access to Redress Channels

(1) Mediation: Mediation processes often lack clear procedural guidelines and defined responsibilities, leading to inter-departmental buck-passing.

(2) Arbitration: Most financial disputes currently fall outside the jurisdiction of arbitration. Furthermore, due to the unequal power dynamic between financial consumers and institutions, consumers often find it challenging to negotiate equitable arbitration agreements. Financial institutions typically dominate the arbitration process, leaving consumers with little autonomy in choosing this option.

(3) Complaints: On one hand, specialized complaint channels are scarce; on the other, existing complaint handling mechanisms are underdeveloped, resulting in inefficiencies and suboptimal outcomes in complaint resolution.

1.3.2 Barriers to Litigation

(1) Difficulty in Providing Evidence: Evidence in online financial transactions is primarily stored in electronic formats, which are susceptible to tampering. This increases the burden of proof on consumers. Moreover, electronic evidence often carries limited

probative value in judicial proceedings, heightening the risk of consumer losses in lawsuits.

(2) Low Efficiency and High Costs: Civil litigation involves intricate procedures, protracted timelines, and substantial financial costs. These factors deter many financial consumers from seeking legal recourse to resolve disputes.

(3) Jurisdictional Challenges: The cross-regional nature of modern financial activities complicates the delineation of the locus delicti and the location where assets are actually obtained by offenders, often leading to disputes over jurisdictional authority.

2. Analysis of the Root Causes Behind the Predicament of Financial Consumer Rights Protection

2.1 Contradictions Between Segmented Regulation and Mixed Operations

The rapid evolution of financial markets has blurred the boundaries between different financial sectors. Under China's traditional regulatory model of "segmented operations and classified supervision," overlapping regulatory responsibilities often result in either excessive regulation or regulatory arbitrage in certain business activities. Conversely, unclear jurisdiction may lead to regulatory blind spots and governance vacuums.

2.2 Lack of Financial Expertise Among Consumers

Unlike traditional physical goods, whose tangible attributes allow consumers to assess their quality through direct observation or touch, financial products are inherently intangible. This immateriality imposes a far higher demand for specialized knowledge compared to everyday consumer goods.

The proliferation of technical jargon in modern financial services has further raised the cognitive barriers to understanding financial products. For consumers without professional backgrounds, mastering such terminology and its deeper implications remains a daunting task. This knowledge gap often distorts their perceptions of risks and returns, undermining their ability to engage in rational decision-making and limiting their prospects for fair transactions in a complex financial environment.

2.3 Cognitive Biases Among Financial Consumers

From the perspective of behavioral finance, consumers with limited financial literacy and awareness are prone to decision-making pitfalls stemming from cognitive biases.

The trend toward integrated operations in the financial sector has deeply embedded financial products and services into various consumption scenarios. While the financial consumption environment is evolving rapidly, consumers' psychological adaptation lags behind. For instance, consumers accustomed to the "seven-day no-questions-asked return" policy in online shopping often misinterpret their rights in financial transactions. Such misconceptions lead to impulsive or overly aggressive decision-making. Several characteristics of modern financial markets further exacerbate these cognitive challenges:

(1) **Hybridization of Financial and Non-Financial Products:** The shared sales channels for financial and non-financial products make it difficult for consumers to distinguish between them, increasing the likelihood of confusion.

(2) **Blurred Boundaries Between Financial Sectors:** The rise of internet finance has accelerated the integration of traditionally distinct financial activities, such as savings, mutual funds, trusts, and insurance.

(3) **Integration of Proprietary and Third-Party Financial Products:** The simultaneous promotion and sale of proprietary and third-party financial products obscure the identity and credentials of the product providers, complicating consumers' ability to make informed choices.

2.4 Challenges in Delivering Inclusive Financial Education

Modern financial markets cater to a highly diverse population with varying educational backgrounds and investment preferences. This heterogeneity in consumer profiles has rendered the demand for financial education increasingly complex.

