**The Different Financial Services (Consumer and Corporate)**

**ADSERO Student Contribution Project 2021**

**5 December 2021**

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1. **Overview on the Available Forms of Financing in Egypt:**

In the current global market situation, individuals are in need for financial support to attain their needs. Companies as well require liquidity to finance their projects, thus, they resort to various venues of finance, these sources of finance could be either internal or external.

Corporations might resort to internal sources that depend on funds options withing a business which can take the forms of retained profits, owner’s capital, or selling assets.[[1]](#footnote-2) Additionally, external finance provided by Financial Institutions (**“FIs”**), which could be classified into banking or non-banking.[[2]](#footnote-3) FIs assume the function of channeling funds to companies and individuals.[[3]](#footnote-4)

In fact, Banking FIs rely heavily on creditworthiness and the business’ balance sheet which make the accessibility to bank loans harder than the non-banking financial facilities provided by the Non-Banking Financial Institutions (**“NBFIs”**). Consequently, the investors prefer to resort to NBFIs.[[4]](#footnote-5)

On a side note, the legislator began in late nineties to adopt new legislations[[5]](#footnote-6) that were influenced by American and French doctrines[[6]](#footnote-7) regulating Non-Banking Financial Facilities. Moreover, the legislator designated the Financial Regulatory Authority (**“FRA”**) to regulate, supervise NBFIs, and to replace any other authority that assumed the role of regulation and supervision of Non-Banking Financial Facilities in previous laws.[[7]](#footnote-8)

To further comprehend the different facilities provided under the Egyptian legal system, a comparison between Banking and Non-Banking Financial Facilities will take place as well as an in-depth analysis of four examples of the main Non-Banking Financial Facilities as follows: (1)Financial Leasing, (2)Factoring, (3)Consumer Finance, and (4)Mortgage Finance.

1. **Brief Comparison between Banking and Non-Banking Facilities:**

In order to completely comprehend the points of divergence between Banking and Non-Banking Financial Facilities, great attention must be drawn towards their core meaning; as the

Banking Financial Facilities provide credit options that are solely regulated and supervised by banks which have the capacity to set the procedures due for acquiring credit facilities. Banking Financial Facilities could be short-term or long-term loans.[[8]](#footnote-9) Long term loans refer to loans with an original or extended maturity of more than one year.[[9]](#footnote-10) Accordingly, short-term loans are loans that have an original maturity normally of one year or less.[[10]](#footnote-11) The applicant for a facility before a bank shall provide his indebtedness record before any other bank.[[11]](#footnote-12)

On the other hand, Non-Banking Financial Facilities strongly acts as a substitute for banks; as they are not administered by regulatory banking agencies. NBFIs provide infrastructure to allow surplus resources to people and businesses with deficits.[[12]](#footnote-13)

1. **Legal Framework of the Non-Banking Financial Facilities:**

Non-Banking Financial Facilities have been of a great importance in the last several years, which have led the legislator to regulate the framework of each non-banking facility and each institution offering any of these facilities, alongside with, the supervision and auditing of the FRA under Law No. 10 of 2009 over the Non-Banking Financial Facility and its Institutions such as the Financial Leasing, Factoring, Small, Medium and Micro-enterprises, Consumer Finance, Insurance, Insurance Funds and Mortgage finance. In this regard, a comprehensive analysis will take place of four (4) of the recently regulated Non-Banking Financial Facilities.

* 1. **Financial Leasing:**

Financial Leasing was regulated by virtue of Law No. 95 of 1995 which was repealed by Law No. 176 of 2018 regulating Financial Leasing and Factoring (the “**Financial Leasing Law**” and “**Factoring Law**”). Article one of the recent Law defined Financial Leasing as an activity where a company (the “**Lessor**”) grants (the “**Lessee**”) the right to use their asset or an asset provided by a supplier, for a certain period in exchange of a rental fee as per the provisions set in the Financial Leasing Contract. The contract must be drafted according to the template set by the FRA.

