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On the Ownership of Funds in Transit in the Payment and Settlement

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Abstract

Payment and settlement will produce issues regarding funds in transit. When we study the ownership of funds in transit, we shall clarify the nature of monetary property, the ownership of deposit money and the significance of bank accounts. Money is independent property and it is not a "material object". Its core is credited. Deposit money is based on bank accounts and it is liminal independent monetary property. Since a depositor deposits legal currency into a bank, the bank has gained the property rights to the legal currency while the depositor will get the control rights over the deposited currency. Deposit currency and statutory currency are in an equal and freely convertible relationship. This equal and freely convertible relationship and interest income are derived from the credit diminution rather than from anything else. To pay the settlement by using deposit currency will result in problems of funds in transit. Funds in transit are neither in the payer's account nor the payee's account. They are in the bank's settlement process. Due to the homogeneity of currency, the control rights over funds in transit can only be held by the bank and the payer holds only statutory non-dominant rights.

Key words: Currency property; Deposit currency; Bank account; Credit diminution; Funds in transit; Payment and settlement

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INTRODUCTION

Any payment and settlement will produce issues regarding funds in transit, that is, in the transfer process of funds from the payer to the payee, funds need to be transferred to the recipient through a bank or a third party payment organization. After the transfer of funds from the payer's account and before funds reach the payee's account, there is actually a time lag process. Funds in this process are funds in transition in payment and settlement. Regarding the ownership of funds in transit, there are controversial points in the theoretical field. First, funds in transit are monetary property; therefore, when we study funds in transit, we shall study the nature of monetary property. Second, funds in transit are deposit currency; therefore, we also need to study the ownership of deposit currency. Third, funds in transit are money outside of accounts; therefore, we shall study deposit accounts. Finally, funds in transit are monetary property in the process of payment and settlement; therefore, we need to have a general understanding of payment and settlement.

1. UNDERSTANDING MONETARY PROPERTY

Regarding the nature of currency, the mainstream views of theorists and practitioners in China still stay at the understanding of the real rights of currency, which results in the understanding of the legal relationship in payment and settlement also just stays at the credits and liabilities. However, the development of currency has been far beyond the scope of the understanding of real rights. Traditionally, Chinese law experts have considered currency as a "material object". "Currency in law is a material object and it is a special moveable asset" (Liang, 1996, p.86; Wang, 2002, p.34). Meanwhile, it is considered that currency is an indefinite object of high degree of substitutability. "Currency is a special

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indefinite object and typical consumer object". (X. Z. Zhou & J. Zhang, 2005) "Indefinite objects refer to things which are determined by variety, quality, specifications or weights and measures without specific designation." (Zhang, 2000)

In different historical periods, currency displays in different forms and it has undergone the development process of physical currency, metal currency, currency securities, credit currency and electronic currency (Liu & Wang, 2009). In the credit currency stage, its symbolic significance continues to rise, the essence of which is the highlighting process of the credit value of currency. The prominent indication of this process is dematerialization. On the one hand, this is determined by the development of technical means, but more importantly, it is the result of the nature of currency. Some scholars believe that "the concept of object is evolving. From Roman law era to modern times, the object of real rights is primarily material objects. However, with the development of market economy, not only material objects but also many rights enter in transaction and thus they can be disposable objects." (Wang, 2002, p.29) At the same time, they recognize that, "although on the principle real rights law of China sets the scope of objects as material or physical objects (moveable and immovable assets), it also leaves enough space for the development of objects of real rights in future." (Wang et al., 2008, p.229) Currency is precisely the national credit symbol made by laws. Even if it belongs to non-physical things and it is not under the category of moveable assets. Based on this, to conclude that currency belongs to special moveable assets is naturally wrong. Therefore, the meaning of contemporary currency ensured by national credit and made by laws cannot be covered by an "object". Although currency cannot completely get rid of the shackles of "object", "object" is only its carrier rather than its essence; therefore, if we only take its carrier as currency's essence and ignore its credit nature, our understanding of currency will stay at the initial stage that currency is just a general equivalent. In accordance with real rights theory of moveable assets, if currency belongs to special moveable assets, we can set pledge right with currency, but money essentially belongs to its possessor. When setting pledge right with currency, the property right of currency has been transferred to the pledgee since the currency is delivered, which is just in contradiction with the law that pledge right does not transfer the ownership of the property. Therefore, moveable real right can hardly explain the special nature of currency property.

