

Archived documents for “Debate over Wu Ying’s death penalty for fraud”

吴英的生命和你我有关

[滕彪 \(2012-01-23\)](#)

2003年夏天，我们在孙志刚案后呼吁废除收容遣送制度之后，开始营救身陷囹圄的农民企业家孙大午的时候，22岁的吴英在东阳市新开了“贵族美容美体沙龙”，展露出不凡的经营才华和交际能力。其实在15岁的时候，她就与别人合伙开了家美容店，生意逐渐做大。2005年又经营KTV、理发休闲店等，2006年注册两家公司，开始介入民间借贷、铜期货等交易。之后大手笔组建本色控股集团：本色商贸、本色洗业、本色广告、本色酒店、本色电脑网络、本色装饰材料、本色婚庆服务、本色物流……，吴英及本色集团开始闻名全国。

多行业的同时运作需要大量流动资金，但年轻没背景的吴英和更年轻的本色集团几乎得不到银行贷款，只能借助于朋友熟人。材料显示，除了一笔1550万元的短期贷款来自工商银行东阳支行外，她的几乎所有资金都来自民间借贷。2006年12月，因债务纠纷，她被义乌市的杨志昂、杨卫陵的杨氏家族成员绑架，并被强迫签署空白文件三十余份，现金数万元、现金支票330万被抢走，被强迫交出数张银行卡密码。吴英报案后，当地公安一直没有立案，她却在两天后收到一封装有两颗子弹的信封。

民营企业急需贷款银行不管，绑架抢夺属于刑事案件公安却不管，本属民事领域的民间金融活动，因为有利可图，政府的积极性来了。吴英报案似乎是她命运的转折点。报案后不久，2007年春节之前，资金链趋紧的吴英被刑事拘留，理由是“涉嫌非法吸收公众存款”。一审开庭时，给吴英做无罪辩护的律师认为，“吴英借来的钱只是朋友间的民间借贷行为，并没有使用欺诈手段，也没有要非法占有的想法，而且全部都用于公司经营上了，并承诺归还。所以我们认为吴英的行为不构成集资诈骗罪，只能算民事纠纷。”但一心要置吴英于死地的法院完全不理睬这些意见。法院认定，从2005年至2007年，吴英以高额利息为诱饵，以投资、借款、资金周转等为名，先后从林卫平、杨卫陵等11人处非法集资人民币7.7亿元，用于偿还本金、支付高额利息、购买房产、汽车及个人挥霍等，实际集资诈骗人民币3.8亿元。吴英的罪名从被拘时的“非法吸收公众存款”变成了可怕的“集资诈骗”。2009年10月，吴英一审被判死刑。2012年1月18日，浙江省高级法院二审维持死刑原判。

吴英作为民间企业家，向朋友借款从事实业经营，既没有使用欺诈手段，也没有非法占有的企图，这只能算是民事纠纷。与公权力何干？受害者没有站出来（借贷金额 7.7 亿，11 个债权人都否认自己被骗），公检法何以如此迫不及待地抓人杀人？如吴英集资是为“占有”，何必搞巨额的固定资产投资和众多的实业？在刑法上，没有社会危害性就没有犯罪，吴英行为的社会危害性在哪？

2008 年 12 月 2 日，浙江省高级法院、检察院、公安厅联合下发的“当前办理集资类刑事案件适用法律若干问题”会议纪要明确指出，“为生产经营所需，以承诺还本分红或者付息的方法，向相对固定的人员筹集资金，主要用于合法的生产经营活动”的情况，“应当作为民间借贷纠纷处理”，“不应认定为非法吸收公众存款犯罪或者集资诈骗犯罪”。2011 年 1 月 4 日，最高法院公布施行的《关于审理非法集资刑事案件具体应用法律若干问题的解释》中明确规定，未向社会公开宣传，在亲友或者单位内部针对特定对象吸收资金的，不属于非法吸收或者变相吸收公众存款。吴英与 11 位债权人均为朋友或固定合作伙伴，因此连“非法吸收公众存款罪”都够不上，判定“集资诈骗罪”乃是欲加之罪、司马昭之心了。

吴英非但不存在“集资诈骗罪”，历史地看，她还是众多推动金融体制变革、打破金融垄断的行动者之一，尽管她未必明确地意识到这一点。吴英案的历史背景是，中国从导致国民奴役和经济崩溃的计划经济中挣扎出来，逐步建立市场经济，中国经济“腾飞”了、“大国崛起”了。但问题是，这个市场制度是非常不完善的，甚至是畸形的。一来政治体制没有跟上经济体制变革，缺少基本的政治自由和起码的司法独立，官商勾结，腐败蔓延，政治体制成为社会发展的瓶颈。二来关键的经济领域，石油、电信、电力、金融、石化、铁路等仍然被垄断（实际上被高干家族控制），行政扭曲价格，公权豪取利润，顽固对抗市场。“入世”这么多年，美、日、欧盟等仍不承认中国的市场经济地位，原因应该在此。

金融垄断的弊病是显而易见的。经济学家茅于軾说，“你把金融业垄断起来了，老百姓的钱就没地方去，一方面钱很多，一方面借钱还借不到，这就说明我们的金融业有很大的问题。金融业干什么？就是把钱能够用到好地方去，现在老百姓有很多钱，而中小企业又很缺钱，就是你金融业有毛病。”吴英在法庭上说，她购置固定资产，目的就是想从银行借款，但却极难从银行系统融资。中小企业或个人要发展，只能转向地下钱庄借贷。另一方面，存款利率低，有钱人不愿把钱存银行，一定设法寻求更高的回报。民间借贷门槛低、有信用、效率高，因此是市场的必然。

民营企业支撑着中国经济的发展。全国企业总数的 99% 以上都是中小企业，而且基本都是民营企业，创造的最终产品和服务价值相当于 GDP 的 60%，近些年 GDP 增量的 80% 以上是民企创造的。但民营企业却难以得到银行的支持，只

能靠处于灰色地带的民间借贷。数据表明，银行的短期贷款中，民营企业只占不到 20%。据全国工商联一项调查，有 90% 以上的民营中小企业表示，无法从银行获得贷款。全国民营企业和家族企业在过去三年中有近 62.3% 通过民间借贷的形式进行融资。在温州，只有 10% 的企业能从正规金融系统获得融资，而有接近 90% 的企业需依赖民间借贷途径融资。温州有 89% 的家庭个人和 60% 的企业参与了民间借贷。

民间借贷完全合法化势在必行。2011 年 11 月，央行负责人称，民间借贷具有制度层面的合法性，应完善相关法律法规，鼓励民间借贷规范化、阳光化运作。另有学者透露，两三年前就已经搞了一个关于民间借贷的法律草案，但全国人大法律工作委员会一直拒绝提交这个草案，无法进入讨论程序。

解决问题之本，应在开放市场，建立自由金融制度。反市场、高腐败、低效率的金融垄断体制必须废除，断无靠重刑乃至死刑来维系垄断特权之道理。若干年后回头看，当中国自由金融体制得以建立，吴英们的行为是正当合法的、符合市场规律的、为国民经济做贡献的，——而今天这样的行为竟获死罪，这是何等的悲哀？吴英能亲眼看到那一天吗？以投机倒把罪为例，中国 1997 年刑法取消投机倒把罪，但《投机倒把行政处罚暂行条例》到 2008 年才被废除。此前，有太多同胞被定为投机倒把而入狱甚至被处死，而他们从事的交易行为今天看来是完全正常的。韩庆生等 4 名国企工程师转到乡镇企业，设计了两套生产污水净化器，却因“技术投机倒把罪”被判入狱。我听过一个案例，有个人把一些猪从一个省赶到另一个省去卖，竟被以投机倒把罪判无期徒刑。温州从事民间金融的郑乐芬以投机倒把罪判处死刑，1991 年被执行死刑，她是中国死于投机倒把罪的最后一人。回头看，这些同胞难道不是市场经济的推动者吗？不正是他们的生存需要、才能和勇气，逼出了市场化改革吗？改革还远远没有完成，改革需要付出代价，但我们就不能长一点记性，避免这类悲剧吗？小岗村的 18 个立下生死状的村民如果被枪毙，后果将会如何？我们就不能稍微仁慈一些，在完全可以避免的情况下，非要流血不可？为了那不久的将来定会实现的自由金融体系，非要人头落地、扼杀一个又一个鲜活的生命？

三

中国古代长期以来刑民不分也体现在吴英案上。萧瀚评论到：“说穿了，就是伪公权可以肆意作恶，蹂躏民间私法关系，夫妻俩吵架吵到官府那儿，可能会被痛打一顿关牢里。现在也一样，吴英借人钱，生意没做好搞砸了，借钱的人只想要回钱，但官府说你只许管我借钱，借不借给你看我高兴，不许管那么多人借，你瞎借钱，我就要宰了你。”先是与民争利，继之残民以逞。只许州官放火、不许百姓点灯。窃钩者被诛，窃国者诛人。司法只是个表象而已，抢劫杀人工具而已。

什么是法治精神？几个世纪以来，法理学的一个核心争论就是“恶法亦法还是恶法非法”？这不是一句两句能说清的。在一个政治经济体制迅速变迁的社会里，这个命题就更加复杂。可以说，人类社会的发展时刻伴随着恶法和对恶法的违反。改革就是对僵化法律制度的突破，这种突破基本上都是事实上的突破导致立法上的变更，而不是相反。农村改革、国企改革、证券制度、户籍制、宗教信仰、教育制度、新闻出版、信访制度、诉讼制度、城管制度、劳教制度、社团制度，哪一个领域没有经历过突破的尝试？哪一个领域没有过公民的血与泪的抗争和受难？哪一个领域彻底完成了改革？哪一个领域不需要继续改革或者说彻底变革？

