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RESEARCH ARTICLE

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On interpretation of loss from unauthorized transactions in China's e-banking business

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Abstract Though China's present multi-level legal rules have provided necessary guidelines to assumption of losses from unauthorized transactions in e-banking business, such problems as lack of cohesion among legal documents, unified processing of clients, lack of clear principles of imputation, and disconnection between legal provisions and practices have in fact constrained the in-depth development of e-banking business. Thus, correct philosophies shall be adhered to and carried out on the basis of dialectic criticism and meanwhile, the specific institutional designs shall be further improved.

Keywords e-banking business, unauthorized transaction, client classification, legal identity, assumption of loss

摘要 尽管中国目前多位阶的法律规则已为电子银行业务中未经授权交易的损失承担提供了必要指引，但是法律文件之间的衔接性缺位、对客户的单一化处理、规则原则的不明确、法律规定与时间的脱节等问题也在事实上制约了电子业务向纵深发展。因此，应在辨证批判的基础上继续贯彻正确的理念，同时在具体制度的设计上进一步完善。

关键词 电子银行业务，未经授权交易，客户分类，身份识别，损失承担

1 Issue

According to the definition in the Measures for the Administration of E-banking Business (hereafter referred to as the Administrative Measures), which took

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effect as of March 1, 2006, e-banking business refers to the banking service provided to clients by banking financial institutions including commercial banks by use of the communication channels open to the social public or open public networks as well as dedicated networks established by banks for specific self-service facilities or clients. By business type, it includes "online banking business" operated through computer and internet, "telephone banking business" through audio and telecommunication devices including telephones, and telecom networks, and other banking business for completion of financial transactions by clients through self-service with electronic service device and network. In terms of operating process, such business refers to those whose transactions are automatically completed by banking business handling systems according to the transaction orders after bank security authentication systems have identified the identities who send electronic transaction orders to banks through PC terminals with such media as Internet. For instance, in online banking transactions, banks issue electronic signature authentication certificates (client certificates) or electronic signature preparation data to clients, who enter online banking systems with the electronic signature authentication certificates or the electronic signature preparation data, where transactions are continued and completed upon the identification of such authentication certificates or electronic signature. (Yuan, 2007) Since e-banking business is not a face-to-face transaction over the counter, how to identify the identities of clients, or in other words, how to ensure that transaction orders sent by clients are significant for both parties to the transaction.

E-banking business falls into the category of financial innovation. When bringing new profit growth for commercial banks, such innovation inevitably triggers new legal issues and legal risks, which can be concluded as an issue as to who are liable for the losses from unauthorized transactions concerning the authentication of the identities of clients. There are three main causes for the occurrence of such issue: Firstly, the clients lose their electronic signature authentication certificates or electronic signature preparation data; secondly, malicious programs steal clients' electronic signature preparation data by capturing characters entered through keyboards or by violence; (Nie, Lei, 2006) and thirdly, clients have logged in fake websites where their information on identities is stolen by Internet "hackers". Hence, a dilemma occurs: For clients, they want to utilize such quick and flexible way to enjoy high-efficient banking service while worrying about the security of funds in their accounts due to possible loss and missing of information on authentication of their personal identities; for banks, they try to make such business as their new economic growth point while feeling nervous about the litigation risks which may come from unauthorized transactions. Thus, how to reasonably define the rights and obligations of both parties in identification of clients' identities and preservation

of their authentication data and how to reasonably distribute the legal risks regarding unauthorized transactions are a prerequisite legal issue for promoting the further development of e-banking business.

2 Analysis on relevant legal provisions

Since e-banking business takes electronic technology as its transaction platform, the possibility that the data related to the authentication of clients' identities stolen by wrongdoers does exist objectively. In case of leakage of a client's authentication data where others falsely use the client' identity authentication data to make e-banking business at the loss of the funds in the client' account, shall the client or the bank be liable for such loss? In this regard, the relevant Chinese legal provisions give corresponding answers. Article 9 of the Electronic Signature Law of the People's Republic of China (hereafter referred to as Electronic Signature Law) promulgated on August 28, 2004 provides that "in any of the following cases, the data message shall be deemed as sent by the sender: (1) Where the data message is sent with authorization of the sender; (2) where the data message is sent automatically by the information system of the sender; or (3) where the result is compliant after the receiver has verified the message by the methods recognized by the sender." Article 45 of the Electronic Payment Guidelines (No. 1) promulgated on Oct. 26, 2005 provides: "Where a non-owner steals other's access tool to send electronic payment orders and his identity authentication and transaction authorization pass the security procedure of the initiating bank, the initiating bank shall take initiatives to assist its clients in finding out the causes thereof and try its best to reduce the client's losses." Article 89 of the Administrative Measures provides: "Where losses are incurred due to any hidden security flaw of e-banking systems, internal illegal operations of financial institutions and other reasons than those caused by clients during e-banking services provided by financial institutions, financial institutions shall bear relevant liabilities. Where losses are incurred due to clients' intentional leakage of transaction passwords or their failure to perform due obligations for security and secrecy protection pursuant to service agreements, financial institutions may be exempt from relevant liabilities according to the provisions stipulated in the service agreements, unless otherwise specified by laws and regulations." Though in form those legal provisions seem to have solved the issues concerning the assumption of losses incurred in unauthorized transactions, there are still some details in those specific provisions worthy of deliberation and review, for which the author makes analysis as follows.

