

Research on the Judicial Application of Chinese Financial Regulatory Rules in Contract Validity Determination: An Innovative Construction Based on the Legal Customs

Junchen Wang

Shanghai Jiaotong University, Shanghai, 200030, China

wangjc25@sjtu.edu.cn

Abstract: To maintain contractual autonomy and prevent excessive intrusion of public law into the private law domain, China's Civil Code should maintain basic hierarchical restrictions on normative documents intervening in the determination of juridical acts' validity. However, the financial sector involves significant national security concerns, risk prevention faces knowledge barriers, traditional regulation is inadequate, and specialized legislation has gaps. To implement the concept of penetrative financial regulation, financial regulatory rules should be allowed to intervene in the determination of financial contract validity. Constrained by the hierarchical limitations of China's Civil Code, past judicial practice has developed four referral pathways: performance obstacles, illegal purposes, violation of superior law authorization, and harm to public interests. The current mainstream referral pathway relies on Article 153(2) of China's Civil Code regarding invalidity due to violation of public order and good customs. As a "bridge" connecting public and private law, the principle of public order and good customs can indeed enrich and expand the civil law system. However, its drawbacks include a failure to distinguish between commercial and civil public order and good customs, leading to tendencies of oversimplified application, and inconsistent judgments in similar cases resulting in insufficient judicial stability. The innovation of this paper lies in proposing a legal customs pathway that provides a more certain and professionally tailored pathway. Unlike the uncertain and subjective application of public order and good customs, the legal customs pathway, based on Article 10 of China's Civil Code, establishes clear evidentiary standards and industry-specific professional norms. This dual-referral system with distinct primary-secondary hierarchy not only enhances judicial predictability but also respects the special nature of commercial transactions. To enable financial regulatory rules to intervene more scientifically and reasonably in the determination of commercial contract validity, Article 10 of China's Civil Code on legal customs sources can be utilized to innovate the "illegal invalidity" pathway. The professionalism of the financial industry requires its practitioners to have general trust in financial regulatory rules as important policy-oriented documents and to repeatedly apply them in transactions within a certain spatiotemporal scope. This indicates that compliance with financial regulatory rules is a customary practice in financial commercial transactions, meeting the elevation conditions for legal customs. Ultimately, contracts violating financial regulatory rules can be deemed invalid for violating legal customs. Its specific application model can refer to the evidentiary model for legal customs in the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the General Provisions of China's Civil Code. The legal customs pathway can form a dual referral system with clear primary and secondary distinctions alongside the public order and good customs pathway, providing sufficient theoretical support for financial regulatory rules to intervene in the determination of commercial contract validity.

Key words: Financial Regulatory Rules, Contract Validity, Public Order and Good Customs, Legal Customs

Introduction

In China, financial regulatory rules possess high national authority and clear enforceability, having undergone filing and legal unification procedures, yet they are strictly excluded by China's Civil Code from being the basis for judging contract validity. To achieve financial regulatory effects, financial regulatory rules should be regarded as legal customs and introduced into judicial adjudication through Article 10 of China's Civil Code and Article 2 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the General Provisions of China's Civil Code. This pathway has rationality and operability. According to Article 153(1) of China's Civil Code, laws should naturally take precedence over public order and good customs as the basis for negating contract validity. The systematic status of legal customs is equivalent to narrowly defined laws and should similarly be given priority application.

This paper employs multiple research methodologies to comprehensively analyze the judicial application of financial regulatory rules. First, normative analysis is adopted to examine the theoretical foundations and systematic position of relevant legal provisions in China's Civil Code and related judicial interpretations. Second, comparative legal research methodology is utilized to draw insights from foreign legislation on legal customs sources, particularly from Swiss, German, Japanese, and Korean commercial legal systems. Third, case study methodology is applied to critically analyze landmark judicial decisions, such as the contrasting judgments in two similar real estate contract cases (Li Haikun case and Qingzhou Wanda case), revealing the inconsistencies in current judicial practice and the necessity for innovative pathways. These methodological pathways collectively enable a thorough exploration of how financial regulatory rules can scientifically and reasonably intervene in commercial contract validity determination through the legal customs pathway.

I. Theoretical Foundations and Practical Needs for Financial Regulatory Rules to Influence Contract Validity Determination

Financial institutions hold absolute advantages over most financial investors in terms of information access and capital size, giving them initiative in contract signing and placing them in an unequal position with investors. Unrestrictedly allowing contractual autonomy in the financial field and ignoring the regulatory guidance function of financial regulatory rules may significantly harm the interests of small and medium-sized financial investors, who constitute the absolute majority of market participants, thereby threatening the overall stability of China's market economic order. Moreover, traditional civil law is inadequate in addressing potential financial risks embedded in commercial contracts, while specialized commercial laws suffer from legislative supply shortages and excessively long update cycles. To enhance financial regulatory efficiency and effectively resolve systemic financial crises, the judiciary should moderately allow financial regulatory rules to intervene in contract validity determination.

