

Kuwait's Fintech Regulation: A work in progress

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Over the past several years, new technology focused on the financial services industry has revolutionized the way banks and other financial services institutions have conducted their businesses. Commonly referred to as “Fintech”, these new technology services and products have an aim at improving the financial services industry, including in the areas of lending, money management, investing and data aggregation. Fintech has proven over time to increase efficiency in the financial services industry by allowing for more accessibility of products and services, reduced costs, convenience and speed of delivery. Like many regulators around the world, the Central Bank of Kuwait (the “**CBK**”) has sought to balance the importance of harnessing and encouraging the growth of technology in the financial services space, while remaining true to its mandate to protect the Kuwait financial and banking sector by implementing appropriate policies and regulations.

While Kuwait has not been as quick as some of its sister Gulf Cooperation Council (“**GCC**”) neighbors on adapting to the ever growing fintech environment, the CBK has implementing several key initiatives, policies and regulations with purpose of encouraging and fostering growth of fintech in Kuwait. In addition to providing for a dedicated Fintech Unit in recognition that fintech has become the number one driver of change in Kuwait’s banking sector, Kuwait has taken several concrete steps in regulating fintech. Most notably Kuwait, (i) like the United Arab Emirates and Bahrain, has introduced a Regulatory Sandbox Framework (the “**Framework**”) designed to encourage fintech growth enable banking systems to test new technologies and (ii) issued CBK Resolution No. 44/430 of 2018 to regulate the e-payment activity in the State of Kuwait (the “**E-Payment Regulation**”).

Regulatory Sandbox Framework

Recognizing the ever-growing importance of financial technology to the financial sector, the Framework temporarily exempts participants from certain regulatory or licensing requirements in order to adopt and promote innovation in the Kuwait financial sector. The Framework is aimed at companies and individuals that provide financial products or services that are based on, or relate to, electronic payment of funds by using new or innovatively applied technology.

An applicant approved to participate by the CBK in the Framework has one year to complete a four stage process. The first stage of the process is the application stage. During the application stage the participant must show the CBK that the product or service meets the eligibility criteria. Specifically, an applicant must show (i) that the service or product is to be launched in the local market, (ii) that the service or product does not contravene the laws and regulations of Kuwait, (iii) that the service or product has a benefit to both the customer and the market and (iv) the service or product must be in an advance enough development position to test.

The second stage is what the CBK is calling the evaluation stage. During this stage, the applicant will be thoroughly evaluated from all technical, security and regulatory aspects relating to the service or product. The third stage is the experimental stage where in collaboration with the CBK the applicant initiates a technical, safety and operational testing of the proposed service or product in a controlled environment. Among other things, testing will include measuring the level of compliance of the product or service with

existing CBK regulations, verifying that security measures are embedded within the proposed product or service and that confidentiality and privacy standards are of the customer are maintained. The final stage is the accreditation stage. It is at the accreditation stage that the CBK will grant their initial approval or reject it for the proposed product or service.

E-Payment Regulation - Resolution No. 44/430 of 2018

Pursuant to the E-Payment Regulation, the CBK maintains a registry of those businesses engaged in the activity of electronic payment of funds in the State of Kuwait. In order to engage in such activity, the guidelines mandate that Electronic Payment Infrastructure Providers and Electronic Payment Agents are registered and licensed with the CBK. Electronic Payment Infrastructure Providers or “EPIP” is defined as any financial institution with the status of a shareholding company that is included in the register to perform all or part of the operations of electronic payment and settlement systems.

Electronic Payment Agents or (“EPA”) is defined as any financial institution that is any financial institution with the form of a shareholding company that is included in the registry of the CBK to practice all or part of the activities of the EPIP. Generally, the role of the EPIP is performed by the Kuwait local banks who generally play the role of sponsor of the EPA. The EPIP is tasked with performing the submission on behalf of the EPA and setting up systems to monitor the activities of the EPA to ensure that it complies with the E-Payment Regulation. The E-Payment Regulation stipulates a paid up minimum capital requirement for a EPIP of 1 million Kuwait Dinars and a paid up minimum capital requirement of an EPA of 20,000 Kuwait Dinars. Amongst other things, the registration application submitted to the CBK includes, submission of a Letter of Guarantee to the CBK of the amount of 100,000 Kuwait Dinars, copies of the constitutional documents of the applicant and a three year business plan for the company. EPIPs and EPAs shall comply with the specific requirements of carrying out the activity services and the handling of confidential information as spelled out in the E-Payment Regulation.

Crypto Currencies

Although the CBK has shown a great willingness to promote Fintech, the CBK has not taken that enthusiasm across all fintech related products and services. In a recent press release, the CBK stated:

“Fintech innovations have increased access and convenience to financial services and transaction, but are accompanied by risks of which they must be aware. This vigilance is especially crucial as social media, and similar unregulated channels, are used to advertise and market high-risk transactions.”

The CBK has cautioned against dealing in crypto-assets, specifically referencing the fact that crypto currencies are not regulated or supervised by any authority in Kuwait, and as such, could lead to major losses for “speculators and increased risk of fraud.”

Conclusion

The regulators in Kuwait recognize the impact of Fintech on the financial services sector. This recognition coupled with the a desire to encourage growth in technology in the financial services space has lead the Central Bank of Kuwait to introduce the Regulatory Sandbox Framework and the E-Payment Regulation. That being said, Kuwaiti regulators remain cautious about certain Fintech products and services and the

risks associated with them. Consequently, the Kuwait regulatory environment in the Fintech space has been slower to develop than some of its GCC neighbors.

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