

# Payment Services and Payment Initiation

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## Executive Summary:

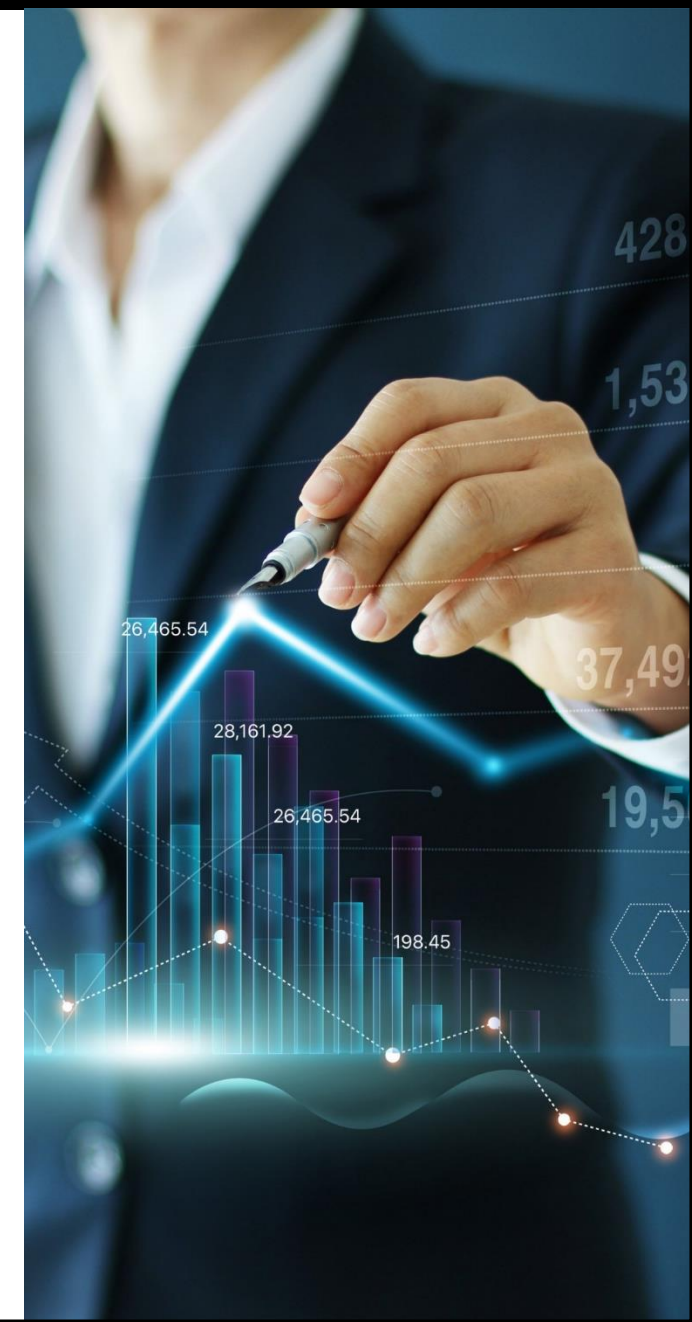
As of June 2024, significant amendments to payment services regulations in Israel will come into effect, impacting foreign Payment Service Provider corporations currently operating under specific exemptions. We are here to guide you through this pivotal development.

The revised law stipulates that foreign corporations, already active in Israel and holding valid payment service licenses from recognized jurisdictions such as the EU, the U.S., or England, must submit their license application to the ISA by September 2024 to ensure continued operations.

Crucially, businesses that submit their license application can maintain their operations during the license approval process, offering them a distinct advantage in ensuring uninterrupted business continuity.

### **These regulatory changes necessitate immediate attention.**

Our financial regulation team at Gornitzky & Co. possesses extensive experience in supporting numerous payment service providers. We are fully equipped to assist you with inquiries and consultations, ensuring a seamless transition in light of these evolving regulations.



