

# The Effectiveness of Notarized Credit Agreement from the Perspective of Compulsory Enforcement

Yue Zhu

School of Law, Southwest Petroleum University, Chengdu 610500, China.

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**Abstract:** The credit agreement is a common form of business contract in financial activities, which means that financial institutions and natural persons or legal persons agree to issue loans to borrowers within the credit limit upon application. However, while the credit agreement brings benefits to multiple parties in the financial society, it also brings certain risks. The signing of the credit agreement is based on the trust of financial institutions in the credit and financial status of borrowers. Once the credit status of the borrower changes, due to the existence of the credit agreement, financial institutions do not repeatedly review the credit status of the borrower, thus making it difficult to promptly grasp the changes in the borrower's credit status and unable to promptly stop the issuance of loans. When the borrower fails to repay the loan on time, the compulsory enforcement of the credit agreement becomes inevitable. To avoid the burden of litigation and shorten the period of debt collection, financial institutions generally notarize the credit agreement to endow it with compulsory enforcement power. However, when the credit agreement is combined with specific business contracts, whether the credit agreement has compulsory enforcement power beyond the specific business contract is understood differently by financial institutions and borrowers, and they are in dispute. The courts also have inconsistent determinations on this issue in practical trials, and there are no clear regulations in current laws and regulations. This article takes a real case from a certain district court in City C, Province S as an introduction and conducts a detailed discussion on this issue, with the aim of obtaining more legal and reasonable enforcement suggestions.

**Keywords:** Notarized Credit Agreement, Effectiveness, Enforcement, Civil Law.

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## 1. The Theoretical Value of Enforceable Notarized Credit Facility Agreements

The system that notarized credit facility agreements can be enforced without going through the trial process is part of the enforcement of notarized creditor's rights documents and is an imported concept. The implementation of this system has significant judicial and social value.

### 1.1. Facilitating the Realization of Creditors' Rights by Applicants

After a credit facility agreement is notarized, if the debtor fails to repay the loan on time when it is due, the applicant can directly apply to the court for compulsory execution of the debtor based on the notarized creditor's rights document. This system provides great convenience for the applicant to realize their due creditor's rights. Moreover, credit facility agreements have certain particularities. Most of them are contracts signed by banks and other financial institutions to provide financing and loan quotas for legal persons or individuals, and the amounts are generally large, ranging from several hundred thousand to several million or even tens of millions. The volume of lending and borrowing transactions of financial institutions in China is huge. If the debtor fails to repay the loan on time and the creditor still has to follow the ordinary debt process to assert their creditor's rights, the creditor will be burdened and it will be difficult to realize their creditor's rights quickly. Therefore, including credit facility agreements in the compulsory enforcement system of notarized creditor's rights documents greatly facilitates the realization of creditor's rights by creditors and shortens the realization period.

### 1.2. Urging Debtors to Fulfill Their Obligations in a Timely Manner

Including credit facility agreements in the compulsory enforcement system of notarized creditor's rights documents not only facilitates the early realization of creditor's rights by applicants but also helps to urge debtors to fulfill their obligations in a timely manner. The notarization of creditor's rights documents requires the mutual consent of both parties and both parties must go to the notary office to handle the relevant procedures. Therefore, it is rare for the debtor to be unaware that the credit facility agreement has been notarized. Compulsory enforcement without litigation is a great convenience for creditors but a great risk for debtors. Financial institutions, to avoid the financial risk of being unable to recover loans, usually have mortgage contracts and guarantee contracts following the credit facility agreement. Debtors are aware of the consequences of compulsory enforcement if they fail to repay the loan on time. In the situation where they have the ability to repay, debtors are less likely to delay repayment or refuse to repay. Therefore, including credit facility agreements in the scope of notarized creditor's rights documents that can be enforced is conducive to debtors fulfilling their contractual obligations in a timely manner.

