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Advances in Fintech Regulation in Paraguay

According to data published by The Global Findex Database 2021 survey, Paraguay had a bank account ownership rate of 54%. Furthermore, according to the latest data published by the Central Bank of Paraguay ("BCP") in August 2023, the population's bank account ownership rose to approximately three-quarters of the country's population, at 76%.

This substantial surge in account ownership in recent years can be attributed not only to the growth of traditional financial institutions in the country but also to the emergence of Fintech companies in the Paraguayan financial market.

Fintech companies have become key tools for financial inclusion. The Fintech industry has generated disruptive alternatives for financial inclusion all around the world, which governments have been regulating and adopting in their inclusion efforts.

We will provide a brief summary of the latest advances in the regulation of the current main Fintech tools in Paraguay, including aspects closely related to these tools, such as personal data and its treatment.

1. e-wallets

Entities that provide e-wallet services in Paraguay are known as EMPE or EMPEs. EMPEs are companies authorized and supervised by the Central Bank of Paraguay to process, manage, and, in general, provide services related to mobile money and e-wallets. Through e-wallets, users can make payments to businesses and transfer electronic money, whether to users of the same e-wallet, different e-wallets, or even to individuals who do not have accounts with any of the e-wallets operating in the country.

With approximately 2.7 million active accounts and monthly transactions of approximately $160 million, e-wallets play a significant role in the country's digital transformation and serve as a tool for financial inclusion.

1.1. Applicable Law

Regulation of e-wallets in Paraguay consists of a set of resolutions issued by BCP and the Secretariat for the Prevention of Money Asset Laundering ("SEPRELAD").

Among the BCP's resolutions are Resolution No. 6/14 and its amendment, No. 6/20, which establish the general conditions for the operation and registration of EMPEs in Paraguay. Additionally, Resolution No. 10/2019 contains provisions related to the information that EMPEs must provide annually to BCP as the regulatory authority.

In addition, SEPRELAD Resolution No. 77/20 outlines the operational framework of measures to combat money laundering and the financing of terrorism that EMPEs must implement, as well as the authorities responsible for supervising these procedures within their structure.

1.1.1. BCP Resolutions

BCP issued Resolution No. 6 in 2014 which -along with its amendment, Resolution No. 6, issued in 2020- currently serves as the national regulatory framework for EMPEs and e-wallets. Through this resolution, BCP declares that e-wallets should be considered as financial inclusion tools that aim to integrate the unbanked population into the national financial system. In this scenario, e-wallets seek to address market needs related to small-scale commercial financing.

In that sense, the documentation requirements for user registration with e-wallets are straightforward, and the registration process is entirely digital.

The Resolution mandates that EMPEs may provide e-money provisioning services and non-bank electronic transfers ("remittances") among their users and the general population through their e-wallets. It also establishes that electronic money will be accepted as a means of payment and will be convertible into cash.

It's worth noting that EMPEs are not authorized to engage in financial intermediation activities or to grant loans from their own funds to users. Also, the funds deposited by users in their accounts do not constitute bank deposits.

Instead, e-wallets function more as a platform for storing electronic money, allowing users to convert their cash into electronic money that can later be converted back into cash, usually for a commission fee charged by the EMPE.

In line with BCP's focus on small-scale activities, the limit on the amount of electronic money that users can store in their accounts is quite limited. Funds exceeding this limit are deposited in a financial institution.

A monthly limit for sending and receiving money transfers is also set for users. If this limit is exceeded, these transactions are made through accounts opened with financial institutions.

As mentioned above, e-wallet users can send money to individuals who do not have an e-wallet account. In that case, the funds can be withdrawn, or the individuals can register with the e-wallet through which the transfer was sent and use the funds from their new e-money account.

Regarding the security of e-money stored in e-wallets, the BCP's regulatory policy stipulates that all funds held by each account holder, agent and point of sale must be held in trust or deposited with the BCP. In fact, EMPEs may secure these funds using both methods, provided that the trust and BCP deposits cover all funds held by account holders, agents, and points of sale. In practice, most EMPEs in the country have chosen to establish trusts as their method of securing funds.

