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**Legal Review:
Licensing, Regulations and Central Bank of Egypt
Oversight of Credit Bureau Operations**

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Prepared for: USAID EFS CTO: Gregg Wiitala
DCTO: Ingi Lotfi
USAID/Egypt Economic Growth Division
Office of Financial and Information Technology

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KRA KRA 4.1 Strengthen the Capacity of CBE for Oversight of Private Information Systems and Protection of Consumer Rights
KRA 4.2 Private Sector Credit Bureau Operational
KRA 4.3 System of Protection in Place for Consumer Rights

Author: EFS Task Leader Marian Mishriki
Subcontractors & Consultants:
Arab Legal Consultants
Hassouna and Abou Ali Law Firm
Paul Backer, Legal /Regulatory adviser

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Table of Contents

Section 1: Legal Review.....	1
Introduction.....	1
A. Identification of legal issues/activities	1
B. Analysis of the Legal Framework	4
B1. The Constitution:.....	4
B2. Criminal Laws.....	5
B4. Laws Organizing the Collection of information by the State.....	6
B5. Antitrust Law no 3 for 2005.....	6
B6. Trade Information Center.....	6
B7. Laws in the pipeline:	7
C. The Banking Law	7
C1. The Public Registry	8
C2. The Secrecy Articles and Information Exchange	8
C3. The Exchange of Information with Suppliers of Goods and Services and other entities not mentioned in article 99.....	10
D. Observations/Concluding Remarks.....	10
D1. The absence of a full legislation for credit bureau(s).....	10
D2. The secrecy issue in relation to consumer protection issue	11
D3. Consumer Protection Rights	11
D4. The Duplicate Role of the Central Bank.....	12
D5. Central Bank regulates only banks	13
D6. But does not regulate Mortgage Finance and Leasing companies.....	13
D7. Nor Suppliers of goods and services.....	13
D8. Nor Non bank financial institutions.....	14
D9. Egyptian Ministries are important providers of information but are sovereign entities	14
Section II: Licensing, regulations and Central Bank Oversight of Credit Bureaus.....	16
Introduction.....	16
A. The Rationale	16
B. Requirements and Procedures to License Credit Bureaus Credit Bureau’s Operating System (i.e. the rules and regulations) Central Bank Supervisory System	17
B.1 Introduction.....	18
B2: Requirements and Procedures to License Credit Bureaus	18
B3. General Provisions	21
B4. Credit Bureau’s Operating System.....	24
B5 Central Bank Supervisory System	29
Annex A: Arab Legal Consultants Legal Research.....	32
Annex B: EFS/Arab Legal Consultant correspondence	67
Annex C: Articles of the Banking Law Pertaining to Credit Information Systems	73
Annex D: Hassouna and Abou Ali Legal Research	79

Section 1: Legal Review

Introduction

The background legal analysis aimed to serve the three KRAs simultaneously and cumulated in finalizing the following deliverables required under EFS work plan for 2005 which. Section 1 covers the following:

- KRS 4.1 Strengthen the Capacity of CBE for Oversight of Private Information Systems and Protection of Consumer Rights
- Status Report: Legal/regulatory issues pertaining to the CBE's role as regulator and the establishment of a private credit bureau.
- KRS 4.2 Private Credit Bureau Operational
- Review/Assessment of existing legal /regulatory impediments
- KRS 4.3 System of Protection for Consumer Rights
- Status Report: Initial findings from review of laws, observations and recommended changes to ensure consumer protection and strengthen CBE 's consumer protection unit

A. Identification of legal issues/activities

The starting point for EFS technical assistance for the credit bureau component was to examine the legal/regulatory environment that will govern the operation of the credit bureau within the Egyptian legal context, assess the impact of the existing environment on the operation of the private credit bureau and identify any legal impediments early in the project.

The main issues were privacy considerations and laws pertaining to exchange of information which can impact on the work of credit bureaus with special attention given to the banking law and the recent amendments approved by the Egyptian Parliament in June 2005.

Following is a list of identified legal issues and activities¹ which we based on our quick research at the time EFS started. Many of the issues have been

¹ Prepared in January 2005

addressed. Some however will be subject to ongoing research in the future as our work on the establishment of private sector credit bureau progresses

Identified activities in order of priority & objectives:

Review Egyptian laws with respect to privacy rights, libel laws, etc

- Establish the principles for consumer protection & incorporate them in the regulations of the credit bureau
- Ensure that the regulations comply with Egyptian laws.
- Draft a consumer consent standard form that will incorporate principles of consumers/ borrowers protection and offer protection to consumers/borrowers as well as other related entities

Provide samples of written agreements between the credit bureau & information users/providers

- Determine minimum requirements in written agreements that will be incorporated as part of the regulations
- Ensure clarity of written agreements governing the relations between the credit bureau and information providers/users
- Minimize /prevent future problems.
- Provide legal protection to the parties involved

Investigate ways to settle disputes outside courts (*between consumer/borrowers and credit bureau or between providers/users of information and credit bureau*).

- Define CBE's role as regulator/supervisor in case there are any disputes
- Establish consumer protection principles & their rights
- Identify a legal channel for disputes in case there are any.
- Establish the role of CBE in settling disputes and the extent of CBE involvement

Assess the quantity, quality, timeliness of public record information such as those pertaining to bankruptcy, criminal convictions, civil judgments, administrative seizures, etc

- Matching the period of maintaining public record information at the credit bureau with what is pursuant to the Egyptian laws.
- Identify issues/ potential difficulties in searching existing data bases for example use of names and identification numbers.

Legal drafting and review of the rules and regulations for the private sector credit bureau

- Ensure that rules and regulations are legally worded

- Ensure the clarity and enforceability of the rules and regulations.
- Ensure that rules and regulations are within the scope of the legislative change in the banking law and/or other laws

Review the consumer protection new law proposed by the Ministry of Supply and Trade (*especially with respect to article number 10 which involves information provided to consumers with respect to credit purchases*) and its relevance to the credit bureau operations

- Examine the potential role of Consumer Associations with respect to consumer/borrowers when dealing with the credit bureau.
- Examine the enforcement of the law to serve the private sector credit bureau purpose

Legal opinion on the liability of the Central Bank of Egypt in case it provides information in the public registry to the private sector bureau to support the initial operation of the credit bureau. This will involve a duplicate role for the CBE as *provider of information & regulator/supervisor*

- Protect the CEB in its capacity as regulator /supervisor of the private sector credit bureau
- Suggest a mechanism to limit such liability

Review Egyptian laws and /or rules and regulations that pertain to Egyptian Ministries and Government agencies which currently maintain information that can be provided to the credit bureau.

- Identification of Legal/Regulatory or other impediments that hinder information flow from Egyptian Ministries/government agencies to the private sector credit bureau and provide recommendations /suggestions to alleviate them.
- Identify issues in using & searching existing data basis such as identification numbers, etc

Legal opinion with respect to other private credit reporting agencies which may operate to collect/provide non bank credit information & other Egyptian companies operating in the field of data gathering which may do so without regulations nor protection of consumer rights

- Examine the possibility of regulating private reporting agencies and /or other companies *in the future*

Legal opinion with respect to the presidential decree issued by the president to establish a trade information center

- Determine the legal obligation of banks under such decree and whether there are any penalties involved

B. Analysis of the Legal Framework

An extensive legal research was undertaken². The full text of the legal research can be referred to in Annex A. Presently there is no separate legislation for data protection or a complete legislation for Credit bureaus as in some other countries. There are, however, some scattered provisions in the constitution and the Egyptian laws. With increasing technological developments, the legislations in Egypt could be insufficient to protect private lives.

Following is a summary of the main findings:

B1. The Constitution:

The 1971 Constitution establishes the principle that individuals' private lives, their communication and correspondence are protected.³

Though no penalties were spelled out by the constitution if such general principles are not followed, on the understanding that the role of the Constitution is to set the general framework/ political philosophy of a nation while leaving specific issues to be handled by legislators, yet the Egyptian Constitution (article number 57) stated that violation of personal freedom or private lives of individuals is a criminal offense and there is no statute of limitation either criminally nor civilly; that personal freedom is a natural right and should not be touched (article 41), and that individuals are free to move and locate (article 50 & 52)

Contrary to some European Constitutions, the Egyptian Constitution does not have a clause to protect *data* /information related to private lives of individuals. Nevertheless, protection of private lives (article 45) generally extends to everything that relates to private lives. This includes and pertains to data/information

Because the constitution is the source of all Egyptian laws, then no law, regulation or ministerial decree should contradict the constitution. If a law is found to be unconstitutional by a court order then it may be become null, void and inapplicable.

All laws have to be constitutional. They should all be derived from and be in line with the Constitution.

² Arab Legal Consultants research , May 2005

³ Article 45 of the Constitution

B2. Criminal Laws

There are penalties in the Criminal law⁴ imposed on anyone violating the private life of a citizen. They include imprisonment for a period not exceeding one year and confiscating the equipment used in the crime. A civil servant may be also punished if he/she misuses his/her authority and position.⁵

The previously mentioned penalty may not apply in some situations: when the law authorizes investigation into private lives or when consent is provided by a person to disclose the data/information about him/her.

Though what constitutes a private life has not been defined in the law, yet it includes everything related to a person: name, picture, home privacy, private conversations, correspondence, family life and everything that relates to his/her financial status. The latter is naturally a part of persons' private lives. Their claims, debts, incomes should not be disclosed/published except with the approval of the concerned person or in application of a law

Criminal Procedures Law number 150 for the year 1950 asserts in article number 295 that civil cases resulting from a criminal offense which violate a private life does not have a statute of limitation.

B3. Civil Laws:

They also assert the right to privacy. Personal secrets should never be disclosed without permission or consent. This also applies to those who, by virtue of their position or job, can view the information unless in situations when it is required or authorized by the law.

Article 50 of the civil law gives a person whose personal rights were subjected to any unlawful violation or intrusion the right to stop or prevent such violation and request compensation for the damage.

The 1948 civil law approach parallels the European legislations in the sense that it did not list or define private rights but tended to establish a general protection for the rights associated with a person's being and it avoided narrow/specific definitions that may include or exclude important issues that might arise as a result of frequent technological developments.

⁴ Law Number 58 for 1937

⁵ Article 309 added by law number 37 in 1972 to law number 58 of 1937 & reflects article 45 of the Constitution

B4. Laws Organizing the Collection of information by the State

Review of several laws pertaining to the collection of information by the state⁶ conclude that an administrative approval is generally required and can only be allowed in light of purposes and under the terms specified by the law. Noteworthy of mention are the following clauses:

Personal data in connection with statistics are considered secret and should not be accessed by any individual or any public or private authority, should not be used except for statistical purposes and should not be published unless with the written consent of the concerned person. Violation of the previously mentioned may cause subjection to imprisonment and fines⁷

No ministry, authority, entity, individual or individuals in the government in public or private sectors can publish any publications, findings, data or statistical information except through the Central Agency for Public Mobilization and Statistics.⁸

State documents related to important State matters and national security issues, their use and publication are organized by a decree issued by the president. Violation of the previously mentioned may cause subjection to imprisonment and fines⁹.

B5. Antitrust Law no 3 for 2005

This law created an authority to protect competition and prevent monopolistic practices. The authority is responsible to establish information and data bases about economic activities. Article 3 of the law forbids employees to disclose information and/ or use it for purposes other than what is specified in the law¹⁰ and there are penalties for noncompliance¹¹

B6. Trade Information Center, established by presidential decree no 128 for 2001 has been established under the umbrella of the Ministry of Supply and obliges many entities including banks to provide the Center with data and statistics, without prejudice to secrecy clauses under the different laws, i.e. the

⁶ These include Law no 189 / 1958, Law no 35 for 1960 amended by law no 28 for 1982, law no 87 for 1960, law no 137 for 1963, presidential decree no 2915 for 1964 to establish the Central Agency for Public Mobilization and Statistics (CAMPAS), law no 121 for 1975 to safeguard the official State documents and organize their publications.

⁷ Article 3 & 4 , law 35 for 1960, amended by law 28 for 1982

⁸ Article 10 of the presidential decree no 2915 for 1964 to establish CAMPAS

⁹ Article 1- 3 of law no 121 for 1975 to safeguard State documents & organize their publication

¹⁰ Article 16

¹¹ Article 23

legislator has allowed exchange of information with the Center without requiring consent from the data subjects.

B7. Laws in the pipeline:

There are two new laws which are in the pipeline.

- One pertains to the disclosure and exchange of information. *The Ministry proposing this law is not known.* The rationale for this law rests on the belief that the current information system hinders the exchange of information that can be used to achieve economic and social targets and that there is a present mismatch in the data. The proposed law establishes the right of all to obtain data and information, the transparency principle, seeks to facilitate the exchange of information with focus on research objectives, defines the information that has a public nature, excludes several sovereign bodies¹² and establishes a higher Council.
- The other law proposed is the Consumer Protection Law, proposed by the Ministry of Supply to protect consumers when they purchase goods and services from suppliers and the goods turn to be defective and organizes the relation when they buy on credit. The law also establishes an authority to protect consumers, and gives it the right to coordinate with different public authorities such as telecommunication, water and electricity. The proposed law forbids disclosure of information and data in connection with private cases and imposes penalties

C. The Banking Law¹³

Introduction:

In mid June 2005 the Egyptian Parliament approved an amendment to the banking law. The relevant articles pertaining to credit information systems can be referred to in Annex C

Among other changes not directly to EFS credit bureau component, the amendment enabled:

- Central Bank to license, regulate and oversee the operations of private sector credit bureaus and issue directives to organize the exchange of information

¹² The Presidency, National Security Council, Ministry of Defense, Ministry of Interior, Ministry of Justice and Ministry of Foreign Affairs

¹³ Banking law no 88 for 2003 amended by law no 93 for 2005

- Exchange information between Central Bank, Banks, leasing and mortgage finance companies and private sector credit bureaus.

Our legal review of the banking law has concentrated on the amended/new articles in the law in conjunction with other unchanged articles¹⁴ that bear relevance to the following issues:

1. The Public Registry
2. The Secrecy articles & the operation of the public and private registries
3. The information exchange between private sector credit bureau and the suppliers of goods and services

C1. The Public Registry¹⁵

It is a requirement in the law, and one that existed prior to the recent amendment, that the Central Bank has to establish the public registry (central system).

It is a legal obligation that banks have to report clients' positions to the Central Bank. Even before the amendment, mortgage finance & financial leasing companies were also obliged to report the positions of their clients to the Central Bank.

Banks are obliged to view the positions of clients at the Central Bank before they extend credit but it is not an obligation for mortgage finance & financial leasing companies to do so though they have the right.

The public registry will therefore continue to exist by law

C2. The Secrecy Articles and Information Exchange¹⁶

Two different article in the same section titling Secrecy of Accounts in the banking law required special attention from our part because of the importance of the secrecy articles to the operation of the private credit bureau.

Whereas secrecy article 97 stated that:

“All clients’ accounts, deposits, trusts and safe deposit boxes and related dealings are secret. They can not be viewed or information provided about them either directly or indirectly except with the written consent of the owner of the

¹⁴ Relevant articles to the operations of both the public and private registries are attached

¹⁵ Articles 65 – 67 of the law and articles 30 – 33 of the executive regulation organizes the operation of the public registry

¹⁶ Section four of the banking law, articles 97 - 101

account, the deposit, the trust or the safe deposit box, or from one of the heirs, or from one of the beneficiaries to some or all of the funds, or from the legal deputy or from an authorized person by a power of attorney or based on a legal judgment or arbitration rule.

The restriction in the preceding paragraph shall apply to all persons and entities including those entities which are authorized by law to view or obtain papers or data whose secrecy is forbidden to be disclosed according to the articles of this law. This restriction shall remain even if the relation between the client and the bank is terminated for any reason”

Article 99 stated:

“The Central Bank and the banks exchange information and data pertaining to clients’ debts and the approved credit facilities. The information and data shall also be exchanged with mortgage finance companies, financial leasing companies and inquiry and scoring companies. The Central Bank of Egypt board of directors shall set the rules organizing the exchange of information, while maintaining the secrecy of information & data and ensuring the availability of whatever is required from it for the soundness of credit extension”

The legal interpretation¹⁷ was that the law (article 99) allowed exchange of information between the mentioned financial institutions and is considered an exception to article 97 and therefore the information exchange does not violate the secrecy article 97 as long as the exchange of information is between the aforementioned institutions in article 99 and complies with the regulations issued by the Central Bank. Consequently, such an exchange will not require the written consent of the borrower/ consumer which will be required for any exchange of information not spelled out in article 99

This opinion corresponded with the legal opinion of the Central Bank legal experts/ advisers and induced the Central Bank to delete its requirement¹⁸ from its directive with respect to the operations of the public registry contrary to banks’ current practices.

EFS sought a second legal opinion and had extensive discussions with another law firm. Following deliberations, the second law firm agreed¹⁹ in general there is a difference between the secrecy consideration which is much more general and comprehensive and encompasses all types of account and the permitted exchange of information in article 99 which is confined to debts and existing clients. While the rationale behind article 99 is well understood, the second legal

¹⁷ Arab Legal Consultants letter dated 22 May 2005

¹⁸ Central Bank board meeting dated 26 April 2005 with respect to the Public Registry System no longer requires banks to obtain written borrowers consent to view their credit information at the Central Bank which was a requirement in the board’s directive of August 1st, 2001. *Article 97 however is continues to exist in the banking law*

¹⁹ Hassouna and Abou Ali final legal report dated July 4, 2005

opinion expressed some concerns with respect to the removal of the requirement to obtain borrowers /consumer consent in Central Bank recent directive because it may be possible by some to interpret the second part of the secrecy article 97 in different ways. This obviously might be more of an issue with respect to exchange of information with a private entity. Consequently, there is a risk that some might object to the removal of the consent requirement from Central Bank Directives with respect to the operation of the public registry because of past banking practices, especially in the light of the Constitution and article 50 of the civil law.

C3. The Exchange of Information with Suppliers of Goods and Services & other entities not mentioned in article 99

Whereas the amendment stated that the credit bureau can collect information from the suppliers of goods and services²⁰, article 99 did not explicitly authorize exchange of information with them nor did it prohibit the information exchange. Suppliers of goods and services are not regulated by the banking law but they fall under the umbrella of the other Egyptian Laws.

The legal consensus was that exchange of information between the private credit bureau and suppliers of goods and services is possible but in this case the written consumer consent will be required to provide information about their data to the private credit bureau and to inquire/view the information available.

D. Observations/Concluding Remarks

D1. The absence of a full legislation for credit bureau(s)

The Central Bank of Egypt has managed to obtain Parliament approval by proposing an amendment in the banking law instead of proposing a full legislation. The latter course of action could have been difficult, expensive and time consuming (may take years). The amendment established the Central Bank as the authority that can license and regulate private sector credit and gave the Central Bank great flexibility in drafting the rules and regulations and organizing the full operating mechanism of credit bureaus.

The flexibility in drafting the regulation:

²⁰ Article 67

A more conservative legal opinion²¹ perceives this as insufficient. The Central Bank could at least have proposed a new chapter in the banking law to organize the operation of Credit Bureaus especially since credit bureaus will also deal with other entities not only the institutions mentioned in article 99. As EFS was early aware of this issue, to mitigate the risks involved we ensured the presence and contribution of Arab Legal Consultants in the legal drafting of the rules and regulations

The licensing:

EFS sees some merit in the opinion of Hassouna and Abou Ali opinion. The burden of defining a credit bureau and its activities falls completely on the Central Bank and may raise some questions in the future with respect to the operation of some companies which were incorporated prior to the amendment in the banking and are active in the area of non bank credit information. These companies perceive themselves as being authorized/ licensed by the Egyptian authorities to conduct credit bureau activities. The amendment in the banking law did not address their status. This raises a question as to what extent can the Central Bank restrict any firm from starting credit bureau activities before obtaining a license.

Likewise for any additions incorporated in the licensing/regulations which have not been specified in the law such as imposing a certain shareholding structure on the private credit bureau or requiring an Egyptian nationality for the credit bureau whereas the banking law required only a joint stock company.

D2. The secrecy issue in relation to consumer protection issue

Despite the legal opinions that exchange of information is possible between the financial institutions specified in article 99 without requiring consumer consent, in practice this has to be tested. An unanticipated negative reaction from some borrowers/consumers in Egypt when they know that their information is being sent to the private sector credit bureau may result in bad publicity for the credit bureau and political pressures against it.²² Thus, adopting consumer friendly procedures, especially when there is no full legislation, acquires even more importance for the private sector credit bureau.

D3. Consumer Protection Rights

The initial findings of our legal research confirm the existence of privacy rights under the Egyptian constitution, Egyptian Laws and the general principle in the banking law that all clients' accounts are secret.

²¹ Hassouna and Abou Ali Legal Report, July 7, 2005

²² Lessons can be drawn from recent experience of private credit bureau in Italy.

While presently consumers do not access the public registry, the Central Bank seems, in line with international practices, very supportive of protection of consumer rights and is willing to incorporate in the regulations of the private credit bureau a detailed mechanism to protect consumers.

