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Legal Updates

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1. Highlights of the Draft Revision to the Anti-Unfair Competition Law

Authors: Michelle GON | Sophie SHI | Jolie YAN | Fengmian CHEN

On November 22, 2022, the State Administration for Market Regulation ("**SAMR**") issued for public comments a draft revision to the *Anti-Unfair Competition Law of the People's Republic of China* (the "**Draft Revision**", the "**AUCL**"), which reflects the government's ongoing efforts against unregulated unfair competition activities emerging in tandem with fast-evolving market forces that continue to give rise to new business forms and models.

The AUCL, first coming into force in 1993, has been revised and amended in 2017 and 2019, respectively, which focused on following aspects: The 2017 revision pinpointed the scope of parties taking bribes in business activities as individuals or entities that work for or entrusted by the transaction counterparty or can influence the transaction, excluding the counterparty itself; it also added rules to regulate unfair competition using the Internet and increased the amount of fines. The 2019 amendment focused on enhancing provisions for trade secrets protection. Likewise, the Draft Revision, representing what would be the third revision or amendment to the AUCL, with 48 articles as opposed to the current 33 articles, demonstrates a number of highlights: It refines rules to address unfair competition in the digital economy; it improves rules against existing types of unfair competition, including enhanced provisions against misleading commercial acts and false promotions, explicitly prohibits taking bribes in transaction activities, and strengthens systems for trade secrets protection; it adds new types of unfair competition, such as acts that harm fair trade and malicious transactions; it improves the legal liability section by introducing penalties on some unfair competition acts while reasonably adjusting the degree of punishment for certain violations. This commentary provides a summary and analysis of the focuses and highlights of the Draft Revision.

Refined rules to address unfair competition in the digital economy

Most significantly, the Draft Revision further specifies unfair competition acts existing in the digital economy, refining rules to regulate the acquisition and use of data and online unfair competition through the use of algorithms and technologies. These changes involve nearly ten articles in the Draft Revision, reflecting the great importance Chinese lawmakers attach to maintaining fair competition and data protection in the digital economy. Article 4 of the Draft Revision directly provides the overarching principle that the State intends to establish and improve the rules for fair competition in the digital economy, and that business operators may not use data and algorithms, technologies, capital advantages, or platform rules to engage in unfair competition. With respect to specific practices, in addition to traffic hijacking, improper interference, and malicious incompatibility that are already prohibited under the current AUCL, the Draft Revision would establish new types of illegal practices such as malicious transactions, influencing user choices, misleading users by using keyword association, by setting false operation options or by other means, intercepting or blocking other operators' pages without justified reasons, hindering the normal provision of online services or products, improper acquisition or use of commercial data, and big data-enabled price discrimination.

Meanwhile, given the complexity of determining unfair competition in the digital economy and the need for greater institutional foreseeability and greater consistency in law enforcement, Article 21 of the Draft Revision sets out several considerations when determining whether an act constitutes unfair competition, which include: (1) the impact on the lawful rights and interests of consumers and other business operators and on public interests; (2) whether such means as force, coercion and fraud are used; (3) whether the act contravenes industry practices or business ethics; (4) whether the act contradicts the principles of fairness, reasonableness and non-discrimination; and (5) the impact on technological innovation, industry development, and the Internet ecosystem.

As indicated above, the Draft Revision uses multiple provisions to regulate new types of unfair competition in the digital economy. Both platform providers and business operators using the platforms should pay close attention to these provisions and accordingly reassess their compliance in regard to relevant issues in their contract execution, performance, and daily operations.

