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Dear Mr Zahir

Comments on proposed Amendments to the Money Service Providers Regulation to Extend Regulatory Oversight to E-Money Institutions

We refer to your request for comments on the proposed Amendments to the Money Service Providers Regulation to Extend Regulatory Oversight to E-Money Institutions (**Proposed Amendments**) of July 25, 2009.

Introduction

1. **Risk Analysis**: Open and continuous dialogue between the regulator and financial sector participants is important in ensuring that any amendments enacted achieve Da Afghanistan Bank's (**DAB**'s) objectives of consumer protection and financial sector development. To this end, DAB is commended for allowing interested parties to comment on the Proposed Amendments and for making such comments publicly available.

   However, for DAB's objectives to be achieved, any regulations enacted must be proportionate to risk posed by E-Money Institutions (**EMI**). In order to enact regulations that are proportionate to risk, it is necessary to undertake a thorough analysis of the risks posed by EMI practices, and seek to address those risks through regulations. In the absence of such an analysis, there is a significant risk that any regulations enacted may not be proportionate to the risks arising from EMI practices and furthermore, may not address all risks. This would be an unfortunate outcome not only for the EMIs and DAB, but also the consumers of EMI services who may be subjected to unnecessary risks and/or inappropriate regulation.

   We understand that a risk analysis of EMI practices has yet to be undertaken. There is therefore a danger that the Proposed Amendments may not address all risks arising from EMI practices in a meaningful way. In these circumstances, notwithstanding that we have provided our comments on the Proposed Amendments below, DAB should consider whether any final decision on the Proposed Amendments is delayed until a thorough risk analysis is undertaken, further regulations are drafted in response to such analysis, and interested parties are again consulted for comments.

2. **Market Development**: The market for EMI products and services in Afghanistan is at an extremely early stage in its development. The market is competitive and open to new entrants, which may include commercial banks, mobile network operators (**MNO**), licensed money service providers, or any number of commercial partnership arrangements between such entities. In seeking to regulate the operations of EMIs on a technology neutral and non-discriminatory basis, we urge DAB to adopt an approach that is flexible (and that may be amended in response to developing market conditions) and that recognizes that the greatest source of innovation, and

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therefore benefit to the Afghan consumer, is likely to be an output of a light-touch regulatory environment that facilitates non-discriminatory competition.

3. **International Experience & Best Practice**: Whilst some aspects of the development of the market for EMI products and services in Afghanistan are unique, we believe that DAB should at all times be cognizant of international experience and international best practice when considering the most appropriate form of EMI regulation for Afghanistan.

It is in this context that we provide below our:

1. answers to the consultation questions set out in your request for comments; and
2. comments on the Proposed Amendments.

Consultation questions

Do you agree with the proposed rule's declaration that e-money is not a deposit?

Yes.

It is necessary to regulate "deposits" because banks use deposits for loans and other lines of credit. Because of this practice, there is a risk that the depositor's money may be lost.

EMIs store money solely for the purpose of it being transmitted through the money transmission service. EMIs do not hold deposits. Nor do they use the money for loans or other lines of credit. Therefore, the risk of the money being lost by an EMI is very small.

It follows that EMIs and banks must be regulated differently.

Do you think that the responsibilities placed on banks that utilise a third-party vendor to provide e-money services, as described in the proposed rule, are specific enough?

Yes.

The bank will be responsible for ensuring regulatory compliance. However, it is assumed that EMIs may still perform regulatory functions (for example KYC) on behalf of the banks under commercial arrangement between the EMIs and the banks.

Do you agree with the prohibition on the payment of interest, and interest equivalents, on e-money balances?

Yes. However, there should be a carve-out for any interest which the EMI may earn on the e-money float.

EMIs will generally deposit the customers' and agents' float into an account with a bank (in the case of M-Paisa the e-money float is deposited in a trust account) which is regulated and supervised by DAB under a banking license.

If EMIs were permitted to earn interest on such deposits, such earnings could be passed onto customers directly in the form of interest payments or indirectly in the form of reduced fees.

Paying interest on e-money balances may possibly result in customers using their e-money accounts for savings. However, this does not result in any increased risk to the customers.

