**2016-2020年上海法院涉地方金融组织**

**纠纷案件审判情况通报**

2020年7月1日，《上海市地方金融监督管理条例》正式施行。根据该条例规定，地方金融组织包括小额贷款公司、融资担保公司、区域性股权市场、典当行、融资租赁公司、商业保理公司和地方资产管理公司，以及法律、行政法规和国务院授权地方人民政府监督管理的具有金融属性的其他组织。近年来，各类地方金融组织积极发挥自身优势，对于健全金融市场体系、满足各类主体融资需求、服务实体经济发展发挥了重要作用。但地方金融组织在发展过程中也暴露出一些问题和不足，应引起重视，予以解决。现将2016-2020年上海法院涉地方金融组织纠纷案件审判情况作如下通报。

**一、涉地方金融组织纠纷案件概况**

**（一）纠纷案件总量增长与结构分化并存**

近年来，随着上海各类地方金融组织获得不同程度发展，涉地方金融组织的纠纷案件数量和标的金额持续增长。2016年至2020年，涉地方金融组织案件数量从4,374件上升至21,229件，增长了3.85倍。[[1]](#footnote-1)

从案件标的金额看，2016年至2020年涉地方金融组织案件标的额从133.97亿元上升至272.06亿元，累计增长了1.03倍。

在涉地方金融组织纠纷案件总量大幅增长的背景下，不同类型案件的增速出现明显差异，导致案件结构持续变化。融资租赁、商业保理等新型融资方式快速发展，案件数量大幅增长。2020年全市法院共受理一审融资租赁合同案件18,241件，比2016年增长了5.13倍；涉商业保理公司案件517件，比2016年增长了1.79倍；涉融资担保公司案件1,298件，比2016年增长了2.14倍。其中融资租赁合同纠纷已经成为金融纠纷中数量位居第三的案件类型，仅次于银行卡和金融借款，其主要原因是近年来融资租赁业务出现了向汽车等消费领域拓展的趋势。

与之相比，小额贷款、典当等传统案件类型相对保持稳定。2020年，全市法院共受理一审小额贷款合同案件912件，比2016年上升69.83%；比2016年上升40.82%；典当案件258件，比2016年上升11.21%；涉地方资产管理公司案件3件，比2016年下降90.32%。

**（二）当事人争议较大导致案件调撤难度高**

2020年，全市法院涉地方金融组织一审案件调撤率为22.35%，低于同期金融商事案件调撤率（31.37% ）9.02个百分点。涉地方金融组织案件中，由于法律规定不明确、合同约定不合理、客户资信状况不佳等因素，导致双方争议较大，难以消弭分歧达成一致意见。一是双方对纠纷处理结果预期认识不一致。融资租赁、保理、典当等案件中，债权人通常有租赁物、应收账款、当物以及第三人提供的保证等作为权益保障，一旦涉讼，债权人往往不愿在金额和还款期限上作出让步，而债务人因资金紧张希望降低还款数额、减免违约金、延缓还款期限等。二是双方对案涉交易的法律性质认识不一致。部分债务人以案件涉及刑事犯罪、融资租赁中的租赁物不真实、保理合同项下的应收账款虚假、典当中的当物不存在等理由进行抗辩，当事人之间的意见争锋相对，导致诉争复杂化，缺乏调解基础。三是双方对合同约定的债务负担是否合理认识不一致。例如，部分案件涉及手续费、服务费等费用，有的系在合同中直接约定，有的则另行签订服务合同。诉讼中，客户常以对方未提供任何服务，费用收取违反法律规定等为由提出抗辩。四是相对于银行等传统金融机构，地方金融组织的资金成本较高。发生纠纷后，地方金融组织在利率、费用、违约金上能够作出的让步空间相对较小。

**（三）客户小而分散等原因导致案件程序问题复杂**

由于地方金融组织多服务于个人或中小企业，交易结构相对借款而言更为复杂，同时随着近年来普惠金融快速发展，客户普遍呈现小而分散的特点，导致案件送达难度高、公告适用多、审理周期较长。例如，融资担保纠纷中，涉及债权人、债务人、担保人、反担保人等诸多主体。融资租赁合同纠纷中，往往涉及出租人、出卖人、承租人、保证人、车辆挂靠企业等众多当事人。保理合同纠纷中，可能涉及保理合同债权人、债务人、担保人以及保理合同项下应收账款的债权人、债务人等主体。由于上海自贸试验区的制度创新和法治化营商环境吸引大量外地公司将合同履行地或案件的管辖地约定为上海，融资租赁公司、商业保理公司等运用科技手段开展异地经营，导致大量被告分散在全国各地，相当数量案件无法直接送达，缺席审判适用比例较高。

**（四）金融创新导致新型、疑难、复杂问题层出不穷**

地方金融组织的业务范围不断拓展，交易模式不断变化，而法律规则相对滞后，反映在金融审判中不断出现新型、疑难、复杂问题，金融市场对于法院通过司法裁判规范引导市场行为的期望和要求也不断提升。例如，融资租赁合同纠纷中，除车辆、医疗器械、教育设施等传统租赁物，还有将城市管网、天然气锅炉等城市基建设施作为租赁物，更出现鸡、猪、奶牛等生物资产以及著作权等无形资产等新类型租赁物。融资租赁物的范围如何界定，存在不同认识。面对这些新情况、新问题，上海法院积极通过组织交流研讨、发布典型案例、制定规范性文件等方式，明确司法裁判标准，规范引导市场行为。

**（五）个别地方金融组织经营失范引发纠纷**

相对于传统金融机构，部分地方金融组织的经营活动规范性还有待提升，风控机制尚不健全，潜在风险隐患较多。例如，有的地方金融组织积极运用金融科技，发展普惠金融，开展平台合作，吸引大量金融投资者和金融消费者参与交易，但相关领域众多客户违约、投资亏损引发纠纷。部分小额贷款公司存在捆绑搭售保证保险，变相收取高额费用，实质上增加借款人融资成本等问题。有的地方金融组织存在对借款人及担保人资信状况审查不严、对公司担保流程未依法审核、对担保物管控不力、通过员工账户发放和回收贷款等风控薄弱环节，影响债权安全。