More stringent enforcement of commercial bribery

The Draft Revision tightens rules against commercial bribery in the following four aspects:

- Counterparty returns as a potential bribed party. Article 8 of the Draft Revision provides that a business operator may not, by itself or instigate others to, bribe the counterparty in a transaction or any of its employees by offering money or valuables or by any other means. This means that the counterparty itself would again be included as a potential bribed party. The 1993 AUCL provides that, where a business operator secretly pays kickbacks to the transaction counterparty, be it an entity or individual, off the books, the operator will be punished for offering bribes; where the counterparty, be it an entity or individual, secretly accepts kickbacks or other benefits off the books, the counterparty will be punished for accepting bribes. By comparison, the 2017 AUCL sets forth the potential bribed parties, which include employees of the transaction counterparty but exclude the counterparty itself. Whether to include the "counterparty" as a bribed party has been a difficult issue in unfair competition law enforcement. On the one hand, business to business payments are normally a market practice resulting from equal, voluntary negotiations between the transaction parties. Commercial arrangements not involving a "power-for-money deal", namely the essence of bribery, should not be deemed as commercial bribery. For example, "secret" payments that are made "off the books" caused by accounting errors should not be considered commercial bribery. On the other hand, however, business to business arrangements with special market entities, such as hospitals, may still cause problems. For example, providing equipment for free with bundled consumables sales as a condition may cause a hospital to skip procurement through open tenders or even lead to collusive bidding or internal corruption within the hospital. Given that, the AUCL is still a useful tool to resolve such systematic problems concerning these special entities. The Draft Revision restores the "transaction counterparty" as a potential bribed party, but still needs to strike a balance given the above two considerations, with the elements to establish illegality to be further clarified in subsequent rules for implementation.
- Provisions are added to prohibit and punish the act of accepting bribes in transactions, which is explicitly specified as an unfair competition practice. A prohibitive provision is introduced in Article

8 of the Draft Revision that "no entity or individual may accept bribes in transaction activities". The legal liability for accepting bribes is prescribed in Article 29.2 that, where a business operator or any of its employee accepts bribes in transaction activities, if laws and administrative regulations have laid down relevant provisions to punish the act of accepting bribes in certain types of transactions, such provisions shall prevail; if laws and administrative regulations are silent, the bribed party will be punished in accordance with provisions to penalize the bribing party. Article 29.2 provides an alternative means to punish a bribed party that falls short of the standard of criminal prosecution, which would facilitate smooth transition between administrative and criminal penalties against a bribed party, as well as the two-way transfer of cases between judicial organs and administrative organs.

- Article 8 of the Draft Revision stresses that "instigating others" to engage in bribery also constitutes commercial bribery, which lays a more solid basis for punishing business operators who offer bribes through distributors or other third parties.
- The maximum fine for commercial bribery is raised from RMB 3 million to RMB 5 million.

The above changes reflect stronger efforts of market regulators to crack down on commercial bribery, which, after coming into force, would pave the way for a new level in law enforcement against commercial bribery.

Aiding unfair competition underlined as a regulatory focus

Another highlight of the Draft Revision lies in stricter constraints on the provision of aid to unfair competition. In the *Provisions on Prohibition of Unfair Competition Acts on the Internet (Draft for Comment)* released by the SAMR in August 2021, business operators are prohibited from aiding others in committing unfair competition acts over the Internet. The Draft Revision underlines the prohibition against aiders who in fact indirectly engage in unfair competition.

Article 2 of the Draft Revision provides a general principle that business operators must not aid other persons in committing any act of unfair competition, with specific requirements set forth in the following provisions: (1) Misleading commercial acts: A business operator may not sell goods that are misleading or facilitate misleading acts by providing storage, transportation, delivery, printing, concealment, premises, etc. (Article 7.2); (2) False commercial promotion: A business operator may not help another business operator in conducting any false or misleading commercial promotions by way of organizing false transactions, fictitious evaluations or otherwise, or provide planning, production, release or other services for false promotion (Article 9.3); (3) **Trade secrets**: A business operator may not help others to violate confidentiality obligations or the right owners' requirements for keeping confidential trade secrets by obtaining, disclosing, using, or allowing any other party to use such trade secrets (Article 10). The legal liability of aiders of unfair competition is the same with that of those who directly commit unfair competition acts, meaning that they may be ordered to cease the illegal acts, have their illegal gains and articles used for illegal activities confiscated, be fined, have their business license revoked, etc.

