

A Research on the Legal Issues of the Third Party Electronic Payment

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Abstract. With the rapid development of China's e-commerce, the third party payment as a payment platform came into being, but it is not mature in the market operation as a payment platform on account of a series of problems like payment security. Based on the author's study and practice experience, this paper firstly analyzed the legal status of the third party payment, and then discussed its legal effect, and finally analyzed the improvement of China's legislation on the legal status of the third party payment.

Introduction

The so-called third party payment refers to the independent institutions with certain strength and credibility to provide the third party e-commerce trading platform. The online consumers buy goods before paying for the third party account, and the third party will be informed to pay for the merchant if the consumer receives their goods; next, the merchant will accept the payments from the third party. At present, the third party payment platforms are continually emerging, which have become the mainstream mode of the online payment. But at this stage of the third party payment, there are many blanks in the law; therefore, to study and propose suggestions on the legal problems existing in the third party electronic payment plays an important role in perfecting the third party payment market operation system and Improving our laws and regulations.

The Legal Status of the Third Party Payment

Management problems on business. Essentially, the clearing and settlement business of the third party payments belong to the bank businesses. In accordance with the third provisions in Commercial Bank Law of the People's Republic of China, settlement business belongs to the intermediate business in commercial bank with an approval from the CBRC. According to this article, clearing business by the third party payment is illegal. Some non-financial institutions or enterprises regard themselves as intermediary agencies providing substitutes works for network users, and carry on working on the margins of the law so as to avoid illegal dilemma. Many third party payment companies in the user agreement and other documents try their best to avoid some similarities with financial institutions, but from the e-commerce activities, the establishment of virtual account and a series of services, such as providing the cash collection, payment and service guarantee, they have clearly surpassed the scope of the banking franchise, resulting in business license being free from the Chinese laws.

Precipitation funds. Due to the funding circulation must operated by the third party payment platform in e-commerce, and payment for good can not be paid timely, which result in the third party platform precipitating a large amount of money. These have the nature of bank savings to a certain extent, and now this is proprietary business prescribed in Commercial Bank Law in China. Presently, except for some large third party payment companies, such as Alipay, TenPay and Quick Money, which have their own special platform of precipitation funds handed to banks, other third parties do not have such a special account; some companies even benefit from the precipitation funds as their profits, this is clearly a violation of the thirty-seventh article in the Contract Law: if the retention period expires or the depositor receives the deposit in advance, the depositary shall return the original and interest to the depositor. As a result, the legal issues arising from the user's interest in the third party payment platform should be owned by the user.

Issues of electronic currency. In order to improve payment efficiency and convenience for network consumers, some large third party payment companies allow buyers and sellers to store a small amount of money when recharging the account without limitation on deposit amount, which will reflect through electronic currency. The use of electronic currency in the network consumption is equivalent to cash, and with the development of electronic commerce it has become an important tool for consumers paying online; however, at present, the problems existing in electronic currency, such as nature and issuing subject are still a blank in Chinese regulations and laws. Compared with the electronic currency issuer, holding electronic money is a kind of debt relationship to network consumers; because of lacking the clear legal norms, how to deal with the problem of future debt redemption? Who will bear the risk of redemption? These problems need to be solved so as to protect the network users' security in a better way.

Financial risk. Due to lacking a clear legal status, the third party payment has certain financial risk. At the early stage of the development of e-commerce, online transactions for a single amount or total amount is not large, and the illegal cash, illegal transfer of funds and other phenomena are not very obvious. But with the development of the third party payment transaction market, transaction amount is increasingly multiplied. As for the daily turnover, it can amount to 100 million yuan at least. Such enormous transactions are mostly completed by deposit card, so the third party payment has become the illegal cash tools for some people. Each credit card has set a certain overdraft limit, so you can see the amount of cash as long as in the limit. Banks issue credit cards with the intention of stimulating consumption or meeting the payment needs, but not let people use large amounts of cash. Thus, the consumers are not allowed to encash from bank or they are limited by a series of harsh conditions, such as increasing cash cost to prevent encashment. Because the e-commerce network transactions have no restriction, and the utilization of credit card through the third party payment platform is not regulated, this vulnerability for some people has gave the opportunity to illegal cash.

