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Fintech 2023

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Egypt: Trends & Developments

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Trends and Developments

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Fintech Legal Framework, Trends and Issues in Egypt

Overview

Despite fintech being in the market practice for some time, initiatives by the Egyptian regulatory bodies and legislation concerning the matter are rather recent developments. In this regard, fintech is perceived as an advanced and disruptive financial technology tool that is used to promote and achieve economic growth.

Commerce and banking practices have evolved drastically during the past decade due to market and global digital economy transformation needs, in addition to the increase in demand for online services. The fintech, banking and e-commerce segments often interplay and are deemed the driving forces for one another, especially in the digital and technology economy markets.

Initially, banking practices in Egypt used and developed a number of e-banking products, such as internet banking, mobile banking and e-payments. Banking Law No 88 of 2003 (the “Old Banking Law”) did not address or create a particular legal regime for e-banking solutions or products. In this context, banks tended to use these e-banking products and their underlying technology on the basis of written agreements with customers.

Contrastingly, Egypt promulgated the Telecommunications Regulations Law No 10 of 2003 (the “Telecommunications Law”) and the E-signature Law No 15 of 2004 (the “E-Signature Law”) and its executive regulations issued by ministerial decree No. 109 of 2005, as amended (the “E-Sig-

nature Law Executive Regulations”). These two pieces of legislation respectively earmarked the enablement of the digital economy and recognised the evidentiary value of electronic documents and signature, thereby seeding growth in the e-commerce and digital market, and ultimately paving the way for fintech advancement in the Egyptian economy.

As part of efforts to tame the ongoing challenges and reinforce the digital transformation strategy, Egypt also issued a number of important pieces of legislation in the information technology field, such as the Cybercrimes Law No 175/2018 on combating information technology crimes and its executive regulations (the “Cybercrimes Law”), the Non-Cash Payment Means Law No 18 of 2019 (the “Non-Cash Law”) and the Data Protection Law No 151 of 2020 (DPL).

The ongoing worldwide challenges, such as the COVID-19 pandemic and political turmoil, have placed particular pressure on governments globally to integrate and create a legislative landscape for fintech in order to reinforce and sustain economic stability. Considering these challenges, by contrast to the local market needs, Egypt has recently furthered and introduced new legislative and regulatory reforms aiming to deal with the fintech industry, trends and challenges.

Legislative and regulatory framework

Several pieces of legislation come into play regarding fintech in Egypt, such as the Telecommunications Law, the E-Signature Law, the DPL and the Cybersecurity Law. As a step towards creating a clear fintech framework, Egypt opted

for two main laws in connection with the fintech market and activities:

- the New Banking Law No 194 of 2020 (the “New Banking Law”); and
- the Non-Banking Activities Fintech Law No 5 of 2022 (The “Fintech Law”).

This distinction is important as it separates the regulatory framework applicable to fintech from both a banking and a non-banking perspective.

Banking activities

Banking activities are initially dealt with under the New Banking Law and the Commerce Law No 17 of 1999, as amended (the “Commerce Law”). The Commerce Law provides for a number of operations that are considered banking activities where a banking institution concludes operations with its customers, whether those customers are merchants or not. These operations include account opening, taking monetary and instrument s deposits, leasing safes, extending overdraft facilities, pledging securities, bank transfers, documentary credit and letters of guarantee.

In retrospect, banking activities are further defined under the New Banking Law as “any activity that entails primarily and regularly accepting deposits, obtaining finance and investing these funds in providing finance, credit facilities or contributing in the share capital of companies, and every other activity deemed banking activities under the banking customs.” The definition under the New Banking Law is broad enough to encompass other types of activities, such as opening accounts, money remittances, payment services and granting loans (“Banking Activities”). These Banking Activities are supervised and regulated by the Central Bank of Egypt (CBE).

The New Banking Law has opted for a generic definition of fintech as “business, application, or financial products which are built on using technology” (“Banking Fintech Activities”). Therefore, Banking Fintech Activities encompasses e-payment, e-financing, cryptocurrency, digital banking, e-money and electronic certification, among others.

The New Banking Law requires a CBE permit before Banking Fintech Activities can be carried out. Failure to obtain the requisite CBE permit would expose the committer to imprisonment and a monetary fine. The New Banking Law also established the evidentiary value of digital means used in Banking Fintech Activities – as long as the relevant activity is undertaken in compliance with the CBE requirements in this respect. These requirements are currently awaited to be issued by the CBE's board of directors.

