

The Construction of Commercial Credit System from the View of Civil Code

Yingjie Guo

Business College, Shanxi University, Taiyuan Shanxi, 030031, China

Key words: Civil code, Commercial credit, Construction.

Abstract. Civil Law is an important normative document of law and standard of behavior for people to proceed with civil and commercial activities and deal with civil and commercial relations. How to establish the commercial credit system in the context of compiling the modern civil code? This paper analyzes some manifestations indicating the lack of commercial credit system and its social harms, showing that the construction of commercial credit system needs the convoy of civil code. Therefore, the establishment of commercial credit system should be based on some principle provisions of the civil code, and countermeasures for establishing the commercial credit system from the view of civil code should be put forward, so as to support the commercial credit establishment in our country and provide certain references for the formulation of the civil code.

Introduction

In the country where the whole people are now in urgent need of "credit" and at the time when the credit establishment needs to be strengthened urgently in the whole society, the compilation of civil code becomes the focus of attention in the circle of civil and commercial laws again. As an "empire provision" of the civil law, the principle of good faith obtains the unprecedented vitality in the context that the society develops rapidly. Due to limited legal protection system for the commercial credit in our country, the lack of relevant legal systems has resulted in a series of social problems.

Convoy of civil code required for construction of commercial credit system

It is said in The Commentary of Zuo: a person speaks with faith and evidence. Commercial credit is the concrete manifestation of credit in the field of commercial affairs. Market economy is credit economy, and credit is basis of commercial transaction and good reputation is a kind of intangible asset; as Max Weber stressed repeatedly in The Protestant Ethic and the Spirit of Capitalism: credit is money.

Manifestations indicating the lack of commercial credit system and its social harms

Credit is the footstone of market economy. Currently, the lack of commercial credit system has greatly hindered the development of commercial credit in our country and impeded the further development of economy. The main manifestations and social harms include:

1. Commodity credit crisis and inundant fake and shoddy goods. Currently, the market is full of fake and shoddy commodities and counterfeiters race to control the market with unfair competition and despicable means such as stealing technology, making and selling poor products, counterfeiting brands, offering high-rate brokerage and distress selling, which break the "rules of the game", lead to "bad money driving out good money" and greatly damage the legitimate rights and interests of consumers.

2. Credit crisis in commercial intercourse and increasing contract disputes. In real life, dishonest contracts and "breaking contracts just like waste papers" are very common phenomena, and economic

disputes concerning malicious defaults and deliberate arrears among enterprises are increasing ceaselessly. In 2014, civil and commercial cases newly accepted by courts throughout the country accounted for 63.06% of the total number of various cases and 86.97% of the court cases. The proportion of contract cases increased, and the contract cases accounted for 55.90% of civil and commercial cases.

3. Financial credit crisis. It is very common that market entities break their promises to bank and non-bank financial institutions. After obtaining services of financial institutions, some enterprises evade debts by every possible means; some enterprises utilize the opportunity of restructuring to evade debts by enterprise emerging, splitting, bankruptcy, annexation, etc.; some enterprises get rid of supervision of financial institutions and refuse to fulfill the obligations by means of paying with revenue in cash, opening several accounts in one name, etc., which greatly damage the rights and interests of banks and other creditors.

4. Credit crisis in securities market and rule-breaking operations despite repeated prohibitions. Some listed companies deceive the society and stock investors by means of financial frauds, and the "Rat Trading" events are often seen, which not only disturb the economic order of capital market and hurt the confidence of investors, but also lead to a series of social and economic problems. From mid-June to early-July of 2015, securities lawbreaking behaviors made a comeback, and the unusual rapid slump occurred in the Chinese stock market.

Convoy of civil code required for construction of commercial credit system

Civil law is mother of all laws, and is an important normative document of law and standard of behavior for people to proceed with civil and commercial activities and deal with civil and commercial relations. "Due to its congenital nature, civil and commercial relation may be a kind of relation that can never be sorted out." With continuous application of cloud computing, cloud storage, Internet of Things, etc., in the context of big data, our each consumption, each connection and each movement will become the objects of data collection, processing and storage, while whom does the ownership of such data belong to?

1. The basic principle of good faith of the civil law is the basis for existence of commercial credit. As the basic principle, good faith embodies the justice and equity of law; when permeating the commercial field as a kind of standard of behavior, it can not only normalize and guide the behaviors of the parties involved, but also act as the basis and standard of any legal judgment. The principle of good faith provides a good legal guarantee and basis for safeguarding a healthy market order.

2. The property law is a legal protection of commercial credit. Commercial credits is a kind of credit centering on property content; the property law specifies various property rights, stipulates the property right ownership where one right is for one property, establishes the principle that property right is sacrosanct and that it has the characteristic of exclusiveness, which plays an extremely important role in preventing credit risks. The emergence of commercial transactions must be based on defining clear exclusive rights, and certain commitment behaviors are required for completing the transaction relation and achieve the purpose of transaction.

