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From Punishment to Risk Identification: Rethinking the Mechanism for Determining “Serious Breaches of Trust” in China’s Social Credit Governance

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Article

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Abstract

Within China's social credit governance system, the determination of "Serious Breaches of Trust" serves as a key mechanism linking credit information, regulatory classification, and subsequent sanctions. Existing scholarship predominantly characterizes this determination as either administrative confirmation or administrative penalty. Drawing on the institutional fragmentation of substantive standards, discretionary authority, and procedural safeguards, this article argues that neither framework adequately captures its predictive and preventive functions in data-driven governance. It therefore reconceptualizes the determination of serious breaches of trust as a distinct form of risk identification centered on risk assessment, classification, and prevention. On this basis, the article proposes a tripartite model of administrative acts—administrative confirmation, administrative penalty, and risk identification—and develops a risk-based governance framework incorporating unified authorization, calibrated standards, procedural safeguards, and dynamic remedies. The study argues that the primary function of serious breach determination is proactive risk governance rather than retrospective punishment. In doing so, it provides a new analytical framework for understanding China's social credit system while contributing to broader debates on risk-based regulation, digital administration, and the governance of data-driven classification systems.

1. Introduction

Globally, credit governance has become a major issue in the modernization of national governance systems and capabilities, and has permeated new areas such as administrative oversight, market regulation, and data-driven governance. From a comparative law perspective, research on credit governance abroad has primarily followed two paths: "risk regulation" and "information supervision," focusing on the legal validity of adverse credit records, algorithmic accountability mechanisms, and procedural safeguards in data-driven decision-making (Zhuang 2024; Wang, Huang, and Arner 2024; Noguera 2024). Regulatory frameworks such as the EU's *General Data Protection Regulation* (GDPR) and the U.S. *Fair Credit Reporting Act* (FCRA) have established relatively mature institutional arrangements centered on transparency, data accuracy, and the rights of data subjects, and have developed a credit governance model grounded in market mechanisms while balancing the protection of personal information (European Parliament and Council 2016; U.S. Congress 1970; Citron and Pasquale 2014), and this governance model has reached a relatively mature stage. Its core lies in embedding credit information governance within existing frameworks for data protection and fair information practices.

In contrast, China is vigorously advancing a state-led social credit governance system, a key feature of which is the integration of administrative oversight, public information sharing, and credit-based sanctions into a unified institutional framework (General Office of the CPC Central Committee & General Office of the State Council 2025; Alguliyev & Alakbarova 2021). Compared to the market-driven credit governance models in Western countries, China's social credit system has established a mechanism for identifying "serious credit breaches" through institutionalization, making it the logical starting point that links credit information collection, risk classification, and subsequent regulatory and punitive measures.

However, although the identification of serious credit breaches has become increasingly prominent in practice, its legal nature remains a subject of academic debate. Existing research has primarily focused on the institutional functions and implementation outcomes of credit sanctions, while systematic discussions regarding the legal status of the determination of severe credit default itself and its relationship with subsequent punitive measures remain scarce (Wang 2026; von Blomberg, 2018;Chen, Mo & Jens Grossklags 2025).

This raises a fundamental question: Within China's social credit governance system, what type of administrative act does the determination of serious credit breaches constitute? Regarding this, current administrative law theory offers two primary interpretive approaches: first, the "administrative confirmation" theory, which views it as the confirmation of specific legal facts or legal statuses; and second, the "administrative penalty" theory, which regards it as a form of "credit penalty" with punitive effects. However, neither of these interpretations adequately addresses the evolving realities of institutional practice. On the one hand, the determination of severe credit breaches exhibits institutional fragmentation across different regions and industries, characterized by inconsistent assessment criteria, significant variations in discretionary standards, and insufficient procedural safeguards. On the other hand, as big data analysis, algorithmic scoring, and intelligent decision-making have become widely integrated into the field of credit governance, the determination of severe credit breaches increasingly demonstrates functional characteristics such as risk prediction, classification identification, and proactive intervention (Liao, 2024). These changes indicate that the determination of severe credit breaches has transcended the institutional logic presupposed by traditional administrative confirmation and administrative penalties.