The other regulatory requirements and procedures required to carry out Banking Fintech Activities would be provided by way of the CBE board of directors' decisions, which are also yet to be issued.

Non-banking activities

Non-banking financial services are those provided by a licensed non-banking financial institution in the field of capital markets, securitisation, venture capital, financial leasing, factoring, real estate finance, consumer finance, micro-finance, investment funds and brokerage services in financial securities (“Non-Banking Financial Activities”). These activities are regulated and supervised by the Financial Market Authority (FRA).

The Fintech Law regulates Non-Banking Financial Activities using Financial Technology (“Non-Banking Fintech Activities”). “Financial

Technology” is defined as “a mechanism that uses modern and innovative technology in the non-banking financial sector to support and facilitate financial activities and services, in addition to financing and insurance activities and services through applications, programs, digital platforms, artificial intelligence or electronic records.” Non-Banking Fintech Activities encompass the use of a number of technology activities, such as digital platforms, digital applications, blockchain, digital contract and digital ID. In this regard, Non-Banking Fintech Activities generally require the prior issuance of one of the following permits or licences from the FRA.

- Fintech Permit: these could be granted directly to companies already licensed from the FRA to carry out Non-Banking Financial Activities or through concluding an outsourcing agreement with a technology services provider that is registered with the FRA. In addition to the FRA licence for Non-Banking Financial Activities, obtaining the FRA Fintech permit would necessitate meeting the following conditions:
 - (a) the applicant possesses the necessary information technology systems and security equipment in accordance with the FRA board requirements;
 - (b) the applicant is not in breach of the law regulating its activity; and
 - (c) the necessary fees have been paid, which will be equivalent to half of the licence fee.
- Fintech Licence: by contrast, a licence to undertake Non-Banking Fintech Activities will require that the applicant company only carries out the licensed activities to establish clear shareholding structure depicting the direct and indirect ownership interests and the concerned parties thereto, and that it is equipped with the proper technology infra-

structure and security means to carry out these activities pursuant to the FRA board requirements in this respect.

- Compliance: in addition to the regulatory compliance requirements applicable to Non-Banking Financial Activities pursuant to the Capital Markets Law No 95 of 1992 (“Capital Markets Law”), the Fintech Law further refers to a number of general compliance requirements specifically for companies carrying out Non-Banking Fintech Activities, which are to be decided by the FRA board. These requirements include:
 - (a) the conditions that should be met in the corporate structure and necessary professional expertise of the managers of the entity;
 - (b) the criteria and features of technology applications used in the activity;
 - (c) technology equipment and security means;
 - (d) corporate governance and disclosures; and
 - (e) anti-money laundering and anti-terrorism requirements (observing the anti-money laundering and anti-terrorism unit instructions in this respect).
- FRA sandbox: the Fintech Law enables the FRA to issue a temporary licence for start-ups in Non-Banking Fintech Activities for -up to two- years, to enable start-ups to test their fintech with real consumers under the supervision of the FRA.
- Contract requirements: in addition to the requirements set forth in the Capital Markets Law (as applicable), the Fintech Law has specified a number of terms that should be included in contracts concluded between Non-Banking Fintech Activities service providers and their customers. These terms include:

- (a) detailed information of the parties in the contract;
- (b) the amount of the facility;
- (c) the duration of settlement;
- (d) the number, amount and conditions of the instalments;
- (e) the applicable interest rate; and
- (f) the guarantees obtained by the financing entity.

- Digital contracts: e-contracts were originally introduced under the E-Signature Law, which recognised e-signatures and established the evidence standard for electronic contracts to produce legal effects in civil, commercial and administrative dealerships. The Fintech Law, by contrast, has provided that the FRA board will issue the relevant regulations in connection with verifying the digital ID and digital contracts requirements for Non-Banking Fintech Activities service providers. These decisions are yet to be issued.
- Blockchain: the FRA board of directors is empowered to set out the criteria to create, license and regulate digital ledger technology (blockchain) and the means to secure and verify data on this ledger.

Trends

Egypt is considered to be one of the top four countries in Africa with a vigorous fintech market due to the fact that a high percentage of the population resides in unbanked areas and resorts to mobile and internet subscriptions, thus increasing the need for the fintech market.

