

Study on the Legal Issues of Third Party Payment Platforms in Internet Fund Transactions

Yaqian Xuan

Department of Law, Law School, Guangxi Normal University, Guilin, China

Abstract

With the innovation and increasing popularity of mobile payment methods, Internet funds have gradually started to replace the market share of traditional funds. However, due to the special nature of Internet funds and the lack of relevant legal provisions to regulate the third-party payment platforms involved in Internet funds, it often causes a lot of transaction risks and security risks for individual investors, and it is worthwhile to pay attention to and discuss how to regulate the third-party payment platforms and explore a more complete Internet fund sales system from them.

Keywords

Third-Party Payment Platforms; Internet Funds; Legal Risks.

1. Concept and History of Internet Funds

In recent years, the Internet is no longer limited to traditional functions such as long-distance communication. With the emergence of new technologies such as cloud computing and big data, Internet technology has gradually begun to penetrate into the financial sector and has gradually gained a certain dominant position. The definition, characteristics and organisational structure of the fund will not be repeated here.

Traditional fund purchases often require investors to complete transactions through certain prescribed offline mediums such as bank counters and brokerage firms, with relatively high barriers to entry. In 2013, Alibaba's third-party payment platform, in conjunction with Tianhong Fund, launched China's first Internet fund, "BalancePay". In fact, a similar online fund trading system on the Internet is not the first of its kind in China. As early as last century, PayPal in the United States was the first to complete the integration of third-party payment platforms with the fund market, which became the prototype of today's Internet funds. In recent years, the relevant authorities in China, such as the Central Bank, have attached importance to and supported the innovative new financial model, for example, in the "Guidance on Promoting the Healthy Development of Internet Finance" issued in July 2015, Internet funds were placed under existing laws to be regulated and adjusted.

Although there is still a wide range of opinions on the concept and definition of Internet funds, there are still certain commonalities in the identification of the characteristics of Internet funds. Firstly, the most significant difference between internet funds and traditional funds is their low threshold and rapid liquidity. For traditional funds, subscription shares are often large and measured in tens of thousands of dollars, whereas for internet funds, for example, in the case of balance funds, subscription shares can be as small as RMB 0.01. Secondly, unlike traditional funds, which need to go through the "T+1, T+2, T+3" process of calculating shares for redemption, internet fund redemptions are often pre-funded by third-party payment platforms or fund companies they work with to achieve "T+0". The "T+0" redemption mode is highly liquid, and investors can often redeem their funds on the same day or even instantly when they apply for redemption. In practice, investors often go through third-party payment platforms to complete online fund transactions, resulting in a number of scholarly internet funds being

limited to sales by third-party institutions only. In fact, in recent years, more and more brokerage firms and fund companies are unwilling to be constrained to develop their own software or APPs for direct sales with investors. Therefore, I do not think it is reasonable to define Internet funds as being sold by third party payment platforms only in a considerable sense. Of course, in practice, due to the economic strength of the third-party payment platform and other reasons in the market has a considerable sense of dominance, in practice, still by the third-party payment platform sales of Internet funds, this paper also aims from this aspect of the legal issues involved and the corresponding countermeasures to think and analysis.

2. Legal Status of Third Party Payment Platforms in Internet Fund Transactions

For internet fund trading models where third party payment platforms cooperate with fund companies and are sold by them, this article takes "BalancePay" as an example. According to the "Tianhong Fund Management Company Limited Self-service Front Desk Service Agreement for Direct Online Trading", which the relevant user has to check and agree to before using the service, we can get a glimpse of the online trading model of such Internet funds. This is reflected in the fact that the user transfers funds from his bank account to his Alipay third party payment account, which is then transferred to the corresponding BalancePay agreement account, and then subscribes for the corresponding shares in accordance with the subscription agreement signed with Tianhong Fund Management Co. The same applies to redemptions.

In this process, some scholars believe that Alipay, as a third party payment platform, only plays a channel or link, i.e. it is believed that Alipay is not actually involved in the fund purchase contract between the user investor and the fund company, of which Alipay has also repeatedly stated in its "BalancePay Service Agreement" that it is not the person at the time of the fund purchase contract, but merely provides a channel for payment. However, I believe that if a dispute arises between the investor and the fund company and is appealed to the court, Alipay cannot use this as a defence. Firstly, in practice, Alipay certainly does not just play the role of providing a payment channel. The user-investor, by trading fund shares through the Alipay application, actually formed a commission-agent relationship with Alipay; likewise, in the above-mentioned balance transfer model, all involve temporary accounts on third-party payment platforms, and therefore, a guaranteed contractual relationship between the user, including the fund company, and Alipay. Secondly, the fact that Alipay stated in its "BalancePay Service Agreement" that it was not a party to the fund purchase contract, in fact, unreasonably reduced the responsibilities and obligations that it should have, and in a relative sense, unreasonably increased the burden of the user investor in the event of a dispute, and as a form clause, the court should review its legal validity. In practice, Alipay often takes advantage of its dominant position in the mobile payment market by posting advertisements on its app to promote its financial products, which is clearly inconsistent with its assertion that it only provides a channel for payment and the corresponding responsibilities and obligations it should assume. It is believed that a legislative system or a judicial decision to hold them accountable for such conduct would be of considerable relevance to improving the order of market transactions and promoting the rule of law in China.

