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To: Legislative Affairs Commission of the Standing Committee of the National People's Congress, No.1 Qianmenxi Dajie, Xicheng District, Beijing 100805
全国人民代表大会常务委员会法制工作委员会，北京市西城区前门西大街 1 号，邮编：100805

Enterprise Bankruptcy Law of the People's Republic of China (Draft Amendments)
(Second Reading Draft)

《中华人民共和国企业破产法（修订草案）（二次审议稿）》

1. BACKGROUND

背景

- 1.1 The Asia Securities Industry and Financial Markets Association ("**ASIFMA**")¹ and the International Capital Market Association ("**ICMA**")² have jointly submitted the comments

¹ ASIFMA is an independent, regional trade association with over 150-member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

ASIFMA 是一个独立的区域性行业协会，会员基础广泛，由银行、资产管理公司、律师事务所和市场基建服务供应商等 150 多家来自买方和卖方市场的领先金融机构和专业机构组成。我们在金融行业拥有共同的利益，即促进在亚洲建立发展一个流动性强并具有深度和广度的资本市场。ASIFMA 认为拥有一个稳定、创新、竞争和高效的亚洲资本市场对于支持亚洲地区的经济增长是十分关键的。我们通过汇聚集体力量和统一行业发声，围绕关键问题推动形成共识、提出解决方案建议并促成变革。我们采取的努力包括与监管机构和交易所进行磋商、制定统一的行业标准、通过政策文件推动改善市场，并降低在地区内开展业务的成本。ASIFMA 通过[全球金融市场协会（GFMA）](#)与美国的[证券业与金融市场协会（SIFMA）](#)及[欧洲的金融市场协会（AFME）](#)形成联盟，共同提供全球最佳行业实践及标准，为区域发展作贡献。

² ICMA is a not-for-profit membership association promoting well-functioning cross-border capital markets. ICMA has offices in Zurich, London, Paris, Brussels and Hong Kong, serving over 630 member firms in 71 jurisdictions globally. Its members include private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo

to the first reading draft of *PRC Enterprise Bankruptcy Law (Draft Amendments)* ("**1st Draft Amendments**") on 10 October 2025 ("**2025 Submission**"). We appreciate the opportunity to provide further joint comments on the second reading draft of *PRC Enterprise Bankruptcy Law (Draft Amendments)* ("**2nd Draft Amendments**") released by the Standing Committee of the National People's Congress ("**NPCSC**") in August 2026, as a supplement to our 2025 Submission.

亚洲证券业与金融市场协会（“**ASIFMA**”）和国际资本市场协会（“**ICMA**”）于 2025 年 10 月 10 日联合就《中华人民共和国企业破产法（修订草案）》一审稿（“**修订草案一审稿**”）提交了意见（“**2025 年意见**”）。我们感谢有机会就全国人民代表大会常务委员会（“**人大常委会**”）于 2026 年 8 月公布的《中华人民共和国企业破产法（修订草案）》二审稿（“**修订草案二审稿**”）进一步联合提出意见，作为对 2025 年意见的补充。

1.2 ASIFMA and ICMA and their respective members welcome the continued development of the bankruptcy legal framework in the People's Republic of China ("**PRC**" or "**China**") as reflected in the 2nd Draft Amendments. These proposed changes demonstrate

and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.

国际资本市场协会（ICMA）是一家致力于推动跨境资本市场良好运行的非营利性会员制组织。ICMA 在苏黎世、伦敦、巴黎、布鲁塞尔和香港设有办事处，为全球 71 个司法管辖区的 630 余家会员机构提供服务。其会员涵盖私营与公共部门发行机构、银行及证券交易商、资产和基金管理机构、保险公司、律师事务所、资本市场基础设施服务商及中央银行。协会制定行业驱动的标准与建议，重点聚焦三大核心固定收益市场领域：一级市场、二级市场、回购与抵押品，并贯穿可持续金融、金融科技与数字化等跨领域主题。ICMA 与监管及政府机构密切合作，助力确保金融监管体系支撑稳定高效的资本市场。

ICMA plays a leading role in supporting efficient and resilient global repo and collateral markets. It sponsors the Global Master Repurchase Agreement (GMRA), the standard legal framework for cross-border repo transactions, and, through its European Repo and Collateral Council (ERCC) and Global Repo and Collateral Forum (GRCF), works closely with market participants to promote well-functioning securities finance markets.

