

The background is a dark blue gradient. A large, white wireframe pyramid is the central focus, with a bright, glowing point of light at its apex. The pyramid's surface is composed of a grid of small, white dots. To the left of the pyramid, there are several smaller, white wireframe structures, some of which are also composed of dots. The overall aesthetic is futuristic and technological.

# INTERNATIONAL **FINTECH** *REVIEW* 2022 / 23



Beaumont Capital Markets

# The International FinTech Review 2022/23

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# Foreword

## How Fintech Shapes Regulation

### PARMA BAINS



**PARMA BAINS**

Financial Sector Expert (Fintech)

#### BIO

Parma Bains is a Financial Sector Expert within the Monetary & Capital Markets Department of the International Monetary Fund. Parma specialises in the regulation of fintech, providing global technical assistance and developing policy, writing about topics including BigTech, Fintech Facilitators, Crypto Assets and Blockchains. He joined from the UK Financial Conduct Authority where he was part of a small team that launched the world's first dedicated fintech regulatory unit, "Project Innovate" and worked in several functions including testing, policy development, and global engagement.

Parma was a member of the 'UK Crypto-asset Taskforce' and authored the FCA's 'Guidance on Crypto Assets'. Prior to joining the FCA, Parma worked for Deutsche Bank and was seconded to the U.S. Department of Justice in New York. He holds a Master's degree in Finance and Financial Regulation from Aston Business School in the UK.

## Foreword - How Fintech Shapes Regulation

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The growth of technology driven innovation in financial services (more commonly known as “fintech”) has the potential to transform how consumers interact with financial services. There is, rightfully, a lot to be excited about as fintech promises to improve consumer and market outcomes using new technologies that can either create new products and services, or fundamentally alter how consumers engage with existing products and services.

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The expansion of Big Tech into financial services is likely to accelerate over the next 12 months and authorities will need to react quickly.

The potential to reduce the reliance in a small number of institutions and democratise financial services putting consumers at the centre of the value chain is a cause worth supporting. The ability of fintech to help decentralise and disinter-mediate value chains also has

the potential to lower costs, generate efficiencies and broaden financial sector coverage while giving consumers greater choice and reducing asymmetric information in financial markets.

We are beginning to see some of this transformation in action, through enabling technologies supported by enabling policies. A great example here is Open Banking – the premise is simple – putting the consumer at the heart of their own data. By giving the consumer the choice of moving their data to new/different entities, it can lead to the unbundling of financial services which can lead to greater competition, consumer choice, inclusion and potentially cheaper or more tailored products and services for certain demographics. Over the next 12 months, the growth of Open Banking will continue to generate new opportunities for firms and consumers, and such an approach could be broadened to cover sectors other than just payments through Open Finance.

However, Open Banking also demonstrates how quickly fintech evolves and how important it is to manage evolving risks. The expansion of Big Tech into financial services has the potential to generate new systemic risks and Open Banking, limited in the types of data that can be shared, could facilitate a one-way flow of information that provides these large technology conglomerates with data that can be combined with proprietary data to outcompete incumbent financial entities and newer fintech start-ups. This could lead to a shift in concentration from one set of well-regulated entities (banks) to another set of less well-regulated entities (Big Tech).

The expansion of Big Tech into financial services is likely to accelerate over the next 12 months and authorities will need to react quickly to ensure any risks to consumers, markets and financial stability are mitigated. One way is through working with standard setting bodies to develop global guidelines in the long-term, while mandating enhanced disclosures and developing industry codes in the short-term.

Ultimately, the move toward democratising financial services might include putting the user at the heart of their data and allowing the user to decide how their data is shared and with whom. This might see a shift toward more jurisdictions experimenting with Open Finance or adding reciprocity to facilitate two-way data sharing, but this can only work with appropriate regulations in place. The Bali Fintech Agenda is one tool authorities can use to ensure that they can harness the benefits of fintech while managing the risks and the expansion of Big Tech into financial services might require enhanced monitoring, greater public-private collaboration, and ensuring legal and regulatory frameworks are fit for purpose in the digital age.

# FOREWORD

## RAISIN



**Marc Roberts**

General Counsel



[marc.roberts@raisin.com](mailto:marc.roberts@raisin.com)



+82-2-2051-1870



[www.raisin.com](http://www.raisin.com)



### BIO

Dr. Marc Roberts has been General Counsel since 2017 of one of the biggest German FinTechs Raisin that aims to revolutionise the savings and investment market.

He was President of the European FinTech Association (EFA) that gives innovative businesses in finance a voice in the European space from 2020 to 2022 and is still a member of the association's board.

Prior to joining the deposits specialist Raisin, he was Senior Associate at the German law firm Hengeler Mueller, where he specialised in compliance and corporate law as well as Cravath Swaine & Moore (New York).





This year has been marked by ongoing crises not only politically, but also in the global financial markets. The ongoing supply chain struggles, after the covid-pandemic and the economic consequences of Russia's attack on Ukraine, are causing uncertainty in the markets and among consumers. We have seen a rise in inflation unprecedented in recent years and as a consequence a substantial increase in interest rates by the central banks. This has forced consumers to change their behaviour regarding consumption and borrowing as well as their strategy relating to savings and investments. It has also changed the approach of venture capital

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Europe is in a strong position with fast-growing players in its member states that can and must compete with companies from the United States and Asia.

and other investors with an impact on their assessment of companies and financing rounds. Further, the pandemic has fundamentally changed how we work together - remote work being the new normal. All these macro-events have, of course, also impacted the FinTech industry.

At the same time we have seen and continue to see the financial sector evolving rapidly. There have been developments in practically all areas of financial services that have a direct impact on the everyday lives of consumers. Whether it's availability, usability or cost of financial services, whether it's in account management, deposits, investing, foreign exchange services or the payments sector. The FinTech ecosystem continues to grow. Europe is in a strong position with fast-growing players in its member states that can and must compete with companies from the United States and Asia.

As an industry, FinTechs have founded the European FinTech Association (EFA) to represent the sector across the EU. Our member companies see the European market as their core market. The EFA advocates for a strong harmonised common market with a true level playing field between incumbents and FinTechs. We embrace technology as a solution to minimise paperwork, further increase availability of products and reduce costs for businesses and consumers alike. Also, we see that technology has the potential to lead to more transparency for regulators and make financial services even safer.

Even though the macro-economic situation leads to new challenges, there continue to be successful business models, which are able to attract financing, talent and customers. One of the big learnings has been that the customer-first approach, which many FinTechs embrace, has created benefits for all sides: Customers receive the financial services they deserve. They have access to financial products that were previously available to high-net worth individuals and corporates only - this includes for example digital wealth management, best exchange rates, real-time payments, and best in class deposit products. Because clients expect to be treated well, have processes facilitated and get the best products there are two options for incumbents: either existing providers develop such services themselves, or they integrate them into their offerings via white-label providers. This fosters innovation and benefits all market participants.

# AUSTRALIA

## International Fintech Review – Chapter by BDO in Australia

# BDO



**TIM AMAN**

Global Leader, Fintech. National Leader, Financial Services



[tim.aman@bdo.com.au](mailto:tim.aman@bdo.com.au)



+61 2 8264 6537



[www.bdo.com.au](http://www.bdo.com.au)

### BIO - TIM AMAN

With a career spanning more than 27 years, Tim provides audit and assurance services to the financial services industry, including wealth management, funds management, superannuation, retail and investment banking, leasing, and insurance clients.

Tim has been BDO in Australia's National Financial Services Leader since joining BDO, and the Global Leader of Fintech for the past 3 years. Recently, Tim was also appointed as Sydney's Partner in Charge for Audit.

Tim is an experienced audit partner, having spent his career in both technical and client-facing roles in the USA, Southeast Asia, the United Kingdom, and Australia.





Australia's financial services industry has traditionally been characterised as secure and effectively managed due to the strong regulatory environment resulting in banks with strong capital positions and a robust asset management industry led by industry and retail superannuation funds. In recent times, Australia has expanded its position in the global financial services ecosystem as a leader in the fintech sector. Currently ranking sixth in the world for fintech, based on the Global Fintech Index, and second in Asia-Pacific, Australia attracts talent and innovators from around the world, as well as investment both domestically and internationally.



Figure 1. CBInsights Market map of Australia's top performing fintechs by sector. November 2022.

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Australia's fintech industry has seen a five-fold increase in the number of fintech companies in the past five years (currently over 800 fintechs across the country).

There is ample opportunity for growth and innovation in the already booming Australian fintech space but as trust and wide-spread adoption continues to grow in fintech products, there are several challenges on the horizon that need to be addressed for

the industry to continue to flourish.

The continued growth and success of Australia's fintech sector heavily relies on the domain expertise in the domestic market and the global growth pathway. The Tech Council of Australia defines domain expertise as the availability of research, talent, adjacent industry expertise or the presence of large domestic or global customers or companies. The global growth pathway refers to the ease with which a fintech can scale globally.

It will require the continued investment of capital and regulatory reform from both the public and private sectors, to develop the fintech sector at a pace that satisfies Australia's consumers and their ever-increasing digital needs.

## Business growth opportunities in Australia

Australia's fintech industry has seen a five-fold increase in the number of fintech companies in the past five years (currently over 800 fintechs across the country), with the industry now worth more than US\$4 billion (AU\$5.87 billion). Further, Australia's global share of GDP is 1.6 per cent, but 2.3 per cent of the world's tech unicorns have been founded in Australia.

This growth has been driven by strong levels of private funding, namely in venture capital (VC), as well as other sources of global and local investment. Australia's VCs invest more in PayTech and diversified fintech relative to global VC funding allocations. Global investors are particularly attracted to Australia's lending tech market, which attracts 2.2 per cent of Australia's VC funding as a share of global VC funding. This is followed by PayTech (1.2 per cent), diversified fintech (0.9 per cent), blockchain & crypto (0.5 per cent) and InsurTech (0.5 per cent).



New areas of innovation, such as embedded finance, are also emerging rapidly in the Australian market. Non-financial institutions will continue to capitalise on the opportunities that embedded finance provides when driving growth, increased user engagement and loyalty, and additional revenue streams. The embedded finance industry is expected to record a CAGR of 29.4 per cent during 2022-2029 and represents a largely untapped area at present.

It remains relatively uncertain whether the more mainstream areas of fintech, such as crypto and blockchain, will sustain their levels of growth and adoption. As of April 2022, 28.8 per cent of Australians (or 7.4 million Australians) own crypto. Between 2020 and 2021, cryptocurrency adoption was reported to have jumped 56 per cent.

However, with recent cyber security attacks gaining mass notoriety in the media, Australians are taking a more cautious approach currently as it pertains to digital assets.

### The payment revolution

Beyond the uptake in crypto and digital currencies, Australia's payment revolution is notable, particularly with PayTech giants like Afterpay and Airwallex originating in Australia.

Open banking is enabling lower barriers to entry for fintechs in the payments processing sector where they may have traditionally been locked out by larger payment companies. Those in the lending sector are also benefiting from rising interest rates as consumers continue to re-evaluate their traditional loan providers and investigate new areas, such as lending tech, which can offer competitive rates. The rising interest rates and inflation have also driven more consumers to Buy Now Pay Later (BNPL) products in the short term, but these rising interest rates will impact the sustainability of BNPL business models in the medium to long term.

Contributing to the revolution is the digital capability of Australian consumers, who as a whole are digitally-savvy, with 47 per cent of Australians preferring to process their payments and daily transactions via a digital wallet. Payments have been streamlined even further with the widespread adoption of instant bank transfers and PayID. PayID is offered by more than 100 banks, credit unions, building societies and other organisations within Australia, including with all the mainstream and commercial banks. It offers the opportunity for Australians to register an easily remembered identifier such as a phone number, email address or registered business number, against a chosen bank account. Payments can be requested or paid to this PayID instantly without requiring the recipient's account numbers and bank details.

The large commercial banks in Australia have been active in the fintech space, forming new partnerships or acquiring emerging fintech startups. This is exemplified in the many commercial partnerships formed with independent companies.

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Beyond the uptake in crypto and digital currencies, Australia's payment revolution is notable, particularly with PayTech giants like Afterpay and Airwallex originating in Australia.

In February 2022, the Commonwealth Bank of Australia (CBA) also partnered with the fintech Paypa Plane to begin Australia's first trial of PayTo. PayTo, the next innovation of the New Payments Platform (NPP), provides a digital way for businesses to offer real-time direct debit payments to their customers. It will also give consumers more control and transparency. PayTo combines open banking with direct debits, to allow businesses to connect directly with consumer bank accounts, rather than going through an intermediary.

Beyond the consumer, Australia's central bank (the Reserve Bank of Australia), also announced its central bank digital currency pilot in July 2022, anticipated to be completed mid-2023. The pilot project proposes the issuance of a central bank digital currency (CBDC) as a liability of the RBA. The intention is to use the CBDC for real financial transactions, initially as a 'wholesale' CBDC and asset tokenisation to improve efficiency, risk management and innovation in wholesale financial market transactions.

### The domestic market and going global

The Australian government has placed increasing emphasis on developing the fintech sector, with on-going revisions to regulations, increased investment, grants and

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The strongest competition in the market comes from traditional Australian financial services companies who are launching their own fintech brands.

incentives and more dedicated resources. In 2016 the Treasury and Government set up a Fintech Advisory Group to advise the Government on policy priorities. They also released the Backing Australian Fintech statement which set out the Government's priorities and plan for growing Australia's fintech sector. The

Treasury notes that the Government has been methodically progressing those fintech priority initiatives to cement Australia's position as a world leader in fintech.

One example is the research and development tax incentives (R&DTI) available locally (non-fintech specific). Australia has an incredibly competitive R&DTI program which offers a tax offset for companies conducting eligible R&D activities. For R&D entities with aggregated turnover of less than AU\$20 million, the refundable R&D tax offset is their corporate tax rate plus an 18.5 per cent premium. For R&D entities with aggregated turnover of AU\$20 million or more, the non-refundable R&D tax offset is their corporate tax rate plus an incremental premium.

State governments are also offering grants locally, such as in New South Wales with their Minimum Viable Product (MVP) grant. This is designed for pre-revenue technology startups to help them engage with a potential business customer, or channel to market, to achieve market validation and first sale. However, like the R&DTI program, these grants often come with the provision that a significant portion of development costs will occur within the region (in this case, New South Wales).

These government initiatives work to foster Australia's position as a global fintech leader and enable companies to launch and grow with greater ease. However, the strongest competition in the market comes from traditional Australian financial services companies who are launching their own fintech brands. These are backed by the strong reputation and consumer loyalty of their parent company and can focus a greater portion of their efforts on customer acquisition.

Fintech start-ups, without the backing of a traditional financial services company, often struggle with the high cost of customer acquisition, building customer loyalty, attracting, and retaining skilled labour and attaining profitability.

The Tech Council of Australia suggests that support for local technology businesses may need to come from an infusion of international talent, capital, or partnerships. Experience in scaling up business, distinct from the ability to develop world-class products, is still a rare skill in Australia.

It's clear however, this limitation has not prevented fintechs from expanding internationally with 40 per cent of fintechs in Australia now generating revenue from overseas, and 18 per cent getting more than half their revenue from international customers. The opportunities for Australian fintechs to move abroad, particularly in Asia-Pacific, are immense. According to Austrade, Australia's business and cultural ties with Asia makes Australia an ideal base for regional operations.

This is exemplified in government-driven initiatives such as the Asialink Business Fintech in Vietnam Capability Development Program, in partnership with the Department of Industry, Science, Energy and Resources (DISER) and Austrade, as well as existing trade agreements such as the Australia-Singapore Digital Economy Agreement, formed in 2020. Agreements such as these enable greater cross-border data flow, digital trade facilitation, open government data, improved digital standards and greater fintech and regtech collaboration.

Investors, particularly those from the UK, can also benefit from the UK-Australia FinTech Bridge, which establishes a framework for individual arrangements between relevant government and private sector parties from the UK and Australia to support further cooperation on FinTech activities. Similarly, Singapore and Australia are also collaborating on a FinTech bridge to improve access for Australian fintechs into the Singapore market.

### The regulatory landscape

The past few years have seen the introduction of new regulatory conditions to support entrepreneurship and the rise of non-traditional finance. In the Australian government's 2022 list of critical technologies in the national interest, distributed ledgers are identified as an area of interest, particularly in blockchain. This list signifies the government's commitment to "backing critical and emerging technologies to provide the country with a clear competitive advantage, accelerate productivity growth, and create well-paying jobs and secure supply chains".

An investment of AU\$1 billion, via a Critical Technology Fund, was also announced in August 2022 to support home-grown innovation.

Open banking is also ramping up in Australia, with the Australian Competition and Consumer Commission (ACCC) actively warning banks who have not met their open banking obligations, that they risk facing enforcement action. As part of Australia's open banking development, Consumer Data Right (CDR) was introduced to Australian banks in 2020. CDR provides consumers greater access to and control over their data and will improve the consumers' ability to compare and switch between products and services.

At the core of these regulatory updates is the desire to protect consumers and continue building trust in financial services, particularly following the 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry when many Australians lost faith and trust in the financial services industry.

### The economic climate

Due to the current headwinds in global economic climate, Australia is not exempt from concerns of a potential recession as the Russia-Ukraine conflict continues, alongside global supply chain issues and rising inflation.

Both public and private companies are feeling the effects of the market contracting with the cost of capital rising and investment levels declining across most sectors.

The Australian Securities Exchange (ASX) saw a significant decline in the pipeline of initial public offerings across

FY22 with just 15 floats registered with the ASX at the end of June 2022 (for a total raise of AU\$121 million) compared to the 43 proposed listings a year earlier (for a total amount of AU\$1.25 billion).

Dry powder in the private capital markets remain at an all-time high with US\$ 17bn available in Australia. Both venture capital and private equity firms are remaining conservative with the deployment of their capital and are waiting for improved market stability. In September 2022, venture capital deal volume was up 111 per cent on the previous month, but in October 2022, deal volumes dropped 15 per cent compared to September. Deal-making activity and the capital markets remain choppy in the Australian and New Zealand regions.

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CDR provides consumers greater access to and control over their data and will improve the consumers' ability to compare and switch between products and services.

Despite this, mergers and acquisitions (M&A) activity will grow in the near future. Amidst the lower valuations and down rounds experienced by technology companies around the world, dealmakers will have the opportunity to buy into companies at a relative discount.



Dry powder levels in Australasia. Source: Preqin, BDO analysis.

## Challenges with the labour market

The broader technology sector is the seventh largest employment sector in Australia with 1 in 16 Australians working in a technology role. These jobs offer highly competitive remuneration with a weekly pay that is 64 per cent higher than the economy-wide average but even now, it is challenging to meet the employment needs of the sector with an estimated shortage of

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Local fintechs will also continue to expand into the Asia market, given the demographics and vast opportunities available in the region.

286,000 technology workers across Australia.

The government has provided a goal of adding a million people in tech related jobs to the economy by 2025 which they will drive through attracting, recruiting, and re-skilling Australians from non-technology sectors. However, this will likely not suffice, and there will need to be a significant immigration push to attract international talent.

The five key barriers to attracting tech talent in Australia have been identified as:

1. Australians lack awareness about what tech jobs exist, or how to get into them.
2. Training products and pathways into tech jobs have not kept pace with industry needs.
3. Women, older Australians, and regional Australians are under-represented.
4. There is only a small talent pool of people with the skills and experience needed to work in experienced technical roles, and those roles have boomed.
5. Australia lacks coordinated effort, analysis and planning for the tech workforce.

As Australia's fintech sector and the broader technology sector continues to mature, there needs to be continued investment and focus on developing the local labour market at risk of losing locally based high growth ventures and companies to foreign markets.

## Australia's fintech outlook

Over the next 12 months, it is expected that there will be a consolidation in the market across fintech subsectors that are saturated due to the current economic headwinds. Increased uptake in open banking will lead to increased competition, and the next generation of locally grown Australian fintechs will emerge from the innovative ecosystem. The market is ripe for the emergence of green fintechs, especially in the WealthTech space over the next 12 to 24 months as the race for customer acquisition continues.

Local fintechs will also continue to expand into the Asian market, given the demographics and vast opportunities available in the region. Whilst Asia, New Zealand, USA, and the UK are well-trodden paths for global expansion, there are existing opportunities in the unbanked areas of Latin America and Africa that should not be neglected.

Further, as the government puts more focus on tax incentives and regulatory updates, Australia will also attract more international fintechs and talent. The outlook in Australia remains buoyant for the foreseeable future.



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# BAHAMAS

## KEY DEVELOPMENTS AND LATEST TRENDS IN THE FINTECH SECTOR IN THE BAHAMAS

### HIGGS & JOHNSON



**Christel Sands-Feaste**

Partner



[csands-feaste@higgsjohnson.com](mailto:csands-feaste@higgsjohnson.com)



+1 242 502 5200



[www.higgsjohnson.com](http://www.higgsjohnson.com)



**HIGGS & JOHNSON**

#### BIO

Christel Sands-Feaste is a partner in the law firm of Higgs & Johnson, based in The Bahamas, where she leads the Firm's practice groups in financial services, securities, investment funds, and Fintech.

A highly regarded lawyer for her specialist expertise in advising on financing transactions, securities (in The Bahamas and international capital markets), securitisations, and investment fund structuring, Christel has also developed a keen interest and expertise in emerging digital assets and related Fintech. In addition to transactional work, Christel regularly advises clients on company legal issues including licensing and compliance matters as well as general corporate and operational activities.

Christel is ranked Tier 1, Band 1 in the General Business Law Category in Chambers Global legal directory, as a "Highly Regarded" attorney in The Bahamas in IFLR1000 and is included in the IFLR1000 Women Leaders List for her outstanding contribution as a female lawyer. She is also recognised as a 'leading individual' by Legal 500 Caribbean (Commercial Transactions).



# HIGGS & JOHNSON



**Oscar N. Johnson, Jr., K.C.**

Co-Managing Partner



[ojohnsonkc@higgsjohnson.com](mailto:ojohnsonkc@higgsjohnson.com)



+1 242 502 5250



[www.higgsjohnson.com](http://www.higgsjohnson.com)



**HIGGS & JOHNSON**

## BIO

Oscar N. Johnson, Jr., K.C. is Co-Managing Partner of the law firm Higgs & Johnson, based in The Bahamas, having also led the Firm as Managing Partner and Global Managing Director from 2012 to June, 2020. He is the former chair of the Litigation practice group and practises a full range of Corporate and Commercial law, specialising in Commercial and Civil Litigation, Admiralty Law, Insurance Law and Employment Law. He also has recent experience in dealing with contentious fintech matters. Oscar regularly appears in the Supreme Court (High Court), and the Court of Appeal of the Commonwealth of the Bahamas, and before the Privy Council.

Legal directories, Chambers Global and Legal 500 Caribbean rank him as a leading lawyer in the area of Dispute Resolution. He has served as a member of The Bridge Authority, the Disciplinary Tribunal, the Arbitration Tribunal and as advisor to the Nassau Tourism & Development Board. Oscar has authored Bahamas-specific chapters in numerous publications including International Professional Practice and Lexology Getting the Deal Through.

# KEY DEVELOPMENTS AND LATEST TRENDS IN THE FINTECH SECTOR IN THE BAHAMAS

The collapse of FTX in early November and the subsequent commencement of bankruptcy proceedings in Delaware and liquidation proceedings in The Bahamas are seismic events which have shaken the sector worldwide. From initial estimates, this is likely to be the single largest insolvency in the country's history, and has prompted questions as to the future of the cryptocurrency industry generally and the necessity for increased regulation and oversight of the sector. Notwithstanding the unprecedented scale of this event, the fintech sector in The Bahamas operates within a transparent policy and legislative regime, encompassing activities beyond cryptocurrency.