A. Legislative Gaps in Controlling Financial Risks

Modern financial markets have global and instantaneous characteristics, making financial risk warning and prevention unable to rely solely on traditional civil and commercial law thinking. (Ji, W.D. & Cheng, J.H., 2018) Additionally, transactions within the financial sector exhibit stronger interconnectivity and transmissibility, causing original risks to spread like dominoes continuously. The emergence of financial risks is difficult to predict, and the ultimate consequences of multiple risk factors overlapping are incalculable. (Geithner, T. & Paulson, H., 2019)

The operational logic of traditional private law systems conflicts with the prevention logic of financial risks. For example, tort remedies in civil law follow the principle of making whole as the basic standard, while financial governance for preventing systemic financial risks primarily focuses on safeguarding the interests of the entire financial market, with rescue policies often aimed at ensuring the stable operation of

systemically important financial institutions.

China's financial commercial legislative system lacks fundamental laws, missing specific legislation such as the Futures Trading Law and the Financial Consumer Protection Law. (Zheng, J.H., Wang, G. & Zhang, C.H. 2015). This results in many popular financial businesses in the market having no specific laws for adjudication. China's financial laws also suffer from untimely updates and difficulty adapting to the rapid changes in economic and social environments. For instance, the current Securities Law has only undergone four amendments and one revision in 20 years. In the current legislative system, the Consumer Protection Law and the Anti-Unfair Competition Law partially involve the protection of financial investors, indirectly regulating the stable order of financial markets. However, the most targeted Financial Stability Law is still in the draft stage.

Admittedly, the incompleteness of law is an inevitable fate for any legal department. However, from the perspective of legal endogeneity theory, civil law, as a crystallization of daily life experience, can still guide people's behavior through authoritative daily rules even when laws are missing. In contrast, laws in the financial field are difficult to form constant legal standards due to the ever-changing market. When gaps exist, they cannot guide the behavior of financial entities through experience summary like positive law does. (Zhao, Y. 2019).

Currently, the main force stabilizing the development order of China's financial market is actually financial regulatory rules. Legislators have limited cognitive capacity and cannot exhaust all circumstances of invalid civil juridical acts in laws and administrative regulations; supplementation by rules is an inherent necessity. After all, "mandatory legal provisions merely embody non-private interests in the form of positive law; non-private interests that have not yet been expressed as specific rules of positive law also need to be maintained." (Yang, D.X. 2021)

B. Regulatory Rules Undertake Primary Professional Regulatory Tasks

Current financial cases often involve practical issues with strong innovativeness, professionalism, variability, and complexity. (Qiang, L. & Lu, Y.F. 2021) China's incomplete financial legal system appears inadequate due to the lack of supporting subordinate laws. From the perspective of the number of normative documents, there are only 8 laws and 14 administrative regulations currently in effect in China's financial sector, while the number of regulatory rules involving specific financial industry fields such as finance, banking, securities, insurance, and trust is 412. This numerical disparity shows that financial regulatory rules have concretized the rough legislative content of financial laws and administrative regulations, which are dominated by principle-based norms and suffer from the problem of legal hollowing. (Xing, H.Q. 2012) They have become the main operational guidelines for market entities in their business operations. Introducing financial regulatory rules as a basis for judging contract validity is not only a practical requirement due to insufficient legislative supply of higher-level financial laws and administrative regulations but also stems from the professionalism and flexibility of financial regulatory rules that can correctly guide the healthy development of the financial industry. Conversely, normative documents have the potential to dynamically elevate their hierarchical status. Current financial regulatory rules may later be upgraded to become part of the Financial Stability Law. This would create a situation where the content and textual expression are identical, but their appearance in documents of different hierarchical levels would produce entirely opposite effects on contract validity. This seems to violate the basic rule of law requiring similar cases to be treated similarly.

Compared to laws and administrative regulations with higher degrees of fixity, financial regulatory rules

have stronger capabilities for penetrative identification and prevention of financial risks. When dealing with interconnected commercial transaction behaviors, judicial adjudicators must not only evaluate each involved contract separately but also review the overall transaction relationship involving multiple contracts in combination, identifying the true intentions hidden behind them.

In the judgment of the case "Beijing Defali Company v. Anhui Welfare Center Marketing Agreement Dispute," it was pointed out that when laws and administrative regulations do not have explicit provisions, but the legislative purpose and regulatory content of financial regulatory rules aim to maintain social public interests, courts can refer to the relevant provisions of financial regulatory rules and determine that the contract in question is invalid because its intended purpose harms public interests. Similarly, in the judgment of "Berkshire Hathaway Investment Company v. Shanghai Waterworks Company Equity Transfer Dispute," it was pointed out that the "detailed rules" for state-owned asset management formulated according to administrative regulations comply with the spirit of laws and administrative regulations and the protection of public interests, and therefore should be treated equally with laws and administrative regulations, allowing the invalidation of contracts that violate relevant rules. This indicates that the judiciary also recognizes that financial regulatory rules bear the primary responsibility for stabilizing financial market order and should be allowed to influence contract validity to achieve an organic combination of financial regulation and financial justice.

II. Development of Referral Pathways for Financial Regulatory Rules to Influence Contract Validity

During China's former Economic Contract Law period, courts could directly rely on policy to negate contract validity, and rules, being superior to policy, were naturally direct adjudicative bases without requiring referral pathways. Subsequent referral pathways emerged due to hierarchical restrictions within the private law system on public law intervention. Limited by the former Contract Law's exclusion of financial regulatory rules from the qualification to determine contract validity, courts adopted multiple referral methods, indirectly introducing financial regulatory rules into contract validity determination through other legal norms.

