

Client Alert

February 2019

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An Overview of the New Regulation Rules for Panda Bond Issuance on the National Inter-bank Bond Market of China

Following the promulgation of the *Interim Measures for the Administration of Bond Issuances by Overseas Institutions in the National Inter-bank Bond Market* (Announcement [2018] No.16 of PBOC and MOF, the “**PBOC Interim Measures**”) jointly by the People’s Bank of China (the “**PBOC**”) and the Ministry of Finance of China (the “**MOF**”) on 25 September 2018, which established the regulatory frameworks for the issuance of Panda Bonds¹ by various types of Overseas Institutions (as defined below) in the national inter-bank bond market of China (the “**CIBM**”), as an implementation and supplement to the relevant provisions of the PBOC Interim Measures, the National Association of Financial Market Institutional Investors (the “**NAFMII**”) officially promulgated the *Guidelines on Debt Financing Instruments of Overseas Non-Financial Enterprises (for Trial Implementation)* on its website on 1 February 2019 (the “**NAFMII Guidelines**”), which clarified the specific rules that overseas non-financial enterprises should comply with when issuing Panda Bonds on the CIBM. The purpose of this alert is to summarize and interpret the key points and requirements of the PBOC Interim Measures and the NAFMII Guidelines (together, the “**New Panda Bonds Regulation Rules**”), for your reference.

1. Summary of the Key Points and Requirements of the New Panda Bonds Regulation Rules

| Regulation Matter | Provisions/Requirements of the New Panda Bonds Regulation Rules | Comments of Baker McKenzie FenXun |
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| Qualified Issuers | <p>Qualified overseas institutions (including such institutions incorporated in Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan) that can issue Panda Bonds on the CIBM (“Overseas Institutions”) includes:</p> <p>(1) foreign governmental institutions (including any agency of the government or a local government of a sovereign country, or any agency of such country that performs government functions) which shall have experience in bond issuance and sound debt repayment ability (“Foreign Governmental</p> | As of now, there are precedents of Panda Bonds issued by all such four types of Overseas Institutions on the CIBM. |

¹ “Panda Bonds” as mentioned in this alert is a broad concept which refers to bonds issued by overseas institutions on the CIBM in accordance with the PBOC Interim Measures and the NAFMII Guidelines, including Renminbi-denominated bonds and the bonds which are denominated in Special Drawing Rights (SDR) and settled in Renminbi (also known as “Mulan Bonds”).

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| | <p>Institutions”).</p> <p>(2) international development institutions (referring to any multilateral, bilateral or regional international development financial institution that grants development loans and makes investments) which shall have experience in bond issuance and sound debt repayment ability (“International Development Institutions”).</p> <p>(3) financial institutions registered or incorporated outside of the People’s Republic of China (the “PRC”) with an independent legal-person status (the “Overseas Financial Institutions”) which shall possess the following qualifications:</p> <ul style="list-style-type: none"> (a) actual paid-in capital not less than 10 billion Renminbi or an equivalent amount in a foreign currency; (b) sound corporate governance and robust risk management system; (c) stable financial condition, good credit standing, and profitability for the most recent three consecutive years; (d) experience in bond issuance and sound debt repayment ability; and (e) being effectively regulated by the financial regulatory authorities of the country or region where it is situated, and its key risk regulatory indicators being in compliance with the requirements of the said authorities. <p>(4) non-financial enterprises registered or incorporated outside of the PRC with an independent legal-person status (the “Overseas Non-Financial Enterprises”).</p> | |
| <p>Approval Regime</p> | <p>(1) Panda Bonds issuance by Overseas Financial Institutions:</p> <ul style="list-style-type: none"> (a) shall be subject to the prior approval by the PBOC; and (b) prior to the pricing of the Panda Bonds, the issuer shall file with the PBOC the updated offering circular, the credit rating report (if any), the underwriting agreement and agreement among the syndicate members, legal opinions and other finalized documents for the | <p>The validity period of the PBOC approval and the registration of NAFMII for Panda Bond issuance is usually two (2) years.</p> |