二、涉地方金融组织纠纷案件趋势研判

**（一）涉地方金融组织纠纷的复杂性、多样性将进一步显现**

近年来，上海法院受理的金融商事案件类型结构已经发生了较大变化，从传统的银行类、保险类案件占据绝对主导，转变为各种金融案件类型并存，涉地方金融组织的纠纷复杂性、多样性将进一步显现。例如，伴随着产业结构调整，中央和地方相继出台相关政策以鼓励融资租赁业的健康发展，融资租赁将在农机、科投、文化教育、卫生及基础设施等诸多公共领域开展业务，并向电子信息、大生命健康、节能环保及新能源等高精尖产业布局。随着保理合同被写入民法典，法律地位进一步明确，为保理行业进一步创新发展提供了空间。同时，随着金融科技不断进步，各类地方金融组织运用互联网、云计算、区块链等新技术进一步拓展业务范围，相关纠纷案件也将不断出现。

**（二）涉地方金融组织纠纷案件审判将更加注重与金融监管的衔接和协调**

随着地方金融组织的金融机构属性进一步明确，监管要求进一步强化，涉地方金融组织纠纷案件司法裁判中将更多考量金融监管因素，注重司法裁判结论与金融监管目标的协调一致。最高人民法院在有关批复中明确，地方金融组织属于经金融监管部门批准设立的金融机构，其因从事相关金融业务引发的纠纷，不适用新民间借贷司法解释。在评判交易行为法律效力时，法院将依法积极回应地方金融组织监管要求，更多关注地方金融组织是否存在违反特许经营等方面金融监管规定，是否应当适用《中华人民共和国民法典》第一百五十三条的规定认定合同无效。在认定当事人在交易活动中的过错及责任时，法院需考量地方金融组织是否按照监管要求充分履行投资者适当性管理、风险揭示、忠实勤勉等义务，合理分配当事人责任，切实保障金融消费者和金融投资者合法权益。

**（三）司法裁判对于地方金融组织交易活动的规范引导作用将进一步强化**

涉地方金融组织的金融交易持续发展创新，在基本交易结构基础上不断设计出多种更复杂的金融产品，当事人之间的争议问题往往涉及法律未作出明确规定的领域，司法裁判对于界定交易法律关系、明确各方权利义务、促进形成交易规则将发挥更为重要的作用。例如，在涉及让与担保、租赁权质押、保单质押、资产收益权回购等非典型担保方式的纠纷中，担保权的成立条件、公示方式以及实现途径等尚存模糊地带，需进一步明确。此类涉及市场交易规则确认的案件将不断出现，司法裁判的示范效应将进一步显现。

三、涉地方金融组织纠纷案件集中反映的问题

**（一）部分地方金融组织需进一步强化规范经营**

由于制度体系尚不健全、行业门槛相对较低、人员素质良莠不齐等原因，部分地方金融组织开展业务的规范性还有待进一步加强。例如，部分地方金融组织收费名目及收取方式尚需规范，实践中约定的收费名目不尽相同，如手续费、服务费、管理费等，有的地方金融组织则直接以融资利息为名义收取费用，有的地方金融组织无法提供证据证明其实际提供了相应的服务和管理。部分地方金融组织未向客户尽到明确说明义务，利用名义利率和实际利率的差异获取高额利润，损害金融消费者合法权益。个别地方金融组织在客户违约后，自行收回担保物，且收回担保物后随意处置，损害客户利益。

**（二）部分地方金融组织违规从事信贷业务需引起重视**

存贷款业务系属需经特别行政许可方能实施的特许经营行为。《上海市地方金融监督管理条例》第十八条规定：“地方金融组织应当依法规范经营，严守风险底线，禁止从事下列活动：（一）吸收存款或者变相吸收存款；……（三）非法受托投资、自营或者受托发放贷款。”个别案件中发现，地方金融组织利用虚构租赁物、租赁物“低值高估”、虚构应收账款等方式向不特定融资人放款，从事名为“融资租赁、保理、典当”实为信用贷款的业务，违反了特许经营的规定，案涉合同被法院认定为无效。

**（三）拓展普惠金融需进一步加强合规性审查**

部分地方金融组织通过与金融科技公司、金融信息中介机构、线上资产管理机构等合作，大力发展普惠金融，开发新的资金来源和客户群体，为其创新发展提供了有利契机，但同时也带来了业务合规风险。例如某商业保理公司与数家金融信息中介机构开展合作，保理融资款系由合作的金融信息中介机构直接发放给融资方，而根据银保监会《关于加强商业保理企业监督管理的通知》的规定，商业保理公司不得通过网络借贷信息中介机构、地方各类交易场所、资产管理机构以及私募投资基金等机构融入资金。

**（四）个别地方金融组织涉嫌违法犯罪的情况仍有出现**

极个别地方金融组织受利益驱使，不安于从正常经营中获取利益而将目光投向了灰色边缘地带，甚至涉嫌刑事犯罪。例如，涉车辆融资租赁合同案件中个别渠道商借融资租赁模式进行合同诈骗或利用第三方进行虚假宣传诱骗客户进行融资租赁业务；个别地方金融组织采用张贴告示标语、暴力收回担保物等非法手段催债。这些案件往往具有区域性和涉众化特点，需引起高度重视。

**（五）当事人之间权利义务不平衡的现象仍然存在**

由于地方金融组织的资金成本较高、债务人违约风险较大等原因，地方金融组织利用优势地位加重债务人负担的情形仍在一定范围内存在，金融消费者和投资者权益保护力度需进一步强化。例如，违约责任条款的设置不均衡，合同中针对客户违约责任的条款较多，而债权人的违约责任仅进行了简单罗列。合同订立时，地方金融组织没有就合同中的违约条款内容向客户进行必要的告知和说明。合同中针对客户未按约还款的情况约定较高比例的违约金，例如部分违约的情况下以全额计算违约金等，导致案件当事人对违约金的计算方式产生争议。