Basically, consumers will have the following rights:

- The right to information. They will be able to obtain credit reports from the private sector credit bureau at any time.
- The right to request correct of information
- The right to object to inquiries made without consent or without a purpose, depending on the situation

Central Bank gives the consumers the right to recourse to, if they do not receive a response from the credit bureau or if the response is not satisfactory to them.

D4. The Duplicate Role of the Central Bank

Originally the Central Bank runs the public registry by law. With the change in the banking law the Central has acquired two new roles:

One: Regulator of the private registry and;

Two: Provider of information to the private registry. While article 99 in the law allowed exchange of information between Central Bank and the private sector credit bureau it also raises a question as to the legal liability of the Central bank, because the data that is with the public registry is of regulatory nature and two processing data/information and sending it the private credit bureau involves responsibility.

It is also the case that provision of data by the Central Bank to the private sector credit bureau is not mandatory. Central Bank seems to be willing to support the private sector credit bureau by providing information to the private registry, especially since it maintains a negative list for consumer loans and credit cards. Central bank is also considering building a database for retail banking and SMEs and then transferring it to the private sector credit bureau.

The provision of information by a public to a private registry is not an unprecedented situation and would be similar to a system evolved in Belgium²³

EFS may investigate ways of limiting Central Bank legal liability in order to protect the Central Bank and suggest best mechanism to effectively transfer the data in the best interest of the private credit bureau and the market.

²³ Report by Paul Backer, Legal /Regulatory Consultant to EFS, May 2005

D5. Central Bank regulates only banks

While providing information to the public registry and using it is mandatory by the banking law, however this is not the case with the private sector credit bureau, but because the Central Bank has wide regulatory powers it can issue a directive to the banks to make it mandatory for them to use the credit bureau, i.e. provide information and inquire about clients (potential borrowers) before extending credit. The collection of bank credit information will be relatively easier compared to other forms of information, making the creation of a product (i.e. bank credit information) essentially with the private sector credit bureau before it can be sold to users.

D6. But does not regulate Mortgage Finance and Leasing companies

The use of the public registry and private registry by mortgage finance and financial leasing companies is voluntary.

Furthermore, these two financial institutions were specifically mentioned in article 99. The legal interpretation highlighted previously implies that they can exchange information without written consumer/borrower consent. This raises the following important queries:

- The exact definition of mortgage finance ²⁴ and leasing companies which will be authorized to exchange information without written consumer consent.
- The existence of different laws governing them. For example, the mortgage finance law (article 43) requires that data secrecy should not be prejudiced with no further detail. There is also a separate leasing law
- The existence of different regulators under the umbrella of the Ministry of Investment

D7. Nor Suppliers of goods and services

Provision of information by the suppliers of goods and services and use of the private credit bureau will be:

- Entirely voluntary
- Based on written consumer consent. This has been agreed upon as a legal requirement.

²⁴ Presently, there are two mortgage finance companies regulated by MFA

Obviously this will be a challenge for the private registry especially since studies indicate that a very small percent of the population use banks, leaving a lot of credit information outside the banking sector.

Therefore, it becomes important that the private credit bureau should:

First: Ensure the willingness of the suppliers of goods and services to participate in the private registry and;

Second: Exercise patience since the suppliers of goods and services should take their time in gathering consumer consents and;

Third: Appreciate that time will be needed before they can use the private registry.

All three issues are challenging for the Private registry.

D8. Non bank financial institutions

They fall under the umbrella of the Ministry of Investment. Their contribution to the credit bureau will also be voluntary. Written consumer consent will be required.

What was stated in the preceding paragraph with respect to the suppliers of good and services will also apply to them.

D9. Egyptian Ministries are important providers of information but are sovereign entities

Because the basic principle is that information can be provided or exchanged if specified in the law or by the written consumer consent, then persuading other providers of information to provide them to the credit bureau will take time. The most important are:

Ministry of Justice: Public record information is an important part of the credit reports and whereas information on bankruptcy is available, a credit bureau should seek to obtain all types of legal information, preferably from its original source. Coordinating with the Ministry of Justice is therefore important. The ease of obtaining the data, its form, accuracy, etc will be more relevant issues than the privacy consideration

Ministry of Interior: Finding common grounds with the Ministry of interior is important. While the Ministry of Interior might not provide its complete data base because of issues of national security and sovereign interest, the credit bureau should at least be able to verify the national identity number when there are doubts about the identity of a consumer. In addition any credit bureau system should incorporate a mechanism for Fraud detection. The latter is one of the key

concerns for the Ministry of Interior, though indicators point out that Fraud is still not a major phenomenon in Egypt as in other countries

Utilities: The telephone, electricity authorities are important providers of information to the credit bureau.

The private sector credit bureau will therefore have to build alliances/partnership with the potential information providers and users. The Central Bank of Egypt as a government body can support all such efforts. EFS role is to support the private sector bureau and contribute to building an enabling environment for its successful operations

Section II: Licensing, regulations and Central Bank Oversight of Credit Bureaus

Introduction

Given the legal background & our findings with respect to the operation of the private credit bureaus and the banking law, EFS together with its subcontractor Arab Legal Consultants have worked very closely with the Central Bank to draft the following, which were required under the banking law:

1. Requirements and Procedures to License Credit Bureaus
2. Credit Bureau 's Operating System (*i.e. the rules and regulations governing the credit bureau operations*)
3. Central Bank Supervisory System

The above three are within the scope of our activities required under the following KRAs

- KRA 4.1 Strengthen the Capacity of CBE for Oversight of Private Information Systems and Protection of Consumer Rights
- Final Draft: Review of rules and regulations
- KRA 4.2 Private Credit Bureau Operational
- Assessment/Status Report on ideal licensing requirements

In addition EFS assisted the CBE in preparing a brief explanatory memorandum to highlight the rationale for drafting the above three which were based on the following:

A. The Rationale

- The Egyptian constitutional and legislative framework related to private rights and exchange of information against which the private sector credit bureau will operate.
- Review of the banking law
- Reference to credit bureau legislations in other countries and codes of conduct²⁵ whether in developed or developing countries

²⁵ Legislations and /or codes of conducts in the following countries were referred to: Saudi Arabia, Kuwait, Turkey, Khazastan and Portugal, Hungary, Ukraine, Argentina, Australia, Canada and U.S. Expatriate

- The educational study tours to the Turkish Credit Bureau arranged by EFS and to South Africa, arranged by the UN
- International Practices in the operation of private credit bureaus

The main principles upon which they were prepared are:

- Consent is not required for the information exchange between the institutions spelled out in article 99, otherwise will be required
- Users of the credit bureau will mostly be legal entities
- Providing information should be in connection with a permissible purpose
- Defining the legal responsibility for information exchange: The credit bureau is responsible for operating/processing errors otherwise the data provider is responsible for the accuracy of its own data. The credit bureau should not provide credit recommendations
- Anyone involved in the information exchange should do so while maintaining the secrecy of the information
- Exchange of information between several credit bureaus licensed by the Central Bank is allowed
- Relations between the credit bureau and information providers/users should be governed by contracts
- IT principles
- Data subjects have the right to obtain their credit reports, the right to request correction of information, the right to complain against unauthorized inquiries and have recourse to the Central Bank as the entity overseeing consumer protection

B. Requirements and Procedures to License Credit Bureaus Credit Bureau's Operating System (i.e. the rules and regulations) Central Bank Supervisory System²⁶

The above three are the outcome of EFS joint work together with its subcontractor Arab Legal Consultants and the Central Bank. The following version includes changes made by CBE after completion of EFS work. EFS is in process of sending its observations/ remarks to the Central Bank with the contribution of its international credit bureau adviser Larry Ulrich in order to ensure that they conform to international standards. Comments /observations will be forwarded to the Central Bank and USIAD.

legal/regulatory consultant Paul Backer also made several presentations to the Central Bank with respect to U.S, EU and Khazastan legislations

²⁶ As at mid July 2005 the requirements & procedures to license credit bureaus, the credit bureau's operating system and the Central Bank Supervisory system were not approved yet by the Central Bank board. They are still under review by the Central Bank and may be subject to changes.

B.1 Introduction

Credit Bureaus²⁷ are Egyptian joint stock companies with sole purpose of offering inquiry services and credit scoring. Paid up capital is not less than L.E 5 million.

Central Bank board of directors licenses such companies to offer inquiry and credit scoring services with respect to debts of banks' clients²⁸, mortgage finance and financial leasing companies and the debts of applicants for credit facilities from suppliers of goods and services. The CBE's board of directors shall also issue a decree to set the rules, terms and procedures to issue licenses, the company's work systems and the Supervisory System of the Central Bank

The board of the Central Bank shall also set the rules to organize the exchange of data and information between the Central Bank and the banks with respect to clients' debts and the approved credit facilities, and the exchange of data and information with mortgage finance, financial leasing companies and credit bureaus while ensuring the secrecy of the data and information and the available of what is required to ensure the soundness of providing credit

Chairmen of the board of directors of credit bureaus, board members, directors, and employees of Inquiry and Credit Scoring companies are forbidden to give or disclose any information or data concerning clients, their accounts, dealings that enable others to view them, other than what is authorized by the provisions of this law. This restriction applies to any person who by virtue of his profession, position or job, either directly or indirectly receives or views information or data referred to herewith.

No company is allowed to engage in offering inquiry services and credit scoring except after obtaining a license from the board of the Central Bank.

Articles 67 bis, 99, 100, 101, 123 and 135 of law no 93 for 2005, promulgated in amendment of some provisions of the Central Bank, the banking sector and Money Law no. 88 of 2003 have organized the legislative framework that governs the licensing of credit bureaus, organizing their operations and the CBE supervision of them

B2: Requirements and Procedures to License Credit Bureaus²⁹

²⁷ In Arabic credit bureaus are referred to as companies offering inquiry and credit scoring services. In this text the terminologies credit bureau, inquiry and credit scoring company and the company are used interchangeably

²⁸ The word client in this text is used to mean data subject

²⁹ This represents the third version that EFS delivered to Central Bank. On March 2nd EFS provided Central Bank with a first draft for ideal licensing requirements with the contribution of EFS in house senior legal adviser. On April 4th, EFS delivered a second version with the contribution of Arab Legal Consultant. Both versions were also contributed by our senior IT adviser

First: Requirements to obtain preliminary approval to incorporate the company

An application should be submitted to the Central Bank's supervision and control department to obtain the initial approval to start procedures to incorporate the company. It should include and satisfy the following data and documents:

1. The name and capacity of the applicant.
2. The legal address of the company which will be used for correspondence.
3. Copy of the initial contract and draft of the articles of association, which includes the company's purpose, names of founders, their nationalities, addresses and the share of each in the paid up capital.
4. A statement with the founders' previous experience in the field of banking and credit
5. The amount of the company's issued and paid up capital, the number of shares and the nominal value per share, in addition to the value and share of any in kind participation.
6. The company's duration.
7. A statement with the suggested name of the company in English and Arabic which should reflect the company's activity in the inquiry and credit scoring field.
8. Copy of the management and operation contracts, if any, which have been concluded with an outside party or any memorandums of understanding in this regard, attached to it a statement with prior work and experience in the field of inquiry and credit scoring
9. The study prepared to establish the company including:
 - a. The activities and services to be provided by the company
 - b. The suggested organization structure and job description, especially the compliance officer and the department responsible for dealings with inquiry requests submitted by the clients
 - c. The nature and sources of data to be gathered, and the persons whose information & data will be collected.
 - d. The company's policy in determining the prices of its services
 - e. The proposed systems to protect clients' rights and the mechanism of dealing with complaints
 - f. The company's plan to transfer the data and information and services to all the governorates in Egypt.
 - g. The equipment and suggested technological systems to set up, operate and ensure security of the database and methods of transferring the data/information
 - h. The technical and material systems which will ensure the secrecy of the data
10. The company's undertaking to:
 - a. Use Arabic language in its correspondence.³⁰

³⁰ It is understood that this applies to Egypt. This is also in compliance with an Egyptian Law.

- b. Appoint board of director's members and executive directors who have good reputation, eligibility, competence and practical experience.
- c. Comply with the Central Bank, Banking sector and money law number 88 for 2003, its amendments and the existing regulations and the regulations and procedures issued by the board of directors of CBE that organize the company's operation while ensuring the secrecy of the data and information.
- d. Provide any data, information or documents requested by the Central Bank.

The application will be presented to the Central Bank of Egypt's board of directors to issue a decree within 30 days from the date of application provided the required information and documents are complete.

The necessary procedures to incorporate the company should be finalized within six months from date of Central Bank of Egypt Board of Director's initial approval notification. The validity period of the initial approval could be extended by a decree from the Central Bank of Egypt's Board of Directors.

Two: Requirements to obtain the license and registration of the company with the Central Bank

An application should be submitted to the Central Bank of Egypt's Regulation and Supervision department to obtain a license to engage in inquiry and credit scoring activities and register the licensed company in a special register at the Central Bank. The following documents are to be attached to the application³¹:

1. The Central Bank's initial approval to incorporate the company.
2. The decree issued to incorporate the company
3. A copy of the company's articles of association.
4. Copy of the company's listing at the commercial register.
5. The address of its head office, branches and agencies, if any.
6. Undertaking to notify the Central Bank with every change in the company's articles of association, management, operating contracts, and any changes in the information given at the time the company applied for initial approval or for registration
7. Undertaking to obtain prior approval from the Central Bank's board of directors when activities are suspended or the company is merged with another entity.
8. A copy of the minutes of the company's general assembly meeting appointing board of directors members, and the issued decrees by the board to appoint its chairman, managing director and/ or its responsible executive directors.

³¹ Articles 4 & 5 of the Executive Regulation of the Central Bank, Banking Sector and Money Law number 88 for 2003 with respect to licensing requirements to establish new banks in Egypt were used as a reference

9. The names of and information related to the Chairman, board members, managing director, and/or responsible executive directors, and indication that each has the competence, efficiency and practical experience.
10. Evidence that none of the founders, board members or executive directors went bankrupt nor a final judgment issued against them to convict them with a criminal offense, a misdemeanor, a breach of trust or any crime referred to in the Central Bank , the banking and money law or the money laundering law.
11. Sample of the documents which the company will use in its dealings with others, for example: agreements between the company and the data & information providers and users, a form to request a credit report, sample of a credit report, a complaint form, a request to correct information form, and an information leaflet about the company and its services.
12. Provide evidence that the company has the appropriate equipment and technological means to set up, operate, update, the information database, on condition that it satisfies the following:
 - a. Appropriate methods of communication to exchange data & information and security system for each communication method
 - b. System to materially secure the database site.
 - c. A documented manual for work procedures.
 - d. A plan to deal with disasters and retrieve information in emergencies to include :
 - A secure login system to the information database.
 - Approval of disaster recovery systems, and an alternative archiving site to store the data

The application is to be presented to the Central Bank Board to issue a decree within thirty days from the date of its submission provided the required documents are fulfilled. In case of approval by the board, a decree from the governor shall be issued to license the credit bureau and register it in the special register at the CBE. The company should not start its activity before it is notified with the approval of the CBE's board of directors.

B3. General Provisions

This section includes some definitions used in the regulations as follows:

Credit Bureau: A joint stock company with a paid-up capital not less than LE 5 million, licensed by the CBE to conduct its activities. Its nature of work involves the formation of credit files through collection, processing, storing and analyzing data and information related to the debt of banks' clients, mortgage finance companies, finance lease companies and all other entities that offer non-bank credit including suppliers of goods and services, the offering of inquiry services,

providing credit reports to the users, offering credit scoring services, without making recommendations in connection with the provision of credit.

Data Providers: Entities that provide any form of credit or maintain information related to the clients' credit worthiness and furnish them to the credit bureaus as per the procedures of these regulations

Client/ Subject of inquiry³²: Natural persons from individuals and legal entities which include companies, medium, small and micro enterprises, that already have or request credit, and whose data & information are collected in a credit file at the bureau and available for inquiry pursuant to the procedures set in these regulations

User: Those who have the right to inquire and obtain credit reports and the services provided by the bureau pursuant to the procedures set in these regulations and they are:

- Legal persons who have contracted with the bureau.
- Legal persons which obtained a consent from a client indicating his acceptance to inquire about his data & information
- Clients who are natural persons who are the data subjects and who have credit files with the company, or their legal representatives, or represented by others having powers of attorney

Database: Electronic database that contains credit files of all clients and includes their related data and information which were collected from the data providers, processed and maintained with the company

Credit File: It contains the clients' personal & credit data that are collected, processed and maintained with the company as follows:

1. The data provider: This includes its name, nature of activities and address
2. Basic data:

Natural Persons: The name, nationality, date and place of birth, gender, type and number of the personal identity verification, present and past addresses, marital status, spouse name, number of dependents, educational qualifications, profession, place and address of present and past jobs, monthly income and costs of living (obligations).

Legal Persons: The name, legal status, names of owners/ major shareholders holding 10% or more of the capital, commercial registry number and date, address, main and secondary activities and financial information about the financial position of the company

³² Data Subject

3. Credit Data: It includes loan value/authorized credit limit, the utilized balances, type of facility, maturity date, type and value of guarantees offered and the installments due.
4. Payment Habits: Historical data for a minimum of two years reflecting the extent to which clients are regular in meeting their commitments on due dates and data reflecting delays in payments, irregularities, or default including unpaid cheques and bills of exchange, amounts unpaid and days overdue.
5. Public Record Information: Judicial judgments, seizures, protested bills of exchange and bankruptcy judgments.
6. Inquiries made to the credit file within a year: It includes the user's name, its activity, and the date of inquiry.

The credit file should not contain data related to political, party or general organizational affiliation, religious beliefs or health condition.

Consent: Clear signed written authorization by the client, his legal representative or authorized agent providing his consent to:

- Inquire about his data and information.
- Agree to forward his data to the company.

The consent shall not be required for the institutions subject to the provisions of article 99 in law no. 88 of 2003 and they are the banks, mortgage finance and leasing companies

Source of gathering data and information: It is one or all of the following sources which are authorized legally or contractually to provide data and information to inquiry and credit scoring companies and they include:

- Banks operating in Egypt.
- Financial leasing and mortgage finance companies.
- Insurance companies.
- Suppliers of goods and services
- Social fund for development
- Institutions that offer credit to medium, small and micro enterprises
- Companies selling on credit
- Factoring companies
- Companies operating in financial securities
- Public records including court records and public notary
- The public registry to record credit at the Central Bank
- Other credit bureaus licensed by the Central Bank of Egypt
- Any other entity that maintains data or information that serves the company's purposes.

Permissible Purpose: It is one of the purposes related to the user's activity including:

1. Providing, increasing, renewing, or amending the terms of any form of credit,
2. Accepting a guarantor or guarantee in any form
3. Lease contracts.
4. Employment or occupying leadership positions
5. Providing insurance services.

Credit Report: A written report issued by the company, in the form of a hard copy or electronically, containing the client's information & data available in the credit file.

B4. Credit Bureau's Operating System

First: Rules governing the relation between the credit bureau and other parties

The relation between the company, the data/ information providers and users is to be governed by contracts which should reflect the provisions of these regulations, and should be amended as per future regulations changes, on condition that they covers the following:

- Purpose and scope of the agreement.
- Ensuring the secrecy and protection of the data and information
- Type of information and data to be gathered and the persons whose data and information are collected.
- Dates of sending the data and information, the method and security measures.
- Conditions and rules of accessing data and requesting credit reports.
- The services rendered fees to obtain them and methods of payment.
- Defining the legal liability of the parties, especially with respect to the correctness and completeness of data and information.
- Dispute settlement and contract termination.

Following are the rules governing the relation with each party:

1. Relation between the credit bureau and data /information providers

The company's contract with the data / information providers should include their commitment to the following:

- a. Undertake all necessary procedures and precautions to ensure that the data and information provided to the company is true complete, delivered and updated on the specified dates.
- b. Obtain client's authorization covering his consent to send his data & information to the credit bureau and keep these authorizations for review by the company if the latter requests so, with the exception of the institutions

- stipulated in article 99 of law no. 88 of 2003, which are the banks, financial leasing companies and mortgage finance companies.
- c. Promptly notify the company with changes in the clients' personal data, or legal actions taken against them, in cases of settlements or closing of accounts.
 - d. Notify their clients who were extended credit with the name and address of the credit bureau, and indicate to them their right to obtain their own credit report file a complaint and request correction of information.
 - e. Deal with complaints submitted by clients immediately upon receiving them from the bureau as per the set rules in this regulation, and maintain a record for all complaints received and results of investigation.

2. Relationship between the bureau and the users

The company's contract with the inquiring entities should include their right to obtain credit reports and all other services offered by the company and their compliance with the following:

- a. All laws and regulatory rules related to requesting and using the credit reports that are provided by the company.
- b. Obtain the client's authorization consenting to inquire about his related data and information, clarifying the purpose of the inquiry with attestation from the user that the client's signature is correct, and maintain these authorizations for the company's review in if it requests so. This applies to the entities not stipulated in article 99 in law no. 88 of 2003 which are the banks, financial leasing companies and mortgage finance companies.
- c. Inquiries and requests for credit reports should be according to the conditions and procedures organizing them with respect to :
 - Submitting the request on the form prepared for this purpose.
 - Mechanism and way of obtaining the information or the credit report.
 - The fees for obtaining the credit report
- d. Request and use of information should be for a purpose related to the user's activity.
- e. Non exchange of data and information in the credit report with others or allowing others to view it for a fee or without.

