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FUNDAMENTALS OF FINANCIAL MARKETS
HONG KONG | FRIDAY, 6 SEPTEMBER 2024

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**INTRODUCTION TO COMMON PRC LAW ISSUES FOR CROSS BORDER LOAN
TRANSACTIONS**

VICKY MA & PHOENIX TO
HONG KONG | FRIDAY, 6 SEPTEMBER 2024

AGENDA

1

NDRC

FOREIGN DEBT MEASURES

2

SAFE & SAMR

TAKING SECURITY/GUARANTEE

FOREIGN DEBT – NEW FOREIGN DEBT MEASURES



Major changes



FOREIGN DEBT – NEW FOREIGN DEBT MEASURES

When does it apply?

Tenor >1 year (more than 365 days)

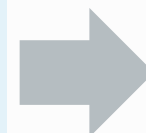


Borrower **controlled** by PRC enterprise

- Owns more than half of the voting rights in such overseas enterprise
- Capable of directing (支配) the operation, finance, human affairs, technology and other important matters of such overseas enterprise

Note: **Indirect borrowing** (Article 33)

- Primary business activities are located in the PRC
- Incurs debt outside of the PRC through an overseas enterprise "in reliance on" or "based on" (基于) the equity interests in, and/or assets, income or other similar rights, of that PRC enterprise



NDRC registration required

Timeline

- Register prior to incurring Foreign Debt / material amendment
- Regular reporting of the drawdown status

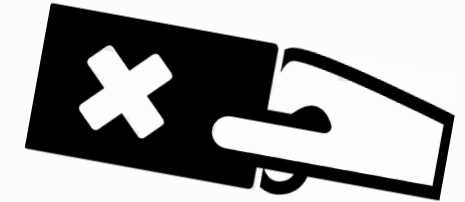
Reporting entity

- Ultimate domestic holding company (境内控股企业总部)
- Primary domestic operating subsidiary (主营业务子公司) for "red-chip" structure

FOREIGN DEBT – NEW FOREIGN DEBT MEASURES

Sanctions measures from the NDRC

- to both relevant company and responsible person
- to intermediaries (such as underwriters, auditors and legal advisors)



issuance of warning
notice

order for rectification

public announcement of misconduct and
suspension of incurring foreign debt

cancellation of the registration
certificate

Documentation requirements

NDRC certificate as **CP**

General **undertakings**



Consultation

Consult with **PRC counsel**

Real-name consultation
with NDRC



FOREIGN DEBT – NEW FOREIGN DEBT MEASURES

FAST TRACK REVIEW

Circular of NDRC on Supporting High-Quality Enterprises to Borrow Medium and Long-Term Foreign Debts to Promote the High-Quality Development of the Real Economy

High Quality Enterprises (but excluding real estate enterprises and financing vehicles of local governments)

Leading position in the industry

Business operations in line with **macroeconomic policies**



International credit rating of BBB- or above (**investment grade**)

No default on debts and violation of laws and regulations in the past 3 years

Fast Track Review

single application for an aggregate quota for entire group

application prior to (i) execution of documents and (ii) appointment of lead underwriter

Requisite legal opinions may be issued by in-house legal

TAKING SECURITY AND GUARANTEE



SAMR

(State Administration for Market Regulation 国家市场监督管理总局)

Equity pledge over shares of a PRC company

Failure to register:
Equity pledge is not valid



SAFE

(State Administration of Foreign Exchange 国家外汇管理局)

Failure to register:
enforcement proceeds may be **trapped** in the PRC

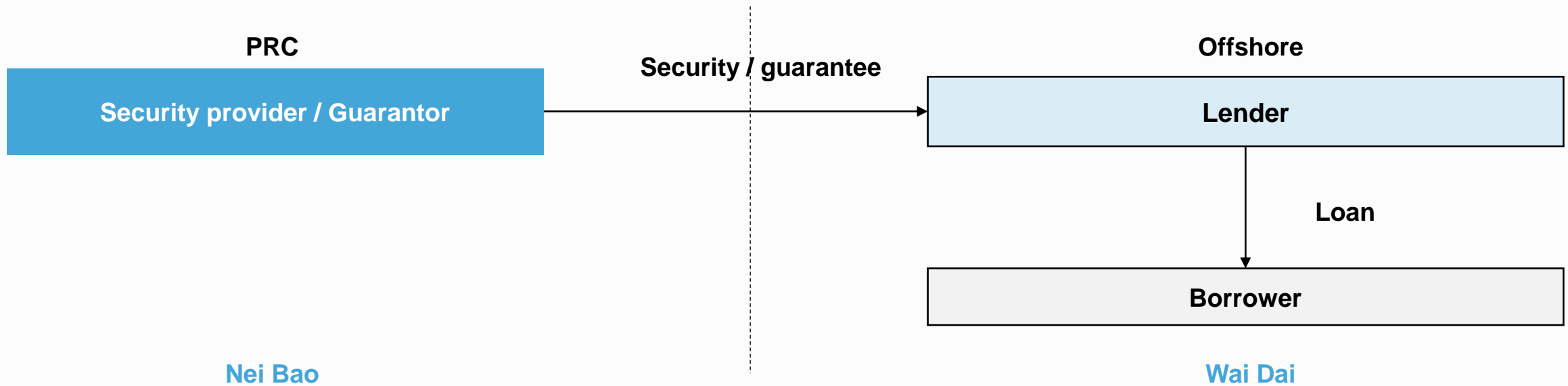


Type of cross-border security	Key PRC regulatory requirements (from the “cross-border” security perspective only)
Nei Bao Wai Dai	Apply for registration with SAFE within 15 PRC business days after signing
Wai Bao Nei Dai	No registration requirement upon signing Data filing by the lender (which has to be a bank or other banking financial institution) Registration with SAFE as a foreign debt of PRC borrower upon enforcement
Other forms of cross-border security	No SAFE registration requirement upon signing Potential registration requirements for the underlying loan and/or upon enforcement

