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The Rule of Law Approach to Promote High-quality Development of Finance

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Abstract. The modernization of the law in finance of China has national strategic height, national interest dimension, financial inclusion and financial opening breadth, It has the characteristics of Chinese practice and benefits the people. At present, the construction of financial of law is faced with some difficulties, such as the supervision of digital finance, the prevention of financial risks, the coordination in the construction of foreign-related financial of law. In order to fully respond to the needs of construction of law in key areas, first, we will promote financial regulatory innovation and implement the inclusive and prudent regulatory concept on the track of marketization and law. The second is to implement departmental coordination, central-local coordination and social coordination in the prevention of systemic financial risks. Third, strengthening foreign-related financial legislation, justice and law enforcement in the context of high-level opening-up.

Keywords. Modernization of the law, Financial supervision, High-quality development

Finance is subordinate to and serves the real economy, as the core of modern economy, financial capital has the nature of seeking profit. The disorderly expansion of financial capital will lead to market monopoly, competition obstruction, capital debt and disconnection from reality to illusion. Therefore, financial security is the logical starting point of financial rule of law. We should stick to the political, people-oriented, social and moral standpoint of financial of law, and realize the dialectical integration of financial security and financial development through the modernization of financial law.

1 The era background of financial rule of law

Since the global financial crisis in 2008, there has been a trend of virtualization in the financial markets of various countries. With the rise of our national strength, global financial risk has become an important factor affecting national security and stability. Under the background of opening wider to the outside world, it is necessary to enhance the ability of financial governance, enhance the influence of financial legal system and lead the development of global financial rules.

Looking back the basic development of our country's financial legal construction in recent ten years, it can be divided into three stages. The first stage is the standardization stage (2013-2015), which aims to consolidate the foundation of financial system reform under the

new normal of economy. Macro-financial market system, medium-sized financial industry internal and external opening rules, micro-financial regulatory standards are the main reform direction.

The second stage is the institutionalization stage (2016-2020) , which aims to comprehensively promote the construction of the financial law system in line with our national conditions. Based on the objective changes of the economic situation and financial risks, the 2017 national financial work conference pointed out that the target of financial services for the real economy should be adhered to. It also establishes the core tasks of preventing financial risks, promoting the reform of financial institutions and expanding financial opening. In 2019, the Technology Innovation Board was set up and a pilot registration system was introduced to further improve the basic system of the capital market, such as listing, information disclosure, trading and delisting.

The third stage is the rule of law stage (2021-2023) , focusing on the systematic planning, coordinated and efficient implementation of a series of financial law modernization initiatives. During this period, a series of major breakthroughs were made, first, following the principles of marketization and rule of law, establishing the purpose of standardizing and guiding the healthy development of capital and curbing its disorderly expansion, and second, deepening institutional reform, the Central Financial Commission (CFC) will be set up to form a regulatory framework of “One bank, one bureau, one meeting”. Third, we have cracked down on securities violations, strengthened coordination in cross-border supervision and law enforcement, and coordinated efforts to guard against and defuse risks.

These are the stages of the development of China's financial law, including three distinctive features of the times, the same can be used as a new era of financial governance practice guide. First, the height of national strategy. Financial development concerns the whole situation, financial legal system is a basic system, the central government attaches great importance to the political nature of financial governance. Second, reflect the dimension of national interests. China has become an important financial power, finance is the key field of opening-up, financial interests are important national interests. Third, the breadth of financial inclusion. The background of financial work is people-oriented, policy incentives and system design are carried out to the people-centered position, to meet the requirements of inclusive finance.

2 A review of the process of financial rule of law

A sound system has a strong response to the reality, to examine the current crux of the financial rule of law, especially the key areas to be resolved, is the primary premise of in-depth reform.

