

Fintech 2022

Contributing editors
Angus McLean and Penny Miller



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent

adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between June and July 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021

No photocopying without a CLA licence.

First published 2016

Sixth edition

ISBN 978-1-83862-661-7

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Fintech

2022

Contributing editors**Angus McLean and Penny Miller****Simmons & Simmons LLP**

Lexology Getting The Deal Through is delighted to publish the sixth edition of *Fintech*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico and the United States.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons LLP, for their continued assistance with this volume.



London

July 2021

Reproduced with permission from Law Business Research Ltd

This article was first published in July 2021

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	5	Hong Kong	98
Angus McLean and Penny Miller Simmons & Simmons LLP		Ian Wood, Jolyon Ellwood-Russell, Michelle Ta, Catherine Kwong and Donia Chu Simmons & Simmons LLP	
Australia	6	India	107
Michael Bacina, Andrea Beatty, Tim Clark, Will Fennell, Tim O'Callaghan and Andrew Rankin Piper Alderman		Stephen Mathias and Anuj Kaila Kochhar & Co	
Belgium	18	Indonesia	117
Martin Carlier, Zeger Saerens, Dimitri Van Uytvanck, Jérôme De Ruyver, Mathieu Vancaillie and Jérémie Doornaert Simmons & Simmons LLP Marc de Munter Baker Tilly		Winnie Yamashita Rolindrawan and Harry Kuswara SSEK Legal Consultants	
Brazil	30	Ireland	125
Nei Zelmanovits, Eduardo Castro, Thales Saito, Pedro Nasi, Rodrigo Chiaverini, Érica Sumie, Alina Miyake and Vinicius Costa Machado Meyer Advogados		Joe Beashel and Ian O'Mara Matheson	
China	41	Japan	133
Jingyuan Shi Simmons & Simmons LLP		Ken Kawai, Akihito Miyake, Tomoyuki Tanaka, Yutaka Shimoo and Kensuke Inoue Anderson Mōri & Tomotsune	
Denmark	51	Kenya	141
Rasmus Mandøe Jensen and Christian Scott Uhlig Plesner Advokatpartnerselskab		John Syekei, Dominic Indokhomi, Ariana Issaias, Cynthia Amutete and Sharon Odeny Bowmans	
Egypt	60	Liechtenstein	151
Mohamed Hashish and Farida Rezk Soliman, Hashish & Partners		Thomas Nägele, Thomas Feldkircher and Monika Hammermüller NÄGELE Attorneys at Law	
France	68	Malta	159
Hubert de Vauplane and Victor Charpiat Kramer Levin Naftalis & Frankel LLP		Leonard Bonello and James Debono Ganado Advocates	
Germany	78	Mexico	168
Christopher Götz, Dang Ngo, Elmar Weinand, Eva Heinrichs, Felix Biedermann, Janine Marinello, Jochen Kindermann, Martin Gramsch and Sascha Kuhn Simmons & Simmons LLP		Gunter A Schwandt and Mario de la Portilla G Nader Hayaux & Goebel	
Gibraltar	91	Netherlands	175
David Borge, Kunal Budhrani and Peter Howitt Ince		Jeroen Bos, Marline Hillen and Koen van Leeuwen Simmons & Simmons LLP	
		New Zealand	187
		Derek Roth-Biester and Megan Pearce Anderson Lloyd	

