

Oct 10, 2025  
2025年10月10日

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)**  
**《中华人民共和国企业破产法（修订草案）》**

1. **BACKGROUND**  
背景

1.1 The Asia Securities Industry and Financial Markets Association ("**ASIFMA**")<sup>1</sup> and the International Capital Market Association ("**ICMA**")<sup>2</sup> appreciate the opportunity to jointly

---

<sup>1</sup> 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。我们通过汇集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。

<sup>2</sup> ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris, Brussels and Hong Kong, serving around 630 member firms in 71 jurisdictions globally. Among its members are private and official sector issuers, banks, broker-dealers, asset managers, pension funds, insurance companies, market infrastructure providers, central banks & law firms. It provides industry-driven standards and recommendations, prioritising three core fixed income market areas – primary, secondary, repo and collateral: with two cross-cutting themes of

provide comments on the *PRC Enterprise Bankruptcy Law (Draft Amendments)* ("**Draft Amendments**") released by the Standing Committee of the National People's Congress ("**NPCSC**") on 12 September 2025.

亚洲证券业与金融市场协会（“**ASIFMA**”）和国际资本市场协会（“**ICMA**”）感谢有机会联合就全国人民代表大会常务委员会（“**人大常委会**”）于 2025 年 9 月 12 日公布的《中华人民共和国企业破产法（修订草案）》（“**修订草案**”）提出意见。

- 1.2 ASIFMA and ICMA and their respective members welcome the publication of the Draft Amendments and commend the substantial efforts of NPCSC and other relevant authorities in the People's Republic of China ("**PRC**" or "**China**") to propose comprehensive amendments to the currently effective Enterprise Bankruptcy Law issued in 2007 with the aim to modernise the state's bankruptcy framework. These proposed changes reflect a forward-looking approach that aligns China's legal infrastructure with global standards, promoting a transparent, predictable, and market-oriented bankruptcy regime. The Draft Amendments represent a significant step toward enhancing legal certainty and fostering a stable financial environment. By incorporating mechanisms widely recognised in international markets, in particular around the close-out netting mechanism, the amendments will help safeguard the legitimate rights of both domestic and international stakeholders and strengthen confidence in China's financial system.

ASIFMA 和 ICMA 及其各自成员欢迎修订草案的公布，并赞扬人大常委会和中华人民共和国（“**中国**”）其他有关部门所做出的巨大努力，从而全面修订现行有效的 2007 年颁布

---

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）致力于推动跨境资本市场的良好运行。作为一家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 个司法管辖区的约 630 家会员机构提供服务。其会员涵盖私营与官方发行机构、银行、经纪交易商、资产管理公司、养老基金、保险公司、市场基础设施服务商、中央银行及律师事务所。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、金融科技与数字化两大跨领域主题。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。

Since the early 1990's, ICMA has played a significant role in promoting the interests and activities of the international repo market, and of the product itself. This includes the development of the [Global Master Repurchase Agreement \(GMRA\)](#), which has become the principal master agreement for cross-border repos globally, as well as for many domestic repo markets. The ICMA [European Repo and Collateral Council \(ERCC\)](#) was established in 1999 as the main representative body for the cross-border repo and collateral market in Europe. In September 2022, in recognition of the increasingly global nature of much of ICMA's repo and collateral work, ICMA established the Global Repo and Collateral Forum (GRCF).

自 20 世纪 90 年代初起，ICMA 在推动国际回购市场及其产品发展方面持续发挥重要作用，其中包括制订已成为全球跨境回购及诸多本土回购市场主协议的[《全球主回购协议》（GMRA）](#)。1999 年，ICMA 设立[欧洲回购与抵押品委员会（ERCC）](#)，作为欧洲跨境回购与抵押品市场的主要代表机构。随着 ICMA 在回购与抵押品领域的工作日益全球化，2022 年 9 月协会正式成立全球回购与抵押品论坛（GRCF）。

的《企业破产法》，以实现国家破产制度的现代化。这些拟议的修订具有前瞻性，推进中国的法律基础设施接轨全球标准，并促进建立一个透明、可预测和市场化的破产机制。修订草案是朝着增强法律的确信性和营造稳定金融环境所迈出的重要一步。通过纳入国际场所广泛认可的机制（特别是终止净额结算机制），此次修订将有助于保障国内和国际利益相关者的合法权益，并增强其对中国金融体系的信心。

- 1.3 This submission outlines our observations and recommendations on certain provisions of the 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中若干条款的意见和建议。我们各成员也可单独提出意见。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 Draft Amendments.