2.1 Lack of necessary logic among normative legal documents

The progress of law is an evolution with time just as biological evolution, and such progressing mode always shows new laws are better than old ones, which is manifested by the treatment of the risks of unauthorized transactions set forth in the above-mentioned three legal documents. By interpreting the third circumstance specified in article 9 of the Electronic Signature Law literally, the following meaning can be understood: If a client's identity authentication and transaction authorization smoothly pass the security procedure of a bank, the losses incurred thereof shall be borne by the client, regardless whether the client's electronic signature authentication certificate or electronic signature preparation data are used by others falsely, or whether the client has faults in dealing with e-banking business. Someone may quote "by the methods recognized by the sender" against the bank, hence shifting losses. Yet, the problem is that when clients apply for electronic signature authentication certificates or electronic signature preparation data to open e-banking business, they have usually reached consensus with the applied banks and defined "the methods recognized by the sender", that is, the basis for the identification of clients' legitimate transaction identities is that such electronic signature authentication certificates and electronic signature has passed banks' security procedures smoothly. Perhaps due to the ambiguity of article 9 of the Electronic Signature Law, which brings some legal risks to banks, the provisions specified in article 45 of the Electronic Payment Guidelines (No. 1) promulgated later make clear and specific the legislative spirit that such losses shall be borne by clients. Article 45 of the Electronic Payment Guidelines (No. 1) definitely provides that in such case, banks' functions and responsibilities are only to take initiatives to assist clients in finding out the causes thereof and try their best to reduce clients' losses. Compared with article 9 of the Electronic Signature Law, it is obvious that the provisions set forth in article 45 completely shift off the legal risks of banks in unauthorized transactions.

In view of the provision regarding "clients shall bear losses unconditionally" set forth in article 9 of the Electronic Signature Law and article 45 of the Electronic Payment Guidelines (No. 1), legislators have great preference of interest in safeguard of banks' interests by fixing risks. Undoubtedly, such legal documents create a platform of rules for e-banking business, but such provisions in deviation from the rationality of "economic man" will necessarily lead to unexpected consequences. Just consider in the circumstance where the security of clients' funds can not be safeguarded to certain extent, who are willing to take such risks? Such kind of concern may well explain the substantive reason why citizens still prefer OTC transactions in the electronic age. Perhaps due to such consideration, the provision of article 89 of the Administrative Measures

embodies certain return of rationality, that is, in case that clients have no fault, the losses of clients' funds incurred due to false use of their identity authentication data by others shall be borne by banks. Though such change of philosophies relatively balances the distribution of risks and rights and interests between banks and clients, it places people in a dilemma. In terms of the force level, the Administrative Measures is a departmental regulation, lower in force level, while the Electronic Signature Law passed by the Standing Committee of the National People's Congress is a law, higher in force level. Thus, when there is rule-concurrence with respect to the provision on the same issue, the provision of the Electronic Signature Law shall prevail over that of the Administrative Measures without any doubt. That is to say, in terms of academic theory, the application of the provision of article 9 of the Electronic Signature Law shall prevail over that of article 89 of the Administrative Measures. Though we may deny the provision in the Electronic Signature Law on the same issue by considering that the "new law is better than old ones", the author holds that, in logic, such defense may not eliminate the priority of the Electronic Signature Law as the so-called new laws and old laws refer to laws at the same level of priority. A legal proverb says: Laws can tolerate inconformity in fact, but not logic. However, the current legal provisions regarding the assumption of risks from unauthorized transactions just violate such requirement of legal logic, which is unexpected by legislators.