Singapore	195
Grace Chong, Dax Lim, Bryan Chua, Alexis Ng and Ern Xu Seah Simmons & Simmons JWS	
South Africa	207
David Geral, Kirsten Kern, Livia Dyer, Xolani Nyali and Bright Tibane Bowmans	
Spain	220
Alfredo De Lorenzo, Álvaro Muñoz, Carlos Jiménez de Laiglesia, Ignacio González, Juan Sosa and María Tomillo Simmons & Simmons LLP	
Sweden	230
Emma Stuart-Beck, Nicklas Thorgerzon, Caroline Krassén, Lave White and Anton Sjökvist Advokatfirman Vinge	
Switzerland	239
Clara-Ann Gordon and Thomas A Frick Niederer Kraft Frey	
Taiwan	247
Abe T S Sung and Eddie Hsiung Lee and Li Attorneys at Law	
Turkey	257
Cigdem Ayozger Ongun, Volkan Akbas and Selin Çetin SRP Legal	
United Arab Emirates	268
Muneer Khan, Jack Rossiter and Raza Rizvi Simmons & Simmons LLP	
United Kingdom	280
Angus McLean, George Morris, Jo Crookshank, Kate Cofman-Nicoresti, Olly Jones, Penny Miller and Peter Broadhurst Simmons & Simmons LLP	
United States	296
Paul T Clark, Jeffrey M Berman, Beth H Alter, Casey J Jennings and Nathan S Brownback Seward & Kissel LLP	

Egypt

Mohamed Hashish and Farida Rezk

Soliman, Hashish & Partners

FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

1 | What is the general state of fintech innovation in your jurisdiction?

Fintech is governed by several Egyptian laws and regulations, including the following main laws and regulations (as amended):

- the Non-cash Payment Methods Law No. 18 of 2019;
- the E-signature Law No. 15 of 2004 and its executive regulation;
- the Non-Financial Markets and Instruments Law No. 10 of 2009;
- the Microfinance Law No. 141 of 2014;
- the Trade Code No. 17 of 1999;
- the Consumer Finance Law No. 18 of 2020;
- the Cybercrime Law No. 175 of 2018;
- the Investment Law No. 72 of 2017 and its executive regulation;
- the Consumer Protection Law No. 181 of 2018 and its executive regulation;
- the Small and Microenterprises Law No. 141 of 2004 and its executive regulation;
- the Telecoms Law No. 10 of 2003;
- the Media Law No. 180 of 2018;
- the Capital Market Law No. 95 of 1992 and its executive regulation;
- the Movable Securities Law No. 115 of 2015 and its executive regulation;
- the Anti-Money Laundering Law No. 80 of 2002 and its executive regulation;
- the Public Entities Contracts Law No. 182 of 2018 and its executive regulation;
- Presidential Decree No. 89 of 2017, founding the National Payments Council;
- the New Banking Law No. 194 of 2020 (the Banking Law); and
- the Data Protection Law No. 151 of 2020 (the Data Protection Law).

There has been rapid global change in the banking and finance sector, particularly in the fintech space. The banking sector in Egypt, being a country that witnessed two revolutions in 2011 and 2013, was certainly affected by this change as well as the local political challenges.

As a result, the Egyptian government, upon a request by the Central Bank of Egypt (CBE), proposed the new Banking Law. This new Banking Law was prepared based on, among other things, several pieces of advice provided by international consultancy firms, a comparative study on the laws of other countries, international standards, the Basel Framework, recommendations of the Organisation for Economic Co-operation and Development, the World Bank Group and the International Monetary Fund, as well as recommendations made by the banks that are registered with the CBE.

In accordance with the Constitution, the new Banking Law was submitted to the House of Representatives for review and approval.

The new Banking Law was promulgated on 15 September 2020 and entered into force the following day, with a period of compliance to its provisions of one to three years from the date it came into force.

Government and regulatory support

2 | Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

In May 2019, the CBE launched a regulatory sandbox for the purpose of providing fintech players with a virtual space within which, subject to a specific framework, applicants can experiment with their solutions for a limited period of time on a small scale and under a well-defined parameter.

Furthermore, a number of funds initiatives are available to fintech start-ups in Egypt. For example, in March 2019, the CBE launched the Fintech Innovation Fund with a value of 1 billion Egyptian pounds. In April 2019, the International Finance Corporation launched, in collaboration with two local partners in Egypt, a two-year programme to support the fintech space in Egypt, and the World Bank Group set aside US\$200 million for small and medium-sized enterprises in Egypt, which can be used also by small and medium-sized fintech players.

In response to covid-19, CBE organised the distribution of free point of sale (POS) terminals, eased fees and charges, and increased contactless payments limits. In November 2020, the e-invoicing system was launched.