除非另有说明，凡提及“条款”，均指修订草案中的相关条款。

## 2. COMMENTS ON ARTICLE 58

对第五十八条的意见

- 2.1 Article 58 of the Draft Amendments provides that

修订草案第五十八条规定：

*"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."*

“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条、第四十三条至第四十五条的规定。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。”

- 2.2 We welcome the introduction of the concept of qualified financial transactions ("QFTs") under Article 58 and the confirmation that QFTs lawfully adopting close-out netting are exempt from the bankruptcy administrator's "cherry-picking"<sup>3</sup> rights under Article 22 and claw-back powers under Articles 43 to 45.<sup>4</sup>

---

<sup>3</sup> This refers to the insolvency administrator's right to elect between continuance or termination of outstanding contracts' performance.

指破产管理人在未履行完毕的合同的继续履行或终止之间进行选择的权利。

<sup>4</sup> This covers the insolvency administrator's to revoke certain transactions that occurred within 1 year or 6 months(lookback period depending on different scenarios involved) before the bankruptcy petition is accepted by the court.

该权利包括破产管理人撤销破产申请受理前一年或六个月（回溯期视不同情况而定）内进行的特定交易的权利。

我们欢迎在第五十八条下引入合格金融交易的概念，并确认依法采用终止净额结算的合格金融交易不受破产管理人在第二十二條下的挑拣履行权和第四十三條至第四十五條下的撤销权的限制。

- 2.3 We highly commend the flexible approach adopted for identifying QFTs, as it allows financial regulators and secondary legislation the necessary latitude to further define and expand the list of QFTs, which could now potentially cover repurchase transactions ("repo") and securities lending transactions to be entered into by market participants under the master agreements, including without limitation the Global Master Repurchase Agreement ("**GMRA**") and the Global Master Securities Lending Agreement ("**GMSLA**"). 我们高度赞赏对合格金融交易采取灵活的认定方法，从而给予金融监管机构和次级立法必要的空间来进一步界定和扩展合格金融交易的范围。具体而言，合格金融交易的范围目前可能涵盖市场参与者在主协议（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和证券借贷交易。
- 2.4 Historically, the *PRC Futures and Derivatives Law* (《中华人民共和国期货和衍生品法》) (the "**FDL**"), which came into effect on 1 August 2022, formally recognises the concept of a "single agreement" and provides statutory protection for close-out netting, shielding it from interference under the Enterprise Bankruptcy Law. The FDL applies to two categories of transactions: (a) "futures transactions", defined as those involving futures contracts or standardised option contracts; and (b) "derivatives transactions", defined as transactions other than futures transactions, involving one or more non-standardised option contracts, swap contracts, or forward contracts. 历史上，于 2022 年 8 月 1 日生效的《中华人民共和国期货和衍生品法》（“**期衍法**”）正式承认了“单一协议”的概念，并为终止净额结算提供了法律保护，使其免受《企业破产法》下特定条款的限制。期衍法适用于两大类交易：（1）“期货交易”，指以期货合约或标准化期权合约作为交易标的的交易；以及（2）“衍生品交易”，指期货交易以外的，以非标准化期权合约、互换合约、远期合约及其组合为交易标的的交易。
- 2.5 However, transactions conducted under GMRA (repos) and GMSLA (securities lending transactions) do not fall within the scope of either "futures transactions" or "derivatives transactions" as defined under the FDL. As a result, the statutory protections afforded by the FDL do not extend to repo and securities lending transactions governed by these master agreements.<sup>5</sup> This has given rise to market concerns regarding the enforceability of close-out netting in the context of such transactions.

---

<sup>5</sup> However, we learned from the market that PRC legislators were of the view that the effect of close-out netting could be generally confirmed under PRC law while the FDL as a matter of legislative practice could only cover matters in the domain of futures and derivatives.