### 1.3. Improving Judicial Efficiency

For the judicial system, the fact that notarized credit facility agreements can enter the compulsory enforcement process without litigation has significant judicial value. According to the 2022 National Court Judicial Statistics Bulletin released by the Supreme People's Court, there were over 15.827 million new civil first-instance cases in 2022, which is an astonishing number. Not only that, but there were still over 16.1137 million old civil first-instance cases in 2022, with the

number of old cases exceeding that of new cases. Undoubtedly, the pressure on the judicial system to handle cases is huge. Therefore, when a credit facility agreement has been notarized and the borrowing facts are clear enough, directly using the notarized creditor's rights document as the basis for enforcement and entering the enforcement process can greatly improve judicial efficiency and relieve the pressure on first-instance courts at the grassroots level. Moreover, most disputes over notarized credit facility agreements and loan agreements are relatively simple and do not require a lengthy litigation process to achieve the purpose of realizing creditor's rights, effectively saving judicial resources.

#### **1.4. Stabilizing Social Order**

Finally, including credit facility agreements in the scope of notarized creditor's rights documents that can be enforced can, to a certain extent, stabilize social order. As mentioned earlier, the credit providers of credit facility agreements are generally financial institutions.

The stability of financial institutions' funds is the ballast stone of the social economy. The funds held by financial institutions are not owned by the institutions themselves but are entrusted by the public. A slight disturbance can have far-reaching consequences. Moreover, credit facility agreements involve relatively large amounts of money, which is different from small loans. They are related to the normal operation of financial institutions and the safety of depositors' funds and people's livelihood. Therefore, the notarized credit agreement can be enforced, which is extremely beneficial for financial institutions to shorten the period of debt collection and avoid the burden of litigation. At the same time, from a macro perspective, it has great value and significance for stabilizing the social financial order and social order.

## **2. Introduction of a Dispute Case on the Enforcement of Notarized Credit Agreement**

He and Liu are spouses. On August 13, 2019, due to business capital needs, He and Liu entered into a Comprehensive Credit Agreement, Loan Contract 1 (Contract No.: xxx), Maximum Amount Guarantee Contract, and Maximum Amount Mortgage Contract with a branch of Zhejiang Commercial Bank Co., Ltd. All four agreements were notarized for compulsory enforcement, with He as the borrower and Liu as the guarantor. The parties agreed to a comprehensive credit line of RMB 950,000, valid from August 13, 2019, to August 12, 2029. The first loan of RMB 660,000 was disbursed accordingly.

On August 3, 2020, the Chengdu Branch of Zhejiang Commercial Bank Co., Ltd. signed Loan Contract 2 (Contract No.: xxx) with He, stipulating a loan of RMB 200,000 with a maturity date of July 3, 2022. This online contract was not notarized.

As He had no overdue payments, and under the central bank's pandemic-era policy encouraging financial institutions to expand credit support, the bank and He re-signed Loan Contract 3 (Contract No.: xxx) on November 24, 2021. This contract provided a loan of RMB 660,000 at an annual interest rate of 6.8875%, maturing on November 8, 2024. This online contract was also not notarized. Notably, the first loan of RMB 660,000 from 2019 (Loan Contract 1) was not repaid, and no new funds were disbursed after Loan Contract 3 was

signed in 2021.

Subsequently, the bank applied to a district court in City C, Province S, for compulsory enforcement of the notarized creditor's rights, citing a notarized document issued by a Chengdu notary office as the enforcement basis. To clarify the case, the court interviewed the involved parties. The two sides disputed whether the credit agreement retained enforceable validity without notarization of subsequent business contracts. With no explicit legal provisions addressing this scenario, the case holds significant precedential value.

