

## Terms of Reference

### Consultancy for Legal and Oversight Framework in line with the National Payment Systems Strategy

#### 1. Background

The State Bank of Pakistan (SBP) was established under the State Bank of Pakistan Act 1956, in accordance with which its objectives are to foster monetary stability and promote credit and exchange conditions conducive to the growth of the economy of Pakistan. Information on the SBP can be found on the website <http://www.sbp.org.pk/>

In recognition that the payments system is an integral part of the financial system and is vital for the financial stability, economic growth and monetary policy implementation, the SBP is committed to ensure safety and efficiency of Pakistan's National Payment System (NPS). SBP's vision 2020 envisages a modern and robust Payment Systems in Pakistan which is well supported in the financial industry of the country and there is a strong desire for the development of a coherent, efficient, safe, convenient and integrated NPS. The financial industry also recognizes that the SBP is best positioned to take the lead in NPS development in light of its statutory objectives as mentioned above.

One of the major components in the implementation of the NPS strategy is to review the existing legal and regulatory framework of the payment Systems of the country, identify the gaps and subsequently fill these gaps by suitable amendments in the legal and regulatory framework of the country.

#### 2. Current Legal Framework

Following are the major legal frameworks that provides the legal basis for governing and developing payment systems of the county.

1. The Payment Systems & Electronic Funds Transfer Act of 2007
2. The Electronic Transaction Ordinance 2002
3. The Negotiable Instrument Act 1881
4. The Qanoon-e-Shahadat, 1984
5. The State Bank of Pakistan Act, 1956
6. The Prevention of Electronic Crimes Act 2016
7. The Banking Companies Ordinance 1962

#### 3. Current Regulatory & Oversight Framework

The major regulations relevant the payment systems in the country are (not exhaustive) are as follows

1. Guidelines for White Label ATM Operators issued vide PSD Circular No: 05 of 2018
2. Electronic Fund Transfers (EFT) Regulations issued vide PSD Circular No. 03 of 2018
3. New PRISM Operating Rules (PORs) issued vide PSD Circular No. 02 of 2018
4. Guidelines for Clearing Operations issued vide PSD Circular No. 03 of 2017
5. Payment Systems Designation Framework issued vide PSD Circular No. 02 of 2017
6. Regulations for Payment Card Security issued vide PSD Circular No. 05 of 2016
7. Prepaid Card Regulations issued vide PSD Circular No. 04 of 2016
8. Regulations for the Security of Internet Banking issued vide PSD Circular No. 03 of 2015
9. Branchless Banking Regulations for Financial Institutions issued vide BPRD Circular No. 09 of 2016
10. Regulations for Mobile Banking Interoperability issued vide BPRD Circular No. 03 of 2016
11. Master Circular of Payment Systems Data issued vide PSD Circular No. 03 of 2016

## 4. Objective

The main objective of the consultancy is to strengthen the current legal and oversight frameworks for the Payment System in Pakistan by:

1. Identifying the existing legislation that needs to be targeted for providing legal coverage to Payment Systems
2. Identifying gaps in the existing legal and oversight framework in the wake of technological advancement that needs to be addressed
3. Suggesting suitable amendments including the draft of these amendments in the relevant legislation, regulations and oversight framework in line with the Principles of Financial Market Infrastructure (PFMI) and international best practices.

## 5. Scope of Work

1. Comprehensive review of the current legal and oversight framework existent in the form of ordinances, acts, rules, regulations, guidelines and any other relevant instructions issued by regulators from time to time, including but not limited to the following:
  - a. The Payment Systems & Electronic Funds Transfer Act of 2007
  - b. The Electronic Transaction Ordinance 2002
  - c. The Negotiable Instrument Act 1881
  - d. The Qanoon-e-Shahadat, 1984
  - e. The State Bank of Pakistan Act, 1956
  - f. The Prevention of Electronic Crimes Act 2016
  - g. The Banking Companies Ordinance 1962
2. Considering the evolving technologies and Payment landscape of the country, review of the above mentioned laws specifically Payment System & Electronic Funds Transfer Act, 2007, identify gaps and propose specific and objective amendments in the relevant Act or law in the light of best international practices. The following critical areas should be covered:
  - a. Legal Framework for E-Money Institutions and Payment Service Providers
  - b. Legal Framework for Cheque Truncation
  - c. Legal and regulatory practices related to Shared KYC and eKYC
  - d. Regulatory Sandbox development in light of the existing and proposed legal framework.
  - e. Fin-Techs (and similar entities leveraging ABCD - AI, Blockchain, Cloud and Data), Digital Fiat Currency (DFC) and other nonbanks authorization and/or designation by SBP
3. Review of SBP's mandate to:
  - a. Conduct oversight of Payment Systems operated by Financial Institutions, Non-Banking Financial Institutions, Exchange Companies, Money or Value Transfer Services and other entities
  - b. Conduct oversight of the electronic and paper based payment instruments
  - c. Conduct oversight of payment channels like ATMs, POS, Internet and Mobile Banking, etc.
  - d. Conduct oversight of Virtual Currencies/Crypto Assets
4. Identify laws and propose amendments in the relevant laws to ensure the legal coverage of above- mentioned areas (Item 3).