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| | <p>issuance.</p> <p>(2) Panda Bonds issuance by Overseas Non-Financial Enterprises:</p> <ul style="list-style-type: none"> (a) shall be subject to the prior registration with NAFMII; (b) during the period starting on the date of acceptance of registration and ending on the date of the establishment of creditor-debtor relationship, where any events that may have a significant impact on investment values and investment decisions occur, the issuer shall make supplemental information disclosure or file with the Registration Meeting of NAFMII for further review in accordance with relevant rules of NAFMII; and (c) save for the first issuance or issuances which are subject to a pre-issuance filing with NAFMII, the issuer shall submit to NAFMII a written plan on use of proceeds from the proposed issuance no later than three (3) business days prior to the publication of the offering documents for each series of Panda Bonds. <p>(3) Panda Bonds issuance by Foreign Governmental Institutions and international development institutions shall be subject to the prior registration with NAFMII.</p> | |
| Issuance Mode and Issuance Way | <p>(1) Public issuance and private placement: Overseas Institutions can issue Panda Bonds through public issuance or private placement to targeted qualified institutional investors that have entered into private placement agreements with the issuer (“Private Placement”).</p> <p>(2) Standalone issuance and issuance in tranches:</p> <ul style="list-style-type: none"> (a) A Foreign Governmental Institution, International Development Institution or Overseas Financial Institution which has solid experience in bond issuance or has issued bonds in the PRC and made continuous information disclosure for more than one year may apply to issue Panda Bonds in one go or in tranches within the approved or registered quota. (b) Overseas Non-financial | <p>According to the relevant rules of the CIBM and based on the market practice, if an Overseas Institution issues Panda Bonds through Private Placement, the bonds issued shall be traded only between the qualified institutional investors who sign the private placement agreements.</p> |

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| | <p>Enterprises issuing Panda Bonds publicly may decide whether and when to issue the bonds during the 12-month period from the acceptance of registration, after which the issuer shall file the proposed issuance with NAFMII prior to such issuance. Where an Overseas Non-financial Enterprise issues Panda Bonds through private placement, it may decide whether and when to issue the bonds during the validity period of registration. If the issuer does not issue the bonds during the 12-month period from the acceptance of registration, the issuer shall file the first issuance with NAFMII prior to such issuance. Where there are separate regulations for other debt financing instruments such as super short-term commercial papers (SCP), asset-backed notes (ABN) and project revenue notes (PRN), such separate regulations shall be complied with.</p> | |
| List of Application Documents | <p>(1) To issue Panda Bonds on the CIBM, an Overseas Financial Institution shall submit to the PBOC the following documents:</p> <ul style="list-style-type: none"> (a) an application letter for bond issuance; (b) the valid resolution made by the issuer's competent decision-making body or other documentary evidence approving the proposed issuance; (c) an offering circular; (d) the financial statements and audit reports for the most recent three (3) years, and the latest financial statement (if any); (e) documentary evidence proving the approval by the financial regulatory authority of the country or region where the issuer is situated on the issuer's operation of relevant financial business; (f) a credit rating report and follow-up credit rating arrangements (if any); (g) guarantee agreement(s) and documents evidencing the | For Private Placement of Panda Bonds, the issuer and the targeted investor could discuss and decide as to whether credit rating is needed. |

