

FINTECH

United Kingdom



Fintech

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Quick reference guide enabling side-by-side comparison of local insights into fintech innovation and government / regulatory support; regulatory bodies and regulated activities; cross-border regulation; regulation of sales and marketing and of changes of control; financial crime; peer-to-peer and marketplace lending; artificial intelligence, distributed ledger technology and crypto-assets; data protection and cybersecurity; outsourcing and cloud computing; intellectual property, competition, tax and corporate immigration considerations; and recent trends.

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FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

What is the general state of fintech innovation in your jurisdiction?

The United Kingdom has been at the forefront of innovation in technology and finance for many years. Despite the ongoing uncertainty over the terms of the UK's departure from the EU and the effects of the covid-19 pandemic, this remains the case today. As the worlds of technology and finance become increasingly linked, London, in particular, has the unique advantages of being the national centre of government and finance and having many world class universities nearby. Fintech businesses also benefit from the UK's time zone, language and legal system.

Perhaps mindful of the potential effect of Brexit, the UK government remains committed to attracting start-ups and scale-up entrepreneurs and investors. The UK remains the leading jurisdiction within Europe for fintech activity. According to data from the UK's fintech trade association, Innovate Finance, in 2019 fintech companies in the UK attracted more capital and completed more deals than the rest of the top 10 European countries combined. Seven of the top 10 deals in Europe involved UK fintech companies. Overall, investment was up 38 per cent to \$4.9 billion. This moved the UK up to second in the global rankings for fintech venture capital investment.

While the UK is home to fintech innovation across the waterfront, there is particular strength and expertise in AI and automation, blockchain and distributed ledger technology, cloud computing, crypto-assets, cybersecurity, big data, insurtech, open banking, payments, peer-to-peer lending and crowdfunding, and regtech.

Law stated - 10 June 2021

Government and regulatory support

Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

Fintech in the UK is promoted by a range of government and regulatory bodies.

The Financial Conduct Authority (FCA) started 'Project Innovate' in 2014 to encourage innovation and promote competition. Currently, Project Innovate includes six initiatives:

- the Regulatory Sandbox allows businesses to test innovative propositions in the market with real consumers;
- the Innovation Hub provides tailored regulatory support for innovative firms;
- the Advice Unit provides feedback to firms developing automated advice and guidance models;
- the Global Financial Innovation Network is an international group of financial regulators and related organisations, including the FCA, committed to supporting financial innovation internationally;
- supporting regtech by encouraging the development of new technologies to help overcome regulatory challenges in financial services; and
- engaging with firms across the UK and internationally to maximise the reach of the FCA's Innovate initiatives.

The Bank of England is also interested in fintech. Its FinTech Hub includes the FinTech Accelerator Project, which works with businesses on fintech proofs of concept.

Law stated - 10 June 2021

FINANCIAL REGULATION

Regulatory bodies

Which bodies regulate the provision of fintech products and services?

The Financial Conduct Authority (FCA) is the financial services regulator for most regulated activities and services that a fintech would provide. The Prudential Regulation Authority is the regulator for banks in the UK. The FCA regulates conduct matters for banks.

Law stated - 10 June 2021

Regulated activities

Which activities trigger a licensing requirement in your jurisdiction?

There are a large number of activities ('specified activities') that, when carried on in the UK by way of business in respect of specified kinds of investments, trigger licensing requirements in the UK. These are set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). While it is not practical to list them all, the most common include the following.

- Accepting deposits: this is mainly carried on by banks and building societies. An institution will accept a deposit where it lends the money it receives to others or uses it to finance its business.
- Dealing in investments (as principal or agent): buying, selling, subscribing for or underwriting particular types of investments. In respect of dealing as principal, the specified investments are 'securities' and 'contractually based investments'. In respect of dealing as agent, the specified kinds of investments are 'securities' and 'relevant investments':
 - securities include shares, bonds, debentures, government securities, warrants, units in a collective investment scheme (CIS) and rights under stakeholder and personal pension schemes;
 - contractually based investments include rights under certain insurance contracts (excluding contracts of general insurance), options, futures, contracts for differences and funeral plan contracts; and
 - relevant investments include the same investments as contractually based investments but also include contracts of general insurance.
- Arranging deals in investments (this is split into two activities and specified investments in respect of arranging include securities and relevant investments):
 - arranging (bringing about) deals in investments, which applies to arrangements that have the direct effect of bringing about a deal; and
 - making arrangements with a view to transactions in investments, which is much wider and includes arrangements that facilitate others entering into transactions.
- Advising on investments: advising a person in their capacity as an investor on the merits of buying, selling, subscribing for or underwriting a security or relevant investment or exercising any right conferred by that investment to buy, sell, subscribe for or underwrite such an investment.
- Managing investments: managing assets belonging to another person, in circumstances involving the exercise of discretion, where the assets include any investment that is a security or contractually based investment.
- Establishing, operating or winding up a CIS.
- Certain lending activities: entering into a regulated mortgage contract or a regulated (consumer) credit agreement (or consumer hire agreement) as lender.
- Certain insurance activities: effecting a contract of insurance as principal and carrying out a contract of insurance as principal.

- Payment services: providing payment services.
- Electronic money: issuing electronic money.

Law stated - 10 June 2021

Consumer lending

Is consumer lending regulated in your jurisdiction?

The general position is that lending by way of business to consumers is regulated in the UK. The FCA is responsible for authorising and regulating consumer credit firms.

There are two categories of regulated lending: regulated credit agreements and mortgages.

Any person (A) who enters into an agreement with an individual (or a 'relevant recipient of credit', which includes a partnership consisting of two or three persons not all of whom are bodies corporate and an unincorporated body of persons that does not consist entirely of bodies corporate and is not a partnership) (B) under which A provides B with credit of any amount must be authorised by the FCA – unless an appropriate exemption applies.

Two of the most common exemptions are: where the amount of credit exceeds £25,000 and the credit agreement is entered into wholly or predominantly for business purposes; and where the borrower certifies that they are 'high net worth' and the credit is more than £60,260.

Other complex exemptions are available that relate to, among other things, the total charge for the credit, the number of repayments to be made under the agreement and the nature of the lender.

If an exemption applies, the lender does not need to comply with the detailed legislative requirements that apply to regulated credit agreements contained in the Consumer Credit Act 1974 (CCA) (and secondary legislation made under it) and the FCA's Consumer Credit Sourcebook (CONC).

Broadly, the CCA sets out the requirements lenders need to comply with in relation to the provision of information, documents and statements and the detailed requirements as to the form and content of the credit agreement itself.

The CONC chapter in the FCA Handbook sets out detailed rules that regulated consumer credit firms must comply with and covers areas such as conduct of business, financial promotions, pre-contractual disclosure of information, responsible lending, post-contractual requirements, arrears, default and recovery, cancellation of credit agreements and agreements that are secured on land.

In addition to the CONC, authorised consumer credit firms must also comply with other applicable chapters of the FCA Handbook.

Failing to comply with the requirements of the CCA may result in those agreements being unenforceable against borrowers and the FCA imposing financial penalties on the firm in question.

Entering into a regulated mortgage contract is a regulated activity. Such contracts are loans where:

- the contract is one under which a person (lender) provides credit to an individual or trustee (borrower);
- the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA (this will change to land in the UK from 31 December 2020); and
- at least 40 per cent of that land is, or is intended to be, used:
 - in the case of credit provided to an individual, as or in connection with a dwelling by the borrower; or
 - in the case of credit provided to a trustee that is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person.

Law stated - 10 June 2021

Secondary market loan trading

Are there restrictions on trading loans in the secondary market in your jurisdiction?

Provided that the loan itself is being traded, and not the loan instrument (eg, an instrument creating or acknowledging indebtedness), then there are no restrictions on trading loans in the secondary market.

Law stated - 10 June 2021

Collective investment schemes

Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

Establishing, operating or winding up a CIS is a regulated activity in the UK for which firms must be authorised by the FCA.

The definition of a CIS is set out in section 235 of the Financial Services and Markets Act 2000 (FSMA). Broadly, a CIS is any arrangement with respect to property of any description, the purpose or effect of which is to enable the persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income. The persons participating in the arrangements must not have day-to-day control over the management of the property. The arrangements must also have either or both of the following characteristics:

- the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
- the property is managed as a whole by, or on behalf of, the operator of the scheme.

Whether a fintech company falls within the scope of this regime will depend on the nature of its business. For example, fintech companies that manage assets on a pooled basis on behalf of investors should consider carefully whether they may be operating a CIS. On the other hand, fintech companies that only provide advice or payment services may be less likely to operate a CIS. Fintech companies are advised to seek legal advice on this subject and to have regard to their other regulatory obligations.

The management of two forms of regulated collective investment schemes, UCITS and AIFs, are also regulated activities.

Law stated - 10 June 2021

Alternative investment funds

Are managers of alternative investment funds regulated?

Managers of alternative investment funds are regulated in the UK under the Alternative Investment Fund Managers Directive, which has been implemented in the UK by the Alternative Investment Fund Managers Regulations 2013 and rules and guidance contained in the FCA Handbook.

Law stated - 10 June 2021

Peer-to-peer and marketplace lending

Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Peer-to-peer (P2P) lending is a term that generally refers to loan-based crowdfunding. In the UK, the FCA regulates loan-based crowdfunding platforms.

Under article 36H of the RAO, operating an electronic system that enables the operator (A) to facilitate persons (B and C) becoming the lender and borrower under an article 36H agreement is a regulated activity (and a firm will require FCA authorisation) where the following conditions are met:

- the system operated by A is capable of determining which agreements should be made available to each of B and C;
- A (or someone acting on its behalf) undertakes to receive payments due under the article 36H agreement from C and make payments to B that are due under the agreement; and
- A (or someone acting on its behalf) takes steps to procure the payment of a debt under the article 36H agreement or exercises or enforces rights under the article 36H agreement on behalf of B.

