

# JUNHE SPECIAL REPORT



April 7, 2020

## The Issuance of Foreign Debts by Enterprises - Q&A Series No.1

### — NDRC’s Answers to FAQs on Filing & Registration for the Issuance of Foreign Debts by Enterprises

In recent years, issuing debts overseas (including borrowing of mid-and-long term commercial loans) has gradually become one of the important channels for corporate financing. By issuing debts overseas, enterprises are able to not only make full use of both domestic and overseas markets to reduce financing costs, but also to expand into global markets.

In February 2020, the National Development and Reform Commission (“**NDRC**”) announced their “*Answers to Frequently Asked Questions on Filing and Registration for the Issuance of Foreign Debts by Enterprises*”. We want to take this opportunity to share with enterprises and other professional organizations some of the

legal issues we’ve encountered in practice with respect to the issuance of foreign debts by enterprises, including but not limited to: (1) The approval, filing, and registration procedures of domestic governmental authorities and the preparation of related application documents; (2) The use and remittance of proceeds; (3) Credit enhancement measures for the issuance of foreign debts; (4) Transaction documents for the issuance of foreign debts; (5) Choosing the market where overseas bonds are listed; (6) Precautions for enterprises in different industries issuing foreign debts; (7) Choosing an issuance structure and tax considerations; (8) The distinctions between senior bonds, perpetual bonds and convertible bonds.

No.	Questions	NDRC’s Answers	JUNHE’s Comments
1.	Under what circumstances are filing and registration for the issuance of foreign debts required?	<b>Answer:</b> In accordance with <i>the Circular on Promoting Reform on the Administration of Filing and Registration System for the Issuance of Foreign Debts by Enterprises (Fa Gai Wai Zii [2015] No. 2044)</i> promulgated by NDRC (“ <b>Circular No.2044</b> ”), for debt instruments borrowed overseas by domestic enterprises as well as offshore enterprises or	● Although Circular No.2044 itself stipulates that to be applicable for offshore enterprises controlled by domestic enterprises (i.e., “Large Red-Chip Companies”), through window guidance since 2016, NDRC requires offshore enterprises controlled by domestic natural persons (i.e., “Small Red-Chip Companies”) to file and register in accordance with Circular No.2044 for the issuance of foreign debts;

		branches controlled by such domestic enterprises, with a maturity longer than one year, denominated in RMB or foreign currencies, with principal and interest repaid as scheduled, including bonds and mid-and-long term international commercial loans, etc., an application for filing and registration in advance with NDRC is required.	<ul style="list-style-type: none"> <li>● Although Circular No.2044 mainly applies to the issuance of foreign debts, filing and registration is also required for overseas borrowing of mid-and-long term international commercial loans.</li> </ul>
2.	Do debt instruments with a maturity “longer than one year” also include those of exactly one year?	<b>Answer:</b> “Debt instruments with a maturity longer than one year” do not include debt instruments with a maturity of exactly one year.	<ul style="list-style-type: none"> <li>● In practice, taking into consideration the repayment processing time, the maturity period of short-term bonds or loans is generally set prudently to be 364 days or shorter;</li> <li>● Although filing and registration is not required for foreign debts with a maturity of one year or less, NDRC does not support enterprises using mid-and-long term foreign debts to repay foreign debts with a maturity of one year or less.</li> <li>● Although filing and registration with NDRC is not required for foreign debts with a maturity of one year or less, depending on the issuance structure, foreign debts registration or onshore guarantees for offshore loans registration may still be required in accordance with the relevant requirements of the People's Bank of China (“PBOC”) and the State Administration of Foreign Exchange.</li> </ul>
3.	"An application for filing and registration in advance with NDRC is required for the issuance	<b>Answer:</b> “In advance” refers to “prior to issuance”. For mid-and-long term international commercial	<ul style="list-style-type: none"> <li>● For bond issuance projects, generally before pricing;</li> </ul>

