

# Legal Commentary

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## From Sectoral to Unified – Key Regulatory Changes in China’s Draft Financial Law

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### Background

On 20 March 2026, the Ministry of Justice, together with the People’s Bank of China (“**PBoC**”), the National Financial Regulatory Administration (“**NFRA**”), the China Securities Regulatory Commission and the State Administration of Foreign Exchange, released the *Financial Law of the People’s Republic of China* (Draft) (《中华人民共和国金融法（草案）》), the “**Draft Financial Law**”, which is open for public comment until 19 April 2026.

The Draft Financial Law comprises 11 chapters and 95 articles, covering the modern central bank system, financial institutions, financial products and services, financial markets, financial regulations, risk management and resolution mechanisms, high-quality financial development and security, and legal liabilities.

Once enacted, the Draft Financial Law is expected to provide a unified legal framework for financial regulation, marking a shift from the current sector-specific approach toward a more coordinated, principle-based system. We summarize below the key highlights of the Draft Financial Law and suggested actions for market participants.

### Key highlights

#### I. A Foundational Law with Comprehensive Scope

##### 1. Full Coverage Across Institutions, Activities and Lifecycle

The Draft Financial Law significantly expands the scope of financial regulation by establishing a comprehensive framework covering all financial sectors, activities and stages of operation.

- **Scope of activities:** Under Article 3 of the Draft Financial Law, “financial activities” refers to monetary and credit activities directly related to deposits, loans, insurance, securities, futures and derivatives, funds, trusts, payment and settlement, credit reporting, and similar matters, engaged in by natural persons, legal persons, and unincorporated organizations. Such term is defined in a broad manner to catch all types of financial activities, howsoever expressed.

- **Scope of institutions:** The Draft Financial Law applies to a wide range of institutions, including banking, securities, fund, futures, insurance and trust institutions, financial holding companies, non-bank payment institutions, as well as financial market infrastructures, regulatory authorities, financial consumers, investors and third-party service providers.

Notably, the Draft Financial Law introduces several key concepts, including financial institutions (金融机构), local small and medium-sized financial institutions (地方中小金融机构), other financial institutions (其他金融机构), and local financial organizations (地方金融组织). Based on our reading of the definitions of these terms, the financial institution shall be the overarching, foundational legal category, while local small and medium-sized financial institutions and other financial institutions are subsets of financial institutions. Their classification is primarily based on the geographical scope of their permitted business (restricted vs. nationwide) and their ownership/control structure (central enterprise-controlled or not).

For private investment funds, it is quite clear that private investment funds are not financial institutions but exist in parallel to financial institutions, which is consistent with current regulatory practice and market understanding. However, for local financial organizations, given the cross-references in the definitions of financial institutions, financial business, and local financial organizations, it may need further clarification from the legislator whether they should fall under the scope of financial institutions, but it reads to us the local financial organizations should not be part of the financial institutions.

With the above said, Article 93 provides that both local financial organizations and private investment funds shall be *mutatis mutandis* subject to the Draft Financial Law, therefore are brought within the regulatory perimeter through this referential application clause.

- **Scope of processes:** The Draft Financial Law governs the entire lifecycle of financial institutions, from market entry and ongoing operations to exit, and establishes a full-chain framework for financial risk prevention, early warning and resolution.

## 2. Addressing Structural Gaps in the Existing Financial Legal Framework

Under the current legal regime, China's financial regulation is primarily governed by sector-specific laws, each applying to a limited category of institutions or activities. For example: the *Law on the People's Bank of China* (《中国人民银行法》) focuses on central bank functions and monetary policy; the *Commercial Bank Law* (《商业银行法》) governs the establishment, operation, and supervision of commercial banks; the *Securities Law* (《证券法》) regulates securities issuance, trading, and supervision; and the *Futures and Derivatives Law* (《期货和衍生品法》) regulates futures markets and derivative trading. As a result, cross-sector activities and mixed financial operations lack a unified set of overarching legal principles. The Draft Financial Law aims to fill these gaps by providing a coordinated, principle-based regulatory structure.

## II. Mandatory Licensing for Financial Activities

Article 31 of the Draft Financial Law clearly establishes that offering financial products or services requires prior approval, registration, or filing with the relevant regulatory authorities. No entity or

individual may provide or indirectly provide financial products or services without such authorization, forming the legal backbone for cracking down on unauthorized financial activity. This regulatory principle is not first proposed under the Draft Financial Law, but has been implemented by regulators for years. For example, as early as 2019, the PBoC, the NFRA, and other financial regulators issued the *Circular on Further Regulating Financial Marketing and Publicity Activities* (《关于进一步规范金融营销宣传行为的通知》). This Circular reinforced the licensing requirement by prohibiting the marketing and promotional activities of any financial products/services without proper license granted by financial regulators, with the only exception of allowing media or platforms to market or promote the licensed products/services of those license holders that entrust such media or platforms to do so.