1.1.2. SEPRELAD Resolutions

EMPEs have their own Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) Rules and Regulations, issued by SEPRELAD through Resolution No. 77/20. This resolution includes, among other measures, the requirement to conduct due diligence on e-wallet users.

In addition, the resolution mandates the existence of an AML and CTF Committee, which must include at least two members of the EMPE Board of Directors. This committee will be chaired by the EMPE's Compliance Officer, who must have a direct, full-time and exclusive employment relationship with the EMPE or its economic group and hold a top management position.

2. Crowdfunding

In crowdfunding, a group of investors finances a project or venture in exchange for bonds, obligations, shares, participation, dividends, or project-related income, among other benefits.

Law No. 5810/17 on the Securities Market explicitly excludes crowdfunding or collective financing from its application, stating in article 8 that "[...] credit contracts under the collective financing modality, either through platforms or other means," are not covered by its scope.

While Paraguay does not have specific regulations for crowdfunding, these activities are legal in the country, and some sectors consider necessary to regulate these activities, taking into account the financing opportunities they provide for small and medium-sized enterprises (SMEs) and startups. In this regard, the Superintendency of Securities (the "SV") is working with key industry players on the drafting of a bill to regulate crowdfunding activities.º

2.1. Projected Bill and Potential Implications

The National Securities Commission, now the Superintendency of Securities, has drafted a bill to regulate crowdfunding platforms. The bill has not yet been presented to the Legislative Branch, as we understand they are finalizing details for its submission.

According to its current wording, the bill aims to establish the SV as the enforcing authority of the law and requires platforms to submit information to the Information Center of the Superintendency of Banks, a subsidiary of the BCP.

The bill defines 'crowdfunding' as the public solicitation of funds from a large number of individuals to finance a business, project, or cause.

Additionally, crowdfunding platforms are defined as "[...] companies that, through a website, electronic systems, digital means, or other mass communication methods, regularly connect a plurality of natural or legal persons offering financing with others seeking some form of financing."

The bill regulates not only crowdfunding platforms but also lending or collective lending platforms. In this sense, it seeks to formalize crowdfunding and lending as forms of collective financing in the national legal framework. The bill also includes provisions applicable to factoring crowdfunding through platforms.

If the bill is passed in its current form, investment, lending, and factoring crowdfunding activities would fall under its scope. This means that crowdfunding platforms would include platforms that provide collective financing in any of these modalities.

It is worth noting that these crowdfunding platforms would not be permitted to engage in activities other than those expressly authorized, unless expressly authorized by the SV and provided they have sufficient mechanisms and procedures in place to minimize conflicts of interest that may arise in the exercise of their activities.

In addition, these platforms would not be allowed to provide recommendations or personalized advice on the investments they facilitate, nor participate as investors or promoters (defined as individuals who request funds through these platforms) in collective financing operations they facilitate. They would only be allowed to charge fees and commissions for providing their services.

The bill provides for the creation of a Registry of Crowdfunding Platforms, which will be managed by the SV. Registration requirements for platforms include the incorporation of a company, minimum capital requirements set forth by the SV, and having operational and technological risk mitigation procedures in place.

Additionally, the bill imposes obligations on the platform to ensure that investors and promoters are protected when participating in this form of financing. For this purpose, platforms must collect and monitor information about promoters, investors, and the transactions conducted through their means, in particular the agreed interest rates.

Finally, the bill outlines the types of offenses, their gradation, and the sanctions that may be imposed by the SV, ranging from warnings and disqualification from engaging in this activity to fines of up to three hundred times the minimum monthly wage (approximately USD 115,000).

3. Lending

Lending, along with crowdfunding, is a widely used form of collective financing around the world. In lending, unlike crowdfunding, a group of individuals lends funds to individuals or legal entities in exchange for the repayment of the capital provided, together with interest thereon.

The granting of monetary loans, whether by individuals or legal entities who do so on a regular basis (the "Lenders"), is regulated by the BCP, as detailed in the following section. However, lending as a form of collective financing typically requires the intervention of a platform to facilitate it. Therefore, the draft of the proposed bill for the regulation of crowdfunding platforms includes the regulation of this activity within its scope.