A. The Contract Itself Is Valid but Performance Faces Obstacles

The first referral form does not involve the influence of financial regulatory rules on contract validity but rather considers violation of relevant provisions of financial regulatory rules as circumstances where the contract cannot be performed.(Li, J.W. 2019)This pathway separates the influence of financial regulatory rules on contract validity from their influence on contract performance, aiming to both respect parties' autonomy of will and ensure regulatory rules function effectively.

By relying on the circumstances of "legal or factual impossibility of performance" in Articles 109-110 of the former Contract Law, this method prevents contracts violating financial regulatory rules from affecting actual interests. This pathway seemingly maintains private autonomy to the greatest extent while not hindering the realization of regulatory purposes. However, acknowledging that contracts are valid but cannot be performed creates a split between legislation and practice. Determining non-performance also raises issues of liability allocation for breach of contract. When both parties to a contract are aware that its content violates financial regulatory rules but still reach an agreement and sign the contract, questions arise about which party should bear responsibility and to what extent. These issues cannot be fully resolved by simply determining that contracts violating financial regulatory rules face obstacles at the performance level.

B. Contracts Are Invalid Due to Legal Forms Concealing Illegal Purposes

The second referral pathway considers contracts violating financial regulatory rules as essentially falling under Article 52(3) of the former Contract Law, which renders invalid contracts that "use legal forms to conceal illegal purposes." The judgment in the case "Beijing Chuangying Nuowei Company v. Baoli Minbao Company Contract Dispute" is a typical representation of this adjudicative channel. In this case, Minbao Company, as a state-owned holding company with excellent assets and corporate credit guaranteed by state funds, was the actual risk-bearer and practical party to the contract, yet its benefits were less than 1% of the total amount. Chuangying Company, as a foreign-invested company, bore almost no practical risk of contract performance but could obtain most of the benefits. This disproportionate risk-benefit allocation would inevitably harm the interests of China's state-owned enterprises. Therefore, the court considered that the profit allocation stipulated in the Cooperation Agreement had illegal intent in its purpose. Although formally compliant with laws and administrative regulations, the agreement should be deemed invalid because it concealed the illegal purpose of transferring state-owned interests.

However, this clause no longer exists independently in the era of the Civil Code, with most of it transformed into Article 146 of China's Civil Code on collusive fictitious representation, and a small part merged into Article 153(1) of China's Civil Code. The validity of the hidden true purpose in collusive fictitious representation is determined according to relevant laws and regulations, so the issue remains whether these regulations include lower-level financial regulatory rules. (Ran, K.P. 2017) The negation of illegal purposes often relies on pathways that such purposes would harm public interests (public interest pathway) or that achieving such purposes would violate public order and good customs (violating customs pathway). Essentially, this does not constitute an independent referral pathway.

C. Regulatory Rules Are Specific Implementations of Superior Laws, and Violating Rules Equals Violating Law

The third referral pathway holds that specific norms in financial regulatory rules are established based on authorization from superior laws and administrative regulations, providing convenience and enhancing feasibility for implementing superior laws. Therefore, a contract's violation of rules is equivalent to violating the superior laws that authorize the rule-making, and can naturally be declared invalid under Article 52(5) of the former Contract Law on illegal invalidity. Article 19 of the Supreme People's Court's Interpretation on the Application of the Contract Section of China's Civil Code (Draft for Comments) also retains similar provisions.

This adjudicative pathway is relatively common in cases involving the protection of China's state-owned assets. For example, in the case "Berkshire Hathaway Investment Company v. Shanghai Waterworks Company Equity Transfer Dispute," the court acknowledged that the Administrative Measures for the Transfer of State-owned Property Rights formulated by the State-owned Assets Supervision and Administration Commission and the Ministry of Finance, and the Shanghai Property Rights Trading Market Management Measures promulgated by the Shanghai Municipal People's Government, as financial regulatory rules, could not directly affect the validity of the equity transfer contract. However, it considered these two rules as specific implementations of the Administrative Regulations on the Supervision and Administration of State-owned Assets promulgated by the State Council. The relevant provisions of these two regulatory rules did not exceed the scope of authorized legislation. In this case, both parties signed the state-owned property transfer contract without following the above regulatory rules, conducting auctions without approval and independently establishing an equity transfer agreement with Berkshire Hathaway without authorization. Therefore, the transfer agreement should be deemed invalid.

However, to universally implement this referral pathway in judicial adjudication, several issues need to be

demonstrated in individual cases. First, it is necessary to clarify what type of authorization from superior laws the financial regulatory rules are based on. Did superior laws propose guiding principles and comprehensive regulations, and are the financial regulatory rules about specific implementation procedures or substantive re-interpretation? Second, are the specific contents of financial regulatory rules necessarily consistent with the legislative purpose and value orientation of superior laws? Courts cannot skip thorough reasoning through presumptive arguments but should analyze the specific provisions of rules in conjunction with the background and regulated objects of superior laws. The authorized legislation pathway may lead to abuse of normative documents intervening in contract validity determination. Because all normative documents are authorized by their superior laws when formulated, all deriving from narrowly defined laws. But if all normative documents are regarded as specific provisions of laws, the hierarchical restrictions on normative documents become meaningless. Additionally, this referral channel has relatively vague interpretations regarding authorized legislation and requires value judgments, making it difficult to achieve similar judgments for similar cases in application, significantly increasing the uncertainty of judgments.

