

(The English version is used for reference only. Should there be any conflicts between the English version and the Chinese version, the Chinese version shall prevail.)

Guidelines on Debt Financing Instruments of Overseas Non-Financial Enterprises (2020)

(Adopted on February 9, 2018 at the sixth conference of the Fifth Governing Council of NAFMII; amended on October 16, 2020 at the eighteenth conference of the Fifth Governing Council of NAFMII)

Chapter I. General Provisions

- Article 1** These Guidelines are promulgated with a view to promoting the open-up of the bond market and regulating the debt financing instruments of overseas non-financial enterprises and in accordance with the Administrative Measures for Debt Financing Instruments of Non-Financial Enterprises on the Inter-bank Bond Market (《银行间债券市场非金融企业债务融资工具管理办法》) (People's Bank of China Order [2008] No.1) promulgated by the People's Bank of China (“PBOC”), the Interim Measures for the Administration of Bonds Issued by Overseas Issuers on the National Interbank Bond Market (《全国银行间债券市场境外机构债券发行管理暂行办法》) (PBOC & Ministry of Finance Announcement [2018] No.16) promulgated by PBOC and the Ministry of Finance and relevant self-regulatory rules of the National Association of Financial Market Institutional Investors (“NAFMII”).
- Article 2** In these Guidelines, “debt financing instruments of overseas non-financial enterprises” means debt financing instruments registered with NAFMII and issued by non-financial enterprises registered or incorporated outside of the People's Republic of China (the “PRC”) with an independent legal-person status. These Guidelines shall apply, *mutatis mutandis*, to the issuance of debt financing instruments by enterprises incorporated in the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan.
- Article 3** Overseas non-financial enterprises issuing debt financing instruments shall be subject to the self-regulatory supervision by NAFMII and comply with self-regulatory rules of NAFMII.
- Article 4** Principal underwriters, underwriters, custody institutions, credit rating agencies, accounting firms, law firms and other relevant intermediary institutions and their respective personnel that provide professional services to overseas non-financial enterprises in connection with their issuances of debt financing instruments shall diligently perform their duties and strictly comply with the codes of conduct and ethics rules, and

perform their respective obligations and assume their respective legal liability in accordance with applicable regulations and agreements.

Article 5 The acceptance of registration by NAFMII does not represent that NAFMII has conducted any substantive assessment on the value of, and risks relating to, investment in the debt financing instruments issued by overseas non-financial enterprises. The registration does not exempt such overseas non-financial enterprise or relevant intermediary institutions from the obligations to make true, accurate, complete and timely information disclosure. Investors shall make their assessment on investment values and assume investment risks.

Chapter II Registration and Issuance

Article 6 Issuances of debt financing instruments by overseas non-financial enterprises shall be subject to the requirement of registration with NAFMII.

Article 7 An overseas non-financial enterprise may issue debt financing instruments in the manner stipulated in the Rules for the Registration and Issuance of Debt Financing Instruments of Non-Financial Enterprises (《非金融企业债务融资工具注册发行规则》).

Article 8 Debt financing instruments 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 principal underwriter(s) shall have a subsidiary or branch in the country or region where the non-financial enterprise is incorporated or the principal place of its business is located, or make other necessary arrangements, to ensure that such principal underwriter(s) have the capability to perform its duties including conducting due diligence.

Article 9 Where NAFMII accepts the registration of the issuance of debt financing instruments, it shall issue a Notice of Registration Acceptance to the overseas non-financial enterprise. The registration shall be valid for two years.

Article 10 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 material events or any events that, although not material, may have a significant impact on investment values and investment decisions occur, the overseas non-financial enterprise shall comply with, mutatis mutandis, the Rules and Procedures for the Registration of Debt Financing Instruments of Non-Financial Enterprises for Public Issuance (《非金融企业债务融资工具公开发行注册工作规程》) and the Rules

and Procedures for the Registration of Debt Financing Instruments of Non-Financial Enterprises for Private Placement (《非金融企业债务融资工具定向发行注册工作规程》) to make supplemental information disclosure or file with the Registration Meeting of NAFMII for its further review.

Article 11 An overseas non-financial enterprise issuing debt financing instruments 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 debt financing instruments. The written plan on use of proceeds is not required to be submitted for the first issuance or issuances which are subject to a pre-issuance filing with NAFMII.