In addition, it is impossible to classify currency as indefinite object. When an indefinite object returns, it just needs to return the same type indefinite object with the same amount. The real situation is that standard currency is different from fractional currency. The currency denomination is different and the amount of money it represents is different. A one-hundred Yuan currency is different from fractional currency of the same value. At least the amount and type are different. To say the least, type characterizes the currency type and amount stands for the currency amount. It cannot explain why a particular industry shows a different degree of willingness to accept different denominations.

In the credit currency stage, currency is the value symbol regulated by national laws and it no longer belongs to commodity. It is only a measure of value and means of payment. It does not have the value of a product. As a general equivalent property, it is a national mandatory provision and it can only be issued by the national legal currency issuer. In the credit currency standard system stage, currency property is no longer a commodity or "material object". Its surface characteristics of a commodity or "material object" only exist as the carrier of credit value. Its property nature has largely changed which is especially true under the impact of electronic currency and even has completely faded the shell of "material object". From the above analysis, we can see that, currency, taking credit as the value foundation, is a property of which does not necessarily depend on a specific material form.

2. DEPOSIT CURRENCY

According to the origin of currency, it can be divided into original currency and derivative currency. The essential characteristic of original currency is that the legal relationship it forms is a direct relationship between the subject and the object, in which it does not directly contain a relationship between subjects. Renminbi is China's legal currency and it is also the original currency of China. Its original nature is prescribed by law. While deposit currency is a derivative form of legal currency and it belongs to the derivative currency. Funds in transit are bonds connecting deposit currency circulation among different subjects. Deposit currency is the starting point as well as the terminal of funds in transit in the field of payment and settlement. For funds in transit, when they enter a subject's account, they will form the subject's deposit currency and its nature of funds in transit will disappear, becoming deposit currency. As for whether the right person for the deposit currency converts it into cash, it is another legal relationship.

On the surface, the word "deposit" means depositors put their money into the bank, but essentially it transfers the money to the bank. The depositor only enjoys the consideration of "voluntary deposit and free withdrawal, with interest for deposit". The essence of the consideration is that the deposit gets deposit currency. The deposit currency, as a derivative form of original currency, has an independent property nature. This also explains why deposit currency can make payments. It is

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just because the word "deposit" covers up the ownership of currency property that scholars are entangled in the appearance of "putting" money in depositors' account in their study and thus they conclude that legal currency still belongs to depositors. Actually, if we interpret it from the perspective of the relationship between original currency and derivative currency, we will not have the above misunderstanding. Deposit currency reflects bank credit. The reason why bank credit is reflected is that "the development of contemporary financial system allows banks to have a unique economic status. It is not only the storage place of currency, but also the hub where social currency liquidity and credit exchange." (Liu & Wang, 2009, p.122) The essence is that people generally are willing to accept bank deposits. As long as people are willing to accept this deposit payment for deposit balance, it has started to perform the functions of currency. Therefore, when people deposit legal currency with national credit into a bank, the deposit currency they get has an independent currency form. This currency also has the payment and settlement functions. Only when there are problems with bank credit, the right person of deposit current would strongly require the bank to exchange legal currency to project its payment function.