法治是人类的事业，因此也必须是符合人性的。但是在一个法律和人性被肆意践踏的年代结束之后，法律体系不完善、法治水平落后，社会上存在着太多僵化教条的理念，落后的、反人性的法律政策。很多情况下，法律“陷人于不仁不义”的境地。比如“亲属作证豁免权”制度建立之前，一个了解了母亲犯罪情况的孩子，就必须在亲情伦理和法律义务之间做出痛苦的选择。毫无疑问，法治、善治、普世价值、一切常识，都要谴责反人伦的法律，而不是自然的人性。

中国公民苦于“非法化生存”久矣。孙大午案的时候，人们就热议“民营企业的非法化生存”；公盟被查抄的时候，大家又讨论“NGO的非法化生存”；崔英杰案、夏俊峰案，人们反思城管的非法化生存；当下的吴英案，民间信贷的非法化生存又进入人们的视野。目前的公权力制度的不完善还造成了“官员的非法化生存”，谁都不干净，所以只能听话不能站错队，否则贪污、受贿、巨额财产来源不明、生活作风问题，说你有你就有，真没有也可以有。有关系就没关系，没关系可就有关系了，为商为官，都是如此。

本来就不应该被禁止的、自然的、自由的，生生地制造了一个非法化生存的法律环境，谁之过？本来健康的制度可以避免某些人性之恶，但一个激发人性之恶的制度迟迟得不到修正废除，谁之过？吴英就算有罪，也是社会变革大背景下不健全的融资制度之罪，是历史和社会之罪，让吴英一个毫无特权的弱女子来承担，这是极端残酷和不公正的。

四

吴英当然不是天使。她虽然有经济眼光和企业家本领，但她不幸没有生在一个健全的市场制度和政治制度下。为了生存，为了扩大财富，她被迫选择了适应这个体制，就像很多来中国做生意的老外也要适应中国的商业政治潜规则一样。吴英检举过她所行贿的多名官员，也当然意味着她有过行贿行为。（需要指出，在检察院没有指控吴英犯有行贿罪的情况下，律师和公众并不应该扮演指控者的角

色。)假如从一开始就仅指控吴英行贿并且证据充分,在法律上似乎问题不大。但行贿罪没有死刑,在受贿者没有调查清楚的情况下,更不能匆忙认定行贿。何况还是吴英主动交代的,依法应“减轻处罚或者免除处罚”,何况是被索贿还是行贿还难说。

但这都不是问题的根本。我们当然要谴责行贿。但假如吴英能够通过正常的渠道得到贷款,她还需要行贿吗?更应该谴责的是这个金融垄断体制和公权力不受约束的体制。

我们生活在一个不道德的体制下。这个不道德的体制让每一个人都染上了不道德的病毒,极少有人能幸免。更进一步,这个体制经常置我们于道德困境之中、甚至法律困境之中。稍有中国底层生活的经验,就不难理解这种非道德化或非法化生存状态。

曾几何时,你收听美国之音,你非法了。你举办一个舞会,你非法了。你雇佣的工人超过 8 个,你非法了。你贱买贵卖,你非法了。你把自己的奥拓开上二环路,你非法了。现在情况变了,很多原来违法的事情变得不违法了。但另一个角度也可以说,情况没变。你在城市打工没办暂住证,你非法了。你没办法准生证把孩子生了,你非法了。只能生一胎你却生了两胎,你非法了。阻拦强拆队伍毁坏你家房子,你非法了。发帖子批评官员,你非法了。为了讨薪你爬上立交桥,你非法了。在路边摆个摊儿卖烤白薯羊肉串,你非法了。没经过出版社自己印些书分发给朋友,你非法了。没经过公安登记而留宿外国人,你非法了。不放弃某一种气功,你非法了。你的孩子奶粉结石了,你站出来带头维权,你非法了。调查地震校舍质量问题,你非法了。越级上访,你非法了。自焚,你非法了。没死成活来下了,你非法了。在这片神奇的土地上,不非法你能活下来吗?

你的亲人生病了要做手术,不给麻醉师和医生红包,手术质量就要下降——有多少人选择不给?不通过关系给领导好处,孩子就上不了稍好一点的学校——有多少人选择不给?你或者你的亲人酒后驾车被抓住,有多少人首先想到按规定接受处罚而不是托关系说情?在有摄像监控和没有摄像监控的情况下,你遵守交通规则的程度有没有不一样?你有没有购买过盗版软件、光碟和书籍?你有没有答应上级领导的不道德的或者不合法的要求?你有没有享受亲属的或多或少的特权利益而沾沾自喜、毫无愧疚?面对重大的非法行径,你有没有选择沉默而不是挺身而出?我的一个熟人花钱买了一个驾照,我的一个亲戚通过提交假体检报告而提前病退,我的另一个亲戚通过关系享受低保待遇,尽管他穷,但周围很多比他更穷的、显然符合条件的家庭却得不到低保。低保指标腐败是全国性的,我知道。至于我自己,以下省略 2000 字……。几乎我们每个人都曾得到“非道德或非法”

的好处，同时更因这种普遍的“非道德化或非法化生存”而受害，但问题是，我们中有多少人接受甚至享受这种“非道德化或非法化生存状态”？

抛开案件证据本身，吴英不是完全清白的。你我也不是。我们不能太过幼稚和势利，在吴英有钱的时候，我们仇富，在她落难的时候，不闻不问、幸灾乐祸。我们每一个人都可能成为吴英。不，我们每一个人都是吴英。我们都是从过去那个体制下的幸存者，我们都希望活到我们希望的那种体制实现的时候。我们都从他人的受难中获利，我们没有成为牺牲者，仅仅是出于偶然。“总有人牺牲，只要别轮到我头上。”这些人往往话音未落，灾难就已降临。幸存者得到制度变迁的好处，但没有谁幸运到每一次都是幸存者。

五

吴英自己说，“也不知道多少人希望我死，多少人希望我活。”谁希望吴英死？吴英被刑拘后，为求立功免死，曾检举她所行贿的多名官员。其中荆门市人大常委会副主任李天贵、荆门市农业银行副行长周亮、中国农业银行丽水市灯塔支行行长梁骅均已经获刑。吴英的父亲透露，吴英在看守所中举报了另外 7 名官员。此外，一审前，东阳市政府十几名官员曾写联名信，要求一审法官判处吴英死刑。一审判决完后，这些官员又曾到浙江省高院，要求二审维持原判。

有网友例举了吴英被抓后的资产被处理过程的可疑情况：本色概念酒店，至少 5000 万，450 万拍卖；38 辆汽车，2000 多万，390 万拍卖；法拉利，375 万，去向不明；珠宝，7000 多万，去向不明；博大新天地商品房买断销售权定金，500 万，去向不明；希宝广场定金，500 万，去向不明；本色集团财务没收现金，75 万，去向不明；强行拍卖得款，500 多万，去向不明……这里面有多少猫腻？

吴英究竟检举了多少官员？姓甚名谁？多少金额？有无查处？哪些官员联名要求处死吴英？他们从吴英资产中获利多少？这些官员不正是做贼心虚吗？按图索骥有何困难？成功检举贪官属于重大立功表现，为何法院量刑时不予考虑？在这么多问题没有说法的情况下，匆匆忙忙判吴英死刑，不是杀人灭口又是什么呢？杀吴英或是一箭三雕：一杀鸡骇猴，恐吓民间资金流动，阻挠自由金融制度，维持垄断特权。二杀人灭口，埋葬吴英掌握的大量官员腐败的证据。三杀人夺财，重新上演屠杀资本家血腥一幕，不是化私为公，而是化私为官。

六

死刑是国家杀人。国家有权杀人吗？杀人杀错了，如何挽回？有哪一种司法制度能够 100% 避免判错死刑？死刑能威慑犯罪吗？统计数据表明，不能。杀人偿命？

这种同态复仇观早已过时，以眼还眼，举世皆盲。犯罪是社会的，不能把全部责任放在犯罪者个体身上，枪毙了事。这也是废除死刑的重要原因之一。把吴英案放在中国金融制度面临改革、司法制度尚不健全的大背景下，尤显废除死刑之必要。

全世界的大潮流是废除死刑。1977年，仅有15个国家完全废除了死刑，到2001年，在法律或事实上废除死刑的国家有108个，2010年则为139个。仍在执行死刑的国家在2009年仅有18个（2010年是22个）。全世界保留并且执行死刑的这一小撮儿国家里，绝大多数情况下死刑也仅仅适用于最严重的暴力犯罪。

中国是死刑超级大国。2010年除中国外的其他国家至少有527例死刑被记录在案，中国执行死刑的数字属于国家绝密，但据学者和人权机构估计，每年大约有8000人被执行死刑。但中国也在减少死刑。2007年最高法院收回死刑复核权。最高人民法院、最高人民检察院、公安部、司法部《关于进一步严格依法办案确保办理死刑案件质量的意见》（2007年）中提到，我国现在应逐步减少适用死刑，“凡是可杀可不杀的，一律不杀。”2011年废除13项非暴力死刑罪名。这些都是限制死刑的努力。

