

# STUDENT ESSAYS

## BANKING LAW

### **A Chinese perspective: the enlightenment of the UK financial system**

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#### **Introduction and background**

The increased economic status of China and the 2007-2009 financial crisis have called for a more modernised regulatory regime to address existing flaws in China, which could be fixed with the help of the reform seen in the UK. Since 2017, the Chinese financial regulatory structure has experienced a transformation from an old regime ‘one bank and three commissions’ to a new framework ‘one committee, one bank and two commissions’, indicative of the FSDC, the CBIRC (combining the CBRC and the CIRC) and the PBOC. Beginning with the *Vanke-Baoneng* case, it is thought that there are problems in the Chinese financial regulatory framework, including systemic risks, regulatory vacuum and regulatory arbitrage as well as consumer protection. The UK has established a ‘twin-peak’ regulatory architecture marked by the PRA and the FCA through the Financial Services Act 2012. There are mainly three aspects that China could learn from the UK: (1) an integrated regulatory structure; (2) coordination mechanisms; (3) enhancement of consumer protection. Each part above is equipped with detailed measures to cope with the current flaws. It is expected that such suggestions could work for China’s reform, whilst based on the characteristics of China’s progressing financial market.

In this highly integrated global financial system, China’s status in the world economy continues to rise, and its financial market is undergoing tremendous change, demanding a more rational regulatory regime. In addition, from 2007 to 2009, an unparalleled financial crisis triggered by the US subprime mortgage crisis swept the globe,<sup>1</sup> exposing the intrinsic flaws in Chinese supervision architecture. Despite some reforms in 2018, the system remains problematic. By contrast, the financial regulatory system in the UK has its unique advantages, which are worth learning for China. This essay will argue that Chinese financial regulatory architecture is defective and recommends a new structure with Chinese characteristics. The essay will be divided into four parts. The first section will expound the historical development of the Chinese financial supervision system. The second section will analyse three challenges faced by the Chinese regulatory system. The third section will briefly introduce the UK regulatory scheme, while the last section will scrutinise how China could learn from UK’s experience.

#### **Chinese financial regulatory structure**

Before the 1990s, China adopted a unified financial regulatory scheme, with the People’s Bank of China (PBOC) as the sole regulator responsible for supervising all financial activities. However, from 1993 to 2017, China shifted to a sectoral or institutional financial supervision model, in which banking, insurance and securities were separately regulated by the China Banking Regulatory Commission (CBRC), the China Insurance Regulatory

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<sup>1</sup> Walter Molano, ‘Economic Crisis and the BRIC Countries’ (2009) 8 J Int’l Bus & L 17.

Commission (CIRC), and the China Securities Regulatory Commission (CSRC). All of these agencies were directly under the leadership of the State Council,<sup>2</sup> and charged with micro-prudential regulation and conduct regulation.<sup>3</sup> The reformed PBOC was not only responsible for jointly overseeing the banking sector with the CBRC, but also for formulating monetary policies, preventing financial risks and safeguarding financial stability.<sup>4</sup> Similar to central banks in other countries, the PBOC was also entrusted with functions such as anti-money laundering, administering foreign exchange market, monitoring the gold market, and maintaining normal operation of payment and settlement systems.<sup>5</sup> However, with the emergence of cross-market financial conglomerates and products, the traditional boundaries between financial institutions began to blur, and such dispersed regulatory regime gradually failed to supervise cross-sector financing business.<sup>6</sup> The main reason was thought to be that these regulators did not exchange information and issued instructions independently, ultimately resulting in inconsistent or contradictory instructions.<sup>7</sup>