(1) The regulatory lag in digital finance. The scale of digital economy has accelerated in recent years, accounting for 41.5% of GDP. The development of digital finance platform is a good example. Digital Finance is the combination of Internet technology and finance, involving digital currency, mobile payment, online lending, equity crowdfunding, financial trust and other industries. However, the limitations of statutory law are particularly prominent in digital financial regulation. The characteristics of digital platform, such as scale economy, network effect and technology innovation, give birth to oligopoly. The negative externalities brought by the disorderly expansion of financial capital in Internet financial platform are mainly embodied in three points. First, the platform abuses its dominant market position to exclude or restrict competition; second, the super platform relies on its special status of financial infrastructure to form a “Too big to fail” situation involving public interests; Third, the

combination of industry and finance will aggravate the spread of financial risks and undermine the unity and openness of the financial market.^[1] Digital financial platform makes rules, provides services and even acts as a transaction supervisor in the market, forming a closed-loop ecology. It is obvious that traditional financial supervision can not deal with digital finance effectively in Sunac, and the blank and lag of supervision are unavoidable, and a series of limitations are exposed. One is policy regulation. The traditional practice of financial supervision is characterized by a “One-size-fits-all” approach, which leads to the dilemma of “One-tube-to-death, one-release-to-chaos”. Second, extensive supervision. It is an indisputable fact that the financial supervision lags behind the digital transformation of the financial market, and the policy supervision is accompanied by the extensive supervision, which will lead to two extremes, or lack of supervision will lead to the loss of other interests or public interests, or improper intervention deviates from the principle of proportionality and the spirit of the rule of law. Third, disciplinary supervision. The traditional supervision mode makes the long-term “Zero-sum game” between the supervisor and the main body of the market, which increases the supervision cost. Limited by the lack of regulatory resources in the regulatory mode, the limits of mandatory disciplinary fuzzy, restrain the confidence and vitality of financial markets.

(2) The lack of coordination in the prevention of systemic financial risks. The modernization of financial governance contains the objective requirement of synergy, and the problem of supervision fragmentation is prominent. First, there is insufficient regulatory synergy among regulators. On the one hand, it is easy for each functional agency to carry out linear supervision according to the internal division of labor, which leads to the problem of “Isolated supervisory island”. On the other hand, the financial supervision department has the separation of its functions from other departments, for example, there is insufficient coordination between financial supervision and anti-monopoly supervision. Facing the current situation of mixed operation and cross-border development of internet finance, the traditional top-down hierarchical structure supervision can not deal with it effectively, which greatly reduces the policy execution and supervision efficiency.

Second, the central and local collaborative governance barriers. There are multi-dimensional imbalances in financial governance from the perspective of central-local relations: first, the imbalance in the distribution of power and responsibility. Moreover, regional differences and the actual needs of local financial industry further force local regulatory authorities to frequently break the central regulatory rules, forming a greater systemic risk. Second, the imbalance of the specific financial risk management. The central supervision tends to centralize and unify the control, and fails to pay attention to the particularity of local financial risks and respond to the differential needs of local financial supervision. Third, the financial regulatory infrastructure and the supply of public goods imbalance. The central government invests less in local financial supervision and public goods, including financial industry governance policies, regulatory technology, credit rating systems, industrial rescue and compensation funds, this will restrain the substantial improvement of local financial supervision ability.^[2]

Third, the public sector and social forces lack of synergy. It is undeniable that, in the face of continued financial sector innovation, massive financial transactions and capital flows, the government plays a crucial role in addressing market failures, however, there are also limitations such as lack of administrative rationality, high cost of governance and frequent rent-seeking. Market is the most effective way to optimize the allocation of resources, and the effectiveness of market forces in preventing financial risks can not be ignored.

(3)The weakness of foreign-related financial rule of law construction. Capital flow knows no borders, international financial rule of law is the key field of foreign-related law and foreign relations, open cooperation and common development is its inherent requirements.^[3]In the current international situation, the construction of foreign-related financial rule of law is facing new challenges. First, from the perspective of the world political structure, geopolitical conflicts continue, foreign financial rule of law is bound to face the negative impact of political risks. Second, from the perspective of the international economy, economic integration is blocked, unilateralism and protectionism are rising, the international trade order is evolving at an accelerated pace, and the rule of law in foreign-related finance is now facing a severe test. Third, the international financial environment, the exchange rate crisis, foreign debt crisis have increased the risk of financial crisis. The spillover effects of recent interest rate tightening in developed economies, for example, have put greater pressure on emerging developing economies.

3 Legal means to promote high-quality financial development

Financial innovation and the development of financial markets have highlighted the conflict between norms and reality. To effectively respond to these dilemmas, systematic and scientific rule of law measures should be taken.

