Chinese Law of Marital Community Debt in the Context of Private Lending Disputes

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Abstract. Relevant rules in Chinese law on the identification of marital common debts was greatly controversial before the Supreme People’s Court’s issuance of the Interpretation on Some Issues Concerning the Application of Law in the Trial of Marital Debt Disputes in January 2018. The contradiction between legislation and judicial interpretations led to many difficulties in judicial practice. The promulgation of the new judicial interpretation perfected the rules for the identification of marital debts to some extent. Article 1064 of the Civil Code sets out the criteria for determining the marital community debt. However, the meaning of marital joint debt is general and ambiguous, lacking uniform standards. On this basis, this paper studies the identification of marital community debt in the context of private lending in China, explores the shortcomings of Article 1064 of the newly promulgated Chinese Civil Code and puts forward corresponding countermeasures to further optimize and solve the issue of marital community debt in the future.

1. Introduction

With the increase of private lending activities across the country, relevant cases handled by national people’s courts have seen an explosive increase and even accounted for half of civil and commercial cases in recent years. According to the report released by the Supreme People’s Court, the number of private lending disputes handled nationwide was 590,400 in 2016 and 1,430,000 in 2018. Taking family as the unit, husband and wife are components of social relationships and commonly seen in the legal relationship of private lending. Private lending disputes over marital community debt involve not only the default of the overdue payments of debtors but also a number of special problems such as the identification of marital community debt, guarantee relationship between husband and wife and concrete execution. At present, trial is sometimes inconsistent with execution in the process of handling relevant disputes, which is mainly due to the mismatching of relevant laws and regulations like marriage law, constantly revised judicial interpretation and execution methods. Interpretation of the Supreme People’s Court on Some Issues Concerning the Application of Law in the Trial of Marital Debt Disputes (hereinafter referred to as Judicial Interpretation on Marital Debts) issued on January 18, 2018 perfected the rules for the identification of debt nature, alleviated the above-mentioned inconsistency between trial and execution and protected the rights of creditors to some degree. However, execution procedures vary from region to region as execution courts in different regions have different provisions on the differences between executed spouses, the uneven balance of interests, value judgment, etc. These disputes are not resolved from the source. In China, systematic legal rules are not formulated for the division and execution of debt-free marital property. Private lending disputes often involve the identification and enforcement of marital debt. However, the provisions of the determination of marital debt are not clear enough so there are still objections in judicial practice. Marital community debt is often confused with marital joint and several debt, which leads to the unclear identification of private debt and marital community debt in judgments. This paper intends to systematically discuss the issue of marital community debt in private lending.
disputes. This paper includes three parts as follows. The first part introduces marital community debt and private lending, putting forward the difficulty in determining marital community debt in judgments. The second part introduces the legal reform concerning marital community debt. The third part summarizes two questions existing in the provisions concerning marital community debt and try to give some proposals.

2. Related Concepts of Marital Community Debt in the Context of Private Lending

2.1. Community Debt vs Joint and Several Debt

The term marital community debt was for the first time used as a legal term in the Judicial Interpretation on Marital Debts in 2018. However, there is no clear distinction on the differences between community debt and joint and several debt in such judicial interpretation. The term marital community debt used in the Judicial Interpretation is just a general elaboration of different kinds of marital debt. Therefore, community debt and joint and several debt are often confused in judicial practice after the promulgation of Judicial Interpretation on Marital Debts in 2018.

Through comparing the relevant provisions of marital community debt and joint and several debt, it can be found that the core difference between the two is whether a mutual consent is reached on debts or the use of funds is involved in marital community debt. There is usually a contractual relationship between joint and several debtors, while there is no contractual relationship between husband and wife, but a relationship by operation of law. It is clarified in Article 178 of the Chinese Civil Code that joint and several debt shall be prescribed by law or agreed upon by the parties. Therefore, the joint and several debt will not be established if there is neither law prescript nor agreement. However, the particularity of marital community debt lies in the spousal relationship as the basis and guarantee of bear debts. According to Article 1064 of the Chinese Civil Code, debts incurred by husband and wife as a result of their common manifestation of intent like their common signature or subsequent ratification by one spouse and those incurred by one spouse for daily family needs in his or her name during the marital relationship shall be marital community debt. It can be seen that marital community debt have two types, namely legal debts—used for the common life, joint production and management of husband and wife and debts agreed by the parties—common manifestation of intent between the husband and the wife.

