

Оптимизация инфраструктуры финансового рынка в контексте финансового законодательства Китая Optimization of the Financial Market Infrastructure System in the Context of China's Financial Legislation

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Аннотация. Инфраструктура финансового рынка Китая включает шесть типов систем: системы регистрации и хранения финансовых активов, клиринговые и расчетные системы, торговые площадки, хранилища отчетов о транзакциях, ключевые платежные системы и базовые кредитные системы, которые имеют большое значение для обеспечения стабильного функционирования финансовой системы. Однако соответствующее законодательство разрозненно, содержится в ряде отдельных законов и административных регламентов, характеризуется фрагментарностью и недостаточным уровнем нормативной базы. Кроме того, недостаточно ясен правовой статус инфраструктуры финансового рынка, ограничена эффективность саморегулирования и отсутствует системная модель регулирования. В связи с этим желательно, чтобы закон о финансах унифицировал базовую систему инфраструктуры финансового рынка, прояснил ее содержание, объем и правовой статус, а также уделит приоритетное внимание нормам саморегулирования. В то же время следует создать скоординированную систему регулирования, при которой Центральный банк будет осуществлять макропруденциальный надзор под координацией Центральной финансовой комиссии, а Комиссия по ценным бумагам и фьючерсам и Главное управление финансового надзора разделять обязанности по формированию динамичного и согласованного механизма, обеспечивающего оказание качественных финансовых услуг реальной экономике через верховенство закона об инфраструктуре финансового рынка Китая.

Ключевые слова: инфраструктура финансового рынка, финансовое законодательство, система надзора, системная оптимизация

Abstract. China's financial market infrastructure encompasses six types of systems: financial asset registration and custody systems, clearing and settlement systems, trading facilities, transaction report repositories, important payment systems and basic credit systems, which are of great significance in safeguarding the stable operation of the financial system. However, the relevant legislation is scattered in a number of individual laws and administrative regulations, showing fragmentation and low-level characteristics, and there are problems such as unclear legal status of financial market infrastructure, limited effectiveness of self-regulation, and lack of systemic regulatory model. In this regard, it is recommended that the proposed financial law should unify the basic system of financial market infrastructure, clarify its content, scope and legal status, and give priority to the application of self-regulatory norms. At the same time, a coordinated regulatory system should be constructed, with the central bank leading the macro-prudential supervision under the coordination of the Central Financial Commission, and the Securities and Futures Commission and the General Administration of Financial Supervision dividing up the work to form a dynamic and coordinated mechanism, so as to provide high-quality financial services for the real economy by the rule of law of China's financial market infrastructure.

Keywords: financial market infrastructure, financial legislation, regulatory framework, system optimization

In July 2024, the Third Plenary Session of the 20th Central Committee of the Communist Party of China passed the Decision on Further Comprehensively Deepening Reform and Promoting Chinese Modernization, which explicitly put forward the legislative goal of “enacting financial laws”, with the intention of enacting a basic law in the field of finance to coordinate the individual financial laws and to form a coordinated, unified, and complete system of financial laws and regulations. The system of financial laws and regulations is harmonized and complete.¹ Financial Market Infrastructures (hereinafter referred to as FMI), as the backstage system of financial system operation, its stable and efficient operation is crucial to the safety and efficiency of the whole financial system². Therefore, FMI should become an important adjustment dimension of financial law. Retrospectively, the systemic risk prevention and control function of FMI has been emphasized after the international financial crisis in 2008, and the connotation of FMI was first defined in the U.S. Dodd-Frank Act in 2010; in 2012, the Committee on Payment and Settlement Systems of the Bank for International Settlements (CPSS) and the International Organization of Securities Commissions (IOSCO) jointly issued Principles for Financial Market Infrastructures (hereinafter referred to as PFMI) further defines FMI as “a multilateral system for clearing, settling, or recording financial transactions between participating institutions”, and categorizes it into five types: payment system, central securities depository (CSD), securities settlement system (SSS), central counterparty (CCP), and transaction database (TR).

China's financial market infrastructure (FMI) system is in line with international standards, but also has local characteristics. 2020, the People's Bank of China (PBOC) and six other ministries jointly issued the “Work Program for the Coordinated Supervision and Regulation of Financial Infrastructures” (hereinafter referred to as the “Work Program”), which includes the “trading facilities” and “basic credit system” in the scope of FMI. “into the category of FMI, forming six categories, including financial asset registration and custody systems, clearing and settlement systems, trading facilities, transaction report repositories, important payment systems, and basic credit systems, and continuing the categorization paradigm in the Measures for the Supervision and Administration of Financial Infrastructures (Solicitation of Opinions) (hereinafter referred to as the “Management Measures”) in 2022. Based on the Chinese FMI classification framework and the international standard of PFMI, this paper systematically deconstructs the actual pattern of China's FMI legal system and discusses its legal system dilemma and optimization path.