3. The company's relation with the clients whose data and information are collected and their right to obtain credit reports file complaints and correct information

- Clients shall have the right to request one free annual copy of their own credit report to ensure the correctness of the data and information in it. The application is to be submitted on the form prepared for this purpose by the company

- Clients shall have the right to request a copy of their own credit report according to the rules and conditions set forth by the company and after paying the required fees
- Clients shall have the right to file a complaint if their data and information in the credit report are not true or complete within 15 days of receiving the report. If a complaint is not filed during this period, the data shall be deemed correct and fully accepted by them.
- The complaint shall be submitted on the form prepared by the company for this purpose, along with attached supporting documents, and clarification of the items subject of the complaint in the credit report and the required action that is requested whether re-investigating , cancellation, correcting or adding.
- Upon receiving the complaint, the company has to promptly undertake a preliminary investigation to ensure that the complaint is in connection with information and data correction. If found otherwise, the bureau shall reject the complaint and advise the complainer accordingly.
- If the complaint is accepted by the company, then it shall undertake an internal audit check and undertake the necessary correction of the required data if an operational & processing error by the company is detected, or send it to the data provider in within five working days from the date of filing the complaint.
- Data provider shall examine the complaint received from the company, and inform the bureau with the result of its investigation and correct the information found to be in error and send it to the bureau within a maximum period of five working days from the date of receiving the complaint.
- In case the bureau and data provider undertake any changes to the credit report as a result of the investigation of the complaint, the complainer shall be notified and furnished with a free copy of his credit report. Notices with the changes shall be advised to all the users who made inquiries in the past six months preceding the changes.
- The complainer shall have the right to recourse to the Central Bank in the following cases:
 - After the lapse of 15 days from the date of filing the complaint with the bureau with no response.
 - The complainer's objection to the results of the complaint.
- In all cases, all credit reports that are issued while the complaint is being investigated shall include a warning note with the information complained and the ongoing investigation.
- If the complaint is in connection with inquiries made without purpose & justification or without authorization, the bureau shall recourse to the user to provide evidence that there is a purpose and justification for the inquiry and verifies the existence of an authorization from the complainer with his consent to inquire about his credit file.
- In case the inquiry about his credit file has been found to be without consent or without a purpose for the inquiry, then the company has to undertake the procedures spelled out in the agreement between it and the user

4. Relation between the bureau and other credit bureaus licensed by the Central Bank

The relation between the credit bureau and other credit bureaus licensed by the Central Bank shall be governed by a contract and shall include the following in particular:

- Purpose and scope of the agreement.
- Type of data that will be exchanged, frequency, methods of communication and security.
- Mutual services, fees for them and method of payment.
- Defining the legal responsibility of each party to the relation especially with respect to the correctness, completeness of the exchanged data/information.
- Dispute settlement and contract termination

Second: Rules organizing the Company's Operations

1. The company is obliged to contract with data providers and users and to include the nature of dealings and legal responsibility for each party to the contract, using the samples prepared by the company for that purpose and keeping all contracts in this concern.
2. Chairmen, board members, directors and employees of credit bureaus are forbidden to give or disclose any information or data about clients, their accounts or dealings that enable others to access them other than in the situations authorized by the law. This restriction shall apply to anyone who by virtue of his profession, position or job, either directly or indirectly receives or views data and information referred to herewith. The company shall put the systems and rules that ensure employees' obligations to maintain the secrecy of data and information and take all necessary procedures to ensure compliance.
3. The bureau shall prepare an information leaflet including its address, telephone, fax, e-mail address, activities, working hours, services rendered and how to obtain them, fees and method of payment.
4. The company is obliged to publicize that it has a license to conduct its activity from the Central Bank, the date of obtaining the license in all its correspondence, publications including the credit files and its website.
5. The company is obliged to establish a department to deal with clients (data subject) requests to obtain their credit reports and receive complaints. Staff of this department should be knowledgeable of clients' rights, qualified to deal with them and should have the ability to explain and interpret the contents of the credit report.
6. The company shall issue the credit report on the form prepared for this purpose with an attachment with definition of the terms.
7. The company is responsible for operating and processing errors
8. The company is obliged to maintain a register for all credit inquiry requests for a period not less than two years. The register should include detailed data

- concerning the date of inquiry, the name of the inquirer, its activity and number of inquiries.
9. The company is obliged to maintain a register with complaints for a period not less than two years, including the actions taken to examine them and the outcomes of the investigations, in addition to prepared statistical reports, covering their numbers, types, and sources.
 10. The company is obliged to appoint a Compliance Officer to monitor the company's compliance with its operational rules and procedures, the applicable laws and directives issued by the Central Bank and the Central Bank Supervisory system.
 11. The company has to provide a suitable and secured method to offer its service and make its credit reports accessible to all inquirers in all the governorates of Egypt.
 12. The company has to keep negative information (legal actions, settlements or other contractual procedures) related to clients. If clients are cleared in cases where there are payments, waivers, cancellation of legal cases, or a legal judgment releasing them, such information has to be kept for a period of five years from the date of release.
 13. The company has to use the data and information kept to develop systems to evaluating credit worthiness as per the known systems in credit bureaus.

Third: Operating and Processing Data Rules

1. The company is obliged to provide appropriate equipment and technological means that will enable it to establish and operate systems and databases.
2. The company shall collect, match, record incoming data from the data providers, processes and analyze it in a manner that serves its purposes.
3. The company is obliged to take all precautionary measures to ensure that the data obtained come from reliable sources.
4. The company has to take necessary measures to secure and protect the data, maintain its secrecy and prevent manipulation & fraud and this includes:
 - a. Establishing a system to physically secure the database site.
 - b. Establishing an alternative emergency (back-up) center, at a suitable distance from the company's headquarters to handle potential hazards or crisis.
 - c. Approving of regular back-up archiving systems, and establishing plans to retrieve information in emergencies to ensue that the data is not lost or damaged.
 - d. Providing secured means of communication for exchanging data with data providers and users.
 - e. Providing protection and security to access the system and database and establishing emergency plan to deal with operations to penetrate the systems.

- f. Contracts with the company's employees should stipulate their compliance with the secrecy of the data and information. Also, written internal policies and rules should be set and regularly revised with their respect to their access and use of the database.
 - g. Establishing operational controls for staff's authorization to access and use the data base, follow up their implementation, and determine penalties for noncompliance with authorized use.
 - h. Establishing a detection system to review patterns and methods of requesting information at regular intervals, with the purpose of detecting, examining any unauthorized or unusual inquiries, to limit manipulation and fraud.
 - i. Develop a system for authentication of identities and validate the correctness & update of personal information.
 - j. Set a documented manual for the operations rules and procedures to be reviewed annually.
5. The company has to regularly review the data security and protection procedures in order to detect any weaknesses and take the necessary actions to avoid their occurrence.
 6. The company should notify the Central Bank with any operation to penetrate the system, and the procedures taken by the company to limit operational and legal risks.
 7. The company should hold periodic meetings with data providers and users to inform them about the company's activities, best practices in providing data, requesting information, obtaining credit reports and any other services.

B5 Central Bank Supervisory System

First: Central Bank Supervisory System over the inquiry and credit scoring companies

The Central Bank of Egypt is the entity legally delegated to license and supervise credit bureaus. To this end, the Central Bank shall:

1. License credit bureaus and register them in a special register.
2. Establish the rules, terms, procedures of licensing of companies, their operating systems (by-laws), and the Central bank supervisory system over credit bureaus, rules regulating the exchange of information with respect to banks clients' debts, mortgage finance and financial leasing companies and the approved credit facilities with the credit bureaus.
3. Review the forms prepared by the company and any amendments thereof, especially:
 - Contracts conducted with data & information providers and users.
 - Authorization form with clients consent to inquire about them and send data.

- Credit report request form.
 - Credit report form.
 - Complaint form and data correction request.
4. Supervise the bureau's activities with the purpose of following up the company's compliance with law no. 88 of 2003, rules and regulations issued by the Central Bank board in this respect.
 5. Request data, information and credit reports that serve the purposes of overseeing & supervising the company's activities on the dates and as per the forms determined by the Central Bank.
 6. Oversee and inspect the company's operations, in particular:
 - Operations rules and procedures manual prepared by the company
 - Review contracts conducted with data providers and users.
 - Review the credit inquiry request register.
 - Review the complaints register, procedures taken to examine such complaints, results and statistical reports prepared with respect to number, type and source.
 - Review the reports prepared by the company's compliance officer with respect to the violations of the procedures and rules manual set by the company, as well as laws, effective rules and decrees issued by the Central Bank board.
 - Review the procedures taken by the company's management to adhere to the criteria and supervisory measures set by the Central Bank and ensuring taking necessary action to rectify any defects.
 7. Supervise and inspect the information systems in order to ensure the system soundness, effectiveness in managing operating risks, particularly:
 - Audit the information systems organization
 - Audit the rules and procedures manual.
 - Audit the data protection and security systems.
 8. Study and examine complaints filed by clients (data subjects)

Second: Applicable Penalties in Cases of Violation

If there is proof that a credit bureau violated the provisions of the CBE, Banking sector and Money Law no. 88 of 2003, its executive regulations, the Central Bank board resolutions with respect to the rules, conditions, and procedures of licensing, the company operating system and the CBE supervisory system, and the rules organizing the information exchange with respect to clients' debts and approved credit facilities and the secrecy requirement, the matter should be referred to the Central Bank board to take any of the following actions stipulated in clauses "a, e, g" in article 135 of the law:

- a) Issue a warning
- g) Request the chairman of the company to invite the board to meet to examine the violations attributed to the company and take necessary actions to remove them. The board of directors meeting shall be attended by a representative or more from the Central Bank.

e) Dissolve the board of directors and appoint a delegate to run the company for a period not exceeding six months, renewable for six more months. The delegate shall, during his term, propose to the company's General Assembly the election of a new board, merging with another company or liquidation.

The license granted to the company may also be withdrawn.

Without prejudice to the penalties enforced by the CBE against the company if it violates the law, its executive regulations and the CBE board resolutions, credit bureaus shall be penalized, in accordance with article 123 of the law, with a fine not less than LE. 10,000 and not exceeding LE. 100,000 for whoever cheats or deludes in rendering inquiry or credit scoring services with the intention of facilitating credit extension, apart from a sentence to pay the credit provider the equivalent sum of the unpaid credit which was extended because of the damage to the credit provider due to the fraudulence or misrepresentation

Annex A: Arab Legal Consultants Legal Research

Summary

This memorandum aims to study the possibility of establishment and operation of private companies working as credit information bureau within the context of the Constitutional and legislative provisions applicable in Egypt.

The study begins with highlighting the purpose of the credit information bureau and the role which they are expected to play. Afterwards, the study tackles the legal organization to protect personal information and its circulation within the framework of the Egyptian Constitutional and legislative texts. Finally, the memorandum will discuss the Egyptian legal organization for information protection and the establishment of credit information bureaus.

Going through the legal organization to protect personal information and its circulation within the context of the texts of the Egyptian Constitution and legislature, one can deduce the following:

- The Constitution confirmed the principle of respecting the private life of individuals in regard to all what is related to freedom of movement, residence, communication, conversations, correspondences; and what is agreed upon is the protection of the inviolability of the private life in general which is decreed by Article 45 of the Constitution, also applicable to information and data.
- The jurisprudent and judicial opinions agreed that information and data concerning individuals are part of their private lives, thus are legally protected.
- The legislator explicitly decided in several laws that the protection of private information and data of individuals, with the purpose of imposing commitment to keep up the confidentiality of such data and to criminalize any act that may lead to a third party's access to such information.
- The information that concerns a person shall not be known to another person without his approval or when the law expressly permits the possessor of information to exchange it with a third party.
- Data collection needs an administrative approval and is allowable only with the purposes and conditions designated by law.
- Work in the field of giving information (notwithstanding the relevant task of information classification) needs a legal permission.

- Technological advancements let the legislative provisions in Egypt become insufficient by themselves to protect private life; thus there is a dire need to have laws that will safeguard private life from the dangers of computer misuse such as the data banks.

It is uncontroversial that exchanging, collecting and providing a third party personal information is considered an infringement to the commitment of keeping up a secret. Disclosure of such information is thus a kind of violation to the inviolability of the private life and is a crime punishable by law. The circulation of information is unallowable unless the legislator permits it expressly and explicitly, so that the circulation of such information as determined by law will be no more an infringement of the inviolability of private life. Another way for the circulation of information other than the legislative permission is the clear approval of the person whose information or data are circulated.

Whatever the matter is, and while it is preferable to enact an independent law to establish credit bureaus, our suggestion is to make some amendments on the banking law which will enable such companies to have a legal existence and carry out their activities. These amendments together with the rules which will be laid down by the board of directors of the Central Bank may be the first stride toward an independent legislation in the near future.

Proposed Amendments and the Work of Credit Bureau

After studying the proposed amendments, we think that:

- Article 67 *bis* shall make the credit bureaus legitimate as their existence and activities shall not constitute any violation to any existing legislation.
- The bureaus shall be supplied with information and data by letting banks exchange whatever information they have with the credit information bureaus. Likewise, such exchange shall not break any bank commitment to confidentiality; the bureau's possession of information and data shall be legitimate (Article 99).

Constitutional and Legislative Systems Pertinent to The Activity of Credit Bureaus in Egypt

This memorandum aims to explore the possibility of establishment and operation of private companies working as credit bureaus within the context of the Constitutional and Legislative provisions applied in Egypt.

It seems essential to focus on the purpose of the credit bureaus and the role which they are expected to perform. We can thus be able to establish a link between such purpose and the legal rules enforced in Egypt, and examine whether or not they constitute an obstacle toward the establishment of this kind of companies. Moreover, it is important to study Constitutional and Legislative

system to see whether it allows the establishment of such companies, or that certain conditions should be met to practice its activity without violating legal provisions.

1- The Purpose of Credit Bureaus

The first credit bureau was founded in the United States and Canada in the beginning of the twentieth century, while the first one in Europe (Germany) was founded in early 1930.

Credit bureaus are a form of information banks that encompass a database serving a certain objective. Such companies use computers to process and enter assembled information and data in order to be retrieved in a way to help different users in several purposes. The database is fed with information concerning the obligations of both individuals and firms whether they are met or not, in respect to their credit dealings in market. Therefore, the credit bureaus provide information on current practices and previous experiences of individuals and companies in fulfilling what they had obtained of credit facilities, whether negatively or positively. The credit bureaus thus help whoever wants to lend a new credit, through information and database including collected credit information, to take a decision in light of the available detailed and diversified data on the person who wants to obtain credit facilities.³³

Hence, the credit information bureaus do not determine the person's credit competency, nor the possibility to grant him a credit or not, but rather the matter is left to the inquirers or the company's service users. The inquirer will be able after being exposed to credit data about the inquiree to identify his credit competency, thus minimizing risks of granting a credit.

The expansion in the economic activity in Egypt and the increasing size of commercial transactions as related to endeavors to draw customers by granting them credit facilities require the availability of information and data as assembled from different sources. Likewise, businessmen and company owners will have an access to these data which will enable them to take right the credit decisions.

The fundamental purpose of the credit information bureaus is embodied in the supply of information and data pertinent to persons requesting to obtain credit whether in the form of loans or credit facilities from suppliers of commodities and services or as other types of credits whether in the field of real estate finance or lease finance.

The concept simply rotates around the credit bureau (The Company) formation of an information net (The Net) which is connected to a number of commercial banks, institutions and companies (The Net Members).

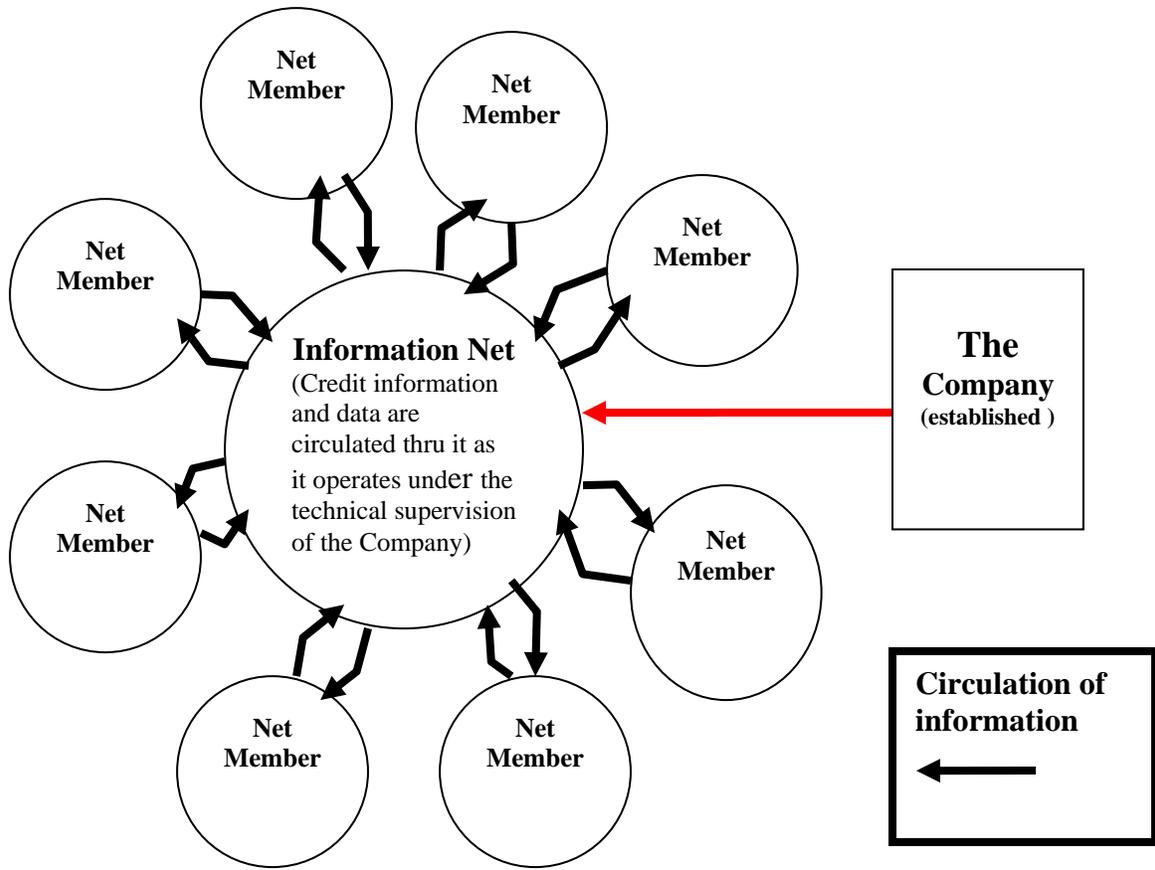
³³ Milne, I.(2004), Data-Sharing Enhances the Power of Information, Credit Risk International, June, pp. 24-27

The Net Members, through their direct contact with The Company via modern communication systems, supply it and update on daily basis credit information and data about their customers. The Company then collects updates and assort data using modern technologies. Once the credit information and data are available on The Net, any Net Member may have an access to them by entering the Net through a password and find out the credit situation of the person wanting to deal with. Based on the information and data attained from the Net, every Net Member will be capable of taking the right decision to grant the proposed person the credit.³⁴

The success of the main idea on which the credit bureaus is founded is in compiling the biggest amount of information and data on individuals obtaining credits in market. This can be achieved only through broadening the circle of membership in the Net. Every Net Member will share in supplying a number of information and data about its customers such as their credit history, the extent of their commitments to pay the entire present and previous debts and due dates of credit payments. The availability of such information on the Net will allow any other Member to be acquainted with these data and thus to take the decision which it sees proper regarding the person under inquiry.

The relationship between the credit bureau and those dealing with it can be illustrated as follows:

³⁴ Gabriel, K.(2004), Building Consumer Awareness of the Credit Reporting Process, Credit Risk International, October, pp. 10-12



International experience elucidates that the success of credit bureaus is exemplified in assembling the biggest amount of information and data to make them accessible to those who enter a contractual relation with the Company and thus acquiring a membership capacity. The member is hence committed to supply information and data on its customers (within legal and organizational frameworks), as well as has the access to credit information and data existing on the Net which have been provided by the Net Members.

From the first impression, this idea seems unacceptable for some customers of the Net Members. Yet, while it is possible that such customers doubt the role and feasibility of the credit information bureaus, by time the strict customer whose credit situation is correct and strong in market will find out that this system not only facilitates obtaining the credit which he strives for, but also it reduces its interest rate as the risks faced by any of the Net Member will be decreased when dealing with him.

Whatsoever the matter is, the whole issue stands at the *information* which is the cornerstone of the entire system and reason for establishing the information net, attracting commercial banks, companies and institutions to be members in the Net.