3. Legal Risks of Third Party Payment Platforms in Internet Fund Transactions

3.1. Third Party Payment Platforms are in Fact Involved in Fund Transactions

As noted above, Alipay states in its BalancePay Service Agreement that it is not a party to the fund purchase contract, but merely plays a role as an intermediary bridge providing a sales

channel. Admittedly, Alipay plays a communication role between user investors and the Fund Company Limited in relation to subscriptions and redemptions, and no third party payment platform is currently qualified to provide direct fund transaction services with user investors. However, the author believes that third party payment platforms such as Alipay have involvement in transactions between fund companies and user investors.

Firstly, and as previously outlined, third party payment platforms such as Alipay use their share of the mobile payment market to advertise and promote internet fund transactions to their audiences. In practice, Alipay's vigorous promotion and publicity of its balance funds, including Tianhong Fund Limited, is not comparable to commercial advertising in the market, such as newspapers, television and computers. Secondly, I believe that third-party payment platforms such as Alipay have the right to make decisions and decide on the access to internet fund sale and purchase contracts, as reflected in the fact that Alipay has the power to refuse fund companies to conduct internet fund transactions with user investors when their subscription shares do not reach a minimum. In summary, for internet fund trading models where the third party payment platform cooperates with the fund company by which it conducts sales, the third party payment platform reviews and approves for example whether the investor's subscription share meets the minimum entry threshold for the meaningful representation made by the fund investor to conduct the underlying internet fund transaction. It is not difficult to see that not only the aforementioned relationship between the user investor and the third party payment platform, but also the corresponding relationship between the third party payment platform and the fund company it cooperates with, will be formed. Unlike its claim that it only provides a channel to facilitate payment, the third party payment platform in fact acts as a fund distributor, which in practice often does not have the qualifications to be a fund distributor. Once the fund transaction contract involved generates a transaction, the legal risks arising can often cause incalculable damage to the rights and interests of a relatively vulnerable party such as the user investor.

3.2. Legitimacy and Compliance of Third-Party Payment Platforms' Promotional Campaigns in Doubt

As mentioned earlier, third party payment platforms often use the convenience of their dominant position in the mobile payment market share to promote and advertise the financial products under them by various means. The third-party payment platforms tend to increase their investment efforts and investment efforts in order to attract user investors, often implying yields. For example, "Ninety percent chance of profit if held for more than two years" and "Seven-day annualised rate of how many times the demand deposit". Although some of the taglines use words such as "may, no less than, no more than" and some incoherent expressions, it is undeniable that these promotional images and taglines on the home page of third party payment platform applications or APPs will undoubtedly raise the psychological expectations of user investors, which will predictably increase significantly the interest of both potential customers and The target group, i.e. user investors, will be more enthusiastic and interested in making additional investments. And according to paragraph 1 and paragraph 3 of Article 77 of the Securities Investment Fund Law of the People's Republic of China, it is clearly stated that public disclosure of fund information is firstly, not to make false records, publish or publish misleading or materially omitted statements, and secondly, also not to promise benefits in violation of the law. There is no doubt that in practice the promotional practices of these third party payment platforms, which boast a cluster of financial products under their own heading, will undoubtedly call into question their legitimacy, including their reasonableness, in light of the two aforementioned provisions. In fact, once the actual benefit is less than the promise stated in the promotion wording, there will undoubtedly be disputes between the user investor and the third party payment platform relating to fabricated false propaganda and exaggerated

claims; and when the actual benefit is greater than the benefit described in the promotion wording, one cannot help but wonder whether this again constitutes an unlawful promise of benefit in the public disclosure of information. Furthermore, the use of promotional words and slogans by third-party payment platforms to win people's attention can essentially cause vicious competition among some interested parties, which is contrary to the development of public order and morality in society and is not conducive to the economic and social development of China as well as the promotion of the rule of law in China. How to regulate the third-party payment platform for its financial products under the promotion and publicity, I am not learned only can only point out this specific and serious social phenomenon and malpractice, how to solve the relevant problems still need more judicial aspirants to pay attention to and judicial examination. In the author's opinion, it is feasible and practical to solve this kind of problem by seeking other legal systems such as invoking the Regulation on Advertising and Advertisement.

