SPC Provisions on Private Lending Cases

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Chapter I — Scope of Application

Article 1 — For the purposes of these Provisions, "private lending" refers to the act of financing between natural persons, between legal persons, and between unincorporated organizations and natural persons, legal persons and unincorporated organizations.

Disputes arising from lending activities conducted by financial institutions and their branches that are established with the approval of the financial regulatory authorities and engaged in loan business shall not be governed by these Provisions.

Article 2 — Where a lender files a lawsuit with a people's court in respect of a private lending dispute, it shall provide documentary evidence such as IOUs, receipts, or loan contracts, and other evidence proving the existence of the lending relationship.

Where the documentary evidence such as IOUs, receipts, or loan contracts provided by the party does not specify the creditor, and the party holding such documentary evidence files a private lending lawsuit, the people's court shall accept the case. Where the defendant raises a fact-based defense against the qualification of the plaintiff as the creditor, and the people's court, upon examination, finds that the plaintiff does not qualify as the creditor, the court shall rule to dismiss the lawsuit.

Chapter II — Formation and Validity of Private Lending Contracts

Article 3 — A private lending contract shall be formed when the parties reach an agreement on the essential elements of the lending, including the amount, currency, term and interest rate.

Article 4 — A natural-person-to-natural-person private lending contract shall be formed upon the actual provision of the loan by the lender.

Article 5 — Where a private lending contract is concluded by a legal person or an unincorporated organization within the scope of its business for the purpose of its production and operation, the people's court shall support a party's claim that the private lending contract is valid, unless such party falls under any of the following circumstances: (1) lending funds obtained from financial institutions on-lent for profit to another borrower who was aware or should have been aware of the fact; (2) lending funds obtained by internal fundraising from its own employees or by illegally absorbing public deposits on-lent for profit; (3) the lender, knowing or being reckless as to the borrower's use of the loan for illegal or criminal activities, still providing the loan; (4) violating public order and good morals; (5) violating the mandatory provisions of laws and administrative regulations.

Article 6 — Where a legal person or unorganized organization raises funds from its own employees for the purpose of its own production and operation, the private lending contract shall be valid unless the funds are raised in violation of Article 5 of these Provisions or in violation of the provisions of the relevant laws.

Chapter III — Proof and Determination of Facts

Article 7 — Where a plaintiff files a private lending lawsuit based on documentary evidence such as IOUs, receipts, or loan contracts, and the defendant raises a defense that the loan has been repaid, the defendant shall provide evidence to prove its defense. Where the defendant provides corresponding evidence to prove its claim, the plaintiff shall still bear the burden of proof for the existence of the lending relationship.

Article 8 — Where a plaintiff files a private lending lawsuit relying solely on a transfer voucher from a financial institution as evidence, and the defendant defends on the grounds that the transfer is for repayment of a previous loan between the parties or for another debt, the defendant shall provide evidence to prove its claim. After the defendant provides corresponding evidence to prove its claim, the plaintiff shall still bear the burden of proof for the existence of the lending relationship.

Article 9 — The people's court shall comprehensively determine the relevant facts, such as whether the lending has occurred and the amount of the loan, based on multiple factors, including the amount of money delivered, the method of delivery, the financial capacity of the parties, the parties' trading practices and the source of the funds.

Chapter IV — Determination of Parties

Article 10 — Where the IOUs, receipts or loan contracts signed or sealed by the borrower name a person other than the borrower, and the lender files a lawsuit claiming that such person and the borrower are joint borrowers, the people's court shall not support the claim unless the lender can prove that such person was a

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joint borrower, guarantor, or has other legal obligations.

Article 11 — Where the legal representative of an enterprise legal person or the person in charge of an unincorporated organization signs a private lending contract with the lender in the name of the enterprise, and the lender has reason to believe that the loan is for the use of the enterprise, the enterprise shall bear civil liability.

Article 12 — Where a legal person or unincorporated organization lends in its own name and the borrower can prove that the loan is for the personal use of the legal representative or person in charge, the borrower may claim that the legal representative or person in charge is the borrower; the people's court shall support such claim.

Chapter V — Interest on Private Lending

Article 13 — Where a private lending contract does not stipulate interest, the people's court shall not support the lender's claim for interest during the loan term.

Where the stipulation on interest in a private lending contract is unclear, the people's court shall, based on factors such as the transaction method, trading practice and market interest rate, determine the interest. Where the lending is between natural persons, the people's court shall be deemed to have no stipulation on interest.

Article 14 — Where both parties agree on an interest rate, the interest rate shall be protected if it does not exceed four times the one-year loan prime rate (LPR) published by the National Interbank Funding Center at the time of the formation of the contract. Where the agreed interest rate exceeds the above limit, the people's court shall not support the claim for the excessive part.

Article 15 — Where the borrower and the lender agree on both an overdue interest rate and a liquidated damages or other charges, the lender may choose to claim the overdue interest, liquidated damages or other charges, or claim all of them together, provided that the total amount shall not exceed the limit stipulated in Article 14 of these Provisions.

Article 16 — Where the borrower and the lender agree to include interest in the principal for calculating compound interest, if the interest rate at the time of the initial loan exceeds the limit stipulated in Article 14 of these Provisions, the portion in excess shall not be recognized as the principal. The sum of the principal and compound interest after the expiry of each lending period, when re-lent, shall be recalculated and if the sum exceeds the initial principal plus interest calculated at the limit stipulated in Article 14 for the entire lending period, the people's court shall not support the claim for the excessive part.

Article 17 — Where the parties agree on interest that is voluntarily paid by the borrower, and the borrower claims the return of the excessive interest on the grounds of unjust enrichment, the people's court shall not support the claim, provided that the borrower is not harmed by coercion, fraud or other circumstances.

Chapter VI — Intersection with Criminal Proceedings

Article 18 — Where a people's court finds, in the course of hearing a private lending dispute case, that the facts of the case may involve illegal fundraising or other crimes, it shall rule to dismiss the lawsuit and transfer the relevant clues and materials to the public security authority or the procuratorial authority.

Where the public security authority or the procuratorial authority decides not to file the case, or where the case is determined not to constitute a crime after investigation, and the party files the lawsuit again, the people's court shall accept the case.

Article 19 — Where a private lending dispute case is basically based on the same facts as a case being heard by a people's court, and the main facts of the case must be determined on the basis of the outcome of the criminal proceedings, the people's court shall rule to suspend the hearing of the civil case.

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Article 20 — Where a borrower is convicted of a crime, the private lending contract shall not necessarily be invalid. The people's court shall determine the validity of the private lending contract in accordance with the relevant provisions of the Civil Code.

Chapter VII — Supplementary Provisions

Article 21 — Private lending disputes that were accepted by a people's court before the implementation of these Provisions shall be governed by the judicial interpretations in force at the time. Private lending disputes accepted after the implementation of these Provisions shall be governed by these Provisions.

Article 22 — Where the judicial interpretations previously issued by the Supreme People's Court are inconsistent with these Provisions, these Provisions shall prevail. These Provisions have no retroactive effect on cases that have been finally adjudicated before their implementation.

Article 23 — These Provisions shall come into force on September 1, 2015, and the 2020 amendments shall come into force on August 20, 2020.

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