



VIA MAIL

10 October 2025

Legislative Affairs Commission of the National  
People's Congress Standing Committee  
No.1 Qianmenxi Dajie  
Xicheng District  
Beijing 100805  
People's Republic of China

Dear Sirs,

**Re: Submission on the PRC Enterprise Bankruptcy Law (Draft Amendments)**

**1. Introduction**

- 1.1 FIA<sup>1</sup> welcomes the opportunity to provide comments on the *PRC Enterprise Bankruptcy Law (Draft Amendments)* ("**Draft Amendments**") released by the National People's Congress Standing Committee ("**NPCSC**") on 12 September 2025.
- 1.2 FIA and its members strongly support the efforts of NPCSC and other legislative bodies in the People's Republic of China ("**China**" or the "**PRC**") to integrate modern financial market practices into China's bankruptcy legal framework. We share the view that the Draft Amendments will help further safeguard the legitimate rights and interests of the relevant parties, and contribute to the improvement of the China's business environment.
- 1.3 We set out in this letter comments, recommendations and request for clarifications from FIA members on the Draft Amendments. We note our members may also make their own individual submissions on the Draft Amendments. Unless otherwise stated or the context otherwise requires, references in this letter to an "Article" are references to the relevant

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<sup>1</sup> FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct.

article of the Draft Amendments, and references to a "Paragraph" are references to the relevant paragraph of the Article.

## 2. **Executive Summary**

- 2.1 FIA welcomes the legislative recognition of qualified financial transactions and the express reference to close-out netting. To further strengthen legal certainty and market confidence, we respectfully recommend that Articles 56 and 107 also be expressly excluded from application to such transactions and their collateral arrangements. These exclusions are essential to ensure that qualified financial transactions can operate according to their agreed terms, free from insolvency-related interference, and to align with international best practices.
- 2.2 We also suggest that, in the process of determining and designating the scope of qualified financial transactions, the China Securities Regulatory Commission be involved alongside other relevant authorities, and that similar products receive equal legal protection regardless of where they are traded, cleared, or settled. This approach will help ensure comprehensive and consistent regulatory coverage for both over-the-counter and exchange-traded derivatives, whether traded domestically or overseas.
- 2.3 Finally, we suggest that a new article on financial market infrastructure operators be included, given the criticality of such operators to the financial system.

## 3. **Article 58 - Exclusion of Articles 56 and 107 from Application to QFTs**

- 3.1 FIA welcomes the introduction of "qualified financial transactions" (合格金融交易) ("QFTs") in Article 58 and the confirmation that QFTs that lawfully adopt close-out netting are not subject the bankruptcy administrator's "cherry-picking right" under Article 22 and "claw-back powers" under Article 43 to 45.
- 3.2 In light of the critical importance of allowing qualified financial transactions to be performed in accordance with their agreed terms, free from the interference of insolvency proceedings, we respectfully recommend that **Article 56 and Article 107** should also be expressly excluded from applying to QFTs or the collateral arrangements in respect of QFTs. Our proposed textual amendments to Article 58 are as below:

*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。

Exclusion of Article 56 in respect of QFTs

- 3.3 Article 56 generally permits the set-off of claims acquired before the acceptance of a bankruptcy petition. However, it establishes key exceptions which bar set-off for claims acquired after the petition's acceptance or with knowledge of insolvency, and for debts arising from non-punitive damages for personal rights infringement.
- 3.4 We recommend that Article 56 be expressly excluded from application to QFTs. The rationale for this exclusion is that the former China Banking and Insurance Regulatory Commission, through its *Q&As on the Measurement of Counterparty Default Risk Assets in Derivatives Transactions* (《中国银保监会有关部门负责人就<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>答记者问》) (the "**CBIRC Notice**"), has already made clear the judicial position on this issue. In particular, the judicial authorities' opinion as quoted by the CBIRC Notice expressly states that close-out netting is based on contractual set-off rules and that the limitations on set-off under the Enterprise Bankruptcy Law do not apply to close-out netting. This guidance has been widely understood as reflecting the consensus position of both the financial regulatory authorities and the judiciary. In light of this, we believe it is important for the amended Enterprise Bankruptcy Law to confirm this position at the statutory level, in order to provide legal certainty and reinforce market confidence.

Exclusion of Article 107 in respect of QFTs

- 3.5 Paragraph 1 of Article 107 provides that, during reorganisation proceedings, the exercise of security interests over specific assets of the debtor is suspended. However, if, among others, the collateral is not necessary for the reorganisation, the secured creditor may apply to the court to resume enforcement of the security interest.
- 3.6 We recommend that Article 107 of the Draft Amendment be expressly excluded from application to collateral arrangements for QFTs. With the widespread implementation of regulatory rules for margins in financial market transactions, collateral arrangements have become an integral component of QFTs. This exclusion is therefore necessary, as Article 107's requirement for court approval prior to collateral enforcement would directly conflict

with a key prerequisite for such transactions. Under relevant capital rules, qualifying master netting agreements must entitle a bank to promptly realize collateral upon an insolvency event. The delay introduced by a court approval process would undermine this fundamental requirement, jeopardizing the legal certainty and efficacy of QFTs.