3.3. The Legitimacy and Compliance of the Third Party Payment Platform's Marketing Tools are in Doubt

As mentioned above, third party payment platforms often use guaranteed or exaggerated slogans to entice user investors to increase their share of investment, and some third party payment platforms may even use the popular "red packet" method to entice user investors to participate in the activities at the level of material rewards, such as Alipay, Daily Fund and other third party payment platforms. For example, third-party payment platforms such as Alipay and Daily Fund often give user investors a partial discount on the purchase of financial derivative products under them by means of forwarding lucky draws. However, there are similar mandatory provisions in laws and regulations that explicitly prohibit this. According to Article 24(6) of the Measures for the Supervision and Administration of Publicly-offered Securities Investment Fund Sales Institutions, the relevant fund sales institutions and their staff shall not use the name of lucky draws or rewards as a means to attract user investors to promote product sales. It is worth noting that the above-mentioned provision is limited to "fund sales institutions", although according to the author's analysis and the previous paragraph of this article, there is no doubt that third-party payment platforms are fund sales institutions, there is still a great controversy as to whether or not third-party payment platforms are fund sales institutions, and therefore in practice it will greatly weaken the effect of this paragraph, thus making it impossible to find a superior law basis for penalizing violations such as lotteries, rebates or rewards in practice. However, it is undeniable that the use of red envelopes, lotteries and other forms of third-party payment platform marketing techniques are clearly as illegal and culpable as those provided for in the law, and allowing similar acts to continue and spread is not only contrary to public order and morality, but also not conducive to the sound development of China's economy and society. From this, it is easy to see that the controversy over the legal status and legal qualification of third-party payment platforms in internet fund transactions, as well as the fact that the existing laws and regulations lag behind the ever-changing technological development and social changes, make it very difficult to regulate and control the new commercial economic model.

4. Rigid and Imperfect Information Disclosure System of Third Party Payment Platforms

As mentioned above, third party payment platforms are often involved in the sale of financial derivative products on the Internet and often form a direct relationship with the parties to the sale and purchase contracts, which, according to the provisions of the Securities Investment Fund Law and the Securities Law on the information disclosure system, undoubtedly requires third party payment platforms to assume not only social but also legal responsibilities. However,

in practice, unlike the traditional fund trading process where user investors can go through a large number of contractual documents and listen to the advice of relevant staff such as managers at offline institutions such as bank counters, in internet fund trading, contractual documents and risk notes are often condensed in hyperlinks which do not allow easy access to relevant notes and risk tips, for example, user investors in the process of using Alipay In the process of using Alipay, for example, although the application app will pop up links to the corresponding internet transmissions such as the aforementioned Alipay Service Agreement and the Tianhong Fund Company Service Agreement, this is in fact not a mandatory service and reading the relevant necessary information is still dependent on the individual user investor's intention. It is doubtful whether the third-party payment platform can rely on the fact that it has provided links to the relevant documents as a defence in the event of a lawsuit brought by the user-investor due to a dispute. It is worth considering that in the process of providing the relevant services, the third-party payment platform does not play its obligations and responsibilities as a good-faith administrator, and effectively fulfils its obligations to disclose information. In this process, it is difficult to avoid the formation of the transaction process for the vulnerable individual user investors, resulting in the "information cocoon" phenomenon, resulting in extreme information asymmetry, thus greatly depleting the rights and interests of user investors.

5. Relevant Legal Responsibilities Still Need to be Improved

Unlike traditional fund trading which requires a large amount of documentation, the emerging internet fund trading has its advantages such as low entry barriers, high liquidity and convenience, but also has its corresponding disadvantages such as a less than prudent attitude towards the practicality principle of applying funds. According to Article 17 of the provisions of the "Supervision and Administration of Publicly Raised Securities Investment Fund Sales Institutions", fund sales institutions should understand the investment habits and risk tolerance of user investors and make corresponding recommendations based on this. However, unlike traditional fund transactions, in internet fund transactions, third party payment platforms often only have a few or even just one or two multiple choice questions to investigate the investor's investment preferences and corresponding risk tolerance ability, which is undoubtedly difficult to effectively protect the rights and interests of user investors. Some third-party payment platforms may even recommend high-risk financial derivative products to investors with low risk tolerance in order to make unjustified excess profits. In practice, the list of similar microscopic practices is endless. However, I believe that a large part of the reason why such violations persist is due to the imperfection of the relevant legal liability regime, from which violators draw extraordinary financial benefits while often being subject to only minor liability or penalties. For example, according to the relevant provisions of the Administrative Measures for the Sale of Securities Investment Funds, most of the legal liabilities are limited to administrative liabilities such as cessation of infringement and correction within a certain period of time, and there is no clear legal provision for the resulting civil liabilities, resulting in an extreme mismatch between the benefits brought about by non-compliance and the risks to be borne. In the author's opinion, it is urgent and important to add a system similar to punitive damages to improve the relevant legal liability system.

