北京市朝阳区东三环中路1号
环球金融中心东塔19层 邮编：100020

19th Floor, East Tower, World Financial Center
1 Dongsanhuan Zhonglu
Chaoyang District
100020 Beijing
P. R. China

T +86 10 5878 5588
F +86 10 5878 5566

www.kwm.com

Foreign Invested Banks: Opportunity or Challenge?

This article was written by Chen Yun(partner), Wang Rong(managing associate) and Liang Yixuan（associate）

On March 10, 2017, the General Office of the China Banking Regulatory Commission ("CBRC") promulgated the Circular on Carrying on Certain Businesses by Foreign Invested Banks (Yin Jian Ban Fa [2017] No.12, the "Circular"), clarifying certain business areas foreign invested banks may be allowed to engage in. In the previous regulatory regime, it is unclear whether foreign invested banks may undertake businesses in such areas. This Circular is intended to encourage foreign invested banks to explore the advantages of their global service networks and to provide comprehensive financial services to those Chinese enterprises in their endeavors to expand their businesses globally.

Major Highlights

1. Underwriting Service

The Circular explicitly allows locally incorporated foreign invested banks to underwrite treasury bonds in compliance with the law. No specific license from CBRC is required. As a result, locally incorporated foreign invested banks only need to make afterwards reporting to CBRC for conducting treasury bonds underwriting business, following the same regulatory requirements as for launching new banking products within the existing business scope of a foreign invested bank.

In fact, the Ministry of Finance has removed the licensing requirements for treasury bonds underwriting by financial institutions as underwriters as early as 2015 and only the bidding requirement remains unchanged. In current practice, however, only a few locally incorporated foreign invested banks with strong capabilities successfully participate in treasury bonds underwriting. We anticipate that there would be more involvement by locally incorporated foreign invested banks in the soon-to-come biddings for the underwriting group membership of treasury bonds, which is expected to take place at the end of 2017.

2. Custody Service

The Circular further provides that foreign invested banks (including locally incorporated foreign invested banks and PRC branches of foreign banks) may provide custody services in accordance with the law by complying with the relevant administrative licensing requirements of CBRC and other regulatory authorities. As for those custody services free of CBRC licensing requirements, foreign invested banks only need to make afterwards reporting to CBRC, following the same regulatory requirements as for launching new banking products within the existing business scope of a foreign invested bank.

As far as the administrative licensing requirements are concerned, certain licenses shall be obtained from the competent financial regulatory authorities, e.g., license shall be issued by the China Securities Regulatory Commission for the custody services to securities invested funds, and by the China Insurance Regulatory Commission for the custody services with regard to insurance funds. It seems to us that the Circular only works to reaffirm the equal treatment between domestic funded banks and foreign invested banks in respect of the provision of custody services, without releasing the current administrative licensing requirements.

In relation to the custody services that may be provided by PRC branches of foreign banks, under the current law and market practices, PRC branches of foreign banks may only provide the custody services with regard to the trust funds, the overseas financial management business on behalf of clients under the CBRC supervision, and the onshore securities investment by QFIIs. Other custody services are usually provided by locally incorporated foreign invested banks. This Circular does not work to expand the scope of the custody services that could be provided by PRC branches of foreign banks.

3. Consultancy Service

The Circular clarifies that foreign invested banks (including locally incorporated foreign invested banks and PRC branches of foreign banks) may provide the consultancy services (such as financial consultancy services) without a CBRC license, but shall comply with the law and the relevant regulatory licensing requirements. Foreign invested banks only need to make afterwards reporting to CBRC, following the same regulatory requirements as for launching new banking products within the existing business scope of a foreign invested bank.

It is noted that the above-mentioned consultancy services shall be limited to those relating to the banking businesses.

4. Cross-Border Cooperation

The Circular specifies that foreign invested banks (including locally incorporated foreign invested banks and PRC branches of foreign banks) may explore the business cooperation with their offshore parent bank groups in compliance with the law, to provide comprehensive financial services to Chinese enterprises in offshore bond issuance, listing, acquisition and financing by taking the advantages of their global service networks.

In practice, some foreign invested banks in China have been making efforts to assist their offshore parent bank groups in promoting the groups' offshore financial services. Nevertheless, PRC regulatory authorities take a conservative attitude towards such practices. In order to mitigate the unexpected compliance risks, foreign invested banks are always advised to adopt certain mitigation strategies, such as referring clients to offshore affiliates on a reverse-solicitation basis, and providing general brand promotion information without referring to any specific products or services.

Now, the Circular clearly provides that onshore foreign invested banks may cooperate with their offshore parent bank groups in areas of offshore bond issuance, listing, acquisition and financing in compliance with the PRC law. We understand that such assistance provided by foreign invested banks in China may be expanded to include the client referral, client relationship maintenance and the onshore assistance in respect of the financial services in relation to the offshore bond issuance, listing, acquisition and financing. Nonetheless, the Circular does not affirmatively open a door for the onshore foreign invested banks to provide assistance to offshore financial institutions in promoting, marketing and selling offshore financial products in the PRC. We tend to think that the above-mentioned cross-border cooperation by onshore foreign invested banks shall serve the ultimate purpose of promoting the global expansion of domestic enterprises, rather than resulting in the banks' carrying on businesses beyond their approved business scopes and their involving in offshore parent bank groups' illegal financial business activities within the territory of the PRC.

5. Investing in Onshore Banking Financial Institutions

The Circular provides that locally incorporated foreign invested banks may invest in onshore banking financial institutions upon the condition that the relevant risks can be controlled.

Based the above, it seems to us that locally incorporated foreign invested banks are now able to participate in a series of tryouts, which are good for risk segregation and business innovation, including setting up direct banks, asset management companies for investment business and credit card centers with independent legal status.

Previously, PRC laws and regulatory requirements are unclear on the capacity of locally incorporated foreign invested banks for setting up onshore banking financial institutions, and are vague on the specific set-up procedures. The Circular only provides a high level green light but is silent on the corresponding operational procedures, and the specific approval process. It is still unclear as to the nature of such a banking financial institution invested by onshore foreign invested banks – whether the regulatory requirements for a domestic financial institution or those for a foreign invested financial institution should apply. Further operational guidelines or guiding opinions from the regulatory authorities are expected.

Summary

The Circular marks a big breakthrough made by CBRC in expanding the business scope of onshore foreign invested banks in the trend of the regulatory convergence for both domestic funded banks and foreign invested banks. Foreign invested banks are encouraged to take the advantage of their global service connects and to enhance their profitability. However, while high level guidance has been given on certain points, there remains uncertainty as to the implementation of the Circular and absence of more detailed guidelines and guiding opinions expected to be provided by the regulatory authorities.

For further insights, please refer to how the Circular brought about significant opportunities for foreign invested banks with presence in China.