

Legal Commentary

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Navigating NFRA Compliance Measures for Foreign Funded Banks

Authors: Ting ZHENG | Raymond YAN | Eryin YING | Lin ZHU | Shirley LIANG | Hattie ZHANG

Overview

On 27 December 2024, the National Financial Regulatory Administration (“**NFRA**”) issued the *Measures for the Compliance Management of Financial Institutions* (《金融机构合规管理办法》)(“**Compliance Measures**”), which will take effect on 1 March 2025. Prior to that, the NFRA released the consultation draft of the Compliance Measures to solicit public comments on 16 August 2024 (“**Consultation Paper**”).

The Compliance Measures are built upon the *Guidelines on Compliance Risk Management for Commercial Banks* (《商业银行合规风险管理指引》)(“**Old Compliance Guidelines**”), and the *Administrative Measures for the Compliance Management of Insurance Companies* (《保险公司合规管理办法》), and will replace them from 1 March 2025, aiming to guide financial institutions (including commercial banks) in establishing more comprehensive and effective compliance management systems by drawing from years of market practice.

We outline below the key requirements under the Compliance Measures and their potential implications for foreign funded banks (including subsidiary banks and where applicable, foreign bank branches) in China (“**Banks**” or a “**Bank**”). Please note a one-year transition period is granted and Banks should complete their alignment with the Compliance Measures by the end of February in 2026.

Key requirements

I. Scope of application

The Compliance Measures apply to wholly foreign owned subsidiary banks and JV banks, among other banking and insurance institutions. Foreign bank branches, among other specified NFRA regulated entities, will need to comply with the Compliance Measures *mutatis mutandis* according to their industry-specific characteristics and regulatory requirements.

II. Expanding coverage

Article 3 of the Compliance Measures provides that “Compliance” for Banks refers to the compliance with such rules that govern Banks’ operations and employee conducts, including laws, administrative regulations, departmental rules, normative documents, and internal policies formulated by Banks to

meet regulatory requirements.

Compared to the Old Compliance Guidelines and the Consultation Paper, the Compliance Measures remove the industry self-regulation standards out of compliance’s coverage. However, Article 6 of the Compliance Measures provides that the China Banking Association shall formulate implementing rules of the Compliance Measures and implement self-regulatory management on the compliance work of its member banks. Banks will still need to abide by those industry self-regulation standards to avoid potential disciplinary measures.

Another point worth noting is that the internal policies formulated by financial institutions to meet regulatory requirements are added into the scope of compliance obligations, which echoes NFRA’s requirement for all banking and insurance financial institutions (including Banks) to timely and dynamically incorporate regulatory provisions into their internal policies under the *Notice of the China Banking and Insurance Regulatory Commission on launching the “Internal Control and Compliance Management Construction Year” Activity in the Banking and Insurance Industries* (《中国银保监会关于开展银行业保险业“内控合规管理建设年”活动的通知》). Banks will need to revisit their internal policies from time to time and ensure they properly incorporate then applicable regulatory requirements.

III. Compliance management system

1. Top-down responsibility system

The Compliance Measures assign compliance responsibilities to all levels of departments and employees within Banks, creating a comprehensive top-down responsibility system, which is detailed in the following table:

Responsible party	Compliance responsibility	Ref. articles
Board of directors (“BOD”) (including the sole director), and, if applicable, the compliance committee or other specialized committees established under the BOD	bearing ultimate responsibility for the effectiveness of compliance management. <i>Note:</i> Normally foreign bank branches only set up management committees to perform the management functions. Their parent banks will bear the ultimate compliance responsibility.	Articles 8 and 11
Senior management personnel (“SMP”)	taking responsibility for implementing compliance management objectives and assuming leadership responsibilities for business compliance in the areas they are responsible for . Among these, the Chief Compliance Officer (“CCO”) shall assume specific leadership responsibilities for the compliance management of the institutions and its employees.	Articles 8, 13, and 18
Compliance management department	taking the lead to undertake compliance management responsibilities and bearing	Articles 3 and 35

Responsible party	Compliance responsibility	Ref. articles
	management responsibility for compliance.	
The principal responsible persons of all departments, branches, and financial subsidiaries at all levels subject to consolidated management (the “ Subordinate Institutions ”)	implementing the compliance management objectives of their respective departments or institutions at the corresponding level, and taking the primary responsibility for the compliance management of their respective departments or institutions at the corresponding level.	Article 9
Business and functional departments and Subordinate Institutions	bearing entity responsibilities (“ 主体责任 ” in Chinese) for compliance within such entity.	Article 35
Internal audit department	bearing supervisory responsibilities for compliance.	Article 35
All employees	complying with relevant compliance norms relating to their duty performance, actively identifying and controlling compliance risks arising from their duty performance, cooperating with Banks and regulators in conducting compliance management, and bearing responsibility for the compliance of their duty performance.	Article 36

