

Legal Commentary

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From Fragmentation to Fortress: Regulatory Restructuring and Implications for PRC Banks' Cross-Border Transactions Under CRD 6

Authors: Han Kun Law Offices: Meng YAN | Yunjia SUN | Yueyun ZHANG
Han Kun LLP: Chengrong LI (Paul LI) | Chun Hei CHU (Samson CHU) |
Yan Tung SO (Jane SO)

The EU's Capital Requirements Directive VI (Directive (EU) 2024/1619, "**CRD 6**" or the "**Directive**") entered into force on 9 July 2024 and will be fully implemented from 11 January 2027, introducing authorisation and compliance requirements for branches of third-country institutions.

Under the Directive, any non-EU bank that provides "core banking services" within the EU must establish a branch in the relevant EU Member State and apply to the local regulatory authorities for authorisation to provide such services, unless it provides such services through an EU-subsiidiary. This means that third-country banks that previously relied on Member State legal exemptions to provide cross-border financial services will no longer enjoy such market-entry convenience. At the same time, EU branches of third-country banks will be brought into a unified minimum EU supervisory framework, covering key dimensions such as capital adequacy, liquidity buffers, and internal governance. Together, CRD 6 and Regulation (EU) 2024/1620 (CRR 3) form a package of EU banking regulation.

In response to the challenges CRD 6 presents for cross-border operations in the EU, this article outlines the relevant regulatory framework, key compliance risks for Chinese banks, and practical response strategies.

Core Changes in the CRD 6 Regulatory Framework

The introduction of CRD 6 marks a shift in EU financial regulation toward a geopolitically driven approach. In substance, the new rules are reshaping the EU's "financial border".

For many years, due to the lack of unified standards, EU Member States took divergent approaches to third-country bank access: some countries, aiming to attract foreign banks, offered broader regulatory exemptions and simplified procedures for obtaining a licence, while others applied stringent standards akin to those for EU subsidiaries. As a result, third-country banks used more lenient regulatory jurisdictions as a springboard to conduct low-cost operations. This type of "regulatory arbitrage" left EU subsidiaries that complied strictly with local rules at a competitive disadvantage. CRD 6 seeks to end this situation by

harmonising the regulatory standards for EU operations of third-country banks and creating a level playing field.

A deeper shift is the reclaiming of regulatory sovereignty. In the past, EU regulators largely relied on home-country regulators of third-country banks (e.g., in China, the U.S., and the U.K.) and off-site monitoring. CRD 6 changes this logic by granting the European Central Bank and national regulators direct powers to intervene in the organisational structures of third-country branches. The EU's concern is that if the asset profile of a third-country bank's EU branch become too large (for example, breaching the €40 billion threshold), financial distress in the bank's home country could quickly be transmitted into Europe through cross-border channels. Therefore, the EU considers it necessary to have concrete powers to manage risks in order to safeguard financial stability in Europe.

Key Interpretation of Article 21c of CRD 6

I. Scope of “core banking services”

Under Article 21c, the following cross-border services or products provided by non-EU credit institutions constitute banking services regulated by CRD 6:

1. taking deposits and other repayable funds;
2. lending, including but not limited to: consumer credit, credit related to immovable property, factoring with recourse, non-recourse factoring, and commercial transaction financing (including forfaiting);
3. guarantees and commitments.

For bank guarantees, standby letters of credit, and financing commitments, EU regulators generally view these products as essentially equivalent to credit support. Therefore, if a non-EU bank that does not have an authorised branch or subsidiary provides such products to a beneficiary or guaranteed party located in the EU, this will highly likely be considered a breach of the relevant provisions of Article 21c.

II. Determination of “carrying out business in a Member State”

Notably, CRD 6 does not provide an EU-level unified legal definition or criteria for determining whether a bank is “carrying out business in a Member State”.

This ambiguity may create uncertainty in practice: for example, to what extent technical factors—such as the governing law of a facility agreement, the place of execution, or whether the setting up of a disbursement account is within the EU—might lead to a finding that core banking services are being provided in a Member State?

In the absence of EU-wide benchmarks, the decision making power is in effect devolved to Member State authorities. Differences in regulatory approach may lead to divergent outcomes across jurisdictions. Therefore, it is critical to examine how each Member State transposes CRD 6 into domestic law.