In order to orientate to the trend of financial integration, China launched the reform of financial supervision landscape from 2017.<sup>8</sup> Compared with the previous system of ‘one bank and three commissions’, the new system of ‘one committee, one bank and two commissions’ has three major changes.<sup>9</sup> Firstly, with the ambition to coordinate the financial policies and oversight activities, the Financial Stability and Development Committee (FSDC) was established within the State Council.<sup>10</sup> Secondly, the CBRC and the CIRC were merged to form the China Banking and Insurance Regulatory Commission (CBIRC), tasked with micro-prudential and conduct supervision of the banking and insurance sectors across the country.<sup>11</sup> The CBIRC would also participate in formulating strategic plans for the reform and development of the financial industry, drafting important laws and regulations for the banking and insurance industries, and basic rules on financial consumer protection.<sup>12</sup> By contrast, the CSRC remains largely unchanged in this reform and remains responsible for supervising and administering national securities and futures markets.<sup>13</sup>

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<sup>2</sup> The State Council, that is, the Central People’s Government of the People’s Republic of China, is the executive body of the highest organ of state power; it is the highest organ of state administration.

<sup>3</sup> Daniel Calvo and others, ‘Financial Supervisory Architecture: What Had Changed after the Crisis?’ (FSI Insights on policy implementation No 3, Bank for International Settlement 2018).

<sup>4</sup> Law of the People’s Republic of China on the People’s Bank of China, art 2.

<sup>5</sup> Law of the People’s Republic of China on the People’s Bank of China, art 4.

<sup>6</sup> Jia Chen and Yu Wang, ‘Financial Regulatory Reform to Be Expanded’ *China Daily* (Beijing, 3 March 2018) <english.www.gov.cn/news/top\_news/2018/03/03/content\_281476064626040.htm> accessed 9 March 2022

<sup>7</sup> Wei Shi, Kang Qu and Zhenbo Hou, ‘The Experience of Unified Financial Supervision in Britain and Suggestions for Reform of Financial Supervision System in China’ (2016) 7 *International Finance* 3

<sup>8</sup> Damian Tobin and Ulrich Volz, ‘The Development and Transformation of the Financial System in the People’s Republic of China’ (ADBI Working Paper Series) 825/2018, 5 <adb.org/sites/default/files/publication/411136/adb-wp825.pdf> accessed 9 March 2022.

<sup>9</sup> Jing He and Kebin Deng, ‘Seesaw Effect and Financial Risk Prevention and Control -- Also on the significance of innovation in the new regulatory pattern of “The First Committee and the Two Sessions”’ (2019) 3 *Economist* 81.

<sup>10</sup> Xinhua, ‘China Establishes Financial Stability and Development Committee’ *China Daily* (Beijing, 9 November 2017) <english.www.gov.cn/news/top\_news/2017/11/08/content\_281475936107760.htm> accessed 9 March 2022.

<sup>11</sup> Provisions on the Functions, Structure and Staffing of the China Banking and Insurance Regulatory Commission, art 3(3).

<sup>12</sup> Provisions on the Functions, Structure and Staffing of the China Banking and Insurance Regulatory Commission, art 3(2).

<sup>13</sup> Provisions on the Functions, Structure and Staffing of the China Securities Regulatory Commission, art 2

Thirdly, the status of the PBOC has been enhanced. In addition to its original functions, the PBOC has been newly appointed to take the lead in drafting important laws and regulations on banking and insurance industries. That the General Office of the FSDC is set up within the PBOC and the Chairman of the CBIRC doubles as the Party Secretary of the PBOC also illustrate the growing position of the PBOC in financial regulation. However, it should be emphasised that the PBOC is a constituent department of the State Council, while the CBIRC and the CSRC are institutions directly under the State Council. Although the PBOC is higher in hierarchy than the CBIRC and the CSRC, there is no direct affiliation between them. Nevertheless, despite these improvements, further reforms are still needed since the regulatory structure still adheres to the institutional approach and the regulatory predicament remains unresolved.

