**2020年度上海法院金融商事审判情况通报**

2020年，是上海基本建成“与我国经济实力以及人民币国际地位相适应的国际金融中心”之年，对上海国际金融中心建设有着承上启下的重要意义。在全球新型冠状肺炎疫情肆虐背景下，上海首次跃居全球金融中心指数（GFCI）排名前三位，基本实现国际金融中心建设的阶段性目标。上海法院在金融商事审判工作中，始终坚持以习近平新时代中国特色社会主义思想为指导，紧紧围绕国家战略目标和工作大局，统筹做好疫情防控和执法办案等各项工作，认真履行法院职责，充分发挥裁判功能，依法平等保护各方金融主体的合法权益，坚持和促进金融服务实体经济，支持和规范金融创新，防范和化解金融风险，推进和保障金融改革，为上海国际金融中心高质量发展提供了有力的司法保障。现将2020年度上海法院金融商事审判情况作如下通报。

**一、金融商事案件基本情况**

**（一）金融商事案件收、结案情况**

2020年，上海法院受理的金融商事案件数量有所下降。全市法院共受理一审金融商事案件179,258件，同比下降6.91%；审结一审金融商事案件178,871件，同比下降6.53%，结案率为99.78%（图一）。案件数量下降的主要原因是银行卡纠纷数量大幅下降。除银行卡案件外，其他金融商事案件的收案数为73,651件，同比上升49.94%。

2020年，全市法院共受理二审金融商事案件1,912件，同比下降4.16%（图二），审结二审案件1,912件。

**（二）收案标的金额情况**

2020年，上海法院受理一审金融商事案件标的总额有所下降，为人民币1,806.04亿元(以下币种相同)，同比下降18.58%（图三）。

案件标的额居前三位的案件类型为金融借款合同纠纷650.97亿元，同比下降15.89%，占标的总额的36.04% ；融资租赁合同纠纷195.13亿元，同比下降17.49%，占标的总额的10.80%；银行卡纠纷162.14亿元，同比下降37.18%，占标的总额的8.97%。其他标的额较大的案件类型有质押式证券回购纠纷101.03亿元，营业信托纠纷96.58亿元，股权转让纠纷43.27亿元，公司债券交易纠纷39.08亿元，保证合同纠纷38.13亿元。部分传统金融商事案件标的金额比重有所下降，其中票据类纠纷16.10亿元，保险类纠纷7.11亿元（图四）。

结案方式上，2020年一审金融商事案件的调撤率为30.17%，同比上升近9.51%，二审案件调撤率为9.26%，同比下降4.22%。一审案件上诉率为1.07%，同比上升0.03%。二审案件改发率为5.02%，低于全市法院平均改发率3.02个百分点。全市法院金融商事案件的申诉率为0.08%，与去年基本持平。

**（三）案件类型分布情况**

2020年全市法院收案数量排名前五的金融商事案件类型是银行卡纠纷105,607件，同比下降35.82%；金融借款合同纠纷42,970件，同比上升58.04%；融资租赁合同纠纷18,241件，同比上升65.93%；证券虚假陈述责任纠纷3,243件，同比上升7.63%；财产保险合同纠纷2,276件，同比下降3.8%。上述五类案件分别占全市法院一审金融商事案件总数的58.91%、23.97%、10.17%、1.8%、1.27% ，合计占比达96.12%（图五）。

银行卡纠纷

**二、金融商事案件特点**

**（一）金融审判支持和规范金融创新活动的功能进一步提升**

金融创新是金融发展的内在本质需求。在金融创新过程中，金融审判就相关问题及时作出回应，对金融创新活动在依法支持保障同时也予以有效规制，是金融持续健康发展的必要条件之一。从上海实践看，随着国际金融中心建设的持续推进，金融市场不断创新发展，金融营商环境持续优化，金融审判水平稳步提升，金融审判支持和规范金融创新活动的功能正在进一步显现，具有市场引领作用的新类型金融商事案件不断涌现。**一是新型金融活动引发新类型纠纷。**例如，在一起涉未取得融资融券资格的主体从事场外配资的案件中，法院充分考量相关监管规定和立法目的，依法对场外配资合同的效力及相应过错和损失承担进行认定。在上海市首例石油掉期合约纠纷中，法院根据金融衍生品交易的自身特性，遵循有关国际惯例和交易规则，确认了提前终止净额计算条款的性质和效力。**二是传统金融领域产生新类型纠纷。**例如，在一例互联网保险纠纷案件中，法院明确了网络投保中明确说明义务和如实告知义务的司法审查标准，将互联网保险这一金融商品和服务纳入金融消费者权益司法保护体系之中。在一起涉私募基金合伙企业有限合伙人对赌纠纷中，法院重点考量对赌的主体、内容及方式是否符合法律规定及合伙协议约定，就对赌协议效力作出认定。**三是具有示范价值和规则导向意义的新型案件。**例如，上海法院审理了全国首例适用多因子量化模型精准核定投资者损失的证券虚假陈述责任纠纷案件。法院委托专业机构运用多因子计算模型，首创“收益率曲线同步对比法”，旨在同时扣除系统风险和个股风险因素，使得赔偿金额计算更为公平合理。在首例信托公司因通道业务被判承担赔偿责任案件中，法院明确信托公司虽仅负事务性管理责任，但仍应秉持审慎原则开展经营，并履行必要的注意义务，如违反相关义务仍应承担相应责任。不少案件所确立的规则，引起了金融监管、行业协会以及金融机构等高度关注，对完善金融产品结构、金融交易规则、金融市场秩序等产生了积极的作用。

