



# Safety Should Be Prioritized When Promoting Financial and Cultural Cooperation Through the Legal System

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**Abstract.** Legislation to promote cultural and financial cooperation in China has yielded positive results and raised expectations, but legal incentives for the integration of cultural industries and capital markets must prioritize national security, public interest security, and credit security as the first premise and bottom line.

**Keywords:** Cultural industry · Corporate Finance · Legal incentives

## 1 Introduction

Since the Third Plenary Session of the 18th Central Committee of the Communist Party of China (CPC) proposed “to encourage financial capital, social capital, and cultural resources,” cultural and financial cooperation has emerged as a distinguishing feature and significant achievement in the development of China’s cultural industry, which is essentially a two-way integration of the cultural industry and the capital market. However, at the same time, the giant statue of Guan Yu in Jingzhou, the Japanese style street incident, the Nanjing summer festival incident, and even the incident of poison teaching materials in the field of cultural undertakings in recent years have proved that the tension between the public welfare property of culture and the profit-driven nature of capital exists objectively, and almost every social incident related to the cultural industry has triggered public concern about “culture being held hostage by capital”, especially about the risk of foreign and private capital infringing on national cultural security. In this regard, the regulation of the law is therefore of great importance, as it will have a direct impact on the orientation of public opinion and the evolution of conflicts. Although a ‘promotion law’ for the cultural industry was included in the State Council 2016 Legislative Work Plan, legislative incentives in the cultural and financial sector should take safety as the baseline.

## 2 Cultural and Financial Cooperation in China Has Become the Norm

At present, the industry in China generally believes that the cultural industry, as an important carrier for the prosperity and development of socialist culture under the market economy, plays an important role in promoting the adjustment of economic structure and

the transformation of economic development mode. China's economic development has entered the "new normal", and residents' consumption has also accelerated into the stage of "development" and "enjoyment" consumption patterns. The consumption demand of service such as culture and entertainment, medical care, tourism and leisure, training and education is growing rapidly, which provides a soil for the growth of cultural industries. The rapid development of the cultural industry needs strong financial support.

## 2.1 Government and Industry Have Reached a Consensus

As early as 2010, Publicity Department of the Communist Party of China, People's Bank of China, Ministry of Finance, Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, China Banking Regulatory Commission, China Securities Regulatory Commission, and China Insurance Regulatory Commission jointly issued the Guiding Opinions on Financial Support for the Revitalization, Development and Prosperity of Cultural Industry, which is intended to take multiple measures and taking a multi-pronged approach to pool financial resources to boost the development and prosperity of cultural industries. Subsequently, in 2014, the Ministry of Culture, the People's Bank of China and the Ministry of Finance jointly issued "Opinions on Deepening Cultural and Financial Cooperation", which also clearly stated that it is necessary to further promote cultural and financial cooperation and promote the cultural industry to become a pillar industry of the national economy. It can be said that cultural and financial cooperation has become a remarkable feature and an important achievement of China's cultural industry and an important driving force for its sustained, rapid and healthy development.

At the "China Film and Television Finance Forum" of the 7th Beijing International Film Festival hosted by the Film and Television Culture and Entertainment Committee of Zhejiang Merchants Association and Beijing Film Academy in 2017, Zhang Pimin, former deputy director of the State Administration of Press, Publication, Radio, Film and Television and vice president of the China Federation of Radio, Film and Television Social Organizations, pointed out that China's international influence is growing, but the influence of China culture is far less than that of China's economy. In this case, we need cultural and financial cooperation, insist on cultural self-confidence, improve the quality of content, and let China content, China creation and China manufacturing go global.

In fact, the Film Industry Promotion Law affirms various financing channels for films from the legal level. Among them, "Promoting the development of the national film industry by providing financial, tax, land and financial support measures" and refining the "all-round" norms from the aspects of film creation and shooting, distribution and screening, industrial support and guarantee, and legal responsibility have laid the foundation for the development of film finance.

It is only the tip of the iceberg that policies and regulations promote the development of cultural and financial cooperation.

## 2.2 A Brief Review of Policies on Cultural and Financial Cooperation

Some scholars described and analyzed the years and quantities of China's cultural and financial policies. Since 2001, policies such as regulations, plans, opinions, methods and announcements have been mainly selected, excluding policies such as leaders' speeches and industry standards. Finally, 240 cultural and financial policies from 2001 to 2019 have been selected, including 60 central policies and 180 local policies. The empirical analysis shows that the number of cultural and financial policies is on the rise and can be divided into the following three stages.

Initial exploration stage (2001–2008): the number of cultural and financial policies issued at this stage was very small, which was in the embryonic stage of exploration. In 2001, Hangzhou, Zhejiang Province issued “Several Opinions on Accelerating the development of Cultural Industry in Hangzhou”, which is the first concrete policy on financial support for the development of cultural industry in China. Subsequently, in 2003, in the Opinions of the Ministry of Culture on Supporting and Promoting the Development of Cultural Industries, the central government put forward specific policies for financial support for cultural industries for the first time. This stage is also a pilot and deepening stage of the cultural system reform in China. The central and local governments began to realize the importance of using finance to support the transformation of cultural units into enterprises and the development of cultural industries, but they did not put forward specific cultural and financial policies.