An article 36H agreement is an agreement by which one person provides another with credit in relation to which:

- A does not provide the credit, assume the rights of a person who provided credit or receive credit; and
- either the lender is an individual or the borrower is an individual and the credit is less than £25,000, or the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

In addition to falling within the definition of an article 36H agreement, a loan may also constitute a regulated credit agreement, unless an exemption applies and so a lender, through a platform authorised under article 36H, may also be required to have permission to enter into a regulated credit agreement as lender. Two of the most common exemptions are: where the amount of credit exceeds £25,000 and the credit agreement is entered into wholly or predominantly for business purposes; and where the borrower certifies that they are 'high net worth' and the credit is more than £60,260.

Other complex exemptions are available that relate to, among other things, the total charge for the credit, the number of repayments to be made under the agreement and the nature of the lender.

The FCA produced a policy statement in June 2019 that confirmed new rules that came into place in December 2019 in relation to P2P lending. These changes are found in the Conduct of Business Sourcebook and Senior Management Arrangements, Systems and Controls, and include:

- enhanced requirements for platform governance arrangements including in relation to credit risk assessment, risk management and fair valuation practices;
- strengthening rules on wind-down planning in the event of platform failure;
- setting out the minimum information that a platform should provide to investors; and
- introducing a requirement to monitor the investors that can use a platform, including that platforms assess investors' knowledge and experience of platform lending where no advice has been given to them. Firms are required to ensure that retail clients:
 - are certified or self-certified as 'sophisticated investors' or 'high net worth investors'; or
 - confirm before a promotion is made that they will receive regulated investment advice or investment management services from an authorised person; or

- do not invest more than 10 per cent of their net investible assets in P2P agreements in the 12 months following certification.

Law stated - 10 June 2021

Crowdfunding

Describe any specific regulation of crowdfunding in your jurisdiction.

In the UK, reward-based crowdfunding (where people give money in return for a reward, service or product) and donation-based crowdfunding (where people give money to enterprises or organisations they wish to support) are not currently regulated in their own right.

Equity-based crowdfunding is where investors invest in shares in, typically, new businesses. Equity-based crowdfunding is not specifically regulated in the UK (in the same way as loan-based crowdfunding).

However, a firm operating an equity-based crowdfunding service must ensure that it is not carrying on any other regulated activity without permission. Examples of regulated activities that equity-based crowdfunding platforms may carry on (depending on the nature and structure of their business) include:

- establishing, operating or winding up a CIS;
- arranging deals in investments; and
- managing investments.

Additionally, equity-based crowdfunding platforms must not market to retail clients unless an appropriate exemption applies.

In the FCA's policy statement on P2P lending, investment-based crowdfunding platforms were also covered. Recent work has focused on restrictions on the types of clients these platforms can market to and how this is managed.

Law stated - 10 June 2021

Invoice trading

Describe any specific regulation of invoice trading in your jurisdiction.

Currently, there are no regulations relating specifically to invoice trading.

However, depending on how the business is structured, a firm that operates an invoice-trading platform may be carrying on regulated activities for which it must have permission, including:

- establishing, operating or winding up a CIS; and
- managing an alternative investment fund.

There is also a possibility that the firm may need to register with the FCA as an Annex 1 financial institution because it carries on commercial lending. As an Annex 1 financial institution, the firm would need to comply with all the detailed anti-money laundering requirements under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 .

Law stated - 10 June 2021

Payment services

Are payment services regulated in your jurisdiction?

Payment services are regulated under the Payment Services Regulations 2017, which implement the second Payment Services Directive (PSD2) in the UK. Payment services include:

- services enabling cash to be placed on a payment account and all the operations required for operating a payment account;
- services enabling cash withdrawals from a payment account and all the operations required for operating a payment account;
- the execution of the following types of payment transaction:
 - direct debits, including one-off direct debits;
 - payment transactions executed through a payment card or a similar device; and
 - credit transfers, including standing orders;
- the execution of the following types of payment transaction where the funds are covered by a credit line for the payment service user:
 - direct debits, including one-off direct debits;
 - payment transactions executed through a payment card or a similar device; and
 - credit transfers, including standing orders;
- issuing payment instruments or acquiring payment transactions;
- money remittance;
- payment initiation services (initiating a payment order at the request of a payment service user with respect to an account held with another payment service provider); and
- account information services (online service to provide consolidated information on one or more payment accounts held by the payment service user with another one (or more) payment service provider).

The PSD2 broadens the scope of transactions governed by its provisions, narrows the scope of certain exclusions, amends the conduct of business requirements and introduces security requirements.

To provide payment services in the UK, a firm must fall within the definition of a 'payment service provider'. Payment service providers include 'authorised payment institutions', 'small payment institutions', credit institutions, electronic money institutions, the post office, the Bank of England and government departments and local authorities.

A firm that provides payment services in or from the UK as a regular occupation or business activity (and is not exempt, or a bank) must apply for authorisation or registration as a payment institution.

Law stated - 10 June 2021

Open banking

Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

Following its investigation into the retail and small and medium-sized enterprise (SME) banking sectors between 2013 and 2016, the UK's competition authority (the Competition and Markets Authority (CMA)) ordered a number of remedies to help promote greater competition in the retail and SME banking markets.

One of the core remedies ordered by the CMA requires the nine largest retail banks in Great Britain and Northern Ireland

to develop and implement an open banking standard application programming interface (API) to give third parties access to information about their services, prices and service quality in order to improve competition, efficiency and stimulate innovation. The open APIs also allow retail and SME customers to share their own transaction data with trusted intermediaries, which can then offer advice tailored to the individual customer.

These measures are intended to make it easier for customers to identify the best products for their needs. Additionally, the PSD2 requires banks to allow third-party payment service providers to initiate payments from their customers' accounts.

Law stated - 10 June 2021

Robo-advice

Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

There are no specific regulations to cover robo-advisers. The rules applying to investment advisers or arrangers and discretionary investment managers are technology-neutral and cover face-to-face as well as online or automated services. Therefore, a licence would generally be required, and robo-advisers would be subject to the usual conduct of business requirements, for example, around suitability assessments, disclosure of costs and charges, and marketing (which must be fair, clear and not misleading).

Law stated - 10 June 2021

Insurance products

Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Effecting or carrying out a contract of insurance, arranging contracts of insurance, or dealing in insurance as an agent are a regulated activities and fintech companies that wish to do this must be regulated. Companies that wish to market insurance products must either be regulated, have their marketing material approved by a regulated firm or fall within an applicable exclusion. For example, exemptions may be available for communications to high net worth individuals, companies, sophisticated individuals and other investment professionals.

Law stated - 10 June 2021

Credit references

Are there any restrictions on providing credit references or credit information services in your jurisdiction?

Providing credit information services and providing credit references are regulated activities for which firms must be regulated. A firm provides credit information services where it takes any of the following steps (or gives advice in relation to any of the following steps) on behalf of an individual or relevant recipient of credit:

- ascertaining whether a credit information agency holds information relevant to the financial standing of an individual or relevant recipient of credit;
- ascertaining the contents of such information;
- securing the correction of, the omission of anything from, or the making of any other kind of modification of, such

information; and

- securing that a credit information agency that holds such information:
 - stops holding the information; or
 - does not provide it to any other person.

Providing credit references involves providing people with information relevant to the financial standing of individuals or relevant recipients of credit where the person has collected the information for that purpose.

In addition, the Small and Medium-Sized Business (Credit Information) Regulations 2015 (the SMB Regulations) require:

- designated banks to share specified credit information about SMEs with designated credit reference agencies (with the permission of the relevant SME); and
- designated credit reference agencies to provide this information to finance providers at the request of the SME and to the Bank of England.

While the provision of this information is not a regulated activity under the FSMA, the FCA does monitor and enforce compliance with the SMB Regulations.

Law stated - 10 June 2021

CROSS-BORDER REGULATION

Passporting

Can regulated activities be passported into your jurisdiction?

An EEA firm that has been authorised under one of the EU single market directives may provide cross-border services into the UK. For these purposes, the relevant single market directives include the:

- Capital Requirements Directive;
- Solvency II Directive;
- second Markets in Financial Instruments Directive (MiFID II);
- Insurance Distribution Directive;
- Mortgage Credit Directive;
- fourth Undertakings for Collective Investment in Transferable Securities Directive;
- the Alternative Investment Fund Managers Directive;
- the second Payment Services Directive; and
- Electronic Money Directive.

To passport a regulated activity into the UK, a firm must first provide notice to its home regulator. The directive under which the EEA firm is seeking to exercise passport rights will determine the conditions and processes that the firm must follow.

Operating an electronic system that enables the operator to facilitate persons becoming the lender and borrower under an 'article 36H agreement', that is, over a peer-to-peer lending platform, is not currently an activity that may be passported.

It is unclear at this point how Brexit might affect the ability for EEA firms to passport services into the UK, and UK firms

to passport services into the EEA, in the future.

Law stated - 10 June 2021

Requirement for a local presence

Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

An EEA firm may exercise passport rights to provide services in the UK. Alternatively, in the case of a non-EEA firm or an EEA firm that is not undertaking an activity that can be passported into the UK, it must establish a local presence and obtain an appropriate licence. For example, an equity crowdfunding platform with the relevant permissions in another EEA state may be able to passport into the UK without establishing a local presence.

Operating an electronic system that enables the operator to facilitate persons becoming the lender and borrower under an article 36H agreement is not currently an activity that can be passported.

