



CHINA'S NEW SYNDICATED LOAN MEASURES – WHAT OFFSHORE¹ LENDERS NEED TO KNOW

¹ In this article, “Onshore” or “PRC” means the People’s Republic of China, excluding Hong Kong and Macau Special Administrative Regions and Taiwan; and “Offshore” means any jurisdiction other than “Onshore”.

PREAMBLE

The National Financial Regulatory Administration of the People's Republic of China (the “**NFRA**”) recently promulgated the Measures on the Management of Syndicated Loan Business (Jingui [2024] 14) (the “**PRC Syndicated Loan Measures**”), which became effective from 1 November 2024. While the PRC Syndicated Loan Measures predominately regulate onshore banks (see Section 2 below), offshore lenders may be affected in a number of ways in cross-border syndicated loan transactions. This article aims to analyse the impact of the PRC Syndicated Loan Measures and share our observations on potential future developments.







BACKGROUND OF ENACTMENT

The PRC Syndicated Loan Measures replaced the Syndicated Loan Business Guidelines, which were revised and issued in 2011 by the China Banking Regulatory Commission (one of the predecessors of the NFRA) (Yinjianfa [2011] 85) (the “**PRC Syndicated Loan Guidelines**”). The changes are intended to improve the management and regulation of syndicated loan business in the PRC. The “upgrading” of the “guidelines” to “measures”, and the new provisions on regulatory powers and administrative penalties in the PRC Syndicated Loan Measures indicate stronger regulation of syndicated loan business by the NRFA.

WHO ARE IN-SCOPE LENDERS?

The PRC Syndicated Loan Measures regulate the syndicated loan business of “banking financial institutions set up and operating loan business in the PRC” (“**In-scope Lenders**”).

There are a few salient points to note:

- “loan business” covers onshore as well as cross-border loan business (for example, outbound lending by domestic banks under PBOC 27²)
- “set up in the PRC”. The NFRA regulates all banks operating in the PRC. Therefore, “set up in the PRC” not only covers domestic banks incorporated in the PRC, but also foreign-owned locally-incorporated banks, as well as onshore branches of foreign banks.

TYPES OF BANKS	IN-SCOPE LENDERS
Chinese-funded banks incorporated and operating in the PRC	✓
Foreign-funded banks incorporated and operating in the PRC	✓
Onshore branches of foreign banks	✓
Offshore branches of Chinese banks	X
Foreign banks operating outside of the PRC	X

- Chinese-funded banks incorporated in the PRC and lending through offshore banking units are not clearly excluded from the PRC Syndicated Loan Measures and it is not clear whether they are In-scope Lenders
- The PRC Syndicated Loan Measures also apply to non-banking financial institutions set up in the PRC engaged in syndicated loans. However, rural banks are not permitted to engage in syndicated lending. Rural commercial banks, rural co-operative banks and rural credit companies are to be separately regulated by the relevant banking regulator of the State Council of the PRC

² The Notice on Offshore Lending Business of Banking Financial Institutions (Yinfa [2022] No. 27) (“PBOC 27”) jointly issued by the People’s Bank of China and the State Administration of Foreign Exchange. See our article “PBOC Notice 27 on Offshore Lending by PRC Banks” for further details: <https://www.kwm.com/hk/en/insights/latest-thinking/notice-on-offshore-lending-business-of-banking-financial-institutions.html>

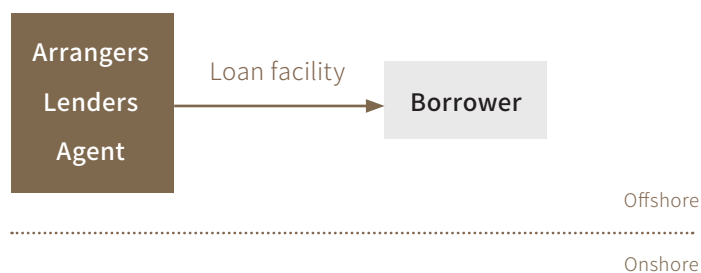


HOW ARE OFFSHORE LENDERS AFFECTED?

