

On the Improvement of Local Financial Supervisory Authority

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Abstract

The Fifth National Financial Work Conference has pointed out the direction for further improvement of local financial supervision authority in China. At present, it seems that the local financial supervision authority, the main body for exercising local financial supervision authority, has problems such as incomplete transformation of functions, irregular legal empowerment and weak enforcement power, which have a negative impact on the effectiveness of local financial supervision authority. To solve the above problems, it is necessary to promote the improvement of local financial regulatory power by constructing a standardized legal authorization path to clarify the subject of power, the scope of power and specific responsibilities, strengthening external supervision, and promoting the collaboration between local financial supervision and the whole financial supervision system.

Keywords

Local Financial Regulatory Authority; Vertical Regulatory System; Power Configuration.

1. Introduction

The Fifth National Conference on Financial Work clarified for the first time the way in which the central and local governments cooperate in financial regulation: the central financial regulator formulates regulatory rules and directs their implementation, while localities are responsible for formulating implementation rules within their jurisdictions. In accordance with the spirit of the meeting, the State Council established the Financial Stability and Development Commission (hereinafter referred to as "FSC") to guide local financial affairs, supervise financial regulators and local government financial operations, and have the authority to conduct accountability. Clearly the exercise of local financial regulatory authority is the object of the "7 + 4" class of financial institutions. According to the meeting, local government financial work offices (hereinafter referred to as "financial offices") are transformed into local financial supervision authorities (hereinafter referred to as "HKMA") to transform into specialized financial regulators. The HKMA at the provincial level also has the responsibility of coordinating between the central and local financial regulators.

2. The Dilemma of Advancing Local Financial Regulatory Authority

2.1. Incomplete Sectoral Reforms Create Conflicting Functions

The HKMA was established on the basis of the FCO, which was initially set up to emphasize its "financing" function and to promote economic growth by competing for financial resources for local governments. In the process of accelerated urbanization in China, the gap between local fiscal revenues and expenditures has been widening. In order to meet the huge demand for funds, many governments compete to set up financing platforms through urban investment companies, and then private equity funds, trust loans, entrusted loans and other ways to finance, the Finance Office as the government's financing department in which played an "important role". However, the HKMA emphasizes the "regulatory" function. In Jiangsu Province, for example, according to the "General Office of the Provincial Party Committee and the General

Office of the Provincial Government (on the issuance of the Jiangsu Province HKMA functional configuration, internal structure and staffing regulations" (hereinafter referred to as "Notice"), the Bureau is a directly under the provincial authorities, plus the Financial Office of the Jiangsu Provincial People's Government, under the jurisdiction of two financial development division, three local financial supervision division. In addition to regulation, the Bureau is responsible for financial reform under the guidance of the FSC. It is worth noting that the Bureau is responsible for the province's microfinance companies, financial guarantee companies (including financial re-guarantee companies), pawnbrokers, financial leasing companies, commercial factoring companies, regional equity markets and local asset management companies engaged in the bulk acquisition and disposal of non-performing assets of financial enterprises approved by the central financial management authorities can be carried out supervision and management. The HKMA faces the problem of "I am in charge of myself", as the original "financing" function is not completely divested, while at the same time it has to perform the "supervision" function, and there is an overlap between the objects of financing and supervision, which makes it very easy to fall into a conflict of functions, and even to commit corruption.

2.2. Unregulated Legal Empowerment Leads to Difficulties in Performing Duties

The document according to which the HKMA of Jiangsu Province was established is the "Notice" jointly issued by the General Office of the Provincial Party Committee and the General Office of the Provincial Government, which does not belong to the list of local regulations and local government regulations. However, the form of financial supervision of the Bureau is not limited to the traditional administrative means such as licensing and punishment, and even includes certain legislative powers, such as research and development of financial supervision of local regulations, draft regulations, local financial supervision and management of development planning and policies within the scope of responsibility, which is clearly unreasonable in terms of legal status.

