

Legal Overview of China's Regulation on Payment Service by Non-Financial Institutions

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This Presentation Will Discuss:

- I. Regulation on Payment Service: In General
- II. Regulation on Payment Service: Internet Payment
- III. Regulation on Payment Service: Prepaid Cards
- IV. Regulatory Trend



I. Regulation on Payment Service: In General

- Payment Service Subject to Regulation
 - Payment Service through network: the service of funds transfer between the payers and the payees through public networks or private networks, including payments through wire transfer, payments through the Internet, payments through cell phones, payments through landline telephones and payments through digital TV
 - Payment Service by prepaid cards: the service of issuing and collecting payments by use of prepaid cards, with four exceptions. Prepaid cards are cards that are issued for profits and in the form of passwords or physical cards with magnetic strips or electronic chips, and designated with prepaid value that can be used to purchase goods or services from third parties other than its issuers
 - Payment Service from POS: the service of collecting monetary funds for merchants in bankcard networks by using POS terminals
 - Other Payment Services: a catch-all clause to expand the payment service that will be subject to the regulation in the future



I. Regulation on Payment Service: In General

- One License: The Payment Business License
 - Issued by the People's Bank of China
 - With two levels: nationwide license and provincewide license
 - Nationwide license requires paid-in capital of RMB100 million and allows license holders to offer payment service in the whole country
 - Provincewide license requires paid-in capital of RMB30 million and allows license holders to offer payment service in the specific province applied for
 - A service provider is offering the service in multi provinces if either it opens branches in other provinces to offer the service, or its customers can use the service to conduct payment transactions that in more than province
 - Have a term of 5 years
- Banking based service
 - Payment service providers must engage bank's service for fund transfer to other payment service providers
 - Payment service providers cannot offer services to banks and other financial institutions



I. Regulation on Payment Service: In General

- Subject to the anti-money laundry and anti-terrorism requirements
- Payment Service providers are not allowed to outsource its payment business and are not allowed to lease, lend and assign its payment business license
- Foreign invested payment service provider
 - no legal basis to grant license yet



II. Regulation on Payment Service: Internet Payment

- A value added telecom business license is additionally required
- Customer Information
 - Must keep PII for each payment instruction from the customers
 - If a customer uses bank accounts, record the account number
 - If a customer uses non-bank accounts (e-wallet), record name and ID number of the customer
 - Must protect customer information and payment business information from loss, damage and illegal disclosure
 - Must keep customer information and payment business information for five years after liquidation of the payment service, or till the conclusion of any then ongoing governmental investigation



II. Regulation on Payment Service: Internet Payment

➤ Deposit Handling

- Deposit belongs to the customers. Any violation is subject to fund embezzlement penalties, administrative or criminal
- One payment service provider must put deposit from customers into special purpose accounts opened by the payment service provider with one commercial bank
- One payment service provider can only open one special purpose account at one branch of the commercial bank
- Branches of the payment service provider cannot open special purpose account in its own name
- Adjustment of depository funds in different special purpose accounts must be verified by the headquarter of the commercial bank
- 90 days average amount of the total deposit of a payment service provider should not be 10 times larger than the paid-in cash capital



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Subject to Payment Service Regulation
 - Can only be issued by payment business license holders and is regulated by the PBOC
 - Prepaid cards categories
 - Person identifiable prepaid cards: value limit for each card is RMB 5K, can report for loss, redeemable and perpetual in term
 - Non-person identifiable prepaid cards: value limit for each card is RMB 1K, cannot report for loss, non-redeemable and a 3-year term at least
 - Issuance:
 - Issuers must request and record person identifiable information, as well as the prepaid card numbers, if any individual or entity purchase prepaid cards with a value more than RMB 10K in one time purchase
 - Issuers can only accept bank wiring as the payment for prepaid cards, if, in one time purchase, an entity purchases prepaid cards with a value more than RMB 5k, or an individual purchases prepaid cards with a value more than RMB 50K; no cash or credit cards are allowed in such circumstances



