

# **Research on Legal Risks and its Countermeasures of the Third-party Internet Platform from the International Perspective**

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**Keywords:** International Perspective; Third-party Internet Platform; Legal Risk; Countermeasure Research

**Abstract:** In recent years, with the rapid growth of e-commerce, third-party payment has become a necessary paying way in our daily life. However, most people lack the necessary understanding of this payment, and the relevant legal system is imperfect. This paper makes an in-depth analysis of the existing legal issues in order to enable users to know what methods to use to protect their legitimate rights and interests. In addition, after in-depth study of the actual situation of the current third-party payment legal regulation, we can conclude that it is much-needed to improve the relevant legal system because it exists many problems.

## **1. Introduction**

Nowadays, with the rapid growth of Internet and e-commerce, online shopping has become an indispensable way of people's daily life because of its own characteristics, such as complete variety of goods, simple and fast way of purchasing and low price. Because of this, electronic payment and other third-party payment have gradually attracted more and more people's attention. Third-party Internet payment is obviously a relatively new way of electronic payment for Chinese people. And it is developing rapidly for the joint promotion of computer technology and electronic commerce. However, the relevant domestic legal system has not been perfected. Nowadays, the rapid development of this payment is accompanied by a series of urgent legal issues to be addressed.

## **2. Definition of the Third-party Internet Platform**

At present, China's relevant laws do not clearly define the boundaries of third-party Internet payment, and there is no consensus on the definition of third-party Internet payment in academic circles. There are also different views at home and abroad. [1] Generally speaking, Cao Honghui, a domestic scholar, thinks that third-party Internet payment refers to the third-party institutions with certain economic strength and good reputation. [2] They sign contracts with large-scale foreign banks in order to provide buyers and sellers with a platform to carry out transactions through the internet.[3] Some foreign scholars like Tae-Hwan Shrom and Paula M.C. Swatman advocate that by providing authorized services to buyers and sellers to negotiate on the platform, then buyers and sellers carry out online payment based on mutual trust. In my opinion, the third-party Internet payment refers to a kind of Internet payment method, through which sellers exchange money and goods according to the buyer's requirements with the help of contracted bank after sellers applying to the central bank and obtaining payment business license.

## **3. Problems in Legal Supervision of the Third-party Internet Payment in China**

### **3.1 Incomplete legal supervision system**

With the promulgation of the Regulations on the Administration of Payments by Non-financial Institutions in 2010 and its Implementation Rules, for the first time, China has firstly made specific provisions on the legal nature of third-party payment institutions by means of legislation, which requires third-party payment organizations to meet industry requirements and obtain a Business License from the Central Bank. The promulgation of the above-mentioned laws and regulations

effectively resolve the qualitative issues involved in the field of third-party Internet payment. However, there are still a lot of shortcomings (including the protection of consumers' legitimate rights and interests and the reserve and ownership of interests paid by third-party) which need to be dealt with. At the present stage, the relevant laws and regulations concerning third-party Internet payment in China are extremely scarce, and the laws and regulations already promulgated by China have a low status. Therefore, there are significant legal risks in the field of third-party Internet payment, such as the lack of consumer rights and interests protection mechanism, derivation of financial crimes, legal liability and the unclear ownership of sedimentary money.

### **3.2 Imperfect guarantee system of consumer rights and interests**

China does not have a perfect legal system or a comprehensive consumer protection system of third-party Internet payment.[4] Consumers do not have a strong sense of rights protection. When consumers feel that their rights and interests are violated, they often do not know how to protect it. Some consumers have weak legal consciousness and can not properly keep evidence. So it is difficult for them to take effective measures to protect their legitimate rights and interests. [5] And it is not helpful for the future development of third-party Internet payment. For example, some trading platforms have low security level which prompts computer hackers to invade. In this case, the data is easily used by people with bad intentions, and this will cause unexpected security defects.

### **3.3 Ascription problem of sedimentary money**

At present, there is no unanimous view on sedimentary money issue of third-party Internet payment, nor do researchers. [6] For the sedimentary money of third-party Internet payment, it includes the following parts: fund deposit; temporary deposit funds in the platform during dispute settlement; in-transit funds; funds in the platform before and after the trading. For a long time, users always pay attention to sedimentary money, which is because sedimentary money can accrue significant benefits after long-time deposit on third-party Internet payment platform. At present, China still has a lot of problems on this issue that need to be solved urgently.

### **3.4 Unclear legal liability of payment subject**

At present, there are no relevant laws and regulations regulating the legal relationship of third-party Internet payment in China. If disputes arise, relevant provisions of Contract Law, General Principles of Civil Law and Tort Liability Law must be applied. However, these laws only give principled requirements on tort liability and liability for breach of contract. Assuming the actual situation of third-party payment, these regulations do not point out specific liability. The legitimate rights and interests of the party to the dispute can not be effectively guaranteed. The reasons are as followings. Firstly, the principle of liability for breach of contract is not clear. The Contract Law focuses on the liability for breach of contract and applies the principle of dualistic structure. In third-party Internet payment, the civil liability has many characteristics, such as broad subject, difficult to obtain evidence and complex legal relationship, so the third-party Internet payment liability for breach of contract can not only adopt the dualistic principle, otherwise the legitimate rights and interests of the parties can not be effectively guaranteed. Secondly, the principle of imputation of tort liability is not clear. According to the Tort Liability Law, there are three principles including the principle of presumptive liability for fault, the principle of liability without fault and the principle of liability for fault. In third-party Internet payment, there will inevitably be some torts, but the corresponding principle is not decided yet. In this case, it is not easy to obtain corresponding relief through legal channels, thus undermining the judicial order and impartiality.