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Regulation of Payment Services and Payment Initiation Services Law establishes the regulations that are applicable to businesses operating in the field and revolutionizes payment services in Israel.

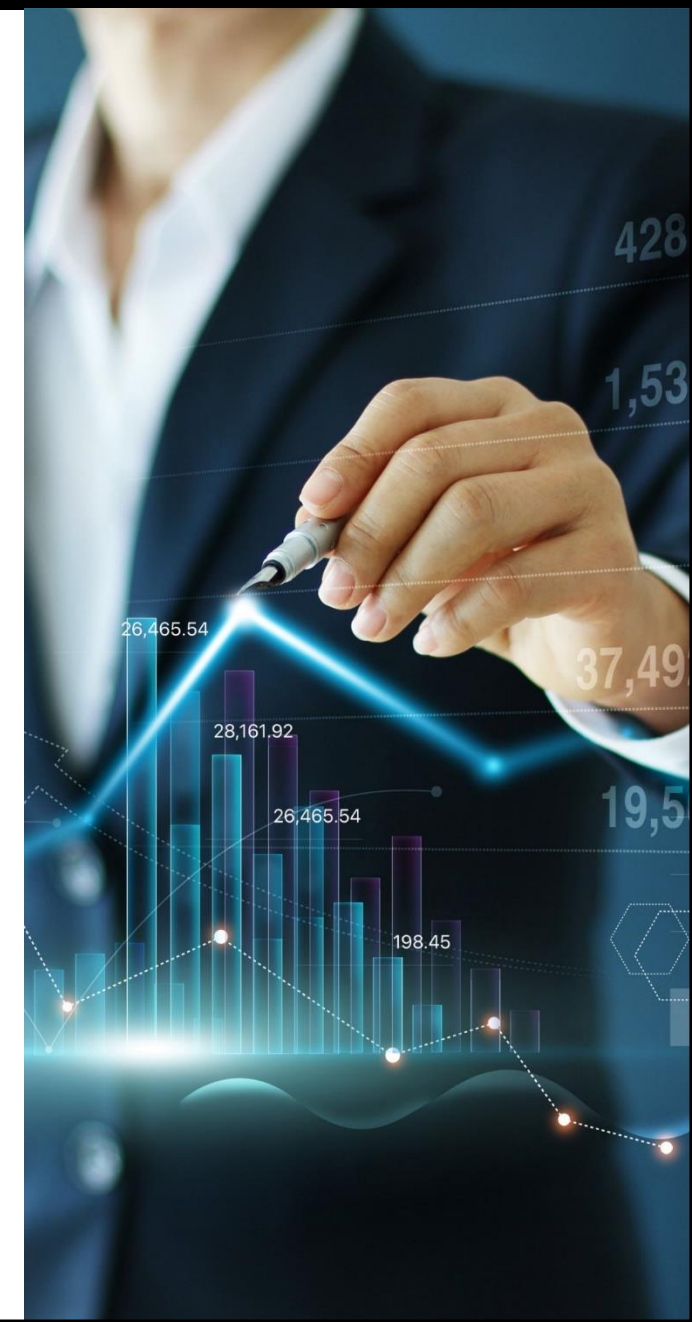
The law was published on June 6, 2023 as part of the Economic Plan Bill. (Legislative Amendments for Implementing the Economic Policy for Budget Years 2023 and 2024) with the dual objectives of promoting market competition and creating a comprehensive regulatory framework, the law sets forth directives regarding this field of operation, payment services licensing, and payment initiation licensing obligation and exemptions to these requirements.

Additionally, the law includes provisions regarding foreign companies, emerging sectors, consumer protection and safeguarding consumers assets, the continuation of the activity of entities operating in these fields prior to legislation of the law, and also a number of indirect legislative amendments to other laws.

The purpose of this guide is to outline the fundamental provisions of the law.

**The financial regulation team at Gornitzky & Co. has extensive experience in the field, providing support for numerous payment service providers, and is will be glad to assist you with inquiries or consultation.**

\*The content provided in this guide offers a general overview of the law and is not intended to replace legal counsel.