Therefore, peer-to-peer (P2P) or marketplace lending platforms that are licensed under local rules governing P2P or marketplace lending in other jurisdictions (whether inside or outside the EEA) would have to establish a local presence and become appropriately regulated.

Law stated - 10 June 2021

SALES AND MARKETING

Restrictions

What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

The UK has a comprehensive set of rules relating to financial promotions. These are set out in Chapter 4 of the Financial Conduct Authority's (FCA) Conduct of Business Sourcebook (COBS).

The definition of a financial promotion is very wide and includes an invitation or inducement to engage in investment activity that is communicated in the course of business. Marketing materials for financial services are likely to fall within this definition.

The basic concept is that financial promotions must be fair, clear and not misleading. FCA guidance suggests that:

- for a product or service that places a client's capital at risk, it makes this clear;
- where product yield figures are quoted, this must give a balanced impression of both the short- and long-term prospects for the investment;
- where the firm promotes an investment or service with a complex charging structure or the firm will receive more than one element of remuneration, it must include the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;
- the FCA, Prudential Regulation Authority (PRA) or both (as applicable) are named as the firm's regulator and any matters not regulated by either the FCA, PRA or both are made clear; and
- where it offers 'packaged products' or 'stakeholder products' not produced by the firm, it gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.

However, an exemption may be available to keep marketing materials outside the scope of the financial promotion

rules. For example, exemptions may be available for communications to high net worth individuals, companies, sophisticated individuals and other investment professionals.

Even authorised firms are prohibited from the promotion of unregulated collective investment schemes, except in specific circumstances set out in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/1060) .

Only authorised persons may make financial promotions and it is a criminal offence for an unauthorised person to communicate a financial promotion. Any agreements entered into with customers as a result of an unlawful financial promotion are unenforceable.

Lending

In relation to lending, there is also a comprehensive set of rules and the position is similar, but not identical, to that set out in COBS.

In respect of credit agreements, the FCA's Consumer Credit Sourcebook 3.3 applies and provides that a financial promotion must be clear, fair and not misleading. In addition, firms must ensure that financial promotions:

- are clearly identifiable as such;
- are accurate;
- are balanced (without emphasising potential benefits without giving a fair and prominent indication of any relevant risks);
- are sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which they are directed, or by which they are likely to be received;
- are presented in a way that does not disguise, omit, diminish or obscure important information, statements or warnings;
- present any comparisons or contrasts in a fair, balanced and meaningful way;
- use plain and intelligible language;
- are easily legible and audible (if given orally);
- specify the name of the person making the communication (or whom they are communicating on behalf of, if applicable); and
- do not state or imply that credit is available regardless of the customer's financial circumstances or status.

Various other detailed requirements apply depending on the type of credit (eg, peer-to-peer, secured, unsecured or 'high-cost short-term' credit) and the type of agreement (eg, whether it is secured on land), which govern things such as:

- the requirement to include particular risk warnings and how those warnings must be worded;
- when and how annual percentage rates and representative examples must be included and displayed; and
- expressions that cannot be included in financial promotions.

In relation to mortgages, chapter 3A of the Mortgages and Home Finance: COBS applies. In addition to being clear, fair and not misleading, financial promotions must:

- be accurate;
- be balanced (without emphasising any potential benefits without also giving a fair and prominent indication of any relevant risks);
- be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to

whom it is directed, or by whom it is likely to be received;

- make it clear, where applicable, that the credit is secured on the customer's home;
- be presented in a way that does not disguise, omit, diminish or obscure important items, statements or warnings; and
- where they contain a comparison or contrast, be designed in such a way that the comparison or contrast is presented in a fair and balanced way and ensures that it is meaningful.

As with credit agreements, other provisions apply depending on the particular type of mortgage, covering, among other things:

- the inclusion and presentation of annual percentage rates and other credit-related information;
- points of contact; and
- when and how financial promotions can be made.

Law stated - 10 June 2021

CHANGE OF CONTROL

Notification and consent

Describe any rules relating to notification or consent requirements if a regulated business changes control.

Part 12 of the Financial Services and Markets Act 2000 sets out a strict system concerning changes of control of regulated firms, and failure to adhere to the appropriate statutory requirements can be a criminal offence, depending on the nature of the breach.

Controllers or potential controllers of FCA-authorized firms are required to make notifications to and obtain approval from the Financial Conduct Authority (FCA) when a change of control occurs. The notification must be made before a change of control takes place. A person who fails to obtain the appropriate FCA approval will be guilty of a criminal offence.

The notification process takes place under three parallel processes:

- each new controller submitting the appropriate controller notification form to seek the FCA's pre-approval;
- each exiting controller notifying the FCA of the change of control; and
- the FCA-regulated firm notifying the FCA of these changes.

In practice, a joint notification is usually made, coordinated by the FCA-regulated firm with the new controllers and exiting controllers. Any potential controllers must provide detailed information, including in respect of its group structure, senior management, commercial activities, any criminal or civil proceedings against the company, and details of the acquisition.

The FCA has a statutory assessment period of 60 working days to determine change-of-control applications. This can be interrupted for a period of 30 days. In practice, determinations are made more quickly. There is no application fee.

Law stated - 10 June 2021

FINANCIAL CRIME**Anti-bribery and anti-money laundering procedures**

Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Generally, fintech companies are only required to have anti-money laundering (AML) procedures if the company is authorised by the Financial Conduct Authority (FCA) or carries out business that is subject to the Money Laundering Regulations 2017 (MLRs 2017). The UK implemented the Fifth Money Laundering Directive (5MLD) on 10 January 2020, by way of updates to the MLRS 2017 effected by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (the 2019 Regulations). Under 5MLD, the 2019 Regulations (in line with the 5MLD), the types of entities required to have money laundering procedures has been widened to include crypto-asset exchange providers and custodian wallet providers. The 2019 Regulations also capture peer-to-peer exchange providers, crypto-asset automated teller machines and the issuing of new crypto-assets (eg, an initial coin offering (ICO) or initial exchange offering (IEO)).

Entities subject to UK money laundering regulations are required to, among other things:

- identify and assess the firm's exposure to money laundering risk by, for example, undertaking a risk assessment;
- perform customer due diligence to an adequate standard depending on the risk profile of the customer;
- keep appropriate records;
- monitor compliance with the AML regulations, including internal communication of policies and procedures; and
- report suspicious transactions.

With respect to anti-bribery policies and procedures, all companies (including fintech companies) that are incorporated in or carry on business, or a part of their business, in the UK are subject to the Bribery Act 2010. While the Bribery Act does not require the implementation of policies or procedures to combat bribery, it creates a de facto requirement to do so. This is because a company charged with 'failing to prevent bribery' may rely on the statutory defence that the company had adequate policies and procedures in place designed to prevent bribery. It is not just large companies that need to be concerned with this law. The successful prosecution of Skansen Interiors Ltd (a company with fewer than 30 employees) for failing to prevent bribery in 2018 indicates that UK prosecutors will target smaller companies for such an offence.

Law stated - 10 June 2021

Guidance

Is there regulatory or industry anti-financial crime guidance for fintech companies?

There is no anti-financial crime guidance issued by the FCA specifically for fintech firms. However, firms that are authorised by the FCA should comply with its 'Financial Crime Guide: A firm's guide to countering financial crime risks' (<https://www.handbook.fca.org.uk/handbook/FCG.pdf>) and may find the FCA's outline to its supervision of crypto-assets helpful (<https://www.fca.org.uk/firms/financial-crime/cryptoassets-aml-ctf-regime>). In addition, the Joint Money Laundering Steering Group issues detailed guidance for the financial sector, and is currently in the process of drafting guidance specific to the crypto-asset sector(<https://jmlsg.org.uk/consultations/consultation-part-ii-sector-22/>).

It is important for fintech firms to understand the concerns and policy drivers that financial institutions have with

respect to their fintech clients. In June 2018, the FCA sent a 'Dear CEO' letter to financial institutions, advising them to take 'reasonable and proportionate measures to lessen the risk of your firm facilitating financial crimes which are enabled by cryptoassets'. This will have a consequential effect on fintech companies, as financial institutions are likely to apply the FCA's guidance when conducting due diligence on and monitoring their relationships with crypto-businesses as a result of this letter. While not addressed to fintech companies, they may also find this guidance helpful in mitigating financial crime risks in their own relationships with individuals and entities whose wealth, funds or revenue derives from crypto-related activities.

Law stated - 10 June 2021

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Provided the essential elements of a contract are present, loan agreements governed by English law can be executed in the form of agreements by signatories of the respective parties with due authority.

The execution requirements for an English law security agreement will depend on the form of security agreement. However, most English law security agreements will be executed in the form of a deed to ensure that no challenge can be made on the grounds of a lack of consideration or owing to the form of property being secured. It is also common for a security agreement to grant the lender a power of attorney, which must be executed as a deed to be enforceable. Certain formalities are required for the execution of a deed:

- the deed must be in writing;
- it must be clear on its face that it is intended to take effect as a deed;
- it must be validly executed as a deed, the requirements of which will vary according to the executing party (for example, whether it is an individual or a company). In particular, if the executing party is a company and if the deed is signed by a director (rather than through the affixing of the company seal or the signature of two authorised signatories), the signature of such director must be attested by a witness (in other words, an individual must observe the execution of the deed and record, on the deed itself, that he or she has made such observation); and
- it must be delivered as a deed, which is to say that the parties must demonstrate an intention to be bound.