The above provisions would impose greater obligations on platform providers to supervise and examine unfair competition on their platforms. The provisions would also raise the bar for other companies and

service providers to examine compliance of their services in a more prudent manner. Also, the protection of trade secrets is further consolidated in the Draft Revision.

Enhanced legal liability and increased cost of violations

With respect to legal liability, the Draft Revision introduces penalties for some unfair competition acts while reasonably adjusting the degree of punishment for certain violations.

I. Expand the scope of application of punitive damages and statutory damages

Under the current AUCL, punitive damages only apply to "trade secrets infringement committed by a business operator in bad faith", where, if the circumstance is grave, the amount of compensation may be determined as between one time and five times the actual losses suffered by the right holder as a result of the infringement or the benefits gained by the infringer from the infringement (Article 17.3). The Draft Revision would expand the scope of application of punitive damages to all types of unfair competition that are "in violation of the provisions of this Law". In addition, as opposed to the current AUCL where the statutory damages of up to RMB 5 million only applies to misleading commercial acts and trade secrets infringement (Article 17.4), such punitive damages would apply to all types of unfair competition under the Draft Revision.

II. Introduce legal liability for certain illegal acts

The Draft Revision introduces penalties for newly added types of unfair competition such as practices that impair fair trade, malicious transactions, and new types of online unfair competition practices. It also sets out legal liabilities for aiding the misleading acts and false promotions. On the basis of the current AUCL, Article 29 of the Draft Revision pursues liability against parties who take bribes in commercial transactions by imposing penalties on accepting bribes in transactions.

III. Impose heavier punishment for certain illegal acts

On the whole, the Draft Revision raises the upper limit of fines for unfair competition practices, with the maximum limit reaching RMB 5 million for violations such as trade secrets infringement, commercial defamation, abuse of a comparative dominant position, malicious transactions, and online unfair competition practices. Where the circumstances are particularly serious and of an extremely grave nature, thereby severely impairing the fair competition order or public interests, the business operator who carried out the corresponding unfair competition act may also have its illegal gains confiscated, be fined in the amount between 1% and 5% of its sales of the preceding year, be ordered to suspend business operations, or have its relevant business permits or business licenses revoked. The business operator's legal representative, principal in charge, and directly responsible person may also be personally subject to fines of between RMB 100,000 and RMB 1 million.

IV. Reduce punishment for certain illegal acts

Under the Draft Revision, the minimum fine for false promotion is reduced from RMB 200,000 to RMB 100,000 to better serve law enforcement realities and ensure congruence between punishment and wrongdoing. Also, Article 41 sets out special circumstances where exemption from punishment is

available: if the business operators concerned have reached a settlement on the assumption of civil liability for the unfair competition act in question or if a people's court has adjudicated on civil liability and the act in question causes no harm to the fair competition order or public interests. In these instances, an investigation that has been initiated may be terminated; or, if an investigation has been concluded, an exemption from penalty will be granted.

In addition to the above highlights, the Draft Revision also delineates the features of commercial promotion and distinguishes it from advertising (Article 9); puts forward the concept of "comparative dominant position" to better protect the rights and interests of small and mid-sized operators in the market (Articles 13 and 47); and enhances protection of personal privacy and personal information (Article 25). The Draft Revision represents a significant revision to the current AUCL in that new types of unfair competition are brought under its umbrella for regulation, while a higher and broader perspective is adopted to re-examine the impact on public interests and business ethics in addition to protecting the rights and interests of business operators and consumers. The AUCL has served as a fundamental basis for market regulation over many years. It is our hope and belief that, after thorough consultation, discussion, and deliberation of the Draft Revision, a newly revised AUCL will be adopted to further optimize the regulatory scope spanning all links of the industrial and commercial chain, so as to safeguard an operable business environment and promote a better social order for fair competition.

