

Financial Services Compliance 2021

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Financial Services Compliance 2021

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Lexology Getting The Deal Through is delighted to publish the fourth edition of *Financial Services Compliance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Egypt, Indonesia, Ireland and Italy.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Zachary J Zweihorn of Davis Polk & Wardwell LLP, for his assistance with this volume.



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REGULATORY FRAMEWORK

Regulatory authorities

1 | What national authorities regulate the provision of financial products and services?

According to Banking Law No. 194 for 2020 (the Banking Law) and Law No. 10 for 2009 regarding the Supervision on Non-Banking Financial Markets and Instruments, the Central Bank of Egypt (CBE) regulates all banking and monetary activities, whereas the Financial Regulatory Authority (FRA) regulates all non-banking financial products and services.

2 | What activities does each national financial services authority regulate?

The CBE regulates the following activities:

- acceptance of deposits;
- extending loans and credit facilities;
- other activities that are considered banking activities based on banking custom;
- foreign currency exchange;
- money transfer;
- credit reporting and rating;
- credit guarantee; and
- payment systems and services.

The non-banking financial activities regulated by the FRA are:

- capital market activities (eg, clearance and settlement in securities transactions, creation and management of securities portfolios and investment funds and securities brokerage);
- custodian activity;
- mortgage finance;
- financial leasing;
- microfinance;
- insurance;
- private insurance funds;
- governmental insurance funds;
- factoring; and
- consumer finance.

3 | What products does each national financial services authority regulate?

The CBE regulates:

- banknote;
- e-money;
- deposits;
- certificates;

- treasury bonds;
- treasury bills; and
- repos.

The FRA regulates:

- securities (eg, shares, bonds and financing instruments);
- investment funds; and
- contracts related to insurance, consumer finance, financial leasing, factoring and mortgage finance.

Authorisation regime

4 | What is the registration or authorisation regime applicable to financial services firms and authorised individuals associated with those firms? When is registration or authorisation necessary, and how is it effected?

According to the Banking Law, any individual or legal entity shall not carry on any banking activities without being licensed by and registered with the CBE. The CBE's board of directors may grant preliminary approval to carry on any regulated banking activities when certain conditions are fulfilled. The licence request together with all required documents are submitted to the CBE's governor and the board of directors decides on the acceptance or rejection of the request.

Also, the credit reporting and rating companies, bureaux de change and money transfer companies are not allowed to carry on their respective activities without being licensed by the CBE.

Further, all regulated non-banking financial services cannot be performed without obtaining a prior licence from the FRA; conditions to be fulfilled and required documents vary depending on the performed activity.

Legislation

5 | What statute or other legal basis is the source of each regulatory authority's jurisdiction?

The Banking Law is the basis of the CBE's jurisdiction in respect of banking and monetary activities regulated thereunder.

With regards to non-banking financial services, several laws are the source of the FRA's jurisdiction, mainly Law No. 10 for 2009 regarding the Supervision on Non-Banking Financial Markets and Instruments, as well as Capital Market Law No. 95 for 1992, Mortgage Finance Law No. 148 for 2001, Finance Leasing and Factoring Law No. 176 for 2018 and Consumer Finance Law No. 18 for 2010.

6 | What principal laws and financial service authority rules apply to the activities of financial services firms and their associated persons?

With regards to banking and other financial services regulated under the Banking Law, the regulatory framework mainly derives from the Banking Law and regulations and decisions of the CBE's board of directors.

As for non-banking financial services, a number of laws draw the regulatory framework including, inter alia, Law No. 10 for 2009 regarding the Supervision on Non-Banking Financial Markets and Instruments, Capital Market Law No. 95 for 1992, Mortgage Finance Law No. 148 for 2001, Finance Leasing and Factoring Law No. 176 for 2018 and Consumer Finance Law No. 18 for 2010, in addition to regulations and decisions issued by the FRA.

Scope of regulation

7 | What are the main areas of regulation for each type of regulated financial services provider and product?

