Jurisdictions such as the United Kingdom, the Netherlands, South Africa and Australia have substantially reformed their banking and financial sector regulators by adopting a "twin peaks" regulatory structure. Such reforms aim to ensure the stability of these jurisdictions’ financial systems. Does such an approach offer jurisdictions like Hong Kong a model for supervising their financial markets?

Financial regulators around the world (including Hong Kong) usually organise themselves along institutional lines. A company’s or institution’s legal status (whether they are a bank, stockbroker or insurance company) determines which regulator supervises its activities - from both prudential and conduct perspectives. Prudential financial regulation helps ensure the stability of the banking system. Conduct regulation generally covers the interaction between financial institutions and the public, including ensuring an appropriate degree of protection for consumers and promoting confidence in the financial system. In Hong Kong, as financial institutions have offered a broader range of financial services, legislation has modified this model to allow some sharing of oversight responsibility for among the four key regulators – the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC), the Office of the Commissioner of Insurance and the Mandatory Provident Fund Schemes Authority. For instance, both the HKMA and SFC share responsibility for Hong Kong banks’ securities business.

"Twin Peaks" Around the World
A reform that is being considered in many overseas jurisdictions in recent years is the “twin peaks” model for financial regulation, which was pioneered in Australia after recommendations from the Wallis Commission. This inquiry was held in 1996, and chaired by a prominent Australian businessman Stan Wallis, to examine the results of the deregulation of the Australian financial system that had occurred in the 1980s and 1990s. The recommendations that emerged from the inquiry led to a fundamental restructuring of that country’s financial regulators in 1998 so that two regulatory “peak” agencies were created. Under the new regime, prudential regulation was placed in the hands of the Australian Prudential Regulation Authority (APRA) while the responsibility for regulating the conduct of business was given to the Australian Securities and Investments Commission (ASIC).
Regarding Australia’s twin peaks system, Georgia State University’s Professor Elizabeth Brown echoes the many voices in academic literature that have argued Australia’s twin peaks regulatory model helped it during the global financial crisis. “The evidence from this examination suggests that Australia was able to avoid many of the problems that arose in the United States and the United Kingdom and that this was at least partly due to its twin peaks regulatory structure,” she wrote.

Subsequently, several jurisdictions have implemented a “twin peaks” regulatory structure or a similar structure. For example, in the United Kingdom, a review of the regulators’ response to the financial crisis led the UK Government to adopt a “twin peaks” structure. In this structure, the Financial Services Authority (FSA) was split into the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) in 2013. The FSA’s pre-global financial crisis “light touch” approach has been replaced by a tougher, forward-looking, judgement-led method of supervision of the financial sector. According to a recent survey, “79% of firms believe the changes to the regulatory system will result in improved effectiveness, which can be expected to contribute to promoting the UK as a global hub for the financial sector.”

Also in 2013, South Africa’s National Treasury released draft legislation signaling a shift towards a “twin peaks” regulatory structure. The draft Financial Sector Regulation Bill proposed the establishment of a new prudential authority within the Reserve Bank that would be responsible for the oversight of the safety and soundness of banks, insurers and financial conglomerates. It also proposed a new market conduct authority designed to protect customers of financial services firms. In addition, a Council of Financial Regulators would be introduced, through which the two new authorities would be expected to co-ordinate and co-operate in regulating all financial services and products. The bill also proposed that a Financial Stability Oversight Committee be established to monitor and respond to risks in the financial system and to major financial crises, such as those of a similar magnitude to the global financial crisis of 2008.

The Netherlands embraced a “twin peaks” approach to financial supervision in 2002. The nation’s central bank, De Nederlandsche Bank (DNB), has retained responsibility for prudential regulation of all financial services, while the Authority for the Financial Markets (AFM) is responsible for conduct of business regulation in the Dutch financial markets. The Dutch model seems to have been influenced by the predominance of financial conglomerates in the Netherlands.

In an interview with Reuters in 2009, Hans Hoogervorst, the then chairman of the Netherlands Authority for the Financial Markets (AFM) (and current chairman of the International Accounting Standards Board) commented that the financial crisis showed that the “twin peaks” model of separating prudential and securities supervision worked very effectively in his country and outperformed many other European nations that had single authorities for regulating the financial sector.

“In Europe, we have many single regulators that are both prudential and securities regulators. They have to combine their penchant for confidentiality and for transparency,” Hoogervorst said. “To be effective, a regulator should have a clear, focused sense of purpose. He should never be in a position where he is tempted to sacrifice the goal of transparency to prudential concerns or vice versa.”