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There is a dedicated regulatory framework in The Bahamas for digital assets businesses since 2020, which is based primarily on the Digital Assets and Registered Exchanges Act, 2020 (the “DARE Act”)

From a central Government policy perspective, the Government of The Bahamas (the “Government”) published a Policy White Paper on The Future of Digital Assets in The Bahamas (the “White Paper”) in April, 2022. The White Paper outlines the

Government's vision and policy position on the regulation of the digital assets space over the next 5 years, including its objectives to grow the sector, increase the attractiveness of The Bahamas for digital assets businesses, establish The Bahamas as a leading digital assets hub and encourage innovation in the Fintech space.

There has been a dedicated regulatory framework in The Bahamas for digital assets businesses since 2020, which is based primarily on the Digital Assets and Registered Exchanges Act, 2020 (the “DARE Act”). The DARE Act regulates initial token offerings and digital assets businesses, in or from The Bahamas. The range of digital assets businesses which require registration under the DARE Act include (i) digital token exchanges, (ii) the provision of services to such exchanges, (iii) payment services providers utilising digital assets, (iv) digital asset service providers and (v) the provision of financial services relating to the sale or



offering of digital assets. The custody of digital assets and the provision of wallet services are separately regulated under the Financial and Corporate Services Providers Act, 2020 (the “FCSPA”).

Both the DARE Act and the FCSPA are administered by the Securities Commission of The Bahamas (the “Commission”), the primary securities regulator in the Bahamas. The responsibilities of the Commission under the DARE Act include, the regulation, monitoring and supervision of digital assets businesses and the development of rules, guidance and codes of practice in connection with the conduct of digital assets businesses and initial token offerings<sup>1</sup>.

In March of 2022, the Commission published the Digital Assets and Registered Exchanges (Anti-Money Laundering, Countering Financing of Terrorism and Countering Financing of Proliferation) Rules, 2022 (the “DARE Act AML Rules”), which imposed the same anti-money laundering and counter terrorist financing obligations on registrants under the DARE Act, as traditional financial institutions, in accordance with international best practices. These obligations include, (i) the implementation of a risk rating framework, which among other things, assesses the risk profile of the registrant and its customers, (ii) the development of internal controls and procedures for the prevention, detection and disclosure of risks associated with money laundering, the financing of terrorism and the financing of the proliferation of weapons, in accordance with the Financial Transactions Reporting Act, 2018, (iii) the verification of customer identity, (iv) the maintenance of customer identification and transaction records, (v) suspicious transaction reporting and (vi) the provision of ongoing employee education and training.

<sup>1</sup> Section 5(1)(a) and (b), DARE Act

More recently, the Commission published its own policy statement outlining The Bahamas' Approach to the Regulation of Digital Assets Businesses<sup>2</sup> (the "SCB Policy Statement"). The SCB's Policy Statement outlines the Commission's considerations in developing the regulatory framework for the sector, describes its regulatory philosophy, clarifies the registration and supervision process and outlines future considerations for the regulation of the sector.

In order to address the rapid evolution of the sector, the Commission has confirmed its intention to review and amend the DARE Act. The areas which have been identified by the Commission to date for potential inclusion in those amendments are, regulatory accounting considerations, segregation of client assets, decentralised finance (de-fi), staking, yield farming, advertising of digital assets, stablecoins, Web 3 and non-fungible tokens (NTFs)<sup>3</sup>.

In addition to the regulation of the digital assets space, The Bahamas has implemented a number of measures in recent years to modernise its payments systems. The world's first nationwide central bank digital currency, the Sand Dollar, was launched by the Central Bank of The Bahamas (the "Central Bank") in October, 2020, after a pilot program on the Island of Exuma in 2019. The launch of the Sand Dollar was a continuation of the Bahamian Payments Systems Initiative which began in 2003. The Sand Dollar is not a cryptocurrency. It is issued by the Central Bank and fully backed by the country's foreign currency reserves. The objectives of the Sand Dollar project include increasing the efficiency of payments systems, increasing financial inclusion, providing non-discriminatory access to payments systems and strengthening anti-money laundering and counter terrorist financing defenses by reducing cash usage. Since the full re-opening of the Bahamian economy after the Covid 19 pandemic, the Central Bank has engaged in more aggressive marketing activity to promote the use of the Sand Dollar in domestic commerce, such as partnering with the organisers of local cultural festivals where the only permitted form of payment is the Sand Dollar.

As a part of a cheque usage elimination project, the Central Bank, the Clearing Banks Association and local Supervised Financial Institutions have committed to cease using Bahamian dollar cheques as negotiable instruments for the acquisition of goods and services and the settlement of legal and financial obligations in The Bahamas on 31st December 2024.

While the FTX debacle will undoubtedly overshadow the industry for some time to come and it remains to be seen whether a global consensus on the optimal method of regulation will be achieved, the regulatory and policy framework for digital assets in The Bahamas is established and the Commission has indicated its intention to strengthen that framework to respond to this rapidly changing space. Moreover, the continued advancement of initiatives such as the Sand Dollar and the cheque elimination project demonstrate The Bahamas' commitment to the overall modernisation of payments systems in The Bahamas.

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In addition to the regulation of the digital assets space, The Bahamas has implemented a number of measures in recent years to modernise its payments systems

2. Policy Statement PS1/2022

3. Section 9, SCB Policy Statement.



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# EGYPT

## LEGAL INSIGHTS TO FINTECH IN EGYPT

### SHAHID LAW FIRM



**Rehan El Bashary**

Partner



[rehan.elbashary@shahidlaw.com](mailto:rehan.elbashary@shahidlaw.com)



+202 2393 5557



[www.shahidlaw.com](http://www.shahidlaw.com)



**SHAHID**  
LAW FIRM

#### BIO

Rehan is a partner at Shahid Law Firm. Rehan has more than 14 years of transactional experience and specializes in joint ventures, mergers and acquisitions, cross-border transactions, equity and convertible debt funding rounds, divestitures, creating and vetting corporate structures and restructurings. Throughout her career, she gained experience in perfecting corporate governance and best practices for multinational operations in the various industries she was exposed to. Her recent experience includes advising leading multinational companies, investors and entrepreneurs in different sectors, both local and international markets, including digital and technology, FinTech, E-commerce, advertising, real estate, F&B, and entertainment.

Prior to re-joining Shahid Law Firm in 2018, Rehan worked as a Legal Affairs Manager at Gemini Egypt Holding for Financial Investments, a Sawiris Family Office Company, which her experience included handling high-profile transactions in the financial services, real-estate development and tourism sectors; particularly, advising on the landmark sale of the majority stake in Egypt's leading microfinance institution.

In addition to her position as a Partner at Shahid Law Firm, Rehan is also the Head of "Venture by Shahid"; the Firm's VC and startup focused practice group that provides legal services to the startup ecosystem and venture capital funds.

Rehan is also a member of the Businesswomen of Egypt 21 (BWE21) and a board member of Banati Foundation.

## Introduction

Egypt launched "Egypt Vision 2030" in 2016 which is a national agenda development plan that will ultimately achieve the principles and goals of sustainable development in Egypt. One of the key pillars for implementing this vision is reaching financial inclusion. To that end, financial inclusion has become the paramount goal for all Egyptian competent ministries, stakeholders and regulatory bodies that play a key role in the digitisation of Egypt.

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financial inclusion has become the paramount goal for all Egyptian competent ministries, stakeholders and regulatory bodies that play a key role in the digitisation of Egypt.

The need for undergoing a digital transformation indeed coincides with the dynamic changes occurring around the world and particularly in the FinTech industry.

It comes as no surprise that during the pandemic the dealings whether B2C (business to customer) or B2B (business to

business) have proved to be more efficient and profitable when using financial technology services that are delivered in a fast pace while maintaining the first in class quality of the services at the same time.

In today's world, speed and technology comprises one of the two main elements leading to the rise or fall of any business. All these factors when combined will ultimately lead to the growth of the digital and technology industry which had indeed encouraged several Egyptian talents to create disruptive and innovative ideas that are now being recognised on an international level.



## Legal Framework & Regulatory Regime

From a legal standpoint, FinTech is mainly regulated by the following laws and regulations:

(1) The new Central Bank Law No. 194 of 2020 as well as its decrees, regulations and circulars, and namely (i) The Technical Payment Aggregators and Payment Facilitators Regulations issued on May 2019, (ii) The Due Diligence Procedures for Customers of Prepaid Cards issued on March 2019, (iii) The Payment Services Regulations using Prepaid Cards issued on March 2020, (iv) The Rules Regulating for Providing Payment Services using Mobile Phones, (v) The Rules Regulating the Interoperability for Deposit and Withdraw Services via Service Providers issued on July 2021, (vi) The Standards for Issuance and Acceptance of Contactless Payments, and (vii) The Rules Regulating Services for Instant Payment Network issued on October 2021 (the "New Banking Law").

Payment operators and service providers and mainly FinTech companies operating in the banking sector were for the first time regulated by the New Banking Law (as opposed to the repealed older banking law No. 88 of 2003) and are required to obtain a license from the Central Bank of Egypt prior to providing the services. Until the detailed licensing regulations are issued, these FinTechs will continue to work in partnership and under the umbrella of Egyptian Banks that are subject to the supervision of the Central Bank of Egypt.



During the transition period, the licensing obligations lies on the partner/sponsor bank. Accordingly, banks wishing to engage FinTechs must obtain the prior consent of the Central Bank of Egypt. In light thereof, it is worth noting that the licensing application must include certain prerequisite steps and documents to be completed and submitted to the Central Bank of Egypt. As an example, the relevant information and documents applicable to a payment aggregator or facilitator includes: (a) a list of the delivery payment channels the banks wishes to use through the FinTech, (b) detailed step plan to be followed in respect to each delivery channel separately, (c) the plan of the bank and the FinTech regarding their dealings with the sub-merchants, their delivery payment channels and value of transactions to be collected, and (d) a certificate indicating that the alternative delivery payment channels were tested and secured. Further, the bank is also not authorised to launch the service in association with the FinTech prior to completing a penetration test report on certain technical aspects that include the Merchant Plugins, Software Development Kit- SDK, and Application Programming Interfaces (APIs).

(2) Law No. 18 for the year 2019 regulating the use of cashless payment methods (the "Cashless Payment Law"). The Cashless Payment Law regulates usage of cashless payment means. These means are which are defined by law as "every payment mean resulting in crediting a beneficiary's bank account. These include deposits, transfers and debit orders, credit and debit cards, mobile payments, or any other means that are approved by the Governor of the Central Bank of Egypt". Pursuant to the Cashless Payment law, private sector entities shall be required to pay all their governmental errands via cashless means of payment, including social insurance subscriptions due to their employees, experts, chairman and members of their board of directors and committees, whenever the number of employees of the private sector entity or their total monthly salaries exceed certain thresholds.

(3) Law No. 5 for the year 2022 regulating the Use of Financial Technology in Non-Banking Financial Activities (the "FinTech Law"). The FinTech Law applies to FinTech operating in the non-banking financial sector which includes capital markets, insurance activities, real estate financing, factoring, financial leasing, financing of MSMEs and consumer finance. According to the FinTech Law, these FinTechs are required to obtain a license from the Financial Regulatory Authority prior to starting their business. The FinTech Law also addressed the usage of smart contracts (with the identification and verification guidelines to be issued at a later stage) in FinTech related transactions. We believe that the regulation of smart contracts will add simplicity and speed between the contracting parties and thus lead to the increase in the flow of business.

Moreover, the two regulatory bodies supervising FinTechs are the Financial Regulatory Authority and the Central Bank of Egypt.

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The FinTech Law also addressed the usage of smart contracts (with the identification and verification guidelines to be issued at a later stage) in FinTech related transactions.

On the one hand, the FRA is the regulator responsible for licensing FinTechs operating in the non-banking sector.

On the other hand, the CBE is regulator responsible for licensing FinTechs operating in the banking sector such as payment facilitators and aggregators as well as payment service providers and operators.

In my view, certain overlap between both regulators may indeed occur when a FinTech operates in both; the non-banking and banking sector which we understand may be resolved by the issuance of an alternative financing law which we are hopeful to cover the overlap.

## FinTech Sandboxes

The Central Bank of Egypt launched its regulatory sandbox framework that will allow FinTechs to test their innovative applications and products on actual customers under the supervision of the Central Bank of Egypt. This Sandbox Framework requires the FinTechs to pass certain stages in order to be able to launch their application in the Egyptian market.

The Financial Regulatory Authority is also working on launching a fintech sandbox for fintech businesses in the non-banking financial sector to test their innovative applications and products on actual customers under the supervision of the Financial Regulatory Authority.

## FinTech Disruption and Key Players in the Egyptian Market

Despite the lack of a comprehensive legal and licensing framework, there are numerous Egyptian FinTech companies that had created disruptive ideas in the industry and left a footprint in that area. Some of these companies are mentioned below as way of an example.

- Fawry is the first company in Egypt to introduce the digital payment component to Egypt via a web based and mobile application. Fawry offers a bundle of payment transfer and collection services that include settlement of utility bills and transfer of payments using the application.

- MoneyFellows is a mobile based application that digitizes the Rotating Savings and Credit Association (ROSCA) model. Money fellows was one of the companies that had graduated from the CBE Sandbox and had raised USD 31 million in a recent Series B Funding Round.

- ValU is a buy now pay later mobile application that enables the users to purchase a product or service directly from a merchant and installing the payments to ValU. ValU was the first company to launch the BNPL service in Egypt and allows access to more than 330 websites on its application that are within a range of diversified retailers and e-commerce providers.

- Lucky is a save now pay later mobile application that enables the users to purchase products from merchants. The spending limit is determined by the financial limits set by the financing companies based on the credit scores of the users. Lucky had raised USD 25 million in its last Series A Funding Round.

- MNT Halan provides several digital solutions that include business and consumer lending (microfinance, nanofinance, SME lending and payroll lending), buy now pay later, e-commerce, payments, mobility and on-demand logistic services. The company recently added a digital FMCG offering to its merchant network. In 2021, MNT Halan had raised USD 120 million which was the biggest funding round in the MENA region during that year. Recently, the company also raised USD 150 million as debt financing from six banks.

- Khazna is a digital application that offers their users, through a prepaid card or through the application, financial and corporate benefits that include receiving salaries in advance, payroll services and payment of utilities. Khazna had raised USD 38 million in its last Series A debt and equity round.

## Investment Figures & Analysis

According to the Egyptian FinTech Investment Focused

H1 2022 Landscape Review Report which is powered by the Central Bank of Egypt, 90% of funding were made in Egyptian FinTechs that are in the stage of Series A with the two dominating sectors being Payments and Remittance as well as Lending & Alternative Finance. In addition, as of H1 2022, the total amount of funding made in FinTech is approximately USD 167 million in 31 transactions.

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Despite the lack of a comprehensive legal and licensing framework, there are numerous Egyptian FinTech companies that had created disruptive ideas in the industry and left a footprint in that area.

## Future Outlook

While we have cited above the applicable legal framework in Egypt, we often see that FinTechs are struggling when it comes to the licensing perspective as a result of the current transitional period in the regulatory regime. Nonetheless, according to the verified reports issued by the Central Bank of Egypt and other regulators, investors are intending to continue investing and supporting the FinTechs. We are expecting the detailed licensing regime to be issued soon.

We also look forward to seeing a comprehensive special legislation governing FinTechs operating in blockchain, artificial intelligence and robotics which are expanding rapidly. We believe that the digital transformation will indeed reshape the global economy in a positive way as there will be more growth in productivity and new smart opportunities will arise as a result.

From a legislation standpoint, we also believe that the policy makers will continue to hold workshops and roundtable discussions with the key players in the FinTech market to identify the actual roadblocks and challenges faced by FinTech and at the same be updated with the new technology ideas.

We also wish to emphasise that the regulators in Egypt are constantly keen to adhere with the international standards when issuing the relevant legislations. By doing so, when a particular legislation is issued it would not be considered as showstopper but in fact a solution that would solve and tackle the most common issues. Finally, we see a bright outlook for the FinTech landscape in Egypt and will be witnessing more disruptive ideas in the near future.

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We also look forward to seeing a comprehensive special legislation governing FinTechs operating in blockchain, artificial intelligence and robotics which are expanding rapidly.

## I. FIRM OVERVIEW

**Shahid Law Firm ("SLF")** was established in 1987 by Counselor Sarwat Abd El-Shahid after serving as a judge and State Counselor for nearly two decades. Since its inception, the firm has grown to include over 100 lawyers, fee earners, and support staff and has become one of the leading international law firms operating in Egypt and the region. Such credit, undoubtedly, is largely due to its lawyers' vast experience, industry insight, and ability to combine their understanding of complex legal matters with a practical solution-oriented approach. SLF's strength lies in our understanding of our clients' commercial needs which, coupled with our detailed knowledge of the legal systems in which we operate, longstanding experience in transactions and the resolution of disputes, as well as our close ties to other leading firms in the region and

beyond, ensures that our clients can obtain the best services they need. We value people with a "client-first" mindset, excellent communication skills, appreciation for cultural differences, and an ability to work effectively as team players. SLF has become the first major Egyptian law firm to expand into the East African market through the signing of an affiliation agreement with the leading and much respected counterparts, Meseret and Associates Law Office (**Ethiopia**) and Yousra Y. M. Elhassan Badi – Advocate (**Sudan**). Through its affiliate offices in **Ethiopia** and **Sudan** as well as its contacts in Western and Southern Africa, SLF began expanding its reach throughout the African continent.

## II. KEY TRANSACTIONAL PRACTICES

Anti-trust, Competition & Anti-Corruption	Commercial, Corporate, and M&A	Insurance	Manufacturing
Aviation	Dispute Resolution – Arbitration	IP, IT, Media & Telecom	Oil & Gas
Banking & Finance	Energy, Projects & Infrastructure	Labor & Employment	Pharmaceuticals & Healthcare
Capital Market	EPC & Real Estate	Leisure & Tourism	Startups & Venture Capital

## III. What is our practice area best known for?

- The litigation and arbitration practice at **SLF** is one of the largest in the Egyptian legal market and is active on the domestic, regional, and international levels.
- Our Litigation practice has gained a reputation for protecting our clients' legal interests and helping them overcome any challenges that their businesses may encounter. We represent clients of all sizes from a variety of industries including energy, oil and gas, pharmaceuticals and healthcare, construction, insurance, tourism and hospitality, technology and media, automotive and real estate. SLF has significant experience in enforcing foreign judgments in Egypt, with an acknowledged ability to pursue enforcement through using all available tools. SLF is known for being the go-to firm when it comes to complex disputes. We have handled some of the largest and most high-profile cases in the last years, setting precedents in the Egyptian legal market before all levels of court. Throughout the years, we have been recognized by leading global directories and ranked in Tier 1 in dispute resolution, among other practices.
- SLF maintains an extensive energy practice, which covers both the conventional side of the business in oil and gas upstream, midstream and downstream projects, and the renewable and alternative energies, with a large focus on the latter.
- Our Energy team is generally highly regarded for its cross-border transactions and regulatory experience. We have been recognised by **Legal500** for **2018** as a Tier 1 firm for Energy and the team has been described as focusing "heavily on the development, structuring and financing of solar and wind power projects". Our clients include East Mediterranean Gas (**EMG**), EDF International Network, EDF Renouvelables, Eni, Engie, Globeleq, Marubeni, Oilibya, Scatec Solar, Seadrill, Vegas Oil & Gas and Voltaia, among other world leaders in the field of energy.
- Our Technology, Media & Telecommunications ("**TMT**") practice is unrivaled in the Egyptian legal market. Our firm provides support and comprehensive legal services to different types of companies across a wide range of industries, and on all aspects of IP, technology, media and telecommunications including privacy and data protection, licensing and copyrights and trademark protection. We have been ranked as Tier 1 by **Legal500** for **2020** and **2022**. We also represent clients in all types of commercial transactions including licensing, joint ventures, R&D co-operations, technology transfer, and due diligence in M&A matters, as well as in litigation and arbitration. Moreover, we are active in the anti-trust bar with respect to matters relating to media and sports broadcasting and are the only Egyptian firm to have acted for clients in the only two sports broadcasting investigations conducted by the **COMESA** Competition Commission, achieving great successes to date.
- In a volatile global market, matching business needs with available resources can be challenging as transactions and the financial instruments become more intricate. Investors are growing more cautious, increasing competition for available capital. Worldwide, regulators and other stakeholders demand more transparency and accountability. Helping clients navigate these complexities, raise funds and increase shareholder value, is the goal of our M&A and Capital Market Practice. Consistently ranked among the top corporate law firms and operating with the world's largest capital market players, Shahid Law Firm has been a trusted advisor to major securities players for years

### OFFICES

#### EGYPT

CAIRO: 20 B Adly Street  
Tel: +202 2393 5557 Fax: +202 2393 5447  
Email: [info@shahidlaw.com](mailto:info@shahidlaw.com)

#### ETHIOPIA

*in association with*  
**Meseret Seyoum & Associates**  
Email: [ethiopia@shahidlaw.com](mailto:ethiopia@shahidlaw.com)

#### SUDAN

*in association with*  
**Yousra Y. M. Elhassan Badi**  
Email: [sudan@shahidlaw.com](mailto:sudan@shahidlaw.com)

# GERMANY

## CURRENT STATE AND LANDSCAPE OF THE GERMAN FINTECHS

### PWC GERMANY



**Sven Meyer**

Director



[sven.meyer@pwc.com](mailto:sven.meyer@pwc.com)



+49 170 225 1714



[www.pwc.com](http://www.pwc.com)



#### BIO

Sven is the Fintech Lead at PwC Germany. He is responsible for the coordination of the fintech activities at PwC and he and his team are the first contact concerning PwC services for fintechs.

Several studies with regard to the state of fintech market in Germany have been released by him (e.g. Fintech Kooperationsradar or Fintech Compliance Study). He has a wide network into the fintech sector and financial service sector in Germany. Especially for B2B fintechs PwC is cooperating with several fintechs to provide innovative solutions to incumbents in the German financial service sector.

Sven deals with innovative solution also in his role in finance transformation at PwC. He advises clients concerning the digitalisation of accounting and finance departments at banks and insurance companies. He implements RPA, Data analytics and BI-Tools at clients to automate accounting processes.

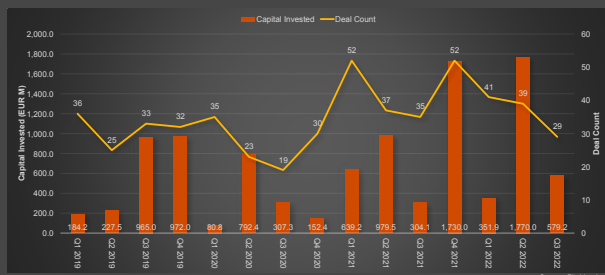
# CURRENT STATE AND LANDSCAPE OF THE GERMAN FINTECHS

## Fintech Funding Situation in Germany

Increasing interest rates, high inflation and, in general, more uncertainty in the market due to macroeconomic developments are also affecting fintech funding in Germany.

Funding deal count has steadily decreased in Q1-Q3 2022 after the record high in Q4 2021. Although the funding volume in Q2 2022 has even beaten Q1 2021, the expectation is that funding volume won't reach the 2021 level. Investors are more cautious and require fintechs to decrease costs instead of growth at any price.