Building on this analysis, this article argues that the determination of serious dishonesty should be reconceptualized as a distinct form of administrative action centered on risk identification.Its institutional function lies not in confirming pre-existing legal facts or imposing retrospective sanctions, but in governing future risks through risk identification, risk classification, and the strategic allocation of regulatory resources. Building on this, this paper further proposes a tripartite model of administrative acts—comprising administrative confirmation, administrative penalties, and risk identification—to address the challenges posed by risk governance practices in the context of digital administration to the traditional classification system of administrative law. To substantiate this argument, Part Two first reveals the institutional fragmentation of serious dishonesty determinations in terms of their normative basis, the allocation of administrative discretion, and procedural safeguards; Part Three critically examines the theories of administrative confirmation and administrative penalties, and proposes the theory of risk identification and its tripartite model; Part Four then constructs a risk governance framework centered on unified authorization, risk calibration, procedural safeguards, and dynamic remedies; finally, the paper summarizes the discussion and examines its significance for the rule-of-law development of credit governance in the era of digital administration. This paper argues that the core attribute of the determination of severe credit default lies in risk identification rather than credit sanctions. Repositioning its legal nature not only helps explain the operational logic of China's social

credit governance practices but also provides a new analytical framework for the development of administrative law theory regarding risk governance in the era of digital administration.

2. Fragmentation in Serious Dishonesty Determinations

In practice, the identification of serious acts of dishonesty within China's social credit governance system exhibits marked fragmentation, giving rise to ongoing disputes regarding the certainty of legal norms, procedural fairness, and regulatory consistency. These inconsistencies are not merely technical issues; rather, they reflect deeper structural contradictions in the design of the credit governance system.

2.1 Fragmentation of Substantive Thresholds (Normative Uncertainty)

The first dimension of fragmentation concerns the absence of a coherent normative framework and consistent substantive criteria for the determination of serious dishonesty. As a fundamental principle of a modern state governed by the rule of law, law-based administration should serve as the normative foundation for all administrative actions. However, in the absence of unified national legislation, the authorities responsible for serious dishonesty determinations, the scope of their powers, and the applicable determination criteria have long remained fragmented. Although the first specialized law promoting the development of the social credit system, the *Law of the People's Republic of China on the Construction of the Social Credit System (Draft for Public Comment)*, was released for public comment at the end of 2022, it has not yet been formally enacted (National Development and Reform Commission, 2022). Consequently, the criteria for determining severe dishonesty rely on laws, administrative regulations, departmental rules, and various normative documents, with their legal basis and hierarchical levels exhibiting distinct characteristics of fragmentation.

Taking the credit reporting sector as an example, the *Regulations on the Administration of the Credit Reporting Industry*, as an administrative regulation enacted by the State Council, sets out only general principles governing credit reporting activities. Meanwhile, the supporting *Measures for the Administration of Credit Reporting Business*, as a departmental regulation, struggles to provide adequate guidance for the complex and diverse credit activities of the digital age (State Council of the People's Republic of China ,2013). In practice, banks act not only as participants in credit transactions but also perform the functions of credit assessment and determination of credit defaults. This dual role of serving as both "player" and "referee" has led to significant doubts regarding the neutrality and objectivity of their determinations. In particular, there remains a lack of uniform standards regarding whether non-malicious cases of default—such as minor overdue payments, temporary defaults caused by force majeure, or delayed repayments resulting from system failures—should be classified as serious breaches of trust (Pei 2025).

Differences in local-level regulations have further exacerbated this issue. Most local normative documents cite only "in accordance with relevant laws and regulations" as their legal basis,While these

measures enumerate specific categories of serious dishonesty, the source of legal authority for such determinations remains uncertain. There are also significant variations across regions in terms of the criteria for determining such acts. For example, the *Foshan Municipal Public Credit Information Resource Catalog(2022)* includes acts such as overdue electricity bills, electricity theft, and unauthorized electricity use in records of dishonesty (Foshan Municipal Development and Reform Bureau, 2022); while the *Implementing Rules for Civilized Traffic Credit Management in Nanjing (2019)* classifies situations where pedestrians and non-motorized vehicle drivers accumulate five or more red-light violations within a year as general acts of dishonesty, which are recorded in personal credit files. Such provisions have sparked extensive academic debate regarding the principle of proportionality, and the public has expressed concerns about an imbalance between the means and ends of credit sanctions (Xiaoshan District People's Government, 2020).

This disparity indicates that the determination of serious breach of trust is not based on uniform and clear legal norms, but rather relies heavily on local policies, industry regulations, and specific enforcement practices (Mercator Institute for China Studies (MERICS) ,2021). As a result, not only is the certainty and predictability that legal norms should provide undermined, but actors in the same or similar situations may also face different determinations due to regional differences. More importantly, in the absence of a unified authorization system and substantive standards, the determining authorities are compelled to rely on their own judgment to interpret and supplement relevant rules, thereby leaving ample room for the expansion of administrative discretion.

