

# AN ACCESS REGIME FOR THE VISA DEBIT SYSTEM

A CONSULTATION DOCUMENT – JULY 2005

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## CONTENTS

Introduction

Background

Options

Draft Access Regime

*Reserve Bank*

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ISBN 0-9752213-4-5 (ONLINE)

# An Access Regime for the Visa Debit System

## 1. Introduction

This Consultation Document proposes a draft Access Regime for the Visa Debit system. The regime would ensure that Specialist Credit Card Institutions are eligible to participate in the Visa Debit system.

The Consultation Document is structured as follows. Section 2 provides some relevant background, including a discussion of the difficulties with the current access arrangements for the Visa Debit system. Section 3 then discusses the options considered by the Bank, while Section 4 presents the access regime proposed by the Bank. This draft regime has been gazetted as required under the *Payment Systems (Regulation) Act 1998*.

Given that the proposed access regime is almost identical to the access regime for credit cards, the Bank is seeking submissions by 10 August. As is usual practice, all submissions will be placed on the Bank's website and an opportunity will be provided to those making submissions to discuss them with the Bank. Submissions should be addressed to:

Head of Payments Policy  
Reserve Bank of Australia  
GPO Box 3947  
Sydney NSW 2001  
or  
pysubmissions@rba.gov.au

## 2. Background

The Bank designated the Visa Debit system in February 2004 as a payment system under the *Payment Systems (Regulation) Act 1998*. This followed designation of the Visa credit card system in April 2000.

After extensive consultation, an access regime was imposed on the Visa credit card system in February 2004 with the aim of improving competition and efficiency in the provision of credit card payment services<sup>1</sup>. Amongst other things, the regime required that any organisation that is an authorised deposit-taking institution (ADI) be eligible to apply to participate in the Visa credit card scheme in Australia. It also required that Visa not discriminate between types of ADIs when assessing applications to participate in the credit card system. The same requirements were placed on the Bankcard and MasterCard schemes.

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<sup>1</sup> See Reserve Bank Media Release 2004-02 issued on 23 February 2004.

This access regime followed the creation in 2003 by the Australian Prudential Regulation Authority (APRA) of a special type of ADI known as a Specialist Credit Card Institution (SCCI). SCCIs are ADIs under the *Banking Act 1959* but may only perform those activities associated with credit card issuing and/or acquiring; APRA has indicated that it has no objection to SCCIs also undertaking debit card acquiring. While SCCIs are not permitted to take deposits, they are supervised by APRA and required to meet prudential requirements consistent with the risks they incur. Details of these requirements can be found at [www.apra.gov.au/ADI](http://www.apra.gov.au/ADI).

Prior to the creation of this special class of ADIs and the Bank's access regime coming into force, Visa's rules had the effect of limiting membership in Australia to those institutions that could accept demand deposits. Under this new, more liberal, access regime SCCIs are able to become members of the Visa credit card system even though they do not accept deposits.

At the time that the credit card access regime was being developed, the Bank expected that an SCCI joining the Visa credit card system with the intention of acquiring credit card transactions would also be able to acquire Visa Debit transactions. Visa has indicated, however, that since the access regime strictly applies only to the credit card system, its rules may preclude an SCCI from acquiring debit card transactions given that an SCCI cannot accept deposits.

This same complication does not arise with respect to MasterCard, as all ADIs – regardless of whether or not they accept demand deposits – are eligible to join the MasterCard system.

In the Bank's opinion the current arrangements in the Visa system are not in the public interest. If an SCCI is not able to acquire both Visa credit and debit card transactions it may find it difficult to provide commercially competitive acquiring services. Indeed, given that Visa debit and credit cards are currently indistinguishable from one another, an inability to acquire Visa Debit transactions may effectively prevent an SCCI from acquiring Visa credit transactions. To the extent that restrictions in Visa's international membership rules continue to stand in the way of competition in credit and debit card acquiring in Australia, the Bank is of the view that further liberalisation of access arrangements is required.

### **3. Options**

The Bank has considered two broad options.

The first option is to request that Visa review and modify its rules and the second is to impose an Access Regime on the Visa Debit system, mirroring that imposed on the Visa credit card system.

This first option has the advantage that it may avoid the need for further regulation. The main disadvantage is that it could take an extended period of time and would have an uncertain outcome. Given Visa's decision-making structure, any rewriting of its rules would be likely to involve not just its Australian operations but also its Asia-Pacific and International boards.

In the Bank's opinion the second option is more likely to promote competition in card acquiring, and to do so in a timely fashion. While the Bank prefers to avoid regulation where possible, it is of the view that the public interest would be best served by timely resolution of this issue. If SCCIs are able to acquire Visa credit card transactions, but not Visa Debit transactions,

they are likely to find it difficult to compete with other institutions in the business of credit card acquiring. Without an access regime, SCCIs may be denied membership of Visa.