四、上海法院支持保障地方金融组织发展的相关举措

**（一）统一适法标准规范引导市场行为**

近年来，上海法院通过制定法律适用意见、公开出版办案要件指南、发布典型案例等方式积极推进涉地方金融组织案件法律适用统一，规范引导市场行为。上海高院先后就融资租赁合同纠纷、典当合同纠纷、保理合同纠纷等出台了适法意见，就实践中争议较大的租赁物范围、虚假应收账款、服务费收取、利息保护上限、违约金调整等问题作了规定，进一步明确司法裁判尺度，取得良好效果。公开出版《融资租赁合同纠纷办案要件指南》，为各法院审理案件提供参考的同时，也对建立市场主体预期、引导市场交易行为发挥了积极作用。上海法院还发布多个典型案例，明确法律适用标准。例如，法院在一起商业保理纠纷案件中明确，商业保理公司向不特定对象放贷，因超越经营范围并违反国家限制经营、特许经营以及法律、行政法规禁止经营规定，应认定借款合同无效。再如，在一起小额贷款合同案件中，法院明确小额贷款作为一种期限短、需求急、频率高的新兴融资方式，具有贷款手续简便、审批手续快捷、担保形式多样的特点。但小额贷款公司在办理贷款业务时，不得违反国家法律和行政法规关于金融贷款的强制性要求，不得预先扣除贷款利息。预先扣除贷款利息的，不受法律保护，法院在判决时按照实际出借金额作为贷款本金予以调整。

**（二）协同推进地方金融组织相关制度建设**

近年来，上海法院通过多种方式积极推进地方金融组织相关制度建设。例如，为维护涉融资租赁物交易安全，促进融资租赁行业有序发展，上海高院于2019年8月21日发布《关于审理融资租赁物权属争议案件的指导意见（试行）》，明确本市金融租赁公司、外商投资融资租赁公司、内资融资租赁试点企业作为出租人，应当在中国人民银行征信中心的动产融资统一登记公示系统中对融资租赁合同中载明的租赁物权属状况予以登记，并明确该登记在一定范围具有对抗第三人的公示效力。[[2]](#footnote-2)在《上海市地方金融组织监督管理条例》起草过程中，上海法院从司法审判角度积极建言献策，促进相关制度完善。

**（三）发送司法建议和白皮书提示风险问题**

针对地方金融组织在案件中反映出的一些问题，上海各级法院通过向有关单位发送司法建议以及向社会发布白皮书等方式，提示金融风险，促进行业健康发展。上海高院、金融法院就融资租赁案件发布专项白皮书，浦东、静安等法院针对涉自贸区保理纠纷、车辆融资租赁纠纷等发布专项白皮书和典型案例，获得良好反响。司法建议的针对性、实效性进一步增强。例如，法院针对个别典当行续当手续不规范以及长期多次续当的问题提出司法建议，有关典当行积极反馈，表示将根据建议内容，严格规范续当手续保留书面凭证，原则上续当不超过三次，且在续当一次后不主动要求对方续当。针对个别小额贷款公司利用名义利率与实际利率的区别收取高额利息的问题，法院在司法建议中指出案涉借款合同的还款计划表中约定每月利息的计算方式为本金按年利率计算一年的利息后按12个月平分后得出，但上述利息的计算方式并未扣除每月借款人已经偿还的借款本金，致使实际计算的利率远高于《借款合同》约定的年利率。相关小额贷款公司表示将尽快完善合同条款，明确借款合同的利率约定，避免利率约定与实际计算不一致。

**（四）积极推动涉地方金融组织纠纷高效化解**

针对大量涉地方金融组织纠纷案件被告为外地户籍且存在部分被告逃避送达等情况，上海法院积极采取措施，与相关监管机构、行业协会开展合作，引导企业在合同模板中增加“司法送达条款”约定及相关法律后果的说明，加强对涉诉当事人在合同、其他诉讼材料中记载信息的查实，提升送达效率。积极推进涉地方金融组织的纠纷多元化解机制建设，推动地方金融行业组织建立健全纠纷调解机制，强化调解组织与法院一站式多元解纷平台对接，通过委托调解、委派调解、调解协议司法确认等方式，高效化解涉地方金融组织纠纷。

五、相关建议

地方金融组织是金融体系的重要组成部分，是上海国际金融中心高质量、高层次发展的重要方面，其健康发展需要金融监管部门、行业协会、市场主体以及社会公众等各方的共同努力。为此，我们建议：

**（一）进一步强化地方金融组织监管**

科学、有效监管是地方金融组织健康发展的重要基础。由于地方金融组织的业务监管规则多由中国人民银行、银保监会等国家金融监管机构制定，而具体监管工作由地方金融监管部门落实，各方需在各司其职、分工尽责基础上，进一步加强信息互通和工作衔接，形成监管合力。国家金融管理部门需进一步推进完善涉地方金融组织的行业立法，提升法律层级，细化监管规则，明确监管要求。地方金融监管部门需严格落实国家监管要求和地方金融监管条例的各项规定，根据监管工作的实际需求，进一步充实队伍力量，明确监管职权，强化监管能力，加强对重点领域、重点行业、重点企业的监管力度。要在实施机构监管的同时，大力加强行为监管和功能监管，对于各类市场主体实际从事的地方金融组织业务活动的，均应加强惩处力度，防止出现金融监管和风险防范的空白地带。及时查处违法违规经营行为，督促地方金融组织依法合规经营，充分关注自身业务模式与借贷业务的界限，回归业务本质，严防信用风险在金融领域的交叉传播。强化金融消费者权益保护，督促地方金融组织及时整改相关纠纷中发现的问题，更新完善合同文本，平衡地方金融组织与投资者之间的权利义务，充分履行地方金融组织的适当性管理义务、风险揭示义务、忠实勤勉义务等。促进金融服务实体经济，规范地方金融组织的收费内容及名目，合理设定融资成本和费用收取方式，有效降低实体经济融资负担，严禁采用违法违规甚至暴力方式催收债权。在新冠肺炎疫情尚未结束的背景下，建议监管部门引导地方金融组织对暂时出现流动性困难但仍能维持正常运营的中小企业、民营企业应秉持“放水养鱼”思维，给予一定扶持，有效减轻企业负担，促进把更多金融资源配置到经济社会发展的重点领域和薄弱环节。