2. Financial Market Infrastructures to be Further Regulated

Authors: TieCheng YANG | Yin GE | Ting ZHENG | Raymond YAN | Eryin YING | Lin ZHU[1]

Overview

On 14 December 2022, the People's Bank of China ("**PBOC**") issued for public comments the *Measures for Administration and Supervision of Financial Market Infrastructures* (the "**FMI Measures**"). The public comment period is open until 14 January 2023.

According to PBOC in a separate explanatory statement, the legal regime governing China's financial market infrastructures ("**FMIs**") lag behind the rapid development of financial technology, and the absence of a unified regulation is not compatible with the complex international environment and the increasing external cybersecurity challenges. The FMI Measures aim to unify regulatory standards, set up a sound management system for market access, optimize facility layouts, and improve governance structures to facilitate the establishment of an FMI system of a reasonable layout, effective governance, and of an advanced, reliable, and flexible nature.

Back in 2012, CPSS[2] and IOSCO[3] issued the *Principles for Financial Market Infrastructures* (the "**PFMI**") to enhance their member states' awareness regarding the safety, efficiency, and steady operation of FMIs following the 2008 financial crisis and called for the implementation of the PFMI among the member states. China is a member state of CPSS and IOSCO[4].

In 2013, PBOC and the China Securities Regulatory Commission ("**CSRC**") successively promulgated circulars[5]to implement the PFMI among the institutions within their respective regulatory purviews. The promulgation of the draft FMI Measures demonstrates China's continuing efforts in complying with its international obligations and aligning with international standards in this area.

We set out in this newsletter the key aspects of the draft FMI Measures to provide readers with a general picture of the proposed FMI regulatory regime, which includes the scope of FMIs covered, market access and key compliance requirements, risk resolution, and the extra-territorial application of the draft FMI Measures.

Key aspects

I. Scope of FMIs covered

1. Defined scope

Article 2 of the draft FMI Measures enumerates six types of FMIs, including the financial assets registration and custody systems, clearing and settlement systems (including the central counterparty

[1] Vito Wang (intern) has made contribution to this article.

[2] The Committee on Payment and Settlement Systems.

[3] The International Organization of Securities Commissions.

[4] PBOC joined the CPSS in July 2009, and CSRC joined IOSCO in July 1995.

[5] PBOC Circular: Yin Ban Fa (2013) No. 187; CSRC Circular: Zheng Jian Ban Fa [2013] No. 42.

engaged in centralized clearing business), trading venues, trading repositories, important payment systems and basic credit reporting systems[6]. This enumeration conforms to the *Work Plan for Coordinated Supervision and Regulation of Financial Infrastructure*, jointly promulgated on 6 March 2020 by PBOC, the National Development and Reform Commission, the Ministry of Finance, the China Banking and Insurance Regulatory Commission ("**CBIRC**"), CSRC, and the State Administration of Foreign Exchange ("**SAFE**").

The list of FMIs will be published by the financial administration authorities of the State Council (i.e., PBOC, CBIRC, CSRC, and SAFE) (the "**Financial Administration Authorities**"). According to the draft FMI Measures, there are currently 26 FMIs (the "**Existing FMIs**") approved by the State Council or the Financial Administration Authorities. The administrative authorities have not yet published an official list of these FMIs, and we summarize the typical FMIs in China based on market information below for reference only.

Type	Name of the FMI
Financial assets registration depository systems	China Securities Depository and Clearing Co., Ltd(中国证券登记结算有限责任公司), China Central Depository & Clearing Co., Ltd.(中央国债登记结算有限责任公司) and Shanghai Clearing House(上海清算所)
Clearing and settlement systems (including the central counterparties (CCPs) engaged in centralized clearing business)	NetsUnion Clearing Corporation (网联清算有限公司) and Cross-Border Interbank Payment System Co., Ltd. (跨境银行间支付清算有限责任公司), etc.
Trading venues	Shanghai Stock Exchange(上海证券交易所), Dalian Commodity Exchange(大连商品交易所) and China Foreign Exchanges Trade System(中国外汇交易中心), etc.
Trade repositories	China Futures Market Monitoring Center Co., Ltd. (中国期货市场监控中心有限责任公司) and China Securities Internet Inter Agency Quoted Systems, Inc. (中证机构间报价系统股份有限公司)
Important payment systems	China UnionPay (中国银联)
Basic credit reporting systems	Credit Reference Center, the People's Bank of China (中国人民银行征信中心)