Notably, the “financial products and services” refer to products provided for “financial activities”, as well as services directly related thereto, by financial institutions and other legal persons, non-legal person organizations, and the like, in accordance with the law, through contracts, agreements, certificates, and similar instruments. Therefore, the financial products and services are broadly defined to cover all products and services provided by all types of institutions in relation to financial activities (namely all currency and credit related activities).

### III. Look-through and Functional Supervision

To ensure that licensing requirements are not circumvented by complex transaction structures or organizational forms, the Draft Financial Law is accompanied by a mechanism for look-through and functional supervision.

- **Support for Regulatory Principles:** Article 8 of the Draft Financial Law designates “look-through supervision” and “functional supervision” as the core means to achieve comprehensive financial regulation. This means that supervision will penetrate legal forms and nested structures to directly examine the substantive functions and ultimate risks of financial activities.
- **Substance Over Form as the Criterion:** Article 51 of the Draft Financial Law requires financial regulatory authorities under the State Council to implement supervision in accordance with the principle of “substance over form”. This principle is the essence of look-through supervision, ensuring that regardless of the name or channel under which a business operates, as long as it possesses a financial substance, it must comply with corresponding licensing and regulatory requirements.
- **Prohibition of Regulatory Arbitrage:** Article 32 of the Draft Financial Law explicitly prohibits circumventing laws and regulatory provisions through mergers, splits, nesting, or other means. Article 50 further requires the formulation and implementation of consistent regulatory standards for similar financial activities. These provisions aim to eliminate regulatory arbitrage opportunities arising from differences in organizational forms, ensuring that businesses with the same functions adhere to the same licensing and conduct rules.
- **Extending the Regulatory Chain:** Article 54 of the Draft Financial Law extends the scope of supervision from financial institutions themselves to their shareholders, actual controllers, related parties, and third-party service providers (such as law firms, accounting firms and information

technology companies). This ensures that licensing requirements and compliance responsibilities are enforced throughout the entire financial ecosystem.

#### IV. Principles and Mechanisms for Financial Risk Resolution

Following the clear identification of risk-bearing entities and the establishment of robust risk identification frameworks through look-through and functional supervision, the Draft Financial Law dedicates its eighth chapter to constructing a comprehensive, multi-layered system for financial risk disposal. This system is designed to manage and resolve financial distress in an orderly manner, guided by core principles and equipped with specific mechanisms and tools.

##### 1. Core Disposal Principles

The disposal framework is anchored by several fundamental principles aimed at ensuring efficiency, fairness, and systemic stability:

- **Market-Driven Principle:** The disposal process prioritizes market-based resolutions over administrative mandates. This involves clearly defined rules and a hierarchy of liability, emphasizing self-rescue by the financial institution itself or its shareholders, alongside resources from industry protection funds and market participants. This principle seeks to break the expectation of “rigid repayment guarantees” and implicit government bailouts. A core tenet is that shareholders and actual controllers must bear losses first, with public resources only deployed after self-help measures are exhausted (as outlined in Article 69 of the Draft Financial Law).
- **Rule of Law Principle:** All disposal actions must be conducted within a clearly defined legal framework, under explicit authorization and oversight. This ensures fairness, transparency, and the maximization of value recovery. It delineates the precise responsibilities and boundaries for authorities involved in risk disposal, such as the central bank and financial stability funds.
- **Ultimate Objective – Systemic Risk Prevention:** The overarching and non-negotiable goal of the entire risk disposal regime is to prevent the occurrence of systemic financial crises. This objective serves as the foundational premise for all regulatory, rescue, and developmental financial policies.

##### 2. Multi-Tiered Risk Disposal Mechanisms

To operationalize these principles, the Draft Financial Law establishes a systemic and multi-dimensional emergency response architecture.

- **Early Risk Identification & Corrective Intervention:** Pursuant to Article 65 of the Draft Financial Law, upon detecting signs of elevated risk, the State Council’s financial regulatory authorities can order the problem institution to review and rectify its operations. Interventions may include graduated set of tools, such as: ordering corrections; suspending or limiting operations; restricting new business or dividends; limiting shareholders’ dividends and the remuneration of directors, senior management, and other directly liable persons; restricting capital expenditures; requiring reduction of risky assets; adjusting regulatory ratios; mandating asset or business transfers;

requiring capital injections; directing responsible shareholder equity transfers or restricting shareholder rights; disciplining responsible personnel; reclaiming compensation; disqualifying unsuitable candidates; and imposing market bans. If corrections are inadequate or standards unmet, authorities may escalate to more intensive disposal measures.