FINANCIAL REGULATION

Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

Several bodies are responsible for enforcing fintech-related laws and regulations, including:

- the Central Bank of Egypt (CBE), which is empowered by Law No. 88 of 2003 on the Central Bank of Egypt and the Banking Sector (the Banking Law) to, among other things, regulate bank accounts and banking transactions;
- the Information Technology Industry Development Agency, which is empowered by the E-signature Law No. 15 of 2004 to, among other things, promote and develop the information technology and communications industry, support small and medium-sized enterprises in using e-transactions and regulate e-signature services activities;
- the Financial Regulatory Authority (FRA), which is empowered by the Non-Financial Markets and Instruments Law No. 10 of 2009 to, among other things, license the carrying out of non-banking financial activities and the protection of stakeholders within the non-banking financial market;

- the National Payments Council, which is empowered by Presidential Decree No. 89 of 2017 to, among other things, reduce the use of cash outside the banking sector, support and encourage the use of electronic methods and channels instead of cash, and protect the consumers of any payment systems and services; and
- the National Telecommunications Regulatory Authority, which is generally empowered by Telecoms Law No. 10 of 2003 to regulate and enhance telecommunication services.

Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

In general, according to the Banking Law and several judgments issued by the economic courts, neither natural nor juristic persons may practise any banking activity in Egypt without being licensed by and registered with the CBE except for public legal persons who carry out any of these works within the limits of their establishment.

'Banking activities' are defined under the New Banking Law Banking business: Every activity that mainly and habitually deals with accepting deposits, obtaining financing, and investing these funds in providing financing and credit facilities or contributing to the capitals of companies' funds, and all that takes place in banking custom as a bank business. This definition is also adopted by the Trade Code No. 17 of 1999.

Any person that violates those provisions is subject to imprisonment or a fine not less than 1 million Egyptian pounds and not more than 10 million Egyptian pounds, in accordance with the New Banking Law. There are two main prerequisites that must be satisfied to apply those penalties in respect of any banking activity, namely carrying out the banking activity on a regular basis and having the banking activity as the main activities of any person, including individuals and juristic persons.

Other than the general rule above, each of the following activities is also regulated and subject to licensing requirements in Egypt:

- microfinancing;
- investment banking;
- brokerage;
- factoring;
- foreign exchange trading;
- payment services;
- e-commerce;
- financial leasing;
- mortgage finance; and
- consumer lending.

Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

The Consumer Finance Law No. 18 of 2020 was issued on 16 March 2020, governing any activity aiming at financing the purchase of products or services for consumption purposes as long as the activity will be carried out on a regular basis. Among the activities covered is financing through payment cards or any other means decided by the CBE.

The consumer finance-related activities above may not be carried out in Egypt unless a licence is obtained from the FRA. The licence requires, among other things, the carrying out of the activities by a joint-stock company with an issued capital of at least 10 million Egyptian pounds.

The Consumer Finance Law (including the licensing requirement) does not apply to all banks registered with the CBE nor any entity licensed to carry out mortgage financing, financial leasing, factoring,

microfinancing or the purchasing of properties from real estate developers.

The Consumer Finance Law applies only to vehicles, durable products, educational services, medical services, travel, and leisure services as well as any other products and services that are determined by the FRA.

Secondary market loan trading

6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

In general, there are no restrictions on trading loans in Egypt. However, if the trading is being carried out on a regular basis, then it may be deemed as the carrying out of banking activities, in which case licensing by and registration with the CBE is required.

The assignment of debts in Egypt is subject to a specific legal framework to be effective in respect of debtor and surety (if any).

Collective investment schemes

7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

As a general rule, no activity relating to investment funds can be carried out unless a licence is obtained from the FRA. Banks registered with the CBE may carry out the activity, provided that an approval is obtained from the CBE.

Investment funds may, in general, be established in the form of a joint-stock company with a minimum issued capital of 5 million Egyptian pounds or any equivalent currency.

