

## On Rule of Law in Governmental Cooperation for Regional Economic Integration

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### Abstract

Currently, economic globalization and regional economic integration are both in function, and as an international and regional varying factor, they profoundly influence and constrain the socio-economic development of all countries. In China, “to promote the regional economic integration in the Beijing-Tianjin-Hebei, in the Yangtze Delta, and in the Pearl River Delta” has been stipulated in China’s Economic and Social Development of the Twelfth Five Year Plan Outline. Governmental cooperation is the inevitable choice in enhancing harmonic regional economic development under regional economic integration, and the fundamental requirement of governmental administration in the transfer of administrative regional economy to the territorial economy. To ensure the continuity, steadiness and optimal effect of governmental cooperation, law must be implemented to study the various potential legal problems so as to construct a strong legal operation system to guarantee the essential coordinative legitimate mechanism and provide excellent legal environment for the regional economic development.

**Key words:** Regional economic integration; Governmental cooperation; Legal administration

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### INTRODUCTION

In the current world, economic globalization and regional economic integration are both in function: within the cooperative regions, government institutions deeply realize the necessity of regional cooperation and demolition of administrative tariffs, and encourage free movement of products and production factors so as to form up comparative regional advantages, optimal industrial distribution and resource allocation. Only in this way can regional members sustain smooth development, promote integrated regional competitive capacity and realize mutual benefit and all-win effect. With the progress of regional economic integration, abundant trans-administrative-region public problems spring up, such as environmental protection, population and resource, valley harnessing, infrastructure construction, regional stability, prevention and cure of epidemic diseases, etc., which cannot be solved by any local government alone. Thus regional governmental cooperation becomes necessary so as to integrate their effort in dealing with such problems and increase competitive capacity. Effective regulations and institutions must be constructed to promote the effect of cooperation. Such is the way of reform proposed by the current research in the transformation of governmental roles from administrative economy to regional economy.

### 1. REGIONAL GOVERNMENTS’ COOPERATION: OBJECTIVE REQUIREMENT OF REGIONAL ECONOMIC INTEGRATION

With the deepening of China’s integration into the world and further progression of market-oriented reform and democratic building, the local government is facing a bigger challenge. Harboring the concept of mutual benefit, local governments should endeavor to push forward the coordinated development of regional economy through

rational cooperation and virtuous competition. This has become a new issue that all government would face in the process of regional economic integration and government management.

### **1.1 Restriction of for Administration**

Administration region, which is based on the idea of administrative region for economy and restricted by administrative division, will definitely reflect the requirement of economy, refers to a case in which local governments manage the public affairs within the enclosed zone classified according to the administrative division (Yang & Chen, 2004). Some scholars think that model is characterized by monopoly, isolation and inflexibility (Jin, 2007). It is designed to manage the public affairs with administrative orders by local governments. From the present study, it can be seen that scholars, though hold different views, all think that for administration is accompanied with power monopoly, enclosed management and administrative division restriction.

#### **1.1.1 The Own-Benefit Orientation of Model Harms the Coordinated Development of Regional Economy, and Becomes a Barrier for Regional Economic Integration**

Economic integration requires the breakthrough of administrative division and the free mobilization of economic exchanges and productive factors. However, what for administration emphasizes is to govern and develop the region, which conflicts with the goal of economic integration. Although under the request of the transformation of government functions progress has been made in terms of management mode and method, the function of local governments both for administration management and economic development still exists. As long as there are regional gaps, local governments will invariably pursue self-interest to achieve self-development in spite of the harm that this move will cause to the economic integrity and sustainable development. Under the current administrative management system, assessment system and power operation system, on one hand, local governments, based on the interest requirement, find it difficult to give up the gained power and interest. On the other hand, the market mechanism remains to be improved and the decisive effect of marketing on resource distribution remains to be enhanced. The barriers for economic integration mostly lie in the enclosed and exclusive management of local governments. Regional economic integration requires changing the pattern of for administration.

#### **1.1.2 Regional Economic Integration Is Distinguished From Administrative Economy Which Uses Administrative Division as Boundaries**

Economy in the region gains a wider development room, which brings a challenge to administrative management within the region while benefiting the region overall

development. Traditional for administration manages public affairs with administrative division as the boundary. The boundary is clear and the type and nature of public affairs are quite simple. Geographical restriction of for administration causes the absence of management of trans-regional public affairs and limits the development of economic integration. Regional economic integration brings about trans-regional public affairs beyond specified administrative division, such as trans-regional decision making, trans-regional law enforcement, and trans-regional environmental protection. These affairs have no fixed law to govern. With the acceleration of integration, these affairs may increase and become more complex. At present, under the administrative management mode with for administration as the dominant force, local governments are more willing to pay attention to local interest and neglect regional public affairs. With the mentality of free-rider, local governments certainly choose to enjoy administration fruits, the result of which is the administration failure of public affairs. It is a problem needing to be addressed urgently in the process of integration regarding how to realize the administration of trans-regional public affairs.

