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Fintech Global

Year in Review 2020 | Year to Come 2021

2021 Predictions

01 The uneven fallout from Covid-19

The pandemic has accelerated digitalisation in some areas and exposed the need for it in others. Legacy systems and manual processes will be put under huge pressure to keep up and Covid-19 “fixes” and “workarounds” will be adapted and become BAU. The economic impact of the crisis will also drive both market and regulatory activity. For example, financial distress may fuel M&A in a sector that is ripe for consolidation, and insolvencies of non-bank financial service providers may test the adequacy of existing consumer protections in this area.

02 Alternative payment models to battle it out but consumers will have final say

As regulators continue to promote a diverse payments landscape, a variety of payment models will be left to co-exist competitively with one another. In some areas, dominant payment systems may face increasing pressure from upcoming alternatives, such as digital wallet systems, interbank instant payment rails and so-called stablecoins. Meanwhile, BigTech will continue to leverage their customer franchise to win market share. Ultimately consumer behaviour is likely, as ever, to drive change.

03 More R&D on CBDCs but few (if any) given the green light

Whilst mainland China has launched a pilot phase of its retail central bank digital currency, most central banks are continuing to consider the viability and desirability/necessity of issuing one. Research and development work is likely to accelerate next year, though decisions as to issuance will likely take more time. Meanwhile, some jurisdictions are investigating options for interbank CBDCs, which could progress more quickly.

04 Regulatory frameworks race to catch up with innovation

New technologies, including distributed ledger technology and artificial intelligence, continue to prompt questions as to the application and suitability of existing financial regulation. New business models and the entry of BigTech into the financial sector have also raised questions as to the adequacy of current frameworks. As regulators across the globe grapple to uphold the principle of “same activity, same risks, same rules”, we are likely to see more clarifications and amendments to regulation.

05 There’s more to come on DeFi and CeFi

The growth of DeFi was a headline of 2020. Whilst regulatory initiatives in Europe have raised questions as to its future, we expect the market to continue to develop over the next year. At the same time, the use of distributed ledger and other technologies in centralised financial markets infrastructure will continue to accelerate, improving efficiencies in the mainstream markets.

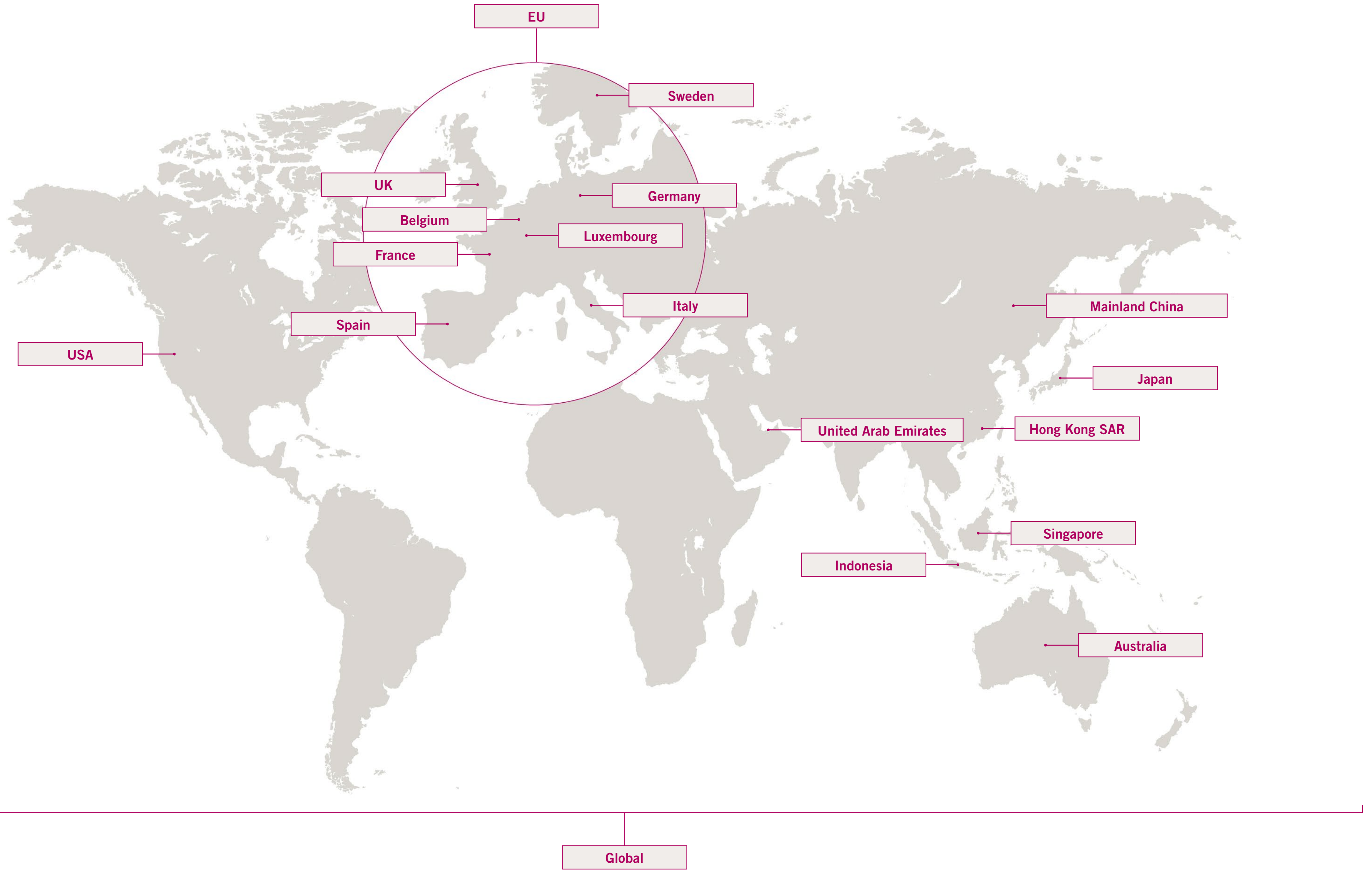
06 Opportunities for cautious growth but heightened investor scrutiny

Given increasing digitalisation we expect continuing focus on fintech as a key vertical within the tech landscape. There may be opportunities to expand for those that identify new business models and innovative solutions that respond to the demands of a digitalised society. However, whilst opportunities to raise external investment may increase for some, parties will be mindful of the potential downsides of rapid expansion, particularly during an economic downturn. We also expect on-going scrutiny of potential for longer-term profit generation – and investor return – impacting investment decisions and growth plans.

07 Increasing regulation of tech and data

Regulators are increasingly concerned to ensure that the pivotal role that technology and data companies play for individuals and businesses does not lead to abusive behaviour or systemic risks to markets and essential supplies. In financial services, regulators around the world will continue to extend their influence over these companies either indirectly (via stricter technology risk management and operational resilience rules on financial institutions) or directly (such as recent EU and U.S. proposals for direct enforcement powers against systemically important tech and social media companies).

Global Fintech



Global

2020

Covid-related funding support

The Covid-19 crisis had a profound impact on the fintech industry. Whilst some business models benefited from increasing demands for remote and digital services, others suffered from the lack of travel, additional complexity of fundraising rounds and general economic slowdown. Governments around the world put in place funding support measures, a number of which were of direct relevance to those in the fintech sector. Read more

Central bank digital currencies

Work on CBDCs accelerated in 2020, with mainland China's central bank launching a pilot program and many others stepping up efforts to investigate design considerations and public appetite. Notably, a group of seven central banks teamed up with the Bank for International Settlements (BIS) to outline a common framework for national and regional efforts in this area, including a list of agreed guiding principles and core features. Read more

Regulation of stablecoins and other cryptoassets

Global efforts to close regulatory gaps in relation to stablecoins and other cryptoassets started to take shape, with new reports from the Financial Stability Board (FSB) (read more), the Financial Action Task Force (FATF) (read more) and the International Organization of Securities Commissions (IOSCO). The European Commission also published its proposed regulatory framework for markets in cryptoassets, which has both broad extra-territorial implications and the potential to inspire the development of similar standards in other jurisdictions. Read more

Tax treatment of virtual currencies

The OECD published a report providing a comprehensive overview of the current income tax and VAT treatment, as well as common tax policy challenges, in relation to virtual currencies. This was based on a survey of more than 50 jurisdictions. The report raised concerns posed by existing and emerging digital currencies (such as stablecoins and CBDCs) and outlined considerations for policymakers.

Regulatory focus on digital operational resilience

The increasing digitalisation of the financial sector has heightened concerns around firms' exposures to digital risks. Among other things, the FSB produced a toolkit for effective cyber incident response and recovery and launched a public consultation on outsourcing and third-party relationships, and IOSCO consulted on an expansion of its outsourcing principles. The EU also proposed a digital operational resilience framework which could impact global technology service providers that service EU financial entities. Read more

Growth of DeFi

During 2020, the economic value of cryptoassets held in Decentralised Finance applications grew dramatically – reportedly from around \$0.5bn in September 2019 to almost \$10bn in September 2020. DeFi encompasses a wide range of quasi-financial activities, such as decentralised stablecoin networks, exchanges and lending platforms. Many players in the space have operated on the assumption that they are unregulated, often without fully understanding the complexity and subtlety of the global regulatory landscape. Read more

Global

2020 continued

Legal status of cryptoassets in common law jurisdictions

The UKJT Statement, which opined that cryptoassets were capable of amounting to property, was endorsed by courts in a number of common law jurisdictions, including England and Wales (read more). In *Ruscoe v Cryptopia Ltd*, the New Zealand High Court cited the legal statement to conclude that cryptocurrencies held by a crypto-exchange were held on trust. This was seen as a landmark decision for the crypto industry, with potentially significant implications as to investors' rights against custodial service providers, including on insolvency.

Regulation of AI in financial services

The use of AI in financial services has continued to expand rapidly. Concerned by issues such as explainability, accountability and biases, financial regulators have taken a growing interest in its regulation and supervision. At a global level, IOSCO consulted on a report on the use of AI and machine learning by market intermediaries and asset managers. Its draft report set out six key recommendations for national regulators. Read more

Refinement of global sandbox

In January, the Global Financial Innovation Network (GFIN) published the lessons learned from the pilot phase of its cross-border testing scheme. None of the applicants to the scheme had been able to meet the standards required to launch a full cross-border test. As a result, GFIN announced three new measures to support the first official cohort, which opened for applications later in the year. Read more

Global

2021

Central bank digital currencies

The joint work of seven central banks and the BIS on CBDCs will continue, with exploration of open questions and further public outreach (read more). Various international bodies will also be looking at how CBDCs may be used to enhance cross-border payments (read more). We may start to see more decisions from central banks as to preferred design models and whether or not to proceed with a launch.

Addressing the risks of Big Tech in finance

The world over, competition authorities and regulators have raised concerns around the control and power of Big Tech firms, and their entry into financial services is no exception. The FSB has highlighted that the risks are most acute in developing markets where Big Tech has made more rapid and broad-based expansion (read more). In 2021, we may see more enforcement action from competition authorities and/or regulatory proposals that seek to effect the commonly uttered principle of "same activity, same risks, same rules". Read more in our Tech Legal Outlook 2021.

Continued focus on operational and financial resilience

Across the globe, enhancing operational resilience is likely to remain a top priority, with national regulators seeking to implement global standards and firms working towards compliance. Among other things, this may require firms to take a more considered approach to outsourcing. In addition, with the global recession heightening concerns that new market entrants have been failing to meet regulatory expectations in relation to financial matters such as safeguarding and prudential risk-management, regulators are likely to be increasingly focused on compliance in these areas.

Scrutiny of international transfers of personal data

Following the decision of the European Court of Justice in the *Schrems II* case, firms transferring personal data from the EU to the U.S. and elsewhere will need to assess, on a case-by-case basis, whether the data will be adequately protected in the recipient jurisdiction. Authorities are likely to take a stricter approach to enforcement now that businesses have had a few months to adapt their arrangements (read more). In other regions, too, we are seeing a legislative trend towards limiting cross-border data transfers, including in Russia and mainland China. Read more

Cross-border payments

With the FSB having laid out a roadmap for enhancing cross-border payments and gained the endorsement of the G20, we can expect to see various workstreams progressing on this front. In particular, a public consultation is due to be launched in May 2021, with a view to informing a joint public and private sector vision for the future of cross-border payments. (Read more)

Progress on regulation and legal categorisation of cryptoassets

Various international standard-setting bodies, such as the FATF, the BCBS and CPMI-IOSCO, will continue work on amending and/or supplementing international regulatory standards to accommodate cryptoassets (read more). In addition, multilateral initiatives to develop common legal taxonomies in respect of digital assets, led by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law, are expected to progress. At the same time, we may see increasing litigation in this area, as more of the legal uncertainties are tested in the courts. Read more

Global

2021 continued

Increasing focus on ESG

With the global financial industry facing increasing pressure to engage with Environmental, Social and Governance (ESG) risks, the market in technology-based ESG data solutions has been growing. We are likely to continue to see investment in new technological solutions, presenting a potential opportunity for Fintechs to use their agility and technological expertise to develop novel offerings in this area. Equally, Fintechs will themselves likely come under pressure from institutional investors and other stakeholders to demonstrate how they are managing their own ESG risks.

European Union

2020

Digital Finance Strategy

In September, the European Commission (EC) released its long-awaited Digital Finance Strategy. Among other things, this drew on the findings of the EC's expert group (read more), its public consultations (read more), and calls from the European Parliament (read more). The strategy sets out four priorities to guide the Commission's fintech agenda to 2024, including: (i) tackling fragmentation, (ii) ensuring the regulatory framework facilitates digital innovation, (iii) promotion of data-driven innovation and (iv) addressing new risks, with regard to the "same activity, same risk, same rules" principle. For each of these areas, it outlines the concrete actions that the EC plans to take. Read more

Proposed legislative framework for markets in cryptoassets

Pursuant to its Digital Finance Strategy, the EC proposed a comprehensive new regime to regulate markets in cryptoassets. It is broadly aimed at cryptoassets that were not previously regulated, including certain stablecoin models. Among other things, the proposal introduces new disclosure and authorisation requirements for cryptoasset issuers and service providers, a market abuse regime for cryptoassets admitted to trading, and a mechanism for the oversight of changes of control in certain issuers and service providers. Read more

Proposed legislative framework for security token market infrastructure

Alongside its proposal for new cryptoasset regulation, the EC proposed a pilot regime to enable regulated institutions to develop DLT-based infrastructure for the trading, custody and settlement of securities. The proposal allows operators to request exemptions from certain regulatory requirements that have previously been identified as obstacles to such development. The framework is intended to facilitate the growth of markets in digital securities. Read more

Proposed legislative framework on digital operational resilience

A third proposal launched under the Digital Finance Strategy was for a new digital operational resilience framework. The proposal imposes new obligations on a wide spectrum of "financial entities" (including banks, insurers, payment service providers, cryptoasset issuers and service providers, and crowdfunding service providers) as well as certain third-party technology providers which are considered "critical" to the functioning of the financial sector. Read more

Retail Payments Strategy

Following the Commission's consultation earlier this year (read more), the EC launched its Retail Payments Strategy in September. The strategy seeks to enable a diversity of safe and efficient payment options, promote home-grown and pan-European payment solutions and contribute to improvements in cross-border payments. It is intended to complement the goals of the European Central Bank (ECB). Read more

European Payments Initiative

In July, a group of 16 European banks officially launched the European Payments Initiative to create a pan-European card and digital wallet solution for in-store, online and peer-to-peer payments. The initiative is supported by the retail payments strategies of the EC and ECB. It is intended to be built on the Europe's instant payments infrastructure and be ready by 2022. Read more

European Union

2020 continued

Interchange Fee Regulation review

In June, the EC published its report on the application of the Interchange Fee Regulation. The IFR was introduced to harmonise and regulate interchange fees charged by EU card issuers, with a view to reducing transaction costs for merchants and ultimately consumers. The report concluded that "major positive results" had been achieved through the IFR, including reduced merchants' charges, but also flagged that further data-gathering and monitoring would be required in some areas. Read more

Direct access for PIs and EMIs to designated payment systems

The EC announced plans to review the Settlement Finality Directive (SFD). As part of this, it is considering extending the scope of the SFD to include payment institutions and e-money institutions. This would enable these players to benefit from direct access to payment systems which have been designated under the SFD, rather than having to participate through direct members, such as banks.

