

China Opens Bank Card Clearing Market to Foreign Competition

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The long-term monopoly in China's bank card clearing market held by China UnionPay ("UnionPay") is set to end. According to a new decision published by the State Council of the People's Republic of China (the "State Council"), effective June 1, 2015, foreign companies such as Visa and MasterCard as well as other domestic companies will be able to obtain bank card clearing licenses. Qualified bank card clearing institutions will compete in China's new bank card clearing market under the regulation of the People's Bank of China (the "PBOC") and the China Banking Regulatory Commission (the "CBRC").

Background

Since its establishment in 2002, UnionPay has enjoyed a virtual monopoly as the sole bank card organization in China – it has been, until now, the only entity allowed to provide clearing services for yuan-denominated bank card payments. The State Council's new decision is set to open this market. This decision came in the wake of a ruling by the World Trade Organization (the "WTO") in July 2012, which found that China's policies regarding electronic payment providers discriminated against foreign card companies. Accordingly, the WTO requested China to open its bank card clearing market to give direct access to other companies (foreign or domestic) by August 2015. While the State Council announced in October 2014 the government's intention to implement the ruling, it was not until April 22, 2015 that the official decision, the Decision on Access Administration for Bank Card Clearing Institutions (the "**Decision on Access Administration**")¹, was promulgated, describing the qualifications and application procedures required for becoming a qualified bank card clearing institution ("**Qualified Bank Card Institution**") and for obtaining the requisite license.

Requirements for Applying for a Bank Card Clearing Business License

Under the Decision on Access Administration, a person desiring to operate bank card clearing services will need to both obtain a bank card clearing business license and be a Qualified Bank Card Institution.

Place of Incorporation. As a threshold matter, only PRC-incorporated companies are permitted to apply for a bank card clearing business license. Foreign companies therefore will need to establish a foreign-invested enterprise under the PRC Company Law to use as the applicant entity for the license.

Qualification Requirements. Additionally, the applicant entity must meet the following requirements in order to be considered a Qualified Bank Card Institution:

- (1) registered capital of no less than RMB1 billion;
- (2) major shareholder(s) (a single shareholder with more than 20% of its equity or multiple shareholders with more than 25% of its equity) must satisfy certain requirements, including: (i) having total assets of no less than RMB2 billion or net assets of no less than RMB500 million during the year prior to the

¹ Full text of this decision in Chinese available at http://www.gov.cn/zhengce/content/2015-04/22/content_9656.htm.

application; (ii) having engaged in the banking, settlement or clearing business for more than five consecutive years prior to the application and earned a profit for at least three of those years consecutively; and (iii) having had no material non-compliance in the most recent three years prior to the application. Less stringent criteria apply to other shareholders who only hold more than 10% of the applicant;

- (3) operates a standard bank card clearing system that meets national and industry standards;
- (4) has infrastructure and disaster recovery systems that meet certain requirements and are able to independently carry out the bank card clearing business within China;
- (5) its directors and senior management satisfy qualification requirements of the PBOC and CBRC; and
- (6) has implemented adequate policies and procedures with respect to matters such as internal control, risk management, IT security and anti-money laundering, among others.

Note that acquisition of Qualified Bank Card Institutions by a foreign company, while not prohibited, would be subject to the security review process for mergers and acquisitions by the Chinese Ministry of Commerce.

PBOC and CBRC Regulation

The PBOC and the CBRC are the key regulators for the new bank card clearing market and will be responsible for approving license applications and implementing detailed rules with respect to the Decision on Access Administration.

Application Procedures. The license application process consists of a preparatory phase and an opening phase. The preparatory phase begins with an initial application for preparatory work with the PBOC. The PBOC will then render a decision within 90 days in consultation with the CBRC. Once this approval is received, the applicant has up to one year to complete its preparatory work for its bank card clearing business (but it is not permitted to actually engage in this business during this period). Once preparation is complete, the applicant may file a second application with the PBOC for the opening of its business and to obtain the requisite license. The PBOC will again render a decision within 90 days in consultation with the CBRC. If a license is granted, the applicant must commence its bank card clearing business within six months.

Post-opening Events. Following receipt of the bank card clearing license, a Qualified Bank Card Clearing Institution must still obtain separate PBOC approval (in consultation with the CBRC) for any of the following actions: (1) establishing branches, (2) separation or mergers, (3) changing its legal or brand/trade name, registered capital, or shareholding structure, (4) changing its directors or senior management, (5) ceasing its business in part or whole, and (6) dissolution.

For foreign bank card clearing companies that only conduct a foreign-currency-denominated card clearing business in cross-border transactions, the above application procedures and requirements do not apply. However, these businesses will still be subject to regulation by the PBOC and the CBRC and will be required to make certain reports to the PBOC and the CBRC regarding their business operations and comply with applicable rules implemented by them.

End of UnionPay's Monopoly

The Decision on Access Administration officially opens China's domestic bank card clearing market to both foreign and domestic players by creating a regulatory framework for new entrants and establishing guidelines that attempt to level the competitive landscape. Indeed, UnionPay will also be required to go through the same regulatory procedures as these new market participants. In practice, however, one will need to wait until the detailed rules are implemented and enforced in order to assess the complete effect of the Decision on Access Administration on the bank card clearing business in China.

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