也许对暴力犯罪废除死刑，还有很长的路要走。但对所有非暴力犯罪，应该尽快废除死刑（目前中国仍有31项非暴力罪名可处死刑）。是以极刑维护畸形的金融垄断体制，还是以此为契机启动改革破除旧规？中国到底奉行慎杀还是滥杀，吴英案或成为一个检验。回首过去的司法实践，经不起时间检验的死刑案件太多太多了。确立杀人指标的“镇反”时代和抽疯式的“严打”期间，自不必说。近年见诸报端的就不胜枚举。无罪的聂树斌、滕兴善，杀了。正当防卫的好公民曹海鑫，杀了。发现尸体去报案的18岁小伙呼格吉勒图，杀了。基本上可以认定是精神病患者的邱兴华，杀了。喊了几句话的荆中秀，杀了。受刑讯逼供被黑社会的樊奇航，杀了。现在又来杀吴英。甘锦华案，疑点重重，死刑；承德陈国清案，子虚乌有，死刑；夏俊峰案，正当防卫，死刑；吴英，被控罪名根本不成立，死刑。——中国司法像“镇反”和“严打”那样，杀红眼了吗？

吴英案发生在不可阻挡的历史洪流之中。和我们一样，吴英是弊端重重的制度中的行动者。她听到死刑判决时的绝望和无助是我们每一个人的绝望和无助。我常常想象，在被押赴刑场的路上，与我同龄的聂树斌的内心世界。每一个人都有可能成为聂树斌。同样，吴英的生命也是和我们每一个人有关的。问题仅仅在于，这一次，我们有能力阻止司法成为谋杀机器吗？或者仅仅在于，我们的后代在回顾吴英案时，看到的是我们的呐喊呢，还是沉默？

2012年1月23日，正月初一

吴英被控集资诈骗案一审辩护词及二审裁定书

[浙江省高级人民法院](#) (2012-01-18)

吴英被控集资诈骗罪一审辩护词

[张雁峰 \(2009-04-16\)](#)

尊敬的审判长、审判员：

我们受吴英家属的委托和北京市京都律师事务所指派，担任吴英的辩护律师。接受委托后，我们进行了会见、阅卷和调查取证，参加了庭审，现依据事实和法律发表如下辩护意见，请法庭考虑。

我们认为，吴英的行为不能构成集资诈骗罪。

按照《刑法》第 192 条规定：集资诈骗罪是指“以非法占有为目的，使用诈骗方法非法集资，数额较大的……”由此可见，构成集资诈骗罪必须同时具备三个要件：一、以非法占有为目的，二、使用诈骗方法，三、非法集资。而被告人吴英的行为并不具备这三个要件。

一、吴英不具有非法占有目的

非法占有目的是行为人的一种主观心理活动，外人看不见，摸不着，无法深入其内心予以了解，所以其主观心理只能通过外化的客观行为来推定。具体如何推定，由于法律没有明确规定，所以司法实践中都是参照 1996 年 12 月 16 日最高人民法院《关于审理诈骗案件具体应用法律的若干问题的解释》（以下简称《解释》）和最高人民法院于 2001 年 1 月 21 日下发的《全国法院审理金融犯罪案件工作座谈会纪要》（法[2001]8 号，以下简称《纪要》）来认定。

按照《解释》的规定，以下 4 种情形属于具有“非法占有目的”：（1）携带集资款逃跑的；（2）挥霍集资款，致使集资款无法返还的；（3）使用集资款进行违法犯罪活动，致使集资款无法返还的；（4）具有其他欺诈行为，拒不返还集资款，或者致使集资款无法返还的。

按照《纪要》的规定，以下 7 种情形属于具有“非法占有目的”：（1）明知没有归还能力而大量骗取资金的；（2）非法获取资金后逃跑的；（3）肆意挥霍骗取资金的；（4）使用骗取的资金进行违法犯罪活动的；（5）抽逃、转移资金、隐匿财产，以逃避返还资金的；（6）隐匿、销毁账目，或者搞假破产、假倒闭，以逃避返还资金的；（7）其他非法占有资金、拒不返还的行为。

由于《纪要》的条款含盖了《解释》的条款，所以我们可以对照《纪要》规定的 7 种情形分析一下吴英的行为是否具有“非法占有目的”。因为其中的 4 种情形控辩双方没有争议，即吴英不具备非法获取资金后逃跑；使用骗取的资金进行违法犯罪活动；抽逃、转移资金、隐匿财产，以逃避返还资金；隐匿、销毁账目，或者搞假破产、假倒闭，以逃避返还资金等行为，所以我们只需要分析其他 3 种情形。辩护人认为，其他 3 种情形吴英同样不具备。

1.吴英不属于“明知没有归还能力而大量骗取资金”

公诉机关认定“明知没有归还能力而大量骗取资金”没有事实依据，因为如果不被绑架、不出事，未必不能偿还。公诉人称其“明知没有归还能力”犯了两个错误：一是客观归罪，二是主观臆断。吴英现在确实没有归还能力，但是这不能表明如果不出事就一定没有归还能力，更不能表明当初“明知”后来没有归还能力。因为“明知”是一个人对事物发展结果的确定性的评价，根据当时的条件和吴英作为20几岁的年轻人，不可能知道自己奋斗的结果就是失败。公诉人称吴英借款利息太高根本不可能通过经营所获利润还款，因为经营企业不可能有这么高的利润，2008年银行利润只有17.8%，这种说法是没有事实依据的。因为现实生活中，根本无法推断哪个行业究竟能够获利多少，如果按照公诉人所谓经营企业不可能有过高利润的理论，那福布斯评出的数百位亿万富豪就无法解释了。

2. 吴英没有“肆意挥霍”资金

所谓“肆意挥霍”指的是任意花钱、胡乱花钱，包括吃喝玩乐、建造豪宅、豪赌等，而吴英并没有这些行为，集资的款项绝大部分用于公司经营管理、购置房产、房地产开发、购买股权、购置汽车等，都是与生产经营有关的事业；有一部分用于归还本金和支付利息；只有一小部分用于购买珠宝，似乎属于“肆意挥霍”，但事实上购买珠宝也属于一种经营，所以虽然至今有巨额借款没有返还，但没有返还的原因并不是吴英将该借款肆意挥霍掉了，换句话说，吴英没有“肆意挥霍”资金。辩护人提交的多份证据几乎都证明了这个问题。

3. 吴英不具有“其他非法占有资金、拒不返还的行为”

这句话有两个关键词，一是“非法占有”，一是“拒不返还”。这里的所谓“占有”，按照《解释》第三条的规定以及法理，其不同于民法中的临时使用，而是指永久性地取得所有权；而所谓“拒不返还”按照法理以及参照有关立法解释、司法解释，应该指的是“有能力返还而不返还”。可是本案被告人吴英所借款项除了用于生产经营就是用于偿还借款本息，部分借款尚未返还，是由于种种原因客观上无力返还，而不是有能力返还主观上故意霸占不予返还，即属于“心有余而力不足”，并非赖帐不还。

二、吴英没有使用“诈骗方法”

按照《解释》第三条的规定，“诈骗方法”是指行为人采取虚构集资用途，以虚假的证明文件和回报率为诱饵，骗取集资款的手段。实践中，行为人经常采取的方法有：编造实际上并不存在的企业或者企业计划，伪造有关批件，以能够取得高回报的养殖、种植、生产产品等为名，骗取社会公众信任，使人相信其投入一定能够获得几倍几十倍的回报。而其实这些绝大多数都是子虚乌有。

吴英并没有伪造虚假的证明文件，没有编造实际上并不存在的企业或项目。借款时只是称做生意，或者称缺少资金，所以根本不存在虚构事实或隐瞒真相的行为。

三、吴英的借款行为不属于“非法集资”

按照《解释》第三条的规定，非法集资是指法人、其他组织或者个人，未经有权机关批准，向“社会公众”募集资金的行为。由于吴英的借款对象全都是亲戚朋友和熟人，而且《起诉书》只涉及11人，完全是特定人员，根本不属于“社会公众”。

关于认定集资诈骗必须符合向“社会公众”募集资金的条件，最高人民法院（2003）刑复字 170 号复核裁定也给予了肯定的回答。1999 年 2 月至 2002 年 2 月，被告人尹生华以虚构其做生意、归还欠款等为由先后骗取 41 人现金和财物共计 1000 余万元人民币，北京一中院判决其构成集资诈骗罪和票据诈骗罪；被告人上诉后北京高院维持原判；最后最高法院复核认为，其在诈骗相关财物时，不是以非法向社会公众募集资金为手段，其行为不符合集资诈骗罪的特征，所以将集资诈骗罪改判为普通诈骗罪。

可见，无论按照最高法院的司法解释还是复核裁定，只有向“社会公众”募集资金才能构成非法集资和集资诈骗；只要不是向社会公众募集资金，就不能认定为非法集资或集资诈骗罪。

四、吴英被指控的部分行为应为公司行为

吴英是本色集团公司的董事长，有的贷款是以公司名义进行的，有的虽然以个人贷入，但购买的财产包括厂房、设备、汽车等也确实用于公司，所以应当认定为公司行为，公诉人将所有行为都归到吴英个人名下，没有任何法律依据。