Traditional offline educational methods face inherent limitations in terms of coverage, constrained by the costs of human and material resources. Furthermore, the content of these programs often fails to align with the multifaceted needs of consumers, significantly

diminishing their practical efficacy. Consequently, the potential of financial education to act as a preventive measure against risks is severely compromised.

3. Legal Practices in Financial Consumer Rights Protection: An International Perspective

3.1 The United States

The United States has taken a pioneering approach to financial consumer rights protection, enacting a series of laws over the decades to address evolving challenges. In 1978, the Right to Financial Privacy Act was introduced, emphasizing that financial account information stored in financial institutions should be shielded from federal government surveillance within reasonable bounds. The Gramm-Leach-Bliley Act of 1999 further established explicit policies for the privacy protection of financial institutions.

In 2009, the U.S. implemented the Financial Regulatory Reform: A New Foundation, which included the establishment of a dedicated agency for protecting the rights of internet financial consumers. By February 2015, the draft of the Consumer Privacy Bill of Rights Act was unveiled, aiming to provide comprehensive privacy safeguards for consumers. Additionally, in June 2018, California enacted the California Consumer Privacy Act (CCPA), imposing stringent prohibitions on the excessive collection of consumer data by various entities.

3.2 The United Kingdom

In 2013, the United Kingdom introduced the Consumer Complaints Handling Rules alongside the Financial Services and Markets Act. These legal frameworks established the "Financial Ombudsman Service" system, providing financial consumers with a specialized and accessible complaint resolution mechanism.

3.3 Japan

Inspired by the United Kingdom's financial reforms, Japan adopted a similar legislative framework through its Financial Services and Markets Act. This act introduced systems such as differentiated treatment for consumers and the concept of "qualified investors," thereby broadening the scope of consumer rights

protection.

3.4 South Korea

On March 5, 2020, South Korea's National Assembly passed the Act on the Protection of Financial Consumers. This groundbreaking legislation deconstructed and redefined core concepts such as financial consumers, financial products, and financial sales, laying the groundwork for comprehensive regulation and the elimination of protection gaps.

The act mandates adherence by financial institutions to six key sales principles: the principles of suitability and appropriateness, the duty to provide explanations, the prohibition of unfair practices, the prohibition of improper solicitation, and the prohibition of false or exaggerated advertising. These provisions significantly strengthen the regulatory oversight of financial institutions' business practices, thereby enhancing consumer rights protection across the board.

4. The Current State and Deficiencies in Domestic Financial Consumer Protection Laws

4.1 The Current Landscape of Legal Regulation in China

China has initially established a legal governance framework for protecting financial consumer rights, encompassing foundational laws, administrative regulations, departmental rules, and policy documents.

4.1.1 Foundational Laws

The Amendment VII to the Criminal Law (2009) marked the first inclusion of the illegal sale or provision of citizens' personal information by financial institutions and their employees under criminal regulation. In 2013, the Consumer Rights Protection Law emphasized that consumers' consent must be a prerequisite for information collection and usage. To address advancements in computer technology, China introduced three pivotal "Information Security Laws": the Cybersecurity Law (2016), the Personal Information Protection Law (2021), and the Data Security Law (2021).

4.1.2 Administrative Regulations

In 2012, the Regulations on the Administration of Credit Reporting were enacted to define the scope of credit reporting, operational rules, and measures for safeguarding the rights of

information subjects. In 2021, the Regulations on the Security Protection of Critical Information Infrastructure were promulgated to strengthen the security obligations of critical information infrastructure operators, covering areas such as security management, monitoring and early warning systems, and emergency response mechanisms.

4.1.3 Departmental Rules

In 2020, the People's Bank of China (PBoC) introduced the Measures for the Protection of Financial Consumer Rights, dedicating a specific chapter to "Protection of Financial Consumer Information," which clarified rules for financial institutions on collecting such information.

4.1.4 Policy Documents

(1) Comprehensive Policy Documents:

In 2015, the State Council issued the Guiding Opinions on Strengthening the Protection of Financial Consumer Rights, formally introducing the concept of "financial consumers" and specifying eight basic rights, including property security, the right to know, and the right to legal recourse.