1. Legislative Overview of China's Financial Market Infrastructure System

At present, the scope of China's FMI has been determined, the relevant system is scattered in a number of laws, regulations and departmental rules, the content framework has been basically formed, and the relevant administrative policy documents have initiated an attempt to build a unified system.

¹ Xing Hui-qiang. On the Formulation of Financial Law[J] // China Law Journal. 2025(2). P. 24.

² Guo Li. The Era's Demand and Theoretical Consideration for the Formulation of Financial Law[J] // Finance and Economics Law. 2025. № 2. P. 27.

1.1. Legislative Forms

China's FMI regime is scattered in a number of individual laws such as the Securities Law of the People's Republic of China, the Law of the People's Republic of China on the People's Bank of China, and the Law of the People's Republic of China on Futures and Derivatives (hereinafter referred to as the Securities Law, the PBOC Law, and the Futures and Derivatives Law), which are fragmented and limited in scope, and the construction of the regime has not been sufficiently systematized. The legal regulation of FMI relies more on the administrative regulations of the State Council and departmental administrative regulations of lower rank, the former including the Regulations on the Administration of the credit reporting Industry and the Regulations on the Administration of Futures Trading, and the latter mainly including the Measures for the Administration of Securities Settlement Risk Fund, the Measures for the Administration of Futures Exchanges, the Measures for the Administration of Stock Exchanges, the Measures for the Administration of Securities Settlement and the Measures for the Payment and Settlement of Payments, the Measures for the Administration of Network Payment Businesses of Non-Bank Payment Institutions and the Measures for the Administration of Bond Registration, Custody and Settlement of Bond Markets in the Interbank Measures for the Administration of Bond Registration, Custody and Settlement in the Bond Market, etc.

In addition, other administrative documents issued under the names of "Circulars", "Decisions", "Programs", etc. also play a role in the construction and operation of the FMI. For example, the 2013 Circular on Matters Relating to the Implementation of the Principles for Financial Market Infrastructures provided institutional guidelines for the initial construction of the FMI by citing the contents of the PFMI; and the 2020 Work Program clarified for the first time the scope of China's FMI, marking the transition of China's FMI system to a coordinated and

systematic approach to planning and construction. These administrative documents have a more "administrative policy" color, reflecting the gradual evolution of a "policy-first" approach in constructing China's FMI system.

1.2. Main contents

In respect of the financial assets registration and custody system, Chapter 9 of the Securities Law, "Securities Registration and Settlement Institutions", stipulates the conditions for the establishment of securities registration and settlement institutions, the scope of their functions, their business rules and legal liabilities. Due to the fact that the Securities Law mainly focuses on the adjustment of publicly issued capital securities, its provisions on registration and settlement organizations are mainly applicable to the securities market, and are not mandatory for the registration and custody of non-securities financial assets such as the interbank lending market, the interbank bond market, the bill market and the gold market.³ In addition, the Administrative Measures for the Registration, Custody and Settlement of Bonds in the Inter-bank Bond Market provides for the registration and custody of inter-bank bonds, of which Article 5 clarifies the legal status of the Centralized Treasury Bonds Registration and Settlement as the bond registration, custody and settlement institution.⁴

In respect of the settlement and clearing system, the PBOC Law contains no explicit provisions on FMI. Article 52 defines financial institutions, primarily banking financial institutions, and even the scope covered by the "application by reference" clause in its second paragraph excludes FMIs. Article 27 mentions the clearing system but confines it to regulating internal clearing within the banking industry.⁵ In contrast, the securities registration and settlement system is more complete and detailed, with three different levels of legislation. First, Articles 108 and 147 of the Securities Law clarify the clearing responsibilities of the securities registry and clearing organization, and

³ Zhu Xiao-chuan. China's Financial Market Infrastructure Management: Current Situation, Difficulties and Legislative Path [J] // Southwest Finance. 2020. № 4. P. 14.

⁴ See Article 5 of the Administrative Measures for Bond Registration, Custody and Settlement in the Interbank Bond Market: The bond registration, custody and settlement institution referred to in these Measures refers to the legal person that specializes in the registration, custody and settlement of bonds in the interbank bond market. The Central Government Bonds Registration and Settlement Company Limited is the bond registration, custody and settlement institution designated by the People's Bank of China.

⁵ See Article 27 of the Law of the People's Bank of China: The People's Bank of China shall organize or assist in organizing the clearing system among banking financial institutions, coordinate clearing matters among banking financial institutions and provide clearing services. Specific measures shall be formulated by the People's Bank of China. Article 52: (1) The banking financial institutions referred to in this Law refer to commercial banks, urban credit cooperatives, rural credit cooperatives and other financial institutions established within the territory of the People's Republic of China that absorb deposits from the public, as well as policy banks. (2) Financial asset management companies, trust and investment companies, finance companies, financial leasing companies, and other financial institutions established within the territory of the People's Republic of China and approved by the State Council's banking supervision and administration authorities shall be subject to the provisions of this Law on banking financial institutions.

