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The Legal 500 Country Comparative Guides

China

FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in China.

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1. What are the sources of payments law in your jurisdiction?

The PRC Law on the People's Bank of China (promulgated in 1995, amended in 2003) and the PRC Law on Commercial Banks (promulgated in 1995, amended twice in 2003 and once again in 2015) are the first-level primary sources of payments law in China; the People's Bank of China (PBOC) serves as the essential regulatory body of payment activities in China.

The PBOC issues China's further principal payments regulations, including the Measures for Payment and Settlement (1997) and the Administrative Measures on Payment Services by Nonfinancial Institutions (2010). However, payment-related matters are not only subject to the oversight of the PBOC and its regulations. For example, the Law of the People's Republic of China on Anti–Money Laundering may be implicated in payments-related matters and, although the PBOC undertakes anti-money laundering activities, the Ministry of Finance, Ministry of Commerce (MOFCOM) and the Public Security Bureaus may also get involved. As another example, cross-border payments will generally implicate the State Administration of Foreign Exchange (SAFE) and its regulations.

On 17 December 2023, the Regulations on the Supervision and Management of Non-Bank Payment Institutions (Regulations) were issued; they will come into effect on 1 May 2024. As the first administrative regulation governing this area, the Regulations have accounted for the regulatory rules previously adopted by the regulatory authorities and provide for comprehensive and continuous supervision throughout the entire payment process and continue to stress strict control over the market entry of payment institutions to prevent risks such as business diversification, fund misappropriation and data leaks. See the answer to question 2 for further details.

2. Can payment services be provided by non-banks, and if so on what conditions?

Yes. The non-bank payment services market in China is in many ways a fully developed market. As of 2022, the Chinese market has over 200 players involved in the non-bank payments industry[1]. On the other hand, statistics indicate that, from the end of 2022 to 5 November 2023, there have been over 15 non-bank payment institutions whose non-bank payment licences have been revoked for failure to meet the increasingly strict regulatory requirements[2]. Among them, the PBOC has imposed a total fine exceeding RMB 80 million on CNEPAY Co., Ltd., and suspended the renewal review of its payment license, for non-compliance with the designated real-name management for special merchants and failure to establish settlement accounts with acquiring banks as per the regulations[3].

The PBOC issues third-party payment licences (Payment Licences) that allow holders to offer online, mobile and offline payment services. To receive a Payment Licence, the applying entity must meet certain requirements including minimum registered and paid-in capital and some organizational requirements.

The newly published Regulations on the Supervision and Management of Non-Bank Payment Institutions, to take effect from 1 May 2024, have introduced significant changes to the payment industry.

(1) Market Entry:

Institutions must obtain a payment license before registration with the State Administration for Market Regulation (SAMR). The registered capital of payment institutions must not be less than RMB 100 million, with the registered capital being fully paid. And the Regulations reiterate that entities engaged in cross-border payments must hold a domestic payment license.

(2) Antitrust:

The Regulations explicitly state that a shareholder cannot directly or indirectly hold more than 10% of the equity or voting rights in two or more non-bank payment institutions of the same business type. If the PBOC discovers non-bank payment institutions involved in suspected monopolistic or unfair competitive practices, it should transfer relevant information to competent law enforcement agencies and cooperate with their investigations.

(3) Clearing and Reserve Funds:

Cross-institution payment business should be processed through qualified clearing institutions. The Regulations emphasize that reserve funds do not belong to the payment institution's own property. The Regulations require payment institutions to deposit reserve funds in the People's Bank of China or qualified commercial banks and the Regulations specify further regulatory measures to fully safeguard user rights.

Most importantly, the Regulations completely reshaped the licensing of non-bank payment institutions by abandoning the previous classification based on "medium" and "technology" and adopting a functional approach. This move aims to address the limitations of the previous classification system and better adapt to the rapidly evolving market landscape and payment technologies. For example. the emergence of "QR Code" payment around 2016 did not fit into any of the three typical business types based on technical features. This posed significant challenges in regulatory implementation and led to many unreasonable situations. To resolve this, the Regulations divided non-bank payment institutions into two categories: "Stored Value Account Operation" and "Transaction Payment Processing". Under this new approach, regardless of the external form of payment, payment institutions can be categorized and managed based on the essence of the business, effectively bridging the regulatory gap. The PBOC mentioned that detailed rules for implementing the Regulations would be formulated to specify the classification of payment businesses, transitional provisions for new and old business types, and approval, punishment procedures.[4]

The PBOC has historically restricted foreign-invested entities (FIEs) from obtaining Payment Licences. However, this was changed with the issuance of the Announcement Regarding Certain Issues on Foreign Investment in Payment Institutions by the PBOC in March 2018. According to that announcement, an FIE can apply for a Payment Licence if it is a PRC-registered limited liability company or joint stock limited company and if it meets the same qualifications that apply to domestic entities. Following PayPal's Payment License in 2021, Airwallex acquired its internet Payment License in 2023 through an equity deal with Shangwutong, a private-owned licensed company[5]. Parties dealing with foreign currency or Chinese currency cross-border payments may need to obtain one or two additional licences: one, for cross-border payments with onshore and offshore Renminbi, also from the PBOC, and another, for cross-border payments in foreign currency, from SAFE. Some supportive measures could be seen at local level. For example, new measures published collaboratively by PBOC, SAFE, China Banking and Insurance Regulatory Commission (CBIRC) and Guangdong Government allow qualified non-bank payment institutions within the Qianhai Cooperation Zone to conduct cross-border payment business. It supports eligible institutions within the Qianhai Cooperation Zone to access the Cross-Border Interbank Payment System (CIPS), facilitating the expansion of the RMB cross-border payment system's business in the Guangdong-Hong Kong-Macao Greater Bay Area (which covers Hong Kong, Macau and 9 cities in Guangdong province). The Qianhai Cooperation Zone is steadily conducting a pilot project for a unified domestic and foreign currency bank settlement account system, providing market entities with high-quality, secure, and efficient banking services.[6]

According to the PBOC's Measures for the Custody of Clients' Reserves of Non-Bank Payment Institutions (effective on 1 March 2021) client reserve funds of non-bank payment institutions are subject to a series of regulatory measures, including that the entirety of such reserves must be deposited in a special reserve bank account of the non-bank payment institution at a qualified commercial bank, and all transactions involving the client reserve will be subject to heightened regulatory overwatch by the PBOC via these commercial banks. There are also special regulatory requirements on non-banking payment institutions conducing cross-border Renminbi payment business.