Strategic development stage (2009–2013): At this stage, the number of policies began to increase, and specialized cultural financial policies began to be introduced, which started the process of systematizing cultural financial policies. This stage belongs to the strategic development stage of cultural finance. In 2009, the “Guiding Opinions on Financial Support for Cultural Export” was issued, which is the first cultural and financial policy document with special policy nature in China. Although the policy has a low degree of cultural and financial specialization and no financial supervision department is involved, its leading role in the development of cultural and financial policies can not be underestimated. In order to implement the spirit of the “Notice of the State Council on Printing and Distributing the Revitalization Plan of Cultural Industry”, in 2010, nine departments jointly promulgated the first special strategic policy document on cultural finance at the national level in China, “Guiding Opinions on Financial Support for the Revitalization, Development and Prosperity of Cultural Industry”. This policy includes multiple financial supervision departments for the first time, forming a basic framework including cultural financial market subjects, cultural financial products and services, supporting mechanisms and monitoring and evaluation of implementation effects.

Rapid strategic advancement stage (2014–2019): the number of cultural financial policies has increased significantly in this stage, and the positioning of cultural finance as a new financial format has been established, and the strategic policy texts with the theme of “cultural finance” have entered a rapid diffusion stage. In order to further promote cultural and financial cooperation and promote the cultural industry to become one of the pillar industries of the national economy, the Opinions on Deepening Cultural and Financial Cooperation was issued in 2014. This is the first strategic policy text with the theme of “cultural finance”, which promoted the dominant position of “culture” in the relationship between finance and culture, and clearly pointed out the significance of

cultural finance as a driving force of the industry, which can be said to be a milestone in the development of cultural finance. Since then, the central government and local governments have begun to introduce special policies and implementation methods with the theme of cultural finance, and China's cultural financial policy have entered a stage of rapid diffusion.

Since 2020, the CPC and the Chinese government have continuously improved the normative system, and the general trend of combining financial capital, social capital and cultural resources has been transformed into a normal state. At the same time, it also caused a series of reflections. It has been agreed that the promotion legislation can certainly be carried out in the field of cultural finance, that is, incentives can be taken by law to promote the in-depth integration of cultural industries and capital markets, but the natural nature of cultural industries determines that the promotion legislation should be limited to safety. Reconstruction of the legal system based on national cultural security.

### **3 Legal System Construction Should Be Limited to the National Cultural Security**

#### **3.1 Clarification on Function Orientation of Cultural Industry Promoting Law**

Firstly, the applicable function of specific rules of conduct. This so-called "promotion" is the function of law, not the role of law. The role of law should be to provide specific rules of conduct for various financing subjects. Second, the binding function of industrial development and market orientation. It is true that the development of cultural industry can not be separated from financial support, but the direction of industrial development and the orientation of financial market should be bound by law, so as to avoid "pan-entertainment" and "capital trap". Thirdly, the guiding role of cultural thinking and ideology. Because promoting social financing of cultural industry according to law should, in the final analysis, be to develop excellent Chinese culture and cultivate socialist core values.

#### **3.2 Rational Return of Legal Provisions for Promoting Social Capital to Enter Cultural Industry**

First, the social financing of the cultural industry should be in compliance with the law. Although soft law governance provides theoretical support for legislation to promote the realization of cultural industries, it does not mean that the regulatory role of the law "changes from hard to soft". Whether it is imperative, prohibitive, declarative, encouraging or principled, it should be unconditionally followed. Second, the regulation of social financing for the cultural industries should be satisfactory. At the level of supervision, legal promotion is mainly manifested as the application of the principles of legal reservation and proportionality, that is, the boundaries between authorization and restriction, allowing the market enough space to play its decisive role, and at the same time conducting appropriate supervision to balance the ultra vires behavior of market subjects. Third, the fundamental purpose of promoting social financing norms of cultural industries should be to promote the prosperity of Chinese culture. Laws, as social norms, has

never been standardized for the sake of standardization. All laws in the field of cultural industries should aim at achieving cultural prosperity or cultural power, which requires that the invasion of bad cultures such as “extravagance” and “vulgarity” and the infiltration of western ideologies such as “export of democracy and human rights” should be clearly resisted through the normative role of law.

### **3.3 Construct a Legal System Headed by the National Security Law**

First of all, the leading role of the constitution should be strengthened. The construction of a legal system of cultural industries should first find support in the constitution, because only the constitution can provide the most basic guarantees, for example, by exploring the constitutional basis for providing legal promotion for cultural industry and the restrictions in Article 47 of the Constitution. Through this process, the implementation of constitutional principles and spirit has been realized. Secondly, we should focus on the National Security Law and link it with relevant laws to provide institutional guarantee. Cultural security is an important part of the overall security concept, and it is the fundamental guarantee for developing and consolidating national and political identity. The more social capital is encouraged to enter the cultural industry, the more cultural safety should be put in the first place, which is embodied in laws including civil law, criminal law, intellectual property law, intangible cultural heritage protection law, foreign investment law and so on, with the national security law as the head. Finally, after the promulgation of the Law on the Promotion of Cultural Industries, relevant supporting normative documents should be upgraded to regulations. This will not only effectively solve the problems of lack of uniformity and insufficient protection of normative documents, but also enhance the operability of the promotion law, while setting relatively stable limits for legal promotion through the regulations.