### **The dilemma of Chinese financial regulatory system**

The *Vanke-Baoneng* case concerned a prolonged hostile takeover bid and can be used to illustrate the deficiencies in the Chinese financial regulatory architecture. Vanke was one of the largest real estate developers in China and the Baoneng Group was an activist investor. From mid-2015, Baoneng invested in Vanke through securities market, but with funds from banks and insurance companies,<sup>14</sup> Baoneng adopted multiple financing means encompassing stock pledge, securities margin trading and asset management plans to avoid the supervision of the regulatory bodies.<sup>15</sup> For example, pursuant to the CBRC rules, funds from banking wealth management products were not allowed to be invested in the securities market.<sup>16</sup> However, CHINA ZHESHANG BANK CO., LTD, a backer of Baoneng, circumvented this rule by placing its wealth management products funding in Huafu Securities Co., Ltd., Minmetals International Trust Co., Ltd. and Zhebao Funding Co. Ltd., before putting them into the securities market.<sup>17</sup> The same was true for insurance funds to avoid the supervision of the CIRC. Eventually, through this sequence of actions Baoneng managed to evade all regulatory oversight. Arguably, this battle has clearly proved that a sector-based regulatory structure might not be suitable to handle interconnected financial activities. Specifically, it reflects inadequate information exchange and interagency coordination among regulators, which enable business activities that could increase systemic risk, such as Baoneng's leveraged financing. Further, the regulatory vacuum within the financial regulatory system leaves space for regulatory arbitrage. Third, it is difficult to protect consumers. The following sections will analyse these three challenges encountered in detail.

#### *Systemic risk*

It is argued that the Chinese financial regulatory regime is not effective in preventing systemic risks. Systemic risk generally refers to the probability that one or more financial events could incur acute instability or collapse of the entire economy.<sup>18</sup> Although micro-

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<sup>14</sup> Hong Qi, 'Financial Supervision under Mixed Operation and Financial Innovation in China from the Perspective of Vanke-Baoneng Case' (2017) 3 *Southwest Finance* 45.

<sup>15</sup> Xiaodong Tang, Bohong Zheng and Haoliang Luo, 'The Process, Focus and Research Objective of Vanke-Baoneng Case' (2016) S1 *Tsinghua Financial Review* 27.

<sup>16</sup> Notice of the China Banking Regulatory Commission on the Relevant Issues concerning Further Regulating the Investment Management of the Personal Financial Management Business of Commercial Banks, CBRC (2009) 65, published 6 July 2009; Measures for the Supervision and Administration of the Wealth Management Business of Commercial Bank, CBIRC (2018) 6, published 26 September 2018.

<sup>17</sup> Tang, Zheng and Luo (n 15) 27.

<sup>18</sup> George G. Kaufman and Kenneth E. Scott, 'What Is Systemic Risk, and Do Bank Regulators Retard or Contribute to It?' (2003) 7 *The Independent Review* 371.

prudential policies are concerned with the stability of individual firms and macro-prudential policies are concerned with the stability of the financial system as a whole,<sup>19</sup> information-sharing is considered indispensable for monitoring risks.<sup>20</sup> However, under the current institutional regulatory structure, the PBOC takes charge of macro-prudential regulation without knowing the specifics of financial business, while the CBIRC and the CSRC operate within their respective domains without interfering with each other. It should be admitted that information exchange and interagency coordination are insufficient.<sup>21</sup>

Under these circumstances, mixed financial holding companies could utilise affiliates governed by different regulators to achieve certain economic benefits.<sup>22</sup> Further, it would be unfeasible for the PBOC, the CBIRC or the CSRC to correctly predict or identify,<sup>23</sup> since each of them only have access to information in their own field, rather than comprehensive information pertaining to all activities of any particular financial entity.<sup>24</sup> Therefore, owing to the information-exchange barrier between the regulators, systemic risks could not be effectively prevented.

### *Regulatory vacuum and regulatory arbitrage*

There is a regulatory vacuum in the Chinese structure, which would provide opportunities for regulatory arbitrage to a certain extent.<sup>25</sup> Regulatory vacuum, an incentive for financial risks, involves uncertainty about which regulators are responsible, which regulators should take the leading role and how their actions should be coordinated.<sup>26</sup> It refers to ‘those financial transactions designed specifically to reduce costs or capture profit opportunities created by differential regulations or laws’.<sup>27</sup> Exploiting regulatory vacuum to acquire undue profits might cause damage to the normal financial order. It is conceivable that giant financial groups could utilise regulatory gaps to transfer assets between various financial sectors, thereby avoiding restrictive provisions, escaping supervision and grabbing huge profits. For example, although the CBRC (now the CBIRC) stipulated that funds from banking wealth management products were prohibited to invest on the securities market,<sup>28</sup> Baoneng transferred the funds from wealth management products of Zheshang Bank to a financial channel, that is, an asset management plan operated by HuaFu Securities Company, before using it on the securities market. Through this channel, Baoneng managed to escape the supervision of both the CBRC and the CSRC and get unjustifiable interests.