	of foreign debts by enterprises"—here, does "in advance" mean prior to signing the contract or prior to the actual issuance?	loans, enterprises are allowed to draft contract(s) and sign framework agreement(s) before filing and registration with NDRC, but filing and registration with NDRC is required before withdrawal. Enterprises can issue foreign debts only after obtaining NDRC's approval on the filing application.	<ul style="list-style-type: none"> <li>● For MTN programmes, generally before the first drawdown;</li> <li>● For loan projects, generally before withdrawal.</li> </ul>
4.	Can enterprises directly apply to NDRC for filing and registration for the issuance of foreign debts?	<b>Answer:</b> The group headquarters (headquarters, head office, etc.) of enterprises and other financial institutions managed by the central government submit filing and registration applications to NDRC, while local enterprises (including local financial institutions) apply directly to NDRC for filing and registration.	<ul style="list-style-type: none"> <li>● The group headquarters of enterprises managed by the central government may apply for an overall quota and then allocate this to each subordinate company to use; or a subordinate company may independently apply to the group headquarters which shall then apply for the subordinate company's foreign debts quota;</li> <li>● Local enterprises directly apply to NDRC, but in practice, the original copy of the filing and registration certificate will be forwarded to the applying enterprise by the local development and reform committee.</li> </ul>
5.	Can an offshore enterprise be the applicant for the filing and registration for the issuance of foreign debts?	<b>Answer:</b> No. For the issuance of foreign debts by domestic enterprises as well as offshore enterprises or branches controlled by such domestic enterprises, the domestic enterprise should be the applicant for filing and registration with NDRC.	<ul style="list-style-type: none"> <li>● Small Red-Chip Companies need to use domestic operating companies under their control, as the applicants;</li> <li>● Large Red-Chip Companies need to use their onshore parent companies as the applicants.</li> </ul>
6.	Does the filing and registration requirement only apply to the public issuance of foreign debts? Is filing and registration also required	<b>Answer:</b> The application of filing and registration requirement is not limited to the public issuance of foreign debts. Filing and registration is also required for the private	<ul style="list-style-type: none"> <li>● Filing and registration is required regardless of a public issuance or private placement.</li> </ul>

	for the private placement of convertible bonds by investment companies?	placement of convertible bonds by investment companies. "Foreign debts" herein refer to debt instruments issued overseas which include but are not limited to common bonds, senior bonds, financial bonds, perpetual bonds, convertible bonds, preferred shares, etc.	<ul style="list-style-type: none"> <li>● Filing and registration is required no matter whether the proceeds are used onshore or offshore.</li> </ul>
7.	Our company (a domestic enterprise and an offshore enterprise or branch controlled by such a domestic enterprise) is borrowing mid-and-long term international commercial loans, rather than issuing foreign bonds. Is an application for filing and registration with NDRC mandatory? If yes, what application documents do we have to submit?	<b>Answer:</b> "Foreign debts" referred to in Circular No.2044 include mid-and-long term international commercial loans, therefore filing and registration with NDRC is required. The preparation of the application documents can reference those of a foreign bonds issuance scenario.	<ul style="list-style-type: none"> <li>● Compared to the application documents for foreign bonds issuance, the main difference in a mid-and-long term international commercial loans scenario is that the lending parties' letter of intent or documents of the same effect is required.</li> </ul>
8.	If a domestic enterprise (as well as an offshore enterprise or a branch controlled by such a domestic enterprise) is borrowing foreign debts with a maturity longer than one year from offshore enterprises (including offshore shareholders), is filing and registration with NDRC required?	<b>Answer:</b> Yes.	<ul style="list-style-type: none"> <li>● If the domestic enterprise is a foreign-invested enterprise, the amount of its foreign debts shall also be subject to 1) the difference between its total investment amount and its registered capital, or 2) the regulatory standards of "macro-prudential management" of PBOC.</li> </ul>
9.	For the issuance of foreign debts by an offshore enterprise controlled by a domestic	<b>Answer:</b> In cases where an offshore enterprise controlled by a domestic natural person	<ul style="list-style-type: none"> <li>● If a domestic natural person becomes a foreign national or obtains Hong Kong, Macao or Taiwan status, it is necessary to take a</li> </ul>