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The risks associated with savings accounts arise from the fact that banks lend the customers' savings to other customers. EMIs do not lend their customers' money to others.

Therefore, saving money through EMIs does not in any way result in greater risk to the customers. And DAB will have control over such savings through its regulation of the relevant bank which is the ultimate payer of the interest and holder of the customers' money.

However, we do recommend that DAB also give due consideration to a scenario where an EMI's e-money float is held in a non-interest bearing trust account by a licensed bank and the licensed bank lends the e-money float, thereby earning income from it, and raising the risk profile of the funds held on trust on behalf of the EMI's customers without providing those EMI customers with any form of return.

Do you agree with the amount, and calculation method, of the minimum capital requirement?

No.

The minimum capital requirements are excessive.

In the case of non-bank EMI services provided by M-Paisa, the customers' position is adequately protected because the money is held on trust with a licensed bank (and cannot be disbursed to an EMI's creditors on a liquidation of the EMI). Further, where the EMI's services are linked to a bank account, the bank bears ultimate responsibility for the customers' money, not the EMI.

In these circumstances, there does not appear to be any reason for subjecting the EMI to the proposed minimum capital requirements.

The proposed minimum capital requirements should be amended to more accurately reflect the fact that the customers' position is adequately protected under EMI practices. Otherwise, the proposed minimum capital requirement is manifestly disproportionate to the subject risk.

Do you agree that EMIs should be allowed to hold liquid assets in the form of current account and savings accounts at banking organisations licensed or permitted by DAB?

Yes. This is a responsible proposal by DAB. However, the obligation to hold assets in multiple bank accounts should only be triggered where the e-money float exceeds a threshold, of say the equivalent of USD 5 million. Otherwise, the EMI may incur substantial administrative costs in maintaining 4 separate accounts to hold a relatively small float.

Additionally, given that the banks are prudentially regulated by DAB, DAB should enact regulations to the effect that the:

1. EMI will not have any liability to a customer for money lost or recovery delayed as a consequence of a bank's liquidation, financial difficulty or other acts or omissions;
2. EMI customers will have first priority on assets of a bank in a liquidation;
3. Non-interest bearing EMI deposits must be backed by a 100% reserve by the bank and cannot be used as a basis of loans or other lines of credit; and
4. DAB will immediately notify the EMI of any financial difficulty faced by a bank holding the EMI's deposits.

DAB may also wish to consider whether EMIs be required to maintain all e-money float deposits in trust accounts on behalf of their customers and agents.

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Do you agree that EMIs should not be subject to the reserve requirement for monetary policy purposes?

Yes. EMIs hold the customers' money solely for the purpose of transmission.

Do you think that the measures in place to prevent systemic risk are adequate? If not, what other measures should DAB adopt?

No.

Given that the banks are prudentially regulated by DAB, DAB should enact regulations to the effect that the:

1. EMI will not have any liability to a customer for money lost or recovery delayed as a consequence of a bank's liquidation, financial difficulty or other acts or omissions;
2. EMI's customers will have first priority on assets of a bank in a liquidation;
3. Non-interest bearing EMI deposits must be backed by a 100% reserve by the bank and cannot be used as a basis of loans or other lines of credit by a bank; and
4. DAB will immediately notify the EMI of any financial difficulty faced by a bank holding the EMI's deposits.

Do you agree with the reporting threshold of "100 customers" concerning service interruptions?

No.

Eventually, EMIs will provide almost all Afghans with secure and affordable access to financial services – including in remote geographical areas where banks do not operate, and at all hours including outside normal banking hours.

For this to happen, EMI services must generally be provided through telecommunications operators. Telecommunications operators are in turn faced with several unique challenges in operating in Afghanistan including insurgent attacks on sites and certain other general technical and business issues, all of which are frequently outside the telecommunications operators' control. In these circumstances, EMIs may suffer service interruptions, the cause and duration of which neither they nor the telecommunications operators will have control over.

Accordingly, in light of the above, and given the potential number of users of EMI services, the proposed number of 100 appears very low. For this to be workable, the number should be expressed as a percentage of the EMI's active customer base. We suggest 10%.

Further, "service interruptions" should be defined including in terms of gravity and duration. Otherwise, even insignificant interruptions may have to be reported.