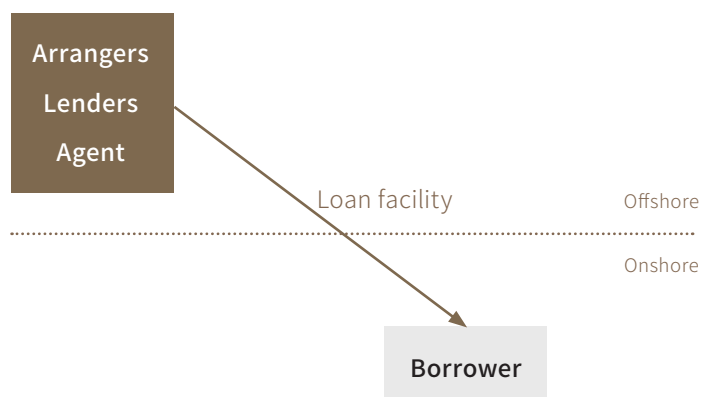
In Section 2 above, we have seen that offshore lenders (including foreign-funded banks operating outside the PRC and offshore branches of Chinese-funded banks) are not In-scope Lenders regulated by the PRC Syndicated Loan Measures. How might the PRC Syndicated Loan Measures affect those offshore lenders?

We illustrate the potential transactions involving offshore lenders that may be affected by the PRC Syndicated Loan Measures in the following diagrams:

- The PRC Syndicated Loan Measures do not apply to syndicated loans where the arrangers, lenders, agents and borrowers are all located offshore.



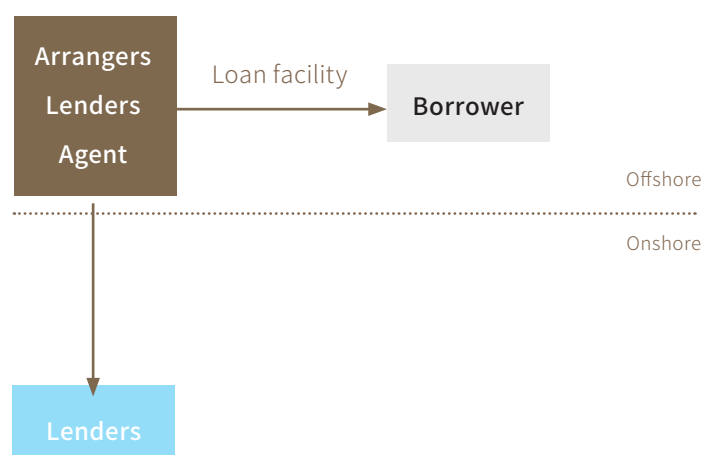
- Where the syndicated loan involves arrangers, lenders and agents that are all located offshore, and the borrowers are all located onshore, the PRC Syndicated Loan Measures do not apply.



- Where the syndicated loan involves offshore lenders as well as one or more In-scope Lenders, the impact of the PRC Syndicated Loan Measures on the offshore lenders in such a transaction depends on the role of such In-Scope Lenders:

- » Where an In-scope Lender acts as a participating lender in the syndicate

By way of example:



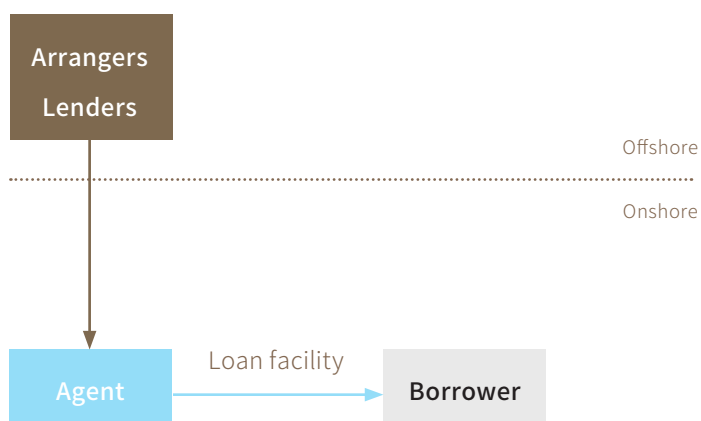
In this scenario, an In-scope Lender acting as a lender must comply with the relevant requirements under the PRC Syndicated Loan Measures, including giving the other lenders (including offshore lenders) the first right of refusal if it wishes to transfer its participation in a loan³ (see “Syndicated loan transfer” under Section 4 below), the requirements relating to the charging of fees (see “Charging of fees” under Section 4 below), and the requirement to register any transfer (see “Registration of transfer” under Section 4 below).

³ Subject to relevant PRC laws and regulations. Please see further Section 5 below.



- » Where an In-scope Lender acts as an agent for the syndicate

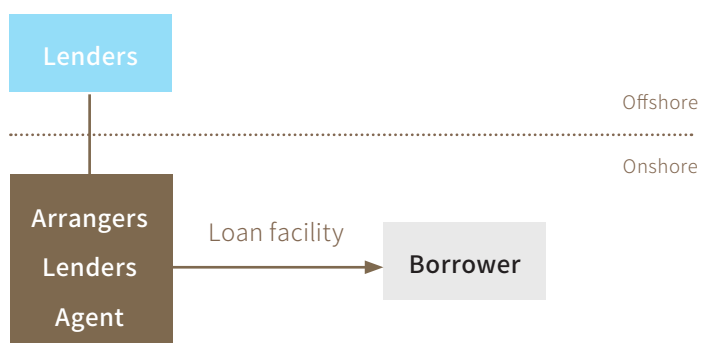
By way of example:



In this scenario, the In-scope Lender acting as an agent must comply with requirements relating to the appointment of agents under the PRC Syndicated Loan Measures (see “Appointment of agents” under Section 4 below) and the charging of fees (see “Charging of fees” under Section 4 below).

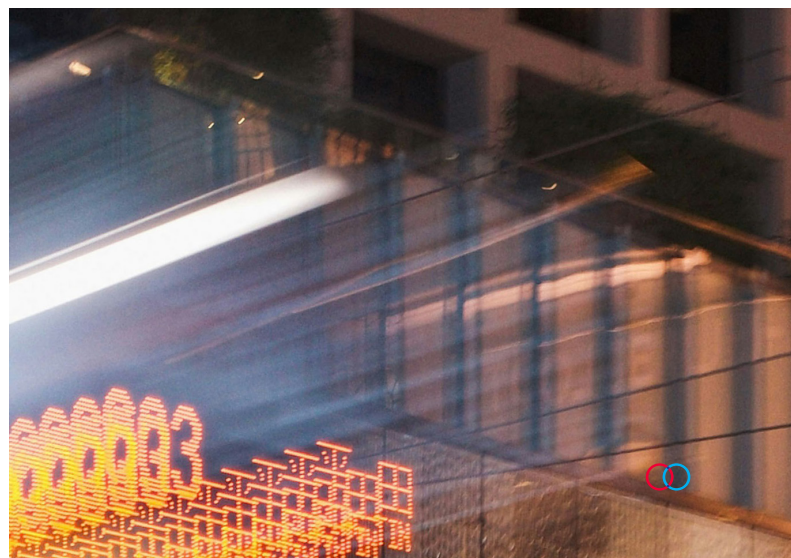
- » Where an In-scope Lender acts as an arranger (which will usually involve other In-scope Lenders acting as an agent or lender)

By way of example:



In this scenario, the In-scope Lender acting as arranger must comply with relevant requirements under the PRC Syndicated Loan Measures, including with respect to minimum commitment and distribution ratios (see “Minimum commitment and distribution ratios” under Section 4 below), tranching (see “Tranching” under Section 4 below) and the charging of fees (see “Charging of fees” under Section 4 below) (while In-scope Lenders acting as agent or lender must comply with the relevant requirements under the PRC Syndicated Loan Measures as mentioned above).

