

In the past few years, we have seen a global trend towards the digitization of financial services. This trend has also reached Argentina, where the pandemic has shown that this digital transition meets a long-latent need in society, as it notoriously favors financial inclusion, while responding to a new form of consumption.

As defined by the Argentine Chamber of Fintech (“CAF” for its acronym in Spanish), Fintech companies are those of digital origin whose main activity is to provide financial services through the use of technology. They provide a fast, accessible and efficient solution to small daily transactions comprising a large part of society, resulting in a big boost to trade, which is crucial for developing economies.

In some cases, Fintech companies offer products and services that compete with those offered by traditional financial institutions. In others, they offer complementary products, and may even provide services to banks. Some of them offer their customers digital accounts to keep electronic money<sup>1</sup>; allowing under-banked individuals to access countless products and services that otherwise, they would be unable to access. Similarly, they solve the problem of physical distance, as they allow transfers even between entities from different countries.

Nowadays, there are more than 220 companies associated with CAF in Argentina<sup>2</sup>, representing almost 10,000 jobs. Most of them are focused on payment services, loans and Business to Business (B2B) services. Other predominant service areas include valuation or sorting services, crowdfunding and insurance. A Comscore report<sup>3</sup> shows a 200% increase in the use of Uala.com.ar, Brubank.com and Rebanking.com between February and April 2020.

## I. Regulatory Framework

The concept of Fintech involves different “verticals”, i.e. there are different areas of activity related to the management of money in which computer technology is used and that correspond to different businesses and operations that Fintech can develop. Therefore, the risks involved in the Fintech activity will depend on the industry vertical concerned. This poses major challenges for the regulatory authorities, since a general regulation of the industry would most likely be excessive for some businesses and insufficient for others.

That said, it should be clarified that this does not imply that there is no regulation, but that each vertical involved must be in accordance to the regulations of the area in which the activity is developed. Likewise, when new businesses emerge, these by definition will be atypical, which could possibly result in regulation complexities due to the conflicting interests of the areas involved. Tax regulations will also apply, but without necessarily impacting the business as their main goal is simply to collect.

In order to develop an efficient regulation, the basis for such regulation and the different vertical risks involved must be analyzed.<sup>4</sup>

The Argentine financial system is mainly regulated by the Financial Entities’ Act (LEF for its acronym in Spanish), Act No. 21,526. Banks keep deposits made by bank account holders, who then lend, and thus multiply the money. Consequently, the main objective of such regulation is, on the one hand, to protect depositors by reason of the asymmetry of information between them and the bank, and on the other, to ensure the transparency of the banking sector, the liquidity necessary in the event of a bank run, and the control of the supply of money. Financial services are among the most heavily regulated sectors in the world. The LEF regulates which type of financial entities can operate within the local market and make regular

<sup>1</sup> The European Central Bank defines electronic money as an electronic store of monetary value on a technical device that may be widely used for making payments to entities other than the e-money issuer. The device acts as a prepaid bearer instrument which does not necessarily involve bank accounts in transactions.  
[https://www.ecb.europa.eu/stats/money\\_credit\\_banking/electronic\\_money/html/index.en.html](https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html)

<sup>2</sup> [http://camarafintech.com.ar/socios-web/?jet-smart-filters=jet-engine/default&jet\\_paged=4](http://camarafintech.com.ar/socios-web/?jet-smart-filters=jet-engine/default&jet_paged=4)

<sup>3</sup> Comscore Argentina (june 2020). *Panorama de la Banca Digital en Argentina*. <https://www.comscore.com/lat/Prensa-y-Eventos/Presentaciones-y-libros-blancos/2020/Panorama-de-la-Banca-Digital-en-Argentina>

<sup>4</sup> Sturzenegger, F., Liendo, H. A Practitioners Guide to Efficiency and Competition Policies in Banking Based on Argentina’s experience 2015-2019. June 2020, Buenos Aires.

intermediation between the supply and demand for financial resources<sup>5</sup>. As long as a Fintech company does not intend to mediate and regulate publicly between the supply and demand for money, its situation is not the same as that of a financial institution, and therefore it does not have to be subject to the same regulation. In contrast, regulation for Fintech should primarily ensure transparency and consumer protection.

Currently, regulators have an impact on three specific aspects of the Fintech industry: 1) regulation on electronic money: what to do with the money they keep, without being considered deposits; 2) payments: what are the minimum standards for participating in the payment system; and 3) loans: under what conditions a private can lend.

Some other regulations that must be taken into account in the Fintech industry are:

(i) The Credit Cards Act (LTC for its acronym in Spanish) No. 25,065, which regulates credit cards, and by analogy, debit cards and so-called "exclusive purchase cards". Moreover, the LEF regulations also apply to debit card systems and electronic funds transfers.