We also note that the availability of a telecommunications operators' network and services is currently regulated by the Afghanistan Telecommunications Regulatory Authority ("ATRA"). ATRA requires telecommunications operators to have their networks available, in existing coverage areas, approximately 99% of the time. A general availability measure may be more appropriate.

Moreover, there does not appear to be any reason why this requirement should be limited to EMIs. The services of banks, Hawala traders and other financial institutions are also subject to interruptions. Such service interruptions can result in a loss of faith in the financial sector generally. Limiting the obligation to report such interruptions to EMIs is discriminatory.

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Do you agree with the prohibition on denominating e-money in currencies other than the afghani?

Yes. However, there should be a carve-out for services provided in partnership with institutions which are licensed to denominate money in foreign currencies.

Do you agree with the proposed limitations on individual, daily and monthly transactions? If not, what limitations would you propose, and what are your justifications for these limitations from an AML/CFT perspective?

No.

The proposed limitations should be increased by at least a multiple of 3 in each instance. Additionally, as general wealth, as well as confidence in EMI services increase, customers will want to transact larger amounts of money through EMI services in the future. Further, the proposed limitations represent a significant reduction on DAB's current limits. In the absence of any evidence that would suggest the current limits are excessive, we are uncertain as to the rationale of the proposed restriction.

The regulations should allow DAB to increase the limitations in the future without amendment of any regulations.

We also suggest that the restrictions be tiered to account for individual customers for whom a greater level of KYC due diligence has been carried out as well as for corporate customers.

EMIs will be subject to the same AML/CFT obligations as banks. All EMI transactions are accurately recorded and monthly reports submitted to DAB. Banks are and should be the most closely monitored players in the financial sector giving they hold and transact large sums of money.

Further, all EMI transactions carried out by MSDA are accurately recorded and monthly reports submitted to DAB.

In these circumstances, there does not appear to be any reason to subject EMIs to even more stringent AML/CFT obligations than banks and Hawalas. Overall, the proposed rule appears manifestly disproportionate to the risks arising from EMI practices.

Limiting the more stringent obligations to EMIs would also be discriminatory.

Do you agree with the proposed ban on the use of EMIs by corporations? If not, what would you suggest to address the AML/CFT customer acceptance and customer responsibilities in a cost-effective way?

No.

One of DAB's policy objectives is to increase access to financial services. Banks and micro-finance institutions may use EMI services to provide their services and products to large sections of the Afghan population, thereby increasing access to financial services. Given that banks and financial institutions are corporations, the proposed ban will prevent them from using such EMI services. This totally undermines DAB's stated objective of increasing financial access.

There is a very large market demand for EMI services by corporations. For example, many corporations wish to use mobile money services offered by EMIs to disburse salaries for their employees; or a utility provider may wish to use such services to allow its customers to pay bills through mobile money services.

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DAB is aware of, and in some cases has expressly consented to, EMIs undertaking salary disbursement trials and working with banks and microfinance institutions on the disbursement and re-payment of salaries and loans using EMI services. There is no evidence that such activities have resulted in any harm to Afghan consumers.

On the contrary such services and trials:

1. Expand the provision of financial services to the previously un-banked as stated above.
2. Reduce the cost of salary and loan disbursements and repayment for the issuing bank or corporate organization.
3. Serve a very significant public policy benefit in reducing inefficiencies that may arise from corruption and leakage in disbursements of salaries, collections of utility payments and so on.

As we noted above in our introductory comments, ex-ante regulation of this nature is not based on evidence or an analysis of risks, and risks depriving Afghans consumers, Afghan corporations as well the Government of Afghanistan of the public policy benefits of EMI activity.

We also note that such restrictions may be deemed to confer an unfair competitive advantage in favour of commercial banks by limiting, without any apparent reason, the scope of an EMI's permitted commercial activity.

From an AML/CFT perspective, there does not appear to be any reason why corporations should not be able to utilize EMI services. AML/CFT restrictions that apply to corporate banking or Hawala activity should be extended to cover corporate use of EMI services. Alternatively, separate AML/CFT procedures (requiring the identification of the ultimate beneficial owners of the corporation) could be enacted. The separate AML/CFT procedures must however apply to banks and Hawala traders as well as EMIs. Overall, the proposed rule appears manifestly disproportionate to the risks arising from EMI practices. Additionally, it is completely inconsistent with the position adopted by regulators in other jurisdictions.

