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Research on the Legal Coordination Dilemmas and Countermeasures in Cross-Border Securities Trading Regulatory Cooperation: A Case Study of the Guangdong-Hong Kong-Macao Greater Bay Area

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Abstract

The rapid flow of global capital and the widespread adoption of digital trading infrastructure have driven exponential growth in the scale of cross-border securities transactions. However, three major legal conflicts-fragmentation of sovereign regulatory authority, misalignment of data export standards, and asymmetry of enforcement tools-have led to difficulties in accessing audit working papers, gaps in investor remedies, and frequent occurrences of regulatory arbitrage. Using the Guangdong-Hong Kong-Macao Greater Bay Area as a case study, this article applies comparative law and game theory methods to systematically examine the root causes of obstacles in legal coordination for cross-border securities transactions. It proposes progressive institutional solutions, including a negative list mechanism for data exports, model rules for cross-border product sales, and the establishment of an Asian Securities Regulatory Court, offering a replicable and scalable Chinese pathway from regional experimentation to global rule output.

Keywords

cross-border securities transactions, financial regulation, legal coordination, Guangdong-Hong Kong-Macao greater bay area

1. Introduction

1.1 Background

In 2024, the cumulative trading volume of the Shanghai-Shenzhen-Hong Kong Stock Connect reached 52.3 trillion yuan, with the average daily trading volume increasing by 3.8 times compared to 2020; the custody balance of the Bond Connect's "Southbound" scheme exceeded 1.2 trillion yuan, doubling year-on-year [1]. However, the rapid development of cross-border securities transactions has also imposed higher requirements on regulatory cooperation. Due to significant differences among countries in securities legal systems, enforcement powers, and data governance, cross-border regulatory coordination faces numerous obstacles. For instance, Fang Xinghai, then Vice Chairman of the China Securities Regulatory Commission (CSRC), stated that due to differences between domestic and foreign laws in aspects such as evidence validity and compulsory

investigation rights, China is still unable to sign the International Organization of Securities Commissions (IOSCO)'s Enhanced Multilateral Memorandum of Understanding (EMMoU), which has created barriers to accessing audit working papers for Chinese concept stocks [2]. Today, cross-border regulatory cooperation extends beyond traditional securities enforcement to multiple areas, including payments, data flows, and anti-money laundering. However, the lack of unified legal systems across countries has led to frequent regulatory arbitrage and rising compliance costs, which have become a major challenge in promoting high-level financial openness.

1.2 Literature Review

The development of cross-border regulatory cooperation has roughly gone through three stages: inter-state power struggles, the establishment of transnational regulatory networks, and the gradual embedding of institutions into national legal systems.

Foreign research has gradually shifted its focus from macro-level inter-state power allocation to micro-mechanisms of network governance. Against the backdrop of stalled hard-law negotiations in the World Trade Organization, Kal Raustiala (2002) proposed the concept of "transgovernmental networks" and pointed out that the "soft law" formed by regulators through memoranda of understanding (MoUs), technical assistance, and peer reviews, although lacking enforceability, can still achieve a certain degree of cooperation through reputation mechanisms and national self-restraint. This proposition laid the theoretical foundation for subsequent discussions on the "hardening of soft law" [3].

Chris Brummer (2010) followed this research line and empirically tested the aforementioned theory using the thousands of assistance requests issued annually by the U.S. Securities and Exchange Commission (SEC) to foreign counterparts. He found that even after the Morrison v. National Australia Bank case significantly restricted the extraterritorial application of U.S. securities laws based on the transaction location standard, regulators could still achieve long-arm jurisdiction indirectly through bilateral memoranda and the International Securities Enforcement Cooperation Act, thereby exposing the normalization of sovereignty conflicts and the skyrocketing compliance costs in soft law practices [4]. Brummer's research pulled Raustiala's network proposition back to the hard-law level, revealing that while soft law offers flexibility, it still struggles to support effective implementation of cross-border regulatory cooperation.

To address this issue, IOSCO issued the "Principles for Cross-Border Regulatory Cooperation" in 2010, which for the first time distilled dispersed network experiences into three hard-law pillars of equivalence, reciprocity, and enforceability, and accordingly launched the EMMoU to upgrade the flexible commitments of MoUs into treaty-like rigid obligations [5]. However, this upgrade demand has compelled countries to scrutinize their own legislative gaps, also clarifying the direction for subsequent research.

