

# Legal 500 Country Comparative Guides 2024

China

Banking & Finance

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in China.

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# China: Banking & Finance

## 1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

For purposes of this China Country Guide only, "China" or the "People's Republic of China (PRC)" excludes Hong Kong and Macau Special Administrative Regions and Taiwan.

China's finance industry used to be regulated by the so-called "one committee, one bank, and two commissions", comprising the Financial Stability and Development Committee ("FSDC"), the People's Bank of China ("PBoC"), the China Banking and Insurance Regulatory Commission ("CBIRC") and the China Securities Regulatory Commission ("CSRC"). There was a financial regulatory mechanism reform in 2023, among which: (i) FSDC came into dissolution and its General Office was absorbed into the newly established Central Financial Commission ("CFC"); (ii) CBIRC was merged into the recently created National Financial Regulatory Administration ("NFRA"); and (iii) the Central Financial Work Commission ("CFWC") was established to supervise the financial sector from ideological and political perspectives. Currently the national authorities governing the banking sector include CFC, PBOC and NFRA.

### CFC

As the policy-making and co-ordinating agency of the Central Committee of the Chinese Communist Party, CFC was established in 2023 to be responsible for the top-level design, overall coordination and promotion, supervision of implementation of financial stability and development. It also has the mandate to study and review major policies and issues in the financial sector.

### PBoC

PBoC is the central bank of China overseeing the monetary system and policies, and is responsible for drafting important laws and regulations for setting interest rates, regulating financial markets (e.g., in respect of anti-money laundering, deposit-taking and lending business), regulating interbank lending and the interbank bond market, and managing foreign exchange transactions.

### NFRA

NFRA, as a ministerial-level public agency directly under the supervision of the PRC State Council, is primarily in charge of banking regulation, supervision, and resolution in China. It specifically oversees and investigates banks' day-to-day business operations, collects and publishes statistics on the banking system, approves the establishment or business expansion of banks, and resolves liquidity, solvency or other risk events in relation to banks.

Notably, in 2017, the banking and insurance sectors were regulated by separate commissions that were merged to form CBIRC as part of the Institutional Reform Plan, the China Insurance Regulatory Commission (CIRC) and the China Banking Regulatory Commission (CBRC). While now NFRA has more comprehensive responsibilities than CBIRC, and is responsible for the supervision of the financial sector except for the securities industry.

## 2. Which type of activities trigger the requirement of a banking licence?

In general, PRC commercial banks can be divided into Chinese-funded banks and foreign-funded banks (including wholly-owned foreign banks, Sino-joint venture foreign banks, and foreign bank branches). The key legislation governing licensed activities of foresaid commercial banks is the *PRC Commercial Banking Law*. Accordingly, a banking license is required for engaging in any or all of the following commercial banking activities:

- taking public deposits;
- loans;
- domestic and cross-border transaction settlement;
- the acceptance and discounting of drafts;
- issuing, purchase and sale of financial bonds;
- issuing and underwriting government bonds;
- inter-bank lending;
- the purchase and sale of foreign exchange;
- bank card services;
- providing letter of credit or guarantees services;
- agency services for receipts and payments of funds and insurance agency services;
- providing safety deposit box services; and
- other businesses approved by NFRA.

In addition, the settlement and sale of foreign exchange is subject to a separate approval of SAFE and the concurrent oversight by PBoC. The banking activities for foreign bank branches are more limited even after they are licensed. Other than foreign currencies business, foreign bank branches can only engage in RMB businesses with non-PRC citizens, except for taking fixed-time deposits from domestic PRC citizens in the amount of not less than RMB500,000 each time.

### 3. Does your regulatory regime know different licenses for different banking services?

Only one banking license is required for a banking institution to engage in any or all of the commercial banking services as enumerated in Question 2 above. The scope of approved services will be reflected in the relevant banking license of the individual commercial bank, and any further adjustment to the scope of such services shall be subject to a separate approval from NFRA.

In addition, subject to a separate approval from CSRC, commercial banks are also allowed to engage in the distribution of public funds.

### 4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

As a general principle, unless otherwise approved by NFRA, a commercial bank cannot engage in the business activities other than those permitted under its banking license. Therefore, a banking license can permit payment services and other commercial business activities as enumerated in Question 2 above, but it cannot permit activities beyond that scope such as broker dealer activities or the issuance of e-money.

It is also notable that China has been observing the segregation operation of financial business in regulating the domestic financial market. Pursuant to the *PRC Commercial Banking Law*, commercial banks are explicitly prohibited from engaging in trust investment business or securities business or making investments in real estate properties other than for self-use or investing in non-bank financial institutions or enterprises.

