

MEMORANDUM

To: Jeffrey Levine, (USAID/Iraq), Alternate Contracting Officer's Representative

CC: Greg Maassen, Chief of Party, Financial Development Project
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From: Florence Faye, Program Manager, AECOM International Development

Date: 16 October 2013

Re: **Deliverable Approval: 11.1 "Review and Modify Draft Regulations/Instructions Based on Input from CBI Legal Department and Expert Payment System lawyers, and CBI Payments Department."**

In accordance with USAID/Iraq Financial Development Project (FDP) Contract Number 267-C-00-10-00005-00, clause F.6.B, Reporting and Deliverables Matrices; AECOM International Development is pleased to submit Deliverable 11.1: "Review and modify draft regulations/instructions based on input from CBI legal department and expert Payments System lawyers, and CBI Payments Department" for COR review and approval.

Background

A retail payment system is an automated system which provides a conduit for low-value retail payments initiated by consumers and businesses to be transmitted between financial institutions; merchants and financial institutions; retail device Point of Sale (PoS) Terminals, Automated Teller Machines (ATMs) and the supporting financial institutions (acquirers); and financial institutions and the internet.

FDP, along with its partner, the Central Bank of Iraq, endeavor to create a national Retail Payment System Infrastructure (RPSI) in order to reduce the country's dependence on cash, allow for the efficient use of ATM machines, Point-of-Sale contacts by merchants, and enable mobile payments as well as mobile banking. A national RPSI will facilitate the connection between all Iraqi banks, ATM machines, and credit card point-of-sale devices to a common interoperable platform, provide connectivity to Global Networks like MasterCard and Visa, and enable citizens of Iraq with the capability and security of effecting mobile payments and accessing mobile banking services.

In addition to procuring a national retail payment system, FDP is working the CBI to develop a legal code defining the roles, responsibilities and governance structure of the retail payment system.

Deliverable 11.1

In order to achieve this shared goal, FDP, in partnership with the Central Bank of Iraq (CBI), has developed legal instructions for the CBI to be able to govern and monitor retail and mobile payments. These include: Payment Services Instructions, Payment Service Provider Instructions, Banking Code of Practice, and Collateral Instructions; and are described in detail below.

Each of these documents went through a rigorous process which included: providing international technical assistance to the Central Bank of Iraq to develop these documents, work with the Central Bank to run them through the appropriate government bodies such as the Shura Council, and incorporating all comments for the final versions that were approved by the Central Bank of Iraq.

Payment Services Instructions

Payment Services Instructions set forth the general principles and policies that govern the establishment of the Retail Payment System Infrastructure and the activities and duties of organizations that provide payment services to customers or payment processing services.

The Payment Services Instructions cover the following: inter-bank settlement of transactions; authorization, supervision, examination and enforcement of payment service providers; interoperability and open access; technical compliance of payment systems; and security of customer funds.

The Instructions define the role of the proposed Steering Committee for Payments Management (SCPM) which would be chaired by the CBI and include members from banking and stakeholder groups to be authorized by the CBI to oversee aspects of payment system governance and assist the CBI in setting the direction for payment systems development in Iraq.

The Instructions also establish CBI's role as the governing body for all payment systems and that CBI will oversee and promote payment systems based on the Bank for International Settlement (BIS) Core Principles. With regards to settlement of disputes, the Instructions define the role of the Financial Services Tribunal as external arbiter to whom PSPs, Users and the SCPM can refer in the event of dispute and in the interests of clarification and transparency.

Payment Service Provider Instructions

Payment Service Provider Instructions set forth the general principles and policies that govern the establishment of the Retail Payment System Infrastructure and set out the rules by which PSPs and Agents are authorized, registered and supervised. Conditions addressed include capital requirements, PSP accounting and audit procedures, as well as contract requirements, fees, dispute resolution, liabilities, and refunds between PSPs and end Users.

The Instructions establish the CBI as the Registration Authority which would maintain a register of authorized persons/entities including Payment Service Provider, operators of payment systems, who are regarded as agents of Payment Service Providers, and agents of authorized Payment Service Providers providing services to customers.

Banking Code of Practice

Included as part of the Payment Service Provider Instruction, this addresses the relationships between PSPs and their customers, and is a voluntary code which sets standards of good banking practices for financial institutions to follow when they are dealing with personal customers in Iraq. The code is written as a public document for the banks to be able to state their respective policies towards customers, rather than a banking regulation

The code applies to: current accounts, including mobile banking accounts; savings and deposit accounts; interest rates; charges; payment services, including foreign-exchange services; cards and PINs; mobile payment services; and loans and overdrafts.

Collateral Instructions

These provide an underpinning for the use of pledged assets in supporting settlement in the RTGS. Participants will be expected to underwrite the settlement of their own RPSI positions. Positions should thus always be collateralized either by cash in RTGS or securities pledged in support of the settlement and capable of immediate liquidation. Settlement of obligations in RTGS requires that funds are available in the RTGS settlement account of the debited Participant. Provision of collateral to ensures the availability of such funds including cash reserves and/or the pledging of assets such as securities or foreign exchange reserves. Such collateral must be available for instant execution and the rules regarding such collateralization will be separately promulgated by CBI.

Note: This is a year three deliverable. The submission date is later than originally indicated in Contract Modification 5 as the modification was approved in July 25, 2013.

Attachments:

Attachment A: Payment Services Regulation 130727 (English)

Attachment B: Payment Services Instructions (Draft) (English)

Attachment C: Governor's Approval on Instructions (Arabic and English)

Attachment D: Financial Collateral 130911 (English)

USAID/IRAQ FINANCIAL DEVELOPMENT PROJECT, CONTRACT NO. 267-C-00-10-00005-00

USAID/Iraq Financial Development Project Deliverables		
	Deliverable	Status
1.3.1	A prioritized reform agenda for financial sector reforms developed by an association	Submitted and Approved
1.2.1	Training plan targeted to build the advocacy capacity of the industry association (s) developed	Submitted and Approved
1.2.2	Communications strategy for association(s) developed	Submitted and Approved
1.4.1	Association Linkages to University programs established	Submitted and Approved
2.1.1	Public-private Steering Committee for design of bank training institute and credit bureau established	Submitted and Approved
2.1.2	GOI commitment confirmed in writing in a manner acceptable to both CBI and USAID	Submitted and Approved
2.1.3	Iraqi driven credit bureau business plan and model developed	Submitted and Approved
2.2.1	Business plan and model for bank training institute	Submitted and Approved
2.3.1	Achievement of Phase 1 of the retail payment system	Submitted and Approved
3.1.1	Gap analysis of at least two existing business and finance University or College programs conducted	Submitted and Approved
3.3.1	Mechanisms for cooperation between the private sector and at least two existing business and finance University or Colleges in place	Submitted and Approved
2.1.4	Legal and regulatory requirements for credit bureau identified and recommendations for needed changes drafted	Submitted and Approved
3.1.3	At least two additional universities or colleges added as counterparts	Submitted and Approved
2.1.6	Sources of data and data requirements for launch of credit bureau resolved	Submitted and Approved
2.2.3	Training of Trainers and curriculum development underway	Submitted and Approved
2.2.5	Bank Training Institute expands number of courses offered	Submitted and Approved
1.3.2	GOI Champions for association reform agenda identified and engaged	Submitted and Pending Approval
3.3.2	Initiatives and Pilots that support student opportunity, such as scholarship and internship programs, career development centers, and entrepreneurship centers	Submitted and Approved
9.2	Banking Studies Center (BSC) branch is established in Basrah and/or Erbil	Submitted and Approved
9.3	Training curriculum approved by BSC steering committee that includes the private sector stakeholders.	Submitted and Approved
10.2	A complete legal and regulatory framework for establishing a credit bureau is submitted for approval to the CBI.	Submitted and Approved
10.3	Develop the necessary business requirement (Technical and Administrative) specifications for a Request for Proposal that is issued by the CBI.	Submitted and Approved
11.2	Prepare with the CBI a complete Request for Proposals that will be issued to procure a new Retail Payment System that ensures interoperability	Submitted and Approved
11.4	Assist with the selection of a vendor for the CBI to procure a comprehensive retail payments system that incorporates a solution for National Switch model.	Submitted and Approved
9.1	Banking Studies Center (BSC) established in Baghdad	Submitted and Pending Approval
10.1	Evaluate the existing Credit Registry in CBI and the banks' (state-owned or private) current systems to provide recommendations (Gaps Analysis) for CBI to implement a functioning CIB.	Submitted and Pending Approval
11.1	Review and modify draft regulations/instructions based on input from CBI legal department and expert Payments System lawyers, and CBI Payments Department	Submitted and Pending Approval