2.2 Dispersion of Institutional Authority (Dispersed Discretionary Power)

If the dispersion of normative bases constitutes the institutional prerequisite for the fragmentation of serious breach of trust determinations, then the dispersion of discretionary power is its most direct manifestation in practical operation. As a statutory authority inherent to administrative entities, administrative discretion is, in essence, "the margin of judgment—often self-defined to a greater or lesser extent and impervious to judicial deprivation—that administrative agencies enjoy within the bounds of statutory purposes, tasks, objectives, limits, and fiscal means" (Wolff et al., 2002: 26). When legal norms fail to provide sufficient and specific guidance for conduct, this margin of judgment expands accordingly.

In the credit sector, issues such as inconsistent criteria for determining serious credit defaults and chaotic credit evaluation standards are particularly prominent. The *Regulations on the Administration of the Credit Reporting Industry* only stipulate in general terms that records of "adverse behaviors or events shall be retained for five years from the date of termination," but fail to provide clear provisions on key issues such as the specific manifestations of serious credit defaults, the duration of delinquency, and the threshold amounts. Consequently, commercial banks have developed differing criteria based on their own risk management needs. Taking the duration of delinquency as an example, some banks set a threshold of 90 days for determining severe credit default, while others extend this to 120 days. Similarly, when assessing non-performing loans, different institutions make determinations based on their

respective risk assessment systems. As a result, the same market entity may be classified as a severe credit defaulter by one bank but still be regarded as a normal customer by another.

Such phenomena are not limited to the financial sector. In areas such as market regulation, ecological and environmental protection, and human resources and social security, different competent authorities have established relatively independent assessment systems based on their respective regulatory objectives and risk preferences. Due to the lack of unified assessment criteria and evaluation rules, different departments often interpret and apply the concept of “serious breach of trust” according to the regulatory needs of their own sectors, thereby giving rise to divergent discretionary approaches.

It is evident, therefore, that the sectoral and regional variations in the criteria for determining severe dishonesty are not merely differences in rules, but rather the result of the decentralized allocation and exercise of discretionary authority. Against a backdrop of insufficient standardized regulations, different determining entities fill institutional gaps by exercising their own judgment, thereby creating a coexistence of diverse assessment standards. The consequences of this are not only manifested in inconsistent determination outcomes but also in the continuous expansion and fragmentation of the boundaries of discretionary authority within the credit governance system.

2.3 Fragmentation of Procedural Safeguards (Lack of Due Process)

The third dimension manifests as the fragmentation of procedural safeguards. Compared to traditional administrative penalties, the determination of severe credit breaches is often carried out through internal or semi-internal procedures. Although some regulatory frameworks have established mechanisms for filing objections and correcting information, their actual effectiveness remains limited. Due to the lack of comprehensive prior notification, opportunities to present statements and defenses, and formal hearing procedures—coupled with the high costs of initiating post-decision correction mechanisms and the insufficient efficiency of remedies—affected parties (i.e., the entity determined as seriously dishonest) often find it difficult to correct errors in a timely manner. This has led to a “lack of due process” in the field of credit governance (Luo, 2023; von Blomberg and Yu, 2023).

This issue is particularly pronounced in the context of data-driven governance. The subjects of serious dishonesty determinations are typically informed only after the final determination has been made, while they find it difficult to ascertain the data sources, evaluation criteria, and specific determination process. Consequently, serious dishonesty determinations increasingly exhibit transparent outcomes but opaque decision-making processes, with limited procedural transparency, inadequate opportunities for participation, and insufficient mechanisms of accountability.

Judicial practice reveals that parties subject to serious dishonesty determinations often encounter substantial barriers to obtaining effective legal remedies. Some courts refuse to conduct substantive reviews on grounds that the matter falls outside the scope of administrative litigation, or that the relevant determination constitutes an internal management act or a procedural act, thereby making it

difficult for parties to seek effective remedies against the determination itself through judicial proceedings (Jiang and Li 2024, 37–38). Although the *Implementing Regulations of the Administrative Reconsideration Law of the People's Republic of China* included the determination of serious dishonesty within the scope of administrative reconsideration effective July 1, 2026 (State Council, 2026), this provision primarily targets determination acts issued by administrative agencies. Under the current system, mass organizations, enterprises, and social organizations continue to perform functions related to the determination of serious dishonesty to a certain extent. When these entities make such determinations, the affected party may still face the issue of the respondent or defendant lacking proper standing when applying for administrative reconsideration or initiating administrative litigation.

