

Legal Commentary

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New Measures on Syndicated Loans: Policy Shifts and Insights

Authors: Ting ZHENG | Raymond YAN | Eryin YING | Lin ZHU | Shirley LIANG

The National Financial Regulatory Administration (“**NFRA**”) issued the *Administrative Measures for Syndicated Loan Business* (“**Administrative Measures**”) on 12 October 2024, which will take effect from 1 November 2024 and shall amend and replace the *Guidelines on Syndicated Loan Business* issued by the China Banking Regulatory Commission on 1 August 2011 (the “**Business Guidelines**”). NFRA released a draft of the Administrative Measures for public consultation on 22 March 2024. We summarized and interpreted the major amendments of the consultation draft (the “**Consultation Draft**”) to the Business Guidelines (for more details, please refer to our previous article “[Optimizing the Regulation of Syndicated Loan Business — Interpretation of the Administrative Measures for Syndicated Loan Business \(Consultation Draft\)](#)”). The final version of the Administrative Measures includes several refinements and enhancements compared to the Consultation Draft, and some of these updates address the concerns we highlighted in our article in March. The key updates include: (1) refining the definition of syndication tranches and segment criteria; (2) enhancing provisions relating to distribution threshold and including distribution thresholds for cases where there is a co-lead arranger and/or sub-lead arranger involved; (3) amending provisions relating to agent banks, with an added exception allowing the borrower’s related parties to serve as an agent bank; (4) clarifying requirements relating to syndicated loan charges and authorizing the industry’s self-discipline organization to regulate these charges; (5) refining the right of first refusal and the scope of eligible transferees in syndicated loan transfers; and (6) removing the requirements for banks engaged in syndicated loan businesses to report to the NFRA.

The amendments, along with our analysis and suggestions, are as follows (changes from the Consultation Draft to the Administrative Measures are shown in **red**):

	Major amendments and suggestions	Administrative Measures in 2024	Consultation Draft	Business Guidelines in 2011/Credit Assets Transfer Notice
1	<p>Refining the Definition of Syndication Tranches and Segment Criteria</p> <p>The Administrative Measures refine the definition of “tranching in syndicated loans” based on the Consultation Draft, clarifying that the criteria for segment are not limited to loan tenor and interest rate. At the press conference, an NFRA official noted that the final version of the Administrative Measures includes refined definition and criteria for tranching, which is expected to facilitate the process for banks and support the establishment of syndicates.</p> <ul style="list-style-type: none"> ■ Banks need to pay attention to the limitations on the number of tranches and participating banks. Compared to the Consultation Draft, the Administrative Measures moderately relax the restriction on the number of participating banks, allowing one bank to constitute a tranche; provided 	<p>Paragraph 2, Article 2 Syndicated loans in these Measures refer to loans or credit facilities in RMB or foreign currency provided by two or more banks to a borrower through an agent bank, pursuant to the same loan agreement, at an agreed time and ratio.</p>	<p>Same as the Administrative Measures</p>	<p>Article 3 Syndicated loans refer to loans or credit facilities in RMB or foreign currency provided by two or more banks to a borrower through an agent bank under the same loan conditions, pursuant to the same loan agreement, at an agreed time and ratio.</p>
		<p>Paragraph 3, Article 2 Tranching in syndicated loans, as defined in these Measures, refers to the operational method in which loans with different conditions are provided to the customer under the same syndicated loan agreement by dividing the loans into tranches based on loan conditions such as the loan tenor and interest rate. The loan conditions must be consistent within the same tranche.</p>	<p>Paragraph 3, Article 2 Tranching in syndicated loans, as defined in these Measures, refers to the operational method in which syndicate members provide loans with different tenors or types under the same syndicated loan agreement by dividing the loans into tranches. The loan conditions, such as the loan tenor, interest rate, and purpose, must be consistent within the same tranche.</p>	N/A
		<p>Paragraph 1, Article 18 Tranching in syndicated loans generally involves no more than three tranches. In principle, each tranche shall consist of at least two banks, and there shall be no more than</p>	<p>Paragraph 1, Article 16 Tranching in syndicated loans generally involves no more than three tranches. In principle, each tranche shall consist of at least two</p>	N/A