Marital community debt and joint and several debt is different in the assumption of debts. The ways of assuming marital community debt and contingent debts have the following differences from the perspective of debt repayment: Each debtor in marital community debt assumes supplementary joint responsibility, while creditors in joint and several debt can directly claim all debts against any debtor. For marital community debt, the other party shall bear the supplementary liability only when the person directly responsible fails to bear the liability. For joint and several debt, there is no sequence of responsibility, and the creditor may sue any or all of the debtors and demand full liability.

Joint and several debts partly tilt towards the right of creditors and the internal agreement of debtors cannot be raised against creditors. In general, creditors of marital community debt cannot extend the repayment of marital community debt to that of personal property. Without considering identity at the time of debt establishment, marital community debt incurred based on the agency of family affairs cannot extent contingent provisions to marital personal property in order to prevent the excessive protection of the interests of creditors.

2.2. Private Lending vs Financial Lending

According to Article one of Provisions of the Supreme People’s Court on Several Issues concerning the Application of Law in the Trial of Private Lending Cases (hereinafter referred to as Provisions on the Trial of Private Lending Cases) issued by Supreme People’s Court in 2015, private lending
means financing among natural persons, legal persons and other organizations while financial lending refers to financial businesses among financial institutions and their branch offices.

Private lending and financial lending are linguistically not two opposite concepts, but legally a classification of lending behaviors between different subjects. Private financing system breeds private lending, a system of economic and legal relations that is excluded from official financial institutions and promotes the development of the private and national economy to a certain extent. On the economic level, formal financial institutions are always unable to solve all financial needs. Cost problems, information asymmetry and other factors lead to the increase of private lending activities. China shows a trend of diversified development in private lending subjects and derives a variety of lending interest-free, low-interest, high-interest and other lending types. Unlike the previous lending between individuals based on intimacy, today’s private lending has a variety of detailed standard terms and produces a number of professional intermediaries, which leads to the rise of costs accordingly. Different from ordinary financial lending, private lending is characterized by high risk, interest rate, etc. The survey data of the People’s Bank of China in 2019 showed that the average lending rate of private lending in China was 17% to 45%, which was obviously beyond the scope prescribed by law. Notice on the Ban of Underground Banks and the Combat of Usury Acts released in 2002 and Regulations on Private Lending issued in 2015 clarified the upper limit of lending rate and stipulated that the part with an annual interest rate of more than 36% was deemed invalid. However, interest rates can easily cause subsequent disputes because of being higher than the scope of legal provisions in non-written documents in real transactions.

2.3. Marital Community Debt in the Context of Private Lending

The occurrence of a debtor-creditor relationship in Chinese civil law is mainly based on contract disputes. Cases involving contract debts accounted for 99.6% of all cases, in which disputes over lending contracts took up 86.8% of all contract dispute. Therefore, the identification of marital community debt also mainly occurs in contract disputes, especially lending disputes. The composition of marital community debt is usually not limited to traditional divorce cases anymore. The prevalence of microfinance stimulates the prosperity of marital co-investment and operation. Thus, the collection and validity judgment of evidence by judicial organs is worthy of attention in property disputes.

Effective private lending belongs to marital community debt, while invalid and illegal private lending only constitutes personal debt. Therefore, legitimate and effective private lending is a prerequisite for the formation of marital community debt. Private lending for production or business operation is effective except under the circumstances in Article 52 of the Contract Law or Article 14 of these Provisions Provisions on the Trial of Private Lending Cases. Article 52 of the Contract Law stipulates: The contract shall be invalid under any of the following circumstances: (1) One party entered into the contract by means of fraud or duress, damaging the interests of the State; (2) maliciously colluding to harm the interests of the state, the collective or a third party; (3) concealing an illegal purpose in a lawful form; (4) impairing the public interests of the society; (5) violating mandatory provisions of laws and administrative regulations. Article 14 of Provisions on the Trial of Private Lending Cases stipulates: under any of the following circumstances, the people’s court shall determine that the private lending contract is null and void: (1) The lender relends credit funds obtained from a financial institution to the borrower at a high interest rate, and the borrower knows in advance or should have known the fact. (2) The lender relends the funds borrowed from any other enterprise or collected from employees of its entity to the borrower for the purpose of making profits, and the borrower knows in advance or should have known the fact. (3) The lender provides the loan although the lender knows in advance or should have known that the borrower borrows the money for illegal or criminal activities. (4) The contract violates public order or good customs. (5) Any other violation of compulsory provisions on the validity of any law or administrative regulation.
In terms of borrowing rates, Article 26 of Provisions on the Trial of Private Lending Cases states: Where the interest rate agreed upon by the borrower and the lender does not exceed the annual interest rate of 24%, and the lender requests the borrower's payment of interest at the agreed interest rate, the people's court shall support such a request. Where the interest rate agreed upon by the borrower and the lender exceeds the annual interest rate of 36%, the agreed interest on the excessive part shall be null and void. If the borrower requests the lender's return of the paid interest on the part exceeding the annual interest rate of 36%, the people's court shall support such a request. Article 29 of Provisions on the Trial of Private Lending Cases states: Where the interest rate on an overdue loan is agreed upon by the borrower and the lender, such interest rate shall prevail, but it shall not exceed the annual interest rate of 24%. Where the interest rate on an overdue loan is not agreed upon or clearly agreed upon by the borrower and the lender, the people's court may handle the situation based on different circumstances.