#### **1.1.3 The Power Monopoly Property of for Administration Excludes the Management and Participation of Other Social Entities on Public Affairs, Which Contradicts Requirement of Economic Integration**

Market economy in its essence is a right economy, in which the status of market entities and social entities on economic development and public administration should be respected and secured. The defects of for administration, in addition to its emphasis on self-interest, strict geographic restriction, are its dominance and monopoly. Because of the absence of effective supervision of administrative power and imperfect restriction mechanism, right still clings to power and cannot realize its value, let alone display due influence on power. The role and status of social entities other than governments cannot be secured. The friction between the almighty power and limited government ability becomes fiercer. On one hand, it is hard to contain the expansion of power. The room for social entities to survive and development is being squeezed. On the other hand, the composition of government staff and management ability is limited. Not all social public affairs can be handled. There are cases that things which shouldn't be handled are handled while other things which should be handled are not handled. Such problems become quite obvious in the process of integration. Measures should be taken to overcome the monopoly of administrative power and governments' management ability limitation.

### **1.2 The Necessity of Transforming From for Administration to Regional Governments' Cooperation**

Regional governments' cooperation is a necessary choice to solve the problems in the process of regional economic

integration. By saying regional governments' cooperation, it means that local governments within a certain region reach consensus on shared interest in the form of systems to realize coordinated development and win-win effect through the optimization of regional resources. It includes the following points: First, regional governments' cooperation refers to joint conferences among high-level officials, combo of cities and governments, NGO cooperation forum under governments' initiative, local governments' combination, development consultancy committee of regional integration, regional joint committee of coordination and other institutions. Among them, the most effective cooperation organizations among local governments are the Yangtze River Economic Cooperation Zone. Second, regional cooperation usually is conducted on the basis of equality and self-willingness and development cooperation agreement as guideline. Third, the aim of regional cooperation is to maximize the economic and social interest among regions. Fourth, regional governments' cooperation in its essence is a kind of coordination of relationship among governments. The core lies in win-win effect. Strengthening regional governments' cooperation is conducive to break down trade barriers among regions, enhance overall development awareness so as to realize the free mobilization of productive factors to form a shared big market, thus achieving mutual benefit. Regional governments' cooperation also is a necessary choice in coordinating interest conflicts and eliminating tragedies of public land. A region with coordinated economic development can overcome the deficiency of resources and space, form scale economy, optimize resource distribution and reach common development through labor division and cooperation of cities with different industrial patterns and productive factors.

The value of regional governments' cooperation lies in that it doesn't exclude or deny the role of administrative division. Instead, it aims at management innovation on the basis of respecting administrative division. This innovation targets at the overall interest of the region, and bases itself on administrative division and struggles to overcome the restrictions of administrative division. It pursues a rational cooperation among governments beyond the restrictions and emphasizes the management function of governments, but doesn't exclude other social entities from managing public affairs. It sees to realize the coordinated development of regional economy and effective administration of public affair through cooperation among governments and entities. The disadvantages of for administration lie in that it overemphasizes the restrictions of administrative division, exercise power monopoly and conduct isolated management. Besides, it ignores and squeezes the status and role of other social entities in administration, which leads to the dereism and limitation of development,

forming a huge barrier for regional economic integration. Economic integration requires overcoming the defects of for administration, finding a way out of for administration to realize coordinated development of regional economy. This necessitates the perspective of observation from the nature of for administration to find a fundamental solution. Some scholars put forward to adjust administrative division and set up trans-regional governments. But it's not an easy move and cannot overcome defects like self-interest, power monopoly and enclosed management completely. After the adjustment there's still the possibility that new problems may occur. It needs a practical and feasible plan to solve for administration problem.

Some scholars think that the major barrier in realizing regional economic integration lies in the current system and structure. Under the circumstance of imperfect market mechanism and legal system, barriers cannot be crashed only by relying on the economic exchanges on non-government level alone. Cooperation between governments to push forward integration is the wise move under the current system (Qian & Jiang, 2005). Among the increasingly fierce competition, China should take part in regional cooperation instead of isolation to stand out in the international economic arena with the collective strength of the region. In fact, because of the gap in resources and the emerging of more trans-regional public issues, it becomes more urgent for regions to maximize interest through cooperation. At present, China has explored some modes of regional public administration through practice. But the governing tool still lacks diversity and target and is confined to economy with little focus and involvement on other aspects. The regional public coordination mechanism remains to be improved and supporting facilities required for seamless connection among regional are still absent (Wang, 2007).

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## **2. RULING BY LAW: THE BASIS AND GUARANTEE OF REGIONAL INTERGOVERNMENTAL COOPERATION**

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Regional cooperation should be based on the reality of regional economic integration and problem-oriented, and face the defects of public management caused by administration regions. Public affairs should be treated and solved through cooperation and action instead of confrontation and inaction under the basic principle of coordinating regional administrative interest and overall interest. Besides, the status and role of other social entities in public affairs administration should be respected and acknowledged. Efforts should be made to break the plague caused by self-interest pursuit, power monopoly and geographical restriction of in public administration. Regional cooperation will not only help solve the existent defects but also can radiate itself toward the future. Even in the future when administrative adjustment occurs or

new regional administration structure takes place, there is still the need for cooperation between governments. To push forward the regional economic integration, the fence of traditional for administration must be crashed to realize the reform in the pattern of regional administration (Xia, 2001). Regional governments' cooperation as a new-type regional public administration mode has the objective necessity to exist. Cooperation and exchanges have become the wise choices of local governments and common interest. The transformation from for administration to governments' cooperation has become the optimal choice to coordinate the governments' relation under regional economic integration.