### Fintech Funding Germany



This has led to several layoffs in the German fintech market. Moss, Trade Republic, Solarisbank and Smava are some of the companies that laid off staff. Others like Nuri and Rubarb were hit even worse and went bankrupt with the crypto market meltdown. Fintechs like Kontist, Penta, and Paypense took the chance for an exit.

However, most of the later-stage fintechs like N26 and Trade Republic received record funding before the funding market slowed down. They will need to find ways to increase their runway, as IPOs won't be an option in the near term. Early-stage and seed funding are continuing, although more selectively than in the past. The most notable examples of seed and early-stage funding have been Moss, Topi, re:cap, and Mondu. VC funds are therefore willing to invest their money. According to Decibel Partners, binding capital commitments to VC funds have reached USD 290bn by end of June 2022, which is expected to be invested over the next three years. After the slowdown in 2022, we might see higher funding in 2023 and 2024 again.



## Fintech Deals since Q4 2021

161 deals in total since Q4 2021



## Fintech Landscape by Category

### Embedded Finance

Buy-now, pay-later (BNPL) in B2C business has certainly been the defining element of embedded finance over the last few years. In embedded finance, financial services like payment, financing, or insurance are embedded in a sale process with a customer. Most prominent BNPL fintech in this category is Klarna which offers its services in Germany, too. Consumers can shop directly via the Klarna app and use the pay-later functions in the check-out process. While Klarna offers its service to online shops as well as consumers, the German fintechs in this area are more focused on B2B customers.

BNPL fintechs like Ratepay or Billie offer a white-label solution that businesses can integrate into the customer check-out process. Other fintechs in Germany that offer BNPL solutions are for example Unser and Billpay. However, Billpay has been acquired by Klarna.

Pay later has a long tradition in Germany and is still the most used payment solution. Shops typically offer their customers the option of buying their products and sending an invoice for payment later.

It is therefore not surprising that the market share of BNPL in German e-commerce payments in 2021 reached 20% according to Statista, which is the second highest market share in Europe.



This development has led to increased competition. Neobanks like N26 now also offer the possibility for its customers to finance purchases made. Deutsche Bank quite recently announced a cooperation with Credi2 to build a BNPL solution for merchants. Santander invested in Payever. And even Apple now offers Apple Pay Later with no fees or interest for its customers.

Furthermore, new embedded finance solutions are on the way. Banxware, Myos or re:cap are offering financing solutions on e-commerce platforms like Amazon, Shopify and other digital platforms like Lieferando. Loan volume, repayment and conditions are based on sales revenues on those platforms (revenue-based financing).

## Alternative Lending

### Loan Comparison Portals

Consumers that want to lend money from banks can compare and receive loans on loan comparison portals like Check24, Verivox, Smava, or Finanzcheck. They offer a quick overview of current loan conditions. Those portals are working together with the major German banks. Customers receive a binding loan offer within minutes.

Smava and Finanzcheck have merged recently and are focusing on loan comparison only. Check24 and Verivox provide all sorts of comparisons starting from electricity and gas to insurance and even holidays.

The concept of comparison portals has been taken over by Compeon and Fincompare to offer loan comparison for SMEs. The comparison can be done for various financial products like business loans, overdraft facilities, factoring, and leasing. However, the business model for SMEs has suffered from COVID-19, which has impacted growth. Some German Volksbanken took advantage of this to acquire Fincompare.

### Loan Platforms

Another way of alternative lending is provided by loan platforms. Compared to comparison portals, customers receive a financing offer directly from the loan platform. Several loan platforms started with peer-to-peer lending, therefore without the participation of banks. However, peer-to-peer lending was not successful in Germany. Funding Circle closed its business in Germany, and Auxmoney stopped its peer-to-peer activities. Kapilendo merged with Invesdor and focuses more on crowdfunding than crowdlending.

Loan platforms in Germany now operate typically in cooperation with banks, which provide the funding for loan origination. Another way of refinancing may come from alternative investment funds or utilising securitisation. Funding seems to be the limiting factor for those platforms as financing demand is always higher than the loan volume originated by those platforms.

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Banxware, Myos or re:cap are offering financing solutions on e-commerce platforms like Amazon, Shopify and other digital platforms like Lieferando

Prominent German loan platforms are for example Auxmoney for consumer loans, Creditshelf for SME lending, loanboox and Komuno for government financing.

### Supply Chain and Trade Finance

COVID-19, the war in Ukraine, sanctions on Russia, and increasing trade barriers have put stress on global supply chains. Cash is king and late payments on invoices have an impact on supplier's liquidity and therefore creditworthiness and even insolvency risk. Large corporations, therefore, seek to protect their suppliers to secure the supply chain by setting up facilities for their suppliers to get quicker access to liquidity. This means that it is prime time for supply chain and trade finance fintechs offering financing solutions.

There are several products available to improve the liquidity situation. In trade finance a supplier would like to receive payment on its invoice as soon as they have shipped the goods. A buyer, on the contrary, would like to pay later after they have received the goods. Modifi has set up a platform on which a seller can upload its invoices and get immediate payment, while a buyer can upload its received invoice to receive financing to pay the invoice later.

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Vivid Money, which was founded in 2019, has already reached a valuation above EUR 800 million according to Pitchbook

Supply chain finance solutions like forfaiting, dynamic discounting, and reverse factoring are typically ways to improve liquidity. CRX Markets, Traxpay, and Cflow have built platforms in Germany to digitize the process.

Supply chain and trade Finance have recently also gained attention because

banks and corporates are stepping in. In Germany, Deutsche Bank invested in Traxpay, while Taulia, a US working capital fintech, was acquired by SAP.

## Personal Finance & Wealthtech

### Neobanks

Neobanks have been among the earliest fintechs in Germany. Initially providing customers with an app-only bank account, further banking features have been added over time. Whether it's bank accounts, savings, insurance or loans, an increasing amount of banking services are now available.

N26, one of the fintech unicorns in Germany, is the clear no. 1 neobank in Germany in terms of number of customers. However, other neobanks with specific customer focus have also been founded over the last few years. For example, Tomorrow is a neobank for sustainability, and Ruuky a neobank for teenagers.

However, competition is increasing. Vivid Money, which was founded in 2019, has already reached a valuation above EUR 800 million according to Pitchbook. Revolut (UK) is increasingly popular in Germany with regard to app download statistics. It is a race concerning the fastest international expansion and parallel product development for further banking and trading services.

### Neobrokers

When it comes to trading, there has been a lot of hype around neobrokers since the start of the COVID-19 pandemic. Customers with more time and fewer possibilities to go shopping invested heavily in equities, ETFs, and cryptocurrencies. This development helped several neobrokers in Germany such as Trade Republic, Scalable Capital, Justtrade, Smartbroker, or finanzen.net zero. However, since the tech bubble bust and the beginning of crypto winter, app downloads are declining.

Further growth will be possible through international expansion and/or merger or further product development. Trade Republic recently received a new license to be able to trade on its own risk or sell own financial instruments to customers. Furthermore, fractional share trading was introduced.

Nevertheless, there is an ongoing discussion about the payment for order flow regulation in Europe. If this were prohibited, it would shake up the neobroker market in the whole of Europe and cast doubt over some of the neobroker business models.

### Investment

If customers in Germany want to invest in other asset classes than equities, ETFs, and bonds, they can do this via investment wealthtechs. Fixed deposits are popular in Germany and can be managed for example with Weltsparen from Raisin DS. Money can be easily transferred throughout Europe to earn the highest interest. Raisin is benefitting from the merger with one of its competitors, Deposit Solution, in 2021 and from increasing interest rates.

For more wealthy customers, asset classes like private equity and venture capital might be an option. Wealthtechs like Moonfare or Liquid offer entries into these asset classes from 50k upwards.

Automated wealth management with the help of roboadvisors has not yet reached the high expectations that people had of it. However, investments have steadily increased during COVID-19. The biggest roboadvisors in Germany are Visualvest (Volksbanken), Scalable Capital (also as whitelabel solution for several banks), quiron (Quirin Privatbank), Raisin Invest (Raisin DS), Cominvest (Comdirect), and Liquid.

### Expense Management

This category includes fintechs whose main focus is on expense management as well as fintechs that provide bank accounts and credit cards for the self-employed and SMEs (i.e. neobanks) where expense management is an additional service.

Well known fintechs for expense management in this segment are Pleo, Spendesk, Moss and Pliant. They offer (virtual) credit cards for a firm's employees to handle their firm-related spendings (e.g. travel expenses). Receipts handling, travel allowances, budgeting and accounting are managed via an app and in real time with the corresponding credit card transactions.

On the other hand, there are fintechs like Kontist, Penta, Qonto and offerings from traditional banks such as Fyrt (Deutsche Bank) for bank accounts for the self-employed and SMEs. They provide business banking accounts, credit cards and sometimes loans for SMEs. Expense management is an additional service. This segment has seen some movement in the last months. Penta found an exit and merged with its French competitor Qonto. Kontist was acquired by the Danish Ageras Group and focuses more on bookkeeping and tax accounting.

### Banking

#### Open Banking & Infrastructure

With the rise of fintechs, there has always been a challenge regarding how to integrate these solutions into the broader value chain of financial services. In Germany and Europe,

PSD2 obliges banks to provide an API for third parties (open banking). Fintechs building APIs to connect to banks are providing the ground infrastructure in digitising banking solutions (infrastructure). Initialising payments or payouts, receiving account information, user verification, or credit scoring are examples of such services.

Open banking and infrastructure fintechs were the first fintechs in Germany. However, over the last years, they have faced competition and consolidation from international players. Truelayer stepped into the German market. FinTecSystems has been acquired by Tink (acquired recently by Visa). FinAPI was sold to Yapily. Within Germany, Figo was merged with Finleap to form Finleap connect.

#### Banking-as-a-Service

A second requirement to do banking services as a fintech is to have a banking license in order to be compliant with regulatory requirements. As this is cumbersome, especially for younger fintechs, banking-as-a-service providers offer banking platforms for fintechs.

Banking-as-a-service has formerly been known as white label banking. Banks providing banking services are almost invisible in the background. In Germany, sometimes traditional banks with a 100-year history are offering white label banking. Sutorbank, Bankhaus von der Heydt, DAB Bank, Baader Bank, and recently SWK Bank are examples of banks providing services for fintechs such as Justtrade, Raisin, and Scalable Capital.

A prominent fintech providing a banking-as-a-service platform in Germany is Solaris. Solaris has helped many well-known fintechs in Germany to start their business.

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If customers in Germany want to invest in other asset classes than equities, ETFs, and bonds, they can do this via investment wealthtechs

However, banking-as-a-service seems to be a short to mid-term solution for fintechs, as most fintechs will aim for their own BaFin banking licenses over the long term.

## Regtechs

Besides banking-as-a-service partner, there are also fintechs specialised in a specific regulatory topic like KYC or AML

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In Germany, the neobrokers, in particular, have implemented solutions for customers to trade cryptocurrencies

A broad range of banks and fintechs are using the Videolent solution of WebID or IDnow in Germany.

While WebID has been acquired by Anacap to finance its further international expansion, IDnow went on a shopping tour to acquire competitors like Identity Trust Management and Arianext and was

searching for an exit. That seems to be taking longer than expected. A further funding round in August 2022 may give room for further acquisitions.

In the meantime, several other fintechs are working on different identity solutions, ranging from digital signatures, eID solutions (to make use of the NFC chips in German passports), or even wallet solutions under the European eIDAS regulation to offer safe storage for sensible documents (passports, driving licenses, etc.) and to be able to share selected data on request to third parties in order to identify yourself. NECT, Authada, Verimi, and Lissi are some fintechs that provide such solutions.

In terms of anti-money laundering (AML), fintechs such as Hawk:AI make use of AI algorithms to monitor money transactions, perform customer screening in relation to sanctions lists and provide customer risk ratings.

## Digital Assets

### Crypto Trading

In Germany, the neobrokers, in particular, have implemented solutions for customers to trade cryptocurrencies. Often, these solutions combine the different parties involved to execute a trade. There is the app of the neobroker to capture a trade, while trade data and prices are called up via API from crypto exchanges on which the execution of a trade is performed too. Cryptocurrencies are then stored at crypto custodians while KYC, AML, and cash transactions are handled typically by a banking-as-a-service provider. Further parties may also be involved, e.g. if cryptocurrencies are lent for interest (staking).

How dependent a fintech might be on other parties in the value chain became obvious when the Celsius Network went bankrupt and Nuri (formerly Bitwala) customers weren't able to get back staked cryptocurrencies. However, shortly after this Nuri went bankrupt too. The recent insolvency of FTX might also negatively impact crypto trading provider in Germany.

### Crypto Custodians

While self-custody of cryptocurrencies may be the safest method of storing cryptos (cold storage), this also comes with the responsibility to take care of the key which involves at least some technical understanding.

More convenient is the use of a third-party custodian who takes care of the cryptos. In Germany, several crypto custodians have got a BaFin license to offer these services. German fintechs such as Tangany, Finoa, Upvest, and Kapilendo Custodian received a license. Several other crypto custodians are still waiting for one of these precious BaFin licenses.

All custodians were growing during the crypto hype in 2021. Tangany and Upvest received further funding in 2022. Finoa states that it is already profitable.

This also attracts traditional banks. Hauck Aufhäuser acquired Kapilendo Custodian, and Commerzbank recently announced applying for a crypto custodian license.

### **Tokenisation**

Blockchain technology is not only used for crypto currencies. It can also be used to make investments in more illiquid asset classes such as real estate or art available to a broader range of investors. Investments start from a few hundred to a few thousand euros.

Finexity, Brickwise, Linus Digital Finance and Exporo are examples of fintechs offering investments in tokenised real estate or other tangible asset classes. Finexity also recently started to tokenise private equity shares and started competing with Moonfare and Liquid.

Quite recently, Deutsche Börse invested in 360X, building a trading platform for tokenised assets, and also has a cooperation with Cashlink which provides infrastructure solutions to tokenise assets.

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Finexity, Brickwise, Linus Digital Finance and Exporo are examples of fintechs offering investments in tokenised real estate or other tangible asset classes



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# IRELAND

## KEY DEVELOPMENTS AND LATEST TRENDS IN THE FINTECH MARKET

### WILLIAM FRY



**Shane Kelleher**

Partner - Financial Regulation Unit and Banking & Finance Department



[shane.kelleher@williamfry.com](mailto:shane.kelleher@williamfry.com)



+353 1 639 5148



[www.williamfry.com](http://www.williamfry.com)



#### BIO

Shane Kelleher, William Fry's Head of Financial Regulation, Co-Chair of the Fintech Group and Co-Head of the Financial Services Sector Group, is a Partner in William Fry's Banking & Finance Department and Co-Chair of the Regulatory Group of the Fintech & Payments Association of Ireland, the main Fintech industry association in Ireland. Shane specialises in banking, payments and fintech regulation and he advises clients on all stages of the regulatory life-cycle including authorisation, supervision and enforcement. As of 2022, Shane's team at William Fry had acted for 40% of successful applicants to the Central Bank of Ireland for authorisation as an electronic money institution, including 80% of successful applicants in 2020 and 2021 alone.

Shane and his team are currently advising on many other applications for authorisation/registration as electronic money institutions, payment institutions, account information service providers, crowdfunding service providers, MiFID investment firms and virtual asset service providers. Shane's other work includes acquisitions/disposals of regulated entities, compliance with conduct of business requirements and regulatory horizon planning.

# WILLIAM FRY



**John O'Connor**

Partner - Technology and Data Group



[john.oconnor@williamfry.com](mailto:john.oconnor@williamfry.com)



+353 1 639 5183



[www.williamfry.com](http://www.williamfry.com)



## BIO

John O'Connor is a Partner in William Fry's Technology & Data Group and is co-Chair of the William Fry Fintech Group. He specialises in complex technology and outsourcing transactions including systems integration and cloud services. He is also a specialist in the area of data protection and cyber security. He has significant experience of advising financial services organisations including several Fintechs on technology related projects involving robotics/ machine learning and distributed ledger technologies such as blockchain.

John is a frequent public speaker and has been widely published in legal journals, he is an active member of the FinTech & Payments Association of Ireland, immediate past co-Chair of the Irish chapter of the International Association of Privacy Professionals, immediate past Chair of the Irish division of The Society for Computers and Law and a member of the Irish Government Data Forum (an advisory Group to the Irish Government).

## A BRIEF OVERVIEW OF THE IRISH FINTECH LANDSCAPE

Ireland has been successful in developing a solid reputation as an EU fintech regulatory hub based on:

- Ireland's traditional strengths in the technology and financial services sectors;
- The firm foundations arising from Ireland's success in attracting regulated fintechs seeking an alternative EU/EEA customer-facing base post-Brexit;
- Other reasons Ireland has attracted strong flows of inward investment (e.g. Ireland is an English

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Ireland has been successful in developing a solid reputation as an EU fintech regulatory hub

speaking, common law jurisdiction which is strongly committed to its EU membership and considered a pro-business environment with an attractive corporate tax regime, a well-skilled workforce and a credible financial regulator).

The leading players in Ireland's fintech landscape include:

- Some leading fintech firms which have established operations in Ireland (including international names such as Google Payments, Facebook Payments and Coinbase and Irish firms such as Stripe and Fexco);
- The relevant Irish government department (the Department of Finance);
- The state agencies responsible for inward investment (the IDA) and for supporting domestic enterprises (Enterprise Ireland);
- The Irish financial regulator (the Central Bank of Ireland or CBI);
- Industry associations including the Fintech & Payments Association of Ireland, Blockchain Ireland, The Banking & Payments Federation of Ireland and Financial Services Ireland.

## WHAT ARE THE MAIN TYPES OF REGULATED FINTECHS IN IRELAND AND THE RECENT FINTECH REGULATORY AUTHORISATIONS TRENDS?

It is important for fintech firms to undertake a regulatory analysis of their business model to ascertain whether it falls within the scope of any existing or proposed regulatory regime which may trigger a requirement to secure a regulatory authorisation or registration and whether an exemption is applicable. The main types of regulatory authorisation regimes which are relevant to fintech business models include:

### Electronic Money Institutions

An electronic money institution is an undertaking authorised to issue electronic money. Electronic money is monetary value as represented by a claim on the issuer, which is (i) electronically stored, (ii) issued on receipt of funds for the purpose of making payment transactions, (iii) accepted as a means of payment by a natural or legal person other than the issuer.

Electronic money institutions are granted authorisation under an EU-wide regulatory regime (including the ability to passport to other EU/EEA Member States) under the European Communities (Electronic Money) Regulations 2011 (as amended), which implement Directive 2009/110/EC (the Electronic Money Directive) into Irish law. As of 1 November 2022, 20 electronic money institutions have been granted authorisation by the CBI, a significant increase from only 2 in 2018.

## Payment Institutions

A payment institution is an undertaking authorised to provide regulated payment services. Regulated payment services include, inter alia, (i) services enabling cash to be placed on a payment account, (ii) services enabling cash withdrawals from a payment account, (iii) execution of payment transactions, (iv) execution of payment transactions where the funds are covered by a credit line for a payment service user, (v) issuing payment instruments or acquiring payment transactions, (vi) money remittance, (vii) payment initiation services and (viii) account information services.

Payment institutions are granted authorisation under an EU-wide regulatory regime (including the ability to passport to other EU/EEA Members States) under the European Union (Payment Services) Regulations 2018 (as amended), which implements Directive (EU) 2015/2366 (the Second Payment Services Directive or **PSD2**) into Irish law. As of 1 November 2022, 23 payment institutions have been granted authorisation by the CBI, up from 12 in 2018.

## MiFID Investment Firms

A MiFID investment firm is an undertaking authorised to carry out investment services in relation to financial instruments.

MiFID investment firms are granted authorisation under an EU-wide regulatory regime (including the ability to passport to other EU/EEA Members States) under the European Union (Markets in Financial Instruments) Regulations 2017 (as amended), which implement Directive 2014/65/EU (the Markets in Financial Instruments Directive II or **MiFID II**) into Irish law. As of 1 November 2022, 92 MiFID investment firms have been granted authorisation by the CBI.

## European Crowdfunding Service Providers

A crowdfunding service provider is a legal person authorised to provide crowdfunding services as defined under Regulation (EU) 2020/1503 (the **Crowdfunding Regulation**), which established an EU regulatory regime (including the ability to passport to other EU/EEA Members States) for crowdfunding service providers.

The Crowdfunding Regulation introduced a transitional regime for existing crowdfunding service providers who were providing crowdfunding services in Ireland before the commencement of the Regulation, which permitted such firms to continue to provide crowdfunding services until the earlier of 10 November 2022 or the date that they are authorised under the Regulation. However, this transitional regime was later extended to 10 November 2023. Whilst at the date of writing no European Crowdfunding Service Providers have been granted authorisation according to the CBI register, as this is a new regulatory regime, a clear trend is an increase in applications for authorisation as a European Crowdfunding Service Provider.

## Virtual Asset Service Providers

The European Union's Fifth Anti-Money Laundering Directive (**5AMLD**) extended anti-money laundering and countering the financing of terrorism (**AML/CFT**) obligations to entities that provide certain services relating to virtual assets. 5AMLD was implemented into Irish law by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (**2021 Act**), and the provisions of the 2021 Act that relate to virtual asset service providers (**VASPs**) commenced on 23 April 2021. The 2021 Act extends the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021 (**CJA 2010 to 2021**) to VASPs. VASPs are 'designated persons' for the purposes of the CJA 2010 to 2021 and are required to comply with the Anti-Money Laundering and Countering the Financing of Terrorism (**AML/CFT**) obligations thereunder.

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A clear trend is an increase in applications for authorisation as a European Crowdfunding Service Provider

VASPs are firms that provide any of the following services relating to virtual assets:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets, namely, to conduct a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- custodian wallet provider; and
- participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both.

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The proposed European Markets in Crypto-Assets Regulation (MiCA) is intended to introduce an EU-wide regime regulating the issuance, offer to the public and trading of crypto-assets.

All VASPs established in Ireland are required to register with the CBI for AML/CFT purposes only. Firms not established in Ireland and/or not carrying on business as a VASP immediately before the 2021 Act coming into force must be registered with the CBI prior to the commencement of any services relating to virtual assets from Ireland.

As of 1 November 2022, 2 VASPs have been registered with the CBI, though, as this is a relatively new registration requirement, a clear trend is an increase in applications for registrations as a VASP.

The VASP registration regime is a domestic Irish regulatory regime (i.e. a VASP registration does not entitle the holder to passport services to other EU/EEA Member States). At present, there is no other bespoke domestic regulatory regime relating to crypto-assets. However, depending on the business model, a firm may fall within the scope of a regulatory authorisation requirement under another existing regulatory regime (e.g. as a MiFID investment firm) unless an exemption is available.

## Proposed Markets in Crypto-Assets Regulation

The proposed European Markets in Crypto-Assets Regulation (**MiCA**) is intended to introduce an EU-wide regime regulating the issuance, offer to the public and trading of crypto-assets. This will include an EU-wide authorisation regime for crypto-asset service providers and issuers (including the ability to passport to other EU/EEA Members States). The objectives of MiCA include:

- To provide legal certainty for crypto-assets not covered by existing EU financial services legislation;
- To replace existing national frameworks applicable to crypto-assets not covered by existing EU financial services legislation;
- To establish uniform rules for crypto-asset service providers at EU level; and
- To establish specific rules for stablecoins.

