1. Introduction to *Research Handbook on Asian Financial Law*

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BACKGROUND

Asian financial law and regulation are at the crossroad between national economic goals and regional integration. Shanghai, Tokyo, Singapore, and Hong Kong are recognized as the leading regional financial centres, yet the lesser recognized centres of Labuan for Islamic for banking and finance and Shenzhen for technology fund raising as well as emerging regional centres such as Mumbai, Sydney, and Dubai play an extremely important role in diversifying Asian financial markets. The health of all financial markets throughout the region, including in particular large economies, is necessary to support regional financial stability, as was highlighted during the Asian financial crisis. China's rapid expansion of its financial markets has become pivotal to economic growth and financial stability in Asian and world markets. With the Asian Infrastructure Development Bank and China's Belt and Road Initiative in place, Asia's financial markets now have new institutions and platforms to strengthen interconnectivity. As the internationalization of the Renminbi gains greater acceptance and with the recent inclusion of A-share equity markets on the MSCI Emerging Markets Index, greater attention will be paid to the importance of China's financial market regulation to maintain regional economic order. Equally important is that jurisdictions generally in the region adopt financial regulations to support economic growth. With many jurisdictions being characterized as developing, it is imperative that regulatory frameworks adequately address consumer protection, market conduct, anti-money laundering, financial innovation, financial inclusion, and financial stability.

Developed countries such as Australia and New Zealand may serve as models for regulatory best practice in some cases; however, any regulatory reform needs to address the market characteristics of each jurisdiction. The regulatory reforms recommended by international bodies following the 2008 global financial crisis are critical for market development and regional reputation. Developed financial markets in Singapore, Hong Kong, and Tokyo also play a role in regulatory guidance. For instance, because most Asian financial markets are dominated by banks, effective resolution frameworks for large systemically important banks are essential to maintain regional stability and market confidence. In an ideal world, the systemic and interconnected features of these banks would be reflected in a regional resolution framework, which does not currently exist. These developed markets also offer some institutional supports to their neighbouring markets making regulatory piggybacking and competition feasible in a cross-border context. For instance, mainland Chinese investors and financial consumers can rely on the Hong Kong market for better financial services or products through the Hong Kong-Shanghai Connect Scheme. Renminbi internationalization not only offers Hong Kong a

real opportunity to become an offshore Renminbi hub but also allows mainland China to further improve its financial market through Hong Kong's market and regulatory infrastructure. Certainly, the cross-border context may also lead to regulatory arbitrage which needs to be addressed through regulatory cooperation not only between two jurisdictions but also in a regional context.

The Association of Southeast Asian Nations (ASEAN) is at the forefront of regional integration initiatives. A range of other regional groups and institutions also play important roles, including ASEAN+3 (adding China, South Korea, and Japan), APEC (the Asia-Pacific Economic Cooperation Forum), and the Asian Development Bank. Another integration initiative is China's Stock and Bond Connect. The aims and purposes of ASEAN centre on trade, economic growth and regional stability, and the Stock and Bond Connect focuses on interconnections within and with mainland China. ASEAN has expanded its remit to harmonizing securities regulation and bond markets, but with limited success. Financial integration across the region remains a challenge as the experience from the European Union has demonstrated. In addition, a range of international organizations also play varying roles, in particular through regional groups and committees. Examples include the Financial Stability Board and its Regional Consultative Group for Asia, the International Organization of Securities Commissions (IOSCO) and its Asia Pacific Regional Committee, and the Bank for International Settlements and its Representative Office for Asia and the Pacific in Hong Kong, as well as multilateral organizations such as the Group of 20, the International Monetary Fund, and the World Bank in particular.

One area that has real promise to bring greater financial integration within Asia is financial technology or FinTech. FinTech enables financial product and service delivery on a mass scale, provides new methods to improve financial services, and creates new types of financial services. The ability of FinTech to seamlessly transcend borders will facilitate greater financial integration in the region. Nonetheless, regulating FinTech is challenging regulators in even the most developed markets and there is no regional multilateral regulatory framework to oversee or monitor FinTech. To date, only bilateral regulatory cooperation arrangements have been endorsed.