It is evident that the current process of determining severe credit breaches not only suffers from insufficient procedural safeguards but also exhibits significant disparities in procedural rules and remedial mechanisms across different sectors and among different entities. While some determinations are subject to relatively comprehensive procedural norms, others rely primarily on internal operational mechanisms; while some entities have access to administrative reconsideration or judicial review procedures, others face difficulties in accessing effective remedies. The disparate allocation of procedural safeguards and remedial pathways further exacerbates the institutional fragmentation of the credit governance system. Compared to differences in determination standards and the allocation of discretionary power, the lack of uniformity in procedural safeguards more directly impacts the rights of affected parties to information, participation, and redress, ultimately undermining the legitimacy of severe credit default determinations.

2.4 Systemic Implications: From Fragmentation to Theoretical Uncertainty

Based on the above analysis, the issues currently evident in the determination of severe credit breaches—such as scattered normative bases, inconsistent standards of discretion, and inadequate procedural safeguards—are not isolated institutional flaws, but collectively reflect significant fragmentation in the system's operational level. On the surface, these issues pertain to different dimensions, including substantive standards, the allocation of authority, and procedural controls. However, upon deeper examination, they collectively point to a lack of a unified and stable legal foundation for the determination of severe dishonesty.

In fact, within the traditional framework of administrative law, different types of administrative acts typically possess relatively clear legal characteristics, which in turn give rise to corresponding substantive rules, procedural requirements, and remedial mechanisms.However, the determination of serious dishonesty combines multiple functions—including factual assessment, risk identification, and the triggering of subsequent regulatory and disciplinary measures—whose operational logic cannot be adequately explained within the existing categories of administrative action. Precisely for this reason, different departments often interpret and apply the system based on their own regulatory objectives, leading to ongoing divergence in determination standards, standards of discretion, and procedural rules.

It is evident, therefore, that fragmentation is not an incidental phenomenon in the system's operation, but rather a systemic consequence arising from the lack of a fully articulated legal nature.

Particularly in the context of digital governance, the increasing use of big data analytics, algorithmic decision-making systems, and credit-scoring technologies in administrative governance has enabled serious dishonesty determinations to function as a mechanism of risk identification, risk classification, and anticipatory governance. This gives rise to a new tension between the expansion of the system's functions and the definition of its legal attributes: on the one hand, practice continues to assign it new governance tasks; on the other hand, existing administrative law theory has yet to provide an analytical framework sufficient to explain this phenomenon. Consequently, the question that truly merits scrutiny is no longer merely how to unify identification standards or improve procedural safeguards, but rather what nature of administrative act the determination of severe credit default actually constitutes. The answer to this question not only concerns the rule-of-law development of the relevant system but also serves as a theoretical prerequisite for understanding the logic of credit governance in the digital age.

3. Theoretical Reconstruction: From the Classification Dilemma to Risk Identification

The persistent ambiguity regarding the legal nature of the determination of "serious breach of trust" not only reflects scholarly disagreements but also reveals the interpretive limitations of the traditional administrative law classification system. Existing administrative law theory primarily revolves around administrative confirmation and administrative penalties; however, both approaches emerged within a governance environment centered on fact-finding and ex post sanctions. With the development of digital credit governance, administrative authorities are increasingly relying on data analysis, credit evaluation, and risk early-warning mechanisms to conduct proactive governance. Consequently, the determination of "serious breach of trust" clearly exhibits the institutional characteristics of risk identification and risk management.

3.1 The Limitations of the Administrative Confirmation Theory

Some scholars hold the opinion that the determination of serious dishonesty constitutes a form of administrative confirmation (Shi 2005; Wang Ruixue 2018; Wang and Huang 2021). Administrative confirmation is a specific administrative act by which an administrative authority identifies, determines, and declares the legal status, legal relationship, or legal facts of a party. According to this view, credit rating is essentially the confirmation by an administrative authority of the legal fact regarding the extent to which a party complies with legal norms; therefore, it should be classified as administrative confirmation.