As a result, the CBE has declared that fintech is one of the quickest-growing industries in Egypt, having recorded two start-ups in 2014, and 112 fintech start-ups and fintech-related businesses in 2021. What once started in the Egyptian market as a simple application to pay one's bills has now evolved into an industry that enables

consumers to pay bills, transfer payments (both governmental and private), purchase in instalments, and even invest in the stock market. Subsequently, opportunities are available for many fintech start-ups, investments, incubators and venture capitalists.

However, the accelerated and expedited development and increasing level of competitiveness have made the need for, and the importance of, fintech supervision, regulation and legislation even more intense.

By virtue of Presidential Decree No 89 of 2017, the President created the National Payments Council (NPC), which would take over the development and promotion of fintech, enabling the financial inclusion of those living in remote and unbanked areas, and setting the legal framework within which the fintech industry would operate. In 2019, the Egyptian government announced its intentions to not only help develop the fintech industry within Egypt but also to become a regional hub for the industry by the year 2030. Said intention, backed by innovation, was reflected by the CBE announcing its innovation and development strategy in 2019.

According to the trends during the past year, Egypt's leading type of fintech service was "Payments and Remittance", which is payments or transfers done electronically, usually across borders. Another main sub-sector of fintech is "Lending and Alternative Financing", which are non-banking methods of lending, creating lines of credit, or any other method of non-banking financing.

Furthermore, Buy Now Pay Later (BNPL) is a service provided by specific online platforms through which people can purchase items and pay for them in instalments through the platform.

In some cases, said platform may require licensing from the FRA if the instalments are divided over six months or more, as this falls under the umbrella of consumer finance and interest may be implemented; other platforms do not require licences from the FRA as the instalments are up to six months only, with no interest but merely transaction fees.

A new type of non-banking service has emerged recently: the rotating savings and credit association (ROSCA). ROSCAs are formed when a group of people get together and agree to pay a monthly fixed instalment of a specific value; at the end of each month, they will have raised a predetermined amount equaling the number of participants, and one of the participants will receive said amount per month. This process will be repeated every month until each of the participants has received said amount. It is worth noting that the principle of a ROSCA in itself is not new, having been used and applied in Egypt for decades. However, applying ROSCA through fintech means is quite new.

The most hyped type of fintech service nowadays is the instant payment network (IPN), which enables desktop and mobile real-time quick financial transfers and direct access to all accounts. The CBE itself has launched such a service under an application named “InstaPay”.

Issues

Slow advancement and integration of technology

Perhaps one of the main issues in advancing fintech is the relatively slow digital transformation in Egypt. Although the Egyptian government has adopted many initiatives in past years to support the tech industry, the information technology sector still requires significant progression to achieve the aimed-for digital transformation

and integration with the digital private sector, especially on a governmental level.

Feeble data protection application

The data protection issue is at the heart of fintech and technology advancement. Although the DPL was promulgated in 2020, the procedural and practical aspects pertaining to data protection are still not yet been effectuated. This is primarily due to the absence of the DPL executive regulations to date and the non-establishment of the data protection centre (DPC), which is the authority to license and oversee data collection and processing activities, in addition to the absence of supporting FRA decisions dealing with data protection requirements in Non-Banking Fintech Activities to date.

It is noteworthy that the DPL applies to the collection and processing of personal data digitally, while excluding certain activities, such as banking, media and journalism. The Non-Banking Fintech Activities do not generally fall within the excluded activities under the DPL. However, Banking Fintech Activities are therefore subject to the customer secrecy standards under the New Banking Law and decisions of the CBE board yet to be issued in this respect.

In addition to the DPL, the Fintech Law also provides obligations for Non-Banking Fintech Activities service providers towards end-customers. The end-customers' information should be kept confidential and not be disclosed to any third party, except with the customer's prior written consent (whether physically or through digital means).

Still, the extent of protection and application relating to data protection in fintech is not clear, making it quite feeble in practice.

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Lack of regulatory decisions

Fintech is a regulated activity and its implementation would heavily rely on regulatory decisions to specify the relevant requirements and procedures to carry out fintech activities. To date, no regulations have been issued by the CBE or the FRA in connection with fintech applications in the respective sectors (banking or non-banking activities). This makes the application and regulatory framework for fintech unclear in practice.

