

CHINA ISSUES NEW REGULATIONS ON MEDIUM AND LONG-TERM FOREIGN DEBT

On 5 January 2023, the National Development and Reform Commission (**NDRC**) released the Administrative Measures for the Review and Registration of Medium and Long-Term Foreign Debt of Enterprises (the **Foreign Debt Measures**), which will take effect on and from 10 February 2023. The Foreign Debt Measures will replace the Circular on Promoting the Reform of the Filing and Registration Regime for Issuance of Foreign Debt by Enterprises (commonly known as **Circular 2044**).

The Foreign Debt Measures represent a tightening of regulations against PRC enterprises raising medium and long term debt (being debt with a tenor of more than one year) outside of the PRC (**Foreign Debt**) when compared with Circular 2044, while also providing clarification on several key concepts.

In this briefing, we look at (a) the background to the Foreign Debt Measures and the key differences from Circular 2044, (b) the scope of the Foreign Debt Measures, (c) the enhanced registration and reporting requirements, (d) the consequences of failure to register or report, (e) the additional compliance obligations and enhanced liability scheme and (f) the impact on lending and debt capital markets transactions.

BACKGROUND TO THE FOREIGN DEBT MEASURES AND KEY DIFFERENCES FROM CIRCULAR 2044

Currently, filing and registration of Foreign Debt in the PRC is regulated by NDRC pursuant to the regime as set out in Circular 2044 (which was introduced in 2015). Circular 2044 requires an in-scope PRC enterprise to register specified information with NDRC prior to incurring Foreign Debt. The purpose of this regime is to allow NDRC to control the total amount of Foreign Debt incurred by PRC enterprises. When the aggregate registered Foreign Debt in a calendar year reaches the stipulated annual national quota, NDRC would make a public announcement stating that the filing of Foreign Debt would no longer be accepted for that calendar year.

Key issues

- The Foreign Debt Measures codify the practice under the 2044 Regime and strengthen the regulation and supervision of Foreign Debt by expanding the types of entities and Foreign Debt covered as well as enhancing the overall registration, reporting and compliance requirements.
- Many key concepts under the 2044 Regime (such as indirect borrowing of Foreign Debt) have now been expressly included and clarified under the Foreign Debt Measures, although certain new concepts need to be further clarified.
- The use of proceeds from Foreign Debt needs to align with the PRC government's policies and should not trigger any national security concerns. On-lending is only permitted when expressly approved by NDRC. Market participants will need to ensure transparency with NDRC during the application process.
- Market participants will need to consider how to properly transition from the 2044 Regime to the Foreign Debt Measures.

Since the introduction of Circular 2044, NDRC has issued a series of FAQs and guidance notes (Circular 2044, together with the FAQs and guidance note, the **2044 Regime**) to refine certain aspects of Circular 2044. Through this approach, "red-chip"¹ and VIE² structures have also become subject to the 2044 Regime (even though these were not originally in scope under Circular 2044)³.

The Foreign Debt Measures are different from the 2044 Regime in four primary ways:

- (a) The Foreign Debt Measures consolidate the 2044 Regime (which consists of a set of administrative regulatory documents (行政规范性文件) into departmental regulations (部门规章). This empowers NDRC to establish an administrative licensing regime (行政许可事项) for Foreign Debt as further addressed below in this briefing;
- (b) The Foreign Debt Measures officially expand the scope of the regulation to cover indirect borrowing (Article 33);
- (c) The Foreign Debt Measures introduce enhanced regulatory requirements for market participants, including (i) additional requirements on use of proceeds, (ii) enhanced reporting and disclosure obligations throughout the term of a Foreign Debt transaction, (iii) enhanced requirements on risk management and (iv) the obligation to cooperate with the PRC government's supervision and inspection; and
- (d) The Foreign Debt Measures codify liability for intermediaries (such as underwriters, auditors and law firms) involved in a breach of the Foreign Debt Measures.

SCOPE OF THE FOREIGN DEBT MEASURES

Types of in-scope PRC enterprises

Pursuant to the Foreign Debt Measures, in addition to Foreign Debt directly incurred by a PRC enterprise, (a) Foreign Debt incurred by overseas enterprises or branches "controlled" by a PRC enterprise (the **Control Limb**, under Article 2) and (b) Foreign Debt incurred indirectly by a PRC enterprise (the **Indirect Borrowing Limb**, under Article 33) will, in each case, be subject to the Foreign Debt Measures.