That said, returning to the legislative purpose of CRD 6 and its risk-control rationale, we tend to believe that whether a non-EU bank's cross-border business constitutes "carrying out business in a Member State" essentially depends on a holistic assessment of the following three core factors:

1. Whether the borrower is located in the EU, i.e., where the credit relationship is substantively anchored;
2. The continuity and systematic nature of the business, i.e., whether the bank is extending credit to EU entities on a non-incident, ongoing basis; and
3. The functional nature of the activity, i.e., whether it falls within the bank's core functions for generating profit and assuming risk.

Accordingly, in general, where a customer or counterparty is located within the EU, the business may be treated as "being carried out in that Member State". In a typical cross-border credit scenario: if a Chinese bank outside the EU lends to a Chinese subsidiary established in the EU, even if approval processes, funds disbursement, and risk management are performed outside the EU, such transaction, unless exemption applies, will very likely be "looked through" and treated as "being carried out in a Member State" because the borrower and the financing purpose are anchored in the EU.

III. Exemptions

1. Legacy contracts

CRD 6 requires Member States to implement measures to protect rights already obtained by customers under contracts signed before 11 July 2026. In principle, such contracts do not trigger the requirement to establish a third-country branch due to the implementation of CRD6¹.

However, it should be noted that CRD 6 explicitly emphasises that legacy contracts are to be interpreted restrictively, so as to prevent evasion of regulatory oversight². For material amendments, renewals, or extensions after 11 July 2026, there is significant uncertainty as to whether the exemptions still apply. It is expected that most Member States are likely to treat such changes as outside the exemptions.

2. Reverse solicitation

If an EU customer or counterparty requests for services entirely on its own exclusive initiative, the third-country institution may in principle be exempt from the branch requirement³. However, such exemption contains strict limitations: the third-country institution must not engage in any direct or indirect marketing, including through affiliates or third parties, to solicit customers. In addition, reverse solicitation covers only the specific product or service requested by the customer. The third-country institution cannot rely on the customer's request to promote other types of banking services unless they are follow-on services that are "necessary for, or closely related to" the originally requested

¹ See CRD 6, Article 21c.5.

² See CRD 6, Recital (6).

³ See CRD 6, Article 21c.2(a).

service⁴.

3. MiFID investment services and ancillary activities

Where a third-country institution provides core investment services under MiFID, CRD 6 does not apply to ancillary activities carried out in connection with those services, such as deposit-taking and lending related to the investment services⁵.

Nevertheless, this exemption is conditional on the third-country institution being entitled to provide the relevant MiFID investment services legally in the EU. In practice, the scope for third-country institutions to provide MiFID services directly without obtaining EU authorisation is limited, making the practical applicability of the exemption rather narrow⁶.

4. Interbank transactions

If the customer or counterparty is an EU credit institution, the third-country institution may be exempt when providing core banking services⁷. This leaves some room for traditional interbank transactions.

For secondary loan market transaction structures such as participations, these may be initially regarded as providing services to credit institutions, thereby falling within the scope of the exemption. However, in practice, careful assessment is still required based on the transaction structure and Member State regulators' interpretations and enforcement approaches.

5. Intra-group transactions

A third-country institution may be exempt when providing core banking services to its EU-based group entities⁸.

Key Implementation Milestones for CRD 6

I. Before 10 January 2026: transposition into Member State law

Member States must transpose the Directive into domestic law. Based on progress to date, transposition has been uneven across Member States, and national implementing measures reflect differing regulatory approaches.

On 29 January 2026, German Federal Parliament took the lead and passed the "Banking Directive Implementation and Bureaucracy Reduction Act" (BRUBEG), amending the German Banking Act (Kreditwesengesetz, KWG) to transpose CRD 6. The amended German Banking Act largely follows

⁴ See CRD 6, Article 21c.3.

⁵ See CRD 6, Article 21c.4.

⁶ Only after a third-country investment firm has completed ESMA registration (which involves an EU equivalence assessment of the third country's regulatory regime and the firm's ongoing compliance obligations) may it, without establishing any entity or TCB in the EU, provide MiFID investment services cross-border directly to professional clients and eligible counterparties as defined in Annex II, Section I of Directive 2014/65/EU. See Article 46(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁷ See CRD 6, Article 21c.2.(b).