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	that, only one such tranche is permitted.	one single tranche with participation from a single bank.	participating banks.	
2	<p>Enhancing Provisions Relating to Distribution Threshold and Including Distribution Thresholds for the Co-lead Arranger Structure</p> <ul style="list-style-type: none"> ■ The commitment threshold and distribution threshold when a single bank acts as the lead arranger have been adjusted to 15% and 30%, respectively, consistent with the Consultation Draft. ■ The co-lead arranger structure has been updated to include a minimum commitment requirement of 10% for each lead arranger (including co-lead and sub-lead arrangers) and the maximum commitment for each syndicated participant is capped at 70%. ■ It is emphasized that, regardless of whether there is one or multiple lead arrangers, syndicated loan transfers must not exceed the corresponding 	<p>Article 13 When a single bank acts as the lead arranger, its commitment ratio shall not be, in principle, less than 15% of the total financing amount of the syndication, and the distribution to other syndicate members shall not be, in principle, less than 30%.</p> <p>When a sub-lead arranger or co-lead arranger is included in the syndication, the commitment ratio of each arranger shall not be, in principle, less than 10% of the total financing amount, and the commitment ratio of each bank shall not, in principle, exceed 70%.</p> <p>Banks conducting loan transfer transactions in accordance with these Measures shall not violate the provisions of the preceding paragraphs.</p>	<p>Article 11 When a single bank acts as the lead arranger, its commitment ratio shall, in principle, not be less than 15% of the total financing amount of the syndication, and the distribution to other syndicate members shall, in principle, not be less than 30%.</p> <p>Banks conducting transfer transactions in accordance with these Measures shall not violate the provisions of the preceding paragraphs.</p>	<p>Article 9 When a single bank acts as the lead arranger, its commitment ratio shall, in principle, not be less than 20% of the total financing amount of the syndication, and the distribution to other syndicate members shall, in principle, not be less than 50%.</p>

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	limits on commitment ratio and distribution ratio.			
3	<p>Amending Provisions Relating to Agent Banks</p> <ul style="list-style-type: none"> Both of the Business Guidelines and the Consultation Draft prohibit borrower-related institutions from serving as agent banks. However, the Administrative Measures now include a new exception: provided that the relationship is disclosed in advance and all syndicate members give written consent, the borrower's related institutions are allowed to act as agent banks. This aligns with the NFRA's regulatory intention to facilitate the syndicated loan transactions. Compared with the Consultation Draft, the Administrative Measures have introduced the new role of documentation agent. Syndicates can decide whether to include this role based on actual needs and the 	<p>Paragraph 2, Article 15 For syndicated loans with a relatively complex structure, additional agent banks such as settlement agent, security agent, or documentation agent may be included to perform specific functions and carry out the corresponding loan management work. Each agent bank shall jointly fulfill the responsibilities of the agent bank as stipulated in these Measures and the loan agreement. Only one bank may serve as the agent bank for the same function.</p> <p>Paragraph 1, Article 15 The agent bank is designated by the lead arranger during the syndicate formation phase or determined through negotiation among syndicate members. The syndicate agent bank must represent the interests of the syndicate, and the borrower's related institutions cannot serve as the agent bank, except where the relationship is disclosed in advance and written consent is obtained from all syndicate members.</p>	<p>Paragraph 2, Article 13 For syndicated loans with a relatively complex structure, additional roles such as a settlement agent or security agent may be included within the syndicate, based on the responsibilities of the agent bank, to carry out the corresponding loan management work as stipulated in the syndicated loan agreement. Only one bank may serve as the agent bank for the same functions.</p> <p>Paragraph 1, Article 13 The agent bank is designated by the lead arranger during the syndicate formation phase or determined through negotiation among syndicate members. The syndicate agent bank must represent the interests of the syndicate, and the borrower's related institutions cannot serve as the agent bank.</p>	<p>Paragraph 2, Article 11 For syndicated loans with a relatively complex security structure, a security agent may be designated to be responsible for implementing various guarantees, as well as the registration and management of collateral or pledged assets for the syndicated loan.</p> <p>Paragraph 3, Article 11 The agent bank shall be determined through negotiation among syndicate members and may be held by the lead arranger or other banks. The syndicate agent bank must represent the interests of the syndicate, and the borrower's affiliated or related institutions cannot serve as the agent bank.</p>

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	complexity of the syndicated loan transaction. In practice, the documentation agent typically assumes the responsibility of hiring legal counsel on behalf of the syndicate and negotiating the syndicated loan agreement with the borrower. The inclusion of a documentation agent helps improve the operational efficiency of syndicated loans and ensures that documents and records are properly managed.			
4	<p>Clarifying Requirements Relating to Syndicated Loan Charges</p> <ul style="list-style-type: none"> Article 40 of the Consultation Draft has clarified that the fees for syndicated loans should be included in the bank's service pricing management. Article 43 of the Administrative Measures further specifies that relevant regulations, such as the <i>Administrative Measures for Service Pricing by Commercial</i> 	Article 42 When banks engage in syndicated loan business, they may charge fees for services such as syndicate arrangement, underwriting, loan commitments, and management of syndication matters. Syndication charges should be under the service pricing management of commercial banks.	Article 40 When commercial banks engage in syndicated loan business, they may charge fees for services such as syndicate arrangement, underwriting, loan commitments, and management of syndication matters. Syndication charges should be under the service pricing management of commercial banks.	Paragraph 1, Article 40 Syndication charges refer to the intermediary service fees charged by syndicate members for providing services such as syndicate arrangement, underwriting, loan commitments, and management of syndication matters on behalf of the borrower. These charges are under the management of intermediary service fees by commercial