然而，我们从市场上了解到，中国立法机关认为，终止净额结算的效力可在中国法律下概括性地得以确认，而期衍法出于立法实践问题，仅可涵盖期货与衍生品领域的事项。

然而，通过 GMRA（回购交易）和 GMSLA（证券借贷交易）进行的交易不属于期衍法下的“期货交易”或“衍生品交易”。因此，期衍法所提供的法律保护并不会延及这些主协议下所进行的回购交易和证券借贷交易，这一度引发了市场对此类交易中终止净额结算可执行性的担忧。

- 2.6 Market practice in this area remains inconsistent. Some participants, as we understand, rely on relevant notices released by the China Banking and Insurance Regulatory Commission ("**CBIRC**")<sup>6</sup> to take comfort that close-out netting arrangements for transactions conducted in the "financial market" (金融市场), which would encompass repo and securities lending, are not subject to the limitations imposed by the Enterprise Bankruptcy Law. Nonetheless, the absence of a clear and unified legal framework continues to create uncertainty, potentially undermining confidence in the enforceability of netting mechanisms for these critical financial instruments.

针对于这一问题的市场实践并不统一。据我们了解，部分市场参与者以中国银行保险监督管理委员会（“**银保监会**”）的相关通知为依据，认为包含回购与证券借贷在内的“金融市场”交易的终止净额结算不受《企业破产法》下特定条款的限制。然而，缺乏明确和统一的法律框架会持续引发不确定性，进而可能损害对使用此类关键金融工具相关的净额结算机制可执行性的信心。

- 2.7 That said, the codification of Article 58 in the Draft Amendments, together with the anticipated issuance of designations of QFTs, is expected to significantly alleviate market concerns regarding the enforceability of close-out netting in relation to repo and securities lending transactions. These developments represent a meaningful step toward enhancing legal certainty and aligning the treatment of such transactions with international standards and market expectations.

尽管如此，将第五十八条列入修订草案，伴随着对于合格金融交易范围的确定，将有望在极大程度上缓解市场对回购和证券借贷交易中终止净额结算可执行性的担忧。这是朝着增强法律确定性并促使对于此类交易的处理符合国际标准和市场预期方向迈出的有意义的一步。

- 2.8 However, to ensure QFTs function without insolvency-related interference and for clarity, **we recommend explicitly excluding Articles 56 and 107 from applying to QFTs and related collateral arrangements.**

然而，为确保合格金融交易的运作不受与破产有关程序的干扰，并进一步清晰相关规则，我们建议明确规定**第五十六条**和**第一百零七条**将不适用于合格金融交易和相关的**抵押品安排**。

---

<sup>6</sup> In particular, the *Notice on Issues Concerning the Measurement Rules for the Default Risk Assets of Derivatives Counterparties (No. 124 [2021] of the CBIRC General Office)* (the "**CBIRC Notice**"), together with the explanatory press note in respect of the CBIRC Notice (the "**Explanatory Note**").

特别是，《关于衍生工具交易对手违约风险资产计量规则有关问题的通知》（“**银保监会通知**”）以及中国银保监会有关部门负责人就银保监会通知答记者问（“**解释性说明**”）。

- 2.9 We respectfully propose to revise as follows –  
我们谨建议做出如下修订：

*"The provisions of Article 22, ~~and~~ Articles 43 to 45, Article 56 and Article 107 do not apply to any qualified financial transaction for which close-out netting has been lawfully adopted and the collateral arrangements with respect to such transactions. The scope of eligible financial transactions shall be stipulated by laws or administrative regulations or determined by financial regulatory authority under the State Council."*

“依法采取终止净额结算的合格金融交易及其担保安排，不适用本法第二十二条、第四十三条至第四十五条、第五十六条、第一百零七条的规定。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。”

- 2.10 A more detailed explanation of our reasoning is set out in the following paragraphs.  
我们在以下段落中为我们的修订提供了更为详尽的解释。

**Comment #1: Exclusion of Article 56 from applying to QFTs**

**建议一：排除第五十六条对于合格金融交易的适用**

- 2.11 Article 56 of the Draft Amendments generally permits the set-off of claims acquired prior to the acceptance of a bankruptcy petition while introducing several exceptions, prohibiting set-off where claims are (among others) (i) acquired after the acceptance of the petition, (ii) obtained with knowledge of the debtor's insolvency, or (iii) based on obligations arising from damages related to the infringement of personal rights.