According to Article 26 and 29, the excess portion shall be invalid if the annual interest rate agreed by both parties exceeds 36%. Interest on overdue payments may be agreed upon by both parties but shall not exceed the annual interest rate of 24%. However, the invalidity of the interest clause will not affect the determination of the validity of marital debt.

3. Evolution of the Relevant Legal Provisions of Marital Community Debt

3.1. Legislation on Different Rules for the Identification of Marital Community Debt before 2018

Rules for the identification of marital community debt are at the stage of constant exploration in China, lacking in relatively complete special legislations and currently scattered in Marriage Law, relevant judicial interpretations and the Civil Code. The earliest Marriage Law first established the principle of debt judgment based on the purpose presumption system. Article 41 of Marriage Law stipulates: At the time of divorce, the debts jointly incurred by both husband and wife for the common life shall be paid out of the jointly owned property. If the jointly owned property is not enough to pay the debts or if the property is individually owned, both parties shall agree upon the payment of the debts. If both parties fail to reach any agreement, the people’s court shall decide on the payment of the debts. According to Article 41, the nature of debts is judged by whether debts are used for the purpose of common life and they are presumed to be marital community debt if so and otherwise shall be repaid by one party alone. In order to ensure the interests of creditors, Article 24 of Judicial Interpretation of the Supreme People’s Court on Marriage Law (II) issued in 2003 stipulates: During the existence of the marriage, if either the husband or wife files a claim for a personal debt in the name of one party, the debt shall be treated as a joint debt of the husband and wife, unless either the husband or wife is able to prove that the creditor and the debtor have clearly stipulated it as a personal debt or to show that the debt is under any of the circumstance as prescribed in the third paragraph of Article 19 of the Marriage Law. It puts forward the benefit-sharing presumption system: A debt occurring during the marital relationship shall be presumed to be a marital community debt even if it is not based on the consensus of husband and wife or owed for the common life. The unilateral loans of one spouse during the marital relationship shall be presumed to be marital community debt except illegal debts unless the other spouse can prove that creditors and debtors expressly agree the debts as personal debts or creditors clearly knows both parties explicitly agree post-marriage income and property as personal property. However, this rule emphasizes the security of transactions and fails to equally safeguard the security of marriage. Therefore, expanding the scope of marital community debt can easily induce false lawsuits and violate the basic requirements of fairness and justice, thereby causing the Supreme People’s Court to supplement this provision through an amendment and add the rule for not protecting marital virtual and illegal debts in 2017. Article 24 of Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Marriage Law of the People’s Republic of China (II) (hereinafter referred to as Judicial Interpretation of the Supreme
People’s Court on *Marriage Law* (II) was added with two paragraphs which separately stipulate: The people’s court shall not uphold the claim of rights made by a third person if one spouse colludes with the third person to fabricate debts; the people’s court shall not uphold the claim of rights made by a third person if one spouse owes debts in illegal and criminal activities like gambling and drug abuse. On the one hand, it guides husband and wife to jointly sign and confirm large debts exceeding daily family needs to prevent risks and guarantee their equal right to know and dispose post-marriage common property; on the other hand, it guides creditors to improve the obligation of paying attention, actively inquire whether the spouse of a debtor is informed to ensure the realization of his rights in the future and require the non-debt spouse of Party B to confirm large debts beyond the scope of common life by jointly signing, issuing agency opinions or other means to reduce the risk of future lawsuits. It is undeniable that the exceptions enumerated in the supplementary provisions are not comprehensive, which leads to an embarrassing situation where it is usually difficult for the spouse of a debtor to achieve substantial success according to this provision in practical lawsuits.