	natural person, is filing and registration required?	issues foreign debts, filing and registration is required.	<p>comprehensive look at the year in which such a change occurred and the source of the business income of the controlled enterprises;</p> <ul style="list-style-type: none"> <li>● If the domestic natural person is only a minority shareholder of an offshore enterprise, it's also necessary to consider the situation of the other shareholders as well as the source of the business income of such offshore enterprises when considering whether filing and registration is required for the issuance of foreign debts.</li> </ul>
10.	A domestic enterprise (as well as the offshore enterprise or branch it controls) plans to borrow a revolving loan from offshore banks, with each single loan's maturity less than a year but the credit period exceeds one year. Is filing and registration with NDRC required?	<b>Answer:</b> Yes.	<ul style="list-style-type: none"> <li>● For a revolving loan with a total maturity exceeding one year, filing and registration is required;</li> <li>● If, prior to maturity, a loan with a maturity of one year or less is expected to be extended to more than one year, the foreign debts registration certificate is required to be obtained from NDRC before maturity; in cases where such a registration certificate has not been obtained yet, we suggest repaying the existing loan by cash or exchange mechanism, then a borrowing loan with a maturity of one year or less.</li> </ul>
11.	Our company plans to issue two foreign debts. Should we submit two applications, or can we combine those two debts into one application?	<b>Answer:</b> One application is fine.	<ul style="list-style-type: none"> <li>● It should also be allowed to combine the filing and registration application for foreign bonds and the filing and registration application for mid-to-long term international commercial loans into one application, but we suggest to specify the quota respectively. Also, for loans, a lending parties' letter of intent or documents of the same effect should be included.</li> <li>● In cases where the proceeds raised through debt issuance by</li> </ul>

			<p>offshore enterprises are expected to be remitted onshore through loans, they are deemed to be foreign debts by the domestic enterprise as well. It is recommended to explain such a plan in the application letter;</p> <ul style="list-style-type: none"> <li>● After applying for filing and registration for foreign bonds issuance, if it is necessary to use such a quota for commercial loans, it is recommended to apply to NDRC for a change of financing mode, and vice versa.</li> </ul>
12.	Is filing and registration required for domestic financial institutions transferring non-performing loans overseas?	<p><b>Answer:</b> In accordance with the <i>Circular of NDRC on Effectively Conducting Reform of Foreign Debt Administration concerning Overseas Credit Assignment (Fa Gai Wai Zi [2016] No. 1712)</i>, “for domestic financial institutions transferring non-performing loans to foreign investors thus forming domestic enterprises’ foreign debts, Circular No. 2044 applies, thus managed under the enterprise foreign debts registration system.”</p>	<ul style="list-style-type: none"> <li>● When foreign investors acquire domestic non-performing assets, they need to prompt the seller to complete the foreign debts filing and registration, and use this as a precedent condition for closing;</li> <li>● Foreign debts filing and registration does not apply where foreign investors purchase non-performing assets backed bonds through "Bond Connect".</li> </ul>
13.	Which enterprises that are applying for filing and registration for the issuance of foreign debts are required to submit a Letter of Commitment to Authenticity?	<p><b>Answer:</b> All enterprises.</p>	<ul style="list-style-type: none"> <li>● Any misrepresentations may be recorded into the National Enterprise Credit Information Publicity System.</li> </ul>
14.	Specifically, which enterprise is responsible to submit a Commitment Letter to Authenticity?	<p><b>Answer:</b> The entity having actual control of the enterprise or the actual determining power over the foreign debts.</p>	<ul style="list-style-type: none"> <li>● A Small Red-Chip Companies’ application of filing and registration for foreign debts should be submitted by its domestic entity, and the Commitment Letter to Authenticity should be issued by the applicant.</li> </ul>