As long as the whole subject is restricted to information, it is meaningless to examine the feasibility of establishing this system from the economic and technical aspects without exposing to the legal situation. It is important to review the provisions of the constitution, legislations, decisions implemented in Egypt which are related to circulating, regulating and exchanging information and data; is their circulation permissible? Are there constraints that restrict disclosure of information and data? Is there a criminal and civil responsibility on those who collect and circulate information and data?

SECTION ONE

The Legal System for Protecting Personal Information

And its Circulation within the Context of Constitutional Provisions and the Egyptian Legislation.

Introduction:

In this section we will review the provisions that regulate the inviolability of private life of individuals, and provisions on the circulation of individual information and data as provided in the constitution and the implemented Egyptian legislations, in addition to the bills to be submitted in the Egyptian parliament.

This study rotates around a number of axes embodied in exposing to the following:

First: The Provisions of the Constitution

Second: The In force and Effective Provisions of the Egyptian Legislation.

Third: Provisions of Bills Related to the Subject under Study to be Submitted to the Parliament of the Arab Republic of Egypt

Fourth: Some Provisions of International Instruments Designed to Protect the Right to Private Life

Each of these axes will be discussed in this section.

First: The Provisions of the Constitution (1971)

Constitutional law as defined by the constitutional jurisprudence is the fundamental law which reveals the form of the government and the political system; it regulates the public authorities concerning their formation, specialization and relations with each other; it reflects the economic social and political philosophy on which the entity of state is based; it determines the rights and freedoms of individuals and put down the basic guarantees for such rights and freedoms.

Since the Constitution is called “the father of laws”, it is above all the legislations and bylaws implemented in a country. As a result it is natural to establish a rule that constitutionality of laws. It states that no law nor regulation nor ministerial decision is enacted while it contravenes the provisions of the Constitution. Furthermore, provisions provided by such legislations, decrees and regulations should be in conformity with provisions stated in the Constitution, otherwise they are null and void, and should not be implemented once declared to be unconstitutional.

Like other constitutions, the Egyptian Constitution stated that the inviolability of private life is a right, and one of the most important human rights in the modern societies. Thereon, as provided by the Constitution in the text of the first paragraph of Article (45):

The law shall protect the inviolability of the private life of citizens. Correspondence, wires, telephone calls and other means of communication shall have their own sanctity and confidentiality and may not be confiscated or monitored except by a causal judicial warrant and for a definite period according to the provisions of the law.

By analyzing the above text one can conclude that the right to private life has two adherent aspects:

- (a) The inviolability of the private life means that the individual is free to live the way he likes without the interference of another person.
- (b) The confidentiality of private life means the individual right to tint a state of confidentiality on the news and information, which reflect his freedom to choose his private life.³⁵

This was implemented by the second clause of the same article which guarantees the confidentiality of the correspondence, wires, telephone calls and other means of communications. The same article emphasizes the prohibition to confiscate or monitor correspondences and telephone calls unless through a judicial warrant which has two characteristics, causal and for a definite period.

³⁵ See for more details Dr. Ahmed Fathy Srouf, *Al-Himaya Al-Dostouryia lil Hoqouq wa al- Horyiat* (The Constitutional Protection of the rights and freedoms) pp.706-and after , 1999.

Thereupon, the effectiveness of the judicial warrant may not be extended to an unlimited time. All should be in accordance with provisions and procedures organized by law.

The content of the previous text raises a question on the degree of liability determined by the Constitution in case violating the stated commitments.

Mostly and generally, the Constitutions do not determine civil or criminal penalties on the infringement of the general principles and provisions provided by the Constitution since its main function is to lay down general framework and political philosophy of the concerned country, leaving the detailed issues to be regulated or determined by the legislature. Nonetheless, the Egyptian Constitution enacted a general provision to confirm the necessity to protect the inviolability of the private life of individuals, as Article (57) stated that any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription. Assertively, the end of Article (57) included the following statement:

The State shall grant a fair compensation to the victim of such an assault.

This means the state commitment to ensure the realization of such protection and pursue those who trespass it.

Other provisions of the Constitution stressed that individual freedom is a natural right protected and not touched (Article 41), as well as every citizen is free to reside and move in any place (Articles 50 & 52).

All the aforementioned articles underline the principle of respect of private life of individuals regarding freedom of residence, movement, communication, calls and correspondence. Nevertheless, unlike some other European Constitutions,³⁶ the Egyptian Constitution does not contain a provision that underline the protection of data and information pertinent to private life of individuals. Yet, it is consented that the protection of the inviolability of private life in general which is determined by Article (45) of the Constitution includes all that is relevant to private life such as phone calls, correspondence or information and data.³⁷

Not mentioning “data and information of individuals” expressly and explicitly in Article (45) does not mean a Constitutional deficiency or defect which may lead to difficulty in interpretation or enforcement. The first paragraph of Article (45) emphasizes that “The law shall protect the inviolability of the private life of citizens.” This is the general principle. To let an accurate definition to be given by laws and court verdicts is in our opinion a proper approach, since it is a general

³⁶ The Spanish Constitution.

³⁷ Dr. Osama Abdallah Fayed, *Al-Hemaya al-Jina'iyah lil Hayat al-Khasah wa Bonouk al-Ma'alomat* (Penal Protection of Private Life and Information Banks), pp. 34-37, 3rd ed., 1994.

framework which can encompass in its implementation any new phenomenon ordained by social and technological innovations affecting private life.³⁸

As for the second paragraph of Article (45), it mentioned correspondences, wires, telephone calls and other means of communications as examples or as illustrations to put a detailed framework to the general principle of the first paragraph in respect to private life.³⁹

In accordance with the Constitutional provisions concerning the inviolability of private life, the Supreme Constitutional Court, on the 2nd of June of the year 1984, pronounced the unconstitutionality of Article (47) of the code of criminal procedure which stipulated that, "The judicial apprehension officer, in case of the suspect was caught *flagrante delicto* in the act of felony or misdemeanor, has the right to search the house of the accused person and seize the things and papers which reveal the truth, if it is clear to him through strong evidences that they are therein." The court decided that the Constitutional Legislator guarantees to protect the freedom of the private life of the individual and his personal freedom and that the inviolability of residence stems from the individual personal freedom and private life; therefore, searching the house without a causal judicial warrant is an assault of personal freedom and of the inviolability of the individual's private life.⁴⁰

It is clear from the above that protecting the private life of individuals, in pursuant to what is provided by the Constitution, is based on a number of principles, the most important of which are as follows:

- Protection of the citizen's dignity, feelings and personal reputation.
- Prohibition of an arbitrary interference in the citizen's private life or in his family or work affairs.
- A Citizen shall not be a target for campaigns whose only purpose is to affect his personality, honor and reputation.
- Protection of the data and information of every citizen.

³⁸ See later the similar approach followed by the Civil Law in Article (50) as it does not define private life while punishes whosoever touches it.

³⁹ For criticism, the first paragraph limited the provision to "citizens" whereas the Constitutional protection should include all who reside on the Egyptian lands.

⁴⁰ Case No. 5 /1984 Constitutional laws on 2nd June 1984.

Second: The In force and Effective Provisions of the Egyptian Legislation.

These laws include the following:

- 1- Criminal Law and Code of Criminal Procedure
 - 1-1 Penal Code Law No. 58 of the year 1937.
 - 1-2 Code of Criminal Procedure Law No. 150 of the year 1950
- 2- Civil Law
- 3- Law No. 88 of the year 2003 promulgating the Law on the Central Bank, Banking Sector and Money.
- 4- Presidential Decree in promulgation of Law No. 128 of the year 2001 Establishing Trade Information Center (TIC)
- 5- Laws Regulating Information Gathering by the state.
- 6- Law No. 3 of the year 2005 Protecting Competition and Preventing Monopolistic Practices

We will discuss all these laws consecutively.

1- Criminal Law and Code of Criminal Procedure

1-1 Penal Code No. 58 of the year 1937.

The Egyptian penal code contains a text that guarantees the protection of the inviolability of private life⁴¹, as it imposes criminal penalties when violating such provisions and rules. Article 309 *bis*, added by promulgating Law No. 37 of 1972⁴², it reads in its first paragraph:

It is punishable to assault the inviolability of the private life of a citizen by imprisonment for a period not more than a year, confiscating the machines or others used in the crime. The penalty is increased if the offence is committed by a public official depending on the power of his job.

This article further lists punishable acts, as exemplified in the following:

⁴¹ It is worth mentioning that the law of journalism No. 96 of 1996 provided in the Article 21 that “ No journalist or other may be exposed to the private life of citizens...” Article 22 stipulates that violating the provisions of this article is punishable by imprisonment for a period not more than a year and a fine not less than five thousands Egyptian pounds and not more than ten thousands Egyptian pounds, or one of the two these penalties. For further details see: Mohamed Al-Shehawy, *al-Himayat al-Gina’ aiyah li Hormat al-Hayat al-Khasah fi Mowagahat al-Sahafa*, (The Penal Protection of the Inviolability of the Private Life In Confrontation to Journalism), 2001.

⁴² This article is added to the provisions of the penal code which reflects the general principles and provisions of the Constitution and in particular Article (45).

- (a) Eavesdropping, recordings (recording from another set) or whatsoever the conversation recording is taking place in a private place or through the phone.
- (b) Photographing or transferring, by any machine whatever its kind is, a photo of a person in a private place.

Nonetheless, the first paragraph of Article (309) indicated that the aforementioned punishment is exemptible in the following conditions:

- Cases that are legally permitted.
- If the disclosure of such information and data is with the consent of the victim.
- If the acts of the previous paragraphs (a) and (b) took place during a meeting at earshot or vision of the attendees, the consent of these shall be hypothetical.⁴³

Not only the penal code emphasized the protection of the private life and stipulated punishment of whoever violates this protection, the second paragraph of Article 309 *bis* (a) provided that it is punishable by imprisonment whoever spread out or facilitated the spreading of, or used even not publicly a record or document obtained by one of the means manifested in the previous article, or if this is done without the consent of the concerned person.

It also stated that the penalty of imprisonment, for not more than five years, of whoever threatened to disclose something which he had acquired through one of the mentioned means to compel a person to do or undo a certain act.⁴⁴

Finally the second clause of the same article imposed a penalty of imprisonment if the perpetrator in this article is a public official who exploited the power of his job.

In all cases, it is ruled that the machines or others used in the crime shall be confiscated as well as the recordings produced be erased or annihilated.

The legislator did not define “private life”, since it entails all that is relevant to the person such as his name, image, the inviolability and sanctity of his residence, conversations, correspondences, his familial life, in addition to his financial position. The financial position of the person is a crucial factor of his private life, thus the rights and debts, general and professional incomes, due corporeal rights may not be publicized or published without the approval of the concerned

⁴³ For more details see: Dr. Mamdouh Kalil Bahr, *Himayat al-Hayat al-Khasah fi al-Qanoun al-gina'iy: Dirasah Moqaranah* (The Protection of Private Life in the Criminal Law: A Comparative Study), 1983.

⁴⁴ The Penal Code included texts of protection of data related to state security if thereof spreading out to deliberately harm the external or internal state security whether during war or peace. The Legislator stipulated for the realizing of crime that it should be done purposely.

person, or in execution of the legal provisions⁴⁵, according to the regulations and procedures therein.⁴⁶

1-2 Code of Criminal Procedure No. 150 of the 1950

To ensure guaranteeing the inviolability of the citizen, the code of criminal procedures underlined a number of guarantees as follows:

- No person shall be arrested or detained unless with legal warrant by the competent authorities must be treated in a manner conducive to the preservation of his human dignity and must not be harmed physically or morally (Article 40).
- Men of Authority shall not enter any resided place unless in cases stated by law, or in case an internal aid is requested cause of fire, drowning or the like. (Article 45)
- Things and papers seized shall be put in a closed secure place fastened up if possible and sealed upon and on a ribbon inside the seal be written the date of the minutes written on seizure of such things indicating the subject for which these things were seized. (Article 56)
- No seals may be opened according to the two articles (53) & (56) except for the attendance of the accused person or his attorney, and the one with whom the things were seized, or after their return to this (Article 57).
- All who know about the seized things and papers because of search and divulged it to unconcerned person or utilized them with whatever means, are punished by the penalties stipulated in Article (310) of the Penal Code (Article 58).
- Law provides that the civil lawsuit stemmed from the assault against the right to a private life is not liable to prescription (Article 295).

2. Civil Law

The civil law, which is the general legislation and general law, regulates civil and commercial issues, preserves the personal rights of individuals such as the right to live, right to physical health, right of honor, right of a name, a right to presentable feature and image and the author's moral right. The Civil Law determines the right to confidentiality to keep the secrets of the private life of individuals unpublicized and safeguarded from any interference and investigation. No person may divulge the secrets of another without his

⁴⁵ Dr. Tarek Sorour, *Qanoun al-'Oqobat: al-Qesem al-Khas Gara'am al-I'atida' Ala al-Ashkhas wa al-Amwal* (Penal Code: Special Section on Crimes of assault against persons and riches), p.492, 1st ed., 2003.

⁴⁶ For further details see: Dr. Mohamed Zaki Abou Amer, *al-Himayat al-Gina'iyah lil Horyat al-Shakhsyah*, (Criminal Protection of the Personal liberties), 1979.

permission or approval⁴⁷. Such prohibition includes those who are exposed to such secrets because of their job or career, except for cases permissible by law⁴⁸. Article 50 of the Civil Law reads:

A person whose rights inherent in his personality have been unlawfully infringed, shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby

Since the right of a private life is considered one of the inherent rights of the individual personality, all who are exposed to unlawful infringement or assault on one of his rights inherent to his being a human may request stopping such assault and ask for compensation on damage inflicted on him. The victim has the right to ask the cessation of the assault without proving the damage. It is agreed that the protection of the right is not in case of a damaging assault but rather it is evidenced by merely the act of assault.

The Civil Law issued in 1948 is in compliance with the European legislations in that it did not identify the personal rights but rather it set out a general protection to these rights which are “inherent to the individual personality” away from laying down accurate definitions of such rights that may include or undermine essential things that might crop up by the technological advancement.⁴⁹

To further stress on the necessity of protecting the private life of individuals, some postulated that the person should not release his future secrets without a limit or condition because this is deemed a waiver of one of the personal rights, something to which a person is not legally entitled.⁵⁰

3- Law No. 88 of the year 2003 promulgating Law of the Central Bank, Banking Sector and Money

This law regulates the confidentiality of banks accounts in its fourth section Articles from (97) to (101).

Article (97) stipulated maintaining the confidentiality of all the customers' accounts, deposits, trusts and safes in banks, in addition to their relevant dealings. According to the same article, no accounts, deposits, trusts and safes of the customers in banks may be accessible or particulars about them be given directly or indirectly,

1. unless a written permission is obtained from:

⁴⁷ Dr. Hasan Kira, *Al-Madkhal Ila al-Qanoun* (Introduction to Law), pp. 448-454; see also Dr. Soliman Morcos, *Al-Madkhal Lil 'Uloom al-Qanouniyya* (Introduction to Legal Sciences), pp. 578-581, sixth ed., 1987.

⁴⁸ Dr. Hasan Kiura, *ibid.*, p.451.

⁴⁹ It is worth mentioning that the Legislator protects the private life of the individual without differentiating between the citizen and the foreigner, as the state is determined to protect all residing on its lands.

⁵⁰ Fayed, *op.cit.*, pp.34-37.

- a) the account holder, depositor, trustor or safe holder,
 - b) one of their heirs or legatees entitled to all or part of the funds in question, or
 - c) their legal representative or the proxy; or
2. By virtue of a court judgment or arbitration award.

This prohibition is applicable on all persons and institutions including those who are empowered by law to have access to or obtain the papers or data whose confidentiality is banned from divulgence according to the provisions of law. Such prohibition continues even if the bank-customer relation is terminated for any reason.

Meanwhile, Article (98) of the Law allows the Attorney General or any one/s (s) he delegates from among at least the first public prosecutors may, of his/her own accord, or upon a request from an official body or a concerned party, to obtain an order from the Cairo Court of Appeals to access or obtain any data or information on the bank accounts, deposits, trusts or safes mentioned in article 97 or the transactions related thereto if this is necessary to unveil the truth about a felony or misdemeanor proved by conclusive evidence.

Any of the concerned parties, on declaration of one's wealth when a garnishment order is served on one of the banks subject to the provisions of this Law, may submit the request referred to in the previous clause to the relevant court of appeal. The court, held in chamber, shall decide the request within the three days subsequent to the date of its submission, after hearing the statement of the public prosecutor or the concerned parties.

The Attorney General or the one/s (s) he delegates for that purpose from among at least the first public prosecutors, and the concerned parties, according to each case, shall notify the bank and concerned parties of the court order within the three days following its issuance. The time specified for the declaration of one's wealth shall begin from the date of notifying the bank of the said court order.

The Attorney General, or the one/s (s)he delegates from among at least the first public prosecutors shall directly order the access to, or the obtainment of any data or information related to the accounts, deposits, trusts, or safes prescribed in Article (97) of this Law, or transactions related thereto. (S)he shall give this order if this is required to reveal a fact in one of the crimes prescribed in Book 2, Part 2., Section 1., of the Penal Code, and in the crimes prescribed in the Anti-Money Laundering Law as promulgated by Law No.80 of the year 2002.

Furthermore, Article (99) of the Law authorizes the Board of Directors of the Central Bank of Egypt to set the rules for the exchange of information and data on customers' debts and their credit facilities between the Central Bank and other banks and among banks in general in a way that ensures confidentiality and availability of the data required for sound bank lending.. The Central Bank of

Egypt also sets the rules for preparing comprehensive auditing reports on banks to pave the way for selling all or part of their shares or for mergers.

On the other hand, Article (100) forbids chairpersons and members of the boards of directors of banks, their directors and staff from disclosing any information or data on bank customers, their accounts, deposits, trusts, safes or information related thereto and allowing third parties to have access to them in cases other than those permitted by virtue of the provisions of this Law.

Finally, Article (101) of the Law states that the concept of bank account confidentiality and the provisions specified in Articles (97) & (101), referred to above, must not violate the following:

- a. The legal tasks assigned to Bank auditors and with the powers legally vested for the Central Bank;
- b. The bank's commitment to issue a certificate of the reasons for refusing to cash a check, upon the demand of whoever is entitled to that right;
- c. A bank has a right to disclose all or part of the data related to transactions of a certain customer in order to prove a bank's claim in a legal dispute between it and that customer related to these transactions.
- d. The conditions prescribed in the laws and provisions regulating anti- money laundering measures.

4. Presidential Decree in promulgation of Law No. 128 of the year 2001 on Establishing Trade Information Center (TIC)

Under this Decree, the Trade Information Center (TIC) was established as a public economic organization with a legal personality, subject to the supervision of the Minister of Supply and Domestic Trade, with its headquarter in Cairo. TIC may establish branches in other governorates.

According to Article (2) of Decree No. 128 of 2001, TIC aims at the following:

- Providing accurate and complete information on trade, commodities, services, markets, local productive potentials and public institutions systems starting from product transportation from factories till their delivery to end users. These various kinds of information are recorded using different kinds of manual and electronic means. This service is available to traders, manufacturers, investors, researchers and dealers in the areas of commerce, industry and production through direct, wireless, electronics and other modern means of communication. This way TIC can achieve effectiveness and efficiency in production and local services sectors as well as optimize their capabilities, increase the competitiveness of the national economy and develop human resources in these areas.
- Providing, deepening and updating communication channels between TIC and local sources of information connected to commodities imported by the General Authority of Supply Commodities (GASC) and dealt in by the

- Ministry of Supply and Domestic Trade (MSDT) using modern technology that ensures speed and accuracy to fulfill TIC information requirements so that it can provide information services to individuals and different concerned bodies.
- Developing the necessary cadres to set up an accurate and integrated database on the systems of trade, commodities and services, and local markets from all local and foreign sources by establishing systems capable of providing services in this sphere within the specialties and goals of TIC.
 - Preparing and publishing, on regular basis, data on the mainstream of sales, stock, prices and new institutions.

Furthermore, Article (3) of the Decree states that TIC will perform all the work and activities necessary to achieve its goals, including:

- Building and constantly updating integrated and accurate databases on all types and means of trade in local markets.
- Coordinating with local and foreign concerned parties through local and international information networks, especially with regard to commercial opportunities related to commodities imported by GASC and dealt in by MSDT.
- Coordinating with chambers of commerce and industry, insurance companies and the *Banking Sector* to ensure the legality of e-commerce operations.

Meanwhile, Article (4) clearly provides that all ministries, agencies, governorates, public and private business sector companies, universities, faculties, research centers, associations, cooperatives, banks, chambers of commerce and industry, businesspeople and investor societies must input the TIC with the necessary data, statistics, researches and studies on the trade activity and the development of commercial and investment activities required to achieve TIC objectives and purposes according to the plan in progress to provide it with the necessary information, without infringing the confidentiality of data specified in other laws.

In essence, the last article implies that its addressees such as ministries, public and private companies, banks and businesspeople societies will not be subject to any legal penalties if they *provide* TIC with the data and information they have. It is true that those persons are originally committed to protecting the confidentiality of the information they have, which was presented to them in a way that does not allow them to disclose or exchange it, yet in this article the legislator permits them to exchange this information with TIC without deeming their action as a violation on their part or having to obtain any consent from the sources of their information.