### 3.2. Judicial Interpretation on Marital Debt

Article 19 of the *Marriage Law* stipulates: Husband and wife may come to an agreement whether the property incurred during the existence of marriage or prior to marriage to be owned by each party, to be jointly owned or partially owned by each party and partially owned by both parties. The agreement shall be made in written form. Where there is no such agreement or it is not explicitly agreed upon, the provisions of articles 17 and 18 shall apply. Article 24 of *Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of the Marriage Law of the People’s Republic of China (II)* (hereinafter referred to as Judicial Interpretation on *Marriage Law* (II)) states as follows: during the existence of the marriage, if either the husband or wife files a claim for a personal debt in the name of one party, the debt shall be treated as a joint debt of the husband and wife, unless either the husband or wife is able to prove that the creditor and the debtor have clearly stipulated it as a personal debt or to show that the debt is under any of the circumstance as prescribed in the third paragraph of Article 19 of the *Marriage Law*.

Article 3 of *Judicial interpretation on Marital Debts* issued by the Supreme People’s Court states as follows: where one spouse incurs a debt in his or her own name during marriage beyond the needs of everyday life of his or her family, if the creditor files any claim on the ground that it is a community debt of husband and wife, the court shall not support the claim, unless the creditor is able to prove that the debt is used to meet the joint needs of life or production or operation of husband and wife or based on their common declaration of will.

Article 3 of *Judicial Interpretation on Marital Debts* changed the benefit-sharing presumption system stipulated in Article 24 of *Judicial Interpretation on Marriage Law* (II)—made clear the standards for the identification of marital community debt and confirmed whether the debts during the marital relationship belonged to marital personal or marital community debt generally depended on whether both parties reached a consensus on debts and shared the benefits of debts. Namely, the new judicial interpretation returned to the combination of consensus and purpose presumption systems in the identification of marital community debt.

Book on Marriage and Family of the *Civil Code* continues the thought of perfecting the community ownership of postnuptial incomes. Debts based on the consensus of husband and wife and other debts incurred for the benefit of the family or themselves may be important issues to be solved by the community ownership of postnuptial incomes. Debts arising from the right to manage and dispose of common property belong to the system of marital property from the perspective of system. In China, loan disputes account for the vast majority of marital common disputes, which deserve special attention in terms of legislation. In particular, large loans require the consent of husband and wife.
Laws and regulations related to marital community debt have corrected Article 24 of *Judicial Interpretation on Marriage Law (II)* to some degree since 2018. This clause has been controversial in the theoretical community. Scholars who are supportive of this clause mainly illustrate its rationality based on the agency of family affairs, the system of apparent agency, the system of marital property and quick trial. As for the agency of family affairs, however, Article 24 of *Judicial Interpretation on Marriage Law (II)* overextends its application scope—Article 17 of *Interpretation on Marriage Law (I)* stipulates that both husband and wife shall be entitled to dispose common property for daily family needs and limits the application of the agency of family affairs to the scope of “daily family needs” while Article 24 of *Judicial Interpretation on Marriage Law (II)* presumes the debts incurred by one spouse externally during the marital relationship to be marital community debt as long as two exceptions are not met. With regard to the system of apparent agency, debts incurred by either husband or wife unilaterally do not constitute apparent agency because the creditor has no reason to believe that the unauthorized agent has the power of agency except for daily family needs. Regarding the system of marital community property, Article 24 of *Judicial Interpretation on Marriage Law (II)* requires the uninformed party to bear joint responsibility unconditionally on the ground that this party has shared the benefits brought by debts during the marital relationship, which is against the privity of contract.

The new judicial interpretation solves the problems in the aforesaid old judicial interpretation to some extent. First, the new judicial interpretation unifies the judicial theory and practice of marital community debt identified based on the expression of common will, integrates the general theory and practice of the academic community and adopts the consensus presumption system, namely taking the consensus of husband and wife on debts as the identification standard, which solves the issue on the excessive protection of creditors in Article 24 of *Judicial Interpretation on Marriage Law (II)*. Secondly, the new judicial interpretation thoroughly changes the benefit-sharing presumption system of marital community debt identified based on common life and stipulated by the old judicial interpretation and transfers the burden of proof to creditors—a unilateral debt shall be identified as a personal debt unless creditors can prove that the debt is used for daily family life or based on the expression of their mutual consent.

Thus, it can be seen that the new judicial interpretation unifies the original issues related to marital community debt, gives consideration to the security, fairness and justice of transactions, and meets the requirements of husband and wife for personality independence and equality.