Central Bank of Iraq (CBI)

No. () of 2013

Iraq Electronic Payment Services Regulation

Pursuant to Paragraph (Third) of Article (80) of the Constitution, Article (39) of the CBI Law no. 56 of 2004 as amended, Article 104 of the Banking Law no. 94 of 2004 and Article 27 of the Electronic Signature and Electronic Transactions Law no. 78 of 2012, the following regulation has been issued:

No. () of 2013

Iraq Electronic Payment Services Regulation

Chapter One

Definitions

Article 1

For purposes of this regulation, the following terms shall have the meanings indicated against each of them:

First: Payment Service Provider (financial institution): the person licensed or authorized by the Central Bank of Iraq to provide electronic payment services.

Second: Payment Service Agent: a person who acts on behalf of a CBI-authorized Payment Service Provider to provide and facilitate transactions.

Third: Bank: Central Bank of Iraq

Fourth: Payment: Electronic Payment

Fifth: Payment Systems Infrastructure: systems and inter-connections (and all relevant devices and programs and others), which make it possible to activate payment, clearing, and settlement through electronic means. The National Switch and the mobile payment interoperability platform shall be a basic part of it.

Sixth: Banking Practices Rules: a set of banking standards and practices that must be followed by the financial institutions when dealing with clients.

Seventh: Core Principles: the 2001 principles issued by the Bank for International Settlements for the systemically important payment systems standards.

Eighth: Know Your Customer (KYC): proper measures taken to verify the customer's identity and types of business or transactions likely to be conducted by him.

Ninth: Payment Tools: one method of a series of activities necessary for the execution of payment transactions.

Tenth: Customer (Payment Service user): the person who is the beneficiary of the payment service in his capacity as the payer or payee or both alike.

Eleventh: Payment System: a set of means, procedures and rules set for money transfers between the system's participants (payment service providers) according to an agreement concluded between them and the system's operator provided that the money transfer process is conducted through payment systems infrastructure in accordance with the Bank's standards.

Twelfth: Payment Transaction: obligations between the payer and payee to deposit, transfer or withdraw money.

Thirteenth: systemically important payment systems: the systems whose failure or breakdown, would lead to or increase the liquidity or credit risks between the financial institutions and thereby affecting the stability of the financial and banking system.

Chapter Two

Objectives

Article 2

This regulation aims at achieving the following:

First: The Bank manages the payment systems in a sound and effective way, and the performance of payment services.

Second: granting licenses and authorizations to those applying to operate as payment service providers if they meet the required conditions.

Third: listing the names of the payment service providers in the register used for this purpose and managed by the Bank.

Fourth: identifying the regulatory framework within which Iraq electronic payment systems shall operate through granting licenses or authorizations, monitoring and supervision of payment service providers, specifying the payment service providers' commitments, clients' rights and any other provisions related to Iraq payment service systems.

Chapter Three

Electronic payment service activities

Article 3

The following activities shall constitute electronic payment services:

First: issuing electronic payment instruments in Iraq;

Second: managing the cash-in and cash-out processes through the ATMs and Points of Sale.

Third: executing payment transactions (debit and credit) where the funds are covered by a credit line for the payment service user.

Fourth: executing payment transactions (debit and credit) by means of any telecommunication, digital or IT device or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services or other recipient of funds, including the mobile payment transactions.

Article 4

The following activities do not constitute electronic payment services managed by the Central Bank of Iraq:

First: payment transactions executed wholly in cash between the payer and the payee without using electronic means.

Second: payment transactions for purposes of services delivered to the payment service providers which support the provision of service.

Third: services which are based on instruments which can be used according to a commercial agreement with the issuer to acquire goods and services at the premises of the party to whom the instruments have been issued.

Fourth: payment transactions executed by the payment service providers or their agents and for their own account.

Fifth: payment transactions between the main payment service provider and its subsidiaries or between subsidiaries of the same undertaking, without any intermediary intervention by a payment service provider and within their own regulations.

Chapter Four

Granting licenses

Article 5

The electronic payment service provider has to the right to practice the profession in Iraq according to a prior license issued by the bank.

Article 6 license granting conditions

First: the electronic payment service provider should be registered as a joint stock company or limited liability company as per provisions of Company Law number 21 of 1997 as amended.

Second: the electronic payment service provider should have the capacity, regulatory and technical skills and necessary mechanisms to implement internal controls and risk management when operating and running the system.

Third: the party to whom the license is granted (licensee) has to be run by technically qualified persons not previously convicted of a crime or felony.

Fourth: ensure system access to all users without any discrimination

Fifth: ensure the continuity of service at high level of availability

Sixth: any conditions or parameters as seen appropriate by the bank

Article 7 license granting requirements

The following documents and information have to be furnished by the applicant:

First: formal request to obtain a license, modify or change a license previously granted to practice the profession

Second: capital requirements as laid down by the bank from time to time

Third: feasibility study

Fourth: articles of incorporation, registration certificate, operating procedures manual, organizational structure, a list of shareholders and management staff members according to the organizational structure

Fifth: nonrefundable granting fees according to what is set by the bank

Sixth: the electronic payment service provider has to fulfill the technical and financial requirements as set by the bank to participate in electronic payment system

Seventh: system rules and levels of service to be provided to clients

Eighth: measures to be taken to curb system risks and ability to manage these risks

Ninth: measures taken to safeguard and protect electronic processes, maintain and secure the system-related process against disclosure, misuse, damage, loss or theft

Tenth: the electronic payment service providers must ensure that the CBI can directly access their electronic system to conduct supervision, monitoring and verification processes

Eleventh: human resources plan to ensure adequacy of resources to operate the system

Twelfth: any other requirements as deemed necessary by the bank

Article 8 license suspension or revocation

The bank may suspend or revoke the license granted to any PSP in the following cases:

First: if the electronic payment service provider does not provide the payment services within 6 months as of the date on which the authorization or license becomes valid

Second: if the electronic payment service provider files an application to cancel the authorization or license

Third: if the electronic payment service provider ceases to exercise business for more than one month

Fourth: if it is established to the bank that the provider has taken procedures or measures to obstruct inspectors in execution of their duties or if it is proved by two sequential investigative reports that the provider has repeated violations

Fifth: the provider no longer meets and is unlikely to meet the provisions of this law or other relevant laws

Sixth: if the provider fails to provide the electronic payment service according to the agreed standards and specifications or if his services proved to be of low quality

Seventh: if it is established that the provider conducted or is involved in suspicious transactions in violation of Anti-Money Laundering Law no 93 of 2004

Eighth: if the provider has been convicted according to a court order

Ninth: if the provider obtains the license or authorization by providing forged documentation and statements or any other illegal means

Tenth: if it provides payment services without obtaining proper approvals

Eleventh: if the continuation of its business is considered as a threat to the stability of the payment system.

