

client alert

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CHINA RELEASES DRAFT P2P LENDING RULES FOR PUBLIC COMMENT

BACKGROUND

On 28 December 2015, the China Banking Regulatory Commission (“**CBRC**”) released a draft version of the *Interim Administrative Measures for the Business Activities of Peer-to-Peer Lending Information Intermediaries* (the “**Measures**”) for public comments. The main purpose of the Measures is to regulate the growing online lending sector, which so far operates in a legal grey area.

A “peer-to-peer (“**P2P**”) lending information intermediary activity” is defined as the provision of lending information services (e.g. loan facilitation, credit rating, etc.) to lenders and borrowers via online platforms in China.

This Client Alert highlights the key points of the draft Measures and their potential impact on P2P lending activities in China. As the Measures are still in the public comment stage, none of the provisions discussed herein have been implemented or are in effect. However, some local authorities have suspended approval of any new company intending to engage in P2P lending activities as they wait for the issuance of the finalised Measures.

Under the current draft Measures, there will be an 18-month grace period once the Measures go into effect for existing companies already engaging in P2P lending activities to comply with the new rules.

KEY POINTS OF THE DRAFT MEASURES

Registration

The corporate name of any company intending to engage in P2P lending activities (“**P2P Lending Intermediary**”) must contain “P2P lending information intermediary”.

After obtaining a business licence, every P2P Lending Intermediary must register with its local financial regulatory authority. The latter will be responsible for rating and categorising P2P Lending Intermediaries; however, such process is not detailed in the draft Measures and additional implementing rules are expected in this respect.

Under the draft Measures, P2P Lending Intermediaries will be required to register with their competent telecommunications authority, and those that are engaged in for-profit activities must also obtain a special licence before registering with their financial regulatory authority. Furthermore, under Chinese law, foreign investment in such kind of activities may be subject to restrictions, such as on the maximum permitted percentage of foreign ownership.

Prohibited Activities

P2P Lending Intermediaries may act only as online intermediaries between lenders and borrowers. They are prohibited from providing insurance services, creating capital pools, engaging in illegal fund-raising, or jeopardising national or public interests. Except for some limited activities such as collection of credit information and risk assessment, P2P Lending Intermediaries cannot conduct offline activities.

In addition to these general principles, P2P Lending Intermediaries are expressly prohibited from engaging in the following activities:

- Financing their own projects or related parties' projects with funds collected from their platforms;
- Directly or indirectly holding and managing lenders' funds;
- Offering guarantees to lenders or promising guaranteed returns;
- Promoting specific financing projects to users whose identities have not been verified;
- Granting loans, unless expressly permitted by laws and statutes;
- Dividing the term of financing projects (e.g. offering loan products with a shorter term than the underlying loan);
- Selling banking financial products, security assets management products, funds, insurance products or trust products;
- Selling other types of financial products in collaboration with other entities, unless otherwise permitted by laws;
- Providing false or exaggerated loan information to attract lenders or to harm third parties' commercial reputation;
- Providing P2P information services for financing investments in the stock market;
- Providing equity crowdfunding or in-kind crowdfunding services;
- Engaging in other activities prohibited by laws and regulations.

The draft Measures also prohibit P2P Lending Intermediaries from making investment decisions on behalf of the lenders. It is unclear whether such provision will prevent P2P Lending Intermediaries from offering automated investment decision tools to lenders.

Obligations

The draft Measures set a long list of obligations for P2P Lending Intermediaries, including:

Due diligence obligations

P2P Lending Intermediaries must approve every account of registered lenders and borrowers and verify their identities and the legitimacy of the financing projects. Both lenders and borrowers must provide accurate and complete identification information.

P2P Lending Intermediaries are responsible for conducting risk assessments on lenders, taking into account their age, health, financial status, investment experience, risk tolerance, and other factors. They must then categorise lenders accordingly and adapt their services (or refrain from providing any service) to lenders according to the results of their risk assessment.

Disclosure and reporting obligations

P2P Lending Intermediaries must duly inform lenders of the risk associated with their investments. Basic information on the borrowers (including annual income, main assets and liabilities, credit report, etc.), financing projects (including type and term of the project, repayment method and rate, credit rating, etc.), and risk assessment must be disclosed on their website.

Reporting obligations for past transactions, including amounts of loans facilitated, number of transactions, borrowing balance, bad loan ratio, and complaints from borrowers or lenders, must also be disclosed on their website.

A central database for the P2P lending industry will be set up, and P2P Lending Intermediaries will be required to report and disclose information through such platform as well.

Risk control

The draft Measures expressly instruct P2P Lending Intermediaries to focus on small loans and set an upper limit and other restrictions on loans, depending on risk assessment, to mitigate centralised credit risks.

P2P Lending Intermediaries must take the measures necessary to prevent fraud and other threats to lenders' interests, identify suspicious transactions, terminate illicit P2P loans, and install adequate IT security systems.

They are also required to cooperate with authorities to combat financial crimes and ensure cyber security and data protection.

Fund management

The fund collection period for a single project cannot exceed 10 business days.

P2P Lending Intermediaries must separate the management of their own equity and the funds received from lenders and borrowers. They must also designate a qualified banking financial institution to act as custodian of funds received from lenders and borrowers.

CONCLUSION

Following the CBRC's issuance of rules for online payment services (which will go into effect on 1 July 2016), the draft Measures confirm the intention of Chinese authorities to regulate and keep close control of the growing online financial sector.

Several provisions of the draft Measures will require further clarification by the CBRC. In particular, certain provisions remain subject to separate detailed implementing rules that have not been disclosed yet.

Gide will closely follow the development of these Measures. In the meantime, please feel free to contact us if you have any questions regarding this or any other issue.

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