In the last few years, the PBOC issued a series of regulations to raise the bar of know-your-client (KYC) requirements on non-banking payment institutions to the same level as that of regulated financial institutions, including the Measures for the Supervision and Administration of Combating Money Laundering and Financing of Terrorism by Financial Institutions (effective as of 1 August 2021) and the Measures for the Administration of Customer Due Diligence and Preservation of Customer Identity Information and Transaction Records of Financial Institutions (effective as of 1 March 2022). In 2023, several payment institutions were fined for non-compliance with KYC regulations. For example, in November 2023, Shanghai Xunfu Information Technology Co., Ltd. was fined RMB 5 million, among other penalties, by the PBOC Shanghai branch for failure to comply with KYC obligations, failure to submit reports on large-sum transactions and suspicious transactions, and transacting with unidentified clients.[7]

Footnotes:

1 http://www.sdzfqs.org.cn/u/cms/www/202308/11145046rnc5.pdf

2 http://www.pbc.gov.cn/rmyh/105208/4756594/index.html

3 https://news.cnstock.com/news,bwkx-202310-5143391.htm

4 http://www.moj.gov.cn/pub/sfbgw/zcjd/202312/t20231215_491722.html

5 http://tradeinservices.mofcom.gov.cn/article/szmy/hydt/202303/146715.html

6 https://www.gov.cn/zhengce/zhengceku/2023-02/23/content_5743026.htm

7 http://shanghai.pbc.gov.cn/fzhshanghai/113577/114832/114918/5134677/index.html

3. What are the most popular payment methods and payment instruments in your jurisdiction?

While in certain situations, bank transfers and promissory notes remain standard payment methods, particularly in B2B transactions, there is no doubt that Alibaba's Alipay and Tencent's WeChat Pay are the most popular general payment methods for daily B2C/retail transactions in China.

Alipay and WeChat Pay have become part of daily life. These services are accepted by a broad range of businesses, from high-end restaurants and designer boutiques to street vendors and taxi drivers, and everything in between. Customers can press the 'pay' button on their smartphone, and a Quick Response (QR) code will appear for the vendor to scan using a point-of-sale (POS) device. Vendors who do not have POS devices often print and display QR codes that customers can scan on their smartphone and then set the amount to transfer to such vendor's electronic wallets. Phone-scannable QR codes also mean that anyone can become a merchant. Transfers between individuals are also convenient, simple and free of charge.

While still accepted, cash is no longer widely used; Chinese people rarely carry a wallet, cash or bank card. While Alipay and WeChat Pay are essential for general life payments, UnionPay is a competitive option for B2B transactions. Any bank in China issuing a debit or credit card will have it linked to UnionPay, which remains the primary interbank network in China (and more generally the largest card network in the world) while also offering online payment methods alongside Alipay and WeChat Pay. Other clearing networks, such as China's NetsUnion Clearing Corporation for non-bank payment institutions from China, and VISA, Master Card and American Express for debit and credit cards, are also in the Chinese market.

According to the Payment & Clearing Association,[8] in 2022, non-bank payment institutions processed a total of 1.128 trillion transactions, with a total transaction volume of RMB 364.21 trillion. In addition, comparatively new payment tech, such as NFC, fingerprint recognition and facial recognition, are also gaining traction, which may augment or add new dimensions to existing legal issues, e.g. under privacy and data protection regulation.

Statistics indicate that as of 31 June 2023, the PBOC has carried out digital Renminbi (or DCEP) pilot tests in pilot areas of 17 provinces and municipalities[9], processing an aggregated 950 million transactions totalling approximately RMB 1.8 trillion. According to data as of the end of June 2023, the circulation of digital RMB has grown by 21.3% compared to the previous year.[10] Digital Renminbi is a legal tender issued by the PBOC and it is mainly positioned as a cash payment voucher (M0). It is different from Alipay or WeChat Pay in many ways, e.g. while Alipay and WeChat Pay still rely on bank accounts in order to be used (even for balance WeChat in wallet need to be transferred from a bank account in advance), DECP does not – even though it currently requires an account with a qualified commercial bank (transfers between users of DECP are independent of bank accounts, which is the same as Bitcoin and other digital currencies), transfer of digital RMB does not rely on bank accounts and allows for offline transactions. In addition, DECP is meant to be as transactable as cash, and merchants should not have the option, as long as they have the systems to accept any electronic payments, to refuse it (as they can sometimes refuse Alipay while accepting WeChat Pay or vice versa).

Footnotes:

8 "China Payment Industry Annual Report" (published on 10 August 2023)

9 https://news.cctv.com/2023/06/02/ARTISaWNKC3saeFY7

SV6w2Nw230602.shtml
https://m.mpaypass.com.cn/news/202308/01174506.html

10
http://finance.people.com.cn/n1/2023/0814/c1004-40056416.html

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

Open banking is generally understood by the market as a system that provides software developers and related businesses with a network of financial institutions' data through the use of application programming interfaces (APIs), which are established on the notion that individuals or entities might be willing to share their banking transaction details with third-party developers of APIs so that the individual end-users may enjoy more advanced and cheaper financial services. Although there are no specialised mandates or API standards for open banking in China, PRC law guides the growth of open banking by imposing specific restrictions on the sharing of bank customer data.

Thus, China has not (yet) provided for system-wide open banking or equivalent mechanisms like the UK may have done. However, some major banks in China are beginning to develop some open banking services. For example, Shanghai Pudong Development Bank (SPDB) has developed its API Bank, through which SPDB embeds its banking services into the Shanghai Port Service Office to process trade companies' international payments or purchase orders online through the Shanghai Port Service Office platform in a matter of minutes.

Industrial Bank also develops an open banking platform on open API. This platform provides modular services such as account management, payment settlement, and loan financing by integrating with licensed institutions on the backend. On the frontend, it connects with the commercial ecosystem, allowing partners in the commercial ecosystem to rapidly link with banks and integrate banking services through API interfaces. In August 2023, Industrial Bank's open banking platform achieved advanced-level certification in API security management maturity assessment and API security capability maturity assessment, making it the first bank in China to receive such recognition.[11]

We believe China's approach to regulating open banking will be pragmatic and organic, allowing industries to develop through experimentation and stepping in to tackle problems as they appear. At the same time, however, a tangential area of growing importance (in China as in other parts of the world), data and privacy protection, may raise barriers to interoperability and other interfacing of service providers, e.g. accessing banks' transaction data, and thus to the further development of open banking in China. The implementation and enforcement of the existing regulations on protecting financial data, such as the PRC Data Security Law and PRC Personal Information Protection Law, will likely be key indicators if not sources of such barriers (see below, answer to question 5).

Footnotes:

11
https://www.cib.com.cn/cn/aboutCIB/about/news/2023/20230912.html

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

China's primary data protection legislation is the PRC Cybersecurity Law (CSL), PRC Data Security Law (DSL), PRC Personal Information Protection Law (PIPL) and PRC Law on the Protection of Consumer Rights and Interests.

However, some other general legislation concerns data protection as well. For example, illegally collecting, using, processing or transferring personal data is prohibited under civil legislation. Criminal legislation also establishes offences related to the infringement of citizens' personal data and privacy, such as the offence of sharing personal information of citizens illegally collected without their consent, the crime of refusing to fulfil information network security responsibilities and the violations of stealing, purchasing or illegally disclosing other people's credit card information. Sector-specific legislation, including banking, insurance, credit information and other sectors, sets out rules for protecting data. On 3 August 2023, the China Payment and Clearing Association published the new Guidelines for Personal Payment Information Protection (Guidelines). Compared to the previous version, the Guidelines clearly define the scope of personal payment information, which refers to any information related to individuals involved in payment activities that can be known and processed, is related to individuals, and can identify individuals either individually or in combination with other information.