5. Comprehensive review of the payment system regulatory framework, identify gaps and propose specific amendments in the relevant regulation or propose new regulations in the light of best international practices specifically covering the areas mentioned in point “2” above.
6. Ensure that draft legal & regulatory framework/amendments adequately covers area related to clearing and settlement of payment instructions by FMI in Pakistan
7. Review existing laws including SBP Act, 1956; Payment Systems and Electronic Fund Transfer Act, 2007 and all/any other legal mandate with reference to SBP’s oversight function.
8. Identify gaps, propose amendments, and draft specific clauses (in line with international security & oversight standards) to enhance legal coverage of SBP’s oversight function; encompassing innovations in the payment systems arena including but not limited to FinTechs, Virtual/Crypto Currencies, Blockchain based Digital Financial Services (DFS), Cybersecurity, Artificial Intelligence (AI), Big Data and cloud computing for payment systems, etc.
9. Review and propose Payment Systems Oversight framework for SBP covering retail, high value and micro payment systems, Securities Settlement Systems, Depositories, Trade Repositories, Central Counterparties, Direct Debit, Credit Transfer Schemes, Card Based Payment Systems and payment instruments based on best practices and international principles (PFMI)
10. Review and analyze data requirements for Payments System’s oversight function and perform the following:
  - a. Propose software solution for payment systems oversight
  - b. Prepare draft Request For Proposals (RFPs) for software acquisition
  - c. Prepare data collection templates and suggest analysis methodology for data acquired from banks, PSOs/PSPs and other participants
  - d. Identify tools for real-time data acquisition and processing
11. Build and enhance SBP capacity through rigorous trainings/workshops for payment systems oversight and effective utilization of proposed software solution for payment systems oversight; including at least 2- 3 model reports based on the proposed oversight framework
12. Develop an overall mechanism to adopt the above mentioned oversight frameworks for SBP
13. Attend meetings with Stakeholders, give presentations, clarifications, explanations to SBP, Ministry of Finance (MoF) and the committees of the Parliament as and when necessary in consultation with Legal Services Department, SBP.
14. Rationalizing the existing data items being collected by Payment Systems Department, SBP and propose changes to enhance the existing data set to be collected.

## 6. Deliverables

1. Detailed review report of the current legal and regulatory framework of the national payment system specifically for the areas mentioned in scope of work.
2. Recommendations to address the gaps and areas of improvements identified in the legal and regulatory review and in light of best international practices as mentioned in the scope of work.
3. Draft of legal and regulatory amendments and new legal & regulatory provisions to fill the gaps and shortcoming identified in legal and regulatory framework review and in light of best international practices.
4. Report including key action items on Regulatory Sandbox for FinTechs and pros and cons for adopting ABCD (AI, Blockchain, Cloud and Data) and other emerging technologies for SBP
5. Oversight framework document for micro, retail and high value payment systems channels and instruments.

6. Strategy for SBP to adopt a comprehensive oversight and legal framework for payments market of Pakistan.
7. Business Requirements and Functional Specification for Oversight data collection and analysis software
8. Project Management for the complete project cycle for the procurement and consequent installation of software for data collection of Oversight.
9. Fulfilment of all the requirements against the scope of work to the satisfaction of SBP's evaluation committee.
10. Capacity building sessions/workshops and training manuals for effective utilization of proposed oversight frame work and software solution for payment systems oversight.

## 7. Duration and Timelines

The consultancy for Legal and Oversight framework is expected to start from December 2019 and is expected to conclude not later than September 2020 (10 months). However, the project management part of the deliverable pertaining to Software for Data collection of Payment Systems Oversight is expected to conclude after successful its installation expected to conclude in July, 2021.

## 8. Payment Terms

Sr. #	Deliverables for Consulting Firm	Timeline	Payment Schedule
1	Detailed review report of the current legal and oversight framework of the national payment system specifically for the areas mentioned in scope of work.	80 days from the signing of the contract	5.0%
2	Recommendations to address the gaps and areas of improvements identified in the legal and oversight review and in light of best international practices as mentioned in the scope of work.	120 days from the signing of the contract	10.0%
3	Draft of legal amendments and new legal & regulatory provisions to fill the gaps and shortcoming identified in legal and regulatory framework review and in light of best international practices.	210 days from the signing of the contract	20.0%
4	Report on review and analysis of SBP's data requirements for oversight function and propose software solution for payment systems oversight including data collection templates and recommendation for analysis methodology.	360 days from signing of the contract	10.0%
5	Oversight framework document for micro, retail and high value payment systems and instruments.	240 days from the signing of the contract	15.0%
6	Strategy for SBP to adopt a comprehensive oversight and legal framework for payments market of Pakistan and key action items on Regulatory Sandbox for FinTechs and pros and cons for adopting latest technology trends (as mentioned in Scope of Work) in SBP	300 days from the signing of the contract	10.0%
7	<ol style="list-style-type: none"> <li>a. Business Requirements and Functional Specification for Oversight data collection and analysis software.</li> <li>b. Project Management for the complete project cycle for the procurement (e.g., RFPs, etc.) and consequent installation of software for data collection of Oversight.</li> <li>c. Capacity building sessions/workshops and training manuals for effective utilization of proposed oversight</li> </ol>	Expected to finish in conclude in July, 2021	30.0%

	frame work and software solution for payment systems oversight.		
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## 9. Reporting & Coordination

The main point of contact for this exercise from SBP will be:

Rajeev Gulrajani

Assistant Director

Payment Systems Department

State Bank of Pakistan

Karachi

Tel: 021-33113449

## 10. Ownership of Confidential Information

The consulting firm would ensure that all the data/ information collected under this consultancy is kept confidential and will be the sole and exclusive property of SBP. The consulting firm will not, acquire any right, title or interest in or to any of the confidential information collected for this consultancy.