## **3. Practical Disputes and Analysis on the Enforceability of Notarized Credit Agreements**

### **3.1. Whether a Notarized Credit Agreement Alone Holds Compulsory Enforcement Validity**

The Notice on Giving Full Play to the Compulsory Enforcement Effect of Notarized Documents to Serve Financial Debt Risk Prevention in Banks, jointly issued by the Supreme People's Court, the Ministry of Justice, and the China Banking Regulatory Commission on July 13, 2017, explicitly included notarized credit agreements within the scope of enforceable notarized creditor's rights instruments. Alongside credit agreements, the following were also included: Various financing contracts, including credit agreements, loan contracts, entrusted loan contracts, trust loan contracts, bill acceptance agreements, financial leasing contracts, factoring contracts, letters of credit contracts, and credit card financing contracts (including credit card agreements and installment payment contracts);

Debt restructuring contracts, repayment agreements, and repayment commitments;

Guarantee contracts and surety bonds; Other creditor's rights instruments meeting the conditions specified in Article 2 of the Notice. As the title of the Notice suggests, the inclusion of credit agreements as notarized creditor's rights instruments aimed to mitigate financial debt risks, thereby encompassing all financial transaction-related documents as enforceable instruments.

However, judicial enforcement practices have sparked disputes over the implementation of this Notice. First, the Notice merely lists enforceable notarized creditor's rights instruments in Article 1 without clarifying whether a credit agreement alone, if notarized, holds compulsory enforcement validity or must be coupled with specific business contracts. A literal interpretation of Article 1 suggests that a standalone notarized credit agreement suffices for enforceability.

Yet, under fundamental contract law theory, a notarized credit agreement constitutes only a preliminary contract, while the actual creditor-debtor relationship is established through subsequent business contracts. Signing a credit agreement does not create a creditor's right but merely signifies the creditor's commitment to grant loans within the agreed credit limit and period. The principal contract—such as a specific loan contract—forms the core legal relationship. According to Article 37 of the Notarization Law of the People's Republic of China, enforceable notarized creditor's rights instruments must include "performance obligations." Thus, even if a credit agreement is notarized, it lacks enforceability unless coupled with specific business contracts that define concrete obligations. While the Notice

symbolically includes credit agreements as enforceable instruments to demonstrate judicial resolve in safeguarding financial order, standalone credit agreements hold no practical enforceability.

### **3.2. Whether Business Contracts Under a Notarized Credit Agreement Require Additional Notarization**

As established in the Dispute, a notarized credit agreement must be coupled with business contracts for enforceability. This raises the question: If a credit agreement is already notarized, must its associated business contracts also undergo notarization?

As noted, a credit agreement is a preliminary contract, while business contracts are principal contracts. If a loan contract (principal) falls within the scope of the notarized credit agreement (preliminary), the parties' intent—as evidenced by notarization—is to allow direct enforcement of all credit-limit-compliant loans without litigation. The joint Notice equates the enforceability of preliminary credit agreements with principal loan contracts in the financial sector.

This article argues that, per the Notice's intent, business contracts under a notarized credit agreement need not undergo separate notarization if they are explicitly linked to the credit agreement. For example, the credit agreement should include clauses such as: "This agreement and its subordinate business contracts constitute an inseparable whole. The compulsory enforcement validity of this notarized agreement extends to all subordinate business contracts."

From the perspectives of judicial efficiency, notarization efficiency, financial operations, and transactional expediency, business contracts linked to a notarized credit agreement should automatically inherit enforceability. However, this applies only to loan contracts explicitly tied to the credit agreement.

### **3.3. Priority Conflicts between Notarized Clauses in Credit Agreements and Business Contracts**

Another dispute arises when conflicting notarization clauses exist between a credit agreement and its subordinate business contracts. For instance: A credit agreement is notarized and linked to its business contracts. A subordinate loan contract includes a clause stating: "This contract shall acquire compulsory enforcement validity upon notarization."

Two interpretations emerge: The loan contract requires separate notarization to gain enforceability. The phrase "upon notarization" merely reaffirms that the loan contract is bound by the enforceability of the notarized credit agreement, given their linkage.