### 3.3. Acceptance of Relevant Judicial Interpretations by the Civil Code

There are totally five drafts of Marriage and Family Volume. The identification and acceptance degree of debts by relevant legislative departments is still at the stage of careful consideration in combination with existing relevant judicial interpretations on marital debts. Through summarizing the cases of marital community debt occurring in society in recent years, Article 1064 of *Civil Code of the People’s Republic of China* (hereinafter referred to as *Civil Code*) passed on May 28, 2020 clarifies the standards for judging the types of marital community debt and divides such debts into three types, namely marital community debt based on the consensus of husband and wife, formed due to the agency of family affairs and incurred by additional daily family needs. Article 1064 of the *Civil Code* stipulates: Debts incurred by the husband and wife in respect of their joint expression of will, such as their joint signature or ratification by one of the husband and wife, and debts incurred by one of the husband and wife in their personal name for the daily needs of the family during the period in which they are under contract of marriage, shall belong to the joint debt of the husband and wife. Article 1064 finally coming into effect partly corrects the benefit-sharing presumption system in Article 24 of the *Judicial Interpretation on Marriage Law (II)* and accept *Judicial Interpretation on Marital Debts* and eventually forms two rules for the identification of marital community debt. Marital community debt incurred based on the principle of consensus and stipulated in *Judicial Interpretation on Marital Debts* and Article 1064 of the *Civil Code* shall be only limited to debts arising from the management of major affairs.
The part of debts involving the unilateral overreach of management shall be amended as “debts incurred by one spouse beyond his or her administration authority during the marital relationship and borne by the personal and common property of the manager”. Except for the debts arising from the agency of family affairs, the two types of marital community debt involved in Article 1064 of the Civil Code actually imply the setting of management right mode and basic classification standards. It is self-evident that personal property is managed and disposed by individuals [13]. As for common property, Article 17 of Judicial Interpretation on Marriage Law (I) stipulates: Article 17 of the Marriage Law, which provides that “both husband and wife shall have equal rights in the disposal of jointly owned property”, shall be understood as follows: The husband and wife have equal right to dispose of their jointly owned property. If it is necessary to dispose of their jointly owned property for daily necessities, both the husband and wife shall have the right to make decisions. Paragraph 2 of Article 1062 in the Civil Code continues the provisions of Marriage Law, only stipulates the equal right of husband and wife to dispose their common property and fails to expressly provide the disposition right mode of common property in Article 17, namely differentiating them according to whether they are used “for daily family needs”. Husband and wife have the right to manage common property because of daily family needs and adopt the mode of joint management not because of daily family needs[14].

The mixed mode of management right is supported in the judicial practice of China. However, the limited scope of daily family agency leads to the limited amount of common property that can be disposed unilaterally if the daily family needs of common property management here are considered to have the same scope with those of daily family agency, which in turn means the great scope of joint management, thus leads to the inconvenience of actions and greatly damages the free action and personal career development of one spouse and the creation of common wealth. Daily family needs are not appropriate criteria for distinguishing the patterns of management behaviors and can only define the limited scope of rights and obligations arising from daily family agency falling within the general validity of marriage. The protection coefficient of the existing assets of family benefits will be the highest if husband and wife are required to jointly manage and dispose affairs beyond the scope of daily family affairs. However, indiscriminate protection impairs the freedom of action and weakens the creation of corresponding property possibly brought by management behavior. The excessive expansion of daily family agency will make one party to impose his or her will on the other party, which is contrary to gender equality and not conducive to family harmony, personal autonomy and growth. Judicial Interpretation on Marital Debts and Article 1064 of the Civil Code deny the presumption of excessive marital community debt triggered by Article 24 of Judicial Interpretation on Marriage Law (I) and discards the path of overextending the scope of the daily family agency[15].

4. Unanswered Questions

4.1. Ambiguity in Statutory Interpretation

Article 1064 of Civil Code stipulates the way to determine marital community debts: Where the couple have consensus on borrowing money, the debts are undoubtedly recognized as their marital community debts; Where the couple have no consensus on borrowing money but one of the couple’s borrowing is exercise his (her) agent power of family affairs, the debts are also recognized as marital community debts; Where there are difficulties to deduct whether there is consensus between the couple on borrowing money, it depends—if the debts are incurred by either spouse in his or her own name during the existence of the marriage relationship for the purpose of meeting the needs of the couple’s daily family life, the debts shall be deemed as marital community debts. From the perspective of interpretation, three different categories are all deemed as marital community debts. That is to say, there are alternative explanations for marital community debts, which is ambiguous and requires further improvement.