- **Tiered & Graded Disposal Responsibility Allocation:** Article 66 of the Draft Financial Law clearly divides powers and responsibilities based on the nature and scope of the at-risk institution:

Institution / Risk Type	Implementing Authority for Risk Mitigation / Resolution	Coordinating / Guiding Authority
National banks; securities, fund, and futures business institutions; central financial enterprises and their controlled financial institutions	Led, organized, and implemented by financial regulatory authorities under the State Council	/
Local small and medium-sized financial institutions, local financial holding companies, local financial organizations	Led, organized and implemented by the provincial-level authority of the place of registration (province, autonomous region, municipality)	The financial regulatory authorities under the State Council are responsible for guidance and cross-regional coordination
Other financial institutions, private investment fund managers	Jointly organized and implemented by the provincial-level financial regulatory authorities at the place of registration, together with the financial regulatory authorities under the State Council	/
Non-financial enterprises involving financial risks	Implemented by the industry authorities at the provincial level at the place of registration, together with the relevant industry authorities under the State Council.	The financial regulatory authorities under the State Council will cooperate
Systemic financial risks	Led by the PBoC	Ministry of Finance under the State Council participates according to law

- **Diversified Disposal Toolkit:** Article 67 of the Draft Financial Law empowers authorities with a range of specific, statutory tools to implement disposals, including but not limited to: implementing measures provided in Article 56, appointing or establishing custodians or takeover organizations to exercise management rights; disposing of assets and liabilities; suspending, limiting, or terminating part or all financial transactions; revoking business licenses; facilitating third-party institutions or temporary transitional entities to take over business, assets, and liabilities; suspending the right to early termination under eligible financial transactions, for a maximum of 48 hours; implementing equity or debt write-downs, debt-to-equity conversions, or forced equity transfers; repatriating overseas assets if required; requiring domestic and foreign group entities

to provide support to maintain critical financial services; and other measures as stipulated by law, administrative regulations, or approved by the State Council.

- **Clear Sequencing of Loss Absorption:** Article 69 of the Draft Financial Law establishes a definitive order for bearing losses and tapping financial resources, codifying the “bail-in” before “bail-out” logic:
  - (1) **First Layer – Internal Absorption:** The institution under disposal and its direct shareholders/actual controllers must first absorb losses, provide capital replenishment, and attempt to restore operations.
  - (2) **Second Layer – Sectoral & Local Resources:** Utilization of local fiscal resources, provincial-level support, and industry protection funds (like the deposit insurance fund).
  - (3) **Final Layer – National Stabilization Tools:** As a last resort, the use of the Financial Stability Guarantee Fund (金融稳定保障基金) and, in severe circumstances, national lender-of-last-resort facilities (central bank emergency lending).

This sequence internalizes risks to shareholders and establishes a graduated escalation for tapping public backstop resources.

- **Judicial & Administrative Coordination:** To ensure legal certainty and procedural efficiency during disposals, Article 70 of the Draft Financial Law provides for seamless coordination between administrative actions and judicial processes. It allows for the centralized jurisdiction of related cases (as designated by the Supreme People’s Court) and the suspension of relevant civil litigation, enforcement, or arbitration proceedings. It also confirms the legal validity of actions already completed during the administrative disposal process (such as asset verification, preservation, and disposal) upon judicial review, preventing legal procedures from hindering timely rescue efforts.

In summary, the Draft Financial Law aims to construct a comprehensive, layered risk disposal framework that progresses from preventative correction to post-crisis resolution. It is designed to be market-driven yet government-backed, with clear divisions of responsibility, a defined toolkit, a transparent funding hierarchy, and judicial safeguards—all converging towards the ultimate goal of safeguarding against systemic financial collapse.

## V. Countermeasures Against Foreign Sanctions

Currently, China mainly relies on the *Anti-Foreign Sanctions Law* (《反外国制裁法》), the *Unreliable Entity List Rules* (《不可靠实体清单规定》), and the *Measures to Block Improper Extraterritorial Application of Foreign Laws* (《阻断外国法律与措施不当域外适用办法》) for sanction countermeasures, but none of these are financial-specific laws. Article 85 of the Draft Financial Law introduces targeted provisions in the financial sector, allowing China to take countermeasures against any country or region that imposes discriminatory financial restrictions on Chinese citizens or organizations, block improper extraterritorial application of foreign laws, and prohibit domestic entities from enforcing or assisting such foreign measures, thereby bolstering national financial security.