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	<p><i>Banks</i> shall be followed.</p> <ul style="list-style-type: none"> The China Banking Association issued the <i>Self-Regulatory Convention on Fees for Syndicated Loan Intermediary Services</i> on 1 October 2015, which remains in effect. The China Banking Association may revise and refine the self-regulatory rules on fees based on the Administrative Measures in the future; banks need to pay attention and timely update their internal pricing mechanisms and execution standards accordingly. 	<p>Article 43 Charges for syndicated loans shall comply with <i>the Administrative Measures for Service Pricing by Commercial Banks and other relevant regulations issued by NFRA</i> and pricing regulatory authority. They shall be determined through negotiation between syndicate members and the borrower based on the principles of “voluntary consultation, fairness and reasonableness, openness and transparency, alignment of quality and price, and separation of interest and fees” and shall be specified in the syndicated loan agreement or fee letter.</p> <p>Banks shall improve their pricing mechanisms, clarify internal implementation standards, establish an internal over-limit review mechanism, and fully disclose and reveal to borrowers information regarding the composition of fees, pricing standards, and billing methods.</p> <p><i>The China Banking Association shall develop detailed industry self-regulatory rules for syndication charges in</i></p>	<p>Article 41 Charges for syndicated loans shall comply with the regulations of the State Council’s banking regulatory authority and the pricing regulatory authority. They shall be determined through negotiation between syndicate members and the borrower based on the principles of “voluntary consultation, fairness and reasonableness, openness and transparency, alignment of quality and price, and separation of interest and fees” and shall be specified in the syndicated loan agreement or fee letter.</p> <p>Banks shall improve their pricing mechanisms, clarify internal implementation standards, establish an internal over-limit review mechanism, and fully disclose and reveal to borrowers information regarding the composition of fees, pricing standards, and billing methods.</p>	<p>banks.</p> <p>Paragraph 2, Article 40 Charges for syndicated loans shall be determined through negotiation between syndicate members and the borrower based on the principles of “voluntary consultation, fairness and reasonableness, and alignment of quality and price” and shall be specified in the syndicated loan agreement or fee letter.</p>

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		accordance with these Measures and other relevant regulations.		
5	<p>Refining the Right of First Refusal and Scope of Eligible Transferees in Syndicated Loan Transfers</p> <ul style="list-style-type: none"> Regarding the transfer of syndicated loans, the Administrative Measures have largely maintained the changes from the Consultation Draft to the Business Guidelines, permitting partial transfer of syndicated loans and specifying that syndicated loan transfers shall be carried out adhering to the regulatory requirements for the transfer of credit assets, including the prior centralized registration. Compared to the Consultation Draft, the Administrative Measures further limit the scope of transferees to banks or institutions recognized by NFRA, rather than any third party. The scope of syndicated loan transferees recognized by NFRA 	<p>Article 47 A syndicated loan transfer refers to a transaction where the lender under a syndicated loan, as the transferor, transfers its syndicated loan to another bank or an institution recognized by NFRA, as the transferee, with the transferee paying the transfer consideration to the transferor.</p>	<p>Article 45 A syndicated loan transfer refers to a transaction where the lender under a syndicated loan, as the transferor, transfers its remaining syndicated loan balance to another lender or a third party, as the transferee, with the transferee paying the transfer price to the transferor.</p>	<p>Paragraph 1, Article 44 A syndicated loan transfer refers to a transaction where the lender under a syndicated loan, as the transferor, transfers its share of the syndicated loan to another lender or a third party, as the transferee, with the transferee paying the transfer price to the transferor.</p>
		<p>Article 49 When a transferor transfers a syndicated loan, under equal conditions, it shall give priority to transferring the loan to other syndicate members. The transferee shall comply with the provisions of these Measures, enjoy the rights stipulated in the syndicated loan agreement, and perform the obligations set forth in the syndicated loan agreement.</p>	<p>Article 47 When a bank transfers a syndicated loan, it shall give priority to transferring the loan to other syndicate members. If none of the syndicate members wish to accept the transfer, the transferor may transfer the loan to a bank other than the syndicate members.</p> <p>The transferee shall comply with the provisions of these Measures, enjoy the rights stipulated in the syndicated loan agreement, and perform the obligations set forth in</p>	<p><i>Notice from the China Banking Regulatory Commission on Further Standardizing the Transfer of Credit Assets by Banking Financial Institutions (“Credit Assets Transfer Notice”)</i></p> <p>Paragraph 2, Article 5 When banking financial institutions transfer syndicated loans, the transferor shall give priority to transferring the loan in its entirety to other members of the syndication. If none of the other syndicate members are</p>