NEI BAO WAI DAI 内保外贷

Nei Bao Wai Dai (NBWD)

“Nei Bao”	Guarantee or security given by a PRC entity
“Wai Dai”	Loan involving non-PRC lender(s) and non-PRC borrower(s)



NEI BAO WAI DAI 内保外贷

CONTINUED

Practical matters – Guarantees

- Need for a standalone Guarantee (recommended)
- Term of guarantee
- Currency
- Amount secured/guaranteed (cap of remittance)
- Amount of principal debts
- Interest rate (floating or fixed)
- Beneficiary

Particulars of the “Nei Bao Wai Dai”			
Code of security provider			
Name of security provider in Chinese		Name of security provider in English	
Date of execution of guarantee security documents			
Type of security	Financial guarantee Non-financial guarantee		
Form of security	Guarantee /Pledge/ Mortgage	Counter-guarantor	
Term of security/guarantee	[] months/days	Security/guarantee expiration date	
Approval document NO		Whether related to outbound investment	
Currency		Amount secured	
Other guarantor/security provider			
Guaranteed/secured debt			
Date of execution of debt agreement		Due date of principal debts	
Term of principal debts		Form of issuance	
Currency of principal debts		Amount of principal debts	

NEI BAO WAI DAI 内保外贷

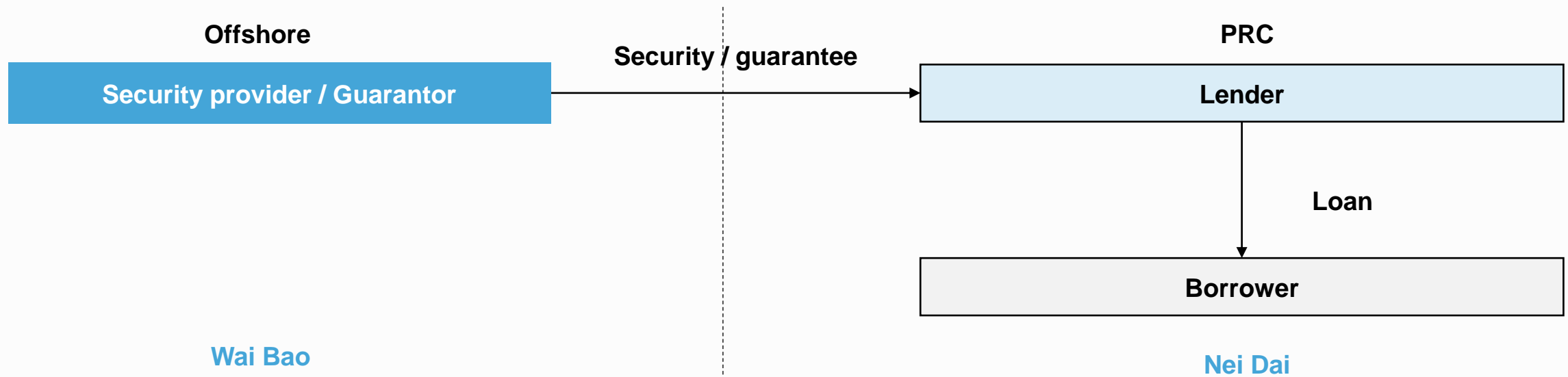
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Interest rate (%)									
Purpose of debt		<input type="checkbox"/> 1-Involving outbound investment <input type="checkbox"/> 2-Repayment of offshore debts <input type="checkbox"/> 3-Replenishment of operating capital or working capital <input type="checkbox"/> 4-other purpose outside PRC <input type="checkbox"/> 5-Repatriation of funds in the form of direct investment <input type="checkbox"/> 6-Repatriation of funds in the form of foreign debts <input type="checkbox"/> 7-Repatriation of funds in the form of trade <input type="checkbox"/> 8-Repatriation of funds by other means							
Repatriation of funds					Amount of funds repatriated				
Code of counter-guarantor					Name of counter-guarantor in English				
Name of counter-guarantor in Chinese									
Remarks									
Information of principal debtor/borrower									
Code	Name	Name in English	Country/region	Entity type	Country/region where the securities are offered/listed	Industry	Code of domestic controlling parent company	Name of domestic controlling parent company	Name of domestic controlling parent in English
Information of beneficiary									
Code of beneficiary	Name of beneficiary in Chinese		Name of beneficiary in English			Country/region of beneficiaries	Types of beneficiaries		
Information of other guarantor/security provider									
Code					Name (Chinese)				

WAI BAO NEI DAI 外保内贷

Wai Bao Nei Dai (WBND)