European Union

2021

Decision on a digital euro project

The ECB has been considering how to get itself ready to issue a retail central bank digital currency, should the need arise. In particular, it has been considering how one might be designed to avoid the possible adverse consequences for the financial industry and the real economy. Having released a detailed report and launched a public consultation, it plans to determine whether to proceed with a digital euro project by mid-2021. Such project would, if launched, begin with an investigation phase aimed at developing a minimum viable product.

Enhancement of supporting architecture for instant payments

EU authorities, including the EC and ECB, will be looking to maximise the potential of Europe's instant payment rails by enhancing the supporting architecture. This will include further development of rulebooks, infrastructure and end-user solutions. In particular, they will be looking to (i) boost participation in the SEPA Instant Credit Transfer Scheme and the TARGET Instant Payment Settlement system (TIPS); (ii) introduce new standards for the point of interaction, for example in relation to QR-codes; and (iii) develop the consumer protection framework in respect of real-time irrevocable payments.

Review of PSD2

The EC plans to launch a comprehensive review of the revised Payment Services Directive (PSD2) at the end of 2021. As part of this, it will consider the impact of strong customer authentication, the current limits on contactless payments, whether other technical activities ought to be brought within scope, the scope of exemptions, the need for changes in prudential, operational and consumer protection requirements, alignment with the Emoney Directive and measures to improve processes in respect of cross-border payments in or out of the EU.

Guidance on regulatory treatment of cryptoassets

Under its Digital Finance Strategy, the Commission plans to provide ongoing guidance on how the EU regulatory framework should be interpreted in relation to new technologies. The first piece of guidance will relate to the treatment of cryptoassets and is due next year.

New framework for interoperable digital identity solutions

Pursuant to its Digital Finance Strategy, the EC plans to propose legislation to facilitate the use of interoperable digital identity solutions for remotely onboarding clients. In particular, it is looking to enable customer due diligence processes across the EU to be harmonised, simplified and capable of being relied on by third parties. To achieve this, it expects to develop further rules on anti-money laundering and counter-terrorism financing and promote the use of trusted digital identities, among other things.

Pan-European sandbox & digital finance platform

Under the Digital Finance Strategy, the Commission also plans to strengthen the European Forum for Innovation Facilitators (read more). In particular, it is aiming to provide a framework under which firms can test cross-border solutions by mid-2021. It is also looking to establish a new EU digital finance platform to serve as a channel for ongoing cooperation between private and public stakeholders.

New framework and guidance on AI

Following the release of its AI whitepaper in 2020 and requests put forward by the European Parliament, the Commission is planning to propose a new regulatory framework for AI in 2021. Following that, it plans to work with the ECB and European Supervisory Authorities to consider the development of regulatory guidance on the use of AI applications in finance.

European Union

2021 continued

New strategy on supervisory data

As part of its Digital Finance Strategy, the Commission is looking to harness technology to streamline regulatory and supervisory processes. To that end, it will develop a strategy on supervisory data in 2021. Among other things, this will look to ensure reporting requirements are suitable for automation, full use is made of international standards and identifiers and data is reported in machinereadable format.

Ensuring fair access to digital platforms for financial service providers

Having raised concerns around large vertically integrated platforms unfairly discriminating against downstream services that compete against them (read more), and launched an investigation into whether Apple is unfairly limiting access to its nearfield communication controller (read more), the EC will be considering whether further measures, such as legislation, are needed to ensure fair access to platforms for all financial service providers. This aligns with the EC's broader cross-sector policy proposals in the Digital Services Act and the Digital Markets Act to ensure digital platforms behave fairly and can be challenged by new entrants and existing competitors.

Crowdfunding Regulation

The EU's Crowdfunding Regulation will start to apply from November 2021. The new regime seeks to provide a uniform framework for crowdfunding service providers across the EU and a straightforward passporting regime. It applies to crowdfunding campaigns of up to EUR 5 million over a 12-month period. Larger operations will be regulated under MiFID II and the Prospectus Regulation (Read more)

Scrutiny of international transfers of personal data

Following the decision of the European Court of Justice in the *Schrems II* case in 2020, firms transferring personal data from the EU to the U.S. and elsewhere will need to assess, on a case by case basis, whether the personal data will be adequately protected. Authorities are likely to take a stricter approach to enforcement now that businesses have had a few months to adapt their arrangements. Read more

Australia

2020

Impact of Covid-19 on the payments landscape

The structural shift away from cash towards digital payments and the growing consumer appetite for different digital and eCommerce platform services has been accelerated by the Covid-19 pandemic. Australia is seeing a significant increase in the uptake of various digital and eCommerce payments services including buy now, pay later (BNPL) and a move away from cash. The Reserve Bank of Australia has raised the prospect of consolidation of the NPP Australia and bank-owned payment providers, BPay and EFTPOS into a single entity to compete with international payments and technology companies. Read more

Commencement of open banking

On 1 July, the Australian open banking regime (CDR), which allows consumers access to specified categories of data about them, and to direct a transfer of such data to accredited third parties, commenced for the major banks. Other banks will follow from 1 November 2020 or 1 February 2021, depending on their accreditation status. Fintechs are now able to apply for accreditation under the regime, which is touted to bring greater transparency, increased customer engagement and increased volume and speed of data exchange. However, the current pace of CDR implementation may be too slow to support fintech innovation, and founders fear the system is being designed to support the major players.

Broader Consumer Data Rights regime

The CDR is intended to be rolled out across the economy on a sector-by-sector basis, including to energy and telecommunications. Supervision of the CDR is set to move to the Federal Treasury, away from the Australian Competition and Consumer Commission (ACCC). Read more

Launch of a buy now, pay later code of practice

The exponential growth of the mostly unregulated BNPL industry has brought regulator attention this year. Following a Senate inquiry and the Australian Securities and Investments Commission's (ASIC) calls for stronger protections for the growing number of consumers using the products, BNPL companies are banding together with the Australian Finance Industry Association to draft a BNPL Code of Practice, expected to be launched on 1 January 2021.

Growth of tech investment

Tech investment in smart retail and payment platforms is increasing, particularly as digital payment platforms and BNPL services gain popularity with millennials. Mainland China's gaming and social media group Tencent Holdings has bought a 5% stake in Afterpay Ltd, an Australian BNPL company. Innovative and non-traditional competitors (e.g. large technology players, tech start-ups, telecommunication providers and retailers) are likely to continue to increase their market share in digital payments.

ASIC v RI Group litigation

In August, ASIC commenced proceedings in the Federal Court of Australia for an alleged failure to have adequate policies, systems and resources that were reasonably appropriate to manage risk in respect of cybersecurity and cyber resilience, in breach of obligations as an Australian Financial Service (AFS) licence holder. Despite flagging the improvement of cyber resilience of all entities as a goal for a number of years, this is the first time ASIC has commenced proceedings in relation to cybersecurity and the proceedings have the look and feel of a test case to establish expectations in relation to cyber preparedness and response. Read more

Australia

2020 continued

Fintech partnerships

The ability for fintechs to leverage the authorised deposit-taking institution (ADI) and AFS licences of a regulated bank is set to become more common. The recent Westpac and Afterpay partnership reflects this trend, pointing to a strategic decision by fintechs to use new avenues to monetise their millennial customer base. Afterpay will be able to offer its customers transaction and savings accounts via the partnership, and, by piggy-backing on Westpac's infrastructure, Afterpay will not require its own ADI licence. Global BNPL giant Klarna has also linked with local joint venture partner and investor Commonwealth Bank of Australia.

Retail Central Bank Digital Currency

The Reserve Bank has entered into a partnership with Commonwealth Bank of Australia, National Australia Bank, Perpetual and ConsenSys (a blockchain technology company) on a collaborative project to explore the potential use and implications of a wholesale central bank digital currency (CBDC), i.e. the digital equivalent of bank notes, using distributed ledger technology (DLT). The project is expected to be completed around the end of 2020 and the parties intend to publish a report on the project and its main findings during the first half of 2021. Read more

Cyber security strategy

Following the release of the Government's Cyber Security Strategy 2020 Report, and the consultation on Protecting Critical Infrastructure and Systems of National Significance, the Government has published exposure drafts of its Security Legislation Amendment (Critical Infrastructure) Bill 2020 which introduces additional security obligations on assets and entities within 11 critical infrastructure sectors (including financial services and markets). Following suit, the Australian Prudential Regulation Authority (APRA) is also developing its own cybersecurity strategy which will seek to influence the broader financial system (and not just APRA-regulated entities). Read more

Australia

2021

Review of the Australian Payments System

The Government will review the regulatory architecture of the Australian payments system next year, to ensure it remains fit for purpose and is capable of supporting continued innovation for both businesses and consumers. A report is expected to be handed down in April 2021. This review is part of the Digital Business Package and reflects the focus on continued innovation in the payments sector following increased consumer appetite for different payment platforms during Covid-19.

Cross-border payments to remain a priority

In the year ahead, the Reserve Bank of Australia has put Australian banks on notice that it is monitoring the high cost of cross-border transactions. This is also an issue on the radar of the ACCC, following the 2019 Foreign Currency Conversion Services Inquiry that made several recommendations to enhance competitive dynamics and pricing practices in cross-border retail payment services.

Regtech

In October 2020 the Productivity Commission issued an information paper on Regulatory Technology aimed at policy makers and regulators, identifying key areas where regtech solutions may be particularly helpful or offer further potential, and highlighted the benefits of creating and maintaining a regulatory environment that supports the realisation of these benefits. This indicates that regtech is back on Australia's strategic road map, a conversation that has also been reignited by Covid-19.

Merger reforms on the ACCC agenda

The ACCC Chairman Rod Sims, has said it is crucial for Australia to tackle the issue of market power as it seeks to recover economically from Covid-19 and deal with the implications of an ever-growing digital economy. In 2021, we are likely to see the competition regulator push for tougher anti-merger laws that prevent dominant businesses with entrenched market power removing potential competition. This hardened stance follows the ACCC's failures in opposing contested mergers including TPG/Vodafone, and its concern that existing merger laws are inadequate to prevent major banks from buying emerging fintechs.

Consumer Credit Reform

In September, the Australian Government announced a simplification of the consumer credit laws designed to increase the flow of credit. The Treasury released draft legislation in November which would amend existing responsible lending obligations under the National Consumer Credit Protection Act 2009 (Cth). Responsible lending is typically an onerous and high-risk activity, so the changes may see a reduction in barriers to entry for fintechs. The change may also see an increase in disparity of regulatory standards between banks and non-bank lenders, giving fintechs a competitive edge, as the Banking Code of Practice and APRA's Prudential Standards place a higher regulatory onus on ADIs when lending. Read more

Review of the Privacy Act

The Government has commenced its long-awaited review the Privacy Act 1988 (Cth), in part in response to the ACCC's Digital Platforms Inquiry. The review is being undertaken by the Attorney-General's office and seeks to bring Australia's privacy laws into the "digital era", ensuring that there is global interoperability of privacy laws, that individuals can exercise meaningful choice and control in relation to their information, and that there is organisational accountability and appropriate enforcement powers.

Expectations for privacy reform

We expect the reforms to shift privacy legislation from a purely principles-based regime to include more prescriptive measures for certain key protections, in line with international privacy regimes like the GDPR, and local regimes implemented for CDR and the COVIDSafe digital tracing application. A second issues paper will be released in early 2021 seeking more specific feedback on preliminary outcomes, including possible options for reform.

Belgium

2020

Implementation of the fifth Anti-Money Laundering Directive

AMLD5 was eventually transposed into Belgian law in July 2020. AMLD5 aims, amongst others, at further increasing transparency of financial transactions, corporate and other legal entities as well countering terrorist financing more effectively, in particular by reducing risks linked to anonymous use of virtual currencies and e-money instruments.

Two categories of players from the fintech world have been added to the list of so-called "obliged entities" and, hence, will need to comply with the Belgian AML regime: (i) virtual currency exchange providers, i.e. providers engaged in exchange services between virtual currencies and fiat currencies, and (ii) custodian wallet providers, i.e. entities that provide services to safeguard private cryptographic keys on behalf of their customers, to hold, store and transfer virtual currencies. Read more

Electronic payments

In setting out its priorities for the financial sector and the financing of the economy, the new Belgian government confirmed that electronic payments will be strongly encouraged – consumers should have the ability to use contactless payments at any time. Read more

Implementation of PSD2

One of the key objectives of the EU's PSD2 regulation is the facilitation of open banking, which requires banks to grant third party providers (TPPs) access to their customers' payment accounts in a manner compliant with the technical standards set out in an EU delegated regulation. To achieve this, banks should build public application programming interfaces (APIs) to which TPPs may integrate their services. APIs allow initiatives like the Belgian Payconiq (now merged with Bancontact) to offer a digital wallet that synchronises and interacts with a user's existing bank accounts. While the initial deadline for this expired in September 2019, we see that certain banks are still struggling to offer a stable and compliant connection to their accounts, and some uncertainty remains as to the required scope of such access.

Open banking start-ups join forces

In early 2020, a number of Belgian TPPs joined forces in an interest group named "Association of 7 and 8" or "A78" – referring to payment services no. 7 and 8 in Annex I to PSD2 – to facilitate open communication and alignment between TPPs, the banks, the financial sector federation and the National Bank of Belgium. A78 recently converted into a non-profit organisation which is also open to other payment institutions (including the ones holding permits for PSD2 services no. 1 to 6): PayBelgium. One of the driving forces behind A78 and PayBelgium is Cake, a Belgian fintech start-up that went live earlier this year. Cake aims to "make banking profitable again" for its over 31,000 users, by making smart use of data and by helping them to better manage their personal finances.