The Guidelines also explicitly state that the use and processing of personal payment information should be strictly limited to its intended purposes. In principle, entities in the payment industry should not use personal payment information in situations unrelated to payment services. Personal payment information should not be provided to non-business-related parties, and it is not allowed to be disclosed publicly. Additionally, the Guidelines outline the security framework for personal payment information and provide more detailed requirements for personnel, systems, and management of relevant institutions.[12]

The newly enacted Regulations on the Supervision and Management of Non-Bank Payment Institutions also set out provisions regarding personal information protection and outbound transfer of data. The processing principles stipulated under the Regulations align with the general rules of this area, including the principles of necessity and confidentiality. Moreover, obtaining separate consent from users is mandatory for information sharing with affiliate of the institutions, and relevant information of the affiliates must be disclosed. Non-bank payment institutions must enter into agreements with affiliated companies on information sharing and supervise their information processing activities to ensure legal compliance and risk control. Concerning outbound transfer of data, if non-bank payment institutions' relevant network facilities, information systems, etc., are recognized as critical information infrastructure (CII) or process personal information up to the quantity stipulated by the Cyberspace Administration of China (CAC), the processing of personal information collected or generated within the country should be conducted domestically. If there is a genuine need to transfer such information outbound, it must comply with laws, regulations and relevant national provisions, and the user's separate consent is a must.[13]

Such legislation and other relevant supporting regulations, including but not limited to the Measures for Administration of Classified Protection of Information Security and Measures for the Security Review of Network Products and Services (Trial), set out rules for providing financial services to consumers and businesses, though these latter are ultimately replaced by the more recent PRC Measures for Cybersecurity Review (Cybersecurity Review Measures). For example, network operators must publish the rules for collecting and using personal data and expressly notify users of the purpose, methods and scope of such collection and use; also, the collection and use of personal data should abide by the principles of 'legitimacy, rightfulness and necessity', which means only collecting personal data relevant and necessary for the provision of services, only processing the minimum type and amount of personal data necessary to fulfil the purpose that the data subject has given consent for, and only processing personal data within a proper and necessary scope.

Under the Circular on Strengthening Personal Financial Information Protection by Banking Financial Institutions, issued by the PBOC, any personal financial information collected within China must be localized within the country. While no personal financial information collected within China can be immediately transferred offshore, a transfer is possible if provided for by laws, regulations and the PBOC. The personal financial information might be transferred offshore if a series of regulatory requirements are met: (i) the data recipients are affiliated with the domestic financial institutions (e.g. a parent, holding company, branch or subsidiary of the domestic financial institution); (ii) the purpose of the offshore transfer is necessary for the business; (iii) the informed consent of data subjects has been obtained; and (iv) a security assessment regarding the offshore data transfer has been completed. Additionally, the Personal Financial Information Protection Technical Specification, issued by the PBOC, sets out specific requirements concerning the collection, transmission, storage, use and destruction of personal financial information.

The PRC government has generally been treading carefully, anxious not to slow down innovation but rather to establish frameworks and promulgate regulations that support economic growth while at the same time offering greater protection to consumers. China's cybersecurity laws and regulations have led fintech firms to strengthen their investments in privacy protection and cybersecurity to promote compliance and internal control so that consumers will be protected while enjoying more convenient and cheaper financial payment services brought by fintech innovation.

However, the promulgation of the sweeping DSL and PIPL, the more recent promulgation of the Measures concerning the Security Assessment for Cross-Border Data Transfer (SA Measures), the revision of the Cybersecurity Review Measures, and the measures relating to standard contract clauses, although none of them fall strictly within the category of 'financial services' regulation, may be signals that data security and protection will constitute a much more sensitive regulatory area – and potential source of challenges – for financial service providers. The new data and personal information protection laws include many restrictions, regulatory requirements and penalties across the spectrum of processing and related conduct, including heightened consent pre-requisites, a re-iteration and expansion of the pre-requisite for certain network operators to follow certain regulatory procedures or even governmental procedures in certain circumstances, and fines ranging from RMB 1 million to 50 million. That said, these data security and protection regulations bear similarities to, and yet are probably in most respects less exacting, than existing and anticipated data security and protection regulations of other jurisdictions. The high-profile enforcement action against CNKI is an example of the potential new environment. In September 2023, the CAC announced that 14 mobile applications operated by CNKI (China National Knowledge Infrastructure), including Mobile CNKI and CNKI Reading, violated essential principles by collecting personal information without necessary consent, not disclosing or clearly stating collection and usage rules, failing to provide account cancellation functionality, and not promptly deleting user personal information after account cancellation. CNKI was ordered to cease the illegal handling of personal information and was fined RMB 50 million by the CAC.[14]

Further to the SA Measures, effective as of 1 September 2022, the CAC clarified in a press release that the following activities will be considered 'cross-border'/'offshore' transfer of data and be subject to the security assessment requirement under the CSL and the PIPL:

- Transferring or storing data that is initially collected or generated during operations carried out within mainland China to any entities or individuals located outside mainland China; and
- Accessing/viewing any data that is initially collected or generated and stored within mainland China by entities or individuals located outside of mainland China, even in cases where the data is otherwise not transferred or stored offshore.

The amended Cybersecurity Review Measures, at the same time, no longer limit the scope of cybersecurity review procedures to only CII operators, but rather extend it to the wider concept of data processors. Likewise, they expand regulated activities to include "data processing activities" that affect or may affect national security, rather than only the "procurement of network products and services".

Footnotes:

12 https://www.lexiscn.com/law/content.php?provider_id=1&isEnglish=N&origin_id=4846375&keyword=5Liq5Lq65pSv5LuY5L%2Bh5oGv5L%2Bd5oqk5oyH5byV&t_kw=5Liq5Lq65pSv5LuY5L%2Bh5oGv5L%2Bd5oqk5oyH5byV&eng=0&search_keyword=%E4%B8%AA%E4%BA%BA%E6%94%AF%E4%BB%98%E4%BF%A1%E6%81%AF%E4%BF%9D%E6%8A%A4%E6%8C%87%E5%BC%95&prid=6fcbae33-84d3-03ee-a67a-6d3e1f2bbae0&crid=415b55ea-921a-41f3-84f1-90e294fe2e89

13 https://www.lexiscn.com/law/content.php?provider_id=1&isEnglish=N&origin_id=5061311&keyword=6Z2e6ZO26KGM5pSv5LuY5py65p6E&t_kw=6Z2e6ZO26KGM5pSv5LuY5py65p6E&eng=0&search_keyword=%E9%9D%9E%E9%93%B6%E8%A1%8C%E6%94%AF%E4%BB%98%E6%9C%BA%E6%9E%84&prid=39ca2133-5c8a-472e-c224-d1d334064487&crid=1bad5937-f629-4957-8e06-b32d06fec007

14 https://m.thepaper.cn/newsDetail_forward_24507111

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

PRC regulators generally encourage innovation in the financial sector. Blockchain is an example: it was identified as one of the core aims in the PRC government's 14th Five-Year Plan in 2021 and Fintech Development Plan for 2022-2025 (Fintech Development Plan). Twelve authorities (including MOFCOM) have published guiding opinions on the promotion and development of blockchain in commodity trading markets.

