

The Risk Analysis and Regulation Suggestions of Network Mutual Aid Platform

Youfang Jin¹, Peiyu Du²

¹Associate Professor, Deputy director of Institute of Economic Law, Zhejiang Sci-tech University, China

²Researcher of Institute of Economic Law, Zhejiang Sci-tech University, China

Abstract. As an emerging inclusive financial model, network mutual aid has a wide range of beneficiaries and low risk protection threshold, which can satisfies the healthcare needs of the long-tail people excluded by traditional insurance. However, these risks like financial risk, information risk, operation risk and other hidden risk are induced due to network mutual aid platform unified legal nature and imperfect regulatory system. We should build a sound regulatory system, clarify the network mutual platform regulatory agency, take the protection of consumer interests as the basic value and rely on the principle of transparency to strengthen the platform information disclosure obligation. Meanwhile, It is necessary to improve regulatory capabilities and promote development of network mutual aid platforms by actively adopting innovative concepts such as regulatory technology and inclusive supervision.

Keywords: Network Mutual Aid; Insurance Business; Transparency Principles; Regulatory Technology; Inclusive Regulation

1. Introduction

With the development of Internet technology, network mutual aid has become an emerging model of financial inclusion. By pre-depositing mutual money to the platform, users can freely join a mutual aid plan. Once the act of mutual aid takes place, all users of the same plan assist through cost apportioning, realizing the economic mutual aid and risk offset amongst users. Low-threshold, low-cost network mutual aid is an effective supplement to social and commercial insurance, in line with the characteristics of inclusive finance "universal, accessible, convenient and inclusive", and plays a role in risk protection for the long-tail population excluded by traditional insurance.

The China Banking and Insurance Regulatory Commission (CBIRC) either by issuing documents or releasing information has consistently underlined in 2021 that network mutual aid needs to be standardized. Due to regulatory compliance issues and their own operational limitations, Meituan Mutual, Easy Mutual, Waterdrop Mutual, 360 Mutual, Mutual Treasure, etc. have been shut down one after another, and the development of network mutual aid platforms has fallen into a downturn. However, there is still a significant discrepancy between people's growing health protection needs and the unbalanced and inadequate health protection supply: medical insurance currently covers a wide range of people, but the level of protection is insufficient, and "returning to poverty due to illness" is still a major concern. Commercial health insurance premiums are high and the underwriting conditions are harsh for commercial health insurance has high premiums and stringent coverage conditions, which is a high threshold for low- and middle-income groups and medium- and high-risk groups. On the other hand, network mutual aid uses the Internet as a medium, and the decentralized operation method effectively reduces costs, with less loss sharing among users, and is in line with the development of inclusive finance, with wide coverage of beneficiaries and low risk protection threshold. Take "Mutual Treasure" as an example, 56% of all users are from third-tier cities and below, of which 32% are from rural areas and counties. Therefore, the national health risk protection system still needs to leverage the power of network mutual aid to add new impetus to the establishment of an accessible, affordable and sustainable health risk protection system.

However, network mutual aid is now facing the dilemma of "theory lagging behind practice, legislation lagging behind regulation, and regulation lagging behind the market", which is also an important reason for the "shutdown wave" of network mutual aid platforms in 2021. Controversy

exists on the legal attributes of network mutual aid platform, which also brings greater problems to judicial trials. Therefore, we should focus on risks regulation and consumer protection, analysis the legal nature of network mutual aid platform based on insurance business standards, and propose targeted risk response measures.

2. Legal Nature of Network Mutual Aid Platform

In 2015 and 2016, the former CIRC issued the "Risk Alert on Network Mutual Aid" and some special rectification actions against the phenomenon of some entities illegally engaging in insurance business in the form of network mutual aid, both of which emphasize that the network mutual aid platform is not insurance institution and does not apply to insurance regulation. With regard to network mutual aid schemes such as accidental injury mutual aid and critical illness mutual aid launched by some non-insurance institutions based on network platforms, the former CIRC believes that, on the premise of encouraging innovative behaviors that meet the diversified risk protection demands of the public, it should ensure that the distinction between network mutual aid platform and insurance institution and prevent network mutual aid from becoming nominal insurance.