Companies looking to enter the market face obstacles, including the lack of a designated regulatory framework, burdensome regulation applicable to non-banking entities, and a "network effect" that allows customers to transfer funds only to other users of a specific application



Non-banking payment companies currently face challenges in integrating with the central payment system



The payment market in Israel is concentrated and is controlled by banks and credit card companies



Payment Services Law, which was enacted in 2019, includes mainly consumer protection provisions, does not address the regulation of payment services, creating a regulatory void that required rectification



In contrast, the international payment market is a competitive market which, includes hundreds of technology payment companies offering advanced solutions

## The Purpose of the Law:

- To open the payment market to competition, ultimately benefitting the Israeli consumer.
- To authorize regulatory authority to supervise and regulate the field, setting forth guidelines for licensing requirements, and defining exemptions to the licensing obligation.
- To expand the scope of activity of payment services providers to include also payment initiation service, between fintech companies and payment service providers. This enables customers to digitally direct payments to their accounts, effectively bridging accessibility issues.
- To establish provisions regarding international entities involved in providing payment services.
- Setting guidelines regarding the obligation of key players to offer services to other companies.
- To establish complementary provisions to the Payment Services Law of 2019 (which is a consumer-protection focused) through the regulation of entities involved in the field. This includes reconciling both legislations, updating definitions, and distinguishing between diverse payment services.
- To establish rules for safeguarding customer assets and introducing additional provisions for licensed entities.



**Key Definitions**



**Payment Order**

An order given by a payer to a payment service provider requesting the execution of a payment transaction through payment instruments, regardless if it is provided by other entity than the payment service provider, including the beneficiary.



**Payment Instruments**

A series of actions that a payer follows to initiate a payment order. This may or may not involve using a verification element.



**Payment Transactions**

The transfer of funds from a payer to a payee, which includes transferring funds between accounts, provided that at least one of the accounts is a payment account; depositing and withdrawing cash from a payment account.



**Payment Account**

A designated account for facilitating payment transactions, regardless of whether it is used for other purposes.



## Key Definitions



### Payment Services

- A.** Management of a payment account;
- B.** Issuance of payment instruments;
- C.** Execution of payment transactions;
- D.** Provision of advanced payment initiation services.



### Foreign Service Provider

A corporation offering payment services or providing basic payment initiation services abroad, which is subject to foreign legislation governing its operations.



### Provider of Payment Service of Systemic Significance

- A.** An auxiliary corporation engaged in providing payment services.
- B.** An entity meeting the conditions of the Minister of Finance, which have yet to be established.



The law's definition is broad and essentially encompasses every payment activity, in parallel with actions regulated under the European regulation, PSD2:

Management of a payment account

Issuance of payment instruments

Execution of payment transactions

Payment initiation services

- Basic Payment Initiation: A technological service that simplifies fund transfers between accounts on behalf of the customer. The customer authorizes each order separately, and the initiation service provider acts as an intermediary and does not manage the funds directly.
- Advance Payment Initiation Service: A technological service enabling customers to seamlessly transfer funds between accounts, with the customer granting advance authorization to the initiation service provider for executing payment orders.

# Exemptions from the Licensing Requirement and Prohibition on Engagement

The licensing requirement for payment services shall not apply to entities regulated under separate legislation and engaged in limited activities, including:



The Israeli Postal Bank



The holder of a license to provide payment services of systemic significance and an entity under its control (supervised by the Bank of Israel)



Banking Corporations



Providers of payment services in a small volume, to a small number of customers or a small number of transactions (to be determined by the regulations). In this case, notification must be given to the ISA in order to receive an exemption.



The operator of a controlled system as defined in the Payment Systems Law



The holder of a license to provide deposit and credit services

The law prohibits insurers from engaging in the provision of payment services.

