

PRC Enterprises' Bond Offering in Hong Kong

DENTONS

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Offering Structures

Direct Issuance

Under this structure, the onshore entity will directly issue the bonds offshore, typically to a trustee who will hold these bonds on behalf of the investors and act as their representative to exercise the investors' rights under the bonds. The terms for these bonds will depend on the international credit rating of the onshore entity.

Issuance with Credit Enhancements

Under this structure, the bonds are issued by the offshore subsidiary or an SPV, but include credit enhancements from the onshore parent entity. The two most common forms of credit enhancements are a cross-border guarantee and a keepwell deed with an equity interest purchase undertaking. A cross-border guarantee is a guarantee provided by the onshore parent company directly to the trustee (acting on behalf of and as the representative for the offshore bondholders) that they will make the payments on the bonds if the offshore entity fails to make the payment. In comparison, a keepwell deed is an undertaking from the onshore parent company to the trustee that it will ensure that the offshore subsidiary or SPV remains solvent, has sufficient liquidity and maintains certain financial ratios during the tenor of the bonds so that it will be able to make the payments on them. These keepwell deed structures are typically supplemented by an equity interest purchase undertaking by the onshore parent entity whereby they undertake to the trustee that they will purchase the onshore subsidiaries of the offshore entity so that the offshore entity will have sufficient funds to make payment on the bonds.

SBLC Issuance

Under this structure, the bonds are issued either by the onshore parent entity or its offshore subsidiary and the payment under bonds and the guarantee (if applicable) will have the benefit of a standby letter of credit issued by a commercial bank to the trustee acting on behalf of the bondholders. This standby letter of credit will allow the trustee to demand payment from the commercial bank if the onshore parent entity and/or offshore entity fails to make payment under the bonds and/or the guarantee (if applicable). As a result, for an SBLC issuance, the credit rating of the bonds will be the credit rating of the commercial bank providing the standby letter of credit, which is usually higher than the credit rating of the issuer or its parent company.

PRC Regulations for Bond Offering

National Development and Reform Commission (NDRC) Regulations

PRC enterprises and any offshore entities controlled by PRC enterprises are required to register with the NDRC

before conducting their offshore bond offerings and file the debt incurred with the NDRC within 10 working days after such offerings. In addition, the NDRC has clarified that such registration also applies to offshore holding entities of PRC enterprises with their operating assets located mainly in the PRC.

Regulations of the State Administration of Foreign Exchange (SAFE)

A PRC parent entity can provide guarantees for bonds issued by any offshore entities controlled by such PRC parent without any prior approval from the SAFE. The PRC parent entity is only required to file the guarantee agreement with the local SAFE branch within 15 days after entering into such agreement.

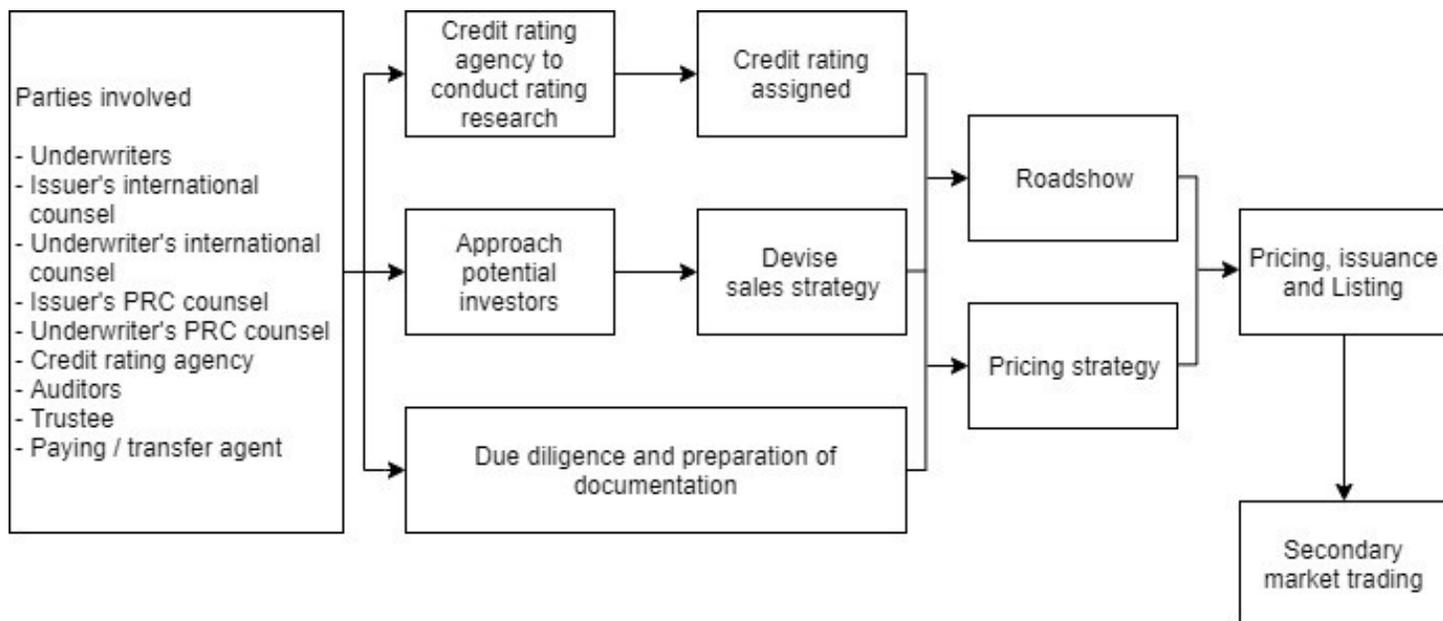
PRC Tax

For offshore bond offerings in Hong Kong, it is common practice for issuers to assume any PRC-related tax costs incurred by the bonds (mainly, Enterprise Income Tax (EIT) and Value Added Tax (VAT)), which could potentially increase their financing cost. For issuers located outside the PRC, the PRC tax authorities may not recognise them as PRC resident enterprises and, as a result, interest and/or premium payments on such bonds would not be subject to EIT and VAT.

Offering Process and Listing

Documents, Parties and Process

A debt offering in Hong Kong typically completes within six to 10 weeks, and generally involves the below parties and process:



The legal documents involved are generally as follows:

- offering circular;
- subscription agreement;
- trust deed;
- terms and conditions of the bonds;

- agency agreement;
- comfort letter/arrangement letter;
- legal opinion; and
- bond certificate.

Listing

According to Chapter 37 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (Listing Rules), PRC issuers satisfying the below qualifications may apply for the listing on SEHK of its debt securities issued to professional investors:

- The issuer must have net assets of HK\$100 million (LR37.05) and must have produced audited accounts for the two years before the listing application was made up to a date at most 15 months before the listing (LR37.06); the debt securities must be freely transferable with a denomination of at least HK\$500,000, be duly authorised and comply with the law of the place where the issuer is incorporated, as well as the issuer's articles of association (LR37.09 to LR37.11).
- If the issuer is (1) a state corporation, or (2) a listed company on SEHK, it shall be exempted from the requirements under LR37.05 and LR37.06. The issuer must nonetheless satisfy the requirements under LR37.09 to LR37.11.
- If the issuer is a listed company on another stock exchange, it shall be exempted from the requirement under LR37.05. The issuer must nonetheless satisfy the requirements under LR37.06 and LR37.09 to LR37.11.
- As debt securities are issued to professional investors only, the Exchange will not heavily scrutinise the documentation involved and generally grants approval within one week of the application.

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