

Study on the Legislative Perfection of China's Supervision for Foreign Banks under the Mode of Mixed Operation

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Abstract: Recently, with stressful competition among traditional commercial banks, financial service innovation is imperative under the maturity of risk control technology in commercial banks, and the mixed operation mode is gradually developing and prevailing in financial industry. Western developed countries are bound to adopt this mode to carry out financial business in China, putting forward new requirements for the laws and regulations of supervision for foreign banks in our country. With the continuous development and extension of business, corresponding perfection should be made so as to play a better regulatory and normative role, to better guarantee the healthy development of domestic banks and foreign banks and handle the domestic situation well. The competitive relationship between banks and foreign banks will safeguard the order and stability of China's financial market.

1. Introduction

With the liberalization of the access system for foreign banks and the relaxation of business restrictions of commercial banks in China, China's financial industry is also following the trend of internationalization. Under the trend of financial market liberalization and financial business innovation, the mixed operation mode has gradually been adopted by China's financial institutions. However, China's relevant financial legislation still exists in the form of separate supervision. There is only one set of administrative regulations for the supervision of foreign banks, which is far less effective than the legal norms. Thus, problems such as loopholes, oversight and out-of-control of financial sector supervision will emerge with the deepening development of financial business. Only by establishing and improving the financial supervision system that adapts to the laws and trends of the development of the financial industry can we effectively prevent financial risks, deal with financial problems, stabilize financial markets and consolidate financial interests.

2. Regulatory Challenges Caused by the Tendency of Mixed Operation Mode

Potential risks of mixed operation are bound to bring unprecedented challenges to China's financial supervision. Although our country's financial legal risk prevention system lacks the necessary legal supervision of mixed operation, our country's current financial law is basically based on the principle of separate operation, but our separate operation model is just like an invisible 'Firewall' to separate the risks that may arise from the problems in the development process of financial groups. In the current trend of close links among various sectors of the financial industry, the financial risk factor doubles and is easily transferred within the group, which will seriously threaten the financial business with close capital exchanges such as credit, guarantee, financial products, insurance, etc. Without the role of segregation of business operation, China's financial institutions will be constrained in the supervision of risk prevention and control.

In contemporary world, financial supervision in the United Kingdom, Japan, Singapore, Norway, Sweden, Denmark and other countries adopts the unified supervision, that is, to establish a unified supervision authority responsible for the supervision of the financial industry, financial institutions and financial services. This supervision mode is relatively inexpensive in terms of supervision information and has the effect of scale operation and scope economy. However, the United States, Germany, Poland and Hong Kong adopt quite different modes of separate supervision. Compared

with the unified supervision, the lack of coordination among the supervisory departments under the separate supervision mode will lead to the occurrence of multiple-supervision and supervision vacuum zone, and the lack of a set of systematic risk early warning, disposal and buffer. And the remedy mechanism has lost the effective judgment and early control of financial risk, but it is undeniable that the separate regulatory agencies have strong specialty and can clearly define their respective division of labor. In the period of economic restructuring, the structure of 'one party, three meetings' has played a positive role in the steady development of China's financial industry and the effective prevention of financial risks. However, under the general trend of mixed operation, China's financial industry supervision mode is bound to face new challenges.

Due to the huge advantages of mixed operation and the pursuit of profit maximization by foreign financial institutions, foreign financial institutions will take various measures to circumvent the financial supervision of our country, to achieve mixed operation in China as far as possible. Firstly, with the continuous opening of China's securities, insurance and other financial services, the business of foreign-funded financial groups is bound to continue to expand, such as the establishment of independent legal persons in China and the operation of subsidiaries separately, but in essence, they are managed by the headquarters of their parent group, through the exchange and sharing of the situation, information and resources of China's financial market, realizing the mixed operation in China. In fact, the mixed operation mode of foreign financial groups is still difficult to achieve immediately. However, they can still expand the market resource network quickly by participating in Chinese commercial banks and bypassing the current restrictions on the scope of customers and operating areas, so as to better integrate the financial groups behind them into the mainland financial environment. In addition, branches of foreign-funded financial institutions or branches of foreign-funded banks set up in China serve as platforms for contacting qualified and interested overseas investment enterprises in China through publicity, research and consulting services, to avoid the restriction and supervision of China's separate business model.

3. Comparison between China and the United States on the Supervision of Foreign Banks

The earliest appearance of foreign banks in the United States began in the 1960s. Traditional European capitalist countries used the period of the Civil War to set up bank branches and carry out transnational financial business in the United States. With the rapid rise of the American economy and the relatively stable political environment after World War II, foreign banks must choose the United States as the center of global monetary and world economic activity for their international business. At this stage, although the increasing number of foreign banks in the United States has posed a great threat to the operation of domestic banks in the United States, due to the lack of federal unified legislation, the United States government began to realize the importance of supervision of foreign banks; under the situation of the competitive advantage of foreign banks and the substantial growth of related business, the United States Congress passed it in 1978. The International Banking Act has initially established a legal system for the supervision of foreign banks at the federal level. The core of the International Banking Act is to provide equal competition opportunities for domestic and foreign banks.