2. Compliance management department

- (1) *Department set-up* — according to Article 3 of the Compliance Measures, Banks are free to decide whether to concentrate all compliance management functions within a single department or split into several non-conflicting departments to jointly undertake compliance management duties, provided that in the latter case, Banks shall clearly designate the leading department responsible for compliance management.
- (2) *Duties* — Article 28 of the Compliance Measures outlines the main responsibilities of the compliance management department, covering the entire process of pre-, during-, and post-event activities, including: leading the organization of compliance reviews, compliance checks, evaluations, compliance risk monitoring, and handling compliance events; formulating compliance norms; promoting the effective implementation of compliance norms etc. These duties clarify the basic workflow of compliance management.
- (3) *Reporting lines* — the compliance management department at Banks shall report to CCO. The compliance management departments at provincial-level or first-tier branches shall report to compliance officers at the same level, and any compliance management department of a Subordinate Institution shall be guided and supervised by higher-level compliance management department.

IV. Compliance personnel management system

1. CCO and compliance officers

According to Article 13 of the Old Compliance Guidelines, CCO (practically often referred to as the compliance head (“合规负责人” in Chinese) in Banks) shall be appointed by the SMP, typically the president (“行长” in Chinese). The Compliance Measures establish unified requirements for Banks to appoint CCO and compliance officers, with the specific requirements as follows:

Item	CCO	Compliance officer
Appointment	A CCO must be appointed at the head office – for foreign bank branches, before the NFRA gives any further clarification, it should be expected that a CCO must be appointed at the managing branch (“管理行” in Chinese) or the sole branch.	<i>In principle</i> , a compliance officer must be appointed at each provincial-level or first-tier branch.
Qualifications	A CCO shall satisfy the following qualification requirements: <ul style="list-style-type: none"> ■ bachelor’s degree or higher (the “full-time bachelor” requirement from the Consultation Paper has been removed); ■ at least 8 years of finance work experience with a minimum of 3 years of legal and compliance work experience; or at least 8 years of legal and compliance work experience with a minimum of 3 years of finance work experience, or at least 8 years of finance work experience with the legal professional qualification certificate; and ■ other conditions prescribed by NFRA. 	A compliance officer shall satisfy the following qualification requirements: <ul style="list-style-type: none"> ■ bachelor’s degree or higher (the “full-time bachelor” requirement from the Consultation Paper has been removed); ■ at least 6 years of finance work experience with a minimum of 3 years of legal and compliance work experience; or at least 6 years of legal and compliance work experience with a minimum of 3 years of finance work experience; or at least 6 years of finance work experience with the legal professional qualification certificate; and ■ other conditions prescribed by NFRA.
Reporting lines	CCO shall report to the chairman and the president of the Bank.	Compliance officers shall primarily report to CCO and also report to the president at the corresponding headquarter or branch where he/she works.
Appointment	The appointment of CCO shall be decided by the BOD.	There is no mandatory requirement on the decision-making body of the appointment of compliance officers. CCO is encouraged to oversee the appointment of compliance officers.

Item	CCO	Compliance officer
Dismissal	<p>The dismissal of CCO or compliance officers shall be based on legitimate reasons, including but not limited to:</p> <ul style="list-style-type: none"> ■ resignation by CCO or compliance officers; ■ replaced by NFRA or its local offices; or ■ proved to be incapable to fulfill duties as CCO or compliance officers, or fail to fulfill such duties diligently. 	
Dual-hatting	<p>CCO or compliance officers may concurrently serve as a SMP in a same Bank. Where the president of Banks concurrently holds the position of CCO or the president of the provincial-level or first-tier branches of Banks concurrently holds the position of compliance officers, the president will not need to satisfy the qualification requirements for CCO or compliance officers and obtain separate qualification approval.</p>	
Independence	<p>CCO or compliance officers shall not take responsibilities for managing front-office business, finance, fund operation, internal audit, or other departments that could present a conflict of interest with compliance management, except when the president concurrently holds the position of CCO or compliance officers as discussed in the section (Dual-hatting) above.</p>	

2. Rights and obligations of CCO and compliance officers

Item		Details
Rights	Right to know and investigate	<ul style="list-style-type: none"> ■ be entitled to attend or sit in on relevant meetings and to review or copy related documents and materials as required for the performance of their duties. Banks must notify CCO in advance of convening important meetings, such as BOD meetings and operational decision-making meetings; ■ have the right to make inquiries and collect evidence from the relevant internal departments or Subordinate Institutions as required for performing their duties, to request the relevant personnel of Banks to explain the relevant issues, and to seek information from such intermediary institutions as external audit institutions and legal service institutions.
	Veto power	<p>If CCO or compliance officers discover instances where any departments or Subordinate Institutions conceal or fail to report Major Violations and Significant Risks (as defined below), they must exercise the veto power against relevant Subordinate Institutions and relevant responsible personnel in charge during the internal compliance assessment of Banks, disqualify them from any excellence appraisal or awards, and promptly enforce internal accountability.</p>
	Proposing accountability	<p>CCO has the right to propose suggestions to the BOD, SMP, relevant departments, and Subordinate Institutions on taking measures such as salary reductions, position adjustments, or demotions against</p>