More seriously, there is no legal arrangement for the HKMA to belong in the administrative sequence, and it is debatable whether it is subordinate to the local people's government or under the dual leadership of the local government and the central bank, resulting in a mismatch between the subject of power and the power it enjoys. According to the provisions of the Legislative Law, both local government regulations and departmental regulations of the State Council are only applicable within their respective areas of competence. The HKMA's authority to supervise MLCs comes from local government mandates, but it does so on the basis of the 2008 Guidance on the Piloting of MLCs (hereinafter referred to as the "Guidance") issued by the CBRC. How can the administrative organs under the local government sequence obtain the authorization of normative legal documents from the CBRC under the People's Bank of China?

In addition, the legal basis of the HKMA for administrative licensing and administrative penalties also conflicts with the higher law. According to the "Guiding Opinions", the HKMA's approval of microfinance companies before registration with the administrative department for industry and commerce is in the nature of a predecessor administrative license. The administrative licensing law provides that only laws, administrative regulations and local regulations can set up administrative licensing, "guidance" as departmental regulations are obviously not included.

2.3. Enforcement Force can Hardly Cope with the Huge Amount of Jurisdictional Objects

In the era of centralized and unified financial regulatory power, the lack of personnel in the central regulator of the vertical regulatory system has long been insufficient to deal with the

huge scale of the local financial system, one of the important reasons for the exercise of financial regulatory power by the local is to relieve the huge pressure of central supervision. [1] This problem is still not solved under the current two-tier financial institution structure of "centrally-led and locally-assisted". In Guangdong, for example, the 2019 statistics show that the province has 525 microfinance companies and 529 financial guarantee companies, while the reform process of the Guangdong Provincial HKMA did not expand the size of the administrative establishment of only 46 people, which really has financial experience in the supervision of only 15 people, accounting for only about 32%. [2] Guangdong, a region at the forefront of financial development in the country, has an HKMA that is still under a high regulatory load, and the situation in the rest of the country is obviously more serious. The reason why "cash loans" repeatedly involve a large number of excessive lending, repeated credit, abnormally high interest rates and other high-risk behavior, in large part because of the lack of local financial regulatory authorities law enforcement forces, objectively unable to carry out regular supervision of a large number of local microfinance companies.

3. Optimization Path of Local Financial Supervision Authority

China's "central main and local subsidiary" financial regulatory system has taken shape, the right way to improve China's local financial regulatory authority is the central government to grasp the macro, set targets, and then by the local supervision according to local conditions.

3.1. Standardize the Authorization Path and Clarify the Authority and Status of the HKMA

Local financial regulatory authority to be effective must rely on the strong support of the law. After promoting the systematization of the HKMA's regulatory power, its legal status, scope of authority and responsibilities need to be clearly defined by law to avoid weak enforcement due to unclear and insufficient authorization. The granting of such power must comply with the constitutional and legislative law requirements for the ranking between normative legal documents. One of the possible paths is for the State Council to issue administrative regulations to distribute the financial regulatory power between the central and local levels, and then for the local people's congresses to specify the responsibilities of the HKMA through the enactment of local regulations. A more authoritative approach is for the NPC to incorporate the HKMA into the existing financial regulatory system through the amendment and repeal of laws, defining the legal status and functions of the institution from a holistic perspective, while normative issues such as institutional settings, regulatory responsibilities, regulatory scope, modalities and remedies can also be provided for by law, thus avoiding ineffective or contradictory normative legal documents. At this point, the local financial regulatory powers held by the HKMA can only be described as legal, effective and regulated powers, and the Bureau can become a legally legitimate local financial regulator.