In addition, with the growth of mobile payments and online banking, the PBOC has developed a new consumer credit rating system that monitors an individual's wealth and debt. The rating system includes household borrowing and utility bills, to give banks or third parties a more comprehensive picture of the individual's financial position and credit risk so that systemic risks can be better controlled. Furthermore, Alipay and WeChat Pay also launched their credit-scoring system within their respective mobile apps, allowing individuals with high scores to enjoy special privileges, such as cash loans, consumer credit and deposit-free bicycle renting.

Some financial institutions are going further, e.g. applications of financial technology innovation regulatory tools. These include Shanghai Pudong Development Bank's "Privacy Computing Technology-Based Abnormal Transaction Monitoring Service", Shanghai Rural Commercial Bank's "Big Data Technology-Based Agricultural Industry Chain Financing Service," and Industrial and Commercial Bank of China

(ICBC) Shanghai Branch and Shanghai Credit Union Co., Ltd.'s "Inclusive Financing Service Based on Federated Learning Technology."

In January 2022, the PBOC promulgated its Fintech Development Plan for 2022-2025 (Fintech Development Plan), which replaces the first official Fintech Development Plan (for 2019-2021). Compared with the former plan, the new plan has placed greater emphasis on the use of data in promoting and driving the development of the fintech sector, and proposed eight main tasks for China's fintech industry, namely:

- Build a comprehensive fintech regulatory framework
- Fully utilize the potential of data as a production factor
- Build new digital infrastructure
- Intensify the application of key and core technologies
- Activate new momentum of digital operations
- Accelerate the reshaping of financial services with intelligence
- Strengthen the prudent regulation of fintech
- Consolidate the foundation for the sustainable development of fintech

Based on the above, it is not surprising that the central and local governments have all vowed to embrace new developments in the fintech sectors. For example, in April 2022, the PBOC, CBIRC, the China Securities Regulatory Commission (CSRC) and SAFE jointly issued the Opinions of the PBOC, CBIRC, CSRC and SAFE on Financial Support for Hainan's Comprehensive Deepening of Reform and Opening Up, in which it was specifically stipulated that the financial regulators will support the Hainan Free-Trade Harbor to promote pilot programs for innovative fintech business.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

With the growth of the fintech market, risks are constantly emerging, such as the possibility that fintech platforms are used for fraud, money laundering or terrorist financing. There are also issues surrounding cybersecurity, data privacy and credit risks. Fintech businesses face not only these inherent risks but also risks of tightening regulation.

For example, fraud risks caused by illegal transaction of bank cards caused PRC authorities to impose stricter regulations and the campaign of "Card Cut-off". On 10 October 2020, the Inter-Ministerial Joint Conference of the State Council for Combating and Controlling New Types of Telecommunications Network Crimes convened a national "Card Cut-off" operation deployment meeting. The meeting decided to launch the "Card Cut-off" operation nationwide to aggressively crack down on illegal activities related to the illicit transaction of phone cards and bank cards. The use of bank cards with false identities makes it difficult to trace and combat, providing means for illegal activities such as online gambling, telecom fraud, virtual currency and money laundering.

To address entities, individuals and organizers renting, selling or lending bank accounts (cards), punitive measures include a 5-year prohibition on opening new accounts and suspension of all non-counter business and payment account transactions. These actions are recorded in the financial credit database and reported to individual credit information system. The management of card blocking by banks is also becoming more stringent. Currently, major banks are intensifying their supervision of bank cards, with a focus on large cash transactions, low account balances, out-of-town card usage, frequent transactions and incomplete information.

Further, following the Ant Group IPO event, government authorities strengthened the supervision and requirements on microloan lending companies and consumer finance companies.

On 7 July 2023, the PBOC, CBIRC and CSRC announced fines totalling RMB 7.123 billion against Ant Group and its affiliated entities. And the online microloan platform "Mutual-Aid" platform has been officially shut down. The regulatory authorities outlined seven charges against Ant Group, including violations of regulations on the protection of consumer financial information and regulations on the protection of financial consumer rights. And the Zhejiang Securities Regulatory Bureau also pointed out Ant Group's violations in fund sales, including breaching regulations related to the access, promotion, file management of fund products and violating regulations on the management of personnel and internal controls of fund sales institutions. The platform under Tencent Group, "Caifutong" was fined RMB 2.427 billion and suspended for similar reasons.

Personal consumer finance products (also known as online microloan platforms) such as "Huabei", "Jiebei" and "Weilidai" attract consumers through fast approval, unsecured loans, high credit limits and cash rebates. For consumers, the proliferation of online lending can easily lead to falling into consumer finance traps, creating a cycle of borrowing to cover previous debts. For instance, Chinese media has reported cases where individuals, such as a Nanjing University student, applied for 56 online loans within a year, was unable to repay, and facing immense debt pressure, chose to take their own life.

In 2020, Ant Group disclosed in its pre-IPO prospectus that in the first six months of that year, approximately 98% of loans were issued by financial institutions or securitized assets. Using this approach, Ant Group leveraged RMB 36 billion in assets to mobilize nearly RMB 2 trillion in joint loans, assuming only a relatively small risk. More than 100 Chinese commercial banks joined Ant Group's large-scale operation, which led to major concerns from regulators on potential economic consequences if the large-scale operation were to fail.

Nevertheless, the penalties imposed on Ant Group and Tencent are also considered to signal the conclusion of China's concentrated rectification of online microloan platforms and it indicates a transition to a normalized and compliant phase in the governance of the area.[15]

Following the Ant Group's event, the threshold for entering into microloan lending activities has risen, while many microloan lending companies have exited the market. Reports claim that in 2022, nearly 500 companies [16] exited the lending market, and the number further decreased by another 354 by the end of September 2023, at which time there remained a total of 5,604 microloan lending companies nationwide.[17] Moreover, due to the Ant Group IPO attempt and the monopoly of Tencent and Baidu, the PRC has begun strengthening antitrust regulation, most notably in the June 2022 amendment to the Anti-Monopoly Law. According to reports in October 2022, the CBIRC has admitted, in an unofficial online Q&A, that it has suspended applications for establishing new online microloan companies and is calling for local financial regulatory bodies to launch campaigns targeting compliance problems in the online microlending industry. After this comprehensive halt, there have been no new licenses issued for online small-sum lending. Companies wishing to enter this industry typically do so through acquiring licensed entities. In August 2023, POIZON, an app with nearly 200 million users, officially obtained an online microloan license by acquiring 100% shares of a licensed company.[18]

On 31 December 2021, the PBOC promulgated the Regulations on Local Financial Supervision and Administration, expressly setting out the nation-wide unified regulatory requirements on the establishment and operation of the so-called "local financial organizations" such as micro-loan companies, financing guarantee companies, regional equity markets, pawnshops, financial leasing companies, commercial factoring companies and local asset management companies, which are so far regulated mostly by local, provincial level legislation. Then on 6 April 2022, the PBOC released a draft of the Financial Stability Law, which aims to promote the stability of the financial sector, including explicitly reiterating that all regulated financial activities must be operated by regulated and licensed entities.

