

17 April 2026

Ministry of Justice of the People's Republic of China
No. 41 Ping'anli West Street
Xicheng District
Beijing, 100035
People's Republic of China

To: Ministry of Justice, People's Bank of China, National Financial Regulatory Administration, China Securities Regulatory Commission, and State Administration of Foreign Exchange

Subject: Proposed Amendments to the Draft Financial Law of the People's Republic of China

Dear Sir/Madam,

The International Capital Market Association ("ICMA")¹ welcomes the opportunity to respond to the Consultation Draft of the Financial Law of the People's Republic of China (the "Draft").

We greatly appreciate the opportunity to participate in the public consultation process, and we would like to express our strong support of the ongoing legislative efforts to formulate the Financial Law of the People's Republic of China to advance a coordinated, high level framework to strengthen financial supervision, prevent and resolve risks, and support high quality financial development.

ICMA would be pleased to engage with the People's Bank of China and other authorities on potential pathways to broaden adoption of internationally recognised master documentation for cross-border repo transactions, including the Global Master Repurchase Agreement ("GMRA"). In this context, ICMA emphasises the importance of clear statutory recognition and consistent supervisory treatment of the legal validity and enforceability of close-out netting for repurchase ("repo") transactions documented under the GMRA (and similar master agreements) under PRC law. Robust legal certainty for close-out netting and related collateral rights is

¹ For over 50 years ICMA and its members have worked together to promote the development of the international capital and securities markets, pioneering the rules, principles and recommendations which have laid the foundations for their successful operation.

ICMA currently has over 630 members in 71 jurisdictions worldwide. ICMA brings together members from all segments of the wholesale and retail debt securities markets, through regional and sectoral member committees, and focuses on a comprehensive range of market practice and regulatory issues which impact all aspects of international market functioning. ICMA prioritises three core fixed income market areas – primary, secondary, repo and collateral: with cross-cutting themes of sustainable finance and FinTech and digitalisation.

ICMA is a not-for-profit association (Verein) under the Swiss Civil Code. The Association is headquartered in Zurich, with offices in London, Paris, Brussels and Hong Kong and registered in the Zurich Commercial Register.

fundamental to prudent risk management, effective resolution planning, and market confidence particularly for international investors participating in onshore and cross-border repo and other securities financing activities.

ICMA's comments focus on Article 65 and Article 67 (risk disposal toolkit and the exemptions provided for under Article 67(2)).

1) Court-led reorganisation or liquidation and consistency with qualified financial transactions (“QFTs”)/close-out netting reforms

ICMA notes that Article 65 provides a legal basis for the State Council financial management departments to facilitate restructuring or take measures such as takeover, trusteeship or revocation where a financial institution's unlawful operations, governance disorder or major risks have endangered or may endanger its continued operation or disrupt financial order. Article 65 further provides that, where statutory bankruptcy conditions are met, the State Council financial management departments may apply to the People's Court for reorganisation or bankruptcy liquidation of the financial institution.

ICMA respectfully highlights the importance of ensuring that any court-led reorganisation or liquidation processes initiated pursuant to Article 65 operate consistently with the PRC's broader policy direction to enhance legal certainty for QFTs and close-out netting in insolvency. In particular, recent and ongoing insolvency reforms have introduced the concept of QFTs and provide that QFTs lawfully adopting close-out netting are exempt from the bankruptcy administrator's "cherry-picking" rights (Article 22) and claw-back powers (Articles 43–45) under the Enterprise Bankruptcy Law amendment framework.

These developments are particularly relevant to repo and securities lending markets. In this context, it is important that the scope of QFTs is capable of covering repo transactions and securities lending transactions documented under widely used master agreements, including (without limitation) the GMRA and the Global Master Securities Lending Agreement (“GMSLA”).

Given Article 65's express linkage to court-led insolvency procedures, ICMA recommends that the Draft (or implementing rules / authoritative guidance) should make clear that, where a financial institution is placed into reorganisation or bankruptcy liquidation following an Article 65 application, the statutory treatment of QFTs and the enforceability of close-out netting and related collateral arrangements will be preserved in accordance with applicable PRC insolvency law and relevant designations of QFTs. This would help ensure that the Financial Law's risk disposal framework strengthens stability without unintentionally introducing uncertainty for core financial market risk mitigants.