15.	“NDRC exercises scale control over the issuance of foreign debts by enterprises, reasonably determining the total volume and structural control goals”— Is “scale control” exercised over the headquarters or each subordinate?	<b>Answer:</b> “NDRC exercises scale control over the issuance of foreign debts by enterprises”, refers to the control over the national foreign debts issuance scale.	<ul style="list-style-type: none"> <li>● As mentioned above, the foreign debts quota obtained by the headquarters can be allocated to each subordinate company to use.</li> <li>● If the quota applied by a subordinate is to be used by the headquarters, it is recommended to communicate with NDRC regarding a change of issuers.</li> </ul>
16.	Can an enterprise’s credit report affect the result of the filing and registration for foreign debts issuance?	<b>Answer:</b> Yes. Enterprises can visit <a href="http://www.creditchina.gov.cn">www.creditchina.gov.cn</a> in advance to check their credit report.	<ul style="list-style-type: none"> <li>● Failure to file and register also affects an enterprise’s credit report and affect its future filing and registration for the issuance of foreign debts.</li> </ul>
17.	If an enterprise engages in debt incurrence to conduct investment activities, should it file and register for foreign debts issuance, or apply for approval/filing for overseas investment?	<b>Answer:</b> Under Circular No.2044, filing and registration for foreign debts issuance is required when enterprises borrow foreign debts; if this constitutes overseas investment under the <i>Measures for Administration of Overseas Investment (NDRC 2017 No.11)</i> at the same time, then approval or filing for overseas investment is also required.	<ul style="list-style-type: none"> <li>● If the purpose of the issuance of foreign debts is for overseas investment, it is recommended to obtain the approval or filing of overseas investment in advance.</li> </ul>
18.	An enterprise has obtained the filing and registration certificate for foreign debts issuance, which is valid until the end of March. What if the pricing can be done by March but the closing can only occur in April?	<b>Answer:</b> In this scenario, as long as the pricing can be completed by the end of March, there will be no impact on the issuance of bonds.	<ul style="list-style-type: none"> <li>● For overseas bonds, only the pricing date is required to be before the registration certificate’s expiry date;</li> <li>● Previously, the foreign debt quota generally expired on September 30th or December 31th; now it is one year from the date of the registration certificate;</li> <li>● According to our past experience and considering the epidemic this year, the filing and registration validity</li> </ul>

			period can be extended by NDRC due to special circumstances.
19.	The mid-to-long term international business loan applied for by my company is three years, but the registration certificate for foreign debts issuance is only valid for one year. What should I do?	<b>Answer:</b> The enterprise should withdraw within the validity period of the registration certificate, and the loan period is subject to the loan agreement.	<ul style="list-style-type: none"> <li>● For overseas loans, it is only required that the first withdrawal date (note: revolving loans may have multiple withdrawal days) be within the validity period of the filing certificate.</li> </ul>
20.	For mid-to-long term international commercial loans, is it necessary to report the issuance information (the information report form for the issuance of foreign debts by enterprises) to NDRC? When should I report?	<b>Answer:</b> Yes, the issuance information (the information report form for the issuance of foreign debts by enterprises) should be reported to NDRC within 10 working days after each withdrawal.	<ul style="list-style-type: none"> <li>● The pre-filing and post-reporting of mid-to-long term international commercial loans can refer to those for the issuance of foreign bonds.</li> </ul>
21.	After filing and registration and when reporting issuance information (the information report form for the issuance of foreign debts by enterprises), if the issuer is the offshore subsidiary, and the applicant is the domestic parent company, should the column of "Issuer" be the domestic parent company or the offshore subsidiary that is actually issuing bonds?	<b>Answer:</b> In this circumstance, the column of "Issuer" should be: "the name of the offshore subsidiary that is actually issuing bonds (the name of the domestic parent company)".	<ul style="list-style-type: none"> <li>● If the parent company provides a guarantee, it is recommended to mention this. <ul style="list-style-type: none"> <li>◦</li> </ul> </li> <li>● For the "comments" column, it is recommended to include the foreign debts issuance registration certificate document number.</li> </ul>
22.	After reporting the issuance information (the information report form for issuance of foreign	<b>Answer:</b> No.	<ul style="list-style-type: none"> <li>● Post-reporting is an important part of corporate compliance. It would be helpful if NDRC develops an online-reporting system, which</li> </ul>