To deal with marital community debts’ apparently vague and general problems, they are believed to be classified as three types: narrow marital community debts, conjugal debt and personal debt.
Such classification is not come from nowhere. It is concluded from the three different situations as stipulated in Article 1064 of Civil Code. The classification is more explicit and reflects the nature and connotations of the different debts between couples. With this concise and improved classification, the application of law can also be more accurate.

4.2. Provisions of Assumption of Debt

As defined in Civil Code, Article 1064 only provides for the recognition of the marital community debts. However, no provisions on debt assumption are stipulated in Civil Code. There are three different debt assumptions on the basis of the above classification.

In the case of narrow marital community debts, liability property shall be the total amount of personal property of the borrower and the marital community property. Debts incurred jointly by a couple in the form of signatures by the couple, acknowledgement by either spouse after such debt was incurred by the other spouse or other form of expression of their common will are definitely so called narrow marital community debts. This is mainly because of the couple’s consensus. To make the claim be supported by courts, creditors shall bear the burden of proof—they are liable for proving that the couple have borrowed the claimed amount of money with consensus or although there is only either spouse signed in the loan agreement, the other spouse has rectified the agreement.

Personal debt shall be paid out of the debtor’s own personal property while joint debt shall be paid out by marital community property. The personal property of a non-debtor is not liable property and can only be used for the repayment of personal debts. Joint debt shall be paid by marital community property. A creditor may claim a right against either or both parties for repayment of the debt. Under the circumstance of conjugal debt, where debts are incurred by either spouse in his or her own name during the existence of the marriage relationship for the purpose of meeting the needs of the couple’s daily family life, the liability property of the lending shall be the personal property of both husband and wife and marital community property. Jurisprudence behind is that although the spouse is not the nominal debtor, he (she) has benefited from the debts since they are borrowed for the purpose of meeting the needs of the couple’s daily family life. To give the creditors the greatest protection under this circumstance, a creditor can also claim a right against either or both parties for repayment of the debt. In this kind of marital community debt, the personal property of both husband and wife can be executed.

To make the claim be supported by courts, apart from the loan agreement signed by either spouse, the creditor shall also prove that the debt is used for the couple’s daily family life affairs. According to Civil Court of Supreme People’s Court of China, the scope of ‘daily family life affairs’ can refer to the following eight kinds of family consumption—food, clothes, family equipment and its maintenance service, health care, consumption of transportation and communication, entertainment and education, living and other goods or services. Among this, whether a specific consumption shall be deemed as joint debt is depended on the couple’s living status, e.g. their respective jobs, identifications, assets, incomes, interests and the number of family members. In addition, living custom of the place where the debts incurred shall also be taken into consideration.

Any debt that is incurred by either spouse in his (her) own name during the existence of the marriage relationship beyond meeting the needs of the couple’s daily family life shall be deemed as personal debt, where, as above-mentioned, only debtor’s own personal property can be executed. Then the question is who shall bear the burden of proof? According to Article 1064 of Civil Code, if creditors intent to claim for execution of both of the couple’s property, they are required to prove that the debt is used for the couple’s daily life expenses or their joint business. Otherwise, they are only allowed to claim against the one who signed the loan agreement.

5. Conclusion

The issue of how to identify marital community debt has always been a hot topic in the legal community. Legislation, judicial positions and legal theories are all at the stage of exploration and constant improvement[16]. Under the original legislative system, marital community debt has
problems like inconsistent identification standards and difficulty in the distribution of the burden of proof, leading to the frequent occurrence of the phenomenon that one spouse maliciously colludes with creditors to infringe the rights and interests of the other spouse in practice.

The new Judicial Interpretation and the newly promulgated *Civil Code* make some amendments to Article 24 of the old judicial interpretation, redefine the category of marital community debt, coordinate original legislative conflicts to the greatest extent and give consideration to the security and fairness of transactions through the reasonable distribution of the burden of proof, which is legislative progress in the identification of marital community debt. The law on marriage and family is constantly being improved. According to Article 1064 of *Civil Code*, we should first judge whether private lending is legal and effective, and then determine the marital community debt. The determination of legality and validity has been very clear. However, the conceptual ambiguity in the legal provisions on marital community debt leads to the uncertainty of judicial practice. The meaning and the identification of marital community debt require detailed and uniform standards and interpretation. China should further improve issues like the category of family agency and the distribution of proof burden and perfect the interpretation and identification of marital community debt.

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