Banks absorb deposits and that is to use their credit to exchange national credit. The nation protects bank credit through its own credit. In other words, bank credit does not come from the bank itself, but from the double support of the country's financial system and the national credit. However, it is not the national credit itself. Therefore, in general, bank credit is lower than national credit and different banks have different credit. Then we can draw a conclusion that, when legal currency is deposited into a bank, the bank has the control right to this legal currency, and the depositor gets the property rights over the deposit currency. They two have equal freely convertible relationship at most of the time. Therefore, when a depositor deposits legal currency into a bank, he will get deposit currency, equal freely convertible rights and interest income from credit diminution. This is precisely the key that some banks with bad operation will provide a slightly higher interest rate than banks with sound management when they absorb deposits. Banks use the legal currency they absorbed to lend and this does not change the deposit amount of depositors in the bank account. Even when the bank has payment crisis, the account balance of depositors will not change accordingly. However, at that time, since the convertible equal relationship between deposit currency and legal currency has been influenced by the actual payment difficulty of the bank, it will produce the phenomenon that they are not equaled freely convertible.

Therefore, when people deposit legal currency into a bank, they tend to consider the following factors: First, ease of access, which means whether depositors can exchange between deposit currency and legal currency anytime and anywhere; second, bank credit, which means whether the convertibility relationship between depositors' deposit currency and legal currency can maintain normal and also means whether depositors' deposit money is safer; third, interest rates—depositors deposit legal currency in the bank in order to get some interest income, but the interest is determined by the bank's own credit, that is the reduction degree of national credit to bank credit; fourth, ease of payment—financial institutions are the center of financial flows of the entire community. Payment and settlement are one of its core businesses. Without the aid of financial institutions, it will cause great obstacles to the movements of capitals among people; therefore, even at extremely low interest rates in some countries, people will continue to deposit money in the bank in order to obtain payment and settlement facilities and financial security. That is the only reason.

3. BANK ACCOUNTS

Deposit currency takes bank accounts as its carrier. The domination of the right person to the deposit currency must rely on bank accounts. Bank accounts are the foundation of depositors dominating their deposit currency. Bank accounts are like safe deposit boxes offered by banks in their proxy custody business. Tenants who rent safe deposit boxes still have the ownership of items saved in boxes and the bank does not have the right to property. Bank accounts can be understood as a virtual safe deposit box.

Bank accounts are the basis for depositors to exercise control over the deposit currency, and without the bank accounts, deposit currency will lose the attachment and the carrier; therefore, a bank account is also the border for depositors to exercise control rights. First, depositors can only dispose their personal accounts; second, no person shall interfere with depositors' legitimate domination over their deposit accounts; third, depositors have no control over the currency property departing from their deposit accounts; although depositors can enjoy certain claims based on statutory grounds, this right no longer directly targets at the currency property. Therefore, a bank account is the characterization of the right person's domination to monetary funds in the account. The control over it refers to can only be within the right border of bank accounts. Currency is an independent property right. Currency belongs to its occupants. The property transfer of currency is based on the change of possession and control. Due to the homogeneity of currency property, the entry into force of the property is based on the delivery. As long as the delivery is completed, the property rights of currency will be transferred. The delivery includes direct delivery of cash as well as payment and settlement of non-cash, and only through the settlement and when currency property

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goes into the payee's account, the payee can actually possess the control over it, and then we can say the payee shall enjoy the property right to those currencies.

Thus, we can draw a conclusion that, the ownership of dominance of deposit currency is based on bank accounts; depositors have the domination over monetary funds in their bank accounts; currency property departing from their bank accounts does not belong to depositors and they do not have the dominance over the deposit currency.