D. Rules Aim to Protect Public Interests, and Contracts Harm Social Public Interests

The fourth referral pathway relies on Article 52(4) of the former Contract Law, which states that contracts "harming social public interests" are invalid. This pathway considers that the legislative purpose of financial regulatory rules is to maintain social public interests, and violating rule provisions essentially harms social public interests. (Xu, J. & Song, Y. 2020) The case "Weijie TianCe Case," regarded as a landmark case of financial judicial regulation, adopted this adjudicative pathway. Regarding the validity determination of the Trust Shareholding Agreement in dispute, the court considered that the agreement's content violated Article 8 of the Insurance Company Equity Management Measures formulated by the Insurance Regulatory Commission, meaning the contract violated financial regulatory rules aimed at protecting public interests in the financial field. It had the potential to harm social public interests and was ultimately deemed invalid.

The fundamental purpose of legislation is to "increase the greatest happiness of the greatest number," requiring that social public interests, as the foundation for value judgment of behaviors and the goal of public power protection, be implemented in legislation. The court's adoption of the public interest clause is relatively more reasonable compared to the first three referral pathways. (Liang, S.S. 2016) However, this adjudicative channel also has problems. The concept of public interest also has uncertain characteristics, manifested as ambiguity, variability, interpretability, and adaptability. Determining whether a contract in an individual case harms public interests depends on judges' discretionary power, which may lead to inconsistent judgments in similar cases and reduce judicial certainty. Moreover, judicial organs sometimes skip the argumentation process and directly conclude that because financial regulatory rules are legally valid, violating them harms social public interests, making contracts violating financial regulatory rules invalid. This oversimplified argumentation pathway leads to abuse of this clause. Finally, with the promulgation of China's Civil Code, public interest is no longer an independent clause for determining contract validity.

III. Analysis of the Mainstream Pathway of Invalidity Due to Violation of Public Order and Good Customs

With the effectiveness of China's Civil Code, the clause on invalidity due to violation of public interests in the former Contract Law has been replaced by Article 153(2) of the Civil Code on invalidity due to violation of public order and good customs. The Contract Section Interpretation also emphasizes that the public order and good customs channel is the unified referral pathway for financial regulatory rules to intervene in contract validity determination. However, this pathway tends to be oversimplified in application. This

violates the principle of economical thinking; parties may gamble on whether courts will negate their contract validity, undermining the honest transaction order in financial markets and ultimately reducing the certainty of contractual expectations and increasing social transaction costs to some extent.

A. The Positive Significance of the Public Order and Good Customs Pathway

In Article 17 of the Contract Section Interpretation, the Supreme People's Court has also enumerated what types of contracts should be deemed invalid for violating public order and good customs, such as contracts that may affect national economic security or harm fair competition order. Therefore, contracts violating financial regulatory rules regulating financial security and market order maintenance can be deemed invalid by courts under Article 153 of China's Civil Code.

The public order and good customs clause not only establishes the boundaries of private autonomy but also serves as a bridge connecting public and private law, realizing modern civil and commercial law's pursuit of substantive justice. (Yu, F. 2006) It allows the civil law system to be expanded by judges absorbing real-world social changes in judicial adjudication, enabling civil law to follow the pace of era development without undergoing major legislative revisions. Public order and good customs are not simply a continuation of the public interest principle but rather the rule of law's response to all non-private interests. The principle of public order and good customs concretizes non-private interests, providing private law subjects with clearer moral standards to follow when engaging in civil juridical acts to maintain society's most basic order. It restricts the extremely broad concept of public interest that lacks baseline requirements and is prone to abuse. Moreover, public order and good customs are somewhat more perceptible and reducible. Public order and good customs are closer to people's daily lives; compared to public interest which sometimes conflicts with private interests, people are more willing to accept the constraints of good customs.

B. Remaining Deficiencies in the Public Order and Good Customs Pathway

Public order and good customs are not a perfect referral pathway. Even though its concept is more definite than public interest, it remains an abstract concept, leading to numerous inconsistent judgments in similar cases. For example, in the case "Li Haikun, Zhoukou Zhongyue Real Estate Co., Ltd., etc. House Purchase Contract Dispute," the final-instance court considered that the specific provisions of the regulatory rule Measures for the Administration of Commodity Housing Sales promulgated by the Ministry of Housing and Urban-Rural Development maintained the normal market order in the commodity housing sales field and sustained financial stability in the housing sector. It ultimately affirmed the original judgment that the refund sales clause in the disputed contract violated public order and good customs, supporting the initial ruling that the contract was invalid. In contrast, in the case "Qingzhou Wanda Chengxin House Development Co., Ltd., Li Wenshuai House Purchase Contract Dispute," the final-instance court believed that the Measures for the Administration of Commodity Housing Sales, being a departmental rule at the hierarchical level, even if contract clauses violated it, were not sufficient to reach the level of violating public order and good customs, ultimately ruling the contract valid. Two cases with similar circumstances, contracts violating the same regulatory rules, and close timing resulted in two different judgments.

Because adjudicators cannot determine general judgment standards for violating public order and good customs, they substitute with the moral thinking of ordinary people in society. As long as any clause in a commercial contract deviates from the moral standards of ordinary people, courts are likely to rule the contract invalid. In China, judges' discretionary power does not include the ability to replace public order and good customs with the moral views of ordinary society without argumentation; this is a destruction of private autonomy. Therefore, when applying the principle of public order and good customs as a referral,

comprehensive judgment should be made on whether the case involves general social morality or baseline social morality, and sufficient argumentation should be provided on whether it reaches the level of violating good customs.

