

Linklaters



Update on recent developments regarding the NDRC registration / filing regime

16 June 2016

Dear all

There have been some recent developments regarding the NDRC registration / filing regime – set out below is a brief summary of these developments:

1. Little Red Chips ("小红筹")

We had a closed door meeting with the NDRC earlier this month.

The NDRC has indicated that "little red chips", or offshore incorporated issuers which are directly or indirectly controlled by PRC individuals, should make a registration/filing with the NDRC before the pricing/closing of any issuance. It remains unclear what is the basis for imposing such a requirement: the NDRC Notice requires registration/filing by offshore entities controlled by PRC "entities" ("机构") only.

There is no written guidance on the application documents or process. However, the NDRC has indicated that the filing for this type of issuers should be made before pricing if possible. The NDRC has also indicated that the filing is purely for information only; there will not be any substantive review of the application by the NDRC; and the filing can be completed quickly.

Given that the little red chips are not PRC entities and are not controlled by a PRC parent, applications would need to be made by its principal subsidiary (the application document as we understand it would comprise an application report which is similar to those currently used by other applicants). For proposed transactions in the near-term, there is still some uncertainty around the lodgement procedure to be followed so issuers should consider discussing this with their relevant NDRC contacts early in the process.

2. Pre-allocated Quotas

The NDRC has published an initial list of 21 enterprises which have been granted quotas on a trial basis for offshore issuances by themselves and their respective subsidiaries in 2016. Any issuances by these entities within the quota does not require separate pre-issuance filing with the NDRC. As a matter of due diligence, managers should check whether an issuance falls within the approved quota and whether there is any condition such as interest rate ceiling for any particular issuance and obtain representations and warranties as appropriate.

The 21 enterprises are CDB, CEXIM, ICBC, ABC, BOC, CCB, BOCOM, China Life, Huarong, Cinda, CICC, CITIC Securities, ICBC Leasing, CITIC Group, Sinopec, China Merchants, China State Construction, China Railway Construction, Sichuan Development, Huawei and HNA.

3. Local NDRC

The NDRC has also designated six provincial and municipal NDRC to handle the filing/registration by local enterprises within their jurisdiction within the quotas allocated to them. Going forward, the Central NDRC will not issue registration certificates for these local enterprises. Note that enterprises and financial institutions incorporated in these provinces and municipalities but managed by the Central Government (MOF and SASAC) should continue to file with the Central NDRC.

The six provinces and municipalities are Shanghai, Tianjin, Fujian, Guangdong, Xiamen and Shenzhen.

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