五、公诉人的指控事实不清、证据不足

按照《刑法》第 141 条的规定，人民检察院只有认为犯罪嫌疑人的“犯罪事实已经查清，证据确实、充分，依法应当追究刑事责任的”才应当提起公诉，可事实上，本案事实并未查清，证据并不确实充分，如集资款的数额、还款数额、集资款去向、吴英和本色集团现有财产的数额等都没有客观准确、令人信服的数字。第一、集资款的数额、还款数额有的只是按照当事人的陈述，没有客观、详实的证据；第二、集资款的具体去向也没有经过司法鉴定；第三、吴英和本色集团现有财产的价值所依据的是东阳市价格认证中心做出的结论不客观、不公正、不准确、不全面的（2008）第 244 号《鉴定结论书》（鉴定书本身的问题在法庭调查时已经质证，这里不再赘述），律师曾书面申请东阳法院委托重新鉴定，但未被准许。2009 年 4 月 2 日律师又申请金华中院对吴英借款的准确金额（剔除不受法律保护的高额利息、剔除借据中所含利息、剔除被杨志昂绑架时的假借条所涉金额等）；吴英借款的资金流向，即哪些用于公司经营、哪些用于还款、哪些用于所谓个人挥霍等；吴英和本色集团的财产价值，包括对违规拍卖的财产重新评估，对购买的房地产现值等进行司法鉴定，但未获批准。

显然，公诉机关的指控事实不清、证据不足，按照《刑事诉讼法》第 162 条的规定，应当作出无罪判决；而且，辩护人有充足证据证明吴英不符合集资诈骗罪的构成要件。见下表：

证明内容	出处	证人证言

吴英不存在明知没有归还能力而大量骗取资金情形	吴英侦查卷十一	方鸿（集团总经理） P52 做期货吴英亏了几百万是有的，总的来是亏的。（证明经营亏损不属于明知） 吴英让我在湖北荆门市关注荆门大酒店和京都大酒店，吴英有意收购这两个酒店，因为这两个酒店存在职工安置问题，我们一直在等荆门市政府对这两个酒店的拍卖公告，等拍卖公告一出来我们就开始正式洽谈收购的事情，但这拍卖公告到 2006 年 9 月份都一直没出来。（证明努力经营）
	辩护人证据	蒋辛幸、周巧、徐玉兰证言（内容略）。
吴英没有肆意挥霍资金	辩护人证据	蒋辛幸、吴喆、周巧、杜沈阳、徐玉兰证言（内容略）。
吴英没有使用诈骗方法	吴英侦查卷四	<p>杨卫江 P10 借钱的时候我问过她的，他说是义乌千足堂资金不够，600 万的时候是吴英她讲要到广州去炒店铺，450 万的时候我没有问过她钱借去干什么，吴英也没有和我说钱用在什么地方。 叶义生 P19 杨卫江打电话给我，问我有没有资金，他有一个朋友叫吴英的，要借钱，我说那要先见个面.....她来了之后问我有没有钱，并说要付利息的，并问我要多少利息，我说两三分就可以了，吴英满口答应了。 P21 问：你为什么要钱借给吴英？ 答：主要是想赚点钱，另一个考虑本色名气很大，我想她发展起来，将来也可以帮助我。 问：吴英向你借钱有无说过何用途？ 吴英说是搞酒店、搞贸易。</p> <p>龚益峰 P85 过了 2005 年的春节后的正月，我与杨志昂、吴英三个人就到广东省广州市去考察了一个市场，.....当初吴英是说她要去投资这个市场，需要向我们借投资款，所以我就和她与杨志昂去了广州，想去证实一下有没有这个市场。</p> <p>P86 当初吴英提出来说是要与我们合作投资的，但是后来我想将资金给她由她操作，又放心不下，所以我后来又将以借款给她的方式给她。</p>
	吴英侦查卷	周忠红 P6 她只讲做生意，我和妻子也没去问她做什么生意.....吴英也没讲拿去干什么，只讲是拿去做生意的.....P10 问：那你怎么会将这么多钱借给她的？ 在我没有去

	六	本色公司上班前，我们是想帮她一下，以后也可以借用她的平台发展，上班后我是想从她那有机会时划块业务来做的。所以我会借钱给她。周忠卫（周忠红弟）P10.....扣车后，我也问忠红，问什么这么多钱借给本色，还不收利息的。他讲：想把本色扶起来，好弄点土建或工程做。
	吴英 侦查 卷七	毛夏娣 P78 问：吴英向你借款时是怎么说的？吴英第一次给我打电话是在 2005 年 9 月份，当时她在湖北荆门，她说她在做石油生意，问我是否要投资。后来她回东阳后，又打电话约我到东阳，陪我看了她的公司及各处房产后，我开始相信她的实力，后我同意将钱投资到她的公司。
	林卫 平等 人讯 问笔 录二 册	林卫平 P21 问：你与吴英如何认识？2006 年 3、4 月份通过杨卫江介绍认识的，关系一般。问：那她怎么向你借钱？那段时间，我在北京有一批铜的生意，因我听说吴英在做铜生意就打电话给她，她赶到北京看了后对我说做现货风险太大，还是跟她做铜期货好了，我相信了她，就跟她做期货，把钱借给了她。
	杨志 昂证 据卷 二	杨志昂 P14 其实是楼恒贞把钱给我，叫我去放贷的，他不吃亏，我也不吃亏。.....因为我放贷的对象不只是吴英一人，其他人也有的。我们是搞滚动开发的。（P19、21 利息万元每日 50 元，但借楼恒贞、朱兴良等利息万元每日 10 元）
	辩护 人证 据	蒋辛幸、徐玉兰证言（内容略）。
吴英 借款 对象 均为 亲戚 朋友， 不属 于社 会公 众	吴英 侦查 卷五	蒋辛幸 P2—3 我是本色集团的常务副总经理.....和吴英的丈夫周洪波是多年的朋友.....P6（蒋借别人的钱）我和吴英说时都是以我的名义投资的，因为这个事情吴英只和我一个人说起来，当时就只有我和吴英在吴英办公室谈的。如果让吴英知道我是帮朋友投资的，他可能不会同意我投资，当时我是这么想的。.....我和徐滨、包来等人闲聊说起此事的，他们听了后都很兴奋，叫我帮忙的，我才把他们的钱给吴英的。P9 徐滨滨、包来的这 250 万元是以我的名义借给吴英的，因为徐滨滨、包来和吴英的关系不是很熟悉，他们自己怕把钱拿给吴英，吴英不接收，所以就叫我帮忙的。徐滨滨 P19 蒋辛幸来跟我说，问我想不想放点钱到本色集团里投资分点红利，我就让他帮忙，之后我就回去准备资金。P20 问：吴英

		知不知道这笔 100 万元的资金是你的？吴英应该不知道.....
	吴英 侦查 卷六	周忠红 P2 本色集团董事长助理.....吴英与我妻子杜云芳关系较好的，吴英在美容店里做学徒时就和杜云芳认识的。
	吴英 侦查 卷七	毛夏娣 P78 我和吴英在七、八年前就认识的，当时吴英在溪口开过美容店的。
吴英借款用于公司经营，吴英的行为属于公司行为	吴英 侦查 卷十一	周洪波 P11 问：公司里有多少车子？大约有 30 几辆。.....问：公司这些小车都是哪些人在用？公司部门经理们在用。买来的房产都是在公司的名义的..... 周巧（公司出纳） P31 问：本色集团控股有限公司下属有几个部门？有办公室、人事部、保安部、工程部、建材部、后勤部、广告部、设计部、布兰奇干洗、正道汽车美容、本色网吧、本色概念酒店、财务部、采购部。 吴喆（集团副总） P90 问：现在本色集团主要有哪些下属企业？共注册成立了 7 家子公司，分别是：1.本色广告公司，2.本色洗业管理公司，3.本色电脑网络公司（虽已注册但未开始运作），4.本色酒店管理公司，5.本色装饰材料公司，6.本色婚庆公司（虽已注册但未开始运作），7.本色物流公司
	辩护人 证据	蒋辛幸、吴喆、周巧证言（内容略）。
借据金额未必属实（即含利息）	杨志昂 证据 卷二	P14 问：按你讲，你把最后一次现金 680 万元借给吴英，吴英给你出具 800 万元人民币的借条，那日后过半个月时，那时与你的利息是全部结清了，是吗？答：是的，是全部结清了。

综上，吴英的行为完全是一种民间借贷行为，虽然有诸多不规范之处，包括超出法定的贷款利率，侵犯了金融管理秩序，最终造成巨额款项无法返还，但是即使如此也并不必然构成犯罪，仍属于民法中的民间借贷纠纷。因为其没有“以非法

占有为目的，使用诈骗方法非法集资”，其行为不符合《刑法》关于集资诈骗罪的规定，依照罪刑法定的原则，起诉书对其犯罪指控不能成立，所以请求法院对吴英做出无罪判决。

谢谢法官！

辩护人：北京市京都律师事务所律师
张雁峰

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Will Wu Ying be sentenced to death for borrowing money?

[China Entrepreneur](#) (2011-11-01)

Wu Ying rose from being a poor peasant to one of the richest women in China. But at 30 years old, she sits in jail awaiting the death penalty for borrowing money from private lenders – a common but technically illegal practice. Many people wonder, who did Wu Ying anger to get this fate? And will society benefit from her execution, or from reforming and regulating its private lending laws? China Entrepreneur traces the shady twists and turns of her arrest, trial, and the divvying up of her wealth by local officials.

By Cai Yu, China Entrepreneur magazine

This article is reprinted from the November 2011 English iPad edition of China Entrepreneur. In January 2012, the High People’s Court of Zhejiang province upheld Wu Ying’s death sentence, prompting a surge of comments on China’s microblogs. The sentence is still subject to review by the Supreme People’s Court.

Wu Ying, once one of the most successful business women in China, has spent five birthdays behind bars. Local officials are selling off her business holdings. She is only 30 years old, but has been sentenced to death penalty for borrowing money outside official channels to fund her business, a common but illegal practice that even government officials take part in.