# Effective Date of the Law and Ongoing Operations

Type	Regulator prior to the completion of licensing	Deadline for Submission of License/Application	Authorization for Continuing Operation	Comments
A corporation providing payment services without prior licensing	-	September 2024	The entity is allowed to continue its operations as long as a decision regarding the license application is pending.	The activity or company was exempt from licensing obligations under the Financial Services Supervision Law or another law.
Holder of a payment services license from the Capital Market, Insurance, and Savings Authority	Capital Market Authority	December 2025	June 2026	
Holder of acquiring (non-stable) license	Bank of Israel	December 2024	December 2025	
Non-Israeli Entities licensed to engage in payment services in a foreign country (Israel)	Under the Regulations for the Supervision of Financial Services (Regulated Financial Services – Exemption from Licensing Obligation), 5783-2022 – a regulator in a foreign country	September 2024	The entity is allowed to continue its operations as long as a decision regarding the license application is pending.	An entity holding relevant license in the U.S., Europe, or England
An entity engaged in payment initiation services	-	September 2024	Until December 2024, if a licensing/application request has been submitted	-



The law stipulates that **foreign payment service providers** will be required to obtain a license from the Israel Securities Authority (ISA) in order to operate in Israel. However, the law also authorizes the ISA to:

- Grant a license to a foreign payment service provider even if it does not meet all the conditions specified in the law for obtaining a license.
- Exempt a controlling shareholder of a payment service provider from the obligation to obtain control permit in Israel

**Under the following conditions:**

1. The ISA is satisfied that the foreign legislation regulating the activities of the foreign payment service provider adequately addresses the matters specified in the relevant sections of the law.
2. The foreign law ensures the protection of the interests of customers in Israel.
3. After careful deliberation, the ISA concludes that it is in the best interest to proceed with this course of action.



A foreign corporation with a valid license to provide payment service in a foreign jurisdiction (Europe, the U.S., or England) which, as of the commencement date (June 6, 2024), has been providing payment services under the exemption outlined in the Regulations for the Supervision of Financial Services (Regulated Financial Services – Exemption from Licensing Obligation), 5783-2022 will continue to be exempt from the licensing requirement until the commencement.

A foreign entity that submits a license application to the ISA within 3 months of the commencement date and obtains approval from the ISA for the application submission, will be permitted to continue its operations in Israel until a decision is reached in its case.



The law amends the Banking (Licensing) Law and specifies that, in order to ensure the stability of the financial system and its regular activity, while also taking into account market competition considerations, the Minister of Finance shall determine conditions under which an entity will be deemed a provider of payment services of systemic significance. An entity that meets these conditions will be required to obtain a license from the Bank of Israel rather than from the ISA.

The holder of a license to provide payment services of systemic significance is permitted to engage in additional activities beyond offering payment services, including extending credit, provision of money conversion services that are ancillary to payment services, provision ATM services, provision of basic or advanced payment initiation services, receiving funds from a payment entity, and other ancillary activities, if it receives approval from the Banking Supervisor. Similarly, it may engage in additional activities upon approval from the Bank of Israel, that such activities are unlikely to impair its obligations.



Type of Entity	Relevant Regulator
Entities with licenses for: basic payment initiation, payment services, account information services, extending credit, and operating credit intermediation systems – all of which fall under the category of payment companies.	Israel Securities Authority
The holder of a license to provide payment services of systemic (banks and credit card companies)	The Bank of Israel
The Postal Bank	The Ministry of Communications
Institutional Entities	The Israel Securities Authority, Insurance and Savings Authority
Holder of a license to: provide deposit and credit services, provide credit, and operate a credit intermediation system	Capital Market, Insurance, and Savings Authority
Other entity which is included in the Minister of Finance's list of financial entities (yet to be published)	the Authority which will be authorized by law to regulate the operations of the entity



**ATM services**



**Money conversion services that are ancillary to payment services**



**Cash transactions**



**Provision of credit ancillary to a payment transaction**

issuance of payment instruments or acquiring payment transactions solely for executing a payment transaction of either depositing cash to a payment account or withdrawing cash from a payment account.