Fintech is also facing cybersecurity challenges with the rise of cyber-financial crimes. Hackers backed by criminal organisations establish offshore servers to hack into systems to steal money or destroy the reliability and credibility of such systems. Although it has added another layer of complexity, fintech firms need to take a preventive approach towards cybersecurity. For example, new generation ATMs have a much higher level of connectivity with mobile integration and face recognition, making them more vulnerable to software-based attacks and theft of customer card data. As such, the growing cybersecurity framework (intended to combat such issues) can be viewed as a potential curb on the growth of fintech businesses via compliance requirements or as an aid to their safe, stable and ultimately greater growth (see above, answer to question 5).

Enhancing forward-looking research and assessing potential risks of new technological financial applications such as the metaverse and AIGC is also a current regulatory focus. On 10 July 2023, CAC alongside six other PRC government departments jointly released the Interim Measures for the Administration of Generative Artificial Intelligence, which imposed several obligations for generative AI providers, including execution of service agreements, anti-addiction measures and reporting content violations and wrongful activities to PRC regulators.

Footnotes:

15
https://www.bbc.com/zhongwen/simp/chinese-news-66188539

16
https://www.gov.cn/xinwen/2023-02/02/content_5739674.htm

17
http://www.pbc.gov.cn/diaochatongjisi/116219/116225/5111492/index.html

18 https://new.qq.com/rain/a/20230821A012JY00

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

Although China does not have tax incentives specifically for fintech, China has adopted tax incentives, subsidies, incubation funds, tax refunds and other preferential government policies for high-tech companies and certain FIEs. A 'high-tech company' recognized by the government is entitled to a variety of preferential policies, including (i) a reduced enterprise income tax (EIT) rate of 15% (compared to the normal rate of 25%), (ii) an exemption of income tax on assignments of nonexclusive licences with a term of five years or more for the first RMB 5 million received from the licence, and a 50% reduction in the income tax to be paid on the amount received from the licence in excess of RMB 5 million; (iii) the allowance of accelerated depreciation of certain fixed assets; and (iv) government subsidies paid to the company and employees hired by the company. In addition, the government provides a temporary waiver of EIT (usually at 10%, unless a preferential tax rate applies under a double tax treaty or arrangement) for non-tax resident enterprises (i.e. foreign investors) that make direct investments in projects and fields for which foreign investments are not banned, with profits distributed by a tax-resident enterprise in the PRC (Tax Deferral), if certain conditions are met.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

The rapid development of technology, including artificial intelligence, blockchain, cloud computing and big data, has brought tremendous changes in the financial services model. We see fintech entrepreneurial projects from early stage to pre-IPO stage in roughly equal numbers, as well as some fintech IPOs. Based on our observations in 2023, the consumer finance sector is attracting investment in China. One of the most anticipated investments in the Chinese market in 2023 should be the investment in Chongqing Ant Consumer Finance Co., Ltd. (Ant Customer Finance). The Ant Group, HFI Digital Technology, Yuwell Group and other investors plan to invest RMB 4.5 billion into Ant Consumer Finance with the approval of the Chongqing regulatory bureau obtained on 25 October 2023. Over the past year, Ant Consumer Finance has undergone two rounds of capital increases. Before this latest capital injection was approved, Ant Customer Finance had obtained approval at the end of last year to increase its registered capital from RMB 8 billion to RMB 18.5 billion. The continuous capital increases by Ant Consumer Finance aim to meet additional capital requirements for loan companies, especially as it takes over the Huabei and Jiebei businesses. With the impact of the pro-consumption environment and the favourable policies in the consumer finance sector, the growth rate of the consumer finance industry is expected to increase. This round of capital increase opens up the growth space for the Ant Consumer Finance's consumer credit lending scale.[19]

Footnotes:

[19] http://www.stcn.com/article/detail/1015305.html

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

In addition to the high levels of internet and mobile penetration, years of sustained economic growth and substantial financial needs of the country, China's fintech sector benefits from vital fintech ecosystems and critical inputs, including a highly educated workforce, the availability of investment capital, advantageous government policies and great demand.

There are numerous specific key pull factors of this jurisdiction for beginning operations. For example, much fintech talent supports China's fintech market, including experts on both the finance and technology sides of the industry and many professionals with top international educations and work experience. Further, the great availability of capital in the Chinese market, mainly from domestic investors, provides investment for fintech firms of all kinds, especially early-stage companies. Moreover, the PRC government has been very active in promoting innovative initiatives to support the growth of fintech companies by offering monetary and tax incentives (see answers to questions 6 and 8).

There are also other innovative policy initiatives, e.g. new Shenzhen policies for the fintech market include: (i) permitting the set-up of wholly foreign-owned enterprises in credit investigation and rating service areas; (ii) reducing the start-up time for all wholly foreign-invested enterprises to less than 5 working days; (iii) supporting (including up to RMB 10 million in financial support) foreign investment to set up research and development institutions; (iv) exempting imported supplies for research from import duties, value-added tax and consumption tax and offering a full refund for all value-added tax for purchases of domestic equipment; (v) offering financial companies one-off awards according to paid-in capital, e.g. those with a paid-in capital reaching RMB 1 billion can received a one-off RMB 20 million award.

On 25 July 2023, the State Council issued the Opinions on Further Optimizing Foreign Investment Environment and Intensifying Efforts to Attract Foreign Investments (Opinions). The Opinions identify 24 policy measures in six areas: (1) improving the quality of foreign capital utilization; (2) guaranteeing the national treatment of foreign-invested enterprises; (3) strengthening the protection of foreign investment; (4) improving the facilitation of investment and operation; (5) increasing fiscal and tax support; and (6) improving ways to promote foreign investment.[20]

To further the Opinions, both Beijing and Jiangsu provinces promulgated regulations or draft regulations, such as the Beijing Foreign Investment Provisions (Draft for Comments) and the Provisions on Encouragement and Protection of Foreign Investment of Jiangsu Province, encouraging foreign investment and promoting creative trial regulations in their respective free trade zones. As an example, Beijing's draft regulation promotes an online FIE registration process. If all verification and registration processes can be carried out online, it will significantly simplify and accelerate the establishment process for FIEs in Beijing.

Footnotes:

20
https://www.lexiscn.com/law/content.php?provider_id=1&isEnglish=Y&origin_id=4849541&eng=0&prid=899e4d14-f8f3-417f-983e-005c02069982&crid=b902fc97-c88d-489f-83f8-f7773d8ac006

11. Access to talent is often cited as a key issue for fintechs – are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

While the PRC Labour Law, the PRC Civil Code and other legislation set out relatively comprehensive rules concerning the relationship between talent and employers, immigration rules make up a less developed framework. The result, however, is a general hospitality to foreign talent, with multiple types of work visas/permits, some not subject to quotas and others with quotas that are very loose. While the process may involve several, typically time-consuming steps (work permit, work visa and residence permit), there is a fast-track process for certain categories of foreign workers (e.g. leading scientific talent and international entrepreneurs). After nearly three years of COVID-related closure, in 2023 all COVID test requirements for international travellers were dropped, China reopened its borders and resumed issuing all types of visas for foreigners, including tourist and business visas.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