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<sup>19</sup> Frédéric Boissay and Lorenzo Cappelletto, ‘Micro- versus Macro-Prudential Supervision: Potential Differences, Tensions and Complementarities’ (2014) 1 *Financial Stability Review* 135

<sup>20</sup> The People’s Bank of China, ‘Macroprudential goals, implementation and cross-border communication’ (BIS Papers No 94, 2018)

<sup>21</sup> Group of Thirty, *The Structure of Financial Supervision: Approaches and Challenges in a Global Marketplace* (2008) <legco.gov.hk/yr08-09/english/panels/fa/papers/fa0223cb1-837-3-e.pdf> accessed 13 March 2022

<sup>22</sup> Ewa Kruszczyńska, ‘Target Board’s Conduct and Shareholders Rights in the Context of Hostile Takeovers in China: A Case Study of Vanke v Baoneng’ (2017) University of Edinburgh, 18 <ssrn.com/abstract=3385975> accessed 9 March 2022

<sup>23</sup> OECD Organisation for Economic Co-operation and Development, *OECD Reviews of Regulatory Reform China: Defining the Boundary between the Market and the State* (OECD Publishing, 2009)

<sup>24</sup> *Ibid.*

<sup>25</sup> Deirdre M. Ahern, ‘Regulatory Arbitrage in a FinTech World: Devising an Optimal EU Regulatory Response to Crowdfunding’ (2018) European Banking Institute Working Paper Series 24/2018, 1 <ssrn.com/abstract=3163728> accessed 10 March 2022

<sup>26</sup> Andrew Godwin, Guo Li and Ian Ramsay, ‘Is Australia’s Twin Peaks System of Financial Regulation a Model for China (Part 1)’ (2016) 46 *Hong Kong LJ* 621

<sup>27</sup> Frank Partnoy, ‘Financial Derivatives and the Costs of Regulatory Arbitrage’ (1997) 22 *J. CORP. L.* 211

<sup>28</sup> Boissay and Cappelletto (n 19).

### *Failure to protect consumers*

It could be argued that Chinese financial regulatory structure fails to provide adequate protection for consumers. Consumers are an essential component of the financial market as they provide capital for its operation. However, consumers might sustain severe monetary losses due to the systemic risk of complex financial networks and the information asymmetry in financial services, prompting regulators to provide them with corresponding protection.<sup>29</sup> With regard to systemic risks, since financial firms are interdependent, a failure in one of them could trigger a chain reaction and cause loss to the funds of the innocent consumers.<sup>30</sup> In terms of information imbalance, some unscrupulous financial service providers would induce consumers who lack the ability to understand complicated contracts to purchase financial products, and then utilise the funds gathered to chase risky high profits, thereby ultimately incurring damage to consumers.<sup>31</sup>

Note that although consumer protection is desirable, Chinese regulatory regime has paid little attention to this important area. In China, there is no single department responsible for consumer protection in all financial industries. Instead, the PBOC, the CBIRC and the CSRC have established specialised consumer protection agencies respectively. The Financial Consumer Protection Bureau, instituted within the PBOC, assumes the responsibility of researching consumer protection schemes.<sup>32</sup> The CBIRC and the CSRC have set up the Consumer Protection Bureau of CBIRC and the Consumer Protection Bureau of CSRC severally, responsible for consumer protection in banking, insurance and securities industries respectively.