Belgium

2021

Data-driven financial services: Fintechs vs. Big Tech

The payments revolution continues steadily in Belgium – last year, the number of approved payment and electronic money institutions rose by 26% against the previous year. Not all traditional banks look at the rise of fintech start-ups the same way. While some consider it as a source of competition, others believe they can learn and benefit from valuable partnerships. However, during a recent parliamentary hearing on the digitalisation of the financial sector, it was explained that the real source of competition – both for traditional banks and so-called neobanks – could be coming from a different angle: Big Tech (and its dominance in big data).

Regulation of data in financial innovation

Banks are shifting from a product-centric approach to a customer-centric approach, driven by data, AI and automation. The quality of these services depends on the collection and the processing of information, which happens to be the specialism of American and Chinese internet giants. We therefore expect increased regulatory attention on the role of data analytics (and data privacy) in financial innovation, which may set the scene for competition between Big Tech and Fintechs.

Response to EU legislative progress on cryptoassets

One key priority area for the EU in its digital finance strategy (see EU 2020) is to enable markets in cryptoassets as well as the tokenisation of traditional financial assets, while ensuring investor and consumer protection and financial stability. In anticipation of new territory for innovation, certain fintech players in Belgium are already preparing to launch new services. An example is Keyrock – a rising Belgian cryptocurrency exchange start-up which is looking at leveraging its existing technology to provide exchange services for tokenised securities, if and when a DLT-based EU regulated market infrastructure materialises (or a sandbox, if this comes first).

Similar fintech companies that are currently staying largely in the shadow of regulation could be playing crucial roles in the implementation of the EU's digital finance strategy in the coming years.

France

2020

Government Covid-19 funding measures for Fintechs

Whilst there were no funding measures by the French Government directly addressed to fintech companies, Fintechs were able to benefit from a range of support measures implemented in favour of start-ups and other companies. Read more

Discussions on governance of artificial intelligence in finance

The French banking regulator published a discussion document on evaluation and governance of AI algorithms and tools in finance through its "Fintech-Innovation Hub". The regulator confirmed that it seeks to improve its supervisory best practices and to share draft guidelines in relation to the design and development phase of an AI algorithm, and the impact of introducing AI algorithms on internal controls, outsourcing arrangements and on the internal and external audit functions within the financial sector. Read more

Implementation of a market infrastructure exemption for security tokens

The AMF (the French securities regulator) has confirmed that, as the national competent authority, it is supporting and preparing for, the implementation of the market infrastructure exemption regime for security tokens which are viewed as financial instruments in France (the Pilot Regime Proposal). The AMF has declared that it is in favour of a bold approach that would include all types of market participants, issuers and business models. Read more

PACTE Law paves the way for MiCA Regulation

A regulatory framework for digital asset service providers Prestataires de services sur actifs numé-riques (DASP) was created in 2019 pursuant to the "PACTE law", which preceded the MiCA Regulation proposal. In late 2020, the AMF specified the national status of DASP by publishing a Q&A highlighting the key aspects of the DASP regime (particularly its territorial scope). This specific French regime will be replaced by the MiCA Regulation, but the French regulator has confirmed equivalent opportunities for French DASPs during the transition process.

France

2021

Testing central bank digital currency solutions for interbank settlement

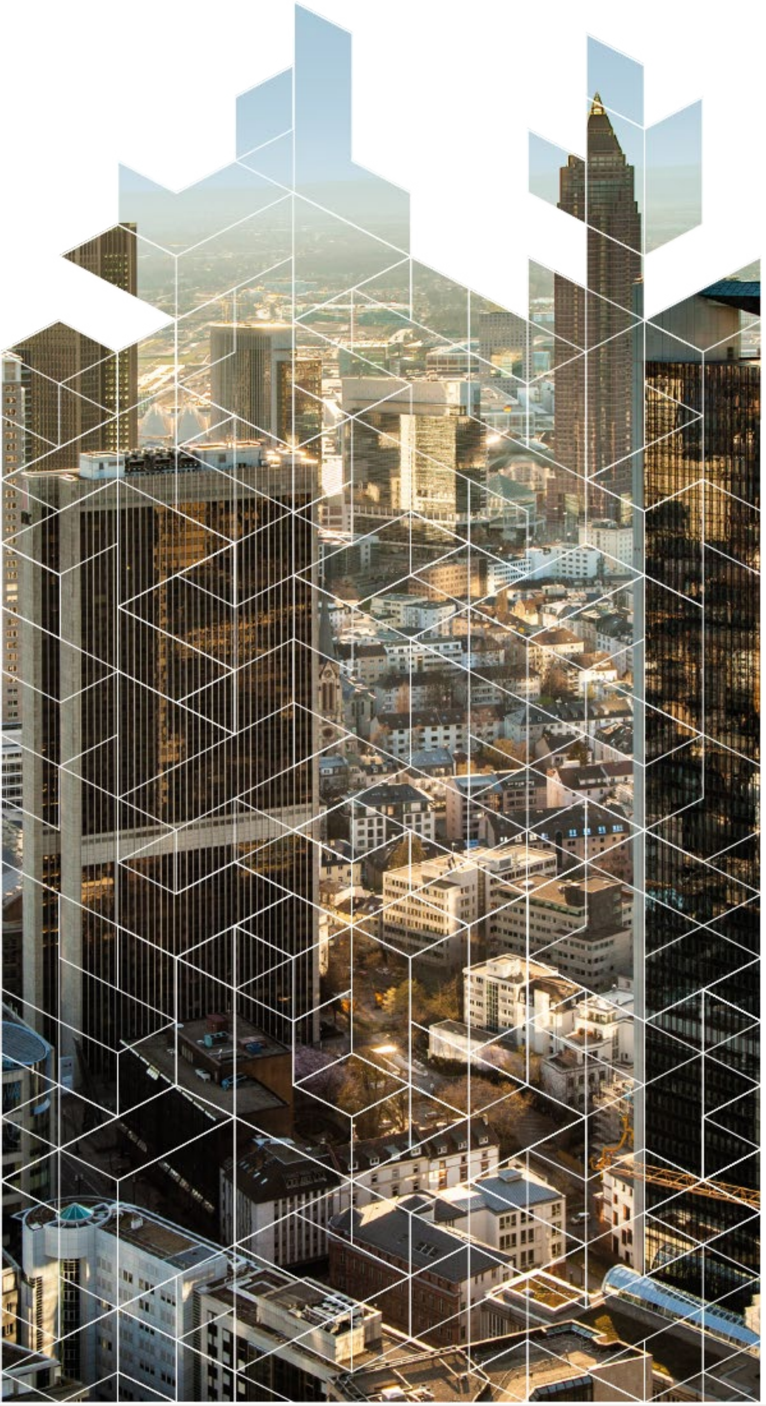
France's central bank has invited eligible European institutions to apply to test central bank digital currency solutions for interbank settlement. This came as the Bank of England sought views on a retail CBDC model (see UK 2020). Selected applicants will have the opportunity to design and create experiments with the benefit of key resources from the Banque. The results will feed into discussions at a Eurosystem level on the viability of a euro CBDC. Read more

A deadline for strong customer authentication on online payments

The French Observatory for the Security of Means of Payments designed a migration plan towards strong customer authentication solutions seeking to identify the necessary adaptations to be made by institutions within the French market. It has granted a grace period for the implementation of strong customer authentication extending to March 2021. Read more

Reflections around the implementation of the travel rule on KYC

A joint working group between the French banking/financial regulators and the market players has highlighted practices and perspectives around the application of the AML-CFT rules to the cryptoasset sector. This group has outlined that the implementation of the so called "travel rule" (requiring financial institutions participating in a transaction to exchange KYC information) to asset transfers remains a major challenge and called for the implementation of technical tools at a transnational level. Read more



Germany

2020

Government Covid-19 funding measures for fintechs

The German Government issued a series of public support funding measures in the course of the Covid-19 crisis, including emergency aid for small businesses, numerous loan schemes of the state development bank (KfW), guarantees by the federal government and the Federal States, immediate grants offered by the Federal States, the setup of the Economic Stability Fund (ESF) and lately its planned support programme for start-ups. Read more

Lex Wirecard & tightening of outsourcing regime

German outsourcing regulation is about to change in respect to increasing digitalisation. First, as a reaction to openly articulated criticism by supervisory authorities that complex outsourcing arrangements have impaired the supervision of the Wirecard Bank AG, the "Lex Wirecard", a "Law to strengthen the Integrity of the financial markets", has been introduced (read more). Second, a draft update to the German outsourcing requirements (in BaFin's circular on minimum requirements for risk management (MaRisk) has been introduced to implement the EBA Outsourcing Guidelines into German law (read more). Together, these initiatives will significantly tighten the German outsourcing regime, requiring e.g., the communication of outsourcing arrangements to BaFin as well as (in certain circumstances) direct oversight over the Service Providers. Overall, it seems likely that outsourcing, and especially business models which rely heavily on outsourcing arrangements, will draw closer scrutiny by the German regulator in the near future.

ICT and security risk management guidelines

A draft update of the MaRisk and a parallel draft update of the Supervisory Requirements for IT in Financial Institutions (BAIT) seeks to further implement the EBA ICT and security risk management guidelines into German law. In the MaRisk update, the focus is on Business Continuity Management (BCM), whereas the BAIT update introduces new chapters regarding operational ICT security and ICT-related BCM.

Competition authorities focused on digital platforms

Competition authorities continued to investigate "gate-keeper" platforms. The German Federal Court of Justice set a further milestone in the proceedings against Facebook (read more) when it agreed in interim proceedings with the Federal Cartel Office (FCO) that the company is abusing its dominant position on the social networks market because it does not provide users with a choice concerning the company's use of data generated outside Facebook. The main proceedings at the Higher Regional Court of Appeal in Düsseldorf are scheduled for March 2021.

Highly dynamic landscape in foreign investment control

FDI has been one of the hottest topics in the context of the Covid-19 pandemic. Boosted by the outbreak of the virus and on the back of the EU Screening Regulation, which came into force in October (read more), we have seen a large number of notable reforms to foreign investment regimes across Europe. In Germany such reform included the introduction of more suspensory proceedings, a lower substantive test as well as criminal sanctions attached to non-compliance (read more). This results in a greater importance of foreign investment control proceedings in fintech M&A than ever, and will need to be factored into transaction planning early on.

Germany

2020 continued

Regulation of cryptoassets

Since January 2020, cryptoassets qualify as a new category of financial instruments under the German Banking Act and financial institutions can apply for a licence to provide crypto custodian business. With the introduction of these innovations, the German legislator launched a solo effort to promote digitisation on a national level. The licence is limited to Germany and cannot be passported. With the expected adoption of the Digital Finance Package at EU level next year (see EU 2021 – read more), the German legislator has already announced that the national framework will be adapted to cater for the EU regulations.

Tax treatment of cryptos

In 2018 the German tax authorities issued some guidance on the taxation of virtual currencies which covers the view that a capital gain on the disposal of cryptos is subject to taxation based on the first-in-first-out method, provided that the sale is made within one year after the acquisition of the cryptos. Court cases on this subject have been rare. However, based on the recent decision of the Nuremberg tax court (3 V 1239/19), taxpayers may be better protected against an undifferentiated tax treatment of virtual currencies, but are also required to collaborate with the tax office in its review of the facts and circumstances.

Germany

2021

Draft Electronic Securities Act paves the way for DLT-based securities

The draft Electronic Securities Act is expected to become law in Q1 of 2021 (read more). Among other things, the draft law allows for the issuance of bearer bonds using distributed ledger technology (DLT), introduces a new license requirement for maintaining a DLT and addresses the most important civil law issues around tokenised securities. This will be the first step towards further German law amendments down the road to enable other purely digital financial instruments. Going forward, it will be interesting to see how the German law interacts with proposals from the EU around the application of financial regulation to security tokens. Read more

Fintech investment trends

The fintech industry is constantly growing in Germany – not least due to the Covid-19 acceleration of digitalisation. Accordingly, further substantial investments in this sector are expected in the coming year – with an increasingly international investor base. Investors will remain active and not shy away from larger funding rounds while at the same time being more careful where they invest. Many business models (even of bigger fintechs) will face increasing pressure.

Standardisation

It is expected that the contracts underlying fintech investments will be increasingly oriented towards international standards and concepts, for example with regard to Liquidation Preferences and Exit Provisions.

Compliance and data protection

Increasing focus is currently being placed on compliance and data protection (fintechs by nature often work with personal data – so that data protection regulations are by nature in focus), including as part of financing rounds and M&A transactions (for example in relation to warranties or covenants). This trend seems to be even more important against the background of an increasingly intensive regulatory focus on the fintech sector.

Market maturity

The first round of fintechs have matured and grown to match German midcap banks and the next generation of fintechs will likely put further pressure on German banks as they seem to be able to offer ever more complex banking products. Furthermore, a certain "professionalisation" is currently seen in the area of employee/management stock option plans – ultimately an alignment to structures which have already been established in the private equity sector. Lastly, the expectation of CBDC together with new legislation (see Germany 2020) will push DLT further into financial markets.

More foreign investment control in the tech sector

It is currently expected that in the first quarter of 2021, a further reform to the German foreign investment rules will come into force. This reform will include activities in many tech sectors in the catalogue of mandatory and suspensory foreign investment control proceedings. Companies engaging in transactions in this space will need to watch this development to ensure that the implications for the transaction timetable and as regards risk allocation between transaction parties are properly addressed.

Germany

2021 continued

New rules to better monitor large digital companies

Germany proposed reforms of Competition Law Reform intended to apply by the end of 2020 early 2021 (read more). The new provisions will tighten the control of fintech digital platforms by extending the FCO's abuse control to companies with "intermediary power" and to companies with "a paramount significance across markets"(read more). Access to data will be a decisive criterion for a company's market position. Self-preferencing, pooling data from multiple sources and hindering interoperability of services or portability of data will be qualified as abusive behaviour. The reform is in line with ongoing EU proposals on a Digital Services Act (read more) and a Digital Markets Act including a New Competition Tool (read more).

Hong Kong SAR

2020

Government Covid-19 funding measures for fintechs

The Hong Kong SAR government put forward three key relief packages to support businesses and individuals affected by Covid-19. These relief packages tended to concentrate on relief for SMEs, with specific measures introduced for a number of particularly hard-hit sectors. There were are no specific, targeted reliefs for Fintechs, but there are a range of measures which fintech companies in Hong Kong may be able to benefit from if they fall within the largely SME perimeters noted below. Read more

Regtech takes centre stage for HKMA

Over the course of 2020, regtech has shot up the leader board of focus areas for the HKMA. Over the summer the HKMA issued a circular requesting that banks support the HKMA's upcoming regtech activities and speed up adoption of regtech in the Hong Kong banking sector. Subsequently, the HKMA published a white paper on regtech setting out a five-year plan for regtech adoption along with initial steps and recommendations. The HKMA continues to issue Regtech Watch, an ongoing newsletter launched in late 2019, to promote the adoption of regtech by the banking industry. Further underlining the importance of this area, the HKMA's 2019 Annual Report promised specific initiatives to help develop a larger and more diverse regtech ecosystem. Read more

SFC continues to focus on cybersecurity

The increase in remote working and online transactions as a result of Covid-19 has meant that cybersecurity remained a hot topic in 2020. The SFC issued a circular specifically on the need for licensed corporations to assess their operational capabilities and implement appropriate measures to manage the cybersecurity risks associated with these arrangements (read more). Then, in September, the SFC provided an update on its 2018 Guidelines for Reducing and Mitigating Hacking Risks Associated with Internet Trading by way of a circular and accompanying report. Read more

Digitalisation picks up the pace

Following the approval on several virtual bank licences by the HKMA last year, 2020 saw the first virtual banks commence operations. In addition to virtual banks, since late 2019, the first virtual insurers have also started operations following grants of licences by the Insurance Authority. We also saw the first 'in principal' approval for an SFC regulated virtual asset trading platform.