It does not appear that specific gaps in access to talent have been identified, but China is still ramping up its intake of foreign talent. Further to the fast-track process for special categories of talent, on 11 January 2023, the Ministry of Commerce and the Ministry of Science and Technology issued the Several Measures for Encouraging Foreign Investment in the Establishment of Research and Development Centres, encouraging the introduction of overseas talents. For example, qualified foreign invested entities are allowed to, with each team as a unit, apply for one-time work permit for a term not exceeding the labour contract period and work-related residence permit for a term not exceeding five years for the foreign members of the team, so as to facilitate long-term and permanent residence for overseas talents in China. In addition, financial institutions shall be supported in handling truthful and lawful cross-border fund receipt and payment for overseas talents working in qualified FIEs in accordance with relevant regulations.[21]

Footnotes:

21
https://www.lexiscn.com/law/content_cnen.php?provider_id=1&isEnglish=N&origin_id=4527283&eng=0&keyword=&t_kw=&prid=8af7ba51-b577-46d8-bf2a-1459a0627ae4&crid=ca3753ff-969b-4baf-bde5-4386a7706d38

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

China is creating an increasingly favourable intellectual property (IP) environment. There are various protections from myriad IP laws and regulations, such as the PRC Patent Law, PRC Copyright Law, E-Commerce Law and PRC Anti-Unfair Competition Law (which covers trade secrets, including know-how and source code). Furthermore, applicants can obtain IP rights ever more quickly and with lower costs. China has also established specialist IP courts in Shanghai, Beijing and Guangzhou and Hainan Free Trade Zone, where most IP cases are tried, while an IP tribunal was formed as a new subdivision in the Supreme People's Court on 1 January 2019. Amendments to the PRC Copyright Law in 2020 included punitive damages, an increase in statutory damages and an increase in civil fines for infringement. On 11 November 2023, the State Council issued the Implementing Rules of the Patent Law of the People's Republic of ("**Implementing Rules**"), effective as of 20 January 2024.[22] The Implementing Rules focus on five issues: (1) improving the patent application system for the convenience of applicants and innovators; (2) enhancing patent examination quality; (3) strengthening administrative protection for patents to safeguard the legitimate rights of patentees; (4) promoting public services related to patents for utilization; and (5) introducing special provisions for international applications of utility model patents to enhance alignment with the Hague Agreement.

Fintech businesses may be able to obtain protection on many inventions and creations as well as branding. The Financial Technology Industry Patent Analysis White Paper for 2023 shows that since 2018, the global financial technology industry has surpassed 340,000 patent applications, with an annual average of nearly 60,000 applications. In 2021, the annual patent application volume for financial technology reached a recent peak at 70,869, with an average annual growth rate of 3.8.[23] Also, source code, databases and relevant data are deemed trade secrets protected under the PRC Anti-Unfair Competition Law. Now fintech firms have specialist courts to seek protection and redress, including recourse to China's highest court. Finally, as programmatic documents specifically for IP reform, such as the Opinions on Several Issues Concerning Strengthening Reform and Innovation in Intellectual Property Trials, are issued by major government players (in the aforementioned case, by the 'Two Offices' at China's highest levels of government), it may not be long until fintech IP is specifically addressed similarly.

Footnotes:

22 https://www.gov.cn/zhengce/content/202312/content_6921633.htm

23 http://www.cnipr.com/sj/zx/202311/W020231127515414113245.pdf

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

Cryptocurrencies, such as Bitcoin, Ethercoin and even stablecoin, are expressly prohibited and generally deemed to have no value. The 23 October 2020 draft amendments to the PRC Law on the People's Bank of China would provide a legal basis for digital currency electronic payments (DCEP), though possibly only for the Central Bank Digital Currency (CBDC) in pilot use by the PBOC. Pilot schemes for DCEP have been running in 17 provinces of China, including the Greater Bay Area, the Beijing-Tianjin-Hebei region, Pearl River Delta region and the Yangtze River Delta region. As mentioned above, the DCEP has gained tremendous market momentum in the two years pilot trial and the DCEP pilot scheme is expected to continue to expand through 2023. In February 2023, Jiangsu province released a work plan on the pilot scheme for DCEP, aiming to establish a digital RMB operation and management system that is convenient, efficient, widely covered in applications and relatively well-developed by the end of 2025.[24]

Footnotes:

24 https://www.jiangsu.gov.cn/art/2023/2/9/art_32648_10745635.html

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

Initial Coin Offerings (ICOs) are officially banned in China. They have been deemed illegal financing activities as per a PBOC circular issued in September 2017. All organisations and individuals are prohibited from engaging in fundraising activities involving ICOs; banks and other financial institutions are also prohibited from involvement in transactions relating in any way to ICOs.

In 2019, both the PBOC and a government group on internet financial risk rectification announced an "all around" crackdown on cryptocurrency and illegal blockchain activities. In September 2021, the PBOC, the CAC, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Industry and Information Technology, the Ministry of Public Security, the State Administration for Market Regulation, the CBIRC, the CSRC and SAFE jointly released the Notice on Further Preventing and Resolving the Risks of Virtual Currency Trading and Speculation, which sets forth, amongst other things, that crypto currencies are not legal tenders, and crypto currency-related activities are illegal financial activities. Provision of services by overseas virtual currency exchanges to residents in China via the internet is also considered to be an illegal financial activity. Where any legal person, unincorporated organization or natural person breaches public order and good morals when investing in virtual currencies or related derivatives, the corresponding civil juristic behaviour is void and the losses arising therefrom are to be borne by themselves.

In April 2023, China's highest court released the Minutes of the National Courts' Conference for Financial Trials (Draft for Comments), which emphasizes that the trading of cryptocurrencies such as Bitcoin, Ethereum and Tether seriously disrupts the economic and financial order and poses a serious threat to the property security of the people. However, it goes on to provide, if the parties agree to offset debts arising from mutual aid, labor and other basic relationships with a small amount of cryptocurrencies, the court shall confirm the validity of the contract (unless there are other bases for invalidity).[25]

The financial value of virtual property has been increasingly acknowledged by PRC judicial bodies. In a case adjudicated by the Beijing Internet Court and publicized as one of the "10 Typical Cases for China Internet Governance in 2022", the plaintiff filed a claim against a game company to refund his unused game coins and pay compensation for other game props since the game company shut down the game. The court upheld the plaintiff's claim and ruled that the game props have the nature of property and shall be protected as internet virtual property. For example, game coins were directly purchased with legal tender, so the game company must refund the amount equivalent to the value of the unused virtual coins.

In sum, crypto-related business operators cannot operate within China, nor can they legally offer services to PRC residents. It is also worth noting that the CAC, the watchdog of China's internet, has pushed Chinese websites to scrutinize news, social media posts, etc. for (improper) promotion of crypto currencies. This ban is not expected to be lifted in the foreseeable future.

Footnotes:

[25] http://www.baotoulawyer.com/info/6080.jspx

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

The use of blockchain technology beyond its cryptocurrency applications has been welcomed and even encouraged by regulators. On 10 January 2019, the CAC released the Provisions on the Administration of Blockchain-Based Information Services (Blockchain Provisions), which are the first official rules to regulate the blockchain industry in China and impose clear procedural guidelines for providing non-crypto currency, blockchain-based information services within China. Blockchain information services in China are defined as information services delivered to the public through the internet or application programs or otherwise and based on blockchain technology or systems. Central and local CAC are responsible for the administration and law enforcement of blockchain information services within their respective administrative regions.