In September 2020, the CIRC Bureau of Combating Illegal Financial Activities wrote an article about the regulation of network mutual aid, stating that network mutual aid platform essentially has the characteristics of commercial insurance and should be considered as "insurance-like" financial services institution. A number of relevant judgments found that regardless of the characteristics and business model, network mutual aid belongs to insurance-like products, and network mutual aid platform is a new type of mutual economic organization arising from the synthesis of private mutual aid and network service technology.

However, *The Social Insurance Law of the People's Republic of China* has very strict restrictions on insurance, and insurance-like operations are difficult to be included in the scope of supervision.¹ In practice, insurance-like operations can be divided into two categories: one is nominal insurance with the purpose of defrauding users, and the other has the core connotation of insurance with the purpose of promoting insurance operation innovation and reducing compliance costs by circumventing regulations. The former can be regulated in accordance with Article 158 of *the Insurance Law*². While the latter can be used to analyze the legal nature of network mutual aid platform based on the business insurance identification standards.³ Although network mutual aid platform does not belong to the strict definition of commercial insurance in *the Insurance Law*, it has the core connotation of insurance. It should be regulated accordance with the "penetrating" regulatory standard and the attitude of "substance is more important than form". If it is not included in insurance supervision, it will actually lower the access and operation requirements.

3. Risk Analysis of Network Mutual Aid Platform

Despite the obvious variability in the operating models of network mutual aid platforms in the current market, their potential legal risks are somewhat homogeneous. This specifically includes the financial risk of insufficient security of the capital pool and frequent platform defaults, the

1 *The Social Insurance Law* Article 2: In this law, "insurance" means commercial insurance activities where an insurance applicant pays an insurance premium to an insure under an insurance contract insurer undertakes to pay the insurance money to compensate for the property loss caused by the occurrence of a potential.

2 *The Social Insurance Law* Article 158: where anyone, in violation of this Law, forms an insurance company or insurance asset management company without approval or illegally operates the commercial insurance business, the competent insurance regulatory body shall ban it, confiscate the illegal gains and impose a fine of not less than the amount of but not more than five times the illegal gains upon it. If there are no illegal gains or the amount of illegal gains is less than 200,000 yuan, a fine of 200,000 yuan up to 1 million yuan shall be imposed upon it.

3 The insurance business criteria can be specifically referred to the "three-element test" in the United States, where innovative insurance products are abundant: (1) whether the business involves the transfer or diversification of risk to the policyholder; (2) whether the business is a substantial part of the insurance contractual relationship between the insurer and the insured; and (3) whether the business is limited to the insurance business.

information risk of information disclosure and privacy leakage, and the operational risk of platform losses and platform insolvency.

3.1 Financial Risk

i. Security risks of the funds pool. Most network mutual aid platforms require users to pre-deposit mutual funds for equal sharing, some platforms charge membership fees to maintain daily operations, these funds are large and mutual aid platforms have greater dominance, and "bank trusteeship and third-party supervision" in the absence of regulatory bodies and regulatory rules are very easy to trigger illegal fund-raising. At present, none of the network mutual aid platforms have made public the flow of their funds, and most of the platforms that have collapsed are due to fund-breaking, which highlights the mutual aid platform funds security problems.

ii. Platform default risk. Most mutual aid platforms give a predicted value for the amount of apportionment for a certain time period and promise that the excess will be paid by the platform. Currently, the users of the online mutual aid platform are relatively young, and the incidence of serious diseases is lower than the average level of the society, so apportioned costs are not high. However, as time goes by and users grow older, the incidence of serious illnesses will gradually approach the social average, and the actual apportioning cost will increase. Once the apportioned amount exceeds the user's affordability, there may occur default risk.

3.2 Information Risk

i. Information disclosure risk. Due to the format contract signed between the network mutual aid platform and the user, the necessary information such as the scope of mutual aid, health notice, waiting period terms and conditions lacks of standardized disclosure rules, coupled with the lack of pre-standard specifications specifically prompted by the exemption clause in the network mutual aid industry, users are extremely susceptible to being misled by publicity to join network mutual aid platforms. There are also risks such as arbitrary iteration of the terms of the mutual aid plan and insufficient publicity of important matters on the network mutual aid platform, which increases the uncertainty of network mutual aid and makes it difficult to protect the interests of users.

ii. Risk of privacy leakage. Network mutual aid platforms bring together hundreds of millions of users' personal information, including users' identification information, health, provident fund, social security, education, insurance, credit cards, online purchases, payments and other private information, which may lead to mass financial frauds in the Internet era in the event of a risky information system event, information security problems or information leakage events.