5. Laws Regulating State Information Gathering

5.1 Presidential Decree in promulgation of Law No. 189 of the year 1958 Obliging Public Institutions, Companies and Cooperatives to Provide Data on their Employees

Article (1) of this Decree requires all public institutions, joint-stock companies and cooperatives to provide the Mobilization Department (MD), within one month from the effective date of this Law, a statement of all their employees whose basic salaries do not exceed LE 15 (fifteen Egyptian pounds) a month on the date of their appointment, as well as their academic qualifications and salaries on 1st January, 1953, upon their appointment or whichever is more recent. They must also state those employee's current salaries, all forms of allowances and in kind benefits they receive in addition to any changes in the previously furnished data. MD must be informed, every three months, of any changes that may occur in this statement.

Meanwhile, Article (3) of this Decree provides for punishing any person who violates the provisions of article 1 thereof by imprisonment for a period of not more than six months and/or a fine of not less than LE 10 (ten Egyptian pounds) and not more than LE 500 (five hundred Egyptian pounds).

5.2 Presidential Decree in promulgation of Law No.35 of the year 1960 on Statistics and Censuses amended by Law No. 28 of the year 1982

According to paragraph 3 of Article (2), individuals and organizations must provide the agency responsible for statistics and censuses with true data in the manner and on the dates specified by that technical agency.

On the other hand, Article (3) deemed personal data used in any statistics or consensus confidential and may not be disclosed, in whole or in part, to any individual, public or private body. Also, this data may not be used for purposes other than statistical ones. As for data pertaining to individuals, it may not be published except with a written consent from the concerned parties. Also, no statistical data may be used as a basis for levying a tax, imposing any other financial burden, a proof to any crime or a basis for any legal action.

Meanwhile, Article (4) of this Decree, amended by Law No. 28 of 1982, imposes an imprisonment penalty for a period of not less than one month and not more than six months and/or a fine of not less than LE 100 (one hundred Egyptian pounds) and not more than LE 500 (five hundred Egyptian pounds) on:

- any person who discloses statistical data, individual's data, commercial or industrial secret(s) or other working techniques he has been exposed to due to his work in statistics and censuses.

- any person who obtains, or try to obtain, through fraudulent, intimidating, misleading or any other means confidential statistical and censuses data and information.

The above provisions imply that the legislator decided to protect individual's data used in censuses and statistics. These data are usually about the number of family members and does not affect their personal lives or freedoms.

5.3 Presidential Decree in promulgation of Law No. 87 of the year 1960 on Public Mobilization

Article (30) of this Decree allows the authorized administrative agency to collect, at any time, the necessary mobilization-related information and clarifications from individuals, companies, organizations and authorities.

On the other hand, in Article (35) the act of disclosing mobilization-related data and information is deemed punishable by imprisonment and/or a fine of not more than LE100 (one hundred Egyptian pounds). If the crime occurred during the mobilization period, the penalty will be imprisonment.

Article (36) of this Decree also punishes whoever works in the mobilization area and spreads out secrets concerning individuals, companies, agencies or institutions while conducting his/her job by imprisonment for a period of not more than six months or a fine of not more than LE 50 (fifty Egyptian pounds).

Moreover, Article (38) of this Decree determines that any person who withholds information and data mentioned in Article (30) or knowingly presents false or incomplete data or information is punished by imprisonment for a period of not more than six months or a fine of not more than LE 50 (fifty Egyptian pounds).

5.4 Presidential Decree in promulgation of Law No. 137 of the year 1963 On Specifying Competences, Academic Qualifications and Inventions

Article (1) of this Decree requires every regular resident of the Arab Republic of Egypt holding an academic degree higher than a high school diploma or its equivalent to submit to the Public Mobilization Department (PMD) of the Agency of Public Mobilization and Statistics (APMAS) at the Egyptian Presidency (EP) a statement of his/her academic qualifications, competences and inventions within three months from the effective date of this Decree, the acquiring date of the academic degree or the patent issuance date. The required data will be specified by a decision of the Minister of Military.

Heads of public and private academic institutes granting degrees higher than a high school diploma or its equivalent must provide the data required by the General Director of APMAS specifying competences and academic qualifications of graduates, within thirty days from the date of their obtainment of these degrees. (Article 2)

Meanwhile, Article (3) requires the Head of the General Department of Overseas Missions to provide data specifying envoys' competences, scientific and practical qualifications higher than a high school diploma or its equivalent, within thirty days from the date of their obtainment of these degrees.

Moreover, Article (4) of the Law requires heads of personnel departments in ministries, government departments, private and public institutions, professional associations and cooperatives to provide the above data in connection with their staff and members of their boards of directors, within three months from the effective date of this Law or that on which they joined or were appointed in these entities. They must also provide data on foreign experts working in these entities, within thirty days from the effective date of this Law or that on which these experts commence their work.

Also, Article (6) of the Law requires all the abovementioned officials responsible for providing the required data to submit to PMD any modification or change occurring in the previously furnished data, if this modification or change relates to an academic qualification, job type or place of work, within thirty days of such modification or change.

It is worth noting also that the Law provides for punishing any person who violates its provisions, or any decisions made pursuant to it or knowingly presents false or incomplete data by imprisonment for a period of not more than six months and/or a fine of not less than LE 10 (ten Egyptian pounds) and not more than LE 500 (five hundred Egyptian pounds). In case of second-time offender, he/she will be punished by both imprisonment and fining.

5.5 Presidential Decree in promulgation of Law No. 2915 of the year 1964 Establishing and Regulating the Central Agency for Public Mobilization and Statistics (CAPMAS)

This Decree, enforced in 1964 and still valid, introduced a number of controls on publishing information through means of publishing and mass media. In fact, Article (10) of the Decree prohibits any ministry, authority, agency, person or persons working in the public or private sector from using, by any means, any publishing or mass media to release any results, publications, data or statistical information unless they are actually taken from CAPMAS statistics. As for statistics not included in CAPMAS program, they can only be published with the approval of CAPMAS.

5.6 Law No. 121 of the year 1975 on Maintaining Official State Documents and Regulating their Publication

Article (1) of this Law requires the President of the Republic to issue a decree setting a system for regulating matters related to maintaining official state

documents and identifying means of publishing and using official documents pertaining to higher state policies and national security that are not required, by law or constitution, to be published upon their issuance or adoption. This system may prohibit publishing some documents for a period of not more than fifty years, if deemed so by the public interest.

On the other hand, Article (2) of the Law prohibits any person who has, owing to his work or responsibilities, access to or obtains unpublished documents, or copies thereof, of the kind referred to in Article (1) of the Law from publishing all or part of their content except with a special authorization issued by a decision from the Cabinet based on a recommendation from the concerned minister.

Article (3) also provides for punishing any person who violates some of the above obligations by imprisonment and/or a fine of not more than LE1000 (one thousand Egyptian pounds), without prejudice to any stricter punishment specified in any other law. Moreover, the Law intensifies the punishment if the perpetrator gains any benefits or profits from his/her crime by imposing an additional fine equal to the benefits or profits he/she gained. In all cases, the materials used in the crime will be confiscated.

6. Law No. 3 of the year 2005 on Protecting Competition and Preventing Monopolistic Practices

This Law aims to regulate the economic process and protect market dealers by regulating competition protection and preventing monopolistic practices. In order to achieve its goals, Articles (6, 7 and 8) of the Law prohibit:

1. competing persons in any given market from entering into any agreement or contract,
2. any person from entering into any agreement or contract with one of his suppliers or customers, or
3. any person who has control over a certain market from taking any actions that could adversely affect the markets and limit competition.

Meanwhile, Article (11) of the Law stipulates for the establishment of an agency called “the Agency for Competition Protection and Monopolistic Practices Prevention” (ACPMPP) to be located in Grand Cairo, with a public legal personality and functioning under the supervision of the competent minister. ACPMPP will perform a number of functions, such as:

- Receiving applications for taking investigative measures, gathering evidence and ordering such measures in cases of anti competition agreements and practices, according to the procedures specified in the Executive Regulation of this Law.
- Receiving notifications from persons once they obtain any assets, ownership or usufruct rights or shares; enter into any partnerships or mergers; or begin to manage two or more persons at the same time in a

way that may lead to a monopoly or maximize an existing one on the effective date of this Law, in order to obtain ACPMPP approval.

- Setting, continually updating and developing an integrated database on economic activities in a way that would facilitate the achievement of ACPMPP mission in all areas of competition protection, in addition to building a database and carrying out the necessary studies and researches to uncover practices detriment to competition.

Article (16) of the Law prevents ACPMPP staff from disclosing any information or data connected to cases on which this Law is applicable or revealing the sources of the information submitted or exchanged while considering, taking actions and making decisions concerning these cases. These information and data as well as their sources may not be used for any purposes other than those for which they were submitted.

On the other hand, Article (23) of the Law states that violation of the above requirement is punishable by a fine of not less than LE 10,000 (ten thousand Egyptian pounds) and not more that LE 50,000 (fifty thousand Egyptian pounds), without prejudice to any other stricter punishment under any other law.

Third: Provisions Included into Bills Related to the Subject under Study to be submitted to the Parliament of the Arab Republic of Egypt

- Amendments to the Law of the Central Bank, Banking Sector and Money
- The Law concerning Regulating Information Disclosure and Circulation
- Consumer Protection Law

1. Amendments to the Credit Bureaus Part of the Banking Sector Law

On the 10th of April, the government submitted to the Parliament a bill to amend some provisions of the Law concerning the Central Bank, Banking Sector and Money. The suggested amendments include some articles regulating the work of credit information bureaus.

The bill reads as follows:

Article 67 bis:

The Board of Directors of the Central Bank may license companies to provide credit information and scoring services regarding to bank customer debts, real estate finance companies, funding lease companies and debts of applicants for credit facilities from commodity and service suppliers. Credit information and scoring bureaus must be joint stock companies, established solely to provide credit information and scoring services with an issued and paid capital no less than LE 5,000000 (five millions Egyptian pounds).

The Board of Directors of the Central Bank shall specify by a decision thereof the rules, conditions, licensing procedures and work system of credit information bureaus in addition to the system by which the Central Bank will monitor them.”

This article is important because it sets the legal framework for credit information bureaus⁵¹. However, their work system and monitoring will be set by the Central Bank.

Article 99:

The Central Bank will exchange with other banks information and data on customer debts and their credit facilities. They will also exchange these information and data with real estate finance companies, funding lease companies and credit information and scoring bureaus. The Board of Directors of the Central bank will set the rules of this exchange guaranteeing their confidentiality and ensuring the availability of the data required for sound bank lending.

The new thing in this bill, compared to Article (99) of the Law, is that it introduces the possibility of exchanging credit information not only between banks but also between them and credit scoring bureaus. Thus, this article broadens the scope of exceptions mentioned in Article (97) concerning the confidentiality of bank accounts (and the prohibition of disclosing any data about them either directly or indirectly) to include information and credit scoring bureaus.

Article (100) points out that:

The Chairpersons and members of the boards of directors of banks and information and credit scoring bureaus as well as their directors and staff may not grant, give access to or disclose any information or data related to their customers, accounts, deposits, trusts, safes, or transactions related thereto to any third party except in the cases specified in the provisions of this Law. This requirement also applies to any person who has, by virtue of his/her professional position, direct or indirect access to the abovementioned information or data.

Compared to Article (100) of the Law, the above article extends the scope of prohibition to include members of the board of directors, directors and staff of information and credit scoring bureaus. Thus all information and data available to a credit information bureau may not be disclosed to a third party except in the cases stated by the law; also every person working at a credit information bureau is basically obliged to maintain the confidentiality of information and data available to him/her.

⁵¹ It seems that the final name of the companies under discussion has not been settled yet. As they are sometimes called “specialized credit information bureaus”, however the bill referred to them as “credit information and scoring bureaus”. We see that the term “credit information bureau” is more accurate because it describes the purpose of the bureau in a way that a reader cannot mistake it for bureaus specialized in other areas such as credit rating.

Meanwhile, Article (101) of the Bill stated that the provisions of Articles 97 and 100 of this Law shall not prejudice the following:⁵²

a-.....

b-.....

c-.....

d-.....

e- *the Information and data provided by information and credit scoring bureaus under the rules of the Central Bank.*

The clause (e) is an addition to Article 101 of the current Law. It indicates that information and credit scoring bureaus may provide third parties with the information accessible to them *through information exchange with banks* according to Article (99) of the Bill subject to the rules set by the board of directors of the Central Bank. Third parties represent bureau customers interested in benefiting from its services through inquiring about new customers.

As for penalties, it is worth noting that Article (125) of the current Law has not been subject to any amendments. Hence violating Article (100), after amendment to encompass commitment of any person working at a credit bureau to keep up the confidentiality of information, would entail imprisonment for a period of not less than one year and a fine of not less than LE 20,000 (twenty thousand Egyptian pounds) and not more than 50,000 (fifty thousand Egyptian pounds).

The Bill also adds a second paragraph to Article (133) of the Penalties Section stating:

Any person who commits fraudulent or misleading acts while providing credit information or scoring services will be punished by a fine of not less than LE10,000 (ten thousand Egyptian pounds) and not more than LE 100,000 (one hundred thousand Egyptian pounds), in addition to a sum equivalent to the unpaid amount of the granted credit due to the fraudulent or misleading acts.

This paragraph aims at emphasizing that any fraudulent or misleading deed committed by a credit information bureau will not pass unpunished. Thus, one could conclude the following:

- a. For the first time, a Bill differentiates between credit information services and credit scoring services, thus it presumed that fraud could occur in either of them.
- b. Legally, fraudulent and misleading actions are premeditated crimes that involve an intention to commit such actions; therefore material mistake and inadvertence do not represent a sufficient basis for committing them.

⁵² They revolve around the confidentiality of bank accounts and the prohibition of examining or disclosing information about them to any person except with a written consent of the account holder or by virtue of a court judgment.

2. The Law concerning Regulating Information Disclosure and Circulation

This Bill is based on the concept that the current Egyptian system for data and information disclosure is characterized by a number of shortcomings impeding the use of information for the achievement of economic and social development plans. These shortcomings include inaccurate, out of date, incomprehensive and contradicting data as well as non-compliance with quality and progress standards. All these factors lead to distrust in published data and information. Moreover, the current system marginalizes and excludes many groups of the society from participating in the search for and study of ways to improve economic and social conditions.

The Bill affirms the right to obtain data and information, therefore it provides effective mechanisms for realizing that right while maintaining the concepts of transparency, accountability and fulfillment of the basic human right of knowledge acquirement, so that disclosure becomes a norm and non-disclosure becomes an exception. This could be achieved using the following mechanisms;

- Allowing and facilitating the disclosure and exchange of data and information in a way that would contribute to the society's need to solve economic and social problems and meet planning and development requirements.
- Realizing the right to obtain information in a transparent way that would serve the concepts of accountability and meet basic human rights.
- Emphasizing the need to create credibility in the data and information issued by government agencies and enhancing their quality in a way that would fulfill the requirements of planning and development.
- Regulating the work done in areas of statistics and information in order to promote and coordinate the contributions of the private sector and civil society organizations (CSO) while preserving the country's security, safety and interest.
- Preserving the freedom of individuals and safeguarding their rights and privacy through the realization of confidentiality of their personal data and information according to law.

The Bill defines "information" and "data" in addition to other terms as follows:

- **Information**: it is a product of a mixture of data or subject materials and it may include mathematical, statistical or logical processes to prove a certain epistemic purpose. Those data and materials could be reached by any natural or legal person from any public or private entity or CSO using conventional methods or modern technologies.
- **Data**: it is any number or series of numbers with chronological, actuarial or subject-related connotations compiled by any natural or legal person from any public or private entity or CSO of whatever type, time or record.
- **Information of special or personal nature**: denotes information recorded in confidential documents or connected with some person through which he/she could be identified.

- **Information of public nature**: denotes information and documents of non-personal or non-private nature issued or received by public entities.

The Bill underlines every person's right to obtain data and information either from public or private entities (law's addressees). It also aims at enhancing the participation of scientific research and marketing institutions to carry out field research in a legal framework consistent with the rules of concerned government agencies. Moreover, the Bill targets the establishment of a higher council concerned mainly with setting and following up data and information rules, standards and regulations, as well as taking the appropriate measures to realize them.

Furthermore, the Bill allows the private sector and CSO to carry out field studies, marketing research and data collection within its scope of work and specialization, unless the concerned agency objects within 15 days after the date of submitting the application. In case of an objection, the applicant may resort to administrative courts.

The Bill also permits the Law addressees to publish, through any means of publishing and mass media, any publications, data or statistical information according to the terms of the Executive Regulations, provided that they explain, upon request, how they obtained such data or information.

The Bill emphasizes that the data and information must be used only for the intended purpose of collection; it must not be exploited as a reason for levying a tax or imposing any other financial burden. Furthermore, they must not be used as evidence to any crime or a basis for any legal action.

Moreover, the Bill organizes the establishment of an agency specialized in conducting state statistics and census according to enacted laws, as well as granting licenses for field studies and data collection to the private entities and CSO's. If no notice of approval or disapproval were received within fifteen days after the submission date of the application prepared for that purpose, this would be deemed as an implied consent to licensing.

The Bill also points out to the establishment of a higher committee to perform the following functions:

- Setting rules for realizing comprehensive quality standards, methods of disclosing and publishing data, and coordinating between agencies concerned with data and information.
- Examining complaints of private entities and CSO's regarding data and information.
- Following up on the achievement of law objectives as well as detecting violations of its provisions.
- Giving a scientific opinion on published data and information, bearing into mind that its report is binding to concerned agencies.

Meanwhile, the Bill requires its addressees to provide the means necessary for disclosure and exchange of data and information, as well as prepare a simplified manual containing full information on the available data and a definition thereof as well as the time of periodic update, delay period, the most recent available statement of information and means of obtaining data and information. The Bill addressees must also specify a special department for information provision and dissemination and design, according to the provisions of this Law, an application form for information obtainment provided that this form does not constitute a financial burden on applicants according to the provisions of this law.

Further, the bill regulates the obtainment of data and information according to the provisions of this law, as it requires any person who wishes to obtain data and information to apply to the department in charge of information dissemination without being obliged to express the reason for practicing this right. The applicant is then handed a receipt and the department must give a notice of reply within one week from the date on which it received the application. The notice must show the method and date of data or information delivery. In case of rejected applications, the notice must give reasons for that rejection. Data and information must be delivered by the method mentioned in the notice and after taking the legally specified procedures. The information and data delivered will be free of charge provided that their cost does not exceed the cost of searching for, preparing and delivering them.

In addition, the bill states that if the required information is in a record comprising other classified information, in this case the required information will be separated and presented on as is basis.

The bill specifies data and information that are not of a general nature, yet they could be disclosed by an order from a competent court. These data and information include:

- Data and information concerning commercial and financial secrets.
- Data and information concerning current negotiations.
- Personal information concerning staff of this law's addressees.
- Investigations and monitoring reports concerning any natural or legal person.

In addition, the Bill excludes from its scope of application information connected with several sovereign bodies such as; the Presidency, National Security Agency, Ministry of Defense, Ministry of the Interior, Ministry of Justice and Ministry of Foreign Affairs.

Yet, the Bill allows agencies subject to the provisions of this law not to disclose information if:

- disclosing this information would constitute a breach of trust to a third party,

- this information is obtained from a third part by amicable means and disclosing it would harm the financial and commercial interests of that third party, or
- such a disclosure would jeopardize relations with another state or an international organization.

Furthermore, agencies subject to the provisions of this law may decline to disclose information or admit its possession of a certain record if such disclosure or admission would obstruct or prevent the uncovering of a crime or the arrest or tracing of criminals in order to achieve justice.

The Bill also permits its addressee to decline to disclose information if such a disclosure would harm the formulation or development of government policy, limit the success of a certain government policy due to premature exposure of it or undermine the effectiveness of a test or an experiment.

The Bill excludes from its scope of application records or information going back to more than 30 years as well as records or information that may cause serious threat to health, safety, and environment or constitute any criminal or corrupt actions, breach of honor, failure to achieve justice and mismanagement.

3. Consumer Protection Law

This Bill guarantees for all the freedom to practice economic activities. However, it prohibits any person from entering into any agreement or practicing any activity that may violate the basic rights of consumers, i.e.:

- giving them freedom of choice,
- providing them with accurate and sufficient information on products,
- compensating them for damages resulting from defective products and for products or suppliers preventing them from fully utilizing products according to their intended use, and
- maintaining their right to protect their health and safety during normal use of products according to the provisions of this law without prejudice to terms of international conventions and treaties effective in Egypt.

It is worth mentioning that the Bill applies to “products” including goods and services provided by persons subject to public or private law. Also, the Bill defines a consumer as any person provided with products to meet his/her personal or family demands or is dealt or contracted with for this purpose. Article (9) of this Law states that every supplier is obliged to refund the consumer or re-offer him/her with the same service if it was rendered in a defective or incomplete manner depending on the nature of the service, the terms and conditions of it and the commercial norm. Any dispute arising from a failure to provide a satisfactory service will be referred to the Consumer Protection Agency (CPA) to decide using the legally prescribed procedures.