2.2 No clear differentiation between individual clients and corporate clients

For ordinary individual clients, since they have no IT knowledge required for the security of e-banking transactions, and banks have professionals in this regard and strong support in fund, hence standing in a dominant position, in case individual clients have no faults, the fairness of law can be fully expressed by having banks to bear the losses from unauthorized transactions. On the contrary, the amount of fund transferred in e-banking business of corporate clients is generally large, and large fund flow means relatively large risks. As banks only charge relatively limited commissions for their provision of such quick and flexible service, it is obviously unfair to require banks to bear huge risks against limited benefits. In addition, different from individual clients, corporate clients have the dominant position in fund, fully capable for engaging professional talents with IT knowledge. Theoretically, corporate clients are capable for preventing their ID materials from being stolen by others through media such as Internet, and their laissez-faire attitude is undoubtedly a fault. Thus, if their electronic signature authentication certificates or electronic signature preparation data are falsely used by others, corporate clients shall be liable for the losses incurred as long as banks have no faults for the losses, even though their identity

authentication has passed security procedures of banks. It a pity that the Electronic Signature Law, the Electronic Payment Guidelines (No. 1) and the Administrative Measures, which provide legal support for e-banking business, have not solved the issue practically from perspectives of gaming, fair allocation of rights and obligations and proper support for e-banking business. Though such "unified" treatment to all problems simplifies and flattens the issue, it hides the complication of the issue invisibly and results in unfair consequences. For example, the provision of article 89 of the Administrative Measures that "in case of no faults of clients (without differentiation of individual clients and corporate clients), losses incurred from unauthorized transactions shall be borne by banks totally", in fact, increases the operating costs for banks intangibly. E-banking business is a financial innovation, and as an innovation, there is inevitably a groping process for progress. Therefore, if laws aim at encouraging innovation and offering safeguard and guideline for it, they shall not increase costs for innovators; otherwise, while new things are accepted in spirits, their growth will be indirectly blocked by specific institutional arrangements.

2.3 No clear provision on the principle of imputation

From the perspective of "remedies preceding rights", how to determine the principle of imputation for civil liabilities is an important issue for the parties concerned as it matters for loss or win of litigations. As far as such proposition is concerned, though article 89 of the Administrative Measures substantially enhances the legal liabilities on commercial banks, when there is losses of fund in clients' accounts due to unauthorized transactions, it is difficult or even impossible to require clients to prove that commercial banks have such problems as hidden security flaws and internal illegal operations. Though someone believes article 89 manifests the feature of "presumption of fault" in terms of the principle of imputation, such reasoning conclusion certainly can not hold water by verification of the positive rules evidence, because in view of procedural law, the "presumption of fault" adopts the "reversal of burden of proof" in terms of burden of proof, hence shifting the burden of proof and the risk of loss of actions due to failure of proof to the defendant. However, the circumstances set for in article 89 of the Administrative Measures are not included in the six circumstances set forth in article 74 of the Opinions of the Supreme Court on Some Issues Concerning the Application of the Civil Procedural Law of the People's Republic of China or the eight circumstances set forth in article 4 of the Some Provisions of the Supreme Court on Evidence in Civil Procedures where the reversal of burden of proof are applied to. In other words, where the client suffering losses from an unauthorized transaction files a lawsuit against a bank, he shall comply with the doctrine of "the burden of proof lying on who claims"

when there is no clear provisions in substantive rules. Evidently, to request clients to prove there are problems about banks' identity authentication systems or banks have illegal operations is nothing else than requesting them to "pick the moon". As it is almost impossible to realize "basing on facts", let alone letting courts make judgments in favor of clients? Hence, it indicates that unclear provision on the principle of imputation restricts the realization of the rights and interests of the parties concerned in procedure.

