Global Financial Services Regulatory Guide - China

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

In the past, the supervision over the banking, securities and insurance industries was all carried out by the central bank of China, that is, the People’s Bank of China (PBOC). With the establishment of the China Securities Regulatory Commission (CSRC) in 1992, the China Insurance Regulatory Commission (CIRC) in 1998 and the China Banking Regulatory Commission (CBRC) in 2003, the regulatory and supervisory functions of the three industries have been officially taken over from the PBOC and assumed by these respective authorities. In 2004, the CSRC, CIRC and CBRC entered into the Memorandum of the Three Financial Supervisory Commissions concerning the Division of and Cooperative Supervision over the Financial Industry, which clarified the division of the regulatory and supervisory functions of the three industries. In 2018 the CBRC and CIRC merged, and the China Banking and Insurance Regulatory Commission (CBIRC) was formed to regulate both banking and insurance industries.

China has a civil law legal system based largely on the continental model, which mainly includes: (a) laws at the state level; (b) regulations published by the State Council; (c) local regulations; and (d) rules published by the governmental agencies.

With few exceptions, foreign investors are generally required to obtain appropriate approvals from competent Chinese regulators before they can set up a business presence or carry on business or marketing activities in China.

China has two regulators responsible for the authorization and supervision of banks, insurers, securities firms and other financial institutions. The allocation of responsibilities between the CBIRC and the CSRC is as follows:

The CBIRC is responsible for supervising banks, finance companies, trust companies, financial lease companies, financial assets management companies, consumer finance companies, auto finance companies, other deposit-taking financial institutions, insurance companies, and other insurance-related institutions in China.

The CSRC is responsible for supervising securities products and services providers in China, such as listed companies, securities companies, securities investment fund management companies, and stock exchanges.

The PBOC also plays an important role in supervising the financial services, such as making the monetary policies and supervising the interbank bond market and interbank clearing system.

Non-financial institution payment service providers ("**Payment Service Providers**") in China are regulated and supervised by the PBOC.  In 2010, the PBOC started to allow Payment Service Providers to operate upon securing a payment service permit.  The PBOC is also responsible for regulating anti-money laundering and anti-terrorism financing activities in China. Financial institutions and Payment Service Providers are required to develop and implement robust and effective internal control policies against anti-money laundering and anti-terrorism financing activities and report any such cases to the PBOC.  In case of any non-compliance, the PBOC may impose penalties (including warning and monetary fines).

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The Chinese legislative regime includes the following:

Laws that are promulgated by the National People’s Congress or the Standing Committee of National People’s Congress

Administrative regulations that are published by the State Council

Local regulations that are published by the local People’s Congress or the Standing Committee of the local People’s Congress

Rules that are published by the ministries, commissions and other governmental authorities at the central level or the local government

The Supreme Court of the PRC may publish judicial interpretations on certain specific issues from time to time. Technically speaking, such judicial interpretations are not “laws” under the Legislation Law, *per se*, but are widely complied with by the governmental authorities and the courts  ̶  hence from a practical point of view are usually considered as one of the sources of laws.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

PRC regulators oversee a broad range of activities, as follows:

Setting up a bank would require approval from the CBIRC.

A bank would need to apply for a separate CBIRC approval for certain business activities, such as issuing bankcards, acting as custodian for securities investment funds, derivative business, electronic banking, foreign exchange business, and wealth management.

Setting up an insurance company, insurance assets management company, insurance agency, and insurance brokerage would require approval from the CBIRC.

Setting up a securities company, fund investment company, futures company and investment advisory institution would require approval from the CSRC.

Setting up a non-financial institution payment service provider (including prepaid card issuance, bankcard acquiring, internet payment, etc.) would require approval from the PBOC.

Setting up a bankcard clearing institution would require approval from the PBOC.

There is no established legal regime regulating cryptoassets and cryptocurrencies-related activities are relatively limited in China1.  However, as a long-standing view taken by PRC regulators, such activities are prohibited.  We summarize the policies and guidance given by PRC regulators from time to time as follows:

Financial institutions and Payment Service Providers are prohibited from undertaking any business in relation to Bitcoin.

Initial coin (i.e., cryptoassets and cryptocurrencies) offering is prohibited.

