

Client Alert: The New Egyptian Central Bank Law - A Step Towards a Cashless Economy

By Dr. Kilian Bälz and Hussam Mujally

The new Egyptian Central Bank Law, No. 194/2020, (“CBE Law”) is the first time the bank is addressing cashless payments, payment service providers, payment systems operators, digital banks, e-money and cryptocurrency. The CBE Law has the potential to further enhance the digital transformation of Egypt’s financial industry.

CBE’s Support of a Less Cash Dependent Economy

Besides being the regulatory body responsible for overseeing banks and other financial institutions active in Egypt, the Egyptian Central Bank (“CBE”) views its role as being a catalyst for change in the payment market. Now, the new CBE Law provides the respective framework for that purpose.

Starting in 2019, the CBE launched several initiatives to encourage a shift towards a less cash-dependent economy. In January 2019, the first local prepaid debit cards “Meeza” were brought into circulation. In April 2019, the CBE contributed substantially to the enactment of Law 18/2019 on Regulating and Using Cashless Payment. This law obligated governmental entities, including state-owned companies, to use cashless payments to fulfill their monetary obligations that exceeded certain limits.

In March 2020, the CBE issued several circulars as a part of Egypt’s efforts to combat the outbreak of Covid-19. Specifically, citizens could obtain prepaid cards and mobile phone wallets for free, maximum limits for credit cards and prepaid cards were increased, and banks were ordered to exempt their customers from fees and commission for using ATMs and several digital payment services. Moreover, the CBE financed and organized the free distribution of 100,000 point-of-sale (“POS”) terminals among businesses in vital sectors.

Several months later, the CBE and the Federation of Egyptian Banks started a targeted advertising campaign, the National Initiative to Raise the Awareness for Benefits of Electronic Payment. The campaign targeted small- and medium-sized businesses to encourage using cashless payment methods, such as mobile payment and credit cards, more frequently. Furthermore, the Ministry of Finance announced that as of 1 October 2020 no government fees exceeding EGP 1,000 could be paid in cash.

Observers see the CBE Law’s enactment as a further step towards a less cash-dependent economy and enhanced financial inclusion in Egypt. At the same time, the CBE Law expands the CBE’s jurisdiction to include payment service providers and operators, digital banks, cryptocurrencies and Fintech firms operating in the Egyptian market, irrespective of whether they are based in Egypt or abroad.

The CBE Law

The CBE law entered into force on 16 September 2020, replacing the old CBE Law, Law no.88/2003.

The CBE Law contains 241 Articles divided into seven chapters, distributed as follows:

- Chapter Two regulates the CBE's organization, competencies and tasks.
- Chapter Three includes provisions regulating the banking sector.
- Chapter Four, titled Payment Systems and Services and Financial Technology, regulates Payment Service Providers (“PSPs”) and Payment Systems Operators (“PSOs”).
- Chapter Five regulates dealing in foreign currencies.
- Chapter Six addresses consumer protection, competition protection and dispute resolution.
- Chapter Seven lists penalties for violations.

Payment Service Providers and Payment Systems Operators under the CBE Law

PSPs were not directly regulated until the enactment of the CBE Law. The CBE did issue several circulars and regulations addressing electronic payment services, including regulations on technical payment aggregators and payment facilitators (“PayFacs”), payment services using prepaid cards, and standards for issuance and acceptance of contactless payments. However, these regulations target traditional banks that contract with PSPs and PayFacs rather than the service providers directly.

The CBE Law now defines a payment system as “*a group of mediums and procedures to payoff, set off or settle monies by means of transferring money between two parties or more via an electronic system*” (Article 1 [33]). Payment services are further defined as “*all services related to the account information, issuing, or sending requests for payment and payment operations or receiving such or implementing such whether in local or foreign currency, it [payment services] includes issuing and managing payment instruments and electronic money.*”

There is an entire chapter dedicated to payment systems, payment services and financial technology that mainly regulates oversight and supervision, providing bank guarantees, and the requirement to obtain a license. The objective is to ensure compliance with license conditions, to regulate outsourcing, and to outline the main rules for operating a payment system as well as penalties for violations.

Providing Services Related to Payment and Operating Payment Systems Requires Licensing

According to Article 184 of the CBE Law, natural and juristic persons are prohibited from conducting any activities related to operating payment systems or providing payment services, unless they have obtained a license from the CBE. The licensing requirement extends to PSPs and PSOs operating inside Egypt or targeting residents in Egypt from abroad.

In this respect, the CBE Law follows an extraterritorial approach, confirming an emerging pattern whereby certain Egyptian agencies shift from a strictly territorial approach to regulations in favor of an effects-based one. The wording of the CBE Law's Article 184 leaves no doubt that the CBE will abandon its practice of applying laws and regulations only to financial institutions with a physical presence in Egypt.

Article 185 of the CBE Law further empowers the CBE to issue regulations governing the conditions for and procedures of granting a license to operate payment systems or provide payment services. These regulations focus on the following aspects in particular:

- Minimum capital
- Legal form
- Requirements of technical competence
- Financial solvency requirements
- Fitness and probity requirements for directors and officers
- Disclosure obligations regarding ownership structure
- Implemented technology
- Quality standards
- Rules required for conducting operations
- License application fees not exceeding EPG 500,000 for PSOs and EPG 100,000 for PSPs

Licensed PSPs and PSOs will be registered with the CBE. PSPs and PSOs are required to provide monetary guarantees to ensure their compliance with licensing conditions. The amount and nature of such guarantees are to be specified by the CBE (Article 188). We expect that such guarantees could be in the form of a blocked account with an Egyptian bank and, taking prior regulations as an indicator, the amount would most likely be at least the amount of three daily collections.