There will be scenarios featuring different combinations of the above roles undertaken by one or more In-scope Lenders and so the relevant requirements of the PRC Syndicated Loan Measures would apply to those In-scope Lenders accordingly. Offshore lenders in the syndicate, though not directly subject to the PRC syndicated Loan Measures, would be indirectly affected by the PRC Syndicated Loan Measures because the In-scope Lenders would still be subject to the relevant requirements as set out above. From an offshore lender’s perspective, the impact could be restrictive (for example, due to tranching requirements) or beneficial (for example, because In-scope Lenders that are participating lenders must give the rest of the syndicate (including offshore lenders) the first right of refusal).



KEY CHANGES FROM THE SYNDICATED LOAN GUIDELINES

For a detailed analysis of the PRC Syndicated Loan Measures, please refer to our recent articles⁴. We set out in the table below the key terms in the PRC Syndicated Loan Measures which may be relevant to offshore lenders, including a comparison with the PRC Syndicated Loan Guidelines.

KEY TERMS	PRC SYNDICATED LOAN GUIDELINES	PRC SYNDICATED LOAN MEASURES	KWM OBSERVATIONS
Tranching	Syndicated loans made under the same loan agreement must be subject to the same terms.	<p>Loan agreements may have tranches with different tenors, interest rates or other conditions.</p> <p>Syndicated loans made under the same tranche must be subject to the same terms.</p> <p>There must not be more than 3 tranches, and there must be at least two lenders in each tranche. There must not be more than one tranche with a single lender only.</p> <p>A single agent must be appointed in relation to all of the tranches.</p>	<p>Tranching is very common in offshore syndicated loan transactions. There are no mandatory regulatory requirements on tranching, so the terms of the tranching can be agreed among contract parties based on their commercial intention.</p> <p>In the onshore market, the introduction of tranching in the PRC Syndicated Loan Measures should promote the development of the syndicated loan market. Unlike the offshore syndicated loan market, the PRC Syndicated Loan Measures contain detailed criteria on tranching and how they are to be implemented.</p> <p>If an In-scope Lender is involved in a cross-border syndication (especially if it acts as arranger or agent), offshore lenders must take into account the fact that the tranching would be subject to the relevant requirements under the PRC Syndicated Loan Measures.</p>
Minimum commitment and distribution ratios	Where there is a sole arranger, its minimum commitment must not be less than 20% of the total commitments, and the minimum distribution to other members of the syndicate must not be less than 50%. In other words, the sole arranger's commitment must be between 20% to 50%.	<p>Where there is a sole arranger, its minimum commitment must not be less than 15% of the total commitments, and the minimum distribution to other members of the syndicate must not be less than 30%. In other words, the sole arranger's commitment must be between 15% to 30%.</p> <p>Where there is a co-arranger or deputy arranger, the minimum commitment of each arranger must not be less than 10% of the total commitments, and the maximum commitment of each bank must not exceed 70%.</p> <p>These ratios must also be complied with in case there is a subsequent transfer.</p>	<p>In the offshore market, commitment and distribution ratios are commercial decisions. It is not uncommon for an arranger to underwrite 100% of the total commitment, and then distribute the loan afterwards.</p> <p>In the onshore market, the PRC Syndicated Loan Measures reduce the minimum commitment of a sole arranger from 20% to 15%, and lower the minimum distribution ratio from 50% to 30%, with adjustments where there is more than one arranger. The PRC Syndicated Loan Measures enhance the flexibility of the arranger in the syndication process and subsequent transfers.</p> <p>If an In-scope Lender is acting as an arranger or co-arranger, even if an offshore lender is not subject to the PRC Syndicated Loan Measures, the minimum commitment and minimum distribution ratios set out in the PRC Syndicated Loan Measures will still be relevant because the In-scope Lender will need to comply with such requirements.</p>
Appointment of agents	<p>The agent will be responsible for the management of the syndicated loan.</p> <p>Where the syndication involves a relatively complicated security structure, a security agent may be appointed to attend to the registration and management of the security.</p>	<p>There may also be a documentation agent, a settlement agent, a security agent, and agents appointed to deal with other specialised services. Any one service may only be handled by a single agent.</p> <p>Where prior written consent has been obtained from all syndicate members, a related entity of the borrower may act as an agent.</p>	<p>The PRC Syndicated Loan Measures provide for more flexibility in the appointment of agents, which aligns better with the offshore market.</p> <p>It is common in cross-border syndicated loan transactions for one offshore agent and one onshore agent to deal with offshore and onshore matters respectively. If the offshore and onshore matters are considered separate services, such appointment would not be in breach of the requirement that any one service must be handled by one agent only but remains to be seen how this requirement is implemented in cross-border syndicated loans.</p>