In 2016, 17 departments, including the State Administration for Industry and Commerce, released the Implementation Plan for Special Rectification of Risks in Internet Financial Advertising Conducted Under the Pretext of Investment and Financial Management. This document mandated the compliance, authenticity, and credibility of internet financial advertisements while prohibiting nine types of unlawful advertisements, such as those that fail to warn of risks or guarantee future returns.

In 2019, the PBoC, China Banking and Insurance Regulatory Commission (CBIRC), China Securities Regulatory Commission (CSRC), and State Administration of Foreign Exchange jointly issued the Notice on Further Regulating Financial Marketing and Promotion Activities, requiring financial practitioners to refrain from inappropriate internet-based financial marketing.

(2) Banking and Insurance Industry Policy Documents:

In 2019, the CBIRC issued the Guiding Opinions on Establishing Mechanisms for Strengthening the Protection of Consumer Rights by Banking and Insurance Institutions. Subsequently, the PBoC published the Measures for the Protection of Financial

Consumer Rights in 2020, and in December 2022, the CBIRC released the Measures for the Administration of Consumer Rights Protection by Banking and Insurance Institutions.

(3) Securities Industry Policy Documents:

In 2013, the State Council released the Opinions on Further Strengthening the Protection of the Lawful Rights and Interests of Small and Medium-sized Investors in the Capital Market. In August 2022, the CSRC promulgated the Measures for the Suitability Management of Securities and Futures Investors (2022 Revision), aimed at safeguarding the rights of securities investors.

4.2 Deficiencies in Existing Domestic Legal Regulations

4.2.1 Absence of Specialized Legislation and Lagging Existing Laws

China's legal framework lacks a dedicated law for financial consumer rights protection. Current laws such as the Consumer Rights Protection Law and the Securities Law do not provide specific provisions for financial consumer rights.

4.2.2 Overly General Legal Provisions and Lack of Operability

For instance, as early as 2003, the Trial Measures for the Administration of Client Asset Management Business of Securities Companies stipulated that securities companies owe a duty of suitability to their clients. This duty was reiterated in Article 72 of the Minutes of the Ninth Civil Meeting (2019), requiring financial institutions to inform consumers of potential risks based on their qualifications. However, emerging financial products are predominantly sold via online platforms, making it difficult to tailor sales and risk disclosures to individual consumers' risk tolerance levels.

Similarly, the Guiding Opinions on Promoting the Healthy Development of Internet Finance (2015) touched on financial consumer protection but provided only high-level principles without detailed rules or procedures.

4.2.3 Lack of Uniformity and Coordination in Legislation

Under the segmented regulatory model, different supervisory bodies issue domain-specific normative documents. These overlapping and intersecting regulations fail to create a unified protection framework and often lead to disputes in legal application due

to their fragmented nature.

4.2.4 Low Legislative Hierarchy

Regulatory agencies have formulated normative documents, such as the Measures for the Administration of Payment Services by Non-Financial Institutions. However, these documents operate at a low legislative level and lack sufficient legal authority.

4.2.5 Conflicts Between Civil Law and Financial Law

Within the unified framework of civil and commercial law, financial transactions have long been constrained by the civil law principle of "equal transactional relationships." By contrast, traditional financial law theories advocate for the "caveat emptor" principle, suggesting that consumers should bear the losses resulting from their insufficient knowledge. This tension between the civil law logic of equal rights and obligations and the financial law's emphasis on risk-bearing creates inherent conflicts.

5. Pathways to Resolution

Justice Benjamin Cardozo insightfully noted that "new generations of problems require new rules to address them. These rules may be modeled after old ones, but they must evolve to meet future demands and ensure future justice."

5.1 Strengthening Financial Education

In the dynamic landscape of financial technology, where industry structures are continually reshaped, online financial institutions possess a direct and precise understanding of consumer needs through their interactions. This positions them to deliver tailored educational content and leverage intelligent platforms to enhance the efficiency of education delivery. Thus, clarifying the educational obligations of online financial institutions has become a critical component of strengthening financial education.