Item		Details
	measures	relevant responsible personnel, and urge the responsible entities and personnel to ensure timely rectifications.
Obligations	Issuance of compliance review opinions	<p>CCO shall organize compliance reviews and issue written compliance opinions for the following two matters:</p> <ul style="list-style-type: none"> ■ Banks' development strategy, significant internal regulations, important new products and important new business plans, and major decision-making matters; and ■ application materials or reports submitted to the NFRA or its local offices that NFRA require CCO's compliance review. Other relevant SMP shall be responsible for the authenticity, accuracy, and completeness of the basic facts and business data in such application materials or reports. <p>If CCO's compliance opinions are not adopted (e.g., a new business is ultimately launched based on Banks' internal decisions or third-party opinions despite CCO's opposing views), Banks shall submit the relevant matters to the BOD for determination. Major matters shall also be promptly reported to the NFRA or its local offices.</p>
	Report of Major Violations and Significant Risks	<p>When CCO identifies Major Violations and Significant Risks involving Banks or their employees, he/she shall promptly report the same to the BOD, the chairman of the BOD, or the president, put forward his / her processing opinion, and urge corrective actions.</p> <p>If Banks themselves are involved in Major Violations and Significant Risks, they must promptly report to the NFRA or its local offices. If Banks fail to report, CCO shall, in his or her own name, directly report to the NFRA or its local offices.</p> <p>According to Article 22 of the Compliance Measures, Major Violations and Significant Risks means major violations of laws and regulations or significant potential compliance risks, mainly including a relatively large amount of fine or confiscation of a relatively large amount of illegal gains; compliance risk events, legal dispute cases, and criminal cases that cause or may cause significant property losses or significant reputation losses to Banks concerned. While NFRA does not provide further guidance on the Major Violations and Significant Risks, Banks may refer to the existing standards under other NFRA rules for now, such as over RMB5million constitutes "relatively large amount" under the <i>Measures for Administrative Penalty by the China Banking and Insurance Regulatory Commission</i> (《中国银保监会行政处罚办法》), until NFRA gives further clarification.</p>
	Actions required for other violations and risks	Where CCO identifies violations and risks (other than Major Violations and Significant Risks) involving Banks or their employees, he/she shall, in accordance with Banks' internal compliance management procedures, organize and procure the relevant entity/department to promptly report, handle and make corrections.

3. Compliance personnel

(1) Professional background

According to Article 38 of the Compliance Measures, the compliance management department should be mainly comprised of those personnel having education background in law or economics or finance, but there is no quantified criteria for the “mainly” referred to in this article.

Additionally, it is required that, in principle, personnel who are engaged in reviewing Banks’ contracts from legal and compliance perspective for the first time, or issuing legal and compliance opinions on Banks’ major events such as reform and reorganization, merger and acquisition and listing, transfer of property rights, bankruptcy reorganization, reconciliation and liquidation, shall have a legal background or have passed the legal professional qualification examination. Compared to the Consultation Paper, “in principle” is added to provide more flexibility.

(2) Compliance personnel in business departments and subordinate institutions

Article 39 requires all departments and Subordinate Institutions shall be equipped with full-time or part-time personnel engaged in compliance work that are commensurate with their business scale and risk control difficulty. Compared to the Consultation Paper, the Compliance Measures allow those departments and Subordinate Institutions having lower compliance risks to have part-time compliance personnel.

4. Evaluation of compliance personnel and remuneration system

Article 43 of the Compliance Measures requires that Banks shall formulate an evaluation and management system for CCO, compliance officers, compliance management department, and full-time compliance management personnel, and shall not adopt evaluation methods that are not conducive to compliance independence, such as the evaluation of SMP who are not in charge of the compliance management department, the evaluation of other departments, or the evaluation based on the business performance of the business department, except for the principal person in charge of Banks; compliance work that requires the joint efforts of all departments must not be used as a separate evaluation indicator for compliance management departments.

Banks shall also establish a mechanism for managing the remuneration of CCO, compliance officers and compliance management personnel, and the remuneration shall comply with following standards:

- (1) *CCO*: the annual total remuneration should generally not be lower than the average level for SMP with the same qualifications (same rank, same evaluation results).
- (2) *Compliance officers and compliance management personnel*: the annual total remuneration should generally not be lower than the average level for personnel with the same qualifications (same job type, same rank, same evaluation results).

Outlook

The Compliance Measures set a comprehensive guideline for the establishment and operation of compliance management systems within Banks. Banks will need to revisit existing compliance

management systems and make necessary adjustments to fully comply with the Compliance Measure by the end of February in 2026. It also remains to be seen whether NFRA will provide window guidance on the scope of Major Violations and Significant Risks, application of the Compliance Measures to foreign bank branches. Han Kun will closely monitor the regulatory updates and assist Banks to achieve continuous compliance.

Important Announcement

This Legal Commentary 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:

Ting ZHENG

Tel: +86 21 6080 0203

Email: ting.zheng@hankunlaw.com