This Handbook seeks to provide a jurisdictional and regional perspective of financial law and regulation across Asia and expose the challenges and opportunities in the region. The handbook is organized into five parts: introduction and conceptual framework; financial regulation in Asia; financial integration in Asia; country studies; and FinTech and innovative finance. Some topics focus on issues from a regional perspective, for example ASEAN and FinTech, while others span multiple jurisdictions from a comparative perspective, such as banking law.

1. INTRODUCTION AND CONCEPTUAL FRAMEWORK

Part I provides a basis for the succeeding chapters. The first three chapters, including this chapter, outline the structure of this Handbook and the principles, trends, and theories which underpin financial regulation. Throughout history finance and its regulation have evolved in different markets yet the regulatory principles have remained fundamentally static. In the wake of the Asian and global financial crises, there has been a reprioritization

of financial regulatory principles. Chapter 2 by Evan Gibson and Douglas Arner of the University of Hong Kong outlines the historical evolution of financial principles and discusses how the global financial crisis prompted a rethink of the financial stability principle which has influenced systemic supervisory design in Asia. Regional integration also presents financial stability risks, as the Asian and global financial crises highlighted. Effective macro-prudential regulation has consequently become re-emphasized. In Chapter 3, Steve Kourabas of Monash University examines post-crisis financial regulatory reforms, predominantly in the United Kingdom among other jurisdictions, and how these reforms have influenced the regulation of financial stability in Asia.

2. FINANCIAL REGULATION IN ASIA

Part II of this Book analyses six distinct financial regulatory themes in Asia. A general starting point is provided by Andrew Godwin of The University of Melbourne in Chapter 4. This chapter gives a comparative analysis of financial regulatory models across nine Asia-Pacific jurisdictions covering principal regulators, their historical development, and current reform trends and challenges. The diversity of regulatory models operating within the region is evident from case studies focusing on the Hong Kong Special Administrative Region (SAR), mainland China, India, Singapore, South Korea, Japan, Indonesia, Australia, and New Zealand. These studies are important to understand the reasons why a regulatory model has been chosen by a jurisdiction and the influences affecting its development. In crisis events, the regulatory model and framework can be pivotal in maintaining financial stability. With most jurisdictions' financial systems being dominated by the banking sector, and in particular domestic systemically important banks (D-SIBs), regulations pertaining to these entities are critical for maintaining financial stability. In Chapter 5, Christian Hofmann of the National University of Singapore discusses the threat that failing systemic banks pose to a financial system by comparing resolution reforms in Hong Kong and Singapore and argues that resolution authorities should have wide bail-in powers and be able to readily exercise these powers. These two international financial centres may be small geographically, but the size of their financial markets and the number of banks, including the presence of global systemically important banks (G-SIBs) and D-SIBs, place a heightened emphasis on bank resolution frameworks.

Securities exchanges have an important role in the region with technology enabling markets to transcend borders for more efficient capital raising. There are three main security market constituents: issuers of securities, investors in securities, and broker-dealers trading in securities. In Chapter 6, David C. Donald of the Chinese University of Hong Kong examines securities markets' networking arrangements against technological change. Each linkage method affects the costs and benefits to market constituents as demonstrated when comparing the Stock Connect programme operating between the Hong Kong stock exchange and the exchanges in Shanghai and Shenzhen with non-connected exchanges in the region. The use of technology to enhance or create financial market infrastructure not only provides cost and other benefits to market constituents, regulators are also beneficiaries. In Chapter 7, Christopher Chen of Singapore Management University analyzes the regulation of derivatives in Hong Kong and Singapore and how technology and financial engineering can create new markets and regulatory issues. From

a regional perspective, Chen argues that financial technology may help Asian regulators oversee derivatives markets by improving cross-border information sharing, reporting, or collateral management. Chapter 8 concludes Part II, with Wei Shen of Shanghai Jiao Tong University discussing the evolution of the offshore Renminbi market and related business in Hong Kong and elsewhere. Shen emphasizes the importance of the Renminbi's inclusion into the International Monetary Fund's special drawing rights basket and the possibility of it becoming a major reserve currency next to the United States dollar, pound sterling, Japanese yen, and Euros. Analogous to the Yen, increasing global acceptance of the Renminbi as an international currency will play a significant role in the future development of Asian financial markets. Along with the Belt and Road Initiative, the Renminbi is likely to facilitate a deepening of Asia's financial integration.