In the domestic research lineage, scholars have primarily focused on the tension between national sovereignty and market openness. Li Renzhen and Zhou Yi (2012) placed the rigid requirements of the EMMoU in the Chinese context and proposed an inter-regional model law approach centered on cross-border financial group regulatory liaison meetings. The specific pathway involves piloting cross-border financial regulatory cooperation mechanisms in economically integrated regions such as the Guangdong-Hong Kong-Macao Greater Bay Area and the Yangtze River Delta, followed by secondary confirmation by national legislative bodies to gradually advance institutional improvements at the national level [6].

Liao Fan (2018) further refined this idea into the proposition of "soft law hardening." He advocated incorporating information exchange obligations from MoUs directly into supporting rules of the Securities Law or Futures Law, transforming them from political commitments into enforceable public law obligations, thereby fundamentally resolving the "commitment without teeth" enforcement dilemma [7].

In the digital finance era, Sun Jianqiang and Zhang Nan (2025) integrated the above institutional designs into a dynamic game analysis framework. Through in-depth interviews and experimental research in the Guangdong-Hong Kong-Macao Greater Bay Area, they found that the "umbrella + twin peaks" regulatory architecture easily falls into a prisoner's dilemma in cross-border scenarios. Only by introducing a higher-level coordination body transcending territorial jurisdiction can non-cooperative games be transformed into self-enforcing collaborative equilibria [8].

Overall, related research has evolved from international soft law to national legislation, regional pilots, and institutional game analysis, forming a complete chain of institutional evolution. This not only responds to the early scholars' network cooperation theory but also provides practical pathways for China's participation in cross-border regulatory cooperation.

1.3 Research Significance

1.3.1 Theoretical Significance

Using the Guangdong-Hong Kong-Macao Greater Bay Area as a sample, this study delves into the legal coordination dilemmas in cross-border securities trading regulatory cooperation, employing comparative analysis and case study methods to reveal the roots of legal conflicts such as fragmentation of sovereign regulatory authority, misalignment of data export standards, and asymmetry of enforcement tools. By integrating ideas of soft law hardening, inter-regional model laws, and treaty-ization, it enriches the theoretical system of cross-border financial regulatory cooperation, providing new analytical frameworks and theoretical perspectives.

1.3.2 Practical Significance

The progressive institutional solutions proposed in this study-a negative list mechanism for data exports, model rules for cross-border product sales, and the establishment of an Asian Securities Regulatory Court-offer operable pathways to address practical issues in cross-border securities trading regulatory cooperation. These solutions help reduce compliance costs, enhance regulatory efficiency, protect investor rights, and promote high-level financial openness. At the same time, through pilot verification in the Guangdong-Hong Kong-Macao Greater Bay Area, they provide a replicable and scalable Chinese approach from regional experimentation to global rule-making.

2. Legal Conflicts in Three Dimensions

2.1 Misalignment of Enforcement Powers

When the China Securities Regulatory Commission (CSRC) investigates cross-border securities violations, it remains constrained by the administrative investigation and administrative recommendation framework under Article 177 of the Securities Law, lacking the authority to compulsorily obtain telephone and internet records, and facing difficulties in immediately preserving evidence on overseas servers [9]. In contrast, the U.S. Securities and Exchange Commission (SEC), relying on the expanded subpoena powers under the Dodd-Frank Act, can directly apply for court injunctions, asset freezes, or even criminal charges once a case is classified as securities fraud. More subtly, after the Morrison case restricted U.S. long-arm jurisdiction, the SEC has shifted to using MoUs to bridge procedural gaps and the International Securities Enforcement Cooperation Act as the substantive legal basis, forming a dual-track collaboration mode for procedures and substance. However, due to the Chinese side's lack of corresponding compulsory enforcement tools, gaps persist in the docking of regulatory cooperation between the two parties [10].

2.2 Cross-Border Data Barriers

Article 44 of the EU's General Data Protection Regulation (GDPR) uses "adequacy decisions" as the core basis for the free export of data, requiring that third countries' privacy protection levels be substantially equivalent to those of the EU. China's Personal Information Protection Law, Article 38, establishes a multi-layer approval system centered on security assessments, emphasizing controllable risks and compliant exports. The two systems exhibit significant differences in substantive standards, procedural nodes, and rights remedies-the EU grants data subjects the right to claim damages through litigation, while China focuses on administrative-led assessments and remedial actions; the EU's adequacy decisions adopt a one-time pre-approval mode, whereas China's security assessments may be repeatedly initiated throughout the data lifecycle. Consequently, when the SEC needs to obtain transaction logs stored in data centers in Shanghai, the two sets of rules often mutually constrain each other, leading to the legal interruption of the evidence chain during cross-border transmission [11].

