

Conference Paper

P2P-loans, prospects and risks application in the Russian Federation

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Abstract

The development of modern technologies determines the emergence of new financial products that affect the existing financial system. The article examines the features of p2p-loans, the advantages, problems and risks associated with their development in the Russian Federation. The article also analyzes the prospects for the legal regulation of p2p-loans.

Keywords: financial technologies, risks, p2p-loans, financial stability

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Currently, the world trend in the economic sphere is development and implementation of various information technologies in the financial sector, as a result of which new financial technologies and financial products are being created. In the context of recurrent financial crises, there is a sharp decline in the level of lending to the population and enterprises by credit institutions due to increased insolvency risks. This phenomenon generates growth of demand for loans from the microfinancial organizations, relatives, colleagues, and sometimes even from the shadow sector of economy.

However, these methods often have a limited local implementation (within a populated area). As it is well known, demand begets supply, in connection with which the introduction of new information technologies makes it possible to offer ways of radically expanding the possibilities for granting loans. P2p-loans are just an example of a relatively new and growing financial product.

P2p (English peer-to-peer) is a technology that is also called a peer-to-peer, decentralized or peer-to-peer network. Its main feature is the absence of a single center through which the network clients interact, i.e. customers interact directly with each other: they exchange information, files, money, etc.

The development of information technology has allowed the creation of Internet sites where potential borrowers and lenders find each other, outside of their cities, and sometimes outside of their country. With the help of p2p-loans, the needs of one

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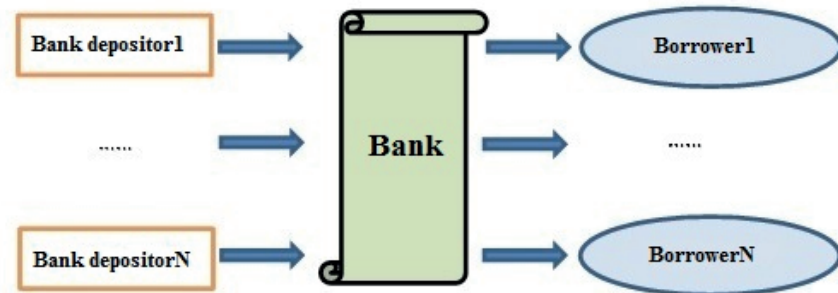


Figure 1: Simplified scheme of bank functioning.

party in money resources and the needs of the other party in obtaining income from available funds are met. At its core, an individual is given the opportunity to carry out activities similar to those performed by classical lending institutions - banks.

For comparison schemes of functioning of banks and p2p-platforms for loans are included below.

In Figure 1 the classical scheme is represented of the banks accumulating temporarily idle funds from citizens and the organizations and providing money to borrowers on the terms of urgency, recoverability and onerousness. In this case a person wishing to gain income from temporarily free money (investor) signs a bank deposit agreement and has no communication with borrowers of bank as the bank independently on its own behalf performs issuance of credits. Respectively, all risks caused by a credit non-return are born by the bank which provided it.

Figure 2 presents a scheme for the functioning of p2p-loans, in which loans are issued by persons wishing to receive income from temporarily idle funds, who become direct lenders to borrowers. In this case, most often the borrower receives the necessary amount for a loan not from one lender, but from several, which minimizes the possible losses for an individual lender.

P2p-site carries out the registration of customers, credit scoring of borrowers, accounting for loan agreements and payments on them, etc., taking a small commission for their services.

It should be noted that the development of financial technologies, in particular p2p-loans, poses a certain threat to classical financial institutions, for example, for credit institutions. This threat already becomes the subject of discussions among the monetary authorities of developed countries (See: Vítor Constâncio, Vice-President of the ECB. Challenges for the European banking industry // The official website of the European Central Bank URL: <https://www.ecb.europa.eu/press/key/date/2016/>

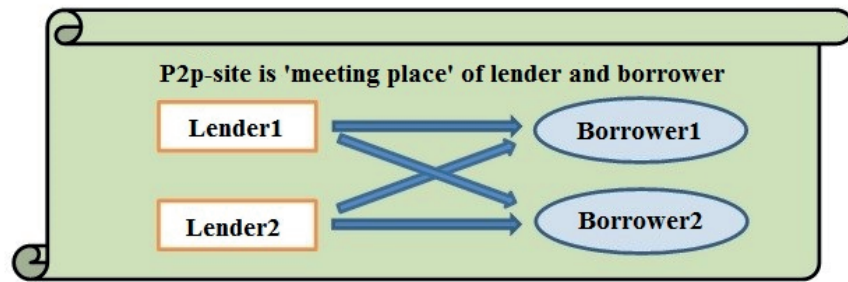


Figure 2: Simplified for the operation of p2p-loans.

html/sp160707_1.en.html (date of circulation: 11/06/2017)). Unlike credit institutions burdened by legislative restrictions, companies that use advanced technologies and create new products are free of excessive state supervision and have the ability to provide financial services at a lower cost.