Twelfth: When CBI deems the suspension or revocation as necessary to protect the consumer's interests.

Thirteenth: the provider shall be notified of the bank's decision to suspend or revoke the license or authorization once it is taken

Fourteenth: the bank has the right to announce its decision to suspend or revoke the license or authorization in the electronic register prepared for this purpose

Chapter Five

Obligations of payment service providers

Article 9

First: providing the CBI with the required measures and procedures necessary according to Anti-Money Laundering Law and "Know Your Customer" principle.

Second: setting appropriate measures to protect the data security and confidentiality against hacking and protecting the registers and information about clients according to the laws in force and the best international practices. These measures are to be reviewed periodically.

Third: the service provider shall be responsible for all procedures regulating the service agents and points of sale.

Fourth: the payment service providers must ensure that any system they are operating is functioning in such a way that would enable it to contribute to an effective and stable performance of the financial system in line with the best practices and international standards related to the payment systems including the Core Principles of the Bank for International Settlements.

Fifth: the payment service provider must comply with CBI's standards and instructions

Sixth: describing the measures taken to protect the money of the payment service clients by setting suitable regulatory measures to minimize the risk of loss or deficiency of money or related assets as a result of fraud, misuse, negligence or mismanagement.

Seventh: in the event of the payment service provider conducting activities other than payment services, he must send the statements of the payment service accounts to the CBI separately from the consolidated balance sheet attached with them.

Eighth: providing the CBI with required statements and information pertaining to his provision of payment services and compliance with the conditions imposed by the Bank.

Ninth: ensuring that the Bank can, for supervision and monitoring purposes, directly access the electronic system, used by the payment service providers.

Tenth: preparing the clients' database.

Eleventh: the mobile payment service providers shall be committed to:

- a- Enter into agreements with the mobile network operators and provide a copy of such agreements to the CBI.
- b- Ensure that the payment process is conducted only inside Iraq and in local currency.
- c- Settle their accounts through one guarantor bank provided that they shall use more than one bank in future for these settlements according to a timeline to be determined by the Bank.

Twelfth: with a view to protecting the client's rights, the electronic payment service provider must observe the following:

- a- Informing the customer of his rights and obligations in an appropriate manner including placing a notice board at the entrance of the company.
- b- Ensuring that the customers are financially compensated in case the transaction has been delayed beyond the agreed period by paying an interest to him if the delay is due to the provider.
- c- Ensuring that the customers are financially compensated in case of loss or deficiency of their money as a result of fraud, negligence or mismanagement.

Chapter Six

Obligations of Central Bank of Iraq

Article 10

First: the Bank shall be responsible for the national payment systems which fall within its jurisdiction and which are considered as systemically important systems.

Second: determining its objectives of the payment system clearly in regard to the systemically important payment systems.

Third: supervising and monitoring the payment systems and payment service providers by determining the supervision standards and rules issued by the Bank.

Fourth: authorizing, licensing, registering and regulating the payment service providers and registering their agents according to the issued conditions and instructions.

Fifth: determining the minimum technical and operational requirements.

Chapter Seven

The core principles for the establishment and operation of electronic payment systems

Article 11

First: executing all the settlement processes through the Real Time Gross Settlement (RTGS) System

Second: the payment service providers must be licensed by the Bank

Third: all the payment systems must be interoperable according to the technical standards determined by the Bank

Fourth: compliance with the Bank's standards

Fifth: giving the payment service providers unlimited access to the Retail Payment System Infrastructure (RPSI)

Sixth: protecting the customer's money in all payment systems

Seventh: applying the standards issued by the Settlement and Payment Systems Committee of the Bank for International Settlements.

Chapter Eight

Systemically Important Payment Systems

Article 12

The RTGS, Check Enabled Automated Clearing House (C-ACH), Central Securities Depository (CSD), all run by the CBI, are systemically important systems. The Bank has exclusive rights to:

First: issue instructions determining whether a system can be considered as systemically important, and the procedures to be followed, and request more information for purposes of assessing the integrity, security, importance of the systems and the systemic risks they constitute to the financial system.

Second: withdraw or not list a payment system or a certain activity as a systemically important system if it is established that this payment system or activity is no longer meeting the prescribed standards.

Chapter Nine

Finality

Article 13

Payment orders executed conclusively:

The transactions executed within this system shall be final and irrevocable according to the cases stipulated in Article 83 of the Banking Law no. 94 of 2004.

Chapter Ten

Material Guarantees

Article 14

Settlement of obligations in the RTGS requires availability of money in the participant's settlement account and that these guarantees must be available for immediate execution. According to the instructions it shall issue, the Bank is to describe the rules pertaining to the material guarantees.

Chapter Eleven

Penalties

Article 15

First: in case the payment service provider ceases to provide the service, violates or breaches any clause of this regulation or instructions, he shall be subject to the following penalties:

- a- Warning
- b- Fine
- c- Suspension of authorization or license
- d- Withdrawal of authorization or license

Second: when imposing the above penalties, the following shall be observed:

- a- Profits accrued as a result of violation
- b- If one person or more have been affected by the violation
- c- A repeat violation
- d- Excuses for suspension of service

Third: the payment service provider shall be referred to competent courts in the following cases:

- a- If it is proven that he has conducted or been involved in suspicious transactions in contravention of the Anti-Money Laundering Law in force.
- b- If he produces forged papers to obtain the required authorization or license or uses any other illegal means.

Chapter Twelve

Validity

Article 16

This regulation shall come into force as of the date of its publication in the Official Gazette and no regulation or instructions contradicting with its provisions shall be applicable.

Nouri Kamil AlMaliki

Prime Minister

Instructions for Electronic Payment Service Providers in Iraq

As per the provisions of Article 39 of CBI Law number 56 of 2004 and Paragraph (1), Article 104 of Banking Law number 94 of 2004, the following instructions were issued:

Instructions number 2 of 2013

Introduction: What is a Payment Service

An Electronic Payment Service Provider in Iraq is a bank or non-bank who performs one or number of the following functions;

Subject to Exceptions – see below, the following activities, when carried out as a regular occupation or business activity, are payment services—

- (a) enabling cash to be placed on a payment account and all of the operations required for operating a payment account;
- (b) enabling electronic cash withdrawals from a payment account and all of the operations required for operating a payment account;
- (c) enabling the execution of the following types of payment transaction—
 - (i) credit transfers, including standing orders;
 - (ii) direct debits, including one-off direct debits;
 - (iii) payment transactions executed through a payment card or a similar device;
- (d) enabling the execution of the following types of payment transaction where the funds are covered by a credit line for the payment service user—
 - (i) credit transfers, including standing orders;
 - (ii) direct debits, including one-off direct debits;
 - (iii) payment transactions executed through a payment card or a similar device;
- (e) issuing payment instruments or acquiring payment transactions;
- (f) Money remittance
- (f) enabling the execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services or other receiver of funds.

Exceptions; Persons who perform the following are not payment service providers;

The following activities do not constitute electronic payment services:

- (a) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;
- (b) payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;
- (c) payment transactions carried out within a payment or securities settlement system between Payment Service Providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;

- (d) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in subparagraph (e) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;
- (f) services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, including—
- (i) the processing and storage of data;
 - (ii) trust and privacy protection services;
 - (iii) data and entity authentication;
 - (iv) information technology;
 - (v) communication network provision; and
 - (vi) the provision and maintenance of terminals and devices used for payment services;
- (g) services based on instruments that can be used to acquire goods or services only—
- (i) in or on the issuer's premises; or
 - (ii) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services, and for these purposes the "issuer" is the person who issues the instrument in question;
- (h) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through the respective telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- (j) payment transactions carried out between payment service providers, or their agents or branches, for their own account;
- (k) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a Payment Service Provider other than an undertaking belonging to the same group.