3. FINANCIAL INTEGRATION IN ASIA

Part III of this Handbook addresses financial integration in Asia, notably the role of ASEAN. In Chapter 9, Deborah Elms and Minh Hue Nguyen of the Asian Trade Centre (Singapore) examine the ASEAN integration model for trade to assess its effectiveness over the past 50 years. Despite concerted efforts to enhance regional integration, the percentage of intra-ASEAN trade has remained stagnant. The Asian financial crisis brought to the fore the issue of capital market coordination and integration within the region and its treatment as an important alternative to the then severely disrupted bank-based financing. The crisis gave rise to a pressing need to deepen equity- and debt-based financing in securities markets. In Chapter 10, Wai Yee Wan of Singapore Management University discusses how the cross-border regulation of securities markets are organized within the ASEAN Economic Community and argues that greater consideration should be given to supervision and enforcement. Within ASEAN there are significant limitations afflicting current practices and market integration continues to be modest. Another issue arising from the Asian financial crisis was the currency and maturity mismatch which was endemic to the region's financial system. The International Monetary Fund's controlling measures were instrumental in the declining role of banks as a primary funding source and the rise of bond markets as an alternative means of corporate sector fund raising. In Chapter 11, Tir Srinopnikom of Central JD Commerce evaluates ASEAN bond market harmonization. The organizational personality of ASEAN has enabled the implementation of a series of regulatory initiatives to support bond market development. Srinopnikom argues that there is nonetheless a vast disparity between market development and market integration because the development of the ASEAN bond market is supported by a complex layer of rule-based and relation-based cooperation arrangements. These are subject to broader Asian financial cooperation arrangements, such as ASEAN+3, which significantly influence market innovation.

Throughout the Asia-Pacific region and globally, several factors, including the complexity of financial products and the importance of investment for wealth management and pension purposes, have led to increased regulatory scrutiny over consumer financial dispute resolution mechanisms. Within Asia there is a growing need to strengthen consumer protection and achieve greater financial inclusion while widening the regulatory net. In Chapter 12, Vivien Chen of Monash University and Andrew Godwin and Ian

Ramsay of The University of Melbourne discuss consumer financial dispute resolution mechanisms in the ASEAN 5 countries, Australia and New Zealand, and compare single-body with multiple-body schemes. The analysis reveals the continuing divergence between jurisdictions in the region, despite the widespread acceptance of international standards. One of the most pertinent consumer protection mechanisms in the region is deposit insurance, which is also an important financial stability mechanism because most financial systems are dominated by banks. In Chapter 13, Angus Chan, Andrew Godwin, and Ian Ramsay of The University of Melbourne examine the challenges for achieving regulatory convergence and coordination for depositor preference rules and deposit insurance schemes in Asia. This chapter underscores the challenges facing financial integration across Asia and the inherent political difficulties in reconciling the need to maintain national regulatory and fiscal sovereignty. The high concentration and interconnectedness of D-SIBs in conjunction with some of the largest G-SIBs accentuate the need to formulate an effective cross-border regulatory response for addressing systemic risk arising from regional banking integration. Chapter 14 builds upon this theme with Casey Watters of the Nottingham University Business School (China) considering the challenges for cross-border corporate insolvencies, focusing on the regulatory frameworks in China, Japan, Indonesia, and Singapore. The analysis reveals the impact of diversity on the ability of jurisdictions and courts to cooperate in the increasingly important area of cross-border insolvency law.

