

On the legal settlement mechanism of SME financing under the background of "one belt and one road"

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Abstract. Small and medium-sized enterprises are facing great opportunities and great challenges in the "one belt and one way" platform. Small and medium-sized enterprises have the advantages of strong adaptability and adaptability in the market, and are the important force for the sustainable development of society. But if we want to get a place in the international competition, China's small and medium-sized enterprises must solve the financing problem, so that we can get development opportunities in the "one belt and one way" strategy.

1. Introduction

From the perspective of economics, the income of SMEs should prove the legitimacy of cost. That is to say, within the scope permitted by law, legislators should maximize the net profit of legislation in the legal system of financing for small and medium-sized enterprises. The problem of SMEs is a worldwide problem. There are a large number of SMEs in both developed and developing countries. Without the existence of small and medium-sized enterprises, free and orderly market economy will vanish from theory to practice. With the in-depth development of the "one belt and one way" strategy, its huge capital volume and market potential have prompted the state to regulate, adjust, lead and protect the legal behavior of Chinese enterprises. Among them, small and medium-sized enterprises have the advantages of strong adaptability and adaptability in the market, which is an important force for the sustainable development of society. However, with the further tightening of domestic financing channels, the financing difficulties of SMEs have become an indisputable fact. The environment for the survival and development of enterprises keeps tightening, and the bottlenecks of capital, talent, technology and other factors facing production and operation continue to increase, among which the financing factor is particularly prominent. Therefore, under the background of a whole road, how to seize the opportunity to go out is of great significance for small and medium-sized enterprises.

2. Analysis of the Reasons for the Difficulty of Financing of SMEs

With China's economy entering the stage of transformation and development, the past government-led growth model has been difficult to maintain, and the micro-level development environment of small and medium-sized enterprises has become unsustainable.

2.1 Difficulty in lending

The contradiction between the huge capital demand space for SMEs' development and the financial restraint policy is one of the reasons for SMEs' financing difficulties. According to the national financial policy, the capital market is only open to large enterprises. Because of management costs and other reasons, state-owned commercial banks are also inclined to large enterprises. In order to avoid loan risk, banks often conduct strict examination after enterprises submit loan applications. According to Article 28 of the General Rules for Loans, if the bank suffers losses due to

the failure of the credit officer's assessment, the credit officer will bear certain responsibilities. In addition, SMEs have small scale and high risk coefficient. In order to minimize their risk, banks and other financial institutions will naturally raise the threshold of loan approval. Article 2 of the Interim Management Method of the Host Bank clearly points out that the main service objects of the host bank are large and medium-sized state-owned corporate enterprises.

2.2 Difficulty in guaranteeing

Guaranteed loan is a common way of loan when an enterprise has a high quality project but lacks a certain amount of collateral. At present, the main behavioral norms for adjusting enterprise financing guarantee include the Guarantee Law of the People's Republic of China, the Banking Law and the Regulations on Loan Contracts. In terms of credit guarantee, it is difficult for small and medium-sized enterprises to find guarantors who meet the guarantee conditions. Article 7 of the Guarantee Law stipulates that "a legal person, other organization or citizen with the ability to pay off debts on his behalf may act as a guarantor". Articles 16, 17 and 18 of the judicial interpretation of the Guarantee Law also strictly restrict the qualifications of guarantors of institutions and functional organizations of corporate entities. In terms of collateral, the Banking Law requires small and medium-sized enterprises to provide real estate mortgage such as housing, land or chattel pledge mortgage when guaranteeing. In order to prevent and control the loan risk of small and medium-sized enterprises, most banks refuse the pledge of creditor's rights, equity rights and other rights as enterprise loan guarantee. Therefore, in the application for guarantee, small and medium-sized enterprises lack the property that can be mortgaged or pledged.

2.3 Lack of multi-level capital market

The liquidity of capital will directly determine the survival and development of an enterprise. The economist Joseph Schumpeter believes that the role of capital lies in acquiring means for entrepreneurs to produce. It can be seen that financial support plays an indispensable role in economic development, especially for the small and medium-sized enterprises in China, which have few own funds, great development prospects and a large number of small and medium-sized enterprises. At present, the main financing channel of SMEs is still the traditional financing channel of financial institutions. The rigorous financing procedures of traditional financing channels and high financing costs make the financing demand of SMEs larger overall. Because the financing requirements of the main board, SMEs and GEM are very high, SMEs are difficult to finance successfully. The new third board market in China is not mature, laws and regulations are not yet perfect, so although the country has relaxed the access requirements, small and medium-sized enterprises are still difficult to carry out flexible capital operations on their platform to meet their financing needs. In short, the financing of SMEs also lacks a multi-level capital market with reasonable design and perfect system.

3. The legal design of SME financing under the background of "one belt and one road"

3.1 Improving the System of Small and Medium-sized Financial Institutions

Many small and medium sized enterprises along the "one belt and one way" along with China have problems of financing difficulties as well as China. At present, China's small and medium-sized financial institutions mainly include urban and rural credit cooperatives, urban commercial banks and various local trust companies and other financial organizations. The emerging system of small and medium-sized financial institutions should include independent private small and medium-sized banks or other lending financial institutions, cooperative financial institutions for small and medium-sized enterprises and specialized financing institutions for small and medium-sized enterprises established by the state. If only large commercial banks are required to provide financing services for SMEs, it will not change the essence of information asymmetry between banks and SMEs.