Licensed investment funds must deposit any securities that they are investing in with one of the banks that is registered with the CBE, providing that the bank (and its related parties) does not control or hold more than 10 per cent of the total shares in the investment fund company.

One of the licensing requirements to be qualified for the investment fund underwriting is to have the minimum required infrastructure and technology to do so.

Investment funds may take the form of an open-end fund, closed-end fund, private equity fund, exchange-traded fund, money market fund, debt fund, real estate fund, donor-advised fund or related fund.

Promoting investment funds is generally not allowed before establishing them except for in the case of private equity funds and providing, among other things, that a notification is sent to the FRA and that no underwriting is made as a part of the promotion.

Most of the alternative financial products and services that are provided by fintech companies generally fall within the scope of either collective investment schemes or banking activities.

Alternative investment funds

8 | Are managers of alternative investment funds regulated?

Yes, managers of alternative investment funds are regulated, including board members.

Peer-to-peer and marketplace lending

9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Peer-to-peer and marketplace lending can be deemed as banking activities, in which case licensing by and registration with the CBE is required in accordance with the New Banking Law.

Crowdfunding

10 | Describe any specific regulation of crowdfunding in your jurisdiction.

Crowdfunding falls within the meaning of banking activities; however, it may also be a form of donor-advised fund.

In practice, a number of donor-advised funds have been established by a special presidential decree rather than a licence from the FRA. For example, Presidential Decree No. 139 of 2014 established a fund of a private nature called the Tahya Misr Fund for the purpose of assisting the government in, among other things, establishing development and service projects as well as developing slums and micro and small projects.

The government has used the crowdfunding approach to fund a number of public utility projects, such as the crowdfunding that was used in 2014 to fund the development of the New Suez Canal, which cost Egypt around 30 billion Egyptian pounds.

Invoice trading

11 | Describe any specific regulation of invoice trading in your jurisdiction.

Invoice trading may be characterised under Egyptian law as banking activities (if providing credit), and may also be characterised as a factoring. This can be assessed on a case-by-case basis.

Licensed factors are allowed to provide, among other things, guarantee, collection and account management services.

The following main three conditions are required in the subject of any factoring transaction:

- 1 it must be created from a commercial transaction related to the relevant buyer and debtor but not through a cash financing;
- 2 it must not be associated with any third party's existing or future right; and
- 3 it must not be limited or restricted unless otherwise agreed by the relevant factor and buyer.

The subject may also be fully depreciated, provided that points (2) and (3) are satisfied.

The provisions of the New Banking Law and several judgments issued by the economic courts also apply to factoring.

Payment services

12 | Are payment services regulated in your jurisdiction?

There is a specific regulation governing payment services that are provided by technical payment aggregators or payment facilitators. Services agreements are subject to specific know-your-customer and anti-money laundering checks and must include specific terms and conditions for those services, including a restriction on sub-contracting unless certain conditions are being met.

Under the New Banking Law, no activity concerning the operation of a payment system or the provision of a payment system may be carried out unless a licence is obtained by the CBE. This new restriction applies to all persons, whether natural or juristic, carrying out the activity in Egypt or providing the services from abroad to any residents in Egypt, with the exceptions of stock exchanges, futures exchanges, securities settlement systems, licensed central clearing, depository and registry systems, custodian banks and internal systems of the Egyptian Ministry of Finance that do not include payment, collection, setting-off or clearance of payment.

Open banking

13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

No.

Robo-advice

14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

Robo-advice is not yet regulated in Egypt.

Insurance products

15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

According to the Insurance Law No. 10 of 1981, no one is allowed in person or through an intermediary to carry out any activity related to insurance or reinsurance in Egypt without obtaining a licence from the FRA. Fintech companies that sell or market insurance products fall within this restriction and are regulated in Egypt.

Credit references

16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

All services relating to the provision of credit rating and indebtedness references are regulated. Those services require a licence from the CBE.

At present, there is only one licensed company, the Egyptian Credit Bureau, that is subject to a specific legal framework governing the provisions of those references.

In general, disclosing credit ratings and indebtedness references related to any person is not allowed unless an approval from the person is obtained.

