The Legal Supervision over the Cash Pooling of Bicycle-sharing

Zhi-sheng XUE and Ting WANG*
School of Humanities and Law of Tianjin Polytechnic University, 399, Binshuixidao Xiqing District Tianjin, P.R.C
*Corresponding author

Keywords: Bicycle-sharing, The cash pooling, Legal supervision.

Abstract. Bicycle-sharing has proliferated all over the country with the development of economy. Even foreign markets have been seized by Bicycle-sharing. But with the expansion of the scope of the market, the coming problem is the security of cash pooling formed by lots of deposit. Two problems are analyzed in this paper: how is the cash pooling of Bicycle-sharing formed; what is the operation mode of Bicycle-sharing. It discusses the necessity of legal supervision over the cash pooling of Bicycle-sharing in two aspects: make clear the legal attribute of deposit; summarize the current status and problems of the cash pooling of Bicycle-sharing. In our country there is a lot of legal vacuum and fuzzy zone in deposit, which causes much controversy on the cash pooling of Bicycle-sharing. Therefore, the legal attribute of bicycle-sharing deposit is discussed, which provides theoretical support for the legal supervision over the cash pooling of bicycle-sharing. Meanwhile, the current status and problems of the cash pooling of bicycle-sharing are also summarized, which laid a realistic foundation for the legal supervision. At the end of this thesis, some suggestions are made for improving the legal supervision over the cash pooling of bicycle-sharing based on the current situation in China.

Introduction

Bicycle-sharing which is based on sharing economy means that the enterprise, government or other social groups provide bicycles for users by means of leasing in the subway, street, business area and other public places. In the past, people were troubled because when they go back home, they have difficulty in the last mile. They think it is not worth taking a taxi. But if they go home on foot, it's so tired. Therefore, bicycle is a good choice for them. They don't need to worry about bikes being stolen, and they can cut way back on expensive travel. According to information, the number of bicycle-sharing users grow rapidly. The number of users has increased seven times in a year. It is predicted that by 2017, the size of the sharing-bicycle market will continue to grow significantly. However, along with the development of sharing bicycle, the industry also faces many problems among which contains that how to supervise the cash pooling of bicycle-sharing.

The Formation Mechanism of the cash pooling on Bicycle-sharing

How does a sharing-bicycle deposit form a cash pooling? Why the deposit of sharing-bicycle can become sedimentary money in the platform? On the one hand, compared to the mode of paying a deposit to ride a bicycle, the users maybe not choose to deposit refund when they don't ride bicycle. So for this reason, deposit will form a “account period”; on the other hand, time of the refund is longer than the deposit payment. Because of this cause, time of fund precipitation becomes longer. By the end of 2016, the number of sharing-bicycle users in China has reached 18 million, and it is expected to reach 50 million by 2017, according to the data released by the third-party agencies in china. If the user number of mobike and ofo is 10 million, the total deposit can get up to 990 million in ofo where each user is required to pay a 99-yuan deposit. While the platform of mobike can get 2 billion deposits where each user is required to pay a 299-yuan deposit. However, nobody knows where the considerable deposits are used. The cash pooling of bicycle-sharing causes many problems, such as...
what is the legal attribute of deposit, whether we should charge a deposit or not, how to regulate the
huge cash pool and so on? To discuss the question of "cash pooling", we should first make clear what
is the property of bicycle-sharing deposit and whether it belongs to the scope of public supervision.

The Legal Attribute of Bicycle-sharing Deposit

Legal Attribute of Traditional Deposit

The term "deposit" is widely used in daily life, such as card deposit, rent deposit, book loan deposit,
CD rental deposit, car rental deposit and so on. However, the nature of deposit is not stipulated by
legal provisions. About the legal nature of the deposit, there are many points of view here: (1)
offsetting theory. This view holds that the delivery of the deposit means that an agreement on deposit
reservation is signed between the parties. This agreement says that when the debtors does not honor
his debt obligations, the creditor can use the deposit to repay the debts. (2) Conditional Elimination
of Creditor's Right Theory. The creditor has the obligation to return the deposit to the debtor;
 correspondingly, when the debtor does not fulfill the debt, the creditor can refuse to return the deposit.
(3) transfer the right of trust. This view holds that the delivery of a deposit is the act of transferring
trust. They do not have the obligation to return the deposit before their debt repaid.