- The Credit is extended as an ancillary service to the payment transaction and in order to facilitate payment transactions.
- The credit amount will be repaid within a maximum period of 12 months from the date the credit is provided.
- The payment company maintains sufficient equity.



## **Limitation on Additional Business:**

Conflicts of Interest: In cases where there is a concern of conflicts of interest, the Minister of Finance has the authority to determine the circumstances in which a payment company will not be authorized to engage in the operation of a payment system that involves another payment service provider.

Additional Business: The Chairman of the ISA has the authority to prohibit the payment company from engaging in additional business or to set provision regarding such pursuits, under circumstances where engaging in these activities could jeopardize the company's obligations, the customers' interest, the Authority's supervision capabilities, or when the operation raises genuine conflict of interest concerns.

**Providing basic payment initiation services is, fundamentally, a technological service, and therefore, the law permits the supervised entities listed below to obtain authorization from their regulator to offer basic initiation services:**

## Type of Approval: **Basic Initiation Services**

### Entities Authorized to Receive Approval:

- A banking corporation
- A holder of a license to provide payment services of systemic significance and an entity under its control
- A postal bank
- A holder of a license to provide deposit and credit services
- An institutional body
- A payment company
- A holder of a license to operate a credit intermediation system
- A holder of license to provide credit
- A holder of license to provide account information services

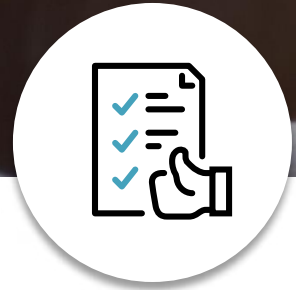
## Type of Approval: **Advanced Initiation Services**

### Entities Authorized to Receive Approval:

- A banking Corporation
- A holder of a license to provide payment services of systemic significance and an entity under its control
- A postal Bank
- A holder of a license to provide deposit and credit services

### **Conditions**

- Existence of technological means, information security, cyber-defense, and risk management.
- A business plan and declaration which demonstrate the entity's ability to provide the service and comply with the legal provisions.



Registration as a company, either domestic or foreign; if the business are controlled and managed in Israel; if the business are not controlled and managed in Israel it is able to satisfy all the directives

Existence of advanced and proper mechanisms, information security, cyber-defense, and risk management

Business plan and declaration demonstrating the ability to provide the service and comply with the legal requirements

Integrity, control permit and a permit to hold means of control

Satisfaction of requirements relating to equity and insurance



**Fee Limitation the Authority's regulations: The Authority can establish directives regarding fee charged for the purpose of safeguarding customer interests or promoting competition**



## Information Security and Business Continuity:

- Adequate and advanced mechanisms for information security, risk management, and cyber-defense
- Regarding the payment company – business continuity



## Corporate Structure – the Authority's Regulations:

- Composition of the board of directors and appointment of committees
- Qualifications for board members and committees
- Guidelines regarding external directors
- Limitations on appointment of directors
- Statutory quorum
- Directorial responsibilities and matters within its purview



## Consumer Protection – the Authority's Regulations:

- Handling customer complaints
- Safeguarding documents
- Prevention of conflicts of interest

**Protection of customer assets, placed in a designated account for the customers' benefit, within a separate and independent entity\*, distinct from the company's finances, is achieved through the following:**

- A separate account for client funds;
- A specified investment account for assets\*\* with low risk and high liquidity, as per the directives of the regulatory authority.

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**The Authority has the discretion to permit the use of insurance or a guarantee as an alternative method for securing funds in a designated account.**

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**Funds received from customers of a payment company, or on their behalf, for rendering payment services, may not be utilized for extending credit.**

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**The Authority shall compile a list of foreign countries where funds may be held with a banking institution.**

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**The law does not impose restrictions on interest charged on funds deposited for customers.**

\*Managing entity a banking corporation, postal bank, a holder of license for deposit and credit services, foreign banking entity in specific countries, as well as a holder of a license to provide payment services of systemic significance that retains its funds with an managing entity, in accordance with the directives of the Israel Securities Authority.

