



the global voice of
the legal profession®

International Bar Association Banking Law Committee

Fintech: how is the world shaping the financial innovation industry?



Iran

Amir Mirtaheri*

Sabeti & Khatami, Tehran

amir.mirtaheri@sabeti-khatami.com

Nika Baghestani†

Sabeti & Khatami, Tehran

nika.baghestani@sabeti-khatami.com

Niloofar Massihi‡

Sabeti & Khatami, Tehran

niloofar.massihi@sabeti-khatami.com

1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

There is no overarching fintech law in Iran and the diverse activities often classified as fintech are only partially and recently regulated as the regulators navigate new financial technologies introduced by industry players.

The Central Bank of Iran (CBI) has issued policy papers and regulations related to digital payments, digital banks, digital asset exchanges and digital custody (wallets). It has also introduced microfinancing regulations which bear on digital lending activities. The Exchange and Securities High Council (Securities Council) and the Securities and Exchange Organization (SEO), the capital market regulators, have introduced regulations on digital capital raising (crowdfunding) and certain asset management technologies (algorithmic trading). Central Insurance of Iran (CII), the insurance regulator, has introduced some regulations relevant to insurtech.¹ All these regulatory frameworks are discussed below.

To date, there is no specific regulation on digital savings mechanisms such as digital funds. A host of other fintech services such as financial management and business intelligence technologies, digital accounting, KYC, credit rating/scoring, due diligence and risk analytics remain either unregulated or subject to general subject-matter regulations.

Digital payments

CBI regulation of digital payments has created a three-layer structure consisting of (1) a central payment network called 'Shaparak' connecting CBI, banks and payment service providers (PSPs), (2) PSPs and (3) payment facilitators, which are intermediaries between PSPs and sellers of goods and services.

* Amir is a senior associate at Sabeti & Khatami and advises on corporate and financial law, usually in matters with a cross-border element. Amir has extensive corporate and M&A experience in the e-commerce and fintech sectors.

† Nika is an associate at the firm and advises clients on corporate, contract and investment matters. She is experienced in advising VCs and e-commerce and technology startups in relation to investment and M&A transactions.

‡ Niloofar is a senior associate at Sabeti & Khatami and advises clients on corporate, contract and capital market matters. She is experienced in negotiating complex mergers and structuring financial instruments in the tech sector.

¹ Insurance and technology.

CBI's Regulation on Establishment, Operation and Monitoring of Payment Service Providers (PSP Regulations), approved in 2011, is discussed in Question 3.

CBI's latest regulation on payment facilitators was issued in 2018. The regulation sets out:

- payment facilitators' corporate and management requirements;
- the qualification process (including required contractual arrangements with a PSP and with *Shaparak*);
- the scope of permitted activities (limited to providing payment services to sellers); and
- capital adequacy, KYC, record-keeping, reporting, AML and counter-terrorist financing (CTF) rules and settlement processes.

PSPs have supervisory responsibilities vis-à-vis payment facilitators with whom they enter into payment agreements.

CBI has a specific regulation on card-not-present (CNP) payments dating back to 2017 and covering matters such as risk management (including via transaction limits), transaction authentication, and record-keeping, incident reporting and outsourcing rules.

Digital banks

During the past decade, digital banking has thrived in Iran in part as a result of the digital banking mandate in the Fourth Development Plan Law, 2004 and the subsequent Digital Banking Regulations approved by the Council of Ministers on 13 March 2008.

The latter Regulations, which cover mobile and online banking as well as necessary hardware infrastructure such as point-of-sale and ATM networks, created a mandate for CBI, other government entities and banks to facilitate rapid expansion of secure digital banking. The Regulations also required CBI to introduce further regulations of various digital banking services. Except for the case of virtual banking discussed below, no such regulation has been publicly announced, although CBI seems to have been in close coordination with banks in relation to development of their digital services per CBI news announcements.

CBI did introduce its regulations on fully digital banks (virtual banks) in 2011. These regulations set out virtual banks' establishment requirements (such as CBI licensing process and single ownership limits), required operational plans and management qualifications, permitted activities, and record-keeping, data security and reporting rules.

Digital custody

Two pieces of regulation deal with digital wallets:

- Directive No. H54251T/107837 of the Council of Ministers dated 6 November 2018 (Fintech Directive); and
- CBI's 2020 Digital Wallet Operators Regulation (Wallet Regulation).

Details of these are discussed in Question 3.

Digital asset exchanges

CBI has regulations on trading crypto assets discussed in Question 2.

Digital lending

There is no regulation specifically dealing with digital lending activities, but CBI has recently issued the Implementation Directive on Micro-lending, and a few banks have introduced microfinancing via their digital platforms based on their internal credit scoring systems.

In addition, an official platform was recently launched (*Setareh Samat*) where borrowers can pledge their shares in public companies as security in support of their loan applications to banks. The platform is intended to be used for pledging other types of securities and financial instruments in the future, such as gold certificates.

There is a considerable demand in the market for microfinancing and buy now pay later schemes, and many e-commerce companies are exploring digital lending arrangements for their customers. It would be of no surprise if CBI introduces specific regulations in this matter in the near future.

Digital capital raising

The primary regulation here is the 2018 Crowdfunding Directive by the Securities Council. Crowdfunding operators must obtain a licence from the special evaluation committee established under the Directive.

Once a project is approved by a licensed operator in accordance with the Directive, and the necessary contractual arrangements are entered into between the operator and the fund applicant, an exchange ticker is assigned by Farabourse, one of the two securities exchanges in Iran, following which public fundraising may commence.

There are limits on the size of the fund to be raised for a single project and on the aggregate at any given time of ongoing fundraising targets by a single operator. Fund applicants are required to provide at least 10 per cent of their project's capital needs in equity.