**（二）融资渠道和结构持续变化引发新型、疑难、复杂问题持续显现**

随着社会融资规模的不断扩大和融资渠道的不断丰富，除传统银行贷款业务外，融资租赁、保理、信托、质押式证券回购等融资渠道以及股票、债券等直接融资方式在融资市场领域占据日益重要的地位。例如，2020年，金融借款合同纠纷、融资租赁合同纠纷、证券虚假陈述责任纠纷案件分别增长58.05%、65.93%、7.63%，案件数量仅次于银行卡纠纷，分列第二至第四位。融资租赁合同纠纷中，“名为租赁，实为借贷”违规从事借贷业务的问题仍然存在，租金及违约金的计算方式、新类型融资租赁物的范围界定等引发争议。保理方面，随着商业保理公司经营规模逐渐扩大，业务模式不断创新，涉案保理公司数量总体呈上升趋势，涉及以虚假应收账款作为保理标的、保理公司向不特定对象放贷等争议问题。2020年，上海法院还受理了72起以信托公司为被告的案件，涉及信托公司违背信义义务的法律责任、信托公司的清算义务、信托公司对外作出“刚性兑付”承诺的法律后果等法律问题。此外，上海法院受理了多起企业债券违约案件，此类案件金额较高，涉及投资者众多，市场影响较大。

**（三）金融科技和普惠金融领域的金融纠纷涉众性特点日益突显**

近年来，随着金融科技不断发展，金融机构不断加强普惠金融力度，跨地域经营成为常态，金融活动参与主体日益广泛，由此也导致金融纠纷的涉众性日益凸显，金融投资者和金融消费权益保护仍需进一步强化。例如，近年来涉助贷类金融借款相关案件高速增长。目前法院受理的案件中涉及的助贷机构主要有保险公司、融资担保公司、非融资性担保公司、金融信息咨询公司等。其中，不乏由P2P整治后业务转型到助贷行业的机构，作为金融借款中的撮合方，利用自身掌握的客户信息、风控及贷后管理优势，提供各种形式的助贷类业务。但实践中此类机构可能存在变相收取高额服务费用、违规开展融资担保业务等诸多不规范行为，较易引发金融风险。再如各类交易场所违规经营引发的案件，在违规交易平台清理整顿后陆续有相关纠纷进入法院，涉及众多参与者利益。

**（四）金融案件涉外因素增加对适用国际规则和惯例提出更高要求**

随着我国上海国际金融中心地位日益巩固和金融对外开放力度不断加大，跨境资金流动和金融服务日益活跃，相应涉外金融纠纷案件也逐渐增多，还有大量案件虽主体不涉外但案件中有涉外因素。上海法院在案件审理中合理采纳国际金融惯例和规则，依法平等保护各国市场主体权益。例如，在全国首例涉离岸债券“维好协议”的香港特别行政区法院生效判决在内地法院申请认可和执行的案件中，法院提出认可和执行香港生效判决的审查标准限于程序事项，案涉“维好协议”在境内法律效力的实体法问题，不属于案件审查范围，同时对拒绝认可和执行判决的“社会公共利益”应作严格解释，通常仅包括认可和执行香港特别行政区判决的结果直接违反内地公共利益之情形。在一起独立保函案件中，法院指出在判断保函的性质时，要重点考察保函的独立性和单据性，充分尊重《见索即付保函统一规则》（URDG758）等国际金融惯例，准确界定当事人权利义务，正确把握保函欺诈要件和证明标准，进一步规范保函止付案件的处理，避免不当止付，促进国际贸易发展。在某涉金融衍生品交易案件中，法院在对当事人违约责任进行认定时，以我国相关法律法规为基本依据，同时充分考量金融衍生品交易的国际惯例（ISDA主协议）及金融衍生品交易的自身特性，计算提前终止款项的相应市场公允价值，为国际规则和惯例的司法适用提供了参考。

**（五）司法科技赋能助推金融审判机制深度革新**

人工智能、大数据、区块链等新一轮科技发展对经济社会产生深刻影响，智慧化、数字化成为发展趋势，也给法院审判工作提供新的发展动能。2020年上海法院金融审判依靠科技创新驱动发展，推进审判方式改革，提升审判效率。**一是全流程网上办案取得实效。**上海法院以电子卷宗随案同步生成、在线庭审、庭审记录方式改革、电子档案单套制改革、智能辅助办案系统运用为重点，扩大全流程网上办案在金融商事审判中的深度应用。**二是推进金融案件智能快审系统建设。**尝试开展要素式立案、文书模板设定、数据智能计算验证、文书自动生成，研究探索金融机构数据系统与法院对接，减少可能出现的数据输入错误、结案时裁判文书数据核验不准等情况。**三是深入推进电子送达。**借助监管机构、行业协会的力量，推广金融机构在合同文本中约定电子送达条款，切实解决送达难问题，节约诉讼时间成本，提高审判质效。

**三、金融商事案件趋势研判**

**（一）金融市场持续深化改革将带来更多新类型金融纠纷**

随着上海国际金融中心高质量发展、金融业进一步扩大对外开放、上海自贸试验区及临港新片区建设推进、浦东新区进一步高水平改革开放等一系列重大战略实施，证券、保险和信托市场的诸多金融创新及相关金融衍生品产生大量新型交易形态和法律关系，新类型金融纠纷可能将持续涌现。在金融科技创新蓬勃发展的背景下，如何兼顾金融风险防范和金融消费者及投资者权益保护，推动技术创新与金融创新融合发展将是一项重大挑战。随着绿色金融市场的不断发展，为打造国际碳金融中心，与碳金融有关的现货、远期产品交易，碳基金、碳债券、碳保险、碳信托等金融创新产品将不断出现，对金融审判提出更高要求。

**（二）金融扩大开放对司法理念和审判能力提出更高要求**

法院对金融案件的裁判是否具有国际化视野是衡量我国金融司法水平的重要标准，也是进一步提升我国金融司法国际公信力的前提和基础。随着我国进一步融入国际金融市场，部分交易模式源自境外的金融产品将逐步进入国内金融市场。金融市场的国际化发展将带来大量成熟市场的经验、规则和国际交易惯例，在规范交易主体行为方面产生重要影响，也将使金融纠纷的管辖制度、裁判规则和司法理念发生深刻变化。面对新挑战，上海高院发布了《上海法院服务保障进一步扩大金融业对外开放若干意见》，着力构建符合新形势需求的金融司法体制机制，对标国际最高标准，提升金融司法能力，公正高效化解涉外金融纠纷，进一步发挥司法服务大局职能。