Payment Service providers will meet the following requirements:

Article 1: Licensing Requirements

1-As per the provisions of Company Law number 21 of 1997, it is permitted to form and incorporate joint stock or limited liability companies that provide electronic payment services under CBI license and supervision.

2- Initial Capital:

- a. the initial capital of joint stock company should not be less than 15 billion dinars
- b. the initial capital of limited liability company should not be less than 10 billion dinars
- c. the initial capital of foreign company branch or representative office should not be less than 10 billion dinars
- d. Plus, based on business expectations as per the business plan according to the payment services to be delivered as defined in the introduction to these instructions,

Services provided	Dinars
Money remittance only	40 million
Services defined in (g)	95 million
Services defined in (a) to (e)	230 million

This assumes the business was pre-existing, had fulfilled a, b, or c and is adding the PSP authorization.

d. the payment service provider has, at all times, to keep an amount of money that equals or exceeds the initial capital. The Central Bank of Iraq has the right to request that the company increases its capital to ensure adequacy for continuity of operations according to type of service or improvements in financial and economic circumstances.

the amount of initial capital can include the following items:

- paid up capital, including share premium accounts but excluding amounts arising in respect of cumulative preference shares
- reserves other than:
 - (i) revaluation reserves;
 - (ii) fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost; and
 - (iii) that part of profit and loss reserves that arises from any gains on liabilities valued at fair value that are due to changes in the authorised Payment Service Provider's credit standing;
- profit or loss brought forward as a result of the application of the final profit or loss,;

3- Licenses shall be issued in the following manner:

First: initial approval

1. License applications shall be submitted to CBI in order to provide electronic Payment Services. The following have to be presented:

- a. information form number 1 for payment service providers and processing agents – see section 5 of this Handbook.
- b. draft articles of incorporation
- c. feasibility study including:
 - a business plan (including, for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the company to operate soundly
 - purpose of formation and incorporation
 - the service to offer
 - intensive market study that confirms its ability to perform activities
 - operating cost

- contingency plan for any eventuality
- the procedures to be taken for managing and monitoring risks the company may face and reporting on them

A description of measures employed to safeguard payment service users funds including the establishment of segregated accounts for these funds; which will be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds;

- source of funding
- evidence of measures taken to comply with the Iraq Anti Money Laundering in force.
- Evidence of adequate measures are employed for protecting customer data in line with international best practice and Iraq Banking Law Articles 38, 49.50
- trade name registered at Federation of Iraqi Chambers of Commerce (in Arabic and English)
- providing a list of founders' names (full name, nationality, job title and experience, address, number of shares, percentage of number of shares owned to capital) and taking into account the availability of at least three persons with financial and technical expertise among these founders
- in case an existing company was among the founders, the following documents have to be presented:
 - balance sheet and profit and loss statement for the last three years audited by accredited auditor provided that statements of the last year are included if the application was submitted during the second half of the year
 - names of persons who have qualifying ownership of 10% or more of the company's capital
- applications fees (listed in part 4 of this Handbook) according to an entry executed via the RTGS

2- the CBI shall, within 60 days, refer the application to CBI board of directors if the application meets the information requirements and the company shall obtain the initial approval to complete formation procedures at Directorate of Companies Registration. The initial approval period shall expire within 6 months and can be renewed for additional 6 months. If the application does not satisfy the, the CBI shall notify the applicant of unmet requirements or rejection.

Second: final approval (license)

1- After obtaining the initial approval, the company shall apply for a license to perform its activities following the completion of its formation and registration procedures. The following shall be attached to the application:

- certified copy of articles of incorporation
- certified copy of certificate of incorporation
- certified copy of the company's by-law
- form number 2 for the company
- form number 3 for the founders
- form number 4 for joint stock company board members and a list of their names

- form number 5 for the managing director
- certified copy of minutes of the general assembly founding meeting
- presenting to CBI a letter confirming deposit of capital in CBI through the bank where the company set up an account and providing CBI with the entry executed through RTGS provided that amount of capital is not released or disposed of before issuing the final license to the company
- description of measures to be taken to safeguard payment service user funds according to the provisions of these instructions including;
- how they will keep records of funds segregated from other accounts they hold evidence that funds are covered by; (i) an insurance policy with an authorized insurer;
 - (ii) a guarantee from an authorized insurer; or
 - (iii) a guarantee from an authorized credit institution
- the company's full address to facilitate coordination with CBI with regard to on-site inspection of the headquarters, assessment of its suitability for operation and notification of any changes to the building
- name of the auditor accredited by auditing profession board
- a receipt confirming payment of license fees according to an entry executed through RTGS

2- the CBI shall inform the applicant about the approval or rejection decision taken by the board with 60 days from submission of documents that met the requirements.

3- Once the license is issued, the company shall be listed in payment service providers register and are subject to all laws in force and instructions issued thereof.

b. license to foreign company branch or representative office:

Licenses shall be awarded to branches or representative offices of foreign companies which are subject to unified and comprehensive monitoring by the supervisory authority in the foreign company's country of origin.

First: initial approval:

1. License applications, along with filled forms 1 and 6, shall be submitted to CBI in order to open the foreign company branch or representative office.
2. a receipt confirming payment of application fees according to an entry executed through RTGS
3. the CBI shall, within 90 days, inform the applicant if the application meets the conditions. The period can be extended on the condition that applicant is notified about delay reasons before the deadline.

Second: final approval:

After obtaining the initial approval, the company shall apply for a license to perform its activities following the completion of its formation and registration procedures as per the law. The following shall be attached to the application:

- 1- presenting to CBI a letter confirming deposit of amount of capital in CBI account at the Federal Reserve Bank of New York and providing CBI with the entry executed through RTGS provided that amount of capital is not released or disposed of before issuing the final license to the branch

- 2- Providing the CBI with certificate of branch registration with Ministry of Trade's Directorate of Foreign Companies' Registration in Iraq and a copy of registration license
- 3- the company's full address to facilitate coordination with CBI with regard to on-site inspection of the branch location, assessment of its suitability for operation and notification of any changes to the building
- 4- a letter of undertaking from the parent company to afford the branch the required amount of money when the CBI requires that.
- 5- providing a letter of branch manager hiring decision issued by the authorized party including the name of branch manager, his permanent residence, nationality and profession in his managerial capacity, academic qualifications and experience of at least 3 years provided that he should be a permanent resident of Iraq and also presenting a copy of residence permit with form number 5 filled out by him
- 6- a letter of undertaking to employ and train up to 50% of the branch staff members from Iraqi local nationals
- 7- name of the auditor accredited by auditing profession board
- 8- the branch organizational structure with names and responsibilities of the key officers taking into consideration that none of the key staff members is engaged in another project or business leading to conflict of interest
- 9- a letter of undertaking in which he affirms his commitment to CBI instructions and the relevant laws
- 10- Disclosure of any limitations in the country of origin that shall restrict his ability to provide information at the request of CBI
- 11- a receipt confirming payment of final approval fees according to an entry executed through RTGS

The CBI shall approve the application and issue the license within 6 months from date on which the applicant is notified that his application meets all requirements.

The bank reserves the right to reject the application when the application does not meet the conditions and send a written decision with grounds for rejection.

Third:

The approval decision with regard to license issuing shall be published on CBI official website. The licensed branch shall be enlisted in payment service providers register and shall be subject to all Iraqi laws in force and relevant instructions.