Online platforms of cryptoassets and cryptocurrencies are prohibited from providing services (including but not limited to trading services) in relation to such assets and currencies in China.

1. Since 2019, PBOC has been implementing certain pilots programs in respect of "e-CNY" (which is expected to be the lawful digital currency of China) across China. By far trials are being conducted in a closed environment and not yet connected to the country's existing sovereign currency issuance and circulation system. The legal framework regulating such e-CNY is also yet to be established and it remains to be seen whether the government's views towards the crypto assets and cryptocurrencies-related activities would be fine-tuned following future implementation of the e-CNY system.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

With a few exceptions (such as cross-border loans provided by foreign banks to Chinese companies), a foreign individual or financial institution is not allowed to carry on any “operational activities” in China that may be deemed as a regulated financial business if they do not have the appropriate business presence in China or approval from a competent Chinese regulator. Activities that involve soliciting business or clients for specific products or transactions that are only allowed to be provided by licensed financial institutions in China may be considered as carrying on such regulated business activities in China.

Generally, the supervisory power of PRC regulators would not extend to foreign individuals or institutions. Note, however, that any non-compliance with PRC law by a foreign individual or institution may leave a “bad record” with the authorities and may adversely affect future activities and local affiliates’ (if any) business operations in China.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

The regulatory requirements for authorization differ depending on various factors, such as (i) type of investor; (ii) type of financial institution in China; and (iii) business activities that the financial institution in China intends to carry on.

In general, the requirements may involve the following:

The financial institution in China would need to have a minimum registered capital (for financial institutions, typically, the capital should be actual paid-in capital).

The investor would need to be in the relevant financial industry (where the investor is foreign, it typically needs to be a financial institution in its home jurisdiction).

The investor would need to satisfy certain qualification requirements, such as assets scale.

Where the investor is foreign, there would need to be a certain memorandum of understanding between the competent regulator in its home jurisdiction and the relevant regulator in China.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

In order for a financial institution to be set up in China and become authorized to carry on business activities, the investors will need to apply to the competent regulator (e.g., CBIRC for commercial banks) for approval. While the detailed requirements and procedures of the CBIRC and CSRC may differ, the application process, in general, will comprise two phases:

Application for preparation — Once approved, the financial institution can be formally established.

Application for commencement of operation — Once approved, the financial institution can then formally start with its business operations.

The whole approval and registration process for setting up a completely new financial institution in China may take around 18 months or even longer.

The legal regime regulating fintech is not yet well developed in China. There is no nationwide regulation on the licensing requirement.  However, the PRC government recently started setting up a Fintech Innovation Working Group to encourage the development of innovative services adopting fintech in some pilot cities. However, detailed licensing and implementing regulations are still under development.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

China has a foreign exchange control regime in place, and such foreign currency and exchange control is rigid. Foreign exchange control applies to the foreign exchange receipts and payments or business activities of organizations and individuals in China, foreign establishments in China, and expatriates in China. The State Administration of Foreign Exchange (SAFE) and its branches/sub-branches are the main regulator and are responsible for foreign exchange control in China.

Under the current foreign exchange control regime in China, cross-border fund transfer is divided into two categories: (a) current account items; and (b) capital account items. Depending on whether the relevant cross-border fund transfer is related to a current account or capital account items, cross-border fund transfers are subject to different administration and supervision treatments.

Current account items are usually of a recurrent nature, examples of which are payments for foreign trade, cross-border supply of services, and remittance of profits and dividends to outside of China. Current account payments and currency conversion in relation to these payments may be made at any licensed foreign exchange bank against the presentment of the relevant supporting materials of the underlying transactions for which payments are to be made. Examples of these materials are purchase contracts and invoices. For current account item transactions, it is essential and a general principle that there should be: (a) genuine and legitimate underlying transaction and accordingly, genuine payment or receipt need; and (b) the amount paid or received should be consistent with the underlying transaction.

Capital account items, on the other hand, are generally related to investments or loans, including capital investments, foreign debts and securities investments. Unlike current account items, capital account payments usually require registration or filing with SAFE before these may be made.

It is now also permissible to make cross-border fund transfers in RMB. In general, the exchange control regime (such as the requirement of genuineness for current account item transactions) applies to cross-border fund transfers in RMB as well.

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