### **3.5 Problems of financial crime**

The first one is illegal “cash-out”. cash-out is a popular means of cash arbitrage on the Internet through which users withdraw their money from bank cards by virtual bank business and various payment terminals. Because there still exists flaws in China's third-party Internet payment supervision system and credit management system, some lawbreakers would take this opportunities

to defraud. The second one is illegal money laundering. Third-party Internet payment laundering is one of the common ways of Internet money laundering. Lawbreakers carry out money laundering activities in the third-party Internet payment platform through various obscure methods. Taking Alipay as an example, lawbreakers use false personal information to open accounts, earn profits and withdraw deposit by selling virtual products. There are many flaws in the legal system of online payment in China. Lawbreakers continue their rampant behaviors with the help of the loopholes in the monitoring system against money laundering

#### **4. Current Situation and Enlightenment of Legal Supervision of the Third-party Internet Payment Abroad**

##### **4.1 Legal supervision of third-party Internet payment in the United States**

In the field of e-commerce, the United States is in the leading position in the world. It has a relatively sound legal mechanism for e-commerce and pays great attention to the control of various monetary industries. In the United States, all kinds of third-party payment are generally regarded as the most representative monetary circulation services, and the corresponding third-party Internet payment companies belong to non-bank financial enterprises. In addition, in the Modern Law of Financial Services, the U.S. government integrates the whole field of third-party payment into the control mechanism of the monetary industry.

##### **4.2. Legal supervision of third-party Internet payment in the European Union**

The European Union defines all types of third-party online payment companies as monetary institutions. In order to improve the overall level of third-party online payment, the European Union proposes to apply the electronic currency control mode to the entire third-party online payment industry.

#### **5. The Enlightenment of Foreign Third-party Internet Payment System to China**

Although the domestic third-party online payment field is in a period of rapid development, China's still legislation is still not perfect. Based on the comparison between domestic and foreign third-party payment, this paper put forward the following suggestions to make for the deficiency of domestic system and learn the experience of foreign countries.

##### **5.1 To strengthen legislation and improve the supervision mechanism of third-party Internet payment**

At present, according to the relevant domestic legal system, all kinds of commercial banks are managed and controlled by the China Banking Regulatory Commission, and all kinds of securities enterprises are supervised by the China Securities Regulatory Commission. However, there is not a supervision department with the same level as the SFC in the field of third-party online payment. Therefore, China can learn from the relevant regulatory experience of EU countries and set up a special third-party online payment supervision department with high-level supervision for third-party online payment. It can also learn from the supervision mode of the United States and create a comprehensive third-party online payment supervision mechanism. For example, a third-party online payment supervision mechanism which is related to the People's Bank of China, Banking Regulatory Commission, Supervisory Committee of Bank of China, Tax authorities and data industry organizations can be set up.

##### **5.2 To strengthen the protection of consumers' rights and interests in third-party payment**

Foreign countries adhere to the principle of fairness, promulgate relevant laws and regulations on the consumer protection third-party Internet payment, and constantly improve the legal system, in order to protect the legitimate rights and interests of users. In order to prevent third-party payment institutions from revealing users' personal privacy, the United States has promulgated the Privacy Law and the Financial Reform Law of the United States. Similarly, the European Union has

promulgated the Data Protection Directive. In these countries, the third-party Internet payment agencies are required to take appropriate measures to properly protect the privacy of users, and regularly check Internet vulnerabilities to prevent some lawbreakers from stealing users' privacy. In order to strengthen the construction of privacy protection of third-party Internet payment in China, we should proceed from the actual situation, make research and analysis on some developing countries, draw lessons from some good experiences abroad, and gradually improve domestic protection mechanism. In addition, users' awareness of privacy protection should be enhanced. This can be achieved by promulgating relevant laws and regulations. In this way, users can feel the protection effect of their own security and privacy.

### **5.3 To improve the sedimentary money system in third-party Internet payment**

Strengthen legislation to clarify the ownership of sedimentary money. The problem of sedimentary money has a far-reaching impact on the supervision of the third-party Internet payment. To solve this problem, several countries have taken effective measures. For example, the United States mostly adopts insurance premium measures, while the European Union mostly adopts risk reserve. At present, the relevant laws of third-party Internet payment are not perfect, the supervision is not in place, and the legal basis is rather weak. What's worse, the problem of sedimentary money is hard to be solved for the limitations of the existing laws and regulations of China. As China's third-party Internet payment industry increasingly develops, we should strengthen the supervision of sedimentary money, construct and improve the laws and regulations on deposits, so as to effectively safeguard the security of sedimentary money.

## **6. Conclusion**

Compared with the network payment platform, the users are still in a disadvantageous position in law. When the users sign the relevant registration agreement, their responsibility identification has a certain bias. It is precisely because of this unfairness of the responsibility identification that leads to the instability of the network payment industry. Therefore, China should promulgate relevant laws as soon as possible, make clear instructions on responsibility determination, conduct strict auditing and monitoring of online payment platforms, and prohibit platforms from requiring users to sign unequal agreements. At present, in order to strengthen the management of the online payment industry, China adopts the principle of fault presumption in the responsibility determination, and tries to safeguard the legitimate rights and interests of users as far as possible. In the management of related platforms, the interests of users should be firstly considered, so as to avoid the platform using its own advantages to damage the interests of individual users. At the same time, we should formulate strict punishment measures to deal with some illegal behaviors, such as fine and penalties for some serious acts. Only by making lawbreakers realize the seriousness of the mistakes can we fundamentally eliminate financial crimes.

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