\*\*Assets: funds, deposits, units of trust funds where the held assets are characterized by low credit risk, and securities as defined in Section 52 of the Securities Law.

To encourage competition and facilitate the provision of services by small entities and Fintech companies, the legislation mandates that various entities allow integration with their payment systems.



## Requirement for engagement between large-volume issuers and acquirers

- A payment company, acting as a large-volume issuer with significant scope of activity and issuing a specific category of payment instrument, is prohibited from unreasonably prevent an agreement with an acquirer handling payment transactions involving the same type of payment instrument.



## Acquiring obligations for aggregator

A payment company, that is a large-volume acquirer, is prohibited from:

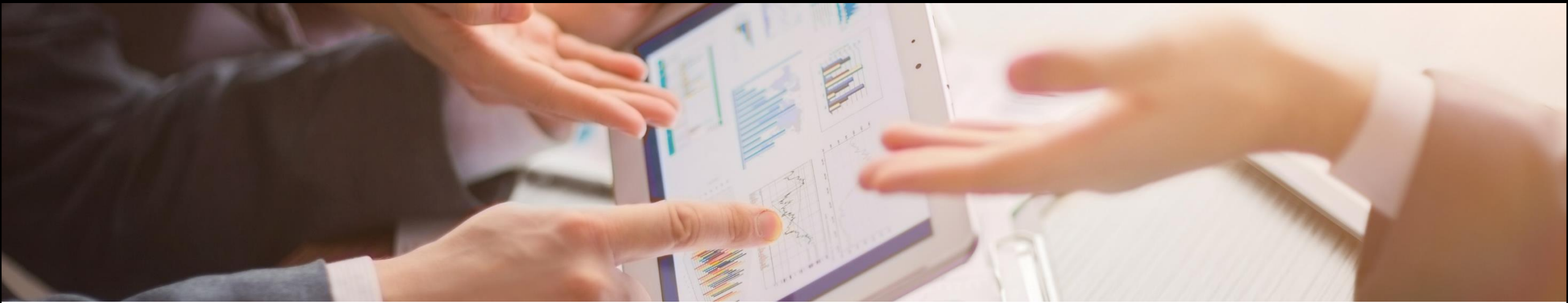
- Refusing to engage in an agreement with an aggregator or prevent an agreement between an aggregator and a supplier.
- Imposing an additional fee on a payee that enters into an agreement with an aggregator.

The Minister, in consultation with the Director-General of Competition, may intervene in the compensation terms and agreements between a large-volume card acquirer and an aggregator.



## Requirement for engagement between large-volume acquirers and issuers

- A payment company that operates as a large-volume acquirer with significant operational scope that processes payment transactions involving a particular type of payment instrument, is obligated to engage with an issuer of the same type of payment instrument for the purpose of settling those payment transactions.



**Large-volume Acquirer:**

An acquirer that has acquired 20 percent or more of the total number of debit card transactions acquired by acquirers in Israel, or the total consideration paid to suppliers in Israel by acquirers, in the preceding calendar year. Alternatively, an acquirer meeting other conditions set by the Minister of Finance in consultation with regulatory authorities and the Director-General of Competition, with an emphasis on competition-related considerations.

**Large-volume Payment Card Acquirer:**

Acquirers under the supervision of the Bank of Israel that have processed 10 percent or more of the total number of debit card transactions acquired by acquirers in Israel, or the overall remuneration paid to suppliers in Israel by acquirers, in the preceding calendar year.

**Large-volume Issuer:**

An issuer that has issued 10 percent or more of the valid debit cards issued in Israel, or an issuer who, through the issuance of debit cards, has represented at least 10 percent of the total transaction volume conducted in Israel during the previous calendar year. Alternatively, an issuer meeting other conditions specified by the Minister of Finance in consultation with regulatory authorities, with a focus on competition-related factors.