#### **4. Draft Access Regime**

The draft Access Regime that the Reserve Bank proposes to impose on the Visa Debit system under Section 12 of the *Payment Systems (Regulation) Act 1998* is set out below. It is similar to that imposed on the Visa credit card system in February 2004 except that it:

- refers to the Visa Debit system, rather than the credit card system;
- refers to ‘debit cards’ and ‘debit card’ issuing and acquiring, rather than ‘credit cards’ and ‘credit card’ issuing and acquiring; and
- will come into effect on 1 September 2005, rather than on 23 February 2004 as was the case for credit cards.

# Draft Access Regime for the Visa Debit System

## Objective

*The objective of this Access Regime is to promote efficiency and competition in the Australian payments system, having regard to:*

- (i) the interests of current participants;*
- (ii) the interests of people who, in the future, may want access to the system;*
- (iii) the public interest; and*
- (iv) the financial stability of the Visa Debit system.*

## Application

1. This Access Regime is imposed under Section 12 of the *Payment Systems (Regulation) Act 1998*.
2. This Access Regime applies to the debit card system operated within Australia known as the Visa Debit system designated on 23 February 2004 by the Reserve Bank of Australia under Section 11 of the *Payment Systems (Regulation) Act 1998*, and referred to as follows as ‘the Scheme’.
3. In this Access Regime:
  - an ‘acquirer’ is a participant in the Scheme in Australia that provides services to a merchant to allow the merchant to accept a debit card;
  - an acquirer is a ‘self acquirer’ if it acquires transactions for which it or a related body corporate (as that term is defined in the *Corporations Act 2001*) is the merchant;
  - ‘authorised deposit-taking institution’ has the same meaning given to that term in Section 5(1) of the *Banking Act 1959*;
  - ‘debit card’ means a card issued under the rules of the Scheme that can be used for purchasing goods or services, or any other article issued under the rules of the Scheme that can be used for purchasing goods or services;
  - an ‘issuer’ is a participant in the Scheme in Australia that issues debit cards to the issuer’s customers;
  - ‘merchant’ means a merchant in Australia that accepts a debit card for payment for goods or services;
  - ‘rules of the Scheme’ mean the constitution, rules, by-laws, procedures and instruments of the Scheme as applied in Australia, and any other arrangement relating to the Scheme by which participants in the Scheme in Australia consider themselves bound;

a ‘specialist credit card institution’ is an authorised deposit-taking institution that engages in, or proposes to engage in, debit card issuing, debit card acquiring or both (within the meaning of Regulation 4 of the *Banking Regulations 1966*) and does not otherwise conduct banking business within the meaning of Section 5 of the *Banking Act 1959*;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Access Regime.

4. Each participant in the Scheme must do all things necessary on its part to ensure compliance with this Access Regime.
5. If any part of this Access Regime is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Access Regime.
6. This Access Regime is to be interpreted:
  - in accordance with its objective; and
  - by looking beyond form to substance.
7. This Access Regime comes into force on 1 September 2005.

### **Eligibility for participation**

8. Any person who is an authorised deposit-taking institution is eligible to apply to participate in the Scheme in Australia. Subject to paragraph 9, any criteria may be applied by the Scheme in assessing applications for participation in the Scheme in Australia.
9. Neither the rules of the Scheme nor any participant in the Scheme shall discriminate between specialist credit card institutions as a class and other authorised deposit-taking institutions as a class in relation to any of the criteria applied in assessing applications for participation or in relation to the rights and obligations of participants in the Scheme in Australia.

### **Terms of participation**

10. Neither the rules of the Scheme nor any participant in the Scheme shall prevent a participant in the Scheme in Australia from being:
  - (i) an issuer only; or
  - (ii) an acquirer only; or
  - (iii) both an issuer and an acquirer.
11. Neither the rules of the Scheme nor any participant in the Scheme shall impose on a participant in the Scheme in Australia any fee, charge, loading or any form of penalty as a consequence of, or which is related in any way to, that participant’s activity as an acquirer relative to its activity as an issuer in the Scheme.
12. Neither the rules of the Scheme nor any participant in the Scheme shall prohibit a participant in the Scheme in Australia from being a self acquirer if the participant

can reasonably establish in accordance with the rules of the Scheme that, as a self acquirer, it has the capacity to meet the obligations of an acquirer.

### **Transparency**

13. The administrator of the Scheme or a representative of the participants in the Scheme in Australia must publish the criteria applied in assessing applications for participation in the Scheme in Australia on the Scheme's website, or make such criteria generally available through other means within three months after this Access Regime comes into force.
14. The administrator of the Scheme must provide to a person that has applied to participate in the Scheme in Australia an estimate of the time it will take to assess the application before a decision on the application will be made. The administrator must assess applications in a timely manner without undue delay.
15. The administrator of the Scheme must provide to a person that has applied to participate in the Scheme in Australia reasons in writing if the application is rejected, within one month after such rejection.