This article favors the second interpretation. First, as resolved in Dispute (2), business contracts linked to a notarized credit agreement inherit enforceability. Second, aligning with the Notice's goal of mitigating financial risks, the phrase "upon notarization" should be interpreted as acknowledging the binding force of the linked credit agreement's notarization. For loan contracts not linked to a credit agreement, even if they include a "notarization clause," they should be treated as standalone loans outside the credit agreement's scope and thus lack enforceability. This ensures clarity and consistency in enforcing notarized creditor's rights instruments.

### **3.4. Whether Debt Rollover Contracts Fall Within the Inseparable Scope of Credit Agreements**

Debt rollover is a common practice in financial institutions, where a new loan is issued to repay an existing loan (including extensions) upon its maturity if the borrower defaults. This mechanism helps banks recover debts and revitalize credit, effectively constituting a contractual extension of the original loan. While the loan amount may remain unchanged or vary, adjustments to repayment dates, interest rates, and other terms typically occur. Under contract law principles, such material modifications render the rollover agreement a new contract. In practice, however, this new contract often lacks explicit linkage to the original notarized credit agreement, raising the question: Does the new rollover contract inherit the compulsory enforcement validity of the original credit agreement?

In judicial practice, financial institutions and borrowers hold opposing views: Financial institutions argue that the rollover contract, despite modifications, represents the same debt and should inherit enforceability from the original linked agreement. Borrowers contend that the new contract, as a distinct legal instrument, lacks enforceability unless explicitly linked to the credit agreement.

In the typical case, the court rejected the bank's enforcement application. It ruled that even though the loan amount remained identical, material changes to rights and obligations (e.g., repayment terms, interest rates) severed the enforceability of the original agreement from the rollover contract.

This article supports the court's reasoning. While debt rollover is a pragmatic financial tool, equating the new contract with the original one risks violating contractual independence and fairness. Extending the original agreement's enforceability to the new contract would create ambiguity: Could other terms of the original agreement also bind the new contract? Could new terms retroactively affect the original agreement? Such outcomes would undermine transactional security and contradict legal principles. To ensure enforceability, lenders should explicitly link the rollover contract to the credit agreement via clauses such as:

"This contract constitutes an inseparable part of the notarized credit agreement. The compulsory enforcement validity of the notarized credit agreement extends to this contract."

### **3.5. Scope of Enforceability for Supplementary Agreements**

Supplementary agreements—post-contract amendments negotiated to address unresolved issues—are common in both private and institutional lending. However, two key disputes arise in enforcement: Does the enforceability of a notarized credit agreement extend to supplementary agreements of its linked loan contracts? If a supplementary agreement retroactively links a previously unlinked loan contract to a credit agreement (or notarizes an originally un-notarized credit agreement), does this retroactively confer enforceability on the original contracts?

Unlike debt rollover contracts, supplementary agreements are generally deemed amendments to the original contract, not new independent contracts. They reflect the parties' mutual intent to refine existing obligations without altering the core legal relationship. Therefore: The enforceability of a

notarized credit agreement extends to supplementary agreements of its linked loan contracts, as these amendments form an inseparable part of the original contractual framework.

If a supplementary agreement retroactively links a loan contract to a notarized credit agreement (or notarizes an un-notarized credit agreement), the original loan contract becomes subject to enforceability from the date of the supplementary agreement's execution. However, this does not retroactively validate pre-supplementary agreement breaches.

In conclusion, enforcement practices must balance efficiency with legal rigor. While supplementary agreements inherit enforceability under the principle of party autonomy, retroactive linkages should be applied cautiously to avoid destabilizing established rights and obligations. Clear contractual drafting remains paramount to mitigate disputes.

