



CHINA PRACTICE • GLOBAL VISION

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● Top News

China's Central Bank Released New Rules to Regulate Payment Services of Non-financial Institutions

● Inside the News

The People's Bank of China (the "**Central Bank**") published the *Administrative Measures for Payment Services of Non-financial Institutions* (the "**Measures**") on its website on June 21, 2010. The Measures officially bring the third party payment institutions under the supervision and administration of the Central Bank, which are developing rapidly without supervision in recent years. The Measures will become effective on September 1, 2010.

The key issues of the Measures are as follows:

A non-financial institution shall apply for and obtain Payment Business Permit (the "Permit") to engage in payment business.

The Measures provide for the first time that a non-financial institution shall be approved by the Central Bank to obtain the Permit to provide payment services and thus qualifies as a payment institution which is subject to the supervision and administration of the Central Bank. No non-financial institution or individual may engage in payment business without the approval of the Central Bank whether explicitly or otherwise.

Pursuant to the Measures, the payment services of a non-financial institution include online payment, issuance and acceptance of prepaid cards, bank card acceptance and other payment services as specified by the Central Bank, among which online payment includes currency exchange and remittance, internet payment, payment by mobile phone, payment by landline telephone, and digital TV payment etc.

Any non-financial institutions which have been engaged in payment business before the implementation of the Measures shall apply for and obtain the Permit within one year from the date on which the Measures become effective. Those institutions that fail to obtain the Permit within the stipulated time limit are not allowed to continue conducting payment business.

A non-financial institution shall satisfy the requirements for application for the Permit.

The Measures provide the following specific requirements for a non-financial institution to apply for and obtain the Permit: a. the applicant shall be a limited liability company or a joint stock limited company duly incorporated under PRC laws within China and shall be a non-financial institution with legal person status; b. the applicant shall have minimum registered capital as specified under the Measures; c. the investor of the applicant shall satisfy certain requirements as provided in the Measures; d. the applicant shall have personnel, offices and facilities, organizations, internal management system and anti-money laundering measures etc.

Some influential internet payment companies in the current domestic market including Alipay, Tenpay have announced that they will apply for the Permit. It is still not clear how the Central Bank will operate in the approval procedures, and whether it is easy or difficult for the companies engaging in payment services to obtain the Permit. It is worth mentioning that the Measures specifically provide that the applicants for the Permit and senior management thereof shall have not been punished for committing any illegal criminal activities by abusing payment business or handling payment business for illegal criminal activities etc. for the latest three years. However, just one week before the promulgation of the Measures, the Ministry of Public Security issued a bulletin on its official website concerning the case of “Happy Paradise” Casino in Suzhou, Jiangsu. In this case, a senior management, whose surname was MEI, of 99Bill Information Service Corporation, a third party payment platform, was arrested for collaborating with a foreign gambling group and assisting it in transferring a sum of RMB 3 billion. 99Bill Information Service Corporation made profits of RMB 17 million in such activity. If the provisions of the Measures are strictly interpreted and implemented, 99Bill Information Service Corporation may not satisfy the foregoing application condition of the Permit. It is concerned by all parties what measures will be taken by the Central Bank in respect of 99Bill Information Service Corporation in the future, and whether 99Bill Information Service Corporation’s future application for the Permit will be denied due to failing to comply with the foregoing application condition.

◆ **Minimum registered capital**

The Measures provide that the minimum registered capital of an applicant who intends to engage in payment business on a national scale shall be RMB 100 million and the minimum registered capital of an applicant who intends to engage in payment business within a province (an autonomous region or a municipality) shall be RMB 30 million. The minimum registered capital

shall be paid-in monetary capital. Such minimum registered capital requirements may force a large number of existing payment companies which cannot meet the foregoing minimum registered capital requirement to exit from the payment market. It is estimated by the insiders that the companies which are able to satisfy the capital requirement for engaging in payment business on a national scale are limited to a few large companies such as Alipay, Yeepay and Tenpay and the current registered capital of half of the remaining more than 300 existing companies engaging in payment business may not reach RMB 30 million or RMB 100 million.

It is worth noticing that as online payment business is virtual, there is the probability that a payment institution which has been approved to conduct payment business within a province (an autonomous region or a municipality) may actually conduct online payment business by network on a national scale. It may be difficult for the Central Bank to discover and supervise such operation of payment business on a national scale in reality. The Central Bank needs to further specify the rules to differentiate between the payment institutions which engage in online payment business within a province and those on a national scale and approves, issues the Permit and conducts daily supervision and administration accordingly.

◆ **Measures regarding foreign-invested payment institutions**

The Measures state specifically that the Central Bank will separately stipulate the rules for the business scope, the qualifications of foreign investors and the contribution ratio of foreign-invested payment institutions and the Central Bank will report such rules to the State Council for approval. Such statement excludes foreign-invested payment companies from the companies which are qualified to apply for the Permit pursuant to the Measures. Thus, foreign-invested payment companies may have to wait for further rules to be issued by the Central Bank and adjust their equity interest structure accordingly. It is predicted by the insiders that existing foreign-invested payment companies such as Tencent, Alibaba, 99Bill may obtain the payment business license later than those domestic companies due to lack of specific rules for the time being.