(ii) The Argentine Central Bank (BCRA for its acronym in Spanish), as the implementing authority of both the LTC and the LEF, has issued several communications regulating aspects of the operations of these businesses. It regulated a number of instruments directly related to electronic instant payment systems, including Immediate Electronic Payments, Immediate Debit, Uniform Virtual Key (CVU for its acronym in Spanish)<sup>6</sup>, and set a standard for payments via fast response codes (QR codes). It also authorized traditional financial institutions to invest and even take control of Fintech subsidiaries whose business consists on providing loans and offering digital payment services, so that they did not lose ground to the latter<sup>7</sup>.

(iii) In mid-2019, the Promotion of the Knowledge Economy Act (LEC for its acronym in Spanish), No. 27,506, was unanimously passed and scheduled to enter into force on January 1, 2020. However, the Ministry of Productive Development decided to suspend its implementation by means of Resolution 30/2020. The government subsequently sent Congress a new bill<sup>8</sup>, which amends the previous one, but maintains "its spirit". The regime aims to promote economic activities that apply the use of knowledge and the digitization of information, supported by advances in science and technology, for the production of goods, the provision of services and/or process improvements. The draft amendment maintains three key benefits: (1) a reduction in the total amount to be paid on Income Tax, (2) a decrease in employer contributions, and (3) exempts LEC subjects from the withholding and export levies covered by the Value Added Tax. It also removes the 10-year fiscal stability clause, and replaces it with one that provides for the stability of benefits for the validity of the regime.

(iv) In all cases, the substantive regulation will also apply, that is, the Civil and Commercial Code (CCCN for its acronym in Spanish), as well as the Consumer Defense Act (LDC for its acronym in Spanish) No. 24,240, the Anti-Money Laundering Act (LLD for its acronym in Spanish) No. 25,246, and the regulations provided by the Financial Information Unit (UIF for its acronym in Spanish) in this regard. Tax regulations will also impact the Fintech business schemes.

(v) With respect to contracts on electronic money systems, they do not coincide with any type of contract regulated by the CCCN. Therefore, Section 970 of the CCCN which regulates atypical contracts will apply, and they will be governed by (i) the will of the parties, (ii) the general rules on contracts and obligations, (iii) the uses and practices of the place of conclusion, and (iv) the provisions corresponding to typical contracts which are compatible and in line with their purpose.

## **II. Challenges to face**

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<sup>5</sup> This given that the Financial Institutions Law prohibits subjects not authorized by it or the BCRA from carrying out regular intermediation operations between the supply and demand of financial resources, or from acting in the credit marking. Section 1, 7 and 38 Financial Institutions Law.

<sup>6</sup> The BCRA created in 2018, through Communication A 6510, the Uniform Virtual Key (CVU for its acronym in Spanish) which, with the same format as a CBU, is the "public key" or user identification. Additionally, the CVU has an ALIAS, as do bank accounts. In this way, interoperability between digital accounts and bank accounts is possible.

<sup>7</sup> Necessary authorization by virtue of section 28, paragraph a) of the Financial Entities Law expressly prohibits banks from exploiting commercial or industrial companies, unless expressly authorized by the BCRA, which must be of a general nature and establish limits and conditions that guarantee non-involvement of solvency.

<sup>8</sup> [https://blog.errepar.com/wp-content/uploads/2020/02/Proyecto-ley\\_de\\_conocimiento.pdf](https://blog.errepar.com/wp-content/uploads/2020/02/Proyecto-ley_de_conocimiento.pdf)

In June 2020, the BCRA published a Report on a study it conducted on Non-Financial Credit Providers (OPNFCs)<sup>9</sup> including Fintech, in which it alerts the percentage of their rates, calling them "excessive" and "inconsistent". In May 2020, the Ministry of Productive Development had already highlighted -after a criminal complaint was filed-<sup>10</sup> that such companies applied abusive fees that, in many cases, exceeded 1500% plus VAT on total financial cost (CFT for its acronym in Spanish).

The study reveals that 77% of Fintechs that provide loans charge their customers a CFT that exceeds 150% per year, and that 50% of the total receives a CFT above 400% per year, constituting as those of higher values. In addition, it shows that companies use various criteria to inform the costs of financing.

The CAF issued a statement, communicating its commitment and that of its members with the current Argentine legislation and arguing that the comparison made by the BCRA is not constructive, since it does not take into account elements such as repayment terms, types of customers, payment method and risk segments, among others. It should be noted that the CAF was created just over 2 years ago, and more than 10 million Argentines already adopted its services.

On the other hand, the various exchange rate restrictions that the BCRA implemented during the year 2020 caused many startups and digital banks to offer turning legally acquired Argentine Pesos into US Dollars within Argentina via a transaction involving Dollar-denominated securities, to ensure the continuity of their activities. This certainly left many companies outside the digital ecosystem.

Avoiding transfers between virtual business accounts, the obligation to keep funds in accounts in sight, an information regime similar to that required by the banks, the elimination of direct debits in online loan collections, among others, are some of the continuous changes in the rules that Fintech companies face on their way to development.