Asset management technologies

There is no regulation of asset management technologies except for SEO's 2020 Regulation of Algorithmic Trading, which could be used as part of a fintech approach to asset management. The regulation sets out the technical requirements for permissible machine trading such as frequency limit, permitted time windows for order submission, logging requirements, record-keeping rules and capability to immediately cancel orders or terminate algorithms when required by law. High frequency trading is prohibited.

Insurtech

In the two sets of regulations issued in 2019, CII addressed online insurance activities such as brokerage services, marketing, sales and payments, and set out requirements such as an electronic commerce licence from the Ministry of Industry and minimum hardware and software capabilities. More recently, CII and Iran's Vice Presidency for Science and Technology have entered into an agreement to support development of insurtech. As a result, more regulatory activities in this matter may be enacted in the future.

2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.

The focus of crypto regulation has been on mining, which witnessed a boom during 2020 and 2021 thanks to heavily subsidised electricity prices. Having started from an outright ban in early 2021, the government moved to allow crypto mining and adopted new regulations.

Legal mining now requires permission from the Ministry of Industry. Mining facilities must not be in the vicinity of large population centres, they must pay for their electricity at unsubsidised rates and may not operate during peak hours of consumption. The Ministry of Energy has introduced detailed regulations on electricity tariffs applicable to mining facilities.

Outside mining, CBI has maintained a fairly sceptical attitude in regulating the use and trading of crypto assets. In early 2019, it issued interim regulations on cryptocurrencies (Crypto Regulations), which prohibited the use of most crypto assets (including global cryptocurrencies, tokens based on tangible or intangible assets and tokens based on fiat currencies other than rial CBDC) as means of payment. Only CBI-regulated banks may issue fiat-based tokens (other than rial CBDC); and issuance of gold and metal-based tokens requires CBI's permission and bank guarantees. The regulations also dealt with ICOs.

The Crypto Regulations are fairly aggressive towards crypto exchanges. The trading of most crypto assets (such as global cryptocurrencies and gold, metal and hard currency-based tokens) may only take place in CBI-licensed crypto exchanges. While traditional licensed exchange houses may apply for a crypto exchange licence, it is unclear whether other exchange platforms are able to obtain such licences. Furthermore, CBI determines the list of cryptocurrencies that may be traded in licensed exchanges. AML and KYC rules apply, and customers and transactions' information must be recorded and reported to CBI.

The Crypto Regulations also indicate the CBI's plans to introduce its rial CBDC, known as crypto-rial. Crypto-rial and tokens based on the former may be used as means of payment.

The only legitimate use of global cryptocurrencies CBI has thus recognised is for licensed miners to use their mined cryptocurrencies to finance import of goods and services into the country using the Ministry of Industry's national trade portal.

3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

Payment service providers

The PSP Regulations set out a long list of requirements to establish a PSP including founders' qualifications, shareholders restrictions and minimum capital requirements, CBI's licensing and *Shaparak*'s technical approval processes, required internal controls, and audit, reporting and AML rules.

Digital wallets

The Fintech Directive designates CBI as regulator of digital wallets. CBI's Wallet Regulation sets out the general framework for open wallets by setting out:

- the requirements for wallet service providers (such as minimum capital);
- capital adequacy, KYC, transaction monitoring and recordkeeping rules;
- required internal controls;
- permitted transactions and turnover caps for commercial and personal wallets;
- responsibilities of wallet service providers; and
- the corresponding roles of national payment platforms, PSPs and credit institutions.

Wallets' and transactions' information must be recorded in a national database.

CBI has reportedly issued regulations on micropayments from wallets and transaction monitoring guidelines for service providers, but these are not publicly available.

4. Special support to fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.

The government has, at the highest level, supported an open, competitive and innovative fintech landscape. In the Fintech Directive, the Council of Ministers required CBI to take anti-monopoly measures in the digital payment sector, banks and PSPs to offer service to licensed fintech companies and government entities to facilitate receipt of small government dues via fintech intermediaries. The Directive also prohibited CBI from imposing business restrictions on fintech companies beyond its strict role as the regulator of the financial sector.

To foster innovation, the Fintech Directive also required CBI to set up a regulatory sandbox, which was launched in June 2022 to monitor novel solutions, assess risks and help formulate regulatory responses. CBI officials have also expressed interest in the development of supervisory and regulatory technologies (RegTech) to expedite much-needed banking reform.

An agreement between CII and the Vice Presidency for Science and Technology, reported in early September 2022, includes creation of a regulatory sandbox for assessment of innovations in the insurance industry as one of the measures in support of Insurtech.

As far as we are concerned, fintech accelerator programs exist but none of them are directly affiliated with the government. Larger accelerators are sponsored by banks, financial institutions, major fintech companies and technology universities. Banks have shown particular interest in the recent years in supporting fintech startups and in acquiring fintech targets, mostly in digital payments, digital banking and wallets.

5. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.

There are currently no open banking regulations in Iran. However, the CBI, in recognition of its significance, created an open banking committee within its digital banking taskforce nearly two years ago. The committee is responsible for identifying supervisory and operation procedures for open banking and has reportedly produced an internal CBI document on the overall architecture of open banking in Iran. It is reasonable therefore to anticipate some regulatory creation in this matter in the near future – although any regulation must be reconciled with CBI’s strict customer data privacy, security and confidentiality regulations for banks such as those stipulated in CBI’s Directives No 7075 of 7 January 1996, and H444 of 25 September 2008. Significant expansion of entities under CBI’s supervision following widespread open banking activities and the resources it will entail may be another reason for CBI’s slow pace in this matter.

There are open banking platforms with the capacity to connect banks’ APIs to fintech companies but no substantial open banking activities have been reported, perhaps in part due to the regulatory vacuum.