Currently, there are crowdfunding platforms in Paraguay focused on lending that have connected thousands of investors with users in need of credits.

3.1. Applicable Regulation

The BCP, through Resolution No. 7/19 (the "Lending Resolution"), included individuals and legal entities that regularly provide monetary loans as subjects of Law No. 861/96 of "General Law of Banks, Financial Institutions, and Other Credit Entities" and its amending Law No. 5.787/16 of "Modernization and Strengthening of the Regulations Governing the Operation of the Paraguayan Financial System."

As a result, the BCP created the Registry of Monetary Lenders, where any individual or legal entity regularly engaged in granting credits (the “Lenders” as defined above) must be registered.

Subsequently, the BCP issued Resolution No. 30/22, establishing the Regulatory Framework for Information Transparency and Integrity Management for the Lenders.

This new resolution introduced specific obligations for the Lenders. The Lending Resolution explicitly states that the Lenders must comply with the BCP's regulations on corporate governance, complaints and inquiries Management, and interest rates.

Additionally, it requires Lenders to sign contracts, either in physical or digital form, for loan transactions. These contracts must include details such as the loan amount, maturity date, interest rate, fees, expenses, and penalties.

The Lending Resolution also establishes obligations for the transfer of credit portfolios, in particular related to notifying the borrower of the transfer, including a 5-day period for such notification after the purchase is formalized, and ensuring that the notification has been made correctly.

The provisions related to the Lenders are effective in regulating the activities of individuals who regularly grant credits with their own funds. However, lending through crowdfunding is a more dynamic activity that requires its own regulation.

Therefore, it is appropriate that the scope of the bill includes this activity and the platforms that facilitate it. Thus, if the current bill is passed, the granting of money loans through lending platforms would be supervised by the SV rather than the Superintendency of Banks.

4. Cryptocurrencies and Crypto Assets

In Paraguay, the market for crypto assets and cryptocurrencies is still in its beginning stages. In previous years, attempts were made to formalize this market through the presentation of a bill aimed at regulating it. However, although activities related to crypto assets and cryptocurrencies are not yet fully regulated, certain aspects have already been subject to regulation by the SEPRELAD, following recommendations from the Financial Action Task Force (the "FATF"). Additionally, the BCP has publicly stated its position on cryptocurrencies.

4.1. Communications issued by the BCP

On May 31, 2019, the BCP issued a statement to investors and the general public, warning about the use of cryptocurrencies. It emphasized that, as they are not issued by a Central Bank, cryptocurrencies have no legal tender or canceling force.

In this statement, the BCP also stated that "[...] their value is mainly based on the trust that people place in them, deciding to use and accept these currencies at their own risk, and their price fluctuates according to supply and demand, usually with significant variability. The future price of these cryptocurrencies can both rise and tend to zero."

The statement further reminded that the Organic Law of the Central Bank of Paraguay, in its articles 38 and 39, designates the guaraní as the monetary unit of the Republic of Paraguay. This law designates the Central Bank of Paraguay as the sole issuer of banknotes and coins in circulation, establishing the legal tender and unlimited canceling force of the guaraní. Consequently, the BCP affirmed, "Bitcoin and other similar cryptocurrencies are not considered as banknotes or coins, have no mandatory canceling force in Paraguay, and therefore, are not guaranteed by the State."

The BCP also warned that individuals buying or investing in these currencies "assume significant risks, such as the possible total loss of the value of their investment (due to high volatility in their price, possibilities of fraud or hacking, and difficulties in selling or exchanging them)." It further asserted that "[...] cryptocurrencies are also often used as instruments of payment in illicit transactions."

Finally, the BCP indicated in this statement that it would continue studying cryptocurrency operations, both regionally and globally, and their potential impact on the financial system, "following the recommendations of best practices according to specialized international organizations."

A little over a year after the issuance of the statement, the BCP issued a new statement on virtual currencies or cryptocurrencies, simply reaffirming its position from the previous year.

When questioned by the local press on subsequent occasions, the BCP simply announced that it "has [already] communicated its institutional position."