Judicial argumentation shows a tendency toward oversimplified introduction. Because China has a large number of normative documents involving financial regulation, and some regulatory rules have flaws in scientificity and feasibility, financial regulatory rules need to be distinguished, and not all can be simply equated with public order and good customs. Based on examining the regulated objects, regulatory intensity, transaction security protection, and social impact should be comprehensively considered. Both subjective and objective factors should be integrated, considering objective factors such as the time cycle of regulatory intensity changes, the actual amount of parties' transactions and potential impacts, while also taking into account parties' subjective states during transactions-whether based on life purposes or profit purposes-for comprehensive consideration. This should be reflected in judgments through thorough argumentation. This requires adjudicators to abandon irrational thinking methods and place greater emphasis on ensuring judgments are built on rigorous legal argumentation and detailed factual analysis.

The principle of public order and good customs, as a basic principle of civil law, has special characteristics when presented in commercial law. China has always adhered to a unified civil and commercial legislative system, not emphasizing differences between civil and commercial law, with various provisions of the Civil Code having no special applicability in the commercial field. However, civil law tends to focus more on individual subjects' interests, while commercial law needs to consider the impact of large-scale commercial behaviors on society. There are deviations in their value orientations. With social development, to maintain stable and efficient economic development, commercial law continues to connect with traditional public law, absorbing numerous regulatory norms. Therefore, the social public order that needs protection in the commercial field and the good customs formed in commercial practice differ from traditional civil law's public order and good customs. To apply the principle of public order and good customs to resolve commercial disputes in judicial processes, the unique public order and good customs formed within the commercial field must be followed, with attention paid to the special social responsibilities borne by commercial entities. The boundaries of private autonomy for commercial entities should also differ from those for civil entities.

IV. Constructing a Dual System Through the Legal Customs pathway

Judicial inertia has prevented the practical world from recognizing the disadvantages of the invalidity due to violation of customs pathway. The academic suggestion to abandon the public order and good customs pathway and shift to illegal invalidity is to delete the term "administrative regulations" in Article 138 of China's Civil Code and expand the interpretation of "laws" in this article to the level of "broadly defined laws." (Liang, S.S. 2025) However, this would allow almost all hierarchies of normative documents to intervene in contract validity determination, inevitably causing unnecessary large-scale impacts on private autonomy. In fact, regarding the illegal invalidity pathway, we can change our thinking and rely on Article 10 of China's Civil Code on dual-hierarchy legal source provisions to treat financial regulatory rules as legal customs intervening in contract validity determination. This innovative referral research pathway views financial regulatory rules as legal customs, enabling them to serve as legal customs equivalent to laws with the ability to determine illegal invalidity of contracts. It can further promote the mutual integration and transformation of public and private law norms, not only making China's commercial law system open but also forming a clear primary-secondary referral system with the violation of customs invalidity pathway, enhancing the certainty and predictability of judicial adjudication.

A. The Feasibility of Legal Customs Intervening in Contract Validity Determination

The 1907 Swiss Civil Code set provisions for the application of legal customs at the beginning of the code. Article 1, paragraph 2 stipulates: "Where the law does not provide, the court shall decide according to legal customs; where there is no legal customs, according to the rule which it would establish as legislator." This represents the most typical legislative provision for the application order of legal customs abroad. The 1930 Civil Code of the Republic of China inherited provisions on the legal source status of customs from the Draft Civil Code of the Great Qing, with its Article 1 stating: "In civil matters, where the law does not provide, custom shall apply; where there is no custom, legal principles shall apply." This provision continues to be used in Taiwan, China. China's 2017 General Principles of Civil Law also established the legal source status of custom in the form of basic law. Therefore, it can be said that both ancient and modern, domestic and foreign, legal customs has entered the legal system as a direct legal source.

Inheriting the General Principles of Civil Law, Article 10 of China's Civil Code recognizes custom as a legal source. It can intervene in judicial adjudication as a supplementary legal source inferior to narrowly defined laws, provided it passes the public order and good customs review. The hierarchical status of custom in China's legal source system is that of a direct legal source. The evolutionary nature of custom and the efficiency and update frequency of regulatory rules converge through different paths. Moreover, financial regulatory rules are essentially the bottom-line guidelines for behavior for professionals in the specialized financial transaction field and must receive unanimous voluntary support.

Custom in legal terminology has three types: intra-legal custom, extra-legal custom, and anti-legal custom. Intra-legal custom is cited according to legal provisions, while extra-legal custom is applied when legal gaps exist. The foundation of financial markets remains the free contracts reached by trading parties. Financial regulatory rules, as a form of legal institutional supply path in modern financial commercial law systems that "combines inducement and compulsion, with inducement as the main pathway," induce financial practitioners to consciously incorporate regulatory rules into transactions. Therefore, financial regulatory rules are not filling legal gaps but rather supplementing market regulation based on basic laws. Thus, financial regulatory rules should be regarded as intra-legal custom.

Commercial organizations develop commercial customs through long-term commercial practice. These customs are malleable because individual members constituting commercial organizations, or staff specifically responsible for transactions, cannot escape their natural person identity attributes. Their reflexive behaviors formed through formulaic massive transactions over time reflect compliance with standardized, unchanging format contracts established by government or industries, ultimately evolving into customary commercial practices familiar to both trading parties. This means that in normally functioning financial markets, financial regulatory rules with guiding roles will receive universal compliance and voluntary recognition from financial practitioners during transactions, expanding the so-called "spontaneously formed order" into a conscious, logical "constructed order," ultimately enabling financial regulatory rules to possess the qualities of becoming legal customs voluntarily recognized by commercial entities.