Typically, peer-to-peer (P2P) marketplace lending platforms require agreements to be entered into electronically (e-signing). The e-signing of simple contracts (such as loan agreements) is accepted as creating enforceable agreements, subject to complying with regulatory requirements (eg, in respect of regulated lending). E-signing can take a range of forms, including typing the signatory's name, signing through biodynamic software (ie, the signatory signing on a screen or on a digital pad) or clicking an 'I accept' (or similar) icon on a web page. Certain limitations on e-signing generally need to be borne in mind:

- English law prohibits e-signing in respect of certain types of contract, including but not limited to documents required to be registered at HM Land Registry;
- there may be restrictions within a company's articles of associations that may restrict or forbid the use of e-signing, and these should be checked prior to any signing; and
- questions arise as to whether the prescribed formalities for executing deeds can be satisfied by e-signing. In

particular, difficulties are likely to arise in satisfying the attestation requirement (where a deed is executed by an individual or by a single director of a company in the presence of a witness) by electronic means.

Even if it were possible to satisfy these formalities, there may be practical reasons (such as certainty and evidential issues) why executing a deed with a 'wet-ink' signature (rather than e-signing it) may be preferable. As such, best practice remains for deeds to be executed with a wet-ink signature.

On 3 September 2019, the Law Commission published Law Com report No. 386 concerning e-signatures. Of particular importance, the Law Commission confirmed that e-signing is capable in law of being used to execute documents (including deeds), provided that (1) the executing party 'intends to authenticate' the document, which it clarified as the same as intending to be bound, and (2) any formalities relating to the execution of such document are satisfied.

With respect to the attestation requirement, however, the Law Commission's views are that the physical presence of a witness is required, even when both the signatory and the witness are executing or attesting the document using e-signature. The Law Commission was not satisfied that the witness's 'virtual' or 'remote' presence would suffice, and this is also the position that is followed by the HM Land Registry. These views, and the law in respect of physical witness, remain unchanged since the beginning of the covid-19 pandemic.

Law stated - 10 June 2021

Assignment of loans

What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

To perfect a legal assignment of loans originated on a P2P lending platform, various criteria must be met. Most importantly, notice of the assignment must be received by the other party to the loan agreement. In addition to this, the benefit under the loan that is being assigned must be absolute, unconditional and not purporting to be by way of charge only, the contract effecting the assignment of the loans must be in writing and signed by the assignor, and the assignment must be of the whole of the debt under the loan agreement.

Subject to certain exceptions, notice by email will comprise notice in writing under English law and, therefore, sending a notice to the other party to the loan agreement by email should not preclude it from being effectively delivered. However, a question remains over whether notice of assignment can be effectively delivered solely by updating the relevant party's account on the P2P lending platform. It is therefore best practice to notify the other party to the loan agreement of the assignment both by email and an update to their P2P account.

If the assignment does not comply with the above criteria for a legal assignment, it may nevertheless take effect as an equitable assignment. One of the key distinctions between a legal and an equitable assignment is that, in the case of an equitable assignment, the person to whom the loan has been transferred would not be able to bring an action under the contract in their own name.

Law stated - 10 June 2021

Securitisation risk retention requirements

Are securitisation transactions subject to risk retention requirements?

The risk retention requirements set out in Regulation (EU) 2017/2402, which came into force on 1 January 2019 (the EU

Securitisation Regulation) will apply directly to the 'originators', 'sponsors' and 'original lenders' of a 'securitisation' transaction (as each such term is defined in the EU Securitisation Regulation) where any of the originator, sponsor or original lender is established in the EU, and indirectly to originators, sponsors and original lenders of securitisation transactions that are offered to 'institutional investors' (as defined in the EU Securitisation Regulation) regulated by a competent authority of an EU member state (in each case, including any P2P securitisation that falls within the definition of 'securitisation' in the EU Securitisation Regulation), as described further below.

What are the risk retention requirements?

The EU Securitisation Regulation requires the originator, sponsor or original lender in respect of a securitisation to retain on an ongoing basis a material net economic interest in such securitisation of not less than 5 per cent using one of five prescribed risk retention methods, including (among other things) retention of:

- the most subordinated tranches, so that the retention equals no less than 5 per cent of the nominal value of the securitised exposures;
- 5 per cent of the nominal value of each of the tranches sold to investors; or
- randomly selected exposures equivalent to no less than 5 per cent of the nominal value of the securitised exposures.

Direct and indirect approaches

The retention requirement applies on a direct basis, as originators, sponsors and original lenders are required to agree on an entity that will act as retention holder and to ensure compliance with the retention requirements, and on an indirect basis, as it is incumbent upon investors in securitisation transactions to ensure that the retention requirement has been complied with. In the absence of agreement among the originator, sponsor or original lender as to who will be the retention holder, the originator shall be the retention holder. Originators, sponsors and original lenders may potentially be subject to a broad range of administrative sanctions (including significant fines) or remedial measures, or even criminal sanctions, where they have negligently or intentionally infringed the risk retention requirements under the EU Securitisation Regulation. Investors in a securitisation that is non-compliant will be subject to higher regulatory capital charges.

Jurisdictional scope

The EU Securitisation Regulation does not explicitly set out the jurisdictional scope of the direct retention obligation (which is where the originator, sponsor or original lender would be required to comply with the risk retention requirements), but there is a helpful note in the Explanatory Memorandum to the original Commission proposal for the EU Securitisation Regulation that the intention is that the direct approach would not apply where none of the originator, sponsor or original lender is 'established in the EU'. 'Establishment' is typically described by reference to the jurisdiction in which the legal entity is incorporated or has its registered office. Therefore, the non-EU subsidiary of an EU entity may not be subject to the direct retention obligation because a subsidiary is typically a separate legal entity, whereas a non-EU branch of an EU entity may be caught within this provision because a branch is typically not a separate legal entity.

Further, there was an unexpected and unintended consequence of the drafting under article 1(11) in Regulation (EU) 2017/2401, which amended article 14 of Regulation (EU) No. 575/2013 (CRR) effective from 1 January 2019. The effect of such amendment was to require non-EU subsidiaries to comply with the direct obligations under Chapter 2 of the EU Securitisation Regulation on a consolidated basis (ie, those relating to due diligence, risk retention, transparency, banning re-securitisation and criteria for credit granting). This raised challenges for third-country entities that are

consolidated into European groups (eg, EU banks operating in third countries through their non-EU subsidiaries), as these non-EU subsidiaries may be required to comply with potentially conflicting sets of requirements under the EU risk retention rules and the locally applicable rules.

Following concerns from market participants, the position on the jurisdictional scope is now clarified through article 1(9) of Regulation (EU) 2019/876 (the CRR II Regulation), which further amended article 14 of the CRR. CRR II Regulation entered into force on 27 June 2019 (except for certain provisions) and limited the application article 14 of the CRR to article 5 of the EU Securitisation Regulation such that only the due diligence requirements will continue to apply on a consolidated basis to non-EU subsidiaries.

Possible retaining entities in respect of P2P securitisations

Typically, a P2P lending platform will not qualify as the 'sponsor' or 'original lender' of a P2P securitisation. However, it may qualify as an 'originator' if it was (either itself or through related entities) directly or indirectly involved in the original agreement that created the P2P loans being securitised. Whether or not the P2P lending platform comprises an originator will ultimately be a question of fact, but it is likely that some P2P lending platforms in the market will (by virtue of their documentation structure and role as operator of the platform) comprise originators for the purposes of the EU Securitisation Regulation. If this is the case, any such P2P lending platform will be required to retain a 5 per cent economic interest in any securitisation of loans originated on their platform unless the originator, sponsor or original lender have agreed between them that another entity will retain.

If a P2P lending platform does either not qualify as an originator or does qualify as an originator but does not wish to retain, another entity with the capacity to retain will need to be identified and this entity will need to agree to retain in accordance with the terms of the EU Securitisation Regulation. Any entity that retains in the capacity of 'originator' is expected to be an entity of substance, and the EU Securitisation Regulation expressly provides that an entity will not be considered an originator where it has been established or operates for the sole purpose of securitising exposures. The EU Securitisation Regulation does not specify in what circumstances an entity will be considered to have been established for the sole purpose of securitising exposures but, in the Final Draft Regulatory Technical Standards relating to risk retention pursuant to article 6(7) of the EU Securitisation Regulation (published on 31 July 2018), the European Banking Authority (EBA) proposed that an originator will not be considered to have been established with the 'sole purpose' of securitising exposures if it satisfies certain conditions, including that:

- it has a broader business enterprise and strategy;
- it has sufficient decision makers with the required experience; and
- its ability to make payment obligations does not depend on the exposures to be securitised or on any exposures retained for the purposes of the risk retention regulations.

Impact of Brexit on EU Securitisation Regulation

As an EU Regulation, the scope of the EU Securitisation Regulation is directly applicable only to EU member states, which brings into consideration its applicability following the UK's departure from the EU. The EU Securitisation Regulation will not apply directly to originators, original lenders or sponsors in the UK for new securitisations post-Brexit. However, EU investors required to comply with the EU Securitisation Regulation will only be able to invest in a UK securitisation transaction that complies with the EU Securitisation Regulation requirements. Accordingly, we would expect many UK deals to continue to be structured to comply with the EU Securitisation Regulation post-Brexit for liquidity purposes.

Although the UK left the EU on 31 January 2020, the European Union (Withdrawal Agreement) Act 2020, which implements the UK-EU Withdrawal Agreement into UK domestic law, provides that a transition period will apply until 31

December 2020 (the transition period). EU law, including the EU Securitisation Regulation, will continue to apply during the transition period, and it is only following the end of the transition period that the interactions of EU laws into the UK becomes uncertain.