**（三）金融市场创新发展呼吁以统一司法促进形成统一市场**

推进法律适用标准统一，实现“相同情况相同处理、类似情况类似处理”是确保司法公正和提升司法公信力的必然要求，也是通过审判建立主体合理预期、促进市场规则形成的重要体现。2021年1月1日，《中华人民共和国民法典》（以下简称“《民法典》”）及配套司法解释正式施行。作为我国第一部以法典形式出台的法律，《民法典》对金融领域的影响是结构性、系统性的，又是全面、深远的。《民法典》在一定程度上回应了金融市场的法治需求，例如在合同编设立保理合同一章、规定非典型担保合同以及出台担保制度司法解释等。金融市场的发展需要确定性和可预测性，金融机构对如何正确适用民法典动产担保规则，推动登记的统一和规范化，正确理解效力顺位规则等需求将不断增强。新法与旧法之间、民事一般法与金融特别法之间、裁判结论与监管目标之间的衔接问题，需要进一步深入研究。

**（四）与金融消费者权益保护相关的金融纠纷案件数量将继续增长**

随着普惠金融持续发展，金融交易的涉众性特征越发明显。证券市场注册制改革全面推进、监管部门对证券市场违法违规行为的惩处力度持续加大以及投资者的维权意识不断增强，相关证券纠纷案件将持续进入法院，内幕交易、操纵市场等新型证券案件将不断出现。信托行业的“刚性兑付”逐步被打破以后，投资者因信托产品无法如期兑付，从而起诉产品销售者和管理者的案件将会逐渐增多。随着金融消费者保护理念的不断深化，各方对金融机构的投资者适当性制度的关注度日益提高，金融消费者以金融机构违反投资者适当性义务为由，提起的损害赔偿诉讼将不断出现。

**四、司法建议情况**

2020年，上海法院共发出金融类司法建议27份，收到有效反馈意见17份，反馈率为62.96%。上述司法建议从具体案件中发现的问题出发，对金融监管机构和金融机构提出有针对性的意见建议，促进市场主体规范经营，从源头上预防纠纷，防范化解金融风险。

**（一）发送对象分布**

近年来，银行、保险、融资租赁等行业是法院发送司法建议较多的金融领域。2020年上海法院发出的金融类司法建议涉及融资租赁业12份，银行业8份，保险业5份，证券业与互联网金融领域各1份。（图六）

**（二）反映的问题及建议**

**1.诉讼文书送达方面的问题及建议**

法院在案件审理中发现，在对部分金融机构和实体企业送达诉讼材料的过程中存在不少问题。一是约定诉讼文书送达条款还需进一步推广，部分金融机构即使约定了送达条款，但填写的联系地址存在重复或不确切之处。二是部分合同中的送达条款为格式条款，字体较小，且无加粗加黑显示，难以引起合同相对方的充分注意。三是部分合同中的送达条款所在页与签字页未在同一页，且合同并未装订成册，合同相对方是否实际知悉并同意引发争议。法院建议金融机构在合同订立时应明确约定诉讼文书送达地址并明确法律责任，大力推广电子方式送达，对约定送达地址条款应使用准确规范的语言，并以明确醒目的方式进行特别提示和说明。

**2.业务合规经营方面的问题及建议**

部分案件反映出，个别金融机构展业经营不规范，存在一定风险隐患，影响自身债权实现。一是贷前审查评价机制存在欠缺。例如，未发现当事人在签署合同前已存在多笔尚未清偿的贷款，履行能力极不稳定。二是合同要素填写不完备。例如，借款人配偶仅在承诺书上签字，对借款金额、期限、对应借款合同均未填写，容易引起歧义。三是抵押环节不严谨，缺少抵押人的委托手续，评估价值填写较为随意。法院建议相关金融机构应加强对客户履约能力的事前审查，建立信用评价等级，形成相对完善的审查评价体系；完善合同的制定及签署，加强员工合规意识及技能培训，确保合同的完整性和合理性；规范抵押评估流程，就评估机构、委托主体、评估后果、费用承担等流程核心事项与抵押人达成合意，以减少后续争议。

**3.风险防控方面的问题及建议**

法院在案件审理中发现，有的金融机构未充分意识到风险防控的重要性并做好审查措施，影响了金融业务的正常开展。一是事前订约资格审核不严，例如保险公司未及时筛查出投保人在订立保险合同时即存在适用免除保险人责任条款的情形。二是事中风控力度不足。例如融资租赁的出租人在承租人逾期支付多期租金后才发现租赁物早已下落不明，导致涉案损失进一步扩大。为促进完善金融机构风控机制，法院建议强化合同订立前资格审查流程的规范程度，排摸易产生纠纷的风险点；加强事中履约监管，及时发现合同相对方的逾期行为，建立较为全面的担保物、租赁物等与合同相关财产的追踪机制。

**（三）司法建议反馈情况**

相关金融监管部门及金融机构对上述司法建议给予高度重视，积极加强监督管理，规范行业经营，完善风险防控机制，取得良好效果。例如，针对诉讼材料送达方面的突出问题，有公司已在主合同的送达条款中增加合同各方当事人送达地址及联系方式的填写位置，并明确约定各方当事人所留地址的适用期间、变更地址的程序及告知期限和相关法律后果。针对部分金融借款业务中合同要素不完备的问题，相关金融机构对照法院建议修订合同文件内容，明确利率计算方式及期间。针对保险业务开展中核保不严的问题，相关保险公司积极开展自查自纠，要求全体销售人员、核保人对投保人的年龄、病情等投保要素进行严格审查，并且在合同签订前尽到保险人的明确说明义务。

**五、相关建议**

2021年是中国共产党成立100周年，也是实施“十四五”规划、开启全面建设社会主义现代化国家新征程的第一年。习近平总书记在浦东开发开放30周年庆祝大会上指出，上海要努力成为国内大循环的中心节点和国内国际双循环的战略链接，完善金融市场体系，发展人民币离岸交易，建设国际金融资产交易平台，更好服务和引领实体经济发展。打造与上海国际金融中心地位和高质量发展需求相适应的金融法治环境，需要政府部门、金融监管机构、金融机构、行业协会以及社会公众等各方共同针对新形势、新任务、新情况共同努力，为此建议：