2. Systemically important FMIs

The draft FMI Measures further differentiate systemically important FMIs ("**SIFMI**") from ordinary FMIs. PBOC will exercise macro-prudential supervision of SIFMI and their operators in addition to the supervision by the responsible Financial Administration Authorities. The stipulation follows the

[6] Basic credit reporting system was not an enumerated type of financial infrastructure in the PFMI. However, it plays an important role in effectively reducing information asymmetry, preventing financial risks, and maintaining national financial security.

suggestions in the PFMI that any member authority may designate FMIs as systemically important for the purposes of applying the principles in the PFMI for FMIs[7]. However, PBOC has not specified the additional regulatory requirements for SIFMIs.

According to the draft FMI Measures, an FMI will be deemed systemically important if it meets any of the following conditions:

- having a large number and wide distribution of participants;
- having a high market share;
- having complex operations, being highly interconnected with financial institutions, or being interconnected with other SIFMIs; and
- providing critical services in the financial market that are difficult to replace and may have a significant adverse impact on the financial system and the real economy in the event of a major risk event, etc., resulting in unsustainable operations.

II. Market access

1. Approval authorities

The establishment of FMIs in China will be approved by the relevant Financial Administration Authorities. Specifically:

- CSRC is responsible for the market access of new FMIs engaging in securities, futures, and related activities;
- PBOC is responsible for the market access of new payment systems, basic credit reporting systems and interbank market FMIs;
- the market access of other new FMIs will be under the joint management of PBOC and the other Financial Administration Authorities; and
- FMIs that involve or may involve significant impact on the financial system or are considered necessary by Financial Administration Authorities shall be reported to the State Council for approval.

In addition, for foreign investments which affect or may affect the national security of the PRC, foreign investment security review is required by law. Without approval, any entity or individual may not establish or operate any form of FMIs and may not use FMI service names such as “financial” “exchange”, “trading center”, “depository and settlement”, “clearing”, and “transaction reporting”.

2. Eligibility requirements

The operator of an FMI will be required to satisfy the following eligibility requirements for establishing an FMI in China. Existing FMIs do not need to undertake the application process again.

[7] Section 4.1.2 of the PFMI.

Items	Specific requirements
Legal person status	The FMI operator must be a legal person duly established within the territory of the PRC.
Corporate governance	The FMI operator must possess a clear and transparent organizational structure and governance arrangements that are not contrary to state or public interests.
Capital requirements	The FMI operator's paid-in capital should satisfy the relevant prescribed requirements.
Place of business and facilities	The FMI operator must possess a place of business with secured systems and facilities in compliance with laws that are necessary for its business operations.
Control systems	The FMI operator must possess risk management systems, internal control systems, established business rules and other rules compatible with its intended business operations.
Personnel	Proposed directors, supervisors and senior executives of the FMI operator must satisfy certain requirements, which include: ■ having a bachelor's degree or above; ■ having a good credit record; ■ being familiar with the laws, regulations and international regulatory standards related to the type of FMI to be established; ■ having at least five years of relevant experience in the financial industry and the management ability required to perform their duties; ■ having no material violations of the law or regulations in the last five years; and ■ other requirements stipulated by the relevant Financial Administration Authorities.
Shareholders	The FMI operator's shareholders must have: ■ a good credit record; ■ no record of intentional or grossly negligent criminal offenses; and ■ no material violations of law or regulations and not subject to material regulatory penalties in the last three years.
Requisite qualifications	The FMI operator must possess the requisite qualifications to conduct the relevant business as approved by the Financial Administration Authorities.
Other	Other requirements as provided by the Financial Administration Authorities.

III. Key compliance requirements

According to the draft FMI Measures, the key compliance requirements for FMIs are summarized below.

