

Legal Commentary

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Key Takeaways from Notice No.42: New Regulatory Measures on Virtual Currencies in the Chinese Mainland

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On 6 February 2026, eight PRC authorities, including the People's Bank of China, jointly issued the Notice on Further Preventing and Addressing Risks Related to Virtual Currencies and Other Matters ("**Notice No.42**"). On the same day, the China Securities Regulatory Commission ("**CSRC**") issued the Regulatory Guidelines on the Offshore Issuance of Asset-Backed Securities Tokens Backed by Onshore Assets (the "**RWA Issuance Regulatory Guidelines**"). Notably, Notice No.42 repeals the 2021 Notice on Further Preventing and Disposing of Risks of Speculation in Virtual Currency Trading (Yinfa [2021] No.237, the "**No.237 Notice**"), which had previously served as the principal framework document governing virtual-currency-related activities in the Chinese Mainland. Although Notice No.42 largely preserves the existing regulatory approach, it also introduces several significant adjustments. This article highlights the key changes brought about by Notice No.42.

Policy Background and Regulatory Tone

Financial regulation in the PRC is characteristically practice-driven: regulatory measures are often calibrated through normative documents and policy guidance in response to new market developments and emerging risks. Since 2025, speculative activities relating to virtual currencies have again intensified in the Chinese Mainland, with certain market participants using real-world asset ("**RWA**") tokenization as a promotional theme and a vehicle for speculation.

Against the broader objective of maintaining social stability and financial order, Notice No.42 was issued together with the RWA Issuance Regulatory Guidelines. Together, these measures both reaffirm the existing risk-control framework and provide more targeted regulatory responses to emerging structures such as RWA.

Continuation of the Existing Regulatory Framework

Overall, Notice No.42 continues the existing regulatory framework, and much of its wording tracks the No.237 Notice. The key points include:

1. Legal characterization: virtual currencies do not have the legal status of currency.
2. Nature of the business: virtual-currency-related business activities conducted within the Chinese

Mainland constitute illegal financial activities and remain subject to a blanket prohibition.

3. Third-party involvement: onshore financial institutions, internet companies and other third parties must not provide services for virtual-currency-related activities.
4. Mining-related activities: existing mining projects remain subject to inspection and shutdown, while new mining projects are strictly prohibited.
5. Civil-law consequences: the relevant civil juristic acts are void, and any resulting losses must be borne by the parties themselves.
6. Liability of onshore persons: where an onshore person knows or should know that an offshore entity is illegally providing services into the Chinese Mainland but nevertheless provides assistance, such person may be held liable.

Key Changes, Primarily from a Cross-Border Perspective

Most notably, Notice No.42 introduces three important changes.

I. **New Requirement (Article 13): Absent Regulatory Approval, Onshore Entities and Their Controlled Offshore Entities Must Not Issue Virtual Currencies Offshore**

This is a substantive and highly consequential new requirement. Previously, while the No.237 Notice expressly prohibited “token issuance financing”, it did not clearly distinguish between onshore and offshore issuance. In practice, enforcement focused primarily on activities carried out within the Chinese Mainland. Some onshore parties sought to circumvent the existing framework by establishing or controlling offshore vehicles and using those vehicles to conduct token issuance and fundraising offshore. Notice No.42 now makes clear that the regulatory reach extends offshore and adopts an approach that focuses on the identity and control nexus of the relevant entity, rather than solely on the place where the conduct occurs. In other words, an offshore issuance may still fall within the regulatory scope of the Chinese Mainland where the issuer is linked to an onshore party through control.