HKMA provides remote on-boarding AML/CFT feedback

The supervision of the new digital banks, as well as feedback from technology firms in the Fintech Supervisory Sandbox and Chatroom along with banks, contributed to the HKMA circular on AML/CFT control measures for remote customer onboarding initiatives. The number of banks using remote onboarding is growing and the HKMA reviewed how banks conducted the assessment of ML/TF risks associated with remote onboarding and how this worked with the risk-based approach for AML/CFT. Read more

HKMA requires enhanced transparency for digital lending platforms

The protection of retail customers and SMEs when applying for unsecured loans and credit cards via digital platforms was covered in a September circular. The emphasis is on treating customers fairly and enabling clients to fully understand their borrowing decisions by enhancing transparency and disclosure of the application process. Read more

Hong Kong SAR

2021

SFC on external electronic data storage

In late 2019 the SFC issued a circular on the use of external electronic data storage by regulated firms and the need for the SFC to be able to have unrestricted access to regulatory records even if the data is stored with an external provider outside of Hong Kong. In November, the SFC confirmed that it would soon publish FAQs stating that a firm's Managers-In-Charge are designated to bear primary responsibility for ensuring compliance in this area. Read more

HKMA's Central Bank Digital Currency project with the Bank of Thailand

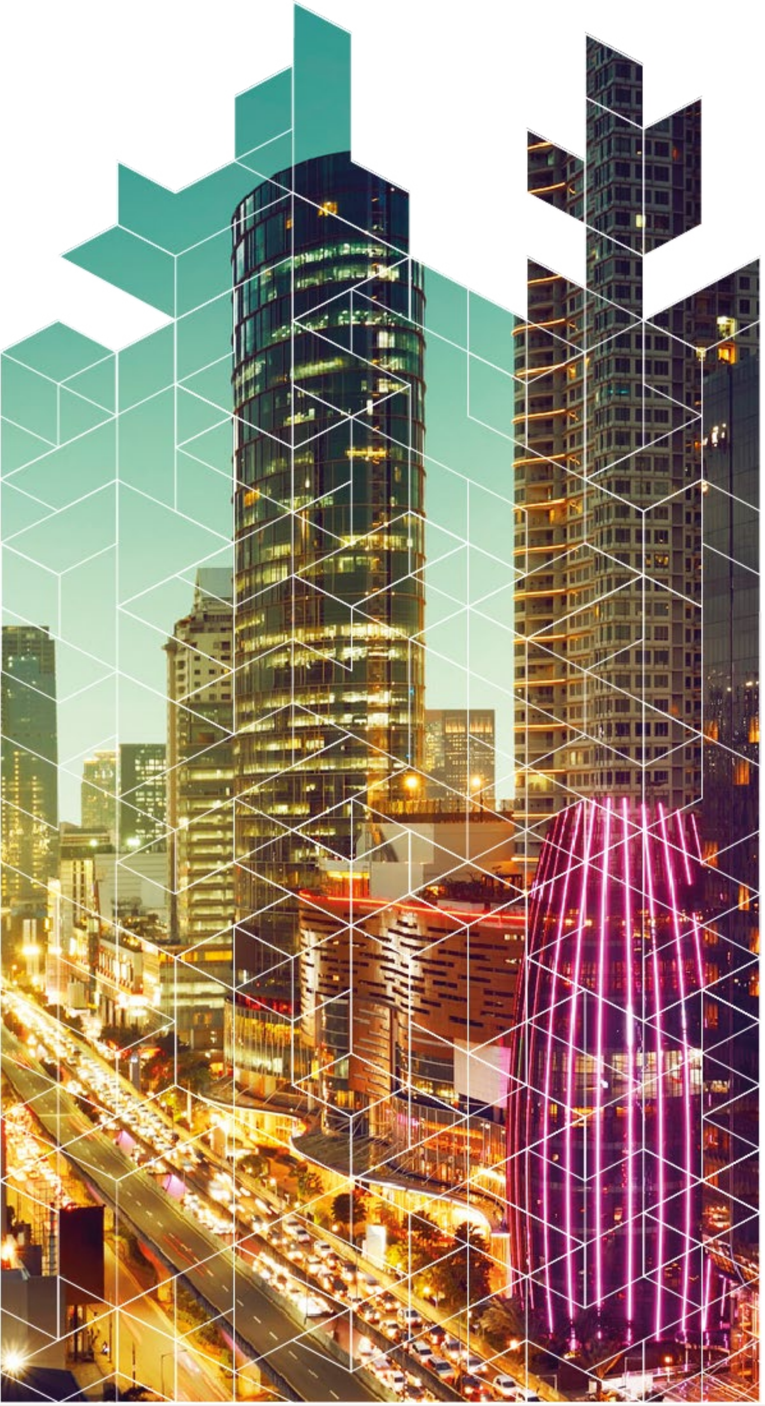
The two central banks are exploring how to make cross-border payments more efficient through their collaboration on a potential blockchain-based Central Bank Digital Currency (CBDC) network. Following the development of the proof of concept in 2020, the banks intend to review business use cases (such as cross-border trade settlement) and then bring banks and large corporates into the trials to test the network using actual trade transactions in 2021.

Proposal to regulate trading platforms for 'non-securities' cryptoassets

In late 2020, the government launched a public consultation on legislative proposals to create a new licensing regime under the Anti-Money Laundering Ordinance for platforms which trade any type of cryptoasset, even if they are not classified as securities under the Securities and Futures Ordinance (SFO). Currently, there is only regulation in place for platforms which trade cryptoassets which are classified as securities under the SFO. The consultation runs until 31 January 2021, and the aim is to introduce a bill to the Legislative Council later in 2021.

HKMA proposes the Commercial Data Interchange (CDI)

The HKMA is carrying out a proof of concept study into 2021 on new financial infrastructure which aims to enable more efficient financial intermediation and data sharing in the banking system. The CDI would be an interoperable platform that allows data owners such as businesses and individuals, to share their common-standard data with banks through data providers such as payment gateways and utilities, which permits the banks to access alternative data that can help in areas such as credit provision and trade financing.



Indonesia

2020

One of the growing fintech market in ASEAN

Indonesia hosts around 20% of all fintech firms in the ASEAN region, with lending and payments currently dominating the domestic fintech ecosystem, accounting for 61.4% and 19.3%% of firms respectively, according to published data.

Regulatory approach to fintech

In September, the head of Indonesia's Financial Services Authority, the Otoritas Jasa Keuangan (OJK), Triyono confirmed the regulator would be adopting a "light touch and safe harbour approach" in order to encourage "responsible" innovation, in order to ensure security, consumer protection, and properly managed risks following the increased digitisation brought on by the pandemic. Triyono explained that this "means no regulation violation, for example, and also certainly brings good benefits to society, handling customers very well and data protection".

Fintech cooperation agreement signed with Malaysia

The OJK and Securities Commission Malaysia (SC) agreed to share information on emerging trends and developments in the fintech sector and to create joint innovation project opportunities. They also plan to expedite referrals for fintech firms aiming to operate in each other's jurisdictions.

Crypto Asset Trading Regulation

In Indonesia, while crypto currencies are not permitted to be used as a payment instrument, Regulation of the Commodity Futures Trading Supervisory Agency (Bappebti) 3 of 2020 on Technical Provisions for the Implementation of Crypto Asset Physical Markets on the Futures Exchange introduced a licensing regime for trading firms to trade certain listed cryptoassets (which are not considered cryptocurrencies) in futures exchanges in Indonesia. Applicants must first register with the Bappebti before applying for the licence.

E-money licences

The central bank of Indonesia, Bank Indonesia, issued two new e-money licenses bringing the total number of licensed e-money providers to 51, comprising 14 banks, and 37 non-bank providers, according to published data.

Indonesia

2021

Proposed Fintech Industry Regulation

The Financial Services Authority (Otoritas Jasa Keuangan – OJK) is of the view that the current fintech industry regulations are not sufficiently detailed as they deal mostly just with P2P lending and equity crowdfunding. There is therefore the urgency to issue a sandbox regulation dealing with four important clusters in fintech industry, being the aggregator, project funder, financial planner and credit scorer.

Potential umbrella regulation for payments

In 2020 the Covid-19 crisis accelerated the shift towards the increased use of fintech platforms for payments. But the financial sector is subject to a complex regulatory web of 135 different guidelines related to payments. Bank Indonesia is considering introducing one umbrella regulation for handling payments which could improve how regulations are enforced. This would cover licensing policies, data management requirements and supervision, and will aim to support a cybersecurity framework.

Real time payments

Bank Indonesia is also working on introducing other guidelines that could be a part of the 2025 payment system roadmap. There have been reports that the Central Bank may recommend introducing a data hub and may draft regulations to support the use of a real-time payment system (BI-Fast).

Draft Bill on Personal Data Protection

Currently, Indonesia does not have a comprehensive single data protection law. The Government is expected to continue to develop and accelerate the preparation and enactment of a Data Protection Bill which is expected to confirm personal privacy as one of a citizen's basic rights. The bill will also address regulatory protection towards personal data utilisation, data storage and transfer, including by adopting GDPR provisions.

Italy

2020

Government Covid-19 funding measures for fintechs

Whilst there were no Italian Government funding measures directly addressed to fintech companies, Fintechs were able to potentially benefit from a range of liquidity support measures tailored to SMEs and even from those targeting larger companies, where they exceeded the relevant thresholds. Read more

Regulatory initiatives still underway

Many of fintech regulatory initiatives intended to be issued in 2020 have not yet seen the light. Two examples include: (i) the proposal by the Italian securities regulator, *Commissione Nazionale per le Società e la Borsa* (CONSOB) for the regulation of initial offerings and exchange of cryptocurrencies, published in January following a consultation process started in March 2019 (read more), and (ii) the draft ministerial regulation on a national register of virtual asset service providers. It is possible that these proposals will be ultimately put aside, overtaken by the corresponding EU law measures. Likewise, the *Agenzia per l'Italia Digitale* has not yet outlined the technical standards that DLTs and smart contracts will require in order to satisfy requirements of Italian law. Read more

The Bank of Italy creates of a fintech department

As evidence of the ever-growing relevance of technological innovation in the financial sector, the Bank of Italy announced that it will set up a new structure specifically focused on fintech, to be based in Milan. This department will perform development coordination tasks for fintech matters and will have oversight over retail payment instruments and services. According to the Governor of the Bank of Italy, this structure will be a place open to experimentation and to collaboration between Italian and international experts, institutions, universities and market players.

Regulators study the impact of Big Data

The Italian Regulatory Authority for Communications, the Italian Competition Authority and the Italian Data Protection Authority published a final report on their Big Data survey which examined the impact of Big Data on the users providing the data, the firms that use them and the markets (including consideration of the impact on the finance sector). The report outlines a number of guidelines and policy recommendations, including a commitment by the three Authorities to create a permanent cooperation mechanism aimed at establishing a level playing field in the utilisation of data. Read more

Digital Operational Resilience and Cybersecurity in the financial sector gain momentum

Throughout 2020, the Bank of Italy, CONSOB and the Institute for the Supervision of Insurance (IVASS) worked together and adopted common strategies to strengthen the security of their ICT systems (as critical infrastructures providers) and of the financial institutions (as supervisory authorities). The regulators highlighted that the current Covid-19 emergency has strongly accelerated the digitalisation of the economy, which in turn has increased the need to enhance the cyber security of the Italian financial system as a whole.

Sales of bitcoins as a form of investment remain subject to the rules on prospectuses

Consistently with the CONSOB's view, the Italian Court of Cassation has recently ruled that whenever the sale of bitcoin is marketed as an investment opportunity with an expectation of a profit, it should be considered as an offer of financial products and therefore should be surrounded by the safeguards provided by the rules on prospectuses. The Court of Cassation rejected the appeal of the plaintiff, who was instead arguing that because bitcoins qualify as virtual currencies, they should be exempted from those rules.

Italy

2021

The Fintech Regulatory Sandbox expected to open

It is expected that in 2021 the Ministry of Economy and Finance will finally publish the implementing decree which will bring the Italian Fintech Sandbox to life. The aim of the sandbox is to promote technological innovation in the financial, credit and insurance sectors, by allowing fintech companies to test new services and products in a lightly regulated environment and under the supervision of competent authorities, for a limited period of 18 months. We expect the sandbox to facilitate the adoption of technological solutions in the financial sector and promote entrepreneurship in fintech firms. Read more

Finalisation of two key national strategies: *Artificial intelligence*

The 30 experts appointed by the Ministry for Economic Development finalised their set of proposals in relation to an Italian Strategy for AI, which in October was then summarised in a draft strategy for final public consultation. It is expected that this consultation will finally be published in 2021, paving the way for the adoption of public policies that steer and encourage the development and use of AI technologies.

DLT and blockchain

Although a parallel proposal for an Italian Strategy on DLT and Blockchain is moving at a slower pace, with the first public consultation over the proposals of the 30 experts having taken place in July 2020, it is expected that this strategy will also be finalised during the course of 2021.

The "Cashless Italy" Plan will unfold its advantages

The "Cashless Italy" Plan was introduced through the 2020 Budget Law and related tax decree, as recently amended in the context of the pandemic emergency legislation. This plan, which is intended to combat tax evasion, is expected to boost the number of digital payments in Italy during 2021. Subject to the enactment of an implementing decree by the Ministry of Economy and Finance, the Plan will include three incentives to make cashless transactions: (i) a 10% cashback on card-based payments made in physical stores, up to a limit of EUR 3,000 annually (i.e. up to maximum EUR 300), (ii) a super cash-back premium of EUR 3,000, reserved for the 100,000 Italian citizens who use their card the most in terms of number of transactions, and (iii) a lottery based on electronic receipts for payments, with every receipt corresponding to one lottery ticket.

Greater openness to digital onboarding

As part of its efforts to usher in a new era of digital banking, the Italian legislator has introduced measures to encourage the financial institutions' use of technology to onboard customers (non-face to face KYC). With the implementation of the EU's AMLD5, the Italian AML Decree was amended to allow the outsourcing of KYC checks to third parties other than financial institutions, in particular to regtech companies. In 2021 the Italian supervisory authorities are expected to issue the implementing regulations necessary to give effect to such provisions. Additional measures to foster digital identification and enhance the customer experience have been introduced with article 27 of recent Law Decree 76/2020.