**（一）进一步强化金融业对外开放的法治保障**

我国对外开放已进入由商品、要素流动转变为以规则、制度开放为基础的新阶段，呈现出全方位、多层次、宽领域等特点。为推动上海进一步健全金融市场体系，增强国际金融中心吸引力和辐射力，加强对国际金融市场的规则衔接是金融国际化发展的必然要求，法律理论界、实务界和金融业界要聚合力量，深入研究国际市场的交易惯例、监管规则和司法成果，积极推动建立与国际金融规则相衔接的制度体系。监管部门在稳步放开跨境投融资限制的同时，应更加注重制度规则的深层次对接，不断增强政策的可预期性和稳定性。金融机构要以金融科技为支撑，重点发展科技金融、绿色金融，提升产业与金融能级，构造与国际组织、境外机构的金融对外交流合作新格局。

**（二）进一步落实金融风险防范各项措施**

防范金融风险是政府部门、金融监管机关、司法机关等各方的共同职责，各单位应进一步加强信息互通和工作衔接，搭建金融信息大数据平台，及时警示和预防金融风险，协同处置重大风险事件。金融监管机关应进一步加大对金融机构的监管力度，及时查处违法违规经营行为，督促金融机构依法合规经营。在合力做好金融风险防范工作的同时，给予金融创新合理的生长空间，推进“监管沙盒”等举措保障金融科技创新，助力上海金融科技竞争力提升。金融机构应进一步健全和完善风险内控机制，提升从业人员守法意识，加强业务流程管理，严格审核借款人、担保人的资信状况和履约能力。

**（三）进一步加强金融消费者权益保护**

在我国经济“双循环”新发展格局下，加强金融消费者权益保护，是当前推动金融供给侧结构改革的重要举措，对维护金融和社会稳定具有重大意义。金融机构要按照金融监管要求，建立健全投资者适当性制度，完善投资者风险承受能力测试制度，并严格按照金融投资者的风险承受能力推介、销售相应金融产品。金融科技类企业在提供特定金融服务或签订服务合同之时，应充分告知金融消费者金融产品的内容、投资活动的性质及风险，依法履行适当性义务。同时，金融机构对其提供的金融产品与服务应当采取必要的安全保障措施，确保金融消费者个人金融信息的保密与安全。同时，应采取各种形式加大对金融消费者和投资者教育力度，对不同年龄段、不同教育程度的受众采取合适的宣传、教育方式。

**（四）进一步加强金融纠纷诉源治理**

为切实保护金融消费者合法权益，预防纠纷发生并降低纠纷解决成本，金融监管机构、司法机关、仲裁机构、行业协会、调解组织等应就全面推进金融纠纷多元化解机制建设进一步加强合作，实现多元解纷机制金融领域全覆盖。依托上海法院一站式多元解纷平台和诉讼服务体系建设，积极引进金融专业调解组织入驻平台。积极推动先行调解、诉前调解机制，健全委托、委派调解机制，切实提高专业调解在金融纠纷多元化解体系中的比重。通过示范案例引导、加大宣传力度，提升社会公众对金融纠纷多元化解机制的知晓度和信任度，积极引导当事人通过调解方式解决金融纠纷。此外，金融机构应当通过提升合规经营水平、优化金融产品服务、依法强化信息披露等方式，从源头减少金融纠纷，强化矛盾纠纷的“诉源治理”。

**Briefing of Financial and Commercial Trials in Shanghai Courts in 2020**

In 2020, Shanghai basically built itself into "an international financial center that is aligned with China's economic strength and the international status of RMB". This is a key milestone for building Shanghai as an international financial center. Against the backdrop of the global COVID-19 pandemic, Shanghai rose to top three in the Global Financial Centers Index (GFCI) for the first time, having essentially achieved its objective in this regard. In financial and commercial trials, Shanghai courts continued to adhere to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, focus on national strategic objectives and the overall situation of work, and coordinate the work of epidemic prevention and control and law enforcement and case handling. They conscientiously performed court duties, giving full play to the function of adjudication, and protecting the legitimate rights and interests of all financial subjects on an equal footing according to law. Moreover, efforts were made to promote financial services to serve the real economy, support and regulate financial innovation, prevent and resolve financial risks, promote and safeguard financial reform, and provide strong support in terms of judicial protection for the high-quality development of Shanghai International Financial Center. The financial and commercial trials in Shanghai courts in 2020 were summarized as follows.

**I. Basic Information of Financial and Commercial Cases**

**(1) Acceptance and settlement of financial and commercial cases**

In 2020, the number of financial and commercial cases handled by Shanghai courts decreased slightly. A total of 179,258 financial and commercial cases of the first instance were handled by the courts in Shanghai, down 6.91% year-on-year. A total of 178,871 financial and commercial cases of the first instance were concluded, down 6.53% year-on-year, with a completion rate of 99.78% (Figure 1). The decrease in the number of cases is mainly due to the significant drop in the number of bank card disputes. Except for cases over bank card disputes, the number of other financial and commercial cases received was 73,651, up 49.94% year-on-year.

In 2020, a total of 1,912 financial and commercial cases of the second instance were accepted by the courts in Shanghai, down 4.16% year-on-year (Figure 2), while a total of 1,912 cases of the second instance were concluded.

 **(2) Amount of the value of accepted cases**

In 2020, the total value of first-instance financial and commercial cases accepted by Shanghai courts fell to RMB 180.604 billion (same currency below), down 18.58% year-on-year (Figure 3).