### 5. Is there a "sandbox" or "license light" for specific activities?

There has been no nation-wide "sandbox" or "license light" regime under PRC banking laws. However, with the support from PBoC, a "regulatory sandbox" pilot program was initially launched in Beijing at the end of 2019, with the focus on the application of cutting-edge technologies in financial sectors, including Internet of Things, big data, artificial intelligence, block chain and API. Following Beijing, several other Chinese cities have also launched their pilot regulatory sandbox programs successively. Participants in China's sandbox programs mainly include financial institutions, technology companies, payment firms, and credit reporting agencies.

In October 2021, the Hong Kong Monetary Authority ("HKMA") and PBoC signed the *Memorandum of Understanding on Fintech Innovation Supervisory Cooperation* in the Guangdong – Hong Kong – Macao Greater Bay Area (GBA) to link up PBoC's Fintech Innovation Regulatory Facility with HKMA's Fintech Supervisory Sandbox in the form of a "network" which can provide a "one-stop platform" to allow eligible financial institutions and technology firms to conduct pilot trails of cross-boundary fintech initiatives, concurrently in Hong Kong and Mainland GBA cities.

In November 2023, HKMA, PBoC and the Monetary Authority of Macao ("AMCM") updated the above Memorandum to further link up PBoC's Fintech Innovation Regulatory Facility, HKMA's Fintech Supervisory Sandbox and the AMCM's Regulatory Requirements for Innovative Fintech Trials, which has deepened the fintech innovation supervisory cooperation across the three regions.

### 6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

According to the *Circular on the Further Prevention and Handling the Risks Concerning the Speculation in Virtual Currency Trading* jointly promulgated by 10 government authorities, including PBoC, on 15 September 2021 ("**Circular 237**"), the regulators have reiterated the position that crypto currencies, such as Bitcoins, Ethereum, and Tether, shall not acquire the status as legal tenders to be circulated or used in the market. Further, all types of cryptocurrency related activities such as the issuance or custody of crypto currencies constitute illegal financial activities, which extends extraterritorially to services provided by offshore crypto currency trading exchanges to Chinese citizens via the internet.

On the other hand, led by PBoC, China has been

developing its own Digital Currency Electronic Payment system and launched the Central Bank Digital Currency ("E-CNY"). E-CNY is the digital form of Renminbi which possesses all its basic features and has been encouraged by the PRC government for the circulation and use in Chinese market. E-CNY and the use of E-CNY were not covered by Circular 237. As of January 2024, the E-CNY had been piloted in 26 regions of 17 provinces/cities in Mainland China, the use of which includes personal consumption, payroll payment, green finance and other services to public enterprises, as well as finance, taxation, public utilities, etc. It is noteworthy that In January 2024, PBoC and HKMA announced several measures to deepen the financial cooperation between Hong Kong and the Mainland China, which clearly include the expansion of the cross-border E-CNY pilots in Hong Kong.

### 7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Given crypto assets are relatively new in concept, the PRC regulators have not yet defined their legal nature. However, we understand crypto assets in general shall fall within the scope of "internet virtual assets" as provided in the *PRC Civil Code*. Nevertheless, as discussed in Question 6, crypto currencies, do not acquire the status as legal tenders and are prohibited to be circulated in the PRC market, except for the E-CNY. Consequently, they do not qualify as deposit and are not covered by deposit insurance or segregation of funds.

### 8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

N/A

### 9. What is the general application process for bank licenses and what is the average timing?

The general application process to obtain a bank license can be divided into two stages, namely the preparation stage and the business operation stage, specifically:

- an applicant shall first apply for the preparation of establishing a commercial bank with NFRA (or its local counterpart) and submit the required application documents, and a preparation period commences after the preparation application is accepted by NFRA (or its local counterpart);

- after the preparation work is completed and passed the acceptance verification by NFRA (or its local counterpart), the applicant can then apply for the business operation of the commercial bank; and
- NFRA (or its local counterpart) will then decide whether to approve the application for business operation and issue the banking license. The applicant shall apply for its business license from the relevant Administration for Market Regulation after acquiring the banking license.

The timeline for acquiring a bank license may vary depending on specific type of the commercial bank to be established. Generally it takes up to 15 months or 20 months (for foreign-funded banks) to finally obtain a bank license starting from the application for preparation is officially accepted.

### 10. Is mere cross-border activity permissible? If yes, what are the requirements?

Any offshore entity proactively targeting at PRC based clients for financial services or financial products might be regarded as "doing business in China" and thus trigger the PRC licensing risk, even if these are provided on a cross-border basis. Recently PRC financial regulators have strengthened regulatory oversight on unlicensed cross-border provision of financial services or promotional activities targeted at PRC based clients.