Article 158 further establishes its legal status as a “central counterparty”, reflecting the response to the PFMI classification standard.⁶ Secondly, the Administrative Measures for Securities Registration and Settlement, as administrative regulations detailing the securities registration and settlement system of the Securities Law, are more detailed and correspond to the contents of the PFMI. Third, the Measures for the Administration of Securities Settlement Risk Funds make brief provisions on the establishment and operation of risk funds, which enhance the risk prevention ability of securities settlement organizations. In addition, Chapter VII of the Futures and Derivatives Law, entitled “Futures Clearing Institutions”, stipulates the clearing and settlement services provided by futures clearing institutions in futures transactions, and Article 93 of the Law specifies the status of futures clearing institutions as “central counterparties”. Article 93 also specifies the status of futures clearing agency as a “central counterparty”, and in Chapter II, provides for a centralized clearing mechanism for derivatives transactions.⁷ The administrative regulation “Regulations on Futures Trading” and the departmental regulation “Measures for the Administration of Futures Exchanges” also regulate the settlement of futures trading in greater detail.

In terms of trading facilities, Chapter VII of the Securities Law provides more detailed provisions on stock exchanges in 22 articles, and the departmental regulation Measures for the Administration of Stock Exchanges provides further details on this basis. Chapter 6 of the Futures and Derivatives Law

also clearly defines the establishment, alteration, dissolution, organizational form and duties of futures exchanges, while Chapter 2 of the Regulations on Futures Trading and the Measures for the Administration of Futures Exchanges contain more detailed provisions. It is worth noting that both the Securities Law and the Futures and Derivatives Law grant stock exchanges and futures exchanges, respectively, enforcement powers regarding self-regulatory measures, making it clear that they can take disciplinary or other self-regulatory measures for violations, which is highly punitive and corrective.⁸ However, there is a lack of clarity in terms of the enforcement power of the business rules of other types of FMIs.

In terms of transaction report repository, it serves as an institution that centrally keeps electronic records of financial transaction data, with the dual attributes of technical system and infrastructure. Currently, registry and custodian institutions such as the Central Treasury Bonds Registration and Settlement Corporation, the Interbank Market Clearing House Corporation, and the China Securities Depository and Clearing Corporation, as well as trading facilities such as the China Foreign Exchange Trading Center (the national interbank lending center), assume the function of transaction report repositories for specific markets. Although the Work Program and the Administrative Measures set out the objectives for the construction of trade report repositories, their construction is still at an exploratory stage.

In terms of important payment systems, The Administrative Measures categorize them as FMI, repre-

⁶ See Article 108 of the Securities Law: Securities companies make transaction declarations in accordance with the securities trading rules based on the entrustment of investors, participate in centralized trading on the floor of the stock exchange, and bear the corresponding responsibility of clearing and settlement based on the results of the transaction. The securities registration and settlement institution shall, based on the transaction results and in accordance with the clearing and settlement rules, carry out the clearing and settlement of securities and funds with the securities company and handle the registration and transfer of securities for the clients of the securities company.

Article 147: The securities registration and settlement institution shall perform the following functions: (a) the establishment of securities accounts and settlement accounts; (b) the depository and transfer of securities; (c) the registration of the register of securities holders; (d) the clearing and settlement of securities transactions; (e) the distribution of interests in securities by the issuer on behalf of the issuer; (f) the handling of inquiries and information services relating to the abovementioned businesses; (g) other businesses approved by the securities regulatory authority under the State Council; (vii) other businesses approved by the securities regulatory authority under the State Council. Article 158: A securities registry and clearing institution that provides securities settlement services as a central counterparty is the common clearing and settlement counterparty of the settlement participants, carries out netting, and provides centralized performance guarantee for securities transactions.

⁷ See Article 93 of the Futures and Derivatives Law: A futures clearing institution, as a central counterparty, is a common counterparty of clearing participants, carries out netting and provides centralized performance security for futures transactions.