China's Civil Code sets "where the law does not provide" as a prerequisite for applying custom and uses public order and good customs as the legality standard for whether custom can be applied. Despite intrinsic differences between civil and commercial law, China's legislation adopts a unified civil and commercial form, so the customs mentioned in the Civil Code's legal source provisions should likewise encompass customs in the financial field. Commercial law is not merely the laws promulgated by the state but must also include these customs that were originally merchant law. In terms of application order, because

commercial legal customs serves as an autonomous rule promoting subjects' adjustment of commercial transactions and reflecting commercial entities' creativity and self-determination in dispute resolution, it should take precedence over discretionary norms of commercial law. According to basic legal principles, commercial legal customs should also take precedence over civil statutory law. Japan has legislatively affirmed this application order, explicitly stating that "regarding commercial matters, where this Law does not provide, commercial customs shall apply; where there are no commercial customs, civil law shall apply." South Korea has similar provisions in its Commercial Code. Although Germany does not explicitly state the application hierarchy of commercial legal customs, it also emphasizes the importance of applying commercial customs in commercial transactions. It can be argued that elevating the legal source hierarchy of commercial legal customs will not cause chaos in statutory law in the specialized field of commercial law but rather better conforms to the economic laws of commercial development.

B. Financial Regulatory Rules Meet the Conditions to Become Legal Customs

Traditional views hold that commercial customs are habitual behaviors gradually formed and ultimately universally recognized and voluntarily followed by practitioners in that field through long-term commercial practice by commercial entities. They can only arise from spontaneous behaviors of merchants, forming over time and expanding application space, ultimately condensing into industry ethics that make transactors voluntarily subject to their universal constraints. This generation process shows that commercial customs are the embodiment of private autonomy, the externalization of merchants' free will in transactions. Markets fundamentally exclude excessive intervention by public power in resource circulation, spontaneously forming supplements to legislative gaps and resistance to administrative regulation. In contrast, financial regulatory rules are a concentrated embodiment of state will, directly guiding/leading financial market development and directly suppressing and controlling practitioners' free transactions. Their binding force is not bottom-up spontaneous recognition but guaranteed by state compulsory measures.

In fact, interpreting financial regulatory rules as commercial customs capable of elevating to legal customs is not far-fetched. The integration of strong administrative regulation is an inseparable characteristic of the development trend of modern commercial law's public-law orientation. Legislation as an emerging rule represents social progress through its application. Making newly revised financial regulatory rules by financial regulatory agencies become natural habits for financial commercial entities in transactions is a requirement of the new legal order. The pathway of treating financial regulatory rules as legal customs for intervention can enrich the development of China's financial commercial law system. Although financial regulatory rules have strong public power attributes, they directly cultivate a large number of self-regulatory norms established spontaneously by financial practitioners, forming industry conventions through professional standards set by self-regulatory organizations. Moreover, to better achieve regulatory purposes, financial regulatory agencies often extract the "essence" from industry self-regulatory norms and reflect it in regulatory rule legislation. Since transaction norms formed by private entities through industry self-regulation can be regarded as commercial customs, financial regulatory rules formulated by financial regulatory departments to standardize and guide financial market development can even more so be regarded as commercial customs universally followed by financial practitioners in transactions for judicial adjudication.

Legal customs do not require long-term historical development to form; strict time requirements are actually for customs formation. According to the definition in Cihai (Comprehensive Dictionary), habit is defined as "a way of behavior consolidated through repetition or multiple practices and becomes necessary." China's Civil Code's Interpretation of the General Provisions and the Interpretation of the Contract Section actually provide two classifications of customs: transaction customs and legal source

customs. Transaction customs and legal source customs are not entirely equivalent; their application in judicial adjudication is in the same domain as industry customs and regional customs with priority application order. They should be distinguished based on their different effects on contracts. Transaction customs only interpret or supplement contracts. Their specific manifestations in judicial adjudication include confirming whether a contract is established, clarifying and defining ambiguous wording in contract clauses, disclosing and clarifying ancillary obligations to make them enforceable, protecting parties' reasonable reliance, and ensuring transaction security. Transaction customs may be individual subjective habits for specific series of transactions without universal influence and public awareness. As long as they possess applicability certainty, temporal continuity, frequency repetition, value legality, and provability in adjudication, they may be regarded as transaction customs by courts. Transaction customs do not necessarily require written form, though written transaction customs appear clearer in judicial adjudication, reducing to some extent the burden of proof for parties claiming transaction customs.

The Contract Section Judicial Interpretation Article 2 provides the Supreme People's Court's specific standards for judging transaction customs, combining parties' identity nature, transaction purposes, past habitual practices, transaction time span, whether transactions have stable locations, whether there is industry-wide recognition, whether they are essential elements for contract formation in this field, and whether they violate laws, regulations, and public order and good customs. As a legal source, custom is stipulated in the General Provisions Judicial Interpretation Article 2. Legal source customs emphasize certain industry barriers, fixed geographical spaces, and general compliance by ordinary people over a relatively long time. In terms of burden of proof allocation, courts can ascertain the existence of legal source customs *ex officio*, during which they also examine customs for public order and good customs and value orientation. Because if a custom is determined to be a legal source custom, it can be directly cited as a basis for ruling contract illegal invalidity, rather than merely cited as a reason for the court's judgment.