Any legal entity performing regulated activities must be licensed by the CBE or the FRA as the case may be. Licence requirements (eg, legal form, minimum capital...) vary depending on the types of performed activities.

For banking activities, the Banking Law provides standards for conduct, such as transparency, compliance with banking custom, protection of customers' rights, as well as rules pertaining to disclosure obligations required to be made to clients and notification obligations required to be made to the CBE of any amendments of the by-laws or any other information. Also, the CBE's board of directors sets rules regarding the control and supervision, liquidity ratios, investments fields, provision of credit facilities that apply to all banks. In addition, banks are required to comply with periodic reporting and confidentiality obligations in respect of their ongoing operations.

For other financial activities regulated under the Banking Law, the CBE's board of directors sets the control and supervision rules that apply to companies performing such activities.

Companies Law No. 159 for 1981 applies to all entities performing regulated activities. Also, Commercial Law No. 17 for 1999 applies to banks in their transactions with clients.

Additional requirements

8 | What additional requirements apply to financial services firms and authorised persons, such as those imposed by self-regulatory bodies, designated professional bodies or other financial services organisations?

The rules and regulations of other professional or self-regulatory bodies may apply to the personnel of companies carrying out regulated activities.

ENFORCEMENT

Investigatory powers

9 | What powers do national financial services authorities have to examine and investigate compliance? What enforcement powers do they have for compliance breaches? How is compliance examined and enforced in practice?

The Central Bank of Egypt (CBE) and the Financial Regulatory Authority (FRA) have the authority to grant their employees law enforcement capacity with regards to any breach of laws or regulations that fall within their respective jurisdiction.

Disciplinary powers

10 | What are the powers of national financial services authorities to discipline or punish infractions? Which other bodies are responsible for criminal enforcement relating to compliance violations?

The CBE is empowered to take disciplinary actions against any bank that breaches or is not in compliance with the rules of the Banking Law or any regulations related thereto, including:

- imposing financial penalties;
- prohibiting, suspending or restricting the bank from carrying on any of the activities or transactions;
- withdraw of licence; and
- dismissal of one or more of the main responsible managers.

Criminal courts have the competence to enforce all criminal penalties (ie, fines and imprisonment) provided for under the Banking Law.

The FRA also can take disciplinary actions against any breach or non-compliance, such as:

- prohibiting from concluding new contracts for a maximum period of six months for consumer finance, factoring and financial leasing activities;
- withdraw of licence;
- prohibiting from carrying out all or part of the licensed activities for a certain period of time;
- suspending the operation for a maximum period of nine months for mortgage finance companies; and
- dismissal of the board of directors of the breaching company.

Economic courts have jurisdiction for all criminal penalties under the relevant laws regulating non-banking financial services in Egypt.

Tribunals

11 | What tribunals adjudicate financial services criminal and civil infractions?

The CBE's board of directors decide on the disciplinary actions to be taken against any bank within the list of actions stipulated under the Banking Law. For criminal infractions, the court case is initiated by the Public Prosecutor.

Within its jurisdiction, the FRA has also the power to take enumerated disciplinary actions in the case of any breach as provided for under the relevant laws. The economic courts have the competence for criminal infractions.

Penalties

12 | What are typical sanctions imposed against firms and individuals for violations? Are settlements common?

All laws regulating financial services provides for penal sanctions that vary between fines or imprisonment or both, as the case may be, for any violation. In addition, the Banking Law provides that the court may order the publication of the judgment in newspapers or any other means. Reconciliation is only possible in certain cases.

COMPLIANCE PROGRAMMES

Programme requirements

- 13 | What requirements exist concerning the nature and content of compliance and supervisory programmes for each type of regulated entity?

According to the Banking Law and different laws and regulations governing non-banking financial activities, banks and all other entities performing regulated activities are obliged to have in place internal systems and controls to ensure that they comply with applicable laws and regulations.

Gatekeepers

- 14 | How important are gatekeepers in the regulatory structure?

The Banking Law provides that the first board of directors of any banks must be approved by the Central Bank of Egypt (CBE)'s governor before its appointment. Also, any bank must obtain a prior approval from the CBE's governor before appointing any senior individuals.