This prohibition should be removed.

Do you think the incorporation of the DAB regulation "Responsibilities of financial institutions in the fight against money laundering and terrorist financing" into this proposed rule by reference is sufficient, or would you favour more explicit language? Do you believe that any of the referenced language in the "Responsibilities" regulation, other than in Part D which is not incorporated, is inapplicable to EMIs?

With regard to the first part, incorporation by reference is sufficient. With regard to the second part, no, there is no provision which is inapplicable.

However, given that certain EMI services will be provided through third party agents, it might be appropriate to enact specific requirements on agent due diligence, AML training and ongoing compliance monitoring.

Whose responsibility is it to address the issue of "interoperability" when e-money is concerned: the financial sector regulatory authority? The telecommunications regulatory authority, the enforcers of anti-monopoly laws. Or none of the above? Should the question be left entirely to the market?

This issue should be determined by the market.

Interoperability impacts on the availability of EMI (financial) services. It falls exclusively under DAB's supervision. At present there is no need to mandate interoperability.

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6.

The market for EMI services is currently in its infancy. If there is sufficient market demand for interoperability the EMIs will be forced to accommodate this demand.

For example, M-Paisa has been operating for a very short period of time. Notwithstanding, as a result of market demand, M-Paisa customers can now transfer cash to non-Roshan mobile subscribers. This demonstrates that if there is a demand for interoperability, the EMIs will be forced to provide this function.

Additionally, the financial services and telecommunications sectors are highly competitive. Several new and innovative services have recently been introduced to the market and we have been informed that other MNOs have already applied, or expressed an interest in applying for, MSP licenses. The market is ultimately the best solution for the Afghan consumer.

Hence, there is no need to mandate interoperability.

However, it would be appropriate for DAB, as the financial service regulator, to monitor the development of the market and intervene only when required.

If the issue is important to address form a technical or public policy perspective, how do you think it should be addressed in relevant laws, regulations or policies?

This issue is important. DAB should monitor the market for developments and intervene only if required.

General Comments

Definitions – Mobile Value Transfer

The definition includes transfer of value through "call" or "text". Hawala traders initiate the transfer value generally through "call" and frequently through "text". Under this definition, a Hawala trader will also be an MVT and subject to the same regulations.

Further, it is unclear why "mobile value transfer" is differentiated from any other type of e-money transfer. The regulations should aim to regulate transactions of electronic money, not the technology.

Accordingly, the references to MVT in the Proposed Amendments should be removed and replaced by EMT (electronic money transactions). Otherwise, the regulations would appear to be discriminatory.

Definitions – Partner

The definition should be expanded to include micro-finance institutions.

Definition - e-money

Monetary value is not always "stored on an electronic device". It is generally stored on a server or platform.

Definition – e-money float

Where the e-money float is held on trust with a licensed bank, the e-money float is not, for legal or accounting purposes, a liability of the EMI.

Article 2.5.3 – licensing application

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7. Sur.

It is unclear why an MNO requires a letter of no objection from ATRA and confirmation from the Ministry of Finance and ATRA regarding its tax status.

The MNO's services will be provided pursuant to a license issued by DAB. Such services will be separate and distinct from its telecommunications services, which will be provided under a separate license issued by ATRA.

The regulatory framework for the provision of e-money services must be technology neutral. Again, it should be the services that are regulated, not the technology or the MNOs.

The fact that an MNO's EMI services may be provided via SMS is irrelevant. Business is transacted by various institutions via SMS and voice; including Hawala traders and non-MNO EMIs. Logically, the same obligation should be imposed on all Hawala traders and non-MNO EMIs.

Limiting this obligation to MNOs would appear to be discriminatory. It should either be removed or expanded to all EMIs and Hawala traders.

It is also unclear why EMIs are required to provide DAB with detailed business plans, current and financial records (other than annual audited accounts, and an annual expansion plan to which an EMI should not be bound) and details of its future agent network.