Currently, the regional cooperation is not highly legalized and still suffers a series of system and mechanism defects. Based on the intergovernmental relationship and ruling by law, we should delve into existing problems and put the intergovernmental cooperation on the legal track so as to legalize the prerequisite of the cooperation, and the basis of cooperation and implementation of cooperation. In this process, the trans-territorial successful experiences can provide a reference to China's regional intergovernmental cooperation, but rejecting the dross and assimilate the essence is also needed so that the intergovernmental legal work can proceed smoothly.

In accordance with the requirements of building a country under the rule of law in China, we enforce our own legislation on the national level and local level and abolish local laws, regulations and relevant policies which are contradictory to regional integration. We also establish and improve law and regulations relating to integration so as to provide legal guarantee for the regional economic integration, and realize the transformation from "promoting integration by relying on policies" to "promoting integration by relying on law". To be specific, improvements are made in the following aspects: Firstly, formulate and improve regional legal system. Any region's coordinated development should be supported by a sound system. The central government should formulate relevant laws and regulations so as to coordinate regional development and regulate economic activities within these areas. As for how to upgrade regional coordination to national coordination, the propositions in academic circles mainly fall into three categories: establish a unified national policy. Second, merge the "Domestic regional cooperation" into the constitution to provide a constitutional basis for the related legislation. Third, legislate single file law and improve the scheme of administrative agreement. The main ways are as follows: diversify the parties of the agreement, complete the procedure of administrative agreement and improve the content of administrative agreement. In order to make the procedure scientific and democratic, we should not only stress the function of governmental system but also attach great importance to

the participation of the public and market entities. Thus, it is imperative to extensively collect their observations and recommendations through various channels so that the administrative agreement can better reflect the will of the people. Last, strengthen legislative cooperation and minimize legislative conflicts. Each subject in regional relations should fully exchange and clean up and amend outdated laws timely when legislative plans are made. Any local rules and regulations which violate epistatic law and do not meet the principles of market economy should be abolished immediately. Secondly, adhere to the law and abide by regulation when the administrative enforcement activities are carried out and establish a long-term mechanism of law enforcement. The state of administrative law-enforcement directly relates to whether the legislative objective can be realized, the maintenance of the public interests and the improvement of regional administration. We should improve the law enforcement system, clarify the law enforcement authority, specify the mission and content of law enforcement and improve the quality of law enforcement officers so as to execute law with rigidity, equity and civility. Moreover, we should establish and improve administrative law enforcement cooperation mechanisms. To strengthen the coordination capacity of the central government, we should also set up regional law enforcement agencies to give macro guidance over administrative law enforcement issues to solve the conflicts among the regional members and between the regional members and central government. The ultimate goal is to safeguard equity and efficiency of law enforcement. Thirdly, unremittingly carry out education and publicity of the legal system, promote the spirit of law and enhance public awareness. The regional construction is inseparable from the participation of every subject. On one hand, this will make the subject get familiar with legal norms in the region and know well about their rights and obligations. On the other hand, cultivating law-abiding consciousness not only eliminates and decreases violation of law but also can constrain them to handle affairs in accordance with the law and practice democracy. Fourthly, intensify supervision and broaden supervision channel. In order to guarantee the subject always acts in accordance with the law, it is necessary to implement effective supervision to the intergovernmental cooperation. Therefore, apart from the government itself, other parties such as organizations, legislative body and the public should also play their roles. Other forms such as democratic supervision and legal supervision should be further improved.

After years of efforts, China's regional cooperation seems to be paying off. The overall situation maintains the momentum of steady growth. The regional cooperative economy characterized by diversified functions has come into being. The regional coordinated development should be promoted by the non-systematic means like

government consultations, and guaranteed by legal means such as improving legislation and collaboration mechanism of law enforcement. In the new stage of development, to deepen regional economic integration and achieve mutually beneficial and win-win cooperation, we must integrate existing system resources, strengthen legal system construction and build legal framework. Moreover, we must shift the way of intergovernmental cooperation from “policy cooperative mechanism” to “legal cooperative mechanism” and gradually set up the “game rule” for the integrated operation in the region. The coordination of government management can be realized through legal coordination and integration, so as the integration of economy and society.

### **3. THE COMBINATION OF BOTH THE HARD AND SOFT LAWS: A POSITIVE EXPLORATION OF LEGAL ADMINISTRATION MODEL FOR REGIONAL GOVERNMENTAL COLLABORATION**

According to the different emphasis attached to the hard and the soft laws, the legal administration of regional economic integration can be summarized into three patterns: the hard-law-based administration mode, the soft-law-based administration mode and the blended administration mode. It has been pointed out by some scholars that the hard-law-based administration mode serves as the institutional basis for the interstate cooperation in America, the soft-law-based administration mode is the suboptimal choice for the economic integration in the Guangdong-Hong Kong-Macao in China, and the blended administration mode guarantees the success of the European integration. There is no unified legal administration pattern for regional integration. The legal administration for regional integration should proceed from the regions’ respective actual circumstances and needs, and select the appropriate legal administration mode suited to the regional conditions on the basis of legitimacy, equality and mutual benefit, and open participation (Zhu, 2011).