Chapter III Requirements on Registration Documents

Article 12 An overseas non-financial enterprise issuing debt financing instruments shall prepare the registration documents in accordance with the relevant self-regulatory rules of NAFMII and these Guidelines.

Article 13 An overseas non-financial enterprise shall submit the following registration documents to NAFMII for offering of debt financing instruments:

- (1) a registration report (attaching its certificate of incorporation, constitutional documents, and the resolutions of its competent decision-making body or other evidencing document(s));
- (2) a letter of recommendation from each principal underwriter;
- (3) an offering circular;
- (4) the audited financial statements for the most recent three financial years, and the latest interim financial statements (if any);
- (5) a credit rating report and credit tracking assessment arrangements (if available);
- (6) legal opinions issued by a PRC law firm and a law firm qualified in the issuer's home jurisdiction, respectively;
- (7) a consent letter from the issuer's overseas auditors (if applicable); and
- (8) other documents as required by NAFMII.

Article 14 An overseas non-financial enterprise shall submit the following registration documents to NAFMII for private placement of debt financing instruments:

- (1) a registration report (attaching its certificate of incorporation, constitutional documents, and the resolutions of its competent decision-making body or other evidencing document(s));
- (2) a letter of recommendation from each principal underwriter;
- (3) a private placement agreement or a private placement offering memorandum;
- (4) the audited financial statements for the most recent two financial years, and the latest semi-annual financial statements;
- (5) legal opinions issued by a PRC law firm and a law firm qualified in the issuer's home jurisdiction, respectively;
- (6) a consent letter from the issuer's overseas auditors (if applicable); and
- (7) other documents as required by NAFMII.

Overseas non-financial enterprises applying for registration for issuing debt financing instruments through entering into private placement agreements with investors are only required to submit their audited financial statements for the most recent financial year.

Article 15 If an overseas non-financial enterprise prepares consolidated financial statements, in principle, such overseas non-financial enterprise 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 issuance documents.

Article 16 The credit rating reports publicly disclosed in connection with debt financing instruments offerings by overseas non-financial enterprises shall be issued by the recognized credit rating agencies qualified to conduct rating business on the National Interbank Bond Market.

Article 17 In an offering of debt financing instruments by an overseas non-financial enterprise, the rules or requirements of the relevant regulatory authorities in the PRC shall apply to the accounting standards and audit standards under which the financial statements of such issuer are prepared.

Article 18 The legal opinion on overseas matters issued in connection with an issuance of debt financing instruments by an overseas non-financial enterprise shall be issued by a law firm 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. Each law firm shall assume legal liabilities for the legal opinion issued by it.

Chapter IV Use of Proceeds

Article 19 The proceeds from the issuance of debt financing instruments by overseas non-financial enterprises shall be used in accordance with applicable laws, regulations and regulatory requirements.

Article 20 The account opening, cross-border settlements, and information reporting in connection with the proceeds from the issuance of debt financing instruments by overseas non-financial enterprises shall be in compliance with relevant rules of PBOC and the State Administration of Foreign Exchange.

Article 21 Overseas non-financial enterprises shall ensure that their use of proceeds be in compliance with the requirements of relevant laws, regulations and national policies, 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 debt financing instruments, 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.

Chapter V Information Disclosure

Article 22 An overseas non-financial enterprise issuing debt financing instruments shall publish the offering documents for the series of such debt financing instruments being offered through the websites recognized by NAFMII. Such offering documents shall at least include:

- (1) an offering circular or a supplemental offering circular;
- (2) a credit rating report and credit tracking assessment arrangements (if available);
- (3) legal opinions issued by a PRC law firm and a law firm qualified to practice law in the issuer's home jurisdiction, respectively;

- (4) the audited financial statements for the most recent three financial years, and the latest interim financial statements (if any);
- (5) a consent letter from the issuer's overseas auditors (if applicable); and
- (6) other documents as required by NAFMII.

Article 23 An overseas non-financial enterprise issuing debt financing instruments through private placement shall disclose to the investors participating in such private placement the offering documents for the series of such debt financing instruments being offered on NAFMII's integrated business and information service platform. Such offering documents shall at least include:

- (1) a private placement agreement or a private placement offering memorandum;
- (2) legal opinions issued by a PRC law firm and a law firm qualified to practice law in the issuer's home jurisdiction, respectively;
- (3) the audited financial statements for the most recent two financial years, and the latest semi-annual financial statements;
- (4) a consent letter from the issuer's overseas auditors (if applicable); and
- (5) other documents as required by NAFMII.