At the date of writing, the text of MiCA had been approved by the EU's European Council but remained to be approved by the EU's European Parliament. Once it receives final approval, MiCA will not take effect for 18 months, and therefore, MiCA is not expected to take effect until the first half of 2024. We expect that Ireland will attract many applicants for authorisation under MiCA based on Ireland's success in attracting other types of regulated Fintechs seeking a suitable base to service their EU/EEA customers.

## WHAT ARE THE MAIN FINANCIAL REGULATORY DEVELOPMENTS AND TRENDS RELEVANT TO THE REGULATED FINTECH SECTOR IN 2022?

### CBI supervisory priorities relevant to the Fintech sector

#### **Operational resilience and cyber resilience**

Operational resilience of the financial sector, including supervision of technology-related change and cyber resilience, is a key focus for the CBI, given its potential impact on firms and their customers and the risks for financial stability. In September 2016 the Central Bank of Ireland issued cross industry guidance in relation to information technology (IT) and cybersecurity governance and risk management by regulated financial services firms in Ireland. On 1 December 2021, the CBI published Cross-Industry Operational Resilience Guidelines for regulated financial service providers (RFSPs).

#### **Anti-money laundering and countering the financing of terrorism (AML/CFT)**

Regulated fintech firms must invest in and maintain strong AML/CFT control frameworks. These frameworks should be based on a firm-specific risk assessment, focussing on the particular AML/CFT risks arising from the firm's business model.

#### **Consumer Protection**

Consumer protection is always a top supervisory priority of the CBI. On 3 October 2022, the CBI launched a discussion paper on consumer protection in financial services. The purpose of the discussion paper is to stimulate discussion and obtain feedback and views from consumers and stakeholders on key discussion topics before the CBI considers and publishes proposed revisions to the Consumer Protection Code, the main conduct of business code relating to consumer protection which applies to RFSPs.

### **Outsourcing**

On 17 December 2021, the CBI published Cross-Industry Guidance on Outsourcing outlining the CBI's expectations regarding the management of outsourcing risk to promote higher standards of operational resilience in RFSPs. Outsourcing is a high supervisory priority of the CBI, and, at the date of writing, the CBI is notifying several regulated fintechs of planned thematic inspections relating to compliance with regulatory requirements relating to outsourcing.

### **Data Protection**

The need for transparency around personal data processing has meant that compliance with data protection legislation such as the General Data Protection Regulation (GDPR) (and the Irish Data Protection Acts 2018) is one of the primary concerns

of fintechs, their counterparties and consumers. Data protection is enforced by the Irish Data Protection Commission (which may on occasion have responsibility for the pan-European Union data processing of a fintech). Consumer facing fintechs in particular and those involved in outsourcings or using new technologies such as blockchain, machine learning and artificial intelligence (AI) need to carefully comply with data protection requirements including in relation to any data transfers outside the European Economic Area (EEA) as well as maintaining records to demonstrate compliance.

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Operational resilience of the financial sector, including supervision of technology-related change and cyber resilience, is a key focus for the CBI.



### Individual Accountability

In 2018 the CBI proposed the introduction of an individual accountability framework (IAF) in the regulated financial services sector comprising four pillars:

- The Senior Executive Accountability Regime or SEAR;
- New conduct standards for regulated firms and their staff;
- Enhancements to the existing fitness and probity regime; and
- Reforms designed to simplify regulatory enforcement against individuals.



IFS 2025 is a government strategy to promote the further development of Ireland's international financial services sector to 2025.

Whilst the proposals draw very heavily on the UK's Senior Managers Regime, unlike the UK, Ireland has a written Constitution and the challenges this poses for legislative drafters partly explain the delays in the progression of the individual accountability agenda

in Ireland. The Central Bank (Individual Accountability Framework) Bill 2022, which will put the IAF proposal into law, was published on 28 July 2022. It is possible that the legislation will be enacted by the end of 2022 and that the IAF will come into effect in mid to late 2023. Whilst three of four pillars will apply to all RFSPs from the outset; the SEAR pillar will apply only to a sub-set of RFSPs in its initial phase, namely, credit institutions, certain MiFID investment firms and insurance undertakings.

### Ireland for Finance Strategy 2020 to 2025 (IFS 2025)

IFS 2025 is a government strategy to promote the further development of Ireland's international financial services sector to 2025. The vision is for Ireland to continue to be a top-tier location of choice for global financial services and to protect our future competitiveness. IFS 2025 consists of four pillars, including:

- ensuring the operating environment underpinning the international financial services sector will support growth;
- technology and innovation to address emerging challenges and opportunities;
- ensuring we continue to have skilled people to meet the demands of the international financial services sector including new and changing skills requirements; and
- effective communication and promotion of Ireland's international financial services offering.

IFS 2025 includes numerous actions specifically targeting the growth of Ireland's fintech sector.

### The Central Bank Innovation Hub

The CBI established the Central Bank Innovation Hub in 2018 to allow fintech firms to engage directly with the CBI outside of existing formal regulator/firm engagement processes (including on issues relating to innovation and regulatory authorisation and registration) and to assist the CBI to gather early intelligence on new innovations in the financial services sector. In its Innovation Hub 2021 Update, the CBI noted several high-level trends, including a 19% increase in the level of enquiries in 2021 in comparison to 2020 and a noticeable increase in enquiries from potential virtual asset service providers and crowdfunding service providers.

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William Fry LLP

T: +353 1 639 5000

E: [info@williamfry.com](mailto:info@williamfry.com)

# JAPAN

## GameFi and relating legal issues under Japanese Law

### ANDERSON MORI TOMOTSUNE



**Ken Kawai**  
Partner



[ken.kawai@amt-law.com](mailto:ken.kawai@amt-law.com)



[www.amt-law.com](http://www.amt-law.com)



#### BIO

Ken Kawai has extensive experience advising financial institutions, fintech start-ups, investors and corporate clients on complex finance and financial regulatory matters.

Ken focuses primarily on the fintech industry, and regularly advises fintech companies, financial institutions, international organisations and self-regulatory organisations on legal issues surrounding fintech, including the complex legal framework governing cryptocurrencies and blockchains.

Ken also specialises in derivatives, and has counselled global banks, broker-dealers and investors on regulatory matters and best practice in respect of derivatives and related products. He derives his deep and practical knowledge in this area from his 17-year career at MUFG Bank, Ltd (formerly known as the Bank of Tokyo-Mitsubishi and, prior to that, the Bank of Tokyo Ltd), where he was involved in derivatives trading and marketing.

Ken has been ranked in Band 1 in the fintech legal space in *Chambers FinTech* in 2020, 2021 and 2022.

ANDERSON MŌRI & TOMOTSUNE

# ANDERSON MORI TOMOTSUNE



**Takeshi Nagase**

Financial Advisor



[takeshi.nagase@amt-law.com](mailto:takeshi.nagase@amt-law.com)



[www.amt-law.com](http://www.amt-law.com)



## BIO

Takeshi Nagase is a fintech partner at Anderson Mori & Tomotsune. He handles finance and corporate transactions, and has considerable experience advising on all legal aspects of public and private mergers and acquisitions, joint ventures, fintech (including, among others, Crypto Asset regulations, and regulatory requirements for registration of CAESPs, initial coin offerings, and the like), and other corporate and financial advisory matters. His clients range from prominent financial institutions to Crypto Asset start-ups. Between 2013 and 2014, Takeshi served on secondment in the disclosure department of the FSA, where he was an instrumental part of the team that revised the laws and guidelines governing disclosure by listed companies, and prepared the Japanese Stewardship Code. Additionally, he handled a broad range of finance and corporate transactions on a secondment stint with the legal department of a major Japanese securities firm from 2015 to 2017. As a result of the unique perspective he has gained from these professional experiences, Takeshi is often sought for his advice on finance-related matters, particularly by clients seeking to evaluate transactions from the regulator's point of view.

# ANDERSON MORI TOMOTSUNE



## BIO

Keisuke Hatano is a partner at Anderson Mori & Tomotsune and specialises in payment and settlement related regulations in Japan.

He has also been involved in a number of significant finance transactions and engaged in many international & domestic litigations. In addition to his professional experience at Anderson Mori & Tomotsune, he worked for the Financial Services Agency where he was mainly engaged in the several amendments to the Banking Act which aim to create a pro-FinTech environment.



**Keisuke Hatano**

Partner



[keisuke.hatano@amt-law.com](mailto:keisuke.hatano@amt-law.com)



[www.amt-law.com](http://www.amt-law.com)



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## I. Introduction

The global huge popularity of the game, which uses blockchain technology ("**Blockchain Games**"), has shifted significant attention in Japan to such Blockchain Games.

Blockchain Games have certain characteristics. The in-game items and game characters in most Blockchain

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GameFi involves provision of financial incentives for game play through the grant of fungible tokens as Rewards.

Games are represented by non-fungible tokens ("**NFTs**") minted on blockchains ("**Game NFTs**"), and are transferable on the blockchains. Blockchain Games also generally employ a mechanism by which to provide fungible tokens that are exchangeable for fiat currency, Bitcoin, Ether, or

crypto assets ("**CAs**") of other kinds as a reward ("**Reward**") for players who use Game NFTs. Such Blockchain Games are sometimes referred to as "play-to-earn" or "GameFi" games because they allow players to earn Rewards that are exchangeable for fiat currency or CAs through game play, thereby creating a new scheme that combines gaming and finance.

GameFi involves provision of financial incentives for game play through the grant of fungible tokens as Rewards. However, an offer of a Blockchain Game with GameFi characteristics in Japan would give rise to the issue of whether Game NFTs are subject to regulation as "Crypto Assets" under the Payment Services Act (the "**PSA**"). This is because NFTs, like Bitcoin and Ether (which constitute CAs), are also tokens on the blockchain. In addition, because Blockchain Games may use sales tactics, such as making multiple random and unknown Game NFTs available for purchase in so-called "*Gacha*" ("**Random Sales**"), they may trigger issues of gambling under the Penal Code. Further, Rewards that can be earned through game play may constitute "offerings of premiums" under

## ANDERSON MŌRI & TOMOTSUNE

the Act against Unjustifiable Premiums and Misleading Representations (the "**AUPMR**") and be subject to comprehensive regulation under the AUPMR.

## II. Whether Game NFTs constitute CAs under the PSA

### (1) Definition of CAs

Bitcoin, commonly viewed as the representative token using blockchain technology, is regulated as a CA under the PSA. As NFTs are also tokens using blockchain technology and are exchangeable for fiat currency or other CAs, the question arises as to whether they constitute CAs under the PSA.

CA is defined in Article 2, paragraph 5, of the PSA as:

- i. proprietary value that may be used to pay an unspecified person the price of any goods purchased or borrowed or any services provided, where such proprietary value may be sold to or purchased from an unspecified person (limited to that recorded on electronic or other devices by electronic means and excluding Japanese and other foreign currencies and currency denominated assets), or transferred using an electronic data processing system; or
- ii. proprietary value that is reciprocally exchangeable for other proprietary value specified in the preceding item with an unspecified person, where such proprietary value may be transferred using an electronic data processing system.

Although no clear guidelines have been established as to what kind of NFTs will be deemed CAs, the following factors would be relevant in determining whether any given NFT constitutes a CA:

- (i) whether the token in question has a unique characteristic and is distinguishable from other tokens from the viewpoint of ordinary users;
- (ii) the kind of utility the token has;
- (iii) the number of similar tokens that have been sold;
- (iv) whether the token is divisible; and,
- (v) whether the token is listed on a crypto exchange.

With respect to item (i), if the token in question has unique characteristics and is distinguishable from other tokens by ordinary users, this would weaken the token's characteristics as a means of payment, thereby making it more unlikely for the token to fall within the definition of CA.

With respect to item (ii), if the token has a unique utility, such as being usable as an item in a game, it can be reasonably argued that the token does not serve as a means of payment but instead serves such utility. This would also reduce the likelihood of the token being deemed a CA.

Regarding item (iii), if many similar tokens have been sold, the uniqueness of the token will be lessened, which in turn will strengthen its characteristics as a means of payment. In such a situation, the likelihood of the token being deemed a CA will increase.

Turning to item (iv), tokens that are divisible will be less unique and higher in quantity. These factors will increase the likelihood of the tokens being used as a means of payment. In such a situation, the token will more likely be deemed to constitute a CA.

With regard to item (v), if the token is listed on a crypto exchange, it would more likely be used as a means of payment because the token would be exchangeable with other tokens. This would increase the likelihood of the token being deemed a CA.

## (2) Determining Whether Game NFTs Constitute CAs

As noted above, whether Game NFTs constitute CAs will be determined on a case-by-case basis, taking into account factors (i) through (v) in Section II.(1) above.

For instance, if a Game NFT has unique characteristics and are distinguishable from other tokens by players (see factor (i)), if the utility of the Game NFT is clear that it can be used as an item or game characters in the game (see factor (ii)), if the Game NFTs are limited in quantity (see factor (iii)), if the Game NFTs are indivisible (see factor (iv)), and are not frequently traded on crypto exchanges (see factor (v)), that Game NFT is unlikely to fall within the definition of CA.

## III. Gambling Regulation under the Penal Code

### (1) Definition of Gambling

There is no definition of "Gacha" or random sales under Japanese

law. With that said, "Gacha" is generally understood to mean a system in online and other games in which characters, items and the like are provided, with an element of chance, to players for a fee. Depending on how a "Gacha" is structured, it may constitute gambling under the Penal Code.

Under the Penal Code, "gambling" is generally understood as (i) the placing of wagers with property, (ii) competition involving the gain or loss of property or property rights (iii) and where the outcome (of loss or gain) is dependent on chance.

A person found guilty of gambling is punishable by a fine not exceeding JPY500,000 (Article 185 of the Penal Code). In addition, a person who "habitually engages in gambling is punishable by imprisonment for a term not exceeding three years (Article 186, Paragraph 1 of the Penal Code).

“

Depending on how a "Gacha" is structured, it may constitute gambling under the Penal Code.

## (2) Applicability of Gambling regulation on Random Sales of Game NFTs

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The provision of economic benefits that are considered part of the original substance of a transaction in light of normal business practices will not be deemed “incidental” to a transaction.

In a case where there exists a scale of rarity in respect of Game NFTs, and purchasers cannot foresee the kind of Game NFTs they will obtain from a Random Sale, the Random Sale of NFTs would involve (iii) “chance”.

However, if the Game NFTs obtainable from

Random Sales have value and utility in the Blockchain Game, and if the Blockchain Game is structured in such a way that users do not lose money even if they obtain common Game NFTs, neither the operator nor players of the Blockchain Game would have lost any property or property rights. In such a situation, Random Sales of Game NFTs are unlikely to constitute gambling.

If, on the other hand, the Game NFTs obtainable from Random Sales differ significantly in degree of rarity, gambling concerns may arise. This is because in such situations, there is a higher probability of players being deemed to have incurred a loss when they obtain low-value common Game NFTs.

## IV. Applicability of the AUPMR to Rewards

If the Rewards granted under a Blockchain Game constitutes provision of “premiums” under the AUPMR, the maximum amount of premiums that can be granted will be restricted.

### (1) Definition of “Premiums” under the AUPMR

Under the AUPMR, “premiums” means “goods, money or other economic benefits offered by a business operator to the other party incidental to a transaction of goods or services supplied as a means of inducing prospective customers to make purchases, regardless of the method used”.

In this regard, even if a transaction is not contingent on the customer’s decision to purchase, if the economic benefit is provided in a manner that could be directly linked to the customer’s decision to purchase, it would be considered incidental to the transaction.

However, the provision of economic benefits that are considered part of the original substance of a transaction in light of normal business practices will not be deemed “incidental” to a transaction.

## (2) Regulations on the Maximum Amount of Premiums Permitted to be Offered

Under the AUPMR, “premiums” are classified into two categories: (i) “general prizes” where premiums are offered by chance, such as by lottery, and (ii) an offer of premiums by means other than “general prizes,” such as the offering of premiums to all users of a service.

The maximum limits, in terms of value, for (i) an offer of prizes by means of “general prizes” and (ii) the offering of premiums to all users are as follows:

### [Limitation on Premiums in the case of a General Prize]

Value of Transaction	Limitation on Value of Premium	
	Maximum Amount	Total Amount
Less than JPY5,000	Twenty times the value of the transaction	2% of the total sales amount in relation to a general prize
JPY5,000 or more	JPY100,000	

### [Limitation on Premiums in the case of Premiums offered to all users]

Value of Transaction	Maximum Amount of Premium Permitted to be Offered
Less than JPY1,000	JPY200
JPY1,000 or more	Two-tenths of the value of the transaction

### (3) Applicability “premiums” regulation to Rewards

Where a Blockchain Game is designed as a so-called “play to earn” type game in which players typically purchase Game NFTs to give them advantages in the game, and Rewards are offered under certain conditions, the Rewards will not generally be considered so-called “freebies” that are offered in conjunction with the sale of the Game NFTs. Instead the Rewards themselves will be considered to constitute the substance of the original transaction itself. Based on this, it would be reasonable to conclude that the Rewards are not incidental to the transaction and will not constitute “premiums” under the AUPMR. Accordingly, in such situations, even if the operator of the Blockchain Game offers Rewards to all players of the game, the AUPMR is unlikely to apply and the maximum amount of Rewards will not be limited to JPY200.

### V. Other Legal Considerations

In addition to the above issues, GameFi may also employ a mechanism called “scholarship”, under which Game NFTs are loaned to players. More specifically, “scholarship” refers to a mechanism in which NFT holders (“**Managers**”) lend Game NFTs to players (“**Scholars**”) in a play-to-earn type Blockchain Game, and Managers and Scholars share the profits earned from game play using the Game NFTs. Ultimately, Scholarship enables (i) Game NFT holders to lend their Game NFTs to multiple Scholars and to efficiently make gains without having to play the Blockchain Game themselves, and (ii) those who cannot obtain Game NFTs themselves to “play-to-earn” by becoming a Scholar.

In a “scholarship” arrangement, Managers allow Scholars to use their Game NFTs through Game NFT usage contracts. In return, Scholars receive a share of the profits earned through game play. Especially, in situations where a “guild” (i.e., a grouping of Managers and Scholars) is involved in providing intermediary services between Managers and Scholars, careful consideration is needed to determine whether the rights of participants in a “scholarship” scheme in effect constitute so-called “collective investment scheme interests” that are subject to regulation under the Financial Instruments and Exchange Act (the “**FIEA**”), because a “scholarship” scheme involves the right to (i) contribute money or other value, (ii) conduct business using such money or other value contributed, and (iii) receive dividends of profits arising from the business conducted using such money or other value contributed<sup>1</sup>.

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GameFi may also employ a mechanism called “scholarship”, under which Game NFTs are loaned to players

<sup>1</sup> The FIEA defines a collective investment scheme as, in essence, a scheme involving the right to (i) contribute money or other value, (ii) conduct business using such money or other value contributed, and (iii) receive dividends of profits arising from the business conducted using such money or other value contributed.

# JAPAN

## Japan - Key Developments & the Latest Trends in the Fintech Market

### KPMG IN JAPAN



**Nobuhiro Yamaguchi**

Senior Manager, Data Analytics



Nobuhiro.yamaguchi@jp.kpmg.com



www.home.kpmg.com

#### BIO

Nobu joined KPMG Consulting in 2021 and has provided data analytics and data strategy projects for financial companies, as well as global financial centre related projects designed to attract overseas fintech companies to Japan.

Prior to KPMG Consulting, he worked for Mizuho Research & Technologies, an IT and consulting company within Mizuho Financial Group, and served as the Senior Technology Manager for creating new business based in San Francisco. Before moving to San Francisco, he worked for the management accounting team, creating customer analysis and product portfolio analysis in order to establish the management plan.



# KPMG IN JAPAN



 **Kenji Hoki**  
Director

 [kenji.hoki@jp.kpmg.com](mailto:kenji.hoki@jp.kpmg.com)

 [www.home.kpmg.com](http://www.home.kpmg.com)

## BIO

Kenji joined KPMG AZSA in 2014 and has provided various advisory services related to regulation within the financial sector, mainly crypto assets and other digital tokens, as well as web3.

Prior to AZSA, he worked at the Financial Services Agency (FSA) from 2003 within the enforcement division of the Securities and Exchange Surveillance Commission. While at the FSA, he was also seconded to the US Commodity Futures Trading Commission and then to the Organization for Economic Co-operation and Development (OECD), as well as worked in the international affairs division.

Prior to the FSA, he worked within the fund management business on Japanese stocks at various major financial institutions and foreign asset management companies.





# KPMG IN JAPAN



 **Tomokazu Sekiguchi**  
Partner

 [tomokazu.sekiguchi@jp.kpmg.com](mailto:tomokazu.sekiguchi@jp.kpmg.com)

 [www.home.kpmg.com](http://www.home.kpmg.com)



## BIO

Tomokazu Sekiguchi is a partner of KPMG AZSA LLC. While he is responsible for the firm's initiatives regarding corporate and sustainability disclosure including assurance over sustainability reporting, he also provides accounting and assurance related services to fintech, crypto assets, and blockchains.

He has strong expertise in the areas of standard-setting and regulation obtained through his previous experiences. Such experiences include working for the Accounting Standards Board of Japan (ASBJ) as a full-time board member and for the International Auditing and Assurance Standards Board (IAASB) as a part-time board member.

# Japan - Key Developments & the Latest Trends in the Fintech Market



## I. Introduction

The Fintech market has been expanding at an unprecedented speed both in terms of scale and variety. Japan is not an exception. To keep pace with the market developments, there continues to be constant changes in relevant laws, regulations and standards. In this article, we will explain (i) the overview the fintech market, (ii) recent developments and challenges regarding relevant laws and

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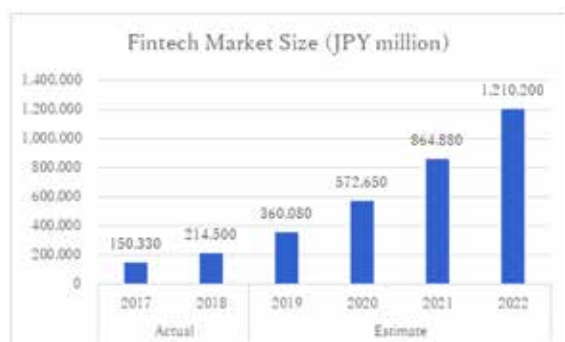
The largest fintech segment is the bank segment where payments with smartphones and utilising blockchain are expected to grow.

regulations to facilitate the developments, and (iii) relevant developments in accounting, auditing and tax areas.

## II. Overview of Fintech Market

Japan is the third largest economy in the world after the United States and China. According to

the study of Yano Research Institute, Ltd., fintech-related businesses in 2018 amounted to approximately JPY214.5 billion (equivalent to USD 1.53 billion), and are expected to grow in excess of JPY1,210 billion (equivalent to USD 8.64 billion) by 2022 (CAGR 51%). The largest fintech segment is the bank segment where payments with smartphones and utilising blockchain are expected to grow. Although the size of the insurance and brokerage segments is smaller than the banking segment, they are expected to grow as well.



(Source: Yano Research Institute, Ltd. "FinTech Market in Japan: Key Research Findings 2019")

The following represents key features regarding fintech trends in Japan.

## 1. Embedded Finance

There exist notable developments around embedded finance, where startups provide services to both non-financial and financial companies as enablers. For example, one fintech-focused startup provides services that would help companies launch the brokerage service or insurance service to their customers. In addition, another startup provides the settlement service to several banks. Further, financial companies also act as enablers in Japan. For example, one of the net banks provides services relevant to banking functions via API (Application Programming Interface).