Her fall came as fast as her rise. In 2006, this young woman from Dongyang, Zhejiang province, became a star in the business world overnight. She started eight industrial corporations almost at once, investing hundreds of millions in the hotel, wedding planning, real estate and logistics industries under the banner BenSe Group. (BenSe means “original color” in Chinese.) Wu Ying was estimated to have 3.8 billion RMB of capital, according to the Hurun Report that year. The source of her wealth became one of the biggest mysteries in the business world of China.

Ten months later, in February 2007, Wu Ying was arrested for “illegally absorbing the savings of the public.” She was sentenced to death in 2009, and appealed to a higher court in 2010.

In 2008, she faced new charges, “fraud through illegal funding.” During her trial for these charges in 2011, she said she was innocent, but admitted guilt to the earlier charge of “illegally absorbing the savings of the public.”

The verdict is still up in the air. Will her death sentence be changed or not? Wu Ying is waiting, so is her family, and her creditors, as well as unknown powers hidden in the shadow like ghosts.

“More people believe Wu Ying will be exempted from death penalty at the trials of the second instance. As her counsel for defense, I share this estimation: The second instance, no problem. It’s been three months since the court debate and there is still no result. This means that the court can’t reach a verdict internally. I’m afraid there are significant differences of opinion on this case,” says Yang Zhaodong, Wu Ying’s attorney, one of the partners of King & Capital Law Firm. Yang has chosen to defend Wu Ying in both instances.

The Research Bureau of the Central Bank conducted two reports on private lending, in 2008 and 2010, and found that the value of private lending in China perhaps exceeded 240 billion RMB, 5.6% of the lending market. In Zhejiang, Shanxi, Inner Mongolia and other provinces with active private lending, supervision of the authorities can’t keep up with the speed of capital flow and innovative ways to pursue profit. The reports found a growth of 28% of private lending in China between 2008 and 2010. Clearly, inflation rates

that outpace the interest rates offered by official banks and the liquidity of the past two years have made the demand for private lending even larger.

Wu Ying's case has reflected the dilemma that small and medium enterprises in China are currently in, with the narrowing of the funding channels and a system still under development. When Wu Ying found no support from official financial institutions, she turned to private lending, a gray area that falls outside the supervision of the authorities. The final verdict in her case will directly impact private enterprises and private lending, and become a key precedent.

The most important question for businessmen is not whether Wu Ying is given the death sentence, but rather whether the debtor and creditor in a private lending arrangement have committed any crime as they practice outside the financing and credit system of the authorities.

“In terms of law, this case is rather clear. In terms of social influence, why is it so important to kill her, a young girl who has encountered problems in her business? What social effect would it bring if she were sentenced to death or sentenced heavily?” asks Tian Wenchang, director of King & Capital Law Firm, a confidant of Wu Ying from the law firm that is defending her.

What is more important: to make Wu Ying a sacrifice on the altar of control over private lending, or to lift the ban on private lending which is already a common practice? The best result would be for Wu Ying's case to draw the attention of decision makers, and make them more aware of the current underground financing conditions and regulate the market.

Who wants Wu Ying dead?

Dongyang falls under the jurisdiction of Jinhua city. Like other cities and counties in Zhejiang province, private lending is so active here that even government officials get involved.

The two biggest industries in Dongyang are wood carving, and the Hengdian Film & TV studio. Dongyang is a forty minute drive from the much more prosperous Yiwu city.

Wu Ying's father Wu Yongzheng, her husband Zhou Hongbo and many creditors share one belief about this case: Wu Ying is in trouble because she has picked the wrong place at the wrong time. They say her fall is not caused by private lending, but by her shaky foundation of powerful connections in Dongyang.

"You have no idea how common it (private lending) is in Dongyang. There are so many investment companies in Dongyang, and if this is a crime, then half of the people in this field should be put to jail," a female creditor said. She believed that Wu Ying did nothing wrong by borrowing money from people. "She is just too young. Those who have expertise in this are still safe no matter how much money they have borrowed."

"Dongyang has made a lot of efforts to attract investors, but few chose to stay, because the business environment is no good here," Wu Ying's husband Zhou Hongbo said during a phone interview. He said that he was strongly against Wu Ying's idea of trying to grow her businesses in Dongyang, because he believed that she was too weak to compete against the local powers.

Wu Yongzheng says that his daughter told him that she was threatened for refusing to pay bribes to the Lou family, which he calls the local power that has dominated Dongyang for years. He remembers the threat as if it were a line from a gangster film: Somebody said, "who cares Wu Ying is making so much noise now? Sooner or later I'd have her kneeling down before me."

Wu Ying's father asserts that the Lou family played an important role in the kidnapping of Wu Ying by creditors in 2006, her arrest, and the low-price auction of her BenSe Hotel after her arrest.

On July 14, 2011, Guangxia Holding Venture Capital Co., Ltd claimed that the Lou Zhongfu family had nothing to do with Wu Ying's case. It added that the family has not been involved with the division of Wu Ying's assets after Wu Ying was arrested. It condemned Wu Ying's father for concocting rumors. In response, Wu Yongzheng said, "They said they'd preserve the legal rights to sue me, and I'm looking forward to it." (China Entrepreneur tried contacting the Guangxia group, but their response was always the same: the man in charge was overseas.)

In 2010, Wu Ying accused ten local officials and bank managers of taking bribes from her. Based on her written materials, Li Tiangui, former director of the People's Congress of Jingmen city, Hubei province, and Zhou Liang, former vice president of the Jingmen branch of Agricultural Bank of China, were arrested.

Someone told Wu Ying's father that before Wu Ying's first trial, over a dozen employees of the Gongyang municipal government wrote jointly to the judge, requesting Wu Ying to be sentenced to death. Wu's father asked the judge whether this was true, but got neither confirmation nor denial. One of Wu Ying's confidants, who asked to keep her identity secret, said, "I just hope they don't kill Wu Ying. If she gets acquitted, many people will go down."

Kidnapped

Wu Ying wrote in her appeal to the higher court that she was kidnapped by her creditors Yang Zhi'ang and Yang Weiling for 10 days at the end of 2006, and that Yang Weiling's wife, a governmental official of Yiwu City, was also involved in the kidnapping. Wu Ying wrote that when she came to the Public Security Bureau to report the kidnapping after she was released, she was told there was no case. When she came back to the BenSe Hotel where she often stayed, a threatening letter with two bullets was at the front desk waiting for her.

On Feb. 4, 2007, Wu Ying was about to board the flight back to Hangzhou at Beijing Capital Airport when she was arrested by officials from the Dongyang Public Security Bureau, starting her four-year imprisonment. Recalling how she was arrested, she had many questions and doubts. At Beijing Capital Airport, the Dongyang Public Security Bureau showed no relevant legal documents. She was arrested and taken directly to the Jinhua Detention House, with the case registered using a false name and a false charge: "Zhu Suzhen, 50,000 RMB fraud." Not until three days later did the Dongyang Public Security Bureau issue a warrant of arrest for absorbing savings of the public.

Someone who had access to Wu Ying said that at the detention house someone tried to send some negative signals to Wu Ying by telling her, "There is no hope to change the verdict on your death sentence. Don't make efforts in vain." This put Wu Ying in despair. On June 29, 2010, Wu Ying drank more

than half a bottle of industrial glue after discovering prison officials read her written materials exposing her bribery of the governmental officials.

Wu's father says that in September 2007 Wu Ying sent him a postcard from detention house, authorizing him to be her representative to handle all affairs of Bense Group and Wu Ying's case. He turned down Dongyang Public Bureau's request to auction off the assets of BenSe Group temporarily held by it. Wu Ying's lawyer handed in letters repeatedly, requesting Dongyang Public Bureau to cancel the auction because it was illegal. However, these efforts didn't stop the Dongyang Public Bureau from auctioning off cars, furniture and the BenSe Hotel at a low price.

In April 2009 the first court hearing of the first charges took place, but Jinhua Intermediate Court didn't show Wu Ying the 50 pages of records of the court hearing until December. Wu Ying immediately found that the records did not match what was stated in the court hearing, so she refused to sign. After repeated efforts to persuade her, she finally signed: "I hereby certify that I've read the above written records, but as it's been too long since the court hearing which involved in too many issues, I can not remember everything clearly. I would confirm nothing but the video and audio record of the court hearing."

On Feb. 10, 2007, the local government of Dongyang city made an announcement through the local Dongyang TV station that the BenSe Group would be closed and its more than 1,000 employees dismissed. An asset audit team would be formed to take care of the assets of the Bense Group as well as its debts.

Back on the street where BenSe Group was located, Wu's father showed China Entrepreneur that the BenSe internet bar and the BenSe Construction Materials City were both closed, the windows and doors were shut and the computers and construction materials were all gone – where to? That is a question with no answer. He questioned, "Why did the government make an announcement about a case still in court?"

On June 29, the Dongyang Public Security Bureau explained in an interview with the China News Agency that the reason to auction the automobiles of BenSe Group was that many creditors, mostly people from the

wealthy nearby city of Yiwu, came to them repeatedly, urging the police and the government to auction them as soon as possible.

Lin Weiping, Wu Ying's major creditor in Yiwu, denied this. He said, "First of all, the Dongyang government has set up an investigation team, and before they come to any conclusion, we won't say anything. Second, our own assets were sealed up by the Public Security Bureau as well."