3.2. Promote Institutional Reform to Reduce Functional Conflicts

Independence is a prerequisite for "regulation", but the HKMA's history and institutional set-up have objectively impacted neutrality. Some scholars believe that the key to deepening the reform of local financial regulatory authority is to further separate the "financing" and "supervisory" functions of the HKMA and make it a specialized regulatory unit. Full independence of local financial supervision is a long-term reform goal, but it is too early to take financing functions away from the HKMA at this stage. Compared to the central government, local financial supervision is more aware of the financing culture, capital trends, business operations and other information and resources within its jurisdiction, making supervision more efficient, targeted and flexible. This advantage comes from the FCO as a government financing institution in the long-term operation of the local financial system in depth grasp. A

completely separate HKMA from the FCO would lose these advantages and would not be beneficial in terms of economic cost and regulatory effectiveness. At present, it should still be based on the financing functions of the former Finance Office, first establish a complete local regulatory system, in the process to avoid the inefficiency of supervision caused by conflicting functions can only promote the institutional reform of local financial supervision.

On the one hand, the HKMA below the provincial level has adopted a vertical management system and is integrated into the administrative sequence of provincial government agencies, so that matters such as its staffing, agency management and departmental funding are decoupled from local governments. The change in administrative subordination can strengthen the authority of local financial supervision and prevent improper intervention in financial supervision by lower-level local governments. On the other hand, the FSC plays a guiding and supervisory role. The vertical system in the provinces has not been able to fully offset the disadvantages of conflicting functions, and provincial governments may still interfere unduly with financial regulation in the pursuit of economic development. The supervision of the HKMA by the FSC consists of two parts: first, the review of documents formulated by provincial governments that may affect the exercise of the HKMA's authority, of which higher-level normative legal documents must be submitted to the FSC for record on its own initiative, while other transactional documents may be reviewed on a random basis in due course due to their large number. Second, the Finance Committee found that the government's actions are contrary to regulatory independence can be corrected by the line and set a deadline for correction, for refusal to correct the right to submit to the State Council ruling.

3.3. Promote System Collaboration to Help Maximize the Effectiveness of Local Financial Regulatory Authority

Local financial regulatory power can only be maximized if it is embedded in the national financial regulatory system, and the current focus is on the construction of a collaborative system and the clarification of collaboration matters. [3] In the author's view, systemic collaboration consists of three aspects: first, comprehensive sharing of regulatory information. In addition to the HKMA, the financial regulators set up in localities also include one bank and two chambers, each exercising financial regulatory power on behalf of different entities, but the regulatory objects are often related or even overlapping. Poor connectivity and incomplete information may lead to failure to detect financial hazards. Therefore to accelerate the establishment of a unified financial regulatory information base. Second, the regulatory approach is dynamically matched. Local financial regulatory authority has to maintain its own flexibility while following the macro leadership of the central government, and conflicts between the two are inevitable in practice and can only be mitigated by weighing interests. Regular working meetings can be organized by the FSC with the participation of the provincial financial regulatory bureaus with a view to fully negotiating between the flexibility of local regulation and the broad principles of the central government at the meetings. Third, regulatory actions are consistent in their objectives. On the one hand, financial risks in one location in the context of the Internet often spread to multiple locations, exceeding the scope of application of local financial regulatory authority. On the other hand, local financial regulators keep financial hazards that may generate large-scale risks under wraps in order to maintain the temporary stability of the local economy. The ultimate goal of local financial regulation is to maintain the safety of the national financial system, and the FSC must play a guiding and supervisory role.

The previous section envisages a vertical regulatory system for the HKMA below the provincial level, with the advantage in system collaboration that the flow of information between the provincial HKMA and the local bureaus does not need to go through the lower local governments again, which can ensure authenticity and efficiency. The Finance Committee is

responsible for communication with other State Council departments at the central level. Among other things, communication between the FSC and provincial governments and guidance to the provincial MAS may be hindered. There are three measures that could be considered: firstly, direct communication should be ensured between the provincial MAS and the FSC for matters such as requests for instructions on unclear jurisdictional matters and the assignment of supervision to special subjects. Second, documents related to financial supervision formulated by provincial governments should be consulted by the FSC at the drafting stage; finally, provincial-level HKMAs should report regularly to the FSC on the performance of their duties.

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