In the event of a 'no deal' Brexit, all of the UK's statutory instruments that amend EU laws will come into force at the end of the transition period. This includes the Securitisation (Amendment) (EU Exit) Regulations 2019, which facilitates the onshoring of the EU Securitisation Regulation as UK domestic law. The Securitisation (Amendment) (EU Exit) Regulations 2019 also make some drafting changes to the implementation of the EU Securitisation Regulation in the UK, for example, clarifying the application of the investor due diligence obligations for third country securitisations and the definition of sponsor. However, the current Securitisation (Amendment) (EU Exit) Regulations 2019 may still be subject to further amendments and/or supplements until the end of the transition period.

Law stated - 10 June 2021

Securitisation confidentiality and data protection requirements

Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

The entity assigning loans to the special purpose vehicle (SPV) must ensure that there are no confidentiality requirements in the loan documents that would prevent it from disclosing information about the loans and the relevant borrowers to the SPV and the other securitisation parties. If there are such restrictions in the underlying loan documentation, the assignor will require the consent of the relevant borrower to disclose to the SPV and other securitisation parties the information they require before agreeing to the asset sale. In addition, the SPV will want to ensure that there are no restrictions in the loan documents that would prevent it from complying with its disclosure obligations under English and EU law (such as those set out in the EU Securitisation Regulation and the CRR).

Again, if such restrictions are included in the underlying loan documents, the SPV would be required to obtain the relevant borrower's consent to such disclosure. In addition, if the borrowers are individuals, the SPV, its agents and the P2P platform would each be required to comply with the statutory data protection requirements under English law.

Law stated - 10 June 2021

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

There are not yet any significant rules or regulations that specifically govern the use of AI in the UK (including in respect of robo-advice), except in respect of some limited regulatory provisions; most notably in the EU General Data Protection Regulation (GDPR), which sets out requirements in respect of 'automated' decision-making (which would include AI) involving personal data. In particular, Article 22 provides that a data subject has the right not to be subject to a decision based solely on automated processing except in certain circumstances (eg, with the data subject's explicit consent). Articles 13(2) and 14(2) also require a data controller to provide 'meaningful information about the logic involved' in an automated decision-making process. For fintech businesses using personal data in the context of AI (eg, in assessing loan applications), this is likely to mean that the business should be able to explain how the AI system operates in that context and why, in any given case, it has arrived at its decision.

The obligation in articles 13(2) and 14(2) reflects a growing consensus on the importance of transparency and explainability in the context of responsible or ethical AI. Regulators and policy groups, particularly in the financial services sector, have emphasised that, while there are considerable benefits to be harnessed from the use of AI, businesses should understand and be able to explain how they are using AI and the impact on stakeholders, particularly consumers. This is particularly so given the increasing complexity of AI systems and the corresponding difficulty in understanding how they operate.

The Financial Conduct Authority (FCA) published two papers on AI in 2019 – ‘Explaining why the computer says no’ and ‘Artificial Intelligence in the boardroom’ – which both emphasise that financial institutions (including their board members) should be able to explain AI-based decisions, particularly in sensitive contexts (for example, in consumer loan applications).

While there are not yet any specific legislative requirements in this regard, it should be remembered that fintech businesses using AI, including for robo-advice, may still be subject to the FCA’s regulatory regime more generally, particularly as the advice offered by a robo-adviser will be a regulated activity where that advice involves an element of personal recommendation regarding investments.

Law stated - 10 June 2021

Distributed ledger technology

Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are no specific rules or regulations specifically governing the use of distributed ledger technology or blockchains in the UK.

Regulators in the UK in general seek to adopt a technology-neutral stance, regulating the outputs of systems rather than how they operate in the background. For example, the FCA in 2017 undertook a review of distributed ledger technology and its use in the financial services industry and concluded that no technology-specific regulation is required to govern its use.

However, some rules and regulations applicable in the UK indirectly have an effect on the deployment of distributed ledger technologies and blockchains as a result of the nature of the operation of these types of systems. For example, the GDPR generally requires personally identifiable information to be capable of erasure once it is no longer needed, which causes difficulties for those seeking to use distributed ledger technology to govern the use of that type of data, given the technology’s generally ‘immutable’ (ie, unchangeable) nature. Another example is the Centralised Securities Depository Regulation (an EU-level regulation applicable in the UK), which requires dematerialised securities to be settled through a centralised securities depository, which is a hurdle to be overcome for those fintech businesses seeking to settle securities via distributed ledger technologies (security tokens).

Law stated - 10 June 2021

Crypto-assets

Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

In the UK, there are specific rules relating the operation of certain types of crypto-businesses in the UK, requiring the following businesses to be registered with the FCA:

- those that provide a facility to enable the exchange of one crypto-asset for another or the exchange of fiat currency for crypto-assets (or vice versa), or any business that makes arrangements with a view to any such

- those that provide custodial crypto-asset wallet services;
- any business that issues new crypto-assets (eg, a business conducting an initial coin offering); and
- businesses that operate crypto-asset automated teller machines.

Prior to operating any such business, the business must first register with the FCA. The registration process is complex and requires the submission of a number of different information requirements. Once a complete application has been submitted, the FCA has three months to consider the application and accept or reject it as it sees fit. At the time of writing, a temporary registration regime exists for those businesses already operating and who have submitted their registration application before 15 December 2020 - businesses on the temporary registration list can continue operating, pending the outcome of their application. All other UK businesses looking to begin operating as a crypto asset exchange, custodian or ATM provider must be registered with the FCA before starting operating.

Other regulatory processes regarding crypto-assets continue in other areas. These follow on from the FCA, Bank of England and HM Treasury's Crypto Assets Task Force report of 2018, which announced the intention to launch a series of consultations on regulation of the crypto-assets industry, including on:

- the transposition of the Fifth Anti-Money Laundering directive into UK law (which resulted in the registration requirements noted above);
- guidance around the application of existing financial services regulation to the crypto assets market (see below);
- the potential extension of the FCA's regulatory perimeter to encompass certain assets and activities within the crypto-assets sector (which, as at the date of writing, has not yet been published); and
- a potential ban on the offering of derivative products to retail customers, where those products reference crypto-assets (which was published in 2019, and confirmed in 2020).

On the consultation for guidance on crypto-asset regulation, this was launched in January 2019, and finalised guidance was released in July 2019. The guidance details the FCA's taxonomy covering 'exchange tokens' (decentralised assets such as bitcoin), 'security tokens' (blockchain-traded products that have similar characteristics to traditional regulated securities), and 'utility tokens' (blockchain-traded products or other items that do not have similar characteristics to traditional regulated securities).

Therefore, in broad terms, the approach in the UK to the regulation of crypto-assets at present varies.

- Unregulated tokens (classic exchange tokens such as bitcoin and utility tokens) are unregulated, although to offer services concerning them, a business may need to be registered with the FCA.
- E-money tokens (crypto-assets that have the characteristics of e-money) are regulated as if they were e-money, and businesses dealing in them need to be properly authorised by the FCA as appropriate under the Electronic Money Regulations and the Payment Services Regulations.
- Security tokens (crypto-assets that have the characteristics of regulated financial products) are regulated in the same way as the type of security that the crypto-asset shares characteristics with, and any businesses dealing in them need to be properly authorised by the FCA as appropriate.

Crypto-asset regulation in the UK continues to be a developing area. In particular one consultation around extending the financial promotions rules in the UK to crypto-asset providers, published in 2020, remains outstanding – it is expected that the results of this will be published during the course of 2021.

Law stated - 10 June 2021

Digital currency exchanges

Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

Any digital currency exchange or brokerage operating in the UK needs to be registered with the FCA. The registration process is complex and requires the submission of a number of different information requirements. Once a complete application has been submitted, the FCA has three months to consider the application and accept or reject it as it sees fit.

Beyond the registration requirement noted above, there are no rules or regulations specifically governing the operation of digital currency exchanges or brokerages where they deal in spot transactions of unregulated crypto-assets. If a digital currency exchange or brokerage deals in regulated crypto-assets or any other regulated product (even if in tokenised form), FCA regulations will apply around authorisation and compliance to the same extent that they would apply to a traditional exchange or brokerage.

Regulation around crypto-assets in the UK is undergoing some change at the time of writing. In particular, a consultation was published in 2020 and closed earlier this year relating to the potential extension of UK financial promotion rules to crypto-asset services. If published in the form consulted on (which is considered likely), it would significantly reduce the crypto-asset industry's ability to carry on marketing activities in the UK.

Law stated - 10 June 2021

Initial coin offerings

Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

Any business intending on carrying out an initial coin offering (ICO) in the UK needs to be registered with the FCA. The registration process is complex and requires the submission of a number of different information requirements. Once a complete application has been submitted, the FCA has three months to consider the application and accept or reject it as it sees fit.

Beyond the registration requirement noted above, here are no rules or regulations specifically governing ICOs, token generating events or any other analogous token distribution process, provided that the tokens being issued as part of the process in question do not have the same or similar rights to regulated securities or e-money in the UK. If the token being issued has the same or similar rights attached to it as regulated securities or e-money in the UK, strict FCA regulations will apply on issuing, holding, dealing in or otherwise selling those tokens.

Regulation around crypto-assets in the UK is undergoing some change at the time of writing.

Law stated - 10 June 2021

DATA PROTECTION AND CYBERSECURITY

Data protection

What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

On 25 May 2018, the EU General Data Protection Regulation (GDPR) came into force with direct effect across the entire EU. In the UK, the Data Protection Act 2018 came into force at the same time as the GDPR and supplemented the GDPR as it applied in the UK. Following Brexit, the GDPR takes effect in the UK as the 'UK GDPR', which is the retained EU law

version of the GDPR as amended by various data protection EU exit regulations. The Data Protection Act 2018 now supplements the UK GDPR. The UK government has published 'Keeling Schedules' showing the changes (in redline form) to the EU GDPR and the Data Protection Act 2018 made by the data protection EU exit regulations. These schedules are not 'law' but are a useful guide to how the UK GDPR and the Data Protection Act 2018 now look.