Article 2: service type change application

The payment service providers may request to change the type of service and include the following in their application:

- 1- a special statement on the proposed change for which the CBI may request information deemed necessary and once the license is issued, the CBI shall update the register it maintains
- 2- payment services the providers wishes to continue and add.

Article 3: imposing conditions

The CBI may set conditions as deemed appropriate to issue the license in the following manner:

- 1- a specific condition may be set to force the concerned party to:

- a. do something in particular
- b. stop doing something in particular

2- conditions may be imposed in the following cases:

- a. when the provider intends to perform activities other than electronic payment
- b. the CBI considers that performing such activities may cause harm to or likely affect:
 - first: the financial position of the applicant
 - second: the effective oversight of the applicant by CBI

Article 4: Board of Directors

1- the formation of board of directors, its meetings, authorities and powers shall be governed by the provisions of Banking Law number 94 of 2004 and Companies Law number 21 of 1997 as amended.

2- the board member is not permitted to be a chairman or board member of another company nor a chairman or board member of a licensed bank.

3- The CBI may express opinion on the eligibility of the designated persons or those holding key positions according to the applicable guidelines.

Article 5: The managing Director

1- The managing director should be experienced, specialized, fully dedicated to the company's business, resident in Iraq and holding at least a university degree, taking into account the above Company Law provisions.

2- If the managing director of the joint stock company is a board member, he must then fulfill the requirements of article 4 above.

3- The managing director of the limited liability company shall exercise the powers of the joint stock's board stipulated in paragraph (Second) of article 123 of the company law in force.

Article 6: Auditor

1- The electronic payment services providers shall be committed to hire an auditor licensed by the Auditing Profession Board to be endorsed by the CBI provided that he continues his job for more than 5 years except at the discretion of the CBI.

2- The auditor must report on the following case when he is aware of their particulars in his capacity as an auditor of the payment service provider or of a person who has close links with the payment service provider:

a- if the auditor logically believes that there is a violation of these instructions has already taken place, or is currently occurring or likely to occur.

b- if the auditor believes that the information or his professional opinion in regard to these issues is so significant that the CBI can determine the compliance of the payment service provider with the obligation and whether it is continuing to do so.

c- The auditor believes that the payment service provider is not successful in providing its services.

d- he mentions in his report that the financial statements have been prepared as they should be, according to the accounting standards.

e- To mention in his report that the financial statements match the payment service provider's activities related to the provision of the payment services.

f- Any other remarks he deems appropriate.

Article 7: CBI's supervisory and monitoring role

The electronic payment services providers shall be subject audit and supervision by the CBI. The Bank's officer has the right to enter the premises, inspect it, observe the carrying out of business activities, access any document found there and request any person working for the service providers to provide an explanation on any document or state where it may be found, and take a copy of it.

Article 8: payment services register

1- The CBI shall maintain a register for public inspection, in which the names of operators of payment systems, names of electronic payment service providers and their agents are included. The register contains the name, address and number and date of issuing or revoking the service and type of service they offer.

2- The Bank may keep the register in any form it thinks fit.

3- The register shall be published in the CBI's official website and made available for public, updated on a regular basis, with a copy of the register, or any part of it, provided to any authority which officially asks for it and which the CBI sees appropriate.

Article 9: penalties

1 - The system operators (processing agents) shall be subject to the jurisdiction of the Payment Service Providers to whom they are registered.

2- When Payment Service Provider breaches any clause of these instructions, the service provider will be subject to following penalties:

a- written warning notice that the CBI will make a public statement or impose a financial penalty, giving 14 days for representations to be received.

b- a fine, with the following to be observed:

First- accrual of profits as result of the violation.

Second- if one person or more incurred a loss or is adversely affected by the violation.

Third- a repeat violation.

Article 10; revocation of authorization

The Bank may revoke the authorization granted to any electronic payment service provider in the following cases:

1- If the electronic payment service provider does not provide the payment services within 6 months as of the date on which the authorization or license becomes valid.

2- If the electronic payment service provider files an application to cancel the authorization or license.

3- If the electronic payment service provider ceases to exercise business for more than one month and after the CBI takes the measures set forth in Article 9 above.

- 4- The person no longer meets and is unlikely to meet conditions of capital adequacy and safeguarding
- 5- If it is established that the provider conducted or is involved in, or did not actively prevent, suspicious transactions in violation of Anti-money laundering law no 93 of 2004.
- 6-if the provider has been convicted according to a court order.
- 7- If the electronic payment service provider obtains the license or authorization by providing forged documentation and information or any other illegal means.
- 8- If it provides payment services before obtaining proper approvals.
- 9- If the continuation of its business is considered as a threat to the stability of the payment system.
- 10- When the CBI deems the revocation as necessary to protect the consumer's interests.

Article 11: Payment Services Agents

They are the persons authorized by the electronic payment services provider who have been licensed by the Central Bank of Iraq (CBI) to provide and facilitate implementation of system operations and services to customers. The payments service provider must furnish the CBI with information on their agents (name, address, description of services they provide, and any other information the CBI deems necessary).

Reliance on Third parties

(1) Where an authorized Payment Service Provider relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Instructions are complied with, including ensuring that the third party is properly trained and skilled to fulfill their functions.

(2) Without prejudice to paragraph (1), an authorized Payment Service Provider is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees, any agent or branch providing payment services or processing services on its behalf, or any entity to which activities are outsourced.

(3) Paragraphs (1) and (2) apply to situations in which an Agent carries out KYC or Due Diligence checks on behalf of the Payment Service Provider, as well as to processing functions.

The Bank may remove the agent

- 1- Upon a request of the service providers.
- 2- Failure to provide the CBI with the required information.
- 3- If the CBI is satisfied that the agent is an unqualified person.
- 4- If the agent violates the anti-money laundering and terrorist financing law in force.
- 5- The provision by the agent of the payment services is illegal.

The bank must give the authorized PSP a warning of their agent's potential removal so that the fault can be rectified or representations made.

Article 12: obligations of payment services providers

- 1- Providing the CBI with the required arrangements and measures according to the KYC principle to protect the security and confidentiality of information from hacking, so that they can be adopted. They must be reviewed periodically.
- 2- The service provider shall be responsible for all procedures regulating the service agents and points of sale.
- 3- The payment service providers shall ensure that any payment system they run or outsource is capable of operating in a way which will contribute to the effective functioning and stability of the financial system, in line with best practices and international standards.
- 4- The PSP must provide a description of safeguarding measures taken to protect the funds of payment service customers. Including evidence of separation of funds.
- 5- In case the payment service provider conducts activities other than the payment service, he must send payment service accounts information to the CBI separate from the consolidated balance sheet but attached withal.
- 6- Providing the CBI with required data and information pertaining to his provision of payment services and compliance with the conditions required by these instructions.
- 7- The payment service provider must maintain appropriate regulatory measures to minimize the risk of loss or deficiency of relevant funds or assets as a result of fraud, misuse, negligence or mismanagement.
- 8- The electronic payment service providers must ensure that the CBI can access their electronic system to conduct supervision, monitoring and verification processes as it deems appropriate.
- 9- Developing proper measures to protect the customers' records and information in line with the international practices.

Article 13: payment service providers' links

If the electronic payment services provider has any close links with another person, it must meet the CBI's requirements:-

- 1- These links would not prevent the Bank's effective supervision of it.
- 2- If the bank has established that the other electronic payment service provider is subject to the law of foreign authority, then this should not prevent the CBI's effective supervision of it.