Meaning of "control" under the Control Limb

The Foreign Debt Measures provide helpful clarification on the meaning of "control" for the purposes of determining in-scope enterprises, which is absent under the 2044 Regime. An overseas enterprise will be considered to be directly or indirectly "controlled" by a PRC enterprise if the PRC enterprise either (i) controls more than half of the voting rights in such overseas enterprise or (ii) is capable of directing (支配) the operation, finance, human affairs, technology and other important matters of such overseas enterprise (Article 2).

¹ Generally speaking, this is a structure where the holding company is incorporated outside the PRC but the key operating entities controlled by such holding company are domiciled in the PRC.

² Generally speaking, a "variable interest entity" structure refers to a legal structure in which an investor has a controlling interest (normally through contractual arrangements) over the PRC operations, in the absence of having a majority of voting rights in the relevant PRC enterprises.

³ See Q31 and Q34 of the FAQs relating to the 2044 Regime issued by NDRC ([link](#)).

In the absence of specific guidance on the meaning of "*is capable of directing*", NDRC could adopt a "*substance over form*" approach when determining whether the "control" threshold is met. Theoretically, contractual arrangements which entitle a PRC enterprise to influence the decision-making process of an overseas enterprise in relation to key matters could be caught if such arrangements are sufficiently extensive, despite the fact that such PRC enterprise does not control any voting rights in such overseas enterprise.

Meaning of "indirect" debt under the Indirect Borrowing Limb

Unlike the 2044 Regime, Foreign Debt that is indirectly incurred by a PRC enterprise is expressly regulated under the Foreign Debt Measures. Pursuant to Article 33 of the Foreign Debt Measures, a PRC enterprise would be considered as indirectly incurring Foreign Debt if (a) its primary business activities are located in the PRC and (b) it incurs debt outside of the PRC through an overseas enterprise "*in reliance on*" or "*based on*" (基于) the equity interests in and/or assets, income or other similar rights of that PRC enterprise.

Technically, the Indirect Borrowing Limb applies to Foreign Debt incurred not only under "red-chip" or VIE structures (which are already in scope under the 2044 Regime), but also Foreign Debt incurred by any overseas enterprise where its "*primary business activities*" are located in the PRC. We expect that further clarity on the scope of financing structures caught under the Indirect Borrowing Limb will come through future practice and/or NDRC guidance.

In particular, it will be important for market participants to be able to determine:

- (a) When will an overseas enterprise's primary business activities be considered to be located in the PRC? Will this be evaluated based on (i) the proportion of income, profits and assets in the PRC on a consolidated group basis and/or (ii) the nationality or place of domicile of the senior management team of the overseas enterprise?
- (b) What is the meaning of "*in reliance on*" or "*based on*" (基于)? Will this apply only where the financiers will have contractual recourse to any PRC enterprises and/or their assets which are located in the PRC (such as under a guarantee or security)? How will certain transaction arrangements involving a PRC enterprise (such as keep-well deed and/or letter of comfort) be treated under the Indirect Borrowing Limb? Will the Foreign Debt Measures be triggered if the Foreign Debt is provided primarily based on the credit of the PRC businesses (irrespective of whether any guarantee or security is given by or over any PRC enterprises and/or their assets)?
- (c) What linkage, if any, is required between the PRC enterprise and the overseas enterprise in order for the Indirect Borrowing Limb to apply? Does the overseas enterprise need to be a direct or indirect shareholder (or controlling shareholder) of a PRC enterprise, or could NDRC view joint venture arrangements as potentially sufficient to trigger the Indirect Borrowing Limb?

Types of Foreign Debt

The Foreign Debt Measures provide additional clarity on the types of financing which constitute Foreign Debt. Under Article 2, the Foreign Debt Measures have amended the forms of debt covered when compared with the 2044 Regime. Apart from senior debt, perpetual bonds, capital bonds, convertible bonds, financial leasing and commercial loans which are already covered

under the 2044 Regime, the Foreign Debt Measures also expressly include medium term notes and exchangeable bonds.

However, unlike the 2044 Regime and the consultation draft of the Foreign Debt Measures issued in August 2022 (the **Consultation Draft**), preference shares are not expressly covered by the Foreign Debt Measures. However, there is catch-all language under Article 2 which gives NDRC broad discretion to evaluate whether preference shares are within scope of the Foreign Debt Measures. This means that it is likely that the NDRC will still treat certain types of preference shares (such as those providing holders with fixed dividends) as Foreign Debt under the catch-all language.