### **III. An opportunity is developing from the pandemic crisis**

For certain sectors, crisis is a synonym of opportunity. Certainly, this was the case for Fintech in Argentina, which in the face of the Coronavirus pandemic, received an extra boost thanks to the boom experienced by e-Commerce given the preventive and compulsory lockdown implemented by the government. Companies had to rethink their ways of operating and resourced to technological tools. This paradigm shift in the business model also enables companies to optimize their services and, in conjunction with technology, deliver them based on each user profile.

While online mobile operations worldwide are the main form of payment, in Argentina, between February and April, the use of different electronic banks increased by 200%. This puts its users around 58.3%, a figure much higher than the Latin-American average which is around 30.9%<sup>11</sup>. In this sense, the local Fintech ecosystem is growing stronger and broader in an era in which consumers try to maximize their time and resources.

The landing of Openbank Argentina - Santander's 100% digital bank that estimates to start operations during the first half of 2021-, Dimo -a project that integrates the main public and private banks and will seek to compete with the already installed MercadoPago- and Stripe -a Fintech "unicorn" valued at approximately US\$36 billion- denote the potential of this segment of the Argentine financial system.

Another case worth mentioning is that of FacePhi -a biometric technology company of Spanish capitals that has just signed a new contract with Orange X, part of the Galicia Group- for whom the Argentine market was again key in its expansion strategy. They will offer the Selph ID product, used to verify and authenticate the document owner using a facial pattern registered on the bank's server.

For Ualá -an app that provides an International MasterCard prepaid card that allows both paying accounts and making purchases on the Internet and shops-, which owns its own Common Investment Fund that has 2 million customers, the eruption of the pandemic accelerated its growth by 25% at the beginning of the lockdown, when all investment activity was affected.

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<sup>9</sup> Central Bank of the Argentine Republic (June 2020). Report of Other Non-Financial Credit Providers. <https://www.bcra.gob.ar/Pdfs/PublicacionesEstadisticas/Informe-OPNFC.pdf>

<sup>10</sup> <https://www.argentina.gob.ar/noticias/denuncia-penal-fintechs-por-estafa-y-usura-credicia>

<sup>11</sup> Comscore Argentina (june 2020). *Panorama de la Banca Digital en Argentina*. <https://www.comscore.com/Lat/Prensa-y-Eventos/Presentaciones-y-libros-blancos/2020/Panorama-de-la-Banca-Digital-en-Argentina>

In addition, small retailers saw in digital collection tools a real opportunity to enter the inclusive world proposed by Fintech. Many are letting go to the old posnets that have connection problems and are welcoming more practical solutions, such as MercadoPago Point or Naranja Pos -which during the pandemic, achieved a collection operation volume equivalent to that of the 15 prior months- that allow attaching credit, debit and prepaid cards readers to mobile devices connecting them by an application.

Besides, other branches that possess these characteristics at their core, such as Insurtech and Proptech, oriented to the insurance and property sectors, respectively, are prevailing. The key is to respond to the different challenges that arise in each sector, where the application of Artificial Intelligence also plays an important role to provide efficient responses to its value chain.

Taking a step further, it allows us to ask ourselves what comes next. The vast universe of digital wallets in Argentina begins to open up other kinds of debates around this ecosystem. The advance that cryptocurrencies are experiencing -there are currently more than 2.500, with BitCoin at the helm- makes us consider if their implementation in Argentina could be possible. So far, the creation of the ePeso or Digital Peso has not been ruled out.

#### **IV. Final considerations**

One of the main benefits that Fintech companies offer is financial inclusion; they enable under-banked individuals to participate in business and financial operations. In addition, Fintech innovation creates new business models and new ways of operating pre-existing financial products and services while increasing competition and decreasing market failures, functional simplification and operational disintermediation. This makes it possible to implement new forms of efficiency, lower costs and adapt to the needs of users.<sup>12</sup>

Considering that the local market demands this type of services, which will benefit from the LEC adoption, we are facing an industry that can be very attractive for foreign companies looking to establish themselves and invest in Argentina<sup>13</sup>. For these reasons, it is essential to keep an eye on the regulatory developments regarding Fintech that may affect the development of its activities, businesses and operations.

In short, Fintech companies offer many more accessible and less bureaucratic services than financial institutions, completely virtual, which has become essential in the current pandemic and social distancing context. Beyond their practical use, they were able to adapt to, and satisfy, the new forms of consumption.

Despite the obstacles it encounters, the Fintech Revolution is a fact. Fintech is not only one of the most prosperous and fastest growing industries in the country, but it has also found in the COVID-19 pandemic an ally to reaffirm its space in the commercial and financial sphere. Fintech has arrived to stay and will play a key role in the subsequent economic recovery.

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*This article is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.*

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<sup>12</sup> Berícua, M., Palazzi, P., Mora, S. Breve introducción al Derecho Fintech. FINTECH: aspectos legales. Volume I. October 2019, Buenos Aires. Page 26.

<sup>13</sup> Indeed, companies such as Hooli and Stripe Payments have set foot in Argentina during the pandemic.