**（二）进一步完善地方金融组织内控管理**

地方金融组织应根据相关法律法规及监管规定，依法、合规、诚信经营，加强业务管理，完善风险内控，落实好在金融风险防范中的主体责任。一是严格尽职调查。加强客户的资质审查，对客户的经营、财务、涉诉等情况进行了解，审慎判断其资信和偿债能力，有效控制业务风险。做好合同履行过程中的回访跟踪，防止“重视业务拓展轻后续管理”的倾向，及时发现客户可能发生的风险问题，在客户轻微违约时，力争采取协商等方式解决争议。二是完善内部业务操作流程规范。将交易过程的每个环节应当审核的内容明确列举，注重业务开展中各环节信息记录及材料留档保存，防止纠纷发生后因举证不能导致法院难以查清事实或自身面临败诉风险。强化对业务人员的合规培训，从严把关合同签订和履行流程。三是完善担保物管理。注重明确担保物权属，就物的取得、权属凭证、现状等作有效审查，完善登记和公示程序，防止他人恶意处分担保物造成损失。就各类新类型担保物，可积极利用信息技术等手段实施必要的监控。

**（三）进一步落实金融风险防范举措**

有关政府部门、金融监管部门、司法机关应进一步建立联动工作机制，加强协作力度，明确职责分工，在合力做好金融风险防范工作的同时，合理引导金融创新，推动金融市场健康、良性发展。进一步加大对涉地方金融组织违法犯罪的打击力度，形成有力震慑，维护金融市场秩序和金融安全。强化投资者教育，进一步树立起“卖者尽责、买者自负”的正确投资理念，严格按照投资者适当性管理的相关规定要求，切实保护投资者合法权益。

**（四）进一步健全涉地方金融组织纠纷多元化解**

为有效化解涉地方金融组织纠纷，建议进一步突出监管部门在金融纠纷多元化解决机制中的支撑作用，抓好已有各项多元化解决机制的落实工作，促进矛盾纠纷化解。进一步发挥行业协会职能作用，扩大行业协会在纠纷调解中的覆盖面，针对当前融资租赁纠纷、商业保理纠纷持续高发的态势，推动建立专项纠纷多元化解机制。充分利用社会化纠纷解决力量和资源，积极探索吸纳各类社会机构参与纠纷化解，促进建立第三方调解机制。大力推进金融仲裁，鼓励地方金融组织约定采用金融仲裁的方式解决金融纠纷。坚持将非诉解决挺在前面，加强诉调对接，进一步拓宽调解通道，完善法院一站式多元解纷平台与各类社会调解组织的互联互通，将更多的金融矛盾纠纷纳入到多元化解机制中，便捷、高效地解决纠纷。

**Trial Briefings on Dispute Cases Involving Local Financial Organizations in Shanghai’s Courts 2016–2020**

On July 1, 2020, the *Regulations of Shanghai Municipality on Local Financial Regulation* came into force. For the purposes of these regulations, “local financial organizations” include microfinance companies, financial guarantee companies, regional equity markets, pawnbrokers, financial leasing companies, commercial factoring companies and local asset management companies, as well as other organizations of a financial nature under the supervision and management of the local people’s governments as authorized by laws, administrative regulations and the State Council. In recent years, various local financial organizations have been giving full play to their own advantages and have played an important role in improving the financial market system, meeting the financing needs of various entities and serving the development of the real economy. But throughout this process of development, local financial organizations have also revealed some problems and shortcomings that should be observed and addressed. The trials on dispute cases involving local financial organizations in Shanghai’s courts from 2016 to 2020 are summarized as follows.

**I. Overview of Disputes Involving Local Financial Organizations**

**(1) Growth in the total number of dispute cases has accompanied internal differentiation**

In recent years, as various types of local financial organizations in Shanghai have developed to different degrees, the number of disputes — and the corresponding amounts —involving local financial organizations have continued to grow. From 2016 to 2020, the number of cases involving local financial organizations rose 3.85 times from 4,374 to 21,229.[[3]](#footnote-3)

Regarding the amounts involved per subject matter, the amounts of cases involving local financial organizations rose 1.03times in aggregate (from RMB 13.397 billion to RMB 27.206 billion) from 2016 to 2020.

Given the significant increase in the total number of dispute cases involving local financial organizations, there were significant differences in the growth rates of different types of cases, leading to continuous changes in case structure. The rapid development of new financing methods such as financial leasing and factoring has led to a significant increase in the number of cases. In 2020, Shanghai’s courts accepted a total of 18,241 cases regarding financial leasing contracts for the first time, an increase of 5.13 times over 2016. There were 517 cases involving commercial factoring companies, representing an increase of 1.79 times over 2016, and there were 1,298 cases involving financial guarantee companies, representing an increase of 2.14 times over 2016. Among these cases, disputes over financial leasing contracts represented the third-largest number of cases among all financial disputes, only after bank card and financial loan cases, mainly due to the financial leasing business having expanded in recent years to consumer fields such as automobiles.

By contrast, traditional case types such as those related to microloans and pawning remained relatively stable. In 2020, Shanghai’s courts accepted a total of 912 first-instance cases of microloan contracts, up 69.83% over 2016. There were 890 cases involving asset management companies that year, up 40.82% over 2016, and there were 258 cases involving pawning, up 11.21% over 2016.

