

Research on the Financial Legal Regulatory System of Guangdong Hong Kong–Macao Greater Bay Area

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Abstract: *The construction of the Guangdong-Hong Kong-Macao Greater Bay Area is a major city cluster construction strategy in China, and it is of great practical importance to enact legislation to guide cooperation in various fields. Therefore, it is highly significant to ensure the stable cooperation of financial order in the Bay Area from the perspective of legal construction and keep the financial risks within a benign range. This paper will illustrate the necessity of financial regulatory cooperation among Guangdong-Hong Kong-Macao Greater Bay Area in the existing financial legal system and point out the obstacles to financial regulatory cooperation in the Greater Bay Area, and further proposes such strategies as formation of the Greater Bay Area Financial Legal Regulatory Cooperation Council to enhance the convergence between laws and regulations, and establishment of a financial arbitration center in the Greater Bay Area.*

Keywords: *Guangdong-Hong Kong-Macao Greater Bay Area; legal regulatory system; financial cooperation*

I. Introduction

The Guangdong-Hong Kong-Macao Greater Bay Area is a major development project in China in recent years, consisting of seven cities in Guangdong. On July 1, 2017, the Framework Agreement on Deepening Cooperation among Guangdong, Hong Kong and Macao to Promote the Construction of the Greater Bay Area was signed in Hong Kong. On February 18, 2019 the State Council of the Central Committee of the Communist Party of China issued the “Guangdong, Hong Kong and Macao Greater Bay Area Development Plan”. In the Guangdong-Hong Kong-Macao Greater Bay Area, there are civil law and common law systems coexisting. The seven cities in Guangdong have a civil law system that is based on the Constitution of the People's Republic of China and has been constructed through the development of China since the founding of the PRC. The Hong Kong Special Administrative Region (HKSAR) is based on the legal system of the former British Overseas Territories. The current common law system of Hong Kong is based on the Constitution and the Basic Law of Hong Kong. Macao is based on the legal system of the former Portuguese Overseas Territories. Macao is the current Macao civil law system, which is based on the legal system of the former Portuguese overseas dependencies (Ba 2018).

On July 1, 1997 and December 20, 1999, the Chinese government resumed the exercise of sovereignty over Hong Kong and Macao and established the “one country, two systems” system in the form of legislation, preserving a high degree of Hong Kong and Macao have a high degree of financial autonomy. It was determined that Hong Kong and Macao could formulate their own monetary and financial policies and protect financial enterprises and financial institutions. As a result, there are three distinct financial regulatory systems between Hong Kong, Macau and the mainland. The financial regulatory system between Hong Kong, Macau and the mainland is also different. Regional financial integration is one of the important trends in contemporary international financial development, and Guangdong, Hong Kong and Macao have historically been a unique economic development region, especially after the reunification of Hong Kong and Macao. Meanwhile, the financial relationship between Guangdong, Hong Kong and Macao has become closer. Before the concept of Guangdong-Hong Kong-Macao Greater Bay Area was proposed, there were very close population exchanges and economic and trade exchanges between Guangdong, Hong Kong and Macao. Financial cooperation and the promotion of mutual recognition of financial professionals' qualifications, as well as the lowering of asset requirements for Hong Kong banks to take up shares in Mainland banks, have deepened and broadened the opportunities for the industry to enter the Chinese Mainland market. Eligible mainland securities companies approved by the CSRC were allowed to set up branches in Hong Kong in accordance with the relevant requirements.

Hong Kong is an integrated offshore international financial center that can help shape a stable and mature financial order in the process of promoting financial cooperation and development in Guangdong, Hong Kong and Macau. However, at present, the agreement based on CEPA is only liberalized in the aspects of financial market access and mutual recognition of practitioner qualifications, while the regulatory system specifically related to various financial sectors is just beginning to be formulated. Consequently, relevant legal strategies and measures should be carried out in a prompt way.