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| | <p>credit status of the guarantor (if applicable); and</p> <p>(h) legal opinions issued by qualified PRC legal counsels and qualified legal counsels of the jurisdiction of incorporation of the issuer.</p> <p>(2) An Overseas Non-financial Enterprise shall submit the following registration documents to NAFMII for issuance of Panda Bonds:</p> <ul style="list-style-type: none"> (a) a registration report (attaching its certificate of incorporation, constitutional documents, and the resolutions of its competent decision-making body or other evidencing document(s)); (b) a letter of recommendation from each lead underwriter; (c) an offering circular; (d) the audited financial statements for the most recent three (in the case of public issuance) or two (in the case of private placement) financial years, and the latest interim financial statements (if any); (e) a credit rating report and credit tracking assessment arrangements (if available) (NOT required for Private Placement); (f) legal opinions issued by a PRC law firm and a law firm qualified in the issuer's jurisdiction of incorporation, respectively; (g) a consent letter from the issuer's overseas auditors (if applicable); (h) an underwriting agreement; and (i) other documents as required by NAFMII. | |
| Use of Proceeds | <p>(1) The PBOC Interim Measures are silent on the regulatory requirements on the use of proceeds of Panda Bonds.</p> <p>(2) The NAFMII Guidelines prescribe that the proceeds from the issuance of Panda Bonds by Overseas Non-financial Enterprises may, in accordance with applicable laws, regulations and regulatory requirements, be used within or outside the PRC. In addition, Overseas Non-financial Enterprises shall ensure that their use of proceeds be in compliance with the requirements of relevant laws,</p> | Based on our experience, the proceeds of the Panda Bonds issued by Overseas Institutions on the CIBM could be used within or outside the PRC (including partial onshore use and partial offshore use) in accordance with the use of |

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| | <p>regulations and national policies of the PRC, strictly in accordance with the use of proceeds disclosed in the offering circular, and perform relevant information disclosure obligations. If there is a need to change the use of proceeds during the life of the Panda Bonds, the issuer shall complete relevant procedures and disclose such change at least five (5) business days prior to such change. The use of proceeds after such change shall also be in compliance with the requirements of relevant laws, regulations and national policies of the PRC.</p> | <p>proceeds as approved by the PBOC or registered with NAFMII. Also, PRC regulators encourage the proceeds of Panda Bonds to be used for the projects supported by PRC government such as the construction of the projects in relation to the Belt and Road Initiative.</p> |
| Account Opening, Fund Remittance, Cross-border Remittance and Information Reporting in relation to the Use of Proceeds | <p>The account opening, cross-border settlements, and information reporting in connection with the proceeds from the issuance of Panda Bonds by Overseas Institutions shall be in compliance with relevant rules of PBOC and the State Administration of Foreign Exchange.</p> | <p>According to relevant rules of PBOC, an Overseas Institution may choose to (a) open a non-resident Renminbi settlement account (the "NRA Account") with a PRC domestic banking financial institution, or (b) entrust a lead underwriter to open a custody account with a PRC domestic banking financial institution, in order to deposit funds raised through issuing Renminbi bonds, and to conduct relevant cross-border Renminbi settlement business.</p> |
| Requirements on Information Disclosure | <p>(1) Principle requirements:</p> <p>(a) The PBOC Interim Measures prescribe that: (i) an Overseas Institution as Panda Bond issuer shall fulfill its information disclosure obligation prior to the Panda Bond issuance and during the life of the Panda Bonds in accordance with relevant rules of the CIBM. The overseas issuer and the guarantors (if any) shall ensure that the information disclosed is truthful, accurate, complete and in a timely manner, without any</p> | <p>Based on our experience in Panda Bond issuance precedents, it is our understanding that for Panda Bond issuance by Overseas Financial Institutions, the information disclosure prior to the Panda Bond issuance and</p> |