2.4 Preset values by law remaining in form virtually

Legislators promulgate laws to establish a desirable order, while legal documents are merely a means to realize legislative intent. Thus, the order under the rule of law must depend on quantitative and qualitative review and evaluation of the practices of rules. By analysis on the utility of rules, it is easy to find that an inconsistency presents between the provision on the assumption of losses from unauthorized transactions in e-banking business and the banking practice that "the inferior level of units have their counter-measures for the policies enacted by the superior levels". By a random browse of the agreements on online banking services or mobile banking services provided by current Chinese banks, it is easy to find that many high-handed unfair clauses with various "different forms of expression but with the same objectives" have, in fact, eliminated the provision of article 89 of the Administrative Measures or rendered them only in form. For instance, article 4 of the service agreements between China Construction Bank and individual clients of its online banking or mobile banking services provides: "Whether or not the clients have actually offered their electronic certificates or passwords to others for use, they shall be responsible for all the financial transactions (those due to error in transactions on the part of banks will be negotiated separately) completed with such electronic certificates or passwords." Similarly, article 7 of the Articles of Association of online banking of the Agricultural Bank of China provides: "Client certificates and passwords are the only identification of the identities for registered clients to enter in the online banking system of Agricultural Bank of China, and all operations against client certificates and passwords are deemed as behaviors taken by the clients." Though clients may refer to the provision of article 89 of the Administrative Measures for denying the force of those high-handed unfair clauses in case of disputes with banks on the losses incurred from unauthorized transactions, the validity of such defense is doubtful, since acceptance by the clients of the service agreements under the strong force of banks when opening online banking services or mobile banking services may be deemed as "the consensus of expression of wills between bank and client". Moreover, as far as law is concerned, the origin of article 89 of the Administrative Measures enacted by the People's Bank of China

is not powerful enough to overthrow the waiver clauses in contracts, since according to article 4 of the Interpretation of the Supreme Court on Some Issues Concerning the Application of the Contract Law of the People's Republic of China (No. 1), upon the implementation of the Contract Law, the courts shall comply with the laws enacted by the National People's Congress and the Standing Committee of the National People's Congress and the administrative statutes enacted by the State Council rather than the local regulations and administrative provisions when confirming the nullity of contracts. Consequently, the issue that is originally easy to deal with may become complicated: Clients suffering losses are likely to directly refer to the provision of article 40 of the Contract Law of the People's Republic of China (hereafter referred to as the Contract Law) to assert the invalidity of the high-handed unfair clauses in the e-banking service agreements; and as a response, banks may refer to the provision of article 9 of the Electronic Signature Law to affirm the force of such disputed clauses. When there are conflicts with respect to the laws referred to, the clients suffering losses may be at a weak position regarding the guidelines of rules, since as far as such cases are concerned, article 9 of the Electronic Signature Law and article 40 of the Contract Law appear to be in the relationship between "special and general". In case of concurrence in application of rules, according to the doctrine of special laws preceding general laws, courts shall accept the force of article 9 of the Electronic Signature Law,[1] which just recognizes those high-handed unfair clauses. Thus, the lack of logic among legal rules and the low precedence of new laws artificially result in the loss of due guiding, evaluating and predicting functions of preset legal rules, hence complicating simple issues.

3 Considerations on countermeasures

The significance of legal analysis lies in provision of a possible solution to the issues found rather than discovery of issues. The author makes considerations on the countermeasures based on the above-mentioned analyses as follows:

3.1 Perseverance in philosophy

As a business in high-tech conditions, e-banking business is an important innovation in financial industry. Thus, the author holds the existing legal

[1] In view of the national circumstances of China, the courts may be afraid to set an example by denying the force of the high-handed unfair clauses in e-banking service agreements according to the provisions of the Contract Law, as their conduct may trigger a series of potential litigations, hence increasing accumulative cases not expected.

platform is not purely a legal licensing for e-banking business, and more importantly, it shall provide necessary convenience and support to such new economic phenomenon, since only in this way can the new thing that has been acknowledged by law develop in order. However, the promulgated laws have been ambiguous—Giving licensing while increasing institutional costs or lacking considerations on fairness in distribution of rights and obligations. Thus, we would rather say such laws chronically hamper the development and growth of new things than say they protect new things. Hence, if we are going to define the assumption of losses incurred from unauthorized transactions in a practical and fair attitude, we shall differentiate individual and corporate clients and determine different principles of imputation for different types of clients.

Though the practices that focus only on results regardless of process, logic, concepts and principles may reach substantial justice required by the society sometimes, they are contrary to the basic requirements for rule of law ultimately, since the proverb that "procedures are the water shed between the rule of law and governance at will" indicates the establishment of rule of law not only cares for justice of results, but pays more attention to the process leading to such just results. Though in time the provision of article 89 of the Administrative Measures precedes the provisions of article 9 of the Electronic Signature Law and article 45 of the Electronic Payment Guidelines (No. 1), in terms of academic theory, the lower level of legal force of the Administrative Measures provides an excuse for denying its force. Though in the development of Chinese financial law we do not lack the precedent that departmental regulations precede formal laws, it is not reasonable after all. The rule of law does not aim at the present time but a long time. Thus, legislators shall have a long-range view rather than a short sight before promulgation of laws. For instance, now that we have discovered defects in the Interim Administrative Measures of E-banking Business in practice and consequently issued the Administrative Measures, rule makers shall have a comprehensive plan, avoiding small amendments of the Interim Administrative Measures of E-banking Business narrowly targeted on problems arising, as the establishment and perfection of any legal system may bring forth the issue "of impact on the whole situation by a slight move in one part". Though it is impossible for legislators to formulate a perfect plan due to "failure of rationality", they shall consider some basic issues as possible as they can, such as logic among rules and legal precedents. Hence, the author holds that it is worth thinking how to make comprehensive consideration of the relevance and dovetailing of the above-mentioned three normative documents and change accordingly the phenomenon of "departmental regulations replacing laws" prevailing in China currently. Though departmental regulations are characteristic of "short, flat and quick", can solve emergent issues and present only the issue of law, the law of development shows that form may be more important than