He said the Dongyang Public Security Bureau told him to persuade the imprisoned woman's other 70 creditors to come in and sign a document as a condition to lift the seal on his assets. Lin said no. "Obviously, it is impossible." — Because no creditor wanted to disclose their true identity and risk being imprisoned.

Big Cousin

Wu Ying was born to a peasant family in Dongyang in 1981. She was the eldest of four girls. After she finished junior middle school, she went to a high school for professional training, but didn't graduate. She worked as an apprentice at her aunt's beauty salon. In 2002, she started her own. Her wonderful skills and her open and generous personality attracted many important clients, and her business became very successful.

In 2002, she was engaged with Zhou Hongbo, a local young man. By 2004 when they got married, she had already owned many businesses, including beauty salons, KTV night clubs, foot massage centers and clothing stores. After she was arrested, she told the police that her total assets in 2004 were as high as 25 million RMB. Had Wu Ying decided to stop then, she could have retired early and played mahjong every day while earning profits from her businesses. However, she was dreaming big.

At the end of 2005, a friend introduced Wu Ying to Luo Huamei from Yiwu, and then to Lin Weiping, who would become a major creditor. Lin Weiping had access to hundreds of millions of renminbi. Wu Ying called him "big cousin."

Lin Weiping is an ordinary looking man in his 40s. He looks as if he's been through a lot, but by no means cunning or aggressive. Before strangers, he seems rather shy. In short, he doesn't have the air of a "banker".

“We are engaged in financing.” Lin Weiping said. “This relies on credit. This is not a mafia business.” In 2010, there was more than 150 million RMB worth of private lending in Zhejiang province, and people like Lin Weiping control this huge pool of funds.

In 2003, Lin Weiping, then a public servant of the Yiwu Cultural Bureau, started a factory to make socks and stockings. In 2005, he resigned from his government position and began to focus on his business. In order to keep his business running, sometimes he had to borrow money from his friends and his friends would borrow from him too. In the beginning, they wouldn't charge each other interest. Later on, they decided to pay interest to each other whenever a loan was given instead of paying with gifts and favors.

Lin Weiping learned in this process about the importance of funding. He closed down his factory and became a funding coordinator who knew how to pool money from his family, his friends, his former colleagues and business partners and give loans to those in need. He made money on the difference in interest rates between borrowing and lending.

Yiwu is a wealthy city where Lin Weiping did not have to worry about the source of funds. As he built his reputation in financing, some friends came to him, asking to be part of his profitable business. Some people trusted him so much that whenever they had some spare money, they'd immediately send it to Lin's bank account without even talking about the interest rate.

“Sometimes I don't even know when they put the money into my bank account,” Lin Weiping said. The transactions were all based on mutual trust and credibility.

Lin Weiping paid creditors a monthly interest rate varying between 2 to 5 percent. “When capital is tight, the creditor would ask for a higher interest rate. But sometimes when you only lend the money out for a few months, he'd be unhappy. Creditors preferred long-term clients with a lower interest rate.”

Lin has his own principles for lending money: no drugs, no gambling, no money laundering. He liked debtors engaging in industry, in other words, things that could be seen.

With governmental policies favoring loans to large state-owned enterprises, commercial banks were not flexible enough to meet the needs of medium and small enterprises and individuals. This left Lin Weiping and many other private lenders a huge market space. For local people who are in need of capital, bonding and consulting companies, pawn shops, enterprises and individuals are all potential sources of loans. In this way, the official financing institutions became secondary to private lending in the local market.

During the accounting period at the end of a month or a year, the local banks in Yiwu or even other cities would even turn to Lin Weiping, their competitor, for loans to keep their business running. Lin never dealt with such transactions directly. Usually, he'd ask one of his creditors to open up a private bank account in the bank, and deposit the money in it, but only for one day. When a bank was extremely tight for money, it would be willing to pay 10,000 RMB for every deposit of 1 million RMB.

Lin Weiping rarely allows money to flow out of Yiwu. However, at the beginning of 2006, he made an exception when his cousin Luo Huamei took Wu Ying, a 25-year-old girl, to visit him.

Wu Ying said she intended to borrow 10 million RMB to start a financing company in Zhuji, Zhejiang. She invited Lin Weiping to go and see this project. She said she also needed money to do futures speculation. Luo Huamei told Lin Weiping that this girl was doing very well in Dongyang and she had 20 to 30 million RMB under her name.

Lin Weiping did some careful thinking. "Those with more than 20 million RMB don't have to take big risks. Since her company was doing so well already, she did not have to take on any projects unless she had total confidence." Lin didn't give her a loan to do futures, but he did go to Zhuji with her to see the project. After verifying that this project did exist, he lent the money to her. Ten days later, Wu Ying paid it back to him as promised.

In April 2006, Wu Ying came to see Lin Weiping with the news that she had found a tourist development project in Jingmen, Hubei province, that would need an investment of 200 million RMB. She wanted to borrow 300 million from him. (In Wu Ying's written appeal to a higher court, this number

was raised to 400 million RMB.) Wu Ying said that Zhou Liang, vice president of the Jingmen Branch of the Agricultural Bank of China, introduced her to Li Tiangui, secretary general of the municipal government of Jingmen, who promised to support her purchase of the Jingmen Hotel and help her develop real estate in Jingmen.

Wu Ying seemed to have a golden future ahead of her. At the time, she had borrowed nearly 130 million RMB from Lin Weiping and other creditors, and paid it off.. She had more than 25 million RMB under her name. Now she began to dream of starting her own group.

Lin Weiping checked his account bank. He had capital returning to his account, and his creditors were not intending to withdraw the money. He thought it would make sense to lend it to Wu Ying.

Between June and September 2006, Lin Weiping gave Wu Ying several loans worth a total of nearly 43 million RMB. Behind these loans were six creditors, both individuals and business entities. Lin warned Wu Ying repeatedly, “No matter how many projects you are investing in, you must tell me honestly. If you are short of money, I will try to solve it for you. Just don’t try to borrow money from others blindly.” According the rules of the private lending industry, creditors keep their clients and their businesses confidential, and forbid the debtors from mortgaging one asset to get several loans from several creditors.

The interest rate on the loans remains a mystery. According to the verdict of Wu Ying’s first trial, Lin Weiping gave the monthly interest rate as 12 % on a loan of more than 400 million RMB.

Wu Ying denied this statistics. She wrote in her appeal to a higher court, “My investments and businesses came from the loans Lin Weiping gave me. A yearly interest rate of 3%, which is a rather low cost for me. I think it is normal to borrow money from friends to do business.” Lin Weiping confirmed to the reporter that he gave Wu Ying a very low interest rate. “I told her, ‘As long as you do it well, I don’t mind making less profit in interest, ’” he said. “Just focus on your industrial businesses. Even if you end up losing money in your enterprises, I will still support you.”

Even after Wu Ying was arrested, Lin Weiping refused to accuse Wu Ying of “fraud.” He believes that the money he lost lending to Wu Ying was a strategic mistake, and a risk he had to face in his business of “financing.”

Asset bubble

After some time had passed, Lin Weiping suddenly learned from the local newspaper that a billionaire in Dongyang had purchased more than 700 shops in Dongyang Century Commerce City with 200 million in cash, purchased more than 20 high-end cars at once, paid 500,000 to 1 million annual salary to the managers of various departments and even paid the exceptionally high monthly salary of 2,100 RMB to her security guards. She offered free service in her car wash and dry-cleaning businesses.

Lin Weiping couldn't believe what he read. He immediately called Wu Ying. “What on earth are you doing? Didn't you say that you'd invest the money in Hubei?” Wu Ying said that the decision makers of the government of Jingmen, Hubei Province, were to send a team to Dongyang to investigate the power of BenSe Group, and she was merely demonstrating her power here. At the end of October, , Wu Ying invited her contacts at the Jingmen Agricultural Bank of China and the Jingmen municiple government to Dongyang in order to move forward with the Jingmen project.

But Wu Ying had bitten off more than she could chew. Between July and September 2006, she purchased and rented many properties surrounding BenSe Commerce and Trade Corporation, registering a lot of companies under the name of BenSe. Her businesses included automobile repair and maintenance, laundry cleaning, advertisement, hotel management, Internet bars, construction materials, wedding planning and logistics. Very quickly, she has created from nothing a “BenSe Street.” In July, she spent 21 million RMB to purchase 55% of the shares of Boda Garden, a real estate project in Dongyang, and paid a 5 million down payment to purchase the sales rights of the commercial buildings of Boda Xintiandi. Her main creditor Lin Weiping said later that “she perhaps has lost control.”

“She is in denial, which makes me very unhappy,” Lin Weiping said.

Lin Weiping's doubts didn't escape Wu Ying's notice. So she made a choice her creditors in private lending detested: Starting from August, she began

to secretly borrow money from Yang Zhi'ang, Gong Yifeng, Yang Weiling, Yang Weijiang and other private creditors as well as her sworn-sister Xu Yulan. The loans were worth tens of millions each, and the daily interest rate was 4‰ to 5‰. She did all this without telling Lin Weiping. Starting from April 2006, Wu Ying borrowed a total of 720 million RMB from 14 creditors in Dongyang and Yiwu, including Lin Weiping.

Wu Ying's name became famous overnight in China. People were surprised as well as confused. They began to ask questions. In November, Wu Ying, while deeply indebted, explained to the media that she became rich because of three things: beauty salons, buying and selling properties, and futures speculation. She claimed that most of her funding came from the futures speculation.

The creditors realized at this point that this young and wealthy woman was tight for cash. They began to urge her to pay back her loans, which soon dried up her pool of funding. Then came her kidnapping.