There are some unique characteristics of Embedded Finance in Japan. First, enablers are usually license holders. In the Embedded Finance field, the players are ordinarily divided into three categories: brands, enablers and license holders; however, enablers (as player of the second category) act as license holders (as player of the third category). The second unique characteristic is that financial companies are users of embedded finance. This is because the speed of digital transformation at traditional financial companies is relatively slow, and traditional financial companies seek to utilise embedded finance so as to accelerate their digital transformation. According to Fuji Chimera Research Institute, Inc. "2022 Future Outlook for Digital Transformation Market <Market Edition>", there will be 50 companies which provide embedded finance services by FY2030.

Exchange rate **US\$1 = JPY140**

## 2. Greater Use of Data

Secondly, both financial institutions and fintech startups focus on data. One of the most notable trends is that financial institutions are more focused on alternative data, including data that are made readily available with advancement in technology (e.g., satellite image). In Japan, however, the use of alternative data is just beginning, and there are many problems such as lack of clarity around rights and obligations involving alternative data, lack of human resources with both financial knowledge and data analysis skills, and unestablished methods for evaluating costs and benefits. In 2021, the Japan Alternative Data Accelerator Association (JADAA) was established so as to solve these problems, and 75 organisations have joined membership of the JADAA as of May 2022.

As utilising data is the trend not only for financial institutions but also for other industries, the market size for data utilisation consulting services is expected to grow from JPY 3.8 billion (equivalent to USD 27 million) in 2020 to JPY 20 billion (equivalent to USD 142 million) in 2030 (CAGR 18.1%) for the financial industry, according to Fuji Chimera Research Institute, Inc. "2022 Future Outlook for Digital Transformation Market <Market Edition>". This forecast indicates that the trend of utilising data will continue to grow and greater number of companies will seek to utilise data that is untouched.

## 3. Cashless Payments

Finally, cashless payments are growing at a rapid pace. According to Yano Research Institute "Domestic Cashless Payment Market 2022" (cited from Nikkei.com, April 20, 2022), the market size of cashless payments was JPY 98 trillion (equivalent to USD 700 billion) in FY2020 and is expected to grow to JPY 153 trillion (equivalent to USD 1,092 billion) in FY2025. However, according to the Ministry of Economy, Trade and Industry (METI), the cashless ratio in Japan was just 29.7% in 2020, which was much lower than other countries, although this trend is changing since the outbreak of COVID 19.

According to the study of Fuji Chimera Research Institute, Inc. "2022 Future Outlook for Digital Transformation Market <Market Edition>", the market size of cashless payments

is expected to be 55% of the total domestic payments in FY2030. In 2021, one of the big tech companies acquired a Japanese fintech startup providing a smartphone payment app and free money transfer service between app users. It is said that Japan's low cashless rate is considered as a business opportunity. One of the challenges for the cashless payments is the profitability of the businesses. Especially as QR code payment companies have incurred a large amount of investment in marketing to expand their ecosystem. However, it is recognised that both QR code payment companies and retailers need to establish more sustainable business models to continue expanding cashless payments.

## III. Developments and Challenges of Relevant Laws and Regulations

Laws and regulations are changing almost every year in response to the rise of fintech. The followings are notable developments of laws and regulations responding to the growth of fintech in Japan.

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The market size of cashless payments was JPY 98 trillion (equivalent to USD 700 billion) in FY2020

### 1. Financial Service Intermediary

In November 2021, the amended Act on the Provision of Financial Services was enacted, introducing a new category, called "Financial Service Intermediaries". Intermediaries that fall under this new category are entitled to handle multiple types of financial services with a single license across financial business categories such as banking, securities, and insurance.

Until the amendment of the Act was enacted, handling

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Digital assets based on permissionless blockchains are expanding both in terms of asset types and market participants.

financial intermediary services of multiple financial business categories had not been permitted unless an entity was registered to provide intermediary services for each business category. Therefore, the financial intermediary businesses were individually conducted for each of the business categories such as

banking, securities, and insurance; and intermediaries were subject to respective regulation and supervision of different business categories. In addition, an entity that provides financial intermediary services was required to be affiliated with identified financial institutions, and such financial institutions were subject to regulatory requirements and were potentially liable for damages caused by the operation of affiliated financial intermediaries. This new financial services intermediary system enables financial services intermediaries to operate within multiple business categories with a single license, and also abolished the affiliation system. Hence, it is expected that financial services intermediaries provide a wide range of options to their customers, so that they can choose to decide which services could best meet their expectations.

As an example, until the amended Act was enacted, the range of services permitted for a registrant of a banking-related financial intermediary was restricted solely to banking related services. However, once they obtain a license as a “Financial Services Intermediary”, they would be entitled to provide various intermediary services, such as those of securities and insurance businesses.

## 2. Digital Assets

Digital assets based on permissionless blockchains are expanding both in terms of asset types and market participants. In line with this growing trend, the legislative and regulatory framework in Japan has changed over time. As of April 2022, rights and obligations involving crypto assets and security tokens have already been legislated, and it is expected that those involving stablecoins will be legislated. The following provides an outline of the Japanese legislative and regulatory framework relating to digital assets, including Non-Fungible Tokens (NFTs).

### (a). Crypto Assets

In 2017, the Payment Service Act (PSA) was amended. The amended Act required a crypto asset exchange business dealing with crypto assets (virtual currency) such as Bitcoin and Ethereum to be registered with the Financial Services Agency (FSA) and to be subject to regulatory requirements of the FSA. Subsequently, supervision was strengthened in the wake of the massive crypto asset spill accident in 2018; and even now, completing the registration process requires considerable time and efforts. As of the end of April 2022, thirty companies are registered with the FSA.

In 2020, the PSA was amended again. The amended Act requires an entity providing custody services of crypto assets to be subject to regulatory requirements of the FSA. At the same time, the custody business related to crypto assets was legislated in the Trust Business Act (TBA). As of April 2022, there is one trust company that incorporated a custody business related to crypto assets under the TBA into its business.

Traditional financial institutions such as banks are generally cautioned by regulators from handling crypto assets. As of April 2022, traditional financial institutions that provide services related to crypto assets to their customers are limited.

As the need for financial institutions to respond to the expanding trend of Web 3.0 is expected to increase in the future, there are calls to review such policies so as not to keep such financial institutions away from the emerging trend.

## **(b) Security Tokens**

In 2020, the Financial Instruments and Exchange Act (FIEA) was amended to clarify regulations on tokenised securities.

Under the amended FIEA, when securities within the scope of the FIEA are tokenized, greater regulatory requirements including those of disclosure requirements, must be complied with compared to the case for traditional securities. Partly owing to such regulatory requirements, the number of actual use cases involving security tokens is relatively limited, although the issuance of security tokens that can be purchased by retail investors is expected to grow gradually. While the practice involving security tokens with permissioned blockchain infrastructure are advanced, initiatives for easing the handling of permissionless tokens (which are mainstream overseas) is under way.

Along with disclosure requirements, one of the major challenges to market expansion of security tokens is the absence of secondary markets, as the design and implementation of such markets would require significant time and effort.

## **(c). Stablecoins**

In March 2022, the bill to amend the PSA and other laws that clarify the legal and regulatory status of so-called stablecoins whose value is linked to the value of fiat currency was submitted to the Diet. The amended law is expected to come into force in 2023.

According to the proposed amendment of the Act, the issuance of stablecoins backed by assets will be limited to banks, fund transfer companies, trust companies/banks; therefore, stablecoins such as Tether circulating overseas will not be handled in Japan. As with the security tokens described above, from the viewpoint of compliance with

laws and regulations, it is anticipated that stablecoins based on permissioned tokens may take precedence.

## **(d). NFTs**

As of April 2022, there are no clear regulations and legal definition of NFTs in Japan. For this reason, various companies are increasingly adopting NFT into their businesses.

There are many gaming companies in Japan, and game content is expected to drive the expansion of the NFT market in Japan. In addition to games, there are many contents unique to Japan that would fascinate the world. Hence, the metaverse and Web 3.0 markets in Japan may be driven not primarily by the financial industry, but by these content industries.

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As of April 2022, there are no clear regulations and legal definition of NFTs in Japan.

## **IV. Developments in Accounting, Audit and Tax Areas**

In pace with laws and regulations in fintech areas, there also exist changes in accounting, audit, and tax areas.

### **1. Developments in Accounting**

Accounting standards and practice are still evolving in fintech area across countries including Japan. One of the most evolving areas is accounting requirements related to crypto assets.

In March 2018, the Accounting Standards Board of Japan (ASBJ) issued Tentative Practical Solution No.38, *Accounting for Virtual Currencies under the Payment Services Act (PSA)*. The Practical Solution requires an entity holding virtual currencies (subsequently renamed as “crypto-assets” by the amendment of the PSA in 2018) to account for them in a manner similar to accounting treatments of financial instruments. In other words, an entity is required to measure a virtual currency held by users at FVTPL at each period end, when there is an active market for the virtual currency. If there is no active market for the virtual currency, an entity is required to follow cost-based accounting, while an impairment loss is required when its recoverable amount is below the original cost.

This Japanese accounting guidance may be considered unique, because International Financial Reporting

Standards (IFRSs® Standards) do not provide specific requirements for accounting treatments of crypto assets. Instead, in June 2019, the IFRS Interpretations Committee published an agenda decision that clarifies that in many cases crypto assets be accounted for in accordance with IAS 38 Intangible Assets.

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in June 2019, the IFRS Interpretations Committee published an agenda decision that clarifies that in many cases crypto assets be accounted for in accordance with IAS 38 Intangible Assets.

In March 2022, the ASBJ published the Exposure Draft relating to accounting and disclosure requirements specific to security tokens. Simultaneously, the ASBJ published a Discussion Paper to explore appropriate accounting and disclosure treatments for the issuance and holdings of ICO tokens.

## 2. Developments in Audit

Due to challenges involving auditing financial statements of crypto asset exchange service providers, in June 2018, the Japanese Institute of Certified Public Accountants (JICPA) published its industry-specific practical guidance No.61, *Practice Guidance relating to Auditing Financial Statements of Crypto Asset Service Providers*, which has been updated from time to time.

The practice guidance provides relevant auditing considerations when auditing crypto asset exchange service providers, including those relating to (i) decision of accepting an audit engagement, (ii) selection of audit team members, (iii) understanding an entity and its environments as well as evaluating risks of material misstatements, and (iv) responding to assessed risks (including designing substantive procedures to perform). As part of the guidance, the guidance also provides illustrative internal controls that are expected to be in place at crypto asset exchange service providers.

## 3. Developments in Tax

Tax laws relating to fintech are also evolving in response to changes in practice. One of the most notable developments is the clarification of tax treatments involving crypto assets. In 2017, tax treatments regarding sales and holdings of crypto assets were clarified by the National Tax Agency of Japan. The National Tax Agency clarified in its publication that, in principle, income from crypto assets (including gains from sales of crypto assets) be classified as “other income” under the Income Tax Acts for individuals, meaning, for example, that gains and losses from crypto assets cannot be offset against each other.

In addition, tax requirements regarding sales and holdings of crypto assets were legislated as part of the amendment to the Corporation Tax Act in 2017, such that tax treatments of corporates became generally aligned with accounting requirements (as stated in “1. Developments in Accounting”).



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# LIECHTENSTEIN

## KEY DEVELOPMENTS & THE LATEST TRENDS IN LIECHTENSTEIN – FROM A LEGAL PERSPECTIVE

### GASSER PARTNER



**Dr. iur. Hannes Arnold M.B.L.-HSG**

Senior Partner



[hannes.arnold@gasserpartner.com](mailto:hannes.arnold@gasserpartner.com)



+423 236 30 80



[www.gasserpartner.com](http://www.gasserpartner.com)

#### BIO

Dr. iur. Hannes Arnold M.B.L.-HSG is senior partner at Gasser Partner Attorneys-at-Law. He specialises in corporate law and financial markets law and is widely recognized in his field. He leads the firm's Banking and Regulatory Practice, one of the most experienced, responsive and innovative banking and regulatory teams in Liechtenstein.

He advises international banks, investment firms, institutional investors and legal advisors in all matters related to regulated activities under Liechtenstein law, including asset management, fintech, crypto and the structuring of financial products. Dr. Arnold is admitted to the Liechtenstein and Austrian Bar.



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RECHTSANWÄLTE

# GASSER PARTNER



## BIO

Dr. iur. Christina Delia Preiner LL.M., is an attorney at Gasser Partner Attorneys-at-Law in Liechtenstein and a key contact for all matters relating to Liechtenstein financial market law and regulation, including licensing procedures, structuring and transactions.

Christina holds a Master's degree from the University of Vienna, Austria, an LL.M. in Banking and Securities Law from the University of Liechtenstein and a PhD from the University of Zurich, Switzerland. She is admitted to the Liechtenstein bar.



Dr. iur. Christina Delia Preiner LL.M.  
Attorney



[christina.preiner@gasserpartner.com](mailto:christina.preiner@gasserpartner.com)



+423 236 30 80



[www.gasserpartner.com](http://www.gasserpartner.com)



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RECHTSANWÄLTE

# KEY DEVELOPMENTS & THE LATEST TRENDS IN LIECHTENSTEIN – FROM A LEGAL PERSPECTIVE

Hardly any area of law is developing as dynamically as fintech and its regulation. Fintech companies and projects are transforming traditional business models and the financial sector as such, especially in banking and insurance, but also on a product and infrastructure level.

If we look at the most important developments and the latest trends from a legal point of view, we cannot do so without discussing the disparity in time between these two factors that we experience on a daily basis. Despite a largely technology-neutral approach, the legal acts in this area of law often require updating or adaptation

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The ambitious Financial Centre Strategy 2019, which is strongly focused on digitalisation and innovation, puts a sustainable and innovative development at the heart of the government's regulatory agenda

in order to address uncertainties, remove obstacles or regulate new developments for the first time. However, at the time of their adoption, the corresponding updates, in particular on a supra-national level, often deal with phenomena that were already developed months or even years ago. Innovative

companies therefore invest and operate in a difficult environment with a high degree of legal uncertainty. This has been particularly evident in recent years for providers of blockchain-based services and has proven to be an even greater challenge in a cross-border context. As we have seen recently, fintech regulation is both necessary and useful, not least to protect reputable providers and the market itself. However, it is obvious that the regulator at times is learning along with the market. It is therefore a particular challenge, especially in this area, to ensure customer and market protection while at the same time adequately facilitating the development of new innovative business models and monitoring how existing regulation and market conditions may affect them.

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In recent years Liechtenstein has earned a reputation as an early promoter of blockchain-related business models, but also as a first mover in their regulation. The country is known for its “short paths” and has proven to be a reliable partner in the implementation of various ambitious projects. In particular the financial market authority, FMA, has helped companies to navigate legal uncertainty. This, in spite of the fact that the implemented EU regulation and the anticipation of legal developments in the EU often strongly shape the path. The willingness to innovate, not only at the corporate level, but especially at the government and regulators’ level, is undoubtedly a key success factor for Liechtenstein as a financial centre. The ambitious Financial Centre Strategy 2019, which is strongly focused on digitalisation and innovation, puts a sustainable and innovative development at the heart of the government's regulatory agenda. It entails the development and promotion of the fintech ecosystem alongside or also in conjunction with other important policy agendas such as sustainability. The Office for Financial Market Innovation and Digitalisation (SFID), which operates as a first “open door” for start-ups and Fintech companies, helps alleviate the journey by coordinating administrative processes and parties. With regard to projects where licensing requirements are or may be triggered, the FMA is responsible and has, in order to guide fintech firms through the process of implementing their business model in Liechtenstein, established a FinTech competence team (<https://www.fma-li.li/en/fintech-and-tvtg/fintech-in-liechtenstein.html>).

When it comes to key developments from a legal perspective, the digitalisation of businesses and also of governmental and regulatory processes is the first important pillar. Liechtenstein is traditionally strong in banking and private wealth management, so data protection and integrity as well as cybersecurity have always enjoyed great importance. The country is considered a pioneer in the region in the area of digitalisation. From January 1, 2023, public authorities and companies will communicate exclusively by electronic means. At the same time, the government is tackling the digitalisation in the area of company law, for example regarding the processes of the commercial register, shareholders meetings as well as their notarisation. On the market side, most financial intermediaries have implemented digitalisation proactively. Fintech is seen as a welcome addition to traditional business models and the trends of recent years have created new opportunities.

The digitalisation of insurance, or Insurtech, is one of the more important areas of fintech in Liechtenstein. Not least due to the favourable regulatory environment and the unique advantages in terms of market access to both the Swiss and the European market, 32 insurance companies are currently licensed in Liechtenstein, which is quite a lot for a country of such modest size. Liechtenstein is home to a number of innovation leaders in this area that offer life, non-life insurance or re-insurance by using innovative technical solutions. Remarkably, Insurtech has been less publicly discussed than various activities and advances in the area of blockchain-based services in banking and asset management, however, the sector has undergone an equally impressive development.

In the area of blockchain-based services in banking and asset management, it can be observed that the also bigger local financial intermediaries are following suit after initial hesitation and are tackling exciting projects in the blockchain sector, not least because the government has created the necessary legal certainty for these strides with the local blockchain law "TVTG", which was enacted as early as January 2020. The projects cover banking, custody solutions, asset management but also tokenisation, infrastructure and trading. This shows that both, start-ups and established market participants benefit from the positioning of Liechtenstein as a first mover in the regulation

of blockchain-related services and the enactment of the blockchain act. Market participants, who are now entering the space benefit from the ecosystem that has been built up so far and the experience gained by both the authorities and the service providers.

On the product side, Liechtenstein sees strong growth in the fund business, both in traditional projects and in more innovative solutions such as crypto funds or tokenised fund units. This success is due, among other things, to a responsive and competent supervisory authority, which made it possible to launch the first crypto AIF as early as 2018. We have also seen an increase in the number of issuers of innovative financial products applying for prospectus approval under the Prospectus Regulation with the Liechtenstein FMA. Of particular note, the TVTG created a framework for asset tokenisation. These provisions are already being used and will continue to generate interesting developments in the future.

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The digitalisation of insurance, or Insurtech, is one of the more important areas of fintech in Liechtenstein.

Looking ahead, one of the most exciting areas of development from a legal perspective will be market infrastructure and tokenised securities as well as their trading. The DLT pilot regime is part of the European Digital Finance Package 2020, which was created to foster the potential of digital finance and also an expression of the desire to create a regime specifically in this area that does not impede innovation and prevents market fragmentation. The corresponding regulation will help develop trading and settlement for DLT financial instruments and is intended to provide the opportunity to test the use of distributed ledger technology in the areas of trading, clearing and settlement both from a regulatory and intermediary perspective. Service providers will be allowed to operate a DLT market infrastructure and to provide their services within the EEA, while certain requirements of European law that otherwise apply to the trading of financial instruments do not apply. The innovative regulatory approach taken in this regard is

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Whether the DLT pilot regime is ultimately successful will be evaluated after five years.

somewhat mitigated by the fact that the permission to operate a DLT MTF is only accessible to firms that are already authorised either as an investment firm or to operate a regulated market, under MifID II (Directive 2014/65/EU) and the permission to operate a DLT securities settlement system is limited to firms that are authorised

as a CSD under the CSDR (Regulation (EU) No 909/2014). Nevertheless the regime will on the other hand create new opportunities on the product level. While the first security token offering in Liechtenstein was done as early as in 2018, the trading of security token on platforms has been challenging, as the infrastructure in place was not inclusive of these products. In order for tokenised securities to reach their full potential and play out advantages, such as a faster settlement, higher transparency or higher cost efficiency, still some issues need to be addressed and the DLT pilot regime is considered an important step in

this direction. Whether the DLT pilot regime is ultimately successful will be evaluated after five years. In order to be available for Liechtenstein market participants, the Regulation must be incorporated into the EEA Agreement. The same applies to MICAR, whose swift incorporation is also awaited by many market participants and is expected to be of great importance immediately. This is due in particular to the fact that the national blockchain law has been a success story and a number of intermediaries, start-ups and established financial services providers alike, operate under the national regime or are in the process of obtaining an accordant registration. MICAR brings advantages especially in the cross-border context, as firms will then also benefit from access to the EEA single market with services regulated under MICAR. The transitional provisions of MICAR are particularly relevant in this context, as MICAR ensures that there is a simplified procedure available for firms that are already authorised in accordance with national regimes. Further, in light of the similar nature of MICAR and the TVTG, Liechtenstein firms will be well prepared for MICAR.

Finally, sustainable finance will undoubtedly be one of the most important areas of development in the coming years.



The EU Sustainable Finance Framework aims to increase the transparency and comparability of sustainable investments and combat greenwashing on a large scale. The framework is ambitious, complex and challenging to implement, but has fallen on fertile ground in Liechtenstein, where sustainability was anchored early on as an important maxim for the financial centre and the country as a whole. Against this background, it will be of great importance to bring together sustainability and digitalisation as the main catalysts for transformation and innovation in the financial services sector. Even if the connection is not self-evident or obvious, it has a lot of potential. The Sustainable Finance Framework is built around the achievement of goals in relation to environment, social affairs and responsible corporate governance ("ESG"). One of the most challenging aspects of implementing the respective processes and producing required disclosures is the availability, collection and compilation of relevant information and data. At the same time, the efficient processing and use of data are fundamental strengths and operating mechanisms of fintech firms. Innovative companies in this sector will undoubtedly develop solutions and create new opportunities for sustainable finance. In addition, fintech solutions can be particularly relevant to the social aspects of financial inclusion, as they break down barriers and allow people who are otherwise excluded from accessing the financial system to participate. As sustainable finance is highly relevant for Liechtenstein market participants on an entity and product level, we expect that Liechtenstein will play a role in further shaping this development.

Although we have only covered some of the most important aspects, it is clear that the upcoming developments are wide-ranging and challenging. A broad bouquet of completely new regulatory rules must be considered, all while keeping up with day to day business. However, experience to date has shown that the market- and regulatory environment in Liechtenstein provide a good basis for mastering these challenges.

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Sustainable finance will undoubtedly be one of the most important areas of development in the coming years.

# MEXICO

## KEY DEVELOPMENTS AND LATEST TRENDS

### INSTRAG



**Lizette Neme**

Partner



[lneme@instrag.mx](mailto:lneme@instrag.mx)



+52 5538888578



[www.instrag.mx](http://www.instrag.mx)



#### BIO

Lizette Neme is a Partner at InStrag, Public Affairs & Law Consulting, where she oversees the regulatory financial and corporate practice areas. InStrag is a boutique consulting firm that strives to provide strategic support and build tailor-made services to help businesses succeed in Mexico, with a focus on digital financial services.

Previously she held several positions in the Ministry of Finance, where she led the drafting and design of the FinTech Law as a key member of the policy makers' team. She also acted as Chief Legal Advisor to the Undersecretary for Revenues.

She began her professional career as external counsel at White & Case in Mexico, where she worked for almost 10 years.

Ms. Neme attended the Escuela Libre de Derecho, where she graduated as an Attorney-in-Law in June 2007. She also obtained an LLM degree in International Finance Law from King's College London, University of London, in 2010.

# KEY DEVELOPMENTS AND LATEST TRENDS

FinTech Law in Mexico was enacted in March 2018 after an intense effort within the financial authorities discussing how to regulate new digital financial services.