The Lessee may buy the whole asset or part of it at the end of the contract by virtue of the terms stipulated therein taking into consideration the paid amount throughout the contract. If the lessee denies purchasing the asset, he may either return it back to the lessor or renew the contract by mutual agreement, but the contract may not be renewed implicitly, and it does not extend on its own whether there existed a notification to the lessee or not.[[13]](#footnote-14)

The legislator specified a difference between Financial Leasing and other lease agreements that might be similar to it such as Operational Leasing. The latter is a lease agreement that does not entail the option of purchasing the asset at the end of the contractual relationship.[[14]](#footnote-15)

1. **Regulatory Framework and Scope of Application:**

Financial Leasing can take two forms, as the Financial Leasing Contract can be concluded between a Lessor who is a licensed company to undertake Financial Leasing activities which engages in providing an asset to be used or possessed by the Lessee during the term of the Financial Leasing to a natural or legal Lessee.[[15]](#footnote-16) Or between the Lessor and a provider (“**Supplier**”) who transfers the ownership of the asset subject to the Financial Leasing Contract, to the Lessor in order for the latter to lease it to the Lessee to enjoy the possession or usage of such asset.

At the end of the Financial Leasing term, the Lessee may choose to buy the asset in whole or in part as stipulated in the contract taking into consideration the amount paid.[[16]](#footnote-17)

Financial Leasing activities may only be carried out by joint stock companies with paid-in capital of not less than ten million EGP, or the equivalent in foreign currency, after obtaining a license from the FRA.

1. **Legal Liability of the Financial Institution and the Consumer:**

Financial Leasing Law has detailed the legal liability of the Lessor and the Lessee with regards to the liability of the Lessor for the inspection of the borrowed capital and ensuring that the correct purposes is used for which the finance was intended without causing any harm to the Lessee in the inspection process. In return, the Lessor has the right to require an insurance policy to ensure the agreed payments due for the lease term in case the Lessee fails to pay the required amount on time.

On the other hand, the Lessee is held liable for any civil or criminal liability that results from the usage of the leased asset from the date of its delivery to the Lessee. Moreover, the Lessee is prohibited to sell or rent the leased asset to a third party as the Lessor is the official owner of the asset until the duration of the lease terminates[[17]](#footnote-18), and any such conduct would be considered void. In return, the Lessee has the right to use the capital in the method agreed upon with the Lessor.

1. **Advantages and Disadvantages of Financial Leasing:**

Financial Leasing is supporting the development of the productive asset base of general tenants, which plays a prominent economic role, enhances the global competitiveness of local economic entreprises, and preserves the pace of development. For the last reasons, Financial Leasing offers a wide range of advantages for the Lessee and the Lessor; however, the Lessee may face some defects that may be considered as disadvantages.

1. **Advantages for the Lessee:**

Financial Leasing offers the Lessee with one hundred percent of the needed asset without being obliged to purchase the asset.[[18]](#footnote-19) Furthermore, the Lessors do not rely on creditworthiness, rather, scrutinize the Lessee’s ability to generate cash from the project, this process helps small businesses get liquidity through accessible venues compared to bank loans. Lastly, the Lessee may also negotiate the assets specs directly with the Supplier before the conclusion of the contract.[[19]](#footnote-20)

1. **Advantages for the Lessor:**

The Lessor does not incur any fees for the maintenance of the leased assets nor any taxes.[[20]](#footnote-21) And the leased asset can be repossessed if the Lessee defaults in payment.[[21]](#footnote-22) Further, the Lessor is exempt from the obligation of guaranteeing hidden defects if negotiations between the Supplier and the Lessee on the specs of the assets took place.[[22]](#footnote-23) Finally, the Lessor maintains his ownership for the asset which is a stronger security than a collateral.[[23]](#footnote-24)

1. **Disadvantages for the Lessee:**

The negotiations reached between the Supplier and the Lessee are not binding upon the Lessor, consequently, the Lessor won’t be liable for the Supplier’s default unless agreed otherwise. Moreover, the Lessee is civilly and criminally liable for accidents and damages caused by the leased asset and the compensation cannot be refund. Finally, the Lessee incurs the maintenance fees and taxes, not the Lessor.[[24]](#footnote-25)

* 1. **Factoring:**

Factoring is a contract in which a goods’ seller or a service provider (the **“Seller”**) sells its current and future pecuniary rights resulting from the purchasing transaction concluded with the buyer of the goods and services (the **“Debtor”**) to a licensed company to practice Factoring activities (the **“Factor”**) in return of immediate cash from the Factor.[[25]](#footnote-26) As Factoring is an instrument to obtain short-term financing to increase the cash flow cycle with an improvement in liquidity[[26]](#footnote-27).