content sometimes.

In fact, the view that "benefits are usually accompanied by risks" indicates e-banking business is a double-edged sword for banking industry and therefore, it shall be an important subject in the reconstruction of Chinese banking industry to take consideration on how to improve the security of business operation through such a way as technical improvement when thinking over how to increase profits. Thus, the Guidelines for the Security Assessment of Electronic Banks promulgated at the same time with the Administrative Measures point out clearly at the beginning that: "The security assessment of electronic banks refers to the security testing and the investigation assessment of the management and control capability of electronic banks in the aspect of security strategies, internal control systems, risk management, system security and protection of clients during the conduct of e-banking business by financial institutions… and a financial institution shall establish the rule and regulation systems and work procedures for the security assessment of its e-banking, and ensure that the security assessment of its e-banking can be conducted in a timely and objective manner." Correspondingly, the Circular of the General Office of China Banking Regulatory Commission on Alerts of Risks in Telephone Banking Business of Commercial Banks promulgated on Nov. 28, 2008 requires commercial banks to develop various forms of education and security alerts concerning telephone banking risks for clients, conduct the risk assessment and classification of telephone banking transfer functions, and enhance other requirements for the verification of identity data of clients, such as CVV code of bank cards, ID data or other pre-registered data. Judged comprehensively, those documents disclose the legal concept that "preventions are better than remedies". In fact, for mature commercial banks, when there is loss to clients incurred from unauthorized transactions, what they think is not whether to compensate for losses incurred, but more importantly, to regard it as a warning and take remedial measures. Thus, compared with the legal rule of remedies, a good security assessment system of e-banking and the upgrading of electronic security technologies may be more effective, direct and important for preventing and eliminating the risks in unauthorized transactions.

3.2 Institutional improvement

It is undoubtedly a relatively wise and fair choice to establish different legal institutions for assumption of the losses for individual clients and corporate clients according to the type of clients. In this regard, the author holds the US's legal provisions on the transfer of electronic funds are worth studying and learning. The US Electronic Funds Transfer Act of 1980, which serves for individual consumers, provides that, in case of an unauthorized transaction

between a bank and its client, even when the bank may prove the loss is due to the fault of the client as a consumer, the consumer only bears a limited liability of USD50 for such unauthorized transaction provided the consumer notifies the bank within two business days after his/her learning of the loss or theft of his/her electronic tools including credit cards; if the consumer fails to perform his/her obligation of notification within such period, his/her liability shall not exceed USD500. (Zhong, 2002) On the contrary, with respect to the payment of a large sum of fund between banks or between a bank and another enterprise, article 4A of the Uniform Commercial Code of the US provides the losses incurred by payment orders shall, as a general rule, be borne by banks, unless a receiving bank and a client has made an agreement that the client shall bear the losses incurred if payment orders sent to the receiving bank in the name of the client pass the security procedures and the client bear all the risks in violation of the security procedures, except that client can prove the violation of the security procedures is caused by the bank. (Liu, Dun, 2003) Hence, the following conclusion can be drawn: The US's laws on the assumption of liabilities for failure in identity identification in e-banking business including online banking provide strict protection for individual clients and let banks bear comparatively heavy liabilities for losses, hence embodying due fairness; by contrast, they offer comparatively poor protection for corporate clients by only requiring banks to perform the obligation of sufficient duty of care. (Sun, 2003) As discussed above, the way the US laws adopt to give different treatments to individual clients and corporate clients meets the market demand for the development of e-banking business undoubtedly. The author believes it is necessary for China in its future legal innovation to practically classify clients as individual clients and non-individual clients, so as to protect the rights and interests of individual consumers through favorable legal rules and manifest fairness by properly increasing the liabilities on non-individual clients at the same time, hence creating certain developing space for e-banking business. To realize such value orientation procedural rules, it is necessary to establish different principles of imputation. The author's view is that for individual clients, the principle of presumption of fault on the part of banks shall be established, whereby in an unauthorized transaction, if the bank party could not prove it is faultless, it shall bear liabilities for failure in proof; and on the contrary, for non-individual clients, the fault liability principle shall be established, whereby in e-banking business, no matter who sends payment orders, a bank shall be deemed as faultless and bear no liabilities for compensating losses, provided the orders pass the verification of the security system of the bank.