From the legal point of view, p2p-loans are not a new phenomenon. The loan agreement is one of the oldest types of contract, known since the Roman law. Roman law and, in particular, Justinian's digests (533 AD) contain the following definition of a loan: "A mutuum is a contract whereby one party (the lender) transfers to the other party (the borrower) the money or a known quantity of other things specified by generic characteristics (grain, oil, wine), with the borrower's obligation to return after the expiration of the period specified in the contract or on demand the same amount of money or the same amount of things of the same kind that were received. (Commercial and non-commercial credit and debt relations: Monograph / V.I. Belotserkovsky, D.V. Kandaurov, M.V. Korneev, A.V. Shchepotyev; Toole. state. un-t. - Tula, 2003. P. 9)". Chapter 42 of the Civil Code of the Russian Federation grants the right to any subject of law to participate in loan legal relations both on the side of the debtor and the lender.

Provision of p2p-loans is carried out through the relevant Internet sites, whose activities are potentially of interest for legal regulation. It should be noted that currently in Russia there is no special regulation of their activities, due to its small volume - the total volume for the IV quarter of 2016 amounted to 46.1 million rubles (data based on voluntary reporting of over 10 largest sites providing both the issuance of loans, and support for various investment projects) (Growth in small business lending was noted at crowdfunding sites [Electronic resource] March 21, 2017 // Official site of the Central Bank of the Russian Federation URL: <http://cbr.ru/press/event/?id=972> (reference date: 06.11.2017)).

In comparison, in 2016, the global p2p-lending market reached \$ 60 billion, and by 2020 it could grow up to \$ 290 billion, according to the Morgan Stanley report. By 2025, the world market for p2p-lending, according to Foundation Capital forecasts, will reach \$ 1 trillion. Eight out of ten banks in the world expect to create strategic partnerships with p2p-lending services, according to a report by PwC (Credits in social networks [Electronic resource] October 30, 2017 // Kommersant Publishing House [site] URL: <https://www.kommersant.ru/doc/3449954> (reference date: 06.11.2017)).

Analysis of the experience of these sites demonstrates that the advantages of p2p-loans are:

1. The possibility of filling the niche in the lending market, unattractive to banks and microfinance organizations for various reasons. For example, as the Bank of Russia noted, in the conditions of the vast territory of our country and a significant gap in the population density, an important problem is insufficient level of geographical coverage of the territory of the Russian Federation by financial service providers. Currently, there is withdrawal of financial service providers from a number of sparsely populated areas of the country, where the traditional form of interaction with consumers of financial services does not give the required return on capital. Thus, in order to increase the level of accessibility of financial services, it is first of all necessary to create conditions for the development of various types of financial services providers, which, incidentally, are already emerging in the Russian financial market (p2p-lending, or social lending, mobile operators, crowd funding, Internet sites) (See: Article II.2 of the Main Directions for the Development of the Financial Market of the Russian Federation for the Period 2016 - 2018 (Approved by the Board of Directors of the Bank of Russia on May 26, 2016) // Bulletin of the Bank of Russia. 2016. № 57).

2. Potential interest rates on p2p-loans may be lower than those provided for bank loans due to the lower cost of a financial product. P2p-sites, unlike credit institutions and microfinance organizations, are not burdened with duties arising from their legal status.

For example, for the right to carry out banking operations, credit institutions are forced to exercise part of the control functions of the state. In particular, it is universal practice to entrust credit organizations with the responsibility to exercise control in the sphere of combating the legalization of proceeds from crime and financing of terrorism. These duties lead to an increase in the cost of financial services provided by credit organization.

3. Lenders who provide p2p-loans can receive more income than bank deposits.

However, for increased income, lenders also receive an increased risk of losing their investments, as there are no guarantees of return or insurance against non-return.

4. Receiving and issuing p2p-loans is carried out remotely via the Internet, which saves time on visiting bank offices, etc.

5. Transactions are made in electronic form, in connection with which the requirement to comply with a simple written form, provided for by Art. 808 of the Civil Code of the Russian Federation.

The loan agreement signed by electronic signatures with transaction of money allow us to say that the agreement is considered to be concluded (the decision of the Gubkin-sky District Court of the Yamalo-Nenets Autonomous District of 01.06.2015 in case No. 2-452 / 2015). In addition, lenders will be able, in the event of a dispute, to submit certificates from p2p-site to the court in support of the facts of the loan agreement conclusion (Zavodsky District Court of Saratov decision of 08.12.2014 in case No. 2-3188 / 14) both as a separate document, and in the form of acceptance of an offer (Appeal of the Moscow City Court of 26.03.2015 in case No. 33-6772) (Bychkov A.I. Conducting settlement operations: methods, specifics and risks. M.: Infotropic Media, 2016. // SPS «ConsultantPlus»).