	debts by enterprises), will NDRC issue a reply?		<p>automatically generates a report certificate or sends a message to the enterprise after the enterprise reports;</p> <ul style="list-style-type: none"> <li>● In the absence of a certificate, it is recommended that the enterprise informs the bond trustee or lender by attaching the report form.</li> </ul>
23.	Do I need to make an appointment before submitting the application documents on site for foreign debts?	<p><b>Answer:</b> No.</p>	<ul style="list-style-type: none"> <li>● During the epidemic, the government affairs service hall suspended its on-site window services.</li> </ul>
24.	Can I mail the application documents? What is the mailing address?	<p><b>Answer:</b> Yes.</p> <p>Mailing address: Window No.2, NDRC service hall, 5<sup>th</sup> South Rally of Sanli River, Xicheng District, Beijing. TEL:010-68505042.</p>	<ul style="list-style-type: none"> <li>● Before mailing, you need to register online and get a registration number. Proof of the on-line registration can be mailed together with the application documents.</li> </ul>
25.	Where can I find filing and registration guidance for foreign debts issuance (mid-to-long term international commercial loans)?	<p>You can view the guidance under the "Scale Management for Foreign Debts" in the "Application &amp; Report" section of the government service hall website.</p>	<ul style="list-style-type: none"> <li>● "Governmental Services" on NDRC's official website: <a href="http://www.ndrc.gov.cn">www.ndrc.gov.cn</a>.</li> </ul>

Note:

The "Questions" and "NDRC's Answers" set out in the above table are from NDRC's official website.

The "JUNHE Comment" above contains our understandings. It summarises our legal service practice for foreign debts issuance by enterprises. If an enterprise encounters similar problems, it is recommended to confirm with NDRC verbally or in writing.

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## 企业发行外债“问”与“答”专题系列之一

### — 国家发改委关于企业发行外债备案登记常见问题解答

近年来，企业境外发债（包括借用中长期商业贷款）逐渐成为企业融资的重要渠道之一。通过境外发债，企业不仅可以充分利用境内外两个市场降低融资成本，而且可以助力企业走出去开拓国际市场。

2020年2月，国家发展和改革委员会（以下简称“**国家发改委**”）公布“企业发行外债备案登记常见问题解答”，我们拟以此作为契机，以“问”和“答”的方式，不定时与企业和其他专业机构分

享我们在实践中遇到的企业境外发债法律问题，该等法律问题包括但不限于：（1）境内政府部门审批、备案、登记流程和申请文件的准备；（2）募集资金的使用和回流；（3）境外发债的增信措施；（4）境外发债交易文件；（5）境外债券上市地选择；（6）不同行业企业境外发债的注意事项；（7）发行结构的选择以及税务考量；（8）高级债券、永续债券、可转换债券的区别等。

序号	问题	国家发改委解答	君合简析
1.	什么情况下需要办理企业发行外债备案登记？	<b>答：</b> 根据国家发改委《关于推进企业发行外债备案登记制管理改革的通知》（发改外资〔2015〕2044号）（以下简称“ <b>2044号通知</b> ”）有关规定， <b>境内企业及其控制的境外企业或分支机构</b> 向境外举借的、以本币或外币计价、按约定还本付息的 <b>1年期以上</b> 债务工具，包括 <b>境外发行债券、中长期国际商业贷款</b> 等，须事前向国家发改委申请办理备案登记手续。	<ul style="list-style-type: none"><li>● 虽然 2044 号通知规定适用的是境内企业控制的境外企业（即“大红筹公司”），但 2016 年以来国家发改委就通过窗口指导的方式要求境内自然人控制的境外企业（即“小红筹公司”）境外发债也需要按照 2044 号通知备案登记；</li><li>● 虽然 2044 号通知的行文主要适用境外发债，但境外举借中长期国际商业贷款，也需要按照 2044 号通知备案登记。</li></ul>
2.	“1 年期以上债务工具”，是否包括 1 年？	<b>答：</b> “1 年期以上” <b>不包括 1 年期</b> 。	<ul style="list-style-type: none"><li>● 考虑到办理还款手续的时间，实践中出于谨慎，短期债券或贷款的期限一般设置为 364 天或以下；</li></ul>