Additionally, the CBE may request PSOs create a fund to cover their operational risks, in particular risks associated with the non-fulfillment of obligations on the part of their members (Article 187). Banks are then obligated to open bank accounts for PSPs and PSOs without discriminating between them (Article 194).

Oversight and Supervision of PSPs and PSOs

The CBE is empowered to issue rules and regulations addressing the oversight mechanism of PSPs and PSOs (Article 186). Such regulations may include:

- Rules on interoperability of payment systems
- Requirements and conditions for organizational structure, governance processes and risk management
- Rules for providing services

- Regulations on contracting outsourcing companies, the scope of services provided, and procedures for accrediting and supervising outsourcing companies
- Rules on insuring and protecting clients' funds, requests for payment, disclosure and transparency, and pricing mechanisms.

As seen above, the CBE Law provides the main guidelines regarding licensing requirements and supervision mechanisms. The particularities, however, will be governed by regulations and circulars to be issued by the CBE.

Yet regarding governance, supervision, financial reporting and disclosure requirements, PSPs operate, more or less, under the same regulations applicable to banks. Article 199 of the CBE Law refers explicitly to the respective Articles applicable to traditional banks. Furthermore, Article 199 refers to Articles 72 through 82, which regulate the acquisition of qualifying holdings. Consequently, the acquisition of a qualifying holding (10% of the shares and/or voting rights) in PSPs requires the prior approval of the CBE (see Article 199 [4] in conjunction with Article 74).

The CBE's Role

The CBE Law expands the CBE's role as a supervisory/regulatory authority to include issuing the main regulations to operate a payment system, including issuing transfer requests, their settlement, and the finality of payment (Article 190 and 191). The CBE is further empowered to create and operate payment systems (Article 184 [3]) and to declare any payment system a systematically important payment system ("SIPS") and, thereby, subject the operator of such SIPS to additional obligations (Article 192).

As part of its supervisory role, the CBE is entitled to address violations of the CBE Law and its regulations, starting from issuing a warning and imposing fines to freezing the activity of the PSP/PSO, dismissing key officers, dissolving the Board of Directors, and revoking the license (Article 196).

Financial and Regulatory Technology

The CBE Law defines financial technology, aka Fintech, as "*business models, applications or financial products based on using technology*" (Article 1 [37]) and regulatory technology ("**Regtech**") as "*using technological applications to ensure the compliance with stipulated laws and regulations*" (Article 1 [38]).

Article 201 of the CBE Law empowers the CBE to create live testing grounds for Fintech and Regtech applications. The CBE launched its Regulatory Sandbox in July 2019, which served as a live testing ground for Fintech startups to try their solutions. Article 201, however, grants the CBE the authority to exempt Fintech and Regtech start-ups, which are testing their applications, from licensing requirements.

Furthermore, the CBE can regulate the conditions and requirements for applications used to access clients' accounts with banks or PSPs (Article 202) and for electronic authentication of banking transactions, requests to pay and transfer, the respective general terms and conditions, and direct debt authorizations and orders. Electronic copies complying with applicable standards bears full probative force (Articles 203 [2] and 204 [2]).

Digital Banks

Digital banks are referred to in the CBE Law as “*banks providing banking services via digital channels or platforms using modern technologies.*”

In an apparent effort to ease digital banks’ access to the Egyptian market, Article 64 (3) of the CBE Law grants the CBE the ability to exempt digital banks from the minimum capital requirement of EGP 5 million for local banks and USD 150 million for branches of foreign banks. Apart from this, digital banks operate under the same licensing requirements as traditional banks. The prohibition on conducting banking activities without a license from the CBE (Article 64) does not explicitly mention targeting the Egyptian market from abroad, as opposed to the regulations regarding payment services. Yet, the explicit mention of digital banks indicates that those targeting the Egyptian market from abroad will also be subject to the CBE Law.

Cryptocurrency and E-money

CBE Law defines e-money as “*monetary value backed by EGP or by currencies issued by other formal currency issuing authorities and circulated via internet*” and cryptocurrency as “*currency electronically stored and unbacked by any of the currencies issued by formal currency issuing authorities and is circulated via internet.*”

The CBE Law’s Article 206 prohibits issuing, dealing, or promoting e-money and cryptocurrency as well as establishing or operating platforms for the circulation of e-money and cryptocurrency, unless the CBE has granted a license in accordance with the applicable rules and procedures. So far, the CBE has not issued any regulations addressing licensing. Whether the introduction of a licensing requirement for e-money and cryptocurrency indicates the CBE is considering regulating the trade and exchange of cryptocurrencies is yet to be seen.

If you would like more information about this topic, please contact us.

Dr. Kilian Bälz
Partner
Berlin/Cairo/Tripoli
kb@amereller.com

Hussam Mujally
Associate
Berlin
mujally@amereller.com

BERLIN | Amereller Rechtsanwälte | Kurfürstenhöfe | Spreeufer 5, 10178 Berlin | Germany
Tel: +49 30 609 895 660

CAIRO | MENA Associates in association with Amereller | GIC Tower | 21 Soliman Abaza St. | Mohandessin | Giza | Egypt
SHEIKH ZAYED (new): B 7-3-1, Polygon Business Park | SODIC-West | Sheikh Zayed | Cairo | Egypt
T: +20 2 376 26 201

DUBAI | Amereller Legal Consultants | One at Business Bay, 14th Floor | P.O. Box 97706 | Business Bay | Dubai | UAE
t: +971 4 332 9686

This client alert is a public document for informational purposes only and should not be construed as legal advice. Readers should not act upon the information provided here without consulting with professional legal counsel. This material may be considered advertising under certain rules of professional conduct.

Copyright © 2020