⁴ Please refer to our articles (in Chinese only):

<https://www.kwm.com/cn/zh/insights/latest-thinking/key-takeaways-of-measures-for-the-administration-of-syndicated-loan-business-draft-for-comments.html>

<https://www.kwm.com/cn/zh/insights/latest-thinking/7-faqs-on-draft-measures-for-the-administration-of-syndicated-loan-business.html>

<https://www.kwm.com/cn/zh/insights/latest-thinking/key-takeaways-of-china-s-revised-rules-on-syndicated-loan.html>

<https://mp.weixin.qq.com/s/j4TxML6XjuDc-cV2GOTaew>

KEY TERMS	PRC SYNDICATED LOAN GUIDELINES	PRC SYNDICATED LOAN MEASURES	KWM OBSERVATIONS
Charging of fees	The PRC Syndicated Loan Guidelines regulated syndication related fees, including arrangement fees, commitment fees and agency fees, and set out how such fees could be charged.	<p>Banks may charge fees for the provision of syndicated loan services including the arrangement of syndicated loans, underwriting, commitment and syndication management. They must also comply with the relevant regulations including the Measures relating to Service Fees of Commercial Banks.</p> <p>The charging of fees must comply with the principles of “reaching consensus voluntarily, fairness and reasonableness, openness and transparency, fees to be consistent with the quality of service, separation of fees and interest”. There are certain prohibitions on charging fees, including where loans are advanced by different branches of a single bank.</p>	<p>In the offshore market, syndication fees are subject to commercial consensus of the parties.</p> <p>In the onshore market, the PRC Syndicated Loan Measures provide for more flexibility, as compared to the PRC Syndicated Loan Guidelines, and allow the parties to agree the type of fees and how fees may be charged, subject to the principles on charging of fees and applicable prohibitions.</p> <p>If a syndication involves In-scope Lenders, offshore arrangers must take into account the requirements under the PRC Syndicated Loan Measures when structuring fees payable to an In-scope Lender.</p>
Syndicated loan transfer	The applicable regulatory requirements include Notice 102. ⁵ These include that any transfer must be of the whole (but not part) of a loan participation, there being a first right of refusal in favour of other syndicate members, and no objection from other syndicate members to a transfer to any lender that is not an existing lender in the syndicate.	<p>A bank may transfer part (but not necessarily all) of its loan participation.</p> <p>When a bank intends to transfer its participation, it must give other syndicate members the first right of refusal such participation on the same terms as offered to a potential lender that is not an existing lender in the syndicate.</p>	<p>In the offshore market, any loan transfer is subject to agreed restrictions in the loan agreement. A first right of refusal by existing syndicate members is not common.</p> <p>The relaxation under the PRC Syndicated Loan Measures allowing a transfer of part of a loan participation is a major breakthrough. The removal of the veto right of existing syndicate members in respect of a transfer to a lender that is not an existing lender in the syndicate (noting that the first right of refusal of other syndicate members remains) will also promote the development of the syndicated loan market.</p> <p>Offshore lenders are not required to offer a first right of refusal in connection with a loan participation to other syndicate members. However, they will benefit from such a right whenever an In-scope Lender wishes to transfer a loan participation.</p>
Registration of transfer		A transfer of syndicated loans must be registered prior to the transfer on the registration platform recognised by the relevant offices of NFRA, which is expected to be the Credit Assets Registration Centre.	<p>The Credit Assets Registration Centre published the Regulations relating to the Transfer of Syndicated Loans (Trial) (Yindengzi [2024] No. 23)⁶ on 31 October 2024, which sets out the transfer procedures for syndicated loans.</p> <p>If there is a transfer of syndicated loans between onshore and offshore lenders in a cross-border syndicated loan, the registration requirements under the PRC Syndicated Loan Measures apply to In-scope Lenders whether they are transferors or transferees. An offshore lender transfer counterparty must take into account such requirements which may necessitate the signing of prescribed form transfer documents. Offshore lenders must also consider the consequences of failing to comply with the relevant transfer registration requirements under the PRC Syndicated Loan Measures.</p>