4.2. Resolutions issued by SEPRELAD

On the other hand, SEPRELAD has issued specific regulations related to activities involving crypto assets or virtual assets. Following recommendations issued by FATF regarding "new technologies," SEPRELAD issued Resolution No. 8/20. This resolution designated individuals or entities engaging in mining or its equivalent, exchange, transfer, storage, or administration of virtual assets, or participating and providing financial services related to these, as Obligated Subjects.

Obligated Subjects before SEPRELAD are individuals or legal entities engaged in sectors considered susceptible to being used as a vehicle for money laundering or terrorist financing. Thus, Obligated Subjects have certain obligations to fulfill before SEPRELAD, such as registration with this institution, reporting of operations, conducting due diligence on clients and suppliers, and having structures in place to mitigate the risks of money laundering and financing mentioned.

Subsequently, SEPRELAD issued Resolution No. 9/20, through which it resolved that Obligated Subjects with clients designated as "Providers of Virtual Asset Services" must analyze their profiles, including specific due diligence, to manage exposure to money laundering and terrorist financing and mitigate associated risks.

This analysis and due diligence thus became necessary procedures to carry out operations, whether initiating or continuing a business relationship with Providers of Virtual Asset Services.

Finally, SEPRELAD issued Resolution No. 314/21, which establishes the Regulation for the Prevention of Money Laundering and Terrorism Financing for individuals or legal entities established or domiciled in the country engaging in activities associated with virtual assets.

This regulation is mandatory for individuals and legal entities engaged in activities associated with virtual assets, namely those mentioned in Resolution No. 8/20. It establishes that Obligated Subjects must implement a comprehensive system for the Prevention of Money Laundering and Terrorism Financing, whose scope covers the entity's entire operation.

Obligated Subjects must conduct a self-assessment of the risks of money laundering and terrorist financing to which they are exposed at least every two years and review the methodology associated with them at least every four years. This self-assessment must be made available to SEPRELAD.

Likewise, Obligated Subjects must have a Compliance structure, led by a Compliance Officer, appointed by the Board or equivalent of the company, or by the owner, in the case of a sole proprietorship. This appointment must be communicated to SEPRELAD within the established period.

The Compliance Officer reports directly to the highest authority of the company or sole proprietorship and is responsible for implementing the prevention policies of money laundering and terrorist financing of the venture or entity, as well as reporting suspicious operations to SEPRELAD.

Finally, the Subject Obligor must have an Anti-Money Laundering and Terrorism Financing Manual and a Code of Ethics and Conduct.

4.3. Proposed bill

In December 2022, the Paraguayan House of Representatives finally archived the Bill that had been presented in 2021, with the aim of regulating the activities of mining, marketing, intermediation, exchange, transfer, custody, and administration of crypto assets.

This Bill had been presented and approved by the Senate in December 2021. The Bill was then modified by the House of Representatives, and in August 2022, the modified Bill was sanctioned by the Senate.

However, through Decree No. 7.692/22 of December 2022, the Executive Branch vetoed the Bill in its entirety. This veto was rejected by the Senate, but the House of Representatives did not support the rejection and, as a result, the Bill was finally archived.

The rejection by the Executive Branch was based on a recommendation from the National Electricity Administration (the "ANDE"). In this regard, the Bill aimed to apply a preferential tariff to the electricity consumption required for mining activities, based on the tariff for industrial activities.

Regarding this, ANDE stated, through Note No. P.3179/2022, that "the activity of crypto-asset mining [...] is characterized by high electricity consumption, intensive use of capital, and scarce use of labor, [so] it is appropriate to characterize it as electro-intensive consumption and not as industrial consumption." Thus, ANDE asserted that the tariff approved by Congress could not cover the costs of providing electricity in which it would incur.

On the other hand, the Undersecretary of State for the Economy also recommended the veto by the Executive Branch, categorizing the activity as short-term and responsible for environmental damages. This position, as well as the aforementioned position of the BCP, was mentioned in the explanatory memorandum of Decree No. 7.692/22, which vetoed the approval of the Bill.

Arguing the need to regulate this activity to address the current reigning informality of this market, the Paraguayan Fintech Chamber is currently drafting a new Bill, which aims to reach a consensus with the various government stakeholders.