- 3.7 Furthermore, collateral provided in connection with QFTs would, in practice, rarely constitute assets necessary for the purposes of reorganisation. On this basis, such collateral should not fall within the scope of the moratorium under Article 107. However, the introduction of a requirement for court approval before enforcement creates additional procedural uncertainty and potential delays, which could undermine the effectiveness of collateral arrangements in QFTs. As the interpretation of what constitutes “necessary assets” has not been tested in practice, there remains uncertainty as to whether enforcement of such collateral would be permitted in a timely and predictable manner. To avoid legal uncertainty and to ensure that the rights of parties to QFTs are preserved in accordance with international standards and market expectations, we recommend that Article 107 should not apply to QFTs or to collateral arrangements relating to such transactions.

#### 4. **Article 58 – Definition of QFTs**

- 4.1 Article 58 provides that the scope of qualified financial transactions (QFTs) shall be determined by law, administrative regulations, or by the financial regulatory authorities under the State Council. We are supportive of this approach, as it enables the regulatory authorities to exercise a degree of flexibility in designating QFTs, allowing them to respond in a timely manner to market developments and the evolving needs of the financial sector. However, we respectfully submit that, in the course of future implementation, particular attention should be paid to the following two issues to ensure clarity and consistency.
- 4.2 First, we recommend that the term “financial regulatory authorities under the State Council” be interpreted to expressly include the China Securities Regulatory Commission (“**CSRC**”), in addition to the People’s Bank of China (“**PBOC**”) and the National Financial Regulatory Administration (“**NFRA**”). Historically, close-out netting and related matters have primarily been addressed by PBOC and NFRA, with the CSRC’s focus being more on exchange-traded products. As a result, CSRC has not played a prominent role in the development of netting-related regulatory frameworks. Nevertheless, netting and settlement mechanisms are equally critical for exchange-traded futures, options, and other derivatives products under CSRC’s supervision. We therefore respectfully suggest that, when determining the scope of QFTs, the involvement of CSRC should be ensured, so as to provide comprehensive

regulatory coverage and support the healthy development of both over-the-counter and exchange-traded derivatives markets.

- 4.3 Second, we strongly encourage confirmation that the scope of QFTs will be applied consistently to both onshore and offshore transactions. In our view, any transaction that substantively meets the characteristics or definition of a QFT should be treated equally, regardless of where it is executed, cleared, or settled. This is particularly important for futures and options transactions. Under the PRC Futures and Derivatives Law ("**FDL**"), only standardised derivatives traded on PRC-recognised or approved trading venues are classified as "futures", which, on a literal reading, could exclude a significant number of futures transactions from the statutory definition. We believe that the regulatory status of a trading venue or the mode of execution should not be a precondition for recognising a transaction as a QFT for the purposes of netting protection. We therefore respectfully suggest that, in the process of specifying the scope of QFTs, careful consideration be given to ensuring that similar products are afforded the same legal protections, irrespective of where they are traded, cleared, or settled.

## 5. **New Article for Financial Market Infrastructure**

- 5.1 We respectfully propose the addition of a new provision to address the bankruptcy of financial market infrastructure ("**FMI**") operators, as follows:

*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。

- 5.2 The rationale for this proposal is that FMIs are critical to the stability and functioning of the financial system, but their business models, operational structures, and risk profiles differ materially from those of traditional financial institutions. As a result, the rules designed for financial institutions may not be entirely suitable or sufficient for FMI operators. The insolvency or resolution of FMI operators is a matter of paramount importance and is already specifically addressed under the *Administrative Measures for the Supervision of Financial Market Infrastructures* (金融基础设施监督管理办法). Including a dedicated provision in the Enterprise Bankruptcy Law would ensure that the legal framework for the resolution of FMI operators is comprehensive and tailored to their unique characteristics. This approach would also provide greater legal certainty and facilitate effective regulatory oversight, thereby supporting the overall stability and resilience of the financial system.

We welcome the opportunity to further discuss with NPCSC on the above or any matters concerning the overhaul of the Enterprise Bankruptcy Law as the next significant milestone in the formulation of a more developed bankruptcy legal framework. Please feel free to contact me at [bherder@fia.org](mailto:bherder@fia.org) or TzeMin Yeo, Head of Legal & Policy, Asia Pacific at [tmyeo@fia.org](mailto:tmyeo@fia.org), should you wish to further discuss.

Sincerely yours

A handwritten signature in black ink, appearing to read 'Bill Herder', is written over the typed name.

Bill Herder

Head of Asia-Pacific