CROSS-BORDER REGULATION

Passporting

17 | Can regulated activities be passported into your jurisdiction?

Not applicable.

Requirement for a local presence

18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

No.

SALES AND MARKETING

Restrictions

19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

In general, the sales and marketing of financial services and products in Egypt are regulated and subject to a prior licence and approval.

CHANGE OF CONTROL

Notification and consent

- 20 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

It depends on several elements, such as the type and location of business that is the subject of the change of control. For example, no one is allowed to acquire between 5 and 10 per cent of the issued capital of any bank registered with the Central Bank of Egypt (CBE) unless a notification is sent to the CBE. Prior approval from the CBE is required to acquire more than 10 per cent of the issued capital. A similar restriction applies to insurance companies.

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

- 21 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Money laundering is mainly governed by the Anti-Money Laundering Law No. 80 of 2002 (the AML Law) and its executive regulation.

The AML Law names 15 entities that must comply with its provisions and its executive regulation, including all banks, branches of foreign banks in Egypt and money transfer entities.

Those entities are also subject to several obligations under other laws governing their specific activities. Violating these obligations will result in imposing different penalties including fines or imprisonment, or both.

Guidance

- 22 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

Yes, all available guides can be found on the anti-money laundering page of the Central Bank of Egypt's website.

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

- 23 | What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

In general, loan agreements do not require any execution formalities, whereas almost all types of securities, such as mortgages, liens, pledges, assignments of rights and movable collateral, have specific execution formalities to be enforceable and effective in respect of third parties.

Peer-to-peer and marketplace lending platforms may be deemed as banking activities; therefore, there is an invalidity risk associated with any loan granted within the peer-to-peer and marketplace lending platform without compliance with the relevant licensing framework.

Assignment of loans

- 24 | What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

In general, there are no restrictions on trading loans in Egypt. However, if the trading is being carried out on a regular basis, then it may be

deemed as the carrying out of banking activities, in which case licensing by and registration with the Central Bank of Egypt is required.

The assignment of debts in Egypt is subject to a specific legal framework to be effective in respect of debtor and surety (if any).

Securitisation risk retention requirements

- 25 | Are securitisation transactions subject to risk retention requirements?

In general, the originator of a securitisation portfolio must guarantee its existence at the assignment date, and the originator is not liable for settling any dues that are the subject of the portfolio upon the perfection of the assignment to the relevant securitisation special purpose vehicle.

The assignment is required, in general, not to be conditional except for one condition that requires complete subscription to the securitised portfolio.

Securitisation confidentiality and data protection requirements

- 26 | Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Not applicable.

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

- 27 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

There is no special regulation in Egypt governing artificial intelligence. However, according to Prime Ministerial Decree No. 2889 of 2019, a new national council was established: the Artificial Intelligence National Council (AINC). The AINC is empowered to determine, supervise, and follow up on Egypt's national strategy for artificial intelligence in light of international developments.

In addition, since 2019, the Minister of High Education has started to add special artificial intelligence departments to several engineering universities in Egypt.

The government has created an enabling legal environment to govern the uses of artificial intelligence. This involved the issuing of the Data Protection Law, in July 2020, which regulates the relationship between data owner and users.

Distributed ledger technology

- 28 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are no specific regulations or rules applied to distributed ledger technology or blockchain. However, the New Banking Law prohibits the issuance or trade of cryptocurrencies or electronic money or the creation or operation of platforms for their trading without obtaining a licence from the Central Bank of Egypt (CBE) in accordance with the rules and procedures it specifies.

Crypto-assets

- 29 | Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

The New Banking Law prohibits the issuance or trade of cryptocurrencies or electronic money or creation or operation of platforms for their trading without obtaining a licence from the CBE in accordance with the rules and procedures it specifies.

The Mobile Payment Regulation was issued by the CBE in November 2016. The Regulation governs mobile payments and provides the minimum requirements that banks must meet to authorise mobile payments, including risk management, supervisory requirements, customers' security, mobile cash, partnership with services providers, interoperability, authentication, confidentiality and licensing framework.