5. Data Protection

Credit information and its processing are regulated through Law No. 6,534/20. However, the treatment and use of personal data is not covered by the scope of this law, prompting current efforts to regulate them.

5.1. Applicable Laws

Law No. 6,534/20, of "Protection of Personal Credit Data," establishes the regime for the protection of data and personal information. It regulates the collection and access to credit information data, establishing provisions for companies engaged in obtaining and providing credit information.

This law defines personal data as any information of any kind, referring to specific or determinable legal or natural persons. It also defines credit information as positive and negative information related to the credit history of individuals and legal entities, regarding credit and commercial activities that serve, among other things, to determine their level of indebtedness, fulfillment of obligations, and, in general, credit risks at a given moment.

This law seeks to preserve fundamental rights, such as privacy, informational self-determination, freedom, security, and fair treatment of individuals. It prohibits the dissemination of intimate data of the owner, or any misuse that may lead to discrimination or pose a serious risk to them.

Furthermore, this law guarantees access to personal data for all individuals and those under their legal authority, guardianship, or curatorship, existing in records maintained by individuals or legal entities, public or private.

According to this law, individuals must expressly and unequivocally consent to the collection and use of their personal data. This consent can be in written, electronic, or digital form and can be expressly revoked under the same conditions, free of charge and without retroactive effect. The processing and transfer of this data without the consent of the owner constitute an unlawful act.

Individuals also have the right to know the general and specific conditions of the processing of their personal data, and the purpose for which they will be used must be explicitly and clearly informed. In this context, they can request the updating, rectification, deletion, opposition, and portability of this data from the entity responsible for its management. Unless otherwise provided by law, credit information in a registry can be retained for up to five years from the date of the recorded events.

The law establishes a duty of secrecy for individuals responsible for and in charge of processing third-party credit information, as well as those involved in any phase of its collection, processing, storage, use, or circulation. This duty of secrecy only gives way when the information is required by the BCP, its supervisory bodies, the National Directorate of Tax Revenues ("DNIT"), the SEPRELAD, the General Comptroller of the Republic, and, naturally, the Public Prosecutor's Office and competent judicial authorities.

Credit information services can only be provided by Credit Information Bureaus previously authorized by the BCP. These bureaus can only provide credit reference services to certain users, including banks and financial institutions, cooperatives, credit houses, individuals or companies providing credit, mutual funds, and pawn shops, as well as individuals or companies dedicated to selling products on credit or installment plans and those functioning as a channel or means to facilitate financial intermediation or credit granting.

These bureaus can only process credit information related to the economic solvency and credit of the owner, obtained from public sources or provided by the owner with their consent. They cannot disclose credit information about (i) overdue debts not judicially claimed that have exceeded three years of registration, (ii) canceled debts, and (iii) creditor meeting lawsuits after five years from their admission.

Users of credit information services must provide Credit Information Bureaus with positive and negative credit information about their clients. Additionally, they can only use credit information obtained through bureaus confidentially and for the assessment of credit risks.

A key obligation established for users of these services is to inform the owner of credit information about the denial of a contract, job application, service, commercial or financial credit based on a credit report, providing a copy of this report.

Regarding violations of the law, both individuals and legal entities that commit offenses may be held responsible, as well as all members of the administrative bodies of the entity in question and those who perform functions similar to those positions, with the exceptions and according to the circumstances established in the law.

Sanctions that may be imposed on violators by the BCP and SEDECO range from warnings, temporary and permanent closure of operations, disqualification from holding positions within the financial, credit, and Credit Information Bureaus systems, to fines that could amount to nearly one million dollars.

5.2. Proposed bill

Upon the enactment of Law No. 6,534/20, sectors of the population expressed concerns about its scope, claiming this law primarily regulates the treatment of credit information of individuals, without focusing much on protecting personal data in general.

Therefore, there is currently a bill that aims to rectify this situation and include personal data. This bill is currently under discussion in the committees of the House of Representatives.

In its current wording, the bill does not seek to repeal Law No. 6,534/20 but aims to regulate, in a supplementary manner, those issues of credit information not covered by Law No. 6,534/20.

Therefore, the bill does not address the treatment and use of already regulated credit information but aims for the comprehensive protection of personal data of individuals to ensure the full exercise of their rights and regulate the free circulation of this data.