ENHANCED REGISTRATION AND REPORTING REQUIREMENTS

The Foreign Debt Measures establish a "*review and approval*" regime for the regulation of Foreign Debt, which replaces the filing requirement under the 2044 Regime. Compared with the 2044 Regime, the Foreign Debt Measures enhance the registration and reporting requirements in several material ways.

Reporting Entity

The Foreign Debt Measures impose a "consolidated" reporting requirement for all enterprises. This means that the ultimate domestic holding company (境内控股企业总部) is responsible for submitting Foreign Debt registration applications to NDRC for the entire group (Article 11). In comparison, under the 2044 Regime, only central state-owned enterprises and financial institutions are required to consolidate their reporting.

Whilst it is relatively straightforward to identify the reporting entity under the Control Limb, it is not the same with respect to the Indirect Borrowing Limb (and it is possible that there is no ultimate domestic holding company (境内控股企业总部) in most cases under the Indirect Borrowing Limb). Under the 2044 Regime, NDRC suggested that the primary domestic operating subsidiary (主营业务子公司) under a "red-chip" structure be the reporting entity, but in light of the new "consolidated" reporting requirements, this arrangement would need to be re-assessed. The issue will be more complex in the case of the Indirect Borrowing Limb where there are multiple PRC enterprises involved. We expect that NDRC will provide guidance in the future to clarify how to determine the reporting entity under such circumstances.

Timeline and substance of applications/reports

The Foreign Debt Measures require PRC enterprises to (a) register with NDRC prior to (i) incurring Foreign Debt and (ii) making a material amendment to a Foreign Debt transaction and (b) regularly report the utilisation/drawdown status of the Foreign Debt and other specific information requested by NDRC through the online platform operated by NDRC.

Generally speaking, the new "*review and approval*" regime imposes more transparency requirements on PRC enterprises with respect to Foreign Debt. The below table summarizes the key provisions on the Foreign Debt applications and reports that PRC enterprises are required to comply with.

Trigger event	Time to apply/report	Key materials	Approval timeline
Initial registration	Enterprises shall obtain the Foreign Debt Registration Certificate (《审核登记证明》) (the Registration Certificate) before closing (in case of offshore debt issuance) and the first utilisation (in case of commercial loans).	<p>An application report covering:</p> <ul style="list-style-type: none"> (a) information on the enterprise, its existing Foreign Debts and its compliance status; (b) analysis on the necessity, feasibility, economics and financial sustainability of borrowing the Foreign Debt; (c) terms of the Foreign Debt, including its currency, amount, interest rate, tenor, type of debt instrument, security or other credit enhancement measures, use of proceeds, repatriation of proceeds into China (if any) and working plan; (d) plan for the repayment of the Foreign Debt and risk control measures; (e) an undertaking letter on the authenticity of the borrowing of the Foreign Debt. <p>NDRC will publish a template of the application report and a list of annexes.</p>	<p>5 business days for completeness review.</p> <p>3 months for substantive review and issuance of registration certificate.</p> <p>The above timeline could be extended when supplemental disclosure/explanation is requested by NDRC.</p> <p>The time period between NDRC requesting supplemental materials and the provision of such supplemental materials satisfactory to NDRC (the Supplemental Materials Period) will not count towards the 3-month review period.</p>
Amendment Registration	<p>Enterprises shall submit an amendment application to NDRC prior to the occurrence of any of the following:</p> <ul style="list-style-type: none"> (a) change in the currency or type of debt instrument of the Foreign Debt; (b) substantial change in the use of proceeds of the Foreign Debt; and (c) other substantial changes to information contained in the Registration Certificate. 	<p>Not specified in the Foreign Debt Measures. It is expected that NDRC will publish templates of application materials in due course.</p>	<p>20 business days.</p> <p>Similarly, to the extent any supplemental materials/explanation is requested by NDRC, the Supplemental Materials Period will not account towards the 20 business days.</p>
Utilisation / Drawdown Report	Enterprises shall report to NDRC within 10 business days upon each drawdown/utilisation.	Information on the borrowing of specific Foreign Debt, including key operational indicators and Foreign Debt borrowing status of an enterprise.	N/A
Expiry of Registration Certificate	The valid period of the Registration Certificate is one year. Enterprises	Information on the borrowing of the relevant Foreign Debt covered by the Registration Certificate.	N/A

