

# China's Central Bank Issues Further Guidance on Inbound Foreign Debt

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**Authors:** [Baldwin Cheng](#), [Xiaoming Li](#), [David Li](#), [Eugene Man](#), [John Shum](#), [Jessica Zhou](#), [Frank Shu](#)

On 29 April 2016, the People's Bank of China ("PBOC") promulgated the Circular on the Nationwide Implementation of Prudent Administration of Cross-Border Financings (《中国人民银行关于在全国范围内实施全口径跨境融资宏观审慎管理的通知》) (the "PBOC Circular"). The PBOC Circular came into effect on 3 May 2016.

The PBOC Circular seeks to reconfigure and unify the existing regulatory frameworks on PRC cross-border financings in both RMB and foreign currencies. As we have reported earlier, the National Development and Reform Commission of China ("NDRC") promulgated the Circular on Promoting Reform on the Administration of Filing and Registration of Foreign Debt Issued by Enterprises (《国家发展改革委关于推进企业发行外债备案登记制管理改革的通知》) in September 2015 (the "NDRC Circular"), introducing significant changes to the then-existing regulatory framework on PRC cross-border loans and bond issuances. As noted in our previous [alert](#), repatriation of loan proceeds, currency conversion and repayment outflows are administered by the State Administration of Foreign Exchange of China ("SAFE") (and its supervisory agency, PBOC) and until SAFE and PBOC announce any changes to their current requirements or practice, the practical impact of the reform remains uncertain.

Whilst it is encouraging to see that both the NDRC Circular and the PBOC Circular set out to abolish the old case-by-case approval system for incurrence of foreign debts and to relax the restrictions on PRC inbound financing, the two circulars diverge in a number of important respects:

	NDRC Circular	PBOC Circular
Scope	Applies to financings (RMB or foreign currencies) obtained from overseas sources by PRC entities as well as offshore entities controlled by PRC entities.	Applies to financings (RMB or foreign currencies) obtained from non- PRC-residents by PRC entities, excluding real estate companies, financing platforms of the government and financial enterprises that were not established by the approval of PBOC, China Banking Regulatory Commission, China Securities Regulatory Commission or the China Insurance Regulatory Commission, e.g. a financial holding company which holds licensed financial institutions but is not a licensed financial institution itself. Unlike the NDRC Circular, the PBOC Circular does not address borrowings by offshore entities controlled by

		PRC entities.
<b>Procedure</b>	An issuer/debtor is required to apply to NDRC for registration before a foreign debt issuance/incurrence and NDRC will issue certificate of registration if all things are in order. A filing of the issuance/incurrence information is also required to be made with NDRC within 10 working days of the completion of each issue/incurrence.	Unlike the NDRC Circular, the PBOC Circular sets out different requirements for financial institutions and non-financial institutions. Subject to further implementation rules by SAFE, financial institutions are required to file with PBOC/SAFE after a foreign debt issuance/incurrence while other types of entities are required to file with PBOC/SAFE after signing of the relevant financing documents but before issuance/incurrence of the relevant foreign debt under such financing documents.
<b>Limit on Quantum</b>	The total volume of “foreign debt” under the NDRC regime will be subject to an annual overall foreign debt quota set by NDRC. When the quota is fully utilised, NDRC will make a public announcement thereof and will cease to accept any further applications for registration. To date, NDRC has not announced the quota for year 2016.	There is no overall foreign debt quota. Instead, the PBOC Circular sets out very detailed formula which a PRC entity can use to calculate the maximum amount of foreign debt it may borrow based on factors such as term, currency, and type of debt. PBOC may adjust the formula or the factors used therein from time to time.

The promulgation of the PBOC Circular is a welcome development following the NDRC Circular. In particular, the clarity it provides to PRC entities in terms of the amount of foreign debt they can incur may enable PRC enterprises to structure future financing transactions with more certainty. However, the divergence between the two circulars may unfortunately result in continued uncertainties for borrowers, lenders and their advisors in practice. Until further clarification is available, perhaps in the form of SAFE’s implementation rules, borrower and lenders, when faced with differences in the two sets of rules, would be prudent to assume that the two circulars will apply in parallel and must both be complied with.

White & Case LLP, Beijing Office  
19th Floor, Tower 1 of China Central Place  
81 Jianguo Lu, Chaoyang District  
Beijing 100025  
China  
**T** +86 10 5912 9600

White & Case  
9th Floor Central Tower  
28 Queen’s Road Central  
Hong Kong  
**T** +852 2822 8700

White & Case LLP, Shanghai Office  
39th Floor, CITIC Square  
1168 West Nanjing Road  
Shanghai 200041  
China  
**T** +86 21 6132 5900

White & Case Pte. Ltd.  
8 Marina View #27-01  
Asia Square Tower 1  
018960  
Singapore  
**T** +65 6225 6000

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