Consumer protection

Consumer protection in the information technology field is generally regulated under the Telecommunications Law and also interjects with the Consumer Protection Law No 181 of 2018 (the “Consumer Protection Law”). In this respect, users’ complaints regarding information technology services are generally reported to the national telecommunications regulatory authority (NTRA).

On the other hand, consumer protection in Banking Activities is subjected to the New Banking Law and CBE supervision. However, consumer protection under the Fintech Law remains unclear with respect to the means of reporting breaches of consumer protection rights. So, the question here is whether consumer protection under the Fintech Law will have a special reporting and procedural framework or whether it will be referred to other laws regulating Non-Banking Financial Activities (such as consumer financing, leasing, factoring and real estate finance).

Data security

In addition to data protection, data security is also pivotal in fintech applications. The Fintech Law and the New Banking Law require respective licensed service providers to protect customers’ data, and to ensure the implementation of adequate security measures. However,

the exact security measures and criteria to be implemented by the service providers in these fields have not yet been promulgated. While the Cybercrimes Law broadly incriminates a number of acts regarding the invasion of data privacy and systems, having specific regulations in place dealing with security issues in the fintech field will assure the enforcement of data security measures.

Regulatory compliance scheme

The fintech sector was not regulated before the issuance of the New Banking Law and the Fintech Law, despite a multitude of players already being active in such field.

Both pieces of legislation, respectively, addressed issues such as the incorporation of fintech companies, the licensing and approvals to be granted by the CBE and the FRA, and the maintenance of said approvals. However, issues pertaining to practices remain untackled.

By way of example, one of the FRA’s licensing requirements for fintech companies is that they should have the necessary technical and technological know-how and expertise, as well as security standards, for the operation of a fintech company. Such technical and technological know-how remains undefined, despite the law stating that such standards shall be issued by the FRA. Additionally, the New Banking Law has charged the CBE with setting the standards that are to be applied to banking applications that would enable consumers to access their bank accounts remotely. These standards have not yet been issued.

In a report issued by the CBE, interviewees stated that the confusion surrounding the legislation is a challenge to be surmounted, and that

endorsement for regulatory compliance is well sought after.

Despite the fintech sector being operational for years in Egypt, and more and more players joining the market, both privately and government-owned, the legislation regulating and organising the industry still leaves something to be desired.

Limited expertise and social awareness

It is noteworthy that some fintech companies, banks or other fintech service and product providers do not have adequate or proper mobile banking service, due to limited expertise and technical know-how. As stated above, even though the laws oblige fintech companies to maintain a certain standard of technological know-how and specific standards for mobile banking apps, these standards have not been issued, by either the FRA or the CBE. An initiative, as elaborated below, by the CBE is currently underway to combat the lack of technical expertise among fintech companies.

In addition, the majority of the Egyptian population remains without bank accounts and is completely unaware of the importance thereof. This is one of the issues the government hopes to combat with fintech, regardless of the population being unbanked or living too far from brick-and-mortar branches. The most popular methods of financial transfer among the unbanked segment of the population are postal transfer through the Egyptian postal service, or transfer through services provided by telecommunication companies. However, in recent years awareness about fintech is starting to gradually improve.

The COVID-19 pandemic has aided the fintech sector to thrive in recent years, with the rising demand for contactless cash transfers and payments propelling the financial industry into

a highly inventive, ever-evolving business. This has made it necessary to pinpoint the major fintech trends that would change the industry and bring Egypt's citizens even more innovation and ease.

An additional reason for the increased general awareness of fintech is the fact that governmental services can now be paid for through online payments, as a result of the Decree issued by the Ministry of Finance. Fees like traffic fines and vehicle registration renewals can also be paid for and handled through one of the fintech companies, or through the designated official websites. Utilities can also now be paid for through one of the major fintech service providers. The list goes on.

Awareness of fintech and fintech service providers is growing, not only increasing the demand for fintech from a consumer's perspective but also creating more and more opportunities for investment, technological advancement and labour force attributes. As a result, the need for proper, precise and coherent legislation dealing with the current shortcomings will become stronger as time goes by.

Anti-money laundering (AML)

AML in fintech has several risk mitigation requirements, and fintech AML compliance holds the same importance as compliance in conventional financial institutions. In this respect, fintech is considered to be one of the fastest-growing industries rising at a meteoric rate in terms of technology, usability and revenues.

The fintech methods are extremely fast and huge in capacity, leading to money launderers exploiting the fintech platforms while keeping pace with technological advancement. For instance, fintech payments are fully remote over the internet.