Given its promise, the European Union is also considering adopting a “twin peaks” approach in its Union-wide surveillance and monitoring actions. Such an action should not be surprising, as the International Monetary Fund has found evidence that consolidated regulation can improve regulatory outcomes.

**Debating the Case for "Twin Peaks"**

While a proposal to introduce a “twin peaks” regulatory model in Hong Kong may find detractors, there are also compelling arguments for giving this approach consideration. There are at least three distinct advantages to such an approach that have been identified...
by its supporters. First, this model would be designed to cover any known gaps in the existing regulation.

Second, the approach offers a complementary model for China’s sectoral-based regulators. China – like the US – regulates based on financial activity. As the Mainland utilises Hong Kong’s position as a financial centre to internationalise its economy, Mainland authorities could gain comfort from having a different regulatory structure in Hong Kong to cross-reference against in identifying and dealing with particular risks in the financial markets.

Third, the new structure can better deal with large domestic and foreign-originated crises. Consider a hypothetical scenario in which a Lehman Brothers-like crisis occurs in China that causes ripple effects in the Hong Kong economy. Under the current system, the SFC and HKMA would both need to step in and attempt to co-ordinate a large resolution package for Hong Kong’s various broker-dealers and banks at risk. Under the revised structure, only a Prudential Regulation Authority would have such a jurisdiction. It would be a single voice that acts as co-ordinator both inside Hong Kong and with China.

In the Netherlands and Australia, an additional benefit of the “twin peaks” approach has emerged after this system was implemented in those jurisdictions. The respective regulators found they gained from hiring employees for their specific functions: prudential regulators from employing persons with business and economic expertise and business conduct regulators from focusing on hiring enforcement-orientated staff. Having the functions in separate regulatory entities resulted in minimising the conflicts between the disparate disciplines that can occur within an organisation, according to a report by the Group of Thirty thinktank.7 As the UK adopted the “twin peaks” approach only last year, its experience with this regulatory model is too short to provide much in the way of concrete assessment at the time of writing.

Critics of the “twin peaks” approach have pointed out that the model is not without problems and risks. Some have argued that the costs of restructuring the financial regulators might outweigh the benefits, particularly since it would affect financial institutions that are already experiencing regulatory fatigue since the global financial crisis. This point was raised strongly in South Africa when its Government was proposing to introduce the “twin peaks” approach. The critics there argued that such an increase in regulation would increase compliance costs and the need for additional staff to monitor compliance for the financial institutions. This could, in turn, reduce the availability of resources for innovation, and for customers mean a reduction in credit offerings, trade finance and risk management services.8

The financial burden of adopting the “twin peaks” approach was a point heavily debated before its introduction in the UK, as it was predicted that splitting the FSA into two regulatory bodies would lead to higher compliance costs for the financial institutions. At the time of writing, it is unclear how the FCA and the PRA will control any rises in costs of compliance being passed on to consumers.

An early proponent of the “twin peaks” model, Dr. Michael Taylor, whose seminal paper in 1995 on this approach when he proposed for the UK’s system of financial regulation to be re-organised, has said more recently that while “twin peaks” has become fashionable as a regulatory model since the global financial crisis, he warned that it may not be suitable for all countries. In a speech delivered in 2011, Dr. Taylor said each country needs to carefully select a regulatory structure for their particular circumstances. He pointed out that he advocated “twin peaks” for the UK because of two conditions present in that market. The first condition is that the banks do not dominate the UK’s financial sector because there are also significant non-bank financial institutions operating in that market. The second condition is that the UK has a highly developed consumer protection framework.

“If you do not have those two conditions in place, what sort of regulatory structure should you think about? It does not necessarily follow that “twin peaks” would
make sense in those conditions,” Dr. Taylor said. “‘Twin peaks’ is not something that should be adopted just because it is the current fashion to do so. You need to analyse the type of industry you are aiming to regulate.”

The “twin peaks” model raises questions about how the responsibilities may be divided between the two regulators if it were to be adopted in Hong Kong. One method would be to allocate to the HKMA the central banking responsibilities of conducting monetary policy as well as for ensuring the overall stability of the financial system and prudential supervision of financial institutions. The SFC would be responsible for regulating conduct across all financial institutions as well as for the securities and futures markets.

An alternative may be to give the central bank responsibilities to the HKMA and remove its banking supervision functions, while splitting the SFC into two authorities that would be responsible for prudential and market conduct regulations.