The Mobile Payment Regulation does not apply to mobile banking, which is governed separately.

Each bank is allowed to issue mobile cash of up to 5 per cent of its paid-in capital or 50 million Egyptian pounds, whichever is less. Mobile cash may only be issued in Egyptian pounds, not in any other currency.

Local transactions in mobile cash within Egypt are allowed within specific daily and monthly thresholds adopted by the CBE. However, these thresholds may be exceeded if a positive outcome for the know-your-customer and authentication process is made.

The Mobile Payment Regulation allows the receipt of mobile cash transfers from abroad, subject to satisfying a number of conditions, including that the transfers must be converted into Egyptian pounds and be limited to natural persons.

Digital currency exchanges

- 30 | Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

The New Banking Law prohibits the issuance or trade of cryptocurrencies or electronic money or creation or operation of platforms for their trading without obtaining a licence from the CBE in accordance with the rules and procedures it specifies.

Initial coin offerings

- 31 | Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

There is no specific regulation governing ICOs in Egypt.

DATA PROTECTION AND CYBERSECURITY

Data protection

- 32 | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The newly issued Data Protection Law No. 151 of 2020 applies to any personal data that is subject to electronic processing, whether partially or entirely.

The Law generally prohibits the transfer of personal data to a foreign country without first obtaining a licence from the new regulatory authority for personal data protection (the 'centre'), and where the level of protection is less than what is provided for by the Law. The policies and regulations for cross-border transfer shall be specified in the Executive Regulations, which have not been issued yet. After the date of its issuance, any entity subject to the Data Protection Law is required to legitimise its position within one year.

Cybersecurity

- 33 | What cybersecurity regulations or standards apply to fintech businesses?

According to Cybercrime Law No. 175 of 2018, all providers of information technology and telecommunications services, including the processing or storing of data, must retain and store users' data for at least 180 continuous days, including identification, the content of the services' system, communication traffic, terminals and any other data required by the National Telecommunications Regulatory Authority.

The providers must also keep all stored and archived data (including personal data) confidential and not disclose the data unless there is court order to do so.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

- 34 | Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

Yes. There are specific legal requirements and regulatory guidance for the outsourcing of specific services. For example, online trading is subject to specific regulations requiring brokerage companies to satisfy certain conditions and requirements to provide any trading solutions online. These conditions and requirements include specific technical requirements and conditions on the information technology infrastructure of the brokerage companies.

Another example, according to a Circular issued by the Central Bank of Egypt (CBE) in 2014, is that no bank registered with the CBE may provide internet banking solutions, including online lending, unless prior authorisation is obtained from the CBE. This prior authorisation requires all banks registered with the CBE to meet specific legal requirements, including the provision of a penetration test report to the CBE.

Cloud computing

- 35 | Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

Cloud computing is subject to Cybercrime Law No. 175 of 2018, which applies to any person providing users, directly or indirectly, with any information technology and telecommunications service, including processing or data storage. Those providers must retain and store users' data for at least 180 continuous days, including identification, the content of services' system, communication traffic, terminals and any other data required by the National Telecommunications Regulatory Authority.

According to the Media Law No. 180 of 2018, a prior licence from the Supreme Council for Media Regulation is required to launch any website in Egypt if:

- the website will be created in Egypt;
- the website will be managed by any person in Egypt; or
- any of the website's subdomains will be managed by any person in Egypt.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

- 36 | Which intellectual property rights are available to protect software, and how do you obtain those rights?

Software is protected in Egypt in the form of copyright. This protection requires the registration of the software, including, among other things,

the first and final 10 pages of the source code, with the Information Technology Industry Development Agency.

IP developed by employees and contractors

- 37 | Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

According to Intellectual Property Rights Law No. 82 of 2002 (the IPRs Law), only the person who provides the direction to create a joint work is entitled to exercise the author rights of the work. This rule applies to copyright created by employees during the course of their employment.

For contractors and consultants, it depends on the specific terms and conditions of the relevant development or services agreement.