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| | <p>false record, misleading statement or material omission; and (ii) any material information disclosed by the overseas issuer in other markets shall also be disclosed on the CIBM simultaneously or as soon as reasonably possible.</p> <p>(b) The NAFMII Guidelines prescribe that: For Panda Bond issuance by Overseas Non-financial Enterprises, the information disclosure (including disclosure of financial information, any material event that may affect the repayment ability of the issuer, any corrections to errors in the disclosed information or any modifications to accounting policies or accounting estimates) during the life of the Panda Bonds shall be specified in the registration and offering documents in accordance with, mutatis mutandis, the <i>Rules for Information Disclosure on Debt Financing Instruments of Non-Financial Enterprises on the Inter-bank Bond Market</i>.</p> <p>(2) Disclosure language and time limit:</p> <p>(a) Principle requirements under the PBOC Interim Measures: The offering documents publicly disclosed by Overseas Institutions as Panda Bond issuers shall be prepared in simplified Chinese ("Chinese") or accompanied with a Chinese translation.</p> <p>(b) Special requirements under the NAFMII Guidelines for Panda Bond issuance by Overseas Non-financial Enterprises:</p> <p>(i) in the case of public issuance: all the registration and offering documents shall be in Chinese or accompanied with a Chinese version; all information disclosed during the life of the Panda Bonds shall be, in principle, in Chinese; where the issuer discloses financial information in English on other securities markets, it shall, simultaneously or as soon as reasonably practicable thereafter, disclose such information in English on</p> | <p>during the life of the Panda Bonds could be specified in the application and offering documents in accordance with, mutatis mutandis, the <i>Administrative Measures for the Issuance of Financial Bonds on the National Inter-bank Bond Market and the Operating Rules on Information Disclosure of Financial Bonds on the National Inter-bank Bond Market</i>.</p> |
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| | <p>the CIBM and disclose the Chinese version of the key contents of such information in accordance with the timeline set forth in its registration and offering documents; where the issuer discloses any material event that may affect the repayment ability of the issuer, any corrections to errors in the disclosed information or any modifications to accounting policies or accounting estimates in English on other securities markets, it shall, simultaneously or as soon as reasonably practicable thereafter, disclose such information in English on the CIBM, and disclose a Chinese version or a Chinese summary within seven (7) business days upon the disclosure of the English version.</p> <p>(ii) in the case of Private Placement: the principal registration and offering documents shall be in Chinese or accompanied with a Chinese version; other documents may be disclosed in either Chinese or English as agreed between the issuer and the investors participating in such private placement. Information disclosure during the life of such Panda Bonds may be made in Chinese or English as agreed between the issuer and the investors. Where there is no such agreement between the issuer and the investors, the issuer shall comply with, mutatis mutandis, the above provisions required for public issuance under the NAFMII Guidelines.</p> <p>(3) Special requirements on information disclosure under the NAFMII Guidelines for Panda Bond issuance by Overseas Non-financial Enterprises:</p> <p>(a) If the issuer prepares consolidated financial statements, in principle, such</p> | |
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| | <p>issuer shall submit, in addition to its consolidated financial statements, the issuer's standalone financial statements, or such contents in the issuer's standalone financial condition that may have a material impact on investors' investment decisions, and include a notice paragraph at a prominent place in the registration and offering documents.</p> <p>(b) Overseas credit enhancement entities providing credit enhancements to issuers of Panda Bonds shall comply with, mutatis mutandis, the information disclosure requirements for issuers.</p> <p>(c) An overseas parent company providing unconditional and irrevocable joint liability guarantee to its wholly-owned financing vehicle shall comply with the information disclosure requirements separately stipulated by NAFMII.</p> <p>(4) Special requirements on information disclosure for Private Placement of Panda Bonds: The PBOC Interim Measures prescribe that Overseas Institutions issuing Panda Bonds through Private Placement shall disclose information in form and substance as agreed in the private placement agreement to targeted qualified institutional investors only, and shall not publicly disclose the offering circular, financial statements or any other offering document.</p> | |
| <p>Requirements on Financial Statements and Accounting Standards</p> | <p>(1) For public issuance of Panda Bonds, the PBOC Interim Measures allows the financial statements of the issuer to be prepared in accordance with such accounting standards other than the Accounting Standards for Business Enterprises of the PRC, which is the generally accepted accounting principles in the PRC (the "PRC GAAP") and any other accounting standards that have been identified and recognized by the MOF as equivalent accounting standards (the "Equivalent Accounting Standards") under the principle of reciprocity, provided that:</p> <p>(a) the issuer shall also provide a description of significant differences between the</p> | <p>Based on the Panda Bond issuance precedents, a Foreign Governmental Institution issuing Panda Bonds could provide its financial data instead if no audited financial statement is available.</p> |