However, this interpretation focuses primarily on the formal legal characterization of serious dishonesty determinations while failing to explain their underlying operational logic. First, administrative

confirmation is based on objective facts, and its core function lies in confirming whether an existing factual state exists; however, the entity determined as seriously dishonest often involves the administrative authority's evaluation and judgment of the party's ability to fulfill obligations, compliance status, and future risks, which goes beyond the scope of mere factual confirmation. Second, "serious" is an evaluative concept with an open-ended nature; its determination typically requires a comprehensive assessment of factors such as the number of violations, the consequences of the conduct, and social impact. Administrative authorities must also rely on their discretion to make judgments rather than mechanically applying established rules. Finally, the determination of severe dishonesty is not limited to past conduct but is intended to reflect the party's future risks regarding performance and compliance. Its institutional function is distinctly forward-looking and dynamic, representing a fundamental difference from the confirmation of established facts emphasized in administrative confirmation.

Therefore, while the administrative confirmation theory can explain the declaratory and fact-certifying dimensions of serious dishonesty determinations, it fails to account for their functions of risk assessment, prospective risk identification, and dynamic regulatory adjustment. Its fundamental limitation lies in its continued reliance on the static framework of "established facts—legal confirmation," which fails to address the risk-oriented logic inherent in digital credit governance.

3.2 The Normative Limits of the Administrative Punishment Theory

Compared with the administrative confirmation theory, the prevailing view in Chinese administrative law scholarship treats the determination of serious dishonesty as an administrative punishment(Qin and Chen 2021; Hu 2017; Wang Wei 2019; Zhang 2021). The primary rationale for this view is that inclusion on the list of entities with severe credit breaches often lowers social standing and triggers a series of adverse consequences, carrying distinct punitive characteristics; therefore, it can be regarded as a new type of administrative penalty centered on reputational sanctions. However, the administrative penalty theory also faces insurmountable theoretical obstacles.

First, there is a conflict with the statutory principles governing administrative penalties. Breaches of trust do not necessarily equate to violations of the law; in practice, such breaches include not only illegal acts but also breaches of contract, moral failings, and even other behaviors that are not appropriate for inclusion in the legal liability system. Administrative penalties can only be imposed for illegal acts explicitly defined by legal norms and cannot cover all instances of breaches of trust. Therefore, incorporating the designation of "Serious Breaches of Trust" into the administrative penalty system as a whole would inevitably exceed the existing boundaries of the Administrative Penalties Law regarding the scope of penalties and types of sanctions.

Second, there is a tension with the principles of proportionality between offense and penalty and the prohibition against double jeopardy. In practice, administrative authorities often first impose penalties for relevant illegal acts and then impose additional adverse consequences by placing entities on the list of seriously dishonest entities. If the designation of "Serious Breaches of Trust" is treated as an

administrative penalty, it could result in double jeopardy and the imposition of multiple adverse consequences for the same act.

Third, the institutional logic of administrative penalties lies in holding parties accountable for past violations, whereas the designation of severe dishonesty is oriented toward risk control and the allocation of regulatory resources. Its subsequent effects are characterized by dynamic adjustments, credit rehabilitation, and removal from the list, and do not possess the finality and retributiveness emphasized in traditional administrative penalties.

Judicial practice has not fully endorsed the “administrative penalty” theory either. For example, in the case of Fengyang County Tianlong Water Conservancy Construction Engineering Co., Ltd. v. Xuanzhou District Public Resources Trading Supervision and Administration Bureau of Xuancheng City, the court explicitly held that inclusion on a blacklist constitutes an administrative measure for punishing dishonesty, rather than an administrative penalty (Pu 2023, 53).

Therefore, while the “administrative penalty” theory can reveal the adverse consequences and punitive nature of severe credit default determinations, it fails to explain institutional features such as risk classification, regulatory early warning, and dynamic credit restoration. Its theoretical focus remains fixed on holding parties accountable for past violations, making it difficult to address the practical need for proactive intervention targeting future risks in credit governance.

3.3 Risk Identification as a Distinct Form of Administrative Action

Given the limitations of both the administrative confirmation theory and the administrative punishment theory, this article argues that the determination of serious dishonesty should be conceptualized as a distinct form of administrative action centered on risk identification. As Zhang (2019, 128) observes, the development of the internet, artificial intelligence, and digital communication technologies has transformed the modes through which administrative authorities exercise regulatory power and has generated new forms of administrative action. Within this context, risk identification refers to the process by which administrative authorities assess the likelihood and potential consequences of future risks on the basis of verifiable data, indicators, and evaluative criteria, thereby producing decisions concerning risk classification and regulatory intervention (Song 2025; Chen and Grossklags 2025).