In adopting the “twin peaks” approach, questions would need to be answered on which financial institutions would fall under the supervision of the prudential regulator. In the Australian system, APRA is responsible for the prudential regulation of banks, other deposit-taking institutions and much of the superannuation industry. However, securities regulation, which includes the prudential supervision of market intermediaries, rests with ASIC. If Hong Kong were to adopt the “twin peaks” model, it needs to be determined whether there are synergies from bringing the prudential regulation of intermediaries under the same regulator as the one that regulates the banks.

Furthermore, the questions of to what extent the two regulators should rely on each other in their respective activities, and how much duplication can be eliminated or must be tolerated, would need to be resolved.

**The Systemic Risks**

A China-originated “double whammy crisis” represents the largest threat to Hong Kong’s position as an international financial centre. The “double whammy crisis” refers to the effect on Hong Kong of a simultaneous fall in property prices and decreasing equity prices due to an economic slowdown in China. It is a “double whammy” because the Hong Kong Stock Market’s Hang Seng Index relies heavily on property stocks, and property stocks also rely heavily on equity prices as equities tend to underpin the borrowings. A prudential regulatory authority would be able to conduct across-the-entire-financial-sector analyses and propose rules aimed at decreasing such systemic risks.

The data that is currently available suggests the risks Hong Kong’s financial sector regulators need to tackle will only increase in the next four years. Figure 1 shows two measures of the volatility of capital inflows into developed countries. The panel on the left-hand side shows the volatility of emerging market inflows, as a percent of gross domestic product (GDP). The panel on the right hand side shows the volatility (as measured by standard deviation) of capital flows into resilient, not-resilient and advanced economies. Advanced economies exhibit relatively high volatility of capital flows. Even resilient economies can exhibit changes in capital flows measuring several percent points of GDP. The implication could not be clearer. Even if capital flows have remained relatively stable, the odds are that capital flows will become more volatile in future.

**Figure 1: Likely Increase in Volatility of Inflows in the Near Future**

**Figure 2: Standard Deviation of Gross Inflows**
In the UK and Australia, the brunt of regulatory reform to adopt a “twin peaks” approach took about two years to complete; however, this may not necessarily be an accurate guide for the timeframe for Hong Kong if it were to also introduce this model. By 2016-2017, inflation and interest rate strains will likely become a focus of Hong Kong’s hypothetical restructured central bank due to economic headwinds coming from overseas markets, such as the US. If reforms to adopt a “twin peaks” approach were to be fast-tracked so they could be completed by 2016, it could allow the presumed new prudential regulatory body and the authority responsible for controlling the money supply time to focus on the task of controlling a potentially over-heating economy in the near future.

Notes:
1 Elizabeth Brown, A Comparison of the Handling of the Financial Crisis in the United States, the United Kingdom, and Australia, 55 VILLANOVA LAW REVIEW 3, 2010.
4 The EU currently follows a sectoral approach for Union-wide surveillance. However, several politicians and senior advisors are advocating for a twin peaks approach. For an overview of the EU system of financial regulation, see Eddy Wymeersch, The Structure of Financial Supervision in Europe: About Single Financial Supervisors, Twin Peaks and Multiple Financial Supervisors, 8 EURO. BUS. ORG. L. REV. 2, 2007. For an example of a senior EU legislator arguing for a twin peaks approach, see Pervenche Beres, First Step towards ’twin peaks’ model of financial supervision, www.euractiv.com/euro-finance/step-twin-peaks-model-financial-analysis-496770.
6 For a fuller description of each model and its appropriateness for Hong Kong, see Douglas Arner and Evan Gibson, Financial Regulatory Structure In Hong Kong: Looking Forward, forthcoming.
「双峰」金融监管模式：未来大势所向？
全球「双峰」监管架构的改革

2013年，英国金融行为监管局（FCA）、英格兰银行（BoE）和金融政策委员会（FPC）三部门合并为FCA，实现了资金市场和金融市场在监管上的统一。"双峰"监管模式得以延续，有利于金融监管的稳定。

2014年，澳大利亚审慎监管局（APRA）接管金融服务监管局（FSB），实行统一监管。

2015年，加拿大央行（Bank of Canada）和加拿大银行业协会（CBA）合并为加拿大金融委员会（CFI）。

2016年，中国银监会（CBRC）和中国证监会（CSRC）合并为中国银保监会（CBIRC），实现了银行、保险和证券市场的统一监管。

2017年，英国金融服务监管局（FSA）和金融服务监管局（FSA）合并为英国金融服务监管局（FCA），实现了金融服务市场的统一监管。
同样地，南非国家财政部于2013年公布其立法草案，显示有意采行「双峰」监管架构。该项有关金融业监管的立法草案，建议在储备银行内新成立一个审慎监管局，负责监督银行、保险公司及金融集团的安全性和稳健性。再者，该法案也提议成立一个新的市场行为监管局，以保障金融服务公司客户的利益。此外，将会另外成立一个金融监管机构议会（Council of Financial Regulators），而这两个新成立的监管局将会通过该议会，就所有金融服务及产品的监管进行协调和合作。除此以外，该法案也提议成立一个金融稳定监督委员会（Financial Stability Oversight Committee），以监控金融体系中的风险，并对与2008年环球金融危机类似的其他重大金融危机作出应对。