ICMA 在助力高效、具备韧性的全球回购与抵押品市场方面发挥引领作用。ICMA 主导制定《全球主回购协议》（GMRA），该协议是跨境回购交易的标准法律框架；同时，ICMA 通过其欧洲回购与抵押品委员会和全球回购与抵押品论坛，与市场参与者密切合作，推动证券融资市场良好运行。

In April 2026, the China Repo Committee was established to reflect the increasing importance of the Chinese repo market within the global fixed income landscape, supported by ongoing market and regulatory developments that promote greater international participation. The Committee serves as a dedicated forum for market participants to discuss developments relating to China's repo market, with a particular focus on cross-border activity, and to share perspectives and practical experience to help shape market practice.

2026 年 4 月，中国回购委员会正式成立，反映出中国回购市场在全球固定收益市场中的重要性日益提升。这一发展得益于相关市场及监管框架的不断完善，促进了更广泛的国际参与。作为市场参与者的专门交流平台，该委员会汇聚各类市场参与者，就中国回购市场相关发展开展讨论，重点关注跨境活动，并分享观点与实践经验，以助力塑造市场实践。

constructive and forward-looking efforts to further align China's insolvency regime with internationally recognised standards, and to support a more transparent, predictable and market-oriented legal environment. The 2nd Draft Amendments mark an important step in strengthening legal certainty and promoting stability in China's financial markets. We also note positively that the 2nd Draft Amendments do not introduce any provision that expressly repudiates or reverses the supportive direction on close-out netting reflected in the 1st Draft Amendments. In particular, Article 52's express recognition that the effectiveness of central clearing and settlement, and close-out netting will not be suspended, invalidated or unwound by reason of a party to the relevant transaction entering into bankruptcy proceedings is a welcome and meaningful development. This clarification will help strengthen the enforceability of close-out netting, safeguard the legitimate rights and expectations of both domestic and international market participants, and further enhance the resilience of China's financial system while reducing capital risks.

ASIFMA 和 ICMA 及其各自成员欢迎修订草案二审稿所体现的中华人民共和国（“中国”）破产法律框架的持续发展。这些拟议修订具有建设性且具备前瞻性，旨在推动中国破产制度进一步与国际公认标准接轨，并促进建立一个更加透明、可预测和市场化的法律环境。修订草案二审稿是朝着增强法律的确定性和营造稳定中国金融市场所迈出的重要一步。我们也欣然看到，修订草案二审稿未否定或推翻修订草案一审稿中有关支持终止净额结算的条款。特别是，第五十二条明确承认集中清算、结算以及终止净额结算的效力不会因交易一方进入破产程序而中止、无效或撤销，这是一项值得欢迎且具有意义的发展。这一明确规定将有助于加强终止净额结算的可执行性，保障境内外市场参与者的合法权利和预期，在降低资本风险的同时，进一步增强了中国金融体系的复原力。

- 1.3 This submission outlines our observations and recommendations on certain provisions of the 2nd Draft Amendments. Individual members may also provide separate comments. Our proposed textual amendments are set out in the Appendix to this submission.

本函概述了我们对修订草案二审稿中若干条款的意见和建议。我们各成员也可能单独提出意见。我们拟议的对于文字的修订载于本函附录中。

- 1.4 Unless otherwise specified, references to an "Article" refer to the relevant article in the 2nd Draft Amendments.