⁸ See Article 83 of the Futures and Derivatives Law: Futures exchanges engaging in futures trading and related activities shall comply with the business rules formulated by futures exchanges in accordance with the law. In case of violation of the business rules, the futures exchange shall impose disciplinary actions or take other self-regulatory measures. Article 3 of the Measures for the Administration of Futures Exchanges: A futures exchange referred to in these Measures refers to a legal person established in accordance with the Futures and Derivatives Law provisions of the Regulations on the Administration of Futures Trading and these Measures, fulfilling the duties stipulated in the Futures and Derivatives Law, the Regulations on the Administration of Futures Trading and these Measures, and practicing self-regulation in accordance with its charter and business rules.

sending a narrower scope than the broader “payment systems” category under PFMI. China has formed a multi-level payment system with a modernized payment system (CNAPS) at its core, including the PBOC’s central clearing system (large-value real-time payment system, small-value batch payment system, online payment inter-bank clearing system, domestic and foreign currency payment system), the commercial banks’ in-branch system, the UnionPay inter-bank payment system, the city bank’s clearing and payment system, the Farmers’ Bank’s payment and clearing system, the RMB cross-border payment system (CIPS) and the Net Link Clearing Platform and so on. The Measures on Payment and Settlement provide for the harmonization of transaction rules for payment systems, but do not address the relevant criteria for the identification of important payment systems.

As for the basic credit reporting system, China has formed a credit reporting system with the central bank’s credit reporting system as the main body. The Regulations on the Administration of the Credit Reporting Industry provide for the establishment, business rules, supervision and legal responsibility of credit reporting agencies, but they have not been revised in the 12 years since they were implemented, and they have become difficult to adapt to the needs of modern financial development. For example, this administrative regulation which narrowly defines the scope of entities subject to credit reporting regulations, fails to distinguish between corporate and personal credit information, and employs a single penalty mechanism makes it difficult to cope with the risks of complex and diverse credit information.⁹ In addition, as a new category of FMI, the legal status and regulatory path of the basic credit reporting system is still unclear, and how to integrate it into the unified regulatory system of FMI is still a problem to be solved.

2. The main problems of China’s financial market infrastructure system

Currently, China’s FMI system lacks unified legislation, its content is not systematic, and there are problems such as regulatory fragmentation and regulatory gaps under the separate regulatory model, which need to be remedied to strengthen the legislative shortcomings.

2.1. Lack of unified legislation

In the current Chinese FMI legislation, although the number of relevant administrative regulations is considerable, to a certain extent, fill legislative gaps.

However, their lower legal binding force cannot fully overcome issues such as legislative fragmentation and unsystematic content. Constrained by the domain barriers of sectoral legislation, the regulatory scope of sectoral regulations is limited to specific domains or specific types of FMIs, presenting distinct industry-oriented characteristics, lacking a unified definition of the conceptual scope of FMIs and not establishing general legal rules. For example, regarding financial asset registration, custody, settlement, and clearing systems, existing legislation remains largely confined to the securities and futures markets, and the bond market registration and clearing system has been split into the inter-bank market and the stock exchange market, failing to cover the settlement and clearing system of other financial assets; in terms of the trading facilities, there is a lack of the standard of “systemically important financial infrastructures”, which does not facilitate the development of FMIs. In terms of trading facilities, there is a lack of standards for “systemically important financial infrastructure”, which does not facilitate the identification and supervision of important payment systems, and there is a lack of legal authorization and recognition of the effectiveness of self-regulatory norms; in terms of trade reporting repositories, there is a lack of unified real-time trade databases and their standards for the scope of application, and there is a lack of institutional norms of the trade reporting system for the bond market or for the financial market as a whole; and in terms of important payment systems, the relevant recognition standards for important In respect of important payment systems, the relevant criteria for recognizing important payment systems have not been addressed, etc.

Although defining the FMI scope, the Work Program is an administrative policy document, and the Administrative Measures remain in draft form. This situation creates serious difficulties in legal application. Although the Work Program often produces substantive binding force in regulatory practice and constitutes a functional reinforcement of the lack of legislation, it does not have national coercive force to ensure implementation, and has the obvious attributes of soft law,¹⁰ insufficient legal effect, and cannot be used as the basis for judicial decisions. This normative framework leads to serious legal application difficulties, market participants can only invoke the “People’s Bank of China Law”, “Securities Law” and other single law in the sporadic provisions, once encountered in the field of legislative gaps, that is, caught in the governance vacuum cannot be relied upon. As the complexity and risk relevance of the FMI system increases, it needs to be optimized at the level of uniformity, authority and adaptability.

⁹ Lin Jun-yue. Gains and Losses on the 10th Anniversary of the Enforcement of the Regulations on the Administration of the credit reporting Industry [J] // Credit reporting. 2023. № 6. P. 9.

¹⁰ Luo Hao-cai, Song Gong-de. Soft Laws are also Laws — Public Governance Calls for the Governance of Soft Laws. Law Press, 2009. P. 394.