A payment service provider has close links to another person if it:

- is a parent undertaking of the provider;
- is a subsidiary undertaking of the provider;
- is a parent undertaking of a subsidiary undertaking of it,
- is a subsidiary undertaking of a parent undertaking of it.
- The organization it belongs to owns or controls 20% or more of the voting rights or capital of it.
- The service provider owns or controls 20% or more of the voting rights or capital of the organization.

Article 14: Customers' Rights

To protect the customer's rights, the electronic payment service provider must observe the following, in line with Chapter 2 of this document:

- 1- Informing the customer of his rights and obligations in any way he deems appropriate including placing notices boards at the entrance of the company.
- 2- Ensure that the customers are materially compensated in case the transfer delivery took longer than the agreed time for reasons due to him, by paying them the legal interest.
- 3- The customer may file a complaint with the Financial Services Tribunal in case any damage has occurred.

Article 15: Payment Service Contracts

They are contracts regulating the relation between the payment service providers and the customer.

A. Continuous service contracts;

are contracts regulating continuous payment services to customers in which the following information should be available:

1. Name of payment service provider
2. Address and contact details of the premises of the payment service providers. If the information provided in the above paragraph is different, then the address and contact details of the branch or the agent through whom the payment service is provided must be given.
3. Details of the payment service providers' guidelines including the number and date of licenses granted by the CBI.
4. Description of the main characteristics of the payment service intended to be provided.
5. Details of all charges to be paid by the service user.
6. f. Information required to be provided by the customer to ensure correct execution of payment order.
7. Information about safeguards and corrective mechanisms in the event of an error
8. Approving the payment transaction and the approval withdrawal instructions.
9. Term of contract.
10. Maximum period of executing the payment services to be provided.
11. Limits of spending on the use of payment instrument in case they are agreed upon.
12. Details of interest rates, method of calculating them and changes to be made to these rates.
13. Means of communications agreed by the parties to communicate information or notices and frequency of delivering the information to be provided.
14. Information about the collaterals and ways of redress which include ways of maintaining payment and reporting any incorrect use.
15. Information about the dispute decision, complaint handling, conciliation and relevant court.
16. The payment service user shall be deemed as having agreed to the contract terms unless the service provider is made aware of him not accepting them before the proposed date on which they come into force.
17. Both parties have the right to terminate the contract.

B - Single service contracts

They are implicit contracts regulating only the use of one-off payment service. The payment service provider must provide the following information in the contract:

- a- Payer and payee information, amount, date and timing to be included in the payment form.
- b- Maximum time required to complete the transaction.
- c- Charges
- d- Exchange rate
- e- The payment service provider, upon receiving the payment order, must provide to the customer the above information in addition to the amount, and date of receiving the payment order.
- f- The payment service user shall be deemed as having agreed to the contract terms unless the service provider is made aware of him not accepting them before the proposed date on which they come into force.
- g- The payer may withdraw consent to a payment transaction at any time before the point when it is irrevocable as defined in Article 83 of the Banking Law.
- h- The two parties have the right to terminate the contract.

Article 16: execution of payment transaction

Transaction Information

Before execution - the Payment Service Provider must inform the customer of the maximum execution time. Information which must be provided to the payee with a transaction by their Payment Service Provider includes:

- A unique identifier enabling the customer to identify the payment transaction and, where appropriate, information on the payer and any information transferred with the payment transaction the amount of the transaction in the currency of the payment account credited.
- Any exchange rate used by the Payment Service Provider and the amount of the payment transaction before it was applied.
- The amount and breakdown of any transaction charges and/or interest payable in respect of the transaction.
- The credit value date.
- Reference exchange rate if applicable.

2- Receipt payment order

- a- The time of receipt of a payment order is the time at which the payment order is given directly or indirectly by the payer.
- b- If the time of receipt of a payment order does not fall on a business day for the payment service provider, the payment order is deemed to have been received as the first order on the day thereafter.
- c- The Payment Service Provider may set a time towards the end of a business day and all payment orders received after this time will be deemed as the first orders to be received on the following business day.

3- Refusal of payment orders: Where a Payment Service Provider refuses to execute a payment order, it must notify the payment service user of—

- a- if possible, the reasons for such refusal; and
- b- The procedure for rectifying any factual errors that led to the refusal.

3- revocation of payment orders

- a- A payment service user may not revoke a payment order after it has been received by the Payment Service Provider.
- b- In the case of a direct debit, the payer may not revoke the payment order after the end of the business day preceding the day agreed for debiting the funds.

4 Amounts transferred and amounts received

- a- The Payment Service Providers must ensure that the amount of the payment transaction is transferred and that no charges are deducted from the amount transferred.
- b- The payer and the Payment Service Provider may agree for the Payment Service Provider to deduct its charges from the amount transferred before crediting it to the payee's account provided that the full amount of the payment order and the amount of the charges are clearly stated in the information provided to the payer.

Article 17: general provisions

- 1- The CBI may reject the authorization application or part of the services described in the application if the conditions set forth in these instructions are not met.
- 2- The CBI has the right to withdraw the authorization for a service if any of its conditions is violated.
- 3- The CBI may issue directions or instructions containing other conditions or amend them.
- 4- The service provider must comply with the requirements of the anti-money laundering law no 93 of 2004 and international best practise.
- 5- The applicant may withdraw its application by sending a notice to the CBI before a decision regarding the application is issued.
- 6- The payment service provider must keep the money collected from/for the user of this service to execute the payment transaction at an open account with a bank licensed by the CBI.
- 7- The Payment Service Provider may charge a Payment Service User for fulfillment of its obligations as agreed between the two parties and where they reasonably correspond to the Payment Service Provider actual costs, allowing for a profit margin;
- 8- A commitment by the Payment Service Providers and their agents to settle the interbank payments through the Iraqi Payment System (RTGS system and C-ACH).
- 9- The electronic payment services provider not to be offered a credit in any case except through the banks (unless the service provider is itself a bank).
- 10- The electronic payment services providers may participate in the national switch directly or through a processing agent authorized by the CBI.
- 11- The electronic mobile payment services providers must be committed to the following:
 - a- The payment process is conducted inside Iraq only and in local currency.

- b- Settle their accounts through one guaranteeing bank provided that more than one bank is used for these settlements in future according to ceilings to be determined by the CBI subsequently.

12- The payment service providers may invest part of their funds in secure liquid assets as the CBI may approve provided that these assets are placed in a separate account.

13- The licensed companies shall be subject to the laws and regulations on voluntary and involuntary liquidation. The CBI may take all measures authorized by the laws and instructions in this regard.

14- In case any dispute arises between the two parties including the CBI rejection to grant the authorization, the electronic payment services providers may contest this rejection within 30 days after receiving notification of the decision. The CBI must notify the Provider of its decision within 30 days after receiving the notification of the objection. In case the objection is rejected, it may file the contest the rejection, suspension or revocation of the authorization with the Financial Services Tribunal as per the CBI Law.

15- When the executed and authenticated payment transaction is denied and if the payment transaction is claimed to have been conducted incorrectly, the payment services providers must prove that the payment transaction was correct, recorded correctly, entered in the payment services provider's account and has not been affected by a technical breakdown or any other deficiency.

16- The payment service providers may use the customers' service center.

17- The CBI may impose conditions or obligations to ensure good functioning of the system.

18- Rules and conditions governing access to payments systems must be transparent and equitable, that is;

- (a) be objective, proportionate and non-discriminatory; and

- (b) not prevent, restrict or inhibit access or participation more than is necessary to—

- (i) safeguard against specific risks such as settlement risk, operational risk or business risk; or

- (ii) protect the financial and operational stability of the payment system.