In the field of financial commercial transactions with high professional barriers, financial practitioners, even if unaware of the influence of financial regulatory rules on contract validity at the civil law level, should be aware of their compulsory nature at the administrative level and should directly regard them as norms with compulsory binding force. They naturally should include relevant regulatory rule norms when signing financial commercial contracts. This compliance with regulatory rule provisions is not only reflected in individual contract clause content but also requires the contract as a whole and transaction spirit to align with the guiding direction of rules. This compliant behavior can be considered habitual practice in transaction activities, forming industry conventions through long-term commercial transactions, various market economic constraints, and interactive behaviors of commercial entities, ultimately gaining recognition of regulatory rules. In financial transaction fields surrounding emerging digital technologies, if commercial transaction customs exist, these customs may not satisfy long-term practical testing in time and lack fixed geographical positions in space. However, if timely and effective rules provide demonstration guidance for this emerging transaction market, practitioners in this field will consciously replicate typical transactions, using rules as behavioral guidelines to control their behavior boundaries. Financial regulatory rules, within a fixed geographical area and during a time period accounting for a relatively high proportion of the industry's overall development history, are continuously cycled and applied to financial transactions, actually meeting the formation conditions of customs. At this point, the rules have gained industry-wide universal recognition. This means that in innovative fields, customs can potentially be rapidly cultivated in the short term. Financial regulatory rules can become fixed behavioral guidelines for financial practitioners and habitual compliance when signing financial commercial contracts without requiring absolute spatiotemporal experience.

Financial regulatory rules, as normative documents formulated by financial regulatory agencies to maintain market stability, concretize socialist core values in the financial field, embodying the state's rational planning will for the development direction of financial markets. They should be voluntarily followed by all financial industry practitioners. Their ideological core remains consistent with the essence of public order and good customs. As commercial habitual practices, they naturally belong to the category of good customs and can certainly pass negative reviews of public order and good customs and laws and regulations. Moreover, financial regulatory rules spontaneously followed by financial practitioners must have undergone substantial scientific argumentation before being issued, having rationality. Their application aims to achieve fairness and justice in the financial field, provide convenience for financial market transactions, and reduce the possibility of financial risks in the long term.

Financial regulatory rules intervening in the financial commercial field as legal customs can also simplify transaction processes and reduce transaction costs to promote markets. Because contracts signed by both parties need to meet the regulatory rules of financial regulatory rules, this will inevitably reduce the risk of contract invalidity, decrease uncertainty during contract performance, improve transaction efficiency, promote good circulation in financial markets, and achieve good interaction between law and markets. The financial industry, as a specialized field with high professional thresholds, requires its practitioners to be very familiar or reasonably expected to know financial regulatory rules. Financial entities subjectively hold certainty about the effectiveness of financial regulatory rules. Financial regulatory rules are departmental rules in nature, applicable nationwide, continuously effective before being repealed, and have universality in financial field transactions. They are widely recognized and long-term applied transaction norms in the industry. This conforms to the characteristics of being objectively followed over time and space dimensions by industry practitioners, possessing both factual and normative features. Therefore, treating financial regulatory rules with public law authority and national binding force as legal customs intervening in financial commercial contract validity determination is a new initiative in the integration of public and private law. This not only helps expand China's commercial legal customs system but also makes those financial regulatory rules recognized by market concept more spontaneously executed by practitioners, conforming to the basic concept of private autonomy. It internalizes financial regulatory rules, so-called "hard law," into the voluntary compliance of every practitioner in the financial commercial field, becoming professional ethics that need not be explicitly stated when signing transaction contracts.

C. Specific Construction of the Legal Customs-Public Order and Good Customs Dual System

The legal customs pathway does not completely replace the public order and good customs pathway but has priority in application order. When facing legislative gaps, judicial practice should first seek whether legal customs exist, only allowing basic legal principles to intervene when none exist. This helps achieve the modest application of the public order and good customs general clause. Because the formation and application of legal customs elevated to legal customs have clear standards to follow, they are more feasible and persuasive compared to abstract legal principles. The Supreme People's Court should fix the adjudicative model through judicial interpretation that in cases without explicit legislative provisions, legal customs should take precedence over basic legal principles. This can ensure courts do not apply bottom-line legal principles without sufficient argumentation. Treating financial regulatory rules as commercial legal customs for referral can prevent abuse of the public order and good customs principle. This safeguards the bottom-line realization of the public order and good customs principle, and commercial legal customs universally recognized and followed by commercial entities better align with financial market development. Becoming adjudicative bases can improve judgments' acceptability and replicability.

