

Legal framework of consumer protection

In Chinese financial service

Ladies and gentlemen:

1. Strict Separating Business Policy and Controlling Policy.

In Chinese legal framework, there are seldom kinds of financial transaction products. Every new financial transaction must be submitted to government for approval.

1.1 In Chinese practice, the consumer can loan from bank mortgaged with estate, he can loan from bank pledged with the future assets (which is a very important financial tool), he can apply to bank for credit card. The consumer can buy securities by way of security company, in which he becomes a investor. He can buy trust benefits from trust investment company, and the raised money will loan to the merchants. He can buy kinds of insurance products from insurance company; but consumer or public cannot sell any financial products to the merchant.

1.2 Generally speaking, Chinese Commercial Bank Act, Securities Law and Insurance Act provide a strict separating business policy and controlling policy. That means: Only the approved bank can operate the deposit business and loan the money to the merchant.

Only the approved security company can do the business of investment banking, security attorney, but it cannot do the business of deposit.

Only the approved trust investment company can do the business of raising money from the public and loan it to the merchant.

Only the approved insurance company can sell its insurance products to the public, but it cannot do the business of deposit.

1.3 Recently, Chinese Supreme People's Court provides, by way of judicial interpretation act, natural person and normal merchant can do the civil loan with each other, but the loan interests is controlled. So at present most of the enterprises or company prefer to make a managing credit contract instead of civil loan contract.

In principle, the government encourages financial institutes to make new financial products, but in Chinese society, because of the bad commercial credibility and large population, the financial products are seldom, such as credit card, bond and so on.

2. New Company Law and Securities Law

The two new acts have been amended this year in the light of European Community Council Directive and Chinese legal experience. They are very important to the commercial society and to the public in the financial market.

2.1 According to the Article 20th of the Company law, when the shareholders of a company abuse their power, it will lead to the application of piercing the corporate veil. That means the company's corporate entity will be denied and its shareholders have to assume the responsibility to the creditors.

2.2 According to the Article 16,21,148,149,123,150 of the Act, the transaction between the related bodies will be limited; such transaction must be decided by the non related shareholders or the independent directors of the company.

2.3 According to the Articles 34,98 of the Company Law, any shareholders of the company have the right to inquire about and copy the corporation by laws, shareholder meeting records, director meeting records, corporate account books. In the old company law, there were only principle regulations; in practice most companies denied the rights of shareholders on the pretext of the corporate secrets.

2.4 According to the Article 152,153 of the Company Law, any shareholder can bring a suit against other shareholder, against the company and against corporate senior managers, by means of independent action and deriving action.

2.5 According to the Article 20,26,31 of Securities Law, any company that wants to issue any kind of securities, must disclose its all kinds of situation by a true, exact and complete way. False representation in public offer is prohibited. If there is occurring false representation, all intermediate institutes and the company must assume the responsibility to the public according to civil law, administrative law and criminal law.

2.6 According to the Article 77,203 of the Securities Law, the manipulating act of the security market is prohibited. If an institute manipulates the securities price, resulting the fluctuations of the market, it will undertake the responsibilities in administrative law, criminal law and civil law. But the suing consumers must prove their losses and the cause relations, which is very difficult.

To make up such a defect, the new securities law provides a new principle of the spot transaction and the futures transaction. And the new financial futures market has been set up in shanghai, which will provide the transaction service of the market index futures, bond future, options and so on. Most Chinese scholars think the principle and the hedge transaction will avoid the manipulating of the individual company shares, which is popular in Chinese financial market.

2.7 The new Securities Law provides the rules to prohibit the security companies to deceive the consumers, including the diverting act of the security companies. Besides, the new security law provides to set up the fund of protecting investors. The fund will be engaged to remedy the losses of the harmed investors.

3. The Development of Chinese Financial Legal System.

Generally speaking, Chinese financial legal system is in initial stage and it develops slowly. Most financial laws take the form of the special Act. The civil law and commercial law are now developing. In practice, the financial transactions (especially the complicated transaction) are not popular besides the deposit. So the legislators pay little attention to the protection of the consumers but the safety of the transactions.

3.1 Nowadays, Chinese banks supply a few kinds of consumer loans. Because the Commercial Bank Act only provides principle rules and there are seldom -forced regulations in the Act, the transaction parties depend on the contract. The interest clause and the responsibility clause of the contract are unfavorable to the consumers, which responds a grievance of the consumer, for example the banks have the right to rise the loan interest rate in accordance with the regulation of the People's Bank of China.

3.2 The insurance practice depends on insurance contract of the two parties. The Insurance Act provides a few principle rules, and the new insurance standard contract between insurance company and the consumer must be supplied for approved to the China Insurance Regulatory Commission.

In legal practice, there are a lot of unfair standard clauses in the insurance contract, for example, the limitation to the insurance accident, the limitation to the insurance compensation. Chinese Consumer Association used to provide many such advises to all kind of insurance companies.

3.3 In the securities practice, the security attorney contract is limited a lot by the Security Law, for example the limitation of the promise from security company, the prohibition of diverting. Because the transactions in the Internet are popular, the security company has little chance to tort the investors.

3.4 Generally speaking, the disputes in Chinese financial transaction are normal by ways of suit to Court, but the consumers have no advantages.

Of course, in many transactions the consumers can bring up an offence against institutes to the China Banking Regulatory Commission, China Insurance Regulatory Commission and China Security Regulatory Commission.

In security transactions the Fund of Protecting Investors may play an important role.

In accordance with Chinese legal system, if the transaction objects of a financial transaction are criminal, and then gain some benefits through illegal activities, the benefits will belong to the State.

Thank you.