Joint ownership

- 38 | Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

According to the IPRs Law, if there is more than one author of any work, all participants in the work are considered joint authors, and none of them can individually use any right over the work unless otherwise agreed between the authors in writing.

Trade secrets

- 39 | How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Trade secrets (including confidential information) are protected by the IPRs Law, provided that the secrets:

- are maintained as confidential and are not within the public domain;
- maintain their value as a result of their confidential status; and
- maintain their confidentiality status under the effective protection measures taken by their owner.

According to the IPRs Law, the court will maintain the confidentiality of trade secrets.

Branding

- 40 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Branding is generally protected as both copyright and trademarks.

Remedies for infringement of IP

- 41 | What remedies are available to individuals or companies whose intellectual property rights have been infringed?

There are several remedies under Egyptian law for owners of intellectual property rights, including specific performance and the right to claim damages that cover all the losses incurred to the owner as well as all the profits of which the owner has been deprived as a result of the infringement.

COMPETITION

Sector-specific issues

- 42 | Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

To assess whether there is an antitrust-related risk, it must first be determined whether the relevant fintech player is deemed to be in a dominant position in accordance with the meaning given under the Antitrust Law No. 3 of 2005 (the Antitrust Law) and its executive regulations.

For a fintech player and its controlled affiliates in Egypt to be deemed to be in a dominant position under the Antitrust Law, the player must:

- 1 hold a market share exceeding 25 per cent of the market that is relevant to each service provided by the player (the relevant market), the percentage being calculated based on two elements, namely the relevant products (the relevant market products) and the geographic area during a certain period;
- 2 be able to make an impact on changing the prices or the quantity of the market products (the dominant ability); and
- 3 not be in a position to limit the dominant ability, noting that the competitors have the ability to carry out the same business as the fintech player in Egypt whether in the present or in the future.

Points (2) and (3) are reviewed and assessed by the Egyptian Competition Authority (ECA) based on specific criteria.

If the fintech player is in a dominant position in the relevant market, then that player must be in a position to conduct certain practices, including entering into any agreement with any of its suppliers or its customers that results in limiting competition.

The assessment of any violation under the Antitrust Law is made by ECA on a case-by-case basis according to specific criteria, including, among other things, the benefits of customers and commercial customs. The assessment is subject to a judicial review by the economic courts.

TAX

Incentives

- 43 | Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

The Investment Law No. 72 of 2017 provides fintech companies, subject to the satisfaction of specific criteria, with several key guarantees and incentives, including:

- exemption from stamp duty and the notarisation fee imposed on articles of incorporation, facilities and loans agreements, security documents or plot of land purchase agreements for five years, starting from the date of registration with the Commercial Registry;
- application of a unified custom duty at a flat rate of 2 per cent of the value of any equipment, machinery and device that is necessary for establishment of the investment projects; and
- tax reduction for seven years, counting from the date of starting the investment projects in Egypt, subject to a specific formula.

Increased tax burden

- 44 | Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

The Tax Authority is currently in the process of proposing several amendments to the existing tax regimes in Egypt, whereby a new digital tax will be introduced. However, it is too early to know the rates of the proposed digital tax.

On 26 March 2020, the Minister of Finance issued Decree No. 188 of 2020 introducing a mandatory clearance e-invoicing framework where all issued invoices must be digitally transmitted to the tax authority in real time before being sent to the customer. The decree obliges all VAT-registered businesses to issue an electronic invoice containing the issuer's electronic signature and a unified code for the goods or service.

On 2 August 2020, the Egyptian Tax Authority issued decree No. 386 of 2020 listing 134 companies who are obliged to issue electronic tax invoices for their sold goods or rendered services as of 15 November 2020. This date is the first phase of a broader roll-out of the e-invoicing obligation. In addition, voluntary adoption of the e-invoicing system is permitted if certain conditions and controls are satisfied.

On 20 November 2020, the Egyptian Tax Authority issued Decree No. 518 of 2020 listing 347 companies, as a second phase, who are obliged to issue electronic tax invoices for their sold goods or rendered services as of 15 February 2021. It was announced through the media that, by the end of June 2021, the e-invoicing system will be mandatory for all companies. Therefore, taxpayers in Egypt must be prepared for the requirement to implement e-invoicing.