The top three types of cases in terms of the value are: 1) disputes over financial loan contracts, with an amount of RMB 65.097 billion, down 15.89% year-on-year, accounting for 36.04% of the total amount of subject matters; 2) disputes over financial leasing contracts, with an amount of RMB 19.513 billion, down 17.49% year-on-year, accounting for 10.80% of the total amount of the value; and 3) bank card disputes, with an amount of RMB 16.214 billion, down 37.18% year-on-year, accounting for 8.97% of the total amount of the value. Other types of cases with large underlying amounts include: disputes over repurchase of pledged securities, with an amount of RMB 10.103 billion; business trust disputes, with an amount of RMB 9.658 billion; equity transfer disputes, with an amount of RMB 4.327 billion; corporate bond transaction disputes, with an amount of RMB 3.908 billion; and disputes of guarantee contract, with an amount of RMB 3.813 billion. The proportion of the underlying amount of some traditional financial commercial cases decreased, including RMB 1.610 billion in disputes over bills and RMB 711 million in disputes over insurance (Figure 4).

In terms of settlement method, the mediation and withdrawal rate of first-instance financial and commercial cases in 2020 reached 30.17%, up nearly 9.51% year-on-year, while the mediation and withdrawal rate of second-instance cases was 9.26%, down 4.22% year-on-year. The appeal rate of first-instance cases was 1.07%, up 0.03% year on year. The rate of re-judgment of second-instance cases was 5.02%, lower than the average rate of re-judgment of courts in Shanghai by 3.02%. The complaint rate of financial and commercial cases in Shanghai courts was 0.08%, basically the same as last year.

**(3) Distribution of case types**

In 2020, the top five types of financial and commercial cases accepted by the courts in Shanghai are as follows: bank card disputes, with a number of 105,607 and a year-on-year decrease of 35.82%; disputes over financial loan contracts, with a number of 42,970 and a year-on-year increase of 58.04%; disputes over financial lease contracts, with a number of 18,241 and a year-on-year increase of 65.93%; disputes over liability for false securities statements, with a number of 3,243 and a year-on-year increase of 7.63%; disputes over property insurance contracts, with a number of 2,276 and a year-on-year increase of 3.8%. The above five types of cases account for 58.91%, 23.97%, 10.17%, 1.8% and 1.27% of the total number of first-instance financial and commercial cases in Shanghai courts, respectively, altogether representing 96.12% (Figure 5).

Bank Card Disputes

**II. Characteristics of financial and commercial cases**

**(1)** **The function of financial trials in supporting and regulating financial innovation activities has been further improved**

Financial innovation is essentially needed to promote financial development. In the process of financial innovation, financial trials respond to relevant issues in a timely manner and effectively regulate financial innovation activities while supporting and protecting them in accordance with the law. This is one of the necessary conditions for the sustainable and healthy development of finance. Regarding the practice in Shanghai, as the city moves forward with the plan of building international financial center, the financial market continues to innovate and develop, with the financial business environment being further optimized. In the meantime, the level of financial trials is steadily improving, the function of financial trials in supporting and regulating financial innovation activities is becoming more apparent, and new types of financial and commercial cases with market-leading effects are constantly emerging.

**First, new financial activities have resulted in new types of disputes.** For example, in a case involving a subject who did not obtain the qualification of financing and financing securities to engage in off-market allocation, the court determined the validity of the off-market allocation contract and the corresponding fault and loss bearing in accordance with the law by fully considering the relevant regulatory provisions and legislative purposes. In the first dispute over oil swap contracts in Shanghai, the court confirmed the nature and effect of the early termination netting clause in accordance with the characteristics of financial derivative transactions themselves and following the relevant international practice and trading rules.

**Second, the traditional financial sector has led to new types of disputes.** For example, in a case of an Internet insurance dispute, the court clarified the judicial review standard of the obligation to clearly explain and truthfully inform in online insurance, and included Internet insurance as a financial commodity or service in the judicial protection system of financial consumers' rights and interests. In a dispute involving a private equity partnership's limited partners betting against each other, the court focused on whether the subject, content and manner of the betting complied with the law and the partnership agreement, and made a determination on the validity of the betting agreement.

**Third, new-type cases have demonstrative value and rule-oriented significance.** For example, a Shanghai court heard the first case of disputes over securities misrepresentation liability in China in which a multi-factor quantitative model was applied to accurately determine investors' losses. The court entrusted a professional institution to use a multi-factor calculation model and pioneered the method of "simultaneous comparison of yield curves". The method is designed to deduct both systemic risk and individual share risk factors to make the calculation of compensation amount more fair and reasonable. In the first case where a trust company was held liable for channel business, the court clarified that although the trust company is only responsible for transactional management, it should still uphold the principle of prudence in its operations and fulfill the necessary duty of care, and should still be held liable if it violates the relevant obligations. The rules established in many cases have attracted a great deal of attention from financial regulation authorities, industry associations and financial institutions. They have had a positive effect on improving the structure of financial products, the rules of financial transactions and the order of the financial market.

**(2) New, difficult and complex problems continue to emerge due to continuous changes in financing channels and structures**

With the continuous expansion of the social financing scale and the ongoing diversification of financing channels, in addition to traditional bank loan business, other financing channels such as financial leasing, factoring, trust, repurchase of pledged securities and other direct financing methods including stocks and bonds occupy an increasingly important position in financing market. For example, in 2020, disputes over financial loan contracts, disputes over financial leasing contracts and disputes over liability for securities misrepresentation grew by 58.05%, 65.93% and 7.63% respectively, with the number of cases ranking second to fourth after bank card disputes. In disputes over financial leasing contracts, the problem of illegal lending business "in the name of leasing which is actually lending" still exists, and disputes have arisen over the calculation of rent and liquidated damages and the definition of the scope of new types of financial leases. As for factoring, with the gradual expansion of the business scale of commercial factoring companies and the ongoing innovation of business models, the overall number of factoring companies involved in the case is on the rise, involving such controversial issues as using false accounts receivable as the subject of factoring and lending to unspecified objects by factoring companies. In 2020, Shanghai courts also accepted 72 cases in which trust companies were defendants, involving legal issues such as the legal liability of trust companies for breach of fiduciary duties, the liquidation obligations of trust companies, and the legal consequences of "rigid payment" promises made by trust companies to the public. In addition, Shanghai courts have accepted many cases due to corporate bond defaults, which are of high value, involve many investors and have a large market impact.