Going forward, for any entity in the UK, one or both of the UK GDPR or EU GDPR (together the GDPR) may apply, depending on what activities that entity carried out, and it will need to be established whether any entity is subject to one or both regimes. Initially the UK GDPR and EU GDPR obligations will be very similar or the same.

The GDPR governs the storage, viewing, use of, manipulation and other processing by businesses of data that relates to a living individual. In summary, the GDPR requires that businesses may only process personal data where that processing is done in a lawful, fair and transparent manner, as further described in the GDPR.

The GDPR requires that any processing of personal data must be done pursuant to one of six lawful bases for processing. The most commonly used lawful basis for processing is to obtain the consent of the data subject to that processing – in relying on this lawful basis, the business must ensure that the consent is freely given, specific, informed and unambiguous, and capable of being withdrawn as easily as it is given. This places a significant burden on businesses to ensure that their customers are fully informed as to what their personal data is being used for, which is a crucial change to the previous regime under which disclosure did not need to be so transparent. Other lawful bases for processing data include where that processing is necessary for the business to perform a contract it has with the data subject, or where required to comply with an obligation the business has at law (not a contractual obligation).

The GDPR further differs from the previous regime in that it places a significantly increased compliance burden on businesses, including for example mandatory requirements to notify regulators of data breaches, obligations to keep detailed records on processing, and requirements for most entities to appoint a data protection officer.

The GDPR does not apply to personal data that has been truly anonymised – as anonymised data cannot, by definition, be personal data. However, to ensure that GDPR does not apply to a certain data set, that data set must be truly anonymised. The GDPR itself gives limited guidance on anonymisation in Recital 26, requiring data controllers to consider a number of factors in deciding if personal data has been truly anonymised, including the costs and time required to de-anonymise, the technology available at the time to attempt de-anonymisation and further developments in technology.

Businesses that infringe the GDPR may be subject to administrative fines of an amount up to €20 million under the EU GDPR (£17.5 million under the UK GDPR) or 4 per cent of global turnover, whichever is higher. If an entity is subject to both the UK GDPR and the EU GDPR, it is possible for the entity to be fined under both regimes for the same breach.

The oversight of UK businesses' compliance with the UK GDPR and related legislation, and enforcement of them, is carried out by the UK regulator, the Information Commissioner's Office. If a UK business has operations in the EU that mean it is subject to the EU GDPR, it may need to appoint a representative in the EU member state in which those operations are most significant, and the oversight of UK businesses' compliance with the EU GDPR and related legislation, and enforcement of them, generally will be led by the relevant regulator in that EU member state.

There are no rules or regulations in the UK relating to personal data that are specifically aimed at fintech companies.

Law stated - 10 June 2021

Cybersecurity

What cybersecurity regulations or standards apply to fintech businesses?

There are no rules or regulations in the UK that provide cybersecurity requirements for fintech businesses specifically. More generally, the GDPR imposes more general requirements on businesses in the UK to ensure a high standard of security over personal data that they process, including the general obligation to have in place reasonable technical and

organisational measures to ensure the security of that data, compliance with which requires measures relating to cybersecurity to be put in place.

Further, for FCA-regulated businesses, the Financial Conduct Authority (FCA) has significant powers of oversight and enforcement in respect of those businesses' internal systems and controls relating to protection of confidential client information. The FCA actively manages and oversees these requirements and, in recent years, has imposed significant fines on entities that have failed to meet these requirements.

Law stated - 10 June 2021

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

The position on regulation of outsourcing by financial services companies in the UK is a complex picture, encompassing a number of different requirements that apply in different ways, depending on the type of financial services business in question.

The most important of these requirements is the new European Banking Authority (EBA) guidelines. On 25 February 2019, the EBA published revised (final) guidelines on outsourcing arrangements (the Guidelines) for credit institutions and certain investment firms as well as payment and electronic money institutions. The Guidelines amend and finalise previously published draft guidelines in light of extensive consultation responses from the industry and industry bodies. Therefore, the Guidelines are consistent with, and build upon, the previous Senior Management Arrangements, Systems and Controls Chapter 8 (SYSC 8) requirements (which now operate mostly as guidance rather than as requirements); however, they apply to a broader set of businesses than SYSC 8 – most noteworthy is the inclusion of payment and electronic money institutions, which are not subject to SYSC 8.

In broad terms, the Guidelines provide more granular detail around requirements that relevant businesses must comply with when carrying out outsourcing (including in relation to internal processes and procedures), compared to the SYSC 8 requirements.

The Guidelines took effect on 30 September 2019 and have been adopted in the UK. All new outsourcing contracts entered into after this date should be compliant with the Guidelines, and relevant institutions are expected to review and update any internal processes and procedures to meet the Guidelines' requirements. There is also a backstop date for upgrading pre-existing contracts to comply with the Guidelines by 31 December 2021. The Guidelines support harmonisation of existing regulation and guidance applicable to different types of financial services firms.

The PRA and FCA have also published supervisory statements (Statements) that build on the Guidelines and set out the PRA and FCA's expectations as to how UK firms will implement outsourcing regulation and manage outsourcing risks, as well as certain other third-party arrangements that are outside the scope of the Guidelines. The Statements make up part of the PRA and FCA's wider focus on operational resilience and that aims to ensure firms have robust structures and processes in place to manage third-party risk. Firms are expected to comply with the expectations in the PRA Statement by Thursday 31 March 2022. Outsourcing arrangements entered into on or after Wednesday 31 March 2021 should meet the expectations in the PRA Statement by Thursday 31 March 2022. Firms should seek to review and update legacy outsourcing agreements entered into before Wednesday 31 March 2021 at the first appropriate contractual renewal or revision point to meet the expectations in the PRA and FCA Statements as soon as possible on or after Thursday 31 March 2022. The FCA does not expect firms to report on progress to the 31 December 2021 EBA Guidelines timeline, but firms should inform the FCA if critical or important outsourcing arrangements have not been finalised by 31 March 2022.

Cloud computing

Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

There are no specific legal requirements in the UK regarding the use of cloud computing in the financial services industry. However, there does exist a body of guidance on the subject and a number of legal requirements that apply to indirectly regulate the use of cloud computing in financial services.

The primary legal requirements relevant to this question relate to the EBA and other outsourcing requirements, which apply to financial services businesses when outsourcing material functions within their businesses. In many different contexts, the use of cloud services will be of sufficiently significant importance to the business's operations to bring this requirement into scope and require the business to meet those outsourcing requirements in undertaking outsourcing. In particular, the European Securities and Markets Authority (ESMA) published new guidelines on outsourcing to cloud service providers on 10 May 2021 (the ESMA Guidelines). The ESMA Guidelines are intended to ensure that firms and competent authorities identify, address, and monitor their cloud outsourcing arrangement risks. As with the EBA Guidelines, the ESMA Guidelines provide more granular detail around requirements that relevant businesses must comply with when carrying out outsourcing, with a particular focus on information security requirements in their internal policies, including the protection of confidential, personal, or otherwise sensitive data. The guidelines will apply from 31 July 2021 to all cloud outsourcing arrangements entered into, renewed, or amended on or after this date, and firms should review and amend existing cloud outsourcing arrangements by 31 December 2022.

Law stated - 10 June 2021

INTELLECTUAL PROPERTY RIGHTS**IP protection for software**

Which intellectual property rights are available to protect software, and how do you obtain those rights?

Computer programs (and preparatory design materials for computer programs) are protected by copyright as literary works. Copyright arises automatically as soon as the computer program is recorded. No registration is required.

Databases underlying software programs may also be protected by copyright and, in certain circumstances, by database right. Database right is a standalone right that protects databases that have involved a substantial investment in obtaining, verifying or presenting their contents (see section 14(1) of the Copyright and Rights in Databases Regulations 1997). Both database copyright and database rights arise automatically without any need for registration.

If the software code has been kept confidential, it may also be protected as confidential information. No registration is required.

Programs for computers, and schemes, rules or methods of doing business 'as such', are expressly excluded from patentability under the Patents Act 1977 (PA 1977). These exclusions ultimately flow from the European Patent Convention. Notwithstanding these exclusions, it is possible to obtain patents for computer programs and business methods if it can be shown that the underlying invention makes a 'technical contribution' over and above that provided by the program or business method itself, such as an improvement in the working of the computer. Accordingly, a well-drafted patent may be able to bring a computer-based, software or business method invention within this requirement,

but this may be difficult to do and will not always be possible. Registration formalities must be followed to obtain protection.

Law stated - 10 June 2021

IP developed by employees and contractors

Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

Copyright and database rights created by an employee in the course of their employment are automatically owned by the employer unless otherwise agreed. Inventions made by an employee in the course of their normal duties (or, in the case of employees who owe a special obligation to further the interests of their employer's business, in the course of any duties) are automatically owned by the employer (see section 11(2) of the Copyright, Designs and Patents Act 1988).

However, copyright and inventions created by contractors or consultants in the course of their duties are owned by the contractor or consultant unless otherwise agreed in writing. Database rights are owned by the person who takes the initiative and assumes the risk of investing in obtaining, verifying and presenting the data in question. Depending on the circumstances, this is likely to be the business that has retained the contractor or consultant.

Law stated - 10 June 2021

Joint ownership

Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

Restrictions on a joint owner's ability to use, license, charge or assign its right in intellectual property will depend on the intellectual property right in question. For example, the restrictions on a joint owner of a patent are different from those on a joint owner of copyright.

A joint copyright owner cannot copy, license or grant security over jointly owned copyright without the consent of the other joint owners (see sections 16(2) and 173(2) of the Copyright, Designs and Patents Act 1988). Each joint owner may assign their own interest, but consent is required for an assignment of the whole right. A joint copyright owner is also able to grant security over their interest.