#### **3.1 Hard-Law-Based Administration Mode**

The term “hard law” refers to the legal instruments and laws which embody the state will, and are formulated or approved by the state and put into implementation with coercive force of the state. Countries that implement the hard-law-based administration mode are represented by America where there is complete parity by law between the federation and states as well as among all states. Apart from the federal constitution and laws, there are independent constitutions and laws in states. Therefore, the conflicts between interstate laws are particularly evident

there. In history, “various conflicts had been generated by the conflicts of interest, for example, trade barriers in various forms were built by the states for the sake of self benefit.” (Zhang, 2006) However, the development of interstate cooperation in America and the tendency of all-America economic integration urged to eliminate the interstate legal conflicts and trade barriers. This has been realized via three ways in American states. First is the establishment of interstate contracts. According to statistics, the interstate contracts between American state governments have reached nearly one hundred, covering broad fields such as the water supply, the preservation of natural resources, flood control, taxation on interstate highways, etc.. (Wang, 2008) An interstate contract is usually signed by the representative designated by the state governor. After its approval by the state council, the state governor will get informed, and this contract will be promulgated in the state as the hard law and incorporated into the code of state regulations and the Code of Federal Regulations. Nevertheless, the content of an interstate contract must abide by the principle of constitutional reservation and legislative authority of the Congress reservation and shall not violate the federal legislative authority and administration authority. Second is the establishment of unified state laws. In 1892, the National Conference of Commissioners on Uniform State Laws was founded in America by representatives appointed by state governors to avoid legislative contradiction and conflict among states. Its primary mission is to unify the laws of the states by ad hoc committees within the conference drafting legal bills and then submitting them to the states to approve. Third is the set-up of interstate organizations such as the state governments’ representative conference. In 1952, Interstate Cooperation Commissions set up by states formed the state governments’ representative conference in America. In addition to the coordination of specific affairs, another important mission for the state governments’ representative conference is to draft legal bills and submit them after discussion to the council of the state governments’ representative conference for examination and approval. Then these bills will be listed into the specialized legislative proposals and sent to all states’ governors, attorney generals and other officers (Li, 1986). From these three ways, it can be seen that the regional integration of the United States has been promoted and realized mainly through the enactment of hard laws by the state councils who have the legislative authority in the manner of approval. Its practice effect is quite satisfactory. In the words of Americans, that is “our institution can work and it indeed is working and can work well.” (Rosenbloom, 2002)

Yet, the hard-law-based administration mode has its limitation: it is unlikely to administrate entirely by the hard law in the regional governmental cooperation. The contradiction between the finiteness of the hard law and

the infinity of social life, between the stiffness and the hysteresis quality of the hard law and the complex and variability of social life, between the hard constraint of the hard law and the transformation and innovation of public administration, and the restriction from other factors like the legislative technology and cost, law enforcement cost, etc, determine that it is impossible to entirely implement the hard-law-based administration mode in the regional governmental collaboration.

### 3.2 Soft-Law-Based Administration Mode

The French scholar Francis Snyder defined the soft law as one “that is not legally binding in principle, but the actual effect of rules of conduct” (Francis, 1994). The soft law is relative to the hard law, and refers to regulations stipulated or recognized by certain social community through its members’ participation and negotiation, usually the contracts and protocols reached by the members within the community on their own. It has no coercive force of the state nor is its implementation ensured by the coercive force of the state. Yet, it does not mean that the soft law is unbinding. Once the soft law is established, members of the corresponding community must observe. In the case of any violation, he or she will be condemned by the public, sanctioned by the discipline and even isolated and expelled by the community. Therefore, the implementation of the soft law is usually ensured by people’s promise and integrity, the public opinion and the discipline (Jinag, 2006). The soft law develops along with the lag of the hard law and the rise of deliberative democracy, which plays the active role of enhancing the subject consciousness of the citizens and promoting social self-governance, remedying the deficiency of the hard law, reducing costs of legislation and law enforcement, innovating the administration mode and preventing the abuse of public power in the public administration. It is held by some scholars that in contemporary society the “soft law” flourishes with the rise of public administration and is the main base for public administration. The “public administration” is mainly the “soft-law-based administration” (Zhai, 2007).

China is situated in the transitional stage of economy and society where various new social relations are in sore need of adjustment through the law, which, however, can far from being met by the hard law alone. In order to fill the gaps of the hard law in these areas and improve the adaptability of the law to the social development, the soft law emerged at the right moment with the rapid development and is playing the increasingly important role. The soft law formed through consultation, argumentation and consensus can respond to diverse interest appeals. Its implementation does not count on the coercive force of the state but the application of the self-discipline mechanism or voluntary compliance induced by interests, which is conducive to establishing harmony under order shared governance, optimizing the resource

allocation, promoting the spirit of rule of law, creating administration democracy and improving the social autonomy.

The soft-law-based administration is a transformation of administration mode. The modern administration mode is the public or cooperative governance model which stresses more consultation and communication, less command or compulsion but a higher level of autonomy and freedom. Different from the traditional state’s administration mode, public governance is unlikely to be constructed entirely on the basis of the hard law, but should be built on the combination of the hard and soft laws and that of stiffness and flexibility. In the course of regional economic integration, regional governments reach a consensus through consultation and communication on the basis of respecting every region’s interest, and implement the co-governance of regional public affairs by cooperation, coordination, negotiation, partnership, and establishing the goal of collective action. Varying from the traditional one-dimensional ruling pattern which is mandatory, compulsory and coerced, it is a bidirectional interactive administration mode on the basis of equality, consultation, mutual trust and benefit, and voluntary compliance which in essence is a sort of flexible and soft-law-based administration where the spirit of democratic consultation gets more expression.