In the case of non-bank EMI services, the customers' position is adequately protected because the money is held on trust with a licensed bank. Further, where the EMI's services are linked to a bank account, the bank bears ultimate responsibility for the customers' money, not the EMI. Additionally, the agent distribution will be determined by, largely, market demand.

In these circumstances, there does not appear to be any reason for subjecting the EMI's to disclose such information. Rather, the EMI will be forced to disclose highly confidential and commercially sensitive information. Whilst we have no doubt that DAB will guard such information and respect its confidential nature, regrettably, despite best intentions and endeavours, accidents and misfortunes occur and such information may be disclosed.

Additionally, business plans are living documents and frequently change. Given that the EMI market is in its infancy, an EMI's current business plan may substantially change as the market develops. Any business plan and associated financial documents submitted by an EMI may have no real value.

On this basis, there does not appear to be a compelling reason for requiring EMIs to provide DAB with their business plans and other financial documents. This requirement should be removed.

The Proposed Amendments also require EMIs to provide DAB with a list of their anticipated partners. We acknowledge that there may be a policy objective behind this requirement. In practice the policy objective will not be met.

An EMI will enter the market with the intention of partnering with as many institutions as possible. Given the limited number of potential EMIs, it is safe to assume that institutions are speaking with all potential EMIs. Therefore, the EMIs are likely to list the same institutions as anticipated partners. Additionally, commercial discussions frequently fall through. Therefore, any list provided is not likely to be accurate.

As such, the policy objective behind this requirement will not be met. This requirement should be removed. Further, we believe that such a requirement is discriminatory. We do not believe that Afghan banks are required to provide a list of future partners.

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With regard to the obligation to provide DAB with the EMI's policy on liquidity management, it should be noted that each EMI will have a different plan on how to manage agent liquidity. For example, M-Paisa enlists existing businesses with cash flows as agents. This model works well in other international markets such as Kenya, where thousands of agents manage their own cash requirements in accordance with market demand. M-Paisa does not provide agents with cash. In any case, we are uncertain as to the rationale for an EMI to provide its agents with cash, when agents will have access to cash floats as a result of the ancillary business they operate at agent locations.

Article 2.5.4 – minimum capital requirements

The minimum capital requirements appear to be excessive. The customers' position is adequately protected regardless of the EMI's financial or capital adequacy position.

The proposed rule creates a very substantial financial burden on the EMI without apparent justification. The proposed rule should be abolished.

Overall, the proposed minimum capital requirement appears manifestly disproportionate to the risks arising from EMI practices.

Article 2.5.5 – minimum liquidity requirement

The proposed rule requiring the EMI to hold the assets in multiple accounts should only be triggered when the float exceeds the equivalent of USD 5 million. Otherwise, the EMI will incur a substantial administrative cost in maintaining 4 separate accounts to hold a relatively small float.

Given that the banks are prudentially regulated by DAB, DAB should enact regulations to the effect that the:

1. EMI will not have any liability to a customer for money lost or recovery delayed as a consequence of a bank's liquidation, financial difficulties or acts or omissions;
2. EMI's customers will have first priority on assets of a bank in a liquidation;
3. EMI deposits must be backed by a 100% reserve by the bank and cannot be used a basis of loans or other lines of credit by a bank; and
4. DAB will immediately notify the EMI of any financial difficulty faced by a bank holding the EMI's deposits.

Article 2.5.6 – transaction and e-money limitations

The limits should be increased by a multiple of at least 3 in each instance. Additionally, DAB should be permitted to increase the limits as the market develops a demand for larger transactions.

MNOs should not be subject to more stringent AML/CFT obligations than banks and Hawalas. It is more likely that money laundering and terror financing will take place through banking and Hawala services.

It is not clear why specific rules should apply to MNOs. The same rules should apply to all electronic money service providers, including all EMIs, Hawalas and banks, unless specific different risks are identified. Otherwise, the rule is discriminatory.

This rule appears manifestly disproportionate to the risks arising from EMI practices.

Article 2.5.7 – additional requirements and limitations

There should be a carve-out for:

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1. services provided in partnership with institutions which are licensed to denominate money in foreign currencies; and
2. interest that may be earned by the EMI from depositing the float into an account with a licensed bank and passed on to the customers by the EMI in the form of interest payments and/or reduced costs.