In the case of UK patents and patent applications, a joint owner is entitled to work the invention concerned for his or her own benefit and does not need the consent of the other joint owners to do so (section 36(2) PA 1977). However, the consent of the other joint owners is required to grant a licence under the patent or patent application and to assign or mortgage a share in the patent or patent application (section 36(3) PA 1977).

The situation is similar for UK-registered trademarks. Each joint owner is entitled to use the registered trademark for their own benefit without the consent of the other joint owners (section 23(3) Trade Marks Act 1994 (TMA 1994)), but the consent of the other joint owners is required to grant a licence of the trademark and to assign or charge a share in the trademark (section 23(4) TMA 1994).

Given the variations in the rights and restrictions of joint owners, and given that the rights of joint owners also differ on a country-by-country basis, it is highly advisable in any situation where parties work together on a project to agree at the outset how the results are to be owned by the parties and their individual rights to exploit the results. In general, joint ownership of intellectual property should be avoided if possible because of the complexities described above.

Trade secrets**How are trade secrets protected? Are trade secrets kept confidential during court proceedings?**

Protection of trade secrets in the UK is regulated by The Trade Secrets (Enforcement, etc) Regulations 2018 (the Trade Secrets Regulations), which implement the Trade Secrets Directive in the UK and came into force on 9 June 2018. Trade secrets are also protected by the law on breach of confidence, which provides broadly the same level of protection as is required under the Trade Secrets Directive. The Trade Secrets Regulations define what qualifies as a protectable trade secret, providing protection for information that:

- is secret, in the sense that it is not generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question;
- has commercial value because it is secret; and
- has been subject to reasonable steps (under the circumstances) by the holder of the information to keep it secret.

The Trade Secrets Regulations also implement aspects of the Trade Secrets Directive that differ from, or add to, the existing law applying to the protection of confidential information. This includes specifying the limitation period for bringing a trade secrets claim and the rules regarding awarding damages and interim and corrective measures.

Confidential information (which may include non-public information that is not captured by the definition of 'trade secret') can be protected against misuse, provided the information in question has the necessary quality of confidence and is subject to an express or implied duty of confidence. In the case of both trade secrets and the confidential information, no registration is necessary (or possible). Trade secrets and confidential information can be kept confidential during civil proceedings with the permission of the court.

Law stated - 10 June 2021

Branding**What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?**

Brands can be protected as registered trademarks either in the UK alone (as a UK trademark) or across the EU (as an EU trademark). A brand can also be protected under the common law tort of passing-off if it has acquired sufficient goodwill.

Certain branding, such as logos and stylised marks, can also be protected by design rights and may also be protected by copyright as artistic works.

The UK and EU trademark databases can all be searched to identify registered or applied for trademark rights with effect in the UK. It is highly advisable for fintech businesses to conduct trademark searches to check whether earlier registrations exist that are identical or similar to their proposed brand names. It may also be advisable to conduct searches of the internet for any unregistered trademark rights that may prevent use of the proposed mark.

Law stated - 10 June 2021

Remedies for infringement of IP

What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Remedies include:

- preliminary and final injunctions;
- damages or an account of profits;
- delivery up or destruction of infringing products;
- publication orders; and
- costs.

Law stated - 10 June 2021

COMPETITION

Sector-specific issues

Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

Competition authorities in the UK (and elsewhere) face a range of potentially complex competition law issues in relation to fintech offerings. These include:

- the risks around the exchange of competitively sensitive information;
- the risks of a fintech firm or platform obtaining a dominant position in the market and any behaviour that could potentially exclude other market players;
- the development and participation in technical standards;
- exclusivity arrangements between parties to a fintech offering;
- the limits of any specified tying or bundling of products or services to the fintech solution; and
- issues around the anticompetitive use of algorithms and machine learning.

The Competition and Markets Authority (CMA), Financial Conduct Authority (FCA) and Payment Systems Regulator (all of which are concurrent competition law enforcement authorities in the UK) generally consider fintech to represent a pro-competitive force, leading to change in markets and encouraging innovation. For example, the FCA is an active participant in the Global Financial Innovation Network.

The CMA has been undertaking a number of initiatives to formulate its approach to the regulation of competition in the UK digital markets, with a view to focusing on the protection of the consumer. As well as undertaking an investigation into the retail banking market, seeking to implement open banking and improve the quality of information provided to customers, the CMA has also taken advice from external experts, advocating a more involved approach to competition regulation. The CMA has been advised to perform more sophisticated analyses of digital mergers, consider the role of big data in creating barriers to entry, and take account of network effects to create more effective rules for large digital platforms (see the Furman and Lear reports for further information). As a result, the CMA issued its Digital Markets Strategy in July 2019: a vision for how it proposes to protect consumers in complex and rapidly-changing digital markets while continuing to protect innovation. One concrete outcome of this has been the creation of a Digital Markets Taskforce, a dedicated unit with the role of monitoring developments in digital markets and advising the

government on how best to approach them. In November 2020, the UK government announced the creation of a new unit, the Digital Markets Unit (DMU), housed in the CMA, which will focus on enforcing a new pro-competition regime covering online platforms with considerable market power. The aim of the new unit will be to promote greater competition and innovation in digital markets and protect consumers and businesses from unfair practices. Since April 2021, the DMU operates in a limited capacity and advises the government on the shape and structure of the unit until the draft legislation granting its full powers comes into force. The government is currently considering the proposed regime and new legislation is expected to come into force at the beginning of 2022.

The CMA has also taken an increasingly interventionist stance in UK merger cases. In part, this is probably as a result of it having received more resources in preparation for Brexit; but also because of a growing feeling that it may have been missing transactions that have negatively impacted competition. This more interventionist approach has been present in all sectors to some extent, but it has been particularly noticeable in relation to fintech deals – a number of Phase II (in-depth) investigations have been related to transactions involving fintech players.

The future of fintech competition regulation will depend in some part on the UK's relationship with the EU post-Brexit. The FCA has as one of its priorities the development of future bilateral arrangements with the EU and the rest of the world to promote its expertise in fintech regulation.

Law stated - 10 June 2021

TAX

Incentives

Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

The UK has introduced a wide range of tax incentives that are available to fintech companies and investors in such companies. The key incentives are set out below, although there are a number of conditions to be met to qualify for each scheme:

- seed enterprise investment scheme (SEIS): 50 per cent income tax relief and exemption from capital gains tax for investors in high-risk start-up trading companies;
- enterprise investment scheme (EIS): 30 per cent income tax relief and exemption from capital gains tax for investors in small high-risk trading companies;
- venture capital trust (VCT) scheme: 30 per cent income tax relief and exemption from capital gains tax for investors in venture capital trusts, which subscribe for equity in, or lend money to, small unquoted companies;
- business asset disposal relief (formerly entrepreneurs' relief): a reduced 10 per cent capital gains tax rate for entrepreneurs selling business assets (only available to directors and employees of businesses);
- investors' relief: an additional reduced 10 per cent capital gains tax rate that allows other types of shareholders to benefit from the same relief as is provided under business asset disposal relief when they sell their shares. Unlike business asset disposal relief, this reduced rate is only available to investors who have not been officers or employees in the company whose shares are being sold;
- research and development tax credits: tax relief for expenditure on research and development;
- patent box regime: a reduced 10 per cent corporation tax rate for profits from the development and exploitation of patents and certain other intellectual property rights;
- innovative finance ISA eligibility: peer-to-peer (P2P) loans are eligible for inclusion in tax-free ISAs;
- tax relief for P2P bad debt: an income tax relief for irrecoverable P2P loans, or P2P bad debt; and
- P2P interest withholding tax exemption: P2P loan interest payments are exempt from UK withholding tax.

Subject to applicable lifetime limits, a company may raise up to £150,000 under the SEIS over a three-year investment period and up to a total of £5 million (£10 million for knowledge-intensive companies) over 12 months from 'relevant investments', which includes investments under the SEIS and EIS and investments by VCTs. While financial activities are an excluded activity for the SEIS, EIS and VCT scheme, as long as a fintech company is only providing a platform through which financial activities are carried out, such a fintech company should still qualify for those schemes assuming it meets the other conditions.

In addition, the government has published a Call for Evidence on the Enterprise Management Incentive scheme (EMI), which allows SMEs to offer tax advantages on the exercise of qualifying share options offered to employees as a form of remuneration. Under the scheme, EMI options can be offered to individual employees up to a value of £250,000 per employee in a three-year period. The total market value of unexercised qualifying share options a company may grant under EMI cannot exceed £3 million. To qualify for EMI, a company must, at the relevant time, have less than £30 million in gross assets, fewer than 250 full-time employees and carry out a qualifying trade. In particular, the Call for Evidence will assess whether the government should expand the EMI scheme to support high-growth companies and how. Again, financial activities such as banking and insurance are an excluded activity for the EMI scheme.

Law stated - 10 June 2021

Increased tax burden

Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

The lifetime limit for business asset disposal relief (formerly entrepreneurs' relief) was reduced from £10 million to £1 million for any qualifying disposals made on or after 11 March 2020. This significantly decreases the relief available from capital gains tax for investors disposing of businesses where the investor meets the qualifying conditions. In November 2020, the Office of Tax Simplification recommended further restrictions on business asset disposal relief to focus it on retirement and the removal of investors' relief.

The government is currently carrying out a review of the UK funds regime that could result in wide-ranging changes to the tax and regulatory frameworks for investment funds in the UK. In addition, Budget 2020 announced a review of how financial services are treated for VAT purposes and the European Commission has also launched a similar review. Fintech companies are advised to keep an eye on what emerges from these reviews, given the potential impact on their tax position.