As the primary manifestation of the soft-law-based administration, the regional cooperation agreement is reached by local governments within certain regions through consultation to regulate respective administrative activities for the sake of coordinating administrative cooperation between each other and realizing the joint regional development. It is the behavior standard for local governments to conduct cooperation. With the social and economic development in modern times, there is increasingly wide cooperation between regions and therefore vast administration agreements have been concluded to eliminate the various barriers in the economic development through the governmental cooperation for the sake of the healthy and orderly development of the regional economy. The legal basis of these agreements lies in the principle of equality, mutual trust and mutual benefit between local governments which do not have the relationship of administrative subordination. The contracting parties are primarily local governments or their functional departments by means of chief executive joint conference. The agreement takes on such forms as “declaration”, “agreement”, “treaty”, “protocol”, “memo”, “outline”, “letter of intent”, “proposal”, “suggestions (on the implementation of...)”, “constitution”, “minutes”, “scheme”, “plan”, “consensus”, etc., among which “declaration” and “agreement” are the most commonly used. In the practice of regional cooperation in China, the joint conference of government chiefs is mostly adopted, during which governmental cooperation agreements with

clear statements of cooperation content and forms are concluded on the basis of equality and free will to regulate the behaviors of all parties. So far, a large number of cooperation agreements covering a wide range of issues have been concluded between local governments within certain region. Instead of a mandatory measure of one party to another party, the regional cooperation agreement is the contracting local governments' self-discipline and motivation towards their administrative power, a new way for local governments to wield administrative power, and the binding regulation of the conduct formed through free will and consultation. Its legitimacy is acquired through dialogue, communication, negotiation and other generally recognized ways between local governments on the basis of equality. Up to now, regional cooperation agreements in China have touched upon numerous domains like infrastructure (energy, transportation, etc.), industrial investment, commerce and trade, tourism, technology, personnel, finance, informatization construction, environmental protection and so forth.

The reason why local governments in certain region sign a cooperation agreement is that all parties can be guided by explicit provisions to support and cooperate with each other in accordance with the agreement so as to achieve common development of the region. The implementation rests upon all parties' sense of responsibility and consciousness towards the community. From the perspective of the pursuit of interests, all contracting parties will be restricted by the self-discipline resulting from the pursuit of interests as a rational-economic man. In practice, once one contracting party defaults, the other parties can take joint action in accordance with self-relief mechanism to ensure the effectiveness of the agreement is respected, compelling the former to observe the agreement under the pressure of being isolated. "The sociality makes people afraid of being isolated and desire to be respected." "Only when the extreme fear towards being isolated is assumed can we explain why human beings can achieve great success at least in the community." (Ye, 2004) It is thus clear that the specific form of liability for breach of contract in the regional cooperation agreement is not a strictly sanction but the cancellation of certain cooperation or a certain preferential, i.e. the default parties cannot enjoy their rights and benefits for they fail to fulfill obligations. This is theoretically feasible in that the obtainment of various rights and interests by the parties concerned in the regional cooperation agreement needs the opposite parties to cooperate or grant specific qualifications, that is, the observant parties force the defaulting parties to observe the agreement or take remedial measures by stopping the cooperation or cancelling a certain preferential so as to realize the constraint on the defaulting parties.

Nevertheless, the soft-law-based administration is not perfect. The lack of coercive force of the state, the likely elasticity of the principle in content, the undefined liability

provisions, etc., because the soft law to fail to effectively play its role occasionally.

### 3.3 The Blended Administration Mode

The blended administration mode refers to one that conducts public administration in the regional integration by the blended law mechanism that uses both hard and soft tactics and combines stiffness and flexibility. "As a regulator of social relations, law is supposed to select laws varying in rigidity to regulate and adjust different social relations in accordance with their difficulty of regularization; otherwise, it will result in the waste of law resources." (Luo, 2009, p.8) From the practical point of view, there is essentially no country that relies solely on the hard law or the soft law to conduct legal governance, but instead, the hard and the soft laws run in parallel and give full play to their strong point in the proper place." (Luo, 2009) To a large extent, the transformation process of public domain governance is manifested in one that the hard rigid single law system evolves to the blended law system where the hard and soft laws are applied alternatively and complement each other.

In the EU, for example, the legal administration of regional integration is neither the simple hard-law-based administration mode nor the mere soft-law-based one but the blended administration mode, which has greatly promoted the formation of the EU where the commonality is emphasized, and all parties respect each other and share common interests and development outcomes.

European countries have gradually moved towards integration since World War II through two phases: the EC and the EU. The foundation of the EC was realized by international treaties such as Treaty establishing *the European Coal and Steel Community* concluded by France, Germany and other 4 countries, and so was its expansion. Similarly, the EU was founded as the *Treaty on European Union* went into effect. The EU has constructed a multi-layered network of organization system via a series of treaties: the European Council, composed by the Heads of member countries and the EU chairman, is the virtual highest decision-making body that takes on the coordination of its member countries' standpoints and decides the EU's fundamental policies; the EU Council of Ministers, made up of the Foreign Ministers of member countries, is the primary legislative and decision-making body, and responsible for the inter-governmental cooperation issues like the EU's common diplomacy; the European Committee, as the permanent executive body, implements the EU treaties and the decisions made by the Council of Ministers, submits reports and draft resolutions to the Council and the European Parliament, and deals with daily affairs; the European Parliament enjoys democratic supervision, consultation authority and budget decisions as well as the legislation shared with the Council of Ministers; the European Court of Justice is the EU's arbitration body with the responsibility of

ensuring the EU's law to be observed. From the above analysis, it is shown that the administrative mode of the EU regional integration then was based on the hard law, i.e. emphasized the treaties and legally binding. It required its member countries to strictly abide by the treaties and the law and allowed the litigation to the court against actions that did not obey the treaties and the law, and punishment would be imposed when necessary so that the integration could be guaranteed by the legalization and institutionalization.