The defining feature of risk identification lies in its prospective and preventive orientation (Coglianese 2017, 102). Unlike administrative confirmation, which focuses on the recognition of existing facts, risk identification is concerned with the assessment of future risks. Unlike administrative punishment, which emphasizes retrospective accountability, risk identification seeks to prevent potential harms through anticipatory governance. Its purpose is neither to certify established facts nor to impose final judgments on past conduct, but rather to facilitate the differentiated allocation of regulatory resources through risk classification.

The operation of serious dishonesty determinations closely reflects this logic. When an individual or entity engages in specified dishonest conduct, administrative authorities do not merely evaluate past behavior. Rather, they infer the degree of future risk associated with the actor's compliance capacity and trustworthiness and adopt corresponding regulatory responses, including enhanced supervision, qualification restrictions, and credit-based constraints. The essence of serious dishonesty determinations therefore lies not in punishment but in the identification, classification, and management of regulatory risk.

This characterization is consistent with the operation of modern credit-reporting systems. Contemporary credit governance functions through a chain of information collection, credit evaluation, risk classification, and regulatory application. Once a high-risk subject has been identified, financial institutions adjust lending intensity, review standards, and risk-control measures accordingly. The central objective is not immediate sanctioning but the concentration of regulatory attention and resources on actors deemed more likely to generate future risks.

Comparative experience reveals a similar pattern (Teichmann 2026; University of Washington, Jackson School of International Studies 2025). Whether in Germany's management of negative credit information, the United States' consumer credit reporting system, or the European Union's emerging model of risk-based regulation, the primary objective is risk identification and risk control through information governance rather than punishment as such. Key mechanisms within China's social credit system—including enhanced supervision, qualification restrictions, and joint disciplinary measures—likewise reflect a broader logic of risk stratification and differentiated governance.

More importantly, the risk-identification framework is closely aligned with the broader development of digital administration. In contemporary risk society, administrative authorities increasingly rely on continuous data collection, algorithmic assessment, and automated scoring systems to conduct anticipatory governance. Compared with traditional punitive approaches, risk identification enables more adaptive forms of regulation through dynamic updating, rolling assessment, and credit-repair mechanisms, thereby reducing the institutional costs associated with rigid and undifferentiated regulatory interventions.

Accordingly, serious dishonesty determinations should be understood as a distinct form of risk-based administrative action centered on risk identification and risk prevention. Such a conceptualization more accurately captures their institutional logic and provides a coherent theoretical foundation for the design of future governance mechanisms.

3.4 Theoretical Implications: From a Binary Structure to a Triadic Model

The foregoing analysis demonstrates that neither the administrative confirmation theory nor the administrative punishment theory can fully explain the institutional functions of serious dishonesty determinations. The former is grounded in the confirmation of established facts, while the latter focuses

on sanctions for past unlawful conduct. Serious dishonesty determinations, however, embody a logic of prospective governance based on risk assessment. Therefore, beyond the traditional binary framework of "administrative confirmation–administrative punishment," it is necessary to introduce risk identification as an independent category, thereby establishing a ternary model consisting of administrative confirmation, administrative punishment, and risk identification.

Within this model, administrative confirmation takes established facts or legal status as its object, and its function lies in identification and declaration; administrative punishment takes unlawful conduct as its object, and its function lies in accountability and behavioral sanctions; risk identification takes future risk conditions as its object and achieves ex ante governance through risk classification and risk early warning. The three respectively respond to three distinct administrative tasks: "what are the facts," "how should unlawful conduct be addressed," and "how should future risks be governed."

From the perspective of the development of digital credit governance, the primary function of serious dishonesty determinations lies neither in confirming established facts nor in imposing final sanctions on past conduct, but rather in achieving classified regulation and risk prevention through risk labeling. Accordingly, categorizing serious dishonesty determinations within the framework of risk identification not only helps overcome the longstanding interpretive dilemma between confirmation and punishment, but also provides a corresponding theoretical foundation for the subsequent construction of legal authorization, procedural controls, and remedial mechanisms.

Accordingly, the classification system of administrative actions should further develop from the traditional binary structure into a ternary structure consisting of "administrative confirmation–administrative punishment–risk identification," so as to respond to the institutional transformation brought about by credit governance in the digital age.