Wu Ying said in court that she was kidnapped by her creditors Yang Zhi'ang and Yang Weiling, who forced her to travel with them to Ma'anshan in Anhui province, Zhenjiang in Jiangsu province, and Wenzhou and Hangzhou in Zhejiang province. She says they forced her to sign more than 30 blank documents and a check for 3.3 million RMB. She also says they stole from her several bank cards and about half a million RMB worth of jewelry and cash. She says they took the stamps and license of her company, and finally forced her to write receipts and authorization documents for the things they had taken.

On December 28, Wu Ying's cousin Luo Huamei tracked her down. She travelled to Zhenjiang to pick her up, and accompanied her back to Dongyang. Lin Weiping had a different interpretation of this incident. "I told Wu Ying at the time, 'You're partly responsible (for the kidnapping) too. Whether you have money or not, you need to be honest with your creditors. When they come to collect their money, you can't keep telling them lies and keep them waiting without knowing when they can get their money back. It was you who turned them to cornered beasts.' "

Wu Ying came home safely, but the news had already spread around Dongyang. The day she returned home, someone leaked to the financial media that BenSe Group was suffering from tight cash flow. The Dongyang Branch of Industrial and Commercial Bank of China urged her to pay back a loan of about 10 million RMB. Even the more than 1,000 employees of BenSe Group became anxious – they didn't get their salary on their pay day, January 10.

Wu Ying once again turned to Lin Weiping. She said she had no money to pay her employees, and asked for a loan of a few million in cash. Knowing that it would cause the BenSe Group to collapse if she had no money to pay her employees, Lin Weiping gave her a loan for the final time.

At this point Lin Weiping realized that Wu Ying was too young to make this game work. In order to minimize the loss, Lin Weiping convinced each and every creditor in Yiwu to support him to buy Wu Ying's debt package at 70% of its value. Wu Ying didn't take the offer. She was busy try to bribe and persuade Liang Hua, president of Lishuidengta Branch of the Agricultural Bank of China, to give her a loan.

On Feb. 4, Wu Ying was arrested. However, because the Dongyang Public Security Bureau didn't show any judiciary documents at her arrest and registered with a fake name when throwing Wu Ying into the detention house, nobody, including her father Wu Yongzheng and her major creditor Lin Weiping, knew where she was.

Five days later, Lin Weiping and Wu Ying's cousin Luo Huamei were arrested on criminal charges by the Dongyang Public Security Bureau. The next day the Dongyang government announced on Dongyang TV that an asset audit team would be formed to clear the assets and debts of the BenSe Group. This was followed by the arrest of other creditors.

Lin Weiping was sentenced to six years in prison, and was released on parole last August. His assets – four cars, three villas and cash – were still frozen. He talked with his creditor friends and promised them that whatever he got back from the debtor, he'd split with everybody fairly.

Lin Weiping said that he would never touch "financing" again. "Financing is different from any other profession. This case made me lose face." Currently

he is living in an unfurnished apartment a former creditor lent him, and in his spare time he studies traditional Chinese medicine and culture. He said he “neither loves nor hates Wu Ying” and he wishes her good luck.

The verdict

In January 2009, the Public Prosecutor’s Office of Jinhua city brought Wu Ying’s case to the Intermediate Court of Jinhua city, with the accusations changed from “illegally absorbing public savings” to “fraud in funding.” During the court hearing on April 16, 2009, Wu Ying, after two years in detention, seemed as unbending as before. She defended herself by saying, “It is true I’ve been doing business with borrowed money, and it is also true that I paid high interest rates. But I never meant to cheat them over money. I used the money on the business of my company. Had I not been arrested, I believe I could pay it all back.” When the prosecutor questioned her abilities to manage so many companies under her name, anger was apparent on her face. She rebuked, “On what grounds do you say that I have no such abilities?”

In December 2009, the Intermediate Court of Jinhua City came to a verdict that Wu Ying was guilty and she was sentenced to death with all of her political rights being deprived and all of her personal assets seized. In January 2010, Wu Ying appealed to a higher court.

The trial for the second charges didn’t take place until April 7, 2011. “I believe I am not guilty of fraud through funding. But I admit that I am guilty of illegally absorbing public savings,” she said with a low voice after the judge allowed her to defend herself.

This trial was the first time Wu Yongzheng saw his daughter in two years. He was very emotional when he heard her say these words. He told the reporter in the interview after the court hearing, “When I heard such words from her, I wish I could slap her in the face if I was allowed to do so. As a human being, you can’t admit to what you’re not guilty of. If she pleads guilty of this crime, I’d rather her dead. A girl without pride does not deserve to be my daughter!”

Throughout his whole life, Wu Yongzheng had to deal with all sorts of lawsuits. He never yielded to any power, nor would he show his weakness to anyone. Inside the closet next to his bed, he has kept documents concerning Wu Ying’s

case. He regularly took the original documents out for photocopying, but he almost never went to the government and the Public Security Bureau of Dongyang City. In his mind, he would not beg for mercy.

Wu Ying has her father's personality, only with more generosity and ambition. When she was busy with her beauty salon and traveling between Guangzhou and Dongyang, she swore that she'd bring the verve and modernity of Guangzhou to Dongyang. This July, when Wu Yongzheng walked along the former BenSe Street in Dongyang with a China Entrepreneur reporter, he said proudly, "Wu Ying has a much smarter business brain!"

"See, some people in Dongyang are creating large, multi-functional entertainment cities. In many places in China, people are experimenting with conceptual hotels. All these were Wu Ying's ideas a few years back!" The young man who worked as driver and guide that day used to be a general manager of the entertainment department of a five-star hotel in Yiwu. Attracted by Wu Ying's ideas, he joined in a large, multi-functional entertainment city project of

BenSe Group. He said with a longing look on his face that if Wu Ying was released, he'd still follow her. "She has ideas!" he said.

Wu Ying's lawyer, Yang Zhaodong, summarizes Wu Ying's character this way: ambitious, bold, unaware of risks, typical young person born in the 1980s. He sees Wu Ying as a girl who wanted to achieve big things. "But whatever she does, she is only thinking of the factors that would lead to success, not the factors that would bring her down."

During her four years in prison, Wu Ying has sent out all sorts of written materials – appeals, accusations and stories about how her cell mates were neglected when physically weak and vulnerable. She wrote how a kind-hearted cellmate was locked up in solo cell because she delivered a bag of candy to a criminal facing the death sentence. She wrote about how her cell mates suffered under the unbearable heat.

Her lawyer Yang Zhaodong also believes that another factor causing Wu Ying's failure was her choices of employees. "She has such a huge enterprise, but all the management were about her age. She didn't have more stable and

more mature people to be her advisers. She made bad judgments of people sometimes.”

When she was first confined, Wu Ying was rather optimistic about her future. She wrote to her family in October 2007, “I will reform myself peacefully and try to get out of here as soon as possible. You must have faith in me that I have a more wonderful road ahead of me.”

Isolated from the huge pressures from her businesses and her debts, she soon became an ordinary girl who had a strong desire to remain beautiful. She often asked her family to bring her skin care products, cuticle remover gel and bitter melon capsules.

However, after four years of waiting and detention, Wu Ying’s optimism and ambition wore away.

In detention, Wu Ying asked her sister in a letter to express her gratitude toward Wu Ying’s husband. She wrote, “I know my relationship with him is over. Just like a kite with a cut string, our attachment is no longer there. I am very grateful for what he did for my case. He has endured so much more than I did.” Today, Wu Ying’s husband Zhou Hongbo keeps busy with his own business, trying to keep a distance from anything related to BenSe Group and Wu Ying.

In 2010, after submitting her written appeals to a higher court, Wu Ying fell into long and hopeless waiting. Despair struck her and she almost reached the point of mental breakdown. She withdrew her appeals and refused to believe anyone, not even her father. The only person she wanted to see was lawyer Tian Wenchang. Wu Yongzheng begged Tian Wenchang to go and see her at Jinhua Detention House. Tian did, and he spent hours trying to console her.

“She is a girl in her twenties. After she was sentenced to death and locked up in cuffs, she felt so ashamed of herself that she didn’t want to see anyone,” Tian Wenchang said. He remembers that he had tried to console her in this way: “Your parents, your sisters and many others are still counting on you, so am I. Some day when I can’t work any more, can you support this old man?”

“No,” she said abruptly. “They already called me a liar. Now I am stuck here and can’t go anywhere. If I promised you to support you when you’re old, knowing I can’t deliver the promise, that would only prove I am a liar.” Tian Wenchang was heart-broken at these words.

Wu Ying finally took her lawyer’s advice and began to study law in the detention house. At the same time, she wrote tens of thousands of words about her violations in hoping that her confessions would be considered a cooperative attitude to save her from the death sentence. In July 2010, these written materials were handed in the people’s supreme court of Zhejiang province. This was the third time Wu Ying handed in materials to this court since she was sentenced to death.

Wu Ying’s confession at the trial of the second charge came as a shock to her lawyer Yang Zhaodong, although he had foreseen that coming. In their previous meetings, Wu Ying once said, “I’ve been confined for so many years, and it is impossible for them to release me as not guilty. In order to show I have a cooperative attitude, I think I’d better admit that I am guilty of illegally absorbing the public savings.”

At the detention house, Wu Ying began to write an autobiography about her career as a businesswoman. She is planning to publish it with the title Black Swan as soon as the opportunity comes. She told Yang Zhaodong that when she is freed, this book might help her make some money to pay back her loans.