Items	Specific requirements
Prior approval	FMI operators are required to obtain prior approval from the relevant Financial Administration Authorities for any of the following:

Items	Specific requirements
	■ Change the name of the FMI or the FMI operator; ■ Change of registered capital; ■ Change of domicile; ■ Adjusting the business scope of the FMI or the FMI operator; ■ Change of major shareholder or actual controller that holds more than 5% of the total capital or shares; ■ Change of legal representative, chairman of the board of directors, chairman of the board of supervisors or general manager; ■ Amending the articles of association; ■ Establishing system connection or carrying out major business cooperations with other domestic or overseas FMI operator; ■ The launch, major change, or shutdown of important business systems; or ■ Other matters stipulated by Financial Administration Authorities.
Filing	An FMI operator should timely file with the Financial Administration Authorities upon the occurrence of any of the following: ■ the formulation and implementation of a recovery plan; ■ the replacement of other director (committee member), supervisors and senior executives; and ■ other matters provided by the Financial Administration Authorities.
Reporting	■ Periodic reporting on its own operations and the conduct of its FMI business engagements. ■ Timely reports of the occurrence of the following significant matters: (1) system failure, human error, or other circumstances such as natural disasters that cause abnormalities in core business and have a material impact; (2) litigations having significant impact on its normal operations or the other situations with significant potential liabilities or losses; or (3) other matters provided by the Financial Administration Authorities. ■ Financial reports for the previous year should be provided to the Financial Administration Authorities at the end of April each year.
Risk management	■ The operator is required to maintain high quality liquid assets of not less than six months' current operating costs (the scope of high-quality liquid assets will be provided separately). ■ The operator is required to keep its own assets used to meet the six months' operating needs and participants' assets at a financial institution or professional institution recognized by the Financial Administration Authorities. ■ The operator should regularly monitor and assess the risks that participants, participants' clients, and other entities may pose to the FMI.
Data protection	■ Disaster backup: the operator should have an established system failure emergency handling mechanism and disaster backup mechanism, with

Items	Specific requirements
	complete data security protection and data backup measures, and the disaster backup center should be located in China. ■ Data transfer: All data collected and generated in the course of operations in the territory of China, including but not limited to personal information and other important data, must be stored entirely within the territory of China. If it is necessary to provide it outside of China due to business needs, it should comply with relevant national regulations.
Data retention	Operators should properly preserve records, original documents, and data information related to financial infrastructure services, as well as information related to internal management and business operations, for a period of not less than 20 years, unless otherwise provided by laws and regulations.

IV. Extraterritorial application

1. Scope of offshore FMIs covered

The draft FMI Measures provide a broad extraterritorial application clause, which provides that where relevant laws and regulations permit overseas FMIs to provide cross-border delivery services to domestic entities or individuals, the Financial Administration Authorities will manage the market access of such FMIs according to their division of responsibilities and relevant laws and regulations. This clause seems to indicate that the provision of cross-border services to domestic entities or individuals by offshore FMIs is subject to approval under PRC law. However, the approval or licensing procedures and the scope of services is not specified.

As of today, many offshore FMIs have been granted approval on a case-specific basis by the Financial Administration Authorities under the recently launched connect programs to provide services to PRC clients, such as trading venues (e.g., Bloomberg, Tradeweb, and MarketAxess) under the Bond Connect, financial assets registration depository systems (e.g., CMU, HKSCC) under the Bond Connect and the Stock Connect, and clearing and settlement systems (e.g., OTC Clearing) under the Swap Connect.

However, it is unclear whether offshore FMIs under other programs that also provide FMI services to PRC clients would fall within the scope of the draft FMI Measures and trigger the approval requirement and supervision by Financial Administration Authorities. For example, Euroclear and Clearstream provide services to PRC clients (e.g., qualified domestic institutional investors) when they trade offshore fixed income products. We expect the regulators will formulate more detailed regulations in this area after the draft FMI Measures are formally promulgated and provide more certainty for offshore FMIs in this regard.