4. Legal Governance of the Designation of Serious Breaches of Trust: A Risk-Based Regulatory Framework

If serious dishonesty determinations are understood as a new type of administrative action centered on risk identification, their legal governance logic should be adjusted accordingly. Based on the problems of normative fragmentation, dispersed discretion, and procedural deficiencies identified in Chapter Two, as well as the theory of risk identification proposed in Chapter Three, this article argues that the rule-of-law governance of serious dishonesty determinations should be developed around four dimensions: unified authorization, risk calibration, procedural safeguards, and dynamic remedies, thereby establishing a governance framework consistent with their risk-identification character.

4.1 A Unified Authorization Structure: Overcoming Normative Fragmentation

The most significant institutional deficiency of current serious dishonesty determinations lies in the fragmentation of their legal basis. In practice, administrative regulations, local regulations, departmental rules, and even normative documents may all serve as the basis for determination, resulting in inconsistent determination standards, divergent legal consequences, and an unstable foundation of legality.

Risk identification possesses prospective and expansive characteristics. Once an erroneous determination is made, its adverse effects are often continuously amplified through joint disciplinary mechanisms. Accordingly, risk-identification actions must be based on a clear and unified authorization framework. The competent authorities, determination standards, and legal consequences of serious dishonesty determinations should be uniformly prescribed by laws or administrative regulations. Local regulations and departmental rules should only be permitted to refine implementation procedures and technical standards within the scope of delegated authority, and should not independently create new categories of serious dishonesty or expand the consequences of determination.

At the institutional level, the ongoing enactment of the *Social Credit System Law* should be taken as an opportunity to establish a nationally unified system of rules governing serious dishonesty determinations and to ensure its coordination with digital governance legislation such as the *Personal Information Protection Law* and the *Data Security Law*. Only under a unified authorization framework can serious dishonesty determinations, as risk-identification actions, obtain a stable foundation of legitimacy.

4.2 The Principle of Risk Calibration: Constraining Dispersed Discretion

Unified authorization does not imply the complete elimination of administrative discretion. Risk identification inherently involves subjective elements of probabilistic judgment and professional assessment, and administrative authorities must retain a certain degree of decision-making discretion. The problem is that such discretion must be constrained by clearly defined boundaries. In current practice, different logics—including “illegality equals dishonesty” and “dishonesty equals serious dishonesty”—coexist, reflecting the absence of a unified risk standard for serious dishonesty determinations (Liu 2023). As a result, different regions, industries, and even agencies within the same industry make generalized determinations based on their own understandings, resulting in a highly dispersed exercise of discretionary power.

In terms of institutional design, the nationally unified catalogue of serious dishonest conduct should be further optimized, and graded and classified management should be implemented according to levels of risk. Minor violations or ordinary dishonest conduct should, in principle, not fall within the category of serious dishonesty. Only conduct involving a high degree of risk, significant spillover effects, or potential harm to market order and public interests should trigger a serious dishonesty determination. The precise allocation of regulatory resources through risk stratification can not only prevent overregulation but also curb the unlimited expansion of discretionary power.

At the same time, risk calibration should apply not only to determination standards themselves but also to the legal consequences that follow determination. As a tool of risk classification, the function of serious dishonesty determinations is to facilitate differentiated regulation rather than the permanent exclusion of regulated actors. Therefore, restrictions on market access, professional qualifications, financing activities, or opportunities for social participation should remain proportionate to the degree of risk involved. More stringent proportionality review should apply to long-term, lifelong, or collateral adverse measures (Shen 2020). The objective of risk identification is to reduce risk rather than create a continuing stigma of identity. Only when risk classifications are subject to temporal limits and meaningful exit mechanisms can the determination of serious breaches of trust avoid degenerating from a tool of risk governance into a de facto system of continuing punishment.

4.3 Due Process in Risk Identification

Although risk identification is preventive in nature, it is not thereby exempt from the requirements of due process. On the contrary, because serious dishonesty determinations possess predictive, expansive, and continuing characteristics, their procedural safeguards should be more stringent than those applicable to traditional administrative actions.

At present, serious dishonesty determinations commonly exhibit the problem of “transparent outcomes but closed processes.” Affected parties are often able to learn only the final determination result, while having little access to the data sources, evaluation standards, and underlying logic on which the determination is based, thereby lacking meaningful opportunities for participation and defence. Accordingly, procedural safeguard mechanisms compatible with risk identification should be established. First, before making a determination, administrative authorities should fulfil a prior-notice obligation by informing affected parties of the principal factual basis, data sources, and preliminary risk-assessment results. Second, affected parties should be granted adequate opportunities to raise objections and seek review regarding data accuracy, evaluation standards, and determination logic. Third, hearing procedures should be introduced for cases involving significant impacts or substantial controversy in order to enhance the transparency and reliability of risk assessments.