Financial supervision is not limited to the supervision on market access, and it is rather on operation in view of the growth and aim of financial enterprises. The high-handed unfair clauses that "all losses shall be borne by clients provided the

identity is verified" as stipulated in the agreements on mobile banking or online banking services currently in the websites of Chinese commercial banks go against the spirits manifested in article 89 of the Administrative Measures. Though we may use the "theory of consensus" to understand the acceptance of those clauses by clients when they open e-banking services, such fact of "consensus without compliance" fully indicates there are deficiencies in our supervision and the design of its legal system. The author holds that since China Banking Regulatory Commission has solved the issue of assumption of losses in unauthorized transactions by promulgating departmental regulations, commercial banks under its supervision are bound to comply with them, but the fact goes otherwise. In reality, that is understandable for commercial banks as they are interest-pursuer, but for supervisors, toleration of the existence of such illegal status is breach of their duties and omission. Thus, we need to think over how to dovetail legal rules and practice in e-banking business.

4 Conclusion

The rule of law in finance can not work without rules. If there are no rules to guide specific financial behaviors, the preset financial order and security are difficult to form. However, when rules, if any, are difficult to obey or not obeyed, rules as the source of the rule of law in finance will remain as nothing; hence expected order will not be formed, and much worse, such inobservance of rules challenges the authority of law actually. Because people's behaviors are usually imitation or learning of others', such bottom-up "betrayal" of preset legal rules will inevitably erode good citizens' due recognition for and faith in law, hence "polluting" the source of rule of law. Meanwhile, if legal documents as the source of rule of law hold an ambiguous attitude to the orientation of values and the protection of interests, or play a role of "compromiser" in the unequal interest gaming, or absolutely ignore social reality, they will promote the evolution of institutions and the development of economy at the cost of the interests of those in weak position, which goes against the original intent of institutional designing without any doubt. Thus, under the dominant pressure brought by financial monopoly, how to promulgate "formal law" to ensure the development of Chinese financial industry in a proper balance of all parties' interests is a practical issue to be considered by rule-makers.

Though conceptual jurisprudence is dispraised as mechanical jurisprudence, hence suffering criticism by many scholars, for human being who are naturally longing for such values as order, rule and security, if laws, which provide security and regulation for economic development, are not supported by system and logic, how to maintain the due consistence among legal rules and realize the

unified dovetailing between law and practice? In case of inconsistence among legal rules, how to ensure the handling of each case embodies the old admonishment of "treating the same issue with the same rule"? Thus, whether substantive laws are emphasized while procedures are overlooked or merits are stressed while forms are neglected, or whether or not to observe the pragmatic philosophy that "it does not matter whether a cat is black or white as long as it can catch mice", the due system and logic of law are indispensable factors in the progress of rule of law. Though there is a saying in philosophy that "every existence is reasonable", in the author's opinion, the phenomena occurred popularly in Chinese financial legal orders that "rules of lower level precede those of higher level", and the departmental regulations replace formal laws in practice are undoubtedly unreasonable for a country with long-range plan on rule of law. Is it worth self-reflecting and deep thinking for scholars who provide guidance to legislators?

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Li Siqi, Ph.D, is a professor of Law at Hunan University. Prof. Li, specializing in financial law, has released 60 research articles or so. He is of the view that the practicability of law has made it certain that study on law should stick to the society-to-society rule, though scholars relatively emphasize rule-styled legal research and holds that financial law is composed of public law and private law. Moreover, the financial sustainable economic development means that the tenet of financial law centers on safety, but not absolutely on profit; and the relation of financial and legal innovation should not be considered only in the framework of financial law. The propensity of interest pursuit of capital will not only unduly affect assessor's judgment, but it should be under the legal freedom. Only being coupled with abstract theory of freedom doctrine, China's financial legal innovation may be clear. Thus, the legal research should not only stick to conventional legal value, but extend to the financial safety.