Besides, the Bill sets up the establishment of an agency called “Consumer Protection Agency” (CPA) to protect a consumer and safeguard his/her interests. The CPA will have a legal personality and will work under the supervision of the concerned minister. CPA’s headquarter will be in Cairo and it may establish branches or offices in other governorates. The Bill further puts down a number of responsibilities for CPA, among them:

- Coordinating with different state authorities to enforce the provisions of this Law particularly those in charge of sector monitoring of economic activities such as communication, water and electricity authorities. They are also required to provide data and technical advice to CPA. However, CPA is mainly responsible for implementing the provisions of this Law in order to protect consumers.
- Preparing an annual report on its efforts and activities, to be issued on January of every year. The report will include CPA’s proposals within the scope of its responsibilities and a copy of thereof will be sent to the People’s and *Shura* (Consultative) Assemblies.

Nevertheless,, the Bill forbids CPA staff from disclosing information, data and sources thereof related to cases to which this law is applicable which were submitted or exchanged while deliberating on, taking actions and making decisions concerning these cases. These information and data as well as their sources may not be used for any purposes other than those for which they were submitted. The Bill also stipulates for punishing any person who violates the previous obligation by imposing a fine of not less than LE 10,000 (ten thousand Egyptian pounds) and not more than LE 50,000 (fifty thousand Egyptian pounds) on him/her, without prejudice to any other stricter punishment under any other law.

Fourth: Some Provisions of International Instruments Designed to Protect the Right to of Private Life

The right to protect the private life was not only the concern of national legal scholars, but also of universal organizations (both international and regional). That is why the Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly on 10th December, 1948 to reflect a group of universal principles promoting respect for human rights and protecting human dignity, honor and freedom regardless of nationality, language and religion. For instance, Article (12) of UDHR provides for the protection against illegal interference in personal life by stating:

No one shall be subjected to arbitrary interference with his privacy, home or correspondence, nor to attacks upon his honor and reputation.

Thus, Article (12) stresses the fact that no one is to be a subject of arbitrary or illegal interference with his privacy, family, home or correspondence, nor to

attacks to his honor or reputation and that every person has a right to legal protection against such interferences or attacks.

In addition, the International Covenant on Civil and Political Rights (ICCPR) acknowledged in 1966, although it entered into effect in 1976, the protection of personal life as one of the human rights.

It is generally accepted that the right to protection of private life becomes an integral part of the legal systems of the state parties to the above instruments once these states ratify them; therefore they are committed to protecting that right against any violations by other state parties to these international instruments. No doubt that when Egypt endorsed UDHR and ratified ICCPR, it made those instruments an integral part of its legal system pursuant to Article (151) of the Egyptian Constitution that provides for the respect of international treaties.⁵³ This necessarily requires the Egyptian legislative, judicial, and executive to respect that right and eliminate any inconsistencies between provisions of international instruments and those of national legislations allowing for the violation of the right to personal life protection.

This brings us to the end of our explanation of constitutional and legislative rules and provisions connected with the protection, regulation and collection of information in Egypt.

SECTION TWO

Egyptian Legal System for the Protection of Information and Establishment of Credit Information Bureaus

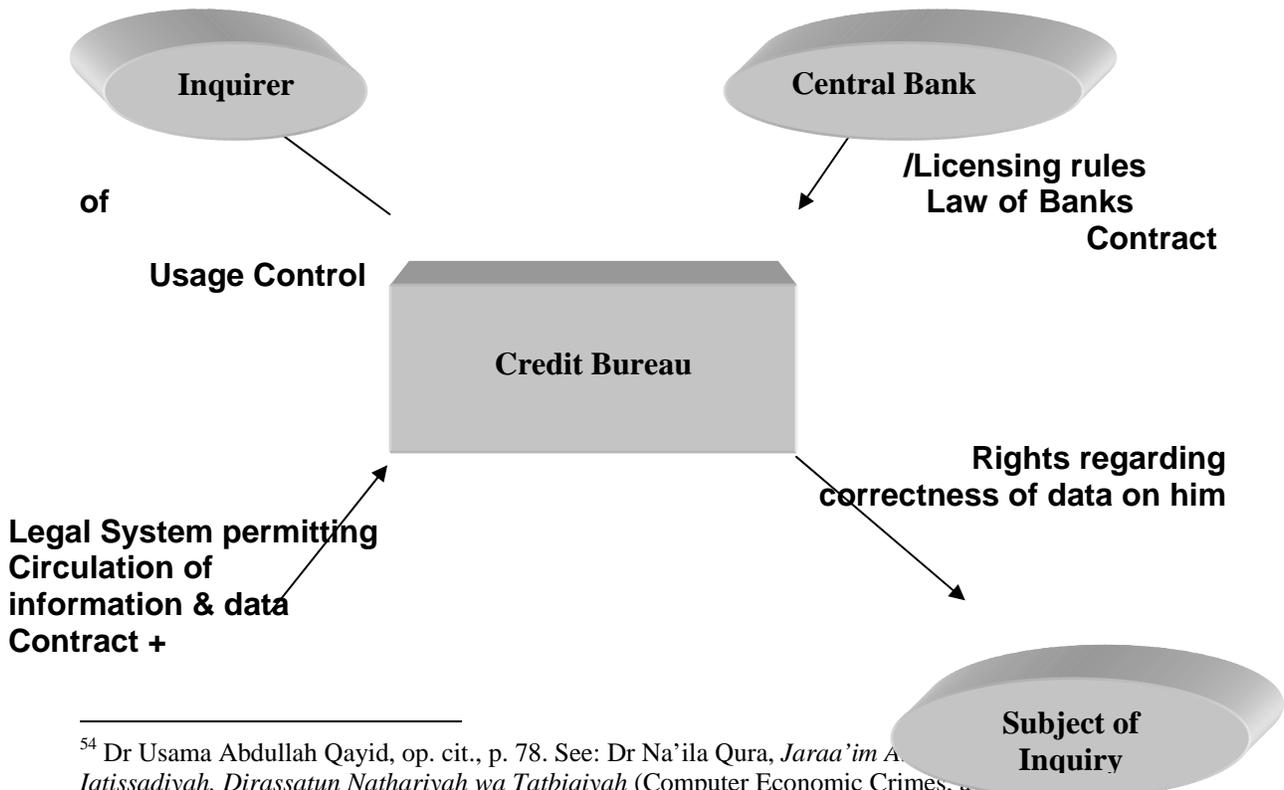
The legal system designed by the Egyptian legislator, comprised of both the Constitution and other legislations, is characterized by the following features:

1. It provides protection, through Constitution and Criminal Law, for the inviolability of private life, without specifying an accurate definition for this protection.
2. Both jurist and judicial opinions agree that individual's information and data constitute part of his/her private life and are therefore legally protected.

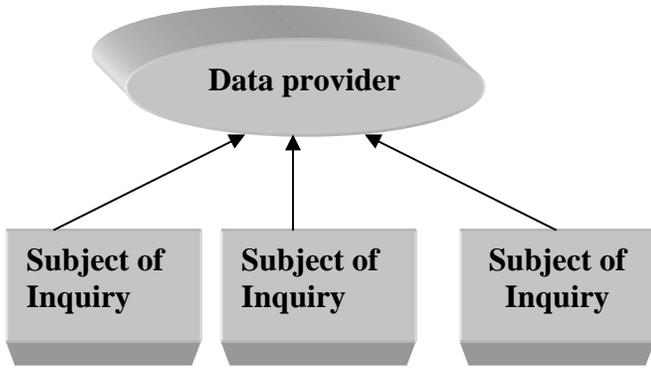
⁵³ Article (151) of the Constitution reads as follows: *The President of the Republic shall conclude treaties and communicate them to the People's Assembly, accompanied by a suitable clarification. They shall have the force of law after their conclusion, ratification and publication according to established procedures. However, peace treaties, alliance pacts, commercial and maritime and all the treaties involving modification of State territories, having connection with the rights of sovereignty, or which lay upon the Treasury of the State certain charges not provided for in the budget, must be approved by the People's Assembly.*

3. It expressly provides in much legislation for the protection of individual's information and data by obligating a sense of confidentiality on them and criminalizing any act that may lead to their disclosure to third parties.
4. No third party may have access to an individual's information without his/her consent or unless the law expressly permits the holder of such information to exchange it with a third party.
5. Information collection requires administrative approval and is allowed only for purposes and under conditions specified by law.
6. Working in the area of information provision (whether classified or not) requires a law to authorize it.
7. The technological advances rendered Egyptian legislations insufficient in themselves for protecting private life; hence there is a dire need for legislations capable of protecting private life from the danger of computer misuse as in data banks.⁵⁴

After listing the main characteristics of the legal system for the protection of individual's information and data, it seems necessary to show the numerous links between a credit information bureau and the Egyptian Central Bank, data provider, inquirer and the subject of inquiry. Below is a diagram illustrating these links:



⁵⁴ Dr Usama Abdullah Qayid, op. cit., p. 78. See: Dr Na'ila Qura, *Jaraa'im A. Iqtissadiyah, Dirassatun Nathariyah wa Tatbiqiyah* (Computer Economic Crimes, a Practical Study); Shams Ad-Din Ibrahim Muhammad, *Wasaa'il Muwajahat Al I'tidaat ala Al Hayah Ash-Shakhsiya fi Majal Tiqniyat Al Ma'lumat fi Al Qanun As-Sudani wa Al Misri* (Ways of Combating Attacks on Personal Life in IT within Sudanese and Egyptian Laws), 2005 and Dr Ashraf Tawfiq, *Al Himaya Al Jinaa'iyah Lil I'timaan Al Masrafi min Al Khidaa'*, *Dirassatun Muqaranah* (Criminal Law Protection of Bank Credit against Fraud, A Comparative Study), 2004.



- The relation between a credit bureau and the Central Bank is based on the fact that the Central Bank must first approve the establishment of the bureau, because the Bank is responsible for granting a bureau the necessary license to perform its operations. Actually, the Board of Directors of the Central Bank sets the licensing rules, conditions and procedures and defines the bureau system of work. The Central Bank also plays a role in supervising and monitoring the bureau operations according to the terms of Article (67) *bis* of the proposed amendments to the Banking Sector Law No. 88 of the year 2003.
- The relation between a data provider and the bureau is manifested in the data and information concerning the subjects of inquiry, presented by the data provider to the bureau according to a legal arrangement that permits the exchange of information and data on the subjects of inquiry through a contract between the bureau and the data provider.⁵⁵ This procedure was provided for in article 99 of the proposed amendments to the Banking Sector Law, which allows banks to exchange information and data concerning their customer's debts and credit facilities with credit information and scoring bureaus according to the rules set by the board of directors of the Central Bank in order to regulate the process of information exchange while maintaining confidentiality.
- The relation between the inquirer and the credit information bureau is manifested in the information and data provided to the inquirer by the bureau according to a law regulating that process and a contract between the inquirer and bureau governing their relation. This legal framework was proposed by subparagraph (f) of Article (101) of the Bill proposing amendments to the Banking Sector Law, which states that information and data provided by credit information and scoring bureaus according to the rules set by the board of directors of the Central Bank do not constitute a non-compliance with the requirement of confidentiality and non-disclosure of information and data stipulated in Articles (97) and (100) of the Law.

The Legal Framework of Credit Bureaus Work

There is no doubt that any exchange, collection and provision of individual's information to third parties is an infringement to the commitment of confidentiality and non-disclosure of information, hence this constitutes a type of violation to the inviolability of private life that requires the enforcement of penalties prescribed by Criminal Law. Consequently, there is no way to exchange any information unless the legislator expressly permits that, this way exchanging information by the means specified by law will not constitute a violation to the inviolability of private life. Another means to exchange information, not related to legislative license, is

⁵⁵ The inquirer could be a natural or legal person. However, we believe that it is better for a bureau to restrict its dealings with legal persons because it is easier to trace a legal person in case of a problem, through his address or commercial register number, contrary to the case of a natural person.

to obtain an express consent of the person to whom the information is related or notify the parties concerned of its exchange.⁵⁶

It is worth noting here that legislative interference in the area of credit information bureaus takes many forms. It could take the form of a separate law on credit information as in Jordan (Law No. 82/2003) or on credit information bureaus and formation of credit history as in Kazakhstan (Law No. 573/2004).

There are also laws regulating every aspect of individual's personal data and all procedures connected to its electronic exchange and collection (Law No. 523/1999 of Finland and the 1998 Australian Law). The regulatory framework could also take the form of a binding code of conduct as in Saudi Arabia (2003). Other states, such as Switzerland, draft their legislative interference in the form of a law on granting credits to consumers and such a law falls under the consumer protection legal system.

The common factor among these laws, despite their differences, is that they form a clear framework for all aspects related to provision of credit information bureaus with information from banks, companies and individuals; various obligations of bureaus; bureaus commitments towards those to which information is provided (i.e. inquirers); as well as bureaus duty to verify and correct the information obtained.

However, the Turkish experience illustrates that legislative interference could take the form of amendments to the banking sector law in a way that allow banks to exchange information and data they have with credit bureaus. It seems that the proposed amendments to the Egyptian Banking Sector Law followed the footsteps of its Turkish counterpart. It is worth noting here that while the Turkish law stipulates that a credit bureau must be owned by ten financial institutions, the Egyptian Bill does not stipulate such a requirement and only specifies requirements related to issued and paid capitals. It is unknown yet if Turkey will enact a separate statute to regulate the work of credit information bureaus or if it already has laws regulating and protecting personal information and data of individuals as is the case in many states. Anyhow, although it is advisable to enact a separate statute on credit information bureaus work, it is proposed to amend the Banking Sector Law in a way that would enable those bureaus to have a legal status and commence their operations accordingly. Those amendments, in addition to the rules to be set by the board of directors of the Central Bank, could be the first steps towards enacting a separate statute in the near future.

Proposed Amendments and the Work of Credit Bureaus

A review of the proposed amendments shows that:

⁵⁶ We do not believe that there would be any problems concerning this consent, except maybe concerning its form and method of validation.

1. Article (67 *bis*) will legitimize credit bureaus in a way that will not let their existence or work constitute a violation to any existing statutes.
2. Credit bureaus will be provided with data and information by allowing banks to exchange their information with them. Clearly such an exchange will not constitute a violation to bank obligation of confidentiality and the bureaus possession of information and data will be legitimate (Article 99)⁵⁷.
3. Credit information bureaus provision of data and information to third parties, according to the rules set by the Board of Directors of the Central Bank, will not constitute a violation to banks obligation of confidentiality (Article 100).
4. Credit information bureaus are obliged to maintain the confidentiality of the information and data they possess. This obligation applies to all staff working at these bureaus regardless of their positions. Any violation of this obligation will lead to imprisonment (Article 124).
5. Credit bureaus will be penalized by fining if they commit any fraudulent or misleading acts during the provision of credit information or scoring services.

Regulatory Rules for the Operation of Credit Bureaus

Proposed amendments to Banking Sector Law legitimize the existence of these bureaus and allow them to collect and provide data and information; however they refer all issues related to rules regulating the work of these bureaus to the Board of Directors of the Central Bank to decide on.

Conclusion

We conclude the following from this study:

1. Personal data and information of the Individuals are part of their private life protected by the Constitution; moreover, most Egyptian laws treat any violation of private life as a punishable criminal act.
2. Any person possessing personal data or information belonging to another individual is obliged to maintain their confidentiality and not to divulge them, directly or indirectly, to a third party.
3. There is no legislation in Egypt regulating the exchange and collection of information, but there is a Bill on this regard.
4. Information or data exchange is only permitted in two cases: when there is a legislation allowing that exchange or through obtaining consent on the exchange from the person to whom these information or data are connected.
5. In the light of Egyptian economic development, there is a dire need for establishing credit bureaus to provide creditors (banks and companies) with information and data enabling them to take sound credit decisions based on all available information concerning the persons applying for credit.

⁵⁷ This means that the data and information available to credit information bureaus will be limited to those provided by banks and will not extend to data and information available to suppliers of services and goods which cannot be obtained by bureaus except with an express consent from the data or information owner.

6. Credit information bureaus cannot exist without a legislation providing for their establishment. Also, international experiences in this regard show that the best way to achieve that end is to enact a separate legislation for information exchange or credit information bureaus work.
7. As in Turkey, the state could start by amending the Banking Sector Law to allow the establishment of credit information bureaus.
8. The rules to be set by the board of directors of the Central Bank will specify the detailed regulating rules of those bureaus work and will actually be deemed as the regulating law of those bureaus work.

Annex B: EFS/Arab Legal Consultant⁵⁸ correspondence

Dr. Bahaa Ali El-Din

Arab Legal Consultants

Fax: 3386709

Dear Sir,

Reference to the legal research your office submitted, we would like to thank you for the efforts exerted in this regard.

We will also be grateful if you answer some of our enquiries concerning this important topic:

- 1- What is the status of article 97 of Banking Law to the effect that enquiry... or obtaining data is only permissible upon a written permission by the account holder, in light of changes of article 99 concerning data sharing among financial institutions mentioned therein and between such financial institutions and credit bureaus. Would you kindly advise us in writing of your legal interpretation?
- 2- The study did not deal with the laws governing the work of both Interior Ministry and Ministry of Justice, though the information available therewith (National ID No. - Interior Ministry) and those available in public records (Bankruptcy - lawsuits...etc.) are very crucial to credit bureaus.
- 3- Does protection provided under the constitution and other laws regarding privacy of citizens spontaneously apply to legal figures too? What is the legal opinion in light of the corporate law?
- 4- On page 44 of consumer protection law, you referred to the commitment made by communication, water and electricity facilities to provide information. Would you kindly inform us whether there are laws governing those bodies or commit them to provide information to others?
- 5- Do you think there is any conflict between the law that governs the Central Agency for Public Mobilization & Statistics (CAMPAS), article 10 that prohibits publication of any information except upon the approval of the Agency, and the new draft law that regulates disclosure and data circulation.

⁵⁸ Original letter sent in Arabic. Translation to English is made by EFS

Kindly advise us in writing of your opinion & legal interpretation as soon as practicable.

Thanks for you cooperation & best regards

Marian Mishriki
Finance & credit specialist
Credit Information Systems

Arab Legal Consultants reply to EFS letter⁵⁹

Marian Mishriki
Finance & Credit specialist
Egypt Financial Services
4 Hayet El Tadrees, Dokki

May 22nd, 2005

Dear Sir,

Our office has prepared and submitted a study on the constitutional and legislative system related to the operations of credit bureaus in Egypt on May 3rd, 2005, as part of the tasks assigned to the project's "part-time legal consultant", whose functions and scope of work have been determined on March 13th, 2005. The content of the study has been debated with you and with Mrs. Nabila El Habashy of the Central Bank of Egypt.

Today, we answer your letter, dated May 16th, that raised several enquiries, which we would like to explain. For easy follow-up, we will attach your questions and enquiries:

1- What is the status of article 97 of Banking Law to the effect that enquiry... or obtaining data is only permissible upon a written permission by the account holder, in light of changes of article 99 concerning data sharing among financial institutions mentioned therein and between such financial institutions and credit bureaus. Would you kindly advise us in writing of your legal interpretation?

- Article (97) of the law originally provides for the privacy of all customers' bank accounts, deposits, credits and safes as well as their financial dealings. That same article has determined that it is impermissible to sight customers' bank accounts, deposits, credits and safes or give any direct or indirect information thereon, except upon a written approval of the holder of such bank accounts, deposits, credits and safes, his heirs, assignees, or legal or authorized representative or upon a judicial verdict or arbitrators' award.

- Article No. 99 of the Banking Law sets forth an exception from that prohibition that relates to the authority of the Central Bank's board of directors as regards laying down regulations of information exchange between the Central Bank of Egypt and other banks on customers' debts and credit facilities, in a way that guarantees privacy and availability of information required to grant banking credit. That exception also establishes the rules to be followed in order to

⁵⁹ Original letter received in Arabic, translated to English by EFS

prepare comprehensive examination reports on banks, as a preliminary step to sell all or part of their shares or merge them. Such an exception means that sharing information related to customers' debts and credit facilities with other banks or with the Central Bank of Egypt is not in breach of article 97 of the law, so long as those banks abide by the rules and regulations established by the Central Bank of Egypt. Hence, when sharing such information, the banks commit to the law and, in turn, do not need to obtain the approval of the customer/account holder. Approval of customers is only necessary for information sharing operations, not covered under article 99 of the law.

- The above supports what follows:

A- The argument that banks require customers' authorization in order to share information with the Central Bank of Egypt means that article 99 add nothing new and is only repetitive and monotonous, as authorization is a requirement for obtaining information as per article 97. It is well known under legal interpretation rules that legislators do not lay down repetitive articles, and laws should be interpreted and applied on this basis.

B- New instructions of the Central Bank of Egypt (CBE), which were approved by the CBE board of directors, have annulled the requirement of obtaining the client's approval for information sharing among banks.

- As amendments of some provisions of the Banking Law have been meant to add credit bureaus under article 99, the above-mentioned provisions shall apply to such credit bureaus as is the case with banks regarding information sharing.