2.2. Legal status is suspended

There is ambiguity regarding whether FMI refers to the system itself, its managing/investing institution, or the controlling entity traced back from the system level. PFMI explains in Note 5 of 1.8 that FMI should not be defined too narrowly as merely the operating system, nor too broadly to encompass shareholders or controllers. Instead, it should refer to the facility business-oriented entity at the operational level that possesses control rights,¹¹ constituting a tangible organizational body. At present, the organizational forms of FMIs in China are mainly membership-based and corporate-based, and there are also more special business units, but no matter what the form of composition is, they all face a problem, namely, the lack of legal authorization for the external validity of their internal self-regulatory management norms. Under the membership model, only the self-regulatory norms of securities and futures exchanges have been authorized,¹² while under the corporate model, FMI operating institutions, being corporate entities and equal market participants, lack any explicit legal authorization for the external validity of their internal self-regulatory rules,¹³ the current operating institutions can only rely on the statute or the relevant agreement to make self-regulatory acts to form a binding force.¹⁴ Even for representative institutions like central clearing centers, which may receive administrative approval or endorsement, their near-monopoly status and perceived authority often deter market participants from challenging their rules. However, this de facto acceptance does not equate to legal authorization.¹⁵

The reason for this phenomenon is mainly that Chinese law does not specify the legal status of FMI, i.e. it is not clear whether FMI is a legal subject with management authority. In this self-regulatory management norms lack of legal authorization and thus do not have the external effect of the situation, if it involves an unspecified third party to claim the right to have the effect of defects, which leads to the uncertainty of the financial transactions, so that the finan-

cial transactions shrouded in the cloud of litigation risks. At the same time, vague legal status directly weakens the effectiveness of supervision.

2.3. Lack of Lack of Coordinated Supervision

Since China's financial industry is in the mode of "separate operation and separate regulation", the payment system, credit reporting system and inter-bank market FMI are also supervised by the People's Bank of China (PBOC), while the securities settlement system, securities custodian system and central counterparty are supervised by the PBOC and the China Securities Regulatory Commission (CSRC) according to the different financial markets in which they are located. The PBOC also supervises the securities settlement system, the securities custody system and the central counterparties. For example, the Shanghai Clearing House as a central counterparty is supervised by the PBOC, while the Shanghai Futures Exchange, Zhengzhou Commodity Exchange and Dalian Commodity Exchange, which are also central counterparties, are supervised by the CSRC, and the insurance exchange is supervised by the State Administration of Financial Supervision. Under this fragmented regulatory framework, rules issued by individual departments have limited applicability. Departments working in silos creates regulatory vacuums, and the absence of inter-regulatory coordination mechanisms results in ineffective oversight which is not conducive to the smooth operation of the FMI.

In response to the above systemic deficiencies, China's recent institutional efforts, while showing a clear intent towards consolidation, have yet to overcome the path dependency of incremental patching, although there is an obvious intention to consolidate. In October 2020, the People's Bank of China (PBOC) released the "People's Bank of China Law (Draft Revision Draft)" (hereinafter referred to as the "Draft Revision Draft"), which attempts to make localized adaptation, and Article 39 of which adds the PBOC to "taking the lead in planning and coordinating the implementation of supervision of important financial

¹¹ Zhang Yang. Risk Regulation of Financial Market Infrastructure [D] : Wuhan University PhD thesis. 2021. P. 39.

¹² Article 83 of the Futures and Derivatives Law and Articles 117 and 158 of the Securities Law give mandatory power to the internal trading rules of securities and futures exchanges as well as securities registration and settlement organizations.

¹³ Typical corporate FMIs are China Securities Depository and Clearing Company Limited, Central Government Bonds Depository and Clearing Company Limited, China Trust and Registration Company Limited, China Financial Futures Exchange Company Limited, Shanghai Insurance Exchange Company Limited, Shanghai Bills Exchange Company Limited, Inter-bank Market Clearing House Company Limited, and Cross-border Inter-bank Payment and Clearing Company Limited, of which. China Securities Depository and Clearing Co. engages in securities registration and settlement and is authorized by Article 158 of the Securities Law, and its internal self-regulatory norms have worldwide effect, while the Beijing Stock Exchange, which was newly established in 2021, although adopting a corporate model, has also been authorized by Article 158 of the Securities Law because it is a securities trading facility.

¹⁴ Ji Kui-ming. The Effect Formation Mechanism of Self-Regulatory Norms for Financial Market Infrastructure[J] // Peking University Law Journal. 2019. № 2. P. 545.

¹⁵ See supra note 11 at 41.

infrastructure construction”,¹⁶ establishing for the first time the central bank’s function of coordinating the supervision of important FMIs, which is borrowed from the U.S. Dodd-Frank Act, which requires that systemically important financial market infrastructures be identified and supervised, as well as the Federal Reserve, which is still responsible for implementing macro-prudential supervision.¹⁷ In June 2024, the NPC Standing Committee published the Financial Stability Law (Draft Second Review Draft), Article 2 of which explicitly stipulates that the objectives of financial stability include safeguarding the continuity of the basic functions of financial institutions, financial markets, and financial infrastructures.¹⁸ Article 17 proposes the establishment of a national financial database, and incorporates the FMIs into the legislative vision of financial stability.¹⁹ However, its article 45 also fails to define the specific scope of FMI, which is a drawback, and the Act has been shelved since the initiation of the financial law legislative program.