*Want to stay up to date with legal fintech developments in Italy? **Subscribe** to our Italy Fintech Newsletter, which provides insights and updates on the latest fintech regulatory developments, as commented on by our Linklaters Milan experts.*

Japan

2020

Introduction of one-stop "Financial Services Intermediary Business" licence by the end of 2021

With the aim of enhancing app user convenience and safety, a new category of business called "financial service intermediary" was introduced under Japanese financial services regulation. Under this new framework, financial service intermediaries will be permitted to offer a wide range of financial services including: bank deposits, fund remittance, loans and recommending suitable securities investment and/or insurance products to their app users as a one-stop shop via online platforms by obtaining a single registration with the Financial Services Agency.

Strengthened protections for investors cryptoassets

In May, amendments to the Payment Services Act (PSA) and the Financial Instruments and Exchange Act (FIEA) were enacted to strengthen the protections for investors in cryptoassets:

***Amended Financial Instruments and Exchange Act licensing requirement*:** Cryptoasset derivative transactions are now subject to a licensing requirement under the FIEA: the provision of a trading platform with an order book indicating buy and sell orders of cryptoasset derivative transactions will require a registration as a Type 1 financial instruments business operator (Type 1 FIBO) and be regulated by various rules of conduct set forth in the FIEA including prohibitions on unfair trading and leverage regulation.

Deposit requirement: The customer in a cryptoasset derivative transaction is in principle required to deposit a margin equivalent to 50% of the value of its cryptoasset derivative transactions while the Japan Virtual Currency Exchange Association (JVCEA), a self-regulatory association certified by the Japan's Financial Services Agency (JFSA) limits the leverage ratio to no more than four times.

Trust bank requirement: The FIEA also imposes the obligation on Type 1 FIBO to entrust its customers' funds to a trust bank or trust company so that such funds are to be protected in the event of the insolvency of the Type 1 FIBO.

Regulation of ICO related activities

ICO-related activities will also be regulated under the FIEA. The amended FIEA introduced a new category of securities, "electronic recording transfer rights" (ERTR) which capture the rights recorded or transferred through DLT. Sale and purchase or brokerage or intermediary of ERTR requires a registration as a Type 1 FIBO.

Amended Payment Services Act

The amended PSA requires a cryptoasset custody service provider to register as a cryptoasset exchange service provider (CAESP) regardless of whether a CAESP engages in sale and purchase of cryptoassets. A CAESP is also required to manage customers' funds separately from its own and entrust customers' funds to a trust bank, etc. Further, a CAESP must manage 95% or more of the value of customers' assets in a cold wallet and up to 5% of the value of customers' assets may be held in a hot wallet, but even in such case, the same amount thereof must be kept in another cold wallet as a guarantee to be used for protection of its customers.

Tokyo bourse compiles system failure report for financial watchdog

On 1 October, the Tokyo Stock Exchange (TSE), run by Japan Exchange Group Inc. (JPX), suspended all trading due to the system failure of TSE's arrowhead stock trading platform, caused by a faulty initial setting for dealing with a glitch and an error in a related manual. Japan's Financial Services Agency launched an on-site inspection of the TSE and JPX, aiming to clarify the responsibility for overlooking the defects in the exchange's system with an eye to issuing an operation improvement order.

Japan

2021

Impact of Covid-19 pandemic: *Get rid of "hanko" movement*

Prime Minister Yoshihide Suga, who took office in mid-September 2020, instructed his government to draw up plans to stop using personal or corporate seals (so called "hanko") on administrative documents, a tradition that has been criticised as outdated and necessitating face-to-face interaction that risks spreading the coronavirus.

Push to all financial filings online by 2022

Under Prime Minister Yoshihide Suga's push to digitise the government, Japan will move all applications and filings from banks, insurance companies and other financial institutions online by the end of March 2022. In July 2020, as an emergency response to the Covid-19 outbreak, the JFSA temporarily began accepting forms from financial institutions via email and without the hanko stamp widely used in Japan in place of signatures. But filing regarding a change in major share-holders or operating hours as well as financial disclosures still must be made in paper. The JFSA aims to update any ordinances and guidelines as needed to complete the shift online by March 2022.

Japan to open fund transfer system to fintech companies

The Japanese Bankers Association plans to open up the bank transfer system to fintech companies, potentially leading to lower transaction fees as early as fiscal 2021. The decision came after the Japan Fair Trade Commission questioned the system's closed membership and transfer fees that have remained stubbornly high. It also comes on the heels of the government's economic growth strategy, in which lower transfer fees play a role.

BOJ to start feasibility study on digital currency in FY 2021

The Bank of Japan will start a feasibility study on digital currency in fiscal 2021 beginning in April as the expansion of cashless payments and cryptocurrencies has forced central banks to consider their response to technological innovations in recent years. Following the feasibility study, the BOJ plans to go into further trials that would also involve payment service providers and end users.

Luxembourg

2020

Market evolution

In 2020 we saw an ever-increasing number of fintech players (both start-ups and established players) setting up structures via Luxembourg, including as a response to Brexit. We also noted an increased cooperation between Fintechs and traditional players, as well as an increased funding of smaller actors.

Positive response of Luxembourg ecosystem to PSD2

The Luxembourg financial ecosystem has responded very positively to the implementation of the new regulatory technical standards governing open banking under the EU's second Payment Services Directive, further enhancing Luxembourg's position as a European payment hub.

Virtual assets and anti-money laundering

Luxembourg has seen particular focus on anti-money laundering and virtual assets following the adoption of two laws in March 2020:

(i) AML and CTF registration obligation for virtual asset service providers (VASPs)

International standards: The law of 25 March 2020 established a central electronic data retrieval system related to payment accounts and bank accounts identified by IBAN and safe-deposit boxes held by credit institutions in Luxembourg, transposing into Luxembourg law EU Directive 2018/843. The law imposes a certain number of special requirements to VASPs with the aim of ensuring that VASPs are supervised in accordance with the latest updates of international standards on the fight against money laundering and terrorist financing.

(ii) AML compliance obligations made applicable to virtual assets and VASPs

A second law dated 25 March 2020 aims to transpose the amendments of the AML/CFT Directive that prevent the risks associated with the use of virtual currencies for terrorist financing and limit the use of prepaid cards. This new law has extended the scope of application of the existing Luxembourg AML law of 2004 on the fight against money laundering and terrorist financing (the 2004 AML Law) to virtual financial assets by adopting new definitions regarding "virtual currencies, virtual assets, virtual asset service providers" and the economic activities they are likely to undertake. In August these definitions were formally adopted via an amendment to the 2004 AML Law.

Registration with the CSSF: VASPs must be registered with the Luxembourg financial regulator, the Commission de Surveillance du Secteur Financier (CSSF) in order to carry out their activities. In the application for registration, VASPs must submit a detailed description of the money laundering and terrorist financing risks to which the applicant will be exposed and the internal control mechanisms that the applicant will set up to mitigate these risks and to comply with the relevant professional obligations.

Role of the CSSF: The register of VASPs is established and maintained by the CSSF, which will also be the supervisory authority responsible for ensuring that VASPs comply with their professional obligations. The CSSF specified the technical modalities imposed on VASPs and their clients in a dedicated Q&A Circular CSSF 20/747 and issued related guidance available on its website.

Luxembourg

2020 continued

The CSSF provided guidance to market players in two communications in January and April 2020 drawing the attention of VASPs to the modified Interpretive Note to the Financial Action Task Force (FATF) Recommendation 15 on New Technologies that further clarifies the FATF's previous amendments to the international standards relating to virtual assets and describes how countries and obliged entities must comply with the relevant FATF Recommendations to prevent the misuse of virtual assets for money laundering and terrorist financing and the financing of proliferation. The CSSF also provided guidance on the relevant risk-based approach to be adopted by VASPs and the methodology of assessing and mitigating the risks associated to virtual assets.

Data and cybersecurity

Luxembourg has implemented the Guidelines of the European Banking Authority on ICT and security risk management by way of the CSSF Circular 20/750 on requirements regarding information and communication technology (ICT) and security risk management. This circular states that the guidance provided also reflects the expectations of the CSSF regarding the risk management measures and the control and security arrangements referred to in the law of 5 April 1993 on the financial sector and the law of 10 November 2009 on payment services.

Luxembourg

2021

Dematerialised securities using distributed ledger technology

In 2021 we expect the adoption of draft law n° 7637 on the issuance of dematerialised securities using distributed ledger technology. The draft law is part of the modernisation of Luxembourg's legal framework for financial transactions and is a continuation of the law of 1 March 2019 that recognised the possibility of using distributed ledger technologies for the circulation of securities.

The law clarifies what needs to be understood as an "issuance account", which is defined as an account held with a settlement provider or central book keeper which can be held by and allows for the recording of dematerialised securities by secured electronic recordings (including distributed ledger technology). The draft law highlights the technologically neutral character of this new framework, which opens the door to the recognition of digital assets in specific cases.

Secondly, the draft law expands the scope of central account holders to include any credit institution or investment firm authorised in a member state of the European Economic Area, provided they meet certain specific organisational and technological criteria.

Cloud infrastructure

In 2020 Luxembourg signed the European declaration on cloud infrastructure entitled "Building the next generation cloud for businesses and the public sector in the EU". Together with 24 other EU Member States, the Luxembourg government has committed to work together with the European Commission to develop a European Next Generation Cloud offering in 2021 and beyond.

The initiative aims to develop a data infrastructure that allows data to be shared and processed securely and reliably. Member States and industry are invited to co-invest with the Commission in the European cloud federation and common data spaces. We expect to see further regulatory developments in this area in 2021.

Mainland China

2020

Covid stimulus measures and impact on fintech growth

In response to Covid-19, PRC regulators used a variety of financing measures and tools to ensure banks had sufficient liquidity and to reduce interest rates (e.g. expanding special loan quotas for companies operating in Covid-19 prevention sectors and rediscounting quotas to support small-and medium-sized enterprises). Along with these pandemic support measures, we have seen central banking regulator, the China Banking and Insurance Regulatory Commission (CBIRC), encouraging banks to adopt technology solutions to develop online businesses that provide remote financial services to customers during the Covid-19 period. Read more

First foreign-invested RMB bank card clearing house approved

In June, American Express's mainland China joint venture received approval from the country's central bank, the People's Bank of China (PBOC), to engage in RMB bank card clearing operations for both online and offline payment transactions in the PRC. This approval enables American Express to become the first foreign credit card institution to offer onshore operations in mainland China, including the issuance of "American Express" branded bank cards. Through grant of this licence, the PBOC expects to improve mainland China's payment and clearing services and the internationalisation of the Chinese yuan. American Express's main rivals – Mastercard and Visa – are awaiting similar regulatory approvals.

New data security guidance for financial institutions

In February, the PBOC published its new Personal Financial Information Protection Technical Specification, setting out operational best practice on the protection of personal financial information (PFI). The PFI Specification applies to licensed financial institutions supervised by mainland China's financial regulators, and more broadly, institutions processing PFI as the number of service providers in the financial services sector continues to grow.

The PFI Specification sets out additional requirements on the collection, storage and processing of personal data by financial institutions operating in mainland China and requires such institutions to assess the level of sensitivity of PFI collected and adjust their practices on a risk basis. Read more

Clean-up of peer-to-peer lending coming to an end

Following years of aggressive clean-up in mainland China by the CBIRC of peer-to-peer (P2P) lending platforms, the number of these platforms has continued to reduce rapidly this year from around 6,000 to fewer than 30. In August, it was announced by the head of CBIRC that this regulatory approach is expected to be switched from a targeted rectification campaign to daily monitoring by the end of this year. The transformation of the peer-to-peer lending market in mainland China was reflected in the successful October listing in New York of Lufax, once mainland China's largest P2P marketplace, but now branded as a wealth management and retail lending services provider.

PBOC's investigation of online customer loans

Mainland China's financial regulators have generally tightened their regulation of online customer loans in 2020. In July, the CBIRC issued the Interim Measures for the Administration of Internet Loans of Commercial Banks with the aim to require commercial banks to strengthen their risk controls and standardise their processes for providing online loans to enterprises and individuals. Immediately after the issuance of these measures, the PBOC issued an emergency notice to commercial banks to require them to provide data on their consumer loan balances for financing provided jointly via third-party online platforms, together with data on non-performing ratios, average rates of return and credit overdrafts.

Mainland China

2020

PBOC's assessment rule on the application of blockchain technology

In July, the PBOC issued a notice on promoting the regulated application of blockchain technology and accompanying rules for assessing its application in financial services. Under the first such nationwide specifications, financial institutions including banks, securities houses, fund managers, futures companies, private equity, insurers and payment institutions are all required to establish and improve their risk control mechanisms for use of blockchain technology, under-take regular security assessments through external advisors, and file reports on compliance with the new rules.

Shenzhen given more autonomy to develop fintech hub

In October, the mainland Chinese government issued reformative measures for the Shenzhen Trial Zone under which the supervisory authorities there have autonomy to formulate local rules and regulations on artificial intelligence and big data to boost the city's role as a tech and finance hub. In addition, the zone's officials are charged with building a big data centre for mainland China's Greater Bay Area, fostering the public sharing of governmental data, and exploring and establishing big data trading platforms that legitimise a growing market this valuable asset.

Mainland China

2021

Reshaping the fintech regulatory landscape

It is clear that the Chinese government is aggressively seeking to shape the regulatory landscape for fintech in mainland China. Plans include digital yuan trials, online lending rules for microlenders and, of general application but relevant to financial services, the first comprehensive law on personal information protection. As summarised below, once implemented, these developments will profoundly impact mainland China's fintech players by squeezing what until recently has been a relatively lightly-regulated business environment.

Possible tender for digital banking licences

The CBIRC is reportedly in the process of drafting rules governing digital-only banks, with certain domestic and foreign banks being consulted on the operational framework for this new area of financial services. Given the recent roll out of digital banking licences in a number of Asian markets, including Hong Kong SAR and Singapore, mainland Chinese regulators seem keen to upgrade the country's regulatory regime to maintain and strengthen its edge in online finance.

CBDCs – Digital yuan trials and infrastructure roll out

With a high-level plan issued in 2020 on the launch of a digital yuan pilot programme for mainland China, various trial zones have initiated internal testing of a digital currency with the objective to extend testing to a broader section of the public in 2021. With respect to the underlying infrastructure, the City Commercial Banks Clearing Co., Ltd., a financial transaction clearing house headquartered in Shanghai, will develop one-point access services to the digital yuan interconnection platform for small- and medium-sized banking institutions.

CSRC to regulate securities companies' leasing of third-party platforms

In August, the China Securities Regulatory Commission (CSRC) issued for public consultation the draft Administrative Rules on Securities Companies' Leasing of Third-Party Platforms for Conducting Securities Business. The rules seek to regulate securities firms' practices of linking their webpages offering securities-related services to third-party internet platforms by way of "floating windows" and other means. Under the rules, securities firms should only cooperate with third-party platforms which have good reputations, and they will be responsible for ongoing reassessment of the compliance and security measures taken by such thirdparty platforms. Firms must also pay special attention to independent business operations, technology security (e.g. backups of info-tech) and data protection programmes.