After obtaining the approval from NFRA, eligible foreign investors (foreign commercial banks or other financial institutions) are allowed to engage in the banking businesses in China by investing in or setting up a bank in China. With the approval from NFRA, a foreign financial institution may also opt to establish its representative office in China, provided that its activities shall be limited to liaison, market research, consultancy and other non-operating activities.

For Chinese-funded banks to engage in any offshore banking business, a prior approval from NFRA is also required.

### 11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

In China, banks can be broadly divided into the central bank, policy banks and commercial banks. PBoC (central bank) is a ministerial organ under the PRC State Council.

Chinese policy banks are state-sponsored non-profit banks which are mainly responsible for the financing in certain strategic important industries and state investment projects.

Aside from PBoC and policy banks, only legal entities obtaining the relevant banking license from NFRA can operate as commercial banks. There are generally five types of commercial banks, including state-owned commercial banks, joint-stock commercial banks, city commercial banks, rural commercial banks, and foreign-funded commercial banks. The *PRC Commercial Banking Law* requires that commercial banks (other than foreign bank branches) shall take the form of legal persons, either a limited liability company or a company limited by shares, duly established in accordance with the *PRC Company Law*.

## 12. What are the organizational requirements for banks, including with respect to corporate governance?

The organizational requirements of commercial banks generally apply to the PRC Company Law. While the *Corporate Governance Guidelines for Banking and Insurance Institutions* ("**Corporate Governance Guidelines**") promulgated by CBIRC (now NFRA) provide the principal corporate governance requirements applicable to PRC commercial banks in the form of company limited by shares. For example, like companies, the basic corporate governance structure of commercial banks in the form of company limited by shares shall include the shareholder / (general) shareholders' meeting, the board of directors, the board of supervisors, and the senior management. Typically, the board of directors oversees the decision-making and exercises the functions and powers as specified by the banks' articles of association. The directors will be elected by the shareholder / (general) shareholders' meeting. The board of supervisors assumes supervisory responsibilities and the senior management is the executive organ. An independent internal audit department is also required to be established to audit the corporate governance.

## 13. Do any restrictions on remuneration policies apply?

The *Regulatory Guidelines for the Stability of Remuneration in Commercial Banks* ("**Remuneration Guidelines**") promulgated by CBIRC (now NFRA) requires commercial banks to establish a uniform remuneration system. The board of directors is responsible for the management of remunerations and shall set up an

independent remuneration management committee to deliberate the remuneration policies. The remuneration management committee shall have no less than one-third of finance specialist as its members.

The Remuneration Guidelines imposes a series of regulatory restrictions on remuneration policies in terms of the amount, frequency and method for payment, calculation of the total remuneration amount of a commercial bank, and standards for performance assessment. Typically, the basic salaries for employees in commercial banks shall not be higher than 35% of its total remuneration. The Corporate Governance Guidelines also requires commercial banks to set up deferral payment and claw-back mechanism for executive directors, senior management staff and key employees.

## 14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

Yes, China has issued a series of rules since 2012, to implement the Basel III capital regulations in aspects of capital adequacy, leverage ratios, and liquidity management for commercial banks, as well as additional capital requirements for systematically important commercial banks. Notably, NFRA promulgated the updated *Administrative Measures for the Capital of Commercial Banks* in 2023, which is further in line with the Basel III framework.

## 15. Are there any requirements with respect to the leverage ratio?

According to the *Administrative Measures for the Capital of Commercial Banks* updated by NFRA in 2023, the leverage ratio of a commercial bank shall not be less than 4% (one percentage point above the Basel III minimum).

## 16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

To implement the Basel III liquidity requirements, CBIRC has promulgated the *Guiding Opinions of China Banking Regulatory Commission on Implementation of New Regulatory Standards for the Banking Industry in China* in 2011, according to which, among others, commercial banks shall achieve LCR and NSFR of not less than 100%. In 2018, CBIRC further clarified in the *Liquidity Risk*



*Management Measures of Commercial Banks* that LCR and NSFR minimum regulatory requirements shall only apply to commercial banks with the assets under management of not less than RMB200 billion.

### 17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

PRC commercial banks are required to disclose their annual reports which shall include, among others, the financial statements for each financial year. The financial statements shall be audited by qualified accounting firms. The annual reports shall also be submitted to NFRA in 5 days prior to its public disclosure.