Recommendations:

- Clarify, in the Financial Law itself or implementing measures, that commencement of court-led reorganisation or liquidation following an Article 65 application does not prejudice the legal validity or enforceability of close-out netting and collateral arrangements for designated QFTs.

- Support continued development of QFT designations in secondary legislation to provide appropriate coverage for repo and securities lending transactions, including those documented under master agreements such as the GMRA and GMSLA, to enhance market confidence and cross-border participation.

2) Article 67 — Risk disposal toolkit; QFTs stay; and exemptions (Article 67(2))

ICMA recognises the value of Article 67(1), which establishes a broad risk disposal toolkit comprising thirteen measures. These measures range from the application of supervisory measures under Article 56, to the appointment of trustees or takeover organisations, disposal of assets and liabilities, suspension/restriction/termination of part or all financial trades. The toolkit also includes the revocation of licences, business/asset transfers to third parties or transitional entities, a time-limited stay of early termination rights under QFTs, bail-in tools (write-down/debt-to-equity), mandatory equity transfers in systemic scenarios, repatriation of overseas assets, and group support requirements for systemically important financial institutions.

ICMA's specific observations below relate to (i) definitional clarity between Article 67(1)(4) (financial trades) and Article 67(1)(8) (QFTs), and (ii) safeguards around the exemption power in Article 67(2).

2.1 Definitional clarity: “financial trades” vs “QFTs”

Article 67(1)(4) permits regulators to suspend, restrict, or terminate part or all financial trades, while Article 67(1)(8) separately provides for a maximum 48-hour suspension of the right to early terminate contracts under QFTs.

ICMA respectfully requests clear definitional and interpretive guidance on the relationship between these two concepts, given that QFTs may constitute a subset of “financial trades”. Without clarification, there is a risk that measures under Article 67(1)(4) could be interpreted to permit a broader or longer interference with QFTs contractual rights than the tailored 48-hour stay in Article 67(1)(8), thereby undermining legal certainty for close-out netting.

Recommendations (avoid overlap that dilutes QFT certainty):

- The only Article 67 tool that may delay the exercise of early termination rights under QFTs is Article 67(1)(8), subject to its 48-hour maximum;
- Article 67(1)(4) should expressly carve out QFTs, such that it cannot be applied in a manner that extends or replicates a stay on QFT termination beyond the specific framework and time limit set out in Article 67(1)(8).
- Recommend adding a definition of QFTs in Article 91 that is capable of covering repo transactions and securities lending transactions documented under widely used master agreements, including (without limitation) the GMRA and the GMSLA to ensure interpretive certainty.

This would preserve the integrity of the QFTs regime and reduce scope for legal uncertainty in stressed conditions.

2.2 Article 67(2) exemptions — need for strict conditions and safeguards

Article 67(2) provides that when adopting Article 67 measures, regulators may exempt compliance with certain legal and administrative requirements, including shareholder/board approvals, creditor or third-party consent, as well as provisions on information disclosure and prohibited transactions.

ICMA understands the policy rationale: risk disposal may require decisive action. However, because Article 67(2) permits temporary disapplication of safeguards that protect stakeholders' rights, ICMA recommends that this exemption power be operationalised narrowly and accompanied by strict conditions and procedural constraints to prevent misuse and preserve predictability.

Recommendations (procedural discipline and proportionality):

- Necessity and proportionality: exemptions should be limited to what is strictly necessary to implement the specific disposal measure chosen.
- Coherence with QFT framework: exemptions should not be interpreted to permit impairment of close-out netting enforceability beyond the narrowly framed, time-limited suspension contemplated by Article 67(1)(8).

3) Conclusion

ICMA appreciates the opportunity to comment on this landmark legislative initiative and stands ready to continue constructive engagement with the relevant authorities to support a resilient, internationally interoperable financial legal framework that promotes stability, liquidity and long-term market development.

Yours faithfully,

A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

Mushtaq Kapasi
Managing Director, Chief Representative
Asia-Pacific

A handwritten signature in black ink, featuring the Chinese characters "张恒荣" (Zhang Hengrong) written in a cursive style.

Ricco Zhang
Senior Director
Asia-Pacific

International Capital Market Association (ICMA)