Draft personal information protection law

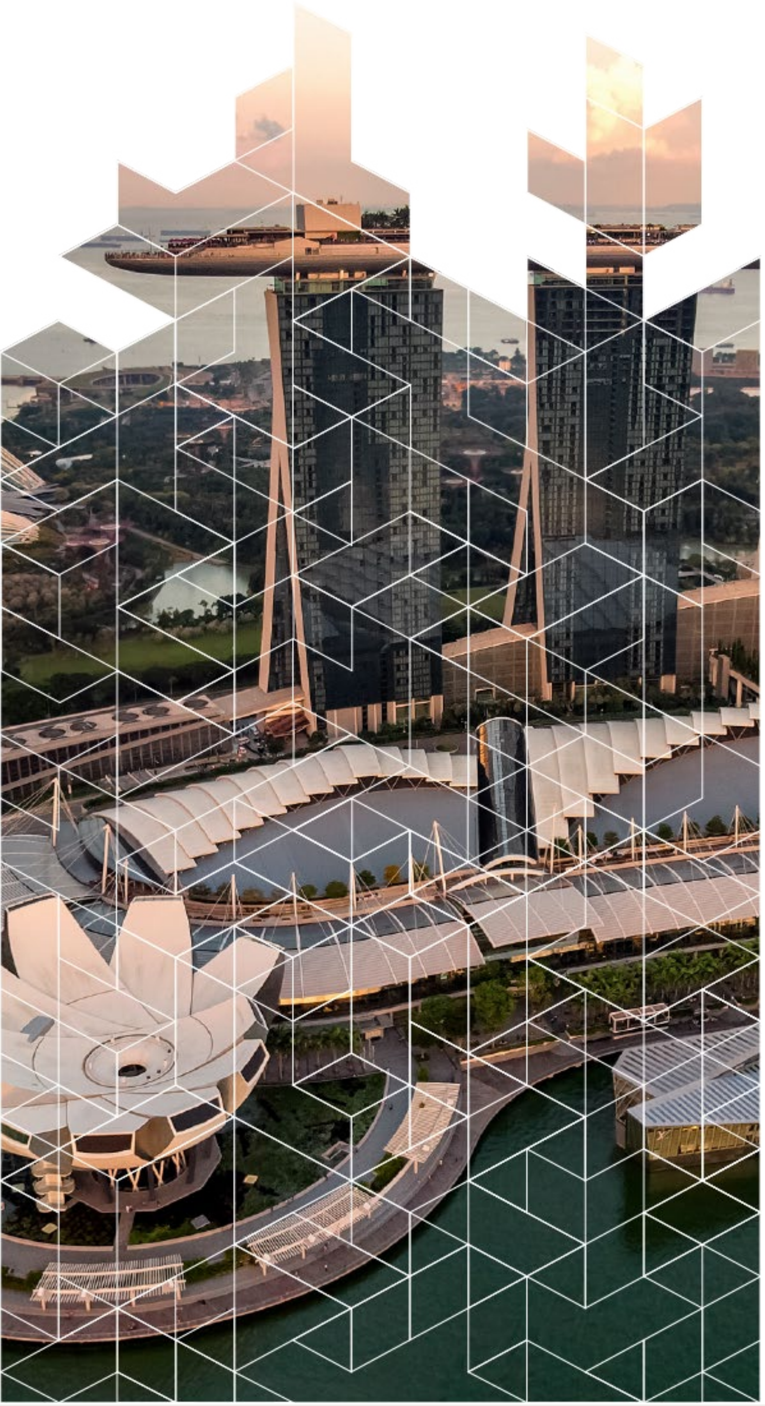
In October, the draft Personal Information Protection Law (PIPL) was published for public comment. The PIPL has been highly anticipated and will work together with the Cybersecurity Law and draft data security law as one of the key pillars of President Xi Jinping's framework for security in mainland China's cyberspace. Multinational financial institutions may be widely impacted by the extraterritoriality, ominous data export restrictions and the increased financial penalties for non-compliance with the rules under the draft PIPL. Against the backdrop of the increasing importance of data, it is expected that this law would be officially promulgated in the first half year of 2021. Read more

Mainland China

2021 continued

Release of draft online lending rules for micro-lenders

In November, the CBIRC and the PBOC jointly released for public comment draft provisional measures on the regulation of online micro-lending. The draft rules provide unified nationwide requirements for, and tighten the supervision of, online microloans, which have previously only been regulated at a provincial level. Under the draft rules, a micro-lending company is required to drastically increase its paid-in capital to RMB1 billion and is confined to lending only in its home province, unless it can obtain approval from the CBIRC by meeting even stricter conditions. The margins for online micro-loans will be impacted by capping the amount of loans allowed for each borrower and setting a minimum leverage ratio of 30% for the lender.



Singapore

2020

Grants to support and develop the fintech industry

The Monetary Authority of Singapore (MAS) has announced various support packages to sustain and strengthen capabilities in the fintech industry amidst Covid-19 challenges. These include:

> **A S$125 million package to support workforce training, digitalisation, and access to digital platforms**; and

> **A S$6 million Fintech Solidarity Grant** to help cover day-to-day capital expenditures and invest in business growth.

The MAS also announced:

> **A S$1.75million MAS Global Fintech Innovation Challenge:** seeking innovative solutions that can help financial institutions respond to Covid-19 and climate change;

> **A commitment of S$250 million to the enhanced Financial Sector Technology and Innovation Scheme:** to accelerate technology and innovation-driven growth in the financial sector; and

> **A S$35 million Productivity Solutions Grant:** to help smaller financial institutions (e.g. banks, insurers, and capital market intermediaries) adopt digital solutions for more streamlined data reporting to the MAS.

Regulation of payment token derivatives

The MAS started to regulate payment token derivatives (i.e. derivatives contracts that reference payment tokens as underlying assets) offered on approved exchanges. The MAS had previously noted increasing industry interest in the payment tokens market and proposed the regime out of a two-fold desire to encourage innovation while ensuring financial stability and protection of investors. The new regime has been implemented under the Securities and Futures Act. Read more

MAS develops "fairness metrics" to aid responsible AI adoption

The MAS launched the first phase of its Veritas initiative, a framework for financial institutions to promote the responsible adoption of Artificial Intelligence and Data Analytics (AIDA). The first phase is focused on developing fairness metrics in credit risk scoring and customer marketing, to help financial institutions validate the fairness of their AIDA solutions in the two use cases.

Digital bank licence applications

The MAS opened applications for digital bank licences in early 2020 and is expected to award up to two digital full bank licences and up to three digital wholesale bank licences by the end of 2020.

MAS consults on non-F2F verification requirements

The MAS issued a consultation on the types of information required for non-face-to-face verification of an individual's identity. A proposed Notice would (i) require financial institutions to use specific types of information for non-face-to-face verification, and (ii) prohibit financial institutions from relying on common personal information such as an identification number or date of birth as the sole means of identity verification. The consultation closes on 9 December 2020.

MAS consultation on regulation of Singapore virtual

Singapore

2020 continued

asset service providers under new Omnibus Act

The MAS issued a consultation on a new omnibus act which will include provisions to regulate virtual asset service providers (VASPs) created in Singapore. The MAS has proposed to: (i) regulate entities created in Singapore but carrying on a business of virtual asset activities overseas, and (ii) impose licensing, business conduct, and anti-money laundering and counter terrorism financing requirements on such entities.

Second edition of the Model AI Governance Framework released

In January 2020, the PDPC released the second edition of the Model AI Governance Framework (Model Framework). The Model Framework is a set of non-legally binding compliance, ethical principles and governance considerations, first released on 23 January 2019, for private sector organisations to consider when deploying AI solutions.

The key updates introduced in the second edition include (amongst others): (i) the inclusion of real-life industry examples, (ii) additional tools to enhance the usability of the Model Framework (two additional documents to guide organisations in adopting the Model Framework have been released, namely the Implementation and Self-Assessment Guide for Organisations and the Compendium of Use Cases), (iii) the inclusion of three new measures (robustness, reproducibility and auditability) aimed at helping organisations enhance the transparency of the algorithms used in AI models and (iv) providing further guidance to organisations on how to adopt a risk-based approach to implementing AI governance measures.

Singapore

2021

Proposed amendments to the Payment Services Act 2019: a moving target for firms?

The MAS consulted on proposed amendments to the Payment Services Act in December 2019 and has now issued its response to feedback. The Payment Services (Amendment) Bill, which effects the MAS's proposed amendments, was also moved for first reading in November, and will likely be passed in 2021. The Bill will address money laundering and terrorist financing risks arising from the digital payment token industry and certain cross-border business models. Key amendments include: (i) an expanded scope of digital payment token services, (ii) an expanded scope of cross-border money transfer services, and (iii) new MAS powers to impose measures on DPT service providers. Read more

Update to Singapore Data Protection law: Key amendments

In November, the Personal Data Protection (Amendment) Bill was passed, making a number of changes to the Personal Data Protection Act. These include: (i) a relaxation of the requirement to obtain a data subject's consent to collect, process or disclose personal data by introducing a concept of "legitimate interests" for businesses (following the European GDPR), (ii) an exception to consent to allow organisations to use personal data without consent for business improvement purposes, (iii) expansion of the deemed consent concept, (iv) introduction of a mandatory breach notification requirement - which would require businesses to notify the Personal Data Protection Commission (PDPC) and the affected individuals if there is a data breach that results in "significant harm" or is of a "significant scale", and (v) data portability provisions.

Penalties for data breaches

The amendments will also increase the maximum financial penalty for data breaches under the PDPA to (i) up to 10% of an organisation's annual turnover in Singapore, or (ii) SGD 1 million, whichever is higher, and also introduce offences for individuals (who may be employees) who knowingly or recklessly disclose personal data when they are unauthorised to do so. Read more

Possible developments in the regulation of digital payment tokens and stablecoins:

It is possible that we may see developments in the regulation of digital payment tokens and stablecoins:

E-money and digital payment tokens

The MAS may issue a response to its December 2019 consultation on the scope of e-money and digital payment tokens under the Payment Services Act 2019. The consultation invited industry feedback on (amongst other things) the defining characteristics of e-money vs digital payment tokens and the regulation of stablecoins.

Financial Action Task Force standards on VASPs

The MAS has also taken steps this year to align its regulation of the digital payment token industry with Financial Action Task Force (FATF) enhanced standards on virtual asset service providers (e.g. through the new Omnibus Act, Payment Services (Amendment) Bill). The FATF has indicated it will issue further guidance on the implementation of these enhanced standards, which may have impact on any additional guidance and/or regulation issued by the MAS.

Spain

2020

Spain passes a new law creating a fintech "Regulatory Sandbox"

In November, Spain passed a new law relating to digital transformation of its financial system. This introduces the highly anticipated regulatory sandbox: a testing space that can be used to try out technological innovation in financial services under special flexible rules. The aim is to curb costs and regulatory complexity, while ensuring supervision by regulators and due protection for the market. The sandbox is expected to enable technological innovation projects developed by any individual or firm, including technology firms, financial institutions, credit servicers, representative associations, public or private centres of research or any other interested party that are granted entry to carry out tests in a special regulatory environment. Read more

Spanish fintech ecosystem

According to a study published in a review of the Bank of Spain in 2020, Spain has a solid and dynamic fintech sector in terms of fintech firms per capita (5 firms per million inhabitants) but with relatively low levels of investments and fintech credit (€3.40 per capita). The study also shows that most of the Spanish fintech companies are focused on offering B2B solutions, obtain revenues via charging fees or commissions and have not matured enough. Moreover, most of these firms are founded by entrepreneurs and located in large cities such as Madrid and Barcelona. The study also shows a positive evolution of the funds invested – mainly through venture capital funds – on the whole Spanish fintech sector since 2014.

Bank of Spain consultation on new circular for payment and e-money institutions

In July, The Bank of Spain issued a public consultation on its intended new circular regarding an accounting regime for payment and e-money institutions. Its main purpose is to create a specific regime for these institutions, based on the accounting standards applicable to credit institutions, but taking into account the differences between the nature, scale and complexity of their activities. Such differences translate into a simplified set of requirements in relation to public and confidential financial information (i.e. in most cases, payment and e-money institutions will be subject to less formalities than credit institutions).

Draft bill for the implementation of AMLD5

With some delay in implementation timetable, the Spanish Government published a draft bill for the adaptation to AMLD5 of Law 10/2010, on the prevention of money laundering and terrorist financing. The bill includes all the main changes of the directive, among which are: (i) new subjects, such as cryptocurrency exchange and wallet firms, (ii) a unified and cohesive registry of beneficial ownership, (iii) clarification on the applicability of rules in international group situations, (iv) possibility of sectors of obligated subjects to put in place common compliance systems, and (v) clarification and enhancement of the responsibility regime of AML auditors. While it is still at a bill stage, we expect that the Spanish Government will make efforts to fast-track it to the extent possible, given the transposition term.

Spain

2020

CNMV criteria on FX forwards as payment instruments

FX forwards that are entered into in order to facilitate payment for identifiable goods, services or direct in-vestment are considered a means of payment and not financial instruments, and therefore not subject to Mi-FID rules. CNMV has approved guidance as to how it will interpret this rule, which allows payment services providers to avoid costly MiFID compliance.

Data protection and fintech

In light of the increasing focus on the protection of personal data under the EU General Data Protection Regulation (GDPR), the Spanish Data Protection Agency (AEPD) has published several guidelines that will be helpful for fintech companies, such as guidelines on privacy by default, by design, and the use of a hash function as a pseudonymisation technique.
Since fintech companies will often by nature process personal data, they will be subject to data protection laws applicable in Spain, and will need to follow the guidelines of the AEPD.

Spain

2021

Opening of the regulatory sandbox

The regulatory sandbox is expected to open in Q1 2021. Sandbox projects will not be subject to the specific legislation usually applicable to financial services. However, firms will be required to act in accordance with the new law and a protocol established between the relevant authorities and the sponsor. The sandbox is conceived as a temporary arrangement under which "tests" can be carried out before a solution is rolled out "in the real world".