### 18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Yes, CBRC (now NFRA) promulgated the amended *Consolidated Supervision and Regulation Guidelines* ("**Consolidation Guidelines**") in 2014 which require PRC commercial banks to adopt consolidated supervision on the whole bank group comprised of the commercial bank *per se*, and all its affiliates, including but not limited to its domestic and overseas banking subsidiaries, non-banking financial institution subsidiaries, non-financial institution subsidiaries and other institutions that shall be included into the scope of consolidated supervision according to the Consolidation Guidelines. "Consolidation Supervision" include the perspectives of accounting consolidation, capital consolidation and risk consolidation.

### 19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

According to the *Provisional Measures on the Administration of Equities of Commercial Banks* promulgated by CBRC (now NFRA) ("**Equities Measures**"), a prior approval shall be obtained from NFRA before an investor, its related parties and the parties acting in concert to hold individually or jointly 5% or more of the total capital or total shares of a commercial bank. For those who intend to hold more than one 1% but less than 5% of the total capital or total shares of a commercial bank, a report to NFRA is required within 10 working days after the equity transfer is completed.

### 20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

The *Equities Measures* requires a more stringent oversight on the major shareholders, controlling shareholders and actual controllers of a commercial bank. "Major shareholder" is defined as the shareholder (i) who holds or controls 5% or more of the shares or voting rights of a commercial bank; or (ii) who holds less than 5% of the total capital or total shares but exerts significant influence over the business management of the commercial bank. If the equity control arises to 50% or more, the shareholder will constitute a "controlling shareholder" of a commercial bank. "Actual controller" of a commercial bank refers to persons who are not the shareholders of a commercial bank but can still exercise control over the bank through investment, contracts or other similar arrangement.

According to the *Equities Measures*, a major shareholder, controlling shareholder or actual controller of a commercial bank shall be subject to distinguished eligibility criteria, rules of conduct and particularly they shall not involve in any of the following situations:

- (a) being listed as the target subject to disciplinary actions for dishonesty by the authorities;
- (b) seriously evading or revoking bank loans;
- (c) providing false materials or made untrue declaration;
- (d) being primarily responsible for a commercial bank's failure in business operation or material violations of laws;
- (e) refusing or obstructing the supervision by NFRA;
- (f) being investigated and punished by financial regulators or other relevant government agencies for illegal and non-compliant acts causing adverse effects; or
- (g) other circumstances which may have an adverse impact on the business management of the commercial bank.

### 21. Are there specific restrictions on foreign shareholdings in banks?

Foreign investors are subject to different eligibility criteria for their investments in PRC commercial banks, depending on the type of the PRC commercial banks and foreign shareholding ratios. Specifically in terms of

foreign shareholding restrictions, if the PRC commercial bank is a Chinese-funded bank, a foreign investor's limit for investment shall be subject to the specific type of the Chinese-funded bank, although certain shareholding limitation for foreign investors have been eliminated; and if the PRC commercial bank is a foreign-funded bank, there are no specific restrictions on foreign shareholding.

## 22. Is there a special regime for domestic and/or globally systemically important banks?

Yes. In 2021, PBoC and CBIRC (now NFRA) jointly promulgated the *Trial Measures on the Additional Regulatory Rules for Systemically Important Banks* (the "SIB Measures"), with the aim to improve China's regulatory regime for systematically important financial institutions. The SIB Measures are applicable to both domestic and globally systemically important banks. According to the SIB Measures, systemically important banks are subject to enhanced supervisory and recovery and resolution planning requirements (for example, additional capital requirements and additional leverage ratio requirements etc.). Globally systemically important banks shall also comply with the total loss-absorbing capacity (TLAC) requirements as discussed in Question 26 below.

In 2021, PBoC and CBIRC (now NFRA) announced 19 systematically important banks based on their evaluation according to the *Evaluation Measures on Systematically Important Banks*, consisted of 6 state-owned commercial banks, 9 joint stock commercial banks, and 4 city commercial banks. In 2023, PBoC and NFRA updated the above list of systematically important banks by adding 1 city commercial bank.

## 23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

PBoC and NFRA can order in the case of a violation of banking regulations within their jurisdiction. The specific sanctions vary depending on the nature and seriousness of the violation. Typical sanctions include fines, order of re-organization or being taken over by NFRA, suspension of business and revocation of the banking license. The directors and senior management staff and other staff directly responsible for the violation may also incur legal liabilities.

## 24. What is the resolution regime for banks?

According to the *Interim Measures for the Implementation of Recovery and Resolution Plans of Banking and Insurance Institutions* (the "Recovery and Resolution Measures"), commercial banks with the assets reaching to a certain level as set out in the Recovery and Resolution Measures are required to formulate their own recovery and resolution plans to address capital and liquidity shortfalls and restore the ability to continue as a going concern in the event of a material risk scenarios. Such recovery and resolution plans shall be approved by the banks' board of directors prior to the submission to NFRA for final approval. The Recovery and Resolution Measures also provide the principle stipulations to guide commercial banks in formulating the plans.