2002年，荷兰采行了「双峰」金融监管模式。该国的中央银行－荷兰中央银行（DNB）－仍然负责所有的金融服务的审慎监管，而金融市场管理局（AFM）则负责监荷荷兰金融市场场的业务行为。荷兰实行的模式，似乎是受到荷兰各个金融集团所处的主导地位之影响。

2009年，荷兰当时的金融市场管理局（AFM）主席（现为国际会计准则理事会主席）Hans Hoogervorst在接受路透社访问时评论称，所发生的金融危机表明，将审慎监管与证券监管分开的「双峰」模式，在荷兰发挥相当大效用，并胜于只依赖单一机构来对金融业进行监管的其他许多欧洲国家。

「欧洲有许多单一机构同时作为审慎监管机构及证券监管机构，故它们需要将保密及透明度这两项要素合而为一。」Hoogervorst说。「但监管机构要有效运作，必须具备明确而集中的目标，绝不可为了实行审慎监管而舍弃透明度：反之亦然。」

欧盟基于其所作出的承诺，也正考虑在整合联盟的监测与管制行动中采纳「双峰」模式。由于国际货币基金组织（IMF）已有证据证明，结合式的监管可有助加强监管效果，因此欧盟的这项行动并不令人感到惊奇。\(^5\)

有关「双峰」监管模式的辩论
尽管可能有人反对将「双峰」监管模式引进香港，但考虑采纳这种模式，应有令人信服的理由。\(^6\)支持实行这一模式的人，提出了至少三点实行这一模式的各种好处。首先，这一模式的设计将会覆盖任何于现行监管制度中存在的已知缺陷。

第二，这一模式为依据行业领域来实施监管的中国监管机构，提供一个互补模型。一如美国，中国也是以金融活动作为监管基础。由于中国是藉香港的金融中心地位来进行经济国际化，因此中国政府会乐意让香港拥有一个不同的监管架构作相互参照，以识别及处理金融市场的特定风险。

第三，这一个新架构能更为有效地处理国内外大型危机。例如，倘若中国发生因如「雷曼兄弟」般的危机，导致香港经济生产活动倒退，而在现行体制下，证监会及金管局均需要介入，研究如何相互协调订制一个大型解决方案，从而为正面风险的香港经纪交易商及银行提供协助。但在经修订的架构下，只有审慎监管局才拥有这权限，作为香港范围以内及香港与中国之间的唯一协调人。

当荷兰及澳洲实施了「双峰」监管制度后，它们很快便领略这一模式所带来的额外好处。各监管机构发现，这一模式能让他们根据各自的职能来招聘员工：审慎监管机构所聘用的，是具备商业和经济专门知识的人员；业务操守监管机构所聘用的，是专门负责执行指令的人员。根据一个名为Group of Thirty的智库所发表的一份报告指出，让不同监管机构各具职能，便可以将一个机构内因职责范围不同而产生的摩擦降至最低。由于英国只是在去年才开始实施「双峰」监管模式，故当本文发表之时，英国在这方面仍处于最初的经验，仍不足以让其对这一模式的实施，作出切实而可靠的评估。

反对实行「双峰」模式的批评者曾指出，这一模式也存在着问题和风险。有人辩称，金融监管机构重组的耗费，可能会大于其获得的利益，尤其是，它会对环球金融危机发生后，对金融监管已感疲惫的金融机构造成影响。当南非政府打算引入「双峰」监管模式时，当地人民便对此提出强烈的反对。

该国的批评者称，监管的加强，将会导致合规成本的增加，并需要增聘人数来负责金融机构合规的监管工作。此举将导致创新方面的可用资源减少：对客户来说，这也意味着信贷提供、贸易融资及风险管理服务的缩减。\(^6\)

"双峰"监管模式引入英国之前，当局曾对其所带来的财务负担，进行了非常激烈的辩论。当地的人认为，将FSA分拆成为两个监管机构，将会为金融机构带来更高的合规成本。在本文发表之
时，我们仍未知悉FCA及PRA就所增加的合规成本转嫁给客户的问题，将会如何作出监控。