**(3) The fact that many people are involved in financial disputes in the field of fintech and financial inclusion is becoming increasingly prominent**

In recent years, with the further development of financial technology, financial institutions continue to strengthen financial inclusion, cross-regional operations have become the norm, and the participation of financial activities has become increasingly widespread. These have also led to the fact that many people are increasingly involved in financial disputes, and the protection of the rights and interests of financial investors and financial consumers still needs to be further enhanced. For example, in recent years, there has been a rapid increase in cases related to financial borrowing involving loan assistance. The main aid lending institutions involved in the cases currently before the court include insurance companies, financial guarantee companies, non-financial guarantee companies and financial information consulting companies. Among them, there are some institutions that have transformed its business into the lending industry after the rectification of P2P, as the aggregator in financial borrowing, and they use their own customer information, risk control and post-loan management advantages to provide various forms of aid lending business. In reality, however, such institutions may have irregular business practices, such as collection of high service fees in a disguised form, and illegal financial guarantee business, which are more likely to cause financial risks. There are also cases arising from irregular business operation of various trading venues, and a large number of subsequent disputes entered the courts after the cleanup and consolidation of the illegal trading platforms, involving the interests of many participants.

**(4) The growth of foreign elements in financial cases places higher demands on the application of international rules and practices**

With the increasing consolidation of Shanghai's status as an international financial center and the increasing opening up of finance towards the outside world, cross-border capital flows and financial services have become increasingly active. The number of cases involving foreign financial disputes has gradually increased. There are also many cases where the subject is not foreign but there are foreign factors involved in the case. Shanghai courts reasonably adopted international financial practices and rules in case trials and protected the rights and interests of market subjects of all countries on an equal footing according to the law. For example, in the first case in China that involves the judgment in force in Hong Kong Special Administrative Region (HKSAR) courts in relation to the "Keepwell Agreement" of offshore bonds to be applied for recognition and enforcement of the mainland courts, the court suggested that the standard of review for the recognition and enforcement of judgments in force in Hong Kong was limited to procedural matters, and the substantive law issue of the legal effect of the "Keepwell Agreement" in the territory was not within the scope of review of the case, while the "public interest" of refusing to recognize and enforce the judgment should be strictly interpreted, which usually only included cases where the result of recognizing and enforcing the judgment of the HKSAR was directly contrary to the public interest of the mainland. In a case involving an independent letter of guarantee, the court pointed out that when judging the nature of the letter of guarantee, it should focus on the independence and documentary nature of the letter of guarantee, fully respect international financial practices such as the *Uniform Rules for Demand Guarantees* (URDG 758), accurately define the rights and obligations of the parties involved, correctly grasp the elements of fraud and proof standards of the letter of guarantee, and further standardize the handling of cases concerning the stop payment of the letter of guarantee, to avoid improper stop payment cases, and promote the development of international trade. In a case involving financial derivatives transactions, the court, in determining the parties' liabilities for breach of contract, took the relevant laws and regulations of China as the basis, while fully considering the international practice of financial derivatives transactions (Master Agreement of ISDA) and the characteristics of financial derivatives transactions, and calculated the corresponding market fair value of the early termination payment, which provided a reference for the judicial application of international rules and practices.

**(5) Judicial technology empowerment boosts further innovation of financial trial mechanism**

Artificial intelligence, big data, blockchain, and other new rounds of technological development have a profound impact on the economy and society. Intelligence and digitalization have become the trend, which also provides new momentum to the court's trial work. In 2020, financial trials in Shanghai courts relied on technological innovation-driven development to promote the reform of trial methods and enhance trial efficiency.

**First, the whole process of online case handling has achieved practical results.** Shanghai courts focused on the synchronous generation of electronic files with cases, online court hearings, reform of court recording methods, reform of the single set system of electronic files, and the use of intelligent auxiliary case handling systems to expand the in-depth application of the whole-process online case handling in financial and commercial trials.

**Second, the development of an intelligent and fast trial system for financial cases has been promoted.** Efforts have been made to carry out the elementary-type filing, document template setting, intelligent data calculation and verification, and automatic document generation. The connection between internal system data of financial institutions and that of courts has been studied and explored, so as to reduce possible errors in data input and inaccurate verification of data in the judgment instrument at the conclusion of cases.

**Third, the electronic service has been further promoted.** With the help of regulators and industry associations, financial institutions are advised to agree on electronic service provisions in the contract text to effectively solve the problem of difficult service, save litigation time costs and improve trial quality and efficiency.

**III. Study and Judgment on the Trend of Financial and Commercial Cases**

**(1) Deepening reform of financial markets will bring more new types of financial disputes**

A series of major strategies have been implemented, including the high-quality development of Shanghai International Financial Center, the further expansion of the financial industry to the outside world, the promotion of the construction of the Shanghai Pilot Free Trade Zone and the new Lingang Area, and the further high-level reform and opening up of the Pudong New Area. Against this backdrop, many financial innovations and related financial derivatives in the securities, insurance and trust markets have generated a large number of new transaction forms and legal relationships. New types of financial disputes are likely to continue to emerge. In the context of booming financial technology innovation, it will be a major challenge to take into account financial risk prevention and protection of financial consumers and investors' rights and interests and to promote the integration of technological innovation and financial innovation. With the ongoing development of the green financial market, in order to build an international carbon financial center, the transactions of spot and forward products related to carbon finance, carbon funds, carbon bonds, carbon insurance, carbon trusts and other financial innovation products will continue to emerge, putting forward higher requirements for financial trials.

**(2) Expanded financial liberalization puts higher demands on judicial concepts and trial capabilities**

Whether the courts' decisions on financial cases have an international perspective is an important criterion for measuring the level of China's financial justice. It is also a prerequisite and basis for further enhancing the international credibility of China's financial justice. As China is further integrated into the international financial market, some of the financial products whose trading patterns originate from abroad will gradually enter the domestic financial market. The international development of financial markets will bring a large number of experiences, rules and international transaction practices of mature markets. It will have an important impact on regulating the behavior of transaction subjects. It will also lead to profound changes in the jurisdictional system, adjudication rules and judicial philosophy of financial disputes. In the face of new challenges, the Shanghai High Court issued the *Several Opinions of Shanghai Courts on Services and Guarantees for Further Opening-up of Financial Sector*, focusing on building a financial judicial system and mechanism that meets the needs of the new situation, benchmarking with the highest international standards, improving the financial judicial capacity, resolving foreign-related financial disputes in a fair and efficient manner, and further playing the function of judicial service to the whole society.

