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Research on the Convergence of Financial Rules in the Guangdong-Hong Kong-Macao Greater Bay Area

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Abstract: The practical foundation for financial rule convergence in the Guangdong-Hong Kong-Macao Greater Bay Area lies in the coexistence of three legal jurisdictions (three legal systems) and three circulating currencies under the "one country, two systems" framework. In this context, adhering to the principle of equality represents a core requirement for implementing the "one country, two systems" policy, while the realization of equality must aim at achieving mutual benefit and win-win outcomes. Therefore, "one country, two systems," equality, and mutual benefit collectively constitute the fundamental principles and conceptual framework for financial rule convergence in the Greater Bay Area. In terms of practical approaches, administrative coordinated legislation, with its operational simplicity and efficiency, emerges as a feasible solution to promote the convergence of financial rules in the Greater Bay Area.

1. Introduction

The Guangdong-Hong Kong-Macao Greater Bay Area (hereinafter referred to as "GBA") is an urban agglomeration comprising nine cities in Guangdong Province (Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen, and Zhaoqing) and two Special Administrative Regions (Hong Kong[China] and Macao[China]). The development of the GBA represents a comprehensive, multidimensional, and systematic mega-project, with its core focus being the high-quality economic development of the region. As the lifeblood of the national economy and a crucial component of a country's core competitiveness, finance plays an indispensable role. The high-quality economic development of the GBA urgently requires financial support and facilitation.

The Outline Development Plan for the GBA sets forth specific objectives for advancing the region's financial system construction and services, including building an international financial hub. However, the GBA's unique conditions of "one country, two systems," three legal jurisdictions (and legal systems), and three currencies inevitably give rise to numerous differences and even conflicts in financial systems, rules, and services across the three regions.

The development of the GBA fundamentally requires the enhancement and optimization of financial systems, regulatory frameworks, and services across the three jurisdictions. This requires bridging regulatory differences, resolving conflicts in financial rules, and achieving physical interconnection and regulatory convergence. Therefore, researching the convergence of financial rules in the GBA carries significant practical implications.

2. The Practical Foundation for Financial Rule Convergence in the GBA

The "one country, two systems" principle, three legal jurisdictions (and legal systems), and three currencies constitute the practical foundation for financial rule convergence in the GBA. Due to the commonalities in finance and currency, most financial rules across the three jurisdictions are identical or compatible. These identical or compatible financial rules operate within their respective domains without raising convergence issues. However, the GBA's development under the conditions of "one country, two systems," three legal jurisdictions, and three currencies necessitates exchanges, cooperation, penetration, and integration across markets, economies, and financial systems. The implementation of financial rules inevitably transcends individual jurisdictions, and differences in rule-making bodies, implementation entities, financial markets, and financial development histories among the three regions have led to conflicts or disparities in financial rules, thereby creating challenges in coordinating, improving, and converging these rules.

The "one country, two systems" principle represents the optimal solution to historical issues concerning Hong Kong(China) and Macao(China), as well as the best institutional arrangement for maintaining their prosperity and stability after their return to China. This principle must be upheld unwaveringly over the long term. "One country, two systems" means that Hong Kong(China) and Macao(China) do not practice the socialist system but instead retain their original capitalist systems, ways of life, free economies, and market systems, with their legal frameworks remaining largely unchanged. The Hong Kong(China) and Macao(China) Special Administrative Regions implement the policies of "Hong Kong(China) people administering Hong Kong(China)" and "Macao(China) people administering Macao(China)," respectively, with their financial systems, rules, and services operating independently. Before the return of Hong Kong(China) and Macao(China), China maintained a unified legal system that belonged to the socialist legal tradition. With their return and the enactment of the two Basic Laws, the socialist legal system of the Chinese mainland and the largely preserved capitalist legal systems of Hong Kong(China) and Macao(China) coexist and complement each other within the sovereign unity of China [1]. Hong Kong(China) inherited the common law legal system from British colonial rule, while Macao(China) adopted the civil law system due to Portuguese governance. In both content and form, the legal system of Hong Kong(China) is deeply influenced by British law, and Macao(China) by Portuguese law. The financial laws, systems, and rules of the GBA's three jurisdictions are embedded within these three distinct legal jurisdictions and systems, making the convergence of financial rules in the GBA particularly challenging.

