

PRC NDRC ISSUES CONSULTATION PAPER ON FAST TRACK REVIEW FOR MEDIUM AND LONG-TERM FOREIGN DEBT RAISED BY HIGH-QUALITY PRC ENTERPRISES

On 14 March 2024, the National Development and Reform Commission (NDRC) of the People's Republic of China (PRC)¹ issued a consultation paper for the *Circular of NDRC on Supporting High-Quality Enterprises to Borrow Medium and Long-Term Foreign Debts to Promote the High-Quality Development of the Real Economy* (the **Consultation Paper**). The Consultation Paper proposes refining the existing framework to support further economic development through easing foreign debt financing by PRC enterprises that are considered as "high quality". Based on the Consultation Paper, enterprises that qualify as "high-quality" enterprises will benefit from streamlined requirements and an accelerated application process when applying for foreign debt registration approval with NDRC (the **Fast Track**) pursuant to the *Administrative Measures for the Review and Registration of Medium and Long-Term Foreign Debt of Enterprises* (NDRC Order No. 56 of 2023, the **Foreign Debt Measures**²). Comments on the Consultation Paper are due by 13 April 2024.

In-scope "High-quality" Enterprises

Except for real estate enterprises and financing vehicles of local governments, enterprises that are "high-quality" are eligible to use the Fast Track.

To qualify as "high-quality", a PRC enterprise must:

- 1) Meet the requirements specified in the Foreign Debt Measures and other relevant rules and regulations;
- 2) Demonstrate that its production and business operations are in line with national macroeconomic and industrial policies;
- 3) Hold a leading position in the industry or geographical region in which it operates, benchmarked by its core financial and operational data;

¹ "PRC" or "China", stands for the People's Republic of China, which for the purpose of this briefing, excludes Hong Kong, Macau or Taiwan.

² Please refer to our previous briefing entitled "[China Issues New Regulations on Medium and Long-Term Foreign Debt](#)" published on 18 January 2023.

Key Issue

- The Consultation Paper proposed a set of streamlined and expedited procedures for "high-quality" enterprises to apply for foreign debt quota that is necessary for their offshore borrowings.
- Thresholds for "high-quality" enterprises focus on the existence of industrial leading position, among others.
- The Fast Track benefits "high-quality" enterprises with simplified application process and document requirements.

- 4) Hold an international credit rating of BBB- or above (*i.e.*, investment grade) or a domestic credit rating of AAA; and
- 5) In the past three years, (i) have not defaulted on any domestic or foreign debt or delayed payment in respect of any principal or interest; (ii) have not committed any major violation of relevant laws and regulations or be included in any regulatory blacklist relating to dishonest conduct and; (iii) have not been issued with an adverse opinion or disclaimer opinion by a certified public accountant in respect of its financial statements, provided where if a qualified opinion has been issued, the material qualification or impact cited by such opinion has been eliminated.

The Consultation Paper indicates that NDRC may in the future further modify the criteria for in-scope "high-quality" enterprises subject to the then prevailing macroeconomic conditions, industrial policies and status of the foreign debt markets.

Fast Track

An in-scope "high-quality" enterprise will benefit from the Fast Track in the following aspects:

- 1) It could apply under a single application for an aggregate foreign debt quota that can be utilised by the applicant enterprise and its subsidiaries;
- 2) If the foreign debt registration is being applied for international commercial loans, the application may be made when a letter of intent is available whilst the loan documents are not executed yet, provided that the executed loan documents shall be submitted to NDRC after the first drawdown under the loan;
- 3) If the foreign debt registration is applied for the issuance of offshore bonds, the applicant is permitted to submit an application even where a lead underwriter has yet to be appointed, provided that the requisite lead underwriter due diligence report and letter of authenticity shall be submitted to NDRC after completion of the bond issuance; and
- 4) For an enterprise with an international credit rating of A- or above and a domestic credit rating of AAA, the requisite legal opinions required to be submitted for the foreign debt registration application may be issued by its own internal legal or compliance department.

To apply for the Fast Track, the enterprise must explain why it is eligible for the Fast Track and provide appropriate supporting materials. NDRC will consider each application (together with the supporting documents) on the whole, with a view to supporting different types of high-quality enterprises.

It appears that the Fast Track will be available for use for a definite period of five years only.

Supervision

NDRC has also mentioned an enhanced mechanism among departments of the central government and local governments, so as to strengthen the supervision and inspection of foreign debt borrowing and utilisation. Provincial governments are expected to take an active role in supporting and stabilising high-quality enterprises within their jurisdiction by ensuring that financings are used in accordance with laws and regulations and for the implementation of national strategies and high-quality economic and social development. They will also actively monitor repayment of principal and interest and implement an early risk

warning system for repayment capacity to address NDRC's long-standing concern over defaults by Chinese borrowers under foreign debt.

Observation and Outlook

The proposed streamlined process is beneficial to time-critical transactions where time can be of the essence. Allowing an application for foreign debt registration with NDRC before the loan documents are in place or a lead underwriter is appointed should at least reduce the "waiting time" of the parties thereby reducing the risk of failed transactions. The Fast Track should enable the parties to have a greater degree of deal certainty before the transaction documents (such as asset purchase agreement and loan agreements) are executed.

However, certain points are still pending clarification from NDRC, such as:

- 1) For a group quota under the Fast Track, there is uncertainty as to whether the current requirement on the disclosure of the internal allocation for the group quota when submitting the group quota application still stands. In addition, the procedures for post-issuance filing are also not entirely clear, *e.g.*, whether a subsidiary benefiting from the group quota could conduct post-issuance filing by itself, or must report through the applicant parent company. This may have a potential impact on project confidentiality and reporting timelines.
- 2) For the legal opinion issued by in-house counsel, whether this can cover non-PRC law matters and whether there would be any requirements on the qualification and independence of the in-house team will need to be clarified.

The Consultation Paper is a welcome potential development which indicates further support for cross border financing activities by qualified PRC enterprises, and shall support deal structuring in the bonds and loans markets in the future.

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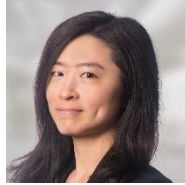
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