Trigger event	Time to apply/report	Key materials	Approval timeline
	shall report to NDRC within 10 business days upon expiry of the Registration Certificate.		
Semi-annual Report	Enterprises shall report to NDRC within the last 5 business days at the end of each January and July.	Information on use of proceeds, repayment of the principal and interest on the Foreign Debt and the key operational indicators of the enterprise.	N/A
Material Impact Events Trigger	Enterprises shall report on a timely basis to NDRC and take risk control measures to mitigate cross-default across both domestic and foreign debt, upon occurrence of material events that may impact the due performance of the Foreign Debt (e.g., potential failure to pay in respect of both domestic and foreign debt; material asset restructure).	Not specified in the Foreign Debt Measures.	N/A

CONSEQUENCE OF FAILURE TO REGISTER OR REPORT

Consequences for enterprise and primary responsible persons

If a PRC enterprise raises Foreign Debt in violation of the Foreign Debt Measures, such PRC enterprise and the primary responsible persons (which may include the legal representative, chairman, general manager and chief financial officer, based on the practice under the 2044 Regime) may be investigated and penalised through public warnings (amongst other consequences). In addition, if a PRC enterprise fails to report the relevant information in accordance with the Foreign Debt Measures, NDRC shall order such PRC enterprise to rectify and may formally warn the PRC enterprise and the primary responsible persons if it fails to rectify or if the violation is severe (Article 28).

In addition, the relevant administrative procedures such as foreign exchange registration, accounts opening, receipt, payment, transfer and exchange of money and use of proceeds shall be conducted in accordance with the Registration Certificate. Government agencies and financial institutions shall not facilitate the relevant procedures or remittance in the absence of a Registration Certificate.

Consequences for Foreign Debt transaction

It is important to note that the Foreign Debt Measures do not expressly state whether and how a failure to obtain NDRC approval in respect of a Foreign Debt will, as a matter of PRC law, affect enforceability of the contract (which documents the terms of such Foreign Debt) and the Foreign Debt transaction.

The relevant context to this is that Paragraph 1 of Article 153 of the PRC Civil Code provides that, civil acts that violate the mandatory provisions of laws (法律) and administrative regulations (行政法规) shall be invalid. In addition, Paragraph 2 of Article 153 of the PRC Civil Code provides that civil acts that are against public order shall be invalid. It remains to be seen if PRC courts and regulators will provide clarity in this regard in the future.

ADDITIONAL COMPLIANCE OBLIGATIONS AND ENHANCED LIABILITY SCHEME

Compared with the 2044 Regime, the Foreign Debt Measures (a) stipulate certain additional compliance obligations on both enterprises and intermediaries and (b) establish an enhanced liability scheme.

Limitation on Use of Proceeds

The Foreign Debt Measures clarify the requirements on use of proceeds arising from Foreign Debt. On one hand, enterprises are encouraged to use Foreign Debt proceeds to develop the main business of the enterprise, facilitate the implementation of major national strategies and support the development of the real economy (Article 7). On the other hand, Foreign Debt proceeds may not be used in a manner that (a) violates the laws and regulations of the PRC; (b) threatens or damages PRC national interests or economy, information or data security; (c) contradicts the macroeconomic objectives of the PRC; (d) contradicts the development plan and industrial policies of the PRC or increase hidden debts of local governments; or (e) involves speculation, or on-lending by an enterprise that is not a banking financial institution (unless expressly approved by NDRC).

When compared with the 2044 Regime (where the use of proceeds requirements were set out under Q47 of the FAQs), it is interesting that although certain new restrictions have been introduced by the Foreign Debt Measures (such as the reference to information and data security, as well as the prohibition against increasing hidden debts of local governments and speculation), two of the previous use of proceeds requirements were relaxed. In particular, the Foreign Debt Measures no longer prohibit use of proceeds to cover losses; and the Foreign Debt Measures expressly allow enterprises to on-lend proceeds of Foreign Debt to others if such on-lending purpose has been approved by NDRC as part of the application process for the Registration Certificate (although this is expected to be carefully reviewed by NDRC).

Enhanced Supervision over Foreign Debt

Enterprises are also required to enhance risk management (Article 23), including timely report of material risk events to NDRC as discussed above. In addition, NDRC is empowered to establish a coordinated regulatory regime to supervise and manage Foreign Debts through methods such as online inspection, interviews, enquiries and spot checks (Article 27) and enterprises will likely receive more queries from PRC regulators in respect of Foreign Debt going forward.