 **(2) Parties were in great dispute, resulting in high difficulty mediating and withdrawing cases**

In 2020, first-instance cases involving local financial organizations in Shanghai’s courts were mediated and withdrawn at a rate of 22.35%, which was 9.02 percentage points lower than the mediation and withdrawal rate of financial and commercial cases (31.37%) during the same period. In cases involving local financial organizations, unclear legal provisions, unreasonable contractual agreements, poor customer creditworthiness and other factors led to large disputes between parties, making it difficult to resolve their differences and reach agreements. First, the parties involved did not have identical views toward the expected outcome of the disputes. In cases regarding financial leasing, factoring and pawnbroking, creditors usually have leases, accounts receivable, pawned goods and guarantees provided by third parties as a protection of their rights and interests. Once they become involved in litigation, creditors are often unwilling to make concessions on the amounts and repayment periods, whereas debtors hope to reduce their repayment amounts, waive or exempt liquidated damages and postpone their repayment periods due to financial constraints. Second, the parties involved did not agree on the legal nature of the transactions in question. Some debtors defended themselves on the grounds that their cases involved criminal offenses, their financial leases were not real, the accounts receivable under the factoring contracts were false, and the pawned goods in the pawn cases did not exist, among other arguments. Competing views between parties led to complications during litigation and a lack of any basis for mediation. Third, the parties involved did not agree on whether debt burdens agreed in their contracts were reasonable. For example, some cases involved fees and service charges, some of which were directly agreed in their contracts, and for some of which separate service contracts were signed. In these lawsuits, the customers often defended themselves on the grounds that the financial institution in question did not provide any services and that fees were charged in violation of legal provisions. Fourth, their capital costs were higher compared to those of traditional financial institutions, such as banks. When disputes occurred, local financial organizations had relatively little room to make concessions on interest rates, fees and liquidated damages.

**(3) Procedural issues in cases** **have been complex due to few and scattered clients, among other reasons**

As local financial organizations mostly serve individuals or SMEs, their transaction structure is more complex compared to that of borrowing, and as a result of the vigorous development of inclusive finance and cross-regional operation in recent years, customers are generally few and scattered, resulting in great difficulty in service them, as well as the need for numerous announcements and long trials. For example, disputes over financial guarantees potentially involved many subjects such as creditors, debtors, guarantors and counter-guarantors. Disputes over financial leasing contracts often involved numerous parties, such as lessors, sellers, lessees, guarantors and vehicle-attached enterprises. Disputes over factoring contracts potentially involved creditors, debtors and guarantors of factoring contracts, as well as creditors and debtors of accounts receivable under factoring contracts and other subjects. Due to institutional innovation and the rule-of-law business environment of the Shanghai Pilot Free Trade Zone, a large number of foreign companies agreed on Shanghai as the place in which their contracts would be executed or as the jurisdiction of their cases. Thus, a considerable number of cases could not be served directly, leading to a high percentage of applied trial by default.

**(4) Financial innovation has led to a proliferation of new, difficult and complex issues**

The business scope of local financial organizations is constantly expanding, and their modes of transaction are constantly changing. But legal rules lag behind these changes, as reflected in the continuous emergence of new, difficult and complex issues during financial trials, as well as the expectation and demand of the financial markets for courts to regulate and guide market behavior through judicial decisions. For example, in disputes over financial leasing contracts, in addition to traditional leased property such as vehicles, medical devices and educational facilities, leased property can also include urban infrastructure facilities such as urban pipeline networks and natural gas boilers. In addition, new types of leased property now include biological assets such as chickens, pigs and cows, as well as intangible assets such as copyrights. There are different understandings on how to define the scope of financial leased property. In facing these new situations and issues, Shanghai’s courts have actively organized exchange seminars, published typical cases and formulated normative documents to clarify the standards of judicial adjudication and regulate and guide market behavior.

**(5) Disputes arise from the mismanagement of individual local financial organizations**

Compared to traditional financial institutions, the standardization of the business activities of local financial organizations still needs improving. Their risk control mechanism is not yet sound, and they entail more potential risks and hidden dangers. Some local financial organizations are actively using financial technology, developing inclusive finance, carrying out platform cooperation and attracting a large number of financial investors and financial consumers to participate in transactions, but disputes still arise from customer default in related areas, as well as due to investment losses. Some local financial organizations have problems bundling and selling guarantee insurance while charging high fees in disguise, for example, which in essence increase the financing costs of borrowers. Some local financial organizations have weaknesses in risk control such as their lax examination of the creditworthiness of borrowers and guarantors, their failure to review a company’s guarantee process in accordance with the law, their ineffective control of collateral and their issuance and recovery of loans through employee accounts, which affects the safety of claims.

**II. A Study on the Trend of Disputes Involving Local Financial Organizations**

**(1) The complexity and diversity of disputes involving local financial organizations will grow**

In recent years, the structure of the types of financial and commercial cases accepted by Shanghai’s courts has changed significantly, from an absolute dominance of traditional banking and insurance cases to the coexistence of various types of financial cases. In addition, the complexity and diversity of disputes involving local financial organizations will grow. For example, along with industrial restructuring, central and local governments have issued relevant policies to encourage the healthy development of the financial leasing industry. This industry conducts business in many public areas such as agricultural machinery, scientific investment, technological investment, culture, education, health and infrastructure, and it extends to high-precision and sophisticated industries such as electronic information, big life and health data, energy conservation, environmental protection and new energy. With factoring contracts being written into the Civil Code, their legal status has been further clarified, providing room for further innovation and development of the factoring industry. Also, with the continuous progress of financial technology, various local financial organizations are further expanding their business scope by using new technologies such as the internet, cloud computing and blockchain, and related dispute cases will thus continue to emerge.