However, this agency configuration is problematic in two aspects. First, the financial consumer protection law is absent. In China, the main source that could be referenced for consumer protection is the Law of the PRC on the Protection of the Rights and Interests of Consumers, but this legislation is excluded from the financial sector. It is noteworthy that China has so far no laws on financial consumer protection. Instead, schemes concerning financial consumer protection are scattered around statutes, including the Securities Act and the Insurance Act. Taking the ‘Crude Oil Treasure’ event<sup>33</sup> as an example. ‘Crude Oil Treasure’ was a derivative business under the regulation ‘Measures for The Administration of Derivatives Trading Business of Banking Financial Institutions’ - which allowed retail investors to engage in derivatives banking transactions. However, this regulation did not actually comply with the rules made by the CSRC and other relevant regulations. Consequently, the interests of investors were at stake. Accordingly, it is urgent to establish a consolidated regulation of financial consumer protection law.

Second, in this increasingly integrated financial situation, the disputes relating to consumer losses are likely to involve multiple financial industries. Consequently, consumer protection

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<sup>29</sup> Iain MacNeil, ‘Consumer Protection: Financial Innovation and Product Intervention’ (2012) 6 *Law & Fin Mkt Rev* 91.

<sup>30</sup> Mattia Montagna, Gabriele Torri and Giovanni Covi, ‘On the Origin of Systemic Risk’ (2020) European Central Bank Working Paper Series No 2502, 4 <[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3749361](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749361)> accessed 13 March 2022.

<sup>31</sup> FSA, *Product Intervention* (DP11/1, January 2011) para 3.7.

<sup>32</sup> ‘Department Brief’ (Financial Consumer Protection Bureau of The People’s Bank of China) <[pbc.gov.cn/jingrxfqy/145720/145821/index.html](http://pbc.gov.cn/jingrxfqy/145720/145821/index.html)> accessed 12 March 2022.

<sup>33</sup> ‘Crude Oil Treasure’ is a financial product provided by the Bank of China to promote the service of crude oil futures for domestic retail investors. On April 20th in 2020, the product suffered as the May contract for West Texas Intermediate saw a plunging price at -\$37.63 per barrel. This triggered the so-called ‘Crude Oil Treasure’ event, which caused huge loss to investors and the Bank of China.

agencies, which are established based on separated supervision, would not be able to effectively protect consumers. For example, in the *Vanke-Baoneng* case, Zheshang Bank utilised the funds of consumers to illegally invest on the securities market. If the investment fails, the money would not be returned to the bank, ultimately causing losses to consumers. In this case, since agencies operate on an industry basis, while the investment is a cross-industry one, the interests of consumers would be difficult to protect.<sup>34</sup>

### **British financial regulatory structure**

It is thought that the UK financial supervision structure would be worth learning from for China. After the 2008 financial crisis and the collapse of Northern Rock, the UK Authority was deeply conscious that a single regulatory, more specifically, the Financial Services Authority, was incapable of bearing all supervising responsibilities.<sup>35</sup> Therefore, the UK introduced the Financial Services Act 2012 and established a ‘twin-peak’ regulatory architecture,<sup>36</sup> mainly concentrating on institutional design and responsibility allocation.<sup>37</sup> Under this framework, the Bank of England (BoE), the central bank of the UK, assumes the responsibility for stabilising the economy.<sup>38</sup> The Financial Policy Committee (FPC), founded within the BoE, is entrusted with macro-prudential regulation.<sup>39</sup> The Prudential Regulation Authority (PRA), a subsidiary of the BoE, is charged with micro-prudential supervision of systemically important financial institutions including deposit takers, insurance companies and significant investment firms.<sup>40</sup> The PRA aims to achieve the safety and soundness of the regulated entities.<sup>41</sup> By contrast, the Financial Conduct Authority (FCA), accountable directly to HM Treasury and Parliament, is not only the prudential supervisor of all institutions except those overseen by the PRA, but also responsible for regulating the business conducts of all financial firms.<sup>42</sup> The FCA seeks to maintain market competition and protect consumers.<sup>43</sup> The following sections will discuss how China could learn from the UK’s experience and alleviate the disadvantages of its financial regulatory structure.