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| | <p>accounting standards adopted by it and the PRC GAAP; and</p> <p>(b) (where the issuer is an Overseas Financial Institution or an Overseas Non-financial Enterprise) information of reconciliation to the PRC GAAP, indicating the amount of finance impact of the differences between the accounting standards on all important items in its financial statements.</p> <p>(2) For Private Placement of Panda Bonds, the PBOC Interim Measures allow Overseas Institutions and targeted investors to discuss and decide the accounting standards to be used for the preparation of the financial reports, and fully disclose the risks in the private placement agreement, and the targeted investors shall commit to bear the risks.</p> | |
| Requirements on the Relevant Intermediary Institutions | <p>(1) Lead Underwriter: the NAFMII Guidelines require that Panda Bonds issued by Overseas Non-financial Enterprises shall be underwritten by financial institution(s) possessing the relevant qualification to act as underwriter(s) for debt financing instruments. At least one of the Lead underwriter(s) shall have a subsidiary or branch in the country or region where the issuer is incorporated or the principal place of its business is located, or make other necessary arrangements, to ensure that such lead underwriter(s) have the capability to perform its duties including conducting due diligence.</p> <p>(2) Rating Agencies: The credit rating reports publicly disclosed in connection with Panda Bond issuance by Overseas Institutions shall be issued by the recognized credit rating agencies qualified to conduct rating business on the CIBM.</p> <p>(3) Audit Institutions:</p> <p>(a) If the issuer's financial statements are prepared in accordance with the PRC GAAP, the issuer shall engage an accounting firm qualified for securities and futures related business in the PRC to audit its financial statements.</p> <p>(b) If the issuer's financial statements are prepared in</p> | <p>(1) According to public information, as of now, six (6) foreign-invested banks have been qualified to underwrite Panda Bonds issued by Overseas Non-financial Enterprises on the CIBM, of which three (3) are qualified to act as the lead underwriter of Panda Bonds issued by Overseas Non-financial Enterprises on the CIBM.</p> <p>(2) According to the relevant announcement and rules issued by the PBOC and NAFMII, qualified overseas rating agencies</p> |

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| | <p>accordance with an accounting standard other than the PRC GAAP, the auditor should be an accounting firm qualified for securities and futures related business in the PRC or an overseas accounting firm satisfying the following requirements:</p> <ul style="list-style-type: none"> (i) being duly registered or incorporated in the country or region where the accounting firm is situated, possessing the audit practice qualification and being in normal practice status; (ii) good international reputation and market recognition; (iii) being qualified to provide audit service for public offering of securities and having no less than five (5) years' experience in providing audit service related to public offering of securities in the country or region where the accounting firm is situated; and (iv) other qualifications or regulatory requirements as prescribed by the MOF. <p>(c) The information on reconciliation to the PRC GAAP provided by an Overseas Institution issuing Panda Bonds shall be authenticated by an accounting firm qualified for the securities and futures related business in the PRC.</p> <p>(d) The overseas accounting firm engaged by an Overseas Institution to audit its financial statements relating to its issuance of Panda Bonds shall be subject to the supervision by the MOF, file for record with the MOF no later than twenty (20) business days prior to the submission of the issuer's application for the issuance of Panda Bonds, and make annual filing with the MOF during the life of the Panda Bonds. If the country or region where the overseas accounting firm is situated has concluded an agreement with the MOF on equivalence of supervision of</p> | <p>may, after registering with the NAFMII, carry out credit rating business on the CIBM. As of now, a PRC subsidiary of S&P Global Inc. has been approved to carry out credit rating business on the CIBM.</p> <p>(3) Based on the Panda Bond issuance precedents, where the issuer is a foreign listed company, legal opinion issued by the issuer's legal counsel from the jurisdiction of the listing of the issuer is also needed. And where the issuer is a Foreign Governmental Institutions or international developing institution, the offshore legal opinion from the perspective of the laws of the jurisdiction of incorporation of the issuer could be issued by the issuer's internal legal counsel.</p> |
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| | <p>audit practice, or a specific cooperation agreement on supervision of audit practice for such issuance of bonds, such agreements shall be followed.</p> <p>(e) The overseas accounting firm engaged by an Overseas Institution as the issuer to audit its financial statements relating to its issuance of bonds in the PRC shall</p> <p>(4) Legal Counsels: The legal opinion on overseas legal matters issued in connection with an issuance of Panda Bonds by an Overseas Institution shall be issued by a law firm or other competent legal counsels qualified to practice law in the country or region where the issuer is incorporated. The legal opinion on PRC legal matters shall be issued by a qualified PRC law firm.</p> | |
| <p>Governing Law and Dispute Resolution</p> | <p>(1) The PBOC Interim Measures are silent on the governing law of the offering and transaction documents for issuances of Panda Bonds by Overseas Institutions. The NAFMII Guidelines explicitly prescribed that the offering and transaction documents for issuances of Panda Bonds by Overseas Non-financial Enterprises shall be governed by the laws of the PRC.</p> <p>(2) The PBOC Interim Measures and the NAFMII Guidelines are silent on the dispute resolution in connection with the offering and transaction documents for issuances of Panda Bonds by Overseas Institutions.</p> | <p>Based on the Panda Bond issuance precedents, in practice the PRC regulators usually require that the offering and transaction documents for issuances of Panda Bonds shall be governed by the laws of the PRC, and the parties usually agree to submit the relevant disputes to the China International Economic and Trade Arbitration Commission for arbitration.</p> |