In Yang Zhaodong’s opinion, the charges against Wu Ying will not stand. “To Wu Ying, these people (11 creditors specifically involved in this case) were a particular circle of friends instead of the “unspecified” public. Wu Ying did borrow money from these friends, but she didn’t commit fraud via gathering funding from the public,” Yang told the court. Wu Ying is waiting for the verdict.

Private Lending Thirsts for Salvation

By Wang Zi

Four years after Wu Ying was imprisoned, underground financing continues to grow. Wu Ying's case, in terms of the amount of cash involved, is already off the top-ten list.

In Wenzhou, the birth and death of medium and small businesses is as common as the change of seasons. However, in recent years, the bankruptcy of more and more enterprises is shadowed by the private lending.

According to the statistics of the intermediate court of Wenzhou City, from March to May 2011, the court has taken 2,628 cases of conflicts involved in private lending, 474 cases more than the same period the previous year. In this city, there are nearly 30 conflicts concerning private lending every day. The amount of these cases added up together is up to 930 million RMB, 315 million more than the same period the previous year.

Zhejiang is not a stand-alone example. Since February 2011, many high-interest private lending cases involved huge amounts of money came to light, and some bonding companies were in such heavy debt that the amount was many hundreds of millions of yuan. In April 2011, Jin Libin, a businessman from Baotou, Inner Mongolia, burned himself in his Audi, leaving an unpaid debt of 1.2 billion RMB.

Private lending has a long history.

Many creditors are very proud that they have far less bad debts than the banks. Private lending is active in circles of family, friends and those one knows very well. Unlike what others might think, the credibility is based on bonds of blood, friendship and geographical connection instead of the methods of the mafia world. People lent money to others because they “know where the debtor is rooted” and that they believe “nobody will burn the bridges while they have to cross the river every day.” For nearly five to six years, though, the private lending seems to have developed beyond the “circle of family and friends,” and some underground banks are controlling tens of billions in cash. They have even started branches in more than twenty cities in China.

Fragile Links

Those who are involved in the private lending bidding meetings are from all walks of life: businessman, workers, peasants, teachers or even

public servants from the Public Security, Prosecution, Court and Financing Systems. Some statistics show that 89% of families and 59% of enterprises are involved in private lending.

At any airport or train station in Zhejiang province, you can easily spot advertisements for private loans. Walking in the streets of Wenzhou, you will see more than twenty consignment shops, pawn shops and bonding and consulting companies.

A study on private lending in Zhejiang province shows that in 2010 alone private lending surpassed 150 million RMB. On the other hand, between 2008 and 2010, there were 61 cases of illegal funding in a small county, involving a sum of 183 million RMB. After the financial crisis, the scale of private lending in Zhejiang is growing.

Li Yongxing, who wrote the study, says that private lending in Zhejiang has gone beyond circles of friends, and out-of-city or even out-of-province lending is becoming more common than before. In private lending bidding meetings, it is considered normal that you don't know half of the people present.

Those who are involved in the private lending bidding meetings are from all walks of life: businessman, workers, peasants, teachers or even public servants from the Public Security, Prosecution, Court and Financing Systems. Some statistics show that 89% of families and 59% of enterprises are involved in private lending.

The backdrop for private lending is that it becoming harder and harder to get loans from banks. Since early 2010, the Central Bank has raised the interest rate of deposit reserve for 12 times in a row.

The need for funds will not shrink because banks stop giving loans. Zhou Dewen, president of the Wenzhou Medium and Small Enterprises Association, wrote in an article, "If the tight restrictions on the money market were not to change, if the government didn't take any action to help, and if the business environment doesn't improve, 40% of medium and small enterprises in China will cut production by half or even go bankrupt in the following six months." He believes that this crisis is even more menacing than the one in

2008. In 2008, enterprises might receive no orders, but now they dare not start production even if they get orders because they don't know when their cash flow will stop.

“The interest rate is already raised to 10 percent per month, and a loan with the interest rate of 6 percent would be considered a good deal. Most of the small enterprises have no power to negotiate the price,” says Yin Fei, founder of daibang.com.. He has been promoting a “pro-charity” financing service to the countryside of China by giving small loans, and he has been observing private lending for years. “For an enterprise with annual sales of 300 to 500 million RMB, it is basically trying its best to compete in the market where the profit rate is rather low. At such high financing cost, it is impossible to do business.”

Yin Fei observed that many small and medium enterprises borrowed money in the past to develop, while today they do it to survive. Some enterprise owners have sold their factories to become creditors.

It is too early to say whether Zhou Dewen's forecast that “40% of medium and small enterprises would go bankrupt” is true. However, none of the hundreds of pawn shops in Zhejiang Province are going bankrupt, and as a matter of fact their business is better than ever. With the borrowing and lending chain becoming longer and longer, creditors rarely see where their money flows to. This marks a big change in the underground financing system in Zhejiang province.

“I used to have three rules: I won't lend money to anyone living outside the radius of 100 kilometers, or anyone who never dined with me before or anyone whose machines are not running with at full capacity in the factory,” an anonymous creditor in Yiwu told China Entrepreneur. “Now it is not that strict any more. Even if you lend the money to people you know, you won't know where the money goes. Strangers usually pay a higher interest rate.” Now he has summed up his rules in one ambiguous term: “As long as he looks reliable.”

Those who look reliable always turn out to be the least reliable. The credit cost for both creditors and debtors is increasing.

Borrowers need to be aware of where the money comes from. “Never borrow money from those with a hard-core background. The most fatal thing is not necessarily how much you have borrowed, but from whom you have borrowed,” this anonymous creditor said. “Make sure your money is from a spectrum of sources instead of being controlled by just one person.” Large sums of money come from local governmental officials or even the mafia world. Such money is considered the most dangerous. Some money flows out of the official banks secretly, usually through the families of the bank employees. In these cases, whenever there is any sign of problems, the bank people will be at your door-step, making sure you pay back the money in time. This can cause a domino effect.

A new tendency has been observed in the market in the past two years. Industrial companies have not been doing well, and creditors are becoming more sensitive to the safety of their capital. Some enterprises far from bankruptcy may just be having temporary cash flow difficulties, but the creditors show up the day the news is out. Sometimes a couple of text messages may ruin a business owner.

Absence of supervision

“To put it simply, the central government has passed on its supervision responsibilities to local government. But the local financing office does not have the supervision power, and honestly speaking, they have no supervision capacities either. Their function is not to supervise financing. So they will continue to shake off this responsibility to even lower levels.”

So far there is no law or regulation naming the supervising institution of private lending in China.

An anonymous bank expert said that China Banking Regulatory Commission (CBRC) claims that its payroll is too small to supervise everything in a meticulous manner. The result is that the supervision of these small financing institutions are subject to the financing office of every province. “To put it simply, the central government has passed on its supervision responsibilities to local government. But the local financing office does not have the supervision power, and honestly speaking, they have no supervision capacities

either. Their

function is not to supervise financing. So they will continue to shake off this responsibility to even lower levels,” the expert said.

“Actually, the supervising department is acquiescent about the existence of private lending. They focus not on how high the interest rate is, but where the capital comes from,” a man in charge of a local commercial bank in Zhejiang province told Chinese Entrepreneur. For this reason, the central government has set up a team to crack down and punish illegal funding. “But the thing is, the legal definition of illegal funding is rather ambiguous. If you just follow the book, ten thousands of people will be sentenced to death. But how many do you catch a year?”

Jiao Jinpu, former vice president of the Research Bureau of the Central Bank and Party Secretary of the Graduate School of the People’s Bank, says, “Small-loan financing companies, pawn shops and bonding companies are all legal, but with the shrinking money market, there are changes in their businesses. In addition, investing or consulting companies are giving loans. Even some venture capital investing companies are doing it.” He pointed out that as soon as the banking system tightens its money market, all the hands will turn to creditors outside the system.

Tightening the loan market has only pushed business to operate underground, and eventually the situation will spin out of control.

Jiao Jinpu believes that private lending happens spontaneously, and it is impossible to supervise. “Private lending is a rough concept. It is hard to say how to supervise it or guide it.” He believes that the boundary for supervision of financing is as simple as this: Is someone is playing with his own money, he has every right to do so: if he is using other people’s money, supervision should move in.

State financing supervision departments are said to be considering making regulations on private lending that would be put on trial in Zhejiang province. The key points are a clarification of what constitutes illegal financing and fraud in fund-raising, and to have every loan registered for future reference.

However, some people are not very optimistic about such regulations. The reason is this: private lending is a financing phenomenon that is usually non-open, regional, market-oriented, profit-oriented and vast in scale. So to cast sunshine on this profitable practice is not necessarily what people would like.

“To truly put private lending under sunshine means the laws and policies have to be open about the money lending from individuals,” says Jiao Jinpu. He pointed out that the Central Bank once proposed a creditor regulation. According to current laws, individuals may give each other loans, but if the creditor charges any interest, it will no longer be protected by the law. Moreover, enterprises are not allowed to borrow and lend money to each other. This regulation has been modified many times, but so far it has not been shown to the public. One of the reasons is that the Central Bank and the China Banking Regulatory Commission can not reach agreement in it. The Commission is the most cautious about it.

In July 2011, Huang He, president of Jiangnan Leather Co. Ltd., fled overseas to avoid his heavy debts. None of his high-interest-rate creditors went to the Wenzhou Supervision Committee to register as a creditor, because as soon as they register, they will be investigated. If this happens there will be a run on that person’s lending operation, eventually leading to bankruptcy or even prison. This fear is not unreasonable, because it happened to Wu Ying’s eleven creditors.