### **Enlightenment and reforms proposals**

#### *Exploring an integrated regulatory structure*

China implements separate regulatory structure based on financial industries, which, under the background of mixed operation of financial holding companies, has caused a series of problems including systemic risk, regulatory vacuum and regulatory arbitrage. By contrast, the UK has adopted the integrated supervision model made up of the PRA and the FCA.<sup>44</sup>

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<sup>34</sup> Qi (n 14).

<sup>35</sup> FSA, *The Turner Review: A Regulatory response to the Global Banking crisis* (March 2009).

<sup>36</sup> Jeremy Hill and Edite Ligere, ‘The UK’s New Financial Services Regulatory Structure – The Shape of Things to come’ (2013) 38(4) JIBLR 156.

<sup>37</sup> HM Treasury, *Call for Evidence: Regulatory Coordination* (Financial Services Future Regulatory Framework Review, July 2019), para 1.7.

<sup>38</sup> Robert Purves, ‘The Regulation of Banks’ in John Odgers QC (ed), *Paget’s Law of Banking* (15th edn, LexisNexis Butterworths 2018).

<sup>39</sup> Alexander Dill, *Bank Regulation, Risk Management, and Compliance: Theory, Practice, and Key Problem Areas* (Routledge 2020).

<sup>40</sup> Eilis Ferran, ‘The Break-up of the Financial Services Authority’ (2011) 31(3) Oxford Journal of Legal Studies 455.

<sup>41</sup> FSMA 2000, s.2B (2).

<sup>42</sup> Anu Arora, *Banking Law* (Pearson 2014).

<sup>43</sup> FSMA 2000, s.1B (2).

<sup>44</sup> Purves (n 38).

It is widely believed that a unified regulatory structure could assist in monitoring systemic risks, filling regulatory vacuum and restraining regulatory arbitrage. Therefore, China should gradually develop towards to the direction of this integrated supervision model.

However, this does not mean that China should simply merge the CBIRC and the CSRC to form a new regulator like the FSA. The failure of the Northern Rock Bank has proved that a single regulator model is not suitable for the modern financial market. Rather than directly merging the CBIRC and the CSRC, it is advised that some experimental mergers could be firstly carried out to explore a suitable way forward for China. For example, the power of micro-prudential regulation held by the CBIRC and the CSRC could be granted to the PBOC. In this way, the PBOC could have the centralised functions of both micro and macro prudential regulation, while the CBIRC and the CSRC could specifically take charge of conduct regulation. In addition, given the fact that there is no unified institution to protect consumers' interests, it is proposed that the financial consumer protection agencies of the CBIRC and the CSRC could be merged to found a Consumer Protection Bureau to deal exclusively with consumer protection issues.

### *Coordination mechanisms*

Compared with China, the coordination mechanisms between financial regulators in the UK are relatively pragmatic and sophisticated. On the one hand, the PRA and the FCA have a statutory duty to coordinate their oversight activities.<sup>45</sup> Specifically, most regulatory issues concerning dual-regulated companies would require the consent, or at least consultation, of them.<sup>46</sup> The PRA and the FCA are also legally obligated to sign a Memorandum of Understanding (MOU) on how to carry out their supervisory functions.<sup>47</sup> Additionally, the director-level officials of these two bodies are required to hold quarterly meetings to interchange views and information pertaining to conduct developments that possibly affect capital.<sup>48</sup> The PRA could also veto the FCA actions that might be detrimental to financial stability.<sup>49</sup> On the other hand, the PFC within the BoE has the power to provide the PRA and the FCA with directions and recommendations on systemic issues on a 'comply or explain' basis.<sup>50</sup> The cross-membership between the PFC and the boards of the PRA and the FCA has also been considered a constructive device to ensure information flow and policy consistency.<sup>51</sup>

Through the mechanisms mentioned above, information sharing and functional coordination among UK financial regulators have been well intensified. Therefore, it is recommended that China could use their advantages for reference. Specifically, the CBIRC and the CSRC could also establish a MOU system and veto system. Notably, as a specialised agency for coordinating regulatory activities within the State Council, the FSDC should take the lead

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<sup>45</sup> HM Treasury, *A New Approach to Financial Regulation: Securing Stability, Protecting Consumers* (Cm 8268, January 2012) para 5.4.