2- The study did not deal with the laws governing the work of both Interior Ministry and Ministry of Justice, though the information available therewith (National ID No. - Interior Ministry) and those available in public records (Bankruptcy - lawsuits...etc.) are very crucial to credit bureaus.

The following should be differentiated:

- Information available at the Interior Ministry is, by nature, confidential and sovereign, and hence, can only be shared with credit bureaus through regulating the relationship with the Interior Ministry in a way that allows the company to communicate with the said ministry to verify some pieces of such information.

- As for the information related to the lawsuits of the Ministry of Justice, they are public (as publicity is the basis of provisions). Preparation of a database in this regard is required. There are currently private companies that provide such services in return for certain fees or subscription, particularly under the provisions of Cessation Court.

3- Does protection provided under the constitution and other laws regarding privacy of citizens spontaneously apply to legal persons too? What is the legal opinion in light of the corporate law?

Yes, for the legal person who is afforded protection, but according to the status of that legal person. Article 53 of the Civil Law provides that legal persons enjoy all rights except for those rights inherent to natural persons (such as the right to

have a spouse, the right of paternal authority, the right of dowry and the right of inheritance...) within the limits specified under the law. It shall have:

- Independent financial standing
- Eligibility within the limits specified under its deed of establishment or under the law.
- Right to sue
- Independent homeland
- Representative to express its own will

As regards companies (legal persons), they have protection according to the civil law that represents the general doctrine of the private law. Furthermore, article 157 of corporate law No. 159 for 1981 provides that:

Shareholders shall have the right to go through company's records and obtain copies of its documents according to the terms and conditions of the executive regulation. Parties concerned shall have the right to request examining the documents, records, minutes and reports concerning the company and obtain certified data from the concerned administrative body. Such a request shall be refused in case the required data may be detrimental to the company or any other body or in breach of public interests. The executive regulation shall provide for such conditions and specify the fees for obtaining data, provided such fees do not exceed one hundred Egyptian pounds.

Article 301 of the executive regulation regulates the rights of shareholders and partners as follows:

Shareholders and partners may review records of the company except for those wherein minutes of the board of directors and accounting books of the company are recorded. They may also go through the company's balance sheets, profit and loss accounts and reports of comptrollers for the previous three fiscal years as well as all other papers and documents; the contents of which are not detrimental to the company's standing or to others.

Review should be made at the company's headquarters and at times previously specified by the company, at least once a week.

Shareholders and partners go through such records themselves and they seek the assistance of professional lawyers or accountants. They may also obtain issues of the documents under review, provided they pay a fee of not less than PT10 per page.

Article 302 regulates the rules of review at the premises of the concerned administrative body as follows:

Each interested shareholder or partner shall have the right to review company's documents, records, minutes and reports at the premises of Capital Market Authority or the general department of companies, in return for a LE10 note for

each document to be reviewed. A copy of the above documents may be obtained in return a LE20 note each.

The concerned administrative body may - upon the request of the company or two thirds of its members and as per the resolution of the head of that administrative body - decide to refuse the above mentioned application, in case the contents of such information are detrimental to the interests of the company or any other agency or in breach of public interests.

4- On page 44 of consumer protection law, you referred to the commitment made by communication, water and electricity facilities to provide information. Would you kindly inform us whether there are laws governing those bodies or commit them to provide information to others?

The general rule provided by the constitution and regulated by penal and procedural laws remains valid. Yet, consumer protection draft law, in an attempt to eliminate any conflict between Consumer Protection Agency and other agencies concerned with sector censorship, decided to share information related to the complaint under investigation with Competition Protection Agency so that a decision could to be made by the Consumer Protection Agency and the technical aspect be handled by sector censorship agencies.

5- Do you think there is any conflict between the law that governs the Central Agency for Public Mobilization & Statistics (CAMPAS), article 10 that prohibits publication of any information except upon the approval of the Agency, and the new draft law that regulates disclosure and data circulation.

There is no conflict in this regard, as a new legislation annuls an old one. The draft law has taken into account the existing data collection system. Whatever the circumstances, it is better in any draft law to be first approved by the People's Assembly.

We hope we have answered all your enquiries and finally we would like to point out that this legal opinion is an inseparable part of the aforementioned legal study and should be reviewed as such.

Best regards,

Dr. Bahaa Ali El-Din

Annex C: Articles of the Banking Law Pertaining to Credit Information Systems

Articles related to the aggregate positions of banks clients at the Central Bank and the licensing of credit bureaus (referred to here as inquiry and credit scoring companies)

Section Two: Organization of the Banking Sector Chapter Four: Banks Supervision

Article 65: Each bank has to establish a system to continuously and promptly register the positions of clients who obtain finance or credit facilities. This system has to be linked to the aggregate information database at the Central Bank. The Central bank can require any bank to make modifications deemed necessary to upgrade this system and to ensure the comprehensiveness of the data pertaining to the debt positions of the clients.

Each bank has to notify the Central Bank with the position of each client obtaining finance or credit facilities.

Article 66: The Central Bank of Egypt shall establish a Central system to register finance and credit facilities offered to the clients of banks operating in Egypt, and a system to register the debt balances of the banks & guarantees issued to offshore parties. The necessary information should be kept in these two systems to supervise credit offered to the clients of banks, their related parties and external liabilities

The Central Bank shall also establish a system for recording the finance balances extended by financial leasing and mortgage finance companies to their clients. These companies are obliged to send the necessary data in this respect to the Central Bank every three months at the maximum. The executive regulation of this law shall establish the contents of these systems and the work procedures

Article 67

The Central Bank shall promptly prepare, upon receipt of information pertaining to finance and credit facilities balances extended by the banks, an aggregate position of what was offered to clients and their related parties.

Each bank has to view the aggregate position of any client & its related parties before offering any finance or credit facilities, and may request an extract of the position in accordance with the terms and conditions specified in the decree from the Central Bank board of directors.

Article 67 bis

The CBE's board of directors may license companies to provide inquiry and credit scoring services related to the debts of banks' clients, mortgage finance companies, financial leasing companies and the debts of applicants for credit facilities from suppliers of goods and services. Inquiry and scoring companies should take the form of a joint stock company and its sole purpose should be to offer inquiry and credit scoring services. Its issued and paid in capital should not be less than Egyptian pounds five million (*equivalent to U.S \$*

The CBE's board of directors shall issue a decree to specify the licensing requirements and procedures, the company's work systems and the Supervisory System of the Central Bank

The Executive Regulation

Article 30: The Central System that registers the finance and credit facilities balances offered to the clients of banks operating in Egypt and established according to article 66 of the law, shall include the following:

- a. Data about the position of each client and its related parties which obtained finance or credit facilities from any of the banks operating in Egypt that exceeds the amount specified in a decree issued by the Central Bank board of directors according to the form prepared for this purpose
- b. Schedules to include clients data sorted as follows:
 - Names of banks and their branches
 - Governorates of Egypt
 - Legal status of clients
 - Economic sectors under which clients activities are classified
 - Types of finance and credit facilities offered
 - Regularity in paying obligations to the banks that extended finance and credit facilities
 - Clients' positions regarding settlements and legal procedures.

Article 31: (*N.B not relevant to credit bureaus*)

The Registry system of the debts of banks operating in Egypt and the guarantees issued to offshore parties which is established in the Central Bank as per article 66 of the law includes the following:

- a. Data about the offshore banks debts on the form prepared for this purpose sorted according to the following:
 - Banks debt
 - Debt maturities
- c. Data about the value of the guarantees issued from banks to offshore parties on the form prepared for this purpose, sorted as follows:
 - Beneficiaries of the guarantee
 - Applicants of the guarantees
 - Maturities of the guarantees

Article 32: The registry system of the finance balances offered by financial leasing and mortgage finance companies to their customers and established in the Central Bank of Egypt as per article 66 of the law includes the following:

- a. Monthly data about the total finance that each company offers to its clients on the form set for this purpose
- b. Monthly data about the position of each client and its related parties which obtain finance from any company which exceeds the amount specified in a decree issued by the board of directors of the Central Bank, on the form used for this purpose

Article 33: Banks, financial leasing & mortgage finance companies are obliged to adhere to the following work procedures for every system referred to in articles 30, 31, 32 of this executive regulation:

- a. Electronic entry of every client and its related parties in the system by a responsible officer whose name and title are notified to the Central Bank
- b. Send the data through the Central Bank network in the dates specified in the Governor's decree
- c. Ensuring the security of the data entry

The Central Bank prepares an aggregate position showing what each client and its related parties obtains. Banks are obliged to view the aggregate position before extending credit, increasing, renewing or changing its terms of credit and also when inquiring about the client.

Section Four: Secrecy of Accounts

Article 97: All clients' accounts, deposits, trusts and safe deposit boxes and related dealings are secret. They can not be viewed or information provided about them either directly or indirectly except with the written consent of the owner of the account, the deposit, the trust or the safe deposit box, or from one of the heirs, or from one of the beneficiaries to some or all of the funds, or from the legal deputy or from an authorized person by a power of attorney or based on a legal judgment or arbitration rule.

The restriction in the preceding paragraph shall apply to all persons and entities including those entities which are authorized by law to view or obtain papers or data whose secrecy is forbidden to be disclosed according to the articles of this law. This restriction shall remain even if the relation between the client and the bank is terminated for any reason.

Article 98

The public prosecutor or his first general attorney delegates, can, on his own accord, or upon a request from an official entity or anyone of position, request from the appeal court an order to view or obtain any data or information related to the accounts, deposits, trusts or safe boxes specified in the preceding article or

their related dealings if this is required to uncover the truth in a felony or misdemeanor where serious evidence exists.

When a wealth declaration is required in a situation when there is an administered seizure at one of the banks subject to the provisions of this law, anyone concerned can, as per the preceding paragraph submit its request to the specialized Appeal Court.

After three days from presenting the request, the court shall make a decision, in the consultation room, after hearing the public prosecution or anyone concerned.

The public prosecutor or his first general attorney delegates and the concerned persons, depending on the situation, have to notify the bank and the concerned persons with the order issued by the court within three days from its issuance.

The deadline date to provide the wealth declaration shall be set from the date of notification to the bank with the order

The public prosecutor or his first general attorney delegates can directly order a view of or obtain information about the accounts, the deposits, the trusts or the safe boxes specified in article 97 of this law or their related dealings if this is required to uncover the truth in one of the crimes specified in section two of book of criminal law, and the crimes specified in the money laundering law number 80 for the year 2002.

Article 99

The Central Bank and the banks exchange information and data pertaining to clients' debts and the approved credit facilities. The information and data shall also be exchanged with mortgage finance companies, financial leasing companies and inquiry and scoring companies. The Central Bank of Egypt board of directors shall set the rules organizing the exchange of information, while maintaining the secrecy of information & data and ensuring the availability of whatever is required from it for the soundness of credit extension.

The board shall also establish the regulations that should be followed to prepare full due diligence reports on banks for a total or partial sale of their shares or for a merger. (*Not relevant to credit bureaus*)

Article 100

Chairmen of board of directors, board members, directors, or employees of banks and Inquiry and Scoring companies are forbidden to give or disclose any information or data concerning clients, their accounts, deposits, custodies or safe deposit boxes or their dealings or enable others to access them, other than what is authorized by the provisions of this law.

This restriction applies to any person who by virtue of his profession, position or job, either directly or indirectly can access the information or data referred to herewith.

Article 101

Articles 97 and 100 of this law do not prejudice the following:

- a- The legally obliged duties by banks auditors and the central bank legal responsibility
- b- The bank's obligation to provide a certificate with the reasons for nonpayment of a cheque upon the request of the drawer
- c- The right of the bank to disclose all or some of the data related to a client's transactions to prove its right in a legal dispute with its client with respect to such transactions.
- d- The laws and provisions organizing anti-money laundering
- e- The information and data provided by Inquiry and Credit Scoring companies as per the regulations that will be set by the board of directors of the Central Bank

Section Seven: Penalties

Article 123

Anyone who purposely reports, with intention of fraud, incorrect facts or conceals some facts in the data, minutes or papers provided from the banks to the Central Bank in application of the provisions of this law shall be subject to imprisonment and a penalty of not less than L.E 20,000 and not more than L.E 100,000

Any one who commits fraud or misleads in providing inquiry or credit scoring services shall be liable to a penalty of not less than Egyptian pounds 10,000 and not more than L.E. 100,000 apart from a sentence to pay the equivalent sum of the unpaid credit which was extended based on fraudulence or misrepresentation

Article 135

Without prejudice to the penalties and sanctions provided for in this law or any other law, the CBE's board of directors could, when there is evidence that a bank violated any provision of this law, the Central Bank System or the decrees issued by its board of directors, take any of the following actions:

- a) Issue a warning
- b) Reduce or suspend the credit facilities provided to the violating bank.
- c) Prevent the violating bank from undertaking some transactions or limiting the credit that it can provide.

- d) Oblige the violating bank to place non interest bearing deposits at the Central bank for a set period over and above the credit balance stipulated in article 74 of the law.
- e) Request the chairman of the violating bank to invite the board for a meeting to examine the violations attributed to the bank and take necessary actions to remove them. The board of directors meeting shall be attended by a representative or more from the Central Bank.
- f) Appoint an observing member at the Bank's board of directors for a period specified by the Central Bank board. This member can participate in the board's discussions and document his opinion with respect to the decisions that are made.
- g) Dissolve the board of directors and appoint a delegate to manage the bank for a period not exceeding six months, renewable for six more months. The delegate shall, during his term, propose to the Bank's General Assembly the election of a new board, merger with another bank or liquidating the bank.

Any of the procedures stipulated in items (a), (e) and (g) can be undertaken in case there is evidence of violation by an Inquiry and Credit Scoring company, or money transfer. The license granted to the company can be withdrawn.

Annex D: Hassouna and Abou Ali Legal Research

Legal Regulations Governing the Operation of Credit Bureaus Pursuant to the Central Bank, Banking Institutions and Money Law No. 88 of 2002 as Amended.

This study is prepared at the request of Egypt Financial Services Project to our office - Hassouna & Abou Ali – to prepare a study on the legal rules governing the operation of credit bureaus pursuant to the Central Bank Law and the then proposed draft law amending some articles of Law 88 of 2003 issuing the Central Bank, Banking Institutions and Money Law (“Law No. 88”), with indication of the role of the Central Bank in setting the regulatory rules governing the operation of the credit bureaus in light of banking secrecy laws. During the preparation of this study and after the issue of several drafts which were reviewed by Egypt Financial Services at the time, Law No. 93 of 2005 was issued amending some provisions of Law No. 88 (“Law No. 93”), which for the first time granted the Central Bank of Egypt the authority to issue licenses for conducting the activities of the credit and rating bureaus and referred with respect to the regulation of the operations of these bureaus without mentioning any further details in this concern to resolutions to be issued by the Central Bank.

This study shall focus on the following issues:

- a. regulation of credit bureaus
- b. role of the Central Bank as an administrative authority regarding credit information
- c. the possibility of exchanging information and data among banks, credit bureaus, mortgage finance companies, leasing companies and sellers of goods and services
- d. impact of the amendments mentioned in Law No. 93 on the customer right for the privacy of his data
- e. concept of “related parties” provided in article 67 of the mentioned law
- f. obstacles which might face the operation of credit bureaus

- 1 -

Regulation of Credit Bureaus

Amendments to Law No. 93 provided for the first time in Egypt a system for the licensing of the activity of credit bureaus. New article 76 (bis) of Law No. 88 empowered the Central Bank's Board of Directors to grant licenses for providing credit and rating services related to the indebtedness of the banks customers, mortgage finance companies, leasing companies and indebtedness of applicants of credit facilities of goods and services suppliers.

Currently, Egyptian law contains no comprehensive regulation of the operation of credit bureaus. The legislative amendment is limited to the requirement that a credit bureau must be formed as a joint stock company, its purpose be limited to the provision of credit information and rating services and its capital shall not be less than Egyptian pounds five million. A resolution is to be issued by the Board of Directors of the Central Bank specifying the conditions and procedures of licensing and regulating the business of the company and control of the Central Bank. Law No. 88 as amended does not clarify the type of credit information and rating services that may be offered.

According to the practice followed in many countries, credit bureaus aim is to collect and issue reports for the credit efficiency level of consumers and loan and bank facilities applicants. Usually, the Credit bureaus obtain the required data about the consumers from banks and other establishments conducting the credit activity providing Credit bureaus with the required information about consumers. There is no direct relation between Credit bureaus and consumers or loans and bank facilities applicants.

Reports released by Credit bureaus include four kinds of information: consumer or borrower information, information about various accounts at banks and other lending entities, information about the legal actions and bankruptcy or insolvency requests or rulings which might have been issued against him and finally a statement regarding the numbers of inquiries authorized by consumer to inform about his credit efficiency. Whereas the credit bureaus are established on the basis of sharing the available information with third parties therefore their purpose raise the question of their legal regulation for protecting the private life, private information and consumer secrets from any infringement in light of the current regulation for credit bureaus.

There is no special legislation in Egypt currently for protecting the personal data and information. Current Egyptian legislations has only mentioned some provisions of the Constitution and other laws related to general rules of protecting the private life (such as articles 41 & 45 of the Egyptian Constitution, article 50 of the Civil Code, article 310 of the Criminal Law and the Presidential Decree No. 35 of 1960 regarding census and counting and also provisions of accounts secrecy in the Law No. 88).

- 2 -

Role of the Central Bank of Egypt

Central Bank of Egypt is responsible for drafting the rules of overseeing and supervising banks and it is the one setting measures to be observed in rating the financing and credit facilities granted by banks and rating those non regular and balances resulted out of this classification.

The law authorized the Central Bank, being as the observer on the credit granted from banks to:

- 1- prepare an accumulative statement to include what has been granted for every customer and his related parties
- 2- The Central Bank may ask any bank to undertake any necessary modifications to update this system
- 3- issue a resolution determining the rules and conditions of the banking access to those accumulative balances according to requests submitted by banks of obtaining extracts of those statements
- 4- Credit Bureaus are affiliated to the Central Bank being the supervising body.
- 5- Central Bank shall set the conducting system in the credit bureaus and the control system thereupon.
- 6- Central Bank is the observer of exchanging data of credit bureaus with banks, mortgage finance and leasing companies.

Currently, Central Bank of Egypt is not competent with supervising and overseeing mortgage finance and leasing companies. Mentioned companies are not affiliated to the Central Bank anymore and the submission of those companies for monthly statements every three months for the total financing granted to their customers is only for accounting purposes without any interference from the Central Bank.

- 3 -

Central Bank Database

Law No. 88 requires each bank to establish a system for the regular and immediate recordation of positions of customers who are granted financing or credit facilities and imposes on the Central Bank to establish a central system for recording balances of financing and credit facilities granted to banks' customers. Law No. 88 also requires the Central Bank to connect the database of positions of the banks customers with an accumulative database established by the General Department for Accumulating Banking Credit Risks at the Central Bank.

The foregoing databases shall include with respect to banks the following (article 30 of the executive regulation of Law No. 88):

- Basic data of customers
- Data of each customer's position and his related parties

- Legal forms of customers
- Economic activities sectors in which customers activity is classified according to
- Extent of the customers regularity in paying their dues to the banks granting credit financing or facilities
- Position of customers regarding settlements and legal procedures

The foregoing databases shall include also with respect to mortgage finance and leasing companies (although those companies are not affiliated currently with the Central Bank) the following:

- Monthly statements every three months for the total financing granted by such companies to their customers pursuant to the form prepared for this purpose.
- Monthly statements for the position of every customer and his related parties who obtain finance from any company exceeding the limit set in the resolution to be issued by the Central Bank Board of Directors on the model prepared for this purpose.

(A) Obligations of the banks towards the Central Bank database

Rules issued by the Central Bank pursuant to the resolution of the board of directors of the Central Bank dated April 26, 2005 (following the resolution of the Chairman of the board of directors dated August 1, 2001) that banks, as an implementation of article 67 of Law No. 88 and article 33 of the executive regulation (other than mortgage finance and leasing companies) shall undertake the following:

- a. access the cumulative position of every new customer, his related parties, joint liability partners and every warrantor prevailing the bank's right in requesting an extraction of this statement. Access shall be pursuant to an application to be submitted by the customer to be granted a credit finance or facility or on increasing its limit, renewal or amending its conditions through the data network of the Central Bank by means of the responsible in which the Central Bank gives a note for his name and post.
- b. enter new customers' data, their guarantors and joint liability partners through the data network of the central bank by means of the responsible in which the Central Bank gives a note for his name and post.
- c. supply the Central Bank with the documents supporting the entered data at the time of entry.
- d. updating the database according to supporting documents and notifying the General Department for Accumulating the Banking Credits Dangers for any amendments made to the data time by time.
- e. notifying for non regular customers in payment whether those taken legal procedures concerning their indebtedness against from the bank or from external entities.
- f. access shall take place pursuant to a request submitted by the customer to obtain credit financing or facilities.