2. Matters to be Observed

- (1) the specific rules for registration and issuance as well as requirements on information disclosure in relation to Panda Bond issuance by Foreign Govermental Institutions and International Development Institutions remains to be clarified by NAFMII

According to Article 27 of the PBOC Interim Measures, NAFMII is responsible for formulating guiding rules for registration and issuance of Panda Bonds by Foreign Governmental Institutions, International Development Institutions and Overseas Non-financing Enterprises on the CIBM as well as the guiding rules on information disclosure for issuance of Panda Bonds by Overseas Institutions on the CIBM, and NAFMII is responsible for reviewing and

conducting ongoing supervision on information disclosure of the issuer. The NAFMII Guidelines mainly focus on the guiding rules for registration and issuance as well as information disclosure of Panda Bonds by Overseas Non-financing Enterprises on the CIBM. And we noticed that although the PBOC Interim Measures prescribe that Foreign Governmental Institutions and International Development Institutions issuing Panda Bonds on the CIBM shall register with NAFMII, the NAFMII Guidelines do not prescribe that Foreign Governmental Institutions and International Development Institutions issuing Panda Bonds on the CIBM shall comply with, *mutatis mutandis*, the NAFMII Guidelines. Therefore, the specific rules for registration and issuance as well as requirements on information disclosure in relation to Panda Bond issuance by Foreign Governmental Institutions and International Development Institutions remain to be clarified by NAFMII.

(2) Overseas Institutions issuing green Panda Bonds on the CIBM shall also comply with special rules stipulated by the PBOC and NAFMII.

It is noteworthy that, according to the *Announcement on Matters Concerning the Issuance of Green Financial Bonds in the Interbank Bond Market* (Announcement No.39[2015] of the PBOC, the “**Green Financial Bonds Announcement**”) and the *Business Guide for Non-Financial Enterprises Green Debt Financing Instruments* and its ancillary forms (Announcement No.10[2017] of the NAFMII, collectively the “**Green Debt Financing Instruments Guide**”), issuance of green financial bonds by overseas financial institutions on the CIBM shall also comply with the Green Financial Bonds Announcement, and issuance of green debt financing instruments by Overseas Non-financial Institutions shall also comply with the rules of the Green Debt Financing Instruments Guide.

We hope you find this alert helpful. Should you have any questions on the topics covered, please do not hesitate to contact us.

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