除非另有说明，凡提及“条款”，均指修订草案二审稿中的相关条款。

2. **COMMENTS ON ARTICLE 52**

对第五十二条的意见

- 2.1 Article 52 of the 2nd Draft Amendments provides that
修订草案二审稿第五十二条规定：

"When engaging in financial transactions, centralised clearing and settlement conducted through a central counterparty in accordance with law, close-out netting conducted in

accordance with law, shall not be suspended, invalidated or unwound by reason of any party to the transactions entering into bankruptcy proceedings."

“从事金融交易，依法通过中央对手方开展的集中清算、结算，以及依法进行的终止净额结算，不因交易任何一方进入破产程序而中止、无效或者撤销。”

- 2.2 We highly commend the introduction of a safe harbour for close-out netting as reflected in Article 52. In our view, compared with Article 58 of the 1st Draft Amendments³, the new Article 52 has extended and strengthened the statutory protection for close-out netting. We note that the protection is now framed by reference to financial transactions, which we understand will capture repurchase transactions ("repo") and securities lending transactions to be entered into by market participants under widely-used and recognised master agreements, including without limitation the Global Master Repurchase Agreement ("GMRA") and the Global Master Securities Lending Agreement ("GMSLA"). We would, however, like to clarify the meaning of a "lawfully adopted" close-out netting mechanism under this Article 52 – it would be very helpful if further clarification can be provided through secondary legislation and/or regulatory guidance.

我们高度赞赏第五十二条中引入终止净额结算安全港。我们认为，与修订草案一审稿第五十八条相比，修订草案二审稿第五十二条扩大并加强了对终止净额结算的法定保护。我们注意到，该保护的适用对象表述为金融交易，我们理解将涵盖市场参与者在广泛使用且经认可的主协议（包括但不限于全球回购主协议（“GMRA”）和全球证券借贷主协议（“GMSLA”））项下达成的回购交易（“回购”）和证券借贷交易。然而，我们希望进一步明确本第五十二条下“依法进行”的终止净额结算的含义。如能在次级立法和 / 或监管指引层面就此作出进一步澄清，将不胜裨益。

- 2.3 Meanwhile, we note that Article 52 no longer operates merely as a carve-out from specified rescission powers of the administrator under particular provisions of the Enterprise Bankruptcy Law. Instead, it provides a general protection against suspension, invalidation or unwinding upon the commencement of bankruptcy proceedings. Such broader approach will enhance legal certainty, support the enforceability of close-out netting arrangements and reduce systemic and counterparty credit risk in China's financial markets.

同时，我们注意到，第五十二条不再仅用于对《企业破产法》中特定条款项下管理人特定撤销权的排除适用。相反，其提供了在破产程序启动时防止金融交易被中止、无效或撤销

³ Article 58 of the 1st Draft Amendments provides that, *"The provisions of Article 22 and Articles 43 to 45 do not apply to any qualified financial transaction for which close-out netting has been lawfully adopted. The scope of eligible financial transactions shall be stipulated by laws or administrative regulations or determined by financial regulatory authority under the State Council."*

修订草案一审稿第五十八条规定：“依法采取终止净额结算的合格金融交易，不适用本法第二十二條、第四十三條至第四十五條的规定。合格金融交易范围由法律、行政法规规定或者国务院金融管理部门确定。”

的一般性保护。采用这一更宽泛的措辞，将进一步增强法律确定性，支持终止净额结算安排的可执行性，并降低中国金融市场中的系统性风险和交易对手信用风险。

- 2.4 To eliminate the potential conflict with the safe harbour protection under the *PRC Futures and Derivatives Law* (《中华人民共和国期货和衍生品法》) (the "**FDL**"), and to provide protection for collateral arrangements and enforcement relating to financial transactions, we respectfully propose to revise Article 52 as follows –

为消除该条款与《中华人民共和国期货和衍生品法》（“期衍法”）项下安全港保护条款可能存在的冲突，并为与金融交易相关的履约保障安排及执行提供保护，我们谨建议对第五十二条做如下修订：

"When engaging in financial transactions, centralised clearing and settlement conducted through a central counterparty in accordance with law, close-out netting conducted in accordance with law, and collateral arrangements provided by way of pledge or otherwise in connection with the financial transactions shall not be suspended, invalidated or unwound by reason of ~~any party to~~ any party participating in the transactions entering into bankruptcy proceedings. Where any party participating in the financial transactions enters into bankruptcy proceedings, Articles 98 and 150 hereunder shall not apply to any collateral arrangements provided by way of pledge or otherwise in connection with the financial transactions."