On a related issue, China has not yet established a separate regulation regime governing the bankruptcy of financial institutions (including banks). There was a proposal from CBRC (now NFRA) on legislating the bankruptcy for banking financial institutions in 2008 but no further development progressed since the initial proposal. In the absence of a bankruptcy regulation specifically applicable to commercial banks, stipulations regarding bankruptcy and restructuring in the *PRC Enterprise Bankruptcy Law* promulgated by the Standing Committee of the National People's Congress also apply to banks, unless provided otherwise.

## 25. How are client's assets and cash deposits protected?

According to the *PRC Commercial Banking Law*, in case of the bankruptcy and liquidation of a commercial bank, payment of the principal and interest of deposits shall be given priority after the liquidation expenses, the wages owed to the employees and labour insurance premiums have been paid. In addition, when a commercial bank has or is likely to have a credit crisis that seriously affects the interests of depositors, NFRA may take over the bank and implement effective measures to help the failing bank to resume its normal operation capabilities.

On the other hand, the State Council promulgated the *Deposit Insurance Regulations* (the "DIR") in 2015, according to which, financial institutions taking deposits from the public (including commercial banks, rural cooperative banks and rural credit cooperatives) are required to purchase deposit insurance from deposits insurance funds management institutions. When the commercial bank is taken over by the insurance funds management institution or its bankruptcy application is accepted by the competent court, the depositor is entitled to be reimbursed for the insured deposits subject to

certain limitations as stipulated by the DIR. The maximum reimbursement amount (inclusive of the principal and interest incurred from the deposit) is RMB500,000 per depositor in one commercial bank. Any unpaid amount more than the maximum payout can be claimed from the liquidation of assets of the failing bank.

**26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?**

There has been no equivalence to the EU bail-in tool under the current PRC law regime. However, commercial banks are allowed to self-rescue by utilizing their proprietary assets or raising funds from the market. For example, the funds for self-rescue can be their proprietary funds or assets, or generated from the disposal of shareholders' equity, or debt to equity swap (not a mandatory obligation), or the introduction of strategic investment etc.

**27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?**

According to the *Administrative Measures on Total Loss-absorbing Capacity of Global Systemically Important Banks* jointly promulgated by PBoC, CBIRC (now NFRA) and the Ministry of Finance, for globally systemically important banks (currently consist of the Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the China Construction Bank and the Bank of Communications), starting from 1 January 2025, the TLAC risk-weighted ratio and the TLAC leverage ratio of shall not be lower than 16% and 6%, respectively. Starting from 1 January 2028, the relevant ratios shall not be lower than 18% and 6.75%, respectively.

**28. In your view, what are the recent trends in bank regulation in your jurisdiction?**

China's banking sector continues to grow, and China has been opening its financial sectors and advances its modernization process, despite the various risks and uncertainties associated with the complex and volatile

international situation. The 14<sup>th</sup> Five-Year Plan sets out the goal of establishing a highly adaptive, competitive, and inclusive modern financial system which can effectively support the real economy. On the other hand, Chinese regulators have been further enhancing the regulation and supervision on the banking sector in response to these new challenges, for example, new regulations have been rolled out which require banks, financial holding companies, and the other banking financial institutions to improve the corporate governance, as well as prevent and resolve risks in major areas (e.g., non-performing asset disposal, real estate financing, etc.). With robust development in fintech and digitalization, increasing oversight has been placed on data security, privacy, and customer rights protection. We expect the Chinese regulators will continue to emphasize on macro-prudence in regulating the banking sector to prevent systematic risks, while taking gradual and incremental steps to advance the industry modernization and innovation.

**29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?**

In the internet era, new technologies, while more intensively applied in the financial sectors, increases the financial risks in several aspects than before:

1. diversified online lending platforms facilitates small personal loans and encourages excessive consumptions (in particular for young people) which may lead to the deviation of finance from serving the real industry;
2. giant fintech companies may abuse its dominant position to eliminate or restrict fair market competition thereby affecting the financial sectors;
3. risk for the infringement of privacy and personal information insecurity increases; and
4. information technologies such as big data, cloud computing, block chain, while improving the efficiency and convenience for providing financial services, may also facilitate the transmission of financial risks among different places, industries and institutions.

China has been and will need to continue to make efforts in coping with these challenges while encouraging the financial innovation.



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