In the 1980s, the boundaries between commercial banks in the United States became increasingly blurred with the investment, acquisition, merger and reorganization of financial groups. In 1991, Congress promulgated the Foreign Bank Supervision Enhancement Act, which aims to ensure that Congress's monetary policy can be applied to all operating banks in the United States. Institutions are implemented fairly and uniformly. While respecting the status of financial supervision in the home country, the Act continuously strengthens the supervision of the host country. The branches of foreign banks in the United States are equal to domestic banks in applicable law. The United States has gradually realized the localization of financial risk supervision.

Until 1998, with the peak period of M&A in American banking industry over, the operation of foreign banks in the United States has declined. In order to promote the enthusiasm of foreign financial activities, the United States Government passed the Gramm-Leach-Bliley Act, which

allows foreign financial groups to engage in banking and securities in the form of legal provisions in the United States. Since then, the United States has ended the financial sector's separate operation and supervision mode, formally opened the mixed operation mode and a comprehensive foreign bank supervision system.

Under the traditional mode of separate operation and management, China's banking supervisory authority is the CBRC. According to the provisions of Article 2 of the Regulations on the Administration of Foreign Banks in China, it intervenes and regulates the business activities of wholly foreign-owned banks, Sino-foreign joint venture banks, branches of foreign banks and representative offices of foreign banks established within the territory of the People's Republic of China with the aim of realizing this goal. The safe operation of China's banking industry. Macroscopic supervision of foreign banks includes not only the external supervision of foreign banks, but also the internal supervision of foreign banks, the supervision of self-regulatory organizations in the same industry and the supervision of social intermediary organizations.

The development of foreign banks in China began in 1979 when Japan Export Bank set up representative offices in Beijing, and then financial institutions in other countries set up representative offices in China. The large-scale entry of foreign banks began in 2006 when China realized the national treatment of foreign banks, and they gradually became a new force to activate China's financial market. Obviously, the emergence of foreign-funded banks like bamboo shoots after a spring rain is conducive to the introduction of foreign capital, the provision of financial communications for China's economic development, the promotion of the development of other financial services and the alleviation of China's shortage of funds. At the same time, by drawing lessons from the advanced management and service level of foreign-funded banks, China's commercial banks will continue to improve their business quality and innovate finance. Products, improve operational efficiency to cope with business competition.

In order to better monitor and adjust the entry of foreign-funded banks into China's financial industry, China has gradually established a legal system of supervision of foreign-funded banks centered on the People's Bank of China Law in terms of laws, regulations and regulations. In November 2006, China promulgated the Regulations of the People's Republic of China on the Administration of Foreign-funded Banks and its implementing rules to allow foreign-funded banks to provide banking RMB services to Chinese citizens in China. However, in the 21st century, considering the operating costs and political and legal risks, the related financial business of foreign banks in China has entered a bottleneck period of development. From 2015 to 2017, our government has issued and issued decisions on Amending the Regulations on the Administration of Foreign Banks and Notice on Some Related Matters of Foreign Banks' Development, aiming at relaxing and reducing the restrictions. At the same time, we should strengthen the supervision of foreign banks to prevent capital outflow.

By contrast, under the policy of free market economy in the early period of the United States, loose supervision was adopted for small-scale foreign-funded banks. With the continuous expansion of its scale, it was gradually restricted on the basis of giving foreign-funded banks equal national treatment. However, in order to promote the enthusiasm and sustainability of foreign-funded financial services, it was necessary to reduce the moral hazard of financial institutions from the market exit mechanism and avoid waste resources from Central Bank. Thus, the United States still maintains the original federal regulatory framework to encourage foreign banks to operate in its territory, and continues to relax restrictions on their scope of business. However, due to historical factors, the supervision of foreign banks in China started from scratch and went through the process of opening up market access step by step. However, due to over-emphasis on strict standards and geographical and business restrictions of market access before joining the World Trade Organization, the supervision of market operation and market exit of foreign banks was neglected, which made foreign banks in China. The operation situation in China is not satisfied, and even the positive role of foreign capital in promoting the development of China's financial industry has not been brought into full play. However, with the continuous development of the mixed operation mode, China's restrictions on foreign-funded banking business are gradually relaxed and

foreign-funded banks are encouraged to provide comprehensive financial services to Chinese-funded enterprises investing abroad, but there are no clear provisions concerning China's territory of internal financial business. Comparing with the development of supervision of foreign banks in China and the United States, we can see that to encourage foreign banks to ensure the stability of domestic financial markets at the same time, we need to implement national treatment, blindly reduce the access threshold, expand the scope of business, and later there will be more risks that are difficult to monitor. At present, our country advocates guiding foreign banks to complete the legal person registration in our country, that is, the supervision mode of "legal person orientation", adhering to the principle of national treatment and taking foreign banks as the standard of our banks for reasonable supervision, aiming at promoting the comprehensive development of foreign banks' business in our country and conforming to the development trend of international financial industry on the premise of protecting the interests of domestic financial consumers, to guard against financial risks.