(2) The rules or conditions governing access to, or participation in, a payment system which, in respect of Payment Service Providers, payment service users or other payment systems are, prohibited when they—

- (a) restrict effective participation in other payment systems;

- (b) discriminate (whether directly or indirectly) between different authorised Payment Service Providers, in relation to the rights, obligations or entitlements of direct participants in the payment system; or

- (c) impose any restrictions on the basis that a person is not of a particular institutional status

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Republic of Iraq
CENTRAL BANK OF IRAQ



جمهورية العراق
البنك المركزي العراقي

قسم المدفوعات

NO.: ٢٥ / ٢٢
Date: ٢٠١٤ / ١١ / ١٤

العدد:
التاريخ:

الى / المصارف كافة

م // تعليمات خدمات الدفع الألكترونية

يهدى هذا البنك أطيب تحياته
في إطار السعي للعمل ضمن بيئة قانونية سليمة وبهدف تطوير وتنظيم العمل المصرفي الإلكتروني.
نرفق لكم التعليمات التي تنظم عمل خدمات الدفع الإلكتروني، والتي سوف يستند عليها لإصدار تعليمات
وضوابط عمل مقدمي خدمات الدفع من المؤسسات المالية المصرفية وغير المصرفية وكذلك ضوابط منح
التراخيص لهم.

... مع التقدير

المرفقات:

تعليمات خدمات الدفع الألكترونية

المحافظ

د. عبد الباسط تركي سعيد

Republic of Iraq
Central Bank of Iraq
Payments Department
No: 25/23
Date: Jan – 14 – 2013

To\ all Banks

Subject\ Electronic Payment Services Instructions.

Greetings,

Within the quest of working under a sound legal environment aiming to develop and regulate electronic banking efforts. Attached is the instructions that regulates electronic payment services, which will be the basis to issue instructions and regulations of payment service providers (PSPs) of the banking and non-banking financial institutions and regulate the licensing procedure of PSPs.

With regards

Attachments:
Electronic Payment Services Instructions

Governor
Dr. Abdul Basit Turki Saeed

Annex 1 Rules for Financial Collateral for RTGS

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PART 1 INTRODUCTION

1. Authority

Pursuant of the provisions of article 4 of the CBI Law no.56, 2004.and subject to Executive Regulations Banking Facilities of CBI (2006) The CBI issues the following Instruction as Annex 1 to The Regulation on the Soundness of Iraqi Settlement Systems

2. Purpose of this document

The purpose of this document is to provide a regulatory basis to protect the validity of financial collateral arrangements and of financial collateral. The primary focus of this arrangement is protection of the Settlement through the CBI RTGS system. The arrangement between settlement participants and CBI settlement accounts.

3. The purpose of Collateral In RTGS Settlement

For those Participants in RTGS with insufficient available funds on their Settlement Account to cover their debit position in the RTGS, the CBI can at the request of that the CSD release available funds from the relevant guarantee account of those Participants, and reserve any additional funds that may become available on the Settlement Account of the Participants concerned.

4. Definitions

In this document:

1. “book entry securities collateral” means financial collateral provided under a financial collateral arrangement that consists of financial instruments, title to which is evidenced by entries in a register or account kept by or on behalf of an intermediary;
2. ;
3. “Central Securities Depository” means the computer system, owned by CBI, which maintains the Register of securities issued by the CBI and Ministry of Finance and their holders, and enables primary and secondary market transactions to be conducted and settled, the funds settlement being via a Delivery versus Payment connection with RTGS.
4. “clearing house” means an entity responsible for the calculation of the net positions of institutions, and the delivery of the transactions constituting those net positions to the receiving institutions;
5. “close-out netting provision” means:
 - a. a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or
 - b. in the absence of such a provision, a provision of financial collateral under an enactment or statutory instrument as a result of which, on the occurrence of an enforcement event (whether through the operation of netting or set-off or otherwise);
 - i. the obligations of the parties to the arrangement are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing the current value of the obligations, or
 - ii. the obligations of the parties to the arrangement are terminated and replaced by an obligation to pay such an amount, or

- iii. an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account;
6. “enforcement event”, in relation to a financial collateral arrangement, means a default or any similar event on the occurrence of which, under the arrangement or by operation of law;
 - a. the collateral taker is entitled to realise or appropriate the financial collateral, or
 - b. a close-out netting provision takes effect;
7. “financial collateral” means cash or financial instruments provided under a financial collateral arrangement, but does not include shares in a company whose exclusive purpose is:
 - a. to own means of production that are essential for the collateral provider’s business, or
 - b. to own real property;
8. “financial collateral arrangement” means a title transfer financial collateral arrangement or a security financial collateral arrangement (whether or not covered by a master agreement or by general terms and conditions);
9. “financial instruments” means any of the following
 - a. shares in companies;
 - b. securities equivalent to shares in companies;
 - c. bonds and other forms of debt instruments if these are negotiable on the capital market;
 - d. any other securities;
 - i. that are normally dealt in and give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange, or
 - ii. that give rise to a cash settlement (excluding instruments of payment);
 - e. units in collective investment undertakings;
 - f. money market instruments;
 - g. claims relating to, or rights in or in respect of, shares, securities, bonds, instruments of a kind referred to in paragraphs (a) to (d);
10. “provision of financial collateral” means the financial collateral is or is to be delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker’s behalf, for example via a pledge on assets held in a securities depository;
11. “relevant account” , in relation to book entry securities collateral that is subject to a financial collateral arrangement, means the register or account (which may be kept by the collateral taker (CBI) or held in the Central Securities Depository) in which the entries are made and by which that collateral is provided to the collateral taker;
12. “right of use”, in relation to a security financial collateral arrangement, means the right of the collateral taker as owner to use and dispose of financial collateral provided under the arrangement in accordance with the arrangement;

13. “security financial collateral arrangement” means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, but only if the full ownership of the collateral remains with the collateral provider after the security right is established;
14. “supervised financial institution” means a financial institution that is subject to prudential supervision by the regulatory authority established under CBI law;
15. “winding-up proceedings”, means collective proceedings (whether founded on bankruptcy or are voluntary or compulsory) involving the intervention of an administrative or judicial authority, taken for the purpose of realising assets and distributing the proceeds among creditors and members, as appropriate, and includes collective proceedings taken for that purpose where the proceedings are terminated by a composition or other similar arrangement;
16. “writing” includes recording by electronic means (such as a computer) or by any other medium.

5. Principles

Within this Regulation the following principles apply:

- (1) If it is foreseen that the participant has a net debit position in a Deferred Net Settlement System (DNS) which settles through RTGS and has insufficient funds in their RTGS settlement account to finalise settlement, Participants agree that the CBI is allowed to appropriate at agreed value any securities held by that participant in the Central Securities Depository that are pledged as a guarantee for settlement under the financial collateral arrangement and to deliver cash to the participant's settlement account to assure settlement.
- (2) Each RTGS Participant will, as necessary, set up such guarantees in the form of earmarked financial instruments as defined above in its CSD account for guaranteeing the Settlement of Net Settlement Instructions (NSI) from Deferred Net Settlement Systems (DNS). The CSD will automatically register such collateral amounts in the participant's RTGS collateral account
- (3) Participants can also register other forms of collateral in the RTGS collateral account, such as foreign exchange reserves and eligible deposits at the CBI
- (4) Each Participant can also set up in RTGS a general reserve and a cash reserve for its own liquidity management purposes. Establishment of a reserve has the effect of moving funds from available funds in the Settlement Account in RTGS into a Reserve Account in RTGS where they can only be used for designated purpose for settlement. A right under a financial collateral arrangement to substitute or withdraw excess financial collateral in favour of the collateral provider does not prejudice the financial collateral that is provided to the collateral taker as mentioned in these Rules.
- (5) Financial collateral arrangements, netting agreements and close-out netting provisions shall be valid and enforceable in accordance with their terms.
- (6) The collateral provider may not make further financial collateral arrangements using the same collateral if the prior collateral taker (CBI) still has right of use.