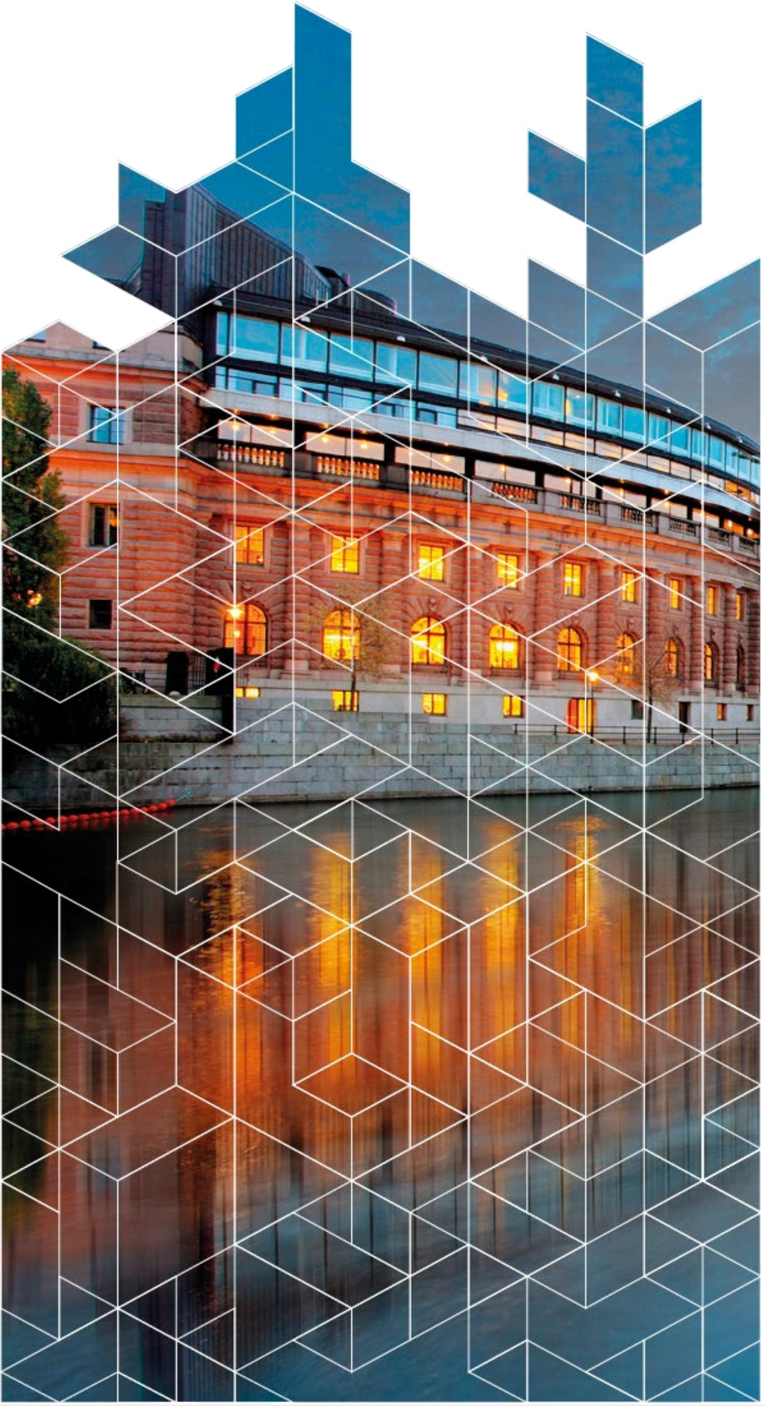
The sandbox is of interest to fintech start-ups that want to launch new technology-based financial products and services in Spain, but also to well-established actors that want to use it as a step before bringing innovative projects to market. The application window for the first cohort of the regulatory sandbox is expected to open soon.

Bank of Spain new circular for payment and e-money institutions

If this circular is implemented as intended, payment and e-money institutions will stop using general accounting procedures by 1 January 2021 and start using these new specific accounting rules.

Implementation of AMLD5 into Spanish law

It is expected that the bill of the law implementing the fifth AML directive in Spain will be passed through Congress and the Senate and enacted during 2021. The current bill includes all the main changes of AML5, among which are: (i) new obligated subjects, such as cryptocurrency exchange and wallet firms, (ii) a unified and cohesive registry of beneficial ownership, (iii) clarification on the applicability of rules in international group situations, (iv) possibility of sectors of obligated subjects to put in place common compliance systems, and (v) clarification and enhancement of the responsibility regime of AML auditors.



Sweden

2020

CBDCs - e-krona

The Swedish Central Bank *(sw. Sveriges Riksbank)* continued its keen focus on CBDCs. In February, it initiated its e-krona pilot, the main aim of which is to increase knowledge of a central bank-issued digital krona and there is currently still no decision made on issuing an e-krona, how an e-krona might be designed or what technology might be used. The pilot is being run by Accenture and is based on R3's Corda DLT platform and a test environment has been set up, in which participants and interactions with the existing infrastructure and settlement systems will be simulated. Read more

CBDCs - BIS Innovation Hub Nordic Centre

The SCB, together with the central banks in Denmark, Iceland and Norway, agreed that the BIS Innovation Hub Nordic Centre will be established in Stockholm.

CBDCs – BIS framework

The SCB was also one of the seven central banks that prepared the BIS CBDC framework published in 2020. Read more

Cross-border payments

Progress continued for P27, the joint initiative by Danske Bank, Handelsbanken, Nordea, OP Financial Group, SEB, and Swedbank on cross-border payments. In October, P27 acquired Bankgirot AB, Sweden's sole clearing house for mass payments. P27 is still awaiting regulatory clearance and it is unclear when this will be granted.

Market evolution

Based on the three-year average from 2017-2019, in terms of fintech investments, Stockholm now ranks third after London and Berlin in Europe. In 2020 a number of large deals took place, including Klarna raising USD650m to become Europe's most valuable private fintech start-up and Tink's acquisitions of Instantor, OpenWrks and Eurobits. The largest segment of the Swedish fintech market is digital payments.

Continued output from the Black Wallet Project

The Black Wallet Project Group, a collaboration between, among others, the Finnish and Swedish police, to identify the risks of terrorist financing and money laundering in the fintech sector, has published its Risk Indicators. These Risk Indicators are based on the threats, vulnerabilities and red flags that the Black Wallet Project Group has identified. The Risk Indicators are targeted to Payment Service Providers (PSPs) and fintech companies in order to help those companies realise, assess and mitigate risks that may arise in relation to their products and services. Further output is expected in 2021, the Group's final year of operation.

Data privacy

The Swedish Data Protection Authority (SPDA) *(sw: Datainspektionen)* had the division between the Swedish Payment Services Act *(sw: betaltjänstlagen)* and credit reporting operations as a focus area for 2019-2020 to distinguish between when the GDPR and the Swedish Act on Credit Reporting *(sw. kreditupplysningslagen)* is applicable. Whilst there have been a number of sanctions on the credit reporting side, the SDPA has not yet published any guidance in light of this focus.

Sweden

2021

CBDCs

The e-krona pilot is due to conclude in February 2021 (though can be extended for up to seven years) so we would hope to have at least some initial results of the pilot during the course of 2021. Whilst no date has yet been confirmed, the BIS Innovation Hub Nordic Centre may be up and running in 2021 though it is more likely to be ready in 2022.

Financial regulatory focus

We expect dealing with Covid-19 and its impact on financial stability to continue to be the main priority of the Swedish Financial Supervisory Authority *(sw. Finansinspektionen)* in 2021, but the SFSA has indicated that it has concerns regarding consumer lending and so we expect some focus on this topic in 2021, which may have a subsequent impact on those fintech firms active in the consumer lending space here in Sweden.

United Arab Emirates

2020

UAE onshore

Government Covid-19 funding measures for Fintechs

The UAE Government put in place measures to help banks, companies and individuals deal with liquidity issues and promote financial stability. Whilst there were no measures directly addressed to fintech companies specifically, they could benefit from a range of support measures implemented by the UAE government in favour of start-ups and other companies.

The UAE Central Bank established a Targeted Economic Support Scheme to assist private sector companies, particularly SMEs and retail customers in the UAE. The UAE Federal Government and the Governments of Abu Dhabi and Dubai also launched financial stimulus and support packages to focusing on supporting local business.

Electronic attendance and voting for listed companies

The Securities and Commodities Authority in the UAE has taken steps to help business continuity for listed companies during the disruption caused by Covid-19. The SCA has issued circulars to listed public joint stock companies in the UAE requiring them to allow electronic attendance and voting at shareholder meetings, together with guidance on business continuity planning. Read more

Consolidation of financial services regulation in the UAE

The UAE Insurance Authority was merged with the UAE Central Bank, creating one consolidated financial services regulator to regulate financial services in the banking and insurances sectors. The Securities and Commodities Authority. Further details of the consolidated regulatory framework, as well as the new framework applicable to the Securities and Commodities Authority, are yet to be announced.

New payment services regulation

2020 saw an increased interest in the UAE digital payments sector both from market participants but also from the local regulators. In November, the Central Bank issued new regulations applicable to stored value facilities. The existing "Regulatory Framework for Stored Value and Electronic Payment Systems" issued in 2016 was repealed.

The new regulations are expected to bring the payment systems regulations in the UAE in line with current practices and to take account of new technological advances in the digital payments sector while maintaining a focus on good governance and operational resilience.

BUNA payment platform launched by Arab Monetary Fund

The Arab Monetary Fund launched "Buna" which is a multicurrency platform providing clearing and settlement services to financial institutions, facilitating cross-border payments within the Middle East and North Africa region. The UAE Dirham was announced as the first settlement currency to be made available on the new "Buna" payments clearing and settlement system.

The UAE ends Israel boycott

In August, the UAE signed the Abraham Accords Peace Agreement: Treaty of Peace, Diplomatic Relations and Full Normalization Between the United Arab Emirates and the State of Israel, removing barriers to trade with Israel and enabling direct trade between the two countries. Banking and financial technology have both been identified as sectors where increased international co-operation between the UAE and Israel will be considered. The UAE Central Bank and the Israeli Government signed a memorandum of understanding committing to promote financial co-operation and investment between the two countries.

United Arab Emirates

2020 continued

Dubai International Financial Centre (DIFC)

DIFC and DFSA Business Stimulus Initiative for companies in the DIFC

The DIFC put in place measures to help companies in the DIFC deal with the immediate challenges presented by the Covid-19 pandemic. Whilst there were no measures directly addressed to fintech companies specifically, they could benefit from a range of support measures implemented by the DIFC in favour of other companies, such as deferral of commercial lease payments and fee waivers. The Dubai Financial Services Authority (DFSA), the financial services regulator in the DIFC also offered temporary regulatory relief for regulated entities in the DIFC, for example through reductions or waivers of fees and additional time to make filings.

DIFC launches new innovation licence

Start-ups and entrepreneurs looking to set up in the DIFC can now apply for a new DIFC Innovation Licence. The new innovation licence is designed to attract technology-led businesses aiming to disrupt the technology and financial sectors. This development enhances the DIFC's existing supportive environment for tech start-ups, of which the FinTech Hive, FinTech Fund and now the new innovation testing licence programme are key features.

New Data Protection Law

The DIFC Data Protection Law No.5 of 2020 and new Data Protection Regulations come into effect from 1 July 2020. Companies in the DIFC must comply with the new regime by 1 October 2020, at the end of the three-month grace period. The new law aligns the DIFC's data protection regime more closely with international best practice (such as the EU's GDPR).

The new framework revises rules on the collection, handling, disclosure and use of personal data in the DIFC. It includes enhanced accountability and responsibility for those controlling and processing data (with provisions relating to compliance obligations, impact assessments and data protection officers, for example). It offers greater protections for the individuals and their personal data, including where their personal data is generated, used or stored in the latest technologies such as blockchain and artificial intelligence. Read more

Money services in the DIFC

The DFSA introduced a series of updates to its Rulebook modules to revise its regime for "Providing Money Services" (PMS) in the DIFC. The previous prohibition on PMS (other than where such activities are conducted in connection with and a necessary part of another regulated financial service) is relaxed and a wider range of payment services activities are permitted. The DIFC has stated that it intends to take a cautious approach to the licensing and supervision of firms active in this area (such as restricting the nature, volume or size of transactions or the type of clients with whom firms can deal). Read more

New start-up accelerator for the DIFC

Regional fintech start-up companies will now be able to apply to a new accelerator programme known as the FinTech Hive Scale Up programme. It is designed for start-up companies who have already gone through Series A financing round, which is the first significant round of financing from external investors, and whose target market is in the MENA region. Launched by the DIFC's FinTech Hive, the new programme is designed to help these types of businesses grow further and faster through access to funding, resources, support services and venture capital investor networks.

DFSA launches cyber threat intelligence platform

The DFSA launched its "Cyber Threat Intelligence Platform". This is the first financial regulator-led cyber security platform in the region. The platform is available to all DIFC registered companies. The platform provides its users with various different indicators of a number of cyber threats to information security. The platform also allows information sharing between the DIFC community aimed at mitigating cyber threats and limiting their impact on operational resilience.

Abu Dhabi Global Market (ADGM)

Changes to cryptoasset regulation in ADGM

The FSRA has amended its framework to regulate crypto asset activities conducted in or from the ADGM. The framework was introduced in 2018 and was the first of its kind in the MENA region. Virtual Assets will no longer be regulated as a separate category of activity – "Operating a Crypto Asset Business" – and specified activities related to Virtual Assets will instead be regulated within existing categories of activities (such as Providing Custody, Operating a Multilateral Trading Facility, Dealing in Investments, etc.).

United Arab Emirates

2021

UAE onshore

Federal Data Protection Regime

We expect data protection to become a priority in 2021 and that initiatives will start to put in place a federal level data protection regime, most likely modelled on the new data protection laws that were passed in the DIFC in 2020. We also expect any data protection regime to focus on data localisation requirements and restrict cross-border transfers of data.

Testing common digital currency

The UAE Central Bank and the Saudi Arabian Monetary Authority are exploring how to make cross-border payments more efficient through their collaboration on a blockchain-based digital currency network. Following the announcement of a preliminary launch of the UAE-Saudi Arabian common digital currency known as "Aber", 2021 will likely see a preliminary roll-out of this programme amongst a select group of financial institutions. Following the outcome of this testing phase, further trials, developments and more widespread implementation are expected.

Renewed focus on cyber security

Following the increase in remote wording and online transactions witnessed in 2020, we expect the UAE regulators to focus their attention on cyber security as a threat to both operational resilience and anti-money laundering efforts.

Dubai International Financial Centre (DIFC)

Scrutiny of international transfers of personal data

Following the decision of the European Court of Justice in the Schrems v Facebook case, firms transferring personal data from the DIFC to the EU and then onward to the U.S. and elsewhere will need to assess, on a case-by-case basis, whether the data will be adequately protected in the recipient jurisdiction to ensure continued compliance with the new DIFC data protection law.

Abu Dhabi Global Market (ADGM)

Changes proposed to the ADGM's rules on providing money services

The ADGM Financial Services Regulatory Authority has consulted on proposed amendments to the regulatory framework for Authorised persons undertaking the regulated activity of "Providing Money Services". Designed to bring the regime up to date with evolving technologies and the emergence of new business models and methods for the transfer of funds, the new specified activities of "Money Remittance" and "Payment Services" activities broaden the scope of the regulated activity. The regime also focuses on more appropriately addressing the risks arising from these types of activities (such as safeguarding of client funds). We expect amendments to be passed by the FSRA to the current framework regulating the activity of "Providing Money Services" in 2021.