			<ul style="list-style-type: none"> <li>● 虽然 1 年期及以下外债不需要报国家发改委备案，但国家发改委并不支持企业用中长期外债偿还 1 年期及以下外债；</li> <li>● 1 年期及以下外债虽然不需要报国家发改委备案，视发行结构，可能仍需要按照中国人民银行和国家外汇管理局的相关规定，办理外债登记或内保外贷登记。</li> </ul>
3.	“企业发行外债，须事前向国家发改委申请办理备案登记手续”，其中“事前”是签署合同之前还是发债之前？	答：“事前”指 <b>发债之前</b> ，中长期国际商业贷款可先草拟合同，签署框架协议，需在 <b>提款前</b> 进行备案。企业需要国家发改委批复备案申请后才能开展外债发行工作。	<ul style="list-style-type: none"> <li>● 就发债项目，一般在定价前；</li> <li>● 就 MTN 项目，一般在第一次提取前；</li> <li>● 就贷款项目，一般在提款前。</li> </ul>
4.	企业是否可以直接向国家发改委提出企业发行外债备案登记申请？	答：中央管理企业和金融机构由集团总部（总公司、总行等）向国家发改委提出备案登记申请，地方企业（含金融机构） <b>直接</b> 向国家发改委提出备案登记申请。	<ul style="list-style-type: none"> <li>● 中央管理企业可由集团总部申请一个总额度分配给各下属公司使用，也可以由某个下属公司向集团总部单独发起并由集团总部申请该下属公司的外债额度；</li> <li>● 地方企业直接向国家发改委申请，但实践中备案登记证明原件由地方发改委转发给申请企业。</li> </ul>
5.	企业发行外债备案登记的申请主体是否可以境外企业？	答：不可以。境内企业及其控制的境外企业或分支机构发行外债，需由 <b>境内企业</b> 向国家发改委申请备案登记。	<ul style="list-style-type: none"> <li>● 小红筹企业一般通过其控制的一家境内主要公司作为申请主体；</li> <li>● 大红筹企业一般通过其境内母公司作为申请主体。</li> </ul>
6.	需要办理备案登记的范围是否仅限于公开发行的外债？投资公司定向发行的可转债是否需要办理备案登记手续？	答：需要办理备案登记的范围不仅限于公开发行外债。投资公司 <b>定向发行</b> 的可转债需要办理备案登记手续。外债包括但不限于 <b>普通债、高级债、金融债、永续债、可转债、优先股等境外债务性融资工具</b> 。	<ul style="list-style-type: none"> <li>● 不论公开发行还是私募发行，都需要备案登记；</li> <li>● 不论募集资金用于境内还是境外，都需要备案登记。</li> </ul>
7.	我们公司（境内企业及其控制的境外企业或分支机构）不是发行境外债券，而是举借中长期国际	答：2044 号通知所称外债包括 <b>中长期国际商业贷款</b> ，需要向国家发改委申请办理备案登记手续。企业中长期国际商业贷款备	<ul style="list-style-type: none"> <li>● 与境外发债的申请材料相比，主要的区别是要提供贷款方意向函或同等效力文件。</li> </ul>