Also, the governance rules adopted by the Financial Regulatory Authority (FRA) set certain conditions for the composition of the board of directors for companies carrying out securities activities.

Directors' duties and liability

- 15 | What are the duties of directors and senior managers, and what standard of care applies to the boards of directors and senior managers of financial services firms?

In the banking sector, directors and senior managers are required to perform their duties and responsibilities according to certain principles including:

- compliance with applicable rules and regulations;
- cooperation with full credibility and transparency with the CBE;
- avoidance of conflict of interests;
- information disclosure and transparency when dealing with retail customers; and
- notifying the CBE of any major breach.

The FRA imposes on all companies carrying out any regulated activities to apply certain governance rules that vary from an activity to another, such as putting in place anti-money laundry, anti-terrorism finance, non-conflict of interests and confidentiality and risks management regulations, submitting of periodic reports and protecting customers' and creditors' rights.

- 16 | When are directors and senior managers typically held individually accountable for the activities of financial services firms?

The person in charge of the effective management of any juristic person shall be punished with the same sanctions provided for under the relevant regulating laws if he or she was aware of the punishable act and the violation was committed because of the default on his or her job obligations.

Private rights of action

- 17 | Do private rights of action apply to violations of national financial services authority rules and regulations?

Customers are entitled to file complaints to the FRA in the case of a breach of a regulatory rule or requirement, and the FRA may take the necessary disciplinary actions against the breaching company. Also,

contractual and tort liabilities rules provided for under the Civil Code may apply to compensate any losses.

Standard of care for customers

- 18 | What is the standard of care that applies to each type of financial services firm and authorised person when dealing with retail customers?

Laws and regulations governing banking and non-banking activities in Egypt set several standards of care, such as confidentiality of customers' accounts and information, protection of customers' rights, that each regulated entity shall apply when dealing with retail customers.

- 19 | Does the standard of care differ based on the sophistication of the customer or counterparty?

No.

Rule making

- 20 | How are rules that affect the financial services industry adopted? Is there a consultation process?

Rules that affect the financial services industry in Egypt are adopted through legislation, and decrees and regulations issued by the relevant national regulatory authority.

The process for adopting new legislation that will significantly affect the financial services industry usually include a consultation phase with the stakeholders, experts and dealers within the market of the relevant financial service.

CROSS-BORDER ISSUES

Cross-border regulation

- 21 | How do national financial services authorities approach cross-border issues?

Egyptian law does not regulate cross-border activities, whether within the banking or non-banking sectors. The Banking Law explicitly provides that all banks completing their transactions within Egypt are subject to the provisions thereof, including licensing and registration requirements set out therein. Accordingly, such licensing and registration requirements shall not be triggered if the services are carried out abroad (ie, the relevant transactions are not concluded in Egypt).

The same rule applies to non-banking financial services regulated under Egyptian laws. Any legal entities performing any regulated activities in Egypt must be licensed by the Financial Regulatory Authority.

International standards

- 22 | What role does international standard setting play in the rules and standards implemented in your jurisdiction?

Generally, the Egyptian legislator takes into consideration international laws and standards when drafting any new laws. Egypt always engages with international counterparts and stakeholders to enhance cooperation and share best practice. Also, the Banking Law includes a chapter related to the coordination, cooperation and exchange of information between the Central Bank of Egypt and foreign counterparts.

UPDATE AND TRENDS**Key developments of the past year**

23 | Are there any other current developments or emerging trends that should be noted?

No.

24 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Since March 2020, the Central Bank of Egypt has taken several precautionary measures to offset the impact of covid-19 (eg, cutting interest rates, setting measures to limit cash transactions and facilitate usage of electronic payment methods, deferring all credit dues (credit facilities, loans...) and taking initiative for non-performing companies and individuals).

Also, the Financial Regulatory Authority has taken measures to reduce the impact of covid-19 (eg, activating electronic means to deal with the public and extending insurance payment grace period (from 60 to 30 days, depending on the insurance sector)).

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