In this regard, financial miscreants leverage the virtual nature of the payments, take advantage of its anonymity, and conceal their identities to perform high-level frauds linked to identity thefts.

Digital currency

Pursuant to the New Banking Law, the trading, issuing and promoting of cryptocurrencies is prohibited without a licence to do so, according to the standards issued by the CBE. In contradiction thereto, in 2022 the CBE issued a fresh warning that cryptocurrencies are prohibited and are not backed by any governmental authority, due to e-piracy, high volatility and its use in financial crimes. Despite this, some people remain optimistic that one day it will be permissible within Egypt. For instance, media sources have stated that, back in 2019, approximately 1.7 million Egyptians held cryptocurrencies in offshore accounts.

Recent developments: CBE initiative

In compliance with the general policy of the Egyptian government to attract investments towards Egypt, the New Banking Law has charged the CBE with aiding the development of the fintech sector. The NPC is also currently working in co-ordination with the CBE to help develop and expand the fintech industry.

Accordingly, the CBE has announced its intention to make Egypt a recognised fintech hub in the Arab World and in Africa. To that effect, the CBE has launched a platform called the “FinTech Hub”, which is a unified platform meant to connect all fintech players, including start-ups, financial institutions, regulators and service providers. It is a one-stop shop that enables the collaboration of fintech start-ups, mentors, service providers and financial institutions. It would also serve as a connection between fintech start-ups and potential investors.

The CBE has also launched a virtual regulatory space called “Fintech Sandbox”, by virtue of which start-ups would be able to test their innovative applications in a live environment under the guidance and supervision of the CBE.

The CBE has also launched two programmes, called “FinTech Academy” and “FinTech Academy”. The first is launched in collaboration with universities, banks and the Egyptian Banking Institute, in order to educate younger generations about financial technology, and aims to scout new talent. The “FinTech Academy” aims to equip bankers, entrepreneurs and developers with the necessary knowledge about emerging technologies and how they could be used in fintech start-ups.

Finally, the CBE is considering launching an investment fund with a capital of approximately EGP3 billion. Said fund is meant to increase investment in the fintech sector, activate fintech in Egypt, and enable the transformation of Egypt into a regional hub for the fintech industry.

It is safe to say that, even though the legislative front is lacking, the CBE has taken the task of making Egypt a fintech hub to heart, and is working hard to educate the general public, including consumers, entrepreneurs and investors on fintech, its importance and its huge potential.

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Shehata & Partners was founded in 1996 and seeks to provide unique legal services that cater to the business needs of corporate entities doing business in Egypt. Its core mission is to provide the most trusted and effective legal advice on both dispute resolution and corpo-

rate law in Egypt. The firm is results-driven and delivers exceptional services to clients across various practice areas and multiple industries. It continues to achieve the highest client satisfaction rates in the region due to the meticulous implementation of its client-centric approach.

Authors



Ibrahim Shehata has a decade of experience within the Egyptian market. He started his career with Ibrachy & Dermarkar law firm, before joining Sharkawy & Sarhan law firm. He then moved to the US to earn his Master of Laws degree in International Arbitration and Venture Capital from New York University. Shehata started off his career focusing on corporate law, successfully advising several multinational companies on doing business in Egypt. He has been recognised in recent years as one of the key players in the entrepreneurial ecosystem through working with more than 40 start-ups. In this regard, Shehata has helped both start-ups and venture capital firms to navigate the legal issues that always arise in this specific realm, guiding them to be more investment-ready.



Nevine El-Shafei joined Shehata & Partners as a partner in 2022 and is a diversified lawyer with more than 15 years of experience in the corporate, banking, finance and business fields. Her practice focuses on corporate, commercial, TMT and pre-contentious matters. Nevine previously worked both in-house and in private practice in Egypt, Qatar and across the MENA Region. She has extensive experience within the banking and finance sectors, and has advised on a broad range of complex transactional and cross-border files; she also has substantial experience in telecommunications and real estate.



Dina El-Saiedi recently joined Shehata & Partners. She has been involved with several key start-up accounts, and has been able to provide a business-mindset approach when advising Egyptian start-ups. Dina previously interned in several top-tier law firms in Egypt, and has proved to be an integral member of Shehata & Partners through having a keen eye on legal developments within the Egyptian legal field.

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