## VI. Legal Independence of CCP Assets

As the core infrastructure for the operation of financial markets, the stability and security of Central Counterparties (CCPs) are of paramount importance. On top of Article 37 of the current Futures and Derivatives Law, which already provides protections for financial market infrastructures' assets, Article 48 of the Draft Financial Law further establishes the principles of property independence and bankruptcy isolation to offer core legal safeguards for the continuity and finality of centralized clearing and settlement activities.

## VII. Per-occurrence and Cumulative Penalties

Article 86 of the Draft Financial Law introduces per-occurrence penalties for the first time in the financial regulatory field, allowing penalties to be calculated separately for each independent violation of the same provision. This addresses debates in existing laws (banking, securities, insurance, etc.) over whether repeated or continuous violations should receive a single or cumulative penalty.

Article 87, Paragraph 1 provides for cumulative penalties, allowing fines in addition to confiscation, such as up to 5% of the previous year's revenue or equivalent transaction value, as well as other measures, including ordering the suspension or prohibition of relevant business, temporary closure for rectification, or revocation of financial licenses. In addition, Article 87, Paragraph 2 specifies penalties for organizing, directing, assisting, or facilitating others in committing financial violations, with the severity of the penalties determined according to the seriousness of the misconduct and the resulting harm.

However, the implementation of these penalties and enforcement procedures, as well as their coordination with sector-specific financial laws, will require further observation.

## VIII. Priority of Civil Compensation

Under Article 220 of the Securities Law, a priority system exists for civil compensation, but it applies only within the securities sector. Article 89, Paragraph 2 of the Draft Financial Law extends this principle to the entire financial sector, stipulating that when a person violates the law and is liable for civil compensation, fines, penalties, or illegal gains, if their assets are insufficient to cover all obligations, available assets must be prioritized for civil compensation.

## IX. Financial Consumer Protection

Chapter 4 of the Draft Financial Law focuses on the rigorous requirements for the marketing of financial products and services and the protection of investors' rights. Key provisions include, but are not limited to: (1) enhanced information disclosure – financial institutions are required to provide comprehensive, truthful, and accurate disclosure regarding transaction structures, rights and obligations, profit distribution, fees and charges, innovative product designs, risk levels and other information; and (2) strengthened suitability management – financial institutions shall only recommend financial products appropriate to the consumer's risk tolerance, preventing the sale of high-risk products to consumers who cannot bear the associated risks. These requirements are largely aligned with existing regulations, such as the *Administrative Measures for the Suitability of Products of*

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*Financial Institutions* (《金融机构产品适当性管理办法》).

## **X. Extraterritorial Application of the Financial Law**

Article 92 of the Draft Financial Law establishes the extraterritorial jurisdiction principle of the Draft Financial Law, whose application logic is not based on the “territorial principle” of the place where the act occurs, but rather on the “effects principle” based on the effects of the act.

According to this provision, even if financial activities occur outside the territory of China, as long as they meet any of the following statutory conditions, the relevant entities shall bear legal liability in accordance with the Draft Financial Law: endangering the national financial security of China; disrupting domestic financial order; or infringing upon the lawful rights and interests of citizens and domestic organizations.

This provision provides a clear legal basis for regulatory authorities to pursue acts that evade China’s financial access and compliance requirements through overseas entities, offshore structures, or cross-border channels. It closely aligns with the “substance over form” principle of look-through regulation, the “same business, same standards” requirement under functional regulation, and the liability look-through provisions applicable to shareholders and actual controllers in the other chapters of the Draft Financial Law, collectively forming a legal regulatory network capable of covering the substance of cross-border financial activities.

Notably, if an overseas institution, without obtaining Chinese authorization, substantially provides financial products or services (e.g., deposit, loan, or securities trading services, etc.) to domestic residents through online platforms, even if its servers and legal entity are located overseas, as long as such acts disrupt domestic financial order or harm the rights and interests of domestic investors, legal liability may be pursued under this provision.

## **Outlook**

Overall, the Draft Financial Law serves as a guiding framework rather than a detailed operational statute and does not provide extensive implementation rules. Importantly, further clarification will be required on how it aligns with and interacts with existing sector-specific laws and regulations. We will continue to monitor any material developments in this regard and provide timely updates.

## ***Important Announcement***

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