Overseas non-financial enterprises issuing debt financing instruments through entering into private placement agreements with investors are only required to disclose their audited financial statements for the most recent financial year.

Article 24 Overseas non-financial enterprises shall specify, in their registration and offering documents, relevant arrangements on meetings of holders of their debt financing instruments.

Article 25 Overseas non-financial enterprises shall periodically disclose relevant financial information. The information disclosure during the life of the debt financing instruments shall be specified in the registration and offering documents in accordance with, *mutatis mutandis*, the Rules for Information Disclosure on Debt Financing Instruments of Non-Financial Enterprises on the Interbank Bond Market (《银行间债券市场非金融企业债务融资工具信息披露规则》, “**Information Disclosure Rules**”). Financial information disclosed by an overseas non-financial enterprise on other securities markets shall also be disclosed in the National

Interbank Bond Market.

Article 26 During the life of the debt financing instruments issued by an overseas non-financial enterprise, upon the occurrence of any material event that may affect the repayment ability of such issuer, any corrections to errors in the disclosed information or any modifications to accounting policies or accounting estimates, such event shall be disclosed on a timely basis. The definition of “material events” in this Article shall be specified in the registration and offering document in accordance with, *mutatis mutandis*, the definition of “material events” in the Information Disclosure Rules. Material events disclosed by an overseas non-financial enterprise on other securities markets shall also be disclosed on the National Interbank Bond Market.

Article 27 For debt financing instruments offered by an overseas non-financial enterprise, all the registration and offering documents shall be in Chinese (which means simplified Chinese for the purpose of these Guidelines) or accompanied with a Chinese version.

For debt financing instruments offered by an overseas non-financial enterprise, all information disclosed during the life of such debt financing instruments shall be, in principle, in Chinese. Where an overseas non-financial enterprise discloses information required under Articles 25 of these Guidelines in English on other securities markets, it shall, simultaneously or as soon as reasonably practicable thereafter, disclose such information in English on the National Interbank Bond Market 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 an overseas non-financial enterprise discloses information required under Articles 26 of these Guidelines in English on other securities markets, it shall, simultaneously or as soon as reasonably practicable thereafter, disclose such information in English on the National Interbank Bond Market, and disclose a Chinese version or a Chinese summary within seven (7) business days upon the disclosure of the English version.

Article 28 For debt financing instruments offered by an overseas non-financial enterprise through 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 debt financing instruments 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 overseas non-financial enterprise

shall comply with, *mutatis mutandis*, Article 27 of these Guidelines.

Article 29 Overseas non-financial enterprises shall ensure the accuracy of the translation of all information disclosure documents and be liable for the losses incurred by investors as a result of the error(s) in the translation.

Article 30 Overseas credit enhancement entities providing credit enhancements to issuers of debt financing instruments shall comply with, *mutatis mutandis*, the information disclosure requirements for issuers.

Where an overseas parent company providing unconditional and irrevocable joint liability guarantee to its wholly-owned financing vehicle, the overseas parent company and the issuer shall comply with the information disclosure requirements separately stipulated by NAFMII.

Chapter VI Miscellaneous

Article 31 The offering and transaction documents for issuances of debt financing instruments by overseas non-financial enterprises shall be governed by the laws of the PRC.

Article 32 Overseas non-financial enterprises and relevant intermediary institutions conducting business relating to debt financing instruments shall comply with these Guidelines. Matters not expressly provided for under these Guidelines shall be governed by the relevant self-regulatory rules of NAFMII.

Article 33 Self-regulatory disciplinary actions shall be imposed on any violations of these Guidelines and relevant self-regulatory rule in accordance with the Market Self-Disciplinary Rules relating to Debt Financing Instruments of Non-Financial Enterprises (《非金融企业债务融资工具市场自律处分规则》). NAFMII shall transfer the case of a relevant entity's alleged violation of the laws of the PRC to relevant authorities.

Article 34 The Secretariat of NAFMII shall have the authority and be responsible for the interpretation of this Guideline.

Article 35 These Guidelines shall come into effect as of the date of publication.