



AMAN ASSEFA & ASSOCIATES

LEGAL UPDATE

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OBSERVATIONS ON PAYMENT
SYSTEM OPERATORS
DIRECTIVE

Observations on Ethiopia's Payment System Operators Directive

Ethiopia's financial sector landscape has been undergoing substantial developments alongside the overall investment framework. As part of the ongoing reform in the digital financial sector, the National Bank of Ethiopia (NBE) has issued yet another directive titled "Licensing and Authorization of Payment System Operators Directive No. ONPS/02/2020" (Directive on Operators) in August 2020. Before the issuance of this directive, the NBE issued the Payment Instrument Issuers Directive in April 2020. A payment system operator is different from payment instrument issuer. A payment system operator owns, operates and administers a payment system, a system which is used to settle transfer of funds/financial transactions (the system includes the institutions, the people, the rules and procedures, standards, and the technology that make the financial transaction possible). A payment instrument issuer, on the other hand, is a person that issues tangible or intangible instruments, instruments that enable a person to make payments or transfer funds (these instruments include cards, cheques, e-money, etc).

Previously, there was no directive or regulation relating to payment system operators and thus there were no payment system operator licenses granted in the past. As such, the Directive on Operators can be deemed the first of its kind in providing specific regulations on the licensing and authorization in payment system operation.

This legal update examines the Directive on Operators, focusing on the requirements for engaging in the payment system operating business, outsourcing technology platforms and foreign payment gateway providers.

Requirements for Engaging in Payment System Operators Business

Like the Payment Instrument Issuers Directive, the Directive on Operators allows only Ethiopian nationals and foreign nationals of Ethiopian origin to engage in payment system operating business. The Directive on Operators requires that an applicant intending to be licensed as payment system operator should be established as a company, where the ownership should be vested in Ethiopian nationals and foreign nationals of Ethiopian origin. Thus, foreign investors are not allowed to engage in the payment system operating business. However, as will be noted in the next section below, foreign investors can provide their technology platforms/services to operators, if and when the operators outsource their technology services.

Moreover, the Directive on Operators requires that any person, other than a financial institution, should be licensed by the NBE in order to do business as a payment system operator. That said, licensed financial institutions are by default considered to be authorized as payment system operators. However, the financial institutions are allowed to use the payment system only for their own use (activities that are related to their routine financial transactions).

The Directive on Operators specifies five (5) types of systems a payment system operator is allowed to operate. These are: national switch operator; a switch operator; automated teller machine (ATM) operator; a point of sale (PoS) device operator and a payment gateway operator. A company is allowed to operate in more than one of any of these systems, except for the national switch operator (which shall be owned only by single entity formed between financial institutions and the NBE). Additionally, a company that intends to operate more than one system is required to meet the sum of the minimum capital requirements of each system. The minimum capital requirement for each system is as follows: for a national switch operator: Ethiopian Birr (ETB) 300 (three hundred) million; for a switch operator: ETB 40 (forty) million; for an ATM machine operator: ETB 20 (twenty) million; for a PoS operator: ETB 10 (ten) million; and for a payment gateway operator: ETB 3 (three) million.

Further, a person's ownership in a company that engages in payment system operation should not exceed 40% (forty percent) (this requirement does not apply for a national switch operator). A minimum of ten (10) shareholders is required if a company intends to operate more than one system. For a company that operates one system, the minimum shareholder requirement for a share company (five shareholders) provided under the Commercial Code shall apply. In addition to meeting the conditions described above, an applicant is required to submit documents that demonstrate the applicant's capacity to manage the system, documents detailing the features and modalities of the system, and any other information the NBE may request.

A payment system operator is not allowed to engage in any other business, including payment instrument issuer business. Should an entity/person engaged in other business be interested in the payment system operator business, it should establish a new separate company that exclusively engages in the payment system operation.

Outsourcing Technology Platforms/Services

Outsourcing is described as an arrangement between a payment system operator and a third party provider through which the latter handles a process, service or an activity otherwise handled by the payment system operator. With the exception to operational functions related to maintenance and deployment of two systems, namely ATM and PoS terminal, the list of services subject to outsourcing have not been outlined under the Directive on Operators. However, this does not mean that other outsourcing services, particularly the provision of technology platform, is prohibited. Outsourcing services, however, shall not relate to the primary business activities of the payment system operators.

Further, the Directive on Operators does not exclude foreign investors from offering outsourcing services permitted by the NBE. Thus, foreign investors may engage in the business of outsourcing services, including the provision of technology platforms to system operators.

Foreign Payment Gateway Providers

As noted earlier, the Directive on Operators recognizes five (5) systems, one of which is payment gateway operator. A payment gateway operator provides the services of integrating merchant's website, mobile tablet application or licensed e-commerce platform. In this regard, apart from domestic payment gateway operators, the Directive on Operators has introduced a rule on the basis of which a foreign payment gateway provider is permitted to offer online payment processing for activities that involve domestic and foreign transactions. A foreign payment gateway provider is allowed to provide online payment processing upon fulfilling two conditions: (i) Entering into an agreement with a licensed financial institution or the national switch operator for authorization, switching, clearing and settlement of payments purposes; and (ii) The presentation of the agreement and approval of the same by the NBE.

In conclusion, the issuance of the Directive on Operators is a step forward in the country's effort to modernize and digitalize payment transactions.





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