In my opinion, the deposit is used to guarantee the performance of the obligation. Maybe we can
say it is a kind of money guarantee. To guarantee the performance of the debt, the debtor or the third
party should pay creditors a certain amount of money. When the debtor fulfills his obligation in
accordance with the agreement, creditors should return the deposit. The deposit and the earnest money
differs from each other in many aspects. First, the amount is different. The amount of the deposit is
stipulated by the parties, but the amount of the deposit cannot exceed 20% of the amount of the main
contract. Secondly, the effect is different. When the party that pays the deposit cannot fulfill the
agreement, the deposit will be confiscated by the creditors or deducted liability for breach of contract.
But the earnest money is binding on both sides of the contract. In fact, the nature of the deposit is close
to the pledge. The pledge includes money and rights. In our daily life, money is monetary. In essence,
money is securities and document of title. Therefore, whether money belongs to chattel or belongs to
rights, he can become a pledge. In a word, the deposit guarantee belongs to the special pledge
guarantee, and the deposit is a pledge in nature.

Legal Relationship between Consumers and Bicycle-sharing

If we want to analyze the legal attributes of bicycle-sharing deposit, we must be able to clarify the
legal relationship between consumers and bicycle-sharing. Professor Cheng Xiao of the law school of
Tsing-Hua University said, “when consumers use bicycle-sharing, the relationship between
bicycle-sharing platform and customers is actually leasehold relation, but it has a little difference from
the ordinary leasehold relation". Whether it is ofo or mobike, as long as consumers agreed to the lease
terms and scan the QR Code on the bike, customers and the platform will form the lease relationship.

So, the lease contract of bicycle-sharing has the following characteristics: first, the contract is
established through network by the means of digital information communication; the second is that
the contract content is usually composed of standard terms which is provided for the platform; and the
third is that the time limit of lease is relatively short. The deposit should be an offer at the moment.
The use of shared bikes first requires registration, which is essentially an invitation to offer. When
users have the offer qualification, the bike company provide the bike to users. The promise is set up
when the user opens the lock on the bike. At that time, the contract is established. When the ride is
locked, the contract is performed. As long as the deposit is not refundable, the user always has the
offer qualification. The act of paying a deposit is not the act of establishing a lease. The purpose of the
lease contract between the two sides play a certain role in the guarantee. The purpose why the
platforms collect a deposit is to guarantee the lease contract. It can urge the user to use leasehold
properly. In a word, the legal attribute of bicycle-sharing deposit has deviated because of the Internet plus.

Bicycle-sharing Breaks the Legal Attribute of Traditional Deposit

**Deviation of Return Time.** An important feature of the deposit system is the refundable nature of the deposit. When the user does not rent the house, the deposit will be returned directly in the traditional rental service. But in the bicycle-sharing service, if the users do not apply for returning the deposit, the deposit will always under the control of the platform. While the user returned the bicycle-sharing, the platform does not return the deposit, which leads to the deviation between the deposit return time and the traditional deposit system.

**The Relationship that the Deposit should be in One to One Correspondence with Leasehold is Broken.** The form of bicycle-sharing deposit is different from the traditional deposit. The deposit is in one to one correspondence with leasehold in the traditional deposit. However, the bicycle-sharing deposit is not. It breaks the one to one relationship and becomes a “one to many” relationship.

Through the analysis of the deposit attribute and the formation path of the cash pooling over bicycle-sharing, we can see that the cash pooling of bicycle-sharing is different from the general pool. The reason why the cash pooling of bicycle-sharing should be survived is decided by the nature of the deposit and the problem of the cash pooling.

Current Situation and Problems of the Cash Pooling over Bicycle-sharing

**Current Situation of the Cash Pooling over Bicycle-sharing**

**The Amount of the Deposit is Considerable.** In January this year, mobike and ofo both announced that they have more than 10 million users. So, the total deposit can get up to 990 million in ofo where each user is required to pay a 99-yuan deposit. While the platform of mobike can get 2 billion deposits where each user is required to pay a 299-yuan deposit. Because there are so many platforms like ofo and mobike, the total number of users is expected to 50 million by the end of the year. It means that the total amount of the deposit will be several billion yuan. In the current environment, it is necessary to collect the deposit because of national quality. Therefore, the deposit scale will continue to increase.

**It is Difficult to Return the Deposit when the Users Do Not Want to Use the Bike.** The occupation of the cash pooling is driven by the profit of the enterprise. According to the statistics of the insurance committee, 176 complaints of bicycle-sharing consumption were received in the second half of last year compared with 463 complaints in the first two months of this year. The main content of the complaint is that deposit refund is not smooth. The problem that the return of the deposit is difficult has become a more and more concern for consumers. The platforms damage the legitimate rights and interests of consumers based on its own interests. In order to regulate this situation, we must take effective supervision measures to urge the deposit to return as soon as possible.