**(2) More attention will be paid to connection and coordination with financial supervision in trials of disputes involving local financial organizations**

With the further clarification of the attributes of local financial organizations as financial institutions and the further strengthening of regulatory requirements, more consideration will be given to financial regulatory factors in the judicial adjudication of disputes involving local financial organizations, with an emphasis placed on the coordination between the conclusions of judicial adjudication and the objectives of financial regulation. In the relevant approval, the Supreme People’s Court clarified that local financial organizations are financial institutions approved by the financial regulatory authorities, and disputes arising from their engagement in related financial business are not subject to the new judicial interpretation of private lending. In judging the legal validity of a transaction, the courts will respond positively to the regulatory requirements of local financial organizations in accordance with the law and pay more attention to whether there are violations of financial regulatory provisions regarding franchising and other aspects of local financial organizations, as well as whether the provisions of Article 153 of the Civil Code of the People’s Republic of China should be applied to find a given contract invalid. In determining fault and responsibility of the parties involved in trading activities, the courts must consider whether local financial organizations have fully performed their obligations regarding investor suitability management, risk disclosure, faithfulness and diligence in accordance with the regulatory requirements, thus reasonably allocating the responsibilities of the parties to effectively protect the legitimate rights and interests of financial consumers and financial investors.

**(3) The role of judicial decisions in regulating and guiding the trading activities of local financial organizations will be further strengthened**

The development and innovation of financial transactions involving local financial organizations continues, and a variety of more complex financial products are constantly being designed on the basis of basic transaction structures. Disputes between parties often involve areas not clearly provided for by law, and judicial decisions will thus play a more important role in defining the legal relationship of transactions, clarifying the rights and obligations of parties, and promoting the formation of transaction rules. For example, in disputes involving atypical security methods such as alienation guarantees, leasehold pledges, policy pledges and the proceeds from the repurchase of assets, the conditions for the establishment of security rights, publicity modes and implementation are still ambiguous and need to be further clarified. Such cases related to the confirmation of market transaction rules will continue to emerge, and the demonstrative effect of judicial decisions will thus further grow.

**III. Problems Related to the Centralized Reflection of Disputes Involving Local Financial Organizations**

**(1) Some local financial organizations need to further strengthen standardized operations**

The standardization of some local financial organizations to carry out business needs to be further strengthened because systems are not yet complete, industry thresholds are relatively low and the quality of personnel varies, among other reasons. For example, some local financial organizations must regulate the names of fees and the ways they are charged. In practice, the agreed names of fees vary, such as fees, service fees and management fees. Some are charged directly in the name of financing interest, though some local financial organizations cannot provide evidence to prove that they actually provide the corresponding services and management. Some local financial organizations fail in their duty to clearly explain such concepts to their customers, taking advantage of the difference between nominal and actual interest rates to obtain high profits and damage the legitimate rights and interests of financial consumers. Individual local financial organizations have repossessed collateral on their own after customers defaulted, and they have disposed of this collateral at will to the detriment of their customers’ interests.

**(2) Attention needs to be paid to irregular business operation at some local financial organizations engaged in the credit business**

The deposit and loan business is a franchise business that requires special administrative approval for its implementation. Article 18 of the *Regulations of Shanghai Municipality on Local Financial Regulation* stipulates that “local financial organizations must regulate their operations in accordance with the law and must strictly adhere to the bottom line of risk; they are prohibited from engaging in the following activities: (1) deposit-taking or disguised deposit-taking; ... (3) illegal entrusted investment, self-financing or entrustment to issue loans.” In individual cases, it has been found that local financial organizations have offered loans to unspecified financiers by means of fictitious leased property, “low-value, overestimated” leased property and fictitious accounts receivable, and they have engaged in businesses known as “financial leasing, factoring and pawning” that were actually credit loans, which violated the provisions of franchising. As such, the contract in question was found to be invalid by the courts.

**(3)** **Compliance** **review** **must be** **further** **strengthened** **to** **expand** **inclusive finance**

Some local financial organizations have cooperated with financial technology companies, financial information intermediaries and online asset management institutions to vigorously develop inclusive finance and to develop new sources of funds and customer groups, providing favorable opportunities for their innovative development. But this has also brought business compliance risks. For example, a factoring company may cooperate with several financial information intermediaries, and its factoring financing is directly issued to a financier via cooperating financial information intermediaries, but according to the *Notice on Strengthening the Supervision and Administration of Commercial Factoring Enterprises* issued by the CBRC, commercial factoring companies are not allowed to raise funds through online lending information intermediaries, various local trading venues, asset management institutions and private investment funds. Thus, the relevant business conducted by local financial organizations must be further regulated.

**(4) Some local financial organizations are still suspected of breaking laws and committing crimes**

Hardly any local financial organizations are not driven by interests, and some are not satisfied with obtaining benefits from normal operation and thus cast their eyes to the gray zone; others yet are even suspected of criminal offenses. For example, in cases involving vehicle financial leasing contracts, individual channel merchants took advantage of the financial leasing model to carry out contract fraud or use third parties to carry out false publicity to lure customers into the financial leasing business. Other individual local financial organizations collected debts via illegal means such as by posting notices and slogans and by the violent repossession of collateral. These cases often have regional and crowd-sourced characteristics and need to be given a high priority.

**(5) An imbalance of rights and obligations between parties still exists**

Due to the higher cost of capital for local financial organizations and the higher risk of debtor default, among other reasons, the situation in which local financial organizations use their dominant position to increase the burden of debtors still exists to a certain extent, and thus the protection of the rights and interests of financial consumers and investors needs further strengthening. For example, the setting of default liability clauses is unbalanced, with more clauses in contracts regarding customers’ default liability and only simple listings of creditors’ default liability. When contracts are concluded, local financial organizations fail to provide the necessary information and fail to offer explanations to the customer regarding the content of default clauses in such contracts. In them, a higher percentage of liquidated damages are agreed should the customer fail to repay his or her loan as promised, such as by calculating the liquidated damages in full in the case of partial default. This has led to disputes between parties regarding the calculation of liquidated damages.