II. Comparison of Financial Regulatory Systems in Mainland China and Hong Kong

1.1 Financial regulatory system in mainland China

The People's Bank of China was established after the establishment of New China, and in 1986 it was responsible for the management of the issuance of financial bonds and corporate bonds and the management of the trading market. 1992 saw the establishment of the China Securities Regulatory Commission, and the insurance industry regulatory function was separated from the People's Bank of China to establish the China Insurance Regulatory Commission. In 1995, the People's Bank of China Law was enacted with supervisory authority. In the same year, the Commercial Bank Law and the Insurance Law of China were promulgated. In 2003, the China Banking Regulatory Commission (CBRC) was established. The banking supervision and management function was separated from the People's Bank of China and was carried out exclusively by the CBRC. Since then, the reform and opening up. After the reform and opening up, China's separate regulatory system for banks, securities and insurance was formed.

Under the mode of sectoral supervision, the China Banking Regulatory Commission, the Securities Regulatory

Commission and the Insurance Regulatory Commission jointly signed the Memorandum of Understanding on the Division of Work and Cooperation in Financial Supervision in 2004, establishing a regulatory liaison meeting mechanism and a regular liaison mechanism, and the three major financial regulators have initially conducted coordinated supervision. However, with the continuous development of China's financial market, a number of new financial innovation products between industries have been born, and mixed business operations have emerged (Teng & Zhang 2019). The old model of sectoral regulation cannot better address the regulatory needs of mixed business operations.

In March 2018, China's financial regulatory system changed. The responsibilities of the China Banking Regulatory Commission and the China Insurance Regulatory and Administration Commission were integrated to form the China Banking and Insurance Supervisory Commission. Together with the establishment of the State Council's Financial Services Commission in November 2017, the new financial regulatory system of "one committee, one line and two committees" has been formed.

1.2 Hong Kong financial regulatory system

Hong Kong's financial development period was much earlier than that of mainland China, and the financial industry in Hong Kong completed the process from scratch in the 1950s. 1859 marked the establishment of the first bank in Hong Kong, the Standard Chartered Bank; 1891 witnessed the opening of the first stock exchange in Hong Kong, the Hong Kong Stock Exchange Association; 1948 saw the publication of the first Banking Ordinance in Hong Kong; especially in response to the financial crisis in Hong Kong in the 1980s, the financial industry in Hong Kong matured. In 1994, the Hong Kong branch of the Bank of China became another note-issuing bank in Hong Kong, and cooperation between Hong Kong's financial sector and the Mainland China has been developed since then, which has played a positive role in the financial stability of Hong Kong. In 1999, the Hong Kong Monetary Authority (HKMA) launched a reform of the financial sector regulatory system, shifting from a capital-based regulatory system to a risk-based regulatory system. After the international financial crisis in 2008, the HKMA enacted Basel III to further strengthen the supervision of the banking sector.

The Hong Kong money market management model is divided into three levels. In Hong Kong the Chief Executive is the highest manager of the entire financial sector. Under the Hong Kong Banking Ordinance, the Chief Executive may, in any particular case, give appropriate directions to the Financial Secretary and the Chief Executive of the Monetary Authority in the exercise of their respective functions under the Ordinance. The Hong Kong Monetary Authority is the body that maintains the stability of the monetary and banking system. It is accountable to the Financial Secretary. Industry self-regulatory organizations play an important role in financial regulation in Hong Kong. The self-regulatory organizations, represented by the Hong Kong Association of Banks, participate in the formulation of industry regulations and perform industry self-regulatory functions to assist in supervision.

III. Barriers to Financial Regulatory Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area

1.3 Conflicting regulatory powers in the vertical configuration of financial regulation in mainland China

As far as mainland China is concerned, the vertical configuration of relevant financial regulation still suffers from conflicts of regulatory powers and the inability to effectively coordinate relevant laws and regulations. The regulatory power of the financial sector is concentrated in the above-mentioned “one commission, one line and two committees”. Financial security is an important area of national security and economic development, and because capital is profit-seeking, finance tends to prefer regulation. Because of the profit-seeking characteristic of capital, finance tends to prefer areas with lax regulation. The loose regulation of one side of the region will form a “financial depression”, and a large amount of capital will flow to the “depression”, and at this time if the local government focuses on the lucrative tax revenue brought by the funds, it will easily raise the financial risk.