The digital services tax (DST) was introduced from 1 April 2020 following a government consultation. This 2 per cent tax applies to the revenues of search engines, social media services and online market places, which derive value from UK users. The DST applies where a group's worldwide revenue from digital activities is more than £500 million and more than £25 million of the revenue is derived from the UK. As such, the tax is expected to impact a small number of large multinationals. Financial services providers are excluded from the online market places definition, meaning fintech companies should generally fall out of the scope of this tax. However, where there are unified platforms with social media, marketplace and search engine elements and the threshold conditions are met, then fintech companies could fall in scope for revenue from the social media and search engine income streams.

From April 2022, the government proposes that large businesses will be required to notify HMRC when they take a tax filing position in relation to VAT, corporation tax or income tax (including PAYE) that is uncertain, based on a number of triggers and subject to a de minimis of £5 million. The rules are expected to apply to businesses with a turnover above £200 million or a balance sheet total over £2 billion. Large fintech businesses are advised to watch out for developments in this area.

The government is also consulting in a number of other areas that may impact fintech businesses, including:

- whether the UK transfer pricing rules should be made more consistent with international practice by requiring businesses to maintain a master file and local file and whether specific information on cross border transactions with connected parties should be reported on an International Dealings Schedule;
- a wide review of the research and development (R&D) tax reliefs regime to ensure that the reliefs remain competitive and well-targeted, including considering its scope.

Law stated - 10 June 2021

IMMIGRATION

Sector-specific schemes

What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

Nationals from EU countries, Iceland, Liechtenstein, Norway and Switzerland

Despite the UK's departure from the EU, Fintech businesses are currently still able to recruit workers from EU countries, Iceland, Liechtenstein, Norway and Switzerland in the same way and on the same basis as they recruit British nationals.

However, this is set to change with nationals from EU countries, Iceland, Liechtenstein, Norway and Switzerland who enter the UK after 31 December 2020 becoming subject to the same working visa requirements as nationals from other countries.

Nationals from other countries

Workers from other countries may only be recruited by UK fintech businesses if they meet the relevant eligibility criteria and are awarded sufficient points under a tiered points-based system. The relevant tiers for fintech businesses are likely to be tier 1 and tier 2.

Tier 1 is open to investors and, until recently, included the Exceptional Talent visa. This is now closed to new applicants and has been replaced by a Global Talent visa, which is available to highly experienced and internationally recognised professionals in a wide range of disciplines, including digital technology. The application depends on an endorsement by an approved body that, in the case of digital technology applicants, is Tech Nation.

Tier 1 also includes options for entrepreneurs who may apply for either a 'start-up visa' or an 'innovator visa', depending on their level of experience. In many cases, entrepreneurs and other workers will require an assessment or endorsement by a relevant UK body, which for fintech related roles is likely to be Tech Nation

Tier 2 is open to skilled workers who are sponsored by a licensed organisation where the role is being transferred to the UK from overseas or cannot be filled by someone living in the UK. A worker with skills deemed to be in short supply receives a number of advantages under the tiered points-based system. Roles currently deemed to be in short supply include IT business analysts, architects and system designers, programmers and software development professionals, and other information technology and communications professionals. Finance roles are not currently considered to be in short supply.

From 1 July 2021, all workers other than British and Irish nationals and those who have indefinite leave to remain in the UK will require a visa to work in the UK. Workers with a strong entrepreneurial, commercial or technical development background in the tech sector can apply for endorsement under the Global Talent visa under the Digitech subcategory. Senior professionals within the fintech sector have been most successful in obtaining endorsement under the Global Talent visa route. While the route is no longer limited by the number of endorsements being issued each year, the threshold for endorsement remains high and is an exclusive visa route. The Global Talent visa has no employment

restrictions, so a visa-holder can be employed or self-employed. The Tier 2 (General) visa route, which enables UK companies to sponsor foreign workers, has now been replaced by the Skilled Worker visa route, which maintains the same sponsorship process as for Tier 2 (General), but with lower barriers for entry, such as lower skill levels qualifying, no limits in the number of workers being sponsored and lower salary levels: particularly for those under 26 and those with a STEM PhD that is relevant to their UK job. Companies are no longer subject to the onerous restrictions on advertising jobs in the UK to comply with immigration regulations, meaning that it is now less significant if a role is on a shortage occupation list, since this now only relates to a reduced salary requirement. Individuals looking to set-up a new company in the UK can still do so via the Representative of an Overseas Business visa (as a senior employee of an overseas company), or via the Start Up and Innovator visa routes (as a founder of an innovative scalable company). Proposals are also still being explored for a visa route for highly skilled professionals, likely with a STEM background, who will qualify under a points-scoring basis where a job offer is not mandatory. This visa route is still expected for late 2021.

Law stated - 10 June 2021

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends to note?

The authorities in the UK continue to develop their approach to the regulation of fintech businesses. While we expect the next six months of regulatory and policy activity to focus on supporting all aspects of the financial services sector (including the fintech sector) through the impact of the coronavirus pandemic and Brexit uncertainty, there is still a large amount of fintech-specific regulator activity on the horizon.

In May 2020, The Financial Conduct Authority (FCA) launched a regulatory grid to help financial firms prepare for upcoming regulatory work. Upcoming regulatory work relevant to the fintech sector includes:

- a review of the UK fintech sector to identify measures to maintain growth and competitiveness;
- a consultation on a measure to bring certain crypto-assets into the scope of financial promotions regulation;
- the Cryptoasset Task Force consultation on the broader regulatory approach to crypto-assets, including new challenges from stablecoins;
- changes to the regulatory regime to prohibit investment products referencing certain crypto-assets;
- a project involving the Bank of England (BOE) and seven firms to explore the viability of testing machine-readable and -executable regulatory reporting;
- the establishment of a joint FCA and BOE forum with industry to look at the impact of AI on financial services;
- the implementation of new rules to enhance the security of payments and limit fraud during the authentication process; and
- an assessment of the opportunities and risks arising from open finance and the FCA's role in ensuring that it develops in the best interests of consumers.

In its 2020/2021 business plan, the Prudential Regulation Authority has outlined its intention to focus on digital currencies and RegTech. It also intends to examine its regulatory framework to identify any changes required.

The BOE has launched a review in discussion with banks, insurers and financial market infrastructures to reform regulatory data over the next decade. The review will seek ways to decrease the burden on industry and to increase the timeliness and effectiveness of data in supporting supervisory judgements, with the outputs helping inform appropriate next steps.

The Payment Systems Regulator's key projects for the coming year include a commitment to supporting Pay.UK's development of the New Payments Architecture and ensuring that it delivers a resilient medium for making digital payments. It has also strengthened its commitment to ensuring that the market for card-acquiring services work well; highlighted the need for greater efforts to tackle authorised push payment scams; and committed to ensuring that payment systems and markets are more competitive.

Law stated - 10 June 2021

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The UK government has launched a number of schemes to support businesses with the impact of the covid-19 pandemic. To date, there are no government measures specifically focused on the fintech sector. However, several of the general support measures may be relevant to fintech firms. These include:

- the Bounce Back Loan Scheme, which provides small businesses with a quick and easy option to apply for an 100 per cent government-backed loan of up to £50,000;
- the Coronavirus Job Retention Scheme under which the government pays up to 80 per cent of the salaries of furloughed workers up to £2,500. The scheme will run until October 2020, but the level of government funding will taper from August 2020, with employers being expected to contribute the balance of the payments;
- a £500 million Future Fund for Innovative UK-based companies, which allows them to apply for a convertible loan of between £125,000 and £5 million from the UK government. The government loans need to be matched by private investors; and
- £750 million grant and loan funding to be provided to small and medium-sized enterprises focusing on research and development. The funding will be administered by Innovate UK.

Fintech businesses should carefully consider the appropriateness of these schemes to determine whether any of them are suitable for their business needs. Further information about the various schemes can be found on the business support pages of the government coronavirus website at <https://www.gov.uk/coronavirus/business-support>.

The government also introduced changes to insolvency law for businesses that get into significant financial difficulty. These are likely to include temporary measures intended to deal with specific issues arising from the covid-19 pandemic and permanent changes that were trailed during consultations carried out in 2016 and 2018 but never implemented. The draft legislation is currently being considered by the UK Parliament in the form of the Corporate Insolvency and Governance Bill.

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Law stated - 10 June 2021

Jurisdictions

	Australia	Piper Alderman
	Belgium	Simmons & Simmons
	Brazil	Machado Meyer Advogados
	Canada	Stikeman Elliott LLP
	China	Simmons & Simmons
	Denmark	Plesner Advokatpartnerselskab
	Egypt	Soliman, Hashish & Partners
	France	Kramer Levin Naftalis & Frankel LLP
	Germany	Simmons & Simmons
	Gibraltar	Ince
	Hong Kong	Simmons & Simmons
	India	Kochhar & Co
	Indonesia	SSEK Legal Consultants
	Ireland	Matheson
	Japan	Anderson Mōri & Tomotsune
	Kenya	Bowmans
	Liechtenstein	NÄGELE Attorneys at Law
	Malta	Ganado Advocates
	Mexico	Nader Hayaux & Goebel
	Netherlands	Simmons & Simmons
	New Zealand	Anderson Lloyd
	Pakistan	Asma Hamid Associates
	Singapore	Simmons & Simmons
	South Africa	Bowmans
	Spain	Simmons & Simmons

 Switzerland	Niederer Kraft Frey
 Taiwan	Lee and Li Attorneys at Law
 Turkey	SRP Legal
 United Arab Emirates	Simmons & Simmons
 United Kingdom	Simmons & Simmons
 USA	Seward & Kissel LLP
 Vietnam	YKVN