Fintech law: a step towards financial inclusion

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Financial inclusion has been set as one of the priorities of ‘Egypt 2030’ vision launched in 2016. Since then, government’s initiatives towards financial inclusion are perceptible. These initiatives were led by the Central Bank of Egypt despite absence of comprehensive legal framework for few years, save for few regulations pertaining to mobile money operations, payment aggregators and facilitators. The role technology is contributing to financial inclusion and how it serves democratizing access to financial services was legislatively recognized by Law No. 194 of 2020 on the Central Bank and Banking System (the “**Banking Law**”).

The Banking Law was the first to address FinTech companies and mandated that a license must be obtained from the Central Bank of Egypt for FinTech companies that intend to provide tech-based banking or financial services. Nevertheless, the Banking Law has not provided sufficient details pertaining to the requirements that such FinTech companies should satisfy referring that to subsequent decisions of the board of the Central Bank, which have not yet seen the light.

Another important milestone towards the inarticulate legal framework of FinTech is the current draft bill addressing tech-based companies and startups engaging in the provision of non-banking financial services (“**NBFS**”). Although this might be seen as an essential pillar in achieving the Egypt Government’s economic expansion plan driven by a comprehensive financial inclusion and digital transformation, but the bill, although long awaited, has fallen short of expectations.

Certain aspects of the FinTech bill

The FinTech draft bill addresses existing licensed companies as well as new players and startups wishing to engage in tech based NBFS products. The law authorizes the Financial Regulatory Authority, being the regulator of NBFS, to be competent regulator for the purposes of licensing and overseeing the FinTech companies subject of said law. Offering tech based NBFS in Egypt whether directly or on cross boarder basis is restricted without the license of the FRA.

FinTech is defined by the draft bill as “*a mechanism that uses modern and innovative technology in the non-banking financial sector to support and facilitate financial services and insurance activities through applications, programs, digital platforms, artificial intelligence or electronic records”.* Recognition of robo-advisory, nano-finance, insur-tech and consumer-tech applications is a step forward. However, it is not clear how such applications are to operate. The draft bill stipulates certain high level requirements that apply to all NBFS FinTech applying for the FRA license. Distinction between the type of the NBFS being provided is not drawn assuming that specific requirements would be determined by the FRA from time to time.

The license requirements further mandate specific conditions to be met, which include most importantly, that the activities of the licensed company are restricted to those approved by the FRA, such that no other business object may be undertaken in parallel. Also, the ownership structure, including indirect ownership as well as the identity of such parties related to the licensee, must be fully disclosed to the FRA, enhancing the concept of transparency. Existing licensed NBFS wishing to offer their products using FinTech platforms can do so directly or through licensed outsourcing entities subject to additional few requirements.

The draft bill has followed the route of the Banking Law with respect to uplifting certain licensing requirements for startups applying for FinTech license subject to the discretion of the FRA. Such special treatment of startups includes waiver of payment of the EGP 50,000 license fee. The FRA is further authorized to issue a temporary license to startups engaging in FinTech NBFS for a period not exceeding two years in order to allow a chance to startups to serve its customers without prejudicing the overall performance of the NBFS industry performance.

Licensing of Outsourcing Services

Article 6 of the draft bill stipulates that certain outsourcing services as may be determined by the board of the FRA can be provided by entities that are licensed as such by the FRA. Outsourcing services are defined by the bill as “*services assigned by licensed FinTech companies providing non-banking financial services to a third party to undertake certain functions or activities on its behalf.*” Given the broad definition of such services, it is not clear whether those would include functions related to software development, data analytics or the like.

Software solution companies dealing with FinTech NBFS could be qualified as outsourcing entities, in which case, an FRA license along with registration with the relevant register would be required for FinTech companies to engage their services. This might entail that majority of software solution providers would fall subject to the provisions of the FinTech draft bill.

Intervention Right of the Regulator

The draft bill grants the FRA broad powers in applying measures against FinTech companies that: (i) fail to observe the provision of the law, FRA regulations or such other licensing requirements; or (ii) do an action or an omission that may prejudice market stability or could be detrimental to their stakeholders or customers. Such measures include revocation of the license, suspension of activities or entry into new contract for up to six months and, most importantly, dismissing the board of the relevant company and appointing a temporary designee to oversee the activities for up to twelve months.

On another front, certain penalties are stipulated by the bill with respect to undertaking tech based NBFS without a license or violating any of the obligations imposed by the law. Such penalties include imprisonment as well as monetary penalties. Such penalties may, in parallel, be imposed on the person responsible for the actual management of the company where such person was aware of the violation or the violation resulted from breach of the duties of such person.

Conclusion

Although not fully comprehensive, but the bill is a significant step to recognizing and providing a clear legal framework for the operation of FinTech NBFS providers.

It is crucial in our view that, the FRA expedites the issuance of necessary directives once the law is promulgated in order to shed more light on the requirements and operation of various provisions of the law.

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