However, because of the lagging nature of the law and the fact that the financial industry is a dynamic industry that is constantly innovating, the strict laws established by the state cannot adapt to the ever-emerging financial innovation systems and products. As a result, local governments can only issue regulations to regulate the ever-innovating financial industry in a localized manner. The power of regulation and financial legislation is concentrated in the central government, and local administrative regulations lack higher legal effect and legal authority. This conflict will be more prominent in the financial regulatory cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area. If the responsibilities of the respective financial regulatory authorities of the seven cities in Guangdong are not clear, their own financial regulation and adjustment of the regulatory system is not strong enough, which will lead to the problem of multiple regulation and inadequate regulation. The existence of regulatory barriers, the lack of initiative in local financial regulation, mainland China will not be able to reasonably effectively dispose of financial risks.

1.4 The trade-off between the protection of Hong Kong and Macao’s financial autonomy and financial regulatory cooperation among Guangdong, Hong Kong and Macao

On July 1, 1997, China resumed the exercise of sovereignty over Hong Kong and became an offshore financial center from the perspective of offshore finance. However, after 1984, there was a crisis of confidence to a certain extent, and the main reason was that Hong Kong feared that its financial autonomy would be weakened by the central government's intervention. The “one country, two systems” system has allayed Hong Kong’s concerns about financial autonomy. The two financial systems are independent of each other, and the financial regulatory authorities of the two places cooperate in central bank monetary management, banking supervision and financial infrastructure. All financial matters between the two places are arranged in full compliance with international financial practices. Therefore, the primary premise of financial regulatory cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area should be to protect the financial autonomy of Hong Kong and Macao.

IV. The path of the construction of financial regulatory system in the Greater Bay Area

The pilot financial legal regulatory mechanism innovation in the Greater Bay Area, and the Greater Bay Area Financial Legal Regulatory Cooperation Council are supposed to be built. The leadership of the Greater Bay Area Financial Supervisory Council is ought to be utilized to guide the regional equity investment market in the Bay Area, and create a platform for innovation in science and technology finance in the Bay Area, and further guide the construction of the Macau-Zhuhai cross-border financial cooperation demonstration zone. These measures will without doubt facilitate the strengthening of cross-sector, cross-industry and cross-market financial business regulatory coordination and information sharing; contribute to the promotion of Hong Kong private equity funds to support the financing of innovative technology enterprises in the Mainland China; help carry out pilot cross-strait financial cooperation and deepen financial cooperation in the Greater Bay Area of Guangdong, Hong Kong and Macao.

By enhancing the convergence of laws and regulations between the three places on both sides of the Taiwan Strait and thus improve and improve the legal system of financial supervision, in the substantive handling of cases because of the independent judicial system between the three places will lead to negotiation of soft law system and regulatory cooperation can not be effectively implemented. Therefore, it is envisaged to build a financial law arbitration center composed of relevant financial law professionals from the eleven cities of Guangdong, Hong Kong and Macao Greater Bay Area and the Financial Law Regulatory Cooperation Council. The Arbitration Center will be responsible for the arbitration of financial disputes and financial violations in the three regions, whether by financial regulators or directly or indirectly injured parties. The arbitration results will have final legal effect in the Greater Bay Area and will be jointly recognized by the judicial institutions of the three places.

The construction of the Greater Bay Area of Guangdong, Hong Kong and Macao is a new opportunity for the development of the Pan-Pearl River Delta region in various fields. In the process of coordinating different financial systems in the region, it is a basic premise to ensure the financial autonomy of Hong Kong and Macao and to ensure the basic national policy of "one country, two systems". On this premise, the establishment of the Council for Integrated Financial Supervision and Cooperation of the Greater Bay Area, the Guangdong-Hong Kong-Macao Greater Bay Area Financial Arbitration Center, and the convergence of laws and regulations are the basic prerequisites for the construction of the financial supervision and cooperation system of the Greater Bay Area.

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