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	<p>awaits further clarification.</p> <ul style="list-style-type: none"> Additionally, Article 49 of the Administrative Measures clarifies that the right of first refusal for syndicate members to assume the loan is contingent upon “equal conditions”, aligning with the standard nature of such right. 		the syndicated loan agreement.	willing to accept the transfer and they have no objections to the transferor transferring it to a banking financial institution other than the syndicate members, the transferor may transfer the entire loan to such banking financial institution.
6	<p>Removing Requirements for Banks Engaged in Syndicated Loan Businesses to Report to NFRA</p> <ul style="list-style-type: none"> Although the Administrative Measures removed the “Supervision and Management” chapter from the Consultation Draft, the amendments allow NFRA to take regulatory measures or impose administrative penalties on banks that violate the Measures were maintained. Compared to the Business Guidelines, the Administrative Measures have eliminated the obligation for banks involved in 	N/A	<p>Chapter VII: Supervision and Management</p> <p>Paragraph 1, Article 56 Banks shall submit reports, statements, documents, and materials related to syndicated loans in accordance with the regulations of the State Council’s banking regulatory authority.</p>	N/A
		<p>Article 7 If a bank violates the provisions of these Measures, NFRA and its local offices shall take regulatory measures or impose administrative penalties according to the law.</p>	<p>Article 58 If a bank violates the provisions of these Measures, the banking regulatory authority shall take regulatory measures or impose administrative penalties according to the law.</p>	N/A
		<p>Paragraph 2, Article 8 The banking association may collect information</p>	<p>Paragraph 2, Article 56 The China Banking Association and local</p>	<p>Article 37 Banks that engage in syndicated loan activities shall</p>

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	<p>syndicated loan activities to regularly report to the local banking association, instead allowing the China Banking Association to collect information as needed. Consequently, the China Banking Association may establish self-regulatory rules to determine the scope and types of information it collects.</p>	<p>related to syndicated loans, with specific content to be determined in consultation with member institutions.</p>	<p>banking associations may collect information related to syndicated loans, with specific content to be determined in consultation with member institutions.</p>	<p>periodically report syndicated loan-related information to the local banking association. The reported content shall include the underwriting and holding volume in the primary market, the transfer volume in the secondary market, interest rates, fee levels, loan tenors, collateral conditions, borrower credit ratings, etc.</p>
7	<p>Application of Syndicated Loan Regulatory Rules to Joint Leasing Business</p> <ul style="list-style-type: none"> Following the release of the Consultation Draft in March, we noted that, on 14 September 2024, NFRA introduced the <i>Administrative Measures for Financial Leasing Companies</i> (set to take effect on November 1 this year). One of the notable changes is the specification that the regulation of joint leasing business of financial leasing companies shall refer to the regulatory rules for syndicated 	<p>Article 58 Non-banking financial institutions legally established in China that engage in syndicated loan business shall be governed by these Measures.</p> <p><i>Administrative Measures for Financial Leasing Companies</i></p> <p>Article 64 When financial leasing companies engage in joint leasing business with institutions qualified to engage in financing leasing activities, they shall follow the principles of “information sharing, independent approval, independent decision-making, and risk assumption”. They shall independently determine financing leasing activities, enjoy the proportionate</p>	<p>Article 59 Non-banking financial institutions legally established in China that engage in syndicated loan business shall be governed by these Measures.</p>	<p>Article 49 Non-banking financial institutions legally established to conduct syndicated loan business shall comply with these Guidelines.</p>

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	<p>loan business. Therefore, relevant provisions of the Administrative Measures may apply to the joint leasing business of financial leasing companies, although the detailed application of these rules awaits further clarification from NFRA.</p>	<p>share of the leased assets and other corresponding rights according to the actual capital contribution ratio or as agreed, and perform corresponding obligations. The relevant business shall be conducted with reference to the syndicated loan business regulatory rules of NFRA.</p>		

Important Announcement

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If you have any questions regarding this publication, please contact:

Ting ZHENG

Tel: +86 21 6080 0203

Email: ting.zheng@hankunlaw.com

Raymond YAN

Tel: +86 21 6080 0512

Email: raymond.yan@hankunlaw.com