However, as the EU's integration extended from the economy towards the society in the wake of the EU's expansion, the hard-law-based administration mode found difficulty in playing its expected role with emerging disadvantages: one is that it was hard to balance the contradiction between the diversity of member countries and the observance of the Community resolution, and the other one is that it failed to solve the crisis of democracy and that of legitimacy at the EU level (Luo, 2010, p.313). To overcome these disadvantages, the EU, after the 1990s, began to utilize the open coordination mechanism which included four basic elements: benchmarking, best practice, periodic evaluation and co-learning, and roughly followed these steps: Firstly, the common guidelines, objectives and evaluation criteria are established at the EU level; member countries then develop their own annual action plans in domestic according to EU guidelines, the process of which is usually supervised by a permanent body who makes appropriate assessments; in the regular peer review process, the implementation of these plans is to be evaluated; finally, the guidelines and the overall results are reviewed and the best practices decided to motivate the learning of other member countries. If necessary, the European Commission will make appropriate adjustments to the guidelines and propose appropriate policy recommendation to its member countries to promote so that the looping execution will be promoted next year (Luo, 2010, pp.405-406).

The soft and hard laws are evolving into two basic forms of the modern law. The blended administration mode combining rigidity and flexibility built upon the complementary advantages of the hard-law-based administration mode and the soft-law-based administration mode is playing a vital role in promoting the regional governmental collaboration. The soft law can compensate the loopholes or drawbacks of the hard law, and hence can be applied in the fields where the hard law is absent or unable to function effectively; in the case of the coexistence of the hard and soft laws, the priority should be given to the soft law with the safeguard of the hard law. In short, the future legal governance will be the blended one that is both rigid and flexible, includes diversity into the unification and achieve complementarity to meet the development of the regional economic integration and the transformation of the public governance. It becomes

the effective choice for facilitating and safeguarding the regional governmental cooperation.

#### **4. THE CONSTRUCTION OF A DIVERSIFIED MECHANISM: THE WISE CHOICE TO DEMONSTRATE THE EFFICACY OF LEGAL GOVERNANCE**

To ensure the realization of the goal of regional intergovernmental collaboration and highlight the effectiveness of legal governance, many matching conditions will be needed, such as the updating of concept, structural reform, mechanism innovation, system improvement and so on. Local governments in the region should change their concept of "administrative economy" and overcome the selfish departmentalism to promote good results of the regional cooperation by setting store by the overall interests of the region, establishing the concepts of "win-win cooperation", "harmonious development" and "unified market", taking institutional cooperation as the starting point and strengthening the construction of appropriate mechanisms.

##### **4.1 Legal Coordination Mechanism**

An effective legal coordination mechanism, by enhancing the consultation and communication between regional cooperation parties and unifying the standards in terms of legislation, administration and judicature, will foster the undifferentiated regional legal environment through the unification of legal system and the equality and consistency of legal application and the reduction of the conflicts of law, further to promote the balanced development of regions. Standardized and effective legal coordination mechanisms such as joint meetings, consultations and communications, administrative protocols, etc., should be constructed under the guidance of the scientific concept of development to remove the policy and legal barriers and minimize the likelihood of local protectionism, therefore, providing legal protection for the balanced development of regional cooperation and social economy.

Currently, it is pressed for breaking policy barriers resulting from the self-contained administration pattern and clearing the major obstacle in promoting the regional integration. The development of regional economic integration challenges the local legislation on the subject, object, purpose, content, requirements, application scope, mechanisms for conflict resolution and so forth, requiring it to shift from the traditional sense of local legislation to regional legislation, from "making law behind closed doors" to "cooperation legislation" for the sake of a fair and reasonable rule of law; legislation values to shift from local development to the balanced regional development; and adjustment objects to shift

from local public affairs to cross-border public affairs. In this sense, legal coordination is particularly significant. On the one hand, local laws and regulations and other regulatory documents and related policies that contradict the regional integration shall be cleared up and abolished to break the barriers in the regional integration, and on the other hand, the harmonization among laws and policies and other regulatory documents, between local legislation and regional legislation, of legislation between various local places, and between local legislation and uniform legislation shall be achieved to form a unified, coordinated and comprehensive system of local legislation and promote the coordinated development of regions. This process will certainly propel the continuous perfection of local legislation and the in-depth development of legal coordination theory.