4. THE PROPERTY OWNERSHIP OF FUNDS IN TRANSIT

In payment and settlement, the payer pays money and transfers monetary funds to the payee through payment and settlement. Except the direct delivery of cash, there will be the time difference issues of money transferred out of the payer's accounts and entering the payee's account. During this period of time, monetary funds are funds in transit. Since funds in transit enter the payment and settlement process of banks and other financial institutions in this process, they are actually controlled by the bank. And in accordance with the provisions of *Payment and Settlement Methods,*[1] for payment made through remitting or transferring, the payer may obtain the property rights of the payment through the exercise of the right to revoke or withdraw, but like what we have previously analyzed, the provision in *Payment and Settlement Methods* is based on the understanding of the real right of currency, and in Payment and Settlement Methods, payments through other payment and settlement tools and payment methods do not have the right to revoke or withdraw. If understood it from the literal meaning, applying for revoking or returning the remittance is just an application made by the payer to the bank, rather than an order. This means the payer loses real control over the monetary funds. This is not consistent with the view that the payer has property rights over funds in transit. In terms of monetary funds themselves, currency belongs to its owner (Liu & Wang, 2009, p.114). Taking into account the homogeneity of currency, the monetary currency into the bank settlement process can only belong to the bank which has actual control and is the management role. Although *Payment and Settlement Methods* provides the payer is entitled to apply for revocation or withdrawal, this can only revoke the payment order. Article 178 of Payment and Settlement Methods provides that "the remitter can apply for return of remitting funds from the bank where the money is remitted out. For the payee who has a deposit account at the bank where the money is remitted in, the payer should contact the payee to ask for return of the money; for the payee who does not have a deposit account at the bank where the money is remitted in, the payer should provide a formal letter or identity document and the original letter and remittance receipt, and then the remitting out bank informs the remitting in bank and the remitting in bank verifies that the remittance has not yet been paid and returns the money to the remitting out bank. Then the payer can get the money returned". This provision illustrates two problems: a) for the payee who has a deposit account at the remitting in bank, the payment has already entered the payee's account and then the remitter has to contact the payee for return the remittance. As for whether the remittance is necessarily returned, there is no provision in the *Payment and Settlement Methods*. If understood it from the literal meaning, the discretion is at the payee's hand because at that time the "money" has already entered the payee's account; b) for the payee who does not have a deposit account at the remitting in bank, after verification and other procedures, the remittance can be returned. This means the money has not entered the payee's account and the payee does not have the right to decide whether to return it. The Payment and Settlement Methods provides that the remitter can apply for rather than order return of the money, and this also illustrates that the money is actually possessed by the bank and the bank has the monetary property rights over the payment.

According to the above analysis, the bank has a property right over monetary funds in transit, but since the funds in transit belong to directional flow, they have time and usage limits; therefore, property rights that the bank has on funds in transit are also constrained by time and purposes rather than complete property control. Banks, as payment and settlement intermediary agencies, provide access for the transfer of currency property. This access service is their basis to control funds in transit and it is also the basis for banks to have property rights on funds in transit. Once funds in transit depart from the payer's account and enter into settlement process of the bank, the payer only has the right to apply for return of the funds when the settlement fails; for the payee, they are receivables with directional flow right. However, both the two types of rights are not targeted at currency property itself, but at banks' remedy rights of currency property. Therefore, the property rights of funds in transit can only be owned by banks.

In addition, in the process of payment and settlement, the volume of funds in transit through bank settlement is very large, but in fact banks do not pay any interest on the funds to payers or payees. If funds in transit belong to payers or payees, in theory, banks need to pay interests to the right person of the funds in transit. However, the fact is not like that and this just happens to confirm from the side the fact that the ownership of funds in transit is retained by the bank.

[1] Please refer to Section 177 and 178 of *Methods of Payment and Settlement*.

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CONCLUSION

The real problem of funds in transit is the dynamic ownership of currency property. This is one of the most central contents in payment and settlement methods. The static ownership of monetary funds can be symbolized by the control over bank accounts, while the dynamic ownership of monetary funds is symbolized by the actual control over monetary funds. The actual control is the key to determine the ownership of funds in transit; therefore, in payment and settlement, the ownership of funds in transit can only be owned by the bank. However, because it is limited by time, usage, etc., the rights of the bank has of funds in transit are not completely controlled and they are also restricted the payer and the payee.

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