“从事金融交易，依法通过中央对手方开展的集中清算、结算，依法进行的终止净额结算，以及与金融交易相关的、通过质押等方式所提供的履约保障安排，不因参与交易的任何一方进入破产程序而中止、无效或者撤销。在参与金融交易的任何一方进入破产程序的情况下，本法第九十八条、第一百五十条的规定不适用于与金融交易相关的、通过质押等方式所提供的任何履约保障安排。”

- 2.5 A more detailed explanation of our reasoning is set out in the following paragraphs.
我们在下文为我们的修订建议提供了更为详尽的解释。

Comment #1: Extending Safe Harbor Protection Beyond Direct Trading Parties

建议一：将安全港保护扩展至直接交易方之外

- 2.6 We note that such safe harbour protection under Article 52 appears to be narrower than the similar protection under FDL. According to Article 37 of the FDL, "*Centralised settlement conducted in accordance with law shall not be suspended, invalidated or unwound by reason of any party participating in the settlement entering into bankruptcy proceedings.*" Such provision extends the protection beyond the direct trading parties to other participants involved in the relevant transaction, such as custodians, brokers, bond depositories and other entities that hold, control or otherwise deal with assets posted in respect of the relevant financial transactions. By contrast, Article 52 of the 2nd Draft Amendments refers only to "any party to the transaction" entering into bankruptcy proceedings. This may conflict with Article 37 of the FDL and create uncertainty, *i.e.* where the insolvency proceedings concern participants involved in the relevant financial transaction (such as a margin deposit bank, a custodian, a clearing member, or an

infrastructure participant) rather than a direct trading party, the safe harbour provided under Article 37 of the FDL would apply to such participants while the safe harbour provided under Article 52 would not.

我们注意到，第五十二条项下的安全港保护范围似乎较期衍法项下的同类保护更为狭窄。根据期衍法第三十七条，“依法进行的集中结算，不因参与结算的任何一方依法进入破产程序而中止、无效或者撤销。”该条款将保护范围扩展至直接交易方之外的其他参与相关交易的参与方，例如托管人、经纪商、债券登记托管机构，以及其他持有、控制或以其他方式处理金融交易相关资产的实体。相比之下，修订草案二审稿第五十二条仅提及“交易任何一方”进入破产程序。这种表述将与期衍法第三十七条冲突并造成不确定性，即在破产程序涉及参与相关金融交易的保证金存管银行、托管机构、清算会员或基础设施等参与方而非直接交易方时，期衍法第三十七条提供的安全港适用于这些参与方，而第五十二条所提供的安全港则不适用于这些参与方。

- 2.7 To avoid inconsistency with the FDL and ensure coherent treatment across the PRC financial market legal framework, we respectfully propose revising the reference of "*any party to the transactions*" under Article 52 to "*any party participating in the transactions*". 为避免与期衍法不一致，并确保中国金融市场法律框架下处理方式的协调一致，我们谨建议将第五十二条下“交易任何一方”修改为“参与交易的任何一方”。

Comment #2: Inclusion of Collateral Arrangements

建议二：纳入履约保障安排

- 2.8 Consistent with the position set out in our 2025 Submission, we respectfully recommend that collateral arrangements provided by way of pledge or otherwise in connection with financial transactions should be included under Article 52, which should not be adversely affected by the bankruptcy of any party participating in the underlying financial transactions or the other articles relating to suspension of security rights under the Enterprise Bankruptcy Law. Specifically, financial collateral should be carved out from the application of Articles 98 (on moratorium stay in the process of re-organisation) and 150 (on enforcement of priority rights in liquidation).