#### **4.2 Interest Adjustment Mechanism**

Interest links social relations and is the source of all social conflicts and contradictions. Interest relation is the most essential intergovernmental relations. "The process of regional cooperation and regional integration is, in effect, one during which regional members continuously contradict, compromise, gamble and coordinate in terms of interest." (Wang, 2012) When interest adjustment mechanism is working well, the relations between local governments will develop relatively smoothly; conversely, the failure of interest adjustment mechanism or the absence of incentives will cause the relatively slow development, the standstill and even retrogress of relations between local governments. In the process of regional economic integration, local government exists as the representative of local interest, and intergovernmental relations are "interest relation first and foremost, and then the power relation, financial relation, public administration relation." (Xie, 2000) On one hand, the issue of interest distribution is at the core of the coordinated development of regional economy but also the root of the chronic problems of repeated construction and local protectionism; on the other hand, there exists an issue of interest creation, i.e. how to create greater regional overall benefits to let the members share the benefits of cooperation by enhancing the overall competitiveness of regions to meet the economic globalization challenges and promote the healthy and rapid development of regional economy (Li, 2007).

The key to the regional economic integration is the coordination of interest relations. As included in the regional cooperation, regional governments should share the overall benefits through cooperation, break the traditional "small and all-inclusive" and "large and all-inclusive" industrial layouts, and readjust the industrial structure over the region to form a reasonable industrial layout and industrial division of labor. However, since there are always a party in a dominant position and the other party at a disadvantage in the course of cooperation,

it will lead regional interests to flow from the latter to the former. This, therefore, requires the construction of the changing mechanism of such institution that demands the dominant party to offer the corresponding benefit compensation to the disadvantaged party, changing the "prisoner's dilemma" in the original game pattern and making "cooperation" a rational choice of local governments in the region, so that the benefits brought about by cooperation can be shared by the whole region. Consequently, the realization of the regional cooperation's expected effect hinges on whether all parties can obtain the balanced benefits and make progress together. In order to achieve a reasonable distribution among regions, the corresponding "regional benefit-sharing and compensation mechanism" needs to be constructed, and all local governments shall bring about the transfer of benefits between places by effective institutional arrangements under the premise of the equality, mutual benefit and cooperation. Of course, the coordinating role of the central government is essential in this mechanism, particularly in relation to the financial transfer payments which are more inseparable from the central government's macro-control.

#### **4.3 Information Sharing Mechanism**

The risk of regional intergovernmental cooperation is mainly stemmed from the asymmetry of interests and asymmetric information. Apart from the interest adjustment mechanism, an information sharing mechanism shall be established as well through the institutionalization to enhance the information exchange and communication between the parties to further eliminate mistrust and the problem of asymmetric information between each other and avoid collectively irrational outcome of local governments. Information is a resource, and therefore the possession of information means the control of resource (Gao, 2004). Asymmetric information tends to cause the distrust contacts among local governments and further the communication obstacle, making intergovernmental interactive process which should be close co-operation deviate, thereby affecting the effect of the cross-regional cooperative administration. In the meanwhile, due to asymmetric information, local governments are likely to confine their thinking to the local region, and therefore can hardly think from the entire region nor support the cross-regional public affairs administration, turning regional cooperation administration into a mere formality. Thus, the exchange and sharing of information become extremely important.

During the promotion of regional economic integration, all parties in the region should break through the regional, departmental and industrial boundaries and institutional obstacles, intensify the information infrastructure construction, make overall planning for the information infrastructure network, unify information exchange standards and norms, create information platform for

the cross-regional cooperation administration, establish regional cooperation information sharing and transmission systems, construct and enjoy common information database together, build digital cities and digitized areas, and set up corporate credit information sharing mechanism, joint law enforcement information system, legal rights safeguard information linkage mechanism and mutual recognition mechanism of test results information, so as to achieve regional public information management integration (Chen, 2009).

#### 4.4 Performance Evaluation Mechanism

Chinese cadre appraisal system especially for the performance evaluation of local government leaders often takes GDP and the revenue as the standard for simple quantification and comparison. This induces the local governments' excessive pursuit of GDP and fiscal revenue growth, inevitably leading the local governments to strengthen the localization of resource allocation and protect local interests while ignoring the interests of the whole, the result of which is the imbalance between the interests of local governments, local protectionism and the prevalence of local market separation. Therefore, the scientific performance evaluation mechanism for local governments and their officials must be established to coordinate and improve inter-governmental interest relation by guiding it in the correct direction and regulating the government officials' values and behavioral norms.

The scientific performance evaluation mechanism for the local governments and their officials can be established from the following aspects. First, the performance evaluation of local government should combine its local economic and social development with its historical status and long-term development organically, and pay special attention to its capacity of sustainable development; should combine the local economic and social development and its contribution to the regional economic and social development; and should combine the costs and benefits in the process of public affairs administration. Second, a scientific, standardized, quantifiable performance appraisal index system which is not just limited to the ability to develop the economy should be designed to evaluate local government officials. It should not only include economic quantity and growth indicators, but also focus on quality indicators for economic growth, social efficiency indicators and eco-environmental indicators; not only examine the cadres' performance in the promotion of local economic and social development, but also be concerned about their performance in abiding by laws and regulations and fulfilling the regional cooperation agreements; not only assess the cadres' performance contribution to the development of the local area but also consider its positive and negative effects on the adjacent areas; not only focus on efficiency, but also be concerned about the

public satisfaction and combine their ability to improve the social economic development with the ability to improve the social benefit organically. The third is to establish a standardized assessment mechanism, such as an open, fair and impartial assessment procedures and methods of supervision. Fourthly, there should be an incentive mechanism and specific rewarding and punishment measures that will be honored in strict accordance with the examination results. Only in this way can the local governments and their officials be encouraged to establish a correct view of achievements, raise their overall and long-term awareness and avoid the phenomena of "figures representing the performance, looking only at the local area and planning matters merely for immediate benefits", so as to provide sufficient power to the cross-regional administration of public affairs development and the implementation of regional coordination.