	商业贷款,需要向国家发 改委申请办理备案登记 手续吗? 申请材料包括 哪些?	案登记申请材料请参照企业发 行外债备案登记申请材料准备。	
8.	境内企业(及其控制的境 外企业或分支机构)向境 外企业(包括境外股东) 举借的 1 年期以上外债 是否需要向国家发 改委申请办理备案登 记手续?	答: 需要。	<ul style="list-style-type: none"> <li>● 境内企业如果是外商投资企业, 外债额度还需要遵守“投注差”或中国人民银行“宏观审慎”的监管标准。</li> </ul>
9.	境内自然人控制的境外 企业发行外债是否需要 办理备案登记手续?	答: 境内自然人控制的境外企业 发行外债需要办理备案登 记手续。	<ul style="list-style-type: none"> <li>● 境内自然人变更成外籍或港澳台身份的, 需要综合看其变更成外籍的年份以及其控制企业的业务收入来源;</li> <li>● 境内自然人持有少数股份的境外企业境外发债是否需要备案, 也需要综合考虑该境外企业其他股东的情况及业务收入来源。</li> </ul>
10.	某境内企业(及其控制的 境外企业或分支机构)计 划向境外银行举借一笔 循环贷款, 单笔贷款期 限不超过 1 年, 授信期 限超过 1 年, 是否需要 向国家发 改委申请办理备案登 记手续?	答: 需要。	<ul style="list-style-type: none"> <li>● 总期限超过一年的循环贷款需要申请外债备案登记;</li> <li>● 一年期及以下期限的贷款如果在到期前希望延长为一年期以上, 应在到期前获得国家发 改委的外债备案; 如果没有 获得外债备案的, 建议先把到期的一年期及以下期限的贷款偿还完, 再借一年期及以下贷款。</li> </ul>
11.	我们公司准备借 <b>两笔外 债</b> , 应该提交两个申请 报告还是可以将两笔外 债写在一个申请报告中?	答: 可以写在一个申请报告中。	<ul style="list-style-type: none"> <li>● 境外债券和中长期国际商业贷款应也可写在一个申请报告中, 但建议说明各自的额度, 同时贷款需要提交贷款方意向函或同等效力文件;</li> <li>● 如果境外企业发债的募集资金希望以贷款方式回流境内, 就境内企业而言也是借用外债, 建议在申请中说明;</li> <li>● 如果企业申请的是境外发债的备案登记, 如果需要将该等额度用于商业贷款,</li> </ul>

			建议向国家发改委申请变更融资方式，反之亦然。
12.	境内金融机构对外转让不良债权是否需要办理备案登记手续？	答：根据《国家发改委关于做好对外转让债权外债管理改革有关工作的通知》（发改外资〔2016〕1712号）有关规定，“境内金融机构向境外投资者 <b>转让不良债权，形成境内企业对外负债</b> ，适用2044号通知有关规定，统一纳入企业外债登记制管理。”	<ul style="list-style-type: none"> <li>● 境外投资者收购境内不良资产时，需要提示出售方办理外债备案登记，并将此作为交割的先决条件；</li> <li>● 境外投资者通过“债券通”购买以不良资产作为基础资产的债券产品，则不涉及外债备案登记。</li> </ul>
13.	哪些企业发行外债申请备案登记应提交申请材料的 <b>真实性承诺函</b> ？	答：所有企业。	● 不实承诺可能会被录入全国信用信息共享平台。
14.	真实性承诺函应由哪家企业出具？	答：应由对企业具有实际控制权或对外债具有 <b>实际决策权的主体</b> 出具。	● 小红筹公司外债备案申请由其一家境内主体申请，且真实性承诺函由申请主体出具。
15.	“国家发改委对企业发行外债实行规模控制，合理确定总量和结构调控目标”，其中“规模控制”是针对总公司还是对各子公司？	答：“国家发改委对企业发行外债实行规模控制”是对 <b>全国发行外债规模的控制</b> 。	<ul style="list-style-type: none"> <li>● 如前所述，总公司获得的外债额度可以给各子公司使用。</li> <li>● 如果子公司申请的额度，希望改为母公司作为发行人，建议与国家发改委沟通变更发行主体事宜。</li> </ul>
16.	企业信用情况是否会影响发行外债备案结果？	答：会影响。申请企业可事先登陆“信用中国”网站（ <a href="http://www.creditchina.gov.cn">www.creditchina.gov.cn</a> ）查询 <b>企业信用</b> 信息。	● 应备案未备案也会影响企业的信用，从而影响企业将来的发债备案。
17.	企业在境外借用外债并开展投资活动，应该办理企业发行外债备案登记，还是应该办理企业境外投资核准/备案？	答：根据2044号通知，企业借用外债应该办理企业发行外债备案登记手续；如果同时涉及《企业境外投资管理办法》（国家发改委令2017年第11号）所述境外投资行为，则也应该办理 <b>境外投资项目核准或备案</b> 。	● 如果外债的用途是用于境外投资，建议提前获得境外投资项目的核准或备案。