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Subject to Payment Service Regulation
 - Issuers must sell prepaid cards in physical stores, and are not allowed to use agents to sell prepaid cards with par value more than RMB 200 each prepaid card
 - Processing System
 - Issuers and processors must maintain its prepaid cards core business processing system within the territory of China, and the prepaid cards core business processing system includes card issuing system, accounting and business servers, cards management system and customer information system. It is prohibited that issuers outsource the prepaid cards core business processing system
 - Channel
 - It is prohibited that issuers issue or sell as agent prepaid cards bearing bank card organization codes or logos, issuers issue co-branded prepaid cards with other payment service providers, or different issuers issue prepaid cards with the same logos
 - Issuers can use processors to facilitate the prepaid cards acceptance and uses, but issuers shall not allow processors to participate fund settlement to the merchants and customer



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Subject to Payment Service Regulation
 - In processing return and refund, Issuers must refund the amount to the original prepaid cards which are used for the purchase; issuers must ensure that, after refunds, the original prepaid cards for purchase shall not penetrate the value limits for such prepaid cards; if refunding to the original cards are not possible, issuers shall issue a prepaid card of the same type as the original prepaid cards used for the purchase to hold the refund
 - Use:
 - It is prohibited to cash-out the prepaid cards, it is prohibited to use one prepaid card to purchase or charge another prepaid cards issued by other issuers, and it is prohibited to wire fund from prepaid cards to bank accounts to electronic accounts maintained by other payment service providers
 - Prepaid cards are not allowed to pay online with very narrow exceptions
 - Charging:
 - Prepaid cards can be charged with cash (up to RMB 5K), bank wirings or electronic accounts (only if the issuers has the proper license to do Internet payment business). Prepaid cards charging can be done at the physical store of the issuers, but automated charging terminal and charging agents can be used when the charging amount to one prepaid card is RMB 200 or lower



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Subject to Payment Service Regulation
 - Redemption
 - Person identifiable cards can be redeemed within 3 months of purchase with personal ID
 - Non-person identifiable cards can only be redeemed when the card issuers stops the prepaid cards business if there is remaining amount in the card and if the prepaid cards has not expired
 - Redeemed funds shall be wired to the bank accounts originally used to purchase the cards; when such bank accounts are not available, to bank accounts owned by card purchasers
 - Cash can only be used if the redeemed amount is RMB 100 or less



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Not Subject to Payment Service Regulation
 - Prepaid card definition
 - Prepaid cards in the same or similar physical or virtual forms used in the retail, hospitality, dining and service areas and can only be accepted by the issuer, the company group which the issuer belongs to and the branded chainstore or franchising operation
 - Regulated by the Ministry of Commerce of the People's Republic of China
 - Subject to an after-the-fact filing regulation, filed within 30 days after the prepaid cards are issued
 - Same categories and associated limits



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Not Subject to Payment Service Regulation
 - Flexible channel
 - No Requirement on Processing System
 - Special Fund Management Requirement
 - Limit on Remaining Prepaid Cards Sales Revenue
 - » Not exceeding 40% of the business revenue from the main business last year, to issuers in retail, dining and hospitality industry;
 - » Not exceeding the business revenue from the main business last year, to issuers in the service industry;
 - » Not Exceeding 200% of the registered capital last year, to issuers newly established; and
 - » Not exceeding 30% of the business revenue from the group's business last year, to issuers belong to a company group



III. Regulation on Payment Service: Prepaid Cards

- Prepaid Cards Business Not Subject to Payment Service Regulation
 - Depository Requirement
 - No less than 20% of the remaining revenue of the prepaid card sales last quarter, to volume issuers (issuers with annual business revenue of RMB 5 million or more, or newly established issuers with registered capital of RMB 1 million or more);
 - No less than 30% of the remaining revenue of the prepaid card sales last quarter, to company group issuers; and
 - No less than 40% of the remaining revenue of the prepaid card sales last quarter, to branded chainstore or franchise issuers

This requirement can be satisfied by depositing the corresponding amount in a bank or purchasing insurances recognized by the authority at the corresponding amount.



IV. Regulatory Trend

- Improving Regulations by the authorities: bank card organization
- Closer Watch on Participation through VIE
- Enhanced Scrutiny on foreign cooperation

A recent PBOC circular to licensed payment service providers prohibits (1) cross-boarder payments cooperation between licensed payment service providers and foreign bank cards organizations on RMB bank accounts and RMB payment accounts; (2) issuing virtual cards for foreign bank card organizations by connecting payment account with account numbers or bank card numbers conforming to the standards of those foreign bank card organizations; and (3) settlement and liquidation in RMB of the acquisition business for foreign bank card holders' transaction in China.



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