4. Suggestions on the Establishment and Perfection of the Supervision Legal System for Foreign-funded Banks in China

There is no systematic law to supervise foreign banks in our country. The mixed operation mode is different from the separate supervision which our country has always implemented. It brings unprecedented challenges. If we want to make full use of the international financial market, it is necessary to play an active role of foreign financial institutions. Only by effective supervision can we better prevent and control financial risks.

First of all, it is crucial to clearly retain the 'Firewall' function of separate operation to prevent the spread of financial risks within financial groups, and at the same time prevent the information forces of insider-related transactions from saying that they are harming the interests of our financial consumers. That is to say, according to the principle of national treatment promised by China's accession to the WTO and the standards of domestic banks, China still adopts the mode of separate operation supervision for foreign banks, but we should learn from the United States and expand the financial business of foreign banks in China, not limited to one kind of commercial bank business.

Second, completing the reform of financial institutions in a short time is obviously not conducive to maintaining the stability of the domestic financial market. Since it is still based on the mode of separate operation supervision, it is necessary to fully establish the necessary linkage and coordination mechanism between the 'one line, three sessions', strengthen the communication and cooperation between regulatory bodies, and effectively cover the regulatory vacuum area in order to reduce the occurrence of financial risks. Specifically, with the People's Bank of China as the center, the supervisory bodies should have clear responsibilities and should not shirk responsibility from each other. If they encounter overlapping business supervision, they should adopt strict double supervision standards to prevent the gradual decline.

Thirdly, on the premise of maintaining the status quo, the unified regulatory approach is particularly important. Without breaking the existing regulatory model and restructuring the merger regulators, it is necessary to maintain the stability of China's financial market. However, without a unified management method, it is obviously difficult to cope with the trend of the evolution of the global financial market from separate operation to mixed operation. Because of the long-term mode of separate operation and supervision in China, the role of rules and regulations is inverted higher than the level of legal effect. We should clarify the supervisory status of financial law. Since national treatment is regarded as the same as domestic banks, we should clearly stipulate foreign banks in our financial law and supervise them in accordance with our financial law. In addition, we can refer to and draw lessons from the Financial Suit of the United States. The Law on Modernization of Business will improve the relevant specific provisions of China's Financial Law on foreign banks, especially the mixed operation mode.

Fourthly, we must be in line with the international standards, attach importance to the protection of the rights and interests of financial consumers, strengthen the information disclosure system of financial services, improve information transparency according to the provisions of the new Basel

Capital Accord, and be realistic about the information disclosure of financial risks. Avoid the spread of risks in financial groups because of insider related transactions, and ultimately it is difficult to control the direct damage to the fundamental interests of financial consumers. The specific provisions of the principle of transparency must be added to the legal provisions on the supervision of foreign banks, which will also help to promote the social supervision of financial institutions by the public and the media.

Fifthly, although we hope to see that foreign financial institutions can promote the prosperity of China's financial market and help Chinese enterprises to 'go abroad' the stable development of overseas investment projects, the necessary exit mechanism is still essential. In order to effectively protect the interests of financial consumers, financial investors, especially the vulnerable groups of depositors in China, we should speed up the establishment and improvement of the deposit insurance legal system in order to safeguard the credit of foreign banks in China and stabilize the order of our financial market.

5. Conclusion

The development of China's mixed operation mode is still in the back row of the reform of the whole international financial industry. In the long run, in order to meet the needs of financial opening after China's entry into WTO, China must not benefit the mainstream system of world finance for a long time. In order to achieve the integration with international finance and realize the mixed operation of financial industry, China's financial system reform must become the target choice. . However, the development of China's mixed business model belongs to catching ducks on the shelf, which is mainly due to several factors: firstly, it is subject to the limitations of China's financial regulatory system; in fact, China's financial institutions have entered this business model prematurely without fully considering the unprecedented financial risks brought about by mixed business; secondly, China is related to it. The laws and regulations of the financial industry are still in the stage of standardization of separate management.

References

- [1] Li,Yuhong &. Ru,Changyun. The Enlightenment of International Financial Industry Integration to China's Financial Industry [J]. Hebei Normal University of Science and Technology (Social Science Edition), 2006,5-1:14.
- [2] Ni,Di. The Development Trend and Countermeasure Research of China's Commercial Bank Mixed Operation [D]. Dissertation of Zhengzhou University, 2008,5.
- [3] Li,Wenjiang. Legal Review and Legislative Improvement of Foreign Banking Supervision [J], Financial Theory and Practice, 2012, 12:67.
- [4] Li,Hongrun. Defects and Perfection of China's Supervision Law on Foreign Banks [J], Jinzhong University Press, 2009, 12:26.
- [5] Tao,Guangfeng. Financial Law [M], Beijing: Renmin University of China Press, 2009 edition, 74.
- [6] Luo,Kun, &. Wang,Rongfen. The Change of Financial Business Model [J], Southwest Finance, 2005, 11:28.