3. The Law of Obligations is a legal protection of commercial credit. The legal relation between credit and debt is the most fundamental legal relation among civil and commercial affairs in the society of market economy, and is also the most typical credit relation in the market economy; the purpose of the Law of Obligations is to protect the rights of contracting parties, realize the content agreed in the contracts, and pursue a fair and balanced interest relationship. "Debt is legally expectable credit"; once the debt emerges as a kind of expectable benefit, guaranteeing the realization of creditor's rights is safeguarding the credit relation.

4. The Tort Liability Law is a legal protection of commercial credit. As the guarantee law and remedy law of rights, the tort liability law stipulates the protection scope of tort liability, and as many as 18 kinds of civil rights and interests are mainly protected and listed in Clause 2 (2) of the Tort Liability Law. The safeguarding of commercial credit is realized mainly by legal liabilities; the

doctrine of liability fixation of the tort liability law guarantees the fixation of tort liability and the balance of compensation portio, maintaining the public order and good customs of the society.

Principle provisions of civil code required as the basis for establishing the commercial credit system

It is required to establish a protection system for the commercial credit system in the future civil code, which can not only give play to programme advantage of civil code, but also reserve a standard interface for formulating and implementing special rules of commercial law, so as to avoid conflicts with commercial regulations in the future development and play a basic and instructive role of normalization.

Maintaining the transaction safety and further strengthening the "principle of good faith"

Although there is a basic conclusion to the traditional principle of "good faith" in the General Rules of Civil Law in our country, as the empire principle of civil law, it stresses honesty, abidance by promises, exercising rights without damaging the rights and interests of other people and of the society, fulfilling obligations with credibility and in accordance with legal provisions, and final realization of balance among the parties concerned and between parties concerned and the society. However, the existing civil law has unclear provisions on its concept and connotation; it has no special status features and cannot give play to its "empire" role; as Xu Guodong said: "the principle of good faith is summary, abstract, ... and is an inchoate law; in other words, it is a blank letter of attorney to the judge". To improve the principle of good faith, it is required to further strengthen this principle, define its special legal status and intensify its enforcement.

Establishing the credit right and strengthening the civil protection of credit and of infringement on other people's credit

Credit right is a basic civil right and has the dual attributes of property right and personality right. Currently, the field of civil law has the consistently positive attitude toward whether our future civil code should establish the credit right. The 21st clause of Draft of Civil Code (version 2002) clearly stipulates: "natural persons and legal persons enjoy the credit right, and it is prohibited to infringe the credit of natural and legal persons by slander and other means". Personality based on credit right sets the credit right in the future civil code, which can explicitly stipulate the behaviors of infringing other people's credit, achieve the sufficient legal protection of credit right, and offer the basic legal guarantee for establishing our Chinese characteristic commercial credit law system and forming a favorable social credit environment.

Construction of commercial credit system from the view of civil code

Commercial credit is institutionalized credit to be completed through a certain legal system. Currently, many legal norms related to commercial credit have been released in our country; generally, however, the commercial credit system is scattered and incomplete in our country; especially, the supervision system concerning the credit of commercial subjects, punishment on defaults, legal remedies and other related aspects are hardly involved, leading to the emergence of distorted relation that the benefit from default is greater than risk and cost and intensifying the social effect of putting profit first within certain range. It is extremely urgent to establish our commercial credit system from the view of civil code.

Strengthening the legislation planning of commercial credit and realizing the seamless connection between legal systems

Enterprises are the most active main market players in commercial credit activities, and are both the demanders and the providers of credit. In the restructuring and scientific innovation activities currently executed by enterprises, legislative bodies in our country has made a in-depth adjustment to

the currently existing enterprise law systems and played an important role; however, the imperfection of relevant credit law systems has still generated some inevitable problems.

1. Formulate the Planning Outline for Construction of Commercial Credit System, to comprehensively strengthen the construction of commercial credit system. At present, the construction of commercial credit system in our country lacks the special planning. The Planning Outline for Construction of Social Credit System released by the State Council in 2014 provided an instructive provision on construction of business credit, however, due to the particularity and operability of commercial credit itself, formulating a special planning for construction of commercial credit system is imperative.

2. Promote the legislation of Enterprise Credit Promotion Law in good time. Although the State Council released the Regulations for Management of Credit Investigation Industry in 2014, the legislation rank is relatively low, and its content lays extra emphasis on management of credit investigation agencies. In order to strengthen the management on use of enterprise information, formulate enterprise credit rating and incentive mechanisms, standardize unreliable enterprises' illegal behaviors and affix unreliable enterprises' legal liabilities, the legislation of enterprise credit promotion law needs to be further promoted.