⁸ See CRD 6, Article 21c.2.(c).

CRD 6's approach on branch requirements.

Luxembourg's government submitted Bill No.8627 on 6 October 2025, which remains under committee review. The bill tends to emphasise a more relaxed stance under CRD 6 to maintain its attractiveness as a global financial hub. For example, it expressly provides that legacy contracts concluded before 11 July 2026 will not trigger branch requirements even if performed after that date.

The government of the Netherlands also submitted the "Capital Requirements Implementation Act 2026" (Implementatiewet kapitaalvereisten 2026) to the House of Representatives on 19 January 2026, and it is now under parliamentary review. The Netherlands leans toward a more prudent "phasing-out" approach for legacy contracts to reduce circumvention of the third-country branch requirements through contract renewals or amendments. The draft Act expressly states that legacy contracts concluded before 11 July 2026 will generally no longer fall within the exemption if amended, renewed, or extended, thereby triggering branch requirements.

Ireland's Department of Finance conducted a public consultation in 2025 on transposition of CRD 6. Although the transposition deadline set out by CRD 6 has passed, Ireland has not yet published official domestic legislation or a draft bill as of now.

II. From 11 July 2026: expiry of exemption for legacy-contracts

After this date, newly signed core banking services contracts will no longer enjoy any form of legacy exemption. Any core banking services initiated thereafter must strictly comply with Article 21c.

For legacy contracts signed before 11 July 2026, any material changes made after that date (e.g., extensions, credit limit adjustments, key changes to interest rate benchmark) are highly likely to result in loss of exemption.

Therefore, the first half of 2026 will be a key window for Chinese banks to carry out reviews of their legacy contracts.

III. From 11 January 2027: full compliance

From 11 January 2027, all third-country banks carrying out business in the EU must comply with CRD 6 requirements for cross-border operations. Banks that fail to obtain the necessary branch authorisation or to operate through an EU subsidiary, may face penalties under CRD 6, including but not limited to administrative fines, public censure, and restrictions on senior management.

Impact of CRD 6 on Chinese Banks' EU Business

I. Structural challenges to operating models

1. Chinese banks without an EU legal entity

Previously, Chinese banks without an EU legal entity mainly relied on specific Member State exemptions to conduct offshore cross-border direct lending. For example, Germany's Federal Financial Supervisory Authority (BaFin) previously granted regulatory exemptions to certain third-country institutions that meet specific conditions under its domestic law, allowing them to provide cross-

border financial services without obtaining a local license if conditions were met.

With CRD 6's implementation, Member States must adjust exemption arrangements that are inconsistent with the Directive. This means operating models that were previously permissible, or in regulatory grey areas, will need to transform. If such banks intend to continue providing core banking services to EU customers, unless they can prove they fall under strict exemptions such as reverse solicitation, they must establish a legally authorised EU subsidiary or branch.

2. Chinese banks already operating EU branches

The main impact of the Directive is a comprehensive upgrade of regulatory requirements: such banks will face stricter minimum requirements across capital adequacy, liquidity coverage, internal governance, book-keeping, and more. For large Chinese banks with deeper EU footprints, this implies not just an increase in supervisory intensity, but also the need to allocate independent EU-based capital and liquidity coverage that align with the standard of Basel III.

Notably, if the total asset profile of the branches exceeds certain thresholds (e.g., total EU asset amount of the group reaching €40 billion or a single branch reaching €10 billion), regulators have the power to require conversion from a branch into a subsidiary to address potential systemic risk⁹.

Additionally, some Member State regulators may also require existing branches to re-apply for authorisation to ensure compliance with CRD 6 and additional local requirements.

II. Analysis of the impact on the types of cross-border transactions conducted by Chinese banks

Under the CRD 6 regulatory framework, Chinese banks' EU transactions are facing higher local compliance requirements. Different product types face different compliance challenges because the underlying legal relationships and the risk-bearing parties differ. Set out below is our analysis of the impact of CRD 6 on several typical categories of cross-border services provided by Chinese banks:

1. Custody

CRD 6 compliance for custody depends on the purity of its function. If services are limited to technical or administrative support such as record-keeping and reporting, the risk of being classified as core banking services is relatively low.

However, once the custody arrangement is tightly linked to credit limits, performance guarantees, or liquidity support agreements, we consider that its legal nature may change fundamentally, and regulators may view it as a disguised form of core banking services.