⁵ 《The Notice relating to further regulating the transfer of credit assets by banking financial institutions》 [Yinjianfa [2010] 102]

⁶ Please refer to the below link for the full text (in Chinese only): <https://www.yindeng.com.cn/Home/fggf/cn/glbm/20241031/2196401.shtml>.

KEY AREAS TO WATCH

The promulgation of the PRC Syndicated Loan Measures is an important milestone in the development of the syndicated loan market in the PRC. We set out below some key areas to watch for offshore lenders with respect to the development of the cross-border syndicated loan market.

AREAS TO WATCH	KWM OBSERVATIONS
Different regulatory requirements apply to offshore and onshore lenders in a cross-border syndication	<p>As explained above, the PRC Syndicated Loan Measures apply to In-scope Lenders, and do not directly apply to offshore lenders. Offshore lenders should consider the impact of the PRC Syndicated Loan Measures based on the role of In-scope Lenders in the syndicate, as this may have an indirect impact on the offshore lenders.</p> <p>When structuring cross-border syndicated loan transactions, the parties should consider the nuances in the supervisory regimes of both onshore and offshore jurisdictions to decide syndication terms that comply with the relevant regulatory requirements.</p>
Cross-border transfer of syndicated loans	<p>Cross-border syndicated loans have become more common thanks to Notice 27 and other regulatory changes in the PRC. In addition to considering the relevant requirements of the PRC Syndicated Loan Measures, parties should also consider the effect of the PRC Syndicated Loan Measures on secondary transfers of the syndicated loans. For example, the minimum commitment and maximum distribution ratios referred to in Section 4 apply to In-scope Lenders not only at the time of syndication but also in respect of secondary transfers.</p> <p>Where there is a cross-border transfer of a syndicated loan (for example, where an offshore lender transfers its loan participation to an onshore lender, or vice versa), in addition to the PRC Syndicated Loan Measures, the parties must also comply with other applicable PRC regulatory requirements. For example, in the case of a transfer of a loan to an onshore borrower by an offshore lender to an onshore lender, the nature of such loan participation will change from being “foreign debt” regulated by the State Administration of Foreign Exchange to “onshore debt”. Such a conversion is not clearly stipulated in current PRC regulations (other than certain trial measures relating to non-performing loans and trade finance) and so must be carefully considered on a case-by-case basis.</p>
The applicability of the PRC Syndicated Loan Measures to club loans	<p>In the offshore loan market, club loans generally refer to syndicated loans co-ordinated by the borrower and a limited number of relationship banks, without going through a loan syndication and distribution process. The PRC Syndicated Loan Measures do not contemplate club loans. It is not clear how the PRC Syndicated Loan Measures apply. For example, it is not clear whether the requirement that the arranger must prepare an information memorandum or the prohibition on the charging of fees where “no syndication service is provided under the pretence of a syndicated loan” are applicable.</p>



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