修订草案第五十六条概括性地允许对于在破产申请受理前的债权主张抵销，并同时引入了几项禁止抵销的例外情形，其中包括（1）在破产申请受理后取得的债权，（2）在已知债务人破产的情况下取得的债权，或（3）因侵犯人身权利相关的损害赔偿所产生的债务。

- 2.12 The Explanatory Note has confirmed judicial authorities' view that for financial market transactions, close-out netting should be interpreted based on contractual set-off ("*with set-off as fundamental legal basis*" as per a literal translation of the relevant section), and the limitations under the Enterprise Bankruptcy Law in respect of exercising set-off are not applicable.<sup>7</sup> This has generally been regarded as embodying the consensus view of both financial regulatory authorities and the judiciary authorities in China. Against this backdrop, it is imperative that the Draft Amendments explicitly codify this position at the statutory level. Such codification would not only eliminate residual ambiguity and enhance legal certainty, but also send a strong signal to the market, reinforcing confidence in the stability and predictability of the insolvency framework.

---

<sup>7</sup> This reads in Chinese as follows:

中文原文为：

"司法部门认为，金融市场中的净额结算规则一贯以《合同法》关于抵销的法律规定为基本依据，净额结算不适用《企业破产法》关于破产抵销权的限制性规定，即便在债务人破产的情况下，亦不能得出管理人有权挑拣履行权的结论。司法实践中，也未有过否定净额结算合同安排的案例"。

解释性说明确认了司法部门的观点，即对于金融市场交易，终止净额结算应基于合同抵销进行解释（参见对相关条款的字面翻译，即“以抵销的法律规定为基本依据”），而不适用《企业破产法》关于破产抵销权的限制性规定，这已被普遍视为体现了中国金融监管机构和司法部门的一致观点。在此背景下，修订草案在立法层面将这一立场在法律层面予以确认具有其必要性。这一立法层面的确认不仅可以消除弥留的立法模糊并增强法律层面的确定性，还可以向市场发出明确的信号，增强市场参与者对破产制度的稳定性和可预见性的信心。

- 2.13 This is particularly important for QFTs documented under master agreements that do not explicitly reference "close-out netting" but instead use "set-off" or equivalent terms to document similar arrangements (such as under the GMRA or GMSLA). Codifying this position would further address issues arising solely from terminology, following the "substance-over-form" approach generally adopted by PRC regulators.

这对于在特定类型主协议（这些主协议并未明确提及“终止净额结算”，而是使用“抵销”或同等术语表达类似安排（例如在 GMRA 或 GMSLA））下进行的合格金融交易而言则尤其重要。按照中国监管机构所一贯采取的“实质重于形式”的监管逻辑，将这一立场在立法层面予以明晰将有助于进一步解决此类仅由术语使用而引发的问题。

**Comment #2: Inclusion of Collateral Arrangements into Article 58**

意见二：在第五十八条中明确加入抵押品安排

- 2.14 Collateral arrangements are a core feature of QFTs and related master agreements (e.g., GMRA, GMSLA). This has reflected China's recently issued *Administrative Measures on Margining for Non-Centrally Cleared Derivatives of Financial Institutions*, which mandate the exchange of initial margin (IM) and variation margin (VM) for certain financial transactions that may fall within the scope of QFTs, although such mandates do not necessarily extend to repos.

抵押品安排是合格金融交易及相关主协议（例如 GMRA、GMSLA）所具备的核心特征。这已体现于中国近期颁布的《金融机构非集中清算衍生产品交易保证金管理办法》，该办法对可能属于合格金融交易范围内的某些金融交易作出交换初始保证金（IM）和变动保证金（VM）的要求（但此类要求并不一定延伸至回购交易）。

- 2.15 The enforceability of such collateral - both before and after insolvency - 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 significantly compromised, creating legal uncertainty and undermining the objectives of China's margining framework and international prudential standards.