Cooperation with foreign regulators could be subject to pre-approval. If foreign authorities launch an inspection or investigation in relation to Foreign Debt and such inspection or investigation may give rise to national security or public interest concerns, the enterprises and intermediaries involved shall report to the relevant PRC authorities before cooperating with foreign authorities. This requirement is consistent with the PRC data security regime, and market participants will need to carefully consider their responsibilities to both foreign authorities and PRC authorities and whether a conflict may arise between such reporting obligation to the relevant PRC authorities on the one hand and the obligation to cooperate with foreign authorities on the other hand.

Liability for Intermediaries

Articles 29 and 30 of the Foreign Debt Measures expressly stipulate that service providers (such as underwriters, auditors and law firms) and the relevant responsible persons will be liable for (a) providing services when being aware of (or where they should have been aware of) (明知或应知) the fact that a Foreign Debt transaction is being conducted in violation of the Foreign Debt Measures, and (b) concealing any facts or giving any fraudulent or misleading statements or material omissions when preparing any opinion/report and/or disclosure statement relating to the Foreign Debt transaction.

It should be noted that intermediary liability has already been narrowed down when compared with the Consultation Draft, where originally service providers could be held liable (without any knowledge qualifier) if the relevant Foreign Debt transaction breached the Foreign Debt Measures.

NDRC has not provided (a) detailed regulatory requirements with respect to the service providers covered (such as whether non-PRC service providers are in-scope), and (b) the consequences of breaches by service providers. In any event, we expect that service providers will need to reconsider their internal policies and controls relating to Foreign Debt transactions in light of the liability regime under the Foreign Debt Measures. Given the criteria expressed under Articles 29 and 30 of the Foreign Debt Measures, intermediaries should consider reviewing their existing diligence and know-your-client (KYC) policies and where appropriate carefully assess participation

in transactions with tight execution timing or where there is little time available to complete an intermediary's internal diligence exercise or KYC procedures.

IMPACT ON LENDING AND DEBT CAPITAL MARKETS TRANSACTIONS

How the Indirect Borrowing Limb applies in practice

As discussed above, the newly introduced Indirect Borrowing Limb (Article 33) will bring in-scope not only red-chip structures or VIE structures (which are already in-scope under the 2044 Regime), but also potentially other structures such as, for example, (a) a financing structure where an overseas enterprise (being a special purpose vehicle set up by an overseas sponsor) borrows a debt outside the PRC to acquire a PRC business or (b) a financing structure where an overseas enterprise, which is owned and controlled by an overseas sponsor and which has operating businesses in the PRC, borrows a debt outside the PRC. Under these structures, the financiers may or may not have any contractual recourse against any PRC enterprises or any assets which are located inside the PRC, albeit that the main credit in the financing could well be such PRC business. One may consider that the financing is "*in reliance on*" or "*based on*" the income or dividends stream of the PRC business, and hence falls within the Indirect Borrowing Limb, although it is not entirely clear whether that is the regulatory intent.

Until the applicability of the Indirect Borrowing Limb is clarified by NDRC, we would recommend that when in doubt, a prudent approach should be taken and case-by-case consultation should be made with NDRC to clarify whether a specific transaction falls within the scope of the Foreign Debt Measures.

We expect that NDRC will issue guidance to provide clarity on the applicability of the Indirect Borrowing Limb.

Impact on Existing and On-Going Transactions

The Foreign Debt Measures will take effect on and from 10 February 2023 (the **Effective Date**) and will replace the 2044 Regime on the same day. A key issue for market participants is how Foreign Debt transactions straddling the Effective Date will be treated for the purposes of the Foreign Debt Measures. In theory, there could be multiple approaches for the transition from the existing 2044 Regime to the new scheme established by the Foreign Debt Measures. For example:

Taking the execution date of the relevant finance documents: Foreign Debt documents executed and dated (i) prior to the Effective Date shall be subject to the 2044 Regime and (ii) on and after the Effective Date shall be subject to the Foreign Debt Measures.

Taking the issue/ utilisation date: Foreign Debt to be issued or utilised (i) prior to the Effective Date shall be subject to the 2044 Regime and (ii) on and after the Effective Date shall be subject to the Foreign Debt Measures.

Taking the date of submitting the application documents as the division line: an application for Foreign Debt submitted (i) prior to the Effective Date shall be subject to the 2044 Regime and (ii) on and after the Effective Date shall be subject to the Foreign Debt Measures.

Taking the date of NDRC approval as the division line: those obtained (i) prior to the Effective Date shall be subject to the 2044 Regime and (ii) on and after the Effective Date shall be subject to the Foreign Debt Measures.