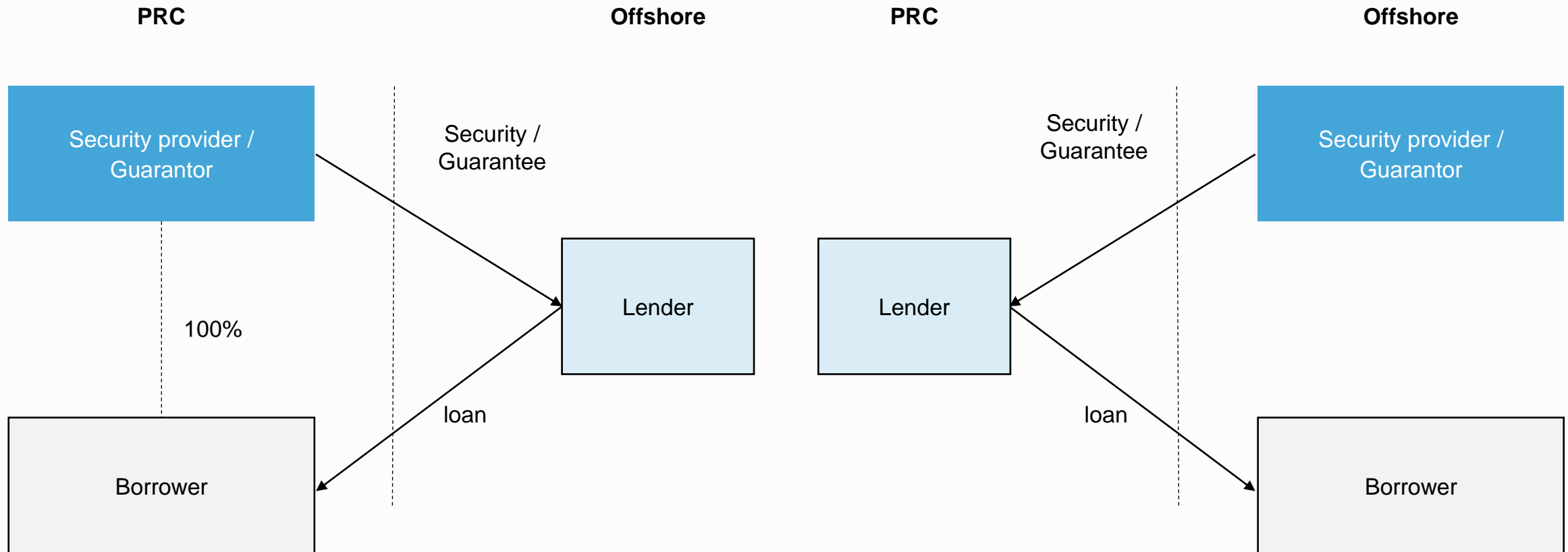
“Wai Bao”	Guarantee or security given by non-PRC entity
“Nei Dai”	Loan involving PRC lender(s) and PRC borrower(s)



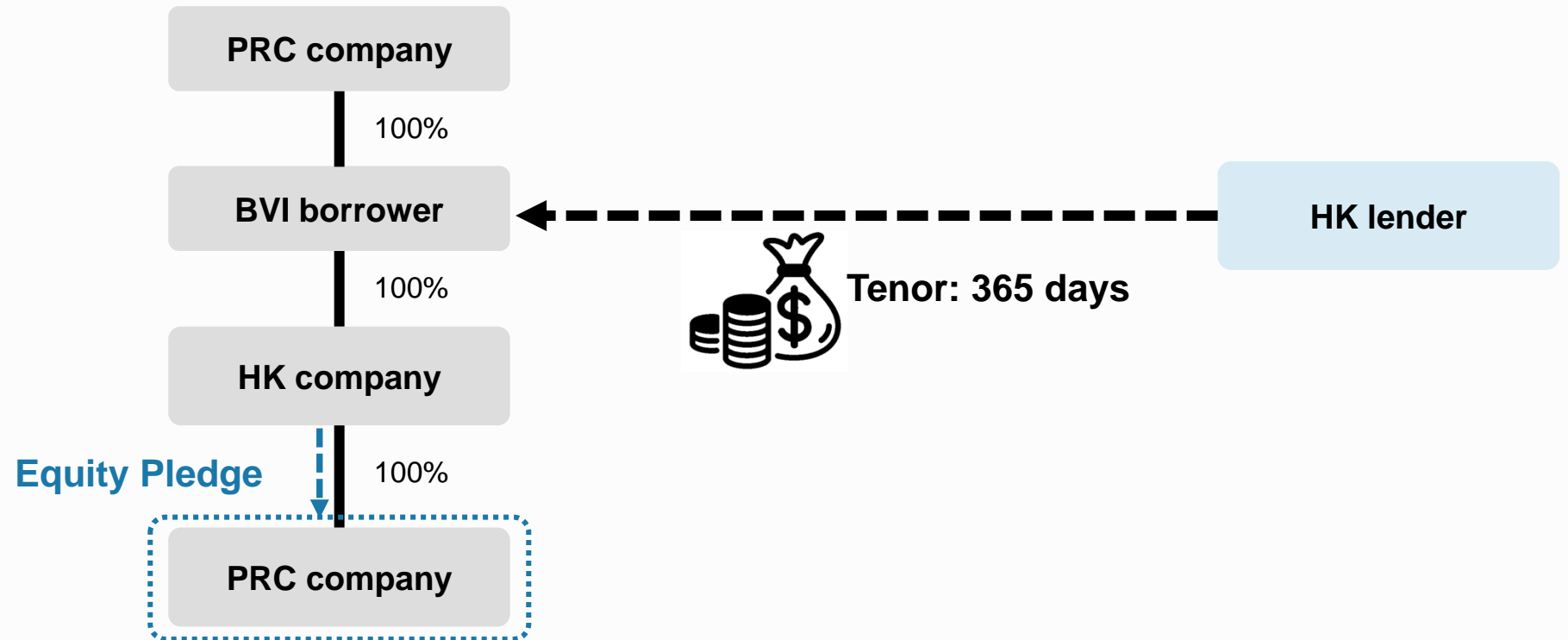
OTHER FORMS OF CROSS-BORDER SECURITY

Cross-border security which is neither NBWD nor WBND is not required to be registered with SAFE.

For example:



1. IS SAMR REGISTRATION REQUIRED?



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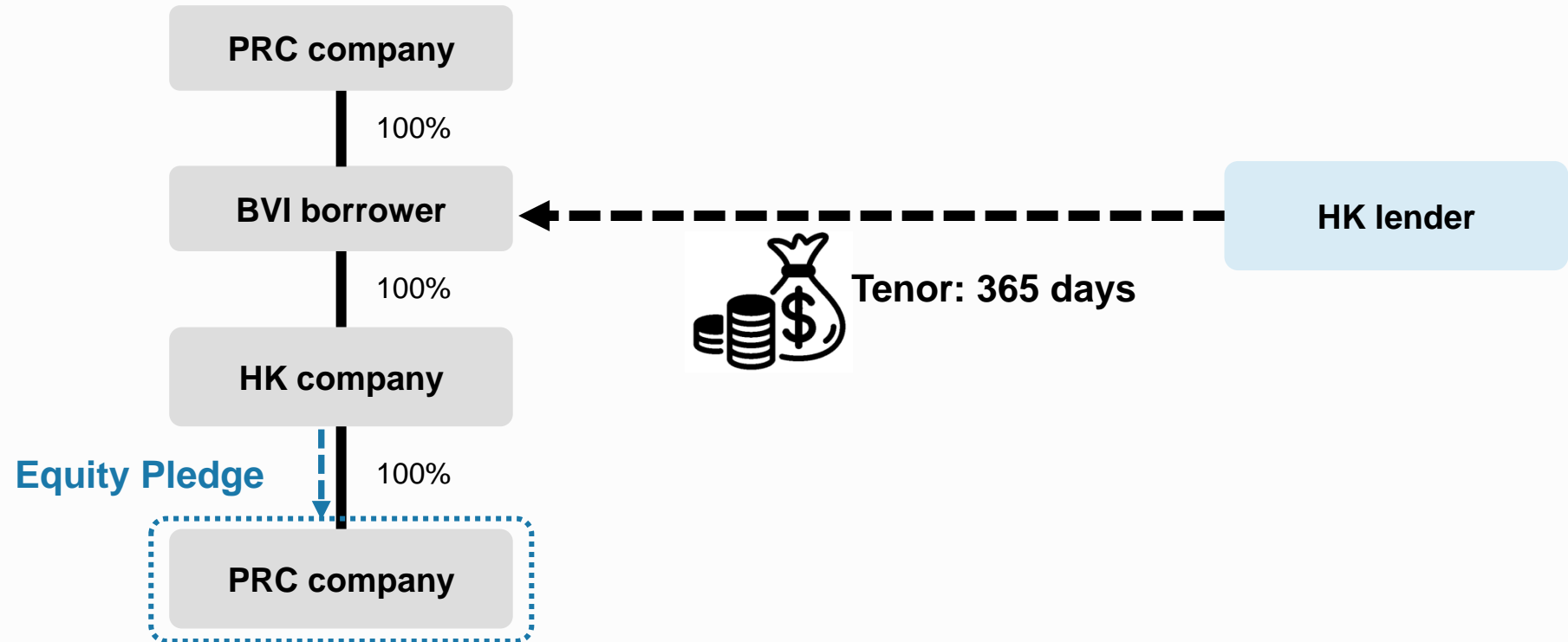
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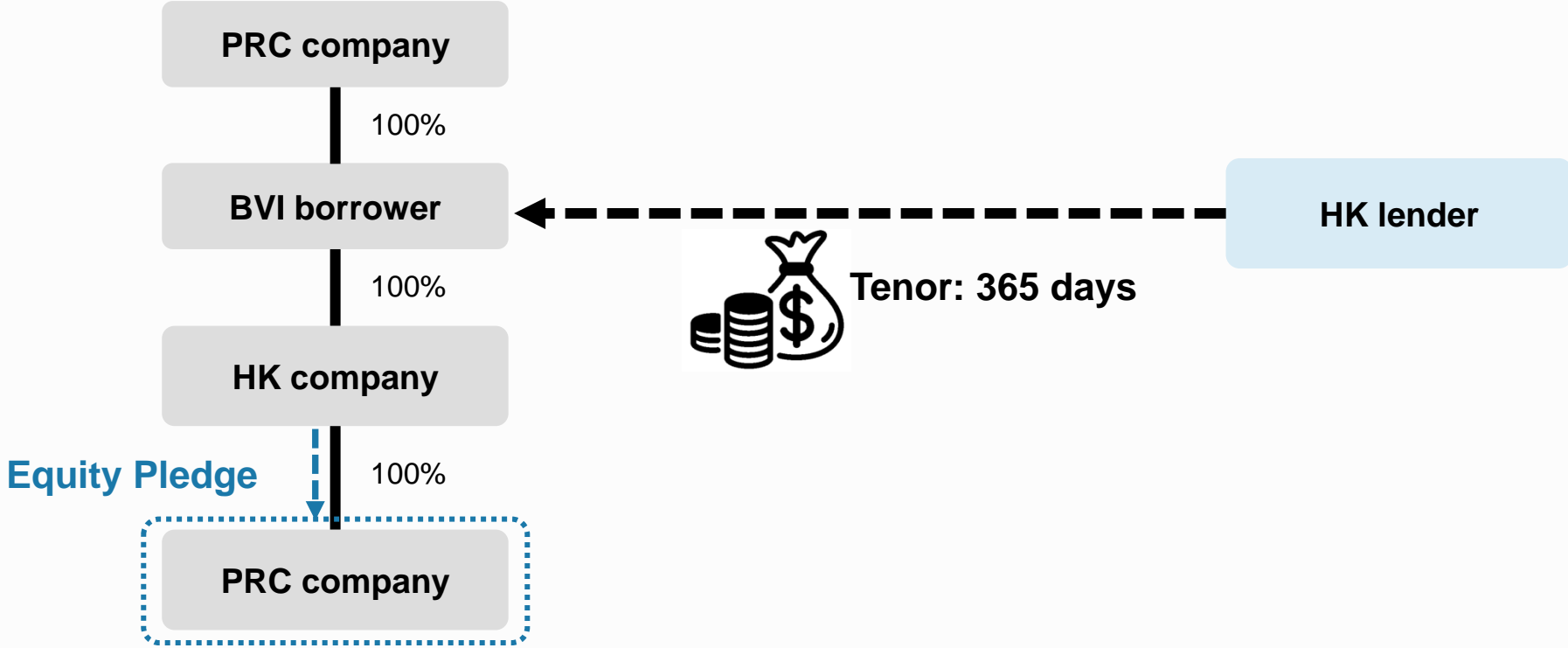
1. Is SAMR registration required?

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1. IS SAMR REGISTRATION REQUIRED?