At the time, there were 238 recognised FinTechs, according to the 2017 Finnovista radar<sup>1</sup>, encompassing the obvious sectors (payments, remittances and crowdfunding), but also lending; enterprise and personal financial management; insurance; scoring, identity and fraud; wealth management; financial education and savings, among others. Some of these activities were already regulated or did not even need regulation, but

there were indeed some that required legal certainty.

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Policy makers decided to create an ad-hoc legal framework to recognise the digital financial services that existed in Mexico and were thriving

Based on the FinTechs operating back in 2017, the decision was made to create an ad-hoc legal framework for two new financial institutions: (i) Crowdfunding Institutions, and (ii) Electronic Payment Institutions (both

named “Financial Technology Institutions” in the Law). As well, crypto, open finance and a regulatory sandbox were recognised and given general legal guidelines.

Some of the already existing regulation (for traditional entities) was amended to allow for its digital transition, such as recognising robo-advisors, and some others were delimited to differentiate between new business models and traditional reserved activities.

## I. Background

Policy makers decided to create an ad-hoc legal framework to recognise the digital financial services that existed in Mexico and were thriving. FinTech Law was one of a kind as it is the only one in the Mexican financial sector that is based in principles and aims that such principles are honoured by the regulated sector when operating



in one hand, and the financial authorities when issuing secondary regulation or supervising the sector on the other. Such principles are: (i) financial inclusion and innovation, (ii) foster competition, (iii) consumer protection, (iv) preserve financial stability, (v) prevent illegal operations, and (vi) technological neutrality.

Also, it allows for a proportionate regulatory framework to be issued by considering, among others, (i) types of activities being done by the FinTech institution, (ii) number or amount of the operations being done, (iii) number of clients, (iv) business model, (v) assets being intermediated, or (vi) net capital.

As to the applicable terms for authorising or responding to any application, the FinTech Law also contains a provision stating that the secondary rules may simplify procedures and provide for simpler ways to comply with the legal requirements, if no unjustified risks are incurred. A yearly revision of the procedures and its fulfilment must be done, unless all procedures from the preceding year have not exceeded 90 days (the minimum term provided in the law).

## II. The FinTech Law

As mentioned before, two financial entities were recognised as financial technology institutions, which required prior authorisation to operate in Mexico. For their authorisation process, three financial authorities are involved: the Ministry of Finance, the Central Bank and the National Banking and Securities Commission (“Banking Commission”), all comprising the Interinstitutional Committee.

<sup>1</sup> <https://www.finnovista.com/en/radar/el-ecosistema-fintech-de-mexico-crece-un-50-en-menos-de-un-ano/>

Provisions are included to clearly state that:

- Controls must be installed to avoid spreading false or misleading information,
- Clients must be clearly informed of the risks taken when operating in the FinTech, and
- No governmental funds guarantee the money held within the entity.

### 1. Crowdfunding Institutions

These institutions connect investors and borrowers to finance capital, debt or royalty projects (donations are out of the scope of the law). As this may be understood as securities intermediation, these institutions were given the rank of financial entities and, therefore, the full stack of prudential regulation was injected. In order to avoid confusion, the Securities Market Law (Ley del Mercado de Valores) was amended to leave these institutions out of its scope, as FinTech law would provide the full stack of regulatory burden, including licensing requirements and prudential regulation.

The Banking Commission has the regulatory and supervision powers to oversee these entities.

### 2. Electronic Payment Institutions

These institutions issue, manage, redeem and transfer e-money ("electronic payment funds" as named in the Law). They can act as money remitters as well. There are two activities that are expressly restricted for these institutions, namely (i) granting loans and (ii) offering any monetary return or benefit over the balances held in the wallet.

The Law expressly excludes from the scope of this chapter the loyalty or rewards programs and the closed-loop cards, which are not considered restricted financial activities.

The regulatory and supervision powers over these entities is shared between the Banking Commission and the Central Bank.

### 3. Virtual Assets

Cryptocurrencies were also included as part of a chapter in the FinTech Law by defining them and granting powers to the Central Bank to regulate how financial entities can operate with them.

They were named "virtual assets" and defined as "the representation of value electronically registered and used amongst the public as a means of payment for any type of legal acts, and which transfer may only be made through electronic means". Legal tender, foreign currency, and any other asset backed by any legal tender can never be considered as a virtual asset.

For FinTech Institutions and Banks to operate with virtual assets, they would need prior authorisation from the Central Bank and may only do so with those virtual assets previously determined by the Central Bank.

There are provisions mandating for FinTech institutions to clearly inform its clients the risks existing when using virtual assets, which should include express disclosures in their platform or webpage that (i) the virtual asset is not legal tender and is not guaranteed by the Federal Government nor the Central Bank, (ii) that it may be impossible to revert the operations once executed, (iii) that the value of the assets is volatile, and (iv) that there are inherent technological, cyber and fraud risks related to the virtual assets.

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## 4. Open Data

FinTech Law, aiming to provide the baseline for a comprehensive open finance legal framework in Mexico, provides that all financial entities in Mexico (this is more than 5,000 entities) must share open, aggregated and transactional data through standardised application programming interfaces (APIs).

Peculiarly, “third parties specialised in IT” (mainly big techs) were included in the Law as entities allowed to access information from the financial institutions. All, having the obligation to do it through the APIs that comply with the regulatory standards that would be established in secondary rules.

Other peculiarity is that no payment initiation was included as part of this framework, therefore making it only an open data outline. As well, it allows for providers of data to

charge for the use of the standardised APIs.

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Peculiarly, “third parties specialised in IT” (mainly big techs) were included in the Law as entities allowed to access information from the financial institutions

The Banking Commission for most entities, and the Central Bank for clearing houses and credit bureaus, must issue the secondary rules that would include the standards to be complied, the authorisation process when applicable, and

the rules for charging for the use of the APIs and access of data.

## 5. Regulatory Sandbox

Lastly, a regulatory sandbox was created, pretending to have a safe haven for the advancement of technology in restricted financial services. Any person pretending to conduct -in a novel manner- a financial activity for which an authorisation is needed, could apply for a sandbox authorisation.

The FinTech Law understands “novelty” as the use of technological tools or means that do not exist in the market at the time of the request for authorisation.

These sandbox authorisations may be given for a term of up to 3 years and would grant exemptions for complying certain legal requirements. Once this temporary authorisation elapses, those entities should “graduate” to become the financial entity in which its activities fit in. This is, the sandbox model should identify, since the beginning, which financial entity would be when the trial period ends. As well, the benefit of the novelty for the clients should be clear, and it must be a model that could be tested with a limited number of clients.

Financial entities (already operating with an existing authorisation) may also test novel models for part of their operations or activities, by requesting a sandbox temporary authorisation, requiring exemptions to their secondary regulations. In this case, the temporary authorisation cannot exceed 2 years.

## III. The Way Forward

### 1. Authorized FinTechs to date

According to the most recent official statement published by the Banking Commission (July 2022)<sup>2</sup>, there are 34 fully authorised FinTechs (from which 26 are fully operating) and 27 are authorised with conditions precedent. However, according to the latest data and developments, as of this date there were 42 fully authorised FinTechs, from which 28 are Electronic Payment Institutions and 14 are Crowdfunding Institutions.

Contrary to the spirit of the law and its principles, the processes to authorise FinTechs has taken much more than expected (almost 2 years). Companies have shown concerns on the heavy regulatory burden inflicted upon them (usually start-ups) and the high number of statutory requirements to be complied prior to authorisation. This represents a sizeable cost to the companies and a very long wait to start operating, which usually affects their time-to-market and funding strategies.

2. <https://www.cnbv.gob.mx/PRENSA/Prensa%20%20Otros/Comunicado%20de%20Prensa%2054%20Fintech.pdf>

## 2. Consolidation and M&A

The lengthy and costly authorisation processes have shown the market that some companies had to pivot their business model to avoid conducting restricted activities and quitting the licensing process. Others have been bought by larger and even already authorised entities in order for the later to take advantage of the technology being developed and update their systems and processes.

As well, we have seen lately a tendency of the incumbent banks to create their own digital solutions and services, as is the case of BBVA with OpenPay, Banorte with Bineo, Santander with Openbank, Banregio with Hey Banco and Afirme with Billú.

Last but not least there are some new entrants that have bought licensed institutions in order to start prompt operations, as the case of Nubank with Akala Sofipo and Ualá with ABC Banco.

This consolidation and progress in the Mexican market is something we will continue to see as we move forward.

## 3. Pending Regulation

### a) Open Banking

In compliance with what FinTech Law provides, regulators had 2 years from the law's publication to issue the rules containing the APIs standards to share open, aggregated and transactional data. However, to date only standards for open data sharing regarding ATM's have been enacted.

The whole open banking idea revolutionised how data was seen in Mexico and changed the mindset on who is the owner, being the only one needed to consent to share it. FinTech Law contains a great starting point, but an intense catch-up must be done regulatory-wise. After certain setbacks and intense follow up from the interested stakeholders, the Banking Commission has included this in its regulatory agenda, therefore we should expect new open data framework to be discussed and enacted during 2023.

As a separate note, the Central Bank published a Payments Strategy<sup>3</sup>, containing a proposal to issue regulation to allow payment initiation through the national payment system managed by it. This will occur once the payment system is updated to allow these new functionalities and proper databases are gathered.

### b) Virtual Assets (Crypto)

Despite of how it is regulated in the FinTech Law, the Central Bank did not issue secondary regulation fostering the use or offering of virtual assets. On the contrary, the secondary rules state that FinTechs and Banks cannot offer exchange services to their clients, and such entities may only use virtual assets for internal operations (basically back-office).

This has stopped the offering of innovative and disruptive services in Mexico and, for those still trying to offer all services encompassed, complex structures are being ideated to try to navigate the complexity of the legal framework.

As more players want to enter the Mexican market, the regulators are being pressured to change the regulation and allow innovation and progress in the services that can be offered by the financial institutions.

In addition, the abovementioned Central Bank's Payment Strategy also contemplates the issuance of a Central Bank Digital Currency, which is being currently discussed and prepared, as some other Nations worldwide.

It is worth noting that crypto exchanges are allowed in Mexico and can operate with no prior license. However, they cannot offer any other financial product or service and have to comply with the anti-money laundering provisions applicable to such activities.

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3. <https://www.banxico.org.mx/sistemas-de-pago/d/%7BA9287AEE-664E-324B-9599-4FF89B6D7791%7D.pdf>



### c) Sandbox operation

The purpose of the existing regulatory sandbox legal framework is well intended, as technological innovation is at the top of mind and a very close relationship between regulators and innovators is proposed, precisely for regulators to be updated of the market progress and seek regulatory amendments as fast as possible.

However, given the basis of Civil Law and how the sandbox was designed in Mexico, the applying sandbox-entities would, at the end of their trial period, adjust its model and requirements to existing models already regulated in the

financial laws, with their respective catalogues of restricted activities and with their full stack of compliance. This has limited innovation in the fullest extent possible. Proof of this is that no entity has entered the sandbox to date.

Therefore, if policy makers aim to make this work, legal changes have to be made and

regulators have to open their mindset to allow for new models, mixing of activities, and financial and other type of innovation, to avoid laying back on the market's evolution.

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According to CB Insights, since 2013 the LatAm fintech funding has increased almost at an 86.44% annual rate

According to CB Insights<sup>6</sup>, since 2013 the LatAm fintech funding has increased almost at an 86.44% annual rate, being 2019 a record year for fundings. As reported by the Bank of International Settlements<sup>7</sup>, Mexico is the second largest fintech market in terms of number of deals, and the third largest market in terms of investment.

This exponential growth can be explained by various factors, but particularly in Mexico also due to specific structural problems which, as a result, create a severely underbanked population. As reported by the 2021 Mexican Financial Inclusion Survey<sup>8</sup>, only 67.8% of the adult population has at least one financial product, as they tend to place little value on formal financial services given lack of trust, being too expensive or having no interest in them.

Nonetheless, financial inclusion in Mexico has improved over the last couple of years, and with the broad and easy access to technology and the government's efforts to implement universal internet coverage, it is expected to increase. This makes Mexico a very broad and interesting market, with a lot of potential growth as FinTech allows low-cost financial services to reach a great part of the population who do not have access to the traditional financial system.

FinTech in Mexico will undoubtedly keep evolving and growing at a rapid rate over the next years, as long as the players in the ecosystem work along regulators to achieve an inclusive regulatory framework which honours inclusion, innovation and competition as its main pillars. Strong private and public collaboration must exist, aiming to build a healthy and cutting-edge financial system in Mexico.

## IV. Final Notes

Latin American financial market has been growing in a constant pace (~25% annual start-up growth) and now encounters a key moment. Mexico, Colombia, Chile and Perú have 1,102 identified FinTechs, concentrating 47% of total FinTechs in LatAm<sup>4</sup>. In particular, Mexico has had a consistently growing demand for financial services over the last 5 years, resulting in a growth of an average annual rate of 23% of FinTech startups, according to the FinTech Radar Mexico 2020<sup>5</sup>.

4. <https://www.finnovista.com/radar/fintech-incumbentes-2021/>

5. [https://www.finnovista.com/wp-content/uploads/2020/03/Fintech-Radar-Mexico-2020\\_Edicion1.pdf](https://www.finnovista.com/wp-content/uploads/2020/03/Fintech-Radar-Mexico-2020_Edicion1.pdf)

6. <https://www.cbinsights.com/research/latin-america-fintech-drivers/>

7. <https://www.bis.org/publ/bppdf/bispap112.pdf>

8. <https://www.inegi.org.mx/programas/enit/2021/>

# SINGAPORE

## Legal and Regulatory Development in Singapore's Fintech Industry

KGP



**Kenneth Pereire**

Managing Director



[kenneth@kgplegal.com.sg](mailto:kenneth@kgplegal.com.sg)



+65 6916 1299



[www.kgplegal.com.sg](http://www.kgplegal.com.sg)



### BIO

Mr Kenneth Pereire is a corporate and commercial lawyer and the Managing Director of KGP Legal LLC. He obtained his qualifications as a Singapore lawyer in 2011 and has worked in Singapore and the ASEAN region for the past 10 years.

His work covers the full range of general corporate and commercial law matters, from mergers and acquisitions and cross-border transactions for international and multi-national companies, including securities and other regulatory and compliance matters, down to the day-to-day legal concerns of small and medium-sized enterprises in establishing operations, drafting all kinds of commercial contracts, licensing and distribution arrangements, employment law matters, leasing, intellectual property registration and protection and litigation advice and assistance.

KGP

# SINGAPORE

## Legal and Regulatory Development in Singapore's Fintech Industry

KGP



**Kenneth Pereire**

Managing Director



[kenneth@kgplegal.com.sg](mailto:kenneth@kgplegal.com.sg)



+65 6916 1299



[www.kgplegal.com.sg](http://www.kgplegal.com.sg)



### BIO

Mr Kenneth Pereire is a corporate and commercial lawyer and the Managing Director of KGP Legal LLC. He obtained his qualifications as a Singapore lawyer in 2011 and has worked in Singapore and the ASEAN region for the past 10 years.

His work covers the full range of general corporate and commercial law matters, from mergers and acquisitions and cross-border transactions for international and multi-national companies, including securities and other regulatory and compliance matters, down to the day-to-day legal concerns of small and medium-sized enterprises in establishing operations, drafting all kinds of commercial contracts, licensing and distribution arrangements, employment law matters, leasing, intellectual property registration and protection and litigation advice and assistance.

KGP

# KGP



**Lin Yingxin**  
Associate Director



yingxin@kgplegal.com.sg



+65 6916 1295



www.kgplegal.com.sg



## BIO

Mr Lin Yingxin is a corporate and commercial lawyer and an Associate Director of KGP Legal LLC. He was admitted to the Singapore bar in 2015. He has worked on numerous local and cross-border transactions and disputes, and has advised entrepreneurs, investors, shareholders, directors, start-ups, small and medium enterprises, and multi-national corporations from various industries, including financial technology, finance, education, bio-technology, software development, distribution, blockchain and cryptocurrency, and e-commerce.

His practice focuses on general corporate and commercial law, including mergers and acquisitions, corporate finance, employment law as well as regulatory and compliance matters. He regularly assists clients in reviewing, negotiating and drafting various types of contracts and documentation.

# KGP

# Legal and Regulatory Development in Singapore's Fintech Industry

## I. Singapore's Fintech Industry

Singapore has continued to blaze the trail for innovation in the financial services sector in 2022, with more than half of Southeast Asia's Fintech firms operating in the city-state as of June 2022, according to a press release by KPMG dated 14 July 2022. While the current pandemic has resulted in a fall in overall Fintech funding in Asia, Singapore's global market share has doubled from 3.1% of global Fintech deal value in 2021 to 6.4% in 2022, according to the said press release, signalling continued confidence in Singapore as the leading Fintech ecosystem

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The Monetary Authority of Singapore (MAS) awarded four new digital bank licenses in 2020

in Southeast Asia. The pandemic has also heightened demand for services such as virtual banking, digital payment services, insurtech and digital advisory services. Since 2016, Singapore has been organising the Singapore FinTech Festival (SFF) for the global FinTech community to foster networks and

collaboration. At the SFF in 2022, many new products and services were launched, including eGuarantee@Gov which enables the quick provision of a banker's guarantee or insurance bond to government agencies, and Cake DeFi Enterprise which provides a suite of decentralised finance services.



### A. Virtual banking

As technology advances and banking habits evolve, Singapore is rapidly embracing virtual banking. This has been accelerated by the pandemic, which channelled customers to using digital banking at a remarkable rate. According to the Singapore Fintech Report 2022, customer sign-ups for DBS Bank's Digibank mobile app between June and August 2020 rose by 216% year-on-year, reaching a high of 3.5 million customers. It was also reported that in the first quarter of 2020, the number of new SME accounts opened online with OCBC grew 2.4 times, while there was a 406% increase in online purchase of UOB's investment products in the first quarter of 2020 as compared to the first quarter of 2019.

Recognising the rising demand for digital financial services, the Monetary Authority of Singapore (MAS) awarded four new digital bank licenses in 2020, to allow for the launch of Singapore's inaugural virtual-only banks. These digital banks include Grab and Singtel's GXS bank that recently launched in August 2022, as well as Ant Group's ANEXT bank, Greenland Financial Holdings' Green Link Digital Bank, and Sea Ltd's Maribank. Standard Chartered Bank and Fairprice Group-backed digital bank, Trust Bank, was also launched on 1 September 2022, reportedly amassing 100,000 customers in 10 days.

### B. Digital payment services

With the growth of online shopping and advancements in real-time payment, there is a rise in demand for digital payment solutions, such as e-wallets and Buy-Now-Pay-Later (BNPL) arrangements.

According to the FIS 2021 Global Payments Report, e-wallets are the second most popular payment method for online purchases, behind credit cards. By 2024, e-wallets are predicted to surpass credit cards and account for 27% of all online purchase transactions in Singapore.

PayNow, Singapore's electronic instant fund transfer service based on the Fast and Secure Transfers (FAST) payment rail, witnessed a 1.6 million increase in individual registrations and a doubling of corporate registrations in 2020. As part of its efforts to establish regional payments connectivity, Singapore also began linking its real-time payment system with others in the region. Today, PayNow has been successfully linked with Thailand's PromptPay, and is expected to link with Malaysia's DuitNow and India's Unified Payments Interface in 2022. On top of expanding PayNow to at least 10 participating banks by October 2022, Singapore also extended this service to non-bank financial institutions like GrabPay, Liquid Pay and Singtel Dash, allowing customers to top up their wallets, transfer funds, and more.

Another growing sector is the BNPL payment model, a form of short-term financing that allows customers to pay for their purchases in instalments. BNPL payments in Singapore are expected to grow by 52.6% on annual basis to reach US\$773.9 million in 2022, as consumers seek to stretch their dollars and merchants start pivoting to online channels to boost sales. During the pandemic, Hoolah, one of leading players in Singapore, cited more than 1,500% growth in transactions and over 800% increase in sales value. It has also recently been acquired by cashback start-up ShopBack. In October, Standard Chartered committed US\$500 million and signed a 10-year strategic partnership with Atome Financial, the operator of one of the largest BNPL platforms in Asia.

### C. Digital advisory services

Singapore's financial advisory space has seen several new Fintech players offering digital advisory services (robo-advisors). These are advisory services on investment products based on automated, algorithm-based tools involving limited or no human interaction. Notable robo-advisors include StashAway, AutoWealth, MoneyOwl and Endowus. With the growing adoption of robo-advisors, Singapore is on its path to becoming a leading wealthtech hub, with at least three of its largest robo-advisors reporting strong assets under management (AUM) figures since 2020. According to KPMG Endowus report titled "WealthTech: Looking ahead", Endowus, which spans both private wealth and public pension savings, cited an increase of 120%

in its client pool over the past year, with AUM across S\$2 billion. StashAway, a robo-advisor that invests customers' money in exchange traded funds, also reported an AUM growth of more than 300% year-on-year in 2020. Likewise, Syfe, a robo-advisor providing fully-managed investment portfolios, had its AUM quadruple in the first half of 2021.

### D. Insurtech

Singapore has one of the region's largest concentrations of Insurtech start-ups (over 80 registered companies). It has two-thirds of its population insured, meaning that its Insurtech industry is primarily focused on improving and streamlining existing services and products. Bolttech, Igloo, and Anapi are some of the major players in the market. Most recently, Bolttech became the first Insurtech Unicorn company based in Singapore. It also announced its acquisition of i-surance, a B2B2C digital insurance platform based on Switzerland, extending its global footprint from 14 to 26 markets. Singapore also has Insurtech innovation labs, such as the Allianz Asia Lab, which encourages collaboration with technological disruptors, digital entrepreneurs and start-ups to identify new ways to meet customer needs along the insurance value chain.

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BNPL payments in Singapore are expected to grow by 52.6% on annual basis to reach US\$773.9 million in 2022



## II. FinTech Regulatory Framework

Presently, there is no single overarching legislation regulating the Fintech space. The applicable regulatory framework depends on whether the nature of the Fintech services or products offered falls within the definitions of regulated financial activities. Generally, the following legislations may be relevant:

- (i) Securities and Futures Act 2001 (SFA)
- (ii) Financial Advisers Act 2001 (FAA)
- (iii) Banking Act 1970
- (iv) Insurance Act 1966
- (v) Payment Services Act 2019 (PSA)
- (vi) Moneylenders Act 2008
- (vii) Companies Act 1967
- (viii) Currency Act 1967
- (ix) Commodity Trading Act 1992

Digital payment services, depending on the scope of their activities, may have to comply with regulatory

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Regulators have to adapt and introduce new compliance measures to meet the challenges of new technologies and criminal methodologies

requirements under the PSA. For instance, if a Fintech business operates e-wallets or deals in digital payment tokens, it may have to obtain a payment institution license. Recently in October 2022, a BNPL code of conduct was also introduced to protect consumers against debt accumulation through mechanisms like

creditworthiness safeguards and marketing guidelines.

Under the digital banking licensing framework, there are two types of digital bank licenses: (i) digital full bank (DFB) license; and (ii) digital wholesale bank (DWB) license. The former caters to a wide range of financial services including retail customers, while the latter has a narrower scope focusing on small and medium-sized enterprises.

As robo-advisory services become more prevalent, the Guidelines on the Provision of Digital Advisory Services have been introduced in October 2018. If robo-advisers carry out regulated activities under the SFA and FAA, they are required to be licensed. If the robo-adviser offers a platform for the execution of certain investment products, it may also be required to hold a CMS license under the SFA.