2.3 Differences in Regulatory Standards

The IOSCO-EMMoU requires member parties to possess hard powers such as asset freezing, compulsory delivery of audit working papers, and real-time sharing of transaction data, designating them as the minimum enforcement authorities. However, the CSRC currently can only issue administrative recommendations to accounting firms under Article 170 of the Securities Law, lacking the power to compel overseas firms to submit original working papers or to freeze suspect accounts in emergencies [7]. This means that even if China and the U.S. sign a bilateral MoU, once it enters the execution phase, the Chinese side may still be unable to respond to the U.S. side's compulsory assistance requests due to insufficient enforcement tools, thereby triggering the "capacity mismatch" clause in the EMMoU, causing the cooperation process to stall.

3. Institutional Experiences from a Comparative Law Perspective

From a comparative law perspective, the EU, the United States, and IOSCO each offer three progressive institutional models: from hard-law unification to long-arm expansion to soft-law hardening.

The EU relies on the Markets in Financial Instruments Directive II (MiFID II) as its core institutional foundation, achieving one-time alignment of key standards such as market access, transparency, and investor protection across its 27 member states. When any member state's regulatory authority encounters questions during the implementation of the directive, it may request a preliminary ruling from the European Court of Justice, whose judgment takes immediate effect for all member states, thereby achieving linkage in the vertical dimension between the primacy of EU law and the automatic unification of member state laws [12]. This dual-wheel drive mechanism, supported by mutual reinforcement between the judiciary and legislature, allows cross-border securities disputes within the EU to focus solely on fact-finding.

The United States, by contrast, follows a different path, with the legislature expanding first and regulatory agencies implementing thereafter. Section 929P(b) of the Dodd-Frank Act of 2010 overturned the transaction location restriction from the Morrison case, triggering the extraterritorial effect of U.S. securities laws as long as overseas transactions have a substantial connection to U.S. capital [13]. At the same time, the Act established swap data repositories (SDRs), mandating that all global entities engaging in derivatives transactions with U.S. counterparties upload transaction records in real time [14], thereby filling cross-border regulatory gaps on the information front. The near-panoramic data obtained by the SEC and the U.S. Commodity Futures Trading Commission through SDRs provides them with an informational advantage in bilateral or multilateral cooperation, serving as a bargaining chip to exchange for enforcement cooperation from other countries.

IOSCO's experience reverses the aforementioned two top-down hard-law models into a bottom-up soft-law hardening approach. The EMMoU applies pressure through public blacklisting, setting seven hard powers-such as asset freezing, compulsory access to communication records, and sharing original audit working papers-as the minimum threshold. Those failing to meet them are publicly listed as non-cooperative jurisdictions and face market sanctions, including transaction restrictions, capital premiums, and even index exclusions. As of the end of 2024, 126 regulatory agencies have signed it, but China is absent due to insufficient legal authorization under Article 177 of the Securities Law and Article 38 of the Personal Information Protection Law [15]. This institutional absence not only places Chinese regulatory agencies in a passive position during bilateral investigations but also objectively exacerbates real-world pain points, such as the deadlock in audit working papers for Chinese concept stocks and controversies over the suitability of cross-border wealth management connect 2.0 products.

4. Empirical Verification of the Chinese Approach: A Case Study of the Guangdong-Hong Kong-Macao Greater Bay Area

4.1 Institutional Testing Ground

The Guangdong-Hong Kong-Macao Greater Bay Area, as China's testing ground for cross-border financial institutional innovation, provides observable, quantifiable, and replicable experimental samples for legal coordination in cross-border financial regulatory cooperation. Among the 2023 cross-border wealth management connect 2.0 complaint cases in the region, 42% of the disputes arose from differences in sales suitability, information disclosure, and jurisdictional rules across the three areas, directly exposing legal

application conflicts under "one country, two systems, three legal jurisdictions." Sun Jianqiang and Zhang Nan (2025) constructed an incomplete information game model based on this, simulating the impact of different coordination mechanisms on the success rate of regulatory cooperation. In scenarios relying solely on existing bilateral MoUs, the coordination success rate is only 37%, with the first party to concede bearing compliance costs, easily falling into a prisoner's dilemma. Once a higher-level Guangdong-Hong Kong-Macao Greater Bay Area Financial Dispute Joint Mediation Center is introduced as a third party, the game structure transforms into a free-rider game, elevating the coordination success rate to 78%, and shortening the average complaint processing cycle from 42 days to 18 days, significantly reducing the uncertainty in financial institutions' compliance.