**(3) Innovative development of financial markets calls for unified justice to promote the formation of a unified market**

Promoting the uniform legal application standards and realizing the principles of "the same treatment in the same situation and similar treatment in similar situations" is an inevitable requirement to ensure judicial justice and enhance judicial credibility. It is also an important exemplification of establishing reasonable expectations of subjects and promoting the formation of market rules through judicial trials. On January 1, 2021, the *Civil Code of the People's Republic of China* and the accompanying judicial interpretations came into force. As the first law in the form of a code in China, the *Civil Code* has comprehensive and far-reaching impacts on the financial sector in a structural and systematic manner. The *Civil Code* has responded to some extent to the rule of law needs of the financial market, such as the creation of a chapter on factoring contracts in the Contracts Title, the provision of atypical security contracts and the introduction of judicial interpretations of the security regime. The development of the financial market requires certainty and predictability, and the demand of financial institutions for the correct application of the rules on security in movable assets under the Civil Code, the promotion of uniformity and standardization of registration, and the correct understanding of the rules on the subordination of effectiveness will continue to grow. The interface between the new law and the old law, between civil general law and financial special law, and between adjudication conclusions and regulatory objectives requires further in-depth study.

**(4) The number of financial dispute cases related to the protection of rights and interests of financial consumers will continue to grow**

As financial inclusion continues to develop, the fact that many people are involved in financial transactions is becoming increasingly apparent. With the comprehensive promotion of the registration system reform, the continuous increase in punishment by the regulatory authorities for securities market violations and the increasing awareness of investors in right protection, relevant securities dispute cases will continue to enter the courts. New types of securities cases, such as insider trading and market manipulation, will continue to emerge. After the "rigid payment" of the trust industry is gradually broken, the number of cases in which investors sue the sellers and managers of trust products for failure to pay on time will gradually increase. With the deepening of the concept of financial consumer protection and the increasing attention of all parties to the investor suitability system of financial institutions, lawsuits for damages filed by financial consumers on the grounds of breach of investor suitability obligations by financial institutions will continue to grow.

**IV. Judicial Suggestions**

In 2020, Shanghai courts issued 27 financial judicial proposals and received 17 effective feedback opinions, with a feedback rate of 62.96%. In the above judicial suggestions, starting from the problems found in specific cases, there are targeted suggestions and recommendations being proposed to financial regulators and financial institutions to promote the standardized operation of market players, prevent disputes at the source and prevent and resolve financial risks.

**(1) Distribution of sent objects**

In recent years, banking, insurance, financial leasing and other industries are the financial fields where the courts send more judicial suggestions. In 2020, Shanghai courts issued 12 financial judicial suggestions in the financial leasing industry, eight in the banking industry, five in the insurance industry, one in the securities industry and one in Internet finance industry. (See Figure 6)

 **(2) Reported problems and suggestions**

**1. Problems and suggestions in the service of litigation documents**

The courts found a number of problems in the process of serving litigation materials on some financial institutions and entities during the case.

First, the provisions on the service of the process need to be further promoted, even if the service clause is specified, although the contact address filled in by some financial institutions is duplicated or inaccurate.

Second, the service clause in some contracts is a form clause with a small font size and no bold and black display, which is difficult to attract the full attention of the counterparties to the contract.

Third, the page where the service clause is located in some contracts is not on the same page as the signature page, and the contract is not bound in a book. Therefore, a dispute arises: whether the opposite parties to the contract actually knows and agrees to it or not. The courts suggested that financial institutions should clearly agree on the address for service of process and clarify legal responsibilities when the contract is concluded, strongly promote electronic means of service, and use precise and standardized language for the agreed service of address clause, with special tips and instructions in a clear and conspicuous manner.

**2. Problems and suggestions on the business compliance and management**

Some of the cases reflect that individual financial institutions are not operating in a standardized manner. There are certain risks and hidden dangers, affecting the realization of their own claims.

First, there is a lack of pre-lending review and evaluation mechanisms. For example, it was not found that the parties had multiple outstanding loans prior to the signing of the contract and that the ability to perform was highly unstable.

Second, the contract elements are incomplete. For example, the borrower's spouse only signed the letter of commitment and did not fill in the amount of the loan, the term, or the corresponding loan contract, which can easily cause ambiguity.

Third, the mortgage process is not rigorous, there is a lack of mortgagor's entrusting procedures and the evaluation value is filled in casually. The courts suggested that the relevant financial institutions should strengthen the prior examination of the customer's ability to perform, establish a credit evaluation rating and form a relatively sound examination and evaluation system; improve the formulation and signing of contracts, strengthen staff compliance awareness and skills training, and ensure the integrity and reasonableness of contracts; standardize the mortgage appraisal process and reach an agreement with the mortgagor on the key matters of the process, such as the appraisal agency, the entrusted body, the consequences of the appraisal and the costs to be borne, so as to reduce subsequent disputes.

**3. Problems and suggestions on risk prevention and control**

The courts found during the trials that some financial institutions were not fully aware of the importance of risk prevention and control, and failed to take review measures properly, which affected the normal conduct of financial business.

First, prior contracting qualifications are not strictly reviewed. For example, the insurance company did not screen the policyholder in time to find out the situation of applying the exclusion of the insurer's liability clause when the insurance contract was concluded.

Second, there is no enough in-process risk control. For example, the lessor in a financial lease discovered that the leased property had missed after the lessee was late in paying multiple installments of rent, which led to further expansion of the loss involved. To promote the improvement of the risk control mechanism of financial institutions, the courts suggested that efforts should be made to: strengthen the degree of standardization of the qualification review process before the conclusion of contracts and check the risk points prone to disputes; enhance the in-process supervision of performance; promptly discover the overdue behavior of the contractual counterparties; and establish a more comprehensive tracking mechanism for collateral, leases and other contract-related properties.