This provision has two principal dimensions:

■ **Regulated subjects: “onshore entities and their controlled offshore entities”**

Although Notice No.42 does not define “onshore entities”, a holistic reading of the text suggests that both onshore entities and onshore individuals are intended to be covered. The concept of “control” is central to this framework and serves as the basis for look-through supervision. In our view, “control” should not be limited to equity ownership, but may also extend to de facto control, material influence, or benefit direction exercised through contractual arrangements, nominee holding structures, technological dominance, operational decision-making, or other means that confer substantive influence over key matters. This approach effectively combines person-based jurisdiction with look-through jurisdiction and is designed to prevent circumvention through complex offshore structures—for example, by establishing or controlling, or arranging for third parties to hold interests in, companies incorporated in jurisdictions such as the British Virgin Islands, the Cayman Islands or Singapore, and

using such structures to issue virtual currencies offshore.

Because “control” is not expressly defined in Notice No.42, determining whether control exists may require a more nuanced, fact-specific analysis in practice, particularly for offshore structures commonly used in token projects, such as foundations and DAOs (decentralized autonomous organizations). In the case of foundations, relevant factors may include governance arrangements, board composition and voting mechanisms, sources of funding, economic arrangements (including benefit distribution), and the identity of the party initiating or leading the project. In the case of DAOs, the analysis may require tracing the initial allocation of governance tokens, identifying the initiators of key proposals, assessing the concentration of voting power over major decisions, and considering other comparable indicators. Where an onshore party is the principal initiator of a project and controls the early governance rights or a substantial portion of the tokens, regulators may take the view that the onshore party is effecting an offshore issuance through its control of the DAO. Alternatively, because a DAO may lack conventional legal personality, regulators may take a look-through approach and treat the onshore party as directly conducting the offshore issuance.

Separately, where an onshore party invests in an offshore issuer without controlling it, other forms of liability may still arise depending on the facts. For example, if the relevant token project is promoted to, or raises funds from, persons in the Chinese Mainland, then an onshore party that provides assistance—such as endorsement, traffic diversion or technical support—may still be found liable under Article 18 of Notice No.42 on the basis that it knew or should have known that the project was unlawful.

■ **Regulated conduct: “issuing virtual currencies offshore”**

Notice No.42 expressly identifies the place of issuance as “offshore”, thereby bringing issuance activities conducted anywhere in the world—including in Hong Kong—within the potential scope of regulation. A key practical question, however, is how “issuance” will be interpreted.

In addition to direct issuance structures such as ICOs (initial coin offerings), IEOs (initial exchange offerings) and IDOs (initial DEX offerings), many Web3 teams raise funds through instruments such as SAFTs (simple agreements for future tokens), SAFEs (simple agreements for future equity) combined with token warrants, and similar arrangements. Under these structures, tokens are not issued immediately; rather, the arrangements typically involve a pre-sale, a commitment to deliver tokens in the future, or the grant of a future subscription right. Applying a substance-over-form approach, regulators may not treat “issuance” as a purely formal, point-in-time event. Instead, they may look through the entire issuance chain and focus on the substance of the conduct, viewing “issuance” as encompassing not only the ultimate creation and sale of the virtual currency itself, but also pre-sale and fundraising activities undertaken for the purpose of a future token issuance. On that basis, such fundraising structures may also fall within the regulatory perimeter.

In addition, Notice No.42 upgrades the prohibited conduct from “token issuance financing” under the No.237 Notice to the broader concept of “issuing virtual currencies”. That drafting change could materially broaden the scope of affected projects. This is because issuance is not limited to financing-driven issuances; it may also include non-financing issuances (such as free airdrops and ecosystem incentive distributions) and functional issuances (such as employee incentive tokens, governance

tokens and platform utility/fuel tokens). In our view, Notice No.42 may therefore bring both non-financing and functional issuances within the regulatory perimeter, rather than confining regulation to financing-type issuances only. The likely rationale is that, regardless of the issuer’s initial purpose, tokens may subsequently flow into secondary trading or payment and settlement scenarios that are themselves prohibited. For example, “free” employee incentive tokens may, once sold by employees, generate economic effects similar to those of a financing issuance. From a risk-control perspective, prohibiting issuance at the source is the most effective way to eliminate arguments that non-financing issuance is somehow permissible.