In December 2022, the People’s Bank of China, in conjunction with relevant departments, drafted and released the Administrative Measures, which is China’s first exposure draft for FMI system legislation.

The Administrative Measures consist of six chapters and forty-six articles, providing detailed provisions on the establishment, operation, supervision and legal liability of FMIs. Among them, Article 2 continues the six classifications of FMIs in the Work Program;²⁰ its Article 24 affirms the principle of interconnection and interoperability of FMIs, requiring FMIs to carry out business cooperation with each other through the connection of relevant systems, and reinforces the transparency of FMIs to reduce the cost of systematic communication in the transaction process.²¹ In addition, the Administrative Measures also set access and reporting obligations for cross-border delivery services of foreign FMIs, taking into account the opening-up and financial security. By clarifying the scope of regulation of FMIs, improving the access arrangements, strengthening their operational and risk management requirements, and optimizing the supervision and responsibilities of relevant entities, the Administrative Measures represent China’s first attempt to implement unified regulation of FMIs.²² However, the Administrative Measures are still at the stage of consultation and the official implementation date is not yet clear.

¹⁶ See Article 39 of the Law of the People’s Bank of China (Draft Revision for Opinion): the People’s Bank of China takes the lead in formulating rules for the supervision and management of financial infrastructures, organizing inspections and evaluations of financial infrastructures, and proposing opinions on the determination of systemically important financial infrastructures and the implementation of macro-prudential management. The PBOC approves the establishment and supervises the establishment of inter-bank market infrastructure, basic credit reporting systems, important payment systems and their operators, and approves the establishment of financial infrastructures other than those in the securities and futures industries in conjunction with the relevant State Council financial supervision and administration authorities, and implements functional supervision.

¹⁷ Lin Jie. Exploring the Reform of Financial Market Infrastructure Regulation[J] //Jinan Journal (Philosophy and Social Science Edition). 2024. № 5. P. 53.

¹⁸ See Article 2 of the Second Review Draft of the Financial Stability Law (Draft): The goal of maintaining financial stability is to safeguard the continuity of the basic functions and services of financial institutions, financial markets and financial infrastructure, to continuously improve the ability of the financial system to withstand risks and serve the real economy, to curb the formation and expansion of financial risks, and to prevent systemic financial risks.

¹⁹ See Article 17 of the Second Review Draft of the Financial Stability Law (Draft): The People’s Bank of China, in conjunction with the relevant departments of the State Council, shall establish a macro-prudential policy framework covering the major financial institutions, financial markets, financial infrastructures and financial activities; it shall monitor and assess the overall risk situation of the financial industry; it shall utilize macro-prudential policy tools; and it shall guard against systemic financial risks. The People’s Bank of China, in conjunction with the relevant departments of the State Council, has established a macro-prudential policy framework covering major financial institutions, financial markets, financial infrastructures and financial activities, monitored and assessed the overall risk situation of the financial industry, utilized macro-prudential policy tools, and prevented systemic financial risks.

²⁰ See Article 2 of the Measures for the Supervision and Administration of Financial Infrastructure (Exposure Draft): The financial infrastructure referred to in these Measures refers to the financial asset registration and depository system, the clearing and settlement system (including the central counterparty that carries out the centralized clearing business), the trading facilities, the transaction report repository, the important payment system, and the basic credit reporting system.

²¹ See Article 24 of the Measures for the Supervision and Administration of Financial Infrastructures (Draft for Public Comments): When financial infrastructures carry out business cooperation among themselves through relevant system connections, their operating institutions shall clarify the rights, obligations and responsibilities of each party through the signing of an agreement or a convention, etc., and shall effectively identify and manage relevant risks.

²² Ji Kui-ming. Outline of Infrastructure Unification Norms in the Formulation of Financial Law [J] // Finance and Economics Law. 2025. № 4. P. 89.

3. Optimization Path of China's Financial Market Infrastructure System

For the long-neglected FMI system, it is only expedient to patch up the current law, and it is more urgent and feasible to take the opportunity of drafting the financial law to formulate the unified basic rules. China's FMI legislation needs to achieve a three-fold goal through the unification of legislation, first, to clarify the basic scope of the six types of FMIs and the dynamic adjustment mechanism; second, to give FMIs a special corporate status and strengthen the effectiveness of self-regulatory norms in the world; and third, to build a hierarchical synergistic system with the central bank's macro-prudential supervision as the core and the functional supervision of the Securities and Exchange Commission (SEC) and the General Administration of Financial Supervision as the complementary system. On this basis, relying on the Financial Services Commission to coordinate and implement differentiated regulatory intensity and high-frequency rule iteration, promote the paradigm shift from fragmented governance to systematization and rule of law, and strengthen the function of "bal- last" for financial stability.