**(3) Feedback on judicial suggestions**

Relevant financial regulators and financial institutions attach great importance to the above judicial suggestions. They have actively strengthened supervision and management, regulated industry operations, and improved risk prevention and control mechanisms. Therefore, good results have been achieved. For example, in response to the outstanding problems in the service of litigation materials, some companies have added the location of filling in the service address and contact information of the parties to the contract in the service clause of the main contract, and clearly agreed on the applicable period of the address left by the parties, the procedure for the change in the address and the deadline for informing the parties and the legal consequences thereof, as well as the parties who are in a position to make electronic service. In response to the problem of incomplete contract elements in some financial borrowing businesses, the relevant financial institutions have revised the content of the contract documents against the court's suggestions to clarify the way and period of the interest rate calculation. In response to the problem of lax underwriting in the conduct of insurance business, the relevant insurance companies have actively carried out self-examination and self-correction, requiring all sales staff and underwriters to strictly examine the insured's age, condition and other elements of insurance, and properly perform the insurer's obligations of explicit disclosure before the contract is signed.

**V. Relevant Suggestions**

The year 2021 marks the 100th anniversary of the founding of the Communist Party of China, as well as the start of implementing China's 14th Five-Year Plan and building China into a modern socialist country in an all-round way. At the 30th anniversary celebration of Pudong's development and opening up, General Secretary Xi Jinping pointed out that Shanghai should strive to become the central node of the domestic economic cycle and the strategic link between domestic and international markets, improve the financial market system, develop RMB offshore transactions, build an international trading platform for financial assets, and better serve and lead the development of the real economy. To create a law-based financial governance environment that fits in with Shanghai's status as an international financial center and the needs of high-quality development, government departments, financial regulators, financial institutions, industry associations and the public need to work together in response to the new situation, new tasks and new circumstances. It is, therefore, recommended that:

**(1) The law-based governance for the opening up of the financial sector to the outside world should be further strengthened**

China's opening up to the outside world has entered a new phase based on the flow of commodities and factors to the opening up of rules and systems, presenting characteristics such as all-round, multi-level and wide fields. In order to help Shanghai to further improve the financial market system and enhance the attractiveness and influence of the international financial center, strengthening the convergence of the rules of the international financial market is an inevitable requirement for the development of financial internationalization. Theoretical circles, legal practice circles and the financial industry should pool their efforts, thoroughly study the transaction practices, regulatory rules and judicial outcomes of the international market, and actively promote the establishment of a system that converges with the international financial rules. While steadily easing restrictions on cross-border investment and financing, the regulators should pay more attention to the deep integration of the system rules and continuously enhance the predictability and stability of the policies. Financial institutions should be supported by financial technology, focus on the development of science and technology finance, green finance, enhance industrial and financial capabilities, and construct a new pattern of financial exchange and cooperation with international organizations and foreign institutions.

**(2) Measures to prevent financial risks should be further implemented**

Prevention of financial risks is the common responsibility of government departments, financial regulatory authorities, judicial authorities and other parties. All the relevant organizations should further strengthen information sharing and work together, build a financial information big data platform, warn and prevent financial risks in a timely manner, and coordinate each other to deal with major risk events. Financial regulatory authorities should further increase the supervision of financial institutions, investigate and deal with illegal and irregular business practices without delay, and urge financial institutions to operate in accordance with the law. In making joint efforts to guard against financial risks, financial regulatory authorities should give reasonable room for financial innovations and promote initiatives such as the "regulatory sandbox" to protect fintech innovations and help enhance Shanghai's fintech competitiveness. Financial institutions should also further improve risk internal control mechanisms, enhance practitioners' awareness of compliance with the law, strengthen business process management, and strictly review the creditworthiness and performance ability of borrowers and guarantors.

**(3) The protection of the rights and interests of financial consumers should be further strengthened**

Under the new development pattern of the "Double circulation" of China's economy, strengthening the protection of financial consumers' rights and interests is an important measure to promote the structural reform of the financial supply side, which is of great significance to maintaining financial and social stability. Financial institutions should, in accordance with the requirements of financial supervision, establish and improve the investor suitability system, improve the investor risk tolerance test system, and recommend and sell the corresponding financial products in strict accordance with the risk tolerance of financial investors. Fintech companies should fully inform financial consumers of the content of financial products, the nature and risks of investment activities when providing specific financial services or entering into service contracts, and fulfill their obligations of appropriateness in accordance with the law. At the same time, financial institutions should take the necessary security measures for the financial products and services they provide to ensure the confidentiality and safety of financial consumers' personal financial information. They should also take various forms to enhance the education of financial consumers and investors, and adopt appropriate publicity and education methods for audiences of different ages and educational levels.

**(4) The governance of financial dispute litigation sources should be further strengthened.**

In order to effectively protect the legitimate rights and interests of financial consumers, prevent disputes and reduce dispute resolution costs, financial regulators, judicial authorities, arbitration institutions, industry associations and mediation organizations should further strengthen cooperation in comprehensively promoting the development of a diversified dispute resolution mechanism for financial disputes, and achieve full coverage of the diversified dispute resolution mechanism in the financial sector. Efforts should be made to actively introduce financial professional mediation organizations to stay in the platform by relying on the building of the one-stop diversified dispute resolution platform and litigation service system of Shanghai courts; and to promote prior mediation and pre-litigation mediation mechanism. It is important to improve the entrusted and assigned mediation mechanism, and effectively increase the proportion of professional mediation in the system of diversified settlement of financial disputes. Through the guidance of model cases, financial institutions are required to enhance publicity, raise the public awareness of and trust in the diversified financial dispute resolution mechanism, and actively guide the parties to resolve financial disputes through mediation. In addition, they should reduce financial disputes at the source and strengthen the "litigation source governance" of conflicts and disputes by improving compliance, optimizing financial products and services, and strengthening information disclosure in accordance with the law.