18.	某公司已获得《企业借用外债备案登记证明》，文件有效期截止至3月底。如果该公司在3月底完成定价，4月份才能完成交割，是否对发行债券有影响？	<b>答：</b> 根据所述情况，公募发行外债3月底完成 <b>定价</b> 即可，不会对发行债券有影响。	<ul style="list-style-type: none"> <li>● 就境外债券，定价日在备案有效期内即可；</li> <li>● 此前外债额度有效期一般截止至 930 或 1231，目前均为备案日起一年；</li> <li>● 按照过往经验并考虑今年疫情，有特殊原因，备案有效期可申请延长。</li> </ul>
19.	我们企业申请的中长期国际商业贷款期限为3年，但是国家发改委给我们出具的《企业借用外债备案登记证明》有效期只有1年，怎么办？	<b>答：</b> 企业需在《企业借用外债备案登记证明》有效期内 <b>提款</b> ，贷款期限以贷款合同为准。	● 就境外贷款，第一次提款日（循环贷款可能有多个提款日）在备案有效期内即可。
20.	中长期国际商业贷款事项是否需要向国家发改委报送发行信息（企业发行外债信息报送表）？应该何时报送？	<b>答：</b> 需要，应在每次提款后10个工作日内，向国家发改委报送 <b>发行信息</b> （企业发行外债信息报送表）。	● 中长期国际商业贷款的事前备案及事后报送信息，均参考境外发债。
21.	企业发行外债登记备案后，报送发行信息（企业发行外债信息报送表）时，如发行主体为境外子公司，申请主体为境内母公司，“发行主体”一栏应填写境内母公司还是实际发债的境外子公司？	<b>答：</b> 根据所述情况，“ <b>发行主体</b> ”一栏的填写方式应为：实际发债的境外子公司名称（境内母公司名称）。	<ul style="list-style-type: none"> <li>● 如果母公司提供担保的，建议也注明；</li> <li>● “备注”档，建议列明外债备案登记证明文号。</li> </ul>
22.	企业向国家发改委报送发行信息（ <b>企业发行外债信息报送表</b> ）后，国家发改委是否会出具批复？	<b>答：</b> 不会出具。	<ul style="list-style-type: none"> <li>● 事后报送信息是企业合规的重要一环，希望国家发改委能开发网上报送系统，企业报送后可自动生成报送凭证，或向企业发送收到报送表的信息；</li> <li>● 在无凭证的情况下，建议企业给债券的信托人或贷款方出具说明并附报送表。</li> </ul>
23.	<b>现场提交</b> 外债申请材料是否需要预约？	<b>答：</b> 不需要。	● 疫情期间，暂停政务服务大厅窗口服务。

24.	申请材料是否可以 <b>邮寄</b> ? 邮寄地址是什么?	<b>答:</b> 可以。地址: 北京市西城区三里河南五巷国家发改委政务服务大厅 2 号窗口, 电话: 010-68505042。	● 邮寄前需要先进行网上登记, 并获得登记号, 申请材料可同时连同登记凭证一并邮寄。
25.	在哪里能找到企业发行外债(中长期国际商业贷款)备案登记事项的办事指南?	<b>答:</b> 您可以在网上政务服务大厅“事项申报”栏目“对借用外债规模的管理”事项下查看该事项的 <b>办事指南</b> 。	● 国家发改委官网 <a href="http://www.ndrc.gov.cn">www.ndrc.gov.cn</a> 下的“政务服务”。

注:

1、以上“问题”和“发改委解答”来自于国家发改委官网。

2、以上“君合简析”是我们为企业境外发债提供法律服务实践中的一些理解和总结, 企业遇到类似问题时, 建议与国家发改委再次口头或书面咨询。

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