4. COUNTRY STUDIES

Part IV of this Handbook examines specific regulatory issues arising within jurisdictions. In Chapter 15, Simin Gao of Tsinghua University Law School discusses macro- and micro-prudential regulation in China focusing on the resolution of systemically important banks. This issue is extremely acute in China's financial system because of the presence of four large G-SIBs. If any of these G-SIBs were to fail, this would cause an economic meltdown and systemic risk contagion throughout its financial system and the region. This concern is somewhat mitigated due to the state ownership of these four large G-SIBs. Essentially, state ownership creates an implicit deposit insurance scheme or security mechanism to abate any risk of a G-SIB failure. Another aspect of bank regulation and systemic risk in China is the shadow banking sector. In Chapter 16, Wei Shen examines path dependence and the regulatory and policy initiatives relating to Chinese banks' lending practices which have resulted in a booming shadow banking sector, including a local government debt crisis. The path-dependence nature of China's commercial banking practices often drives the banking sector into a repeating cycle of regulatory failure and regulatory reform. China has a multi-dimensional financial system because of its special administrative regions, namely Hong Kong and Macau, which have independent yet interconnected legal and financial systems. Macau in particular is often overlooked as a financial centre because of its close proximity to Hong Kong, one of the largest international finance centres in the world. In Chapter 17, Leong Cheng Hang of the University of Macau provides an interesting and unique insight into Macau's banking regulatory framework and its financial institutions. It will be interesting to see how China's Greater Bay Area plan, which includes Hong Kong, Macau, and Guangdong

Province (the largest province in terms of GDP in China), reshapes financial markets and financial integration within this area.

Turning to other countries in the region, in Chapter 18, Tim Lindsey of The University of Melbourne and Simon Butt of the University of Sydney give an overview of the three key areas of financial law relevant to doing business in Indonesia: banking, insolvency, and taxation. Many aspects of regulatory schemes described in this chapter remain aspirational in the sense that they are only partly or inconsistently enforced. This is particularly true of insolvency and taxation. Lindsey and Butt note that the shortcomings of financial law in these three areas share a number of overlapping causes, but all relate to the much-discussed gap in Indonesia between the ‘law in books’ and the ‘law in action’. In Chapter 19, Nik Norzrul Thani of Zaid Ibrahim & Co and Ili Rahilah Ibrahim provide an historical account and the current state of Islamic banking and finance law in Malaysia. Malaysia is at the forefront of Islamic banking and finance, boasting the largest number of Islamic banks of any jurisdiction in Asia, a sophisticated Islamic capital market, and an advanced legal and regulatory framework. This chapter explores Malaysia’s development in this area, tracing its historical roots from the inception of Islamic banking and finance through to the current state of the market and its regulation. The chapter provides an insight into Malaysia’s experience, which has the potential to serve as a model for Islamic banking and finance in other jurisdictions throughout the region. In Chapter 20, Helen Dervan of Auckland University of Technology and Simon Jensen of Buddle Findlay turn their minds to regulatory design and analyze the steps taken to adopt the Twin Peaks regulatory model in New Zealand following the global financial crisis. The inadequacy of prudential reforms in New Zealand is becoming increasingly obvious and has prompted the government to initiate a review of the Reserve Bank of New Zealand Act 1989. This chapter examines the legal frameworks for each regulator in the context of the terms of reference and the review. Dervan and Jensen argue that prudential regulatory reforms have been too narrow, exposing regulatory gaps and vulnerabilities that need to be addressed before New Zealand can be viewed as having a proper Twin Peaks model. Chapter 21 concludes Part IV with Dora Neo of the National University of Singapore discussing consumer protection in Singapore. This chapter analyzes the decisions of Singapore’s judiciary to enforce contractual clauses which can affect consumer protection and examines consumer protection in relation to Singaporean credit and investment services. Neo explores the role of the courts in enforcing clauses in standard form financial contracts and argues that there is a need to ensure that statutory provisions protecting consumer rights are not curtailed by contractual provisions.