<sup>46</sup> Clifford Chance, *UK Regulatory Reform: Adapting to the new approach to regulating insurers* (May 2012)

<sup>47</sup> Andromachi Georgosouli, 'The FCA-PRA Coordination Scheme and the Challenge of Policy Coherence' (2012) 8(1) *Capital Markets Law Journal* 62.

<sup>48</sup> International Monetary Fund and Monetary and Capital Markets Department, United Kingdom: Financial Sector Assessment Program-Basel Core Principles for Effective Banking Supervision- Detailed Assessment Report (IMF Staff Country Report No 16/166, June 2016).

<sup>49</sup> *Ibid.*

<sup>50</sup> HM Treasury, *The Financial Services Bill: the Financial Policy Committee's Macro-Prudential Tools* (Cmd 8434, 2012) para 3.21.

<sup>51</sup> Financial Stability Board, *Peer Review of the United Kingdom* (Review Report, 2013).

in the interdepartmental linkage system. For example, in terms of its personnel composition, the FSDC could be chaired by a member of the Standing Committee of the Political Bureau, while the governor of the PBOC could be the vice-chairman. The other members could be partly selected from the boards of the CBIRC and the CSRC.<sup>52</sup> In addition, the FSDC should arrange regular meetings among the director-level officials of all supervisory agencies, providing a platform for information exchange and discussion of major financial issues.<sup>53</sup>

### *Strengthening consumer protection*

As previously shown, China is less effective in consumer protection than the UK. Under the UK financial regulatory framework, the mission of protecting consumer is entrusted to the FCA;<sup>54</sup> given statutory powers to actively step in.<sup>55</sup> Numerous safeguarding measures have already started. For example, the Consumer Redress Scheme would compel companies to investigate their previous business practices, ascertain whether their breaches of legal obligations have led consumers to suffer loss and, if so, to pay redress.<sup>56</sup> The Money Advice Service is established to arrange personal finance educational courses and provide consumers with sound advice and annual finance health audit services.<sup>57</sup> The Financial Services Compensation Scheme acts as the fund of last resort to reimburse consumers who have not been compensated sufficiently by firms, attempting to prioritise consumers' legitimate interests.<sup>58</sup>

The most noteworthy service, the Financial Ombudsman Scheme, aims to address disputes concerning a minimum amount (often less than £355,000) arising between companies and consumers.<sup>59</sup> With its own separate funds and institutions, the Ombudsman can not only transfer abstruse legal rules into straightforward terms,<sup>60</sup> but also follow the standard of fairness and reasonableness to adjudicate such cases.<sup>61</sup> Unlike judicial procedures emphasising strict compliance with legal norms, such a standard enables the Ombudsman to sidestep technical legal issues and make decisions on the basis of a balance of interests, which also prevents precious judicial resources being abused.<sup>62</sup> In addition, the scope of a 'consumer' has been enlarged, involving not only retail consumers but also anyone associated with a supervised activity.<sup>63</sup> This makes it possible to ensure that all parties engaging in such events would be entirely protected, thus attracting more investment to boost commercial vitality. In a word, the essence of these strategies in the UK is that the tasks of consumer protection should be divided into parts in more details.

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<sup>52</sup> Kathy Yuan and others, 'A financial regulatory regime reform template to ensure financial stability for the Chinese economy' (2018) Tsinghua University National Institute of Financial Research Paper 14/2018, 34 <pbcsf.tsinghua.edu.cn/Upload/file/20180528/20180528094312\_8064.pdf> accessed 10 March 2022.

<sup>53</sup> Ibid.

<sup>54</sup> FSMA 2000, s.319(6).

<sup>55</sup> Betsy Dorudi et al, 'United Kingdom regulatory reform: emergence of the twin peaks' (2012) 95 COB 1.