However, the Foreign Debt Measures are silent on the correct transitional approach. Depending on the approach taken, this would have various consequences for the affected Foreign Debt transactions. For example, will the new requirements under the Foreign Debt Measures apply to existing Foreign Debt where NDRC has already provided approval? Would market participants need to update their filed application documents in order to satisfy the new requirements under the Foreign Debt Measures? Further, if the Foreign Debt Measures apply to existing Foreign Debt, would corporate enterprises with outstanding foreign bonds issued under the previous 2044 Regime now need to report under the new semi-annual reporting requirement? In addition, bond issuers who previously relied on their parent companies' omnibus quota would now need to carefully consider and re-tool their internal administrative and logistical arrangements with their parent companies under the new Foreign Debt Measures. Market participants should consult with NDRC and their legal advisers to plan for transition on 10 February 2023.

Potential Impact on Documentation

Under the 2044 Regime, transaction documentation that related to Foreign Debt usually set out certain requirements and restrictions specific to NDRC approval with respect to the enterprise (where applicable):

Use of Proceeds: The issuer/borrower shall not use the utilised/drawn proceeds in violation of the applicable law and regulations (including, without limitation, Circular 2044 and any other PRC laws and regulations to the extent applicable to it or such transactions).

Representation of Validity and Admissibility in Evidence: The issuer/borrower is usually required to represent that all authorisations required (i) to lawfully to enter into its finance documents, exercise its rights and comply with its obligations thereunder, (ii) to make the finance documents admissible in evidence in its jurisdiction of incorporation, and (iii) for it and its subsidiaries to carry on material business as now conducted or contemplated have been obtained or effected and are in full force and effect.

Undertaking in relation to Authorisations: The issuer/borrower is usually required to undertake that it shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any authorisations (i) required to enable it to perform its obligations under the finance documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any finance document, and (ii) required under any law or regulation for it and its subsidiaries to carry on their business.

Conditions Precedent: The issuer/borrower shall provide a copy of the filing certificate (企业借用外债备案登记证明) issued by NDRC evidencing the completion of the NDRC foreign debt quota filing process relating to the transaction pursuant to Circular 2044 showing an aggregate principal amount of not less than the total commitments and/or total target issue amount.

Ongoing Undertaking: The issuer/borrower shall also undertake to complete the ongoing reporting duty of the relevant information pursuant to Circular 2044 and may be required to provide evidence when requested.

The abovementioned clauses are widely accepted by the market as the starting point for negotiations. We expect that these provisions will need to be updated to reflect the new obligations imposed under the Foreign Debt Measures.

Timeline of Transactions

As a result of the enhanced supervision and reporting obligations, NDRC approvals under the Foreign Debt Measures are expected to be issued within three (3) months from the date of confirming the completeness of the application documents, which on paper is significantly longer than the nominal timeline of seven (7) business days under the 2044 Regime. However, we understand that the timeline under the Foreign Debt Measures to a large extent reflects the *de facto* practice of NDRC under the 2044 Regime, and was not intended to materially lengthen the registration process. Market participants will need to carefully design the timetable for Foreign Debt transactions in light of the current requirements set out under the Foreign Debt Measures, including the identification of appropriate issuance windows and the form of the latest audited and reviewed financial information available for diligence and incorporation into investor disclosures.

In particular, where Foreign Debt is expected to be incurred for an event-driven transaction (such as mergers and acquisitions), the underlying contract (such as the sale and purchase agreement) may also need to be reviewed carefully to take into account the timeline above. As in the case with the 2044 Regime, it is currently not clear whether NDRC will accept an application for registration based on a debt commitment letter (with a term sheet attached) or whether NDRC will only accept an application for registration based on fully executed long-form financing documentation. We therefore expect that there will be more negotiations in the market surrounding "Availability Period" (and related commitment fees) to take into account the timeline above insofar as commercial loans are concerned.

OUTLOOK

The Foreign Debt Measures mark a significant evolution of NDRC's approach to regulating Foreign Debt. There are various aspects of the Foreign Debt Measures that require further clarification, such as the scope of enterprises covered and how we will transition from the 2044 Regime to the Foreign Debt Measures. Market participants will need to carefully consider the enhanced reporting and compliance requirements, as well as the expanded liability regime for service providers involved in helping enterprises raise Foreign Debt.

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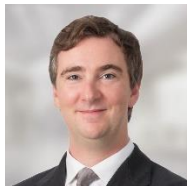
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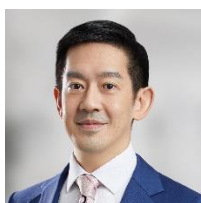
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