For Insurtech, the same pieces of legislation that apply to traditional insurance businesses may also be applicable, as Insurtech is often used in the insurance industry as a means to distribute traditional insurance products and process claims. As such, Fintech products or services in the Insurtech sector may be licensed and governed under the Insurance Act and the FAA.

It is worthy to note that many Fintech businesses are platforms or intermediaries that bring buyers and sellers together, in which case they could potentially fall outside the ambit of regulatory framework.

## III. Compliance Requirements

As the Fintech landscape undergoes innovation, regulators have to adapt and introduce new compliance measures to meet the challenges of new technologies and criminal methodologies. Therefore, in carrying out businesses, Fintech companies must ensure adherence to anti-money laundering (AML) and counter-financing of terrorism (CFT) guidelines issued by MAS, and implement procedures and controls for the effective management of AML/CFT risks, in alignment with the Financial Action Task Force's (FATF) recommendations.

#### IV. Why FinTech businesses choose to set up in Singapore

The Fintech industry is seen as a vital component of Singapore's growth towards a Smart Nation of digitally-enabled economy, government and society. As such, MAS has kept a clear focus on developing foundational digital infrastructures and creating supporting institutions necessary to grow a digital financial economy, contributing to Singapore's reputation as one of the top tech innovation hubs in the world.

Singapore's thriving Fintech ecosystem is a product of a range of several factors.

First, our world-class infrastructure and connectivity enables the easy set-up of start-ups looking to base their operations here. Singapore has ultra-high-speed fibre infrastructure running across the entire nation and mobile penetration rate exceeding 100%, all of which are key for Fintech growth. Singapore is also located at the heart of Asia, serving as an ideal gateway into the Asian market and offering start-ups many possibilities to springboard into the ASEAN region.

Second, Singapore has strong government support and excellent regulations which foster a business-friendly environment that encourages innovation. For instance, MAS launched the FinTech Regulatory Sandbox regime in 2016, which relaxes regulations to allow financial institutions and non-financial players to experiment and test Fintech products within a well-defined space and duration. In 2020, MAS also announced Financial Sector Technology and Innovation (FSTI) 2.0, an enhancement to the FSTI scheme launched in 2015, which commits S\$250 million over the next 3 years to drive technology adoption and innovative growth in the local financial sector, by supporting innovation projects and building a stronger pipeline of Fintech talent in Singapore. MAS also develops accelerator programs that provide the Singapore tech start-up ecosystem with government co-investment, mentorship support and start-up capital grants. Examples include the Startup SG Accelerator and Enterprise Development Grant operated by Enterprise Singapore. MAS also organises the annual Singapore FinTech Festival, which offers a major platform for Fintech collaborations.

Lastly, Singapore has a strong private sector funding that fuels the Fintech ecosystem. Apart from financial support from the government, funding has also been strongly backed by many venture capitalists, angel and private equity funds. In fact, Singapore-based FinTech firms continued to attract the most deals in ASEAN, securing more than half of the total 163 deals, amounting to US\$1.8 billion in funding, which is 43% of total funding in ASEAN.

#### V. Legal Documentation to raise capital in the Singapore Fintech Industry

At earlier stages, start-ups may raise capital by issuing ordinary shares or convertible notes. From Series A onwards, start-ups will typically issue equity in the form of preference shares to their investors. Convertible notes may also be utilised to close bridging rounds.

Where equity in a Singapore private company limited by shares is issued to investors as part of a fundraising round, the typical investment agreements will include a term sheet, a share subscription agreement and a shareholders' agreement. If new classes of preference shares are issued, the company would have to amend its constitution to include the terms of such class of preference shares.

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Singapore has strong government support and excellent regulations which foster a business-friendly environment that encourages innovation

Below are some common legal documentation that start-ups may require for various fundraising transactions:

**A. Series A documents**

- (i) Non-disclosure Agreement
- (ii) Term Sheet
- (iii) Subscription Agreement
- (iv) Shareholders' Agreement
- (v) Employee Share Option Plan
- (vi) Company Constitution

**B. Pre-Series A documents**

- (i) Non-disclosure Agreement
- (ii) Convertible Note Purchase Agreement  
Founders' Agreement
- (iii) Employee Deed of Assignment of Intellectual  
Property

Lawyers will be able to provide the relevant advice and assistance on the specific legal requirements for a start-up's capital raise.

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Funding has also been strongly backed by many venture capitalists, angel and private equity funds



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**KGP LEGAL LLC**

10 Anson Road, #23-05  
International Plaza, 079903

Call (+65) 6916 1298

Fax (+65) 6916 1290

[enquiry@kgplegal.com.sg](mailto:enquiry@kgplegal.com.sg)

**KGP**

## SOUTH KOREA

### DEVELOPMENT OF KOREA'S FINTECH INDUSTRY

## D'LIGHT



**Rae Yi Kang**

Foreign Attorney (D.C., U.S.)



ryk@dlightlaw.com



+82-2-2051-1870



www.dlightlaw.com



#### BIO

Rae Yi graduated from Sungkyunkwan University with a degree in Psychology and obtained a Juris Doctorate degree (J.D.) at Cornell Law School.

Rae Yi worked as a legal researcher at D'Light Law Group, conducting regulatory research in each country, and upon passing the bar, Rae Yi has participated in multiple overseas M&As and financial deals as a foreign attorney.


Rae Yi is currently a member of the Global Business, General Corporate / M&A, and Blockchain Practice Groups at D'Light Law Group.

# D'LIGHT



 **Min Kyung Kang**  
Associate

 [mkk@dlightlaw.com](mailto:mkk@dlightlaw.com)

 +82-2-2051-1870

 [www.dlightlaw.com](http://www.dlightlaw.com)



## BIO

Min Kyung earned her Bachelor's degree in business administration from Yonsei University and her Juris Doctor degree from Seoul National University School of Law. She has also completed a Ph.D. course in corporate law at Seoul National University.

Min Kyung is qualified as a Certified Public Accountant and a Chartered Financial Analyst. With her professional qualifications, she has worked as a financial advisor in the field of structured finance and corporate restructuring, and as a fund manager of PEF which is specialized in alternative investments such as Distressed Assets.

As a Legal Advisor, she has participated in numerous M&A and financial deals (PF, CB, RCPS, ABL, etc.) and has advised clients to manage their legal, financial and tax risks. Min Kyung is a key member of D'Light Law Group's FinTech, Regulatory Sandbox, and General Corporate / M&A Practice Groups.



## 1. Development of Korea's Fintech Industry

The fintech industry began to receive attention from the financial sector in Korea at the end of 2014. This is when several small ICT companies, by combining new technologies, agility, and innovative ideas, started offering unprecedented, user-friendly, and cost-effective financial services in the value chains of banking, such as payment, remittance, and loans. For instance, the easy remittance service, which enables remittance services using only phone numbers, differentiates itself from existing remittance services that require public certificates,

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There are two types of financial platforms depending on whether the operating entity is a financial company or an online platform operator.

one-time passwords (OTP), and bank account numbers of the party to receive the money. As such, it is inevitable in Korea that innovative fintech companies replace, erode, and eventually unbundle each business area of financial institutions, including banks.

However, it is not easy for fintech companies to commercialise innovative ideas since Korea has a separate regulatory system for each financial industry, has a high level of regulation, and takes rule-based regulation. As such, rigid financial regulations in Korea make it difficult for fintech companies to meet entry requirements in the early stages of start-ups. As a result, many fintech companies practically choose to engage in business partnerships with the existing financial institutions or operate as innovative financial services designated under the Special Act on Support for Financial Innovation that provides the institutional basis for the financial regulatory sandbox. Recognising that finance digitalisation is accelerated, the Korean government is pursuing fintech invigoration policies by reforming financial infrastructure and systems to promote financial innovation and enhance consumer benefits. Accordingly, this article will examine the current status of the fintech market, focusing on the current financial infrastructure and institutional reform in Korea.



## 2. Activation of the Platform-based Finance

There are two types of financial platforms depending on whether the operating entity is a financial company or an online platform operator. In the former case, where an existing financial company becomes the operating entity of a financial platform, the offline-oriented business regulations under the relevant regulatory laws occasionally limit the platform's operation. Accordingly, the Financial Services Commission of Korea (FSC) announced a plan to revitalise platform activities by expanding the scope of online projects for each industry, including banks, insurance companies, and credit card companies, and activating information sharing among affiliates. To be specific, FSC plans the following: (1) for banks, creates institutional conditions for the implementation of Digital Universal Bank, a comprehensive financial app, to strengthen the role as comprehensive property managers; (2) for insurance companies, improves the system and promotes consultations with related ministries for such companies to advance to the healthcare financial platforms; and (3) for credit card companies, expands such companies' concurrent and incidental businesses to provide comprehensive financial services as life-friendly financial platforms.

On the other hand, in the latter case, where an online platform operator becomes the operating entity in the financial industry, FSC plans to institutionalise such business in the future after consummating the pilot operation under the regulatory sandbox. Such platforms mainly provide comparison or recommendation services for deposits, insurance, and P2P products or introduce brokerage services for financial investment products. For instance, regulations on online loan product comparison platforms have been improved by designating such platforms as innovative financial services under the regulatory sandbox to pilot the business and thereafter introducing online loan product brokerage business through the enactment of the Financial Consumer Protection Act. Further, FSC allowed the online loan recruiters to be exempted from the loan recruiter’s exclusivism to one company, a system requiring loan recruiters to sign consignment contracts with only one financial company.

### 3. Introduction of MyData Business in the Financial Sector

In the mid-2000s, Korea led the regulation of digital finance globally by enacting the Electronic Financial Transactions Act based on a relatively developed Internet environment even before foreign countries started regulating digital finance in earnest. Since then, however, there has been practically no institutional innovation in the field of electronic financial transactions in Korea. Such a standstill caused problems because, at the same time, there have been significant changes in the financial environment, including the advent and explosive popularisation of smartphones in 2007, and the digital transformation of finance and fintech innovation in the 2010s. For example, big tech companies entered the financial industry based on information and communication technology and e-commerce, and the financial environment was changed to the simple authentication methods from the existing public certification system.

Many countries are recognising the importance of digital finance and are overhauling related laws and systems to encourage competition and innovation in the digital finance sector. Such movement includes revision and enactment of laws and regulations, including ‘PSD2: The

revised Payment Services Directive’ and ‘eIDAS: Regulation on electronic Identification, Authentication and Trust Services’ of the EU, ‘Payment Services Regulations’ of the United Kingdom, ‘Payment Services Acts’ of Singapore, and ‘Act on Payment Services’ of Japan. Recognising its complex regulatory system of electronic finance compared to the overseas ones, the Korean government has revised the Electronic Financial Transactions Act to revitalize innovative operators’ entry into the financial industry, and a related bill is currently pending in the National Assembly.

The main contents of the Electronic Financial Transactions Act revision are as follows. First of all, the introduction of MyPayment businesses.

MyPayment business is an electronic financial business that helps transfer electronic funds by delivering payment instructions to financial companies with payers’ accounts without holding payers’ funds. Although MyPayment business operators should register with the FSC,

the entry requirements for such licenses are very relaxed compared to other electronic financial companies. Secondly, MyPayment business operators will be allowed to operate MyData business as a concurrent business. Such a combination is expected to provide innovative financial services by enabling portfolio recommendation through inquiry of all financial assets and asset allocation based on the portfolio in one app. Further, the revision will simplify the type of electronic financial business and ease entry regulations by reorganising the kind of electronic financial business classification from the current regulation per electronic payment method to the same regulation for the same function. Finally, the revision will diversify the scope of its application by introducing small post-payment systems and promoting user protection systems such as user deposit protection for the stability of the financial market.

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Many countries are recognising the importance of digital finance and are overhauling related laws and systems to encourage competition and innovation in the digital finance sector.

The legislative initially proposed to amend the Electronic Financial Transactions Act in November 2020, but the date was pending due to the difficulty of coordinating opinions among stakeholders on the revision of the Act. However, since FSC and the Bank of Korea reached a final agreement in July 2022, including the withdrawal of the introduction of a comprehensive payment business, the revision is expected to occur soon.

## 5. Expansion of infrastructure to promote and support the use of artificial intelligence in the financial sector

The financial sector has infinite possibilities to utilize AI based on the infrastructure that established the

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foundation for big data activation, such as the introduction of MyData and the activation of data combinations. Specifically, AI technology took its first step in the financial sector, including RoboAdvisor, chatbot, product recommendation, abnormal transaction detection, credit evaluation, and credit

The financial sector has infinite possibilities to utilize AI based on the infrastructure that established the foundation for big data activation.

screening. In this regard, establishing an environment that ensures the smooth use of high-quality big data becomes an essential task since data significantly affect the performance of AI. Therefore, FSC prepares countermeasures for lacking quality data, proper systems, and reliability, which have hindered AI use in Korea's financial sector.

To be specific, although the introduction of the de-identified personal information system enables the use of such information in AI development becomes possible without the consent of the information subject, it is still challenging to accumulate and utilize a large amount of data as it must be used and destroyed only for alias processing (Article 20-2 (2) 2-2 of the Credit Information

Act). This causes inefficiency because the data user should always recombine an existing data set for other purposes. To solve these problems and secure high-quality data, FSC plans to build a “financial AI library” that allows data reuse after combining data under a regulatory sandbox. Meanwhile, Korea's strict security regulations, such as network separation, have also impeded AI utilisation in Korea because they limit the use of external APIs and cloud services which are necessary for smooth AI development and utilisation. Thus, to facilitate external APIs, FSC is considering allowing the regulatory sandbox which exempts the service development using pseudonym information or test servers from the requirement of separating the physical network. In addition, FSC endeavors to improve insufficient AI-related systems in Korea by announcing AI guidelines in the financial sector (July 2021) and AI development and utilisation guidelines for each five primary financial services (August 2022). FSC is also working on publishing a guidebook on expandable AI (XAI) in the near time to protect consumers from decision-making through AI. Finally, FSC plans to establish a data verification and test environment by establishing a financial AI test bed to improve financial AI accuracy and reliability.

## 6. Enhancement of the Regulatory Sandbox System for Innovative Financial Services

Korea introduced the financial regulatory sandbox system on April 4, 2019, and currently, the regulatory sandbox designates 223 innovative financial services as of October 2022, of which 135 services commenced operation. This includes 46 services that proved their stabilities and consumer benefits, which eventually resulted in reorganising related regulations. However, there are concerns that the regulatory sandbox system is less effective than before. This is because newly designated innovative financial services are gradually decreasing from 77 (2019), 58 (2020), 50 (2021) to 38 services (2022), and the diversity in the services is also falling.

Accordingly, on August 8, 2022, FSC announced the following policy to enhance the regulatory sandbox system for innovative financial services: (1) reorganising the top-down review system leaned to the FSC chairman to bottom-up review system to ensure expertise and autonomous judgment of private members; (2) improving stability and predictability of regulatory sandbox system operation; and (3) reorganising the innovative financial services support system that is biased toward financial support. Specifically, FSC will improve the designation process by changing the Innovation Finance Review Committee from the existing FSC chairman’s sole review system. The new designation process will be the co-chair system consisting of the chairpersons of FSC and private members and providing expert support of an innovation finance service to analyse the regulatory sandbox application and review the feasibility of the business structure. Also, FSC will improve the stability and predictability of regulatory sandbox system operation by determining and notifying whether there will be an applicable institutionalisation of special regulations before the expiration of the regulatory sandbox and establishing a response system for project termination risks in advance. Further, FSC plans to diversify its innovative financial services support system from the existing system that only focuses on financial support. The new support will provide comprehensive advice to each fintech operator by designating a person in charge who will provide support from financial service processes, regulatory systems, planning, development, accounting, to tax management advice. Also, FSC plans to establish a data analysis support platform to verify the ideas of innovative businesses.

## 7. Defi

In Korea, although the enactment of the Act on Reporting and Using Specified Financial Transaction Information imposed obligations on certain business operators handling virtual assets to report their operation to the head of the Financial Information Analysis Institute, the legal nature of virtual assets still needs to be clearly defined. Specifically, the legislative submitted and discussed more than ten bills related to virtual assets, but the bills are still at a standstill. Furthermore, operating financial services using

virtual assets is largely limited in Korea due to the strict requirements under the Capital Market Act or the Act on the Regulation of Conducting Fund-raising Business Without Permission. Although certain limited kinds of financial services are allowed to operate, including the fiat currency exchange providing staking services or certain companies providing virtual assets lending services by setting virtual assets as collateral, many other innovative services are having difficulties satisfying the regulations of the said Acts. In other words, introducing and activating Defi services in Korea will also take considerable time due to scattered and unresolved institutional issues. Meanwhile, FSC recently announced that securities-type tokens would be subject to regulations under the Capital Markets Act, which is expected to establish different regulatory systems depending on the nature of tokens, in line with international regulatory trends. Financial experts predict that FSC’s policy will be similar to the U.S. and/or Singapore, which regulate securities-type tokens according to existing laws if they fall under products stipulated by existing securities laws.

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In 2023, the Korean fintech market is expected to advance further by introducing various innovative services, expanding AI, big data, and digital finance infrastructures.

## 8. Conclusion

FSC and other regulatory institutions have prepared detailed policies over the past two years after announcing the comprehensive digital finance innovation plan in July 2020. As a result, they are gradually specifying the institutional environment of the fintech industry. In the meantime, multiple regulatory improvements have provided a foundation for fintech operators to operate safely within the institutional sphere. In 2023, the Korean fintech market is expected to advance further by introducing various innovative services, expanding AI, big data, and digital finance infrastructure, and promoting other new business types such as MyPayment.

# SWITZERLAND

## The Swiss Fintech Framework

### PRAGER DREIFUSS



**Dr Christian Schönfeld**

Counsel



[christian.schoenfeld@prager-dreifuss.com](mailto:christian.schoenfeld@prager-dreifuss.com)



[www.prager-dreifuss.com](http://www.prager-dreifuss.com)



#### BIO

Dr Christian Schönfeld is counsel at Prager Dreifuss and a member of the corporate and M&A practice group. He focuses on banking and capital markets law and associated regulatory issues with financial market law. Within these areas he has particular experience in collective investment law and in the areas of Fintech and crypto assets (ICOs, tokenisation etc.). Furthermore, he works in the areas of corporate and commercial law including mergers and acquisitions. He also advises on data protection matters and is a member of Prager Dreifuss' Startup Desk.

Prior to joining Prager Dreifuss as an attorney, Christian worked as a research assistant at the University of St. Gallen where he also earned his doctorate with a thesis on collective investment schemes in distress. He is a regular speaker at conferences and publishes on the topics he specialises in.

## I. Introduction

Being host to a financial centre of international renown Switzerland is keen to encourage innovative business models, keep regulatory requirements at a sensible level and reduce unnecessary regulatory obstacles. Therefore, the emergence of new technologies and new business models in the context of the financial services industry is

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Switzerland has, so far, refrained from enacting a separate, comprehensive Fintech statute.

seen as a chance as well as a challenge. The goal to promote innovation may be at odds with the regulatory aims of protecting investors and ensuring transparency and the proper functioning of the financial markets. Switzerland, therefore, constantly needs to determine how to regulate such

new technologies and how to strike a balance between enabling innovation without jeopardising the other goals of financial market regulation.

The following essay shall provide an overview of the structure of Swiss financial market regulation and the Swiss regulatory framework governing Fintech as well as highlight the various regulatory initiatives of particular relevance to Fintech and Fintech business models.

## 2. The Principle of Technology Neutrality

As a general principle, Swiss financial market regulation adheres to the principle of technology neutrality, i.e. “same business, same risks, same rules”. This means that the same rules shall apply to equivalent activities irrespective of the technology used unless such underlying technology results in a different risk structure which, in turn, warrants a different regulatory treatment. In other words, Switzerland regulates business models instead of technologies.



Therefore, Switzerland has, so far, refrained from enacting a separate, comprehensive Fintech statute. As a consequence, the statutes which regulate the financial industry apply also in the context of Fintech.

## 3. Main Sources of Swiss Financial Market Law

The most important of these statutes are the following:

The **Banking Act (BA)** contains the rules for the provision of banking services, i.e. in particular lending services. The BA requires that whoever accepts deposits from the public on a professional basis obtains a banking license. Certain forms of lending may be subject to additional regulation, e.g. the granting of consumer credits pursuant to the **Consumer Credit Act (CCA)**.

Dealing in securities is regulated by the **Financial Institutions Act (FinIA)**. Enterprises require a securities firm license if they, on a commercial basis:

- trade securities in their own name for the account of clients;
- trade securities for their own account on a short-term basis, operate primarily on the financial market and
  - could thereby jeopardise the proper functioning of the financial market, or
  - are member of a trading venue, or
  - operate an organised trading facility pursuant to the FMIA (as defined below); or
- trade in securities for their own account on a short-term basis and publicly quote prices for individual securities upon request or on an ongoing basis (market maker).



Furthermore, the following activities may only be performed by anyone operating primarily in the financial sector if they have a banking or a securities firm license:

- underwriting securities issued by third parties and offering these to the public on a primary market on a commercial basis; and
- creating derivatives in the form of securities and offering these to the public on the primary market on a commercial basis.

In addition, the FinIA also contains rules pertaining to further financial market participants, e.g. asset managers.

The **Collective Investment Schemes Act (CISA)** regulates the formation of collective investment schemes.

The **Financial Markets Infrastructure Act (FMIA)** regulates financial market infrastructures such as stock exchanges.

The **Anti-Money-Laundering Act (AMLA)** regulates the obligations of so-called financial intermediaries in combating money laundering, including, for instance, the duty to perform KYC checks, to notify the competent authorities in case of suspected money laundering and to affiliate with a self-regulatory organisation (SRO). Financial intermediaries in the sense of AMLA include not only regulated entities such as banks or securities firms but also persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets, in particular persons who carry out credit transactions, provide services related to payment transactions, trade for their own accounts or for the account of others in banknotes, coins, securities etc., make investments as investment advisers or manage securities or hold them on deposit.

The aforementioned statutes are supplemented by secondary regulation found in ordinances. Moreover, the Swiss Financial Market Supervisory Authority FINMA regularly publishes circulars and guidelines on its practice.

Finally, the described regulation is also supplemented by the **Financial Market Supervision Act (FINMASA)** which provides the legal basis for FINMA.

## 4. Specific Aspects of Financial Market Regulation relevant for Fintech Business Models

Although Switzerland has not enacted a comprehensive Fintech Act, the legislator and FINMA have enacted specific rules regarding Fintech where deemed necessary. Swiss regulation aims at allowing Fintech innovations to develop without being hindered by excessive regulatory burdens while at the same time striking a balance with the goals of protecting investors and ensuring the functioning of the market. The following aspects are of particular relevance with respect to Fintech business models:

### 4.1. Settlement Accounts

As mentioned, accepting deposits from the public on a professional basis requires a banking license. More detailed provisions on, and exemptions from, this requirement are contained in the **Banking Ordinance (BO)**.

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The Anti-Money-Laundering Act (AMLA) regulates the obligations of so-called financial intermediaries in combating money laundering.

Pursuant to the BO, balances on customer accounts by precious metal dealers, asset managers or similar companies which do not bear interest and are used solely for the settlement of customer transactions do not qualify as deposits provided that the settlement takes place within 60 days. The same exemption may also apply for securities firms and DLT trading facilities (see below for this new category of licensed financial market infrastructures).

FINMA has further clarified this exemption in its circular on public deposits with non-banks. Depending on the specific circumstances, this exemption may enable money transmitting services or crowdfunding platforms which may qualify as the above-mentioned “similar companies” without triggering a licensing requirement.