## **4. Judicial Enforcement Recommendations**

### **4.1. Elevating the Legal Regulatory Hierarchy**

Since its implementation, the notarized creditor's rights instruments system has played a vital role in mitigating non-performing loans in the financial sector. The compulsory enforceability of notarized credit agreements, in particular, serves as a cornerstone for financial institutions' lending confidence. However, since the establishment of this system under the 1982 Provisional Notarization Regulations of the People's Republic of China and the Notarization Procedures Rules, ambiguities in the scope of creditor's rights instruments and procedural irregularities have persisted. Subsequent guidelines—including the 2000 Joint Notice on Issues Concerning the Enforcement of Notarized Creditor's Rights Instruments with Compulsory Effect, the 2008 Supreme People's Court Reply on Whether Courts Should Accept Litigation Disputes Over the Content of Enforceable Notarized Creditor's Rights Instruments, the 2017 Joint Notice by the Supreme People's Court, Ministry of Justice, and China Banking Regulatory Commission, and the 2018 Supreme People's Court Provisions on Enforcing Notarized Creditor's Rights Instruments—have sought to address these issues. Currently, courts and notary offices rely on these documents, alongside the Notarization Law (2017 Amendment), to handle cases. Nevertheless, as a critical civil creditor's rights mechanism, the system's current placement within notarization-specific regulations is insufficient in legal hierarchy. It should be elevated to foundational laws.

#### **4.1.1. Establishing Dedicated Chapters in Enforcement Legislation**

The notarized creditor's rights instruments system allows claims to proceed directly to enforcement without litigation. Financial institutions (e.g., banks) and legally sophisticated entities or individuals frequently notarize credit agreements and loan contracts to expedite debt recovery. Consequently, courts handle a significant volume of such cases. However, relying solely on the Notarization Law and administrative regulations fails to meet practical judicial needs. Dedicated chapters should be added to the Civil Procedure Law and the planned Enforcement Law to codify the system, particularly standardizing contentious elements like credit agreements, thereby unifying enforcement criteria.

#### **4.1.2. Incorporating the System into the Civil Code**

As discussed, the notarized creditor's rights instruments

system offers advantages such as streamlined debt recovery, incentivized debtor compliance, enhanced judicial efficiency, and social stability. For courts overwhelmed by caseloads and backlog, direct enforcement of notarized instruments alleviates pressure. Yet, this pivotal civil mechanism remains absent from the Civil Code—the “encyclopedia of civil life”—a notable oversight. When loan disputes arise, legally unsophisticated parties still default to traditional litigation, prolonging resolution and straining judicial resources. Most loan cases are straightforward; direct enforcement after notarization and court review would save time and reduce burdens. For complex cases, parties could appeal enforcement or non-enforcement rulings to higher courts. Thus, integrating the system (including credit agreements) into the Civil Code would yield substantial practical benefits.

## **4.2. Establishing Inter-Departmental Collaboration Mechanisms**

### **4.2.1. Strengthening Coordination between Courts and Notary Authorities**

The effective operation of the notarized creditor's rights instruments system hinges on collaboration between two key entities: notary authorities, which verify and notarize basic loan facts, and courts, which review and enforce the notarized documents. While their respective mandates derive from the Notarization Law and judicial interpretations like the Supreme People's Court Provisions on Several Issues Concerning the Enforcement of Notarized Creditor's Rights Instruments, practical complexities often outpace theoretical frameworks. For instance, disagreements over factual determinations or enforcement standards—such as disputes involving credit agreements—highlight the lack of unified criteria between courts and notary authorities. This disconnect leads to inefficiencies: notary offices may prioritize document authentication while courts occasionally reject their validity, undermining both judicial efficiency and creditor-debtor rights.

To address this, regular joint meetings and symposiums should be organized to align enforcement standards, resolve procedural ambiguities, and harmonize interpretations of contentious issues. Higher-level courts, such as the Supreme People's Court or provincial high courts, should spearhead these efforts to ensure nationwide and regional consistency in applying the system.