2. IS NDRC REGISTRATION REQUIRED?



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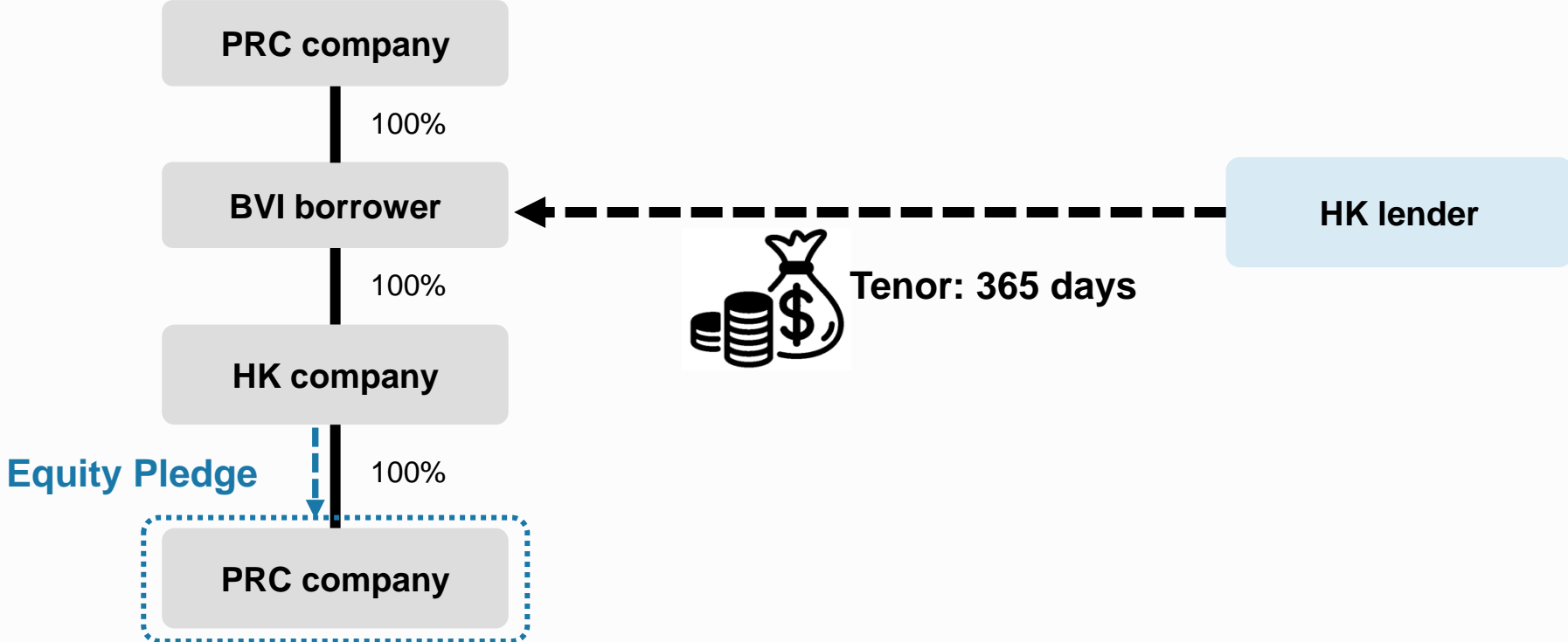
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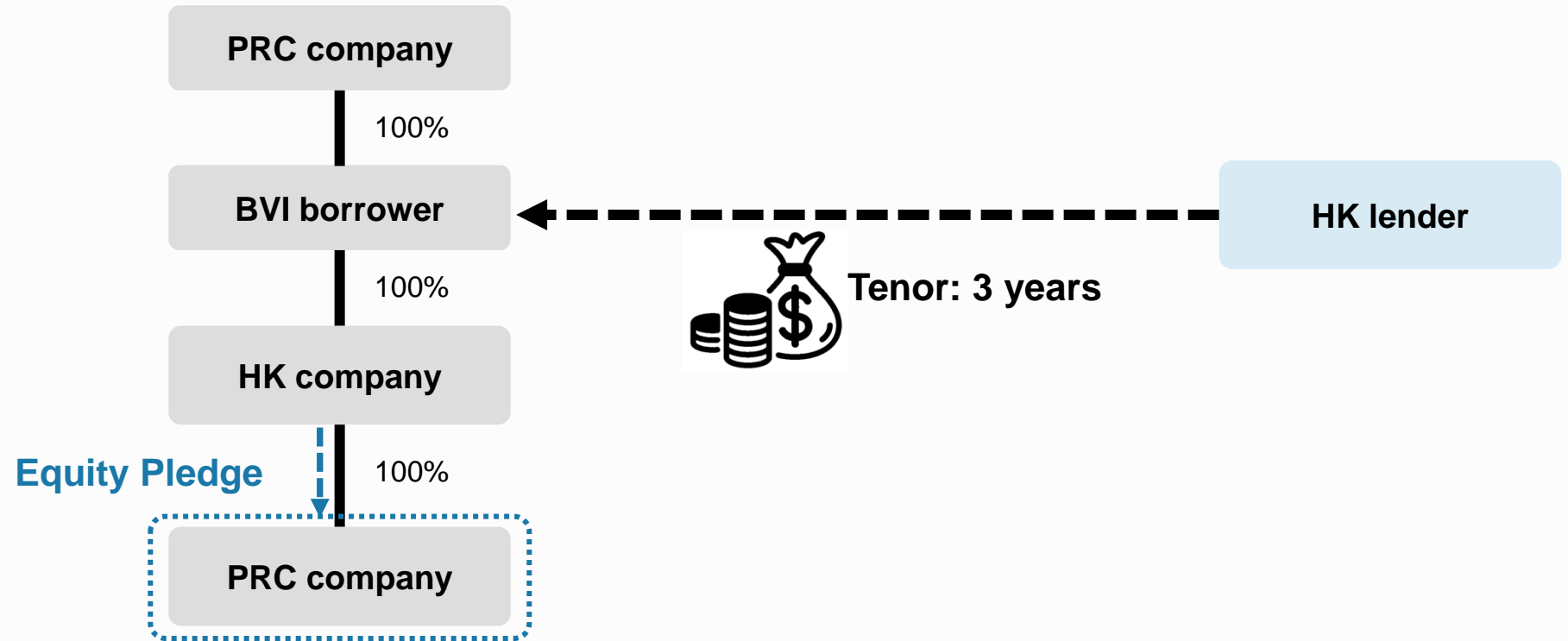
2. Is NDRC registration required?