The Renminbi (RMB), Hong Kong dollar (HKD), and Macanese pataca (MOP) are the legal tender of the People's Republic of China, the Hong Kong(China) Special Administrative Region, and the Macao(China) Special Administrative Region, respectively. The People's Bank of China is the authority responsible for managing the RMB, issuing currency, formulating foreign exchange and exchange rate policies, implementing monetary policies and regulatory measures, and adjusting money supply through tools such as interest rates and reserve requirements, while also regulating international payments through foreign exchange controls. Hong Kong(China) is the world's third-largest financial center after New York and London. Its status as an international financial hub underscores the importance of the HKD in global markets, making it one of the world's most stable and well-structured currencies. Hong Kong's linked exchange rate system, which pegs the HKD to the U.S. dollar, results in a dual exchange rate regime featuring both fixed and floating rates. The Macanese pataca is pegged to the Hong Kong dollar, effectively establishing an indirect link to the U.S. dollar. Hong Kong(China) and Macao(China) do not impose foreign exchange controls, allowing the free convertibility of the HKD and MOP. The independent operation of the RMB, HKD, and MOP inevitably leads to conflicts in financial rules within the GBA.

3. Fundamental Principles for Financial Rule Convergence in the GBA

3.1. Adherence to the "One Country, Two Systems" Principle in Financial Rule Convergence

The "one country, two systems" principle has been proven effective through practice, aligning with the fundamental interests of the nation and its people, receiving strong support from Chinese mainland citizens, unanimous endorsement from Hong Kong(China) and Macao(China) residents, and widespread international recognition. The governments, enterprises, and compatriots of the Hong Kong(China) and Macao(China) Special Administrative Regions, along with the nine cities of Guangdong, serve as primary practitioners, participants, and contributors to the grand endeavor of building the GBA. Therefore, the development of the GBA must consistently uphold the "one country, two systems" principle, organically integrating adherence to the "one country" framework with respect for the "two systems" differences. This involves maintaining the foundation of "one country" while leveraging the advantages of "two systems," upholding the rule of law, strictly adhering to the Constitution and Basic Laws, and fully utilizing market mechanisms to promote complementary strengths among Guangdong, Hong Kong(China), and Macao(China). When addressing financial rule convergence issues, relevant government bodies, units, and departments should mutually respect the autonomy and independence of their counterparts in the Hong Kong(China) and Macao(China) Special Administrative Regions.

3.2. Adherence to the Principle of Equality in Financial Rule Convergence

Upholding the "one country, two systems" principle in financial rule convergence inherently necessitates adherence to the principle of equality. First, the entities responsible for formulating financial rules in the GBA are equal. Under the "one country, two systems" principle and the Basic Laws of Hong Kong(China) and Macao(China), the Hong Kong(China) and Macao(China) Special Administrative Regions enjoy a "high degree of autonomy," including executive, legislative, independent judicial, and final adjudication powers. These powers are characterized by autonomy, independence, and equality, and are generally not subject to interference by the central government, let alone local governments. In addressing financial rule convergence issues, relevant Chinese mainland government bodies, units, and departments are equals with their counterparts in the Hong Kong(China) and Macao(China) Special Administrative Regions. The essence of equality lies in autonomy, meaning equal parties possess the same voice, decision-making authority, and legitimacy. Second, the financial laws of Hong Kong(China), Macao(China), and Chinese mainland hold equal legal status and effect.[2]. They not only hold absolute authority within their respective jurisdictions but also enjoy equal standing when conflicts arise beyond their domains. Resolving conflicts in financial laws requires mutual respect for each other's political, economic, and legal systems, seeking solutions on the premise of recognizing the equal status of each other's laws. Third, the judicial entities of the GBA's financial rules are equal. The Basic Laws of the Hong Kong(China) and Macao(China) Special Administrative Regions grant them independent judicial and final adjudication powers, which ensure their judicial parity with mainland judicial entities. In resolving conflicts between Hong Kong(China), Macao(China), and mainland financial laws, there exists no supreme judicial coordinating body. Mainland courts, including the Supreme People's Court, have no authority to issue directives to Hong Kong(China) or Macao(China) courts, nor do Hong Kong(China) or Macao(China) courts have such authority over mainland courts.