## 4.2. Sandbox

The BO also provides for an exemption tied to the criterion of “on a professional basis” which, generally speaking, extends to anyone who permanently accepts more than 20 deposits from the public (or offers to do so).

However, whoever permanently accepts more than 20 deposits from the public or crypto-based assets held in collective custody (or who publicly offers to do so) is not deemed to be acting on a professional basis, if he:

- accepts such deposits or crypto-based assets totalling no more than CHF 1 million;

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The requirements for a Fintech license are less strict than those for a classic banking license to boost innovative business models.

- does not engage in the margin business; and
- informs the depositors, prior to them making their deposit, that:
  - he is not supervised by FINMA; and
  - the deposits are not covered by the deposit guarantee scheme.

Again, this exemption was further clarified in FINMA's circular on public deposits with non-banks.

This so-called Sandbox exemption enables Fintech businesses to try out the viability of their business model in a first step unhindered by regulatory requirements in the BA. Only if they exceed the threshold of CHF 1 million must they notify FINMA within 10 days and apply for a license under the BA within 30 days.

## 4.3. Innovation Space

Finally, Fintech companies that do not qualify for the sandbox exemption, e.g. because they have outgrown it, may benefit from the so-called Fintech license under the BA.

The requirements for a Fintech license are less strict than those for a classic banking license geared at boosting innovative business models: The minimum capital required amounts to CHF 300'000 or 3 per cent of the total amount of deposits and the requirements for own funds and liquidity which apply to banks, do not apply under the Fintech license. Also, the Fintech license does not lead to the application of the special accounting provisions of the BA.

The FinTech license is available to persons who:

- on a professional basis accept or offer to accept deposits from the public of up to CHF 100 million or designated crypto-based assets; and
- neither invest these deposits or crypto-based assets, nor pay interest on them.

In view of investor protection Fintech licensees, nonetheless, have to establish an appropriately equipped risk management system and effective internal controls and ensure that their management fulfils the fit and proper criterion.

If the threshold of CHF 100 million is exceeded the licensee must notify FINMA within 10 days and apply for a banking license within 90 days (subject to FINMA granting an exception to continue business under the FinTech license in special cases).

## 4.4. DLT Act

In September 2020, the Swiss parliament passed the Federal Act on the Adaptation of Federal Law to Developments in the Distributed Ledger Technology (DLT Act). The DLT Act was a blanket act which amended various statutes.

It introduced crypto-based securities to Swiss private law in the form of registered uncertificated securities (so-called DLT securities) as a new form of uncertificated securities. Furthermore, it amended debt enforcement and insolvency law by clarifying the conditions for the segregation of crypto-based assets bankruptcy and also included changes to Swiss private international law.

The DLT Act also served to close gaps in existing regulation with regard to DLT securities. Firstly, it extended the regulatory definition of the term security also to include DLT securities. Secondly, it opened certain regulatory concepts for business models based on crypto assets (for instance, the Fintech license under the BA which previously did not cover crypto-based assets). Thirdly, it created a new category of licensed financial market infrastructures, the DLT trading facility in the FMIA. DLT trading facilities enjoy more freedom than traditional trading facilities (e.g. stock exchanges or multilateral trading facilities) when it comes to who may be granted access and what services may be offered. Nonetheless, they follow similar licensing requirements. Finally, AMLA has also been amended to take into account the aforementioned changes to Swiss financial market law.

The changes to Swiss private law entered into force on 1 February 2021. The regulatory amendments came into force on 1 August 2021.

The various amendments that have been introduced by the DLT Act open up new business possibilities for Fintech enterprises active in the sector of digital assets, such as custody of digital assets or issuance or trading of digital assets. At the same time, it is proof of Switzerland's willingness to adjust to innovation in the area of Fintech. This, in turn, increases the attractiveness of the Swiss market for young businesses and innovative entrepreneurs.

#### 4.5. Video and Online Identification

To enable financial intermediaries to employ new technologies and service providers to fulfil their AML-obligations, FINMA has published a circular on the duties of care when establishing business relations via digital means.

The circular distinguishes between identification via video and online identification and details the requirements which need to be fulfilled to achieve compliance with AMLA. Furthermore, it also addresses the outsourcing of these duties to third party service providers.

#### 4.6. Initial Coin Offerings

In the wake of the rising popularity of initial coin offerings (ICOs) or initial token offerings (ITOs) of blockchain or crypto projects, FINMA early on (2018) published guidelines on the regulatory treatment of different forms of crypto assets. They are the basis of the regulatory assessment of crypto assets and ICOs.

FINMA distinguishes three types of tokens each of which triggers separate regulatory consequences:

- Payment tokens constitute means of payment for the purchase of goods or services from third parties or function as means of value transfers. This includes the "classic" crypto currencies such as Bitcoin. They qualify as means of payment under AMLA. Persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets qualify as financial intermediaries. This includes persons who issue or manage means of payment and, consequently, issuers of payment tokens who, therefore, have to comply with the obligations of financial intermediaries under AMLA.
- Asset tokens convey to their owners a claim against the token's issuer. Consequently, asset tokens have investment character, for example equity or debt tokens. Asset tokens may qualify as securities under financial market regulation, namely if they are suitable for mass trading, i.e. fungible. If this is the case, the issuance of such tokens will trigger the obligation to publish a prospectus under **The Financial Services Act (FINSA)** (unless an exemption under FinSA applies).

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The various amendments that have been introduced by the DLT Act open up new business possibilities for Fintech enterprises active in the sector of digital assets

- Utility tokens convey access to a digital use that already

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Swiss financial market regulation follows the principle of technology neutrality and, consequently, regulates specific technologies only to a limited extent.

exists at the time the token is issued, e.g. the right to access a platform on a blockchain. Utility tokens are treated as services of the real economy and their issuance triggers neither the AML obligations applicable to payment tokens nor the prospectus obligations applicable to asset tokens.

In practice, these different types of tokens are not mutually exclusive but often overlap. As a result, the regulatory requirements for several types of tokens, e.g. payment and asset tokens, may apply simultaneously. Furthermore, the regulatory qualification may change over time, resulting in additional challenges for the promoters of a crypto project to achieve compliance.

## 5. Conclusion

Swiss financial market regulation follows the principle of technology neutrality and, consequently, regulates specific technologies only to a limited extent. Nonetheless, Switzerland's desire to foster innovative business models combined with the fast-paced developments in Fintech have resulted in various regulatory initiatives specifically addressing Fintech business models on various tiers of the regulatory framework.

These amendments make pursuing new and promising business models possible without jeopardising the protection of investors and the functioning of the market. They greatly improve the attractiveness of Switzerland as a hub for Fintech businesses.

It remains to be seen, what developments will follow but it seems safe to assume that the pace of innovation will not slow down in the foreseeable future. Therefore, Switzerland will have to continue to live up to the challenge of reacting appropriately to these future developments as well as to eventual regulatory developments abroad in order to preserve its status as one of the financial markets of global renown.

# PRAGER DREIFUSS

ATTORNEYS AT LAW



CH-8008 Zurich | CH-3001 Bern | BE-1050 Brussels

[www.prager-dreifuss.com](http://www.prager-dreifuss.com)



# UK

## The UK Fintech Scene

### BURGES SALMON



**Martin Cook**

Partner, Head of Fintech



[martin.cook@burges-salmon.com](mailto:martin.cook@burges-salmon.com)



+44 (0) 117 307 6989



[www.burges-salmon.com](http://www.burges-salmon.com)



#### BIO

Martin is a partner in Burges Salmon's technology and financial services teams, and is internationally recognised for his fintech and technology expertise. He leads the firm's fintech practice.

Prior to Burges Salmon, Martin was General Counsel and Group Company Secretary at WorldRemit (now Zepz), a leading international payments business, responsible for the legal, regulatory, data privacy, company secretarial and risk management functions. Previous in-house roles focussed on technology and fintech, including at Funding Circle as Global Head of Legal & Regulatory. Martin also worked at leading law firms where he advised significant financial institutions and corporates, and technology and private equity firms.

Martin's experience includes advising on: major technology implementation and outsourcing projects; business expansion and growth (including M&A, international expansion and product development); risk, governance and compliance-related topics; and regulatory change projects. Martin works with emerging businesses and scale-ups through to significant international financial institutions.



# BURGES SALMON



**Brandon Wong**

Solicitor, Fintech and Financial Regulation



Brandon.Wong@burges-salmon.com



+44 (0) 117 307 6146



www.burges-salmon.com



## BIO

Brandon is a solicitor (admitted in September 2021) in the fintech, funds and financial regulatory teams. Brandon focuses on financial services regulatory matters for a broad range of clients with a particular interest in the fintech sector.

His experience is broad, and includes advising both fintechs (start-ups through to "unicorns") and established players on digital assets, fund management, payment services and alternative business models for UK businesses and for overseas business establishing in the UK.

# BURGES SALMON



**Matthew Loader**

Solicitor, Fintech and Technology



[Matthew.Loader@burges-salmon.com](mailto:Matthew.Loader@burges-salmon.com)



+44 (0) 117 307 2247



[www.burges-salmon.com](http://www.burges-salmon.com)

## BIO

Matthew is a solicitor (admitted in 2020) in the technology team and advises on a broad range of data protection, technology, intellectual property and commercial matters for clients in a number of sectors, including technology, retail, energy and defence.

Matthew has a particular interest in the fintech sector and has completed a legal secondment to an established fintech business. His recent experience also includes advising an AI cybersecurity scale-up and a payment service provider on commercial matters.



## A BRIEF OVERVIEW OF THE UK FINTECH LANDSCAPE

The UK continues to be a world-leading fintech jurisdiction nurturing both home-grown and overseas fintechs looking to capture a share of the UK market and, often, acting as a launch-pad to other international markets.

In our experience, the reasons for this include:

- the stable and well developed legal and regulatory system, which has – generally speaking – both permitted and embraced innovation in financial services (such as ‘open banking’ and pioneering the use of regulatory ‘sandboxes’);
- the high adoption of digital financial services and fintech solutions in the UK, so a consumer market that is already trusting of digital delivery; and
- despite Brexit, the UK as a ‘gateway’ jurisdiction between the EU and the rest of the world – for both outbound investment by EU-based businesses and vice versa.

### UK Fintech in Numbers

**US\$37.3 billion:** UK fintech investment in 2021

**45%:** fintech investment in the UK as a percentage of investment in overall European investment

**2nd:** UK ranking (behind the US) in global fintech investment

**2,500:** number of fintechs operating in the UK

The UK fintech market continues to receive a wealth of support from government, national associations and fintech organisations all geared towards ensuring that the UK maintains its place on the international fintech pedestal. However, the UK fintech scene can prove a fickle beast often necessitating a close eye on upcoming changes and developments. As such, we take a look at some market trends and upcoming regulatory changes that are likely to impact fintechs operating, or looking to operate, in the UK.



## Wider trends in the market

The UK fintech market has seen a high degree of engagement from industry and government before and since the publication of the Kalifa Independent Review of UK Fintech in 2021. The Review culminated in a number of recommendations to remove barriers for fintech companies to start-up and scale-up effectively. This includes action on key themes including: access to talent; access to funding; a favourable regulatory environment; collaboration and co-operation as a driver of growth; and support for international development. Industry recognises that there is more work to be done, however, to ensure the UK keeps pace on the international stage.

*Examples of recent government and sectoral support for fintech*

Notable progress since the publication of the Kalifa Review includes:

- the commitment to establish a Centre for Finance, Innovation and Technology (CFIT) to coordinate fintech growth;
- implementation of a ‘Scale-up’ visa to support international talent;
- enhancements to the FCA’s regulatory sandbox; and
- increased activity across all UK regions in relation to fintech, with non-London fintech hubs developing rapidly and co-ordinating on the implementation of regional fintech policies.

Commentators have often spoken of a 'bonfire of red tape' (i.e. de-regulation) – particularly in light of the UK's departure from the EU and with it a focus on repeal of EU laws that were 'onshored' following Brexit. This is particularly relevant in the context of the UK's financial services sector given the lack of recognition of any equivalence framework and the end of the 'passporting' regime. Given possible divergence, both international fintechs and UK fintechs looking to expand overseas should pay close attention.

Following the same theme, the UK government has announced a series of reforms to drive growth and competitiveness in the financial services sector, collectively known as the "Edinburgh Reforms". The reforms aim to develop an open, sustainable, technologically advanced and globally competitive financial services sector.

A significant part of the proposed reforms is implementing the UK's deregulatory agenda, with plans to bring forward a deregulatory package that will replace EU derived financial services law with tailor-made rules for the UK. One of the primary delivery mechanisms to achieve this goal is the Financial Services and Markets Bill currently going through the UK Parliament.

The Bill constitutes one of the most significant pieces of financial services legislation in recent times. Important fintech-related initiatives include giving the UK financial services regulators (the Prudential Regulation Authority and FCA) new secondary objectives to facilitate growth and international competitiveness (having regard to supporting the use of new technology, such as crypto technologies, artificial intelligence and machine learning), and delivering a financial markets infrastructure sandbox allowing firms to test the use of new technologies and practices that underpin financial markets (such as distributed ledger technology (DLT)). Other measures will provide UK regulators with sufficient powers to tailor the application of retained EU law where these do not currently exist, such as in payments law.

Although a deregulatory agenda suggests fewer rules, in practice this is unlikely to be the case and it might be better described as an 'independent regulatory agenda'. In seeking to deliver UK-specific regulatory regimes, more or updated regulation (not less) is likely. This will be driven by financial regulatory developments as well as new legislation of general application that will also apply to financial services.

*Example: UK proposals for the regulation of artificial intelligence (AI)*

The UK government has outlined (at a high level) how it will likely approach AI governance and regulation.

In regulating the use of AI, the UK is currently intending – and explicitly – taking a different approach to the EU. That said, it aims to build international co-operation around shaping AI regulation. The UK government plans to develop a range of cross-sectoral principles to address underlying issues and risks of AI, while individual UK regulators will be responsible for designating and implementing proportionate regulatory responses to high-risk uses. The regime is designed to maintain a high degree of flexibility to adapt to evolving technology and use-cases, and regulators are to consider a light-touch approach.

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As part of its deregulatory agenda, the UK government plans to bring forward a deregulatory package that will replace EU derived financial services law.

The historic trend for outcomes-based financial regulation continues apace. New rules are being implemented and – given the rapid development of financial services, driven by innovation in products, services and distribution methods – regulators continue to monitor for adverse consequences and poor customer outcomes. There seems to be little doubt that regulatory action will be taken where harm occurs or is likely.

### Example: Consumer Duty

This requires firms to focus on delivering good outcomes for consumers at all stages of the customer journey. This is not a new topic; it replaces (by way of imposing a higher and more codified standard) existing principles within the FCA Handbook.

As well as a new overarching principle, regulated firms will need to follow new rules centred on the needs, characteristics and objectives of their customers – including those with characteristics of vulnerability.

It is fair to say that the FCA's expectations of firms is



The FCA has not been shy in warning consumers about the risks of investing in cryptoassets.

increasing, in terms of product design, product monitoring, the way customers are spoken to and the way risks are managed. Improved evidence and data standards of firms are also expected.

The Duty forms part of the FCA's transformation to becoming a more assertive and data-

led regulator, taking action quickly where it identifies practices that fail to deliver the right outcomes for consumers. More than a mere box-ticking exercise, the Consumer Duty requires a cultural shift within organisations permeating up to board level. Although existing firms have until the end of July 2023 to comply, those looking to obtain authorisation in the UK need to demonstrate compliance from the outset with the Duty. This will be particularly pertinent to fintechs that are considering authorisation, as the Duty will likely have consequences for innovative business models and product propositions.

### Example: FCA review of 'Big Tech'

The FCA has announced a review of the potential competition benefits and harms from Big Tech firms' entry into retail financial services. The FCA has provided analysis in relation to the potential competition impacts of payments, deposit taking, consumer credit and insurance.

As innovation in the market develops, we are also likely to see the development of open banking to open finance in the coming years. It is clear to any observer of the UK market that the advent of open banking (targeted on payment services allowing customers to move and manage their money) has led to greater competition and innovation, bringing benefits to consumers and businesses. There is demand to build on this success, and for regulators and industry to work together, to broaden the use cases by developing an open finance framework (such as the development of financial dashboards consolidating customers' financial data). This work has already started. As open finance initiatives develop, we expect to see a wave of new fintechs and products come to market; we also anticipate high adoption rates.

### Product-specific regulatory changes

As well as general market trends, we are seeing specific regulatory intervention where there are concerns that positive customer outcomes are not being met. This type of activity is unlikely to diminish as socio-economic pressures result in greater financial vulnerability for more people.

#### *Example: Cryptoassets*

The FCA has not been shy in warning consumers about the risks of investing in cryptoassets. Momentum has been building for cryptoasset regulation, culminating in a number of upcoming regulatory interventions targeted at unregulated cryptoassets, including:

- requiring certain cryptoasset firms to be registered for the purposes of anti-money laundering supervision (at the time of writing, around 40 firms have been registered);
- applying the Change of Control regime to registered cryptoasset firms (where persons acquiring 25% or more control must receive prior FCA approval before completing transactions);
- incorporating certain cryptoassets within the financial promotions regime;
- proposals outlining additional rules in respect of cryptoassets constituting high risk investments once in scope, heavily impacting on cryptoasset firms' marketing approach and compliance;
- the regulation of stablecoins backed by fiat currency, as well as separate regulatory proposals in respect of all other cryptoassets, due to be delivered as part of the Financial Services and Markets Bill.

#### *Examples: Reform of Consumer Credit and regulation of Buy-Now-Pay-Later*

The UK government has committed to reforming the Consumer Credit Act to cut costs for businesses and simplify rules for consumers. The announcement builds on the recommendations of the Woolard Review into the unsecured credit market and details the intention to consolidate consumer credit regulation within the FCA Handbook, enabling the FCA to quickly respond to emerging developments in the consumer credit market. Part of the Edinburgh Reforms included the issuance of a Consumer Credit consultation seeking to initiate these reforms. One segment of the market that sparked a great deal of interest was the Buy-Now Pay-Later (BNPL) market. From a regulatory standpoint, the

UK government has announced its intention to regulate the sector following the Woolard Review, which found a number of areas of potential consumer detriment in the unregulated BNPL market, including inappropriate promotion of BNPL, poor consumer understanding of the product, lack of affordability assessments and inconsistent treatment of customers in financial difficulty. Under its proposals, BNPL and other currently exempt short-term interest-free credit agreements, would fall within the scope of regulation when provided by third-party lenders, but the wider application of the UK's consumer credit rules would be appropriately tailored.

We expect legislative change during 2023.

These examples demonstrate that, while plenty of support exists for fintechs to develop in the UK, regulators and legislators will not pull any punches where concerns of consumer detriment arise. Of course, the UK is not alone in this.

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The UK government has introduced a new Data Protection and Digital Information Bill (DPDI Bill) that is currently progressing through the legislative process.

#### **Data**

The UK government has introduced a new Data Protection and Digital Information Bill (DPDI Bill) that is currently progressing through the legislative process.

The stated purpose of the DPDI Bill is to update and simplify the UK's data protection framework and to reduce the compliance burdens on business while maintaining high data protection standards. However, businesses that are seeking substantial reform to help innovation and growth may feel the DPDI Bill does not go far enough.



There is a risk that re-statement of the UK's data protection regime will threaten the EU's adequacy decision relating to the UK. All across industry are watching progress carefully in this regard.

## Governance and business operations

### *Appointed representatives of regulatory principals*

A well-trodden path for fintechs operating in the UK is through the appointed representative (AR) regime, allowing firms to carry on certain regulated activities under the supervision of a regulatory principal without needing to seek direct authorisation.

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The UK government has indicated its intention to amend the relief limits with respect to EIS and SEIS funding.

While the AR regime remains a popular choice for fintechs wishing to move quickly to market or to trial new products, it has received a high degree of scrutiny over previous years culminating in the introduction of additional obligations on principal firms,

flowing through to ARs. The additional rules primarily focus on enhanced oversight and data collection and reporting obligations. This sits alongside HM Treasury's Call for Evidence on the AR regime generally exploring potential legislative changes. Certainly a space to watch for fintechs that incorporate the use of the AR regime in their go-to-market strategies.

### *Critical technology service providers*

Many firms, fintechs included, will be familiar with third party outsourcings but perhaps less familiar is third party providers being directly regulated as a result; in effect, the expansion of financial regulation into non-financial services firms. The UK government announced its intention to regulate certain third party providers to the financial services sector, due to the fact that financial services firms and financial market infrastructure firms are increasingly outsourcing to third parties outside the finance sector in respect of key

functions and services (such as cloud-based computing services). Of particular concern is where many firms rely on the same third party provider (i.e. concentration risk). As of 2020, over 65% of UK firms used the same four cloud providers for cloud infrastructure services.

Under its proposals, Treasury intends (in consultation with other financial regulators) to designate certain third parties that provide services to firms as 'critical'. Regulators will then be able to make rules, gather information, and take enforcement action, in respect of certain services that critical third parties provide to financial services firms. While the number of affected businesses is likely to remain small, the proposals do signal an increasingly complex regulatory landscape that can catch the unexpected.

### *Individual accountability: Senior Managers and Certification Regime extension*

Payment services and e-money firms should be aware of the FCA's desire to extend the Senior Managers and Certification Regime (SM&CR) to them. The regulator has said that extending the SM&CR to the payments and e-money sector would enhance individual accountability and governance within firms, and strengthen the FCA's supervision. More widely however, as part of the Edinburgh Reforms, the government plans to commence a review into reforming the SM&CR regime itself in early 2023. Beware: changes are likely to follow.

## Fundraising

It is no surprise that the UK is seeking to reduce barriers to fintech investment. Following the 2021 Hill Review into the UK listing regime, the FCA adopted a number of recommendations to bolster growth and innovation in the UK public markets. Reforms included allowing a targeted form of dual class share structures within the premium listing segment to encourage innovative, often founder-led companies onto public markets sooner and reducing the amount of shares an issuer is required to have in public hands (i.e. free float) from 25% to 10%.

On the early stage side, although not implemented, the UK government has indicated its intention to amend the relief limits with respect to EIS and SEIS funding (both being types of tax relief (incentives) for investors). If brought into law, this would permit businesses to fundraise up to £250,000 in SEIS funding. This is a £100,000 increase compared with the previous cap. The proposals also raise the cap on businesses' gross assets (an eligibility requirement) and the amount that individuals are permitted to invest. Regarding EIS, a 'sunset clause' was previously in place allowing the government to discontinue the scheme from 6 April 2025. However, the government has indicated its intention to extend EIS beyond the 2025 backstop. Although these proposals may be subject to future change, the growth objective is clear and fintechs (and their investors) should continue to take full advantage where they can.

#### What's left?

Plenty. Many more themes relevant to UK fintech deserve a mention but it would be remiss not to highlight the ESG agenda in the UK. As well as the green finance initiatives and wider market activity (including the planned publication of an updated Green Finance Strategy in early 2023), the FCA's Green Fintech Challenge and Digital Sandbox Sustainability Pilot are just two initiatives that showcase the UK's innovation in the space. Given the need for innovative product solutions and to leverage data insights, it is clear fintech will play an important role in delivering on the UK's green finance commitments.

# BURGES SALMON FINTECH

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If you have any questions, please contact  
Martin Cook at [martin.cook@burges-salmon.com](mailto:martin.cook@burges-salmon.com)





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[www.beaumont-capitalmarkets.co.uk](http://www.beaumont-capitalmarkets.co.uk)  
0208 004 1402