United Kingdom

2020

Bank of England assessing CBDC potential

The Bank of England set out its current thinking on Central Bank Digital Currencies in a discussion paper. The paper invited feedback on a platform model for a UK retail CBDC which would rely on the private sector to act as payment interface providers. The Bank was also one of a group of Central Banks which came together to share experiences as they assess the potential of CBDCs. Read more

Extending the regulatory net for cryptoassets

The Financial Conduct Authority (FCA) released consumer research on cryptoassets which showed that customers who were influenced by advertising were more likely to subsequently regret their purchase. In response, the Treasury sought feedback on a new proposal to bring unregulated cryptoassets into the scope of the financial promotions regime. Read more

Oversight of online financial promotions via social media and search engines

The FCA consulted with the Treasury over how to apply the financial promotions regime to search engines and social media platforms and are considering if they need additional powers to do so. Beyond financial promotions, the FCA added that they want to see fraud included in the Government's forthcoming online harms legislation (something the Government had previously appeared to rule out). Read more

The proprietary status of cryptoassets confirmed

The High Court of England and Wales found that cryptoassets like Bitcoin are property under English law. In doing so, it adopted the reasoning of the UK Jurisdiction Taskforce's legal statement on cryptoassets and smart contracts. Whilst not a definitive judicial authority, this provided a helpful endorsement of the UKJT statement and the proprietary status of cryptoassets. Read more

Applying AML to cryptoasset businesses

The FCA became the UK's AML supervisor for cryptoasset exchange providers and custodian wallet providers under the EU AMLD5. Updated sectoral guidance clarified the scope of the UK AML regime for cryptoassets firms and highlighted specific money laundering risk factors for those firms. It was also a reminder for UK cryptoassets firms to apply to register with the FCA for AML supervision. Read more

Government Covid-19 funding measures for fintechs

From the outset of the Covid-19 crisis in the UK, the government issued a series of public support funding measures, including the Covid-19 Corporate Financing Facility (CCFF) (read more), the Coronavirus Business Interruption Loan Scheme for SMEs (read more) (and a Large Business variation (read more)) and latterly its innovative start-up measures. Read more

AI and financial services

The FCA and Alan Turing Institute continued their exploration of the use of AI in financial services. In May an FCA Insight blog gave an indication of their direction of travel in relation to the importance of transparency for AI in financial markets (read more). The FCA and Bank of England launched the UK's AI Public-Private Forum following a 2019 survey of financial institutions' application of AI technology. Read more

United Kingdom

2020 continued

Techsprints revisited and new sandboxes opened

An FCA report set out the lessons it has learned from hosting seven techsprints and suggests areas for further improvement. The sixth cohort of firms was welcomed into the FCA's regulatory sandbox and applications opened for the seventh. The FCA launched a pilot for a digital sandbox targeted at challenges caused by the Covid-19 pandemic. The FCA is also spearheading the GFIN's global sandbox for cross-border testing of innovative products. Read more

The future for UK fintech

The Government launched a fintech strategic review to make recommendations to help ensure the growth of the UK fintech industry (read more) The Treasury consulted on its blueprint for a future regulatory framework which proposed more policy discretion for regulators after Brexit (read more). The Treasury also led a review into the UK's payments landscape. Read more

United Kingdom

2021

UK to pass Brexit milestone

The Brexit transition period ends at 11pm (UK time) on 31 December 2020. After this date, UK firms will no longer have rights to passport-regulated services into the EEA. Some EEA firms may benefit from the temporary permissions regime to continue servicing UK clients. Read more

Recommendations for supporting UK fintech due

An independent Fintech Strategic Review will report its recommendations to the Government at the start of 2021. The review aims to identify priority areas for industry, policy makers and regulators to support growth in the fintech sector. It is focusing on *"promoting the UK as a key market to establish and grow a fintech company"*. Read more

New payments landscape takes shape

The Treasury will provide feedback from its Call for Evidence on the payments landscape in the UK. This will set out next steps for its policy work relating to payments regulation and infrastructure. Read more

UK to set out its approach on stablecoins

The Government plans to propose a regulatory approach for stablecoin initiatives in 2021. This aims to ensure stablecoins meet the same minimum standards as other payment methods. This is expected to be consistent with the global agenda for stablecoin regulation. Read more

More to come on digital currencies

The Bank of England and Treasury are considering whether and how to issue a digital currency as a complement to cash. The Bank is expected to follow up from its 2019 discussion paper which mooted a platform model for a retail CBDC in the UK. Read more

Policy development by the PSR

The Payment Systems Regulator will consult on its strategy in Q1 2021. This will cover three themes: innovation and future payments; competition; and choice and availability of payment methods. The PSR is also due to finalise its report into the card-acquiring market. Read more

Ban on retail crypto-derivatives to take effect

The FCA's prohibition of retail crypto-derivatives will take effect from 6 January 2021. The ban covers the marketing, distribution and sale in or from the UK to all retail clients of derivatives and exchange-traded notes that reference certain types of regulated cryptoassets. Read more

UK Listing Rules review to attract "high quality, innovative companies"

In November 2020, HM Treasury launched a call for evidence (read more) seeking input on the existing listing regime, including free float requirements, dual class share structures and track record requirements, so as to ensure that UK rules continue to be well adapted to the needs of fast-growing new economy companies, including tech companies. The outcome of the review is expected to be a range of recommendations aimed at ensuring that the UK retains a dynamic market for equity issuances and IPOs and continues to attract high quality, innovative companies. Read more

A UK taxonomy for digital assets?

The Law Commission has been asked by the Government to look into creating a taxonomy for digital assets. A consultation paper is due in the first half of 2021.

United Kingdom

2021 continued

More guidance on AI in financial services

The FCA and the Alan Turing Institute will report on their project exploring the application of AI in financial services (read more). Both are also involved in the AI Public-Private Forum which is due to run until October 2021.

Operational resilience

The FCA, Prudential Regulatory Authority (PRA) and Bank of England will finalise their rules aimed at building the resilience of the UK financial services sector to operational disruption (read more). This is likely to take into account the industry response to the Covid-19 pandemic as well as the Wirecard insolvency and other high profile incidents which have taken place since the draft rules were released. Read more

Data plans

The Bank of England is likely to set out a Data Strategy following its 2020 discussion paper on transforming data collection in the UK financial sector. The FCA and Bank will also commission a joint review of writing regulation as code as part of its digital regulatory reporting programme. Read more

UK Foreign direct investment regime

In November, the UK announced wide-reaching forms of foreign investment in the UK. It will apply to investment in the tech sector and could come into force as early as Spring 2021. The proposal will introduce a mandatory notification obligation for “high-risk sectors” (including data infrastructure, AI and computing hardware) and will allow the Government to review start-ups and early stage companies developing fintech with use cases which could raise national security concerns. It is a huge departure from the existing FDI system and means fintech investors will need to think of the UK in a similar way to the US in respect of CFIUS. Read more

Scrutiny of international transfers of personal data

Following the decision of the European Court of Justice in the *Schrems II* case, firms transferring personal data from the EU to the U.S. and elsewhere will need to assess, on a case-by-case basis, whether the data will be adequately protected in the recipient jurisdiction. The situation is more complicated in the UK with Brexit and a question remains around whether data transfers to the UK will continue to be permitted in 2021 or whether additional measures be required. Read more

United States

2020

Digital assets going mainstream

While long-predicted, in 2020 mainstream adoption of digital assets started to become a reality, as dominant and established market players publicly announced their investments in the space. Key examples include: PayPal's widely reported venture into crypto (with a new service reportedly enabling eligible users in the United States to buy, hold and sell digital assets); Visa and Mastercard's' powering of crypto debit card services (including those offered by Coinbase and Binance); and JPMorgan Chase's digital currency, JPM Coin, being used commercially by a large technology player to send payments globally, as well its new business unit, called Onyx, being created to develop its blockchain and crypto initiatives.

Scrutiny, enforcement and private litigation for prominent token sales, digital assetnative companies and their founders

In parallel with the move towards mainstream adoption of digital assets, in 2020 - years after the 2017 ICO boom - multiple U.S. regulators continued to pay close attention to ICOs, digital assets, trading platforms and other digital native companies. Read more

> The **SEC** had at least two key federal court successes, against Kik Interactive and Telegram Group, confirming the general proposition that offers and sales of tokens in ICOs for fundraising purposes are presumptively offers and sales of securities under U.S. law, requiring either registration or an exemption therefrom.

> In October, **FinCEN** assessed a civil penalty against the founder, administrator and primary operator of a digital asset "mixer" or "tumbler," for violating the Bank Secrecy Act and its related regulations, including by failing to register as a money services business.

> The **DOJ** and the **CFTC** brought enforcement actions in the digital asset space against prominent digital native players.

> A spate of **putative class actions** were filed in the Southern District of New York against well-known digital asset issuers and trading platforms, as well as many of their principals under a control theory of liability.

Federal lawmakers introduce new digital asset-focused bills

In 2019 and 2020, the U.S. House of Representatives introduced multiple bills relating to digital assets. For example September 2020, the following two bills were introduced:

> **Securities Clarity Act:** At a high level this attempts to distinguish between the offer and sale of an investment contract, and the digital asset that is sold pursuant to such investment contract.

> **Digital Commodity Exchange Act:** proposes that digital asset trading platforms be under the CFTC's jurisdiction, while indicating that the SEC would continue to have jurisdiction in the case of "a securities offering or transaction associated with a digital commodity presale."

The State of Wyoming continues its support of digital asset development

The State of Wyoming issued its first and second special-purpose depository institution charters to Kraken and Avanti Bank, respectively. In addition, the Wyoming Division of Banking granted a no-action letter to Two Ocean, a firm seeking to offer digital asset custodial services. The no-action letter noted that it would not pursue enforcement against Two Ocean "for holding itself out to the public as a 'qualified custodian' if Two Ocean operates in conformity with applicable laws and rules surrounding the safekeeping of customer assets, including both Wyoming and federal law." Shortly thereafter,

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the SEC sought public comment on “qualified custodians” highlighting that the Wyoming no-action letter implicated both U.S. federal and state law.

Regulators sought to provide greater clarity for digital asset native companies and projects

> The **DOJ** released a Report of the Attorney General’s Cyber Digital Task Force, entitled “Cryptocurrency: An Enforcement Framework” which suggested approaches for investigating cryptocurrency-related crimes.

> **SEC** Commissioner Hester Peirce proposed a safe harbor that would allow digital token offerings without SEC registration, but the SEC has not yet taken any action to implement it.

> **FinCEN** invited comment on a proposed rule that would modify the Bank Secrecy Act’s recordkeeping and travel rule regulations by decreasing the threshold for international (but not U.S. domestic) transactions, from $3,000 to $250, at which “financial institutions must collect, retain and transmit certain information related to funds transfers and transmittal of funds”.

> The **CFTC** issued an Advisory on Virtual Currency for Futures Commissions Merchants, as well as interpretive guidance on what constitutes “actual” delivery of a virtual currency, clarifying when such products are within the CFTC’s regulatory reach. Read more

> The **OCC** issued an interpretive letter stating that its long-held position that U.S. national banks may provide custody and safekeeping services extends to the electronic safekeeping of digital assets. Read more

> The **OCC** also sought public comment on the digital activities of national banks and federal savings associations. Among other things, it asked whether the current regulations are fit for purpose. The findings are likely to influence the direction of rule-making efforts in this area. Read more

DeFi boom

2020 also saw a boom in Decentralized Finance (DeFi), which many have compared to the 2017 token offering heyday. In fact, earlier this year it was reported that the daily trading volume of Uniswap - a popular decentralized exchange - had exceeded the daily trading volume of Coinbase Pro. DeFi encompasses a wide range of quasi-financial activities, such as decentralized stablecoin networks, exchanges and lending platforms and many players in the space operate on the assumption that they are unregulated. In reality, the regulatory landscape is complex, and a number of arrangements are likely to have implications under existing frameworks.

FINRA Cybersecurity guidance for WFH

The Financial Industry Regulatory Authority has issued a cybersecurity alert intended to help member firms – including those in the fintech and digital securities space – to strengthen their systems and internal controls in areas where cyber risks may be heightened because of the pandemic. Read more

Guidance on cybersecurity and resilience

A discussion by the SEC Office of Compliance Inspections and Examinations provided a useful guide as to the industry practices and measures that OCIE may consider when assessing an organization’s cybersecurity preparedness and potential deficiencies. As in recent years, cybersecurity will continue to be a key element of OCIE’s examination program in 2020 and will likely remain an examination priority for years to come. Read more

Risk management principles for cloud computing security in financial services

A joint statement from the regulators comprising the Federal Financial Institutions Examination Council (FFIEC) provided a nice compilation of useful signposts for financial institutions assessing the risks and rewards associated with cloud computing services. Read more

SEC’s FinHub becomes stand-alone office

In December, the SEC announced that its Strategic Hub for Innovation and Financial Technology - commonly referred to as FinHub - would become a stand-alone office that Valerie Szczepanik would continue to lead, reporting directly to the SEC Chair as first director. Many believe that the establishment of a new FinHub office signals confidence in the continued growth and increasing significance of fintech – including crypto, blockchain and other technological innovations – to the U.S. markets and the broader economy. Szczepanik’s appointment suggests confidence in her leadership of FinHub to-date, including its outreach to, and interactions with, both innovative market participants and other regulators. Read more

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Increased regulatory scrutiny and enforcement of DeFi

As the DeFi trend continues, as it potentially includes a wide variety of projects, companies and services, it will be critical to look beyond the catch-phrase to assess individual offerings, sales and other transactions and structures against existing U.S. laws, including principles-based regulations, similarly to ICOs and other digital asset-related activities. We anticipate heightened scrutiny and potential enforcement actions in the DeFi space in 2021: from regulators including the SEC, FinCEN, CFTC and DOJ, to sanctions and or OFAC enforcement actions - against certain DeFi projects and teams that may not have prioritized compliance with applicable law.

Continued maturing of enterprise collaboration with public blockchains

In 2021, we expect to see established Fintechs continue to advance the use of, and enterprise collaboration and experimentation with, a variety of public blockchains and related consumptive use cases, including both those featuring proof-of-stake consensus mechanisms, like Polkadot, and proof-of-work consensus mechanisms. We also anticipate that we will receive greater clarity from the SEC in terms of examples of tokens initially sold as securities, as to which secondary sales may no longer be sales of securities.

Central Bank Digital Currencies

The Federal Reserve Bank – along with many other countries' central banks (see Global 2020) - is actively engaged in CBDC research towards a U.S. solution for a digital currency. This includes a collaboration between MIT's Digital Currency Initiative and Fed Payments, and the Digital Dollar Project, a partnership between Accen-ture and the Digital Dollar Foundation which reportedly is advancing discussions of a "digital dollar" CBDC. We expect further developments on this in 2021.

The impact of the change in administration

The recent U.S. presidential election will result in changes in top-level leadership of key regulators. The selection of the new SEC Chair may signal the SEC staff's go-forward approach to fintech and digital as-sets. While potential appointments remain unclear, many in the fintech and digital asset space have noted with interest the appointment of Gary Gensler, former CFTC Chairman and MIT professor with digital asset and reg tech expertise, to President-elect Biden's transition team. In April, Brian Brooks, former Chief Legal Of-ficer of Coinbase, Inc., was appointed the OCC's Chief Operating Officer and First Deputy Comptroller, a move that many believe already has had an effect on the OCC, including its interpretive letter regarding custody of cryptoassets (see United States 2020) and its crypto-friendly footnotes. These and other appointments could have far-reaching implications in 2021.

Antitrust scrutiny of fintech

The fintech sector should expect greater antitrust scrutiny, as the DOJ's Antitrust Division has made it clear that they are paying attention to "transactions involving acquisitions of nascent competitors in emerging technologies". It is also closely scrutinizing the increasing number of vertical mergers that involve a number of different financial products and services, such as data platforms and infrastructure that are potentially inputs to the acquiring firms' products. Read more

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