Core Element	Requirements	Evidence Examples	Financial Context Special Considerations
Industry Consensus	Widely recognized and voluntarily followed by industry practitioners	<ul style="list-style-type: none"> • Industry guidelines and standards • Professional association codes • Expert testimony from financial practitioners • Market transaction records 	Financial regulatory rules are typically mandated by regulators but gain industry consensus through routine compliance and professional acceptance within financial institutions
Temporal Continuity	Consistent application over significant period	<ul style="list-style-type: none"> • Historical compliance records • Evolution of regulatory practice documents • Longitudinal market behavior data 	Shorter time frame acceptable than traditional customs due to dynamic nature of financial markets;
Spatial Universality	Applicable within defined geographical scope	<ul style="list-style-type: none"> • Regulatory enforcement records across regions • Uniform application documentation • Cross-institutional compliance evidence 	Financial regulatory rules typically possess nationwide application; spatial requirement satisfied through consistent enforcement across financial sector regardless of geographical boundaries
Legality Review	Compliance with fundamental legal principles and public ethics	<ul style="list-style-type: none"> • Alignment analysis with higher-level laws • Impact assessment on market stability • Public interest evaluation reports 	Must demonstrate that the regulatory rule serves financial stability purposes without unduly restricting contractual freedom; proportionality test essential

Table 1 Evidentiary Model for Legal Customs in Financial Regulatory Context

In judicial adjudication, the legal customs pathway should appropriately reduce judges' obligation for reasoned argumentation compared to the public order and good customs pathway, avoiding escape to basic legal principles. For the specific practical operation of the legal customs pathway in judicial adjudication, judges should make substantive judgments on the practical situations of financial regulatory rules in financial market transactions based on specific evidence such as industry documents, transaction records, or expert testimony. Focus should be on whether financial regulatory rules have gained universal recognition in the financial industry and are voluntarily followed during transactions. Second, judges

should conduct legality judgments on such commercial customs, confirming that habits transformed from financial regulatory rules do not violate mandatory legal provisions or public order and good customs. Finally, judges need to exercise their discretionary power, comprehensively deciding based on the degree of harm to non-private interests by the contract, the legitimacy degree of the contract's involvement in its own interests, whether this custom should be elevated to legal custom status and used to negate financial commercial contract validity based on illegal invalidity.

The Supreme People's Court should also clarify through judicial interpretations or guiding cases the identifying and guiding role of judicial precedents, explicitly stating that commercial legal customs should take precedence over general civil law, and commercial legal customs passing the public order and good customs test should take precedence over civil law basic principles, thereby establishing a more authoritative application hierarchy. It should also determine the scope of financial regulatory rules that can be regarded as financial commercial legal customs, restricting judges' discretionary power to some extent and improving the predictability of financial judicial adjudication. Local courts at all levels should also report financial regulatory rules explored in judicial practice that can be regarded as commercial customs to further enrich guiding cases. This unified operational standard can relatively reduce the constraints of judges' subjective cognitive levels and cognitive rationality on the accuracy of custom identification and application during the custom determination process.

The increasing formalization of commercial customs is an inevitable trend of global economic integration development. Autonomous organizations in business circles worldwide are promoting the re-professionalization of commercial law. Financial regulatory rules intervening as customs in commercial transactions require Chinese chambers of commerce and financial industry associations to fully leverage their self-regulatory and internal supervisory roles. We should vigorously promote the integration, communication, and coordinated development between financial regulatory departments and chambers of commerce, industry associations, and other autonomous organizations, stimulating autonomous organizations to spontaneously deepen the case-by-case implementation of financial regulatory rules and regularly propose professional improvement suggestions to regulatory departments based on market practice feedback. Commercial associations, industry mutual aid societies, and other civilian organizations should also actively organize regular learning of financial regulatory rules, ensuring internalization in heart and externalization in action of financial regulatory rules in financial transactions.

Financial judicial adjudication should likewise respect merchants' profit-seeking nature, excluding purely management-oriented financial regulatory rules from intervening in judicial adjudication as legal customs to avoid the arbitrariness of regulatory departments in controlling financial risks. It should be noted that the commercial legal customs referral pathway does not mean the public order and good customs pathway is completely replaced. Treating financial regulatory rules as commercial customs intervening in financial commercial adjudication is more about ensuring the bottom-line application of the public order and good customs principle in judicial application. It imposes some constraints on judges' discretionary power, enhancing the predictability and certainty of judicial adjudication. Combining the pre-contract warning and guidance role of commercial customs with the post-contract effectiveness negotiation evaluation norms of public order and good customs, a dual referral system (legal customs and public order and good customs) is established for financial regulatory rules intervening in commercial contract validity determination. This aims to enable financial regulatory rules to regulate commercial transactions throughout the entire process, eliminating financial risks at the source.

Conclusion

This paper has demonstrated that the current mainstream pathway of invalidating financial contracts through the violation of public order and good customs principle is fraught with uncertainty and inconsistent application, particularly failing to distinguish between civil and commercial contexts. The innovative legal customs pathway proposed in this paper offers a more systematic and predictable solution to enable financial regulatory rules to intervene in contract validity determination.

By treating financial regulatory rules as legal customs under Article 10 of China's Civil Code, this pathway establishes clear evidentiary standards and industry-specific professional norms that overcome the subjective and oversimplified application tendencies of the public order and good customs principle. The legal customs pathway recognizes the unique characteristics of financial commercial transactions, where practitioners possess specialized knowledge and voluntarily comply with regulatory rules as industry standards. This pathway respects the professional nature of financial markets while ensuring sufficient regulatory oversight.

The theoretical contribution of this paper extends beyond financial regulation to the broader interpretation of China's Civil Code. It demonstrates how legal customs can serve as a dynamic bridge between public and private law, enriching the civil law system with professional commercial norms. Future judicial interpretations should clarify the evidentiary standards for recognizing legal customs in financial transactions, establishing a more authoritative application hierarchy that prioritizes commercial legal customs over general civil law principles.

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