(B) Obligations of the mortgage finance and leasing companies towards the database of the Central Bank

Rules of the Central Bank issued by the board resolution dated April 26, 2005 concerning the mortgage finance and leasing companies decided to oblige them with the following:

- a. Entering new customers' data, their guarantors and their joint liability partners through the data network of the Central Bank by means of the responsible in which the central bank gives a note for his name and post.
- b. Supplying the Central Bank with the entered information supporting documents at the time of the data entry.
- c. Updating the database according to the supporting documents and notifying the General Department for Accumulating the Banking Credits Dangers for any amendments made to the data time by time.
- d. Granting them the right of inspecting the accumulative statement of the customer and the related parties despite of the fact that the law is lacking any provision allowing that to the mentioned companies. The law stated only in this concern that the mentioned companies are obliged to furnish the Central Bank database with definite information in which it has determined.

(C) Obligations of the credit bureaus towards the database of the Central Bank

Provisions of amendments issued by the Law No. 93 did not identify the nature of the credit bureaus obligation towards the Central Bank database and referred in this concern to resolution to be issued by the Central Bank Board of Directors determining rules, conditions and procedures of licensing those companies, their conducting system and overseeing by the Central Bank. In our opinion, it was better if the Law No. 93 included the basis determining the frame of the relation between the credit bureaus and the Central Bank database to avoid any objection from the concerns for non - constitutionality or legality of these rules. It will be suitable that amendments to be issued in the executive regulation of Law No. 88 in absence of provisions in the law itself as a conciliatory solution.

- 4 -

Accounts and Information Secrecy and Data Exchange

It is previously mentioned that there is no legislation in Egypt for the protection of personal data and information. The matter is only limited in the current Egyptian legislation to scattered provisions in the Constitution and other laws of general principals regarding protection of private life or secrecy of bank accounts (for example, articles 41 & 45 of the Egyptian Constitution, article 50 of the Civil Code, article 310 of the Criminal Law and Presidential Decree No. 35 of 1960 regarding census and counting and also provisions of accounts secrecy in Law No. 88). The Mortgage Finance Law did not regulate the secrecy of date of customers of mortgage finance companies, although article

43 of the mentioned law provides that the provisions of the laws regulating data secrecy shall not be prejudiced but with no further details.

Article 45 of the Egyptian Constitution provides that: “Citizens’ personal life is sacred and protected by law”. Article 50 of the Egyptian Civil Code also provides that: “A person whose rights inherent in his personality have been unlawfully infringed shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby”. Judgments of the cassation courts decided that applying articles 45 of the Constitution and 50 of the Civil Procedures Law together results that disclosing the secrets of a private life of an individual without permission is illegal and accordingly a wrong action deserving remuneration pursuant to article 163 of the Civil Code. Article 310 of the Criminal Law provided that “If any of the physicians, surgeons, pharmacist or nurses or any others are trusted with a secret because of his profession or position and disclosed it in cases other than when permitted by law, shall be punished by imprisonment for a period not less than six months or a maximum fine of EGP five hundred.

Applying the former general rules, article 97 of the Law 88 confirmed the secrecy of the banks’ customers deposits, trusts, treasures and any information regarding them and prohibited access by any entity or giving any information about them either directly or indirectly to confirm the secrecy of information and accounts and as admission to the right of the customer of not disclosing any of his secrets or data. As an exception of the accounts secrecy rule, mentioned article 97 enables access to the customers’ accounts in the following cases:

- 1- An explicit written consent from the customer (owner of the account, deposit, trust or treasury) to inform about him and inspect his financial position. This written consent shall be issued directly from him personally or by any of the following means: any of the inheritors in case of death, one of the legatees, legal attorney or the one mandated for this matter.
- 2- Pursuant to a court decision or arbitral award.

It is important to clarify that the prohibition mentioned in the above paragraph applies to all individuals and entities, including entities which the law grants the right of access, to obtain papers or data not to be disclosed pursuant to this law. This prohibition shall be valid even if the relation of the bank and the customer was terminated for any reason.

Article 99 of Law No. 88 further authorized the exchange of information and data regarding the indebtedness of the customers and credit facilities granted to them between the Central Bank and banks. It also authorized the exchange of this information among mortgage finance, leasing companies and credit bureaus such that the Central Bank Board of Directors sets the rules regulating such exchange warranting the data and information secrecy and guarantee providing enough thereof to insure the credit providing. Article 100 –after being amended by the Law 93 – prohibited chairmen and members of the boards of each of the banks, mortgage finance, leasing companies and credit bureaus their

managers and employees from giving or disclosing any information or data of the customers, their accounts, deposits, trusts, treasures and their transactions or make them available for access by third parties in cases other than those authorized by provisions of this law. This prohibition shall be applied on any body that his profession, position or job enables him directly or indirectly to inspect the mentioned information or data.

Article 101 of Law No. 88 provided that the prohibition mentioned in articles 97 and 100 shall be without prejudice to the following:

1. Duties to be legally performed by banks auditors and also the authorities empowered to the Central Bank.
2. Obligation of the bank in issuing a certificate determining the reasons of refusing the payment of a check upon the concerned request.
3. Right of the bank, mortgage finance and leasing companies in disclosing part or all of the available information to prove the bank's right in any litigation with that customer concerning this information.
4. Provisions of special laws and rules regulating the money wash contention.
5. data and information provided by credit bureaus pursuant to the rules determined by the Central Bank board of directors.

Data Exchange

Article 99 of Law No. 88 authorized the Central Bank to set the rules of exchanging data and information related to their indebtedness and also their credit facilities between banks, mortgage finance, leasing companies and credit bureaus but in a way guarantying their secrecy. The said article did not grant any other authority the right of obtaining the data and information available with the Central Bank and the banks operating in this field.

The law did not identify a definite concept for exchanging data. Also, the law did not identify other sources from which credit bureaus may obtain information other than the information exchanged with banks, mortgage finance and leasing companies.

Rules issued by the Central Bank dated April 26, 2005 do not clarify which information to be accessed by those companies as it did with banks.

It is early at this stage to determine the means and content of exchange of data and information by credit bureaus prior to the issuance of the regulatory rules by Central Bank. It is notable that the law did not authorize credit bureaus to exchange information with any other entity other than those provided in article 99 (as amended) of Law No. 88. The question arises in this regard as to whether credit bureaus can exchange information with suppliers of goods and services and the rules that govern this exchange in light of the data secrecy rules.

Article 101 in its last paragraph allowed credit bureaus to provide data and information without determining to whom and how shall it be provided and referred the matter to

rules to be set by the board of directors of the Central Bank. If these rules enable credit bureaus to provide information to entities other than those stated in article 99 of Law No. 88, then this may be considered a breach to the principal of secrecy of customers' transactions which are protected.

It is not clear in our opinion the usefulness of exchanging data with certain specified entities determined by law, all of whom have the right to access to the Central Bank database. There is no apparent need for the banks, mortgage finance and leasing companies to exchange information with credit bureaus unless credit bureaus have other sources other than the Central Bank database. Such scenario raises a question about the legality of this exchange in light of article 45 of the Constitution and article 50 of the Civil Code aforementioned.

Extent of Secrecy and Exchange

It is important to differentiate between the extent of secrecy provided in article 97 of Law No. 88 and that of information to be exchanged among banks, credit bureaus, mortgage finance and leasing companies. Secrecy pursuant to article 97 of Law No. 88 is wider and inclusive; it applies to customers' bank accounts, deposits, trusts, safe boxes and any of their information, and article 97 prohibited access thereto by any entity or giving any of data whether directly or indirectly.

On the other hand, the extent of secrecy pursuant to article 99 of Law No. 88 is limited to data and information related to customers' indebtedness and credit facilities, which only represent a part of the extent of secrecy regulated in article 97 of Law No. 88.

Currently, Central Bank rules enable banks to extract the following reports from the data network of the Central Bank:

- Accumulated data of the positions of bank customers.
- A statement of customers' names and their related parties.
- Code numbers of new customers dealing with the bank.
- Basic data of bank customers.
- Position of bank customers concerning their regularity in paying their dues to the banks granting the financing and credit facilities and concerning the procedures taken for their indebtedness.
- A statement of the total accounts of financing and credit facilities granted from the group of banks in which he belongs to pursuant to the following:
 - Kind of credit facilities (authorized and used)
 - Economic activity
 - Residence of the customers
 - Legal forms
 - Reiterated distribution of categories
 - Statement of the bank customers

Central Bank rules dated April 26, 2005 do not specify the type of reports or information which may be extracted through the database network of the Central Bank by mortgage finance and leasing companies and credit bureaus.

Written Consent of the Customer

The provisions of article 97 and article 99 of Law No. 88 raises a question regarding the extent of the bank's obligation to obtain a written consent from the customer, his legal deputy or delegated attorney to enable the bank to inspect the customer's debit accounts, and information and transactions related thereto with the Central Bank or any of the banks operating in Egypt.

In this regard we note that the rules of the Central Bank issued on April 26, 2005 did not explicitly require the consent although the rules issued by the Central Bank dated August 1, 2001 required a written consent from the customer approving the bank's access to his debit accounts and related information and transactions whether with the Central Bank or any of the banks operating in Egypt. These rules were issued under the Banking Accounts' Secrecy Law No. 205 of 1990 ("Law No. 205") and remained in force under Law No. 88 until they were replaced on April 26, 2005 (before the issuance of Law No. 93). Reading article 1 of Law No. 205 indicate that it is identical to article 97 of the Law No. 88, which raises a question about the legal basis that led the Central Bank in its rules issued on April 2005 not to require the customer's consent despite the existence of provisions enabling the banks to access the accumulative data of the customer with the Central Bank, particularly the provision of the second paragraph of article 97 of Law No. 88 applying secrecy on all individuals and entities, including those empowered by the law to review and obtain papers or data subject to secrecy pursuant to this law.

The question raised above is not raised regarding dealings of banks with their customer, but it also arises, albeit in a more specific manner, with respect to the need of credit bureaus to obtain a written consent from the customer before exchanging indebtedness information of customers' who have obtained credit facility from a bank, mortgage finance or leasing companies.

It may be concluded in light of the explicit language of article 99 of Law No. 88, which enables the exchange of data and information related to the customers' indebtedness and credit facilities granted to them, that this exchange among the banks and Central Bank and between them and the mortgage finance and leasing companies may be made without a written consent from the customer; provided that such exchange is limited to the indebtedness information and that secrecy of such information is assured and that the exchange is initiated by a request submitted by the customer to obtain a credit finance or facility or upon its increase, renewal or amendment of its conditions.

We note from the foregoing that some may raise objection for not obtaining the customer's consent by arguing that prior banking practice under the same current provisions required the customer's consent especially in light of the constitutional provision coupled with the provision of article 50 of the Civil Code.

According to the abovementioned, credit bureaus are prohibited from disclosing any data obtained through an exchange with the Central Bank, banks and mortgage finance and leasing companies to third parties, including suppliers of goods and services in light of the absence of a specific regulation of such exchange. Hence, rules concerning data and information secrecy which has been discussed in the former parts of this report remain valid and the written consent of the customer must be obtained. The question, however, arises in this context as to who are the customers of the credit bureaus?

- 5 -

Concept of Related Parties

Expression of “Related Parties” was mentioned in connection with the database of the Central Bank in articles 66 and 67 of Law No. 88 without clarifying what is meant by this expression. Articles 66 and 67 of Law No. 88 provided that the credit and financing accounts submitted to customers of the banks operating in Egypt and indebtedness of these banks to the outside and guarantees issued by them to entities abroad shall be kept in a recording system for information necessary to oversee credit submitted for banks’ customers and its related parties and the outside indebtedness and the Central Bank shall prepare an accumulative statement for what was submitted for each customer and its related parties.

The executive regulations of Law No. 88 in connection with those articles did not include any clarification for this expression. Laws regulating the Central Bank, banks and credit which were superseded by Law No. 88 mentioned nothing about this expression. Therefore, a reference shall be made to the provisions and other terms in Law No. 88 and its executive regulations to reach a meaning for the expression and its interpretation.

Expression of “Related Parties” was first mentioned in Law No. 88 in article 56 discussing the subject of overseeing banks, deposits insurance and the commitment of determining the maximum limits of investment at one customer and his related parties and the banks’ related parties. Article 56 of Law No. 88 provided in the last paragraph that the related parties shall mean those parties in which the customer are actually controlling pursuant to what is meant by the actual control in article 51 of Law No. 88.

Article 51 of Law No. 88 provided that on applying the provisions of this article, the actual control of the natural or the judicial person that he owns a percentage enabling him to appoint the majority of the Bank’s Board of Directors or controlling in any way the resolutions issued by the board or controlling the resolutions issued by its general meeting. Ownership of the natural person shall include what he owns plus any of his relatives to the fourth degree, and the ownership of the judicial person shall include what it owns plus any of the board members or the shareholders whether they were natural or judicial or with any other judicial party if it was under the actual control of the same natural or judicial persons. Account shall include the total ownership of more than a natural and judicial persons in which there is an agreement between them to practice their

own rights in the general meeting or the board of the bank leading to the actual control on any of them.

Rules of the Central Bank lately issued dated April 26, 2005 obliged the banks upon granting a financing or credit facility to obtain from the customer an acknowledgement in which he discloses his related parties pursuant to the concept mentioned in Law No. 88 as follows:

- (a) the related parties to the natural person customer including his relatives to the fourth degree, the individual establishments he owns, his guarantors and warrantors.
- (b) The related parties to the judicial person customer including: the joint liability partners in the individuals companies, chairman and board members of the joint stock company and shareholders owning most of the shares (any one owning and/or with his related parties 10% or more of the issued capital or any percentage resulting the actual control over it), whether being natural or judicial persons. Actual control of the natural or judicial person means owning any percentage enabling him to appoint the majority of the board of directors or controlling by any mean the resolutions issued by the company's board of directors or controlling the resolutions issued by the general meeting.
- (c) Any other judicial person if it was under the actual control to the same natural or judicial persons (branches – affiliated companies)

Examining the definition mentioned in article 51 of Law No. 88 we consider that the mentioned definition shall not be applied to the provisions concerning the database of the Central Bank for the difference between the subject and purpose of articles 51 and 56 of Law No. 88 from the credit regulating operation. Also that the Central Bank has widened the expression of “related parties” outside the meant field mentioned in articles 66 and 67 of Law No. 88 and that the expression of “related parties” the terms of articles 66 and 67 Banking Law and that the expression of “related parties” in the terms of articles 66 and 67 must be connected to the credit operation specified in the customer's request, that is to say:

- 1- Persons specified in article 62 of Law No. 88 providing that:

“ The one willing to obtain a financing or credit facilities from banks from the natural persons or judicial shall disclose in the request owners of the establishment, owners of the shares or the shareholding percentage in the closed underwriting joint stock companies and the relative degree if any and the indebtedness amounts in other banks upon submitting the request. Request shall not be observed unless these data are submitted along with the acknowledgement of their validity.”

According to this provision the related parties are the owners of shares or shareholdings in the closed underwriting joint stock companies in the companies applying for obtaining financing or credit facility.

2- Persons specified in the resolution of the Central Bank regarding the database of the Central Bank (dated August 1, 2001) are the customer warrantors and his joint liability partners.

3- Sister companies affiliated to the customer or subject to his control.

It is recognized in this concern that the mentioned obligation of the related parties is not applied from the provisions apparent aforementioned mortgage finance and leasing companies

- 6 -

Obstacles which might face the operation of credit bureaus

We have previously clarified that credit bureaus usually obtain the necessary information about consumers from banks and other entities performing lending activity which provide the credit bureaus with the necessary information about their customers. Amendments to Law No. 88 referred for regulating of the operation of such companies to rules to be issued by the board of directors of the Central Bank. In the absence of such rules for our review, it is difficult to determine the obstacles which might face the operation of the credit bureaus.

On the other hand, in light of article 45 of the Egyptian Constitution which provides that: "Citizens' personal life is sacred and protected by law", it would have been more suitable that regulation of operations of credit bureaus be specified in the law and not referred to resolutions of the board of directors of the Central Bank, particularly that the activity of such credit bureaus shall not be limited to banks, mortgage finance and leasing companies.

Therefore, it is important in our opinion to add a new chapter to Law No. 88 to include a more comprehensive regulation of credit bureaus, taking into consideration the novelty of such bureaus in Egypt. The new regulation should specifically include the following:

- Sufficient protection for the private life of citizens and secrecy of their data.
- Entities from which credit bureaus may seek information about customers and content of this information.
- Entities which can obtain credit information from credit bureaus
- Right of customers to obtain statements containing their recorded data and their right to correct mistakes in the recorded data and determination of the cost thereof and related procedures.
- Events in which the credit bureaus may exchange information with third parties.
- Obligation of the entities demanding credit information to obtain the consent of the customer ordering the service.
- Means of settling the differences between the different entities arising with respect the correctness and accuracy of data.

- Responsibility resulting from the incorrectness of used data.
- Determining the price limits for services furnished by the credit bureaus and price of use of data system among the central bank, banks and other companies.

End of Report

Attachment (1)
Related legal provisions

Article	provision
Article 65	<p>Each bank is obliged to establish a system for the constant and instant registration of the positions of customers obtaining finance or credit facilities. This system shall be connected to the collective information at the Central Bank. The Central Bank may ask any bank to undertake any amendments which might be required to update this system in order to guarantee that the system is including all data of the borrowers' position of his customers. Each bank has to inform the central bank with a statement on the position of each customer obtaining finance or credit facilities.</p>
Article 66	<p>Central bank shall establish a central system for registering the finance and credit facilities balance granted to customers or banks practicing in the Arab Republic of Egypt and also a system for the registration of indebtedness balances of those banks to the outside and the guarantees issued from them to foreign entities. These two system shall keep the necessary information for oversight of credit granted to bank customers and parties related to them and the external indebtedness.</p> <p>The central bank shall also establish a system for registering the financing balances granted from the mortgage and leasing companies for customers. At least every three months, such companies shall submit the necessary data in this regard to the Central Bank.</p> <p>The executive regulations of this law shall determine the contents of the systems and their operation means.</p>
Article 67	<p>Upon receiving information about the financing and credit facilities balances, Central Bank shall prepare an accumulative statement on what has been granted for each customer and also the related parties.</p> <p>Each bank has to inspect the accumulative statement of any customer and his related parties before granting any financing or credit facility with the right of requesting an extract of this statement pursuant to the terms and conditions according to a resolution to be issued by the Central Bank board of directors</p>

- Article 67 repeated (new) Board of directors of the Central Bank may grant the companies consent to offer information services and credit classification related to the indebtedness of the customers of banks, mortgage finance and leasing companies and indebtedness of claimers of credit facilities from goods and services suppliers. Information and credit classification companies must be a joint stock company such that its sole purpose shall be practicing the information and credit classification services, issued and paid capital shall not be less than Egyptian Pounds five million.
Central Bank board of directors shall determine, with a resolution, rules and conditions of procedures of permission and operation system in the company and system of the central bank's overseeing over them.
- Article 97 All customers' accounts, deposits, trusts and treasuries at banks and all dealings related to them shall remain secret and shall not be inspected or giving any data directly or indirectly unless by a written consent from the holder of the account, trust or treasury or from any of his inheritors or legatees with part or whole of those monies or from the legal attorney or mandated attorney in this regard or pursuant to a court decision or an arbitral award.
Prohibition mentioned in the aforementioned paragraph shall apply on all individuals and entities including the entities having the legal permission of inspecting and obtaining the papers or information enjoying secrecy protection pursuant to this law. This prohibition shall continue even if the relation between the customer and the bank was terminated for any reason.
- Article 99 (amended) Central Bank and banks shall exchange data and information related to the indebtedness of customers and credit facilities granted to them also these data and information shall be exchanged with mortgage finance and leasing companies and information and credit classification companies. Central Bank board of directors shall set rules regulating such exchange guaranteeing data and information secrecy insuring furnishing enough thereof for securing the credit granting.
It shall also set rules to be followed for preparing the full inspection report for banks in order to sale the whole shares or part thereof or their merge.
- Article 100 (amended) Chairmen and board members of the banks and the information and credit classification, their managers or employees all are prohibited from giving or disclosing any data or information about customers, their accounts, deposit, trusts, their safe boxes or dealing therein or make them available and accessible by third parties other than in the authorized cases pursuant to the provisions of this law.
This prohibition shall apply to any inspecting person because of his

profession, work or position directly or indirectly for the aforementioned data and information.

- Article 101 Articles 97 and 100 of this law shall not provoke the following:
(amended)
- (a) Legal duty of the bank auditors and authorities granted to the Central Bank.
 - (b) Right of the bank in issuing a certificate determining the reasons of refusing the payment of a check upon the request of one of his customers.
 - (c) Right of the bank in disclosing part of or all of the available data in case of the existence of any dispute with that customer concerning these information.
 - (d) As per what has been provided in the laws and provisions of the law of contending money wash.
 - (e) Data and information furnished by the information and credit classification companies. Pursuant to the rules set by the board of the central bank.
- Article 123 A fine of not less than Egyptian Pounds ten thousand and not exceeding
Second Egyptian pounds one hundred thousand shall be imposed on any party
paragraph committing fraud or deceit in submitting the information and credit
(new) rating service despite of issuing a court decision for the payment of a sum equivalent to what was not paid of the granted credit because of the committed fraud or deceit.