Particularly in the context of the widespread use of algorithms and automated decision-making, procedural safeguards should not be confined to traditional rights of representation and defence. Administrative authorities should further be required to explain the basic logic of the risk models employed, thereby ensuring that risk assessments possess explainability, contestability, and verifiability. Procedural legitimacy thus becomes a core condition for the legitimacy of risk identification.

4.4 Dynamic Error Correction and Credit Rehabilitation

Risk identification is, by its nature, a probabilistic judgment rather than a final adjudication. Accordingly, any risk classification should be capable of revision as circumstances change. A prominent problem in current practice is that once a “serious dishonesty” label is imposed, it often persists for an excessive period of time, and adverse consequences may continue long after the underlying facts have ceased to

exist. Such “permanent labeling” not only contradicts the dynamic nature of risk identification but also risks transforming risk governance into continuing punishment.

Accordingly, a remedial mechanism centered on dynamic error correction and credit rehabilitation should be established. For dishonesty records resulting from data errors, information-aggregation mistakes, or erroneous factual determinations, immediate correction procedures should be available to revoke or amend erroneous determinations without delay. At the same time, a standardized credit-rehabilitation system should be developed through mechanisms such as automatic expiration, time-limited disclosure, and credit restoration, enabling risk labels to be dynamically adjusted in accordance with changing risk conditions. Dynamic error correction and credit rehabilitation are not exceptions to risk identification; rather, they are intrinsic requirements for maintaining the legitimacy of risk governance. Only by allowing risk classifications to evolve alongside changing circumstances can serious dishonesty determinations preserve their preventive and dynamic character rather than devolve into permanent negative status labels.

5 Conclusion: Building a Risk-Based Credit System in the Era of Digital Governance

This article seeks to address a longstanding yet insufficiently explained question: what is the legal nature of serious dishonesty determinations as a form of administrative action? An examination of China’s social credit governance practice demonstrates that both the administrative confirmation theory and the administrative punishment theory suffer from significant limitations. The former cannot adequately explain the risk-assessment and future-oriented functions embedded in serious dishonesty determinations, while the latter fails to account for their preventive, dynamic, and remediable institutional characteristics. This article argues that the core function of serious dishonesty determinations lies neither in confirming existing facts nor in sanctioning past misconduct, but rather in identifying, classifying, and issuing warnings regarding future performance risks and compliance risks, thereby enabling the differentiated allocation of regulatory resources. Accordingly, serious dishonesty determinations should be understood as a new type of administrative action centered on risk identification.

The theoretical contribution of this article lies in distinguishing risk identification from the conventional analytical framework of administrative confirmation and administrative punishment and treating it as an important conceptual tool for understanding credit governance in the digital age. The normative fragmentation, dispersed discretion, and procedural deficiencies manifested in serious dishonesty determinations are not merely defects in institutional design; rather, they reflect the inability of existing categories of administrative action to adequately accommodate the practical realities of risk governance. By introducing the analytical framework of risk identification, this article not only provides a new jurisprudential characterization of serious dishonesty determinations but also offers a new explanatory approach to the development of administrative action categories in the context of digital governance.

More broadly, serious dishonesty determinations should not be regarded as an isolated phenomenon within China's social credit system. Rather, they reflect a broader transformation of modern administrative law from ex post sanctions to ex ante governance. As data analytics, algorithmic decision-making, and risk assessment increasingly become central instruments of public governance, the operational logic of administrative power is gradually shifting from the paradigm of "violation–punishment" to that of "risk–prevention." Against this backdrop, the central challenge facing administrative law in the future may no longer be limited to regulating how the state imposes sanctions, but rather how the state identifies, classifies, and manages risks. The response to this challenge will not only shape the rule-of-law development of social credit systems but also influence the further evolution of administrative law theory in the global digital age.

Declarations

Author Contribution

Luo Sizhang conceptualized the study, conducted the research, wrote the manuscript, and carried out all revisions. The author read and approved the final manuscript.

Data Availability

We do not analyse or generate any datasets, because our work proceeds within a theoretical and mathematical approach. One can obtain the relevant materials from the references below.

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