2. Eligibility requirements

Eligible offshore FMIs must meet the following conditions, including:

- having more than three years of experience in providing FMI services;

- be subject to equivalent and comprehensive supervision and regulation by the corresponding local authorities; and
- not having encountered any major risk incidents and not having been subject to any serious punishment by the relevant authorities.

3. Reporting requirements

Eligible offshore FMIs are also required to report to the Financial Management Departments on their business engagement based on the principle of reciprocity with the local authority.

Specifically, the offshore FMIs that provide relevant services for PRC residents or institutions are required to periodically report to the Financial Administration Authorities the following: (1) their offshore business engagements and compliance status; (2) the acquisition of regulatory authorizations (or exemptions), business licenses and permits outside China; (3) PFMI-based self-assessment reports; and (4) other matters provided by the Financial Administration Authorities.

The above reporting requirements should equally apply to existing offshore FMIs that have already obtained the approval from Financial Administration Authorities after the draft FMI Measures are formally promulgated.

V. Others

1. Risk resolution

It has long been an issue for offshore investors to enter China's financial markets due to lack of clarity in the extreme event of an FMI's insolvency under PRC law. Despite the low possibility of an FMI's financial difficulties in China, especially when all of the FMIs in China are state-owned and backed by China's sovereign credit, the legal analysis as to the safety of offshore investors' assets remains a critical issue, particularly as this may be required by their local financial regulators for their entering into a new financial market.

In this respect, Article 36 of the draft FMI Measures provides that an FMI is required to formulate and update recovery plans and will be called to exit the market if it (or its operator) has difficulty in continuing operations or severely endangers the financial order and damages public interests. This is in line with a similar regulatory requirement imposed by PBOC in the *Financial Stability Law of the People's Republic of China (Draft for Consultation),* promulgated earlier this year, which is also applicable to FMIs. The option of market exit means the entrance by an FMI into a bankruptcy proceeding would not be entirely impossible even for a state-owned FMI. However, the conditions for market exit, the specific exit procedure and how the claims and debts would be treated in are all subject to broad regulatory uncertainty.

2. Legal liability

The draft FMI Measures provide parallel liabilities for FMI operators and persons directly responsible for the following violations:

- breach of the draft FMI Measures falling within the scenarios enumerated in Article 39;

- unlicensed operation, out-of-scope business operations, or the falsification of a business license or permit; and
- endangerment to the FMI or its safe operation.

The penalties vary depending on the seriousness of the violation and the monetary penalties are capped at RMB 1 million.

Outlook

The promulgation of the draft FMI Measures indicate that the Chinese regulators are imposing more comprehensive and stringent control on FMIs, including offshore FMIs that provide services for PRC clients. Given the different types of FMIs and financial industry regulators are involved, the regulators may need to shed light on how to interpretate and enforce the provisions in the context of different financial regulations, and cope with the application uncertainties as discussed above. The current draft of the FMI Measures is also subject to change and amendments may be made before it is formally promulgated. We will keep a close eye on any noteworthy developments.

Important Announcement

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:

Beijing	**Wenyu JIN**	**Attorney-at-law**
	Tel:	+86 10 8525 5557
	Email:	wenyu.jin@hankunlaw.com
Shanghai	**Yinshi CAO**	**Attorney-at-law**
	Tel:	+86 21 6080 0980
	Email:	yinshi.cao@hankunlaw.com
Shenzhen	**Jason WANG**	**Attorney-at-law**
	Tel:	+86 755 3680 6518
	Email:	jason.wang@hankunlaw.com
Haikou	**Jun ZHU**	**Attorney-at-law**
	Tel:	+86 898 3665 5000
	Email:	jun.zhu@hankunlaw.com
Wuhan	**Jiao MA**	**Attorney-at-law**
	Tel:	+86 27 5937 6200
	Email:	jiao.ma@hankunlaw.com
Hong Kong	**Dafei CHEN**	**Attorney-at-law**
	Tel:	+852 2820 5616
	Email:	dafei.chen@hankunlaw.com