For Chinese banks, the key to compliance lies in building robust "firewalls", clearly separating custody asset management activities from the bank's assumption of risk. In particular, if a Chinese bank provides EU customers with custody solutions that include financing features, it should be alert to the risk that the arrangement may be "looked through" and characterised as the provision of core banking services.

⁹ See CRD 6, Recital (21).

2. Guarantees and standby letters of credit

Due to their clear credit-substitution features, guarantees, standby letters of credit (SBLCs), and credit commitment letters are very likely to be directly classified as core banking services.

A common scenario in practice is that a Chinese bank may enhance the credit of a borrower in the EU by issuing an SBLC, with an EU local bank providing the underlying loan. In this structure, as the loan itself is provided by an EU local bank, the compliance risk is relatively low. However, the credit enhancement arrangement constitutes “guarantees and commitments” under the CRD 6 regime. If the Chinese bank issuing the SBLC has no establishment in the EU, and the issuance is viewed as a systematic service providing to EU customers, the guarantee or commitment may itself be characterised as non-compliant.

Accordingly, Chinese banks should consider alternative approaches as soon as practicable. For Chinese banks that already operate branches in the EU, one option is to migrate their operation so that the SBLCs are issued by an EU subsidiary or EU branch. For Chinese banks with no presence in the EU, they may explore whether the transaction can be implemented through cooperation with local banks.

3. Risk participation

In this structure, a bank located in the EU, acting as the lead bank, signs a loan agreement with the borrower and disburses the funds directly. The Chinese bank, as a participating bank, assumes all or part of the credit risk by entering into a risk participation agreement with the lead bank.

Where the Chinese bank participates on a funded basis by advancing funds to the lead bank, the structure avoids a direct contractual relationship with the borrower in form. However, under CRD 6, it should be noted that if the Chinese bank is deeply involved, particularly where risk and return are fully transferred, its involvement may still be characterised as a substantive provision of services into the EU.

A risk participation (unfunded) structure is closer to a credit default swap. Once an advance payment or indemnity is triggered, the substance of the legal relationship may be traced back to the category of “guarantees and commitments”, and may therefore remain subject to Article 21c.

4. Syndicated loans

In syndicated lending transactions, a bank’s compliance risk exposure can vary significantly depending on the role it plays.

The lead arranger role is the most likely to be characterised as a substantive provision of services into the EU. Even if the loan agreement is governed by English law and the funding flows and settlement are completed in London, where the borrower is an EU entity and the Chinese bank, as an initial lender, signs the agreement directly and commits a credit limit to the borrower, regulators are likely to view the bank as providing core banking services to the EU market. In addition, as the lead arranger is responsible for early-stage due diligence, term negotiations and syndication, these activities may be viewed as involving elements of active marketing. Even if the borrower has nominally initiated the

transaction, the complexity of arranging a syndicate typically goes well beyond the passive boundaries of reverse solicitation. In principle, from 2027 onwards, Chinese banks are not recommended to continue acting as lead arrangers or initial lenders for EU borrowers.

If the Chinese bank participates only as an ordinary syndicate lender, risk exposure is narrower but compliance risk remains. A cautious approach is therefore recommended during the transitional period up to July 2026. The reason is that, as an ordinary syndicate lender, the Chinese bank remains a party to the facility agreement and holds contractual claims directly against the EU borrower and therefore may still fall within the scope of Article 21c.

5. Aircraft project financing

In aviation finance, a long-established mainstream structure is for an Ireland-incorporated SPV to act as lessor, hold the aircraft assets and seek a cross-border loan from an onshore Chinese bank or its non-EU branch (e.g., the London branch). However, with the implementation of CRD 6, the structure of cross-border direct lending as such is likely to come under closer compliance scrutiny.

The core challenge lies in the borrower's jurisdictional nexus (i.e., the Irish SPV). Under the "look-through" approach of Article 21c, where the borrowing entity is located in an EU Member State, granting credit to it is highly likely to be characterised as the provision of core banking services in that Member State.

Some banks may attempt to rely on the reverse-solicitation exemption as a safe harbour, arguing that the financing request was initiated by the Irish SPV. In practice, however, where an Irish SPV repeatedly and systematically seeks financing from the same Chinese bank, regulators are unlikely to accept that the approach was genuinely ad hoc, and may instead be inclined to characterise it as the bank carrying out core banking services in Ireland.