#### 4.5 Incentive and Restraint Mechanism

The regional intergovernmental collaboration needs both the motivation to cooperation and the constraint on the non-cooperative behaviors. That is to provide adequate incentives for cooperative behaviors while those who violate the "rules of cooperation" should be given the appropriate punishment. Since enthusiasm for regional cooperation body is driven and induced by profit, the local governments want to be recognized as well as obtaining regional interests in the promotion of regional cooperation. Therefore, appropriate means should be applied to encourage and support regional cooperation, such as favorable policies given to the investment in regional cooperation projects, targeted policy support to cross-regional industry, instrumental preferential policies to inter-regional companies, institutional policy acknowledgement to the development of inter-regional cooperation, recognition by quantitative indicators to the performance evaluation of department and leaders who actively promote the regional cooperation, etc, all of which can be effective incentives for regional cooperation. Meanwhile, regional economic integration and regional cooperation impose a responsibility or constraint on each member.

An obligation owed to each member of the community is to make the interests of the community prior to self-interest, regardless of conflict occurring.....This is the principle of social responsibility. The social responsibility does not require people to abandon the pursuit of individual self-interest, but that they must pursue in the consistent way with pursuing the community interest. (Xia et al., 1995)

This means tolerance and compromise. Regional cooperation agreement is a reciprocal administrative contracts for each contracting party, whose binding force is mainly manifested in a soft constraint, the self-restraint based on community responsibility and the principle of "making your word gold". Under the soft constraint,

when one party defaults, the punishment may not be the sanction in the strict sense, but the cancellation of certain cooperation or a certain preferential term or the isolation by other members and affection on its reputation.

The external constraint mechanism or the hard constraint mechanism should be established as well for the purpose of preventing opportunistic behavior, maintaining the stability of the inter-region cooperation and enhancing its authority. This mechanism may include the following contents: a clear regional cooperation agreement in terms of rules of conduct, rules observed with by the parties in the regional cooperation, as well as the liability for breach of the terms of regional cooperation; a coordination organization responsible for the adjudicate verdict of the contradictions and conflicts occurring in the regional cooperation; central or higher levels of government through appropriate laws and regulations to regulate the regional cooperation relations and make punitive institutional arrangements for disorderly conducts in the regional cooperation.

#### 4.6 Dispute Settlement Mechanism

The inevitable occurrence of disputes between local governments in the regional intergovernmental collaboration demands a sound dispute settlement mechanism. Generally speaking, in the event of a dispute during the regional cooperation, the parties can choose the independent negotiation to resolve the dispute which is a mild way to settle disputes that help maintain the harmonization between parties. Yet, this settlement way is not effective at all times. When the dispute fails to be settled via independent negotiation, the disputing parties can request the higher administrative authority to make a ruling which will exercise adjudication to resolve the dispute. This is very efficient and feasible to settle disputes. Both of the above mentioned resolutions are to resolve the dispute within the administrative system. Can the disputes in the regional cooperation be settled through litigation outside the administrative system? In Spain, disputes of regional governments occurring in the performance of the administrative agreement can be resolved by administrative proceedings and constitutional litigation. In America, disputes arising due to the implementation of the interstate agreement can be litigated in the United States Supreme Court, for example, if one contracting party of interstate agreements violates the rules and damages the other member state, the victim state is entitled to file a suit for compensation to the highest federal court (Ye, 2006). In China, although judging from the current situation, it has certain difficulty in including disputes occurring in the regional cooperation into the proceedings and designing a judicial decision system outside the administrative adjudication mechanism in the near future, it is necessary and reasonable to include the regional cooperation disputes into the proceedings so that judicial relief becomes the ultimate protection way of

regional cooperation from the perspective of the long-term development and the impartiality and authority of dispute resolution (Shi, 2011).

## CONCLUSION

To conclude, since World War II through to 21<sup>st</sup> century, regional economic integration rapidly develop and become one of the major trends of the global economy, reshaping the economic-social environment of national and local governments and bringing challenges to the traditional administrative practice, thus urging the construction of new administrative models and institutional arrangements. Regional governmental collaboration is invented as a new model of public administration to enhance the harmonious and orderly development of regional social economy. As Friedman pointed out, dealing with social changes, law functions as both a reactive and a pushing device; and although the passive reaction is more generally recognized, law is surely and actively pushing forward the social development (Friedman, 1972). There are hard law and soft law. Hard law plays the irrevocable role of regulation and adjustment. The administrative legal model in compatible with regional governmental cooperation should be the combination of both the hard and the soft law. To ensure the continuity, steadiness and effectiveness of regional governmental cooperation, rules and regulations must be established, functioning as both the reactive and pushing device to bridge up differences in regional administrative rules and regulations, and break up regional tariffs on merchandise, capital, labor, technology and information. In this direction of development, optimal effect of with systematic development strategies, deepened division of industry, and quickened industrial integration can be achieved to promote regional competitive capacity so as to stimulate internal potentials, better cope with external developing pressure, and eventually reach the all-win effect among the regional parties.

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