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2. IS NDRC REGISTRATION REQUIRED?



3. IS NDRC REGISTRATION REQUIRED?



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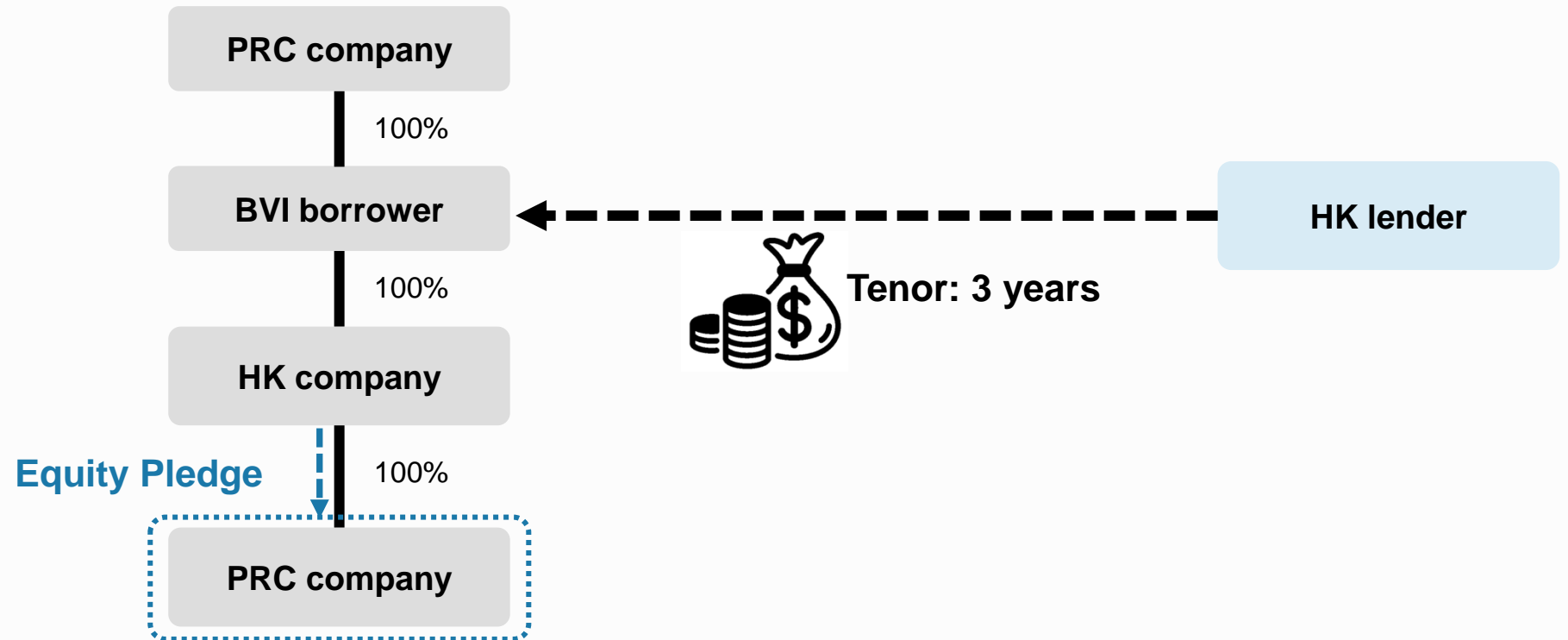
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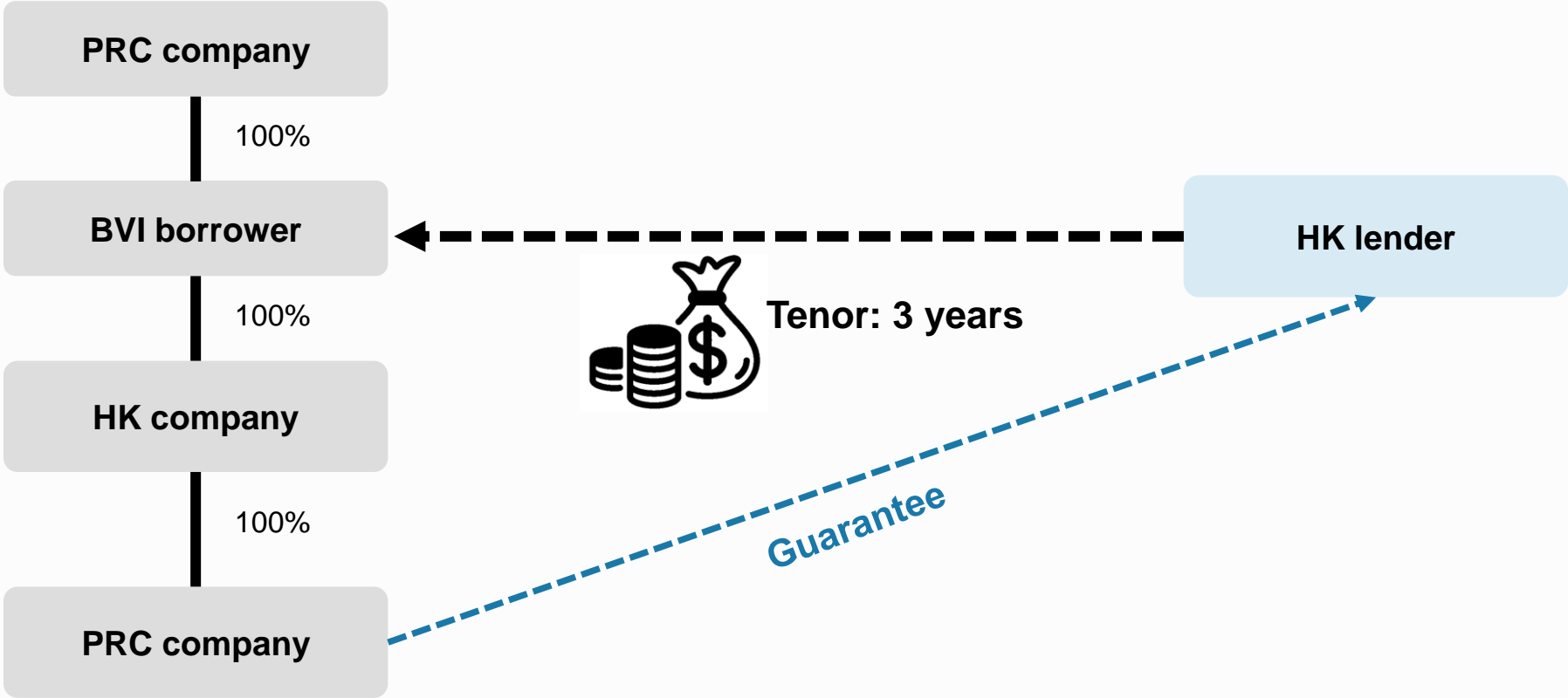
3. Is NDRC registration required?