**IV. Shanghai’s Courts’ Initiatives to Support and Protect the Development of Local Financial Organizations**

**(1) Unifying law-applicable standards to regulate and guide market behavior**

In recent years, Shanghai’s courts have actively promoted the uniform application of law in cases involving local financial organizations by formulating opinions on the application of law, publicly publishing guidelines on the essentials of handling cases and publishing typical cases to regulate and guide market behavior. The Shanghai High Court has successively issued law-appropriate opinions on disputes over financial leasing contracts, disputes over pawn contracts and disputes over factoring contracts, among others, and it has issued regulations on issues such as the scope of leased property, false accounts receivable, the collection of service fees, upper limits to interest protection and the adjustment of liquidated damages, which have been more controversial in practice, to further clarify the scale of judicial adjudication and to achieve good results. The publicly published *Guidelines on the Essentials of Handling Disputes over Financial Leasing Contracts* provide a reference for various courts when hearing cases, and it also plays an active role in establishing the expectations of market players and in guiding market transactions. Shanghai’s courts have also published a number of typical cases to clarify the standards of the application of the law. For example, the court clarified in a factoring dispute case that if a commercial factoring company offers a loan for an unspecified object, the loan contract should be considered invalid on the grounds that it exceeds the scope of business and violates the national restrictions on business and franchised business, as well as the provisions of laws and administrative regulations prohibiting business. In another example regarding a petty loan contract case, the court clarified that petty loans, as an emerging short-term financing method with urgent demand and a high frequency of occurrence, are characterized by their simple loan procedures, quick examination and quick approval procedures, among other various forms of guarantee. Microfinance companies, however, must not violate national laws and administrative regulations on mandatory financial loan requirements and must not deduct loan interest in advance when handling this loan business. The pre-deduction of loan interest is not protected by law, and the court will adjust such a loan’s principal according to the actual loan amount at the time of judgment.

**(2) The development of systems related to local financial organizations is promoted via collaboration**

In recent years, Shanghai’s courts have actively promoted the construction of systems related to local financial organizations through various means. For example, to maintain the safety of transactions involving financial leases and to promote the orderly development of the financial leasing industry, the Shanghai High Court issued its *Guiding Opinions on Hearing Cases of Disputed Ownership of Financial Leases (for Trial Implementation)* on August 21, 2019, specifying that financial leasing companies, foreign-invested financial leasing companies and domestic financial leasing pilot enterprises in Shanghai, as lessors, must register the title status of the leased property contained in the financial lease contract with the Unified Registration and Publication System for Chattel Financing of the Credit Reference Center of the People’s Bank of China, specifying that such registration has a publicity effect against third parties to a certain extent.[[4]](#footnote-4) Throughout the process of drafting the *Regulations of Shanghai Municipality on the Supervision and Administration of Local Financial Organizations*, Shanghai’s courts actively advised and promoted the improvement of the relevant system from the perspective of their court trials.

**(3) Judicial suggestions and white papers are issued to warn about risky issues**

In response to some problems reflected in cases involving local financial organizations, courts at all levels in Shanghai have issued warnings about financial risks and have promoted the healthy development of the industry by sending judicial advice to the relevant units while also issuing white papers to society at large. The Shanghai High Court and the Financial Court issued special white papers on financial leasing cases, and the courts in Pudong and Jing’an districts issued special white papers and typical cases related to factoring disputes involving the Free Trade Zone and vehicle financial leasing disputes, receiving good reactions. The relevance and effectiveness of judicial suggestions have also been further enhanced. For example, the courts put forward judicial suggestions for individual pawnbrokers’ irregular renewal procedures and long-term, multiple renewals, and such pawnbrokers concerned have given positive feedback, saying that they would strictly standardize their renewal procedures and keep written certificates according to the suggestions. Also, in principle, they have agreed to not renew a pawn more than three times and would not actively ask the other party to renew such a pawn after one renewal. In response to the problem of individual microfinance companies using the difference between the nominal interest rate and the actual interest rate to charge high interest, the courts have pointed out in their judicial suggestions that the repayment schedule of the loan contract in question specifies that the monthly interest should be calculated by dividing the interest accrued on the principal for one year at the annual interest rate by 12 months, but the actual calculation of interest did not deduct the principal amount of the loan that had been repaid by the borrower each month, resulting in an actual interest rate calculated to be much higher than the annual interest rate agreed in the *Loan Contract*. The relevant microfinance company said it would improve its contract terms as soon as possible and clarify its provisions on interest rates in its loan contract according to the court’s opinions to avoid inconsistency between the interest rate agreement and the actual calculation.

**(4) The efficient resolution of disputes involving local financial organizations is being actively promoted**

In response to the situation in which defendants in a large number of disputes involving local financial organizations are registered outside Shanghai, some of whom evade the service process, Shanghai’s courts have taken active measures to cooperate with the relevant regulators and industry associations to guide enterprises to add “judicial service clauses” and related legal consequences to their contract templates, in addition to strengthening their verification of information recorded in contracts and other litigation materials of parties involved in litigation, thus enhancing the efficiency of their service process. The construction of a diversified dispute resolution mechanism involving local financial organizations is being actively promoted, and local financial industry organizations are being promoted to establish a sound dispute mediation mechanism. In addition, the matchmaking of mediation organizations with courts’ one-stop diversified resolution platform is being strengthened to efficiently resolve disputes involving local financial organizations via entrusted mediation, assigned mediation and the judicial confirmation of mediation agreements.

**V. Relevant Suggestions**

Local financial organizations play an important part in the financial system, as well as in the high-quality and high-level development of the Shanghai International Financial Center. They require the joint efforts of all parties, including financial regulators, industry associations, market players and the public for their healthy development. For this purpose, we propose the following suggestions.