4.2 "Two-Step" Reform Path

4.2.1 Short-Term

Through supporting rules under the Futures and Derivatives Law, incorporate information exports into negative list management. Except for special circumstances explicitly listed in the list, data from cross-border wealth management, swap transactions, and similar activities can be directly transmitted and used without repeated security assessments. At the same time, referencing the "Guangdong-Hong Kong-Macao Greater Bay Area Arbitration Model Law," jointly issue model rules for cross-border product sales, providing modular texts for suitability assessments, cooling-off periods, dispute jurisdictions, and legal applicability clauses, for voluntary adoption by banks, securities firms, and fund companies, thereby achieving alignment of regulatory interfaces at the private law level first.

4.2.2 Long-Term

Under the framework of the Regional Comprehensive Economic Partnership (RCEP) Agreement, initiate the "Asian Financial Stability Treaty" initiative, unifying the minimum regulatory standards in the three major areas of securities, payments, and data through "most-favored-nation" treatment, and establishing an Asian Financial Regulatory Court to resolve inter-regional legal conflicts through preliminary rulings. If the short-term model rules operate smoothly, it is expected that by 2026, the mediation success rate for disputes between Hong Kong and Macao investors and mainland financial institutions can be stabilized above 80%, providing credible data support for subsequent treaty negotiations, thereby making the Guangdong-Hong Kong-Macao Greater Bay Area a true institutional springboard for advancing cross-border financial regulatory cooperation from soft law to hard law [16].

5. Conclusion and Outlook

5.1 Research Conclusions

This study, using the Guangdong-Hong Kong-Macao Greater Bay Area as an example, confirms that the fundamental contradiction in cross-border securities trading regulatory cooperation lies in the fragmentation of sovereign regulatory authority, which gives rise to three normative conflicts: insufficient enforcement powers under Article 177 of the Securities Law, misalignment of data export standards under Article 38 of the Personal Information Protection Law, and asymmetry of enforcement tools in the IOSCO-EMMoU. These conflicts are not due to factual information deficiencies but rather institutional gaps at the level of legal authorization, urgently requiring responses through coordinated hardening via domestic law revisions, inter-regional model laws, and international treaties.

Building on the existing proposition of "soft law hardening," this study proposes a three-tier progressive scheme: a negative list mechanism for data exports, model rules for cross-border product sales, and the establishment of an Asian Securities Regulatory Court. In the short term, through supporting rules under the Futures and Derivatives Law, change data exports from case-by-case assessments to negative list management, achieving simplification of administrative law permissions. In the medium term, drawing on the "Guangdong-Hong Kong-Macao Greater Bay Area Arbitration Model Law," jointly issue model rules to unify suitability obligations, cooling-off periods, and dispute jurisdiction clauses at the private law level, reducing uncertainty in legal application. In the long term, under the RCEP framework, initiate the "Asian Financial Stability Treaty," establish an Asian Securities Regulatory Court, and resolve inter-regional normative conflicts through treaty-

based preliminary ruling mechanisms, completing the leap from political commitments to judicial hard constraints.

5.2 Future Outlook

The current Article 2, Paragraph 2 of the Securities Law only provides declarative authorization for overseas securities issuances that disrupt domestic market order, lacking supporting procedural rules and conflict norms, resulting in unclear constitutive requirements, applicability conditions, and legal consequences for long-arm jurisdiction. Future research can focus on the introduction of the effects principle and the conduct principle, comparing the extraterritorial application clauses of Section 10(b) of the U.S. Securities Exchange Act and the EU's Market Abuse Regulation, proposing draft suggestions for adding a dedicated chapter on extraterritorial application to China's Securities Law, along with supporting conflict norm guidelines.

The core obstacle to China not yet signing the IOSCO-EMMoU lies in insufficient domestic legal authorization, where compulsory measures such as asset freezing and compulsory access to communication records conflict with the legal reservation matters under Article 8 of the Legislation Law. In the future, through the model of special decisions by the National People's Congress Standing Committee, China can authorize the State Council to sign treaties including compulsory measures in the field of cross-border securities regulation to resolve legal reservation barriers. By comparing relevant practices in treaties China has joined, such as the Convention on Cybercrime and the United Nations Convention against Transnational Organized Crime, China can propose reservation schemes that comply with international law while balancing sovereignty and security.

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