Article 2.5.8.2.1 – agent responsibility

The customers should be protected. However, the regulations should be proportionate to risk and should not be commercially prohibitive.

Dealing and handling cash is extremely risk for the customer when transferring money. E-money provides the customer with a highly secure way of transferring money.

The proposed rule that the EMI be responsible for any losses suffered by a customer through agent actions is commercially prohibitive and not proportionate to the risk posed to customers by agents. As any risk analysis will demonstrate, as well as an analysis of other markets (and we are not aware of any market which by law requires the EMI to accept responsibility for the agent's actions), the risk of a customer losing money through agent actions including fraud or misconduct is almost non-existent.

There is a contract between the customer and the agent. This will enable the customer to take action against the agent direct in the rare event that the customer is deprived of money through the agent's actions. The risks for the agent, such as losing right to act as agent and possibly criminal prosecution, far outweigh the potential benefits, given the relatively small amounts of money involved in such transactions.

However, if the EMI is required to indemnify the customer for any losses arising from agent actions including agent fraud and misconduct, the frequency of customer and agent collusion to defraud the EMI will exponentially increase. As a result, the EMI will have to closely monitor the agents' activities at substantial cost. These costs will be passed on to the customer. This will make the services unaffordable for most customers and will undermine DAB's objective of increasing access to financial services.

In practice, for commercial and legal reasons it will generally be impossible for the EMI to prove that the customer and agent colluded to defraud the EMI. Given that the amounts involved will be relatively small, it will not be practical for an EMI to take a matter to a court to establish customer and agent collusion. Additionally, from a legal perspective, because the EMI's interface with the customer is the agent, frequently the only evidence that an EMI could rely on to establish collusion is the agent's testimony. As both the agent and the customer will have been involved in the fraud, the agent is not likely to provide the EMI with any helpful evidence.

Additionally, such an obligation does not accord with existing legal principles. The EMI agents are independent contractors – the EMI is the principal. Under general principles of law, a principal is not liable for the unauthorised acts of its contractors. The proposed rule would make the EMI (as principal) liable for the actions of its agents (independent contractor) contrary to established legal principles.

Furthermore, the proposed rule does not accord with existing employment law principles. The law generally holds an employer liable for the authorised acts of its employees. However, where the employee's actions are unauthorized, the employer is not liable.

For example, a bank will not be held to be liable where its teller defrauds customers of money provided the act of fraud was not authorized by the bank. This is notwithstanding there exists a relationship of

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employment between the bank and the teller and the bank has complete control and supervision of the teller.

Accordingly, given that an EMI has less control and supervision of its agents than a bank over its employees, and has less stringent obligations under existing general law principles, it is inappropriate to hold an EMI to a much higher obligation than a bank in a similar situation.

The proposed rule is manifestly disproportionate to the risks arising from EMI practices. If enacted, the proposed rule will prohibit EMIs from providing affordable services, thereby limiting access to financial services for the vast majority of Afghans. It will also be a barrier to many new entrants into the market thereby preventing competition in the market.

For these reasons, the proposed rule should be removed.

Alternatively, the EMI should only be required to indemnify where the customer is able to prove that it followed all policies and procedures communicated by the EMI in its dealings with the agent. The onus of proof is more appropriately placed on the customer as this reduces the risk of collusion between the agent and the customer.

Article 2.5.8.3 – free of charge hotline

The EMI should be able to decide on how it will help its customers manage their account. However, DAB should monitor the market and if there is evidence of issues at a later stage, a mechanism should be prescribed at that stage.

Alternatively, there should be a limit place on the number of free calls. The customers should be allowed up to 2 free calls

Article 2.5.9.1 – limit of agent revenue from VMT transactions

There is generally no reason to prescribe rules for agent liquidity (assuming that this is the policy objective behind this rule.) The market will very quickly ensure that agents have sufficient funds to satisfy demand. Otherwise, neither the agent nor the EMI will earn an income. Hence, there is no reason to prescribe rules for agent liquidity.

Also, there does not appear to be any reason why MVT transactions should be treated differently to other money transfers. Hence, the rule should be extended to all money transmission service providers.