**The Funds in the Cash Pooling Fear to Become the Maim Profit Model for the Platform.** Deposit has the guarantee nature in terms of civil and commercial law. The proceeds from the deposit are legal fruits. If the parties have a contract to deal with it as agreed; if the parties do not have an agreement or the agreement is not clear, the legal fruits should be possessed by the platform like ofo and mobike. In civil law, “deposit profit model” has no problem.

But “deposit profit model” is a high-risk model for consumers or society. Money is a special movable property, and possession is all. Once received, it can be used freely, unless the law has a stipulation of the party has an agreement. At present, the bicycle-sharing deposit is unsupervised. So, it is a legal lacuna. Then, the platforms use the fund for investment. Once the money chain breaks or some people absconded with money, it will inevitably lead to a crisis that the deposit cannot return to consumers. Therefore, the interest of consumers will be violated.
Problems Faced by the Cash Pooling of Bicycle-sharing

The Problem of Deposit Justification is Questioned. The deposit is in one to one correspondence with leasehold in the traditional deposit. However, the bicycle-sharing deposit is not. It breaks the one to one relationship and becomes a one to many relationship. It is suspected of illegal fund raising. The main characteristics of illegal fund raising: one is to raise funds for society without the approval of the regulatory authorities; second is that the crowdfunding promises to give investors investment return in a certain period of time.

Obviously, under the mode of mobike and ofo, the deposit charged according to the number of users, which has the risk of illegal fund raising. They are different from the traditional illegal fund raising, because they imply not the investment returns but a commitment to a continuous service or a convenient service. Therefore, it is necessary for the relevant departments to pay more attention to the scale, use and refund rules of the deposit collected by various kinds of bicycle platforms.

The Loss of Capital Appears because of Funds Misappropriation. Bicycle-sharing can form a huge cash pooling through the deposit rules. But no one knows the whereabouts of the money. Currently, the deposit is mainly used in three aspects: one is for production. Bicycle-sharing requires high costs and management costs. Second is the loss of deposit caused by the withdrawal. The third is for other investment and operation.

The Text the Improvement of Legal Supervision over the Cash Pooling of Bicycle-sharing

Set up A Perfect Law and Regulation System for the Cash Pooling of Bicycle-sharing

In the long run, bicycle-sharing is good for society and users. Although it has some risks and problems, we can take measures to supervise. For new things, our management cannot be inflexible, which will hander the development.

The government should set up law and regulations related to the bicycle-sharing deposit through considering the needs of consumers and the enterprise. We need a clear deposit rule to manage the deposit. We need to clear the collection standard of the deposit, the return process of deposit, the nature of deposit and so on in the relevant laws and regulations. We can protect the legitimate rights and interests of consumers by this means.

Save the Deposit through A Third Party

The platforms should be forced to place the deposit on deposit in a bank. By this means, the Chinese bank regulators can figure out where the deposit all went. The deposit can only be used to refund the user, and cannot embezzle for other reasons. The process of returning the deposit should be operated by the bank. And the banks must return deposit to users according to the original path, rather than to the platform account.

In this way, the platform manager can be separated from the deposit. Therefore, we can protect the rights and interests of the users from infringement. The phenomenon of cash pooling is note the unique characteristics of the bicycle-sharing. In the early years, scholars have had a huge dispute about the cash pooling of the third-party payment platform such as Alipay. Then our government set up regulations to regulate the platforms. Bicycle-sharing is in a similar stage. The reason why the deposit is a risk is that the local government does not supervise and the relevant law is in a state of emptiness. Therefore, the establishment of a sound financial supervision, settlement, trusteeship system should be the proper meaning of deposit.

Establish the Margin System

The platforms should pay the security deposit for the supervision department. The deposit extension insurance system is an effective preventive measure to prevent the risk of the third-party payment platform in the United States. The third-party payment platform shall establish an interest-free
account at the federal deposit insurance company. And the insurance costs incurred are deducted from the interest on the cash pooling.

This system compensates for the loss of users when the platforms have problems. When we supervise the platforms of bicycle-sharing, we should ask the platforms to pay the security deposit to the regulatory department to meet the risk of enterprise bankruptcy, broken fund chain and so on. The legal supervision over the cash pooling of Bicycle-sharing does not necessarily affect the overall platforms.

Summary
The government based on the angle of encouraging new things, should take various measures to supervise the platform, and focus on preventing risks. Only in this way, can we protect the interests of consumers and advance the bicycle-sharing healthily.

Acknowledgement
This research was financially supported by Tianjin Philosophy and Social Science Planning Fund Program, the Research on Legal Mechanism of Risk Control in OTC Options Market (TJFX16-007).

References
[6] Xu Jinghui. Top-up is very smooth, but the refund is very tortuous [N]. The Shanghai Mercury, 2017-03-10004.