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3. IS NDRC REGISTRATION REQUIRED?



4. IS SAFE REGISTRATION REQUIRED?



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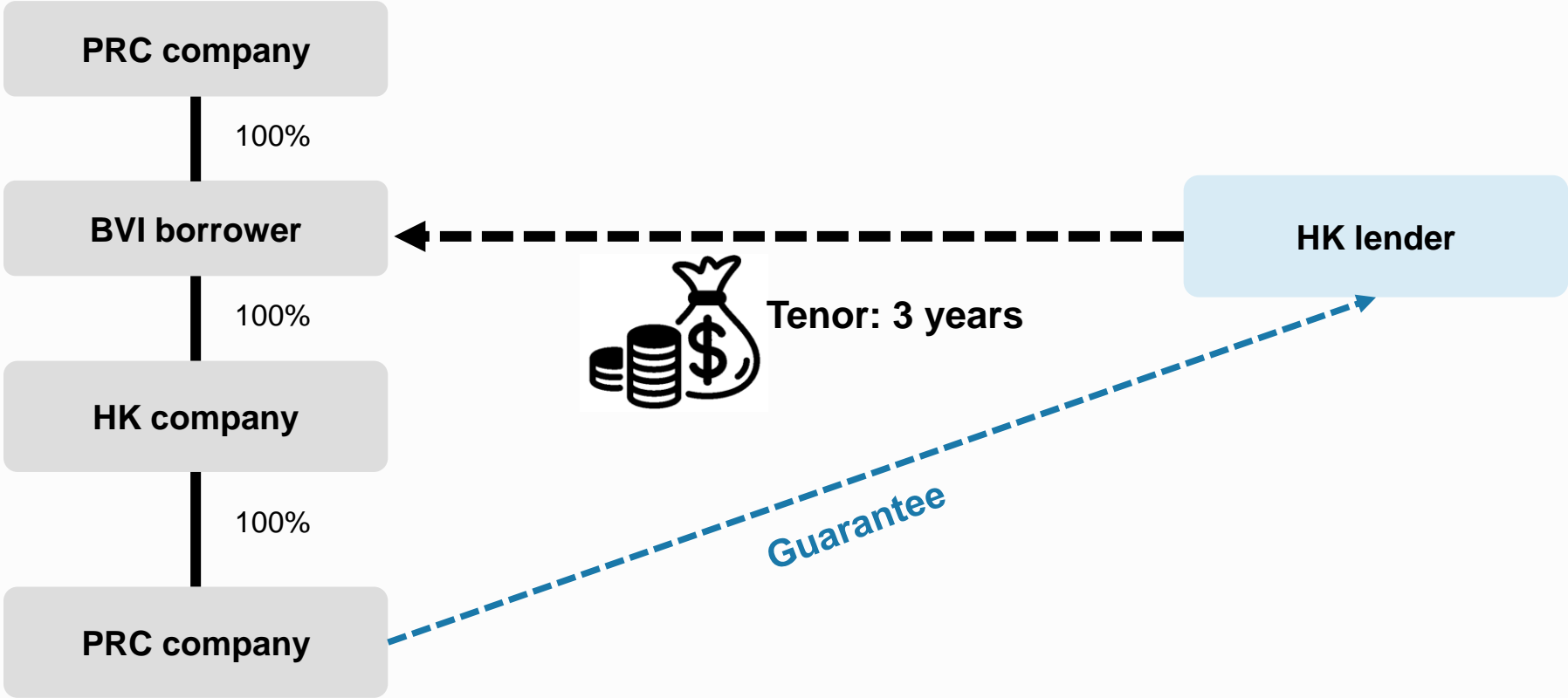
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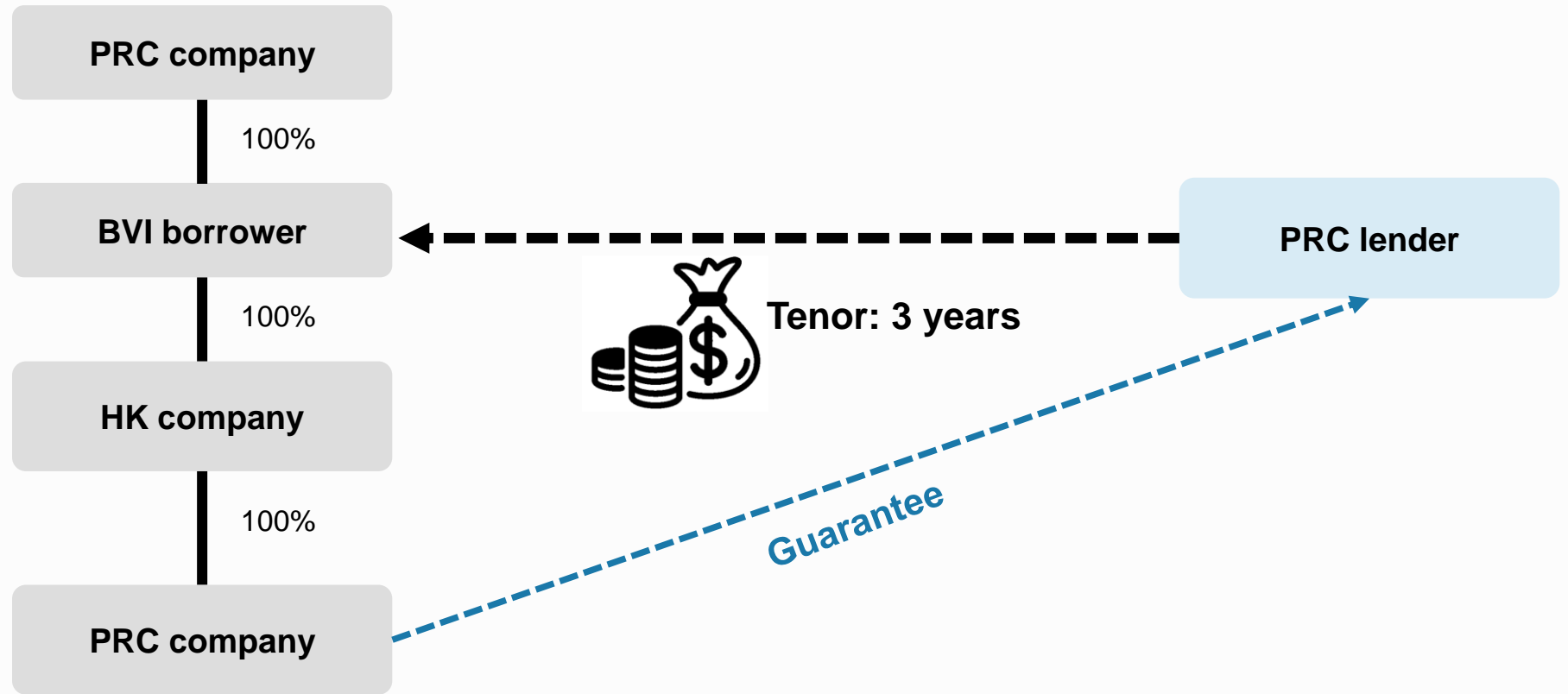
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4. IS SAFE REGISTRATION REQUIRED?