### **4.2.2. Creating Dedicated Enforcement Units for Notarized Creditor's Rights Instruments**

Though currently governed by the Notarization Law and related judicial interpretations, the notarized creditor's rights instruments system is poised for elevated legal status—potentially through inclusion in the Enforcement Law or Civil Code. As its application expands, notarized instruments will become a major enforcement category for courts, akin to family law cases. Mirroring the specialized domestic relations divisions established to handle complex family disputes, courts should create dedicated enforcement units for notarized creditor's rights instruments. These units would:

Focus exclusively on enforcing notarized instruments; Facilitate real-time communication with notary authorities to address recurring disputes; Propose judicial recommendations to refine enforcement procedures and simplify debt recovery. By centralizing expertise and streamlining cross-departmental coordination, such units would enhance both the efficiency and legitimacy of the system, ensuring it meets the demands of modern financial

and legal practice.

### 4.3. Clarifying the Application of Credit Agreements

#### 4.3.1. Refining Review Standards

The notarized creditor's rights instruments system has evolved over 40 years since its formal introduction in 1982, adapting to economic growth and increasingly complex financial activities. Despite legislative refinements, the application of credit agreements within this system remains contentious among scholars, practitioners, and lawmakers. Frequent use of credit agreements in financial transactions has spawned diverse disputes. However, the inclusion of credit agreements in the system lacks grounding in China's foundational laws or general statutes, appearing only in the 2017 Joint Notice by the Supreme People's Court, Ministry of Justice, and China Banking Regulatory Commission on Leveraging the Compulsory Enforcement Effect of Notarized Documents to Mitigate Financial Debt Risks. Article 1 of this 11-article Notice states:

"Notary offices may grant compulsory enforcement validity to the following creditor's rights instruments signed by financial institutions, provided they comply with Article 37 of the Notarization Law: (1) financing contracts, including credit agreements, loan contracts, entrusted loan contracts, trust loan contracts, bill acceptance agreements, financial leasing contracts, factoring contracts, letters of credit contracts, and credit card financing contracts; (2) debt restructuring contracts, repayment agreements, and repayment commitments; (3) guarantee contracts and surety bonds; (4) other creditor's rights instruments meeting the conditions in Article 2 of this Notice." This marked the first official recognition of credit agreements, yet the Notice omitted detailed review criteria.

In practice, most credit agreements and their notarization comply with legal norms. However, issues such as documentation errors or business contracts exceeding credit limits necessitate rigorous review. Review of credit agreements involves two stages:

Notary authorities must conduct substantive reviews of credit agreements, guarantee contracts, and loan contracts to ensure compliance before issuing notarized documents. Courts must review notarized instruments during enforcement. Article 37 of the Notarization Law stipulates: "If a notarized creditor's rights instrument contains definitive errors, the court shall rule against enforcement and notify the parties and the notary office." The term "definitive errors" remains ambiguous-whether factual inaccuracies, misinterpretations of intent, or typographical/date errors. This

article argues that while factual and consensual defects in notarized instruments are rare, procedural flaws are common. Thus, courts should adopt a "procedural review as primary, substantive review as secondary" approach to minimize redundant scrutiny.

To safeguard the interests of both lenders and borrowers, review standards must be unified and clarified: For notary offices, guidelines should prevent perfunctory approvals by mandating thorough substantive reviews. For courts, criteria should curb arbitrary rejections of valid instruments, ensuring balanced enforcement practices.

By codifying these standards, the system can harmonize efficiency with fairness, reducing disputes and enhancing trust in notarized credit agreements.

#### 4.3.2. Clarifying Enforceable Categories of Credit Agreements

Although credit agreements were included in the scope of notarized creditor's rights instruments under the 2017 Joint Notice by the Supreme People's Court, Ministry of Justice, and China Banking Regulatory Commission, significant disputes persist in academic and judicial practice. As previously analyzed, the core issue lies in the impracticality and obstacles to implementation. To address this, enforceable categories of credit agreements must be clearly defined, providing actionable guidelines. Specifically, credit agreements should be matched with corresponding business contracts to distinguish:

**Enforceable business contracts:** Those explicitly linked to the credit agreement and falling within its scope (e.g., loans within the approved credit limit and term).

**Non-enforceable business contracts:** Those exceeding the credit agreement's scope (e.g., loans beyond the approved limit or violating agreed terms).

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