The Blockchain Provisions encourage self-regulation in the blockchain industry to promote the growth and proper development of the blockchain industry. They set out certain requirements for blockchain service providers to ensure compliance with cybersecurity law. For example, blockchain service providers must certify the real identity of blockchain service users by checking relevant organisation codes, identity card numbers and mobile phone numbers and keeping the login records of users for at least 6 months. When a blockchain service provider intends to launch any new products, application programs or functions, it is now required to report to the CAC and undergo a security assessment. While the Blockchain Provisions do not require operating permits for blockchain services, they have a filing requirement concerning blockchain service providers.

Since 2016, Fintech giants such as Ant Financial and Tencent have sponsored several blockchain-based applications to promote charity, such as a program for raising funds for children with hearing-impairs, and to use blockchain technologies to locate lost people. JD, Cainiao and Tencent have developed several blockchain-based logistics services, including for tracking of courier packages and combatting of merchandise counterfeiting. Blockchain-based services have been widely used in various other scenarios, including governmental and commercial online copyright protection platforms as well as evidence preservation. For example, electronic evidence platforms such as "Rights Guardian" can store electronic evidence through blockchain technology, making evidence collection more convenient and cost-efficient comparing with the more traditional evidence preservation channel such as notary public. Such evidence that are preserved by the blockchain platforms more and more accepted by the court in China.

The PRC's new "regulatory sandbox" regime (see answer to question 6) features several trial applications of blockchain technologies in the fintech sector.

On 25 April 2021, the CAC launched its own Blockchain Service Network (BSN). The BSN is a national blockchain platform led by China's State Information Centre and backed by giant state-owned companies like China UnionPay, China Mobile and China Merchants Bank. The initiative is meant to provide an economical and efficient way for small and medium-sized enterprises to use blockchain technology and build decentralised apps. BSN integrated Chainlink, the blockchain middleware, into its network while announcing at the same time 6 public chains, Tezos, NEO, Nervos, EOS, IRISnet and Ethereum, to be used on the BSN. With the inclusion of Ethereum, there was a possibility that the BSN would be a way to globalise Chinese blockchain technology, but BSN was split into two entities, BSN International and BSN China.

In 2023, the BSN achieved a significant milestone by entering into a collaboration, with a leading European cloud computing solutions provider, for deployment in Europe. This groundbreaking partnership entails using the BSN's products within data centers utilizing state-of-the-art European cloud technologies. The initial suite of products was slated to launch by the end of October 2023, with additional plans for cloud service deployments in Switzerland expected to be finalized by the close of the year, although at present the deployment status is unclear. This strategic move underscores the BSN's formal entrance into the mainstream European cloud service market, marking a crucial step in expanding its global presence.[26]

Footnotes:

26
http://finance.people.com.cn/n1/2023/1020/c1004-40100018.html

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

The artificial intelligence (AI) market in China is seeing strong growth, particularly in the following areas within the fintech sector: (i) speech recognition and natural language processing applications, such as smart customer service, deep-dive behaviour analysis and voice data mining; and (ii) machine learning, neural network applications and knowledge maps, each for applications such as wealth management, fraud detection, intelligent risk control and robo-advising.

In general, PRC regulators are neither encouraging nor impeding AI technology, though the onerous licencing and other requirements for financial advisory services related to publicly traded funds and securities necessarily entail considerable regulation of AI. Certain 'intelligent advisers' in the private investment sector (e.g. asset managers exclusively providing services to qualified investors) are subject to a different set of regulatory requirements regarding the use of AI. The different conditions have been comparatively lax but have recently been subject to increased regulation that will impact China's fintech sector.

The Guiding Opinions for Regulating Asset Management Business of Financial Institutions reiterated that any institution that wishes to use AI technology to engage in investment advisory services must obtain an investment advisor licence. The guiding opinions stated that nonfinancial institutions are prohibited from engaging in asset management activities under the alternative name of 'intelligent investment advisers' if their registered business scope does not include 'asset management'.

Until a couple of years ago, intelligent investment advisory has been relatively active in China's mutual fund sector and there have been several mutual fund products identifying themselves as using intelligent investment advisers. However, in November 2021, several Chinese companies engaged in such business received a Notice on Regulating Fund Investment Advisory Activities from local branches of the CSRC, calling for all companies that do not have an investment advisor license to suspend investment advisory services in the mutual fund sector. Consequently, as of July 2022 almost all commercial banks in China have suspended online services using intelligent investment advisory technology.

As China has increasingly been opening up its asset management market (including its market of securities investment fund managers), allowing seasoned foreign investment management firms such as JP Morgan, BlackRock and Fidelity to set up wholly foreign-owned private fund management services onshore, it is foreseeable that these foreign giants would be able to further tap into the Chinese private intelligent advisory services market by targeting qualified investors in China.

As of 2021, the PBOC has pilot schemes around the country to integrate financial data using AI, aiming to explore the application of AI to drive the high-efficiency handling and security of sharing financial data and achieve cross-tier, organisational integration of data applications. The fast-growing technological company SenseTime has partnered with the central bank to promote research into AI uses in the financial sector. The Fintech Development Plan (2022-2025) (see answer to question 6) expressly calls for the optimisation of AI, data resources, algorithm models, hashing power support and other core AI assets and the deep integration of AI technology with financial business in the PRC.

On 10 July 2023, the Interim Measures for the Administration of Generative Artificial Intelligence Services (Generative AI Measures) were issued, effective as of 15 August 2023. Any entity, organization or individual that provides services that generate any text, images, audios, videos or other content to the general public in mainland China using “generative AI technology”, whether through APIs or other means, will be subject to the Generative AI Measures.

The Generative AI Measures require providers of generative AI services to take a number of actions, including executing service agreements with users, labelling videos and other generated content if the service provider offers “deep synthesis” services, and reporting content violations and wrongful activities to PRC regulators, etc. For any generative AI services with “public opinion properties or the capacity for social mobilization”, their providers are required by the Generative AI Measures to conduct security assessments and algorithm filings via the CAC’s designated online platform. As of November 2023, the CAC already accepted filings of 262 applicants.

Further legislative developments on AI are expected in the near term according to the State Council’s 2023 legislative agenda, including an “AI law”.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

The insurance industry has undergone tremendous changes due to technological innovations in the industry. Thousands of enterprises involved in online insurance have been reportedly established each of the last several years. On 29 May 2023, the Institute of Finance & Banking Chinese Academy of Social Sciences and the Research Centre for Insurance & Economic Development Chinese Academy of Social Sciences jointly released the 2023 Research Report on Innovative Services for Internet Insurance Claims. According to the report, online, intelligent, and paperless are the three major trends in China’s internet insurance claims services. It is expected that by 2030, the premium income of internet insurance will increase nearly six times compared to 2022, or it may exceed RMB 2.85 trillion, and the amount of sales and claims completed through internet channels will be close to RMB 1 trillion.[27]

Beyond traditional insurance moving online from offline, insurtech has triggered innovations throughout the insurance industry and forged a brand-new ecological model. Ant Group’s Mutual Aid (Mutual Aid) and Waterdrop Mutal Aid are examples. These two platforms work in a same model: it is a health insurance product for lower-income families, similar to conventional health insurance products. Members of these platforms will receive health care coverage for free if they share medical expenses when other members become ill. It is cheaper and more affordable than traditional health insurance: each member pays an amount based on the ratio of members to those who fall ill. Nevertheless, most of these platforms are operating without an insurance license.