To encourage competition and facilitate the provision of services by small entities and fintech companies, the law imposes an obligation on various entities to permit the integration of their payment systems. This integration is intended for the seamless execution of transfers and receipt of payments by payees, in a straightforward and user-friendly manner.

## Integration of P2P payment service



Operators of P2P payment service (applications facilitating payments between payers and payees) that enable fund transfers among individuals on a significant scale are required to allow their customers to transfer and receive funds from clients of other P2P applications, based on identifying detail.

## Payment Reception Requirement



Payment account managers which are not small-volume of operations payment account managers are obligated to receive funds from payers who are clients of P2P payment service providers facilitating transfers among individuals. This also applies to payments of a payer payment account manager, based on identifying detail. The purpose is to enable transfers between smaller platforms and larger payment accounts (e.g., in banks).

Payee payment account managers must enable the receipt of funds.

## User-Friendly and Favorable Terms



Entities obligated to offer integration services with payment systems and facilitate payment reception are required to provide these services conveniently and on the same terms as of their customers. This includes prohibiting the imposition of unreasonable terms or charging higher fees than those applied to their direct clients.





**To promote competition, the legislation introduces various measures aimed at facilitating the convenient and competitive operation of providers of payment initiation services**

Establishing standardized access for payment initiators to payer's payment accounts through a payment order interface system.

Mandating payment account managers to grant access to payment initiators without imposing any prerequisites or contractual obligations.

Requiring that payment instructions provided by payment initiators be treated as direct customer instructions.

Prohibiting payment account managers from charging payment initiators for facilitating access to or discontinuation of access to the payer's payment account.



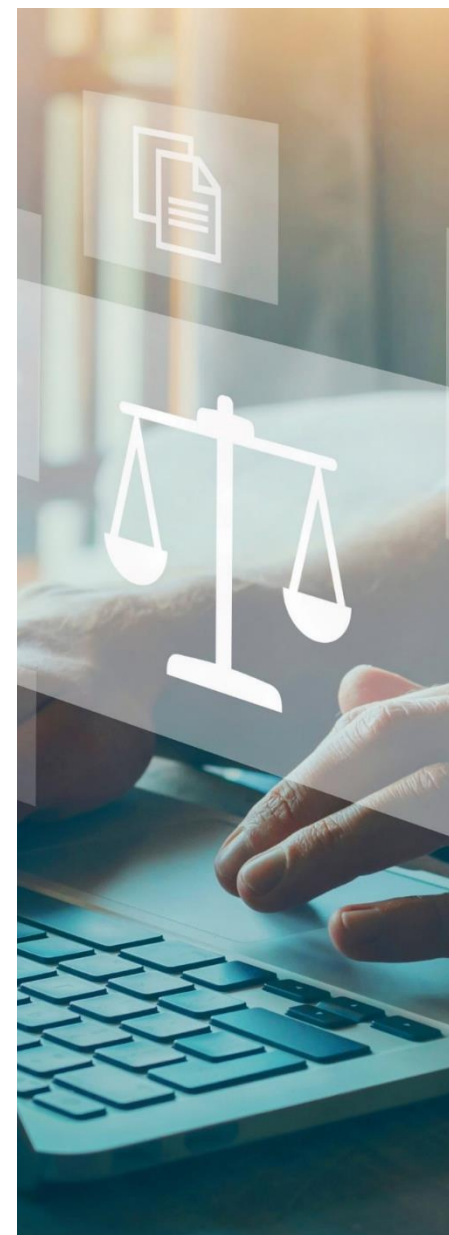
## Criminal Sanctions

- Engaging in the provision of payment services or basic initiation services without a valid license or in violation of license terms.
- Engaging in the provision of advanced initiation services without proper authorization.
- Including misleading information in a license application or in reports to the Israel Securities Authority.