抵押品的可执行性（无论是在破产前还是破产后）对快速清算、准确估值及整体市场稳定而言均至关重要。如未在法律层面明确予以认可，这些风险缓释机制的有效性可能会大打折扣，进一步造成法律上的不确定性并损害中国保证金框架拟达成的目标，并偏离于国际审慎标准。

- 2.16 Given the critical role of collateral arrangements in QFTs and their inseparable link to the enforceability of close-out netting, we strongly recommend that any exclusions under Article 58 of the Draft Amendment should also expressly extend to collateral arrangements associated with QFTs.

鉴于抵押品安排在合格金融交易中的关键作用及其与终止净额结算可执行性间不可分割的联系，我们强烈建议修订草案第五十八条项下的所有排除适用的情形也应明确覆盖于与合格金融交易相关的抵押品安排。

**Comment #3: Exclusion of Article 107 from applying to QFTs**

**意见三：排除第一百零七条对于合格金融交易的适用**

- 2.17 Article 107 of the Draft Amendments generally requires that, during the period of reorganization, the exercise of security rights against the specific property of the debtor shall be suspended, with certain exceptions in place.

修订草案第一百零七条概括性地规定，除特定情形外，在重整期间，对债务人的特定财产享有的担保权暂停行使。

- 2.18 We strongly recommend that Article 107 of the Draft Amendment be expressly excluded from application to collateral arrangements QFTs. This exclusion is essential because the requirement under Article 107 for prior court approval before collateral enforcement directly conflicts with a core prerequisite for such transactions. Under Basel capital adequacy standards and corresponding PRC prudential rules, qualifying master netting agreements must grant counterparties the ability to *promptly* realise collateral upon an insolvency event. Any delay introduced by a judicial approval process would undermine this fundamental requirement, jeopardising the enforceability of netting and collateral rights and, consequently, the regulatory capital benefits associated with these arrangements.

我们强烈建议修订草案明确规定第一百零七条不适用于与合格金融交易相关的抵押品安排。这一排除至关重要，因为第一百零七条项下所规定的在抵押品执行前须事先获得法院批准的要求与此类合格金融交易的核心先决条件直接冲突。根据与巴塞尔协议相关的资本充足标准及相应的中国审慎规则，合格的净额结算主协议必须赋予交易对手在破产事件发生时将抵押品及时变现的能力。引入司法审批流程而造成的任何延误都会背离于这一基本要求，损害净额结算及抵押品权利的可执行性，进而损害与这些安排相关的监管资本利益。

- 2.19 Furthermore, in practice, collateral provided in connection with QFTs would seldom constitute assets essential to the debtor's reorganisation. Accordingly, such collateral should not fall within the scope of the moratorium under Article 107. However, the imposition of a requirement for court approval prior to enforcement introduces procedural ambiguity and potential delays, which may materially impair the efficacy of collateral arrangements underpinning QFTs. The concept of "necessary assets" remains undefined and untested in judicial practice, thereby creating uncertainty as to whether enforcement of collateral in QFTs can proceed in a timely and predictable manner. This lack of clarity

risks undermining the legal certainty and enforceability that are foundational to financial markets and may deter counterparties from engaging in QFTs governed by such a regime. To align with international best practices and preserve the integrity of financial collateral arrangements, we recommend that Article 107 be expressly excluded from applying to QFTs and any related collateral. Such an exclusion would ensure that the rights of parties to QFTs are upheld in accordance with established market expectations and global standards, thereby safeguarding financial stability and transactional certainty.

此外，在实践中，与合格金融交易相关的抵押品极少构成债务人重组所必需的资产。因此，此类抵押品不应落入第一百零七条项下暂停行使抵押权的范围。然而，如若要求在强制执行前须获得法院批准，会引入程序上的模糊性和潜在延误的可能性，进而可能会严重损害作为合格金融交易基础的抵押品安排的效力。“必需资产”的概念在司法实践中尚未得到明确界定且未经检验，因此对以及时和可预测的方式强制执行合格金融交易相关抵押品增加了不确定性。此类不明晰之处有动摇金融市场重要基础之一——法律的确定性和可执行性的风险，并可能阻碍交易对手参与相关的合格金融交易。为与国际最佳实践保持一致并保障金融抵押品安排的健全性，我们建议在修订草案中明确规定第一百零七条不适用于合格金融交易及任何相关抵押品安排。这一排除将保障合格金融交易交易方的权利根据既定的市场预期和国际标准得到维护，从而维护金融稳定性和交易的确定性。