5. IS SAFE REGISTRATION REQUIRED?



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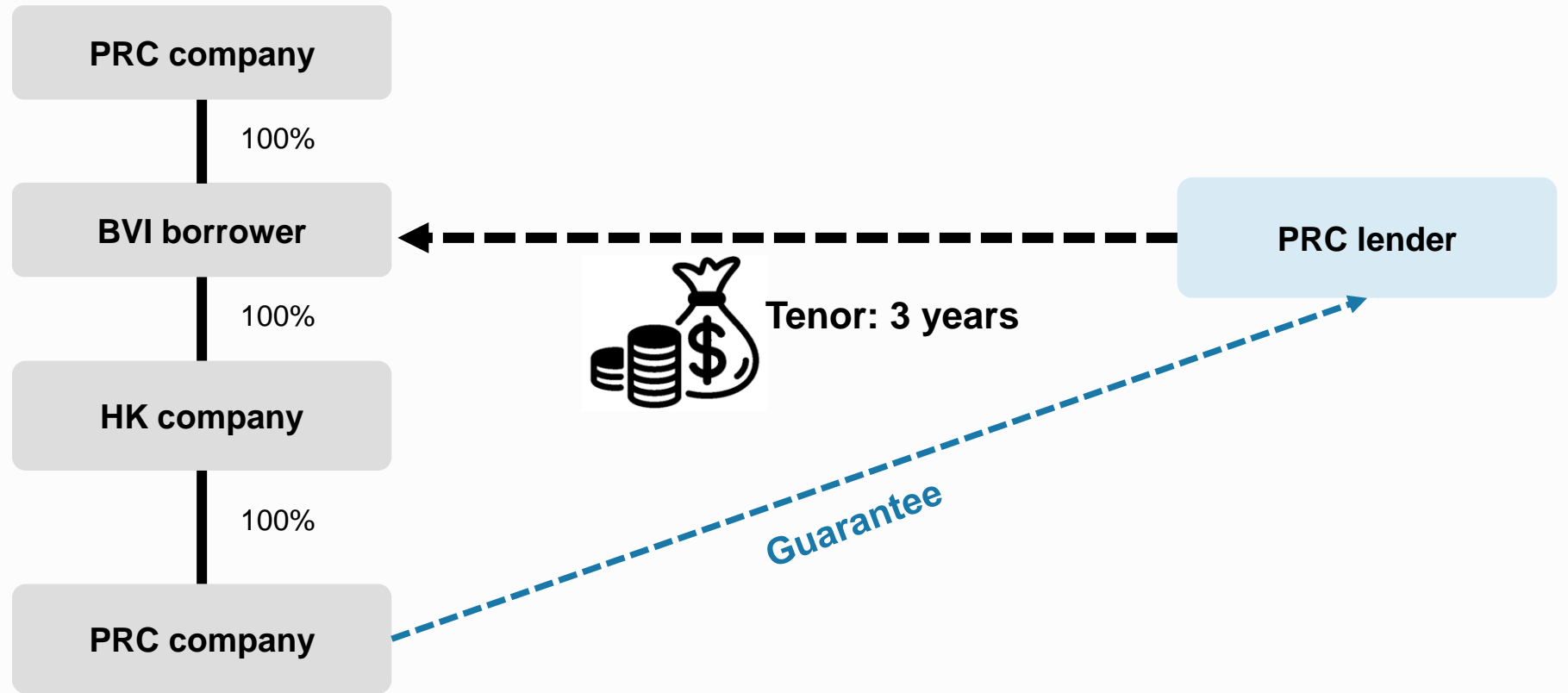
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5. Is SAFE registration required?

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5. IS SAFE REGISTRATION REQUIRED?





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