
PRC Companies Can Now Tap Hong Kong's Public Debt Market Via 'Dim Sum Bonds'

by Woon-Wah Siu and Eric Zhang

Since the second half of 2007, China's financial institutions have been allowed to issue RMB-denominated bonds in Hong Kong (so-called "Dim Sum Bonds"). No mechanism existed for non-financial PRC institutions to offer these bonds directly. Therefore, institutions generally offered Dim Sum Bonds through their Hong Kong or other offshore subsidiaries. While the Bao Steel Group received approval to issue Dim Sum Bonds in late 2011, direct offerings by other non-financial institutions remained a murky territory. This changed on May 2, when the National Development and Reform Committee (NDRC) promulgated the Notice Concerning Offering RMB Denominated Bonds in Hong Kong by Domestic Non-Financial Institution Entities (Notice), which provides a roadmap for direct Dim Sum Bond offerings by non-financial PRC institutions.

What Are Dim Sum Bonds and Non-Financial Institutions?

Under the Notice, "Dim Sum Bonds" means renminbi-denominated debt securities issued and offered in Hong Kong, with a term of maturity of at least one year, and "Non-Financial Institutions" refer to PRC incorporated entities without bank characteristics, including state owned enterprises and foreign invested enterprises.

Who Is Eligible to Issue Dim Sum Bonds?

As long as a non-financial institution (Bond Issuer) meets the following requirements, it can issue and offer Dim Sum Bonds:

1. It has sound corporate governance;
2. It has good credit and a good reputation;

3. It has strong profitability;
4. The proceeds from the Dim Sum Bond offering are used principally to invest in fixed assets, and the investment must be consistent with national policies relating to macroeconomic management, utilization of foreign capital and outbound investments, and with regulations governing fixed assets investments and management;
5. It is not in default in, and has not delayed payment of, principal or interest on any outstanding bonds or other obligations; and
6. It has not committed any material violation of law within last three years.

The Notice does not clarify what constitutes sound corporate governance, good credit and reputation, strong profitability or material violation of law. The lack of clarity in these areas means that NDRC has significant discretion in approving any application.

What Documents Must Be Submitted to NDRC?

State-owned enterprises directly controlled by the central government apply for approval directly with the NDRC in Beijing (Central NDRC). Other Bond Issuers have to apply with provincial branches of NDRC in their places of incorporation. The provincial branches of NDRC will conduct preliminary reviews before submitting the applications to Central NDRC for final approval.

Each applicant, whether state-owned or otherwise, is required to submit the following documents:

1. An application;
2. A copy of its business license;
3. Board resolutions approving the Dim Sum Bond offering or other documents with equal legal force;
4. Information on the amount and terms (including term of maturity) of the offering and the use of the proceeds;
5. The plan of distribution;
6. Audited financial statements for the last consecutive three years; and
7. Counsel's legal opinion.

The NDRC has the right to require the applicant to provide other documents and information from time to time.

Timing and Other Considerations

Central NDRC will approve or reject an application within 60 business days after receipt of all necessary documents. However, the Notice does not specify a timeframe within which provincial branches of NDRC must complete their preliminary reviews.

A Bond Issuer must initiate work relating to the offering within 60 days after Central NDRC approval. The approval from Central NDRC is valid for one year from the date of Central NDRC approval, and the Dim Sum Bond offering must be completed within the one-year period.

The Bond Issuer is required to submit a report on the offering to Central NDRC within ten business days after completion of the offering.

Bond proceeds may only be used in the manner approved by the Central NDRC; any change in the use of the proceeds will require Central NDRC's approval.

The proceeds from a Dim Sum Bond offering constitute foreign debt. Consequently, the Bond Issuer must register the debt with the State Administration of Foreign Exchange (SAFE) and pay principal and interest in accordance with SAFE rules.

Some Remarks

The *Tentative Measure for the Administration of the Issuance of RMB-Denominated Bonds in Hong Kong by Financial Institutions* continues to apply to the issuance of Dim Sum Bonds by PRC financial institutions.

Non-financial PRC institutions can continue to offer Dim Sum Bonds through Hong Kong or other offshore subsidiaries. However, the Notice provides that if a non-financial PRC institution guarantees the Dim Sum Bonds issued by an offshore subsidiary, that institution must file a report with Central NDRC. The report must include details about the offshore subsidiary's offering and must be filed 20 business days prior to the offering.

Finally, the Notice provides that in the event a non-financial PRC institution issues RMB-denominated debt in jurisdictions other than Hong Kong, the institution should reference the procedures set forth in the Notice. This seems to suggest that China may allow PRC companies to access other debt markets in the world in the future.

If you have questions, please contact the Pillsbury attorney with whom you regularly work or the author:

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