## **4 Legal Norm Design Should Be Based on Public Interest Security**

Cultural industries are different from cultural undertakings in that they are mainly combined with other industries such as tourism, sports and finance in the form of ‘culture+’ projects, such as cultural parks, cultural and sports centres and cultural finance, etc. Although cultural industry projects do not automatically exclude profit-making, and even business income has become an important evaluation indicator for many local governments in measuring the development of cultural industries, when the law has greatly facilitated cultural industry projects, it is particularly important to think about how to safeguard public interests.

Although it is generally believed that cultural industry projects should not go against public interests, few people have made a relatively complete summary and analysis of the current situation, existing problems and reasons of public interest protection in the cultural industry. In this regard, on the one hand, the project cycle can be decomposed according to preparation, procurement, implementation and acceptance, so as to solve the problems and its causes in a targeted manner; On the other hand, we can pay attention to public interest litigation related to cultural industry projects, especially in the field of cultural relics and cultural heritage protection.

Specifically, the legal considerations for social financing of cultural industry projects to safeguard the public interests mainly include: First, the priority of public interests should be made clear. When formulating laws and regulations to promote cultural industry projects, it should be clear that the public interests are the first interest; When designing specific incentive provisions, legal interests should be weighed. Underwriting provisions should be used prudently; And public interest protection should not remain in the principal provisions and general provisions. Second is to improve the government supervision mechanism. Promoting social financing according to law should not reduce the government's supervision responsibility for cultural industry projects. It is possible to explore the "one-arm interval" management model and strengthen the government's administrative guidance and supervision of trade associations and chambers of commerce. Thirdly, public supervision mechanisms should be improved. Public supervision in the cultural industry has proven to be more effective thanks to self-media such as Jitterbug, Weibo and WeChat, and public concerns and doubts about the entry of capital into the cultural industry can be properly guided by the system to form a social supervision synergy. To this end, on the one hand, in order to enhance the initiative of public supervision, we can consider stipulating the responsibility of the government for timely feedback and open handling; On the other hand, in order to enhance the effectiveness of public supervision, consideration can be given to strengthening the disclosure of procedural matters and the clarification of substantive conditions for financing cultural industry projects. Fourthly, the public interest litigation system in the cultural sector should be improved, and the implementation rules should be further enriched on the basis of obtaining legislative authorization.

## 5 Legal Rules Should Pay Attention to the Security of Credit Data

The significance of credit data security for financing the cultural industry is obvious. As cultural enterprises have few fixed assets, high intellectual capital content, high growth and high returns, high market risk, small scale, and most cultural enterprises have difficulty providing collateral and rely mainly on credit financing, this establishes the fundamental and prerequisite role of credit in credit financing, while making it characterised by fragmentation, confidentiality and fungibility of credit information [2]. The existence of industrial interests makes it unavoidable for data misuse and privacy breaches. Credit is essentially a process of collecting raw data. After logical analysis, processing and systematically fixing the collected credit data, it has become a product—credit evaluation information [3]. In turn, it can become a tool for regulating data security, like the Credit Star Program jointly sponsored by National Development and Reform Commission and other units.

In view of this, while promoting the growing two-way integration of culture and finance, the security of credit data should also be anchored. On the one hand, new types of rights should be created with caution. Although the creation of new rights is usually regarded as a typical performance of legal incentives, it should be done with caution in view of the characteristics of credit and data security [4]. For example, endowing data with private nature seems to be beneficial to market transactions, but it violates the laws of data generation and dissemination, and covers up other data claims outside the

economy. On the other hand, public powers should be rebalanced. The introduction of public power itself is a guarantee of the security of credit data and a balance between the exercise of private rights or market behaviour on the part of capital demanders, financing intermediaries and capital suppliers under the influence of capitalism. But considering that public authorities have multiple identities as data collectors, data users and data behaviour regulators, the legal system should be designed in such a way as to rebalance the intervening public power through private legitimate rights and interests. As for the scope of private rights and interests, it is necessary to leave it to the civil code to make it clear [5].

## 6 Summary

Over the years, cultural and financial cooperation has become a prominent feature of China's cultural industry development and an important driving force for sustained and healthy development. Especially in the post-epidemic period, cultural and financial cooperation is of great significance to alleviate the financial pressure of small and medium-sized cultural enterprises and supporting the cultural industry to resume production and work. Only norms can last for a long time. Even if it is promoted by legislation, we should build a legal firewall based on the publicity of culture, especially its great significance in ideology, public interest maintenance and credit.

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