### 3. **NEW ARTICLE FOR FINANCIAL MARKET INFRASTRUCTURE**

关于金融市场基础设施的新条款

- 3.1 We respectfully propose the inclusion of a dedicated provision in Chapter XIII of the Draft Amendments to address the bankruptcy of financial market infrastructure ("FMI") operators, which is intended to close a significant gap in the existing legal framework by establishing a clear and coherent process for managing the insolvency of entities that are fundamental to the functioning of financial markets. Given the systemic importance of FMIs and their unique operational characteristics, a tailored approach is essential to ensure legal certainty, maintain financial stability, and enable timely regulatory intervention. 我们谨建议在修订草案第十三章中增设一条专门条款，以规范金融基础设施运营机构的破产事宜。该条款旨在弥补现行法律框架中的重大缺口，通过建立明确且协调的程序来处理对金融市场运行至关重要的机构的破产问题。鉴于金融基础设施的重要系统性地位及其独特的运营特征，采取针对性的制度安排对于确保法律确定性、维护金融稳定以及实现监管部门的及时干预至关重要。

- 3.2 Our proposed textual amendment is as set out below:

我们对于文字的修订建议如下：

*"The rules relating to the bankruptcy of financial market infrastructure operators shall be separately formulated by the State Council. Where a financial market infrastructure operator is subject to any of the circumstances set out in Article 2 of this Law, or where the financial market infrastructure regulatory authority under the State Council determines, in accordance with law, that the operator is unable to continue its operations or poses a serious threat to financial order or the public interest, the financial market infrastructure*

*regulatory authority under the State Council may apply for its bankruptcy. Where a financial market infrastructure operator itself applies for bankruptcy, or where a creditor applies for the bankruptcy of a financial market infrastructure operator, the consent of the financial market infrastructure regulatory authority under the State Council that approved the establishment of the operator shall be obtained."*

“金融基础设施运营机构破产的相关规定由国务院另行制定。金融基础设施运营机构有本法第二条规定情形，或者国务院金融基础设施管理部门依法认定其难以持续经营，或严重危害金融秩序、损害公众利益的，国务院金融基础设施管理部门可以申请其破产。金融基础设施运营机构申请破产的，或者债权人申请金融基础设施运营机构破产的，应当经批准设立该金融基础设施运营机构的国务院金融基础设施管理部门同意。”

- 3.3 FMI operators serve as the backbone of the financial system, facilitating the clearing, settlement, and recording of transactions across markets. Their operational continuity is essential to maintaining financial stability and public confidence. Unlike traditional financial institutions, FMI operators are characterised by distinct business models, governance structures, and risk exposures, which render conventional insolvency and resolution frameworks ill-suited to their unique functions.

金融市场基础设施作为金融系统的骨干，促进跨市场交易的清算、结算和记录。金融市场基础设施运营的连续性对于维持金融稳定和公众信心至关重要。与传统金融机构不同，金融市场基础设施运营机构的业务模式、治理结构和风险敞口具有其独特性，这使得传统的破产和清算框架难以与其独特的功能兼容。

- 3.4 The failure of an FMI operator could have systemic repercussions, disrupting critical market functions and amplifying contagion risks across the financial sector. Recognising this, the regulatory framework already provides for specialised oversight under the *Administrative Measures for the Supervision of Financial Market Infrastructures*. However, the absence of a corresponding provision within the Drafting Amendments leaves a gap in the legal architecture governing the resolution of FMI operators.

金融市场基础设施运营机构的破产可能会产生系统性影响，扰乱关键的市场功能，并扩大传导至整个金融体系。中国监管机构已对相关情况有所认知，并已经在《金融基础设施监督管理办法》下设置了专门的监管规则。然而，修订草案中缺少对应的条款，在金融市场基础设施运营机构处置的法律架构中留下了一个空白。

- 3.5 To address this gap, we propose the inclusion of a dedicated provision in the Drafting Amendments that reflects the specialised nature of FMIs and aligns with existing supervisory measures. Such a provision would enhance legal certainty, enable timely and coordinated regulatory intervention, and ensure that resolution tools are appropriately calibrated to the operational realities of FMI operators.

