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Defining Kuwait's Fintech Frontier: The Regulatory Revolution of 2023

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Fueled by the Central Bank's strategic vision, Kuwait's fintech industry witnessed a significant transformation in 2023. Revisions to the rules governing electronic payments and the launch of “Buy Now Pay Later” services were two noteworthy additions demonstrating a dedication to innovation and strict regulatory monitoring.

The updated rules, which have their roots in Law No. 20 of 2014, impose strict requirements on financial institutions that use electronic fund transfers, emphasizing client safety, cybersecurity, and anti-money laundering protocols. The most notable features were the division of E-money Service Providers into small and large categories and the resulting simplification of regulatory monitoring. Limited-purpose E-Money operations also arose, with strict operational limitations and ceilings.

Kuwait adopted a strong position on cryptocurrencies during these developments, with the Capital Markets Authority banning associated operations. This action aligned with regional initiatives to prevent money laundering and maintain financial stability.

Kuwait's fintech journey is still in progress, marked by inventiveness and strict regulation. However, the environment is still favorable for future development and cooperation to create a vibrant financial ecosystem.

- **Electronic Payments of Funds and Buy Now Pay Later (BNPL) services.**

The new regulation aligns with the Central Bank of Kuwait's (CBK) strategy to support the development of new technologies in the electronic payment space and preserve a robust, advanced financial system. Additionally, it complies with the mandate issued by Law No. 20 of 2014 on electronic transactions, which bestowed CBK the power to supervise and regulate electronic fund transfers and issue legally binding directives in this respect.

The Instructions for Regulating the Electronic Payment of Funds - May 2023 have been amended by the Central Bank of Kuwait. The guidelines were initially released in 2018. Early in 2022, a draft of the revised instructions was made available to the public, and this was followed by a round of public consultations with interested parties.

The Central Bank of Kuwait stated in a statement¹ that these guidelines specified the prerequisites that both new and established financial institutions had to fulfill in order to engage in the business of electronic money transfers or to run electronic payment systems. These requirements varied based on the type of business and the size of the enterprise, and there were five different types of licenses available. The instructions outline the regulatory standards and procedures that those institutions must follow in order to improve the security and stability of payment systems in the State of Kuwait. These include client protection, cyber security, business continuity, governance, a risk management framework, and the fight against money laundering and terrorist funding.

A variety of licensable activities, including e-payment, e-money, e-payment service operations, and buy now pay later services, were formed by CBK under the new legislation. The extent of the service provider's operations and the kind of activities it plans to engage in determine the licensing requirements.²

¹ Press statement | CBK issues new instructions regulating the electronic payments of funds. (2023). Retrieved from <https://www.cbk.gov.kw/en/cbk-news/announcements-and-press-releases/press-releases/2023/05/202305161200-cbk-issues-new-instructions-regulating-the-electronic-payments-of-funds>

² Omar Handoush, & Yousef AlShereedah. (2023). Central bank of kuwait's overhaul of e-payment regulations. Retrieved from <https://www.tamimi.com/news/central-bank-of-kuwaits-overhaul-of-e-payment-regulations/>

Additionally, CBK established rules controlling Buy Now Pay Later services for the first time, opening the door for Kuwait-based companies including online merchants and e-commerce platforms to provide Kuwaiti customers with products on Buy Now Pay Later terms.

Most notably, significant shareholder enterprises licensed by the CBK to engage in lending or currency exchange activities qualified to be individually licensed as e-payment service providers under the former CBK regulations. Only by serving as an agent for these big businesses were licenses extended to small and medium-sized businesses. Now, CBK has removed this limitation. As a result, startups now have greater freedom than ever to secure the required permits and run their own businesses.

Notably, the new regulation³ divides E-money service providers (EMSP) into Small E-money Service Provider and Large E-money Service Provider. The first should have a minimum capital of KWD 100,000, and the second a minimum capital of KWD 1,000,000.

Particularly, Chapter Two of the regulation outlines regulations for practitioners in the financial activity sector. Here are the key points:

1. **Practicing the Activity:** Service providers must be listed in the CBK Register with accurate information. Registration is mandatory except for local banks.
2. **E-Payment Service Providers (EPSP):**
 - Divided into Small and Large categories based on legal form, minimum capital, services offered, and transaction limits.
 - Small EPSPs have lower capital requirements and transaction limits compared to Large EPSPs.
3. **E-money Service Providers (EMSP):**
 - Similar classification into small and large categories with varying capital, services, and transaction limits.
 - Transaction limits and storage of E-money vary based on provider size.
4. **E-Payment Service Operators (EPSO):**
 - They manage Retail Payment Systems in Kuwait and may conduct specified E-Payment Activities, excluding certain services like BNPL and E-money operations.
5. **Activity Services (Article 7):**
 - Encompass various payment-related activities such as payment acquisition, direct debit, issuing payment instruments, E-money operations, BNPL, and other activities determined by the CBK Governor.
6. **Article 8** outlines services that fall outside the scope of regulated activity within electronic payment systems. Here are the key points:
 - Excluded services:
 - Payment transactions facilitated by commercial intermediaries for specific sales, purchases, or collections, where only one party (payer or payee) authorizes the intermediary.
 - Cash payments or direct transactions between payer and payee without any intermediary involvement.
 - Transactions using electronic payment instruments issued by a single issuer solely for acquiring goods or services from that issuer or its related entities.