3.3 Operational Risk

i. Platform loss risk. According to the platform's public information, the platform operator's income mainly comes from the management fees collected, which are mainly used for eligibility checks, case investigations, product operations and technical inputs. This means that if users refuse to pay on a large scale or withdraw in groups, the normal operation of the platform will be difficult. Moreover, most network platforms will not fully consider the fact that management fees increase as users increase. It is questionable whether the mutual funds can be truly distributed to the recipient users.

ii. Risk of platform insolvency. Due to the imperfection of the current regulatory system of the network mutual aid, it is difficult to curb malpractices such as individual operators or investors arbitrarily raising the cap line on assessments, unreasonably refusing to pay out, misappropriating the pool of mutual funds, fictitious mutual events, maliciously transferring assets, forcing the platform to withdraw, terminating business or even "running away" in order to obtain mutual funds. Once a mutual aid platform runs into problems, the legitimate rights and interests of users will be damaged, and it is easy to become the outbreak point of social mass incidents.

4. Regulation Suggestions of Network Mutual Aid Platform

Given the aforementioned analysis of the legal nature of network mutual aid platform as "insurance-like", it is suggested to bring it into the supervision scope of CBIRC. Specific regulatory initiatives should take the protection of consumer interests as a fundamental value based on the principle of transparency, strengthen the obligation to disclose information on platforms, and actively adopt innovative concepts such as regulatory technology and inclusive regulation to improve regulatory capacity.

4.1 Clear Regulatory Agency

According to the aforementioned analysis of the legal nature of network mutual aid platform, its "insurance-like" nature has the core connotation of insurance and should be regulated by the CBIRC. According to the consequentialism, The CBIRC's regulatory is more conducive to the public interest. Network mutual aid platform involve the affairs of potentially large numbers of unspecified people and should be brought under administrative supervision, rather than being regulated by contract law as mere nameless contracts. The health risk protection provided by network mutual aid platform is no longer just the rights and interests of a specific minority, but involves many social public interests. Although the CBRC emphasizes that network mutual aid platform is not insurance institution, reference is made to the fact that products with similar insurance protection functions in the US, such as performance bonds, are included in insurance regulation rather than taking general contractual regulation. Failure to include insurance regulation would in effect lower the entry and operating requirements for the industry, which is not conducive to the protection of consumer rights. Therefore, from the perspective of public interest, excluding network mutual aid platform from the scope of regulation not only reflects the failure of the principles or theories of traditional prudential and conduct regulation, or institutional regulation, but is also not conducive to protecting the interests of the majority of network mutual users. In addition, for the risky chaos of network mutual platforms, the regulatory entity should formulate corresponding industry guidelines and specific punishment measures to ensure that the illegality is commensurate with its punishment.

4.2 Risk Focus of Regulation

Due to the construction of a network with higher density and more nodes than traditional mutual aid, network mutual aid on the one hand makes the function of risk diversification greatly enhanced; on the other hand, it also accelerates the spread and contagion of financial risks. Unlike traditional large financial institutions, which are "too big to fail", mutual aid platforms with over 10 million or even over 100 million users may have "too many connections to fail". If the platform is mismanaged or even bankrupt, or leaves users with nowhere to seek redress, it can lead to mass advocacy incidents. If risk control measures are inadequate, systemic financial risks can easily be induced. Since users are the basic nodes of network mutual aid platform system risk, it is necessary to regulate the risk that threatens users. Based on the principle of transparency, we supervise the use of platform funds and fund accounts to ensure the safety of funds, truthfulness of information and orderly operation within the network mutual aid platform, protect the safety of consumer transactions, privacy and information security as well as guarantee security and continuous payout, and prevent the platform from misappropriation and misuse of funds.

