

Technological Innovation within the Legal Sector: An Update on the Regulatory Framework for Electronic Payment Services in Iraq

Ali Al Dabbagh - Senior Associate - Litigation

a.aldabbagh@tamimi.com - Baghdad

Rawan Aljuboori

R.Aljuboori@tamimi.com - Baghdad

Introduction

The COVID-19 pandemic has catalysed the introduction of technology in business and the global economy. Recent technological innovations have opened up the door for digital payment methods which are easy, convenient, contactless and safe, resulting in the introduction of a new regulatory landscape governing e-transactions. In Iraq, electronic payment services are regulated by The Electronic Payment Regulation No. (3) of 2014 (the “**E-Payment Regulation**”), this Article will discuss (i) the available types of licenses in Iraq pursuant to the E-Payment Regulation (ii) the licensing requirements for electronic payment service provider (iii) the relationship with foreign offshore electronic payment service providers, and (iv) the main operational requirements for conducting electronic payment services in Iraq.

Types of available licenses for electronic payment activities

Under the E-Payment Regulation a payment system is defined as “*a group of instruments, arrangements, and rules concerning the transfer of money among subscribers to the system, provided that money is transferred by using payment system infrastructures.*” In Iraq, there are several types of electronic payment activities, each requiring a specific type of license issued by the Central Bank of Iraq (the “**CBOI**”). The current available electronic payment licenses include:

1. licenses to act as an issuer of electronic payment tools;
2. licenses to operate Points of Sale (POS) and interact with consumers to facilitate cash deposits and withdrawals; and,
3. licenses to act as a processor between issuers of electronic payment tools, merchants, and Points of Sale.

In addition to the abovementioned licenses, the CBOI has issued the Mobile Payment Instructions of 2020 (the “**Mobile Payment Instruction**”), which regulates the licensing of mobile phones payment services providers, essentially this type of license enables the licensee to conduct all of the activities cited above in points i-iii through a more restricted set of products approved by the CBOI on a case-by-case basis.

It is worth noting that the licenses issued by the CBOI are strictly interpreted. Should the service provider wish to offer any new products or services that are not provided for under the license, they must amend the current license to accommodate for such services or products accordingly.

Licensing requirements for electronic payment providers

An application for electronic payment services must include evidence of the following:

1. The applicant must demonstrate the necessary technical and operational skills to establish and maintain a functioning payment system in accordance with the standards set by the CBOI and the ability to comply with the applicable audit controls and risk management requirements;
2. The applicant must demonstrate the ability to secure the consumer's electronic operations and guarantee financial stability;
3. The applicant also needs to provide a feasibility study, as well as, acquire a fixed business location inside of Iraq;
4. Documents that contain detailed descriptions of the electronic payment activities, services, and products;
5. Details about the applicant's marketing strategies, information, and cyber security arrangements;
6. Approval from any and all relevant authorities confirming that there are no security restraints against granting an electronic payment services license; and,
7. A detailed risk assessment report, exit plan, business plan including a list of targeted customers, and information about the source of funds of the applicant.

The relationship with foreign offshore electronic payment providers

In 2021, the CBOI published new instructions regulating the relationship of Iraqi licensed electronic payment providers with their foreign offshore counterparts (the "**2021 Instructions**"). The 2021 Instructions specify that certain licensed entities can act as primary or secondary agents of foreign branded electronic payment solutions after obtaining approval from the CBOI.

Iraqi electronic payment providers licensed to act as (i) processors of transactions between issuers of electronic payment tools (ii) merchants (iii) Points of Sale, and (iv) mobile phones payment services providers can become primary agents. Primary agents can then in turn appoint secondary agents to offer foreign branded payment services to consumers subject to the approval of the CBOI and the foreign electronic payment provider. The 2021 Instructions place a number of compliance obligations on the primary agent of the foreign branded electronic payment services provider and requires such primary agents to use the contracts and agreements approved by the CBOI with all of its secondary agents, whereby, the secondary agent is regarded as subordinate to the primary agent.

The main operational requirements for conducting electronic payment services in Iraq

It is worth noting that there are certain continuing obligations on the payment service provider after obtaining the license. The electronic payment providers must adhere to special audit requirements and submit periodical disclosure reports to the CBOI, in addition to, complying with the minimum data retention requirements and anti-money laundering laws and regulations. Operational requirements include

consumer protection considerations, continuity of service guarantees and electronic systems that are compatible and capable of interconnecting with the existing Iraqi banking system infrastructure.

Conclusion

In conclusion, the CBOI has recently amended its legal framework governing the electronic payment services in Iraq by issuing the 2021 Instructions and the Mobile Payment Instructions. Such an overhaul has codified already existing practices and provided for much needed clarity within the E-Payment Regulation. Although the E-Payment Regulation will remain as the main governing body for electronic transactions, it is likely that such legislative framework will be constantly amended by the CBOI as a result of technological innovation and modernised business practices. Under the current regime, the CBOI classifies electronic payment service providers into three categories: (i) issuers of electronic payment tools (ii) collectors operating points of sale, and (iii) processors running the infrastructure needed to offer the service, whereby the licenses for service providers are issued pursuant to the abovementioned activities. Additionally, the CBOI also provides the option of a license for mobile phones payment services providers allowing such providers to have their own infrastructure and points of sale without the need for the earlier distinctions. Further, Iraqi licensed electronic payment providers can offer foreign branded payment services as primary and secondary agents.

Al Tamimi & Company's Banking and Finance team regularly advises on financial agreements and transactions. For further information, please contact [Ali AI Dabbagh](mailto:Ali.AI.Dabbagh@tamimi.com) (A.AIDabbagh@tamimi.com).