5. FINTECH AND INNOVATIVE FINANCE

In the final part of this Handbook, Part V, we consider aspects of FinTech and innovative finance in Asia. Chapter 22 by Douglas Arner, Evan Gibson, and Janos Barberis of the University of Hong Kong examines Hong Kong’s regulation of FinTech, focusing on government policy, regulatory initiatives, and sectoral regulation to reveal flaws in the regulatory framework. There is a detailed discussion on sandboxes, cybersecurity regulation, RegTech initiatives, virtual banking, open application program interfaces, stored value facilities, faster payment systems, robo-advisory services, virtual assets, and InsurTech.

This chapter argues that Hong Kong needs to introduce digital financial regulators within a modified regulatory structure to more effectively regulate FinTech. In Chapter 23, Tetsuo Morishita of Sophia University analyzes the regulation of virtual currency exchanges, crypto assets, third-party payment service providers, and FinTech regulatory reforms in Japan. The chapter explains recent FinTech initiatives undertaken by the Japanese government and provides an overview of FinTech investments and consumer attitudes towards FinTech in Japan. This is followed by an analysis of a virtual currency exchange insolvency in Japan. Stacey Steele of The University of Melbourne and Tetsuo Morishita examine the Japanese insolvency proceedings of Mt Gox and the subsequent regulatory reforms. The choice of insolvency proceeding for Mt Gox had significant consequences for insolvency practitioners involved in the proceeding and the rights of creditors. Steele and Morishita conclude by suggesting further reforms are needed in Japan to deal with insolvent virtual currency exchanges. In Chapter 25, Sirui Han and Chao Xi of the Chinese University of Hong Kong discuss venture capital regulation in China and analyze interagency regulatory competition which has shaped the regulatory framework. The chapter highlights the discourses, rhetoric, and strategies developed by the China Securities Regulatory Commission and the National Development and Reform Commission in their competing quest for authority over China's venture capital sector. Of particular interest is regulatory competition being more dominant than regulatory cooperation within China. This regulatory competition may pose a potential challenge to regulation cooperation at the regional level in Asia. In Chapter 26 Chang-hsien Tsai of the National Tsing Hua University compares Taiwan's crowdfunding regulation with that of the United States. Tsai argues that Taiwan's crowdfunding regulations place a greater emphasis on consumer protection than on capital formation with the government's role taking precedence over market forces. To conclude Part V and this Handbook, Lev Bromberg, Andrew Godwin, and Ian Ramsay of The University of Melbourne analyze the impact of FinTech on regulatory convergence and coordination in Asia. In particular, the chapter examines regional developments in respect of sandboxes in Australia, Singapore, Hong Kong, and Malaysia, regional developments in FinTech MoUs and FinTech bridges, and the potential impact of sandboxes and cooperation agreements on regulatory convergence. They argue that despite the challenges for regulatory convergence in the area of FinTech, the pressure for regional convergence is likely to increase as more jurisdictions establish sandboxes and sign FinTech cooperation agreements.

The genesis of this Handbook came from the ongoing collaboration of the editors and a series of research projects hosted by their institutions: the Centre for Cross-Border Commercial Law in Asia at Singapore Management University; the Centre for Corporate Law, the Transactional Law Group and the Global Economic Law Network at The University of Melbourne; and the Asian Institute of International Financial Law at the University of Hong Kong. The editors and authors came together through a series of events in Melbourne, Singapore, Hong Kong, and Shanghai over a period of several years to discuss and develop the content of this Handbook. This would not have been possible without funding from Singapore Management University, Shanghai Jiao Tong University, the University of Hong Kong, and The University of Melbourne, as well as individual funding from many of the participants and contributors. Further support was provided by external funding bodies including the Hong Kong Research Grants Council Theme-based Research Scheme (Enhancing Hong Kong's Future as a Leading

International Financial Centre), Hong Kong Research Grants Council Research Impact Fund and General Research Fund, the Australian Research Council and the Centre for International Finance and Regulation.

Looking forward it is clear that finance and its regulation in Asia will continue to develop and evolve, in some cases very rapidly, particularly as a result of technology. Cooperation in the context of cross-border challenges relating to financial integration will continue to become more important but also more challenging, as has been the case in Europe.