1. **Regulatory Framework and Scope of Application:**

Factoring as a facility acts as a financing tool through which entrepreneurs obtain financial privileges which rise from commercial sales. The act of factoring itself entails that after purchasing the pecuniary rights, the relationship will be directly between the Factor and the Debtor, as the debt will be directly paid to the Factor[[27]](#footnote-28).

In order for the Factoring to take place, three conditions must exist[[28]](#footnote-29);

* 1. The transaction must be arising out of commercial gain not from any cash lending operation;
	2. The transaction should be free of any current and future rights of third parties, and
	3. The transaction shall not be restricted as long as the parties did not agree otherwise.

Factoring contracts are concluded according to the templates issued by the FRA and to include the conditions stipulated by the Factoring Law.

1. **Legal Liability of Financial Institution and Consumer:**

According to the Factoring Law, the Seller is under an obligation to disclose certain information specifically all the risks and obstacles that may intervene in the process of procuring the pecuniary rights, as well as any information related to the sold rights and its guarantees. Further, The FRA has the discretionary power to decide which information is legible for this disclosure, as well as the method of disclosure to the factor.[[29]](#footnote-30)

Furthermore, the above-mentioned Law has guaranteed the Factor rights; as the Seller may be held accountable in case of the non-performance of the Debtor’s contractual obligations based on the Seller’s non-performance, and the demise of the right before its transference to the Factor, or the inability to transfer the right to the Factor.[[30]](#footnote-31)

1. **Advantages and Disadvantages of Factoring:**

Factoring as a Non-Banking Financial Facility guarantees an immediate cash flow for the seller who is in need of liquidity. This is advantageous for the Seller, but this does not negate the fact that Factoring has disadvantages as well.

* + 1. **Advantages of Factoring:**

Factoring provides the Seller with liquidity without waiting till the maturity of bills, this liquidity might reach ninety percent from the pecuniary rights of the Seller.[[31]](#footnote-32) Further the seller may guarantee that the risk of insolvency of the Debtor is only covered by the Factor. Accordingly, the seller becomes able to invest in new projects, pay his loans, and minimize the risk of bad debts.[[32]](#footnote-33) On the other hand, the Factor may advantage from the Factoring process by purchasing the pecuniary right with diluted rates from the seller, without changing the rights and obligations of the Debtor.

* + 1. **Disadvantages of Factoring:**

Factoring requires an assignment of the Seller’s rights to the Factor, which may be problem in the process of Factoring, in case the contract concluded between the Seller and the Debtor prohibits the assignment of rights, the Debtor’s consent shall be acquired.[[33]](#footnote-34) Accordingly, if the Debtor denies the assignment of rights to the Factor, factoring will not occur.

* 1. **Consumer Finance:**

Consumer Finance is an activity aiming to provide financial support for the purchase of goods and services by a consumer, for consumable purposes in installments proportionate to the consumer’s income. The financial allocation may be provided through commercial payment cards or any of the payment methods approved by the Central Bank of Egypt. Further, The activity won’t be considered a Consumer Finance activity unless the period required for the payment of installments is more than 6 months.[[34]](#footnote-35)

1. **Regulatory Framework and Scope of Application:**

Consumer Finance Activities are regulated under Law No. 18 of 2020 (the “**Consumer Finance Law**”). The Consumer Finance Activities are provided by either Consumer Finance Companies which shall be established for the sole purpose of undertaking the Consumer Finance Activities or Consumer Finance Providers which are manufacturers or distributers of goods. According to Consumer Finance Law, the Consumer Finance Companies may finance specific goods and services, which includes the durable goods, vehicles and educational, medical and touristic services. In the other hand, for the Consumer Finance Providers, they are permitted to only finance vehicles and durable goods [[35]](#footnote-36).

Consumer Finance Law provides for an obligation on the Consumer Finance Companies to enter into contracts with their clients based on a template set by the FRA. The contract must include the specification of the goods or services, the price of the goods or services upon purchasing and the amount to be paid by the consumer, the facility amount, the term of the facility, the number of installments, the value of each installment, the interest rate and the security provided by the consumer[[36]](#footnote-37).

On a side note, the Consumer Finance Companies may grant facilities through commercial payment cards and other payment methods approved by the Central Bank of Egypt, based on a contract concluded with a network of sellers and providers of consumer goods and services[[37]](#footnote-38).