3.1. Clarify the basic scope of FMI

The Third Plenary Session of the 20th CPC Central Committee proposed the formulation of a financial law, which provides an important opportunity for the rule of law and institutionalization of FMI. Although the current legislative model of financial law exists in the financial basic law and "stability and regulation" unification of the two legislative paths of choice, but these two legislative models will be involved in the regulation of FMI, so to solve the current problems encountered in the construction of the FMI, the optimal model is still a strong unification of the financial law on the FMI for comprehensive regulation. Therefore, the author believes that the scope of the basic concept of FMI, its legal status and regulatory path can be clarified in the financial law by combining the Administrative Measures, the Exposure Draft, the Financial Stability Law (Draft) and other relevant documents. First of all, for the basic concept and scope of FMI, it can continue the provisions in the Administrative Measures, adopt enumerative definition to divide China's FMI into six categories, and at the same time,

it can set up a bottom-up clause, primarily stipulating the criteria and methodologies for identifying FMI, thereby enabling the FMI scope to evolve dynamically²³ and mitigating the limitations inherent in purely enumerative legislative approaches. For the Internet financial platform can be incorporated into the supervision of FMI through the idea of differentiated treatment, categorized governance and differentiated supervision.²⁴ At the same time, the "Administrative Measures" did not further explain the specific FMI after categorization, so it can be defined together in the financial law to clarify the specific point of each type of FMI. The definition of the scope of FMI is only the starting point for the construction of the system, and it is more crucial to establish the legal personality and power boundary of FMI. For the lack of effectiveness of self-regulatory management of this core problem, need to be empowered by legislation to achieve from the "de facto authority" to the "legal source of power" of the leap.

3.2. Enhancing the External Validity of FMI Self-Regulatory Norms

FMI can become the basis of financial market transactions, because of its self-regulatory management of the financial market to form a constraint, prompting market participants to form stable expectations. However, as mentioned above, only a few FMI self-regulatory management norms have been explicitly authorized, and none of the others have been explicitly authorized. The issue of the external effectiveness of self-regulatory management norms boils down to the ambiguity of the legal status of FMI operating organizations. The "Management Measures" have responded to this problem, Article 23 gives FMI operating institutions the responsibility of managing the main body, but the concept of "FMI operating institutions" introduced in this article is controversial.²⁵ As previous analysis indicates, the core connotation of FMI refers to the entity directly responsible for operating the facility-oriented business. However, this article creatively introduces the FMI operating organization, which is obviously the result of confusing the front-end technical system with the main body and placing FMI too far in front of the technical system. And the source of its self-regulatory authority and the way of performing its duties are still stuck in the solidified thinking of private

²³ See supra note 22 at 95.

²⁴ Yue Cai-shen. Legal Reflections on the Incorporation of Internet Financial Platforms into the Regulation of Financial Market Infrastructure [J] // Politics and Law Series. 2021. № 1. P. 91.

²⁵ See Article 23 of the Measures for the Supervision and Administration of Financial Infrastructure (Exposure Draft): Financial infrastructure operating institutions shall assume the main responsibility for the management of participants and take practical measures to strengthen the supervision and management of participants. The rights, obligations and responsibilities of each party shall be clarified between the financial infrastructure operator and the financial infrastructure participants through the signing of agreements, conventions or the formulation of business rules. For participants that conduct business in violation of the law and pose greater risks, management measures such as suspension of business and orderly withdrawal should be taken as appropriate.

authorization and administrative penalties, which need to be unified legislation to break the conceptual and practical path of dependence.²⁶ Therefore, the provisions of the Management Measures can be further improved in the financial law, which can directly stipulate that FMI is the main body of management of market participants, and make it clear that it is a special enterprise legal person with certain market management authority. Furthermore, grant priority effect to FMI internal self-regulatory rules, allowing them to prevail over conflicting provisions in general laws. By directly authorizing the self-regulatory management of FMI in the financial law, its legal status is clarified and FMI is given a higher legal status, which makes it have the double-layer functions of both management and service, and also helps to relieve the regulatory pressure and realize the full coverage of regulation. After the legal status is clarified, the scientific nature of the configuration of the regulatory power becomes the guarantee for the system to land, and the flexible regulatory framework matching the risk level of FMI can be constructed to dissolve the tension between sectoral regulation and functional regulation.

