

ClientAlert

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Federal Reserve Approval of ICBC Acquisition Clears the Way for Chinese Bank Acquisitions of US Banks

On May 9, 2012, the Board of Governors of the Federal Reserve System ("Board") issued an order approving the first acquisition of a US bank by a bank organized under the laws of the People's Republic of China ("ICBC Order").¹ The ICBC Order approves the acquisition by Industrial and Commercial Bank of China ("ICBC"), considered the world's largest bank in terms of profit and market capitalization, of an 80 percent interest in The Bank of East Asia (USA) National Association ("BEA-USA"), a national bank with offices in New York and California and total consolidated assets of approximately US\$766 million. While the size of this acquisition is quite small, the ICBC Order is significant because it paves the way for Chinese banks to expand their presence in the US financial markets through the acquisition or establishment of US banking organizations.

The Board also approved the applications by Bank of China Limited ("BOC") to establish an additional branch in Chicago ("BOC Order")² and for Agricultural Bank of China Limited to establish its initial branch in the United States.³ It also eases the regulatory process for the establishment by Chinese banks of branches and agencies in the United States.

White & Case served as counsel to ICBC in respect of its acquisition of BEA-USA and the related application to the Board. White & Case also served as counsel to BOC with respect to its application for Board approval of a Chicago branch.

The ICBC Order is of significance as a result of the Board's finding that ICBC and other Chinese commercial banks are supervised by the China Banking Regulatory Commission ("CBRC"), the prudential supervisor of commercial and other banks in China, pursuant to comprehensive supervision and regulation on a consolidated basis. The Bank Holding Company Act of 1956, as amended ("BHC Act"), requires the Board to make such a finding in order to approve the application of a foreign banking organization to acquire control of a US banking organization.⁴ The Board considers this standard, often referred to as "comprehensive consolidated supervision" or "CCS," to be met only upon a finding by the Board that the foreign banking organization's home country supervisor has in place adequate policies and procedures to monitor and examine the worldwide activities



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1 A copy of the ICBC Order is available at <http://www.federalreserve.gov/newsevents/press/orders/order20120509a.pdf>.

2 A copy of the BOC Order is available at <http://www.federalreserve.gov/newsevents/press/orders/order20120509c.pdf>.

3 A copy of the Agricultural Bank of China order is available at <http://www.federalreserve.gov/newsevents/press/orders/order20120509b.pdf>.

4 BHC Act §3(c)(1)(B).

and operations of banks under its supervision, including their consolidated financial condition and results, dealings with affiliates and compliance with capital adequacy, asset risk exposure and other prudential standards.

Once the Board has made a CCS determination in respect of the home country supervision of a particular foreign banking organization, any banking organization in that country that is supervised on substantially the same basis as the bank that is the subject of such determination should be able to piggyback on such determination in its own application for Board approval. The CCS determination in respect of ICBC allows China's other internationally active commercial banks, which together have assets of approximately US\$11.5 trillion, to establish a direct presence in the US banking market either through an acquisition of a banking organization or the establishment of a branch or agency in the United States.⁵

Concurrently with the ICBC Order, the Board also approved the application of BOC, one of China's five largest commercial banks with the most expansive overseas branch network, to establish a Chicago branch office. The Board in the BOC Order applied its CCS determination to BOC. The Board did the same in considering Agricultural Bank of China's branch application.

The International Banking Act of 1978, as amended ("IBA"), applies the CCS standard to foreign banking organizations seeking approval to establish a branch or agency office in the United States.⁶ The IBA, however, allows for the Board to apply a limited exception to grant approval to those banking organizations supervised by a banking supervisor "actively working towards" establishing CCS. The Board, since 2007, has approved the application of Chinese banks, including ICBC, to establish branch offices in the United States under the "actively working towards" exception to CCS. The Board most recently approved an application of a Chinese bank under this limited exception on April 8, 2011, the same day that ICBC filed its application for approval of the BEA-USA acquisition.⁷ The Board noted in issuing that approval that the CBRC "at a minimum" was working to establish CCS and that the Board was working actively with Chinese authorities to understand the system for the consolidated supervision of Chinese commercial banks. The Board, as a result of that continuing review in connection with the applications of ICBC and BOC, was able to reach the favorable CCS determination set forth in the ICBC Order. The Board's conclusion is substantiated by a

recent report of the International Monetary Fund and the World Bank in connection with their program for the ongoing review of the implementation and adherence of national banking supervisory regimes to the capital adequacy and other supervisory standards established by the Basel Committee on Banking Supervision as part of the Basel Core Principles of Effective Banking Supervision.⁸ That report concludes that "the regulation and supervision of China's banking system has made impressive progress in the past few years, led by an activist, forward-looking regulator, China Banking Regulatory Commission (CBRC), with a clear safety and soundness mandate that has been supported by banks and by the State."

The ICBC Order is the first time the Board has made an initial CCS determination in respect of the banking supervisory regime of a foreign country in almost a decade. Since the adoption of the amendments to the BHC Act that established the CCS standard in 1991, the Board has made initial CCS determinations in respect of the supervisory regimes of the banking supervisors of 26 countries. China and the CBRC become the 27th. According to data released by the Board, as of December 31, 2011, foreign banking organizations from those countries controlled US banking organizations with total assets of more than US\$1.0 billion and maintained US branch and agency offices with total assets in excess of US\$2.0 billion.

The ICBC Order involved the approval of three bank holding company applications—ICBC and its two shareholders—Central Huijin Investment Ltd. ("Huijin"), and China Investment Corporation ("CIC"). All three organizations already were treated as if they were bank holding companies because of Chinese bank branches in the United States.⁹ As a result of the BEA-USA transaction, all three will become registered bank holding companies. The Board has found that both CIC and Huijin, which are not banking organizations, are subject to an appropriate type and level of CCS. In this regard, the Board, using the authority granted it under Section 4(c)(9) of the BHC Act, had previously granted both CIC and Huijin limited exceptions to certain provisions of the BHC Act, and those continue.

The Board's finding of CCS by the CBRC may also yield benefits to banks from countries for which the Board has yet to find CCS. These three Board approvals demonstrate the Board's willingness to find CCS being exercised in other countries.

5 The CBRC 2011 annual report lists 17 large and joint-stock commercial banks with total assets as of December 31, 2011 of US\$11.45 trillion of which ICBC represents US\$2.46 trillion.

6 12 U.S.C. §3105(d)(1).

7 Bank of Communications, 97 Fed. Res. Bul. __ (2011).

8 International Monetary Fund, People's Republic of China: Detailed Assessment Report: Basel Core Principles for Effective Banking Supervision (April 2012).

9 12 U.S.C. §3106(a).

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