1. **Advantages and Disadvantages of Consumer Finance Companies:**

Consumer Finance facilitated the purchase of the daily fundamental goods and services by breaking down the expensive purchases into affordable installments. Even though the legislator aimed to aid consumers by virtue of such facilities, Consumer Financing is not free from disadvantages.

1. **Advantages of Consumer Finance:**

The consumer in the Consumer Finance contract is the owner of the purchased goods; however, according to the template of the Consumer Finance contract issued by the FRA, the consumer is prohibited from the disposal of the goods till the end of the financing term[[38]](#footnote-39). The Consumer Finance secures funds for purposes not commercial or business purposes[[39]](#footnote-40). Also, it increases the domestic demand on the consumable assets and equipment, thus, contributes to the growth of the investment, employment and economic growth[[40]](#footnote-41). Further, The Consumer Finance services are exempted from the Value Added Tax[[41]](#footnote-42).

1. **Disadvantages of Consumer Finance:**

If any consumer is from a governance that is stigmatized with terrorism especially in specific regions of Egypt, the Consumer Finance Company shall take that into consideration before issuing the facility.[[42]](#footnote-43) Even though this looks like a benign decree, but it hides a dark side as it stigmatizes the applicants for this facility from these regions with terrorism and opens the door for absolute discrimination between the applicants. Moreover, the Consumer Finance Law does not regulate of the interest rates imposed on the installments.

* 1. **Mortgage Finance:**

Mortgage Finance is facility aims at financing natural or legal investors (“**Investors**”), in order to invest in the purchase, renovation, construction or enhancement a property whether for residential, administrative, service and commercial purposes.

1. **Regulatory Framework and Scope of Application:**

Mortgage Finance Law No. 148 of 2001 (the “**Mortgage Finance Law**”) specified the activities that are subject to the application of such Law, which includes the purchase, construction, maintenance or improvement of properties. Also, the financing of purchasing the usufruct rights and the leasing of properties, the financing of the purchase of property with participation and profit schemes, and mortgage refinancing. Although, the activities are stated exclusively in the Mortgage Finance Law, the competent minister may add new activities to the Mortgage Finance field. [[43]](#footnote-44)

Furthermore, the Executive Regulations of Mortgage Finance Law No. 1 of 2001 (the “**Executive Regulations**”) sets out the framework around which Mortgage Finance activities must exist. As such activities shall be exercised according to the rules and standards set by the Authority’s Board of Directors based on the nature of each activity[[44]](#footnote-45).

It is important to note that Mortgage Finance shall be secured by a lien on the property, or a mortgage. Further, such finance shall take the form of a contractual relationship between the Investor and the Mortgage Finance company (the “**Financier**”) on the forms issued by the FRA with a specific information stipulated under article 2 Bis of the Executive Regulations. [[45]](#footnote-46)

1. **Advantages and Disadvantages of Mortgage finance activities:**

Mortgage finance solved the housing conflict of people by granting various incentives to the Investors by offering a variety of activities that are covered by Mortgage Finance and privileges that are enjoyed by the Investor. On the other hand, the Financier is secured with a system of guarantees to reimburse their money, also, injecting funds into the market, activates the real estate industry, and creates new job opportunities. However, there are disadvantages that would put the investor in perils.

1. **Advantages of Mortgage Finance:**

Payment of the facility may extend to twenty years or more if the payment schedule permits such extension.[[46]](#footnote-47) Furthermore, the Investor is allowed to accelerate the payment of the whole or part of the premiums to decrease the total amount of the due premiums according to the rules set by the executive regulation.[[47]](#footnote-48) Therefore, this provides the Investor with flexibility in the repayment of his loan and makes him capable of adjusting his budget accordingly.

The Investor is allowed to sell, lease or to waive the usufruct rights of the financed property to a third party after acquiring the Financier’s permission, even though, such transaction is contingent upon the third party’s acceptance of subrogation.[[48]](#footnote-49)

1. **Disadvantages of Mortgage Finance:**

If the investor defaults, the Financier may undertake the procedures stipulated for in the law,[[49]](#footnote-50) this is perilous for the Investor as it makes the upcoming premiums due in full amount,[[50]](#footnote-51) The Financier in that case notifies the Investor of his default with a writ of execution annexed to the financing contract concluded between them.[[51]](#footnote-52) If the investor failed to pay within the period specified in the notification, the Property will be sold by public auction.[[52]](#footnote-53)

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