3.3. Constructing a coordinated regulatory system

While different legislative models for the financial law are under consideration, the regulatory model for FMI must be addressed regardless of the model chosen. The Management Measures “Exposure Draft” requires the central bank to coordinate the supervision of important financial FMIs. The Financial Stability Law (Draft) similarly provides for the central bank’s responsibility to supervise FMIs and requires the central bank to supervise them in coordination with the State Council’s supervisory and regulatory authorities, but is silent on the specific coordination mechanism. 2023 The State Council implemented institutional reforms to form the State Financial Supervision and Administration Bureau, which will unify and exercise the functions of financial supervision in addition to those of the securities industry. How the newly established General Admin-

istration of Financial Supervision can supervise FMIs in synergy with the central bank and the Securities and Futures Commission, and how to play the function of the financial members’ association for coordination and harmonization have all become urgent issues to be resolved. Therefore, important FMIs can be distinguished in the Financial Law according to the categorization criteria for important FMIs in the Administrative Measures.²⁷ In accordance with the provisions of the Administrative Measures, the Exposure Draft and the Financial Stability Law (Draft), and under the principle of “who establishes, who supervises”, and upholding the systemic thinking of supervision, a hierarchical supervisory system should be established to differentiate between significant and non-significant FMIs.

Specifically, under the overall leadership, communication and coordination of the Financial Services Commission, the People’s Bank of China may be responsible for macro-prudential supervision of important FMIs. Among them, FMIs involving securities, futures and their related activities shall be supervised by the China Securities Regulatory Commission in accordance with the law; payment systems, basic credit systems, and inter-bank market FMIs shall be supervised by the People’s Bank of China; other FMIs may be functionally supervised by the State General Administration of Financial Supervision; for non-important FMIs, they shall be supervised by the department that approves of their establishment; and in the case of regulatory conflicts, they may be supervised by the Finance At the same time, it is necessary to build a differentiated regulatory intensity gradient — comprehensive regulation for systemically important FMIs (e.g., applying the 24 indicators of the PFMI, etc.), and flexible regulatory tools (e.g. exempting part of the operational resilience requirements, etc.) for non-systemically important FMIs, for which “regulatory sandboxes” can be introduced. Introducing a “regulatory sandbox” mechanism can incentivize financial innovation and application, while simultaneously containing associated risks within manageable bounds to safeguard financial stability.²⁸ Si-

²⁶ See supra note 29 at 95.

²⁷ See Article 37 of the Administrative Measures, which determines that those that meet some or all of the following criteria are systemically important financial infrastructures, and the financial administration department of the State Council shall be responsible for proposing and supervising the determination in accordance with the division of responsibilities: (i) the number of participants is large and widely distributed; (ii) it has a high market share; (iii) it has complex business, is highly interconnected with financial institutions or is interconnected with other systemically important financial infrastructures; and (iv) it has a high level of risk in terms of the number of participants and the number of participants interconnected; and (v) providing critical services in the financial market that are difficult to replace and may have a significant adverse impact on the financial system and the real economy in the event of a major risk event or other event that results in the inability to sustain operations. Those that do not meet the above criteria are non-systemically important financial infrastructures and shall be supervised by the financial administration department of the State Council or the provincial people’s government in accordance with the division of responsibilities in accordance with the requirements of Article 3 of these Measures.

²⁸ *Yuan Kang, Tang Feng. Systemic Risks of Financial Infrastructures in the Context of Fintech and Their Regulatory Consequences [J] // Finance and Economics Law. 2021. № 6. P. 16.*

multaneously, financial regulators should be granted greater autonomy in rulemaking. This, coupled with a high-frequency cycle of enacting, amending, repealing, and interpreting rules ("legislation, reform, abolition, and interpretation"), will enhance regulatory adaptability to market dynamics. Regulatory policy incentives and constraints should be dynamically adjusted, and regulatory measures allocated in a timely manner to remain effective.²⁹

4. Conclusion

The development of China's FMI legal framework is at a critical juncture, transitioning from a "policy-driven" approach to "systematic legislation". The existing system has formed structural contradictions in terms of fragmented legislative content, vague classification

standards, suspended legal status and fragmented regulatory powers and responsibilities, which urgently need to be consolidated through high-level legislation. The enactment of a basic financial law or a special FMI law can not only unify and define the legal scope and classification framework of FMI, but also eliminate market transaction uncertainty by granting external validity to self-regulatory norms. At the same time, the construction of a hierarchical regulatory system centered on the importance of FMI, to realize the tension and relaxation of regulation. In the future, China needs to balance the local practice and international integration in the legislative innovation, strengthen the institutional function of FMI as the "ballast" of financial stability, and support the high-quality development of the Chinese-style modernized financial system with the rule of law and systematic underlying structure.

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²⁹ *Xu Ying-jun, Kong Xiao-xia*. Multi-dimensional Synergy and Unified Legislation of Financial Supervision under Systemic Thinking [J] // Journal of Henan University (Social Science Edition). 2025. № 3. P. 35.