After reaching its peak in 2019, the online mutual aid industry witnessed several platforms, including Waterdrop Mutal Aid and Meituan Mutal Aid, shutting down as regulatory scrutiny intensified, affecting various giant internet companies.[28] On 14 November 2020, the Measures on Internet Insurance Business were issued by CBIRC, effective as of 1 February 2021. These measures further limit the kinds of parties that can conduct certain insurtech business, e.g. prohibiting third-party online platforms (as opposed to platforms operated by qualified insurance institutions), while also imposing new compliance requirements and potential penalties. As introduced in question 7, Mutal Aid has been officially shut down and penalties amount to more than RMB 7 billion.

Footnotes:

27
http://ifb.cssn.cn/newpc/xscg/lwbg/202305/W020230527596044580909.pdf
http://ifb.cssn.cn/was5/web/search?channelid=243977&searchword=%E4%BA%92%E8%81%94%E7%BD%91%E4%BF%9D%E9%99%A9%E7%90%86%E8%B5%94%E5%88%9B%E6%96%B0%E6%9C%8D%E5%8A%A1%E7%A0%94%E7%A9%B6%E6%8A%A5%E5%91%8A&x=26&y=22

28 https://www.yicai.com/news/101001138.html

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

Mobile payments, dominated by two apps, WeChat Pay and Alipay, have become so common in China that paying with cash is practically unheard-of, even with street vendors and taxi drivers. Competition for a larger market share has propelled innovations such as Alipay’s

'Smile to Pay' facial recognition system through which customers can authenticate their payments by having their faces scanned. Recently, WeChat officially launched 'palm scanning payment', allowing pay with just a wave of your hand and thus providing a better overall experience for identity recognition, authentication, and transaction settlement.[29] Such rapid development in mobile payments is partially due to China's unique fintech ecosystem: a tech-savvy population, an underdeveloped banking industry and a regulatory environment that, at least until very recently, was very permissive. Tencent's WeBank was China's first digital bank, established at the end of 2014, and it was closely followed by Alibaba affiliated MyBank, as well as Baidu and China CITIC Bank's aiBank. Such digital banks provide financial services to people who do not have access to traditional financial services. For example, WeBank's most popular service is Weilidai Consumer Loans, available through Tencent's WeChat app, which provides unsecured personal loans in the range of RMB 500 to RMB 200,000. Weilidai Consumer Loans give borrowers a 24/7 digital banking experience with the flexibility to borrow and return at any time.

Footnotes:

[29] https://www.stcn.com/article/detail/871494.html

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

There has been more competition/disruption than collaboration in China between fintech companies and incumbent financial institutions. In particular, WeChat and Alipay have taken huge market shares in the payments space, with it now being estimated that about half of daily expenses go through mobile payments. However, banks themselves have been innovating to try and regain market share in the payments space. For example, UnionPay has connected nearly all mainland banks within one mobile app to expand mobile payment services; and China's dominant bank card clearing service has launched a nationwide campaign with aggressive discounts on transaction fees on the vendors' side to attract users of Alipay and WeChat Pay, and has also successfully pushed Alipay and WeChat Pay to charge customers for fund transfers from Alipay or WeChat Pay to bank accounts.

However, there have also been some instances of collaboration. For example, fintech companies have established collaborative relationships with commercial banks, such as the one between Ant Financial and the SPDB, whose digital transformation Ant Financial supports with its technological capabilities, and another between WeBank and the Agricultural Bank of China in the fields of mobile payment smart accounts, cross-border payments, credit card business, etc. Another example here is that Tencent and Bank of China signed an agreement to cooperate in the field of digital financial services for enterprises. By leveraging digital technology, Tencent could help Bank of China improve the quality and efficiency of financial services for small and medium-sized enterprises.[30] Collaboration is also noted between insurance companies and banks. For example, in November 2023, Zhonghui Life Insurance and Bank of China signed a comprehensive strategic cooperation agreement for carrying out comprehensive cooperation in areas such as product sales, asset management, investment banking, financial markets, basic financial services and innovative businesses.[31]

Footnotes:

[30] https://www.bankofchina.com/aboutboc/bi1/202207/t20220707_21402615.html

[31] http://www.cbimc.cn/content/2023-11/18/content_500316.html

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

Banks in China have been investing more in technologies such as AI, biometric identification, big data and blockchain. For example, China Construction Bank, one of the largest state-owned banks, released an app to connect real-estate developers, purchasers, owners and renters in the Greater Bay Area. Among other features, renters can apply for loans for long-term commercial leases through the app. Another bank, the Industrial and Commercial Bank of China, also one of the largest state-owned banks, has launched facial scanning technology at ATMs. UnionPay has linked all the ATMs around the country for any bank, making it the single bank card in China connected to all banks. Banks are reported to be behind the majority of projects in the many fintech regulatory sandboxes launched since January 2020 (see answer to question 6). In 2023, many banks carried out fintech innovation programmes, such as the retail credit intelligent risk operations decision system construction project of SPDB, the digital supply chain project of Industrial Bank, one-stop retail financial digital marketing cloud platform project of China Minsheng

Bank, as well as the quantum computing project of Ping'An Bank.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

There have been several strong examples of disruption by fintech companies in China. The most significant disruption has been in the payment space (see answer to question 20), but there have been others as well.

For example, there has been a sharp rise in online lending/deferred payments provided by fintech giants such as Alibaba and JD, which provide loans to shoppers on Taobao or JD (both similar to Amazon/eBay), who can choose to make instalment payments when purchasing products. This move by e-commerce companies into consumer credit pits them against China's largest credit card issuer (UnionPay) and banks. Deposit-like vehicles are also challenging banks' funding models. In 2013, Alibaba launched an app called Yuebao that allowed users to seamlessly invest in money market funds, with no minimum amount and the option to withdraw funds. These funds offered higher rates than those associated with bank accounts.

In addition, the initial absence of regulations sparked the boom of the online lending market and gave rise to many scams and high-risk financial models. The most headline-grabbing case was Ezubao, in 2016, which was an online peer-to-peer lending platform that promised double-digit annual returns to investors. However, the platform turned out to be a Ponzi scheme. After the Ezubao scandal, P2P platforms faced waves of regulation intended to standardise the industry, which placed caps on loan sizes, forced lenders to use custodian banks to hold their deposits, and ultimately effectively banned P2P lending.

In general, we believe that the tighter regulatory environment will lead smaller players to either fold or collaborate; as a result, several stable companies will eventually emerge and operate under the heightened regulatory scrutiny to promote the healthy and sustainable development of internet platforms, though shocks can rock even the largest players, e.g. the penalties of RMB 7.1 billion imposed on Ant Group in July 2023. After the investigation, other tech giants, such as Tencent, Baidu, Meituan and Bytedance, have been fined for violating competition laws, while other fintech giants, such as JD Group's JD Digits, have suspended IPO plans.

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