4.3 Innovative Ideas of Regulation

Regulatory Technology emphasizes the active embrace and application of new technologies to existing regulatory systems, thereby improving regulatory capabilities. It can be argued that regulatory technology is the way to achieve an optimal regulatory regime for network mutual aid platform and provides tools to implement the principle of transparency. Network mutual aid platform is a product of the development of Internet technology, taking full advantage of the information revolution, online payments, big data and other technological achievements to create an environment

that supports "modern trust". Using technologies such as cloud computing, artificial intelligence and blockchain, effective regulation of network mutual aid platform which are "too connected to fail" can be implemented. While the traditional vertically fragmented financial regulatory system is based on financial exclusion, network mutual regulation should be based on financial inclusion, replacing command-and-control regulatory relationships with those based on trust and cooperation, thus balancing trust and interests and achieving sustainable development. The implementation of the concept of inclusive regulation can be carried out while regulators provide macro guidance and actively promote the establishment of laws and regulations and systems, and play the role of industry autonomy rules, formulate autonomy rules in line with the current state of market development, and cooperate with regulators to promote legal compliance of operations.

5. Conclusion

In 2020, the "Opinions of the State Council of the Central Committee of the Communist Party of China on Deepening the Reform of the Medical Security System" proposed the reform and development of a "medical security system with basic medical insurance as the main agency, medical aid as the backbone, supplementary medical insurance, commercial health insurance, charitable donations and medical mutual aid for joint development by 2030. The document clearly defines the position of "medical mutual aid" in the national medical security system for the first time. However, as an emerging financial field with the dual nature of Internet finance and inclusive finance, the network mutual aid platform has many risks, which are essentially related to the immaturity of China's regulation of the financial industry. Therefore, it is necessary to build a perfect network mutual regulatory system and promote the standard development of network mutual aid platform, and make it an important component of China's medical insurance system. At the same time, the operators of network mutual aid platforms should also continue to explore and gradually form industry self-regulation norms to promote better and faster development of China's mutual aid platforms.

References

- [1] He Qihao and Zhang Junyan. The Rise and Fall of Re-Mutualization? --An Analysis of the Legal Nature and Regulatory Response of Online Mutual Aid[J]. *Economic and Trade Law Review*, 2022(1): 104-119.
- [2] Sang Benkian. How Legal Doctrines Arise--An Analysis Based on a Consequentialist Perspective[J]. *Jurists Review*, 2019(4): 1-16.
- [3] Lee R. Russ, Thomas F. Segalla. *Couch on Insurance 3d*, Clark Boardman Callaghan, 2005.
- [4] Shao Zhiquan, Wu Qiong. Research on Legal Risks and Regulation of Online Mutual Aid Platforms--Based on Member Protection Perspective[J]. *Shanghai Insurance*, 2019(12): 53-57.
- [5] Xu Duoqi. The Social Characteristics of Internet Financial Risks and Regulatory Innovation[J]. *Chinese Journal of Law*, 2018(5): 20-39.
- [6] Zheng Bingwen. The Nature, Risks and Regulation of Online Mutual Aid[J]. *Macroeconomic Management*, 2020(10): 7-23.
- [7] Zhang Wenjie. Zheng Liansheng. Distributed ledger technology and its application in the insurance trust system: the example of mutual treasure[J]. *Credit Reference*, 2020(7): 33-44.
- [8] Nie Jianliang, Sun Zhihong, Wu Yufeng. Social Network and the Realization of Rural Mutual Assistance for the Aged[J]. *Social Security Studies*, 2021(04): 22-33.
- [9] Zhao Yaning. Private Law Positioning and Right-Obligation-Liability Allocation of Network Mutual Assistance[J]. *Western Law Review*, 2021(02): 1-19.
- [10] Xia Weihua. Exploration of insurance innovation development model under the empowerment of block chain technology--to mutual insurance as an example [J]. *Finance and Accounting Monthly*, 2020(21): 128-133.
- [11] Li Hailong, Liu Yue. The case study of "mutual insurance" [J]. *Financial Theory and Practice*, 2020(09): 105-110.

- [12] Duan Liqiong, Fang Yuan. The legal nature of online mutual aid schemes during the epidemic [J]. People's judicature application, 2020(25): 58-65.
- [13] Ying Yang. Deny Network Mutual Assistance's Insurance Nature [J]. Scientific and Social Research, 2021, 3(6).
- [14] Nir Kshetri. The evolution of cyber-insurance industry and market: An institutional analysis [J]. Telecommunications Policy, 2020, 44(8).
- [15] Chen An, Hieber Peter, Lämmlein Lars. Regulatory measures for distressed insurance undertakings: a comparative study [J]. Scandinavian Actuarial Journal, 2020(1): 30-43.