与我们在 2025 年意见中阐明的立场一致，我们谨建议将与金融交易相关的、通过质押等方式所提供的履约保障安排纳入第五十二条项下，从而确保其不会因基础金融交易任何一方进入破产程序，或因《企业破产法》中有关担保权暂停行使的其他规定，而受到不利影响。具体而言，应将金融担保品明确排除于第九十八条（关于重整程序中的暂停行使）和第一百五十条（关于清算中优先受偿权的行使）的适用范围之外。

- 2.9 The timely enforceability of collateral arrangements relating to financial transactions is essential to enable rapid liquidation, accurate valuation, and overall market stability. Without clear statutory recognition, the effectiveness of these risk mitigation mechanisms could be compromised, creating legal uncertainty that is inconsistent with China's margining framework and international prudential standards. Collateral under financial transactions are often provided by way of title transfer or through the creation of a security interest. The prompt enforceability of title transfer-based collateral arrangements is

addressed under the existing PRC legal framework, *i.e.* the close-out netting regime. However, security interest-based collateral arrangements still lack express statutory protection ensuring that such arrangements can be enforced in a timely manner without delay due to a party's insolvency. Accordingly, it is recommended to extend the safe harbour protection under Article 52 to expressly cover the collateral arrangements provided by way of pledge.

与金融交易相关的履约保障安排能够及时执行，对于快速清算、准确估值和整体市场稳定而言至关重要。如这一风险缓释机制未在法律层面得到明确认可，其有效性可能受到损害，并由此产生与中国保证金制度及国际审慎监管标准不一致的法律不确定性。金融交易项下的履约保障通常通过所有权转让或设立担保权益的方式提供。在现行中国法律框架下，以所有权转移为基础的履约保障安排的及时执行已有相应法律依据 – 即终止净额结算安排。然而，就基于担保权益的履约保障安排而言，其目前仍缺乏明确的法定保护，以确保对履约保障安排能够及时执行，不受交易一方进入破产程序而延迟。因此，我们建议将第五十二条项下的安全港保护明确扩展至通过质押方式提供的履约保障安排。

- 2.10 Meanwhile, we note that Article 98 generally requires the exercise of security rights over specific property of the debtor to be suspended during the reorganization period (subject to certain exceptions), and permits a secured creditor to resume enforcement only with prior court approval – for example, if it can be established that the collateral is not necessary for the re-organisation, the secured creditor may apply to the people's court for resumption of the enforcement of its security rights. Pursuant to Article 150, a secured party with a security interest over specific property of the debtor may, at any time, request the administrator to exercise its priority right in respect of that specific property, and the administrator shall promptly liquidate and distribute the relevant property. Article 150 further restricts the disposal of certain collateral for the benefit of an individual creditor where such disposal would reduce the value of the bankruptcy estate available to other creditors. These provisions set out stay restrictions and/or application procedures for collateral enforcement. Such restrictions and/or prior procedures may create uncertainty as to whether a secured creditor can promptly dispose of the relevant collateral. This is particularly significant for financial institutions like banks, as the ability to liquidate collateral without delay is often necessary for recognising its risk-mitigating effect in regulatory capital requirement calculations, which may have potential implications for regulatory capital charges and the transaction costs associated with the relevant financial transactions.

同时，我们注意到，第九十八条概括性地要求在重整期间暂停对债务人特定财产行使担保权（若干例外情形除外）。并且，该条仅允许担保权人在事先取得法院批准的情况下，方可恢复执行担保权——例如，如能够证明担保物并非重整所必需，担保权人可向人民法院申请恢复行使担保权。根据第一百五十条，对债务人的特定财产享有担保权的权利人可随时要求管理人就该特定财产行使其优先受偿的权利，管理人应及时变价并分配相关财产。第一百五十条进一步限制在处分担保物会减少可供其他债权人分配的破产财产价值的情况下，为个别债权人的利益处分某些担保物。上述条款规定了对担保品处分的暂缓限制和/