◆ **Qualifications of major capital contributors**

The Measures also provide for the following specific qualifications and conditions of the major capital contributors of an applicant: the major capital contributors shall be duly incorporated limited liability companies or duly incorporated joint stock limited companies; shall have been providing information processing and support service for financial institutions or e-commerce activities for more than two consecutive years up to the application date; shall have made profits for more than two consecutive years; shall have not been punished for committing illegal criminal activities by abusing payment business or handling payment business for illegal criminal activities etc. for the latest three years. Pursuant to the Measures, the major capital contributors include

the capital contributors who have actual control over an applicant or which hold more than 10% equity interest of an applicant.

The administration of the Permit and the operation of payment institutions

The Permit shall be valid for five years as of the date of issuance. If a payment institution intends to continue engaging in payment business after the expiration of the Permit, it shall apply for renewal of the Permit within six months before the expiration. The period granted by the Central Bank for each renewal of the Permit shall be five years. A payment institution shall conduct business within the approved business scope as indicated in the Permit and shall not carry out business beyond the approved scope nor outsource its business. A payment institution shall not assign, lease or lend its Permit.

In addition, in respect of monetary capital transfer between payment institutions, the Measures require payment institutions to entrust banking financial institutions to handle such monetary capital transfer. Payment institutions are not allowed to mutually deposit monetary capital in other payment institutions or to entrust other payment institutions to handle such monetary capital transfer. Except otherwise specially permitted, payment institutions are not allowed to handle the monetary capital transfer between banking financial institutions.

The Measures require that a payment institution shall publicly disclose its charge items and standards of its payment business, formulate rules for payment business and measures for protecting clients' rights and interests and establish and improve risk management and internal control system in accordance with the requirements of prudent operation.

For the purpose of protecting clients' cash reserve and regulating the operation and management of clients' cash reserve by payment institutions, the Measures provide that the clients' cash reserve received by payment institutions does not constitute self-owned property of such payment institutions. Payment institutions may only transfer cash reserve as per payment instruction given by a client and shall not appropriate clients' cash reserve in any for. The proportion of the paid-in monetary capital of payment institutions to the average daily balance of clients' cash reserve shall not be lower than 10%. However, the Measures do not provide a specific definition for "clients' cash reserve".

It is reported that in the draft of the Measures, the Central Bank proposed that the clients' cash reserve shall only be used in bank deposit, stock up, and other financial investment products free of risks. However, it is hard in practice for third-party payment institutions to make profits if they do not engage in feasible financial investment and management for their cumulated capital and funds (including the clients' cash reserve received). Based on the foregoing fact, a large number of existing payment companies brought forward their opinions regarding such provision. Under

these circumstances, the Measures provide vague rules in this regard, which provide general protecting prohibitive provisions regarding clients' cash reserve and nevertheless withhold the definition of it for further specification and interpretation.

It is worth mentioning that the Measures require that a payment institution can only choose one commercial bank as the deposition-management bank of clients' cash reserve and can only open one deposit account for cash reserve especially with one branch of the commercial bank. The commercial bank and the Central Bank shall supervise the deposition-management condition and the using condition of clients' cash reserve of a payment institution. The foregoing provision may force a large number of payment institutions to adjust the deposition and management of their clients' cash reserve to comply with such provision as currently they may have several deposition-management bank accounts for clients' cash reserve.

Conclusion

The Measures enhance market access for payment industry and specify the operation rules and the administration system for the third party payment industry. Before the promulgation of the Measures, the external environment of most non-financial payment institutions is unstable. The Measures provide same competition environment for all third party payment institutions which is conducive to the fair competition of the industry. However, the promulgation of the Measures means that the regulatory authorities have commenced systemic administration of third party payment industry, especially the online payment industry. The emerging mobile phone payment industry is also included in the regulatory system beforehand. The emerging network finance based on full marketization is stopped. It is reported that the Central Bank will set off "Super Net-Banks", which is the second generation of payment system between the individual network bank systems of domestic banks. It is said that this may be one of the reasons for the Central Bank to promulgate the Measures to sort and regulate the existing domestic third party payment institutions. It is reported that the Central Bank will formulate detailed implementation rules and relevant operating measures in relation to the Measures. The implementation rules will provide specific rules regarding the qualifications and conditions of applicants, the requirements and contents of application documents and the obligations of relevant parties. The operating measures will focus on the operating rules or guidance for payment institutions to engage in different kinds of business, especially for the issuance and acceptance of prepaid cards and bank card acceptance. The Central Bank will also cooperate with relevant authorities such as the Ministry of Public Security to formulate ancillary measures and organize and conduct special examinations over the third party payment industry. We will pay close attention to and update you on any implementation rules and operating measures to be issued in the future.

Important Announcement

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