First, in view of the emerging digital financial sector, we should carry out timely regulatory innovation, strengthen the responsibility of the main body, and establish a complete and effective financial regulatory system. (1) Financial innovation is the internal driving force of financial development. To achieve the dual focus on regulation and development, we should first complete the transformation of the concept of financial supervision. Finance is the medium to promote the rational allocation of production factors, and it can not create social wealth by itself. Therefore, financial legislation and supervision should recognize the basic function of financial service entity economy, and grasp the scale of financial development and financial security. We should transform the policy logic of financial supervision into the logic of rule of law, and carry out the principle of inclusive and prudent rule of law on the track of Marketization and rule of law. Understand the law and characteristics of digital finance development, avoid tolerance and prudence dissimulation into functional organs connivance or inaction. We should also ensure the fairness, transparency and rationality of the supervisory decision-making and procedure, make the punishment equal and strengthen the administrative rationality and predictability. Give the new business form the necessary trial and error space, through the rule of law of inclusive and prudent supervision, and strive for efficiency and safety balance.

(2) On the basis of classification, accurate supervision and normal supervision can be realized. The operation logic of legal liability mechanism lies in that, based on the prior value presupposition, the legislators embody the expectation of social order into specific rules or standards, and take this as the basis of negative evaluation or adverse consequences. Classification is an innovative mode to strengthen the supervision of digital financial platform, and it is the inevitable requirement to realize fine supervision and differential supervision. Referring to the guidelines on the classification and grading of Internet platforms issued by the State Administration of market supervision, the categories of financial platforms shall be scientifically determined, the levels of platforms shall be rationally classified, and the responsibilities of platforms shall be fairly implemented, to protect the legitimate rights and interests of financial consumers, while maintaining the order of the digital financial market. The legal liability should be carried out accurately for the subject who is in violation of the

corresponding contractual obligations or causes tort damage. In the normal supervision, the function of responsibility restriction is brought into full play, which provides the legal basis for the stability of the digital financial market order. (3) We will rely on scientific and technological innovation in financial regulation to effectively enhance our regulatory capacity. Technology has enabled the development of digital finance in Sunac, and there is an urgent need for regulatory tools to keep pace with the times. With the help of the application of science and Technology in the digital financial supervision, the infrastructure construction in the field of financial supervision will be promoted, and the information sharing and transmission as well as the real-time dynamic monitoring of big data will be realized, carry out problem investigation and risk early warning in advance and in time. Moreover, we should timely increase the ratio of technical professionals in regulatory departments, strengthen the technical logic of talent leadership. In addition, clarifying the boundary between regulatory intervention and platform autonomy is not only the guarantee of free behavior of market players, but also helpful to activate industry self-regulation. The role of self-regulation of platform and industry groups can minimize the cost of department supervision and benefit multi-governance. (4) Strengthen the ability of resolving disputes in the Justice of digital finance. In the systems engineering of digital financial governance, judiciary is an essential component of financial governance, in addition to the role of governments and financial regulators. There are many investors in digital financial cases, and the handling of such cases is more complicated because of the characteristics of stakeholders, constantly improve the convenience of litigation and judicial efficiency. In particular, we should gradually explore a dispute settlement mechanism that is beneficial to investors. For example, at the current stage, we need to further improve our securities dispute representative litigation system, it aims to solve the problems of the equity of the power allocation of the investor protection institution, the initiative of starting and transforming the representative litigation procedure, and the efficiency promotion of the public execution mode.

Second, cooperative governance of systemic financial risks. (1) Departmental collaboration. Financial regulation is a systems engineering that promotes a pluralistic governance structure in the context of the goal of a unified national market. Financial regulators, Macroeconomic regulation and control, industry authorities, judiciary and Discipline Inspection and supervision authorities should clarify their responsibilities and strengthen coordination. In the market access, prudential supervision, conduct supervision and other links, we must strictly enforce the law and improve the responsibility mechanism for risk management. In the process of risk disposal, we should resolutely punish corruption and guard against moral hazard. For example, in sector coordination, we should fully realize the complementary relationship between financial supervision and anti-monopoly regulation. The former emphasises efficiency and security in situations such as market access and exit, Capital adequacy ratio, transaction risk concentration and diffusion, while the latter focuses on market competition and order, the main regulation of abuse of market dominance to limit competition. We should actively explore the mechanism of consultation and cooperation between the anti-monopoly Commission and the Financial Stability and Development Commission of the State Council. (2) Coordination between the central and local authorities. One is to establish the basic concept of 'Central-local' coordinated governance. In the specific financial governance affairs to integrate the different demands of the central government, and the formation of the corresponding institutional arrangements. Second, we will deepen departmental reform. We should further clarify the central and local financial management of the positioning and specific regulatory functions, detailed local financial supervision of the 'Power List'. Third, we should pay attention to the prevention of local financial risks and enhance the effectiveness of supervision. In the light of