3.3. The Principle of Mutual Benefit and Win-Win in Financial Rule Convergence of the GBA

The principle of mutual benefit and win-win is fundamentally about balancing interests. Mutual

benefit means that each party benefits the other or provides the expected benefits to the other, while win-win means that all parties obtain their expected benefits, thereby achieving victory and success in practice. Since the entities responsible for formulating and applying financial rules in the GBA are equal, and the financial laws and rules of Guangdong, Hong Kong(China), and Macao(China) are also equal—with equal voice, decision-making authority, legitimacy, and legal effect—mutual benefit and win-win become the inevitable outcome of the principle of equality. Adhering to the principle of equality necessarily entails upholding the principle of mutual benefit and win-win.

It is worth noting that the principle of mutual benefit and win-win inherently includes the principle of mutual compromise. Only by navigating the thorny path of compromise can the goal of mutual benefit and win-win be reached. Scenarios where one party gains completely while the other loses entirely, or where one party gains nothing while the other wins everything, are generally unattainable unless the balance of equality is disrupted. Compromise is an art and a prerequisite for achieving mutual benefit and win-win. To realize mutual benefit and win-win, compromise must reach an optimal position. When conflicts arise in the financial rules of the GBA, the best course of action for all parties is to achieve optimal mutual benefit and win-win through optimal compromise.

The above three principles are interconnected, mutually reinforcing, and complementary, forming an indispensable conceptual framework. We must deeply understand and comprehensively grasp these principles and adopt them as the guiding ideology for financial rule convergence in the GBA.

4. Pathway Selection for Financial Rule Convergence in the GBA

From the perspective of global legislative and judicial practices, there are generally two approaches to resolving interregional legal conflicts: the interregional conflict law approach and the uniform substantive law approach. The interregional conflict law approach includes methods such as formulating a nationally unified interregional conflict law, having each jurisdiction develop its own interregional conflict law, applying private international law by analogy, or using identical rules for both interregional and international legal conflicts. The uniform substantive law approach encompasses enacting nationally unified substantive laws, creating uniform substantive laws applicable only to certain jurisdictions, adopting identical or similar substantive laws across jurisdictions to achieve harmonization, establishing unified substantive rules through judicial practice, and extending substantive laws applicable in one jurisdiction to another to achieve legal uniformity [3].

Currently, the academic discourse in China predominantly focuses on three solutions for addressing interregional legal conflicts: the conflict law approach, the model law approach, and the coordinated legislation approach. Among these, the model law and coordinated legislation approaches are derived from the uniform substantive law pathway and essentially rely on uniform substantive laws to resolve issues. Interregional conflict law refers to the applicable law used to resolve legal conflicts between different regions with distinct legal systems within a single country, aiming to regulate legal relationships and resolve conflicts between jurisdictions. Given that interregional conflict law shares the same purpose, nature, origins, and similar rules with international conflict law, they can be applied analogously or referenced mutually. Considering the unique characteristics of "one country, two systems" and the historical and current contexts of Hong Kong(China), Macao(China), and Taiwan(China), it is my view that applying international conflict law by analogy or reference is sufficient for addressing legal conflicts between different jurisdictions in China, making the formulation of a separate unified interregional conflict law unnecessary. The model law approach is a secondary choice, adopted due to insufficient conditions, numerous obstacles, and inadequate justification for enacting and implementing uniform

substantive laws in China. The drawback of the model law is its non-binding nature; its implementation depends on voluntary compliance and internal acceptance by the parties involved. If the entities responsible for application do not prioritize the model law, it may remain shelved and ineffective.