At the same time, the development of projects that create conditions for the provision of p2p-loans in the absence of legal regulation can create certain risks:

1. Lack of regular reporting and independent control reduces the transparency of project activities, which in turn creates risks for lenders investing their money through them. At present, everything functions at the level of trust and reputation of the site.

As the Bank of Russia notes, when using the financial services of such financial intermediaries, consumers take on an increased level of risks, while regulation and supervision of the financial market participants that provide them are currently not available. The Bank of Russia began monitoring the activities of these financial intermediaries, which may result in a decision on the appropriateness and possible forms of regulation of these sectors of the financial market by the Bank of Russia (See: Article II.2 of the Main Directions for the Development of the Financial Market of the Russian Federation for the Period 2016 - 2018 (Approved by the Board of Directors of the Bank of Russia on May 26, 2016) // Bulletin of the Bank of Russia. 2016. № 57). As the volume of the p2p-loan market in Russia increases, different kinds of fraudulent schemes, camouflaged financial pyramids without real issuing p2p-loans, and the like are not ruled out.

2. Lack of proper identification of clients of these projects, as different remote channels and information are used, usually provided by customers by filling out forms,

appearance of a client in person is most often absent. In this regard, one can not be completely sure that the client of the p2p-site really exists or that personal data of a third person is not used without his knowledge.

3. Non-proliferation of control mechanisms typical for credit and microfinance organizations in the sphere of combating the legalization of criminal proceeds and the financing of terrorism, since other legal entities act as owners.

4. The credit history of the borrower does not reflect information about the received p2p-loans, which allows him to simultaneously obtain p2p-loans on several sites at once.

This situation emerges because of a direct restriction in Section 4, Art. 3 of the Federal Law No. 218-FZ of December 30, 2004 "On Credit Histories" (Russian newspaper. 2005. № 2) of the sources of the formation of the credit history: the creditor organization, the organization in favor of which the court decision on the recovery of money from the debtor entered into force and not executed within 10 days in connection with failure to pay fees for living quarters, utilities and communication services, the federal bailiffs service, a guarantor (a credit or insurance organization) that issued an obligation to pay the principal (beneficiary) an amount of money, the liquidator appointed to conduct the procedure applicable in the insolvency (bankruptcy) of an individual, including an individual entrepreneur.

At the same time, it is necessary to recognize that similar risks are created by ordinary loan agreements, which are not taken into account by any statistics, and therefore the real solvency of the borrower may differ significantly from that claimed by him when obtaining a loan or loan.

5. The level of credit scoring of borrowers used by p2p-sites is potentially lower than that used in banks.

Persons with high solvency and a good credit history are unlikely to become clients of p2p-sites. More often p2p-loans are taken by persons who can not receive a loan from banks. In this regard, the issue of the quality of credit scoring is of paramount importance.

It should be noted that if for banks low-quality scoring of borrowers turns into their immediate losses, in the case of p2p-loans, losses are borne by lenders, and not by p2p-sites themselves. Often, a p2p-site receives an interest in the form of a loan, and therefore there is a direct motivation in concluding a larger number of contracts, regardless of the low solvency of the borrower.

Currently p2p-sites do not bear any legal responsibility for the quality of scoring and sufficiency of measures taken against fraud, as well as credit burden on the borrower. The exception may be cases where the p2p-site acts as a guarantor under the loan agreement. Unfortunately, for a rather short history of the existence of p2p-sites for loans in Russia, some of them have already faced major cases of fraud on the part of borrowers, which eventually led to the termination of some p2p-sites.

6. The reliability of storing p2p-site data, including agreements and transactions, raises questions. Termination of some p2p-sites for loans in Russia was carried out by their creators without additional notice to customers by stopping the support of the website. Accordingly, customers lost data on concluded transactions, including loan agreements executed in electronic form, the issue of the procedure for repaying loans and ways to confirm earlier payments had remained unresolved.

7. Risk of a low level of execution of decisions on collecting debts from physical persons. In general, this risk is not specific for p2p-loans, it is typical for all recoverers who encounter non-paying citizens.

All of the above risks are included by lenders in the interest rate for p2p-loans, which in turn often negates the main idea of p2p-loans "low interest rates by excluding the intermediary". Currently, p2p-loans, especially in Russia, can not be viewed as a real competitor in lending for credit and microfinance organizations.

Thus, the analysis of p2p-loans based on new financial technologies shows that they have a number of advantages (increasing efficiency, accessibility and expansion of financial services) and the background for filling a certain niche in the financial and credit sphere of Russia.

At the same time, the introduction of p2p-loans by virtue of their specifics (remote provision of services via the Internet, weak transparency and state control, etc.) may incur certain risks of creating financial pyramids, fraud, money laundering, obtained by criminal means. In this regard, the integration of p2p-loans into the financial system of the Russian Federation and the achievement of their effectiveness is not possible without appropriate legal regulation by the state.

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