或申请程序。此类限制和/或前置程序可能对担保权人及时处置相关担保物的能力造成不确定性。对于银行等金融机构而言，这一点尤为重要，原因在于担保物能够不受延迟地变现，通常是其在监管资本要求计算中确认该担保物风险缓释效果的必要条件，并可能对相关金融交易的监管资本计提和交易成本产生潜在影响。

- 2.11 We strongly recommend that Articles 98 and 150 be expressly excluded from applying to collateral arrangements relating to financial transactions. Under Basel capital adequacy standards and corresponding PRC prudential rules, qualifying master netting agreements must grant counterparties the ability to *promptly* realise (i.e. liquidate) collateral upon an insolvency event. Excluding financial collateral enforcement from the stay and restrictions imposed by Articles 98 and 150 is in line with such standards.

我们强烈建议明确规定，第九十八条及第一百五十五条不适用于与金融交易相关的履约保障安排。根据巴塞尔资本框架下的资本充足率标准以及中国相应审慎监管规则的要求，合格的净额结算主协议应当赋予交易对手在破产事件发生时将担保品及时变现的能力。只有将金融担保品的处分排除在第九十八条及第一百五十五条所规定的暂缓措施和相关限制之外，方能满足上述监管标准的要求。

We welcome further opportunity to discuss the issues set out in this letter with the NPC. If you have further questions or would otherwise like to follow up, please contact Philippe Dirckx, ASIFMA's Managing Director and Head of Fixed Income, at pdirckx@asifma.org, Mushtaq Kapasi, ICMA's Managing Director and Chief Representative, Asia-Pacific, at mushtaq.kapasi@icmagroup.org or Ricco Zhang, ICMA's Senior Director, Asia-Pacific, at ricco.zhang@icmagroup.org. We would also be happy to meet with you to discuss this letter if you deem it appropriate.

我们欢迎有机会与全国人大讨论本函所述的问题。如果您有进一步的问题或希望跟进相关事宜，请通过 pdirckx@asifma.org 联系 ASIFMA 的 Philippe Dirckx（董事总经理 - 固定收益主管），通过 mushtaq.kapasi@icmagroup.org 联系 ICMA 的 Mushtaq Kapasi（亚太区董事总经理，首席代表）或通过 ricco.zhang@icmagroup.org 联系 ICMA 的张顺荣（亚太区高级总监）。如果您认为合适，我们也很乐意与您会面对讨论本函的具体内容。

Sincerely,

谨此：

**Asia Securities Industry & Financial Markets
Association (ASIFMA)**
亚洲证券业与金融市场协会（ASIFMA）

**International Capital Market Association
(ICMA)**
国际资本市场协会（ICMA）

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Senior Director
Asia-Pacific
亚太区资深总监

Appendix – Proposed Amendments to the 2nd Draft Amendments

附录–对修订草案二审稿的文件修订建议

Article Reference 条文序号	Proposed amendments in Chinese 提议做出的中文修订	Proposed amendments in English 提议做出的英文修订
52	从事金融交易，依法通过中央对手方开展的集中清算、结算，依法进行的终止净额结算，<u>以及与金融交易相关的、通过质押等方式所提供的履约保障安排</u>，不因<u>参与交易的任何一方</u>进入破产程序而中止、无效或者撤销。<u>在参与金融交易的任何一方进入破产程序的情况下，本法第九十八条、第一百五十条的规定不适用于与金融交易相关的、通过质押等方式所提供的任何履约保障安排。</u>	When engaging in financial transactions, centralised clearing and settlement conducted through a central counterparty in accordance with law, close-out netting conducted in accordance with law, <u>and collateral arrangements provided by way of pledge or otherwise in connection with the financial transactions</u> shall not be suspended, invalidated or unwound by reason of any party to <u>any party participating in the</u> transactions entering into bankruptcy proceedings. <u>Where any party participating in the financial transactions enters into bankruptcy proceedings, Articles 98 and 150 hereunder shall not apply to any collateral arrangements provided by way of pledge or otherwise in connection with the financial transactions.</u>