Given the profit-driven nature of financial institutions, regulatory authorities and industry associations should establish incentive mechanisms to recognize institutions that excel in consumer education. Incentives could include tax reductions or cash subsidies to encourage broader participation.

Additionally, specialized institutions such as a Financial Education Committee could be established to oversee the planning and

development of educational content, ensuring a unified and systematic approach.

5.2 Raising Market Entry Barriers

The low entry threshold in the online financial sector has, in recent years, attracted numerous small and medium-sized enterprises, many of which lack adequate capital management and risk control capabilities. This has heightened the risk of consumer rights violations and undermined the overall stability of the market. To address these vulnerabilities, stricter review standards must be implemented to ensure that market entrants possess the requisite operational competencies. Concurrently, clear market exit rules should be established for entities that fail to meet operational qualifications or engage in significant violations. This dual-regulation mechanism would optimize industry structure and mitigate systemic risks.

5.3 Enacting a Dedicated Financial Consumer Protection Law

Aligning with both China's policy direction and international legislative trends, the development of a dedicated Financial Consumer Protection Law is imperative. Such legislation would provide preferential legal safeguards for financial consumers as a cohesive group.

This law should comprehensively regulate the actions of financial market participants, encompassing every stage from product development and marketing to post-sale management. Moreover, it should establish clear rules for dispute resolution mechanisms and legal liabilities, ensuring a robust framework for consumer protection.

5.4 Balancing Litigation and Non-Litigation Remedies: Building a Diversified Dispute Resolution Mechanism

5.4.1 Mediation

Encouraging financial operators and consumers to resolve disputes through mediation, either pre-litigation or during litigation, could expedite resolutions.

5.4.2 Conciliation

As a consensual dispute resolution mechanism, conciliation facilitates contractual agreements between parties to resolve conflicts amicably. Drawing inspiration from the UK's "Financial Ombudsman Service," a

government-administered financial conciliation institution could be established to handle complaints more effectively.

5.4.3 Arbitration

A mandatory arbitration system could be introduced, requiring financial institutions to agree with consumers to submit disputes to arbitration bodies, thus avoiding prolonged litigation processes. Additionally, arbitration procedures, including electronic service of documents, should be continually refined to ensure enforceability in the digital era and reduce procedural burdens on consumers.

5.4.4 Public Interest Litigation

In modern financial consumption, disputes have shifted from traditional individual conflicts to social disputes with externalities that transcend individual interests. Given this transformation and the scarcity of dispute resolution resources, an innovative public interest litigation mechanism should be introduced.

Consumers should have the choice to pursue private litigation or authorize eligible social organizations to initiate public interest lawsuits on their behalf, catering to personalized needs while managing judicial costs.

The implementation of a public interest litigation system requires careful consideration of the following:

(1) Clarifying Eligible Plaintiffs:

In the initial stages, a broad definition of eligible plaintiffs can help facilitate the system's implementation. This could include granting prosecutorial agencies the authority to act as plaintiffs in financial consumer public interest cases by amending the Civil Procedure Law and Administrative Procedure Law. Similarly, the Securities Investor Protection Fund Corporation, directly managed by the China Securities Regulatory Commission, could qualify as a plaintiff due to its professionalism in securities and financial matters. Additionally, consumer protection organizations and provincial-level consumer associations could also act as plaintiffs. Over time, specialized financial consumer protection organizations should be cultivated to gradually transfer public interest litigation rights to these dedicated bodies.

(2) Define the Scope of Claims

Public interest litigation plaintiffs may make the following claims: First, cessation of infringement. Second, compensation for

damages.

Third, issuance of a public apology.

(3) Allocating the Burden of Proof:

While plaintiffs should be responsible for proving facts such as infringing actions and damages, the burden of proof for causation should be shifted to the defendants. Courts may, however, require plaintiffs to provide specific evidence if deemed capable of doing so.

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