6. Application

- (1) These Rules apply to a financial collateral arrangement and to financial collateral only if the arrangement and collateral are within CBI jurisdiction, according to the CBI Law 2004;
- (2) The collateral taker and the collateral provider who are the parties to the financial collateral arrangement must each be one of the following:
 - a. the CBI),
 - b. a supervised financial institution (a settlement bank);
 - c. a central counterparty, Central Securities Depository, settlement agent or clearing house, or any similar entity that is operating in the futures, options or derivatives markets provided the entity is regulated under the laws of Iraq;
- (3) For these rules to apply to a financial collateral arrangement, there must be evidence in writing of the arrangement (registration in a computer system constitutes such evidence, as defined above) .
- (4) For this instruction to apply to financial collateral, there must be evidence in writing of the provision of the collateral. The evidence must identify the financial collateral concerned. For that purpose, it is sufficient to prove;

- a. that the relevant book entry securities collateral has been credited to, or forms a credit in, the relevant CSD account which registers securities earmarked for a specific collateral purpose, and
- b. that the relevant cash collateral has been credited to, or forms part of, a participants settlement account.

7. Formal requirements with respect to financial collateral arrangements and the provision of financial collateral

- (1) Participants governed by Iraqi law hereby explicitly acknowledge that in accordance with this CBI Collateral instruction, the creation, validity, perfection, enforceability and admissibility in evidence of the above collaterals is not dependent on the performance of any formal act and that the above collateral is considered provided to and under the control of the CBI (the collateral taker), by reserving the credit balances in the available funds or in the relevant reserve accounts of the Participants, and by registration of the Collateral over government securities in the Central Securities Depository (CSD).
- (2) For the purposes of these Rules, "formal act" includes any judicial act, registration, notification, note in any public registry, acknowledgement, advertisement published in any newspaper or journal, any form of delivery or any similar act
- (3) Paragraph (1) does not prejudice the application of this instruction to financial collateral that has been provided so long as that provision is capable of being evidenced in writing and the relevant financial collateral arrangement is also capable of being evidenced in writing.

8. Parts 2 and 3 not to limit other Iraqi laws

- (1) Nothing in Parts 2 and 3 limits any requirement imposed by any other Law of Iraq to the effect that the realisation or valuation of financial collateral and that the calculation of the relevant financial obligations must be conducted in a commercially reasonable manner.

PART 2

ENFORCEMENT OF FINANCIAL COLLATERAL ARRANGEMENTS

9. Right of collateral taker to enforce security financial collateral arrangement.

- (1) On the occurrence of an enforcement event relating to a security financial collateral arrangement, the collateral taker under the arrangement has a right to realise financial collateral provided under the arrangement:
 - a. if the collateral is in the form of a financial instrument, by sale or appropriation and by setting off the instrument's value against, or applying that value in discharge of, the relevant financial obligations, and
 - b. if the collateral is in the form of cash, by setting off the amount of cash against, or applying it, in discharge of the relevant financial obligations.
- (2) For the purpose of this instruction, a collateral taker may appropriate a financial instrument only if the relevant security financial collateral arrangement:
 - a. allows appropriation, and
 - b. provides for the valuation of the instrument.
- (3) Financial collateral may, subject to the terms of the relevant security financial collateral arrangement, be realised under this Regulation **without the need**:
 - a. to give prior notice of intention to realise the financial collateral, or
 - b. for the terms of realisation to be approved by a court, public authority or person, or
 - c. to conduct the realisation by public auction or by any other means by which an insolvent person's assets may be lawfully realised, or
 - d. for any additional period of time to have elapsed.

10. Financial collateral arrangement to have effect despite winding-up proceedings or reorganisation measures

- (1) A financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or reorganisation measures in relation to the collateral provider or collateral taker.

11. Collateral and Finality

RTGS Participants agree that, as soon as an ACH net settlement instruction or net settlement instruction from any other Clearing House is submitted to RTGS, the CBI shall automatically reserve the available funds in their Settlement Accounts where participants have a net debit position in ACH, to enable the immediate Settlement of the net positions once the NSI is accepted for Settlement.

If insufficient funds are available in the Settlement Account of one or more Participants to settle those Participants' net balances as calculated by the Clearing House, the CBI shall calculate the sum of available funds plus the amount held in the reserve account in RTGS associated with that Clearing House, and if insufficient funds are available, CBI shall realize relevant securities under the security financial collateral arrangement in the CSD for the amount of the additional funds required. After realization of the necessary amount, CBI must credit the Participant's settlement account. The RTGS must then accept the net settlement instruction for Settlement. Settlement of the net positions calculated by Clearing House will proceed. The CBI is debited with the value of the securities it has bought by executing the pledge.

12. Financial collateral arrangements and financial collateral not to be invalidated or voided

(1) A financial collateral arrangement, or financial collateral provided under such arrangement, cannot be invalidated, declared void or be reversed because the arrangement was created, or the financial collateral was provided:

- a. on the day on which relevant winding-up proceedings or reorganisation measures were commenced, but before the making of an order of court commencing those proceedings or measures, or
- b. during a period before, and defined by reference to, the commencement of those proceedings or measures, or by reference to the making of any court order or the taking of any other action, or the occurrence of any other event, during those proceedings or measures.

(2) Certain financial collateral arrangements, etc. to be enforceable against third party

Any financial collateral arrangement or relevant financial obligation that has been created, or any financial collateral that has been provided, on the day on which, but after the moment on which, winding-up proceedings or reorganisation measures were commenced, is binding on third parties so long as the collateral taker concerned is able to prove that that collateral taker was not aware, and had no reason to believe, that the proceedings or measures had commenced.

13. Provision of financial collateral not to be invalidated or declared void by certain events

(1) If a financial collateral arrangement contains an obligation to provide financial collateral, or additional financial collateral, in order to take account of changes in the value of the financial collateral, or in the amount of the relevant financial obligations, the provision of financial collateral, or additional, substituted or replacement financial collateral, under such an obligation may not be invalidated or declared void or be reversed only because:

- a. the provision was made on the day on which winding-up proceedings or reorganisation measures commenced, but before the making of a court order commencing those proceedings or measures, or during a period before, and defined by reference to;

- i. the commencement of winding-up proceedings or reorganisation measures, or
 - ii. the making of a court order, or the taking of any other action, or the occurrence of any other event, during the course of those proceedings or measures, or
 - b. the relevant financial obligations were incurred before the date on which the financial collateral, or the additional, substituted or replacement financial collateral, was provided.
- (2) If a financial collateral arrangement contains a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value, the provision of financial collateral, or additional, substituted or replacement financial collateral, under such a right may not be invalidated or declared void or be reversed only because:
- a. the provision was made on the day on which winding-up proceedings or reorganisation measures commenced, but before the making of the court order commencing those proceedings or measures, or during a period before, and defined by reference to:
 - i. the commencement of winding-up proceedings or reorganisation measures, or
 - ii. the making of a court order, or the taking of any other action, or the occurrence of any other event, during the course of those proceedings or measures, or
 - b. the relevant financial obligations were incurred before the date on which the financial collateral, additional, substituted or replacement financial collateral, was provided.

14. How This Instruction relates to general law of Iraq relating to Bankruptcy

Except as provided by this Part, nothing in these Regulations affects the operation of the laws of Iraq relating to bankruptcy with respect to the voiding of transactions during the period referred to in 13(1)(a) or 13(2)(a).