Coordinated legislation seeks to directly resolve legal conflicts through statutory law. The entities involved in coordinated legislation include legislative and administrative bodies with relevant functions. Depending on the primary actor, coordinated legislation can be categorized into legislature-centered (legislative council) or government-centered approaches. Legislature-centered coordinated legislation involves consensus-building, joint drafting, separate deliberation and adoption, and joint promulgation of the legal text. Government-centered coordinated legislation primarily relies on signing cross-regional cooperative agreements [4].

Through in-depth consideration of factors such as "one country, two systems," equality, and mutual benefit, as well as comprehensive comparison of major solutions for addressing interregional legal conflicts, I conclude that coordinated legislation represents a preferable approach for resolving financial rule conflicts and achieving financial rule convergence in the GBA. The formulation of specialized uniform substantive laws or interregional conflict laws in the monetary and financial domain would prove unrealistic. Similarly, developing non-binding model laws lacks sufficient necessity. Under the premise of "one country, two systems," the three jurisdictions share aligned objectives and visions for GBA development, which establishes a foundation for coordinated financial rule legislation. The high degree of autonomy enjoyed by Hong Kong(China) and Macao(China), the independence of their monetary and financial institutions and policies, and the equality among all participating entities collectively create favorable conditions for such coordinated legislation. The purpose of financial rule convergence in the GBA is to resolve conflicts arising from regulatory differences among the three jurisdictions, achieve mutual benefits, and provide superior financial products and services - these imperatives inject momentum into the coordinated legislative process.

When comparing legislature-centered and government-centered approaches to coordinated legislation, this paper advocates adopting the administrative legislation path centered on governmental bodies for GBA financial rule convergence. This preference stems from the observation that financial rule issues and conflicts typically emerge as concrete, specific problems during the actual operation of financial systems and delivery of financial services. The relevant administrative authorities possess the most comprehensive understanding of these operational realities and are best positioned to address them. Compared with legislature-centered coordination, the administrative approach offers greater specificity, simplicity, and flexibility in implementation. The tangible outcome of administrative coordinated legislation takes the form of executive agreements. Mere meeting minutes or memoranda cannot be considered as completed administrative coordinated legislation. For matters requiring approval from respective legislative bodies, signed administrative agreements must undergo corresponding legislative procedures. In a society governed by rule of law, administrative agreements carry binding enforcement power. All parties bear responsibility and obligation to implement financial rule convergence agreements that are duly established and enacted through administrative coordinated legislation. This mechanism ensures both the practicality and enforceability of the converged financial rules across the GBA jurisdictions.

5. Conclusion

The convergence of financial rules in the GBA of Guangdong, Hong Kong(China) and Macao(China) is a complex issue involving political, economic, legal and financial aspects. Starting

from the actual situation of “one country, two systems”, three jurisdictions and three currencies, and adhering to the principles or concepts of equality and mutual benefit and win-win situation, we are committed to solving the specificity, particularity and specialization of the convergence of financial rules in the GBA. It is unrealistic to formulate specialized uniform substantive laws and inter-regional conflict of laws to resolve conflicts of laws in the financial field, and it is even less necessary to formulate model laws with no enforcement power. With regard to the specific issues and matters relating to the convergence of financial rules in the GBA, it is simpler and easier to solve the problem by signing a binding and enforceable administrative agreement through administrative co-legislation, which is a quick and flexible way to solve the problem.

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