## Financial Sanctions

- Offering payment services or basic initiation services without a valid license or in breach of license terms.
- Assuming control of a payment company without obtaining control permit, or transferring control to an entity that did not obtain the said permit.
- Failing to adhere to the directive of the Chairman of the Israel Securities Authority to sell the means of control or to refrain from exercising voting rights.
- Additional business of a payment company prohibited by the Chairman of the Israel Security Authority.
- Paying interest on a customer's payment account balance without holding or investing the customer's funds.
- Providing misleading information in a license application or to the Israel Securities Authority





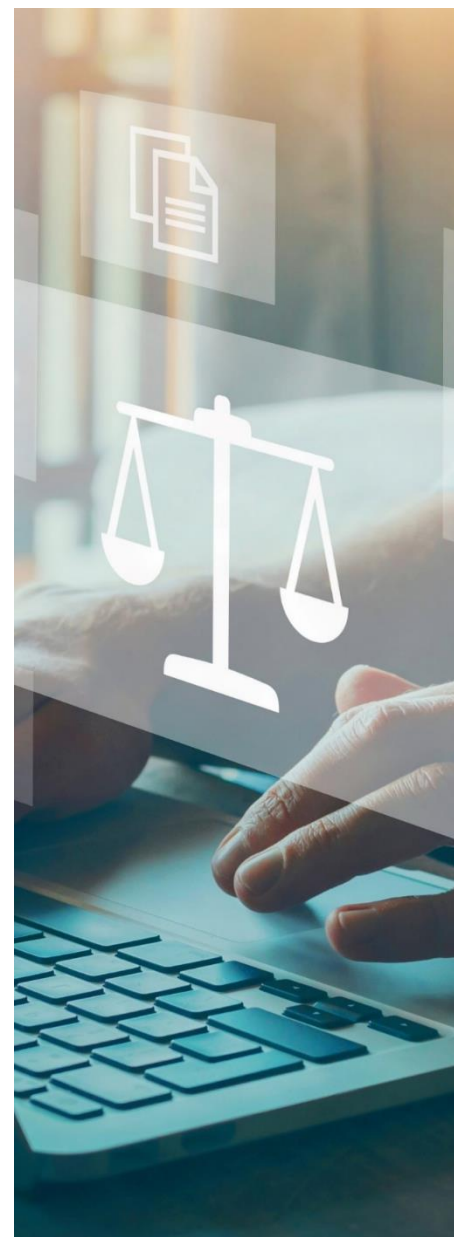
## License Suspension

In the following cases, an entity's license can be suspended: The license was granted based on inaccurate information; any condition required for obtaining the license is no longer met; the license holder violated a statutory provision; the license holder failed to initiate services within two years of obtaining the license or ceased operation for two consecutive years; there are circumstances indicating deficiency in the license's holder trustworthiness; public interest considerations justify revoking or suspending the license.



## Unauthorized Activity

Unauthorized Activity - If the controlling shareholder of a payment company lacks proper authorization, the Chairman of the Israel Securities Authority has the mandate to order the following: the sale of its means of control; the annulment of voting rights and the right to appoint a director; and the removal of a director or CEO appointed by the controlling shareholder.



Amendments to the Financial Services Supervision Law: omission of activities regulated under the new law and modification of regulations.

Revisions to the Financial Information Services Law: Addition of a payment company as a financial entity and appropriate updating of data categories.

Changes to the Banking Law (Licensing): Introduction regulations on holders of a license to provide payment services of systemic significance large-volume acquirers, and large-volume issuers.

Adjustments to the Payment Services Law: Consumer-focused adjustments for payment initiation activities.

Fair Credit Law - Extension of the law's applicability to payment companies and The holder of a license to provide payment services of systemic significance, with the necessary adjustments.

Wage Protection Law - Addition of the option to transfer salary through a payment company and a holder of a license to provide payment services of systemic significance.

Class Action Law - Inclusion of payment companies and basic initiation license holders as entities subject to class action suits.

Anti-Money Laundering Law - Authorization of the Israel Securities Authority to issue suitable directives that affect payment companies and holders of a license or approval for basic payment initiation.

- Regulation of Payment Services and Payment Initiation Law, 5783-2023
- Consult with us about submitting an application





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