Understanding of the Legal Effect on the Third Party Payment

First, the basic legal status of the third party payment in e-commerce under the network environment is the transaction intermediary agency transforming funds between the two sides. According to the role of the third party payment playing in e-commerce activities, the author thought that the services should belong to an intermediary service for the following reasons: on the one hand, the third party payment companies in network the transaction collect, claer and pay only for buyers and sellers; there is no association between online transaction contract and the third party payment companies. In a legal point, this should not belong to the transaction contract, so the transaction not be restrained by the contract. on the other hand, the third party payment only provides a transaction platform between the two sides of the business, which has no legal obligation to ensure both integrity and has no obligation of substituting any party. Thus, the legal status of the third party payment should be defined as intermediary services.

Second, e-commerce in third party payment institutions and trading parties constitutes contract legal relationship. The contract legal relationship refers to the the rights and obligations of the lawful parties in the process of civil circulation. In the legal relationship, the rights and obligations of the subjects are always revolving around a certain object; if there is no object, there will be no rights and obligations so that there will be no contract legal relationship. However, looking around the e-commerce activities, when the user is using the third party payment network transaction, we must firstly pay the service agreement through the page frame to confirm whether they agree to the request or not. Only when they agree to the service agreement, can both parties to the transaction use the third party payment of funds, which is a typical contractual relationship. As the main body of the legal relationship of the contract, the third party payment has equal rights and obligations between the subjects. In this sense, the legal status of the third party payment should be defined as a party to the contract, and be subjected to the adjustment of the Contract Laws. Because the third party payment involves a large number of users of funds, the service provided by it is similar to the banking financial services. Therefore, in addition to accepting the Civil Law, Contract Law, Economic Law and other

relevant regulations, the financial supervision mechanism should be introduced so that to avoid the risk of capital and safeguard the interests of the users.

China's Legislation on the Legal Status of the Third Party Payment

As for the definition of the third party payment on the legal status around the world is not exactly the same. The United States defines the third party payment platform precipitation funds as a debt, rather than the deposits in the Federal Banking Law. Therefore, the third party payment institutions do not belong to banks or other financial institutions deposit units without the need for a banking license to carry out payment, clearing business, but they must accept federal and state anti-money laundering regulations. The EU issued the relevant laws and regulations requiring the non-bank electronic payment companies who must obtain a financial license to engage in business. It also stipulates that the right to issue electronic currency belongs to traditional credit institutions and electronic currency institutions. In China, because e-commerce started too late, the ownership of the third party payment on enterprise interest and legal operation on business are not clear, which resulting in a great risk in the operation for the third party payment companies accompanied with hidden dangers at funds to users.

In view of the legal status of the third party payment, China has been seeking a solution from the perspective of legislation, and has issued a series of laws and regulations. In 2005, the Central Bank released the Electronic Payment Guideline for electronic payment activities of the banking system; the focus of the guideline is to adjust the rights and obligations of banks and their customers in electronic payment activities without involving the supervision of the third party payment companies. The Central Bank issued a notice of Payment Clearing Organization and Management Approach, which regulates the third party payment companies, the nature of the payment clearing organization, qualification, registered capital, approval procedures and institutional risk monitoring, etc. But the law did not pass the approval of the State Council, and ultimately failed to be formally introduced. Until 2010, specifically for third party payment laws and regulations have break the record of zero. This year, the Non- financial Institutions Payment Service Management Approach issued by the People's Bank of China officially began to put into effect. The legal nature of the third party payment institution is defined in the form of legislation, and third party payment enterprise must obtain business license before engaging in payment business so that to end the disorder and make the third party payment formally incorporated into the national legal supervision system. With the rapid development of e-commerce, the traditional payment system can not fully meet the needs of the development of China's online transactions. In such case, the third party payment companies are continue to grow; to a large extent, it fill the defects of the original financial payment system, which in line with the future development trend of e-commerce market. The implementation of the third party payment license system, which will be included in the financial services system as an organic part. This is not only conducive to the development of electronic payment industry norms, but also conducive to the overall construction of Chinese financial payment system.

Conclusion

The third party payment as a new payment method, although the law is not perfect, it has the transaction advantages of convenience, high efficiency and low cost, which makes up the deficiency of the traditional banking business, but also meet the needs of network transactions; further, it has become the mainstream of the future development of e-commerce in China and the world. Therefore, we should pay close attention to the development trend of the third party payment, and take corresponding measures to maximize the reduction of risk, so that to create a favorable legal environment for it with the purpose of establishing a healthy, orderly Chinese e-commerce market.

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