3. Establish the natural person bankruptcy system. The existing Bankruptcy Law in our country has not set the natural person bankruptcy system. In recent years, with the expansion of consumption credit and increase in frequency of commercial activities in the name of natural person, "the lack of personal bankruptcy system is one of the main causes of 'difficulty in execution'". Judging from the current situation, our country has possessed the material basis and economic conditions for establishing the natural person bankruptcy system, and it is the right time to construct such system.

4. Pay attention to inter-connection of legal systems and improve the basic guarantee of legal systems. Strengthen the management of capital credit and ensure the credit construction of enterprises themselves; intensify the liquidation and cancellation procedures of subjects quitted, and affix the necessary criminal liabilities of malicious debt evaders. Strictly punish the "two feigning and one evading" behaviors, and add restrictive provisions on companies' actual controllers and dormant partners; speed up the legislation process of social organizations, and give full play to the positive role of social organizations in commercial credit supervision.

Establishing the resource sharing of commercial credit and promoting the credit construction in different regions, departments and industries

1. Establish the long-term collaborative mechanism for sharing and utilization of commercial information, and establish a positive interaction between the nation and different regions to avoid emergence of "information isolated island" and realize the resource sharing of credit information. Different regions need to explore and establish a long-term collaborative mechanism for sharing and utilization of commercial information, to form a credit information resource library and realize the system data sharing among different regions.

2. Strengthen the construction of commercial credit organizations, department interaction and information sharing. Governmental departments at all levels should formulate specific commercial credit implementation rules according to their local actual conditions, and promote the standardization of enterprise information database, data exchange, information safety, etc. Explore and set up the special market and quality supervision committee to integrate information resources of related departments, financial agencies and industrial organizations and realize the actual information resource sharing among different departments.

3. Establish the all-round and three-dimensional commercial credit supervision and reward/punishment linkage mechanism. Through cooperation among industrial and commercial bureau, people's court, taxation, social security and other departments, sign the information sharing and supervision cooperation agreement, to execute the joint supervision on unreliable enterprises, practically implement the "restricting all points for illegal behavior at any one point", let liable

enterprises stand out from the crowd and make it difficult for unreliable enterprises to move a single step.

Creating a favorable commercial credit environment, cultivating and developing a healthy credit market

1. Strengthen the credit construction of enterprises themselves. Credit is directly linked with enterprises' influence, competitiveness and popularity. Enterprises should continuously improve their own credit self-discipline mechanisms, pay attention to cultivate operating personnel's legal awareness and moral cultivation, constrain top management personnel with the self-discipline system, and improve the enterprise credit management level by means of education, demonstration, supervision, technical control, punishment, etc.

2. Strengthen the construction of governmental credit. Governmental departments should insist on law-based administration and leading by examples, strive to make government affairs public, study and formulate the compensation mechanism for loss of administrative credit, improve the governmental decision-making procedure, actively accept the social supervision, strictly execute the governmental fault liability affixation measures, punish governmental unreliable behaviors and actually achieve the "true in word and resolute in deed".

3. Strengthen the construction of judicial credit. It is said in the Decisions of the Central Committee of the Communist Party of China for Several Significant Issues Concerning the Comprehensive Promotion of Law-based State Governance: "Justice is the lifeline of law-based governance." Juridical organizations should set up the judicial authority, improve the judicial credibility, eradicate all kinds of latent rules, achieve the mutual coordination, interaction and supervision of investigation power, prosecutorial power, judicial power and enforcement power, timely accept and hear economic cases, judge economic disputes with justice, protect legal rights and interests of victims, and accelerate the resolution of the difficult execution.

References

- [1] Tang Rongling: Discussion on Civil and Commercial Regulations in the Context of Commercial Credit Loss of Enterprises, *Legal & Economy*, 2014.2.
- [2] Mou Chen, Wang Ruwen and Liu Zengyi: Exploration on Connotation of the Principle of Good Faith in Civil and Commercial Law and Its Perfection Routes, *Legal System and Society*, 2014.5.
- [3] Feng Guo: From Closure to Publicity – Several Theoretical Thinking on Commercial Credit, *Chinese Yearbook of Commercial Law*, 2015.
- [4] Li Yangchun: The Loss and Construction of Commercial Credit Law System in China, *Journal of Xiangtan University*, 2010.5 .
- [5] Meng Huaxing: Research on Construction of Enterprise Credit System, China Economy Press, version 2011.
- [6] Li Dongxia and Hao Lei: Thinking on Law-based Governance of Enterprise Credit Construction, *Journal of Chinese Academy of Governance*, 2015.3.
- [7] Zhang Ke and Wu Juan: Discussion on Civil Protection of Commercial Credit, *Journal of Jiaozuo Teachers College*, 2007.9.
- [8] Wu Jin: Thinking on Routes for Achieving the Commercial Credit System in China, *Scientific Development Concept*, 2015.2.