³ Instructions for regulating the electronic payment of funds, (2023). Retrieved from https://www.cbk.gov.kw/en/images/e-payment-instructions-2023-161512_v40_tcm10-161512.pdf

- Payments processed within securities settlement systems, central clearing houses, or central banks.
- Any form of check-based payment transactions.
- Transactions exclusively between a parent company and its subsidiaries or among subsidiaries without involving other E-Payment service providers.
- Activities involving transportation of physical currency, including collection, processing, and delivery of banknotes and coins.

These services are considered outside the purview of the electronic payment regulations, specifying scenarios where payment transactions occur without the involvement of regulated intermediaries or fall under specialized financial systems or instruments.

As for Chapter Three entitled "Limited Purpose E-Money" it includes:

- Article 9: Practicing Limited Purpose E-money Activity (LPEP)
 - Requires a no-objection certificate from the CBK before practicing Limited Purpose E-money Activity.
 - Activity service providers must ensure LPEPs possess this certificate before providing them with E-Payment instruments.
- Article 10: Ceiling of LPEPs Operations
 - Sets a total value limit for Limited Purpose E-money at KWD 400,000.
 - Service providers exceeding this limit must inform the CBK, which can adjust the limit based on risk or require the company to register as a different type of E-money Service Provider.
- Article 11: LPEPs Obligations
 - LPEPs must obtain CBK approval before providing services and submit audited financial statements annually.
 - They must implement funds segregation, anti-money laundering measures, customer protection, international confidentiality standards, and comply with CBK instructions.

As for the registration requirements and application, they were tackled in Chapter Four.

As such, Applicants must submit required documentation; additional information may be requested by CBK. Failure to provide requested information within 30 days may lead to rejection of the application.

The documents required for registration include memorandum and articles of association, commercial register details, equity structure, and financial statements. Moreover, applicants must provide a strategic plan covering objectives, feasibility studies, SWOT analysis, and financial projections.

Furthermore, there are specific requirements related to the company's operating procedures, infrastructure, risk management, customer protection, and exit strategy plans.

● Cryptocurrency Landscape⁴

Kuwait has declared its intention to outlaw practically all activities involving digital assets inside its boundaries.

The Capital Markets Authority (CMA), Kuwait's primary financial regulator, has released a circular on the nation's supply and oversight of virtual assets.

⁴ Hellweger, A. (2023). Crypto and virtual asset transactions banned in kuwait. Retrieved from <https://www.rahmanravelli.co.uk/expertise/cryptocurrency/articles/crypto-and-virtual-asset-transactions-banned-in-kuwait/>

In it, the CMA reaffirms its commitment to the "absolute prohibition" of any cryptocurrency-related activities, including mining, investments, and payments. Additionally, it prohibits municipal regulators from granting licenses to businesses who wish to offer virtual asset services.

Prohibition does not apply to securities or other financial products that are governed by the CMA and the Central Bank of Kuwait.

Customers have been urged by the CMA to exercise caution and awareness of the dangers involved with using virtual assets. It has focused especially on the risks connected to cryptocurrency.

Cryptocurrencies "don't carry a legal status and are not issued or supported," according to the CMA. The statement cautions that the prices of these assets are always driven by speculation, which might cause a dramatic collapse, and that they are "not linked to any asset or issuer."

According to the regulator, the new rules are made to go hand in hand with the nation's efforts to stop the funding of terrorism and money laundering. It has emphasized that Article 15 of Law No. 106 of 2013 lays out the consequences for breaking Kuwait's anti-money laundering regulations.

The country views the CMA's crypto limitations as a component of a recently implemented interdepartmental crypto prohibition that involves multiple supervisory authorities in Kuwait. It has been stated that the Ministry of Commerce and Industry, the Insurance Regulatory Unit, and the Central Bank of Kuwait have all released circulars similar to this.

But Kuwait is not the only nation in the Middle East and North Africa (MENA) area adopting this position. A complete ban on cryptocurrencies has also been enacted in Morocco, Libya, and Qatar. Five years after reiterating that the kingdom has a complete prohibition on cryptocurrencies, Saudi Arabia seems to be reevaluating its stance. It has now designated a leader for the digital currency and virtual assets programs of the central bank.