the frequent illegal and illegal asset management business, we adopt the functionalist penetrating supervision strategy to reverse the situation of 'Emphasizing development but neglecting supervision'. At the same time, we need to increase the supply of local financial supervision tools and infrastructure, such as financial technology enterprises' supervision information disclosure and credit information sharing. (3) Governance through social cooperation. The combination of government governance and social governance is also an important component of the pluralistic co-governance pattern. Ease the high dependence on government supervision, making administrative governance, social governance, market governance in-depth interaction, complement each other. In financial risk co-governance, scientific introduction of administrative guidance, administrative contract, administrative authorization and administrative entrustment to build a bridge for the government and market co-governance. At the same time, we should use incentive and restraint mechanism comprehensively. In the incentive mechanism, financial subsidies and special fund support are given to social organizations or market entities to promote the enthusiasm of non-governmental entities to participate in financial governance through economic incentives. In the liability restraint, the liability for breach of contract or the supplementary liability for tort should be carried out for the failure to fulfill the governance obligations as agreed or the improper influence on the exercise of administrative power. (4) A combination of legal and moral means. The excellent Chinese traditional culture is the cultural foundation of the financial development of socialism with Chinese characteristics. It combines the moral concepts of honesty and trustworthiness, justice and profit, integrity and innovation with the construction of the rule of law in a strong financial country.

Third, the construction of foreign-related financial rule of law from the perspective of financial opening. Adhere to domestic financial supervision and integration into the international financial supervision system, committed to promoting domestic practice in the international competitiveness building. First, adhere to the principle of serving national interests. Using rule of law to maintain financial security and financial order is the starting point and end-result of foreign-related financial rule of law construction. The construction of international financial rule of law must be based on the national prosperity strategy and serve the national high-level opening-up strategy. Second, accelerate legislation in key areas. We will strengthen legislation on foreign investment, foreign-related financial institutions, currency exchange rates, currency internationalization, and foreign exchange management. Third, we will continue to strengthen the judicial development of foreign-related finance. We will build a talent pool for foreign-related financial trials and raise the judicial level of foreign-related financial trials. Fourth, deepen international cooperation on financial governance. Under the guidance of the concept of 'Community of shared future for mankind', we should innovate multilateral financial governance cooperation ways and expand the financial governance cooperation fields. The relevant rules in the financial field in international high-standard economic and trade agreements should be scaled down and restrictive measures should be streamlined to enhance the transparency, stability and predictability of the opening-up policy. It will further enhance the facilitation of cross-border investment and financing, regulate overseas investment and financing activities, and improve financial support for the joint construction of 'the Belt and Road'. For example, promoting the establishment of mutually beneficial exchange rate stability systems and enhancing communication and collaboration among central banks. Another example is the creation of a linkage mechanism for early warning of international financial risks to reveal financial risks in a timely manner, the exploration of

unified regulatory standards in specific areas, and the promotion of cross-border regulatory and law enforcement collaboration.

References

^[1] Sun Jin, Limits of Traditional Supervision by Internet Financial Platform and Its Reform [J]. *ECUPL Journal*, 2023 (01): 59-71.

^[2] Feng Hui, Collaborative Governance by Central and Local Regulators on the Local Finance and Its Legal Approaches [J]. *The Jurist*, 2021(05):84-99.

^[3] Liu Daoyuan, Liu Yajie, Research Outline on the Capital Market Rule of Law in Xi Thought [J]. *Journal of Henan Normal University (Philosophy and Social Sciences Edition)*, 2022(06):1-11.

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