Dr. Michael Taylor是「双峰」监管模式的早期倡导者，他在1995年发表了一篇颇具份量的论文，主张依据这一模式来重组英国的金融监管制度。但他在近期提出警告，当全球金融危机发生后，「双峰」模式虽然成为了一时之尚的监管模式，但它并非对所有国家都适合。他在一次于2011年发表的演讲中提到，每个国家都需要按其实际情况来慎重一个对其合适的监管制度，他解释他之所以提倡英国实行「双峰」监管模式，是基于英国金融市场存在的两个条件。第一个条件是，英国的银行并没有主导英国的金融业，因为当地市场还存在许多极具规模的非银行金融机构。第二个条件是，英国拥有一个发展水平相当高的保障消费者架构。

「如果我们并不具备该两个条件，那么我们将考虑实行同样的架构呢？但即使具备了该等条件，这并非说『双峰』监管模式便必然可行。」Dr. Taylor说。「我们不能因『双峰』监管模式是一时的风尚而采纳它，而是需要对我们所拟监管的行业类别进行仔细的分析。」

此外，香港若实行「双峰」监管模式，将会涉及两个监管机构的权责分配问题。其中一个处理方法是，将执行货币政策、确保金融体系整体稳定、对金融机构进行审慎监管等的金融管理职责授予金管局，而证监会则就金融机构的行为操守，以及就证券和期货市场进行监管。

另一个处理方法是，将中央银行的职能授予金管局，并免除其监管银行职责；同时，证监会将分作两个权力机构，分别负责审慎及市场行为监管。

如实行「双峰」模式，所须回答的问题是：甚么金融机构受审慎监管机构的监管？在澳洲的体制下，对银行、其他存款类金融机构，以及大部分退休金产业所作的审慎监管，皆由APRA负责。然而，对证券业的监管（包括对市场中介机构的审慎监管）仍然由ASIC负责。香港若实行「双峰」监管模式，便必须确定：对中介结构进行审慎监管的监管机构，与监管银行的，是同一个监管机构，这是否能够产生协同效应？

此外，其他仍需解决的问题包括：就各自的职能而言，两个监管机构应相互依赖对方至甚么程度？以及，可以消除或必须容许多少职能上的重复？

**系统性风险**

来自中国的「双重打击危机」，会对香港的国际金融中心地
位构成严重威胁。「双重打击危机」所指的，是中国经济放缓，导致楼价与股票价格同时下跌，从而对香港造成打击。即「双重打击」，是因为香港恒生指数中，在很大程度上受房地产的影响，而地产股也在很大程度上，受股票价格的影响，其影响是股票通常作为对借贷的支持。审慎监管机构可以进行模拟整个金融业的分析，并提出降低该系统性风险的规则。

当前的可用数据显示，香港金融业监管机构所面临的困境，未来四年将会有增无减。对于发达国家资本流入的波动性，图1显示了两套衡量标准。左方显示的，是新兴市场资本流入的波动性，并以国内生产总值（GDP）的一个百分比来表示；右方显示的，是流入富弹性、不具弹性及先进经济体的资本流量的波动性（以标准差衡量）。发达经济体显示较高的资本流动波动性，而即使是富弹性经济体，也可以显示达数个GDP百分点的资本流动变化。意思再清楚不过：即使资本流动一直保持相对稳定，但情况显示，资本流动在未来将会更为波动。

图1：久远往来的资本流入波动性增加可能

图2：资本流入总量标准差

英国和澳洲为实施「双峰」监管模式，大约耗用了两年时间来完成其改革的最首要部分；但倘若香港也采纳这一模式，该两国所耗费的时间，也许不足以作为香港确切的时间指引。到了2016-2017年，鉴于美国等海外市场将会刮起经济逆风，通货膨胀及利率紧缩问题，很可能会成为假设的经济系统后的香港中央银行的焦点所在。采纳「双峰」监管模式的改革如可加快进行，并能够于2016年或之前完成，将可让设想的新审慎监管机构和控制货币供应的监管部门，能够拥有充分时间专注于监控不久可能出现的经济过热情况。©

注释
1. Elizabeth Brown, A Comparison of the Handling of the Financial Crisis in the United States, the United Kingdom, and Australia, 55 VILLANOVA LAW REVIEW 3, 2010.
issuesandinsights/articlespublications/pages/twin-peaks-regulation-changes-challenges.aspx


6 对每一个模式的更详尽描述及其对香港的适用性，参看 Douglas Amer and Evan Gibson, Financial Regulatory Structure In Hong Kong: Looking Forward, forthcoming。