IMMIGRATION

Sector-specific schemes

45 What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

As a general rule, non-Egyptians are not allowed to work in Egypt without being permitted to do so by the Ministry of Manpower. In practice, the issuance of a work permit takes up to three months, and is valid from one to three years.

The proportion of foreign employees must not exceed 10 per cent of the total number of employees and must not exceed 20 per cent of the company's payroll. The 10 per cent threshold may be increased to 20 per cent for fintech businesses subject to specific criteria.

UPDATE AND TRENDS

Current developments

46 Are there any other current developments or emerging trends to note?

Yes: the New Banking Law No. 194 of 2020 and Data Protection Law No. 151 of 2020.

Coronavirus

47 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In response to the covid-19 pandemic, several pieces of emergency legislation and relief initiatives have been issued in the private sector. For example, a new law was issued under Law No. 24 of 2020, determining the financial rules for facing the challenges brought on the pandemic (the Financial Support Rules). The Financial Support Rules grant all businesses working in the sectors that have been badly affected by the pandemic a number of benefits and exemptions to support them to overcome the repercussions of the pandemic. The Rules also provide that these businesses should not lay off any of their employees or reduce the salaries of their employees.

SOLIMAN, HASHISH & PARTNERS LAW FIRM

Mohamed Hashish

m.hashish@shandpartners.com

Farida Rezk

f.rezk@shandpartners.com

10th Floor, Degla Plaza Building (75/77)
199 St, Degla
New Maadi
Cairo
Egypt
Tel: +201 00047 0077
www.shandpartners.com

Furthermore, Egypt announced a 100 billion Egyptian pounds stimulus package, which has been allocated to different sectors including the health sector, citizen support facilities, the Central Bank, the industry sector, the tourism and aviation sector and the tax sector.

In response to covid-10, the Central Bank of Egypt (CBE) issued a set of measures that include the following:

- Limit cash transactions and facilitate the usage of electronic payment methods. The cancellation of fees and commissions were applied to the points of sale (POS), cash withdrawals from ATMs and E-wallets, for a period of six months starting from March 2020, which came to an end in September 2020; however, cash withdrawal came to an end by the end of 2020.
- The CBE launched the Industrial, Agricultural and Construction Private Sector Initiative, where 100 billion Egyptian pounds have been allocated through banks at an 8 per cent interest rate to finance industrial private sector corporates, and companies operating in the agricultural field, in addition to agricultural production and manufacturing, including export and packaging stations for agricultural commodities, refrigerators as well as fisheries, poultry, livestock, whose annual turnover is 50 million Egyptian pounds or more, taking into consideration the total consolidated annual turnover of the client and its related parties. The initiative has the purpose of granting credit facilities to finance the purchase of raw materials, production supplies, machinery and equipment, or production lines (capital expenditures), in addition to workers' salaries and other utilities expenses.
- With the aim of facilitating meetings for banks' board of directors during the crisis, banks were allowed to hold these meetings virtually with certain exceptions until the end of 2021, thereby allowing the participation of board members in board meetings via video or teleconference with no maximum number of times of attendance and without binding the majority of the board members to attend physically.
- Egypt has allocated funds for research and development and innovation; for example, during the covid-19 outbreak, 80 million Egyptian pounds were allocated for frontier research to diagnose, test and develop a vaccine for covid-19. This has promoted many research bodies to innovate and develop new types of masks, sanitising equipment, oxygen masks, vaccine trials, etc.

- A new Law No. 170 of 2020 was issued in August 2020, mandating solidarity contribution on private and public sector employees and managers whereby monthly net salaries are subject to a 1 per cent deduction and pensions subject to an 0.5 per cent deduction. This is to support the national economy in facing the consequences of pandemics. However, employees whose net salary and pensioners whose net monthly pension does not exceed 2,000 Egyptian pounds shall not be subject to the obligation.

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)