Article 2.5.9.2 – using existing DAB-licensed and permitted financial institutions

EMIs, banks and financial institutions should be encouraged to work together to extend access to financial services. This will naturally occur given there are several areas of mutual interest.

However, the proposed rule may be interpreted to mean that the EMIs are required to work with banks at the exclusion non-bank agents. Non-bank agents are an important strategic asset in extending access to financial access.

Hence, the Proposed Amendments should specifically make it clear that EMIs are free to use both bank and non-bank agents, at their discretion.

Article 2.5.9.4 – liquidity

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Whilst EMIs should have adequate liquidity management policies, ultimately the agents need to be self funded. This is the only way that the services can be able to be offered to all Afghans.

The market will very quickly ensure that agents have sufficient funds to satisfy demand. Otherwise, neither the agent nor the EMI will earn an income. Hence, there is no reason to prescribe rules for agent liquidity.

Article 2.5.11 – event-driven reporting

Under the Constitution of the Islamic Republic of Afghanistan, an EMI should be free to lawfully conduct its business.

The requirement that the EMI notify DAB at least 15 days prior to entering into any discussions with the specified organizations and obtain a letter of no objection is onerous, will be very difficult to comply with in practice as discussions are frequently before any notification may be given to DAB, and is also discriminatory.

The regulations should regulate the services, not how the providers of the services conduct their businesses.

There should be no requirement for the EMI to notify DAB and obtain a no objection letter before it can enter into a commercial relationship with the specified organizations.

If there are concerns for national security, then logically *ALL* businesses (not just EMIs and other MSPs) should obtain a letter of no objection from DAB before entering into a commercial relationship with the specified foreign organizations. This obligation should extend to banks, telecommunications providers, airlines, the construction industry, taxi drivers, to name a few.

Unless there is a valid policy reason for limiting this obligation to EMIs (and there does not appear to be, as the risks are not unique to EMIs but apply to all businesses), this obligation should be removed.

Article 2.5.12.2 – anti-money laundering/combating the financing of terrorism

The restriction against corporations should be removed. There does not appear to be a valid policy objective behind the restriction and no other jurisdiction of which we are aware has imposed such a restriction.

One of DAB's policy objectives is to increase access to financial services. Banks and micro-finance institutions may use EMI services to provide their services and products to large sections of the Afghan population, thereby increasing access to financial services. Given that banks and financial institutions are corporations, the proposed ban will prevent them from using such EMI services. This totally undermines DAB's stated objective of increasing financial access.

There is a very large market demand for EMI services by corporations. For example, many corporations wish to use mobile money services offered by EMIs to disburse salaries for their employee; or a utility provider may wish to use such services to allow its customers to pay bills through mobile money services.

From an AML/CFT perspective, there does not appear to be any reason why corporations should not be able to utilize EMI services. EMI practices are less risky from an AML/CFT perspective; EMI should not be subject to more stringent AML/CFT obligations. Separate AML/CFT procedures (requiring the identification of the ultimate beneficial owners of the corporation) should be enacted. Such obligations should be extended to banks and Hawalas traders.

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The proposed rule is manifestly disproportionate to the risks arising from EMI practices and is inconsistent with the practices of regulators in other jurisdictions.

Article 2.5.12.4 – expedited customer identification

There does not appear to be a valid policy reason for limiting this to MNOs. Prima facie this appears discriminatory and should be removed.

Conclusion

Thank you for the opportunity to provide these comments and for your due consideration.

We sincerely believe that it would be in the interests of DAB, EMIs and all Afghan people for DAB to conduct a thorough risk analysis of EMI practices and a detailed study of regulations in other markets before taking any final decision.

We would of course be happy to provide DAB with any reasonable assistance required to undertake such an analysis.

Additionally, given the number of issues raised by the Proposed Regulations, we would like to meet with DAB to provide further details in support of our comments and clarify any issues we have raised in this letter.

Otherwise, we look forward to receiving your response to this letter and reserve the right to make further or other comments on the Proposed Amendments, as well as any other issues that might arise.

If you require any further information or clarification, please feel free to contact us.

Sincerely,

Zahir Khoja
President
Mobile Service Development Afghanistan Limited

Zmarak Zhouand
Vice-President
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