<sup>56</sup> Christopher Hodges, 'Mass Collective Redress: Consumer ADR and Regulatory Techniques' (2015) 23 Eur Rev Priv Law 829.

<sup>57</sup> Dorudi and others (n 55) 19.

<sup>58</sup> Richard O'Brien, 'The Limits of Judicial Deference to Decisions of Regulatory Bodies: R (Emptage) v Financial Services Compensation Scheme' (2013) 18 Jud Rev 109

<sup>59</sup> Arora (n 42) 195.

<sup>60</sup> Iain MacNeil, 'Consumer Dispute Resolution in the UK Financial Sector: The Experience of the Financial Ombudsman Service' (2007) 1 Law & Fin Mkt Rev 515.

<sup>61</sup> Gary Meggitt, 'An Independent Insurance Authority for Hong Kong' (2012) 7 J Comp L 258.

<sup>62</sup> Caroline Mitchell, 'The Financial Ombudsman Service – A Fair and Reasonable Alternative to the Court' (2011) 3/4 Eur J Commer Contract Law 65

<sup>63</sup> Dorudi and others (n 55) 15.



Therefore, considering that there have been inner consumer protection bureaus in the CBIRC and CSRC, the first step is to design new enforcement rules to enhance their effectiveness to adapt to the already existing regime.<sup>64</sup> It is suggested that firstly the PBOC should incorporate the duty of consumer protection into the scope of macro-prudential regulation, emphasising the importance of this task to the CBIRC and CSRC.<sup>65</sup> In the meantime, specific parts of consumer protection for different institutions should be clarified by legal authority in order to pinpoint the dispute settlement mechanism.<sup>66</sup> For example, in terms of compensation scheme, the methods of calculating the amount and the institution that enforces such policies should be strictly scrutinised.

Given that the online financial business has flourished rapidly, it is proposed that a raft of detailed rules concerning innovative fields are created, covering the extent to which people invading others' rights should be punished, the disclosure of information about the risk and model of a defined product<sup>67</sup> as well as the standard of how to treat consumers fairly.<sup>68</sup> Furthermore, the task of educating consumers should be underlined given the fact that many people engage in the market, merely following the trend.<sup>69</sup> There is an urgent need to provide consumers especially in poor regions and vulnerable groups with sufficient consultation services,<sup>70</sup> for example, the way that financial system runs and how potential risks arise. If, in the future, the current structure does not work desirably, even with strong policies, a separate organisation professionally centering on consumer protection could be established.<sup>71</sup> It could work cooperatively with the existing institutions and cover all business lines.

## Conclusions

In conclusion, this essay has demonstrated that although the Chinese financial supervision scheme has experienced reforms in 2018, there are still deficiencies in mitigating systemic risk, preventing regulatory vacuum and protecting consumers. Through the analysis of the UK regulatory system, it is proposed that the Chinese regime could develop towards the direction of integrated regulatory structure, strengthen interagency coordination and enhance protection for consumers by subdividing tasks. Such development should also be based on the characteristics of China's financial market.

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<sup>64</sup> Zhiqiang Huang, 'The New Architecture and Inspiration of Financial Regulation Reform in Britain' [2012] *Studies of International Finance* 19

<sup>65</sup> Biyun Ren and Gaoqing Xu, 'Thoughts on the Perfection of Business Conduct Supervision of China's Financial Institutions' [2020] *Economic Review* 43

<sup>66</sup> Yunsong Xu, 'Research on the Construction and Development of the Behavioural Supervision System in China: International Experience and Reference' (2016) 8 *Credit Reference* 15

<sup>67</sup> Ren and Xu (n 65) 48.

<sup>68</sup> Fengyu Li and Min Weng, 'The Legislative Reform of Financial Regulation System in Britain and the Inspiration for China' (2014) 11 *Southwest Finance* 51

<sup>69</sup> Huang (n 64) 24.

<sup>70</sup> Xu (n 66) 23.

<sup>71</sup> Huang (n 64) 24.