为了填补这一空白，我们建议在修订草案中加入一条专门的条款，以反映金融市场基础设施的独特性质，并与现有的监管规则保持一致。这一条款将增强法律上的确定性，促成及

时和协调的监管干预，保障处置工具可得以适当校准以适应金融市场基础设施运营机构的运营现实。

- 3.6 In sum, FMIs are indispensable to the functioning of financial markets, yet their risk and operational profiles diverge significantly from those of conventional financial institutions. A tailored legal framework—integrated with current regulatory oversight—would reinforce the resilience of FMIs, mitigate systemic risk, and safeguard the stability of the broader financial system.

总而言之，金融市场基础设施对金融市场的运行不可或缺，然而它们的风险和运营特征与传统金融机构大相径庭。量身定制的法律框架（与现有的监管相结合）可以进一步增强金融市场基础设施的韧性，降低系统性风险，并保障整个金融系统的稳定性。

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](mailto:pdirckx@asifma.org), Mushtaq Kapasi, ICMA's Managing Director and Chief Representative, Asia-Pacific, at [mushtaq.kapasi@icmagroup.org](mailto:mushtaq.kapasi@icmagroup.org) or Ricco Zhang, ICMA's Senior Director, Asia-Pacific, at [ricco.zhang@icmagroup.org](mailto: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](mailto: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](mailto: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](mailto: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）

Philippe Dirckx（狄辉立）



Managing Director – Head of Fixed Income  
固定收益部主管

Mushtaq Kapasi（墨博文）



Managing Director, Chief Representative  
Asia-Pacific  
亚太区董事总经理，首席代表

Ricco Zhang（张顺荣）



Senior Director  
Asia-Pacific  
亚太区资深总监

## Appendix – Proposed Amendments to the Draft Amendments

### 附录 - 对修订草案的文件修订建议

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
58	<p>依法采取终止净额结算的合格金融交易<u>及其担保安排</u>，不适用本法第二十二条、第四十三条至第四十五条、<u>第五十六条、第一百零七条</u>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。</p>	<p>The provisions of Article 22, <del>and</del> Articles 43 to 45, <u>Article 56 and Article 107</u> do not apply to any qualified financial transaction for which close-out netting has been lawfully adopted <u>and the collateral arrangements with respect to such transactions</u>. The scope of eligible financial transactions shall be stipulated by laws or administrative regulations or determined by financial regulatory authority under the State Council.</p>
New under Chapter 13	<p><u>金融基础设施运营机构破产的相关规定由国务院另行制定。金融基础设施运营机构有本法第二条规定情形，或者国务院金融基础设施管理部门依法认定其难以持续经营，或严重危害金融秩序、损害公众利益的，国务院金融基础设施管理部门可以申请其破产。金融基础设施运营机构申请破产的，或者债权人申请金融基础设施运营机构破产的，应当经批准</u></p>	<p><u>The rules relating to the bankruptcy of financial market infrastructure operators shall be separately formulated by the State Council. Where a financial market infrastructure operator is subject to any of the circumstances set out in Article 2 of this Law, or where the financial market infrastructure regulatory authority under the State Council determines, in accordance with law, that the operator is unable to continue</u></p>

<b>Article Reference</b> 条文序号	<b>Proposed amendments in Chinese</b> 提议做出的中文修订	<b>Proposed amendments in English</b> 提议做出的英文修订
	<u>设立该金融基础设施运营机构的国务院金融基础设施管理部门同意。</u>	<u>its operations or poses a serious threat to financial order or the public interest, the financial market infrastructure regulatory authority under the State Council may apply for its bankruptcy. Where a financial market infrastructure operator itself applies for bankruptcy, or where a creditor applies for the bankruptcy of a financial market infrastructure operator, the consent of the financial market infrastructure regulatory authority under the State Council that approved the establishment of the operator shall be obtained.</u>