To this end, the bill seeks to regulate issues related to biometric, genetic, sensitive, and personal data. It also aims to regulate the processing of this data and its automated use, as well as the profiling based on them.

6. Trust Services

The Paraguayan State, through the Ministry of Information and Communication Technologies, has developed strategies for the digitization of services, transactions, and interactions in the country, both in the public and private spheres. This project, known as the Digital Agenda, among other things, seeks to promote access to secure and fast digital interactions and, in this context, has regulated the provision of so-called "trust services."

Trust services, defined as those involving the creation, verification, validation, or preservation of electronic signatures, electronic seals, electronic time stamps, electronic delivery, website authentication, and means of identification through electronic identification systems, are regulated as such in Paraguay by Law No. 6,822/21, "On Trust Services for Electronic Transactions, Electronic Documents, and Electronic Transmissible Documents," (the "Trust Services Law") and its regulatory decree, No. 7,576/22.

These services aim to generate trust and security in electronic transactions and interactions between public bodies, citizens, and businesses, and their regulation is necessary to foster a secure electronic money ecosystem for the population. Among those frequently used are electronic signatures for validating legal acts such as contracts, electronic billing processes, electronic transmission of data or documents, and an increasingly wide range of government procedures.

6.1. Applicable Laws[9]

Law No. 6,822/21 is primarily influenced by European Regulation No. 910/2014, which regulates electronic identification and trust services for electronic transactions in the member states of the European Union.

The state entity responsible for supervising and issuing the necessary resolutions for the implementation of the provisions of the Trust Services Law is the Ministry of Industry and Commerce, as stipulated by its regulatory decree.

To precisely determine what trust services are, the Trust Services Law establishes four pillars to define them, namely:

a) The creation, verification, and validation of electronic signatures, electronic seals, electronic time stamps, certified electronic delivery services, and certificates related to these services;
b) The creation, verification, and validation of certificates for website authentication;
c) The preservation of electronic signatures, seals, or certificates related to these services;
d) The issuance service of means of identification through electronic identification systems.

The main services within these pillars are electronic signatures, electronic seals, electronic time stamps, certified electronic delivery services, and certificates for website authentication.

The law establishes that, as long as identification is carried out through an electronic identification system in compliance with the requirements outlined in the Trust Services Law, legal effects or admissibility in private, judicial, and administrative proceedings will not be denied to the electronic identification of an individual or legal entity (through its representative).

Likewise, the law establishes a distinction between the provision of these services and their qualified provision, which constitutes a more reliable version of these services and can only be provided by qualified providers according to the parameters established in the law, with implications explained later. The Ministry of Industry and Commerce maintains the list of qualified providers.

To become a qualified provider of these services, providers must be established in the country, either (i) by establishing domicile in Paraguayan territory; (ii) having facilities or workplaces in Paraguayan territory, where they carry out all or part of their activity; or (iii) by registering their company or branch with the General Directorate of Public Records. In addition, the provision of the service must be included in the social statutes of the providing entity.

These qualified providers must be audited at least every two years by independent auditors. In addition, they can be audited at any time by the Ministry of Industry and Commerce, and they must adjust their operations to the observations made by it.

Additionally, trust services provided by service providers established outside the country will be recognized as equivalent to those provided by service providers established in Paraguay, as long as there are mutual recognition agreements between national authorities or corresponding international organizations.

The Trust Services Law reiterates what was established by its predecessor, Law No. 4,017/10, by stating that a qualified electronic signature has the same legal effect as a handwritten signature. However, it eliminates the distinction between digital and electronic signatures that Law No. 4,017/10 had stipulated, causing confusion in the everyday use of these services.

The electronic reproduction of documents in paper format, through scans and similar processes, receives explicit legal recognition through the Trust Services Law. This recognition will be valid as long as there is some reliable guarantee that the integrity of the information contained in the document has been preserved.

Finally, the Trust Services Law also recognizes the legal value of acknowledgments of receipt of electronic documents through any act by the recipient that is sufficient to indicate to the sender the receipt of the document. This is especially important for everyday interactions through emails or messaging applications.

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