6. Uggestions for the Regulation of Third-Party Payment Platforms in Internet Fund Transactions

6.1. Improve the Quality of the Relevant Industrial Workforce and Strengthen the Discipline of the Corresponding Qualifications

As analysed by the author, there is currently a controversy over the legal status of third-party payment platforms in internet fund transactions, and there is a lack of mandatory provisions in laws and regulations in this regard. In practice, this also makes the violation of third-party payment platforms lack of sufficient superior law support and jurisprudential basis. By clarifying the legal position and definition of third-party payment platforms through legislative means, it will help third-party payment platforms to be aware of their legal responsibilities and obligations and reduce the number of legal loopholes that already exist, as well as help companies and enterprises in a dominant position and with asymmetric information to reduce the oppression of individual investors. Similarly, once the definition and characterisation of a third-party payment platform is clarified, for example, as a fund distribution or fund sales organisation, it is also necessary to strengthen the corresponding qualification discipline, including the access to the qualification and the liability for breach of the corresponding industry regulations. This will not only help to improve the work and overall quality of the relevant practitioners, but also help to regulate the discipline of the industry and improve the discipline of not only business but also social and economic development.

6.2. Establishment of an Adequate and Standardised Information Disclosure System

Some provisions and improvements have already been made to the information disclosure system in the Administrative Measures for the Sale of Securities Investment Funds introduced in 2016, and for fund sales institutions, the laws and regulations compel them to have the obligation to make documents accessible to user investors by way of display. In the author's view, the current prescribed information disclosure system and practice are still somewhat unclear and partially unreasonable. In the author's view, the first and foremost thing is to increase the scope of information disclosure, adding to the existing types of documents such as information on internet funds, monthly or quarterly financial reports of fund companies, and share subscription letters, in order to minimise the information asymmetry between individual user investors and corporate companies and thereby eliminate the disadvantageous position of individual user investors in the transaction to facilitate the transaction and enhance the This will minimise the information gap between the individual user investor and the corporate company, thereby minimising the vulnerability of the individual user investor in the transaction, facilitating the transaction and enhancing the security and fairness of the transaction. At the same time, a mandatory information disclosure system should be established, for example, for fund sales institutions, i.e. third-party payment platforms, to add a mandatory system when providing information notices or risk tips to individual user investors, for example, they must read the corresponding contract documents or literature tips before conducting transactions, and the progress of reading the corresponding documents and materials as a constituent element of the establishment of the contract, and the progress of reading the corresponding risk tips if The user investor cannot proceed to the next step of the transaction if he has not completed the required progress. At the same time, the fund distribution institution may also add a time limit to the reading progress, so that even if the user investor adopts an opportunistic approach to ignore the risk tips, the minimum time limit on reading will still help to strengthen the information disclosure and risk tips for them. Due to the unique nature of internet fund trading, it is relatively difficult to regulate in practice and certainly not as tightly as traditional fund trading. However, it is undeniable that the establishment of a strict and extended

information disclosure system through legislative means is conducive to the promotion of internet fund trading and helps to avoid the legal risks of online trading of the corresponding internet line funds while contributing to a greater extent to the construction of the rule of law in China and the orderly economic and social development of China from a more macro perspective.

Acknowledgments

One of the milestones of the "Challenges and Responses to the Protection of Personal Sensitive Information - An Empirical Analysis Based on APP Privacy Agreement(202210602142)" of the 2022 Innovation Training for Students of Guangxi Normal University.

References

- [1] Wang Xinyol. Research on the Legal Risks of Internet Money Market Funds and Their Regulation [D] Shanghai Jiaotong University. 2016.
- [2] Li Tao. Research on the Legal System of Information Disclosure of Internet Non-public Equity Financing [D] Southwest University of Political Science and Law. 2017.
- [3] Zhao Wenyu. Research on Risk Control of Internet Funds - Taking BalancePay as an Example [D]. Shandong University of Finance and Economics. 2017.
- [4] Liu Fang. An Analysis of the Legal Issues of Internet Fund Sales in China [D] Guangxi University. 2018.
- [5] Chen Hongmei, "Internet Credit Risk and Big Data", Tsinghua University Press, 2015.
- [6] Han Xiangbo, "Research on the Legal Issues of Appropriateness of Financial Product Sales - Focusing on Dispute Resolution of Financial Products", Law Press, 2013 edition.
- [7] Liu Renwu, Qin Daoai and Liu Hua, Legal Aspects of the Insolvency of Financial Institutions, Social Science Literature Press, 2007.
- [8] Ouyang Rihui, Internet Financial Regulation: Self-Regulation, Inclusion and Innovation, Economic Science Press, 2015.
- [9] Zhang Jikang and Luan Peiqiang, "The Development of Money Market Funds in the United States", in Studies in American Issues (2nd series), Current Affairs Press.