**(1) The supervision of local financial organizations** **should be further strengthened**

Scientific and effective supervision is an important foundation for the healthy development of local financial organizations. As the business supervision rules of local financial organizations are mostly formulated by the People’s Bank of China, the CBRC and other national financial regulatory agencies, and as specific supervision work is implemented by local financial regulatory agencies, all parties need to further strengthen information exchange and work connections on the basis of their respective duties and responsibilities, thus forming a regulatory synergy. National financial regulators must further promote the improvement of legislation involving local financial organizations. They must raise their levels of legal competency, refine regulatory rules and clarify regulatory requirements. Local financial regulators are required to strictly implement national regulatory requirements and provisions regarding local financial supervision regulations to further enrich their teams’ strengths in light of the actual needs of regulatory work. They must clear the regulatory authorities, strengthen their regulatory capacity and enhance supervision over key areas, key industries and key institutions. It is necessary to vigorously strengthen behavioral and functional supervision when implementing institutional supervision, and all types of market players actually engaged in financial or financial-like activities should be supervised and managed according to the natures of their businesses to prevent the emergence of gaps in financial supervision and risk prevention. Illegal and irregular business practices must be promptly investigated and handled, and local financial organizations are urged to operate in compliance with the law, pay full attention to the boundaries between their own business models and the lending business, return to the essence of their business and strictly prevent the cross-spreading of credit risks in the financial sector. The protection of financial consumers’ rights and interests should be strengthened, and local financial organizations should be urged to rectify problems found regarding the relevant disputes. Likewise, they should update and improve the text of their contracts, balance the rights and obligations between financial institutions and investors, and fully fulfill investor suitability obligations and risk disclosure obligations, as well as the faithful and diligent obligations of financial institutions. Financial services should be promoted to serve the real economy. The content and names of the fees charged by local financial organizations should be regulated. Financing costs and collection methods should be reasonably set. The financing burden of the real economy should be effectively reduced, and the use of illegal or even violent methods to collect debts are strictly prohibited. Given that the COVID-19 epidemic has not ended, it is recommended that regulators guide local financial organizations to give some support to SMEs and private enterprises that have temporary liquidity difficulties but that are still able to maintain normal operations by upholding the mindset of “releasing water to nurture the fish” and by exercising caution when offering loans to effectively reduce the burden on enterprises and to promote the allocation of more financial resources to key areas and weak links of economic and social development.

**(2) The internal control management of local financial organizations should be further improved**

Local financial organizations should operate in accordance with the relevant laws and regulatory provisions on a legal, compliant and honest basis. They should strengthen business management, improve their internal control of risk and implement the main responsibility of financial institutions in financial risk prevention.

First, due diligence should be strictly conducted to strengthen their review of customer qualifications and to understand their customers’ businesses, as well as their financial and litigation-related circumstances. Local financial organizations should also prudently judge the creditworthiness and solvency of their customers, and they should effectively control business risks. They should conduct follow-up visits during contract execution to prevent the tendency of “attaching importance to business development rather than follow-up management.” They should discover possible risks with customers in a timely manner, and they should strive to resolve disputes by means of negotiation when customers breach contract in minor ways.

Second, the specification of internal business operations should be improved. The content of each step of the transaction process should be clearly listed, and attention should be paid to information records and material retention in each link of the business to prevent the courts from being unable to discover the facts or face the risk of losing the relevant lawsuit due to evidence that cannot be presented after a dispute occurs. Compliance training for business personnel should be strengthened, and the contract signing and execution process should be strictly checked.

Third, the management of collateral should be improved. The focus should be on clarifying the ownership of collateral and on effectively examining acquisitions, proof of ownership and the current status of collateral, as well as on improving registration and publicity procedures to prevent others from maliciously disposing of collateral and causing losses. For all new types of collateral, information technology and other means can be actively used to implement the necessary monitoring.

**(3) Financial risk prevention initiatives should be further implemented**

Government departments, financial regulatory authorities and judicial organs should further establish a linkage work mechanism, strengthen collaboration efforts, clarify the division of responsibilities and reasonably guide financial innovation. They should also promote the healthy and benign development of the financial markets while making joint efforts to prevent financial risks. Likewise, they should further intensify efforts to crack down on crimes involving local financial organizations, forming a strong deterrent and maintaining the order of the financial markets and financial security. They should strengthen investor education, further establishing the correct investment concept of “sellers abide by their duties, and buyers bear their own responsibilities” in strict accordance with the relevant provisions of the investor suitability management requirements. In addition, they should effectively protect the legitimate rights and interests of investors.

**(4) The diversified resolution of disputes involving local financial organizations should be further improved**

To effectively resolve disputes involving local financial organizations, it is recommended that the supporting role of regulators in the diversified financial dispute resolution mechanism be further highlighted. The implementation of the existing diversified resolution mechanisms should be firmly grasped, and the resolution of conflicts and disputes should be promoted. This should be done to further exercise the functional role of financial industry associations, expand the coverage of industry associations throughout the mediation of financial disputes and promote the establishment of a special mechanism for the diversified resolution of financial disputes regarding the continued high incidence of financial leasing disputes, factoring disputes and asset management disputes. Full use should be made of socialized dispute resolution forces and resources, and active exploration of the involvement of various social institutions throughout the resolution of financial disputes should be undertaken while promoting the establishment of third-party mediation mechanisms. Likewise, financial arbitration should be vigorously promoted, and local financial organizations should be encouraged to agree to resolve financial disputes via financial arbitration. Non-litigious resolutions should be promoted, and the matchmaking between litigation and mediation should be strengthened, while further broadening mediation channels, improving the interconnections between the one-stop, diversified dispute resolution platform of the courts with various social mediation organizations, and incorporating more financial conflicts and disputes into diversified resolution mechanisms for convenient and efficient dispute resolution.

1. 因涉区域性股权市场案件数量较少，暂未列入统计。 [↑](#footnote-ref-1)
2. 2021年1月1日《最高人民法院关于适用〈中华人民共和国民法典〉有关担保制度的解释》施行后，融资租赁物登记效力已明确。 [↑](#footnote-ref-2)
3. The number of cases involving regional equity markets is relatively small and is not included in the statistics for the time being. [↑](#footnote-ref-3)
4. The effectiveness of the registration of financial leasing has been clarified after the implementation of the *Interpretation of the Supreme People’s Court on the Application of the Relevant Guarantee System of the Civil Code of the People’s Republic of China* on January 1, 2021. [↑](#footnote-ref-4)