Therefore, the author puts forward three suggestions: Firstly, the state should speed up the revision of the SME Promotion Law, strengthen the support for SMEs in tax preferences, promoting financing, reducing the cost of start-up, and so on. Secondly, formulating a special law for SMEs, which is connected with SMEs, define the definition of SMEs in legislation and stipulate the main features of SMEs. Thirdly, referring to the experience of international financial legislation, such as Japan's host banking system, we should reform the existing Banking Law, amend or delete the "no investment in non-self-use real estate or non-bank financial institutions and enterprises" mentioned in Article 43 of the Banking Law, and legalize the holding of enterprise shares by commercial banks in legislation.

3.2 Perfecting the credit guarantee system for small and medium-sized enterprises

Japan has formed a credit guarantee law system for small and medium-sized enterprises centered on the Law on Credit Guarantee Association of Small and Medium-sized Enterprises and the Law on Credit Insurance of Small and Medium-sized Enterprises. However, the current laws related to credit guarantee in China are still in the transitional stage, which is insufficient to provide strong legal support for SMEs' financing. From the current domestic legislative situation, the main purpose of the legislation of the Guarantee Law is to protect the interests of creditors. The purpose of the regulation is to regulate the legal relationship between enterprises, institutions, legal persons, other organizations or natural persons. It only regulates the act of guaranteeing, but does not explain the issue of credit guarantee. As far as credit guarantee system is concerned, according to Coase theorem, legislators can break the original allocation of resources by redefining and distributing rights, and ultimately achieve Pareto optimum.

Here are three suggestions: Firstly, we should establish a credit guarantee system centered on the "Law on Credit Guarantee for Small and Medium-sized Enterprises". The law stipulates the legal status of SMEs' credit guarantee institutions, as well as the amount of guarantee, the proportion of compensation, risk-taking and interest income. The law should clearly stipulate that the main qualification of credit guarantee institutions for SMEs can be divided into three categories: government-led credit guarantee institutions, mutual credit guarantee institutions and commercial credit guarantee institutions. Secondly, we should improve the re-guarantee system and counter-guarantee system to realize risk transfer and compensation. Although risk transfer itself does not eliminate risks, the bearers of risk consequences have shifted. The law can directly stipulate that all kinds of relevant guaranty institutions must take part in counter-guaranty in order to realize the value of binding the guaranty liability and improving the repayment ability of the guaranty institutions. Thirdly, we should establish authoritative credit evaluation institutions to speed up the information docking between financial institutions and small and medium-sized enterprises. We will promote the construction of an information-based credit evaluation system for small and medium-sized enterprises, with small and medium-sized enterprises as the main service objects and credit evaluation, credit records and credit investigation as the main links.

3.3 Establishing diversified financing mechanisms

Solving the biggest financial obstacle to developing the international market for SMEs is the key to carrying out the strategy of "one belt and one road" and "going out". With the rapid development of Internet finance, a new potential financing channel has emerged——P2P network lending. In terms of P2P network lending, the relevant legal design is not yet mature, and there are practical problems in the operation of P2P network lending, such as shutdown, difficulties, running, being involved in criminal investigation and so on.

The author puts forward three suggestions. Firstly, we should standardize the legal definition of P2P network borrowing and strengthen the criminal legislation of P2P network borrowing. The Code of Financial Institutions issued by the People's Bank of China in September 2014 clearly lists the types of deposit and non-deposit financial institutions in the banking industry, and the legal nature of P2P online lending platform is not one of them. In my opinion, it is more appropriate to define the legal nature of P2P online lending platform as non-financial institutions. As for the criminal

legislation of P2P network lending, because P2P network lending is carried out through the Internet, lenders, online lending platforms and borrowers do not understand each other, it is very easy to touch the criminal law network in practice, suspected of illegal fund-raising, illegal business, misappropriation and other charges. Secondly, improve the supervision system of P2P platform. At present, the regulatory standards of P2P network lending still refer to the general network enterprises. In the setting of access conditions for P2P network lending, the law should set a certain threshold for registered capital, stipulate that the platform should have a reasonable internal control system, a perfect organizational framework and a certain number of professional managers. In setting the exit conditions of P2P network lending, the platform must fulfill the relevant contractual obligations. In addition, the state should also require the information of P2P governance mechanism, operation mode, wind control mechanism and other platforms to be open to the public, so as to solve the problem of opaque capital operation in P2P network borrowing.

4. Conclusion

The domestic development of enterprises is the premise of participating in international competition. The premise of a country's enterprises' international competitiveness is to develop first at home. The first step for the further development of enterprises in China is to solve the problem of financing. For China, small and medium-sized enterprises are facing great opportunities and great challenges in the "one belt and one way" platform. Small and medium-sized enterprises have the advantages of strong adaptability and adaptability in the market, and are the important force for the sustainable development of society. Along with the development of the whole area, the reduction of investment cost and trade cost has brought great development space for small and medium-sized enterprises. But if we want to gain a foothold in international competition and find a strategic development path suitable for its own characteristics, SMEs must solve the financing problem, so that we can get development opportunities in the "one belt and one way" strategy. In international competition, SMEs are more vulnerable to threats than large enterprises. The first ones to be eliminated in the market are often those with weaker strength. Only by protecting the small and medium-sized enterprises well can we achieve the future large enterprises. Therefore, how to innovate its own development path from the perspective of perfecting the system of small and medium-sized financial institutions, improving the credit guarantee system of small and medium-sized enterprises, and establishing diversified financing mechanisms, so as to truly realize the good vision of "going out" requires long-term efforts of legal workers.

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