■ **Exception: “unless approved by the relevant authorities in accordance with laws and regulations”**

Although this wording formally leaves room for legality, in practice it suggests that ordinary commercial projects are highly unlikely to obtain such approval. Its legislative logic appears closer to “prohibition as the rule, exceptional approval only”, effectively foreclosing the relevant activities in substance.

II. Revised Formulation for Cross-Border Services: from “Prohibiting Services to Mainland Residents” to “Prohibiting the Illegal Provision of Services to Onshore Entities”

Despite the change in wording, we understand that the core regulatory expectation remains the same: offshore entities must not target persons in the Chinese Mainland by marketing to them, soliciting them, or providing them with relevant services. In practice, the question of who constitutes an “onshore entity” has long been a key compliance issue for offshore licensed virtual-asset institutions, including those in Hong Kong, particularly in the context of onboarding and KYC documentation requirements. Given the close connections between Hong Kong and the Mainland, striking an appropriate balance between compliance and business needs remains a practical challenge.

At the same time, the addition of the qualifier “illegal” raises the question whether some forms of cross-border services might still be lawful. Our preliminary view is that stablecoin-related services provided by offshore payment institutions within cross-border payment rails may potentially fall within a carve-out. There is meaningful commercial demand for such services in practice, and they do not appear to be the primary focus of the current enforcement framework. From an operational perspective, however, specific projects should still be assessed on a case-by-case basis.

III. Clarification of the RWA Regulatory Approach: “Prohibition of Onshore Activities” Plus “Approval for Offshore Issuance”

Notice No.42 adopts a broad, catch-all definition intended to capture different forms of RWA-related activities and strictly prohibits RWA activities conducted onshore. At the same time, where onshore assets are used for offshore RWA issuance, Notice No.42 adopts an approval-based framework.

For a more detailed discussion, please refer to our previous article, “Han Kun Insight | New Rules on Real-World Asset (RWA) Tokenization: A New Turn in the Road”.

Beyond the foregoing, Notice No.42 also reflects several other adjustments. Article 1 effectively places a substantive brake on RMB stablecoin-related initiatives, thereby cooling the overheated

market narrative seen in 2025. Article 15 requires offshore subsidiaries and branches of PRC-funded financial institutions to conduct RWA business in a “prudent” manner—a deliberately restrained formulation that also appears intended to temper market speculation—and to satisfy relevant conditions such as professional staffing and AML management. In addition, Articles 6 and 15 expressly mention intermediaries (including law firms and accounting firms) for the first time and make clear that they must not unlawfully provide services for illegal business activities. This appears to be a direct response to the sharp increase in intermediary involvement over the past year.

Broader Implications: How to View Notice No.42 from a Global Perspective

From a global perspective, Notice No.42 reaffirms the Chinese Mainland’s regulatory trajectory in relation to digital assets (virtual currencies). Unlike jurisdictions such as the United States, the European Union, Singapore and Hong Kong—which have been moving toward classification-based regulation and licensing regimes—the Chinese Mainland continues to adopt a risk-first approach under which prohibition remains the default position. The policy emphasis remains on preserving social stability and containing systemic financial risk.

Against this backdrop, the Chinese Mainland’s stringent approach has, objectively, created a more distinct institutional space for Hong Kong. As a jurisdiction operating under the common law within the national framework, with a highly open capital regime and an already established licensing regime for virtual assets, Hong Kong has continued—on the premise that risks remain controllable—to advance the licensing of virtual asset trading platforms, the development of a stablecoin regulatory framework, and the exploration of RWA initiatives, thereby serving as something of a regulatory testing ground. In particular, in the context of intensifying strategic competition between China and the United States, it is not realistic for the country to remain entirely absent from the development of crypto assets and on-chain finance. Hong Kong’s continued experimentation therefore helps preserve, while maintaining clear risk boundaries, an institutional interface and a degree of strategic flexibility for national participation in the global digital-asset industry, and places Hong Kong in a stronger position to capture structural opportunities in the compliant digital-asset sector.

Important Announcement

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