As a global hub for aircraft leasing, it remains uncertain whether Ireland will adopt more flexible supporting policies or implementing guidance for specific sectors such as aviation finance. It is therefore advisable to closely monitor Irish legislative and regulatory developments and to build sufficient flexibility into post-2026 new financing projects to accommodate potential policy adjustments.

Chinese Banks' Path Forward: Compliance-Driven Strategic Transformation

As July 2026 approaches, Chinese banks' EU business has entered a critical phase of proactive reshaping. Banks currently providing cross-border direct lending to EU Member States should systematically assess their status and implement measures promptly to ensure continuity and compliance.

I. Review legacy business

Chinese banks should immediately begin an EU-wide review of legacy contracts, especially long-tenor credit contracts that remain outstanding after 11 July 2026 and may face material changes such as tenor extensions or interest rate adjustments etc. For legacy business that are highly likely not exempt, banks may consider confirming a pathway for transferring the relevant exposures in the first half of 2026 (e.g., via novation agreements, risk participation, or direct asset sales) so that, before

CRD 6 becomes fully applicable from January 2027, the relevant exposures can be transferred to an appropriately licensed entity established within the EU.

II. Reassess EU footprint

Facing the compliance impact of CRD 6, Chinese banks that have not yet established a presence in the EU should, in light of their potential growth and footprint, carefully weigh the option of establishing an EU subsidiary against setting up a third-country branch. Establishing a subsidiary means that, once authorised in a single Member State, the bank can benefit from “passporting” rights. Through this right, the bank may use that Member State as a base to provide banking services across the EU. By contrast, authorisation for a third-country branch is typically subject to strict territorial limitations and, in principle, is limited to conducting business in the Member State where the branch is established. For banks seeking to expand their businesses across multiple EU jurisdictions, third-country branches are therefore clearly less flexible.

For Chinese banks that have already made an initial EU entry, the compliance balance is increasingly tilting towards the higher-cost end. Even existing third-country branches will face materially more intensive regulation and higher compliance requirement under CRD 6, and in some respects the regulatory burden may begin to converge with that applicable to subsidiaries.

Given this fundamental shift in the regulatory “red line”, relevant financial institutions should reassess their EU operating structure from a strategic perspective. Chinese banks should not treat CRD 6 merely as a one-off compliance “gap-filling” exercise, but they should take the opportunity to prudently evaluate whether their existing legal-entity structure remains fit for purpose.

III. Prudently assess exemptions

Although Article 21c blocks most cross-border “direct access” paths, CRD 6 retains a small number of exemptions. Chinese banks must conduct a highly granular, look-through compliance assessment to avoid inadvertently crossing regulatory “tripwires”.

Under CRD 6, where a financial service genuinely arises from the client’s exclusive initiative, the bank may be exempt from the requirement to obtain a local licence. In regulatory practice, however, EU authorities are expected to apply an almost stringent standard when assessing this pathway. For Chinese banks pursuing scalable and systematic expansion, reliance on reverse solicitation not only shifts the burden of proof onto the bank (to prove it was entirely passive), but it also lacks commercial scalability due to its inherent constraints on proactive client acquisition. Accordingly, reverse solicitation can only serve as a supplementary solution for occasional transactions, and should not be treated as a sustainable operating model. By contrast, transactions with EU-authorized peer institutions or with entities within the same group are more operationally feasible. However, even these structures may attract secondary risk of being accused of “regulatory arbitrage” under a look-through regulation.

Given the complexity of exemption analysis, Chinese banks should, during this period of strategic transition, engage specialist legal counsel with a cross-border regulatory perspective to provide robust legal opinions on specific transaction structures. This helps to ensure the legal effectiveness of the

chosen structures and, in the event of regulatory scrutiny, serves as key evidence that the bank has discharged its duty of prudent due diligence.

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

Meng YAN

Tel: +86 21 6080 0512

Email: raymond.yan@hankunlaw.com

Yunjia SUN

Tel: +86 21 6080 0976

Email: yunjia.sun@hankunlaw.com

Chengrong LI (Paul LI)

Han Kun LLP

Tel: +44 7702 605 278

Email: paul.li@hankunlondon.co.uk